

# Legislative Analysis



## REVISE PUBLIC SCHOOL EMPLOYEE STRIKE DETERMINATION PROCESS AND PENALTIES

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**House Bill 5387 (H-4) as enrolled**  
**Sponsor: Rep. Daniela R. Garcia**  
**House Committee: Appropriations**  
**Senate Committee: None (Placed directly on General Orders)**  
**Complete to 6-9-16**

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

### SUMMARY:

House Bill 5387 would amend the Public Employment Relations Act (PERA), which prohibits public employees from striking and allows for collective bargaining, to revise the penalties and process for dealing with teacher strikes statewide, as follows.

Currently under the act, if a public employer alleges a prohibited strike, the employer must notify the Michigan Employment Relations Commission (MERC) of the number of full or partial days a public school employee was engaged in a strike. The bill would add that the State Superintendent of Public Instruction, after consultation with the public employer, must notify MERC. The bill would require either the employer or the state superintendent to include a sworn affidavit, supported by any available proof, and a statement of the facts relied on to establish that a strike took place, and require them to concurrently serve the bargaining representative of the notice. The bill would also allow a parent of a child enrolled in the district to notify MERC if a public employer failed to do so.

Under the bill, MERC would be required to hold a hearing and issue its decision not later than 15 days after receiving notice of a strike, rather than within 60 days as required under current law. It would require that the person that notified MERC of the strike would bear the burden of proof at the hearing. MERC would be required to issue its decision within 3 business days after the close of the hearing.

Under the bill, if MERC determines that a strike took place, the state superintendent or the public employer shall notify MERC within 5 days of the names and addresses of each employee alleged to have participated in the strike, and provide each said employee with notice as well. Employees named in the notice and alleged to have been absent or to have abstained wholly or in part from work without permission on the date of the strike would be presumed to have engaged in the strike. An employee would be allowed to challenge that presumption within 10 days after the notice was served or mailed by filing with MERC a sworn affidavit with supporting proof.

If an employee files a timely affidavit and supporting proof, MERC must have a hearing within 15 days to determine whether the employee engaged in the strike, and the bill would place the burden of proof on the employee.

The bill deletes a \$5,000 fine assessed on the bargaining representative for each day of the strike.

It would also revise the judicial process related to strikes as follows:

- Allows the state superintendent and the attorney general, in addition to a public employer, to bring an action to enjoin a strike in circuit court.
- Prohibits a court from overturning a commission determination that a strike or lockout exists "except by clear and convincing evidence."
- Provides that the court shall order each public school employee to pay a fine in an amount equal to one day of pay for each full or partial day the employee engaged in the strike. For a lockout, the court would order the employer to pay a fine of \$5,000 for each full or partial day of the lockout, and order each board member to pay a fine of \$250 per day for each full or partial day of lockout. Fines are deposited into the State School Aid Fund.
- Provides that the court shall order employees or employers to end the strike or lockout.
- Provides that the court may grant additional equitable relief that it finds appropriate.
- Allows a court to enforce an order to end the strike or lockout through its contempt power.

Currently under PERA, before an employer disciplines or discharges an employee for participating in a strike, the employee is entitled to a determination as to whether he or she violated the act. The bill would reduce from 10 days to 5 days the time within which an employer must commence a proceeding after a request for determination is filed. It would also reduce the time from 10 days to 2 days within which the employer must make a decision after a proceeding concludes. The bill would also allow a public employer to consolidate employee hearings unless the employee demonstrates manifest injustice from the consolidation.

#### **FISCAL IMPACT:**

The bill would create additional administrative costs for the State and would have an indeterminate fiscal impact on local public school employers.

House Bill 5387 could create increased administrative costs for MERC, which is in the Department of Licensing and Regulatory Affairs, by significantly reducing the time (from 60 days to 15 days) it has after a strike to hold hearings on the issue and by creating hearings at which an employee could challenge their presumed participation in a strike.

To the extent that the bill reduces the number of strikes, it could create savings for public school employers in avoiding interruptions in school calendars and having to make up lost instructional days at the end of the year.

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