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**State Government & Tribal  
Affairs Committee**

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**HB 2079**

**Brief Description:** Concerning use of agency shop fees.

**Sponsors:** Representatives McDermott, Ormsby, Williams, Simpson and Hunt.

**Brief Summary of Bill**

- Provides that when labor organizations are making political campaign contributions, the contribution is not considered to be use of agency shop fees when the organization's general treasury has sufficient funds to cover the contributions from other revenue sources.

**Hearing Date:** 2/20/07

**Staff:** Colleen Kerr (786-7168).

**Background:**

Agency shop fees are fees paid by educational employees who are nonunion members for the costs related to collective bargaining done by labor organizations or unions on behalf of all employees. Under Washington law, agency shop fees are equivalent to member dues and, like dues, are deducted by employers from salary payments. A portion of member dues goes to the support of political and ideological causes as chosen by the labor organization or union; such expenditures are referred to as non-chargeable activities. The United States Supreme Court, in *Chicago Teachers Union v. Hudson*, 475 U.S. 292 (1986), has ruled that nonmembers who do not wish to support such causes may obtain a rebate for non-chargeable activities.

Washington law specifically prohibits labor organizations or unions from using agency shop fees for political campaign contributions from such fees that have been paid by nonmembers unless the individual nonmembers have given affirmative authorization. This law was enacted in 1992 as the result of I-134, the Fair Campaign Practices Act, which in part restricted the ability of labor organizations or unions to use agency shops fees for political purposes.

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The use of member dues and agency shop fees for political purposes is controlled by the First Amendment and invokes the right of free speech and the right of freedom of association. With regard to these rights, the First Amendment is underpinned by a fundamental tension: the right of freedom of association to enable people to band together for greater effect in the political arena, and the free speech rights entitled to that organization; and the countervailing right of an individual not to be compelled to associate with politics and ideologies he or she does not support. In the context of the political speech of labor organizations or unions, and political use of member dues and agency shop fees, these are competing interests.

The United States Supreme Court, in a series of cases, has established standards for the use of member dues and agency shop fees:

- In *International Association of Machinists v. Street*, 367 U.S. 740 (1961), the Court held that the union had the right to collect fees from all employees who benefit from the union's collective bargaining, but that these fees may not be used to support political causes if the member disagrees with those causes. The appropriate remedy, however, must take into consideration the administrative efficiency in accommodating the interests of each group – where the majority has an interest in stating views that the dissent would seek to silence.
- In *Abood v. Detroit Bd. of Educ.*, 431 U.S. 209 (1977), the Court affirmed that *Street* applied to public employees represented by a collective bargaining agency, stating that member dues can be spent for purposes other than collective bargaining, and further held that the burden is on the employee to express his or her objection to such political expenditures.
- In *Ellis v. Bhd. of Ry., Airline & S.S. Clerks*, 466 U.S. 435 (1984) and *Chicago Teachers Union v. Hudson*, 475 U.S. 292 (1986), the Court established the process and appropriate safeguards by which unions establish the amount of rebate to nonmembers for non-chargeable activities. Because the nonmember rights are also protected by the First Amendment, the procedure must be carefully tailored and must allow an employee a fair opportunity to identify the impact of expenditures on his or her rights and assert a First Amendment claim.

In Washington, the issue of agency shop fees has been the subject of protracted litigation. Most recently, in 2006, the Washington Supreme Court (Court) in *State ex rel. PDC v. WEA*, Wn.2d 543 (2006) upheld two state Court of Appeals decisions that held the prohibition on the use of agency shop fees for political campaign contributions is an unconstitutional restriction of First Amendment rights. In its holding, the Court held that the statutory requirement that prohibits unions from using nonmember fees for political purposes unless the union has the affirmative assent of the nonmember is an unconstitutional infringement on the First Amendment rights of unions. Because it found the statute unconstitutional, the court did not address how unions could meet the statutory standard of affirmative authorization. The United States Supreme Court granted certiorari in 2006, and heard oral arguments in January, 2007; a decision is pending.

### **Summary of Bill:**

The statute prohibiting labor organizations from using agency shop fees paid by nonmembers for political campaign contributions unless authorized to do so by the individual nonmembers is modified so that when labor organizations are making such political campaign contributions, the contribution is not considered to be use of agency shop fees when there are sufficient funds in the organization's general treasury from other revenue sources.

**Appropriation:** None.

**Fiscal Note:** Not requested.

**Effective Date:** The bill contains an emergency clause and takes effect immediately.