

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 2a and 6 (MCL 423.202a and 423.206), section 2a as added and section 6 as amended by 1994 PA 112.

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

1       Sec. 2a. (1) ~~If a public school employer alleges that there is~~  
2 ~~a strike by 1 or more public school employees in violation of~~  
3 ~~section 2, the public school employer shall notify the commission~~  
4 ~~of the full or partial days a public school employee was engaged in~~  
5 ~~the alleged strike.~~ **UPON BELIEF THAT CONDITIONS CONSTITUTING A**  
6 **STRIKE BY 1 OR MORE PUBLIC EMPLOYEES IN VIOLATION OF SECTION 2**

1 EXIST, THE PUBLIC SCHOOL EMPLOYER OR THE SUPERINTENDENT OF PUBLIC  
2 INSTRUCTION, AFTER CONSULTATION WITH THE PUBLIC SCHOOL EMPLOYER,  
3 SHALL NOTIFY THE COMMISSION OF THE FULL OR PARTIAL DAYS THAT THE  
4 ALLEGED STRIKE HAS OCCURRED AND THE NAME AND ADDRESS OF THE  
5 BARGAINING REPRESENTATIVE. THE NOTICE SHALL BE ACCOMPANIED BY A  
6 SWORN AFFIDAVIT, SUPPORTED BY ANY AVAILABLE DOCUMENTARY PROOF,  
7 CONTAINING A CLEAR AND CONCISE STATEMENT OF THE FACTS UPON WHICH  
8 THE PUBLIC SCHOOL EMPLOYER OR THE SUPERINTENDENT OF PUBLIC  
9 INSTRUCTION RELIES TO ESTABLISH A VIOLATION OF SECTION 2. THE  
10 PUBLIC SCHOOL EMPLOYER OR THE SUPERINTENDENT OF PUBLIC INSTRUCTION  
11 SHALL CONCURRENTLY SERVE THE BARGAINING REPRESENTATIVE WITH A COPY  
12 OF THE NOTICE. IF THE PUBLIC SCHOOL EMPLOYER OR THE SUPERINTENDENT  
13 OF PUBLIC INSTRUCTION HAS NOT NOTIFIED THE COMMISSION OF AN  
14 ALLEGATION OF A STRIKE UNDER THIS SUBSECTION, A PARENT OR LEGAL  
15 GUARDIAN OF A CHILD WHO IS ENROLLED IN THE SCHOOL DISTRICT MAY  
16 NOTIFY THE COMMISSION OF THE FULL OR PARTIAL DAYS THAT 1 OR MORE  
17 PUBLIC SCHOOL EMPLOYEES WERE ENGAGED IN AN ALLEGED STRIKE.

18 (2) If a bargaining representative alleges that there is a  
19 lockout by a public school employer in violation of section 2, the  
20 bargaining representative shall notify the commission of the full  
21 or partial days of the alleged lockout.

22 (3) Within ~~60~~15 days after receipt of a notice ~~made pursuant~~  
23 ~~to~~ UNDER subsection (1) or (2), the commission shall conduct a  
24 hearing to determine if ~~there has been a violation and shall issue~~  
25 ~~its decision and order.~~ CONDITIONS CONSTITUTING A STRIKE BY 1 OR  
26 MORE PUBLIC SCHOOL EMPLOYEES IN VIOLATION OF SECTION 2 OR A LOCKOUT  
27 EXIST. THE PERSON GIVING NOTICE UNDER SUBSECTION (1) OR (2) BEARS

1 THE BURDEN OF PROOF AT THE HEARING ON THE ALLEGATIONS. THE  
2 COMMISSION SHALL ISSUE ITS DECISION WITHIN 3 BUSINESS DAYS AFTER  
3 THE CLOSE OF THE HEARING. A hearing conducted under this subsection  
4 is separate and distinct from, and is not subject to the procedures  
5 and timelines of, a proceeding conducted under section 6.

6 (4) IF THE COMMISSION DETERMINES THAT CONDITIONS CONSTITUTING  
7 A STRIKE IN VIOLATION OF SECTION 2 EXIST, THE SUPERINTENDENT OF  
8 PUBLIC INSTRUCTION OR THE PUBLIC SCHOOL EMPLOYER SHALL, WITHIN 5  
9 BUSINESS DAYS AFTER NOTIFICATION OF THE DECISION, NOTIFY THE  
10 COMMISSION OF THE NAME AND HOME ADDRESS OF EACH PUBLIC SCHOOL  
11 EMPLOYEE ALLEGED TO HAVE PARTICIPATED IN THE STRIKE. THE  
12 SUPERINTENDENT OF PUBLIC INSTRUCTION OR THE PUBLIC SCHOOL EMPLOYER  
13 SHALL, WITHIN THE SAME PERIOD, SERVE WITH OR MAIL TO EACH NAMED  
14 PUBLIC SCHOOL EMPLOYEE A COPY OF THE NOTICE.

15 (5) A PUBLIC SCHOOL EMPLOYEE NAMED IN THE NOTICE UNDER  
16 SUBSECTION (4) AND ALLEGED TO HAVE BEEN EITHER ABSENT FROM WORK  
17 WITHOUT PERMISSION OF THE PUBLIC SCHOOL EMPLOYER OR TO HAVE  
18 ABSTAINED WHOLLY OR IN PART FROM THE FULL PERFORMANCE OF HIS OR HER  
19 NORMAL DUTIES WITHOUT PERMISSION ON A DATE WHEN A STRIKE OCCURRED  
20 IS PRESUMED TO HAVE ENGAGED IN THE STRIKE ON THAT DATE.

21 (6) A PUBLIC SCHOOL EMPLOYEE PRESUMED TO HAVE ENGAGED IN A  
22 STRIKE IN VIOLATION OF SECTION 2 MAY CHALLENGE THAT PRESUMPTION  
23 WITHIN 10 DAYS AFTER THE DATE THE NOTICE WAS SERVED OR MAILED TO  
24 THE EMPLOYEE UNDER SUBSECTION (4), BY FILING WITH THE COMMISSION  
25 AND CAUSING TO BE SERVED ON THE SUPERINTENDENT OF PUBLIC  
26 INSTRUCTION OR THE PUBLIC SCHOOL EMPLOYER, A SWORN AFFIDAVIT,  
27 SUPPORTED BY AVAILABLE DOCUMENTARY PROOF, CONTAINING A CLEAR AND

1 CONCISE STATEMENT OF THE FACTS UPON WHICH HE OR SHE RELIES TO SHOW  
2 THAT THE DETERMINATION WAS INCORRECT.

3 (7) THE PUBLIC SCHOOL EMPLOYER SHALL DEDUCT FROM THE ANNUAL  
4 SALARY OF A PUBLIC SCHOOL EMPLOYEE NAMED IN A NOTICE UNDER  
5 SUBSECTION (4) WHO FAILS TO FILE AN AFFIDAVIT AND SUPPORTING PROOF  
6 UNDER SUBSECTION (6) AN AMOUNT EQUAL TO 1 DAY OF PAY FOR THAT  
7 PUBLIC SCHOOL EMPLOYEE FOR EACH FULL OR PARTIAL DAY THAT HE OR SHE  
8 ENGAGED IN THE STRIKE. THE PUBLIC SCHOOL EMPLOYEE'S ANNUAL SALARY  
9 IS THE ANNUAL SALARY THAT IS ESTABLISHED IN THE APPLICABLE CONTRACT  
10 IN EFFECT AT THE TIME OF THE STRIKE OR, IF NO APPLICABLE CONTRACT  
11 IS IN EFFECT AT THE TIME OF THE STRIKE, IN THE APPLICABLE CONTRACT  
12 IN EFFECT AT THE TIME OF THE DEDUCTION. HOWEVER, IF NO APPLICABLE  
13 CONTRACT IS IN EFFECT AT EITHER OF THOSE TIMES, THE PUBLIC SCHOOL  
14 EMPLOYEE'S ANNUAL SALARY SHALL BE CONSIDERED TO BE THE ANNUAL  
15 SALARY THAT APPLIED OR WOULD HAVE APPLIED TO THE PUBLIC SCHOOL  
16 EMPLOYEE IN THE MOST RECENT APPLICABLE CONTRACT IN EFFECT BEFORE  
17 THE STRIKE. A PUBLIC SCHOOL EMPLOYER SHALL COMPLY PROMPTLY WITH  
18 THIS SUBSECTION. A DEDUCTION UNDER THIS SUBSECTION IS NOT A  
19 DEMOTION FOR PURPOSES OF 1937 (EX SESS) PA 4, MCL 38.71 TO 38.191.

20 (8) IF A PUBLIC SCHOOL EMPLOYEE NAMED IN A NOTICE UNDER  
21 SUBSECTION (4) FILES A TIMELY AFFIDAVIT AND SUPPORTING PROOF, A  
22 COMMISSIONER, THE COMMISSION, OR AN AGENT OF THE COMMISSION SHALL,  
23 WITHIN 15 DAYS AFTER RECEIPT OF THE AFFIDAVIT AND SUPPORTING PROOF,  
24 COMMENCE A HEARING TO DETERMINE WHETHER THE PUBLIC SCHOOL EMPLOYEE  
25 ENGAGED IN A STRIKE IN VIOLATION OF SECTION 2. THE PUBLIC SCHOOL  
26 EMPLOYEE BEARS THE BURDEN OF PROOF AT THE HEARING. A HEARING  
27 CONDUCTED UNDER THIS SUBSECTION IS SEPARATE AND DISTINCT FROM, AND

1 IS NOT SUBJECT TO THE PROCEDURES AND TIMELINES OF, A PROCEEDING  
2 UNDER SECTION 6.

3 (9) ~~(4) If, after a hearing under subsection (3), a majority~~  
4 ~~of the commission finds that 1 or more public school employees~~  
5 ~~engaged in a strike in violation of section 2, the commission shall~~  
6 ~~fine each public school employee an amount equal to 1 day of pay~~  
7 ~~for that public school employee for each full or partial day that~~  
8 ~~he or she engaged in the strike and shall fine the bargaining~~  
9 ~~representative of the public school employee or employees \$5,000.00~~  
10 ~~for each full or partial day the public school employee or~~  
11 ~~employees engaged in the strike.~~**AFTER A HEARING UNDER SUBSECTION**  
12 **(8), IF A COMMISSIONER, THE COMMISSION, OR AN AGENT OF THE**  
13 **COMMISSION DETERMINES BY THE PREPONDERANCE OF THE EVIDENCE THAT THE**  
14 **PUBLIC SCHOOL EMPLOYEE ENGAGED IN A STRIKE IN VIOLATION OF SECTION**  
15 **2, THE INDIVIDUAL OR COMMISSION SHALL STATE ITS FINDINGS OF FACT**  
16 **AND SHALL ISSUE AND CAUSE TO BE SERVED ON THE PUBLIC SCHOOL**  
17 **EMPLOYEE AN ORDER REQUIRING THE EMPLOYEE TO CEASE AND DESIST FROM**  
18 **THE UNLAWFUL CONDUCT AND THE PUBLIC SCHOOL EMPLOYER TO DEDUCT FROM**  
19 **THE ANNUAL SALARY, AS DESCRIBED IN SUBSECTION (7), OF THE PUBLIC**  
20 **SCHOOL EMPLOYEE AN AMOUNT EQUAL TO 1 DAY OF PAY FOR THAT PUBLIC**  
21 **SCHOOL EMPLOYEE FOR EACH FULL OR PARTIAL DAY THAT HE OR SHE ENGAGED**  
22 **IN THE STRIKE. IF THE EVIDENCE IS PRESENTED BEFORE A COMMISSIONER**  
23 **OR AGENT OF THE COMMISSION, THE COMMISSIONER OR AGENT SHALL ISSUE**  
24 **AND CAUSE TO BE SERVED ON THE PARTIES TO THE PROCEEDING A PROPOSED**  
25 **DECISION, TOGETHER WITH A RECOMMENDED ORDER, WHICH SHALL BE FILED**  
26 **WITH THE COMMISSION. IF A PARTY DOES NOT FILE AN EXCEPTION WITHIN**  
27 **20 DAYS AFTER SERVICE OF THE PROPOSED DECISION, THE RECOMMENDED**

1 ORDER BECOMES THE ORDER OF THE COMMISSION AND IS EFFECTIVE AS  
2 STATED IN THE ORDER.

3 (10) ~~(5)~~—If, after a hearing under subsection (3), a majority  
4 of the commission finds that a public school employer instituted a  
5 lockout in violation of section 2, the commission shall fine the  
6 public school employer \$5,000.00 for each full or partial day of  
7 the lockout and shall fine each member of the public school  
8 employer's governing board \$250.00 for each full or partial day of  
9 the lockout. **THE FINE SHALL BE PAID TO THE COMMISSION AND**  
10 **TRANSMITTED AS PROVIDED IN SUBSECTION (11).**

11 ~~——(6) If the commission imposes a fine against a public school~~  
12 ~~employee under subsection (4) and the public school employee~~  
13 ~~continues to be employed by a public school employer, the~~  
14 ~~commission shall order the public school employer to deduct the~~  
15 ~~fine from the public school employee's annual salary. The public~~  
16 ~~school employee's annual salary is the annual salary that is~~  
17 ~~established in the applicable contract in effect at the time of the~~  
18 ~~strike or, if no applicable contract is in effect at the time of~~  
19 ~~the strike, in the applicable contract in effect at the time of the~~  
20 ~~decision and order. However, if no applicable contract is in effect~~  
21 ~~at either of those times, the public school employee's annual~~  
22 ~~salary shall be considered to be the annual salary that applied or~~  
23 ~~would have applied to the public school employee in the most recent~~  
24 ~~applicable contract in effect before the strike. A public school~~  
25 ~~employer shall comply promptly with an order under this subsection.~~  
26 ~~A deduction under this subsection is not a demotion for the~~  
27 ~~purposes of Act No. 4 of the Extra Session of 1937, being sections~~

1 ~~38.71 to 38.191 of the Michigan Compiled Laws.~~

2       (11) ~~(7) The commission shall transmit money received from~~  
3  ~~fines imposed under this section, and a public school employer~~  
4  ~~shall transmit money deducted pursuant to an order under subsection~~  
5  ~~(6), IF A PUBLIC SCHOOL EMPLOYER DOES NOT DEDUCT MONEY FROM A~~  
6  ~~PUBLIC SCHOOL EMPLOYEE'S PAY PURSUANT TO AN ORDER UNDER THIS~~  
7  ~~SECTION OR IF THE COMMISSION DOES NOT RECEIVE PAYMENT OF A FINE IT~~  
8  ~~IMPOSED UNDER THIS SECTION WITHIN 30 DAYS, THE SUPERINTENDENT OF~~  
9  ~~PUBLIC INSTRUCTION SHALL INSTITUTE COLLECTION PROCEEDINGS AND THE~~  
10  ~~MONEY RECEIVED SHALL BE TRANSMITTED to the state treasurer for~~  
11  ~~deposit in the state school aid fund established under section 11~~  
12  ~~of article IX of the state constitution of 1963.~~

13 ~~—— (8) If the commission does not receive payment of a fine~~  
14  ~~imposed under this section within 30 days after the imposition of~~  
15  ~~the fine, or if a public school employer does not deduct a fine~~  
16  ~~from a public school employee's pay pursuant to an order under~~  
17  ~~subsection (6), the commission shall institute collection~~  
18  ~~proceedings.~~

19       (12) DEDUCTIONS IMPOSED UNDER THIS SECTION ARE IN ADDITION  
20 TO ANY LOSS OF PAY ATTRIBUTABLE TO THE FULL OR PARTIAL DAY THAT  
21 THE PUBLIC SCHOOL EMPLOYEE WAS ABSENT FROM WORK AS A RESULT OF  
22 THE STRIKE UNDER SECTION 2 AND ANY OTHER PENALTY PRESCRIBED BY  
23 THIS ACT AND BY OTHER LAW.

24       (13) ~~(9)~~ Fines imposed under this section are in addition to  
25 all other penalties prescribed by this act and by law.

26       (14) ~~(10)~~ A public school employer, **THE SUPERINTENDENT OF**  
27 **PUBLIC INSTRUCTION, OR THE ATTORNEY GENERAL** may bring an action to

1 enjoin a strike by public school employees in violation of section  
2 2, and a bargaining representative may bring an action to enjoin a  
3 lockout by a public school employer in violation of section 2, in  
4 the circuit court for the county in which the affected public  
5 school is located. ~~A-IF THE COMMISSION HAS MADE A DETERMINATION~~  
6 ~~AFTER A HEARING UNDER SUBSECTION (3) THAT A STRIKE OR LOCKOUT~~  
7 ~~EXISTS, THAT FINDING SHALL NOT BE OVERTURNED EXCEPT BY CLEAR AND~~  
8 ~~CONVINCING EVIDENCE. IF THE~~ court having jurisdiction of an action  
9 brought under this subsection ~~shall grant injunctive relief if the~~  
10 ~~court finds that a strike or lockout has occurred, without regard~~  
11 ~~to the existence of other remedies, demonstration of irreparable~~  
12 ~~harm, or other factors. Failure to comply with an order of the~~  
13 ~~court may be punished as contempt. In addition, the court shall~~  
14 ~~award court costs and reasonable attorney fees to a plaintiff who~~  
15 ~~prevails in an action brought under this subsection.~~**FINDS THAT**  
16 **CONDITIONS CONSTITUTING A STRIKE OR LOCKOUT IN VIOLATION OF SECTION**  
17 **2 EXIST AND UNLESS CLEAR AND CONVINCING EVIDENCE HAS SHOWN THAT THE**  
18 **SANCTION WOULD NOT BE EQUITABLE OR THE SANCTION WOULD DUPLICATE A**  
19 **SANCTION IMPOSED BY THE COMMISSION FOR THE SAME ACTIVITY UNDER**  
20 **SUBSECTION (9) OR (10), THE COURT SHALL DO ALL OF THE FOLLOWING:**  
21 (A) FOR A STRIKE IN VIOLATION OF SECTION 2, ORDER EACH PUBLIC  
22 SCHOOL EMPLOYEE TO PAY A FINE IN AN AMOUNT EQUAL TO 1 DAY OF PAY  
23 FOR THAT PUBLIC SCHOOL EMPLOYEE FOR EACH FULL OR PARTIAL DAY THE  
24 PUBLIC SCHOOL EMPLOYEE ENGAGED IN THE STRIKE. FOR A LOCKOUT IN  
25 VIOLATION OF SECTION 2, ORDER THE PUBLIC SCHOOL EMPLOYER TO PAY A  
26 FINE OF \$5,000.00 FOR EACH FULL OR PARTIAL DAY OF THE LOCKOUT AND  
27 ORDER EACH MEMBER OF THE PUBLIC SCHOOL EMPLOYER'S GOVERNING BOARD



1 TO PAY A FINE OF \$250.00 FOR EACH FULL OR PARTIAL DAY OF THE  
2 LOCKOUT. A FINE IMPOSED UNDER THIS SUBSECTION SHALL BE TRANSMITTED  
3 TO THE STATE TREASURER FOR DEPOSIT INTO THE STATE SCHOOL AID FUND  
4 ESTABLISHED UNDER SECTION 11 OF ARTICLE IX OF THE STATE  
5 CONSTITUTION OF 1963.

6 (B) ORDER THE PUBLIC SCHOOL EMPLOYEES OR PUBLIC SCHOOL  
7 EMPLOYER ACTING IN VIOLATION OF SECTION 2 TO END THE STRIKE OR  
8 LOCKOUT.

9 (C) AWARD COSTS AND ATTORNEY FEES TO A PLAINTIFF WHO PREVAILS  
10 IN AN ACTION UNDER THIS SUBSECTION.

11 (D) GRANT ADDITIONAL EQUITABLE RELIEF THAT THE COURT FINDS  
12 APPROPRIATE.

13 (15) AN ORDER ISSUED UNDER SUBSECTION (14) IS ENFORCEABLE  
14 THROUGH THE COURT'S CONTEMPT POWER.

15 (16) ~~(11)~~—A public school employer shall not provide to a  
16 public school employee or to a board member any compensation or  
17 additional work assignment that is intended to reimburse the public  
18 school employee or board member for a monetary penalty imposed  
19 under this section or that is intended to allow the public school  
20 employee or board member to recover a monetary penalty imposed  
21 under this section.

22 (17) ~~(12)~~—As used in this section, "public school employee"  
23 means a person employed by a public school employer.

24 Sec. 6. (1) Notwithstanding the provisions of any other law, a  
25 public employee who, by concerted action with others and without  
26 the lawful approval of his or her superior, willfully absents  
27 himself or herself from his or her position, or abstains in whole

1 or in part from the full, faithful and proper performance of his or  
2 her duties for the purpose of inducing, influencing or coercing a  
3 change in employment conditions, compensation, or the rights,  
4 privileges, or obligations of employment, or a public employee  
5 employed by a public school employer who engages in an action  
6 described in this subsection for the purpose of protesting or  
7 responding to an act alleged or determined to be an unfair labor  
8 practice committed by the public school employer, shall be  
9 considered to be on strike.

10 (2) Before a public employer may discipline or discharge a  
11 public employee for engaging in a strike, the public employee, upon  
12 request, is entitled to a determination under this section as to  
13 whether he or she violated this act. The request shall be filed in  
14 writing, with the officer or body having power to remove or  
15 discipline the employee, within 10 days after regular compensation  
16 of the employee has ceased or other discipline has been imposed. If  
17 a request is filed, the officer or body, within ~~10~~5 days after  
18 receipt of the request, shall commence a proceeding for the  
19 determination of whether the public employee has violated this act.  
20 The proceedings shall be held in accordance with the law and  
21 regulations appropriate to a proceeding to remove the public  
22 employee and shall be held without unnecessary delay. The decision  
23 of the officer or body shall be made within ~~10~~2 days after the  
24 conclusion of the proceeding. If the employee involved is found to  
25 have violated this act and his or her employment is terminated or  
26 other discipline is imposed, the employee has the right of review  
27 to the circuit court having jurisdiction of the parties, within 30

1 days from the date of the decision, for a determination as to  
2 whether the decision is supported by competent, material, and  
3 substantial evidence on the whole record. **A PUBLIC EMPLOYER MAY**  
4 **CONSOLIDATE EMPLOYEE HEARINGS UNDER THIS SUBSECTION UNLESS THE**  
5 **EMPLOYEE DEMONSTRATES MANIFEST INJUSTICE FROM THE CONSOLIDATION.**  
6 This subsection does not apply to a penalty imposed under section  
7 2a.

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