

Legislative Analysis



COUNTING OF PUPIL INSTRUCTION TIME FOR VIRTUAL LEARNING COURSES

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House Bill 5392

Sponsor: Rep. Margaret O'Brien

Committee: Education

Complete to 2-14-12

A SUMMARY OF HOUSE BILL 5392 AS INTRODUCED 2-9-12

The bill would amend Section 101 of the State School Aid Act. That provision describes in some detail what schools must do to be eligible to receive state aid. One of the requirements is that a district must provide 1,098 hours of pupil instruction. For the 2011-2012 school year, the required minimum number of days of pupil instruction is 165 days; for 2012-2013, the number is 170 days. With some exceptions, the failure to meet the required hours and days of instruction results in a loss of a portion of state aid. The section, however, allows a district to apply for a waiver to the Superintendent of Public Instruction for a department-approved alternative education program or another innovative program approved by the department. This is referred to as a seat time waiver. House Bill 5392 would eliminate this waiver process.

The bill would specify instead that the district in which a student is counted in membership would determine the student's attendance at school or participation in instruction, and would determine the number of hours and days of student instruction offered to the student. The district, as now, would have to maintain records to substantiate its compliance with certain requirements, including that it offers the minimum hours and days of student instruction.

The Superintendent of Public Instruction must promulgate rules to implement the hours and days requirements and, under the bill, would have to ensure that the rules treat a student's documented participation in online learning or another distance learning delivery method the same as the student's documented attendance at a school building for the purposes of determining hours and days of public instruction.

MCL 388.1701

FISCAL IMPACT:

The bill would have an indeterminate fiscal impact on the state and school districts, given that it is unclear how it would be implemented by local districts, intermediate school districts, and the Department of Education.

The hours and days of instruction requirement partially determines the amount of state aid payment districts receive, with districts providing less than the required instructional time receiving a prorated payment. By eliminating the seat time waiver, districts would

be impacted to the extent that existing programs operating under a seat time waiver would no longer meet the minimum hours requirement (reducing state aid payments). Alternatively, with the elimination of seat time waivers, districts could alter programs that operated under a seat time waiver in order to provide for the continued instruction of seat-time-waiver pupils, potentially requiring additional expenditures. To ensure compliance with the minimum instruction hours requirement, Intermediate School Districts (ISDs) and the Department of Education could need additional resources as well.

The bill eliminates the seat-time waiver process. The State School Aid Act generally requires that school districts provide at least 1,098 hours of instruction and a minimum number of days of instruction.¹ However, the act provides that the state Superintendent of Public Instruction (SPI) may waive the minimum hour and day requirement for districts operating alternative education programs or other innovative programs. This waiver is known as the "seat time waiver".² It is through a seat time waiver that districts may provide expanded and full-time online learning options to students beyond the limits of virtual and distance learning courses specified in the department's pupil accounting rules.³

However, the seat-time waiver does not solely apply to virtual learning opportunities, with the department noting "[o]nline is considered to be the primary method of delivery for instruction used by seat time waiver programs; however, the Department recognizes that methods other than virtual learning can be approved as seat time waiver programs. Technology using interactive television shall also serve as an appropriate means of instructional activity."⁴

For the 2011-12 school year, the department expanded the availability of seat time waivers, allowing districts operating under a seat time waiver to operate any (or all) of four types of programs: (1) the Genesee ISD seat time waiver program, GENNET⁵; (2) an ISD-led seat time waiver consortium program; (3) an individual district-designed seat time waiver program; or (4) a blended learning option.⁶ According to Department of Education data, as of December 22, 2011, nearly 220 school districts had approved seat time waivers for the 2011-12 school year, with 144 of those districts operating under the Genesee ISD statewide seat time waiver.⁷

¹ The 1,098-hour requirement applies to grades 1-12. Currently a full-time kindergarten pupil must have at least half (549) of the minimum required instruction hours for grade 1-12 pupils. The minimum number of days required is 165 in 2011-12, increasing to 170 beginning in 2012-13. See Section 2 (Days and Hours of Pupil Instruction) of the Pupil Accounting Manual, http://www.michigan.gov/documents/mde/Section-2_250846_7.pdf.

² See Section 5-O-B (Seat Time Waiver) of the Pupil Accounting Manual, http://www.michigan.gov/documents/mde/5-O-B_SeatTimeWaivers_329678_7.pdf.

³ Rule 11 (R 340.11) of the department's pupil accounting rules provides that self-schedule virtual learning courses taken at a pupil's self-scheduled time and place (with no daily attendance requirement) require an on-site mentor (certified teacher) to monitor the student's progress. The rule only permits up to 2 self-scheduled virtual learning courses to be used to determine the full-time equivalency of the student. The rule also permits up to 2 virtual learning courses taken during the school day. A seat time waiver essentially waives these requirements.

⁴ See Section 5-O-B (Seat Time Waiver) of the Pupil Accounting Manual.

⁵ <http://gennetonline.geneseeisd.org/default.htm>.

⁶ Department of Education memorandum "Streamline Process for Approving Seat Time Waivers" July 7, 2011, [http://techplan.edzone.net/STW/OEII%20STW%20memo%20070711\(4\).pdf](http://techplan.edzone.net/STW/OEII%20STW%20memo%20070711(4).pdf).

⁷ <http://techplan.edzone.net/STW/STW%20Basic%20List%20of%20approvals%2012-11.xls>

The key feature of the seat time waiver is that it enables alternative education and other innovative programs to provide less than the minimum number of required hours and days of instruction. However, in repealing the authority for the Superintendent of Public Instruction to grant seat time waivers, those districts would now be required to provide the minimum required hours and days of instruction. This change would have a programmatic and budgetary impact on school districts, if districts were to increase instructional hours. Additionally, the School Aid Act provides that districts that fail to provide the minimum required days and hours of instruction will have their state school aid payments subject to proration, with the prorated amount deducted from the district's first (October) school aid payment payable in the following fiscal year.

The bill provides that the district in which a pupil is counted in membership would determine the pupil's attendance at school or participation in instruction and would determine the number of hours and days of pupil instruction offered to the pupil. It's not clear whether this provision is intended to supersede any basic requirements set forth by the department on what constitutes the 1,098-hour requirement. The department's pupil accounting rules include a lengthy list of requirements defining what constitutes pupil instruction time. That list includes, among other things, instructional time as part of a JROTC program, a homeroom period lasting not more than 15 minutes, up to 30 minutes per day between class periods, and a recess of a reasonable duration if supervised by a certified teacher.⁸

To the extent that the bill permits districts to self-determine instructional hours below what constitutes the current 1,098 hour requirement, School Aid expenditures would increase, as state school aid payments to those districts providing less than 1,098 hours of instruction (unless subject to a seat time waiver) would be subject to proration under current law but not under the bill. (Essentially, the bill could permit districts to determine what constitutes 1,098 hours in such a way that, if current law and current pupil accounting rules applied, it would not constitute 1,098 hours.)

In allowing districts to determine attendance and participation, the bill would impose additional requirements on intermediate school district (ISD) pupil accounting audit staff, as what constitutes instructional times would vary to a greater extent among districts. The State School Aid Act (MCL 388.1618) requires districts and ISDs to have an audit of its pupil accounting records conducted at least annually. Pupil audits are necessary to ensure the accuracy and reasonableness of districts' FTE membership counts, upon which state school aid payments are based. The department would be impacted as well, as its staff conduct desk reviews and quality control reviews of pupil audits.

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

⁸ See Rule 10 (R 340.10) of the department's pupil accounting rules and Section 2 of the Pupil Accounting Manual.