

# Legislative Analysis

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## EDUCATION ACHIEVEMENT AUTHORITY & SCHOOL BUILDING REDEPLOYMENT

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**House Bill 6004 (Substitute H-1)**  
**Sponsor: Rep. Lisa Posthumus Lyons**  
**Committee: Education**

**Complete to 12-4-12**

### A SUMMARY OF HOUSE BILL 6004 (SUBSTITUTE H-1)

House Bill 6004(H-1) would add four sections to the Revised School Code and amend six existing sections to establish in statute the Education Achievement Authority.

This authority would oversee a separate Michigan school district called the 'reform district,' whose leader, known as the chancellor, would have the powers of a school superintendent, and whose constituent schools would comprise those school buildings, statewide, where student achievement, as measured on state tests, fell within the lowest five percent of Michigan schools for three consecutive years.

These schools, known as 'achievement schools,' could leave the system when their students' test scores improved enough to lift the school out of the bottom five percent. Students in the 'reform district' achievement schools would be taught by certificated teachers; however, collectively bargained contracts would be cancelled when a school entered the 'reform district' as an achievement school. Further, House Bill 6004 (H-1) would eliminate the current prohibition that disallows unilateral changes in pay scales or benefits when developing addendums to collective bargaining contracts.

House Bill 6004(H-1) also provides for a statewide inventory of unused school buildings so they can be leased or sold to other educational entities, either public (such as charter schools) or nonpublic schools or entities. The bill also provides for an inventory of buildings in school districts operated by an emergency financial manager under Public Act 172 of 1990, or a successor statute, to ensure the "buildings' "optimum use," including redeployment, and 'hoteling.'

[Generally speaking, the bill establishes a statutory basis for the Education Achievement Authority, which was created through an interlocal agreement under the Urban Cooperation Act by the Detroit Public Schools and Eastern Michigan University in August 2011. Rather than codifying applicable provisions of the interlocal agreement, the bill contains numerous references to that interlocal agreement, and contains significant additions to that agreement, and continues the EAA's existing governance structure – with an authority board and executive committee – until a new authority governing board is established on "the second July 1 after a qualified authority is authorized to function as the Achievement Authority.]

A more detailed description of the bill follows.

**Education Achievement Authority**

The bill would create the Education Achievement Authority to provide, among other things: innovative, flexible, transparent, safe, efficient, and effective public educational services throughout the state; to design quality public elementary and secondary education programs; to improve learning environments and student achievement for all students, including but not limited to educationally disadvantaged students; to expand flexibility and adaptability for student learning models and styles; to stimulate innovative public school teaching methods; to create new professional opportunities for teachers within a public school structure and educational programs innovatively designed and managed by teachers directly engaged in the provision of educational services; to provide greater choices for parents; to facilitate the extension of technology and online learning; to encourage public-private partnerships to foster learning; to renovate, repurpose, and remodel school buildings; to acquire and develop sites, including athletic and recreational facilities; to expand the number and types of public entities permitted to operate public schools; and to provide new forms of public school governance.

The Education Achievement Authority would be a public body corporate and special authority initially created under the Urban Cooperation Act, by an interlocal agreement effective August 11, 2011, between the school district of the City of Detroit, and the board of regents of Eastern Michigan University, or a public body corporate that becomes a qualified authority after the effective date of this legislation. If the achievement authority includes more than one qualified authority at the same time, the Governor would designate the qualified authority that he or she determined was best able to effectuate the purposes detailed above. No more than one qualified authority could function as the achievement authority at the same time.

Subject to the leadership and general supervision of the State Board of Education over all public education, a school operated, managed, authorized, established, or overseen by the Achievement Authority would be a public school under Section 2 of Article VIII of the State Constitution, and the Achievement Authority is a school district for the purposes of Section 11 of Article IX of the State Constitution.

House Bill 6004(H-1) requires that the Achievement Authority only engage in tax-exempt governmental functions carried out as a political subdivision of the state under Section 115 of the Internal Revenue Code of 1986. Further, the bill specifies that the activities of the Achievement Authority are essential governmental functions carried out by a political subdivision of the state, and are exempt from taxation by the State of Michigan or a local unit of government.

The bill specifies that this act would supersede any inconsistent provisions found in the interlocal agreement, and that the Achievement Authority would continue to exist notwithstanding withdrawal of a school district or state public university under the interlocal agreement.

Under the bill, the validity of the confirmation of the Achievement Authority would be conclusively presumed unless held to be invalid by the Court of Appeals in an original action filed in the Court of Appeals within 60 days after the enactment of this legislation. The bill specifies that the Court of Appeals would have original jurisdiction to hear an action, in an expedited manner.

### **Authority Board & Executive Committee**

Initially, the Achievement Authority would have an authority board as set forth in the interlocal agreement. Any vacancies on the board would be filled by the Governor.

Further, the Achievement Authority would have an executive committee, if so specified in the interlocal agreement, and vacancies there would also be filled by gubernatorial appointment.

Then, beginning on the second July 1 after a qualified authority is authorized to function as the Achievement Authority, the Achievement Authority would be governed by a seven-member authority board, with five members appointed by the Governor, and two members selected by the Governor from three-person lists submitted by the Senate Majority Leader and the House Speaker. Board members would serve four-year terms, except that the members of the first board would be appointed to staggered terms (one serving one year; two serving two years; two serving three years, two serving four years), to ensure continuity. Beginning on the second July 1 after a qualified authority is authorized, this board would have all the powers and duties previously vested in any other governing body for the Achievement Authority, and any other governing body would be dissolved.

Under the bill, the governing body is required to adopt ethics policies governing the conduct of the governing body members, and the officers and employees of the Achievement Authority, including policies and procedures to disclose relationships that could create conflicts of interest. Further, members of the governing body and officers and employees of the authority are considered to be public servants, and subject to laws with respect to conflicts of interest. Further, they, and the chancellor, must take the constitutional oath of office. All can be removed by the Governor from office for gross neglect of duty or corrupt conduct.

Members of the authority board governing body would serve without compensation, but could be reimbursed for actual and necessary expenses.

### **The Chancellor**

Under the bill, the chief executive of the Achievement Authority is the chancellor, as appointed by the governing body. The chancellor administers all programs, funds, personnel, facilities, and contracts and is subject to oversight by the governing body.

### **Powers of the Achievement Authority Board**

The board's powers would include both the shared and specific powers specified in the interlocal agreement, as well as the powers and responsibilities under the bill. Generally, the board would be authorized to do all things necessary to achieve the objectives of the authority, construed liberally to fully effectuate the legislative intent, and all powers and duties, rights, obligations, functions, and responsibilities would be broadly interpreted to effectuate the intent and purposes. Additionally, the board could enter into agreements or cooperative arrangements with other entities, public or private; join organizations; acquire property by purchase, lease, land contract or otherwise; and condemn properties. All deeds, mortgages, contracts, leases, purchase or other agreements must be approved by the governing body of the Achievement Authority and executed in the name of the Achievement Authority. Further, the Achievement Authority may dispose of its property without the approval of a local unit of government where the property is located.

The bill specifies that property of the Achievement Authority is public property devoted to an essential public and governmental function, and that property is exempt from all taxation. Property the authority receives could be recorded with the register of deeds without paying a fee.

Under the bill, the Achievement Authority could not levy ad valorem property taxes or another tax for any purpose. (However, the operation, management, authorization, establishment, or oversight of one or more schools by the Achievement Authority within a school district or intermediate school district would not affect their ability to levy taxes.)

The Achievement Authority could establish one or more nonprofit corporations to assist it in furthering its public purpose. The Authority also could receive, disburse, and pledge money, and incur temporary debt. The Authority also could borrow money and issue bonds in accord with Part VI of the Revised Municipal Finance Act. Bonds issued would be full faith and credit obligations of the Achievement Authority pledging the general funds of the authority. Any instrument of indebtedness would not constitute an obligation of the State of Michigan or a party to the interlocal agreement. Further, the full faith and credit or the taxing power of the state or any agency of the state, or the full faith and credit of a party to the interlocal agreement, could not be pledged for the payment of any Achievement Authority bond, note, agreement, mortgage, loan, or other instrument of indebtedness. Further, the Achievement Authority's indebtedness would not constitute an obligation (either general, special, or moral) of the State of Michigan, a party to the interlocal agreement, a school district, or a charter school.

### **Proposed Work of the Achievement Authority or an Achievement School**

The bill specifies that the Achievement Authority or an achievement school may do all of the following: educate students in grades k-12; provide for student safety and welfare; employ or contract with personnel, and fix compensation (to include hiring, contracting, scheduling, supervising, or terminating personnel); implement a method of compensation

based on performance, accomplishments, and assignment in a subject area or school that is difficult to find employees to staff; use as a classroom teacher (in any grade) an adjunct instructor, a university faculty member, or a community college faculty member with subject-matter teaching experience; use non-certificated teachers in the same ways that other public schools are authorized to do so; develop and implement new teaching techniques or methods; and use any instructional technique or delivery methods that can be used by other school districts.

Generally, House Bill 6004 (H-1) specifies that "except as provided by law, an achievement school must use certificated teachers according to Superintendent of Public Instruction rule."

### **Authority Financial Website**

The bill requires that the Achievement Authority develop, maintain, and make publicly available a single, searchable financial data website on the Internet. To the extent practicable, the authority must update the financial data at least monthly, and provide the data in a structured format that can be downloaded. The website must include a method by which a user can provide feedback concerning the organization or utility of the website. The financial information on the website must be archived, and remain accessible for at least five years. The bill also requires that the website allow the public to search financial data at no cost, and specifies the ways it must aggregate its information, including the amount and source of the money received; and the money expended, including the name and principal location of the individual or entity receiving a payment; the amount of money expended; the funding source of the money; the name of the budget program or activity receiving the money; and a description of the planned use of the money.

Overall, the bill specifies that the Achievement Authority must provide maximum public access, through its website, to information concerning the programs and plans.

### **Release of Data; Immunity**

Under the bill, the Achievement Authority may issue or release an opinion, report, data, or research materials regarding the academic, financial, and compliance performance of a vendor, contractor, or educational service provider within the education achievement system. In taking these actions, the authority would have governmental immunity, as provided in Section 7 of Public Act 170 of 1964 (MCL 691.1407).

### **Governmental Immunity**

The bill specifies that the Achievement Authority, an achievement school, the chancellor, a member of the governing body, and employees, officers, and volunteers would have governmental immunity. They would be immune from civil liability, both personally and professional, for an act or omission, if the person or entity acted or had a reasonable

belief to be acting within the person's or entity's scope of authority. The same would be true of the parties entering into the interlocal agreement.

### **Compliance with Revised School Code**

The bill requires that the Achievement Authority comply, and ensure that an achievement school complies, with various listed sections of the Revised School Code, numbering more than 35 provisions. (See Section 779(1) of the bill.)

Further, if the Achievement Authority provides medical, optical, or dental benefits to employees and their dependents, they it must do so in accord with the Public Employee Health Benefit Act and the Publicly Funded Health Insurance Contribution Act.

### **Agreements with School Districts & Charter Schools**

The Achievement Authority could enter into an agreement with a school district or charter school to provide or receive services. The services could be provided on a cooperative basis, or fees for service can be charged.

### **Conservation Improvements**

The Achievement Authority could contract with a qualified provider for energy conservation improvements to facilities, in the same manner as a school district.

### **Emergency Managers & Public School Building Redeployment; Hoteling**

House Bill 6004 specifies "the policy of this state is to provide for the optimum use of buildings and other assets that are paid for with public funds and are intended to be used for school purposes."

Under the bill, an emergency financial manager operating under Public Act 72 of 1990, or a successor statute, would be required to do all of the following: promptly inventory all buildings being used or previously used as a school; for each building make a determination that the building (1) will be used for school purposes, (2) can be redeployed by one or more eligible public schools, or can be used as a school building and is available for purchase or lease by a nonpublic school, or (3) the building is unsuitable for use as a school building.

If one or more buildings can be redeployed, then the emergency financial manager would advise the State School Superintendent, the Chancellor of the Achievement Authority, and any other person who had requested notice. The title of a school building redeployed would remain with the school district, but the management, maintenance, and operation of the building as a school would be performed by the eligible public school to which the building was redeployed.

[Under the bill, "eligible public school" would be defined to mean a public school academy, the authorizing body for a public school academy, the Achievement Authority, an achievement school, or a university school. Further, a "university school" would be defined to mean a laboratory school or teacher training school maintained by a state public university, or another public school operated by a state public university.] The bill specifies that the redeployment of a building would not affect a security interest of a creditor or bondholder of the school district.

The bill requires that an emergency financial manager apply "hoteling" concepts to the extent appropriate. Under the bill, "hoteling" is defined to mean making a school building available for use by multiple educational and community institutions, including, but not limited to, use of a single building and all available classrooms, laboratories, computer and distance learning technology, auditoria, or gymnasiums, by one or more eligible public schools or nonpublic schools.

### **Statewide School Building Inventory; Leasing; Sale**

Each school district would be required to inform the Department of Education whenever a school building that was previously used for classroom instruction is closed, unused, or unoccupied. Further, at least annually, a school district would update its list (by a date set by the department), and that list, updated each year before August 31, would be available on the department's website. The board of a school district that owns a school building placed on the Department of Education's list would be required to "take reasonable and necessary action to prevent waste to the school building while the school building was on the list."

House Bill 6004 (H-1) specifies that subsections 1260(a)(3) to (9), described below, *would apply to a school district only if at least one public school that was operated by the school district was under the control of the Achievement Authority* under section 1280(c).

If a school district that owns a school on the list indicates the school building may be reclaimed for classroom instruction during a one-year period after the school first appears on the department's list, then the department must designate the school building as "unavailable" for that year. If a school district reclaims the school, then it must be used within one year for classroom instruction. Once the school building is again placed on the department's list, it could not be reclaimed again, unless the district demonstrated to the state superintendent that it had a legitimate need based on enrollment growth in the district.

An eligible school (see definition, above) intending to use a listed school building would send a letter to the State School Superintendent, and the superintendent would notify the school district that owns the school. Within 63 days after receipt of the letter, the school district would be required to lease or sell the school building to the eligible public school. The lease would have to be written to reflect fair market value for as long as the school building was used for classroom instruction by the eligible public school, or for another term at the option of the eligible public school.

The eligible public school would be required to begin using the school building for classroom instruction not later than two years after leasing it. If it were not, then the school building would return to the department's list. Likewise, a sale of the building by a school district to an eligible public school would have to be for fair market value, and the school building used for classroom instruction no later than two years after its purchase. If it were not used within two years, the State of Michigan could exercise a right of reversion, terminating the eligible public school's interest in the school building, and the building would then be placed on the department's list of redeployable schools. The state also could exercise a right of reversion if the eligible public school that purchased it closed the school, or stopped using the building for classroom instruction.

House Bill 6004(H-1) prohibits a school district from leasing or selling a school building if the lease or sale would unconstitutionally impair a bond, note, security, or uncontested legal obligation of the school district.

During the term of a lease, the eligible public school leasing the building would be responsible for the direct expenses related to the school building, including utilities, insurance, maintenance, repairs, and remodeling. The school district would be responsible for any debt incurred for or liens that attached to the school building before it was leased.

Under the bill, if a school building appeared on the department's list for at least 48 months, the district could sell or otherwise dispose of the building in any manner the school board considered appropriate.

#### **List of Lowest Achieving 5% of All Public Schools**

Now under the law, the State School Superintendent annually publishes a list identifying the public schools in the state that the Department of Education determines to be among the lowest achieving five percent of all schools in the state. House Bill 6004(H-1) would retain this provision, and add, "as defined by the United States Department of Education."

Currently, the State School Superintendent issues an order placing each public school falling in the lowest five percent of achievement under the supervision of the State School Reform/Redesign Officer. House Bill 6004(H-1) would retain this provision, but place the schools under the supervision of the "State Redesign Officer."

#### **School Redesign Plan**

Currently under the law, within 90 days of being placed under the redesign officer's supervision, the school board of the public school or the board of directors of a charter school submits a redesign plan (developed with input from the local teacher bargaining unit and the local superintendent) to the State School Redesign Officer. House Bill 6004(H-1) would retain this provision, and also require that "the redesign plan directly address the reasons the public school is among the lowest achieving schools by



incorporating measures to improve pupil performance in those subject areas in which the pupils are failing to adequately achieve."

### **Intervention Models Expanded**

Under existing law, the school redesign plan requires the implementation of one of four school intervention models specified in the federal Race to the Top incentive grant (that is, the turnaround model, the restart model, school closure, or the transformation model). House Bill 6004(H-1) specifies instead that the redesign plan would require the implementation of one of those models, or other intervention models that are approved under federal law.

### **Notice of Low Achievement to School Redesign Officer**

House Bill 6004(H-1) specifies that not later than October 1 of each year, if a public school has been on the list of lowest achieving schools for three consecutive years after 2010, then the State School Superintendent must notify the State School Redesign Officer.

### **Reform District**

Now under the law, a state school reform/redesign school district exists as a school district for the purpose of receiving state school aid under the State School Aid Act. House Bill 6004(H-1) would retain this provision, but re-title the district, calling it, instead, the state reform district. Further, the bill specifies that the reform district would function as a political subdivision that is a party to a contract transferring the powers, duties, rights, obligations, functions, and responsibilities of the state reform district to the Achievement Authority.

### **Achievement Authority & Federal Funds**

Under the bill, the Achievement Authority may perform the functions of the Department of Education for a school placed within the district, to the full extent permitted under federal law, and would be entitled to receive federal funds otherwise payable to the department.

### **State School Redesign Officer**

House Bill 6004(H-1) specifies that the State School Redesign Officer would be required to issue an order to place a public school in the state reform district and under the control of the Achievement Authority, if the School Redesign Officer:

- received notice from the State School Superintendent that a public school (excepting those under the control of the Achievement Authority) has been on the list of lowest achieving schools for three consecutive years;
- disapproved the redesign plan for a low-achieving school; or

- determined that the redesign plan is not achieving satisfactory results.

If the State School Redesign Officer issued an order to place the public school into the reform district, then the chancellor would be required to impose one of the school intervention models (noted above). Now under the law, if a school is placed in the district, the redesign officer also must impose an addendum to each applicable collective bargaining agreement in effect for the public school. House Bill 6004(H-1) would delete this provision.

### **Chancellor: Alternative School Intervention Models; Authority**

Further, the bill would allow the chancellor to adopt an alternative school intervention model (as long as it was not prohibited by federal law) that had a greater likelihood of improving educational outcomes, if a previously adopted redesign plan was not achieving satisfactory results.

House Bill 6004(H-1) specifies that the chancellor (rather than the redesign officer) would act as the superintendent of the state reform district. With respect to schools placed in the state reform district and under the control of the Achievement Authority, the chancellor would have all the powers, duties, rights, obligations, functions, and responsibilities of a school superintendent, as well as those that would otherwise apply to the school board or other school officers who previously operated the school, *except* those related to taxation or borrowing.

### **Contract Termination**

Now under the law, the redesign officer has the power to terminate any contract or portion of a contract entered into by a school board, except those concerning debt service on legally authorized bonds and collective bargaining agreements. House Bill 6004(H-1) specifies that the chancellor can "terminate or modify" existing contracts except those concerning debt service, and it eliminates the prohibition against termination or modification of collectively bargained agreements. Further, the bill specifies that a contract terminated by the chancellor is void.

### **Chief Executive Officer**

House Bill 6004(H-1) would allow the chancellor to appoint a chief executive officer to take control of public schools that have been placed in the state reform district and under the control of the Achievement Authority. Now the law allows the redesign officer to make that recommendation to the State School Superintendent who then makes the decision.

If a chief executive officer is appointed, he or she must impose one of the school intervention models (noted above), and he or she *may* impose an addendum in all collectively bargained contracts, as necessary to implement the school intervention model.

The bill also specifies that a chief executive officer can impose a new school intervention model, if he or she determines that a previously adopted model is not achieving satisfactory results.

With respect to a public school placed under the control of a chief executive officer, he or she would have all of the same powers, duties, rights, obligations, functions, and responsibilities that the chancellor has for public schools placed in the state reform district and under the control of the Achievement Authority.

The chief executive officer would be required to submit monitoring reports to the chancellor on the implementation and results of the intervention model, in the form and manner, and according to a schedule, determined by the chancellor. Further, the chief executive officer would be required to exercise any other powers or duties over the public school as may be directed by the chancellor. Now under the law, a chief executive officer exercises those powers and duties, as directed by the State School Superintendent.

### **Collective Bargaining Agreements**

Now under the law, the addendum to a collective bargaining agreement must allow for certain changes that are necessary to implement particular school intervention models. Specifically, any contractual or other seniority system does not apply, although unilateral changes in pay scales or benefits cannot be made. Further, any contractual or other work rules that are impediments to implementing the redesign plan do not apply; however, again, unilateral changes in pay scales or benefits cannot be made. House Bill 6004(H-1) would retain these prohibitions against including seniority and work rules, and further, eliminate the provision that now prohibit the unilateral changes in pay scales or benefits.

### **Authority of Redesign Officer, Chancellor & Chief Executive Officer**

Under the bill, for a public school operating under a redesign plan, the state school redesign officer would direct the expenditure of all funds attributable to students, and the principal (or another school leader designated by the redesign officer) would have full autonomy and control over curriculum and discretionary spending at the school.

For a school operating under the control of the Achievement Authority, the chancellor would direct the expenditure of all funds attributable to students and also would have full autonomy and control over curriculum and discretionary spending at the school.

Likewise, for a public school operating under the chief executive officer, the chief executive officer would direct the expenditures of all funds attributable to students, and also would have full autonomy and control over curriculum and discretionary spending at the school.

### **Governor Appoints Redesign Officer**

Now under the law, the State School Superintendent hires the State School Reform/Redesign Officer. Under House Bill 6004(H-1), the Governor would appoint the State School Redesign Officer. Now under the law, the State School Redesign Officer must be chosen solely on the basis of competence and experience in educational reform and redesign; is exempt from the state classified civil service; and is responsible directly to the State School Superintendent. House Bill 6004(H-1) would retain all of these provisions.

### **Restart Model**

Currently the law requires that the State School Reform/Redesign Officer follow specified steps if imposing the *restart model* when an educational management organization will manage and operate the schools. House Bill 6004(H-1) retains these provisions, but specifies that these steps be carried out either by the chancellor under the control of the Achievement Authority or by a chief executive officer under Section 10 of the bill. Now under the law, when a restart model is implemented, no collective bargaining agreement is considered to be in effect. House Bill 6004(H-1) would retain that provision.

### **Turnaround Model**

Now the law requires that the State School Reform/Redesign Officer follow specified procedures concerning collectively bargained agreements when imposing a *turnaround model* for schools. In this instance a collective bargaining agreement continues to apply with respect to pay scales and benefits. House Bill 6004(H-1) would eliminate this provision. Further, the law now specifies that in the instance of an imposed turnaround model, an employee would continue to retain and accrue seniority rights in the school district according to the collective bargaining agreement. House Bill 6004(H-1) would eliminate that provision.

### **Transformation Model**

Now under the law, if more than nine schools in a school district are among the lowest achieving schools in the state, the *transformation model* cannot be implemented for more than 50 percent of those schools. House Bill 6004(H-1) would eliminate this provision.

### **Collective Bargaining; Seniority; Retirement**

House Bill 6004(H-1) specifies that if a chancellor or chief executive officer imposes an alternative school intervention model having a greater likelihood of improving educational outcomes, then he or she must determine the most effective mechanism for the management and operation of the schools, and the provision of education services. To that end, any collectively bargained agreement applicable to employees working at the

school before the imposition of the alternative school intervention model would *not* apply to school personnel after the imposition of the alternative model.

In addition, following the imposition of an alternative intervention model, the employees would *not* accrue seniority rights in the schools district, nor would they accrue creditable service under the Public School Employees Retirement Act, and any compensation or remuneration paid for work at the public school would *not* constitute compensation or remuneration as a public school employee under the Public School Employees Retirement Act.

### **No Assignment to Achievement Authority if School Improvement**

Under House Bill 6004 (H-1), the state school redesign officer would be prohibited from issuing an order to place a public school in the state reform district and under the control of the Achievement Authority if the school had been determined by the Department of Education to have achieved adequate yearly progress for all subjects and all subgroups (for the purposes of the No Child Left Behind Act of 2001) for the most recent school year for which data were available.

Further, the bill specifies that the state school redesign office would not be required to issue an order to place a school in the state reform district and under the control of the Achievement Authority if the state school redesign officer determined that the public school had made significant progress in the implementation of its redesign plan, based on state assessment data for the most recent school year.

### **Release Due to School Improvement**

House Bill 6004(H-1) specifies that the chancellor or a chief executive officer can recommend to the State School Superintendent that a school be released from the imposed school improvement measures, if a school has made significant improvement in student achievement. The superintendent may then release the school if he or she agrees with that assessment of the school's progress.

### **Annual Report**

Under the bill, at least annually the State Redesign Officer and the chancellor must submit a report to the Governor, the State School Superintendent, and the standing committees of the Senate and House of Representatives having jurisdiction over education legislation, on the progress being made in improving student proficiency.

### **Department of Education Website**

The Department of Education would be required to post on its website the work rules and formula used by the federal Department of Education to identify the lowest achieving five percent of all public school in Michigan; and a list of the public schools so identified, updated each year. However, a public school operated by a school district in which an

emergency manager is in place under Public Act 72 of 1990 would not be placed under the supervision of the State Redesign Officer.

### **State Superintendent Order**

Now under the law, if a school that is included on the lowest achieving schools list is operated by a school district in which an emergency manager is in place, then the Superintendent of Public Instruction is prohibited from issuing an order to place that school under the supervision of the State School Reform/Redesign Officer. House Bill 6004 (H-1) would eliminate this provision.

### **Responsibility of Local Boards of Education**

House Bill 6004(H-1) prohibits the board of a school district or charter school from taking any action that is inconsistent with or interferes with the powers and duties of the Education Achievement Authority, the state reform district, the State Redesign Officer, the chancellor, or a chief executive officer.

### **School Property Transfers**

Under House Bill 6004(H-1), if a public school is placed in the state reform district and under the control of the Achievement Authority, then ownership of the real property occupied by the public school, as well as the personal property at the public school (at the time the school was placed in the reform district and under the control of Achievement Authority), would *not* transfer to the Achievement Authority, unless the Authority purchased it from the school board or the board of directors of the charter school. The Achievement Authority or the chancellor would be prohibited from selling or otherwise conveying that real or personal property without the written approval of the school board or board of directors that previously operated the school (unless it had been previously purchased by the Achievement Authority).

### **Court of Appeals: Schools Placed in Achievement Authority**

House Bill 6004(H-1) specifies that the validity of an order to place a public school into the state reform district and under the control of the Achievement Authority would be conclusively presumed, unless held to be invalid by the Court of Appeals in an original action filed in the Court of Appeal within 60 days after the issuance of the order. The Court of Appeals would have original jurisdiction to hear an action under this subsection of the law, and would be required to hear it in an expedited manner.

### **Special Education**

The bill specifies that for the purposes of ensuring that a student with a disability, who is enrolled in an achievement school or in a university school, be provided with special education programs and services, the Achievement Authority would be considered to be a local school district.

## **FISCAL IMPACT:**

**State Impact:** For the current school year – the EAA's first year operating schools – the EAA is operating 15 schools previously under the control of the Detroit Public Schools. Of these 15 schools, 12 are directly managed by the EAA, while three schools are authorized as charter schools managed by an education service provider. The schools include six high schools and nine elementary/middle schools. Total (unaudited) Fall 2012 pupil membership for the 15 EAA schools is about 10,000 FTE membership pupils.

The FY 2012-13 School Aid Budget amended numerous provisions in the School Aid Act to add references to the EAA. Generally speaking, the EAA is treated the same as other public schools and receives a per-pupil foundation allowance and other categorical funding for which it is eligible. For the purposes of the foundation allowance, the EAA receives the foundation allowance of the school district in which the EAA school is located, which currently ranges from a minimum of \$6,966 per pupil to a state guaranteed maximum of \$8,019 per pupil. In the case of the current EAA schools located in Detroit, the EAA receives \$7,190 per pupil in the 12 schools it directly manages, the same foundation allowance as the Detroit Public Schools. However, because the EAA has chartered three schools, it receives the statutory maximum foundation allowance for charter schools (\$7,110 per pupil) in those three schools. The placement of individual public schools within the EAA alters the state and local share that constitute a school district's foundation allowance and state School Aid budget outlays, but it is generally cost-neutral.

The Department of Education's August 2012 list of Priority Schools (previously referred to as persistently lowest achieving schools) for 2011-12, contains 146 school buildings from 49 school districts (including charter schools, ISDs, and the EAA). Of those 146 school buildings, 22 are now closed and 13 are now part of the EAA. Total Fall 2011 headcount in the 146 buildings was about 73,500 pupils, out of a total statewide Fall 2011 headcount of over 1.5 million. The bill provides that schools appearing on the list of priority schools for three consecutive years will be placed within EAA (through the School Reform District). Thirty-seven school buildings have appeared on the list of priority schools for each of the past three years. Of those schools, 13 are now EAA schools.

The bill requires the EAA to maintain a website providing financial data, maintaining archived data for at least 5 years. This website would be in addition to the transparency requirements required by Section 18 of the State School Aid Act (MCL 388.1618). The state maintains a website on the EAA at [www.michigan.gov/ea](http://www.michigan.gov/ea), although financial data is not reported as detailed in the bill. The EAA would see increased costs to provide the data in the manner required by the bill.

In October 2011, the EAA Executive Committee approved a contract transferring the powers and responsibilities of the State School Reform/Redesign District to the EAA. To date, no schools have been placed within the School Reform/Redesign District, although many schools are implementing school turnaround plans under the supervision of the

School Reform/Redesign Officer. The bill contains numerous amendments to Section 1280c further clarifying the transfer of responsibilities from the reform district to the EAA, although it appears at first blush that much of the changes would generally have no fiscal impact given that the transfer of responsibilities has already occurred by operation of the contract.

The Department of Education could see additional costs related to compiling, maintaining, and publishing data concerning school buildings that are closed, unused, or unoccupied. Currently, the Center for Educational Performance and Information (CEPI) provides data on school facilities through its Educational Entity Master (EEM) database. This data includes a list of closed school facilities.

**Local Impact:** The bill would have varying impacts on local school districts. As a traditional school district "loses" a school building to the School Reform District (operated through the EAA), the district would generally see a reduction in revenue from its per-pupil foundation allowance, although the district would also see a reduction in staffing and building costs. The bill explicitly states that the operation of a school within a school district would not affect the district's ability to levy ad valorem property taxes or other taxes.

The bill also contains provisions concerning the maintenance of school buildings that are closed, unused, or unoccupied. Districts would be required to provide a list of closed, unused, or unoccupied schools to the Department of Education. Districts already provide data on school facilities through the Educational Entity Master (EEM) maintained by the Center for Educational Performance and Information (CEPI).

Of note, the bill explicitly states that with regard to unused school buildings, school boards "take reasonable and necessary action to prevent waste to the school building" while the school building is on the Department of Education's lowest achieving school list. This provision could have a some cost impact on districts depending on current physical condition of their closed facilities, the potential closure of other buildings in the future, and the interpretation of the expression "prevent waste to the school building." The EEM lists nearly 3,330 closed school facilities currently.

While current law provides that school districts making school property available for sale or lease cannot refuse to sell or lease that property solely because the purchaser/lessee intends to use the property for a lawful educational purpose, the amendments in the bill could facilitate the sale or lease of school property (at fair market value) to other educational providers.

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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.