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# United States Senate

COMMITTEE ON HEALTH, EDUCATION,  
LABOR, AND PENSIONS

WASHINGTON, DC 20510-6300

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April 7, 2026

## VIA ELECTRONIC TRANSMISSION

The Honorable Bob Ferguson  
Governor  
State of Washington  
416 Sid Synder Avenue SW Suite 200  
Olympia, WA 98504

Dear Governor Ferguson,

As Chairman of the Senate Committee on Health, Education, Labor, and Pensions (HELP), I am committed to ensuring that workers can rely on a predictable process when they are involved in an unfair labor practice dispute or want to organize to improve their working conditions.

You recently signed HB 2471, which expands the jurisdiction of the State of Washington's Public Employment Relations Commission (PERC) to that of entire trades and industries under the purview of the National Labor Relations Board (NLRB) when the Board declines to exercise jurisdiction.<sup>1</sup>

This broad infringement of the NLRB's jurisdiction undermines processes long-enshrined in federal law that protect workers and falsely suggests to workers that PERC decisions can provide a legal resolution. The issue of the NLRB's jurisdiction has been settled by the U.S. Supreme Court on several occasions: notably in *San Diego Unions v. Garmon*, and again in *Wis. Dept. of Indus., Labor & Human Relations v. Gould, Inc.*<sup>2</sup>

In addition to affirming the jurisdiction of the NLRB in any matter related to the National Labor Relations Act (NLRA), *Guss v. Utah Labor Relations Bd.* speaks directly to the issue HB 2471 purports to "fix" when the NLRB declines jurisdiction.<sup>3</sup> The Court was clear: a state cannot

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<sup>1</sup> Engrossed Substitute H.B. 2471, 69th Leg., Reg. Sess. (Wash. 2026).

<sup>2</sup> *San Diego Unions v. Garmon*, 359 U.S. 236 (1959); *Wis. Dept. of Indus. v. Gould, Inc.*, 475 U.S. 282 (1986).

<sup>3</sup> By vesting in the National Labor Relations Board jurisdiction over labor relations matters affecting interstate commerce, Congress has completely displaced state power to deal with such matters where the Board has declined to exercise its jurisdiction, but has not ceded jurisdiction to a state agency pursuant to the proviso to § 10(a) of the National Labor Relations Act. *Guss v. Utah Labor Relations Bd.*, 353 U.S. 1, 1 (1957)

substitute its judgment for the federal government's when the NLRB declines to assert jurisdiction.

I am also concerned that HB 2471 would lead the State of Washington to improperly claim jurisdiction over entire industries when the NLRB declines to assert jurisdiction in a particular matter or over a particular company, subjecting parties who have complied with an established labor scheme to new uncertainties and costs.

The practical impact of this law will be mistaken filings by well-meaning workers who want to follow the law and orders from the PERC that imply a worker's issue has been resolved when, in reality, those orders are meaningless. HB 2471 accomplishes the opposite of its purported goal, which is to help workers. Workers in Washington, and across the United States, should be able to assert their rights without confusion or undue difficulty. To that end, I request answers to the following questions by April 21, 2026:

#### Jurisdictional Basis

1. *San Diego Unions v. Garmon* stated that the NLRB has jurisdiction “over the multitude of activities regulated by § 7 and § 8 of the National Labor Relations Act.”<sup>4</sup> In *Wis. Dept. of Indus., Labor & Human Relations v. Gould, Inc.*, a unanimous Court stated that it is a “general rule” that “States may not regulate activity that the NLRA protects, prohibits, or arguably protects or prohibits.”<sup>5</sup>
  - a. Given these decisions by the U.S. Supreme Court, on what grounds does the State of Washington believe HB 2471 provides certainty for workers regarding the permanent disposition of unfair labor practice disputes and certification of bargaining units even when the NLRB declines jurisdiction?
  - b. How is HB 2471 not preempted by the NLRA?
2. In *San Diego Unions v. Garmon*, the Court stated that the failure of the NLRB to assert jurisdiction did not allow states “to regulate activities they would otherwise be precluded from regulating” and “to allow the States to control activities that are potentially subject to federal regulation involves too great a danger of conflict with national labor policy.”<sup>6</sup>
  - a. Does the state of Washington believe HB 2471 operates outside of *Garmon*?
  - b. Was HB 2471 proposed and passed to challenge *Garmon* and seek its reversal?

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<sup>4</sup> *Garmon*, 359 U.S. 236 at 241.

<sup>5</sup> *Gould, Inc.*, 475 U.S. 282 at 286.

<sup>6</sup> *Garmon*, 359 U.S. 236 at 244.

3. In *Guss v. Utah Labor Relations Bd.*, the Court clearly stated that the NLRB had not ceded power to a state agency when it declined to assert jurisdiction in a matter.
  - a. Why did the State of Washington disregard the *Guss* Court's conclusions and instead seek to assert broad jurisdiction when this question had already been decided?
  - b. Was HB 2471 proposed and passed to challenge *Guss* and seek its reversal?
4. HB 2471 states: "should the board decline to exercise jurisdiction...this chapter applies in full force and effect to such employer, employees, trade, or industry."
  - a. Does the State of Washington believe that the NLRB declining jurisdiction in one matter grants it jurisdiction over an entire industry or trade related to that matter?
    - i. If so, please provide examples of other laws or court decisions where this pattern or practice of jurisdictional assertion has been upheld.
  - b. What is the State of Washington's definition of declining to exercise jurisdiction?
    - i. Under this law, does the NLRB declining to pursue a case for any reason constitute declining to exercise jurisdiction?
    - ii. Under this law, does the NLRB only decline to exercise jurisdiction when it specifically states that it lacks jurisdiction?

#### Cost and Reimbursement

1. Will the State of Washington reimburse Washingtonians for any costs, including time away from work, related to properly refiling any claim with the NLRB that was originally improperly filed with the PERC?
  - a. If not, what categories of costs or specific costs will you reimburse?
2. Will you or your administration promise not to seek any federal reimbursement in any form for costs associated with implementing HB 2471 or defending it from any litigation that may arise related to its preemption?
3. Will you promise not to raise taxes or implement any fee structure of any sort to pay for the expansion of or additional hiring at the PERC or any state agency for costs related to implementing HB 2471 not already provided for in the state budget?

#### Impact on Workers

1. Under this law, the State of Washington could impute NLRA-style rights to workers even if they are covered by a different federal law.
  - a. Is the State of Washington concerned about workers being confused about their rights under state law and federal law?

2. Section 15 of HB 2471 compels interest arbitration if the parties cannot come to an agreement. Less than a year ago, an International Association of Machinists and Aerospace Workers (IAM) shop steward characterized workers not being able to vote on an agreement that is the result of interest arbitration as removing democracy from the workplace.<sup>7</sup>
  - a. How will workers be able to challenge any decision by the arbiter that they believe is unfair?
3. Section 15(3) of HB 2471 states that the “rules of evidence in prevailing judicial proceedings may be considered, but are not binding.” However, an arbitrator or arbitration panel has broad powers, which include administering oaths, requiring document production or the attendance of witnesses, and the ability to issue subpoenas.
  - a. Given the arbitrator or arbitration panel’s broad powers and the potential for abuse of those powers, why did the State of Washington not provide parties to arbitration protections they would otherwise enjoy in a judicial proceeding?
4. How will the State of Washington communicate to workers how to file an unfair labor practice claim or petition to certify a bargaining unit with the PERC?
  - a. In those communications, will the State of Washington disclose that any unfair labor practice claim or petition to certify a bargaining unit adjudicated by the PERC is preempted by the NLRA?
5. Does the State of Washington anticipate workers filing concurrently with the NLRB and PERC to preserve their claims?
  - a. If so, does the State of Washington have a plan to educate workers about federal preemption of state law?
6. How does the PERC plan to enforce its orders on employers that are not headquartered in but operate in the State of Washington and in others states as well?
  - a. Does the PERC plan on asserting its jurisdiction outside of the State of Washington?
7. Did the State of Washington engage in any sort of analysis to determine what filing claims with both the PERC and NLRB would cost Washingtonians?
  - a. Please include a copy of any analysis.

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<sup>7</sup> *Labor Law Reform Part 2: New Solutions for Finding a Pro-Worker Way Forward*, 119<sup>th</sup> Cong. (2025) (testimony of Mr. Joshua Arnold).

8. How long, on average, does it take for the PERC to process unfair labor practice claims or petitions to certify a bargaining unit?

Sincerely,

Bill Cassidy, M.D.

Bill Cassidy, M.D.

Chairman

U.S. Senate Committee on Health,  
Education, Labor, and Pensions