## 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,"

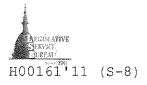
by amending sections 1, 9, 10, 14, and 15 (MCL 423.201, 423.209, 423.210, 423.214, and 423.215), sections 1 and 14 as amended by 2012 PA 76, section 10 as amended by 2012 PA 53, and section 15 as amended by 2012 PA 45.

## 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.



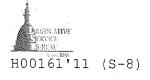
- (b) "Commission" means the employment relations commissioncreated in section 3 of 1939 PA 176, MCL 423.3.
- 3 (c) "Intermediate school district" means that term as defined 4 in section 4 of the revised school code, 1976 PA 451, MCL 380.4.
- (d) "Lockout" means the temporary withholding of work from a group of employees by means of shutting down the operation of the employer in order to bring pressure upon the affected employees or the bargaining representative, or both, to accept the employer's terms of settlement of a labor dispute.
- (e) "Public employee" means a person holding a position by
  appointment or employment in the government of this state, in the
  government of 1 or more of the political subdivisions of this
  state, in the public school service, in a public or special
  district, in the service of an authority, commission, or board, or
  in any other branch of the public service, subject to the following
  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 chief executive officer serving in a school district of the first class under part 5A of the revised school code, 1976 PA 451, MCL



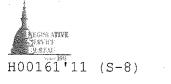
- 1 380.371 to 380.376, issues an order determining that it is in the
- 2 best interests of the school district, then a public school
- 3 administrator employed by that school district is not a public
- 4 employee for purposes of this act. The exception under this
- 5 subparagraph applies to public school 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



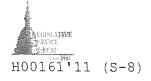
- 1 the full, faithful, and proper performance of the duties of
- 2 employment.
- 3 Sec. 9. (1) It shall be lawful for public employees to
- 4 organize PUBLIC EMPLOYEES MAY DO ANY OF THE FOLLOWING:
- 5 (A) ORGANIZE together or to-form, join, or assist in labor
- 6 organizations; , to engage in lawful concerted activities for the
- 7 purpose of collective negotiation or bargaining or other mutual aid
- 8 and protection; —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.
- (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.
- (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

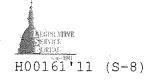


## 1 THIS STATE.

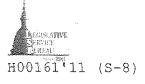
- 2 (9) (4)—By March 1 of each year, each exclusive bargaining
- 3 representative that represents public employees in this state shall
- 4 file with the commission an independent audit of all expenditures
- 5 attributed to the costs of collective bargaining, contract
- 6 administration, and grievance 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.
- 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.
- (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



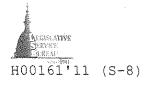
- 1 school academies under the revised school code, 1976 PA 451, MCL
- 2 380.1 to 380.1852.
- 3 (f) The decision of whether or not to contract with a third
- 4 party for 1 or more noninstructional support services; or the
- 5 procedures for obtaining the contract for noninstructional support
- 6 services 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
- 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



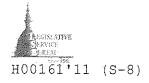
- 1 bargaining between a public school employer and a bargaining
- 2 representative of its employees, and, for the purposes of this act,
- 3 are within the sole authority of the public school employer to
- 4 decide.
- 5 (5) If a public school is placed in the state school
- 6 reform/redesign school district 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.
- (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.

