

SUBSTITUTE FOR
HOUSE BILL NO. 5387

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 2a and 6 (MCL 423.202a and 423.206), section 2a as added and section 6 as amended by 1994 PA 112.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 2a. (1) ~~If a public school employer alleges that there is~~
2 ~~a strike by 1 or more public school employees in violation of~~
3 ~~section 2, the public school employer shall notify the commission~~
4 ~~of the full or partial days a public school employee was engaged in~~
5 ~~the alleged strike.~~ **UPON BELIEF THAT CONDITIONS CONSTITUTING A**
6 **STRIKE BY 1 OR MORE PUBLIC EMPLOYEES IN VIOLATION OF SECTION 2**

1 EXIST, THE PUBLIC SCHOOL EMPLOYER OR THE SUPERINTENDENT OF PUBLIC
2 INSTRUCTION, AFTER CONSULTATION WITH THE PUBLIC SCHOOL EMPLOYER,
3 SHALL NOTIFY THE COMMISSION OF THE FULL OR PARTIAL DAYS THAT THE
4 ALLEGED STRIKE HAS OCCURRED AND THE NAME AND ADDRESS OF THE
5 BARGAINING REPRESENTATIVE. THE NOTICE SHALL BE ACCOMPANIED BY A
6 SWORN AFFIDAVIT, SUPPORTED BY ANY AVAILABLE DOCUMENTARY PROOF,
7 CONTAINING A CLEAR AND CONCISE STATEMENT OF THE FACTS UPON WHICH
8 THE PUBLIC SCHOOL EMPLOYER OR THE SUPERINTENDENT OF PUBLIC
9 INSTRUCTION RELIES TO ESTABLISH A VIOLATION OF SECTION 2. THE
10 PUBLIC SCHOOL EMPLOYER OR THE SUPERINTENDENT OF PUBLIC INSTRUCTION
11 SHALL CONCURRENTLY SERVE THE BARGAINING REPRESENTATIVE WITH A COPY
12 OF THE NOTICE. IF THE PUBLIC SCHOOL EMPLOYER OR THE SUPERINTENDENT
13 OF PUBLIC INSTRUCTION HAS NOT NOTIFIED THE COMMISSION OF AN
14 ALLEGATION OF A STRIKE UNDER THIS SUBSECTION, A PARENT OR LEGAL
15 GUARDIAN OF A CHILD WHO IS ENROLLED IN THE SCHOOL DISTRICT MAY
16 NOTIFY THE COMMISSION OF THE FULL OR PARTIAL DAYS THAT 1 OR MORE
17 PUBLIC SCHOOL EMPLOYEES WERE ENGAGED IN AN ALLEGED STRIKE.

18 (2) If a bargaining representative alleges that there is a
19 lockout by a public school employer in violation of section 2, the
20 bargaining representative shall notify the commission of the full
21 or partial days of the alleged lockout.

22 (3) Within ~~60~~15 days after receipt of a notice ~~made pursuant~~
23 ~~to~~ UNDER subsection (1) or (2), the commission shall conduct a
24 hearing to determine if ~~there has been a violation and shall issue~~
25 ~~its decision and order.~~ CONDITIONS CONSTITUTING A STRIKE BY 1 OR
26 MORE PUBLIC SCHOOL EMPLOYEES IN VIOLATION OF SECTION 2 OR A LOCKOUT
27 EXIST. THE PERSON GIVING NOTICE UNDER SUBSECTION (1) OR (2) BEARS

1 THE BURDEN OF PROOF AT THE HEARING ON THE ALLEGATIONS. THE
2 COMMISSION SHALL ISSUE ITS DECISION WITHIN 3 BUSINESS DAYS AFTER
3 THE CLOSE OF THE HEARING. A hearing conducted under this subsection
4 is separate and distinct from, and is not subject to the procedures
5 and timelines of, a proceeding conducted under section 6.

6 (4) IF THE COMMISSION DETERMINES THAT CONDITIONS CONSTITUTING
7 A STRIKE IN VIOLATION OF SECTION 2 EXIST, THE SUPERINTENDENT OF
8 PUBLIC INSTRUCTION OR THE PUBLIC SCHOOL EMPLOYER SHALL, WITHIN 5
9 BUSINESS DAYS AFTER NOTIFICATION OF THE DECISION, NOTIFY THE
10 COMMISSION OF THE NAME AND HOME ADDRESS OF EACH PUBLIC SCHOOL
11 EMPLOYEE ALLEGED TO HAVE PARTICIPATED IN THE STRIKE. THE
12 SUPERINTENDENT OF PUBLIC INSTRUCTION OR THE PUBLIC SCHOOL EMPLOYER
13 SHALL, WITHIN THE SAME PERIOD, SERVE WITH OR MAIL TO EACH NAMED
14 PUBLIC SCHOOL EMPLOYEE A COPY OF THE NOTICE.

15 (5) A PUBLIC SCHOOL EMPLOYEE NAMED IN THE NOTICE UNDER
16 SUBSECTION (4) AND ALLEGED TO HAVE BEEN EITHER ABSENT FROM WORK
17 WITHOUT PERMISSION OF THE PUBLIC SCHOOL EMPLOYER OR TO HAVE
18 ABSTAINED WHOLLY OR IN PART FROM THE FULL PERFORMANCE OF HIS OR HER
19 NORMAL DUTIES WITHOUT PERMISSION ON A DATE WHEN A STRIKE OCCURRED
20 IS PRESUMED TO HAVE ENGAGED IN THE STRIKE ON THAT DATE.

21 (6) A PUBLIC SCHOOL EMPLOYEE PRESUMED TO HAVE ENGAGED IN A
22 STRIKE IN VIOLATION OF SECTION 2 MAY CHALLENGE THAT PRESUMPTION
23 WITHIN 10 DAYS AFTER THE DATE THE NOTICE WAS SERVED OR MAILED TO
24 THE EMPLOYEE UNDER SUBSECTION (4), BY FILING WITH THE COMMISSION
25 AND CAUSING TO BE SERVED ON THE SUPERINTENDENT OF PUBLIC
26 INSTRUCTION OR THE PUBLIC SCHOOL EMPLOYER, A SWORN AFFIDAVIT,
27 SUPPORTED BY AVAILABLE DOCUMENTARY PROOF, CONTAINING A CLEAR AND

1 CONCISE STATEMENT OF THE FACTS UPON WHICH HE OR SHE RELIES TO SHOW
2 THAT THE DETERMINATION WAS INCORRECT.

3 (7) THE PUBLIC SCHOOL EMPLOYER SHALL DEDUCT FROM THE ANNUAL
4 SALARY OF A PUBLIC SCHOOL EMPLOYEE NAMED IN A NOTICE UNDER
5 SUBSECTION (4) WHO FAILS TO FILE AN AFFIDAVIT AND SUPPORTING PROOF
6 UNDER SUBSECTION (6) AN AMOUNT EQUAL TO 1 DAY OF PAY FOR THAT
7 PUBLIC SCHOOL EMPLOYEE FOR EACH FULL OR PARTIAL DAY THAT HE OR SHE
8 ENGAGED IN THE STRIKE. THE PUBLIC SCHOOL EMPLOYEE'S ANNUAL SALARY
9 IS THE ANNUAL SALARY THAT IS ESTABLISHED IN THE APPLICABLE CONTRACT
10 IN EFFECT AT THE TIME OF THE STRIKE OR, IF NO APPLICABLE CONTRACT
11 IS IN EFFECT AT THE TIME OF THE STRIKE, IN THE APPLICABLE CONTRACT
12 IN EFFECT AT THE TIME OF THE DEDUCTION. HOWEVER, IF NO APPLICABLE
13 CONTRACT IS IN EFFECT AT EITHER OF THOSE TIMES, THE PUBLIC SCHOOL
14 EMPLOYEE'S ANNUAL SALARY SHALL BE CONSIDERED TO BE THE ANNUAL
15 SALARY THAT APPLIED OR WOULD HAVE APPLIED TO THE PUBLIC SCHOOL
16 EMPLOYEE IN THE MOST RECENT APPLICABLE CONTRACT IN EFFECT BEFORE
17 THE STRIKE. A PUBLIC SCHOOL EMPLOYER SHALL COMPLY PROMPTLY WITH
18 THIS SUBSECTION. A DEDUCTION UNDER THIS SUBSECTION IS NOT A
19 DEMOTION FOR PURPOSES OF 1937 (EX SESS) PA 4, MCL 38.71 TO 38.191.

20 (8) IF A PUBLIC SCHOOL EMPLOYEE NAMED IN A NOTICE UNDER
21 SUBSECTION (4) FILES A TIMELY AFFIDAVIT AND SUPPORTING PROOF, A
22 COMMISSIONER, THE COMMISSION, OR AN AGENT OF THE COMMISSION SHALL,
23 WITHIN 15 DAYS AFTER RECEIPT OF THE AFFIDAVIT AND SUPPORTING PROOF,
24 COMMENCE A HEARING TO DETERMINE WHETHER THE PUBLIC SCHOOL EMPLOYEE
25 ENGAGED IN A STRIKE IN VIOLATION OF SECTION 2. THE PUBLIC SCHOOL
26 EMPLOYEE BEARS THE BURDEN OF PROOF AT THE HEARING. A HEARING
27 CONDUCTED UNDER THIS SUBSECTION IS SEPARATE AND DISTINCT FROM, AND

1 IS NOT SUBJECT TO THE PROCEDURES AND TIMELINES OF, A PROCEEDING
2 UNDER SECTION 6.

3 (9) ~~(4) If, after a hearing under subsection (3), a majority~~
4 ~~of the commission finds that 1 or more public school employees~~
5 ~~engaged in a strike in violation of section 2, the commission shall~~
6 ~~fine each public school employee an amount equal to 1 day of pay~~
7 ~~for that public school employee for each full or partial day that~~
8 ~~he or she engaged in the strike and shall fine the bargaining~~
9 ~~representative of the public school employee or employees \$5,000.00~~
10 ~~for each full or partial day the public school employee or~~
11 ~~employees engaged in the strike.~~ AFTER A HEARING UNDER SUBSECTION
12 (8), IF A COMMISSIONER, THE COMMISSION, OR AN AGENT OF THE
13 COMMISSION DETERMINES BY THE PREPONDERANCE OF THE EVIDENCE THAT THE
14 PUBLIC SCHOOL EMPLOYEE ENGAGED IN A STRIKE IN VIOLATION OF SECTION
15 2, THE INDIVIDUAL OR COMMISSION SHALL STATE ITS FINDINGS OF FACT
16 AND SHALL ISSUE AND CAUSE TO BE SERVED ON THE PUBLIC SCHOOL
17 EMPLOYEE AN ORDER REQUIRING THE EMPLOYEE TO CEASE AND DESIST FROM
18 THE UNLAWFUL CONDUCT AND THE PUBLIC SCHOOL EMPLOYER TO DEDUCT FROM
19 THE ANNUAL SALARY, AS DESCRIBED IN SUBSECTION (7), OF THE PUBLIC
20 SCHOOL EMPLOYEE AN AMOUNT EQUAL TO 1 DAY OF PAY FOR THAT PUBLIC
21 SCHOOL EMPLOYEE FOR EACH FULL OR PARTIAL DAY THAT HE OR SHE ENGAGED
22 IN THE STRIKE. IF THE EVIDENCE IS PRESENTED BEFORE A COMMISSIONER
23 OR AGENT OF THE COMMISSION, THE COMMISSIONER OR AGENT SHALL ISSUE
24 AND CAUSE TO BE SERVED ON THE PARTIES TO THE PROCEEDING A PROPOSED
25 DECISION, TOGETHER WITH A RECOMMENDED ORDER, WHICH SHALL BE FILED
26 WITH THE COMMISSION. IF A PARTY DOES NOT FILE AN EXCEPTION WITHIN
27 20 DAYS AFTER SERVICE OF THE PROPOSED DECISION, THE RECOMMENDED

1 ORDER BECOMES THE ORDER OF THE COMMISSION AND IS EFFECTIVE AS
2 STATED IN THE ORDER.

3 (10) ~~(5)~~—If, after a hearing under subsection (3), a majority
4 of the commission finds that a public school employer instituted a
5 lockout in violation of section 2, the commission shall fine the
6 public school employer \$5,000.00 for each full or partial day of
7 the lockout and shall fine each member of the public school
8 employer's governing board \$250.00 for each full or partial day of
9 the lockout. **THE FINE SHALL BE PAID TO THE COMMISSION AND**
10 **TRANSMITTED AS PROVIDED IN SUBSECTION (11).**

11 ~~——(6) If the commission imposes a fine against a public school~~
12 ~~employee under subsection (4) and the public school employee~~
13 ~~continues to be employed by a public school employer, the~~
14 ~~commission shall order the public school employer to deduct the~~
15 ~~fine from the public school employee's annual salary. The public~~
16 ~~school employee's annual salary is the annual salary that is~~
17 ~~established in the applicable contract in effect at the time of the~~
18 ~~strike or, if no applicable contract is in effect at the time of~~
19 ~~the strike, in the applicable contract in effect at the time of the~~
20 ~~decision and order. However, if no applicable contract is in effect~~
21 ~~at either of those times, the public school employee's annual~~
22 ~~salary shall be considered to be the annual salary that applied or~~
23 ~~would have applied to the public school employee in the most recent~~
24 ~~applicable contract in effect before the strike. A public school~~
25 ~~employer shall comply promptly with an order under this subsection.~~
26 ~~A deduction under this subsection is not a demotion for the~~
27 ~~purposes of Act No. 4 of the Extra Session of 1937, being sections~~

1 ~~38.71 to 38.191 of the Michigan Compiled Laws.~~

2 (11) ~~(7) The commission shall transmit money received from~~
3 ~~fines imposed under this section, and a public school employer~~
4 ~~shall transmit money deducted pursuant to an order under subsection~~
5 ~~(6),~~ **IF A PUBLIC SCHOOL EMPLOYER DOES NOT DEDUCT MONEY FROM A**
6 **PUBLIC SCHOOL EMPLOYEE'S PAY PURSUANT TO AN ORDER UNDER THIS**
7 **SECTION OR IF THE COMMISSION DOES NOT RECEIVE PAYMENT OF A FINE IT**
8 **IMPOSED UNDER THIS SECTION WITHIN 30 DAYS, THE SUPERINTENDENT OF**
9 **PUBLIC INSTRUCTION SHALL INSTITUTE COLLECTION PROCEEDINGS AND THE**
10 **MONEY RECEIVED SHALL BE TRANSMITTED** to the state treasurer for
11 deposit in the state school aid fund established under section 11
12 of article IX of the state constitution of 1963.

13 ~~—— (8) If the commission does not receive payment of a fine~~
14 ~~imposed under this section within 30 days after the imposition of~~
15 ~~the fine, or if a public school employer does not deduct a fine~~
16 ~~from a public school employee's pay pursuant to an order under~~
17 ~~subsection (6), the commission shall institute collection~~
18 ~~proceedings.~~

19 (12) **DEDUCTIONS IMPOSED UNDER THIS SECTION ARE IN ADDITION**
20 **TO ANY LOSS OF PAY ATTRIBUTABLE TO THE FULL OR PARTIAL DAY THAT**
21 **THE PUBLIC SCHOOL EMPLOYEE WAS ABSENT FROM WORK AS A RESULT OF**
22 **THE STRIKE UNDER SECTION 2 AND ANY OTHER PENALTY PRESCRIBED BY**
23 **THIS ACT AND BY OTHER LAW.**

24 (13) ~~(9)~~ Fines imposed under this section are in addition to
25 all other penalties prescribed by this act and by law.

26 (14) ~~(10)~~ A public school employer, **THE SUPERINTENDENT OF**
27 **PUBLIC INSTRUCTION, OR THE ATTORNEY GENERAL** may bring an action to

1 enjoin a strike by public school employees in violation of section
2 2, and a bargaining representative may bring an action to enjoin a
3 lockout by a public school employer in violation of section 2, in
4 the circuit court for the county in which the affected public
5 school is located. ~~A-IF THE COMMISSION HAS MADE A DETERMINATION~~
6 ~~AFTER A HEARING UNDER SUBSECTION (3) THAT A STRIKE OR LOCKOUT~~
7 ~~EXISTS, THAT FINDING SHALL NOT BE OVERTURNED EXCEPT BY CLEAR AND~~
8 ~~CONVINCING EVIDENCE. IF THE~~ court having jurisdiction of an action
9 brought under this subsection ~~shall grant injunctive relief if the~~
10 ~~court finds that a strike or lockout has occurred, without regard~~
11 ~~to the existence of other remedies, demonstration of irreparable~~
12 ~~harm, or other factors. Failure to comply with an order of the~~
13 ~~court may be punished as contempt. In addition, the court shall~~
14 ~~award court costs and reasonable attorney fees to a plaintiff who~~
15 ~~prevails in an action brought under this subsection.~~**FINDS THAT**
16 **CONDITIONS CONSTITUTING A STRIKE OR LOCKOUT IN VIOLATION OF SECTION**
17 **2 EXIST AND UNLESS CLEAR AND CONVINCING EVIDENCE HAS SHOWN THAT THE**
18 **SANCTION WOULD NOT BE EQUITABLE OR THE SANCTION WOULD DUPLICATE A**
19 **SANCTION IMPOSED BY THE COMMISSION FOR THE SAME ACTIVITY UNDER**
20 **SUBSECTION (9) OR (10), THE COURT SHALL DO ALL OF THE FOLLOWING:**
21 (A) FOR A STRIKE IN VIOLATION OF SECTION 2, ORDER EACH PUBLIC
22 SCHOOL EMPLOYEE TO PAY A FINE IN AN AMOUNT EQUAL TO 1 DAY OF PAY
23 FOR THAT PUBLIC SCHOOL EMPLOYEE FOR EACH FULL OR PARTIAL DAY THE
24 PUBLIC SCHOOL EMPLOYEE ENGAGED IN THE STRIKE. FOR A LOCKOUT IN
25 VIOLATION OF SECTION 2, ORDER THE PUBLIC SCHOOL EMPLOYER TO PAY A
26 FINE OF \$5,000.00 FOR EACH FULL OR PARTIAL DAY OF THE LOCKOUT AND
27 ORDER EACH MEMBER OF THE PUBLIC SCHOOL EMPLOYER'S GOVERNING BOARD

1 TO PAY A FINE OF \$250.00 FOR EACH FULL OR PARTIAL DAY OF THE
2 LOCKOUT. A FINE IMPOSED UNDER THIS SUBSECTION SHALL BE TRANSMITTED
3 TO THE STATE TREASURER FOR DEPOSIT INTO THE STATE SCHOOL AID FUND
4 ESTABLISHED UNDER SECTION 11 OF ARTICLE IX OF THE STATE
5 CONSTITUTION OF 1963.

6 (B) ORDER THE PUBLIC SCHOOL EMPLOYEES OR PUBLIC SCHOOL
7 EMPLOYER ACTING IN VIOLATION OF SECTION 2 TO END THE STRIKE OR
8 LOCKOUT.

9 (C) AWARD COSTS AND ATTORNEY FEES TO A PLAINTIFF WHO PREVAILS
10 IN AN ACTION UNDER THIS SUBSECTION.

11 (D) GRANT ADDITIONAL EQUITABLE RELIEF THAT THE COURT FINDS
12 APPROPRIATE.

13 (15) AN ORDER ISSUED UNDER SUBSECTION (14) IS ENFORCEABLE
14 THROUGH THE COURT'S CONTEMPT POWER.

15 (16) ~~(11)~~—A public school employer shall not provide to a
16 public school employee or to a board member any compensation or
17 additional work assignment that is intended to reimburse the public
18 school employee or board member for a monetary penalty imposed
19 under this section or that is intended to allow the public school
20 employee or board member to recover a monetary penalty imposed
21 under this section.

22 (17) ~~(12)~~—As used in this section, "public school employee"
23 means a person employed by a public school employer.

24 Sec. 6. (1) Notwithstanding the provisions of any other law, a
25 public employee who, by concerted action with others and without
26 the lawful approval of his or her superior, willfully absents
27 himself or herself from his or her position, or abstains in whole

1 or in part from the full, faithful and proper performance of his or
2 her duties for the purpose of inducing, influencing or coercing a
3 change in employment conditions, compensation, or the rights,
4 privileges, or obligations of employment, or a public employee
5 employed by a public school employer who engages in an action
6 described in this subsection for the purpose of protesting or
7 responding to an act alleged or determined to be an unfair labor
8 practice committed by the public school employer, shall be
9 considered to be on strike.

10 (2) Before a public employer may discipline or discharge a
11 public employee for engaging in a strike, the public employee, upon
12 request, is entitled to a determination under this section as to
13 whether he or she violated this act. The request shall be filed in
14 writing, with the officer or body having power to remove or
15 discipline the employee, within 10 days after regular compensation
16 of the employee has ceased or other discipline has been imposed. If
17 a request is filed, the officer or body, within ~~10~~5 days after
18 receipt of the request, shall commence a proceeding for the
19 determination of whether the public employee has violated this act.
20 The proceedings shall be held in accordance with the law and
21 regulations appropriate to a proceeding to remove the public
22 employee and shall be held without unnecessary delay. The decision
23 of the officer or body shall be made within ~~10~~2 days after the
24 conclusion of the proceeding. If the employee involved is found to
25 have violated this act and his or her employment is terminated or
26 other discipline is imposed, the employee has the right of review
27 to the circuit court having jurisdiction of the parties, within 30

1 days from the date of the decision, for a determination as to
2 whether the decision is supported by competent, material, and
3 substantial evidence on the whole record. **A PUBLIC EMPLOYER MAY**
4 **CONSOLIDATE EMPLOYEE HEARINGS UNDER THIS SUBSECTION UNLESS THE**
5 **EMPLOYEE DEMONSTRATES MANIFEST INJUSTICE FROM THE CONSOLIDATION.**
6 This subsection does not apply to a penalty imposed under section
7 2a.

8 Enacting section 1. This amendatory act takes effect 90 days
9 after the date it is enacted into law.