

Legislative Analysis



SCHOOLS OF EXCELLENCE

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Senate Bill 925 (Substitute H-1)

Sponsor: Sen. Buzz Thomas

House Committee: Education

Senate Committee: Education

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A SUMMARY OF SENATE BILL 925 (PROPOSED SUBSTITUTE H-1)

House Bill 925 (H-1) would amend the Revised School Code to create a new category of charter school called a "school of excellence" and include "schools of excellence" in the definitions of 'public school' and 'public school academy' (customarily called a charter school).

'School of Excellence' requirements. Under a new part of the Revised School Code--Schools of Excellence Part 6E--a 'school of excellence' charter school could be authorized by the board of a local K-12 school district, an intermediate school district, a community college, or a state public university. Generally, the authorizers of 'schools of excellence' could only locate their schools within their district boundaries.

An authorizing body could not issue a contract to organize a school of excellence without approval of the state school superintendent. The state school superintendent would be prohibited from approving the issuance of a contract by an authorizing body unless the superintendent determined that an authorized charter school met certain requirements. (The superintendent could not approve more than one contract for each charter school, and would have to identify that charter school in the notice of approval.) For contracts issued after the effective date of this legislation, an authorizing body would give priority to those from entities having a proven track record of making substantial progress in improving student achievement.

The state superintendent would have to determine that a charter school met all of the following requirements:

-If the charter school operated grades K to 8, then both of the following:

- on average over a three-year period, at least 90 percent of the students enrolled had achieved a score of proficient or better on the MEAP mathematics and English language arts tests.
- on average over a three-year period, at least 50 percent of the students met the income eligibility criterion for the federal free or reduced-price lunch program (as determined under federal law).

-If the charter school operated grades 9 to 12, then both of the following:

- at least 80 percent of the students graduated from high school or were on track to do so; the school had at least 80 percent attendance; and the students had an average score of at least 18 of the college entrance exam component of the Michigan Merit Exam.
- on average over a three-year period, at least 50 percent of the students met the income eligibility criteria for the federal free or reduced-price lunch program.

A school of excellence would be organized with a board of directors under the Non-Profit Corporation Act, and could not be organized by a church or other religious organization, or have any organizational or contractual affiliation with a church or religious organization.

Application Requirements. To obtain a contract to organize and operate one or more schools of excellence, an applicant could apply to an authorizing body, and the bill describes the components of the application in considerable detail. The application would have to contain, among other things, a list of proposed board members and the method of their appointment or election; the proposed articles of incorporation; the proposed bylaws; documentation describing the school's governance structure, educational goals, curricula, assessments, admission policy, school calendar and school day schedule, age and grade range of students (including the requirement that the school offer all of grades 9 to 12 within four years after it begins operations), descriptions of staff responsibilities, the school's location (including the prohibition that a school of excellence not be located in a school district having a graduation rate of over 60 percent as determined by the Department of Education), an assurance that employees would be covered by the collective bargaining agreements that apply to other employees in the school district, and an address for the proposed physical plant.

Oversight. An authorizing body would have to oversee, or contract with an ISD, community college, or public university to oversee each school of excellence operating under a contract. The oversight would have to be sufficient to ensure that the authorizing body could certify that the schools of excellence were in compliance with statute, rules, and contract terms. If the state board of education found that an authorizing body was not engaging in appropriate oversight, the state board could suspend its power to issue new contracts. An authorizing body could not charge a fee, or require reimbursement of expenses, for considering an application for a contract, for issuing a contract, or for providing oversight of a contract in an amount that exceeded a combined total of three percent of the total state school aid received by the 'school of excellence.' The authorizing body could use its fee only for the training, evaluation, and technical assistance purposes described in the bill.

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

Schools of Excellence Competitive Contracts. Schools of excellence contracts would be issued on a competitive basis, taking into consideration the resources available, the population to be served, and the educational goals to be achieved. An authorizing body would submit to the state superintendent a copy of a contract within 10 days of issuing it. The bill describes in some detail the components of a contract, including among other

things, the educational goals the 'school of excellence' will achieve and the methods by which it will be held accountable; an agreement that employees of the 'school of excellence' will be covered by the collective bargaining agreements that apply to employees of the school district; requirements and procedures for financial audits; a requirement that the board of directors will prohibit specifically identified family relationships between members of the board, and individuals who have an ownership interest in an educational management organization involved in the operation of the 'school of excellence'; a requirement to make information available to the public (including, among other things, the authorizing contract, board members, budget, copies of bills paid for amounts of \$10,000 or more, quarterly finance reports, a list of teachers and their salaries and teaching certificates, curriculum documents, proof of insurance, copies of facility leases or deeds and equipment leases, copies of management contracts, health and safety reports, all audit management letters); a requirement that the authorizing body review and may disapprove any agreement between the board of directors and an educational management organization before the agreement is final and valid; a requirement that the board of directors demonstrate to the authorizing body the success of its student admission process (including wide advertisement of openings, the efforts to recruit students eligible for special education and English as a second language services, and a two-week open enrollment period); a requirements that the board prohibit any individual from being employed by the 'school of excellence' in more than one full-time position, and simultaneously being compensated at a full-time rate for each position; and a requirement that the board report to the authorizing body the total compensation for each employee.

Compliance with State Statutes. A 'school of excellence' would have to comply with all applicable laws, including among others, the Open Meetings Act, and the Freedom of Information Act.

Governmental Immunity. A 'school of excellence' and its incorporators, board members, officers, employees, and volunteers would have governmental immunity. An authorizing body and its board members, officers, and employees would be immune from civil liability, both personally and professionally, for an act or omission in authorizing a 'school of excellence' if the authorizing body had acted or reasonably believed he or she acted within the appropriate scope of authority.

Taxation. A 'school of excellence' would be exempt from all taxation on its earnings and property. The school could not levy *ad valorem* property taxes or another tax for any purpose. If a school district operated a 'school of excellence', its power to levy taxes would not be affected, and revenue the district generated from tax levies could be used to supported the operation or facilities of 'schools of excellence,'

The bill specifies that an agreement, mortgage, loan, or other instrument of indebtedness entered into by a 'school of excellence' and a third party would not constitute an obligation, either general, special, or moral, of the State of Michigan or an authorizing body. Further, the full faith and credit or the taxing power of Michigan or any other agency of the state, or the full faith and credit of an authorizing body could not be pledged for the payment of any 'school of excellence' bond, note, agreement, mortgage, loan, or other instrument of indebtedness. Finally, this part of the school code would not

impose any liability of the State of Michigan or any authorizing body for any debt incurred by a 'school of excellence.'

Location. A 'school of excellence' could be located in all or part of an existing school building, but could not be operated at a site other than the single site requested for the configuration of grades that will use the site, as specified in the application.

Tuition and Admissions. A 'school of excellence' could not charge tuition, and could not discriminate in its student admissions policies 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. However, a 'school of excellence' could limit admission to students 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.

A 'school of excellence' could not enroll a student who was not a resident of Michigan (except for a foreign exchange student).

If there are more applications to enroll in the 'school of excellence' than there are spaces available, students would be selected to attend using a random selection process. However, a 'school of excellence' could give enrollment priority to a sibling of a student enrolled. The school would have to allow any student who had been enrolled in the preceding year the opportunity to enroll in the next appropriate grade (unless it was not offered by the school).

High School Requirement. A 'school of excellence' could include any grade up to grade 12, or any configuration of grades, including kindergarten and early childhood education, as specified in its contract. In addition to any other grade levels it operates, a 'school of excellence' must operate all of grades 9 to 12 within four years after it begins operations.

Powers of Incorporation. The bill describes in detail the powers a 'school of excellence' can exercise in order to carry-out its purposes.

EMO Contracts. A 'school of excellence' would be prohibited from entering into a contract with an educational management organization to operate or manage the 'school of excellence' unless the EMO had operated or managed at least one public charter school that met the requirements noted above, or had an equivalent track record of performance in another state, as determined by the state school superintendent.

Desegregation Orders. If a 'school of excellence' was operated by a school district subject to a court desegregation order, then student selection at that school would be subject to the court order.

Certified Teachers. Generally, a 'school of excellence' would have to use certified teachers according to state board rule. However, a 'school of excellence' operated by a state public university or community college could use non-certificated people to teach, as follows:

- if operated by a public university, then a full-time, tenured or tenure-track faculty member;
- if operated by a community college, then a full-time faculty member having at least five years' experience in the relevant subject matter;
- in any other situation in which a school district is permitted under the school code to use non-certificated teachers.

A 'school of excellence' could develop and implement new teaching techniques or methods, and must report those to the authorizing body and state board of education to be made known to the public.

Compensation Based on Job Performance. A 'school of excellence' could, with the approval of the authorizing body, employ or contract with personnel as necessary for the operation of the school. The school could implement and maintain a method of compensation for its employees that was based on job performance, job accomplishments, and job assignment in a subject areas or school that was difficult to find employees to staff.

Health Care Benefits. If a board of directors of a 'school of excellence' provided medical, optical, or dental benefits to employees and their dependents, then the board would have to provide them in accord with the Public Employees Health Benefit Act (MCL 123.71 to 124.85).

Responsibilities of Authorizers. If an authorizing body issued a contract for a 'school of excellence', it would have several responsibilities described in detail in the legislation. Among those responsibilities are contract compliance; board selection processes ensuring community representation; operational oversight; accountability measures for academic performance standards; assurances that a 'school of excellence' board operated independent of any EMOs; fair and open student admissions; and open communication practices.

The authorizing body for a 'school of excellence' would be the fiscal agent for the school. A state school aid payment for the school would be paid to the authorizing body, and then forwarded to the school. (Each 'school of excellence' would be assigned a district code within 30 days by the Department of Education, in order to receive funding under the State School Aid Act.)

Contract Revocation. A 'school of excellence' contract could be revoked by the authorizing body if it determined that one or more of the following had occurred:

- failure to meet educational goals;
- failure to comply with applicable laws;
- failure to meet generally accepted public sector accounting principles; or
- a violation of the contract.

If the state school superintendent determines that a 'school of excellence' operating for at least four years is among the lowest achieving five percent of all public schools in Michigan (as defined for the purposes of the federal incentive grant program created

under Sections 14005 and 14006 of Title XIV of the American Recovery and Reinvestment Act of 2009, Public Law 111-5), the state superintendent would be required to notify the authorizing body. Upon such notification, the authorizing body would be required to revoke the contract of the 'school of excellence', and that school would be closed.

The decision to issue, reissue, or reconstitute a contract, or to revoke a contract, is solely within the discretion of the authorizing body, is final, and is not subject to review by a court of any other state agency. If a contract is revoked, the authorizing body is not liable for that action to the 'school of excellence', a student of the school, the parent or guardian of a student, or any other person.

Before an authorizing body revoked a contract, it could take corrective measures to avoid revocation. It could reconstitute the school in a final attempt to improve student educational performance, and could also include a reconstituting provision in the contract that identified the corrective measures, including but not limited to removing one or more members of the board of directors, withdrawing approval to contract, or appointing a new board of directors or a trustee to take over operation of the 'school of excellence'.

If an authorizing body revoked a contract, its members would work with a school district or another public school, or a combination of these entities, to ensure a smooth transition for the affected students. If this occurred mid-year, then school aid funds would be returned to the state treasurer, who would then redistribute the funds to the public school in which the students enrolled. This would be done following a methodology established by the Department of Education and the Center for Educational Performance and Information.

The authorizing body would have to inform the state school superintendent of any contract revocations within 10 days. Title to all real and personal property, and other assets owned by the school would revert to the state. Within 30 days following the revocation, the board of directors of the school would hold a public meeting to adopt a plan for the distribution of assets, and to approve the dissolution of the corporation. The plan would be filed with state treasurer for approval, and the state treasurer would monitor the dissolution (developing a dissolution plan, if one were not forthcoming, and appointing a trustee if the board member failed to proceed in a timely manner). The school's board of directors would then file a certificate of dissolution with the Department of Energy, Labor, and Economic Growth within 10 business days. Any money from the sale of property would be deposited in the State School Aid Fund.

Authorizing Body & School of Excellence Contract Provisions. Under the bill, an authorizing body and 'school of excellence' could include provisions in a contract that permitted an entity that applied for the contract to do any of the following: participate in the recruiting, interviewing, and nominating process for members of the 'school of excellence' board of directors; conduct an independent educational review, on a periodic basis, to determine whether the 'school of excellence' was successful in implementing the educational goals set forth in the contract; serve as contract administrator between the 'school of excellence' board of directors and any EMO contracted to operate or manage

the 'school of excellence'; and make recommendations to the authorizing body and 'school of excellence' on how to improve the school's operation.

New Contracts with EMOs. Beginning with contracts described in this bill that are entered into after the effective date of this legislation, if the governing board of a public school enters into a contract with an EMO to carry out the operations of a public school, then the governing board must ensure all of the following: that the governing board has conducted due diligence to conclude the EMO has sufficient expertise and experience; has obtained independent legal counsel in negotiations with the educational management company; and for charter school governing boards, has, under the contract between the company and the board, ensured that the management company will provide all financial and other information.

The bill describes in detail the provisions that contracts with educational management companies must contain, including among other things, information about teachers, administrators, and support staff; the business operations of the public school; a provision requiring the educational management company to make information available to the board of directors concerning the operation and management of a charter school, including the information required by the charter school's authorizing body.

The bill defines "educational management company" to mean an entity that enters into an agreement with the governing board of a public school to provide comprehensive educational, administrative, management, or instructional services or staff to the public school. The term includes an educational management organization as that term is defined in the code.

Tie bar. Senate Bill 925 (H-1) is tie-barred to Senate Bill 926, so that Senate Bill 925 would not take effect unless Senate Bill 926 also is enacted into law.

MCL 380.5 et al

FISCAL IMPACT:

The creation of schools of excellence would change the distribution of school aid funds among school districts to the extent that students transfer from a school district into a school of excellence. Existing districts would lose per pupil funding, the immediate impact of which would be somewhat addressed in SB 926 (H-1) if additional funds were appropriated for declining enrollment grants specifically for this purpose.

The State may see some overall school aid costs diminish in the case where a school of excellence was located in a district with a foundation higher than the public school academy maximum foundation which is currently \$7,580, such that the State would be paying less for each of those students who transferred out of the local school district into the school of excellence. However, in the short term, some of this would be negated if the State appropriated additional declining enrollment funds in the School Aid Act as intended in SB 926 (H-1).

Creating a new class of public school academies could create additional administrative costs for the Department of Education in dealing with the applications and monitoring of additional districts.

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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.