

# Legislative Analysis

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## **NEW DETROIT SCHOOL DISTRICT: COLLECTIVE BARGAINING AND FINANCIAL OVERSIGHT**

Phone: (517) 373-8080  
<http://www.house.mi.gov/hfa>

**House Bill 5387 (passed by the House as H-2 with amendment)**  
**Sponsor: Rep. Daniela R. Garcia**

Analysis available at  
<http://www.legislature.mi.gov>

**Senate Bill 711 (passed by the House as H-1)**  
**Senate Bill 820 (passed by the House as H-1)**  
**Sponsor: Sen. Goeff Hansen**

**Committee: Appropriations**  
**Complete to 5-6-16**

### **SUMMARY:**

The bills would amend the Public Employment Relations Act, the Michigan Financial Review Commission Act, and PA 566 of 1978, which prohibits a public officer from holding incompatible offices, as part of a package to restructure Detroit Public Schools (DPS), which would be replaced by a new community district under House Bill 5384. In general, the bills would do the following:

- Revise the penalties and process for dealing with teacher strikes statewide.
- Prohibit the collective bargaining agreements in place in DPS from being transferred to the proposed community district.
- Expand the role of the Detroit Financial Review Commission to approve the superintendent of a qualified school district under its authority.
- Expand exemptions under PA 566 related to school district officials on the Financial Review Commission.

All three bills are tie-barred to House Bill 5384, and Senate Bill 820 is also tie-barred to Senate Bill 711. The bills are described in more detail below.

### **Public Employment Relations Act (PERA)**

House Bill 5387 would amend the PERA, which prohibits public employees from striking and allows for collective bargaining, to prohibit the collective bargaining agreements in place between DPS and its employees from being transferred to the community district and to revise the penalties and process for dealing with teacher strikes statewide as follows.

Currently under the act, if a public employer alleges a prohibited strike, the employer must notify the Michigan Employment Relations Commission (MERC) of the number of full or partial days a public school employee was engaged in a strike. The bill would allow a parent of a child enrolled in the district to notify MERC if a public employer failed to do so. It would also require that if conditions constituting a strike exist, the state superintendent of public instruction must notify MERC of the number of full or partial days a public school employee was engaged in a strike.

Under the bill, MERC would be required to hold a hearing and issue its decision not later than 2 days after receiving notice of a strike rather than within 60 days. It would also allow a bargaining representative, public school employer, the state superintendent, an affected public school employee, or a parent who notified MERC to offer testimony or evidence to support or contest the allegation of a strike or lockout at the hearing.

The bill deletes a \$5,000 fine assessed on the bargaining representative for each day of the strike.

It would also revise the judicial process related to strikes as follows:

- Allows the state superintendent and the attorney general, in addition to a public employer, to bring an action to enjoin a strike in circuit court.
- Prohibits a court from overturning a commission determination that a strike or lockout exists "except by clear and convincing evidence."
- Adds that in addition to injunctive relief and awarding court costs and reasonable attorney fees, if a court finds a strike or lockout exists, and if the sanction is equitable and would not duplicate fines imposed by MERC, the court must also do the following:
  - For a strike, order each public school employee to pay a fine in an amount equal to one day of pay for each full or partial day the employee engaged in the strike. For a lockout, order the employer to pay a fine of \$5,000 for each full or partial day of the lockout and order each board member to pay a fine of \$250 per day for each full or partial day of lockout.
  - Grant additional equitable relief that the court finds appropriate.
- Allows a court to enforce an order to end the strike or lockout through its contempt power.

Currently under the Act, before an employer disciplines or discharges an employee for participating in a strike, the employee is entitled to a determination as to whether he or she violated the act. The bill would reduce from 10 days to 5 days the time within which an employer must commence a proceeding after a request for determination is filed. It would also reduce the time from 10 days to 2 days within which the employer must make a decision after a proceeding concludes. The bill would also allow a public employer to consolidate employee hearings unless the employee demonstrates manifest injustice from the consolidation.

### **Financial Review Commission**

Senate Bill 711 would amend the Michigan Financial Review Commission Act, to revise the authority of the financial review commission (FRC) it was given in House Bill 5385 (PA 53 of 2016) over the existing Detroit school district as well as the community district proposed under HB 5384.

SB 711 would amend the definition of "qualified school district" such that it would mean either the existing DPS district or the community district that would replace it under HB 5384. It would also exclude the former DPS district superintendent and school board chair

from membership on the FRC once the functions and responsibilities have been transferred to the community district.

SB 711 would also expand the role of the FRC by authorizing it to approve the superintendent of a qualified school district under its authority. The bill provides that if the FRC does not approve the appointment within 45 days, the appointment is denied. It would also prohibit a qualified school district from altering the terms or conditions of an employment contract with or the benefits of its superintendent or terminating its superintendent without the approval of the FRC (excluding the superintendent and school board chair).

Senate Bill 820 would provide an exemption for a superintendent or school board chair serving both the district and on the FRC under PA 566 of 1978, which prohibits a public officer from holding incompatible offices.

### **FISCAL IMPACT:**

The bills would generally reduce local costs for the community district by an indeterminate amount and would create some amount of additional administrative costs for the State, as described below.

#### **School Employee Strikes**

House Bill 5387 could create increased administrative costs for MERC, which is in the Department of Licensing and Regulatory Affairs, by significantly reducing the time (from 60 days to 2 days) it has after a strike to hold hearings on the issue. The bill could also increase administrative costs for the Department of Education by requiring that the state superintendent of public instruction monitor and report the number of full or partial days an employee was engaged in a strike and by allowing the superintendent to bring action against a strike in court.

#### **Community District Collective Bargaining**

Presumably, House Bill 5387 would reduce community district costs by prohibiting the transfer of any existing collective bargaining agreements from DPS to the new community district. Any savings, however, would depend on the nature of the operating and contract changes made by the community district.

#### **Financial Review Commission**

SB 711 would limit cost revisions for the community district by preventing the community district from revising contract or benefits of its superintendent without FRC approval.

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