

SUBSTITUTE FOR  
HOUSE BILL NO. 5387

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 11, 13, and 15 (MCL 423.211, 423.213, and 423.215), section 15 as amended by 2014 PA 414.

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

1           Sec. 11. Representatives designated or selected for purposes  
2 of collective bargaining by the majority of the public employees in  
3 a unit appropriate for such purposes, **AS PROVIDED IN SECTION 13,**  
4 shall be the exclusive representatives of all the public employees  
5 in ~~such~~-**THAT** unit for the purposes of collective bargaining in  
6 respect to rates of pay, wages, hours of employment, or other

1 conditions of employment ~~and~~ shall be so recognized by the public  
2 employer. ~~Provided, That~~ **HOWEVER**, any individual employee at any  
3 time may present grievances to his **OR HER** employer and have the  
4 grievances adjusted, without intervention of the bargaining  
5 representative, if the adjustment is not inconsistent with the  
6 terms of a collective bargaining contract or agreement then in  
7 effect ~~provided that~~ **AND** the bargaining representative has been  
8 given opportunity to be present at ~~such~~ **THE** adjustment.

9       Sec. 13. The commission shall decide in each case, to ~~insure~~  
10 **ENSURE** public employees the full benefit of their right to self-  
11 organization, to collective bargaining, and otherwise to effectuate  
12 the policies of this act, the unit appropriate for the purposes of  
13 collective bargaining as provided in section 9e of ~~Act No. 176 of~~  
14 ~~the Public Acts of 1939, as amended, being section 423.9e of the~~  
15 ~~Michigan Compiled Laws: Provided, That in 1939 PA 176, MCL 423.9E.~~  
16 **IN** any fire department, or any department in whole or **IN** part  
17 engaged in, or having the responsibility of, fire fighting, ~~no~~ **A**  
18 person subordinate to a fire commission, fire commissioner, safety  
19 director, or other similar administrative agency or administrator ~~and~~  
20 shall ~~be deemed~~ **NOT BE CONSIDERED** to be a supervisor.

21       Sec. 15. (1) A public employer shall bargain collectively with  
22 the representatives of its employees as described in section 11 and  
23 may make and enter into collective bargaining agreements with those  
24 representatives. Except as otherwise provided in this section, for  
25 the purposes of this section, to bargain collectively is to perform  
26 the mutual obligation of the employer and the representative of the  
27 employees to meet at reasonable times and confer in good faith with

1 respect to wages, hours, and other terms and conditions of  
2 employment, or to negotiate an agreement, or any question arising  
3 under the agreement, and to execute a written contract, ordinance,  
4 or resolution incorporating any agreement reached if requested by  
5 either party, but this obligation does not compel either party to  
6 agree to a proposal or make a concession.

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

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

14 (a) Who is or will be the policyholder of an employee group  
15 insurance benefit. This subdivision does not affect the duty to  
16 bargain with respect to types and levels of benefits and coverages  
17 for employee group insurance. A change or proposed change in a type  
18 or to a level of benefit, policy specification, or coverage for  
19 employee group insurance shall be bargained by the public school  
20 employer and the bargaining representative before the change may  
21 take effect.

22 (b) Establishment of the starting day for the school year and  
23 of the amount of pupil contact time required to receive full state  
24 school aid under section 1284 of the revised school code, 1976 PA  
25 451, MCL 380.1284, and under section 101 of the state school aid  
26 act of 1979, 1979 PA 94, MCL 388.1701. **IN ADDITION, FOR A PUBLIC**  
27 **SCHOOL EMPLOYER THAT IS A COMMUNITY DISTRICT ORGANIZED UNDER THE**

1 REVISED SCHOOL CODE, 1976 PA 451, MCL 380.1 TO 380.1852, COLLECTIVE  
2 BARGAINING BETWEEN THE PUBLIC SCHOOL EMPLOYER AND A BARGAINING  
3 REPRESENTATIVE OF ITS EMPLOYEES SHALL NOT INCLUDE ANY DECISION  
4 RELATED TO AN EMPLOYEE'S WORK SCHEDULE OR THE SCHOOL CALENDAR OR  
5 THE IMPACT OF THAT DECISION ON AN INDIVIDUAL EMPLOYEE OR THE  
6 BARGAINING UNIT.

7 (c) The composition of school improvement committees  
8 established under section 1277 of the revised school code, 1976 PA  
9 451, MCL 380.1277.

10 (d) The decision of whether or not to provide or allow  
11 interdistrict or intradistrict open enrollment opportunity in a  
12 school district or the selection of grade levels or schools in  
13 which to allow an open enrollment opportunity.

14 (e) The decision of whether or not to act as an authorizing  
15 body to grant a contract to organize and operate 1 or more public  
16 school academies under the revised school code, 1976 PA 451, MCL  
17 380.1 to 380.1852.

18 (f) The decision of whether or not to contract with a third  
19 party for 1 or more noninstructional support services; or the  
20 procedures for obtaining the contract for noninstructional support  
21 services other than bidding described in this subdivision; or the  
22 identity of the third party; or the impact of the contract for  
23 noninstructional support services on individual employees or the  
24 bargaining unit. However, ~~this subdivision~~ **THE PRECEDING SENTENCE**  
25 applies only if the bargaining unit that is providing the  
26 noninstructional support services is given an opportunity to bid on  
27 the contract for the noninstructional support services on an equal

1 basis as other bidders.

2 (g) The use of volunteers in providing services at its  
3 schools.

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

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

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

15 (k) Decisions about the development, content, standards,  
16 procedures, adoption, and implementation of the public school  
17 employer's policies regarding personnel decisions when conducting a  
18 staffing or program reduction or any other personnel determination  
19 resulting in the elimination of a position, when conducting a  
20 recall from a staffing or program reduction or any other personnel  
21 determination resulting in the elimination of a position, or in  
22 hiring after a staffing or program reduction or any other personnel  
23 determination resulting in the elimination of a position, as  
24 provided under section 1248 of the revised school code, 1976 PA  
25 451, MCL 380.1248, any decision made by the public school employer  
26 pursuant to those policies, or the impact of those decisions on an  
27 individual employee or the bargaining unit.

1           (l) Decisions about the development, content, standards,  
2 procedures, adoption, and implementation of a public school  
3 employer's performance evaluation system adopted under section 1249  
4 of the revised school code, 1976 PA 451, MCL 380.1249, or under  
5 1937 (Ex Sess) PA 4, MCL 38.71 to 38.191, decisions concerning the  
6 content of a performance evaluation of an employee under those  
7 provisions of law, or the impact of those decisions on an  
8 individual employee or the bargaining unit.

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

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

27           (o) Decisions about the development, content, standards,

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

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

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

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

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

1 reform/redesign school district or operated by the chief executive  
2 officer.

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

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

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

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

27 (8) Collective bargaining agreements under this act may be



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

6 (9) A unit of local government that enters into a consent  
7 agreement under the local financial stability and choice act, 2012  
8 PA 436, MCL 141.1541 to 141.1575, is not subject to subsection (1)  
9 for the term of the consent agreement, as provided in the local  
10 financial stability and choice act, 2012 PA 436, MCL 141.1541 to  
11 141.1575.

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

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

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

1 (b) The procedures for obtaining a contract for the transfer  
2 of functions or responsibilities under an agreement described in  
3 subdivision (a).

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

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

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

13 **(14) EACH COLLECTIVE BARGAINING AGREEMENT THAT IS ENTERED INTO**  
14 **BETWEEN A PUBLIC SCHOOL EMPLOYER AND PUBLIC EMPLOYEES OR A**  
15 **BARGAINING UNIT UNDER THIS ACT ON OR AFTER THE EFFECTIVE DATE OF**  
16 **THE AMENDATORY ACT THAT ADDED THIS SUBSECTION SHALL INCLUDE A**  
17 **PROVISION, WHICH PROVISION IS A PROHIBITED SUBJECT OF BARGAINING**  
18 **UNDER THIS ACT, STATING THAT IF THE PUBLIC SCHOOL EMPLOYER BECOMES**  
19 **A COMMUNITY DISTRICT UNDER THE REVISED SCHOOL CODE, 1976 PA 451,**  
20 **MCL 380.1 TO 380.1852, AND THE FUNCTIONS AND RESPONSIBILITIES OF**  
21 **THE PUBLIC SCHOOL EMPLOYER ARE TRANSFERRED TO THE COMMUNITY**  
22 **DISTRICT, THEN ALL OF THE FOLLOWING APPLY:**

23 **(A) THE COMMUNITY DISTRICT IS NOT THE SUCCESSOR EMPLOYER TO**  
24 **ANY EXISTING COLLECTIVE BARGAINING AGREEMENT OF THE PUBLIC SCHOOL**  
25 **EMPLOYER AND IS NOT SUBJECT TO A COLLECTIVE BARGAINING AGREEMENT**  
26 **THAT APPLIED TO THE PUBLIC SCHOOL EMPLOYER FROM WHICH FUNCTIONS AND**  
27 **RESPONSIBILITIES WERE TRANSFERRED.**

1 (B) THE COMMUNITY DISTRICT IS NOT A SUCCESSOR EMPLOYER FOR ANY  
2 PURPOSE.

3 (C) EXCEPT AS PROVIDED IN SECTION 12B(4)(G) OF THE REVISED  
4 SCHOOL CODE, 1976 PA 451, MCL 380.12B, THE COMMUNITY DISTRICT IS  
5 NOT CONSIDERED THE EMPLOYER OF ANY EMPLOYEE WHO WORKED AT A PUBLIC  
6 SCHOOL FROM WHICH FUNCTIONS AND RESPONSIBILITIES WERE TRANSFERRED  
7 TO THE COMMUNITY DISTRICT.

8 (D) ANY RIGHTS AND OBLIGATIONS UNDER EXISTING COLLECTIVE  
9 BARGAINING AGREEMENTS OR INDIVIDUAL CONTRACTS ENTERED INTO BY THE  
10 PUBLIC SCHOOL EMPLOYER REMAIN THE SOLE RESPONSIBILITY OF THAT  
11 PUBLIC SCHOOL EMPLOYER AND ARE NOT THE RESPONSIBILITY OF THE  
12 COMMUNITY DISTRICT.

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

15 Enacting section 2. This amendatory act does not take effect  
16 unless House Bill No. 5384 of the 98th Legislature is enacted into  
17 law.