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State of Minnesota
HOUSE OF REPRESENTATIVES

**EIGHTY-FIFTH
SESSION**

HOUSE FILE No. 363

January 25, 2007

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The bill was read for the first time and referred to the Committee on Commerce and Labor

1.1 A bill for an act
1.2 relating to labor; providing an employee organization access to employees at
1.3 certain meetings; providing for card-check procedures for certifying an exclusive
1.4 representative; specifying the tax treatment of employer expenditures related
1.5 to opposing employee unionization efforts; providing penalties; amending
1.6 Minnesota Statutes 2006, section 290.01, subdivisions 19a, 19c; proposing
1.7 coding for new law in Minnesota Statutes, chapters 179; 179A.

1.8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.9 Section 1. **[179.105] ACCESS TO EMPLOYEES AT MEETINGS.**

1.10 Subdivision 1. **Application.** This section applies to a meeting conducted by an
1.11 employer if: (1) at the meeting the employer discusses with its employees reasons not to
1.12 certify an exclusive representative; and (2) the employer requires employees to attend the
1.13 meeting or pays employees who choose to attend the meeting.

1.14 Subd. 2. **Notice; opportunity to speak.** For a meeting subject to this section:
1.15 (1) the employer must give reasonable advance notice to an employee organization that
1.16 has notified the employer that it intends to seek exclusive representative status for the
1.17 employer's employees; and (2) the employer must allow a representative of the employee
1.18 organization an opportunity to speak at the meeting in response to the employer's
1.19 position in opposition to certification of an exclusive representative. The time allotted
1.20 to the employee organization must be at least as much time as the employer takes to
1.21 present its position opposing certification of an exclusive representative. If more than
1.22 one employee organization is seeking to be certified as the exclusive representative, the
1.23 organizations must equally divide the total time allotted to the exclusive representative
1.24 under this subdivision.

2.1 Subd. 3. **Nondiscrimination.** An employer may not discriminate against an
2.2 employee with respect to any terms and conditions of employment because the employee
2.3 spoke in favor of certifying an exclusive representative at a meeting under this section.

2.4 **Sec. 2. [179.165] CARD-CHECK CERTIFICATION PROCEDURES.**

2.5 Subdivision 1. **Application.** An employee organization seeking to be certified as an
2.6 exclusive representative in an appropriate unit may use the card-check procedures in this
2.7 section instead of other procedures established by the commissioner.

2.8 Subd. 2. **Petition; filing of authorization cards.** (a) An employee organization
2.9 using the procedures in this section must file a petition with the commissioner stating
2.10 intent to have employees file cards with the commissioner authorizing the employee
2.11 organization to serve as the exclusive representative of employees in the unit.

2.12 (b) Upon receipt of a petition, the commissioner, in consultation with the employer
2.13 and the employee organization filing the petition, must issue an order specifying the time
2.14 and place in which employee authorization cards must be filed. The place for turning in
2.15 authorization cards must be at one or more sites where those eligible to turn in cards are
2.16 employed. Upon request of the petitioning employee organization, the time for filing of
2.17 authorization cards must be no more than 30 days from the time the petition is filed.

2.18 (c) An employee organization other than the organization filing the petition may seek
2.19 to have employees submit authorization cards at the same time and in the same manner as
2.20 employees filing cards on behalf of the petitioning employee organization. An employee
2.21 organization acting under this paragraph must give notice to the petitioning employee
2.22 organization, the commissioner, and the employer of its intent to seek certification under
2.23 this section. The notice must be given within ten days of the issuance of an order by the
2.24 commissioner under paragraph (b).

2.25 (d) An employee must sign an authorization card in the presence of the commissioner
2.26 or the commissioner's designee. The commissioner must forbid any representative of the
2.27 employer or an employee organization seeking to be certified from being present when
2.28 employees have an opportunity to sign authorization cards.

2.29 (e) Upon request of an employee eligible to sign an authorization card under this
2.30 section, the commissioner must provide a language interpreter to assist an employee
2.31 exercising rights under this section.

2.32 Subd. 3. **Certification.** The commissioner must designate an employee organization
2.33 as the exclusive representative of employees in a bargaining unit if a majority of
2.34 employees in the unit submit cards requesting designation of the employee organization
2.35 as the exclusive representative.

3.1 Subd. 4. **Fees.** The commissioner may issue an order imposing a fee to cover the
 3.2 cost of services, including interpreter services, the commissioner provides under this
 3.3 section. The order must require the employer to pay half of the fee and that all of the
 3.4 employee organizations seeking certification pay the other half, with this half divided
 3.5 equally among the employee organizations.

3.6 Subd. 5. **Treatment of data.** Authorization signatures or cards furnished in support
 3.7 of a petition filed under this section are protected nonpublic data with regard to data not on
 3.8 individuals under section 13.02, subdivision 13, and confidential data on individuals with
 3.9 regard to data on individuals under section 13.02, subdivision 3.

3.10 Subd. 6. **Penalties.** A person who intentionally intimidates or attempts to
 3.11 intimidate an employee from exercising rights under this section to sign or not to sign an
 3.12 authorization card is guilty of a gross misdemeanor and may be sentenced to imprisonment
 3.13 for up to one year or to a fine of up to \$3,000, or both.

3.14 **Sec. 3. [179A.115] ACCESS TO EMPLOYEES AT MEETINGS.**

3.15 Subdivision 1. **Application.** This section applies to a meeting conducted by an
 3.16 employer if: (1) at the meeting the employer discusses with its employees reasons not to
 3.17 certify an exclusive representative; and (2) the employer requires employees to attend the
 3.18 meeting or pays employees who choose to attend the meeting.

3.19 Subd. 2. **Notice; opportunity to speak.** For a meeting subject to this section:
 3.20 (1) the employer must give reasonable advance notice to an employee organization that
 3.21 has notified the employer that it intends to seek exclusive representative status for the
 3.22 employer's employees; and (2) the employer must allow a representative of the employee
 3.23 organization an opportunity to speak at the meeting in response to the employer's
 3.24 position in opposition to certification of an exclusive representative. The time allotted
 3.25 to the employee organization must be at least as much time as the employer takes to
 3.26 present its position opposing certification of an exclusive representative. If more than
 3.27 one employee organization is seeking to be certified as the exclusive representative, the
 3.28 organizations must equally divide the total time allotted to the exclusive representative
 3.29 under this subdivision.

3.30 Subd. 3. **Nondiscrimination.** An employer may not discriminate against an
 3.31 employee with respect to any terms and conditions of employment because the employee
 3.32 spoke in favor of certifying an exclusive representative at a meeting under this section.

3.33 **Sec. 4. [179A.125] ALTERNATIVE CARD-CHECK CERTIFICATION**
 3.34 **PROCEDURES.**

4.1 Subdivision 1. **Application.** An employee organization seeking to be certified as
4.2 an exclusive representative in an appropriate unit may use the card-check procedures in
4.3 this section instead of the procedures in section 179A.12.

4.4 Subd. 2. **Petition; filing of authorization cards.** (a) An employee organization
4.5 using the procedures in this section must file a petition with the commissioner stating
4.6 intent to have employees file cards with the commissioner authorizing the employee
4.7 organization to serve as the exclusive representative of employees in the unit.

4.8 (b) Upon receipt of a petition, the commissioner, in consultation with the employer
4.9 and the employee organization filing the petition, must issue an order specifying the time
4.10 and place in which employee authorization cards must be filed. The place for turning in
4.11 authorization cards must be at one or more sites where those eligible to turn in cards are
4.12 employed. Upon request of the petitioning employee organization, the time for filing of
4.13 authorization cards must be no more than 30 days from the time the petition is filed.

4.14 (c) An employee organization other than the organization filing the petition may seek
4.15 to have employees submit authorization cards at the same time and in the same manner as
4.16 employees filing cards on behalf of the petitioning employee organization. An employee
4.17 organization acting under this paragraph must give notice to the petitioning employee
4.18 organization, the commissioner, and the employer of its intent to seek certification under
4.19 this section. The notice must be given within ten days of the issuance of an order by the
4.20 commissioner under paragraph (b).

4.21 (d) An employee must sign an authorization card in the presence of the commissioner
4.22 or the commissioner's designee. The commissioner must forbid any representative of the
4.23 employer or an employee organization seeking to be certified from being present when
4.24 employees have an opportunity to sign authorization cards.

4.25 (e) Upon request of an employee eligible to sign an authorization card under this
4.26 section, the commissioner must provide a language interpreter to assist an employee
4.27 exercising rights under this section.

4.28 Subd. 3. **Certification.** The commissioner must designate an employee organization
4.29 as the exclusive representative of employees in a bargaining unit if a majority of
4.30 employees in the unit submit cards requesting designation of the employee organization
4.31 as the exclusive representative.

4.32 Subd. 4. **Fees.** The commissioner may issue an order imposing a fee to cover the
4.33 cost of services, including interpreter services, the commissioner provides under this
4.34 section. The order must require the employer to pay half of the fee and that all of the
4.35 employee organizations seeking certification pay the other half, with this half divided
4.36 equally among the employee organizations.

5.1 Subd. 5. **Treatment of data.** Authorization signatures or cards furnished in support
5.2 of a petition filed under this section are protected nonpublic data with regard to data not on
5.3 individuals under section 13.02, subdivision 13, and confidential data on individuals with
5.4 regard to data on individuals under section 13.02, subdivision 3.

5.5 Subd. 6. **Penalties.** A person who intentionally intimidates or attempts to
5.6 intimidate an employee from exercising rights under this section to sign or not to sign an
5.7 authorization card is guilty of a gross misdemeanor and may be sentenced to imprisonment
5.8 for up to one year or to a fine of up to \$3,000, or both.

5.9 Sec. 5. Minnesota Statutes 2006, section 290.01, subdivision 19a, is amended to read:

5.10 **Subd. 19a. Additions to federal taxable income.** For individuals, estates, and
5.11 trusts, there shall be added to federal taxable income:

5.12 (1)(i) interest income on obligations of any state other than Minnesota or a political
5.13 or governmental subdivision, municipality, or governmental agency or instrumentality
5.14 of any state other than Minnesota exempt from federal income taxes under the Internal
5.15 Revenue Code or any other federal statute; and

5.16 (ii) exempt-interest dividends as defined in section 852(b)(5) of the Internal Revenue
5.17 Code, except the portion of the exempt-interest dividends derived from interest income
5.18 on obligations of the state of Minnesota or its political or governmental subdivisions,
5.19 municipalities, governmental agencies or instrumentalities, but only if the portion of the
5.20 exempt-interest dividends from such Minnesota sources paid to all shareholders represents
5.21 95 percent or more of the exempt-interest dividends that are paid by the regulated
5.22 investment company as defined in section 851(a) of the Internal Revenue Code, or the
5.23 fund of the regulated investment company as defined in section 851(g) of the Internal
5.24 Revenue Code, making the payment; and

5.25 (iii) for the purposes of items (i) and (ii), interest on obligations of an Indian tribal
5.26 government described in section 7871(c) of the Internal Revenue Code shall be treated as
5.27 interest income on obligations of the state in which the tribe is located;

5.28 (2) the amount of income or sales and use taxes paid or accrued within the taxable
5.29 year under this chapter and the amount of taxes based on net income paid or sales and use
5.30 taxes paid to any other state or to any province or territory of Canada, to the extent allowed
5.31 as a deduction under section 63(d) of the Internal Revenue Code, but the addition may not
5.32 be more than the amount by which the itemized deductions as allowed under section 63(d)
5.33 of the Internal Revenue Code exceeds the amount of the standard deduction as defined
5.34 in section 63(c) of the Internal Revenue Code. For the purpose of this paragraph, the

6.1 disallowance of itemized deductions under section 68 of the Internal Revenue Code of
6.2 1986, income or sales and use tax is the last itemized deduction disallowed;

6.3 (3) the capital gain amount of a lump sum distribution to which the special tax under
6.4 section 1122(h)(3)(B)(ii) of the Tax Reform Act of 1986, Public Law 99-514, applies;

6.5 (4) the amount of income taxes paid or accrued within the taxable year under this
6.6 chapter and taxes based on net income paid to any other state or any province or territory
6.7 of Canada, to the extent allowed as a deduction in determining federal adjusted gross
6.8 income. For the purpose of this paragraph, income taxes do not include the taxes imposed
6.9 by sections 290.0922, subdivision 1, paragraph (b), 290.9727, 290.9728, and 290.9729;

6.10 (5) the amount of expense, interest, or taxes disallowed pursuant to section 290.10
6.11 other than expenses or interest used in computing net interest income for the subtraction
6.12 allowed under subdivision 19b, clause (1);

6.13 (6) the amount of a partner's pro rata share of net income which does not flow
6.14 through to the partner because the partnership elected to pay the tax on the income under
6.15 section 6242(a)(2) of the Internal Revenue Code;

6.16 (7) 80 percent of the depreciation deduction allowed under section 168(k) of the
6.17 Internal Revenue Code. For purposes of this clause, if the taxpayer has an activity that
6.18 in the taxable year generates a deduction for depreciation under section 168(k) and the
6.19 activity generates a loss for the taxable year that the taxpayer is not allowed to claim for
6.20 the taxable year, "the depreciation allowed under section 168(k)" for the taxable year is
6.21 limited to excess of the depreciation claimed by the activity under section 168(k) over the
6.22 amount of the loss from the activity that is not allowed in the taxable year. In succeeding
6.23 taxable years when the losses not allowed in the taxable year are allowed, the depreciation
6.24 under section 168(k) is allowed;

6.25 (8) 80 percent of the amount by which the deduction allowed by section 179 of the
6.26 Internal Revenue Code exceeds the deduction allowable by section 179 of the Internal
6.27 Revenue Code of 1986, as amended through December 31, 2003;

6.28 (9) to the extent deducted in computing federal taxable income, the amount of the
6.29 deduction allowable under section 199 of the Internal Revenue Code; ~~and~~

6.30 (10) the exclusion allowed under section 139A of the Internal Revenue Code for
6.31 federal subsidies for prescription drug plans; and

6.32 (11) to the extent deducted in computing federal taxable income, the amount of
6.33 expenditures related to opposing employee unionization efforts including, but not limited
6.34 to: legal and consultant fees, mailings, food and beverages, meeting costs, printed
6.35 materials, or any compensation paid to individuals to oppose unionization efforts.

7.1 **EFFECTIVE DATE.** This section is effective for taxable years after December
7.2 31, 2006.

7.3 Sec. 6. Minnesota Statutes 2006, section 290.01, subdivision 19c, is amended to read:

7.4 Subd. 19c. **Corporations; additions to federal taxable income.** For corporations,
7.5 there shall be added to federal taxable income:

7.6 (1) the amount of any deduction taken for federal income tax purposes for income,
7.7 excise, or franchise taxes based on net income or related minimum taxes, including but not
7.8 limited to the tax imposed under section 290.0922, paid by the corporation to Minnesota,
7.9 another state, a political subdivision of another state, the District of Columbia, or any
7.10 foreign country or possession of the United States;

7.11 (2) interest not subject to federal tax upon obligations of: the United States, its
7.12 possessions, its agencies, or its instrumentalities; the state of Minnesota or any other
7.13 state, any of its political or governmental subdivisions, any of its municipalities, or any
7.14 of its governmental agencies or instrumentalities; the District of Columbia; or Indian
7.15 tribal governments;

7.16 (3) exempt-interest dividends received as defined in section 852(b)(5) of the Internal
7.17 Revenue Code;

7.18 (4) the amount of any net operating loss deduction taken for federal income tax
7.19 purposes under section 172 or 832(c)(10) of the Internal Revenue Code or operations loss
7.20 deduction under section 810 of the Internal Revenue Code;

7.21 (5) the amount of any special deductions taken for federal income tax purposes
7.22 under sections 241 to 247 and 965 of the Internal Revenue Code;

7.23 (6) losses from the business of mining, as defined in section 290.05, subdivision 1,
7.24 clause (a), that are not subject to Minnesota income tax;

7.25 (7) the amount of any capital losses deducted for federal income tax purposes under
7.26 sections 1211 and 1212 of the Internal Revenue Code;

7.27 (8) the exempt foreign trade income of a foreign sales corporation under sections
7.28 921(a) and 291 of the Internal Revenue Code;

7.29 (9) the amount of percentage depletion deducted under sections 611 through 614 and
7.30 291 of the Internal Revenue Code;

7.31 (10) for certified pollution control facilities placed in service in a taxable year
7.32 beginning before December 31, 1986, and for which amortization deductions were elected
7.33 under section 169 of the Internal Revenue Code of 1954, as amended through December
7.34 31, 1985, the amount of the amortization deduction allowed in computing federal taxable
7.35 income for those facilities;

8.1 (11) the amount of any deemed dividend from a foreign operating corporation
8.2 determined pursuant to section 290.17, subdivision 4, paragraph (g);

8.3 (12) the amount of a partner's pro rata share of net income which does not flow
8.4 through to the partner because the partnership elected to pay the tax on the income under
8.5 section 6242(a)(2) of the Internal Revenue Code;

8.6 (13) the amount of net income excluded under section 114 of the Internal Revenue
8.7 Code;

8.8 (14) any increase in subpart F income, as defined in section 952(a) of the Internal
8.9 Revenue Code, for the taxable year when subpart F income is calculated without regard
8.10 to the provisions of section 103 of Public Law 109-222;

8.11 (15) 80 percent of the depreciation deduction allowed under section 168(k)(1)(A)
8.12 and (k)(4)(A) of the Internal Revenue Code. For purposes of this clause, if the taxpayer
8.13 has an activity that in the taxable year generates a deduction for depreciation under
8.14 section 168(k)(1)(A) and (k)(4)(A) and the activity generates a loss for the taxable year
8.15 that the taxpayer is not allowed to claim for the taxable year, "the depreciation allowed
8.16 under section 168(k)(1)(A) and (k)(4)(A)" for the taxable year is limited to excess of the
8.17 depreciation claimed by the activity under section 168(k)(1)(A) and (k)(4)(A) over the
8.18 amount of the loss from the activity that is not allowed in the taxable year. In succeeding
8.19 taxable years when the losses not allowed in the taxable year are allowed, the depreciation
8.20 under section 168(k)(1)(A) and (k)(4)(A) is allowed;

8.21 (16) 80 percent of the amount by which the deduction allowed by section 179 of the
8.22 Internal Revenue Code exceeds the deduction allowable by section 179 of the Internal
8.23 Revenue Code of 1986, as amended through December 31, 2003;

8.24 (17) to the extent deducted in computing federal taxable income, the amount of the
8.25 deduction allowable under section 199 of the Internal Revenue Code; ~~and~~

8.26 (18) the exclusion allowed under section 139A of the Internal Revenue Code for
8.27 federal subsidies for prescription drug plans; and

8.28 (19) to the extent deducted in computing federal taxable income, the amount of
8.29 expenditures related to opposing employee unionization efforts including, but not limited
8.30 to: legal and consultant fees, mailings, food and beverages, meeting costs, printed
8.31 materials, or any compensation paid to individuals to oppose unionization efforts.

8.32 **EFFECTIVE DATE.** This section is effective for taxable years after December
8.33 31, 2006.