

HOUSE BILL NO. 5144

June 24, 2021, Introduced by Reps. Sneller, O'Malley and Yaroach and referred to the Committee on Government Operations.

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 section 15 (MCL 423.215), as amended by 2014 PA 414.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 15. (1) A public employer shall bargain collectively with

1 the representatives of its employees as described in section 11 and
2 may make and enter into collective bargaining agreements with those
3 representatives. Except as otherwise provided in this section, for
4 the purposes of this section, to bargain collectively is to perform
5 the mutual obligation of the employer and the representative of the
6 employees to meet at reasonable times and confer in good faith with
7 respect to wages, hours, and other terms and conditions of
8 employment, or to negotiate an agreement, or any question arising
9 under the agreement, and to execute a written contract, ordinance,
10 or resolution incorporating any agreement reached if requested by
11 either party, but this obligation does not compel either party to
12 agree to a proposal or make a concession.

13 (2) A public school employer has the responsibility,
14 authority, and right to manage and direct on behalf of the public
15 the operations and activities of the public schools under its
16 control.

17 (3) Collective bargaining between a public school employer and
18 a bargaining representative of its employees ~~shall~~**must** not include
19 any of the following subjects:

20 (a) Who is or will be the policyholder of an employee group
21 insurance benefit. This subdivision does not affect the duty to
22 bargain with respect to types and levels of benefits and coverages
23 for employee group insurance. A change or proposed change in a type
24 or to a level of benefit, policy specification, or coverage for
25 employee group insurance ~~shall~~**must** be bargained by the public
26 school employer and the bargaining representative before the change
27 may take effect.

28 (b) Establishment of the starting day for the school year and
29 of the amount of pupil contact time required to receive full state

1 school aid under section 1284 of the revised school code, 1976 PA
2 451, MCL 380.1284, and under section 101 of the state school aid
3 act of 1979, 1979 PA 94, MCL 388.1701.

4 (c) The composition of school improvement committees
5 established under section 1277 of the revised school code, 1976 PA
6 451, MCL 380.1277.

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

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

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

26 (g) The use of volunteers in providing services at its
27 schools.

28 (h) Decisions concerning use and staffing of experimental or
29 pilot programs and decisions concerning use of technology to

1 deliver educational programs and services and staffing to provide
2 that technology, or the impact of those decisions on individual
3 employees or the bargaining unit.

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

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

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

23 (l) Decisions about the development, content, standards,
24 procedures, adoption, and implementation of a public school
25 employer's performance evaluation system adopted under section 1249
26 of the revised school code, 1976 PA 451, MCL 380.1249, or under
27 1937 (Ex Sess) PA 4, MCL 38.71 to 38.191, decisions concerning the
28 content of a performance evaluation of an employee under those
29 provisions of law, or the impact of those decisions on an

1 individual employee or the bargaining unit.

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

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

20 (o) Decisions about the development, content, standards,
21 procedures, adoption, and implementation of the method of
22 compensation required under section 1250 of the revised school
23 code, 1976 PA 451, MCL 380.1250, decisions about how an employee
24 performance evaluation is used to determine performance-based
25 compensation under section 1250 of the revised school code, 1976 PA
26 451, MCL 380.1250, decisions concerning the performance-based
27 compensation of an individual employee, or the impact of those
28 decisions on an individual employee or the bargaining unit.

29 (p) Decisions about the development, format, content, and

1 procedures of the notification to parents and legal guardians
 2 required under section 1249a of the revised school code, 1976 PA
 3 451, MCL 380.1249a.

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

5 (4) Except as otherwise provided in subsection (3)(f), the
 6 matters described in subsection (3) are prohibited subjects of
 7 bargaining between a public school employer and a bargaining
 8 representative of its employees, and, for the purposes of this act,
 9 are within the sole authority of the public school employer to
 10 decide.

11 ~~(5) If a public school is placed in the state school~~
 12 ~~reform/redesign school district or is placed under a chief~~
 13 ~~executive officer under section 1280c of the revised school code,~~
 14 ~~1976 PA 451, MCL 380.1280c, then, for the purposes of collective~~
 15 ~~bargaining under this act, the state school reform/redesign officer~~
 16 ~~or the chief executive officer, as applicable, is the public school~~
 17 ~~employer of the public school employees of that public school for~~
 18 ~~as long as the public school is part of the state school~~
 19 ~~reform/redesign school district or operated by the chief executive~~
 20 ~~officer.~~

21 (5) ~~(6)~~ A public school employer's collective bargaining duty
 22 under this act and a collective bargaining agreement entered into
 23 by a public school employer under this act are subject to ~~all of~~
 24 ~~the following:~~

25 ~~(a) Any~~ **any** effect on collective bargaining and any
 26 modification of a collective bargaining agreement occurring under
 27 section ~~1280e~~ **1280g** of the revised school code, 1976 PA 451, MCL
 28 ~~380.1280e~~ **380.1280g**.

29 ~~(b) For a public school in which the superintendent of public~~

1 ~~instruction implements 1 of the 4 school intervention models~~
2 ~~described in section 1280c of the revised school code, 1976 PA 451,~~
3 ~~MCL 380.1280c, if the school intervention model that is implemented~~
4 ~~affects collective bargaining or requires modification of a~~
5 ~~collective bargaining agreement, any effect on collective~~
6 ~~bargaining and any modification of a collective bargaining~~
7 ~~agreement under that school intervention model.~~

8 (6) ~~(7)~~—Each collective bargaining agreement entered into
9 between a public employer and public employees under this act on or
10 after March 28, 2013 ~~shall~~ **must** include a provision that allows an
11 emergency manager **or a financial management team** appointed under
12 the local financial stability and choice act, 2012 PA 436, MCL
13 141.1541 to 141.1575, to reject, modify, or terminate the
14 collective bargaining agreement as provided in the local financial
15 stability and choice act, 2012 PA 436, MCL 141.1541 to 141.1575.
16 Provisions required by this subsection are prohibited subjects of
17 bargaining under this act.

18 (7) ~~(8)~~—Collective bargaining agreements under this act may be
19 rejected, modified, or terminated pursuant to the local financial
20 stability and choice act, 2012 PA 436, MCL 141.1541 to 141.1575.
21 This act does not confer a right to bargain that would infringe on
22 the exercise of powers under the local financial stability and
23 choice act, 2012 PA 436, MCL 141.1541 to 141.1575.

24 (8) ~~(9)~~—A unit of local government that enters into a consent
25 agreement under the local financial stability and choice act, 2012
26 PA 436, MCL 141.1541 to 141.1575, is not subject to subsection (1)
27 for the term of the consent agreement, as provided in the local
28 financial stability and choice act, 2012 PA 436, MCL 141.1541 to
29 141.1575.

1 **(9)** ~~(10)~~—If the charter of a city, village, or township with a
2 population of 500,000 or more requires and specifies the method of
3 selection of a retirant member of the municipality's fire
4 department, police department, or fire and police department
5 pension or retirement board, the inclusion of the retirant member
6 on the board and the method of selection of that retirant member
7 are prohibited subjects of collective bargaining, and any provision
8 in a collective bargaining agreement that purports to modify that
9 charter requirement is void and of no effect.

10 **(10)** ~~(11)~~—The following are prohibited subjects of bargaining
11 and are at the sole discretion of the public employer:

12 (a) A decision as to whether or not the public employer will
13 enter into an intergovernmental agreement to consolidate 1 or more
14 functions or services, to jointly perform 1 or more functions or
15 services, or to otherwise collaborate regarding 1 or more functions
16 or services.

17 (b) The procedures for obtaining a contract for the transfer
18 of functions or responsibilities under an agreement described in
19 subdivision (a).

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

22 **(11)** ~~(12)~~—Subsection ~~(11)~~ **(10)** does not relieve a public
23 employer of any duty established by law to collectively bargain
24 with its employees as to the effect of a contract described in
25 subsection ~~(11)(a)~~ **(10) (a)** on its employees.

26 **(12)** ~~(13)~~—An agreement with a collective bargaining unit ~~shall~~
27 **must** not require a public employer to pay the costs of an
28 independent examiner verification described in section 10(9).

29 Enacting section 1. This amendatory act takes effect 90 days

1 after the date it is enacted into law.

2 Enacting section 2. This amendatory act does not take effect

3 unless Senate Bill No. _____ or House Bill No. 5141 (request no.

4 00333'21) of the 101st Legislature is enacted into law.