

# HOUSE BILL NO. 4582

May 16, 2023, Introduced by Reps. Bierlein and Bezotte 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 sections 1, 10, and 11 (MCL 423.201, 423.210, and 423.211), section 1 as amended by 2014 PA 414 and section 10 as amended by 2023 PA 9, and by adding section 11a.

**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~~ a bargaining representative of certain employees  
5 of the employer.

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

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

10           (d) "Lockout" means the temporary withholding of work from a  
11 group of employees by shutting down the operation of the employer  
12 to bring pressure upon the affected employees or the bargaining  
13 representative, or both, to accept the employer's terms of  
14 settlement of a labor dispute.

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

22           (i) An individual employed by a private organization or entity  
23 who provides services under a time-limited contract with this state  
24 or a political subdivision of this state or who receives a direct  
25 or indirect government subsidy in ~~his or her~~ **the individual's**  
26 private employment is not an employee of this state or that  
27 political subdivision, and is not a public employee. This provision  
28 shall not be superseded by any interlocal agreement, memorandum of

1 understanding, memorandum of commitment, or other document similar  
2 to these.

3 ~~(ii) If, by April 9, 2000, a public school employer that is the~~  
4 ~~chief executive officer serving in a school district of the first~~  
5 ~~class under part 5A of the revised school code, 1976 PA 451, MCL~~  
6 ~~380.371 to 380.376, issues an order determining that it is in the~~  
7 ~~best interests of the school district, then a public school~~  
8 ~~administrator employed by that school district is not a public~~  
9 ~~employee for purposes of this act. The exception under this~~  
10 ~~subparagraph applies to public school administrators employed by~~  
11 ~~that school district after the date of the order described in this~~  
12 ~~subparagraph whether or not the chief executive officer remains in~~  
13 ~~place in the school district. This exception does not prohibit the~~  
14 ~~chief executive officer or board of a school district of the first~~  
15 ~~class or its designee from having informal meetings with public~~  
16 ~~school administrators to discuss wages and working conditions.~~

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

27 (f) "Public school academy" means a public school academy or  
28 strict discipline academy organized under the revised school code,  
29 1976 PA 451, MCL 380.1 to 380.1852.

1 (g) "Public school administrator" means a superintendent,  
2 assistant superintendent, chief business official, principal, or  
3 assistant principal employed by a school district, intermediate  
4 school district, or public school academy.

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

13 (i) "School district" means that term as defined in section 6  
14 of the revised school code, 1976 PA 451, MCL 380.6, or a local act  
15 school district as defined in section 5 of the revised school code,  
16 1976 PA 451, MCL 380.5.

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

28 (2) This act does not limit, impair, or affect the right of a  
29 public employee to the expression or communication of a view,

1 grievance, complaint, or opinion on any matter related to the  
2 conditions or compensation of public employment or their betterment  
3 as long as the expression or communication does not interfere with  
4 the full, faithful, and proper performance of the duties of  
5 employment.

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

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

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

22 (c) Discriminate in regard to hire, terms, or other conditions  
23 of employment to encourage or discourage membership in a labor  
24 organization. However, this act or any other law of this state does  
25 not preclude a public employer from making an agreement with ~~an~~  
26 ~~exclusive-a~~ bargaining representative as described in section 11 to  
27 require as a condition of employment that all other employees in  
28 the bargaining unit pay to the ~~exclusive~~-bargaining representative  
29 a service fee equivalent to the amount of dues uniformly required

1 of members of the ~~exclusive~~ bargaining representative.

2 (d) Discriminate against a public employee because ~~he or she~~  
3 **the public employee** has given testimony or instituted proceedings  
4 under this act.

5 (e) Refuse to bargain collectively with the representatives of  
6 its public employees, subject to section 11.

7 (2) It is the purpose of 1973 PA 25 to reaffirm the continuing  
8 public policy of this state that the stability and effectiveness of  
9 labor relations in the public sector require, if the requirement is  
10 negotiated with the public employer, that all other employees in  
11 the bargaining unit share fairly in the financial support of their  
12 ~~exclusive~~ bargaining representative by paying to the ~~exclusive~~  
13 bargaining representative a service fee that may be equivalent to  
14 the amount of dues uniformly required of members of the ~~exclusive~~  
15 bargaining representative.

16 (3) A labor organization or its agents shall not do any of the  
17 following:

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

22 (b) Restrain or coerce a public employer in the selection of  
23 its representatives for the purposes of collective bargaining or  
24 the adjustment of grievances.

25 (c) Cause or attempt to cause a public employer to  
26 discriminate against a public employee in violation of subsection  
27 (1)(c).

28 (d) Refuse to bargain collectively with a public employer, if  
29 it is the representative of the public employer's employees,

1 subject to section 11.

2 (4) By July 1 of each year, each ~~exclusive~~-bargaining  
3 representative that represents public employees in this state shall  
4 have an independent examiner verify the ~~exclusive~~-bargaining  
5 representative's calculation of all expenditures attributed to the  
6 costs of collective bargaining, contract administration, and  
7 grievance adjustment during the prior calendar year and shall file  
8 that verification with the commission. The commission shall make  
9 the ~~exclusive~~-bargaining representative's calculations available to  
10 the public on the commission's website. The ~~exclusive~~-bargaining  
11 representative shall also file a declaration identifying the local  
12 bargaining units that are represented. Local bargaining units  
13 identified in the declaration filed by the ~~exclusive~~-bargaining  
14 representative are not required to file a separate calculation of  
15 all expenditures attributed to the costs of collective bargaining,  
16 contract administration, and grievance adjustment.

17 (5) A public employer and a bargaining representative may  
18 enter into a collective bargaining agreement that requires all  
19 public employees in the bargaining unit to share equally in the  
20 financial support of the bargaining representative. This act does  
21 not, and a law or policy of a local government must not, prohibit  
22 or limit an agreement that requires public employees in the  
23 bargaining unit, as a condition of continued employment, to pay to  
24 the bargaining representative membership dues or service fees. This  
25 subsection becomes effective immediately upon, and applies to the  
26 extent permitted by, either of the following:

27 (a) A decision or ruling by the United States Supreme Court  
28 that reverses or limits, in whole or in part, *Janus v AFSCME*,  
29 *Council 31*, \_\_\_US\_\_\_; 138 S Ct 2448 (2018).

1 (b) The ratification of an amendment to the United States  
 2 Constitution that restores the ability to require, as a condition  
 3 of employment, a public employee who is not a member of a  
 4 bargaining representative to pay, under any circumstances, fees,  
 5 including agency fees, to the bargaining representative.

6 ~~(6) For fiscal year 2022-2023, \$1,000,000.00 is appropriated~~  
 7 ~~to the department of labor and economic opportunity to be expended~~  
 8 ~~to do all of the following regarding the 2023 amendatory act that~~  
 9 ~~added this sentence:~~

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

11 ~~(b) Provide the commission with sufficient staff and other~~  
 12 ~~resources to implement the amendatory act.~~

13 ~~(c) Inform public employers, public employees, and bargaining~~  
 14 ~~representatives about changes to their rights and responsibilities~~  
 15 ~~under the amendatory act.~~

16 ~~(d) Any other purposes that the director of the department of~~  
 17 ~~labor and economic opportunity determines in the director's sole~~  
 18 ~~discretion are necessary to implement the amendatory act.~~

19 Sec. 11. Representatives designated or selected for purposes  
 20 of collective bargaining by ~~the majority of the~~ public employees in  
 21 a unit appropriate for such purposes, shall be ~~the exclusive~~  
 22 representatives of ~~all the~~ **those** public employees in ~~such~~ **the** unit  
 23 for the purposes of collective bargaining in respect to rates of  
 24 pay, wages, hours of employment or other conditions of employment,  
 25 and shall be so recognized by the public employer. ~~÷ Provided, That~~  
 26 **However**, any individual employee at any time may present grievances  
 27 to ~~his~~ **the employee's** employer and have the grievances adjusted,  
 28 without intervention of the bargaining representative, if the  
 29 adjustment is not inconsistent with the terms of a collective



1 bargaining contract or agreement then in effect, provided that the  
2 bargaining representative has been given opportunity to be present  
3 at such adjustment.

4       **Sec. 11a. Notwithstanding any other provision of this act, a**  
5 **bargaining representative shall represent a public employee for**  
6 **purposes of collective bargaining only if that public employee**  
7 **votes for the bargaining representative or authorizes, in writing,**  
8 **the bargaining representative to represent the public employee.**