
Commerce & Labor Committee

PSHB 2016

Brief Description: Prohibiting use of public funds to encourage or discourage unionization.

Sponsors: Representatives Conway, Hudgins, Campbell, Cody, Kenney, Blake, Miloscia, Romero, Wallace, O'Brien, Wood, Chase, Simpson, Berkey, Darneille, Hunt, Moeller, Upthegrove, Edwards, Kagi and Santos.

Brief Summary of Proposed Substitute Bill

- Prohibits an employer who receives public funds from using the public funds to encourage or discourage unionization by its employees or other employees.
- Authorizes filing complaints of violations with the Department of Labor and Industries and specifies certain court actions and sanctions.

Hearing Date: 2/27/03

Staff: Chris Cordes (786-7103).

Background:

Under the federal National Labor Relations Act, covered employees in the private sector have various rights related to collective bargaining. These rights include the right to form, join, or assist labor organizations and the right to refrain from these activities. It is an unfair labor practice for an employer or a union to interfere with, restrain, or coerce employees in the exercise of these rights or to discriminate against employees in regard to hiring or job tenure to encourage or discourage membership in a labor organization. It is not an unfair labor practice for an employer to express his or her views if the expression of views contains no threat of reprisal or promise of benefit.

These employee rights are referenced in a number of laws providing federal funding for specific programs. For example, the Workforce Investment Act requires recipients of funding to provide assurances to the Secretary of the Department of Labor that the funds will not be used to assist, promote, or deter union organizing.

The Public Employment Relations Commission administers similar employee rights and unfair labor practices under Washington's public employee collective bargaining laws.

California and New York have adopted laws that prohibit employers who receive funds from the state under a grant or contract from using state funds to encourage or discourage union organizing.

Summary of Proposed Substitute Bill:

The Neutrality Requirement

An employer who receives public funds may not use those funds to encourage or discourage unionization by its employees or any other employees. An employer that derives revenue from a lease of state property may not encourage or discourage unionization by his or her employees who are employed on or in relation to that property. All contracts for the payment of public funds must contain a covenant requiring the employer to comply with this neutrality requirement.

Actions that are Deemed to Violate the Neutrality Requirement

Uses of public funds that are deemed to encourage or discourage unionization include:

- communications that advocate or suggest an employer's support or opposition to unionization of its workers;
- hiring or consulting with legal counsel or consultants to advise on assisting or deterring unionization or impeding a labor organization that represents employees from fulfilling its representation responsibilities;
- holding meetings to influence employees to join or not join or form or not form a labor organization for the purpose of collective bargaining; or
- planning or conducting activities by supervisors to assist or deter the activities of employees related to unionization.

These provision do not:

- limit the rights of individuals who are not supervisors, managers, consultants, attorneys, advisers, or contractors of the employer to advocate for or against unionization if not precluded by law; or
- limit the rights of employers or unions to engage in lawful activities relating to the negotiation and enforcement of agreements with a labor organization.

Accounting for Public Funds

A recipient of public funds must account for the public funds. If the funds are designated by the state for a specific expenditure, the funds must be allocated to that expenditure. If the funds are not designated for specific expenditures, the funds must be allocated on a pro rata basis to all of the employer's expenditures related to the purpose for which the funds were received.

Violations and Sanctions

Any individual, employee, or employee's representative may file a complaint at any time with the Director of the Department of Labor and Industries (Director) alleging that an employer who has a contract with the state has violated the neutrality requirement. The

Director must conduct a hearing within 30 days. Within 10 days after the hearing, the Director must make a determination.

If the Director determines that it appears likely that the employer is in violation, the Director must order the employer to keep accurate and complete records of the employer's expenditure of public funds. These records must be submitted to the Director within 30 days after each calendar quarter. The report must include a statement that the representations in the report are true and contain no material omissions to the employer's best knowledge and belief. A violation of this requirement is a misdemeanor. The Director may audit the records of employers subject to these requirements.

If the Director certifies an employer's willful or material failure to comply with the record keeping or reporting requirements or a failure to provide access to records for audit, the person is ineligible to receive public funds until the Director certifies that the employer is in full compliance.

If an employer knowingly authorizes or permits an expenditure of public funds that violates the neutrality requirements, the employer is liable to the state for civil damages of twice the expenditure, plus reasonable attorneys' fees and costs. A taxpayer may bring an action to recover these damages after the taxpayer has served a copy of the complaint and the evidence on the Washington State Attorney General (AG) and the AG has either agreed to bring an action or has failed, within 30 days, to agree to bring an action. An action by the AG must be brought within 60 days of notifying the taxpayer of the intent to do so. The taxpayer and the AG may intervene in an action brought by the other. The AG may dismiss or settle actions after a court hearing. The participating taxpayer may be subject to participation limits imposed by a court and may recover his or her attorneys' fees and costs if a violation is found.

A final judgment finding a violation of the neutrality requirements is grounds for debarment of public funds for three years from the date the judgment is entered.

Application

Contracts entered into under the following laws are explicitly made subject to the neutrality requirements: the higher education law, the public works law, the personal services contracts law, and the laws governing contracts by the Department of Transportation for the construction and maintenance of highways and by the Department of General Administration.

The neutrality requirements do not apply to contracts entered into before September 1, 2003.

Substitute Compared to Original Bill:

The substitute bill deletes language stating that violations of the neutrality requirement include advocating that employees should vote for or against union representation and specifying that employers are not prohibited from granting voluntary recognition to a union. The substitute also allows complaints to be filed by any individual and makes other clarifying changes.

Rules Authority: The bill requires the Director of the Department of Labor and Industries to adopt rules.

Appropriation: None.

Fiscal Note: Requested on February 19, 2003.

Effective Date: The bill contains an emergency clause and takes effect on July 1, 2003.