



Senate Fiscal Agency  
P. O. Box 30036  
Lansing, Michigan 48909-7536



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

Senate Bills 131 and 132 (as introduced 2-10-11)  
Sponsor: Senator Phil Pavlov (S.B. 131)  
Senator Geoff Hansen (S.B. 132)  
Committee: Education

Date Completed: 3-22-11

## **CONTENT**

**Senate Bill 131** would enact the "Education Mandate Rollback Law" as Section 1290 of the Revised School Code to allow a school district to apply for an education mandate rollback contract (EMRC) that would waive certain provisions of the Code or the State School Aid Act, rules promulgated under either statute, or Federal requirements, as part of a performance-based contract. The bill would do the following:

- Require a district to establish measurable pupil performance goals and identify how that a waiver would allow the district to meet them.
- Require an EMRC to be approved by the Superintendent of Public Instruction, and establish criteria for approval.
- Identify statutes and provisions that could not be waived.
- Limit the term of an EMRC to five years, but allow renewal if the district met its pupil performance goals.
- Allow the Superintendent to terminate an EMRC after two years of declining pupil performance or failure to meet Federal performance standards.
- Establish reporting requirements.

**Section 1290 would be repealed 10 years after its effective date.**

**Senate Bill 132** would amend the State School Aid Act to provide that, except for a requirement that could not be waived under the proposed Education Mandate Rollback Law, the requirements of the Act and rules promulgated under it would be subject to waiver under an education mandate rollback contract.

The bills are tie-barred to each other. Senate Bill 131 is described in detail below.

### Application Process

A school district could apply to the Superintendent of Public Instruction for an education mandate rollback contract for the district or for one or more schools within the district. ("School district" would mean a school district or a public school academy.)

An EMRC would allow the Superintendent to waive a provision of the Revised School Code or of the State School Aid Act, or rules promulgated under the Code or the Act, as part of a performance-based contract with clearly defined and measurable performance goals. A school district also could apply for a waiver of certain Federal requirements, in accordance with Federal law.

The board of a school district that intended to apply for an EMRC would have to establish an education mandate rollback planning committee, which would have to include a representative of each of the district's collective bargaining units that would be affected by the contract.

The committee would have to work with the school board to develop a resolution indicating the board's intent to apply for the EMRC. If the contract were not intended to cover the entire school district, the resolution would have to specify the schools covered. The board would have to hold at least two public meetings before adopting the resolution. The type of waivers sought and the need for them would have to be explained, and public comment allowed, at the meetings.

The school board would have to submit to the Superintendent an application for an EMRC in the form and manner prescribed by the Department of Education. The planning committee would have to assist the board in developing the application.

The application would have to contain a specific listing of the statutes and rules, and Federal statutes and regulations if applicable, proposed to be waived, and a statement specifying the need for waiver for each statute or rule, including the purpose and intended results for each waiver. The application also would have to describe the specific goals for improved pupil performance in the school district or school, describe the measurements to be used to determine whether the goals had been met, and explain how the contract and the waivers would assist the school district or school in achieving the goals. The goals would have to include improving MEAP scores (i.e., the scores achieved by the pupils of a school district or school, as applicable, on all Michigan Educational Assessment Program tests or other State assessments administered to pupils of the school district or school).

The application would have to contain a copy of the resolution described above. If the district were seeking Federal waivers, the application would have to explain how the public notice requirements of Federal law would be met. A fiscal impact statement estimating how the waiver could increase or reduce program costs also would have to be included. If the contract would not cover the entire district, the application would have to identify the specific schools to be covered.

### Application Approval

Within 60 days after receiving an application for an EMRC, the Superintendent would have to approve or disapprove the application and notify the school district of the decision. If the application were approved, the Superintendent promptly would have to enter into an EMRC with the district. If it were disapproved, the notification would have to include specific reasons for the disapproval, and the school could submit a revised application.

If the Superintendent did not act on an application and notify the district with 60 days, the application would be considered approved and the Superintendent promptly would have to enter into an EMRC with the district.

The Superintendent could not approve an application for an EMRC unless the performance goals in the application were sufficiently specific and would, if met, constitute improved pupil achievement. In addition, the proposed EMRC would have to allow the school district to enhance learning and to operate in a more effective, efficient, or economical manner. The application also could not be approved unless the district had exhibited financial responsibility during the preceding three years, as determined by the Superintendent. (This would not preclude the approval of an EMRC for a school in financial hardship, if the hardship were not due to financial irresponsibility.) In addition, the EMRC could not result in the diminution of wages, hours, or other terms and conditions of employment for employees or collective bargaining units of the school district.

In approving applications, the Superintendent would have to give priority to applications that were focused on reducing pupil achievement gaps based on race, gender, and socioeconomic status.

### EMRC Provisions

The Department of Education would have to prescribe the form of an EMRC, which would have to include at least all of the following:

- All matters addressed in the application.
- Assurance that the school district would report its annual progress toward its performance goals.

- An agreement that, in order for the contract to be renewed, the school's or school district's MEAP scores would have to demonstrate adequate annual progress toward meeting the goals and reach a measurable benchmark by the end of the contract.
- An agreement on the contents of the empowerment report to be filed by the school district at the end of the contract.
- The term of the contract, which could not exceed five years.

#### Empowerment Report; EMRC Renewal

When the term of an EMRC ended, the school district would have to submit an empowerment report (a final evaluation) describing how the school district or school met or did not meet the performance goals in the contract. The report would have to summarize the performance goals achieved and the programs, curriculum, or other innovative approaches used to achieve those goals. The Superintendent could renew an EMRC if the performance goals had been met.

#### EMRC Termination

The Superintendent could terminate an EMRC for a school if it had experienced two consecutive years of declining pupil performance based on the performance goals and measurements in the contract, or it had failed for two consecutive years to achieve the Federal pupil performance standard in both math and English at all applicable grade levels for all applicable subgroups. Termination of the EMRC would not be required if the decline or failure were due to exceptional or uncontrollable circumstances.

("Failed to achieve the federal pupil performance standard" would mean that the Department of Education had determined that the school had failed to achieve adequate yearly progress under the Federal No Child Left Behind Act or a successor Federal standard that was based on pupil performance and required to be met for the receipt of full Federal funds.)

#### Prohibited Waivers

The Superintendent could not grant an EMRC that contained a waiver that would

undermine the underlying purposes of the program for which the waiver was sought.

The Superintendent could not waive any of the following as part of an EMRC:

- Health and safety regulations.
- Statutory teacher certification requirements.
- Any provision under Section 1312 (which prohibits school employees from inflicting corporal punishment).
- Any requirement relating to competitive bidding.
- Any requirement relating to conflicts of interest, ethics, or transparency of operations.
- Any requirement or limitation relating to borrowing money, issuing bonds, notes, or other evidence of indebtedness, or levying taxes.
- Any requirement that would be prohibited under Federal law from being waived.

The Superintendent also could not waive a requirement under Part 6A, Part 6C, or Part 6E of the Revised School Code (which govern public school academies (PSAs), urban high school academies, and schools of excellence, respectively) except waiver of Section 503(6), 523(3), or 553(6) to the extent necessary to allow waiver of another requirement that was imposed under another part of the Code, and that could be waived under Section 1290 for a school district that was not a PSA.

(Sections 503(6), 523(3), and 553(6) require PSAs, urban high school academies, and schools of excellence to comply with the following acts:

- The Open Meetings Act.
- The Freedom of Information Act.
- The public employment relations Act.
- Public Act 166 of 1965 (which requires the payment of a prevailing wage for employees working under a State contract).

Those sections also require compliance with Sections 1134, 1135, 1153, 1163(3), 1167, and 1274 of the Revised School Code, which do the following, respectively:

- Require schools to tag the records of missing students.
- Require student identification at the time of enrollment.

- Prohibit the separation of students into different schools or departments based on race, color, or sex.
- Allow bilingual instruction.
- Require school buildings to meet construction codes.
- Require competitive bidding on school construction.
- Require policies governing the procurement of supplies, materials, and equipment by school districts.

In addition, Section 523(3) requires urban high school academies to comply with the following:

- Public Act 566 of 1978 (which prohibits public employees and officers from holding incompatible public offices).
- Public Act 317 of 1968 (which governs contacts between public employees or officers and public entities).
- The Uniform Budgeting and Accounting Act.
- The Revised Municipal Finance Act.
- The Federal No Child Left Behind Act.
- Section 1280 of the Code (which contains accreditation requirements).)

#### Reporting Requirements

The Superintendent would have to submit to the Legislature an annual report on the status of the EMRC program, including a report on the contracts issued during the year, and on progress made toward attainment of performance goals.

As the initial EMRCs issued under Section 1290 expired, the Department would have to post on its website information on the innovations and best practices used to achieve pupil performance goals under the contracts.

Proposed MCL 380.1290 (S.B. 131)  
Proposed MCL 388.1609 (S.B. 132)

Legislative Analyst: Suzanne Lowe

#### **FISCAL IMPACT**

The bills could result in decreased local costs, but the ultimate fiscal impact would depend upon how many waivers were sought, the type of waivers sought (e.g., those that would result in increased efficiency or economy), and the degree of success by the school districts in

accomplishing the goals of the waivers. In other words, if a district sought a waiver in order to operate in a more economical manner, and if by receiving the waiver the district did see reduced costs with the same or a higher level of educational achievement, then the fiscal impact of the bills would be a reduction in local costs. However, it is not possible to state that this would be a certain outcome.

Fiscal Analyst: Kathryn Summers

S1112\S131sa.

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.