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BILL ANALYSIS

Senate Fiscal Agency

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Mich. State Law Library

**Senate Bill 896** (as passed by the Senate)**Senate Bill 989** (as passed by the Senate)**Senate Bill 990** (as passed by the Senate)**Sponsor:** Senator Harmon Cropsey**Committee:** Local Government and Veterans**Date Completed:** 10-26-88***RATIONALE***

For 33 years, cities, villages, school districts, townships, and counties seeking to establish a district library have been guided by Public Act 164 of 1955. The Act provides, in general, for presenting to the voters a proposal to establish a library, the appointment or election of a board of trustees, the board's powers, the funding of a library, and the withdrawal of a municipality from a library district. Some people contend that the Act is inadequate in setting up mechanisms to follow when establishing a library district. For example, the Act allows a tax to be levied for the establishment and operation of a library, upon approval by the voters in the district or a participating municipality. The Act does not, however, outline procedures for conducting the election, except in broad terms. Thus, situations have arisen over the years in which municipalities have taken steps on their own to implement certain provisions in the Act. In the case of millage elections, there reportedly have been instances when local governments in a district, such as a township and a city, have cooperated in developing procedures for conducting a millage election due to the absence of guidelines in Public Act 155. Another inadequacy, some people point out, is that the Act includes provisions for a municipality to follow when attempting to withdraw from a library district, but the Act contains no provisions for a municipality to follow when it may want to join a library district. Consequently, some people believe that procedures for establishing and maintaining a district library should be specified in the law, that current practices of district libraries should be incorporated into the law, and that the law's current provisions should be revised so they can be applied meaningfully.

***CONTENT***

**Senate Bill 896 (S-3)** would create the "District Library Establishment Act" to replace Public Act 164 of 1955. **Senate Bill 989** would amend the District Library Financing Act to add conditions that a district library would have to meet before it could issue bonds. **Senate Bill 990** would amend the Michigan Election Law to prescribe procedures for the recall of elective district library board members. Senate Bills 989 and 990 are tie-barred to Senate Bill 896.

**Senate Bill 896 (Substitute S-3)**

The bill would create the "District Library Establishment Act" to provide for the establishment and maintenance of district libraries by doing the following:

- Requiring that an agreement for establishing a district library be approved by the municipalities involved in establishing the library as well as by the State librarian.

- Providing for the appointment or election of board members, and specifying their authority.
- Providing for funding the establishment and operation of a district library, including allowing an election on a proposed district-wide library tax.
- Permitting a tax of not more than two mills to be levied on taxable property in a municipality for district library purposes.
- Providing for a municipality to withdraw or be added to a district library.
- Repealing Public Act 164 of 1955 and providing that district libraries established under that Act would be considered established libraries under the bill.
- Specifying that a district library would constitute an authority under Section 6, Article IX of the State Constitution, and would be subject to the 50-mill tax limitation specified in Section 6.

**Establishing a District Library**

Two or more municipalities (cities, villages, school districts, townships, or counties) authorized by law to establish and maintain a library or library services jointly could establish a district library if each of the following requirements were satisfied:

- The public library board approved the establishment of the district library, if the proposed district contained a lawfully established public library that was recognized by the Legislative Council, as created by the Legislative Council Act, for the purposes of the distribution of State aid and penal fines.
- Each municipality's legislative body adopted a resolution that provided for the establishment of a district library and approved a district library agreement.
- The agreement provided for the creation of a board to govern the operation of the district library and set forth all of the following:
  - The identity of the municipalities establishing the district library; the method of selection of board members either by election or appointment; and, if by appointment, the members' term of office and total number, and the number of board members to be appointed by each participating municipality's legislative body, or, if by election, the number of provisional board members to be appointed by the legislative body of each participating municipality.
  - The percentage of funds needed for the establishment and operation of the district library to be supplied by each participating municipality.

S.B. 896, 989 &amp; 990 (10-26-88)

**OVER**

- The procedure for amending the agreement, which would require the consent of the legislative bodies of at least two-thirds of the participating municipalities.
- A time period, at least one year, after the effective date of the agreement during which the adoption of a resolution to withdraw from the district library would be void.
- Any other necessary provisions regarding the district library.

(School district would mean one of the following, as defined in the School Code: an intermediate school district, a local act school district or special act school district, or a local school district; but would not include a primary school district or a school district that holds meetings instead of elections.)

### **Agreement**

A county, township, city, or village that united with other municipalities to establish a district library could provide in the resolution that only a portion of its territory would be included in the district. The portion of a county to be included in the district would have to be bounded by county, township, city, village, or school district boundaries. The portion of a township, city, or village to be included would have to be bounded its boundaries and by existing district library or school district public library boundaries.

An agreement could provide that the district library board was abolished and the district library terminated unless a district library millage, at a rate not less than a minimum number of mills stated in the agreement, was approved by the district electors on or before a date stated in the agreement. An agreement that contained such a provision would have to specify the manner in which the net assets of the district library would have to be distributed to the participating municipalities upon termination and would have to contain a plan for continuing public library service to all residents of the district after termination.

A board or the municipalities' legislative bodies would be required to submit to the State librarian the agreement or an amendment to the agreement within 10 days after it was adopted.

The State librarian would be required to approve an agreement or an amendment, or a revision in board structure, as provided in the bill, if it conformed to the bill's requirements. The State librarian would be required to disapprove the agreement, amendment, or revision if it did not conform. Within 30 days after the State librarian received the agreement, amendment, or revision, he or she would be required to send to the board or legislative bodies a written statement of approval or disapproval. If the agreement, amendment, or revision were disapproved, the State librarian would be required to explain in a written statement the reasons for disapproval, and the Legislative Council could not recognize the library as being lawfully established for the purposes of distribution of State aid and penal fines until the State librarian approved an amendment or revision that resulted in the agreement conforming to the bill's requirements. If the State librarian did not send a written statement of approval or disapproval, within 30 days after the date that the State librarian received the agreement, amendment, or revision, it would be considered approved.

The bill specifies that a district library established pursuant to the bill would constitute an authority under Section 6 of Article IX of the State Constitution. The bill also specifies

that a district library established pursuant to the bill, however, would be subject to the tax limitations of the first paragraph of Section 6 of Article IX of the State Constitution. (The first paragraph of Section 6 specifies that total taxes on real and tangible personal property cannot exceed 50 mills. A following paragraph, however, makes an exception to the 50-mill limitation for taxes imposed by a city, village, charter, county, charter township, charter authority, or other authority, whose tax limitations are provided by charter or by general law.)

### **Currently Established Libraries**

Within one year after the bill's effective date, the board of a district library established pursuant to Public Act 164 of 1955 would be required to submit to the State librarian an organizational plan that included certain information (concerning the municipalities establishing the district library; the number of board members, their method of selection, and terms of office; and operating funds) and would be required to revise the board structure and selection to conform to the bill's provisions for the appointment or election of board members. If the board of a district library established pursuant to Public Act 164 of 1955 complied with these provisions and the State librarian did not disapprove the revision of board structure and selection, such a district library would be considered established pursuant to the bill.

### **Board Members**

A candidate for appointment or election as a board member would have to be a qualified elector of the participating municipality, a resident of the district, and at least 18 years of age by the date the appointment was made or by the deadline for filing nominating petitions.

The office of board member would become vacant when the incumbent died, resigned, ceased to be a member of the district, was convicted of a felony, or was removed from office by the Governor pursuant to Section 10 of Article V of the State Constitution (for gross neglect of duty or corrupt conduct in office, or for any other misfeasance or malfeasance). The office of an appointed board member would become vacant when the incumbent ceased being a resident of the municipality that appointed the incumbent.

If an agreement prescribed appointed board members, the board would have to consist of at least five and not more than eight members. A term could not be more than four years. A member would have to serve until the appointment and qualification of a successor. A vacancy would have to be filled for the unexpired term by the municipality that appointed that member. The agreement also could provide that the right to appoint one or more board members rotated between two or more municipalities.

The bill would provide procedures for the election of board members. If an agreement prescribed elected board members, the board would have to consist of seven members who were elected at large from the district, and a provisional board of seven members would have to be appointed by the legislative body of each participating municipality. Provisional board members would have to hold office until their successors were elected and qualified. Board members would have to be elected on nonpartisan ballots. The bill would prescribe a schedule for board elections, procedures for filing a vacancy on the board, and separate election procedures for a school district that was a participating municipality.

### **Board Authority**

A board could do one or more of the following:

- Establish, maintain, and operate a public library for the district.
- Appoint and remove officers from among its members.
- Appoint and remove a librarian or assistants and fix their compensation.
- Acquire real or personal property for library purposes by purchase, land contract, installment purchase contract, lease with or without option to purchase, or title retaining contract.
- Erect buildings.
- Supervise and control district library property.
- Enter into a contract to receive library-related service from, or give library-related service to, a library or a municipality within or without the district.
- Adopt bylaws and regulations, not inconsistent with the bill, governing the board and the district library.
- Propose and levy upon approval of the electors a tax for support of the district library.
- Issue bonds and borrow money pursuant to the District Library Financing Act.
- Accept gifts and grants for the district library. Money for the district library would have to be paid to the board and deposited in a fund known as the district library fund. The board would exclusively control the expenditure of money deposited in the fund.
- Do any other thing necessary for conducting the district library service, whose cost would have to be charged against the district library fund.

A board could reimburse each board member for necessary expenses that the member incurred in the performance of official duties. A board could compensate its members for attending board meetings and would have to include the amount of compensation in the annual budget. Compensation could not exceed \$30 per board member per meeting. A board member could not be compensated for attending more than 52 meetings per year.

#### Operating Funds/Tax Levy

Subject to any limitation in the district library agreement on the amount of the district library annual budget, or the amount or percentage of an increase in the annual budget, or both, that applied in the absence of a district-wide tax approved by the voters, the board would be required annually to determine the amount of money needed for the establishment and operation of the district library and would have to state that amount in an annual budget. Of the amount that was not supplied by a district-wide tax, the legislative body of each participating municipality annually would have to pay to the board the percentage set forth in the agreement. A participating municipality could make the payment by appropriating money from its general fund or by levying a tax on the taxable property for district library purposes, or both.

All or part of the money needed for the establishment and operation of a district library could be supplied by a tax levied by the district library on the taxable property in the district. A district library could not levy a tax unless it was approved by the voters, as provided in the bill. A district library tax in effect or authorized to be levied by the district library established pursuant to Public Act 164 of 1955 could be levied at the rate and for the period of time originally authorized without being approved by the voters, as provided in the bill.

A participating municipality could not levy a tax for district library purposes on the municipality's taxable property, unless the tax were approved by a majority of the municipality's electors who voted on the proposal. The legislative body of a participating municipality would be required to certify a proposed tax to the municipality's

clerk, or, if the municipality is a school district, to the secretary of the school board for inclusion on the ballot at least 60 days before the election date.

#### District-Wide Tax and Election

A library tax in effect or authorized to be levied by a participating municipality before the municipality became a party to an agreement could be levied at the rate and for the period of time originally authorized and used as a source of all or part of the percentage of money set forth in the agreement, unless prohibited by the millage authorization.

A district-wide tax or taxes could not exceed two mills. If one or more of the participating municipalities had a legally established public library with an authorized tax of more than two mills on the day before the bill's effective date, the district library could levy a tax or taxes of not more than the greatest number of mills authorized to be levied by any such participating municipality for its public library. The millage limitations would not apply to taxes needed to pay the principal and interest on bonds issued pursuant to the District Library Financing Act.

An election for or recall of board members and an election for a district-wide tax would have to be conducted under the Michigan Election Law. A ballot proposal for a district-wide tax would have to state the amount of the millage.

If none of the participating municipalities were a school district, a district-wide tax proposal could not be placed on the ballot unless it was adopted by a resolution of the board and certified no later than 60 days before the election to the county clerk of each county in which all or part of the district was located for inclusion on the ballot. The proposal would have to be certified for inclusion on the ballot at the next general election, the State primary immediately preceding the general election, or a special election not occurring within 45 days of a State primary or a general election, as specified by the board's resolution.

If one or more of the municipalities were school districts, a proposal for a district-wide tax could not be placed on the ballot unless it was adopted by board resolution and certified no later than 60 days before the election to the secretary of the school board of the largest participating school district. The board would have to certify the proposal for inclusion on the ballot at the next regularly scheduled election of school board members in the largest participating school district or at a special election not occurring within 45 days of a State primary or general election, as specified by the board's resolution. If there were more than one participating school district, the school board secretary to whom the ballot proposal was certified would be required to certify the proposal to the secretary of the school board of every other participating school district.

If a special election were requested, within 10 days after receiving the proposal, the school board secretary to whom the resolution was certified by the board or the clerk of the largest county would be required to request approval of a special election date from the county election scheduling committee of the clerk's county or school board secretary's school district.

If a majority of the votes cast on the question of a district-wide tax were in favor of the proposal, the tax levy would be authorized. No more than two elections could be held in a calendar year on a district-wide tax proposal.

The bill also would prescribe procedures for conducting elections for board members or a district-wide tax when

the election was held in conjunction with a general, State, primary, or special election; when none of the participating municipalities was a school district; when one or more municipalities was a school district; and, when all or a portion of a municipality was not a school district but was in the library district though not within school district boundaries.

#### Withdrawal from District Library

Except to the extent that the agreement provided otherwise, a participating municipality in which a district library tax was in effect or authorized to be levied by the district library or the participating municipality could withdraw from the district library if each of the following requirements were satisfied:

- At least two months before the next regularly scheduled municipal election, the legislative body of the municipality adopted a resolution to withdraw on a date specified in the resolution. The date could not be less than six months after the next regularly scheduled municipal election.
- Notice of an election on the resolution was published in a newspaper of general circulation in the municipality at least 10 days before the next regularly scheduled election of the municipality following adoption of the resolution.
- The resolution was approved by a majority of the municipality's electors voting on it at the next regularly scheduled municipal election following adoption of the resolution. If only a portion of the municipality's territory were included in the district, the vote would have to be conducted only in that portion.
- After approval of the resolution by the electors, the municipality's clerk or, if the municipality were a school district, the secretary of the school board filed with the Library of Michigan a copy of the official canvass statement and a certified copy of the resolution and filed with the board a copy of the official canvass statement and enough certified copies for the legislative bodies of each of the participating municipalities.
- Payment or the provision for payment was made to the district library or its creditors of all obligations of the municipality seeking to withdraw.
- The legislative body of the withdrawing municipality gave the Library of Michigan a plan for continuing, after the municipality no longer received library services from the district library, public library services for residents of the withdrawing municipality or the portion of the territory of the withdrawing municipality that was included in the district.

A district library tax in effect or authorized to be levied by the district library or by the withdrawing municipality before the adoption of the withdrawal resolution would be levied in the municipality, but only for the period of time originally authorized. A withdrawing municipality would continue to receive library services from the district library as long as the district-wide tax continued to be levied in the municipality.

Except to the extent that the agreement provided otherwise, a participating municipality in which no district library tax was in effect or authorized to be levied by either the library or the participating municipality, could withdraw from the district library if all of the following conditions were satisfied:

- The municipality's legislative body adopted a resolution to withdraw from the district library on a specified date, which would have to follow the date of the resolution by at least one year.
- The municipality's clerk or, if the municipality were a school district, the school board secretary filed with the

Library of Michigan a certified copy of the resolution and filed with the board enough certified copies of the resolution for distribution to the participating municipalities' legislative bodies.

- The bill's requirements on payment of obligations and development of a plan for continuation of library services were met.

After the municipality withdrew, the agreement would have to be amended to reflect the withdrawal.

#### Adding a Municipality

A municipality, other than a school district, could become a party to an existing agreement if the agreement's requirements concerning the addition were satisfied, or in the absence of requirements, if each of the following requirements were satisfied:

- The municipality's legislative body resolved by majority vote that the municipality become a participant and that all or a portion of the municipality's territory be added to the district.
- The resolution was conditioned on the board's adopting, within a specified time period, amendments to the agreement specified in the resolution. The amendments would have to reflect the addition to the district and would have to include, but not be limited to, changes in board representation or the percentage of funds needed for the establishment and operation of the district library to be supplied by each participating municipality after it became a party to the agreement.
- The board amended the agreement within a time and manner specified in the resolution. The amendment would have to be made by majority vote of the board members elected or appointed and serving, notwithstanding anything to the contrary in the procedure for amending the agreement.

If there were a district-wide library tax, the board would have to condition acceptance of the municipality or territory into the district on the authorization of that tax by a majority of the electors of the municipality or territory voting on the proposal.

#### Senate Bill 989

The bill would amend the District Library Financing Act to add conditions to those already included in the Act which a district library would have to meet before it could issue bonds. Under the bill, a district library would be prohibited from issuing bonds unless: the question of issuing bonds was certified by the "board" (district library board) and the election was conducted in the manner provided in the "District Library Establishment Act", as proposed in Senate Bill 896, for an election for a district-wide tax; and, a majority of a district's qualified electors voting on the issue approved the issuance of bonds. The bill also specifies that a board, and not a municipality or a board as the current Act provides, could not submit a bond proposal more than once a year. (The current Act requires that the governing body of each municipality that participates in the library district adopt a resolution on submitting the bond issue to the electors and specifies ballot language for the bond issue.)

In addition, the bill would delete current provisions on issuing bonds without submitting the question to the electors and on submitting to the electors the question of establishing a district library at the same election when a proposal to issue bonds was on the ballot. The bill also would repeal provisions in the Act that require clerks of municipalities in the district to cooperate with the Election Commission in conducting an election in the library district (MCL 397.285), and that set limits on the amount of money

a district library can borrow or the amount of bonds that the district can issue (MCL 397.286).

MCL 397.282 et al.

### Senate Bill 990

The bill would amend the Michigan Election Law to prescribe procedures for the recall of elective district library board members. A petition demanding the recall would have to be filed with the clerk of the "largest" county. ("Largest", as defined in Senate Bill 896, if used in reference to a county, would mean the county having the most registered electors of a library district, as last reported to the county clerk pursuant to the Election Law.) In addition, a nominating petition for the office of district library board member would have to be signed by at least 3% of the number of persons voting in the library district at the last election at which district library board members were elected and filed with the clerk of the largest county or, if a school district were a participating municipality, with the secretary of the "largest" participating school district. ("Largest", as defined in Senate Bill 896, if used in reference to a participating school district, would mean the participating school district having the most electors voting at the last regularly scheduled school board election in the participating school district.) The officer with whom the recall petition was filed, upon certification of the votes cast on the recall question, would have to notify the district library board of the election results as well as the date and time of certification.

MCL 168.960 et al.

## **FISCAL IMPACT**

### Senate Bill 896 (Substitute S-3)

The bill would have an indeterminate impact on local governments. Local governments that established a district library could incur expenses as a result of such an action. The actual expenses and source of funding for those expenses would depend on the number and type of library districts established.

### Senate Bill 989

The bill would have no fiscal impact on State or local government.

### Senate Bill 990

The bill could result in an indeterminate cost to local library boards if a special recall election were held. The cost would depend on the number of such elections held.

## **ARGUMENTS**

### ***Supporting Argument***

For more than 30 years, the State's 67 district libraries and the municipalities that form their districts through their own initiative have taken steps to accommodate the inadequacies of Public Act 155. For example, some townships have operated as a participant in a library district, even though the Act does not contain provisions on a municipality joining an established library district. In addition, some school districts that operate a public library are considering converting that library to a district library so the millage funds set aside in the school budget for the library could be used entirely for the schools. Yet, the current Act is silent on how such a conversion, including an election on the question and on the millage, could be handled. For example, the Kalamazoo School District is studying the possibility of converting its library to a district library involving the school district and the city of Kalamazoo. Yet, approximately 3% of the city is outside

of the school district. Under Public Act 155, it is not clear how the election would be conducted and where voters outside of the school district would cast their ballots. Senate Bill 896 (S-3) would clarify such vague aspects of the current Act, and would provide mechanisms for carrying out its provisions, which are lacking in the Public Act 155.

### ***Opposing Argument***

While Senate Bill 896 (S-3) attempts to remedy weaknesses in the current Act by providing mechanisms for conducting elections in a library district, the cure may be as bad as the ailment. Concerns have been raised by the Elections Bureau of the Department of State about the bill's election provisions. For example, a voter who resides in a township that is a member of a district library and in a school district that is not a member could be treated unfairly under the bill. In this case, the voter either would have to vote in two places on school election day, or vote in his or her school election and then vote by absentee ballot in the library district. Furthermore, it is not certain that the elector would know where to vote. In addition, voters could have to travel a long distance — even to another county — to cast their ballots. These voters could claim a denial of equal protection if the election process proposed in the bill were enacted, according to the Elections Bureau. This could be the case, especially since these voters would be expected to follow closely the legal advertisements to find out how to exercise their voting rights, while other voters in member school districts only would have to appear at the regular school election and cast a ballot. Furthermore, some people contend that in some cases school districts would not be reimbursed for expenses incurred in conducting a district library election. For example, under the bill, a school district would be reimbursed for the costs of a district library election when that election was not held in conjunction with a regularly scheduled school election. Yet, the bill does not provide for costs to be covered when the library election was part of a school election, even though schools would incur extra expenses for conducting the district library election. The aim of the bill is laudable, but revisions are needed to cause less disruption and to improve the quality of the proposed election process.

### ***Opposing Argument***

Although the bill would make it clear that a district library was a taxing authority for purposes of Section 6, Article IX of the State Constitution, a Senate amendment to the bill would make district libraries subject to the 50-mill tax limitation of that section. Section 6 provides that total taxes on property cannot exceed 50 mills, but makes exceptions to that limitation for, among other things, an authority whose tax limitations are provided by law. Although current law provides that a district library is an authority, there is no law limiting such an authority's taxes. Accordingly, the Attorney General in 1979 found that a district library was not "vested with any of the indicia of an 'authority' as that term appears" in Section 6, and that "no 'tax limitations'...are provided a district library by the district library act" (OAG No. 5506, 6-12-79). In 1987, however, the Michigan Supreme Court made it clear that a district library is a taxing authority (Jackson District Library v Jackson County, 428 Mich 371), although the Court did not address the application of Section 6 to district libraries. As introduced, Senate Bill 896 not only would have provided that district libraries were authorities, but also would have set tax limitations for them, thus excusing district libraries from the Constitution's 50-mill tax limitation. Under the Senate amendment, however, district libraries would still be subject to that limitation. By attempting to take away taxing powers that these authorities otherwise would have under the Constitution, this amendment could be

unconstitutional. The amendment also would call into question the taxing powers of district libraries established under the current law, and would create uncertainty regarding the jurisdiction over district libraries under the so-called "truth in taxation" law (Public Act 5 of 1982). Moreover, the amendment could deny some district libraries the funds they need to operate, if they are located in areas that already are taxing property at the 50-mill limit.

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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.