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REG. PROPRIETARY SCHOOLS

Senate Bill 661 (Substitute H-4)
First Analysis (7-8-93)

Sponsor: Senator Michael J. Bouchard
Senate Committee: Education
House Committee: Higher Education

THE APPARENT PROBLEM:

Michigan's current law regulating proprietary (private business and trade) schools was enacted in 1943, prior to the tremendous growth of these schools in the 1980s due to increased participation in federal and state student financial aid programs. Recently, however, there has been much publicity surrounding the high rate of defaulted student loans by students attending these schools. A United States Senate Subcommittee on Investigations has found that thousands of students have been the victims of unscrupulous schools who have given them neither the training nor the skills they hoped to acquire. Many of these schools close at short notice. In a few cases, students were able to finish their courses through "teachouts," where arrangements are made to transfer them to another school. But in many cases, the students are left with responsibility for their student loans and without training or jobs. Likewise, taxpayers are ultimately billed for billions of dollars of losses in defaulted loans, while at the same time many school owners and other financial players profit handsomely. The subcommittee issued a report calling for comprehensive reform. In addition, Congress has reauthorized the Higher Education Act, calling for increased participation of the states in the monitoring of proprietary schools.

In Michigan, a performance audit by the Office of the Auditor General on proprietary school licensing stated that Michigan laws were outdated and did not clearly address the educational and enforcement standards necessary for effective regulation. The report called for more effective monitoring of schools and better consumer protection. Private trade schools and business schools in the state are licensed under Public Act 148 of 1943. Permits are issued to representatives of such schools who solicit prospective students for enrollment under Public Act 40 of 1963. The Department of Education maintains that a lack of resources has prevented it from performing its duties related to reviewing and approving license applications, monitoring school activities, and identifying unlicensed schools. The department supports legislation to protect students from failure to make tuition refunds, failure to maintain financially stable operations, and failure to provide students with alternative teaching arrangements when a school ceases to provide instruction.

THE CONTENT OF THE BILL:

Senate Bill 661 would create the Proprietary School Educational Assurance Act, which would become effective September 1, 1993. The bill is tie-barred to Senate Bill 163, which would repeal Public Act 148 of 1943, and Public Act 40 of 1963, the acts that regulate private, trade, business, and correspondence schools; and to House Bill 4823, which would create a new proprietary school licensing act. Under the bill, a Tuition Reimbursement Fund would be created in the state treasury to reimburse students' tuition fees when a school closed, and to reimburse the Department of Education for costs incurred in arranging teachout opportunities. The bill would also provide for "teachout" arrangements (instruction to students of a school that has closed); would establish the process for determining assessments to be charged proprietary school licensees; and would require that the State Board of Education promulgate rules to implement the act according to the requirements of the Administrative Procedures Act.

Tuition Reimbursement Fund. The Tuition Reimbursement Fund would be administered by the Department of Education. Money received from any source, including assessments, would be deposited in the fund, and used only to pay tuition refunds to students, for authorized costs incurred by the department in arranging teachout opportunities for students in a situation in which there were insufficient teachout schools to provide the teachout opportunities, and to purchase insurance or reinsurance to guarantee that the fund's obligations could be met. The state treasurer would issue warrants from the fund as directed by the department. A student would be eligible for a full refund if he or she was not offered a teachout opportunity after a school closed, or if it were determined that attending a teachout school would cause undue hardship.

Under the bill, the process for determining assessments to be charged licensees would be structured so that each licensee would pay an equitable assessment, based on the school's enrollment, tuition charges, and claims history, and to generate at least $30,000 from initial assessments and maintain at least that amount in the fund at the beginning of each state fiscal year, minus any amount paid for insurance or reinsurance. The process could be structured so that assessments were imposed and collected to satisfy the obligations of the fund only as they arose, or to maintain a fund balance of at least $30,000, minus insurance or reinsurance payments. Emergency assessments could also be imposed.

Annual Audit. The auditor general and the department would each be required, under the bill, to audit the fund annually. In addition, the auditor general would be required to produce an annual financial statement for the fund according to generally accepted accounting principles. If either determined, as a result of an audit, that the resources of the fund were inadequate to meet actual or anticipated obligations, then both would be required to make recommendations to the State Board of Education on changes to ensure that the fund would have adequate resources.

Department Responsibilities. Under the bill, the department would be required to develop, adopt, and submit a plan of operation for the tuition reimbursement fund within six months after the effective date of the act. Copies of the plan would also have to be provided to the standing committees of the legislature responsible for higher education legislation, and would include at least the following provisions:

a) A process for determining debts and liabilities to be paid from the fund.

b) A process for determining assessments to be charged to licensees as a condition of licensure to ensure the solvency of the fund.

At least 30 days after the department submitted its plan of operation, the state board would be required to approve, disapprove, or modify the process for determining assessments and to notify the department and the legislative standing committees for higher education legislation.

Under the bill, the department would have the following legal status:

**The department would be considered a party in interest in all proceedings involving a claim against the fund.

**The department could investigate a claim to determine its validity.

**The department could compromise, settle, and pay a valid claim and deny an invalid claim.

Tuition Refunds. A student would be eligible for a refund if a school closed or ceased instruction and the student was not offered a teachout opportunity according to a teachout plan developed by the department for the instructional program in which he or she was enrolled, or if continuing instruction at a teachout school would be an undue hardship for the student. The refund would be made for tuition paid by or on behalf of the student to the proprietary school for courses not completed by the student because of the closure or cessation of instruction, as follows:

** The portion of the tuition payment that was paid with funds other than federal or state student financial aid money would be repaid to the student in full.

** The portion of the tuition payment that was made by or on behalf of the student that was paid with federal or state student finance aid funds would be refunded in accordance with applicable state or federal law.

In addition, until the amount of a refund was exhausted, a tuition refund would be paid in the following order of priority:

** First, to repay the unpaid balance of a loan taken out by the claimant for payment of tuition for which the refund is made.

** Second, to repay a state or federal government agency that had paid tuition on behalf of the claimant.

** Third, to refund the claimant for actual personal tuition expenditures that had been borrowed from other sources.

Under the bill, refund recipients would assign or subrogate their tuition refund rights to the fund.

<u>Teachout Arrangements.</u> If a school closed, the department would make arrangements with one or more other schools to provide teachout opportunities. (A teachout school would mean a proprietary school that was contractually committed to the department under a teachout plan to provide instruction for students of a school that ceased instruction). A proprietary school would be required to participate, according to the teachout plan developed by the department.

A teachout plan would ensure the following:

a) The teachout opportunities would be arranged with one or more teachout schools that offered an instructional program or course that was substantially similar to that offered in the school that ceased instruction.

b) The teachout school would have to fulfill the enrollment agreement signed by a student at the school ceasing instruction, except that the department, in consultation with the teachout school and with the approval of each student, could modify the agreement's requirements.

c) The teachout plan could not require a teachout school to provide teachout opportunities in a particular instructional program to a number of students that exceeded ten percent of the school's average enrollment for the program over the immediately preceding three years.

In addition, a teachout school could not collect additional fees from a student, except for tuition that was still owed to the school that closed, but could receive any tuition that was still owed to the school that ceased instruction under the enrollment agreement. A student could also decline to enroll at a teachout school if his or her participation would result in undue hardship, and could seek a refund from the Tuition Reimbursement Fund. The teachout plan would identify the expenses to be reimbursed.

<u>Violations.</u> Under the bill, a person who violated the provisions of the act would be subject to the disciplinary measures and procedures specified in the Proprietary School Licensing Act (proposed in House Bill 4823).

FISCAL IMPLICATIONS:

According to the Department of Education, the bill would have no fiscal implications for the state, since the cost of administering the provisions of the bill would be supported by fees. The department estimates that approximately $300,000 in fees and assessments would be collected under the provisions of House Bill 4823. (7-7-93)

ARGUMENTS:

For:

Proprietary schools play an important role in the education of many young people who are either not qualified or are unable to afford a traditional college education. It is therefore unconscionable that such a large percentage of these schools have been permitted to operate in a manner which often denies students a legitimate educational opportunity and leaves them with debts they cannot pay. In many cases, the root of the problem has centered on the profit motive and the easy availability of enormous amounts of student aid from federal and state sources. Many schools have adopted a strategy of recruiting as many students as possible, regardless of whether the students are qualified to complete the program or not, and regardless of whether the school has a reasonable expectation of sustained business viability and success.

For:

The provisions of the bill include four of the seven recommendations of the 1990 State Higher Education Executive Officers (SHEEO) report, which called for reform of the proprietary school industry. SHEEO's report recommended:

-- A license to operate a post-secondary institution should be conditioned on a reasonable expectation of business viability and success.

-- In the event of a business failure or sudden closure of a school, students should be financially protected and given the opportunity to complete their program of study.

-- Students admitted to institutions should demonstrate an ability to benefit from the program of study.

-- An institutional license should be offered (or renewed) only in those instances where the institution can demonstrate reasonable outcomes regarding student graduation and/or job placement.

-- State financial support for existing or strengthened licensing standards should be adequate to ensure proper enforcement.

-- Standards governing institutional licensing should be fair and equally applied to institutions of similar types and missions.

-- Coordination and consolidation of state licensing should be implemented to the greatest extent possible.

Against:
The bill provides for an effective date of September 1, 1993, which is less than two months away. Most schools have established plans and made business decisions for the coming school year based on the current law, including the hiring of instructors, preparing curricula, and publishing brochures, and would have no opportunity to alter their budgets to accommodate the bill's provisions. In fairness to schools and students, the bill should provide for a later effective date to allow those proprietary schools to plan ahead. Alternatively, the bill could "grandfather" those institutions that are currently licensed and operating.

POSITIONS:

The Department of Education supports the bill. (7-7-93)

The State Board of Education supports the bill. (7-7-93)

A representative of the Michigan Organization of Private and Vocational Schools testified in support of the bill. (7-7-93)