

# HOUSE BILL No. 5192

December 1, 2011, Introduced by Reps. Durhal, Walsh, Liss, Stallworth, Tlaib, Stapleton, Rutledge, Womack, LeBlanc, Haugh, Wayne Schmidt, Haines and Cavanagh and referred to the Committee on Oversight, Reform, and Ethics.

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 103.

**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

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

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

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

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

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

1 act of 1979, 1979 PA 94, MCL 388.1701.

2 (c) The composition of school improvement committees  
3 established under section 1277 of the revised school code, 1976 PA  
4 451, MCL 380.1277.

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

9 (e) The decision of whether or not to act as an authorizing  
10 body to grant a contract to organize and operate 1 or more public  
11 school academies under the revised school code, 1976 PA 451, MCL  
12 380.1 to 380.1852.

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

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

26 (h) Decisions concerning use of experimental or pilot programs  
27 and staffing of experimental or pilot programs and decisions

1 concerning use of technology to deliver educational programs and  
2 services and staffing to provide the technology, or the impact of  
3 these decisions on individual employees or the bargaining unit.

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

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

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