

REPEAL PUBLIC SECTOR RIGHT-TO-WORK LAW

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House Bill 4004 as enrolled
Sponsor: Rep. Regina Weiss
House Committee: Labor
Senate Committee: Labor
Complete to 3-22-23

Analysis available at
<http://www.legislature.mi.gov>

(Enacted as Public Act 9 of 2023)

SUMMARY:

House Bill 4004 would amend 1947 PA 336, the public employment relations act (PERA), to remove provisions added to the act in 2012 commonly known as the “Right to Work” legislation pertaining to public employees. Right-to-work laws generally provide that an employee cannot be legally compelled to pay dues to a union in order to be covered under their workplace’s collective bargaining agreement.

Currently, under PERA, most public employees cannot be required to pay dues, fees, or other charges to a labor organization in order to obtain or continue their employment.¹ Employees also cannot be required to leave, enter, or stay in a union. Violations are punishable by a \$500 fine.

Public employees are also granted the explicit right to refrain from organizing or joining labor organizations and from participating in collective bargaining.

House Bill 4004 would remove the above provisions. Instead, a new provision would provide that Michigan or a local law (under PERA or otherwise) does not prevent a public employer from entering into an agreement with a designated union representative that requires all other employees represented by the union to pay a service fee equivalent to the amount that union members may be required to pay in dues as a condition of employment. If such a requirement is in place, the bill would state that it is the public policy of the state of Michigan that the stability and effectiveness of public sector labor relations require employees covered by a union to fairly share in the financial support of that union by paying the fee.

The bill also includes a provision stating that an agreement requiring employees to pay the bargaining representative dues or service fees would become effective upon either a ruling by the United States Supreme Court that reverses or limits the 2018 *Janus v AFSCME* decision (see **Background**, below) or the ratification an amendment to the United States Constitution that restores the ability to require a public employee who is not a member of a bargaining representative to pay fees to the representative as a condition of employment.

¹ Public police and fire department employees, state police troopers and sergeants, or any individual seeking to become employed in those professions are exempted.

The bill would appropriate \$1.0 million to the Department of Labor and Economic Opportunity (LEO) for the 2022-23 fiscal year to do all of the following:

- Respond to public inquiries regarding the changes made to PERA by the bill.
- Provide the LEO Employment Relations Commission with sufficient staff and other resources for implementation.
- Inform public employers, public employees, and bargaining representatives about changes to their rights and responsibilities.
- Any other purpose the director of LEO determines necessary for implementation of the bill.

(This appropriation would have the effect of making the bill immune from referendum under section 9 of Article II of the state constitution.)

Finally, the bill would remove obsolete provisions pertaining to collective bargaining for public school employees in schools that implemented redesign plans.²

The bill would go into effect 90 days after enactment.

MCL 423.209 et seq.

BACKGROUND AND BRIEF DISCUSSION:

In 2012, Michigan became the twenty-fourth state to enact what is commonly called right-to-work legislation with the passage of 2012 PA 348 and 2012 PA 349, which prohibited mandatory union fees for private and public employees, respectively. House Bill 4004 would reverse the changes made to PERA by 2012 PA 349.

Opponents of right-to-work laws argue that the laws create a free-rider problem and the resulting financial impact on unions has reduced their ability to provide services, while supporters of right-to-work laws argue that they foster economic growth and job creation while allowing employees to opt out of supporting unions that do not align with their interests. Twenty-seven states and Guam have adopted right-to-work laws, the most recent being Kentucky in 2017.³

In 2018, the United States Supreme Court ruled in *Janus v AFSCME* that requiring public employees to pay fees to cover union costs was a violation of the First Amendment.⁴ Although the *Janus* ruling would take precedence over state law and House Bill 4004 would thus be unenforceable, supporters of the bill have stated that its provisions would serve as a placeholder should *Janus* be overturned.⁵

² Section 1280c of the Revised School Code, which governed the identification of the lowest achieving 5% of public schools and the implementation of redesign plans, was repealed in 2018.

³ https://ballotpedia.org/Right-to-work_laws.

⁴ <https://www.scotusblog.com/case-files/cases/janus-v-american-federation-state-county-municipal-employees-council-31/>

⁵ <https://www.detroitnews.com/story/business/2023/01/17/repealing-right-to-work-for-public-sector-unions-conflicts-with-court-ruling/6981220007/>

FISCAL IMPACT:

The bill would have no immediate fiscal impact due to the applicability of *Janus* on public employee unions as described above.

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