



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



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

Senate Bill 873 (Substitute S-2)  
Senate Bill 875 (Substitute S-2)  
Senate Bill 925 (Substitute S-1)  
Sponsor: Senator Wayne Schmidt (S.B. 873 & 875)  
Senator Lana Theis (S.B. 925)  
Committee: Education and Career Readiness

Date Completed: 5-28-20

### **CONTENT**

**Senate Bill 873 (S-2) would amend the State School Aid Act to do the following for the remainder of 2019-2020 school year:**

- Suspend the hours and days of pupil instruction and reporting requirements for attendance from March 11, 2020, until the end of the school year if a school district had an approved continuity of learning and COVID-19 response plan.
- Prohibit a district with an approved plan from forfeiture of State aid unless the district did not substantially comply with its plan.
- Allow a cyber school and was in compliance with the Revised School Code to continue to be exempt from required days and hours of instruction and full-time equivalency of pupils.
- Allow a district to provide nonessential elective courses through alternative modes of instruction, if feasible.
- Require a district to provide elective courses required for a 12<sup>th</sup> grade pupil to graduate through alternative modes of instruction.
- Prohibit a district that received Federal funds for the 2019-2020 school year to provide special education services from being penalized or required to repay them because of the inability to provide those services after March 11, 2020.
- Make eligible an intermediate school district (ISD) or authorizing body that reviewed plans, on its own or with others, for any additional funding appropriated to support those activities.
- Specify that a district with an approved plan would be eligible to receive continued payments from the State School Aid Fund (SAF).
- Suspend district obligations to administer various tests and assessments for the remainder of the 2019-2020 school year.
- Require that districts with a collective bargaining agreement implement the bill in a manner consistent with the agreement.
- Suspend certain sections of the Act that would otherwise result in the forfeiture of portions of funds that would be allocated to a district under the Act.
- Prescribe record requirements for grantees and subrecipients of Great Start Readiness Program (GSRP) funding and require all subrecipients to create a GSRP plan.

**Senate Bill 875 (S-2) would amend the Revised School Code to do the following for the remainder of the 2019-2020 school year:**

- Suspend in-person instruction, sports activities, and other in-person extracurricular activities for K-12 pupils and require that school buildings to remain closed for those purposes while the state of emergency or state of disaster related to COVID-19 remained in effect.
- Suspend requirements for the minimum amount of pupil instruction that would, under normal circumstances, cause SAF payments to be withheld.
- Suspend common school calendar requirements for the 2019-2020 school year and for the 2020-2021 school year, as necessary.
- Require districts to implement a continuity of learning and COVID-19 response plan beginning April 28, 2020, and prescribe requirements for a plan.
- Allow a district to contract with one more providers or to partner with one or more other districts or ISDs for the implementation of a plan.
- Prescribe plan approval powers and procedures for applicable entities.
- Prescribe temporary powers of the Superintendent of Public Instruction (SPI).
- Specify that the decision to award credit, issue grades, and the use of pass or fail designations would continue to be made at the district-level.
- Make certain recommendations to State-approved nonpublic schools and parents or guardians homeschooling pupils.
- Prescribe certain requirements and social-distancing practices for district buildings.
- Waive a district's obligation to administer certain assessments for the remainder of the school year.
- Prescribe procedures for pupils who were enrolled in Advanced Placement (AP) courses and who were eligible to take AP examinations.
- Waive certain requirements and prescribe procedures for assessments or other performance evaluations of teachers and school administrators.
- Require that a district implement a process to issue grades to pupils in the 12<sup>th</sup> grade, award credits required for graduation, issue diplomas, and provide for the completion of the Michigan merit curriculum (MMC).
- Require that a district provide a pupil in grade 12 who was failing a course before March 11, 2020, with an opportunity to receive credit for the course.
- Waive certain instructional requirements for graduation or unmet instructional requirements.
- Prescribe certain procedures for the provision of special education.
- Suspend certain sections of the School Aid Act that, if unmet, normally would result in forfeiture of funds.
- Encourage districts to donate personal protection equipment (PPE) to healthcare providers and other necessary personnel.
- Prohibit a district from requiring an employee to work in a disaster relief child care center if that employee met certain conditions, including having a positive COVID-19 diagnosis.

**Senate Bill 925 (S-1)** would amend the Teachers' Tenure Act to do the following:

- Waive certain requirements for performance evaluations for teachers unless a teacher was on an individualized development plan on March 13, 2020, during the 2019-2020 school year.
- Require that until June 30, 2020, year-end performance evaluations would have to give no consideration to criteria requiring data or information unavailable because of certain circumstances.
- Allow certain teachers to maintain continuing tenure under the Act.
- Allow a district to complete a performance evaluation for the 2019-2020 school year for teachers who were on continuing tenure and did not have an individualized development plan.

- **Allow districts to extend the time period in which a teacher could make progress toward a development plan goal under certain circumstances.**
- **Require that a district implement the bill in a manner consistent with any collective bargaining agreement that was in effect on or before the bill's effective date.**

The bills are tie-barred. Senate Bill 875 (S-2) also is tie-barred to Senate Bill 885, which would amend the Public Act 116 of 1973 (the child care licensing Act) to allow certain entities, including a school district or a nonpublic school to establish and maintain a disaster relief child care center without a license from the Department of Licensing and Regulatory Affairs.

### **Senate Bill 873 (S-2)**

#### Hours and Days of Instruction & State Aid Allocation

A school district implementing a continuity of learning and COVID-19 response plan that was approved under Section 1851b of the Revised School Code (which Senate Bill 875 (S-2) would add) would have to waive any requirements that a district have a minimum number of the district's membership in attendance on any day of pupil instruction and waive any requirement that a district report the percentage of that district's membership in attendance to the Michigan Department of Education (MDE) for the period beginning on March 11, 2020 and ending on the last day of the 2019-2020 school year. "District" would mean a school district, as that term is defined in the Code, or a public school academy (PSA). District would not include an ISD, except for an intermediate district that educates K-12 pupils.

The bill would temporarily suspend a requirement for a district to provide at least 1,098 hours and 180 days of pupil instruction in order to provide for the following additional exceptions for the 2019-2020 school year that would have to be counted as hours and days of instruction:

- In addition to counting as hours and days of pupil instruction under Section 101(4), the first six days or the equivalent number of hours for which pupil instruction was not provided because of conditions not within the control of school authorities, the MDE would have to count up to 13 additional days or the equivalent number of hours for which pupil instruction was not provide because of a school closure pursuant to an Executive Order (EO) issued by the Governor in response to the COVID-19 states of emergency or disaster.
- A district could count an additional five days, or the equivalent number of hours used to prepare for and provide instruction by alternative modes of instruction pursuant to a learning and response plan as days or an equivalent number of hours of pupil instruction.

Under the bill, the section above would be retroactively effective beginning March 11, 2020.

"Alternative modes of instruction" would mean modes of pupil instruction, other than in-person instruction, that may include, without limitation, partnerships with other districts or ISDs, community colleges, or institutions of higher education, use of vendors, use of online learning, telephone communications, electronic mail, virtual instruction, videos, slideshows, project-based learning, use of instructional packets, or a hybrid of multiple modes of learning that still promote recommended practices for social distancing to mitigate the spread of COVID-19. This definition would apply retroactively, effective March 11, 2020.

Section 101 of the Act pertains to waivers for the minimum number of hours and days of pupil instruction required under the Act. The bill would temporarily suspend strict compliance with rules and procedures under Section 101 as necessary to allow a district that had an MDE-approved alternative education program or another innovative program approved by the MDE that did not use a 100% online model of delivery approved before March 30, 2020, to use additional exceptions provided for in the bill to satisfy the number of days and hours of instruction required under a waiver granted by the MDE

The bill also would waive the minimum number of hours and days of pupil instruction required under the Act for any district with an approved plan. A district with an approved plan would be considered to be operating a Department-approved alternative education program or another approved innovative program for the remainder of the 2019-2020 school year only. A district with an approved plan would not be subject to forfeiture of its State aid allocation; however, if a district did not comply substantially with the terms of its plan, the amount of any forfeiture under Section 101 of the Act would have to be calculated based upon a comparison of the number of hours and days of pupil instruction provided to the minimum number of hours and days of pupil instruction required under the Act, as affected by the bill.

A district with an approved continuity of learning and COVID-19 response plan would not be required to report to the Center for Educational Performance and Information the pupils enrolled in a Department-approved alternative education program.

A school of excellence that was a cyber school and was in compliance with the Code, could continue to educate pupils in a manner consistent with Section 1851b of the Code, and would continue to be exempt from the Act's days and hours of instruction and full time equivalency of pupils requirements for the remainder of the 2019-2020 school year. This would be retroactive, effective beginning on March 16, 2020.

Nothing in the bill or in Section 1851b of the Code would alter the inapplicability of instructional hours and student count requirements for eligible pupils enrolled in a dropout recovery program that met the requirements of Section 23a (dropout recovery programs) of the Act. Currently, dropout recovery programs operated by a district qualify for special membership counting provisions and hours and days of pupil instruction. "Eligible pupil" would mean that term as defined in Section 23a: a pupil who has been expelled from school under the mandatory expulsion provisions in Section 1311 or 1311a of the Revised School Code, a pupil who has been suspended or expelled from school under a local policy, a pupil who is referred by a court, a pupil who is pregnant or is a parent, a pupil who was previously a dropout, or a pupil who is determined by the district to be at risk of dropping out. This would be retroactive, effective beginning March 16, 2020.

Notwithstanding any provision of the Act to the contrary, the approval of the SPI or the Department would not be required for a district to make use of the hours and days of pupil instruction waiver provided for under the bill, which would be retroactive to March 11, 2020.

#### Pupil Attendance & Accounting

The bill, retroactive to March 16, 2020, would permit a district under an approved continuity of learning and COVID-19 response plan to enroll a pupil in more than two virtual courses, regardless of whether the course was published in a catalog of courses or a parent or guardian approved, and so as to suspend any requirement to comply with minimum requirement to count a pupil in membership established by the pupil accounting manual.

The temporary allowances provided by the bill in regard to attendance, described below, would be retroactive, effective beginning March 16, 2020.

The bill would temporarily eliminate the requirement for a district or ISD maintaining school during the entire school year to use the fourth Wednesday in April as a pupil membership count day for the 2019-2020 school year.

Section 104b prescribes the information a district must include on each pupil's high school transcript, including the number of school days the pupil attended school each school year during high school and the total number of school days in session for each of those years. The bill would authorize a district to include each day that a pupil was considered in

attendance under the bill or pursuant to a continuity of learning and COVID-19 response plan, as a day the pupil had attended school during the 2019-2020 school year.

### Special Education Funding

Notwithstanding any provision of the Act to the contrary, a district or a nonpublic school that had been allocated Federal funds for the 2019-2020 school year to provide special education services would not be penalized or required to repay the funds by the State because of the inability to provide those services in person during the 2019-2020 school year after March 11, 2020. This section would be retroactive, effective beginning April 28, 2020.

### Reviewing Continuity of Learning and COVID-19 Respond Plans

An ISD or authorizing body that reviewed and approved or disapproved continuity of learning and COVID-19 response plans on its own or with others under Section 1851b of the Code would be eligible for any additional funding appropriated to support those activities. However, an ISD or authorizing body that did not review and approve or disapprove plans under Section 1851b of the Code would not be eligible for any additional funding.

A district with an approved plan would be eligible to receive continued payments from the SAF for the 2019-2020 school year. This section would be retroactive, effective beginning April 2, 2020.

### State Assessments for Pupils

The bill would temporarily suspend the required administration of the Michigan merit examination (MME) for the 2019-2020 school year for pupils in grade 11 and pupils in grade 12 who had not completed the MME in grade 11. Pupils in the 11<sup>th</sup> grade in the 2019-2020 school year would be administered the Scholastic Aptitude Test (SAT) portion of the MME during the school day in the fall of the 2020-2021 school year, as permitted by the College Board. Results from this test would be used for college entrance purposes but would not be used for school accountability purposes. The bill also would temporarily suspend, for the remainder of the 2019-2020 school year, the obligation of a district to administer State assessments, including the Michigan Student Test of Educational Progress (M-Step), or an alternative to the M-STEP, such as the MI-ACCESS assessment, or other assessments take in conjunction with the M-STEP, including the Preliminary Scholastic Aptitude Test (PSAT). Pupils that were scheduled to be administered the PSAT during the school day in the 2019-2020 school year would be administered the PSAT during the school day in the fall of the 2020-2021 school year, as permitted by the College Board.

The temporary suspension of MME and the M-Step, described above, would be retroactive, effective on March 16, 2020, while the temporary suspension of the assessments described below would be effective beginning on March 11, 2020.

The bill would temporarily suspend a district's obligation or requirement to administer the following tests for the remainder of the 2019-2020 school year:

- For English language learners, the English language proficiency assessment known as the "WIDA ACCESS for English language learners" or the "WIDA Alternate ACCESS".
- The Maryland-Ohio observational tool (also referred to as the Kindergarten Readiness Assessment).

The bill would suspend, beginning on March 16, 2020, for the remainder of the 2019-2020 school year, the obligation of a district to administer an assessment that assessed a pupil's ability to apply reading and mathematics skills in a manner that was intended to allow

employers to use the results in making employment decisions, including the WorkKeys assessment.

#### Teacher and Administrator Evaluations

The bill would temporarily waive any requirement for assessments or other performance evaluations of teachers, except for teachers who were on an individualized development plan on March 13, 2020, and district administrators during the 2019-2020 school year. This section would be retroactive, effective beginning on March 11, 2020.

#### Elective Courses

Before March 11, 2020, if a district provided nonessential elective courses to nonpublic school or homeschool pupils at a district, ISD, or nonpublic school site, and was able to continue to offer the elective courses through alternative modes of instruction, then the district could, if feasible, provide for those courses in its continuity of learning and COVID-19 response plan, and could continue to offer the elective courses through alternative modes of instruction for the remainder of the 2019-2020 school year. This would apply effective on April 3, 2020.

However, if a district provided a nonessential elective course to a nonpublic school pupil or homeschool pupil in grade 12 and that course was required for the pupil to graduate or receive a diploma, the district would have to continue to offer the elective course to the pupil through alternative modes of instruction for the remainder of 2019-2020 school year. This would apply retroactively, effective beginning April 28, 2020.

#### Collective Bargaining

Notwithstanding any provisions of this act to the contrary, for a district with a collective bargaining agreement that was in effect on or before the date of the bill's enactment, the bill would have to be implemented by the district in a manner consistent with the collective bargaining agreement. This would apply retroactively, effective beginning March 11, 2020.

#### Guidance, Waivers, or Administrative Rules

Under the bill, before the MDE, the SPI, or the Michigan Department of Civil Rights (MDCR) sought any guidance, issued a waiver, or sought a waiver relating to the bill or Section 1851b of the Code, or suspended an administrative rule, the SPI or the Director of the MDCR, as applicable, would have to provide the Governor, in writing, with a copy of the request or waiver and information relating to the request, waiver, or suspension. This section would be retroactive, effective beginning April 2, 2020.

#### Forfeiture of Funds

Under the Section 162 of the School Aid Act, a district or an ISD that fails through the negligence of a school official to file reports required under the Act must forfeit that proportion of funds in which the district or ISD otherwise would be entitled under the Act, as the delay in the reports bears to a school year consisting of the required minimum numbers of days and hours for the district or ISD. Section 163 of the Act prohibits certain conduct for districts and ISDs, including employing teachers or substitute teachers who do not have a valid permit, certificate, or authorization to teach in an elementary or secondary school. Section 163 also prescribes penalties and fines for violations. Under the bill, notwithstanding any provisions of the Act to the contrary, strict compliance with rules and procedures under Sections 162 and 163 would be suspended temporarily to prevent the forfeiture of funds resulting from the implementation of the bill or Section 1851b of the Code.

Section 166a requires that the board of a district or an ISD providing reproductive health or other sex education instruction ensure that certain conditions are met. If a violation of this Section is found to have occurred after an investigation, the district or ISD forfeits an amount equal to 1% of its total state aid allocation. Under the bill, notwithstanding any provision of the Act to the contrary, strict compliance with rules and procedures under Section 166a would be temporarily suspended for the 2019-2020 school year to waive instruction requirements unmet in the 2019-2020 school year by a district before March 11, 2020, except as described in the district's approved continuity of learning and COVID-19 response plan.

This section would be retroactive, effective beginning March 16, 2020.

#### Great Start Readiness Program

An ISD that was an approved grantee of Great Start Readiness Program funding for the 2019-2020 school year would have to maintain records of approved subrecipient GSRP plans for continuing the program for the remainder of the 2019-2020 school year. An ISD would be responsible for enduring all subrecipients of the program fund, including community-based providers, created a GSRP plan for the remainder of the 2019-2020 school year. The GSRP plan could be incorporated in the original continuity of learning and COVID-19 response plan submitted for approval under Section 1851b of the Code or could be submitted for approval as an amendment or addendum to the district's current approved continuity of learning and COVID-19 response plan. Subrecipient GSRP plans would have to include all the following:

- A description of plans to provide and document how all members of the GSRP teaching team would engage on an ongoing basis with enrolled children and their families, through the most convenient communication method for the family in light of COVID-19-related orders and guidance, and, as appropriate, provide children and their families plan for the transition from the program to kindergarten. (The outreach described here would have to include a virtual conference with the family.)
- A description of how the GRSP funds and resources would be used to implement a modified program that was developmentally appropriate for the strengths, interest, and needs of each individualized child.
- A best estimate of the date on which subrecipients would begin implementation of the GSRP plan, which could not be later than May 7, 2020.

This section would be retroactive, effective beginning April 28, 2020.

### **Senate 875 (S-2)**

#### Suspension of In-Person, K-12 Instruction

The bill would suspend in-person instruction for K-12 pupils for the remainder of the 2019-2020 school year and school buildings used for the provision of K-12 education would have to remain closed for those purposes for the remainder of 2019-2020 school year. Sports activities and other in-person extracurricular school activities would be suspended while any state of emergency or state of disaster prompted by COVID-19 was in effect and any Executive Order requiring the closure of schools due to COVID-19 was in effect. The bill would apply to all public, nonpublic, and boarding schools in Michigan.

However, a school of excellence that was a cyber school, as that term is defined in Section 551, and that was in compliance with Section 553a, could continue to educate pupils in a manner consistent with the bill and could continue to be exempt from the requirements of Section 101(3) and (8) of the School Aid Act during a state of emergency or state of disaster.

"Pupil" would mean that term as defined in Section 6 of the School Aid Act: an individual in membership in a public school.

This section would be retroactive, effective beginning March 16, 2020.

#### Continuity of Learning and COVID-19 Response Plan

Beginning no later than April 28, 2020, districts would have to implement a continuity of learning and COVID-19 response plan for the remainder of the 2019-2020 school year. By April 3, 2020, the MDE, in collaboration with the Michigan Association of Intermediate School Administrators and the Michigan Council of Charter School Authorizers would have to develop and distribute to districts a model template for a continuity of learning COVID-19 response plan. A plan must include all the following elements and would have to be consistent with Section 296a of the State School Aid Act (which Senate Bill 873 (S-2) would add):

- A description of the methods a district would use to provide alternative modes of instruction other than in-person instruction and a summary of material each pupil and the pupil's parents or guardians would need to meaningfully access the alternative modes of instruction included in the plan.
- A description of the methods a district would use to keep pupils at the center of educational activities, including outreach to continue building relationships and maintain connections, and to help pupils feel safe and valued.
- A description of plans to deliver content in multiple ways so that all pupils could access learning.
- A description of plans to manage and monitor learning by pupils.
- A budget outline estimating additional expenditures associated with the plan and sources of revenue to pay for those expenditures.
- A description of the manner in which district administrators, board members, teachers, and any representatives of teachers had collaborated in the development of the plan.
- A description of methods the district would use to notify pupils and parents or guardians of the plan.
- A best estimate of the date on which the district would begin implementation of the plan.

A plan would have to accomplish at least all the following:

- Provide for assistance, to the extent feasible, to pupils enrolled in eligible courses under the Postsecondary Enrollment Options Act and the Career and Technical Preparation Act in completing those courses for the 2019-2020 school year.
- Provide or arrange for continuation of food distribution to eligible pupils.
- Provide for evaluation of participation in the plan by pupils.
- Provide mental health support to pupils affected by a state of emergency or state of disaster prompted by COVID-19.
- Provide for the district to support the efforts of the ISD in which the district was located to mobilize disaster relief child care centers as described in EO 2020-51 or any other EO that could follow it.

Subject to any applicable requirements of a collective bargaining agreement in effect on or before the date of the enactment of the bill, a plan also would have to provide that the district could redeploy staff to provide meaningful work in the context of the plan and that the district could furlough or lay off school employees, as determined by the district.

Any plan adopted by an ISD would have to include a plan for early childhood services, including a GSRP that would have to comply with the requirements of Section 296a and guidance issued by the MDE. This would apply retroactively, effective April 3, 2020, while a plan for early childhood services could be incorporated in a district's original continuity of learning and COVID-19 response plan submitted for approval or submitted for approval as an amendment or addendum to a district's currently approved plan, effective retroactively, beginning April 30, 2020.

A plan could provide for the adoption of a balanced calendar instructional program for the remainder of the 2019-2020 school year and could plan for the adoption of a balanced calendar instructional program for the 2020-2021 school year.

A district could contract with one or more providers for implementation of a plan. If a district lacked the capacity to implement a plan on its own, a district could partner with one or more other districts or ISDs to do so. A district could enter into one or more cooperative agreements under Section 11a(4) to provide for implementation of a plan.

For a district that was not a PSA, its plan would have to be approved by the intermediate superintendent of the ISD in which that district was located. If the district were a PSA, the PSA's plan would have to be approved by the authorizing body of the PSA or the authorizing body's designee for the purpose of administering contracts with PSAs. However, if a PSA that by agreement provided public educational services for the residents of a district that did not directly provide public educational services to the residents on its own, its plan would have to be approved by the intermediate superintendent of the ISD in which that PSA was located. If an ISD educated K-12 students, it could adopt a plan for those activities and implement the plan once adopted. A school of excellence that was a cyber school and in compliance with Section 553a could continue to educate pupils under its contract, which would be that school's plan.

An intermediate superintendent or an authorizing body or its designee would have to approve a continuity of learning and COVID-19 response plan submitted by a district if the plan complied with the bill's requirements, and if the intermediate superintendent, authorizing body or its designee believed the plan represented a good-faith effort to provide adequate alternative modes of instruction given the limitations resulting from the COVID-19 pandemic and accompanying response efforts. Intermediate superintendents and authorizing bodies and their designee would have to allow for flexibility and resume that a plan submitted by a district would be implemented to the best of the district's ability.

Intermediate school districts and authorizing bodies or their designee would have to transmit copies of approved plans to the SPI and to the State Treasurer. If a district or ISD maintained a public internet site, the district or ISD would have to post its approved or adopted plan on the website.

An ISD could enter into a cooperative agreement with one or more other ISDs for the purpose of reviewing and approving plans. An ISD or authorizing body that reviewed and approved or disapproved a plan on its own or with others would be eligible for any additional funding appropriated to support these activities. An ISD or authorizing body that did not review and approve or disapprove plans would not be eligible for any additional funding.

Intermediate districts and authorizing bodies or their designees would have to be prepared to review and approve or disapprove plans beginning April 8, 2020. A district with an approved plan would be eligible to receive continued payments from the SAF for the 2019-2020 school year.

A district that was not a PSA could amend its plan with the approval of the intermediate superintendent of the ISD in which that district was located. A district that was an PSA could amend its plan with the approval of its authorizing body or its designee. For a PSA that by agreement provided public educational services for the residents of a strict that did not directly provide public educational services to the residents on its own, the PSA's plan could be amended with the approval of the intermediate superintendent of the ISD in which that PSA was located.

For the remainder of the 2019-2020 school year, decisions regarding the awarding of credit, issuance of grades, and the use of pass or fail designations would continue to be made at the district level by districts with due recognition of the impact of the COVID-19 pandemic.

Plans would not have to address the following provisions of the Elementary and Secondary Education Act (ESEA) of 1965 that were waived by the United States Department of Education for 2019-2020 school year: a) assessment requirements under Section 1111(b)(2) of the Act (which require each state to demonstrate that it has adopted a set of high-quality student academic assessments in mathematics, reading or language arts, and science); and b) report card provisions related to certain assessments and accountability in the ESEA, including all of those listed in the bill.

This section, unless otherwise specified, would apply retroactively, effective April 2, 2020.

#### Nonpublic Schools & Homeschooling

For the remainder of 2019-2020 school year, State-approved nonpublic schools and parents and guardians homeschooling pupils would be encouraged to do all the following:

- Offer all students electronic, or other remote, or home-based instruction, to the extent feasible, for the remainder of the 2019-2020 school year, including course offerings provided by the Michigan Virtual School.
- Coordinate with districts providing nonessential elective courses under Section 166b of the State School Aid Act to any of their students for the remainder of the 2019-2020 school year.
- Assist eligible nonpublic school students to complete eligible courses, to the extent feasible, under the Postsecondary Enrollment Options Act and the Career and Technical Preparation Act.
- Take actions necessary to continue to receive any Federal funding previously allocated in a manner consistent with applicable Federal law.

This section would apply retroactively, effective beginning March 16, 2020.

#### District Buildings

Notwithstanding the closure of school buildings under EO 2020-11 or any other executive order that could follow it, district employees or contractors necessary to conduct minimum basic school operations consistent with an approved plan, including those employees or contractors necessary to facilitate alternative modes of instruction, could be physically present in district buildings, as determined by the district administrators. (Under EO 2020-65, district employees and contractors performing the functions described are considered to be performing necessary government activities for purposes of EO 2020-59 or any other EO that may follow it.)

In implementing this requirement, district would have to adopt social-distancing practices and other mitigation measures to protect district employees and contractors, including all the following:

- Restricting the number of employees and contractors present in a district building to no more than was strictly necessary to perform the activities authorized by the bill.
- Promoting remote work to the fullest extent possible.
- Keeping employees and contractors in a district building at least six feet from one another to the maximum extent possible,
- Increasing standards of district building cleaning and disinfection to limit exposure to COVID-19, as well as adopting protocols to clean and disinfection in the event of a positive COVID-19 case in a district building.

- Adopting policies to prevent employees and contractors from entering the premises if they displayed respiratory symptoms or had had contact with an individual who was known or suspected to have had COVID-19.
- Any other social-distancing practices and mitigation measures related to COVID-19 recommended by the Federal Centers for Disease Control and Prevention.

The bill would allow a district to permit parents and guardians of pupils to visit school property for the purpose of obtaining materials and equipment pursuant to a continuity of learning and COVID-19 response plan and use the same social distancing and other mitigation measures required for district employees and contractors. As specified by EO 2020-65, parents and guardians leaving their homes or residences for these purposes would be obtaining necessary services or supplies for the purpose of EO 2020-59 or any executive order that could follow it. Any child care workers at a child care located within a district building, including workers at a disaster relief childcare centers, would be permitted to be physically present in district buildings, as determined by district administration and as permitted by EO 2020-59 or any executive order that could follow it.

This section would apply retroactively, effective beginning March 16, 2020.

### State Assessments

The bill would waive obligations or requirements for districts to administer the MME, SAT, PSAT, M-STEP, MI-ACCESS, other assessments taken in conjunction with the M-STEP, and WorkKeys in a substantially similar manner as under Senate Bill 873 (S-2). The allowance for 11<sup>th</sup> graders to take the SAT or PSAT during the fall of 2010-2021 school year would also be substantially similar to the allowance provided for under Senate Bill 873 (S-2).

For the remainder of the 2019-2020 school year, pupils who were enrolled in AP courses and were eligible to take the AP examinations administered by the College Board, would have to be permitted to take an AP examination using the at-home testing option provided by the College Board. Districts would have to facilitate, for the remainder of the 2019-2020 school year, to the extent feasible, access to information related to AP courses and course schedules provided online by the College Board. For pupils who were eligible but did not have access to the internet or a device necessary for access, districts would have to facilitate access to information regarding assistance provided by the College Board for completing exam requirements at [apstudents.collegeboard.org/coronavirus-updates](http://apstudents.collegeboard.org/coronavirus-updates).

Notwithstanding any provision of this Act to the contrary, for eligible pupils without access to the internet or a device necessary to access the internet, districts would be required to facilitate for the remainder of the 2019-2020 school year, to the extent feasible, access to information regarding assistance provided by the College Board.

This section would apply retroactively, effective beginning March 16, 2020.

### Teacher & Administrator Evaluations

The bill would temporarily waive any requirement for assessments or other performance evaluations of teachers, except for teachers who were on an individualized development plan on March 13, 2020, and district administrators during the 2019-2020 school year.

Section 1250 of the Code requires a district, ISD, or PSA to implement and maintain a method of compensations for teachers and administrators that includes job performance and job accomplishments as a significant factor in determining compensation and additional compensations. For teachers and administrators hired after September 1, 2019, job performance, evaluated based on the annual evaluations, and job accomplishments, are the primary factor in determining compensation. This Section also determines what factors do or

do not qualify in determining compensation. The bill would temporarily suspend strict compliance with the rules and procedures described in Section 1250 for the remainder of the 2019-2020 school year. This would apply retroactively, effective beginning March 11, 2020.

### Grade 12 Pupils

For the remainder of the 2019-2020 school year, a district would have to implement a process to issue grades to pupils in the 12<sup>th</sup> grade, award credits needed for graduation, provide for the completion of the MMC, issue diplomas to pupils in the 12<sup>th</sup> grade, and reflected continued learning by pupils in the 12<sup>th</sup> grade. To achieve this, a district could, without limitation, use one or more of the following options:

- Award credits and grades for courses taken based on course work through March 11, 2020.
- Provide an optional final exam or other culminating activity to test pupil understanding of the subject matter of a course to the extent practicable.
- Implement a process for pupils in the 12<sup>th</sup> grade to be certified as eligible to graduate using a previous learning assessment, a portfolio, or resume approach.
- Offer an interdisciplinary culminating activity that encompassed essential standards missed by pupils because of the school closures.

Districts would have to provide a pupil in the grade 12 in the 2019-2020 school year and who was failing a course as of March 11, 2020, with an opportunity to demonstrate learning in the subject matter of the course and receive credit for the course in the 2019-2020 school year, as determined by the district.

Before March 11, 2020, if a district were providing a nonessential elective course to a nonpublic school pupil or a homeschool pupil in the 12<sup>th</sup> grade at either a district, ISD, or nonpublic school site and that course was required for that pupil to graduate with a diploma, the district, to the extent feasible, would have to continue to offer that elective course to the pupil through alternative modes of instruction for the remainder of the 2019-2020 school year.

Section 1166 of the Code requires pupils to complete a one-semester course of study of five period per week in civics or order to receive a diploma. The bill would suspend this requirement for the remainder of the 2019-2020 school year retroactive to March 16, 2020.

Unless otherwise specified, the provisions described above would apply retroactively, effective April 28, 2020.

### Special Education

All of the following would apply to the provision of special education:

- Districts would have to strive in good faith and to the extent practicable, based upon existing resources, technology, training, and curriculum, as well as circumstances presented by any state of emergency or state of disaster, to provide equal access to alternative modes of instruction to students who had disabilities from birth to 26 years of age for the remainder of the 2019-2020 school year, including the provision of auxiliary services determined under Section 1296 of the Code.
- While either the COVID-19 state of emergency or state of disaster, or both, continued, districts would have to comply with guidance from the US Department of Education, including its office of Civil Rights and Office of Special Education and Rehabilitation Services, and the MDE concerning the delivery of alternative modes of instruction to students with disabilities considering the impact of COVID-19.

- Districts, to the extent practicable and necessary, would have to make individualized determinations whether and to what extent compensatory services could be needed for pupils after the school closure period prompted by the COVID-19 states of emergency or disaster.
- A district or a nonpublic school that had been allocated Federal funds for the 2019-2020 school year to provide special education services would not be penalized or required to repay the funds by the State because of the inability to provide those services in-person during the 2019-2020 school year after March 11, 2020.

Additionally, within five days after the effective date of EO 2020-35, the MDE and MDCR would be strongly encouraged to continue to submit request for interpretation, guidance on implementation, flexibility, or waivers to the US Department of Education that would permit districts and nonpublic schools to do one or more of the following during the remainder of the 2019-2020 school year:

- Deliver instruction to all pupils, including students with disabilities, without having to reconvene or amend individualized education programs (IEPs) or Section 504 plans.
- Deliver direct and consultative related services such as therapies, including occupational and physical therapy, speech language pathologist services, social service worker services, teacher consultant services, and other special education services and supports, without having to reconvene or amend IEPs or Section 504 plans.
- Complete IEPs and Section 504 plans online, either by telephone conference or video conference, if the parents or guardians involved had access to the technology and agree to the alternative means of participation; however, if a parent or guardian elected to not participate in an otherwise due IEP online, a district could extend the deadline for completion of the education program for up to 30 school days after the school closure period prompted by the COVID-19 states of emergency or disaster ends.
- Complete annual or otherwise due IEPs online, either by telephone conference or video conference, with those IEPs being considered timely if they were completed by the end of the 2019-2020 school year.
- Consider whether a pupil should be provided compensatory education for pupils after the school closure period prompted by the COVID-19 states of emergency and disaster ends, based on applicable law and guidance, no later than the first annual IEP meeting of the 2020-2021 school year.
- Consider compensatory education for pupils who were more likely to qualify for compensatory education through IEP amendments, with the authority to complete those program amendments online, either by telephone conference, virtual meetings, or other technology.
- Other requests the MDE deems necessary to facilitate the delivery of alternative modes of instruction with equal access.

"Section 504 plan" would mean a plan under Section 504 of Title V of the Federal Rehabilitation Act of 1973.

The bill would not require that an IEP be amended.

"Individualized education program" would mean that term as described in R 340.1721e, which is a written statement for a child with a disability that is developed, reviewed, and revised in accordance with §§ 300.320 through 300.324.

#### Superintendent of Public Instruction & Teacher Certification

The bill also would temporarily suspend, for the remainder of the 2019-2020 school year, a requirement that a district, university school, or ISD apply for a limited time waiver for a MDE rule interpreting or implementing a provision of the Code. The SPI would be permitted to temporarily suspend an MDE rule interpreting or implementing a provision of the Code to

facilitate the implementation of the bill or Section 296 of the School Aid Act. The SPI could not grant a waiver from the duty to comply with a provision of the Code and could not grant a waiver from the duty to comply with another State statute unless, and to the extent that, a waiver was specifically allowed under the bill or another State statute. This would apply retroactively, effective beginning April 1, 2020.

The SPI would also be permitted, until June 30, 2020, to issue a temporary one-year teaching certificate to an otherwise qualified individual who was unable to take an appropriate subject area examination required by the Code, due to COVID-19 or accompanying response efforts. The SPI could, until June 30, 2020, issue a temporary one-year teaching certificate to an individual holding a teaching certificate from another state or a teaching degree from an out-of-State teacher preparation institution who applied for a Michigan teaching certificate, who was otherwise qualified, but was unable to take an appropriate subject area examination required by the Code because the exam was not offered because of COVID-19 or accompanying response efforts.

The bill also would allow the SPI, until June 30, 2020, to temporarily waive the requirement that a person seeking a teaching certificate successfully complete a course approved by the MDE in first aid and cardiopulmonary resuscitation and instruction approved by the MDE in foreign body airway obstruction management when the person was unable to complete the course or instruction because they were not offered because of COVID-10 or the response efforts.

The SPI could, until June 30, 2020, issue an interim teaching certificate to an otherwise qualified individual who was unable to take an appropriate subject are examination required under the Code because the exam was not offered because of COVID-19 or the response efforts.

Under the bill, until June 30, 2020, the SPI could extend the duration of a one-year temporary teacher employment authorization by another year if the holder of the authorization were unable to complete the requirements to obtain a Michigan teaching certificate because the requirements could not be satisfied because of COVID-19 or accompanying response efforts.

The bill also would waive, until June 30, 2020, for any teacher within his or her third year of employment the requirement that he or she receive at least 15 days of professional development within that teacher's first three years of employment if the requirement could not be completed because of COVID-19 or accompanying response efforts.

Under the bill, until June 30, 2020, the MDE would be permitted to renew an individual's school counselor credential regardless of whether the individual had completed at least 25 hours of professional development approved by the Department under the Code, covering counseling about college preparation and selection process and at least 25 hours of professional development approved by the department covering career counseling.

This section would apply retroactively, effective beginning March 16, 2020.

#### Student Instruction, Credit Requirements, & Year-Round Schooling

Section 1284 of the Code requires that the board of a school district or of a PSA ensure that the school or PSA provide at least the minimum amount of pupil instruction during each school year, otherwise State school aid payments may be withheld. Section 1284a of the Code requires an ISD to adopt a common school calendar to apply to its constituent districts, and prescribes the conditions that the calendar must meet. Under the bill, Section 1284 would be temporarily suspended for the remainder of the 2019-2020 school year as necessary to facilitate the implementation of the bill and Section 296a of the School Aid Act, and Section

1284a would be temporarily suspended for the remainder of the 2019-2020 school year and for the 2020-2021 school year as necessary.

The bill would permit a district under an approved continuity of learning and COVID-19 response plan to enroll a pupil in more than two virtual courses, regardless of whether the virtual course was published in a catalog of courses or a parent or guardian approved. The bill would suspend any requirement to comply with the minimum requirements to count a pupil in membership established by the pupil accounting manual in relation to this permission.

"Membership" would mean that term as defined in the School Aid Act.

Under the bill, until June 30, 2020, a district would be permitted to determine a pupil has completed a credit without using subject area content expectations or guidelines developed by the MDE.

The bill, for the remainder of the 2019-2020 school year, would waive instruction requirements prescribed in Sections 1169 (instruction relating to HIV and AIDS), 1506 (instruction in reproductive health), and 1507 (instruction sex education) of the Code that were unmet during that school year by a district before March 11, 2020, except as described in the district's approved plan. The bill also would waive, for the 2019-2020 school year, cardiopulmonary resuscitation instruction requirements prescribed by Section 1170a of the Code, except as described in a district's plan.

Section 1280f(5) of the Code specifies that, beginning with pupils enrolled in grade 3 during the 2019-2020 school year, pupils who do not meet certain reading level requirements are not be allowed to enroll in grade 4. This Section also prescribes certain obligations districts must meet. The bill would temporarily suspend this requirement and district obligations for the remainder of the 2019-2020 school year.

In order to mitigate the impact of COVID-19 on educational outcomes, a district could adopt year-round school or a year-round school program for the 2020-2021 school year or start the 2020-2021 school year before the first Monday in September. The bill would permit a district to adopt year-round school, a year-round program, or an early start for the 2020-2021 school year. Adoption of these measure could be included by a district as part of its plan.

For district with a collective bargaining agreement that was in effect on or before the date of the bill's enactment, the bill would have to be implemented by the district in a manner consistent with the collective bargaining agreement. This is exempt from the retroactive nature of this section, described below.

Before the MDE, SPI, or the MCDR sought any guidance, issued a waiver, or sought a waiver related to the implementation of the bill or Section 296a of the School Aid Act, or suspended an administrative rule, the SPI or the Director of the MCDR, as applicable, would have to provide the Governor with a copy of the request of waiver and information relating to the request, waiver, or suspension. This would apply retroactively, effective beginning April 2, 2020.

Nothing in the bill or in Section 296a of the School Aid Act would alter the inapplicability of instructional hours and student count requirements to eligible pupils enrolled in a dropout recovery program that met the requirements of Section 23a of the Act. Currently, dropout recovery programs operated by a district qualify for special membership counting provisions and hours and days of pupil instruction.

The bill's provisions regarding nonessential elective courses provide to nonpublic school or homeschool pupils before March 11, 2020, are substantially similar to those provisions in Senate Bill 873 (S-2). This would apply retroactively, effective beginning April 3, 2020.

Unless otherwise specified, this section would apply retroactively, effective March 16, 2020.

### Forfeiture of Funds

The bill's provision pertaining to the forfeiture of funds are substantial the same as those under Senate Bill 873 (S-2). This section would apply retroactively, effective March 16, 2020.

### Attendance

The bill would temporarily waive, for the remainder of the 2019-2020 school year, all compulsory attendance requirements and enforcement measures prescribed by Sections 1561 and 1577 through 1599 of the Code, consistent with the bill and Section 296a, and a district's approved continuity of learning and COVID-19 response plan. This section would apply retroactively, effective March 16, 2020.

### Performance Evaluations

Sections 3a and 3b of Article II (Probationary Period) of the teachers' tenure Act, Section 3 of Article III (Continuing Tenure) of the Act, and Section 1249 of the Code would be temporarily suspended until June 30, 2020, such that annual year-end performance evaluations would have to give no consideration to criteria requiring data or other information unavailable because a school district, student, teacher, or administrator acted in conformance with the bill, Section 296a of the School Aid Act, an EO, other orders, or response efforts prompted by a COVID-19 state of emergency or disaster. Additionally, the temporary suspension of those sections would allow a teacher rated as highly effective or effective on his or her annual year-end performance evaluation to accrue time toward completing the teacher's probationary period under Article II for the 2019-2020 school year. The bill also would allow those teachers to maintain continuing tenure.

The bill would not prohibit an employing school district from completing an annual year-end performance evaluation for the 2019-2020 school year for a teacher on continuing tenure who had not been provided with an individualized development plan. If the district completed an annual year-end performance evaluation for that school year for a teacher on continuing tenure who had not been provided with an individualized development plan, the district would have to comply with the provisions described above.

Under the bill, the MDE would be authorized to renew an individual's teaching certificate or permit between the effective date of EO 2020-65 and the end of the individual's certificate or period permit, regardless of whether the individual had received an annual year end evaluation for the 2019-2020 school year.

Beginning retroactively on March 11, 2020, a teacher who had an individualized development plan on March 13, 2020, would have to be provided an annual year-end performance evaluation by the employing school district in the 2019-2020 school year. Both of the following would apply to the performance evaluation:

- The teacher's annual year-end performance evaluation would have to be determined based on his or her performance at least through March 13, 2020, and be consistent with Section 1249 of the Code, and Section 3a of Article II and Section 3 of Article III of the teachers' tenure Act, as the bill would affect them, and Section 1 of Article XI of the teachers' tenure Act.
- The teacher's annual year-end performance evaluation could also account for his or her performance after March 13, 2020, through the end of the 2019-2020 school year, but would have to be consistent with the parameters described above, and could include a consideration of efforts made by the teacher to prepare and provide remote student

instruction given the limitations that resulted from the COVID-19 pandemic and accompanying response efforts.

Unless otherwise specified, this section would apply retroactively, effective beginning March 16, 2020.

#### Personal Protection Equipment

In response to the COVID-19 states of emergency and disaster, to ensure management of district and ISD affairs and property in ways that would assist in the response to the states of emergency or disaster, district and ISDs would be authorized and encouraged to donate medical PPE and supplies to healthcare providers and other necessary personnel engaged in response efforts to COVID-19. This section would apply retroactively, effective beginning March 11, 2020.

#### Disaster Relief Childcare Centers

Until June 1, 2020, in response to the state of emergency described in EO 2020-51, school districts and nonpublic schools would have to first identify employees who voluntarily elected to become disaster relief child care center participants before reassigning other employees to work in a disaster relief child care centers, to the extent authorized under applicable contracts and laws.

"Disaster relief child care center" would mean that term as defined under Section 5m of the child care licensing Act (which Senate Bill 885 would add): a child care center offering child care as provided under EO 2020-51.

Districts and nonpublic schools could not require an employee to work in a disaster relief child care center if that employee met any of the following conditions:

- Had a confirmed diagnosis of COVID-19 or had been in contact with someone with a confirmed diagnosis of COVID-19 in the last 14 days.
- Displayed the symptoms of COVID-19.
- Was 60 years old or older.
- Had an underlying condition that placed that employee at an elevated risk of serious illness from COVID-19.

This section would be retroactive, effective beginning March 16, 2020.

### **Senate Bill 925 (S-1)**

#### Article III

Under Section 3 of Article III of the Act, the controlling board of a school district employing a teacher on continuing tenure must ensure that the teacher is provided with an annual year-end performance evaluation. If the teacher is rated as ineffective or minimally effective on an annual year-end evaluation, the district must provide the teacher with an individualized development plan developed by appropriate administrative personnel in consultation with that teacher. The plan must require the teacher to make progress towards certain goals within a specified time period that does not exceed 180 days. The evaluation must be based on multiple classroom observations in addition to other factors required under the Revised School Code, and must include at least an assessment of that teacher's progress in meeting the goals within that teacher's plan.

Under the bill, notwithstanding any provision of the Act to the contrary, strict compliance with rules and procedures under Section 3 of Article II would be temporarily suspended for the

remainder of the 2019-2020 school year to the extent necessary to waive any requirement for assessments or other performance evaluations of teachers, except for teachers on an individualized development plan on March 13, 2020, during the 2019-2020 school year. This would apply retroactively, effective beginning March 11, 2020.

#### Article XI

Notwithstanding any provision of this Act to the contrary, any teacher who had an individualized development plan on March 13, 2020, under Section 3a of Article II (Probationary Period) or Section 3 of Article III (Continuing Tenure), would have to be provided an annual year-end performance evaluation as required under Section 1851b of the Revised School Code .

Sections 3a and 3b of Article II of the teachers' tenure Act, Section 3 of Article III of the Act, and Section 1249 of the Code would be temporarily suspended until June 30, 2020, such that annual year-end performance evaluations would have to give no consideration to criteria requiring data or other information unavailable because a school district, student, teacher, or administrator acted in conformance with Section 1851b of the Code, Section 296a of the School Aid Act, an EO, other orders, or response efforts prompted by a COVID-19 state of emergency or disaster. The temporary suspension of those sections would allow a teacher rated as highly effective or effective on his or her annual year-end performance evaluation to accrue time toward completing the teacher's probationary period under Article II for the 2019-2020 school year. The bill also would allow those teachers to maintain continuing tenure under Article III.

Nothing in the bill or Section 2a of Article III would prohibit a district from completing an annual year-end performance evaluation for the 2019-2020 school year for a teacher on continuing tenure who had not been provided with an individualized development plan described under the bill.

The bill would temporarily suspend compliance with rules and procedures under Section 3 of Article III as follows:

- Time periods specified for a teacher on continuing tenure to make progress toward development plan goals could be extended to allow the teacher sufficient time to make progress toward goals based on criteria requiring data or other information unavailable because a school district, student, teacher, or administrator acted in conformance with Section 1851b of the Code, Section 269a of the State School Aid Act, an EO, other orders, or response efforts prompted by a COVID-19 state of emergency or disaster.
- A development plan goal based on criteria requiring data or other information that was unavailable because of the circumstances described above could be waived.

A district with a collective bargaining agreement that was in effect for employees of that district on or before the bill's effective date would have to be implement the bill in a manner consistent with the collective bargaining agreement. This would apply retroactively, effective beginning March 11, 2020.

Unless otherwise specified, this section would be retroactive, effective beginning March 16, 2020.

MCL 388.1701 et al. (S.B. 873)  
380.1279g et al. (S.B. 875)  
38.83a et al. (S.B. 925)

Legislative Analyst: Dana Adams

## **FISCAL IMPACT**

### **Senate Bill 873 (S-2) & Senate Bill 875 (S-2)**

The bills would codify the content of Executive Order 2020-35, which is in effect currently as Executive Order 2020-65, and would suspend in-person instruction of K-12 education and would require the use of alternatives means to deliver instruction. If not for the existence of the Executive Orders, the bills would have had an indeterminate fiscal impact on districts, public school academies, and the Department of Education. The fiscal information below is the same as the fiscal impact statement from EO 2020-35 (since the bills are codifying content from EO 2020-35 and its successor, EO 2020-65).

Districts and public school academies would face some build-related savings with the closure of school buildings for in-person instruction, although those savings would be lessened to the extent child care centers were operating in those buildings. To the extent hourly workers were not paid during the school closures, district or public school academies would see additional savings.

It is likely, however, that districts and public school academies would see increased costs to the extent alternative modes of instruction included in a district's learning plan were greater than the costs that otherwise would have occurred on-site. These types of costs primarily would center on technology, i.e., devices, connectivity, applications, and personnel, among other things. To the extent ensuring employees working in a disaster relief child care center met the requirements of the bill, district or public school academies would see additional costs.

The Department of Education would experience additional administrative costs to develop and distribute template learning plans, coordinate plans transmitted to the Department, and implement new teacher certification requirements. Depending on the amount of implementation time, there likely could be significant costs to implement the bill. The costs could be lessened by reduced administration of assessments, teacher certification, and any other requirements that were suspended.

### **Senate Bill 925 (S-1)**

The bill could have a positive fiscal impact on local schools. The temporary changes to performance evaluation requirements for teachers could reduce administrative costs for schools in the 2019-2020 school years. These savings would be determined based on the level of current costs spent on year-end performance evaluations, which vary from schools throughout the State.

Fiscal Analyst: Cory Savino  
Kathryn Summers

SAS\S1920\s873sc

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.