

HOUSE BILL No. 4033

January 15, 2019, Introduced by Reps. Chirkun, Elder, Sabo, Sowerby, Cambensy, Stone, Hertel, Shannon, Peterson, Pagan, Koleszar, Cherry, Pohutsky, Rabhi, Cynthia Johnson and Lasinski and referred to the Committee on Government Operations.

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 9, 10, and 15 (MCL 423.209, 423.210, and 423.215), as amended by 2014 PA 414.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 9. ~~(1) Public employees may do any of the following:~~
2 ~~— (a) Organize~~ **ORGANIZE** together or form, join, or assist in
3 labor organizations; engage in lawful concerted activities for the
4 purpose of collective negotiation or bargaining or other mutual aid
5 and protection; or negotiate or bargain collectively with their
6 public employers through representatives of their own free choice.

1 ~~—— (b) Refrain from any or all of the activities identified in~~
2 ~~subdivision (a).~~

3 ~~—— (2) No person shall by force, intimidation, or unlawful~~
4 ~~threats compel or attempt to compel any public employee to do any~~
5 ~~of the following:~~

6 ~~—— (a) Become or remain a member of a labor organization or~~
7 ~~bargaining representative or otherwise affiliate with or~~
8 ~~financially support a labor organization or bargaining~~
9 ~~representative.~~

10 ~~—— (b) Refrain from engaging in employment or refrain from~~
11 ~~joining a labor organization or bargaining representative or~~
12 ~~otherwise affiliating with or financially supporting a labor~~
13 ~~organization or bargaining representative.~~

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

19 ~~—— (d) Pay the costs of an independent examiner verification as~~
20 ~~described in section 10(9).~~

21 ~~—— (3) A person who violates subsection (2) is liable for a civil~~
22 ~~fine of not more than \$500.00. A civil fine recovered under this~~
23 ~~section shall be submitted to the state treasurer for deposit in~~
24 ~~the general fund of this state.~~

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

27 (a) Interfere with, restrain, or coerce public employees in

1 the exercise of their rights guaranteed in section 9.

2 (b) Initiate, create, dominate, contribute to, or interfere
3 with the formation or administration of any labor organization. A
4 public school employer's use of public school resources to assist a
5 labor organization in collecting dues or service fees from wages of
6 public school employees is a prohibited contribution to the
7 administration of a labor organization. However, a public school
8 employer's collection of dues or service fees pursuant to a
9 collective bargaining agreement that is in effect on March 16, 2012
10 is not prohibited until the agreement expires or is terminated,
11 extended, or renewed. A public employer may permit employees to
12 confer with a labor organization during working hours without loss
13 of time or pay.

14 (c) Discriminate in regard to hire, terms, or other conditions
15 of employment to encourage or discourage membership in a labor
16 organization. **HOWEVER, THIS ACT OR ANY OTHER LAW OF THIS STATE DOES**
17 **NOT PRECLUDE A PUBLIC EMPLOYER FROM MAKING AN AGREEMENT WITH AN**
18 **EXCLUSIVE BARGAINING REPRESENTATIVE AS DESCRIBED IN SECTION 11 TO**
19 **REQUIRE AS A CONDITION OF EMPLOYMENT THAT ALL OTHER EMPLOYEES IN**
20 **THE BARGAINING UNIT PAY TO THE EXCLUSIVE BARGAINING REPRESENTATIVE**
21 **A SERVICE FEE EQUIVALENT TO THE AMOUNT OF DUES UNIFORMLY REQUIRED**
22 **OF MEMBERS OF THE EXCLUSIVE BARGAINING REPRESENTATIVE.**

23 (d) Discriminate against a public employee because he or she
24 has given testimony or instituted proceedings under this act.

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

27 **(2) IT IS THE PURPOSE OF 1973 PA 25 TO REAFFIRM THE CONTINUING**

1 PUBLIC POLICY OF THIS STATE THAT THE STABILITY AND EFFECTIVENESS OF
 2 LABOR RELATIONS IN THE PUBLIC SECTOR REQUIRE, IF THE REQUIREMENT IS
 3 NEGOTIATED WITH THE PUBLIC EMPLOYER, THAT ALL OTHER EMPLOYEES IN
 4 THE BARGAINING UNIT SHARE FAIRLY IN THE FINANCIAL SUPPORT OF THEIR
 5 EXCLUSIVE BARGAINING REPRESENTATIVE BY PAYING TO THE EXCLUSIVE
 6 BARGAINING REPRESENTATIVE A SERVICE FEE THAT MAY BE EQUIVALENT TO
 7 THE AMOUNT OF DUES UNIFORMLY REQUIRED OF MEMBERS OF THE EXCLUSIVE
 8 BARGAINING REPRESENTATIVE.

9 (3) ~~(2)~~—A labor organization or its agents shall not do any of
 10 the following:

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

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

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

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

24 ~~— (3) Except as provided in subsection (4), an individual shall~~
 25 ~~not be required as a condition of obtaining or continuing public~~
 26 ~~employment to do any of the following:~~

27 ~~— (a) Refrain or resign from membership in, voluntary~~

1 ~~affiliation with, or voluntary financial support of a labor~~
2 ~~organization or bargaining representative.~~

3 ~~—— (b) Become or remain a member of a labor organization or~~
4 ~~bargaining representative.~~

5 ~~—— (c) Pay any dues, fees, assessments, or other charges or~~
6 ~~expenses of any kind or amount, or provide anything of value to a~~
7 ~~labor organization or bargaining representative.~~

8 ~~—— (d) Pay to any charitable organization or third party any~~
9 ~~amount that is in lieu of, equivalent to, or any portion of dues,~~
10 ~~fees, assessments, or other charges or expenses required of members~~
11 ~~of or public employees represented by a labor organization or~~
12 ~~bargaining representative.~~

13 ~~—— (4) The application of subsection (3) is subject to the~~
14 ~~following:~~

15 ~~—— (a) Subsection (3) does not apply to any of the following:~~

16 ~~—— (i) A public police or fire department employee or any person~~
17 ~~who seeks to become employed as a public police or fire department~~
18 ~~employee as that term is defined under section 2 of 1969 PA 312,~~
19 ~~MCL 423.232.~~

20 ~~—— (ii) A state police trooper or sergeant who is granted rights~~
21 ~~under section 5 of article XI of the state constitution of 1963 or~~
22 ~~any individual who seeks to become employed as a state police~~
23 ~~trooper or sergeant.~~

24 ~~—— (b) Any person described in subdivision (a), or a labor~~
25 ~~organization or bargaining representative representing persons~~
26 ~~described in subdivision (a) and a public employer or this state~~
27 ~~may agree that all employees in the bargaining unit shall share~~

1 ~~fairly in the financial support of the labor organization or their~~
2 ~~exclusive bargaining representative by paying a fee to the labor~~
3 ~~organization or exclusive bargaining representative that may be~~
4 ~~equivalent to the amount of dues uniformly required of members of~~
5 ~~the labor organization or exclusive bargaining representative.~~
6 ~~Section 9(2) shall not be construed to interfere with the right of~~
7 ~~a public employer or this state and a labor organization or~~
8 ~~bargaining representative to enter into or lawfully administer such~~
9 ~~an agreement as it relates to the employees or persons described in~~
10 ~~subdivision (a).~~
11 ~~—— (c) If any of the exclusions in subdivision (a) (i) or (ii) are~~
12 ~~found to be invalid by a court, the following apply:~~
13 ~~—— (i) The individuals described in the exclusion found to be~~
14 ~~invalid shall no longer be excepted from the application of~~
15 ~~subsection (3).~~
16 ~~—— (ii) Subdivision (b) does not apply to individuals described~~
17 ~~in the invalid exclusion.~~
18 ~~—— (5) An agreement, contract, understanding, or practice between~~
19 ~~or involving a public employer, labor organization, or bargaining~~
20 ~~representative that violates subsection (3) is unlawful and~~
21 ~~unenforceable. This subsection applies only to an agreement,~~
22 ~~contract, understanding, or practice that takes effect or is~~
23 ~~extended or renewed after March 28, 2013.~~
24 ~~—— (6) The court of appeals has exclusive original jurisdiction~~
25 ~~over any action challenging the validity of subsection (3), (4), or~~
26 ~~(5). The court of appeals shall hear the action in an expedited~~
27 ~~manner.~~

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

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

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

7 ~~—— (c) Inform public employers, public employees, and labor~~
8 ~~organizations concerning their rights and responsibilities under~~
9 ~~2012 PA 349.~~

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

13 ~~—— (8) A person, public employer, or labor organization that~~
14 ~~violates subsection (3) is liable for a civil fine of not more than~~
15 ~~\$500.00. A civil fine recovered under this section shall be~~
16 ~~submitted to the state treasurer for deposit in the general fund of~~
17 ~~this state.~~

18 **(4)** ~~(9)~~—By July 1 of each year, each exclusive bargaining
19 representative that represents public employees in this state shall
20 have an independent examiner verify the exclusive bargaining
21 representative's calculation of all expenditures attributed to the
22 costs of collective bargaining, contract administration, and
23 grievance adjustment during the prior calendar year and shall file
24 that verification with the commission. The commission shall make
25 the exclusive bargaining representative's calculations available to
26 the public on the commission's website. The exclusive bargaining
27 representative shall also file a declaration identifying the local

1 bargaining units that are represented. Local bargaining units
2 identified in the declaration filed by the exclusive bargaining
3 representative are not required to file a separate calculation of
4 all expenditures attributed to the costs of collective bargaining,
5 contract administration, and grievance adjustment. ~~For fiscal year~~
6 ~~2011-2012, \$100,000.00 is appropriated to the commission for the~~
7 ~~costs of implementing this subsection. For fiscal year 2014-2015,~~
8 ~~\$100,000.00 is appropriated to the commission for the costs of~~
9 ~~implementing this subsection.~~

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

18 Sec. 15. (1) A public employer shall bargain collectively with
19 the representatives of its employees as described in section 11 and
20 may make and enter into collective bargaining agreements with those
21 representatives. Except as otherwise provided in this section, for
22 the purposes of this section, to bargain collectively is to perform
23 the mutual obligation of the employer and the representative of the
24 employees to meet at reasonable times and confer in good faith with
25 respect to wages, hours, and other terms and conditions of
26 employment, or to negotiate an agreement, or any question arising
27 under the agreement, and to execute a written contract, ordinance,

1 or resolution incorporating any agreement reached if requested by
2 either party, but this obligation does not compel either party to
3 agree to a proposal or make a concession.

4 (2) A public school employer has the responsibility,
5 authority, and right to manage and direct on behalf of the public
6 the operations and activities of the public schools under its
7 control.

8 (3) Collective bargaining between a public school employer and
9 a bargaining representative of its employees ~~shall~~**MUST** not include
10 any of the following subjects:

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

19 (b) Establishment of the starting day for the school year and
20 of the amount of pupil contact time required to receive full state
21 school aid under section 1284 of the revised school code, 1976 PA
22 451, MCL 380.1284, and under section 101 of the state school aid
23 act of 1979, 1979 PA 94, MCL 388.1701.

24 (c) The composition of school improvement committees
25 established under section 1277 of the revised school code, 1976 PA
26 451, MCL 380.1277.

27 (d) The decision of whether or not to provide or allow

1 interdistrict or intradistrict open enrollment opportunity in a
2 school district or the selection of grade levels or schools in
3 which to allow an open enrollment opportunity.

4 (e) The decision of whether or not to act as an authorizing
5 body to grant a contract to organize and operate 1 or more public
6 school academies under the revised school code, 1976 PA 451, MCL
7 380.1 to 380.1852.

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

19 (g) The use of volunteers in providing services at its
20 schools.

21 (h) Decisions concerning use and staffing of experimental or
22 pilot programs and decisions concerning use of technology to
23 deliver educational programs and services and staffing to provide
24 that technology, or the impact of those decisions on individual
25 employees or the bargaining unit.

26 (i) Any compensation or additional work assignment intended to
27 reimburse an employee for or allow an employee to recover any

1 monetary penalty imposed under this act.

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

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

18 (l) Decisions about the development, content, standards,
19 procedures, adoption, and implementation of a public school
20 employer's performance evaluation system adopted under section 1249
21 of the revised school code, 1976 PA 451, MCL 380.1249, or under
22 1937 (Ex Sess) PA 4, MCL 38.71 to 38.191, decisions concerning the
23 content of a performance evaluation of an employee under those
24 provisions of law, or the impact of those decisions on an
25 individual employee or the bargaining unit.

26 (m) For public employees whose employment is regulated by 1937
27 (Ex Sess) PA 4, MCL 38.71 to 38.191, decisions about the

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

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

17 (o) Decisions about the development, content, standards,
18 procedures, adoption, and implementation of the method of
19 compensation required under section 1250 of the revised school
20 code, 1976 PA 451, MCL 380.1250, decisions about how an employee
21 performance evaluation is used to determine performance-based
22 compensation under section 1250 of the revised school code, 1976 PA
23 451, MCL 380.1250, decisions concerning the performance-based
24 compensation of an individual employee, or the impact of those
25 decisions on an individual employee or the bargaining unit.

26 (p) Decisions about the development, format, content, and
27 procedures of the notification to parents and legal guardians

1 required under section 1249a of the revised school code, 1976 PA
2 451, MCL 380.1249a.

3 ~~— (g) Any requirement that would violate section 10(3). —~~

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

10 (5) If a public school is placed in the state school
11 reform/redesign school district or is placed under a chief
12 executive officer under section 1280c of the revised school code,
13 1976 PA 451, MCL 380.1280c, then, for the purposes of collective
14 bargaining under this act, the state school reform/redesign officer
15 or the chief executive officer, as applicable, is the public school
16 employer of the public school employees of that public school for
17 as long as the public school is part of the state school
18 reform/redesign school district or operated by the chief executive
19 officer.

20 (6) A public school employer's collective bargaining duty
21 under this act and a collective bargaining agreement entered into
22 by a public school employer under this act are subject to all of
23 the following:

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

27 (b) For a public school in which the superintendent of public

1 instruction implements 1 of the 4 school intervention models
2 described in section 1280c of the revised school code, 1976 PA 451,
3 MCL 380.1280c, if the school intervention model that is implemented
4 affects collective bargaining or requires modification of a
5 collective bargaining agreement, any effect on collective
6 bargaining and any modification of a collective bargaining
7 agreement under that school intervention model.

8 (7) Each collective bargaining agreement entered into between
9 a public employer and public employees under this act on or after
10 March 28, 2013 ~~shall~~**MUST** include a provision that allows an
11 emergency manager appointed under the local financial stability and
12 choice act, 2012 PA 436, MCL 141.1541 to 141.1575, to reject,
13 modify, or terminate the collective bargaining agreement as
14 provided in the local financial stability and choice act, 2012 PA
15 436, MCL 141.1541 to 141.1575. Provisions required by this
16 subsection are prohibited subjects of bargaining under this act.

17 (8) Collective bargaining agreements under this act may be
18 rejected, modified, or terminated pursuant to the local financial
19 stability and choice act, 2012 PA 436, MCL 141.1541 to 141.1575.
20 This act does not confer a right to bargain that would infringe on
21 the exercise of powers under the local financial stability and
22 choice act, 2012 PA 436, MCL 141.1541 to 141.1575.

23 (9) A unit of local government that enters into a consent
24 agreement under the local financial stability and choice act, 2012
25 PA 436, MCL 141.1541 to 141.1575, is not subject to subsection (1)
26 for the term of the consent agreement, as provided in the local
27 financial stability and choice act, 2012 PA 436, MCL 141.1541 to

1 141.1575.

2 (10) If the charter of a city, village, or township with a
3 population of 500,000 or more requires and specifies the method of
4 selection of a retirant member of the municipality's fire
5 department, police department, or fire and police department
6 pension or retirement board, the inclusion of the retirant member
7 on the board and the method of selection of that retirant member
8 are prohibited subjects of collective bargaining, and any provision
9 in a collective bargaining agreement that purports to modify that
10 charter requirement is void and of no effect.

11 (11) The following are prohibited subjects of bargaining and
12 are at the sole discretion of the public employer:

13 (a) A decision as to whether or not the public employer will
14 enter into an intergovernmental agreement to consolidate 1 or more
15 functions or services, to jointly perform 1 or more functions or
16 services, or to otherwise collaborate regarding 1 or more functions
17 or services.

18 (b) The procedures for obtaining a contract for the transfer
19 of functions or responsibilities under an agreement described in
20 subdivision (a).

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

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

27 (13) An agreement with a collective bargaining unit ~~shall~~**MUST**

1 not require a public employer to pay the costs of an independent
2 examiner verification described in section ~~10(9)~~-**10(4)**.

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