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Senate Bill 5 (as introduced 1-12-23)  
Senate Bill 34 (as introduced 1-29-23)  
Sponsor: Senator Darrin Camilleri  
Committee: Labor

Date Completed: 3-14-23

### **INTRODUCTION**

Collectively, the bills would eliminate "right-to-work" provisions. These provisions generally allow public and 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 bills would allow public and private employers to require employees as a condition of employment to pay to an exclusive bargaining representative dues uniformly required of all the representative's members.

Senate Bill 34 would take effect 90 days after its enactment.

### **FISCAL IMPACT**

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

MCL 423.209 et al. (S.B. 5)  
423.1 et al. (S.B. 34)

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## **CONTENT**

### **Senate Bill 5 would amend the public employment relations Act to do the following:**

- Delete a provision allowing a public employee to refrain from labor organizing and collective bargaining.**
- Delete a provision prohibiting a person from compelling any public employee to join in or refrain from labor organization and collective bargaining, and the fines prescribed for a violation of this provision.**
- Specify that the Act would not preclude a public employer from making an agreement with an exclusive bargaining representative to require as a condition of employment that all other employees in the bargaining unit pay to the exclusive bargaining representative a service fee equal to the amount of dues uniformly required of members.**

### **Senate Bill 34 would amend the labor mediation Act to do the following:**

- Delete a provision allowing an employee to refrain from labor organizing and collective bargaining.**
- Delete a provision prohibiting a person from compelling any employee to join in or refrain from labor organization and collective bargaining, and the fines prescribed for a violation of this provision.**
- Specify that the Act would not interfere with the right of an employer to enter into an all-union agreement with one labor organization or interfere with the right of the employer to make an all-union agreement with more than one labor organization established among the employer's employees if certain conditions were met.**

## **Senate Bill 5**

### **Public Employees**

The public employment relations Act allows public employees to do the following:

- Organize together or form, join, or assist in labor organizations.
- Engage in lawful concerted activities for the purpose of collective negotiation or bargaining or other mutual aid and protection.
- Negotiate or bargain collectively with their public employers through representatives of their own free choice.

In addition, a public employee may refrain from any or all those activities. The bill would delete this provision.

(The Act defines "public employee" as an individual holding a position by appointment or employment in the government of the State, the government of one or more political subdivisions of the State, in the public school service, in a public or special district, in the service of an authority, or in any other branch of public service, subject to the following exceptions:

- An individual employed by a private organization providing services under a time-limited contract with the State or a subdivision of the State.
- A public school administrator, under specified circumstances.
- Individuals in specified student positions, such as an individual serving as a graduate student research assistant or participating in intercollegiate athletics.)

The Act prohibits a person from compelling by force, intimidation, or unlawful threats, or attempting to compel any public employee to do the following:

- Become or remain a member of a labor organization or bargaining representative or otherwise affiliate with or financially support a labor organization or bargaining representative.
- Refrain from engaging in employment or refrain from joining a labor organization or bargaining representative or otherwise affiliating with or financially supporting a labor organization or bargaining representative.
- 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 or public employees represented by a labor organization or bargaining representative.
- Pay the costs of an independent examiner verification as required by the Act.

The Act specifies that a person who violates that prohibition is liable for a civil fine of up to \$500, which must be submitted to the State Treasurer for deposit into the General Fund. The bill would delete the prohibition and associated fine.

#### Public Employer

The Act prohibits a public employer or an officer or agent of a public employer from discriminating in regard to hire, terms, or other conditions of employment to encourage or discourage membership in a labor organization, among other things. Under the bill, the Act or any other law of the State would not preclude a public employer from making an agreement with an exclusive bargaining representative as described in Section 11 of the Act to require as a condition of employment that all other employees in the bargaining unit pay to the exclusive bargaining representative a service fee equal to the amount of dues uniformly required of members of the exclusive bargaining representative. (Section 11 of the Act requires representatives selected for the purpose of collective bargaining by most of a unit of public employees to serve as the exclusive representatives of that unit of public employees.)

The bill specifies that it would be the purpose of the Public Act 25 of 1973 (which amended the public employment relations Act) to reaffirm the continuing public policy of the State that the stability and effectiveness of labor relations in the public sector would require, if the requirement were negotiated with the public employer, that all other employees in the bargaining unit share fairly in the financial support of their exclusive bargaining representative by paying to the exclusive bargaining representative a service fee that could be equivalent to the amount of dues uniformly required of members of the exclusive bargaining representative.)

#### 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 public 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 instead of, equivalent to, or any portion of dues, fees, assessments, or other charges or expenses required of

members of or public employees represented by a labor organization or bargaining representative.

The Act specifies that the provision described above does not apply to specified employees, such as public police or fire department employees, and that these employees may agree that all employees in a bargaining unit must share fairly in the financial support of the labor organization or their exclusive bargaining representative. In addition, the Act specifies that an agreement or practice involving or between a public employer, labor organization, or bargaining representative that violates the provision described above is unlawful and unenforceable.

A person, public employer, or labor organization that violates the provision described above is liable for a civil fine of not more than \$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 would delete all the provisions described above.

#### Public School Employer

Under the Act, a public school employer's collective bargaining duty and a collective bargaining agreement entered into by a public school employer are subject to all of the following:

- Any effect on collective bargaining and any modification of a collective bargaining agreement occurring under Section 1280c of the Revised School Code.
- For a public school in which the Superintendent of Public Instruction implements one of the four school intervention models described in Section 1280c of the Revised School Code, if the school intervention model that is implemented affects collective bargaining or requires modification of a collective bargaining agreement, any effect on collective bargaining and any modification of a collective bargaining agreement under that school intervention model.

In addition, the Act specifies that if a public school is placed in the State school reform/redesign school district or is placed under a chief executive officer under the Revised School Code, then, for the purposes of collective bargaining, the State school reform/redesign officer or the chief executive officer is the public school employer of the public school employees of that public school for as long as the public school is part of the state school reform/redesign school district or operated by the chief executive officer.

The bill would delete all the provisions described above.

(Section 1280c of the Revised School Code related to the identification of the lowest achieving schools in the State and their placement under State supervision. The Section was repealed effective June 30, 2019.)

### **Senate Bill 34**

#### Employees

The Act allows employees to do the following:

- Organize together or form, join, or assist in labor organizations.

- Engage in lawful concerted activities for the purpose of collective negotiation or bargaining or other mutual aid and protection.
- Negotiate or bargain collectively with their public employers through representatives of their own free choice.

In addition, an employee may refrain from any or all those activities. The bill would delete this provision.

(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 the exception to the definition.

#### 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 of 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 would delete all the provisions described above.

#### Compelling to Organize

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.

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

The bill would delete all the provisions described above. Instead, under the bill, an employee or other person could not by force, intimidation, or unlawful threats compel or attempt to compel any person to become or remain a member of a labor organization or refrain from engaging in employment.

A violation of the provision described above would be a misdemeanor.

### All Union Agreements

The bill specifies that nothing in the Act could be construed to do either of the following:

- Interfere with the right of an employer to enter into an all-union agreement with one labor organization if it was the only organization established among the employer's employees and recognized by the employer, by consent, as the representative of most of the employer's employees.
- Interfere with the right of the employer to make an all-union agreement with more than one labor organization established among the employer's employees if the labor organizations were recognized by the employer, by consent, as the representatives of most of the employer's employees.

MCL 423.209 et al.

### **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*,<sup>1</sup> 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.

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.<sup>2</sup> 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.<sup>3</sup>

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<sup>1</sup> 431 US 209 (1977).

<sup>2</sup> *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.

<sup>3</sup> *Id.* at 2486.

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.