

Assembly Bill No. 1889

CHAPTER 872

An act to add Chapter 6 (commencing with Section 16645) to Part 2 of Division 4 of Title 2 of the Government Code, relating to use of state funds.

[Approved by Governor September 28, 2000. Filed with Secretary of State September 29, 2000.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1889, Cedillo. State funds: unionization.

Nothing in existing law prohibits recipients of state funds from using the funds to discourage unionization.

This bill would prohibit a state contractor that receives \$50,000 or more under a state contract, during the term of the contract, including any extension or renewal, from assisting, promoting, or deterring union organizing, as defined, in this state and would prohibit state funds from being used to reimburse those activities. The bill would also prohibit a grant recipient, state contractor, public employer, or private employer who receives state funds and meets other requirements from using state funds to assist, promote, or deter union organizing. The bill would prohibit an employer who conducts business on state property pursuant to a contract or concession agreement with the state or a state agency to use the state property to hold a meeting with any employees or supervisors if the purpose of the meeting is to assist, promote, or deter union organizing. The bill would impose civil penalties for a violation of the above provisions. The bill would make an employee of a public employer that receives state funds personally liable to the state for knowingly authorizing a use of state funds to assist, promote, or deter union organizing.

The bill would require specified recipients of state funds to comply with certification and recordkeeping requirements relating to the use of state funds. The bill would provide that it does not apply to an expenditure made prior to January 1, 2001, or to a grant or contract awarded prior to January 1, 2001, except as specified.

The people of the State of California do enact as follows:

SECTION 1. The Legislature finds and declares the following:

It is the policy of the state not to interfere with an employee's choice about whether to join or to be represented by a labor union. For this reason, the state should not subsidize efforts by an employer to assist, promote, or deter union organizing. It is the intent of the



Legislature in enacting this act to prohibit an employer from using state funds and facilities for the purpose of influencing employees to support or oppose unionization and to prohibit an employer from seeking to influence employees to support or oppose unionization while those employees are performing work on a state contract.

SEC. 2. Chapter 6 (commencing with Section 16645) is added to Part 2 of Division 4 of Title 2 of the Government Code, to read:

CHAPTER 6. PROHIBITION ON USE OF STATE FUNDS AND FACILITIES
TO ASSIST, PROMOTE, OR DETER UNION ORGANIZING

16645. For purposes of this chapter, the following terms have the following meanings:

(a) “Assist, promote, or deter union organizing” means any attempt by an employer to influence the decision of its employees in this state or those of its subcontractors regarding either of the following:

(1) Whether to support or oppose a labor organization that represents or seeks to represent those employees.

(2) Whether to become a member of any labor organization.

(b) “Employer” means any individual, corporation, unincorporated association, partnership, government agency or body, or other legal entity that employs more than one person in the state.

(c) “State contractor” means any employer that receives state funds for supplying goods or services pursuant to a written contract with the state or any of its agencies. “State contractor” includes an employer that receives state funds pursuant to a contract specified in paragraph (2) of subdivision (d). For purposes of this chapter, the contract shall be deemed to be a contract with a state agency.

(d) (1) “State funds” means any money drawn from the State Treasury or any special or trust fund of the state.

(2) “State funds” includes any money appropriated by the state and transferred to any public agency, including a special district, that is used by the public agency to fund, in whole or in part, a service contract in excess of two hundred fifty thousand dollars (\$250,000).

(e) “State property” means any property or facility owned or leased by the state or any state agency.

16645.1. (a) No state funds shall be used to reimburse a state contractor for any costs incurred to assist, promote, or deter union organizing.

(b) Every request for reimbursement from state funds by a state contractor shall include a certification that the contractor is not seeking reimbursement for costs incurred to assist, promote, or deter union organizing. A state contractor that incurs costs to assist, promote, or deter union organizing shall maintain records sufficient to show that no reimbursement from state funds has been sought for



those costs. The state contractor shall provide those records to the Attorney General upon request.

(c) A state contractor is liable to the state for the amount of any funds obtained in violation of subdivision (a) plus a civil penalty equal to twice the amount of those funds.

(d) This section does not apply to a fixed-price contract or to any other arrangement by which the amount of the payment of state funds does not depend on the costs incurred by the state contractor.

16645.2. (a) The recipient of a grant of state funds, including state funds disbursed as a grant by a public agency, shall not use the funds to assist, promote, or deter union organizing.

(b) For purposes of this section, each recipient of a grant of state funds shall account for those funds as follows:

(1) State funds designated by the grantor for use for a specific expenditure of the recipient shall be accounted for as allocated to that expenditure.

(2) State funds that are not designated as described in paragraph (1) shall be allocated on a pro rata basis to all expenditures by the recipient that support the program for which the grant is made.

(c) Prior to the disbursement of a grant of state funds, the recipient shall provide a certification to the state that none of the funds will be used to assist, promote, or deter union organizing. Any recipient that makes expenditures to assist, promote, or deter union organizing shall maintain records sufficient to show that state funds have not been used for those expenditures. The grant recipient shall provide those records to the Attorney General upon request.

(d) A grant recipient is liable to the state for the amount of any funds expended in violation of subdivision (a) plus a civil penalty equal to twice the amount of those funds.

16645.3. (a) No state contractor shall assist, promote, or deter union organizing by employees who are performing work on a service contract, including a public works contract, for the state or a state agency.

(b) A state contractor that violates subdivision (a) is liable for a civil penalty of one thousand dollars (\$1,000) per employee per violation.

16645.4. (a) A state contractor that receives state funds in excess of fifty thousand dollars (\$50,000) pursuant to a contract with the state or a state agency shall not use those state funds to assist, promote, or deter union organizing during the life of the contract, including any extensions or renewals of the contract. The dollar threshold in this subdivision, however, does not limit the application of other provisions of this chapter that restrict the use of state funds.

(b) All contracts in excess of fifty thousand dollars (\$50,000) and that are awarded by the state or a state agency shall contain the prohibition stated in subdivision (a).



(c) A state contractor who is subject to subdivision (a) and who makes expenditures to assist, promote, or deter union organizing shall maintain records sufficient to show that no state funds were used for those expenditures. The state contractor shall provide those records to the Attorney General upon request.

(d) A state contractor is liable to the state for the amount of any funds expended made in violation of subdivision (a) plus a civil penalty equal to twice the amount of those funds.

16645.5. (a) An employer conducting business on state property pursuant to a contract or concession agreement with the state or a state agency, or a subcontractor on such a contract or agreement, shall not use state property to hold a meeting with any employees or supervisors if the purpose of the meeting is to assist, promote, or deter union organizing. This section does not apply if the state property is equally available, without charge, to the general public for holding a meeting.

(b) An employer that violates subdivision (a) shall be liable to the state for a civil penalty equal to one thousand dollars (\$1,000) per employee per meeting.

16645.6. (a) A public employer receiving state funds shall not use any of those funds to assist, promote, or deter union organizing.

(b) Any public official who knowingly authorizes the use of state funds in violation of subdivision (a) shall be liable to the state for the amount of those funds.

16645.7. (a) A private employer receiving state funds in excess of ten thousand dollars (\$10,000) in any calendar year on account of its participation in a state program shall not use any of those funds to assist, promote, or deter union organizing.

(b) As a condition of participating in a state program pursuant to which it will receive state funds in excess of ten thousand dollars (\$10,000) in any calendar year, a private employer shall provide a certification to the state that none of those funds will be used to assist, promote, or deter union organizing.

(c) A private employer who is subject to subdivision (a) and who makes expenditures to assist, promote, or deter union organizing shall maintain records sufficient to show that no state funds were used for those expenditures. The private employer shall provide those records to the Attorney General upon request.

(d) A private employer is liable to the state for any funds expended in violation of subdivision (a) plus a civil penalty equal to twice the amount of those funds.

16645.8. (a) A civil action for a violation of this chapter may be brought by the Attorney General, or by any state taxpayer, on behalf of the people of the State of California, for injunctive relief, damages, civil penalties, and other appropriate equitable relief. All damages and civil penalties collected pursuant to this chapter shall be paid to the State Treasury.



(b) Before filing an action under this section, a taxpayer shall give written notice to the Attorney General of the alleged violation and the intent to bring suit. If the Attorney General commences a civil action for the same alleged violation within 60 days of receiving the notice, a separate action by the taxpayer shall be barred.

(c) A taxpayer may intervene as a plaintiff in any action brought under this section.

(d) A prevailing plaintiff in any action under this section is entitled to recover reasonable attorney's fees and costs. A prevailing taxpayer intervenor who makes a substantial contribution to an action under this section is entitled to recover reasonable attorney's fees and costs.

16646. (a) For purposes of this chapter, any expense, including legal and consulting fees and salaries of supervisors and employees, incurred for research for, or preparation, planning, or coordination of, or carrying out, an activity to assist, promote, or deter union organizing shall be treated as paid or incurred for that activity.

(b) For purposes of accounting for expenditures, if state funds and other funds are commingled, any expenditures to assist, promote, or deter union organizing shall be allocated between state funds and other funds on a pro rata basis.

16647. This chapter does not apply to an activity performed, or to an expense incurred, in connection with any of the following:

(a) Addressing a grievance or negotiating or administering a collective bargaining agreement.

(b) Allowing a labor organization or its representatives access to the employer's facilities or property.

(c) Performing an activity required by federal or state law or by a collective bargaining agreement.

(d) Negotiating, entering into, or carrying out a voluntary recognition agreement with a labor organization.

16648. This chapter does not apply to an expenditure made prior to January 1, 2001, or to a grant or contract awarded prior to January 1, 2001, unless the grant or contract is modified, extended, or renewed after January 1, 2001. Nothing in this chapter requires employers to maintain records in any particular form.

16649. The provisions of this chapter are severable. If any section or portion of this chapter, or any application thereof, is held invalid, in whole or in part, that invalidity shall not effect any other section, portion, or application that can be given effect.

