Legislative Analysis

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REPEAL PA 312: COMPULSORY ARBITRATION

House Bills 4205 & 4206
Sponsor: Rep. Joe Haveman
Committee: Government Operations

Complete to 2-22-11

A SUMMARY OF HOUSE BILLS 4205 & 4206 AS INTRODUCED 2-8-11

House Bill 4205 would repeal Public Act 312 of 1969, which provides for the compulsory arbitration of labor disputes in police and fire departments. (MCL 423.231)

House Bill 4206 would amend the Aeronautics Code to delete a reference to Public Act 312 of 1969. The bill is tie-barred to House Bill 4205. (MCL 259.119)

BACKGROUND INFORMATION:

The following is a discussion of PA 312 written by the Research Services Division of the Legislative Service Bureau in November 2008, which notes that compulsory final offer arbitration for fire fighters and police officers was designed to provide a viable and legitimate alternative to the strike.

"Compulsory binding arbitration provides for resolution of impasses in labor disputes in police and fire departments. It originated with the passage of 1969 PA 312, being MCL §§ 423.231 to 423.247. This act provides compulsory binding arbitration for public safety employees when, after thirty days, the negotiation and fact-finding steps have resulted in an impasse situation. The arbitration awards are determined on an issue-by-issue basis, and are based on the final best offer of the parties. An arbitrator's decisions are restricted to economic issues, with noneconomic issues settled by mediation or a nonbinding fact-finding procedure.

Under the provisions of 1969 PA 312, either party may institute arbitration by serving written notice on the other party and the Michigan Employment Relations Commission. An arbitration panel is made up of a representative selected by each party and a panel chair picked by the parties in order of preference from a three person list provided by the MERC. The act requires that the panel chair schedule a meeting within fifteen days, and conclude the proceedings within thirty days after the meeting. The panel chair may remand the dispute back to mediation for a period of not more than three weeks, and, at or before the conclusion of the hearing, require the parties to submit their final offers. The arbitration panel is required to issue its decision within thirty days of the termination of the hearing, and base its decisions on the issues in dispute and statutory standards. Section 9 of 1969 PA 312 (MCL § 423.239) provides that the arbitration panel's decisions, when applicable, shall be based on the following factors:

• The lawful authority of the employer.

• Stipulations of the parties.
• The interests and welfare of the public and financial ability of the unit of government to meet those costs.
• Comparison of the wages, hours, and conditions of employment of the employees with the wages, hours, and conditions of employment of other employees performing similar services in public and private employment in comparable communities.
• The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays and other benefits.
• The cost of living.
• Changes in any of the foregoing circumstances.

Compulsory final offer arbitration for fire fighters and police officers was designed to provide a viable and legitimate alternative to the strike. The effectiveness, expeditiousness, and constitutionality of this act, however, have been hotly contested issues. As to the fairness of arbitration awards, a review of the 43 last best offer awards from 2007-2008 found that of 480 issues decided by arbitrators, the local unit of government's last best offer prevailed 55 percent of the time. The local unit of government prevailed in 266 issues and the bargaining unit positions prevailed in 214 issues, although it could be argued that not all issues had equal weights.

Although most would concede that compulsory arbitration has virtually eliminated public safety employee strikes, many local officials have complained that arbiters have a lack of accountability and have not placed enough consideration on a local unit's ability to pay. Accordingly a host of bills have been introduced to repeal the act. None of these bills has seen significant action. Conversely, a number of bills have been introduced to expand binding arbitration to other groups of public servants. These groups typically include local correctional employees, county road commission employees, and teachers. As with legislation to repeal binding arbitration, none of these bills has seen significant action."

(Written by Terry Bergstrom of the Legislative Service Bureau's Research Services Division, November 2008. Available to legislators and staff at the LSB Intranet site.)

FISCAL IMPACT:

State Impact: House Bill 4205 could increase the expenditures of the Michigan Employment Relations Commission organized within the Department of Energy, Labor, and Economic Growth.

Under Section 6 of Act 312, the state (MERC) shares the cost of arbitration proceedings equally with the local unit of government and the union involved in the proceeding. For the past several years, MERC's share of these costs has averaged about $115,000 annually (This means the local unit and the union each pay a similar amount.) With the repeal of the act, the state would be free of these charges. However, if collective bargaining and mediation fail to result in a final agreement, a labor dispute may be subject to fact finding under Section 25 of the Labor Mediation Act, 1939 PA 176.[1]

[1] MCL 423.25. "When in the course of mediation under section 7 of [the Public Employees Relations Act] it shall become apparent to the commission that matters in disagreement between the parties might be more readily settled if the facts involved in the disagreement were determined and publicly known, the commission may make written

Under fact finding, a neutral fact finder appointed by MERC conducts a hearing at which the parties present evidence and witnesses in support of their position. The fact finder issues a non-binding recommendation to settle the dispute.[2] Under the Labor Mediation Act, however, the costs of the fact finder are borne entirely by MERC. The MERC is funded entirely by Securities Fees, the excess of which, by law, lapses to the General Fund. In sum, while the MERC would see reduced costs related to arbitration, it would see increased costs for fact finding. However, given the different funding split for Act 312 and fact finding, overall MERC could see increased costs.

A 1978 amendment to the State Constitution (Article XI, Section 5) provides for collective bargaining and binding arbitration for the Michigan state police troopers and sergeants. Although arbitration proceedings for MSP troopers appear to also be dictated by Act 312, the repeal of the bill would have no impact on those proceedings.[3]

Local Impact: Local governments would likely see reduced costs with the repeal of Act 312, although the magnitude of that repeal is not known. In the most direct sense, local units would see a reduction in their one-third share of the arbitrator's fees. Based on the state's experience, this would be a savings to local units of about $115,000 annually, in aggregate. Local units also individually incur thousands of dollars in legal and other costs as it goes through an Act 312 proceeding. While local units wouldn't be subject to Act 312, local units could incur a similar amount were the dispute subject to fact finding.

There doesn't appear to be any recent research that has quantified the financial impact of Act 312 on local units of government, particularly during this last decade, although it is generally contended that binding arbitration tends to result in an increase in employment costs. Citing an existing body of research, the 2005-2006 Governor's Task Force on Local Government Services and Fiscal Stability stated:

> *Based on a review of the relevant labor economics literature, there is strong and consistent evidence that public sector union presence, particularly the existence of compulsory binding arbitration statutes (typically for public safety employees),*

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finings with respect to the matters in disagreement. The findings shall not be binding upon the parties but shall be made public."

[2] See, *Guide to Public Sector Labor Relations Law in Michigan: Law and Procedure before the Michigan Employment Relations Commission*, Michigan Employment Relations Commission, January 2011, http://michigan.gov/documents/dleg/mercguide_217393_7.pdf. The MERC guide further notes, "[t]he value of fact finding is that after a formal hearing, the parties receive an objective and professional evaluation of their bargaining positions. While the fact finder's report is not binding, the parties may accept his or her recommendations in whole or in part. Parties often return to negotiations or mediation after fact finding and are frequently able to resolve their differences."

[3] The Legislature enacted Public Act 17 of 1980 to implement the 1978 constitutional amendment. In 1991, however, the Attorney General opined that that act was unconstitutional and that Act 312, not Act 17, controls the resolution of disputes between MSP officers. "Because the provisions of 1980 PA 17 are not 'the same as' the provisions of 1969 PA 312, as the latter act existed on November 7, 1978, 1980 PA 17 is unconstitutional." The 2002 arbitration award involving the MSP officers also notes, "[t]he authority for this compulsory interest arbitration is found in the 1978 amendment to Article XI, Section 5 of the 1963 Constitution and Act 312 of Public Act of 1969, as it existed at the time of the constitutional amendment was ratified". Moreover, the current MSP contract provides, in part, "resolution of all disputes with reference to the implementation of collective bargaining and arbitration for Michigan State Police Troopers and Sergeants mandated by the 1978 Amendment to Article XI, Section 5, of the Michigan Constitution of 1963, shall be implemented and provided for pursuant to 1969 PA 312, and shall be through the mediation and arbitration process set forth therein."

leads to higher average wage levels for public safety employees. These higher public safety wage levels have been shown to have the spillover effect of raising other public sector employee wages, albeit to a lesser extent. These wage effects have been found to be particularly strong in Midwestern states. Even stronger however, the evidence indicates that binding arbitration leads to an even greater impact on fringe benefit costs for municipalities. The overall effect is a significantly higher overall compensation package for binding arbitration states.

There is also evidence of an employment effect due to unions. The presence of binding arbitration leads to higher average employment levels for public safety employees. However, these higher employments are offset by lower employment levels for other non-public safety employees. The net effect is slightly higher public sector employment due to binding arbitration.

The overall impact of these wage and employment effects due to binding arbitration is to raise municipal expenditures in binding arbitration states by 3 to 5 percent relative to other states. While small in percentage terms, this impact is large in dollar terms.[4]

In reviewing a number of recent Act 312 awards (mostly involving county sheriff's departments), the general trend, given Michigan's prolonged economic troubles, has seen Act 312 arbitration panels side with employers on many of the disputed issues, particularly on health insurance and retirement issues, generally resulting in reduced employer costs as compared to the union proposals. Many of these decisions are based on a comparison of comparable internal bargaining units (i.e. other units within the local unit), where the local unit has successfully pushed for higher employee contribution rates and other cost savings measures. The record on wages is mixed, with the arbitration panels splitting their awards, incorporating offers from both the union and the employer. These decisions have often focused on external comparable units (i.e. those from other comparable local units).

Historically, it appears that use of Act 312 varies considerably among the local units depending on the type (county, city, or township), and the size of the local unit and the agency. Research at various points in the 1970's, 1980's and 1990's indicated that Act 312 tended to be invoked in larger units (counties more so than townships or cities) and larger agencies. The act also was more heavily used in metropolitan areas.[5]

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.

[4] *Final Report to the Governor,* Task Force on Local Government Services and Fiscal Stability, May 2006, http://www.michigan.gov/documents/FINAL_Task_Force_Report_5_23_164361_7.pdf

[5] *Compulsory Arbitration in Michigan,* Citizens Research Council. Report No. 279, January 1986, http://www.crcmich.org/PUBLICAT/1980s/1986/rpt279.pdf. See, also, Brian Richard Johnson, *Act 312 Arbitration: An Exploratory Study*, 1998, doctoral dissertation, Michigan State University, School of Criminal Justice.