

## DETROIT PUBLIC SCHOOLS RESTRUCTURING

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**House Bill 5384 as introduced**  
**Sponsor: Rep. Daniela R. Garcia**  
**Committee: Appropriations**  
**Complete to 2-22-16**

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

### BRIEF SUMMARY:

House Bill 5384 would amend the Revised School Code by adding and amending sections that define the responsibilities of all entities within the Detroit Public Schools (DPS). Essentially, this bill would split DPS into two entities, one—the Qualifying School District—with the responsibilities of collecting millages and other taxes and discharging the debts of the old DPS, and the other—the Community District—which would oversee the day-to-day operations of the schools.

The bill is part of a package of six bills (HB 5382-5387) restructuring the Detroit Public Schools. Other bills provide the funding for the operation of the new Community District, limit retirement benefits and collective bargaining options in the new district, expand the authority of the Detroit City Financial Review Commission so as to cover the new district, and revise penalties and processes for dealing with teacher strikes statewide.

In House Bill 5384, Section 12b describes the transition from a single DPS to two DPS entities, with separate functions and school boards, as well as the eventual dissolution of one of the entities. A new Part 5B is created to govern the operation of a Community District, which is the term applied to the new district that would be created under the bill. The bill is tie-barred to House Bill 5385, which would amend the Michigan Financial Review Commission Act. Under that bill, the financial review commission would have oversight responsibilities for the old DPS district.

The bill would also amend certain rules for intermediate school districts and public school academies (charter schools), and contains other provisions that apply to all school districts, as described below.

### DETAILED SUMMARY:

Under House Bill 5384, the Detroit Public Schools would be divided on the **transfer date of July 1, 2016**, into two entities, each with a governing board:

**Qualifying School District** (Old District)—A school district previously organized and operated as a First Class School District (based on enrollment) that has a pupil membership of less than 100,000 enrolled on its most recent pupil membership count day. Because Detroit Public Schools was the sole First Class School District, this summary will treat the Qualifying School District and DPS as the same entity.

This district will exist after July 1, 2016, for the limited purposes of repayment of debt.

**Community District** (New District)—A school district that will be organized and conducted in the same manner as a general powers school district. It will operate the schools and oversee education beginning July 1, 2016, and will assume all responsibilities of DPS once the old district (QSD) dissolves upon repaying DPS's debts. See Part 5B summary, below.

### **Sec. 12b—Qualifying School District**

Once DPS' debts have been discharged, the old district will dissolve and the new district will assume its responsibilities. Until that time, the responsibilities of the old district are described below.

***Board's responsibilities:*** Until the elected members of the school board of the community district (new district) take office, the existing board of the qualifying school district will continue for the limited purpose of performing functions and satisfying responsibilities related to the repayment of debt and dissolution of the qualifying school district. These functions include, but are not limited to:

- Certifying and levying taxes for the satisfaction of the debt in the name of the old district.
- Conducting school district elections.
- Doing all other things relative to the repayment of outstanding debt of the old district required by law and by the terms of the debt, including, but not limited to, levying or renewing a school operating tax under Section 1211, or refunding or refinancing debt at a lower rate.
- Doing all other things related to the dissolution of the old district.

***Transfer of funds:*** On the transfer date (July 1, 2016), the state superintendent of public instruction will transfer all applicable grants and federal funds from the old district to the new district.

***Transfer of rights and responsibilities from the old district to the new district:*** On July 1, 2016, the new district will acquire, succeed to, and assume "the exclusive right, responsibility, and authority to own, occupy, operate, control, use, lease, and convey the facilities of the qualifying school district existing as of the transfer date, including all lands, buildings, improvements, structures, easements, rights of access, and all other privileges and appurtenances."

- In addition to all interests in land, the new district will be the successor in interest to all fixtures associated with the land and buildings, as well as all agreements and legal instruments to which DPS was a party, including collective bargaining agreements with employees. It will also receive any applicable records and files associated with DPS.

- The new district will have the right and authority to operate these facilities, subject to any liens or legal restrictions.
- The old district will retain DPS's debt and other obligations.

***The old district's responsibilities generally:*** After the new district is created, but before July 1, 2016, the old district will function as usual in carrying out the responsibilities of DPS. At all times, before and after July 1, 2016, the old district will notify the state treasurer upon the repayment of all its outstanding operating obligations and outstanding debt.

***The new district board assumes responsibilities of the old district board:*** Once the members of the new district school board are elected and assume their duties, as described below in ***Initial terms***, the old district school board is dissolved and the new district board will assume their responsibilities until the old district is fully dissolved.

***Once all DPS debts and obligations have been discharged:*** If the state treasurer is notified that all the old district's debts and obligations have been repaid, and verifies the same, or if the treasurer discovers independently that all debt obligations have been repaid, the treasurer will certify that information in a written notice to the new district. At that time, **the old district will be fully dissolved**, with any assets transferred to the new district.

### **Part 5B—Community Districts**

The most significant changes center on the creation of the "community district" designation that will apply to the new district. While the new district will function in the same manner as a general powers school district, it will also be required to notify and gain approval from the Detroit Financial Review Commission for certain actions, including the hiring and firing a superintendent, as described below. The new community district will be created 30 days after the old district becomes a "qualifying school district," and will assume the responsibility of providing education beginning July 1, 2016.

The validity of the formation of the new district is conclusively presumed unless questioned in an original action filed in the Michigan Court of Appeals within 60 days after the district's creation. [Sec. 393]

#### **New District School Board [Sec. 384]**

- ***Membership:*** The school board will consist of nine school electors (eligible to vote in school district elections). Initially, the mayor of Detroit ("the chief administrative officer") will appoint three members and the governor of Michigan will appoint six. One of the governor's appointments will be from one or more nominees submitted by the Majority Leader of the State Senate and one from one or more nominees submitted by the Speaker of the House of Representatives. Members must be appointed within 30 days of the district's creation, with the governor to appoint members on behalf of the mayor if the mayor fails to appoint members. All members must be residents of the community district. An individual may not serve on the old and new district school boards simultaneously.

- **Initial Terms:** The terms of the following appointees will expire on the following dates:
  - December 31, 2017: two of the mayor's appointees.
  - December 31, 2019: one of the mayor's appointees and one of the governor's appointees.
  - December 31, 2021: two of the governor's appointees.
  - December 31, 2023: three of the governor's appointees, including those from nominations submitted by the Senate Majority Leader and the House Speaker.
- **Vacancy:** If a vacancy occurs during the initial term of an appointed member, the vacancy will be filled in the same manner as the original appointment for the balance of the unexpired term.
- **Chairperson:** The mayor of Detroit will designate an appointed member of the school board to be the initial chairperson. If the mayor does not do so, the governor will appoint the chairperson. After the initial designation, the school board will designate its chairperson.
- **Elections:** After the terms of the initial appointees, the new district school board members will be elected to six-year terms, with a term to begin on January 1. The elections will take place in the November regular election in odd-numbered years, with the nominations taking place in the August primary election in odd-numbered years.

Superintendent of the new district (Sec. 385)

Within 90 days of the creation of new district, its school board will appoint a superintendent, subject to the approval of the Financial Review Commission (FRC). If the FRC does not approve the appointment within 45 days, it is deemed denied. The new district could not alter the terms and conditions of an employment contract, alter the benefits provided, or terminate the employment of the superintendent unless that action is approved by the FRC. The superintendent would be selected based on his or her demonstrated ability, record of competence, experience in increasing academic achievement, experience with education reform and redesign, and expertise in the turnaround of academically underperforming school districts.

Evaluation of new district (Sec. 385)

The new district's school board would have to annually evaluate and issue a report on the district's performance based on the following factors: (1) the proportion of pupils enrolled in the district that achieve scores at least equivalent to proficient on state assessments; (2) the proportion of pupils enrolled in the district that achieve at least a school year's worth of academic growth in a school year; and (3) the proportion of graduates from or pupils enrolled in the district that are enrolled in some form of postsecondary education.

Finances

- **Millages:** If another school district is authorized to levy a school operating tax under Section 1211 (which provides the rules for levying millages for school operating purposes) within the geographic boundaries of the new district during a tax year, the district may not levy a millage. In other words, the old district will be levying the school operating tax until that district ceases to exist, and the new district may not do so during that time. [Sec. 386]

- **Financial oversight:** As the new district is within the bounds of Detroit, the Financial Review Commission will have oversight over it, as provided in the Michigan Financial Review Commission Act (MCL 141.1631). [Sec. 387]
- **Administrative expenses:** The new district may not use more than 6.3 percent of its current operating expenditures for administrative expenses. The state treasurer would monitor and verify compliance with this requirement. [Sec. 388]
- **Facility improvements:** The new district would have to prioritize a portion of its funding to pay for facility-related improvements, such as costs associated with deferred maintenance, space consolidation, and school closure or other building closures.
- **Appropriation:** For the fiscal year ending September 30, 2016, \$250,000 is appropriated from the General Fund to the Department of Treasury to provide financial support for the organization and administration of a community district. The state treasurer will ensure that a portion of the money is allocated as a grant to provide school board training to the initial elected members of the school board (to be elected in the general elections of 2017, 2019, 2021, and 2023). [Note: Inclusion of this appropriation means that the bill will not be subject to referendum.]
- **Borrowing and lines of credit:** The bill extends the ability of a school board or intermediate school board to borrow and obtain a line of credit to apply to the new school district as well. [Sec. 1225]
- **Issuance of notes or bonds:** The bill also extends the rules and prohibitions for borrowing money and issuing notes or bonds that apply to school districts to apply to the new district as well, with the attendant liability. [Sec. 1351a]

#### Accountability

- **School grading system:** Within 90 days after July 1, 2016, the state school reform/redesign officer will establish an "A-F" grading system for the new district, to be implemented and administered by the Michigan Department of Education. An "A" will be awarded to high-performing schools and "F" for the lowest achieving schools under Section 1280C. The accountability system must utilize individual student growth, as measured in years of academic process, as being 33-50% of a school's overall grade calculation. [Sec. 389]
- **Schools subject to closure:** By October 1 of each year, the State School Reform/Redesign Office will prepare a list of schools subject to closure in the new district. A school will be included on that list if either of the following applies:
  - The school has operated for at least four years and has appeared on the list of the lowest achieving five percent of public schools in the state (under MCL 380.1280c) for three of the last five school years; or
  - The school has received a letter grade of "D" or lower for three consecutive school years under the system described in *school grading system*, above.

Within 30 days after the State School Reform/Redesign Office list is published, the superintendent of public education will order those schools closed effective at the end of the school fiscal year (June 30). [Sec. 390]

#### Teachers in the new district

- **Teacher qualifications:** The bill provides that the new school district may employ full-time or part-time noncertificated, nonendorsed teachers to teach in its schools if the

appropriate official of the district determines that, due to the individual's combination of education and experience, it would be appropriate and in the best interests of the pupils. The noncertificated teacher may use three years of successful classroom teaching, as determined by observation and review, to waive the student teaching requirement for receiving a provisional teaching requirement. [Sec. 1233c]

- ***Teacher/administrator compensation:*** The new district will implement a method of compensation that focuses on job performance and job accomplishments as the primary factor in determining compensation and additional compensation, which will apply to all teachers and administrators hired by the district after the bill takes effect. The assessment would be required to incorporate a "rigorous, transparent, and fair" evaluation system that evaluates teachers and administrators primarily based on student growth as measured by assessments and other objective criteria. [Sec. 1250]

If the school district where an administrator is primarily responsible for administering instructional programs receives a "D" or lower under the *school grading system*, above, the administrator will not receive a pay increase.

The district will not consider length of service or an advanced degree when determining compensation or adjustments in compensation, unless the degree is specific to the subject taught (for secondary teachers) or is an advanced degree in elementary education (for elementary teachers).

#### Early Literacy System

Within 180 days after July 1, 2016, the new district must establish an early literacy system that includes at least all of the following: (1) an early screening system to identify pupils with reading deficiencies in grades K-3; (2) intervention programs to address each pupil's barriers to reading, if any; (3) additional class time dedicated to reading; and (4) a "read at home" plan for parents and guardians to ensure that they have necessary resources for supplemental support. [Sec. 391]

#### Public library

Part 5B, which establishes the community district, does not affect the management or control of a public library. Any powers and duties of the old district relative to a library would be transferred to the new district on July 1, 2016. [Sec. 392]

#### Advisory board for new district's school board

The school board of the new district may appoint an advisory board to assess academics and operations and make recommendations on the use of facilities, enrollment, building capacity, transportation, student proficiency and growth, graduation rates and trends, special education, wrap-around services, or other matters at the request of the new district board. If appointed, this board must then meet at least annually, regularly report to the school board, and submit an annual report to the school board and superintendent, the state school reform/redesign officer, and the House and Senate committees with responsibility for education legislation. [Sec. 394]

The new district will operate year-round

Beginning with the first school year that begins after the new district is created, it shall operate its schools on a balanced school-year calendar that ensures that there is no period during which school is not in session that exceeds 30 consecutive calendar days. [Sec. 1284]

The section that mandates that the school year begin after Labor Day will not apply to the new district. [Sec. 1284b]

The bill provides that the governing body for the new district (and other public schools operating year-round schools) will determine the end date for the school year, which may be any time after May 31 and before the first Monday in September. [Sec. 1284c]

**Amendments for Charter Schools [Sections 502 to 561]**

The bill also amends several rules for various categories of charter schools, including: **Urban High School Academies** (UHSA), which are chartered under Part 6C of the Revised School Code and can only be authorized by state public universities; and **Schools of Excellence** (SOEs), which are chartered under Part E of the Revised School Code and are established as either (1) a replication of a high performing school, (2) a cyber school, or (3) a conversion of a Part 6A charter school based on criteria that define superior academic performance. The changes include the following:

- **MEAP to M-STEP:** The bill replaces references to Michigan education assessment program (MEAP) test as an indicator of pupil progress, with references to the math and reading portions of the Michigan student test of educational progress (M-STEP) assessment, since Michigan transitioned to the M-STEP in 2015.
- **Closure of charter schools:** If the State School Reform/Redesign Officer determines that a charter school site (that is not an alternative school serving a special student population) has been operating for at least four years and is among the lowest achieving five percent of all public schools in the state for three of the previous five years (under Section 1280c), the officer will notify the charter school's authorizing body. Upon receiving this notice, the authorizing body will revoke the charter school's contract, effective at the end of the school year. If the charter school operates at more than one site, its authorization will be revoked for the age and grade levels in the lowest achieving five percent.

(This section is largely unchanged from current law, but specifies the time period for which a charter school must be in the lowest five percent, and replaces references to the state superintendent of public instruction with references to the State School Reform/Redesign Officer.)

The bill also removes a provision allowing the authorizing body to issue a new contract to an urban high school academy whose contract has been revoked, within the one year period following the revocation, without the new contract counting toward the maximum number of contracts that may be issued.

### Amendments for Intermediate School Districts

**Superintendent:** If a constituent school district (a school district entirely within an intermediate school district) does not have a superintendent, the ISD's superintendent will assume responsibilities such as recommending and suspending teachers, subject to actions by the constituent district's school board. This assumption of duties does not apply when the constituent school district is not required to employ a superintendent or in the case of the old Detroit school district, which will not oversee any schools. [Sec. 654]

**Constituent school districts not operating schools:** Currently, if an intermediate superintendent finds that a constituent district has not operated a school for the previous two or more years, that constituent district must either attach itself to an operating school district or reopen and operate its own school. The bill would retain these requirements, but add provisions to allow for the reorganization of DPS as the old district and the new district, even though the old district will not directly be operating any schools. [Sec. 921]

**Constituent district with school operated by another district:** If a constituent district has entered into an agreement with another school district or public entity to operate a public school of the constituent district, then the pupils in that school will be counted in the membership of the constituent district and the revenue payable to the constituent district would be transferred to the school district or public entity operating the public school. (Sec. 705) Revenue from a regional enhancement property tax would not be allocated or paid to the constituent district that does not operate a public school.

### New Provisions Applying to All Districts

**Refinancing Operating Deficits:** The bill would expand the ability of districts with an operating deficit to refinance that debt into notes or bonds. Currently under statute, a district with an operating deficit of greater than \$100 per pupil may finance its operating deficit through a note or bond of up to 10 years with the backing of its future state aid payments or other district revenue. Under the bill, an eligible district would expand to include a district that has outstanding state aid anticipation notes issued under Section 1225 through the Michigan Finance Authority. Additionally, the bonds, which would be called school financing stability bonds, could be used to refinance existing outstanding state aid anticipation notes, and could be used for up to 25 years rather than 10. Finally, in addition to future state aid, the bill would expand the district's revenues used to back the notes or bonds to include the district's local school operating revenues collected from its 18-mill nonhomestead property tax levy.

**Kindergarten:** The bill would allow a child to enroll in a different kindergarten if the school district of residence does not operate a kindergarten, and also removes provisions that have already sunset. [Sec. 1147]

**Strikes:** If the state superintendent of public instruction has information that a person holding a teaching certificate has engaged or participated in a strike prohibited under the Public Employment Relations Act, the superintendent must:

- Notify the person that the teaching certificate could be suspended for at least one year, or revoked, for engaging or participating in the strike, and of the right to a hearing before the superintendent under the Administrative Procedures Act. This is to occur within 10 days after the inception of the strike or after receiving information that the person has engaged or participated in a strike.
- Revoke the teaching certificate, if the person does not ask for the hearing within 15 working days after receipt of the notification.
- If a hearing takes place, complete the proceedings and make a final decision and order within 120 days after receiving the request for a hearing.
- Suspend the teaching certificate for at least one year or permanently revoke the teaching certificate, if the determination is made that the person has engaged or participated in strike. The penalty would depend on the superintendent's determination of the severity of the offense.

**Educating Pupils:** The bill specifies that a school district may fulfill its obligation to educate pupils by either (1) directly operating one or more public schools on its own; or (2) causing public education services to be provided for pupils of the district through an agreement, contract, or other cooperative agreement with another public entity, including but not limited to another school district or an intermediate school district.

**Repealers:** The bill would repeal current Part 5a of the code (provisions from 2004 dealing with the appointment of school reform boards in Detroit) and eight sections in Part 6 (provisions from 2004 related to election of school reform board members).

MCL 380.3 et al.

## **FISCAL IMPACT:**

The bill would increase costs for the state, while allowing DPS to pay off its debt over time. Additional provisions, described below, would have an additional, but indeterminate, fiscal impact on both the state, local school districts and intermediate districts, and public school academies.

### Old District Debt/New District Foundation Allowance

In splitting DPS into two entities, the bill would redirect local school operating revenues, collected from the 18-mill levy on nonhomestead property, in order to pay off the debt of the old district. The total estimated debt is approximately \$715.0 million, including approximately \$515.0 million in accumulated operating deficits as well as \$200.0 million to finance start-up costs and school building reinvestment for the new district. In order to accomplish this, the district will likely have to refinance existing loans from the State Aid Note program through the Michigan Finance Authority along with other debt into longer term bonds. The bill would allow the district to do this with Treasury's approval and would extend the maximum bond period from 10 to 25 years. Interest and bond costs could add to the total debt costs, and estimates for time until the debt is fully repaid vary from 10-12 years. However, this assumes that the voters reauthorize the old district's 18-mill levy in 2022, when the existing authorization expires.

While both the old and new district exist, and the local school operating revenues are diverted to debt repayment, the state would backfill the local portion of the foundation allowance for the new district through an appropriation in the School Aid budget. The estimated local portion of the foundation allowance for DPS is approximately \$72.0 million or \$1,580 per pupil for FY 2016-17. Funding would be available from a combined \$72 million per year in individual and corporate income tax revenues earmarked into the Community District Education Trust Fund as proposed under other bills in the larger package related to DPS being considered (House Bills 5382-5383).

#### Other New District Costs

The bill would cap the new district's central administrative expenses at 6.3% of current operating expenditures (COE), which is the statewide average when excluding DPS. Based on FY 2014-15 data, DPS central administrative expenses (\$57.3 million) were approximately 8.7% of COE (\$655.9 million). However, the district's FY 2015-16 budget plan included \$11.0 million in reduced central administration expenses which would reduce that percentage. Under the bills, the new district may have to further reduce those costs, which would free up revenue that could be redirected to other costs such as instructional purposes.

The bill would require that the district move to a year-round, balanced calendar. While this wouldn't require an increase in total instructional days, it could create additional costs based on existing staff contracts and would likely require significant expenditures to install air conditioning in district school buildings.

The bill would also require the district to undertake additional early literacy initiatives which could create additional costs; however, there is approximately \$22.9 million in ongoing funding currently in the School Aid budget to support a portion of the costs of such activities statewide, for which DPS would be eligible.

The bill would have an indeterminate fiscal impact on the new district related to teacher compensation. While it would revise the method used for determining pay increases, it is unclear whether this would have an impact on overall compensation levels.

Finally, the bill would create costs for the new district by requiring that if a school operated by the new district was in the lowest performing 5% of all districts statewide for 3 of the last 5 school years or received a letter grade of "D" or lower for three consecutive years in the proposed "A-F" accountability system, the State Reform/Redesign Office (SRRO), now in the Department of Technology, Management, and Budget and the Department of Education (MDE) must close the school building, eliminating some of the alternative "school turn-around" measures allowed currently under statute for other schools in the bottom 5%. The district would incur the costs of closing the building and with the potential costs of replacing the school elsewhere.

#### Public School Academies (PSAs) within the geographic boundaries of the New District

PSAs within the new district would also be subject to the new "A-F" accountability system proposed under the bill as well as the automatic closure provisions that would apply to the

new district; thus, they would incur the costs of closing buildings. Additionally, PSAs would be required to implement the early literacy initiatives proposed for the new district and would incur the related increased costs.

#### Statewide School District Impact

The bill could reduce district costs and create efficiencies by allowing a district to provide educational services through a contract or cooperative agreement with another public entity. This could encourage cooperation in districts where a full district consolidation or annexation is not feasible.

Additionally the bill could limit the potential financial impact to a district related to a strike, by adding loss of teacher certification as a penalty and disincentive. The fiscal impact is difficult to assess because the cost varies depending on the number of teachers on strike and the remedy used by the district, which could vary from using substitute teachers to making up additional days of instruction at the end of the school year.

#### Other State Costs

The bill could create additional administrative costs by requiring that the SRRO develop an "A-F" school accountability system for the community district and that MDE implement and administer the system.

The bill would also create additional administrative costs for MDE in requiring that state superintendent suspend or revoke teaching certifications for teachers that engage in a strike and would require notifications to each participant and hearings prior to suspension or revocation, which would have to be completed within 120 days of a hearing request.

The bill would appropriate \$250,000 General Fund/General Purpose (GF/GP) to the Department of Treasury for the purposes of providing financial support for the organization and administration of the community district. It would require that the Treasurer use a portion of the funds to provide school board training to the initially elected board members.

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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.