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INSPECT SCHOOL CONSTRUCTION

House Bill 5119 (Substitute H-1)
First Analysis (2-25-92)

Sponsor: Rep. Vincent J. Porreca
Committee: Education

THE APPARENT PROBLEM:

Recently, public attention has focused on the problems of a middle school in the Woodhaven School District that has had to be almost wholly reconstructed even though it was originally built only in 1976. Reportedly, the exterior walls of the school were not properly connected to the building's steel frame and were in danger of collapsing. This case and others in which school buildings were discovered to have structural flaws have led some people to question the adequacy of oversight of school construction. The construction of school buildings is subject to Public Act 306 of 1937 (the school construction act) and not to the State Construction Code Act. This means school buildings are not subject to the same set of structural, mechanical, and electrical standards as other buildings, nor are they subject to the same level of scrutiny. Public Act 306 is concerned mainly with fire safety and health inspections. It is generally understood that inspectors at the state and local level who typically oversee building projects do not have jurisdiction over the building of schools. The jurisdiction lies instead with the state school superintendent, who has apparently delegated the task to the state fire marshal, who provides fire safety inspections. The Department of Labor carries out electrical inspections for the state fire marshal. (In some cities, reportedly including Lansing and Detroit, school officials and municipal building departments collaborate but that is done voluntarily.) Schools are required to hire architects and, it is said, it is up to school districts to negotiate with architects for the desired level of building oversight services. Some people believe that it makes sense to subject the construction of school buildings to the same codes, permit process, plan reviews, and inspections to which other major buildings, including residential buildings, are subject.

THE CONTENT OF THE BILL:

The bill would, generally speaking, bring school buildings under the State Construction Code Act.

The school building construction act (Public Act 306 of 1937) would be repealed. The responsibility for administering and enforcing the code would lie with the director of the bureau of construction codes in the Department of Labor. However, the director would be required to delegate the responsibility to the applicable local enforcing agency if both the school board and governing body of the local governmental subdivision certified to the construction code commission that full-time code officials, inspectors, and plan reviewers registered under the Building Officials and Inspectors Registration Act, would conduct plan reviews and inspections of school buildings.

If there was no delegation of responsibility, the bureau of construction codes would perform for school buildings all plan reviews and inspections required by the code. A school building could not be constructed, remodeled, or reconstructed after the effective date of the bill until written approval of the plans and specifications had been obtained from the bureau indicating the school building would be designed and constructed in conformance with the code. (This would not apply to any school building for which construction has begun before the effective date of the bill.) The bill would not affect the responsibilities of the state fire marshal under the Fire Prevention Code.

A definition of "school building" would be added to the construction code. The definition would refer to a structure in which six or more pupils receive instruction. The term would also mean a structure owned, leased, or under the control of a public or private K to 12 school system or a community college or junior college. The term would not apply to a structure owned, leased, or under the control of a college or university.

The bill would eliminate a provision that reads "Locally adopted codes shall not apply to public or nonpublic schools within the governmental subdivision without concurrence by the school authorities having jurisdiction."

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BACKGROUND INFORMATION:

A related and intertwined issue is that of who at the local level has authority over site selection and planning decisions when the construction of a school or school-related facility is proposed. As a result of a dispute over such matters in Birmingham between school and municipal officials, a provision was put in the School Code in 1990 that says a school board cannot design or build a school building to be used for instructional or noninstructional school purposes or design and implement the design for a school site unless the design and construction complies with Public Act 306 of 1937 (the school building construction law) and also says the state superintendent "has sole and exclusive jurisdiction over the review and approval of plans and specifications for the construction, reconstruction, or remodeling of school buildings used for instructional or noninstructional school purposes and of site plans for those school buildings." (The Birmingham dispute reportedly was over tennis courts or the placement of fences around tennis courts.) That provision was an amendment to a bill dealing with competitive bid requirements. House Bill 4122 in the current legislative session would remove the 1990 provision from the School Code. The argument for that bill, which has passed the House, is that the 1990 amendment takes away or threatens to take away local government's regulation of such things as drains, bus garages, fences, and various other facilities and structures within a school site plan that can affect the surrounding area. (The bill was amended on the House floor to exempt certain projects already underway.) Some people think the language is legally challengeable and does not do all that city and township officials fear, but it remains the subject of debate. This issue does not appear to be directly addressed in House Bill 5119 because the State Construction Code Act does not deal with planning and zoning issues. The term "site plan" seems to have somewhat different uses in construction planning inspections and zoning and land use planning reviews.

FISCAL IMPLICATIONS:

The Department of Labor testified that the fees it can charge under the State Construction Code Act for permits, plan reviews, and inspections will cover the costs of its responsibilities under the bill. (2-18-92)

ARGUMENTS:**For:**

The aim of the bill is to make school buildings subject to the same construction codes and inspections as other major buildings and thereby avoid any repetition of the construction of structurally flawed, unsafe school buildings. The bill requires the Department of Labor to approve plans and oversee construction of schools or else delegate the responsibility to competent local officials. Currently, schools can be built without any oversight by state or local inspectors, except for checks for compliance with fire safety and health regulations. Under this proposal, schools will be subject to the permit, plan review, and inspection requirements of the state construction code and the code's structural, mechanical, electrical, and plumbing regulations. The bill will protect students, school personnel, and the public, and save school districts the expense of repairing or even reconstructing flawed buildings. There appears to be no good reason why school buildings should not be subject to stringent codes and inspections. Also, some people argue that currently it is not clear where the responsibility lies for the costs associated with unsuccessful school building projects and that this bill will clarify that issue.

Against:

While the concept of improving the supervision of the construction of school buildings is a good one, there remain a number of concerns about this bill. School officials are concerned about the additional costs that may be involved under the process mandated by the bill. The Department of Labor has said it typically charges in fees one-half of one percent of the total project cost for permits, plan reviews, and inspections. School districts now must pay fees to architects for the planning and oversight of school construction, and will continue to have some architect costs under this proposal, in addition to new fees from the state or from local building inspectors. Further, schools remain concerned, as they have for several years, about how site selection and zoning issues are to be resolved at the local level. There have been disputes in the past between school districts and other local units of government over such issues. At the very least, school officials would like to see a zoning and land use dispute resolution mechanism provided to settle such arguments (which often involve local political and personality differences) at the state level. School representatives are also concerned about the

enforcement of duplicate codes with duplicate fees (e.g., the state construction code and the fire safety code) and about the qualifications of the people doing inspections at the local level. It should also be noted that the instances that give rise to this bill are unusual and not common occurrences.

Response:

Municipal officials say that zoning and site plan review responsibilities should properly remain with the local unit of government. They are concerned about the weakening of local municipal control over non-instructional school buildings that was attempted several years ago (in an amendment to the School Code) and believe local governments should have control over zoning issues as they relate to school buildings. While efforts to give zoning dispute resolution powers to the Department of Labor are perhaps well-intentioned, zoning issues should be in local hands. (The department would not seem suited to the responsibility in any case.) Besides, attempts to deal with issues of zoning should be made in other acts. They do not belong in the construction code. The provision added to the School Code in 1990 giving to the state superintendent the sole and exclusive authority over the review and approval of construction plans and site plans for instructional and noninstructional school buildings should be repealed.

Against:

Some municipal officials believe that local building departments are best suited for the kind of construction review proposed in this bill, not the Department of Labor. Cities have the professionals to do the job and they are close at hand when inspections need to be made. Delays in inspections are costly. The bill should put the responsibility directly in their hands and let them charge the necessary fees. (The bill now provides for the delegation of responsibility to local units, but requires the certification of the local school district.)

POSITIONS:

Among those testifying before the House Education Committee in favor of putting school buildings under the state construction code were representatives from the Woodhaven schools and the Michigan State Building and Construction Trades Council. (2-18-92)

The Department of Labor does not yet have an official position on the bill. (2-24-92)

The Michigan Association of School Boards cannot support the bill without the inclusion of a neutral zoning dispute resolution mechanism. (2-24-92)