

HOUSE BILL No. 5829

September 8, 2016, Introduced by Rep. Glenn 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 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 THE PUBLIC EMPLOYEES IN A UNIT
13 WITHOUT AN EXCLUSIVE REPRESENTATIVE. INDEPENDENT BARGAINING DOES
14 NOT GRANT ANY GREATER OR LESSER DUTIES OR OBLIGATIONS FOR A PUBLIC
15 EMPLOYER OR PUBLIC SCHOOL EMPLOYER TO A PUBLIC EMPLOYEE WHO HAS
16 CHOSEN TO 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 superseded by
14 any interlocal agreement, memorandum of understanding, memorandum
15 of commitment, or other document similar to these.

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

~~class or its designee from having informal meetings with public school administrators to discuss wages and working conditions.~~

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

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

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

(I) ~~(h)~~—"Public school employer" means a public employer that is the board of a school district, intermediate school district, or public school academy; ~~is the chief executive officer of a school district in which a school reform board is in place under part 5A of the revised school code, 1976 PA 451, MCL 380.371 to 380.376; or~~ is the governing board of a joint endeavor or consortium consisting of any combination of school districts, intermediate school districts, or public school academies.

(J) ~~(i)~~—"School district" means that term as defined in

1 section 6 of the revised school code, 1976 PA 451, MCL 380.6, or a
2 local act school district as defined in section 5 of the revised
3 school code, 1976 PA 451, MCL 380.5.

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

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

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

23 (a) Organize together or form, join, or assist in labor
24 organizations; engage in lawful concerted activities for the
25 purpose of collective negotiation or bargaining or other mutual aid
26 and protection; or negotiate or bargain collectively with their
27 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)~~-10(8).

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

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

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

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

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

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

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

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

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

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

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

11 (b) Restrain or coerce a public employer in the selection of
12 its representatives for the purposes of collective bargaining or
13 the adjustment of grievances.

14 (c) Cause or attempt to cause a public employer to
15 discriminate against a public employee in violation of subsection
16 (1) (c) .

17 (d) Refuse to bargain collectively with a public employer,
18 provided it is the representative of the public employer's
19 employees, subject to section 11.

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

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

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

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

23 (i) A public police or fire department employee or any person
24 who seeks to become employed as a public police or fire department
25 employee as that term is defined under section 2 of 1969 PA 312,
26 MCL 423.232.

27 (ii) A state police trooper or sergeant who is granted rights

1 under section 5 of article XI of the state constitution of 1963 or
2 any individual who seeks to become employed as a state police
3 trooper or sergeant.

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

18 (C) A PUBLIC EMPLOYER OR THIS STATE MAY AGREE THAT ANY PERSON
19 DESCRIBED IN SUBDIVISION (A), OR A LABOR ORGANIZATION OR BARGAINING
20 REPRESENTATIVE REPRESENTING PERSONS DESCRIBED IN SUBDIVISION (A),
21 SHALL REPRESENT ALL EMPLOYEES IN THE BARGAINING UNIT REGARDLESS OF
22 MEMBERSHIP IN THE LABOR ORGANIZATION OR EXCLUSIVE BARGAINING
23 REPRESENTATIVE.

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

26 (i) The individuals described in the exclusion found to be
27 invalid ~~shall~~ **ARE** no longer ~~be~~ excepted from the application of

1 subsection (3).

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

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

16 (6) The court of appeals has exclusive original jurisdiction
17 over any action challenging the validity of subsection (3), (4), or
18 (5). The court of appeals shall hear the action in an expedited
19 manner.

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

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

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

26 ~~—— (c) Inform public employers, public employees, and labor~~
27 ~~organizations concerning their rights and responsibilities under~~

1 ~~2012 PA 349.~~

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

5 (7) ~~(8)~~ A person, public employer, or labor organization that
6 violates subsection (3) is liable for a civil fine of not more than
7 \$500.00. A civil fine recovered under this section shall be
8 submitted to the state treasurer for deposit in the general fund of
9 this state.

10 (8) ~~(9)~~ By July 1 of each year, each exclusive bargaining
11 representative that represents public employees in this state shall
12 have an independent examiner verify the exclusive bargaining
13 representative's calculation of all expenditures attributed to the
14 costs of collective bargaining, contract administration, and
15 grievance adjustment during the prior calendar year and shall file
16 that verification with the commission. The commission shall make
17 the exclusive bargaining representative's calculations available to
18 the public on the commission's website. The exclusive bargaining
19 representative shall also file a declaration identifying the local
20 bargaining units that are represented. Local bargaining units
21 identified in the declaration filed by the exclusive bargaining
22 representative are not required to file a separate calculation of
23 all expenditures attributed to the costs of collective bargaining,
24 contract administration, and grievance adjustment. ~~For fiscal year~~
25 ~~2011-2012, \$100,000.00 is appropriated to the commission for the~~
26 ~~costs of implementing this subsection. For fiscal year 2014-2015,~~
27 ~~\$100,000.00 is appropriated to the commission for the costs of~~

1 ~~implementing this subsection.~~

2 (9) ~~(10)~~ Except for actions required to be brought under
3 subsection (6), a person who suffers an injury as a result of a
4 violation or threatened violation of subsection (3) may bring a
5 civil action for damages, injunctive relief, or both. In addition,
6 a court shall award court costs and reasonable attorney fees to a
7 plaintiff who prevails in an action brought under this subsection.
8 Remedies provided in this subsection are independent of and in
9 addition to other penalties and remedies prescribed by this act.

10 Sec. 11. Representatives designated or selected for purposes
11 of collective bargaining by the majority of the public employees in
12 a unit appropriate for such purposes, shall be the exclusive **LABOR**
13 **ORGANIZATION OR BARGAINING** representatives of all the public
14 employees in such unit for the purposes of collective bargaining in
15 respect to rates of pay, wages, hours of employment or other
16 conditions of employment, and shall be so recognized by the public
17 employer. ~~÷ Provided, That~~ **HOWEVER, EXCEPT AS PROVIDED IN SECTION**
18 **10(4)(C),** any individual employee at any time may **INDEPENDENTLY**
19 **BARGAIN WITH RESPECT TO RATES OR PAY, WAGES, HOURS OF EMPLOYMENT,**
20 **AND OTHER CONDITIONS OF EMPLOYMENT, AND MAY** present grievances to
21 his **OR HER** employer and have the grievances adjusted ~~÷~~ without
22 intervention of the bargaining representative. ~~÷ if the adjustment~~
23 ~~is not inconsistent with the terms of a collective bargaining~~
24 ~~contract or agreement then in effect, provided that the bargaining~~
25 ~~representative has been given opportunity to be present at such~~
26 ~~adjustment.~~

27 Sec. 15. (1) A public employer shall bargain collectively with

1 the representatives of its employees as described in section 11 and
2 may make and enter into collective bargaining agreements with those
3 representatives. Except as otherwise provided in this section, for
4 the purposes of this section, to bargain collectively is to perform
5 the mutual obligation of the employer and the representative of the
6 employees **WHO ARE MEMBERS OF THE LABOR ORGANIZATION OR BARGAINING**
7 **REPRESENTATIVE** to meet at reasonable times and confer in good faith
8 with 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 manage and direct on behalf of the public
16 the operations and activities of the public schools under its
17 control.

18 (3) ~~Collective bargaining~~ **BARGAINING, COLLECTIVELY OR**
19 **INDEPENDENTLY**, between a public school employer and a bargaining
20 representative of its employees **WHO ARE MEMBERS OF A LABOR**
21 **ORGANIZATION OR BARGAINING REPRESENTATIVE, OR BETWEEN THE PUBLIC**
22 **SCHOOL EMPLOYER AND AN EMPLOYEE WHO IS NOT A MEMBER OF A LABOR**
23 **ORGANIZATION OR BARGAINING REPRESENTATIVE**, shall not include any of
24 the following subjects:

25 (a) Who is or will be the policyholder of an employee group
26 insurance benefit. This subdivision does not affect the duty to
27 bargain with respect to types and levels of benefits and coverages

1 for employee group insurance. A change or proposed change in a type
2 or to a level of benefit, policy specification, or coverage for
3 employee group insurance shall be bargained by the public school
4 employer and the bargaining representative before the change may
5 take effect.

6 (b) Establishment of the starting day for the school year and
7 of the amount of pupil contact time required to receive full state
8 school aid under section 1284 of the revised school code, 1976 PA
9 451, MCL 380.1284, and under section 101 of the state school aid
10 act of 1979, 1979 PA 94, MCL 388.1701.

11 (c) The composition of school improvement committees
12 established under section 1277 of the revised school code, 1976 PA
13 451, MCL 380.1277.

14 (d) The decision of whether or not to provide or allow
15 interdistrict or intradistrict open enrollment opportunity in a
16 school district or the selection of grade levels or schools in
17 which to allow an open enrollment opportunity.

18 (e) The decision of whether or not to act as an authorizing
19 body to grant a contract to organize and operate 1 or more public
20 school academies under the revised school code, 1976 PA 451, MCL
21 380.1 to 380.1852.

22 (f) The decision of whether or not to contract with a third
23 party for 1 or more noninstructional support services; or the
24 procedures for obtaining the contract for noninstructional support
25 services other than bidding described in this subdivision; or the
26 identity of the third party; or the impact of the contract for
27 noninstructional support services on individual employees or the

1 bargaining unit. However, this subdivision applies only if the
2 bargaining unit that is providing the noninstructional support
3 services is given an opportunity to bid on the contract for the
4 noninstructional support services on an equal basis as other
5 bidders.

6 (g) The use of volunteers in providing services at its
7 schools.

8 (h) Decisions concerning use and staffing of experimental or
9 pilot programs and decisions concerning use of technology to
10 deliver educational programs and services and staffing to provide
11 that technology, or the impact of those decisions on individual
12 employees or the bargaining unit.

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

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

19 (k) Decisions about the development, content, standards,
20 procedures, adoption, and implementation of the public school
21 employer's policies regarding personnel decisions when conducting a
22 staffing or program reduction or any other personnel determination
23 resulting in the elimination of a position, when conducting a
24 recall from a staffing or program reduction or any other personnel
25 determination resulting in the elimination of a position, or in
26 hiring after a staffing or program reduction or any other personnel
27 determination resulting in the elimination of a position, as

1 provided under section 1248 of the revised school code, 1976 PA
2 451, MCL 380.1248, any decision made by the public school employer
3 pursuant to those policies, or the impact of those decisions on an
4 individual employee or the bargaining unit.

5 (l) Decisions about the development, content, standards,
6 procedures, adoption, and implementation of a public school
7 employer's performance evaluation system adopted under section 1249
8 of the revised school code, 1976 PA 451, MCL 380.1249, or under
9 1937 (Ex Sess) PA 4, MCL 38.71 to 38.191, decisions concerning the
10 content of a performance evaluation of an employee under those
11 provisions of law, or the impact of those decisions on an
12 individual employee or the bargaining unit.

13 (m) For public employees whose employment is regulated by 1937
14 (Ex Sess) PA 4, MCL 38.71 to 38.191, decisions about the
15 development, content, standards, procedures, adoption, and
16 implementation of a policy regarding discharge or discipline of an
17 employee, decisions concerning the discharge or discipline of an
18 individual employee, or the impact of those decisions on an
19 individual employee or the bargaining unit. For public employees
20 whose employment is regulated by 1937 (Ex Sess) PA 4, MCL 38.71 to
21 38.191, a public school employer shall not adopt, implement, or
22 maintain a policy for discharge or discipline of an employee that
23 includes a standard for discharge or discipline that is different
24 than the arbitrary and capricious standard provided under section 1
25 of article IV of 1937 (Ex Sess) PA 4, MCL 38.101.

26 (n) Decisions about the format, timing, or number of classroom
27 observations conducted for the purposes of section 3a of article II

1 of 1937 (Ex Sess) PA 4, MCL 38.83a, decisions concerning the
2 classroom observation of an individual employee, or the impact of
3 those decisions on an individual employee or the bargaining unit.

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

13 (p) Decisions about the development, format, content, and
14 procedures of the notification to parents and legal guardians
15 required under section 1249a of the revised school code, 1976 PA
16 451, MCL 380.1249a.

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

18 (4) Except as otherwise provided in subsection (3)(f), the
19 matters described in subsection (3) are prohibited subjects of
20 bargaining between a public school employer and a bargaining
21 representative of its employees, and, for the purposes of this act,
22 are within the sole authority of the public school employer to
23 decide.

24 (5) If a public school is placed in the state school
25 reform/redesign school district or is placed under a chief
26 executive officer under section 1280c of the revised school code,
27 1976 PA 451, MCL 380.1280c, then, for the purposes of collective

1 bargaining under this act, the state school reform/redesign officer
2 or the chief executive officer, as applicable, is the public school
3 employer of the public school employees of that public school for
4 as long as the public school is part of the state school
5 reform/redesign school district or operated by the chief executive
6 officer.

7 (6) A public school employer's collective bargaining duty
8 under this act and a collective bargaining agreement entered into
9 by a public school employer under this act are subject to all of
10 the following:

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

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

22 (7) Each collective bargaining agreement entered into between
23 a public employer and public employees under this act on or after
24 March 28, 2013 shall include a provision that allows an emergency
25 manager appointed under the local financial stability and choice
26 act, 2012 PA 436, MCL 141.1541 to 141.1575, to reject, modify, or
27 terminate the collective bargaining agreement as provided in the

1 local financial stability and choice act, 2012 PA 436, MCL 141.1541
2 to 141.1575. Provisions required by this subsection are prohibited
3 subjects of bargaining under this act.

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

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

16 (10) If the charter of a city, village, or township with a
17 population of 500,000 or more requires and specifies the method of
18 selection of a retirant member of the municipality's fire
19 department, police department, or fire and police department
20 pension or retirement board, the inclusion of the retirant member
21 on the board and the method of selection of that retirant member
22 are prohibited subjects of collective bargaining, and any provision
23 in a collective bargaining agreement that purports to modify that
24 charter requirement is void and of no effect.

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

27 (a) A decision as to whether or not the public employer will

1 enter into an intergovernmental agreement to consolidate 1 or more
2 functions or services, to jointly perform 1 or more functions or
3 services, or to otherwise collaborate regarding 1 or more functions
4 or services.

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

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

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

14 (13) An agreement with a collective bargaining unit shall not
15 require a public employer to pay the costs of an independent
16 examiner verification described in section ~~10(9)~~-10(8).

17 **(14) EXCEPT AS PROVIDED IN SECTION 10(4) (C) , A COLLECTIVE**
18 **BARGAINING AGREEMENT BETWEEN A PUBLIC EMPLOYER AND A BARGAINING**
19 **REPRESENTATIVE OF ITS EMPLOYEES WHO ARE MEMBERS OF A LABOR**
20 **ORGANIZATION OR BARGAINING REPRESENTATIVE SHALL NOT INCLUDE ANY**
21 **WAGES OR CONDITIONS OF EMPLOYMENT FOR MEMBERS OF THE LABOR**
22 **ORGANIZATION OR BARGAINING REPRESENTATIVE THAT ARE BASED ON, LINKED**
23 **TO, OR CONTINGENT UPON WAGES OR CONDITIONS OF EMPLOYMENT OF**
24 **EMPLOYEES WHO ARE NOT MEMBERS OF THE LABOR ORGANIZATION OR**
25 **BARGAINING REPRESENTATIVE.**

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