

# Legislative Analysis



## REVISE LOCAL LABOR CONTRACTS DURING CONSOLIDATION OF SERVICES

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**House Bill 4309 without amendment**  
**Sponsor: Rep. Eileen Kowall**

**House Bill 4311 without amendment**  
**Sponsor: Rep. Paul Opsommer**

**House Bill 4310 without amendment**  
**Sponsor: Rep. Cindy Denby**

**House Bill 4312 without amendment**  
**Sponsor: Rep. Thomas Hooker**

**Committee: Local, Intergovernmental, and Regional Affairs**  
**First Analysis (3-23-11)**

**BRIEF SUMMARY:** The bills would amend various acts to allow the officials in local governments who are consolidating services to eliminate certain guarantees and provisions of collectively bargained contracts.

**FISCAL IMPACT:** The bills are being examined to see if their fiscal impact can be determined.

### **THE APPARENT PROBLEM:**

The Michigan Department of Treasury reports a trend toward financial crisis in local governmental units and school districts throughout Michigan because of the state's economic downturn. During the last decade, the state has lost over 800,000 jobs, with more than half of those in manufacturing, and the automotive industry has been significantly reduced in size.

Further, the housing crisis in Michigan has been profound: the state has the sixth highest mortgage foreclosure rate in the nation; and the taxable value of houses has dropped an estimated 32 percent in the state's seven southeastern counties (according to the Southeast Michigan Council of Governments), and about 16 percent elsewhere in Michigan. Consequently, property taxes--which are based on a home's value and which serve as the main revenue stream for local units of government--have plummeted. As a result, even customarily well-managed counties, cities, towns, villages, townships, and school districts are facing financial crisis as their budgets have dropped precipitously.

In addition to the loss in property tax revenue, local units of government have lost more than \$4 billion in anticipated state-shared revenue during the past decade, leading some to call the State Revenue Sharing Program the State Revenue "Stealing" Program, instead. And during the decade-long economic slowdown, school districts have shared services, reduced services, or eliminated services outright.

As the economy rebounds, the recovery for local units of government and school districts will be slowed by the provisions of Proposal A (the school funding proposal adopted by the voters in 1993) and the Headlee Amendment to the State Constitution (adopted by the

voters in 1979), since both limit the growth in local revenue, holding the increase in a parcel's property taxes to an amount equal to five percent or the rate of inflation, whichever is less. Consequently, some analysts argue that local government and school districts expenditures must be permanently recalibrated--that is, all local government and school costs including personnel costs must be reduced overall by 20- to 25-percent--requiring many politically unpopular decisions.

For these reasons, many local government and school officials may need the technical assistance available from the Department of Treasury's local government rapid response intervention team, and from the state superintendent of public instruction. And, the state may well need the ability to intervene in order to avoid bankruptcies in counties, townships, cities, towns, villages, and school districts. Already this legislative session, laws have been enacted that would enable the state to place local governments or school districts into receivership, and appoint an emergency manager who has the power and authority to make sweeping change, including the ability to abrogate collectively bargained contracts, and to suspend collective bargaining for up to five years, thereby enabling the emergency manager to reduce personnel costs unilaterally and quickly, returning the local government or school district to financial health.

In order to reduce their costs during the past decade, local units of government throughout Michigan have consolidated both personnel and services. Indeed, many state laws exist to enable consolidation and service sharing. In April 2007, the Michigan Citizens Research Council issued Report 346 entitled "Authorization for Inter-local Agreements and Intergovernmental Cooperation in Michigan." That 111-page report describes the provisions of 77 Michigan statutes designed to enable governmental cooperation. See ***Background Information*** below.

Local government officials have been using those statutes to consolidate services. In fact, a Michigan Municipal League survey released on March 3, 2011, showed 640 examples of sharing services among 129 communities. For example, the City of Charlotte has a long history of cooperating with neighboring governments to deliver fire suppression, hazardous materials, and emergency medical response services. For more than 70 years, a contractual relationship has existed between the City of Charlotte (which is centrally located in Eaton County), and the Rural Fire Association comprising five townships--a total service area of 144 square miles. In 2010, members of the department responded to 620 alarms, an average of one call every 14 hours. The average response time was six and one-half minutes, and responses were handled by a staff of six full-time firefighters, and 30 volunteers. The department operates two stations 24-hours a day, and uses seven firefighting vehicles. The annual \$900,000 cost of operating the department (excluding capital investments) is divided among the city and townships based on the number of emergency responses that take place each year within each jurisdiction.

However, the consolidation of essential services in local units of government has not kept pace with the drastic, and, some argue, permanent, reductions in local revenue. Despite the successful consolidation of services in many parts of the state--many located in the

Northern counties according to committee testimony--some local officials report legal barriers to intergovernmental cooperation.

In May 2007, the MSU Land Policy Institute and State and Local Government Program mounted a conference entitled "Intergovernmental Cooperation in Michigan: A Policy Dialogue." A paper commissioned for that conference by lawyers at Miller, Canfield, Paddock and Stone, PLC, summarized the principal legal and statutory impediments which confront policymakers seeking to implement consolidation of services and other forms of intergovernmental cooperation. Nine statutes were cited as needing revision: the Urban Cooperation Act (Public Act 7 of 1967), the Intergovernmental Transfer of Functions and Responsibilities Act (Public Act 8 of 1967), the Emergency Services to Municipalities Act (Public Act 57 of 1988), the Public Employment Relations Act (Public Act 336 of 1947), the Binding Arbitration Act (Public Act 312 of 1969), the Michigan Election Law (Public Act 116 of 1954), the Home Rule City Act (Public Act 279 of 1909), State Revenue Sharing (Public Act 140 of 1971), and the General Property Tax Act (Public Act 206 of 1893). See ***Background Information***.

Legislation has been introduced to amend three of these statutes--the Emergency Service to Municipalities Act (Public Act 57 of 1988); the Intergovernmental Transfer of Function and Responsibilities Act (Public Act 8 of 1967); and, the Urban Cooperation Act (Public Act 7 of 1967)--as well as the Metropolitan Transportation Authorities Act. The amendments would allow the officials in local governments who are consolidating services to eliminate guarantees and provisions of collectively bargained contracts, in order to save money.

### ***THE CONTENT OF THE BILLS:***

The bills would amend various acts to allow the officials in local governments who are consolidating services to eliminate certain guarantees and provisions of collectively bargained contracts. A description of each bill follows.

#### **House Bill 4309**

The bill would amend Public Act 57 of 1988 (MCL 124.610), which allows municipalities to incorporate authorities in order to provide emergency services, and guarantees certain labor contracts and employment rights during the formation and reorganization of authorities, in order to eliminate those guaranteed rights and to revise the content of labor contracts.

Under current law, employees of a municipal emergency service whose duties are transferred to an authority under this act must be given comparable positions of employment with the emergency service established by the authority. House Bill 4309 would retain this provision.

Further, *the law specifies that the employees would maintain their seniority status and all benefits rights of the positions held in the municipal emergency response service before the transfer.* House Bill 4309 would eliminate this provision.

Under existing law, an authority may bargain collectively and enter into agreements with labor organizations *pursuant to Act No. 336 of the Public Acts of 1947--that is, the Public Employees Relations Act (PERA)*. House Bill 4309 would retain the reference to PERA.

Existing law says that *when the duties of a municipal emergency service are transferred to an authority, the authority immediately assumes and is bound by any existing labor agreements applicable to that municipal service for the remainder of the term of the labor agreement*. House Bill 4309 would eliminate this provision.

Existing law says that *the members and beneficiaries of any pension or retirement system or other benefits established by a municipal emergency service which is transferred to an authority must have the same rights, privileges, benefits, obligations, and status with respect to the comparable systems established by the authority*. House Bill 4309 would eliminate this provision.

Under existing law, a representative of the employees or any group of employees in a municipal emergency service who represent or are entitled to represent the employees continues to represent the employees after the transfer. House Bill 4309 would retain this provision.

#### **House Bill 4310**

The bill would amend the Metropolitan Transportation Authorities Act of 1967 (MCL 124.413) to eliminate existing labor union agreements, and to revise the content of labor contracts.

Metropolitan transportation authorities now are *bound by existing labor union agreements with public or privately owned entities that are acquired, purchased or condemned by the authority*. House Bill 4210 would eliminate this provision.

Further, *members and beneficiaries of any pension or retirement system or other benefits established by the acquired transportation system continue to have rights, privileges, benefits, obligations and status with respect to the established system*. House Bill 4210 would eliminate this provision.

The act now says that *the metropolitan transportation authority board assumes the obligation of any transportation system it acquires with regard to wages, salaries, hours, working conditions, sick leave, health and welfare and pension or retirement provisions for employees*. House Bill 4210 would eliminate this provision.

Further, existing law says that *no employee of any acquired transportation system who is transferred to a position with the authority can by reason of such transfer be placed in any worse position with respect to workmen's compensation, pension, seniority, wages, sick leave, vacation, health and welfare insurance or any other benefits that he enjoyed as an employee of the acquired transportation system*. House Bill 4210 would eliminate this provision.

### **House Bill 4311**

The bill would amend Public Act 8 of the 1967 Extra Session (MCL 124.534), which provides for intergovernmental transfers of functions and responsibilities, to eliminate existing labor union agreements, and to revise the content of labor contracts.

Currently, the law specifies the elements of a contract when there are intergovernmental transfers of functions. In particular, a contract must include a description of the functions or responsibilities to be transferred; the effective date of the contract; and the term of operation under the contract. House Bill 4311 would retain these provisions.

In addition, the law now requires that the contract include the manner in which the affected employees, if any, of the participating political subdivision will be transferred, reassigned, or otherwise treated, subject to the following:

*(i) such employees as are necessary for the operation thereof shall be transferred to and appointed as employees subject to all rights and benefits. These employees shall be given seniority credits and sick leave, vacation, insurance and pension credits in accordance with the records or labor agreements from the acquired system. Members and beneficiaries of any pension or retirement system or other benefits established by the acquired system shall continue to have rights, privileges, benefits, obligations and status with respect to such established system. The political subdivision to which the functions or responsibilities have been transferred shall assume the obligations of any system acquired by it with regard to wages, salaries, hours, working conditions, sick leave, health and welfare and pension or retirement provisions for employees. If the employees of an acquired system were not guaranteed sick leave, health and welfare and pension or retirement pay based on seniority, the political subdivision shall not be required to provide these benefits retroactively.*

*(ii) No employee who is transferred to a position with the political subdivision shall by reason of such transfer be placed in any worse position with respect to workmen's compensation, pension, seniority, wages, sick leave, vacation, health and welfare insurance or any other benefits that he enjoyed as an employee of such acquired system.*

House Bill 4311 would eliminate these provisions.

Finally, now under the law, the contract would also have to describe the manner in which any real property, facilities, equipment, or other personal property required in the execution of the contract would be transferred, sold, or otherwise disposed of between the contracting parties; the method of financing to be used and the amount to be paid by each of the participating units in relation to the undertaking involved; and other legal, financial, and administrative arrangements necessary to effectuate the undertaking. House Bill 4311 would retain these provisions.

### **House Bill 4312**

The bill would amend the Urban Cooperation Act of 1967 (MCL 124.505) to eliminate existing labor union agreements and to revise the content of labor contracts.

Now under the law, a joint exercise of power under the act must be made by contract or contracts in the form of an inter-local agreement, and the law specifies the elements of the contract. Provisions must be included to address, among other things, the agreement's purpose, its duration, the method by which it may be rescinded, the organization of entities created, the manner in which the parties to the inter-local agreement will provide financial support, the method or formula for equitably allocating revenues, and the manner of employing, engaging, compensating, transferring, or discharging necessary personnel, subject to the provisions of applicable civil service and merit systems. House Bill 4312 would retain these inter-local agreement contract requirements, as well as a dozen others.

The law now also specifies certain restrictions regarding the manner of employing, compensating, transferring, and discharging personnel. House Bill 4312 would eliminate those restrictions. The restrictions that would be eliminated include the following:

*(i) the employees who are necessary for the operation of an undertaking created by an inter-local agreement shall be transferred to and appointed as employees subject to all rights and benefits. These employees shall be given seniority credits and sick leave, vacation, insurance, and pension credits in accordance with the records or labor agreements from the acquired system. Members and beneficiaries of any pension or retirement system or other benefits established by the acquired system shall continue to have rights, privileges, benefits, obligations and status with respect to such established system. The political subdivision to which the functions or responsibilities have been transferred shall assume the obligations of any system acquired by it with regard to wages, salaries, hours, working conditions, sick leave, health and welfare and pension or retirement provisions for employees. If the employees of an acquired system were not guaranteed sick leave, health and welfare and pension or retirement pay based on seniority, the political subdivision shall not be required to provide these benefits retroactively.*

*(ii) An employee who is transferred to a position with the political subdivision shall not, by reason of such transfer, be placed in any worse position with respect to worker's compensation, pension, seniority, wages, sick leave, vacation, health and welfare insurance or any other benefits that the employee enjoyed as an employee of the acquired system.*

#### **BACKGROUND INFORMATION:**

To read the 111-page Report 346, entitled "Authorization for Inter-local Agreements and Intergovernmental Cooperation in Michigan," published by the Citizens Research Council of Michigan in April 2007, (and funded by the C. S. Mott Foundation and the Kellogg Foundation, visit <http://www.crcmich.org/PUBLICAT/2007/rpt346.pdf>

For an overview of the paper "Legal Barriers to Intergovernmental Cooperation Agreements in Michigan" by Michael McGee and Christopher Trebilcock, see [http://www.mml.org/events/annual\\_convention/cv07/resources/legalbarriers.pdf](http://www.mml.org/events/annual_convention/cv07/resources/legalbarriers.pdf)



## **ARGUMENTS:**

### ***For:***

Proponents of this legislation advance three arguments in favor of the bills: the legislation gives local officials cost-containment tools, including: (1) the opportunity to recalibrate and reduce local spending by adjusting personnel costs so that those costs reflect the new reality of sharply reduced property tax revenue collections; (2) the flexibility to consolidate services quickly, if not unilaterally, without lengthy labor negotiations, in order to avoid financial crisis; and (3) the chance to redesign service delivery so it better matches shifts in regional population age, density, and land-use, while saving taxpayers millions of dollars.

First, those who favor these bills note that it is imperative that local officials be able to reduce and permanently recalibrate local spending. Local governments have foregone \$4.2 billion in state revenue sharing money in the last decade. Further, Governor Snyder proposes the elimination of statutory revenue sharing in Fiscal Year 2012 (an additional \$350 million cut), replacing it with a \$200 million fund that would be awarded to local governments that demonstrate best practices to reduce overall service costs.

The reduction in state revenue sharing is coupled with a sharp drop in property tax collections--the main revenue source used to fund local government services. Property tax revenue has plummeted during an unprecedented economic downturn in which Michigan has lost more than 800,000 over the last decade, more than half of those in manufacturing, and suffered the sixth worst housing foreclosure rate in the country. Overall, the taxable value of houses has dropped an estimated 32 percent in the state's seven southeastern counties (according to the Southeast Michigan Council of Governments), and about 16 percent elsewhere in Michigan.

As the economy rebounds, the recovery for local units of government and school districts will be slowed by the provisions of Proposal A (the school funding proposal adopted by the voters in 1993) and the Headlee Amendment to the State Constitution (adopted by the voters in 1979), since both limit the growth in local revenue, holding the increase in a parcel's property taxes to an amount equal to five percent or the rate of inflation, whichever is less. Consequently, proponents of these bills argue that local government must be permanently recalibrated--that is, all local government costs including personnel costs must be reduced overall by 20- to 25-percent--requiring many politically unpopular decisions.

Second, as a result of the economic downturn, even customarily well-managed counties, cities, towns, villages, and townships, are facing financial crisis as their budgets have dropped precipitously. Proponents of these bills say many local officials need the flexibility to consolidate services quickly, if not unilaterally, without lengthy labor negotiations, if they are to avoid financial crisis. They fear that many local government officials will need the technical assistance available from the Department of Treasury's local government rapid response intervention team. They note that already this legislative session, laws have been enacted that would enable the state to place local

governments into receivership, and appoint an emergency manager who has the power and authority to make sweeping change, including the ability to abrogate collectively bargained contracts, and to suspend collective bargaining for up to five years.

They argue that historically, service consolidation has been hindered because collective bargaining agreements differ between local jurisdictions. Different workforces have conflicting rates of pay, varying benefits, and customized work rules. These differences in the jurisdictions' labor costs serve as a barrier to consolidating services. When local officials meet to discuss consolidation, employees in all jurisdictions argue their salaries and benefits should not be lowered, and they sometimes accuse local officials of unfair labor practices.

To avoid the possibility of a financial crisis and receivership, as well as the appointment by the governor and state treasurer of an emergency manager, local officials must be able to save money quickly, and to consolidate services despite conflicting labor contracts.

Third, proponents of these bills note that when local officials use the cost-containment tools these bills offer to enable consolidation of services, they will have the chance to redesign service delivery so that it better matches shifts in regional population age, density, and land-use. The laws that these bills would amend have been in place for nearly two generations. During that time, the land use decisions and demography of Michigan communities have changed a great deal. Local officials can capitalize on Michigan's economic downturn to make their communities more lively and livable, as they make the cost of their essential services more affordable.

A Michigan State University economist said that these bills to consolidate services could save the state \$100 million over the course of three to five years, depending on the degree to which local officials used them to merge services.

***Against:***

Opponents of this legislation offer three main arguments in opposition to the bills. They say the following: (1) The bills are unnecessary because service consolidations are already common throughout the state, necessarily so because of decades of reduced state-shared revenue and unfunded mandates; (2) the bills are "strategic, not substantive" because they are part of a larger strategy to attack public sector unions and collective bargaining, and that in doing so, the bills will provoke labor strife and make the consolidation of local governmental services more difficult, rather than easier; and (3) the bills are over-reaching because Michigan's recovery is underway, the recession is over, and property and income tax collections will increase as the economy rebounds.

First, opponents of the bills note that the bills are unnecessary because consolidations are many and varied throughout Michigan, and they have been underway for more than a decade. Indeed, many state laws exist to enable consolidation and service sharing. In April 2007, the Michigan Citizens Research Council issued Report 346 entitled "Authorization for Inter-local Agreements and Intergovernmental Cooperation in Michigan." That 111-page report describes the provisions of no less than 77 Michigan



statutes designed to enable governmental cooperation, and local officials have been using them to do just that. In fact, a Michigan Municipal League survey released on March 3, 2011, showed 640 examples of sharing services among 129 communities.

Second, opponents of the bills say this legislation is part of a regional strategy to wage an assault on working people and their public sector unions, because those unions give workers a voice in collective bargaining. Opponents argue that these bills--four of many introduced during this legislative session in Michigan and throughout the Midwest--further erode the dignity of public workers and are part of a larger strategy designed to deprive public employees of a voice. In contrast, Michigan workers and managers have long demonstrated that common problems deserve common solutions; that to achieve the common good both workers and managers must work together. Throughout the state, unionized public sector employees have made wage and benefit concessions, and helped local officials to downsize their organizations, privatize services, and to consolidate operations. Critics say that when given the opportunity to report-out substitute legislation that would advance a bipartisan policy approach--using model legislation developed during the last legislative session that passed the Michigan Senate--a majority of the committee voted instead to challenge collectively bargained contracts, and to suspend employment rights.

Opponents of these bills observe that in the communities where working people are organized and accustomed to having a voice in their workplace, the legislation to silence them will provoke labor strife. That labor unrest and resistance will make the consolidation of services more difficult, rather than easier. Opponents of the bills also say unions are not the problem; they are the beginning of the solution. They argue that common solutions to social problems will not be possible if the atmosphere in a community is brutally divisive and bitterly hostile. Workers whose expertise is dismissed, whose voices are silenced, and whose dignity is humiliated cannot apply their energy to solving public problems.

Third, opponents of the bills say they are over-reaching because Michigan's recovery is underway, the recession is over, and future property tax collections will increase as the economy rebounds. They offer evidence of growth in the U.S. economy. For example: light motor vehicle sales increased in February to a seasonally adjusted annual rate of 13.4 million units; this is above the January level of 12.6 million units. Compared to a year-ago, auto sales were up 22.4 percent and light trucks and SUVs were up 32.3 percent. February sales for Ford increased 13.7 percent, for GM increased 46.3 percent, and for Chrysler increased 12.6 percent from a year-ago. Further, both the ISM manufacturing and the non-manufacturing (services) indices showed solid gains in February; indicating that the U.S. economy is picking up momentum and broadening.

And, opponents of the bills offer evidence of growth in the Michigan economy. For example, although there is no official measure that dates state business cycles, Michigan nonfarm employment reached a low point in the second half of 2009 and has since posted gains. The gains started out CY 2010 relatively weak, but accelerated in the fourth quarter, posting a significant gain in November. In January 2011, Michigan nonfarm

employment increased by 40,000, following the November gain. As of March 2011 and relative to a year ago, nonfarm employment increased 69,000--due primarily to manufacturing, but also professional and business services and education and health services, while job losses occurred in government. In addition, personal income in the state is again on the rise: after declining 3.1 percent in 2009--which was due to the Great Recession and significant motor vehicle restructuring--Michigan personal income grew 2.8 percent in 2010.

Finally, opponents of the bills note that state revenue collections are up. Based on House Fiscal Agency target estimates and revenue data through February, Fiscal Year 2010-11 General Fund/General Purpose revenue is up \$45 million and for the School Aid Fund is up \$45 million. These target estimates are based on the January 2011 consensus estimates.

***POSITIONS:***

The Michigan Municipal League supports the bills. (3-3-11)

The Michigan Townships Association supports the bills. (2-24-11)

The Michigan Association of Counties supports the bills. (2-24-11)

The City of Charlotte supports the bills. (3-3-11)

The City of Grand Rapids and the City of Wyoming support the bills. (2-24-11)

The City of Lincoln Park supports the bills. (2-24-11)

The Grand Valley Metro Council supports the bills. (2-24-11)

The Detroit Regional Chamber of Commerce supports the bills. (3-3-11)

The Michigan Professional Fire Fighters Union opposes the bills. (2-24-11)

The IAFF Local 421- Lansing Fire Fighters oppose the bills. (2-24-11)

Birmingham Fire Fighters Local 911 opposes the bills. (2-24-11)

AFSCME opposes the bills. (2-24-11)

AFL-CIO opposes the bills. (2-24-11)

Grand Rapids Firefighters oppose the bills. (2-24-11)

Lincoln Park Fire Fighters oppose the bills. (2-24-11)

The International Union of Operating Engineers - Local 324 opposes the bills. (2-24-11)

The Amalgamated Transit Union opposes the bills. (2-24-11)

The Fraternal Order of Police opposes the bills. (2-24-11)

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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.