

**Department of Legislative Services**  
Maryland General Assembly  
2009 Session

**FISCAL AND POLICY NOTE**  
**Revised**

Senate Bill 264  
Finance

(The President, *et al.*) (By Request - Administration)

Appropriations

**State Employees - Collective Bargaining - Negotiations - "The Fair Share Act"**

This Administration bill authorizes the State to collectively bargain with the exclusive representative of a bargaining unit for service fees from State employees who are not members of that exclusive representative. Thus, employees who are in a bargaining unit but are not members of any employee organization must pay the service fee if a fee is successfully negotiated. Likewise, under the bill, employees who are dues-paying members of an employee organization that is not the exclusive representative must also pay any negotiated service fee.

The bill specifies that service fees may not be bargained for in negotiations between an employee organization and a University System of Maryland (USM) institution, Morgan State University, St. Mary's College of Maryland, or Baltimore City Community College.

The bill takes effect July 1, 2009.

**Fiscal Summary**

**State Effect:** Authorizing the State to collectively bargain with exclusive representatives for nonmember service fees does not impact State finances. Implementing the bill's exemption provisions can be handled with existing resources.

**Local Effect:** None.

**Small Business Effect:** The Administration has determined that this bill has minimal or no impact on small business (attached). Legislative Services concurs with this assessment. (The attached assessment does not reflect amendments to the bill.)

## Analysis

**Bill Summary:** Employees may not be required to pay a service fee due to specified religious objections. However, such employees are required to pay up to an amount equal to the negotiated service fee to a nonprofit charitable organization. To receive this exemption, employees must provide proof of payment to the exclusive representative and the Department of Budget and Management (DBM).

**Current Law:** Service fees from nonmembers may not be collectively bargained.

**Background:** While an exclusive representative bargains for all members of a particular bargaining unit, only a portion of these individuals pays union membership dues to the representing organization. A service fee is paid by an employee to his or her bargaining unit's exclusive representative to offset costs attributable to the collective bargaining process. Generally, this fee is less than the fee charged for union dues.

### *Supreme Court Rulings*

The U.S. Supreme Court has issued several opinions relating to the right of a public sector exclusive representative to collect service fees from nonunion members. In *Abood v. Detroit Board of Education*, 431 U.S. 209 (1977), the court found that, while an exclusive representative could collect a fee from nonunion members, the fee revenues could not be used to support ideological causes not germane to the organization's duties as the collective bargaining representative. In another case, the *Chicago Teachers Union v. Hudson*, 475 U.S. 292 (1986), the court held that, in order to protect nonunion members' constitutional rights to freedom of speech and association, the union's collection of agency fees must "include an adequate explanation of the basis for the fee, a reasonably prompt opportunity to challenge the amount of the fee before an impartial decision maker, and an escrow for the amounts reasonably in dispute while such challenges are pending."

### *Maryland Bargaining Units*

Maryland's collective bargaining law applies to employees of the Executive Branch departments, the Maryland Insurance Administration, the State Department of Assessments and Taxation, the State Lottery Agency, USM, Morgan State University, St. Mary's College of Maryland, and Baltimore City Community College.

Certain Executive Branch employees within the State do not have these rights, such as elected government officials; political appointees or employees by special appointment; or any supervisory, managerial, or confidential employees of an Executive Branch department, USM institution, or other State college or university, including faculty.

The bill applies to the 32,427 State employees in nine Executive Branch bargaining units with exclusive representatives. Union membership dues for State employees typically range from \$9 to \$15 per biweekly pay period but exceed \$19 per pay period for certain unions.

**Exhibit 1** shows the number of State employees in each bargaining unit. The State's collective bargaining statute only applies to the Executive Branch.

Several thousand State employees belong to a union that is not the exclusive representative of their bargaining unit (excluding higher education units). Whether these employees also belong to the union with exclusive bargaining authority is not known; however, if service fees are successfully negotiated, these individuals would pay service fees in addition to their union dues. According to DBM, more than 20,000 of the State's 52,949 Executive Branch employees are union members.

**Exhibit 1**  
**State of Maryland Bargaining Units**  
**(Excluding Higher Education Units)**

<u>Unit</u>	<u>Unit Name</u>	<u>Number of Employees</u>	<u>Exclusive Representative</u>
A	Labor and Trades	1,830	AFSCME MD
B	Administrative, Technical, and Clerical	6,029	AFSCME MD
C	Regulatory, Inspection, and License	500	AFSCME MD
D	Health and Human Services (nonprof.)	2,206	AFSCME MD
E	Health Care Professionals	2,028	AFT – Healthcare MD
F	Social and Human Services Professionals	3,939	AFSCME MD
G	Engineering, Scientific, and Administrative Professionals	4,904	MPEC
H	Public Safety and Security	9,373	AFSCME / Teamsters
I	Sworn Police Officers	1,688	SLEOLA

Note: AFSCME = American Federation of State, County, and Municipal Employees; AFT = American Federation of Teachers; MPEC = Maryland Professional Employees Council; SLEOLA = State Law Enforcement Officers' Labor Alliance

Source: Department of Budget and Management, February 2009

### *Service Fees in Other States*

Twenty-three states either require state employees to pay a service fee or permit the fee to be mandated through collective bargaining. In some states, employees with a religious objection to paying the fee are exempt from paying it. In all states, some employees, such as managers or confidential employees, are exempt from the collective bargaining law. In some states, supervisors are exempt. Service fees are also referred to as representation fees, agency fees, agency shop fees, or fair share fees. **Exhibit 2** lists the states where service fees are authorized.

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#### **Exhibit 2 States Allowing Public Sector Service Fees**

Alaska	Hawaii	Minnesota	New York	Vermont
California	Illinois	Montana	Ohio	Washington
Connecticut	Maine	New Hampshire	Oregon	Wisconsin
Delaware	Massachusetts	New Jersey	Pennsylvania	
District of Columbia	Michigan	New Mexico	Rhode Island	

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#### **Additional Information**

**Prior Introductions:** Similar bills, HB 129 and SB 111, were introduced in 2007. The House Appropriations Committee heard HB 129, but took no action on the bill; the Senate Finance Committee took no action on SB 111.

**Cross File:** HB 298 (The Speaker, *et al.*) (By Request - Administration) - Appropriations.

**Information Source(s):** Department of Budget and Management, University System of Maryland, St. Mary's College of Maryland, Baltimore City Community College, Maryland Department of Transportation, State Department of Education, Morgan State University, Maryland Higher Education Commission, Department of Legislative Services

**Fiscal Note History:** First Reader - February 15, 2009  
ncs/rhh Revised - Senate Third Reader - April 9, 2009  
Revised - Enrolled Bill - May 15, 2009

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ANALYSIS OF ECONOMIC IMPACT ON SMALL BUSINESSES

TITLE OF BILL: State Employees - Collective Bargaining - Negotiations - "The Fair Share Act"

BILL NUMBER: SB 264

PREPARED BY: The Governor's Legislative Office

PART A. ECONOMIC IMPACT RATING

This agency estimates that the proposed bill:

WILL HAVE MINIMAL OR NO ECONOMIC IMPACT ON MARYLAND  
SMALL BUSINESS

OR

WILL HAVE MEANINGFUL ECONOMIC IMPACT ON MARYLAND  
SMALL BUSINESSES

PART B. ECONOMIC IMPACT ANALYSIS

The proposed legislation will have no impact on small business in Maryland.