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SFA**BILL ANALYSIS**

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House Bill 5482 (Substitute H-2 as passed by the House)
House Bill 5483 (as passed by the House)
Sponsor: Representative Jason Allen (House Bill 5482)
Representative Jud Gilbert II (House Bill 5483)
House Committee: Commerce
Senate Committee: Education

Date Completed: 2-20-02

CONTENT

House Bill 5482 (H-2) would create the "Career Development and Distance Learning Act" to provide for the formation, regulation, and registration of distance learning corporations.

House Bill 5483 would amend the Nonprofit Corporation Act to state that it would not modify the requirements of the Career Development and Distance Learning Act. The bill is tie-barred to House Bill 5482.

House Bill 5482 (H-2)

Nonprofit Corporation

The bill would define "registered distance learning corporation" as a distance learning corporation incorporated under the Nonprofit Corporation Act and registered under this proposed Act.

A registered distance learning corporation would be subject to the State laws that apply to nonprofit corporations, except as provided in the proposed Act. The bill provides that a registered distance learning corporation would be a charitable and benevolent institution, and its funds and property would be exempt from State, county, city, or township taxes. A corporation would be prohibited from acting as a registered distance learning corporation except as authorized by and pursuant to a registration issued by the Director of the Department of Career Development (DCD) or his or her designee.

Articles of Incorporation

A registered distance learning corporation's articles of incorporation would have to contain the purposes of the corporation, which would have to include at least all of the following:

- 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 Michigan 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 would enable distance learning education and training to flourish and prosper, including providing selected industries with business and financial operations, human resource 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, business, nonprofit organizations, and government agencies to meet the training and educational needs of the State's workforce.

- To establish, acquire, or participate in or with other people who furthered the purposes of the registered distance learning corporation.

In addition, the articles of incorporation would have to provide that the board would include four members, appointed as follows: 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 Majority Leader of the Senate; and one member appointed by the Governor from a list of five names submitted by the Speaker of the House of Representatives.

Further, the articles of incorporation would have to provide that the board of directors would consist of the following individuals: the four appointed members described above; at least one member representing 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 located in Michigan; and at least five members representing the private sector.

Last, the articles would have to provide that the corporation was not an educational corporation for purposes of Sections 170 to 177 of Public Act 327 of 1931, which establishes the corporate powers of private schools and universities.

Application for Registration

Under the bill, a corporation applying for registration as a registered distance learning corporation would have to submit its articles of incorporation, any amendments to its articles, or restated articles of incorporation to the Attorney General for examination. The Attorney General would have to review the articles or amendments within 60 days, and if the Attorney General found that they complied with the proposed Act, he or she would have to certify this finding to the Director. A corporation would have to pay a fee of \$100 to the Attorney General for this examination; the fee would have to be deposited in the State Treasury.

Next, the corporation would have to file all of the following with the Director:

- A copy of the articles of incorporation of the corporation, certified by the Administrator. ("Administrator" would refer to the Director of the Department of Consumer and Industry Services.)
- The certificate of the Attorney General described above. This requirement would be waived if the Attorney General failed to certify the submitted articles in 60 days.
- A general plan of the proposed activities of the corporation.
- A copy of the financial statements of the corporation.
- A copy of the bylaws of the corporation.

Upon their submission, the DCD Director would have to examine the documents. The bill would require a distance learning corporation to submit a fee of \$500 to the Director for this examination; the fee would have to be deposited in the State Treasury.

The Director then could conduct investigations, request additional oral and written information from the corporation, and examine under oath any people interested in or connected with the distance learning corporation seeking registration.

Registration

The Director would have to register a corporation as a registered distance learning corporation if all of the following were met: the documents filed with the Director, including the general plan and the financial statements, were in proper form; the articles of incorporation contained the required provisions; the corporation had been in existence for distance learning purposes for three years or more at the time it applied for registration; and the Internal Revenue Service had determined that the corporation would be exempt from taxation under Section 501(c)(3) of the Internal Revenue Code.

Upon registration, the Director would have to return to the corporation one copy of the articles of incorporation, certifying that the corporation was a registered distance learning corporation, and deliver to the Administrator a certificate that the corporation was a registered distance learning corporation.

Funds and Property

A registered distance learning corporation

could acquire, hold, and dispose of its funds and property only for the lawful purposes of the corporation and for the benefit of the public. A registered distance learning corporation would have to conduct its activities, including acquiring, holding, and disposing of funds and property, in a manner within the scope of the purposes of the corporation as specifically set forth in its articles and consistent with the proposed Act.

Permitted Activities

The bill would permit a registered distance learning corporation to do any act consistent with one or more of the purposes of the corporation, including any of the following:

- 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 administered or furnished 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 had the power to conduct by itself.
- Obtain, hold, and dispose of patents, trademarks, copyrights, or other intellectual property rights in any invention, idea, goods, 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 or a person under contract with the corporation.
- Offer educators opportunities to learn new knowledge, skills, and strategies for developing and delivering instructional services.
- Grant credits, degrees, or high school diplomas only through dual enrollment programs with educational institutions authorized to grant credits, degrees, or high school diplomas in the State.

These activities would be subject to the limits contained in the proposed Act, the Nonprofit Corporation Act, any other law of the State, or the corporation's articles of incorporation.

Lack of Capacity or Power

Under the bill, if an act of a registered distance learning corporation were otherwise legal, it would not be invalid because the corporation was without capacity or power to do the act. The lack of capacity or power, however, could be asserted in any of the following actions: an action by a board member against the corporation to enjoin an act; 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 of that officer or board member; or an action or special proceeding by the Attorney General to enjoin the corporation from the transaction of unauthorized business, to set aside an unauthorized transaction, or to obtain other equitable relief.

The bill would prohibit a registered distance learning corporation from acting as a public school or postsecondary degree-granting institution in the State, or from independently granting degrees or high school diplomas.

Hearings and Cease and Desist Orders

The Director could hold a hearing to consider an alleged violation of the proposed Act, if a sworn complaint alleging a violation of the Act by a registered distance learning corporation were filed with the Director.

If, after a hearing, the Director determined that the registered distance learning corporation was violating or had violated the proposed Act, the Director would have to reduce his or her findings and decision to writing, and would have to issue and serve the corporation with a copy of the findings and an order requiring the corporation to cease and desist from engaging in the prohibited activity.

If a registered distance learning corporation violated a cease and desist order of the Director, the Director, after notice and an opportunity for a hearing, could by order revoke the registration of the corporation. If the corporation showed by a preponderance of

evidence that the prohibited activity described in the cease and desist order resulted from a bona fide error that violated a policy or procedure of the corporation intended to prevent that error, the Director would be prohibited from revoking the registration but could require the corporation to take specific remedial action. The corporation would have to comply with any remedial action that the Director required.

After notice and an opportunity for hearing, the Director at any time could, by order, reopen and alter, modify, or set aside all or part of an order issued by him or her, if, in the Director's opinion, conditions of fact or of law had so changed as to require that action, or if the public interest required that action.

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 those records from unauthorized access and to collect only personal data that was necessary for the proper operation of the corporation.

A registered distance learning corporation would have to adopt appropriate practices and procedures concerning confidential information in compliance with applicable law.

Further, a registered corporation could enter into agreements with public and private people to protect trade secrets, tests and test scores, proprietary information, and other information if the disclosure of that information would jeopardize the privacy or property rights of another person. Information subject to an agreement under this provision would not be subject to disclosure under the Freedom of Information Act.

House Bill 5483

Section 124 of the Nonprofit Corporation Act provides that the Act does not modify the requirements of the Supervision of Trustees for Charitable Purposes Act; Public Act 169 of 1965 (which governs the dissolution of charitable purpose corporations); the Charitable Organizations and Solicitations Act; and the Uniform Management of Institutional

Funds Act. The bill would add the proposed Career Development and Distance Learning Act to this list.

The Act requires a corporation subject to the above acts to comply with those acts, as well as comply with the Nonprofit Corporation Act. Further, if there are any inconsistencies between those acts and the Nonprofit Corporation Act, those acts must control.

MCL 450.2124 (H.B. 5483)

Legislative Analyst: Claire Layman

FISCAL IMPACT

The bills would create a specific corporate structure for distance learning corporations, to formalize the structure of the Michigan Virtual University. The registration fees in the bill would result in one-time revenue of \$500 to the Department of Career Development and \$100 to the Attorney General, which would receive and review the required filings. The bills would have no fiscal impact on local government.

Fiscal Analyst: Elizabeth 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.