

# SENATE BILL REPORT

## HB 2079

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As Reported By Senate Committee On:  
Labor, Commerce, Research & Development, March 29, 2007

**Title:** An act relating to use of agency shop fees.

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

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

**Brief History:** Passed House: 3/09/07, 55-42.

**Committee Activity:** Labor, Commerce, Research & Development: 3/22/07, 3/29/07 [DP, DNP].

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### SENATE COMMITTEE ON LABOR, COMMERCE, RESEARCH & DEVELOPMENT

**Majority Report:** Do pass.

Signed by Senators Kohl-Welles, Chair; Keiser, Vice Chair; Franklin, Murray and Prentice.

**Minority Report:** Do not pass.

Signed by Senators Clements, Ranking Minority Member; Hewitt and Holmquist.

**Staff:** Jennifer Strus (786-7316)

**Background:** Agency shop fees are fees paid by public 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 Initiative 134, the Fair Campaign Practices Act, which in part restricted the ability of labor organizations or unions to use agency shop fees for political purposes.

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

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 (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; and
- 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 in *State ex rel. PDC v. WEA*, Wn.2d 543 (2006) upheld two state Court of Appeals decisions, holding that the statutory requirement prohibiting 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. The Washington Supreme Court stated that the statute's requirement of affirmative authorization is an unconstitutional burden on the First Amendment rights of labor organizations: "Dissenters may not silence the majority by the creation of too heavy an administrative burden." In its analysis, the Washington Supreme Court considered Washington Education Association's *Hudson* accounting practices and other hypothetical options for meeting the affirmative authorization standard. 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.

**Committee/Commission/Task Force Created:** No.

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

**Staff Summary of Public Testimony:** PRO: Direct contributions to political candidates are not affected by this bill; they remain prohibited. The Public Disclosure Commission has refused to clarify state law for the unions and this bill provides the clarification that the unions have been seeking. The bill clarifies the use of agency fees and puts to bed years of wrangling over this question. The bill preserves the First Amendment rights of those paying union dues as well as those paying agency shop fees. There is no reason to spend nonmember fees on political issues without the nonmember's permission. The bill fixes a technical problem in the current law.

CON: This bill relieves the union of asking for permission to use the agency fees for political reasons. It also violates nonmembers' First Amendment rights. It does not clarify the agency shop fee process which is difficult to understand. Currently, a nonmember can protest the use of his or her fees for political reasons with which he or she may disagree. With this bill, the ability to do that would end. There is no problem with collective bargaining, but there is a problem with the support of political candidates with which he does not agree. It is premature to amend the section of the law that is currently on appeal to the United States Supreme Court. The bill is not intended to clarify the law, but rather to subvert it. The bill presents constitutional concerns.

OTHER: The money collected from the union member and the nonmember must be used proportionally. If \$1 from the non member goes towards collective bargaining and \$1 from the member is used in part for political issues, then the money is not spent proportionally and that is where constitutional issues arise in this bill.

**Persons Testifying:** PRO: Representative McDermott, prime sponsor; Cathy Dejong, Washington Education Association; Kim Field, State Employees International Union 1199.

CON: Amber Birks, teacher; Gordon Kenny, teacher; Mike Reitz, Evergreen Freedom Foundation; Dennis Redman, Fair Washington Labor Association.

OTHER: Tom Wendell, Attorney General's Office.