Legislative Analysis

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COMPULSORY ARBITRATION ACT FOR COUNTY CORRECTIONS OFFICERS

House Bill 6112
Sponsor: Rep. Fred Miller
Committee: Labor

Complete to 6-9-08

A REVISED SUMMARY OF HOUSE BILL 6112 AS INTRODUCED 5-13-08

House Bill 6112 would create a new act known as the Corrections Officer Compulsory Arbitration Act which would apply to corrections officers under the authority of a county sheriff. It would provide a binding compulsory arbitration procedure for the resolution of certain disputes.

[The bill would define "corrections officer" to mean any individual employed by or under the authority of a county sheriff who is engaged in the supervision, control, or management of individuals in the custody of a county sheriff.]

The bill contains a "public policy" statement as follows:

It is the public policy of this state that in public corrections facilities, where the right of employees to strike is prohibited by law, it is requisite to the high morale of the employees and the efficient operation of those public corrections facilities to afford an alternate, expeditious, effective, and binding procedure for the resolution of disputes, and to that end the provisions of this act, providing for compulsory arbitration, shall be liberally construed.

The bill would provide the following arbitration procedure.

Last Offer of Settlement. In mediating a county public corrections facility employee dispute that is not a dispute concerning the interpretation or application of an existing agreement, each party would be required to submit a last offer of settlement on all issues in dispute to the mediator and the other party within the time limit set by the mediator. A last offer of settlement would not be modified after it is submitted without written consent of both parties.

If the dispute could not be resolved between the parties within 30 days after submitting the last offer of settlement, the employees or employer could initiate binding arbitration proceedings by submitting a written request to the Michigan Employment Relations Commission and a copy to the other party.

Arbitration Panel. Within 10 days after the end of the 30-day period, the employer would choose a delegate, and the employees' designated or selected exclusive collective

bargaining representative (or if none, their previously designated representative in the prior mediation procedure) would choose a delegate to a panel of arbitration. The employer and employees would promptly advise the other of their selected delegate.

Within seven days after a request from one or both parties, the Employment Relations Commission would select from its panel of arbitrators three persons as nominees for impartial arbitrator of the arbitration panel. Within five days after the selection, each party could peremptorily strike the name of one of the nominees. Within seven days after this five-day period, the commission would designate one of the remaining nominees as the impartial arbitrator of the arbitration panel.

Duties of Impartial Arbitrator, Expenses & Fees. Upon appointment, the impartial arbitrator would proceed to act as chairperson of the three-person arbitration panel, call a hearing to begin within 15 days, and give reasonable notice of the time and place of the hearing. Before the hearing, the commission would provide the chairperson with the final offer of settlement that each party submitted during mediation. Upon application, for good cause shown, and upon terms and conditions that are just, the arbitration panel would grant leave to intervene to a person, labor organization, or governmental unit that has a substantial interest in the dispute.

Under the bill, the arbitration panel could receive into evidence any oral or documentary evidence or other data that it considers relevant. The proceedings would be informal. Technical rules of evidence would not apply, and the failure to comply with technical rules of evidence could not impair the competency of the evidence. A verbatim record of the proceedings would be made, and the arbitrator could arrange for the necessary recording service. Transcripts could be ordered at the expense of the ordering party; however, transcripts would not be necessary for a decision by the arbitration panel.

The commission would establish the expense of the proceedings in advance, including a fee to the chairperson. The parties would bear that expense equally. If the delegates are public officers or employees, they would continue on the payroll of the public employer at their usual rate of pay. The hearing conducted by the arbitration panel could be adjourned from time to time but, unless otherwise agreed by the parties, would have to be concluded within 30 days of the date it begins. Actions and rulings of a majority of the arbitration panel would be considered the actions and rulings of the entire panel.

Authority of Chairperson. At any time before the panel renders an award, the chairperson could remand the dispute to the parties for further collective bargaining for a period not to exceed three weeks. The time provisions of this act would be extended for a time period equal to that of the remand. The chairperson of the arbitration panel would notify the Employment Relations Commission of the remand.

Authority of Arbitration Panel. The arbitration panel could administer oaths and issue subpoenas to require the attendance of witnesses and the production of books, papers, contracts, agreements, and documents that it considers material to a just determination of the issues in dispute. If any person refuses to obey a subpoena, be sworn or testify, or if

any witness, party, or attorney is guilty of any contempt while attending any hearing, the arbitration panel could, or the attorney general if requested shall, invoke the aid of any circuit court for the county within which the hearing is being held, and the court would issue an appropriate order. Failure to obey the order would be punished by the court as contempt.

Hearing Conclusion and Oral Arguments. At the conclusion of the hearing held, each party would present oral argument in support of the last offer of settlement, which would be made part of the record. At the conclusion of oral argument, the hearing would be closed and no further oral or documentary evidence or argument would be presented by either party without unanimous agreement of the arbitration panel. Within 30 days after the conclusion of the hearing or after any further additional periods to which the parties agree, the arbitration panel would make written findings of fact and promulgate a written opinion and order upon the issues presented to it and upon the record made before it and mail or otherwise deliver a true copy of the opinion and order to the parties and their representatives and to the Employment Relations Commission. The arbitration panel could adopt the party's entire last offer of settlement that (in the opinion of the arbitration panel) more nearly complies with the applicable factors cited in the bill. The findings, opinion, and order would be based upon those applicable factors.

Applicable Factors for Findings, Opinions, and Orders. If the parties have no agreement or have begun negotiations or discussions involving a new or amended agreement in which wage rates or other conditions of employment are in dispute, the arbitration panel shall base its findings, opinions, and order upon the following factors: (a) the lawful authority of the employer; (b) stipulations of the parties; (c) the interest and welfare of the public and the financial ability of the unit of government to meet the costs; (d) comparison of the wages, hours, and conditions of employment of the employees involved in the arbitration proceeding with those of other employees performing similar services, and with other employees generally in both public employment in comparable communities and private employment in comparable communities; (e) the average consumer prices for goods and services, commonly known as the cost of living; (f) the overall compensation currently received by the employees, including direct wage compensation; vacations, holidays and other excused time; insurance and pensions; medical and hospitalization benefits; the continuity and stability of employment; and all other benefits received; (g) changes in circumstances concerning any of the factors in subdivisions (a) to (f) while the arbitration proceedings are pending; and (h) other factors that are normally or traditionally taken into consideration in determining wages, hours, and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration, or otherwise between the parties, in the public service or in private employment.

Pending Decisions. While proceedings are pending before the arbitration panel, a party could not change existing wages, hours, or other conditions of employment without the consent of the other party. A party could consent to proposed modifications without prejudice to rights or positions under this act. A charge that a violation had occurred could be filed with the Employment Relations Commission. The commission could

remedy the violation as provided in Public Employee Relations Act. A charge of a violation would not automatically stay proceedings before the arbitration panel. A party aggrieved by a final order of the commission regarding an alleged violation could obtain review of the order in the court of appeals. Appeal to the court would not automatically stay the order of the commission

Arbitration Panel Decision. A majority decision of the arbitration panel, if supported by competent, material, and substantial evidence on the whole record, would be final and binding upon the parties. Either party or the arbitration panel could enforce the decision in the circuit court for the county in which the dispute arose or in which a majority of the affected employees reside. The beginning of a new municipal fiscal year after arbitration proceedings are initiated, but before the arbitration decision is rendered or enforced, would not render the dispute moot or impair the jurisdiction or authority of the arbitration panel or the validity of its decision. Increases in rates of compensation or other benefits could be awarded retroactively to the beginning of any period in dispute, any other statute or charter provisions to the contrary notwithstanding. At any time the parties could, by stipulation, amend or modify an award of arbitration.

Review of Arbitration Order. Orders of the arbitration panel would be reviewable by the circuit court for the county in which the dispute arose or in which a majority of the affected employees reside, but only on the basis that the arbitration panel was without or exceeded its jurisdiction; the order is unsupported by competent, material, and substantial evidence on the whole record; or the order was procured by fraud, collusion, or other similar and unlawful means. Review proceedings would not automatically stay the order of the arbitration panel.

Imprisonment. Under the bill, a person could not be sentenced to a term of imprisonment for any violation of this act or an order of the arbitration panel.

Exclusions to the Act. The act would not apply to a dispute between a labor organization representing corrections officers and a public employer if that the parties are operating under a collective bargaining agreement that provides for disputes to be submitted to binding interest arbitration.

The new act created by the bill would be supplementary to the existing Public Employment Relations Act and would not amend or repeal any of its provisions. The fact-finding procedures of that act, however, would be inapplicable to disputes subject to arbitration under this act.

The Employment Relations Commission could grant whatever relief is necessary to enforce the provisions of this act, except in those matters expressly reserved in this act to the circuit court.

FISCAL IMPACT:

By providing compulsory arbitration for county corrections officers, the bill would increase the direct costs of counties in arbitrating labor disputes. These costs would vary among the counties depending on their size and on the complexity of the dispute, among other factors, and would include attorney's fees and the county's portion of the arbitrators' fees. In surveying a number of counties, these costs would be several thousand dollars, or in many instances, tens of thousands, per bargaining unit in each county.

These costs would also vary among the counties depending on the structure of the bargaining units involved, as some counties already include corrections deputies and road patrol deputies in the same unit, even though corrections deputies are not subject to compulsory arbitration under 1969 PA 312. Beyond the immediate direct costs of arbitration, the bill would have an indeterminate impact on counties, ultimately depending on the results of arbitration concerning corrections employee wages, health benefits, retirement benefits, and other employee economics. There appears to be no statistically reliable set of data concerning municipal employee economics upon which a long-term analysis of compulsory arbitration (under Act 312) could be based.

The chart on the next page shows a brief summary of the outcome of recent Act 312 awards involving counties. In general, the recent 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 county), where the county has successfully pushed for higher employee contribution rates for health insurance and other cost savings mechanisms. The record on wages is mixed, where the arbitration panels have split 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 counties).

The bill, like Act 312, provides that the arbitration panel should base its findings on, among other things, the financial ability of the unit of government to meet the costs. This, in theory, should serve to temper the cost increases required to meet the unions' proposals, although the financial ability of the local unit is it is not the sole determining factor.

(See chart on following page for a brief summary of the outcome of recent Act 312 awards involving counties.)

A Brief Summary of the Outcome of Recent Act 312 Awards Involving Counties

Employer	Union	Date	Arbitration Award
Berrien County	Police Officers Labor Council	March 5, 2007	Wages - Union (2 yrs) and Employer (1 yr) Insurance - Employer Pension - Employer
Macomb County	Police Officers Labor Council	March 31, 2008	Wages - Employer Longevity - Employer Shift Premium - Employer Overtime - Union Pension - Union
Lake County	Command Officers Association of Michigan	November 20, 2007	Wages - Employer Retirement - Employer Leave Time - Employer Longevity - Employer Shift Premium - Employer Health Insurance - Employer
Kalkaska County	Police Officers Association of Michigan	November 20, 2007	Wages - Union (2 yrs) and Employer (1 yr) Shift Premium - Union Health Insurance - Employer
Sanilac County	Police Officers Association of Michigan	September 12, 2007	Retiree Health Care - Employer
Iosco County	Police Officers Association of Michigan	May 17, 2007	Wages - Union (1 yr) and Employer (2 yrs) Shift Premium - Union Health Insurance - Employer Retirement - Employer
Allegan County	Police Officers Labor Council	May 8, 2007	Retirement - Employer

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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.