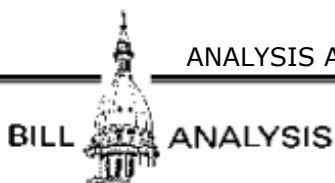




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Senate Bill 636 (as reported without amendment)
Senate Bill 637 (Substitute S-1 as reported)
Senate Bills 638 and 639 (as reported without amendment)
Sponsor: Senator Wayne Kuipers (S.B. 636)
 Senator Nancy Cassis (S.B. 637)
 Senator Patricia L. Birkholz (S.B. 638)
 Senator Bill Hardiman (S.B. 639)
Committee: Education

Date Completed: 10-5-09

RATIONALE

While many public schools in Michigan offer excellent educational opportunities to their pupils, some districts have performed poorly on a consistent basis. Under the Federal No Child Left Behind Act, each school is required to make adequate yearly progress (AYP) toward the goal of achieving satisfactory performance on yearly assessment tests, or is subject to sanctions. According to the Michigan Department of Education, 528 schools, or 14%, failed to make AYP in 2008-2009, and 514 schools did not make AYP for two or more years in a row. Critics have pointed to those results as an indication of fundamental problems in the schools--problems that repeated reform efforts have been unable to address. Some parents and teachers in struggling districts reportedly have expressed frustration that bureaucratic inertia has prevented them from implementing needed changes and trying out new ways of engaging children in the classroom. Under those circumstances, some believe that reform within a school district may be impossible, and that an independent school could offer benefits to students that current institutions are unable to provide. In addition, it has been suggested that in some cases, an existing school could benefit from separating from the district and taking control of its own curriculum and administration.

CONTENT

Senate Bill 636 would create Part 6D (Neighborhood Public Schools) of the Revised School Code to do the following:

- **Allow certificated teachers, parents of pupils, local units of government, community colleges, universities, governmental agencies, and others to apply to a sponsoring body for a performance contract to organize and operate a neighborhood public school (NPS).**
- **Require a performance contract to include specific educational outcomes the NPS would achieve, the standards to which it would be held accountable, and procedures and grounds for revoking or terminating the contract.**
- **Permit the conversion of an existing school to an NPS if a majority of the certificated teachers employed at the school and a majority of the parents of pupils enrolled at the school approved, and other requirements were met.**
- **Permit the creation of a cyber school NPS that provided full-time instruction through online learning or otherwise through a computer or other technology.**
- **Establish admissions requirements.**
- **Prohibit an NPS from levying any tax.**

- Require an NPS to comply with certain requirements of the Code, including "Public Act 25 of 1990" mandates and the performance of criminal history checks.
- Provide that the sponsoring body of an NPS would be its fiscal agent, and allow the sponsoring body to charge an oversight fee, which it could use for specific purposes.
- Require the Superintendent of Public Instruction to establish alternative routes to certification or other approval that would allow teachers to teach in NPSs.

The bill also would revise several sections of the Code to do the following:

- Require an NPS to comply with current requirements regarding background checks for school employees and contract workers.
- Require an NPS to adopt a core curriculum that complied with the content standards of the Michigan Merit Standard and meet certain other requirements, if it wanted to be accredited.
- Require an NPS to meet the teacher certification requirements currently prescribed for a school district or intermediate school district (ISD).
- Require the board of a district or ISD to grant a leave of absence to an employee to teach in an NPS.

Senate Bill 637 (S-1) would amend the State School Aid Act to do the following:

- Require per-pupil allocations for an NPS to be calculated in the same manner as currently provided for a public school academy (PSA).
- Establish provisions for determining membership in an NPS, for the purpose of calculating the amount of school aid it would receive.
- Require an NPS to receive additional allowances for at-risk pupils and for special education programs and services in the same manner as currently provided for a PSA.
- Exempt a cyber school NPS from certain requirements, and authorize the Superintendent of Public Instruction to waive any provisions of the Act or rules promulgated under it for a cyber school NPS.

Senate Bill 638 would amend the teachers' tenure Act to indicate that a teacher in an NPS would not be considered a teacher for the purpose of continuing tenure, although a tenured teacher on a leave of absence from a school district to teach in an NPS would retain tenure during that leave of absence.

Senate Bill 639 would amend the public employment relations Act to prohibit collective bargaining agreements between a public school employer and a bargaining representative of its employees from including decisions concerning the grant of a leave of absence to teach in an NPS.

Senate Bills 637 (S-1), 638, and 639 are all tie-barred to Senate Bill 636.

Senate Bill 636

Neighborhood Public School

The bill would permit a person or entity, under certain conditions, to apply for a performance contract to organize an NPS to be operated under the direction of a governing board and in accordance with bylaws adopted by the board.

A neighborhood public school could be organized as any type of public school, including the following:

- A family educational service center, which would offer a combination of early childhood, adult education, and social services that were designed to enrich and support neighborhoods, and provide a more holistic approach to pupil and family education and development.
- An early childhood learning center, which would primarily focus on offering preschool and kindergarten educational programs.
- A neighborhood elementary or middle school, which would operate innovative educational programs or programs with innovative instructional approaches, enrich educational programs through partnerships with community and cultural organizations, provide enhanced counseling and social services, or operate other research-based programs or services designed to improve pupil achievement.

- A career education high school, which would focus on preparing pupils for jobs immediately upon graduating.
- A college preparatory high school, which would focus on advanced placement, international baccalaureate, or another type of college preparatory academic curriculum.
- A middle college, which would operate programs that allowed pupils simultaneously to earn a high school diploma and an associate's degree.
- A dropout recovery center, which would provide educational programs to pupils who were up to the age of 21 and who either had previously dropped out of school or were at risk of dropping out.
- A cyber school, which would provide full-time instruction to pupils through online learning or otherwise on a computer or other technology, which could be remote from a school facility.

An NPS would be a public school under Article VIII, Section 2 of the State Constitution (which requires the State to maintain and support a system of free public and elementary schools) and for the purposes of Article IX, Section 11 of the Constitution (which established the State School Aid Fund), and for the purposes of Section 1225 and 1351a of the Code (which authorize the board of a local school district or ISD to borrow money and issue bonds).

An NPS would be subject to the leadership and general supervision of the State Board of Education under Article VIII, Section 3 of the Constitution. The bill states that powers granted to an NPS would constitute the performance of essential public purposes and governmental functions of the State.

The bill would include an NPS within the definition of "school district", and would include the governing board of an NPS within the definition of "school board".

Eligible Entities

For a conversion NPS, an NPS corporation that was formed by one or more certificated teachers or by a majority of the parents or legal guardians of pupils enrolled in the school to be converted could apply for a performance contract to organize and operate one or more NPSs.

Any of the following entities could apply for a performance contract to organize and operate one or more NPSs that were not conversion NPSs:

- An NPS corporation that was formed by one or more certificated teachers and that met requirements for organization under the Nonprofit Corporation Act.
- A county, city, village, or township.
- A community college.
- A State public university.
- A department or other agency of State government.
- Another person or entity.

("Entity" would mean a partnership, nonprofit or business corporation, labor organization, or any other association, corporation, trust, or other legal entity or a governmental entity.

"Certificated teacher" would mean an individual holding a valid teaching certificate or other approval to teach in an NPS.)

NPS Corporation

An NPS corporation would have to be organized under the Nonprofit Corporation Act, except that it would not be required to comply with Sections 170 to 177 of the Act (which deal with educational corporations and educational foundations). An NPS would be governed under the direction of a board of directors in accordance with Part 6D and with bylaws adopted by the board and incorporated into the performance contract. To the extent disqualified under the Michigan or United States Constitution, an NPS could not be organized by a church or other religious organization and could not have any organizational or contractual affiliation with or constitute a church or other religious organization.

Sponsoring Body; Performance Contract Application

An eligible person or entity could apply to any of the following public sponsoring bodies for a performance contract to organize and operate one or more NPSs:

- The State Board of Education.
- The board of a school district.
- The intermediate school board of an ISD.
- The board of a community college.

- The governing board of a State public university.
- The mayor of a city with a population of at least 65,000, as of the most recent decennial census.

A mayor who met that requirement could issue a performance contract for an NPS without regard to any provision to the contrary in the city charter, although a mayor could not issue a performance contract for an NPS to operate outside the boundaries of that city, and an NPS sponsored by a mayor could not operate outside the boundaries of the city.

If an eligible person or entity desired to organize and operate one or more NPSs, it would have to apply for the performance contract to the State Board of Education or the governing board of a State public university, which could grant the performance contract as provided under the bill. A State public university could not grant a performance contract to itself.

The application for a performance contract would have to include the following:

- Identification of the person or entity applying for the performance contract.
- If the application were for a conversion NPS, a statement to that effect.
- If the application were for a type of NPS listed in the bill, a statement to that effect identifying the type of NPS that would be operated.
- A list of the proposed members of the board or a description of the qualifications and method for appointment or election of members to the board.
- The governance structure of the NPS.
- A copy of the performance goals of the NPS and the curriculum to be offered and methods of pupil assessment to be used by the NPS.
- The admission policy and criteria to be maintained by the NPS.
- Except for an application for a cyber school, the school calendar and school day schedule.
- The age or grade range of pupils to be enrolled.
- Descriptions of staff responsibilities.
- A description of how the NPS would supplement the educational programs currently available to pupils in the area where the NPS would be located, and

information demonstrating that sufficient demand existed for the type of educational programs that the NPS would offer.

- A description of how the NPS would meet "Public Act 25 of 1990" requirements (regarding teacher certification, criminal background checks, school accreditation, and core curriculum content standards) among other statutory requirements.

If the application were for a conversion NPS, it also would have to include evidence satisfactory to the sponsoring body that the applicants had formed an NPS corporation that met the bill's requirements and that the application was supported by at least a majority of the certificated teachers employed at the school to be converted, and at least a majority of the parents or legal guardians of pupils enrolled in the school.

A sponsoring body could grant a performance contract to a person or entity to organize and operate an NPS in the State if it determined that the person or entity met the requirements of Part 6D, that the proposed NPS demonstrated the ability to meet the requirements of the part, and that the issuance of the performance contract would further the educational goals of the State.

A sponsoring body would not be required to issue a performance contract to any person or entity. Except as otherwise provided, performance contracts would have to be awarded on a competitive basis, taking into consideration the resources available, the population to be served, and the educational goals to be achieved by the proposed NPS.

A sponsoring body could give priority to a person or entity that proposed to organize and operate a cyber school.

A sponsoring body also could give priority to a person or entity that proposed to organize and operate an NPS that met one or both of the following criteria:

- The NPS would be located within, or would be intended to serve children residing in, a school district that had not made adequate yearly progress under the No Child Left Behind Act (NCLB) for two or more consecutive years.
- The NPS would be located within, or would be intended to serve children

residing in, a school district in which 40% of its pupils were at-risk pupils, as defined in the State School Aid Act.

"Performance contract" would mean the executive action taken by a sponsoring body that evidenced the sponsorship of an NPS and that established the written instrument executed by a sponsoring body conferring certain rights, franchises, privileges, and obligations on an NPS and confirming the status of the NPS as a public school in the State.

Performance Contract

A performance contract granted to a person or entity to organize and operate an NPS would be a contract issued to the NPS by the sponsoring body and would have to include at least the following information:

- A commitment by the NPS to comply with Part 6D and applicable law.
- The educational outcomes the NPS would achieve, stated in clear and measurable terms, and consistent with the State Board-recommended core academic curriculum standards and the subject area content expectations for the Michigan Merit Standard.
- The standards to which the NPS would be held accountable.
- A description of the method to be used to monitor the NPS's compliance with Part 6D and its performance in meeting its targeted educational outcomes.
- A description of the process for amending the performance contract during the term of the contract.
- Specific operating requirements for the NPS, including certain matters specified in the bill.
- If the performance contract were for a conversion NPS, identification of the existing school facilities to be occupied in whole or in part by the conversion NPS.
- Procedures and grounds for revoking or terminating the performance contract.
- Procedures for the dissolution of the NPS and the disposition of its property.

To the extent applicable, the pupil performance of an NPS would have to be assessed using a Michigan Education Assessment Program (MEAP) test or the Michigan Merit Exam, and any other assessments developed or selected by the sponsoring body designed to measure

academic progress toward the NPS's educational outcomes. As determined by the sponsoring body, the standards also would have to include attendance and graduation rates, measures of college or career preparedness, and other standards appropriate for the grade levels offered by the NPS.

The sponsoring body could renew a performance contract for a length of time determined by the sponsoring body, if it determined that the NPS had achieved or was making progress toward achieving the educational outcomes required in the performance contract and had complied with other requirements of Part 6D and in the contract.

Conversion NPS

A sponsoring body could issue a performance contract to establish a conversion neighborhood public school if an application for preliminary approval were submitted to the sponsoring body by one or more certificated teachers employed by the school district at the school to be converted, or by a majority of parents or legal guardians of the pupils enrolled in the school, and the sponsoring body issued preliminary approval based on the information in the application. An application for preliminary approval would have to contain information prescribed by the sponsoring body as necessary to satisfy the body that it was likely to approve a performance contract application. A sponsoring body would have to act on an application for preliminary approval and notify the applicant in writing of the decision within 60 days after receiving a complete application.

In addition, the application would have to include evidence satisfactory to the sponsoring body that the applicants had formed an NPS corporation organized under the Nonprofit Corporation Act; that the application was supported by the affirmative vote of at least a majority of the certificated teachers employed at the school to be converted who were present and voted on the question; and that the application was supported by the affirmative vote of at least a majority of the parents or legal guardians of the pupils enrolled in the school who were present and voted on the question at a public meeting on the issue.

The evidence included with the application would have to include documentation that all teachers who were eligible to participate in the vote received adequate notice of it and that the ballot used in the vote clearly stated that if the school became a conversion NPS, then the teachers would no longer be employees of the school district and the school, and its teachers would no longer be subject to a collective bargaining agreement with the district. The vote would have to be held within 60 days before the date the performance contract application was submitted.

The meeting at which the parents or legal guardians voted would have to be held within 60 days before the date the application was submitted. Public notice would have to be given for the meeting in the same manner as notice of a school board meeting.

If the performance contract for a conversion NPS identified existing school facilities to be occupied by the NPS, the school district in which the conversion NPS was to be located would have to allow the NPS to convert those school facilities to its use, as specified in the contract. The school district could not charge the NPS rent for the facilities. The conversion NPS would assume the financial liability for all utilities, maintenance, security, improvements, and other costs necessary to maintain the facilities in at least the same condition in which the NPS originally acquired them.

A conversion NPS and a school district could enter into a contract or cooperative arrangement concerning general liability insurance for the conversion NPS.

Cyber School

A sponsoring body could issue a performance contract to establish an NPS that was a cyber school. A cyber school would have to provide full-time instruction to pupils through online learning or otherwise on a computer or other technology. This instruction and learning could occur remote from a school facility.

In addition to the other provisions required in a performance contract (described above), a contract for a cyber school NPS would have to include a requirement that a teacher who held appropriate certification

according to State board rule would be responsible for all of the following for each course in which a pupil was enrolled:

- Improving learning by planned instruction.
- Diagnosing the pupil's learning needs.
- Assessing learning, assigning grades, and determining advancement.
- Reporting outcomes to administrators and parents or legal guardians.

Notwithstanding any other provisions of the Code or any rule, if an NPS that was a cyber school were in compliance with those requirements regarding a certificated teacher, any other adult assisting with the oversight of a pupil during his or her participation in the cyber school's education program would not be required to be a certificated teacher or an employee of the sponsoring body.

Notwithstanding any rule to the contrary, a cyber school would not be required to comply with any rule that would require a pupil's physical presence or attendance in a classroom or that otherwise was inconsistent with a pupil's participation in an online, remote education program, including R 340.10 and 340.11 of the Administrative Code. (Those rules deal with pupil instructional time and virtual learning, respectively.)

The Superintendent of Public Instruction would have to waive any other provision of the Code, the State School Aid Act, or the Administrative Code that otherwise would interfere with the operation or funding of a cyber school as described in the bill.

A performance contract for a cyber school NPS would have to include a requirement that the cyber school would make educational services available to pupils for a minimum of 1,098 hours during a school year and would ensure that each pupil participated in the educational program for at least 1,098 hours during a school year.

At the end of a cyber school's second full school year of operations, the sponsoring body would have to submit to the Superintendent of Public Instruction and the Legislature a report detailing the operation of the cyber school, providing statistics on pupil participation and academic performance, and making recommendations

for any further statutory or rule changes related to cyber schools and online learning in the State.

NPS Admissions; Enrollment

An NPS could not charge tuition, and could not discriminate in its pupil admissions policies or practices on the basis of intellectual or athletic ability, measures of achievement or aptitude, status as a person with a disability, or any other basis that would be illegal if used by a school district. An NPS could limit admissions to pupils within a particular range of age or grade or on any other basis not specifically prohibited under Part 6D that would be legal if used by a school district.

An NPS could not enroll a pupil who was not a State resident. Except as provided below, enrollment would have to be open to all pupils who resided in the state and met the admission policy. If there were more applications to enroll in the NPS than there were spaces available, pupils would have to be selected to attend by a random selection process. An NPS would have to allow any pupil who was enrolled in the NPS in the immediately preceding school year to enroll in the NPS in the appropriate grade unless that grade was not offered at the NPS.

If an NPS were a conversion NPS, it would have to give enrollment priority to pupils who resided in the school district in which the conversion NPS was located. If an NPS were a cyber school and its sponsoring body were a school district or ISD, the NPS would have to give enrollment priority to pupils who resided in that school district or ISD. If the sponsoring body for an NPS were a mayor, the NPS would have to give enrollment priority to pupils who resided in the city in which the NPS was located.

If an NPS were operated in a district that was subject to a court desegregation order, pupil selection of the NPS would be subject to that court order.

An NPS could give enrollment priority to a sibling of a pupil enrolled in the NPS, and to the child of a person who worked at the NPS or was a member of its governing board.

As specified in its contract, an NPS could include any of the following:

- Kindergarten and early childhood education.
- Any grade up to grade 12.
- Adult education.

An NPS or public school academy could enter into an agreement with any other public school to allow a pupil who had completed the last grade offered by the NPS or PSA to transfer into the other public school or to allow a pupil who had completed the last grade offered by the other public school to transfer into the NPS or PSA without having to go through the random selection process.

Taxation; Buildings & Property

An NPS would be exempt from all taxation on its earnings and property. Instruments of conveyance to or from an NPS would be exempt from all taxation, including the real estate transfer tax. An NPS could not levy ad valorem property taxes or another tax for any purpose.

An NPS could acquire by any means, hold, and own in its own name buildings and other property for school purposes, and interest in buildings and property, and other real and personal property, including interests in property subject to mortgages, security interests, and other liens, necessary or convenient to fulfill its purposes.

If a school district or ISD owned a school building or other facility and ceased to use it for school purposes, the district or ISD would have to notify the Department of Management and Budget (DMB) of that fact within 30 days after ceasing to use the building or facility. The DMB would have to maintain a listing of these school buildings and facilities and post the listing on its website and update it at least weekly. A school district or ISD could not dispose of the school building or facility in any way for at least 60 days after notifying the DMB. If an NPS or person or entity that was applying to form an NPS notified that school district or ISD and the DMB during the 60-day period that the NPS was offering to purchase or lease the building or facility, the district or ISD would have to accept the offer and sell or lease the building or facility to the NPS at fair market value, as determined by the district or ISD.

If more than one NPS or person or entity provided notice that it was offering to purchase or lease the building or facility, the district or ISD would have to consider both the amount of each offer and the anticipated benefits to the community in determining which offer to accept.

NPS Debt Obligations

An agreement, mortgage, loan, or other instrument of indebtedness entered into by an NPS and a third party would not constitute an obligation, either general, special, or moral, of the State or a sponsoring body. The full faith and credit or the taxing power of the State or any agency of the State, or the full faith and credit of a sponsoring body, could not be pledged for the payment of any NPS bond, note, agreement, mortgage, loan, or other instrument of indebtedness.

General Requirements

An NPS would be governed by Part 6D and would not be subject to the other provisions of the Code except as provided in the part or specifically in another provision of the Code.

An NPS would be subject to all of the following and would have to comply with all of the following to the same extent as if it were a school district:

- The requirements of Public Act 25 of 1990.
- The Freedom of Information Act and the Open Meetings Act.
- The health and safety laws that are generally applicable to all public school buildings.

An NPS also would be subject to the requirements of Sections 1230 to 1230e, 1233, 1233b, and 1246 of the Code, as if it were a school district. (Those sections require an employee of a district or an individual assigned to work regularly and continuously in any of the district's schools to undergo criminal background checks; prohibit a district from employing an individual who has been convicted of a listed offense or allowing him or her to work regularly and continuously in any of its schools; require an applicant for employment at a school district to authorize his or her former employer to disclose any previous unprofessional conduct by the

applicant; and prohibit a district from allowing a noncertificated teacher to teach in a grade or department of the school, with certain exceptions.)

If an NPS were organized or operated by the board of a school district or an ISD, the district or ISD would not be the employer of any employees assigned to work regularly at the NPS, and those employees would not be subject to any collective bargaining agreement that applied to employees of the district or ISD.

An NPS could not issue high school diplomas unless it complied with Sections 1278a and 1278b of the Code (which prescribe high school graduation requirements under the Michigan Merit Standard) to the same extent as if it were a school district.

An NPS would have to meet generally accepted accounting principles.

The governing board of an NPS would have to insure the property of the NPS. The insurance could be obtained from mutual, stock, or other responsible insurance companies licensed to do business in the State.

An NPS could not provide religious instruction.

An NPS would have to perform the same functions and duties under Article 3 of the Code (which deals with special education) as a local school district, and would be considered to be a local school district, for the purposes of ensuring that a person with a disability enrolled in the NPS was provided with special education programs and services.

An NPS and its incorporations, board members, officers, employees, and volunteers would have governmental immunity. A sponsoring body and its board members, officers, and employees would be immune from civil liability, both personally and professionally, for an act or omission in issuing a performance contract to an NPS if the sponsoring body or the person acted or reasonably believed that he or she acted within the sponsoring body's or the person's scope of authority.

An NPS, with the approval of its sponsoring body, could employ or contract with

personnel, or enter into a contract with another party to furnish teachers or other personnel, as necessary for the operation of the school, prescribe their duties, and fix their compensation. An NPS could implement and maintain a method of compensation for its employees that was based on job performance, job accomplishments, and job assignment in a subject area or school that was difficult to staff.

In addition to other powers set forth in Part 6D, an NPS could take action to carry out the purposes for which it was incorporated, including all of the following:

- To sue and be sued in its name.
- To acquire, hold, and own in its own name real and personal property, or interests in real or personal property, for educational purposes; and to sell or convey the property as the interests of the NPS required.
- To receive, disburse, and pledge funds for lawful purposes.
- To enter into binding legal agreements with people or entities as necessary for the operation, management, financing, and maintenance of the NPS.
- To incur temporary debt in accordance with certain restrictions in the part.
- To solicit and accept any grants or gifts that would enhance the NPS's educational purposes and to establish or permit the establishment on its behalf of one or more nonprofit corporations for the purpose of assisting the NPS in furthering its public purposes.
- To borrow money and issue bonds in accordance with the Code and the Revised Municipal Finance Act.

Bonds issued under that provision would be full faith and credit obligations of the NPS, pledging the general funds or any other money available for such a purpose.

Duties of Sponsoring Body

The sponsoring body for an NPS would be its fiscal agent. A State school aid payment for an NPS would have to be paid to the sponsoring body, which would then forward the payment to the NPS.

If the sponsoring body were a mayor, the sponsoring body would have to contract with a State public university to act as the fiscal

agent for the NPS and to assist the sponsoring body in an advisory capacity in carrying out its oversight responsibilities. The university could charge a fee to the sponsoring body for those services, not to exceed 30% of the fee that was charged to the NPS by the sponsoring body.

A sponsoring body would have the responsibility to oversee an NPS's compliance with the performance contract and all applicable law, and could not charge a fee for providing oversight of a contract for an NPS in an amount that exceeded 3% of the total State school aid received by the NPS in the year in which the fees or expenses were charged.

A sponsoring body could use that fee for the following:

- Considering applications and issuing or administering performance contracts.
- Compliance monitoring and oversight of NPSs.
- Training for NPS applicants, administrators, and governing boards.
- Technical assistance to and on behalf of NPSs.
- Academic support to NPSs or to their pupils.
- Evaluation of NPS performance.
- Training of teachers in NPSs.
- Other purposes to assist NPSs in achieving improved academic performance.
- Providing information about NPSs to the public and the Legislature.
- Assisting NPSs in fulfilling the requirements of the Code.
- Reasonable administrative costs associated with carrying out its duties.

A performance contract issued under Part 6D could be revoked by the sponsoring body that issued it if the sponsoring body determined that one or more of the following had occurred:

- Failure of the NPS to abide by and substantially meet the educational goals and outcomes set forth in the performance contract.
- Failure of the NPS to maintain applicable health and safety standards.
- Failure of the NPS to meet generally accepted accounting principles.

-- The existence of one or more other grounds for revocation as specified in the contract.

If an NPS's performance contract had been revoked, terminated, or not reissued by a sponsoring body, the NPS corporation would have to transfer to the State any property owned by the NPS that was acquired substantially with State school aid funds. The State Treasurer or his or her designee would be authorized to accept and dispose of this property. The State Treasurer would have to deposit in the State School Aid Fund any money included in that property and the net proceeds from the sale of the property or interests in property, after payment of any debt of the NPS that was secured by the property or interest in property.

If an NPS were a conversion NPS and its performance contract had been revoked, terminated, or not reissued, facilities under its control would revert to the school district that originally had owned the facilities.

A sponsoring body could require an NPS to purchase a surety bond or insurance, or to hold funds in escrow, in an amount determined by the sponsoring body to ensure that sufficient funds existed to provide for the dissolution of an NPS.

Teacher Certification

To the extent required under the NCLB, and except as otherwise provided for a cyber school, an NPS would have to use a certificated teacher to perform a function for which a school district was required under State law to use a certificated teacher.

The Superintendent of Public Instruction would have to establish alternative routes to certification or other approval that would allow teachers to obtain certification or other approval to teach in NPSs by demonstrating proficiency in the grades and subjects that they would teach. The Superintendent would have to establish these alternative routes in cooperation with national organizations whose purpose was to match exemplary recent college graduates and professionals with diverse academic backgrounds with teaching positions in urban and rural schools.

Leave of Absence to Teach in NPS

Upon written request by the employee, the board of a district or ISD would have to grant a leave of absence to an employee to teach in an NPS. A district or ISD could not enter into a collective bargaining agreement unless it allowed an employee of the district or ISD to take such a leave of absence.

If a collective bargaining agreement that would not allow a leave of absence were in effect for employees of a school district or ISD as of the bill's effective date, then these provisions would not apply to the district or ISD until after the collective bargaining agreement expired.

Annual Education Report

Under the Code, if the board of a school district wants all of its schools to be accredited, it must prepare and submit to the State Board an annual education report that includes specified information. Under the bill, that requirement also would apply to the governing body of an NPS.

Background Checks

The Code requires all employees or individuals working under contract in a public school, PSA, or nonpublic school to undergo a criminal history check through the Department of State Police and an FBI criminal records check. A school district, PSA, or nonpublic school may not employ or allow an individual to work under contract at any of its schools if the individual has been convicted of a offense. Under the bill, those requirements also would apply to an employee or individual working under contract in an NPS.

If an official of a school district, PSA, ISD, or nonpublic school has notice from an authoritative source that an individual has been convicted of a listed offense, the board must take steps to verify that information using public records, and if the information is verified, may not employ that individual in any capacity or allow him or her to work regularly and continuously under contract in any of its schools. Under the bill, the governing board of an NPS would be subject to the same requirement.

Before hiring an applicant for employment, a school district, PSA, ISD, or nonpublic school

must request the applicant's current employer, or if the applicant is not currently employed, his or her previous employer to provide any information regarding unprofessional conduct by the applicant. The school district, PSA, ISD, or nonpublic school must request the applicant to sign a statement authorizing his or her former employer or employers to disclose that information. The prospective employer may use information received under that provision only to evaluate an applicant's qualifications for employment in the position for which he or she has applied. Under the bill, those provisions also would apply to an NPS.

The Code requires a person who is employed by, has applied for a position with, or works regularly and continuously under contract in a school district, PSA, ISD, or nonpublic school, and who is charged with any crime specified in the Code, to report to the Department of Education and to the school district, ISD, PSA, or nonpublic school that he or she has been charged with the crime. If a person who is employed by or working regularly and continuously in a school district, ISD, PSA, or nonpublic school enters a plea of guilty or no contest to or is found to be guilty of any crime after having been initially charged with a crime specified in the Code, the person must immediately disclose to the court that he or she is employed by or working regularly and continuously in a school district, ISD, PSA, or nonpublic school. A person who violates these requirements may have his or her contract terminated. Under the bill, these provisions also would apply to an employee, applicant for employment, or person working regularly and continuously under contract at an NPS.

Certification, Continuing Ed Requirements

The board of a school district or ISD generally may not permit a teacher who does not hold a valid teaching certificate to teach in a grade or department of the school, and may not allow an individual to serve in a counseling role unless he or she meets certain certification requirements. The Code permits the board of a district or ISD to engage a noncertificated, nonendorsed teacher to teach certain science, math, or foreign language courses or other courses determined by the State Board to be appropriate in grades 9 through 12, if the teacher has a major or graduate

degree in the field in which he or she will teach and meets certain other requirements. Under the bill, those provisions also would apply to the governing board of an NSP.

The bill also would require a superintendent, principal, assistant principal or other administrator of an NPS to meet the continuing education requirements specified in the Code.

Accreditation

In order for an NPS to be accredited under the Code, its governing board would have to adopt and implement a three- to five-year school improvement plan and continuing school improvement process for the NPS, as is currently required for the board of a school district.

In addition, if the governing board of an NPS wanted the NPS to be accredited, the governing board would have to provide all pupils attending the NPS with a core academic curriculum in compliance with the Code.

Expulsion for Weapon Possession

If a pupil possesses a dangerous weapon in a weapon free school zone, commits arson in a school building or on school grounds, or commits criminal sexual conduct in a school building or on school grounds, the Code requires the school board or its designee to expel the pupil from the school district permanently, subject to possible reinstatement under certain conditions. Under the bill, that provision would not apply to an NPS that was a cyber school.

A school board or administrator that complies with that requirement is not liable for damages for expelling a pupil. Under the bill, the authorizing body of an NPS would not be liable for damages for expulsion of a pupil by the NPS.

Under the Code, if a pupil is enrolled by a public school district-sponsored alternative education program or a PSA during the period of expulsion, the PSA or alternative education program is immediately eligible for the prorated share of either the PSA's or operating school district's foundation allowance or the expelling school district's foundation allowance, whichever is higher. Under the bill, the same provisions would

apply if a pupil were enrolled by an NPS during the period of expulsion.

Senate Bill 637 (S-1)

District Code

The State School Aid Act requires the Department of Education (DOE) to assign a district code to each PSA that is authorized under the Revised School Code and is eligible to receive funding under the Act, within 30 days after a contract is submitted to the Department by the authorizing body of the PSA.

The bill would require the DOE to do the same for each NPS that was granted a performance contract under the Revised School Code and was eligible to receive funding under the Act, within 30 days after a performance contract was submitted to the DOE by the sponsoring body of the NPS.

The Act includes provisions for assigning a district code to a PSA if the DOE fails to assign a code within the 30-day period. Under the bill, those provisions also would apply to an NPS.

Exemptions for Cyber School

Under the bill, any provisions of the Act or a rule promulgated under the Act would be subject to waiver by the Superintendent of Public Instruction, as provided under Senate Bill 636, for an NPS that was a cyber school.

NPS Property

Currently, if a PSA purchases property using money received under the Act, the PSA must retain ownership of the property unless it sells the property at fair market value. Under the bill, that provision also would apply to an NPS.

Property of a PSA that was acquired substantially with funds appropriated under the Act must be transferred to the State by the PSA corporation if the PSA has been ineligible to receive funding under the Act for 18 consecutive months; the PSA's contract has been revoked or terminated; or the PSA's contract has not been reissued by the authorizing body. Under the bill, those provisions also would apply to an NPS, if it were ineligible to receive school aid funding for 18 consecutive months, its performance

contract had been revoked or terminated, or the performance contract had not been reissued by the sponsoring body.

Debt Obligations

Under the bill, any contract, mortgage, loan, or other instrument of indebtedness entered into by an NPS receiving funds under the Act and a third party would not constitute an obligation, either general, special, or moral, of the State or of a sponsoring body. The full faith and credit of the State or any agency of the State, or the full faith and credit of a sponsoring body could not be pledged for the payment of any contract, mortgage, loan, or other instrument of indebtedness entered into by the NPS.

Per-Pupil Allocation

The per-pupil allocation for an NPS would be calculated in the same manner as currently provided for a PSA. The allocation per pupil for pupils enrolled in a PSA is equal to the sum of the local school operating revenue per membership pupil for the district in which the PSA is located and the State portion of that district's foundation allowance, or the State maximum PSA allocation, whichever is less. The per-pupil allocation for a PSA must be adjusted if more than 25% of the pupils residing within a district are members of one or more PSAs. Under the bill, those provisions also would apply to an NPS.

The maximum PSA allocation is calculated based on the highest per-pupil allocation among all PSAs for the preceding State fiscal year, and is adjusted annually based in part on the adjustment made in the basic foundation allowance. Under the bill, the maximum NPS allocation would be calculated in the same manner.

Membership

Under the Act, "membership" means for a district, PSA, university school, or ISD the sum of the following:

- The product of .75 times the number of full-time equated pupils in grades K to 12 actually enrolled and in regular daily attendance on the pupil membership count day for the current school year.

-- The product of .25 times the final audited count from the supplemental count day for the preceding school year.

Under the bill, that definition also would apply to an NPS. For an NPS that was a cyber school and in compliance with Senate Bill 636, a pupil's participation in the cyber school's educational program would be considered regular daily attendance.

A pupil enrolled in an NPS would have to be counted in membership in the NPS.

If a district were the sponsoring body for a new NPS, in the first year in which pupils were counted in membership in the NPS, the district would have to exclude from its pupil count for the immediately preceding supplemental count day any pupils who were counted in the NPS.

If a pupil counted in membership in an NPS also were educated by a district or ISD as part of a cooperative education program, the pupil could be counted in membership only in the NPS unless a written agreement signed by all parties specified otherwise.

For a pupil receiving instruction in both an NPS and a district or ISD but not as part of a cooperative education program, if the NPS provided instruction for at least half of the class hours required under the Act, the NPS would have to receive a prorated share of the full-time equated membership for each of those pupils. If the NPS provided for less than half of the class hours required, the district would receive a prorated share of the full-time equated membership for each of the pupils, and the remainder of the full-time membership would be allocated to the NPS.

If a pupil were enrolled in an NPS on the pupil membership count day, and if the NPS's performance contract were revoked or if the NPS otherwise ceased to operate, if the pupil enrolled in a district within 45 days after the count day, the DOE would have to adjust the district's pupil count to include the pupil.

Allowance for At-Risk Pupils

The Act provides for eligible districts and eligible PSAs to receive an additional allowance to provide at-risk pupils with services, including medical or counseling

services, school health clinics, child and adolescent health centers, and hearing and vision screenings. The amount of the allowance must be based on the number of pupils in the district or academy who met the income eligibility criteria for free breakfast, lunch, or milk in the previous State fiscal year. Under the bill, an NPS would be eligible to receive an additional allowance based on the same criteria.

The Act allocates funds for the purpose of reimbursing districts and ISDs for special education programs, services, and personnel. The amount allocated to a district is calculated based in part on the district's special education pupil membership. Under the bill, the amount allocated to an NPS for that purpose would be calculated in the same manner as for a PSA.

Currently, if a PSA enrolls a pupil who resides outside of the ISD in which the PSA is located and who is eligible for special education programs and services or is a child with disabilities, as defined under the Individuals with Disabilities Act, the provision of special education and services and the payment of additional costs of those programs and services generally are the responsibility of the district and ISD in which the pupil resides. Under the bill, that provision also would apply to an NPS.

Hours of Pupil Instruction

The School Aid Act requires each district to provide at least 1,098 hours of pupil instruction. A district that fails to meet that requirement must forfeit a portion of its total State aid allocation, based on the number of hours the district was in noncompliance.

In providing the minimum number of hours of pupil instruction, a district must use certain guidelines, including restrictions on the number of study halls that may be counted as instruction time, reduced requirements for pupils for whom a reduced schedule is in their best interest, exceptions for students who are unable to receive the required number of hours of instruction because of travel time, and provisions for counting instruction time that is part of a junior reserve officer training corps program.

Under the bill, those requirements would not apply to an NPS that was a cyber school and was in compliance with Senate Bill 636.

Other NPS Requirements

In order for an NPS to receive State aid under the Act, the NPS would have to demonstrate to the satisfaction of the DOE that it had made a good faith effort to advertise, throughout the entire area of the ISD in which the NPS was located, that the NPS was enrolling students and the procedures for applying for enrollment. The DOE could not make any payments to the NPS until it had provided evidence demonstrating compliance with that requirement.

If an NPS were a successor to a nonpublic school and more than 75% of the pupils enrolled in the NPS during its first year of operation were previously enrolled in the nonpublic school, there would be a rebuttable assumption that the NPS did not make the required good faith effort.

A board member of an NPS or NPS corporation would have to abstain from voting on any contract in which he or she had a conflict of interest.

Senate Bill 638

Under the teachers' tenure Act, a teacher must complete a probationary period of four full school years before being granted tenure. After the satisfactory completion of the probationary period, a teacher is considered to be on continuing tenure in that district and must be employed continuously by the controlling board under which the probationary period was completed, and may not be dismissed or demoted except as provided in the Act.

An individual employed as a teacher in a PSA is not considered a teacher during that employment for the purpose of continuing tenure, although if a teacher employed in a PSA is on leave of absence from a school district and was on continuing tenure in the district when he or she began the leave of absence, the teacher retains continuing tenure in that school district during the period he or she is employed in the PSA.

The bill would extend those provisions to an individual employed as a teacher in an NPS.

Senate Bill 639

Under the bill, a collective bargaining agreement between a public school employer and a bargaining representative of its employees could not include decisions concerning the grant of a leave of absence to teach in an NPS.

The bill would revise the definition of "public school employer" to include an NPS established under Part 6D of the Revised School Code.

MCL 380.5 et al. (S.B. 636)
388.1603 et al. (S.B. 637)
38.71 & 38.91 (S.B. 638)
423.201 & 423.215 (S.B. 639)

BACKGROUND

The American Recovery and Reinvestment Act of 2009 provides \$4.35 billion to support the so-called "Race to the Top Fund". Money in the fund is to be distributed to states that adopt education reforms meeting certain requirements. To qualify for a grant, a state must demonstrate that it has made progress in the following areas:

- Improving teacher effectiveness and addressing inequities in the distribution of highly qualified teachers between high- and low-poverty schools.
- Improving the collection and use of data, including a longitudinal data system that meets certain requirements.
- Improving academic content standards and student achievement standards.
- Supporting struggling schools.

The governor of a state must apply for a Race to the Top grant on behalf of the state, and the application must describe the state's progress in each of those four areas and describe how it would use the grant to improve student academic achievement in the state, including how it would allocate the funds to give priority to high-need schools.

The grants are to be distributed in two phases. While specific application dates have not yet been set, the application period for the first phase is expected to be in late 2009, with grants distributed early in 2010. The second phase is expected to begin early in 2010, with awards distributed later that year. States that do not apply in the first phase, or that apply but are not awarded

grants, may apply or reapply in the second phase.

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

The bills would enable teachers and parents to have a greater say in the operation of currently failing schools. Schools that have failed to meet the standards set under the No Child Left Behind Act might suffer from dysfunctional or ineffective administration, and members of the community or teachers within the school can feel helpless to make a substantial difference in that context. The bills would offer two possible solutions in these situations: A new NPS could be created to provide an alternative venue for students in the failing school, or the existing school could be converted into an NPS. Removing a school from a failing district and establishing a separate administration could help to break the cycle of poor performance, by giving educators the latitude to explore alternative ways of teaching students, and by giving parents a voice in the school system. Many parents or other members of a community are willing to commit time to help improve schools, but currently many districts are unable to take full advantage of the resources that those individuals offer. The formation of an NPS would reconnect the school with the community, helping to ensure that the curriculum was aligned with the students' needs, and enhancing the communication between parents, teachers, and administrators.

The bills also would provide additional flexibility to experiment with modes of teaching. A cyber school, for example, could help reach children in new ways and engage them with new technology. The development of conferencing equipment and web-based instruction means that students and teachers no longer have to be in the same physical location, but very few schools have embraced the possibilities offered by those technological advances. The bills would give an NPS the opportunity to take advantage of those options, while holding it accountable for meeting its stated objectives.

Other states have established independent schools that have been very successful using unconventional approaches. The Minnesota New Country School, for example, uses a project-based curriculum, which engages students in active learning and incorporates content from multiple disciplines in an applied environment. The curriculum is designed to meet the Minnesota State Standards, as well as to help students develop complex reasoning skills and investigate academic problems in an independent environment. Both parents and faculty have a significant role in shaping the curriculum and designing the school environment. The bills would permit the creation of similar innovative schools in Michigan, in communities where the current schools are not meeting students' needs.

Supporting Argument

The bills would help the State qualify for a grant from the Race to the Top Fund, by demonstrating that Michigan is taking serious steps to improve its failing schools. Such a grant could be used to invest in additional school improvements, further increasing the prospects for students in currently failing schools.

Opposing Argument

The NPSs proposed under the bills would be similar in concept to charter schools, and would raise many of the same problems for existing districts. By pulling students out of an already struggling school district, an NPS could weaken the district's finances, creating an unsustainable situation and leaving the remaining students in an even worse position. The bills would do nothing to address the underlying causes of failure in the struggling districts, but simply would allow the creation of alternative schools that could offer better results for some students, or not, while weakening the system as a whole. It would be preferable to implement comprehensive reform that would help all students achieve success in the public schools.

Opposing Argument

Although much attention has been focused on poorly performing schools, the bills would not provide any standard for determining if a school was eligible to be converted to an NPS. Instead, the bills would permit the conversion of any school to an NPS, regardless of its performance. There

should be some restrictions specifying that only failing schools could be converted.

Also, in some cases, a well organized minority could push for conversion against the will of the majority of parents, particularly because turnout is often low at school district elections. If only 10% of parents showed up at the polls, for example, then 6% of the parents could decide to convert the school to an NPS regardless of the wishes of the other 94%. The bills should require the approval of a majority of parents in the district, rather than just those who voted, to convert a school to an NPS.

Response: The provisions for holding a referendum to convert a school to an NPS are similar to those for approving school millages and electing school board members. Traditionally, a majority of votes cast is necessary to decide those questions. All parents in a district would be free to participate in an election, and whether they chose to do so would be up to them. In addition to the vote of the parents, a majority of teachers working in the school would have to approve the conversion. The bills also would require the approval of a sponsoring body willing to issue a performance contract to the NPS, which would be unlikely to occur without public support. Those provisions would act as safeguards to prevent a school from being converted against the general will of the public.

Legislative Analyst: Curtis Walker

FISCAL IMPACT

State: To the extent that the creation of neighborhood public schools, conversion schools, or cyber schools yielded more students who were either retained in school or brought back into the public school system when they otherwise would have dropped out, the State would incur higher school aid budget costs, equal to the number of these students multiplied by the per-pupil foundation allowance. To the extent that students in public schools simply transferred from one school to another, there would be no State costs, though individual school districts' finances would be affected by the pupil migration.

The Department of Education would incur costs in administering the additional contract applications, similar to costs incurred now by

the Charter Schools unit at the Department. In addition, the Department would see increased costs with the requirement to establish alternative routes to certification or other approval that would allow teachers to obtain certification or other approval to teach in neighborhood public schools.

Local: As mentioned above, local school districts whose pupils decided to transfer to a new neighborhood public school would see declining revenue based on how many students transferred. This is similar to the phenomenon that exists under current law with respect to public school academies (i.e., charter schools). Also, the requirement that local school districts grant their employees leaves of absence, if those employees wanted to teach at one of the newly created schools, could create a personnel (and, therefore, cost) issue until new staff were hired to replace those on leave.

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.