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SFA



BILL ANALYSIS

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Senate Bill 146 (Substitute S-4 as passed by the Senate)
Sponsor: Senator Glenn D. Steil
Committee: Education

Date Completed: 6-16-97

RATIONALE

Public Act 362 of 1993 added Part 6A to the School Code to authorize the creation of public school academies, and permit the governing body of a school district, intermediate school district (ISD), community college, or State public university to act as an authorizing body for granting contracts to organize and operate an academy. Public Act 416 of 1994 revised Part 6A and added new provisions on academies in a new Part 6B, which prohibited the combined total number of contracts for public school academies issued by all State public universities from exceeding 75. Subsequently, Public Act 289 of 1995 amended the School Code, which it renamed the Revised School Code, and increased from 75 to 150 the total number of public school academy contracts that all State public universities may issue by 1999. Currently, 12,500 students are enrolled in 78 academies operating across the State, 67 of which were authorized by public universities. For some children who are economically deprived, have troubled backgrounds, or experience learning disabilities, obtaining an education through the traditional public school system apparently can be a frustrating experience that inhibits their educational development. The needs of these children, some people contend, could best be met in public school academies, especially those established to provide special learning environments. Consequently, some people believe that the Code should be amended to revise the cap on the number of academies that public universities may authorize and to permit the establishment of specialized academies.

CONTENT

The bill would amend the Revised School Code's provisions on public school academies to specify that the limit on the number of contracts to organize and operate a public school academy, that may be issued by State public universities

would not apply to a contract issued for a public school academy located in a school district that, at the time the contract was issued, had at least 2,000 pupils or 50% of its membership eligible for the Federal free or reduced price lunch program. (Currently, the combined total of contracts that may be issued by all State public universities is 100 through 1997, 125 through 1998, and 150 thereafter. The total that may be issued by any one university may not exceed 50% of the maximum combined total number.)

The bill also would permit a public school academy to limit enrollment either to: pupils whose primary disability had been determined to be a specific learning disability or another particular characteristic or set of characteristics recognized under State Board of Education rules, or pupils placed in the academy by a court. The contract authorizing the academy would have to state that it was established specifically for enrolling one of these types of pupils.

In addition, the bill would repeal a section of the Code under which Part 6B is to be repealed "if the final disposition of *council of organizations and other for education about parochial, inc., et al., v John Engler...* is that Part 6a, as added by Act No. 362 of the Public Acts of 1993, is held by a court of competent jurisdiction to be constitutional, effective, or otherwise valid" (MCL 380.518).

MCL 380.502 et al.

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

For some parents of learning disabled students, the special education programs and services offered in their local school districts do not adequately meet their children's needs. This has led some parents to go to great lengths to seek outside of their local school district trained professionals who can help these children's educational progress. One parent reportedly was able to locate a State university professor who developed an educational program for his autistic child. In other cases, some private schools offer programs that focus on particular learning disabilities. Officials at these schools believe that additional children, who have difficulty learning due to a disability, could benefit from their school's educational programs. The Revised School Code, however, prohibits a public school academy from limiting enrollment to students with special needs. Thus, private schools that offer specialized programs for these students, or persons who may want to develop specialized programs for them, cannot receive contracts to organize and operate as public school academies. The bill, however, would allow academies to limit enrollment to students with specific disabilities. Some students require an educational program focused on a particular disability and would benefit from being educated with other students who have the same condition, rather than being placed in classrooms with students who have different or no learning disabilities. This type of educational program cannot be found in traditional special education settings.

Response: The Revised School Code specifies that in order to ensure that a handicapped person enrolled in a public school academy is provided with special education programs and services, the academy is considered to be a local school district. Under these provisions, an academy that is not designed specifically for disabled students, but has enrolled handicapped students, must adhere to provisions in the Code as well as extensive administrative rules governing special education programs, including rules specific to learning disability programs. Presumably, academies established under the bill would be subject to the same regulations. Although the Revised School Code permits a public school academy, as well as a school district, university school, or intermediate school district to apply for a waiver from a State Board or Department rule interpreting or implementing a provision of the Code, the State Board may grant a waiver only if one of these entities demonstrates that it can address the intent of the rule in a more effective, efficient, or economical manner or that the waiver is necessary to stimulate improved pupil

performance. Thus, an academy could seek a waiver of a State special education rule. If the State Board waived a special education rule, however, some people believe that the academy still would be subject to the Federal regulations upon which the State rule is based.

Supporting Argument

Under the bill, the cap on the total number of contracts issued by State public universities would not apply to a public school academy located in a school district that, at the time a contract was issued, had at least "2,000 pupils or 50% of its membership eligible for the federal free or reduced price lunch program". Thus, an urban school district, for example, could apply to a public university for authorization to open a public school academy for inner city students and not be subject to the Code's limit on the total number of academies that can be authorized by State public universities. In addition, the bill would permit a public school academy to limit enrollment to pupils placed in the academy by a court. Public school academies are viewed as a new breed of public schools that can bring innovation into the classroom by experimenting with unconventional teaching methods. As a result of the bill, public universities could authorize the establishment of academies in school districts where students come from economically disadvantaged backgrounds or troubled homes. For many of these students, traditional public schools have not met their needs, and their families cannot afford to send them to private schools. Public school academies offer hope to troubled children as well as children of low income families.

Response: Although the bill's proponents contend that it would open up educational opportunities for disadvantaged youths, not all at-risk students would be able to attend an academy due a number of circumstances, such as a lack of transportation. Thus, the number of disadvantaged and troubled youths who would be served by these academies could be limited. Furthermore, whenever a student leaves a school district to attend an academy, the State school aid allocated for that student leaves the school district too, draining the district's financial resources and limiting the district's ability to offer programs for at-risk students. There also appears to be some confusion as to which public school academies would fall outside of the cap on the number of academies a public university may establish. The bill specifies that the cap would not apply to an academy in a school district that, at the time of the contract, had "at least 2,000 pupils or 50% of its membership eligible for the federal free or reduced

price lunch program". Some people believe this means any district with a population of at least 2,000 students or a district in which 50% of its membership, regardless of its size, was eligible for the Federal free or reduced lunch program. Others contend that this provision would apply to a district that had 2,000 pupils eligible for the free or reduced lunch program, or had 50% of its population eligible for this program. The interpretation of this provision could affect the number of school districts in which academies could be established for at-risk students.

Opposing Argument

Concerns have been raised about the bill's emphasis on exclusivity and the potential ability of academies to refuse to enroll students with dissimilar disabilities or no disabilities at all. Prohibiting these students from enrolling in an academy that was limited to learning disabled pupils could violate certain Federal and State civil rights and education laws. The Michigan Handicappers' Civil Rights Act, for example, prohibits an educational institution from discriminating "in any manner in the full utilization of or benefit from the institution, or the services provided and rendered by the institution to an individual because of a handicap that is unrelated to the individual's ability to utilize and benefit from the institution or its services, or because of the use by an individual of adaptive devices or aids". Thus, a public school academy that was established to provide educational services to a student population with a particular disability to the exclusion of students with other disabilities could be discriminatory to students who would be ineligible to apply based on their particular disability. In addition, two Federal statutes, the Americans with Disabilities Act (ADA) and provisions of the Rehabilitation Act, prohibit discrimination and exclusion of qualified disabled persons. The ADA provides that "...no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity." In addition, implementing regulations for the Rehabilitation Act, it has been pointed out, prohibit a qualified handicapped person from being excluded from participation in, being denied the benefits of, or being subjected to discrimination under any program or activity that receives or benefits from Federal financial assistance.

Opposing Argument

The issues of inclusion and the appropriate education for a learning disabled child are central to the question of whether the development of public school academies that restricted enrollment could jeopardize Federal funds that the State receives for special education. Currently, the State must meet certain eligibility requirements in order to receive Federal funds for special education. Under Federal law, a state must demonstrate that it has established "procedures to assure that, to the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are not disabled, and that special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily..." (20 USC 1412). Furthermore, it is important that children are educated with a diverse group of classmates. Inclusive education provides an opportunity for children to learn about other children who may have abilities different than their own and helps break down barriers among children. If the bill allowed all students to enroll in an academy established for students with learning difficulties, including nondisabled students who also could benefit from this kind of instructional program, the issue of discrimination could be resolved.

Response: Public school academies for learning disabled students, established under the bill, would comply with Federal law because these academies would be to the maximum extent appropriate for these children. Education in regular classes, even with the use of supplementary aids and services, does not result in a satisfactory education for these children. Furthermore, many of an academy's students could return to a regular classroom setting as they adapted to their learning disability. The bill aims to give parents of learning disabled children a choice of the most appropriate school and educational program for their children.

Legislative Analyst: L. Arasim

FISCAL IMPACT

The bill would have a fiscal impact on State and local government as follows:

Increase Public School Academy Authorizations by Universities: The exclusion of certain types of public school academies from the cap on the

number of schools that may be authorized by universities would increase public school academy authorizations by State public universities. Depending on the interpretation of the phrase "...at least 2,000 pupils or 50% of its membership eligible for Federal free or reduced price lunch program...", many districts could be exempted from the cap on authorizations by universities. Approximately 237 of the State's 555 local school districts are projected to have more than 2,000 pupils in membership in FY 1997-98. Alternatively, only 16 districts currently have 50% of their pupils eligible for free or reduced price lunch and 2,000 pupils eligible for free or reduced price lunch. This would include the city school districts such as Detroit, Grand Rapids, Lansing, Flint, Pontiac, Kalamazoo, Benton Harbor, Saginaw, and others. New public school academies are estimated to attract approximately 25% of their pupils from nonpublic schools; thus, increased authorizations of academies are expected to increase total State pupil membership, increasing the State cost of the foundation allowance. The magnitude of this impact is unknown.

Potential Loss of Federal Funds: The bill would permit academies to limit enrollment to students with a specific handicapping condition. This raises the issue of whether such schools would violate the antidiscrimination policies required for the State to receive Federal funds under the Individuals with Disabilities Education Act (IDEA). This funding is estimated at \$95.9 million in FY 1997-98. Most IDEA money currently is distributed by the State to local school districts, intermediate school districts, and public school academies.

If a public school academy with enrollment restricted to a certain special education population opened pursuant to the bill, it is possible that Michigan's compliance with Federal special education law could come under review. A determination by the U.S. Department of Education that the State did not comply with the requirement described above, could make the State ineligible for Federal special education funding.

Fiscal Analyst: E. Pratt

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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.