

HOUSE BILL NO. 4176

February 09, 2021, Introduced by Reps. Sabo, Camilleri, Morse, Brabec, Puri, Young, Manoogian, Steckloff, Sowerby, Cavanagh, Clemente, Breen, Pohutsky, Hope, Steenland, Shannon, Hood, Stone, Hammoud, Weiss, Witwer, Rabhi, Hertel, Aiyash, Scott, O'Neal, Tate, Garza, Thanedar, Ellison, Liberati, Kuppa, Brixie, Tyrone Carter, Sneller, Haadsma, Rogers, Cherry, Koleszar, Lasinski, Coleman, Cambensy, Peterson, Cynthia Johnson, Bolden, Whitsett, Anthony, Brenda Carter and Yancey and referred to the Committee on Workforce, Trades, and Talent.

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 9, 10, and 15 (MCL 423.209, 423.210, and 423.215), as amended by 2014 PA 414.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 9. ~~(1) Public employees may do any of the following:~~

2 ~~(a) Organize~~ **organize** together or form, join, or assist in
3 labor organizations; engage in lawful concerted activities for the
4 purpose of collective negotiation or bargaining or other mutual aid
5 and protection; or negotiate or bargain collectively with their
6 public employers through representatives of their own free choice.

7 ~~(b) Refrain from any or all of the activities identified in~~
8 ~~subdivision (a).~~

9 ~~(2) No person shall by force, intimidation, or unlawful~~
10 ~~threats compel or attempt to compel any public employee to do any~~
11 ~~of the following:~~

12 ~~(a) Become or remain a member of a labor organization or~~
13 ~~bargaining representative or otherwise affiliate with or~~
14 ~~financially support a labor organization or bargaining~~
15 ~~representative.~~

16 ~~(b) Refrain from engaging in employment or refrain from~~
17 ~~joining a labor organization or bargaining representative or~~
18 ~~otherwise affiliating with or financially supporting a labor~~
19 ~~organization or bargaining representative.~~

20 ~~(c) Pay to any charitable organization or third party an~~
21 ~~amount that is in lieu of, equivalent to, or any portion of dues,~~
22 ~~fees, assessments, or other charges or expenses required of members~~
23 ~~of or public employees represented by a labor organization or~~
24 ~~bargaining representative.~~

25 ~~(d) Pay the costs of an independent examiner verification as~~
26 ~~described in section 10(9).~~

27 ~~(3) A person who violates subsection (2) is liable for a civil~~
28 ~~fine of not more than \$500.00. A civil fine recovered under this~~
29 ~~section shall be submitted to the state treasurer for deposit in~~

1 ~~the general fund of this state.~~

2 Sec. 10. (1) A public employer or an officer or agent of a
3 public employer shall not do any of the following:

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

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

18 (c) Discriminate in regard to hire, terms, or other conditions
19 of employment to encourage or discourage membership in a labor
20 organization. **However, this act or any other law of this state does**
21 **not preclude a public employer from making an agreement with an**
22 **exclusive bargaining representative as described in section 11 to**
23 **require as a condition of employment that all other employees in**
24 **the bargaining unit pay to the exclusive bargaining representative**
25 **a service fee equivalent to the amount of dues uniformly required**
26 **of members of the exclusive bargaining representative.**

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

29 (e) Refuse to bargain collectively with the representatives of

1 its public employees, subject to section 11.

2 (2) It is the purpose of 1973 PA 25 to reaffirm the continuing
3 public policy of this state that the stability and effectiveness of
4 labor relations in the public sector require, if the requirement is
5 negotiated with the public employer, that all other employees in
6 the bargaining unit share fairly in the financial support of their
7 exclusive bargaining representative by paying to the exclusive
8 bargaining representative a service fee that may be equivalent to
9 the amount of dues uniformly required of members of the exclusive
10 bargaining representative.

11 (3) ~~(2)~~ A labor organization or its agents shall not do any of
12 the following:

13 (a) Restrain or coerce public employees in the exercise of the
14 rights guaranteed in section 9. This subdivision does not impair
15 the right of a labor organization to prescribe its own rules with
16 respect to the acquisition or retention of membership.

17 (b) Restrain or coerce a public employer in the selection of
18 its representatives for the purposes of collective bargaining or
19 the adjustment of grievances.

20 (c) Cause or attempt to cause a public employer to
21 discriminate against a public employee in violation of subsection
22 (1)(c).

23 (d) Refuse to bargain collectively with a public employer,
24 ~~provided-if~~ it is the representative of the public employer's
25 employees, subject to section 11.

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

29 ~~(a) Refrain or resign from membership in, voluntary~~

~~1 affiliation with, or voluntary financial support of a labor
2 organization or bargaining representative.~~

~~3 (b) Become or remain a member of a labor organization or
4 bargaining representative.~~

~~5 (c) Pay any dues, fees, assessments, or other charges or
6 expenses of any kind or amount, or provide anything of value to a
7 labor organization or bargaining representative.~~

~~8 (d) Pay to any charitable organization or third party any
9 amount that is in lieu of, equivalent to, or any portion of dues,
10 fees, assessments, or other charges or expenses required of members
11 of or public employees represented by a labor organization or
12 bargaining representative.~~

~~13 (4) The application of subsection (3) is subject to the
14 following:~~

~~15 (a) Subsection (3) does not apply to any of the following:~~

~~16 (i) A public police or fire department employee or any person
17 who seeks to become employed as a public police or fire department
18 employee as that term is defined under section 2 of 1969 PA 312,
19 MCL 423.232.~~

~~20 (ii) A state police trooper or sergeant who is granted rights
21 under section 5 of article XI of the state constitution of 1963 or
22 any individual who seeks to become employed as a state police
23 trooper or sergeant.~~

~~24 (b) Any person described in subdivision (a), or a labor
25 organization or bargaining representative representing persons
26 described in subdivision (a) and a public employer or this state
27 may agree that all employees in the bargaining unit shall share
28 fairly in the financial support of the labor organization or their
29 exclusive bargaining representative by paying a fee to the labor~~

~~organization or exclusive bargaining representative that may be equivalent to the amount of dues uniformly required of members of the labor organization or exclusive bargaining representative. Section 9(2) shall not be construed to interfere with the right of a public employer or this state and a labor organization or bargaining representative to enter into or lawfully administer such an agreement as it relates to the employees or persons described in subdivision (a).~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) Collective bargaining between a public school employer and

1 a bargaining representative of its employees ~~shall~~**must** not include
2 any of the following subjects:

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

11 (b) Establishment of the starting day for the school year and
12 of the amount of pupil contact time required to receive full state
13 school aid under section 1284 of the revised school code, 1976 PA
14 451, MCL 380.1284, and under section 101 of the state school aid
15 act of 1979, 1979 PA 94, MCL 388.1701.

16 (c) The composition of school improvement committees
17 established under section 1277 of the revised school code, 1976 PA
18 451, MCL 380.1277.

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

23 (e) The decision of whether or not to act as an authorizing
24 body to grant a contract to organize and operate 1 or more public
25 school academies under the revised school code, 1976 PA 451, MCL
26 380.1 to 380.1852.

27 (f) The decision of whether or not to contract with a third
28 party for 1 or more noninstructional support services; or the
29 procedures for obtaining the contract for noninstructional support

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

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

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

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

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

22 (k) Decisions about the development, content, standards,
23 procedures, adoption, and implementation of the public school
24 employer's policies regarding personnel decisions when conducting a
25 staffing or program reduction or any other personnel determination
26 resulting in the elimination of a position, when conducting a
27 recall from a staffing or program reduction or any other personnel
28 determination resulting in the elimination of a position, or in
29 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.

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

27 (n) Decisions about the format, timing, or number of classroom
28 observations conducted for the purposes of section 3a of article II
29 of 1937 (Ex Sess) PA 4, MCL 38.83a, decisions concerning the

1 classroom observation of an individual employee, or the impact of
2 those decisions on an individual employee or the bargaining unit.

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

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

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

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

23 ~~(5) If a public school is placed in the state school~~
24 ~~reform/redesign school district or is placed under a chief~~
25 ~~executive officer under section 1280c of the revised school code,~~
26 ~~1976 PA 451, MCL 380.1280c, then, for the purposes of collective~~
27 ~~bargaining under this act, the state school reform/redesign officer~~
28 ~~or the chief executive officer, as applicable, is the public school~~
29 ~~employer of the public school employees of that public school for~~

~~as long as the public school is part of the state school reform/redesign school district or operated by the chief executive officer.~~

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

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

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

~~(5) (7)~~ Each collective bargaining agreement entered into between a public employer and public employees under this act on or after March 28, 2013 ~~shall~~ **must** include a provision that allows an emergency manager appointed under the local financial stability and choice act, 2012 PA 436, MCL 141.1541 to 141.1575, to reject, modify, or terminate the collective bargaining agreement as provided in the local financial stability and choice act, 2012 PA 436, MCL 141.1541 to 141.1575. Provisions required by this subsection are prohibited subjects of bargaining under this act.

~~(6) (8)~~ Collective bargaining agreements under this act may be rejected, modified, or terminated pursuant to the local financial

1 stability and choice act, 2012 PA 436, MCL 141.1541 to 141.1575.
2 This act does not confer a right to bargain that would infringe on
3 the exercise of powers under the local financial stability and
4 choice act, 2012 PA 436, MCL 141.1541 to 141.1575.

5 ~~(7) (9)~~—A unit of local government that enters into a consent
6 agreement under the local financial stability and choice act, 2012
7 PA 436, MCL 141.1541 to 141.1575, is not subject to subsection (1)
8 for the term of the consent agreement, as provided in the local
9 financial stability and choice act, 2012 PA 436, MCL 141.1541 to
10 141.1575.

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

20 ~~(9) (11)~~—The following are prohibited subjects of bargaining
21 and are at the sole discretion of the public employer:

22 (a) A decision as to whether or not the public employer will
23 enter into an intergovernmental agreement to consolidate 1 or more
24 functions or services, to jointly perform 1 or more functions or
25 services, or to otherwise collaborate regarding 1 or more functions
26 or services.

27 (b) The procedures for obtaining a contract for the transfer
28 of functions or responsibilities under an agreement described in
29 subdivision (a).

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

3 **(10)** ~~(12)~~ Subsection ~~(11)~~ **(9)** does not relieve a public
4 employer of any duty established by law to collectively bargain
5 with its employees as to the effect of a contract described in
6 subsection ~~(11)(a)~~ **(9) (a)** on its employees.

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

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