

The Feral Firefighter's Briefing Paper on HB 4309 **(Draft version placed into written testimony of March 3, 2011 meeting record of the House Committee on Local, Intergovernmental, and Regional Affairs)**

HB 4309 would amend the Emergency Services Authorities Act (PA 57 of 1988). The sponsors of HB 4309 ostensibly state their intent is to remove supposed legal barriers to intergovernmental collaboration and/or consolidation of police and fire services that would achieve efficiencies and cost savings for municipalities.

First, HB 4309 sponsors are concerned with the "employee protection provision" found in the Urban Cooperation Act and other laws (PA 7, PA 8, and PA 204 of 1967) that supposedly "requires that when local governments merge ... the better benefits package is automatically applied to all new employees." In addition, some have claimed this provision prohibits the layoff of unnecessary employees. However, these laws only require the transfer of "necessary" employees and that those employees who are transferred are not placed in a "worse position with respect to worker's compensation."

Regardless, the employee protection provision is *not* even found in PA 57 of 1988; PA 57 states only that transferred employees "maintain their seniority status and all benefit rights of the position held ... before the transfer" and that the authority "... shall not be required to create or maintain unnecessary positions."

Second, some are concerned that existing contracts would remain in effect indefinitely, never allowing the Authority to negotiate a new contract. However, PA 57 states the Authority is "... bound by any existing labor agreements ... for the *remainder* of the term of the labor agreement." After all existing contracts expire, a new contract would be negotiated with the Authority with all wages and benefits subject to change.

Last session, no bills were introduced to amend PA 57 of 1988. However, the Senate did pass SB 1085/1086 which amended the Urban Cooperation Act (and PA 8) to address the expressed concerns of HB 4309 sponsors (the bills stalled in the House).

The proposed amendments of HB 4309 address none of its' sponsors' stated concerns. Instead, HB 4309 amends PA 57 to void all existing labor contracts, seniority rights, pension rights, healthcare, wages and other benefits of police and firefighters transferred to an emergency services Authority. How is this justifiable?

This brief was an independent effort. Its' contents do not necessarily reflect the opinions of the MPFFU, other firefighters or The City of Grand Rapids Fire Department. This brief can be viewed/downloaded/printed: <http://www.feralfirefighter.blogspot.com>

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Executive Summary

The past decade has been financially difficult for Michigan municipalities. Local governments have been faced with large declines in income tax, property, and state shared revenues at the same time medical and pension payments have increased. Local governments have been forced to increase taxes, make deep budget cuts, and lay off police and firefighters. Some municipal leaders and state legislators have blamed Michigan municipalities' budget problems on excessive police and firefighter's wages and benefits, despite the wage and benefit concessions of recent years.

Now, Governor Snyder's proposed 2011-2012 budget eliminates *all* discretionary revenue sharing, placing an even greater financial burden onto municipalities. However, as an incentive to adopt "best practices" (to be described later in March 2011) municipalities will compete to receive a share of some of the cut revenue sharing funds.

Some of these "best practices" will involve intergovernmental collaboration and/or consolidation of services to achieve efficiencies and cost savings for municipalities. (However, in practice consolidation does not always result in dramatic efficiencies and cost savings. This is especially true in the case of more labor intensive functions such as police patrol officers and urban firefighters providing emergency response services).

...

HB 4309, HB 4310, HB 4311, and HB 4312 were ostensibly introduced to amend state laws to "allow local governments to implement cost-saving reforms that will help keep tax bills from being raised. ... The four-bill package includes legislation sponsored by Reps. Cindy Denby, R-Handy Township; Paul Opsommer, R-DeWitt; and Tom Hooker, R-Byron Center."

Rep. Tom Hooker claimed these "bills provide local governments the ability to merge manpower resources without automatically upgrading benefits packages. The current "Urban Cooperation Act" [PA 7 of 1967] is considered by many to actually be the "Urban Un-Cooperation Act. ... Current law requires that when local governments merge operations to save resources, the better benefits contract is automatically applied to all new employees. While intended to protect employees, the result has deterred local governments from consolidating because of increased personnel costs."

In his 2009 Citizens Research Council (CRC) report, "Streamlining Functions and Services of Kent County and Metropolitan Grand Rapids Cities," Eric Luper claimed that some state laws need to be amended to remove "employee protection provisions" that supposedly prohibit layoff of unnecessary employees and "... may cause the cost of that [consolidated] service to increase rather than decline" [apparently referring to the claim that the employee protection provision requires increasing the compensation of all transferred employee up to that of the highest previously paid in the existing departments].

These claims do not appear to be correct. However, these misperceptions are prevalent among municipal leaders, the Michigan Municipal League (MML), and some state legislators.

The CRC claims are clearly erroneous in the case of PA 57 of 1988; the employee protection provision is *not* even found in PA 57 of 1988; PA 57 states only that transferred employees "maintain their seniority status and all benefit rights of the position held ... before the transfer" and that the authority "... shall not be required to create or maintain unnecessary positions."

Some are concerned that existing contracts would remain in effect indefinitely, never allowing the Authority to negotiate a new contract. However, PA 57 states the Authority is "... bound by any existing labor agreements ... for the *remainder* of the term of the labor agreement." After all existing contracts expire, a new contract would be negotiated with the Authority with all wages and benefits subject to change.

The CRC claims appear erroneous in the case of the "employee protection clause" found in the Urban Cooperation Act (PA 7 of 1967) along with PA 8, PA 204 of 1967. These laws only require the transfer of "necessary" employees and that those employees who are transferred are not placed in a "worse position with respect to worker's compensation."

In their 2007 legal analysis, Michael McGee and Christopher Trebilcock of the law firm Miller-Canfield did not identify the "employee protection provisions" as posing legal barriers to intergovernmental cooperation, require bringing all employees up to the highest compensation level, and wrote these laws do "not require the transfer of all the employees." However, they noted the Urban Cooperation Act language [and PA 8, PA 204] is not clear regarding the assumption of labor contracts. McGee & Trebilcock suggested amendments to "ensure that a new authority could begin to function under a single collective bargaining agreement within a relatively short time period."

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Last session, no bills were introduced to amend PA 57 of 1988. However, Senator Jansen and Hardiman did introduce SB 1085 and SB 1086 to amend the Urban Cooperation Act (and PA 8) to include language clearly stating that all bargaining units did not have to move to the highest wage and benefit levels of existing departments after consolidation. Senator Jansen and Hardiman's bills were amended during the legislative process to clarify that existing labor contracts would be assumed by the new entity, until a new unified contract was negotiated.

The Michigan Professional Firefighter's Union (MPFFU) President Mark Docherty testified, "There is a misconception ... that each bargaining group need to be paid the highest wage and the best benefits from each group. This is not true. ... Another concern expressed was that contracts from an acquired system would remain in effect indefinitely, never allowing the Authority to decrease any wages or benefits for employees of the Authority. This also is not true. Even though we believe the Act is clear, we wanted to address all the concerns that seemed to be throwing up road blocks

to consolidations. We worked with the Michigan Municipal League (MML) and Senate Republicans to craft 2 bills [SB 1085/1086] that clarified all of these issues."

President Docherty continued, "SB 1085/1086 clarified that each employee did not have to be raised to the highest wage and benefits of each group. Each bargaining group would maintain their own contract until it expired. If one contract expired a year before the others, then it would be extended one year until the other contracts also expired. After all the contracts have expired, a new single contract would be negotiated with all employees in the Authority as one bargaining group. At that point all wages and benefits would be subject to change."

It appears this language would have satisfied the expressed concerns of the MML and the Republican Caucus with the "hold harmless clause" and with "negotiat[ing] a new contract" after consolidation. However, although SB 1085 and SB 1086 passed the Senate, they were held up and died in the House last session.

President Docherty concluded his remarks before the Committee, "We would like to revisit the meaningful reforms that were placed in SB 1085/1086 last session. We believe this would completely address the concerns expressed above [PA 7 "hold harmless" clause and renegotiation of a new Authority contract]."

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HB 4309 was introduced on February 22, 2011 to amend the Emergency Services Authorities Act (PA 57 of 1988). Ostensibly, the intent of HB 4309 is to remove supposed "impediments to consolidation" of police and/or fire departments into an emergency services Authority. However, the amendments of HB 4309 have nothing to do with addressing the legitimate concerns identified by McGee & Trebilcock. PA 57 doesn't even contain the "hold harmless" clause found in the Urban Cooperation Act, and PA 57 already contains provision for the negotiation of a new unified contract.

Instead, HB 4309 would amend The Emergency Services Authorities Act (PA 57 of 1988) by deleting virtually all clauses that "guarantee labor contracts and employment rights in regard to the formation and reorganization of authorities" (HB 4310, HB 4311, and HB 4312 would do the same for transfers under the Urban Cooperation Act, etc.) for the employees transferred to a newly created Authority.

From the point of view of police and firefighters, transfer to an Authority under the terms of HB 4309's amendments to PA 57 could be a nightmare. Although little would change on the streets, except a new patch on their shoulder, everything could change for police and firefighter employment rights, wages, benefits, and working conditions.

Some have claimed that "Michigan is not Wisconsin." True, HB 4309 does not remove the right to collective bargaining or the right to belong to a Union. However, the existing labor contracts would not be assumed by the new Authority. In effect, although the skeleton of collective bargaining would still be in place, HB 4309 would eliminate the results of 40 years of collective bargaining by tearing up the contract.

The transferred employees would be working without the protection of a labor contract. Instead of negotiating wages, benefits, and conditions of work from the levels of their existing contract, the Union would be negotiating "from zero" with the municipal leaders of the Authority. This would mean a return to "collective begging"; after "negotiating" an entirely new contract, with deep wage and benefit concessions, eventually the Union would accept whatever terms the Authority would unilaterally impose. And, if PA 312 is repealed, the police and firefighters would then have no neutral arbitrator to appeal the terms of a draconian new contract.

Further, transferred employees would lose their "seniority." Traditionally, the least senior employees are laid off first. However, without seniority transferring to the Authority, a 30-year veteran would have the same seniority as a first-year rookie. Zero. Even worse, as a "new" employee he could become a "new" probationary firefighter subject to discharge without cause, without appeal.

Finally, pension benefit rights would be eliminated by the formation of an Authority (although the Michigan constitution protects "accrued" benefits to date). It's important to note that most police and firefighters do not contribute to Social Security nor will they receive Social Security. And their pensions, unlike Social Security, have no (or small) Cost-of-Living-Adjustments to protect against inflation. If future police and fire pension benefits are reduced dramatically, it would delay their retirement. Many police and firefighters would be compelled to work until disabled or well into old age.

In his February 24, 2011 testimony, MPFFU President Docherty said, "What HB 4309 does is completely strip away any wages, seniority, healthcare, pensions, or any other benefits. ... All this bill does is to strip away the bargaining rights of the employees in an attempt to seek greater savings through massive reductions in wages and benefits without having to bargain those concessions. This was never the intent of consolidations or authorities. ... I urge you to not remove the collective bargaining rights of firefighters and not pass HB 4309."

AHB 4309 (and HB 4310, HB 4311, and HB 4312) are ostensibly supposed to remove legal barriers to intergovernmental collaboration and/or consolidation. However, passage of these bills may in practice create barriers to collaboration/consolidation efforts. Why would police and firefighters (and other public employees) cooperate with a process that would strip them of their employment and benefit rights? Consolidation efforts could be tied up for years with lawsuits in the court system.

...

Of course, from the point of view of municipal leaders and the Michigan Municipal League (MML), passage of HB 4309 would be the answer to their dreams. Merely by consolidating police or fire departments into an Authority, regardless of the any actual efficiencies or cost savings, they would be able to reset their police and firefighter labor contracts to zero. And, as a bonus, by displaying "best practices" with their collaboration/consolidation efforts, they would receive back some of the cut discretionary revenue sharing funds from the State.

"Knowing revenue sharing isn't being increased, we need to look at ways to help local communities and leaders stretch limited funds," stated Senator Mark Jansen, a leading proponent of government reforms." In their January 27, 2011 presentation, "The League's Prosperity Agenda", The MML listed several reforms that would "give communities all available *tools* to manage costs and control revenues." Among their "tools" is: "Allow communities to consolidate without costing more."

Governor Rick Synder has said, "Michigan is not Wisconsin," that he wants to "work with labor" and within collective bargaining. But the impact of HB 4309 (along with HB 4310, HB 4311, and HB 4312) allowing Authorities to void contracts will have a similar effect here in Michigan.

The Emergency Authorities Act (PA 57 of 1988) doesn't present any barriers to consolidation of emergency services into authorities. The proposed amendments of HB 4309 don't remove any supposed legal barriers to intergovernmental collaboration. In actuality, with the passage of HB 4309 police and firefighters would be stripped of the protections of their existing contract, seniority, and pension rights by a transfer to an Authority. How is this justifiable?

Are these impacts of HB 4309 truly the intention of our State legislators? How would passage of HB 4309 promote the welfare of our police, firefighters or the public safety?

March 17, 2011

Mr. Jeffrey Guilfoyle, President
Citizens Research Council of Michigan

Thanks for your response to my March 9, 2011 e-mail, "Error in CRC Report 357 Calls into Question CRC's Credibility," that expressed my concerns with your 2009 report "Streamlining Functions and Services of Kent County and Metropolitan Grand Rapids Cities" (Report 357). This report appears to have been written by your Director of Local Affairs, Eric Lupher, who for the past six years, has researched and published on intergovernmental collaboration and/or consolidation to achieve efficiencies and cost savings.

In my March 9th e-mail, I wrote:

"Lupher incorrectly claimed that some state laws need to be amended to remove 'employee protection provisions' that supposedly prohibit layoff of unnecessary employees and require increasing the compensation of all transferred employee up to the highest previously paid of the existing departments. ... These intergovernmental laws do not prohibit layoffs and only mandate that transferred employees are not placed in a "worse position" after transfer."

"... Eric Lupher's claims are clearly erroneous in the case of PA 57 of 1988 [Emergency Services Authority Act], and certainly appear erroneous in the case of the "hold harmless" [employee protection provision] clause found in the Urban Cooperation Act (PA 7 of 1967), PA 8 of 1967, and PA 204 of 1967 (based not merely on my own layman's analysis, but also on the 2007 legal analysis conducted by Miller-Canfield)...."

"**Note:** for a detailed discussion of why the claims of CRC Report 357 are erroneous, with links to source material, see my briefing paper, "The Feral Firefighter's Briefing Paper on HB 4309,"

On Friday, March 11, 2011, I spoke briefly on the phone with Eric Lupher. Afterwards, I sent him a brief e-mail with my reaction to our discussion:

"As far as your remarks about "laws that impede collaboration", I'll await your written response; your explanations on the phone weren't convincing to me. However, you were correct to point out that you never explicitly used the language (that politicians have used) about laws requiring all compensation be raised to highest level. ... although I still believe you were alluding to it in your phrase [p.7, CRC Report 357] '...because of these [employee protection] provisions, consolidated service provision may cause the cost of that service to increase rather than decline"

Note: this letter is posted at <http://www.feralfirefighter.blogspot.com>
with active hyperlinks

On Monday, March 14, 2011, I received your response to my March 9th e-mail. Here are the portions of your response concerning “laws that impede collaboration”:

“The problem with the laws in question is not their implementation nor in the case law, but in the interpretation given the provisions by those inside and outside of Michigan local government. It is clear in some cases that attempts to consolidate existing services have fallen apart because of these provisions, but other attempts have failed because of the fear of these provisions. With that in mind, the paper was careful not to say that the acts create restrictions in any way nor that they require paying workers at the highest of the two collaborating governments’ pay scale. To say, as the paper does, that local governments are restrained from using intergovernmental collaboration to reduce the size of municipal staffs does not infer that these provisions create insurmountable road blocks.”

“Additionally, the fact that these laws may cause collaborating municipalities to hold labor costs steady, while the other costs of collaboration are added to the burden “may cause the cost of that service to increase rather than decline.” It is your inference that the cause of increased cost is paying everyone at the highest level. In fact there are many other potential causes of that increase – legal costs, excess equipment, accountants and consultants, etc. – that cannot be offset by labor cost reductions if labor costs are at best held constant.”

“We find that the findings of the Miller Canfield memo are analogous to our report findings. In fact, many others have looked at this issue before CRC or Mr. McGee and Mr. Trebilcock wrote about this subject and those studies came to similar conclusions about the implications of these provisions.”

“It is important to note, as you do in your briefing paper on HB 4309, that the pursuit of cost savings is but one reason for which local governments have turned to intergovernmental collaboration. In many of the other cases, these provisions have not been insurmountable obstacles and collaboration has resulted.”

...

Unfortunately, your written response did not satisfactorily address my concerns with the accuracy of CRC Report 357.

First, I found it difficult to follow the logic of your written response. Further, it appears that some of your assertions were a bit disingenuous. Below, following this letter, I’ve broken down your written response into numbered points, and I’ve commented in detail on each point (I’ve edited and rearranged some of your comments for clarity. Italics are added)

Second, your response never addressed my arguments (presented in detail on pp.10 –18 of “The Feral Firefighter’s Briefing Paper on HB 4309”) that ‘employee protection provisions’ *do not* impede collaboration and consolidation. More specifically, I discussed the following four questions:

Does the “employee protection provision” of PA 57 of 1988 prohibit the layoff of unnecessary employees when forming of a fire authority?

Does the “employee protection provision” of the Urban Cooperation Act (PA 7 of 1967) and other intergovernmental laws (e.g. PA 8 and PA 204 of 1967) prohibit the layoff of unnecessary employees when forming interlocal agreements or making intergovernmental transfers?

Does the “employee protection provision” of PA 57 of 1988 require that all employees in a fire authority be raised to the highest wage & benefit level of the existing fire departments? Would the Authority be unable to negotiate a new contract?

Does the “employee protection provision” in the Urban Cooperation Act etc. mandate all wages and benefits be raised to the level of the highest of the collaborating departments when establishing interlocal agreements or intergovernmental transfers? Would existing contracts remain in effect indefinitely?

However, you did acknowledge that “I have not addressed all of your concerns point by point.” I hope to take you up later on your offer to “discuss the issues relating to CRC that you raise in more detail, either in person, or by phone.”

To simplify matters, let’s narrow the scope a bit. Why not explain to me just how any clauses in PA 57 prohibit the layoff of unnecessary employees or would mandate all employees be brought up to the highest compensation level?

Thanks again for your response to my previous letter.

Sincerely,
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1.) “The problem with the laws in question [PA 57 of 1988, PA 7, 8, and 204 of 1967] is not their implementation [statutory language?] nor in the case law, but in the *interpretation* given the [employee protection] provisions by those inside and outside of Michigan local government. It is clear in some cases that attempts to consolidate existing services have fallen apart because of these provisions, but other attempts have failed because of the fear of these provisions.”

I’m confused. You seem to be saying that the problem isn’t really with the laws themselves which contain the “employee protective provision*,” but instead lay with their “interpretation” by politicians who “fear” that this provision requires bringing all transferred employees up to the highest compensation levels and prohibits layoffs. But, then you equivocate by saying that some attempts have “fallen apart *because* of these provisions*...” So, which is it? Are you saying the problem is in the “reality” of the law, or merely its incorrect “interpretation” that is actually the problem?

Similarly, Eric Lupher appears to equivocate in his portion of the December 2009 Business Leaders for Michigan report, “Improving Delivery of Local Governmental Services.” Eric first writes the problem lies with the laws themselves; (p.18) “In essence, *clauses in these laws* state ... cannot eliminate workers that are currently employed to provide that service or reduce the wages, benefits, and other means of compensation of those workers.”

However, on the following page, Eric points to the problem being with “interpretations of the law”; (p.19) “Local governments that have conducted feasibility studies* for the consolidation of services have found ... employee protection clauses cause the aggregate cost of wages and benefits to increase. This increase is the result of *interpretations of the law* that require retention of all employees currently on staff, and raise all salaries to the highest level of those paid by the areas included in the collaboration.” But, then Eric concludes, “employee protection *clauses* create significant disincentives. To address this problem, these clauses must be deleted from state laws.

And, Eric Lupher appears to claim in Report 357 that the laws themselves are the problem (see Point #3 and #4 below). But, if the laws aren’t the problem, then why do they need to be changed? Why not change the “interpretation” of the laws among the politicians?

***Note:** Here’s the “employee protection clause found in the The Urban Cooperation Act:

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

***Note:** Can you provide any references to attempts that “have fallen apart *because* of these provisions” and to “local governments that have conducted feasibility studies* for the consolidation of services...”?

BLF: http://www.businessleadersformichigan.com/files/Improving_Local_Govt_Svc_Report.pdf

2.) **“The problem with the laws in question is not their implementation nor in the case law, but in the *interpretation* given the provisions by those inside and outside of Michigan local government.”**

But, it certainly appears that the CRC itself has certainly contributed to the widespread misperception among politicians that these laws are a problem. For example, on September 23, 2009 Eric Lupher gave a presentation to the Michigan Government Finance Officers Association which claimed: (p.21) “The legislature needs to address”... (p.22) “laws that *can* cause collaboration to cost more than independent service provision” [lists PA 57 of 1988, PA 7, 8, and 204 of 1967]”... (p.23) ”In particular these laws state [employee protection clause from PA 7].

A couple of months later, the CRC published Report 357 “Streamlining Functions and Services of Kent County and Metropolitan Grand Rapids Cities.” Eric Lupher’s Conclusion claimed: (p.33) “It will be *necessary for state laws to be amended* ... provisions in a few laws create circumstances wherein collaboration *may* increase the cost of service provision.” The report’s findings were echoed in The GR Press’s coverage of West Michigan mayors who used the report to kick off their media/propaganda campaign for consolidation in November 2009 (Note the use of the careful qualifiers “can cause” and “may increase” above to provide some wigggle room).

3.) **“It is clear in some cases that attempts to consolidate existing services have fallen apart because of these [employee protection] provisions, ... In many of the other cases, these provisions have not been insurmountable obstacles and collaboration has resulted.” ... To say, as the [Report 357] paper does, that local governments are restrained from using intergovernmental collaboration ... does not infer that these provisions create insurmountable road blocks.”**

It appears that you may have referred here to my claim, “Lupher incorrectly claimed that some state laws [that supposedly impede collaboration] *need to be amended* to remove ‘employee protection provisions’...” But, you created a straw-man if you were arguing that by writing “need” I meant “insurmountable roadblocks.”

However, my statement that Eric Lupher claimed “laws need to be amended” is correct. In his Conclusion to Report 357, Eric wrote: (p.33) “It will be *necessary for state laws to be amended* ... to benefit from collaboration to the fullest extent possible. ... provisions in a few laws create circumstances wherein collaboration may increase the cost of service provision”

Further, in Eric Lupher’s portion of the December 2009 Business Leaders for Michigan report, “Improving Delivery of Local Governmental Services,” Eric wrote: (p.18) “...legislative *change is needed* to remove legal impediments to interlocal collaboration. *Significant barriers* to functional consolidation must be addressed, including ... clauses in several state laws...” and (p.19) “... these clauses *must* be deleted from state laws.”

EL 9-09: http://www.crcmich.org/PUBLICAT/2000s/2009/mgfoa_09-23-09.pdf

CRC 357: <http://www.crcmich.org/PUBLICAT/2000s/2009/rpt357.pdf>

GR Press: <http://feralfirefighter.blogspot.com/2011/03/crc-west-mi-mayors-and-gr-press.html>

BLF: http://www.businessleadersformichigan.com/files/Improving_Local_Govt_Svc_Report.pdf

4.) **“With that in mind [that the problem with the laws is in the interpretation given the provisions], the paper [Report 357] was careful *not* to say that the acts create restrictions in any way...”**

First, how can you possibly argue “the paper was careful *not* to say that the acts create restrictions *in any way*”? Report 357 is full of references to supposed “restrictions” posed by provisions in the acts!

For example, (pp.7-8) “Laws that *Impede* Collaboration” ... “provisions in some of these laws *severely limit* the ability of local government to come together for service provision.” ... “laws *impede* local governments” ... “the result of these provisions is that local governments are *restrained* from using intergovernmental collaboration effectively to reduce the size of municipal staffs” ... “laws that *hinder*...collaboration” ... directly create *impediments* to collaboration” and (p. 22) “as long as the employee protection provisions remain in the Urban Cooperation act and Emergency Service Authorities Act, a full consolidation ... is not likely to result in cost savings in the near term.”

Further, in “Improving Delivery of Local Governmental Services,” Eric wrote: (p.18) “...*legal impediments* to interlocal collaboration. *Significant barriers* to functional consolidation” ... “provisions that serve as *impediments*” ... “*severely restrict* the ability of local governments” ... “cannot eliminate workers ... or reduce their wages” ... and (p.19) “clauses create *significant disincentives*” ... “removal of these *impediments*.”

5.) **“To say, as the paper does, that ‘local governments are restrained from using intergovernmental collaboration to reduce the size of municipal staffs’ does not infer that these provisions create insurmountable road blocks.”**

I’m confused here. It appears that you referred to my assertion that, “Lupher incorrectly claimed ... ‘employee protection provisions’ ... *prohibit* layoff of unnecessary employees...” Surely, you weren’t arguing that I was wrong to “infer” that Eric claimed that the provisions were responsible for the creation of “road blocks” (i.e. prohibit) to reducing the size of municipal staff?

Eric wrote in Report 357 that, (p.7) “Employee protective provisions ... *impede* local governments from using intergovernmental collaboration to displace employees ... The provisions state that employees affected by transfer ... should not be put in any worse position ... The result of these provisions is that local governments are *restrained* from using intergovernmental collaboration effectively to reduce the size of municipal staffs. (To my ear, “impede” and “restrained” sure sound like one of the “restrictions” of point #* to me!)

Perhaps you were being disingenuous by leaving out the first half of the phrase you quoted from Report 357? That is, (p.7) “The result of these provisions is that local governments are restrained from using intergovernmental collaboration effectively to reduce the size of municipal staffs.” It certainly appears that Eric blamed the provisions for the inability to reduce staff.

Furthermore, in “Improving Delivery of Local Governmental Services,” Eric *explicitly* claimed that the employee protective provisions prohibit layoffs of unnecessary employees: (p.18) “In essence, *clauses in these laws state that two or more local governments that are attempting to consolidate provision of a service cannot eliminate workers that are currently employed...*” and (p.19) “ *these employee protection clauses cause the aggregate cost of wages and benefits to increase. This increase is the result of interpretations of the law that require retention of all employees currently on staff...*” (if the fault is not in the law itself, then why change it?)

6.) “With that in mind [the problem with the laws is in the *interpretation* given the provisions], the paper was careful *not* to say ... they [employee protection provisions] *require paying workers at the highest of the two collaborating governments’ pay scale. ... It is your inference that the cause of increased cost is paying everyone at the highest level. In fact there are many other potential causes of that increase...*”

It appears you were referring here to my claim: “Lupher incorrectly claimed that some state laws need to be amended to remove ‘employee protection provisions’ that ... *require* increasing the compensation of all transferred employee up to the highest previously paid of the existing departments.”

It is true that, in Report 357, Eric was “careful not to say” the provisions explicitly “require paying workers at the highest of the two collaborating governments’ pay scale.” However, he implied (with a qualifying “may”) such a mandate with his claim: (p.7) “In fact, *because of* these [employee protection] provisions, consolidated service provision *may* cause the cost of that service to increase rather than decline.”

A couple of months later, in “Improving Delivery of Local Governmental Services,” Eric correctly wrote, (p.18) “clauses in these laws state that two or more local governments that are attempting to consolidate provision of a service cannot ... *reduce* the wages, benefits, and other means of compensation of those workers.” Eric then explicitly said that (p.19) “... these *employee protection clauses* cause the aggregate cost of wages and benefits to increase. This increase is the result of *interpretations of the law* that ... raise all salaries to the highest level of those paid by the areas included in the collaboration.”

...

My “inference” was correct that Eric was referring to the idea that the employee protection provision requires increasing the compensation of all transferred employee up to the highest previously paid in the existing departments. Why else “may” costs *increase* after consolidation *because of* the employee protection provisions?

So, Eric Lupher acknowledged the laws themselves are OK, it’s the wrong interpretations that are the problem. But, you wouldn’t realize that if you were a finance officer who just sat through his September 23, 2009 presentation: (p.21) “The legislature needs to address”... (p.22) “*laws that can cause collaboration to cost more than independent service provision*” [lists PA 57 of 1988, PA 7, 8, and 204 of 1967]”... (p.23) ”In particular these laws state [employee protection clause from PA 7]. His presentation was misleading, at best.

7.) **“Additionally, the fact that these laws may cause collaborating municipalities to hold labor costs steady, while the other costs of collaboration are added to the burden ‘*may cause the cost of that service to increase rather than decline.*’ It is your inference that the cause of increased cost is paying everyone at the highest level. In fact there are many other potential causes of that increase – legal costs, excess equipment, accountants and consultants, etc. – that cannot be offset by labor cost reductions if labor costs are at best held constant.”**

Here you refer to Report 357 where Eric Luper wrote, (p.7) “In fact, *because of these [employee protection] provisions*, consolidated service provision may cause the cost of that service to increase rather than decline.”

I believe you may have been disingenuous by omitting the crucial first part of the preceding phrase, “*because of these [employee protection] provisions*”, and instead substituting the phrase “the fact that these laws may cause collaborating municipalities to hold labor costs steady, while the other costs of collaboration are added to the burden.”

Was your omission an act of carelessness or worse? Report 357 didn’t mention any “other costs of collaboration” as the cause of costs increasing. Instead, the report placed the blame on the “employee protection provisions.” With labor costs steady, what else in the “employee protection provisions,” besides the mistaken interpretation the laws require increasing the compensation of all transferred employees up to the highest, would cause costs to increase?

8.) “We find that the findings of the Miller Canfield memo are analogous to our report findings. In fact, many others have looked at this issue before CRC or Mr. McGee and Mr. Trebilcock wrote about this subject and those studies* came to similar conclusions about the implications of these provisions.”

In May 2007, Michael P. McGee and Christopher M. Trebilcock of Miller-Canfield presented their paper, “Legal Barriers to Intergovernmental Cooperation Agreements in Michigan,” at a Lansing conference on “Intergovernmental Cooperation in Michigan.” Their paper summarized “the principal legal and statutory impediments which confront policymakers seeking to implement consolidation of services and other forms of intergovernmental cooperation. ... The white paper authors ... [explained] that, in general, Michigan has a favorable climate for intergovernmental cooperation ... Regardless, many municipalities view the current statutory framework ... negatively.”

After reading both their report and your CRC Report 357, I simply don’t understand how you found that “the findings of the Miller-Canfield paper are “analogous” to CRC Report 357 and “came to similar conclusions.” McGee and Trebilcock did not identify the “employee protection provisions” as posing legal barriers to intergovernmental cooperation. They did not identify these provisions as requiring all employees be brought up to the highest compensation level and they said these laws do “not require the transfer of all the employees.” However, they noted the Urban Cooperation Act [and PA 8, PA 204] is not clear regarding the assumption of labor contracts. McGee & Trebilcock suggested amendments to “ensure that a new entity could begin to function under a single collective bargaining agreement within a relatively short time period.”

Note: discussed in more detail in The Feral Firefighter’s Briefing Paper on HB 4309”

***Note:** Could you provide me with references to “those studies” from “many others who have looked at this issue before”? That would be extremely helpful in clearing things up.

...

First, Report 357 claimed that “Employee protection provisions ... impede local governments from using intergovernmental collaboration to displace employees...” But McGee and Trebilcock did not identify the employee protection provision of PA 7, 8, and 204 as a “legal barrier” that prohibits displacing unnecessary employees:

(p.7) By its terms, Act 8 [and PA 7] *only requires the transfer of “employees ... necessary for the operation”* of the transferred functions and responsibilities (emphasis added). *Ostensibly, this does not require the transfer of all the employees* of the governmental unit performing the function or responsibility transferred. However, as discussed further below, the transferring governmental unit may have greater obligations as the result of existing collective bargaining agreements and the attenuating requirements under Michigan labor laws...”

Second, CRC Report 357 claimed that "...because of these [employee protection] provisions, consolidated service provision may cause the coast of that service to increase rather than decline." But McGee and Trebilcock did not identify the employee protection provision of PA 7, 8, and 204 as a "legal barrier" that mandates bringing all employees up the highest wages and benefits of the old contracts. In fact, they viewed this clause as in effect requiring the new entity to assume the existing contracts:

"Although Act 8 [and PA 7] does not specify that the acquiring governmental unit must apply the terms of the transferred employees' collective bargaining agreement, if one exists, the Act in effect places such a burden by mandating that *'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 [the terms and conditions of employment.]* Thus, while the acquiring governmental unit may or may not be a successor employer under Michigan law obligated to recognize the union representing the transferred employees and to abide by the terms of the associated collective bargaining agreement, the acquiring governmental unit must maintain the status quo of the terms and conditions of employment the transferred employees enjoyed while working for the transferring governmental unit."

...

However, the Urban Cooperation Act (PA 7) & PA 8 language is not clear regarding the assumption of labor contracts and the negotiation of a new contract. Michael McGee and Christopher Trebilcock explained that

"(p. 7) ... Act 8 [& PA 7] requires that those employees retain all rights and benefits previously held, ... in accordance with the records or labor agreements from the acquired system." The governmental unit that acquires the functions or responsibilities assumes "the obligations ... with regard to wages, salaries, hours, working conditions, sick leave, health and welfare and pension or retirement provisions for employees."

McGee and Trebilcock consider this language of PA 7 & 8 as a legal barrier to consolidation because, "The end result is unmanageable multi-layer set of work rules, wages, and benefits established through years of collective bargaining which effectively eliminate the sought after economic efficiencies" As a solution, they suggested amending the laws to clarify the process of forming a new unified labor contract:

"With careful and thoughtful drafting [laws including PA 7, 8, and 57] could be amended in a manner that provides sufficient certainty in the accretion of two or more bargaining units without effectively limiting collective bargaining over wages, benefits and other terms and conditions of working. ..." They believed judicious amendments will "help eliminate the problems associated with multi-layer collective bargaining by setting forth a uniform and objective mechanism to determine which terms and conditions shall apply to employees of the new authority. ... [and] would ensure that a new authority could begin to function under a single collective bargaining agreement within a relatively short time period."

For **PA 57 of 1967**, the authors noted, “Similar to Act 7 and Act 8, Act 57 requires that the authority “immediately ... assume and be bound by any existing labor agreements applicable to that municipal service for the remainder of the term of the labor agreement.” The result of such an obligation is identical to that under Acts 7 and 8: an unmanageable multi-layer set of work rules, wages, and benefits established through years of collective bargaining which effectively eliminate the sought after economic efficiencies.”

McGee and Trebilcock suggested the following amendment to PA 57:

“When the duties of a municipal emergency service are transferred to an authority, the authority shall assume and be bound by the existing labor agreement applicable to that municipal service of the transferring municipality with the greatest number of employees being transferred to the authority. The authority shall be bound for the remainder of the term of the agreement.” ...

Alternatively, Section 10(3) could be amended by providing that “the authority shall immediately assume and be bound by the existing labor agreement applicable to that municipal service for no more than six (6) months or until a new collective bargaining agreement is reached, whichever period is shorter.”

For the **Urban Cooperation Act (PA 7 of 1967) and PA 8**, the authors suggested adding the following language:

“For purposes of this Act, the transferred employees shall be subject to the terms and conditions set forth in the then existing collective bargaining agreement of the political subdivision to which the functions and responsibilities have been transferred or acquired. All terms and conditions of employment shall be immediately applied and the transferred employee shall obtain all the right and benefits under the collective bargaining agreement as if the employee had been an employee of the political subdivision to which the functions and responsibilities have been transferred or acquired.”

McGee and Trebilcock believe these amendments will “help eliminate the problems associated with multi-layer collective bargaining by setting forth a uniform and objective mechanism to determine which terms and conditions shall apply to employees of the new authority. ... would ensure that a new authority could begin to function under a single collective bargaining agreement within a relatively short time period.” ... “With careful and thoughtful drafting, the principal enabling statutes... could be amended in manner that provides sufficient certainty in the accretion of two or more bargaining units without effectively limiting collective bargaining over wages, benefits and other terms and conditions of working.”