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BILL



ANALYSIS

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Senate Bill 1173 (Substitute S-1 as reported)
Senate Bill 1179 (Substitute S-1 as reported)
Sponsor: Senator Nancy Cassis (S.B. 1173)
Senator Mark C. Jansen (S.B. 1179)
Committee: Families and Human Services

Date Completed: 4-29-10

RATIONALE

In 2006, the Department of Human Services (DHS) entered into an interlocal agreement with Mott Community College to create the Michigan Home Based Child Care Council (MHBCCC). Located in Flint, the Council's mission is to provide support and professional development services to child care providers in order to improve the quality of care.

Also in 2006, the United Auto Workers (UAW) and the American Federation of State, County, and Municipal Employees (AFSCME) established a union known as Child Care Providers Together Michigan (CCPTM). Organizers petitioned the Michigan Employment Relations Commission to recognize CCPTM as a collective bargaining unit representing child care providers, and the Commission authorized an election to decide the question, as provided under the public employment relations Act. The election was conducted by mail, and over 92% of those voting voted in favor of union representation, although only about 6,000 of the 40,000-plus home care providers returned their ballots.

After being elected to represent the child care providers, CCPTM negotiated a collective bargaining agreement with the Michigan Home Based Child Care Council as the public employer. The contract requires all child care providers who receive DHS subsidies either to participate in the union and pay dues or to pay a service fee. In January 2009, the DHS began deducting 1.15% from the subsidies sent to each child

care provider, and paying that amount to CCPTM.

Some child care providers have objected to the deductions, saying that they are not State employees and therefore the union was improperly authorized under the public employment relations Act. Some also have questioned whether the MHBCCC has the authority to act as the public employer of home-based child care providers without specific legislation or an executive order authorizing that activity. It has been suggested that the law should prohibit subsidy recipients from being considered public employees, and that the recognition of any union consisting of individuals who are not public employees should be invalidated.

CONTENT

Senate Bill 1173 (S-1) would amend the public employment relations Act to prohibit the Michigan Employment Relations Commission (MERC) from recognizing a bargaining unit consisting of individuals who are not public employees.

Senate Bill 1179 (S-1) would amend the public employment relations Act to exclude a person who provides contract services and receives a direct or indirect government subsidy in his or her private employment from the definition of "public employee" under the Act.

Each bill states that it "is curative, reflects the original intent of the legislature, and is retroactive".

Senate Bill 1173 (S-1)

The public employment relations Act permits public employees to organize or participate in labor organizations. A public employer must bargain collectively with the representatives of its employees and may make and enter into collective bargaining agreements with those representatives. In each case, MERC must decide the unit appropriate for the purposes of collective bargaining.

If MERC receives a petition submitted by a public employee or group of employees, or an individual or labor organization acting in their behalf, or by a public employer or his or her representative, the Commission must investigate the petition and hold a hearing if appropriate. If, after a hearing, MERC finds that a question of representation exists, it must direct an election by secret ballot and certify the election results.

Under the bill, an election could not be directed for, and MERC 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 was formed or recognized in violation of that provision would be invalid and void.

Senate Bill 1179 (S-1)

Under the Act, subject to certain exceptions, "public employee" means a person holding a position by appointment or employment in the government of the State or one or more of the political subdivisions of the State; in the public school service; in a public or special district; in the service of an authority, commission, or board; or in any other branch of the public service.

A person employed by a private organization or entity that provides services under a time-limited contract with the State or a political subdivision of the State is not an employee of the State or that political subdivision, and is not a public employee.

The bill would add that a person employed by a private organization or entity who receives a direct or indirect government subsidy in his or her private employment

would not be an employee of the State or a political subdivision of the State, and would not be a public employee.

MCL 423.214 (S.B. 1173)
423.201 (S.B. 1179)

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

Most home-based child care providers consider themselves to be small business owners. Their primary relationship is with the parents of the children in their care. The DHS provides subsidy payments to help low-income parents cover the cost of child care, but that subsidy generally does not cover the total cost of the care, and accepting the subsidy does not make the child care provider a State employee. Since there is no traditional employer/employee relationship between the workers and the MHBCCC, the bargaining unit never should have been recognized.

The MHBCCC was created by an interlocal agreement between Mott Community College and the DHS, and it is unclear why this entity was named as the public employer of all home-based child care providers receiving State subsidies. Despite the unusual nature of the petition, MERC held an election by mail to determine whether to approve the union. Only about 6,000 child care providers returned ballots, out of approximately 40,500 child care providers eligible to vote. Many child care providers say that they were unaware of the unionization drive and do not recall ever receiving a ballot. Many say they were later surprised to receive notice that they were members of the CCPTM union, and object strongly to the mandatory deduction of dues from their subsidy payments. Union dues typically go toward bargaining efforts to increase compensation and improve workplace conditions, but in this case, the MHBCCC has no power to increase compensation; it can only make nonbinding recommendations to the Legislature. Neither the employer nor the union has the power to improve working conditions, since the workplace is the child care provider's home. Although CCPTM has said that it offers training and other professional

development activities, those opportunities are available through other sources. Thus, it is not clear what benefits child care providers receive for the dues that are deducted from their subsidy checks.

If the union is allowed to remain in place, it is possible that other small business owners that accept government subsidies or payments could be subject to similar unionization efforts. The bills would ensure that this does not happen, by retroactively invalidating the recognition of the bargaining unit created to represent home-based child care workers and preventing future unionization efforts of this nature. These measures also would help to correct any impression that Michigan is unfriendly to business.

Opposing Argument

Child day care workers are among the lowest paid individuals in Michigan. Home-based child care providers enrolled with the DHS generally receive a subsidy payment of \$1.60 to \$1.85 per hour per child. The subsidy rate for family child care homes and group child care homes is \$2.40 or \$2.90, depending on the age of the child. In 2006, when the question of unionization was taken up, the rates were even lower and had not been increased in a number of years. Like all workers, home-based child care providers have the right to organize bargaining units to negotiate better pay, benefits, and improved working conditions. It is in the interest of the State to ensure that those workers are adequately compensated, so that they are in a position to protect the children under their care.

The election to unionize those workers was conducted in accordance with the public employment relations Act, and it would be improper to change the law to invalidate those results. Organizers collected signatures in support of unionization from over 22,000 child care workers, according to a UAW spokesperson, and in an election conducted by MERC, over 92% of ballots cast were in support of unionization. The low participation rate is not surprising, since many members already had signed cards in support of forming a union. The process was carried out properly and reflects the will of child care providers, who negotiated a contract in good faith with the MHBCCC. If there are objections to the validity of those actions, State law provides procedures for filing complaints or contesting election results.

Opposing Argument

The collection of union dues by the Department of Human Services has been the subject of a recent lawsuit (*Loar v Department of Human Services*). While the lawsuit was dismissed by the Michigan Court of Appeals in December 2009, the plaintiff's counsel has said that other actions are being considered. It would be preferable to wait for the resolution of the litigation before revising the law.

Legislative Analyst: Curtis Walker

FISCAL IMPACT

Currently, the Department of Community Health (DCH) provides about \$1.0 million in Gross funding to support the Michigan Quality Community Care Council and the Department of Human Services provides \$200,000 Gross to support the Michigan Home Based Child Care Council. These organizations serve as the employer for the purposes of collective bargaining with child day care providers and Medicaid adult home help workers. These organizations, in their current form, serve other functions within the Child Development and Care and Adult Home Help programs, namely training, matching providers to recipients, and criminal history checks. Enactment of this legislation would not lead to the elimination of State financial support for the two organizations.

Reimbursement paid to providers of Medicaid adult home help and child day care services is not established through a collective bargaining process but is subject to the annual appropriations process for the DCH and the DHS. This legislation would not lead to any change in reimbursement for these services.

The DHS and DCH could see a small, indeterminate increase in administrative cost associated with modifying payment systems to discontinue the deduction of union dues from reimbursement to adult home help and child day care providers.

Fiscal Analyst: David Fosdick

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.