

SENATE SUBSTITUTE FOR
HOUSE BILL NO. 5912

A bill to amend 1979 PA 94, entitled
"The state school aid act of 1979,"
by amending section 101 (MCL 388.1701), as amended by 2019 PA 58.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 101. (1) To be eligible to receive state aid under this
2 article, not later than the fifth Wednesday after the pupil
3 membership count day and not later than the fifth Wednesday after
4 the supplemental count day, each district superintendent shall
5 submit and certify to the center and the intermediate
6 superintendent, in the form and manner prescribed by the center,
7 the number of pupils enrolled and in regular daily attendance, **or,**
8 **for 2020-2021 only, the number of pupils engaged in pandemic**
9 **learning for fall 2020 or the number of pupils engaged in pandemic**

1 **learning for spring 2021, as applicable, or, for a district that**
2 **operates as a cyber school, as that term is defined in section 551**
3 **of the revised school code, MCL 380.551, the number of pupils**
4 **enrolled and in regular daily attendance,** including identification
5 of tuition-paying pupils, in the district as of the pupil
6 membership count day and as of the supplemental count day, as
7 applicable, for the current school year. In addition, a district
8 maintaining school during the entire year shall submit and certify
9 to the center and the intermediate superintendent, in the form and
10 manner prescribed by the center, the number of pupils enrolled and
11 in regular daily attendance in the district **or, for 2020-2021 only,**
12 **the number of pupils engaged in pandemic learning for fall 2020 or**
13 **the number of pupils engaged in pandemic learning for spring 2021,**
14 **as applicable, or, for a district that operates as a cyber school,**
15 **as that term is defined in section 551 of the revised school code,**
16 **MCL 380.551, the number of pupils enrolled and in regular daily**
17 **attendance,** for the current school year pursuant to rules
18 promulgated by the superintendent. Not later than the sixth
19 Wednesday after the pupil membership count day and not later than
20 the sixth Wednesday after the supplemental count day, the district
21 shall resolve any pupil membership conflicts with another district,
22 correct any data issues, and recertify the data in a form and
23 manner prescribed by the center and file the certified data with
24 the intermediate superintendent. If a district fails to submit and
25 certify the attendance data, as required under this subsection, the
26 center shall notify the department and the department shall
27 withhold state aid due to be distributed under this article from
28 the defaulting district immediately, beginning with the next
29 payment after the failure and continuing with each payment until

1 the district complies with this subsection. If a district does not
 2 comply with this subsection by the end of the fiscal year, the
 3 district forfeits the amount withheld. A person who willfully
 4 falsifies a figure or statement in the certified and sworn copy of
 5 enrollment is subject to penalty as prescribed by section 161. **As**
 6 **used in this subsection, "pupils engaged in pandemic learning for**
 7 **spring 2021" means that term as defined in section 6a.**

8 (2) To be eligible to receive state aid under this article,
 9 not later than the twenty-fourth Wednesday after the pupil
 10 membership count day and not later than the twenty-fourth Wednesday
 11 after the supplemental count day, an intermediate district shall
 12 submit to the center, in a form and manner prescribed by the
 13 center, the audited enrollment and attendance data **as described in**
 14 **subsection (1)** for the pupils of its constituent districts and of
 15 the intermediate district. If an intermediate district fails to
 16 submit the audited data as required under this subsection, the
 17 department shall withhold state aid due to be distributed under
 18 this article from the defaulting intermediate district immediately,
 19 beginning with the next payment after the failure and continuing
 20 with each payment until the intermediate district complies with
 21 this subsection. If an intermediate district does not comply with
 22 this subsection by the end of the fiscal year, the intermediate
 23 district forfeits the amount withheld.

24 (3) Except as otherwise provided in subsections (11), ~~and~~
 25 (12), **and (13)**, all of the following apply to the provision of
 26 pupil instruction:

27 (a) Except as otherwise provided in this section, each
 28 district shall provide at least 1,098 hours and 180 days of pupil
 29 instruction. If a collective bargaining agreement that provides a

1 complete school calendar was in effect for employees of a district
2 as of June 24, 2014, and if that school calendar is not in
3 compliance with this subdivision, then this subdivision does not
4 apply to that district until after the expiration of that
5 collective bargaining agreement. A district may apply for a waiver
6 under subsection (9) from the requirements of this subdivision.

7 (b) Except as otherwise provided in this article, a district
8 failing to comply with the required minimum hours and days of pupil
9 instruction under this subsection forfeits from its total state aid
10 allocation an amount determined by applying a ratio of the number
11 of hours or days the district was in noncompliance in relation to
12 the required minimum number of hours and days under this
13 subsection. Not later than August 1, the board of each district
14 shall either certify to the department that the district was in
15 full compliance with this section regarding the number of hours and
16 days of pupil instruction in the previous school year, or report to
17 the department, in a form and manner prescribed by the center, each
18 instance of noncompliance. If the district did not provide at least
19 the required minimum number of hours and days of pupil instruction
20 under this subsection, the department shall make the deduction of
21 state aid in the following fiscal year from the first payment of
22 state school aid. A district is not subject to forfeiture of funds
23 under this subsection for a fiscal year in which a forfeiture was
24 already imposed under subsection (6).

25 (c) Hours or days lost because of strikes or teachers'
26 conferences are not counted as hours or days of pupil instruction.

27 (d) Except as otherwise provided in subdivisions (e), ~~and~~ (f),
28 **and (h)**, if a district does not have at least 75% of the district's
29 membership in attendance on any day of pupil instruction, the

1 department shall pay the district state aid in that proportion of
2 1/180 that the actual percent of attendance bears to 75%.

3 (e) If a district adds 1 or more days of pupil instruction to
4 the end of its instructional calendar for a school year to comply
5 with subdivision (a) because the district otherwise would fail to
6 provide the required minimum number of days of pupil instruction
7 even after the operation of subsection (4) due to conditions not
8 within the control of school authorities, then subdivision (d) does
9 not apply for any day of pupil instruction that is added to the end
10 of the instructional calendar. Instead, for any of those days, if
11 the district does not have at least 60% of the district's
12 membership in attendance on that day, the department shall pay the
13 district state aid in that proportion of 1/180 that the actual
14 percentage of attendance bears to 60%. For any day of pupil
15 instruction added to the instructional calendar as described in
16 this subdivision, the district shall report to the department the
17 percentage of the district's membership that is in attendance, in
18 the form and manner prescribed by the department.

19 (f) At the request of a district that operates a department-
20 approved alternative education program and that does not provide
21 instruction for pupils in all of grades K to 12, the superintendent
22 shall grant a waiver from the requirements of subdivision (d). The
23 waiver must provide that an eligible district is subject to the
24 proration provisions of subdivision (d) only if the district does
25 not have at least 50% of the district's membership in attendance on
26 any day of pupil instruction. In order to be eligible for this
27 waiver, a district must maintain records to substantiate its
28 compliance with the following requirements:

29 (i) The district offers the minimum hours of pupil instruction

1 as required under this section.

2 (ii) For each enrolled pupil, the district uses appropriate
3 academic assessments to develop an individual education plan that
4 leads to a high school diploma.

5 (iii) The district tests each pupil to determine academic
6 progress at regular intervals and records the results of those
7 tests in that pupil's individual education plan.

8 (g) All of the following apply to a waiver granted under
9 subdivision (f):

10 (i) If the waiver is for a blended model of delivery, a waiver
11 that is granted for the 2011-2012 fiscal year or a subsequent
12 fiscal year remains in effect unless it is revoked by the
13 superintendent.

14 (ii) If the waiver is for a 100% online model of delivery and
15 the educational program for which the waiver is granted makes
16 educational services available to pupils for a minimum of at least
17 1,098 hours during a school year and ensures that each pupil
18 participates in the educational program for at least 1,098 hours
19 during a school year, a waiver that is granted for the 2011-2012
20 fiscal year or a subsequent fiscal year remains in effect unless it
21 is revoked by the superintendent.

22 (iii) A waiver that is not a waiver described in subparagraph
23 (i) or (ii) is valid for 1 fiscal year and must be renewed annually
24 to remain in effect.

25 **(h) For the 2020-2021 school year only, subdivision (d) does**
26 **not apply for any day of pupil instruction. However, for the 2020-**
27 **2021 school year only, a district shall ensure that 1 2-way**
28 **interaction occurs between a pupil enrolled in the district and the**
29 **pupil's teacher or at least 1 of the pupil's teachers during each**

1 month of the school year for at least 75% of pupils enrolled in the
2 district. If a district does not ensure that the interactions
3 required under this subdivision occur for at least 75% of pupils
4 enrolled in the district during each month of the school year, the
5 department shall pay the district state aid in that proportion of
6 1/10 that the actual percentage of interaction during each month
7 bears to 75%. As used in this subdivision, "2-way interaction"
8 means a communication that occurs between a pupil and the pupil's
9 teacher or at least 1 of the pupil's teachers, where 1 party
10 initiates communication and a response from the other party follows
11 that communication, and that is relevant to course progress or
12 course content for at least 1 of the courses in which the pupil is
13 enrolled. Responses, as described in this subdivision, must be to
14 the communication initiated by the teacher, and not some other
15 action taken. The communication described in this subdivision may
16 occur through, but is not limited to, any of the following means:

17 (i) Electronic mail.

18 (ii) Telephone.

19 (iii) Instant messaging.

20 (iv) Face-to-face conversation.

21 (i) ~~(h)~~—The superintendent shall promulgate rules for the
22 implementation of this subsection.

23 (4) Except as otherwise provided in this subsection, the first
24 6 days or the equivalent number of hours for which pupil
25 instruction is not provided because of conditions not within the
26 control of school authorities, such as severe storms, fires,
27 epidemics, utility power unavailability, water or sewer failure, or
28 health conditions as defined by the city, county, or state health
29 authorities, are counted as hours and days of pupil instruction.

~~1 For 2018-2019 only, in addition to these 6 days, if pupil~~
~~2 instruction is not provided on 1 or more days that are included in~~
~~3 a period for which the governor has issued an executive order~~
~~4 declaring a state of emergency across this state, upon request by a~~
~~5 district to the superintendent of public instruction, in a form and~~
~~6 manner prescribed by the department, that 1 or more of those days~~
~~7 and the equivalent number of hours count as days and hours of pupil~~
~~8 instruction, the department shall count those requested days and~~
~~9 the equivalent number of hours as days and hours of pupil~~
~~10 instruction for the purposes of this section. For 2018-2019, the~~
~~11 days included in the executive order are January 29, 2019 to~~
~~12 February 2, 2019.~~ With the approval of the superintendent of public
~~13 instruction, the department shall count as hours and days of pupil~~
~~14 instruction for a fiscal year not more than 3 additional days or~~
~~15 the equivalent number of additional hours for which pupil~~
~~16 instruction is not provided in a district due to unusual and~~
~~17 extenuating occurrences resulting from conditions not within the~~
~~18 control of school authorities such as those conditions described in~~
~~19 this subsection. Subsequent such hours or days are not counted as~~
~~20 hours or days of pupil instruction.~~

21 (5) A district does not forfeit part of its state aid
 22 appropriation because it adopts or has in existence an alternative
 23 scheduling program for pupils in kindergarten if the program
 24 provides at least the number of hours required under subsection (3)
 25 for a full-time equated membership for a pupil in kindergarten as
 26 provided under section 6(4).

27 (6) In addition to any other penalty or forfeiture under this
 28 section, if at any time the department determines that 1 or more of
 29 the following have occurred in a district, the district forfeits in

1 the current fiscal year beginning in the next payment to be
2 calculated by the department a proportion of the funds due to the
3 district under this article that is equal to the proportion below
4 the required minimum number of hours and days of pupil instruction
5 under subsection (3), as specified in the following:

6 (a) The district fails to operate its schools for at least the
7 required minimum number of hours and days of pupil instruction
8 under subsection (3) in a school year, including hours and days
9 counted under subsection (4).

10 (b) The board of the district takes formal action not to
11 operate its schools for at least the required minimum number of
12 hours and days of pupil instruction under subsection (3) in a
13 school year, including hours and days counted under subsection (4).

14 (7) In providing the minimum number of hours and days of pupil
15 instruction required under subsection (3), a district shall use the
16 following guidelines, and a district shall maintain records to
17 substantiate its compliance with the following guidelines:

18 (a) Except as otherwise provided in this subsection, a pupil
19 must be scheduled for at least the required minimum number of hours
20 of instruction, excluding study halls, or at least the sum of 90
21 hours plus the required minimum number of hours of instruction,
22 including up to 2 study halls.

23 (b) The time a pupil is assigned to any tutorial activity in a
24 block schedule may be considered instructional time, unless that
25 time is determined in an audit to be a study hall period.

26 (c) Except as otherwise provided in this subdivision, a pupil
27 in grades 9 to 12 for whom a reduced schedule is determined to be
28 in the individual pupil's best educational interest must be
29 scheduled for a number of hours equal to at least 80% of the

1 required minimum number of hours of pupil instruction to be
2 considered a full-time equivalent pupil. A pupil in grades 9 to 12
3 who is scheduled in a 4-block schedule may receive a reduced
4 schedule under this subsection if the pupil is scheduled for a
5 number of hours equal to at least 75% of the required minimum
6 number of hours of pupil instruction to be considered a full-time
7 equivalent pupil.

8 (d) If a pupil in grades 9 to 12 who is enrolled in a
9 cooperative education program or a special education pupil cannot
10 receive the required minimum number of hours of pupil instruction
11 solely because of travel time between instructional sites during
12 the school day, that travel time, up to a maximum of 3 hours per
13 school week, is considered to be pupil instruction time for the
14 purpose of determining whether the pupil is receiving the required
15 minimum number of hours of pupil instruction. However, if a
16 district demonstrates to the satisfaction of the department that
17 the travel time limitation under this subdivision would create
18 undue costs or hardship to the district, the department may
19 consider more travel time to be pupil instruction time for this
20 purpose.

21 (e) In grades 7 through 12, instructional time that is part of
22 a Junior Reserve Officer Training Corps (JROTC) program is
23 considered to be pupil instruction time regardless of whether the
24 instructor is a certificated teacher if all of the following are
25 met:

26 (i) The instructor has met all of the requirements established
27 by the United States Department of Defense and the applicable
28 branch of the armed services for serving as an instructor in the
29 Junior Reserve Officer Training Corps program.

1 (ii) The board of the district or intermediate district
2 employing or assigning the instructor complies with the
3 requirements of sections 1230 and 1230a of the revised school code,
4 MCL 380.1230 and 380.1230a, with respect to the instructor to the
5 same extent as if employing the instructor as a regular classroom
6 teacher.

7 (8) Except as otherwise provided in subsections (11), ~~and~~
8 (12), **and (13)**, the department shall apply the guidelines under
9 subsection (7) in calculating the full-time equivalency of pupils.

10 (9) Upon application by the district for a particular fiscal
11 year, the superintendent shall waive for a district the minimum
12 number of hours and days of pupil instruction requirement of
13 subsection (3) for a department-approved alternative education
14 program or another innovative program approved by the department,
15 including a 4-day school week. If a district applies for and
16 receives a waiver under this subsection and complies with the terms
17 of the waiver, the district is not subject to forfeiture under this
18 section for the specific program covered by the waiver. If the
19 district does not comply with the terms of the waiver, the amount
20 of the forfeiture is calculated based upon a comparison of the
21 number of hours and days of pupil instruction actually provided to
22 the minimum number of hours and days of pupil instruction required
23 under subsection (3). A district shall report pupils enrolled in a
24 department-approved alternative education program under this
25 subsection to the center in a form and manner determined by the
26 center. All of the following apply to a waiver granted under this
27 subsection:

28 (a) If the waiver is for a blended model of delivery, a waiver
29 that is granted for the 2011-2012 fiscal year or a subsequent

1 fiscal year remains in effect unless it is revoked by the
2 superintendent.

3 (b) If the waiver is for a 100% online model of delivery and
4 the educational program for which the waiver is granted makes
5 educational services available to pupils for a minimum of at least
6 1,098 hours during a school year and ensures that each pupil is on
7 track for course completion at proficiency level, a waiver that is
8 granted for the 2011-2012 fiscal year or a subsequent fiscal year
9 remains in effect unless it is revoked by the superintendent.

10 (c) A waiver that is not a waiver described in subdivision (a)
11 or (b) is valid for 1 fiscal year and must be renewed annually to
12 remain in effect.

13 (10) A district may count up to 38 hours of qualifying
14 professional development for teachers as hours of pupil
15 instruction. All of the following apply to the counting of
16 qualifying professional development as pupil instruction under this
17 subsection:

18 (a) If qualifying professional development exceeds 5 hours in
19 a single day, that day may be counted as a day of pupil
20 instruction.

21 (b) At least 8 hours of the qualifying professional
22 development counted as hours of pupil instruction under this
23 subsection must be recommended by a districtwide professional
24 development advisory committee appointed by the district board. The
25 advisory committee must be composed of teachers employed by the
26 district who represent a variety of grades and subject matter
27 specializations, including special education; nonteaching staff;
28 parents; and administrators. The majority membership of the
29 committee shall be composed of teaching staff.

1 (c) Professional development provided online is allowable and
2 encouraged, as long as the instruction has been approved by the
3 district. The department shall issue a list of approved online
4 professional development providers, which must include the Michigan
5 Virtual School.

6 (d) Qualifying professional development may only be counted as
7 hours of pupil instruction for the pupils of those teachers
8 scheduled to participate in the qualifying professional
9 development.

10 (e) For professional development to be considered qualifying
11 professional development under this subsection, the professional
12 development must meet all of the following:

13 (i) Is aligned to the school or district improvement plan for
14 the school or district in which the professional development is
15 being provided.

16 (ii) Is linked to 1 or more criteria in the evaluation tool
17 developed or adopted by the district or intermediate district under
18 section 1249 of the revised school code, MCL 380.1249.

19 (iii) Has been approved by the department as counting for state
20 continuing education clock hours. The number of hours of
21 professional development counted as hours of pupil instruction may
22 not exceed the number of state continuing education clock hours for
23 which the qualifying professional development was approved.

24 (iv) Not more than a combined total of 10 hours of the
25 professional development takes place before the first scheduled day
26 of school for the school year ending in the fiscal year and after
27 the last scheduled day of school for that school year.

28 (v) No more than 10 hours of qualifying professional
29 development takes place in a single month.

1 (vi) At least 75% of teachers scheduled to participate in the
2 professional development are in attendance.

3 (11) Subsections (3) and (8) do not apply to a school of
4 excellence that is a cyber school, as **that term is** defined in
5 section 551 of the revised school code, MCL 380.551, and is in
6 compliance with section 553a of the revised school code, MCL
7 380.553a.

8 (12) Subsections (3) and (8) do not apply to eligible pupils
9 enrolled in a dropout recovery program that meets the requirements
10 of section 23a. As used in this subsection, "eligible pupil" means
11 that term as defined in section 23a.

12 **(13) For the 2020-2021 school year only, the minimum number of**
13 **hours and days of pupil instruction requirement under subsection**
14 **(3) is waived for all districts. However, for the 2020-2021 school**
15 **year only, districts shall, at a minimum, provide pupil instruction**
16 **at school, at a different location, in person, online, digitally,**
17 **by other remote means, in a synchronous or asynchronous format, or**
18 **through any combination therein that results in an amount of hours**
19 **and days necessary to deliver the educational or course content**
20 **that would have been delivered in 180 days and 1,098 hours in a**
21 **school year in which pandemic learning was not provided and that**
22 **would have led to course completion. As used in this subsection,**
23 **"pandemic learning" means a mode of pupil instruction provided as a**
24 **result of the COVID-19 pandemic.**

25 **(14) ~~(13)~~**At least every 2 years the superintendent shall
26 review the waiver standards set forth in the pupil accounting and
27 auditing manuals to ensure that the waiver standards and waiver
28 process continue to be appropriate and responsive to changing
29 trends in online learning. The superintendent shall solicit and

1 consider input from stakeholders as part of this review.

2 Enacting section 1. This amendatory act does not take effect
3 unless all of the following bills of the 100th Legislature are
4 enacted into law:

5 (a) House Bill No. 5911.

6 (b) House Bill No. 5913.