



# HOUSE BILL No. 5136

October 14, 1993, Introduced by Rep. Bandstra and referred to the Committee on Labor.

A bill to amend the title and sections 1, 2, and 6 of Act No. 336 of the Public Acts of 1947, entitled as amended

"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; and to prescribe means of enforcement and penalties for the violation of the provisions of this act,"

being sections 423.201, 423.202, and 423.206 of the Michigan Compiled Laws; and to add sections 8, 17, 18, 19, 20, 21, and 22.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. The title and sections 1, 2, and 6 of Act  
2 No. 336 of the Public Acts of 1947, being sections 423.201,  
3 423.202, and 423.206 of the Michigan Compiled Laws, are amended  
4 and sections 8, 17, 18, 19, 20, 21, and 22 are added to read as  
5 follows:

1 TITLE

2 An act to prohibit strikes by certain public employees; to  
 3 provide review from disciplinary action with respect thereto; to  
 4 provide for the mediation of grievances and the holding of elec-  
 5 tions; to declare and protect the rights and privileges of public  
 6 employees; ~~and to prescribe means of enforcement~~ THE POWERS  
 7 AND DUTIES OF THE EMPLOYMENT RELATIONS COMMISSION, EMPLOYERS,  
 8 EMPLOYEES, BARGAINING REPRESENTATIVES, AND CERTAIN OTHER PERSONS;  
 9 and TO PRESCRIBE penalties. ~~for the violation of the provisions~~  
 10 ~~of this act.~~

11 Sec. 1. (1) As used in this act:

12 (A) "AFFILIATED ORGANIZATION" MEANS ANY LABOR ORGANIZATION  
 13 AT THE STATE OR NATIONAL LEVEL WITH WHICH A LOCAL BARGAINING REPR-  
 14 RESENTATIVE IS ASSOCIATED.

15 (B) "BARGAINING REPRESENTATIVE" MEANS A LABOR ORGANIZATION  
 16 RECOGNIZED BY AN EMPLOYER OR CERTIFIED BY THE COMMISSION AS THE  
 17 SOLE AND EXCLUSIVE BARGAINING REPRESENTATIVE OF CERTAIN EMPLOYEES  
 18 OF THE EMPLOYER.

19 (C) "COMMISSION" MEANS THE EMPLOYMENT RELATIONS COMMISSION  
 20 CREATED IN SECTION 3 OF ACT NO. 176 OF THE PUBLIC ACTS OF 1939,  
 21 BEING SECTION 423.3 OF THE MICHIGAN COMPILED LAWS.

22 (D) "LOCKOUT" MEANS THE TEMPORARY WITHHOLDING OF WORK DURING  
 23 A LABOR DISPUTE BY MEANS OF SHUTTING DOWN THE OPERATION OF THE  
 24 EMPLOYER FROM A GROUP OF EMPLOYEES IN ORDER TO BRING PRESSURE  
 25 UPON THE AFFECTED EMPLOYEES OR THE BARGAINING REPRESENTATIVE, OR  
 26 BOTH, TO ACCEPT THE EMPLOYER'S TERMS OF SETTLEMENT OF THE  
 27 DISPUTE.

1 (E) "PUBLIC EMPLOYEE" MEANS A PERSON HOLDING A POSITION BY  
2 APPOINTMENT OR EMPLOYMENT IN THE GOVERNMENT OF THIS STATE, IN THE  
3 GOVERNMENT OF 1 OR MORE OF THE POLITICAL SUBDIVISIONS OF THIS  
4 STATE, IN THE PUBLIC SCHOOL SERVICE, .IN A PUBLIC OR SPECIAL DIS-  
5 TRICT, IN THE SERVICE OF AN AUTHORITY, COMMISSION, OR BOARD, OR  
6 IN ANY OTHER BRANCH OF THE PUBLIC SERVICE.

7 (F) "STATE SCHOOL AID FUND" MEANS THE FUND ESTABLISHED PUR-  
8 SUANT TO SECTION 11 OF ARTICLE IX OF THE STATE CONSTITUTION OF  
9 1963 TO PROVIDE FINANCIAL ASSISTANCE TO SCHOOL DISTRICTS AND  
10 INTERMEDIATE SCHOOL DISTRICTS IN THIS STATE.

11 (G) ~~(a)~~ "Strike" means the concerted failure to report for  
12 duty, the ~~wilful~~ INTENTIONAL absence from one's position, the  
13 stoppage of work, or the abstinence in whole or in part from the  
14 full, faithful, and proper performance of the duties of employ-  
15 ment ~~—~~ for the purpose of inducing, influencing, or coercing a  
16 change in the conditions ~~—~~ or compensation ~~—~~ or the rights,  
17 privileges, or obligations of employment. STRIKE INCLUDES AN  
18 UNFAIR LABOR PRACTICE STRIKE AND A SYMPATHY STRIKE. ~~This act~~  
19 ~~shall not be construed to limit, impair, or affect the right of a~~  
20 ~~public employee to the expression or communication of a view,~~  
21 ~~grievance, complaint, or opinion on any matter related to the~~  
22 ~~conditions or compensation of public employment or their better~~  
23 ~~ment, so long as the same is not designed to and does not inter-~~  
24 ~~fere with the full, faithful, and proper performance of the~~  
25 ~~duties of employment.~~

26 ~~(b) "Commission" means the employment relations commission~~  
27 ~~as created in section 3 of Act No. 176 of the Public Acts of~~

1 ~~1939, as amended, being section 423.3 of the Michigan Compile~~  
 2 ~~laws.~~

3 (2) THIS ACT DOES NOT LIMIT, IMPAIR, OR AFFECT THE RIGHT OF  
 4 A PUBLIC EMPLOYEE TO THE EXPRESSION OR COMMUNICATION OF A VIEW,  
 5 GRIEVANCE, COMPLAINT, OR OPINION ON ANY MATTER RELATED TO THE  
 6 CONDITIONS OR COMPENSATION OF PUBLIC EMPLOYMENT OR THEIR BETTER<sup>R-</sup>  
 7 MENT AS LONG AS THE EXPRESSION OR COMMUNICATION DOES NOT INTER<sup>A-</sup>  
 8 FERE WITH THE FULL, FAITHFUL, AND PROPER PERFORMANCE OF THE  
 9 DUTIES OF EMPLOYMENT.

10 Sec. 2. ~~No person holding a position by appointment or~~  
 11 ~~employment in the government of the state of Michigan, or in the~~  
 12 ~~government of any 1 or more of the political subdivisions ther<sup>e</sup>~~  
 13 ~~of, or in the public school service, or in any public or specia<sup>l</sup>~~  
 14 ~~district, or in the service of any authority, commission, or~~  
 15 ~~board, or in any other branch of the public service, hereinaft<sup>e</sup>r~~  
 16 ~~called a "A public employee —," shall NOT strike AND A PUBLIC~~  
 17 EMPLOYER SHALL NOT INSTITUTE A LOCKOUT IN CONJUNCTION WITH A  
 18 LABOR DISPUTE. AN EMPLOYER SHALL NOT BE CONSIDERED TO HAVE VIOL-  
 19 LATED THIS SECTION IF THERE IS A TOTAL OR PARTIAL CESSATION OF  
 20 THE EMPLOYER'S OPERATIONS IN RESPONSE TO A STRIKE HELD IN VIOLA-  
 21 TION OF THIS SECTION.

22 Sec. 6. (1) Notwithstanding the provisions of any other  
 23 law, any ~~person holding such a position~~ PUBLIC EMPLOYEE who, by  
 24 concerted action with others —, and without the lawful approval  
 25 of his OR HER superior, ~~wilfully~~ INTENTIONALLY absents himself  
 26 OR HERSELF from his OR HER position, or abstains in whole or in  
 27 part from the full, faithful, and proper performance of his OR

1 HER duties, ~~for the purpose of inducing, influencing or coercing~~  
2 ~~a change in the conditions or compensation, or the rights, privi-~~  
3 ~~leges or obligations of employment~~ shall be ~~deemed~~ CONSIDERED  
4 to be on strike. ~~but the~~

5 (2) EXCEPT AS PROVIDED IN SECTION 19, A person, upon  
6 request, ~~shall be~~ IS entitled to a determination PURSUANT TO  
7 THIS SECTION as to whether he ~~did violate the provisions of~~ OR  
8 SHE VIOLATED this act. The request shall be filed in writing,  
9 WITHIN 10 DAYS AFTER REGULAR COMPENSATION OF THE EMPLOYEE HAS  
10 CEASED OR OTHER DISCIPLINE HAS BEEN IMPOSED, with the officer or  
11 body having power to remove or discipline ~~such~~ THE employee.  
12 ~~, within 10 days after regular compensation of such employee has~~  
13 ~~ceased or other discipline has been imposed. In the event of~~  
14 ~~such~~ IF A request IS FILED, the officer or body, ~~shall~~ within  
15 10 days AFTER RECEIPT OF THE REQUEST, SHALL commence a proceeding  
16 for the determination of whether the ~~provisions of~~ PUBLIC  
17 EMPLOYEE HAS VIOLATED this act. ~~have been violated by the~~  
18 ~~public employee,~~ THE PROCEEDING SHALL BE HELD in accordance with  
19 the law and ~~regulations~~ RULES appropriate to a proceeding to  
20 remove the public employee ~~. The proceedings~~ AND shall be  
21 ~~undertaken~~ HELD without unnecessary delay. The decision of the  
22 ~~proceeding~~ OFFICER OR BODY shall be made within 10 days AFTER  
23 THE CONCLUSION OF THE PROCEEDING.

24 (3) If the employee involved is ~~held~~ FOUND to have vio-  
25 lated this ~~law~~ ACT and his OR HER employment IS terminated or  
26 other discipline IS imposed, ~~he shall have~~ THE EMPLOYEE HAS the  
27 right of review to the circuit court having jurisdiction of the

1 parties, within 30 days from ~~such~~ THE DATE OF THE decision, for  
2 A determination AS TO whether ~~such~~ THE decision is supported by  
3 competent, material, and substantial evidence on the whole  
4 record.

5 SEC. 8. IF COLLECTIVE BARGAINING AND MEDIATION FAIL TO  
6 RESOLVE A LABOR DISPUTE AND EITHER PARTY OR THE COMMISSION  
7 REQUESTS FACT-FINDING UNDER SECTION 25 OF ACT NO. 176 OF THE  
8 PUBLIC ACTS OF 1939, BEING SECTION 423.25 OF OF THE MICHIGAN  
9 COMPILED LAWS, THE FACT-FINDER SHALL BASE HIS OR HER FINDINGS OF  
10 FACT AND RECOMMENDATIONS UPON ALL OF THE FOLLOWING FACTORS, AS  
11 APPLICABLE:

12 (A) THE LAWFUL AUTHORITY OF THE EMPLOYER.

13 (B) STIPULATIONS OF THE PARTIES.

14 (C) THE INTERESTS AND WELFARE OF THE PUBLIC AND THE FINAN-  
15 CIAL ABILITY OF THE EMPLOYER TO MEET THOSE NEEDS.

16 (D) COMPARISON OF THE WAGES, HOURS, AND CONDITIONS OF  
17 EMPLOYMENT OF THE EMPLOYEES INVOLVED IN THE PROCEEDING WITH THE  
18 WAGES, HOURS, AND CONDITIONS OF EMPLOYMENT OF OTHER EMPLOYEES  
19 PERFORMING SIMILAR SERVICES IN THE PUBLIC AND PRIVATE SECTORS IN  
20 COMPARABLE COMMUNITIES.

21 (E) PRESENT REVENUE LEVELS AND REVENUE SOURCES OF THE  
22 EMPLOYER, THE ABILITY OF THE EMPLOYER TO PAY WITHIN THE FRAMEWORK  
23 OF THESE REVENUE LEVELS AND REVENUE SOURCES, AND LIMITATIONS ON  
24 THE GROWTH OF THESE REVENUE SOURCES.

25 (F) THE OVERALL COMPENSATION PRESENTLY RECEIVED BY THE  
26 EMPLOYEES, INCLUDING DIRECT WAGE COMPENSATION, VACATIONS,  
27 HOLIDAYS AND OTHER EXCUSED TIME, INSURANCE, PENSIONS, MEDICAL AND

1 HOSPITALIZATION BENEFITS, THE CONTINUITY AND STABILITY OF  
2 EMPLOYMENT, AND ALL OTHER BENEFITS RECEIVED.

3 (G) CHANGES IN ANY OF THE CIRCUMSTANCES LISTED IN SUBDIVI-  
4 SIONS (A) THROUGH (F) DURING THE PENDENCY OF THE FACT-FINDING  
5 PROCEEDINGS.

6 (H) THE APPROPRIATENESS OF THE EMPLOYER ESTABLISHING A CASH  
7 RESERVE FUND TO BE USED IN FUTURE YEARS AT THE EMPLOYER'S  
8 DISCRETION.

9 (I) FACTORS OTHER THAN THOSE LISTED IN SUBDIVISIONS (A)  
10 THROUGH (H) THAT NORMALLY OR TRADITIONALLY ARE TAKEN INTO CONSID-  
11 ERATION IN THE DETERMINATION OF WAGES, HOURS, AND CONDITIONS OF  
12 EMPLOYMENT THROUGH VOLUNTARY COLLECTIVE BARGAINING, MEDIATION,  
13 FACT-FINDING, OR OTHERWISE BETWEEN THE PARTIES, IN THE PUBLIC  
14 SERVICE OR IN PRIVATE EMPLOYMENT.

15 SEC. 17. (1) THIS SECTION AND SECTIONS 18 TO 21 APPLY ONLY  
16 TO PUBLIC SCHOOL EMPLOYEES AND EMPLOYERS.

17 (2) AS USED IN SECTIONS 18 TO 21:

18 (A) "EMPLOYEE" MEANS A PERSON WHO IS A MEMBER OF A BARGAIN-  
19 ING UNIT THAT INCLUDES CLASSROOM TEACHERS EMPLOYED BY A SCHOOL  
20 DISTRICT OR INTERMEDIATE SCHOOL DISTRICT ORGANIZED UNDER THE  
21 SCHOOL CODE OF 1976, ACT NO. 451 OF THE PUBLIC ACTS OF 1976,  
22 BEING SECTIONS 380.1 TO 380.1852 OF THE MICHIGAN COMPILED LAWS.

23 (B) "EMPLOYER" MEANS A SCHOOL BOARD OR AN OFFICER OR AGENT  
24 OF A SCHOOL BOARD OF A SCHOOL DISTRICT OR INTERMEDIATE SCHOOL  
25 DISTRICT ORGANIZED UNDER THE SCHOOL CODE OF 1976, ACT NO. 451 OF  
26 THE PUBLIC ACTS OF 1976.

1 SEC. 18. (1) IF AN EMPLOYER DETERMINES THAT THERE IS A  
2 STRIKE IN VIOLATION OF SECTION 2, THE EMPLOYER SHALL NOTIFY THE  
3 COMMISSION OF EACH DAY AN EMPLOYEE IS ABSENT WITHOUT EXCUSE FROM  
4 WORK OR ABSTAINS IN PART FROM THE PERFORMANCE OF HIS OR HER  
5 DUTIES OF EMPLOYMENT ON A SCHEDULED DAY OF WORK, WHETHER OR NOT  
6 THE DAY WAS ESTABLISHED AS A DAY OF WORK MUTUALLY BY THE PARTIES  
7 IN NEGOTIATIONS OR WAS ESTABLISHED SOLELY BY THE EMPLOYER.

8 (2) IF A BARGAINING REPRESENTATIVE DETERMINES THAT THERE IS  
9 A LOCKOUT IN VIOLATION OF SECTION 2, THE BARGAINING REPRESENTATIVE  
10 SHALL NOTIFY THE COMMISSION OF EACH DAY OF THE APPARENT  
11 LOCKOUT.

12 SEC. 19. (1) WITHIN 60 DAYS AFTER RECEIPT OF A NOTICE MADE  
13 PURSUANT TO SECTION 18, THE COMMISSION SHALL CONDUCT A HEARING  
14 AND ISSUE ITS FINDINGS. A HEARING CONDUCTED UNDER THIS SUBSECTION  
15 IS SEPARATE AND DISTINCT FROM AN UNFAIR LABOR PRACTICE PROCEEDING  
16 CONDUCTED UNDER SECTION 6.

17 (2) IF A MAJORITY OF THE COMMISSION FINDS THAT 1 OR MORE  
18 EMPLOYEES WERE ON STRIKE IN VIOLATION OF SECTION 2, THE COMMISSION  
19 SHALL FINE EACH EMPLOYEE \$100.00 FOR EACH DAY OF THE STRIKE  
20 AND THE BARGAINING REPRESENTATIVE OF THOSE EMPLOYEES AN AMOUNT  
21 NOT TO EXCEED \$5,000.00 FOR EACH DAY OF THE STRIKE.

22 (3) IF A MAJORITY OF THE COMMISSION FINDS THAT AN EMPLOYER  
23 INSTITUTED A LOCKOUT IN VIOLATION OF SECTION 2, THE COMMISSION  
24 SHALL FINE THE EMPLOYER AN AMOUNT NOT TO EXCEED \$5,000.00 FOR  
25 EACH DAY OF THE LOCKOUT.

1           (4) THE COMMISSION SHALL TRANSMIT MONEY RECEIVED UNDER THIS  
2 SECTION TO THE STATE TREASURER FOR DEPOSIT IN THE STATE SCHOOL  
3 AID FUND.

4           (5) IF THE COMMISSION DOES NOT RECEIVE PAYMENT OF A FINE  
5 IMPOSED UNDER THIS SECTION WITHIN 30 DAYS AFTER THE IMPOSITION OF  
6 THE FINE, THE COMMISSION MAY REQUEST THAT THE ATTORNEY GENERAL  
7 INSTITUTE COLLECTION PROCEEDINGS.

8           SEC. 20. AN EMPLOYER AND A BARGAINING REPRESENTATIVE SHALL  
9 NOT NEGOTIATE THE RECOVERY OF ANY PENALTY IMPOSED UNDER THIS  
10 ACT.

11          SEC. 21. A BARGAINING REPRESENTATIVE OR AN AFFILIATED ORGA-  
12 NIZATION, OR BOTH, SHALL NOT DIRECTLY OR INDIRECTLY SUBSIDIZE AN  
13 EMPLOYEE ENGAGED IN A STRIKE IN VIOLATION OF THIS ACT.

14          SEC. 22. THE COMMISSION SHALL PROMULGATE, AS NECESSARY, NOT  
15 LATER THAN 1 YEAR AFTER THE EFFECTIVE DATE OF THIS ACT, RULES TO  
16 IMPLEMENT SECTIONS 17 TO 21 PURSUANT TO THE ADMINISTRATIVE PROCE-  
17 DURES ACT OF 1969, ACT NO. 306 OF THE PUBLIC ACTS OF 1969, BEING  
18 SECTIONS 24.201 TO 24.328 OF THE MICHIGAN COMPILED LAWS.