

DETROIT PUBLIC SCHOOLS RESTRUCTURING

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House Bill 5384 (proposed Substitute H-1)

Sponsor: Rep. Daniela R. Garcia

Committee: Appropriations

Complete to 5-2-16

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

BRIEF SUMMARY:

House Bill 5384 would amend the Revised School Code 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—with the responsibilities of collecting millages and other taxes and discharging the debts of the old DPS, and the other—the Community District—which would oversee the day-to-day operations of the schools.

The bill is part of a package of seven bills (HBs 5382, 5383, 5387, 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, prohibit collective bargaining over work schedules or the school calendar in the new district, and expand the authority of the Financial Review Commission to include approval of the superintendent of the new district.

In House Bill 5384, Section 12b describes the transition from a single DPS to two DPS entities, with separate functions and school boards, as well as the eventual dissolution of one of the entities. A new Part 5B is created to govern the operation of a Community District, which is the term applied to the new district that would be created under the bill.

The bill would also amend certain rules for intermediate school districts and public school academies (charter schools), 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.

Community District (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 (QSD) 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.

Board's responsibilities: Until the elected members of the school board of the community district (new district) take office, the existing board of the qualifying school district (old district) will continue for the limited purpose of performing functions and satisfying responsibilities related to the repayment of debt and dissolution of the old district as of the transfer date. 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, levying or renewing 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 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.
- The old district will retain DPS's debt and other obligations.

Employment and collective bargaining agreements do not necessarily transfer: Generally, 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. However, in order for a superintendent or school principal employed by the old district to be retained, that person must apply and be hired by the new district. Additionally, collective bargaining agreements executed with the old district will not apply to the new district, and the new district is not the successor employer of employees of the old district.

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. Following the transfer date, the old district will not employ a superintendent of schools. 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 hiring and 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. 393]

New District School Board [Sec. 384]

- ***Initial school board:*** The initial school board will consist of seven school electors (eligible to vote in school district elections); the mayor of Detroit ("the chief administrative officer") will appoint two members and the governor of Michigan will appoint five. One of the governor's appointments will be from one or more nominees submitted by the Majority Leader of the State Senate and one from one or more nominees submitted by the Speaker of the House of Representatives. Members must

be appointed within 30 days of the district's creation, with the governor to appoint members on behalf of the mayor if the mayor fails to appoint members. All members must be residents of the community district. An individual may not serve on the old and new district school boards simultaneously.

- ***Initial elected school board:*** The members of the initial board will serve until the initial elected board is elected and takes office. The initial elected board, and subsequent boards, will consist of seven school electors, elected on a districtwide basis. Of the seven highest vote-getters in the initial district-wide school board election, the top four will serve six-year terms and the bottom three will serve four-year terms. That initial election will take place at the first August election that occurs at least 180 days after the transfer date, and the board members' terms will begin on January 1 following the election.
- ***Vacancy:*** If a vacancy occurs during the initial term of an appointed member, the vacancy will be filled in the same manner as the original appointment for the balance of the unexpired term.
- ***Chairperson:*** The mayor of Detroit will designate an appointed member of the school board to be the initial chairperson. If the mayor does not do so, the governor will appoint the chairperson. After the initial designation, the school board will designate its chairperson.
- ***Elections:*** After the terms of the initial elected board, the new district school board members will be elected to six-year terms, with a term to begin on January 1. The elections will take place in the November regular election in odd-numbered years, with the nominations taking place in the August primary election in odd-numbered years.

Superintendent of the new district [Sec. 385]

Within 90 days of the creation of the new district, its school board will appoint a superintendent of schools, subject to the approval of the Financial Review Commission (FRC). If the FRC does not approve the appointment within 45 days, it is deemed denied. The new district cannot alter the terms and conditions of an employment contract, alter the benefits provided, or terminate the employment of the superintendent unless that action is approved by the FRC. The superintendent is 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 school districts. The board's appointee must have at least 18 months' experience as the superintendent or chief executive officer of a public K-12 educational agency in this or another state.

Evaluation of new district [Sec. 385]

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 school year's worth 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.

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 Financial Review Commission will have oversight over it, as provided in the Michigan Financial Review Commission Act (MCL 141.1631). [Sec. 387]
- **Administrative expenses:** The new district may not use more than 6.3 percent of its current operating expenditures for administrative expenses. The new district's 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. 388]
- **Facility improvements:** The new district will have to prioritize a portion of its funding to pay for facility-related improvements, such as costs associated with deferred maintenance, space consolidation, and school closure or other building closures. [Sec. 388]
- **Coordination of funding:** The new district's school board will assign an official to (1) coordinate and oversee all funding received by the district as a donation, bequest, or other gift; (2) act as a contact point for all gifts to the district; and (3) post this contact information on the district's website. Unless the specific funding is restricted for another use, the official must ensure that it is used by the new district only for academic programs or wraparound services. [Sec. 395]
- **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 2017). [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]
- **Refinancing Operating Deficits:** The bill would expand the ability of a qualifying district to refinance outstanding state aid anticipation notes 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 qualifying district. 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. [Sec. 1356a]

Accountability [Sec. 390 and 391]

- ***Schools subject to closure:*** By October 1 of each year, the State School Reform/Redesign Office (SRO) will prepare a list of public schools located within the geographic boundaries of the new district that are subject to closure. A school will be included on that list if the school has operated for at least four years and has appeared on the list of the lowest achieving five percent of public schools in the state (under MCL 380.1280c) for three of the last five school years.
- ***SRO may order closure or implement new requirements:*** Within 30 days after the SRO list is published, the SRO will order those schools closed effective at the end of the school year. 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.
- ***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 with substantially the same leadership and curricular offerings, to avoid closure requirements.

Teachers in the new district

- ***Teacher qualifications:*** 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. [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 bill 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. 392]

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 "applicable state assessments"**: The bill replaces references to the Michigan education assessment program (MEAP) test as an indicator of pupil progress, with references to the "applicable state assessments", to account for the 2015 transition to the Michigan student test of educational progress (M-STEP) and any future changes in assessments.
- **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 three of the previous five years (under Section 1280c), 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 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**: A charter school's authorizing body must be accredited by a nationally recognized accreditation body that specializes in charter schools 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 be accredited.
- **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 the school would have substantially the same board of directors, leadership, and curriculum offerings as the closed school.

(The charter school provisions also specify the time period for which a charter school must be in the lowest five percent, and 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

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 education 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.

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).

MCL 380.3 et al.

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 \$500.0 million, including approximately \$467.0 million in accumulated operating deficits as well as \$33.0 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 to the total debt costs, and estimates for time until the debt is fully repaid vary from 10-12 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 \$72.0 million or \$1,580 per pupil for FY 2016-17. Funding would be available from a combined \$72 million per year in individual and corporate income tax revenues earmarked into the Community District Education Trust Fund as proposed under other bills in the larger package related to DPS being considered (House Bills 5382-5383).

Other New District Costs

The bill would cap the new district's central administrative expenses at 6.3% of current operating expenditures (COE), which is the statewide average when excluding DPS. Based on FY 2014-15 data, DPS central administrative expenses (\$57.3 million) were approximately 8.7% of COE (\$655.9 million). However, the district's FY 2015-16 budget plan included \$11.0 million in reduced central administration expenses which would reduce that percentage. Under the bills, the new district may have to further reduce those

costs, which would free up revenue that could be redirected to other costs such as instructional purposes.

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 would also restrict the use of all funding received by the community district from a private source for the purpose of academic programs or wraparound services unless the gift was specified for another use.

Finally, the bill 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 3 of the last 5 school years, 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.

Public School Academies (PSAs) 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.

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.

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.