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BILL ANALYSIS



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Senate Bill 116 (Substitute S-3 as passed by the Senate)
Sponsor: Senator Arlan Meekhof
Committee: Economic Development

(enacted version)

Date Completed: 12-10-12

CONTENT

The bill would amend Public Act 176 of 1939, which governs private labor relations, to do the following:

- **Permit employees to engage in, or refrain from, collective bargaining activities.**
- **Prohibit an individual from being required to engage in or refrain from certain activities (such as joining or paying dues to a labor organization) as a condition of employment.**
- **Prescribe a \$500 maximum civil fine for a violation of that prohibition, and allow a person injured by a violation to bring a civil action for damages, injunctive relief, or both.**
- **Give the Court of Appeals exclusive jurisdiction over an action challenging the validity of this prohibition.**
- **Prohibit a person from forcing or attempting to force anyone to engage in or refrain from certain activities (such as joining or supporting a labor organization); and prescribe a \$500 maximum civil fine for a violation.**
- **Delete the current provision making it a misdemeanor to force someone to join a labor organization or refrain from working.**
- **Appropriate \$1.0 million to the Department of Licensing and Regulatory Affairs in fiscal year 2012-13 for implementation of the amendments.**

Organizing & Collective Bargaining

The Act states that it is lawful for employees to organize together or form, join, or assist in labor organization, engage in lawful concerted activities for the purpose of collective negotiation or bargaining or other mutual aid and protection, or negotiate or bargain collectively with their employers through representatives of their own choosing.

The bill, instead, would permit employees to engage in those activities or to refrain from any or all of them.

Condition-of-Employment Prohibition

The bill would prohibit an individual from being required as a condition of obtaining or continuing employment to do any of the following:

- Refrain or resign from membership in, voluntary affiliation with, or voluntary financial support of a labor organization.

- Become or remain a member of a labor organization.
- Pay any dues, fees, assessments, or other charges or expenses of any kind or amount or provide anything of value to a labor organization.
- Pay to any charitable organization or third party an amount that was 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.

An agreement, contract, understanding, or practice between or involving an employer and a labor organization that violated this prohibition would be unlawful and unenforceable. This would apply only to an agreement, contract, understanding, or practice that would take effect or be extended or renewed after the bill's effective date.

These provisions would have to be implemented to the maximum extent permitted by the U.S. Constitution and Federal law.

The Court of Appeals would have exclusive original jurisdiction over any action challenging the validity of these provisions. The Court would have to hear the action in an expedited manner.

Civil Fine & Remedy

A person who violated the condition-of-employment prohibition would be liable for a civil fine of up to \$500. The fine would have to be submitted to the State Treasurer for deposit in the State's General Fund.

Except for actions required to be brought in the Court of Appeals, a person who suffered an injury as a result of a violation or threatened violation of the prohibition could bring a civil action for damages, injunctive relief, or both. A court also could award court costs and reasonable attorney fees to a prevailing plaintiff. These remedies would be independent of and in addition to other penalties and remedies prescribed by the Act.

Unlawful Force, Intimidation, or Compulsion

Currently, it is a misdemeanor for an employee or other person to force or attempt to force anyone to become or remain a member of a labor organization, or to force or attempt to force anyone to refrain from engaging in employment.

The bill, instead, would prohibit an employee or other person by force, intimidation, or unlawful threats, from compelling or attempting to compel anyone to do any of 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 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 would be 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 violated this prohibition would be liable for a civil fine of up to \$500. The fine would have to be submitted to the State Treasurer for deposit in the State's General Fund.

Appropriation

For fiscal year 2012-13, the bill would appropriate \$1.0 million to the Department of Licensing and Regulatory Affairs to be spent to do all of the following:

- Respond to public inquiries regarding the bill.
- Provide the Michigan Employment Relations Commission with sufficient staff and other resources to implement the bill.
- Inform employers, employees, and labor organizations about their rights and responsibilities under the bill.

The appropriation also could be spent for any other purposes that the Department Director determined necessary to implement the bill.

Employer Right to Recognize Union

The Act provides that nothing in it may be construed to interfere with the right of an employer to enter into an all-union agreement with one labor organization or more than one labor organization established among the employer's employees and recognized by the employer, by consent, as the representative or representatives of a majority of the employees. The bill would delete this provision.

Definitions

The Act's definition "employer" excludes the State and any political subdivisions of the State, among others. The bill also would exclude any entity subject to Public Act 336 of 1947 (the public employment relations Act, which authorizes public employees to form labor unions, and governs collective bargaining between public employers and representatives of their employees).

Public Act 176 defines "employee" as an individual, partnership, association, corporation, business trust, or labor organization. The bill would include any other private entity.

Declaration of Policy

The Act states, "It is hereby declared as the public policy of this state that the best interests of the people of the state are served by the prevention or prompt settlement of labor strikes...". The bill, instead, would declare as public policy that the best interests of the people "are served by protecting their right to work in a manner consistent with section 14(b) of the national labor relations act..., and preventing or promptly setting labor disputes...".

(Section 14(b) of the National Labor Relations Act provides that it is not to be construed as authorizing the execution or application of agreements requiring membership in a labor organization as a condition of employment in any state in which that execution or application is prohibited by state law.)

Severability

Under the bill, if Public Act 176 or any part of it were found to be in conflict with the State Constitution, the U.S. Constitution, or Federal law, the Act would have to be implemented to the maximum extent permitted by the State Constitution, the U.S. Constitution, and Federal law. Any provision held invalid or inoperative would be severable from the remaining portions of the Act.

MCL 423.1 et al.

Legislative Analyst: Suzanne Lowe

FISCAL IMPACT

The bill would have an indeterminate fiscal impact on State and local government.

Since State and local governments contract with private vendors for the acquisition of various products and services, future changes to private labor contracts could affect the price at which State and local governments are able to obtain those products and services. At this time, it is impossible to quantify what, if any, impact this could have on the finances of State and local government.

The bill would establish a \$500 maximum civil fine for a person who violated a prohibition under the bill. It is unknown how many people would commit a violation, but revenue from the fines would be credited to the General Fund.

The bill also includes a \$1.0 million fiscal year 2012-13 appropriation to the Department of Licensing and Regulatory Affairs for public inquiries, staffing, the provision of information, and other activities 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.

Fiscal Analyst: Josh Sefton

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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.