Legislative Analysis

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PA 312: ARBITRATION PROCESS AND FACTORS

House Bill 4522
Sponsor: Rep. Jeff Farrington
Committee: Government Operations

Complete to 5-17-11

A SUMMARY OF HOUSE BILL 4522 AS INTRODUCED 4-12-11

Public Act 312 of 1969 provides for the compulsory arbitration of labor disputes in police and fire departments. House Bill 4522 would amend the act in the following ways.

Factors in Arbitration

**Under the act, when there is no agreement between the parties or when wage rates and other conditions of employment for a new agreement are in dispute, an arbitration panel is to base its findings, opinions, and order on certain specified factors. The bill would emphasize two factors: (1) the interests and welfare of the public and the financial ability of the unit of government to pay and (2) the pay and benefits of other employees in the unit of government outside the bargaining unit in question. (See Background Information for the factors in current law.)

**In determining the ability of the governmental unit to pay (as cited above), the panel could not consider unused millage or assessment capacity, but would have to consider (1) the financial impact on the community of any award made by the arbitration panel over a minimum of five years from the date of the award; and (2) all liabilities, whether or not they appear on the balance sheet of the unit of government.

**The arbitration panel would have to afford weight to the factors in the act as follows: (1) a determination that the unit of government does not have the financial ability to pay would be a fundamental concern; and (2) the *internal* comparable pay and benefits (other employees within the local unit) would be given greater significance than the *external* comparables (with employees performing similar services elsewhere in both the public and private sectors in comparable communities).

Limit on Arbitration Awards

**An arbitration award could not require an increase in the total economic cost to the local unit of government that exceeds the lesser during the contract period of (1) the total percentage increase in the local unit of government's general fund, excluding reappropriation of fund equity; or (2) the increase in the percentage change in the consumer price index.

Arbitration Process

** The bill would require that a mediator, upon receipt of a written request for binding arbitration, would have to consult with the parties and then create and transmit to the

parties a list of each of the issues in dispute. Within 30 days after receipt of the request, the parties would have to meet with the mediator to present in writing and explain proposed contract language to resolve each issue and engage in any further discussion or negotiation as the parties agree. (This meeting could include issues previously discussed by the parties but omitted from the mediator's list.)

Except in cases where the parties agree to a longer period because of continuing negotiations, the mediator would have to transmit the final list of issues in dispute and both parties' proposed contract language to the Employment Relations Commission for hearing no more than 14 days after receiving the written proposed contract language. The parties would retain the right to meet and negotiate, with or without the mediator, to attempt to resolve some or all of the disputed issues at any time before the arbitration panel issues an award under the act.

**At a hearing by an arbitration panel (under Section 6 of the act), the arbitrator would address the merits of only those issues identified by the mediator and submitted to the Employment Relations Commission (as described in the paragraphs above).

Limits on Length of Process

**The act currently says that the hearing conducted by an arbitration panel is to be concluded within 30 days of the time it begins, unless otherwise agreed by the parties. The bill would specify that, if the parties agree, the chair could extend the time for the conclusion of the hearing to no more than 120 days from the beginning of the hearing. The panel could not waive the 120-day limit. Further, the arbitration panel now must make written findings of fact and promulgate a written opinion and order within 30 days of the conclusion of a hearing "or such further additional periods to which the parties may agree." That language would be struck and the bill would require the findings, opinion, and order to be produced within 30 days, "or if the parties agree to an extension, within 90 days of the conclusion of the hearing."

Public Police and Fire Employees

**Currently the act describes a public police and fire department as referring to a department of a city, county, village or township having employees engaged in police work or fire fighting. The bill would rewrite this so as to say that public police and fire department employee means "an employee of a department of a city, county, village, township, district, board, or any other entity created in whole or by the authorization of one or more of those governing bodies, whether created by statute, ordinance, contract, resolution, delegation, or any other mechanism, who is engaged as a police officer or in fire fighting . . ." (The act would continue to refer to emergency medical service personnel employed by a police or fire department and an emergency telephone operator employed by a police or fire department. However in the case of the emergency telephone operator, the language would be amended so the act would apply to an operator only if directly employed by a public police or fire department.)

Costs Shared by Parties Only

**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 bill provides, instead, that the costs of the proceedings are to be shared equally among the local government and the labor union.

BACKGROUND INFORMATION:

The findings, opinion, and order of an arbitration panel currently must be based on the following factors: the lawful authority of the employer; the stipulation of the parties; the interests and welfare of the public and the financial ability of the unit of government to meet those costs; comparison of the wages, hours, and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours, and conditions of employment of other employees performing similar services and with other employees generally in public and private employment in comparable communities; the average consumer prices for goods and services, commonly known as the cost of living; the overall compensation presently received by the employees; changes in any of the foregoing circumstances while the arbitration proceedings are pending; and other factors normally and traditionally taken into consideration in the determination of wages, hours, and conditions of employment.

FISCAL IMPACT:

State Impact: The Act 312 process is administered by the Michigan Employment Relations Commission/Bureau of Employment Relations within the Department of Licensing and Regulatory Affairs. For FY 2011, 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 contract disputes from 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, established by MERC, is $650.) The bill provides, instead, that the costs of the proceedings are to be shared equally among the local government and the labor union. This provision would reduce state expenditures by approximately $115,000 annually, based on expenditures for the past several fiscal years, 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. These additional responsibilities - current administrative rules provide for a much more limited mediator's report - could necessitate the hiring of additional mediators, subject to appropriation. 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 one of the early steps in the proceedings 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.

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 for the past few years. On the other hand, the bill 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 requirements. This time requirement is often waived, which has served to draw out the duration of a typical Act 312 proceeding to 12-18 months. In addition to the direct costs of the proceeding itself (arbitrators fees and travel expenses), local units of government spend, individually, several thousands of dollars, 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 bill's provisions concerning a compressed time frame allowed for resolution of an arbitration proceeding and a more limited scope of the issues addressed in a proceeding would tend to reduce local expenditures.

The bill contains several provisions affecting the review of arbitration awards that would generally serve to decrease local unit expenditures. While ability to pay is a factor that must be weighed by the arbitration panel, it is not the sole determining factor or principal factor used by the arbitrators in rendering a decision. The bill further defines what ability to pay means, and gives it priority over other potential factors. The act also permits the arbitration panel to review the pay and benefits of internal (within the local unit) and external (outside of the local unit) bargaining units. A non-exhaustive review of recent Act 312 decisions for the past several years indicates that the general 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 local unit), where the local unit has successfully pushed for higher employee contribution rates and other cost savings measures. The record on wages is mixed, with the arbitration panels splitting 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 local units). In this regard, the bill's focus on internal bargaining units would generally serve to decrease local government expenditures.

In the near term one significant limit on local government expenditures would stem from an added provision that states that an arbitration award shall not require an increase in the total economic cost to the local unit of government, over the contract period, that exceeds

the lesser of (1) the total percentage increase in the local unit's general fund revenue and (2) the inflationary increases.

Historically, it appears that use of Act 312 varies considerably among the local units depending on the type (county, city, or township), and the size of the local unit and the agency. Research at various points in the 1970's, 1980's and 1990's indicated that Act 312 tended to be invoked in larger units (counties more so than townships or cities) and larger agencies. The act also was more heavily used in metropolitan areas.[1]

There doesn't appear to be any recent research that has quantified the financial impact of Act 312 on local units of government, particularly during this last decade, although it is generally contended that binding arbitration tends to result in an increase in employment costs. Citing an existing body of research, the 2005-2006 Governor's Task Force on Local Government Services and Fiscal Stability stated:

> *Based on a review of the relevant labor economics literature, there is strong and consistent evidence that public sector union presence, particularly the existence of compulsory binding arbitration statutes (typically for public safety employees), leads to higher average wage levels for public safety employees. These higher public safety wage levels have been shown to have the spillover effect of raising other public sector employee wages, albeit to a lesser extent. These wage effects have been found to be particularly strong in Midwestern states. Even stronger however, the evidence indicates that binding arbitration leads to an even greater impact on fringe benefit costs for municipalities. The overall effect is a significantly higher overall compensation package for binding arbitration states.*
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> *There is also evidence of an employment effect due to unions. The presence of binding arbitration leads to higher average employment levels for public safety employees. However, these higher employments are offset by lower employment levels for other non-public safety employees. The net effect is slightly higher public sector employment due to binding arbitration.*
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> *The overall impact of these wage and employment effects due to binding arbitration is to raise municipal expenditures in binding arbitration states by 3 to 5 percent relative to other states. While small in percentage terms, this impact is large in dollar terms.*[2]

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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.

[1] *Compulsory Arbitration in Michigan*, Citizens Research Council. Report No. 279, January 1986, http://www.crcmich.org/PUBLICAT/1980s/1986/rpt279.pdf. See, also, Brian Richard Johnson, *Act 312 Arbitration: An Exploratory Study*, 1998, doctoral dissertation, Michigan State University, School of Criminal Justice.

[2] *Final Report to the Governor*, Task Force on Local Government Services and Fiscal Stability, May 2006, http://www.michigan.gov/documents/FINAL_Task_Force_Report_5_23_164361_7.pdf