

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2747 Session of 2018

INTRODUCED BY DUSH, OCTOBER 22, 2018

REFERRED TO COMMITTEE ON LABOR AND INDUSTRY, OCTOBER 22, 2018

AN ACT

1 Amending the act of July 23, 1970 (P.L.563, No.195), entitled
 2 "An act establishing rights in public employes to organize
 3 and bargain collectively through selected representatives;
 4 defining public employes to include employes of nonprofit
 5 organizations and institutions; providing compulsory
 6 mediation and fact-finding, for collective bargaining
 7 impasses; providing arbitration for certain public employes
 8 for collective bargaining impasses; defining the scope of
 9 collective bargaining; establishing unfair employe and
 10 employer practices; prohibiting strikes for certain public
 11 employes; permitting strikes under limited conditions;
 12 providing penalties for violations; and establishing
 13 procedures for implementation," in employee rights, providing
 14 for right to participate in elections or referendums, for
 15 right to assemble with members of employee organizations, for
 16 rate of dues or initiation fees, for right to initiate legal
 17 actions, for disciplinary measures imposed on members of
 18 employee organizations, for election officers in employee
 19 organizations, for remedial measures for invalid elections,
 20 for duties of members and agents of employee organizations,
 21 for constitution and bylaws and reports and for penalties.

22 The General Assembly of the Commonwealth of Pennsylvania
 23 hereby enacts as follows:

24 Section 1. The act of July 23, 1970 (P.L.563, No.195), known
 25 as the Public Employe Relations Act, is amended by adding
 26 sections to read:

27 Section 402. In accordance with the rules of an employe
 28 organization's constitution or bylaws, a member of an employe

1 organization shall have equal rights and privileges within the
2 employe organization to:

3 (1) Nominate candidates in an election of the employe
4 organization.

5 (2) Vote in elections or referendums of the employe
6 organization.

7 (3) Attend membership meetings and participate in the
8 deliberations and voting upon the business of the membership
9 meetings.

10 Section 403. (a) A member of an employe organization may
11 meet and assemble freely with other members of the employe
12 organization and may express views, arguments or opinions on any
13 of the following:

14 (1) Candidates in an election of the employe organization.

15 (2) Business properly before the membership meeting in
16 accordance with the employe organization's rules pertaining to
17 the conduct of membership meetings.

18 (b) Nothing in this section shall be construed to impair the
19 right of an employe organization to adopt and enforce reasonable
20 rules of conduct for the employe organization to prohibit a
21 member from interfering with the employe organization's
22 performance or legal or contractual obligations.

23 Section 404. (a) The rate of dues or initiation fees
24 payable by members of a local employe organization shall not be
25 increased and a general or special assessment shall not be
26 imposed on the members except by any of the following:

27 (1) A majority vote by secret ballot of the members in good
28 standing at a general or special membership meeting after
29 reasonable notice of the intention to vote upon the question.

30 (2) A majority vote by secret ballot of the members in good

1 standing voting in a membership referendum.

2 (b) The rate of dues or initiation fees payable by members
3 of a Statewide employe organization shall not be increased and a
4 general or special assessment shall not be imposed on the
5 members except by a majority vote by secret ballot of the
6 members in good standing of the Statewide employe organization
7 voting in a membership referendum.

8 Section 405. (a) An employe organization shall not prevent
9 or limit the right of a member of the employe organization to
10 institute an action in court or a proceeding before an
11 administrative agency, regardless of whether or not the employe
12 organization or the employe organization's officers are named as
13 defendants or respondents in the action or proceeding. An
14 employe organization may require that a member of the employe
15 organization use reasonable hearing procedures within the
16 employe organization before instituting an action in court or a
17 proceeding before an administrative agency. The reasonable
18 hearing procedures under this subsection shall not exceed a
19 four-month period.

20 (b) An employe organization shall not prevent or limit the
21 right of a member of an employe organization to appear as a
22 witness in any judicial, administrative or legislative
23 proceeding or to petition the General Assembly or communicate
24 with a member of the General Assembly.

25 (c) Except as a party, an interested public employer shall
26 not directly or indirectly finance, encourage or participate in
27 any judicial, administrative or legislative proceeding.

28 Section 406. Except for the nonpayment of dues to an employe
29 organization, a member of an employe organization shall not be
30 fined, suspended, expelled or otherwise disciplined by the

1 employe organization unless the employe organization provides
2 the member with all of the following:

3 (1) Specific written charges.

4 (2) A reasonable time for the member to prepare the member's
5 defense.

6 (3) A full and fair hearing.

7 Section 407. (a) A Statewide employe organization shall
8 elect the Statewide employe organization's officers not less
9 often than once every five years by secret ballot among the
10 members of the Statewide employe organization in good standing
11 or at a convention of delegates selected by secret ballot.

12 (b) A local employe organization shall elect the local
13 employe organization's officers not less often than once every
14 three years by secret ballot among the members of the local
15 employe organization in good standing.

16 (c) As enforceable by a suit filed by a candidate for an
17 office in an employe organization in the court of common pleas
18 of the jurisdiction where the employe organization maintains the
19 employe organization's principal office, the employe
20 organization and the employe organization's officers shall
21 comply with all of the following:

22 (1) A reasonable request by a candidate to distribute
23 campaign literature by mail or other means at the candidate's
24 expense in aid of the candidate's campaign to all members of the
25 employe organization in good standing.

26 (2) Refrain from discrimination in favor of or against a
27 candidate regarding the use of lists of members of the employe
28 organization or the distribution of campaign literature by mail
29 or other means to members of the employe organization on behalf
30 of a candidate, including the cost of the distribution.

1 (3) Within thirty days before an election for an office in
2 the employe organization, authorize a candidate to conduct no
3 more than one inspection of a list containing the names and last
4 known addresses of all the members of the employe organization
5 who are subject to a collective bargaining agreement requiring
6 membership in the employe organization as a condition of
7 employment. The list shall be maintained and kept at the employe
8 organization's principal office by a designated official of the
9 employe organization.

10 (4) Adequate safeguards to ensure a fair election for an
11 office of the employe organization, including the right of a
12 candidate to have an observer at the polls and during the
13 counting of the ballots.

14 (d) An officer of a intermediate body, including a general
15 committee, system board, joint board or joint council, shall be
16 elected not less than once every four years by secret ballot
17 among the members of the employe organization in good standing
18 or by officers of the employe organization elected by secret
19 ballot who represent the members.

20 (e) For an election by secret ballot as required by this
21 section, the following apply:

22 (1) An employe organization shall provide a reasonable
23 opportunity for the nomination of candidates.

24 (2) A member of the employe organization in good standing
25 shall be eligible to be a candidate, hold office and vote for or
26 otherwise support a candidate without being subject to penalty,
27 discipline or improper interference or reprisal of any kind by
28 the employe organization or another member.

29 (3) Not less than fifteen days before an election for office
30 in an employe organization, the employe organization shall

1 provide notice of the election via registered mail to a member
2 of the employe organization at the member's last known home
3 address. A member of the employe organization in good standing
4 shall be entitled to one vote.

5 (4) If a member of an employe organization has the member's
6 dues withheld by the member's employer for payment to the
7 employe organization pursuant to the member's voluntary
8 authorization as provided in a collective bargaining agreement,
9 the member shall not be declared ineligible to vote or be a
10 candidate for office in the employe organization by reason of an
11 alleged delay or default in the payment of dues.

12 (5) Votes cast by members of a local employe organization in
13 an election shall be separately counted and published. The
14 election official designated in the constitution and bylaws, or
15 the secretary of the board if no election official is
16 designated, shall preserve the ballots and other records
17 pertaining to the election for not less than one year. The
18 election shall be conducted in accordance with the constitution
19 and bylaws of the local employe organization insofar as the
20 constitution and bylaws are not inconsistent with the provisions
21 of this section.

22 (f) If officers are elected to an office of a Statewide
23 employe organization by a convention of delegates elected by
24 secret ballot, the convention shall be conducted in accordance
25 with the constitution and bylaws of the employe organization
26 insofar as the constitution and bylaws are not inconsistent with
27 the provisions of this section. The officials designated in the
28 constitution and bylaws, or the secretary of the board if no
29 official is designated, shall preserve for the credentials of
30 the delegate, minutes and other records of the convention

1 pertaining to the election for no less than one year.

2 (g) Funds received by an employe organization by way of
3 dues, assessments or other levies and funds of a public employer
4 shall not be contributed or applied to promote a candidate in an
5 election for an office in the employe organization. Funds of an
6 employe organization may be utilized for notices, factual
7 statements of issues not involving a candidate and other
8 expenses necessary for the holding of an election for an office
9 in the employe organization.

10 (h) If the board, upon application of a member of a local
11 employe organization, finds after a hearing that the
12 constitution and bylaws of the local employe organization do not
13 provide an adequate procedure for the removal of an elected
14 officer guilty of serious misconduct, the officer may be removed
15 in accordance with the following:

16 (1) The local employe organization shall provide notice and
17 a hearing for the official regarding the allegation of
18 misconduct.

19 (2) The members of the local employe organization in good
20 standing shall vote on the removal of the officer by secret
21 ballot conducted in accordance with the local employe
22 organization's constitution and bylaws insofar as the
23 constitution and bylaws are not inconsistent with the provisions
24 of this act.

25 (i) The board shall promulgate regulations prescribing the
26 minimum standards and procedures for determining the adequacy of
27 the removal procedures under subsection (h).

28 (j) Except as other provided under this act, an employe
29 organization shall not be required to conduct the elections of
30 officers with greater frequency or in a different manner than is

1 required by the employe organization's constitution and bylaws,
2 except as otherwise provided by this title. Nothing in this act
3 shall be construed to affect the existing rights and remedies to
4 enforce the constitution and bylaws of the employe organization
5 with respect to the election of officers.

6 Section 408. (a) A member of an employe organization who
7 has exhausted the remedies available under the constitution and
8 bylaws of the employe organization or invoked the remedies
9 without obtaining a final decision within ninety days after the
10 invocation may file a complaint with the board alleging a
11 violation of section 407. The member of the employe organization
12 must file a complaint with the board within thirty days after
13 exhausting the remedies available under the constitution and
14 bylaws of the employe organization or ninety days has expired
15 since failing to obtain a final decision. An election challenged
16 under this section shall be presumed valid pending a final
17 decision on the election. The affairs of the employe
18 organization shall be conducted by the officers elected or as
19 prescribed by the employe organization's constitution and bylaws
20 during the board's investigation of the complaint.

21 (b) The board shall investigate a complaint under subsection
22 (a). If the board finds probable cause to believe that a
23 violation of this act has occurred and has not been remedied,
24 the board shall, within one hundred twenty days after the filing
25 of the complaint under subsection (a), bring a civil action
26 against the employe organization in the court of competent
27 jurisdiction where the employe organization maintains the
28 employe organization's principal office to invalidate the
29 election, direct the conduct of a new election or hearing or
30 require a vote upon the removal of officers under the

1 supervision of the board in accordance with this act. The court
2 shall have power to take such action as the court deems proper
3 to preserve the assets of the employe organization.

4 (c) If a court finds, by a preponderance of the evidence,
5 that an election has not been held within the time prescribed by
6 section 407 or a violation of section 407 may have affected the
7 outcome of an election, the court shall order the election void
8 and direct the conduct of a new election under supervision of
9 the board in conformity with the constitution and bylaws of the
10 employe organization as practicable. After the new election is
11 conducted, the secretary of the board shall promptly certify to
12 the court the names of the individuals elected and the court
13 shall enter a decree declaring the individuals to be officers of
14 the employe organization. If the court orders the removal of an
15 officer guilty of serious misconduct under section 407(h), the
16 secretary of the board shall certify the results of the vote and
17 the court shall enter a decree declaring whether the officer has
18 been removed from the employe organization.

19 (d) A court order directing an election, dismissing a
20 complaint, or designating officers of an employe organization
21 under subsection (c) shall be appealable in the same manner as
22 the final judgment in a civil action. An order directing an
23 election under subsection (c) shall not be stayed pending
24 appeal. The rights and remedies for challenging an election
25 already conducted shall be exclusive to the court of competent
26 jurisdiction.

27 Section 409. (a) An employe organization shall adopt a
28 constitution and bylaws. The employe organization shall file a
29 copy of the constitution and bylaws with the board and a report
30 signed by the employe organization's president and secretary or

1 corresponding principal officers. The report shall contain all
2 of the following information:

3 (1) The name of the employe organization.

4 (2) The employe organization's mailing address and any other
5 address where the employe organization maintains the employe
6 organization's principal office or keeps records required under
7 this act.

8 (3) The name and title of the employe organization's
9 officers.

10 (4) Initiation fees required from a new or transferred
11 member of the employe organization.

12 (5) Regular dues or fees or other periodic payments required
13 to remain a member of the employe organization.

14 (6) Detailed statements or references which specify the
15 employe organization's procedures regarding all of the
16 following:

17 (i) The qualifications for membership in the employe
18 organization or restrictions on membership in the employe
19 organization.

20 (ii) Levy of assessments by the employe organization.

21 (iii) Participation in insurance or other benefit plans.

22 (iv) Disbursements of the employe organization's funds.

23 (v) Audits of the employe organization.

24 (vi) Regular and special meetings conducted by the employe
25 organization.

26 (vii) Election, appointment or selection of the employe
27 organization's officers or other organizations comprised of the
28 employe organization's officers, including how officers are
29 elected, appointed or selected.

30 (viii) Discipline or removal of the employe organization's

1 members, agents and officers for breach of trust.

2 (ix) Imposition of fines, suspensions and expulsions of the
3 employe organization's members, agents or officers, including
4 the grounds for the disciplinary actions, notice of disciplinary
5 actions, hearings on disciplinary actions, evidence standards
6 and appeal mechanisms.

7 (x) Bargaining demands and strikes.

8 (xi) Ratification of contract terms.

9 (b) If the information provided in the report under
10 subsection (a) changes before the employe organization files the
11 annual financial report under subsection (c), the change shall
12 be reported to the board at the time the employe organization
13 files the annual financial report under subsection (c).

14 (c) An employe organization shall file an annual financial
15 report with the board signed by the employe organization's
16 president and treasurer or corresponding principal officers. The
17 annual financial report shall contain the necessary information
18 to accurately disclose the employe organization's financial
19 condition and operations for the preceding fiscal year,
20 including all of the following information:

21 (1) The assets and liabilities of the employe organization
22 at the beginning and end of the preceding fiscal year.

23 (2) The receipts of the employe organization and the sources
24 of the receipts.

25 (3) The salary, allowances and other direct or indirect
26 disbursements of the employe organization's funds, including
27 reimbursed expenses, for all of the following:

28 (i) The employe organization's officers.

29 (ii) The employe organization's employes who received more
30 than one thousand dollars (\$1,000) during the preceding fiscal

1 year in the aggregate from the employe organization or any other
2 labor organization affiliated with the employe organization or
3 affiliated with the same national or Statewide employe
4 organization as the employe organization.

5 (iii) Direct and indirect loans made to the employe
6 organization's members, agents or officers who received more
7 than ten thousand dollars (\$10,000) in the aggregate during the
8 fiscal year and the statement of the purpose of the loans,
9 security for the loans and arrangements for repayment of loans.

10 (iv) Direct and indirect loans to business enterprises, the
11 statement of the purpose of the loans, security for the loans
12 and arrangements for the repayment of the loans.

13 (v) Other disbursements of funds made by the employe
14 organization and the purpose of the disbursements which impact
15 the employe organization's financial condition as the Secretary
16 of the Department of Labor and Industry may prescribe by
17 regulation.

18 (d) An employe organization shall make available the
19 information specified in a report required under this section to
20 the employe organization's members. If reasonable cause is shown
21 by an employe organization's member, the employe organization
22 and the employe organization's officers shall permit the member
23 to examine books, records and accounts necessary to verify the
24 information in a report required under this section. If the
25 employe organization fails to meet the requirements under this
26 subsection, a member of the employe organization may initiate an
27 action for appropriate equitable relief in the court of common
28 pleas where the employe organization's principal office is
29 located. In addition to a judgment awarded to a plaintiff in an
30 action under this subsection, the court may award reasonable

1 attorney fees and the costs of the litigation to the plaintiff.

2 (e) The board shall make available the information specified
3 in a report required under this section on the Department of
4 Labor and Industry's publicly accessible Internet website.

5 Section 410. (a) An employe organization's members and
6 agents shall have the following duties:

7 (1) Use, manage, invest and expend assets in possession of
8 the employe organization solely for the benefit of the employe
9 organization and the employe organization's members in
10 accordance with the employe organization's constitution and
11 bylaws.

12 (2) Refrain from holding or acquiring any pecuniary or
13 personal interest which conflicts with the interests of the
14 employe organization.

15 (3) Deposit any funds in connection with transactions
16 conducted by an employe organization on behalf of the employe
17 organization.

18 (b) A general exculpatory provision in the constitution and
19 bylaws of an employe organization that contradicts the duties
20 required under subsection (a) shall be void.

21 (c) If an employe organization's member or agent is alleged
22 to have violated the duties under subsection (a) and the employe
23 organization refuses or fails to file suit to recover damages or
24 other appropriate relief within a reasonable time after being
25 requested to file suit by a member of the employe organization,
26 the member may sue the alleged violator in a court of competent
27 jurisdiction to recover damages or other appropriate relief for
28 the benefit of the employe organization. No action may be
29 brought under this subsection unless the plaintiff obtains leave
30 of the court from a verified application and for good cause

1 shown. The verified application may be made ex parte. The court
2 may allocate a reasonable part of the recovery in an action
3 under this subsection to pay the fees of the plaintiff's counsel
4 or compensate the plaintiff's expenses incurred in connection
5 with the suit.

6 (d) In addition to any other penalties provided by law, upon
7 conviction of a member or agent of an employe organization for
8 an offense involving the theft or other misappropriation of
9 assets, the penalties shall be as follows:

10 (1) Disqualification from membership in any employe
11 organization.

12 (2) If conviction is graded as a felony, termination from
13 current employment in a public office and disqualification from
14 employment in a public office in the future.

15 Section 2. This act shall take effect in 60 days.