

PUBLIC EMPLOYER CONTRACTS

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House Bill 4059 (Substitute H-2)
Sponsor: Rep. Marty Knollenberg
Committee: Oversight, Reform, and Ethics

Revised First Analysis (3-15-11)

BRIEF SUMMARY: The bill, which amends the Public Employment Relations Act, would prohibit public employer contracts that pay union officials for time conducting union business.

FISCAL IMPACT: The bill would have no direct impact on the expenditures of the several state departments, as the Public Employment Relations Act does not apply to the state classified workforce. The bill would have varying impacts on municipalities. Smaller, rural municipalities would likely not be materially impacted, while larger municipalities could realize some cost savings to the extent they no longer provide paid leave time for union business. For more information, see *Fiscal Information*.

THE APPARENT PROBLEM:

The Michigan Department of Treasury reports a trend toward financial crisis in local governmental units and school districts throughout Michigan because of the state's economic downturn. During the last decade, the state has lost over 800,000 jobs, with more than half of those in manufacturing, and the automotive industry has been significantly reduced in size.

Further, the housing crisis in Michigan has been profound: the state has the sixth highest mortgage foreclosure rate in the nation; and the taxable value of houses has dropped an estimated 32 percent in the state's seven southeastern counties (according to the Southeast Michigan Council of Governments), and about 16 percent elsewhere in Michigan. Consequently, property taxes--which are based on a home's value and which serve as the main revenue stream for local units of government--have plummeted. As a result, even customarily well-managed counties, cities, towns, villages, townships, and school districts are facing financial crisis as their budgets have dropped precipitously.

In addition to the loss in property tax revenue, local units of government have lost more than \$4 billion in anticipated state-shared revenue during the past decade, leading some to call the State Revenue Sharing Program the State Revenue "Stealing" Program, instead. And during the decade-long economic slowdown, school districts have shared services, reduced services, or eliminated services outright.

As the economy rebounds, the recovery for local units of government and school districts will be slowed by the provisions of Proposal A (the school funding proposal adopted by the voters in 1993) and the Headlee Amendment to the State Constitution (adopted by the

voters in 1979), since both limit the growth in local revenue, holding the increase in a parcel's property taxes to an amount equal to five percent or the rate of inflation, whichever is less. Consequently, some analysts argue that local government and school districts expenditures must be permanently recalibrated--that is, all local government and school costs including personnel costs must be reduced overall by 20- to 25-percent--requiring many politically unpopular decisions.

For these reasons, many local government and school officials may need the technical assistance available from the Department of Treasury's local government rapid response intervention team, and from the state superintendent of public instruction. And, the state may well need the ability to intervene in order to avoid bankruptcies in counties, townships, cities, towns, villages, and school districts. Bills have already been passed the House and Senate that would enable the state to place local governments or school districts into receivership, and appoint an emergency manager who will have the power and authority to make sweeping change, including the ability to abrogate collectively bargained contracts, and to suspend collective bargaining for up to five years, thereby enabling the emergency manager to reduce personnel costs unilaterally and quickly, returning the local government or school district to financial health.

Among the costs in an estimated 12 school districts and an unknown number of local governments is the release time paid for union officials to conduct union business. For example, according to the Wayne-Westland and Southfield school superintendents, their school districts pay the full-time salary of a teacher who serves as the union president without any instruction responsibilities. According to a spokesperson for the Michigan Education Association, a similar full-time work release arrangement has been collectively bargained in an estimated 12 school districts statewide. More customary is a situation that allows for released time during the school day for the union president as is needed to solve problems, often but not always purchased or reimbursed by the union.

In order to save public funds and cut unnecessary costs, legislation has been introduced to prohibit local government and school employers from paying release time for union officials to conduct union business.

THE CONTENT OF THE BILL:

House Bill 4059 (H-2) would amend the Public Employment Relations Act (Public Act 336 of 1947) to prohibit public employer contracts that pay union officials for time conducting union business.

More specifically, after the effective date of the legislation, the bill would prohibit a public employer from entering into or renewing a bargaining agreement that requires or allows paid time for union officers, members, or bargaining representatives to conduct union business or otherwise carry-out the duties of the union, if the time is paid by the public employer.

MCL 423.210

FISCAL INFORMATION:

The bill would have no direct impact on the expenditures of the several state departments, as the Public Employment Relations Act does not apply to the state classified workforce. The PERA implements Article IV, Section 48 of the State Constitution, which states that "the legislature may enact laws providing for the resolution of disputes concerning public employees, except those in the state classified civil service." Moreover, Article XI, Section 5 of the State Constitution grants the Civil Service Commission plenary authority over the civil service system. The issue of union leave is addressed in several collective bargaining agreements between the state and its employees' unions as well as in Civil Service rules.

The bill would have varying impacts on municipalities. Smaller, rural municipalities would likely not be materially impacted, while larger municipalities could realize some cost savings to the extent they no longer provide paid leave time for union business. A review of selected municipal contracts doesn't immediately indicate how prevalent paid union leave is as a feature of municipal employee contracts, or whether it is a feature of certain contracts (e.g., police and fire) but not others (e.g. clerical staff). Many contracts already allow unpaid time off for union officials to attend to union business (except when participating in grievance issues), while others generally prohibit employees from spending time on union business during regular working hours. At the other end, however, some municipal contracts provide for full-time union officials.

As background information, the collective bargaining agreements for state government departments generally provide for unpaid time off for union officials to tend to union business provided that the time off "does not substantially interfere" with the departmental operations. During that time, the employee shall not earn annual, sick, or length of service credits. However, union officials are free to use leave time they have available to them. The union is permitted to "buy back" up to 120 hours of that leave time – in effect returning that leave time to the employee – by paying the department for the cost of that time.

Employees are permitted time off with pay to attend grievance hearings, labor-management meetings, and certain other meetings, and may also utilize "administrative leave" to attend "authorized union functions," with prior notice, and "subject to the operational needs" of the department.¹

Civil Service rules expressly provide that "[a] classified employee shall not engage in union activities during actual-duty time. A classified employee may engage in union activities only while on approved union leave or on off-duty time."² The granting of union leave time is further conditioned on the following:

¹ This description is taken from the current contract with the Michigan State Employees Association (MSEA), Safety and Regulatory Unit. Copies of the several collective bargaining agreements are available on the website of the Office of the State Employer, <http://www.michigan.gov/ose>.

² See Chapter 6 (Employer-Employee Relations) of the Civil Service Rules.

- A classified employee is prohibited from engaging in union activities or political activities during actual-duty time. An appointing authority shall discipline any employee who engages in union activities or political activities during actual-duty time.
- A manager or supervisor is prohibited from permitting a classified employee to engage in union activities or political activities during actual-duty time. The appointing authority shall discipline a manager or supervisor who permits an employee to engage in union activities or political activities during actual-duty time.
- The state employer or an appointing authority are prohibited from entering into any formal or informal written or unwritten agreements permitting classified employees to engage in union activities on actual-duty time or to receive any compensation, benefit, or benefit accrual paid in whole or in part by the state for union activities, unless expressly included in a collective bargaining agreement approved by the civil service commission.

Of note, Civil Service rules require that the "state employer shall report annually to the civil service commission on the state subsidy for union activities. The report must include the amount, type, and value of all state-paid union leave, administrative leave banks, administrative union officer leave, and any other arrangement by which an employee receives any compensation, benefit, or benefit accrual paid in whole or in part by the state for union activities." This report, however, has apparently never been completed.

ARGUMENTS:

For:

Proponents of the bill argue that taxpayers are on the hook for the pay of some union officials when their money should go to the classroom. They say union activities should be funded by union dues.

For example, the superintendent of the Wayne-Westland school district says the union employees in that school district pay more than \$700,000 in union dues each year--money that should be used to pay for the local union president's salary. (This district educates 12,800 students from Wayne, Westland, Canton, Dearborn Heights, Inkster, and Romulus in a total of 18 schools, including 11 elementary schools (K-4), two upper elementary schools (5-6), two middle schools (7-8), two high schools (9-12), and an ultramodern facility for career/technical training.) Instead, the superintendent notes, his school district has collectively bargained to pay the full-time salary and benefits of the union president--amounting to about \$103,000. The same is true of two contiguous school districts where union presidents have release time to attend to union duties, for a total cost of \$350,000 each year--money that could better be spent in the three school districts to employ more classroom teachers, refurbish school buses, or buy new computers and textbooks.

This bill, the superintendent argues, is a desperately needed reform, because it will allow school officials to put their taxpayer's money toward instructional opportunities.

Against:

Opponents of the bill argue that full-time release time for local union presidents is not a widespread phenomenon. For example, in education it affects an estimated 12 large school districts. Customarily, time that is devoted to union duties is reimbursed to the school district from union dues.

Opponents of the bill also argue that release time is not imposed on school districts or local units of government. Instead, it is collectively bargained at the negotiating table. If school districts and local units of government do not want it, they should make certain it does not remain in their collectively bargained labor agreements. They point-out that the few organizations that choose to pay for release time tend to employ many people or be geographically widespread, the kinds of places where labor problems can be solved more effectively when they are attended to on a full-time basis--a joint decision embodied in the collective bargaining agreement.

Opponents also note that not a single management improvement program advocates unilateral decision-making and ignoring your employees. Instead, managers seeking to improve their skills are trained to communicate, share decision-making, and solve problems before they become insurmountable. Permitting early involvement and engagement with problems saves local governments and school systems money, and addressing employee concerns is a good business practice.

POSITIONS:

Southfield Public Schools supports the bill. (3-8-11)

Wayne-Westland Schools supports the bill. (3-8-11)

The Michigan Association of School Administrators and the Michigan Association of Intermediate School Administrators support the bill. (3-8-11)

The National Federation of Independent Business supports the bill. (3-8-11)

The Michigan Association of School Boards supports the bill. (3-8-11)

Americans for Prosperity - Michigan supports the bill. (3-8-11)

Wayne Regional Education Services Administration (RESA) supports the bill. (3-8-11)

The Michigan Association of School Administrators supports the bill. (3-15-11)

The Michigan Education Association opposes the bill. (3-8-11)

The Amalgamated Transit Union opposes the bill. (3-8-11)

Michigan State Employees Association opposes the bills. (3-8-11)

International Union of Operating Engineers opposes the bill. (3-8-11)

The American Federation of Teachers opposes the bill. (3-8-11)

United Auto Workers 6000 opposes the bill. (3-8-11)

The Michigan Nurses Association opposes the bill. (3-8-11)

Michigan SEIU State Council opposes the bill. (3-15-11)

Michigan Laborers' District Council opposes the bill. (3-15-11)

The AFL-CIO opposes the bill. (3-15-11)

AFSCME opposes the bill. (3-15-11)

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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.