

Legislative Analysis



PUBLIC EMPLOYEE BARGAINING UNITS

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House Bill 4003

Sponsor: Rep. Paul Opsommer

Committee: Families, Children, and Seniors

Complete to 5-16-11

A SUMMARY OF HOUSE BILL 4003 AS INTRODUCED 1-13-11

The bill would amend the Public Employment Relations Act to prohibit the Michigan Employment Relations Commission from recognizing a bargaining unit consisting of individuals who are not public employees, and would add provisions that determine who is and who is not a public employee under the act.

(The act authorizes public employees to organize and to negotiate or bargain collectively with their public employers through representatives of their own choice and prohibits strikes.)

The act currently specifies that a person employed by a private organization or political subdivision of the state who provides services under a time-limited contract or who receives a direct or indirect government subsidy in his or her private employment *is not an employee of this state and is not a public employee*. House Bill 4003 would also exclude a person who provides contract services and receives a direct or indirect government subsidy from the definition of "public employee" under the act.

Further, the bill would say that this provision in the act could not be superseded by any interlocal agreement, memorandum of understanding, memorandum of commitment, or other document similar to these.

Under the bill, an election could not be directed for, and the commission or a public employer could not recognize a bargaining unit of a public employer consisting of individuals who are not public employees. A bargaining unit that is formed or recognized in violation of this subsection would be invalid and void.

The bill also states, in an enacting section, that it "is curative, reflects the original intent of the legislature, and is retroactive."

MCL 423.201

FISCAL IMPACT:

The bill would appear have no significant fiscal impact on the state or local units of government. In the past few years, the state has entered into interlocal agreements to establish the Michigan Quality Community Care Council (MQC3) and the Michigan

Home Based Child Care Council (MHBCCC), with those entities acting as the employer for personal care service providers – e.g. home health aides and home-based child care providers.¹ While the state does incur some costs relative to the administration of the MQC3 and, until recently, the MHBCCC, those costs would not appear to be directly impacted (to any significant degree) by the union status of the MQC3 personal care service providers.² Personal care service provider reimbursement rates are determined by the DCH and DHS, subject to available resources, and are not determined by the collective bargaining agreements with the MQC3 or, when it existed, the MHBCCC.

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.

¹ For background on the development of the unionization of direct care aides see, Peggie R. Smith, *The Publicization of Home-Base Care Work in State Labor Law*, 92 Minnesota Law Review 1390 (2008). In this article, the author noted, "Even though independent workers in home-based care may not technically qualify as public employees, the labor movement has relied on various measures – including legislation, governor-issued executive orders, ballot initiatives, and intergovernmental cooperation agreements – to force states to extend labor law rights to workers, most commonly by requiring a state agency to function as an employer of record for the workers and to recognize a labor representative on their behalf. With this approach, unions can enable home-based care workers to participate in shaping the terms and conditions of their work experiences, while simultaneously respecting the interest of care recipients."

² The annual budget of the MQC3 is about \$1.0 million, with roughly half covered by federal Medicaid funds. Earlier this year, after much controversy, the MHBCCC was dissolved by the Snyder administration and Mott Community College. With the dissolution of the MHBCCC, the FY 2012 Executive Budget Recommendation for the Department of Human Services assumes a savings of \$200,000 GF/GP.