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SFA**BILL ANALYSIS**

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Senate Bill 393 (as introduced 4-23-03)
Sponsor: Senator Wayne Kuipers
Committee: Education

Date Completed: 5-8-03

CONTENT

The bill would create the "Charter School Oversight and Accountability Act" within Part 6A (Public School Academies) of the Revised School Code. The bill would do the following:

- **Provide for a graduated increase in the number of public school academies (PSAs) chartered by State public universities, capping the number at 450 in the year 2011.**
- **Restrict the number of contracts issued by State public universities for high school PSAs to five per year until 2012.**
- **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.**
- **Remove the prohibition against a community college's chartering a PSA in a first class school district (the Detroit Public Schools).**
- **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.**
- **Require authorizing bodies to hold a PSA board of directors accountable for the school's academic performance.**
- **Provide that a PSA's board of directors would have to make available to the public information concerning its membership, operation and management, financial standing, teacher salary and certification, and health and safety.**
- **Allow PSAs to give enrollment priorities to siblings of students,**

children of employees and board members, and students of PSAs that formed a joint high school.

The bill also would amend the Code to regulate public schools' contracts with educational management companies.

Issuance of PSA Contracts

Graduated Cap. The Code requires that an entity wishing to operate a public school academy apply to an authorizing body--the board of a school district, an intermediate school board, or the board of a community college--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. The bill would increase the maximum number of contracts for PSAs, other than high school PSAs, by 30 each year, until a limit of 450 was reached in 2011. (The bill provides that the combined total number of contracts issued by State public universities for high school PSAs, excluding joint high schools, would be limited to five per calendar year until 2012. 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.

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. Also, the Code prohibits community colleges from issuing contracts for a PSA outside the boundaries of the community college district. The bill would retain this provision.

MDE, 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 issue a district code within the 30 days, 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.

Authorizing Bodies

Suspension of Authorizing Body; Unanimous Vote. 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. Currently, an authorizing body is prohibited from charging a fee, or requiring reimbursement of expenses, for considering an application for a contract, issuing a contract, or providing oversight of a PSA 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 a portion of this fee to provide technical assistance to the PSA, and would be prohibited from using any portion of the fee for any purpose other than considering applications and issuing contracts or for oversight of, technical assistance to, and direct academic support to PSAs.

Mergers. 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.

Dissolutions. 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, both the application for a contract and the contract itself, issued by an intermediate school district (ISD) 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, 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.

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.

Anti-Nepotism 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 who 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 its operation and management available to the public and to the authorizing body in the same manner as is required by State law 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 they were 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 Process. 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. A contract issued by an authorizing body would have to require the board of directors of the PSA to demonstrate all of the following 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.
- That the PSA had made the following additional efforts to recruit pupils who were eligible for special education programs and services to apply for admission: reasonable efforts to advertise all enrollment openings to organizations and media that regularly served and advocated for individuals with disabilities within the boundaries of that ISD; and inclusion 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, that the open enrollment

period for the PSA lasted at least two weeks, and that the enrollment times included some evenings and weekends.

Double Dipping. 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.

Compensation of Employees. A contract 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

The bill would permit PSAs to issue bonds under Section 1351a of the Code (which permits districts to borrow money and issue bonds for capital expenditures (building a new school, or remodeling, for example) 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.

Further, 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 provides that a PSA may not charge tuition, and that it must not discriminate 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. The bill would permit a PSA to give enrollment priority to one or more of the following: a

sibling of a pupil enrolled in the PSA; 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 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 submit a copy of the contract to the MDE within 10 days after issuing the contract; and that it oversee the operations of each PSA, sufficient to ensure that the PSA 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 that authorizing bodies 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 a Federal tribally controlled community college, the authorizing body 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

Currently, the Code requires that PSAs 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 198 (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 permit an authorizing body, before revoking a contract, to consider and take corrective measures to avoid revocation. The body could reconstitute the PSA to improve student educational performance, or to avoid interruption of the educational process. An authorizing body could include in the contract a reconstituting provision that identified these corrective measures, including removing one or more board members, withdrawing approval to contract, or appointing a new board of directors or a trustee to take over operation of the academy.

Transition; Return of State Funds. If an authorizing body revoked a contract, the 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 that were 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

Department of Education and the Center for Educational Performance and Information (CEPI).

New Contract. If an authorizing body revoked a contract, the body could issue a new contract within one-year after the revocation without making that school subject to the cap on the total number of PSA contracts issued by universities.

Notification. Within 10 days after a PSA's contract terminated or was revoked, the authorizing body would have to notify the Superintendent of Public Instruction in writing of the name of the PSA, and the date on which the contract terminated or was revoked.

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 of directors' 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, or his or her designee, would have to review and approve the plan. If the proposed plan were not approved within 30 days, the State Treasurer, or his or her designee, would have to give the board of directors an acceptable plan of distribution.
- The State Treasurer, or his or her designee, 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, or his or her designee, 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.

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 of directors 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 contain at least all of the following:

- A requirement 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 personal information: 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.

- A requirement 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 of those funds, 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 public school academy, a requirement that the educational management company make available to the board of directors 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.

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.

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 30 per year. Estimating this cost (assuming an average PSA size of 350 students, a per-pupil payment of \$6,700, and that all 30 new schools would open each year) yields an additional foundation allowance payout from the School Aid budget of \$28 million in the first year, \$56 million in the second year, and then an additional (cumulative) cost of \$17 million per year through 2013, when the maximum estimated additional cost under the given assumptions would be \$208 million. Thereafter, the yearly cost of this legislation under the given assumptions would be \$170 million. This estimate hinges on the assumptions that all 30 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 an actual fiscal estimate 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.

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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.