

Department of Legislative Services  
 Maryland General Assembly  
 2020 Session

FISCAL AND POLICY NOTE  
 First Reader

House Bill 163  
 Economic Matters

(Delegate 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 or require an employer, including the State and units of government, to negotiate the payment by an employee of 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, 2020 effective date.

Fiscal Summary

**State Effect:** General fund expenditures increase by \$59,600 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 2021	FY 2022	FY 2023	FY 2024	FY 2025
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	59,600	70,300	72,000	74,400	77,000
Net Effect	(\$59,600)	(\$70,300)	(\$72,000)	(\$74,400)	(\$77,000)

*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.

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**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

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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 28,682 State employees, excluding higher education employees, were covered by collective bargaining rights as of December 2019, 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, the 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.

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**Exhibit 2**  
**State of Maryland Bargaining Units**  
**(Excluding Higher Education Units)**  
**As of December 2019**

<u>Unit</u>	<u>Unit Name</u>	<u>Employees</u>
A	Labor and Trades	1,747
B	Administrative, Technical, and Clerical	4,736
C	Regulatory, Inspection, and License	753
D	Health and Human Services (nonprofessional)	1,586
E	Health Care Professionals	1,838
F	Social and Human Services Professionals	3,424
G	Engineering, Scientific, and Administrative Professionals	4,979
H	Public Safety and Security	7,435
I	Sworn Police Officers	1,756
J	Maryland Transportation Authority Sworn Officers	428

Source: Department of Budget and Management

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*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. In 2017, the U.S. Supreme Court ruled in *Janus v. American Federation of State, County, and Municipal Employees*, 585 U.S. \_\_\_ (2018) 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 collect agency fees from nonconsenting employees. Consequently, Maryland no longer collects service fees from nonunion members.

POLITICO studied the nationwide impact of the *Janus* court case by reviewing 10 large public-employee unions. It found that those unions lost 309,612 fee payers in 2018. However, all but one reported more money at the end of 2018, and membership was up in those unions by 132,312 members. In states without right-to-work laws, the percent of public employees represented by a union decreased by 1.0 percentage point and public unions in those states lost union coverage for 115,625 employees.

*Prevalence of Unions*

According to the [U.S. Bureau of Labor Statistics](#), 11.3% of employees in Maryland were *members of unions* and 12.8% 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 2019, which are slightly higher than the national averages of 10.3% and 11.6%, 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 33.6%, which was more than five times higher than the union membership rate of 6.2% for private-sector employees in 2019.

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**Exhibit 3**  
**Union Participation Rates in Maryland and Surrounding States – 2019**

	<u>Union Members</u>	<u>Represented by Unions</u>
Delaware	8.7%	9.9%
District of Columbia	9.3%	10.2%
<b>Maryland</b>	<b>11.3%</b>	<b>12.8%</b>
Pennsylvania	12.0%	13.1%
Virginia	4.0%	5.2%
West Virginia	10.2%	11.1%

Source: U.S. Department of Labor

**State Expenditures:** General fund expenditures increase for OAG by at least \$59,612 in fiscal 2021, which accounts for the bill’s October 1, 2020 effective date. This estimate reflects the cost of hiring one administrator to investigate and process complaints. It includes a salary, fringe benefits, one-time start-up costs, and ongoing operating expenses.

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Salary and Fringe Benefits	\$53,946
Operating Expenses	<u>5,666</u>
<b>Total FY 2021 State Expenditures</b>	<b>\$59,612</b>

Future year expenditures reflect a full salary 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 2019, the national median weekly earnings for private-sector union members were \$1,025, while nonunion members had median weekly earnings of \$881. The effects will be felt most strongly in industries with a strong union presence, such as transportation and utilities (18.7% of employees are represented by unions), telecommunications (15.3% of employees are represented by unions), and educational services (14.1% of employees are represented by unions).

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### **Additional Information**

**Prior Introductions:** HB 126 of 2019 and similar bills, HB 264 of 2018 and HB 531 of 2017, received unfavorable reports from the House Economic Matters Committee. In addition, similar bills were introduced in the 2011 through 2016 sessions.

**Designated Cross File:** None.

**Information Source(s):** Anne Arundel, Baltimore, Garrett, and Howard counties; Maryland Association of Counties; City of Rockville; Maryland Municipal League; Office of the Attorney General; Comptroller's Office; Judiciary (Administrative Office of the Courts); Maryland State Department of Education; University System of Maryland; Department of Budget and Management; Maryland Department of Health; Department of Public Safety and Correctional Services; Maryland Department of Transportation; Montgomery County Public Schools; POLITICO; U.S. Bureau of Labor Statistics; Department of Legislative Services

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