

HOUSE BILL REPORT

HB 1575

As Reported by House Committee On:
Labor & Workplace Standards
Appropriations

Title: An act relating to strengthening the rights of workers through collective bargaining by addressing authorizations and revocations, certifications, and the authority to deduct and accept union dues and fees.

Brief Description: Strengthening the rights of workers through collective bargaining by addressing authorizations and revocations, certifications, and the authority to deduct and accept union dues and fees.

Sponsors: Representatives Stonier, Valdez, Ryu, Sells, Chapman, Cody, Macri, Peterson, Kloba, Lovick, Gregerson, Fey, Pollet, Senn, Riccelli, Lekanoff, Fitzgibbon, Bergquist, Stanford, Doglio, Tharinger, Goodman, Jinkins, Frame and Davis.

Brief History:

Committee Activity:

Labor & Workplace Standards: 2/4/19, 2/18/19 [DPS];
Appropriations: 2/25/19, 2/26/19 [DP2S(w/o sub LAWS)].

Brief Summary of Second Substitute Bill

- Provides that public employers and public employee organizations are not liable in claims or causes of action for deducted union fees that were permitted by law and deducted before the *Janus v. AFSCME* decision.
- Eliminates public employees' right to make a legal claim or seek judicial enforcement of a right related to membership dues under the new provisions of the act.
- Removes union security provisions from various collective bargaining statutes.
- Creates provisions for employees to provide electronic or recorded voice authorization to deduct membership dues.
- Authorizes a cross-check process to determine union representation for certain public employees, upon a showing of interest of 50 percent of the employees in the bargaining unit.

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.

HOUSE COMMITTEE ON LABOR & WORKPLACE STANDARDS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 4 members: Representatives Sells, Chair; Chapman, Vice Chair; Gregerson and Ormsby.

Minority Report: Do not pass. Signed by 3 members: Representatives Mosbrucker, Ranking Minority Member; Chandler, Assistant Ranking Minority Member; Hoff.

Staff: Trudes Tango (786-7384).

Background:

Authorization of Union Dues.

On June 27, 2018, the United States Supreme Court decided *Janus v. AFSCME*, which held that it is unconstitutional to require public employees who are not members of the union to pay fees to the union. Therefore, a union security provision that requires an employer to automatically deduct fees from a nonunion employee's salary is invalid. An employee's clear consent is required before dues may be deducted from the employee's pay.

Cross-Check to Determine Representation.

A union that wishes to be the exclusive bargaining representative of a unit of employees must file a petition for representation on behalf of the employees. The union must file the petition with the Public Employment Relations Commission (PERC) with a "showing of interest" showing that at least 30 percent of the employees in the bargaining unit support the petition.

The PERC determines union representation by either an election or a cross-check of records. Generally, when there is an election for representation and there is no current contract, ballots are mailed to eligible employees to vote for their choice of representation.

An alternative way of determining representation is by a "cross-check" process. A cross-check can only be conducted when only one union has petitioned to represent a unit and the petition is supported by the sufficient number of signature cards. For most public employees, the petitioning union must submit signature cards from at least 70 percent of the employees in the bargaining unit. For state civil service employees who bargain under the Personnel Service Reform Act (PSRA) and most higher education employees, the threshold showing is at least 50 percent. A cross-check process is not available for certificated employees of school districts.

The employer provides PERC with employment records with the signatures of the eligible employees, and PERC verifies the cards against the signatures on the employment record. Matching signatures count as a "yes" vote. Employees are given the opportunity to request that their signature not be used for the purpose of a cross-check.

Summary of Substitute Bill:

Provisions Related to *Janus vs. AFSCME*.

Public employers and an employee organization are not liable in, and have a complete defense to, any claims or actions for requiring, deducting, receiving, or retaining agency or fair share fees from public employees, if the fees were permitted under state law and paid before June 27, 2018. This provision applies to all claims and actions pending and to claims and actions filed on or after the effective date of the bill.

Union security provisions in the various collective bargaining statutes are stricken.

Authorization to Deduct Dues.

Provisions are established regarding an employee's authorization to deduct membership dues from the employee's salary. An employee's written, electronic, or recorded voice authorization must be made by the employee to the exclusive bargaining representative. The employer is required to deduct from the employee's salary membership dues and remit those amounts to the exclusive bargaining representative once it receives the employee's authorization from the exclusive bargaining representative.

The authorization remains in effect until expressly revoked by the employee in accordance with the terms and conditions of the authorization. The request to revoke must be in writing.

This provision is added to: the Public Employees Collective Bargaining Act (PECBA) covering employees of cities, counties, and other public employees; the Personnel System Reform Act (PSRA) covering state civil service employees; marine employees; certificated school district employees; and higher education faculty.

A provision is added for the deduction of payments made to individual providers (IPs). The exclusive bargaining representative may designate a third-party entity to act as an IP's agent in receiving payment from the state to the IP, so long as the IP entered into an agreement with a third-party entity for purposes of deducting and remitting voluntary payments to the exclusive bargaining representative.

Cross-Check.

A determination through a cross-check process may be made upon a showing of interest submitted in support of the exclusive bargaining representative by more than 50 percent of the employees, rather than 70 percent, for employees under PECBA and the PSRA, marine employees, higher education faculty, and symphony musicians. The PERC may adopt rules to implement cross-check procedures.

Substitute Bill Compared to Original Bill:

The substitute bill: (1) removes the provision requiring that the employer and employee organization concur on the use of a cross-check process; (2) authorizes the PERC to adopt rules for cross-check processes; and (3) provides that the exclusive bargaining representative may designate a third-party entity to act as an individual provider's (IP) agent in receiving payment from the state to the IP, so long as the IP entered into an agreement with a third-party entity for purposes of deducting and remitting voluntary payments to the exclusive bargaining representative.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Substitute Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) This bill will help clarify the relationship between union members and their union. It provides clarity on how someone becomes a member of the union and that the union is responsible for getting information to the employer about an employee's membership. The bill aligns the statutes with the *Janus* decision. Voice authorizations have become common, and this bill modernizes the statute.

(Opposed) This bill makes it more difficult for employees to stop paying dues and makes it easier for unions to collect dues. The bill still interferes with employees' fundamental rights by restricting how and when workers can exercise their rights. Telephonic authorization deprives employees the chance to review membership forms in writing. The bill requires revocation of the authorization to be in writing, but allows authorization to be by voice recording. Employers will be put in a difficult legal position of not honoring an employee's request to revoke authorization. The bill eliminates secret ballot elections and the right of workers to vote.

Persons Testifying: (In support) Representative Stonier, prime sponsor; J. Pat Thompson, County and City Employees; and Lucinda Young, Washington Education Association.

(Opposed) Erin Shannon, Washington Policy Center; and Maxford Nelsen, Freedom Foundation.

Persons Signed In To Testify But Not Testifying: None.

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: The second substitute bill be substituted therefor and the second substitute bill do pass and do not pass the substitute bill by Committee on Labor & Workplace Standards. Signed by 19 members: Representatives Ormsby, Chair; Bergquist, 2nd Vice Chair; Robinson, 1st Vice Chair; Cody, Dolan, Fitzgibbon, Hansen, Hudgins, Jinkins, Macri, Pettigrew, Pollet, Ryu, Senn, Springer, Stanford, Sullivan, Tarleton and Tharinger.

Minority Report: Do not pass. Signed by 13 members: Representatives Stokesbary, Ranking Minority Member; MacEwen, Assistant Ranking Minority Member; Rude, Assistant Ranking Minority Member; Caldier, Chandler, Dye, Hoff, Kraft, Mosbrucker, Schmick, Steele, Sutherland and Ybarra.

Minority Report: Without recommendation. Signed by 1 member: Representative Volz.

Staff: David Pringle (786-7310).

Summary of Recommendation of Committee On Appropriations Compared to Recommendation of Committee On Labor & Workplace Standards:

The Appropriations Committee substitute bill adds a section that eliminates public employees' rights to make a legal claim or seek judicial enforcement of a right related to requiring, deducting, receiving, or retaining membership dues under the new provisions of the act.

The Appropriations Committee also added a section making the bill null and void unless specific funding is provided for the bill in the omnibus appropriations act by June 30, 2019.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Second Substitute Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed. However, the bill is null and void unless funded in the budget.

Staff Summary of Public Testimony:

(In support) This bill aligns public employee collective bargaining laws with the new legal environment. It is the additional Public Employment Relations Commission staffing needs that drive costs. Some local government employers have asked for additional indemnification.

(Opposed) This bill takes away the right to vote on union representation. No signature requirement for deductions is a big problem. There is government liability for enforcing private agreements. The substitute bill is worse than the version originally introduced. The bill is not fair, and it picks winners and losers. This is clearly aimed to aid a private financial arrangement.

Persons Testifying: (In support) Joe Kendo, Washington State Labor Council.

(Opposed) Jami Lund, Freedom Foundation.

Persons Signed In To Testify But Not Testifying: None.