



Senate Fiscal Agency  
P.O. Box 30036  
Lansing, Michigan 48909-7536



Telephone: (517) 373-5383  
Fax: (517) 373-1986

House Bill 4004 (Substitute H-6 as passed by the House)  
House Bill 4005 (Substitute H-2 as passed by the House)  
Sponsor: Representative Regina Weiss  
House Committee: Labor  
Senate 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 requiring financial support to a bargaining unit as a condition of employment. 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. Each bill also would appropriate \$1.0 million to the Department of Labor and Economic Opportunity (LEO) for their implementation.

House Bill 4004 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.

Each bill also includes a \$1.0 million fiscal year (FY) 2023-24 appropriation to LEO for implementation costs related to the bill. It is not clear what the actual amount of these costs would be, or how much, if any, of this appropriation would be spent.

MCL 423.209 et al. (H.B. 4004)  
423.1 et al. (H.B. 4005)

Legislative Analyst: Tyler P. VanHuyse  
Fiscal Analyst: Bruce Baker  
Joe Carrasco, Jr.

## **CONTENT**

**House Bill 4004 (H-6)** 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.
- Prohibit a local government from limiting or prohibiting an agreement that required public employees in a bargaining unit, as a condition of continued employment, to pay to a bargaining representative membership dues or service fees.
- Appropriate \$1.0 million to the Department of Labor and Economic Opportunity (LEO) for FY 2023-2024 for the bill's implementation.

**House Bill 4005 (H-2)** would amend 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.

### **House Bill 4004 (H-6)**

#### **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.

The bill specifies that a public employer and a bargaining representative could enter into a collective bargaining agreement that required all public employees in the bargaining unit to share equally in the financial support of the bargaining representative. It specifies that the Act would not, and a law or policy of a local government could not, prohibit or limit an agreement that required public employees in the bargaining unit, as a condition of continued employment, to pay to the bargaining representative membership dues or service fees. These provisions would become effective immediately upon, and apply to the extent permitted by, either of the following:

- A decision or ruling in the United States Supreme Court that reversed or limited, in whole or in part, *Jannus v AFSCME* (see **BACKGROUND**).
- The ratification of an amendment to the United States Constitution that restored the ability to require, as a condition of employment, a public employee who was not a member of a bargaining representative to pay, under any circumstances, fees, including agency fees, to the bargaining representative.

#### 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.)

### Appropriations

Under the bill, for FY 2023-2024, \$1.0 million would be appropriated to LEO to be spent to do all the following regarding the bill's provisions:

- Respond to public inquiries regarding the bill.
- Provide LEO with sufficient staff and other resources to implement the bill.
- Inform public employers, public employees, and bargaining representatives about changes to their rights and responsibilities under the bill.
- Any other purposes that the Director of LEO determined in the Director's sole discretion were necessary to implement the bill.

### **House Bill 4005 (H-2)**

#### 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 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 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 this provision is liable for a civil fine of up to \$500. The bill would delete these provisions.

### Agreement requiring Payment of Dues

Under the bill, an employer and a labor organization could 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. This bill specifies that the Act would not, and a law or policy of a local government could not, prohibit or limit an agreement that required all bargaining unit employees, as a condition of continued employment, to pay to the labor organization membership dues or service fees.

### Appropriations

Under the bill, for FY 2023-2024, \$1.0 million would be appropriated to LEO to be expended to do all the following regarding the bill's provisions:

- Respond to public inquiries regarding the bill.
- Provide LEO with sufficient staff and other resources to implement the bill.
- Inform public employers, public employees, and bargaining representatives about changes to their rights and responsibilities under the bill.
- Any other purposes that the Director of LEO determined in the Director's sole discretion were necessary to implement the bill.

### **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.