



Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536

BILL ANALYSIS



Telephone: (517) 373-5383
Fax: (517) 373-1986

Senate Bills 711, 820, and 822 (as enacted) **PUBLIC ACTS 195, 196, & 197 of 2016**
House Bill 5383 (as enacted) **PUBLIC ACT 193 of 2016**
House Bill 5384 (as enacted) **PUBLIC ACT 192 of 2016**
House Bill 5387 (as enacted) **PUBLIC ACT 194 of 2016**
Sponsor: Senator Goeff Hansen (S.B. 711 & 820)
 Senator David Knezak (S.B. 822)
 Representative Amanda Price (H.B. 5383)
 Representative Daniela Garcia (H.B. 5384 & 5387)
Senate Committee: Government Operations (S.B. 711, 820, & 822)
House Committee: Appropriations

Date Completed: 6-29-16

CONTENT

The following is a brief description of legislation that transfers the Detroit Public Schools to a new district, and makes related changes.

As used in this summary, "qualifying school district" refers to the "old" Detroit Public Schools (DPS), which will remain in existence only for the purposes of levying mills to pay off debt. "Community district" means the "new" district established to continue all rights, functions, and responsibilities of educating children, with the exception of paying off old operating debt.

All of the bills, except House Bill 5387, took effect on June 21, 2016. House Bill 5387 will take effect on September 19, 2016.

Senate Bill 711

The bill amended the Michigan Financial Review Commission Act to exclude the superintendent and board chair of the "old" DPS from membership on the Financial Review Commission (FRC), although the superintendent and board chair of the "new" DPS will be on the FRC. The bill also allows the FRC to provide that the "new" district may not alter the terms and conditions of an employment contract with or the benefits of its superintendent or terminate its superintendent without the approval of the FRC. The bill specifies that the superintendent and board chair will not have a vote on the FRC's approval of changes related to the superintendent.

Finally, the bill authorizes the FRC to approve all reimbursement to the community district's school board members, officials, and employees for travel outside Michigan.

(Note that in this bill and in Senate Bill 820, a "qualified" school district is different from a "qualifying" school district because, in these two bills, both the "old" DPS and the "new" DPS are considered a "qualified" school district.)

Senate Bill 820

The bill amended Public Act 566 of 1978, which prohibits the holding of incompatible public offices, to permit the superintendent or chairperson of a qualified school district to serve on

a financial review commission for the qualified school district. In addition, the bill allows an emergency manager to serve as a transition manager.

Senate Bill 822

The bill amended the Emergency Municipal Loan Act to allow the Local Emergency Financial Assistance Loan Board to authorize a loan to a qualifying district of up to \$150.0 million for transitional operating costs, with a cap of \$25.0 million of that loan authorized for deferred facilities maintenance.

Also, if *any* municipality is delinquent in repaying an emergency loan, the bill allows the State Treasurer to withhold the municipality's revenue under the Local Community Stabilization Share Tax.

House Bill 5383

The bill amended the Michigan Trust Fund Act to create the Community District Education Trust Fund (the Fund) and to earmark and deposit \$72.0 million of tobacco settlement revenue each year into the Fund, beginning in fiscal year 2016-17, until a total of \$617.0 million is deposited into the Fund. However, if the \$617.0 in earmarked tobacco settlement revenue is not enough to cover the cost of this legislative package, then the General Fund will be required to reimburse the School Aid Fund for as long as the 18 mills levied by the DPS are diverted to pay off the debt.

The Department of Treasury estimated one version of a repayment plan scenario to have a total cost of \$705.1 million for the package. That total cost consists of \$565.0 million in principal and \$140.1 million in estimated interest costs. Of the \$140.1 million in estimated interest, \$58.6 million is interest on the payment owed to the Michigan Public School Employees' Retirement System (MPERS) and \$34.0 million is interest for the emergency loan. The remaining \$47.5 million in interest costs is payable to outside lenders.

If Treasury's estimated total cost of \$705.1 million is accurate, and given the cap of \$617.0 million in this bill for tobacco settlement revenue deposited into the Fund (which will be used to offset costs in the School Aid budget), the bill will require the General Fund to pay an estimated \$88.1 million to the School Aid Fund (the difference between an estimated \$705.1 million and the \$617.0 million earmarked to the Community District Education Trust Fund) to reimburse for the costs not covered by the \$617.0 million. This is an estimate because actual debt service (interest costs) will depend on various factors such as market rates, timing, and debt structure. The total additional costs required to be reimbursed by the General Fund (those additional costs in excess of the \$617.0 million) may be higher or lower than \$88.1 million once all debt service payments are completed.

House Bill 5384

The bill amended the Revised School Code to establish the community district. The key amendments are described below.

Regarding the creation, organization, and operation of the district, the bill does the following:

- Transfers all records, funds, and property of the qualifying district to the community district on the transfer date, which is defined as July 1, 2016; but provides for the qualifying district to retain proceeds from bonds, notes, or emergency loans, taxes levied by or payable to the qualifying district, and all qualifying school district functions.
- Provides that the qualifying district retains a limited separate identity as a separate taxing unit only for the limited purpose of repayment of the debt until the debt is retired.
- Dissolves the qualifying district upon certification of repayment of debt.

- Requires the Governor to designate the emergency manager of the DPS as the transition manager for the community district until the elected members of the school board of the community district are elected and take office; requires the transition manager to oversee the community district, but provides that he or she may not negotiate or enter into any collective bargaining agreement that would bind the elected school board of the community district; and requires the transition manager to appoint an interim superintendent until a superintendent is selected by the elected board, and to adopt an initial budget for the community district for its first fiscal year.
- Provides for the board for the community district to be elected in November 2016, and consist initially of seven members, elected on a districtwide basis, with staggered terms; and provides that subsequent terms will be four years in duration.
- Requires the community district to have and maintain an advisory council, which annually must prepare a report on the physical state and use of school facilities, the siting of existing and future public schools, the efficient and equitable distribution of facilities, and pupil transportation.
- Requires the community district board to employ a superintendent and, on an annual basis, to evaluate and issue a report on the performance of the district based on pupils' proficiency on State assessments, the proportion of pupils achieving at least one year of academic growth in a school year, and the proportion of graduates (or pupils enrolled in the district) who are enrolled in some form of postsecondary or career and technical education.
- Requires the community district to be subject to financial oversight by the Financial Review Commission.
- Prohibits the community district from renewing or extending a lease with the Education Achievement Authority (EAA) after June 30, 2017; requires the qualifying district to take action as soon as possible after the transfer date to withdraw from the interlocal agreement with Eastern Michigan University creating the EAA; and prohibits the qualifying district from exercising any powers under that interlocal agreement after June 30, 2017.
- Appropriates \$250,000 from the State's General Fund to the Department of Treasury in fiscal year 2015-16 for the purpose of providing support for the organization and administration of the community district.

The bill does the following with respect to accountability and school closures:

- Requires the State School Reform/Redesign Officer (SRRO) to establish, implement, and administer a community district accountability system for all public schools located within the boundaries of the community district, including all charter schools ("public school academies") and schools operated by the community district, beginning with the second full school year starting after the transfer date.
- Requires the accountability system annually to assign a letter grade to each school within the boundaries of the community district, based on a school's performance on proficiency measures, growth measures, and nonacademic measures.
- Requires the SRRO, until the accountability system has been in place for at least three school years, to order the community district to close a school operated by the district that was among the lowest achieving 5% of public schools in the State for the immediately preceding three years, unless the SRRO determines that closure of the school would result in unreasonable hardship to the pupils.
- Requires the SRRO, after the accountability system has been in place for at least three school years, to order the community district to close a school operated by the district if the school has been assigned an "F" for the immediately preceding three years, unless the SRRO determines that closure of the school would result in unreasonable hardship to the pupils.
- For a public school subject to closure, requires the SRRO to consider other public school options available to pupils in the school's geographic area, and permits the SRRO to rescind the order to close if closure would result in unreasonable hardship to the pupils.

In addition, for a charter school in the lowest achieving 5% of public schools or assigned a letter grade of "F" for the three preceding years, the bill transfers the authority for notifying the charter school's authorizer of this designation from the State Superintendent of Public Instruction to the SRRO. (The Code requires an authorizing body receiving such a notice to amend the charter school's contract to eliminate the school's authority to operate the existing age and grade levels at the site, with the school ceasing to operate by the end of the school year.) The bill requires the SRRO to consider other public school options offered by the affected charter school, and allows the closure order to be rescinded if the SRRO determines that closure would result in an unreasonable hardship to the school's pupils.

Regarding the opening of new schools, the bill does the following:

- Prohibits the community district from opening a new school at the same location as a closed school within three years after the closure of the school, unless the new school will be substantially different.
- Prohibits the community district from opening a new school if: 1) until the accountability system has been in effect for at least three school years, the proposed school would operate at the same location as a public school that is on the list the lowest achieving 5% of schools in the State or has been on that list during the previous three years; or, after the accountability system has been in effect for at least three years, the proposed school would operate at the same location as a school assigned an "F" grade for three of the preceding years; and 2) the proposed school would have substantially the same leadership and curriculum as the previous school.
- Prohibits an authorizing body from issuing a contract for a new charter school located in the community district unless the governing body of the authorizing body certifies to the SRRO that the authorizing body has been accredited by a nationally recognized accreditation body.
- Prohibits an authorizing body from issuing a contract for a new charter school in the community district if: 1) the proposed charter school would operate at the same location as either a) a public school that was in the lowest 5% for the previous three years, or had an "F" letter grade in three of the previous five years, or b) a charter school that had its contract revoked or terminated; and, 2) the proposed charter school would have substantially the same board of directors, leadership, and curriculum as the public school that previously operated at that location.

Regarding personnel of the community district, the bill does the following:

- Provides that the community district will acquire and assume the collective bargaining agreements applicable to the qualifying school district on the transfer date, and the community district will be the successor employer of employees of the qualifying district.
- State that an individual who is entitled to employment by the qualifying district will be entitled to employment by the community district on the transfer date.
- Requires the community district board to annually review each school administrator's employment contract and make an affirmative decision to renew the contract or to provide notice of nonrenewal.
- Reduces the number of days for notification of nonrenewal of employment for the community district's superintendent and other administrators from at least 90 to at least 30.
- Allows the community district to employ or contract for, or both, qualified teachers and other qualified instructional personnel at a school that formerly operated as an achievement school.
- Allows the community district to engage a full-time or part-time noncertificated, nonendorsed teacher if the appropriate official in the district determines that, due to the individual's combination of education and experience, it is appropriate and in the best interests of the pupils of the community district; and provide that if the individual

completes three years of successful classroom teaching, that experience must be used and student teaching waived for the purpose of receiving a provisional teaching certificate.

- Requires the community district to implement and maintain a method of compensation that includes job performance and job accomplishments as the primary factor in determining compensation for teachers and administrators hired after the letter grade accountability system has been implemented; prohibits length of service from being considered for compensation; and permits consideration of an advanced degree in compensation only when applicable to subject area endorsements.

The bill also does the following:

- Broadens the definition of "public school" to include an educational entity established under other laws of the State, and operated by "another public body".
- Allows a school district to educate pupils by directly operating one or more public schools on its own, or causing public education services to be provided for pupils of the district through an agreement, contract, or other cooperative agreement with another public entity.
- Eliminates the operating deficit floor of \$100 per pupil in order for a school district to issue notes or bonds for funding the deficit; allows a district with outstanding State aid anticipation notes to issue notes or bonds for funding the deficit with the approval of the State Treasurer; allows a district to do such borrowing (which had been prohibited since January 1, 1994); and, extends the maximum repayment period for school financing stability bonds from 10 years to 25 years.
- Allows the board of a school district, rather than a school district that operates grades K-12, to be an authorizing body for a charter school.

In addition, the bill repealed Part 5a (the appointment of school reform boards) and Sections 403, 404, 412, 416a, 420, 421, 449, and 485 (all pertaining to the board or the chief executive officer of a "first class district") of the Revised School Code.

House Bill 5387

The bill amends Public Act 336 of 1947, which prohibits strikes by certain public employees, to revise the process for addressing violations of the prohibition. Specifically, the bill does the following, effective September 19, 2016:

- Reduces from 60 to 15 days for the time frame in which the Michigan Employment Relations Commission must conduct a hearing to determine if conditions constituting a strike or a lockout exist, and requires the Commission to issue its decision within three business days after the hearing.
- Allows a public school employee who is notified that he or she is suspected of engaging in a strike to challenge that allegation; and provides that the employee will bear the burden of proof at the hearing to determine whether he or she was engaged in a strike.
- Requires the public school employer to deduct one day's pay for an employee determined to have been engaged in a strike, for each full or partial day that the employee was on strike.
- Requires the Superintendent of Public Instruction to institute collection proceedings if a public school employer does not deduct money from an employee's pay or if the Commission does not receive payment of a fine.
- Provides that if a circuit court finds that an illegal strike or lockout occurred, the court must order the deduction of one day's pay from each public school employee on strike, for each day of a strike, or \$5,000 for each day of a public school employer lockout (along with the \$250 daily fine for each governing board member); and requires money collected to be remitted to the State School Aid Fund.
- Requires the court to order a strike or lockout to end, and award costs and attorney fees to a plaintiff who prevails in an action alleging a strike or lockout.

- Shortens the time frame from 10 to five days for the commencement of a proceeding to determine whether a public employee has violated the Act; shortens from 10 to two days the deadline for a decision to be made after the conclusion of the proceeding; and allows a public employer to consolidate employee hearings unless an employee demonstrates manifest injustice from the consolidation.

MCL 141.1633 et al. (S.B. 711)
15.183 (S.B. 820)
141.932 et al. (S.B. 822)
12.252 et al. (H.B. 5383)
380.3 et al. (H.B. 5384)
423.202a & 423.206 (H.B. 5387)

FISCAL IMPACT

State: The package earmarks \$617.0 million of tobacco settlement money into the Community District Education Trust Fund, to be used to help offset the majority of the costs of the plan, but likely not all of the costs; the amount above \$617.0 million will then be paid for by the General Fund (as discussed above in the description of House Bill 5383). The package allows school districts to "cause education to be provided" for pupils through an agreement with another public entity, and if those other public entities are not part of the retirement system, it is possible that higher stranded retirement costs will occur, paid by the School Aid Fund. The additional requirement for the State Reform/Redesign Office (SRRO) to develop an accountability system for schools located in the community district may require additional resources; since the SRRO is funded under the Department of Technology, Management, and Budget, this would be an additional State cost. If the Department of Treasury's Financial Review Commission requires additional staff, services, contracts, or supplies in order to review a qualified school district (the new community district in Detroit), in addition to the City of Detroit, then there will be increased State costs. A Financial Review Commission already exists for review of the City of Detroit, and under the bills, the Commission's role is expanded to review the finances of the "new" Detroit school system. The Department of Treasury earlier estimated the additional cost to the Financial Review Commission for oversight of the "new" system at \$1.0 million, which will be used primarily to support outside assistance and expertise to assist with necessary review and analysis on both the financial and academic sides of the district, as well as the transition itself from the "old" to the "new" system. The State may see increased stability in repayments of emergency loans due to new language that allows the withholding of a municipality's portion of the revenue generated by the local community stabilization share tax levied under the Use Tax Act (i.e., reimbursement for the loss of personal property tax revenue), in addition to the already-existing language that allows the withholding of a municipality's revenue sharing payments.

In addition, House Bill 5384 appropriates \$250,000 from the General Fund to the Department of Treasury for organization and administration of the community district.

Local: The bills allow districts with outstanding State aid anticipation notes to borrow and issue bonds for refunding and refinancing. These changes may allow deficit districts to refinance any existing debt, or issue debt to pay off a deficit and, depending on interest rates available at the time of the borrowings or refinancings, might lead to district savings. The elimination of the Education Achievement Authority will result in additional revenue to the community district and other surrounding districts or public school academies, based on the number of EAA enrollments that occurred.

Fiscal Analyst: Kathryn Summers

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.