

Department of Legislative Services
 Maryland General Assembly
 2013 Session

FISCAL AND POLICY NOTE

House Bill 318
 Economic Matters

(Delegate W. Miller, *et al.*)

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, 2013 effective date.

Fiscal Summary

State Effect: General and federal fund expenditures for the Department of Health and Mental Hygiene (DHMH) decrease by \$464,300 (50/50 split) in FY 2014 as a result of not needing a fiscal intermediary to make deductions for independent care providers but are offset by a decrease in federal fund revenues of \$232,200. General fund expenditures for the Office of the Attorney General (OAG) increase by \$255,000 for staff to carry out the bill’s enforcement requirements and by \$45,000 for one-time programming expenses for the Maryland State Department of Education (MSDE). Out-year costs and savings reflect annualization and inflation. The bill’s criminal penalty provisions are not expected to materially affect State finances.

(in dollars)	FY 2014	FY 2015	FY 2016	FY 2017	FY 2018
FF Revenue	(\$232,200)	(\$309,500)	(\$309,500)	(\$309,500)	(\$309,500)
GF Expenditure	\$67,900	\$44,500	\$60,500	\$77,400	\$95,000
FF Expenditure	(\$232,200)	(\$309,500)	(\$309,500)	(\$309,500)	(\$309,500)
Net Effect	(\$67,900)	(\$44,500)	(\$60,500)	(\$77,400)	(\$95,000)

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

Local Effect: Potential minimal decrease in expenditures for local governments due to relief of the operational burden associated with collecting nonmember service fees on behalf of the exclusive representative of certain bargaining units. 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.

Small Business Effect: Potential meaningful. Small businesses may benefit from reduced labor costs.

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 24 states that have established right-to-work laws that include provisions similar to the bill; Michigan became the latest state to enact a similar law in December 2012.

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

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

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 does not prohibit a labor organization from assessing 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 that is successfully negotiated by a labor organization on behalf of its members.

Maryland Bargaining Units

Exhibit 2 shows the number of State employees in each bargaining unit. 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 and Gaming Control Agency, University System of Maryland (USM), 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.

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.

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

<u>Unit</u>	<u>Unit Name</u>	<u>Employees</u>	<u>Exclusive Representative</u>
A	Labor and Trades	730	AFSCME MD
B	Administrative, Technical, and Clerical	3,487	AFSCME MD
C	Regulatory, Inspection, and License	312	AFSCME MD
D	Health and Human Services (nonprof.)	1,690	AFSCME MD
E	Health Care Professionals	1,719	AFT – Healthcare MD
F	Social and Human Services Professionals	3,875	AFSCME MD
G	Engineering, Scientific, and Administrative Professionals	3,686	MPEC
H	Public Safety and Security	9,385	AFSCME/Teamsters
I	Sworn Police Officers	1,662	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, January 2013

State Employees May Be Assessed Service Fees

Chapter 187 of 2009 (SB 264) 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, employees who are dues-paying members of an employee organization that is not the exclusive representative must also pay any negotiated service fee.

Chapter 187 specifies that service fees may not be bargained for in negotiations between an employee organization and a USM institution, Morgan State University, St. Mary's College of Maryland, or Baltimore City Community College.

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.

While an exclusive representative bargains for all members of a particular bargaining unit, only some of these individuals pay 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.

A memorandum of understanding (MOU) between the American Federation of State, County, and Municipal Employees (AFSCME), the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO), and the State regarding bargaining units A, B, C, D, and F includes a provision requiring all employees who are covered by the MOU but who are not members of AFSCME to pay AFSCME a service fee as a condition of continued employment with the State. The requirement to pay the service fee was effective July 1, 2011, or within 30 calendar days of employment with the bargaining unit. The amount of the service fee was not specified in the proposed MOU but must not exceed the amount of dues uniformly required of AFSCME members. The MOU requires the State to automatically withhold from the biweekly salary of each employee who is not an AFSCME member the service fee as determined without the necessity of a written, signed authorization of the employee. The fee assessed by AFSCME, which represents the largest group of State employees, is \$13.89 per biweekly pay period, or \$361 per year.

Chapter 171 of 2011 (HB 171) codifies collective bargaining rights for "independent home care providers" who participate in and are reimbursed under one of four State programs (or a successor program of one of these programs): the Medicaid Waiver for Older Adults Program, the Medicaid Personal Care Program, the Living at Home Waiver Program, and the In-Home Aide Service Program. It specifies that a future collective bargaining agreement may allow an exclusive representative to receive service fees from independent home care providers who are not members of the "provider organization" but are nonetheless represented by the organization. However, the State must conclude that the agreement as a whole will not adversely affect nonmember providers. A service fee provision is only allowable if nonmembers pay fees on a sliding scale in approximate proportion to the amount that each nonmember independent home care provider receives as reimbursement.

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."

Prevalence of Unions

According to the U.S. Bureau of Labor Statistics, 10.6% of employees in Maryland were *members of unions* and 12.3% of employees in Maryland were *represented by unions* (which includes those paying service fees) in 2012. These percentages are slightly lower than the national average of 11.3% and 12.5%, 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.

Exhibit 3 Union Rates in Maryland and Surrounding States 2012

	<u>Union Members</u>	<u>Represented by Unions</u>
Delaware	10.4%	11.8%
District of Columbia	8.6%	10.3%
Maryland	10.6%	12.3%
Pennsylvania	13.5%	14.4%
Virginia	4.4%	5.5%
West Virginia	12.1%	13.1%

Source: U.S. Department of Labor

State Effect: General fund expenditures increase for OAG by \$254,983 in fiscal 2014, which accounts for the bill's October 1, 2013 effective date. This estimate reflects the cost of hiring three assistant Attorneys Generals and one administrative aide 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	4
Salaries and Fringe Benefits	\$245,683
Operating Expenses	<u>9,300</u>
Total FY 2014 State Expenditures	\$254,983

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

In prior similar bills, OAG advises that it incorrectly assumed it could carry out the bill's enforcement requirements with existing budgeted resources. It has since realized that the enforcement provisions put a substantial burden on OAG's resources, thus requiring additional positions.

The bill requires MSDE to no longer deduct service fees to child care providers. MSDE's general fund expenditures increase \$45,000 in fiscal 2014 to reprogram its tracking system that processes invoices for payment to child care providers receiving child care subsidy payments. This one-time expense includes costs for software development, programming, testing, and implementation.

The Department of Health and Mental Hygiene (DHMH) reimburses expenses for independent home care providers through the Medical Assistance Personal Care Program. There are approximately 3,279 independent personal care providers, of which 1,500 are union members and 1,779 are not. DHMH is in negotiations with independent home care providers to reach a new collective bargaining agreement (50/50 split) that will likely include a service fee for nonmembers. Once an agreement is reached, DHMH will need to contract with a fiscal intermediary to make service fee deductions of nonunion independent personal care providers since DHMH is not allowed to make deductions to independent home care providers. Contracting with a fiscal intermediary costs the State \$29 per person per month, so DHMH will save \$619,092 annually in general and federal fund expenditures (50/50 split); total savings in fiscal 2014 are \$464,319 due to the bill's October 1, 2013 effective date. However, this savings is partially offset by a reduction in federal matching fund revenues of \$309,546 annually or \$232,160 in fiscal 2014 due to the October 1, 2013 effective date.

General fund expenditures for the Central Payroll Bureau within the Comptroller's Office minimally decrease annually because the bill relieves the Central Payroll Bureau of the operational burden associated with collection of approximately \$4.0 million annually in nonmember service fees on behalf of the exclusive representative of certain bargaining units.

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 2012, the national median weekly earnings for union members were \$943, while nonunion members had median weekly earnings of \$742. The effects will be felt most strongly in industries with a strong union presence, such as transportation and utilities (20.6% of employees are union members) and construction (13.2% of employees are union members).

Additional Information

Prior Introductions: HB 91 of 2012 and HB 743 of 2011, substantively similar bills, received unfavorable reports from the House Economic Matters Committee.

Cross File: None.

Information Source(s): American Federation of State, County, and Municipal Employees; Caroline, Calvert, Howard, Montgomery, and Prince George's counties; Baltimore City; City of Laurel; Town of Sykesville; Baltimore City Community College; Morgan State University; St. Mary's College; Comptroller's Office; Department of Budget and Management; Department of General Services; Department of Health and Mental Hygiene; Department of Labor, Licensing, and Regulation; Department of Natural Resources; Department of Public Safety and Correctional Services; Department of State Police; Maryland Association of Counties; Maryland Higher Education Commission; Maryland Municipal League; Maryland-National Capital Park and Planning Commission; Maryland Department of Transportation; Maryland State Department of Education; Office of the Attorney General; University System of Maryland; U.S. Department of Labor; Department of Legislative Services

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Analysis by: Heather N. Ruby

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