

Legislative Analysis



PENALTIES FOR PUBLIC SCHOOL EMPLOYEES AND EMPLOYERS IN EVENT OF STRIKES OR LOCKOUTS

Mitchell Bean, Director
Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

House Bill 4465

Sponsor: Rep. Bill Rogers

House Bill 4466

Sponsor: Rep. Paul Scott

Committee: Education

Complete to 4-19-11

A SUMMARY OF HOUSE BILLS 4465 AND 4466 AS INTRODUCED 3-23-11

The bills specify penalties for teachers and labor organizations who participate in work stoppages (customarily called strikes), and for public school employers who deny their employees the opportunity to work (customarily called lockouts). House Bill 4465 is tie-barred to House Bill 4466 so that it could not go into effect unless House Bill 4466 was also enacted into law. A more detailed description of each bill follows.

House Bill 4465 would amend the Revised School Code (MCL 380.1535b) to specify that if the state school superintendent had information that a person who held a valid Michigan teaching certificate had engaged or participated in a strike, the state superintendent would be required to take all of the following actions:

- Within 10 days after the start of the strike, or after receiving information that the person had engaged or participated in a strike, notify the person that his or her teaching certificate could be suspended for up to two years, or revoked, and that there was a right to a hearing before the state superintendent under the Administrative Procedures Act;
- If the person did not avail himself or herself of the right to a hearing within 15 working days after receiving the written notice, permanently revoke the person's teaching certificate; and
- If a hearing took place, complete the proceedings and make a final decision and order within 120 working days after receiving the request for a hearing. If the state superintendent determined (as a result of the hearing) the person had engaged or participated in a strike, then the state superintendent would be required to suspend the person's teaching certificate for at least two years, and could permanently revoke the person's teaching certificate, depending on a determination as to the severity of the offense.

House Bill 4466 would amend the Michigan Public Employment Relations Act (MCL 423.202a and 423.206) to set penalties for public school employers and employees during lockouts and strikes.

House Bill 4466 would require the state school superintendent to notify the Public Employment Relations Commission of the full or partial days a public school employee was engaged in a strike.

Now under the law, a public school employer can allege a strike which is in violation of the Public Employment Relations Act, and notify the Public Employment Relations Commission of the days (or partial days) an employee was engaged in the alleged strike. House Bill 4466 would retain this provision, but extend it to also require notification of the state school superintendent. Similarly, if a bargaining representative alleges that there is a lockout by a public school employer, he or she must notify the commission of the full or partial days of the alleged lockout. House Bill 4466 would retain this provision unchanged.

Now under the law, within 60 days after receiving a notice of an alleged strike or lockout, the commission must conduct a hearing to determine if there has been a violation of the law, and then must issue its decision and order. House Bill 4466 would retain this provision but shorten the 60 days to two days--so that within two days after receiving a notice of the strike or lockout, the commission would have to conduct a hearing to determine if there had been a violation of the law, and then would have to issue its decision and order. Further, House Bill 4466 would require that the hearing offer an opportunity for the bargaining representative, public school employer, or public school employee to offer testimony or other evidence to support or contest the allegation of a strike or lockout.

Now under the law, if a majority of the commission finds that public school employees have engaged in a strike, the commission fines each employee an amount equal to one day of pay for each full or partial day the employee was engaged in the strike. Further, the bargaining representative of the school employees is fined \$5,000 for each full or partial day of the strike. Likewise, if after a hearing it is determined that a public school employer instituted a lockout, the employer is fined \$5,000 a day, and each member of the school governing board is fined \$250 a day for each full or partial day of the lockout. House Bill 4466 would retain both of these provisions.

Now the law allows the Public Employment Relations Commission to order a public school employer to deduct the fine from an employee's annual salary, and the employer to comply promptly with such an order. House Bill 4466 would retain this provision, unchanged. Now under the law, any money collected from fines is deposited by the state treasurer in the State School Aid Fund, and if payment of an imposed fine is not received within 30 days, the commission begins collection proceedings. House Bill 446 would also retain these provisions unchanged.

Now under the law, a public school employer can bring an action to enjoin a strike by public school employees, and a bargaining representative can bring an action to enjoin a lockout in the circuit court for the county in which the public school is located. House Bill 4466 would retain this provision, but also allow an action to enjoin a strike to be brought by the state school superintendent. Further, the bill specifies that if the Public Employment Relations Commission had made a determination that a strike or lockout existed after conducting its hearing, then that finding could not be overturned by the circuit court, except by clear and convincing evidence.

Now under the law, a circuit court having jurisdiction must grant injunctive relief, if the court finds that a strike or lockout has occurred (without regard to the existence of other remedies, demonstration of irreparable harm, or other factors). Further, the law specifies that failure to comply with an order of the court can be punished as contempt, and finally, the court is required to award court costs and reasonable attorney fees to a plaintiff who prevails in the action. House Bill 4466 would eliminate these provisions.

Instead, House Bill 4466 specifies that if the court having jurisdiction finds that conditions constituting a strike or a lockout exist (and unless clear and convincing evidence has shown that the sanction would not be equitable or the sanction would duplicate a sanction imposed by the commission for the same activity), then the court would be required to take all of the following actions:

- For a strike, to order (i) the labor organization to pay a fine of \$5,000 for each full or partial day the employees were engaged in the strike, and (ii) each public school employee to pay a fine in an amount equal to one day of pay for each full or partial day the employee was engaged in the strike. For a lockout, order the public school employer to pay a fine of \$5,000 for each full or partial day of the lockout, and (ii) each member of the public school governing board to pay a fine of \$250 for each full or partial day of the lockout.
- Order the public school employees or public school employer to end the strike or lockout.
- Award costs and attorney fees to a plaintiff who prevails in the action.
- Grant additional equitable relief that the court finds appropriate.

Finally, House Bill 4466 specifies that an order issued under this section of the law would be enforceable through the court's contempt power.

Now under the law, a public school employer is prohibited from providing compensation or additional work assignments to any employee or board member, in order to reimburse them for the monetary penalties imposed for strikes or lockouts. House Bill 4466 would retain this provision.

Now the law describes the behavior of a public school employee that is considered to be a strike, and House Bill 4466 would retain that provision. That is, a public employee who, by concerted action with others and without the lawful approval of his or her superiors, willfully absents himself or herself from his or her position, or abstains in whole or in

part from the full, faithful, and proper performance of his or her duties for the purpose of inducing, influencing, or coercing a change in employment conditions, compensation, or the rights, privileges, or obligations of employment, or a public employee employed by a public school employer who engages in an action described in this subsection of the law for the purpose of protesting or responding to an act alleged or determined to be an unfair labor practice committed by the public school employer, shall be considered to be on strike.

Now under the law, before a public employer can discipline or discharge a public employee for engaging in a strike, the employee is entitled to a determination as to whether he or she violated the act. A request for that determination is filed (in writing) with the officer or body having power to remove or discipline the employee, within 10 days after regular compensation of the employee has stopped, or other discipline has been imposed. If a request is filed, the officer or body begins a proceeding to make the determination within 10 days after receiving the request. House Bill 4466 would retain this provision, but shorten the deadline from 10 days to five days, so that the officer or body would have to commence a proceeding within five days. Now under the law, the officer must make a decision within 10 days. House Bill 4466 would shorten the deadline from 10 days to two days, so that the officer or body would have to make its determination with two days after the conclusion of the proceeding.

Now under the law, if an employee is found to have violated the act and his or her employment is terminated or other discipline is imposed, the employee has the right of review to the circuit court within 30 days of the decision, for a determination as to whether the decision is supported by competent, material, and substantial evidence. House Bill 4466 would retain this provision.

Finally, House Bill 4466 specifies that a public employer could consolidate employee hearings under this subsection, unless the employee demonstrated manifest injustice from the consolidation.

FISCAL IMPACT:

A fiscal analysis is in progress.

Legislative Analyst: J. Hunault
Fiscal Analyst: Mary Ann Cleary
Bethany Wicksall

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.