

**STATE OF MICHIGAN
COURT OF CLAIMS**

TAMERA MARTIN, an individual, and
RICHARD SULLIVAN, an individual,

Plaintiffs,

No. 25-_____ -MM

Hon. _____

v.

VERIFIED COMPLAINT

MICHIGAN EMPLOYMENT RELATIONS
COMMISSION (MERC),
a state government agency, TINAMARIE
PAPPAS, MERC Chairperson (in her official
capacity), WILLIAM F. YOUNG, MERC
Commissioner (in his official capacity),
ROBERT L. CHIARAVALLI, MERC
Commissioner (in his official capacity),
MICHIGAN DEPARTMENT OF LABOR
AND ECONOMIC OPPORTUNITY (LEO),
a state government agency, and SUSAN
CORBIN, LEO Director (in her official
capacity),

Defendants.

MCR 1.109 (D) DECLARATION

There is no pending or resolved civil action
arising out of the transaction or occurrence
alleged in this complaint.

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VERIFIED COMPLAINT

INTRODUCTION

1. In 2024 the Legislature passed two acts, 2024 PA 144 and 2024 PA 145. These two acts were signed by the Governor and filed with the Secretary of State on October 8, 2024. The purpose of these two acts was to create a novel and unconstitutional form of state public employee who is a public employee solely for the purpose of collective bargaining. The reason for this novel action was to benefit a favored labor union, SEIU Healthcare Michigan (which is not a party here). However, this special form of state public employee the Legislature tried to create violates Const 1963, art 11, § 5, which requires that the Civil Service Commission have plenary control over public employees—control that is denied to it by these acts. Further, the unconstitutional portions of these acts make them void *ab initio* as the unconstitutional portions are not severable from the rest of the acts—the sole purpose of the acts being to create the unconstitutional classification of public employees. Therefore, for MERC to hold an election for certification for these employees would be unconstitutional, and it would be difficult to undo after such an election was held. Art 11, § 5 provides that enforcement of this constitutional provision be “compelled by injunction or mandamus proceedings brought by any citizen of the state,” which is what is sought here. Additionally, forcing these caregivers to associate with a union violates their federal First Amendment rights. Under a logical extension of *Harris v Quinn*, 573 US 616 (2014), home help providers cannot be placed in a mandatory bargaining unit (even if no financial support for the union is demanded).

JURISDICTION

2. The Court of Claims has exclusive jurisdiction “To hear and determine any claim or demand, statutory or constitutional, liquidated or unliquidated, ex contractu or ex delicto,

or any demand for monetary, equitable, or declaratory relief or any demand for an extraordinary writ against the state or any of its departments or officers notwithstanding another law that confers jurisdiction of the case in the circuit court.” MCL 600.6419(1)(a).

3. The remedy sought here is against a state department and for an extraordinary writ or injunction.
4. The Constitution confers jurisdiction upon any citizen of the state to prevent violations of that provision: “Violation of any of the provisions hereof may be restrained or observance compelled by injunctive or mandamus proceedings brought by any citizen of the state.” Const 1963, art 11, § 5.
5. Plaintiffs do not seek monetary damages and this court has jurisdiction to hear federal constitutional claims against state officials under 42 USC § 1983 for prospective relief but not monetary damages. See *Smith v Dept of Public Health*, 428 Mich 540, 585 (1987): “The [US] Supreme Court, therefore, found that the Eleventh Amendment did not preclude official-capacity suits for injunctive relief because such suits ‘stripped’ an official of his ‘official or representative character,’ thus exposing only the individual occupying the office to liability. But the Eleventh Amendment did bar official-capacity suits for monetary relief because such actions were, in effect, suits against the state itself, despite the presence of individual officials as nominal defendants.”

PERSONAL JURISDICTION

6. Defendant Department of Labor and Economic Opportunity (LEO) is a principal department in the executive branch of our state government and was created under Executive Order 2019-13, MCL 125.1998(1) and the authority of Const 1963, art 5, § 2.

The Court of Claims has personal jurisdiction over LEO and its officers pursuant to MCL 600.6419(1)(a).

7. Defendant Michigan Employment Relations Commission (MERC) was created under section 3 of 1939 PA 176, as amended, MCL 423.3, and control over MERC was transferred to LEO pursuant to Executive Order 2019-13, MCL 125.1998(1). The Court of Claims has personal jurisdiction over MERC and its officers pursuant to MCL 600.6419(1)(a).

PARTIES

8. Plaintiff TAMERA MARTIN is an individual who resides in Galesburg, in the County of Kalamazoo, Michigan, and is a home health care giver subject to the acts at issue here.
9. Plaintiff RICHARD SULLIVAN is an individual who resides in Marlette, in the County of Sanilac, Michigan, and is a home health care giver subject to the acts at issue here.
10. Defendant LEO is a principal department in the executive branch of our state government and was created under Executive Order 2019-13, MCL 125.1998(1) and the authority of Const 1963, art 5, § 2.
11. Defendant LEO is one of the 20 principal departments within the executive branch as allowed by Const 1963, art 5, § 2.
12. Defendant SUSAN CORBIN is the Director of LEO and is sued in her official capacity.
13. Defendant MERC was created under section 3 of 1939 PA 176, as amended, MCL 423.3, and control over MERC was transferred to LEO pursuant to Executive Order 2019-13, MCL 125.1998(1).
14. Defendant TINAMARIE PAPPAS is the Chairperson of MERC and is sued in her official capacity.

15. Defendant WILLIAM F. YOUNG is a Commissioner of MERC and is sued in his official capacity.

16. Defendant ROBERT L. CHIARAVALLI is a Commissioner of MERC and is sued in his official capacity.

GENERAL ALLEGATIONS

17. In October 2024 the Legislature passed Senate Bills 790 and 791. See Exhibits A and B.

18. On October 8, 2024, the Governor signed these two bills into law and filed them with the Secretary of State. *Id.* They were assigned Public Acts 144 and 145 respectively (Acts).

19. The Acts became effective following the expiration of 90 days from the end of the 102nd Legislature's regular session. Therefore they went into effect on April 2, 2025.¹

20. The result of the two Acts was an attempt to create a special class of Michigan state public employee who was not subject to the state Civil Service Commission.

21. House Fiscal Agency analysis of then-Senate Bill 790, which became 2024 PA 144, reported that the purpose of the act was to:

Under the bill, solely for the purposes of collective bargaining and as expressly limited as described below, individual home help caregivers would be considered public employees of the director of DHHS or the director's representative. The bill states that it would not require or provide for individual home help caregivers to be treated or classified as public employees for any other purpose, and DHHS's employer role for collective bargaining would not be a basis for establishing an employer-employee relationship. Individual home help caregivers would not be employees of the state or a political subdivision of the state for any other purpose and would not be subject to section 5 of Article XI of the state constitution (which establishes the classified state civil service).

Legislative Analysis, page 2, Exhibit C.

¹<https://www.legislature.mi.gov/documents/publications/PublicActEffectiveDates/Sine%20Die%20Effective%20Dates.pdf>

22. The stated purpose of 2024 PA 145 was to change the definition of certain public employees:

An individual designated by the legislature as a public employee. The legislature may designate an individual as a public employee only for the purpose of collective bargaining. The designation does not render the individual an employee of this state or political subdivision of this state for any purpose other than the limited purpose authorized by the legislature.

2024 PA 145, Sec 1(e)(ii), Exhibit B, *supra*.

23. House Fiscal Agency analysis of then-Senate Bill 791 which became 2024 PA 145 reported that the purpose of the act was to:

[A]mend 1947 PA 336, the public employment relations act (PERA), to provide that the term *public employee*, whenever used in the act, includes an individual designated by the legislature as a *public employee*. The definition of public employee also would allow the legislature to designate an individual as a public employee only for the purpose of collective bargaining and provide that this designation does not make the individual an employee of the state or a political subdivision of the state for any purpose other than the limited purpose authorized by the legislature.

Legislative Analysis, page 1, Exhibit C, *supra* (emphasis in original).

24. The Acts together purport to create a new class of public employees that is composed of home help caregivers.

25. The Acts purport to make the caregivers “public employees.” 2024 PA 145, MCL 423.201(e)(ii) and 2024 PA 144, MCL 400.804(1).

26. 2024 PA 144 explicitly states that these employees are not subject to the state civil service: “Individual home help caregivers are not employees of the state or political subdivisions of this state for any other purpose and are not subject to the provisions of section 5 of article XI of the state constitution of 1963.” MCL 400.804(1)

27. 2024 PA 144 purports to designate caregiver employees as “public employees” solely for the purpose of collective bargaining. MCL 400.804(1)

28. The Acts make this “public employee” designation, yet these caregiver employees are not employees of the state or political subdivisions of the state for any other purpose than the limited collective bargaining purpose authorized by the Legislature. *Id.*
29. 2024 PA 144 created a home help caregiver council (Council) within the Department of Health and Human Services (DHHS). MCL 400.802(e) and (f), and MCL 400.803(1).
30. DHHS is one of the 20 principal departments in the executive branch pursuant to Const 1963, Art 5, § 2 and is not a party to this action at this time.
31. The Council is governed by a seven-member board of directors that includes the directors—or their designees—from DHHS, LEO, and the Department of Treasury. The remaining members of the board are appointed by the director of DHHS and two must represent participants or participant’s representatives and two must represent nonprofit organizations that advocate on behalf of other adults or people with disabilities. 2024 PA 144, MCL 400.803(2).
32. The home help care caregivers are considered public employees of the state only for collective bargaining purposes. 2024 PA 144, MCL 400.804(1).
33. The home help care caregivers are employees of the director of DHHS solely for the purpose of collective bargaining. 2024 PA 144, MCL 400.804(1)
34. Except for the purposes of collective bargaining, the home help caregivers remain employees of the home help participants. “Except for the limited purposes described in subsection (1), participants or participants’ representatives are the sole employer of individual home help caregivers and retain the rights to select, hire, direct, schedule, supervise, or terminate the services of any individual home help caregiver.” MCL 400.804(2).

35. The home help caregivers are likewise not considered government actors and the government and its offices are not liable for their actions. “Notwithstanding an individual home help caregiver’s status as a public employee under subsection (1), the individual home help caregiver is not a government actor and the state, the department, the council, and the board bear no liability for any actions undertaken by the individual home help caregiver in the performance of the individual home help caregiver’s duties. The state, the department, or contractors of the state or department are not vicariously or jointly liable for the action or inaction of any individual home help caregiver...” 2024 PA 144, MCL 400.804(5).
36. 2024 PA 144 provides for methods of dispute resolution regarding caregivers’ disputes with the bargaining representative. MCL 400.804(12) and MCL 400.805.

COUNT I

2024 PA 144 AND 145 VIOLATE THE MICHIGAN CONSTITUTION BY DEPRIVING THE CIVIL SERVICE COMMISSION CONTROL OVER THE CAREGIVER EMPLOYEES

37. The Plaintiffs incorporate the preceding paragraphs by reference.
38. The Constitution of Michigan of 1963, art 11, § 5, grants to the Civil Service authority over employees of the state.
39. The Constitution places all employees of the State under the control of the Civil Service Commission with a few explicit exemptions. Therefore, any state employee who is not exempt falls under the Civil Service’s authority:

The classified state civil service shall consist of all positions in the state service except those filled by popular election, heads of principal departments, members of boards and commissions, the principal executive officer of boards and commissions heading principal departments, employees of courts of record, employees of the legislature, employees of

the state institutions of higher education, all persons in the armed forces of the state, eight exempt positions in the office of the governor, and within each principal department, when requested by the department head, two other exempt positions, one of which shall be policy-making. The civil service commission may exempt three additional positions of a policy-making nature within each principal department.

Const 1963, art 11, § 5.

40. The Civil Service Commission has the constitutional duty to classify all positions according to duties and responsibilities. *Id.*
41. The Civil Service Commission has the constitutional duty to fix the rates of compensation for all classes of employees. *Id.*
42. The Civil Service Commission has the constitutional duty to approve or disapprove disbursements for all personal services. *Id.*
43. The Civil Service Commission has the constitutional duty to set the standards for employment based exclusively on merit. *Id.*
44. The Civil Service Commission has the constitutional duty to classify all positions according to duties and responsibilities. *Id.*
45. The Civil Service Commission has the constitutional duty to make rules and regulations covering all personnel transactions. *Id.*
46. The Civil Service Commission has the constitutional duty to regulate all conditions of employment in the classified service. *Id.*
47. Despite the fact that the subject caregivers are employees of the director of the DHHS or the director's representative, MCL 400.804(1), and the DHHS is a principal state department, their position is taken out of the control of the Civil Service Commission and all of the forgoing duties in the paragraphs above, despite being given to the Civil Service Commission by the Constitution, are allocated elsewhere by the subject Acts.

48. 2024 PA 144 states that a statewide bargaining unit is mandated and that caregivers must not be excluded from the unit based on their status as a family member:

(7) Notwithstanding section 13 of 1947 PA 336, MCL 423.213, the only appropriate unit for individual home help caregivers is a statewide unit of all individual home help caregivers. Individual home help caregivers who are related to their participant or their participant's representative must not be excluded from the unit described in this subsection for that reason.

MCL 400.804(7).

49. 2024 PA 144 explicitly states that these employees are not subject to the state civil service:

“Individual home help caregivers are not employees of the state or political subdivisions of this state for any other purpose and are not subject to the provisions of section 5 of article XI of the state constitution of 1963.” MCL 400.804(1).

50. 2024 PA 145 designates these caregivers as public employees under PERA. It amends MCL 423.201(e) of PERA to include caregivers. This gives MERC the authority to, *inter alia*, certify an election for a bargaining unit covering the caregivers.

51. 2024 PA 144 likewise confers on MERC the authority to certify a bargaining unit representative union. MCL 400.804(3).

52. Pursuant to 2024 PA 144, DHHS is given limited employment control over the caregivers. MCL 400.804(5).

53. No other government agent or agency is given more control over the public employment of the caregivers than DHHS, which is given authority over the Council.

54. The sole reason for the creation of this new form of public employment is so that there exists a government agency to collectively bargain with a labor union representing the caregivers.

55. Under PERA, collective bargaining with public employees as defined by that act cannot take place until a bargaining representative (union) is elected and certified by MERC as the exclusive representative of the unit.
56. MERC has received Certification of Representation petitions from a union, SEIU Healthcare Michigan (SEIU), for such an election. These are MERC case Nos. 25-D-0699-RC and 25-F-1170RC, Case Search IDs C-136298 and C-14099. See Exhibits D and E.²
57. No election has been held or certified yet.
58. Both of the above petitions for Certification of Representation state that they seek to represent a bargaining unit containing 31,616 employees.
59. The subject Acts are void where they seek to create a new class of employees of a principal agency which are exempted from the Civil Service's control, as is mandated by the Constitution.
60. Since the Legislature cannot create a class of state employees that violates the constitution, the Acts are invalid to the extent that this is what they seek to do.
61. The creation of the new class of unconstitutional state employees exempt from the Civil Service Commission's control is the sole purpose of the subject Acts. As such, their creation and empowerment are not severable from the rest of the Acts.
62. The subject Acts are void *ab initio*.
63. Because the subject Acts are void *ab initio*, MERC has no jurisdiction to certify an election for representation of such bargaining unit because such unit is entirely the result of these invalid Acts.

² It is unclear why the same union filed two petitions for representation of the same unit.

64. Without such jurisdiction on the part of MERC, any resulting certification will be invalid and will result in confusion and expense.

COUNT II

42 USC 1983

FORCING PUBLIC EMPLOYEES TO ASSOCIATE WITH A UNION VIOLATES THE FIRST AMENDMENT OF THE UNITED STATES CONSTITUTION

65. Plaintiffs incorporate the preceding paragraphs by reference.

66. The United States Supreme Court has recognized that requiring public employees to be part of a bargaining unit impinges on their First Amendment freedoms.

67. The United States Supreme Court has recognized that requiring public employees to fund a union which speaks on their behalf and promotes messages that the employee does not agree with violates First Amendment free speech rights. The rationales that the United States Supreme Court has given for requiring public employees to associate with a union are insufficient for these limited-purpose or quasi-public employees such as Plaintiffs.

68. *Janus v AFSCME*, 585 U.S. 878 (2018) made it clear that public employees cannot be compelled to pay money to a union representing them as, under even the heightened exacting scrutiny, much less strict scrutiny.

69. *Harris v Quinn*, 573 US 616 (2014) made it clear that the labor law rationales for finding that a public purpose exists that can overcome First Amendment rights do not apply to quasi-public employees such as the Plaintiffs.

70. Certifying the election and forcing Plaintiffs to associate with and be represented by a union would violate their First Amendment rights to freedom of association even if individual employees opt out and refrain from paying the union for representation.

71. There are less onerous ways for the government to fulfill its goals of obtaining input from caregivers, maintaining a registry, or other elements of the subject Acts than to violate Plaintiffs' freedom of association.

REQUESTED REMEDY

For the reasons cited above, Plaintiffs request that this court find that 2024 PA 144 and 2024 PA 145 are null and void. As the unconstitutional provisions are inseparable from the rest of the Acts, these should be voided in their entirety.

Alternately, that either PA 144 or 145 are null and void separately or in parts thereof sufficient to prevent the formation of this statewide bargaining unit of caregivers who are public employees solely for the purpose of collective bargaining.

Const 1963, art 11, § 5 states that "Violations of any of the provisions hereof may be restricted or observance compelled by injunctive or mandamus proceedings brought by any citizen of the state." Plaintiffs therefore request declaratory relief, injunctive relief, and a mandamus preventing MERC from holding or certifying an election and creating a bargaining unit pursuant to these Acts.

Plaintiffs request any attorney fees and costs as allowed pursuant to 42 USC § 1983 and 42 USC § 1988 or any other relevant authority.

Dated: July 30, 2025

Respectfully submitted,

By: /s/ Derk A. Wilcox

Derk A. Wilcox (P66177)
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VERIFICATION

I declare that the allegations pleaded in this complaint are true to the best of my information, knowledge, and belief.

Executed this 25 day of July, 2025

Tamera Martin
Tamera Martin

State of Michigan)
County of Midland)

Subscribed to and sworn to (affirmed) before me this ___ day of July, 2025, by Tamera Martin who is personally known to me or proved to me on the basis of satisfactory evidence to be the person who appeared before me.

Notary Public
State of Michigan, County of Midland
My commission expires 12/26/2028
Acting in County of Kalamazoo


CHRISTINE M. BOWERSON
NOTARY PUBLIC – STATE OF MICHIGAN
COUNTY OF MIDLAND
My Commission Expires December 26, 2028
Acting in the County of Midland



VERIFICATION

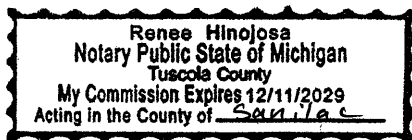
I declare that the allegations pleaded in this complaint are true to the best of my information, knowledge, and belief.

Executed this 28th day of July, 2025


Richard Sullivan

State of Michigan)
County of Sanilac)

Subscribed to and sworn to (affirmed) before me this ___ day of July, 2025, by Richard Sullivan who is personally known to me or proved to me on the basis of satisfactory evidence to be the person who appeared before me.



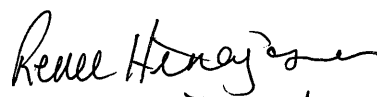
Notary Public 
State of Michigan, County of Tuscola
My commission expires 12-11-2029
Acting in County of Sanilac

EXHIBIT A

EXHIBIT A

EXHIBIT A

**HOUSE SUBSTITUTE FOR
SENATE BILL NO. 790**

A bill to create the home help caregiver council and to prescribe its powers and duties; to designate certain individuals as public employees for certain purposes; to require collective bargaining of certain terms and conditions of employment for certain public employees; to provide for the mediation and arbitration of grievances; to provide for the deduction of wages; and to provide for the powers and duties of certain state and local governmental officers and entities.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act may be cited as the "home help caregiver
2 council act".

3 Sec. 2. As used in this act:

4 (a) "Activities of daily living" includes eating, toileting,

1 bathing, grooming, dressing, mobility, and transferring.

2 (b) "Agency provider" means any of the following:

3 (i) A current Medicare certified home health agency.

4 (ii) An entity, other than the department, with a federal
5 employer identification number that directly employs or contracts
6 with caregivers to provide home or community-based services.

7 (iii) A community mental health services program under section
8 202 of the mental health code, 1974 PA 258, MCL 330.1202, that
9 works with clients who use arrangements that support self-
10 determination.

11 (c) "Bargaining representative" means that term as defined in
12 section 1 of 1947 PA 336, MCL 423.201.

13 (d) "Board" means the board of directors of the council.

14 (e) "Council" means the home help caregiver council created in
15 this act.

16 (f) "Department" means the department of health and human
17 services.

18 (g) "Individual home help caregiver" means a caregiver,
19 selected by a participant or the participant's representative, who
20 provides individual home help services to a participant. Individual
21 home help caregiver does not include a caregiver who provides
22 services through an agency provider, an integrated care
23 organization, or other similar entity.

24 (h) "Individual home help service" means services under the
25 Home Help Program that provides assistance with 1 or more
26 activities of daily living or instrumental activities of daily
27 living through caregivers in a home or community-based setting.

28 (i) "Instrumental activities of daily living" includes, but is
29 not limited to, tasks such as laundry, light housework, shopping,

1 meal preparation or clean up, and medication administration.

2 (j) "Integrated care organization" means a managed care entity
3 under 42 CFR part 438 that has contracted with the department and
4 the Centers for Medicare and Medicaid Services to provide Medicare
5 and Medicaid covered services to individuals who are dually
6 eligible for full Medicare and Medicaid.

7 (k) "Interested parties advisory group" means the individuals
8 described in section 3(14) that make recommendations concerning
9 adequate payments and other workforce supports for personal care
10 attendants providing services under the state Medicaid program.

11 (l) "Participant" means a person who receives individual home
12 help services.

13 (m) "Participant's representative" means a participant's legal
14 guardian or an individual having the authority and responsibility
15 to act on behalf of a participant with respect to the provision of
16 individual home help services.

17 Sec. 3. (1) The home help caregiver council is created within
18 the department. The council possesses the powers, duties, and
19 jurisdictions vested in the council under this act and other laws.

20 (2) The council is directed and governed by a board of
21 directors consisting of the following 7 members:

22 (a) The director of the department or the director's
23 designated representative from within the department.

24 (b) The director of the department of labor and economic
25 opportunity or the director of the department of labor and economic
26 opportunity's designated representative.

27 (c) The director of the department of treasury or the director
28 of the department of treasury's designated representative.

29 (d) Two members appointed by the director of the department to

1 represent participants or participant representatives.

2 (e) Two members appointed by the director of the department
3 who represent nonprofit organizations that advocate on behalf of
4 older adults or people with disabilities.

5 (3) Except as otherwise provided in this subsection, board
6 members of the council must be appointed for a term of 4 years. Of
7 the board members initially appointed by the director, the
8 following board members' terms must be as follows:

9 (a) One member who represents participants or participant
10 representatives must be appointed for a term that expires on July
11 31, 2025.

12 (b) One member who represents nonprofit organizations that
13 advocate on behalf of older adults or people with disabilities must
14 be appointed for a term that expires on July 31, 2026.

15 (c) One member who represents participants or participant
16 representatives must be appointed for a term that expires on July
17 31, 2027.

18 (d) One member who represents nonprofit organizations that
19 advocate on behalf of older adults or people with disabilities must
20 be appointed for a term that expires on July 31, 2028.

21 (4) After the initial appointments under subsection (3), if a
22 vacancy occurs among the board members described in subsection (2)
23 by expiration of a term, the director of the department shall
24 appoint an individual satisfying the requirements of subsection (2)
25 to a new 4-year term. If a vacancy occurs on the board among the
26 board members described in subsection (2) other than by expiration
27 of a term, the vacancy must be filled by the director of the
28 department for the remainder of the term of the unexpired term.
29 Board members may continue to serve until a successor is appointed.

1 Unless otherwise specified, a board member's resignation is
2 effective upon written notice received by the director.

3 (5) Appointments under this section must be filed with the
4 secretary of state. Upon appointment to the board described in
5 subsection (2), and upon taking and filing the oath of office
6 required by section 1 of article XI of the state constitution of
7 1963, the board member shall enter office and exercise the duties
8 of the office of the board member.

9 (6) Not less than 60 days following the appointment of a
10 majority of the members of the board, the board described in
11 subsection (2) shall hold its first meeting at a date and time
12 determined by the director of the department. The board members
13 shall elect from among the board members an individual to serve as
14 a chairperson of the board and may elect other officers as the
15 board considers necessary. All officers must be elected annually by
16 the board.

17 (7) The business of the board described in subsection (2) must
18 be conducted at a public meeting of the board held in compliance
19 with the open meetings act, 1976 PA 267, MCL 15.261 to 15.275.
20 Public notice of the time, date, and place of a meeting of the
21 board must be given in the manner required by the open meetings
22 act, 1976 PA 267, MCL 15.261 to 15.275. The board shall adopt
23 bylaws consistent with the open meetings act, 1976 PA 267, MCL
24 15.261 to 15.275, governing its procedures and the holding of
25 meetings. After organization, the board shall adopt a schedule of
26 regular meetings and adopt a regular meeting date, place, and time.
27 A special meeting of the board may be called by the chairperson of
28 the board or as provided in bylaws adopted by the board. Notice of
29 a special meeting must be given in the manner required by the open

1 meetings act, 1976 PA 267, MCL 15.261 to 15.275.

2 (8) The board described in subsection (2) shall organize and
3 make its own policies and procedures and shall adopt bylaws not
4 inconsistent with this act governing its operations. A majority of
5 the members of the board serving constitute a quorum for
6 transaction of business. The board shall meet at the call of the
7 chairperson and as may be provided in the bylaws.

8 (9) The board described in subsection (2) shall keep a written
9 or printed record of each meeting, which record and any other
10 document or record prepared, owned, used, in the possession of, or
11 retained by the council in the performance of an official function
12 must be made available to the public in compliance with the freedom
13 of information act, 1976 PA 442, MCL 15.231 to 15.246.

14 (10) The council shall do all of the following:

15 (a) Provide for additional and relevant training and
16 educational opportunities for individual home help caregivers,
17 including opportunities for individual home help caregivers to
18 obtain certification that documents additional training and
19 experience in areas of specialization.

20 (b) Provide for a mandatory orientation program related to
21 employment in providing individual home help services. All of the
22 following requirements apply to the orientation program described
23 in this subdivision:

24 (i) The orientation program is conducted on paid time.

25 (ii) An individual home help caregiver must attend an initial
26 orientation not more than 45 days after the date the individual
27 begins to provide individual home help services.

28 (iii) A bargaining representative of individual home help
29 caregivers must be allowed to attend each orientation. The

1 bargaining representative must be allowed to distribute materials
2 to and collect materials from attendees and make a presentation to
3 attendees that is not more than 30 minutes long during the
4 orientation.

5 (iv) The council shall provide a bargaining representative of
6 individual home help caregivers who attends an orientation a list
7 of the individual home help caregivers who are registered for the
8 orientation not less than 24 hours before the start of the
9 orientation.

10 (c) The council may contract with organizations with expertise
11 in providing training and workforce development services to develop
12 and deliver orientations and any additional trainings.

13 (d) By not later than September 30, 2025, and then semi-
14 annually thereafter, compile and maintain a list of the names, home
15 addresses, home telephone numbers, personal cellular telephone
16 numbers, and personal email addresses, if known, of all individual
17 home help caregivers who have been paid to provide individual home
18 help services within the immediately preceding 6 months. In
19 fulfilling this obligation, the council must follow all applicable
20 laws and regulations related to the protection of personally
21 identifiable information. The list described in this subdivision
22 must not include the name or private data of any participant or
23 participant's representative or indicate that an individual home
24 help caregiver is a relative of a participant or has the same
25 address as a participant.

26 (e) Maintain a registry of individuals qualified to be
27 individual home help caregivers to promote and coordinate effective
28 and efficient individual home help services. Individual home health
29 caregivers may request to opt out of having the individual's

1 information maintained in the registry created under this section.

2 (f) Espouse, support, and work to preserve participant
3 selection and self-direction of individual home help caregivers.

4 (g) Provide support to individual home help caregivers through
5 a variety of methods aimed at encouraging competence, achieving
6 quality services for participants, and improving individual home
7 help caregiver retention through improved job satisfaction.

8 (h) Collect statewide information and data related to the home
9 help caregiver workforce, including, but not limited to, individual
10 home help caregiver pay, retention and turnover rates, individual
11 home help caregiver job satisfaction, service gaps caused by
12 individual home health caregiver shortages, and other relevant
13 information as requested by the interested parties advisory group.

14 (i) Serve as a communications hub for the home help caregiver
15 workforce to disperse information relevant to individual home help
16 caregivers.

17 (11) Any funds allocated for the provision of relevant
18 training and education opportunities as described in subsection
19 (10) may be used to provide career education, wraparound support
20 services, and job skills training in areas of specialization for
21 individual home help caregivers. Funds may also be used for program
22 expenses, including, but not limited to, hiring instructors,
23 marketing and recruitment efforts, space rental, and supportive
24 services to help individual home help caregivers attend trainings.

25 (12) The council shall convene and support an interested
26 parties advisory group at least every 2 years and as often as the
27 council's members determine to be necessary to meet the council's
28 obligations in accordance with federal Medicaid requirements or any
29 other requirements. For purposes of this subsection, the interested

1 parties advisory group membership must include Home Help
2 participants, individual home help caregivers, representatives of
3 the department, and the bargaining representative of individual
4 home help caregivers.

5 (13) Except as otherwise provided in this act, the council may
6 do all things necessary or convenient to implement the purposes and
7 provisions of this act and the purposes, objectives, and
8 jurisdictions vested in the council or the board by this act or
9 other law.

10 (14) The council may receive local, state, federal, and other
11 funds to pay for individual home help services and to accomplish
12 the purposes and provisions of this act. Funds to support the
13 operation of the council may be provided by the department.

14 (15) The council may employ, appoint, engage, and compensate
15 employees to accomplish the purposes and provisions of this act.

16 (16) The council may enter into contracts and agreements, and
17 contract for the services of persons or entities, to accomplish the
18 purposes and provisions of this act.

19 (17) The departments and agencies of this state shall
20 cooperate with and assist the council in the performance of its
21 powers and duties under this act and in the implementation of any
22 agreements entered into by the council as authorized by the act.

23 (18) The council and the department shall immediately commence
24 all necessary steps to ensure that individual home help services
25 are offered in conformity with this act, to seek any necessary
26 federal approval for program modifications from the Centers for
27 Medicare and Medicaid Services, and to gather all information that
28 may be needed for promptly compiling lists required under this act.
29 The council and the department shall complete the steps described

1 in this subsection by not later than September 30, 2025.

2 Sec. 4. (1) Solely for the purposes of collective bargaining,
3 and as expressly limited under this section, individual home help
4 caregivers are considered, by virtue of this section, public
5 employees of the director of the department of health and human
6 services or the director's representative. This act does not
7 require or provide for the treatment or classification of
8 individual home help caregivers as public employees for any other
9 purpose, and the department's role as employer solely for the
10 purposes of collective bargaining does not serve as a basis to
11 establish an employer-employee relationship. Individual home help
12 caregivers are not employees of the state or political subdivisions
13 of this state for any other purpose and are not subject to the
14 provisions of section 5 of article XI of the state constitution of
15 1963. 1947 PA 336, MCL 423.201 to 423.217, applies to the
16 governance of the collective bargaining relationship between the
17 department and the bargaining representative of a bargaining unit
18 composed of individual home help caregivers as provided in this
19 section.

20 (2) Except for the limited purposes described in subsection
21 (1), participants or participants' representatives are the sole
22 employer of individual home help caregivers and retain the rights
23 to select, hire, direct, schedule, supervise, or terminate the
24 services of any individual home help caregiver who provides
25 individual home help services for the participant in accordance
26 with the laws and regulations governing the Home Help Program. This
27 act does not alter those rights. A provision of any agreement
28 reached between the department and any bargaining representative of
29 individual home help caregivers does not interfere with the rights

1 of a participant or participant's representatives to select, hire,
2 direct, schedule, supervise, or terminate the employment of the
3 participant or participant's representative's individual home help
4 caregivers in accordance with the laws and regulations governing
5 the Home Help Program.

6 (3) Without limiting any bargaining obligations under 1947 PA
7 336, MCL 423.201 to 423.217, except for those identified as rights
8 of participants or participants' representatives, at the request of
9 the exclusive bargaining representative, the board or the board's
10 chosen representative on behalf of the department shall engage in
11 collective bargaining with the exclusive bargaining representative
12 concerning the terms and conditions of employment that are within
13 the state's control. Once an exclusive bargaining representative is
14 selected by a majority of individual home help caregivers under
15 1947 PA 336, MCL 423.201 to 423.217, or other applicable collective
16 bargaining statute or regulation, that representative continues to
17 be recognized by the director, and any other state entity or body
18 charged with regulating individual home help caregivers' conditions
19 of employment, unless and until the representative is decertified
20 by a vote of the majority of individual home help caregivers.

21 (4) This section does not modify the department's authority to
22 deny participation in the Medicaid program to individuals who do
23 not or will not comport with program requirements under state and
24 federal law and regulation, or to terminate the participation of
25 individual providers. This act must not be construed as modifying
26 or limiting this authority.

27 (5) Notwithstanding an individual home help caregiver's status
28 as a public employee under subsection (1), the individual home help
29 caregiver is not a government actor and the state, the department,

1 the council, and the board bear no liability for any actions
2 undertaken by the individual home help caregiver in the performance
3 of the individual home help caregiver's duties. The state, the
4 department, or contractors of the state or department are not
5 vicariously or jointly liable for the action or inaction of any
6 individual home help caregiver, whether or not that individual home
7 help caregiver was included on any referral registry maintained by
8 the state, department, or contractors of the state or department,
9 or referred to a consumer or prospective consumer by the state,
10 department, or contractors of the state or department. The
11 existence of a collective bargaining agreement, the placement of an
12 individual home help caregiver on any referral registry, or the
13 development or approval of a plan of care for a consumer who
14 chooses to use the services of an individual home help caregiver
15 and the provision of case management services to that consumer, by
16 the department, does not constitute a special relationship with the
17 consumer. The state, the department, or contractors of the state or
18 department shall not indemnify any home help caregiver for claims
19 against them arising from actions taken during the course of the
20 home help caregiver's employment.

21 (6) Individual home help caregivers may, in accordance with
22 the procedures set forth in sections 12 and 14 of 1947 PA 336, MCL
23 423.212 and 423.214, choose a bargaining representative to bargain
24 collectively and enter into collective bargaining agreements with
25 the department under sections 9, 11, and 15 of 1947 PA 336, MCL
26 423.209, 423.211, and 423.215. If a bargaining representative of
27 individual home help caregivers is certified, the mutual rights and
28 obligations of the department and the bargaining representative to
29 bargain collectively over the terms and conditions of individual

1 home help caregivers' employment extend to the subjects covered
2 under section 15 of 1947 PA 336, MCL 423.215, but do not include
3 those subjects reserved to participants and participants'
4 representatives under subsection (2). If there is not an agreement
5 between the bargaining representative and the department, the
6 department has no obligation to engage in effects or impact
7 bargaining with respect to the subjects reserved to participants
8 and participants' representatives under subsection (2).

9 (7) Notwithstanding section 13 of 1947 PA 336, MCL 423.213,
10 the only appropriate unit for individual home help caregivers is a
11 statewide unit of all individual home help caregivers. Individual
12 home help caregivers who are related to their participant or their
13 participant's representative must not be excluded from the unit
14 described in this subsection for that reason.

15 (8) Any aspects of a collective bargaining agreement entered
16 into under this act requiring appropriation by the federal
17 government, this state, or revisions to statutes or regulations
18 must be subject to passage of those appropriations and any
19 necessary statutory and regulatory revisions. If any such
20 appropriations or revisions are not adopted, the council or the
21 bargaining representative may reopen negotiations on all or part of
22 the collective bargaining agreement.

23 (9) Acts made unlawful under section 10 of 1947 PA 336, MCL
24 423.210, are prohibited and considered unlawful if carried out by
25 either of the following parties:

26 (a) The department.

27 (b) A labor organization representing or seeking to represent
28 individual home help caregivers.

29 (10) Any alleged violation of subsection (9) may be filed with

1 the employment relations commission as an unfair labor practice and
2 considered and ruled upon in accordance with sections 10 and 16 of
3 1947 PA 336, MCL 423.210 and 423.216, and the commission's rules
4 and regulations.

5 (11) As provided for under sections 2, 3, and 6 of 1947 PA
6 336, MCL 423.202, 423.203, and 423.206, an individual home help
7 caregiver shall not strike.

8 (12) Whenever in the course of mediation of a bargaining
9 representative dispute, except a dispute concerning the
10 interpretation or application of an existing agreement, if the
11 dispute has not been resolved to the agreement of both parties
12 within 30 days of the submission of the dispute to mediation, or
13 within such further additional periods to which the parties agree,
14 the exclusive bargaining representative or the department may
15 initiate binding arbitration proceedings by prompt request, in
16 writing, to the other, with copy to the employment relations
17 commission. Except as otherwise provided in this subsection, an
18 arbitration described in this subsection must be conducted in the
19 same manner and under the same procedures as a binding arbitration
20 under 1969 PA 312, MCL 423.231 to 423.247. Notwithstanding the
21 procedures of binding arbitration under 1969 PA 312, MCL 423.231 to
22 423.247, the majority decision of the arbitration panel is binding
23 on the parties only with respect to those economic issues
24 identified by the arbitration panel as described in section 8 of
25 1969 PA 312, MCL 423.238. The arbitration panel is not required to
26 adopt the last offer of settlement from either party as to each
27 economic issue, but may render an award that falls between the
28 parties' last offers of settlement on each economic issue, so long
29 as such award is based on the applicable factors described under

1 section 9 of 1969 PA 312, MCL 423.239. Without limiting any of the
2 department's obligations as described under section 10 of 1969 PA
3 312, MCL 423.210, the department may implement its last best offer
4 of settlement on each economic issue 60 days after the decision of
5 the arbitration panel. Nothing in this act is intended to curtail
6 or infringe on the legislature's constitutional appropriation
7 authority.

8 (13) The council shall, upon request and agreement by the
9 requesting party to protect the data described in this subsection
10 and use it only in furtherance of the purposes outlined in this
11 section or 1947 PA 336, MCL 423.201 to 423.217, provide lists
12 compiled under section 3 of this act to both of the following
13 parties:

14 (a) Any labor organization wishing to represent the
15 appropriate unit of individual home help caregivers.

16 (b) A bargaining representative of individual home help
17 caregivers.

18 (14) Negotiations between the board or the board's chosen
19 representative on behalf of the department and the bargaining
20 representative of individual home help caregivers must begin not
21 later than July 1 of any year before the year in which an existing
22 collective bargaining agreement expires.

23 Sec. 5. The department shall make any deductions from the
24 wages of individual home help caregivers that are authorized under
25 section 7 of 1978 PA 390, MCL 408.477, or otherwise authorized by
26 law. Those deductions include, but are not limited to, deductions
27 of the dues of a bargaining representative where authorized by the
28 individual home help caregiver. As described in section 7 of 1978
29 PA 390, MCL 408.477, this act expressly allows deductions from the

1 wages of individual home help caregivers in writing or pursuant to
2 any form of authorization given by the caregiver that is permitted
3 and valid under the uniform electronic transactions act, 2000 PA
4 305, MCL 450.831 to 450.849. A deduction for a bargaining
5 representative may only be revoked pursuant to the terms of the
6 individual home help caregiver's authorization. A bargaining
7 representative that certifies that it has and will maintain
8 individual home help caregivers' authorizations must not be
9 required to provide a copy of an individual authorization to the
10 department unless a dispute arises about the existence or terms of
11 the authorization. An individual home help caregiver's request to
12 cancel or change deductions for bargaining representatives must be
13 directed to the labor organization and not to the department. The
14 labor organization is responsible for processing the request to
15 cancel or change deductions. The department shall rely on
16 information provided by the bargaining representative regarding
17 whether deductions for a labor organization were properly canceled
18 or changed, and the labor organization shall indemnify the council
19 for any claims made by the individual home help caregiver for
20 deductions made in reliance on that information.

21 Enacting section 1. This act does not take effect unless
22 Senate Bill No. 791 of the 102nd Legislature is enacted into law.

EXHIBIT B

EXHIBIT B

EXHIBIT B

**HOUSE SUBSTITUTE FOR
SENATE BILL NO. 791**

A bill to amend 1947 PA 336, entitled

"An act to prohibit strikes by certain public employees; to provide review from disciplinary action with respect thereto; to provide for the mediation of grievances and the holding of elections; to declare and protect the rights and privileges of public employees; to require certain provisions in collective bargaining agreements; to prescribe means of enforcement and penalties for the violation of the provisions of this act; and to make appropriations,"

by amending sections 1 and 14 (MCL 423.201 and 423.214), section 1 as amended by 2023 PA 237 and section 14 as amended by 2012 PA 349.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. (1) As used in this act:

2 (a) "Bargaining representative" means a labor organization
3 recognized by an employer or certified by the commission as the
4 sole and exclusive bargaining representative of certain employees

1 of the employer.

2 (b) "Commission" means the employment relations commission
3 created in section 3 of 1939 PA 176, MCL 423.3.

4 (c) "Intermediate school district" means that term as defined
5 in section 4 of the revised school code, 1976 PA 451, MCL 380.4.

6 (d) "Lockout" means the temporary withholding of work from a
7 group of employees by shutting down the operation of the employer
8 to bring pressure upon the affected employees or the bargaining
9 representative, or both, to accept the employer's terms of
10 settlement of a labor dispute.

11 (e) "Public employee" means, except as otherwise provided in
12 subdivisions (f) and (g), an individual holding a position by
13 appointment or employment in the government of this state, in the
14 government of 1 or more of the political subdivisions of this
15 state, in the public school service, in a public or special
16 district, in the service of an authority, commission, or board, or
17 in any other branch of the public service. Public employee includes
18 ~~an~~ **both of the following:**

19 (i) **An** individual serving as a graduate student research
20 assistant or in an equivalent position.

21 (ii) **An individual designated by the legislature as a public**
22 **employee. The legislature may designate an individual as a public**
23 **employee only for the purpose of collective bargaining. The**
24 **designation does not render the individual an employee of this**
25 **state or political subdivision of this state for any purpose other**
26 **than the limited purpose authorized by the legislature.**

27 (f) An individual employed by a private organization or entity
28 who provides services under a time-limited contract with this state
29 or a political subdivision of this state ~~or who receives a direct~~

~~or indirect government subsidy in the individual's private employment is not an employee of this state or that political subdivision, and is not a public employee. This provision supersedes any interlocal agreement, memorandum of understanding, memorandum of commitment, or other document similar to these.~~

(g) A student participating in intercollegiate athletics on behalf of a public university in this state is not a public employee entitled to representation or collective bargaining rights under this act.

(h) "Public school academy" means a public school academy or strict discipline academy organized under the revised school code, 1976 PA 451, MCL 380.1 to 380.1852.

(i) "Public school employer" means a public employer that is any of the following:

(i) The board of a school district, an intermediate school district, or a public school academy.

(ii) The governing board of a joint endeavor or consortium consisting of any combination of school districts, intermediate school districts, or public school academies.

(j) "School district" means that term as defined in section 6 of the revised school code, 1976 PA 451, MCL 380.6, or a local act school district as defined in section 5 of the revised school code, 1976 PA 451, MCL 380.5.

(k) "Strike" means the concerted failure to report for duty, the willful absence from one's position, the stoppage of work, or the abstinence in whole or in part from the full, faithful, and proper performance of the duties of employment for the purpose of inducing, influencing, or coercing a change in employment conditions, compensation, or the rights, privileges, or obligations

1 of employment. For employees of a public school employer, strike
2 also includes an action described in this subdivision that is taken
3 for the purpose of protesting or responding to an act alleged or
4 determined to be an unfair labor practice committed by the public
5 school employer.

6 (2) This act does not limit, impair, or affect the right of a
7 public employee to the expression or communication of a view,
8 grievance, complaint, or opinion on any matter related to the
9 conditions or compensation of public employment or their betterment
10 as long as the expression or communication does not interfere with
11 the full, faithful, and proper performance of the duties of
12 employment.

13 Sec. 14. ~~(1)~~ An election ~~shall~~**must** not be directed in any
14 bargaining unit or any subdivision within which, in the preceding
15 12-month period, a valid election was held. The commission shall
16 determine who is eligible to vote in the election and shall
17 promulgate rules governing the election. In an election involving
18 more than 2 choices, if none of the choices on the ballot receives
19 a majority vote, a runoff election ~~shall~~**must** be conducted between
20 the 2 choices receiving the 2 largest numbers of valid votes cast
21 in the election. An election ~~shall~~**must** not be directed in any
22 bargaining unit or subdivision of any bargaining unit if there is
23 in force and effect a valid collective bargaining agreement that
24 was not prematurely extended and that is of fixed duration. A
25 collective bargaining agreement does not bar an election upon the
26 petition of persons not parties to the collective bargaining
27 agreement if more than 3 years have elapsed since the agreement's
28 execution or last timely renewal, whichever was later.

29 ~~(2) An election shall not be directed for, and the commission~~

1 ~~or a public employer shall not recognize, a bargaining unit of a~~
2 ~~public employer consisting of individuals who are not public~~
3 ~~employees. A bargaining unit that is formed or recognized in~~
4 ~~violation of this subsection is invalid and void.~~

EXHIBIT C

EXHIBIT C

EXHIBIT C

Legislative Analysis



HOME HELP CAREGIVER COUNCIL

Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

Senate Bill 790 (proposed substitute H-1)
Sponsor: Sen. Kevin Hertel

Analysis available at
<http://www.legislature.mi.gov>

Senate Bill 791 (proposed substitute H-1)
Sponsor: Sen. Sylvia A. Santana

House Committee: Appropriations
Senate Committee: Appropriations [Discharged]
Complete to 9-24-24

SUMMARY:

Senate Bills 790 and 791 would provide that, for collective bargaining purposes, caregivers under the Home Help Program are public employees of the director of the Department of Health and Human Services (DHHS) or the director's representative. (Generally speaking, the Home Help Program provides assistance with everyday activities so individuals with functional limitations can live at home.) The bills also would create the Home Help Caregiver Council in DHHS to provide orientation, education, and other supports to caregivers. Caregivers would, as public employees, be subject to provisions of the public employment relations act. They could be represented by a labor organization, and the council would have to maintain a list containing caregiver contact information and provide it to organizations seeking to represent them. The council's board of directors would have to collectively bargain with the caregivers' bargaining representative. The bills are described in detail below.

Senate Bill 791 would amend 1947 PA 336, the public employment relations act (PERA), to provide that the term *public employee*, whenever used in the act, includes an individual designated by the legislature as a public employee. The definition of *public employee* also would allow the legislature to designate an individual as a public employee only for the purpose of collective bargaining and provide that this designation does not make the individual an employee of the state or a political subdivision of the state for any purpose other than the limited purpose authorized by the legislature.

In addition, PERA now prohibits a public employer's bargaining unit that consists of individuals who are not public employees from having an election regarding representation or from being recognized by either the public employer or the Michigan Employment Relations Commission (MERC), and it provides that a bargaining unit formed or recognized in violation of those prohibitions is invalid and void. The bill would eliminate these provisions.

PERA now provides that an individual employed by a private organization or entity who receives a direct or indirect government subsidy in the individual's private employment is not an employee of the state or political subdivision providing the subsidy and is not a public employee. The bill would eliminate this provision.

Finally, under PERA, an individual employed by a private organization or entity who 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 political subdivision and is not a public employee. PERA now adds that this provision supersedes any interlocal agreement, memorandum of understanding or of

commitment, or other similar document. The bill would eliminate the language adding that the PERA provision supersedes those other documents.

MCL 423.201 and 423.214

Senate Bill 790 would create a new act called the Home Help Caregiver Council Act. Under the bill, solely for the purposes of collective bargaining and as expressly limited as described below, *individual home help caregivers* would be considered public employees of the director of DHHS or the director's representative.¹ The bill states that it would not require or provide for individual home help caregivers to be treated or classified as public employees for any other purpose, and DHHS's employer role for collective bargaining would not be a basis for establishing an employer-employee relationship. Individual home help caregivers would not be employees of the state or a political subdivision of the state for any other purpose and would not be subject to section 5 of Article XI of the state constitution (which establishes the classified state civil service).² PERA would apply only to the governance of the collective bargaining relationship between DHHS and the *bargaining representative* of a bargaining unit composed of individual home help caregivers as described below.³

Individual home help caregiver would mean a caregiver who, under the Home Help Program, is selected by a *participant* or the *participant's representative* and provides *individual home help services* to a participant. A caregiver who provides services through an *agency provider* or *integrated care organization*, or another similar entity, would not be considered an individual home help caregiver under the bill.

Participant would mean a person who receives individual home help services.

Participant's representative would mean a participant's legal guardian or an individual who has the authority and responsibility to act on a participant's behalf regarding the provision of individual home help services.

Individual home help service would mean services the Home Help Program that provides assistance with one or more *activities of daily living* or *instrumental activities of daily living* through caregivers in a home or community-based setting.⁴

Activities of daily living would include eating, toileting, bathing, grooming, dressing, mobility, and transferring (e.g., moving to or from a bed, chair, or standing position).

Instrumental activities of daily living would include at least laundry, light housework, shopping, meal preparation or cleanup, and medication administration.

¹ As described above, Senate Bill 791 would amend PERA to provide that, whenever used in that act, the term *public employee* includes "an individual designated by the legislature as a public employee." Senate Bill 790 appears to designate individual home help caregivers as public employees in a way that would, under Senate Bill 791, include them as *public employees* wherever that term is used in PERA. The bills do not provide, in PERA, any limitations on PERA's application to individuals defined there as public employees.

² <https://www.legislature.mi.gov/Laws/MCL?objectName=mcl-Article-XI-5>

³ The bills together appear to define individual home help caregivers as *public employees* within PERA itself, and they do not provide, in PERA, any limitations on PERA's application to individuals defined there as public employees.

⁴ The terms *home or community-based setting* and, used later, *home or community-based services* generally refer to settings outside of institutions such as nursing homes and services provided in those noninstitutional settings. See <https://www.cms.gov/training-education/partner-outreach-resources/american-indian-alaska-native/ltss-ta-center/information/ltss-models/home-and-community-based-services>

Agency provider would mean any of the following:

- A home health agency that is currently Medicare-certified.⁵
- An entity, except for the Department of Health and Human Services (DHHS), that has a federal employer identification number and directly employs or contracts with caregivers to provide home or community-based services.
- A community mental health services program (CMHSP) under the Mental Health Code that works with clients who use arrangements that support self-determination.⁶

Integrated care organization would mean a managed care entity under federal rules⁷ that has contracted with DHHS and the Centers for Medicare and Medicaid Services (CMS) to provide Medicare and Medicaid covered services to individuals who are dually eligible for full Medicare and Medicaid.

Bargaining representative would mean (as defined in PERA) a labor organization recognized by an employer or certified by MERC as the sole and exclusive bargaining representative of certain employees of the employer.

The bill states that it would not modify the authority, and must not be construed as modifying or limiting the authority, of DHHS to deny participation in the Medicaid program to individuals who do not or will not comport with state and federal program requirements or to terminate the participation of individual providers.

Immunity from liability

The bill would provide that individual home help caregivers are not government actors, their limited status as public employees under the bill notwithstanding, and that the state (including DHHS, the Home Help Caregiver Council, and the council's board of directors) is not liable for actions undertaken by caregivers in performing their duties.

Further, the state, DHHS, or a state or DHHS contractor could not be held liable, vicariously or jointly, for the action or inaction of an individual home help caregiver, regardless of whether they referred the caregiver to a consumer or included the caregiver on a referral registry. A special relationship with a consumer would not be established or evidenced by the existence of a collective bargaining agreement, the placement of an individual home help caregiver on a referral registry, the development or approval of a consumer's plan of care, or the fact that DHHS provides case management services to the consumer.

Finally, the state, DHHS, or a state or DHHS contractor could not indemnify an individual home help caregiver for claims against them arising from actions taken in the course of their employment.

Rights of participants

Under the bill, except for the limited purposes described above (i.e., collective bargaining), participants or participant's representatives would be the sole employer of individual home help caregivers and retain the rights to select, hire, direct, schedule, supervise, or terminate the

⁵ With regard to the term *home health agency*, see <https://www.michigan.gov/lara/bureau-list/bsc/accs-division/hha>

⁶ The term *arrangements that support self-determination* is not defined in the bill or in the Mental Health Code. For information on CMHSPs, see <https://www.michigan.gov/mdhhs/keep-mi-healthy/mentalhealth/mentalhealth/cmhsp>

⁷ Specifically, 42 CFR Part 438: <https://www.ecfr.gov/current/title-42/chapter-IV/subchapter-C/part-438>

services of any individual home help caregiver who provides individual home help services to the participant in accordance with the laws and regulations that govern the program. The bill says that it would not alter those rights, and that a provision of an agreement reached between DHHS and a bargaining representative of individual home help caregivers would not interfere with those rights.

Bargaining representatives

The bill would authorize individual home help caregivers to choose a bargaining representative to bargain collectively and enter into collective bargaining agreements with DHHS under specified sections of PERA. Once a bargaining representative is selected by a majority of individual home help caregivers under PERA or another applicable law, that representative would have to continue to be recognized by the director and any other state entity charged with regulating individual home help caregivers' conditions of employment, unless the representative is decertified by a vote of the majority of individual home help caregivers. If a bargaining representative is certified, the mutual rights and obligations of DHHS and the bargaining representative to bargain collectively over wages, hours, and other terms and conditions of employment would not include the subjects reserved to participants and participant's representatives as described above. If there is not an agreement between DHHS and the bargaining representative, DHHS would have no obligation to engage in effects or impact bargaining with respect to the subjects reserved to participants and participant's representatives as described above.⁸

At the bargaining representative's request, the board of directors of the Home Help Caregiver Council (described below) or the board's representative would have to engage in collective bargaining with the bargaining representative concerning the terms and conditions of employment that are within the state's control. This provision would not limit any bargaining obligations arising out of PERA, except for those identified above as the rights of participants or participant's representatives.⁹ Negotiations between the director of DHHS or the director's representative would have to begin by July 1 of any year before the year an existing collective bargaining agreement expires in.

The bill would state that, notwithstanding section 13 of PERA (which charges MERC with deciding the appropriate bargaining unit for a given group of public employees),¹⁰ a statewide unit of all individual home help caregivers is the only appropriate bargaining unit for those caregivers. Caregivers who are related to their participant or related to their participant's representative could not be excluded for that reason from the bargaining unit.

Any aspects of a collective bargaining agreement that require federal or state appropriations or revisions of law would have to be made subject to those appropriations or revisions, and either the Home Help Caregiver Council or the bargaining representative could reopen negotiations on all or part of the agreement if the appropriations or revisions are not made.¹¹

⁸ Effects bargaining, also known as impact bargaining, involves decisions that an employer has the right to make but that will have effects or an impact on relevant employees.

⁹ The bills together appear to define individual home help caregivers as *public employees* within PERA itself, and they do not provide, in PERA, any limitations on PERA's application to individuals defined there as public employees.

¹⁰ The bills together appear to define individual home help caregivers as *public employees* within PERA itself, and they do not provide, in PERA, any limitations on PERA's application to individuals defined there as public employees.

¹¹ As described above, the responsibility for collective bargaining would be given to the council's board of directors.

Arbitration proceedings

If a bargaining representative dispute (except for one about the interpretation or application of an existing agreement)¹² has not been resolved to the agreement of both parties within 30 days after its submission to mediation (or an additional period the parties agree to), DHHS or the bargaining representative could initiate binding arbitration proceedings by prompt request, in writing, to the other, with a copy to MERC. The arbitration would have to be conducted in the same way as a binding arbitration under 1969 PA 312 (which provides for compulsory arbitration of labor disputes in police and fire departments), except that, under the bill, an arbitration panel's decision would be binding only for economic issues identified by the panel as described in section 8 of 1969 PA 312.¹³ The panel would not have to adopt the last offer of settlement from either party as to each economic issue, but could adopt an award that falls between those last offers on each economic issue, as long as the award is based on applicable factors described in section 9 of 1969 PA 312.¹⁴ DHHS could implement *its* last best offer of settlement on each economic issue 60 days after the panel's decision, but would also (or still) have to meet all of its obligations under section 10 of PERA.¹⁵

Wage deductions

DHHS would have to make deductions from the wages of individual home help caregivers that are authorized by law, including under 1978 PA 390 (which regulates the payment of wages and benefits for Michigan workers), and including deduction of the dues of a bargaining representative if authorized by the caregiver.

As described in section 7 of 1978 PA 390,¹⁶ the bill would expressly allow deductions from the wages of individual home help caregivers in writing or using a valid form of authorization under the Uniform Electronic Transactions Act. A deduction for a bargaining representative could be revoked only under the terms of the authorization. Caregiver requests to cancel or change bargaining representative deductions would have to be directed to, and processed by, the labor organization and not DHHS. Unless a dispute arises about the existence or terms of an authorization, a bargaining representative that certifies that it has and will maintain caregivers' authorizations would not have to provide DHHS with a copy of an individual authorization. DHHS would have to rely on information provided by the bargaining representative regarding whether deductions were canceled or changed. The labor organization would have to indemnify the Home Help Caregiver Council for any claims made by the caregiver for deductions made based on that information.¹⁷

¹² The bill does not define the term *bargaining representative dispute*.

¹³ Section 8 requires the arbitration panel to make a conclusive determination as to which issues in dispute are economic and direct each party to submit, before the hearing, its last offer of settlement on each economic issue. <https://www.legislature.mi.gov/Laws/MCL?objectName=MCL-423-238>

¹⁴ <https://www.legislature.mi.gov/Laws/MCL?objectName=mcl-423-239>

¹⁵ Generally speaking, section 10 prohibits public employers (e.g., DHHS) and labor organizations from interfering with public employees (e.g., individual home help caretakers) in the exercise of their right to form or join a labor organization and prohibits them from refusing to bargain with each other. The section also prohibits other forms of interference in labor organizing or collective bargaining, such as discriminating in employment on the basis of labor organization membership or activity. <https://www.legislature.mi.gov/Laws/MCL?objectName=MCL-423-210>

¹⁶ Section 7 prohibits deduction from wages of any amount that includes an employee contribution to a separate segregated fund established for political purposes under section 55 of the Michigan Campaign Finance Act (<https://www.legislature.mi.gov/Laws/MCL?objectName=mcl-169-255>) without the full, free, and written consent of the employee, obtained without intimidation or fear of discharge for refusal to allow the deduction. However, this prohibition does not apply to deductions expressly allowed by law.

¹⁷ Under the bill, DHHS would be responsible for making deductions from wages.

Applicability of specific provisions of PERA

The bill would provide that acts prohibited and made unlawful under section 10 of PERA are prohibited and unlawful if performed by DHHS or a labor organization representing or seeking to represent individual home help caregivers.

The bill would provide, as PERA does, that an alleged violation may be filed with MERC as an unfair labor practice and considered and ruled on under sections 10 and 16 of PERA and MERC's rules and regulations.¹⁸

The bill would provide that, as provided in sections 2, 3, and 6 of PERA, an individual home help caregiver is prohibited from striking.

Home Help Caregiver Council

The bill would create the Home Help Caregiver Council in DHHS. The council would have to do all of the following with regard to individual home help caregivers:

- Provide for a mandatory orientation program for newly enrolled caregivers. The program would have to be conducted on paid time, and a caregiver would have to attend an initial orientation no later than 45 days after they begin providing individual home help services. Both of the following would apply to the orientation program:
 - A caregiver bargaining representative could attend, give material to attendees and receive it from them, and make a presentation of up to 30 minutes in length.
 - At least 24 hours before the orientation begins, the council would have to give an attending bargaining representative a list of caregivers registered for it.
- Provide for additional training and educational opportunities for caregivers, including opportunities for certification of training and experience in areas of specialization.
- By September 30, 2025, and twice a year after that, compile and maintain a list of all caregivers who have been paid for providing individual home help services in the previous six months. The list would include caregivers' names, home addresses, home phone numbers, personal cell phone numbers, and personal email addresses, if known. The list could not include the name or private information of a participant or participant's representative or indicate that a caregiver is a relative of, or has the same address as, a participant. In preparing the list, the council would have to protect personally identifiable information as required by law. Upon request, the council would have to provide the list to the following entities, as long as they agree to protect the information and use it only for purposes of the bill or PERA:
 - A labor organization that wants to represent the appropriate unit of individual home help caregivers.
 - A bargaining representative of individual home help caregivers.
- Maintain a registry of individuals *qualified to be* caregivers. Those who *are* caregivers could, upon request, opt out of having their information maintained in this registry.
- Collect statewide information related to the home help caregiver workforce (i.e., not just individual home help caregivers), including at least information about individual home help caregiver pay, retention and turnover rates, individual home help caregiver job satisfaction, service gaps caused by individual home help caregiver shortages, and

¹⁸ Section 16: <https://www.legislature.mi.gov/Laws/MCL?objectName=MCL-423-216>

Rules: https://ars.apps.lara.state.mi.us/AdminCode/DownloadAdminCodeFile?FileName=1833_2018-051LR_AdminCode.pdf&ReturnHTML=True

any other relevant information as requested by the interested parties advisory group described below.

- Serve as a communications hub to distribute information relevant to individual home help caregivers.
- Support and work to preserve participant selection and self-direction of caregivers.
- Provide supports to caregivers aimed at encouraging competence, achieving quality services, and improving caregiver retention through improved job satisfaction.

The council could contract with experienced organizations to develop and deliver orientations and trainings. Funds for training and education opportunities could be used for career education, wraparound support services, and job skills training in areas of specialization, as well as for such expenses as instructors, marketing and recruitment, space rental, and services to help caregivers attend.

The council would have to convene and support an interested parties advisory group as often as its members consider necessary to meet the council's obligations under federal Medicaid requirements, or any other requirements, but not less often than once every two years.¹⁹ The advisory group would include Home Help participants, individual home help caregivers, their bargaining representative, and representatives of DHHS. The bill defines the group as these individuals who make recommendations about adequate payments and other workforce supports for personal care attendants providing services under the state Medicaid program.

The council could do all things necessary or convenient to implement the provisions described above. The council could receive local, state, federal, and other funds to accomplish the purposes described above. DHHS could provide funds to support the council's operation. The council could hire and pay employees and enter into contracts and agreements to accomplish the purposes described above. A document or record prepared, owned, used, possessed, or retained by the council for an official function would have to be made available to the public under the Freedom of Information Act (FOIA). All state departments and agencies would have to cooperate with and assist the council in performing its powers and duties described above and implementing any agreements it enters into.

The council could receive local, state, federal, and other funds to pay for individual home help services.²⁰

The council and DHHS would have to immediately begin all necessary steps to do all of the following, and complete those steps by September 30, 2025:

- Ensure that individual home help services are offered in conformity with the bill.
- Seek from the CMS any necessary federal approval for program modifications.
- Gather all information that might be needed to promptly compile lists required under the bill.

¹⁹ CFR 447.203(b)(6): <https://www.ecfr.gov/current/title-42/chapter-IV/subchapter-C/part-447/subpart-B/section-447.203>. Relevant guidance is here, on page 35: <https://www.medicaid.gov/medicaid/access-care/downloads/ffs-prov-final-rule-guidance.pdf>.

²⁰ It is unclear which of the council's responsibilities (described above) would involve paying for individual home help services.

Board of directors for the council

The council would be directed and governed by a board of directors consisting of the following seven members:

- The director of DHHS or their designated representative from within DHHS.
- The director of the Department of Labor and Economic Opportunity (LEO) or their designated representative.
- The state treasurer or their designated representative.
- Two members appointed by the DHHS director to represent participants or participant's representatives.
- Two members appointed by the DHHS director who represent nonprofit organizations that advocate on behalf of older adults or people with disabilities.

Members would be appointed to four-year terms ending July 31, but initial appointments would be for one, two, three, and four years to stagger the terms. Terms for members appointed to represent participants would expire in odd-numbered years, and those for members appointed to represent nonprofit organizations would expire in even-numbered years. At the end of a term, the director of DHHS would appoint someone to serve a new term. For a mid-term vacancy, the director would appoint someone to serve the rest of the term. A member's resignation would be effective whenever the director of DHHS gets their written notice. A member could serve until a successor is appointed.

Appointments would have to be filed with the secretary of state, and board members would have to take and file the oath sworn by legislative, executive, and judicial officers under section 1 of Article XI of the state constitution.²¹

The board's first meeting would have to be held within 60 days after a majority of members are appointed, at a date and time determined by the DHHS director. The board would have to select a chairperson from its members and could elect other officers it considers necessary. It would elect the chairperson and any other officers annually. A majority of members serving would be a quorum of the board.

In addition to engaging in collective bargaining as described above, the board would have to do all of the following:

- Organize and make its own policies and procedures and adopt bylaws governing its operations.
- Adopt a schedule of regular meetings. A special meeting could be called by the chairperson or as provided in the bylaws.
- Meet at the call of the chairperson and as provided in the bylaws.
- Comply with the Open Meetings Act with regard to its meetings, meeting notices, and bylaws.
- Keep a written or printed record of each meeting, which would be subject to FOIA.

The bill says that nothing in it is intended to curtail or infringe on the legislature's constitutional appropriation authority.

The bill cannot take effect unless Senate Bill 791 is also enacted.

²¹ <https://www.legislature.mi.gov/Laws/MCL?objectName=mcl-Article-XI-1>

FISCAL IMPACT:

Senate Bills 790 and 791 would have two primary cost drivers. First, the bills would establish new annual costs related to the new Home Help Caregiver Council, which would cost a minimum of \$5.0 million Gross (\$2.5 million GF/GP) and could be up to \$10.0 million Gross (\$5.0 million GF/GP). The specific cost estimate would depend on the amount and types of additional trainings the Home Help Caregiver Council would contract with organizations for. Second, and representative of the majority of the bills' potential costs, these bills could significantly increase state costs related to home help services, but those costs would depend on the outcomes of any negotiations and on the legislature's appropriating funds for the cost increases.

Due to the fact that a majority of costs would be attributed to negotiations that have an unknown outcome, the cost estimate below makes a number of assumptions in order to establish a cost range. The assumptions reviewed include:

- The number of home help workers to be part of the negotiations. The bill is clear that Medicaid fee-for service adult home help workers would be a part of the negotiations, but the bill is not clear about whether home help workers that provide services through the Medicaid MI Choice managed care program, and non-Medicaid home help programming provided through area agencies on aging, would be part of any negotiations.
- The negotiated hourly rate. Similar efforts in other states have had hourly rates negotiated up to between \$15.00 and \$16.15.
- The inclusion of other employment benefits. It is unknown whether other benefits besides the hourly rate would be a part of negotiations, including whether paid leave or health insurance/stipends would be included.

Given the very broad range of possible outcomes of the negotiations, the cost, and subsequent request for a legislative appropriations, could range from an estimated \$39.7 million Gross (\$13.8 million GF/GP) to \$193.2 million Gross (\$65.9 million GF/GP) within the state Medicaid program. The non-GF/GP portion of the cost comes from federal Medicaid reimbursements. For FY 2024-25, the federal Medicaid reimbursement rate is 65.13%.

It is also important to note that, while these bills specifically exempt home help services provided through the CMHSPs and integrated care organizations, as managed care providers they are required to have a sufficient provider network. Therefore, any changes in the reimbursement rates paid to home help workers through a different Medicaid program could affect their ability to maintain a sufficient provider network without the CMHSPs and integrated care organizations also increasing the rates, though not necessarily up to the same amount, that they provide to home help workers.

Legislative Analyst: Rick Yuille
Fiscal Analysts: Kevin Koorstra
Kent Dell

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

EXHIBIT D

EXHIBIT D

EXHIBIT D

Case

25-D-0699-RC

Case Access Request

Case System Id	Status	Stage	Initiation Date	Type
00014633	Approved	Initiation	4/16/2025	Certification of Representation (RC)

Case Information

Case Name	MERC Case #
Home Help Caregiver Council and Michigan Department of Health and Human Services and SEIU Healthcare Michigan	25-D-0699-RC
Case Search ID	Status
C-13628	Approved
Employer Type	Stage
Public	Initiation
Business Type - Private Sector Only	Type
	Certification of Representation (RC)
Service Type - Public Sector Only	Dispute Category
Health Care	Elections
Bargaining Unit Type ⓘ	Process Category
Health Care	Representation
Initiation Date	
4/16/2025	

Bargaining Unit Information

Description of Bargaining Unit	Total Unit Employees
	31,616
Bargaining Unit Excluded	Date of Recognition or Certification
Caregivers who provide services through an agency provider, an integrated care organization, or similar entity.	
Bargaining Unit Included	Date of Claim: (Rqd only if RM Petition)
All individual home help caregivers selected by a participant or the participant's representative, who provides individual home help services to a participant.	
Contract Expiration Date	

Statement of Service

Service Delivery Method:	No Email Address Provided
	Yes

Signature

Signature Checkbox	Signature Date
<input checked="" type="checkbox"/>	

▼ **Additional Information**

Contact Name

Akeem Pack VA-17037 (/merc/s/detail/003cs00000l6mF0AAI)

▼ **System Information**

Web Email

Parties

Representatives

Event Filings

Notes

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EXHIBIT E

EXHIBIT E

EXHIBIT E

Case
25-F-1170-RC

Case Access Request

Case System Id	Status	Stage	Initiation Date	Type
00015104	Approved	Initiation	6/27/2025	Certification of Representation (RC)

Case Information

Case Name	MERC Case #
Home Help Caregiver Council and Michigan Department of Health and Human Services and SEIU Healthcare of Michigan	25-F-1170-RC
Case Search ID	Status
C-14099	Approved
Employer Type	Stage
Public	Initiation
Business Type - Private Sector Only	Type
	Certification of Representation (RC)
Service Type - Public Sector Only	Dispute Category
Health Care	Elections
Bargaining Unit Type ⓘ	Process Category
Health Care	Representation
Initiation Date	
6/27/2025	

Bargaining Unit Information

Description of Bargaining Unit	Total Unit Employees
	31,616
Bargaining Unit Excluded	Date of Recognition or Certification
Caregivers who provide services through an agency provider, an integrated care organization, or similar entity.	
Bargaining Unit Included	Date of Claim: (Rqd only if RM Petition)
All individual home help caregivers selected by a participant or the participant's representative, who provides individual home help services to a participant.	
Contract Expiration Date	

Statement of Service

Service Delivery Method:	No Email Address Provided
	Yes

Signature

Signature Checkbox	Signature Date
<input checked="" type="checkbox"/>	

▼ **Additional Information**

Contact Name

Community Contact A-00002 (/merc/s/detail/003t000000ILgIEAA1)

▼ **System Information**

Web Email

Parties

Representatives

Event Filings

Notes

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