

Legislative Analysis



FAILING SCHOOLS & TURNAROUND SCHOOLS

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House Bills 4787 and 4789
Sponsor: Rep. Tim Melton

House Bill 4788
Sponsor: Rep. Bert Johnson
Committee: Education

Complete to 5-4-09

A SUMMARY OF HOUSE BILLS 4787 - 4789 AS INTRODUCED 4-2-09

BRIEF SUMMARY:

Among other things, the bills would:

- Require the State Superintendent of Public Instruction to appoint a school reform/redesign officer to be chosen on the basis of the individual's competence and experience in educational reform. Certain "failing" schools would be placed under the control and supervision of the reform/redesign officer.
- Define a "failing" school in such cases as one that has been unaccredited for four consecutive years; or has failed to achieve the federal pupil performance standard for four or more consecutive years; and has fewer than 35 percent of its students scoring at least "proficient" for both mathematics and English language arts on the most recent MEAP assessments or Michigan Merit Examination.
- Establish a process to identify and restructure "failing" schools. If a school met the criteria for a failing school and was placed under the control of the reform officer, a review board would be appointed to identify the causes of the failure and recommend actions to remedy the situation. Such remedies could include appointing a new school administrator or principal, allowing parents to send children elsewhere, contracting with an educational management organization, aligning the school with an existing school improvement model, or closing the school.
- Allow, as an alternative, a "failing" school to be placed under the oversight of the state reform/redesign officer and operated as a "redesigned school" with modified staffing rules, either (1) under a memorandum of understanding with the school district that allows a renegotiation of collective bargaining agreements regarding staff assignments, seniority, and work rules, or (2) under a performance contract with a "qualified entity," meaning a charter school that meets certain performance criteria and that was selected after a request for proposals.

- Provide for the creation and funding of "turnaround schools." A turnaround school would be classified in statute as a kind of public school academy or charter school. It would be organized under the Nonprofit Corporation Act and be administered by a board of directors. It could not be organized by or affiliated with a religious organization. A turnaround school would be subject to the leadership and general supervision of the State Board of Education. A turnaround school could be authorized by a state public university, a community college, an intermediate school district, or a school district.
- Specify that there could be one turnaround school per failing school; that it would have to be located within 4.9 miles of the corresponding failing school and within the same school district; and that it would operate under a five-year contract that could be renewed if certain performance criteria were met. A turnaround school would have to enter into a contract with an approved educational management organization.

House Bill 4787 is the main bill in the package and amends the Revised School Code. It contains a new Part 6D, entitled "Turnaround Schools," and amends existing Part 16 of the code to add the other provisions on school reform and redesign.

House Bill 4788 would amend Public Act 336 of 1947 (MCL 423.215), which deals with collective bargaining and employee relations for public school teachers, to specify that a collective bargaining agreement entered into under the act would be subject to the new Section 1260c of the Revised School Code added by House Bill 4787 regarding staffing decisions in "redesigned schools."

House Bill 4789 would amend the State School Aid Act (MCL 388.1606) to provide for the funding of turnaround schools, by including turnaround schools within the definition of "public school academy."

House Bills 4788 and 4789 are each tie-barred to House Bill 4787, which in turn is tie-barred to those two bills. This means, essentially, that all the bills must be enacted for any to take effect.

FISCAL IMPACT:

The bills would have an indeterminate fiscal impact on the state and school districts. The proposed turnaround schools would be a type of public school academy (PSA) for the purposes of school aid funding and as such would be paid a foundation allowance equal to the PSA maximum or the foundation allowance of the district in which they are located, whichever was less. Districts in which a failing school was closed would lose funding due to the loss of pupils, and the funding would follow the pupils to the turnaround school. The state would spend less per pupil for turnaround schools created in districts where the foundation allowance was higher than the PSA maximum, which is currently \$7,580. In addition, the bills would create additional costs for the Department of Education associated with the establishment of a state school reform/redesign officer, school review teams, and the added level of oversight for failing and turnaround schools.

DETAILED SUMMARY OF HOUSE BILL 4787:

Turnaround Schools

Authorizing body. An authorizing body would issue a contract for the organization and operation of a turnaround school, within the authorizing body's geographic boundaries (where applicable). The bill defines "authorizing body" to mean the governing board of a public university, a community college, an intermediate school district, or a school district.

State Superintendent approval. A contract would need the approval of the State Superintendent of public instruction. The Superintendent could grant approval for one turnaround school for each failing public school, within two-years after the public school's failure. In the order approving the contract, the State Superintendent would identify the failing public school that corresponded to the turnaround school. A turnaround school would have to be located within 4.9 miles of its corresponding failed public school, and within the same school district. Its contract would be for an initial term of five years. Its contract could be renewed if the following conditions were met:

- At least 80 percent of the students had graduated from high school or were determined by the Department of Education to be on track to graduate, the school had at least 80 percent average attendance, and if applicable, the school's students had an average score of at least 18 of the college entrance examination component of the Michigan Merit Examination.
- The school was meeting the other educational goals set forth in the contract.
- The school was operating in substantial compliance with the Revised School Code.

Application to create a turnaround school. To obtain a contract, an entity would apply to an authorizing body, completing an application that included, among other things, information concerning the sponsor's name, the board members' names, and the articles of incorporation, as well as the proposed school's name, purpose, bylaws, governance structure, education goals (including those noted above) and the curricula and manner of assessment, the admission policy, school calendar and day schedule, the age and range of the students to be enrolled (beginning with the lowest grade level of the failing public school), descriptions of staff responsibilities, and a description of and address for the proposed buildings where the turnaround school would be located.

State Board oversight. If the state board of education found that an authorizing body had not engaged in appropriate continuing oversight of its turnaround schools, board members could suspend the power of the authorizing body to issue new contracts.

Authorizer's fees; duties; contracts; EMOs. An authorizing body could not charge a fee that exceeded a combined total of three percent of the total state school aid received by the turnaround school, and the legislation describes the uses to which the fee could be put.

An authorizing body would not be required to issue a contract to any entity. Instead, turnaround school contracts would be issued on a competitive basis, taking into consideration the resources available for the proposed school, the population to be served; and the educational goals to be achieved. The legislation specifies evaluation criteria against which applicants would be measured. *It also prohibits an authorizing body from issuing a contract unless the contract requires the turnaround school to enter into an agreement for operation of the school by an established educational management organization (EMO) approved by the Department of Education.*

Under the bill, a contract issued to organize and administer a turnaround school would have to contain, among other things, information about the proposed school's educational goals (including those noted above); assurance that the MEAP and Merit Exam would be used to measure achievement; a description of its compliance method; a description to be followed when amending the contract; a board-signed certificate of compliance; contract revocation procedures; a school's address and description of its buildings; requirements and procedures for annual independent financial audits; policies concerning conflicts of interest; school accountability procedures, including public posting of the contract and board meeting agendas and minutes; public posting of budgets; quarterly financial reports submitted to the authorizers; a current list of teachers and copies of their teaching certificates; curriculum documents; proof of insurance; copies of facility leases or deeds and equipment leases; copies of management and service contracts; health and safety reports; any management letters issued as part of the annual financial audit; a requirement that the authorizing body must review and may disapprove any agreement between the board of directors and an educational management organization (EMO) before the agreement is final and valid; a requirement that all procedures concerning fair and open enrollment, as specified in the bill, have been followed; inclusion in all student recruitment materials of a statement that appropriate special education services are available; a prohibition that individuals are employed in more than one full-time position; and a requirement that if requests, the board report to the authorizing body the total compensation for each person working at the turnaround school.

Legal compliance; governmental immunity; taxation. A turnaround school would be required to comply with, among others, the following laws: the Open Meetings Act, the Freedom of Information Act, the Uniform Budgeting and Accounting Act, the Revised Municipal Finance Act, and the federal No Child Left Behind Act.

A turnaround school and its incorporators, board members, officers, employees, and volunteers would have governmental immunity. An authorizing body and its board members, officers, and employees would be immune from civil liability, both personally and professionally, for any acts or omissions in authorization or oversight if the body acted within its scope of authority. A turnaround school would be exempt from all taxation on its earnings and property and could not levy property taxes, or any other tax.

A turnaround school could acquire by purchase, gift, lease, or in other ways delineated in the legislation, buildings and other property for school purposes. An agreement, mortgage, loan, or other instrument of indebtedness entered into by a turnaround school and a third party would not constitute an obligation of the State of Michigan or an authorizing body. Neither the full faith-and-credit of the state nor that of an authorizing

body may be pledged for the payment of any turnaround school bond, note, agreement, mortgage, loan, or other instrument of indebtedness.

Turnaround school location; tuition; enrollment priority; grade levels. A turnaround school can be located in all or part of an existing public school building. If not, it must be located within 4.9 miles of the failing public school to which it corresponds. The school cannot charge tuition, nor can it discriminate in its student admissions policies on the basis of intellectual or athletic ability, measures of achievement or aptitude, status as a handicapped person, or any other basis that would be illegal if used by a school district. However, a turnaround school could limit admission to students who were within a particular range or age or grade level, or on any other basis that would be legal if used by a school district. Except for foreign exchange students, only Michigan residents could be enrolled.

The bill specifies that a turnaround school give enrollment priority to any child who was previously enrolled in the failing public school to which it corresponds. The school could also give priority to a sibling of a student already enrolled, and to a child of a person who was employed by the turnaround school.

Initially, a turnaround school would be required to include at least the lowest grade level of the grade levels offered by the failing public school to which it corresponds, and then would be required to add one or more additional grade levels each year to ensure that at least all of the grade levels offered by the failing school were offered by the turnaround school within four years after it began operation. A turnaround school could also include other grades or any configuration of grades, including kindergarten and early childhood education, or adult education.

Teachers; certification; personnel contracts. A turnaround school would be required to use certificated teacher according to State Board rule. It could, however, use non-certificated individuals to teach as follows: (1) if its authorizer is a university, then any full-time, tenured, or tenure-track faculty member; or (2) in any other situation in which a school district is permitted under the Revised School Code to use non-certificated teachers.

A turnaround school may develop and implement new teaching techniques or methods, and report those to the authorizing body, and to the state board in order to make them available to the public. A turnaround school could, with the approval of its authorizing body, employ or contract with personnel, or enter into a contract with another party to furnish teachers or other personnel, prescribe their duties, and fix their compensation. If health care benefits are provided, then they must be provided in accord with the Public Employees Health Benefit Act.

Authorizer responsibilities. An authorizing body that issues a contract for a turnaround school must do all of the following:

- Ensure that the contract and the application for the contract comply with all requirements noted in the law.
- Within 10 days after issuing the contract, submit a copy to the Department of Education.

- Adopt a resolution establishing the method of selection, length of term, and number of members of the board of directors of each turnaround school that it authorizes.
- Oversee the operations of each turnaround school operating under a contract issued by the authorizing body.
- Develop and implement a process for holding a turnaround school board of directors accountable for meeting academic performance standards.
- Take necessary measures to ensure that a turnaround school board of directors operates independently of any educational management company involved in the operations of the turnaround school.
- Oversee and ensure that the student admission process is operated in a fair and open manner.
- Ensure that the board of directors of the turnaround school maintains and releases information as necessary under the law.

An authorizing body can enter into an agreement with other authorizing bodies to carry out its oversight functions.

State school aid. The authorizing body of a turnaround school is its fiscal agent. A state school aid payment for a turnaround school is paid to the authorizing body which, in turn, forwards the payment to the turnaround school. Within 30 days after a contract is submitted to the Department of Education by an authorizing body, the department must issue a district code to the turnaround school. (If the department fails to do so, then the State Treasurer issues a temporary district code so the school can receive funding.)

Contract revocation. A contract issued may be revoked by the authorizing body if one or more of the following occurs: failure of the turnaround school to abide by and meet the educational goals set forth in the contract; failure to comply with all applicable law; failure to meet generally accepted public sector accounting principles; or the existence of other grounds for revocation, as specified in the contract. The decision to issue, to re-issue, to reconstitute, or to revoke a contract, is solely within the discretion of the authorizing body. The decision is final, and it is not subject to review by a court or any state agency.

However, before an authorizing body revokes a contract, it must consider and take corrective measures, including reconstituting the school, in order to avoid revocation. Ultimately, an authorizing body is responsible for a smooth transition for affected students, and must return any school aid funds attributable to those students to the State Treasurer who redistributes the funds to the public school in which the students enroll after revocation. (This is done following a methodology established by the department together with the Center for Educational Performance and Information.)

If an authorizer revokes a contract, it can issue a new contract within a one-year period following revocation, without the new contract counting toward the maximum number of contracts that can be issued. The authorizer must notify the State School Superintendent, in writing, of any contract revocations within 10 days. Upon revocation, title to all real and personal property and other assets owned by the turnaround school revert to the State of Michigan. Then, within 30 days, the turnaround school board of directors must meet

to adopt a plan of distribution of assets, and to approve the dissolution of the turnaround school corporation, all in accord with Chapter 8 of the Nonprofit Corporation Act.

That plan must be forwarded to the State Treasurer for approval, and the State Treasurer (or a designee) would monitor the dissolution process. In addition, within 10 business days after its dissolution meeting, the turnaround school board must file a certificate of dissolution with the Department of Energy, Labor, and Economic Growth. As part of the plan of distribution of assets, the turnaround school board would designate the director of the Department of Management and Budget (or a designee) to dispose of all real property of the turnaround school, in accord with the directors developed for disposition of surplus land and facilities under the Management and Budget Act. The State Treasurer could appoint a trustee to carry out these duties, if the turnaround school board failed to do so, and any money collected from the sale of property would be deposited in the State School Aid Fund.

Special contract provisions. An authorizing body and turnaround school could include provisions in their contract that permitted the entity that applied for the contract to do any of the following:

- Participate in the recruiting, interviewing, and nominating process for turnaround school board members.
- Conduct an independent educational review, on a periodic basis, to determine whether the turnaround school was successful in implementing the educational goals set forth in the contract.
- Serve as contract administrator between the turnaround school board of directors and any educational management company contracted to operate the turnaround school.
- Make recommendations to the authorizing body and turnaround school on how to improve the turnaround school's operation.

Reform/Redesign Officer and Failing Schools

State school reform/redesign officer; evaluation team. Under the bill, the State Superintendent would hire a state school reform/redesign officer who has competence and experience in educational reform.

If the Department of Education determined that a school has been unaccredited for four consecutive years, or had failed to achieve the federal pupil performance standard for four or more consecutive years, and that the percentage of all pupils enrolled in the school who scored at least "proficient" on the most recent Michigan Education Assessment Program assessment or Michigan Merit Examination (as applicable) was less than 35 percent in both mathematics and English language arts, then the Superintendent of Public Instruction would be required to issue an order placing the public school under the control and supervision of the state school reform/redesign officer.

Currently under the law, the State Superintendent must take action if the school has been unaccredited for three consecutive years.

Under the bill, within 30 days after the order placing a school under a reform/redesign officer's control, the redesign officer would appoint a review team to conduct an evaluation of the public school. That review team would submit a report within 30 days that identifies the reasons for the public school's failure and contains recommendations on the measures that the state school reform/redesign officer should take to turn the school around. (Upon request, the reform/redesign officer could grant one 60 day extension of this time-limit.) The board of a school district or charter school would be required to cooperate fully with a review team appointed for this purpose.

After receiving the report of the review team, the state school reform/redesign officer could issue an order imposing one or more of the following measures:

- Appoint (at the expense of the affected school district) an administrator until the school became accredited.
- Allow parents to send their students to any accredited school, as determined by the Department of Education (with transportation provided if the receiving school were eligible for Title I funds).
- *With the approval of the reform/redesign officer, align the school with an existing research-based school improvement model, contract with an established educational management organization for operation of the school by the EMO, or establish an affiliation for providing assistance to the school with a college or university located in the state.*
- Hire a new principal using a performance contract to administer the school.
- *The reform/redesign officer would enter into a performance contract with an established EMO for operation of the school.*
- The reform/redesign officer would designate the school as a failing school to be operated under the "Turnaround Schools" section of the Revised School Code, as described above.
- Close the school.

Watch list. At least annually, the Department of Education would publish a "watch list" of schools that were in danger of meeting the failing schools criteria, and notify the board that operated the school. A school would be included on a "watch list" if the department determined that a school had failed to achieve the federal pupil performance standard for three or more consecutive years, and that the percentage of all students enrolled in the school who scored at least "proficient" on the most recent MEAP or Merit exam was less than 40 percent in both math and English language arts.

Further, the list could include other schools if the department determined that there were other reasons why the schools were in danger of meeting the criteria. Under the bill, the phrase "failed to achieve the federal pupil performance standard" is defined to mean that the department has determined that the school has failed to achieve adequate yearly progress under the No Child Left Behind Act of 2001, Public Law 107-110, or has failed to meet a successor federal standard that the Superintendent of Public Instruction has identified as being a standard established by the federal government that is based on pupil performance and is required to be met in order to receive full federal funding.

Failing public school designation; employee contract renegotiation. If a public school was determined by the Department of Education to meet the criteria noted above, and

was then designated by the state school reform/redesign officer as a failing public school, the reform/redesign officer would do one of the following:

- Enter into a memorandum of understanding with the board that operates the school.
- Assume autonomous control and oversight of the school through a performance contract with a qualified entity to operate the school.

Memorandum of understanding; staff reassignment. The bill delineates the elements necessary in a memorandum of understanding, including modification of school policies and renegotiation of applicable collective bargaining agreements to provide for any of the following that are determined by the state school reform/redesign officer to be necessary to achieve educational goals:

- That a principal designated by the reform/redesign officer may remove a staff member from a job assignment, and direct that he or she be assigned elsewhere; may require an employee who works at the school to reapply and be rehired for assignment at the school; may hire and assign employees to work at the school (but would make these personnel decisions without terminating a person from school district employment, and without allowing unilateral changes in pay scales or benefits).
- That any contractual or other seniority system would not apply at the school.
- That any contractual or other work rules determined to be an impediment to achieving satisfactory pupil performance would not apply at the school.
- That the reform/redesign officer would direct the expenditure of all state school aid attributable to pupils at the school, and the principal would have full autonomy and control over curriculum and discretionary spending at the school.

Assuming autonomous control. If the reform/redesign officer decided to assume autonomous control and oversight through a performance contract with a qualified entity to operate the school, then the officer would publish a request for proposals for qualified entities to enter into a performance contract with the state to operate the school. The officer would select the contractor, and enter into a contract having at least those elements described in the bill, including provisions to address educational goals, assessments, accountability, and contract compliance.

All of the following would apply to the operation of a redesigned public school by a qualified entity working under a performance contract:

- A qualified entity operating the school could remove a staff member from a job assignment, and direct that he or she be assigned elsewhere (but would make these personnel decisions without terminating a person from school district or charter school employment).
- The principal or other school leader designated by the qualified entity could hire and assign employees to work at the school, and an employee who worked at the school at the time it was designated as a failing school would have to reapply to be rehired (but would not be terminated from school district or charter school employment).

- With the approval of the reform/redesign officer, any contractual or other work rules would not apply at the school (without allowing unilateral changes in pay scales or benefits).
- With the approval of the reform/redesign officer, any contractual or other seniority system would not apply at the school.
- The principal or other school leader designated by the qualified entity would have full autonomy and control over curriculum and discretionary spending at the school.

Qualified entities. The state school reform/redesign officer would be required to compile a list of qualified entities that could apply for and be a party to a performance contract. A qualified entity would be an entity that met both of the following criteria: (1) had been issued and was currently a party to a contract with an authorizing body to organize and operate at least one public school academy (customarily called a charter school); and (2) for each charter school that it operated, the scores of the students on MEAP tests and the Michigan Merit Exam were, on average, at least 10 percent higher than the scores of the students of the school district in which the charter school was located.

Educational management organizations. The bill specifies that if a governing board of a public school enters into a contract with an educational management company to carry out the operations of a public school, then the governing board must ensure all of the following:

- That the governing board has conducted sufficient due diligence to conclude that the educational management company has sufficient educational expertise and management experience to provide the agreed services
- That the governing board will obtain independent legal counsel in all negotiations with the educational management company
- In the case of a charter school, that the educational management company will provide, under its contract, all financial and other information needed to comply with the reporting requirements contained in the contract between the board of directors and its authorizing body.

The bill specifies that if a governing board of a public school enters into a contract with an educational management company to carry out the operations of a public school, then the contract would have to contain at least all of the following provisions:

- A provision requiring the educational management company to provide to the governing board information regarding any teachers, administrators, and support staff employed by the company and assigned to work at the public school, including at least all of the following personal information: name; education, including highest degree attained; salary; copy of teaching certificate or other required permit or credential, if required for the position; description of relevant experience; and employment record.
- A provision requiring the educational management company to provide to the governing board information regarding the business operations of the public school, including financial records and information concerning the operation of the school; financial records and information concerning leases for equipment,

physical facility space, or institutional and educational materials; and financial records and information concerning mortgages and loans.

- In the case of a charter school, a provision requiring that the educational management company will make information available concerning the operation and management of the charter school, including at least all the information necessary to comply with the reporting requirements contained in the contract between the board of directors and its authorizing body.

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