

Legislative Analysis



PA 425 CONTRACTS: ELIMINATE COMPARABLE EMPLOYEE BENEFITS UPON TRANSFER

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House Bill 4534 as reported

(Enacted as Public Act 114 of 2011)

Sponsor: Rep. Nancy Jenkins

Committee: Local, Intergovernmental, and Regional Affairs

First Analysis (5-4-11)

BRIEF SUMMARY: The bill would change the ways local officials employ, engage, compensate, transfer, or discharge personnel who carry out economic development projects under a conditional transfer of property agreement—better known as Act 425 contracts.

FISCAL IMPACT: To the extent that workers were transferred and their wages and/or benefits reduced, the costs to local government would decline accordingly. There would be no direct state fiscal impact.

THE APPARENT PROBLEM:

In order to reduce their costs during the past decade, local units of government throughout Michigan have consolidated both personnel and services. Indeed, many state laws exist to enable consolidation and service sharing. In April 2007, the Michigan Citizens Research Council issued Report 346 entitled "Authorization for Inter-local Agreements and Intergovernmental Cooperation in Michigan." That 111-page report describes the provisions of 77 Michigan statutes designed to enable governmental cooperation. See *Background Information*.

Local government officials have been using those statutes to consolidate services. In fact, a Michigan Municipal League survey released on March 3, 2011, showed 640 examples of sharing services among 129 communities. For example, the City of Charlotte has a long history of cooperating with neighboring governments to deliver fire suppression, hazardous materials, and emergency medical response services. For more than 70 years, a contractual relationship has existed between the City of Charlotte (which is centrally located in Eaton County), and the Rural Fire Association comprising five townships—a total service area of 144 square miles. In 2010, members of the department responded to 620 alarms, an average of one call every 14 hours. The average response time was six and one-half minutes, and responses were handled by a staff of six full-time firefighters, and 30 volunteers. The department operates two stations 24-hours a day, and uses seven firefighting vehicles. The annual \$900,000 cost of operating the department (excluding capital investments) is divided among the city and townships based on the number of emergency responses that take place each year within each jurisdiction.

However, critics say that the consolidation of essential services in local units of government has not kept pace with the drastic, and, some argue, permanent, reductions in

local revenue. Despite the successful consolidation of services in many parts of the state—many located in the Northern counties, according to committee testimony—some local officials report that there are legal barriers to intergovernmental cooperation.

In May 2007, the MSU Land Policy Institute and State and Local Government Program mounted a conference entitled "Intergovernmental Cooperation in Michigan: A Policy Dialogue." A paper commissioned for that conference by lawyers at Miller, Canfield, Paddock and Stone, PLC, summarized the principal legal and statutory impediments which confront policymakers seeking to implement consolidation of services and other forms of intergovernmental cooperation. Nine statutes were cited as needing revision. See ***Background Information***.

Legislation has recently passed the House to amend three of these statutes—the Emergency Service to Municipalities Act (Public Act 57 of 1988); the Intergovernmental Transfer of Function and Responsibilities Act (Public Act 8 of 1967); and, the Urban Cooperation Act (Public Act 7 of 1967)—as well as the Metropolitan Transportation Authorities Act. These bills—House Bills 4309-4312—would allow the officials in local governments who are consolidating services to eliminate guarantees and provisions of collectively bargained contracts, presumably to make consolidation cost effective and encourage intergovernmental cooperation among local governments.

For a fuller discussion of the issues surrounding the disregarding of collectively bargained contracts, see the House Fiscal Agency's legislative analyses of House Bills 4309-4312 at www.legislature.mi.gov.

Similar language has now been proposed for yet another statute. Public Act 425 of 1984 allows two or more local units of government to conditionally transfer property for a period of up to 50 years for the purpose of an economic development project. A conditional transfer of property is controlled by a written contract, agreed to by the affected local units. A contract can be renewed or can be terminated early. This act is sometimes referred to as Act 425 (although it is also known as the Conditional Transfer of Property by Contract Act.)

Under Act 425, for example, a city and a township could reach an agreement whereby land in a township is conditionally transferred to a city in order to facilitate an economic development project. The township has the land available but not the means to provide necessary infrastructure. A neighboring city has the capability to extend or provide the infrastructure (but itself does not have available land). The two local units can enter a contract to conditionally transfer the property and share tax revenues from the new development. The act spells out what needs to be in a contract. The act is seen as an alternative to annexation and a form of regional cooperation. For more information, see ***Background Information***.

Legislation has been introduced to eliminate the language of the act that requires comparable employee benefits upon the conditional transfer of land when that transfer also entails the transfer of enterprises on the land having employees.

THE CONTENT OF THE BILL:

House Bill 4534 would amend the act (MCL 124.26) to change the ways local officials would employ, engage, compensate, transfer, or discharge personnel who carry out economic development projects under such a contract. Under the bill, local government civil service and merit systems would not need to be followed. In addition, the bill would eliminate the existing requirement that transferred employees be placed in positions that are comparable with respect to worker's compensation, pension, seniority, wages, sick leave, vacation, health and welfare insurance, or any other benefits.

Currently under the law, a contract may provide for the manner of employing, engaging, compensating, transferring, or discharging personnel required for an economic development project to be carried out under a contract, ***subject to the provisions of applicable civil service and merit systems.***

Further, the law now specifies that ***an employee who is transferred by a local unit due to a contract under this act shall not by reason of the transfer be placed in any worse position with respect to worker's compensation, pension, seniority, wages, sick leave, vacation, health and welfare insurance, or any other benefits that he or she enjoyed before the transfer.***

House Bill 4534 would remove the language from the law that is highlighted above.

BACKGROUND INFORMATION:

Citizens Research Council Report. To read the 111-page Report 346, entitled "Authorization for Inter-local Agreements and Intergovernmental Cooperation in Michigan," published by the Citizens Research Council of Michigan in April 2007 (and funded by the C. S. Mott Foundation and the Kellogg Foundation), visit <http://www.crcmich.org/PUBLICAT/2007/rpt346.pdf>

Legal Barriers to Consolidation. For an overview of the paper "Legal Barriers to Intergovernmental Cooperation Agreements in Michigan," by Michael McGee and Christopher Trebilcock, see:

http://www.mml.org/events/annual_convention/cv07/resources/legalbarriers.pdf

Public Act 425 Contracts. For additional information, consult the following on the website of the Michigan Economic Development Corporation regarding Public Act 425:

<http://www.michiganadvantage.org/cm/files/Fact-Sheets/ConditionalLandUseTransferPA425.pdf>

ARGUMENTS:

For:

Proponents of this bill argue that while Act 425 may differ in some respects from the other acts that have recently been under consideration, for consistency's sake its

provisions should mirror those found in House Bills 4309-4312, which have already passed the House. Representatives of local government say that while the act is aimed at conditional land transfers, many aspects of local government operations can be part of an Act 425 agreement.

Proponents of this kind of legislation, generally speaking, advance the following supporting arguments: (1) the legislation gives local officials cost-containment tools, including the opportunity to recalibrate and reduce local spending by adjusting personnel costs so that those costs reflect the new reality of sharply reduced property tax revenue collections; (2) they provide local units the flexibility to consolidate services quickly, though not unilaterally, without lengthy labor negotiations, in order to avoid financial crisis; and (3) they offer municipalities the chance to redesign service delivery so it better matches shifts in regional population age, density, and land-use, while saving taxpayers millions of dollars.

Proponents argue that historically, efforts to consolidate services have been hindered because collective bargaining agreements differ between local jurisdictions. Different workforces have conflicting rates of pay, varying benefits, and customized work rules. These differences in the jurisdictions' labor costs serve as a barrier to consolidating services. When local officials meet to discuss consolidation, employees in all jurisdictions argue their salaries and benefits should not be lowered, and they sometimes accuse local officials of unfair labor practices. A Michigan State University economist said that bills to consolidate services like this one, and House Bills 4309-4312 could save the state \$100 million over the course of three to five years, depending on the degree to which local officials used them to merge services.

Against:

Opponents of this legislation offer four main arguments in opposition to the bills. (1) They argue that throughout 20 years of history before the State Boundary Commission, no Public Act 425 Agreement has ever included the transfer of employees. Consequently, the bill is totally unnecessary. Further, opponents of the bill (and the other related bills) say the following: (2) The bill is not needed because service consolidations are already common throughout the state, in response to decades of reduced state-shared revenue and unfunded mandates; (3) the bill is "strategic, not substantive," because it is part of a larger strategy to attack public sector unions and collective bargaining, and that in doing so, the bill will provoke labor strife and make the consolidation of local governmental services more difficult, rather than easier; and (4) the bill is over-reaching because Michigan's recovery is underway, the recession is over, and property and income tax collections will increase as the economy rebounds.

Throughout the state, unionized public sector employees have made wage and benefit concessions and helped local officials to downsize their operations, privatize services, and consolidate operations. Legislation like this makes cooperation between local units and their employees less, rather than more, likely.

At no time during committee testimony on House Bill 4534 could any person give a concrete example of an instance of a Public Act 425 agreement that included the transfer of land *and employees*. Indeed, the representatives of the Michigan Municipal League who supported the bill acknowledged this fact, and while the spokesperson for the Michigan Townships Association noted that "PA 425 agreements can be about anything," he did not cite any instance in which employees were transferred at the time of a conditional land transfer. Finally, a state representative who is now a member of the House Local, Intergovernmental, and Regional Affairs Committee once chaired the State Boundary Commission and it was his testimony that that no employees were ever involved in PA 425 agreements that came before that commission in his nearly two decades of service.

POSITIONS:

The Michigan Municipal League supports the bill. (4-14-11)

The Michigan Townships Association supports the bill. (4-14-11)

The Washtenaw County Farm Bureau supports the bill. (4-14-11)

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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.