

SENATE SUBSTITUTE FOR

HOUSE BILL NO. 4003

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, 14, and 15 (MCL 423.201, 423.209, 423.210, 423.214, and 423.215), sections 1 and 14 as amended by 2012 PA 76, section 10 as amended by 2012 PA 53, and section 15 as amended by 2012 PA 45.

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
5 of the employer.



1 (b) "Commission" means the employment relations commission
2 created in section 3 of 1939 PA 176, MCL 423.3.

3 (c) "Intermediate school district" means that term as defined
4 in section 4 of the revised school code, 1976 PA 451, MCL 380.4.

5 (d) "Lockout" means the temporary withholding of work from a
6 group of employees by ~~means of~~ shutting down the operation of the
7 employer ~~in order~~ to bring pressure upon the affected employees or
8 the bargaining representative, or both, to accept the employer's
9 terms of settlement of a labor dispute.

10 (e) "Public employee" means a person holding a position by
11 appointment or employment in the government of this state, in the
12 government of 1 or more of the political subdivisions of this
13 state, in the public school service, in a public or special
14 district, in the service of an authority, commission, or board, or
15 in any other branch of the public service, subject to the following
16 exceptions:

17 (i) A person employed by a private organization or entity who
18 provides services under a time-limited contract with this state or
19 a political subdivision of this state or who receives a direct or
20 indirect government subsidy in his or her private employment is not
21 an employee of this state or that political subdivision, and is not
22 a public employee. This provision shall not be superseded by any
23 interlocal agreement, memorandum of understanding, memorandum of
24 commitment, or other document similar to these.

25 (ii) If, by April 9, 2000, a public school employer that is the
26 chief executive officer serving in a school district of the first
27 class under part 5A of the revised school code, 1976 PA 451, MCL



1 380.371 to 380.376, issues an order determining that it is in the
2 best interests of the school district, then a public school
3 administrator employed by that school district is not a public
4 employee for purposes of this act. The exception under this
5 subparagraph applies to public school administrators employed by
6 that school district after the date of the order described in this
7 subparagraph whether or not the chief executive officer remains in
8 place in the school district. This exception does not prohibit the
9 chief executive officer or board of a school district of the first
10 class or its designee from having informal meetings with public
11 school administrators to discuss wages and working conditions.

12 (iii) An individual serving as a graduate student research
13 assistant or in an equivalent position and any individual whose
14 position does not have sufficient indicia of an employer-employee
15 relationship using the 20-factor test announced by the internal
16 revenue service of the United States department of treasury in
17 revenue ruling 87-41, 1987-1 C.B. 296 is not a public employee
18 entitled to representation or collective bargaining rights under
19 this act.

20 (f) "Public school academy" means a public school academy or
21 strict discipline academy organized under the revised school code,
22 1976 PA 451, MCL 380.1 to 380.1852.

23 (g) "Public school administrator" means a superintendent,
24 assistant superintendent, chief business official, principal, or
25 assistant principal employed by a school district, intermediate
26 school district, or public school academy.

27 (h) "Public school employer" means a public employer that is



1 the board of a school district, intermediate school district, or
2 public school academy; is the chief executive officer of a school
3 district in which a school reform board is in place under part 5A
4 of the revised school code, 1976 PA 451, MCL 380.371 to 380.376; or
5 is the governing board of a joint endeavor or consortium consisting
6 of any combination of school districts, intermediate school
7 districts, or public school academies.

8 (i) "School district" means that term as defined in section 6
9 of the revised school code, 1976 PA 451, MCL 380.6, or a local act
10 school district as defined in section 5 of the revised school code,
11 1976 PA 451, MCL 380.5.

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

23 (2) This act does not limit, impair, or affect the right of a
24 public employee to the expression or communication of a view,
25 grievance, complaint, or opinion on any matter related to the
26 conditions or compensation of public employment or their betterment
27 as long as the expression or communication does not interfere with



1 the full, faithful, and proper performance of the duties of
2 employment.

3 Sec. 9. (1) ~~It shall be lawful for public employees to~~
4 ~~organize~~ PUBLIC EMPLOYEES MAY DO ANY OF THE FOLLOWING:

5 (A) ORGANIZE together or ~~to~~ form, join, or assist in labor
6 organizations; ~~to~~ engage in lawful concerted activities for the
7 purpose of collective negotiation or bargaining or other mutual aid
8 and protection; ~~to~~ or ~~to~~ negotiate or bargain collectively with
9 their public employers through representatives of their own free
10 choice.

11 (B) REFRAIN FROM ANY OR ALL OF THE ACTIVITIES IDENTIFIED IN
12 SUBDIVISION (A).

13 (2) NO PERSON SHALL BY FORCE, INTIMIDATION, OR UNLAWFUL
14 THREATS COMPEL OR ATTEMPT TO COMPEL ANY PUBLIC EMPLOYEE TO DO ANY
15 OF THE FOLLOWING:

16 (A) BECOME OR REMAIN A MEMBER OF A LABOR ORGANIZATION OR
17 BARGAINING REPRESENTATIVE OR OTHERWISE AFFILIATE WITH OR
18 FINANCIALLY SUPPORT A LABOR ORGANIZATION OR BARGAINING
19 REPRESENTATIVE.

20 (B) REFRAIN FROM ENGAGING IN EMPLOYMENT OR REFRAIN FROM
21 JOINING A LABOR ORGANIZATION OR BARGAINING REPRESENTATIVE OR
22 OTHERWISE AFFILIATING WITH OR FINANCIALLY SUPPORTING A LABOR
23 ORGANIZATION OR BARGAINING REPRESENTATIVE.

24 (C) PAY TO ANY CHARITABLE ORGANIZATION OR THIRD PARTY AN
25 AMOUNT THAT IS IN LIEU OF, EQUIVALENT TO, OR ANY PORTION OF DUES,
26 FEES, ASSESSMENTS, OR OTHER CHARGES OR EXPENSES REQUIRED OF MEMBERS
27 OF OR PUBLIC EMPLOYEES REPRESENTED BY A LABOR ORGANIZATION OR



1 BARGAINING REPRESENTATIVE.

2 (3) A PERSON WHO VIOLATES SUBSECTION (2) IS LIABLE FOR A CIVIL
3 FINE OF NOT MORE THAN \$500.00. A CIVIL FINE RECOVERED UNDER THIS
4 SECTION SHALL BE SUBMITTED TO THE STATE TREASURER FOR DEPOSIT IN
5 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 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 ~~the effective~~
18 ~~date of the amendatory act that added this sentence~~ **MARCH 16, 2012**
19 is not prohibited until the agreement expires or is terminated,
20 extended, or renewed. A public employer may permit employees to
21 confer with a labor organization during working hours without loss
22 of time or pay.

23 (c) Discriminate in regard to hire, terms, or other conditions
24 of employment to encourage or discourage membership in a labor
25 organization. ~~However, this act or any other law of this state does~~
26 ~~not preclude a public employer from making an agreement with an~~
27 ~~exclusive bargaining representative as described in section 11 to~~



1 ~~require as a condition of employment that all employees in the~~
2 ~~bargaining unit pay to the exclusive bargaining representative a~~
3 ~~service fee equivalent to the amount of dues uniformly required of~~
4 ~~members of the exclusive bargaining representative.~~

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

7 (e) Refuse to bargain collectively with the representatives of
8 its public employees, subject to the provisions of section 11.

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

18 (2) ~~(3)~~ A labor organization or its agents shall not do any of
19 the following:

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

24 (b) Restrain or coerce a public employer in the selection of
25 its representatives for the purposes of collective bargaining or
26 the adjustment of grievances.

27 (c) Cause or attempt to cause a public employer to



1 discriminate against a public employee in violation of subsection
2 (1)(c).

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

6 (3) EXCEPT AS PROVIDED IN SUBSECTION (4), AN INDIVIDUAL SHALL
7 NOT BE REQUIRED AS A CONDITION OF OBTAINING OR CONTINUING PUBLIC
8 EMPLOYMENT TO DO ANY OF THE FOLLOWING:

9 (A) REFRAIN OR RESIGN FROM MEMBERSHIP IN, VOLUNTARY
10 AFFILIATION WITH, OR VOLUNTARY FINANCIAL SUPPORT OF A LABOR
11 ORGANIZATION OR BARGAINING REPRESENTATIVE.

12 (B) BECOME OR REMAIN A MEMBER OF A LABOR ORGANIZATION OR
13 BARGAINING REPRESENTATIVE.

14 (C) PAY ANY DUES, FEES, ASSESSMENTS, OR OTHER CHARGES OR
15 EXPENSES OF ANY KIND OR AMOUNT, OR PROVIDE ANYTHING OF VALUE TO A
16 LABOR ORGANIZATION OR BARGAINING REPRESENTATIVE.

17 (D) PAY TO ANY CHARITABLE ORGANIZATION OR THIRD PARTY ANY
18 AMOUNT THAT IS IN LIEU OF, EQUIVALENT TO, OR ANY PORTION OF DUES,
19 FEES, ASSESSMENTS, OR OTHER CHARGES OR EXPENSES REQUIRED OF MEMBERS
20 OF OR PUBLIC EMPLOYEES REPRESENTED BY A LABOR ORGANIZATION OR
21 BARGAINING REPRESENTATIVE.

22 (4) THE APPLICATION OF SUBSECTION (3) IS SUBJECT TO THE
23 FOLLOWING:

24 (A) SUBSECTION (3) DOES NOT APPLY TO ANY OF THE FOLLOWING:

25 (i) A PUBLIC POLICE OR FIRE DEPARTMENT EMPLOYEE OR ANY PERSON
26 WHO SEEKS TO BECOME EMPLOYED AS A PUBLIC POLICE OR FIRE DEPARTMENT
27 EMPLOYEE AS THAT TERM IS DEFINED UNDER SECTION 2 OF 1969 PA 312,



1 MCL 423.232.

2 (ii) A STATE POLICE TROOPER OR SERGEANT WHO IS GRANTED RIGHTS
3 UNDER SECTION 5 OF ARTICLE XI OF THE STATE CONSTITUTION OF 1963 OR
4 ANY INDIVIDUAL WHO SEEKS TO BECOME EMPLOYED AS A STATE POLICE
5 TROOPER OR SERGEANT.

6 (B) ANY PERSON DESCRIBED IN SUBDIVISION (A) , OR A LABOR
7 ORGANIZATION OR BARGAINING REPRESENTATIVE REPRESENTING PERSONS
8 DESCRIBED IN SUBDIVISION (A) AND A PUBLIC EMPLOYER OR THIS STATE
9 MAY AGREE THAT ALL EMPLOYEES IN THE BARGAINING UNIT SHALL SHARE
10 FAIRLY IN THE FINANCIAL SUPPORT OF THE LABOR ORGANIZATION OR THEIR
11 EXCLUSIVE BARGAINING REPRESENTATIVE BY PAYING A FEE TO THE LABOR
12 ORGANIZATION OR EXCLUSIVE BARGAINING REPRESENTATIVE THAT MAY BE
13 EQUIVALENT TO THE AMOUNT OF DUES UNIFORMLY REQUIRED OF MEMBERS OF
14 THE LABOR ORGANIZATION OR EXCLUSIVE BARGAINING REPRESENTATIVE.
15 SECTION 9(2) SHALL NOT BE CONSTRUED TO INTERFERE WITH THE RIGHT OF
16 A PUBLIC EMPLOYER OR THIS STATE AND A LABOR ORGANIZATION OR
17 BARGAINING REPRESENTATIVE TO ENTER INTO OR LAWFULLY ADMINISTER SUCH
18 AN AGREEMENT AS IT RELATES TO THE EMPLOYEES OR PERSONS DESCRIBED IN
19 SUBDIVISION (A) .

20 (C) IF ANY OF THE EXCLUSIONS IN SUBDIVISION (A) (i) OR (ii) ARE
21 FOUND TO BE INVALID BY A COURT , THE FOLLOWING APPLY:

22 (i) THE INDIVIDUALS DESCRIBED IN THE EXCLUSION FOUND TO BE
23 INVALID SHALL NO LONGER BE EXCEPTED FROM THE APPLICATION OF
24 SUBSECTION (3) .

25 (ii) SUBDIVISION (B) DOES NOT APPLY TO INDIVIDUALS DESCRIBED IN
26 THE INVALID EXCLUSION.

27 (5) AN AGREEMENT , CONTRACT , UNDERSTANDING , OR PRACTICE BETWEEN



1 OR INVOLVING A PUBLIC EMPLOYER, LABOR ORGANIZATION, OR BARGAINING
2 REPRESENTATIVE THAT VIOLATES SUBSECTION (3) IS UNLAWFUL AND
3 UNENFORCEABLE. THIS SUBSECTION APPLIES ONLY TO AN AGREEMENT,
4 CONTRACT, UNDERSTANDING, OR PRACTICE THAT TAKES EFFECT OR IS
5 EXTENDED OR RENEWED AFTER THE EFFECTIVE DATE OF THE AMENDATORY ACT
6 THAT ADDED THIS SUBSECTION.

7 (6) THE COURT OF APPEALS HAS EXCLUSIVE ORIGINAL JURISDICTION
8 OVER ANY ACTION CHALLENGING THE VALIDITY OF SUBSECTION (3), (4), OR
9 (5). THE COURT OF APPEALS SHALL HEAR THE ACTION IN AN EXPEDITED
10 MANNER.

11 (7) FOR FISCAL YEAR 2012-2013, \$1,000,000.00 IS APPROPRIATED
12 TO THE DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS TO BE
13 EXPENDED TO DO ALL OF THE FOLLOWING REGARDING THE AMENDATORY ACT
14 THAT ADDED THIS SUBSECTION:

15 (A) RESPOND TO PUBLIC INQUIRIES REGARDING THE AMENDATORY ACT.

16 (B) PROVIDE THE COMMISSION WITH SUFFICIENT STAFF AND OTHER
17 RESOURCES TO IMPLEMENT THE AMENDATORY ACT.

18 (C) INFORM PUBLIC EMPLOYERS, PUBLIC EMPLOYEES, AND LABOR
19 ORGANIZATIONS CONCERNING THEIR RIGHTS AND RESPONSIBILITIES UNDER
20 THE AMENDATORY ACT.

21 (D) ANY OTHER PURPOSES THAT THE DIRECTOR OF THE DEPARTMENT OF
22 LICENSING AND REGULATORY AFFAIRS DETERMINES IN HIS OR HER
23 DISCRETION ARE NECESSARY TO IMPLEMENT THE AMENDATORY ACT.

24 (8) A PERSON, PUBLIC EMPLOYER, OR LABOR ORGANIZATION THAT
25 VIOLATES SUBSECTION (3) IS LIABLE FOR A CIVIL FINE OF NOT MORE THAN
26 \$500.00. A CIVIL FINE RECOVERED UNDER THIS SECTION SHALL BE
27 SUBMITTED TO THE STATE TREASURER FOR DEPOSIT IN THE GENERAL FUND OF



1 THIS STATE.

2 (9) ~~(4)~~—By March 1 of each year, each exclusive bargaining
 3 representative that represents public employees in this state shall
 4 file with the commission an independent audit of all expenditures
 5 attributed to the costs of collective bargaining, contract
 6 administration, and grievance adjustment during the prior calendar
 7 year. The commission shall make the audits available to the public
 8 on the commission's website. For fiscal year 2011-2012, \$100,000.00
 9 is appropriated to the commission for the costs of implementing
 10 this subsection.

11 (10) EXCEPT FOR ACTIONS REQUIRED TO BE BROUGHT UNDER
 12 SUBSECTION (6), A PERSON WHO SUFFERS AN INJURY AS A RESULT OF A
 13 VIOLATION OR THREATENED VIOLATION OF SUBSECTION (3) MAY BRING A
 14 CIVIL ACTION FOR DAMAGES, INJUNCTIVE RELIEF, OR BOTH. IN ADDITION,
 15 A COURT SHALL AWARD COURT COSTS AND REASONABLE ATTORNEY FEES TO A
 16 PLAINTIFF WHO PREVAILS IN AN ACTION BROUGHT UNDER THIS SUBSECTION.
 17 REMEDIES PROVIDED IN THIS SUBSECTION ARE INDEPENDENT OF AND IN
 18 ADDITION TO OTHER PENALTIES AND REMEDIES PRESCRIBED BY THIS ACT.

19 Sec. 14. (1) An election shall not be directed in any
 20 bargaining unit or any subdivision within which, in the preceding
 21 12-month period, a valid election was held. The commission shall
 22 determine who is eligible to vote in the election and shall
 23 promulgate rules governing the election. In an election involving
 24 more than 2 choices, if none of the choices on the ballot receives
 25 a majority vote, a runoff election shall be conducted between the 2
 26 choices receiving the 2 largest numbers of valid votes cast in the
 27 election. An election shall not be directed in any bargaining unit



1 or subdivision ~~thereof where~~ **OF ANY BARGAINING UNIT IF** there is in
 2 force and effect a valid collective bargaining agreement that was
 3 not prematurely extended and that is of fixed duration. A
 4 collective bargaining agreement does not bar an election upon the
 5 petition of persons not parties ~~thereto~~ **TO THE COLLECTIVE**
 6 **BARGAINING AGREEMENT** if more than 3 years have elapsed since the
 7 agreement's execution or last timely renewal, whichever was later.

8 (2) An election shall not be directed for, and the commission
 9 or a public employer shall not recognize, a bargaining unit of a
 10 public employer consisting of individuals who are not public
 11 employees. A bargaining unit that is formed or recognized in
 12 violation of this subsection is invalid and void.

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

26 (2) A public school employer has the responsibility,
 27 authority, and right to manage and direct on behalf of the public



1 the operations and activities of the public schools under its
2 control.

3 (3) Collective bargaining between a public school employer and
4 a bargaining representative of its employees shall not include any
5 of the following subjects:

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

14 (b) Establishment of the starting day for the school year and
15 of the amount of pupil contact time required to receive full state
16 school aid under section 1284 of the revised school code, 1976 PA
17 451, MCL 380.1284, and under section 101 of the state school aid
18 act of 1979, 1979 PA 94, MCL 388.1701.

19 (c) The composition of school improvement committees
20 established under section 1277 of the revised school code, 1976 PA
21 451, MCL 380.1277.

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

26 (e) The decision of whether or not to act as an authorizing
27 body to grant a contract to organize and operate 1 or more public



1 school academies under the revised school code, 1976 PA 451, MCL
2 380.1 to 380.1852.

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

14 (g) The use of volunteers in providing services at its
15 schools.

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

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

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

27 (k) Decisions about the development, content, standards,



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

13 (l) Decisions about the development, content, standards,
14 procedures, adoption, and implementation of a public school
15 employer's performance evaluation system adopted under section 1249
16 of the revised school code, 1976 PA 451, MCL 380.1249, or under
17 1937 (Ex Sess) PA 4, MCL 38.71 to 38.191, decisions concerning the
18 content of a performance evaluation of an employee under those
19 provisions of law, or the impact of those decisions on an
20 individual employee or the bargaining unit.

21 (m) For public employees whose employment is regulated by 1937
22 (Ex Sess) PA 4, MCL 38.71 to 38.191, decisions about the
23 development, content, standards, procedures, adoption, and
24 implementation of a policy regarding discharge or discipline of an
25 employee, decisions concerning the discharge or discipline of an
26 individual employee, or the impact of those decisions on an
27 individual employee or the bargaining unit. For public employees



1 whose employment is regulated by 1937 (Ex Sess) PA 4, MCL 38.71 to
2 38.191, a public school employer shall not adopt, implement, or
3 maintain a policy for discharge or discipline of an employee that
4 includes a standard for discharge or discipline that is different
5 than the arbitrary and capricious standard provided under section 1
6 of article IV of 1937 (Ex Sess) PA 4, MCL 38.101.

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

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

21 (p) Decisions about the development, format, content, and
22 procedures of the notification to parents and legal guardians
23 required under section 1249a of the revised school code, 1976 PA
24 451, MCL 380.1249a.

25 **(Q) ANY REQUIREMENT THAT WOULD VIOLATE SECTION 10(3).**

26 (4) Except as otherwise provided in subsection (3)(f), the
27 matters described in subsection (3) are prohibited subjects of



1 bargaining between a public school employer and a bargaining
2 representative of its employees, and, for the purposes of this act,
3 are within the sole authority of the public school employer to
4 decide.

5 (5) If a public school is placed in the state school
6 reform/redesign school district or is placed under a chief
7 executive officer under section 1280c of the revised school code,
8 1976 PA 451, MCL 380.1280c, then, for the purposes of collective
9 bargaining under this act, the state school reform/redesign officer
10 or the chief executive officer, as applicable, is the public school
11 employer of the public school employees of that public school for
12 as long as the public school is part of the state school
13 reform/redesign school district or operated by the chief executive
14 officer.

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

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

22 (b) For a public school in which the superintendent of public
23 instruction implements 1 of the 4 school intervention models
24 described in section 1280c of the revised school code, 1976 PA 451,
25 MCL 380.1280c, if the school intervention model that is implemented
26 affects collective bargaining or requires modification of a
27 collective bargaining agreement, any effect on collective



1 bargaining and any modification of a collective bargaining
2 agreement under that school intervention model.

3 (7) Each collective bargaining agreement entered into between
4 a public employer and public employees under this act after March
5 16, 2011 shall include a provision that allows an emergency manager
6 appointed under the local government and school district fiscal
7 accountability act, 2011 PA 4, MCL 141.1501 to 141.1531, to reject,
8 modify, or terminate the collective bargaining agreement as
9 provided in the local government and school district fiscal
10 accountability act, 2011 PA 4, MCL 141.1501 to 141.1531. Provisions
11 required by this subsection are prohibited subjects of bargaining
12 under this act.

13 (8) Collective bargaining agreements under this act may be
14 rejected, modified, or terminated pursuant to the local government
15 and school district fiscal accountability act, 2011 PA 4, MCL
16 141.1501 to 141.1531. This act does not confer a right to bargain
17 that would infringe on the exercise of powers under the local
18 government and school district fiscal accountability act, 2011 PA
19 4, MCL 141.1501 to 141.1531.

20 (9) A unit of local government that enters into a consent
21 agreement under the local government and school district fiscal
22 accountability act, 2011 PA 4, MCL 141.1501 to 141.1531, is not
23 subject to subsection (1) for the term of the consent agreement, as
24 provided in the local government and school district fiscal
25 accountability act, 2011 PA 4, MCL 141.1501 to 141.1531.

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



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

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

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

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

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

20 (12) Nothing in subsection (11) relieves a public employer of
21 any duty established by law to collectively bargain with its
22 employees as to the effect of a contract described in subsection
23 (11)(a) on its employees.

24 Enacting section 1. If any part or parts of this act are found
25 to be in conflict with the state constitution of 1963, the United
26 States constitution, or federal law, this act shall be implemented
27 to the maximum extent that the state constitution of 1963, the



1 United States constitution, and federal law permit. Any provision
2 held invalid or inoperative shall be severable from the remaining
3 portions of this act.

