

Legislative Analysis



LIMIT LOCAL GOVERNMENT'S ABILITY TO REGULATE EMPLOYER-EMPLOYEE RELATIONS

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House Bill 4052 as enacted
Public Act 105 of 2015
Sponsor: Rep. Earl Poleski
House Committee: Commerce and Trade
Senate Committee: Michigan Competitiveness
Complete to 8-24-16

Analysis available at
<http://www.legislature.mi.gov>

REVISED SUMMARY:

The bill created a new act, *the Local Government Labor Regulatory Limitation Act*. The new act contains a legislative finding and declaration that "the regulation of the employment relationship between a nonpublic employer and its employees is a matter of state concern and is outside the express or implied authority of local governmental bodies to regulate, absent express delegation of that authority to the local governmental body."

Specifically, the new act prohibits a local governmental body from adopting, enforcing, or administering an ordinance, local policy, or local resolution that:

- Regulates information an employer or potential employer must request, require, or exclude on an application for employment from an employee or potential employee. (This does not prohibit requiring criminal background checks for a local license or permit.)
- Requires an employer to pay an employee a wage higher than the state minimum hourly wage or the federal minimum wage (unless the federal minimum is lower than the state minimum wage).
- Regulates work stoppage or strike activity of employers and their employees or the means by which employees can organize.
- Requires an employer to pay an employee a wage or fringe benefit based on wage or benefit rates prevailing in the locality. This would not apply to state projects subject to Public Act 166 of 1965 (the prevailing wage law).
- Requires an employer to provide paid or unpaid leave time.
- Regulates hours and scheduling that an employer is required to provide to employees. (However, this does not prohibit a local unit's limiting the hours a business may operate.)

- Requires an employer or its employees to participate in any educational apprenticeship or training program that is not required by state or federal law.
- Requires an employer to provide any specific fringe benefit or any other benefit for which the employer would incur an expense.
- Regulates or creates administrative or judicial remedies for wage, hour, or benefit disputes.

Actions that are not prohibited

The bill says that the new act does not prohibit a local governmental body from adopting or enforcing an ordinance, policy, or resolution prohibiting employment discrimination.

Subject to certain other provisions in the new act, it does not prohibit local government ordinances, policies, or regulations from providing for the terms and conditions of a voluntary agreement between an employer and the local government in connection with the provision of services directly to the local government or in connection with the receipt of a grant, tax abatement, or tax credit from a local government.

Also, the new act does not prohibit a local governmental body from enforcing a written agreement voluntarily entered into and in effect prior to October 1, 2015.

Definitions

The term "employer" excludes public employers and educational institutions, but otherwise applies to persons and entities engaging in a commercial activity, enterprise, or business in the state.

The term "local governmental body" means any local government or its subdivision, including, but not limited to, a city, village, township, county, or educational institution; any public authority, agency, board, commission, or other governmental, quasi-governmental, or quasi-public body; or any public body that acts or purports to act in a commercial, business, economic development, or similar capacity for a local government or its subdivision. The term "educational institution" refers to local and intermediate school districts, public school academies, and community colleges. However, the term "local governmental body" does not include an authority established by interlocal agreement under the Urban Cooperation Act to which the state is a party. (The Michigan Economic Development Corporation, or MEDC, for example, is such an entity.)

Severability

The bill specifies that if any part of the new act is found to be in conflict with the State Constitution, the US Constitution, or federal law, the act would be implemented to maximum extent those constitutions and laws permit. Any provision held invalid would be severable from the remaining portions of the act.

Enacting Section

The bill applies to ordinances, local policies, and local resolutions adopted after December 31, 2014. The act also says:

Nothing in this act authorizes a local governmental body to adopt an ordinance, local policy, or local resolution regulating the employment relationship as to matters described in this act, and nothing in this act shall be construed as an express or implied recognition of any such authority that may or may not exist elsewhere in state law. Whether a local governmental body had the authority, before January 1, 2015, to adopt an ordinance, local policy, or local resolution regulating the employment relationship as to matters described in this act is a separate question that this act does not address. This act is not intended to be construed to impact the reasoning or outcome of pending litigation in any way, for or against any particular legal position.

FISCAL IMPACT:

As written, the bill would have an indeterminate impact on state and local revenues. The direction and magnitude of this effect each depend on broader economic conditions and the decisions of individual firms and municipalities, none of which can be known in advance.

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