
Commerce & Labor Committee

HB 1828

Brief Description: Requiring a state policy of neutrality towards unionization for persons using aerospace-related tax incentives.

Sponsors: Representatives Sells, Campbell, Conway, Cody, Green, Seaquist, McCoy, Chase, Dunshee, Wood, Moeller, Kenney, P. Sullivan, B. Sullivan, Kirby, Roberts, Appleton, Blake, Hasegawa, Hunt, Miloscia, Lovick, Morrell, Williams, Rolfes, Hurst, Simpson and Ormsby.

Brief Summary of Bill

- Bars a person claiming certain aerospace tax incentives from encouraging or discouraging unionization by that person's employees.
- Creates civil penalties for violations and allows taxpayers to bring civil actions for appropriate relief.

Hearing Date: 2/20/07

Staff: Jill Reinmuth (786-7134).

Background:

Neutrality Requirements

Under the federal National Labor Relations Act (NLRA), 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

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assurances to the Secretary of the Department of Labor that the funds will not be used to assist, promote, or deter union organizing.

California and New York have adopted laws that restrict employers who receive certain state funds from the state under a grant or contract from using these funds to encourage or discourage union organizing. The United States Court of Appeals for the Ninth Circuit upheld California's law in September 2006, finding that the restrictions were not preempted by the NLRA and did not violate the First Amendment. (A petition for review of the Ninth Circuit decision was filed with the United States Supreme Court in January 2007.) The United States Court of Appeals for the Second Circuit reversed a District Court decision upholding New York's law in December 2006, and remanded the case for resolution of disputed facts.

Aerospace Tax Incentives

Washington's major business tax is the business and occupation (B&O) tax. The B&O tax is imposed on the gross receipts of business activities conducted within the state, without any deduction for the costs of doing business. Revenues are deposited in the State General Fund. A business may have more than one B&O tax rate, depending on the types of activities conducted. There are a number of different rates. The main rates are: 0.471 percent for retailing; 0.484 percent for manufacturing, wholesaling, and extracting; and 1.5 percent for professional and personal services, and activities not classified elsewhere.

Sales tax is imposed on retail sales of most items of tangible personal property and some services, including construction and repair services. Sales and use taxes are imposed by the state, counties, and cities. Sales and use tax rates vary between 7 and 8.9 percent, depending on location. There are a number of sales and use tax exemptions, including machinery and equipment directly used in manufacturing.

Property taxes are imposed by state and local governments. All real and personal property in this state is subject to the property tax based on its value, unless a specific exemption is provided by law. There are exemptions for certain properties, including property owned by federal, state, and local governments, churches, farm machinery, and business inventory.

Property owned by federal, state, or local governments is exempt from the property tax. However, private lessees of government property are subject to the leasehold excise tax. The purpose of the leasehold excise tax is to impose a tax burden on persons using publicly-owned, tax-exempt property similar to the property tax that they would pay if they owned the property. The tax is collected by public entities that lease property to private parties.

In 2003 and 2006, the Legislature adopted comprehensive tax incentives limited to aerospace manufacturing and related industries. The incentives were intended to address the cost of doing business in Washington compared to locations in other states.

For aerospace manufacturers, the incentives included: a reduction in the B&O tax rate; a B&O tax credit for pre-production development expenditures; and a B&O tax credit for property taxes and leasehold excise taxes paid on property used in the manufacture of commercial airplanes and airplane components. A leasehold tax exemption for port district facilities is available to manufacturers of super-efficient airplanes that are not using the B&O tax credit for property taxes. Also included were sales and use tax exemptions for computer equipment and software, and its installation, used primarily in the development of commercial airplanes and components.

For non-manufacturing firms, the incentives included: a B&O tax credit for pre-production development expenditures; and sales and use tax exemptions for computer equipment and software, and its installation, used primarily in the development of commercial airplanes and components.

For certain firms that repair equipment used in interstate or foreign commerce, the incentive was a reduction in the B&O tax rate. These firms must be classified by the Federal Aviation Administration (FAA) as a Federal Aviation Regulation part 145 certificated repair station with airframe and instrument ratings and limited ratings for nondestructive testing, radio, class 3 accessory, and specialized services.

The Senate and House fiscal committees must report to the Legislature by November 1, 2010, and again by November 1, 2023, on the effectiveness of the incentives in keeping Washington competitive.

Summary of Bill:

A person is barred from claiming certain aerospace tax incentives if the person encourages or discourages unionization by that person's employees. "Encourag[ing] or discourag[ing] unionization" means attempting to influence the decision of the person's employees regarding whether to support or oppose an employee organization that seeks to represent them for the purpose of collective bargaining or to become a member of the organization.

A taxpayer may file a complaint with the Director of the Department of Revenue (Director). Within 30 days of receiving the complaint, the Director must conduct a hearing. Within 10 days of concluding the hearing, the Director must make a determination. A person that violates the neutrality requirement is liable for repayment of the amount of the tax incentive taken for that year, plus a civil penalty equal to twice that amount. The person is also barred from claiming a tax incentive for that year and the following calendar year.

A taxpayer also may bring a civil action for injunctive relief, civil penalties, and other appropriate relief. The prevailing plaintiff is entitled to attorneys' fees and costs.

The timing of the reports on the effectiveness of the tax incentives is changed. The reports are required by November 1 of each even-numbered year from 2008 through 2002, rather than by November 1 of 2010 and 2023.

Rules Authority: The bill does not address the rule-making powers of an agency.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill contains an emergency clause and takes effect on July 1, 2007.