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BILL ANALYSIS

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Senate Bill 1162 (as introduced 5-31-12)
Sponsor: Senator Jack Brandenburg
Committee: Reforms, Restructuring and Reinventing

Date Completed: 6-11-12

CONTENT

The bill would amend the public employment relations Act to do the following with respect to prohibited strikes and lockouts:

- **Require a public employer to notify the Michigan Employment Relations Commission (MERC) of an alleged strike, and require a bargaining representative to notify MERC of an alleged lockout.**
- **Require to MERC conduct a hearing upon receiving notice of a prohibited strike or lockout.**
- **Require MERC to fine an employee one day's pay, and fine his or her bargaining representative $5,000, for each full or partial day the employee engaged in an prohibited strike.**
- **Require MERC to fine a public employer $5,000 for each full or partial day of a prohibited lockout.**
- **Require the fine imposed against an employee to be deducted from his or her salary.**
- **Require MERC to institute collection proceedings if a fine were not paid within 30 days or deducted as required.**
- **Allow a public employer to bring an action to enjoin a strike, and allow a bargaining representative to bring an action to enjoin a lockout.**

Strike & Lockout Prohibition

Section 2 of the Act prohibits a public employee from striking. It also prohibits a public school employer from instituting a lockout unless there is a total or partial cessation of the employer's operations in response to a prohibited strike. Under the bill, the lockout provisions would apply to a public employer, rather than a public school employer.

Fines

The bill would add Section 2b to provide for hearings and penalties, and allow actions for an injunction. As used in this section, "public employer" would mean a county, township, village, city, authority, school district, or other political subdivision of the State, and would include any entity created by two or more public employers.

If a public employer alleged that there was a strike by one or more public employees in violation of Section 2, the employer would have to notify MERC of the full or partial days the employee was engaged in the alleged strike. If a bargaining representative alleged that there was a lockout by a public employer in violation of Section 2, the bargaining representative would have to notify MERC of the full or partial days of the alleged lockout.

Within 60 days after receiving either notice, MERC would have to conduct a hearing to determine if there had been a violation, and would have to issue its decision and order. This hearing would be separate and distinct from, and would not be subject to the procedures and timelines of, a proceeding conducted under Section 6 of the Act.

(Under Section 6, an employee is considered to be on strike if he or she engages in certain conduct. The employee is entitled to a determination of whether he or she violated the Act, and the proceeding must comply with the law appropriate to a proceeding to remove a public employee. The proceeding must be held within 10 days after the employee files a request, and a decision must be made within 10 days after the proceeding. If the employee is fired or otherwise disciplined, he or she has the right of review in the circuit court.)

If a majority of the Commission found, after a hearing under the bill, that one or more public employees engaged in a strike in violation of Section 2, MERC would have to fine each public employee an amount equal to one day of pay for that employee for each full or partial day that he or she engaged in the strike. The Commission also would have to fine the bargaining representative of the public employee or employees $5,000 for each full or partial day of the strike.

If a majority of the Commission found, after a hearing, that a public employer instituted a lockout in violation of Section 2, MERC would have to fine the employer $5,000 for each full or partial day of the lockout.

If MERC imposed a fine against a public employee and he or she continued to be employed by a public employer, the Commission would have to order the employer to deduct the fine from the employee's salary. The employer would have to comply with the order promptly.

The Commission would have to transmit money received from fines imposed under Section 2b, and a public employer would have to transmit money deducted from an employee's salary for a fine, to the State Treasurer for deposit in the State's General Fund.

If MERC did not receive payment of a fine within 30 days after it was imposed, or if a public employer did not deduct a fine from an employee's salary as ordered, the Commission would have to institute collection proceedings.

Fines imposed under Section 2b would be in addition to all other remedies and sanctions prescribed by the Act and by law.

<u>Injunction</u>

The bill would permit a public employer to bring an action to enjoin a strike by public employees in violation of Section 2. A bargaining representative also could bring an action to enjoin a lockout by a public employer in violation of that section. The action would have to be brought in the circuit court for the county where the affected public employer was located.

The court would have to grant injunctive relief if it found that a strike or lockout had occurred, without regard to the existence of other remedies, demonstration of irreparable harm, or other factors. The court also would have to order court costs and reasonable attorney fees to a prevailing plaintiff.

Failure to comply with an order of the court could be punished as contempt.

Reimbursement Prohibition

The bill would prohibit a public employer from providing to a public employee any compensation or additional work assignment that was intended to reimburse the employee for, or allow the employee to recover, a monetary penalty imposed under Section 2b.

MCL 423.202 et al. Legislative Analyst: Suzanne Lowe

FISCAL IMPACT

The bill would have an indeterminate fiscal impact on State government and a small, but negative, fiscal impact on local units of government that violated the Act. Under the bill, the Michigan Employment Relations Commission would have to fine public employees who engaged in a strike in violation of the Act a day's pay for each full or partial day the employee was on strike. Additionally, MERC would have to fine public employers that instituted lockouts in violation of the Act $5,000 for each full or partial day any illegal lockout occurred. Revenue from these two types of fines would be credited to the State General Fund.

The Commission would incur some new costs from investigating complaints associated with the provisions of the bill. It is unknown whether the amount of revenue raised from fines would be greater than the additional costs, so the fiscal impact of the bill is indeterminate.

Fiscal Analyst: Josh Sefton