Legislative Analysis

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MICHIGAN EMPLOYMENT SECURITY ACT: AMERICORPS SERVICES ARE NOT "EMPLOYMENT"

House Bill 5598 as enrolled
Public Act 243 of 2004
Sponsor: Rep. Bruce Caswell

House Committee: Employment Relations, Training and Safety
Senate Committee: Commerce and Labor
First Analysis (8-30-04)

BRIEF SUMMARY: The bill would amend the Michigan Employment Security Act, which governs the state's unemployment benefits system, to specify that the term "employment" as used in the act would not include services performed in an Americorps program under certain circumstances.

FISCAL IMPACT: There would be no fiscal impact on the state or on local governmental units.

THE APPARENT PROBLEM:

In 1993, Congress and then-President Clinton enacted the National and Community Service Trust Act of 1993 (P.L. 103-82). Among other things, the act established the Americorps program, which is a network of several national service programs aimed at improving education, public safety, public health, and the environment in communities throughout the country. The Americorps program engages over 50,000 individuals to provide these services through a vast network of nonprofit organizations, public agencies, and faith-based organizations. In return for their service, members receive an educational allowance of $4,725, as well as health insurance and child care assistance, and a modest allowance for basic living expenses

In 1995, the Department of Labor ruled that Americorps members were not entitled to unemployment compensation under the Federal Unemployment Tax Act, as there is no employer-employee relationship between Americorps grantees and members. While Americorps members were not entitled to benefits under federal law, they could still be eligible under state law.

The issue of whether Americorps members are eligible for unemployment compensation under the Michigan Unemployment Security Act was recently addressed by the state Court of Appeals in *Dana v. American Youth Foundation*, 257 Mich App 208 (2003). The act defines "employment", for the purposes of determining eligibility for unemployment compensation, to generally mean services performed for payment or under any contract of hire. The act further includes a lengthy list of types of services are not specifically not considered to be "employment" and, therefore, do not entitle

individuals to benefits. The act specifically excludes from consideration as "employment", services that are performed as part of an unemployment work-relief or work-training program that is assisted or financed wholly or partially by a governmental agency. It was argued that the Americorps program was created as a job-training program, and that the work of an Americorps member was part of a governmental-funded work-training program, which disqualified Americorps members from receiving any benefits. The court of appeals, relying on a 1996 ruling on the definition of "work-relief" and "work-training" by the Department of Labor, held that Americorps did not fit the definition "work-relief" or "work-training", and that Americorps members are engaged in "employment" as used in the MUSA and are eligible for unemployment compensation.

Some people believe that, following prior rulings by the Department of Labor, and notwithstanding the appellate court's ruling, Americorps service should not be considered to be "employment" for the purposes of determining eligibility for unemployment compensation under the Michigan Unemployment Security Act.

THE CONTENT OF THE BILL:

The bill would amend the Michigan Employment Security Act, which governs the state's unemployment benefits system, to specify that the term "employment" as used in the act would not include services performed in an Americorps program, but only if the individual performed such services under a contract or agreement providing for a guaranteed stipend opportunity and the individual received the full amount of the guaranteed stipend prior to the ending date of the contract or agreement.

Generally, the act defines "employment" to mean services, including services in interstate commerce, performed for remuneration (payment) or under any contract of hire, written or oral, express or implied. The act also includes a lengthy list of services that are not considered to be "employment".

MCL 421.43

ARGUMENTS:

For:

The bill is consistent with federal law and rulings by the Department of Labor that Americorps members are not actual employees of the program and, as such, are not engaged in actual employment that would qualify them for unemployment compensation. While the work of Americorps members may very well appear to be employment, they do not receive actual wages or compensation, aside from an education award and a modest allowance for basic living expenses.

Moreover, excluding Americorps service from the definition of "employment" is necessary for these services to be provided. If the nonprofit and faith-based organizations that rely on Americorps services were required to pay the costs of unemployment

compensation, many of these programs would be dramatically scaled back or would go without the services of Americorps members.

Against:

The bill denies support to individuals who have often sacrificed a great deal to serve communities in great need of assistance. Absent the work of Americorps members, many of these services would not be provided.

In addition, the bill makes a distinction between Americorps members and regular employees of a nonprofit organization, when such a distinction often does not exist. In many instances, the Americorps members work along side of regular employees of a non-profit organization. There is no difference in the work done by the employee and the work done by the Americorps member. To argue that one person is entitled to unemployment compensation while denying those same benefits to another individual is discriminatory.

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