

Department of Legislative Services
 Maryland General Assembly
 2018 Session

FISCAL AND POLICY NOTE
 First Reader

House Bill 264
 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, 2018 effective date.

Fiscal Summary

State Effect: General fund expenditures increase by at least \$127,900 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 2019	FY 2020	FY 2021	FY 2022	FY 2023
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	127,900	158,200	162,900	168,800	174,800
Net Effect	(\$127,900)	(\$158,200)	(\$162,900)	(\$168,800)	(\$174,800)

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

Local Effect: Potential minimal decrease in expenditures for local governments due to relief of the operational burden associated with collecting nonmember service fees. Revenues are not materially affected.

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 28 states

that have established right-to-work laws that include provisions similar to the bill; Missouri became the latest state to enact a similar law in February 2017. The Missouri law was supposed to take effect in August 2017 but is now subject to a ballot referendum, which will occur in 2018.

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

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

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 30,000 State employees have collective bargaining rights. **Exhibit 2** shows the number of State employees in each bargaining unit as of January 2018. 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)

<u>Unit</u>	<u>Unit Name</u>	<u>Employees</u>
A	Labor and Trades	677
B	Administrative, Technical, and Clerical	3,319
C	Regulatory, Inspection, and License	596
D	Health and Human Services (nonprofessional)	1,641
E	Health Care Professionals	1,621
F	Social and Human Services Professionals	3,599
G	Engineering, Scientific, and Administrative Professionals	3,710
H	Public Safety and Security	7,889
I	Sworn Police Officers	1,702

Source: Department of Budget and Management, January 2018

State Employees May Be Assessed Service Fees

Chapter 187 of 2009 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 428 of 2013 authorized an employee organization to collectively bargain with a University System of Maryland institution, Morgan State University, St. Mary's College of Maryland, or Baltimore City Community College regarding the right of the employee organization to collect service fees from nonmembers.

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; and the State regarding specified bargaining units 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.

Chapter 171 of 2011 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, *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."

However, in *Harris v. Quinn*, 573 U.S. __ (2014), slip op., the court ruled home health care workers in Illinois are not required to pay service fees because these home health care workers are unlike full-fledged public employees and do not enjoy most of the rights and benefits that state employees receive. Although this ruling has a narrow scope by exempting only certain workers from being considered public employees, a labor union in Maryland, SEIU Local 500, stopped requiring payment of service fees from nonunion members as a result of this court decision. Thus, the Maryland State Department of Education advises that it no longer deducts service fees from child care subsidy reimbursements made to family child care providers.

The U.S. Supreme Court agreed in September 2017 to hear a case, *Janus v. American Federation of State, County, and Municipal Employees*, No. 16-1466, which challenges the constitutionality of the court's decision in *Abood* under the First Amendment.

Prevalence of Unions

According to the [U.S. Bureau of Labor Statistics](#), 10.8% of employees in Maryland were *members of unions* and 11.8% of employees in Maryland were *represented by unions* (which includes those paying service fees) in 2017, which are similar to the national averages of 10.7% and 11.9%, 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 34.4%, which was more than five times higher than the union membership rate of 6.5% for private-sector employees in 2017.

Exhibit 3
Union Participation Rates in Maryland and Surrounding States – 2017

	<u>Union Members</u>	Represented by <u>Unions</u>
Delaware	10.7%	11.2%
District of Columbia	9.8%	11.5%
Maryland	10.8%	11.8%
Pennsylvania	12.0%	13.0%
Virginia	4.6%	5.8%
West Virginia	11.0%	11.9%

Source: U.S. Department of Labor

State Expenditures: General fund expenditures increase for OAG by at least \$127,881 in fiscal 2019, which accounts for the bill’s October 1, 2018 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	\$117,163
Operating Expenses	<u>10,718</u>
Total FY 2019 State Expenditures	\$127,881

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

Approximately 25,000 State employees within the State Personnel Management System pay service fees totaling approximately \$10.0 million annually, with the fee deducted from covered employees’ pay checks. General fund expenditures for the Central Payroll Bureau (CPB) within the Comptroller’s Office may minimally decrease annually because the bill relieves CPB of some of the operational burden associated with collection of member and nonmember service fees on behalf of the exclusive representative of certain bargaining units. Even so, CPB must continue to collect union dues using the processes currently in place, so any reduction in expenditures is expected to be minimal. Additionally, the bill alleviates the administrative burden for CPB over mediating nonunion member service fee disputes as it is likely that fewer disputes occur under the bill.

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.

Expenditures for local governments may decrease minimally due to relief of the operational burden associated with collecting nonmember service fees on behalf of the exclusive representative of certain bargaining units. The Maryland Municipal League estimates more than 90% of municipalities have no collective bargaining agreements and, therefore, are not affected by the bill. **Exhibit 4** shows the municipalities in Maryland that have collective bargaining agreements.

Exhibit 4
Municipalities with Collective Bargaining Agreements

Annapolis	Frederick
Baltimore City	Greenbelt
Bel Air	Hagerstown
Bowie	Mount Rainier
College Park	Ocean City
Cumberland	Rockville
Elkton	Takoma Park

Source: Maryland Municipal League

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 2017, the national median weekly earnings for private-sector union members were \$984, while nonunion members had median weekly earnings of \$816. The effects will be felt most strongly in industries with a strong union presence, such as transportation and utilities (19.7% of employees are represented by unions), telecommunications (17.0% of employees are represented by unions), and construction (14.7% of employees are represented by unions).

Additional Information

Prior Introductions: HB 531 of 2017 and a similar bill, 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): Office of the Attorney General; Comptroller's Office; Judiciary (Administrative Office of the Courts); Department of Budget and Management; National Right to Work Foundation; U.S. Department of Labor; U.S. Supreme Court; Department of Legislative Services

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