

— LEGISLATIVE —
TESTIMONY

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Preserve Important Labor Reforms

Michigan Senate Labor Committee

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The following is testimony submitted for presentation to the Michigan Senate Labor Committee by the Mackinac Center's Steve Delie on June 22, 2023. This testimony and others can be read online at mackinac.org/testimony.

Preserve Important Labor Reforms

My name is Steve Delie, and I am the Director of Labor Policy at the Mackinac Center. We are a 501(c)(3) nonprofit research and educational institute that advances the principles of free markets and limited government. Through our programs, we challenge government overreach and advance free-market approaches to public policy that frees people to realize their potential and dreams. I write today to oppose House Bills 4044, 4233, 4354, 4356 and 4357.

If enacted, these bills would reverse various decade-old labor reforms that have helped ensure Michigan's schools can accomplish their goal of educating our children in an effective manner. I urge you to vote no on these bills, and to preserve these important reforms.

HB 4044

If adopted, HB 4044 would undo reforms enacted by PA 54 of 2011. These reforms eliminated automatic increases in pay and benefits for workers operating under an expired union contract, thereby incentivizing more efficient contract negotiations. Undoing these reforms would place undue strain on already struggling municipalities and be a step back from efficient bargaining.

Municipalities that are already at financial risk could be devastated by the additional costs this bill would impose. Excluding one outlier,¹

¹ According to reports to the Department of Treasury, the City of Gladstone's pension is 58919.8% funded. Such an extreme outlier (assuming it is not an error) would have presented a misleading picture of the average municipality's funding status.

Michigan's average municipal pension is underfunded by 15%. Similarly, Michigan municipalities other post-employment benefits (typically retiree health care) are only 53% funded.² Cities like Mt. Clemens, which has funded only 5% of its OPEB liabilities, Battle Creek, which has only 40% of its pension funded, or Trenton, which has a pension system that is underfunded by 56%, will face only greater challenges if HB 4044 is adopted.³

Repealing the changes Public Act 54 made to PERA would only increase pressure on already-stretched municipal budgets, while rewarding less-effective unions. Currently, unions are highly motivated to negotiate following the expiration of a collective bargaining agreement, largely due to the financial incentives Public Act 54 created. Without these incentives, a major motivating drive behind timely contract negotiations would disappear.

Municipal officials who spoke about PA 54 of 2011 underscore the importance of preserving these reforms. Oakland County's former Deputy County Executive Robert Daddow blamed the lack of incentive to negotiate as causing Oakland County to struggle to budget its expenses and benefits.⁴ A former Royal Oak Superintendent, Thomas Moline, echoed these remarks, noting that that before PA 54, the Royal Oak School District had to pay an extra \$3.7 million in salary and benefits during contract negotiations, while unions had little incentive to bargain.⁵

2 The City of Kentwood represents an extreme outlier, with the City's OPEB benefits reported to be 13,263.2% funded. Again, assuming this is not an error, inclusion of this single entry would have significantly hampered the ability to communicate a typical municipality's funding status.

3 Data available here: <https://www.michigan.gov/treasury/local/cefd/retirement>.

4 <https://www.michiganlegislature.com/20403>.

5 <https://www.michiganlegislature.com/court-upholds-law-banning-automatic-pay-increases-for-public-employees>

In conclusion, HB 4044 would be severely detrimental to Michigan's municipalities and the public at large. I respectfully request that you vote no on HB 4044.

HB 4233

If adopted, HB 4233 would permit public employers to use public school resources to assist labor organization in collecting dues or service fees from school employees. In light of the U.S. Supreme Court's decision in *Janus v AFSCME*, however, the application of this bill would be limited to the collection of dues on behalf of unions, as non-member employees cannot be required to pay service fees.

The Mackinac Center opposes this bill on the simple grounds that public monies should not be used to assist private organizations. School funding should be devoted to improving the education of Michigan's students, and ensuring that they have the skills, resources, and instruction needed to prepare them for success in the future. Diverting this funding to exclusively benefit unions offers no such benefit. Instead, it amounts to a taxpayer-funded subsidy for unions.⁶

Should HB 4233 be adopted, the public will be financially responsible for the collection of union dues. These dues exclusively benefit unions, and offer no benefit to the generalized taxpayer. As a result, unions, rather than the public generally, should be responsible for the collection of these fees. HB 4233 represents yet another handout to unions at the expense of the taxpayer, and as such, should be rejected.

⁶ See, e.g., *Ysura v Pocatello Educ Ass'n*, 555 U.S. 353, 358 (2009) (finding access to public payroll deductions to be a state-subsidy of unions' First Amendment activity); *Wisconsin Educ Ass'n v Walker*, 705 F 3d 640 (7th Cir 2013) (recognizing same).

HB 4354

HB 4354 is the most impactful of this bill package, and will have the most deleterious effects on public school education. If adopted, HB 4354 would remove the following from the list of prohibited subjects of bargaining:

- Teacher placement
- Layoff and recall procedures
- Teacher performance evaluations
- Policies regarding discharge and discipline
- The number of classroom observations a teacher may undergo
- Compensation, including merit pay
- Parental notification that a student is being taught by a teacher who has been rated ineffective in that subject for 2 consecutive years.
- Agreements to consolidate, jointly perform, or cooperate on functions or services between school districts

While these policies may benefit teachers' unions, they are not a recipe for successful public education. Should these subjects be re-opened for bargaining, policies regarding placement and layoffs are highly likely to rely solely on seniority, allowing for skilled, younger teachers to be displaced simply on the basis of the amount of time they have been in a union. Those same younger teachers are likely to lose opportunities for meaningful merit pay, with seniority being far more relevant to their compensation.

Under these amendments, administrators would also be largely unable to provide any degree of accountability. With observation periods limited, it will be more difficult to effectively gauge a teacher's performance. And even if an observation reveals concerns about a teacher's performance, limitations on performance evaluations and discipline could prevent

administrators from taking any meaningful action. Underperforming teachers would be able to continue to underperform, with administrators being unable to make the personnel decisions needed to improve results.

Students, too, would suffer. Ineffective teachers, even chronically ineffective ones, could continue to teach subjects they are unqualified to teach, with students receiving a notification that is likely to be so milquetoast that it fails to provide parents with any meaningful notice of that fact. Given administrators' inability to replace ineffective teachers with more qualified ones, students would be trapped in a perpetual cycle of mediocrity.

If this bill is adopted, it sends a clear message: the interests of teachers' unions are more important than providing children with the best possible education.

HB 4356

HB 4356 eliminates the prohibition on bargaining over the privatization of school services. Such a repeal would be shortsighted, as these services have been overwhelming popular with schools as the best available option on the market.

Privatization of school custodial, transportation, and food services first became a prohibited subject of bargaining in 1994, and the Mackinac Center began measuring the privatization level of these services in 2001. In 2001, about 30% of school districts contracted out for one of these services. By 2015, that number had risen to nearly 70%. That number has remained at relatively the same level since. In 2020, 44.5% of all districts contracted out for food services, 50.5% contracted out for custodial services, and 28.2% contracted out for transportation services.

This overwhelming uptick in privatization demonstrates that privatized services are a highly valuable option. It also is an essential element of

keeping schools solvent. School districts are required to pay 28.21% of the payroll to fund employee retirement. By privatizing, schools are able to balance their budgets by requiring private employers to be responsible for providing employee retirement.

Importantly, these services have also proven to be intensely popular among the districts who have privatized. When surveyed, 86.1% of districts stated they were satisfied with the services they have contracted out for. Of the remaining districts, 9.6% didn't answer, 2.9% were unsure, and only 1.4% were dissatisfied.

Privatization saves districts money, have proven incredibly popular, and are an option chosen by the overwhelming majority of school districts. The Legislature should not force districts to bring these services in house when it is clear that is a less-efficient, less-popular option.

Conclusion

Taken together, this package would benefit teachers' unions at the expense of students, teachers, schools, and parents. If the Legislature is serious about making Michigan students as well-educated as possible, identifying and retaining high quality teachers, and ensuring schools are financially sound, it should reject these bills.



Steve Delie is the director of labor policy and Workers for Opportunity at the Mackinac Center for Public Policy.

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The Mackinac Center for Public Policy is dedicated to improving the understanding of economic principles and public policy among private citizens and public officials. A nonprofit and nonpartisan research and education institute, the Mackinac Center has grown to be one of the largest state-based think tanks in the country since its founding in 1987.

Additional information about the Mackinac Center and its mission to improve the quality of life in Michigan through sound public policy can be found at www.mackinac.org.