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Senate Bill 393 (Substitute S-1 as passed by the Senate)
Sponsor: Senator Wayne Kuipers
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RATIONALE

Charter schools, or public school academies as they are called under the Revised School Code, have existed in Michigan for a decade. In 1993, Public Act 362 added Part 6A to the Code to authorize public school academies (PSAs), requiring them to be independent, nonprofit, public schools, funded on a per-pupil basis from the State School Aid Fund.

Under Part 6A, a contract to organize and operate a new charter school may be issued by the boards of the following educational bodies, or "authorizers": school districts, intermediate school districts (ISDs), community colleges, and State public universities. To receive a charter, individuals or entities must apply to an authorizer and meet its requirements. The authorizing body then must oversee the charter school, ensuring that it is in compliance with Michigan law and the terms of the contract. Some schools engage private educational management companies such as Edison, the Leona Group, and National Heritage Academies to provide some or all of the schools' curricular, staffing, administrative, or management services.

In Michigan, the majority of charters are issued by public universities. According to amendments enacted in 1996, universities combined may not issue more than 150 charter school contracts, and no single university may issue more than half of that number. As of June 2003, 148 charters were authorized by State universities (including Central Michigan University, which authorized 57, and Grand Valley State University, which authorized 30), while 12 charters were issued by local school districts, 28 by ISDs, and 12 by community colleges. Community colleges are limited to chartering schools within their

jurisdiction, which is the entire State in the case of Bay Mills, a Federal tribally controlled community college.

Those who are issued charters tend to fall into four categories: converted private schools, converted public schools, "Mom and Pop" schools, and "cookie cutter" or franchise schools, which are largely run by educational management companies. Charter schools are subject to the "leadership and general supervision" of the State Board of Education, and must comply with the same laws as traditional public schools. Charter schools may not charge tuition, for example, or discriminate in their admissions policies. Although charter schools are independent of school districts, a charter school authorized by a local district must abide by its collective bargaining agreements.

Unlike traditional public schools, public school academies may not borrow money or issue bonds to pay for school infrastructure. Instead, charter schools fund the majority of their capital projects from their general budget, the source of which is State aid. Under the State School Aid Act, each charter school receives from the State either the per-pupil foundation allowance of the district in which it resides, or the current average foundation allowance (\$6,700 in 2002-2003), plus \$500, whichever is less. Therefore, the maximum amount any charter received in 2002-2003 was \$7,200 per pupil. To raise additional funds, many charter schools turn to private sources, and they may borrow money from financial institutions for operating expenses. One-time start-up grants of up to \$150,000 also are available from the U.S. Department of Education and the Michigan Department of Education.

To date, most charter school contracts have been issued to K-8 schools, largely because high schools students are more expensive to educate. (The costs of science labs, athletic fields, and extracurricular activities are among the additional expenses borne by high schools.) This trend is changing gradually: In July 2003, about 72 of all 200 charters encompassed grades beyond 8th, because many charter schools add one grade per year as their students advance. Only 24 of the 200 charters, however, are stand-alone high schools for students in grades 9-12 or 10-12.

Since their inception, charter schools have been controversial. Issues presently receiving attention include the cap on university-authorized charters, collective bargaining for teachers, public accountability for educational management companies, and oversight of authorizing bodies and public school academy governing boards. In 2001 the Michigan Legislature established the Commission on Charter Schools to conduct a complete and objective review of all aspects of Michigan public school academies. The President of Michigan State University, Peter McPherson, chaired the Commission, which also included the Superintendent of Public Instruction, Tom Watkins, one member appointed each by the majority and minority leaders of the Senate and the House, and two members appointed by the Governor. In April 2002, the Commission issued its findings and recommendations; every member except Superintendent Watkins signed the report. The recommendations included a gradual increase in the number of schools chartered by universities, and the inclusion of schools chartered by Bay Mills in the cap; the establishment of an additional number of "special purpose" charters to target certain populations of students, including those at-risk; the authorization of joint charter high schools, created by two or more "feeder" charters; increased oversight and academic accountability involving the Superintendent of Public Instruction, the authorizers, and the charter school boards; and increased access to charter schools' financial information. To address reported problems and expand the number of charter schools in Michigan, many believe that the Commission's recommendations, in some form, should be enacted.

CONTENT

The bill would amend Part 6A (Public

School Academies) of the Revised School Code to do the following:

- **Provide for a graduated increase in the number of public school academies chartered by institutions of higher education with statewide jurisdiction (including a Federal tribally controlled community college), capping the number at 350 in the year 2012.**
- **Allow institutions of higher education to charter up to five high school PSAs per year, which would not be included in the cap.**
- **Allow two or more existing charter schools to establish a new charter school (a joint high school) and exempt joint high schools from the proposed five-per-year cap.**
- **Remove the prohibition against a community college's chartering a PSA in a first class school district.**
- **Allow a PSA to provide distance learning to a pupil outside the boundaries of its authorizer and to count the pupil in membership for school aid.**
- **Require authorizing bodies to hold a PSA's board of directors accountable for the school's academic performance.**
- **Require a PSA's board of directors to make available to the public information about its membership, and the school's operation and management, financial standing, teacher salary and certification, and health and safety.**
- **Limit the uses of PSAs' application fee revenue.**
- **Allow PSAs to give enrollment priority to children of employees and board members and to students of PSAs that formed a joint high school.**
- **Specify that the Michigan Department of Education (MDE) would have to assign a district code to a newly authorized charter school within 30 days, or the State Treasurer would have to assign a temporary code.**
- **Permit PSAs to issue bonds.**

The bill also would add Part 6C (Urban High School Academies) to the Code to allow State public universities to issue up to 15 contracts for "urban high school academies" in the Detroit school district. An urban high school academy would have to operate at least grades 9-12 within five years of beginning operation.

Contract priority would have to be given to applicants with net assets of at least \$50 million, that had a stated goal of increasing high school graduation rates, and that would operate at least grades 9-12 within three years of beginning operation.

In addition, the bill would amend the Code to regulate public schools' contracts with educational management companies.

The bill states that it would be known as the "Charter School Oversight and Accountability Act".

Issuance of PSA Contracts

Graduated Cap. The Code requires that an entity wishing to operate a public school academy apply to an authorizing body for a contract authorizing it to operate the PSA. Currently, the combined total number of contracts issued by State public universities for public school academies, regardless of grade, must not exceed 150. Under the bill, the maximum number of contracts issued by institutions of higher education with statewide jurisdiction for PSAs, other than high school PSAs, would be 170 through 2003 and would increase by 20 each year to a maximum of 350 in 2012 and subsequent years.

(The definition of "institution of higher education with statewide jurisdiction" would include a State public university and a Federal tribally controlled community college.)

The bill provides that the combined total number of contracts issued by institutions of higher education with statewide jurisdiction for high school PSAs, excluding joint high schools, would be limited to five per calendar year. A PSA would be a high school PSA if it operated all of grades 9 to 12, or if it would operate all of those grades within three school years after it began operation.

These limitations would not apply to a reissued or reconstituted contract for a PSA or to a new contract that was issued by an authorizing body within one year after the revocation of an existing contract.

The bill would delete a provision that prohibits a single State public university from issuing more than 50% of the maximum combined

total number of PSA contracts allowed for universities.

Joint High School. Under the bill, a public school academy could join with one or more other PSAs to form a consortium for the purpose of establishing and operating a joint high school. Joint high schools would not be subject to the proposed limit of five new high school academies per year. A copy of the consortium agreement would have to be incorporated into the contract of each participating PSA. A public school academy that did not currently operate grades 9-12, or any combination of those grades, would not be prohibited from offering some or all of those grades under an existing contract with an authorizing body.

Detroit Public Schools. Currently, community colleges are prohibited from issuing a contract for a public school academy to operate in a school district of the first class (the Detroit Public Schools). The bill would remove this prohibition.

District Codes. The bill provides that, within 30 days after a contract was submitted to the MDE, the Department would have to issue a district code to the public school academy for which the contract was issued. If the MDE did not do so, the State Treasurer would have to assign a temporary district code in order for the PSA to receive funding under the State School Aid Act.

Drop Outs. The bill states that authorizing bodies would be encouraged to issue contracts for PSAs for students who had dropped out of school or otherwise had failed to complete high school.

Authorizing Bodies

Authority to Issue. Under Part 6A, any of the following may act as an authorizing body to issue a contract to organize and operate one or more PSAs: the board of a school district that operates grades K to 12; an intermediate school board; the board of a community college; or the governing board of a State public university. The bill would refer to the board of a school district (rather than a district that operates grades K-12), and would replace "state public university" with "institution of higher education with statewide jurisdiction".

A contract issued by the board of a Federal tribally controlled community college before the bill's effective date would continue to be considered issued under the provision authorizing community colleges to issue PSA contracts, rather than under the provision authorizing institutions of higher education to do so.

Distance Learning. Under Part 6A, the board of a school district, ISD, or community college may not issue a contract for a PSA to operate outside the boundaries of that school district, ISD, or community college. Under the bill, these limitations would not prohibit a PSA from providing instruction to a pupil residing outside the school district's, ISD's, or community college's boundaries through distance learning and counting the pupil in membership as provided under the State School Aid Act.

Suspension. The Code provides that, if the State Board of Education finds that an authorizing body is not engaging in appropriate continuing oversight of one or more PSAs operating under a contract issued by the authorizing body, the Board may suspend the power of the authorizing body to issue new contracts to organize and operate PSAs. Under the bill, the State Board could suspend the authorizing body's power to issue new contracts only by unanimous vote.

Application Fee. The Code prohibits an authorizing body from charging a fee, or requiring reimbursement of expenses, for considering an application for a PSA contract, issuing a contract, or providing oversight of a contract, in an amount that exceeds a combined total of 3% of the total State school aid received by the PSA in the school year in which the fee or reimbursement is charged. Under the bill, the authorizing body could use the fee only for the following purposes:

- Considering applications and issuing or administering contracts.
- Compliance monitoring and oversight of PSAs.
- Training for PSA applicants, administrators, and boards of directors.
- Technical assistance to PSAs.
- Academic support to PSAs, or to pupils or graduates of PSAs.
- Evaluation of PSA performance.
- Training of teachers, including supervision of teacher interns.
- Other purposes that assisted PSAs or

traditional public schools in achieving improved academic performance.

Merger. The bill provides that, if the authorizing body of a PSA consolidated or otherwise merged with another entity that was eligible to serve as an authorizing body, the contract for the PSA would remain valid and the successor entity would be considered to be the authorizing body for the PSA, and would have to perform all of the duties of the authorizing body under the Code.

Dissolution. Under the bill, if the authorizing body of a PSA dissolved or otherwise ceased to exist, the contract for the PSA would remain valid, and the PSA could continue to operate for 90 days. The board of directors of the PSA could arrange for the contract to be reauthorized during this period by another authorizing body. The Superintendent of Public Instruction could extend this period in his or her discretion if he or she determined that an extension was in the best interest of the pupils of the PSA. If the contract were not reauthorized within the 90-day period, it would be void. The cap on new PSA contracts proposed by the bill would not apply to a contract that was reauthorized in this manner.

PSA Contract Provisions

Amendments to Contract. Currently, a contract issued by an authorizing body to organize and administer a PSA must contain a number of provisions, including a description of the process for amending the contract. The bill specifies that an authorizing body could approve amendment of the contract with respect to any provision contained within it.

Collective Bargaining Agreements; ISDs. Under the bill, if a PSA contract were issued by an intermediate school district for a school that was a conversion of an existing program of the ISD, was a program substantially similar to an existing program of the ISD, or was a program or class managed by the ISD, both the application for the contract and the contract itself would have to contain an assurance that employees of the public school academy would be covered by the collective bargaining agreements that applied to other employees of the ISD employed in similar classifications in schools or programs that were not PSAs. Currently, only a PSA authorized by a school district must include collective bargaining assurances in its contract and application for a contract.

Conflict of Interest. The bill would require a PSA contract to contain a requirement that the board of directors ensure compliance with the requirements of Public Act 317 of 1968, which governs contracts of public servants with public entities.

Antinepotism Clause. Under the bill, a contract would have to contain a requirement that the board of directors prohibit specifically identified family relationships between members of the board, persons who had an ownership interest in or were officers or employees of an educational management company involved in the operation of the PSA, and employees of the PSA. The contract would have to identify the specific prohibited relationships consistent with applicable law. (The bill would define "educational management company" as an entity that entered into an agreement with the governing board of a public school to provide comprehensive educational, administrative, management, or instructional services or staff to the public school.)

Public Disclosure. Under the bill, a contract would have to require the PSA's board of directors to make information concerning the school's operation and management available to the public and to the authorizing body in the same manner as State law requires for school districts. Also, the contract would have to require the board of directors to collect, maintain, and make available to the public and the authorizing body, in accordance with applicable law and the contract, at least all of the following information:

- A copy of the contract issued by the authorizing body for the PSA.
- A list of currently serving members of the board, including their name, address, and term of office; copies of policies approved by the board; board meeting agendas and minutes; a copy of the budget approved by the board and of any amendments to the budget; and copies of bills paid for amounts of \$10,000 or more as submitted to the board.
- Quarterly financial reports submitted to the authorizing body.
- A current list of teachers working at the PSA that included their individual salaries; copies of the teaching certificates or permits of current teaching staff; and evidence of compliance with the criminal

background and records checks and unprofessional conduct check required under the Code for all teachers and administrators working at the academy.

- Curriculum documents and materials given to the authorizing body.
- Proof of insurance as required by the contract.
- Copies of facility mortgages, leases, or deeds, and of any equipment leases.
- Copies of any management contract or services contract approved by the board.
- All health and safety reports and certificates, including those relating to fire safety, environmental matters, asbestos inspection, boiler inspection, and food service.
- Any management letters issued as part of the annual financial audit required under the Code.
- Any other information specifically required under the Code.

Pupil Admission & Recruitment. Under the bill, a contract issued by an authorizing body would have to require the board of directors of the PSA to demonstrate to the satisfaction of the authorizing body that the PSA had made a reasonable effort to advertise its enrollment openings in a newspaper of general circulation in the intermediate school district in which the PSA was located; and that the open enrollment period for the PSA lasted at least two weeks and the enrollment times included some evenings and weekends.

The contract also would have to require the board to demonstrate, to the authorizer's satisfaction, that the PSA had done the following to recruit pupils who were eligible for special education programs and services to apply for admission: made reasonable efforts to advertise all enrollment openings to organizations and media that regularly serve and advocate for individuals with disabilities within the boundaries of that ISD; and include in all pupil recruitment materials of a statement that appropriate special education services would be made available to pupils attending the school as required by law.

Employee Compensation. A PSA contract would have to require the board of directors to prohibit an individual from being employed by the PSA in more than one full-time position and simultaneously being compensated at a full-time rate for each of those positions.

A contract also would have to require that, upon request, the board of directors report to the authorizing body the total compensation for each individual working at the PSA.

PSA Bonds; Indebtedness

Under Part 6A, PSAs may incur temporary debt in accordance with Section 1225 of the Code (which authorizes school districts to borrow money for operating purposes). The bill also would permit PSAs to issue bonds under Section 1351a (which permits districts to borrow money and issue bonds for capital expenditures, such as building a new school or remodeling, but not for maintenance expenditures). The bonds would be full faith and credit obligations of the PSA, pledging the general funds or any other money available for such a purpose. The bonds would be subject to the Revised Municipal Finance Act.

The bill states that an agreement, mortgage, loan, or other instrument of indebtedness entered into by a PSA and a third party would not constitute an obligation, either general, special, or moral, of the State or an authorizing body. The full faith and credit or the taxing power of the State or any agency of the State, or the full faith and credit of an authorizing body, could not be pledged for the payment of any public school academy bond, note, agreement, mortgage, loan, or other instrument of indebtedness. The bill specifies that Part 6A would not impose any liability on the State or an authorizing body for any debt incurred by a PSA.

Enrollment Priority

The Code prohibits a PSA from discriminating in its pupil admissions policies on the basis of intellectual or athletic ability, status as a handicapped person, or any other basis that would be illegal if used by a school district. A PSA may grant enrollment priority, however, to siblings of pupils currently enrolled in the PSA. The bill also would permit a PSA to give enrollment priority to a child (including an adopted child or legal ward) of a person employed by or at the PSA, or on the board of directors of the PSA; or to a pupil who applied for admission to a joint high school, if the pupil had attended one or more of the PSAs that were members of the consortium formed to establish and operate the joint high school and had completed the grade levels offered by those PSAs.

Responsibilities of Authorizing Bodies

Joint Agreements. The Code requires an authorizing body that issues a contract for a PSA to oversee the operations of each PSA, sufficient to ensure that it is in compliance with the terms of the contract and with applicable law. The bill would permit an authorizing body to enter into an agreement with one or more other authorizing bodies to oversee a public school academy, or to carry out any function of an authorizing body.

Academic Standards. The bill would require authorizing bodies to develop and implement a process for holding a PSA board of directors accountable for meeting applicable academic performance standards set forth in the contract, and for implementing corrective action for a PSA that did not meet those standards.

Other Requirements. The bill would require an authorizing body to take measures to ensure that a PSA board operated independently of any educational management company involved in the operation of the PSA; oversee and ensure that the pupil admission process was operated in a fair and open manner, and was in compliance with the contract and Part 6A; and ensure that the board maintained and released information as necessary to comply with applicable law. If the authorizing body were the governing board of a Federal tribally controlled community college, it would have to comply with Section 1475 of the Code (which requires such colleges to act as a public educational body of the State, subject only to the State Constitution and Michigan law).

Statutory Compliance

The Code requires PSAs to comply with the Open Meetings Act, the Freedom of Information Act, the public employment relations Act, and the prevailing wage law. The bill also would require PSAs to comply with Public Act 566 of 1978 (incompatible public offices), Public Act 317 of 1968 (conflict of interest), the Uniform Budgeting and Accounting Act, the Revised Municipal Finance Act, and the Federal No Child Left Behind Act.

Revocation

Authority to Revoke & Reissue. The Code permits an authorizing body to revoke a contract if the body determines that the PSA has failed to abide by and meet the

educational goals in the contract, to comply with all applicable law, or to meet generally accepted public sector accounting principles; or if other grounds for revocation, specified in the contract, exist. The Code states that the decision of an authorizing body to revoke a contract issued to a PSA is solely within the discretion of the authorizing body. Under the bill, the decision to issue, reissue, or reconstitute a contract also would be solely within the discretion of the body.

Corrective Measures. The bill would require an authorizing body, before revoking a contract, to consider and take corrective measures to avoid revocation. The body would have to reconstitute the PSA in a final attempt to improve student educational performance, or to avoid interruption of the educational process. An authorizing body would have to include in the contract a reconstituting provision that identified these corrective measures, including removing one or more board members, withdrawing approval to contract with an educational management company, or appointing a new board of directors or a trustee to take over operation of the academy.

Transition; Return of State Funds. If it revoked a contract, an authorizing body would have to work with a school district or another PSA, or with a combination of those entities, to ensure a smooth transition for the affected pupils. If the revocation occurred during the school year, the authorizing body, as the fiscal agent for the PSA, would have to return to the State Treasurer any school aid funds attributable to the affected pupils, for deposit into the State School Aid Fund. The State Treasurer would have to distribute funds to the school district or PSA in which the pupils enrolled after the revocation, under a methodology established by the MDE and the Center for Educational Performance and Information (CEPI).

New Contract. If an authorizing body revoked a contract, it could issue a new contract within one year after the revocation, and the cap on the total number of PSA contracts issued by institutions of higher education would not apply.

Notification. Within 10 days after a PSA's contract terminated or was revoked, the authorizing body would have to give the

Superintendent of Public Instruction written notice of the name of the PSA, and the date of the termination or revocation.

Distribution of Assets. In the event of a contract termination or revocation, title to and interests in all real and personal property, and other assets owned by the PSA, would revert to the State. The property would have to be distributed according to the following requirements:

- Within 30 days following the termination or revocation, the PSA board of directors would have to hold a public meeting to adopt a plan of distribution of assets and to approve the dissolution of the PSA corporation, in accordance with Chapter 8 of the Nonprofit Corporation Act.
- The PSA would have to file a certificate of dissolution with the Department of Consumer and Industry Services within 10 business days following board approval.
- Simultaneous with the filing of the certificate of dissolution, the PSA's board of directors would have to give a copy of its plan of distribution of assets to the State Treasurer for approval. Within 30 days, the State Treasurer would have to review and approve the plan. If the proposed plan were not approved within 30 days, the State Treasurer would have to give the board an acceptable plan of distribution.
- The State Treasurer would have to monitor the PSA's winding up of the dissolved corporation in accordance with the approved plan of distribution.
- As part of the plan of distribution, the PSA board would have to designate the Director of the Department of Management and Budget, or his or her designee, to dispose of all real property of the PSA corporation in accordance with the directives developed for disposition of surplus land and facilities under Section 251 of the Management and Budget Act (MCL 18.1251).
- If the PSA board failed to take any necessary action as required by the bill, the State Treasurer could suspend the board and appoint a trustee to carry out the plan of distribution. The trustee would have all the rights, powers, and privileges under law that the PSA board had before being suspended.
- Following the sale of the real or personal property, or the interests in it, and after payment of any PSA debt secured by the

property or interests in it, the PSA board, or the appointed trustee, would have to forward any remaining money to the State Treasurer, who would have to deposit the money in the State School Aid Fund.

(Responsibilities of the State Treasurer also could be performed by his or her designee.)

Urban High School Academies

The bill would create Part 6C of the Code to permit the governing board of a State public university to act as an authorizing body to issue a contract for the organization and operation of an urban high school academy in the Detroit school district. A maximum of 15 urban high school academy contracts could be issued for initial terms of 10 years. If an urban high school academy met the educational goals set forth in the contract and operated in substantial compliance with Part 6C, the authorizing body would have to renew the contract automatically for subsequent 10-year terms.

An urban high school academy would have to include at least grades 9 through 12 within five years after beginning operation, and could include other grades or any configuration of these grades, as specified in its contract.

To obtain a contract to organize and operate one or more urban high school academies, an entity could apply to the governing board of a State public university. The contract would have to be issued to an urban high school academy corporation designated by the entity applying for the contract. (Under Part 6C, an "entity" would be a nonprofit corporation organized under the Nonprofit Corporation Act that had been granted tax-exempt status under Section 509(a) of the Internal Revenue Code.) An authorizing body would not be required to issue a contract to any entity.

The application would have to contain the same information as an application for a standard PSA, including the name of the entity, a list of the proposed members of the board of directors, the proposed articles of incorporation, the governance structure of the proposed academy, and a copy of its educational goals. An urban high school academy contract application also would have to include a financial commitment by the entity applying for the contract to construct or renovate the building or buildings that the academy would occupy.

As required for standard PSAs, an authorizing body would have to issue contracts for urban high school academies on a competitive basis, taking into consideration the resources available for the proposed academy, the population to be served, and the educational goals to be achieved. In addition, the authorizing body for an urban high school academy would have to give priority to applicants that demonstrated that the proposed school would operate at least all of grades 9 through 12 within three years, had a stated goal of increasing high school graduation rates, and had received commitments for financial and educational support from the entity applying for the contract, and that the entity submitting the application had net assets of at least \$50 million.

Like standard PSAs, an urban high school academy would be considered a public school under Article VIII, Section 2, of the State Constitution, and a school district for the purposes of Article IX, Section 11 of the Constitution. (Article VIII, Section 2 requires the Legislature to maintain and support a system of free public elementary and secondary schools, and requires school districts to provide for pupil education without discrimination as to religion, creed, race, color, or national origin. Article IX, Section 11 requires the establishment of the State School Aid Fund.)

An urban high school academy also would be a school district for purposes of Sections 1225 and 1351a of the Code (which allow school districts to borrow money for operating purposes and issue bonds for capital expenditures). An urban high school would be subject to the leadership and general supervision of the State Board over all public education under Article VIII, Section 3 of the Constitution. The bill states that an urban high school academy would be a body corporate and a governmental agency, and that the powers granted to it would constitute the performance of essential public purposes and governmental functions of the State.

All of the other provisions that currently apply, and that would apply under the bill, to a standard PSA would apply to an urban high school academy, including those regarding the following: the assignment of district codes; authorizing bodies (suspension, application fees, merger and dissolution); contract provisions (conflict of interest, antinepotism,

public disclosure, pupil admission, and employee compensation); enrollment priority; the responsibilities of authorizing bodies (joint agreements, academic standards, and the other requirements proposed by the bill); statutory compliance; revocation; and educational management companies.

Educational Management Companies

Governing Board Assurances. Beginning with contracts entered into after the bill's effective date, if the governing board of a public school entered into a contract with an educational management company to carry out the operations of a public school under the Code, the governing board would have to ensure all of the following: that the board had conducted sufficient due diligence to conclude that the educational management company had sufficient educational expertise and management experience to provide the agreed services; that the governing board would obtain independent legal counsel in all negotiations with the company; and that, if the governing board were the board of directors of a public school academy, pursuant to the contract between the board and the educational management company, the company would give to the board all financial and other information required to comply with the reporting requirements contained in the contract between the board and its authorizing body.

Contract Provisions. The contract between the governing board and the educational management company would have to require that the company give to the governing board information regarding any teachers, administrators, and support staff employed by the company and assigned to work at the public school, including at least all of the following: name; education, including highest degree attained; salary; copy of teaching certificate or other required permit or credential, if required for the position; description of relevant experience; and employment record.

The contract also would have to require that the educational management company give to the governing board information regarding the business operations of the school, including at least all of the following: financial records and information concerning the school's operation, including budgets and detailed records of funds received from the State and other entities, expenditure and investment of those

funds, carryover, and contractual arrangements or agreements entered into by the company as an agent of the governing board; financial records and information concerning leases to which the governing board was a party, including leases for equipment, physical facility space, or institutional and educational materials; and financial records and information concerning mortgages and loans to which the governing board was a party.

If the governing board were the board of directors of a PSA, the contract would have to require the educational management company to make available to the board information concerning the operation and management of the PSA, including at least all of the information necessary to comply with the reporting requirements contained in the contract between the board and its authorizing body.

These requirements would not apply to a contract to furnish substitute teachers.

MCL 380.501 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

When Part 6A was added to the Code, its supporters claimed that public school academies would be a new type of public school, where innovation would flourish, teachers would be empowered, and a particular philosophy, approach, or focus could be applied. They also pointed out that traditional public schools, in turn, might adopt some of these innovations in an effort to retain and attract students. These claims still apply, now that Michigan has had charter schools for 10 years and they have proven to be popular.

By increasing the cap on university-chartered schools, the bill would meet public demand for additional public school academies. More charter schools would provide a wider range of options to low-income parents, many of whom have children trapped in failing public schools but do not have the resources for private schools. The bill would benefit Detroit especially, as it would allow a community

college to charter schools in that city, and would provide for 15 urban high school academies to be established, at no cost to the city, within its boundaries. Detroit is in need of innovative, academic schools at all levels. In 2002, 96 of its elementary and middle schools failed to meet adequate yearly progress standards established by the Michigan Department of Education and mandated by the Federal No Child Left Behind Act. Meanwhile, Michigan's authorizers received good marks, according to a report published by the Thomas B. Fordham Institute: They ranked eighth among the 24 jurisdictions reviewed in the study, as reported in the *Detroit News* (7-3-03). Allowing the creation of additional charter schools would enable parents to choose the best educational setting for their children, regardless of their income or geographic location.

Response: Although public school academies were created to spur innovation in teaching and learning, a study published by Public Sector Consultants in June 2000 found them to be more an experiment in organization than an innovation in curriculum, according to a recent commentary in the *Detroit Free Press* (6-17-03). During Senate Education Committee testimony, representatives of the charter community were unable to point to a single program a PSA offered that a public school did not. Parents already have choice within the traditional public schools because many districts participate in a Schools of Choice program, which permits students to attend any school in their county, ISD, or adjoining district with openings (if both schools choose to participate in the program). Public magnet schools offer another type of educational choice. Additional charter schools also could divert more money from traditional public schools and place it in the hands of private educational management corporations, which tend to spend more on administrative costs than on teaching and learning. (According to the American Federation of Teachers, company-run charter schools spend \$1,000 more per pupil on administrative costs and less on instruction, compared with regular school districts.)

Additionally, the Public Sector Consultants study found that charters outside of the Wayne Intermediate School District, which includes Detroit, generally performed better than charters located within the district. Detroit should not be inundated with new

charter schools, based on their mediocre performance in that city. Further, opening additional charter schools in Detroit could undercut reform measures already being put in place there.

Supporting Argument

The bill would enact many of the recommendations made by the Commission on Charter Schools in April 2002. All of the recommendations regarding authorizer authority and accountability, revocation of contracts, and conflict of interest are in the bill, and nearly all of those relating to educational management companies and public school academies' release of information are proposed as well.

For example, the bill would require more than a dozen new accountability provisions in the contracts between authorizers and charter boards, and those between charters and educational management companies. Among other things, the latter contracts would have to require that educational management companies open their books to the public, which would correct a reported problem of these private organizations' sometimes refusing State officials access to their records and information. Further, contracts between schools and authorizers would have to contain an antinepotism clause, addressing another reported problem of familial relationships between those in an educational management company and on the charter board of directors, and/or within the authorizing organization. Taken together, the information an authorizing body would require about its charter schools' operations, whether or not they had contracted with an educational management company, should serve to make public much more information about the schools' financial operations than is presently available.

Also, the contract issued by an authorizing body would have to require that a charter school's board of directors make efforts to recruit special education students. These efforts would have to include advertising all enrollment openings to organizations and media that regularly serve and advocate on behalf of individuals with disabilities within the boundaries of the school's ISD. This was a recommendation of the Commission, based on findings that charters served a much smaller percentage of special education students than did traditional public schools. Some Commission members felt that students with

disabilities were being discouraged from attending PSAs because the services these students require are very expensive. The bill would correct this.

Additionally, the bill would require authorizers to develop and implement a process for holding a charter board of directors accountable for meeting applicable academic performance standards, and to implement corrective action for a charter that did not meet those standards. This recommendation also comes directly from the Commission, and was a response to findings that there was a lack of direct accountability for charter schools' academic performance.

Supporting Argument

As recommended by the Commission on Charter Schools, the bill would help to close the Bay Mills Community College loophole, by including charters issued by Bay Mills in the maximum number of total charters issued by institutions of higher education. Presently, this authorizer may issue an unlimited number of charters, which is an open invitation for sites to be chosen by educational management companies anywhere in the State, rather than by the governing board of a charter school whose members are accountable to the parents of those who attend. This presents problems of accountability. When a for-profit management company selects a city, and owns the school building, the school's governing board might feel beholden to the corporation, rather than to the parents of its students. Currently, about 70% of all charters are affiliated with educational management companies, the highest percentage by far in the country. Public tax dollars should not be funding private corporations, especially when traditional public schools are suffering under the economic downturn and the worst State budget crisis in 30 years.

Supporting Argument

Public school academy boards are not presently accorded due process in matters of revocation and renewal. Authorizers may revoke a school's charter at any time if it determines that the school has failed to abide by the charter. The public school academy is often denied a chance to plead its case, or to work with the authorizer to establish a plan for improvement. The bill would address this by requiring an authorizer to consider and take corrective measures to avoid revoking a contract.

Response: Charter schools also should be given adequate notice that their contract will or will not be renewed.

Opposing Argument

Regarding the maximum number of charters allowed, the bill would clearly deviate from recommendations of the Commission on Charter Schools. The Commission had recommended increasing the cap on university-chartered PSAs (including those chartered by Bay Mills) by five in 2002 and 10 in each of the following five years; allowing 15 special purpose PSAs per year for five years; capping university-issued charters to 10 per year from 2008 through 2017; and allowing the new charters only for special purpose PSAs. In contrast, the bill would allow universities to issue an additional 200 charters for standard PSAs by 2012, plus five high school PSAs per year; and would not provide for special purpose PSAs or limit the number of university-issued charters in any school district.

Michigan already is among the top three states (surpassed only by Arizona and California) in the number of charter schools it authorizes, and the academic achievements of charters do not match those of traditional public schools, let alone exceed them. A recent report on charter schools by Standard and Poor revealed that in half of all schools authorized by Central Michigan University (CMU), students in all grades scored lower on MEAP tests than the average for the district where they were located, according to the *Detroit Free Press* (4-25-03). Only six CMU-chartered schools exceeded the local district's average in all grades. Further, according to a commentary in the *Detroit Free Press* (6-17-03), the Brookings Institute found that "charter schools score significantly below regular public schools on achievement tests", and that Michigan charter schools were the lowest-achieving schools in the Institute's 10-state study. It would be illogical to allow more charter schools to open when they have failed to improve academic performance.

Response: The Public Sector Consultants study published in June 2000 presents a different view of public school academy performance. According to the study's key findings, "Over the span of years for which data are now available, PSAs outperformed traditional public schools on the Michigan Department of Education's measure of 'adequate yearly progress' in all subject areas." The study also found that PSAs in

their third year of operation generally performed better than PSAs that had been in operation for fewer years. Charter schools need to be given a chance to flourish.

Opposing Argument

Significantly increasing the number of charter schools would overextend the already-strapped Michigan Department of Education, which only has 3.5 employees and a \$500,000 budget to regulate all of the State's charter schools. By comparison, Central Michigan University reportedly has 65 people assigned to oversee the schools if has chartered. The bill should make the expansion of charter schools contingent upon additional funding to the Department, so that the State could properly oversee the schools.

Legislative Analyst: Claire Layman

FISCAL IMPACT

The State would experience a fiscal impact under the bill in two ways: paying additional foundation allowance funds for new pupils in membership due to the increase in the "cap", and receiving returned funds upon dissolution of a PSA during a school year.

A similar fiscal impact would arise from the new urban high school academies. A total of 15 new academies would be allowed to open in the Detroit school district under the bill. If one assumed that the 15 academies each housed 350 students, and all opened in the first year, these schools would cost the State \$14 million in the first and second years, and \$8.5 million yearly thereafter.

The School Aid Act defines a pupil in membership as 80% weighted on the current-year fall pupil count, plus 20% weighted on the previous-year February count. However, during a PSA's first two full years of operation, the PSA is paid for pupils weighted on a current-year basis: 50% of the pupils counted in the current fall plus 50% of the pupils counted in the following February. Combining this method of paying for a new PSA's pupils with a historical survey that 25% of a PSA's pupils come from outside of the existing public school system (i.e., from private schools or home schools), leads to an additional cost to the State from increasing the charter school "cap" by 20 per year. Estimating this cost (assuming an average PSA size of 350 students, a per-pupil payment of \$6,700, and that all 20 new schools would open each year)

yields an additional foundation allowance payout from the School Aid budget of \$18.7 million in the first year, \$37.4 million in the second year, and then an additional (cumulative) cost of \$11.7 million per year through 2013, when the maximum estimated additional cost under the given assumptions would be \$131 million. Thereafter, the yearly cost of this legislation under the given assumptions would be \$117 million. This estimate hinges on the assumptions that all 20 new schools would open each year, that the size of each school would be 350 pupils, and that 25% of those 350 pupils would come from outside of the existing public school system. It is possible that after a certain point, the percentage of pupils coming into the new charter schools from outside of the existing public school system would drop, thereby reducing the fiscal impact on the State.

On the other side, under Section 507(7), if an authorizing body revoked a contract during a school year, the authorizing body would have to return to the State Treasurer any School Aid funds received by the authorizing body attributable to the affected pupils, for deposit into the School Aid Fund.

For PSAs, the bill includes several provisions that carry fiscal impacts. First, the bill would allow PSAs to borrow money by issuing bonds for capital needs. Though the PSAs still would not have taxing authority, it is anticipated that by having bonding authority, PSAs could possibly see decreased capital costs through increased borrowing flexibility, though estimating an actual fiscal impact is not practicable.

Second, by requiring PSAs that would be conversions of existing programs of intermediate school districts to cover employees of the PSAs according to the collective bargaining agreements of the ISD, additional costs to the PSA could arise if the value of the ISD collective bargaining agreements were to exceed what the PSA would have otherwise compensated its employees. The opposite is also true, making the fiscal impact of this provision indeterminate.

Third, authorizers (as local units of government) could see increased costs due to the proposed restriction that authorizer fees could not be used to support any activities other than technical support to the PSA,

considering applications, issuing contracts, oversight, and direct academic support to the PSA. If an authorizer is currently using the authorizer fee to support activities other than those listed above, the authorizer would face increased costs if it wanted to continue funding those other activities.

Fourth, the bill includes explicit instructions to PSAs for advertising enrollment openings and procedures. If a PSA is not currently undertaking the enrollment advertising to the extent proposed, increased costs would result as the PSA complied with the new provisions.

Fiscal Analyst: Kathryn 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.