



Telephone: (517) 373-5383
Fax: (517) 373-1986
TDD: (517) 373-0543

Senate Bill 620 (as introduced 9-7-11)
Sponsor: Senator Dave Robertson
Committee: Education

Date Completed: 9-13-11

CONTENT

The bill would add Part 6D to the Revised School Code to provide for the organization and administration of conversion schools, which would be public schools previously operated by a school district and converted under a contract issued by an authorizing body. The bill would do the following:

- Require a petition to convert a school to be signed by at least 51% of the teachers at that school or at least 51% of the parents or guardians of pupils at the school.
- Require an application to convert a school to be submitted to the board of the school district that included the school and, if that board did not approve the application, allow it to be submitted to another authorizing body.
- Specify provisions that a contract would have to contain, including the school's educational goals and the methods that would be used to hold the school accountable.
- Require the goals to include demonstrated improved academic achievement for all groups of pupils, as well as a graduation rate and average attendance of at least 80% by the last year of the contract.
- Provide that a conversion school would not be subject to the collective bargaining agreements of a school district.
- Require a conversion school to use certificated teachers except as provided for a school authorized by a university or community college.

- Require a conversion school authorized by a school district to be located in the school that was converted and prohibit the district from charging rent, but make the school financially responsible for maintaining the facilities.
- Allow an authorizing body to revoke a conversion school's contract under certain circumstances and to take corrective measures to avoid revocation.
- Allow an authorizing body to charge a fee of up to 3% of a conversion school's total State school aid for overseeing the school's contract.
- Prohibit a conversion school from levying any taxes, but specify that a school district's operation of a conversion school would not affect the district's ability to levy taxes.
- Prohibit a conversion school from charging tuition or discriminating in its pupil admissions.
- Allow a conversion school to limit admission to pupils within a particular age range or grade level, but require it to include all of the grades offered before the conversion.

The bill also would include a school operated by a conversion school corporation in the Code's definition of "public school", and would include a conversion school in the definition of "public school academy".

The bill is tie-barred to Senate Bills 618, 619, 621, and 624. Senate Bill 618 would

make changes in the Revised School Code concerning the formation, operation, and termination of public school academies, urban high school academies, and schools of excellence, and would allow school districts to contract with other entities for the provision of teachers. Senate Bill 619 would amend the Code to delete the limit on the number of cyber schools that may be formed, and revise requirements for cyber schools. Senate Bill 621 would make changes in the State School Aid Act concerning the provision of State aid for the instruction of nonpublic students by public schools. Senate Bill 624 would amend that Act to delete the geographic requirement for school of choice participation. All of those bills are tie-barred to Senate Bill 620.

Senate Bill 620 is described in detail below.

Legal Status; Organization

A conversion school would be a public school under Article VIII, Section 2 of the State Constitution (which requires the State to maintain a system of free public elementary and secondary schools), would be a school district for the purposes of Article IX, Section 11 of the Constitution (which established the State School Aid Fund) and for the purposes of borrowing money and issuing bonds, and would be subject to the general supervision of the State Board of Education. A conversion school would be a body corporate and a governmental agency.

A conversion school corporation would have to be organized under the Nonprofit Corporation Act, but would not be required to comply with certain requirements of that Act that deal with education corporations and educational foundations.

To the extent disqualified under the State or U.S. Constitution, a conversion school 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.

A conversion school would be presumed to be legally organized if it had exercised the franchises and privileges of a conversion school for at least two years.

A conversion school would have to be organized and administered under the

direction of a board of directors in accordance with Part 6D and bylaws adopted by the board.

Contract Application

Any of the following could act as an authorizing body to issue a contract to organize and operate a conversion school:

- The board of a school district.
- An intermediate school board.
- The board of a community college.
- The governing board of a State public university.
- Two or more of those entities exercising power, privilege, or authority jointly pursuant to an interlocal agreement under the Urban Cooperation Act.

To obtain a contract to convert a public school operated by a school district to a conversion school, one or more people or a legal entity would have to apply to the school district and submit to the board of the district an application and a petition signed by at least 51% of the teachers employed by the school district at the school to be converted and/or at least 51% of the parents or legal guardian of the pupils enrolled in the school. The board would have to consider the petition and approve or deny it within 60 days. If the board denied the petition, it would have to issue a letter of denial to the applicant.

If the school board did not approve the application within 60 days after the application and petition had been submitted, the applicant could submit the application to another authorizing body, which could issue a contract.

The application for a contract would have to contain information specified in the bill, including the proposed articles of incorporation; a copy of the proposed bylaws; descriptions of staff responsibilities; and an agreement that the conversion school would comply with Part 6D and, subject to provisions of the part, with all other State law applicable to public bodies and with Federal law applicable to public bodies or school districts.

The application also would have to contain documentation meeting the requirements of the authorizing body, if any, including at least all of the following:

- The governance structure of the conversion school.
- A copy of the school's educational goals, the curriculum to be offered, and the methods of pupil assessment to be used.
- The admission policy and criteria to be maintained by the school.
- The school calendar and school day schedule.
- The age or grade range of pupils to be enrolled, which would have to include at least all of the grades that were previously operated by the school that was converted.

The educational goals would have to include demonstrated improved pupil academic achievement for all groups of pupils and the specific goals required to be in the contract under Part 6D (described below). To the extent applicable, the progress of the pupils in the school would have to be assessed using at least a Michigan Education Assessment Program (MEAP) test or the Michigan Merit Exam.

Authorizing Body Responsibilities; Authority

An authorizing body would have to oversee, or contract with an intermediate school district (ISD), community college, or State public university to oversee, the board of directors of each conversion school operating under a contract issued by the authorizing body. The authorizing body also would be responsible for overseeing compliance by the board of directors with the contract and all applicable law.

If the Superintendent of Public Instruction found that an authorizing body (other than the school district that previously operated the conversion school) was not engaging in appropriate continuing oversight of one or more boards of directors of conversion schools, the Superintendent could suspend the power of the authorizing body to issue new contracts to organize and operate conversion schools. A contract issued by the authorizing body during the suspension would be void. A contract issued before the suspension would not be affected.

An authorizing body could not charge a fee, or require reimbursement of expenses, for considering an application for a contract, issuing a contract, or providing oversight of a contract for a conversion school, in an amount that exceeded a combined total of

3% of the total State school aid received by the school in the school year in which the fees or expenses were charged. An authorizing body could provide other services for a conversion school and charge a fee for them, but could not require such an arrangement as a condition of issuing the contract.

An authorizing body would have to adopt a resolution establishing the method of selection, length of term, and number of members of the board of directors of each conversion school subject to its jurisdiction.

An authorizing body that issued a conversion school contract also would have to do the following:

- Develop a process for holding the school's board of directors accountable for meeting applicable academic performance standards set forth in the contract and for implementing corrective action for a school that did not meet the standards.
- Take necessary measures to ensure that the school board operated independently of any educational management company involved in the school's operations.
- Oversee and ensure that the school's pupil admission process was operated in a fair and open manner and was in compliance with the contract and Part 6D.
- Ensure that the school board maintained and released information as necessary to comply with applicable law.

The authorizing body for a conversion school would be its fiscal agent. A State school aid payment for the school would have to be paid to the authorizing body, which would have to forward the payment to the school.

The decision of an authorizing body to issue, not issue, or reconstitute a contract under Part 6D, or to terminate or revoke a contract, would be solely within the discretion of the authorizing body, would be final, and would not be subject to review by a court or any State agency. The authorizing body would not be liable for that action to the conversion school, the conversion school corporation, a pupil of the school, the parent or guardian of a pupil of the school, or any other person.

Contract Issuance; Contents

An authorizing body would not be required to issue a contract to any person or entity. Conversion school contracts would have to be issued on a competitive basis taking into consideration the resources available for the proposed school, the population to be served by it, and the educational goals to be achieved by the school.

Within 10 days after issuing a contract for a conversion school, the authorizing body would have to submit a copy of it to the Superintendent of Public Instruction.

A contract would have to contain at least all of the following:

- The educational goals the school was to achieve and the methods by which it would be held accountable.
- A description of the method to be used to monitor compliance by the school's board of directors with applicable law and its performance in meeting its targeted educational objectives.
- A description of the process for amending the contract during its term.
- Procedures for revoking the contract and grounds for revocation, including at least those listed in the bill.
- Requirements and procedures for financial audits, which would have to be conducted at least annually by a certified public accountant.
- The term of the contract and a description of the process and standards for renewing it, including increases in pupil academic achievement for all groups of pupils.
- A requirement that the board ensure compliance with Public Act 317 of 1968 (which governs contracts between public servants and public entities).
- A requirement that the board prohibit specifically identified family relationships between board members, individuals with an ownership interest in an educational management organization involved in the school's operation, officers or employees of such an organization, and employees of the school.
- A requirement that the board make information concerning its operation and management available to the public and to the authorizing body in the same

manner as required by State law for school districts.

- A provision requiring the authorizing body to review, and allowing it to disapprove, any agreement between the board and an educational management organization before the agreement was final and valid.
- A requirement that the board prohibit any individual from being employed by the school in more than one full-time position and simultaneously being compensated at a full-time rate for each of those positions.
- A requirement that the board, if requested, report to the authorizing body the total compensation for each individual working at the school.

The contract also would have to require the board to collect, maintain, and make available to the public and the authorizing body at least all of the following information concerning the school's operation and management:

- A copy of the contract.
- A list of currently serving board members; copies of policies approved by the board; board meeting agendas and minutes; a copy of the budget approved by the board; and copies of bills paid for \$10,000 or more.
- Quarterly financial reports submitted to the authorizing body.
- A current list of teachers and administrators working at the school, including their individual salaries, and copies of teaching or school administrator's certificates or permits.
- Evidence of compliance with the criminal background and records checks and unprofessional conduct check required under the Code for all teachers and administrators working at the school.
- Curriculum documents and materials given to the authorizing body.
- Copies of any management contracts or services contracts approved by the board.
- Copies of facility leases or deeds, or both, and of any equipment leases.
- All health and safety reports and certificates.
- Any management letters issued as part of the annual financial audit.
- Any other information specifically required under the Code.

In addition, the contract would have to require the board to demonstrate all of the following to the satisfaction of the authorizing body with regard to its pupil admission process:

- That the school had made a reasonable effort to advertise its enrollment openings.
- That the school had made additional efforts (described in the bill) to recruit pupils who were eligible for special education programs and services or English-as-a-second-language services.
- That the open enrollment period for the school lasted at least two weeks and included some evening and weekend times.

Educational Goals

The educational goals of a conversion school would have to include demonstrated improved pupil academic achievement for all groups of pupils and specific goals for improvement in pupil performance that the school would have to meet. The goals also would have to include a provision that, if the performance improvement goals were not met, the contract would be revoked and management of the school would be returned to the school district.

The goals would have to include that, by the last year of the contract, at least 80% of the school's pupils would graduate from high school or be determined to be on track to graduate, and the school would have at least 80% average attendance as determined by the Department of Education.

To the extent applicable, pupil performance would have to be assessed using at least a MEAP test or the Michigan Merit Exam.

Enrollment

A conversion school could not charge tuition or discriminate in its pupil admissions policies or practices on the basis of intellectual or athletic ability, measures of achievement or aptitude, status as a student with a disability, or any other basis that would be illegal if used by a school district. A conversion school, however, could limit admission to pupils who were within a particular range of age or grade level or on any other basis that would be legal if used by a school district.

Except for a foreign exchange student who was not a U.S. citizen, a conversion school could not enroll a pupil who was not a resident of Michigan. For a conversion school authorized by a school district or ISD, enrollment could be open to all State residents who met the admission policy, and would have to be open to all pupils residing within the geographic boundaries, if any, of the school district and ISD authorizing body who met the admission policy. For a conversion school authorized by a community college or public university, enrollment would have to be open to all State residents who met the admission policy.

Subject to the following provisions, if there were more applications to enroll in a conversion school than spaces available, a random selection process would have to be used to select pupils to attend.

A conversion school would have to give enrollment priority to a pupil who was previously enrolled in the school that was converted or who resided in the attendance area for that school as established by the school district.

A conversion school could give enrollment priority to any of the following:

- A sibling of a pupil enrolled in the school.
- A pupil who transferred to the conversion school from another public school pursuant to a matriculation agreement between the two schools that provided for this enrollment priority, if specified requirements were met.
- A child of a person who was employed by or at the conversion school or who was on its board of directors.

A conversion school would have to allow any pupil who was enrolled in the school in the previous school year to enroll in the appropriate grade, unless the school did not offer that grade.

Grades Offered

A conversion school could include any grade up to grade 12 or any configuration of those grades, including kindergarten and early childhood education, as specified in its contract. A conversion school would have to include all of the grades that were previously operated by the school that was converted.

If specified in its contract, a conversion school also could operate an adult basic education program, adult high school completion program, or general education development testing preparation program.

The authorizing body could approve a contract amendment with respect to ages of pupils or grades offered.

Conversion School Facilities

If a conversion school were authorized by the board of a school district, the conversion school would have to be located at the school that was converted; the board of the school district would continue to own the school building but could allow the educational management organization that was operating the school to control the building. The school district could not charge the conversion school rent for the facilities, but the school 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 as they were in when acquired by the conversion school.

If a conversion school were authorized by another authorizing body, the school would have to be located within the school district that operated the school that was converted, and could be located at the school that was converted under an agreement with the school district.

Employer; Collective Bargaining

If a conversion school were authorized by the board of the school district that operated the school that was converted, the school district would be the employer of the employees regularly working at the conversion school, but the school and its employees would not be subject to collective bargaining agreements that applied to employees of the school district employed in similar classifications in schools that were not conversion schools.

If a conversion school were authorized by an authorizing body other than the board of the school district that had operated the school, the school district would not be the employer of employees regularly working at the conversion school and the school and those employees would not be subject to a

collective bargaining agreement with the school district.

Teachers; Teaching Techniques

Except as otherwise provided by law, a conversion school would have to use certificated teachers according to State Board rule.

A conversion school authorized by a public university or community college could use noncertificated individuals to teach as follows:

- A school authorized by a university could use as a classroom teacher in any grade a faculty member who was employed full-time by the university and who had been granted institutional tenure, or had been designated as being on tenure track, by the university.
- A school authorized by a community college could use as a classroom teacher a full-time member of the college faculty who had at least five years' experience at the college in teaching the subject matter that he or she taught at the conversion school.
- A noncertificated individual could be used in any other situation in which a school district was permitted under the Code to use noncertificated teachers.

A conversion school could develop and implement new teaching techniques or methods or significant revisions to known teaching techniques or methods, and would have to report them to the authorizing body and the State Board to be made available to the public. A conversion school could use any instructional technique or delivery method that a school district could use.

Contract Revocation; Corrective Measures

An authorizing body could revoke a contract issued under Part 6D if the authorizing body determined that any of the following had occurred:

- The conversion school failed to demonstrate improved pupil academic achievement for all groups of pupils or to meet the educational goals set forth in the contract.
- The school failed to comply with all applicable law.

- The school failed to meet generally accepted public sector accounting principles and demonstrate sound fiscal stewardship.
- There existed any other grounds for revocation specified in the contract.

Before revoking a contract, the authorizing body could consider and take corrective measures to avoid revocation. It could reconstitute the school in a final attempt to improve pupil educational performance or to avoid interruption of the educational process. An authorizing body would have to include a reconstituting provision in the contract that identified these corrective measures, including canceling a contract with an educational management organization, withdrawing approval of an employment contract, or appointing a new board of directors or a trustee to take over operation of the school.

If an authorizing body revoked a contract, it would have to work with a school district or another public school, or both, to ensure a smooth transition for the affected pupils. If the revocation occurred during the school year, the authorizing body, as fiscal agent, would have to return to the State Treasurer any school aid funds it held that were attributable to the affected pupils, for deposit in the State School Aid Fund. The State Treasurer would have to distribute funds to the public school in which the pupils enrolled after the revocation according to a methodology established by the Department of Education and the Center for Educational Performance and Information.

Except for a conversion school that was an alternative school serving a special student population, if the Superintendent of Public Instruction determined that a conversion school site that had been operating for at least four years was among the lowest-achieving 5% of all public schools in the State, was in year two of restructuring sanctions under the No Child Left Behind Act, excluding the individualized education plan subgroup, and was not currently undergoing reconstitution, the Superintendent would have to notify the authorizing body. The authorizing body then would have to amend the conversion school's contract to eliminate the school's authority to operate the existing age and grade levels at the site and the school would have to cease operating those age and

grade levels, effective at the end of the school year. If the conversion school operated at only one site, the authorizing body would have to revoke the school's contract, effective at the end of the school year.

Applicable Law; Immunity; Taxation

A conversion school would be required to comply with all applicable law, including the following:

- The Open Meetings Act.
- The Freedom of Information Act.
- The public employment relations Act.
- Public Act 166 of 1965 (the prevailing wage law).

A conversion school also would have to comply with the following sections of the Revised School Code:

- Section 1134 (which deals with tagging the records of missing students).
- Section 1135 (which requires proof of identity of enrolled students).
- Section 1146 (which pertains to single-gender schools or classes).
- Section 1153 (which allows bilingual programs).
- Sections 1263(3) and 1267 (which deal with the construction of school buildings).
- Section 1274 (which pertains to the procurement of supplies and equipment).

A conversion school and its incorporators, board members, officers, employees, and volunteers would have governmental immunity as provided in Section 7 of the governmental immunity law (which extends immunity to employees, officers, and volunteers of a governmental agency for conduct that does not amount to gross negligence). An authorizing body and its board members, officers, and employees would be immune from civil liability for an act or omission in authorizing a conversion school if the body or person acted or reasonably believed he or she acted within the body's or person's scope of authority.

A conversion school would be exempt from all taxation on its earnings and property. Instruments of conveyance to or from a conversion school would be exempt from all taxation. Property occupied by a conversion

school and used exclusively for educational purposes would be exempt from real and personal property taxes.

A conversion school could not levy ad valorem property taxes or another tax for any purpose. The operation of one or more conversion schools by a school district or ISD, however, would not affect the ability of the school district or ISD to levy ad valorem property taxes or another tax.

If a school district or ISD applied for and obtained a contract to operate one or more conversion schools, the power of the district or ISD to levy taxes for any purpose under the Code would not be affected by the operation of a conversion school by the district or ISD. Revenue from taxes levied by a school district or ISD or bonds it issued could be used to support the operation or facilities of a conversion school operated by the district or ISD in the same manner as it could use that revenue to support school district or ISD operations and facilities.

Part 6D would not impose any liability on the State or on an authorizing body for any debt incurred by a conversion school.

Personnel; Benefits

With the approval of its authorizing body, a conversion school could employ or contract with personnel as necessary for the operation of the school, prescribe their duties, and set their compensation.

If the board of directors of a conversion school provided medical, optical, or dental benefits to employees and their dependents, the board would have to do so in accordance with the Public Employees Health Benefit Act and would have to comply with that Act.

MCL 380.3 et al.

Legislative Analyst: Suzanne Lowe

FISCAL IMPACT

State: Unless the conversion of existing schools into "conversion schools" resulted in a net increase in student enrollment (which would result in increased State costs), there would be no fiscal impact on the State under this legislation.

Local: For each local school building that was reorganized as a conversion school, the district in which that school building was a part would see a reduction in revenue, unless the district was the authorizing body of the conversion school. In instances where the authorizing body was not the local district, the reduction in revenue would be equal to the number of students previously enrolled in the school building that converted, multiplied by the district's foundation allowance. Clearly, then, the new conversion school would be the recipient of that revenue, less a 3% administrative oversight fee paid to the authorizer.

Also, the proposed legislation would require that employees of the conversion school not be part of the collective bargaining agreements in place for other employees in the district. This would allow the board of the conversion school to set wages and benefits at levels other than those specified by existing collective bargaining agreements. There would be a fiscal impact if the wages and benefits offered to employees at the conversion school differed from those in place before the school was converted. In addition, conversion schools not authorized by local districts would be given the ability to use noncertificated teachers, which, depending on the wages and benefits offered, could result in fiscal implications when compared to the hiring of certificated teachers.

Finally, employees at the conversion schools would not be part of the Michigan Public School Employees' Retirement System (MPSERS). Each time membership within that system declines (due to privatization, retirements, conversion schools, etc.), the cost of the existing accrued unfunded liabilities is spread among remaining payrolls of all participating entities, and the contribution percentages remitted by the remaining payrolls increase. Therefore, the resulting fiscal implications are not uniform. Districts in which a lot of their school buildings converted would see a relative gain compared to districts that did not (by losing payroll subject to MPSERS retirement contribution rates). Again, the unfunded liabilities are a fixed number, to be paid off by spreading the cost over total payroll. When MPSERS payroll declines in a nonuniform fashion, entities or their payrolls remaining in the system will be adversely

affected by having to pay for the liabilities that were stranded by the payrolls that exited the system.

Fiscal Analyst: Kathryn Summers

S1112\sb620sa.

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.