

# Legislative Analysis



## EXPAND DEFINITION OF A PUBLIC EMPLOYEE UNDER PERA

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**Senate Bill 185 (S-5) as reported from House committee**

**Sponsor: Sen. Jeff Irwin**

**House Committee: Labor**

**Senate Committee: Labor**

**Complete to 10-14-23**

Analysis available at  
<http://www.legislature.mi.gov>

**BRIEF SUMMARY:** Senate Bill 185 would amend the Public Employment Relations Act (PERA) to allow graduate student research assistants and independent contractors to organize.

**FISCAL IMPACT:** The bill would have an indeterminate fiscal impact on public universities. Any fiscal impact for a public university would be directly related to the assumed costs or benefits of any new collective bargaining agreement under the provisions of the bill compared to the prior or alternative status of any collective bargaining agreement that prohibited certain subjects from being collectively bargained or individuals that would become eligible to participate in collective bargaining that were previously restricted from doing so.

### **THE APPARENT PROBLEM:**

Currently, graduate instructors and university staff are permitted to unionize, while graduate research assistants are not. This policy has been in place since 1981, when the Michigan Employment Relations Commission (MERC) held that teaching assistants and staff assistants, but not graduate student research assistants, were public employees.<sup>1</sup>

### **THE CONTENT OF THE BILL:**

The following groups currently are not considered public employees and are not granted collective bargaining or representation rights under PERA:

- Graduate student research assistants (GSRAs).
- Individuals classified as independent contractors in accordance with the Internal Revenue Service (IRS) 20-factor test.<sup>2</sup>
- Student athletes at Michigan's public universities.

The bill would allow graduate student research assistants and independent contractors to be considered public employees and thus entitled to representation and collective bargaining under the act.<sup>3</sup> College athletes would remain excluded under the bill.

MCL 423.201

<sup>1</sup> <https://cdm16110.contentdm.oclc.org/digital/collection/p16110coll2/id/115247/rec/86>.

<sup>2</sup> More information on the IRS 20-factor test, which distinguishes independent contractors from employees, can be found here: <https://www.michigan.gov/-/media/Project/Websites/leo/Documents/UIA/Fact-Sheets/FS-155---Independent-Contractor-or-Employee.pdf>

<sup>3</sup> Senate Bill 185 would add a provision to the definition of *public employee* that explicitly includes graduate student research assistants and individuals serving in a GSRA-equivalent position.

### ***HOUSE COMMITTEE ACTION:***

The House Labor committee reported the Senate-passed version of the bill without amendment.

### ***BACKGROUND INFORMATION:***

The MERC policy excluding graduate research assistants from public employee status was challenged in 2011, but before a final decision was made, 2012 PA 45 was enacted and MERC suspended its review.

2012 PA 45 added the language excluding graduate student research assistants and independent contractors from the definition of a public employee that would be removed by Senate Bill 185. When signing the bill, Governor Snyder stated that GSRAs were primarily students, not public employees.<sup>4</sup> PERA was further amended in 2014 to exclude students participating in college athletics on behalf of a public university.<sup>5</sup>

In 2014, a federal judge ruled that 2012 PA 45 was enacted in violation of the state constitution's "change of purpose" clause because the content of the final version of the bill was not sufficiently related to the content of the version that was originally introduced.<sup>6</sup> However, MERC took up the issue again in 2014 and upheld its original decision, prohibiting graduate student research assistants from classification as public employees.<sup>7</sup>

### ***ARGUMENTS:***

#### ***For:***

Supporters of the bill argue that, although they are students, GSRAs essentially have the role of an employee: they have a boss, provide value to their employer, and have work responsibilities. The only difference between GSRAs and graduate student instructors, who are allowed to organize under PERA, is that GSRAs work in labs rather than classrooms. Senate Bill 185 would level the playing field and allow GSRAs to join their grad student peers in negotiating for better working conditions and pay.

#### ***Against:***

Opponents of the bill argue that since GSRAs' primary duties involve assisting professors with their research, the relationship between a GSRA and a university faculty member more closely resembles a relationship between a student and mentor than one between an employee and employer. The change proposed by Senate Bill 185 would be disruptive to academic institutions, as allowing GSRAs to unionize would be detrimental to the relationship between professors and their assistants and would negatively affect GSRAs' educational experience.

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<sup>4</sup> <https://www.michigan.gov/formergovernors/recent/snyder/press-releases/2012/03/13/governor-signs-bill-clarifying-role-of-graduate-student-research-assistants>

<sup>5</sup> A summary of this change, made by 2014 PA 414, can be found here:

<http://www.legislature.mi.gov/documents/2013-2014/billanalysis/House/pdf/2013-HLA-6074-29D64A2E.pdf>

<sup>6</sup> The ruling can be found here: <https://casetext.com/case/toth-v-callaghan>. House Bill 4246, the bill that eventually became 2012 PA 45, originally would have allowed emergency managers to reject, modify, or terminate collective bargaining agreements.

<sup>7</sup> <https://cdm16110.contentdm.oclc.org/digital/collection/p16110coll2/id/144451/rec/1>

***POSITIONS:***

A representative of the American Federation of Teachers Michigan testified in support of the bill. (6-15-23)

The following entities indicated support for the bill:

- AFSCME Council 25 (6-15-23)
- Michigan AFL-CIO (6-15-23)
- Michigan Building and Construction Trades Council (6-15-23)
- Michigan Education Association (9-28-23)
- Michigan League for Public Policy (6-15-23)
- Michigan Nurses Association (6-22-23)

The following entities indicated opposition to the bill:

- Mackinac Center for Public Policy (6-15-23)
- Michigan Association of State Universities (9-26-23)

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations and does not constitute an official statement of legislative intent.