

Department of Legislative Services
Maryland General Assembly
2013 Session

FISCAL AND POLICY NOTE
Revised

House Bill 863
Appropriations

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

Finance

Higher Education Fair Share Act

This Administration bill authorizes an employee organization to collectively bargain with institutions of the University System of Maryland (USM), Morgan State University (MSU), St. Mary's College of Maryland (SMCM), and Baltimore City Community College (BCCC) regarding the right of the employee organization to collect service fees from nonmembers. If a fee is negotiated and collected, employees of the affected institutions whose religious beliefs preclude them from supporting collective bargaining organizations must make an equivalent payment to a charitable organization and provide written proof of the payment to (1) the president of the institution or the president's designee and (2) the employee's exclusive representative.

Fiscal Summary

State Effect: None. USM, MSU, SMCM, and BCCC can implement the bill's requirements with existing budgeted resources. To the extent that a service fee is negotiated through collective bargaining, the institutions and/or the Comptroller's Office can implement a payroll deduction with existing budgeted resources.

Local Effect: None.

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

Analysis

Current Law/Background: Most employees of USM, MSU, SMCM, and BCCC, including senior administrators, faculty members, and student employees, are not subject

to collective bargaining and, therefore, are not currently in a bargaining unit. If a service fee is negotiated under the bill, they would not have to pay it.

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.

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, MSU, SMCM, or BCCC.

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.

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, 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. In most cases, the fee is paid as a payroll deduction by the Central Payroll Bureau of the Comptroller's Office.

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."

USM Bargaining Units

Each of the 12 USM institutions is required to have a separate bargaining unit, and each has at least one bargaining unit. Together, they represent a total of 5,858 employees. Appropriate bargaining units consist of all eligible exempt employees, all eligible nonexempt employees, and all eligible sworn police officers. **Exhibit 1** shows the composition of the bargaining units. The first exclusive representative listed represents employees, and the second represents campus police officers. BCCC advises that it has 187 employees represented by AFSCME in three different bargaining units; of those, 89 employees are exempt. MSU advises that it has 213 employees in two bargaining units represented by AFSCME and the Fraternal Order of Police. Similar information was not provided by SMCN in time for inclusion in this fiscal and policy note.

Exhibit 1
USM Bargaining Units for Fiscal 2013

	<u>Representative(s)</u>	<u>Exempt/ Nonexempt</u>	<u>Police Officers</u>	<u>Total</u>
UM – College Park	AFSCME/FOP	1,443/1,606	71	3,120
UM – Baltimore	AFSCME/FOP	841/NA	35	876
UM – Baltimore City	AFSCME/FOP	353/NA	19	372
Frostburg State	AFSCME/MCEA	229/96	15	340
Salisbury Univ.	MCEA/MCEA	272/NA	13	285
UM – Eastern Shore	AFSCME/AFSCME	195/53	NA	248
Univ. of Baltimore	AFSCME/AFSCME	139/NA	8	147
Bowie State	AFSCME/MCEA	85/49	11	145
Coppin State	AFSCME/AFSCME	68/44	11	123
UM – Univ. College	AFSCME/NA	107/NA	NA	107
UM – Ctr. For Env. Studies	MCEA/NA	58/NA	NA	58
Towson University	NA/FOP	NA	37	37

UM: University of Maryland
 AFSCME: American Federation of State, County, and Municipal Employees
 FOP: Fraternal Order of Police
 MCEA: Maryland Classified Employees Association
 Source: University System of Maryland

Additional Information

Prior Introductions: None.

Cross File: SB 841 (The President, *et al.*) (By Request - Administration) - Finance.

Information Source(s): University System of Maryland, Maryland Higher Education Commission, Department of Budget and Management, Baltimore City Community College, Department of Legislative Services

Fiscal Note History: First Reader - February 28, 2013
 ns/ljm Revised - House Third Reader - March 25, 2013

Analysis by: Michael C. Rubenstein

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

ANALYSIS OF ECONOMIC IMPACT ON SMALL BUSINESSES

TITLE OF BILL: Higher Education – Fair Share Act

BILL NUMBER: Senate Bill 841/ House Bill 863

PREPARED BY: 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.