

SENATE BILL REPORT

SB 5623

As Reported by Senate Committee On:
Labor & Commerce, February 20, 2019

Title: An act relating to strengthening the rights of workers through collective bargaining by addressing authorizations and revocations, certifications, and the authority to deduct and accept union dues and fees.

Brief Description: Strengthening the rights of workers through collective bargaining by addressing authorizations and revocations, certifications, and the authority to deduct and accept union dues and fees.

Sponsors: Senators Van De Wege, Das, Hunt, Salomon, Keiser, Saldaña, Conway and Hasegawa.

Brief History:

Committee Activity: Labor & Commerce: 2/05/19, 2/20/19 [DPS, DNP].

Brief Summary of First Substitute Bill

- Provides that public employers and employee organizations are not liable for requiring, deducting, receiving, or retaining agency or fair share fees from public employees if the fees were permitted at the time under state law and were paid before June 27, 2018.
- Removes provisions in state law authorizing union security clauses in collective bargaining agreements.
- Provides procedures for authorizing deducting union dues from an employee's pay and for the revocation of such authorization.
- Modifies the showing of interest required for certification of an exclusive bargaining representative by cross-check for certain public employees.

SENATE COMMITTEE ON LABOR & COMMERCE

Majority Report: That Substitute Senate Bill No. 5623 be substituted therefor, and the substitute bill do pass.

Signed by Senators Keiser, Chair; Conway, Vice Chair; Saldaña and Wellman.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Minority Report: Do not pass.

Signed by Senators King, Ranking Member; Walsh.

Staff: Jarrett Sacks (786-7448)

Background: Public Employees' Collective Bargaining Act. The Public Employees' Collective Bargaining Act (PECBA) provides for collective bargaining by counties, cities, other political subdivisions, and certain state employees, such as commissioned officers of the State Patrol. PECBA also provides for collective bargaining between the Governor and certain non-state employee groups such as family child care providers, adult family home providers, individual providers of home care services, and language access providers. These groups are state employees solely for the purpose of collective bargaining.

Union Security Clauses. A union security provision requires employees to maintain union membership or pay union dues or fees as a condition of continued employment. One type of union security provision is an agency shop agreement, where the employer may hire union or non-union employees, and the employees do not need to join the union. However, non-union member employees must pay a fee to cover representation-related costs. This fee is known as an agency shop fee or agency fee.

In 2018, in *Janus v. American Federation of State, County, and Municipal Employees*, the United States Supreme Court held that, for public employers, requiring non-union member employees to pay agency fees violated the constitution.

Dues Deduction. Under state collective bargaining laws, if a collective bargaining agreement contains an authorized union security provision, the employer must enforce the agreement by deducting the dues required for membership in the exclusive bargaining representative, or the equivalent fee for nonmembers, from the employee's pay and transmitting that money to the exclusive bargaining representative.

If the collective bargaining agreement requires deductions not subject to the union security provision, written authorization from the employee is required before the employer may make the deduction from the employee's pay. If a collective bargaining agreement does not contain a union security provision, written authorization from the employee is required before the employer may deduct union dues from the employee's pay.

Certifying Union Representation. A union files a petition on behalf of the employees it wants to represent. A showing of interest must be filed with all petitions, which requires signed and dated cards from at least 30 percent of employees in the proposed bargaining unit stating the desired outcome of the petition. If a petition is supported by 30 percent of employees in the proposed bargaining unit, an election or cross-check is held.

A cross-check, where showing of interest cards are compared to employment records, is conducted if the petitioning union submits showing of interest cards from at least 70 percent of the employees in the proposed bargaining unit in favor of the petition, or at least 50 percent for state civil service employees and certain higher education employees. Certificated school district employees and faculty of community and technical colleges cannot organize by cross-check.

Summary of Bill (First Substitute): Post-Janus Liability. Public employers and employee organizations are not liable for, and have a complete defense to, claims or actions for requiring, deducting, receiving, or retaining agency or fair share fees from public employees if the fees were permitted at the time under state law and were paid before June 27, 2018. The bar on claims applies to all claims pending on the effective date of the bill and to claims filed on or after the effective date of the bill.

Union Security Clauses. Provisions in state law authorizing union security clauses are removed.

Dues Deduction and Revocation. An employee's written, electronic, or recorded voice authorization to have the employer deduct membership dues from the employee's salary must be made by the employee to the exclusive bargaining representative. The employee's authorization remains in effect until expressly revoked by the employee.

An employee's request to revoke authorization for payroll deductions must be in writing and submitted by the employee to the exclusive bargaining representative. After the employer receives confirmation from the exclusive bargaining representative that the employee has revoked the authorization, the employer must end the deductions effective on the first payroll after receipt of the confirmation. The employer must rely on information provided by the exclusive bargaining representative regarding the authorization and revocation of deductions.

An exclusive bargaining representative of individual providers may designate a third-party entity to act as the individual provider's agent in receiving payments from the state, so long as the individual provider has entered into an agency agreement with a third party for the purposes of deducting and remitting payments to the exclusive bargaining representative.

Public employers and employee organizations are not liable for requiring, deducting, receiving, or retaining membership dues from public employees under the bill.

Cross-check Procedures. If only one employee organization is seeking certification as the exclusive bargaining representative, and there is no incumbent exclusive bargaining representative, the Public Employment Relations Commission may determine the question of representation using cross-check.

The threshold for the showing of interest needed for certification by cross-check is changed to 50 percent for:

- employees bargaining under PECBA, except for individual providers, family child care providers, adult family home providers, and language access providers;
- faculty at public four-year higher education institutions;
- marine employees; and
- symphony musicians that collectively bargain under state law.

Provisions are added standardizing cross-check procedures for most public employees.

EFFECT OF CHANGES MADE BY LABOR & COMMERCE COMMITTEE (First Substitute): Provisions requiring the concurrence of the employer and the exclusive bargaining representative for certification by cross-check are removed. The Public

Employment Relations Commission may make rules regarding cross-check procedures. An exclusive bargaining representative of individual providers may designate a third party entity to act as the individual provider's agent in receiving payments from the state, so long as the individual provider has entered into an agency agreement with a third party for the purposes of deducting and remitting payments to the exclusive bargaining representative. Public employers and employee organizations are not liable for requiring, deducting, receiving, or retaining membership dues from public employees under the bill.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Original Bill: *The committee recommended a different version of the bill than what was heard.* PRO: The bill ensures union membership remains strong. It also aligns current law with the *Janus* decision and provides uniformity throughout the statute. After *Janus*, unions did a lot of grassroots work to maintain membership. *Janus* established that membership is strictly between the employee and the union, the bill echoes that. The bill ensures the revocation of dues deduction adheres to the agreement between the union and the employee. The bill also modernizes the current system by allowing authentication by electronic means.

CON: The bill allows voice authorizations for dues deduction, which will lead to coercive phone calls and employees not knowing what they are signing up for. The ability to revoke authorization is narrower than the ability to authenticate, the additional methods should apply to revocation as well. The bill gives unions control over the public payroll and creates a liability risk for public employers. Cross-checks are undemocratic and should not be encouraged.

Persons Testifying: PRO: Senator Kevin Van De Wege, Prime Sponsor; Erin Haick, Service Employees International Union 925; Lucinda Young, WEA; Pat Thompson, American Federation of State, County and Municipal Employees.

CON: Maxford Nelsen, Freedom Foundation.

Persons Signed In To Testify But Not Testifying: No one.