

**HB 3127 - H AMD 745**

By Representative Nixon

**WITHDRAWN 2/14/2006**

1           Strike everything after the enacting clause and insert the  
2 following:

3           "NEW SECTION. Sec. 1. A new section is added to chapter 41.59  
4 RCW to read as follows:

5           (1) It is unlawful for an employee or an employee organization,  
6 directly or indirectly, to induce, instigate, encourage, authorize,  
7 ratify, or participate in a strike.

8           (2) It is unlawful for an employer to authorize, consent to, or  
9 condone a strike, to conduct a lockout, to pay or agree to pay an  
10 employee for any day in which the employee participates in a  
11 strike, or to pay or agree to pay any increase in compensation or  
12 benefits to an employee in response to or as a result of a strike  
13 or any act that violates subsection (1) of this section. It is  
14 unlawful for any representative of the employer to authorize,  
15 ratify, or participate in any violation of this subsection.

16           (3)(a) If a violation of subsection (1) or (2) of this section  
17 occurs, or is imminently threatened, any citizen domiciled within  
18 the jurisdictional boundaries of the state may petition the  
19 superior court of the county in which the school district, or any  
20 part thereof, is situated for an injunction restraining the  
21 violation or imminently threatened violation. Rules of civil  
22 procedure regarding injunctions apply to the action. However, the  
23 court shall grant a temporary injunction if it appears to the court  
24 that a violation has occurred or is imminently threatened; the  
25 plaintiff need not show that the violation or threatened violation  
26 would greatly or irreparably injure him or her. A bond may not be  
27 required of the plaintiff unless the court determines that a bond  
28 is necessary in the public interest.

29           (b) Failure to comply with any temporary or permanent  
30 injunction granted under this subsection is contempt of court as

1 provided in chapter 7.21 RCW. The court may impose a penalty of up  
2 to ten thousand dollars for an employee organization or the  
3 employer, for each day during which the failure to comply  
4 continues. The sanctions for an employee found to be in contempt  
5 shall be as provided in chapter 7.21 RCW. An individual or an  
6 employee organization that makes an active good faith effort to  
7 comply fully with the injunction shall not be deemed to be in contempt.

8 (4) Nothing in this section prevents new or renewed bargaining  
9 and agreement within the scope of bargaining, as defined by this  
10 chapter, at any time. However, the parties may not agree to a  
11 provision regarding suspension or modification of any court-ordered  
12 penalty provided in this section and any such agreement is void.

13 (5) Each of the remedies and penalties provided by this section  
14 is separate and several and is in addition to any other legal or  
15 equitable remedy or penalty.

16 (6) In addition to the remedies and penalties provided by this  
17 section, the successful litigant is entitled to recover costs and  
18 reasonable attorneys' fees incurred in the litigation.

19 **Sec. 2.** RCW 41.59.020 and 1989 c 11 s 11 are each amended to  
20 read as follows:

21 As used in this chapter:

22 (1) (~~The term~~) "Employee organization" means any  
23 organization, union, association, agency, committee, council, or  
24 group of any kind in which employees participate, and which exists  
25 for the purpose, in whole or in part, of collective bargaining with  
26 employers.

27 (2) (~~The term~~) "Collective bargaining" or "bargaining" means  
28 the performance of the mutual obligation of the representatives of  
29 the employer and the exclusive bargaining representative to meet at  
30 reasonable times in light of the time limitations of the  
31 budget-making process, and to bargain in good faith in an effort to  
32 reach agreement with respect to the wages, hours, and terms and  
33 conditions of employment: PROVIDED, That prior law, practice or  
34 interpretation shall be neither restrictive, expansive, nor  
35 determinative with respect to the scope of bargaining. A written  
36 contract incorporating any agreements reached shall be executed if  
37 requested by either party. The obligation to bargain does not  
38 compel either party to agree to a proposal or to make a concession.

1 In the event of a dispute between an employer and an exclusive  
2 bargaining representative over the matters that are terms and  
3 conditions of employment, the commission shall decide which item(s)  
4 are mandatory subjects for bargaining and which item(s) are nonmandatory.

5 (3) (~~The term~~) "Commission" means the public employment  
6 relations commission established by RCW 41.58.010.

7 (4) (~~The terms~~) "Employee" and "educational employee" means  
8 any certificated employee of a school district, except:

9 (a) The chief executive officer of the employer.

10 (b) The chief administrative officers of the employer, which  
11 shall mean the superintendent of the district, deputy  
12 superintendents, administrative assistants to the superintendent,  
13 assistant superintendents, and business manager. Title variation  
14 from all positions enumerated in this subsection (4)(b) may be  
15 appealed to the commission for determination of inclusion in, or  
16 exclusion from, the term "educational employee".

17 (c) Confidential employees, which shall mean:

18 (i) Any person who participates directly on behalf of an  
19 employer in the formulation of labor relations policy, the  
20 preparation for or conduct of collective bargaining, or the  
21 administration of collective bargaining agreements, except that the  
22 role of such person is not merely routine or clerical in nature but  
23 calls for the consistent exercise of independent judgment; and

24 (ii) Any person who assists and acts in a confidential capacity  
25 to such person.

26 (d) Unless included within a bargaining unit pursuant to RCW  
27 41.59.080, any supervisor, which means any employee having  
28 authority, in the interest of an employer, to hire, assign,  
29 promote, transfer, layoff, recall, suspend, discipline, or  
30 discharge other employees, or to adjust their grievances, or to  
31 recommend effectively such action, if in connection with the  
32 foregoing the exercise of such authority is not merely routine or  
33 clerical in nature but calls for the consistent exercise of  
34 independent judgment, and shall not include any persons solely by  
35 reason of their membership on a faculty tenure or other governance  
36 committee or body. The term "supervisor" shall include only those  
37 employees who perform a preponderance of the above-specified acts  
38 of authority.

39 (e) Unless included within a bargaining unit pursuant to RCW

1 41.59.080, principals and assistant principals in school districts.

2 (5) (~~The term~~) "Employer" means any school district.

3 (6) (~~The term~~) "Exclusive bargaining representative" means  
4 any employee organization which has:

5 (a) Been selected or designated pursuant to the provisions of  
6 this chapter as the representative of the employees in an  
7 appropriate collective bargaining unit; or

8 (b) Prior to January 1, 1976, been recognized under a  
9 predecessor statute as the representative of the employees in an  
10 appropriate collective bargaining or negotiations unit.

11 (7) (~~The term~~) "Person" means one or more individuals,  
12 organizations, unions, associations, partnerships, corporations,  
13 boards, committees, commissions, agencies, or other entities, or  
14 their representatives.

15 (8) (~~The term~~) "Nonsupervisory employee" means all  
16 educational employees other than principals, assistant principals  
17 and supervisors.

18 (9) "Labor dispute" means a controversy concerning terms or  
19 conditions of employment, or concerning the association or  
20 representation of persons in negotiating, fixing, maintaining,  
21 changing, or seeking to arrange terms or conditions of their public  
22 employment, regardless of whether the disputants in the controversy  
23 stand in the proximate relation of employer and employee.

24 (10) "Lockout" means the refusal of the employer, in connection  
25 with a labor dispute, to permit its employees to commence or  
26 continue the full performance of their normal duties and services  
27 as employees.

28 (11) "Strike" means any concerted action by employees or  
29 employee organizations, in connection with a labor dispute, to  
30 suspend, curtail, interrupt, withhold, or otherwise fail or refuse  
31 to perform fully their normal duties or services as employees."

32 Correct the title.

**EFFECT:** Replaces all provisions of the original bill with a prohibition on strikes by educational employees or condoning or consenting to a strike or a lockout by an educational employer.