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HOUSE BILL 1832

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State of Washington

62nd Legislature

2011 Regular Session

By Representatives Upthegrove, Moscoso, Fitzgibbon, Stanford, Pettigrew, Sells, Goodman, Roberts, Green, Frockt, Kenney, and Ormsby

Read first time 02/04/11. Referred to Committee on Labor & Workforce Development.

1 AN ACT Relating to protecting the rights of employees of service  
2 contractors at certain airports; amending RCW 14.08.015; adding a new  
3 section to chapter 14.08 RCW; repealing RCW 14.08.010; and declaring an  
4 emergency.

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

6 **Sec. 1.** RCW 14.08.015 and 1987 c 254 s 1 are each amended to read  
7 as follows:

8 The definitions in this section apply throughout this chapter  
9 unless the context clearly requires otherwise.

10 (1) "Airport charges" means charges of an airport operator for tie-  
11 downs, landing fees, the occupation of a hangar by an aircraft, and all  
12 other charges owing or to become owing under a contract between an  
13 aircraft owner and an airport operator or under an officially adopted  
14 regulation and/or tariff including, but not limited to, the cost of  
15 sale and related expenses.

16 (2) "Aircraft" means every species of aircraft or other mechanical  
17 device capable of being used for the purpose of aerial flight.

18 (3) "Airport operator" means any municipality (~~as defined in RCW~~  
19 ~~14.08.010(2)~~) or state agency which owns and/or operates an airport.

1       (4) "Airport purposes" means and includes airport, restricted  
2 landing area, and other air navigation facility purposes.

3       (5) "Awarding authority" means any person, including the  
4 municipality and a contractor or subcontractor, who awards or otherwise  
5 enters into a contract to perform food and beverage, retail, security,  
6 or janitorial services, at an airport in a county with a population of  
7 four hundred fifty thousand or more.

8       (6) "Contractor" means any person who enters into a service  
9 contract with the awarding authority and any subcontractors to the  
10 service contract at any tier who employ ten or more persons.

11       (7) "Employee" means any person engaged to perform services  
12 pursuant to a service contract, but does not include a person who is:  
13 (a) A managerial, supervisory, or confidential employee, including any  
14 person who would be so defined under the federal fair labor standards  
15 act; or (b) employed for less than fifteen hours per week.

16       (8) "Labor organization" means the same as in 29 U.S.C. Sec.  
17 152(5).

18       (9) "Labor peace agreement" means an enforceable agreement with a  
19 labor organization that represents or seeks to represent the  
20 contractor's employees working under the contract and that contains  
21 provisions under which the labor organization for itself and its  
22 members agree to refrain from engaging in any picketing, work  
23 stoppages, boycotts, or any other economic interference with the  
24 operations of the contractor under its contract.

25       (10) "Municipality" means any county, city, town, airport district,  
26 or port district of this state.

27       (11) "Owner" means (a) every natural person, firm, partnership,  
28 corporation, association, trust, estate, or organization, or agent  
29 thereof with actual or apparent authority, who expressly or impliedly  
30 contracts for use of airport property for landing, parking, or  
31 hangaring aircraft, and (b) includes the registered owner or owners and  
32 lienholders of record with the federal aviation administration.

33       (12) "Person" means any individual, proprietorship, partnership,  
34 joint venture, corporation, limited liability company, trust  
35 association, or other entity that may employ or enter into other  
36 contracts, including the state and its political subdivisions.

37       (13) "Service contract" means a contract for the performance of

1 food and beverage, retail, security, or janitorial services, at the  
2 airport.

3 (14) "Successor service contract" means a service contract with the  
4 awarding authority under which substantially the same services to be  
5 performed have previously been rendered to the awarding authority as  
6 part of the same program or at the same facility under another service  
7 contract or have previously been rendered by the awarding authority's  
8 own employees.

9 (15) "Terminated contractor" means a contractor whose service  
10 contract expires without renewal or whose contract is terminated within  
11 eighteen months before or after the commencement of operations under a  
12 successor service contract, and includes the awarding authority itself  
13 when work previously rendered by the awarding authority's own employees  
14 is the subject of a successor service contract.

15 NEW SECTION. Sec. 2. A new section is added to chapter 14.08 RCW  
16 to read as follows:

17 (1) Each contractor and awarding authority that enters into a  
18 service contract to be performed at the airport shall be subject to the  
19 following obligations:

20 (a) The awarding authority shall give advance notice to a  
21 contractor and the exclusive bargaining representative of any of the  
22 contractor's employees, of the termination or nonrenewal of the service  
23 contract as soon as reasonably practicable after the awarding authority  
24 knows or decides that the contract will be terminated or not renewed,  
25 and shall provide the contractor and the exclusive bargaining  
26 representative with the name, telephone number, and address of the  
27 successor contractor or contractors, if known. The terminated  
28 contractor shall, not later than three days after receipt of the  
29 notice, provide the successor contractor with the name, date of hire,  
30 and employment occupation classification of each person employed by the  
31 terminated contractor at the site or sites covered by the service  
32 contract as of the date the terminated contractor receives the notice  
33 of termination or nonrenewal.

34 (b) On the date the service contract terminates, the terminated  
35 contractor shall provide the successor contractor with updated  
36 information concerning the name, date of hire, and employment  
37 occupation classification of each person employed by the terminated

1 contractor at the site or sites covered by the service contract, to  
2 ensure that the information is current up to the actual date of service  
3 contract termination.

4 (c) If the awarding authority fails to notify the terminated  
5 contractor of the identity of the successor contractor, as required by  
6 (a) of this subsection, the terminated contractor shall provide the  
7 information described in (b) of this subsection to the awarding  
8 authority not later than three days after receiving notice that the  
9 service contract will be terminated. The awarding authority shall be  
10 responsible for providing the information to the successor contractor  
11 as soon as the successor contractor has been selected.

12 (d)(i) Except as provided in (d)(iv) of this subsection, a  
13 successor contractor shall retain, for at least ninety days from the  
14 date of first performance of services under the successor service  
15 contract, each of the employees who was continuously employed by the  
16 terminated contractor at the site or sites covered by the service  
17 contract during the six-month period immediately preceding the  
18 termination or nonrenewal of the service contract, or, if sooner, the  
19 layoff or termination of the employee, including any periods of layoff  
20 or leave with recall rights, and shall offer employment to employees  
21 who have been continuously employed by the terminated contractor at the  
22 site or sites covered by the service contract during the six-month  
23 period immediately preceding commencement of the successor contractor's  
24 operations and who are engaged in operations of the terminated  
25 contractor that have not ceased when the successor contractor commences  
26 operations and retain any employee who accepts the offer for at least  
27 ninety days from the date of first performance of services under the  
28 successor service contract.

29 (ii) Except as provided in (d)(iv) of this subsection, if the  
30 successor service contract is terminated prior to the expiration of the  
31 ninety-day period, then any contractor awarded a subsequent successor  
32 service contract shall be bound by the requirements set forth in this  
33 subsection to retain, for a new ninety-day period commencing with the  
34 onset of the subsequent successor service contract, all of the  
35 employees who were entitled to retention or employment as provided in  
36 (d)(i) of this subsection.

37 (iii) At least five days prior to the termination of a service  
38 contract, if the termination occurs before the successor contractor

1 commences operations, or at least fifteen days prior to the  
2 commencement of the first performance of service under a successor  
3 service contract, the successor contractor shall hand-deliver a written  
4 offer of employment to each employee who is entitled to retention or  
5 employment as provided in (d)(i) of this subsection. The written offer  
6 of employment shall be in substantially the form set forth below and in  
7 the employee's native language or any other language in which the  
8 employee is fluent:

9 "IMPORTANT INFORMATION REGARDING YOUR EMPLOYMENT

10 To: . . . . . (Name of employee)

11 We have received information that you are employed by . . . . .  
12 (name of predecessor contractor) and are currently performing work at  
13 . . . . . (address of worksite). . . . . (Name of predecessor  
14 contractor's) contract to perform . . . . . (describe services under  
15 contract) at . . . . . (address of worksite) will terminate as of .  
16 . . . . . (last day of predecessor contract) and it will no longer be  
17 providing those services as of that date. We are . . . . . (name of  
18 successor contractor) and have been hired to provide services similar  
19 to those of . . . . . (name of predecessor contractor) at . . . . .  
20 . (address of worksite). We are offering you a job with us for a  
21 ninety-day probationary period starting . . . . . (first day of  
22 successor contract) to perform the same type of work that you have  
23 already been doing for . . . . . (name of predecessor contractor)  
24 under the following terms:

- 25 Pay rate (per hour): \$ . . . . .
- 26 Hours per shift: . . . . .
- 27 Total hours per week: . . . . .
- 28 Benefits: . . . . .

29 You must respond to this offer within the next ten days. If you  
30 want to continue working at . . . . . (address of worksite) you must  
31 let us know by . . . . . (no later than ten days after the date of  
32 this letter). If we do not receive your response by the end of  
33 business that day, we will not hire you and you will lose your job. We  
34 can be reached at . . . . . (successor contractor telephone number).

35 Washington state law gives you the following rights:

1           1. You have the right with certain exceptions, to be hired by our  
2 company for the first ninety days that we begin to provide services at  
3 . . . . . (address of worksite).

4           2. During this ninety-day period, you cannot be fired without just  
5 cause.

6           3. If you believe that you have been fired or laid off in  
7 violation of this law, you have the right to sue us and be awarded back  
8 pay, attorneys' fees, and court costs.

9 From: . . . . . (Name of successor contractor)  
10 . . . . . (Address of successor contractor) . . . . .  
11 (Telephone number of successor contractor)"

12           Each offer of employment shall state the time within which the  
13 employee must accept the offer, but in no case shall that time be less  
14 than ten days from the date of the offer of employment.

15           (iv) The provisions of (d)(i) and (ii) of this subsection shall not  
16 be construed to require a successor contractor to retain any employee  
17 whose attendance and performance records, while working under the  
18 terminated service contract, would lead a reasonably prudent employer  
19 to terminate the employee.

20           (e) If at any time a successor contractor determines that fewer  
21 employees are required to perform the successor service contract than  
22 were required by the terminated contractor, the successor contractor  
23 shall be required to retain the employees by seniority within each job  
24 classification, based upon the employees' total length of service at  
25 the affected site or sites.

26           (f) During the ninety-day period, the successor contractor shall  
27 maintain a preferential hiring list of employees eligible for retention  
28 pursuant to (d) of this subsection who were not initially retained by  
29 the successor contractor, from which the successor contractor shall  
30 hire additional employees, if necessary.

31           (g) Except as provided under (e) of this subsection, during the  
32 ninety-day period, the successor contractor shall not discharge without  
33 just cause an employee retained pursuant to this section. For purposes  
34 of this subsection, "just cause" shall be determined solely by the  
35 performance or conduct of the particular employee.

36           (h) If the performance of an employee retained pursuant to this  
37 section is satisfactory during the ninety-day period, the successor

1 contractor shall offer the employee continued employment under the  
2 terms and conditions established by the successor contractor, or as  
3 required by law.

4 (2)(a) An employee displaced or terminated in violation of this  
5 section may bring an action in superior court against the awarding  
6 authority, the terminated contractor, or the successor contractor,  
7 jointly or severally, to recover damages for any violation of the  
8 obligations imposed under this section.

9 (b) If the employee prevails in the action, the court may award the  
10 employee: (i) Back pay, including the value of benefits, for each day  
11 during which the violation continues, that shall be calculated at a  
12 rate of compensation not less than the higher of: (A) The average  
13 regular rate of pay received by the employee during the last year of  
14 employment in the same job occupation classification, or, if the  
15 employee has been employed for less than one year, the average rate of  
16 pay for the employee's entire employment multiplied by the average  
17 number of hours worked per day over the last four months of employment  
18 preceding the date of the violation; or (B) the final regular rate of  
19 pay received by the employee at the date of termination multiplied by  
20 the average number of hours worked per day over the last four months;  
21 and (ii) reinstatement to the employee's former position at not less  
22 than the most recent rate of compensation received by the employee,  
23 including the value of any benefits.

24 (c) If the employee prevails in the action, the court shall award  
25 the employee reasonable attorneys' fees and costs.

26 (d) Nothing in this subsection shall be construed to limit an  
27 employee's right to bring a common law cause of action for wrongful  
28 termination against the awarding authority, the terminated contractor,  
29 or the successor contractor.

30 (3) Any awarding authority or contractor who knowingly violates the  
31 provisions of this section shall pay a penalty not to exceed one  
32 hundred dollars per employee for each day the violation continues.

33 (4) Prior to execution of leases or contracts, including renewals  
34 or material amendments, (each of these referred to in this subsection  
35 and subsections (5) through (8) of this section as a "contract") with  
36 the airport or the airport's terminal lessee or managing agent, all  
37 contractors, and any existing subtenants under their contracts, shall

1 enter into a labor peace agreement. The contract shall require the  
2 contractor to in turn obligate its future subtenants under the contract  
3 to enter into labor peace agreements.

4 (5) The contractor must provide evidence of the signed labor peace  
5 agreement to the airport prior to execution of its contract with the  
6 airport or the airport's terminal lessee or managing agent.

7 (6) Where the contractor is selected through a request for  
8 proposals or other procurement process issued by the airport or airport  
9 terminal lessees or their managing agents, notification of the labor  
10 peace agreement requirement shall be included in the procurement  
11 documents. In these cases, the contractor must provide evidence of the  
12 signed labor peace agreement in its response to the request for  
13 proposals or the proposal will be deemed nonresponsive.

14 (7) The labor peace agreement requirement shall be a material  
15 condition of any contracts with the airport, and each contract shall  
16 provide that the airport shall have the right to impose penalties and  
17 ultimately suspend or terminate the contractor's operations for a  
18 breach of the requirement, and to recover damages for the airport's  
19 losses and expenses incurred as a result of the breach.

20 (8) The airport shall identify the labor organization(s) that  
21 represent or are likely to seek to represent a contractor's employees  
22 and notify each contractor of this identification along with the labor  
23 organization's contact information.

24 NEW SECTION. **Sec. 3.** RCW 14.08.010 (Definition--"Municipality")  
25 and 1987 c 254 s 3 & 1945 c 182 s 1 are each repealed.

26 NEW SECTION. **Sec. 4.** This act is necessary for the immediate  
27 preservation of the public peace, health, or safety, or support of the  
28 state government and its existing public institutions, and takes effect  
29 immediately.

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