HOUSE BILL REPORT
HB 2079

As Reported by House Committee On:
State Government & Tribal Affairs

Title: An act relating to use of agency shop fees.

Brief Description: Concerning use of agency shop fees.

Sponsors: Representatives McDermott, Ormsby, Williams, Simpson and Hunt.

Brief History:
Committee Activity:
State Government & Tribal Affairs: 2/20/07, 2/21/07 [DP].

Brief Summary of Bill

- Provides that when labor organizations are making political campaign contributions, the contribution is not considered to be use of agency shop fees when the organization's general treasury has sufficient funds to cover the contributions from other revenue sources.

HOUSE COMMITTEE ON STATE GOVERNMENT & TRIBAL AFFAIRS

Majority Report: Do pass. Signed by 6 members: Representatives Hunt, Chair; Appleton, Vice Chair; Green, McDermott, Miloscia and Ormsby.

Minority Report: Do not pass. Signed by 3 members: Representatives Chandler, Ranking Minority Member; Armstrong, Assistant Ranking Minority Member and Kretz.

Staff: Colleen Kerr (786-7168).

Background:

Agency shop fees are fees paid by public employees who are nonunion members for the costs related to collective bargaining done by labor organizations or unions on behalf of all employees. Under Washington law, agency shop fees are equivalent to member dues and, like dues, are deducted by employers from salary payments. A portion of member dues goes to the support of political and ideological causes as chosen by the labor organization or union; such expenditures are referred to as non-chargeable activities. The United States Supreme Court, in

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Chicago Teachers Union v. Hudson, 475 U.S. 292 (1986), has ruled that nonmembers who do not wish to support such causes may obtain a rebate for non-chargeable activities.

Washington law specifically prohibits labor organizations or unions from using agency shop fees for political campaign contributions from such fees that have been paid by nonmembers unless the individual nonmembers have given affirmative authorization. This law was enacted in 1992 as the result of Initiative 134, the Fair Campaign Practices Act, which in part restricted the ability of labor organizations or unions to use agency shops fees for political purposes.

The use of member dues and agency shop fees for political purposes is controlled by the First Amendment and invokes the right of free speech and the right of freedom of association. With regard to these rights, the First Amendment is underpinned by a fundamental tension: the right of freedom of association to enable people to band together for greater effect in the political arena, and the free speech rights entitled to that organization; and the countervailing right of an individual not to be compelled to associate with politics and ideologies he or she does not support. In the context of the political speech of labor organizations or unions, and political use of member dues and agency shop fees, these are competing interests.

The United States Supreme Court (Court), in a series of cases, has established standards for the use of member dues and agency shop fees:

- In *International Association of Machinists v. Street*, 367 U.S. 740 (1961), the Court held that the union had the right to collect fees from all employees who benefit from the union's collective bargaining, but that these fees may not be used to support political causes if the member disagrees with those causes. The appropriate remedy, however, must take into consideration the administrative efficiency in accommodating the interests of each group – where the majority has an interest is stating views that the dissent would seek to silence.
- In *Abood v. Detroit Bd. of Educ.*, 431 U.S. 209 (1977), the Court affirmed that *Street* applied to public employees represented by a collective bargaining agency, stating that member dues can be spent for purposes other than collective bargaining, and further held that the burden is on the employee to express his or her objection to such political expenditures.
- In *Ellis v. Bhd, of Ry., Airline & S.S. Clerks*, 466 U.S. 435 (1984) and *Chicago Teachers Union v. Hudson*, 475 U.S. 292 (1986), the Court established the process and appropriate safeguards by which unions establish the amount of rebate to nonmembers for non-chargeable activities. Because the nonmember rights are also protected by the First Amendment, the procedure must be carefully tailored and must allow an employee a fair opportunity to identify the impact of expenditures on his or her rights and assert a First Amendment claim.

In Washington, the issue of agency shop fees has been the subject of protracted litigation. Most recently, in 2006, the Washington Supreme Court in *State ex rel. PDC v. WEA*, Wn.2d 543 (2006) upheld two state Court of Appeals decisions, holding that the statutory requirement prohibiting unions from using nonmember fees for political purposes unless the union has the affirmative assent of the nonmember is an unconstitutional infringement on the

First Amendment rights of unions. The Washington Supreme Court stated that the statute's requirement of affirmative authorization is an unconstitutional burden on the First Amendment rights of labor organizations: "Dissenters may not silence the majority by the creation of too heavy an administrative burden." In its analysis, the Washington Supreme Court considered Washington Education Association's *Hudson* accounting practices and other hypothetical options for meeting the affirmative authorization standard. The United States Supreme Court granted certiorari in 2006, and heard oral arguments in January 2007; a decision is pending.

Summary of Bill:

The statute prohibiting labor organizations from using agency shop fees paid by nonmembers for political campaign contributions unless authorized to do so by the individual nonmembers is modified so that when labor organizations are making such political campaign contributions, the contribution is not considered to be use of agency shop fees when there are sufficient funds in the organization's general treasury from other revenue sources.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill contains an emergency clause and takes effect immediately.

Staff Summary of Public Testimony:

(In support) This bill has been the subject of much misunderstanding. It does not allow agency shop fees to be used for political purposes. The relevant question is one of accounting. The bill clarifies that shop fees are not used when there are sufficient funds in an agency's general treasury. It clarifies the existing language in the statute. The bill does not interfere with the Supreme Court case. If the statute is struck down, then this bill also fails. This simply provides labor organizations with a clear understanding of how to meet the existing statutory requirement. The emergency clause is necessary because theWashington Education Association (WEA) and other labor organizations need clarity so that they can move forward on political advocacy for its members. This bill protects the free speech rights of employees represented by the unions and those it does not represent, but states clearly that agency shop fees will not be spent on nonchargeable activities. The substance of the bill does in no way change the spirit of Initiative 134, it simply adds language that allows labor organizations a method to meet the letter of the law. Unions provide a voice for members who cannot individually advocate; there is greater political power in numbers.

(Neutral) Governments have a high interest in labor harmony. The state's interest is how to avoid the free-rider problem: how to allow employees to be involved in collective bargaining and other labor processes, but not require those employees to adopt the labor organization's political ideology. There are possible constitutional problems with the language in the bill. On

its face, the bill needs to be more clear in defining what other revenue sources are. Should those other revenue sources be dedicated to goals that do not include nonchargeable activities, such as a facility, then the labor organization would still potentially violate the law by relying on other revenue sources. There should also be a definition of a general treasury fund. What is a general treasury fund is open to many interpretations. But once you try to define it, you get into the troublesome area of dictating how a union must structure its accounts, an issue that would send the parties back to court. It is not clear how this bill would affect the pending United States Supreme Court (Court) case, but the issue before the Court would still be justiciable.

(Opposed) Many citizens of Washington are very unhappy that the Washington Education Association (WEA) is attempting to change statute that was enacted as the result of a citizens' initiative. Since law was enacted in 1994, the WEA has admitted to intentionally violating the statute and has been fined for some of the largest campaign finance violations in state history. These campaign violations are currently before the United States Supreme Court (Court). Legislative reform of the existing law is premature until there is a ruling in the Court case. There is an injunction in the case until there is a final ruling. The emergency clause also causes a great deal of concern, citizens should not be prevented from having referendum on a law that modifies a law created by initiative. The bill uses an accounting gimmick to overcome the spirit of the Paycheck Protection Act. There are fatal flaws in the proposed legislation, primarily that it interferes with the litigation before the Court. The WEA has been a continuous violator of the Paycheck Protection Act. The public should not trust the WEA to define the law. The issue of commingling funds is not sufficiently addressed in the bill, but there are myriad implications. Clarifying the bill might require segregated accounts where there is a pro rata share for actual collective bargaining and other purposes.

Persons Testifying: (In support) Representative McDermott, prime sponsor; Andi Meadows, Washington Education Association; Bill Garlington, Firefighters IAFF Local 452; and Marcy Johnsen, Service Employees International Union 1199 Northwest.

(Neutral) Tom Wendel, Office of the Attorney General.

(Opposed) Lloyd Gardner; and Booker Stallworth, Evergreen Freedom Foundation.

Persons Signed In To Testify But Not Testifying: None.