

SENATE BILL NO. 873

April 24, 2020, Introduced by Senator SCHMIDT and referred to the Committee on Government Operations.

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 2019 PA 58,
and by adding section 296a.

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 and certify to the center and the intermediate

1 superintendent, in the form and manner prescribed by the center,
2 the number of pupils enrolled and in regular daily attendance,
3 including identification of tuition-paying pupils, in the district
4 as of the pupil membership count day and as of the supplemental
5 count day, as applicable, for the current school year. In addition,
6 a district maintaining school during the entire year shall submit
7 and certify to the center and the intermediate superintendent, in
8 the form and manner prescribed by the center, the number of pupils
9 enrolled and in regular daily attendance in the district for the
10 current school year pursuant to rules promulgated by the
11 superintendent. Not later than the sixth Wednesday after the pupil
12 membership count day and not later than the sixth Wednesday after
13 the supplemental count day, the district shall resolve any pupil
14 membership conflicts with another district, correct any data
15 issues, and recertify the data in a form and manner prescribed by
16 the center and file the certified data with the intermediate
17 superintendent. If a district fails to submit and certify the
18 attendance data, as required under this subsection, the center
19 shall notify the department and the department shall withhold state
20 aid due to be distributed under this article from the defaulting
21 district immediately, beginning with the next payment after the
22 failure and continuing with each payment until the district
23 complies with this subsection. If a district does not comply with
24 this subsection by the end of the fiscal year, the district
25 forfeits the amount withheld. A person who willfully falsifies a
26 figure or statement in the certified and sworn copy of enrollment
27 is subject to penalty as prescribed by section 161.

28 (2) To be eligible to receive state aid under this article,
29 not later than the twenty-fourth Wednesday after the pupil

1 membership count day and not later than the twenty-fourth Wednesday
2 after the supplemental count day, an intermediate district shall
3 submit to the center, in a form and manner prescribed by the
4 center, the audited enrollment and attendance data for the pupils
5 of its constituent districts and of the intermediate district. If
6 an intermediate district fails to submit the audited data as
7 required under this subsection, the department shall withhold state
8 aid due to be distributed under this article from the defaulting
9 intermediate district immediately, beginning with the next payment
10 after the failure and continuing with each payment until the
11 intermediate district complies with this subsection. If an
12 intermediate district does not comply with this subsection by the
13 end of the fiscal year, the intermediate district forfeits the
14 amount withheld.

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

17 (a) Except as otherwise provided in this section, each
18 district shall provide at least 1,098 hours and 180 days of pupil
19 instruction.

20 If a collective bargaining agreement that provides a complete
21 school calendar was in effect for employees of a district as of
22 June 24, 2014, and if that school calendar is not in compliance
23 with this subdivision, then this subdivision does not apply to that
24 district until after the expiration of that collective bargaining
25 agreement. A district may apply for a waiver under subsection (9)
26 from the requirements of this subdivision.

27 (b) Except as otherwise provided in this article, a district
28 failing to comply with the required minimum hours and days of pupil
29 instruction under this subsection forfeits from its total state aid

1 allocation an amount determined by applying a ratio of the number
2 of hours or days the district was in noncompliance in relation to
3 the required minimum number of hours and days under this
4 subsection. Not later than August 1, the board of each district
5 shall either certify to the department that the district was in
6 full compliance with this section regarding the number of hours and
7 days of pupil instruction in the previous school year, or report to
8 the department, in a form and manner prescribed by the center, each
9 instance of noncompliance. If the district did not provide at least
10 the required minimum number of hours and days of pupil instruction
11 under this subsection, the department shall make the deduction of
12 state aid in the following fiscal year from the first payment of
13 state school aid. A district is not subject to forfeiture of funds
14 under this subsection for a fiscal year in which a forfeiture was
15 already imposed under subsection (6).

16 (c) Hours or days lost because of strikes or teachers'
17 conferences are not counted as hours or days of pupil instruction.

18 (d) Except as otherwise provided in subdivisions (e) and (f),
19 if a district does not have at least 75% of the district's
20 membership in attendance on any day of pupil instruction, the
21 department shall pay the district state aid in that proportion of
22 $1/180$ that the actual percent of attendance bears to 75%.

23 (e) If a district adds 1 or more days of pupil instruction to
24 the end of its instructional calendar for a school year to comply
25 with subdivision (a) because the district otherwise would fail to
26 provide the required minimum number of days of pupil instruction
27 even after the operation of subsection (4) due to conditions not
28 within the control of school authorities, then subdivision (d) does
29 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 department shall pay the
4 district state aid in that proportion of 1/180 that the actual
5 percentage of attendance bears to 60%. 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 (f) 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 (d). The
14 waiver must provide that an eligible district is subject to the
15 proration provisions of subdivision (d) 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.

28 (g) All of the following apply to a waiver granted under
29 subdivision (f):

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

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

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

16 (h) The superintendent shall promulgate rules for the
17 implementation of this subsection.

18 (4) Except as otherwise provided in this subsection, the first
19 6 days or the equivalent number of hours for which pupil
20 instruction is not provided because of conditions not within the
21 control of school authorities, such as severe storms, fires,
22 epidemics, utility power unavailability, water or sewer failure, or
23 health conditions as defined by the city, county, or state health
24 authorities, are counted as hours and days of pupil instruction.
25 For 2018-2019 only, in addition to these 6 days, if pupil
26 instruction is not provided on 1 or more days that are included in
27 a period for which the governor has issued an executive order
28 declaring a state of emergency across this state, upon request by a
29 district to the superintendent of public instruction, in a form and

1 manner prescribed by the department, that 1 or more of those days
2 and the equivalent number of hours count as days and hours of pupil
3 instruction, the department shall count those requested days and
4 the equivalent number of hours as days and hours of pupil
5 instruction for the purposes of this section. For 2018-2019, the
6 days included in the executive order are January 29, 2019 to
7 February 2, 2019. With the approval of the superintendent of public
8 instruction, the department shall count as hours and days of pupil
9 instruction for a fiscal year not more than 3 additional days or
10 the equivalent number of additional hours for which pupil
11 instruction is not provided in a district due to unusual and
12 extenuating occurrences resulting from conditions not within the
13 control of school authorities such as those conditions described in
14 this subsection. Subsequent such hours or days are not counted as
15 hours or days of pupil instruction.

16 (5) A district does not forfeit part of its state aid
17 appropriation because it adopts or has in existence an alternative
18 scheduling program for pupils in kindergarten if the program
19 provides at least the number of hours required under subsection (3)
20 for a full-time equated membership for a pupil in kindergarten as
21 provided under section 6(4).

22 (6) In addition to any other penalty or forfeiture under this
23 section, if at any time the department determines that 1 or more of
24 the following have occurred in a district, the district forfeits in
25 the current fiscal year beginning in the next payment to be
26 calculated by the department a proportion of the funds due to the
27 district under this article that is equal to the proportion below
28 the required minimum number of hours and days of pupil instruction
29 under subsection (3), as specified in the following:

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

5 (b) The board of the district takes formal action not to
6 operate its schools for at least the required minimum number of
7 hours and days of pupil instruction under subsection (3) in a
8 school year, including hours and days counted under subsection (4).

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

13 (a) Except as otherwise provided in this subsection, a pupil
14 must be scheduled for at least the required minimum number of hours
15 of instruction, excluding study halls, or at least the sum of 90
16 hours plus the required minimum number of hours of instruction,
17 including up to 2 study halls.

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

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

1 number of hours of pupil instruction to be considered a full-time
2 equivalent pupil.

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

16 (e) In grades 7 through 12, instructional time that is part of
17 a Junior Reserve Officer Training Corps (JROTC) program is
18 considered to be pupil instruction time regardless of whether the
19 instructor is a certificated teacher if all of the following are
20 met:

21 (i) The instructor has met all of the requirements established
22 by the United States Department of Defense and the applicable
23 branch of the armed services for serving as an instructor in the
24 Junior Reserve Officer Training Corps program.

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

1 teacher.

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

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

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

27 (b) If the waiver is for a 100% online model of delivery and
28 the educational program for which the waiver is granted makes
29 educational services available to pupils for a minimum of at least

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

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

8 (10) A district may count up to 38 hours of qualifying
9 professional development for teachers as hours of pupil
10 instruction.

11 All of the following apply to the counting of qualifying
12 professional development as pupil instruction under this
13 subsection:

14 (a) If qualifying professional development exceeds 5 hours in
15 a single day, that day may be counted as a day of pupil
16 instruction.

17 (b) At least 8 hours of the qualifying professional
18 development counted as hours of pupil instruction under this
19 subsection must be recommended by a districtwide professional
20 development advisory committee appointed by the district board. The
21 advisory committee must be composed of teachers employed by the
22 district who represent a variety of grades and subject matter
23 specializations, including special education; nonteaching staff;
24 parents; and administrators. The majority membership of the
25 committee ~~shall~~**must** be composed of teaching staff.

26 (c) Professional development provided online is allowable and
27 encouraged, as long as the instruction has been approved by the
28 district. The department shall issue a list of approved online
29 professional development providers, which must include the Michigan

1 Virtual School.

2 (d) Qualifying professional development may only be counted as
3 hours of pupil instruction for the pupils of those teachers
4 scheduled to participate in the qualifying professional
5 development.

6 (e) For professional development to be considered qualifying
7 professional development under this subsection, the professional
8 development must meet all of the following:

9 (i) Is aligned to the school or district improvement plan for
10 the school or district in which the professional development is
11 being provided.

12 (ii) Is linked to 1 or more criteria in the evaluation tool
13 developed or adopted by the district or intermediate district under
14 section 1249 of the revised school code, MCL 380.1249.

15 (iii) Has been approved by the department as counting for state
16 continuing education clock hours. The number of hours of
17 professional development counted as hours of pupil instruction may
18 not exceed the number of state continuing education clock hours for
19 which the qualifying professional development was approved.

20 (iv) Not more than a combined total of 10 hours of the
21 professional development takes place before the first scheduled day
22 of school for the school year ending in the fiscal year and after
23 the last scheduled day of school for that school year.

24 (v) No more than 10 hours of qualifying professional
25 development takes place in a single month.

26 (vi) At least 75% of teachers scheduled to participate in the
27 professional development are in attendance.

28 (11) Subsections (3) and (8) do not apply to a school of
29 excellence that is a cyber school, as **that term is** defined in

1 section 551 of the revised school code, MCL 380.551, and is in
2 compliance with section 553a of the revised school code, MCL
3 380.553a.

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

8 (13) At least every 2 years the superintendent shall review
9 the waiver standards set forth in the pupil accounting and auditing
10 manuals to ensure that the waiver standards and waiver process
11 continue to be appropriate and responsive to changing trends in
12 online learning. The superintendent shall solicit and consider
13 input from stakeholders as part of this review.

14 **Sec. 296a. (1) Notwithstanding any other provision of this act**
15 **to the contrary and subject to subsection (2), all orders, rules,**
16 **regulations, proclamations, directives, and provisions related to**
17 **this act included in Executive Order No. 2020-35 are incorporated**
18 **into this section by reference and remain in effect for the**
19 **remainder of the 2019-2020 school year.**

20 (2) All orders, rules, regulations, proclamations, directives,
21 and provisions incorporated by reference into this section under
22 subsection (1) that are specified in Executive Order No. 2020-35 as
23 continuing beyond the remainder of the 2019-2020 school year
24 continue and remain in effect as specified in Executive Order No.
25 2020-35.

26 (3) It is the intent of the legislature to codify, as
27 specified in this section, the portions of Executive Order No.
28 2020-35 that relate to this act through the amendatory act that
29 added this section.