

Legislative Analysis



E-LEARNING PACKAGE

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House Bill 5910 (proposed substitute H-1)
Sponsor: Rep. Pamela Hornberger

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

House Bill 5911 as introduced
Sponsor: Rep. Gregory Markkanen

House Bill 5912 (proposed substitute H-2)
Sponsor: Rep. Andrea K. Schroeder

House Bill 5913 (proposed substitute H-2)
Sponsor: Rep. Annette Glenn

Committee: Education
Complete to 7-21-20

SUMMARY:

House Bill 5910 would amend the Revised School Code, and House Bills 5911 to 5913 would amend the State School Aid Act, to provide a framework for electronic learning—or *e-learning*—beginning with the 2020-2021 school year.

E-learning day would mean any of the following:

- A day on which instruction is received electronically or remotely through a program adopted under the bill while students are not physically present at school because the school is closed due to conditions beyond the control of school authorities (such as a pandemic).
- A day that is preplanned by the district, intermediate school district (ISD) or public school academy (PSA, or charter school) on which instruction is received electronically or remotely through a program adopted under the bill while students are not physically present at school. (These days cannot be scheduled on a Monday or Friday, on a day immediately before or after a scheduled break for the district, ISD, or PSA, or on consecutive days.)
- A day on which instruction is received electronically or remotely through a program adopted under the bill while students are not physically present at school because the district, ISD, or PSA that operates the school closes the school after receiving a notice from the superintendent of public instruction of the required closure following a declaration of a state of emergency or state of disaster by the governor.

House Bill 5910

The bill would amend the Revised School Code to require the Michigan Department of Education (MDE) to develop or adopt a program for e-learning days that meets specified requirements, described below, that districts, ISDs, and PSAs could adopt, and subsequently renew and implement, beginning with the 2021-2022 school year. MDE could promulgate rules to implement e-learning guidelines consistent with the bill.

Under the bill, if the governor issued an executive order declaring a state of emergency or state of disaster and one or more public schools were required to close because of that order, the

superintendent of public instruction would have to notify the district, ISD, or PSA that operated any school required to close. The notice would have to specify the days of closure. A district, ISD, or PSA with an adopted program would have to close the applicable school on the specified days and provide student instruction electronically or remotely on those days.

District adoption of programs

Beginning with the 2021-2022 school year, the board of a district or ISD or the board of directors of a PSA could adopt, and subsequently renew its adoption of, a research-based program or programs for e-learning days that allow student instruction to be received electronically or remotely. The board or board of directors would have to submit the programs to its respective authorizer within 14 days after adoption or renewal, and adoption or renewal of adoption would expire after one year. The authorizer would be the applicable ISD for a school district, MDE for an ISD, and the applicable authorizing body for a PSA. Additionally, the board or board of directors would have to make the program or programs accessible through the transparency reporting link on the district, ISD, or PSA website. Preplanned e-learning days would have to be identified on the school calendar.

Program requirements

A program's e-learning days could not exceed the number allowed to be counted as days of pupil instruction under the State School Aid Act. (See House Bill 5912, below.)

In order for a district, ISD, or PSA to implement such a program, the board or board of directors would have to ensure that any program does all of the following:

- Allows access to all students enrolled in the district, ISD, or PSA.
- Takes into account the specific needs of each participating student, including special education students and English language learners.
- Is designed to comply with other requirements of the code and the State School Aid Act.
- Offers at least five hours of instructional content or schoolwork on each e-learning day.
- Allows access to the necessary hardware and software for all participating teachers and staff (subject to the **exception** below).
- Provides for, at minimum, computers, internet, and other forms of electronic communication required for the program and that can be accessed by all participants from home or other remote facilities (subject to the **exception** below).
- Provides for nonelectric materials to be available for participating students, teachers, and staff if they are not provided access to the necessary technology. (This is an **exception** to the requirements, above.)
- Provides for appropriate learning opportunities for students with special needs.
- Provides for a method to verify students' participation.
- Provides a process to track student progress and address the extent to which participation is within students' control with regard to time, pace, and means of learning.
- Provides for effective notice to students and parents or guardians concerning the use of particular school days as e-learning days.
- Provides for adequate training in the use of programs for participating students, teachers, and staff.
- Provides for a means of ensuring that program expectations and responsibilities are communicated to participating teachers, staff, students, and students' parents or guardians.

Public hearing

Before adopting or renewing a program, the board or board of directors would have to hold a public hearing on the proposed adoption or renewal. All of the following would have to be met regarding the hearing:

- Notice of the hearing would have to be provided at least 10 days beforehand through written or electronic means designed to reach all applicable parents or guardians.
- The hearing would have to be held at a meeting of the board or board of directors, and would be subject to the Open Meetings Act.
- The terms of the proposed program would have to be substantially presented at the hearing.
- The hearing would have to provide the opportunity for public comments.

Means for instruction and interaction

A program for e-learning days could provide for student instruction and interaction between teachers and participating students using the internet, telephones, text messaging, online chat room platforms, and any similar means of electronic communication.

Qualified teachers

Currently, the code requires the board of a school district to hire and contract with qualified teachers except in two cases:

- **Community district**: The board of a school district that is a community district can employ or contract for, or both, qualified teachers and other qualified instructional personnel at a public school that was formerly an achievement school (a school formerly managed by the Education Achievement Authority, which managed low-performing schools from 2011 until 2017). Currently, the only community district is the Detroit Public Schools Community District (DPCD). In 2016, the Detroit Public School District split into two entities,¹ one—the qualifying district—with the responsibilities of collecting millages and other taxes and discharging the debts of the old DPS, and the other—the community district, or DPSCD—responsible for overseeing the day-to-day operations of the schools.
- **Dropout recovery programs**: If a district partners with an education management organization (EMO) for a dropout recovery program, the teacher of record can be employed or contracted by the EMO.

The bill would add districts that are providers of virtual courses and districts that have adopted or renewed adoption of an e-learning days program to the list of exceptions to the rule. Those districts could contract for qualified teachers and other qualified instructional personnel.

MCL 380.1231 and proposed MCL 380.1851b

House Bill 5911

The bill would amend section 21f of the State School Aid Act, which governs *virtual courses* and virtual education. The bill would provide that the general rules contained in section 21f would not apply to virtual courses offered as part of programs for e-learning days (which would be added to the Revised School Code by HB 5910).

¹ House Fiscal Agency Analysis of 2016 PA 192 (HB 5384): <http://www.legislature.mi.gov/documents/2015-2016/billanalysis/House/pdf/2015-HLA-5384-4D9538F1.pdf>

Virtual course is defined as a course of study that is capable of generating a credit or a grade and that is provided in an interactive learning environment where the majority of the curriculum is delivered using the internet and in which students may be separated from their instructor or teacher of record by time or location, or both.

Many of the changes would simply exclude the e-learning provisions in HB 5910 from the general requirements for virtual courses, such as a list of which students could or could not be denied enrollment in virtual courses, calculation of per-pupil funding for virtual courses, and course catalog and enrollment requirements.

Exceptions to the current limit of two virtual courses

Currently, a student can enroll in more than two virtual courses per term only if the district has determined that it is in the student's best interest, the student agrees, and the district and pupil have developed an education development plan (EDP). Under the bill, a student could take more than two courses under those current provisions or under either of the following conditions:

- The student has exhibited an academic deficiency by testing below grade level in one or more subjects on the Michigan Student Test of Educational Progress (M-STEP) or a successor state assessment or benchmark assessment, and the virtual courses are designed to remedy that deficiency.
- For the 2020-2021 school year only, the student's parent or guardian requests enrollment in more than two virtual courses due to health, safety, and welfare concerns related to the COVID-19 pandemic. (However, such a student would still have to participate in all state-administered and district-administered assessments to the same extent as if the student were participating in in-person courses.)

Denial of enrollment in virtual courses

A district may now deny a student enrollment in an online course for any of several specified reasons, including that the student is enrolled in kindergarten through 5th grade or that the virtual course is inconsistent with the student's remaining graduation requirements or career interests. The bill would amend these provisions to allow a district to deny a student enrollment in a virtual course if the student was enrolled in kindergarten through 5th grade and the virtual course was not aligned to age-appropriate academic standards for that grade level. The bill would also remove the provision allowing a district to deny enrollment in a virtual course that is inconsistent with the student's career interests. Additionally, under the bill, a student could repeat a course that he or she had recently failed if that course was intended to remedy an academic deficiency. Finally, the bill would remove a provision that now allows a district to deny enrollment if the virtual course is of insufficient quality or rigor and requires a district that exercises such a denial to enroll the student in a similar course of sufficient quality or rigor.

Publishing of board-approved courses

Currently, in order to provide a virtual course to a student, a ***provider*** must publish it in the student's district catalog of board-approved courses or in the statewide catalog maintained by the Michigan Virtual University (MVU). The bill would instead require that it be published in the catalog of board-approved courses for the student's ISD or in the statewide catalog maintained by a ***qualifying statewide educational institution*** (a category that would include the MVU or a state public university). Additionally, for purposes of this requirement, the district, ISD, or qualifying statewide educational institution would be responsible for ensuring that the course was of equal quality and rigor to an in-person course.

Provider would mean a district, including a district that operates as a cyber school, an ISD, community college, state public university, or other person or entity that the primary district pays to provide the virtual course.

Alignment with Michigan Merit standards

Under the bill, a provider also would need to ensure that a virtual course in a core academic subject or one that would fulfill one or more of the credit requirements of the Michigan Merit standard was aligned to the appropriate state content standards established by MDE.

Payment for virtual courses

Generally, a student's primary district must use foundation allowance or per-pupil funds to pay for a student's virtual course or courses, but is not required to pay more than 6.67% of the minimum foundation allowance for the current fiscal year. However, under the bill, for a student enrolled in a virtual course through a community college or state public university, payment would have to be the lesser of the amount of the *eligible charges* or the percentage of the statewide pupil-weighted average foundation allowance, for all districts for the academic year starting October 1, prorated to account for the proportion of the school year that the student was enrolled. When calculating the statewide pupil-weighted average foundation allowance, if a district's foundation allowance was above the target foundation allowance, then the district's foundation allowance would be considered to be the target foundation allowance.

Eligible charges would mean tuition and mandatory course fees, material fees, and registration fees required by the community college or state public university for the virtual course, and would include any late fees charged because of the primary district's failure to make a required payment. It would not include transportation or parking costs or activity fees.

MCL 388.1621f

House Bill 5912

Currently, with certain exceptions, if a district does not have at least 75% attendance on any instructional day, the state aid payment for that day is prorated based on the percentage of students in attendance. Under the bill, e-learning days would be exempt from this attendance requirement. For districts whose remote instruction exposes students to the academic standards that apply for the student's grade level or courses in the same scope and sequence as in-person instruction, if the district did not have an average of at least 75% attendance, MDE would have to prorate the state aid in the proportion of 10/180 that the actual average percentage of attendance for that *attendance period* bears to 75%.

Attendance period would mean each period of 10 consecutive days in a school year.

Instructional hours

Currently under the State School Aid Act, districts must provide at least 1,098 instructional hours and 180 days of instruction. The first six days of instruction that are not provided because of conditions beyond the control of school authorities (including severe storms, fires, epidemics, utility power unavailability, or other specified events) are "forgiven" and counted toward the 180-day/1,098-hour requirement. An additional three days may be forgiven with the approval of the superintendent of public instruction, typically referred to as a "snow day waiver."

The bill would amend those requirements so that the first two days of instruction that are not provided because of conditions beyond the control of school authorities (with pandemics added to the list of uncontrollable conditions) would be forgiven. Then, different e-learning scenarios would trigger different amounts of forgiven days, as follows:

Proposed section of the Revised School Code (HB 5910)	Type of e-learning day	Forgiven days/hours
MCL 380.1851b(9)(a)	A day on which instruction is received electronically while students are not physically present at school because the school is closed due to conditions beyond the control of school authorities (such as a pandemic).	Days or the equivalent number of hours, not to exceed 7 days or the equivalent, would be counted as hours and days of student instruction.
MCL 380.1851b(9)(b)	A day that is preplanned by the district, ISD, or PSA on which instruction is received electronically while students are not physically present at school. (These days cannot be scheduled on a Monday or Friday, on a day immediately before or after a scheduled break for the district, ISD, or PSA, or on consecutive days.)	Days or the equivalent number of hours, not to exceed 20 days or the equivalent, would be counted as hours and days of student instruction.
MCL 380.1851b(9)(c)	A day on which instruction is received electronically while students are not physically present at school because the district, ISD, or PSA that operates the school decides to close after receiving a notice from the superintendent of public instruction stating that the school should be closed.	Days or the equivalent number of hours would be counted as hours and days of student instruction.

The days and hours in the chart above, and the two initial forgiven days, would each be in addition to the days and hours forgiven under any of the other categories. MDE could not count any hours and days other than these as hours and days of student instruction.

Extended continuity of learning plan

The bill would require MDE to waive, for the 2020-2021 school year, the minimum hours and days requirement for each district providing instruction under an extended continuity of learning plan approved by an ISD or authorizing body. The bill states that it is the legislature’s intent that extended continuity of learning plans provide districts with maximum flexibility to adapt educational programs to respond to the pandemic. An extended continuity of learning plan would have to contain all of the elements required for inclusion in a continuity of learning and COVID-19 response plan under Executive Order 2020-65 and would also have to include all of the following:

- A statement indicating why an extended continuity of learning plan is necessary to increase student engagement and achievement for the 2020-2021 school year.

- The educational goals expected to be achieved and whether they are expected to be achieved by the middle or end of the school year. All of the following apply:
 - The goals must include increased achievement or growth on a benchmark assessment in the aggregate and for all subgroups of students.
 - The goals must include an assurance that the district will select and administer an appropriate assessment in the fall, winter, and spring.
 - The goals must be measurable through a benchmark assessment.
- A description of how instruction will be delivered.
- A description of how instruction for core academic areas will expose the student to applicable academic standards or courses in the same scope and sequence as in-person instruction, and a description of how progress will be graded or reported to the student and parent or guardian.
- An assurance and description of how students will be provided with equitable access to technology and the internet necessary to participate in instruction.
- A description of how the district will ensure that students with disabilities will be provided with equitable access to instruction accommodation in accordance with applicable state and federal laws, rules, and regulations.
- A requirement that, if the district provides in-person instruction for the 2020-2021 school year, the district consult with the local health department regarding any applicable guidelines issued by MDE or the Department of Health and Human Services (DHHS) concerning provision of in-person instruction, including building cleaning and occupancy requirements.
- A requirement that the district offer in-person student instruction to all students enrolled in grades K to 5 for the 2020-2021 school year.

By August 15, 2020, a district other than a PSA that chose to submit a continuity of learning plan would have to submit it to the ISD for approval, and a PSA opting in would have to submit its plan to its authorizing body for approval. The ISD or authorizing body would have to apply the same approval procedure used for the approval of a continuity of learning and COVID-19 response plan under Executive Order 2020-65. If approved, the plan would have to be transmitted to the superintendent of public instruction and state treasurer as provided under Executive Order 2020-65. To assess progress, an ISD or authorizing body could require a district to provide benchmark assessment data as a condition to approval of an extended continuity of learning plan. An ISD or authorizing body that approved the plan would be responsible for monitoring implementation of the plan and assessment and public reporting on progress toward the goals established in the plan.

A district would have to make any approved extended continuity of learning plan accessible through the transparency reporting link on its website.

MCL 388.1701

House Bill 5913

The bill would introduce a definition for *attendance*, which would shift the counting of instructional time for students from seat time to student engagement in instruction.

Attendance would mean student engagement in instruction that is provided under the direction of a certificated teacher or an individual who is teaching pursuant to

applicable state law or a rule and that is intended to lead to the student's mastery of academic standards established by MDE. Instruction could be provided at school or a different location or in person, online, digitally, or by other remote means in a synchronous or asynchronous format, and could occur remotely from a school facility.

The bill would provide that a student receiving appropriate remote instruction comparable to in-person instruction because the student's parent or guardian requested the remote instruction or because the district or PSA determined it was necessary due to the pandemic would be counted in membership in the district or PSA providing the remote instruction.

Pupil Accounting and Pupil Auditing Manual Oversight Committee

Currently under the act, MDE reviews its pupil accounting and pupil auditing manuals at least annually. The bill would create a committee to assume this responsibility. MDE would have to adopt all recommendations made by the committee.

No later than August 1, 2020, the Pupil Accounting and Pupil Auditing Manual Oversight Committee would be created in MDE. The committee would consist of the following eleven members:

- Three appointed by the governor, including one nominated by the Senate Majority Leader in consultation with the Senate education committee chair and one nominated by the Speaker of the House in consultation with the House education committee chair.
- The superintendent of public instruction or a designee.
- Seven members appointed by the superintendent of public instruction, including two representing school administrators, two representing PSAs (one of whom would represent a school of excellence that operates as a charter school), one representing school administrators working in ISDs, one representing the authorizing bodies of PSAs, and one representing special education students.

The initial committee members would have to be appointed within 14 days after the bill's effective date and would serve for three-year terms or until a successor was appointed. If a vacancy occurred, the appointment for the replacement would mirror the initial appointment. The governor could remove a member for incompetence, dereliction of duty, malfeasance, misfeasance, or nonfeasance in office, or any other good cause.

The first committee meeting would have to be called by August 31, 2020, at which time the committee would elect a chairperson and other officers as appropriate. Thereafter, the committee would meet at least quarterly. Commission meetings would have to comply with the Open Meetings Act, and its writings would be subject to the Freedom of Information Act.

Committee members would serve without compensation but could be reimbursed for necessary expenses in the performance of their duties.

Benchmark assessments

If full-time, in-person instruction resumed for 2020-2021, the bill would require, as a condition of receiving state aid, that a district administer at least one benchmark assessment to all students in kindergarten through 8th grade within the first 30 days of the school year to measure proficiency in reading and math. If full-time, in-person instruction did not resume for some or all students by the beginning of the 2020-2021 school year, then a district would need to administer at least one benchmark assessment described below to all students in kindergarten

through 8th grade within the first 30 days of the halfway point of the school year to measure proficiency in reading and math.

Under the bill, MDE would have to approve either three or four benchmark assessments that could be administered by a district, with at least one available at no cost to the district. MDE would have to inform districts of approved assessments in an equitable manner. The benchmark assessments would have to meet all of the following:

- Be one of the most commonly administered benchmark assessments in Michigan.
- Be aligned to the content standards in Michigan.
- Complement Michigan's summative assessment system.
- Be internet-delivered and include a standards-based assessment using a computer-adaptive model to target the instructional level of each student.
- Provide information on student achievement with regard to learning content required in a given year or grade span.
- Provide immediate feedback to students and teachers.
- Be nationally normed.
- Provide multiple measures of growth and provide for multiple testing opportunities.

Alternatively, a district could administer one or more of the following:

- A benchmark assessment in reading for students in kindergarten through 9th grade that contains progress monitoring tools and enhanced diagnostic assessments.
- A benchmark assessment in math for students in kindergarten through 6th grade that contains progress monitoring tools.

To the extent practicable, a district would have to administer the same benchmark assessment from one year to the next.

Reporting on benchmark assessment data

A district would have to provide MDE with access to student-level data from a benchmark assessment described above. By December 1, 2020, MDE would have to provide a report to the House and Senate appropriations subcommittees on school aid and the House and Senate Fiscal Agencies, identifying the number and percentage of students in each district who are significantly behind grade level based on the data.

A district administering a benchmark assessment described above would have to provide a student's math and English language arts proficiency data to the student's parent or guardian within 30 days of the test.

MCL 388.1603 et seq.

Tie-bars

House Bills 5910 and 5913 are tie-barred to each of the other three bills. House Bills 5911 and 5912 are tie-barred to HBs 5910 and 5913. A bill cannot take effect unless each bill to which it is tie-barred is also enacted.

FISCAL IMPACT:

The bills would create an indeterminate cost increase for the state and for local school districts, ISDs, and PSAs.

House Bill 5911 would have a negligible fiscal impact for public universities. Community colleges and universities would be allowed to provide virtual courses and potentially receive compensation from school districts of students enrolled virtually. The administration costs around the course catalog would be minor and covered under current funding levels.

E-Learning Days

MDE would incur costs to develop or adopt a program for e-learning days and, beginning with the 2021-2022 school year, to determine the e-learning days or hours eligible to count as pupil instruction under the revised section 101 of the State School Aid Act. MDE may incur additional costs if the department chooses to promulgate rules for the implementation of e-learning days.

A district, ISD, or PSA that adopts or renews a program or programs for e-learning days would incur additional expenses to meet the requirements of the bill; however, adoption or renewal is not mandatory.

A district that provides instruction through e-learning days could incur an indeterminate cost impact to contract *for*, rather than contract *with*, qualified teachers, as well as to contract for other qualified instructional personnel.

Virtual Courses

A district or PSA may incur administrative costs to comply with the additional requirements for virtual courses under section 21f of the State School Aid Act, including that the process for accessing and enrolling in virtual courses be in the same manner as for in-person courses.

A district or PSA may also incur additional costs for virtual courses due to the revised restrictions on virtual courses, including lifting the two-course cap under certain circumstances. Under the bills, districts and PSAs may incur increased costs for courses provided by a community college or public university, as the cap of 6.67% of the minimum foundation allowance would be revised to a prorated percentage of the statewide weighted average foundation allowance.

A district, ISD, PSA, or statewide educational institution (MVU or public university) that maintains a catalog of virtual courses would incur costs to ensure that a virtual course is of a quality or rigor at least equal to an in-person course before including the virtual course in its catalog.

A provider of a virtual course, which may include a district, ISD, PSA, community college, public university, or other entity, may incur costs to meet the requirements of the bills, including ensuring that a core virtual course is aligned to the appropriate state content standards.

A district that provides a virtual course could incur an indeterminate cost impact to contract *for*, rather than contract *with*, qualified teachers, as well as to contract for other qualified instructional personnel.

Remote Instruction

MDE would incur administrative costs to verify the 75% attendance threshold over periods of 10 consecutive school days rather than for each day individually and prorate state aid payments accordingly for a district or PSA providing remote instruction.

A district or PSA may incur an indeterminate fiscal impact due to the provision allowing a district to count a student in membership without the permission of the student’s district of residence if the student is receiving remote instruction at the request of the student’s parent or guardian because of the COVID-19 pandemic.

Extended Continuity of Learning Plans

For FY 2020-21 only, MDE may incur administrative costs to waive the minimum hours or days of instruction for each district that is providing instruction under an extended continuity of learning plan approved by an ISD/authorizing body.

An ISD or PSA authorizer may incur administrative costs to review and approve districts’ and PSAs’ extended continuity of learning plans, monitor implementation, and assess and report progress toward the educational goals in the extended plan.

A district or PSA that submits an extended continuity of learning plan would incur additional expenses to meet the requirements of the bill; however, the submission of an extended plan is not mandatory.

Pupil Accounting and Pupil Auditing Manual Oversight Committee

MDE would likely incur costs associated with creating the Pupil Accounting and Pupil Auditing Manual Oversight Committee within the department, including providing administrative resources to the committee, as well as adopting all of the recommendations by the committee as required by the bills.

Additionally, MDE may incur costs to reimburse expenses for members of the committee; however, reimbursement is not mandatory.

Benchmark Assessments

MDE would incur costs to approve and inform districts of three to four benchmark assessments, provide at least one of the approved benchmark assessments at no cost to districts, and collect pupil-level data from the benchmark assessments and provide a report by December 1, 2020, on the number and percentage of pupils in each district who are significantly behind grade level.

Districts and PSAs would incur a cost to administer at least one approved benchmark assessment within the timeline described by the bills and to provide assessment data as required to MDE and students’ parents/guardians.

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