

Legislative Analysis



ANNUAL WRITTEN AUTHORIZATION FOR DEDUCTION OF CERTAIN UNION DUES

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House Bill 5025 (Substitute H-1)

Sponsor: Rep. Earl Poleski

Committee: Oversight, Reform, and Ethics

First Analysis (2-22-12)

BRIEF SUMMARY: The bill would require the annual written authorization of the employee before an employer could deduct from an employee's wages any portion of union membership dues, or other fees, assessments, or contributions that are not "directly germane" to the labor organization's collective bargaining or contract administration functions. Deductions for collective bargaining and contract administration purposes would not require annual authorization.

FISCAL IMPACT: The bill would impose some additional costs on school districts relative to the filing and retention of the annual written consent to deduct union dues from an employee's paycheck; and may have a minor fiscal impact on the state's Wage & Hour Division inasmuch as the proposed amendment requiring employees to give written consent authorizing deductions annually could result in violations, and thus additional investigation and enforcement activities by the Wage and Hour Division. See *Fiscal Information* below.

THE APPARENT PROBLEM:

The labor organizations selected by private and public sector employees to represent them during collective bargaining with their employers collect annual dues. The dues give the labor organization the funds to negotiate for wages, benefits, and workplace safety, on behalf of their members. In many workplaces, if employers agree, union dues are automatically deducted from an employee's wages and deposited into the account of the labor organization, with the written consent of the employee. The employee's consent is given once, not annually, but can be revoked in writing at any time. Automatic payroll deduction to fund collective bargaining is considered an efficient arrangement both for personnel departments and workers.

Often, although not always, an employee's payroll deduction authorization form is accompanied by a separate card that authorizes the employer to reduce wages a small amount each week, if the employee wants to make a voluntary contribution to the union for political purposes. (See *Background Information* for examples.) Some believe, particularly in the case of public sector unions, where workers are paid out tax revenues, that payroll deductions should not be made for political purposes without annual consent from employees. Legislation has been introduced to address this issue.

THE CONTENT OF THE BILL:

The bill would require the annual written authorization of the employee before an employer could deduct from the employee's wages any portion of union membership dues, or other fees, assessments, or contributions that are used for purposes that are not directly germane to the labor organization's collective bargaining or contract administration functions. Deductions for collective bargaining and contract administration purposes would not require annual authorization.

The bill is an amendment to Public Act 390 of 1978, described as an act to regulate the time and manner of payment of wages and fringe benefits to employees, to prescribe rights and responsibilities of employers and employees, to provide for settlement of disputes regarding wages and fringe benefits, and to prescribe the powers and duties of the relevant state agencies, among other things.

The term "employer" in the act applies to private and public employers. It includes state government, cities, counties, villages, townships, school districts, intermediate school districts, institutions of higher education, as well as individuals, sole proprietorships, partnerships, associations, and corporations.

Currently under the law, an employer must have the full, free, and written consent of an employee, obtained without intimidation or fear of discharge for refusal to permit the deduction, to deduct, directly or indirectly, any amount of the employee's wages, except for those deductions required or expressly permitted by law or by a collective bargaining agreement.

The bill specifies that its provisions "shall not be construed to impair a labor organization's ability to bargain for the right to collect an agency fee or fair share contribution from an employee who is not a member of the labor organization, subject to other provisions of law."

MCL 408.477

BACKGROUND INFORMATION:

During committee testimony, a union official circulated an image of the card used by the Teamsters. Their voter education program is called Michigan D.R.I.V.E, which stands for "Democrat Republican Independent Voter Education." Their payroll deduction card reads in part: *"I subscribe, freely and voluntarily, the sum indicated below each week to DRIVE with the understanding that this voluntary contribution may be used by DRIVE for political purposes, including contributions to support candidates for local, state and federal offices. I understand my right to refuse to contribute without reprisal and that the amounts below serve merely as suggestions. I am free to subscribe more, less, or nothing, without benefit or disadvantage. I further hereby authorize and request my employer to deduct from my earnings the sum indicated below each week to be remitted to Michigan DRIVE. I reserve the right in accordance with the applicable state or*

federal laws to revoke this voluntary authorization at any time by giving written notice of such revocation to Michigan DRIVE, in accordance with such laws or otherwise." The card also notes that a copy of the Michigan DRIVE report is filed with and available from the Michigan Secretary of State, Elections Division.

To review an image of a sample political contribution deduction card used by some local unions that are part of the Communication Workers of America (an AFL-CIO affiliate), visit this link:

<http://www.cwalocal7803.org/resources/PayrollDeductionCard.pdf>

FISCAL INFORMATION:

House Bill 5025 may have a minor fiscal impact on the state's Wage & Hour Division, in the Department of Licensing and Regulatory Affairs, inasmuch as the proposed amendment requiring employees to give written consent authorizing deductions annually could result in violations of the proposed amendment and thus additional investigation and enforcement activities of the Wage and Hour Division.

House Bill 5025 would impose some additional costs on school districts relative to the filing and retention of the annual written consent to deduct union dues from an employee's paycheck. Currently, the process for payroll deductions for union dues and service fees is largely automated, so there is very little work school districts must go through on a regular basis. However, to the extent that the written consent is not timely filed (e.g. prior to the start of a district's fiscal year, the start of the school year, or the receipt of the employee's first paycheck), school districts could expend additional staff time and resources to ensure that the union dues are properly withheld, including, potentially, the collection of any "past due" union dues. The cost of these additional expenses would be offset in those school districts where a collective bargaining agreement explicitly provides that the union is to reimburse (at least in part) the school district for administering a payroll deduction.

ARGUMENTS:

For:

Proponents of this legislation offer a number of arguments in its support. They say that the legislation is needed to empower Michigan union workers by requiring their annual consent before the portion of their union dues that are "not germane" to collective bargaining are automatically taken out of their paycheck. They say that the legislation "allows workers to hold union management accountable for how they are spending workers' hard-earned dollars." Proponents argue that "union leadership will work that much harder for their membership if they realize that workers have an ongoing choice in paying dues." As one proponent notes, the bill "gives the employee some chance to hold their union accountable, in the nature of consumer protection."

Supporters argue that "political activities" generally fall into the category of activities not germane to collective bargaining. Proponents note that while this bill applies to workers

in both the public and private sectors, it can particularly serve to increase accountability for public workers, and especially for school teachers. They say that testimony on legislation introduced earlier in the legislative session to prohibit a public employee or bargaining representative from using public resources for (among other things) political activities, it was revealed that union representatives were participating in political activities not germane to collective bargaining. For example, legislators learned that the Michigan Education Association issued a letter to all local MEA presidents and members in mid-March 2011. That letter alerted MEA members that "we are under assault in Lansing," and it noted that dozens of bills were being considered on a daily basis at the Capitol that "are outright attacks on our students, our members, our communities and our future." After describing these attacks, the letter then advised MEA members, "To stop these assaults, we must stand up!" and it warned them that "we must take action accordingly."

Proponents of this legislation also claim that some school districts do not have policies in place that prohibit political activity during actual-duty time, a prohibition that exists, for example, for all state civil servants in Civil Service Rule 1-12.6. This bill will help school workers, and others, know what their union representatives and some fellow teachers are up to, and if they chose to do so, allow them to refuse to authorize any portion of their union dues for political activities that are not germane to collective bargaining. The legislation gives workers an annual opportunity to review the political involvement of their bargaining representatives, and decide each year whether they agree or disagree with the positions the union has taken, ostensibly on their behalf. The bill gives workers the chance to more easily opt out of participation, if they disagree.

The bill's supporters also argue that, while collective bargaining for workers in both the public and private sectors is allowed in Michigan, both businesses and service agencies should remain politically neutral in their workers' decisions about political participation. Politics should be kept out of the workplace. Some proponents further argue that Michigan should go beyond this bill and join the State of Indiana in passing legislation that allows workers the right to work in a non-union job, free from the pressure of fellow workers to form a union and pursue a common political agenda.

Against:

Opponents of the bill say that it imposes a great deal of paperwork, time, and effort on a union, when members already have the opportunity to opt out of political participation. In effect, the bill requires labor and management to micro-manage workers' lives, since union representatives would have to repeatedly double check their members' decisions, as if doubting the workers' capacity to make a principled decision and to stick with it. As one opponent said, "This legislation is designed to place more bureaucratic regulations on good Michigan employers."

Opponents of the bill say the bill is an overreaction to the March 2011 Michigan Education Action Alert, issued to all MEA members. It is an attempt to impose unnecessary punitive action on unions as a way of striking out against critics of proposed legislation. They point out that the MEA is a member-driven organization, and that in

order for the leadership to gauge the feelings of its members, it must conduct surveys, allowing members to express their views on a range of actions and responses to state education policy. They say the education professionals who respond then expect that their opinions will be conveyed to lawmakers, in order to guide elected officials when they formulate education policy. That way, lawmakers can be better informed about the positions of a significant and knowledgeable segment of the electorate.

The introduction and passage of this kind of legislation creates, if anything, a more divisive and hostile relationship between employees and employers, and so rather than contribute to labor peace, it risks producing an increase in labor-management strife. Combined with other anti-worker and anti-union legislation during the current legislative session, this bill will work against the kind of cooperative action that is needed in the public sector to find ways to address problems facing schools and local governments in a time of tight budgets.

Opponents of the bill, and other related legislation, find it bewildering. They see this bill, combined with similar legislation, as an unnecessary attack on the collective bargaining power of unions and on the political power of union workers. It is an effort to deprive workers of a voice and contribute to the dismantling of collective bargaining.

They argue that this employment relations strategy is flawed, because Michigan workers in both the public and private sectors have over the past decade of economic uncertainty demonstrated their willingness to lower their pay and benefits, and make other concessions, in an effort to make Michigan companies and state and local government agencies successful. They further argue that public sector unions are not the problem; they are often the beginning of the solution. They note that Michigan public sector employees have demonstrated during Michigan's decade-long economic downturn that they can partner with public sector managers to solve budget problems. They argue that solutions to social problems (in areas such as health, safety, and education) will not be possible if the atmosphere in a community is brutally divisive and bitterly hostile.

POSITIONS:

The Michigan Chamber of Commerce supports the bill. (1-17-12)

The Midland Area Chamber of Commerce supports the bill. (1-31-12)

Associated Builders and Contractors support the bill. (1-31-12)

The NFIB supports the bill. (1-31-12)

The Michigan Retailers Association supports the bill. (1-17-12)

The Michigan Laborers' District Council opposes the bill. (1-31-12)

The Michigan Chapter, National Electrical Contractors Association opposes the bill. (1-31-12)

United Auto Workers Retirees, Fight for Your Rights, oppose the bill. (1-31-12)

The Amalgamated Transit Union opposes the bill. (1-31-12)

The United Auto Workers oppose the bill. (1-31-12)

The Michigan Association of School Boards opposes the bill. (1-31-12)

IBEW Local 58 opposes the bill. (1-31-12)

UAW Local 6000 opposes the bill. (1-31-12)

IUOE Local 324 opposes the bill. (1-31-12)

Progressive Democrats of Monroe oppose the bill. (1-31-12)

The Michigan Corrections Officers (MCO) oppose the bill. (1-31-12)

Michigan Building and Construction Trades oppose the bill. (1-31-12)

The Michigan Nurses Association oppose the bill. (1-31-12)

Michigan Professional Fire Fighters oppose the bill. (1-17-12)

The Michigan AFL-CIO opposes the bill. (1-17-12)

The MEA/NEA Local 1 and the 6-E Coordinating Council oppose the bill. (1-17-12)

The Michigan Laborers District Council opposes the bill. (1-17-12)

AFSCME Council 25 opposes the bill. (1-17-12)

Macomb Intermediate School District opposes the bill. (1-17-12)

Michigan Elementary and Middle School Principals oppose the bill. (1-17-12)

The Middle Cities Education Association opposes the bill. (1-17-12)

The Calhoun Intermediate School District opposes the bill. (1-17-12)

The Genesee Intermediate School District opposes the bill. (1-17-12)

Wayne RESA opposes the bill. (1-17-12)

Kalamazoo, Muskegon, Ottawa Intermediate School Districts oppose the bill. (1-17-12)

The Michigan Association of Police Organizations opposes the bill. (1-17-12)

The Deputy Sheriffs Association opposes the bill, noting that it has local and statewide contractual implications. (1-17-12)

The Teamsters oppose the bill. (1-17-12)

Police Officers Association of Michigan (POAM) opposes the bill. (1-17-12)

The Michigan State Employees Association opposes the bill. (1-17-12)

The International Brotherhood of Electrical Workers opposes the bill. (1-17-12)

The Utility Workers Union of America opposes the bill. (1-24-12)

The Michigan AAUP opposes the bill. (1-24-12)

The Michigan Municipal League opposes the bill. (1-24-12)

Concerned Citizens of Michigan opposes the bill. (1-24-12)

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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.