

# 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.

7       ~~(b) Refrain from any or all of the activities identified in~~  
8 ~~subdivision (a).~~

9       ~~(2) No person shall by force, intimidation, or unlawful~~  
10 ~~threats compel or attempt to compel any public employee to do any~~  
11 ~~of the following:~~

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

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

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

25       ~~(d) Pay the costs of an independent examiner verification as~~  
26 ~~described in section 10(9).~~

27       ~~(3) A person who violates subsection (2) is liable for a civil~~  
28 ~~fine of not more than \$500.00. A civil fine recovered under this~~

~~section shall be submitted to the state treasurer for deposit in the general fund of this state.~~

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

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

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

(c) Discriminate in regard to hire, terms, or other conditions of employment to encourage or discourage membership in a labor organization. **However, this act or any other law of this state does not preclude a public employer from making an agreement with an exclusive bargaining representative as described in section 11 to require as a condition of employment that all other employees in the bargaining unit pay to the exclusive bargaining representative a service fee equivalent to the amount of dues uniformly required of members of the exclusive bargaining representative.**

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

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

3 (2) It is the purpose of 1973 PA 25 to reaffirm the continuing  
4 public policy of this state that the stability and effectiveness of  
5 labor relations in the public sector require, if the requirement is  
6 negotiated with the public employer, that all other employees in  
7 the bargaining unit share fairly in the financial support of their  
8 exclusive bargaining representative by paying to the exclusive  
9 bargaining representative a service fee that may be equivalent to  
10 the amount of dues uniformly required of members of the exclusive  
11 bargaining representative.

12 (3) ~~(2)~~—A labor organization or its agents shall not do any of  
13 the following:

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

18 (b) Restrain or coerce a public employer in the selection of  
19 its representatives for the purposes of collective bargaining or  
20 the adjustment of grievances.

21 (c) Cause or attempt to cause a public employer to  
22 discriminate against a public employee in violation of subsection  
23 (1)(c).

24 (d) Refuse to bargain collectively with a public employer,  
25 ~~provided~~ ~~if~~ it is the representative of the public employer's  
26 employees, subject to section 11.

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

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

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

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

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

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

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

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

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

~~(b) Any person described in subdivision (a), or a labor organization or bargaining representative representing persons described in subdivision (a) and a public employer or this state may agree that all employees in the bargaining unit shall share fairly in the financial support of the labor organization or their~~

~~exclusive bargaining representative by paying a fee to the labor organization or exclusive bargaining representative that may be equivalent to the amount of dues uniformly required of members of the labor organization or exclusive bargaining representative. Section 9(2) shall not be construed to interfere with the right of a public employer or this state and a labor organization or bargaining representative to enter into or lawfully administer such an agreement as it relates to the employees or persons described in subdivision (a).~~

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

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

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

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

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

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

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

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

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

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

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

**(4)** ~~(9)~~ By July 1 of each year, each exclusive bargaining representative that represents public employees in this state shall have an independent examiner verify the exclusive bargaining representative's calculation of all expenditures attributed to the costs of collective bargaining, contract administration, and grievance adjustment during the prior calendar year and shall file that verification with the commission. The commission shall make the exclusive bargaining representative's calculations available to the public on the commission's website. The exclusive bargaining representative shall also file a declaration identifying the local bargaining units that are represented. Local bargaining units identified in the declaration filed by the exclusive bargaining representative are not required to file a separate calculation of all expenditures attributed to the costs of collective bargaining, contract administration, and grievance adjustment. ~~For fiscal year~~

~~2011-2012, \$100,000.00 is appropriated to the commission for the costs of implementing this subsection. For fiscal year 2014-2015, \$100,000.00 is appropriated to the commission for the costs of implementing this subsection.~~

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

Sec. 15. (1) A public employer shall bargain collectively with the representatives of its employees as described in section 11 and may make and enter into collective bargaining agreements with those representatives. Except as otherwise provided in this section, for the purposes of this section, to bargain collectively is to perform the mutual obligation of the employer and the representative of the employees to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or to negotiate an agreement, or any question arising under the agreement, and to execute a written contract, ordinance, or resolution incorporating any agreement reached if requested by either party, but this obligation does not compel either party to agree to a proposal or make a concession.

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



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

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

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

17           (c) The composition of school improvement committees  
18 established under section 1277 of the revised school code, 1976 PA  
19 451, MCL 380.1277.

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

24           (e) The decision of whether or not to act as an authorizing  
25 body to grant a contract to organize and operate 1 or more public  
26 school academies under the revised school code, 1976 PA 451, MCL  
27 380.1 to 380.1852.

28           (f) The decision of whether or not to contract with a third  
29 party for 1 or more noninstructional support services; or the

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

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

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

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

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

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

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

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

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

28 (n) Decisions about the format, timing, or number of classroom  
29 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  
28 bargaining under this act, the state school reform/redesign officer  
29 or the chief executive officer, as applicable, is the public school

1 employer of the public school employees of that public school for  
2 as long as the public school is part of the state school  
3 reform/redesign school district or operated by the chief executive  
4 officer.

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

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

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

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

29 (8) Collective bargaining agreements under this act may be

1 rejected, modified, or terminated pursuant to the local financial  
2 stability and choice act, 2012 PA 436, MCL 141.1541 to 141.1575.  
3 This act does not confer a right to bargain that would infringe on  
4 the exercise of powers under the local financial stability and  
5 choice act, 2012 PA 436, MCL 141.1541 to 141.1575.

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

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

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

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

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

1 subdivision (a).

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

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

8 (13) An agreement with a collective bargaining unit ~~shall~~**must**  
9 not require a public employer to pay the costs of an independent  
10 examiner verification described in section ~~10(9)~~**10(4)**.

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