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State of Minnesota

HOUSE OF REPRESENTATIVES

EIGHTY-EIGHTH SESSION

H. F. No. 2312

02/25/2014 Authored by Winkler

The bill was read for the first time and referred to the Committee on Labor, Workplace and Regulated Industries

1.1 A bill for an act
1.2 relating to labor relations; prohibiting use of public funds for employee influence
1.3 activity; requiring record keeping; providing for enforcement and civil actions;
1.4 providing civil penalties; proposing coding for new law in Minnesota Statutes,
1.5 chapter 179.

1.6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.7 Section 1. [179.78] DEFINITIONS.

1.8 Subdivision 1. Scope. For the purposes of sections 179.78 to 179.785, the terms
1.9 defined in this section have the meanings given them.

1.10 Subd. 2. Employee influence activity. (a) "Employee influence activity" means any
1.11 activity, effort, or attempt by a publicly funded employer:

1.12 (1) to influence its employees regarding their decisions about whether to support
1.13 or oppose a labor organization that represents or seeks to represent those employees or
1.14 whether to become a member of any labor organization;

1.15 (2) to encourage or discourage any employee from joining or refraining from
1.16 joining a labor organization or from participating or refraining from participating in any
1.17 activities in support thereof; or

1.18 (3) to encourage or discourage any employee from participating in or refraining
1.19 from participating in any effort by a labor organization or any other form of employee
1.20 self-organization or any activity in which an employee participates for the purpose of
1.21 mutual aid or protection.

1.22 (b) "Employee influence activity" includes:

1.23 (1) conducting meetings during working hours if any such meetings are conducted
1.24 for the purpose of or in connection with any action to carry out the purposes of paragraph
1.25 (a), clauses (1) to (3);

2.1 (2) training managers, supervisors, or other personnel regarding methods or
2.2 techniques of or related to carrying out the purposes of paragraph (a), clauses (1) to (3); and
2.3 (3) hiring, retaining, paying the salary or any other compensation to, or defraying
2.4 any expenses of any individual, corporation, unincorporated association, partnership,
2.5 firm, consultancy, or other entity, or any individual acting for or on behalf of same, for
2.6 performing research, planning, advising, preparing, coordinating, carrying out, or engaging
2.7 in activities related to carrying out the purposes of paragraph (a), clauses (1) to (3).

2.8 Subd. 3. **Employee.** "Employee" means any individual:

2.9 (1) employed by a publicly funded employer, including but not limited to any
2.10 individual engaged in performing work, providing services, or fulfilling contracts that are,
2.11 in whole or in part, directly or indirectly, paid for, financed, derived, or subsidized by,
2.12 with, or from public funds; and

2.13 (2) any individual employed by any employer in connection with such work.

2.14 Subd. 4. **State.** "State" includes the state of Minnesota and any agency, office,
2.15 officer, department, division, board, commission, authority, instrumentality, or political
2.16 subdivision thereof; any corporation, entity, or body created by state law; and any
2.17 individual designated by or with authority to act for the state or any of its subordinate units
2.18 or political subdivisions.

2.19 Subd. 5. **Attorney general.** "Attorney general" means the attorney general of the
2.20 state of Minnesota.

2.21 Subd. 6. **Employer.** "Employer" means any individual, corporation, unincorporated
2.22 association, partnership, institution, trustee, trustee in bankruptcy, receiver, government
2.23 agency or body, or other legal entity or association other than the state, that employs at
2.24 least one person in the state or any director, officer, or managerial employee acting as an
2.25 agent for such individual, corporation, unincorporated association, partnership, institution,
2.26 trustee, trustee in bankruptcy, receiver, government agency or body, or other legal entity
2.27 or association other than the state, that employs at least one person in the state. This
2.28 definition includes contractors, subcontractors, grantees, and subgrantees of employers.

2.29 Subd. 7. **Publicly funded employer.** "Publicly funded employer" means the state
2.30 or any employer that receives public funds in excess of \$25,000 per year in any of the
2.31 immediately preceding five years whether such funds are received through payment,
2.32 grant, allocation, reimbursement, or subsidy.

2.33 Subd. 8. **Public funds.** "Public funds" means the revenues of the state from
2.34 whatever source derived and any money drawn from the accounts or treasury or any special
2.35 fund or trust fund of the state or any of its subordinate units and political subdivisions,
2.36 insofar as such funds are appropriated, expended, paid over, granted, allocated,

3.1 reimbursed, transferred, or contributed to any other person or entity for the purpose of
3.2 supplying services to the state, for the performance of public works pursuant to the state or
3.3 its citizens, or for or in connection with the performance of any contract with the state.

3.4 Sec. 2. **[179.781] PROHIBITED ACTIVITIES.**

3.5 Subdivision 1. **Employer activities.** Publicly funded employers shall not engage
3.6 in employee influence activity for which public money is used, directly or indirectly, to
3.7 pay any cost or expense, or for which any cost or expense is defrayed or reimbursed
3.8 from public funds.

3.9 Subd. 2. **State activities.** The state shall not engage in any employee influence
3.10 activity nor shall the state appropriate, pay, grant, or transfer public funds or, with public
3.11 funds, reimburse a publicly funded employer for costs or expenditures arising from or in
3.12 connection with any employee influence activity.

3.13 Subd. 3. **Expression of views.** Nothing in this section shall be interpreted to limit
3.14 the right of a publicly funded employer to express any views to its employees or others, or
3.15 to engage in any otherwise lawful employee influence activity, as long as such expression
3.16 is made or action conducted without utilizing public funds.

3.17 Sec. 3. **[179.782] CERTIFICATION.**

3.18 As a condition of receiving public funds, a publicly funded employer other than the
3.19 state shall certify to the state that it will not engage in employee influence activity for which
3.20 public money is used, directly or indirectly, to pay any cost or expense or for which any
3.21 cost or expense is defrayed or reimbursed from public funds. A publicly funded employer
3.22 must certify that it will comply with all the requirements of this section. Certification is
3.23 required in requests for reimbursements from public funds, requests to participate in state
3.24 programs, bid proposal submissions, grant request applications, and service contracts.

3.25 Sec. 4. **[179.783] RECORD KEEPING.**

3.26 A state contractor, grant recipient, or program participant that incurs costs or
3.27 expenses related to employee influence activities shall maintain records sufficient to show
3.28 that public funds have not been used and are not being sought for the purpose of engaging
3.29 in employee influence activities. These records shall be provided to the attorney general
3.30 upon request, within ten days of a request.

3.31 Sec. 5. **[179.784] EXCEPTIONS.**

4.1 The provisions of sections 2, 3, 4, and 6 shall not apply when the state or publicly
 4.2 funded employer is:

4.3 (1) performing an activity required by federal or state law or by a collective
 4.4 bargaining agreement;

4.5 (2) addressing a grievance or entering into, negotiating, or administering a collective
 4.6 bargaining agreement or other agreement with a labor organization;

4.7 (3) using bulletin boards, e-mail, or other facilities normally used for communication
 4.8 with or by employees, by any employee, labor organization, groups of employees, or bona
 4.9 fide employee organization, for discussion of issues related to unionization or collective
 4.10 bargaining if any applicable law or collectively bargaining agreement permits or requires a
 4.11 publicly funded employer to allow such use; or

4.12 (4) using or accessing facilities or property by any employee, labor organization,
 4.13 groups of employees, or bona fide employee organization if any applicable law or
 4.14 collective bargaining agreement permits or requires a publicly funded employer to allow
 4.15 such use or access.

4.16 **Sec. 6. [179.785] ENFORCEMENT AND ACTIONS.**

4.17 Subdivision 1. **Department of Labor and Industry.** Any citizen or taxpayer of the
 4.18 state who complains that a publicly funded employer is using or has used public funds
 4.19 for employee influence activities may request the Department of Labor and Industry
 4.20 to investigate the matter. The Department of Labor and Industry shall commence an
 4.21 investigation if there is reasonable cause to believe a violation has occurred or is likely to
 4.22 occur and shall issue a report within 90 days.

4.23 Subd. 2. **Attorney general.** A civil action for a violation of this section may be
 4.24 brought by the attorney general, on behalf of the people of the state, for injunctive relief,
 4.25 damages, civil penalties, and other appropriate equitable relief.

4.26 Subd. 3. **Individual.** A citizen or taxpayer may bring an action following
 4.27 notification to the attorney general. If, at any time after the citizen or taxpayer has
 4.28 commenced an action, the attorney general commences an action with regard to the same
 4.29 matter, the suit by the citizen or taxpayer shall be held in abeyance. The court may, in its
 4.30 discretion and for the assistance of the court, permit any citizen or taxpayer to intervene
 4.31 and participate in any proceedings connected with the action of the attorney general. If the
 4.32 attorney general subsequently declines to proceed with its action, the citizen or taxpayer
 4.33 action shall be reopened and proceed. If the action of the attorney general is dismissed
 4.34 by the court or resolved by settlement between the parties, the citizen or taxpayer action

5.1 shall be dismissed or otherwise resolved as provided in the settlement to the extent that the
5.2 actions arise out of the same alleged violations.

5.3 Subd. 4. **Cease and desist.** The court shall order a publicly funded employer other
5.4 than the state to cease and desist from such action and to reimburse the state in the amount
5.5 of any prohibited expenditures plus interest and damages. The court shall provide other
5.6 relief, legal and equitable, as is just and appropriate, including, when the action was
5.7 commenced by a citizen or taxpayer, reasonable costs and attorney fees. Whenever a citizen
5.8 or taxpayer action is superseded by an action brought by the attorney general that results
5.9 in a finding of a violation of this section, the citizen or taxpayer may recover reasonable
5.10 costs and attorney fees incurred prior to the initiation of the action of the attorney general.

5.11 Subd. 5. **Presumption.** In any action under this section, it shall be presumed that
5.12 public funds were used for any costs or expenditures in connection with any employee
5.13 influence activity unless the publicly funded employer establishes by a preponderance
5.14 of the evidence that, prior to engaging in such activity, the publicly funded employer
5.15 made reasonable efforts to segregate its public funds from other revenue sources, and
5.16 that any costs or expenditures associated with such employee influence activity were
5.17 entirely defrayed from revenues other than any public funds of which the publicly funded
5.18 employer is a recipient, grantee, payee, or beneficiary. If public funds and other funds
5.19 are commingled, any costs incurred or expenses related to employee influence activities
5.20 shall be presumed to derive pro rata from public funds.

5.21 Subd. 6. **Damages and penalties.** All damages and civil penalties collected shall be
5.22 deposited in the general fund in the state treasury.