Legislative Analysis



DETROIT PUBLIC SCHOOLS RESTRUCTURING

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House Bill 5384 (H-4) as passed by the House on 6-2-16 Sponsor: Rep. Daniela R. Garcia

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

Committee: Appropriations

Complete to 6-7-16

BRIEF SUMMARY:

House Bill 5384 would amend the Revised School Code (MCL 380.3 et al.) by adding and amending sections that define the responsibilities of all entities within the Detroit Public Schools (DPS).

Essentially, this bill would split DPS into two entities, one—the Qualifying School District (old district)—with the responsibilities of collecting millages and other taxes and discharging the debts of the old DPS, and the other—the Community District (new district)—which would oversee the day-to-day operations of the schools.

The bill is part of a package of five bills (with HB 5383, and SBs 711, 820, and 822) restructuring the Detroit Public Schools. Other bills provide the funding for the operation of the new Community District, provide for emergency loan authorization for the old district, and expand the authority of the Financial Review Commission to include termination of the superintendent of the old district, as well as approval of reimbursement of school board members, officials, and employees for travel outside the state.

House Bill 5384 would do all of the following:

- Provide for an appointed **transition manager**, who would oversee both the dissolution of the old district and creation of the new district.
- Create the new district on July 1, 2016, with the responsibility for educating students, as well as facilities, most employment contracts, and applicable funds and obligations, transferring from the old to new district at that time.
- Allow for the new district's **elected school board** (elected in November 2016) to take office in January 2017 and assume management of the new district at that time.
- Charge the state reform and redesign office (SRO) with creating an **A-F grading system** for all traditional public schools and public school academies (charter schools) within the geographic boundaries of the new district.
- Require the SRO to close traditional schools and notify authorizing bodies of charter schools to revoke their charter for schools within the geographic boundaries of the new district, when a school is in the lowest five percent of Michigan schools, or has received an "F" grade under the new grading system, for the preceding three years.
- Create an **advisory council** for the new district, with representation from the traditional and charter public school communities, which would provide reports on the distribution of students and school locations and recommendations on best addressing those needs.
- Dissolve the Education Achievement Authority (EAA).

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• Amend certain rules for intermediate school districts and contains other provisions that apply to all school districts, as described below.

DETAILED SUMMARY:

Under House Bill 5384, the Detroit Public Schools would be divided on the **transfer date** of July 1, 2016, into two entities, each with a governing board:

Qualifying School District (Old District)—A school district previously organized and operated as a First Class School District (based on enrollment) that has a pupil membership of less than 100,000 enrolled on its most recent pupil membership count day. Because Detroit Public Schools was the sole First Class School District, this summary will treat the Qualifying School District and DPS as the same entity. This district will exist after July 1, 2016, for the limited purposes of repayment of debt, satisfying liability from legal claims filed before the transfer date, and protecting the credit of the state and it its school districts.

<u>Community District</u> (New District)—A school district that will be organized and conducted in the same manner as a general powers school district. It will operate the schools and oversee education beginning July 1, 2016, and will assume all responsibilities of DPS once the old district dissolves upon repaying DPS's debts. See Part 5B summary, below.

Sec. 12b—Qualifying School District

Once DPS' debts have been discharged, the old district will dissolve and the new district will assume its responsibilities. Until that time, the responsibilities of the old district are described below.

Transition manager runs old and new district: Before the transfer date, the governor will designate a transition manager to manage the old district (in place of the school board and superintendent), and the new district (until the elected board takes office in January 2017). The transition manager's responsibilities to the <u>new</u> district are described below in *Transition manager*.

The transition manager's responsibilities to the <u>old</u> district are to perform the functions and satisfy the responsibilities related to the repayment of debt and dissolution of the old district. These functions include, but are not limited to:

- Certifying and levying taxes for the satisfaction of the debt in the name of the old district.
- Doing all other things relative to the repayment of outstanding debt of the old district
 required by law and by the terms of the debt, including, but not limited to, filing draw
 requests and borrowing from the revolving loan fund for debt service on qualified
 bonds, levying or seeking voter approval for a renewal of a school operating tax under
 Section 1211, or refunding or refinancing debt at a lower rate.

• Doing all other things related to the dissolution of the old district.

Transfer of funds: On the transfer date (July 1, 2016), the state superintendent of public instruction will transfer all applicable grants and federal funds from the old district to the new district.

Transfer of student count data: In the new district's first year, until the Michigan Department of Education can calculate the new district's membership, the initial state school aid payments will be determined based on the membership total of the old district.

Transfer of rights and responsibilities from the old district to the new district: On July 1, 2016, the new district will acquire, succeed to, and assume "the exclusive right, responsibility, and authority to own, occupy, operate, control, use, lease, and convey the facilities of the qualifying school district existing as of the transfer date, including all lands, buildings, improvements, structures, easements, rights of access, and all other privileges and appurtenances."

- In addition to all interests in land, the new district will be the successor in interest to all fixtures associated with the land and buildings, as well as all agreements and legal instruments to which DPS was a party, with specific exceptions, below. It will also receive any applicable records and files associated with DPS.
- The new district will have the right and authority to operate these facilities, subject to any liens or legal restrictions. This transfer does not constitute a change in occupancy.
- The old district will retain DPS's debt and other obligations.

Transfer of law enforcement agency: The old district's law enforcement agency will be transferred on the transfer date to the new district. [Sec. 1240]

Employment and collective bargaining agreements transfer for most employees: With the exception of the old district's superintendent of schools, a person who is entitled to employment by the old district on the transfer date will be entitled to employment in the new district following the transfer, and the new district is the successor employer of employees of the old district. Current collective bargaining agreements will remain in place until the initial elected school board can renegotiate the terms; the transition manager (in place until January 2017) may not negotiate new agreements. The transition manager will take necessary steps to ensure that employment records are transferred to the new district.

While the chief school administrators (generally school principals) will be retained from the old district to the new district, the elected school board will decide to renew or not renew the contracts of the school principals once the board takes office in January 2017. The board will review each principal's employment contract and make an affirmative decision to renew the contract or provide notice of nonrenewal. If the board does not renew the contract, it must provide notice a minimum of 30 days before the termination date of the contract. [Secs. 12b, 385, and 1229]

Students automatically transferred to new district: Unless a student has graduated, students enrolled in the old district will be automatically enrolled in the new district on the transfer date, either at the same school or another school the student applied and was admitted to before the transfer date. However, this would not limit the right of a pupil to attend the school of his or her choice.

The old district's responsibilities, generally: After the new district is created, but before July 1, 2016, the old district will function as usual in carrying out the responsibilities of DPS. At all times, before and after July 1, 2016, the old district will notify the state treasurer upon the repayment of all its outstanding operating obligations and outstanding debt. Proceeds from bonds, notes, or emergency loans, taxes levied by or payable to the old district, and state aid funds payable to the old district will be retained by the old district. The old district will not assume any subsequent debt, either from the community district or otherwise.

The new district board assumes responsibilities of the old district board: Once the members of the new district school board are elected and assume their duties, the old district school board is dissolved and the new district board will assume its responsibilities until the old district is fully dissolved.

Once all DPS debts and obligations have been discharged: If the state treasurer is notified that all the old district's debts and obligations have been repaid, and verifies the same, or if the treasurer discovers independently that all debt obligations have been repaid, the treasurer will certify that information in a written notice to the new district. At that time, the old district will be fully dissolved, with any assets transferred to the new district.

Part 5B—Community Districts

The most significant changes center on the creation of the "community district" designation that will apply to the new district. While the new district will function in the same manner as a general powers school district, it will also be required to notify and gain approval from the Detroit Financial Review Commission for certain actions, including firing a superintendent, as described below. On July 1, 2016, DPS will become a "qualifying school district," the new district will be created as a "community district," and the new district will assume the responsibility of providing education.

The validity of the formation of the new district is conclusively presumed unless questioned in an original action filed in the Michigan Court of Appeals within 60 days after the district's creation. [Sec. 389]

New District Governance

Transition manager: As described above, the transition manager will operate the old district until it is dissolved and the new district until the elected board takes office in January 2017. The manager's responsibilities to the new district will include:

• Appointing an interim superintendent of schools for the new district to function until the elected board appoints a permanent superintendent.

- Adopting the initial budget and general appropriations act for the new district's first fiscal year, which will be subject to amendment by the elected school board once it takes office.
- Transferring financial and accounting records, as well as student records, from the old district to the new district.
- Taking necessary actions to ensure that state and federal grants, school buildings and other property, educational programs, and vendor contracts are transferred from the old district to the new district, and are operational after the transfer date.
- Adopting on behalf of the new district any policy necessary to ensure compliance with this act and other applicable law.

Some of these actions are subject to the control of the Financial Review Commission (FRC). [Sec. 12b]

Elected school board: The transition manager will serve until the seven-member board is elected and takes office. In order to appear on the ballot, a candidate must submit a nominating petition with affidavit or a filing fee. Of the seven elected in the initial district-wide school board election, the top two vote-getters will serve six-year terms, the next three will serve four-year terms, and the remaining two will serve two-year terms. That initial election will take place November 2016, and the board members' terms will begin on January 1, 2017. After the terms of the initial elected board, the new district school board members will be elected to four-year terms, with terms to begin January 1. [Sec. 384]

Superintendent of the new district: Within 90 days after taking office, the elected school board will appoint a superintendent of schools, to be selected based on demonstrated ability, record of competence, experience in increasing academic achievement, experience with education reform and redesign, and expertise in the turnaround of academically underperforming urban schools. The FRC will not have authority over the hiring or employment contract of the superintendent, but will have authority to approve or deny the school board's decision to fire the superintendent. [Sec. 385]

Evaluation of new district: The new district's school board will annually evaluate and issue a report on the district's performance based on the following factors: (1) the proportion of pupils enrolled in the district that achieve scores at least equivalent to proficient on state assessments; (2) the proportion of pupils enrolled in the district that achieve at least one year of academic growth in a school year; and (3) the proportion of graduates from or pupils enrolled in the district that are enrolled in some form of postsecondary education or career and technical education. [Sec. 385]

New District Finances

Millages: If another school district is authorized to levy a school operating tax under Section 1211 (which provides the rules for levying millages for school operating purposes) within the geographic boundaries of the new district during a tax year, the new district may not levy a millage. In other words, the old district will be levying the school operating tax until that district ceases to exist, and the new district may not do so during that time. [Sec. 386]

Financial oversight: As the new district is within the bounds of Detroit, the FRC will have oversight over it, as provided in the Michigan Financial Review Commission Act (MCL 141.1631). The appointment and firing of a chief financial manager for the new district, and the firing of a new district superintendent, are subject to the approval of the FRC. The transition manager and the subsequent school board will ensure that the district does not provide any reimbursement from public funds for travel outside the state to a school board member, official, or employee of the new district. The state treasurer will monitor and verify compliance with these requirements. [Sec. 387]

Appropriation: For the fiscal year ending September 30, 2016, \$250,000 is appropriated from the General Fund to the Department of Treasury to provide financial support for the organization and administration of a community district. The state treasurer will ensure that a portion of the money is allocated as a grant to provide school board training to the initial elected members of the school board (to be elected in the general election of 2016). [Sec. 396] [Note: Inclusion of this appropriation means that the bill will not be subject to referendum.]

Borrowing and lines of credit: The bill extends the ability of a school board or intermediate school board to borrow and obtain a line of credit to apply to the new school district as well. It also prohibits the old district from borrowing money for school operations. [Sec. 1225]

Issuance of notes or bonds: Additionally, the bill extends the rules and prohibitions for borrowing money and issuing notes or bonds that apply to school districts to apply to the new district as well, with the attendant liability. It also states that, in addition to the usual prohibitions, the old district may not borrow money or issue bonds for capital improvements. [Sec. 1351a]

Accountability

School grading system: The state school reform/redesign officer (SRO) will establish an accountability system to be utilized for all traditional and charter public schools in the new district. All public schools will receive a grade of A, B, C, D, or F, annually, based on a point scale of 0 to 100 points. At least 80% of the points assigned must be based on the combined weight given to proficiency measures and growth measures, including scores on state assessments and graduation rates. The remaining points may be assigned based on nonacademic measures, which will include student surveys, year-to-year reenrollment rates, absenteeism rates, and parent participation in school satisfaction surveys. This system will take effect in the 2017-2018 school year, and will remain in effect until it is replaced by a system created by the legislature for all public schools in the state. [Sec. 390]

Schools subject to closure: The SRO will order a school closed no later than the end of the current school year if a school operated by the new district is among the lowest achieving five percent of public schools in the state for the preceding three years (under MCL 380.1280c). Once the grading system has been in effect for at least three school years, the SRO will order a school closed for receiving a grade of "F" for the preceding three years.

Before issuing this order, the SRO will consider the surrounding public school options at the grade level of the affected school, and may rescind the order if the existing options are insufficient and would create an unreasonable hardship to the students in that area. If the SRO rescinds an order, it must do so before the end of the school year, and must require the school to implement a school improvement plan that includes measures to improve student growth and proficiency, as measured by performance on state assessments. [Sec. 391]

Requirements for a new school in the same location: Neither the community district nor a charter school authorizing body may open a new school in the same location as a public school ordered closed by the SRO under this section within three years of the closure, unless (1) the school has a substantially different leadership structure and curricular offerings than the previous school and (2) the new school is approved by the SRO. Similarly, the board of the community district cannot open a new school in the same location as a school on the SRO list or receiving an "F" grade for three of the preceding five school years, with substantially the same leadership and curricular offerings, to avoid closure requirements. [Sec. 392]

Advisory Council [Sec. 393]

A six-member council, all members of which must reside in the district, will provide advice on the locations of school facilities within the new district. The membership will be as follows:

- Three representatives from the traditional public school community, including (1) the superintendent of schools of the new district or a designee; (2) the school board president of the new district or a designee; and (3) one member, appointed by the SRO, who is the parent of a traditional public school student in the new district.
- Three representatives from the charter public school community, including (1) one member representing authorizing bodies; (2) one school administrator at a charter school in the new district; and (3) one member, appointed by the SRO, who is the parent of a charter public school student in the new district.

Board members will serve for four years, and vacancies will be filled in the same manner as the original appointment.

Annually, the council must prepare and submit to the new district school board a report on the physical state and utilization of school facilities, the location of current and future schools based on population and other factors, and transportation of students. The school board must provide a copy of the report to the SRO, each charter authorizing body, and the House and Senate education committees. The school board must consider the report in carrying out its duties; there is no requirement for the charter school community to consider or act on the report.

Dissolution of Education Achievement Authority (EAA) [Sec. 395]

The new district will not renew or extend any lease between the old district and the EAA after June 30, 2017. It will withdraw from any interlocal agreement with a public university

creating an achievement authority as soon as possible after the transfer date, and may not jointly exercise any powers under the agreement after June 30, 2017.

Teachers in the new district

Use of noncertificated teachers: The bill provides that the new school district may employ full-time or part-time noncertificated, nonendorsed teachers to teach in its schools if the appropriate official of the district determines that, due to the individual's combination of education and experience, it would be appropriate and in the best interests of the pupils. The noncertificated teacher may use three years of successful classroom teaching, as determined by observation and review, to waive the student teaching requirement for receiving a provisional teaching requirement. This alternative certification option will not take effect until the new school district's initial elected school board takes office, in January 2017. [Sec. 1233c]

Teacher/administrator compensation: The new district will implement a method of compensation that focuses on job performance and job accomplishments as the primary factor in determining compensation and additional compensation, which will apply to all teachers and administrators hired by the district after the A-F grading system for schools takes effect. The evaluation will be based on the factors described in Sec. 1249 for teachers and Sec. 1249b for administrators. [Sec. 1250]

The district will not consider length of service or an advanced degree when determining compensation or adjustments in compensation, unless the degree is specific to the subject taught (for secondary teachers) or is an advanced degree in elementary education (for elementary teachers).

Public library

Part 5B, which establishes the community district, does not affect the management or control of a public library. Any powers and duties of the old district relative to a library will be transferred to the new district on July 1, 2016. [Sec. 388]

Amendments for Charter Schools [Sections 502 to 561]

The bill also amends several rules for various categories of charter schools, including: **Urban High School Academies** (UHSAs), which are chartered under Part 6C of the Revised School Code and can only be authorized by state public universities; and **Schools of Excellence** (SOEs), which are chartered under Part E of the Revised School Code and are established as either (1) a replication of a high performing school, (2) a cyber school, or (3) a conversion of a Part 6A charter school based on criteria that define superior academic performance. The changes include the following:

• **MEAP to "M-STEP":** The bill replaces references to the Michigan education assessment program (MEAP) test as an indicator of pupil progress, with references to the "M-STEP", to account for the 2015 transition to the Michigan student test of educational progress.

- Closure of charter schools: If the State School Reform/Redesign Officer determines that a charter school site (that is not an alternative school serving a special student population) has been operating for at least four years and is among the lowest achieving five percent of all public schools in the state for the three preceding years and is not undergoing reconstitution or—once the grading system has been in place for three years—that the school has received an "F" grade for the preceding three years and is not undergoing reconstitution, the officer will notify the charter school's authorizing body. Upon receiving this notice, the authorizing body will revoke the charter school's contract, effective at the end of the school year. If the charter school operates at more than one site, its authorization will be revoked for the age and grade levels in the lowest achieving five percent. As with traditional public schools in the new district, the SRO may rescind the order to close the school if the public school options remaining in the area are insufficient and would create a hardship for students.
- Accreditation: In order to issue a charter for a new charter school, the governing board of the authorizing body must certify to the SRO that the authorizing body has been accredited by a nationally recognized authorizing body or, if two or more public agencies are proposing to open a charter school jointly, each of the public agencies party to the interlocal agreement must certify accreditation to the SRO.
- *Location restrictions:* As described above, the bill extends the requirements of Sec. 390 to charter schools. Accordingly, the charter school cannot open a new school in the same location as a public school closed by the SRO or terminated by another authorizing body if <u>either</u> of the following circumstances exist:
 - The proposed charter school would operate in the same location as a public school that is on the SRO list of lowest-achieving schools or was on that list in the previous three years, or after the grading system has been in effect for three years, the existing public school received an "F" grade for three of the preceding five years; or
 - The school would have substantially the same board of directors, leadership, and curriculum offerings as the closed school.

(The charter school provisions also replace references to the state superintendent of public instruction with references to the State School Reform/Redesign Officer.)

Finally, the bill removes a provision allowing the authorizing body to issue a new contract to an urban high school academy whose contract has been revoked, within the one year period following the revocation, without the new contract counting toward the maximum number of contracts that may be issued.

Amendments for Intermediate School Districts

Superintendent: If a constituent school district (a school district entirely within an intermediate school district) does not have a superintendent, the ISD's superintendent will assume responsibilities such as recommending and suspending teachers, subject to actions by the constituent district's school board. This assumption of duties does not apply when the constituent school district is not required to employ a superintendent or in the case of the old Detroit school district, which will not oversee any schools. [Sec. 654]

Constituent school districts not operating schools: Currently, if an intermediate superintendent finds that a constituent district has not operated a school for the previous two or more years, that constituent district must either attach itself to an operating school district or reopen and operate its own school. The bill will retain these requirements, but add provisions to allow for the reorganization of DPS as the old district and the new district, even though the old district will not directly be operating any schools. [Sec. 921]

Constituent district with school operated by another district: If a constituent district has entered into an agreement with another school district or public entity to operate a public school of the constituent district, then the pupils in that school will be counted in the membership of the constituent district and a proportionate share of the revenue payable to the constituent district would be transferred to the school district or public entity operating the public school. The proportionate share will be determined according to the percentage of the constituent district's membership that is enrolled in the particular public school for the state fiscal year corresponding to the tax year. [Sec. 705] Revenue from a regional enhancement property tax will not be allocated or paid to the constituent district that does not operate a public school.

New Provisions Applying to All Districts

Refinancing Operating Deficits: The bill would expand the ability of districts to refinance outstanding state aid anticipation notes and related multiyear repayment options through bonds, which would be called school financing stability bonds. Currently under statute, a district with an operating deficit of greater than \$100 per pupil may finance its operating deficit through a note or bond of up to 10 years with the backing of its future state aid payments or other district revenue. Under the bill, an eligible district would expand to include a district with any operating deficit or a district that has outstanding state aid anticipation notes. In addition to future state aid, the bill would expand the district's revenues used to back the notes or bonds to include the district's local school operating revenues collected from its 18-mill nonhomestead property tax levy. The bill would also extend the maximum repayment period from 10 to 25 years. [Sec. 1356]

Kindergarten: The bill will allow a child to enroll in a different kindergarten if the school district of residence does not operate a kindergarten, and also removes provisions that have already sunset. [Sec. 1147]

Educating Pupils: The bill specifies that a school district may fulfill its obligation to educate pupils by either (1) directly operating one or more public schools on its own; or (2) causing public educations services to be provided for pupils of the district through an agreement, contract, or other cooperative agreement with another public entity, including but not limited to another school district or an intermediate school district. [Sec. 11a]

Repealers: The bill will repeal current Part 5a of the code (provisions from 2004 dealing with the appointment of school reform boards in Detroit) and eight sections in Part 6 (provisions from 2004 related to election of school reform board members).

FISCAL IMPACT:

The bill would increase costs for the state, while allowing DPS to pay off its debt over time. Additional provisions, described below, would have an additional, but indeterminate, fiscal impact on both the state, local school districts and intermediate districts, and public school academies.

Old District Debt/New District Foundation Allowance

In splitting DPS into two entities, the bill would redirect local school operating revenues, collected from the 18-mill levy on nonhomestead property, in order to pay off the debt of the old district. The total estimated debt would be approximately \$565.0 million, including approximately \$415.0 million in accumulated operating deficits as well as \$150.0 million to finance start-up costs and cash flow issues for the new district. In order to accomplish this, the district would likely have to refinance existing loans from the State Aid Note program through the Michigan Finance Authority along with other debt into longer term bonds. The bill would allow the district to do this through school financing stability bonds with Treasury's approval. Interest and bond costs could add an estimated \$140 million to the total debt costs, and while estimates for time until the debt is fully repaid vary, it is likely to be at least 10 years. However, this assumes that the voters reauthorize the old district's 18-mill levy in 2022, when the existing authorization expires.

While both the old and new district exist, and the local school operating revenues are diverted to debt repayment, the state would backfill the local portion of the foundation allowance for the new district through an appropriation in the School Aid budget. The estimated local portion of the foundation allowance for DPS is approximately \$71.6 million or \$1,726 per general education pupil for FY 2016-17. Funding would be made available from a combined \$72 million per year in tobacco settlement fund revenues earmarked into the Community District Education Trust Fund as proposed under House Bill 5383.

Other New District Costs

The bill would have an indeterminate fiscal impact on the new district related to teacher compensation. While it would revise the method used for determining pay increases, it is unclear whether this would have an impact on overall compensation levels.

The bill also would create costs for the new district by requiring that if a school operated by the new district was in the lowest performing 5% of all districts statewide for the preceding 3 years or received a letter grade of "F" for the preceding 3 years in the proposed "A-F" accountability system, the State Reform/Redesign Office (SRO) must close the school building, eliminating some of the alternative "school turn-around" measures allowed currently under statute for other schools in the bottom 5%. However, the SRO could rescind automatic school closures if it determines that the closure would result in an unreasonable hardship to the pupils in the school, and the SRO could require the school to instead implement a school improvement plan.

<u>Public School Academies (PSAs)</u> within the geographic boundaries of the New District PSAs within the new district would also be subject to the automatic closure provisions that would apply to the new district; thus, they would incur the costs of closing buildings or implementing school improvement plans.

"A-F" School Accountability System:

The bill could create additional state administrative costs by requiring the SRO establish, implement, and administer an "A-F" school accountability system for the community district. As part of the nonacademic measures in the "A-F" school accountability system, the new district and PSAs within its geographic boundaries would incur contracting costs by requiring them to conduct student surveys procured from a third-party vendor.

Statewide School District Impact

The bill could reduce district costs and create efficiencies by allowing a district to provide educational services through a contract or cooperative agreement with another public entity. This could encourage cooperation in districts where a full district consolidation or annexation is not feasible. The bill also would require a district to transfer a proportionate share of regional enhancement millage revenue it receives to the other district or public entity.

Other State Appropriations

The bill would appropriate \$250,000 General Fund/General Purpose (GF/GP) to the Department of Treasury for the purposes of providing financial support for the organization and administration of the community district. It would require that the Treasurer use a portion of the funds to provide school board training to the initially elected board members.

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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.