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SFA**BILL ANALYSIS**

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Senate Bill 72 (Substitute S-4 as passed by the Senate)
Sponsor: Senator Jon Cisky
Committee: Education

Date Completed: 2-5-98

RATIONALE

Many people are concerned about the education of juveniles who have committed criminal offenses or have been expelled from public schools for certain violations. Juveniles accused of committing criminal offenses often are held at county juvenile detention facilities until their cases are adjudicated by the circuit court. Counties that operate these centers contract with their local school districts or intermediate school districts (ISDs) to provide educational services to those who are detained. Once a court finds that a juvenile committed a criminal act, it may order him or her to return home, be placed in a foster care home, or attend a treatment program. In cases in which juvenile offenders are returned to their communities, they often attend local public schools to continue their education. Other juvenile offenders may be ordered to long-term residential facilities that are run by either a private organization or the State. Youths who are placed in private residential facilities also are sent to local public schools for their education. Juveniles who committed serious offenses and exhibited aberrant behavior may be placed in State residential facilities where the State employs teachers to operate educational programs.

In addition, the Revised School Code requires a local school board or a superintendent, principal or other designated school official to expel permanently, subject to possible reinstatement, a pupil who unlawfully possesses a dangerous weapon in a weapon free school zone, commits arson in a school building or on school grounds, or rapes a person in the building or on school grounds. Pupils who are expelled under these conditions are expelled from all public schools in the State, unless a school district operates or participates in an alternative education program established for them. If a student is expelled and is not placed in an alternative education program, a

school district may provide, or may arrange for the ISD to provide, to the student at home instructional services that are similar to those provided to homebound or hospitalized pupils.

Many adjudicated youths have special treatment and educational needs that public schools cannot address. In addition, there are few alternative programs for students who have been expelled from a public school for weapons' possession or other offenses under the School Code. While some public school academies already have been established to serve adjudicated youths, the academies are prohibited under the Code from restricting enrollment only to these students. Some people believe, however, that the education of these juveniles could be addressed best in public school academies that limited enrollment solely to these students.

CONTENT

The bill would amend the Revised School Code to permit a public school academy to limit enrollment only to the following types of pupils: those placed in an academy by a court or by the Family Independence Agency under the direction of a court; those who had been expelled under the Code for possessing a dangerous weapon in a weapon free school zone, or committing arson or criminal sexual conduct in a school building or on school grounds; and, pupils who had been expelled for physically assaulting certain school personnel, as proposed in Senate Bill 313.

An academy could limit enrollment to these pupils if its authorizing contract stated that the academy had been established specifically for enrolling one or more of these pupils. An academy that limited enrollment, as described above, would not be required to keep any group of these pupils

physically separated from another group of those pupils, as might otherwise be required under the Code or Senate Bill 313. (The Code requires that a program operated for individuals expelled for possessing a dangerous weapon in a weapon free school zone, or committing arson or criminal sexual conduct in a school building or on school grounds must ensure that they are physically separated at all times during the school day from the general pupil population. Senate Bill 313 would require that students who had been expelled for physically assaulting certain school personnel were separated from the general pupil population during the school day.)

If the Family Independence Agency, Department of Corrections, or another State department or agency had custody of or jurisdiction over a child, that State department or agency would have the legal and financial obligation for educating the child. The family division of the circuit court (family court) of one or more circuits could act as an authorizing body and issue a contract to organize and operate a public school academy that limited enrollment to pupils described above. An academy authorized under this provision could be residential. The family court would be in addition to the entities that presently may issue a contract to organize and operate an academy. (Under the Code, any of the following may act as an authorizing body: the board of a K-12 school district, an intermediate school board, the board of a community college, and the governing board of a State public university.)

The bill states that, to improve the State's public elementary and secondary schools, public school academies could be established within the State's system of public schools as a means of achieving the following purposes: to improve pupil achievement for all pupils, including, but not limited to, educationally disadvantaged pupils, by improving the learning environment; to stimulate innovative teaching methods; to create new professional opportunities for teachers in a new type of public school in which the school structure and educational program could be innovatively designed and managed by teachers at the school site level; to achieve school accountability for pupil educational performance by placing full responsibility for performance at the school site level; and, to provide parents and pupils with greater choices among public schools, both within and outside their existing school districts.

Under the Code, the State Board of Education must submit an annual comprehensive report on

academies to the Senate and House Committees on Education. In addition to the matters that must be included in the report, the bill would require it to include an evaluation of whether public school academies were fulfilling the purposes described above.

MCL 380.504

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

According to the Department of Education, the following three public school academies are operating in the State and focus on educating adjudicated youths: Saginaw Transitional Academy, with 13 students; St. Clair Learning Academy, with 13 students; and, Curtis House Academy, in Frankenmuth, with 20 students. These schools serve students who according to their ages should be in grades nine through 12, but academically may not be performing at those grade levels. Adjudicated and expelled youths often must deal with serious behavioral and social problems that adversely affect their educational progress and can be detrimental to the safety of other students and the school community. Academies can address treatment needs and provide remedial education specifically for these students in programs that often go beyond a traditional public school's scope and resources. Under the Revised School Code, however, a public school academy cannot "discriminate in its pupil admissions policies or practices on the basis of intellectual or athletic ability, measures of achievement or aptitude, status as a handicapped person, or any other basis that would be illegal if used by a school district" (MCL 380.504). An academy may limit admission to pupils who are within a certain age range or grade level or on any other basis that would be legal if used by a school district. The Code also provides that enrollment in an academy may be open to all persons who reside in the State, who meet the admissions policy, and who reside within the geographic boundaries, if any, of the authorizing body. If more students apply to enroll in an academy than spaces available, the Code requires pupils to be chosen by random selection. Consequently, academies that serve adjudicated youths cannot limit enrollment solely to those students. Some parents reportedly want to enroll their children, who have not been expelled or adjudicated, in these academies

because they believe their children would benefit from the program offered at the schools. Administrators of the academies, however, believe that they should address the educational needs and treatment issues only of youths who have gone through the court process. Therefore, charter schools established specifically for court-placed youths should be able to restrict enrollment to guarantee classroom space for these students.

Response: The Revised School Code states that a public school academy is a public school under Article VIII, Section 2 of the State Constitution. (This provision requires the Legislature to maintain and support a system of free public and secondary schools, and requires every school district to provide for the education of its pupils without discrimination as to religion, creed, race, color, or national origin.) There is concern that allowing public school academies, including those for court-placed youths and expelled students, to restrict enrollment could be subject to a legal challenge since public schools cannot restrict attendance.

Supporting Argument

The Family Independence Agency (FIA) operates a number of residential facilities across the State that provide educational services for adjudicated youths. Funds to operate the educational programs, including the employment of teachers, come from the Agency's State appropriation and not from the State School Aid Fund. The bill specifies that if the FIA, Department of Corrections, or another State department or agency had custody of or jurisdiction over a child, it would have the legal and financial obligation for educating the child. Thus, the State School Aid Fund could not be tapped to pay for the education of these youths who currently are under the jurisdiction of the State. This addresses the concern that, if public school academies were established solely for court-placed youths, a State department or agency having custody of or jurisdiction over a youth who attended one of these academies could merely shift financial responsibility for operating an educational program from its departmental budget to the School Aid Fund.

Response: According to FIA officials, the educational programs that the Agency provides to youths placed under its jurisdiction do not parallel the public school system. Although the Agency employs teachers to provide the educational services, the programs do not provide for open enrollment and do not receive State school aid. While these programs also do not meet the requirements of a public school academy, they are not private schools since they are funded through

a State department budget. The bill would permit the establishment of public school academies solely for adjudicated youths, including individuals under the jurisdiction of the FIA, the Department of Corrections, and any other State department or agency having custody of or jurisdiction over the individual. The Revised School Code, however, states that a public school academy is a public school under Article VIII, Section 2 of the State Constitution and is a school district for purposes of State funding under Article IX, Section 11, which establishes the State School Aid Fund and provides for its distribution. Furthermore, the Michigan Supreme Court ruled in *Council of Organizations and Others for Education about Parochial v Governor* (455 Mich 557 (1997)) that public school academies are public schools. Requiring a department or agency to pay for the education of a youth under its jurisdiction who attended an academy established for court-placed youths would collide with the Code's concept of a public school academy. The Code clearly states that a public school academy is a public school, is eligible for State school aid, and cannot charge tuition. The bill, however, would create a hybrid public school academy that could restrict enrollment to certain students and could accept funding from other State sources, such as a departmental budget, other than the State School Aid Fund. Furthermore, it is not clear whether a State agency's payment to a public school academy for the education of youths under its jurisdiction would be considered the payment of tuition. Also, the bill does not address who would be responsible for the costs of a residential academy, if one were established under the bill.

Supporting Argument

The bill would permit the family court to act as an authorizing body and issue contracts to organize and operate public school academies for court-placed youths. Under the Revised School Code, the governing boards of K-12 school districts, ISDs, community colleges, and State public universities currently may act as an authorizing body. The family court would be uniquely qualified to authorize the establishment of academies for adjudicated youths because the court deals with these individuals and is keenly aware of the problems that they face in obtaining an education.

Response: The Code enumerates the responsibility of an authorizing body in relation to public school academies operating under the contracts it issues, including overseeing the academies to ensure compliance with the statute as well as rules and terms of the contract; establishing the selection, length of term, and

number of members of a board of directors for each academy under its jurisdiction; and, acting as the fiscal agent for the academy. While the family court may understand the educational needs of adjudicated youths, it may not be appropriate for the court to act as the facilitator of remedies by acting as an authorizing body of academies for these youths.

Legislative Analyst: L. Arasim

FISCAL IMPACT

The bill would have an unknown fiscal impact on State and local government. The State fiscal impact of the bill depends on the degree to which it would increase pupil membership and thus State payments for the foundation allowance. Local and intermediate school districts could have reduced costs and lower State revenues if the education of some court-placed students were shifted to a public school academy.

Currently, a public school academy may be formed with a specialized curriculum or structure for juvenile offenders or expelled students; however, enrollment may not be limited to a particular group of students. Permitting the limitation on enrollment could expand the use of public school academies for students who have been expelled or are under the charge of a court.

Students in detention facilities may currently be counted in pupil membership if their education is provided by certified teachers through contract with a local or intermediate school district. Students in the juvenile delinquent residential facilities operated by the Family Independence Agency, however, are educated by that Agency and are not currently counted in pupil membership.

A pupil in a public school academy is eligible to be counted in pupil membership, generating a foundation allowance payment from the State. The foundation allowance for a public school academy is the same as the foundation allowance for the local school district in which the academy is located, but may not exceed \$5,962 per pupil in FY 1997-98. The entire foundation allowance for a pupil in a public school academy is paid by the State. Public school academies also are eligible for other categorical funds provided in the State School Aid Act.

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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.

Fiscal Analyst: E. Pratt