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**SUBSTITUTE HOUSE BILL 2016**

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**State of Washington**

**58th Legislature**

**2003 Regular Session**

**By** House Committee on Commerce & Labor (originally sponsored by Representatives Conway, Hudgins, Campbell, Cody, Kenney, Blake, Miloscia, Romero, Wallace, O'Brien, Wood, Chase, Simpson, Berkey, Darneille, Hunt, Moeller, Upthegrove, Edwards, Kagi and Santos)

READ FIRST TIME 03/05/03.

1 AN ACT Relating to employers that use public funds to encourage or  
2 discourage unionization; adding a new section to chapter 28B.10 RCW;  
3 adding a new section to chapter 39.04 RCW; adding a new section to  
4 chapter 39.29 RCW; adding a new section to chapter 43.19 RCW; adding a  
5 new section to chapter 47.28 RCW; adding a new chapter to Title 49 RCW;  
6 creating new sections; prescribing penalties; providing an effective  
7 date; and declaring an emergency.

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

9 NEW SECTION. **Sec. 1.** (1) The legislature finds that it is the  
10 policy of this state not to interfere with an employee's choice about  
11 whether to join or be represented by an employee organization. For  
12 this reason, the state should not subsidize efforts by an employer to  
13 encourage or discourage unionization.

14 (2) It is the intent of the legislature to prohibit an employer  
15 from using state funds and facilities for the purpose of influencing  
16 employees to support or oppose unionization and to prohibit an employer  
17 from seeking to influence employees to support or oppose unionization  
18 while these employees are performing work on a state contract.

1        NEW SECTION.    **Sec. 2.**    The definitions in this section apply  
2 throughout this chapter unless the context clearly requires otherwise.

3        (1) "Employee organization" means an organization of any kind in  
4 which employees participate and which exists for the purpose, in whole  
5 or in part, of collective bargaining with employers.

6        (2) "Employer" means:        (a) A person, firm, corporation,  
7 partnership, business trust, legal representative, or other business  
8 entity that engages in a business, industry, profession, or activity in  
9 this state; and (b) the state or a public agency.

10        (3) "Encourage or discourage unionization" means an attempt by an  
11 employer to influence the decision of its employees in this state or  
12 the employees of its subcontractors regarding whether to: (a) Support  
13 or oppose an employee organization that represents or seeks to  
14 represent those employees for the purpose of collective bargaining; or  
15 (b) become a member of an employee organization.

16        (4) "Public agency" means political subdivisions of the state and  
17 any municipal corporation or quasi-municipal corporation.

18        (5) "State" means the state of Washington.

19        (6) "State contractor" means an employer that receives state funds  
20 for providing services pursuant to a written contract with: (a) The  
21 state; or (b) a public agency of the state that is using state funds to  
22 fund, in whole or in part, a service contract of more than fifty  
23 thousand dollars.

24        (7) "State funds" means moneys appropriated by the state for any  
25 purpose, whether from the state treasury or from moneys in the custody  
26 of the state treasurer. "State funds" includes moneys appropriated by  
27 the state and transferred to a public agency only if the funds are used  
28 by the public agency to fund, in whole or in part, a service contract  
29 of more than fifty thousand dollars.

30        (8) "State property" means any property or facility owned or leased  
31 by the state.

32        NEW SECTION.    **Sec. 3.**    (1)(a)(i) A state contractor that receives  
33 state funds of more than fifty thousand dollars under a contract with  
34 the state may not use those funds to encourage or discourage  
35 unionization during the term of the contract, including any extensions  
36 or renewals of the contract. The dollar threshold in this subsection  
37 (1)(a)(i) does not limit the application of other provisions of this

1 chapter that restrict the use of state funds. All contracts of more  
2 than fifty thousand dollars awarded by the state must contain the  
3 prohibition stated in this subsection.

4 (ii) State funds may not be used to reimburse a state contractor  
5 for costs incurred to encourage or discourage unionization. A request  
6 for reimbursement from state funds by a state contractor must include  
7 a certification that the contractor is not seeking reimbursement for  
8 costs incurred to encourage or discourage unionization.

9 (iii) A state contractor may not encourage or discourage  
10 unionization by employees who are performing work on a service  
11 contract, including a public works contract, for the state.

12 (b) A state contractor subject to this subsection that makes  
13 expenditures to encourage or discourage unionization must maintain  
14 records sufficient to show that state funds have not been used for  
15 those expenditures and that no reimbursement from state funds has been  
16 sought for these costs. The state contractor must provide those  
17 records to the attorney general on request.

18 (2)(a) A recipient of a grant of state funds, including state funds  
19 disbursed as a grant by any public agency of the state, may not use the  
20 funds to encourage or discourage unionization.

21 (b) For purposes of this subsection, the recipient of a grant of  
22 state funds must account for the funds as follows:

23 (i) State funds designated by the grantor for use for a specific  
24 expenditure of the recipient shall be accounted for as allocated to  
25 that expenditure.

26 (ii) State funds that are not designated as described in (b)(i) of  
27 this subsection shall be allocated on a pro rata basis to all  
28 expenditures by the recipient that support the program for which the  
29 grant is made.

30 (c) Before disbursement of a grant of state funds, the recipient  
31 must certify to the state that none of the funds will be used to  
32 encourage or discourage unionization.

33 (d) A grant recipient that makes expenditures to encourage or  
34 discourage unionization must maintain records sufficient to show that  
35 state funds have not been used for those expenditures. The grant  
36 recipient must provide those records to the attorney general on  
37 request.

1 (3) A public employer receiving state funds may not use any of the  
2 funds to encourage or discourage unionization.

3 (4)(a) A private employer receiving state funds of more than ten  
4 thousand dollars in a calendar year on account of its participation in  
5 a state program may not use any of the funds to encourage or discourage  
6 unionization.

7 (b) As a condition of participating in the state program under  
8 which the employer will receive state funds of more than ten thousand  
9 dollars in a calendar year, the private employer must certify to the  
10 state that none of the funds will be used to encourage or discourage  
11 unionization.

12 (c) A private employer subject to this subsection that makes  
13 expenditures to encourage or discourage unionization must maintain  
14 records sufficient to show that state funds have not been used for  
15 those expenditures. The private employer must provide those records to  
16 the attorney general on request.

17 (5) An employer who derives revenue from state property and who  
18 uses that property through a lease, concession contract, or other  
19 agreement with the state may not encourage or discourage unionization  
20 by his or her employees who are employed on or in relation to that  
21 state property.

22 (6) Each contract for the payment of state funds to an employer  
23 must contain a clause requiring the employer to comply with this  
24 chapter.

25 (7) For the purposes of this section:

26 (a) Expenses, including legal and consulting fees and salaries of  
27 supervisors and employees, incurred for research for, or preparation,  
28 planning, or coordination of, or carrying out, an activity to encourage  
29 or discourage unionization, shall be treated as paid or incurred for  
30 that activity.

31 (b) To account for expenditures, if state funds and other funds are  
32 commingled, any expenditures to encourage or discourage unionization  
33 must be allocated between state funds and other funds on a pro rata  
34 basis.

35 NEW SECTION. **Sec. 4.** (1) A person or entity is liable to the  
36 state for funds reimbursed for expenditures or expended in violation of

1 section 3(1)(a) (i) or (ii), (2), or (4) of this act plus a civil  
2 penalty equal to twice the amount of those funds.

3 (2) A public official who knowingly authorizes the use of state  
4 funds in violation of section 3(3) of this act is liable to the state  
5 for the amount of those funds.

6 (3) A state contractor who violates section 3(1)(a)(iii) of this  
7 act is liable to the state for a civil penalty of one thousand dollars  
8 per employee per violation.

9 (4) An employer who violates section 3(5) of this act is liable to  
10 the state for a civil penalty of one thousand dollars per employee per  
11 violation.

12 (5) A taxpayer may bring a civil action in the name of the state  
13 seeking injunctive relief, civil penalties, and other appropriate  
14 equitable relief for a violation of this chapter. A prevailing  
15 plaintiff in an action under this subsection is entitled to recover  
16 reasonable attorneys' fees and costs.

17 NEW SECTION. **Sec. 5.** This chapter does not apply to an activity  
18 performed or an expense incurred in connection with:

19 (1) Addressing a grievance or negotiating or administering a  
20 collective bargaining agreement;

21 (2) Allowing an employee organization or its representatives access  
22 to the employer's facilities or property;

23 (3) Performing an activity required by federal or state law or by  
24 a collective bargaining agreement; or

25 (4) Negotiating, entering into, or carrying out a voluntary  
26 recognition agreement with an employee organization.

27 NEW SECTION. **Sec. 6.** A new section is added to chapter 28B.10 RCW  
28 to read as follows:

29 All contracts entered into under this chapter on or after September  
30 1, 2003, are subject to the requirements established under chapter  
31 49.-- RCW (sections 1 through 5 of this act).

32 NEW SECTION. **Sec. 7.** A new section is added to chapter 39.04 RCW  
33 to read as follows:

34 All contracts entered into under this chapter on or after September

1 1, 2003, are subject to the requirements established under chapter  
2 49.-- RCW (sections 1 through 5 of this act).

3 NEW SECTION. **Sec. 8.** A new section is added to chapter 39.29 RCW  
4 to read as follows:

5 All contracts entered into under this chapter on or after September  
6 1, 2003, are subject to the requirements established under chapter  
7 49.-- RCW (sections 1 through 5 of this act).

8 NEW SECTION. **Sec. 9.** A new section is added to chapter 43.19 RCW  
9 to read as follows:

10 All contracts entered into and purchases made, including leasing or  
11 renting, under this chapter on or after September 1, 2003, are subject  
12 to the requirements established under chapter 49.-- RCW (sections 1  
13 through 5 of this act).

14 NEW SECTION. **Sec. 10.** A new section is added to chapter 47.28 RCW  
15 to read as follows:

16 All contracts entered into under this chapter on or after September  
17 1, 2003, are subject to the requirements established under chapter  
18 49.-- RCW (sections 1 through 5 of this act).

19 NEW SECTION. **Sec. 11.** Sections 1 through 5 of this act constitute  
20 a new chapter in Title 49 RCW.

21 NEW SECTION. **Sec. 12.** This act does not apply to expenditures or  
22 requests for reimbursements made before September 1, 2003, or to a  
23 grant or contract entered into before September 1, 2003, unless the  
24 grant or contract is modified, extended, or renewed on or after  
25 September 1, 2003.

26 NEW SECTION. **Sec. 13.** If any provision of this act or its  
27 application to any person or circumstance is held invalid, the  
28 remainder of the act or the application of the provision to other  
29 persons or circumstances is not affected.

30 NEW SECTION. **Sec. 14.** If any part of this act is found to be in  
31 conflict with federal requirements that are a prescribed condition to

1 the allocation of federal funds to the state, the conflicting part of  
2 this act is inoperative solely to the extent of the conflict and with  
3 respect to the agencies directly affected, and this finding does not  
4 affect the operation of the remainder of this act in its application to  
5 the agencies concerned. Rules adopted under this act must meet federal  
6 requirements that are a necessary condition to the receipt of federal  
7 funds by the state.

8 NEW SECTION. **Sec. 15.** This act is necessary for the immediate  
9 preservation of the public peace, health, or safety, or support of the  
10 state government and its existing public institutions, and takes effect  
11 July 1, 2003.

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