

# Legislative Analysis



## “RETURN TO LEARN” PACKAGE

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**House Bill 5911 (S-1) as passed by the Senate**  
**Sponsor: Rep. Gregory Markkanen**

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

**House Bill 5912 (S-2) as passed by the Senate**  
**Sponsor: Rep. Andrea Schroeder**

**House Bill 5913 (S-1) as passed by the Senate**  
**Sponsor: Rep. Annette Glenn**

**1st House Committee: Education**  
**2nd House Committee: Ways and Means**  
**Senate Committee: Education and Career Readiness**  
**[Discharged to the Committee of the Whole]**  
**Complete to 8-17-20**

## SUMMARY:

House Bills 5911, 5912, and 5913 would amend the State School Aid Act to direct per pupil funding for the 2020-2021 school year based on four main parameters and considerations: days, hours, enrollment, and attendance.

### House Bill 5913

#### Enrollment/Membership (Section 6)

Generally under current law, the enrollment for a school year (or “membership” as it is referred to in the School Aid Act) for districts, intermediate school districts (ISDs), and public school academies (PSAs, or charter schools) is determined based on a blend of two count days—the prior school year’s spring count and the current school year’s fall count. Spring counts occur on the second Wednesday in February, and fall counts occur on the first Wednesday in October. Since at least 2016, the fall count has been weighted at 90% and the spring count has been weighted at 10%.<sup>1</sup>

Due to the ongoing COVID-19 pandemic and the possibility that instruction will take place in person and virtually, it has been proposed that the method for determining funding be changed for the 2020-2021 school year only. Accordingly, under the bill, membership generally would be determined using a “super blend,” comprising the blends of the current and prior school year. The 2019-2020 count (obtained by weighting the February 2019 count at 10% and the October 2019 count at 90%) would make up 75% of the super blend, and the 2020-2021 count (obtained by weighting the number of full-time *pupils engaged in pandemic learning for fall 2020* at 90% and the February 2020 count at 10%) would make up 25%. This super blend formula would also apply to districts operating as cyber schools, but would be based for those districts on the number of students enrolled and in regular daily attendance, which is the language currently used.

In 2020-2021, the fall count would still take place on the first Wednesday in October and the spring count would take place on the second Wednesday in February (or, if the district was not

<sup>1</sup> [https://www.house.mi.gov/hfa/PDF/Briefings/SchAid\\_BudgetBriefing\\_fy19-20.pdf](https://www.house.mi.gov/hfa/PDF/Briefings/SchAid_BudgetBriefing_fy19-20.pdf)

in session because of conditions outside its control, on the first subsequent day it is in session). A district would be considered to be in session for purposes of the count as long as it was providing pupil instruction under an approved extended COVID-19 learning plan.

***Pupils engaged in pandemic learning for fall 2020*** would mean students in grades K to 12 who are enrolled in a district (except a district operating as a cyber school) or ISD and to whom any of the following apply:

- For a student not learning sequentially, any of the following occurs for each of the student’s scheduled classes on 2020-2021 count day:
  - Attendance at a live lesson from at least one of his or her teachers.
  - Documented login to an online or virtual lesson or lesson activity.
  - Engagement in a subject-oriented telephone conversation with at least one of his or her teachers
  - Documented email dialogue between the student and at least one of his or her teachers.
- For a student using sequential learning, any of the following occurs for each of the student’s scheduled classes on 2020-2021 count day:
  - Documented attendance of a virtual course where synchronous, live instruction occurs with at least one of his or her teachers.
  - Documented completion of a course assignment.
  - Documented completion of a course lesson or lesson activity.
- At a minimum, one ***two-way interaction*** has occurred between the student and at least one of his or her teachers during the week (Wednesday to Tuesday) on which the count day falls and during each week for the three consecutive weeks after the week on which count day falls. (A district could utilize these two-way interactions toward meeting the two-way interaction requirement under HB 5912, below.)
- The student does not fall into the above categories and was not excused from completion or participation in the activities, but participated in or completed an activity on the sequential or non-sequential learning lists in the 10 school days immediately following count day.
- The student does not fall into the above categories and was excused from completion or participation in the activities, but participated in or completed an activity on the sequential or non-sequential learning lists in the 30 calendar days immediately following count day.
- The student meets the criteria of students in grades K to 12 actually enrolled and in regular daily attendance.

***Pupils engaged in pandemic learning for spring 2021*** would have the same definition as “pupils engaged in pandemic learning for fall 2020.”

***Two-way interaction*** would mean a communication that occurs between a student and at least one of the student’s teachers, where one party initiates communication and a response from the other party follows that communication, and that is relevant to course progress or course content for at least one of the courses in which the student is enrolled. These responses would have to be to the communication initiated by the teacher, and not some other action taken. The communication could take place through email, telephone, instant messaging, or face-to-face conversation, but would not be limited to those options.

However, as now, there are several exceptions to the general funding model, to account for districts and PSAs in their first years of operation and those offering grade levels for the first time, as shown below. Funding for these entities would not change, but language would be updated to account for references to pandemic learning.

	Pupil Membership Blend
Current statute	90% current Oct / 10% prior Feb
General 2020-2021 rule	75% weight for (90% Oct '19/10% Feb '19) / 25% for (90% Oct '20/10% Feb '20)
New districts and PSAs in their first two years of operation (2020-2021)	50% Oct '20 / 50% Feb '21
New districts and PSAs that begin operation mid-school year (2020-2021)	Feb '21
Districts and PSAs that have students enrolled in a grade level that was not offered by the district or PSA in the preceding school year, for that grade level (2020-2021)	50% Oct '20 / 50% Feb '21
PSA that has been in operation at least two years and that suspended operation for at least one semester and is resuming operations, for 2020-2021	90% Oct '20 or Feb '21 (whichever applies first after operations resume) / 10% most recent count day before suspending operations

**Extended COVID-19 learning plan (section 98a)**

Under the bill, in order to receive state aid for 2020-2021, a district would have to provide instruction under *an extended COVID-19 learning plan* that has been approved by an ISD or authorizing body, as applicable. The bill states the legislature’s intent that the learning plans provide districts with maximum flexibility to adapt their educational programs for some or all students at some or all of the schools operated by the district. [Note: None of these requirements would apply to a district operating as a cyber school.]

*An extended COVID-19 learning plan* would have to include all of the following:

- A statement indicating why an extended COVID-19 learning plan is necessary to increase student engagement and achievement for the 2020-2021 school year.
- The educational goals expected to be achieved for the 2020-2021 school year. These educational goals could not be used to determine state policy. The district would have to establish all of its goals under this provision by September 15, 2020. An extended COVID-19 learning plan would have to specify which educational goals are expected to be achieved by the middle of the school year and which by the end of the school year. All of the following would apply to these educational goals:
  - They must include increased student achievement or, if it can be validly and reliably measured using benchmark assessments, growth on those assessments in the aggregate and for all subgroups of students.
  - They must include an assurance that the district will select benchmark assessments aligned to state standards and an assurance that the district will

administer them to all students to determine whether students are making meaningful progress toward mastery of the standards.

- They must be measurable through those benchmark assessments.
- A description of how *instruction* will be delivered. (*Instruction* in this instance may be delivered at school or at a different location, in person, online, digitally, by other remote means, in a synchronous or asynchronous format, or through any combination of these, but it must conform to the description submitted.) The district’s board or board of directors would have to meet monthly after the plan’s submission to reconfirm how instruction will be delivered during the 2020-2021 school year, and would have to solicit public comment from parents and guardians during the meeting. If the description of instruction changed following one of these meetings, the district would have to deliver instruction according to the reconfirmed description.
- A description of how instruction for core academic areas provided under the learning plan will expose each student to standards comparable to in-person instruction and a description of how student progress will be graded or reported to the student and his or her parents or guardians.
- If the district is delivering instruction virtually, an assurance and description of how students will be provided with equitable access to technology and the internet necessary to participate in instruction. (This would not prohibit the district from providing instruction through nonvirtual educational materials.)
- A description of how the district will ensure that students with disabilities will be provided with equitable access to instruction accommodation in accordance with state and federal law.
- A requirement that the district, in consultation with the local health department and district employees, develop districtwide guidelines concerning pupil instruction based on local data on *key metrics*. However, the ultimate decision on instruction would rest with each district. (*Key metrics* would include COVID-19 cases, hospitalizations, deaths, positive tests, health care capacity, and testing, tracking, and containment infrastructure.)
- A provision that, if the district determines that it is safe to provide in-person instruction, it will prioritize instruction for grades K to 5.
- A requirement that the district ensure that at least two two-way interactions occur between a student and at least one of his or her teachers during each week of the school year for at least 75% of students in the district. These could apply toward the district’s two-way interaction requirement under HB 5912, below. A district would have to publicly announce its weekly interaction rates at its monthly reconfirmation meetings and make those rates available on its website.

A district intending to provide instruction under an extended COVID-19 learning plan would have to submit the plan to its ISD or authorizing body, as applicable, by October 1, 2020. The ISD or authorizing body would have to approve the plan if it includes all of the elements listed above, and would have to transmit copies of the plan to the superintendent of public instruction and state treasurer.

Approved plans would have to be made accessible through the transparency reporting link on the district’s website by October 1, 2020.

By February 1, 2021, a district providing instruction under one of these plans would have to create a report concerning progress toward the plan’s mid-year goals and ensure that it is accessible through the district’s website. Additionally, by the last day of the school year, the district would have to create a report concerning progress toward end-of-year goals and ensure that it is accessible through the website.

**Benchmark assessments (section 104)**

The bill would require, as a condition of receiving state aid, that a district administer at least one benchmark assessment to all students in kindergarten through 8th grade within the first nine weeks of the school year and by the last day of the school year, to measure proficiency in reading and math. These assessments could be any of the following or a combination of the following:

- A benchmark assessment from a provider approved by the Michigan Department of Education (MDE), with the requirements for those assessments listed in the table below.
- A benchmark assessment in reading for grades K to 9 that contains progress monitoring tools and enhanced diagnostic assessments, or a benchmark assessment in math for grades K to 8 that contains progress monitoring tools, or both of those assessments.
- A local benchmark assessment or assessments. (If this option is utilized, the district would have to report to MDE and the Center for Educational Performance and Information (CEPI) on the assessments administered and how they measure changes, including any learning losses, and how the district intends to address those losses.)

MDE would have to approve either four or five providers of benchmark assessments that could be administered by a district. MDE would have to inform districts of approved assessment providers in an equitable manner. MDE would have to make one of the assessments from an approved provider available to districts at no cost to the districts. The two types of benchmark assessments from approved providers would have to meet all of the following:

<p>Benchmark assessment from approved provider generally:</p>	<p>Benchmark assessment from approved provider made available to districts at no cost:</p>
<ul style="list-style-type: none"> <li>• Be one of the most commonly administered benchmark assessments in Michigan.</li> <li>• Be aligned to the content standards in Michigan.</li> <li>• Complement Michigan’s summative assessment system.</li> <li>• Be internet-delivered and include a standards-based assessment using a computer-adaptive model to target the instructional level of each student.</li> <li>• Provide information on student achievement with regard to learning content required in a given year or grade span.</li> <li>• Provide immediate feedback to students and teachers.</li> <li>• Be nationally normed.</li> <li>• Provide multiple measures of growth and provide for multiple testing opportunities.</li> </ul>	<ul style="list-style-type: none"> <li>• Be aligned to the content standards in Michigan.</li> <li>• Complement Michigan’s summative assessment system.</li> <li>• Be internet-delivered and include a standards-based assessment.</li> <li>• Provide information on student achievement with regard to learning content required in a given year or grade span.</li> <li>• Provide timely feedback to students and teachers.</li> <li>• Be nationally normed.</li> <li>• Provide information to educators about student growth and allow for multiple testing opportunities.</li> </ul>

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

A district administering a benchmark assessment described above would have to provide a student's data to the student's parent or guardian within 30 days of the test.

By June 30, 2021, a district would have to send the aggregate district-level data from these benchmark assessments (excluding data from local benchmark assessments) to a regional data hub in the Michigan data hub network that would compile the data and send it to CEPI.

By August 1, 2021, MDE and CEPI would have to provide a report to the governor and the House and Senate Education committees that identifies the number and percentage of students in each district who are significantly behind grade level based on the data.

The benchmark assessment data could also be used to measure students' growth based on their performance on state summative assessments to identify districts and schools where student achievement has increased or decreased. However, it could not be used for the state accountability system. The bill states the legislature's intent that the data be used to identify learning loss caused by the COVID-19 pandemic.

After statewide assessments resumed, MDE would also have to provide a report to the House and Senate Education committees that identifies the specific student groups whose expected trajectory toward grade-level proficiency was most impacted by school closures caused by the COVID-19 pandemic.

A district administering a local benchmark assessment would have to report to MDE and CEPI, in a manner prescribed by CEPI, the assessment administered and how it measured changes in learning, including losses, and what plan the district has to address losses in learning.

The bill states the legislature's intent to appropriate funding for a study to be conducted by a higher education institution or other qualified entity that would assess the efficacy and operations of distance-learning programs utilized in Michigan, assess the best practices that should be replicated for distance-learning schools, and note models that were ineffective.

Finally, the bill states the legislature's intent that funding not be allocated for 2020-2021 for the Michigan Kindergarten Entry Observation (MKEO) tool and that its implementation be suspended for the school year.

MCL 388.1606 et seq.

### **House Bill 5911**

The bill would amend section 21f of the School Aid Act, which governs virtual courses, including, among other things, the courses that may be offered, limits on and requirements for enrollment, and quality standards for the courses. It would provide that the requirements under that section concerning virtual courses do not apply to virtual courses offered as part of pandemic learning (which would refer to a mode of student instruction provided as a result of the COVID-19 pandemic).

MCL 388.1621f

## House Bill 5912

The bill would amend section 101 of the School Aid Act, which governs eligibility to receive state aid, the submission and certification of student count data, and minimum hours and days requirements, among other subjects.

Currently, district superintendents must certify to CEPI and the ISD superintendent the number of students enrolled and in regular daily attendance by the fifth Wednesday after the October and February count days.

The bill would retain those requirements but revise the terminology so they apply to students engaged in pandemic learning for fall 2020 and spring 2021 (or students enrolled and in regular daily attendance for districts operating as cyber schools).

Currently under the act, districts must provide at least 1,098 instructional hours and 180 days of instruction. This requirement would be waived for the 2020-2021 school year, but districts would have to, at a minimum, provide student instruction at school, at a different location, in person, online, digitally, by other remote means, in a synchronous or asynchronous format, or through any combination of those that would result in an amount of hours and days necessary to deliver the content that would have led to course completion in a typical school year.

Generally, if a district does not have at least 75% attendance on any day of student instruction, MDE prorates that day's funding in the proportion that actual attendance bears to 75% attendance.

Under the bill, the 75% attendance requirement would not apply to any day of instruction in the 2020-2021 school year. However, a district would have to ensure that one *two-way interaction* occurs between each enrolled student and at least one of his or her teachers during each month of the school year for at least 75% of the enrolled students. If this were not achieved, MDE would prorate that month's funding in the proportion that actual attendance bears to 75% attendance.

MCL 388.1701

The bills are tie-barred to one another, which means that none of them could take effect unless all of them were enacted.

### **FISCAL IMPACT:**

The bills would create an indeterminate cost increase for the state and create an indeterminate impact for local school districts, ISDs, PSAs, and PSA authorizers.

#### **Pupil membership**

The state would incur an estimated \$45.0 million cost increase due to the revision of the pupil membership calculation that would combine the following pupil blends:

- 75% of the FY 2019-20 pupil membership blend
- 25% of the FY 2020-21 pupil membership blend

The cost increase would be due to including the FY 2019-20 pupil membership blend in the calculation, because statewide pupil membership is projected to decline in FY 2020-21. In other words, due to declining enrollment, there is a year-over-year reduction of baseline costs, and including a weight of the previous year will result in a smaller net reduction than originally projected.

While local school districts and PSAs as a whole would receive a net increase in state funding, the fiscal impact of the pupil membership revision for each individual district or PSA would depend on that district's or PSA's specific pupil membership trend. A district or PSA that would have experienced declining enrollment in FY 2020-21 based on the current law blend would have a larger than projected enrollment under the bills' revised calculation, and therefore increased funding, while a district or PSA that would have experienced increased enrollment in FY 2020-21 based on the current law blend would have a smaller than projected enrollment and would receive less revenue under the bills' revised calculation.

### **Extended COVID-19 learning plans**

A district or a PSA that is not a cyber school would incur additional costs to develop, provide instruction under, and meet the reporting guidelines of an extended COVID-19 learning plan for the 2020-2021 school year as summarized above, as well as to reconfirm its mode of instruction every 30 days at a school board or board of directors meeting. A district or PSA that does not provide instruction under an extended COVID-19 learning plan is not eligible to receive state aid for FY 2020-21.

An ISD or PSA authorizer would incur administrative costs to review and approve districts' or PSAs' extended COVID-19 learning plans, monitor implementation, and assess and report progress toward the educational goals in the learning plans.

### **Benchmark assessments**

MDE would incur costs to approve four or five providers of benchmark assessments and may incur costs to provide one benchmark assessment at no cost if Smarter Balanced, the provider of the benchmark assessment currently offered at no cost, is not approved as one of the four or five providers under this requirement.

MDE and CEPI would incur costs to collect aggregate district-level data from the benchmark assessments and to report, by August 1, 2021, on the number and percentage of students in this state who are significantly behind grade level.

MDE would incur a cost to provide a report after statewide assessments resume identifying student groups whose trajectory toward grade-level proficiency were most impacted by school closures due to COVID-19.

A district or PSA would incur a cost to administer at least one approved benchmark assessment to all K-8 students within the first nine weeks of the 2020-2021 school year and again before the end of the school year. A district or PSA would also incur a cost to provide each student's benchmark assessment data to the student's parent or guardian within 30 days of the assessment and send aggregate district-level data from the benchmark assessment to a regional data hub.



If a local assessment is administered, a district or PSA would incur costs to report to MDE and CEPI the assessment used and how that assessment measures changes in learning, including any losses, and the district's plan for addressing any losses in learning.

A district or PSA that does not comply with the bills' benchmark assessment requirements is not eligible to receive state aid for FY 2020-21.

**Kindergarten assessment**

It is the intent of the bills to suspend the administration of the Michigan kindergarten entry observation tool (MKEO) for FY 2020-21 only. In FY 2019-20, the school aid budget appropriated \$2.5 million to implement the MKEO. The FY 2020-21 budget has not yet been completed; if the MKEO is suspended, it would result in a \$2.5 million savings to baseline costs.

**Attendance and days and hours provisions**

For FY 2020-21 only, a district or PSA that is not a cyber school would incur an indeterminate fiscal impact to meet the new requirements that would apply instead of the waived attendance and minimum days and hours requirements.

The current 75% daily attendance requirement would be waived and replaced with a requirement that at least one two-way interaction must occur between a student and his or her teacher(s) for at least 75% of students per month. If this requirement is not met, the district or PSA would lose a proportion of its state aid payment based on the percentage of students who satisfied the requirement compared to the 75% threshold.

The minimum of 180 days and 1,098 hours of instruction requirement would also be waived and replaced with a requirement that a district or PSA provide instruction in the amount of days and hours necessary to deliver course content or course progress that would have satisfied this requirement.

**Distance learning study**

It is the intent of the bills that the legislature appropriate funding in FY 2020-21 for a study by a higher education institution or other entity to assess distance learning programs that were effective or ineffective in meeting educational goals and attainment. This would increase costs to the state; however, the language is an expression of legislative intent only and does not, in itself, increase costs.

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