



Senate Fiscal Agency
P.O. Box 30036
Lansing, Michigan 48909-7536

BILL ANALYSIS



Telephone: (517) 373-5383
Fax: (517) 373-1986

House Bill 5910 (Substitute H-2 as passed by the House)
House Bill 5911 (as passed by the House)
House Bill 5912 (Substitute H-4 as passed by the House)
House Bill 5913 (Substitute H-3 as passed by the House)
Sponsor: Representative Pamela Hornberger (H.B. 5910)
Representative Gregory Markkanen (H.B. 5911)
Representative Andrea Schroeder (H.B. 5912)
Representative Annette Glenn (H.B. 5913)

House Committee: Education
Ways and Means
Senate Committee: Education and Career Readiness

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CONTENT**House Bill 5910 (H-2) would amend the Revised School Code to do the following:**

- Allow community districts to contract with provider of virtual courses.
- Define "e-learning day".
- Require the Michigan Department of Education (MDE) to develop or adopt a program for use of e-learning days.
- Allow the board of a district or the board of directors of a public school academy (PSA), beginning with the 2021-2022 school year, to adopt a research-based program and subsequently renew its adoption of e-learning days.
- Prescribe requirements for a program for e-learning days and prescribe procedures for the adoption or renewal of a program.
- Allow the MDE to promulgate rules regarding the implementation of e-learning day programs.
- Prescribe modes of communication within an e-learning day program.
- Prohibit a district, intermediate school district (ISD), or PSA from implementing a program unless they could ensure certain provisions are met.
- Require the Superintendent of Public Instruction (SPI) to send notice of any school closures required under an Executive Order declaring a state of emergency or state of disaster.

House Bill 5911 would amend the State School Aid Act to do the following:

- Prohibit a primary district from offering a virtual course to an eligible pupil unless the course was published on the district's catalog of board-approved courses for that district, the ISD in which it was located, or in a statewide catalog maintained by a Statewide education institution.
- Prohibit a pupil from being enrolled in a virtual course without the consent of a parent or legal guardian unless he or she was 18 years old or emancipated.
- Prescribe conditions that would allow a pupil to enroll in more than two virtual courses in a specific academic term, semester, or trimester.

- Require a provider to accept the enrollment of all eligible applicants in a virtual course if that course had not exceeded capacity.
- Prohibit a primary district from establishing additional requirements beyond those prescribed by the bill that would prohibit a pupil from taking a virtual course.
- Prescribe conditions that would allow a district to deny a pupil enrollment in a virtual course.
- Prescribe certain requirements for virtual course providers.
- Require a provider to ensure that a virtual course in a core academic subject aligned with the appropriate Michigan Merit Standard.
- Specify calculations for the Statewide pupil-weighted average foundation allowance for the purposes of the bill.
- Specify that the minimum requirement to count a pupil enrolled in virtual courses in student membership would be established by the Pupil Accounting and Pupil Auditing Manual Oversight Committee.

House Bill 5912 (H-4) would amend the State School Aid Act to do the following:

- For the 2020-21 school year, specify that the Department of Education would have to waive the required minimum number of hours and days of pupil instruction for each district that was providing instruction under an extended continuity of learning plan that had been approved by an intermediate school district or authorizing body.
- Specify an extended continuity of learning plan would have to contain all the elements required for inclusion in a continuity of learning plan and COVID-19 response plan, a statement indicating why an extended continuity of learning plan was necessary to increase pupil engagement and achievement for the school year, a description of how instruction would be delivered, among other elements prescribed in the bill.
- Include pandemics as conditions not within the control of school authorities for the purpose of counting as hours and days of pupil instruction the first two, instead of six, days or the equivalent number of hours for which pupil instruction was not provided.
- Count as hours and days of pupil instruction certain days or equivalent number of hours provided through e-learning.
- By August 15, 2020, require a school that intended to provide instruction under an extended continuity of learning plan to submit its extended continuity of learning plan as prescribed in the bill for approval.
- If approved, require the district to transmit copies of its plan to the Superintendent of Public Instruction and the State Treasurer in the same manner required under Executive Order 2020-65.
- Require an intermediate district or authorizing body that approved an extended continuity of learning plan to be responsible for monitoring the district's implementation of the extended continuity of learning plan and assessment and public reporting regarding the district's progress toward the educational goals established in the extended continuity of learning plan.

House Bill 5913 (H-3) would amend the State School Aid Act to do the following:

- Define "attendance" for the purposes of the bill.
- Specify that instruction could be provided in other modes besides at a school or in-person.

- **Specify that a pupil participating in remote instruction relating to COVID-19 would be counted in membership in the district or PSA that provided the pupil with remote instruction.**
- **Permit a district to count a pupil participating in remote instruction due to COVID-19 in membership without the approval of the pupil's district of residence.**
- **Create the "Pupil Accounting and Pupil Auditing Manual Oversight Committee" within the MDE and specify its membership.**
- **Authorize the Committee to review the pupil accounting and auditing manuals instead of the Department.**
- **Require a district to administer at least one approved benchmark assessment to pupils in grades K to 8 within the first 30 days of the 2020-2021 school year in order to receive State aid, if full-time, in-person instruction were resumed.**
- **Require a district to administer at least one benchmark assessment to all pupils in grades K to 8 within 30 days after the halfway point of the 2020-2021 school year in order to receive State aid, if full-time, in-person instruction were not resumed for all or some pupils.**
- **Require the MDE to approve between four to five benchmark assessments to be administered by districts.**
- **Prescribe the requirements that an approved benchmark assessment would have to meet and prescribe additional requirements for the assessment that the MDE would have to provide to districts at no cost.**
- **Require districts to enter into an agreement with the MDE to provide the Department with access to pupil-level data from benchmark assessments.**
- **Require the MDE, by December 1, 2020, to provide a report to the House and Senate appropriations subcommittees on State school aid and the House and Senate Fiscal Agencies.**
- **If a district administered an assessment, require it to provide each pupil's math and English language arts proficiency data, as available, to the pupil's parent or guardian within 30 days of the assessment.**

House Bill 5910 (H-2) and House Bill 5913 (H-3) are tie-barred to House Bill 5911 and 5912 and each other, while House Bill 5911 and House Bill 5912 (H-4) are tie-barred to House Bill 5910 and House Bill 5913.

House Bill 5910 (H-2)

Providers of Virtual Courses

Generally, the Revised School Code requires a board of a school district to hire and contract with qualified teachers. The Code provides exceptions to this requirement in the case of a district that is a community district employing qualified teachers or other instructional personnel at a public school that formerly operated as an achievement school, or if a district partners with an education management organizations for a drop out recovery programs. Under the bill, if a school district were a provider of virtual courses under Section 21f of the School Aid Act, the board of the district could contract for qualified teacher and other qualified instructional personnel.

("Provider" would mean that term as defined in Section 21f of the Act, which would be amended under House Bill 5911 to mean "a district, including a district that operates as a cyber school as that term is defined in Section 551 of the Code, an intermediate district, community college, State public university, or other person or entity that the primary district pays to provide the virtual course.)

E-Learning Days; Program

Under the bill, the MDE would have to develop or adopt a program for the use of e-learning days that met all prescribed requirements and that, beginning with the 2021-2022 school year, could be adopted and renewed and implemented by school districts, ISDs, and PSAs. The Department could promulgate rules to implement e-learning day programs.

"E-learning day" would mean any of the following:

- A day on which pupil instruction is received electronically or remotely through a program or programs adopted or renewed under this section while pupils are not physically present at school because the school is closed due to conditions not within the control of school authorities, such as pandemics.
- A day that is preplanned by the school district, intermediate school district, or public school academy on which pupil instruction is received electronically or remotely through a program or programs adopted or renewed under this section while pupils are not physically present at school. A day described in this subdivision cannot be scheduled to occur on a Monday or Friday, on a day immediately before or immediately following a scheduled break during which the schools operated by the school district, intermediate school district, or public school academy will not be in session, or on consecutive days.
- A day on which pupil instruction is received electronically or remotely through a program or programs adopted or renewed under this section while pupils are not physically present at school because the school district, intermediate school district, or public school academy that operates the school closes the school as required by an Executive Order declaring a state of emergency or state of disaster or after receiving a notice from the SPI.

Beginning with the 2021-2022 school year, the board of a district or ISD or board of directors of a PSA, by a resolution of the board, could adopt a research-based program or programs and subsequently renew its adoption for e-learning days that would permit pupil instruction to be received electronically or remotely on e-learning days. The board of a district or ISD, or board of directors of a PSA that adopted or renewed a program for e-learning days would have to do the following:

- The board of an ISD would have to submit its adopted or renewed program for e-learning days to the MDE no later than 14 days following the adoption or renewal.
- The board of a school district would have to submit its adopted or renewed program to its ISD no later than 14 days following adoption or renewal.
- The board of directors of a PSA would have to submit its adopted or renewed program to its authorizing body no later than 14 days following adoption or renewal.

The board of an ISD or district, or board of directors of PSA also would have to make its adopted or renewed program for e-learning days accessible through the transparency reporting link located on the district's, ISD's or PSA's website.

A program could not provide for e-learning days each school year in an amount that exceeded the number of e-learning days that could be counted as days of pupil instruction. (See House Bill 5912 (H-4) for further detail).

A district, ISD, or PSA could not implement a program unless the board of the district or ISD, or board of directors of the PSA ensured that, at a minimum, all of the following were met:

- All pupils enrolled in the district, ISD, or PSA implementing the program had access to it.

- The specific needs of each pupil who would participate in the program were taken into account, including the needs of special education pupils and pupils who were English language learners.
- The program was designed to comply with other requirements of the Code and the School Aid Act.
- Except as otherwise provided below with respect to nonelectronic materials, all teachers and other staff who would be participating in the program had access to any and all necessary hardware or software.
- The program offered at least five hours of instructional content or school work on each e-learning day.
- Except as otherwise provided, the program provided for computers, internet, and other forms of electronic communication that were required for the program and that could be accessed from home or from other remote facilities by all participating pupils.
- The program would have to provide for nonelectronic materials to be made available to pupils and teachers or other staff participating in the program if they were not provided with access to the necessary technology for the program.
- The program provided for appropriate learning opportunities for pupils with special needs.
- The program provided for a method to verify each pupil's participation in the program and a process for tracking pupil progress and for addressing the extent to which participation was within the pupil's control with regard to the time, pace, and means of learning.
- The program provided for effective notice to pupils and their parents or legal guardians concerning the use of particular school days or e-learning days.
- The program provided for adequate training in the use of the program for pupils, teachers, and other school staff who would participate in the program.
- The program provided for a means of ensuring the protocol concerning the general expectations and responsibilities of the program were communicated to teachers, school staff, and pupils who would participate in the program and the parents and legal guardians of pupils.

An adoption or renewal of a program by a district, ISD, or PSA would expire one year after the adoption or renewal. Before a program was adopted or renewed, there would have to be a public hearing on the proposed adoption or renewal. All of the following would have to be met concerning a public hearing:

- It would have to be held at a meeting of the board or board of directors and would be subject to the Open Meetings Act.
- The terms of the proposed program subject to adoption or renewal would have to be substantially presented at the hearing.
- The public hearing would have to provide for the opportunity for public comments.
- Notice of the hearing would have to be provided at least 10 days before the hearing, though written or electronic means, designed to reach the parents or guardians of all pupils enrolled in the district, ISD, or PSA.

A program for e-learning days could provide for pupil instruction and interaction between teachers and participating pupils through the use of any of the following forms of electronic communication that met the needs of all participating pupils:

- The internet.
- Telephones.
- Text messaging.
- Online chat room platforms.
- Means of electronic communication that are similar to those described above.

The board of a school district or ISD, or board of directors of a PSA that adopted or renewed a program for e-learning days would have to ensure that any preplanned e-learning days were identified on its school calendar for each school year.

School Closure Notice; Executive Orders

If the Governor issued an Executive Order declaring a state of emergency or state of disaster and, pursuant to that Order, one or more public schools was required to close, the SPI would have to send a notice of the closures to the district, ISD, or PSA that operated each school that was required to close. The notice would have to specify that days for which the school would have to remain closed under the Order. A district, ISD, or PSA that had adopted or renewed a program, after receiving a notice, would have to close the applicable school on the specified days and provide pupil instruction electronically or remotely through the program or programs.

The bill also specifies that it should not be construed as imposing mandates on nonpublic schools.

House Bill 5911

Virtual Courses; Primary Districts

Under the State School Aid Act, a primary district must enroll an eligible pupil in virtual courses in accordance with provisions of the Code described below. ("Primary district" means the district that enrolls the pupil and reports the pupil for membership purposes.) The Act specifies that a primary district may not offer a virtual course to an eligible pupil unless it is published in the primary district's catalog of board-approved courses or in the statewide catalog of virtual courses maintained by the Michigan Virtual University. The primary district also must provide on its publicly accessible website a link to the statewide catalog of virtual courses maintained by the Michigan Virtual University. Unless the pupil is at least age 18 or is an emancipated minor, a pupil may not be enrolled in a virtual course without the consent of his or her parent or legal guardian.

Under the bill, a primary district could not offer a virtual course to an eligible pupil unless it was published in the primary district's catalog of board-approved courses, in the catalog of board-approved courses of the intermediate district in which the primary district was located, or in a statewide catalog of virtual courses maintained by a qualifying statewide education institution. The primary district also would have to ensure that its catalog of board-approved courses was made available to pupils in the same form and manner that its catalog of in-person courses was made available to pupils and provide on its publicly accessible website a link to the statewide catalogs of virtual courses maintained by each qualifying statewide educational institution. Unless a pupil was at least age 18 or was an emancipated minor, a pupil could not be enrolled in a virtual course without the consent of the pupil's parent or legal guardian. The bill specifies that these provisions would not apply to virtual courses offered as part of a program or programs for e-learning days adopted or renewed by a district (described further under House Bill 5910).

"Qualifying statewide educational institution" would mean the Michigan Virtual University or a State public university.

The Act requires a primary district to enroll an eligible pupil in up to two virtual courses as requested by the pupil during an academic term, semester, or trimester. Under the bill, to the extent practicable, a primary district would have to ensure that the enrollment process for a virtual course was the same as the enrollment process for an in-person course offered by the district.

The Act allows a pupil to be enrolled in more than two virtual courses in a specific academic term, semester, or trimester if all the following apply:

- The primary district has determined that it is in the best interest of the pupil.
- The pupil agrees with the recommendation of the primary district.
- The primary district, in collaboration with the pupil, has developed an education development plan, in a form and manner prescribed by the Department, that is kept on file by the district, except if the pupil is home-schooled and enrolled as a part time pupil.

Under the bill, a pupil could be enrolled in more than two virtual courses in a specific academic term, semester, or trimester if all of the above conditions were met or if any of the following applied:

- The pupil had exhibited an academic deficiency by testing below grade level in one or more subjects on the Michigan Student Test of Education Progress (M-STEP) or a successor State assessment or a benchmark assessment administered by the primary district and the virtual course or courses were designed to remedy this deficiency.
- For the 2020-21 school year only, the pupil's parent or legal guardian requested the pupil's enrollment in more than two virtual courses as described above because of health, safety, and welfare concerns related to the COVID-19 pandemic; however, a pupil who enrolled in one or more virtual courses in this manner would have to participate in all State-administered and district-administered assessments to the same extent as if the pupil was participating in in-person courses at the primary district.

The bill also specifies that the provisions above would not apply to virtual courses offered as part of a program or programs for e-learning days adopted or renewed by a district.

Under the Act, if the number of applicants eligible for acceptance in a virtual course does not exceed the capacity of the provider to provide the virtual course, the provider must accept for enrollment all of the applicants eligible for acceptance. If the number of applicants exceeds the provider's capacity to provide the virtual course, the provider must use a random draw system, subject to the need to abide by State and Federal antidiscrimination laws and court orders. A primary district that is also a provider must determine whether or not it has the capacity to accept applications for enrollment from nonresident applicants in virtual courses and may use that limit as the reason for refusal to enroll a nonresident applicant. The bill specifies that these provisions would not apply to virtual courses offered as part of a program or programs for e-learning days adopted or renewed by a district.

(Currently, "provider" means the district, intermediate district, or community college that the primary district pays to provide the virtual course or the Michigan Virtual University if it is providing the virtual course. The bill would define "provider" as a district, including a district that operates as a cyber school as that term is defines in Section 551 of the Revised School Code, an intermediate district, community college, State public university, or other person or entity that the primary district pays to provide the virtual course.)

Denial of Virtual Course Enrollment

Under the Act, a primary district may not establish additional requirements beyond those specified in the Act that would prohibit a pupil from taking a virtual course. The bill specifies that this would not apply to virtual courses offered as part of a program or programs for e-learning days adopted or renewed by a district.

The Act specifies that a pupil's primary district may deny the pupil enrollment in a virtual course if any of the following apply, as determined by the district:

- The pupil has previously gained the credits that would be provided from the completion of the virtual course.

- The virtual course is not capable of generating academic credit.
- The pupil has not completed the prerequisite coursework for the requested virtual course or has not demonstrated proficiency in the prerequisite course content.
- The cost of the virtual course exceeds 6.67% of the minimum foundation allowance for the current fiscal year, unless the pupil or the pupil's parent or legal guardian agrees to pay the cost that exceeds this amount.
- The request for a virtual course enrollment did not occur within the same timelines established by the primary district for enrollment and schedule changes for regular courses.
- The request for a virtual course enrollment was not made in the academic term, semester, trimester, or summer preceding the enrollment. This subdivision does not apply to a request made by a pupil who is newly enrolled in the primary district.

In addition, the primary district may deny the pupil enrollment in a virtual course if the pupil is enrolled in any of grades K to 5. The bill would allow a primary district to deny the pupil enrollment in a virtual course if the pupil was enrolled in grade K to 5 and the virtual course was not aligned to age-appropriate academic standards for that grade level.

The Act also allows a pupil's primary district to deny the pupil enrollment in a virtual course if the virtual course is inconsistent with the pupil's remaining graduation requirements or career interests of the pupil. The bill would allow the district to do this only if the virtual course were inconsistent with the pupil's remaining graduation requirements.

The Act allows a pupil's primary district to deny the pupil enrollment in a virtual course if he or she has failed a previous virtual course in the same subject during the two most recent academic years. Under the bill, this provision would not apply to a pupil who was enrolling in a virtual course intended to remedy an academic deficiency. The bill also would delete a provision that allows a pupil's primary district to deny the pupil enrollment in a virtual course if the virtual course is of insufficient quality or rigor.

Under the Act, if a pupil is denied enrollment in a virtual course by the pupil's primary district, it must provide written notification to the pupil of the denial, the reason or reasons for the denial, and a description of the appeal process. The pupil may appeal the denial by submitting a letter to the superintendent of the intermediate district in which the pupil's primary district is located. The bill specifies that these provisions would not apply to virtual courses offered as part of a program or programs for e-learning days adopted or renewed by a district.

Virtual Course Provider Requirements

To provide a virtual course to an eligible pupil, a provider currently must meet the requirements specified in the Act. Among others, the provider must ensure that the virtual course has been published in the pupil's primary district's catalog of board-approved courses or published in the Statewide catalog of virtual courses maintained by the Michigan Virtual University. Under the bill, the provider would have to ensure that the virtual course had been published in the pupil's primary district's catalog of board-approved courses, published in the catalog of board-approved courses of the ISD in which the pupil's primary district is located, or published in a Statewide catalog of virtual courses maintained by a qualifying Statewide educational institution. For the purposes of this provision, a district, ISD, or qualifying Statewide educational institution would be responsible for ensuring that a virtual course is of a quality or rigor at least equal to or greater than that of an in-person course offered by the entity before offering a virtual course in its catalog of courses.

A provider must assign to each pupil a teacher of record and provide the primary district with the personnel identification code assigned by the center for the teacher of record. If the provider is a community college, the virtual course must be taught by an instructor employed by or contracted through the providing community college. The bill specifies that if the

provider were a State public university, the virtual course would have to be taught by an instructor employed by or contracted through the university. (Under the Act, "instructor" means an individual who is employed by or contracted through a community college. Under the bill, the term also would mean an individual who is employed by or contracted through a State public university. The bill also would amend the definition of "teacher of record" to include a provider that is a State public university, and who is a regular or adjunct member of the State public university's faculty.)

A community college that is a provider must ensure that each virtual course it provides generates postsecondary credits. The bill would extend this requirement to a State public university.

The bill also would require a provider to ensure, for a virtual course in a core academic subject for a virtual course that would fulfill one or more of the credit requirements of the Michigan Merit Standard, that the virtual course was aligned to the appropriate State content standards established by the Department. (The Michigan Merit Standard requires a student to complete 18 total credits divided among English language arts, math, an online learning experience, physical education and health, science, social studies, visual, performing, and applied arts, and world languages).

Under the bill, the provisions above would not apply to virtual courses offered as part of a program or programs for e-learning days adopted or renewed by a district.

Virtual Courses & District Requirements

Under the Act, a pupil's primary district must assign to the pupil a mentor and supply the provider with the mentor's contact information for any virtual course in which a pupil enrolls.

For a pupil enrolled in one or more virtual courses, the primary district must use foundation allowance on per-pupil funds calculated under the Act to pay for the expenses associated with the virtual course or courses. A primary district is not required to pay toward the cost of a virtual course an amount that exceeds 6.67% of the minimum foundation allowance for the current fiscal year as calculated under the Act. However, under the bill, for a pupil enrolled in a virtual course that was provided by a community college or State public university, payment for that course would have to be an amount equal to the lesser of the amount of the eligible charges of the prorated percentage of the Statewide pupil-weighted average foundation allowance, as calculated under the Act, for all district for the fiscal year that began on October 1 of the academic year of enrollment in the virtual course, with the proration based on the proportion of the school year that the pupil was enrolled in the virtual course.

The bill specifies that in the calculation of the statewide pupil-weighted average foundation allowance for the purposes of the bill, if a district's foundation allowance were above the target foundation allowance under the Act, then the district's foundation allowance would be considered to be the target foundation allowance. "Eligible charges" would mean tuition and mandatory course fees, material fees, and registration fees required by the community college or State public university for the virtual course, and include any late fees charged by the community college or State public university due to the primary district's failure to make a required payment. Eligible charges would not include transportation or parking costs or activity fees.

Under the Act, the enrollment of a pupil in one or more virtual courses does not result in a pupil being counted as more than 1.0 full-time equivalent pupils. The minimum requirements to count the pupil in membership are those established by the pupil accounting manual as it was in effect for the 2015-2016 school year or as subsequently amended by the Department if the Department notifies the Legislature about the proposed amendment at least 60 days before it takes effect. Under the bill, the minimum requirements to count the pupil still would apply except if the virtual courses were offered as part of a program for e-learning days. Also,

the minimum requirements to count the pupil in membership would be those established by the pupil accounting manual for the 2015-2016 school year or as subsequently amended by the Department immediately upon amendment if the amendment was recommended by the Pupil Accounting and Pupil Auditing Manual Oversight Committee.

The bill specifies that the provisions above would not apply to virtual courses offered as part of a program or programs for e-learning days adopted or renewed by a district.

The bill also specifies that it should not be construed as imposing mandates on nonpublic schools.

House Bill 5912 (H-4)

Extended Continuity of Learning Plan Requirements

Generally, the State School Aid Act prescribes requirements that school districts must meet to receive State aid. Among other requirements, the Act specifies that if a district does not have at least 75% of the district's membership in attendance on any day of pupil instruction, the Department must pay the district State aid in that proportion of 1/180 that the actual percent of attendance bears to 75%. Under the bill, this requirement would not apply to an e-learning day.

Also, if a district were providing remote instruction to pupils and that remote instruction exposed those pupils to the academic standards that applied for the pupil's grade level of courses in the same scope and sequence as the district provided for in-person instruction, then the requirements above related the payment of State aid in a proportion of 1/180 would not apply to that district. Instead, for that district, if the district did not have an average of at least 75% of the district's membership in attendance for each attendee period in the school year, the Department would have to pay the district State aid in that proportions of 10/180 that the actual average percentage of attendance for that attendance period bore to 75%. As used above, "attendance period" would mean each period of 10 consecutive school days in a school year.

The bill specifies that the provisions in the Act relating to the provision of pupil instruction would apply except as specified below.

Under the bill, for the 2020-21 school year, the MDE would have to waive the required minimum number of hours and days of pupil instruction as described above for each district that was providing instruction under an extended continuity of learning plan that had been approved by an intermediate school district or authorizing body, as applicable. The bill states that it is the intent of the Legislature that extended continuity of learning plans described below provide districts with maximum flexibility to adapt their educational programs for some or all pupils at some or all of the schools operated by the district to respond to the COVID-19 pandemic.

An extended continuity of learning plan would have to contain all the elements required for inclusion in a continuity of learning plan and COVID-19 response plan under Executive Order 2020-65 and would have to include all the following additional elements:

- A statement indicating why an extended continuity of learning plan was necessary to increase pupil engagement and achievement for the 2020-21 school year.
- A description of how instruction would be delivered, which the bill would allow at school or at a different location, in person, online, digitally, by other remote means, in a synchronous or asynchronous format, or any combination thereof.

- A description of how instruction for core academic areas provided under the extended continuity of learning plan would expose each pupil to the academic standards that applied for each pupil's grade level or courses in the same scope and sequence as the district had planned for that exposure to occur for in-person instruction and a description of how pupil progress toward mastery of the standards would be graded or otherwise reported to the pupil and the pupil's parent or legal guardian.
- An assurance and description of how pupils would be provided with equitable access to technology and the internet necessary to participate in instruction.
- A description of how the district would ensure that students with disabilities would be provided with equitable access to instruction accommodation in accordance with applicable State and Federal laws, rules, and regulations.
- A requirement that, if the district provided in-person instruction for the 2020-21 school year, the district would consult with the local health department regarding any applicable guidelines issued by the Department or the Department of Health and Human Services (DHHS) concerning providing in-person instruction at school for the 2020-21 school year, including guidelines for school building cleaning and school building occupancy and a requirement that the district implement the guidelines, if any, described in the bill, and if the guidelines included a recommendation that a district close one or more of its school buildings, the ultimate decision concerning whether or not to close those school buildings would remain with the district.
- A requirement that the district offer in-person pupil instruction to all pupils enrolled in grades K to 5 for the 2020-21 school year.
- A requirement that, if the district provided in-person pupil instruction to pupils in any of grades K to 5 for the 2020-21 school year and if a pupil enrolled in the district, a teacher, or the parent or legal guardian of a pupil enrolled in the district requested some reasonable form of protective barriers, masks, or gloves, the district would have to make its best effort to obtain and provide all requested protective barriers, masks, or gloves to the pupil or teacher.

In addition, an extended continuity of learning plan would have to include the education goals expected to be achieved. The bill would require an extended continuity of learning plan to specify which educational goals would be expected to be achieved by the middle of the school year and which goals would be expected to be achieved by the end of the school year. All the following would apply to the educational goals:

- The goals would have to include increased pupil achievement or growth on a benchmark assessment described below in the aggregate and for all subgroups of pupils.
- The goals would have to include an assurance that the district would have to select a benchmark assessment that was aligned to State standards and an assurance that the district administered the benchmark assessment to all pupils in the fall, winter, and spring of the school year to determine whether pupils were making meaningful progress toward mastery of these standards.
- The goals would have to be measurable through a benchmark assessment described above.

Requirements for Hours and Days for Pupil Instruction

Currently, except as otherwise provided in the Act, the first six days or the equivalent number of hours for which pupil instruction is not provided because of conditions not within the control of school authorities, such as severe storms, fires, epidemics, utility power unavailability, water or sewer failure, or health conditions as defined by the city, county, or State health authorities, are counted as hours and days of pupil instruction. The bill would reduce the number of days to two and would include pandemics as conditions not within the control of school authorities.

Under the bill, all the following also would apply to the provision of pupil instruction:

- Days or the equivalent number of hours, not to exceed a total of seven days or the equivalent number of hours for those days each school year, for which pupil instruction was provided as an e-learning day because the school was closed because of a condition not within its control would be counted as hours and days of pupil instruction.
- Days or the equivalent number of hours, not to exceed a total of 20 days or the equivalent number of hours for those days each school year, for which pupil instruction was provided as a preplanned e-learning day would be counted as hours and days of pupil instruction.
- Days or the equivalent number of hours for which pupil instruction was provided as an e-learning day because of an executive order declaring a state of emergency would be counted as hours and days of pupil instruction.
- Except as otherwise provided, the Department could not count any hours and days other than the hours and days described above as hours and days of pupil instruction for the purposes of the bill if pupil instruction were not provided on those days or for those hours due to conditions or for reasons described above.

The bill also specifies that the hours and days counted in each provision above would be counted in addition to the hours and days of the other provisions above.

Submission of Extended Continuity of Learning Plan

Under the bill, a district that was not a PSA that intended to provide instruction under an extended continuity of learning plan would have to submit its extended continuity of learning plan as required by the bill to the intermediate district in which the district was located by August 15, 2020, and a district that was a PSA that intended to provide instruction under an extended continuity of learning plan would have to submit its extended continuity of learning plan to its authorizing body no later than August 15, 2020, for approval. The intermediate district or authorizing body would have to apply the same approval procedure used for the approval of a continuity of learning and COVID-19 response plan under Executive Order 2020-65.

If a district's extended continuity of learning plan were approved, the district would have to transmit copies of its plan to the Superintendent of Public Instruction and the State Treasurer in the same manner that copies of a continuity of learning and COVID-19 response plan were required to be transmitted to the superintendent of public instruction and State Treasurer under Executive Order 2020-65. To assess progress toward educational goals, an intermediate district or authorizing body could require a district to provide the intermediate district or authorizing body with access to benchmark assessment data as a condition to approval of an extended continuity of learning plan.

An intermediate district or authorizing body that approved an extended continuity of learning plan would be responsible for monitoring the district's implementation of the extended continuity of learning plan and assessment and public reporting regarding the district's progress toward the educational goals established in the extended continuity of learning plan.

The bill also would require an extended continuity of learning plan created and approved under the bill to be made accessible through the transparency reporting link located on the district's website. The bill specifies that this provision would not be construed as imposing mandates on nonpublic schools.

House Bill 5913 (H-3)

"Attendance"

"Attendance" would mean, except as otherwise provided, pupil engagement in instruction that is provided under the direction of a certified teacher or an individual who is teaching pursuant to applicable State law or a rule and that is intended to lead to the pupil's mastery of academic standards established by the Department. Instruction could be provided at school or a different location or in person, online, digitally, or by other remote means in a synchronous or asynchronous format and could occur remotely from a school facility.

Pupil Membership; COVID-19

The Act prescribes the method by which schools may count pupil membership and prescribes factors, as applicable, that apply to determine the membership of a district, a PSA, or ISD. The bill would include the following as a factor: a pupil receiving remote instruction that exposed the pupil to the academic standards that applied for the pupil's grade level or courses in the same scope and sequence as the district or PSA that provided the pupil the remote instruction provided for in-person instruction because the pupil's parent or legal guardian requested the remote instruction or the district or PSA that provided the pupil the remote instruction that determined the remote instruction was necessary due to health, safety, and welfare concerns related to the COVID-19 pandemic would be counted in membership in the district or PSA that provided the pupil the remote instruction.

(Under the Act, "pupil" means an individual in membership in a public school. A district must have the approval of the pupil's district of residence to count the pupil in membership, except approval by the pupil's district of residence is not required in specific instances. The bill would include the scenario described above as such an instance.)

Under the Act, "class" means a period of time in one day when pupils and a certified teacher, a teacher engaged to teach under Section 1233b of the Code, or an individual working under a valid substitute permit, authorization, or approval issued by the Department, are together and instruction is taking place. Under the bill, the definition of "class" would include together "virtually, in-person, or by some other means." (Section 1233b of the Code prescribes the qualifications that allow a noncertified, nonendorsed teacher to teach certain courses full-time or part-time.)

Pupil Accounting and Pupil Auditing Manual Oversight Committee

Under the bill, no later than August 1, 2020, the Pupil Accounting and Pupil Auditing Manual Oversight Committee would be created within the Department. The Committee would have to consist of the following 11 members:

- Three members appointed by the Governor, including one member selected from nominees submitted by the Senate Majority Leader and one selected from nominees submitted by the Speaker of the House of Representatives.
- The SPI, or his or her designee.
- Two members appointed by the SPI and selected from a list of nominees submitted by statewide organizations representing school administrators working in districts.
- Two members appointed by the SPI and selected from a list of nominees submitted by statewide organizations representing PSAs (one of whom would have to represent districts that were schools of excellence that operated as cyber schools).

- Two members appointed by the SPI, one selected from nominees submitted by statewide organizations representing PSAs and one selected from nominees submitted by statewide organizations representing school administrators working in ISDs.
- One member appointed by the SPI and selected from a list of nominees submitted by individuals who represent the interest of special education students.

The members first appointed to the Committee would have to be appointed within 14 days after the bill's effective date. Member would serve three-year terms or until a successor was appointed, whichever was later. If a vacancy occurred, the appointment for the unexpired term would have to be made in the same manner as the original appointment. The Governor could remove a member of the committee for incompetence, dereliction of duty, malfeasance, misfeasance, or nonfeasance in office, or any other good cause.

The first meeting of the Committee would have to be called by August 31, 2020. At this meeting, the Committee would have to elect a chairperson and other officers as necessary or appropriate. After the first meeting, the committee would have to meet at least quarterly, or more frequently at the call of the chairperson, or by the request of a majority of the members.

A majority of members would constitute a quorum for the transaction of business. A majority of members would be required for official action of the committee. The Committee would be subject to the Open Meetings Act and the Freedom of Information Act. Members of the Committee would service without compensation; however, members could be reimbursed for the actual and necessary expenses incurred while performing their official duties.

Pupil Accounting Manuals

Currently, the Department must review its pupil accounting and auditing manuals at least annually and must periodically update those manuals to reflect changes in the Act. The bill would shift this function to the Pupil Accounting and Pupil Auditing Manual Oversight Committee, which also would recommend updates to the manuals. The Department would have to adopt all of the recommendations by the Committee

Benchmark Assessments

Under the bill, in order to receive State aid under the Act, if full-time, in-person instruction resumed for the 2020-2021 school year, a district would have to comply with the requirements of the bill and would have to administer at least one approved benchmark assessment to all pupils in grades K to 8 within the first 30 days of the 2020-2021 school year to measure proficiency in reading and math. If full-time, in-person instruction did not resume for some or all pupils for the first semester, trimester, or quarter of that school year, then, in order to receive State aid, a district would have to administer at least one approved benchmark assessment to all pupils in grades K to 8 within 30 days after the halfway point of the 2020-2021 school year to measure proficiency.

The MDE would have to approve at least four, but no more than five, benchmark assessments for the administration by a district. The Department would have to inform districts of all of the assessment approved in an equitable manner. The approved assessments, excluding the assessments provided by the MDE at no cost, would have to meet all of the following:

- Be one of the most commonly administered benchmark assessments in Michigan.
- Be aligned to the content standards of Michigan.
- Complement the State's summative assessment system.
- Be internet-delivered and include a standards-based assessment that used a computer-adaptive model to target the instructional level of each pupil.

- Provide information on pupil achievement with regard to learning content required in a given year or grade span.
- Provide immediate feedback to pupils and teachers.
- Be nationally normed.
- Provide multiple measures of growth and provide for multiple testing opportunities.

A district could administer one or more of the following benchmark assessments in order to meet the bill's requirements:

- A benchmark assessment in reading for students in grades K to 9 that contained progress monitoring tools and enhanced diagnostic assessments.
- A benchmark assessment in math for students in grades K to 8 that contained progress monitoring tools.

To the extent practicable, if a district administered a benchmark assessment, the district would have to administer the same assessment that it administered to pupils in previous school years.

A district would have to enter into an agreement with the Department to provide the MDE with access to pupil-level data from a benchmark assessment. No later than December 1, 2020, the Department would have to provide a report to the House and Senate appropriations subcommittees on State school aid and the House and Senate Fiscal Agencies identifying the number and percentage of pupils in each district who were significantly behind grade level, as determined by the MDE based on the data provided to the Department. The assessment data also could be used to measure students' growth based on their performance on State summative assessments to identify district and schools where student achievement had increased or decreased. After the administration of Statewide assessments resumes, the Department would have to provide a report to the House and Senate appropriations subcommittees on State school aid and the House and Senate Fiscal Agencies identifying the specific student growth whose expected trajectory toward grade-level proficiencies were most affected by school closures.

If a district administered a benchmark assessment, the district would have to provide each pupil's math and English language arts proficiency data from the assessment, as available, to the pupil's parent or guardian within 30 days of administration.

The Department would have to make one of the approved benchmark assessments available to districts at no cost to the districts. The assessment would have to meet all of the following:

- Be one of the most commonly administered assessment systems in Michigan.
- Be aligned with the content standards of Michigan.
- Be internet-delivered and include a standards-based assessment.
- Provide information on pupil achievement with regard to learning content required in a given year or grade span.
- Provide timely feedback to pupils and teachers.
- Be nationally normed.
- Provide information to educators about student growth and allow for multiple testing opportunities.

The bill specifies that the bill would not be construed as imposing mandates on nonpublic schools.

MCL 380.1231 et al. (H.B. 5910)
380.1621f (H.B. 5911)

Legislative Analyst: Dana Adams
Tyler VanHuysse

FISCAL IMPACT

House Bill 5910 (H-2)

The Department of Education would experience administrative costs to develop and adopt programs for the use of e-learning days beginning in the 2021-2022 school year. The Department also would experience minor administrative costs to collect adopted or renewed program plans for e-learning days from intermediate school districts and authorizing bodies and when notifying public schools that are required to close because of a state of emergency or state of disaster. These costs likely would be minimal and within current appropriations because of the length of time before e-learning day programs could be adopted.

Intermediate school districts, school districts, and public school academies would experience an indeterminate fiscal impact when adopting or renewing e-learning program plans. This would include planning and implementation costs when adopting or renewing program plans that used e-learning days. Intermediate school districts and authorizing bodies would experience minor costs to collect adopted or renewed e-learning program plans and submitting those plans to departments.

Districts and public school academies could experience savings from utilizing e-learning program plans that resulted in reduced transportation and staff costs on e-learning days. These savings could be offset by additional information technology and other costs devoted to delivering educational materials to students. Overall costs or savings would depend on current resources and infrastructure for each school. Additionally, districts and academies would have the final decision on if, when, or what kind of e-learning program plans were adopted, which would be more likely to result in no overall fiscal impact or possible savings.

The bill also could have an additional fiscal impact in that it would allow districts that are providers of virtual courses under Section 21f of the School Aid Act to contract for teachers and other qualified instructional personnel, rather than having to directly employ teachers for that content.

House Bill 5911

Districts would face an indeterminate fiscal impact because of changes proposed for Section 21f of the School Aid Act. The proposed broadening of virtual courses that could be taken by students could result in additional courses taken, the fiscal impact of which would depend on a comparison to costs for in-seat courses.

For courses offered by a community college or university, districts likely would see increased costs due to the replacement of the current cap on costs for a virtual course (6.67% of the minimum foundation allowance) with the lesser of the amount of eligible charges for the course or the prorated percentage of the statewide average foundation allowance (with the proration based on the proportion of the school year the student was enrolled in the virtual course). The addition of universities as providers of digital content could mean a reduction in revenue to community colleges if students chose courses provided by universities over those provided by community colleges.

House Bill 5912 (H-4)

For the 2020-21 school year, by removing the requirement for districts to meet thresholds for days and hours, the bill would result in no financial penalties for districts that failed to meet those thresholds. However, a condition of removing the requirement for minimum days and hours would be that a district would have to provide an assurance that it would select a benchmark assessment aligned to State standards and an assurance that the benchmark would be administered to all pupils in the fall, winter, and spring of the school year. If the district already is not using such a benchmark, there could be additional costs the district would face to comply with these assurances. Further, the bill would require districts to offer masks and gloves to teachers and pupils when needed, which would result in additional costs.

Beginning with the 2021-22 school year, by removing a 75% requirement for students attending school in order to count the day as a day of instruction, the bill likely would result in fewer districts losing State aid as a result of providing e-learning days. In addition, the 75% requirement would be waived for districts providing eligible remote instruction, and instead, that requirement would be replaced with districts having *an average* of 75% virtual attendance during a 10-school day period. This, too, likely would provide flexibility for districts to achieve the required thresholds and avoid State aid penalties. Also, by allowing various types of e-learning days to count toward required days of instruction, districts would see a reduced likelihood for State aid penalties related to insufficient days of instruction.

House Bill 5913 (H-3)

The bill could result in pupil memberships being counted in areas other than the pupil's district of residence, under the proposed language in Section 6(4)(mm), which states that a pupil receiving remote instruction is counted in membership of the district providing the remote instruction. This essentially would be like schools of choice but for remote learning, in which a student would not need the approval of the home district in order to be counted in the membership of the district providing remote instruction. This could result in some districts gaining pupils and others losing pupils, depending on where students received remote instruction.

There could be some additional costs to the Department for reimbursing members of the pupil accounting and auditing manual oversight committee for expenses, as provided under the bill.

The bill also would require districts to administer approved benchmark assessments at certain intervals in order to receive State aid payments. If districts were not previously administering these benchmarks, the districts could face increased compliance costs, and could see costs associated with providing proficiency data to parents as required under the bill. The Department could face additional administrative costs associated with approving benchmark assessments as required under the bill.

Fiscal Analyst: Cory Savino
Kathryn Summers

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.