

# Legislative Analysis

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## INTERMEDIATE SCHOOL DISTRICTS

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

**House Bill 5457 (Substitute H-4)**  
**Sponsor: Rep. Brian Palmer**

**House Bill 5475 (Substitute H-5)**  
**Sponsor: Rep. Ken Bradstreet**

**House Bill 5627 (Substitute H-3)**  
**House Bill 5839 (Substitute H-5)**  
**House Bill 5850 (Substitute H-2)**  
**House Bill 5851 as introduced**  
**House Bill 5921 (Substitute H-4)**  
**Sponsor: Rep. Ruth Johnson**

**Committee: Education**  
**Complete to 9-8-04**

## **A SUMMARY OF HOUSE BILLS 5457, 5475, 5627, 5839, 5850, 5851 AND 5921 AS REPORTED FROM COMMITTEE**

The bills would, among other things, do the following

\*\* Require the audit of at least five intermediate school districts (ISDs) every two years, with the audits to be conducted by independent certified public accountants and directed by the Department of Treasury.

\*\* Require the annual submission of information to the Department of Education by the Center for Educational Performance and Information (CEPI) , including information on travel expenses; contracts above a specified amount or not competitively bid; the compensation of highly paid employees (the top three percent); payments for public relations, lobbying, and legal services, and the percentage of the budget spent on these and similar services; personal services provided costing more than \$25,000; as well as other information. Each ISD would have to report such information to CEPI.

\*\* Allow the authorization of millages to be put before the voters for reconsideration when a determination was made that proceeds from millages supporting special education and vocational-technical education had been used inappropriately. To force an election, ten percent of a district's electors would have to petition the ISD for reconsideration.

\*\* Create penalties for the misuse of school district and ISD funds, including criminal penalties for violations of competitive bidding requirements and for the improper use of school bond proceeds.

\*\* Establish a conflict of interest policy for ISD officials and employees.

\*\* Reduce terms of office for ISD board members from six years to four years, beginning with members elected after January 1, 2009.

More detailed descriptions of the bills follow.

**House Bill 5457 (H-4) (Random Independent Audits of ISDs directed by Department of Treasury)**

House Bill 5457 would amend the Revised School Code (MCL 380.622a) to require the Department of Treasury to direct independent random financial audits of intermediate school districts, paid for by the State of Michigan.

The bill specifies that in addition to the annual audit required of intermediate school districts under the law, an intermediate school district (ISD) could be subject to an audit by the Department of Treasury, if selected when the department announced the ISDs that would be audited each year. Under the bill, the department would direct the audit of five ISDs every two years, and announce the districts that would be audited between July 1 and July 15 of the year in which the audits would be conducted. (The bill also provides that the department could direct more than five audits, if that were necessary and appropriate.)

The bill requires that the audit include an examination of an ISD's accounts, financial records, and accounting procedures, and an examination of at least three of the following aspects of an ISD's operations, as directed by the Department of Treasury:

- a) adherence by school board members, ISD administrators, and employees and officials to ethics policies adopted by the intermediate school board or required by state law;
- b) adherence to conflict of interest policies adopted by the board or required by state law, including but not limited to policies and practices with regard to contracts in which a board member, administrator, or employee who is involved in the contracting process (or family members of these individuals), has a substantial conflict of interest, and also policies and practices with regard to a school district administrator negotiating, handling, presenting, or recommending a contract with an entity to which the administrator or a family member has a substantial conflict of interest;
- c) whether a modification to an existing contract was made during the audit period that resulted in an additional financial obligation to the ISD, and the modification was not competitively bid;
- d) whether the ISD's policies and practices for responding to requests received under the Freedom of Information Act, and the ISD's actual responses to requests made during the audit period were in compliance with the act. The bill specifies that this part of the audit include, but not be limited to, an examination of whether the costs charged for responding to requests was excessive;

- e) whether board members, administrators, and employees are adhering to travel guidelines and practices adopted by the ISD board or required by state law; pay and stipends to administrators;
- f) all records relating to stipends, salaries, benefits, or other compensation paid to ISD administrators; and
- g) all records relating to purchases of food, gifts, and other items not used for instructional purposes.

The bill requires that all intermediate school board members and all intermediate school district officials provide all information requested by the independent auditors or the Department of Treasury, and cooperate with them to the fullest extent possible.

Under the bill, the Department of Treasury would announce the random audits of ISDs between July 1 and 15 each year, and the ISD board would contract with an independent certified public accounting firm to conduct the audit, and notify the department of the auditor and a contact person for the auditor. The department would oversee the conduct of the audit by the independent auditor to the extent the department considered that necessary to meet the purposes of the act.

Under the bill, the independent auditor would be required to submit an audit report to the Center for Educational Performance and Information(CEPI). Then the center would be required to submit a copy of the audit report of each audit to the Department of Treasury, to the applicable ISD board, and to the senate and house standing committees having jurisdiction over education legislation, to the Department of Education, and if appropriate, to the attorney general. If the department determined there were violations of state law governing the financial operations of an ISD, then the department would file a report with the attorney general. If the report were filed with the attorney general, he or she would be required to review the report, and if appropriate direct the prosecuting attorney for the county where the violations occurred to begin proceedings against the ISD. The proceedings would have to include at least a civil action in court, seeking the recovery of any public money determined by the audit to have been illegally expended, and for the recovery of any public property determined to have been converted or misappropriated.

The bill specifies that an audit would have to be performed in accord with standards issued by the American Institute of Certified Public Accountants, and with government audit standards issued by the U. S. General Accounting Office.

Finally, the bill specifies that the Department of Treasury would pay the costs of an audit it directed, and the legislature would be required to appropriate funds to the department for the costs of the audits.

### **House Bill 5475 (H-5) (ISD Annual Report Information)**

House Bill 5475 would amend the Revised School Code (MCL 380.620) to require the Center for Educational Performance and Information to annually submit information for

each intermediate school district to the Department of Education for the immediately preceding school fiscal year, and the department would post the information on its website. The bill is tie-barred to House Bill 5627 so that it could not become law unless House Bill 5627 also were enacted. If enacted into law, the bill would take effect on July 1, 2005.

Under the bill, the report would be required to contain all of the following general information—the total budget, the number of students served, the number of employees, and the number of constituent districts, charter schools, and nonpublic schools served.

In addition, for each ISD board member or employee who had travel expenses during the school fiscal year that totaled more than \$3,000, paid with district funds (excluding travel expenses within the boundaries of the ISD for work-related purposes, and millage reimbursement), all of the following travel information would be required—the total cost of air travel, lodging, car rental, meals, as well as the dates, purpose and locations of travel, and the name and position of the board member or employee.

For each contract (other than an employment contract, or fiber optic contract) that obligated the ISD for more than \$100,000, or was not competitively bid and obligated the ISD for an amount in excess of \$25,000, or was entered into with an entity in which an ISD board member or administrator or a family member was known by the board to have a monetary interest, a description of the contract that included at least the following information—the subject matter and cost and whether it had been competitively bid or was single source; and the name and position of each individual who signed the contract on behalf of the ISD. The bill specifies that if there were a modification to an existing contract that resulted in an additional obligation for more than \$100,000, or there were a modification that was not competitively bid and that resulted in an additional financial obligation of more than \$25,000, or a modification that resulted in the total financial obligation to the ISD from the existing contract exceeding \$25,000, then a description of the modification and the total amount of the additional and total financial obligation would be required.

Further, the report would have to include the following information for each district employee with a compensation package having a total annual monetary value in the top three percent of the ISD's employees—the dollar value of the salary, all expense accounts and reimbursed expenses, and of any bonus, stipend, or any other form of supplemental compensation. ("Supplemental compensation" would be defined to mean any payment or benefit made available to that employee that is not generally made available to all teaching, administrative, and executive-level employees of the intermediate school district.)

The report would be required to include total costs incurred during the school fiscal year, and the source or sources of money expended for fiber optic or cable equipment and operating system software for fiber optic or cable equipment networks. The description of the source or sources of the money expended for these purposes would have to include

the amount used from each of the separate funds maintained by the ISD and used from each other source.

The report would have to include payments made during the school fiscal year to people who were not employees of the ISD for public relations, polling, lobbying, or legal services, and a description of the services received by the ISD in return.

The bill specifies that for each person (excepting those noted above) to whom the ISD had been required to issue a federal income tax form 1099 that showed payments in excess of \$25,000, the report would have to note the total amount paid, a description of the project or projects for which the person had contracted, and the services provided.

The bill also specifies that the report would have to include the amount and percentage of the intermediate district's total budget that had been spent on administrative costs (as defined in the Michigan Public School Accounting Manual), public relations, surveys, polling, lobbying, and legal services.

The report also would be required to include a list of all motor vehicles weighing 7,500 pounds or less that had been owned or leased by the ISD, and a description of their purpose.

The bill specifies that the requirements concerning air travel would not apply to air travel on a scheduled airline in the Upper Peninsula of Michigan, or to chartered air travel in the Upper Peninsula, if the cost of the chartered air travel were less than the published cost of the same air travel on a scheduled airline.

Further, the bill specifies that the requirements concerning contracts and modifications to contracts would not apply to a contract for utilities, or to a contract for an annuity or retirement benefit in which all employees were eligible to participate, unless the contract were for payment of a commission to a third-party broker for securing one of the contracts.

Finally under the bill, if an ISD had fewer than three employees in the top three percent of employees, then the Center for Educational Performance and Information would be required to submit the information for the employees whose compensation packages placed them in the top three. If an ISD had more than 20 employees in the top three percent of employees, then the center would be required to submit the information for the employees whose compensation packages placed them in the top 20 among the ISD's employees.

The bill specifies the kinds of contracts in which ISD school board members or administrators, or their family members would *not* be considered to have a monetary interest, including: a) a corporation in which the person was a stockholder owning one percent or less of the total stock (if the stock was not listed on the stock exchange), or the stock has a present market value of \$25,000 or less (if the stock was listed on the stock exchange); b) a corporate trust, in which the person was a beneficiary, owned one percent

or less of the total stock (if the stock is not listed on the stock exchange), or the stock had a present market value of \$25,000 or less (if the stock is listed on the stock exchange); and c) a professional limited liability company organized under Michigan law, if the person was an employee but not a member of the company. Further, school board members, administrators, and their family members would *not* be considered to have a monetary interest in the instance of a contract between the ISD and any of the following: a) a corporation in which the person was not a stockholder owning more than one percent of the total stock outstanding in any class if the stock were not listed on a stock exchange; was not a stockholder owning stock that had a present market value in excess of \$25,000 if the stock were listed on a stock exchange; or, was not a director, officer, or employee; b) a firm, partnership, or other unincorporated association in which an intermediate board member, administrator, or family member was not a partner, member, or employee; a corporation or firm that had an indebtedness owed to an ISD board member, administrator or family member; and c) a contract between the ISD and a constituent district. Under the bill, beginning January 1, 2006, the monetary amounts specified would be indexed annually so they would increase at the same rate as the Detroit consumer price index—all items. The adjustment for each year would be announced by the Department of Education before December 15 each year.

Under the bill, “family member” would be defined to mean a person’s spouse or spouse’s sibling, or child; a person’s sibling, or sibling’s spouse or child; a person’s child or child’s spouse; or a person’s parent or parent’s spouse, and includes these relationships as created by adoption or marriage.

### **House Bill 5627 (H-3) (ISD Annual Report Information to CEPI )**

The bill would amend the State School Aid Act (MCL 388.1607 and 388.1618) to require that by November 15 each year, intermediate school districts report all information required under House Bill 5475 to the Center for Educational Performance and Information (CEPI).

Currently under the law, by November 15 of each year, each school district and intermediate school district must submit its annual comprehensive financial data to CEPI. The bill specifies that an intermediate school district’s financial data would have to contain all the information required under section 620 of the Revised School Code [which would be a new section added to the code if House Bill 5475 were enacted into law].

The bill is tie-barred to House Bill 5475 so that it could not become law unless House Bill 5475 also were enacted.

If enacted, the bill would take effect January 1, 2005.

**House Bill 5839 (H-5) (Special Ed and Vocational Ed Audits and Millage Reauthorization)**

The bill would amend the Revised School Code (MCL 380.681 et al) to specify that an ISD that levied taxes for area vocational-technical education program operating purposes, and also for special education operating purposes, would be required to submit to the Department of Treasury the audits required under section 622 of the code [which concerns financial institutions accounts, investments, and additional funds], and also under section 622a of the code (which would be created if House Bill 5457 is enacted into law). If the department determined that the proceeds had been used inappropriately, then the authorization for that proportion of the tax that had been misused could be reconsidered at the next ISD election, if at least 10 percent of the district electors petitioned the ISD to reconsider the reauthorization. However, if the proceeds from the tax were being used to repay debt secured by bonds issued by the ISD, then the election would be held at the next ISD election occurring after the debt secured by the bonds had been retired. Before the election could occur, the Department of Treasury would be required to notify the ISD of its determination that the tax had been misused. If the ISD disputed that determination or claimed that the situation had been corrected, then within 15 days after receipt of the determination the ISD could submit an appeal of the determination to the Department of Treasury. The department would be required to consider the appeal within 30 days. If the department did not make an affirmative finding within the 30-day period that the determination was incorrect or that the situation had been corrected, then the authorization could be reconsidered at the next regular ISD election.

Further, the bill would prohibit an ISD from using the proceeds from bonds issued or refunded, or taxes levied to repay bonds, for any purposes other than those described under the two sections of the code concerning vocational technical facilities and special education facilities. If such a facility was to be used for purposes other than providing such programs and services, proceeds from bonds issued or refunded, or from millage levied to repay bonds issued or refunded, could be used only for that portion of the facility that was used for providing the appropriate programs and services.

In addition, the bill specifies that taxes authorized by an intermediate school district for *operating purposes* could not be levied for a period exceeding 20 years, and could be renewed with approval of the ISD electors for a period not to exceed 20 years.

**House Bill 5850 (Substitute H-2) (Penalties for Misusing School Funds)**

The bill would amend the Revised School Code (380.1804) to provide penalties for the misuse of school district or intermediate school district funds.

Under the bill, a person would be prohibited from using school district or ISD funds, or other public funds under the control of the districts, for purchasing alcoholic beverages, jewelry, gifts, fees for golf, or any item the purchase or possession of which was illegal. However, the bill specifies that this provision does not prohibit the use of public funds for the purchase of a plaque, medal, trophy, or other award for the recognition of an

employee or student, if the purchase does not exceed \$44 per recipient. Beginning January 1, 2005, the monetary amount of this exception would be indexed annually, on or before December 15, using the Detroit consumer price index—all items, the amount to be announced by the Department of Education.

The bill specifies that in addition to any other penalty provided by law, a person who violated this section would be guilty of a crime punishable by imprisonment for not more than 93 days or a fine, or both. The amount of the fine would be as follows:

- a) if the cumulative amount of the funds used in violation was less than \$5,000, then a fine of up to \$1,000;
- b) if the amount of funds used was at least \$5,000 and less than \$10,000, then a fine of at least \$1,000 and not to exceed \$2,000;
- c) if the amount was at least \$10,000 and less than \$15,000, then a fine of at least \$2,000 and not to exceed \$3,000;
- d) if the amount was at least \$15,000 and less than \$25,000, then a fine of at least \$3,000 and not to exceed \$4,000; and,
- e) if the cumulative amount of the funds that were used by the person in violation was \$25,000 or more, then a fine of at least \$4,000.

Further, the bill would require a court to order a person convicted of such a violation to make restitution to the affected school district or intermediate school district.

Under the bill, as used in this section of the code, “public funds” would mean funds generated from taxes levied under this act, state appropriations of state or federal funds, or payments to the school district or intermediate school district for services, but would not include voluntary contributions made by school district or intermediate school district board members or employees for a specific purpose.

The bill also specifies that a person who knowingly or intentionally violated the competitive bidding requirements under the code, or who permitted or consented to such a violation, would be guilty of a crime punishable by a fine in an amount equal to not more than 10 percent of the cost of the project involved in the violation, or imprisonment for not more than one year, or both.

Finally under the bill, a person who knowingly or intentionally used the proceeds of bonds issued under this act for a purpose other than that stated in the ballot proposal authorizing the issuance of the bonds, or who permitted or consented to such a misuse, would be guilty of a crime punishable by a fine in an amount equal to not more than 10 percent of the cost of the project involved in the violation, or imprisonment for not more than one year, or both. [In both instances, the bill specifies that the violator would not be subject to the penalties of section 1804. Section 1804 of the Revised School Code concerns neglect or refusal to perform acts, and it specifies that a school official or member of a school board or an intermediate school board, or other person who neglects or refuses to perform an action required under the code, or who violates or knowingly



permits or consents to a violation, is guilty of a misdemeanor punishable by a fine of not more than \$500, or imprisonment for not more than three months, or both.]

### **House Bill 5851 (Sentencing Guidelines)**

The bill would amend the Code of Criminal Procedure (MCL 777.13p) to create the sentencing guidelines for two new crimes—the first, failing to comply with school competitive bidding processes; and the second, the improper use of school bond proceeds. In both instances the crimes would be categorized as crimes against the public trust (category H), and the state maximum incarceration would be for a period of one year.

House Bill 5851 is tie-barred to House Bill 5850 so that it could not become law unless House Bill 5850 also were enacted.

### **House Bill 5921 (Substitute H-4) (Conflict of Interest; Overlapping Directors; ISD Board Size; ISD Candidate Designation; Terms of Office)**

The bill would amend the Revised School Code (MCL 380.612) to, among other things, create a conflict of interest policy for intermediate school district officials and employees, and also specify that not more than three ISD board members could also be serving as members of the boards of constituent districts, or as directors of public school academies (a limitation that would apply at the expiration of the current terms of those now serving on both boards). A more detailed explanation of the bill follows.

Generally, intermediate school boards have five members if they are elected from among the constituent district boards, or seven members if popularly elected by the voters. Under the bill, an intermediate school board could change the number of its members to seven by adopting a resolution. However, before adopting the resolution, the board would be required to hold at least two public hearings. The bill specifies that if an intermediate school board determined that the terms of its members should be staggered, then the board members could adopt bylaws (or amend its bylaws) to ensure that change, and in doing so could alter the current terms of members serving.

Currently the term of office for ISD board members is six years. In contrast, the bill specifies that beginning with the terms of ISD board members elected after January 1, 2009, the term of office of each member elected to an ISD board would be four years. Further, the bill specifies that not later than April 1, 2005, each intermediate school board adopt bylaws for election of board members that would provide for the transition to four-year terms, and that would provide for annual election of members. All of the following would apply to those bylaws: a) they would have to ensure that all members were elected for four-year terms beginning with the election in 2009; b) they would have to ensure that at least one member was elected each year, and c) they could alter the current terms of members serving.

In addition, currently the board members of all but four intermediate school districts [1) Gogebic-Ontonagon, 2) Charlevoix-Emmet, 3) Midland, and 4) Crawford-Oscoda-Ogemaw-Roscommon] are elected biennially on the first Monday in June by an electoral body composed of one member of the board of each constituent school district. Under the bill, this provision would be retained. Under the law, the board of a constituent district designates its representative to the electoral body by resolution adopted not earlier than 21 days before the date of the biennial election, and must consider the resolution at not less than two public meetings before adopting it. In its resolution designating its representative, the board must identify the candidate the board supports for each position to be filled on the ISD board, and then direct its representative to vote for that individual or individuals (at least on the first ballot taken by the electoral body). The law also requires that the meeting of the electoral body be conducted in a manner prescribed under the Open Meetings Act. Under the bill all of these provisions would be retained.

Currently under the law, a member of an intermediate school board who is elected at a biennial election or who is appointed to fill a vacancy is subject to recall by the intermediate school electors, in the manner prescribed by the Michigan Election Law. The bill would retain the recall provisions, but eliminate references to “a biennial election.” The current law also allows an intermediate school board to submit to school electors a ballot question to determine if the electors want intermediate board members selected by popular election. If the electors vote in favor of popular election, members of the intermediate school board are elected at the next regular school election and biennially thereafter at the regular school elections of the constituent districts. The bill would retain these provisions, but once again eliminate the reference to biennial elections.

The bill requires that not later than July 1, 2005, each intermediate school board adopt and implement a conflict of interest policy designed to avoid conflicts of interest by intermediate school district officials and employees. Not later than that date, each intermediate school board would be required to adopt and implement a policy to prohibit the use of ISD funds, or other public funds, to purchase alcoholic beverages, jewelry, gifts, fees for golf, or any item the purchase or possession of which was illegal. The bill includes monetary penalties for violation of this policy.

However, the bill specifies that this provision would not prohibit the use of public funds for the purchase of a plaque, medal, trophy, or other award for the recognition of an employee, volunteer, or student, if the purchase did not exceed \$100 per recipient. [Under the bill, as used in this section of the code, “public funds” would mean funds generated from taxes levied under this act, state appropriations of state or federal funds, or payments to the school district or intermediate school district for services by a constituent district or any other person, but would not include voluntary contributions made for a specific purpose by school district or intermediate school district board members or employees, another individual, or private entity.] Beginning January 1, 2005, the monetary amount of this exception would be indexed annually, on or before December 15, using the Detroit consumer price index—all items, the amount to be announced by the Department of Education.

Under the bill, the Department of Education would be required to develop and distribute a model conflict of interest policy, and a model policy meeting the requirements noted above.

The bill also specifies that in any one-month period, an intermediate school board member or intermediate school district administrator would be prohibited from accepting from a person who did business, or who sought to do business, with the ISD, any money, goods, or services with a value in excess of \$44, if the board member or official did not provide goods or services of equal value in exchange. Beginning January 1, 2005, the monetary amount of this exception would be indexed annually, on or before December 15, using the Detroit consumer price index—all items, the amount to be announced by the Department of Education. [The bill specifies that this subsection would not apply to a gift or reward already prohibited under section 1805 of the code. Section 1805 concerns penalties for accepting gifts, and says that a superintendent of public instruction, intermediate superintendent, school officer, superintendent, principal, or teacher of schools shall not act as agent for an author, publisher, or seller of schoolbooks, or school apparatus, or receive a gift or reward for his or her influence in recommending the purchase or use of a schoolbook apparatus, or furniture. A person who violates this section of the school code is guilty of a misdemeanor punishable by a fine of not more than \$500, or imprisonment for not more than three months, or both.]

The bill specifies that if an intermediate school board member or school administrator had a substantial conflict of interest in a proposed contract, then the ISD board would be prohibited from entering into a contract. [Under the bill, “substantial conflict of interest” is defined to mean a conflict of interest on the part of an intermediate school board member or intermediate school district administrator in respect to a contract with the intermediate school district that is of such substance as to induce action on his or her part to promote the contract for his or her own personal benefit. The bill also defines in some detail cases in which contracts would *not* pose substantial conflicts of interest.]

The bill specifies that if an intermediate school board member, administrator, or employee who recommended, negotiated, or was authorized to sign a contract on behalf of the ISD either was employed by, or was under contract with, a business enterprise with which the ISD was considering entering into a contract, or knew that he or she had a family member who had an ownership interest in, or was employed by, a business enterprise with which the ISD was considering entering into a contract, then he or she would be required to disclose that fact to the intermediate school board at a public meeting of the board, before the board entered into the contract. If the board received a disclosure, the board would be required to vote at a public meeting on whether or not it considered the relationship described in the disclosure to be a conflict of interest. The bill further specifies that the board could not enter into the contract without first voting at a public meeting. [Under this subsection of the bill, “family member” would be defined to mean a person’s spouse or spouse’s sibling or child; a person’s sibling, or sibling’s spouse or child; a person’s child or child’s spouse; or a person’s parent or parent’s spouse, and includes these relationships as created by adoption or marriage.]

The bill would require that an intermediate school board ensure that each employment contract with a school administrator employed by the ISD include both a provision prohibiting the school administrator from engaging in conduct involving moral turpitude, and a provision allowing the intermediate school board to void the contract if the school administrator violated the provision prohibiting conduct involving moral turpitude.

Finally, the bill would amend the section of the code concerning the instance in which two or more adjoining ISDs combine to form a single intermediate school district. Currently under the law, at the first election (and in order to achieve staggered terms so that not all board members leave office at the same time), three members of the board are elected for six years, two member for four years, and two members for two years. In contrast, the bill specifies that two members of the board would be elected for four years, two members for three years, two members for two years, and one member for one year.

Legislative Analyst: J. Hunault

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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.