

SUBSTITUTE FOR
HOUSE BILL NO. 4004

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 9, 10, and 15 (MCL 423.209, 423.210, and 423.215), as amended by 2014 PA 414.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 9. ~~(1) Public employees may do any of the following:~~
2 ~~(a) Organize~~ **organize** together or form, join, or assist in
3 labor organizations; engage in lawful concerted activities for the
4 purpose of collective negotiation or bargaining or other mutual aid

1 and protection; or negotiate or bargain collectively with their
2 public employers through representatives of their own free choice.

3 ~~(b) Refrain from any or all of the activities identified in
4 subdivision (a).~~

5 ~~(2) No person shall by force, intimidation, or unlawful
6 threats compel or attempt to compel any public employee to do any
7 of the following:~~

8 ~~(a) Become or remain a member of a labor organization or
9 bargaining representative or otherwise affiliate with or
10 financially support a labor organization or bargaining
11 representative.~~

12 ~~(b) Refrain from engaging in employment or refrain from
13 joining a labor organization or bargaining representative or
14 otherwise affiliating with or financially supporting a labor
15 organization or bargaining representative.~~

16 ~~(c) Pay to any charitable organization or third party an
17 amount that is in lieu of, equivalent to, or any portion of dues,
18 fees, assessments, or other charges or expenses required of members
19 of or public employees represented by a labor organization or
20 bargaining representative.~~

21 ~~(d) Pay the costs of an independent examiner verification as
22 described in section 10(9).~~

23 ~~(3) A person who violates subsection (2) is liable for a civil
24 fine of not more than \$500.00. A civil fine recovered under this
25 section shall be submitted to the state treasurer for deposit in
26 the general fund of this state.~~

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

29 (a) Interfere with, restrain, or coerce public employees in

1 the exercise of their rights guaranteed in section 9.

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

14 (c) Discriminate in regard to hire, terms, or other conditions
15 of employment to encourage or discourage membership in a labor
16 organization. **However, this act or any other law of this state does**
17 **not preclude a public employer from making an agreement with an**
18 **exclusive bargaining representative as described in section 11 to**
19 **require as a condition of employment that all other employees in**
20 **the bargaining unit pay to the exclusive bargaining representative**
21 **a service fee equivalent to the amount of dues uniformly required**
22 **of members of the exclusive bargaining representative.**

23 (d) Discriminate against a public employee because he or she
24 has given testimony or instituted proceedings under this act.

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

27 **(2) It is the purpose of 1973 PA 25 to reaffirm the continuing**
28 **public policy of this state that the stability and effectiveness of**
29 **labor relations in the public sector require, if the requirement is**

1 negotiated with the public employer, that all other employees in
 2 the bargaining unit share fairly in the financial support of their
 3 exclusive bargaining representative by paying to the exclusive
 4 bargaining representative a service fee that may be equivalent to
 5 the amount of dues uniformly required of members of the exclusive
 6 bargaining representative.

7 (3) ~~(2)~~—A labor organization or its agents shall not do any of
 8 the following:

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

13 (b) Restrain or coerce a public employer in the selection of
 14 its representatives for the purposes of collective bargaining or
 15 the adjustment of grievances.

16 (c) Cause or attempt to cause a public employer to
 17 discriminate against a public employee in violation of subsection
 18 (1)(c).

19 (d) Refuse to bargain collectively with a public employer,
 20 ~~provided-if~~ it is the representative of the public employer's
 21 employees, subject to section 11.

22 ~~(3) Except as provided in subsection (4), an individual shall~~
 23 ~~not be required as a condition of obtaining or continuing public~~
 24 ~~employment to do any of the following:~~

25 ~~(a) Refrain or resign from membership in, voluntary~~
 26 ~~affiliation with, or voluntary financial support of a labor~~
 27 ~~organization or bargaining representative.~~

28 ~~(b) Become or remain a member of a labor organization or~~
 29 ~~bargaining representative.~~

1 ~~(c) Pay any dues, fees, assessments, or other charges or~~
2 ~~expenses of any kind or amount, or provide anything of value to a~~
3 ~~labor organization or bargaining representative.~~

4 ~~(d) Pay to any charitable organization or third party any~~
5 ~~amount that is in lieu of, equivalent to, or any portion of dues,~~
6 ~~fees, assessments, or other charges or expenses required of members~~
7 ~~of or public employees represented by a labor organization or~~
8 ~~bargaining representative.~~

9 ~~(4) The application of subsection (3) is subject to the~~
10 ~~following:~~

11 ~~(a) Subsection (3) does not apply to any of the following:~~

12 ~~(i) A public police or fire department employee or any person~~
13 ~~who seeks to become employed as a public police or fire department~~
14 ~~employee as that term is defined under section 2 of 1969 PA 312,~~
15 ~~MCL 423.232.~~

16 ~~(ii) A state police trooper or sergeant who is granted rights~~
17 ~~under section 5 of article XI of the state constitution of 1963 or~~
18 ~~any individual who seeks to become employed as a state police~~
19 ~~trooper or sergeant.~~

20 ~~(b) Any person described in subdivision (a), or a labor~~
21 ~~organization or bargaining representative representing persons~~
22 ~~described in subdivision (a) and a public employer or this state~~
23 ~~may agree that all employees in the bargaining unit shall share~~
24 ~~fairly in the financial support of the labor organization or their~~
25 ~~exclusive bargaining representative by paying a fee to the labor~~
26 ~~organization or exclusive bargaining representative that may be~~
27 ~~equivalent to the amount of dues uniformly required of members of~~
28 ~~the labor organization or exclusive bargaining representative.~~

29 ~~Section 9(2) shall not be construed to interfere with the right of~~

~~1 a public employer or this state and a labor organization or
2 bargaining representative to enter into or lawfully administer such
3 an agreement as it relates to the employees or persons described in
4 subdivision (a).~~

~~5 (c) If any of the exclusions in subdivision (a) (i) or (ii) are
6 found to be invalid by a court, the following apply:~~

~~7 (i) The individuals described in the exclusion found to be
8 invalid shall no longer be excepted from the application of
9 subsection (3).~~

~~10 (ii) Subdivision (b) does not apply to individuals described in
11 the invalid exclusion.~~

~~12 (5) An agreement, contract, understanding, or practice between
13 or involving a public employer, labor organization, or bargaining
14 representative that violates subsection (3) is unlawful and
15 unenforceable. This subsection applies only to an agreement,
16 contract, understanding, or practice that takes effect or is
17 extended or renewed after March 28, 2013.~~

~~18 (6) The court of appeals has exclusive original jurisdiction
19 over any action challenging the validity of subsection (3), (4), or
20 (5). The court of appeals shall hear the action in an expedited
21 manner.~~

~~22 (7) For fiscal year 2012-2013, \$1,000,000.00 is appropriated
23 to the department of licensing and regulatory affairs to be
24 expended to do all of the following regarding 2012 PA 349:~~

~~25 (a) Respond to public inquiries regarding 2012 PA 349.~~

~~26 (b) Provide the commission with sufficient staff and other
27 resources to implement 2012 PA 349.~~

~~28 (c) Inform public employers, public employees, and labor
29 organizations concerning their rights and responsibilities under~~

1 ~~2012 PA 349.~~

2 ~~(d) Any other purposes that the director of the department of~~
3 ~~licensing and regulatory affairs determines in his or her~~
4 ~~discretion are necessary to implement 2012 PA 349.~~

5 ~~(8) A person, public employer, or labor organization that~~
6 ~~violates subsection (3) is liable for a civil fine of not more than~~
7 ~~\$500.00. A civil fine recovered under this section shall be~~
8 ~~submitted to the state treasurer for deposit in the general fund of~~
9 ~~this state.~~

10 ~~(4) (9)~~ By July 1 of each year, each exclusive bargaining
11 representative that represents public employees in this state shall
12 have an independent examiner verify the exclusive bargaining
13 representative's calculation of all expenditures attributed to the
14 costs of collective bargaining, contract administration, and
15 grievance adjustment during the prior calendar year and shall file
16 that verification with the commission. The commission shall make
17 the exclusive bargaining representative's calculations available to
18 the public on the commission's website. The exclusive bargaining
19 representative shall also file a declaration identifying the local
20 bargaining units that are represented. Local bargaining units
21 identified in the declaration filed by the exclusive bargaining
22 representative are not required to file a separate calculation of
23 all expenditures attributed to the costs of collective bargaining,
24 contract administration, and grievance adjustment. ~~For fiscal year~~
25 ~~2011-2012, \$100,000.00 is appropriated to the commission for the~~
26 ~~costs of implementing this subsection. For fiscal year 2014-2015,~~
27 ~~\$100,000.00 is appropriated to the commission for the costs of~~
28 ~~implementing this subsection.~~

29 ~~(10) Except for actions required to be brought under~~

1 ~~subsection (6), a person who suffers an injury as a result of a~~
2 ~~violation or threatened violation of subsection (3) may bring a~~
3 ~~civil action for damages, injunctive relief, or both. In addition,~~
4 ~~a court shall award court costs and reasonable attorney fees to a~~
5 ~~plaintiff who prevails in an action brought under this subsection.~~
6 ~~Remedies provided in this subsection are independent of and in~~
7 ~~addition to other penalties and remedies prescribed by this act.~~

8 **(5) A public employer and a bargaining representative may**
9 **enter into a collective bargaining agreement that requires all**
10 **public employees in the bargaining unit to share equally in the**
11 **financial support of the bargaining representative. This act does**
12 **not, and a law or policy of a local government must not, prohibit**
13 **or limit an agreement that requires public employees in the**
14 **bargaining unit, as a condition of continued employment, to pay to**
15 **the bargaining representative membership dues or service fees. This**
16 **subsection becomes effective immediately upon, and applies to the**
17 **extent permitted by, either of the following:**

18 **(a) A decision or ruling by the United States Supreme Court**
19 **that reverses or limits, in whole or in part, *Janus v AFSCME,***
20 ***Council 31, ___US___; 138 S Ct 2448 (2018).***

21 **(b) The ratification of an amendment to the United States**
22 **Constitution that restores the ability to require, as a condition**
23 **of employment, a public employee who is not a member of a**
24 **bargaining representative to pay, under any circumstances, fees,**
25 **including agency fees, to the bargaining representative.**

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

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

2 (b) Provide the commission with sufficient staff and other
3 resources to implement the amendatory act.

4 (c) Inform public employers, public employees, and bargaining
5 representatives about changes to their rights and responsibilities
6 under the amendatory act.

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

10 Sec. 15. (1) A public employer shall bargain collectively with
11 the representatives of its employees as described in section 11 and
12 may make and enter into collective bargaining agreements with those
13 representatives. Except as otherwise provided in this section, for
14 the purposes of this section, to bargain collectively is to perform
15 the mutual obligation of the employer and the representative of the
16 employees to meet at reasonable times and confer in good faith with
17 respect to wages, hours, and other terms and conditions of
18 employment, or to negotiate an agreement, or any question arising
19 under the agreement, and to execute a written contract, ordinance,
20 or resolution incorporating any agreement reached if requested by
21 either party, but this obligation does not compel either party to
22 agree to a proposal or make a concession.

23 (2) A public school employer has the responsibility,
24 authority, and right to manage and direct on behalf of the public
25 the operations and activities of the public schools under its
26 control.

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

1 (a) Who is or will be the policyholder of an employee group
2 insurance benefit. This subdivision does not affect the duty to
3 bargain with respect to types and levels of benefits and coverages
4 for employee group insurance. A change or proposed change in a type
5 or to a level of benefit, policy specification, or coverage for
6 employee group insurance ~~shall~~**must** be bargained by the public
7 school employer and the bargaining representative before the change
8 ~~may take~~**takes** effect.

9 (b) Establishment of the starting day for the school year and
10 of the amount of pupil contact time required to receive full state
11 school aid under section 1284 of the revised school code, 1976 PA
12 451, MCL 380.1284, and under section 101 of the state school aid
13 act of 1979, 1979 PA 94, MCL 388.1701.

14 (c) The composition of school improvement committees
15 established under section 1277 of the revised school code, 1976 PA
16 451, MCL 380.1277.

17 (d) The decision of whether or not to provide or allow
18 interdistrict or intradistrict open enrollment opportunity in a
19 school district or the selection of grade levels or schools in
20 which to allow an open enrollment opportunity.

21 (e) The decision of whether or not to act as an authorizing
22 body to grant a contract to organize and operate 1 or more public
23 school academies under the revised school code, 1976 PA 451, MCL
24 380.1 to 380.1852.

25 (f) The decision of whether or not to contract with a third
26 party for 1 or more noninstructional support services; or the
27 procedures for obtaining the contract for noninstructional support
28 services other than bidding described in this subdivision; or the
29 identity of the third party; or the impact of the contract for

1 noninstructional support services on individual employees or the
2 bargaining unit. However, this subdivision applies only if the
3 bargaining unit that is providing the noninstructional support
4 services is given an opportunity to bid on the contract for the
5 noninstructional support services on an equal basis as other
6 bidders.

7 (g) The use of volunteers in providing services at its
8 schools.

9 (h) Decisions concerning use and staffing of experimental or
10 pilot programs and decisions concerning use of technology to
11 deliver educational programs and services and staffing to provide
12 that technology, or the impact of those decisions on individual
13 employees or the bargaining unit.

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

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

20 (k) Decisions about the development, content, standards,
21 procedures, adoption, and implementation of the public school
22 employer's policies regarding personnel decisions when conducting a
23 staffing or program reduction or any other personnel determination
24 resulting in the elimination of a position, when conducting a
25 recall from a staffing or program reduction or any other personnel
26 determination resulting in the elimination of a position, or in
27 hiring after a staffing or program reduction or any other personnel
28 determination resulting in the elimination of a position, as
29 provided under section 1248 of the revised school code, 1976 PA

1 451, MCL 380.1248, any decision made by the public school employer
2 pursuant to those policies, or the impact of those decisions on an
3 individual employee or the bargaining unit.

4 (l) Decisions about the development, content, standards,
5 procedures, adoption, and implementation of a public school
6 employer's performance evaluation system adopted under section 1249
7 of the revised school code, 1976 PA 451, MCL 380.1249, or under
8 1937 (Ex Sess) PA 4, MCL 38.71 to 38.191, decisions concerning the
9 content of a performance evaluation of an employee under those
10 provisions of law, or the impact of those decisions on an
11 individual employee or the bargaining unit.

12 (m) For public employees whose employment is regulated by 1937
13 (Ex Sess) PA 4, MCL 38.71 to 38.191, decisions about the
14 development, content, standards, procedures, adoption, and
15 implementation of a policy regarding discharge or discipline of an
16 employee, decisions concerning the discharge or discipline of an
17 individual employee, or the impact of those decisions on an
18 individual employee or the bargaining unit. For public employees
19 whose employment is regulated by 1937 (Ex Sess) PA 4, MCL 38.71 to
20 38.191, a public school employer shall not adopt, implement, or
21 maintain a policy for discharge or discipline of an employee that
22 includes a standard for discharge or discipline that is different
23 than the arbitrary and capricious standard provided under section 1
24 of article IV of 1937 (Ex Sess) PA 4, MCL 38.101.

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

1 (o) Decisions about the development, content, standards,
 2 procedures, adoption, and implementation of the method of
 3 compensation required under section 1250 of the revised school
 4 code, 1976 PA 451, MCL 380.1250, decisions about how an employee
 5 performance evaluation is used to determine performance-based
 6 compensation under section 1250 of the revised school code, 1976 PA
 7 451, MCL 380.1250, decisions concerning the performance-based
 8 compensation of an individual employee, or the impact of those
 9 decisions on an individual employee or the bargaining unit.

10 (p) Decisions about the development, format, content, and
 11 procedures of the notification to parents and legal guardians
 12 required under section 1249a of the revised school code, 1976 PA
 13 451, MCL 380.1249a.

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

15 (4) Except as otherwise provided in subsection (3)(f), the
 16 matters described in subsection (3) are prohibited subjects of
 17 bargaining between a public school employer and a bargaining
 18 representative of its employees, and, for the purposes of this act,
 19 are within the sole authority of the public school employer to
 20 decide.

21 ~~(5) If a public school is placed in the state school
 22 reform/redesign school district or is placed under a chief
 23 executive officer under section 1280c of the revised school code,
 24 1976 PA 451, MCL 380.1280c, then, for the purposes of collective
 25 bargaining under this act, the state school reform/redesign officer
 26 or the chief executive officer, as applicable, is the public school
 27 employer of the public school employees of that public school for
 28 as long as the public school is part of the state school
 29 reform/redesign school district or operated by the chief executive~~

1 officer.

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

6 ~~(a) Any effect on collective bargaining and any modification~~
 7 ~~of a collective bargaining agreement occurring under section 1280e~~
 8 ~~of the revised school code, 1976 PA 451, MCL 380.1280e.~~

9 ~~(b) For a public school in which the superintendent of public~~
 10 ~~instruction implements 1 of the 4 school intervention models~~
 11 ~~described in section 1280e of the revised school code, 1976 PA 451,~~
 12 ~~MCL 380.1280e, if the school intervention model that is implemented~~
 13 ~~affects collective bargaining or requires modification of a~~
 14 ~~collective bargaining agreement, any effect on collective~~
 15 ~~bargaining and any modification of a collective bargaining~~
 16 ~~agreement under that school intervention model.~~

17 ~~(5) (7)~~ Each collective bargaining agreement entered into
 18 between a public employer and public employees under this act on or
 19 after March 28, 2013 ~~shall~~ **must** include a provision that allows an
 20 emergency manager appointed under the local financial stability and
 21 choice act, 2012 PA 436, MCL 141.1541 to 141.1575, to reject,
 22 modify, or terminate the collective bargaining agreement as
 23 provided in the local financial stability and choice act, 2012 PA
 24 436, MCL 141.1541 to 141.1575. Provisions required by this
 25 subsection are prohibited subjects of bargaining under this act.

26 ~~(6) (8)~~ Collective bargaining agreements under this act may be
 27 rejected, modified, or terminated pursuant to the local financial
 28 stability and choice act, 2012 PA 436, MCL 141.1541 to 141.1575.
 29 This act does not confer a right to bargain that would infringe on

1 the exercise of powers under the local financial stability and
2 choice act, 2012 PA 436, MCL 141.1541 to 141.1575.

3 **(7)** ~~(9)~~—A unit of local government that enters into a consent
4 agreement under the local financial stability and choice act, 2012
5 PA 436, MCL 141.1541 to 141.1575, is not subject to subsection (1)
6 for the term of the consent agreement, as provided in the local
7 financial stability and choice act, 2012 PA 436, MCL 141.1541 to
8 141.1575.

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

18 **(9)** ~~(11)~~—The following are prohibited subjects of bargaining
19 and are at the sole discretion of the public employer:

20 (a) A decision as to whether or not the public employer will
21 enter into an intergovernmental agreement to consolidate 1 or more
22 functions or services, to jointly perform 1 or more functions or
23 services, or to otherwise collaborate regarding 1 or more functions
24 or services.

25 (b) The procedures for obtaining a contract for the transfer
26 of functions or responsibilities under an agreement described in
27 subdivision (a).

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

1 **(10)** ~~(12)~~—Subsection ~~(11)~~—**(9)** does not relieve a public
2 employer of any duty established by law to collectively bargain
3 with its employees as to the effect of a contract described in
4 subsection ~~(11)(a)~~—**(9) (a)** on its employees.

5 **(11)** ~~(13)~~—An agreement with a collective bargaining unit ~~shall~~
6 **must** not require a public employer to pay the costs of an
7 independent examiner verification described in section ~~10(9)~~—**10(4)**.

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