

HOUSE BILL No. 5387

February 18, 2016, Introduced by Reps. Garcia, Poleski, Price and Pscholka and referred to the Committee on Appropriations.

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, 6, 10, 11, 13, and 15 (MCL 423.202a, 423.206, 423.210, 423.211, 423.213, and 423.215), section 2a as added and section 6 as amended by 1994 PA 112 and sections 10 and 15 as amended by 2014 PA 414.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 2a. (1) IF CONDITIONS CONSTITUTING A STRIKE BY 1 OR MORE
2 PUBLIC SCHOOL EMPLOYEES EXIST, THE SUPERINTENDENT OF PUBLIC
3 INSTRUCTION SHALL NOTIFY THE COMMISSION OF THE FULL OR PARTIAL DAYS
4 A PUBLIC SCHOOL EMPLOYEE WAS ENGAGED IN THE STRIKE.

1 (2) ~~(1)~~—If a public school employer alleges that there is a
2 strike by 1 or more public school employees in violation of section
3 2, the public school employer shall notify the commission of the
4 full or partial days a public school employee was engaged in the
5 alleged strike. **IF THE PUBLIC SCHOOL EMPLOYER HAS NOT NOTIFIED THE**
6 **COMMISSION OF AN ALLEGATION OF A STRIKE UNDER THIS SUBSECTION, A**
7 **PARENT OF A CHILD WHO IS ENROLLED IN THE SCHOOL DISTRICT MAY NOTIFY**
8 **THE COMMISSION OF THE FULL OR PARTIAL DAYS 1 OR MORE PUBLIC SCHOOL**
9 **EMPLOYEES WERE ENGAGED IN AN ALLEGED STRIKE.**

10 (3) ~~(2)~~—If a bargaining representative alleges that there is a
11 lockout by a public school employer in violation of section 2, the
12 bargaining representative shall notify the commission of the full
13 or partial days of the alleged lockout.

14 (4) ~~(3)~~ ~~Within 60~~ **NOT MORE THAN 2** days after receipt of a
15 notice made pursuant to subsection (1), ~~or (2)~~, **OR (3)**, the
16 commission shall conduct a hearing to determine if there has been a
17 violation and shall issue its decision and order. **THE HEARING SHALL**
18 **OFFER THE BARGAINING REPRESENTATIVE, THE PUBLIC SCHOOL EMPLOYER,**
19 **THE SUPERINTENDENT OF PUBLIC INSTRUCTION, AN AFFECTED PUBLIC SCHOOL**
20 **EMPLOYEE, AND A PARENT WHO NOTIFIED THE COMMISSION UNDER SUBSECTION**
21 **(2) AN OPPORTUNITY TO PRESENT TESTIMONY OR OTHER EVIDENCE TO**
22 **SUPPORT OR CONTEST THE ALLEGATION OF A STRIKE OR LOCKOUT.** A hearing
23 conducted under this subsection is separate and distinct from, and
24 is not subject to the procedures and timelines of, a proceeding
25 conducted under section 6.

26 (5) ~~(4)~~—If, after a hearing under subsection ~~(3)~~, **(4)**, a
27 majority of the commission finds that 1 or more public school

1 employees engaged in a strike in violation of section 2, the
2 commission shall fine each public school employee an amount equal
3 to 1 day of pay for that public school employee for each full or
4 partial day that he or she engaged in the strike. ~~and shall fine~~
5 ~~the bargaining representative of the public school employee or~~
6 ~~employees \$5,000.00 for each full or partial day the public school~~
7 ~~employee or employees engaged in the strike.~~

8 (6) ~~(5)~~—If, after a hearing under subsection ~~(3)~~, ~~(4)~~, a
9 majority of the commission finds that a public school employer
10 instituted a lockout in violation of section 2, the commission
11 shall fine the public school employer \$5,000.00 for each full or
12 partial day of the lockout and shall fine each member of the public
13 school employer's governing board \$250.00 for each full or partial
14 day of the lockout.

15 (7) ~~(6)~~—If the commission imposes a fine against a public
16 school employee under subsection ~~(4)~~ ~~(5)~~ and the public school
17 employee continues to be employed by a public school employer, the
18 commission shall order the public school employer to deduct the
19 fine from the public school employee's annual salary. The public
20 school employee's annual salary is the annual salary that is
21 established in the applicable contract in effect at the time of the
22 strike or, if no applicable contract is in effect at the time of
23 the strike, in the applicable contract in effect at the time of the
24 decision and order. However, if no applicable contract is in effect
25 at either of those times, the public school employee's annual
26 salary shall be considered to be the annual salary that applied or
27 would have applied to the public school employee in the most recent

1 applicable contract in effect before the strike. A public school
2 employer shall comply promptly with an order under this subsection.
3 A deduction under this subsection is not a demotion for the
4 purposes of ~~Act No. 4 of the Extra Session of 1937, being sections~~
5 ~~38.71 to 38.191 of the Michigan Compiled Laws.1937 (EX SESS) PA 4,~~
6 **MCL 38.71 TO 38.191.**

7 (8) ~~(7)~~—The commission shall transmit money received from
8 fines imposed under this section, and a public school employer
9 shall transmit money deducted pursuant to an order under subsection
10 ~~(6), (7)~~, to the state treasurer for deposit in the state school
11 aid fund established under section 11 of article IX of the state
12 constitution of 1963.

13 (9) ~~(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), (7)~~, the commission shall institute collection
18 proceedings.

19 (10) ~~(9)~~—Fines imposed under this section are in addition to
20 all other penalties prescribed by this act and by law.

21 (11) ~~(10)~~—A public school employer **OR THE SUPERINTENDENT OF**
22 **PUBLIC INSTRUCTION** may bring an action to enjoin a strike by public
23 school employees in violation of section 2, and a bargaining
24 representative may bring an action to enjoin a lockout by a public
25 school employer in violation of section 2, in the circuit court for
26 the county in which the affected public school is located. ~~A-IF THE~~
27 **COMMISSION HAS MADE A DETERMINATION AFTER A HEARING UNDER**

1 SUBSECTION (4) THAT A STRIKE OR LOCKOUT EXISTS, THAT FINDING SHALL
2 NOT BE OVERTURNED EXCEPT BY CLEAR AND CONVINCING EVIDENCE. IF THE
3 court having jurisdiction of an action brought under this
4 subsection shall ~~grant injunctive relief if the court finds that a~~
5 ~~strike or lockout has occurred, without regard to the existence of~~
6 ~~other remedies, demonstration of irreparable harm, or other~~
7 ~~factors. Failure to comply with an order of the court may be~~
8 ~~punished as contempt. In addition, the court shall award court~~
9 ~~costs and reasonable attorney fees to a plaintiff who prevails in~~
10 ~~an action brought under this subsection.~~ FINDS THAT CONDITIONS
11 CONSTITUTING A STRIKE OR LOCKOUT IN VIOLATION OF SECTION 2 EXIST
12 AND UNLESS CLEAR AND CONVINCING EVIDENCE HAS SHOWN THAT THE
13 SANCTION WOULD NOT BE EQUITABLE OR THE SANCTION WOULD DUPLICATE A
14 SANCTION IMPOSED BY THE COMMISSION FOR THE SAME ACTIVITY UNDER
15 SUBSECTION (5) OR (6), THE COURT SHALL DO ALL OF THE FOLLOWING:

16 (A) FOR A STRIKE IN VIOLATION OF SECTION 2, ORDER EACH PUBLIC
17 SCHOOL EMPLOYEE TO PAY A FINE IN AN AMOUNT EQUAL TO 1 DAY OF PAY
18 FOR THAT PUBLIC SCHOOL EMPLOYEE FOR EACH FULL OR PARTIAL DAY THE
19 PUBLIC SCHOOL EMPLOYEE ENGAGED IN THE STRIKE. FOR A LOCKOUT IN
20 VIOLATION OF SECTION 2, ORDER THE PUBLIC SCHOOL EMPLOYER TO PAY A
21 FINE OF \$5,000.00 FOR EACH FULL OR PARTIAL DAY OF THE LOCKOUT AND
22 ORDER EACH MEMBER OF THE PUBLIC SCHOOL EMPLOYER'S GOVERNING BOARD
23 TO PAY A FINE OF \$250.00 FOR EACH FULL OR PARTIAL DAY OF THE
24 LOCKOUT.

25 (B) ORDER THE PUBLIC SCHOOL EMPLOYEES OR PUBLIC SCHOOL
26 EMPLOYER ACTING IN VIOLATION OF SECTION 2 TO END THE STRIKE OR
27 LOCKOUT.

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

3 (D) GRANT ADDITIONAL EQUITABLE RELIEF THAT THE COURT FINDS
4 APPROPRIATE.

5 (12) AN ORDER ISSUED UNDER SUBSECTION (11) IS ENFORCEABLE
6 THROUGH THE COURT'S CONTEMPT POWER.

7 (13) ~~(11)~~—A public school employer shall not provide to a
8 public school employee or to a board member any compensation or
9 additional work assignment that is intended to reimburse the public
10 school employee or board member for a monetary penalty imposed
11 under this section or that is intended to allow the public school
12 employee or board member to recover a monetary penalty imposed
13 under this section.

14 (14) ~~(12)~~—As used in this section, "public school employee"
15 means a person employed by a public school employer.

16 Sec. 6. (1) Notwithstanding the provisions of any other law, a
17 public employee who, by concerted action with others and without
18 the lawful approval of his or her superior, willfully absents
19 himself or herself from his or her position, or abstains in whole
20 or in part from the full, faithful and proper performance of his or
21 her duties for the purpose of inducing, influencing or coercing a
22 change in employment conditions, compensation, or the rights,
23 privileges, or obligations of employment, or a public employee
24 employed by a public school employer who engages in an action
25 described in this subsection for the purpose of protesting or
26 responding to an act alleged or determined to be an unfair labor
27 practice committed by the public school employer, shall be

1 considered to be on strike.

2 (2) Before a public employer may discipline or discharge a
3 public employee for engaging in a strike, the public employee, upon
4 request, is entitled to a determination under this section as to
5 whether he or she violated this act. The request shall be filed in
6 writing, with the officer or body having power to remove or
7 discipline the employee, within 10 days after regular compensation
8 of the employee has ceased or other discipline has been imposed. If
9 a request is filed, the officer or body, within ~~10~~5 days after
10 receipt of the request, shall commence a proceeding for the
11 determination of whether the public employee has violated this act.
12 The proceedings shall be held in accordance with the law and
13 regulations appropriate to a proceeding to remove the public
14 employee and shall be held without unnecessary delay. The decision
15 of the officer or body shall be made within ~~10~~2 days after the
16 conclusion of the proceeding. If the employee involved is found to
17 have violated this act and his or her employment is terminated or
18 other discipline is imposed, the employee has the right of review
19 to the circuit court having jurisdiction of the parties, within 30
20 days from the date of the decision, for a determination as to
21 whether the decision is supported by competent, material, and
22 substantial evidence on the whole record. **A PUBLIC EMPLOYER MAY**
23 **CONSOLIDATE EMPLOYEE HEARINGS UNDER THIS SUBSECTION UNLESS THE**
24 **EMPLOYEE DEMONSTRATES MANIFEST INJUSTICE FROM THE CONSOLIDATION.**
25 This subsection does not apply to a penalty imposed under section
26 2a.

27 Sec. 10. (1) A public employer or an officer or agent of a

1 public employer shall not do any of the following:

2 (a) Interfere with, restrain, or coerce public employees in
3 the exercise of their rights guaranteed in section 9.

4 (b) Initiate, create, dominate, contribute to, or interfere
5 with the formation or administration of any labor organization. A
6 public school employer's use of public school resources to assist a
7 labor organization in collecting dues or service fees from wages of
8 public school employees is a prohibited contribution to the
9 administration of a labor organization. However, a public school
10 employer's collection of dues or service fees pursuant to a
11 collective bargaining agreement that is in effect on March 16, 2012
12 is not prohibited until the agreement expires or is terminated,
13 extended, or renewed. A public employer may permit employees to
14 confer with a labor organization during working hours without loss
15 of time or pay.

16 (c) Discriminate in regard to hire, terms, or other conditions
17 of employment to encourage or discourage membership in a labor
18 organization.

19 (d) Discriminate against a public employee because he or she
20 has given testimony or instituted proceedings under this act.

21 (e) Refuse to bargain collectively with the representatives of
22 its public employees, subject to section 11.

23 (2) A labor organization or its agents shall not do any of the
24 following:

25 (a) Restrain or coerce public employees in the exercise of the
26 rights guaranteed in section 9. This subdivision does not impair
27 the right of a labor organization to prescribe its own rules with

1 respect to the acquisition or retention of membership.

2 (b) Restrain or coerce a public employer in the selection of
3 its representatives for the purposes of collective bargaining or
4 the adjustment of grievances.

5 (c) Cause or attempt to cause a public employer to
6 discriminate against a public employee in violation of subsection
7 (1)(c).

8 (d) Refuse to bargain collectively with a public employer,
9 provided it is the representative of the public employer's
10 employees, subject to section 11.

11 **(E) ON OR AFTER THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT**
12 **ADDED THIS SUBDIVISION, ENTER INTO OR RENEW A BARGAINING AGREEMENT**
13 **WITH A SCHOOL DISTRICT THAT IS A COMMUNITY DISTRICT ORGANIZED UNDER**
14 **THE REVISED SCHOOL CODE, 1976 PA 451, MCL 380.1 TO 380.1852, IF THE**
15 **BARGAINING AGREEMENT REQUIRES OR ALLOWS PUBLIC-EMPLOYER-PAID**
16 **RELEASE TIME FOR A UNION OFFICER OR BARGAINING REPRESENTATIVE TO**
17 **CONDUCT UNION BUSINESS.**

18 (3) Except as provided in subsection (4), an individual shall
19 not be required as a condition of obtaining or continuing public
20 employment to do any of the following:

21 (a) Refrain or resign from membership in, voluntary
22 affiliation with, or voluntary financial support of a labor
23 organization or bargaining representative.

24 (b) Become or remain a member of a labor organization or
25 bargaining representative.

26 (c) Pay any dues, fees, assessments, or other charges or
27 expenses of any kind or amount, or provide anything of value to a

1 labor organization or bargaining representative.

2 (d) Pay to any charitable organization or third party any
3 amount that is in lieu of, equivalent to, or any portion of dues,
4 fees, assessments, or other charges or expenses required of members
5 of or public employees represented by a labor organization or
6 bargaining representative.

7 (4) The application of subsection (3) is subject to the
8 following:

9 (a) Subsection (3) does not apply to any of the following:

10 (i) A public police or fire department employee or any person
11 who seeks to become employed as a public police or fire department
12 employee as that term is defined under section 2 of 1969 PA 312,
13 MCL 423.232.

14 (ii) A state police trooper or sergeant who is granted rights
15 under section 5 of article XI of the state constitution of 1963 or
16 any individual who seeks to become employed as a state police
17 trooper or sergeant.

18 (b) Any person described in subdivision (a), or a labor
19 organization or bargaining representative representing persons
20 described in subdivision (a) and a public employer or this state
21 may agree that all employees in the bargaining unit shall share
22 fairly in the financial support of the labor organization or their
23 exclusive bargaining representative by paying a fee to the labor
24 organization or exclusive bargaining representative that may be
25 equivalent to the amount of dues uniformly required of members of
26 the labor organization or exclusive bargaining representative.
27 Section 9(2) shall not be construed to interfere with the right of

1 a public employer or this state and a labor organization or
2 bargaining representative to enter into or lawfully administer such
3 an agreement as it relates to the employees or persons described in
4 subdivision (a).

5 (c) If any of the exclusions in subdivision (a) (i) or (ii) are
6 found to be invalid by a court, the following apply:

7 (i) The individuals described in the exclusion found to be
8 invalid shall no longer be excepted from the application of
9 subsection (3).

10 (ii) Subdivision (b) does not apply to individuals described
11 in the invalid exclusion.

12 (5) An agreement, contract, understanding, or practice between
13 or involving a public employer, labor organization, or bargaining
14 representative that violates subsection (3) is unlawful and
15 unenforceable. This subsection applies only to an agreement,
16 contract, understanding, or practice that takes effect or is
17 extended or renewed after March 28, 2013.

18 (6) The court of appeals has exclusive original jurisdiction
19 over any action challenging the validity of subsection (3), (4), or
20 (5). The court of appeals shall hear the action in an expedited
21 manner.

22 (7) For fiscal year 2012-2013, \$1,000,000.00 is appropriated
23 to the department of licensing and regulatory affairs to be
24 expended to do all of the following regarding 2012 PA 349:

25 (a) Respond to public inquiries regarding 2012 PA 349.

26 (b) Provide the commission with sufficient staff and other
27 resources to implement 2012 PA 349.

1 (c) Inform public employers, public employees, and labor
2 organizations concerning their rights and responsibilities under
3 2012 PA 349.

4 (d) Any other purposes that the director of the department of
5 licensing and regulatory affairs determines in his or her
6 discretion are necessary to implement 2012 PA 349.

7 (8) A person, public employer, or labor organization that
8 violates subsection (3) is liable for a civil fine of not more than
9 \$500.00. A civil fine recovered under this section shall be
10 submitted to the state treasurer for deposit in the general fund of
11 this state.

12 (9) By July 1 of each year, each exclusive bargaining
13 representative that represents public employees in this state shall
14 have an independent examiner verify the exclusive bargaining
15 representative's calculation of all expenditures attributed to the
16 costs of collective bargaining, contract administration, and
17 grievance adjustment during the prior calendar year and shall file
18 that verification with the commission. The commission shall make
19 the exclusive bargaining representative's calculations available to
20 the public on the commission's website. The exclusive bargaining
21 representative shall also file a declaration identifying the local
22 bargaining units that are represented. Local bargaining units
23 identified in the declaration filed by the exclusive bargaining
24 representative are not required to file a separate calculation of
25 all expenditures attributed to the costs of collective bargaining,
26 contract administration, and grievance adjustment. ~~For fiscal year~~
27 ~~2011-2012, \$100,000.00 is appropriated to the commission for the~~

1 ~~costs of implementing this subsection.~~ For fiscal year 2014-2015,
2 \$100,000.00 is appropriated to the commission for the costs of
3 implementing this subsection.

4 (10) Except for actions required to be brought under
5 subsection (6), a person who suffers an injury as a result of a
6 violation or threatened violation of subsection (3) may bring a
7 civil action for damages, injunctive relief, or both. In addition,
8 a court shall award court costs and reasonable attorney fees to a
9 plaintiff who prevails in an action brought under this subsection.
10 Remedies provided in this subsection are independent of and in
11 addition to other penalties and remedies prescribed by this act.

12 Sec. 11. Representatives designated or selected for purposes
13 of collective bargaining by the majority of the public employees in
14 a unit appropriate for such purposes, **AS PROVIDED IN SECTION 13,**
15 shall be the exclusive representatives of all the public employees
16 in ~~such~~**THAT** unit for the purposes of collective bargaining in
17 respect to rates of pay, wages, hours of employment, or other
18 conditions of employment, ~~and~~ shall be so recognized by the public
19 employer. ~~Provided, That~~**HOWEVER,** any individual employee at any
20 time may present grievances to his **OR HER** employer and have the
21 grievances adjusted, without intervention of the bargaining
22 representative, if the adjustment is not inconsistent with the
23 terms of a collective bargaining contract or agreement then in
24 effect, ~~provided that~~**AND** the bargaining representative has been
25 given opportunity to be present at ~~such~~**THE** adjustment.

26 Sec. 13. The commission shall decide in each case, to ~~insure~~
27 **ENSURE** public employees the full benefit of their right to self-

1 organization, to collective bargaining, and otherwise to effectuate
2 the policies of this act, the unit appropriate for the purposes of
3 collective bargaining as provided in section 9e of ~~Act No. 176 of~~
4 ~~the Public Acts of 1939, as amended, being section 423.9e of the~~
5 ~~Michigan Compiled Laws: Provided, That in 1939 PA 176, MCL 423.9E.~~
6 **IN** any fire department, or any department in whole or **IN** part
7 engaged in, or having the responsibility of, fire fighting, ~~no~~**A**
8 person subordinate to a fire commission, fire commissioner, safety
9 director, or other similar administrative agency or administrator ~~,~~
10 shall ~~be deemed~~ **NOT BE CONSIDERED** to be a supervisor.

11 Sec. 15. (1) A public employer shall bargain collectively with
12 the representatives of its employees as described in section 11 and
13 may make and enter into collective bargaining agreements with those
14 representatives. Except as otherwise provided in this section, for
15 the purposes of this section, to bargain collectively is to perform
16 the mutual obligation of the employer and the representative of the
17 employees to meet at reasonable times and confer in good faith with
18 respect to wages, hours, and other terms and conditions of
19 employment, or to negotiate an agreement, or any question arising
20 under the agreement, and to execute a written contract, ordinance,
21 or resolution incorporating any agreement reached if requested by
22 either party, but this obligation does not compel either party to
23 agree to a proposal or make a concession.

24 (2) A public school employer has the responsibility,
25 authority, and right to manage and direct on behalf of the public
26 the operations and activities of the public schools under its
27 control.

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

4 (a) Who is or will be the policyholder of an employee group
5 insurance benefit. This subdivision does not affect the duty to
6 bargain with respect to types and levels of benefits and coverages
7 for employee group insurance. A change or proposed change in a type
8 or to a level of benefit, policy specification, or coverage for
9 employee group insurance shall be bargained by the public school
10 employer and the bargaining representative before the change may
11 take effect.

12 (b) Establishment of the starting day for the school year and
13 of the amount of pupil contact time required to receive full state
14 school aid under section 1284 of the revised school code, 1976 PA
15 451, MCL 380.1284, and under section 101 of the state school aid
16 act of 1979, 1979 PA 94, MCL 388.1701. **IN ADDITION, FOR A PUBLIC
17 SCHOOL EMPLOYER THAT IS A COMMUNITY DISTRICT ORGANIZED UNDER THE
18 REVISED SCHOOL CODE, 1976 PA 451, MCL 380.1 TO 380.1852, COLLECTIVE
19 BARGAINING BETWEEN THE PUBLIC SCHOOL EMPLOYER AND A BARGAINING
20 REPRESENTATIVE OF ITS EMPLOYEES SHALL NOT INCLUDE ANY DECISION
21 RELATED TO AN EMPLOYEE'S WORK SCHEDULE OR THE SCHOOL CALENDAR OR
22 THE IMPACT OF THAT DECISION ON AN INDIVIDUAL EMPLOYEE OR THE
23 BARGAINING UNIT.**

24 (c) The composition of school improvement committees
25 established under section 1277 of the revised school code, 1976 PA
26 451, MCL 380.1277.

27 (d) The decision of whether or not to provide or allow

1 interdistrict or intradistrict open enrollment opportunity in a
2 school district or the selection of grade levels or schools in
3 which to allow an open enrollment opportunity.

4 (e) The decision of whether or not to act as an authorizing
5 body to grant a contract to organize and operate 1 or more public
6 school academies under the revised school code, 1976 PA 451, MCL
7 380.1 to 380.1852.

8 (f) The decision of whether or not to contract with a third
9 party for 1 or more noninstructional support services; or the
10 procedures for obtaining the contract for noninstructional support
11 services other than bidding described in this subdivision; or the
12 identity of the third party; or the impact of the contract for
13 noninstructional support services on individual employees or the
14 bargaining unit. However, ~~this subdivision~~ **THE PRECEDING SENTENCE**
15 applies only if the bargaining unit that is providing the
16 noninstructional support services is given an opportunity to bid on
17 the contract for the noninstructional support services on an equal
18 basis as other bidders. **IN ADDITION, FOR A PUBLIC SCHOOL EMPLOYER**
19 **THAT IS A COMMUNITY DISTRICT ORGANIZED UNDER THE REVISED SCHOOL**
20 **CODE, 1976 PA 451, MCL 380.1 TO 380.1852, COLLECTIVE BARGAINING**
21 **BETWEEN THE PUBLIC SCHOOL EMPLOYER AND A BARGAINING REPRESENTATIVE**
22 **OF ITS EMPLOYEES SHALL NOT INCLUDE THE DECISION OF WHETHER OR NOT**
23 **TO CONTRACT WITH A THIRD PARTY FOR ANY SUPPORT SERVICE; THE**
24 **PROCEDURES FOR OBTAINING THE CONTRACT FOR SUPPORT SERVICES; THE**
25 **IDENTITY OF THE THIRD PARTY; OR THE IMPACT OF THE CONTRACT FOR**
26 **SUPPORT SERVICES ON AN INDIVIDUAL EMPLOYEE OR THE BARGAINING UNIT.**

27 (g) The use of volunteers in providing services at its

1 schools.

2 (h) Decisions concerning use and staffing of experimental or
3 pilot programs and decisions concerning use of technology to
4 deliver educational programs and services and staffing to provide
5 that technology, or the impact of those decisions on individual
6 employees or the bargaining unit.

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

10 (j) Any decision made by the public school employer regarding
11 teacher placement, or the impact of that decision on an individual
12 employee or the bargaining unit. **IN ADDITION, FOR A PUBLIC SCHOOL
13 EMPLOYER THAT IS A COMMUNITY DISTRICT ORGANIZED UNDER THE REVISED
14 SCHOOL CODE, 1976 PA 451, MCL 380.1 TO 380.1852, COLLECTIVE
15 BARGAINING BETWEEN THE PUBLIC SCHOOL EMPLOYER AND A BARGAINING
16 REPRESENTATIVE OF ITS EMPLOYEES SHALL NOT INCLUDE ANY DECISION MADE
17 BY THE PUBLIC SCHOOL EMPLOYER REGARDING PLACEMENT OF ANY EMPLOYEE,
18 OR THE IMPACT OF THAT DECISION ON AN INDIVIDUAL EMPLOYEE OR THE
19 BARGAINING UNIT.**

20 (k) Decisions about the development, content, standards,
21 procedures, adoption, and implementation of the public school
22 employer's policies regarding personnel decisions when conducting a
23 staffing or program reduction or any other personnel determination
24 resulting in the elimination of a position, when conducting a
25 recall from a staffing or program reduction or any other personnel
26 determination resulting in the elimination of a position, or in
27 hiring after a staffing or program reduction or any other personnel

1 determination resulting in the elimination of a position, as
2 provided under section 1248 of the revised school code, 1976 PA
3 451, MCL 380.1248, any decision made by the public school employer
4 pursuant to those policies, or the impact of those decisions on an
5 individual employee or the bargaining unit. **IN ADDITION, FOR A
6 PUBLIC SCHOOL EMPLOYER THAT IS A COMMUNITY DISTRICT ORGANIZED UNDER
7 THE REVISED SCHOOL CODE, 1976 PA 451, MCL 380.1 TO 380.1852,
8 COLLECTIVE BARGAINING BETWEEN THE PUBLIC SCHOOL EMPLOYER AND A
9 BARGAINING REPRESENTATIVE OF ITS EMPLOYEES SHALL NOT INCLUDE ANY
10 DECISION MADE BY THE PUBLIC SCHOOL EMPLOYER ABOUT THE DEVELOPMENT,
11 CONTENT, STANDARDS, PROCEDURES, ADOPTION, AND IMPLEMENTATION OF THE
12 PUBLIC SCHOOL EMPLOYER'S POLICIES REGARDING PERSONNEL DECISIONS FOR
13 ANY EMPLOYEE OR GROUP OF EMPLOYEES WHEN CONDUCTING A STAFFING OR
14 PROGRAM REDUCTION OR ANY OTHER PERSONNEL DETERMINATION RESULTING IN
15 THE ELIMINATION OF A POSITION, WHEN CONDUCTING A RECALL FROM A
16 STAFFING OR PROGRAM REDUCTION OR ANY OTHER PERSONNEL DETERMINATION
17 RESULTING IN THE ELIMINATION OF A POSITION, OR IN HIRING AFTER A
18 STAFFING OR PROGRAM REDUCTION OR ANY OTHER PERSONNEL DETERMINATION
19 RESULTING IN THE ELIMINATION OF A POSITION; ANY DECISION MADE BY
20 THE PUBLIC SCHOOL EMPLOYER PURSUANT TO THOSE POLICIES; OR THE
21 IMPACT OF THOSE DECISIONS ON AN INDIVIDUAL EMPLOYEE OR THE
22 BARGAINING UNIT.**

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

1 content of a performance evaluation of an employee under those
2 provisions of law, or the impact of those decisions on an
3 individual employee or the bargaining unit. **IN ADDITION, FOR A**
4 **PUBLIC SCHOOL EMPLOYER THAT IS A COMMUNITY DISTRICT ORGANIZED UNDER**
5 **THE REVISED SCHOOL CODE, 1976 PA 451, MCL 380.1 TO 380.1852,**
6 **COLLECTIVE BARGAINING BETWEEN THE PUBLIC SCHOOL EMPLOYER AND A**
7 **BARGAINING REPRESENTATIVE OF ITS EMPLOYEES SHALL NOT INCLUDE ANY**
8 **DECISION MADE BY THE PUBLIC SCHOOL EMPLOYER ABOUT THE DEVELOPMENT,**
9 **CONTENT, STANDARDS, PROCEDURES, ADOPTION, AND IMPLEMENTATION OF THE**
10 **PUBLIC SCHOOL EMPLOYER'S PERFORMANCE EVALUATION SYSTEM FOR ANY**
11 **EMPLOYEE OR GROUP OF EMPLOYEES; DECISIONS CONCERNING THE CONTENT OF**
12 **A PERFORMANCE EVALUATION OF AN EMPLOYEE; OR THE IMPACT OF THOSE**
13 **DECISIONS ON AN INDIVIDUAL EMPLOYEE OR THE BARGAINING UNIT.**

14 (m) For public employees whose employment is regulated by 1937
15 (Ex Sess) PA 4, MCL 38.71 to 38.191, decisions about the
16 development, content, standards, procedures, adoption, and
17 implementation of a policy regarding discharge or discipline of an
18 employee, decisions concerning the discharge or discipline of an
19 individual employee, or the impact of those decisions on an
20 individual employee or the bargaining unit. For public employees
21 whose employment is regulated by 1937 (Ex Sess) PA 4, MCL 38.71 to
22 38.191, a public school employer shall not adopt, implement, or
23 maintain a policy for discharge or discipline of an employee that
24 includes a standard for discharge or discipline that is different
25 than the arbitrary and capricious standard provided under section 1
26 of article IV of 1937 (Ex Sess) PA 4, MCL 38.101. **IN ADDITION, FOR**
27 **A PUBLIC SCHOOL EMPLOYER THAT IS A COMMUNITY DISTRICT ORGANIZED**

1 UNDER THE REVISED SCHOOL CODE, 1976 PA 451, MCL 380.1 TO 380.1852,
2 COLLECTIVE BARGAINING BETWEEN THE PUBLIC SCHOOL EMPLOYER AND A
3 BARGAINING REPRESENTATIVE OF ITS EMPLOYEES SHALL NOT INCLUDE
4 DECISIONS ABOUT THE DEVELOPMENT, CONTENT, STANDARDS, PROCEDURES,
5 ADOPTION, AND IMPLEMENTATION OF A POLICY REGARDING DISCHARGE OR
6 DISCIPLINE OF ANY EMPLOYEE OR GROUP OF EMPLOYEES; DECISIONS
7 CONCERNING THE DISCHARGE OR DISCIPLINE OF ANY INDIVIDUAL EMPLOYEE;
8 OR THE IMPACT OF THOSE DECISIONS ON ANY INDIVIDUAL EMPLOYEE OR ANY
9 BARGAINING UNIT, AND THE PUBLIC SCHOOL EMPLOYER SHALL NOT ADOPT,
10 IMPLEMENT, OR MAINTAIN A POLICY FOR DISCHARGE OR DISCIPLINE OF ANY
11 EMPLOYEE THAT INCLUDES A STANDARD FOR DISCHARGE OR DISCIPLINE THAT
12 IS DIFFERENT THAN A SUBSTANTIALLY SIMILAR ARBITRARY AND CAPRICIOUS
13 STANDARD.

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

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

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

5 (q) Any requirement that would violate section 10(3).

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

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

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

26 (a) Any effect on collective bargaining and any modification
27 of a collective bargaining agreement occurring under section 1280c

1 of the revised school code, 1976 PA 451, MCL 380.1280c.

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

10 (7) Each collective bargaining agreement entered into between
11 a public employer and public employees under this act on or after
12 March 28, 2013 shall include a provision that allows an emergency
13 manager appointed under the local financial stability and choice
14 act, 2012 PA 436, MCL 141.1541 to 141.1575, to reject, modify, or
15 terminate the collective bargaining agreement as provided in the
16 local financial stability and choice act, 2012 PA 436, MCL 141.1541
17 to 141.1575. Provisions required by this subsection are prohibited
18 subjects of bargaining under this act.

19 (8) Collective bargaining agreements under this act may be
20 rejected, modified, or terminated pursuant to the local financial
21 stability and choice act, 2012 PA 436, MCL 141.1541 to 141.1575.
22 This act does not confer a right to bargain that would infringe on
23 the exercise of powers under the local financial stability and
24 choice act, 2012 PA 436, MCL 141.1541 to 141.1575.

25 (9) A unit of local government that enters into a consent
26 agreement under the local financial stability and choice act, 2012
27 PA 436, MCL 141.1541 to 141.1575, is not subject to subsection (1)

1 for the term of the consent agreement, as provided in the local
2 financial stability and choice act, 2012 PA 436, MCL 141.1541 to
3 141.1575.

4 (10) If the charter of a city, village, or township with a
5 population of 500,000 or more requires and specifies the method of
6 selection of a retirant member of the municipality's fire
7 department, police department, or fire and police department
8 pension or retirement board, the inclusion of the retirant member
9 on the board and the method of selection of that retirant member
10 are prohibited subjects of collective bargaining, and any provision
11 in a collective bargaining agreement that purports to modify that
12 charter requirement is void and of no effect.

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

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

20 (b) The procedures for obtaining a contract for the transfer
21 of functions or responsibilities under an agreement described in
22 subdivision (a).

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

25 (12) Subsection (11) does not relieve a public employer of any
26 duty established by law to collectively bargain with its employees
27 as to the effect of a contract described in subsection (11)(a) on

1 its employees.

2 (13) An agreement with a collective bargaining unit shall not
3 require a public employer to pay the costs of an independent
4 examiner verification described in section 10(9).

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

7 Enacting section 2. This amendatory act does not take effect
8 unless Senate Bill No. ____ or House Bill No. 5384 (request no.
9 03997'15) of the 98th Legislature is enacted into law.