

# HOUSE BILL No. 5023

September 28, 2011, Introduced by Reps. Lyons, Pscholka, Haveman, Daley, Walsh, Price, McMillin, Poleski, Lund, Bumstead, Gilbert, Wayne Schmidt and Yonker and referred to the Committee on Oversight, Reform, and Ethics.

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

by amending section 2 (MCL 423.202), as amended by 1994 PA 112, and by adding section 2b.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1           Sec. 2. A public employee shall not strike and a public ~~school~~  
2 employer shall not institute a lockout. A public ~~school~~-employer  
3 does not violate this section if there is a total or partial  
4 cessation of the public ~~school~~-employer's operations in response to  
5 a strike held in violation of this section.

6           **SEC. 2B. (1) IF A PUBLIC EMPLOYER ALLEGES THAT THERE IS A**  
7 **STRIKE BY 1 OR MORE PUBLIC EMPLOYEES OF A PUBLIC EMPLOYER IN**

1 VIOLATION OF SECTION 2, THE PUBLIC EMPLOYER SHALL NOTIFY THE  
2 COMMISSION OF THE FULL OR PARTIAL DAYS THE PUBLIC EMPLOYEE WAS  
3 ENGAGED IN THE ALLEGED STRIKE.

4 (2) IF A BARGAINING REPRESENTATIVE ALLEGES THAT THERE IS A  
5 LOCKOUT BY A PUBLIC EMPLOYER IN VIOLATION OF SECTION 2, THE  
6 BARGAINING REPRESENTATIVE SHALL NOTIFY THE COMMISSION OF THE FULL  
7 OR PARTIAL DAYS OF THE ALLEGED LOCKOUT.

8 (3) WITHIN 60 DAYS AFTER RECEIPT OF A NOTICE MADE PURSUANT TO  
9 SUBSECTION (1) OR (2), THE COMMISSION SHALL CONDUCT A HEARING TO  
10 DETERMINE IF THERE HAS BEEN A VIOLATION AND SHALL ISSUE ITS  
11 DECISION AND ORDER. A HEARING CONDUCTED UNDER THIS SUBSECTION IS  
12 SEPARATE AND DISTINCT FROM, AND IS NOT SUBJECT TO THE PROCEDURES  
13 AND TIMELINES OF, A PROCEEDING CONDUCTED UNDER SECTION 6.

14 (4) IF, AFTER A HEARING UNDER SUBSECTION (3), A MAJORITY OF  
15 THE COMMISSION FINDS THAT 1 OR MORE PUBLIC EMPLOYEES OF A PUBLIC  
16 EMPLOYER ENGAGED IN A STRIKE IN VIOLATION OF SECTION 2, THE  
17 COMMISSION SHALL FINE EACH PUBLIC EMPLOYEE AN AMOUNT EQUAL TO 1 DAY  
18 OF PAY FOR THAT PUBLIC EMPLOYEE FOR EACH FULL OR PARTIAL DAY THAT  
19 HE OR SHE ENGAGED IN THE STRIKE AND SHALL FINE THE BARGAINING  
20 REPRESENTATIVE OF THE PUBLIC EMPLOYEE OR EMPLOYEES \$5,000.00 FOR  
21 EACH FULL OR PARTIAL DAY THE PUBLIC EMPLOYEE OR EMPLOYEES ENGAGED  
22 IN THE STRIKE.

23 (5) IF, AFTER A HEARING UNDER SUBSECTION (3), A MAJORITY OF  
24 THE COMMISSION FINDS THAT A PUBLIC EMPLOYER INSTITUTED A LOCKOUT IN  
25 VIOLATION OF SECTION 2, THE COMMISSION SHALL FINE THE PUBLIC  
26 EMPLOYER \$5,000.00 FOR EACH FULL OR PARTIAL DAY OF THE LOCKOUT.

27 (6) IF THE COMMISSION IMPOSES A FINE AGAINST A PUBLIC EMPLOYEE

1 UNDER SUBSECTION (4) AND THE PUBLIC EMPLOYEE CONTINUES TO BE  
2 EMPLOYED BY A PUBLIC EMPLOYER, THE COMMISSION SHALL ORDER THE  
3 PUBLIC EMPLOYER TO DEDUCT THE FINE FROM THE PUBLIC EMPLOYEE'S  
4 SALARY. THE PUBLIC EMPLOYEE'S SALARY IS THE ANNUAL SALARY THAT IS  
5 ESTABLISHED IN THE APPLICABLE CONTRACT IN EFFECT AT THE TIME OF THE  
6 STRIKE OR, IF NO APPLICABLE CONTRACT IS IN EFFECT AT THE TIME OF  
7 THE STRIKE, IN THE APPLICABLE CONTRACT IN EFFECT AT THE TIME OF THE  
8 DECISION AND ORDER. HOWEVER, IF NO APPLICABLE CONTRACT IS IN EFFECT  
9 AT EITHER OF THOSE TIMES, THE PUBLIC EMPLOYEE'S SALARY SHALL BE  
10 CONSIDERED TO BE THE ANNUAL SALARY THAT APPLIED OR WOULD HAVE  
11 APPLIED TO THE PUBLIC EMPLOYEE IN THE MOST RECENT APPLICABLE  
12 CONTRACT IN EFFECT BEFORE THE STRIKE. A PUBLIC EMPLOYER SHALL  
13 COMPLY PROMPTLY WITH AN ORDER UNDER THIS SUBSECTION.

14 (7) THE COMMISSION SHALL TRANSMIT MONEY RECEIVED FROM FINES  
15 IMPOSED UNDER THIS SECTION, AND A PUBLIC EMPLOYER SHALL TRANSMIT  
16 MONEY DEDUCTED PURSUANT TO AN ORDER UNDER SUBSECTION (6), TO THE  
17 STATE TREASURER FOR DEPOSIT IN THE GENERAL FUND OF THE STATE  
18 TREASURY.

19 (8) IF THE COMMISSION DOES NOT RECEIVE PAYMENT OF A FINE  
20 IMPOSED UNDER THIS SECTION WITHIN 30 DAYS AFTER THE IMPOSITION OF  
21 THE FINE, OR IF A PUBLIC EMPLOYER DOES NOT DEDUCT A FINE FROM A  
22 PUBLIC EMPLOYEE'S PAY PURSUANT TO AN ORDER UNDER SUBSECTION (6),  
23 THE COMMISSION SHALL INSTITUTE COLLECTION PROCEEDINGS.

24 (9) FINES IMPOSED UNDER THIS SECTION ARE IN ADDITION TO ALL  
25 OTHER REMEDIES AND SANCTIONS PRESCRIBED BY THIS ACT AND BY LAW.

26 (10) A PUBLIC EMPLOYER MAY BRING AN ACTION TO ENJOIN A STRIKE  
27 BY PUBLIC EMPLOYEES IN VIOLATION OF SECTION 2, AND A BARGAINING

1 REPRESENTATIVE MAY BRING AN ACTION TO ENJOIN A LOCKOUT BY A PUBLIC  
2 EMPLOYER IN VIOLATION OF SECTION 2, IN THE CIRCUIT COURT FOR THE  
3 COUNTY IN WHICH THE AFFECTED PUBLIC EMPLOYER IS LOCATED. A COURT  
4 HAVING JURISDICTION OVER AN ACTION BROUGHT UNDER THIS SUBSECTION  
5 SHALL GRANT INJUNCTIVE RELIEF IF THE COURT FINDS THAT A STRIKE OR  
6 LOCKOUT HAS OCCURRED, WITHOUT REGARD TO THE EXISTENCE OF OTHER  
7 REMEDIES, DEMONSTRATION OF IRREPARABLE HARM, OR OTHER FACTORS.  
8 FAILURE TO COMPLY WITH AN ORDER OF THE COURT MAY BE PUNISHED AS  
9 CONTEMPT. IN ADDITION, THE COURT SHALL AWARD COURT COSTS AND  
10 REASONABLE ATTORNEY FEES TO A PLAINTIFF WHO PREVAILS IN AN ACTION  
11 BROUGHT UNDER THIS SUBSECTION.

12 (11) A PUBLIC EMPLOYER SHALL NOT PROVIDE TO A PUBLIC EMPLOYEE  
13 ANY COMPENSATION OR ADDITIONAL WORK ASSIGNMENT THAT IS INTENDED TO  
14 REIMBURSE THE PUBLIC EMPLOYEE FOR, OR ALLOW THE PUBLIC EMPLOYEE TO  
15 RECOVER, A MONETARY PENALTY IMPOSED UNDER THIS SECTION.

16 (12) AS USED IN THIS SECTION, "PUBLIC EMPLOYER" MEANS A  
17 COUNTY, TOWNSHIP, VILLAGE, CITY, AUTHORITY, SCHOOL DISTRICT, OR  
18 OTHER POLITICAL SUBDIVISION OF THIS STATE AND INCLUDES ANY ENTITY  
19 JOINTLY CREATED BY 2 OR MORE PUBLIC EMPLOYERS.