

**HOUSE OF REPRESENTATIVES
LABOR COMMITTEE
June 23, 2010**

Summary of Testimony of Scott Smith

Background:

Member, Clark Hill PLC, municipal lawyer for 30 years

Current municipal clients include: Allegan, Grand Haven, Grand Rapids, Greenville, Mount Pleasant, Otsego, Plainwell, Portland, South Haven, Sparta and Wyoming.

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Testimony:

Emphasized 5 issues:

1. The Urban Cooperation Act needs a provisions to supersede local charter and ordinance limitations.
Some cities have quirky charter provisions that, for example, might be interpreted to require that they operate their own police department, fire department, tax assessment office or other municipal service that limit the funding available for consolidated operations with other municipalities, etc.
2. The Urban Cooperation Act should provide stand alone authority for the joint exercise of powers.
Section 3 of the Urban Cooperation Act currently requires that in case of conflicts with other statutes, the other statutes control. It should be replaced with a provision indicating the Urban Cooperation Act provides authority in addition to other statutes so it will stand on its own.
3. It should be clear that funding a joint endeavor under the Urban Cooperation Act, does not constitute revenue sharing under section 5a of the Urban Cooperation Act.
The Urban Cooperation Act currently allows for revenue sharing agreements. This provision was added to allow municipalities to have annexation agreements that provided for revenue sharing. However, like 1984 PA 425 which allows for the conditional transfer of property from one jurisdiction to another, the revenues sharing provision of the Urban Cooperation Act provides for a possible referendum. While the right of referendum may make sense in a situation where municipal boundaries are being adjusted, we think it could hamper collaboration and consolidation of services.
4. Collective bargaining should not prevent, impede or delay decisions for cooperation and consolidation, though collective bargaining with affected bargaining units should be a given after the cooperation or consolidation agreement is made.
Some unions have insisted on collective bargaining over whether or not consolidation can occur, with whom consolidation can occur, the terms of the consolidation, the consolidation process, etc. There is a need to collectively bargain the terms and conditions of employment in the consolidated operation. But bargaining over whether or not the consolidation can even be considered creates an impediment that will hamper most consolidation efforts.
5. The current versions of SB 1085 and 1086 could have the unintended consequences of reactivating expired collective bargaining agreements and of indefinitely having multiple collective bargaining agreements covering the employees doing the same jobs. It would be better if the MERC successorship process was allowed to work.
Under the currently proposed SB 1085 and 1086, if, at the time of consolidation, some collective bargaining agreements had expired, the consolidation would reactivate them. Furthermore, if there were a consolidation under SB 1085/1086, existing and expired collective bargaining agreements would remain in place "until a new labor agreement is in place." If there were a consolidation involving multiple bargaining units, each existing or expired collective bargaining agreement would remain in effect until that bargaining unit might otherwise agree. This is a special challenge for employees not covered by Act 312.
A better way would be to allow MERC successorship rules to apply to the situation and to have the resulting collective bargaining address the issues of wages, benefits and conditions of employment.

TESTIMONY TO HOUSE LABOR COMMITTEE ON SB 1085/1086

My name is Scott Smith. I am a member of the Clark Hill law firm and have served as a municipal lawyer for 30 years. I currently serve as general legal counsel for Allegan, Grand Haven, Mount Pleasant, Otsego, Plainwell, Sparta and South Haven. I also serve as special counsel for Grand Rapids, Greenville, Portland, and Wyoming. I have assisted colleagues in my firm in working with the Bay-Arenac Behavioral Health Authority, Grant, Lake Odessa, Lansing, Wayne County, and others. In the past (at previous law firms), I have worked closely with Benton Harbor, Cedar Springs, Kentwood, St. Joseph and others.

So I have been blessed to serve communities in a full range of sizes that have a variety of local characteristics. As a result, I have worked on dozens of intergovernmental agreements addressing a variety of matters from annexation (or the conditional transfer of property from one jurisdiction to another), to utilities, to shared services, to economic development projects, and other subjects.

I perceive that municipalities are poised for unprecedented municipal collaboration, cooperation and consolidation. Whether precipitated by the economic conditions or other factors, there are now opportunities to enhance governmental efficiency and efficacy that did not exist even a few years ago.

As Eric DeLong has said, Grand Rapids and Wyoming have a history of cooperation. Many West Michigan communities have cooperated for a number of years and many are now looking afresh at how cooperation and consolidation will enable them to enhance services. They are looking at perhaps combining assessing, human resources, public works, recreation, public safety, and other services. Every services is being considered for such efforts.

What communities lack is adequate tools. As a Citizens Research Council Report the current statutes enacted to enable or even encourage such activities instead serve as impediments.

This brings me to SB 1085 and SB 1086 which are now before you and which were initially conceived to modify the Urban Cooperation Act, and the Transfer of Functions Act to remove or, at least, reduce, some of those impediments. However, not only do they fail to really do so, but they may increase those impediments. Let me offer the following observations:

Observation #1. The Urban Cooperation Act needs a provisions to supersede local charter and ordinance limitations.

Some cities have quirky charter provisions that, for example, might be interpreted to require that they operate their own police department, fire department, tax assessment office or other municipal service that limit the funding available for consolidated operations with other municipalities, etc. Currently, SB 1085 and 1086 do not address those provisions. Our suggested substitute would do so by superseding local charter and ordinance provisions.

Observation #2. The Urban Cooperation Act should provide stand alone authority for the joint exercise of powers.

Section 3 of the Urban Cooperation Act currently requires that in case of conflicts with other statutes, the other statutes control. It would be improved by being replaced with a provision indicating the Urban Cooperation Act provides authority in addition to other statutes so it will stand on its own.

Observation #3. Though a minor point, it should be clear that funding a joint endeavor under the Urban Cooperation Act, does not constitute revenue sharing under section 5a of the Urban Cooperation Act. The Urban Cooperation Act currently allows for revenue sharing agreements. This provision was added to allow municipalities to have annexation agreements that provided for revenue sharing. However, like 1984 PA 425 which allows for the conditional transfer of property from one jurisdiction to another, the revenues sharing provision of the Urban Cooperation Act provides for a possible referendum.

While the right of referendum may make sense in a situation where municipal boundaries are being adjusted, we think it could hamper collaboration and consolidation of services. So, we suggest adding a provision to make it clear that funding of a joint exercise of power is not a revenue sharing agreement. Observation #4. Collective bargaining should not prevent, impede or delay decisions for cooperation and consolidation, though collective bargaining with affected bargaining units should be a given after the cooperation or consolidation agreement is made.

Some unions have insisted on collective bargaining over whether or not consolidation can occur, with whom consolidation can occur, the terms of the consolidation, the consolidation process, etc. SB 1085 and 1086 do not address these issues. In fact, three West Michigan communities who have discussed consolidating some public safety operations have each received communications from the unions representing their personnel demanding to bargain over whether they may even consider such consolidation. All three communities recognize the need to collectively bargain the terms and conditions of employment in the consolidated operation. But bargaining over whether or not the consolidation can even be considered creates an impediment that will hamper most consolidation efforts. Such bargaining could delay consolidation efforts for many months.

Let me be clear. We recognize labor unions have made Michigan what it is today. They are a part of what Michigan is and of what it will be. Any improvements in municipal government will require with affected personnel. Those employees represented by unions in collective bargaining relationships will continue to be represented by unions in collective bargaining relationships. Police officers, fire fighters, and other emergency personnel for whom mandatory arbitration is required to offset an inability to engage in other collective activities, will continue to be able to rely on that arbitration.

We are not suggesting any changes to those employee bargaining rights or employer obligations to bargain over the terms and conditions of employment in the consolidated operation. Instead, we are urging you to ensure that questions over whether or not consolidation can occur, with whom consolidation will occur, and the terms of the consolidation agreement not be subject to collective bargaining. Once the consolidation agreement is made, collective bargaining with the affected employees or units would be assumed as a given.

To be totally clear, we are not seeking any changes to Act 312.

Observation #5. The current versions of SB 1085 and 1086 could have the unintended consequences of reactivating expired collective bargaining agreements and of indefinitely having multiple collective bargaining agreements covering the employees doing the same jobs. It would be better if the MERC successorship process was allowed to work.

Under their terms, SB 1085 and 1086 could reactivate expired collective bargaining agreements. If, at the time of consolidation, some collective bargaining agreements had expired, the consolidation would reactivate them. Furthermore, if there were a consolidation under SB 1085/1086, existing and expired collective bargaining agreements would remain in place "until a new labor agreement is in place." If there were a consolidation involving multiple bargaining units, each existing or expired collective bargaining agreement would remain in effect until that bargaining unit might otherwise agree.

Some have suggested this should not be an issue because Act 312 will, at least eventually, result in a new contract. However, Act 312 is not applicable to general office employees, public works employees, municipal utility employees or others who may be affected by consolidation efforts. Moreover, even where it is applicable, there is a lengthy process to reach the situation the mediator recognizes as "impasse" before the arbitration process can begin. Furthermore, if different unions are involved, it could be months before the employees determine which of their respective unions will represent them in the negotiations with the management team for the consolidated joint endeavor.

Therefore, multiple collective bargaining agreements with different unions could stay in place indefinitely. This means the consolidated operation could be dealing indefinitely with multiple collective bargaining units under varying collective bargaining agreements providing varying sick leave, vacation, compensation, insurance and other provisions that cover employees doing the same job, perhaps even working side-by-side.

As SB 1085/1086 are currently written, the joint endeavor could be indefinitely saddled with (i) the unmanageable situation of multiple wage, insurance, paid time off, and other contract provisions that will add significant complexity to payroll functions, scheduling and other management obligations and making it much more difficult to unify the employees, or (ii) the consolidated operation find

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the need to permanently concede a rich blend of compensation in order to quickly settle a new collective bargaining agreement, or (iii) the consolidated operation would have to at least temporarily offer that rich blend in order to unify the employees and then ask for concessions in seeking a permanent agreement. A better way would be to allow MERC successorship rules to apply to the situation and to have the resulting collective bargaining address the issues of wages, benefits and conditions of employment. Consolidation is a key to the future effective and efficient delivery of local government services. Consolidation will enable communities to reduce equipment purchases, reduce layers and numbers of management personnel, and achieve other efficiencies. Legislators have said for years that such efficiencies are essential for local government. Please provide the tools to enable that to happen. When I was in college, a good friend looked at my lack of hand-eye coordination and my mechanical inability and advised me, "If you have to make a living with your hands, you'll starve." My wife, noting those same inadequacies, refuses to let me use power tools for fear that I will either destroy something or hurt myself. So, when skilled work needs to be done around my home, I ask the people who do that work what needs to be done and get them to do it. Sometimes that means family and friends. Sometimes that means I hire it done. But, I don't tell others how to do it or what tools to use. I ask what they need and want, and I get that for them. I do not substitute my judgment for theirs. I do not offer alternatives. In the same way, if legislators are sincere in urging municipalities to consider efficiencies in collaborative, cooperative and even consolidated services, legislators need to provide real tools, the tools the doers say they need. Eric DeLong is a doer. I implement the policies communities make. We both need tools. We are telling you what they are. We urge you to provide the tools those who have to use them are requesting.