Testimony of Russ Bellant on HB 6004
before the
House Education Committee
November 13, 2012

The most fundamental problem with HB 6004 is that it is grossly unconstitutional.

It establishes a state K-12 school district under the direct control of the Governor. Article VIII of the Michigan Constitution, which defines roles and responsibilities in education, does not even reference the Office of the Governor. Section 3 of that article says that "Leadership and general supervision over all public education, including adult education and instruction programs in state institutions...is vested in a state board of education. It shall serve as the general planning and coordinating body for all public education, including higher education, and shall advise the legislature as to the financial requirements in connection therewith."

Further, Article V that describes the powers and duties of the Executive Branch, provides no implied or direct power to the Governor over education.

Despite the clear language of the Constitution, this bill intends to give the Governor control of an educational entity that will have the power to strip assets from local school districts. Section 771.1(*l*) (see p.9) allows the EAA to "repurpose" school buildings owned by local districts. This is elaborated on in section 1260a(4), (see p.31) which mandates that a local school district must sell or lease an unused building to a competing non district school, including the EAA. The local school district has no rights of ownership of the property that they have title to in the name of local taxpayers.

Language found in Section 1260a(2) (see p. 30) requires a local school district that closes a school to maintain that school in usable condition for years while it is placed on an MDE list until other schools take it over, so that those schools doing the takeover do not have to pay restart costs. This is an unfunded mandate put on a local school district that is trying to save money by taking a building offline. It is

also unconstitutional, per Article IX, Section 25, which reads "The state is prohibited from requiring any new or expanded activities by local governments without state financing."

The Governor is also treading on the Constitution by asking you to allow him, not MDE, to appoint a "school redesign officer, " again violating article VIII. This gubernatorial appointee will then make curriculum and staffing decisions for each school in the lowest 5% academically.

HB 6004 also gives the achievement authority the power of the Michigan Department of Education for the schools under its control. The Governor is in effect creating his own department of education, even allowing it to bypass MDE on using (and monitoring) federal education funds. This invites abuse of state and federal dollars, as no independent review would supervise those funds. Again, this violates Article VIII.

Proposed new sections listed on page 48-9 bars our school districts from taking any action that could be interpreted as "inconsistent with or interferes with the powers or duties" of the EAA. This language can give threatening power to the EAA over local districts and opens the door for future Governors to have unconstitutionally direct power over aspects of local school district decisions.

New language (see p.40) also empowers the Chancellor to modify or terminate contracts. This is contrary to Article 1, Section 10, which says that no "law impairing the obligation of contract shall be enacted."

Another problematic element in this bill is the taking of property of a local school district to put in the hands of a "nonpublic school." This is being proposed despite Article VIII, Section 2, which says that "no public monies <u>or property</u> (my emphasis) shall be appropriated or paid or any public credit utilized, by the legislature...directly or indirectly to aid or maintain any private, denominational or other nonpublic, pre elementary, elementary or secondary school."

That constitutional ban on using public resources for private education functions makes other language in this bill questionable, such as Section 775 (E)2 (see p.18), which says that the EAA can enter into agreements or cooperative arrangements with private entities "as part of performing the functions of the achievement authority." This language would permit the EAA to take public resources and shift them to favored private schools.

The specter of the Governor setting up a school district under his direct control and setting up the ability to strip public assets from local school units for his own school system while isolating the MDE and the state board of education from review of his empire gives too much unaccountable power to him and his successors. It invites abuse, and where abuse is invited, it usually walks in the door. That the Governor is trying to move this quickly through a lame duck session as reflects poorly on his methods, given the radical and far reaching changes that he proposes.

Constitutions are written to proscribe limits of power on officeholders. It is a guard to protect the people against unwarranted power. Our 1963 constitution was written by conservatives to protect local control and home rule that is being run over by recent legislative acts that no longer respect the integrity of local units, their voters or taxpayers.

I ask each of you to do just one thing before voting on this bill. Take it to each school district and ISD in your District. Hear what they say. Represent your district, not Richard McLellan, Bill Rustem or Rick Snyder.