

Legislative Analysis



REFORMING AND REDESIGNING FAILING SCHOOLS

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House Bill 4787 as passed by the House
House Bill 4789 as passed by the House
Sponsor: Rep. Tim Melton

House Bill 4788 as passed by the House
Sponsor: Rep. Bert Johnson
Committee: Education

First Analysis (8-24-09)

BRIEF SUMMARY: Among other things, the bills would:

- Require the State Superintendent of Public Instruction to appoint a **school reform/redesign officer** to be chosen on the basis of the individual's competence and experience in educational reform. Certain "failing" schools would be placed under the control and supervision of the reform/redesign officer.
- Create a State **School Reform/Redesign School District** that would consist of certain failing schools throughout the state.
- Beginning after the 2008-2009 school year, **define a "failing" school** as one that has been unaccredited for four consecutive years; or has failed to achieve the federal pupil performance standard for four or more consecutive years; and has fewer than a "designated percentage" of its students scoring at least "proficient" for both mathematics and English language arts on the most recent MEAP assessments or Michigan Merit Examination. The term "designated percentage" is defined to mean 30 percent for 2009-2010, 33 percent for 2010-2011, 36 percent for 2011-2012, 39 percent for 2012-2013, 42 percent for 2013-2014, and 45 percent for 2014-2015 and thereafter.
- Establish a **process to identify and restructure "failing" schools**. If a school met the criteria for a failing school and was placed under the control of the reform officer, a review team would be appointed to identify the causes of the failure and recommend actions to remedy the situation. Their evaluation would focus on both school district and school building issues, and a report would be issued within 30 days. The state reform/redesign officer also would create and confer with a school advisory council consisting of parents and community leaders.
- Allow a **"failing" school to be placed under the oversight of the state reform/redesign officer** and operated as a "redesigned school" with modified staffing rules, either (1) under a **memorandum of understanding with the school district** that allows a renegotiation of collective bargaining agreements regarding staff assignments, seniority, and work rules, or (2) under a **performance contract**

- with a charter school** (referred to as a "qualified entity") that meets certain performance criteria and that was selected after a request for proposals. Generally, a school would first operate under a memorandum of understanding within its regular school district and then, if there was not sufficient improvement or the MOU was violated, would be placed in the special school district and would be operated as a special charter school.
- **Expand the definition of "public school"** to include the turnaround school corporation, and the State School Reform/Redesign School District, and expand the definition of "public school academy" to include a turnaround school.
 - Provide for **the creation and funding of "turnaround schools."** A turnaround school would be classified in statute as a kind of public school academy or charter school. It would be organized under the Nonprofit Corporation Act and be administered by a board of directors. It could not be organized by or affiliated with a religious organization. A turnaround school would be subject to the leadership and general supervision of the State Board of Education. A turnaround school could only be authorized by the state reform/redesign school district. (Once authorized, however, it could contract with other charter school authorizers for services.)
 - Specify that there could be **one turnaround school per failing school**; that it would have to be located within the attendance area of the corresponding failing school and within the same school district; and that it would operate under a five-year contract that could be renewed if certain performance criteria were met. A turnaround school would have to enter into a contract with an approved educational management organization.
 - The state reform/redesign officer would create a **High Performing School Review Team** consisting of teachers, school administrators, and other educational experts, to evaluate Michigan charter schools and similar public schools in other states to identify programs that operate high-performing public schools.
 - Require the Department of Education to publish a **"watch list" of public schools in danger of meeting the failing schools criteria**, and to notify the board members and representatives of all unions who, in turn, would notify the parents of students. The watch list would include schools whose students failed to achieve federal performance standards for three or more consecutive years, and schools where fewer than 45 percent of the students scored at least proficient on the MEAP or Merit Exam in both math and English language arts.
 - Allow **collective bargaining** over the starting date of the school year, the composition of site-based decision-making bodies, and third-party contracting for non-instructional services. These are currently among the topics that state law says cannot be addressed during collective bargaining in schools systems.

For a description of the content of each bill and a detailed summary of House Bill 4787, which is the main bill in the package, see the section labeled *The Content of the Bills*.

FISCAL IMPACT: The bills would have an indeterminate fiscal impact on the state and school districts. The proposed turnaround schools would be a type of public school academy (PSA) for the purposes of school aid funding and as such would be paid a foundation allowance equal to the PSA maximum or the foundation allowance of the district in which they are located, whichever was less. Districts in which a failing school was closed would lose funding due to the loss of pupils, and the funding would follow the pupils to the turnaround school. The state would spend less per pupil for turnaround schools created in districts where the foundation allowance was higher than the PSA maximum, which is currently \$7,580. In addition, the bills would create additional costs for the Department of Education associated with the establishment of a state school reform/redesign officer, school review teams, and the added level of oversight for failing and turnaround schools.

THE APPARENT PROBLEM:

There are nearly 4,000 K-12 public schools in Michigan's 552 school districts, and each district is served by one of the 57 regional intermediate school districts. In addition there are 225 public school academies each of which is treated as a separate school district, in statute. Together, this public school system educates over 1.6 million students.

Each year school officials report the academic achievement of their students to the Center for Educational Performance and Instruction (CEPI), located in the Michigan Department of Education. The schools' reports tally the success of their students as measured by written tests--the MEAP tests in grades 3-8, and the Michigan Merit Examination in high school, administered in grade 11. The tests are custom-designed by Michigan educators to measure the students' understanding of the state's curricular standards developed to gauge proficiency in English language arts, mathematics, science, and social studies. Generally, test scores are higher for elementary school students than they are for middle- and high school-students.

The students in some schools routinely score very poorly on their tests. They fail to achieve Adequate Yearly Progress (AYP) as they progress through their school district's curricular program of instruction. Many of these schools are high-poverty schools, known as Title I schools (because they are entitled to supplemental funding under Title I of the federal Elementary and Secondary Education Act). If a Title I school's students score poorly over two consecutive years, the federal No Child Left Behind Act of 2001 requires that school officials take action. Failure to meet AYP for two years means a school "needs improvement," and technical assistance must be provided by the state Department of Education. (In Michigan, these services are provided through the intermediate school Districts, or ISDs.)

Failure to meet AYP for three years means the school must offer students the opportunity to receive supplemental academic enrichment services such as tutoring, and students must

be given the choice to transfer to higher-performing schools. Missing AYP for four or more consecutive years requires that a Title I school take one or more of several "corrective actions" (such as replace the staff, implement a new curriculum, decrease management authority at the school level, appoint an outside expert to advise the schools, extend the school day or year, change the school's internal organization, and/or offer a transfer option along with supplemental education services). Schools that fail to meet AYO for five consecutive years must be "restructured." If these "restructured" schools do not improve by the following year, the school could reopen as charter schools, the staff could be replaced, and the state can take over their operation.

Despite this federal program of intervention, some Michigan schools—mostly high schools in poor rural and urban communities, estimated to number about 85 statewide—have been unable to increase student achievement. To reverse their chronic failure and their students' persistent underachievement, legislation has been introduced to re-design those schools.

According to extensive committee testimony from a range of national experts, there are proven programs that increase student achievement, regardless of a school's location and its students' wealth. The programs cited include the KIPP (Knowledge Is Power Program) Schools operating in 19 states and serving 17,000 students [www.kipp.org], the Green Dot Public Schools operating in Los Angeles and New York City, often in cooperation with the teacher unions [www.kipp.org], the YES College Prep Schools in Houston [www.yesprep.org], and the Harlem Children's Promise Zone in New York City [www.hcz.org].

The bills in this package allow the State Superintendent of Public Instruction to appoint a state school reform/redesign officer, and annually identify failing public schools and charter schools having a high percentage of students with low academic achievement. The State Superintendent could then place the failing schools in a single statewide reform/redesign school district headed by the reform/redesign officer. That reform/redesign officer would be required to develop memorandums of understanding with the governing boards and teachers unions of the failing schools, in order to redesign the schools' programs of curriculum, teaching, learning, and assessment. Reforms could include proven educational management interventions that increase student achievement elsewhere in the county, or the creation of entirely new schools, to be known as turn-around schools. See chart on the last page (adapted from a chart provided by the sponsors) that illustrates in general terms the reform/redesign process.

THE CONTENT OF THE BILLS:

House Bill 4787 is the main bill in the package and amends the Revised School Code. It contains a new Part 6D, entitled "Turnaround Schools," and amends existing Part 16 of the code to add the other provisions on school reform and redesign.

House Bill 4788 would amend Public Act 336 of 1947 (MCL 423.215), which deals with collective bargaining and employee relations for public school teachers, to specify that a

collective bargaining agreement entered into under the act would be subject to the new provisions added by House Bill 4787 regarding staffing decisions in "redesigned schools."

The bill specifies that if a public school is designated as a failing public school by the state school superintendent, then for the purposes of collective bargaining, the state school reform/redesign officer would be a joint employer of the public school employees, along with the employer that operated the school.

The bill also would allow collective bargaining over the starting date of the school year, the composition of site-based decision-making bodies, and third-party contracting for non-instructional services. (These are currently among the topics that state law says cannot be addressed during collective bargaining in schools systems.)

House Bill 4789 would amend the State School Aid Act (MCL 388.1606) to provide for the funding of turnaround schools, by including turnaround schools within the definition of "public school academy."

In addition, the bill specifies that a student enrolled in a failing public school that is placed in the state school reform/redesign school district, and that is managed by a qualified person or entity under a performance contract, would be counted in membership in the district or public school academy that operated the failing public (the word "school" is omitted) before it was designated as a failing public school.

House Bills 4788 and 4789 are each tie-barred to House Bill 4787, which in turn is tie-barred to those two bills. This means, essentially, that all the bills must be enacted for any to take effect.

DETAILED SUMMARY OF HOUSE BILL 4787:

Turnaround Schools

State Reform/Redesign District as authorizer. An authorizing body would issue a contract for the organization and operation of a turnaround school. The bill defines "authorizing body" to mean the state reform/redesign school district created under the act.

Five-year contract. A contract would be issued to a qualified entity selected on a competitive basis, and could be solicited, by the state superintendent of public instruction. The authorizer could grant approval for one turnaround school for each failing public school, and would identify the failing public school that corresponded to the turnaround school. A contract would be issued for five years, and if successful, could be extended an additional five years. To earn a contract extension, the operator would have to meet, by the final year of the contract, the "80-80-18 test": 80 percent high school graduation, 80 percent average daily attendance, and an average score of 18 on the college entrance examination component of the Michigan Merit Exam.

The contract would be issued to a qualified entity selected by the State Reform/Redesign District on a competitive basis, after receiving and evaluating proposals. Under the bill, a "qualified entity" is defined, and generally means an in-state charter school operator that operates high-performing schools (as determined by a High Performing School Review Team created under the bill), or an out-of-state school operation that is similar to a public school in Michigan, or that provides comprehensive educational, administrative, management, or instructional services or staff for a school in another state, and who operates high-performing schools (as determined by a High Performing School Review Team created under the bill).

High-performing school review team. The "High Performing School Review Team" would be created by the State School Reform/Redesign Officer to evaluate charter schools in Michigan and out-of-state, to identify people or entities that operate high-performing public schools. The team would consist of at least teachers, school administrators, and other educational experts. In identifying high-performing public schools, the team would take into account the past academic performance of students at the school, past grade offerings, and student demographics. The Reform/Redesign Officer would use the evaluation to recruit entities to operate turnaround schools.

A turnaround school's five-year contract could be renewed if the following conditions were met:

- At least 80 percent of the students had graduated from high school or were determined by the Department of Education to be on track to graduate, the school had at least 80 percent average attendance, and if applicable, the school's students had an average score of at least 18 on the college entrance examination component of the Michigan Merit Examination.
- The school was meeting the other educational goals set forth in the contract.
- The school was operating in substantial compliance with the Revised School Code.

Application to create a turnaround school. To obtain a contract, a qualified entity would apply to the authorizing body, completing an application that included, among other things the sponsor's name, the board members' names (including representatives from the local community), and the articles of incorporation, as well as the proposed school's name, purpose, bylaws, governance structure, education goals (including those noted above) and the curricula and manner of assessment, the admission policy, school calendar and day schedule, the age and range of the students to be enrolled (including all of the same grade levels offered by the failing public school), descriptions of staff responsibilities, and a description of and address for the proposed buildings where the turnaround school would be located, including a financial commitment by the qualified entity to construct or renovate the buildings.

Locate within attendance area. The turnaround school would have to be located within the attendance area of the failing public school, and within the same school district.

Authorizer's fees; duties; contracts; EMOs. An authorizing body could not charge a fee that exceeded a combined total of three percent of the total state school aid received by the turnaround school, and the legislation describes the uses to which the fee could be put.

The authorizing body would not be required to issue a contract to any entity, and the state reform/redesign officer could solicit applications. Turnaround school contracts would be issued on a competitive basis, taking into consideration the resources available for the proposed school, the population to be served; and the educational goals to be achieved. The legislation specifies evaluation criteria against which applicants would be measured. It also prohibits an authorizing body from issuing a contract unless the contract requires the turnaround school to enter into an agreement for operation of the school by an established educational management organization (EMO) approved by the Department of Education.

Under the bill, a contract issued to organize and administer a turnaround school would have to contain, among other things, information about the proposed school's educational goals (including those noted above); assurance that the MEAP and Merit Exam would be used to measure achievement; a description of its compliance method; a description to be followed when amending the contract; a board-signed certificate of compliance; contract revocation procedures; a school's address (within the attendance area and school district) and description of its buildings; requirements and procedures for annual independent financial audits; policies concerning conflicts of interest; school accountability procedures, including public posting of the contract and board meeting agendas and minutes; public posting of budgets; and quarterly financial reports submitted to the authorizing body.

The contract would also have to contain a current list of teachers and copies of their teaching certificates; curriculum documents; proof of insurance; copies of facility leases or deeds and equipment leases; copies of management and service contracts; health and safety reports; any management letters issued as part of the annual financial audit; a requirement that the authorizing body must review and may disapprove any agreement between the board of directors and an educational management organization (EMO) before the agreement is final and valid; a requirement that all procedures concerning fair and open enrollment, as specified in the bill, have been followed; inclusion in all student recruitment materials of a statement that appropriate special education services and English as a second language services are available; an open enrollment period lasting two weeks, including evening and weekend hours; a prohibition that individuals are employed in more than one full-time position; and a requirement that if requested, the board report to the authorizing body the total compensation for each person working at the turnaround school.

Legal compliance; governmental immunity; taxation. A turnaround school would be required to comply with, among others, the following laws: the Open Meetings Act, the Freedom of Information Act, the Uniform Budgeting and Accounting Act, the Revised Municipal Finance Act, and the federal No Child Left Behind Act.

A turnaround school and its incorporators, board members, officers, employees, and volunteers would have governmental immunity. An authorizing body and its board members, officers, and employees would be immune from civil liability, both personally and professionally, for any acts or omissions in authorization or oversight if they acted within its scope of authority. A turnaround school would be exempt from all taxation on its earnings and property and could not levy property taxes, or any other tax.

A turnaround school could acquire by purchase, gift, lease, or in other ways delineated in the legislation, buildings and other property for school purposes. An agreement, mortgage, loan, or other instrument of indebtedness entered into by a turnaround school and a third party would not constitute an obligation of the State of Michigan or an authorizing body. Neither the full faith-and-credit of the state nor that of an authorizing body may be pledged for the payment of any turnaround school bond, note, agreement, mortgage, loan, or other instrument of indebtedness.

Turnaround school location; tuition; enrollment priority; grade levels. A turnaround school can be located in all or part of an existing public school building. If not, it must be located within the attendance area and school district (as established by the school district that operates the failing school) of the failing public school to which it corresponds. The school cannot charge tuition, nor can it discriminate in its student admissions policies on the basis of intellectual or athletic ability, measures of achievement or aptitude, status as a handicapped person, or any other basis that would be illegal if used by a school district. However, a turnaround school could limit admission to students who were within a particular range or age or grade level, or on any other basis that would be legal if used by a school district. Except for foreign exchange students, only Michigan residents could be enrolled.

The bill specifies that a turnaround school allow the enrollment of any child who was previously enrolled in the failing public school to which it corresponds. The school could also give priority to a sibling of a student already enrolled, and to a child of a person who was employed by the turnaround school.

A turnaround school would be required to include all of the same grade levels offered by the failing public school to which it corresponds. A turnaround school could also include other grades or any configuration of grades, including kindergarten and early childhood education.

Teachers; certification; personnel contracts. A turnaround school would be required to use certificated teachers--that is, "only an individual holding a Michigan teaching certificate, except as otherwise provided by law."

A turnaround school may develop and implement new teaching techniques or methods, and report those to the authorizing body and to the state board in order to make them available to the public. A turnaround school could, with the approval of its authorizing body, employ or contract with personnel, or enter into a contract with another party to furnish teachers or other personnel, prescribe their duties, and fix their compensation. If

health care benefits are provided, then they must be provided in accord with the Public Employees Health Benefit Act.

Authorizer responsibilities. If the authorizing body issued a contract for a turnaround school, the authorizer would be required to do all of the following:

- Ensure that the contract and the application for the contract comply with all requirements noted in the law.
- Within 10 days after issuing the contract, submit a copy to the Department of Education.
- Establish the method of selection, length of term, and number of members of the board of directors of each turnaround school that it authorizes, ensuring that the board includes representation from the local community.
- Oversee the operations of each turnaround school operating under a contract issued by the authorizing body.
- Develop and implement a process for holding a turnaround school board of directors accountable for meeting academic performance standards.
- Take necessary measures to ensure that a turnaround school board of directors operates independently of any educational management company involved in the operations of the turnaround school.
- Oversee and ensure that the student admission process is operated in a fair and open manner.
- Ensure that the board of directors of the turnaround school maintains and releases information as necessary under the law.

An authorizing body can enter into an agreement with other authorizing bodies to carry out any function, noted above under "authorizer responsibilities."

State school aid. The authorizing body of a turnaround school is its fiscal agent. A state school aid payment for a turnaround school is paid to the authorizing body which, in turn, forwards the payment to the turnaround school. Within 30 days after a contract is submitted to the Department of Education by an authorizing body, the department must issue a district code to the turnaround school. (If the department fails to do so, then the State Treasurer issues a temporary district code so the school can receive funding.)

Contract revocation. A contract issued may be revoked by the authorizing body if one or more of the following occurs: failure of the turnaround school to abide by and meet the educational goals set forth in the contract; failure to comply with all applicable law; failure to meet generally accepted public sector accounting principles; or the existence of other grounds for revocation, as specified in the contract. The decision to issue, to re-issue, to reconstitute, or to revoke a contract, is solely within the discretion of the authorizing body. The decision is final, and it is not subject to review by a court or any state agency.

However, before an authorizing body revokes a contract, it may consider and take corrective measures, including reconstituting the school, in order to avoid revocation.

Ultimately, an authorizing body is responsible for a smooth transition for affected students, and must return any school aid funds attributable to those students to the State Treasurer for redistribution to the public school in which the students enroll after revocation. (This is done following a methodology established by the department together with the Center for Educational Performance and Information.)

The authorizer must notify the State School Superintendent, in writing, of any contract revocations within 10 days. Upon revocation, title to all real and personal property and other assets owned by the turnaround school revert to the State of Michigan. Then, within 30 days, the turnaround school board of directors must meet to adopt a plan of distribution of assets and to approve the dissolution of the turnaround school corporation, all in accord with Chapter 8 of the Nonprofit Corporation Act.

That plan must be forwarded to the State Treasurer for approval, and the State Treasurer (or a designee) would monitor the dissolution process. In addition, within 10 business days after its dissolution meeting, the turnaround school board must file a certificate of dissolution with the Department of Energy, Labor, and Economic Growth. As part of the plan of distribution of assets, the turnaround school board would designate the director of the Department of Management and Budget (or a designee) to dispose of all real property of the turnaround school, in accordance with the directions developed for disposition of surplus land and facilities under the Management and Budget Act. The State Treasurer could appoint a trustee to carry out these duties, if the turnaround school board failed to do so, and any money collected from the sale of property would be deposited in the State School Aid Fund.

Special contract provisions. An authorizing body and turnaround school could include provisions in their contract that permitted the qualified entity that applied for the contract to do any of the following:

- Participate in the recruiting, interviewing, and nominating process for members of the turnaround school board of directors.
- Conduct an independent educational review, on a periodic basis, to determine whether the turnaround school was successful in implementing the educational goals set forth in the contract.
- Serve as contract administrator between the turnaround school board of directors and any educational management company contracted to operate the turnaround school.
- Make recommendations to the authorizing body and turnaround school on how to improve the turnaround school's operation.

Reform/Redesign Officer and Failing Schools

State school reform/redesign officer; evaluation team. Under the bill, the State Superintendent would hire a state school reform/redesign officer who has competence and experience in educational reform. The state school reform/redesign officer would be exempt from the civil service, and directly responsible to the state school superintendent.

State school reform/redesign school district. A state school reform/redesign school district would be created, as constitutionally prescribed for the purpose of receiving state school aid, and subject to the leadership of the State Board of Education. All of the following would apply to the state school reform/redesign school district:

- It would consist of failing schools from school districts throughout the state that were placed into the district, in order to turn them around academically.
- The state reform/redesign officer would serve as the reform/redesign school district's superintendent.
- The state reform/redesign officer's powers, rights, duties, and obligations would include, but not be limited to, the following: authority over all expenditures; rights and obligations under collective bargaining agreements and employment contracts entered into by the school board for employees at the school; rights to prosecute and defend litigation; rights under statute, rule, and common law; authority to delegate any powers to designees with proper supervision; and the power to terminate contracts, or portions of contracts (excepting debt service on legally authorized bonds and, following provisions of the act, collectively bargained agreements).

Beginning after the 2008-2009 school year, if the Department of Education determined that a school has been unaccredited for four consecutive years, or had failed to achieve the federal pupil performance standard for four or more consecutive years, and that the percentage of all pupils enrolled in the school who scored at least "proficient" on the most recent Michigan Education Assessment Program assessment or Michigan Merit Examination (as applicable) was less than the "designated percentage" in both mathematics and English language arts, then the Superintendent of Public Instruction could (but would not be required to) issue an order placing the failing public school under the control and supervision of the state school reform/redesign officer. Under the bill, the term "designated percentage" would be defined to mean 30 percent for 2009-2010, 33 percent for 2010-2011, 36 percent for 2011-2012, 39 percent for 2012-2013, 42 percent for 2013-2014, and 45 percent for 2014-2014 and thereafter.

Currently under the law, the State Superintendent must take action if the school has been unaccredited for three consecutive years.

Review team. Under the bill, within 15 days after an order placing a school under a reform/redesign officer's control, the redesign officer would appoint a review team to conduct an evaluation of the failing public school. The review team would consist of at least a teacher, a support staff member, a parent, a school administrator, a school board member, a member of the local community, and a designee of the state superintendent. The members, excepting the designee of the state school superintendent, would serve at the pleasure of the state school reform/redesign officer. The evaluation would cover, at a minimum, standards and expectations, curriculum, instruction, time on task, learning environment, prevalence of transient students, parental involvement, community involvement, staff development, planning and assessment, and governance and leadership.

That review team would submit a report within 30 days to the state reform/redesign officer, based on its evaluation that identifies the reasons for the public school's failure and contains recommendations on the measures that the state school reform/redesign officer should take to turn the school around. The board of a school district or charter school would be required to cooperate fully with a review team appointed for this purpose.

Actions to address a failing school. If a public school is designated as a failing school by the state superintendent, then all of the following apply:

- If the public school was a charter school, then the state superintendent could order the charter school's authorizing body to revoke the charter school's contract, and the charter school could be closed. If the state superintendent did not order revocation of the contract, then the state school reform/redesign officer would proceed with a memorandum of understanding for the charter schools, and place the charter school in the state school reform/redesign school district.
- If the public school was not a charter school, then all of the following would apply:
 - (1) The state school reform/redesign officer would confer with the school board that operates the school, and also with collective bargaining representatives of all of the bargaining units, to attempt to enter into a memorandum of understanding (MOU). If the parties were unable to agree to a MOU by the next January 31 after the public school was designated as a failing school, then the state school reform/redesign officer would impose a MOU on the parties and proceed under the act, based on the imposed MOU.
 - (2) The state school reform/redesign officer would place the failing public school into the state school reform/redesign school district created under the act, and take other specified actions if any of the following occurred:
 - If the school had operated for at least two full school years under a MOU and had failed to meet the requirements for continuing to operate under a MOU. The requirements for continuing to operate would be contained in the MOU and would include at least a requirement that the Department of Education determines either that the percentage of all students enrolled in the school who scored at least "proficient" on the most recent MEAP assessments or Michigan Merit Examination (as applicable) was at least 30 percent in either mathematics or English language arts or that the percentage of all students below the proficient achievement level used for the federal student performance standard decreased by at least 10 percent from the preceding year. (Scores labeled "provisionally proficient" would be considered as proficient for these purposes.)

-- If the state superintendent determined that the school board had failed to comply with the MOU.

Memorandum of Understanding provisions. If the state school reform/redesign officer entered into a MOU with the school board or board of directors that operated the failing public school, the MOU would provide for at least all of the following:

- General oversight and supervision of the failing public school by the state school reform/redesign officer.
- The requirements for continuing to operate under the MOU.
- Continued day-to-day operation of the failing public school by the school board or board of directors, but only after modification of school district or charter school policies and renegotiation of applicable collective bargaining agreements to provide for any of the following as determined by the state school reform/redesign officer:

(1) That any contractual or other seniority system otherwise applicable would not apply at the public school. (However, this would not allow unilateral changes in pay scales or benefits.)

(2) That any contractual or other work rules the reform/redesign officer determined to be impediments to achieving satisfactory student performance would not apply at the public school. (However, this subparagraph would not allow unilateral changes in pay scales or benefits.)

(3) That the reform/redesign officer would direct the expenditure of all funds attributable to students at the public school and the principal or other school leader designated by the reform/redesign officer would have full autonomy and control over curriculum and discretionary spending at the public school.

(4) That, for the purposes of collective bargaining under Public Act 336 of 1947, the state school reform/redesign officer would be a joint employer of the employees at the public school along with the board of the school district or the board of directors of the charter school that operated the public schools.

(5) That an individual could be employed to teach at the school only if he or she held a valid Michigan teaching certificate, except as otherwise provided by law.

The bill specifies that the state school reform/redesign officer would be a joint employer of the employees at the school, along with the board of the school district or board of directors of the public school academy that operates the school.

Performance contract or turnaround school. If the reform/redesign officer decided to place the public school in the state school reform/redesign school district, then he or she would have to do one of two things: assume autonomous control by establishing a school performance contract or create a turnaround school (see above).

If the reform/redesign officer assumed autonomous control and oversight through a performance contract with a qualified person or entity to operate the school, then the officer would publish a request for proposals for qualified entities to enter into a performance contract with the state to operate the school. The reform/redesign officer would select the contractor and enter into a performance contract having at least those elements described in the bill, including provisions to address educational goals, assessments, accountability, and contract compliance. (At a minimum, the educational goals would include that at least 80 percent of the school's students graduate from high school or be determined by the Department of Education to be on track to graduate, the school have at least 80 percent average attendance, and if the school was a high school, the students have an average score of at least 18 on the college entrance examination component of the Michigan Merit Examination.)

All of the following would apply to the operation of a redesigned public school by qualified persons or entities working under a performance contract:

- The school district or public charter school that operated the failing school would remain the employer of all staff, but for the purposes of collective bargaining, the state school reform/redesign district would be the joint employer of all employees working at the school, along with the board or board of directors.
- A qualified person or entity managing the school could remove a staff member from a job assignment, in accord with any applicable collective bargaining agreement that applied to the school after modification of that agreement, and direct that he or she be assigned elsewhere. (However, the leader would make these personnel decisions without terminating a person from school district or charter school employment).
- The principal or other school leader designated by the qualified person or entity could hire and assign employees to work at the school, and an employee who worked at the school at the time it was designated as a failing school would have to reapply to be rehired (but would not be terminated from school district or charter school employment).
- With the approval of the reform/redesign district, any contractual or other work rules would not apply at the school (without allowing unilateral changes in pay scales or benefits).
- With the approval of the reform/redesign district, any contractual or other seniority system would not apply at the school.
- The principal or other school leader designated by the qualified person or entity would have full autonomy and control over curriculum and discretionary spending at the school.
- The school manager could assign to teach at the school only an individual holding a valid Michigan teaching certificate.
- The school board or board of directors that operated the public school before it was designated a failing school would have to ensure that all school officials and employees cooperated with the school reform/redesign officer, and with those managing the performance contract.

- The public school would be part of the school reform/redesign district for management of the school, but for purposes of calculating state aid under the State School Aid Act, the school would be considered part of the school district or charter school that operated the school before it was designated as a failing school.
- The state school reform/redesign officer would be required to establish a school advisory council consisting of parents and community leaders. The following people could be appointed: students; representatives of community organizations that offer health, social, or educational services; and representatives of local workforce development boards or post-secondary institutions that serve local communities.

Educational management organizations (EMOs). The bill specifies that if a governing board of a public school enters into a contract with an educational management company to carry out the operations of a public school, then the governing board must ensure all of the following:

- That the governing board has conducted sufficient due diligence to conclude that the educational management company has sufficient educational expertise and management experience to provide the agreed services.
- That the governing board will obtain independent legal counsel in all negotiations with the educational management company.
- In the case of a charter school, that the educational management company will provide, under its contract, all financial and other information needed to comply with the reporting requirements contained in the contract between the board of directors and its authorizing body.

The bill specifies that if a governing board of a public school enters into a contract with an educational management company to carry out the operations of a public school, then the contract would have to contain at least all of the following provisions:

- A provision requiring the educational management company to provide to the governing board information regarding teachers, administrators, and support staff employed by the company and assigned to work at the public school, including at least all of the following personal information: name; education, including highest degree attained; salary; copy of teaching certificate or other required permit or credential, if required for the position; description of relevant experience; and employment record.
- A provision requiring the educational management company to provide to the governing board information regarding the business operations of the public school, including financial records and information concerning the operation of the school; financial records and information concerning leases for equipment, physical facility space, or institutional and educational materials; and financial records and information concerning mortgages and loans.
- In the case of a charter school, a provision requiring that the educational management company will make information available concerning the operation

and management of the charter school, including at least all the information necessary to comply with the reporting requirements contained in the contract between the board of directors and its authorizing body.

Watch list. At least annually, the Department of Education would publish a "watch list" of public schools that were in danger of meeting the failing schools criteria, and notify the board that operated the school, and also representatives of all the bargaining units. The board would be required to notify the parents and publish a notice about its status in the school website. A school would be included on a "watch list" if the department determined that a school had *"failed to achieve the federal pupil performance standard"* for three or more consecutive years, and that the percentage of all students enrolled in the school who scored at least "proficient" on the most recent MEAP or Merit Exam was less than 45 percent in both math and English language arts.

The list could include other schools if the department determined that there were other reasons why the schools were in danger of meeting the criteria. Under the bill, the phrase *"failed to achieve the federal pupil performance standard"* is defined to mean that the department has determined that the school has failed to achieve adequate yearly progress under the No Child Left Behind Act of 2001, Public Law 107-110, or has failed to meet a successor federal standard that the Superintendent of Public Instruction has identified as being a standard established by the federal government that is based on pupil performance and is required to be met in order to receive full federal funding.

For the purposes of this section, the state school reform/redesign officer would be encouraged to consider taking measures to increase the number of qualified school counselors serving a failing public school, to ensure that there was at least one school counselor for every 250 students.

The state superintendent would prioritize efforts by addressing the lowest-performing public schools first and addressing others as resources became available if he or she determined that the resources available were insufficient to address all of the "failing" public schools.

At least quarterly, the state school reform/redesign officer would submit a report to the standing committees of the Senate and House of Representatives with jurisdiction over education on the progress in student proficiency due to the measures under the act.

Disabled students in charter schools. Finally, the bill specifies that for the purposes of ensuring that a student with a disability enrolled in a charter school is provided with special education programs and services, the charter school would be considered to be a local school district under this article.

Definitions. The bill defines several terms, including among others "educational management company," "educational management organization," "entity," and "qualified entity." Definitions of those terms follow.

The term "educational management company" means an entity that enters into an agreement with the governing board of a public school to provide comprehensive educational, administrative, management, or instructional services or staff to the public school. The term includes an "educational management organization."

Under the bill, a "qualified entity" means an entity that is determined by the superintendent of public instruction to meet either of the following:

(1) Meets both of the following:

- Has been issued and is currently a party to a contract to organize and operate at least one public school academy under Part 6A.
- The high-performing school review team created under Section 1280c has determined that it operates high-performing schools.

(2) Meets both of the following:

- Is an entity that operates a school in another state that is similar to a public school in Michigan or that provides comprehensive educational, administrative, management, or instructional services or staff for a school in another state that is similar to a public school in Michigan.
- The high-performing school review team created under Section 12280c has determined that it operates, or provides services or staff, for high-performing schools.

ARGUMENTS:

For:

Proponents of this legislation argue that interventions to reverse chronically failing schools are necessary in order to increase student achievement. They note that school failure affects students' quality of life--their ability to find work with good pay or to continue their education beyond high school. Without a high school diploma from a reputable school, students have little earning potential which cancels their many hopes and dreams, while creating a drag on the state's overall economic recovery. See "The Economic Impact of the Achievement Gap in America's Schools: Summary of Findings" published by McKinsey and Company Social Sector Office in April 2009."

Proponents also argue support for these bills poses a moral imperative. They say that to ignore the plight of students in failing schools when proven educational interventions exist elsewhere in the United States is to reject one's primary responsibility as a legislator: that is, to solve social problems that can be mitigated, and sometimes reversed.

Proponents of the bills point out that educational interventions that turn around failing schools always begin by making the schools more coherent, both academically and administratively. Those who turn-around failing schools know that mastery of curricular

content is assured when students have well-educated teachers capable of high quality teaching, lengthened school days and years during which to study and learn, high expectations to achieve, an aligned or articulated curriculum that makes sense year-to-year, and periodic formative assessments that measure students' growth and development so that teachers can continually diagnose and re-evaluate their learning. In addition, failing schools nearly always need new or newly trained leaders. Although the research demonstrates that changes in management alone cannot reverse the decline of a failing school, the research also clearly demonstrates that poor management—nearly ubiquitous in failing schools—will, if not replaced, impede any and all efforts to improve learning in the classroom.

Proponents note that several educational management organizations have raised student achievement in failing schools nationwide--and they cite the work of four: Green Dot Public Schools, YES College Prep, Harlem Children's Zone, and KIPP. For example, they cite the school results demonstrated by Green Dot Public Schools as it works in 18 poor Los Angeles schools. In five of those schools, 80 percent of entering 9th graders graduated within four years, 76 percent have been admitted to four-year universities. They note that Green Dot Public Schools has expanded its base of operations to New York City, where it works in the cooperation with the United Federation of Teachers' union. Proponents cite the success of YES College Preparatory schools in Houston, Texas, serving primarily Hispanic students, where YES Prep students outscore their counterparts in the Houston Independent School District--virtually all of the high students achieving perfect or near perfect scores in reading and mathematics. Proponents cite the work of charter schools operated by the Harlem Children's Zone where schools produced enormous gains in math scores between grades six and eight. One middle school, Promise Academy, eliminated the achievement gap in math between its black students and the city average for white students. And proponents cite the work of educators in the KIPP (Knowledge Is Power Program) Schools--a nationwide network of free, open-enrollment, college-prep public schools with a track record of preparing students in underserved communities for success in college and in life. There are currently 66 KIPP schools in 19 states and the District of Columbia serving almost 17,000 students.

Proponents of the bills cite the work of key education leaders who have turned around failing schools and in urban schools districts--perhaps most notably Paul Vallas, who offered three hours of testimony before the House Education Committee as he described his tireless work as the big-city school superintendent of the Chicago Public Schools (1995-2001), the Philadelphia Public Schools (2001-2003), and now the turnaround school superintendent of more than 20 struggling schools in the state of Louisiana, including all of the New Orleans Public Schools, wiped out by Hurricane Katrina in 2005. Other education leaders who have risen to the challenge include Superintendent Dr. Bernard Taylor, Jr. of the Grand Rapids Public Schools, where, for three consecutive years, the district has increased the number of schools meeting the federal Adequate Yearly Progress standards, jumping from 26 to 35 schools meeting AYP, a 25 percent improvement.

Proponents of the legislation also cite the need for school re-design so that the adults in failing schools can re-engage with the disconnected youth they teach. They advocate re-engagement through community-wide systems of support. In these re-designed systems, schools and educational achievement are central, but the systems also develop workforce connections and forge partnerships with those who can help students stay healthy, well-nourished, and securely sheltered. These efforts, promoted by the National League of Cities' Institute for Youth, Education, and Families, have had success in Albany, Cheyenne, Baltimore, Corpus Christi, Kansas City, Philadelphia, Nashville, Oklahoma City, San Jose, and more. See "Beyond City Limits: Cross-System Collaboration to Re-engage Disconnected Youth," a project funded by the William and Flora Hewlett Foundation, and the Charles Steward Mott Foundation.

Finally, proponents of the bills point out that the federal No Child Left Behind Act of 2001 sets out increasingly severe sanctions for Title I schools whose students fail to meet Adequate Yearly Progress for two, three, four, and five consecutive years. Despite those sanctions, few states have invented interventions that re-design the failing schools and reverse their academic decline. The Obama Administration and U.S. Secretary of Education Arne Duncan (a former Chicago school superintendent) have dedicated a multi-billion dollar "Race to the Top Fund" in order to incentivize state policy action. Enacting these bills into law would allow Michigan to compete for those funds.

For these many reasons—economic, moral, educational, social, and monetary—proponents of the bills say Michigan should identify its chronically failing schools, import and promote programs and people who can turn them around, and ensure a sound educational experience for the thousands of struggling students in them who want to learn. They say that to do otherwise would be unconscionable.

Against:

Some opponents of these bills say that while the idea to turn around the worst of Michigan's failing schools is a good one, the new leaders selected to turn around the failing schools will need far more flexibility to hire and fire principals, teachers and other non-instructional staff, despite existing collective bargaining agreements. Instead, these bills strengthen the role of teacher unions and collective bargaining. For example, opponents note that House Bill 4788 (H-3) has been amended to incorporate House Bill 4219, a bill reported from the House Labor Committee in May 2009, which if enacted into law would allow collective bargaining over third party contracting for non-instructional services (customarily called "privatization"). In addition, the bill would allow collective bargaining over the starting date of the school year, and also the composition of site-based decision-making bodies. These are currently among the topics that state law says cannot be addressed during collective bargaining in school systems, and they should continue to be prohibited. Collective bargaining impedes schools reform and redesign. The bills should be amended to ensure that new school leaders have the ability to restructure the workforce within a failing school.

Against:

The bills allow the creation of new charter schools, to be known as turnaround schools. Some opponents of the bills argue that the new turnaround schools designed to replace the failing schools would further weaken and hollow out big city public schools districts. Too many competing charter schools would drain the urban districts of revenue by claiming the per capita state school aid payment that would follow the highest performing students when their parents enrolled them in the new programs.

In addition, charter school expansion is eyed warily by teachers unions, since this relatively fast-growing segment of the education marketplace is non-unionized.

Response:

The turnaround charter schools created under the bill would be authorized by the state reform/redesign school district. Only that district, headed by a superintendent known as the state school reform/redesign officer, could authorize new charter schools. The new charter schools would have to be located within the attendance area of the failing school it was intended to replace.

During lengthy testimony before the House Education Committee, Andrew Rotherham of the Education Sector think tank in Washington, D.C., testified that Michigan should allow more charters, since restricting choice in education has been an educational disaster. Rotherham argued that "starving good charter schools by restricting their ability to expand doesn't make any sense. Giving them incentives to replicate in communities of need does." According to Rotherham, to ensure that choice initiatives genuinely benefit students, policymakers should concentrate on quality and scale. He writes, "...Nor is the problem that teachers' contracts are inherently incompatible with charter schooling. High-profile charter schools like Green Dot Public Schools, which employ unionized teachers, show that effective charters can operate in tandem with teachers unions, and there are Knowledge Is Power Program schools and other schools operating under modified teachers union contracts..." See "Fair Trade: Five Deals to Expand and Improve Charter Schooling" published in January 2008 at www.educationsector.org

POSITIONS:

The Michigan Department of Education supports the bills. (6-11-09)

Detroit Teachers - Children First support the bills. (6-11-09)

The United Way for Southeastern Michigan supports the bills. (6-11-09)

Michigan State University supports the bills. (6-18-09)

Grand Rapids Area Chamber of Commerce supports the bills. (6-18-09)

The Michigan Education Association supports the bills. (6-18-09)

The American Federation of Teachers-Michigan supports the bills. (6-18-09)

AFSCME supports the bills. (6-18-09)

The ACLU supports the bills. (6-18-09)

IUOE Local 547 supports House Bills 4787 and 4788. (6-18-09)

Service Employees International Union supports the bills. (6-18-09)

The Michigan State AFL-CIO supports the bills. (6-18-09)

The Michigan Catholic Conference supports the bills. (6-11-09)

The Michigan Association of School Boards opposes the bills. (6-18-09)

The Michigan Council of Charter School Authorizers opposes House Bill 4787. (6-18-09)

The Michigan Elementary and Middle School Principals Association opposes the bills. (6-18-09)

Oakland Schools opposes the bills. (6-18-09)

The Michigan Association of School Administrators opposes the bills. (6-18-09)

Detroit Public Schools is neutral on the bills. (6-11-09)

The Association of Michigan School Counselors is neutral on the bills. (6-11-09)

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.

