

Department of Legislative Services
 Maryland General Assembly
 2019 Session

FISCAL AND POLICY NOTE
 First Reader

House Bill 126 (Delegate Miller, *et al.*)
 Economic Matters

Labor and Employment - Labor Organizations - Right to Work

This bill specifies that an employer may not require, as a condition of employment or continued employment, an employee or prospective employee to (1) join or remain a member of a labor organization; (2) pay any dues, fees, assessments, or other charges to a labor organization; or (3) pay any charity or another third party an equivalent amount in lieu of a payment to a labor organization. The bill repeals various provisions of State law that authorize an employer, including the State and units of government, to require that an employee pay a fee (service, maintenance, or representation fee) to a labor organization to which the employee is not a member. The bill applies only prospectively and may not be interpreted to apply to a collective bargaining agreement entered into before the bill's October 1, 2019 effective date.

Fiscal Summary

State Effect: General fund expenditures increase by \$134,000 for the Office of the Attorney General (OAG). Out-year costs reflect annualization and elimination of one-time costs. The bill's criminal penalty provisions are not expected to materially affect State finances.

(in dollars)	FY 2020	FY 2021	FY 2022	FY 2023	FY 2024
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	134,000	165,500	171,000	176,900	182,900
Net Effect	(\$134,000)	(\$165,500)	(\$171,000)	(\$176,900)	(\$182,900)

Note: () = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate increase; (-) = indeterminate decrease

Local Effect: Local finances are not materially affected as discussed below.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary: The bill allows an employee, or prospective employee, to pursue a *civil* cause of action in circuit court against an employer that violates the bill's provisions. If an employer is found liable for a violation, the employee or prospective employee is entitled to injunctive relief, damages, court costs, and reasonable attorney's fees.

The Attorney General must (1) take any steps necessary to ensure effective enforcement of the bill; (2) investigate all related complaints; and (3) commence and try all related prosecutions. The bill specifies that the Attorney General has all the powers and duties vested in State's Attorneys under law with respect to criminal prosecutions related to the bill's provisions.

An individual who violates the bill's provisions is guilty of a misdemeanor and is subject to maximum penalties of imprisonment for one year and/or a fine of \$1,000. A person other than an individual who violates the bill's provisions is likewise guilty of a misdemeanor but is subject only to a fine of up to \$1,000.

The bill does not apply to (1) employers and employees covered by the federal Railway Labor Act; (2) federal employers and employees; and (3) employers and employees on exclusive federal enclaves. Any provision of the bill that conflicts with or is preempted by federal law is unenforceable.

Current Law/Background: State law specifies that it is the policy of the State that negotiation of terms and conditions of employment should result from a voluntary agreement between employees and the employer, and, thus, each individual worker must be fully free to associate, organize, and designate a representative for negotiation of terms and conditions of employment. This process must be free from coercion, interference, or restraint by an employer in (1) designation of a representative; (2) self-organization; and (3) other concerted activity for the purpose of collective bargaining or other mutual aid or protection. State law establishes a procedure for certifying a labor organization as the bargaining representative for a workplace, and a majority of employees must vote in favor of joining a union in order for a workplace to unionize.

"Right-to-work" Laws

The federal Taft-Hartley Act of 1947 banned "closed shops," which are places of employment bound by an agreement to hire only the members of a particular union. However, the Taft-Hartley Act, as amended, allowed for the continued existence of "union shops," which are places of employment that require employees to join a union within a certain number of days after being hired. Many states have banned union shops; these states are sometimes referred to as "right-to-work" states. **Exhibit 1** depicts the 27 states that

have established right-to-work laws that include provisions similar to the bill. Missouri passed a similar law in February 2017, but voters rejected the right-to-work law in a ballot referendum in 2018.

Exhibit 1
States with “Right-to-work” Laws

Alabama	Indiana	Mississippi	South Carolina	West Virginia
Arizona	Iowa	Nebraska	South Dakota	Wisconsin
Arkansas	Kansas	Nevada	Tennessee	Wyoming
Florida	Kentucky	North Carolina	Texas	
Georgia	Louisiana	North Dakota	Utah	
Idaho	Michigan	Oklahoma	Virginia	

Source: Department of Legislative Services

Maryland law does not prohibit the existence of union shops. In cases where a union exists in a workplace but employees are not required to join, State law allows a labor organization to negotiate the assessment of a fee – sometimes called a service fee, shop fee, or agency fee – to nonmember employees who receive wage increases and/or additional benefits residually due to a collective bargaining agreement. If such fees are not included in a collective bargaining agreement, they may not be assessed.

Maryland Bargaining Units

Approximately 25,362 State employees, excluding higher education employees, were covered by collective bargaining rights as of July 2018, as shown in **Exhibit 2**. Maryland’s collective bargaining law generally applies to employees of the Executive Branch departments, the Maryland Insurance Administration, the State Department of Assessments and Taxation, the State Lottery and Gaming Control Agency, University System of Maryland, the Office of the Comptroller, the Maryland Transportation Authority who are not police officers, the State Retirement Agency, the Maryland State Department of Education, Morgan State University, St. Mary’s College of Maryland, and Baltimore City Community College, along with specified firefighters for the Martin State Airport and all full-time Maryland Transportation Authority police officers at the rank of first sergeant and below.

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.

Exhibit 2
State of Maryland Bargaining Units
(Excluding Higher Education Units)
As of July 2018

<u>Unit</u>	<u>Unit Name</u>	<u>Employees</u>
A	Labor and Trades	676
B	Administrative, Technical, and Clerical	3,315
C	Regulatory, Inspection, and License	590
D	Health and Human Services (nonprofessional)	1,571
E	Health Care Professionals	1,636
F	Social and Human Services Professionals	3,549
G	Engineering, Scientific, and Administrative Professionals	3,689
H	Public Safety and Security	8,163
H	Baltimore/Washington International Airport Firefighters	90
I	Sworn Police Officers	1,700
J	Maryland Transportation Authority Sworn Officers	403

Source: Department of Budget and Management; Maryland Department of Transportation

State Employees and Service Fees

State law authorizes collective bargaining 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 generally must pay the service fee if a fee is successfully negotiated. Likewise, employees who are dues-paying members of an employee organization that is not the exclusive representative must also pay any negotiated service fee. Employees may not be required to pay a service fee due to specified religious objections, but instead they must pay up to an amount equal to the negotiated service fee to a nonprofit charitable organization.

However, the U.S. Supreme Court reversed its position in 2018 on 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 U.S. Supreme 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. The U.S. Supreme Court agreed in September 2017 to hear a case, *Janus v. American Federation of State, County, and Municipal Employees*, 585 U.S. ___ (2018), which challenged the constitutionality of the court’s decision in *Abood* under the First Amendment. The court concluded that the state’s collection of agency fees from nonconsenting public employees was a violation of the First Amendment and *Abood* is, therefore, overruled. States and public-sector unions may no longer extract agency fees from nonconsenting employees. Consequently, the State no longer collects service fees from nonunion members.

Prevalence of Unions

According to the [U.S. Bureau of Labor Statistics](#), 11.0% of employees in Maryland were *members of unions* and 12.1% of employees in Maryland were *represented by unions* (which includes those who are in bargaining units but who are not members of the union) in 2018, which are similar to the national averages of 10.5% and 11.7%, respectively. **Exhibit 3** shows the percentage of union members and workers represented by unions in Maryland and its surrounding states, including the District of Columbia. Nationally, public-sector employees had a union membership rate of 33.9%, which was more than five times higher than the union membership rate of 6.4% for private-sector employees in 2018.

Exhibit 3
Union Participation Rates in Maryland and Surrounding States – 2018

	<u>Union Members</u>	Represented by <u>Unions</u>
Delaware	10.3%	10.8%
District of Columbia	9.9%	11.6%
Maryland	11.0%	12.1%
Pennsylvania	12.6%	13.4%
Virginia	4.3%	5.5%
West Virginia	10.0%	10.8%

Source: U.S. Department of Labor

State Expenditures: General fund expenditures increase for OAG by at least \$133,978 in fiscal 2020, which accounts for the bill’s October 1, 2019 effective date. This estimate reflects the cost of hiring one assistant Attorney General and one investigator to carry out the bill’s enforcement requirements and to investigate complaints. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Positions	2
Salaries and Fringe Benefits	\$123,260
Operating Expenses	<u>10,718</u>
Total FY 2020 State Expenditures	\$133,978

Future year expenditures reflect full salaries with annual increases and employee turnover and ongoing operating expenses.

As a result of the U.S. Supreme Court ruling in *Janus*, the State no longer requires nonunion State employees to pay service fees. Thus, the bill codifies this existing practice. However, OAG is still tasked with enforcing the bill’s ban on the payment of service fees.

Local Fiscal Effect: The circuit courts can likely handle any increase in litigation with existing resources. The criminal penalty provisions of the bill are not expected to materially affect local government finances or operations.

No longer collecting service fees from nonunion public-sector employees has no fiscal impact on local jurisdictions as the U.S. Supreme Court prohibited this practice in *Janus*.

Small Business Effect: Prohibiting an employer or labor organization from requiring employees to join, remain members of, or pay dues to a labor organization may reduce wages and, thereby, lower operating costs for small businesses. In 2018, the national median weekly earnings for private-sector union members were \$999, while nonunion members had median weekly earnings of \$848. The effects will be felt most strongly in industries with a strong union presence, such as transportation and utilities (18.3% of employees are represented by unions), telecommunications (16.2% of employees are represented by unions), and educational services (15.5% of employees are represented by unions).

Additional Information

Prior Introductions: Similar bills, HB 264 of 2018, HB 531 of 2017, and HB 1038 of 2016, received unfavorable reports from the House Economic Matters Committee. In addition, similar bills were introduced in the 2011 through 2015 sessions.

Cross File: None.

Information Source(s): Allegany County; Maryland Association of Counties; City of College Park; Baltimore City Public Schools; Anne Arundel County Public Schools; Montgomery County Public Schools; Wicomico County Public Schools; Talbot County Public Schools; Maryland Municipal League; Office of the Attorney General; Judiciary (Administrative Office of the Courts); Maryland State Department of Education; University System of Maryland; St. Mary's College of Maryland; Department of Budget and Management; Maryland Department of Health; Department of Human Services; Department of Public Safety and Correctional Services; Maryland Department of Transportation; National Conference of State Legislatures; U.S. Department of Labor; U.S. Supreme Court; Department of Legislative Services

Fiscal Note History: First Reader - February 4, 2019
mag/mcr

Analysis by: Heather N. Ruby

Direct Inquiries to:
(410) 946-5510
(301) 970-5510