

HOUSE BILL No. 5858

September 13, 2016, Introduced by Rep. Glenn and referred to the Committee on Commerce and Trade.

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 1 and 6 (MCL 423.201 and 423.206), section 1 as amended by 2014 PA 414 and section 6 as amended by 2016 PA 194.

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.

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

3 (c) "Intermediate school district" means that term as defined
4 in section 4 of the revised school code, 1976 PA 451, MCL 380.4.

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

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

17 (i) An individual employed by a private organization or entity
18 who provides services under a time-limited contract with this state
19 or a political subdivision of this state or who receives a direct
20 or indirect government subsidy in his or her private employment is
21 not an employee of this state or that political subdivision, and is
22 not a public employee. This provision shall not be superseded by
23 any interlocal agreement, memorandum of understanding, memorandum
24 of commitment, or other document similar to these.

25 ~~(ii) If, by April 9, 2000, a public school employer that is~~
26 ~~the chief executive officer serving in a school district of the~~
27 ~~first class under part 5A of the revised school code, 1976 PA 451,~~

1 ~~MCL 380.371 to 380.376, issues an order determining that it is in~~
2 ~~the best interests of the school district, then a public school~~
3 ~~administrator employed by that school district is not a public~~
4 ~~employee for purposes of this act. The exception under this~~
5 ~~subparagraph applies to public school administrators employed by~~
6 ~~that school district after the date of the order described in this~~
7 ~~subparagraph whether or not the chief executive officer remains in~~
8 ~~place in the school district. This exception does not prohibit the~~
9 ~~chief executive officer or board of a school district of the first~~
10 ~~class or its designee from having informal meetings with public~~
11 ~~school administrators to discuss wages and working conditions.~~

12 (ii) ~~(iii)~~—An individual serving as a graduate student
13 research assistant or in an equivalent position, a student
14 participating in intercollegiate athletics on behalf of a public
15 university in this state, or any individual whose position does not
16 have sufficient indicia of an employer-employee relationship using
17 the 20-factor test announced by the internal revenue service of the
18 United States department of treasury in revenue ruling 87-41, 1987-
19 1 C.B. 296 is not a public employee entitled to representation or
20 collective bargaining rights under this act.

21 (f) "Public school academy" means a public school academy or
22 strict discipline academy organized under the revised school code,
23 1976 PA 451, MCL 380.1 to 380.1852.

24 (g) "Public school administrator" means a superintendent,
25 assistant superintendent, chief business official, principal, or
26 assistant principal employed by a school district, intermediate
27 school district, or public school academy.

1 (h) "Public school employer" means a public employer that is
2 the board of a school district, intermediate school district, or
3 public school academy; ~~is the chief executive officer of a school~~
4 ~~district in which a school reform board is in place under part 5A~~
5 ~~of the revised school code, 1976 PA 451, MCL 380.371 to 380.376;~~ or
6 is the governing board of a joint endeavor or consortium consisting
7 of any combination of school districts, intermediate school
8 districts, or public school academies.

9 (i) "School district" means that term as defined in section 6
10 of the revised school code, 1976 PA 451, MCL 380.6, or a local act
11 school district as defined in section 5 of the revised school code,
12 1976 PA 451, MCL 380.5.

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

24 (2) This act does not limit, impair, or affect the right of a
25 public employee to the expression or communication of a view,
26 grievance, complaint, or opinion on any matter related to the
27 conditions or compensation of public employment or their betterment

1 as long as the expression or communication does not interfere with
2 the full, faithful, and proper performance of the duties of
3 employment.

4 Sec. 6. (1) Notwithstanding the provisions of any other law, a
5 public employee who, by concerted action with others and without
6 the lawful approval of his or her superior, willfully absents
7 himself or herself from his or her position, or abstains in whole
8 or in part from the full, faithful and proper performance of his or
9 her duties ~~for the purpose of inducing, influencing or coercing a~~
10 ~~change in employment conditions, compensation, or the rights,~~
11 ~~privileges, or obligations of employment, or a public employee~~
12 ~~employed by a public school employer who engages in an action~~
13 ~~described in this subsection for the purpose of protesting or~~
14 ~~responding to an act alleged or determined to be an unfair labor~~
15 ~~practice committed by the public school employer,~~ shall be
16 considered to be on strike.

17 (2) Before a public employer may discipline or discharge a
18 public employee for engaging in a strike, the public employee, upon
19 request, is entitled to a determination under this section as to
20 whether he or she violated this act. The request shall be filed in
21 writing, with the officer or body having power to remove or
22 discipline the employee, within 10 days after regular compensation
23 of the employee has ceased or other discipline has been imposed. If
24 a request is filed, the officer or body, within 5 days after
25 receipt of the request, shall commence a proceeding for the
26 determination of whether the public employee has violated this act.
27 The proceedings shall be held in accordance with the law and

1 regulations appropriate to a proceeding to remove the public
2 employee and shall be held without unnecessary delay. The decision
3 of the officer or body shall be made within 2 days after the
4 conclusion of the proceeding. If the employee involved is found to
5 have violated this act and his or her employment is terminated or
6 other discipline is imposed, the employee has the right of review
7 to the circuit court having jurisdiction of the parties, within 30
8 days from the date of the decision, for a determination as to
9 whether the decision is supported by competent, material, and
10 substantial evidence on the whole record. A public employer may
11 consolidate employee hearings under this subsection unless the
12 employee demonstrates manifest injustice from the consolidation.
13 This subsection does not apply to a penalty imposed under section
14 2a.

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