

# HOUSE BILL NO. 5809

February 23, 2022, Introduced by Reps. Rabhi, Weiss, Brenda Carter, Sabo, Clemente, Hope, Stone, Coleman, Haadsma, Breen, Sowerby, Steckloff, Cavanagh, Cherry, Steenland, Neeley, Brabec, Garza, Liberati, O'Neal, Cynthia Johnson, Kuppa, Pohutsky, Tyrone Carter, Manoogian, Bolden, Shannon, Rogers, Scott, Aiyash, Thanedar, Ellison, Hood, Young, Peterson, Tate, Morse, Jones and Hertel and referred to the Committee on Education.

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 together or form, join, or assist in labor  
3 organizations. ~~engage~~

4           **(b) Engage** in lawful concerted activities for the purpose of  
5 collective negotiation or bargaining or other mutual aid and  
6 protection. ~~or negotiate~~

7           **(c) Negotiate** or bargain collectively with their public  
8 employers through representatives of their own free choice.

9           **(d)** ~~(b)~~ Refrain from any or all of the activities identified  
10 in ~~subdivision~~ **subdivisions (a) to (c)**.

11           (2) ~~No~~ **A** person shall **not** by force, intimidation, or unlawful  
12 threats compel or attempt to compel any public employee to do any  
13 of the following:

14           (a) Become or remain a member of a labor organization or  
15 bargaining representative or otherwise affiliate with or  
16 financially support a labor organization or bargaining  
17 representative.

18           (b) Refrain from engaging in employment or refrain from  
19 joining a labor organization or bargaining representative or  
20 otherwise affiliating with or financially supporting a labor  
21 organization or bargaining representative.

22           (c) Pay to any charitable organization or third party an  
23 amount that is in ~~lieu~~ **place** of, equivalent to, or any portion of  
24 dues, fees, assessments, or other charges or expenses required of  
25 members of or public employees represented by a labor organization  
26 or bargaining representative.

27           ~~(d) Pay the costs of an independent examiner verification as~~

1 ~~described in section 10(9).~~

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

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

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

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

22 (c) Discriminate in regard to ~~hire,~~ **hiring**, terms, or ~~other~~  
23 conditions of employment to encourage or discourage membership in a  
24 labor organization.

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

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

29 (2) A labor organization or its agents shall not do any of the

1 following:

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

6 (b) Restrain or coerce a public employer in the selection of  
7 its representatives for the purposes of collective bargaining or  
8 the adjustment of grievances.

9 (c) Cause or attempt to cause a public employer to  
10 discriminate against a public employee in violation of subsection  
11 (1)(c).

12 (d) Refuse to bargain collectively with a public employer ~~7~~  
13 ~~provided it~~ **if the labor organization** is the representative of the  
14 public employer's employees, subject to section 11.

15 (3) Except as provided in subsection (4), an individual ~~shall~~  
16 **must** not be required as a condition of obtaining or continuing  
17 public employment to do any of the following:

18 (a) Refrain or resign from membership in, voluntary  
19 affiliation with, or voluntary financial support of a labor  
20 organization or bargaining representative.

21 (b) Become or remain a member of a labor organization or  
22 bargaining representative.

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

26 (d) Pay to any charitable organization or third party any  
27 amount that is in ~~lieu~~ **place** of, equivalent to, or any portion of  
28 dues, fees, assessments, or other charges or expenses required of  
29 members of or public employees represented by a labor organization

1 or bargaining representative.

2 (4) The application of subsection (3) is subject to the  
3 following:

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

5 (i) A public police or fire department employee or ~~any~~**a** person  
6 who seeks to become employed as a public police or fire department  
7 employee as that term is defined under section 2 of 1969 PA 312,  
8 MCL 423.232.

9 (ii) A state police trooper or sergeant who is granted rights  
10 under section 5 of article XI of the state constitution of 1963 or  
11 ~~any~~**an** individual who seeks to become employed as a state police  
12 trooper or sergeant.

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

27 (c) If any of the exclusions in subdivision (a) (i) or (ii) are  
28 found to be invalid by a court, the following apply:

29 (i) The individuals described in the ~~exclusion found to be~~

1 ~~invalid shall~~ **invalid exclusion are** no longer ~~be~~ excepted from the  
2 application of subsection (3).

3 (ii) Subdivision (b) does not apply to individuals described in  
4 the invalid exclusion.

5 (5) An agreement, contract, understanding, or practice between  
6 or involving a public employer, labor organization, or bargaining  
7 representative that violates subsection (3) is unlawful and  
8 unenforceable. This subsection applies only to an agreement,  
9 contract, understanding, or practice that takes effect or is  
10 extended or renewed after March 28, 2013.

11 (6) The court of appeals has exclusive original jurisdiction  
12 over any action challenging the validity of subsection (3), (4), or  
13 (5). The court of appeals shall hear the action in an expedited  
14 manner.

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

18 (a) Respond to public inquiries regarding 2012 PA 349.

19 (b) Provide the commission with sufficient staff and other  
20 resources to implement 2012 PA 349.

21 (c) Inform public employers, public employees, and labor  
22 organizations concerning their rights and responsibilities under  
23 2012 PA 349.

24 (d) Any other purposes that the director of the department of  
25 licensing and regulatory affairs determines in his or her  
26 discretion are necessary to implement 2012 PA 349.

27 (8) A person, public employer, or labor organization that  
28 violates subsection (3) is ~~liable for~~ **subject to** a civil fine of  
29 not more than \$500.00. A civil fine recovered under this section

1 ~~shall~~**must** be submitted to the state treasurer for deposit in the  
2 general fund of this state.

3 ~~(9) By July 1 of each year, each exclusive bargaining~~  
4 ~~representative that represents public employees in this state shall~~  
5 ~~have an independent examiner verify the exclusive bargaining~~  
6 ~~representative's calculation of all expenditures attributed to the~~  
7 ~~costs of collective bargaining, contract administration, and~~  
8 ~~grievance adjustment during the prior calendar year and shall file~~  
9 ~~that verification with the commission. The commission shall make~~  
10 ~~the exclusive bargaining representative's calculations available to~~  
11 ~~the public on the commission's website. The exclusive bargaining~~  
12 ~~representative shall also file a declaration identifying the local~~  
13 ~~bargaining units that are represented. Local bargaining units~~  
14 ~~identified in the declaration filed by the exclusive bargaining~~  
15 ~~representative are not required to file a separate calculation of~~  
16 ~~all expenditures attributed to the costs of collective bargaining,~~  
17 ~~contract administration, and grievance adjustment. For fiscal year~~  
18 ~~2011-2012, \$100,000.00 is appropriated to the commission for the~~  
19 ~~costs of implementing this subsection. For fiscal year 2014-2015,~~  
20 ~~\$100,000.00 is appropriated to the commission for the costs of~~  
21 ~~implementing this subsection.~~

22 **(9)** ~~(10)~~ Except for actions required to be brought under  
23 subsection (6), a person who suffers an injury as a result of a  
24 violation or threatened violation of subsection (3) may bring a  
25 civil action for damages, injunctive relief, or both. In addition,  
26 a court shall award court costs and reasonable attorney fees to a  
27 plaintiff who prevails in an action brought under this subsection.  
28 Remedies provided in this subsection are independent of and in  
29 addition to other penalties and remedies prescribed by this act.

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

14           (2) A public school employer ~~has the responsibility,~~  
15 ~~authority, and right to~~ **shall** manage and direct on behalf of the  
16 public the operations and activities of the public schools under  
17 its control.

18           (3) Collective bargaining between a public school employer and  
19 a bargaining representative of its employees ~~shall~~ **must** not include  
20 any of the following subjects:

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

29           (b) Establishment of the starting day for the school year and



1 of the amount of pupil contact time required to receive full state  
2 school aid under section 1284 of the revised school code, 1976 PA  
3 451, MCL 380.1284, and under section 101 of the state school aid  
4 act of 1979, 1979 PA 94, MCL 388.1701.

5 (c) The composition of school improvement committees  
6 established under section 1277 of the revised school code, 1976 PA  
7 451, MCL 380.1277.

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

12 (e) The decision of whether or not to act as an authorizing  
13 body to grant a contract to organize and operate 1 or more public  
14 school academies under the revised school code, 1976 PA 451, MCL  
15 380.1 to 380.1852.

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

27 (g) The use of volunteers in providing services at its  
28 schools.

29 (h) Decisions concerning use and staffing of experimental or

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

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

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

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

24 (l) Decisions about the development, content, standards,  
25 procedures, adoption, and implementation of a public school  
26 employer's performance evaluation system adopted under section 1249  
27 of the revised school code, 1976 PA 451, MCL 380.1249, or under  
28 1937 (Ex Sess) PA 4, MCL 38.71 to 38.191, decisions concerning the  
29 content of a performance evaluation of an employee under those

1 provisions of law, or the impact of those decisions on an  
2 individual employee or the bargaining unit.

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

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

21 (o) Decisions about the development, content, standards,  
22 procedures, adoption, and implementation of the method of  
23 compensation required under section 1250 of the revised school  
24 code, 1976 PA 451, MCL 380.1250, decisions about how an employee  
25 performance evaluation is used to determine performance-based  
26 compensation under section 1250 of the revised school code, 1976 PA  
27 451, MCL 380.1250, decisions concerning the performance-based  
28 compensation of an individual employee, or the impact of those  
29 decisions on an individual employee or the bargaining unit.

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

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

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

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

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

26 (a) Any effect on collective bargaining and any modification  
 27 of a collective bargaining agreement occurring under **former** section  
 28 1280c of the revised school code, 1976 PA 451. ~~, MCL 380.1280e.~~

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

1 instruction implements 1 of the 4 school intervention models  
2 described in **former** section 1280c of the revised school code, 1976  
3 PA 451, ~~MCL 380.1280c~~, if the school intervention model that is  
4 implemented affects collective bargaining or requires modification  
5 of a 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  
28 141.1575.

29 (10) If the charter of a city, village, or township with a

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

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

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

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

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

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

25 ~~(13) An agreement with a collective bargaining unit shall not~~  
26 ~~require a public employer to pay the costs of an independent~~  
27 ~~examiner verification described in section 10(9).~~