

### At a Glance

## S. 567, Richard L. Trumka Protecting the Right to Organize Act of 2023

As reported by the Senate Committee on Health, Education, Labor, and Pensions on July 18, 2023

By Fiscal Year, Millions of Dollars	2023	2023-2028	2023-2033
Direct Spending (Outlays)	0	0	0
Revenues	0	38	94
Increase or Decrease (-) in the Deficit	0	-38	-94
Spending Subject to Appropriation (Outlays)	0	4	not estimated

Increases <i>net direct spending</i> in any of the four consecutive 10-year periods beginning in 2034?	No	Statutory pay-as-you-go procedures apply?	Yes
<b>Mandate Effects</b>			
Increases <i>on-budget deficits</i> in any of the four consecutive 10-year periods beginning in 2034?	No	Contains intergovernmental mandate?	Yes, Under Threshold
		Contains private-sector mandate?	Yes, Over Threshold

#### The bill would

- Expand the enforcement powers of the National Labor Relations Board
- Authorize appropriations for additional data collection, reporting, and dispute mediation
- Impose mandates by preempting state laws and requiring employers to take additional actions during negotiations

#### Estimated budgetary effects would mainly stem from

- Imposing new civil penalties on violators of the National Labor Relations Act
- Authorizing appropriations for the Federal Mediation and Conciliation Service and the Department of Labor

#### Areas of significant uncertainty include

- Predicting the amount of civil penalties that would be imposed and collected under the bill
- Estimating costs to employers

**Detailed estimate begins on the next page.**



## Bill Summary

S. 567 would amend several provisions of the National Labor Relations Act (NLRA), which establishes the rights of most private-sector employees to engage in collective bargaining. The bill would change the statutory definitions of joint employer, employee, and supervisor; modify the list of actions that would qualify as unfair labor practices; and allow collective bargaining agreements to require all employees in a unit to contribute fees to a labor organization as a condition of employment. Employers would be required to post notices that inform workers of their rights under the NLRA and would be prohibited from engaging in certain labor practices. Parties negotiating an initial collective bargaining agreement would be encouraged to use the mediation and arbitration services of the Federal Mediation and Conciliation Service (FMCS) early in the collective bargaining process.

The NLRA is administered by the National Labor Relations Board (NLRB). The bill would allow the NLRB to take into account economic analysis when deciding cases and to assess civil penalties for violations of the act. S. 567 also would require the NLRB to report annually on its activities to the Congress and the President.

In addition, S. 567 would require more employers to disclose to the Department of Labor any indirect activities (such as hiring outside parties to draft personnel policies or presentations) designed to persuade employees to exercise or not to exercise their right to organize and bargain collectively.

## Estimated Federal Cost

The estimated budgetary effect of S. 567 is shown in Table 1. The costs of the legislation fall within budget function 500 (education, training, employment, and social services).

**Table 1.**  
**Estimated Budgetary Effects of S. 567**

	By Fiscal Year, Millions of Dollars											2023-2028	2023-2033
	2023	2024	2025	2026	2027	2028	2029	2030	2031	2032	2033		
<b>Increases in Revenues</b>													
Estimated Revenues	0	4	7	9	9	9	11	11	11	11	12	38	94
<b>Increases in Spending Subject to Appropriation</b>													
Estimated Authorization	0	*	1	1	1	1	n.e.	n.e.	n.e.	n.e.	n.e.	4	n.e.
Estimated Outlays	0	*	1	1	1	1	n.e.	n.e.	n.e.	n.e.	n.e.	4	n.e.

n.e. = not estimated; \* = between zero and \$500,000.



## **Basis of Estimate**

CBO assumes that the bill will be enacted near the end of fiscal year 2023 and that the necessary amounts will be available each fiscal year. Estimated outlays are based on historical spending patterns for existing and similar activities.

## **Revenues**

S. 567 would provide the NLRB with the authority to assess civil penalties on employers that violate certain sections of the NLRA. Civil monetary penalties are generally remitted to the Treasury and recorded as revenues. Under current law, the NLRB may seek remedies including reinstatement and back pay for discharged workers. The bill would enable the NLRB to assess a civil penalty of up to \$50,000 on employers that commit an unfair labor practice as defined by the NLRA. A higher maximum penalty of \$100,000 would apply in cases where an employer has committed a previous violation within the last five years and where the violation also involves serious economic harm or the discharge of an employee.

Based on the history of such cases, CBO estimates those penalties would be imposed in about 360 cases per year; CBO expects that about one-quarter of those cases would be subject to the higher penalty. CBO estimates that, on average, the penalties imposed would be half the maximum allowable penalty. The bill also would enable the NLRB to assess a civil penalty of up to \$10,000 on any person who fails to obey an order of the board. Based on the history of such cases, CBO estimates those penalties would apply to about 60 cases per year. In total, CBO estimates that enacting those provisions would increase revenues by \$94 million over the 2023-2033 period.

## **Spending Subject to Appropriation**

CBO estimates that implementing S. 567 would cost \$4 million, on net, over the 2023-2028 period. Such spending would be subject to the availability of appropriated funds.

**National Labor Relations Board.** Some provisions of S. 567 would increase the workload of the NLRB, such as requiring the agency to report annually to the Congress and the President and allowing the agency to hire staff to conduct economic analysis to support the agency's rulemaking and other decisions. Other provisions would decrease the workload of the NLRB, because the agency would no longer need to seek enforcement of its orders through the U.S. Courts of Appeals. On net, CBO estimates that implementing those provisions would not significantly change the operating costs for the NLRB over the 2023-2028 period.

**Federal Mediation and Conciliation Service.** Currently, the FMCS receives about 500 notifications annually from the NLRB that new bargaining units have been certified and that the parties are working toward an initial collective bargaining agreement. The agency mediates disputes only if both parties request its services, which occurs in roughly 10 percent of initial collective bargaining cases. S. 567 would allow either side to request mediation



services from the FMCS early in the collective bargaining process. If the dispute were not resolved, the FMCS could refer the parties to an arbitration panel.

Using information from the agency, CBO expects that the number of initial cases mediated by the FMCS would double under the bill because either party could request mediation. Additionally, CBO expects that the agency would continue to encourage parties to work toward an agreement independently before mediating any conflict and referring parties to arbitration. The costs of mediation are covered by the FMCS; any arbitration costs are covered by the parties. Using information from the agency, CBO estimates that personnel and administrative costs would increase by \$3 million over the 2023-2028 period mostly to update its system for referring parties to arbitration, and to hire an additional mediator.

**Department of Labor.** Title II would require employers to report more of their indirect efforts to influence employees’ decisions to organize or bargain collectively to the department’s Office of Labor-Management Standards. Using information from the department, CBO expects that the number of reports filed would roughly triple and that enforcement and processing costs would increase by \$1 million over the 2023-2028 period.

**Uncertainty**

The amount of additional civil penalties that would be imposed and collected under the bill is uncertain and depends on the extent to which businesses continue to commit unfair labor practices when significant penalties apply. The extent to which the NLRB will choose to pursue civil penalties in addition to other remedies, such as reinstatement and back pay for employees, is also uncertain.

**Pay-As-You-Go Considerations**

The Statutory Pay-As-You-Go Act of 2010 establishes budget-reporting and enforcement procedures for legislation affecting direct spending or revenues. The net changes in revenues that are subject to those pay-as-you-go procedures are shown in Table 2.

<b>Table 2.</b>													
<b>CBO’s Estimate of the Statutory Pay-As-You-Go Effects of S. 567, the Richard L. Trumka Protecting the Right to Organize Act of 2023, as reported by the Senate Committee on Health, Education, Labor, and Pensions on July 18, 2023</b>													
<b>By Fiscal Year, Millions of Dollars</b>												2023-	2023-
	2023	2024	2025	2026	2027	2028	2029	2030	2031	2032	2033	2028	2033
	<b>Net Decrease in the Deficit</b>												
Pay-As-You-Go Effect	0	-4	-7	-9	-9	-9	-11	-11	-11	-11	-12	-38	-94



## **Increase in Long-Term Net Direct Spending and Deficits: None.**

### **Mandates**

S. 567 would impose mandates as defined in the Unfunded Mandates Reform Act (UMRA). CBO estimates that the cost of the mandate on state, local and tribal governments would be below the annual threshold for the intergovernmental mandates established by UMRA, but the aggregate cost of complying with the private-sector mandates would exceed the annual threshold established in UMRA (those thresholds are \$99 million and \$198 million in 2023, respectively, adjusted annually for inflation).

#### **Mandate that Affects the Public Sector**

The bill would preempt current law in states that prohibit contracts between employers and unions from requiring workers to pay for the costs of union representation as a condition of employment. CBO estimates the costs of the preemption, for example to update the information available to businesses and employees about the change in law, would be small.

#### **Mandates that Affect the Private Sector**

By requiring employers to post notices outlining new protections for employees and potential employees, S. 567 would impose a mandate on employers under the jurisdiction of the NLRA. Using information from the NLRB, CBO estimates that the cost to comply with the requirement would be approximately \$90 per business and that it would apply to most of the nation's roughly 8 million businesses. Thus, CBO estimates that posting the new notices would cost several hundred million dollars in total.

Several other private-sector mandates are contained in S. 567 but CBO cannot anticipate the number of businesses that would be affected nor the extent to which changes in their labor practices would be required. Therefore, CBO cannot estimate the cost of the following mandates:

- Employers would be prohibited from participating in union elections, requiring employees to attend employer-organized meetings related to labor representation, or misrepresenting employees' status as it relates to the right to representation.
- Employers would be required to allow employees to use electronic and communication equipment for labor organizing and to maintain wages and working conditions for employees during collective bargaining.
- Employers could not reduce or deny employee's hours to influence their position in collective bargaining before a strike, permanently replace employees who participate in strikes seeking better wages and benefits, coerce employees from engaging in class action lawsuits relating to employment conditions.
- Employers would be prohibited from requiring predispute arbitration agreements and voiding any such existing agreements.



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A handwritten signature in black ink, appearing to read "Phillip L. Swagel".

Phillip L. Swagel  
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