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Senate Bill 588 (as enrolled)
Sponsor: Senator Bill Schuette
Committee: Education

Date Completed: 12-3-99

RATIONALE

The Family Educational Rights and Privacy Act (FERPA) is a Federal law designed to protect the privacy of a student's educational records. In general, schools must have written permission from a parent or an eligible student before releasing information from a student's record. Under Michigan's Freedom of Information Act (FOIA), however, a public body is permitted, but not required, to exempt from disclosure information that, if released, would prevent it from complying with FERPA. As a result, a public body, such as a school district, may release information in compliance with the FOIA, but in violation of the Federal law. Apparently this occurred in 1996 and 1997 when Midland Public School officials, in response to FOIA requests, released information about a student's confession to violating athletic rules by drinking alcohol during an athletic season, a basketball coach's notes about two players' attitudes, and coaches' notes about the ability of a player to meet certain financial obligations. In another instance, school officials released certain academic records of a student, including report cards and test scores. Despite parents' complaints, school officials reportedly continued releasing FERPA-protected documents in response to FOIA requests. As a result, several students filed complaints with the U.S. Department of Education. The Department concluded in August 1997, that Midland school officials violated FERPA with the release of this information. Subsequently, the school district agreed in a settlement to update its policies on the release of information, appoint a FERPA officer to monitor the district's compliance with the law, and notify parents and students of their rights under FERPA. To prevent a similar situation from occurring in other school systems, it has been suggested that the FOIA should require a public body to exempt from disclosure information that is protected under FERPA.

CONTENT

The bill would amend the Freedom of Information Act to require a public body to exempt from disclosure information that, if released, would prevent the public body from complying with the Federal Family

Educational Rights and Privacy Act. Currently, a public body is permitted to exempt this information from disclosure as a public record.

MCL 15.243

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

The FOIA currently permits a public body to exempt FERPA-protected information from disclosure as a public record. Since the FOIA language is permissive, the Act also can be read to allow disclosure of these education records. As a result, school officials can be faced with a dilemma: whether to comply with the FOIA's policy of openness, or to comply with FERPA's strict privacy requirements. By requiring a public body to exempt disclosure of this information, the bill would clarify the responsibility of school officials and eliminate the inconsistency that exists between the State and Federal statutes.

Legislative Analyst: L. Arasim

FISCAL IMPACT

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

Fiscal Analyst: K. Summers-Coty

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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.