

# SENATE BILL 422

P4

3lr1604  
CF HB 667

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By: **Senators Pugh, Benson, Conway, Currie, Ferguson, Forehand, Frosh, Garagiola, Gladden, Kelley, King, Klausmeier, Madaleno, Manno, McFadden, Montgomery, Peters, Pinsky, Ramirez, Robey, Rosapepe, Stone, and Young**

Introduced and read first time: January 28, 2013

Assigned to: Finance

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Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 29, 2013

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## CHAPTER \_\_\_\_\_

1 AN ACT concerning

2 **Public School Employees – Collective Bargaining – Representation Fees**

3 FOR the purpose of requiring public school employers in all jurisdictions of the State  
4 to negotiate with certain employee organizations designated as the exclusive  
5 representatives for the public school employees a requirement of a certain  
6 service or representation fee to be charged to nonmembers; exempting certain  
7 employees from certain requirements for paying service or representation fees;  
8 requiring certain public school employers and certain exclusive bargaining  
9 representatives to negotiate whether service or representation fees are  
10 applicable to certain employees under certain circumstances; providing for the  
11 ratification of certain contracts in certain counties by certain employees after a  
12 certain date; providing a certain exception and requirement for noncertificated  
13 employees whose religious beliefs are opposed to joining or financially  
14 supporting a collective bargaining organization; requiring the exclusive  
15 representative to establish and maintain a certain procedure; requiring the  
16 public school employer to deduct a certain fee from the earnings of nonmember  
17 employees in accordance with a certain schedule; excluding certain negotiated  
18 fees from certain requirements and further negotiations; making conforming  
19 changes; providing for the application of this Act; and generally relating to  
20 representation fees for public school employees.

21 BY repealing and reenacting, with amendments,

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 Article – Education  
 2 Section 6–407(c) and 6–504  
 3 Annotated Code of Maryland  
 4 (2008 Replacement Volume and 2012 Supplement)

5 BY repealing  
 6 Article – Education  
 7 Section 6–407(d), (e), and (f)  
 8 Annotated Code of Maryland  
 9 (2008 Replacement Volume and 2012 Supplement)

10 BY adding to  
 11 Article – Education  
 12 Section 6–407(d), (e), and (f)  
 13 Annotated Code of Maryland  
 14 (2008 Replacement Volume and 2012 Supplement)

15 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
 16 MARYLAND, That the Laws of Maryland read as follows:

17 **Article – Education**

18 6–407.

19 (c) (1) [In Montgomery County, Prince George’s County, Baltimore  
 20 County, Baltimore City, and Howard County, the] ~~THE~~ **SUBJECT TO SUBSECTION**  
 21 **(D) OF THIS SECTION, THE** public school employer [may] **SHALL** negotiate with the  
 22 employee organization designated as the exclusive representative for the public school  
 23 employees in a unit, a ~~REQUIRED~~ **REQUIREMENT OF A** reasonable service or  
 24 representation fee, to be charged nonmembers for representing them in negotiations,  
 25 contract administration, including grievances, and other activities as are required  
 26 under subsection (b) of this section.

27 (2) The service or representation fee may not exceed the annual dues  
 28 of the members of the organization.

29 (3) An employee who is a substitute teacher and who works on a  
 30 short-term day-to-day basis is not required to pay a service or representation fee.

31 (4) An employee whose religious beliefs are opposed to joining or  
 32 financially supporting any collective bargaining organization is:

33 (i) Not required to pay a service or representation fee; and

34 (ii) Required to pay an amount of money as determined in  
 35 paragraph (2) of this subsection to a nonreligious, nonunion charity or to such other

1 charitable organization as may be mutually agreed upon by the employee and the  
2 exclusive representative, and who furnishes to the public school employer and the  
3 exclusive representative written proof of such payment.

4 [(5) (i) In Baltimore County, the provisions of this subsection shall  
5 apply only to employees who are hired on or after July 1, 1997.

6 (ii) The provisions of this paragraph apply if an agency or  
7 representation fee is negotiated in Baltimore County.

8 (iii) 1. Subject to the provisions of subparagraph 2 of this  
9 subparagraph, the employee organization designated as the exclusive representative  
10 for the public school employees shall indemnify and hold harmless the Board of  
11 Education of Baltimore County against any and all claims, demands, suits, or any  
12 other forms of liability that may arise out of, or by reason of, action taken by the board  
13 for the purpose of complying with any of the agency or representation fee provisions of  
14 the negotiated agreement.

15 2. The board shall retain without charge to the board the  
16 services of counsel that are designated by the exclusive representative with regard to  
17 any claim, demand, suit, or any other liability that may arise out of, or by reason of,  
18 action taken by the board for the purpose of complying with any of the agency or  
19 representation fee provisions of the negotiated agreement.

20 (iv) The employee organization designated as the exclusive  
21 representative shall submit to the board an annual audit from an external auditor  
22 that reflects the operational expenses of the employee organization and explains how  
23 the representation fee is calculated based on the audit.

24 (v) 1. The agency or representation fee shall be based only  
25 on the expenses incurred by the employee organization in its representation in  
26 negotiations, contract administration, including the handling of grievances, and other  
27 activities, as required under this section.

28 2. Any political activities of the employee organization  
29 designated as the exclusive representative may not be financed by the funds collected  
30 from the agency or representation fee.]

31 **(5) THE EXCLUSIVE REPRESENTATIVE SHALL ESTABLISH AND**  
32 **MAINTAIN A PROCEDURE THAT PROVIDES NONMEMBERS WITH:**

33 **(I) AN ADEQUATE EXPLANATION OF THE BASIS FOR THE**  
34 **SERVICE OR REPRESENTATION FEE; AND**

35 **(II) AN OPPORTUNITY TO CHALLENGE THE AMOUNT OF THE**  
36 **FEE.**

1           ~~[(6) In Montgomery County, an AN~~ employee who is a home or hospital  
2 teacher and who works on a short-term day-to-day basis is not required to pay a  
3 service or representation fee.]

4           ~~(6)~~ (7)           **THE PUBLIC SCHOOL EMPLOYER SHALL:**

5                           **(I) DEDUCT THE SERVICE OR REPRESENTATION FEE FROM**  
6 **THE EARNINGS OF THE NONMEMBER EMPLOYEES IN ACCORDANCE WITH A**  
7 **SCHEDULE PROVIDED BY THE EXCLUSIVE REPRESENTATIVE; AND**

8                           **(II) PROMPTLY TRANSMIT THE AMOUNT DEDUCTED TO THE**  
9 **EXCLUSIVE REPRESENTATIVE.**

10           [(d) (1) In Allegany County, Calvert County, Charles County, Garrett  
11 County, and Washington County, the public school employer may negotiate with the  
12 employee organization designated as the exclusive representative for the public school  
13 employees in a unit, a reasonable service or representation fee, to be charged  
14 nonmembers for representing them in negotiation, contract administration, including  
15 grievances, and other activities specified under subsection (b) of this section.

16           (2) In Charles County, the provisions of this subsection shall apply  
17 only to employees who are hired on or after July 1, 2005.

18           (e) In Garrett County:

19                           (1) A public school employee who is not a member of the employee  
20 organization designated as the exclusive representative for the public school  
21 employees in a unit at the time that a negotiated service or representation fee is  
22 initiated is exempt from the fee provided under subsection (d) of this section; and

23                           (2) An individual who becomes a public school employee after the time  
24 that a negotiated service or representation fee is initiated and does not join the  
25 employee organization designated as the exclusive representative is liable for the fee  
26 provided under subsection (d) of this section.

27           (f) In Anne Arundel County:

28                           (1) The public school employer may negotiate with the employee  
29 organization designated as the exclusive representative for the public school  
30 employees in a unit, a reasonable service or representation fee to be charged  
31 nonmembers for representing them in negotiations, contract administration, including  
32 grievances, and other activities as are required under subsection (b) of this section.

33                           (2) (i) Subject to the provisions of subparagraph (ii) of this  
34 paragraph, the employee organization designated as the exclusive representative for

1 the public school employees shall indemnify and hold harmless the Anne Arundel  
2 County Board of Education against any and all claims, demands, suits, or any other  
3 forms of liability that may arise out of, or by reason of, action taken by the board for  
4 the purpose of complying with any of the agency or representation fee provisions of the  
5 negotiated agreement.

6 (ii) The board shall retain without charge to the board the  
7 services of counsel that are designated by the exclusive representative with regard to  
8 any claim, demand, suit, or any other liability that may arise out of, or by reason of,  
9 action taken by the board for the purpose of complying with any of the agency or  
10 representation fee provisions of the negotiated agreement.

11 (3) The employee organization designated as the exclusive  
12 representative shall submit to the Anne Arundel County Board of Education an  
13 annual audit from an external auditor that reflects the operational expenses of the  
14 employee organization and explains how the service or representation fee is calculated  
15 based on the audit.

16 (4) (i) The service or representation fee shall be based only on the  
17 expenses incurred by the employee organization in its representation in negotiations,  
18 contract administration, including grievances, and other activities under this section.

19 (ii) Political activities of the employee organization designated  
20 as the exclusive representative may not be financed with the funds collected from the  
21 service or representation fee.

22 (5) An employee whose religious beliefs are opposed to joining or  
23 financially supporting any collective bargaining organization is:

24 (i) Not required to pay a service or representation fee; and

25 (ii) Required to pay an amount of money as determined under  
26 paragraph (1) of this subsection to a nonreligious, nonunion charity or to another  
27 charitable organization that is mutually agreed upon by the employee and the  
28 exclusive representative, and who furnishes to the public school employer and the  
29 exclusive representative written proof of the payment.

30 (6) Any negotiated agreement that includes a representation fee also  
31 shall contain a provision that requires that an amount of revenue equal to 25% of the  
32 annual representation fees collected and maintained by the local bargaining  
33 representative be designated for professional development for represented educators.

34 (7) This subsection shall apply only to employees who are hired on or  
35 after October 1, 2004.]

36 **(D) WHEN NEGOTIATING THE IMPLEMENTATION OF A SERVICE OR**  
37 **REPRESENTATION FEE UNDER THIS SECTION, THE PUBLIC SCHOOL EMPLOYER**

1 AND THE EXCLUSIVE BARGAINING REPRESENTATIVE SHALL NEGOTIATE  
 2 WHETHER THE FEE IS APPLICABLE TO CURRENT EMPLOYEES.

3 (E) (1) THIS SUBSECTION APPLIES TO A COUNTY IN WHICH A SERVICE  
 4 OR REPRESENTATION FEE WAS NOT NEGOTIATED BEFORE JULY 1, 2013.

5 (2) THE FOLLOWING EMPLOYEES IN A UNIT ARE ELIGIBLE TO  
 6 VOTE ON RATIFICATION OF THE IMPLEMENTING AGREEMENT THAT PROVIDES  
 7 FOR A SERVICE OR REPRESENTATION FEE:

8 (I) MEMBERS OF THE EMPLOYEE ORGANIZATION; AND

9 (II) NONMEMBERS AFFECTED BY THE SERVICE OR  
 10 REPRESENTATION FEE.

11 (3) THE IMPLEMENTING AGREEMENT THAT PROVIDES FOR A  
 12 SERVICE OR REPRESENTATION FEE SHALL BE RATIFIED BY A MAJORITY OF  
 13 VOTES CAST BY THE EMPLOYEES ELIGIBLE TO VOTE UNDER PARAGRAPH (2) OF  
 14 THIS SUBSECTION.

15 ~~(E)~~ (F) IN A COUNTY IN WHICH A SERVICE OR REPRESENTATION FEE  
 16 HAS BEEN NEGOTIATED BEFORE JULY 1, 2013, THE FEE SHALL BE  
 17 IMPLEMENTED UNDER THE PROVISIONS OF THE AGREEMENT NEGOTIATED  
 18 BEFORE JULY 1, 2013, AND CONSISTENT WITH THE REQUIREMENTS OF THIS  
 19 SECTION WITHOUT THE NEED FOR FURTHER NEGOTIATIONS.

20 6-504.

21 (a) A public school employee may refuse to join or participate in the activities  
 22 of employee organizations.

23 (b) (1) [In Montgomery County, Allegany County, Charles County, and  
 24 Howard County, the county board] ~~THE~~ SUBJECT TO SUBSECTION (E) OF THIS  
 25 SECTION, THE PUBLIC SCHOOL EMPLOYER, with respect to noncertificated  
 26 employees, shall negotiate a structure of **REQUIRED** reasonable service **OR**  
 27 **REPRESENTATION** fees to be charged nonmembers for representation in negotiations  
 28 and grievance matters by employee organizations.

29 [(2) In Charles County, the provisions of this subsection shall apply  
 30 only to employees hired on or after July 1, 2005.]

31 (2) AN EMPLOYEE WHOSE RELIGIOUS BELIEFS ARE OPPOSED TO  
 32 JOINING OR FINANCIALLY SUPPORTING ANY COLLECTIVE BARGAINING  
 33 ORGANIZATION IS:

1                   **(I) NOT REQUIRED TO PAY A SERVICE OR**  
 2 **REPRESENTATION FEE; AND**

3                   **(II) REQUIRED TO PAY AN AMOUNT OF MONEY THAT IS**  
 4 **EQUAL TO THE SERVICE OR REPRESENTATION FEE TO A NONRELIGIOUS,**  
 5 **NONUNION CHARITY OR TO SUCH OTHER CHARITABLE ORGANIZATION AS MAY**  
 6 **BE MUTUALLY AGREED UPON BY THE EMPLOYEE AND THE EMPLOYEE**  
 7 **ORGANIZATION, AND WHO FURNISHES TO THE PUBLIC SCHOOL EMPLOYER AND**  
 8 **THE EMPLOYEE ORGANIZATION WRITTEN PROOF OF THE PAYMENT.**

9           [(c) In Prince George's County, the county board shall negotiate an  
 10 organizational security provision, commonly known as "agency shop", with employee  
 11 organizations.]

12           **(C) THE EMPLOYEE ORGANIZATION SHALL ESTABLISH AND MAINTAIN A**  
 13 **PROCEDURE THAT PROVIDES NONMEMBERS WITH:**

14                   ~~(1)~~ **(1) AN ADEQUATE EXPLANATION OF THE BASIS FOR**  
 15 **THE SERVICE OR REPRESENTATION FEE; AND**

16                   ~~(2)~~ **(2) AN OPPORTUNITY TO CHALLENGE THE AMOUNT**  
 17 **OF THE FEE.**

18           [(d) (1) In Anne Arundel County, Baltimore County, and Garrett County,  
 19 the county board, with respect to noncertificated employees, may negotiate a structure  
 20 of reasonable service fees to be charged nonmembers for representation in negotiations  
 21 and grievance matters by employee organizations.

22                   (2) In Anne Arundel County, if the county board negotiates a structure  
 23 of fees as authorized under this subsection:

24                   (i) Each party shall:

25                                   1. Confer in good faith, at all reasonable times; and

26                                   2. Reduce to writing the matters agreed on as a result of  
 27 the negotiations; and

28                   (ii) Neither party is required to agree to any proposal or to make  
 29 any concession.

30                   (3) (i) The provisions of this paragraph apply if an agency or  
 31 representation fee is negotiated in Baltimore County.

32                                   (ii) 1. Subject to the provisions of subsubparagraph 2 of this  
 33 subparagraph, the employee organization designated as the exclusive representative

1 for the public school employees shall indemnify and hold harmless the Board of  
2 Education of Baltimore County against any and all claims, demands, suits, or any  
3 other forms of liability that may arise out of, or by reason of, action taken by the board  
4 for the purpose of complying with any of the agency or representation fee provisions of  
5 the negotiated agreement.

6                   2. The board shall retain without charge to the board the  
7 services of counsel that are designated by the exclusive representative with regard to  
8 any claim, demand, suit, or any other liability that may arise out of, or by reason of,  
9 action taken by the board for the purpose of complying with any of the agency or  
10 representation fee provisions of the negotiated agreement.

11                   (iii) The employee organization designated as the exclusive  
12 representative shall submit to the board an annual audit from an external auditor  
13 that reflects the operational expenses of the employee organization and explains how  
14 the representation fee is calculated based on the audit.

15                   (iv) 1. The agency or representation fee shall be based only  
16 on the expenses incurred by the employee organization in its representation in  
17 negotiations, contract administration, including the handling of grievances, and other  
18 activities as required under § 6-509 of this subtitle; and

19                   2. Any political activities of the employee organization  
20 designated as the exclusive representative may not be financed by the funds collected  
21 from the agency or representation fee.

22                   (4) In Garrett County, if a noncertificated employee was not a public  
23 school employee at the time that a service fee under paragraph (1) of this subsection  
24 was initiated, the noncertificated employee may not be charged a service fee.】

25                   **(D) THE PUBLIC SCHOOL EMPLOYER SHALL:**

26                   **(I) DEDUCT THE SERVICE OR REPRESENTATION FEE FROM**  
27 **THE EARNINGS OF THE NONMEMBER EMPLOYEES IN ACCORDANCE WITH A**  
28 **SCHEDULE PROVIDED BY THE EMPLOYEE ORGANIZATION; AND**

29                   **(II) PROMPTLY TRANSMIT THE AMOUNT DEDUCTED TO THE**  
30 **EMPLOYEE ORGANIZATION.**

31                   [(e) In Baltimore City, the public school employer shall negotiate with the  
32 employee organization designated as the exclusive representative for the public school  
33 employees in a unit, a reasonable service or representation fee to be charged to  
34 nonmembers for representing them in negotiations in the same manner that any such  
35 fee was permitted under law and bargained for prior to January 1, 1997.]



1           **(E) WHEN NEGOTIATING THE IMPLEMENTATION OF A SERVICE OR**  
2 **REPRESENTATION FEE UNDER THIS SECTION, THE PUBLIC SCHOOL EMPLOYER**  
3 **AND THE EXCLUSIVE BARGAINING REPRESENTATIVE SHALL FIRST NEGOTIATE**  
4 **WHETHER THE FEE IS APPLICABLE TO CURRENT EMPLOYEES.**

5           **(F) (1) THIS SUBSECTION APPLIES TO A COUNTY IN WHICH A SERVICE**  
6 **OR REPRESENTATION FEE WAS NOT NEGOTIATED BEFORE JULY 1, 2013.**

7           **(2) THE FOLLOWING EMPLOYEES IN A UNIT ARE ELIGIBLE TO**  
8 **VOTE ON RATIFICATION OF THE IMPLEMENTING AGREEMENT THAT PROVIDES**  
9 **FOR A SERVICE OR REPRESENTATION FEE:**

10                   **(I) MEMBERS OF THE EMPLOYEE ORGANIZATION; AND**

11                   **(II) NONMEMBERS AFFECTED BY THE SERVICE OR**  
12 **REPRESENTATION FEE.**

13           **(3) THE IMPLEMENTING AGREEMENT THAT PROVIDES FOR A**  
14 **SERVICE OR REPRESENTATION FEE SHALL BE RATIFIED BY A MAJORITY OF**  
15 **VOTES CAST BY THE EMPLOYEES ELIGIBLE TO VOTE UNDER PARAGRAPH (2) OF**  
16 **THIS SUBSECTION.**

17           ~~(E)~~ **(G) IN A COUNTY IN WHICH A SERVICE OR REPRESENTATION FEE**  
18 **HAS BEEN NEGOTIATED BEFORE JULY 1, 2013, THE FEE SHALL BE**  
19 **IMPLEMENTED UNDER THE PROVISIONS OF THE AGREEMENT NEGOTIATED**  
20 **BEFORE JULY 1, 2013, AND CONSISTENT WITH THE REQUIREMENTS OF THIS**  
21 **SECTION WITHOUT THE NEED FOR FURTHER NEGOTIATIONS.**

22           **SECTION 2. AND BE IT FURTHER ENACTED, That this Act may not be**  
23 **construed to require any further negotiations regarding provisions of applicability to**  
24 **employees based on date of hire that are contained in an implementing agreement**  
25 **that provided for a service or representation fee negotiated prior to July 1, 2013.**

26           **SECTION ~~2~~ 3. AND BE IT FURTHER ENACTED, That this Act shall take**  
27 **effect July 1, 2013.**