Legislative Analysis

Mitchell Bean, Director
Phone: (517) 373-8080
http://www.house.mi.gov/hfa

BINDING ARBITRATION FOR COUNTY CORRECTIONS OFFICERS

House Bill 6154 as introduced
Sponsor: Rep. Fred Miller
Committee: Labor

First Analysis (6-22-10)

BRIEF SUMMARY: The bill would create a new act that would apply to corrections officers under the authority of a county sheriff, providing them with a binding compulsory arbitration procedure for the resolution of certain disputes.

FISCAL IMPACT: By providing compulsory arbitration for county corrections officers, House Bill 6154 would increase the direct costs of counties simply to arbitrate labor disputes under the bill. These costs would vary among the counties depending on their size and on the complexity of the dispute, among other factors, and would include attorney's fees and the county's portion of the arbitrators' fees and other expenses of the proceeding. Based on discussions with county officials on similar legislation last session, these costs would be several thousand dollars, or in many instances, tens of thousands, per bargaining unit in each county. For additional information, see ***Fiscal Information*** later in the analysis.

THE APPARENT PROBLEM:

Currently under state law, firefighters, police officers, and some dispatchers who work for local units of government are eligible to have their employment contracts arbitrated under Public Act 312 of 1969. Arbitration is available to settle contract disputes because public employee strikes are prohibited under state law, and an alternative dispute resolution process is necessary in order to avoid a work stoppage that could threaten public safety.

What is Public Act 312? Under Public Act 312, the Arbitration Law, the officials in local units of government and local law enforcement labor leaders are required to negotiate in good faith. If they cannot resolve a labor contract together, state-employed mediators are available to assist them. The mediators are successful about 90 percent of the time, and the parties in the dispute settle their differences after a state mediator is invited to intervene. However, if the parties cannot agree, then the dispute is sent to binding arbitration where the parties follow a process of negotiation set out in Public Act 312. According to committee testimony, the number of binding arbitration cases is on the decline. For example, the general counsel for labor issues in 35 of Michigan's 83 counties testified that there were a total of six Public Act 312 cases in the past two years.

When Public Act 312 was enacted into law, it included local corrections officers who work in county jails, since they are police officers. However, a Court of Appeals case determined in 1986 that corrections officers are not eligible for compulsory arbitration under Public Act 312. See See *Capitol City Lodge No 141, Fraternal Order of Police* v *Ingham County Bd of Comm'rs*, 155 Mich App 116 (1986). That case set a three-prong test to determine more precisely the particular local law enforcement and protection officers who were eligible for binding arbitration. The Appeal Court panel ruled that workers had to be (1) hired by local

police or fire departments; (2) exposed to the dangers of police work or firefighting; and (3) incapable of being replaced on an immediate basis.
A Court of Appeals panel of judges ruled that county corrections officers who work in jails do not meet criterion (3) above, since they can be replaced on an immediate basis by other deputy sheriffs who work to enforce the laws while on road patrol.

Consequently, since that 1986 case was decided, local deputy sheriffs who work as corrections officers have not been eligible to have their contract disputes settled by arbitrators, although their fellow deputy sheriffs who work on road patrol can do so.

Legislation has been re-introduced to allow deputy sheriffs who work as correction officers to be covered by Public Act 312 of 1969, the Binding Arbitration Law. See ***Background Information***.

THE CONTENT OF THE BILL:

House Bill 6154 would create a new act known as the Corrections Officer Compulsory Arbitration Act which would apply to corrections officers under the authority of a county sheriff. It would provide a binding compulsory arbitration procedure for the resolution of certain disputes.

[The bill would define "corrections officer" to mean any individual employed by or under the authority of a county sheriff who is engaged in the supervision, control, or management of individuals in the custody of a county sheriff. Further, the bill would define "public corrections facility" to mean any county corrections facility used to house or detain individuals in the custody of the county sheriff that has employees engaged as corrections officers and that is established by any of the following: (1) a county; (2) a county sheriff; (3) an authority, district, board, or any other entity created independently or jointly by or between one or more governmental bodies, whether created by statute, charter, ordinance, resolution, delegation, or any other mechanism.]

The bill contains a "public policy" statement as follows:

It is the public policy of this state that in public corrections facilities, where the right of employees to strike is prohibited by law, it is requisite to the high morale of the employees and the efficient operation of those public corrections facilities to afford an alternate, expeditious, effective, and binding procedure for the resolution of disputes, and to that end the provisions of this act, providing for compulsory arbitration, shall be liberally construed.

The bill would provide the following arbitration procedure.

Last Offer of Settlement. In mediating a county public corrections facility employee dispute that is not a dispute concerning the interpretation or application of an existing agreement, each party would be required to submit a last offer of settlement on all issues in dispute to the mediator and the other party within the time limit set by the mediator. A last offer of settlement would not be modified after it is submitted without written consent of both parties.

If the dispute could not be resolved between the parties within 30 days after submitting the last offer of settlement, the employees or employer could initiate binding arbitration proceedings by submitting a written request to the Michigan Employment Relations Commission and a copy to the other party.

Arbitration Panel. Within 10 days after the end of the 30-day period, the employer would choose a delegate, and the employees' designated or selected exclusive collective bargaining representative (or if none, their previously designated representative in the prior mediation procedure) would choose a delegate to a panel of arbitration. The employer and employees would promptly advise the other of their selected delegate.

Within seven days after a request from one or both parties, the Employment Relations Commission would select from its panel of arbitrators three persons as nominees for impartial arbitrator of the arbitration panel. Within five days after the selection, each party could peremptorily strike the name of one of the nominees. Within seven days after this five-day period, the commission would designate one of the remaining nominees as the impartial arbitrator of the arbitration panel.

Duties of Impartial Arbitrator, Expenses & Fees. Upon appointment, the impartial arbitrator would proceed to act as chairperson of the three-person arbitration panel, call a hearing to begin within 15 days, and give reasonable notice of the time and place of the hearing. Before the hearing, the commission would provide the chairperson with the final offer of settlement that each party submitted during mediation. Upon application, for good cause shown, and upon terms and conditions that are just, the arbitration panel would grant leave to intervene to a person, labor organization, or governmental unit that has a substantial interest in the dispute.

Under the bill, the arbitration panel could receive into evidence any oral or documentary evidence or other data that it considers relevant. The proceedings would be informal. Technical rules of evidence would not apply, and the failure to comply with technical rules of evidence could not impair the competency of the evidence. A verbatim record of the proceedings would be made, and the arbitrator could arrange for the necessary recording service. Transcripts could be ordered at the expense of the ordering party; however, transcripts would not be necessary for a decision by the arbitration panel.

The commission would establish the expense of the proceedings in advance, including a fee to the chairperson. The parties would bear that expense equally. If the delegates are public officers or employees, they would continue on the payroll of the public employer at their usual rate of pay. The hearing conducted by the arbitration panel could be adjourned from time to time but, unless otherwise agreed by the parties, would have to be concluded within 30 days of the date it begins. Actions and rulings of a majority of the arbitration panel would be considered the actions and rulings of the entire panel.

Authority of Chairperson. At any time before the panel renders an award, the chairperson could remand the dispute to the parties for further collective bargaining for a period not to exceed three weeks. The time provisions of this act would be extended for a time period equal to that of the remand. The chairperson of the arbitration panel would notify the Employment Relations Commission of the remand.

Authority of Arbitration Panel. The arbitration panel could administer oaths and issue subpoenas to require the attendance of witnesses and the production of books, papers, contracts, agreements, and documents that it considers material to a just determination of the issues in dispute. If any person refuses to obey a subpoena, be sworn, or testify, or if any witness, party, or attorney is guilty of any contempt while attending any hearing, the arbitration panel could, or the attorney general if requested shall, invoke the aid of any circuit

court for the county within which the hearing is being held, and the court would issue an appropriate order. Failure to obey the order would be punished by the court as contempt.

Hearing Conclusion and Oral Arguments. At the conclusion of the hearing held, each party would present oral argument in support of the last offer of settlement, which briefs would be made part of the record. At the conclusion of oral argument, the hearing would be closed and no further oral or documentary evidence or argument would be presented by either party without unanimous agreement of the arbitration panel. Within 30 days after the conclusion of the hearing or after any further additional periods to which the parties agree, the arbitration panel would make written findings of fact and promulgate a written opinion and order upon the issues presented to it and upon the record made before it and mail or otherwise deliver a true copy of the opinion and order to the parties and their representatives and to the Employment Relations Commission. The arbitration panel could adopt the party's entire last offer of settlement that (in the opinion of the arbitration panel) more nearly complies with the applicable factors cited in the bill. The findings, opinion, and order would be based upon those applicable factors.

Applicable Factors for Findings, Opinions, and Orders. If the parties had no agreement or had begun negotiations or discussions involving a new or amended agreement in which wage rates or other conditions of employment were in dispute, the arbitration panel would be required to base its findings, opinions, and order upon the following factors: (a) the lawful authority of the employer; (b) stipulations of the parties; (c) the interest and welfare of the public and the financial ability of the unit of government to meet the costs; (d) comparison of the wages, hours, and conditions of employment of the employees involved in the arbitration proceeding with those of other employees performing similar services, and with other employees generally in both public employment in comparable communities and private employment in comparable communities; (e) the average consumer prices for goods and services, commonly known as the cost of living; (f) the overall compensation currently received by the employees, including direct wage compensation; vacations, holidays and other excused time; insurance and pensions; medical and hospitalization benefits; the continuity and stability of employment; and all other benefits received; (g) changes in circumstances concerning any of the factors in subdivisions (a) to (f) while the arbitration proceedings are pending; and (h) other factors that are normally or traditionally taken into consideration in determining wages, hours, and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration, or otherwise between the parties, in the public service or in private employment.

Pending Decisions. While proceedings were pending before the arbitration panel, a party could not change existing wages, hours, or other conditions of employment without the consent of the other party. A party could consent to proposed modifications without prejudice to rights or positions under this act. A charge that a violation had occurred could be filed with the Employment Relations Commission. The commission would be required to call a hearing and render a decision within 45 days of the filing. Further, the commission could remedy the violation as provided in Public Employee Relations Act. A charge of a violation would not automatically stay proceedings before the arbitration panel. A party aggrieved by a final order of the commission regarding an alleged violation could obtain review of the order in the court of appeals. However, appeal to the court would not automatically stay the order of the commission.

Arbitration Panel Decision. A majority decision of the arbitration panel, if supported by competent, material, and substantial evidence on the whole record, would be final and

binding upon the parties. Either party or the arbitration panel could enforce the decision in the circuit court for the county in which the dispute arose or in which a majority of the affected employees reside. The beginning of a new municipal fiscal year after arbitration proceedings were initiated, but before the arbitration decision was rendered or enforced, would not render the dispute moot or impair the jurisdiction or authority of the arbitration panel or the validity of its decision. Increases in rates of compensation or other benefits could be awarded retroactively to the beginning of any period in dispute, any other statute or charter provisions to the contrary notwithstanding. At any time the parties could, by stipulation, amend or modify an award of arbitration.

Review of Arbitration Order. Orders of the arbitration panel would be reviewable by the circuit court for the county in which the dispute arose or in which a majority of the affected employees resided, but only on the basis that the arbitration panel was without or exceeded its jurisdiction; the order was unsupported by competent, material, and substantial evidence on the whole record; or the order was procured by fraud, collusion, or other similar and unlawful means. Review proceedings would not automatically stay the order of the arbitration panel.

Imprisonment. Under the bill, a person could not be sentenced to a term of imprisonment for any violation of this act or an order of the arbitration panel.

Exclusions to the Act. The act would not apply to a dispute between a labor organization representing corrections officers and a public employer if the parties were operating under a collective bargaining agreement that provided for disputes to be submitted to binding interest arbitration.

The new act created by the bill would be supplementary to the existing Public Employment Relations Act, and would not amend or repeal any of its provisions. The fact-finding procedures of that act, however, would be inapplicable to disputes subject to arbitration under this act.

The Employment Relations Commission could grant whatever relief was necessary to enforce the provisions of this act, except in those matters expressly reserved in this act to the circuit court.

BACKGROUND INFORMATION:

During the 2007-2008 legislative session, a substantially similar bill passed the House of Representatives on June 26, 2008, by a vote of 78-29.

FISCAL INFORMATION:

By providing compulsory arbitration for county corrections officers, the bill would increase the direct costs of counties simply to arbitrate labor disputes under the bill. These costs would vary among the counties depending on their size and on the complexity of the dispute, among other factors, and would include attorney's fees and the county's portion of the arbitrators' fees and other expenses of the proceeding.[1] Based on discussions with county

[1] Unlike Act 312, which provides for a cost sharing for arbitrators' fees and other expenses of the arbitration proceeding among the employer, the union, and the state, HB 6154 splits the costs cost of the proceeding among the employer and the union.

officials on similar legislation last session, these costs would be several thousand dollars, or in many instances, tens of thousands, per bargaining unit in each county.

These costs would also vary among the counties depending on the structure of the bargaining units involved, as some counties already include corrections deputies and road patrol deputies in the same unit, even though corrections deputies are not subject to compulsory arbitration under 1969 PA 312.[2] Because the bill would enact a separate act that differs from Act 312, in counties where road patrol deputies and corrections officers are currently within the same bargaining unit, there may ultimately be a move to sever the existing bargaining unit into one eligible for Act 312 arbitration and one eligible for HB 6154 arbitration, which would increase the costs to arbitrate disputes in those counties.[3]

Beyond the immediate direct costs of the arbitration process itself, the bill would have an indeterminate impact on counties, ultimately depending on the results of arbitration concerning corrections employee wages, health benefits, retirement benefits, and other employee economics. There appears to be no statistically reliable set of data concerning municipal employee economics upon which a long-term analysis of compulsory arbitration (under Act 312) could be based. However, local government interests have long contended that binding arbitration for police officers and firefighters is a costly mandate on local units of government.[4] Moreover, in its final report, the Governor's Task Force on Local Government Services and Fiscal Stability noted, "[b]ased 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."[5]

The impact of the bill is also dependant on the level of wages and benefits currently provided to corrections deputies. The chart below shows county-level data from the 1997 and 2007 census of government conducted by the U.S. Census Bureau. While not showing a complete

---

[2] There is a lengthy legal history looking at whether county corrections officers are covered under Act 312, in the same manner as colleagues within the sheriff's department (road patrol deputies). Both the Michigan Employment Relations Commission and state courts have generally held that county corrections officers are not Act 312-eligible. See, for example, *Capital City Lodge No. 141, Fraternal Order of Police v. Ingham County Board of Commissioners*, 155 Mich App 116 (1986), *In the Matter of Tuscola County and Tuscola County Sheriff, and Police Officers Labor Council*, Michigan Employment Relations Commission, Case No. UC02 E-015 October 1, 2003, [http://www.dleg.state.mi.us/ham/ber/pdf/2003/uc02e015.pdf], and *In the Matter of Oakland County and Oakland County Sheriff, and Oakland County Deputy Sheriffs Association*, Michigan Employment Relations Commission Case No. UC06 J-031 (August 7, 2007), [http://www.michigan.gov/documents/dleg/uc06j031_292515_7.pdf].

[3] See, for example, *In the Matter of Oakland County and Oakland County Sheriff, and Oakland County Deputy Sheriffs Association*, Michigan Employment Relations Commission Case No. UC06 J-031, 7 August 2007, [http://www.michigan.gov/documents/dleg/uc06j031_292515_7.pdf] and Oakland County and Oakland County Sherriff's Department v. Oakland County Deputy Sheriff's Association, Court of Appeals Docket No. 280075, 9 February 2009, [http://coa.courts.mi.gov/documents/opinions/final/coa/20090203_c280075_70_16o-280075.pdf].

[4] See, for example, the *Final Report of the Legislative Commission on Statutory Mandates*, December 2009, [http://council.legislature.mi.gov/files/lcsm/lcsm_final_report.pdf].

[5] *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].

picture of employee economics over this 10-year period, the data indicates that increases in pay levels of county corrections officers has outpaced increases for road patrol deputies (notwithstanding their uneven bargaining position) and other county government employees. Given this trend, it could be the case that extending binding arbitration to county corrections officers would have no impact on pay levels for corrections officers. (The data below is statewide data, however, and doesn't necessarily reflect differences at the individual county level, where the actual financial impact would be incurred. Moreover, by continuing the practice of reviewing comparable internal bargaining units and other counties, an HB 6154 binding arbitration award in one county can indirectly impact the employee economics within the county and other "comparable" counties.) On the other hand, the data indicates that, on an aggregate level, road patrol deputies are better compensated than corrections officers. Binding arbitration could serve to close this pay gap, thereby increasing the costs to counties.

	March 1997	March 2007	% Change
Police Officers			
-- FTE Positions	3,758	3,756	-0.1%
-- Payroll	$12,602,694	$17,425,870	38.3%
Avg. Annual Salary	$40,243	$55,674	38.3%
Corrections			
-- FTE Positions	4,833	5,357	10.8%
-- Payroll	$13,762,336	$21,368,958	55.3%
Avg. Annual Salary	$34,171	$47,868	40.1%
All Employees			
-- FTE Positions	49,691	51,787	4.2%
-- Payroll	$137,005,203	$198,860,991	45.1%
Avg. Annual Salary	$33,086	$46,080	39.3%
Total Others			
-- FTE Positions	41,100	42,674	3.8%
-- Payroll	110,640,173	160,066,163	44.7%
Avg. Annual Salary	$32,304	$45,011	39.3%

Source: U.S. Census Bureau, March 1997 and March 2007 Census of Government.

Note: The "police officer" category includes only those county police officers (sheriff's deputies) with the power to arrest. The "payroll" figure is the total payroll for March of the census year. The "average annual salary" takes the average payroll cost for one FTE position in March, and multiplies that figure by 12. The "total others" category takes the data for all county employees, and subtracts data for police officers and corrections officers.

In reviewing a number of recent Act 312 awards concerning county sheriff's departments, 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 county), where the county has successfully pushed for higher employee contribution rates for health insurance and other cost savings mechanisms. However, 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 counties).

The bill, like Act 312, provides that the arbitration panel should base its findings on, among other things, the financial ability of the unit of government to meet the costs. This, in theory, should temper the cost increases required of the counties to meet the unions' proposals, particularly given the prolonged and ever continuing budgetary constraints on the state and local units of government. However, the financial ability of the local unit is not the sole determining factor, and may not necessarily be the predominant determining factor. Moreover, there are no clear criteria used to determine a local unit's ability to pay.

Additionally, the bill imposes a number of requirements on the Michigan Employment Relations Commission (Bureau of Employment Relations), within the Department of Energy, Labor, and Economic Growth. These requirements include selecting nominees (3) to act as chairperson of the arbitration panel and receiving and reviewing complaints of alleged violations of the bill. The MERC/BER would also be impacted to the extent new bargaining units representing HB 6154-eligible corrections officers are created, by operation of the selection and election provisions of the Public Employment Relations Act. The department has not yet indicated how these changes would impact MERC/BER.

ARGUMENTS:

For:

Those who support the bill say that local corrections officers--that is, the deputy sheriffs who work in county jails--should have the same opportunity to have their employment contract disputes arbitrated as do their fellow deputy sheriffs who work road patrol. To deny them access to arbitrators is unfair, and a risk to the safety of both the public and also to the officers themselves, given the nature of their work.

Since the Court of Appeals panel ruled in 1986--more than 20 years ago--that county jail corrections officers could be easily and quickly replaced by their co-workers on road patrol, and were not, therefore, covered by the Binding Arbitration Law, much about their work has changed. According to committee testimony, the deputy sheriffs who work as jail corrections officers are now specially certified, and their work in jails has become more dangerous and demanding. Furthermore, in some counties they are cross-trained, and rotate through both patrol and corrections assignments. In every way, the officers are professional equals, yet their wages, salaries, benefits, and working conditions are considered separately and unequally. In many instances, corrections officers begin their careers with lower pay, and as a result, they have lower pensions decades later when their careers end.

As the Police Officers Association points out, "The results of Michigan's binding arbitration law for police officers and firefighters have been extraordinarily successful. Since the

passage of PA 312 there have been no police or firefighter strikes over traditional contract negotiations." The process works, and it should be re-instated for county corrections officers.

Fundamental fairness and job parity require that county deputy sheriffs who work as road patrol officers, and as corrections officers have their contract disputes arbitrated under PA 312, equally and in the same manner.

Against:

Those who oppose the bill argue that local units of government cannot afford binding arbitration for more deputy sheriffs--most especially not in these tough economic times.

Opponents note that studies undertaken by the Mackinac Center on Public Policy to investigate binding arbitration reveal that arbitration takes about 15 months, on average, and can take as long as three years. During that time, local officials must pay attorneys to advise them throughout the process, and eventually also pay the increase in the cost of salaries and benefits that are decided upon by the arbitrator--an arbitrator who acts unilaterally and without accountability to local taxpayers. Overall, the Mackinac Center reports that binding arbitration adds as much as five percent to the cost of government.

Those opposed to the bill argue there's no question that House Bill 6154 is an example of an "unfunded mandate" and a violation of the Headlee Amendment to Michigan's Constitution. They say the specialized attorneys that county officials would have to hire would charge an estimated $40,000 to $60,000 to represent a county in each case being arbitrated. They conclude that local governments who have suffered continual cuts in state-shared revenue simply cannot afford this legislation.

POSITIONS:

The Oakland County Sheriff's Office supports the bill, the Oakland County Sheriffs' Association, and the Oakland County Deputy Sheriffs' Association all support the bill. (5-26-10)

The Police Officers' Association of Michigan supports the bill. (5-26-10)

The Deputy Sheriffs' Association supports the bill. (5-26-10)

The Michigan Townships Association opposes the bill. (5-26-10)

The Michigan Association of Counties opposes the bill. (5-26-10)

Oakland County opposes the bill. (5-26-10)

The Michigan Municipal League opposes the bill. (5-26-10)

Americans for Prosperity oppose the bill. (5-26-10)

Legislative Analyst: J. Hunault
Fiscal Analyst: Mark Wolf

■ 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.