

# HOUSE BILL No. 5396

February 24, 2016, Introduced by Reps. Johnson, Brunner, Tedder and Runestad and referred to the Committee on Education.

A bill to amend 1979 PA 94, entitled  
"The state school aid act of 1979,"  
by amending section 101 (MCL 388.1701), as amended by 2015 PA 85.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1           Sec. 101. (1) To be eligible to receive state aid under this  
2 article, not later than the fifth Wednesday after the pupil  
3 membership count day and not later than the fifth Wednesday after  
4 the supplemental count day, each district superintendent shall  
5 submit to the center and the intermediate superintendent, in the  
6 form and manner prescribed by the center, the number of pupils  
7 enrolled and in regular daily attendance in the district as of the  
8 pupil membership count day and as of the supplemental count day, as  
9 applicable, for the current school year. In addition, a district  
10 maintaining school during the entire year, as provided under

1 section 1561 of the revised school code, MCL 380.1561, shall submit  
2 to the center and the intermediate superintendent, in the form and  
3 manner prescribed by the center, the number of pupils enrolled and  
4 in regular daily attendance in the district for the current school  
5 year pursuant to rules promulgated by the superintendent. Not later  
6 than the sixth Wednesday after the pupil membership count day and  
7 not later than the sixth Wednesday after the supplemental count  
8 day, the district shall certify the data in a form and manner  
9 prescribed by the center and file the certified data with the  
10 intermediate superintendent. If a district fails to submit and  
11 certify the attendance data, as required under this subsection, the  
12 center shall notify the department and state aid due to be  
13 distributed under this article shall be withheld from the  
14 defaulting district immediately, beginning with the next payment  
15 after the failure and continuing with each payment until the  
16 district complies with this subsection. If a district does not  
17 comply with this subsection by the end of the fiscal year, the  
18 district forfeits the amount withheld. A person who willfully  
19 falsifies a figure or statement in the certified and sworn copy of  
20 enrollment shall be punished in the manner prescribed by section  
21 161.

22 (2) To be eligible to receive state aid under this article,  
23 not later than the twenty-fourth Wednesday after the pupil  
24 membership count day and not later than the twenty-fourth Wednesday  
25 after the supplemental count day, an intermediate district shall  
26 submit to the center, in a form and manner prescribed by the  
27 center, the audited enrollment and attendance data for the pupils

1 of its constituent districts and of the intermediate district. If  
2 an intermediate district fails to submit the audited data as  
3 required under this subsection, state aid due to be distributed  
4 under this article shall be withheld from the defaulting  
5 intermediate district immediately, beginning with the next payment  
6 after the failure and continuing with each payment until the  
7 intermediate district complies with this subsection. If an  
8 intermediate district does not comply with this subsection by the  
9 end of the fiscal year, the intermediate district forfeits the  
10 amount withheld.

11 (3) Except as otherwise provided in subsections (11) and (12),  
12 all of the following apply to the provision of pupil instruction:

13 (a) Except as otherwise provided in this section, each  
14 district shall provide at least 1,098 hours and, beginning in 2010-  
15 2011, the required minimum number of days of pupil instruction.  
16 Beginning in 2014-2015, the required minimum number of days of  
17 pupil instruction is 175. However, all of the following apply to  
18 these requirements:

19 (i) If a collective bargaining agreement that provides a  
20 complete school calendar was in effect for employees of a district  
21 as of July 1, 2013, and if that school calendar is not in  
22 compliance with this subsection, then this subsection does not  
23 apply to that district until after the expiration of that  
24 collective bargaining agreement. If a district entered into a  
25 collective bargaining agreement on or after July 1, 2013 and if  
26 that collective bargaining agreement did not provide for at least  
27 175 days of pupil instruction beginning in 2014-2015, then the

1 department shall withhold from the district's total state school  
2 aid an amount equal to 5% of the funding the district receives in  
3 2014-2015 under sections 22a and 22b.

4 (ii) A district may apply for a waiver under subsection (9)  
5 from the requirements of this subdivision.

6 (b) Beginning in 2016-2017, the required minimum number of  
7 days of pupil instruction is 180. If a collective bargaining  
8 agreement that provides a complete school calendar was in effect  
9 for employees of a district as of the effective date of the  
10 amendatory act that added this subdivision, and if that school  
11 calendar is not in compliance with this subdivision, then this  
12 subdivision does not apply to that district until after the  
13 expiration of that collective bargaining agreement. A district may  
14 apply for a waiver under subsection (9) from the requirements of  
15 this subdivision.

16 (c) Except as otherwise provided in this article, a district  
17 failing to comply with the required minimum hours and days of pupil  
18 instruction under this subsection shall forfeit from its total  
19 state aid allocation an amount determined by applying a ratio of  
20 the number of hours or days the district was in noncompliance in  
21 relation to the required minimum number of hours and days under  
22 this subsection. Not later than August 1, the board of each  
23 district shall **EITHER** certify to the department **THAT THE DISTRICT**  
24 **WAS IN FULL COMPLIANCE WITH THIS SECTION REGARDING** the number of  
25 hours and days of pupil instruction in the previous school year **OR**  
26 **REPORT TO THE DEPARTMENT EACH INSTANCE OF NONCOMPLIANCE IN A FORM**  
27 **AND MANNER PRESCRIBED BY THE CENTER.** If the district did not

1 provide at least the required minimum number of hours and days of  
2 pupil instruction under this subsection, the deduction of state aid  
3 shall be made in the following fiscal year from the first payment  
4 of state school aid. A district is not subject to forfeiture of  
5 funds under this subsection for a fiscal year in which a forfeiture  
6 was already imposed under subsection (6).

7 (d) Hours or days lost because of strikes or teachers'  
8 conferences shall not be counted as hours or days of pupil  
9 instruction.

10 (e) If a collective bargaining agreement that provides a  
11 complete school calendar is in effect for employees of a district  
12 as of October 19, 2009, and if that school calendar is not in  
13 compliance with this subsection, then this subsection does not  
14 apply to that district until after the expiration of that  
15 collective bargaining agreement.

16 (f) Except as otherwise provided in subdivisions (g) and (h),  
17 a district not having at least 75% of the district's membership in  
18 attendance on any day of pupil instruction shall receive state aid  
19 in that proportion of 1/180 that the actual percent of attendance  
20 bears to the specified percentage.

21 (g) If a district adds 1 or more days of pupil instruction to  
22 the end of its instructional calendar for a school year to comply  
23 with subdivision (a) because the district otherwise would fail to  
24 provide the required minimum number of days of pupil instruction  
25 even after the operation of subsection (4) due to conditions not  
26 within the control of school authorities, then subdivision (f) does  
27 not apply for any day of pupil instruction that is added to the end

1 of the instructional calendar. Instead, for any of those days, if  
2 the district does not have at least 60% of the district's  
3 membership in attendance on that day, the district shall receive  
4 state aid in that proportion of 1/180 that the actual percentage of  
5 attendance bears to the specified percentage. For any day of pupil  
6 instruction added to the instructional calendar as described in  
7 this subdivision, the district shall report to the department the  
8 percentage of the district's membership that is in attendance, in  
9 the form and manner prescribed by the department.

10 (h) At the request of a district that operates a department-  
11 approved alternative education program and that does not provide  
12 instruction for pupils in all of grades K to 12, the superintendent  
13 shall grant a waiver from the requirements of subdivision (f). The  
14 waiver shall indicate that an eligible district is subject to the  
15 proration provisions of subdivision (f) only if the district does  
16 not have at least 50% of the district's membership in attendance on  
17 any day of pupil instruction. In order to be eligible for this  
18 waiver, a district must maintain records to substantiate its  
19 compliance with the following requirements:

20 (i) The district offers the minimum hours of pupil instruction  
21 as required under this section.

22 (ii) For each enrolled pupil, the district uses appropriate  
23 academic assessments to develop an individual education plan that  
24 leads to a high school diploma.

25 (iii) The district tests each pupil to determine academic  
26 progress at regular intervals and records the results of those  
27 tests in that pupil's individual education plan.

1 (i) All of the following apply to a waiver granted under  
2 subdivision (h):

3 (i) If the waiver is for a blended model of delivery, a waiver  
4 that is granted for the 2011-2012 fiscal year or a subsequent  
5 fiscal year remains in effect unless it is revoked by the  
6 superintendent.

7 (ii) If the waiver is for a 100% online model of delivery and  
8 the educational program for which the waiver is granted makes  
9 educational services available to pupils for a minimum of at least  
10 1,098 hours during a school year and ensures that each pupil  
11 participates in the educational program for at least 1,098 hours  
12 during a school year, a waiver that is granted for the 2011-2012  
13 fiscal year or a subsequent fiscal year remains in effect unless it  
14 is revoked by the superintendent.

15 (iii) A waiver that is not a waiver described in subparagraph  
16 (i) or (ii) is valid for 1 fiscal year and must be renewed annually  
17 to remain in effect.

18 (j) The superintendent shall promulgate rules for the  
19 implementation of this subsection.

20 (4) Except as otherwise provided in this subsection, the first  
21 6 days or the equivalent number of hours for which pupil  
22 instruction is not provided because of conditions not within the  
23 control of school authorities, such as severe storms, fires,  
24 epidemics, utility power unavailability, water or sewer failure, or  
25 health conditions as defined by the city, county, or state health  
26 authorities, shall be counted as hours and days of pupil  
27 instruction. With the approval of the superintendent of public

1 instruction, the department shall count as hours and days of pupil  
2 instruction for a fiscal year not more than 3 additional days or  
3 the equivalent number of additional hours for which pupil  
4 instruction is not provided in a district due to unusual and  
5 extenuating occurrences resulting from conditions not within the  
6 control of school authorities such as those conditions described in  
7 this subsection. Subsequent such hours or days shall not be counted  
8 as hours or days of pupil instruction.

9 (5) A district shall not forfeit part of its state aid  
10 appropriation because it adopts or has in existence an alternative  
11 scheduling program for pupils in kindergarten if the program  
12 provides at least the number of hours required under subsection (3)  
13 for a full-time equated membership for a pupil in kindergarten as  
14 provided under section 6(4).

15 (6) In addition to any other penalty or forfeiture under this  
16 section, if at any time the department determines that 1 or more of  
17 the following have occurred in a district, the district shall  
18 forfeit in the current fiscal year beginning in the next payment to  
19 be calculated by the department a proportion of the funds due to  
20 the district under this article that is equal to the proportion  
21 below the required minimum number of hours and days of pupil  
22 instruction under subsection (3), as specified in the following:

23 (a) The district fails to operate its schools for at least the  
24 required minimum number of hours and days of pupil instruction  
25 under subsection (3) in a school year, including hours and days  
26 counted under subsection (4).

27 (b) The board of the district takes formal action not to

1 operate its schools for at least the required minimum number of  
2 hours and days of pupil instruction under subsection (3) in a  
3 school year, including hours and days counted under subsection (4).

4 (7) In providing the minimum number of hours and days of pupil  
5 instruction required under subsection (3), a district shall use the  
6 following guidelines, and a district shall maintain records to  
7 substantiate its compliance with the following guidelines:

8 (a) Except as otherwise provided in this subsection, a pupil  
9 must be scheduled for at least the required minimum number of hours  
10 of instruction, excluding study halls, or at least the sum of 90  
11 hours plus the required minimum number of hours of instruction,  
12 including up to 2 study halls.

13 (b) The time a pupil is assigned to any tutorial activity in a  
14 block schedule may be considered instructional time, unless that  
15 time is determined in an audit to be a study hall period.

16 (c) Except as otherwise provided in this subdivision, a pupil  
17 in grades 9 to 12 for whom a reduced schedule is determined to be  
18 in the individual pupil's best educational interest must be  
19 scheduled for a number of hours equal to at least 80% of the  
20 required minimum number of hours of pupil instruction to be  
21 considered a full-time equivalent pupil. A pupil in grades 9 to 12  
22 who is scheduled in a 4-block schedule may receive a reduced  
23 schedule under this subsection if the pupil is scheduled for a  
24 number of hours equal to at least 75% of the required minimum  
25 number of hours of pupil instruction to be considered a full-time  
26 equivalent pupil.

27 (d) If a pupil in grades 9 to 12 who is enrolled in a

1 cooperative education program or a special education pupil cannot  
2 receive the required minimum number of hours of pupil instruction  
3 solely because of travel time between instructional sites during  
4 the school day, that travel time, up to a maximum of 3 hours per  
5 school week, shall be considered to be pupil instruction time for  
6 the purpose of determining whether the pupil is receiving the  
7 required minimum number of hours of pupil instruction. However, if  
8 a district demonstrates to the satisfaction of the department that  
9 the travel time limitation under this subdivision would create  
10 undue costs or hardship to the district, the department may  
11 consider more travel time to be pupil instruction time for this  
12 purpose.

13 (e) In grades 7 through 12, instructional time that is part of  
14 a junior reserve officer training corps (JROTC) program shall be  
15 considered to be pupil instruction time regardless of whether the  
16 instructor is a certificated teacher if all of the following are  
17 met:

18 (i) The instructor has met all of the requirements established  
19 by the United States Department of Defense and the applicable  
20 branch of the armed services for serving as an instructor in the  
21 junior reserve officer training corps program.

22 (ii) The board of the district or intermediate district  
23 employing or assigning the instructor complies with the  
24 requirements of sections 1230 and 1230a of the revised school code,  
25 MCL 380.1230 and 380.1230a, with respect to the instructor to the  
26 same extent as if employing the instructor as a regular classroom  
27 teacher.

1           (8) Except as otherwise provided in subsections (11) and (12),  
2 the department shall apply the guidelines under subsection (7) in  
3 calculating the full-time equivalency of pupils.

4           (9) Upon application by the district for a particular fiscal  
5 year, the superintendent shall waive for a district the minimum  
6 number of hours and days of pupil instruction requirement of  
7 subsection (3) for a department-approved alternative education  
8 program or another innovative program approved by the department,  
9 including a 4-day school week. If a district applies for and  
10 receives a waiver under this subsection and complies with the terms  
11 of the waiver, the district is not subject to forfeiture under this  
12 section for the specific program covered by the waiver. If the  
13 district does not comply with the terms of the waiver, the amount  
14 of the forfeiture shall be calculated based upon a comparison of  
15 the number of hours and days of pupil instruction actually provided  
16 to the minimum number of hours and days of pupil instruction  
17 required under subsection (3). Pupils enrolled in a department-  
18 approved alternative education program under this subsection shall  
19 be reported to the center in a form and manner determined by the  
20 center. All of the following apply to a waiver granted under this  
21 subsection:

22           (a) If the waiver is for a blended model of delivery, a waiver  
23 that is granted for the 2011-2012 fiscal year or a subsequent  
24 fiscal year remains in effect unless it is revoked by the  
25 superintendent.

26           (b) If the waiver is for a 100% online model of delivery and  
27 the educational program for which the waiver is granted makes

1 educational services available to pupils for a minimum of at least  
2 1,098 hours during a school year and ensures that each pupil is on  
3 track for course completion at proficiency level, a waiver that is  
4 granted for the 2011-2012 fiscal year or a subsequent fiscal year  
5 remains in effect unless it is revoked by the superintendent.

6 (c) A waiver that is not a waiver described in subdivision (a)  
7 or (b) is valid for 1 fiscal year and must be renewed annually to  
8 remain in effect.

9 (10) Until 2014-2015, a district may count up to 38 hours of  
10 qualifying professional development for teachers as hours of pupil  
11 instruction. However, if a collective bargaining agreement that  
12 provides for the counting of up to 38 hours of qualifying  
13 professional development for teachers as pupil instruction is in  
14 effect for employees of a district as of July 1, 2013, then until  
15 the school year that begins after the expiration of that collective  
16 bargaining agreement a district may count up to the contractually  
17 specified number of hours of qualifying professional development  
18 for teachers as hours of pupil instruction. Professional  
19 development provided online is allowable and encouraged, as long as  
20 the instruction has been approved by the district. The department  
21 shall issue a list of approved online professional development  
22 providers, which shall include the Michigan Virtual School. As used  
23 in this subsection, "qualifying professional development" means  
24 professional development that is focused on 1 or more of the  
25 following:

26 (a) Achieving or improving adequate yearly progress as defined  
27 under the no child left behind act of 2001, Public Law 107-110.

1 (b) Achieving accreditation or improving a school's  
2 accreditation status under section 1280 of the revised school code,  
3 MCL 380.1280.

4 (c) Achieving highly qualified teacher status as defined under  
5 the no child left behind act of 2001, Public Law 107-110.

6 (d) Integrating technology into classroom instruction.

7 (e) Maintaining teacher certification.

8 (11) Subsections (3) and (8) do not apply to a school of  
9 excellence that is a cyber school, as defined in section 551 of the  
10 revised school code, MCL 380.551, and is in compliance with section  
11 553a of the revised school code, MCL 380.553a.

12 (12) Subsections (3) and (8) do not apply to eligible pupils  
13 enrolled in a dropout recovery program that meets the requirements  
14 of section 23a. As used in this subsection, "eligible pupil" means  
15 that term as defined in section 23a.

16 (13) Beginning in 2013, at least every 2 years the  
17 superintendent shall review the waiver standards set forth in the  
18 pupil accounting and auditing manuals to ensure that the waiver  
19 standards and waiver process continue to be appropriate and  
20 responsive to changing trends in online learning. The  
21 superintendent shall solicit and consider input from stakeholders  
22 as part of this review.

23 Enacting section 1. This amendatory act takes effect 90 days  
24 after the date it is enacted into law.