Legislative Analysis

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PROHIBIT USE OF STATE FUNDS TO DISCOURAGE UNIONIZATION

House Bill 4443
Sponsor: Rep. Fred Miller
1st Committee: Commerce
2nd Committee: Labor

Complete to 11-26-07

A SUMMARY OF HOUSE BILL 4443 AS INTRODUCED 3-13-07

The bill would create a new act to prohibit expenditures of state funds on activities that interfere with or discourage unionization. The bill would also require recordkeeping and quarterly reporting by certain recipients of state funds and would provide penalties for violators of the act. The Department of Labor and Economic Growth (DLEG) would be required to promulgate for the implementation of the new act in accordance with the Administrative Procedures Act. A more detailed description of the bill follows.

Prohibit Use of State Funds for Union Discouragement

A person (meaning an individual, partnership, corporation, limited liability corporation, association, governmental entity, or other legal entity) would be prohibited from using state funds wholly or in part to interfere with or discourage unionization by its employees or the employees of any other employer. However, the bill does not limit the right of an employer or labor organization to engage in lawful activities relating to negotiation and enforcement of a collective bargaining agreement.

Recordkeeping Requirements

An individual or entity that receives state funds and who expends any funds to interfere with or discourage unionization would have to maintain accurate and complete records of all expenditures. The records would need to be sufficient to demonstrate whether state funds have been used for interference with or discouragement of unionization.

Quarterly Reporting Requirements

A person subject to recordkeeping requirements would be required to prepare and submit to DLEG a quarterly report that specifies each expenditure of state funds and each expenditure of funds used for the interference with or discouragement of unionization. The report would have to include a certification of the person, under oath, that state funds were not expended to interfere with or discourage unionization and would need to be filed within 30 days after the end of each calendar quarter. A person who provided false certification would be guilty of perjury.

Departmental Audit Authority and Compliance Requirements

The department could at any time, or in response to a credible complaint, audit the records of a person subject to the act's certification requirement to ensure compliance with the act. Under the bill, DLEG could, if it so determined, certify that a person has failed or refused to do the following: (1) comply with record keeping requirements, (2) comply with reporting requirements, or (3) failed to provide the department with access to records for an audit under the act. A person subject to certification would be ineligible to receive state funds until DLEG determines that the person was in full compliance.

Penalty for Unauthorized Expenditures

Under the bill, a person who knowingly authorizes an expenditure of state funds in violation of this act is liable to the state for civil damages equal to twice the amount of the expenditure, plus attorneys fees and costs. A taxpayer could bring a civil action (on behalf of the state) to recover civil damages. A taxpayer who prevails would be entitled to one-half the amount recovered, plus his or her attorney fees. A person adjudicated to be in violation of the improper use of state funds would be ineligible to receive state funds for a period of three years after the date the judgment had been entered.

Interfering With or Discouraging Unionization

The bill would define "interfere with or discourage unionization" to mean (1) a communication in any form that advocates, directly or by implication, that an employee should vote against unionization; (2) hiring or consulting persons to advise on means to deter unionization or impede a labor organization that represents employees from fulfilling its representation responsibilities; (3) holding meetings to influence employees to refrain from unionizing; and (4) planning or engaging in employee-supervisor activities to deter the lawful activities of a labor organization.

FISCAL IMPACT:

The bill should result in a slight increase in state expenditures due to additional DLEG compliance responsibilities. State revenue could also potentially increase due to the penalty provisions. The bill imposes civil damages, half of which would be paid to the state, without directing the revenue into any specific state fund. In these cases, it is assumed that a provision of the Management and Budget Act would apply and the revenue from the damages would be deposited into the state General Fund (MCL 18.1443). Thus, House Bill 4443 would increase the state General Fund by an indeterminate amount, depending upon how much revenue from civil damages the state collects under the bill's provisions.

By creating a new felony perjury offense, the bill would have an indeterminate fiscal impact on the state and local units of government. The bill could increase state and local correctional costs; any increase would depend on the numbers and severity of sentences imposed. The average costs of incarceration in a state prison is about $31,000 per prisoner annually, a figure that includes allocated portions of various fixed costs. The state's average cost of felony parole and probation supervision is about $2,000 per offender annually. Costs of any jail incarceration would be borne by the affected county and vary by jurisdiction.

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