

Legislative Analysis



NEW DETROIT SCHOOL DISTRICT: RETIREMENT, COLLECTIVE BARGAINING, FINANCIAL OVERSIGHT

Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

House Bill 5385 as introduced
Sponsor: Rep. Earl Poleski

Analysis available at
<http://www.legislature.mi.gov>

House Bill 5386 as introduced
Sponsor: Rep. Bradford C. Jacobsen

House Bill 5387 as introduced
Sponsor: Rep. Daniela R. Garcia

Committee: Appropriations
Complete to 2-22-16

SUMMARY:

The bills would amend Michigan Financial Review Commission Act, the Michigan Public School Employees Retirement System Act, and the Public Employment Relations Act as part of a package to restructure Detroit Public Schools (DPS), which would be replaced by a new community district under House Bill 5384. In general, the bills would do the following:

- Limit retirement benefits and collective bargaining options in the community district
- Expand the authority of the Detroit City Financial Review Commission to cover the community district.
- Revise the penalties and process for dealing with teacher strikes statewide.

House Bills 5386 and 5387 are both tie-barred to House Bill 5384. The bills are described in more detail below.

Financial Review Commission

House Bill 5385 would amend the Michigan Financial Review Commission Act, enacted as part of the Detroit City Bankruptcy legislation in 2014¹, to expand the act's scope to cover the community district proposed under HB 5384. The bill would allow a single financial review commission (FRC) to oversee the fiscal management for both a qualifying city and the community district if the district were located within the city, but would add the district's superintendent and school board chair as FRC members. The mayor and local governing board chair would not vote on district issues, and the superintendent and school board chair would not vote on city issues.

Under the proposed legislation, the FRC would ensure compliance with several applicable state statutes. Specifically for the community district, the bill would add the Revised School Code, the State School Aid Act, and the Public School Employees Retirement Act.

¹ See House Fiscal Agency Analysis: <http://www.legislature.mi.gov/documents/2013-2014/billanalysis/House/pdf/2013-HLA-5566-7780ED85.pdf>.

Subject to any collective bargaining agreements in effect, the FRC would be charged with establishing a program and requirements that increase managerial accountability, streamline the provision of services, and review employee compensation and benefits.

The community district would be required to provide the FRC with written reports regarding financial stability and allow the FRC to audit or inspect financial statements, actuarial reports, revenue estimates, and any other information the FRC considers necessary. The FRC would have to file reports with the governor, Senate Majority Leader, and the House Speaker twice a year, and make those reports available on the Department of Treasury's website.

Under the bill, the FRC would have to approve all collective bargaining agreements or revisions to those agreements. Each quarter, the district's chief financial officer would be required to certify to the FRC the amount of debt service due on bonds, leases, or other debt through maturity and certify the district's ability to meet those requirements for that fiscal year.

House Bill 5385 would allow the FRC to do the following for the community district:

- Revise revenue estimates.
- Review, revise, and approve operational budgets.
- Review and approve requests to issue debt.
- Review compliance with a deficit elimination plan.
- Approve the appointment of the district's chief financial officer.
- Approve the appointment of the district's superintendent, and under the bill the district may not alter or terminate a superintendent's contract without approval of the FRC.
- Require development of financial best practices.
- Recommend policies and operating procedures.
- Require financial and managerial training.
- Make and execute contracts.
- Sue or be sued.
- Require access to all district information deemed necessary.
- Require employee attendance at FRC meetings.
- Perform any other duties assigned by the governor that are not inconsistent with the act.

Additionally the bill would establish conditions under which a community district could demonstrate financial stability over time and receive a waiver regarding the FRC's oversight and responsibilities for the district, as well as the conditions under which the FRC could rescind that waiver if the community district fails to maintain compliance. Under the bill, the FRC may not dissolve itself until the State Treasurer certifies that both (1) the community district has paid in full all outstanding district debt and (2) the district has been in compliance with the act for the immediately preceding 5 consecutive fiscal years.

Michigan Public School Employees' Retirement System (MPERS)

Currently, newly hired employees in a school district are part of MPERS, and they have the option of choosing between a Tier 1 hybrid plan (that includes both defined benefit

(pension) and defined contribution (DC or 401k) components) or a Tier 2 DC plan². The Tier 2 DC plan benefit is a 50% employer matching contribution capped at an amount equal to 3% of an employee's compensation.

House Bill 5386 would amend the Public School Employees Retirement Act to provide that employees who work for the community district proposed under HB 5384, and who have not previously worked for a MPSERS employer, are automatically members of the Tier 2 DC plan and do not have the option of choosing the Tier 1 Hybrid plan.

Public Employment Relations Act (PERA)

House Bill 5387 would amend the PERA, which prohibits public employees from striking (and public employers from locking out employees) and allows for collective bargaining, to revise requirements related to teacher strikes in any district and to provide for additional limits to collective bargaining in a community district.

Teacher Strikes

Currently under the act, if a public employer alleges a prohibited strike, the employer must notify the Michigan Employment Relations Commission (MERC) of the number of full or partial days a public school employee was engaged in a strike. The bill would allow a parent of a child enrolled in the district to notify MERC if a public employer failed to do so. It would also require that if conditions constituting a strike exist, the state superintendent of public instruction must notify MERC of the number of full or partial days a public school employee was engaged in a strike.

Under the bill, MERC would be required to hold a hearing and issue its decision not later than 2 days after receiving notice of a strike rather than within 60 days. It would also allow a bargaining representative, public school employer, the state superintendent, an affected public school employee, or a parent who notified MERC to offer testimony or evidence to support or contest the allegation of a strike or lockout at the hearing.

The bill deletes a \$5,000 fine assessed on the bargaining representative for each day of the strike.

It would also revise the judicial process related to strikes as follows:

- Allows the state superintendent, in addition to a public employer, to bring an action to enjoin a strike in circuit court.
- Prohibits a court from overturning a commission determination that a strike or lockout exists "except by clear and convincing evidence."
- Adds that in addition to injunctive relief and awarding court costs and reasonable attorney fees, if a court finds a strike or lockout exists, and if the sanction is equitable and would not duplicate fines imposed by MERC, the court must also do the following:

² For a more detailed description of the MPSERS Hybrid plan, please see the following House Fiscal Summary of Public Act 75 of 2010 which created the plan: <http://www.legislature.mi.gov/documents/2009-2010/billanalysis/House/pdf/2009-HLA-1227-7.pdf>.

- For a strike, order each public school employee to pay a fine in an amount equal to one day of pay for each full or partial day the employee engaged in the strike. For a lockout, order the employer to pay a fine of \$5,000 for each full or partial day of the lockout and order each board member to pay a fine of \$250 per day for each full or partial day of lockout.
- Grant additional equitable relief that the court finds appropriate.
- Allows a court to enforce an order to end the strike or lockout through its contempt power.

Currently under the Act, before an employer disciplines or discharges an employee for participating in a strike, the employee is entitled to a determination as to whether he or she violated the act. The bill would reduce from 10 days to 5 days the time within which an employer must commence a proceeding after a request for determination is filed. It would also reduce the time from 10 days to 2 days within which the employer must make a decision after a proceeding concludes. The bill would also allow a public employer to consolidate employee hearings unless the employee demonstrates manifest injustice from the consolidation.

Community District Collective Bargaining

House Bill 5387 would prohibit a labor organization from entering into or renewing a bargaining agreement with a community school district, proposed under House Bill 5384, if the bargaining agreement requires or allows public-employer-paid release time for a union officer or bargaining representative to conduct union business.

The bill would also prohibit collective bargaining between a community school district and its employees on any decision related to the following:

- An employee's work schedule or the school calendar or the impact of that decision on an individual employee or the bargaining unit.
- Whether to contract with a third party for any support service, the procedures for obtaining a contract for support services, the identity of the third party, or the impact of the contract for support services on an individual employee or the bargaining unit. (The Act already prohibits bargaining over third party contracts for noninstructional services in all districts.)
- Placement of any employee, or the impact of that decision on an individual employee or the bargaining unit. (The Act already prohibits bargaining over teacher placement in all districts.)
- Personnel decisions "for any employee or group of employees" when conducting a staffing or program reduction, or a recall in hiring after a staffing or program reduction resulting in the elimination of a position. (The Act already prohibits bargaining over these personnel decisions for teachers in all districts.)
- Performance evaluation decisions "for any employee or group of employees." (The Act already prohibits bargaining over performance evaluation decisions for teachers and administrators in all districts.)
- Policies regarding discharge or discipline "of any employee or group of employees." (The Act already prohibits bargaining over discharge or discipline decisions for teachers in all districts.)

FISCAL IMPACT:

The bills would generally reduce local costs for the community district by an indeterminate amount and would create some amount of additional administrative costs for the State, as described below.

Financial Review Commission

Generally, providing the FRC with authority over the community district under House Bill 5385 is intended to improve the financial stability of the district, but there are no data available with which to estimate the potential fiscal impact. For the most part, financial viability of the community district will be contingent on the new district's enrollment, and its ability to adjust expenditures to available foundation allowance and other revenues tied to that enrollment.

MPSERS

The bill could limit the growth in future MPSERS costs, for both the State and MPSERS employers that share unfunded liability costs system-wide, by reducing the proportion of the system in a hybrid plan for which future unfunded liabilities could grow over time and replacing it with a larger share in the DC plan that has no risk of future unfunded liabilities.

The bill would not change the contribution for current unfunded accrued liabilities (UAL) charged to a former district or the community district replacing it as proposed under House Bill 5384. UAL contribution rates are applied to an employer's total MPSERS payroll including the payroll of employees in any of the three types of MPSERS benefits (Pension, Hybrid, or 401k), so the distribution of payroll among those three types would not affect an employer's contribution nor would it have an impact on the state's required share of UAL costs under Sec. 147c of the School Aid Act.

The bill could slightly reduce annual costs to the community district by eliminating the choice of the Hybrid plan and providing only the option of the defined contribution (401k) plan to new employees. Currently the normal cost of the Hybrid plan is 3.13% of payroll, while the maximum 401k contribution match for a district is 3.0% of payroll. The difference would save the district approximately \$380,000 per year upon full implementation (out of an annual total cost of \$75.3 million in FY 2014-15). However, it's likely to take 30 years before the district's full staff would be on the DC plan. Additionally, the district would see reduced costs if employees chose not to contribute the full 6% of their salaries to maximize the employer match.

School Employee Strikes

House Bill 5387 could create increased administrative costs for MERC, which is in the Department of Licensing and Regulatory Affairs, by significantly reducing the time (from 60 days to 2 days) it has after a strike to hold hearings on the issue. The bill could also increase administrative costs for the Department of Education by requiring that the state superintendent of public instruction monitor and report the number of full or partial days

an employee was engaged in a strike and by allowing the superintendent to bring action against a strike in court.

Community District Collective Bargaining

Presumably, House Bill 5387 would reduce community district costs by further limiting the subjects allowable for collective bargaining. Any savings, however, would depend on the nature of the operating changes made that would no longer be subject to collective bargaining.

Fiscal Analyst: Bethany Wicksall

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