Legislative Analysis

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POLICE AND FIRE BINDING ARBITRATION

Senate Bill 1072 as passed by the Senate
Sponsor: Sen. Randy Richardville
House Committee: Labor
Senate Committee: Reforms and Restructuring

Complete to 6-15-10

A SUMMARY OF SENATE BILL 1072 (S-3) AS PASSED BY THE SENATE 2-10-10

The bill would amend Public Act 312 of 1969, which provides for compulsory arbitration of labor disputes involving municipal police, fire, and emergency services personnel, to do the following:

- Shift the state share of arbitration costs to the parties.
- Limit an arbitration hearing to a list of issues prepared by a mediator in consultation with the parties.
- Limit the duration of the arbitration process.
- Establish training requirements for arbitrators serving as the chair of a arbitration panel.
- Expand the entities covered by Public Act 312.

The act covers emergency personnel in city, county, village, and township departments and establishes the requirements for binding arbitration of labor disputes. Under the bill, emergency service employees of an entity created by authorization of one or more of those governing bodies also would be covered by the provisions of Public Act 312. This would include, but not be limited to, authorities, districts, or boards, whether these entities were created by statute, ordinance, contract, delegation, resolution, or other mechanism.

The bill would expand the role of the mediator who is involved in the case before start of binding arbitration. The mediator, in consultation with the parties, would develop a list of the issues in dispute. This list would be established within 30 days after receipt of a written request for arbitration. The mediator would be required to develop a final list of issues in dispute, including proposed contract language prepared by the parties, and submit those materials to the Employment Relations Commission within 14 days. The subsequent arbitration hearing would be limited to the list of issues identified by the mediator.

The bill would reduce the timelines for arbitration cases which, under current law, can be extended by agreement of the parties. It would require a mandatory arbitration hearing to be concluded within 180 days after it began, if the extension were approved by the parties. The bill also would limit the time the arbitration panel had to finish its report.

With the permission of the parties, the report period could be extended to 90 days from conclusion of the hearing, instead of the current unrestricted extensions.

The bill would establish training requirements for arbitrators to serve as the chair of an arbitration panel, and would allow training requirements to be waived if an arbitrator had already served as chair of a commission-appointed arbitration panel in a labor dispute before the bill's effective date.

Under the bill, the current state share of the costs of arbitration would be shifted to the parties to the arbitration.

MCL 423.232 et al.

FISCAL IMPACT:

State Impact: The Act 312 process is administered by the Michigan Employment Relations Commission/Bureau of Employment Relations within the Department of Energy, Labor, and Economic Growth. For FY 2010, the MERC/BER has an appropriation of $3.5 million, supported by Securities Fees. The MERC/BER appoints arbitrators in Act 312 cases and appoints mediators to mediate police and fire contracts prior to the parties (the labor union and the local government) filing for Act 312 arbitration.

Current law provides that the costs of an Act 312 proceeding are to be shared equally among the state, local governments (employers), and labor unions. (The arbitrators' maximum daily rate is $650.) The bill provides, instead, that the costs of the proceedings are to be shared equally among local governments and the unions. This provision would reduce state expenditures by approximately $115,000 annually, based on annual expenditures since FY 2006, and push those costs onto local units of government and labor unions accordingly. By statute, excess securities fees lapse to the General Fund. To the extent the bill reduces MERC/BER expenditures, it would increase the amount lapsed to the General Fund.

Additionally, the bill contains additional language regarding the role of the mediator, prior to the initiation of an arbitration hearing. This includes transmitting a list of disputed issues, meeting with parties to discuss proposed contract language, and meeting with parties in further negotiations. The department indicates that these provisions could increase the costs of the MERC/BER in mediating labor disputes, potentially necessitating the hiring of additional mediators (there are currently 11), subject to appropriation.[1] On the other hand, the additional information would also serve in getting the ball rolling, so to speak, and facilitate a quicker resolution to the Act 312 process, as

[1] Existing MERC rules (R 423.504) provides for a rather limited mediator's report to the MERC when an Act 312 arbitration proceeding is initiated. This report includes a listing of the issues that were formerly at issue and since resolved, the date the dispute was mediation and the number of bargaining and mediation sessions held, and a recommendation to MERC as to whether it would be useful or beneficial to remand the dispute for further collective bargaining.

one of the early steps in the proceeding is to establish the issues raised in the petition for arbitration, and the bill limits the issues discussed during the proceeding to those established by the mediator. Any cost savings from a quicker resolution would be realized by the local government and the labor union, as the bill shares the cost of the proceeding among the local unit of government and the labor union.

The bill would also require the MERC/BER to establish the qualifications and training needed for an individual to serve as an arbitrator. (Currently there are 48 individuals in the MERC/BER's panel of arbitrators). There appears to be no set minimum qualification standards for arbitrators (new or incumbent), such as having a law degree, or 5 years experience in labor relations. The application form utilized by the MERC/BER requires applicants to list their employment history, educational background, including education relevant to serving as an arbitrator, and prior collective bargaining experience or experience as a labor arbitrator. Currently the MERC/BER does offer a limited training program to its panel of arbitrators. This is done every 18 months or so, and is often done in conjunction with partnering organizations, such the MSU College of Law and interested stakeholder groups, which have provided the financing for the program. MERC/BER officials have noted that there are no funds set aside in the agency's appropriation for training programs for its panel of arbitrators.

Training topics typically have included seminars on legislation affecting public employment laws, recent MERC and court cases of some significance, analyzing the financial situation of local units of government, and issues surrounding employee health benefits. The added requirements of the bill regarding qualifications and training would generally increase MERC/BER expenditures, particularly to the extent these activities become a routine part of MERC/BER operations, although any such increases would be subject to appropriation by the Legislature.

Local Impact: The bill would have differing impacts on local units of government. By shifting the state's share of the cost of the arbitration proceeding to local units of government and the labor unions the bill would increase local expenditures. As noted above, in aggregate, these costs would be about $57,500 per year, based on expenditures since FY 2006. On the other hand, the bill also imposes stricter time requirements for resolving arbitration proceedings, which would decrease local expenditures. While the act generally prescribes that arbitration proceedings are to be concluded within 30 days, it allows the parties, by mutual agreement, to waive this time requirement. The time requirement is often waived, which has served to draw out the duration of a typical Act 312 proceeding to 12-18 months. The bill, by contrast, does not allow the parties to agree to extend the deadline for resolution, but allows the chair (neutral arbitrator) to extend the timeline to 180 days from the time the proceeding begins. In addition to the direct cost of the proceeding (arbitrator fees and travel expenses), local units of government spend, individually, several thousands of dollars, and in many cases, tens of thousands of dollars, to go through an arbitration hearing. These costs include witness fees, attorney fees, travel costs, and opportunity costs. The compressed timeframe allowed for resolution of an arbitration proceeding would tend to reduce local expenditures.

The bill also expands Act 312 eligibility to include police, fire, EMS, and dispatch employees of any authority, district, board, or other entity created wholly or partially by the authorization of the governing body under state statute, ordinance, contract, resolution, delegation, or any other mechanism. This provision would have an indeterminate impact on the local unit of governments, depending on the extent to which this provision affected the decisions of local government to provide shared-services, such as through a regional fire authority.

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