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**SUBSTITUTE SENATE BILL 5914**

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**State of Washington 65th Legislature 2017 Regular Session**

**By** Senate Ways & Means (originally sponsored by Senator Braun)

AN ACT Relating to imposing a fee on labor organizations for the collection and remittance of dues, fees, and other amounts on behalf of a labor orgranization for the purpose of offsetting costs; amending RCW 41.80.100, 47.64.160, 41.56.113, 28B.52.045, and 41.76.045; adding a new section to chapter 41.56 RCW; adding a new section to chapter 41.59 RCW; creating new sections; and declaring an emergency.

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

NEW SECTION. **Sec.**  The legislature finds that the state, local government, and other public employers cover the administrative cost of dues and other voluntary withholding deductions as well as other costs related to administering collective bargaining. The legislature intends to cover a portion of the state's cost by imposing a fee based on the amount of dues and other amounts collected on behalf of and remitted to public employee unions and using the proceeds toward costs associated with the public employment relations commission. The state also intends to provide local governments and other public employers the same ability to recover collective bargaining costs through the imposition of fees based on the amount of dues and other amounts collected on behalf of and remitted to public employee unions.

NEW SECTION. **Sec.**  A new section is added to chapter 41.56 RCW to read as follows:

(1)(a) Except as provided in subsection (2) of this section, a public employer that collects and remits dues and other amounts on behalf of a labor organization may impose a fee of up to five percent of the amount collected to offset the cost of administration. The rate of the fee is established by the employer and is not subject to collective bargaining.

(b)(i) If a labor organization fails to pay the fee established by this subsection within sixty calendar days of the end of the period for which the fee was assessed, the employer may retain a portion of the amount collected as payment of the fee.

(ii) If a labor organization fails to pay the fee established by this subsection within sixty calendar days of the end of the period for which the fee was assessed three times in a twelve-month period, the employer may cease collecting amounts on behalf of the exclusive bargaining representative for one year.

(2)(a) There shall be a fee, as established by the office of financial management, charged to any labor organization for the collection and remittance of any dues, fees, payments, or any other amounts on behalf of a labor organization. The office of financial management must establish the rate as the higher of:

(i) Two percent; or

(ii) A level that ensures that the total amount collected from the fee funds no less than one-half of the total amount appropriated to the public employment relations commission during the previous fiscal biennium, up to a maximum of five percent.

(b)(i) Each state agency must assess the fee on the total amount collected and remitted on behalf of a labor organization at the time of remittance to the labor organization. At the option of the labor organization, the state agency may retain a portion of the amount to be remitted as payment of the fee.

(ii)(A) If a labor organization fails to pay the fee established by this subsection within sixty calendar days of the end of the period for which the fee was assessed, the agency must retain a portion of the amount to be remitted as payment of the fee.

(B) If a labor organization fails to pay the fee established by this subsection within sixty calendar days of the end of the period for which the fee was assessed three times in a twelve-month period, the agency must cease collecting amounts on behalf of the exclusive bargaining representative for one year.

(c) The fees collected by the employer under this subsection must be deposited to the personnel service fund under RCW 41.06.280 and used for costs of the public employment relations commission.

(d) For purposes of this subsection, "state agency" means every state office, department, division, bureau, board, commission, or other state agency, including offices headed by a statewide elected official, and institutions of higher education.

**Sec.**  RCW 41.80.100 and 2002 c 354 s 311 are each amended to read as follows:

(1) A collective bargaining agreement may contain a union security provision requiring as a condition of employment the payment, no later than the thirtieth day following the beginning of employment or July 1, 2004, whichever is later, of an agency shop fee to the employee organization that is the exclusive bargaining representative for the bargaining unit in which the employee is employed. The amount of the fee shall be equal to the amount required to become a member in good standing of the employee organization. Each employee organization shall establish a procedure by which any employee so requesting may pay a representation fee no greater than the part of the membership fee that represents a pro rata share of expenditures for purposes germane to the collective bargaining process, to contract administration, or to pursuing matters affecting wages, hours, and other conditions of employment.

(2) An employee who is covered by a union security provision and who asserts a right of nonassociation based on bona fide religious tenets, or teachings of a church or religious body of which the employee is a member, shall, as a condition of employment, make payments to the employee organization, for purposes within the program of the employee organization as designated by the employee that would be in harmony with his or her individual conscience. The amount of the payments shall be equal to the periodic dues and fees uniformly required as a condition of acquiring or retaining membership in the employee organization minus any included monthly premiums for insurance programs sponsored by the employee organization. The employee shall not be a member of the employee organization but is entitled to all the representation rights of a member of the employee organization.

(3) Upon filing with the employer the written authorization of a bargaining unit employee under this chapter, the employee organization that is the exclusive bargaining representative of the bargaining unit shall have the exclusive right to have deducted from the salary of the employee an amount equal to the fees and dues uniformly required as a condition of acquiring or retaining membership in the employee organization. The fees and dues shall be deducted each pay period from the pay of all employees who have given authorization for the deduction and shall be transmitted by the employer as provided for by agreement between the employer and the employee organization.

(4) The employer and all state agencies must assess the fee provided in section 2 of this act. The rate of the fee is not subject to collective bargaining.

(5) Employee organizations that before July 1, 2004, were entitled to the benefits of this section shall continue to be entitled to these benefits.

**Sec.**  RCW 47.64.160 and 1983 c 15 s 7 are each amended to read as follows:

(1) A collective bargaining agreement may include union security provisions including an agency shop, but not a union or closed shop. If an agency shop provision is agreed to, the employer shall enforce it by deducting from the salary payments to members of the bargaining unit the dues required of membership in the bargaining representative, or, for nonmembers thereof, a fee equivalent to such dues. All union security provisions shall safeguard the right of nonassociation of employees based on bona fide religious tenets or teachings of a church or religious body of which such employee is a member. Such employee shall pay an amount of money equivalent to regular dues and fees to a nonreligious charity or to another charitable organization mutually agreed upon by the employee affected and the bargaining representative to which such employee would otherwise pay the dues and fees. The employee shall furnish written proof that such payment has been made. If the employee and the bargaining representative do not reach agreement on such matter, the commission shall designate the charitable organization.

(2) The employer and all state agencies must assess the fee provided in section 2 of this act. The rate of the fee is not subject to collective bargaining.

**Sec.**  RCW 41.56.113 and 2010 c 296 s 4 are each amended to read as follows:

(1) This subsection (1) applies only if the state makes the payments directly to a provider.

(a) Upon the written authorization of an individual provider, a family child care provider, an adult family home provider, or a language access provider within the bargaining unit and after the certification or recognition of the bargaining unit's exclusive bargaining representative, the state as payor, but not as the employer, shall, subject to (c) of this subsection, deduct from the payments to an individual provider, a family child care provider, an adult family home provider, or a language access provider the monthly amount of dues as certified by the secretary of the exclusive bargaining representative and shall transmit the same to the treasurer of the exclusive bargaining representative.

(b) If the governor and the exclusive bargaining representative of a bargaining unit of individual providers, family child care providers, adult family home providers, or language access providers enter into a collective bargaining agreement that:

(i) Includes a union security provision authorized in RCW 41.56.122, the state as payor, but not as the employer, shall, subject to (c) of this subsection, enforce the agreement by deducting from the payments to bargaining unit members the dues required for membership in the exclusive bargaining representative, or, for nonmembers thereof, a fee equivalent to the dues; or

(ii) Includes requirements for deductions of payments other than the deduction under ((~~(a)(i)~~)) (b)(i) of this subsection, the state, as payor, but not as the employer, shall, subject to (c) of this subsection, make such deductions upon written authorization of the individual provider, family child care provider, adult family home provider, or language access provider.

(c)((~~(i)~~)) The initial additional costs to the state in making deductions from the payments to individual providers, family child care providers, adult family home providers, and language access providers under this section shall be negotiated, agreed upon in advance, and reimbursed to the state by the exclusive bargaining representative.

((~~(ii) The allocation of ongoing additional costs to the state in making deductions from the payments to individual providers, family child care providers, adult family home providers, or language access providers under this section shall be an appropriate subject of collective bargaining between the exclusive bargaining representative and the governor unless prohibited by another statute. If no collective bargaining agreement containing a provision allocating the ongoing additional cost is entered into between the exclusive bargaining representative and the governor, or if the legislature does not approve funding for the collective bargaining agreement as provided in RCW 74.39A.300, 41.56.028, 41.56.029, or 41.56.510, as applicable, the ongoing additional costs to the state in making deductions from the payments to individual providers, family child care providers, adult family home providers, or language access providers under this section shall be negotiated, agreed upon in advance, and reimbursed to the state by the exclusive bargaining representative.~~))

(d) The governor and the exclusive bargaining representative of a bargaining unit of family child care providers may not enter into a collective bargaining agreement that contains a union security provision unless the agreement contains a process, to be administered by the exclusive bargaining representative of a bargaining unit of family child care providers, for hardship dispensation for license-exempt family child care providers who are also temporary assistance for needy families recipients or WorkFirst participants.

(2) This subsection (2) applies only if the state does not make the payments directly to a provider.

(a) Upon the written authorization of a language access provider within the bargaining unit and after the certification or recognition of the bargaining unit's exclusive bargaining representative, the state shall require through its contracts with third parties that:

(i) The monthly amount of dues as certified by the secretary of the exclusive bargaining representative be deducted from the payments to the language access provider and transmitted to the treasurer of the exclusive bargaining representative; and

(ii) A record showing that dues have been deducted as specified in (a)(i) of this subsection be provided to the state.

(b) If the governor and the exclusive bargaining representative of the bargaining unit of language access providers enter into a collective bargaining agreement that includes a union security provision authorized in RCW 41.56.122, the state shall enforce the agreement by requiring through its contracts with third parties that:

(i) The monthly amount of dues required for membership in the exclusive bargaining representative as certified by the secretary of the exclusive bargaining representative, or, for nonmembers thereof, a fee equivalent to the dues, be deducted from the payments to the language access provider and transmitted to the treasurer of the exclusive bargaining representative; and

(ii) A record showing that dues or fees have been deducted as specified in (a)(i) of this subsection be provided to the state.

(3) The employer and all state agencies must assess the fee provided in section 2 of this act. The rate of the fee is not subject to collective bargaining.

**Sec.**  RCW 28B.52.045 and 1987 c 314 s 8 are each amended to read as follows:

(1) Upon filing with the employer the voluntary written authorization of a bargaining unit employee under this chapter, the employee organization which is the exclusive bargaining representative of the bargaining unit shall have the right to have deducted from the salary of the bargaining unit employee the periodic dues and initiation fees uniformly required as a condition of acquiring or retaining membership in the exclusive bargaining representative. Such employee authorization shall not be irrevocable for a period of more than one year. Such dues and fees shall be deducted from the pay of all employees who have given authorization for such deduction, and shall be transmitted by the employer to the employee organization or to the depository designated by the employee organization.

(2) A collective bargaining agreement may include union security provisions, but not a closed shop. If an agency shop or other union security provision is agreed to, the employer shall enforce any such provision by deductions from the salary of bargaining unit employees affected thereby and shall transmit such funds to the employee organization or to the depository designated by the employee organization.

(3) An employee who is covered by a union security provision and who asserts a right of nonassociation based on bona fide religious tenets or teachings of a church or religious body of which such employee is a member shall pay to a nonreligious charity or other charitable organization an amount of money equivalent to the periodic dues and initiation fees uniformly required as a condition of acquiring or retaining membership in the exclusive bargaining representative. The charity shall be agreed upon by the employee and the employee organization to which such employee would otherwise pay the dues and fees. The employee shall furnish written proof that such payments have been made. If the employee and the employee organization do not reach agreement on such matter, the commission shall designate the charitable organization.

(4) The employer and all state agencies must assess the fee provided in section 2 of this act. The rate of the fee is not subject to collective bargaining.

**Sec.**  RCW 41.76.045 and 2002 c 356 s 12 are each amended to read as follows:

(1) Upon filing with the employer the voluntary written authorization of a bargaining unit faculty member under this chapter, the employee organization which is the exclusive bargaining representative of the bargaining unit shall have the right to have deducted from the salary of the bargaining unit faculty member the periodic dues and initiation fees uniformly required as a condition of acquiring or retaining membership in the exclusive bargaining representative. Such employee authorization shall not be irrevocable for a period of more than one year. Such dues and fees shall be deducted from the pay of all faculty members who have given authorization for such deduction, and shall be transmitted by the employer to the employee organization or to the depository designated by the employee organization.

(2) A collective bargaining agreement may include union security provisions, but not a closed shop. If an agency shop or other union security provision is agreed to, the employer shall enforce any such provision by deductions from the salary of bargaining unit faculty members affected thereby and shall transmit such funds to the employee organization or to the depository designated by the employee organization.

(3) A faculty member who is covered by a union security provision and who asserts a right of nonassociation based on bona fide religious tenets or teachings of a church or religious body of which such faculty member is a member shall pay to a nonreligious charity or other charitable organization an amount of money equivalent to the periodic dues and initiation fees uniformly required as a condition of acquiring or retaining membership in the exclusive bargaining representative. The charity shall be agreed upon by the faculty member and the employee organization to which such faculty member would otherwise pay the dues and fees. The faculty member shall furnish written proof that such payments have been made. If the faculty member and the employee organization do not reach agreement on such matter, the dispute shall be submitted to the commission for determination.

(4) The employer and all state agencies must assess the fee provided in section 2 of this act. The rate of the fee is not subject to collective bargaining.

NEW SECTION. **Sec.**  A new section is added to chapter 41.59 RCW to read as follows:

An employer may impose the fee provided in section 2(1) of this act.

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

NEW SECTION. **Sec.**  If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state, the conflicting part of this act is inoperative solely to the extent of the conflict and with respect to the agencies directly affected, and this finding does not affect the operation of the remainder of this act in its application to the agencies concerned. Rules adopted under this act must meet federal requirements that are a necessary condition to the receipt of federal funds by the state.

NEW SECTION. **Sec.**  This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately.

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