

# **First Class Schools Analysis**

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## ***Executive Summary***

In June of 2008 the Skillman Foundation (Skillman) contracted with Public Sector Consultants Inc. (PSC) to research the issue of First Class School Districts and to provide details to help formulate an analysis that the loss of First Class status would have on Detroit Public School children.

Our analysis included a detailed review of the Michigan Compiled Laws (MCL), relevant legislative proposals before the Michigan legislature, and published articles concerning the issue of First Class Schools, as well as discussions with policymakers and legislators.

Based on our research, we have concluded that if Detroit Public Schools no longer meets the statutory definition of a School District of the First Class, there are a number of statutory references that will be affected, administrative processes that will require clarification, and potential financial and programmatic issues to be considered. These include

- the composition and business procedures of the Detroit Public Schools Board of Education;
- financial references to the distribution of grant funds in the School Aid Act;
- programmatic references, including references to charter school authorizing in the city of Detroit; and
- statutory definitions in other acts unrelated to the Revised School Code or the School Aid Act which will be affected by a change in status of the Detroit Public Schools.

## ***About First Class Status***

### *What Is First Class Status?*

Under Michigan law, a First Class School District is defined as a district with at least 100,000 students on the pupil count day. Presently, Detroit Public Schools, with 102,494 students, is the only district large enough to meet the definition of a First Class School District. Utica Community Schools is a distant second at 29,000 students. It is anticipated, however, that the September 2008 pupil count will find Detroit Public Schools with fewer than 100,000 students.

School districts of the First Class are governed by Michigan's Revised School Code, the State School Aid Act, and Michigan Administrative Rules (340.1–340.4, 340.7, 340.10–340.18).

Section 380.402 of the Revised School Code gives the following definition of a First Class School District:

A school district that has a pupil membership of at least 100,000 enrolled on the most recent pupil membership count day.

The construction of this definition provides clues that are important for interpreting how the 100,000 number is calculated. The definition of “pupil membership,” also defined by the Revised School Code (MCL 380.5[5] [2]), is

...the number of full-time equivalent pupils in a public school as determined by the number of pupils registered for attendance plus pupils received by transfer and minus pupils lost as defined by rules promulgated by the state board.

“Pupil membership count day,” as defined by section 380.5(5)(8) of the Revised School Code, references the State School Aid Act (MCL 388.1606), which provides the following:

- Pupils are counted on the fourth Wednesday after Labor Day each school year.
- For districts maintaining school during the entire school year, pupils are counted on the fourth Wednesday in July, the fourth Wednesday after Labor Day, the second Wednesday in February, and the fourth Wednesday in April.

On July 1, 2008, new administrative rules from the Michigan Department of Education that deal with this issue took effect. R340(1)(b) defines “count date” as “...the pupil membership count day pursuant to MCL section 388.1606(7) and the supplemental pupil count pursuant to MCL section 388.1606a.”

Section 388.1606a of the State School Aid Act reads:

Except as otherwise provided in this act, in addition to the pupil membership count day, there shall be a supplemental pupil count of the number of full time equated pupils in grades K–12 actually enrolled and in regular daily attendance in a district or intermediate district on the second Wednesday in February....

Both the statute and rules go on to define when a student can be counted, how many days the student must have resided in a district to be counted, and how to deal with transfer students, public school academy students, nonresident students, and students committed to alternative educational environments. For the purposes of this analysis, the differences between the definitions is important because it appears that

- for financial and accounting purposes (i.e., the School Aid Act) a combination of the fall count and the previous school year supplemental February count is used; whereas
- the definition of “First Class School District” in the Revised School Code relies on the “most recent pupil membership count day.”

The application of this computation affects not only **how many pupils** qualify as Detroit Public School students (i.e., there could be potential fluctuations around the 100,000 mark depending on which count methodology is used) but **when** Detroit Public Schools would lose its First Class status (e.g., would the statutory provisions fall into place after the September count—or in the first full academic year after the low September count?).

### ***Administrative Impacts of a Change in First Class Status***

A 1995 overhaul of the Revised School Code consolidated the status of Michigan school districts into two general categories: First Class School Districts and General Powers School Districts. By definition, Detroit Public Schools is the only district in Michigan large enough to qualify as a First Class School District. Logically, if the Detroit Public

Schools pupil count falls below 100,000, the status of the district would be a General Powers District.

First Class Schools have all the powers of General Powers Districts—and in many cases have additional or expressly defined statutory responsibilities. Exhibit 1 compares the two types of school districts, as described in the Revised School Code.

**EXHIBIT 1**  
**Comparison of First Class Districts with General Powers Districts**

	<b>First Class</b>	<b>General Powers</b>	<b>Why This Is Important</b>
Board composition	Defined by statute; 4 members elected at large; 7 elected by voting district.	All members serve at large. Number of members is defined by board by-laws. Changes to board size require vote of electorate.	Stability of the DPS board has been an ongoing issue for the public, legislators, and the press.
Board officers	Defined by statute as President, Vice President, Secretary, Treasurer. President and Vice President are board members and are elected biennially. Secretary and Treasurer are paid appointees and not voting members of the board.	Established by board bylaws.	The secretary and treasurer of the DPS board have statutory accountability standards not required in General Powers districts. For example, the secretary of the board is required to make a certification that the district has the ability to pay a vendor, prior to signing a contract authorized by the board. This is likely in response to reports that district vendors have performed work and been unable to collect compensation.
Compensation	Fixed by statute at \$30 per diem for meetings, subcommittee meetings, and authorized duty.	Varies by district. Not defined by statute; typically set through bylaws.	The DPS board has been criticized for inappropriate spending by board members. Presumably this provision is intended to limit board expenses.
Meeting locations	Required monthly; not less than 7 meetings held in different voting districts; time and place specified by bylaws.	Monthly meetings required by statute; time and place defined by bylaws.	Detroit has a well-documented transportation issue. This provision may exist to ensure that meetings occur in locations across the city and are therefore accessible to parents with limited transportation options.
Board member personal interest in contracts	Expressly prohibited by statute.	Policy set through bylaws.	The DPS has a history of problems surrounding vendor relationships and contracting.
Annual audit	Required by statute	Not specified by act. May	The legislature was

	First Class	General Powers	Why This Is Important
		be required by bylaws.	very clear in requiring an annual financial audit of the district's financial transactions. This would seem to imply that the legislature has concerns about expenditures of the board.
Record roll call votes	Required for any action creating a liability or debt or originating in the disposal or expenditure of property or money.	Not required. May be required by bylaws.	This appears to be an additional accountability measure instituted by the legislature.
Free flow of information	Requires the board, at least every two years, to adopt policies encouraging free flow of information between the school district and the community, including autonomous school-community organization and procedures for handling complaints, concerns, and recommendations.	No similar statutory requirement exists.	This is a "transparency" requirement to engage parents and community organizations in the actions of the board.
Condemnation proceedings	May borrow money to pay awards in condemnation proceedings with approval of Detroit City Council.	No similar statutory requirement exists.	Legislative intent is unclear.
Bond sales	May use proceeds from bond sales to pay for remodeling of existing buildings.	No similar statutory requirement exists.	Legislative intent is unclear.
Contracts	Before entering into a contract with a value of more than \$15,000, the board is required to solicit competitive bids.	Districts are required to solicit competitive bids for all contracts.	DPS may have been exempted from the "all contracts" provision due to the size of the district. Soliciting competitive bids for all contracts may present additional operational hurdles for the district's purchasing process.

Source: Public Sector Consultants, Inc.

A change from first class status will have several administrative impacts on the operations of the Detroit School Board, which may include (but are not limited to)

- the composition of the board,
- the manner in which the board is elected, and
- how the board conducts business.

In addition, these changes may affect the business proceedings of the district in regards to its ability to borrow money, contract for services, and issue bonds.

## ***Financial and Programmatic Impacts of a Change in First Class Status***

A change in First Class School District status may affect not only the financial operations of the Detroit Public Schools, but because of the construction of the State School Aid Act, may affect the financial operations of other school districts in Wayne County, Michigan.

The Fiscal Year 2008 School Aid Act contains the following references to “First Class School District.”<sup>1</sup>

### ***References to First Class Schools in State School Aid Act***

- **MCL 388.1618(2)—Auditing and Expenses.** In instances where the “reasonableness” of expenditures is in question, the Act empowers the Michigan Department of Education to require an audit of district expenditures. Typically, these audits are performed by CPAs or the intermediate district superintendent. However, in the case of a district of the first class the audit may be performed by a certified public accountant, the intermediate superintendent, *or the auditor general of the city*. MCL 388.1618(9) allows for the withholding and forfeiture of funds for noncompliance with this section.
- **MCL 388.1664—Middle College Programs.** Grant funds were allocated to intermediate districts or a District of the First Class that are in consortium with a community college or state public university and a hospital to create and implement a middle college focused on the field of health sciences.
- **MCL 388.1699j—Pilot Programs.** Grant funds have been allocated for pilot programs for demonstration projects in science and math instruction. The criteria for these grant awards state that the district must be located in a county that includes a district that is a School District of the First Class.
- **MCL 388.1699k—Districts Financing Operating Deficit.** Grant funds were allocated for payments to districts under this section. Criteria for the grant award include the district being located in a county that includes a district that is a School District of the First Class.

In addition, section 388.1766e of the State School Aid Act includes references to construction of new buildings or addition to or repair or renovation of existing buildings, and the use of a competitive bid process. This section requires that before entering into a contract in an amount in excess of \$15,000.00 for any materials, supplies, or equipment or a contract in an amount in excess of \$15,000.00 for construction of a new building, or addition to or repair or renovation of an existing building, the board of a district organized as a School District of the First Class or any other purchasing authority within a district organized as a School District of the First Class, shall obtain sealed competitive bids, and the district shall award such a contract using this competitive bid process.

In July of 2008 the Michigan Legislature passed the Fiscal Year (FY) 2008 School Aid bill (Senate Bill 1107). Inserted in the bill was a measure designed to mitigate the impact

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<sup>1</sup> SB 1107, the FY 2009 School Aid Budget Bill has been ordered enrolled and is awaiting the Governor’s signature. With a few exceptions, the updated budget bill contains the same funding references as the 2008 language.

that a change in first class status would have on the financial operations of DPS and other Wayne County Schools. The FY 2009 School Aid Budget includes a new definition of “First Class Schools” as “a district that had at least 60,000 pupils in membership for the immediately preceding fiscal year.” While this change in definition will prevent districts from losing funds tied to the first class status, it will not have any effect on the definition in the Revised School Code.

### ***Programmatic References to First Class School Districts in Revised School Code***

There are several programmatic references in the School Code for First Class School Districts. These include:

- **MCL 380.502—Granting of Charters.** In Michigan, there are four ways to obtain a charter status. It can be granted by a K–12 school board, intermediate school board, community college, or public university. Public universities reached their cap of 150 charters in 1999,<sup>2</sup> limiting the playing field to K–12 boards, intermediate school districts, and community colleges. Presently, section 380.502 expressly prohibits a community college from chartering in a First Class School District. *If the Detroit Public Schools were to lose First Class status, this restriction would be lifted, and community colleges would be able to exercise their chartering authority and open new schools within the city of Detroit.*
- **MCL 380.505a—Chartered Educational Clinic.** This is a specialty type of charter for tutoring/special attention to at-risk students. The same provisions apply as above. *If the Detroit Public Schools were to lose First Class status, this restriction would be lifted and community colleges would no longer be prohibited from opening charters within the city.*
- **MCL 380.505a—Urban High School Academies.** According to the Senate Fiscal Agency Bill Enrolled Analysis of SB393 of 2003 (PA 179 of 2003), Urban High School Academies originated through businessman Robert Thompson’s pledge to donate \$200 million to 15 Detroit Charter High Schools focused on increasing graduation rates. Under current law, Urban High School Academies can only be chartered by public universities, and can issue charters only within the boundaries of a First Class School District. *A change from First Class status for the Detroit Public Schools would create authorizing and operating questions for these urban academies.*
- **MCL 380.1311b—Strict Discipline Academies.** These academies have a similar organizational structure to Urban High School Academies; *however*, community colleges cannot charter in First Class School Districts. *A change in first class status would appear to allow community colleges to charter Strict Discipline Academies in the city of Detroit.*
- **MCL 380.1602—Community College Programs.** With approval of the State Board of Education, a First Class School District may establish collegiate or non-collegiate courses of study. Districts that are not First Class districts are limited to offering (embracing) two years of collegiate work. This provision does not apply to First Class

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<sup>2</sup> “Wait and See on Detroit Charter Schools,” [www.educationreport.org](http://www.educationreport.org), accessed 7/2/08.

School Districts as they appear to have authority to offer beyond two years of study. *This may create operational and programmatic considerations for community colleges in the city of Detroit offering programs beyond two years of study.*

### **References to School Districts of the First Class or First Class School Districts in Other Sections of State Law**

Obviously, for the purposes of this paper, we have focused on how the definition of a First Class district affects the provisions of the Revised School Code and the State School Aid Act. It is very important to note, however, that either term, “School District of the First Class” or “First Class School District,” extends well beyond the School Code and School Aid Act to other areas of state law, such as the Land Bank Fast Track Act. Therefore, a change of status for the Detroit Public Schools may have an impact on areas of state law not directly related to the operation of schools.

The statutory references to First Class schools outside the School Aid Act and School Code vary. The definition occurs in the following statutes:

- **Public Body Law Enforcement Agency Act (Act 378 of 2004).** This statute deals with the creation of law enforcement agencies. Public bodies that are located in a county with a First Class School District are required to have only the authorization of the county prosecutor and chief of police. Public bodies that do not have a First Class School District are required to have the approval of the county sheriff in addition to the prosecutor and chief of police.
- **Reciprocal Retirement Act (Act 88 of 1961).** This statute includes “School District of the First Class” in the definition of a municipal unit.
- **The General Property Tax Act (Act 206 of 1893).** This requires the City of Detroit to collect real and personal property taxes levied after December 31, 2003, by all taxing jurisdictions authorized to levy property tax in the city; and requires the city treasurer to return all uncollected delinquent real property taxes to the Wayne County treasurer for collection.
- **The Property Tax Limitation Act (Act 62 of 1933).** This statute includes First Class School District in the definition of a “local unit” and specifies the millage rate to be collected and paid by the school district to the public library commission.
- **Social Security for State Employees (Act 205 of 1951).** This establishes referendum on coverage requirements for employees of any political subdivision, including a School District of the First Class.
- **The Land Bank Fast Track Act (Act 258 of 2003).** This statute defines “qualified city” as a city that contains a First Class School District.
- **The Public School Employees Retirement Act (Act 300 of 1980).** This requires that one member of the Michigan Public School Employees’ retirement board include an employee, or retiree of a School District of the First Class.

### **Conclusion**

In reviewing the term “First Class School District,” we found numerous references to the concept in state law. Presently, the Detroit Public Schools is the only district that qualifies under state law as a First Class School District—a designation that is dependent

on its pupil count. If Detroit Public Schools no longer meets the statutory definition of a School District of the First Class, there are a number of statutory references that will be affected, administrative processes that will require clarification, and potential financial and programmatic issues to be considered. These include

- the composition and business procedures of the Detroit Public Schools Board of Education;
- financial references to the distribution of grant funds in the School Aid Act;
- programmatic references, including references to charter school authorizing in the city of Detroit; and
- statutory definitions in other acts unrelated to the Revised School Code or the School Aid Act which will be affected by a change in status of the Detroit Public Schools.

In addition, with the pending changes to the School Aid Act that will lower the threshold of First Class Schools from 100,000 students to 60,000 students, Michigan’s policymakers—and the leadership of the Detroit Public Schools—now find themselves operating under one definition for pupil aid purposes (60,000 students), and another definition for school code purposes (100,000 students). If this statutory differentiation is not addressed, it appears that as early as this fall many of the changes to school board structure and charter schools will take effect even as district funding remains unaffected.