

Legislative Analysis



AMENDED RULES FOR PUBLIC EMPLOYEE STRIKES

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<http://www.house.mi.gov/hfa>

House Bill 5235 as introduced
Sponsor: Rep. Tim Kelly

Analysis available at
<http://www.legislature.mi.gov>

House Bill 5236 as introduced
Sponsor: Rep. Amanda Price

House Bill 5237 as introduced
Sponsor: Rep. Pat Somerville

Committee: Education
Complete to 2-9-16

SUMMARY:

House Bills 5235-5237 would amend three public acts to expedite the process for ruling on and penalizing teacher strikes, increase penalties for those strikes, allow the state superintendent of public instruction to suspend or revoke the teaching licenses of strike participants, and withhold funds from a school district or intermediate school district (ISD) that fails to enforce the strike penalty.

House Bill 5235: Expanded strike definition and penalties

This bill would amend Public Act 336 of 1947, the Public Employment Relations Act (PERA), which prohibits strikes by certain public employees (and lockouts by public school employers) by expediting the process for ruling on and penalizing strikes, increasing penalties for strikes, and extending the penalties of a commission finding to apply to a court injunction.

Currently, a public employee is legally prohibited from striking, under Section 2 of PERA. House Bill 5235 would expand that prohibition to apply to the ongoing "sick outs" as described in ***Background***, below, so that "conditions constituting a strike...by one or more public school employees" would trigger the same process and penalties as a formal strike.

Whereas current law requires a hearing before the Michigan Employment Relations Commission (MERC) to determine if there has been a violation within 60 days of the applicable notice, the bill would require a hearing within two days of that notice. It would allow the bargaining representative, public school employer, or public school employee the opportunity to offer testimony or other evidence to support or contest the allegation of a strike.

House Bill 5235 would also amend the rules and penalties for an injunction (an equitable remedy requiring or prohibiting a certain act) by the circuit court, which would effectively stop a strike. Currently, if the MERC concludes that a teacher has participated in a strike, it will fine the teacher a day's pay and the bargaining representative \$5,000. This bill would extend that financial penalty to instances when a court issues an injunction, unless clear

and convincing evidence has shown it would not be equitable or the teacher and bargaining representative have already been so penalized by the Commission.

The bill would also require the court issuing the injunction to order the striking teachers to return to work, award costs and attorney fees to the party seeking the injunction if that party prevails, and grant additional equitable relief that the court finds appropriate.

The sections of PERA this bill addresses also apply to lockouts by schools, with most sections regarding lockouts remaining unchanged. However, the bill would also extend the rules and penalties for a determination by the MERC that a lockout occurred to apply to an injunction by the circuit court. Specifically, unless clear and convincing evidence shows it would not be equitable or the school and governing board have already been so penalized by the Commission, an injunction would trigger a fine of \$5,000 for the public school employer and a fine of \$250 for each member of the public school employer's governing board.

The bill would also require the court issuing the injunction to order the school to reopen, award costs and attorney fees to the party seeking the injunction if that party prevails, and grant additional equitable relief that the court finds appropriate.

Finally, the bill amends a subsection which applies when a public employee is willfully absent or "abstains in whole or in part from the full, faithful, and proper performance" of duties as part of a protest of employment conditions, compensation, or employment rights or privileges.

Now, an employee may file a request for a determination on whether he or she violated this rule, with the proceeding to be commenced within ten days of the request and a decision within ten days of the proceeding's conclusion. The bill would amend the rules so that the proceeding is commenced within five days of the request and the decision within two days of the proceeding's conclusion. Additionally, it would allow the public employer to consolidate employee hearings unless the employee shows manifest injustice would result from the consolidation.

MCL 423.202a and 423.206.

House Bill 5236: Suspension or revocation of teaching license

This bill would amend the Revised School Code to require that the state superintendent of public instruction notify a teacher suspected of strike participation that the teacher is subject to suspension or revocation of his or her teaching license, which will take effect unless the teacher requests a hearing and is cleared of those charges.

Within ten days of the initiation of a teacher strike or receiving notice that a strike has commenced, the superintendent of public instruction will notify the teacher that teaching credentials may be suspended for at least two years, or revoked. The superintendent will also notify the teacher of the right to a hearing before the superintendent, which must be

invoked within 15 days. Failure to invoke this right will result in a permanent revocation of the teacher's teaching certificate.

If the hearing takes place, the superintendent has 120 days to determine whether the teacher has participated in a strike. If the superintendent determines that the teacher has participated in a strike, the teacher's teaching certificate will be suspended or revoked, depending on the severity of the offense.

Proposed MCL 380.1535b.

House Bill 5237: Penalty to school district or ISD

This bill would amend the State School Aid Act of 1979 by withholding funds from a school district or intermediate school district that fails to fine its teachers who are found to have participated in a strike.

If a school district or ISD fails to comply with an order from the Employment Relations Commission to deduct a fine from an employee's salary due to strike activity, the district or ISD will forfeit five percent of its total state aid.

Proposed MCL 388.164g.

House Bills 5235 and 5236 would take effect 90 days after their enactment. House Bill 5237 is tie-barred to House Bills 5235 and 5236, meaning it would not take effect unless the other two take effect.

BACKGROUND:

These bills are understood to be a response to a series of "sick outs" by Detroit Public School teachers during the month of January 2016, which have closed about 90 percent of the district's public schools on occasion. Because public employees are not legally allowed to strike, teachers called in sick on designated days, in what they claimed was an attempt to draw attention to unsafe school conditions. These bills would classify those actions as strikes, subject to the same penalties as existing strikes.

FISCAL IMPACT:

The bills would have an indeterminate fiscal impact on both the state and local units of government.

House Bills 5235 and 5236 could increase administrative costs for the Department of Education (MDE) by involving the state Superintendent in the process of dealing with teacher strikes and requiring that the Superintendent suspend or revoke teaching certificates for teachers who engaged or participated in a strike. House Bill 5235 could increase administrative costs for the Michigan Employment Relations Commission (MERC) in reducing the number of days within which it must conduct a hearing after a strike from 60 to 2. It could also increase revenue to the state's School Aid Fund (SAF) through the

additional penalties that would be applied by a circuit court if the strike were enjoined by the court.

Finally, House Bill 5237 could both reduce state costs and reduce state aid payments to a district or intermediate district, if either fails to comply with an order from MERC to deduct a fine from an employee's salary.

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