

# HOUSE BILL No. 6112

May 13, 2008, Introduced by Reps. Miller, Rick Jones, Nofs, Elsenheimer, Stakoe, Sheltrown, Palsrok, Ward, David Law, Meisner, Byrum, Simpson, Gillard and McDowell and referred to the Committee on Labor.

A bill to provide for compulsory arbitration of labor disputes in public corrections facilities; to provide for the selection of members of arbitration panels; to prescribe the procedures and authority of arbitration panels; and to provide for the enforcement and review of decisions of the arbitration panels.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1           Sec. 1. This act shall be known and may be cited as the  
2 "corrections officer compulsory arbitration act".

3           Sec. 2. It is the public policy of this state that in public  
4 corrections facilities, where the right of employees to strike is  
5 prohibited by law, it is requisite to the high morale of the  
6 employees and the efficient operation of those public corrections  
7 facilities to afford an alternate, expeditious, effective, and

House Bill No. 6112 as amended June 26, 2008

1 binding procedure for the resolution of disputes, and to that end  
2 the provisions of this act, providing for compulsory arbitration,  
3 shall be liberally construed.

4 Sec. 3. As used in this act:

5 (a) "Commission" means the employment relations commission  
6 created in section 3 of 1939 PA 176, MCL 423.3.

7 (b) "Corrections officer" means any individual employed by or  
8 under the authority of a county sheriff who is engaged in the  
9 supervision, control, or management of individuals in the custody  
10 of a county sheriff.

11 (c) "Public corrections facility" means any county corrections  
12 facility, [ ] used to house or detain  
13 individuals in the custody of the county sheriff, that has  
14 employees engaged as corrections officers and that is established  
15 by a county; county sheriff; or any authority, district, board, or  
16 any other entity created independently or jointly by or between 1  
17 or more governmental bodies, whether created by statute, charter,  
18 ordinance, resolution, delegation, or any other mechanism.

19 Sec. 4. (1) In mediating a public corrections facility  
20 employee dispute that is not a dispute concerning the  
21 interpretation or application of an existing agreement, each party  
22 shall submit a last offer of settlement on all issues in dispute to  
23 the mediator and the other party within the time limit the mediator  
24 prescribes. A last offer of settlement shall not be modified after  
25 it is submitted without written consent of both parties.

26 (2) If the dispute has not been resolved to the agreement of  
27 both parties within 30 days after submitting the last offer of

1 settlement, the employees or employer may initiate binding  
2 arbitration proceedings by submitting a written request to the  
3 employment relations commission and a copy to the other party.

4       Sec. 5. Within 10 days after the end of the 30-day period, the  
5 employer shall choose a delegate, and the employees' designated or  
6 selected exclusive collective bargaining representative, or if  
7 none, their previously designated representative in the prior  
8 mediation procedure, shall choose a delegate to a panel of  
9 arbitration as provided in this act. The employer and employees  
10 shall promptly advise the other of their selected delegate.

11       Sec. 6. Within 7 days after a request from 1 or both parties,  
12 the employment relations commission shall select from the Michigan  
13 employment relations commission panel of arbitrators established  
14 under section 5(2) of 1969 PA 312, MCL 423.235, 3 persons as  
15 nominees for impartial arbitrator of the arbitration panel. Within  
16 5 days after the selection, each party may peremptorily strike the  
17 name of 1 of the nominees. Within 7 days after this 5-day period,  
18 the commission shall designate 1 of the remaining nominees as the  
19 impartial arbitrator of the arbitration panel.

20       Sec. 7. Upon appointment, the impartial arbitrator shall  
21 proceed to act as chairperson of the 3-person arbitration panel,  
22 call a hearing to begin within 15 days, and give reasonable notice  
23 of the time and place of the hearing. Before the hearing, the  
24 commission shall provide the chairperson with the final offer of  
25 settlement that each party submitted during mediation. Upon  
26 application, for good cause shown, and upon terms and conditions  
27 that are just, the arbitration panel shall grant leave to intervene

1 to a person, labor organization, or governmental unit that has a  
2 substantial interest in the dispute. The arbitration panel may  
3 receive into evidence any oral or documentary evidence or other  
4 data that it considers relevant. The proceedings shall be informal.  
5 Technical rules of evidence do not apply, and the failure to comply  
6 with technical rules of evidence does not impair the competency of  
7 the evidence. A verbatim record of the proceedings shall be made,  
8 and the arbitrator shall arrange for the necessary recording  
9 service. Transcripts may be ordered at the expense of the party  
10 ordering them, but transcripts are not necessary for a decision by  
11 the arbitration panel. The commission shall establish the expense  
12 of the proceedings in advance, including a fee to the chairperson.  
13 The parties shall bear that expense equally. The delegates, if  
14 public officers or employees, shall continue on the payroll of the  
15 public employer at their usual rate of pay. The hearing conducted  
16 by the arbitration panel may be adjourned from time to time but,  
17 unless otherwise agreed by the parties, shall be concluded within  
18 30 days of the date it begins. Actions and rulings of a majority of  
19 the arbitration panel are considered the actions and rulings of the  
20 entire panel.

21       Sec. 8. The arbitration panel may administer oaths and issue  
22 subpoenas to require the attendance of witnesses and the production  
23 of books, papers, contracts, agreements, and documents that it  
24 considers material to a just determination of the issues in  
25 dispute. If any person refuses to obey a subpoena or refuses to be  
26 sworn or to testify, or if any witness, party, or attorney is  
27 guilty of any contempt while attending any hearing, the arbitration

House Bill No. 6112 as amended June 26, 2008

1 panel may, or the attorney general if requested shall, invoke the  
2 aid of any circuit court for the county within which the hearing is  
3 being held, which court shall issue an appropriate order. Failure  
4 to obey the order may be punished by the court as contempt.

5       Sec. 9. At any time before the panel renders an award, the  
6 chairperson may remand the dispute to the parties for further  
7 collective bargaining for a period not to exceed 3 weeks. The time  
8 provisions of this act shall be extended for a time period equal to  
9 that of the remand. The chairperson of the arbitration panel shall  
10 notify the employment relations commission of the remand.

11       Sec. 10. At the conclusion of the hearing held under section  
12 7, each party shall present oral argument [or, at the request of both  
13 parties, the panel shall direct the parties to submit posthearing  
14 briefs] in support of the last offer of settlement, which shall be made part of the record. At the  
15 conclusion of oral argument [or after the submission of posthearing  
16 briefs], the hearing shall be closed and no further oral or documentary evidence or argument shall be presented  
17 by either party without unanimous agreement of the arbitration  
18 panel. Within 30 days after the conclusion of the hearing or after  
19 any further additional periods to which the parties agree, the  
20 arbitration panel shall make written findings of fact and  
21 promulgate a written opinion and order upon the issues presented to  
22 it and upon the record made before it and shall mail or otherwise  
23 deliver a true copy of the opinion and order to the parties and  
24 their representatives and to the employment relations commission.  
25 The arbitration panel shall adopt the party's entire last offer of  
26 settlement that, in the opinion of the arbitration panel, more  
27 nearly complies with the applicable factors prescribed in section  
11. The findings, opinion, and order shall be based upon the

1 applicable factors prescribed in section 11.

2       Sec. 11. If the parties have no agreement or have begun  
3 negotiations or discussions involving a new or amended agreement in  
4 which wage rates or other conditions of employment are in dispute,  
5 the arbitration panel shall base its findings, opinions, and order  
6 upon the following factors, as applicable:

7       (a) The lawful authority of the employer.

8       (b) Stipulations of the parties.

9       (c) The interest and welfare of the public and the financial  
10 ability of the unit of government to meet the costs.

11       (d) Comparison of the wages, hours, and conditions of  
12 employment of the employees involved in the arbitration proceeding  
13 with those of other employees performing similar services and with  
14 other employees generally in both of the following:

15       (i) Public employment in comparable communities.

16       (ii) Private employment in comparable communities.

17       (e) The average consumer prices for goods and services,  
18 commonly known as the cost of living.

19       (f) The overall compensation presently received by the  
20 employees, including direct wage compensation; vacations, holidays  
21 and other excused time; insurance and pensions; medical and  
22 hospitalization benefits; the continuity and stability of  
23 employment; and all other benefits received.

24       (g) Changes in circumstances concerning any of the factors in  
25 subdivisions (a) to (f) while the arbitration proceedings are  
26 pending.

27       (h) Other factors that are normally or traditionally taken

1 into consideration in determining wages, hours, and conditions of  
2 employment through voluntary collective bargaining, mediation,  
3 fact-finding, arbitration, or otherwise between the parties, in the  
4 public service or in private employment.

5       Sec. 12. A majority decision of the arbitration panel, if  
6 supported by competent, material, and substantial evidence on the  
7 whole record, is final and binding upon the parties. Either party  
8 or the arbitration panel may enforce the decision in the circuit  
9 court for the county in which the dispute arose or in which a  
10 majority of the affected employees reside. The beginning of a new  
11 municipal fiscal year after arbitration proceedings are initiated,  
12 but before the arbitration decision is rendered or enforced, does  
13 not render the dispute moot or impair the jurisdiction or authority  
14 of the arbitration panel or the validity of its decision. Increases  
15 in rates of compensation or other benefits may be awarded  
16 retroactively to the beginning of any period in dispute, any other  
17 statute or charter provisions to the contrary notwithstanding. At  
18 any time the parties may, by stipulation, amend or modify an award  
19 of arbitration.

20       Sec. 13. If an employee organization recognized under 1947 PA  
21 336, MCL 423.201 to 423.217, as the bargaining representative of  
22 employees subject to this act willfully disobeys a lawful order a  
23 court issues as provided in section 12 or willfully encourages or  
24 offers resistance to that order, whether by a strike or otherwise,  
25 the court may impose a fine of not more than \$250.00 for each day  
26 that the contempt persists. If an employer willfully disobeys a  
27 lawful court order of enforcement or willfully encourages or offers

House Bill No. 6112 as amended June 26, 2008

1 resistance to the order, the court may impose a fine against the  
2 employer of not more than \$250.00 for each day that the contempt  
3 persists.

4       Sec. 14. Orders of the arbitration panel are reviewable by the  
5 circuit court for the county in which the dispute arose or in which  
6 a majority of the affected employees reside, but only on the basis  
7 that the arbitration panel was without or exceeded its  
8 jurisdiction; the order is unsupported by competent, material, and  
9 substantial evidence on the whole record; or the order was procured  
10 by fraud, collusion, or other similar and unlawful means. Review  
11 proceedings do not automatically stay the order of the arbitration  
12 panel.

13       Sec. 15. (1) While proceedings are pending before the  
14 arbitration panel, a party shall not change existing wages, hours,  
15 or other conditions of employment without the consent of the other  
16 party. A party may consent to proposed modifications without  
17 prejudice to rights or positions under this act.

18       (2) A charge that a violation of subsection (1) has occurred  
19 shall be filed with the employment relations commission. [The commission  
20 shall call a hearing and render a decision within 45 days of the  
21 filing.] The  
22 commission may remedy the violation as provided in section 16 of  
23 1947 PA 336, MCL 423.216.

24       (3) A charge filed under subsection (2) does not automatically  
25 stay proceedings before the arbitration panel.

26       (4) A party aggrieved by a final order of the commission that  
27 grants or denies, in whole or in part, the relief sought under this  
section may obtain review of the order in the court of appeals as  
provided in section 16(e) of 1947 PA 336, MCL 423.216. Appeal to

1 the court does not automatically stay the order of the commission.

2       Sec. 16. (1) This act does not apply to a dispute between a  
3 labor organization representing corrections officers and a public  
4 employer provided that the parties are operating under a collective  
5 bargaining agreement that provides for disputes to be submitted to  
6 binding interest arbitration.

7       (2) This act is supplementary to 1947 PA 336, MCL 423.201 to  
8 423.217, and does not amend or repeal any of its provisions. The  
9 fact-finding procedures of that act are inapplicable to disputes  
10 subject to arbitration under this act.

11       (3) The employment relations commission shall grant whatever  
12 relief is necessary to enforce the provisions of this act, except  
13 in those matters expressly reserved in this act to the circuit  
14 court.

15       Sec. 17. A person shall not be sentenced to a term of  
16 imprisonment for any violation of this act or an order of the  
17 arbitration panel.