

# HOUSE BILL No. 5539

December 13, 2001, Introduced by Reps. Richardville, Raczkowski, Julian, Mortimer, Shackleton, Kowall, Woronchak, Rivet, DeRossett, Newell, Schauer, Ehardt, Switalski and Pestka and referred to the Committee on Employment Relations, Training and Safety.

A bill to provide for compulsory arbitration of labor disputes between county corrections officers and their employers; to provide for the selection of members of arbitration panels; to prescribe the procedures and authority of arbitration panels; and to provide for the enforcement and review of awards of those panels.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1       Sec. 1. It is the public policy of this state that it is  
2 requisite to the high morale of county corrections officers and  
3 the efficient operation of county corrections facilities to  
4 afford an alternate, expeditious, effective, and binding proce-  
5 dure for the resolution of disputes, and to that end the provi-  
6 sions of this act, providing for compulsory arbitration, shall be  
7 liberally construed.

1       Sec. 2. As used in this act:

2       (a) "County corrections facility" means any county jail or  
3 other site used to house or detain individuals in the custody of  
4 a county sheriff.

5       (b) "County corrections officer" means an individual  
6 employed by or under the supervision of a county sheriff while  
7 engaged in the management or control of individuals in the cus-  
8 tody of that county sheriff.

9       (c) "Employment relations commission" means the commission  
10 created in section 3 of 1939 PA 176, MCL 423.3.

11       Sec. 3. If in the course of mediation of a county correc-  
12 tions officer's dispute, except a grievance dispute concerning  
13 the interpretation or application of an existing agreement, the  
14 dispute has not been resolved within 30 days of the submission of  
15 the dispute to mediation, or within additional periods to which  
16 the parties may agree, the employees or the employer may initiate  
17 binding arbitration proceedings by a prompt request, in writing,  
18 to the other, with a copy to the employment relations  
19 commission.

20       Sec. 4. Within 10 days after the written request described  
21 in section 3 is made, the employer shall choose a delegate and  
22 the employees' designated or selected exclusive collective bar-  
23 gaining representative, or if none, their previously designated  
24 representative in the mediation and fact-finding procedures,  
25 shall choose a delegate to a panel of arbitration as provided in  
26 this act. The employer and the employees shall immediately  
27 notify the other and the mediation board of their selections.

1        Sec. 5. (1) Within 7 days after a request from 1 or both  
2 parties, the employment relations commission shall select from  
3 its panel of arbitrators, as provided in subsection (2), 3 per-  
4 sons as nominees for impartial arbitrator or chairperson of the  
5 arbitration panel. Within 5 days after the selection, each party  
6 may peremptorily strike the name of 1 of the nominees. Within 7  
7 days after this 5-day period, the commission shall designate 1 of  
8 the remaining nominees as the impartial arbitrator or chairperson  
9 of the arbitration panel.

10        (2) The employment relations commission shall provide a  
11 panel of arbitrators, from the Michigan employment relations com-  
12 mission panel of arbitrators created in section 5 of 1969 PA 312,  
13 MCL 423.235, to be available to arbitrate labor disputes under  
14 this act.

15        Sec. 6. Upon the appointment of the arbitrator, he or she  
16 shall proceed to act as chairperson of the panel of arbitration,  
17 call a hearing, to begin within 15 days after the appointment,  
18 and give reasonable notice of the time and place of the hearing.  
19 The chairperson shall preside over the hearing and shall take  
20 testimony. Upon application and for good cause shown, and upon  
21 such terms and conditions as are just, a person, labor organiza-  
22 tion, or governmental unit having a substantial interest in the  
23 arbitration may be granted leave to intervene by the arbitration  
24 panel. Any oral or documentary evidence and other data deter-  
25 mined relevant by the arbitration panel may be received in  
26 evidence. The proceedings shall be informal. Technical rules of  
27 evidence shall not apply, and the competency of the evidence is

1 not impaired by a violation of a technical rule of evidence. A  
2 verbatim record of the proceedings shall be made, and the arbi-  
3 trator shall arrange for the necessary recording service.  
4 Transcripts may be ordered at the expense of the party ordering  
5 them, but the transcripts shall not be necessary for a decision  
6 by the arbitration panel. The expense of the proceedings,  
7 including a fee to the chairperson, established in advance by the  
8 labor mediation board shall be borne equally by each of the par-  
9 ties to the dispute and the county. The delegates, if public  
10 officers or employees, shall continue on the payroll of the  
11 public employer at their usual rate of pay. The hearing con-  
12 ducted by the arbitration panel may be adjourned from time to  
13 time, but, unless otherwise agreed by the parties, shall be con-  
14 cluded within 30 days after the time of its commencement. The  
15 majority actions and rulings of the arbitration panel shall con-  
16 stitute the actions and rulings of the arbitration panel.

17       Sec. 7. The arbitration panel may administer oaths, require  
18 the attendance of witnesses, and the production of books, papers,  
19 contracts, agreements, and documents as the panel determines  
20 material to a just determination of the issues in dispute, and  
21 for purpose may issue subpoenas. If any person refuses to obey a  
22 subpoena, or refuses to be sworn or to testify, or if any wit-  
23 ness, party, or attorney is guilty of any contempt while in  
24 attendance at any hearing, the arbitration panel may, or the  
25 attorney general if requested shall, invoke the aid of any cir-  
26 cuit court within the jurisdiction in which the hearing is being

1 held, which court shall issue an appropriate order. Any failure  
2 to obey the order may be punished by the court as contempt.

3       Sec. 8. At any time before the rendering of an award, the  
4 chairperson of the arbitration panel, if he or she is of the  
5 opinion that it would be useful or beneficial to do so, may  
6 remand the dispute to the parties for further collective bargain-  
7 ing for a period not to exceed 3 weeks. If the dispute is  
8 remanded for further collective bargaining, the time provisions  
9 of this act shall be extended for a time period equal to that of  
10 the remand. The chairperson of the panel of arbitration shall  
11 notify the employment relations commission of the remand.

12       Sec. 9. At or before the conclusion of the hearing held  
13 pursuant to section 6, the arbitration panel shall identify the  
14 economic issues in dispute, and direct each of the parties to  
15 submit, within the time limit as the panel shall prescribe, to  
16 the arbitration panel and to each other its last offer of settle-  
17 ment on each economic issue. The determination of the arbitra-  
18 tion panel as to the issues in dispute and as to which of these  
19 issues are economic shall be conclusive. The arbitration panel,  
20 within 30 days after the conclusion of the hearing, or further  
21 additional periods to which the parties may agree, shall make  
22 written findings of fact and issue a written opinion and order  
23 upon the issues presented to it and upon the record made before  
24 it, and shall mail or otherwise deliver a true copy of those  
25 writings to the parties and their representatives and to the  
26 employment relations commission. As to each economic issue, the  
27 arbitration panel shall adopt the last offer of settlement which,

1 in the opinion of the arbitration panel, more nearly complies  
2 with the applicable factors prescribed in section 10. The find-  
3 ings, opinions, and order as to all other issues shall be based  
4 upon the applicable factors prescribed in section 10.

5       Sec. 10. Where there is no agreement between the parties,  
6 or where there is an agreement but the parties have begun negoti-  
7 ations or discussions for a new agreement or amendment of the  
8 existing agreement, and wage rates or other conditions of employ-  
9 ment under the proposed new or amended agreement are in dispute,  
10 the arbitration panel shall base its findings, opinions, and  
11 order upon the following factors, as applicable:

12       (a) The lawful authority of the employer.

13       (b) Stipulations of the parties.

14       (c) The interests and welfare of the public and the finan-  
15 cial ability of the county to meet those costs.

16       (d) Comparison of the wages, hours, and conditions of  
17 employment of the employees involved in the arbitration proceed-  
18 ing with the wages, hours, and conditions of employment of other  
19 employees performing similar services and with other employees  
20 generally:

21       (i) In public employment in comparable communities.

22       (ii) In private employment in comparable communities.

23       (e) The average consumer prices for goods and services, com-  
24 monly known as the cost of living.

25       (f) The overall compensation presently received by the  
26 employees, including direct wage compensation, vacations,  
27 holidays and other excused time, insurance and pensions, medical

1 and hospitalization benefits, the continuity and stability of  
2 employment, and all other benefits received.

3 (g) Changes in any of the circumstances described in subdi-  
4 visions (a) to (f) during the pendency of the arbitration  
5 proceedings.

6 (h) Any other factor, which is normally or traditionally  
7 taken into consideration in the determination of wages, hours,  
8 and conditions of employment through voluntary collective bar-  
9 gaining, mediation, fact-finding, arbitration, or otherwise  
10 between the parties, in the public service or in private  
11 employment.

12 Sec. 11. A majority decision of the arbitration panel, if  
13 supported by competent, material, and substantial evidence on the  
14 whole record, shall be final and binding upon the parties, and  
15 may be enforced, at the instance of either party or of the arbi-  
16 tration panel in the circuit court in the county in which the  
17 dispute arose or in which a majority of the affected employees  
18 reside. The commencement of a new municipal fiscal year after  
19 the initiation of arbitration procedures under this act, but  
20 before the arbitration decision, or its enforcement, does not  
21 render a dispute moot, or otherwise impair the jurisdiction or  
22 authority of the arbitration panel or its decision. Increases in  
23 rates of compensation or other benefits may be awarded retroac-  
24 tively to the commencement of any period in dispute, any other  
25 statute or charter provisions to the contrary notwithstanding.  
26 At any time the parties, by stipulation, may amend or modify an  
27 award of arbitration.

1        Sec. 12. If an employee organization recognized under 1947  
2 PA 336, MCL 423.201 to 423.217, as the bargaining representative  
3 of employees subject to this act, willfully disobeys a lawful  
4 order of enforcement by a circuit court pursuant to section 11,  
5 or willfully encourages or offers resistance to that order,  
6 whether by a strike or otherwise, the punishment for each day  
7 that the contempt persists may be a fine fixed in the discretion  
8 of the court in an amount not to exceed \$250.00 per day. A  
9 public employer who is subject to 1947 PA 336, MCL 423.201 to  
10 423.217, and who willfully disobeys a lawful order of enforcement  
11 by the circuit court or willfully encourages or offers resistance  
12 to the order is guilty of contempt and may be fined for each day  
13 that the contempt persists an amount, fixed at the discretion of  
14 the court, not to exceed \$250.00 per day to be assessed against  
15 the employer.

16        Sec. 13. (1) Orders of the arbitration panel shall be  
17 reviewable by the circuit court in the county in which the dis-  
18 pute arose or in which a majority of the affected employees  
19 reside, but only for the following reasons:

20            (a) The arbitration panel was without or exceeded its  
21 jurisdiction.

22            (b) The order is unsupported by competent, material, and  
23 substantial evidence on the whole record.

24            (c) The order was procured by fraud, collusion, or other  
25 similar and unlawful means.

26        (2) The pendency of the proceeding for review shall not  
27 automatically stay the order of the arbitration panel.

1        Sec. 14. During the pendency of proceedings before the  
2 arbitration panel, existing wages, hours, and other conditions of  
3 employment shall not be changed by action of either party without  
4 the consent of the other but a party may consent without preju-  
5 dice to his or her rights or position under this act.

6        Sec. 15. This act is supplementary to 1947 PA 336, MCL  
7 423.201 to 423.217, and does not amend or repeal any of its pro-  
8 visions, but any provisions of that act requiring fact-finding  
9 procedures shall be inapplicable to disputes subject to arbitra-  
10 tion under this act.

11       Sec. 16. A person shall not be sentenced to a term of  
12 imprisonment for any violation of this act or an order of the  
13 arbitration panel.