

SENATE BILL REPORT

ESHB 1187

As of March 22, 2023

Title: An act relating to privileged communication between employees and the unions that represent them.

Brief Description: Concerning privileged communication between employees and the unions that represent them.

Sponsors: House Committee on Civil Rights & Judiciary (originally sponsored by Representatives Hackney, Berry, Bateman, Ramel, Doglio, Simmons, Lekanoff, Bronoske, Wylie, Stonier, Pollet and Ormsby).

Brief History: Passed House: 3/6/23, 95-0.

Committee Activity: Law & Justice: 3/23/23.

Brief Summary of Bill

- Creates a privilege from examination and disclosure for a union representative and a union employee concerning any communication between the union representative or union employee made during union representation, and creates exceptions to this privilege.
- Applies the privilege from examination and disclosure to the union members and organizations that represent employees of college districts, employees of school districts, public employees, faculty at public four-year institutions of higher education, civil service employees, ferry employees, port employees, and labor unions.

SENATE COMMITTEE ON LAW & JUSTICE

Staff: Ryan Giannini (786-7285)

Background: Testimonial Privilege. The judiciary has the power to compel witnesses to

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appear and testify in judicial proceedings so the court will receive all relevant evidence. Common law and statutory law recognize exceptions to certain communications when certain classes of relationships or communications within those relationships are deemed of such importance that they should be protected from being compelled to testify in judicial proceedings.

Washington statutory law establishes a number of testimonial privileges, including communications between the following persons:

- spouses or domestic partners;
- attorney and client;
- clergy and confessor;
- physician and patient;
- public officers and another person if the public interest would suffer due to the disclosure;
- peer support group counselor and law enforcement officer, limited authority law enforcement officer, or firefighter;
- sexual assault advocate and victim;
- mental health counselor and client; and
- alcohol or drug addiction sponsor and addiction recovery fellowship participant.

Summary of Bill: Testimonial Privilege. Neither a union representative nor an employee the union represents or has represented shall be examined or required to disclose any communication between an employee and union representative or between union representatives made in the course of union representation. Exceptions to this privilege are established that permit examination and disclosure of such communications under the following circumstances:

- when such examination or disclosure appears necessary to prevent the commission of a crime likely to result in a clear, imminent risk of serious physical injury or death of a person;
- in civil or criminal actions in which the represented employee is accused of a crime or assault or battery;
- in civil or criminal actions where a union member is a party to the action, the union member may obtain a copy of any statement previously given that concerns the subject matter of the action and may elicit testimony concerning such statements, however, this right does not render the statements discoverable over the objection of the union member;
- in civil, criminal, or regulatory actions against the union or its affiliated, subordinate, or parent bodies or their agents; or
- when a union employee discloses information to a union representative about the employee's commission of a crime or intent to engage in criminal conduct.

The testimonial privilege does not apply to any record of communications that would otherwise be subject to disclosure under the Public Records Act. A communication includes any oral, written, or electronic communication or document containing such

communication.

Union Employees and Representatives. The testimonial privilege applies to employees and representatives of any organization that represents the following employees in negotiations with employers:

- academic employees of community and technical colleges;
- public employees;
- certificated employees of school districts;
- faculty at a public four-year institution of higher education;
- state employees;
- ferry employees;
- labor unions; and
- port employees.

Appropriation: None.

Fiscal Note: Not requested.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.