

HOUSE BILL No. 6077

November 30, 2016, Introduced by Reps. Nesbitt, Poleski and Somerville and referred to the Committee on Local Government.

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 1a and 15 (MCL 423.201a and 423.215), section 1a as added by 2011 PA 259 and section 15 as amended by 2014 PA 414.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1a. ~~The provisions of this~~ **THIS** act ~~are~~ **IS** subject to all
2 of the following:

3 (a) The municipal partnership act, **2011 PA 258, MCL 124.111 TO**

1 **124.123.**

2 (b) 1967 (Ex Sess) PA 8, MCL 124.531 to 124.536.

3 (c) The urban cooperation act of 1967, 1967 (Ex Sess) PA 7,
4 MCL 124.501 to 124.512.

5 (d) 1988 PA 57, MCL 124.601 to 124.614.

6 **(E) THE LOCAL UNIT OF GOVERNMENT RETIREMENT ACT.**

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

20 (2) A public school employer has the responsibility,
21 authority, and right to manage and direct on behalf of the public
22 the operations and activities of the public schools under its
23 control.

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

27 (a) Who is or will be the policyholder of an employee group

1 insurance benefit. This subdivision does not affect the duty to
2 bargain with respect to types and levels of benefits and coverages
3 for employee group insurance. A change or proposed change in a type
4 or to a level of benefit, policy specification, or coverage for
5 employee group insurance shall be bargained by the public school
6 employer and the bargaining representative before the change may
7 take effect.

8 (b) Establishment of the starting day for the school year and
9 of the amount of pupil contact time required to receive full state
10 school aid under section 1284 of the revised school code, 1976 PA
11 451, MCL 380.1284, and under section 101 of the state school aid
12 act of 1979, 1979 PA 94, MCL 388.1701.

13 (c) The composition of school improvement committees
14 established under section 1277 of the revised school code, 1976 PA
15 451, MCL 380.1277.

16 (d) The decision of whether or not to provide or allow
17 interdistrict or intradistrict open enrollment opportunity in a
18 school district or the selection of grade levels or schools in
19 which to allow an open enrollment opportunity.

20 (e) The decision of whether or not to act as an authorizing
21 body to grant a contract to organize and operate 1 or more public
22 school academies under the revised school code, 1976 PA 451, MCL
23 380.1 to 380.1852.

24 (f) The decision of whether or not to contract with a third
25 party for 1 or more noninstructional support services; or the
26 procedures for obtaining the contract for noninstructional support
27 services other than bidding described in this subdivision; or the

1 identity of the third party; or the impact of the contract for
2 noninstructional support services on individual employees or the
3 bargaining unit. However, this subdivision applies only if the
4 bargaining unit that is providing the noninstructional support
5 services is given an opportunity to bid on the contract for the
6 noninstructional support services on an equal basis as other
7 bidders.

8 (g) The use of volunteers in providing services at its
9 schools.

10 (h) Decisions concerning use and staffing of experimental or
11 pilot programs and decisions concerning use of technology to
12 deliver educational programs and services and staffing to provide
13 that technology, or the impact of those decisions on individual
14 employees or the bargaining unit.

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

18 (j) Any decision made by the public school employer regarding
19 teacher placement, or the impact of that decision on an individual
20 employee or the bargaining unit.

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

1 hiring after a staffing or program reduction or any other personnel
2 determination resulting in the elimination of a position, as
3 provided under section 1248 of the revised school code, 1976 PA
4 451, MCL 380.1248, any decision made by the public school employer
5 pursuant to those policies, or the impact of those decisions on an
6 individual employee or the bargaining unit.

7 (l) Decisions about the development, content, standards,
8 procedures, adoption, and implementation of a public school
9 employer's performance evaluation system adopted under section 1249
10 of the revised school code, 1976 PA 451, MCL 380.1249, or under
11 1937 (Ex Sess) PA 4, MCL 38.71 to 38.191, decisions concerning the
12 content of a performance evaluation of an employee under those
13 provisions of law, or the impact of those decisions on an
14 individual employee or the bargaining unit.

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

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

6 (o) Decisions about the development, content, standards,
7 procedures, adoption, and implementation of the method of
8 compensation required under section 1250 of the revised school
9 code, 1976 PA 451, MCL 380.1250, decisions about how an employee
10 performance evaluation is used to determine performance-based
11 compensation under section 1250 of the revised school code, 1976 PA
12 451, MCL 380.1250, decisions concerning the performance-based
13 compensation of an individual employee, or the impact of those
14 decisions on an individual employee or the bargaining unit.

15 (p) Decisions about the development, format, content, and
16 procedures of the notification to parents and legal guardians
17 required under section 1249a of the revised school code, 1976 PA
18 451, MCL 380.1249a.

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

20 (4) Except as otherwise provided in subsection (3)(f), the
21 matters described in subsection (3) are prohibited subjects of
22 bargaining between a public school employer and a bargaining
23 representative of its employees, and, for the purposes of this act,
24 are within the sole authority of the public school employer to
25 decide.

26 (5) If a public school is placed in the state school
27 reform/redesign school district or is placed under a chief

1 executive officer under section 1280c of the revised school code,
2 1976 PA 451, MCL 380.1280c, then, for the purposes of collective
3 bargaining under this act, the state school reform/redesign officer
4 or the chief executive officer, as applicable, is the public school
5 employer of the public school employees of that public school for
6 as long as the public school is part of the state school
7 reform/redesign school district or operated by the chief executive
8 officer.

9 (6) A public school employer's collective bargaining duty
10 under this act and a collective bargaining agreement entered into
11 by a public school employer under this act are subject to all of
12 the following:

13 (a) Any effect on collective bargaining and any modification
14 of a collective bargaining agreement occurring under section 1280c
15 of the revised school code, 1976 PA 451, MCL 380.1280c.

16 (b) For a public school in which the superintendent of public
17 instruction implements 1 of the 4 school intervention models
18 described in section 1280c of the revised school code, 1976 PA 451,
19 MCL 380.1280c, if the school intervention model that is implemented
20 affects collective bargaining or requires modification of a
21 collective bargaining agreement, any effect on collective
22 bargaining and any modification of a collective bargaining
23 agreement under that school intervention model.

24 (7) Each collective bargaining agreement entered into between
25 a public employer and public employees under this act on or after
26 March 28, 2013 shall include a provision that allows an emergency
27 manager appointed under the local financial stability and choice

1 act, 2012 PA 436, MCL 141.1541 to 141.1575, to reject, modify, or
2 terminate the collective bargaining agreement as provided in the
3 local financial stability and choice act, 2012 PA 436, MCL 141.1541
4 to 141.1575. Provisions required by this subsection are prohibited
5 subjects of bargaining under this act.

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

12 (9) A unit of local government that enters into a consent
13 agreement under the local financial stability and choice act, 2012
14 PA 436, MCL 141.1541 to 141.1575, is not subject to subsection (1)
15 for the term of the consent agreement, as provided in the local
16 financial stability and choice act, 2012 PA 436, MCL 141.1541 to
17 141.1575.

18 (10) If the charter of a city, village, or township with a
19 population of 500,000 or more requires and specifies the method of
20 selection of a retirant member of the municipality's fire
21 department, police department, or fire and police department
22 pension or retirement board, the inclusion of the retirant member
23 on the board and the method of selection of that retirant member
24 are prohibited subjects of collective bargaining, and any provision
25 in a collective bargaining agreement that purports to modify that
26 charter requirement is void and of no effect.

27 (11) The following are prohibited subjects of bargaining and

1 are at the sole discretion of the public employer:

2 (a) A decision as to whether or not the public employer will
3 enter into an intergovernmental agreement to consolidate 1 or more
4 functions or services, to jointly perform 1 or more functions or
5 services, or to otherwise collaborate regarding 1 or more functions
6 or services.

7 (b) The procedures for obtaining a contract for the transfer
8 of functions or responsibilities under an agreement described in
9 subdivision (a).

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

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

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

19 **(14) FOR A COLLECTIVE BARGAINING AGREEMENT THAT A LOCAL UNIT**
20 **OF GOVERNMENT ENTERS INTO, RENEWS, OR MODIFIES AFTER JANUARY 1,**
21 **2017, THE ESTABLISHMENT OR CONTINUATION OF AN EMPLOYEE RETIREMENT**
22 **HEALTH CARE PLAN OR RETIREE TAX-DEFERRED HEALTH SAVINGS ACCOUNT**
23 **PLAN AND THE TERMS OF ANY SUCH PLAN ARE PROHIBITED SUBJECTS OF**
24 **BARGAINING. AS USED IN THIS SUBSECTION, "LOCAL UNIT OF GOVERNMENT"**
25 **MEANS THAT TERM AS DEFINED IN THE LOCAL UNIT OF GOVERNMENT**
26 **RETIREMENT ACT.**

27 Enacting section 1. This amendatory act does not take effect

1 unless Senate Bill No. _____ or House Bill No. 6074 (request no.
2 06264'16) of the 98th Legislature is enacted into law.