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News Advisory

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Governor makes misleading statements at press conference

The details revealed by the Evergreen Freedom Foundation this week about Governor Locke's deal with Boeing prompted the governor to directly address the issue at a January 21 press conference. Unfortunately, many of the governor's statements and answers to media questions were false.

We have carefully reviewed the governor's conference. His statements on some key facts flatly contradict the agreement bearing his signature, as well as events as they occurred. We do not expect the governor to agree with our opinion of a contract he brokered, but we do expect him to be straightforward about the facts.

1. Were details of the Boeing contract purposefully undisclosed?

Governor Locke loudly and repeatedly denied that he and his colleagues tried to keep details of the Boeing contract hidden. This begs the question: Why then did it come as such a shock to legislators, media and the public last week, more than a month after the contract was signed?

Governor Locke claimed:

"We actually put out a press release and gave to all of you all of the actions and all of the agreements that were contained in that proposal. We detailed it to you showing how much money was involved, when it was due . . ."

This statement is squishy at best. While the governor's office published a broad description of some of the contract's provisions and made copies of the contract available to those who requested them in December, the relevant exhibits—with important details and terms of the contract—were not available until nearly one month later. EFF obtained them January 16 after filing a public records request, and some of the information was heavily, if not entirely, redacted. **We still have not received copies of other documents referenced in the contract.**

Further, the contract itself, signed by the governor, stipulates that:

"Notwithstanding that [these documents] are public records, the Public Parties understand the importance to themselves, Boeing and the goodwill of [the 7E7 project] to keep all matters arising under or in connection with this Agreement strictly confidential . . . to the fullest extent permitted by law." (Section 12.11)

Governor Locke claimed:

“We also briefed the legislators on the elements of the package on the day of the announcement by Boeing. We also gave them more detailed briefings the first day of the legislature and have given them copies of the outline. . . . Copies of the document have also been made available to members of the legislature. This has never been a secret document. . . . We’ve given it out to members of the legislature.”

Judging by the response from legislators this week, they were either asleep at the wheel or Governor Locke did not do what he claims. Here are just a couple of examples:

Rep. Helen Sommers (Chair of the House Appropriations Committee): *“It’s not a very comfortable situation when you learn about this sort of thing in the newspaper. . . I was shocked when I saw [the redactions in the exhibits].”* (Seattle Times, 1/21 and 1/22)

Rep. Barry Sehlin (Ranking Minority Member of House Appropriations Committee): *“Now that it’s done, I know a number of us are anxious to see what are the details.”* (Seattle Times, 1/21)

Sen. Bill Finkbeiner (Senate Majority Leader): *I don’t know the details. I didn’t negotiate the contract. I can’t say it was worth what they did here. But clearly Boeing is a big deal.”* (Seattle Times, 1/21)

Both the State Auditor’s Office and Rep. Helen Sommers, who is responsible for writing the state supplemental budget this year, received their first copy of the Boeing contract from EFF—not the governor—along with the exhibits that have been released to date.

Governor Locke claimed:

“We had to go through the legal process of determining which [documents] had proprietary information, but in terms of the promises made to Boeing—in terms of the additional dollars and programs that we would be seeking—we outlined that to [media]. In fact, when Boeing made the announcement, we indicated all the future dollar amounts that would be required, and we gave you the details of where those dollars would be coming from and when those would be needed.”

On page 6 you will find **Attachment 1**. It lists items that were not mentioned in the contract, and therefore were not public until the exhibits were released under a public records request nearly a month after the agreement was signed. (A December 19, 2003 letter from Boeing’s chief counsel to the state indicated which exhibits should be withheld, but stated the rest were not subject to redaction. We did not receive any of the exhibits until January 16, 2004.)

On page 8 you will find **Attachment 2**, which lists items included in the contract, but were 1) not mentioned publicly by the governor, or 2) not complete without a corresponding explanation in the exhibits. It would have been very difficult for members of the public to figure out what they mean or how much they obligated the state to pay with a copy of the contract alone.

Note: The Washington State Constitution requires the governor to keep a copy of all records relating to his office (Article 3, Section 24). When we requested the exhibits, we were told the state did not have them and would have to get them from Boeing.

2. Is the state hiring and training Boeing workers?

On this issue, the governor flatly contradicted his own contract when he denied the state would be hiring and training the workforce for the Boeing 7E7 project.

Governor Locke claimed:

“We will not be hiring people or choosing people for Boeing. We will offer a training program just as we offer so many other training programs in concert with many industries of the state of Washington.”

“The people we train—they might not even want to apply for Boeing. They may take these skills and apply for another company.”

“None of those people who go through that center are guaranteed a job at Boeing nor do they have to apply for Boeing. They could apply for a job working for Airbus if they wanted to.”

The contract the governor signed says otherwise:

Section 7.5.2 – *“Boeing shall have the exclusive use of the [Employment Resource Center] for a minimum of five years for the benefit of Boeing and its suppliers.”*

Section 7.2.1 – *“(The) State agrees to fund an end-to-end recruitment, screening, assessment and training program to meet the initial staffing and workforce development needs of Boeing and its Suppliers and other parties designated by Boeing for Project Olympus.”*

Section 7.5.1 – *“The ERC shall be designed and modified in accordance with plans and specifications reasonably acceptable to and after consultation with Boeing prior to the State seeking of bids or proposals for construction thereof.”*

3. Do other businesses have similar concessions from the state?

During the governor’s press conference, one reporter asked: *“You seem to be saying that other businesses in the state get similar considerations as Boeing got. Is that what you’re saying?”*

Governor Locke claimed:

“Yes. . . . We’ve done this routinely for businesses, and local governments have done this routinely.”

We can't name even one other businesses in the state that has seven full-time state employees to run interference with the state, or receives other provisions granted to Boeing, such as same-day permit processing or favorable environmental impact analyses.

In fact, the contract makes it clear:

*“This agreement is for the **sole and exclusive benefit of the Public Parties and Boeing** . . . No other persons or entities are intended third party beneficiaries of this agreement . . . nor shall such third parties have any rights to enforce any of the provisions of this Agreement.”* (Section 12.14)

4. Is the contract even legal?

We have been unable to find any constitutional provisions that authorize the governor to sign an agreement that binds future governors, legislatures, and the state as a whole.

Governor Locke claimed:

“We consulted with the attorney general’s office and they reviewed the elements. We pushed back. Boeing was negotiating and we said there are certain things we simply will not do and cannot do.”

We have a request in (filed January 21) for the documents or correspondence the governor seems to be referencing in this statement. Thus far, we have obtained only a memo issued by Assistant Attorney General David Walsh regarding the provision in the contract (now dropped by Boeing) that provided state funds for designing and operating a cargo freighter. This memo is not a legal opinion, and it was issued January 13, a full **25 days after the contract was signed**.

Supplemental documents provided after our records request include an Exhibit F titled “Authorizing Resolutions and Ordinances” and Exhibit G titled “Opinions of Counsel.” Both exhibits are completely blank. (Not redacted, because there are no words on them to redact.)

The contract states:

*“[T]he State . . . shall provide Boeing with an opinion of counsel in form and substance to be **approved by Boeing, from an attorney acceptable to Boeing**, stating that in the opinion of such counsel: this agreement has been duly authorized . . . constitutes the valid and binding obligation of such party. . . and adequate funds are available . . .”* (Section 12.18)

If anyone decides to challenge provisions in the contract, Section 11.3 requires the state to “. . . assume the **entire defense** of such proceedings, including **all fees, costs and expenses whatsoever relating thereto**.”

We believe the contract is in violation of several sections of the Washington State Constitution.

Attachment 1 – Items not mentioned in contract

Though the governor stated that all details related to the Boeing contract were made available when Boeing made the announcement it would stay in our state, the following is a list of items and provisions that were not mentioned in the contract, and therefore were not public until the exhibits were released under a public records request nearly a month after the agreement was signed.

- The City of Everett will reduce the B&O tax at Boeing’s Everett facility “*from the standard rate of .001 to .00025 for manufacturing gross receipts greater than \$6 billion.*” (Exhibit B-8)
- Specific details on water improvements the City of Everett is required to perform for Boeing’s facility. (Exhibit C-1)
- Required improvements for sanitary sewers that the City of Everett must complete. (Exhibit C-2)
- The City of Everett must make such improvements, upgrades, services and supplementary documentation as necessary to meet the minimum waste water processing performance criteria in Exhibit C-4.
- Boeing will receive priority for road access related to its project, to include four-lane access to the nearest interstate. The roads must support up to 35,000 employees at the assembly site and up to 83,000 employees in the surrounding area. This includes building HOV lanes on I-5 and widening Highway 527 to five lanes for a length of 20 blocks. (Exhibit C-9)
- The Port on Everett will pay all dock and port costs, fees and expenses (a minimum of \$34 million) related to its agreement with Boeing, including building a 27-acre facility at the south terminal which will have the capacity to handle all cargo arriving from Japan. (Exhibit C-11)
- Snohomish County agrees to undertake and complete the design and construction of all runway and runway-related improvements as determined by Boeing. This includes facilities to support modified 747-400s to transport parts for the 7E7. The County will build a 30-foot-wide road between the cargo pad, Boeing’s factory and supplier facilities. The County shall pay all costs. (Exhibit C-12)
- The state will spend \$14 million from various funds and the general fund for workforce development at a state-of-the-art Employment Resource Center (ERC). (Exhibit D-2) Included are \$2-\$3 million in Reed Act funds. (Reed Act funds are counted and included in the state’s unemployment insurance trust fund balance. A recent decrease in the trust fund balance resulted in a 14% increase in unemployment insurance rates for employers this year. Employment Security Department, 1/22.)
- The potential uses of the ERC are in Exhibit D-3, but all the information is redacted. However, it does state that the “*ERC will provide training facilities for Boeing and Supplier employees.*” Further, Boeing is still developing the requirements of the ERC, so these are not available. “*The State will be responsible for all costs and expenses of design and construction of the ERC. At a minimum, the State will appropriate \$10 million for the design and construction of the ERC.*” (Exhibit D-3-2)

- In the 2005-07 capital budget the state will provide funds [amount blank] for training equipment costs for the ERC. (Exhibit D-3-3)
- *“All facilities operating and maintenance [for the ERC] to be provided by State or local resources. Further definition of operations to be determined by Boeing.”* (Exhibit D-4)
- The state will allocate \$5 million in the 2004 supplemental budget to assist Boeing in the development of an operating model for the 747-400 large cargo freighter. In addition, the state will work with Boeing to identify the funding source to support the *“design, modification, certification, and operation of three 747-400 large cargo freighter.”* (Exhibit E) (According to the Seattle Times (1/22), the provision for the \$5 million has been dropped by Boeing. However, to our knowledge the contract has not yet been revised. We do not know if the state is still legally obligated by the contract to work with Boeing to identify the funding source for the three 747-400 large cargo freighters.)
- Exhibit F. Authorizing Ordinances and Resolutions was blank.
- Exhibit G. Opinion of Counsel was blank.
- Schedule 1. Site application questionnaire for Project Olympus (we have not received this).
- Schedule 2. Project Olympus Legal Questionnaire (we have not received this).
- Schedule 3. Restatement of commitments. Dated November 10, 2003. (We have not received this.)

Attachment 2 – Items mentioned, but not explained in contract

These are items included in the contract, but 1) not mentioned publicly by the governor, or 2) not complete without a corresponding explanation in exhibits. In some of the items, it would have been very difficult for members of the public to figure out what they mean or how much they obligate the state to pay without further information.

- *“The applicable Public Parties shall fully fund and perform their respective Commitments, and at no time shall Boeing be responsible for or be required to incur or pay any cost, charge or expense under this Agreement relating to those commitments (or any agreement executed pursuant hereto) unless this Agreement (or the agreement executed pursuant hereto) specifically identifies a cost, charge or expense to be paid by Boeing.”* (Section 1.3.2)
- Boeing’s consultation is required before any of the seven state employees who will be coordinators are hired. (Section 2.1)
- The City of Everett will expedite all permits requested by Boeing, its contractors and subcontractors and *issue* permits within 60 days. (Section 3.3)
- The state will give Boeing, its contractors and subcontractors priority over all same-day applications when the company applies for permits, or modification or renewal of permits. (Section 3.3(e))
- The state will hire a nationally-recognized consulting firm to publish a study that shows the economic benefits of Boeing’s 7E7 project for the state and the report shall be completed within 150 days of December 19, 2003. (Section 3.5)
- The state shall not suspend, revoke, or require repayment of rate reductions. (Section 4.1)
- *“If so requested by Boeing, the Port of Everett or the County to the extent that there exists reasonable financial capacity, shall acquire fee simple title to the Facilities Site, Project Olympus or a portion thereof and lease the same back to Boeing on terms and conditions acceptable to Boeing and otherwise in accordance with applicable law.”* (Section 5.2.2)
- The state will give Boeing favorable treatment in its environmental impact analyses. (Section 6.2)
- The City of Everett will acquire all *“easements and property easements as may be necessary to provide for the sanitary sewer and/or POTW [Publicly Owned Treatment Works] as determined in Exhibit C-2.”* (Section 6.4.1)
- The state will *“fund an end-to-end recruitment, screening, assessment and training program to meet the initial staffing and workforce development needs of Boeing and its Suppliers and other parties designated by Boeing for Project Olympus.”* (Section 7.2)
- The state will *“either acquire an existing facility or construct a new facility, and in either case, design, engineer, modify and equip such facility to serve as the Employment Resource Center.*

The ERC shall be designed and modified in accordance with plans and specifications reasonably acceptable to and after consultation with Boeing prior to the State seeking of bids or proposals for construction thereof.” (Section 7.5.1) The programs are described in Exhibit D-1 (which is totally redacted).

- All of the authorizing ordinances and resolutions had not been approved at the time the contract was signed (some still have not been). (Section 10.2)
- Boeing has the right to conduct all tests of the 7E7 and operate its facilities 24 hours a day, seven days a week. *“The public parties shall take no actions, legislative or otherwise, nor support any actions that would limit Boeing’s ability to conduct such tests or otherwise operate the facilities.”* (Section 10.5)
- Should anyone decide to challenge any provision of this agreement, the state will *“ . . . assume the **entire defense** of such proceedings, including **all fees, costs and expenses** whatsoever relating thereto.”* (Section 11.3)
- Regarding key exhibits, all parties involved are instructed to *“withhold or redact”* all details of the agreement *“to the fullest extent permitted by law”* and the information shall not be included in the master agreement. (Section 12.11)
- The state will coordinate all press releases and publications on this issue with Boeing. (Section 12.12)
- *“This agreement is for the **sole and exclusive benefit of the (state) and Boeing** . . . No other persons or entities are intended third party beneficiaries of this agreement . . . nor shall such third parties have any rights to enforce any of the provisions of this Agreement.”* (Section 12.14)
- *“[T]he State . . . shall provide Boeing with an opinion of counsel in form and substance to be **approved by Boeing, from an attorney acceptable to Boeing**, stating that in the opinion of such counsel: this agreement has been duly authorized . . . constitutes the valid and binding obligation of such party . . . and adequate funds are available . . .”* (Section 12.18)