

HOUSE BILL NO. 5812

February 23, 2022, Introduced by Reps. Cynthia Johnson, Weiss, Brenda Carter, Sabo, Clemente, Hope, Coleman, Stone, Haadsma, Breen, Sowerby, Steckloff, Cavanagh, Cherry, Steenland, Neeley, Brabec, Garza, Liberati, O'Neal, Rabhi, Kuppa, Pohutsky, Tyrone Carter, Manoogian, Bolden, Rogers, Shannon, Anthony, Scott, Aiyash, Thanedar, Ellison, Peterson, Young, Tate, Morse, Jones, Hertel and Whitsett 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 section 15 (MCL 423.215), as amended by 2014 PA 414.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

- 1 Sec. 15. (1) A public employer shall bargain collectively with
- 2 the representatives of its employees as described in section 11 and

1 may make and enter into collective bargaining agreements with those
2 representatives. Except as otherwise provided in this section, for
3 the purposes of this section, to bargain collectively is to perform
4 the mutual obligation of the employer and the representative of the
5 employees to meet at reasonable times and confer in good faith with
6 respect to wages, hours, and other terms and conditions of
7 employment, or to negotiate an agreement, or any question arising
8 under the agreement, and to execute a written contract, ordinance,
9 or resolution incorporating any agreement reached if requested by
10 either party, but this obligation does not compel either party to
11 agree to a proposal or make a concession.

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

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

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

27 (b) Establishment of the starting day for the school year and
28 of the amount of pupil contact time required to receive full state
29 school aid under section 1284 of the revised school code, 1976 PA

1 451, MCL 380.1284, and under section 101 of the state school aid
2 act of 1979, 1979 PA 94, MCL 388.1701.

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

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

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

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

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

27 (h) Decisions concerning use and staffing of experimental or
28 pilot programs and decisions concerning use of technology to
29 deliver educational programs and services and staffing to provide

1 that technology, or the impact of those decisions on individual
2 employees or the bargaining unit.

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

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

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

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

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

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

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

28 (p) Decisions about the development, format, content, and
29 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 (q) 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 (5) ~~(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~~ **any** effect on collective bargaining and any
25 modification of a collective bargaining agreement occurring under
26 section ~~1280c~~ **1280g** of the revised school code, 1976 PA 451, MCL
27 ~~380.1280c~~ **380.1280g**.

28 ~~(b) For a public school in which the superintendent of public~~
29 ~~instruction implements 1 of the 4 school intervention models~~

~~described in section 1280c of the revised school code, 1976 PA 451, MCL 380.1280c, if the school intervention model that is implemented affects collective bargaining or requires modification of a collective bargaining agreement, any effect on collective bargaining and any modification of a collective bargaining agreement under that school intervention model.~~

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

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

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

(9) ~~(10)~~ If the charter of a city, village, or township with a population of 500,000 or more requires and specifies the method of

selection of a retirant member of the municipality's fire department, police department, or fire and police department pension or retirement board, the inclusion of the retirant member on the board and the method of selection of that retirant member are prohibited subjects of collective bargaining, and any provision in a collective bargaining agreement that purports to modify that charter requirement is void and of no effect.

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

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

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

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

(11) ~~(12)~~—Subsection ~~(11)~~—**(10)** does not relieve a public employer of any duty established by law to collectively bargain with its employees as to the effect of a contract described in subsection ~~(11)(a)~~—**(10)(a)** on its employees.

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

Enacting section 1. This amendatory act does not take effect unless Senate Bill No. ____ or House Bill No. 5811 (request no. 04272'21) of the 101st Legislature is enacted into law.