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BILL ANALYSIS

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Senate Bill 34 (as enacted)
Sponsor: Senator Darrin Camilleri
Senate Committee: Labor
House Committee: Labor

PUBLIC ACT 8 OF 2023

Date Completed: 4-24-23

INTRODUCTION

The bill eliminates "right-to-work" provisions for private employees. Generally, these provisions allow private employees to refrain from labor organization and collective bargaining and prohibit individuals and employers from compelling an employee to take certain actions, such as becoming a member of a labor organization. Instead, the bill will allow private employers to require employees as a condition of employment to pay to an exclusive bargaining representative due uniformly required of all the representative's members. Additionally, the bill appropriates $1.0 million the Department of Labor and Economic Opportunity (LEO) for Fiscal Year (FY) 2023-2024 for the implementation of the bill's provisions.

The bill will take effect on the 91st day after the 2023 Legislature adjourns sine die.

BRIEF RATIONALE

Public Act 348 of 2012 prohibits mandatory union fees for private employees, a prohibition commonly known as "right-to-work". Some people believe that "right-to-work" laws make it harder for unions to collectively bargain and lead to lower wages and poorer benefits for employees on average. Accordingly, it has been suggested that Michigan's "right-to-work" laws for private employees be eliminated.

FISCAL IMPACT

The bill will eliminate civil fines of $500 for violations of statutory provisions. Any fine revenue was previously deposited in the State's General Fund/General Purpose (GF/GP) account for State use. Elimination of the fines will result in a loss in revenue to the State's GF/GP account, the amount of which is indeterminate. Any loss in revenue will depend on the number of violations that would have been levied under current law.

MCL 423.1 et al.

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CONTENT

The bill amends the labor mediation Act to do the following:

- **-- Delete a provision prohibiting an individual from being required to refrain from, join, or pay any dues or fees to, a labor organization, as a condition of obtaining or continuing employment.**
- **-- Allow an employer and a labor organization to enter into a collective bargaining agreement that required all employees in the bargaining unit to share fairly in the financial support of the labor organization.**
- **-- Appropriate $1.0 million to LEO for FY 2023-2024 for the bill's implementation.**

Organization as a Requirement of Employment

The Act specifies that an individual may not be required to do any of the following as a condition of obtaining or continuing employment:

- -- Refrain or resign from membership in, voluntary affiliation with, or voluntary financial support of a labor organization or bargaining representative.
- -- Become or remain a member of a labor organization or bargaining representative.
- -- Pay any dues, fees, assessments, or other charges or expenses of any kind or amount or provide anything of value to a labor organization or bargaining representative.
- -- Pay to any charitable organization or third party any amount that is in lieu of, equivalent to, or any portion of dues, fees, assessments, or other charges or expenses required of members or public employees represented by a labor organization or bargaining representative.

The Act also specifies that an agreement, contract, understanding, or practice between or involving an employer and a labor organization that violates the provision above is unlawful and unenforceable. A person, employer, or labor organization that violates the provision above is liable for a civil fine of up to $500. Except as otherwise provided, a person who suffers an injury as a result of a violation or threatened violation may bring a civil action for damages, injunctive relief, or both.

The bill deletes all the provisions described above.

(Under the Act, "employee" includes any employee, and is not limited to the employees of a particular employer, unless provided otherwise, and includes any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any act that is illegal under the Act, has not obtained any other regular and substantially equivalent employment. The term does not include any individual employed as an agricultural laborer, or in the domestic service of any family or any person at his home, or any individual employed by his parent or spouse, or any individual employed as an executive or supervisor, or any individual employed by an employer subject to the Railway Labor Act.)

The Act defines "employer" as an individual, partnership, association, corporation, business trust, labor organization, or any other private entity. The Act specifies that the term does not include any entity subject to the public employment relations Act. The bill would delete this exception to the definition.

Compelling to Pay Fees to a Third-Party

Under the Act, an employee or other person may not by force, intimidation, or unlawful threats compel or attempt to compel any person to do the following:

-- Become or remain a member of a labor organization or otherwise affiliate with or financially support a labor organization.
-- Refrain from engaging in employment or refrain from joining a labor organization or otherwise affiliating with or financially supporting a labor organization.
-- Pay to any charitable organization or third party an amount that is in lieu of, equivalent to, or any portion of dues, fees, assessments, or other charges or expenses required of members of, or employees represented by a labor organization.

Additionally, a person who violates the provision described above is liable for a civil fine of up to $500.

The bill deletes all the provisions described above.

Agreement requiring Payment of Dues

Under the bill, an employer and labor organization may enter into a collective bargaining agreement that requires all employees in the bargaining unit to share fairly in the financial support of the labor organization. The bill specifies that the Act does not, and a law or policy of a local government may not, prohibit or limit an agreement that requires all barging unit employees, as a condition of continued employment, to pay the labor organization membership dues or service fees.

Appropriation

The bill appropriates $1.0 million for FY 2023-2024 to LEO to be spent to do the following regarding the bill's provisions:

-- Respond to public inquiries regarding the provisions of the bill.
-- Provide LEO with sufficient staff and other resources to implement the provisions of the bill.
-- Inform employers, employees, and labor organizations about changes to their rights and responsibilities under the provisions of the bill.
-- Any other purposes that the Director of LEO determined in the Director's sole discretion that is necessary to implement the provisions of the bill.

BACKGROUND

Under Public Acts (PAs) 348 and 349 of 2012, Michigan adopted what is commonly referred to as "right-to-work" legislation. In short, those Acts prohibited mandatory union fees for private and public employees, respectively. Before the enactment of PA 349, a collective bargaining agreement with a public sector union could employ a union security clause, i.e., a provision that requires all members of a bargaining unit either to join or financially support the union. In other words, a member of a collective bargaining unit could opt out of joining the union but was obliged to pay an agency fee.

The constitutionality of requiring public employees to pay fees to cover union costs originally was addressed in a 1977 United States Supreme Court opinion. In Abood v. Detroit Board of Education[1] the Court upheld against a First Amendment challenge a Michigan statute that allowed a public employer whose employees were represented by a union to require those of its employees who did not join the union to pay fees to it.

[1] 431 US 209 (1977).

Illinois had a law similar to the statute at issue in *Abood*, which was challenged in 2015 by an individual employed within the Illinois state government.[2] In 2018, the US Supreme Court overruled *Abood* and held in *Janus v. AFSCME* that the state of Illinois' extraction of agency fees from nonconsenting public-sector employees violates the First Amendment.[3]

[2] *Janus v. American Federation of State, County, and Municipal Employees, Council 31*, 138 S. Ct. 2448 (2018). The procedural and factual histories of the *Janus v. AFSCME* case are more complex than described here but are beyond the scope of this **BACKGROUND** section.
[3] *Id*. at 2486.

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