

HOUSE BILL No. 4596

May 11, 2017, Introduced by Rep. Hornberger and referred to the Committee on Michigan Competitiveness.

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 1, 9, 10, 11, and 15 (MCL 423.201, 423.209, 423.210, 423.211, and 423.215), sections 1, 9, 10, and 15 as amended by 2014 PA 414.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. (1) As used in this act:

2 (a) "Bargaining representative" means a labor organization
3 recognized by an employer or certified by the commission as the
4 sole and exclusive bargaining representative of certain employees

1 of the employer.

2 (b) "Commission" means the employment relations commission
3 created in section 3 of 1939 PA 176, MCL 423.3.

4 (C) "INDEPENDENT BARGAINING" OR "TO BARGAIN INDEPENDENTLY"
5 REFERS TO BARGAINING BETWEEN A PUBLIC EMPLOYER OR PUBLIC SCHOOL
6 EMPLOYER AND A PUBLIC EMPLOYEE WITH RESPECT TO RATES OF PAY, WAGES,
7 HOURS OF EMPLOYMENT, OR OTHER TERMS AND CONDITIONS OF EMPLOYMENT
8 WITHOUT THE INTERVENTION OF A LABOR ORGANIZATION, BARGAINING AGENT,
9 OR EXCLUSIVE REPRESENTATIVE. INDEPENDENT BARGAINING DOES NOT GRANT
10 ANY GREATER OR LESSER RIGHTS OR PRIVILEGES TO A PUBLIC EMPLOYEE WHO
11 HAS CHOSEN TO REPRESENT HIMSELF OR HERSELF IN A UNIT WITH AN
12 EXCLUSIVE REPRESENTATIVE THAN A PUBLIC EMPLOYEE IN A UNIT WITHOUT
13 AN EXCLUSIVE REPRESENTATIVE. INDEPENDENT BARGAINING DOES NOT IMPOSE
14 ANY GREATER OR LESSER DUTIES OR OBLIGATIONS FOR A PUBLIC EMPLOYER
15 OR PUBLIC SCHOOL EMPLOYER TO A PUBLIC EMPLOYEE WHO HAS CHOSEN TO
16 REPRESENT HIMSELF OR HERSELF IN A UNIT WITH AN EXCLUSIVE
17 REPRESENTATIVE THAN THOSE DUTIES OR OBLIGATIONS THAT THE PUBLIC
18 EMPLOYER OR PUBLIC SCHOOL EMPLOYER OWES TO A PUBLIC EMPLOYEE IN A
19 UNIT WITHOUT AN EXCLUSIVE REPRESENTATIVE.

20 (D) ~~(e)~~ "Intermediate school district" means that term as
21 defined in section 4 of the revised school code, 1976 PA 451, MCL
22 380.4.

23 (E) ~~(d)~~ "Lockout" means the temporary withholding of work from
24 a group of employees by shutting down the operation of the employer
25 to bring pressure upon the affected employees or the bargaining
26 representative, or both, to accept the employer's terms of
27 settlement of a labor dispute.

1 **(F)** ~~(e)~~—"Public employee" means an individual holding a
2 position by appointment or employment in the government of this
3 state, in the government of 1 or more of the political subdivisions
4 of this state, in the public school service, in a public or special
5 district, in the service of an authority, commission, or board, or
6 in any other branch of the public service, subject to the following
7 exceptions:

8 (i) An individual employed by a private organization or entity
9 who provides services under a time-limited contract with this state
10 or a political subdivision of this state or who receives a direct
11 or indirect government subsidy in his or her private employment is
12 not an employee of this state or that political subdivision, and is
13 not a public employee. This provision ~~shall not be~~ **IS NOT**
14 superseded by any interlocal agreement, memorandum of
15 understanding, memorandum of commitment, or other document similar
16 to these.

17 ~~—— (ii) If, by April 9, 2000, a public school employer that is~~
18 ~~the chief executive officer serving in a school district of the~~
19 ~~first class under part 5A of the revised school code, 1976 PA 451,~~
20 ~~MCL 380.371 to 380.376, issues an order determining that it is in~~
21 ~~the best interests of the school district, then a public school~~
22 ~~administrator employed by that school district is not a public~~
23 ~~employee for purposes of this act. The exception under this~~
24 ~~subparagraph applies to public school administrators employed by~~
25 ~~that school district after the date of the order described in this~~
26 ~~subparagraph whether or not the chief executive officer remains in~~
27 ~~place in the school district. This exception does not prohibit the~~

1 ~~chief executive officer or board of a school district of the first~~
 2 ~~class or its designee from having informal meetings with public~~
 3 ~~school administrators to discuss wages and working conditions.~~

4 (ii) ~~(iii)~~—An individual serving as a graduate student
 5 research assistant or in an equivalent position, a student
 6 participating in intercollegiate athletics on behalf of a public
 7 university in this state, or any individual whose position does not
 8 have sufficient indicia of an employer-employee relationship using
 9 the 20-factor test announced by the ~~internal revenue service~~
 10 **INTERNAL REVENUE SERVICE** of the United States ~~department~~ **DEPARTMENT**
 11 of ~~treasury~~ **TREASURY** in revenue ruling 87-41, 1987-1 C.B. 296 is
 12 not a public employee entitled to representation or collective
 13 bargaining rights under this act.

14 (G) **"PUBLIC EMPLOYER" MEANS THE EMPLOYER OF A PUBLIC EMPLOYEE.**

15 (H) ~~(f)~~—"Public school academy" means a public school academy
 16 or strict discipline academy organized under the revised school
 17 code, 1976 PA 451, MCL 380.1 to 380.1852.

18 (I) ~~(g)~~—"Public school administrator" means a superintendent,
 19 assistant superintendent, chief business official, principal, or
 20 assistant principal employed by a school district, intermediate
 21 school district, or public school academy.

22 (J) ~~(h)~~—"Public school employer" means a public employer that
 23 is the board of a school district, intermediate school district, or
 24 public school academy; ~~is the chief executive officer of a school~~
 25 ~~district in which a school reform board is in place under part 5A~~
 26 ~~of the revised school code, 1976 PA 451, MCL 380.371 to 380.376; or~~
 27 is the governing board of a joint endeavor or consortium consisting

1 of any combination of school districts, intermediate school
2 districts, or public school academies.

3 **(K)** ~~(i)~~—"School district" means that term as defined in
4 section 6 of the revised school code, 1976 PA 451, MCL 380.6, or a
5 local act school district as defined in section 5 of the revised
6 school code, 1976 PA 451, MCL 380.5.

7 **(l)** ~~(j)~~—"Strike" means the concerted failure to report for
8 duty, the willful absence from one's position, the stoppage of
9 work, or the abstinence in whole or in part from the full,
10 faithful, and proper performance of the duties of employment for
11 the purpose of inducing, influencing, or coercing a change in
12 employment conditions, compensation, or the rights, privileges, or
13 obligations of employment. For employees of a public school
14 employer, strike also includes an action described in this
15 subdivision that is taken for the purpose of protesting or
16 responding to an act alleged or determined to be an unfair labor
17 practice committed by the public school employer.

18 (2) This act does not limit, impair, or affect the right of a
19 public employee to the expression or communication of a view,
20 grievance, complaint, or opinion on any matter related to the
21 conditions or compensation of public employment or their betterment
22 as long as the expression or communication does not interfere with
23 the full, faithful, and proper performance of the duties of
24 employment.

25 Sec. 9. (1) Public employees may do any of the following:

26 (a) Organize together or form, join, or assist in labor
27 organizations; engage in lawful concerted activities for the

1 purpose of collective negotiation or bargaining or other mutual aid
2 and protection; or negotiate or bargain collectively with their
3 public employers through representatives of their own free choice.

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

6 (2) ~~No~~**A** person shall **NOT** by force, intimidation, or unlawful
7 threats compel or attempt to compel any public employee to do any
8 of the following:

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

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

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

22 (d) Pay the costs of an independent examiner verification as
23 described in section ~~10(9)~~**10(8)**.

24 **(E) IF THE PUBLIC EMPLOYEE IS NOT A MEMBER OF A LABOR**
25 **ORGANIZATION, ACCEPT REPRESENTATION FROM A LABOR ORGANIZATION OR**
26 **BARGAINING REPRESENTATIVE. AS USED IN THIS SUBDIVISION,**
27 **"REPRESENTATION" INCLUDES COLLECTIVE NEGOTIATION OR BARGAINING WITH**

1 RESPECT TO RATES OF PAY, WAGES, HOURS OF EMPLOYMENT, OR OTHER
2 CONDITIONS OF EMPLOYMENT; THE PRESENTMENT OF GRIEVANCES TO THE
3 PUBLIC EMPLOYER; AND GRIEVANCE ADJUSTMENT.

4 (3) A person who violates subsection (2) is liable for a civil
5 fine of not more than \$500.00. A civil fine recovered under this
6 section ~~shall~~**MUST** be submitted to the state treasurer for deposit
7 in the general fund of this state.

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

10 (a) Interfere with, restrain, or coerce public employees in
11 the exercise of their rights guaranteed in section 9.

12 (b) Initiate, create, dominate, contribute to, or interfere
13 with the formation or administration of any labor organization. A
14 public school employer's use of public school resources to assist a
15 labor organization in collecting dues or service fees from wages of
16 public school employees is a prohibited contribution to the
17 administration of a labor organization. However, a public school
18 employer's collection of dues or service fees pursuant to a
19 collective bargaining agreement that is in effect on March 16, 2012
20 is not prohibited until the agreement expires or is terminated,
21 extended, or renewed. A public employer may permit employees to
22 confer with a labor organization during working hours without loss
23 of time or pay.

24 (c) Discriminate in regard to hire, terms, or other conditions
25 of employment to encourage or discourage membership in a labor
26 organization.

27 (d) Discriminate against a public employee because he or she

1 has given testimony or instituted proceedings under this act.

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

4 **(F) EXCEPT AS PROVIDED IN SUBSECTION (4) (C), REFUSE TO BARGAIN**
5 **INDEPENDENTLY WITH PUBLIC EMPLOYEES WHO ARE NOT MEMBERS OF A LABOR**
6 **ORGANIZATION, BARGAINING AGENT, OR EXCLUSIVE REPRESENTATIVE SUBJECT**
7 **TO SECTION 11.**

8 (2) A labor organization or its agents shall not do any of the
9 following:

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

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

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

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

23 **(E) EXCEPT AS PROVIDED IN SUBSECTION (4) (C), REPRESENT OR**
24 **BARGAIN ON BEHALF OF PUBLIC EMPLOYEES WHO ARE NOT MEMBERS OF A**
25 **LABOR ORGANIZATION OR ITS AGENTS AND WHO HAVE CHOSEN TO REPRESENT**
26 **THEMSELVES.**

27 (3) Except as provided in subsection (4), **A PERSON SHALL NOT**

1 **REQUIRE** an individual ~~shall not be required~~ as a condition of
2 obtaining or continuing public employment to do any of the
3 following:

4 (a) Refrain or resign from membership in, voluntary
5 affiliation with, or voluntary financial support of a labor
6 organization or bargaining representative.

7 (b) Become or remain a member of a labor organization or
8 bargaining representative.

9 (c) Pay any dues, fees, assessments, or other charges or
10 expenses of any kind or amount, or provide anything of value to a
11 labor organization or bargaining representative.

12 (d) Pay to any charitable organization or third party any
13 amount that is in lieu of, equivalent to, or any portion of dues,
14 fees, assessments, or other charges or expenses required of members
15 of or public employees represented by a labor organization or
16 bargaining representative.

17 **(E) IF THE INDIVIDUAL IS NOT A MEMBER OF A LABOR ORGANIZATION,**
18 **ACCEPT REPRESENTATION FROM A LABOR ORGANIZATION OR BARGAINING**
19 **REPRESENTATIVE. AS USED IN THIS SUBDIVISION, "REPRESENTATION"**
20 **INCLUDES COLLECTIVE NEGOTIATION OR BARGAINING WITH RESPECT TO RATES**
21 **OF PAY, WAGES, HOURS OF EMPLOYMENT, OR OTHER CONDITIONS OF**
22 **EMPLOYMENT; THE PRESENTMENT OF GRIEVANCES TO THE PUBLIC EMPLOYER;**
23 **AND GRIEVANCE ADJUSTMENT.**

24 (4) ~~The application of subsection~~ **SUBSECTION** (3) is subject to
25 the following:

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

27 (i) A public police or fire department employee or ~~any person~~

1 **AN INDIVIDUAL** who seeks to become employed as a public police or
2 fire department employee as that term is defined under section 2 of
3 1969 PA 312, MCL 423.232.

4 (ii) A state police trooper or sergeant who is granted rights
5 under section 5 of article XI of the state constitution of 1963 or
6 ~~any~~**AN** individual who seeks to become employed as a state police
7 trooper or sergeant.

8 (b) ~~Any person~~**AN INDIVIDUAL** described in subdivision (a), or
9 a labor organization or bargaining representative representing
10 ~~persons~~**INDIVIDUALS** described in subdivision (a), and a public
11 employer or this state may agree that all employees in the
12 bargaining unit shall share fairly in the financial support of the
13 labor organization or their exclusive bargaining representative by
14 paying a fee to the labor organization or exclusive bargaining
15 representative that may be equivalent to the amount of dues
16 uniformly required of members of the labor organization or
17 exclusive bargaining representative. Section 9(2) ~~shall not be~~
18 ~~construed to~~**DOES NOT** interfere with the right of a public employer
19 or this state and a labor organization or bargaining representative
20 to enter into or lawfully administer such an agreement as it
21 relates to the employees or ~~persons~~**INDIVIDUALS** described in
22 subdivision (a).

23 **(C) A PUBLIC EMPLOYER OR THIS STATE MAY AGREE THAT AN**
24 **INDIVIDUAL DESCRIBED IN SUBDIVISION (A), OR A LABOR ORGANIZATION OR**
25 **BARGAINING REPRESENTATIVE REPRESENTING INDIVIDUALS DESCRIBED IN**
26 **SUBDIVISION (A), SHALL REPRESENT ALL EMPLOYEES IN THE BARGAINING**
27 **UNIT REGARDLESS OF MEMBERSHIP IN THE LABOR ORGANIZATION OR**

1 **EXCLUSIVE BARGAINING REPRESENTATIVE.**

2 (D) ~~(e)~~—If any of the exclusions in subdivision (a) (i) or (ii)
3 are found to be invalid by a court, the following apply:

4 (i) The individuals described in the exclusion found to be
5 invalid ~~shall~~ **ARE** no longer ~~be~~ excepted from the application of
6 subsection (3).

7 (ii) ~~Subdivision (b) does~~ **SUBDIVISIONS (B) AND (C) DO** not
8 apply to individuals described in the invalid exclusion.

9 (5) An agreement, contract, understanding, or practice between
10 or involving a public employer, labor organization, or bargaining
11 representative **THAT TAKES EFFECT OR IS EXTENDED OR RENEWED AFTER**
12 **MARCH 28, 2013 AND** that violates subsection ~~(3)~~ **(3) (A) TO (D)** is
13 unlawful and unenforceable. ~~This subsection applies only to an~~
14 ~~agreement, contract, understanding, or practice that takes effect~~
15 ~~or is extended or renewed after March 28, 2013.~~ **AN AGREEMENT,**
16 **CONTRACT, UNDERSTANDING, OR PRACTICE BETWEEN OR INVOLVING A PUBLIC**
17 **EMPLOYER, LABOR ORGANIZATION, OR BARGAINING REPRESENTATIVE THAT IS**
18 **ENTERED INTO OR RENEWED AFTER THE EFFECTIVE DATE OF THE AMENDATORY**
19 **ACT THAT ADDED SUBSECTION (3) (E) AND THAT VIOLATES SUBSECTION**
20 **(3) (E) IS UNLAWFUL AND UNENFORCEABLE.**

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

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

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

2 ~~— (b) Provide the commission with sufficient staff and other~~
3 ~~resources to implement 2012 PA 349.~~

4 ~~— (c) Inform public employers, public employees, and labor~~
5 ~~organizations concerning their rights and responsibilities under~~
6 ~~2012 PA 349.~~

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

10 (7) ~~(8)~~—A person, public employer, or labor organization that
11 violates subsection (3) is liable for a civil fine of not more than
12 \$500.00. A civil fine recovered under this section shall ~~shall~~ **MUST** be
13 submitted to the state treasurer for deposit in the general fund of
14 this state.

15 (8) ~~(9)~~—By July 1 of each year, each exclusive bargaining
16 representative that represents public employees in this state shall
17 have an independent examiner verify the exclusive bargaining
18 representative's calculation of all expenditures attributed to the
19 costs of collective bargaining, contract administration, and
20 grievance adjustment during the prior calendar year and shall file
21 that verification with the commission. The commission shall make
22 the exclusive bargaining representative's calculations available to
23 the public on the commission's website. The exclusive bargaining
24 representative shall also file a declaration identifying the local
25 bargaining units that are represented. Local bargaining units
26 identified in the declaration filed by the exclusive bargaining
27 representative are not required to file a separate calculation of

1 all expenditures attributed to the costs of collective bargaining,
 2 contract administration, and grievance adjustment. ~~For fiscal year~~
 3 ~~2011-2012, \$100,000.00 is appropriated to the commission for the~~
 4 ~~costs of implementing this subsection. For fiscal year 2014-2015,~~
 5 ~~\$100,000.00 is appropriated to the commission for the costs of~~
 6 ~~implementing this subsection.~~

7 (9) ~~(10)~~ Except for actions required to be brought under
 8 subsection (6), a person who suffers an injury as a result of a
 9 violation or threatened violation of subsection (3) may bring a
 10 civil action for damages, injunctive relief, or both. In addition,
 11 a court shall award court costs and reasonable attorney fees to a
 12 plaintiff who prevails in an action brought under this subsection.
 13 Remedies provided in this subsection are independent of and in
 14 addition to other penalties and remedies prescribed by this act.

15 Sec. 11. Representatives designated or selected for purposes
 16 of collective bargaining by the majority of the public employees in
 17 a unit appropriate for such purposes, ~~shall be~~ **ARE** the exclusive
 18 **LABOR ORGANIZATION OR BARGAINING** representatives of all the public
 19 employees in such unit for the purposes of collective bargaining in
 20 respect to rates of pay, wages, hours of employment or other
 21 conditions of employment, and ~~shall~~ **MUST** be ~~so~~ recognized **AS SUCH**
 22 by the public employer. ~~Provided, That any~~ **HOWEVER, EXCEPT AS**
 23 **PROVIDED IN SECTION 10(4)(C), AN** individual employee at any time
 24 may **INDEPENDENTLY BARGAIN WITH RESPECT TO RATES OR PAY, WAGES,**
 25 **HOURS OF EMPLOYMENT, AND OTHER CONDITIONS OF EMPLOYMENT, AND MAY**
 26 present grievances to his **OR HER** employer and have the grievances
 27 adjusted ~~without~~ intervention of the bargaining representative. ~~7~~

1 ~~if the adjustment is not inconsistent with the terms of a~~
2 ~~collective bargaining contract or agreement then in effect,~~
3 ~~provided that the bargaining representative has been given~~
4 ~~opportunity to be present at such adjustment.~~

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

19 (2) A public school employer ~~has the responsibility,~~
20 ~~authority, and right to~~**SHALL** manage and direct on behalf of the
21 public the operations and activities of the public schools under
22 its control.

23 (3) ~~Collective bargaining~~**BARGAINING, COLLECTIVELY** between a
24 public school employer and a bargaining representative of its
25 employees shall ~~shall~~**WHO ARE MEMBERS OF A LABOR ORGANIZATION OR**
26 **BARGAINING REPRESENTATIVE OR INDEPENDENTLY BETWEEN THE PUBLIC**
27 **SCHOOL EMPLOYER AND AN EMPLOYEE WHO IS NOT A MEMBER OF A LABOR**

1 **ORGANIZATION OR BARGAINING REPRESENTATIVE, MUST** not include any of
2 the following subjects:

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

11 (b) Establishment of the starting day for the school year and
12 of the amount of pupil contact time required to receive full state
13 school aid under section 1284 of the revised school code, 1976 PA
14 451, MCL 380.1284, and under section 101 of the state school aid
15 act of 1979, 1979 PA 94, MCL 388.1701.

16 (c) The composition of school improvement committees
17 ~~established~~**DESCRIBED** under section 1277 of the revised school
18 code, 1976 PA 451, MCL 380.1277.

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

23 (e) The decision of whether or not to act as an authorizing
24 body to grant a contract to organize and operate 1 or more public
25 school academies under the revised school code, 1976 PA 451, MCL
26 380.1 to 380.1852.

27 (f) The decision of whether or not to contract with a third

1 party for 1 or more noninstructional support services; or the
2 procedures for obtaining the contract for noninstructional support
3 services other than bidding described in this subdivision; or the
4 identity of the third party; or the impact of the contract for
5 noninstructional support services on individual employees or the
6 bargaining unit. However, this subdivision applies only if the
7 bargaining unit that is providing the noninstructional support
8 services is given an opportunity to bid on the contract for the
9 noninstructional support services on an equal basis as other
10 bidders.

11 (g) The use of volunteers in providing services at its
12 schools.

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

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

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

24 (k) Decisions about the development, content, standards,
25 procedures, adoption, and implementation of the public school
26 employer's policies regarding personnel decisions when conducting a
27 staffing or program reduction or any other personnel determination

1 resulting in the elimination of a position, when conducting a
2 recall from a staffing or program reduction or any other personnel
3 determination resulting in the elimination of a position, or in
4 hiring after a staffing or program reduction or any other personnel
5 determination resulting in the elimination of a position, as
6 provided under section 1248 of the revised school code, 1976 PA
7 451, MCL 380.1248, any decision made by the public school employer
8 pursuant to those policies, or the impact of those decisions on an
9 individual employee or the bargaining unit.

10 (l) Decisions about the development, content, standards,
11 procedures, adoption, and implementation of a public school
12 employer's performance evaluation system adopted under section 1249
13 of the revised school code, 1976 PA 451, MCL 380.1249, or under
14 1937 (Ex Sess) PA 4, MCL 38.71 to 38.191, decisions concerning the
15 content of a performance evaluation of an employee under those
16 provisions of law, or the impact of those decisions on an
17 individual employee or the bargaining unit.

18 (m) For public employees whose employment is regulated by 1937
19 (Ex Sess) PA 4, MCL 38.71 to 38.191, decisions about the
20 development, content, standards, procedures, adoption, and
21 implementation of a policy regarding discharge or discipline of an
22 employee, decisions concerning the discharge or discipline of an
23 individual employee, or the impact of those decisions on an
24 individual employee or the bargaining unit. For public employees
25 whose employment is regulated by 1937 (Ex Sess) PA 4, MCL 38.71 to
26 38.191, a public school employer shall not adopt, implement, or
27 maintain a policy for discharge or discipline of an employee that

1 includes a standard for discharge or discipline that is different
2 than the arbitrary and capricious standard provided under section 1
3 of article IV of 1937 (Ex Sess) PA 4, MCL 38.101.

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

9 (o) Decisions about the development, content, standards,
10 procedures, adoption, and implementation of the method of
11 compensation required under section 1250 of the revised school
12 code, 1976 PA 451, MCL 380.1250, decisions about how an employee
13 performance evaluation is used to determine performance-based
14 compensation under section 1250 of the revised school code, 1976 PA
15 451, MCL 380.1250, decisions concerning the performance-based
16 compensation of an individual employee, or the impact of those
17 decisions on an individual employee or the bargaining unit.

18 (p) Decisions about the development, format, content, and
19 procedures of the notification to parents and legal guardians
20 required under section 1249a of the revised school code, 1976 PA
21 451, MCL 380.1249a.

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

23 (4) Except as otherwise provided in subsection (3)(f), the
24 matters described in subsection (3) are prohibited subjects of
25 bargaining between a public school employer and a bargaining
26 representative of its employees, and, for the purposes of this act,
27 are within the sole authority of the public school employer to

1 decide.

2 (5) If a public school is placed in the state school
3 reform/redesign school district or is placed under a chief
4 executive officer under section 1280c of the revised school code,
5 1976 PA 451, MCL 380.1280c, then, for the purposes of collective
6 bargaining under this act, the state school reform/redesign officer
7 or the chief executive officer, as applicable, is the public school
8 employer of the public school employees of that public school for
9 as long as the public school is part of the state school
10 reform/redesign school district or operated by the chief executive
11 officer.

12 (6) A public school employer's collective bargaining duty
13 under this act and a collective bargaining agreement entered into
14 by a public school employer under this act are subject to all of
15 the following:

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

19 (b) For a public school in which the superintendent of public
20 instruction implements 1 of the 4 school intervention models
21 described in section 1280c of the revised school code, 1976 PA 451,
22 MCL 380.1280c, if the school intervention model that is implemented
23 affects collective bargaining or requires modification of a
24 collective bargaining agreement, any effect on collective
25 bargaining and any modification of a collective bargaining
26 agreement under that school intervention model.

27 (7) Each collective bargaining agreement entered into between

1 a public employer and public employees under this act on or after
2 March 28, 2013 ~~shall~~**MUST** include a provision that allows an
3 emergency manager appointed under the local financial stability and
4 choice act, 2012 PA 436, MCL 141.1541 to 141.1575, to reject,
5 modify, or terminate the collective bargaining agreement as
6 provided in the local financial stability and choice act, 2012 PA
7 436, MCL 141.1541 to 141.1575. Provisions required by this
8 subsection are prohibited subjects of bargaining under this act.

9 (8) Collective bargaining agreements under this act may be
10 rejected, modified, or terminated pursuant to the local financial
11 stability and choice act, 2012 PA 436, MCL 141.1541 to 141.1575.
12 This act does not confer a right to bargain that would infringe on
13 the exercise of powers under the local financial stability and
14 choice act, 2012 PA 436, MCL 141.1541 to 141.1575.

15 (9) A unit of local government that enters into a consent
16 agreement under the local financial stability and choice act, 2012
17 PA 436, MCL 141.1541 to 141.1575, is not subject to subsection (1)
18 for the term of the consent agreement, as provided in the local
19 financial stability and choice act, 2012 PA 436, MCL 141.1541 to
20 141.1575.

21 (10) If the charter of a city, village, or township with a
22 population of 500,000 or more requires and specifies the method of
23 selection of a retirant member of the municipality's fire
24 department, police department, or fire and police department
25 pension or retirement board, the inclusion of the retirant member
26 on the board and the method of selection of that retirant member
27 are prohibited subjects of collective bargaining, and any provision

1 in a collective bargaining agreement that purports to modify that
2 charter requirement is void and of no effect.

3 (11) The following are prohibited subjects of bargaining and
4 are at the sole discretion of ~~the~~**A** public employer:

5 (a) A decision as to whether or not the public employer will
6 enter into an intergovernmental agreement to consolidate 1 or more
7 functions or services, to jointly perform 1 or more functions or
8 services, or to otherwise collaborate regarding 1 or more functions
9 or services.

10 (b) The procedures for obtaining a contract for the transfer
11 of functions or responsibilities under an agreement described in
12 subdivision (a).

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

15 (12) Subsection (11) does not relieve a public employer of any
16 duty established by law to collectively bargain with its employees
17 as to the effect of a contract described in subsection (11) (a) on
18 its employees.

19 (13) An agreement with a collective bargaining unit ~~shall~~**MUST**
20 not require a public employer to pay the costs of an independent
21 examiner verification described in section ~~10(9)~~**10(8)**.

22 **(14) EXCEPT AS PROVIDED IN SECTION 10(4) (C) , A COLLECTIVE**
23 **BARGAINING AGREEMENT BETWEEN A PUBLIC EMPLOYER AND A BARGAINING**
24 **REPRESENTATIVE OF ITS EMPLOYEES WHO ARE MEMBERS OF A LABOR**
25 **ORGANIZATION OR BARGAINING REPRESENTATIVE MUST NOT INCLUDE ANY**
26 **WAGES OR CONDITIONS OF EMPLOYMENT FOR MEMBERS OF THE LABOR**
27 **ORGANIZATION OR BARGAINING REPRESENTATIVE THAT ARE BASED ON, LINKED**

1 TO, OR CONTINGENT UPON WAGES OR CONDITIONS OF EMPLOYMENT OF
2 EMPLOYEES WHO ARE NOT MEMBERS OF THE LABOR ORGANIZATION OR
3 BARGAINING REPRESENTATIVE.

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