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HOUSE BILL 2016

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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 02/19/2003. Referred to Committee on Commerce & Labor.

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 the state  
10 currently places no limitation on the use of its funds to either  
11 encourage or discourage unionization, and as a result, public funds  
12 have been used by employers when there are efforts to unionize their  
13 work force.

14 (2) The legislature declares that it is the policy of this state to  
15 recognize the right of employees to freedom of association in the  
16 workplace and freedom of choice in who will represent employees in  
17 collective bargaining.

18 (3) The legislature further declares that the expenditure of public  
19 funds to support an employer's support or opposition to unionization of

1 the employer's workers does not serve the purposes for which the public  
2 funds were provided to the employer and, thus, the expenditure of those  
3 funds to support or oppose unionization is a misuse and waste of public  
4 funds.

5 (4) For these reasons, the legislature intends to ensure that  
6 public funds are not used to encourage or discourage employees from  
7 choosing union representation.

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

- 10 (1) "Public funds" means the same as in RCW 43.88.020.  
11 (2) "Unionization" means organization of employees for the purpose  
12 of collective bargaining.

13 NEW SECTION. **Sec. 3.** (1) An employer who receives public funds  
14 may not use, either directly or indirectly, those funds, either in  
15 whole or in part, to encourage or discourage unionization by that  
16 employer's employees or any other employees. An employer who derives  
17 revenue from property owned by the state and used by that employer  
18 through lease, concession contract, or other agreement may not  
19 encourage or discourage unionization by his or her employees who are  
20 employed on or in relation to that state property.

21 (2) "Receive public funds" means to receive public funds pursuant  
22 to a payment to a health care provider, a grant, a competitively bid  
23 contract, or reimbursement for services, and also includes receipt by  
24 a subcontractor of payment for the performance of services purchased by  
25 or funded by the state.

26 (3) A recipient of public funds is deemed to use the public funds  
27 if the recipient applies the funds, in whole or in part, to operating  
28 or capital expenses.

29 (4) A use of public funds is deemed to encourage or discourage  
30 unionization if the funds are used, either directly or indirectly, for:

31 (a) Any communication in any form that advocates directly or by  
32 implication suggests that employees should vote for or against  
33 representation by a union for purposes of collective bargaining;

34 (b) Hiring or consulting legal counsel or other consultants to  
35 advise on how to assist or deter unionization or how to assist or

1 impede a labor organization that represents employees from fulfilling  
2 its representation responsibilities;

3 (c) Holding meetings to influence employees to join or not to join  
4 or form or not to form a labor organization for the purpose of  
5 collective bargaining; or

6 (d) Planning or conducting activities by employer supervisors to  
7 assist or deter the activities of a labor organization.

8 (5) Nothing in this chapter limits the right of individuals who are  
9 not supervisors, managers, consultants, attorneys, advisers, or  
10 contractors of a recipient of public funds to advocate for or against  
11 unionization in the facilities of the recipient to the extent not  
12 precluded by applicable law.

13 (6) Nothing in this chapter limits the right of any employer or  
14 union to engage in lawful activities relating to the negotiation and  
15 enforcement of a collective bargaining agreement.

16 (7) Every contract for the payment of public funds to an employer  
17 shall contain a covenant that the employer will comply with this  
18 chapter.

19 (8) Nothing in this chapter prohibits an employer from granting  
20 voluntary recognition to a union as a representative of the employer's  
21 employees.

22 NEW SECTION. **Sec. 4.** Each recipient of public funds shall account  
23 for the public funds in accordance with the following:

24 (1) Public funds designated by the state for use for, or to  
25 reimburse, a specific expenditure of the recipient shall be accounted  
26 for as being allocated to that expenditure.

27 (2) Public funds that are not so designated shall be allocated on  
28 a pro rata basis to all expenditures of the recipient that support or  
29 are related to the purpose for which the public funds are received.

30 NEW SECTION. **Sec. 5.** The director of the department of labor and  
31 industries shall adopt rules to implement the requirements of this act.

32 NEW SECTION. **Sec. 6.** (1) A labor organization or collective  
33 bargaining representative at any time may file a complaint with the  
34 director of the department of labor and industries alleging that an

1 employer that has a contract with the state is in violation of section  
2 3 of this act.

3 (2) Within thirty days of receiving a complaint under subsection  
4 (1) of this section, the director shall conduct a hearing to determine  
5 whether the alleged violation has occurred.

6 (3) The director shall make a determination and render a decision  
7 within ten days following conclusion of the hearing.

8 (4) If the director determines, by a preponderance of the evidence,  
9 that it appears likely that the employer has violated section 3 of this  
10 act, the director shall order the employer thereafter to keep accurate  
11 and complete records of the employer's expenditures of all public funds  
12 received by the employer. The records shall be sufficient to show  
13 whether the employer has used public funds to encourage or discourage  
14 unionization.

15 (5) Each employer subject to the recordkeeping requirements of  
16 subsection (4) of this section during a calendar quarter shall prepare  
17 and submit to the director, within thirty days following the end of the  
18 quarter, a report specifying each expenditure of public funds and each  
19 expenditure of funds to encourage or discourage unionization made by  
20 the employer during the reported quarter.

21 (6) The report required by subsection (5) of this section shall  
22 include a statement that the representations made are true, correct,  
23 and contain no material omissions of fact to the best knowledge and  
24 belief of the employer submitting the certification. A violation of  
25 this subsection is a misdemeanor.

26 (7) The director, on his or her own initiative or in response to a  
27 complaint the director deems credible, may at any time audit the  
28 records of an employer subject to the requirements of this section to  
29 ensure compliance with this act.

30 (8) Following a certification by the director that any employer has  
31 willfully or materially failed to comply with the recordkeeping  
32 requirements of subsection (4) of this act or the reporting  
33 requirements of subsection (5) of this act, or has failed or refused to  
34 promptly provide the director or his or her designated representative  
35 access to the employer's records for the purpose of conducting an audit  
36 under subsection (7) of this act, the person shall be ineligible to  
37 receive public funds until the director certifies that the employer is  
38 in full compliance with those requirements.

1        NEW SECTION.    **Sec. 7.**    (1) Any employer who knowingly authorizes or  
2 permits an expenditure of public funds in violation of this act is  
3 liable to the state for civil damages equal to twice the amount of the  
4 expenditure, plus reasonable attorneys' fees and costs.

5        (2) Any taxpayer may bring an action to recover these civil damages  
6 on behalf of the state provided that both of the following conditions  
7 exist:

8        (a) The taxpayer has first served a copy of the complaint on the  
9 attorney general with a written disclosure of substantially all  
10 material evidence and information the taxpayer possesses.

11        (b) The attorney general has either notified the taxpayer that the  
12 attorney general has agreed to bring an action to recover funds  
13 expended in violation of this act or, after thirty days, the attorney  
14 general has failed to agree to bring an action to recover the funds  
15 expended in violation of this act.

16        (3) If the attorney general agrees to bring an action to recover  
17 the funds expended in violation of this act, the action shall be  
18 brought within sixty days of notifying the taxpayer of the intent of  
19 the attorney general to do so and the taxpayer may intervene in the  
20 action.

21        (4) In any action brought under subsection (2) of this section all  
22 of the following provisions apply:

23        (a) The attorney general may intervene in any action brought by a  
24 taxpayer at any time.

25        (b) The action may be dismissed only if the court and the attorney  
26 general give written consent to the dismissal and their reasons for  
27 that consent.

28        (c) The attorney general has the primary responsibility for  
29 prosecuting any action that the attorney general initiates or in which  
30 he or she intervenes, and is not bound by an act of the person bringing  
31 the action.

32        (d) The attorney general may dismiss the action notwithstanding the  
33 objections of the taxpayer initiating the action if the taxpayer has  
34 been notified by the attorney general of the filing of the motion and  
35 the court has provided the person with an opportunity for a hearing on  
36 the motion.

37        (e) The attorney general may settle the action with the defendant

1 notwithstanding the objections of the taxpayer initiating the action if  
2 the court determines, after a hearing, that the proposed settlement is  
3 fair, adequate, and reasonable under all the circumstances.

4 (f) Upon a showing by the attorney general or a defendant that  
5 unrestricted participation during the course of the litigation by the  
6 taxpayer initiating the action would interfere with or unduly delay the  
7 prosecution of the case, or would be repetitious, irrelevant, or for  
8 purposes of harassment, the court may, in its discretion, impose  
9 appropriate limitations on the taxpayer's participation.

10 (5) In any action brought under subsection (2) of this section in  
11 which the defendant is found to have violated this act, the taxpayer  
12 shall recover as part of the judgment his or her attorneys' fees and  
13 costs.

14 (6) A final judgment of a court of competent jurisdiction stating  
15 that an employer has violated section 3 of this act is a ground for  
16 debarment of public funds for three years from the date the judgment is  
17 entered.

18 NEW SECTION. **Sec. 8.** A new section is added to chapter 28B.10 RCW  
19 to read as follows:

20 All contracts entered into under this chapter on or after September  
21 1, 2003, are subject to the requirements established under chapter  
22 49.-- RCW (sections 1 through 7 of this act).

23 NEW SECTION. **Sec. 9.** A new section is added to chapter 39.04 RCW  
24 to read as follows:

25 All contracts entered into under this chapter on or after September  
26 1, 2003, are subject to the requirements established under chapter  
27 49.-- RCW (sections 1 through 7 of this act).

28 NEW SECTION. **Sec. 10.** A new section is added to chapter 39.29 RCW  
29 to read as follows:

30 All contracts entered into under this chapter on or after September  
31 1, 2003, are subject to the requirements established under chapter  
32 49.-- RCW (sections 1 through 7 of this act).

33 NEW SECTION. **Sec. 11.** A new section is added to chapter 43.19 RCW  
34 to read as follows:

1 All contracts entered into and purchases made, including leasing or  
2 renting, under this chapter on or after September 1, 2003, are subject  
3 to the requirements established under chapter 49.-- RCW (sections 1  
4 through 7 of this act).

5 NEW SECTION. **Sec. 12.** A new section is added to chapter 47.28 RCW  
6 to read as follows:

7 All contracts entered into under this chapter on or after September  
8 1, 2003, are subject to the requirements established under chapter  
9 49.-- RCW (sections 1 through 7 of this act).

10 NEW SECTION. **Sec. 13.** Sections 1 through 7 of this act constitute  
11 a new chapter in Title 49 RCW.

12 NEW SECTION. **Sec. 14.** This act shall not apply to contracts  
13 entered into before September 1, 2003.

14 NEW SECTION. **Sec. 15.** If any provision of this act or its  
15 application to any person or circumstance is held invalid, the  
16 remainder of the act or the application of the provision to other  
17 persons or circumstances is not affected.

18 NEW SECTION. **Sec. 16.** If any part of this act is found to be in  
19 conflict with federal requirements that are a prescribed condition to  
20 the allocation of federal funds to the state, the conflicting part of  
21 this act is inoperative solely to the extent of the conflict and with  
22 respect to the agencies directly affected, and this finding does not  
23 affect the operation of the remainder of this act in its application to  
24 the agencies concerned. Rules adopted under this act must meet federal  
25 requirements that are a necessary condition to the receipt of federal  
26 funds by the state.

27 NEW SECTION. **Sec. 17.** This act is necessary for the immediate  
28 preservation of the public peace, health, or safety, or support of the  
29 state government and its existing public institutions, and takes effect  
30 July 1, 2003.

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