

SENATE SUBSTITUTE FOR
HOUSE BILL NO. 5192

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; and to prescribe means of enforcement and penalties for the violation of the provisions of this act,"

by amending section 15 (MCL 423.215), as amended by 2011 PA 260.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 15. (1) A public employer shall bargain collectively with
2 the representatives of its employees as described in section 11 and
3 may make and enter into collective bargaining agreements with those
4 representatives. Except as otherwise provided in this section, for
5 the purposes of this section, to bargain collectively is to perform
6 the mutual obligation of the employer and the representative of the

1 employees to meet at reasonable times and confer in good faith with
2 respect to wages, hours, and other terms and conditions of
3 employment, or to negotiate an agreement, or any question arising
4 under the agreement, and to execute a written contract, ordinance,
5 or resolution incorporating any agreement reached if requested by
6 either party, but this obligation does not compel either party to
7 agree to a proposal or make a concession.

8 (2) A public school employer has the responsibility,
9 authority, and right to manage and direct on behalf of the public
10 the operations and activities of the public schools under its
11 control.

12 (3) Collective bargaining between a public school employer and
13 a bargaining representative of its employees shall not include any
14 of the following subjects:

15 (a) Who is or will be the policyholder of an employee group
16 insurance benefit. This subdivision does not affect the duty to
17 bargain with respect to types and levels of benefits and coverages
18 for employee group insurance. A change or proposed change in a type
19 or to a level of benefit, policy specification, or coverage for
20 employee group insurance shall be bargained by the public school
21 employer and the bargaining representative before the change may
22 take effect.

23 (b) Establishment of the starting day for the school year and
24 of the amount of pupil contact time required to receive full state
25 school aid under section 1284 of the revised school code, 1976 PA
26 451, MCL 380.1284, and under section 101 of the state school aid
27 act of 1979, 1979 PA 94, MCL 388.1701.

1 (c) The composition of school improvement committees
2 established under section 1277 of the revised school code, 1976 PA
3 451, MCL 380.1277.

4 (d) The decision of whether or not to provide or allow
5 interdistrict or intradistrict open enrollment opportunity in a
6 school district or of which grade levels or schools in which to
7 allow such an open enrollment opportunity.

8 (e) The decision of whether or not to act as an authorizing
9 body to grant a contract to organize and operate 1 or more public
10 school academies under the revised school code, 1976 PA 451, MCL
11 380.1 to 380.1852.

12 (f) The decision of whether or not to contract with a third
13 party for 1 or more noninstructional support services; or the
14 procedures for obtaining the contract for noninstructional support
15 services other than bidding described in this subdivision; or the
16 identity of the third party; or the impact of the contract for
17 noninstructional support services on individual employees or the
18 bargaining unit. However, this subdivision applies only if the
19 bargaining unit that is providing the noninstructional support
20 services is given an opportunity to bid on the contract for the
21 noninstructional support services on an equal basis as other
22 bidders.

23 (g) The use of volunteers in providing services at its
24 schools.

25 (h) Decisions concerning use of experimental or pilot programs
26 and staffing of experimental or pilot programs and decisions
27 concerning use of technology to deliver educational programs and

1 services and staffing to provide the technology, or the impact of
2 these decisions on individual employees or the bargaining unit.

3 (i) Any compensation or additional work assignment intended to
4 reimburse an employee for or allow an employee to recover any
5 monetary penalty imposed under this act.

6 (j) Any decision made by the public school employer regarding
7 the placement of teachers, or the impact of that decision on an
8 individual employee or the bargaining unit.

9 (k) Decisions about the development, content, standards,
10 procedures, adoption, and implementation of the public school
11 employer's policies regarding personnel decisions when conducting a
12 staffing or program reduction or any other personnel determination
13 resulting in the elimination of a position, when conducting a
14 recall from a staffing or program reduction or any other personnel
15 determination resulting in the elimination of a position, or in
16 hiring after a staffing or program reduction or any other personnel
17 determination resulting in the elimination of a position, as
18 provided under section 1248 of the revised school code, 1976 PA
19 451, MCL 380.1248, any decision made by the public school employer
20 pursuant to those policies, or the impact of those decisions on an
21 individual employee or the bargaining unit.

22 (l) Decisions about the development, content, standards,
23 procedures, adoption, and implementation of a public school
24 employer's performance evaluation system adopted under section 1249
25 of the revised school code, 1976 PA 451, MCL 380.1249, or under
26 1937 (Ex Sess) PA 4, MCL 38.71 to 38.191, decisions concerning the
27 content of a performance evaluation of an employee under those

1 provisions of law, or the impact of those decisions on an
2 individual employee or the bargaining unit.

3 (m) For public employees whose employment is regulated by 1937
4 (Ex Sess) PA 4, MCL 38.71 to 38.191, decisions about the
5 development, content, standards, procedures, adoption, and
6 implementation of a policy regarding discharge or discipline of an
7 employee, decisions concerning the discharge or discipline of an
8 individual employee, or the impact of those decisions on an
9 individual employee or the bargaining unit. For public employees
10 whose employment is regulated by 1937 (Ex Sess) PA 4, MCL 38.71 to
11 38.191, a public school employer shall not adopt, implement, or
12 maintain a policy for discharge or discipline of an employee that
13 includes a standard for discharge or discipline that is different
14 than the arbitrary and capricious standard provided under section 1
15 of article IV of 1937 (Ex Sess) PA 4, MCL 38.101.

16 (n) Decisions about the format, timing, or number of classroom
17 observations conducted for the purposes of section 3a of article II
18 of 1937 (Ex Sess) PA 4, MCL 38.83a, decisions concerning the
19 classroom observation of an individual employee, or the impact of
20 those decisions on an individual employee or the bargaining unit.

21 (o) Decisions about the development, content, standards,
22 procedures, adoption, and implementation of the method of
23 compensation required under section 1250 of the revised school
24 code, 1976 PA 451, MCL 380.1250, decisions about how an employee
25 performance evaluation is used to determine performance-based
26 compensation under section 1250 of the revised school code, 1976 PA
27 451, MCL 380.1250, decisions concerning the performance-based

1 compensation of an individual employee, or the impact of those
2 decisions on an individual employee or the bargaining unit.

3 (p) Decisions about the development, format, content, and
4 procedures of the notification to parents and legal guardians
5 required under section 1249a of the revised school code, 1976 PA
6 451, MCL 380.1249a.

7 (4) Except as otherwise provided in subsection (3)(f), the
8 matters described in subsection (3) are prohibited subjects of
9 bargaining between a public school employer and a bargaining
10 representative of its employees, and, for the purposes of this act,
11 are within the sole authority of the public school employer to
12 decide.

13 (5) If a public school is placed in the state school
14 reform/redesign school district or is placed under a chief
15 executive officer under section 1280c of the revised school code,
16 1976 PA 451, MCL 380.1280c, then, for the purposes of collective
17 bargaining under this act, the state school reform/redesign officer
18 or the chief executive officer, as applicable, is the public school
19 employer of the public school employees of that public school for
20 as long as the public school is part of the state school
21 reform/redesign school district or operated by the chief executive
22 officer.

23 (6) A public school employer's collective bargaining duty
24 under this act and a collective bargaining agreement entered into
25 by a public school employer under this act are subject to all of
26 the following:

27 (a) Any effect on collective bargaining and any modification

1 of a collective bargaining agreement occurring under section 1280c
2 of the revised school code, 1976 PA 451, MCL 380.1280c.

3 (b) For a public school in which the superintendent of public
4 instruction implements 1 of the 4 school intervention models
5 described in section 1280c of the revised school code, 1976 PA 451,
6 MCL 380.1280c, if the school intervention model that is implemented
7 affects collective bargaining or requires modification of a
8 collective bargaining agreement, any effect on collective
9 bargaining and any modification of a collective bargaining
10 agreement under that school intervention model.

11 (7) Each collective bargaining agreement entered into between
12 a public employer and public employees under this act after March
13 16, 2011 shall include a provision that allows an emergency manager
14 appointed under the local government and school district fiscal
15 accountability act, 2011 PA 4, MCL 141.1501 to 141.1531, to reject,
16 modify, or terminate the collective bargaining agreement as
17 provided in the local government and school district fiscal
18 accountability act, 2011 PA 4, MCL 141.1501 to 141.1531. Provisions
19 required by this subsection are prohibited subjects of bargaining
20 under this act.

21 (8) Collective bargaining agreements under this act may be
22 rejected, modified, or terminated pursuant to the local government
23 and school district fiscal accountability act, 2011 PA 4, MCL
24 141.1501 to 141.1531. This act does not confer a right to bargain
25 that would infringe on the exercise of powers under the local
26 government and school district fiscal accountability act, 2011 PA
27 4, MCL 141.1501 to 141.1531.

1 (9) A unit of local government that enters into a consent
2 agreement under the local government and school district fiscal
3 accountability act, 2011 PA 4, MCL 141.1501 to 141.1531, is not
4 subject to subsection (1) for the term of the consent agreement, as
5 provided in the local government and school district fiscal
6 accountability act, 2011 PA 4, MCL 141.1501 to 141.1531.

7 (10) If the charter of a city, village, or township with a
8 population of 500,000 or more **REQUIRES AND** specifies the **METHOD OF**
9 selection of a retirant member of the municipality's fire
10 department, police department, or fire and police department
11 pension or retirement board, **THE INCLUSION OF THE RETIRANT MEMBER**
12 **ON THE BOARD AND** the method of selection of that **RETIRANT** member ~~is~~
13 ~~a~~**ARE** prohibited ~~subject~~**SUBJECTS** of **COLLECTIVE** bargaining, **AND ANY**
14 **PROVISION IN A COLLECTIVE BARGAINING AGREEMENT THAT PURPORTS TO**
15 **MODIFY THAT CHARTER REQUIREMENT IS VOID AND OF NO EFFECT.**

16 (11) The following are prohibited subjects of bargaining and
17 are at the sole discretion of the public employer:

18 (a) A decision as to whether or not the public employer will
19 enter into an intergovernmental agreement to consolidate 1 or more
20 functions or services, to jointly perform 1 or more functions or
21 services, or to otherwise collaborate regarding 1 or more functions
22 or services.

23 (b) The procedures for obtaining a contract for the transfer
24 of functions or responsibilities under an agreement described in
25 subdivision (a).

26 (c) The identities of any other parties to an agreement
27 described in subdivision (a).

1 (12) Nothing in subsection (11) relieves a public employer of
2 any duty established by law to collectively bargain with its
3 employees as to the effect of a contract described in subsection
4 (11) (a) on its employees.