



**House
Legislative
Analysis
Section**

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**DISTANCE LEARNING
CORPORATION**

House Bill 5482 (Substitute H-1)

Sponsor: Rep. Jason Allen

House Bill 5483 as introduced

Sponsor: Rep. Judson Gilbert II

Committee: Commerce

First Analysis (12-12-01)

THE APPARENT PROBLEM:

Distance learning is a growing phenomenon. In Michigan, a wide variety of educational and training programs are available from the Michigan Virtual University. According to information from the organization, it is "a private, not-for-profit 501(c)(3) Michigan corporation established in 1998 to meet the workforce development education and training needs of Michigan businesses and industries and their current and prospective employees through the innovative use of electronic learning technologies". It was founded by Governor Engler and what is now the Michigan Economic Development Corporation, in collaboration with universities and industry. Today, according to MVU promotional material, the organization serves more than 75,000 clients and students each year, including K-12 learners, higher education students, and adult-corporate learners across the state. It does not independently grant degrees or award diplomas; credentials are granted by the organization providing the program, while MVU acts as a broker or partner with state colleges and universities and private training providers. Public Act 230 of 2000 (House Bill 5802) mandated in statute that the MVU create the Michigan Virtual High School in order to achieve a number of goals, including expanding curricular offerings for high schools through agreements with high schools or licenses with recognized providers; creating a statewide instructional model using interactive multimedia tools delivered by electronic means, such as the Internet, digital broadcast, or satellite network; providing pupils the opportunity for on-line learning; offering teachers opportunities to learn new skills and strategies for developing and delivering instructional services; granting diplomas through a dual enrollment method with school districts; and acting as a broker for college-level equivalent courses (such as the advance placement or AP courses). However, no statute has yet been enacted generally addressing distance learning corporations like the MVU.

Legislation has been drafted that would provide for the registration and oversight of such organizations and provide them with permanent status.

THE CONTENT OF THE BILLS:

House Bill 5482 would create a new act, the Career Development and Distance Learning Act, to provide for the formation, regulation, and registration of distance learning corporations.

A registered distance learning corporation would be subject to state laws applicable to nonprofit corporations, except as provided in the new act. House Bill 5483 would amend the Nonprofit Corporation Act (MCL 450.2124) to specify that the act would not modify the requirements of the new Career Development and Distance Learning Act. A distance learning corporation would be a charitable and benevolent institution and its funds and property would be exempt from taxation in the state or any political subdivision of the state. Also, it would not be an educational corporation under the Michigan General Corporation Act.

Under the bill, a distance learning corporation would have to be registered with the director of the Department of Career Development. (The term "director" also includes a designee of the director.) To be so registered, a corporation would have to have been in existence for distance learning purposes for three years or more at the time it applied for registration. In applying for registration, the corporation would have to file with the director a copy of its articles of incorporation, a certificate from the attorney general, a general plan of proposed activities, financial statements, and a copy of its bylaws.

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Board of directors. The board of the distance learning corporation would consist of two members appointed by the governor with the advice and consent of the Senate; one member appointed by the governor from a list of five names submitted by the Senate Majority Leader; one member from a list of five names submitted by the Speaker of the House of Representatives; at least one board member elected to represent state public universities; at least one member representing community colleges; at least one member representing public schools; at least one member representing independent nonprofit degree-granting colleges and universities in Michigan; and at least five members representing the private sector.

Purposes. The articles of incorporation would have to contain the purposes of the corporation, including:

- To help promote the use of education technology to accelerate career and workforce development by improving the learning environment, stimulating innovative teaching methods, achieving accountability, and providing residents of the state with greater technology-based educational choices;
- To promote technology-based education and training to public and private sector organizations, including alternative models of education that emphasize partnerships between public education and the business sector;
- To provide technology-based services that will enable distance learning education and training to flourish and prosper, including providing selected industries with business and financial operations, human resources administration, resource development, research, marketing, technology coordination, digital library support, faculty training and development, and other student and academic support operations;
- To support and encourage various collaborative efforts among educational institutions, businesses, nonprofit organizations, and government agencies to meet the training and educational needs of the state's workforce; and
- To establish, acquire, or participate in or with other persons that further the purposes of the registered distance learning corporation.

Permitted Activities. Subject to the limits in the new act, the nonprofit act, and other state laws, and limits in its articles of incorporation, the distance learning corporation could engage in the following acts consistent with its purposes:

- Engage in experimental distance learning projects;
- Provide training and distance learning services and professional development programs to government employees;
- Accept gifts, grants, appropriations, donations, fees for services, royalties, or other payments or property from any source;
- In administering any publicly supported distance learning plan, contract or subcontract with any organization that administers or furnishes distance learning services to any federal, state, or local government, agency, or political subdivision;
- Make grants for the public welfare;
- Participate with any other public or private entity in any transaction the corporation has the power to conduct by itself;
- Obtain, hold, and dispose of patents, trademarks, copyrights, or other intellectual property rights in any invention, idea, good, service, or other tangible or intangible property subject to protection under any applicable intellectual property law, including property created or developed by an employee of the corporation or a person under contract with the corporation;
- Offer educators opportunities to learn new knowledge, skills, and strategies for developing and delivering instructional services; and
- Grant credits, degrees, or high school diplomas, but only through dual enrollment programs with educational institutions that are authorized to grant credits, degrees, or high school diplomas in the state.
- A registered distance learning corporation would not be and could not act in Michigan as a public school or postsecondary degree-granting institution and could not independently grant degrees or high school diplomas.

Lack of capacity or power. If an act of a distance learning corporation was otherwise legal, it would not be invalid because the corporation was without capacity or power to do the act. However, the lack of capacity or power could be asserted in an action by a board member to enjoin an act; in an action by or in the right of the corporation to procure a judgment in its favor against an incumbent or former officer or board member of the corporation for loss or damage due to an unauthorized act by that officer or board member; or in an action or special proceeding by the

attorney general to enjoin the corporation from the transacting of unauthorized business, to set aside an unauthorized transaction, or to obtain other equitable relief.

Registration process. As mentioned earlier, a distance learning corporation would have to apply to the director of the Department of Career Development for registration. The director would conduct an examination of the documents submitted, could conduct other investigations, and could request additional written and oral information. The corporation would have to pay a fee of \$500 to the department director for the examination and registration. The corporation would also have to submit its articles of incorporation to the attorney general, who would have 60 days to review them for compliance with the provisions of the new act. If the articles (and any amendments or restatements) comply, the attorney general would certify them to the director of the Department of Career Development. The corporation would have to pay a \$100 fee to the attorney general for the examination.

Complaints, hearings, compliance actions. If a sworn complaint alleging a violation of the act by a distance learning corporation was filed with the director, he or she could hold a hearing. If after the hearing, the director determined that the corporation was violating or had violated the act, he or she would have to reduce the findings and decision to writing and issue and serve a copy of the findings on the corporation, along with an order requiring the corporation to cease and desist from engaging in the prohibited activity. A registration could be revoked after a hearing if the corporation violated a cease and desist order.

However, if the corporation showed by a preponderance of the evidence that the prohibited activity resulted from a bona fide error that violated a policy or procedure of the corporation intended to prevent that error, the director would not revoke the registration, but could require the corporation to take remedial action. The corporation would have to comply with the remedial action. After notice and hearing, the department director could at any time by order reopen and alter, modify, or set aside, all or part of an order, if in his or her opinion, conditions of fact or of law had changed sufficiently.

Confidentiality. To ensure the confidentiality of records containing personal data associated with identifiable individuals, a registered distance learning corporation would have to use reasonable care to secure such records from unauthorized access and to collect only personal data that was necessary for the

proper operation of the corporation. The corporation would have to adopt appropriate practices and procedures concerning confidential information in compliance with applicable law. A corporation could enter into agreements with public and private persons to protect trade secrets, tests and test scores, proprietary information, and other information whose disclosure could jeopardize the privacy or property rights of another person. Information subject to such an agreement in the possession of a public body would not be subject to disclosure under the Freedom of Information Act.

BACKGROUND INFORMATION:

Information about the Michigan Virtual University can be found on its web site at www.mivu.org.

FISCAL IMPLICATIONS:

The House Fiscal Agency reports that the Michigan Virtual University appears to be the one entity in the state with interest and eligibility to be designated as a registered distance learning corporation, so it is likely the bill would result in \$600 in one-time revenue from fees charged by the director of the Department of Career Development and the attorney general. State costs to the department and attorney general would increase on a one-time basis by a similar amount. Similar fees and costs could be imposed in the future to the extent that other corporations become eligible for registration. (Fiscal note dated 12-10-01)

ARGUMENTS:

For:

House Bill 5482 provides a statutory framework for distance learning corporations, such as the Michigan Virtual University. Generally speaking, the bill requires the registration and oversight of such organizations by the Department of Career Development (with a role for the state's attorney general); spells out the purposes, goals, and permitted activities; provides for a board of directors, representing public schools, community colleges, universities, state government, and the private sector; and requires that certain confidentiality standards be met. The bill makes clear the corporation's role as a broker (rather than an independent degree or diploma granting entity). While the purposes, activities, and structure described in the bill already essentially exist in the operation of the Michigan Virtual University, there are no statutory provisions governing this organization. The bill provides a degree of

permanence to these operations and puts in place a governance structure that will help to ensure quality control for the long run.

POSITIONS:

The president and chief executive officer of the Michigan Virtual University testified in support of the bills. (12-11-01)

A representative of the Michigan Education Association testified in support the bills. (12-11-01)

The President's Council, State Universities of Michigan, supports the substitute for House Bill 5482. (12-11-01)

The Department of Career Development has indicated support for the bills. (12-11-01)

The Michigan Chamber of Commerce has indicated support for the bills. (12-11-01)

Analyst: C. Couch

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.