

HOUSE BILL No. 4804

June 5, 2013, Introduced by Rep. Lund and referred to the Committee on Local Government.

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 section 15 (MCL 423.215), as amended by 2012 PA 349.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 15. (1) A public employer shall bargain collectively with
2 the representatives of its employees as described in section 11 and
3 may make and enter into collective bargaining agreements with those
4 representatives. Except as otherwise provided in this section, for
5 the purposes of this section, to bargain collectively is to perform

1 the mutual obligation of the employer and the representative of the
2 employees to meet at reasonable times and confer in good faith with
3 respect to wages, hours, and other terms and conditions of
4 employment, or to negotiate an agreement, or any question arising
5 under the agreement, and to execute a written contract, ordinance,
6 or resolution incorporating any agreement reached if requested by
7 either party, but this obligation does not compel either party to
8 agree to a proposal or make a concession.

9 (2) A public school employer has the responsibility,
10 authority, and right to manage and direct on behalf of the public
11 the operations and activities of the public schools under its
12 control.

13 (3) Collective bargaining between a public school employer and
14 a bargaining representative of its employees shall not include any
15 of the following subjects:

16 (a) Who is or will be the policyholder of an employee group
17 insurance benefit. This subdivision does not affect the duty to
18 bargain with respect to types and levels of benefits and coverages
19 for employee group insurance. A change or proposed change in a type
20 or to a level of benefit, policy specification, or coverage for
21 employee group insurance shall be bargained by the public school
22 employer and the bargaining representative before the change may
23 take effect.

24 (b) Establishment of the starting day for the school year and
25 of the amount of pupil contact time required to receive full state
26 school aid under section 1284 of the revised school code, 1976 PA
27 451, MCL 380.1284, and under section 101 of the state school aid

1 act of 1979, 1979 PA 94, MCL 388.1701.

2 (c) The composition of school improvement committees
3 established under section 1277 of the revised school code, 1976 PA
4 451, MCL 380.1277.

5 (d) The decision of whether or not to provide or allow
6 interdistrict or intradistrict open enrollment opportunity in a
7 school district or the selection of grade levels or schools in
8 which to allow an open enrollment opportunity.

9 (e) The decision of whether or not to act as an authorizing
10 body to grant a contract to organize and operate 1 or more public
11 school academies under the revised school code, 1976 PA 451, MCL
12 380.1 to 380.1852.

13 (f) The decision of whether or not to contract with a third
14 party for 1 or more noninstructional support services; or the
15 procedures for obtaining the contract for noninstructional support
16 services other than bidding described in this subdivision; or the
17 identity of the third party; or the impact of the contract for
18 noninstructional support services on individual employees or the
19 bargaining unit. However, this subdivision applies only if the
20 bargaining unit that is providing the noninstructional support
21 services is given an opportunity to bid on the contract for the
22 noninstructional support services on an equal basis as other
23 bidders.

24 (g) The use of volunteers in providing services at its
25 schools.

26 (h) Decisions concerning use and staffing of experimental or
27 pilot programs and decisions concerning use of technology to

1 deliver educational programs and services and staffing to provide
2 that technology, or the impact of those decisions on individual
3 employees or the bargaining unit.

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

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

10 (k) Decisions about the development, content, standards,
11 procedures, adoption, and implementation of the public school
12 employer's policies regarding personnel decisions when conducting a
13 staffing or program reduction or any other personnel determination
14 resulting in the elimination of a position, when conducting a
15 recall from a staffing or program reduction or any other personnel
16 determination resulting in the elimination of a position, or in
17 hiring after a staffing or program reduction or any other personnel
18 determination resulting in the elimination of a position, as
19 provided under section 1248 of the revised school code, 1976 PA
20 451, MCL 380.1248, any decision made by the public school employer
21 pursuant to those policies, or the impact of those decisions on an
22 individual employee or the bargaining unit.

23 (l) Decisions about the development, content, standards,
24 procedures, adoption, and implementation of a public school
25 employer's performance evaluation system adopted under section 1249
26 of the revised school code, 1976 PA 451, MCL 380.1249, or under
27 1937 (Ex Sess) PA 4, MCL 38.71 to 38.191, decisions concerning the

1 content of a performance evaluation of an employee under those
2 provisions of law, or the impact of those decisions on an
3 individual employee or the bargaining unit.

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

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

22 (o) Decisions about the development, content, standards,
23 procedures, adoption, and implementation of the method of
24 compensation required under section 1250 of the revised school
25 code, 1976 PA 451, MCL 380.1250, decisions about how an employee
26 performance evaluation is used to determine performance-based
27 compensation under section 1250 of the revised school code, 1976 PA

1 451, MCL 380.1250, decisions concerning the performance-based
2 compensation of an individual employee, or the impact of those
3 decisions on an individual employee or the bargaining unit.

4 (p) Decisions about the development, format, content, and
5 procedures of the notification to parents and legal guardians
6 required under section 1249a of the revised school code, 1976 PA
7 451, MCL 380.1249a.

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

9 (4) Except as otherwise provided in subsection (3)(f), the
10 matters described in subsection (3) are prohibited subjects of
11 bargaining between a public school employer and a bargaining
12 representative of its employees, and, for the purposes of this act,
13 are within the sole authority of the public school employer to
14 decide.

15 (5) If a public school is placed in the state school
16 reform/redesign school district or is placed under a chief
17 executive officer under section 1280c of the revised school code,
18 1976 PA 451, MCL 380.1280c, then, for the purposes of collective
19 bargaining under this act, the state school reform/redesign officer
20 or the chief executive officer, as applicable, is the public school
21 employer of the public school employees of that public school for
22 as long as the public school is part of the state school
23 reform/redesign school district or operated by the chief executive
24 officer.

25 (6) A public school employer's collective bargaining duty
26 under this act and a collective bargaining agreement entered into
27 by a public school employer under this act are subject to all of

1 the following:

2 (a) Any effect on collective bargaining and any modification
3 of a collective bargaining agreement occurring under section 1280c
4 of the revised school code, 1976 PA 451, MCL 380.1280c.

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

13 (7) Each collective bargaining agreement entered into between
14 a public employer and public employees under this act after March
15 16, 2011 shall include a provision that allows an emergency manager
16 appointed under the local government and school district fiscal
17 accountability act, 2011 PA 4, MCL 141.1501 to 141.1531, to reject,
18 modify, or terminate the collective bargaining agreement as
19 provided in the local government and school district fiscal
20 accountability act, 2011 PA 4, MCL 141.1501 to 141.1531. Provisions
21 required by this subsection are prohibited subjects of bargaining
22 under this act.

23 (8) Collective bargaining agreements under this act may be
24 rejected, modified, or terminated pursuant to the local government
25 and school district fiscal accountability act, 2011 PA 4, MCL
26 141.1501 to 141.1531. This act does not confer a right to bargain
27 that would infringe on the exercise of powers under the local

1 government and school district fiscal accountability act, 2011 PA
2 4, MCL 141.1501 to 141.1531.

3 (9) A unit of local government that enters into a consent
4 agreement under the local government and school district fiscal
5 accountability act, 2011 PA 4, MCL 141.1501 to 141.1531, is not
6 subject to subsection (1) for the term of the consent agreement, as
7 provided in the local government and school district fiscal
8 accountability act, 2011 PA 4, MCL 141.1501 to 141.1531.

9 (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 (11) The following are prohibited subjects of bargaining and
19 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).

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

3 (12) Nothing in subsection (11) relieves a public employer of
4 any duty established by law to collectively bargain with its
5 employees as to the effect of a contract described in subsection
6 (11) (a) on its employees.

7 (13) IF A CITY OR CHARTER COUNTY ADOPTS A RESOLUTION, AN
8 ORDINANCE, OR A CHARTER PROVISION THAT OPERATES TO PROHIBIT THE
9 CITY OR CHARTER COUNTY FROM OFFERING A DEFINED BENEFIT RETIREMENT
10 PLAN TO SOME OR ALL OF ITS EMPLOYEES, A DEFINED BENEFIT RETIREMENT
11 PLAN FOR THOSE EMPLOYEES IS A PROHIBITED SUBJECT OF BARGAINING.
12 NOTHING IN THIS ACT PROHIBITS A CITY OR CHARTER COUNTY FROM
13 ADOPTING, OR LIMITS THE EFFECT OF, AN ORDINANCE OR A CHARTER
14 PROVISION THAT RESTRICTS THE CITY OR CHARTER COUNTY FROM OFFERING
15 ITS EMPLOYEES A DEFINED BENEFIT RETIREMENT PLAN. AS USED IN THIS
16 SUBSECTION, "DEFINED BENEFIT RETIREMENT PLAN" MEANS A RETIREMENT
17 PLAN FOR A GROUP OF EMPLOYEES THAT PROVIDES A SPECIFIED BENEFIT ON
18 RETIREMENT IN A PREDETERMINED AMOUNT BASED ON FACTORS OTHER THAN
19 CONTRIBUTIONS AND INVESTMENT RETURNS.