

# HOUSE BILL No. 4003

January 13, 2011, Introduced by Rep. Opsommer and referred to the Committee on Commerce.

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; and to prescribe means of enforcement and penalties for the violation of the provisions of this act,"

by amending sections 1 and 14 (MCL 423.201 and 423.214), section 1 as amended by 1999 PA 204.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1       Sec. 1. (1) As used in this act:

2           (a) "Bargaining representative" means a labor organization  
3 recognized by an employer or certified by the commission as the  
4 sole and exclusive bargaining representative of certain employees  
5 of the employer.

6           (b) "Commission" means the employment relations commission  
7 created in section 3 of 1939 PA 176, MCL 423.3.

8           (c) "Intermediate school district" means that term as defined

1 in section 4 of the revised school code, 1976 PA 451, MCL 380.4.

2 (d) "Lockout" means the temporary withholding of work from a  
3 group of employees by means of shutting down the operation of the  
4 employer in order to bring pressure upon the affected employees or  
5 the bargaining representative, or both, to accept the employer's  
6 terms of settlement of a labor dispute.

7 (e) "Public employee" means a person holding a position by  
8 appointment or employment in the government of this state, in the  
9 government of 1 or more of the political subdivisions of this  
10 state, in the public school service, in a public or special  
11 district, in the service of an authority, commission, or board, or  
12 in any other branch of the public service, subject to the following  
13 exceptions:

14 (i) Beginning March 31, 1997, a person employed by a private  
15 organization or entity ~~that~~ WHO provides services under a time-  
16 limited contract with ~~the~~ THIS state or a political subdivision of  
17 ~~the~~ THIS state OR WHO RECEIVES A DIRECT OR INDIRECT GOVERNMENT  
18 SUBSIDY IN HIS OR HER PRIVATE EMPLOYMENT is not an employee of ~~the~~  
19 THIS state or that political subdivision, and is not a public  
20 employee. THIS PROVISION SHALL NOT BE SUPERSEDED BY ANY INTERLOCAL  
21 AGREEMENT, MEMORANDUM OF UNDERSTANDING, MEMORANDUM OF COMMITMENT,  
22 OR OTHER DOCUMENT SIMILAR TO THESE.

23 (ii) ~~If, within 30 days after the effective date of the~~  
24 ~~amendatory act that added this subparagraph,~~ IF BY APRIL 9, 2000 a  
25 public school employer that is the chief executive officer serving  
26 in a school district of the first class under part 5A of the  
27 revised school code, 1976 PA 451, MCL 380.371 to 380.376, issues an

1 order determining that it is in the best interests of the school  
2 district, then a public school administrator employed by a school  
3 district that is a school district of the first class under the  
4 revised school code, 1976 PA 451, MCL 380.1 to 380.1852, is not a  
5 public employee for purposes of this act. The exception under this  
6 subparagraph applies to public school administrators employed by  
7 that school district after the date of the order described in this  
8 subparagraph whether or not the chief executive officer remains in  
9 place in the school district. This exception does not prohibit the  
10 chief executive officer or board of a school district of the first  
11 class or its designee from having informal meetings with public  
12 school administrators to discuss wages and working conditions.

13 (f) "Public school academy" means a public school academy or  
14 strict discipline academy organized under the revised school code,  
15 1976 PA 451, MCL 380.1 to 380.1852.

16 (g) "Public school administrator" means a superintendent,  
17 assistant superintendent, chief business official, principal, or  
18 assistant principal employed by a school district, intermediate  
19 school district, or public school academy.

20 (h) "Public school employer" means a public employer that is  
21 the board of a school district, intermediate school district, or  
22 public school academy; is the chief executive officer of a school  
23 district in which a school reform board is in place under part 5A  
24 of the revised school code, 1976 PA 451, MCL 380.371 to 380.376; or  
25 is the governing board of a joint endeavor or consortium consisting  
26 of any combination of school districts, intermediate school  
27 districts, or public school academies.

1 (i) "School district" means that term as defined in section 6  
2 of the revised school code, 1976 PA 451, MCL 380.6, or a local act  
3 school district as defined in section 5 of the revised school code,  
4 1976 PA 451, MCL 380.5.

5 (j) "Strike" means the concerted failure to report for duty,  
6 the willful absence from one's position, the stoppage of work, or  
7 the abstinence in whole or in part from the full, faithful, and  
8 proper performance of the duties of employment for the purpose of  
9 inducing, influencing, or coercing a change in employment  
10 conditions, compensation, or the rights, privileges, or obligations  
11 of employment. For employees of a public school employer, strike  
12 also includes an action described in this subdivision that is taken  
13 for the purpose of protesting or responding to an act alleged or  
14 determined to be an unfair labor practice committed by the public  
15 school employer.

16 (2) This act does not limit, impair, or affect the right of a  
17 public employee to the expression or communication of a view,  
18 grievance, complaint, or opinion on any matter related to the  
19 conditions or compensation of public employment or their betterment  
20 as long as the expression or communication does not interfere with  
21 the full, faithful, and proper performance of the duties of  
22 employment.

23 Sec. 14. (1) An election shall not be directed in any  
24 bargaining unit or any subdivision within which, in the preceding  
25 12-month period, a valid election was held. The commission shall  
26 determine who is eligible to vote in the election and shall  
27 promulgate rules governing the election. In an election involving

1 more than 2 choices, ~~where~~**IF** none of the choices on the ballot  
2 receives a majority vote, a runoff election shall be conducted  
3 between the 2 choices receiving the 2 largest numbers of valid  
4 votes cast in the election. An election shall not be directed in  
5 any bargaining unit or subdivision thereof where there is in force  
6 and effect a valid collective bargaining agreement ~~which~~**THAT** was  
7 not prematurely extended and ~~which~~**THAT** is of fixed duration. A  
8 collective bargaining agreement shall not bar an election upon the  
9 petition of persons not parties thereto ~~where~~**IF** more than 3 years  
10 have elapsed since the agreement's execution or last timely  
11 renewal, whichever was later.

12 **(2) AN ELECTION SHALL NOT BE DIRECTED FOR, AND THE COMMISSION**  
13 **OR A PUBLIC EMPLOYER SHALL NOT RECOGNIZE, A BARGAINING UNIT OF A**  
14 **PUBLIC EMPLOYER CONSISTING OF INDIVIDUALS WHO ARE NOT PUBLIC**  
15 **EMPLOYEES. A BARGAINING UNIT THAT IS FORMED OR RECOGNIZED IN**  
16 **VIOLATION OF THIS SUBSECTION IS INVALID AND VOID.**

17 Enacting section 1. This amendatory act is curative, reflects  
18 the original intent of the legislature, and is retroactive.