

# HOUSE BILL No. 5392

February 9, 2012, Introduced by Reps. O'Brien, McMillin, Nesbitt, Shaughnessy, Price, Lyons, Franz, MacGregor, Hooker, Pscholka and Genetski and referred to the Committee on Education.

A bill to amend 1979 PA 94, entitled  
"The state school aid act of 1979,"  
by amending section 101 (MCL 388.1701), as amended by 2010 PA 110.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1       Sec. 101. (1) To be eligible to receive state aid under this  
2 act, not later than the fifth Wednesday after the pupil membership  
3 count day and not later than the fifth Wednesday after the  
4 supplemental count day, each district superintendent shall submit  
5 to the center and the intermediate superintendent, in the form and  
6 manner prescribed by the center, the number of pupils enrolled and  
7 in regular daily attendance in the district as of the pupil  
8 membership count day and as of the supplemental count day, as  
9 applicable, for the current school year. In addition, a district  
10 maintaining school during the entire year, as provided under  
11 section 1561 of the revised school code, MCL 380.1561, shall submit

1 to the center and the intermediate superintendent, in the form and  
2 manner prescribed by the center, the number of pupils enrolled and  
3 in regular daily attendance in the district for the current school  
4 year pursuant to rules promulgated by the superintendent. Not later  
5 than the seventh Wednesday after the pupil membership count day and  
6 not later than the seventh Wednesday after the supplemental count  
7 day, the district shall certify the data in a form and manner  
8 prescribed by the center and file the certified data with the  
9 intermediate superintendent. If a district fails to submit and  
10 certify the attendance data, as required under this subsection, the  
11 center shall notify the department and state aid due to be  
12 distributed under this act shall be withheld from the defaulting  
13 district immediately, beginning with the next payment after the  
14 failure and continuing with each payment until the district  
15 complies with this subsection. If a district does not comply with  
16 this subsection by the end of the fiscal year, the district  
17 forfeits the amount withheld. A person who willfully falsifies a  
18 figure or statement in the certified and sworn copy of enrollment  
19 shall be punished in the manner prescribed by section 161.

20 (2) To be eligible to receive state aid under this act, not  
21 later than the twenty-fourth Wednesday after the pupil membership  
22 count day and not later than the twenty-fourth Wednesday after the  
23 supplemental count day, an intermediate district shall submit to  
24 the center, in a form and manner prescribed by the center, the  
25 audited enrollment and attendance data for the pupils of its  
26 constituent districts and of the intermediate district. If an  
27 intermediate district fails to submit the audited data as required

1 under this subsection, state aid due to be distributed under this  
2 act shall be withheld from the defaulting intermediate district  
3 immediately, beginning with the next payment after the failure and  
4 continuing with each payment until the intermediate district  
5 complies with this subsection. If an intermediate district does not  
6 comply with this subsection by the end of the fiscal year, the  
7 intermediate district forfeits the amount withheld.

8 (3) Except as otherwise provided in subsection ~~(11)~~, **(10)**, all  
9 of the following apply to the provision of pupil instruction:

10 (a) Except as otherwise provided in this section, each  
11 district shall provide at least 1,098 hours and, beginning in 2010-  
12 2011, the required minimum number of days of pupil instruction. For  
13 2010-2011 and for 2011-2012, the required minimum number of days of  
14 pupil instruction is 165. Beginning in 2012-2013, the required  
15 minimum number of days of pupil instruction is 170. However,  
16 beginning in 2010-2011, a district shall not provide fewer days of  
17 pupil instruction than the district provided for 2009-2010. ~~A~~  
18 ~~district may apply for a waiver under subsection (9) from the~~  
19 ~~requirements of this subdivision.~~

20 (b) Except as otherwise provided in this act, a district  
21 failing to comply with the required minimum hours and days of pupil  
22 instruction under this subsection shall forfeit from its total  
23 state aid allocation an amount determined by applying a ratio of  
24 the number of hours or days the district was in noncompliance in  
25 relation to the required minimum number of hours and days under  
26 this subsection. Not later than August 1, the board of each  
27 district shall certify to the department the number of hours and,

1 beginning in 2010-2011, days of pupil instruction in the previous  
2 school year. If the district did not provide at least the required  
3 minimum number of hours and days of pupil instruction under this  
4 subsection, the deduction of state aid shall be made in the  
5 following fiscal year from the first payment of state school aid. A  
6 district is not subject to forfeiture of funds under this  
7 subsection for a fiscal year in which a forfeiture was already  
8 imposed under subsection (6).

9 (c) Hours or days lost because of strikes or teachers'  
10 conferences shall not be counted as hours or days of pupil  
11 instruction.

12 (d) If a collective bargaining agreement that provides a  
13 complete school calendar is in effect for employees of a district  
14 as of October 19, 2009, and if that school calendar is not in  
15 compliance with this subsection, then this subsection does not  
16 apply to that district until after the expiration of that  
17 collective bargaining agreement.

18 (e) Except as otherwise provided in subdivision (f), a  
19 district not having at least 75% of the district's membership in  
20 attendance on any day of pupil instruction shall receive state aid  
21 in that proportion of 1/180 that the actual percent of attendance  
22 bears to the specified percentage.

23 ~~(f) At the request of a district that operates a department-~~  
24 ~~approved alternative education program and that does not provide~~  
25 ~~instruction for pupils in all of grades K to 12, the superintendent~~  
26 ~~may grant a waiver from the requirements of subdivision (e) in~~  
27 ~~order to conduct a pilot study. The waiver shall indicate that an~~

1 ~~eligible district is subject to the proration provisions of~~  
2 ~~subdivision (c) only if the district does not have at least 50% of~~  
3 ~~the district's membership in attendance on any day of pupil~~  
4 ~~instruction. In order to be eligible for this waiver, THE DISTRICT~~  
5 **IN WHICH A PUPIL IS COUNTED IN MEMBERSHIP SHALL DETERMINE THE**  
6 **PUPIL'S ATTENDANCE AT SCHOOL OR PARTICIPATION IN INSTRUCTION AND**  
7 **SHALL DETERMINE THE NUMBER OF HOURS AND DAYS OF PUPIL INSTRUCTION**  
8 **OFFERED TO THE PUPIL. IN ORDER TO COUNT A PUPIL IN MEMBERSHIP, a**  
9 **district must maintain records to substantiate its compliance with**  
10 **the following requirements: ~~during the pilot study.~~**

11 (i) The district offers the minimum hours **AND DAYS** of pupil  
12 instruction as required under this section.

13 (ii) For each enrolled pupil, the district uses appropriate  
14 academic assessments to develop an individual education plan that  
15 leads to a high school diploma.

16 (iii) The district tests each pupil to determine academic  
17 progress at regular intervals and records the results of those  
18 tests in that pupil's individual education plan.

19 (g) The superintendent shall promulgate rules for the  
20 implementation of this subsection. **THE SUPERINTENDENT OF PUBLIC**  
21 **INSTRUCTION SHALL ENSURE THAT THE RULES TREAT A PUPIL'S DOCUMENTED**  
22 **PARTICIPATION IN ONLINE LEARNING OR ANOTHER DISTANCE LEARNING**  
23 **DELIVERY METHOD THE SAME AS A PUPIL'S DOCUMENTED ATTENDANCE AT A**  
24 **SCHOOL BUILDING FOR THE PURPOSES OF DETERMINING HOURS AND DAYS OF**  
25 **PUPIL INSTRUCTION.**

26 (4) Except as otherwise provided in this subsection, the first  
27 6 days or the equivalent number of hours for which pupil

1 instruction is not provided because of conditions not within the  
2 control of school authorities, such as severe storms, fires,  
3 epidemics, utility power unavailability, water or sewer failure, or  
4 health conditions as defined by the city, county, or state health  
5 authorities, shall be counted as hours and days of pupil  
6 instruction. With the approval of the superintendent of public  
7 instruction, the department shall count as hours and days of pupil  
8 instruction for a fiscal year not more than 6 additional days or  
9 the equivalent number of additional hours for which pupil  
10 instruction is not provided in a district after April 1 of the  
11 applicable school year due to unusual and extenuating occurrences  
12 resulting from conditions not within the control of school  
13 authorities such as those conditions described in this subsection.  
14 Subsequent such hours or days shall not be counted as hours or days  
15 of pupil instruction.

16 (5) A district shall not forfeit part of its state aid  
17 appropriation because it adopts or has in existence an alternative  
18 scheduling program for pupils in kindergarten if the program  
19 provides at least the number of hours required under subsection (3)  
20 for a full-time equated membership for a pupil in kindergarten as  
21 provided under section 6(4).

22 (6) Not later than April 15 of each fiscal year, the board of  
23 each district shall certify to the department the planned number of  
24 hours and days of pupil instruction in the district for the school  
25 year ending in the fiscal year. In addition to any other penalty or  
26 forfeiture under this section, if at any time the department  
27 determines that 1 or more of the following has occurred in a

1 district, the district shall forfeit in the current fiscal year  
2 beginning in the next payment to be calculated by the department a  
3 proportion of the funds due to the district under this act that is  
4 equal to the proportion below the required minimum number of hours  
5 and days of pupil instruction under subsection (3), as specified in  
6 the following:

7 (a) The district fails to operate its schools for at least the  
8 required minimum number of hours and days of pupil instruction  
9 under subsection (3) in a school year, including hours and days  
10 counted under subsection (4).

11 (b) The board of the district takes formal action not to  
12 operate its schools for at least the required minimum number of  
13 hours and days of pupil instruction under subsection (3) in a  
14 school year, including hours and days counted under subsection (4).

15 (7) In providing the minimum number of hours and days of pupil  
16 instruction required under subsection (3), a district shall use the  
17 following guidelines, and a district shall maintain records to  
18 substantiate its compliance with the following guidelines:

19 (a) Except as otherwise provided in this subsection, a pupil  
20 must be scheduled for at least the required minimum number of hours  
21 of instruction, excluding study halls, or at least the sum of 90  
22 hours plus the required minimum number of hours of instruction,  
23 including up to 2 study halls.

24 (b) The time a pupil is assigned to any tutorial activity in a  
25 block schedule may be considered instructional time, unless that  
26 time is determined in an audit to be a study hall period.

27 (c) Except as otherwise provided in this subdivision, a pupil

1 in grades 9 to 12 for whom a reduced schedule is determined to be  
2 in the individual pupil's best educational interest must be  
3 scheduled for a number of hours equal to at least 80% of the  
4 required minimum number of hours of pupil instruction to be  
5 considered a full-time equivalent pupil. A pupil in grades 9 to 12  
6 who is scheduled in a 4-block schedule may receive a reduced  
7 schedule under this subsection if the pupil is scheduled for a  
8 number of hours equal to at least 75% of the required minimum  
9 number of hours of pupil instruction to be considered a full-time  
10 equivalent pupil.

11 (d) If a pupil in grades 9 to 12 who is enrolled in a  
12 cooperative education program or a special education pupil cannot  
13 receive the required minimum number of hours of pupil instruction  
14 solely because of travel time between instructional sites during  
15 the school day, that travel time, up to a maximum of 3 hours per  
16 school week, shall be considered to be pupil instruction time for  
17 the purpose of determining whether the pupil is receiving the  
18 required minimum number of hours of pupil instruction. However, if  
19 a district demonstrates to the satisfaction of the department that  
20 the travel time limitation under this subdivision would create  
21 undue costs or hardship to the district, the department may  
22 consider more travel time to be pupil instruction time for this  
23 purpose.

24 (e) In grades 7 through 12, instructional time that is part of  
25 a junior reserve officer training corps (JROTC) program shall be  
26 considered to be pupil instruction time regardless of whether the  
27 instructor is a certificated teacher if all of the following are



1 met:

2 (i) The instructor has met all of the requirements established  
3 by the United States department of defense and the applicable  
4 branch of the armed services for serving as an instructor in the  
5 junior reserve officer training corps program.

6 (ii) The board of the district or intermediate district  
7 employing or assigning the instructor complies with the  
8 requirements of sections 1230 and 1230a of the revised school code,  
9 MCL 380.1230 and 380.1230a, with respect to the instructor to the  
10 same extent as if employing the instructor as a regular classroom  
11 teacher.

12 (8) Except as otherwise provided in subsection ~~(11)~~, **(10)**, the  
13 department shall apply the guidelines under subsection (7) in  
14 calculating the full-time equivalency of pupils.

15 ~~—— (9) Upon application by the district for a particular fiscal~~  
16 ~~year, the superintendent may waive for a district the minimum~~  
17 ~~number of hours and days of pupil instruction requirement of~~  
18 ~~subsection (3) for a department approved alternative education~~  
19 ~~program or another innovative program approved by the department,~~  
20 ~~including a 4 day school week. If a district applies for and~~  
21 ~~receives a waiver under this subsection and complies with the terms~~  
22 ~~of the waiver, for the fiscal year covered by the waiver the~~  
23 ~~district is not subject to forfeiture under this section for the~~  
24 ~~specific program covered by the waiver. If the district does not~~  
25 ~~comply with the terms of the waiver, the amount of the forfeiture~~  
26 ~~shall be calculated based upon a comparison of the number of hours~~  
27 ~~and days of pupil instruction actually provided to the minimum~~

~~number of hours and days of pupil instruction required under subsection (3). Pupils enrolled in a department approved alternative education program under this subsection shall be reported to the center in a form and manner determined by the center.~~

(9) ~~(10)~~ A district may count up to 38 hours of qualifying professional development for teachers as hours of pupil instruction. Professional development provided online is allowable and encouraged, as long as the instruction has been approved by the district. The department shall issue a list of approved online professional development providers, which shall include the Michigan virtual university. However, if a collective bargaining agreement that provides more than 38 but not more than 51 hours of professional development for teachers is in effect for employees of a district as of October 1, 2006, then until the fiscal year that begins after the expiration of that collective bargaining agreement a district may count up to 51 hours of qualifying professional development for teachers as hours of pupil instruction. A district that elects to use this exception shall notify the department of its election. As used in this subsection, "qualifying professional development" means professional development that is focused on 1 or more of the following:

(a) Achieving or improving adequate yearly progress as defined under the no child left behind act of 2001, Public Law 107-110.

(b) Achieving accreditation or improving a school's accreditation status under section 1280 of the revised school code, MCL 380.1280.

1 (c) Achieving highly qualified teacher status as defined under  
2 the no child left behind act of 2001, Public Law 107-110.

3 (d) Integrating technology into classroom instruction.

4 (e) Maintaining teacher certification.

5 (10) ~~(11)~~ Subsections (3) and (8) do not apply to a school of  
6 excellence that is a cyber school, as defined in section 551 of the  
7 revised school code, MCL 380.551, and is in compliance with section  
8 553a of the revised school code, MCL 380.553a.

9 (11) ~~(12)~~ The department shall study the actual costs of  
10 providing distance learning or other alternative instructional  
11 delivery that is being used in this state and shall report on its  
12 findings to the house and senate fiscal agencies and the office of  
13 the state budget not later than September 10, 2012. Upon request by  
14 the department, a school of excellence described in subsection  
15 ~~(11)~~, (10), the Michigan virtual university, or a ~~school that~~  
16 ~~receives a seat time waiver from the department under this section~~  
17 **DISTRICT** shall submit to the department any data requested by the  
18 department for the purposes of this study.