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BILL ANALYSIS

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Senate Bill 34 (as enacted) **PUBLIC ACT 8 of 2023**
Sponsor: Senator Darrin Camilleri
Senate Committee: Labor
House Committee: Labor

Date Completed: 8-21-23

RATIONALE

Michigan adopted what is commonly referred to as "right-to-work" legislation under Public Acts (PAs) 348 and 349 of 2012. In summary, those PAs prohibited mandatory union fees for private and public employees, respectively. Before the enactment of PA 348 & 349, a collective bargaining agreement with a 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 still obliged to pay an agency fee.

Today, some people question whether PA 348 of 2012 – the Act which prohibits mandatory union fees for private employees – is necessary. 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 was suggested that the "right-to-work" laws be deleted.

CONTENT

Senate Bill 34 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.**

The bill will take effect 91 days after the Legislature adjourns sine die.

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.

MCL 423.1 et al.

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

According to testimony before the Senate Committee on Labor, peer employees in states with "right-to-work" laws make 3.1% less than in states without. There is also a big difference in the health benefits, retirement benefits, access to paid sick days, access to paid vacation days, and days off on holidays offered from union work and non-union work. These disparities are especially pronounced for women and workers of color. When unions are strong, they help counteract these disparate outcomes. Deleting "right-to-work" laws will likely strengthen the wages and benefits of workers employed by strengthening unions.

Supporting Argument

According to testimony before the Senate Committee on Labor, "right-to-work" laws were not historically developed to protect workers, but instead to do three things: 1) keep Black workers unemployed and relegated to the lowest paying jobs; 2) keep Black and White workers divided and fighting each other for the benefit of employers; and 3) promote White supremacy. "Right-to-work" laws were developed in Arkansas by an individual named Vance Muse as a tactic for the dismantling of minority and multiracial unionizing efforts, primarily the Southern Tenant Farmers Union. The morality of these laws was based in the Jim Crow governing philosophy. Due to the negative history of these laws and the anti-worker impact these laws still have today, "right-to-work" laws should be deleted.

Supporting Argument

According to testimony before the Senate Committee on Labor, "right-to-work" laws directly decrease the use of in-state firms in publicly funded projects because larger, non-union construction firms can often afford to undercut local, union firms during the bidding process. Many large, non-union construction firms that exist outside of Michigan are contracted when labor costs are low, resulting in an increase in money that flows outside the State when "right-to-work" laws are adopted. Deleting "right-to-work" laws will keep tax dollars in Michigan.

Supporting Argument

"Right-to-work" laws put those who follow the law at a competitive disadvantage. According to testimony before the Senate Committee on Labor, there are issues with enforcement that incentivize illegal behavior from non-union contractors. Many firms misclassify workers as independent contractors when they are not. The presence of this illegal behavior means that "right-to-work" laws incentivize race to the bottom strategies - strategies where states and municipalities attempt to undercut each other's rules and regulations to attract economic

investment at the cost of product quality and labor standards. Therefore, given the impact on labor standards that "right-to-work" laws incentivize, these laws should be deleted.

Supporting Argument
Union and non-union contracts are very different. According to testimony before the Senate Committee on Labor, heightened attention to safety and work standards aren't often present in non-union contracts. The materials that non-union contracts use are often lower grade. The focus for non-union contracts is often on getting the job done quickly instead of correctly. Given that "right-to-work" laws make it easier for non-union contracts to comply with these lower standards, "right-to-work" laws should be deleted.

Supporting Argument
"Right-to-work" laws enable individuals who do not pay dues to benefit from a collective bargaining agreement. These individuals do not pay for the privileges they receive as a result of union efforts undertaken on their behalf. Therefore, it is fairer that "right-to-work" laws be deleted so that union employees contribute to the institution which provides them with benefits.

Opposing Argument
"Right-to-work" laws are about the freedom of an individual to decide whether to pay union dues with his or her own wages. The personal choice to pay is an important value that the State should uphold in its labor laws. Therefore, "right-to-work" laws should not have been deleted.

Response: Individuals also have the freedom to seek non-union employment. According to testimony before the Senate Committee on Labor, union employment in Michigan is in significantly higher demand, so the chance of an individual who did not want to pay union dues finding a place of employment with a non-union firm is good.

Opposing Argument
"Right-to-work" laws improve the State's economic competitiveness and can attract business investment in Michigan. Reportedly, data from the Bureau of Labor Statistics says that states with "right-to-work" laws gained 1.6 million jobs in the last nine years while states without lost 800,000 jobs. Repealing "right-to-work" laws now would create a 'whiplash effect' that would provide for inconsistency and uncertainty in our legal system and could contribute to a decrease in business investment in Michigan. Deleting "right-to-work" laws will hurt the State's economy because of trends toward globalization – the increasing interdependence and competition of economies internationally. "Right-to-work" laws are necessary for those who wish to compete with other states and nation-states worldwide and participate in a global economy.

Opposing Argument
With "right-to-work" laws, unions are incentivized to provide a good service. Instead of demanding union fees from every employee, the union must make sure that the services it provides persuade members of its workplace to pay dues. Deleting "right-to-work" laws means that unions have less of an incentive to provide adequate services to their employees because they are already collecting union fees from the employees that participate in the workplace they represent.

Opposing Argument
Unions often participate in political speech. Forcing an individual to pay agency fees for a partisan organization is not conscionable.

Response: Union members who object to full membership may continue as 'core' members and pay only that share of dues used directly for representation, such as collective bargaining and contract administration. Known as objectors, they are no longer full members

but are still protected by the union contract. Unions are obligated to tell all covered employees about this option, which is known as their 'Beck Right'.[1] In other words, an employee may exercise their 'Beck Right' to opt-out of any funds collected for political speech while still being represented by the union and union contract.[2]

Legislative Analyst: Alex Krabill

FISCAL IMPACT

The bill will result in the elimination of civil fines of $500 for violations of statutory provisions that the bill eliminates. 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 depends on the number of violations that are levied under current law.

Fiscal Analyst: Joe Carrasco, Jr.

[1] National Labor Relations Board, *Employer/Union Rights and Obligations*, 2023.
[2] 487 U.S. 735 (1988)

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