

Legislative Analysis



PUBLIC EMPLOYEE PAYROLL DEDUCTIONS FOR UNION PACS & ELIMINATE ANNUAL CONSENT

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House Bills 4245 & 4284 as passed by the House

Sponsor: Rep. Fred Miller

1st Committee: Labor

2nd Committee: Ethics and Elections

Second Analysis (10-30-09)

BRIEF SUMMARY The bills allow public employee payroll deductions for donations to separate segregated funds of employees' collective bargaining representatives (customarily called political action committees), require written consent from the employees, and eliminate the annual signature requirement for a political action committee check-off for payroll deductions.

FISCAL IMPACT: House Bill 4284 would have no fiscal impact to the State of Michigan or local units of government. Because House Bill 4245 requires full compensation for the use of any public resources, the bill would have no significant impact on the State of Michigan.

THE APPARENT PROBLEM:

In Public Act 117 of 1994, extensive revisions were made to the Michigan Campaign Finance Act, including changes that modified the requirements for consent to payroll deductions to separate segregated funds established by a corporation or a labor organization, including adding the requirement for yearly written affirmative consent for automatic contributions. The secretary of state then issued emergency rules that specified what constitutes evidence of annual consent for payroll deduction. The validity of these new requirements and the emergency rules were litigated in *AFL-CIO v. Miller*. The emergency rules were struck down by the circuit court, and that decision was upheld by the Michigan Court of Appeals. While the case was pending, the secretary of state established permanent rules regarding consent for payroll deductions to separate segregated funds, and those rules took effect in December 1998.

While the Public Act 117 litigation was ongoing, a new amendment was added to the Michigan Campaign Finance Act--Section 57--embodied in Public Act 590 of 1996. That section was subsequently amended by Public Act 250 of 2001. In sum, Section 57 prohibits a public body from authorizing the use of funds, personnel, office space, computer hardware or software, property, stationery, postage, vehicles, equipment, supplies, or other public resources to make a contribution or expenditure or provide volunteer personal services that are excluded from the definition of "contribution" under the Michigan Campaign Finance Act. Penalties for violating the prohibition include fines and imprisonment.

As a result of the prohibition embodied in Section 57, the Michigan Education Association, on August 22, 2006, sought a declaratory ruling from Secretary of State Terri Lynn Land, as to three issues: (1) Could the Gull Lake School Public Schools continue to make and transmit to MEA-PAC the payroll deductions requested by MEA members through a properly completed, voluntary consent form? (2) Could the Gull Lake Public Schools, consistent with the provisions of the Michigan Campaign Finance Law, administer the payroll deductions to MEA-PAC if either the MEA or MEA-PAC pays the school district, in advance, for any costs associated with administering those payroll deductions? And finally, (3) What costs should be considered by the Gull Lake Public Schools in determining the costs attributable to administering the payroll deductions that are to be transmitted to the PAC?

On November 20, 2006, Secretary of State Land issued a declaratory ruling (after posting the request for declaratory ruling on the department's website for public comment). The declaratory ruling noted that a public body is prohibited from collecting and remitting contributions to a committee through its administration of a payroll deduction plan. The declaratory ruling also noted that while public bodies were prohibited from making such expenditures, corporations--both nonprofit and for-profit--were not prohibited from administering voluntary payroll deduction plans for political PACs. Further, the declaratory ruling noted that a violation could not be avoided by requiring the union to pay the anticipated costs before they were actually incurred.

In contrast to public employees, currently under the law the employees of corporations can voluntarily contribute to their collective bargaining representative through a payroll deduction, but unlike other payroll deductions--for example, payroll deductions made for car loans, home mortgages, or charitable contributions--the payroll deductions for Michigan political committees must be authorized annually with a signed employee authorization card. The annual signature requirement applies to both for-profit and non-profit businesses, as well as to labor organizations. According to testimony from a representative of the United Auto Workers, Michigan is the only state to require an annual signature requirement.

Legislation has been introduced to allow public employees to make voluntary payroll deductions to political PACs, and also to eliminate the requirement that all employees re-authorize their voluntary payroll deductions by signing authorization cards every year.

THE CONTENT OF THE BILLS:

The bills would amend two sections of the Michigan Campaign Finance Act to allow public employee payroll deductions for donations to union political action committees, and to eliminate the annual signature requirement for a political action committee check-off, for payroll deductions. House Bill 4284 is tie-barred to House Bill 4245, meaning it will not go into effect unless House Bill 4245 is also enacted into law.

House Bill 4245 (H-2)

The bill would allow a public employee, including but not limited to employees of public universities, to contribute to a separate segregated fund of the employee's collective bargaining representative by payroll deduction, provided that the collective bargaining representative provides full compensation for the value of the resources used, to the public body.

The Michigan Campaign Finance Act (MCL 169.257) prohibits a public body or an individual acting for a public body from using or authorizing the use of funds, personnel, office space, computer hardware or software, property, stationery, postage, vehicles, equipment, supplies, or other public resources to make a contribution or expenditure, or to provide volunteer personal services that are excluded from the definition of contribution under Section 4(3)(a) of the act.

However, the law also specifies that this prohibition does not apply in six instances: during the expression of views by an elected or appointed public official who has policy-making responsibilities; during the production or dissemination of factual information concerning issues relevant to the function of the public body; during the production or dissemination of debates, interviews, commentary, or information by a broadcasting station, newspaper, or magazine; during the use of a public facility if any candidate or committee has an equal opportunity to use the public facility; during the use of a public facility if that facility is primarily used as a family dwelling and is not used to conduct a fund-raising event; and when an elected or appointed public official is on his or her own personal time, and is expressing his or her own personal views, expending personal funds, or is providing personal volunteer services.

House Bill 4245 (H-2) would retain all of these exceptions. In addition, the bill would add a seventh exception: *"the use of public resources to permit a public employee, including, but not limited to, employees of public universities, to contribute to a separate segregated fund of the employee's collective bargaining representative by payroll deduction, provided that the collective bargaining representative provides full compensation for the value of the resources used, to the public body."*

House Bill 4284 (H-2, as amended on the House floor)

The Michigan Campaign Finance Act (MCL 169.255) allows a profit or a nonprofit corporation, a joint stock company, a domestic dependent sovereign, or a labor organization to solicit or obtain contributions for a separate segregated fund established under Section 55 of the act from an individual on an automatic basis, including but not limited to a payroll deduction plan, only if the individual who is contributing to the fund affirmatively consents to the contribution at least once in every calendar year. House Bill 4284 (H-1) would retain this provision, newly require that the consent be *in writing*, but delete the words *"at least once in every calendar year."*

In addition, the act now prohibits for-profit and nonprofit corporations, joint stock companies, domestic dependent sovereigns, and labor organizations from soliciting or obtaining contributions for a separate segregated fund on an automatic or passive basis

including, but not limited to, a payroll deduction plan or reverse check-off method. House Bill 4284 (H-2) would retain the prohibition concerning a passive basis including, but not limited to, a reverse check-off method, but remove the words "automatic" and "payroll deduction plan" from the prohibition.

ARGUMENTS:

For:

Those who support House Bill 4245 argue that the Michigan Campaign Finance Act should not prohibit public employees from making voluntary contributions from their paychecks to separate segregated funds of the employees' collective bargaining representative by payroll deduction, if the costs of doing so are reimbursed in advance. They argue that courts have customarily rejected the notion that a voluntary political contribution payroll deduction program inappropriately politicizes government employment. They note that private sector employees are allowed to make political contributions through payroll deduction, and they argue that public sector employees should have the same opportunities to participate in the political process as do their counterparts in the private sector.

For:

Proponents of House Bill 4284 note that Michigan is the only state in the union that requires annual signature cards to re-authorize voluntary payroll deductions for PAC contributions. They argue that the annual affirmative consent requirement is inefficient, costly, and time-consuming. They note that there is no need to annually authorize other voluntary payroll deduction--for example, auto loans, mortgages, charitable contributions. In the case of voluntary political deductions, however, the law requires that a signature card be filed each year, essentially forcing contributors to "re-declare" their support on an annual basis, even if no changes are made to an individual's voluntary contribution. In her written testimony to the Ethics and Elections Committee, Assistant Professor Jocelyn Benson of the Wayne State University Law School notes that "the requirement creates additional and unnecessary barriers for citizens who wish to become politically involved." She argues that "Eliminating the annual affirmative consent requirement will streamline the ability for citizens to make contributions while substantially reducing transaction costs for both the citizen and the recipients of contributions."

Against:

Those who oppose House Bill 4245 argue that the Michigan Campaign Finance Act does now and should continue to prohibit school districts from administering paycheck withdrawals for a union's "separate segregated fund" (more commonly referred to as a political action committee or PAC). As the Mackinac Center amicus curiae brief in *Michigan Education Association v. Michigan Secretary of State* notes, "On November 20, 2006, the secretary of state issued a declaratory ruling that school districts could not administer payroll deduction for separate segregated funds even if the union agreed to reimburse the district in advance for any costs." The brief continues, "a plain reading of the Michigan Campaign Finance Act shows that such paycheck withdrawals are illegal

and that this interpretation properly recognizes the government has no appropriate role in advancing partisan political ends."

Response:

The Michigan Education Association filed suit to reverse the secretary of state's declaratory ruling, and the trial court agreed on September 4, 2007. However, on August 29, 2008, the Michigan Court of Appeals reversed the trial court's decision. Currently that case rests with the Michigan Supreme Court.

In its amicus curiae brief in *Michigan Education Association v. Michigan Secretary of State*, the Michigan Chamber of Commerce argues that the U. S. Supreme Court has recently acted to uphold statutes like Section 57 of the Michigan Campaign Finance Act, when on February 24, 2009, it issued its decision in *Secretary of State v. Pocatello Education Association*.

POSITIONS:

The International Union, UAW supports the bills. (7-15-09)

The Michigan State AFL-CIO supports the bills. (7-15-09)

The Michigan Education Association supports the bills. (7-15-09)

The American Federation of Teachers-Michigan supports the bills. (7-15-09)

The Service Employees International Union supports the bills. (7-15-09)

The Michigan Nurses Association supports the bills. (7-15-09)

The Michigan Corrections Association supports the bills. (7-15-09)

DTE Energy supports House Bill 4284. (7-15-09)

Ford Motor Company supports House Bill 4284. (7-15-09)

The Detroit Regional Chamber of Commerce supports House Bill 4284. (7-15-09)

Dow Chemical supports House Bill 4284. (7-15-09)

Dow Corning Corporation supports House Bill 4284. (7-15-09)

AT&T supports House Bill 4284. (7-15-09)

The Michigan Credit Union League supports House Bills 4284 and 4997. (10-28-09)

The Michigan Bankers Association supports House Bill 4284. (7-15-09)

Frankenmuth Insurance Company supports House Bill 4284. (7-15-09)

Professor Jocelyn Benson supports House Bill 4284. (7-15-09)

ATU supports House Bills 4284 and 4245. (10-28-09)

IUOE #324 supports the bills. (10-28-09)

The Grand Rapids Chamber of Commerce supports House Bill 4284. (10-28-09)

The Secretary of State opposes House Bill 4245. (7-15-09)

The Michigan Chamber of Commerce opposes House Bill 4245. (7-15-09)

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.