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Senate Bill 1018 (Substitute S-1 as passed by the Senate)
Sponsor: Senator Dave Hildenbrand
Committee: Reforms, Restructuring and Reinventing

(as enrolled)

Date Completed: 3-28-12

RATIONALE

A program called Home Help Services is administered by the Department of Human Services (DHS) and the Department of Community Health (DCH), and funded through the DCH. The program supports services to individuals who are eligible for Medicaid and need assistance with personal care activities, such as eating, bathing, and dressing, as well as household chores. The services are provided by workers who are selected by the recipients and paid by the State. In 2004, the DCH entered into an interlocal agreement with the Tri-County Aging Consortium (the Area Agency on Aging that serves Clinton, Eaton, and Ingham Counties) under the Urban Cooperation Act. The agreement created the Michigan Quality Community Care Council (MQCCC) to coordinate personal assistance services, as well as maintain a registry of providers in designated communities. As the result of an election held in 2005 under Michigan's public employment relations Act (PERA), the MQCCC recognized a labor organization, Service Employees International Union (SEIU) Healthcare Michigan, as the bargaining representative of these Home Help workers. Many people do not consider these workers to be public employees, however, and believe that SEIU Healthcare Michigan should not be recognized as their bargaining representative.

The public employment relations Act authorizes public employees to form labor unions, and governs collective bargaining between public employers and representatives of their employees. A public employer may voluntarily recognize a

bargaining representative of its employees but, if it does not, the employees or a labor organization may submit cards or file a petition for an election with the Michigan Employment Relations Commission (MERC). This took place with respect to the Home Help workers in 2005. Evidently, some 43,000 ballots were sent to the workers, who returned 6,949 "yes" votes and 1,007 "no" votes (and 589 spoiled ballots), and a contract was ratified in 2006.

Although State funding for the MQCCC was eliminated in fiscal year 2011-12, the agency receives support from other sources and continues to serve as the public employer of the workers for purposes of PERA, and the DCH continues to deduct union dues from their payments.

CONTENT

The bill would amend the public employment relations Act to do the following:

- **Exclude from the definition of "public employee" a person who receives a government subsidy in his or her private employment.**
- **Provide that the exclusion could not be superseded by an interlocal agreement, memorandum of understanding or commitment, or similar document.**
- **Prohibit the recognition of a bargaining unit consisting of individuals who are not public employees.**

-- **Invalidate a bargaining unit formed or recognized in violation of that prohibition.**

The Act's definition of "public employee" includes a person holding a position by appointment or employment in State or local government, in the public school service, and in any other branch of the public service, subject to exceptions. One of the exceptions applies to a person employed by a private organization or entity who provides services under a time-limited contract with the State or a political subdivision of the State.

Under the bill, the term "public employee" also would exclude a person employed by a private organization or entity who receives a direct or indirect government subsidy in his or her private employment. This provision could not be superseded by any interlocal agreement, memorandum of understanding, memorandum of commitment, or other similar document.

The Act provides for an election to be held when public employees submit a petition alleging that 30% or more of the public employees in a unit wish to be represented for collective bargaining. The Michigan Employment Relations Commission (MERC) must promulgate rules governing the election.

The bill would prohibit an election from being directed for, and would prohibit MERC or a public employer from recognizing, a bargaining unit of a public employer consisting of individuals who are not public employees. A bargaining unit that was formed or recognized in violation of this prohibition would be invalid and void.

The bill states, "This amendatory act is curative, reflects the original intent of the legislature, and is retroactive."

MCL 423.201 & 423.214

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

Workers in the Home Help Services program essentially are independent contractors who

are hired by the clients they serve. According to the DHS brochure describing the program, "Home Help clients employ their own providers. Providers are not employed by the DHS or the state of Michigan." The interlocal agreement that created the MQCCC describes a provider as an individual "employed by" a consumer receiving the services. The agreement also defines "Home Help Program" as programs through which payments are made *on behalf of* eligible individuals to personal assistance services providers. In addition, responsibilities of the MQCCC under the agreement include, "Supporting the direct employment by Consumers of Providers selected by Consumers", and "Assisting Consumers in making their decision on whom to employ...".

While the interlocal agreement makes it clear that the recipients of Home Help Services are supposed to be the employers of the workers, the agreement does not appear to establish an employment relationship between the MQCCC and the workers. The agreement makes the Council responsible for "providing certain employer-related services" and "functioning as an employer of record", and requires the Council to "fulfill its responsibilities as a public employer subject to [PERA]". The agreement does not indicate, however, that these requirements pertain to the MQCCC's relationship with Home Help workers, rather than its own personnel, whom the agreement authorizes the Council to employ. Ultimately, there appears to be nothing in the agreement that expressly authorized the MQCCC to recognize SEUI Healthcare Michigan as the workers' bargaining representative. Furthermore, even if the MQCCC is a public employer, the workers are not public employees simply because the money that is used to pay them is provided by the government.

Senate Bill 1018 (S-1) would address this situation, and others like it that might arise, by making it clear in PERA that a privately employed individual who directly or indirectly receives a governmental subsidy in that employment is not a public employee for purposes of the Act. In this case, the Home Help workers are privately employed by the program recipients, and the source of their wages is the government subsidy that supports the Home Help Services program. Since these workers could not be considered

public employees under the bill, SEIU Healthcare Michigan could not be recognized as their bargaining representative, notwithstanding the interlocal agreement that created the MQCCC.

Opposing Argument

The bill would invalidate what was a legitimate election under PERA. The Bureau of Employment Relations, which provides staff for MERC, would not have conducted the election if it had not received cards or petitions signed by at least 30% of the members of the bargaining unit, as required by law. A clear majority of the votes were in favor of joining the union and, according to the Bureau director, it is not unusual for a low percentage of ballots to be returned. The Bureau had no reason to question the authority of the MQCCC to certify the bargaining unit. As pointed out above, the interlocal agreement clearly identifies the Council as a "public employer". While the Home Help workers are employed by the recipients, the MQCCC is a co-employer for purposes of PERA. Retroactively invalidating the election and the collective bargaining agreement would violate Article I, Section 10 of the U.S. and State Constitutions, which prohibit the enactment of a law impairing the obligation of contracts. The affected workers negotiated in good faith and have vested rights in the contract that governs their wages, benefits, and conditions of employment.

Furthermore, while the discussion about this bill involves Home Help workers and their membership in SEIU Healthcare Michigan, the proposed language is not limited to this situation. The bill would apply to *any* privately employed individual receiving a direct or indirect government subsidy in his or her employment.

Opposing Argument

Before the MQCCC's State funding was eliminated, the Council performed many valuable functions that benefited both the recipients and the providers who participate in the Home Help Services program. One of the MQCCC's principal responsibilities is maintaining a registry of qualified and reliable providers, which connects recipients with workers who will meet their needs and protects them from unscrupulous or incompetent individuals. The registry also helps the providers find stable employment. Although the Council still maintains a

registry, the number of listed providers is about half of what it used to be.

The interlocal agreement that created the MQCCC also made it responsible for assisting recipients in selecting a provider, developing recruitment and retention programs to expand the pool of providers, facilitating and coordinating advanced training for providers, and coordinating mentoring for consumers and providers. These and other activities helped make it possible for seniors and disabled individuals to stay in their own homes, resulting in considerable cost savings for the State. This conclusion is supported by a March 2011 report of the Anderson Economic Group, LLC, which studied the role of the MQCCC and the Home Help Services program. According to the report, the State saves \$47,000 annually for each person who is diverted from nursing facility care and into home care. The report also found that, over the past four years, the MQCCC had saved the State over \$1.1 million in unemployment payments, by monitoring the claims of providers.

Although the Home Help Services program remains in operation, it is not possible for the MQCCC to continue performing as it once did. Before it was defunded by the State, the Council had 13 full-time and two part-time employees; now, there are three part-time people on its payroll, according to the MQCCC director. This situation is unfortunate for the ill, elderly, and disabled recipients, as well as the underpaid workers, who benefited from the services provided by the Council, regardless of whether the Home Help workers were or were not in a union.

Legislative Analyst: Suzanne Lowe

FISCAL IMPACT

The bill would have no fiscal impact on State or local government.

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.