

AMEND PUBLIC EMPLOYEE DISCIPLINARY & DISMISSAL PROCESS

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House Joint Resolution MM
As reported from committee without amendment
Sponsor: Rep. Kevin Cotter

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

House Bill 5677,
As reported from committee without amendment
Sponsor: Rep. Dan Lauwers
Committee: Workforce and Talent Development
Complete to 6-8-16

BRIEF SUMMARY:

House Joint Resolution MM would amend the Michigan State Constitution to allow the heads of the principal departments¹ to discipline or dismiss employees in the state classified civil service "for conduct that directly and negatively impacts the department's ability to accomplish its statutory duties in a fair, timely, equitable, and transparent manner."

If approved by two-thirds of both the House and the Senate, the resolution would be submitted to the voters at the next general election. A "general election" is an election in November of an even-numbered year.

House Bill 5677 would create the Grievance Procedure Act, which would provide for the manner in which an employee in the state classified civil service could appeal a disciplinary decision made by a department head. HB 5677 is tie-barred to HJR MM, meaning that unless HJR MM becomes part of the state constitution, the bill cannot take effect.

FISCAL IMPACT:

The bill could increase costs to the state to the extent grievances for appeal were filed and/or employee dismissals were overturned and back-pay and related costs were incurred. There is no way to predict the amount of such activities if the legislation were enacted into law.

¹ Article V, Section 2 of the state constitution says that "All executive and administrative offices, agencies and instrumentalities of the executive branch of state government and their respective functions, powers and duties, except for the office of governor and lieutenant governor and the governing bodies of institutions of higher education provided for in this constitution, shall be allocated by law among and within not more than 20 principal departments."

THE APPARENT PROBLEM:

According to the sponsors of the resolution and bill, the current disciplinary process for employees in the state civil service is overly lengthy, and as a result, it is difficult to discipline and/or dismiss poor-performing employees. This difficulty, they assert, in turn leads to inefficient state agencies, as workers are forced to pick up duties from the employee on leave who is awaiting resolution of their disciplinary proceedings. This also leads to low morale on the part of those who must do the extra work, as they do the extra work for no extra pay while the employee subject to discipline awaits resolution of the disciplinary or dismissal process.

The goal of the legislation, the sponsors say, is to empower managers to run their divisions as efficiently and as effectively as possible while getting faster resolution of the disciplinary and dismissal process. The sponsor further noted that by allowing for a more expedient process, this will make state employees more accountable for their actions.

THE CONTENT OF THE BILL:

HJR MM

Specifically, the joint resolution would amend Article IV, Section 48, and Article XI, Section 5 of the Michigan Constitution of 1963.

Article IV, Section 48 allows the legislature to enact laws providing for the resolution of disputes concerning public employees, except those in the state classified civil service. HJR MM would amend that section to grant, the legislature the power, as regards the civil service, to enact laws regarding grievance procedures for an appeal to the Civil Service Commission following discipline or dismissal by the head of a principal department for conduct that "directly and negatively impacts that department's ability to accomplish its statutory duties in a fair, timely, equitable, and transparent manner."

Article XI, Section 5 would be amended, as noted earlier, by adding language to allow the head of a principal department to discipline or dismiss an employee in the state classified service for conduct that directly and negatively impacts that department's ability to accomplish its statutory duties in a fair, timely, equitable, and transparent manner. This would apply "notwithstanding the powers granted to the Civil Service Commission."

An employee who considers himself or herself aggrieved by this discipline or dismissal would have the right to appeal that decision to the Civil Service Commission through the grievance procedures established by law. [These procedures would be created in House Bill 5677.] The commission could then reverse that employee's discipline or dismissal if the department head's decision was determined to be arbitrary or capricious.

House Bill 5677

HB 5677 would create the Grievance Procedure Act, which sets the grievance process for an employee who feels that discipline or a dismissal was not for just cause. The term "just

cause" would mean conduct that directly and negatively impacts the department's ability to accomplish its statutory duties in a fair, timely, equitable, and transparent manner.

Section 3 of the act states that an employee may file a grievance for an appeal to the commission following discipline or dismissal by the head of a principal department for conduct that the employee believes does not constitute just cause.

Section 4 would delineate the manner in which a grievance must be filed and how the grievance would be addressed by the commission. A grievance must be signed and filed in writing within 14 calendar days after the employee knew of or, in the exercise of reasonable diligence, should have known of the circumstances giving rise to the grievance.

Unless the grievant elects review by the full commission, a hearing officer or designated agent of the commission could hear the grievance. The grievant and the principal department would share the cost of the review equally, and the commission would not be able to award attorney fees, witness fees, costs, or other expenses, nor could the commission be able to award interest on any monetary award.

The commission may award back pay, but the back-pay award would be limited to pay for regularly scheduled hours and holidays for which the employee normally would have been paid. A back-pay award could not include any other pay premium, such as overtime, on-call, callback, explosives duty, out-of-state location, or emergency response premium. A back-pay award would be subject to all of the following deductions:

- Earnings in other employment or self-employment, except previously approved supplemental employment.
- Benefits received from employer contributory income protection insurance.
- Benefits received under worker's compensation, unemployment compensation, social security, or social welfare programs.

The Civil Service Commission could award sick and annual leave credit that would normally have accrued during the period of vacated discipline or dismissal, as well as seniority credit and longevity compensation that would normally have accrued during a period of vacated discipline or dismissal, though any such seniority credit could not be used for classification or qualification purposes. For a limited-term appointment, the commission could not award damages to a grievant any period after the expiration date of the grievant's term of appointment.

Section 5 would establish criteria that would determine if the commission could consider a grievance. For a grievance to be considered, the grievant must allege that he or she was dismissed or disciplined by the head of a principal department without just cause.

The Civil Service Commission could not consider a grievance based on any of the following:

- The failure to renew or extend the employee's appointment under a limited-term contract.
- The failure to renew or extend the term of a limited-term position.
- A non-disciplinary lateral job change.
- An appointment decision arising out of the selection, appointment, or certification of a candidate for a position.

Section 6 would describe how the commission would respond to a grievance, as well as criteria for when the commission could overturn a department head's disciplining or dismissal of an employee.

Once it has considered a grievance, the commission would issue a written grievance decision setting forth findings of fact, conclusions of law, and any remedial orders. If the commission fails to issue a decision on the grievance within 28 calendar days, the grievance is considered to be administratively denied.

The commission could only reverse the discipline or dismissal that caused the grievance if the head of the department acted arbitrarily and capriciously in determining that the employee's conduct was just cause for discipline or dismissal. The grievance decision of the commission or an administrative denial would be binding unless the grievant files an appeal within 27 days of denial, as provided in Section 7.

Section 7 would set the date of when a grievance decision or administrative denial would be final and binding, as well as how such a decision or denial could be appealed to the circuit court. A grievance decision or administrative denial would become final and binding on the parties 28 calendar days after the date the decision is issued, unless the decision provides for a later effective date or either party files a further appeal to the circuit court within 27 calendar days after the date the written decision is issued or the grievance is administratively denied.

Upon filing of an appeal, the effective date of the decision is automatically stayed pending further order, unless the written grievance decision of the commission orders a principal department to reinstate a grievant who has been dismissed, the principal department, as a condition of further appeal, must either reinstate the grievant or restore the grievant's base pay and medical, dental, and vision group insurance. In this instance, the principal department would have to continue the reinstatement or payment of base pay and benefits while the further appeal is pending.

The bill would define the following terms in Section 2 of the act: "Civil Service Commission" or "commission" would mean the commission created in Section 5 of Article XI of the State Constitution of 1963; "Employee" would mean an employee in the classified state civil service, as described in Section 5 of Article XI of the State Constitution of 1963; "Grievance" would mean an appeal authorized under Section 3 of the act.

BACKGROUND INFORMATION:

The Civil Service Commission is non-salaried and consists of four persons, not more than two of whom can be members of the same political party, appointed by the governor for terms of eight years. No two terms can expire in the same year.

Section 5 of Article XI of the state constitution says the classified state civil service consists of all positions in the state service except those filled by popular election, heads of principal departments, members of boards and commissions, the principal executive officer of boards and commissions heading principal departments, employees of courts of record, employees of the legislature, employees of the state institutions of higher education, and all persons in the armed forces of the state.

Also, the constitution allows eight exempt positions in the office of the governor; and within each principal department, when requested by the department head, two other exempt positions, one of which shall be policy-making. The Civil Service Commission can exempt three additional positions of a policy-making nature within each principal department.

Section 5 also gives appointing authorities the power to create or abolish positions for reasons of administrative efficiency without the approval of the commission. This is the only reason that positions can be created or abolished. Any employee considering himself aggrieved by the abolition or creation of a position has the right of appeal to the commission through established grievance procedures.

ARGUMENTS:

For:

As noted earlier, the goal of the legislation is to promote more efficient and effective government by empowering managers in state agencies to more quickly discipline or dismiss employees who are not performing their jobs as required. By speeding up the process, the state's employee discipline and dismissal process would more closely mirror the private sector, while still retaining most of the elements of the current appeals process, supporters say. This would ensure workers who are disciplined are still able to appeal any discipline or dismissal decision.

Against:

Opponents of the legislation say that the current process works adequately, pointing to recent Michigan Civil Service reports showing 336 classified employees were dismissed in FY 2014-15, with another 160 dismissed in the first half of FY 2015-16, as proof that employees are not "unfireable." Critics of the package worry the "arbitrary and capricious" standard that would be established by the bill to overturn a disciplinary or dismissal decision is too high a threshold to use when determining whether a punishment fit the action committed by that employee.

POSITIONS:

The following indicated support of HJR MM and HB 5677:

Michigan Freedom Fund (5-26-16)

The following indicated opposition to HJR MM and HB 5677:

State Employee Retirees Association (6-1-16)

Michigan AFL-CIO (6-1-16)

AFSCME (5-26-16)

Michigan Association of Governmental Employees (5-26-16)

UAW Local 6000 (5-26-16)

SEIU 517M (5-26-16)

Michigan Corrections Organization (5-26-16)

Michigan Regional Council of Carpenters and Millwrights (5-26-16)

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