

# SENATE BILL No. 96

January 29, 2013, Introduced by Senators HOPGOOD, ANDERSON, GREGORY, HOOD, WARREN, SMITH, BIEDA, YOUNG, HUNTER, WHITMER and JOHNSON and referred to the Committee on Reforms, Restructuring and Reinventing.

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), sections 9, 10, and 15 as amended by 2012 PA 349.

**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

1 public employers through representatives of their own free choice.

2 ~~—— (b) Refrain from any or all of the activities identified in~~  
3 ~~subdivision (a).~~

4 ~~—— (2) No person shall by force, intimidation, or unlawful~~  
5 ~~threats compel or attempt to compel any public employee to do any~~  
6 ~~of the following:~~

7 ~~—— (a) Become or remain a member of a labor organization or~~  
8 ~~bargaining representative or otherwise affiliate with or~~  
9 ~~financially support a labor organization or bargaining~~  
10 ~~representative.~~

11 ~~—— (b) Refrain from engaging in employment or refrain from~~  
12 ~~joining a labor organization or bargaining representative or~~  
13 ~~otherwise affiliating with or financially supporting a labor~~  
14 ~~organization or bargaining representative.~~

15 ~~—— (c) Pay to any charitable organization or third party an~~  
16 ~~amount that is in lieu of, equivalent to, or any portion of dues,~~  
17 ~~fees, assessments, or other charges or expenses required of members~~  
18 ~~of or public employees represented by a labor organization or~~  
19 ~~bargaining representative.~~

20 ~~—— (3) A person who violates subsection (2) is liable for a civil~~  
21 ~~fine of not more than \$500.00. A civil fine recovered under this~~  
22 ~~section shall be submitted to the state treasurer for deposit in~~  
23 ~~the general fund of this state.~~

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

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

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

13 (c) Discriminate in regard to hire, terms, or other conditions  
14 of employment to encourage or discourage membership in a labor  
15 organization. **HOWEVER, THIS ACT OR ANY OTHER LAW OF THIS STATE DOES**  
16 **NOT PRECLUDE A PUBLIC EMPLOYER FROM MAKING AN AGREEMENT WITH AN**  
17 **EXCLUSIVE BARGAINING REPRESENTATIVE AS DESCRIBED IN SECTION 11 TO**  
18 **REQUIRE AS A CONDITION OF EMPLOYMENT THAT ALL EMPLOYEES IN THE**  
19 **BARGAINING UNIT PAY TO THE EXCLUSIVE BARGAINING REPRESENTATIVE A**  
20 **SERVICE FEE EQUIVALENT TO THE AMOUNT OF DUES UNIFORMLY REQUIRED OF**  
21 **MEMBERS OF THE EXCLUSIVE BARGAINING REPRESENTATIVE.**

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

24 (e) Refuse to bargain collectively with the representatives of  
25 its public employees, subject to the provisions of section 11.

26 (2) **IT IS THE PURPOSE OF 1973 PA 25 TO REAFFIRM THE CONTINUING**  
27 **PUBLIC POLICY OF THIS STATE THAT THE STABILITY AND EFFECTIVENESS OF**

1 LABOR RELATIONS IN THE PUBLIC SECTOR REQUIRE, IF THE REQUIREMENT IS  
2 NEGOTIATED WITH THE PUBLIC EMPLOYER, THAT ALL EMPLOYEES IN THE  
3 BARGAINING UNIT SHALL SHARE FAIRLY IN THE FINANCIAL SUPPORT OF  
4 THEIR EXCLUSIVE BARGAINING REPRESENTATIVE BY PAYING TO THE  
5 EXCLUSIVE BARGAINING REPRESENTATIVE A SERVICE FEE THAT MAY BE  
6 EQUIVALENT TO THE AMOUNT OF DUES UNIFORMLY REQUIRED OF MEMBERS OF  
7 THE EXCLUSIVE BARGAINING REPRESENTATIVE.

8 (3) ~~(2)~~—A labor organization or its agents shall not do any of  
9 the following:

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

14 (b) Restrain or coerce a public employer in the selection of  
15 its representatives for the purposes of collective bargaining or  
16 the adjustment of grievances.

17 (c) Cause or attempt to cause a public employer to  
18 discriminate against a public employee in violation of subsection  
19 (1)(c).

20 (d) Refuse to bargain collectively with a public employer ~~τ~~  
21 ~~provided~~—~~IF~~ it is the representative of the public employer's  
22 employees, subject to section 11.

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

26 ~~——(a) Refrain or resign from membership in, voluntary~~  
27 ~~affiliation with, or voluntary financial support of a labor~~

1 ~~organization or bargaining representative.~~

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

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

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

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

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

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

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

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

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

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

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

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

17 ~~—— (5) An agreement, contract, understanding, or practice between~~  
18 ~~or involving a public employer, labor organization, or bargaining~~  
19 ~~representative that violates subsection (3) is unlawful and~~  
20 ~~unenforceable. This subsection applies only to an agreement,~~  
21 ~~contract, understanding, or practice that takes effect or is~~  
22 ~~extended or renewed after the effective date of the amendatory act~~  
23 ~~that added this subsection.~~

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

1 ~~—— (7) For fiscal year 2012-2013, \$1,000,000.00 is appropriated~~  
2 ~~to the department of licensing and regulatory affairs to be~~  
3 ~~expended to do all of the following regarding the amendatory act~~  
4 ~~that added this subsection:~~

5 ~~—— (a) Respond to public inquiries regarding the amendatory act.~~

6 ~~—— (b) Provide the commission with sufficient staff and other~~  
7 ~~resources to implement the amendatory act.~~

8 ~~—— (c) Inform public employers, public employees, and labor~~  
9 ~~organizations concerning their rights and responsibilities under~~  
10 ~~the amendatory act.~~

11 ~~—— (d) Any other purposes that the director of the department of~~  
12 ~~licensing and regulatory affairs determines in his or her~~  
13 ~~discretion are necessary to implement the amendatory act.~~

14 ~~—— (8) A person, public employer, or labor organization that~~  
15 ~~violates subsection (3) is liable for a civil fine of not more than~~  
16 ~~\$500.00. A civil fine recovered under this section shall be~~  
17 ~~submitted to the state treasurer for deposit in the general fund of~~  
18 ~~this state.~~

19 (4) ~~(9)~~ By March 1 of each year, each exclusive bargaining  
20 representative that represents public employees in this state shall  
21 file with the commission an independent audit of all expenditures  
22 attributed to the costs of collective bargaining, contract  
23 administration, and grievance adjustment during the prior calendar  
24 year. The commission shall make the audits available to the public  
25 on the commission's website. ~~For fiscal year 2011-2012, \$100,000.00~~  
26 ~~is appropriated to the commission for the costs of implementing~~  
27 ~~this subsection.~~

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

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

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

26       (3) Collective bargaining between a public school employer and  
27 a bargaining representative of its employees shall not include any



1 of the following subjects:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 than the arbitrary and capricious standard provided under section 1  
2 of article IV of 1937 (Ex Sess) PA 4, MCL 38.101.

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

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

17 (p) Decisions about the development, format, content, and  
18 procedures of the notification to parents and legal guardians  
19 required under section 1249a of the revised school code, 1976 PA  
20 451, MCL 380.1249a.

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

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

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

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

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

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

26           (7) Each collective bargaining agreement entered into between  
27 a public employer and public employees under this act after March

1 16, 2011 shall include a provision that allows an emergency manager  
2 appointed under the local government and school district fiscal  
3 accountability act, 2011 PA 4, MCL 141.1501 to 141.1531, to reject,  
4 modify, or terminate the collective bargaining agreement as  
5 provided in the local government and school district fiscal  
6 accountability act, 2011 PA 4, MCL 141.1501 to 141.1531. Provisions  
7 required by this subsection are prohibited subjects of bargaining  
8 under this act.

9 (8) Collective bargaining agreements under this act may be  
10 rejected, modified, or terminated pursuant to the local government  
11 and school district fiscal accountability act, 2011 PA 4, MCL  
12 141.1501 to 141.1531. This act does not confer a right to bargain  
13 that would infringe on the exercise of powers under the local  
14 government and school district fiscal accountability act, 2011 PA  
15 4, MCL 141.1501 to 141.1531.

16 (9) A unit of local government that enters into a consent  
17 agreement under the local government and school district fiscal  
18 accountability act, 2011 PA 4, MCL 141.1501 to 141.1531, is not  
19 subject to subsection (1) for the term of the consent agreement, as  
20 provided in the local government and school district fiscal  
21 accountability act, 2011 PA 4, MCL 141.1501 to 141.1531.

22 (10) If the charter of a city, village, or township with a  
23 population of 500,000 or more requires and specifies the method of  
24 selection of a retirant member of the municipality's fire  
25 department, police department, or fire and police department  
26 pension or retirement board, the inclusion of the retirant member  
27 on the board and the method of selection of that retirant member

1 are prohibited subjects of collective bargaining, and any provision  
2 in a collective bargaining agreement that purports to modify that  
3 charter requirement is void and of no effect.

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

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

11 (b) The procedures for obtaining a contract for the transfer  
12 of functions or responsibilities under an agreement described in  
13 subdivision (a).

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

16 (12) Nothing in subsection (11) relieves a public employer of  
17 any duty established by law to collectively bargain with its  
18 employees as to the effect of a contract described in subsection  
19 (11) (a) on its employees.