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BILL



ANALYSIS

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Senate Bill 1358 (as introduced 11-8-12)
Sponsor: Senator Phil Pavlov
Committee: Education

Date Completed: 11-27-12

CONTENT

The bill would amend the Revised School Code to establish the Education Achievement Authority (EAA) in statute. Currently, the EAA exists as a Michigan public body corporate, created by an interlocal agreement between the Board of Regents of Eastern Michigan University and the School District for the City of Detroit in August 2011.

The bill also would do the following:

- Provide for an Authority Board, executive committee, and Chancellor.
- Transfer the powers and duties of the State Reform District to the EAA.
- Require a public school to be placed in the State Reform District and under the control of the EAA if it had been listed among the lowest achieving 5% of public schools for three consecutive years, or if the school's redesign plan were disapproved or unsuccessful.
- Transfer to the Chancellor certain responsibilities concerning intervention models for schools in the Reform District.
- Replace provisions concerning collective bargaining and seniority rights of employees.
- Require the emergency financial manager of a school district to inventory all buildings used as a school and determine their suitability for use.
- Require each school district in the State to give the Department of Education an annual list of unused

- buildings that had been used for classroom instruction, and to maintain them in a condition suitable for use as a school building.
- Provide for the lease and sale of unused available buildings.

Confirmation of EAA

The bill would confirm the EAA as part of the State's system of public schools and outline a number of purposes of the Authority. The EAA would possess the powers, duties, rights, obligations, functions, and responsibilities vested in it under the interlocal agreement, any transfer contract between the EAA and a school district, the State School Aid Act or its successor law, and any other law of this State. The EAA's activities would be considered the performance of essential public purposes and governmental functions of this State and would be exempt from State and local taxes.

A school operated, managed, authorized, established, or overseen by the EAA would be considered a public school, with the EAA as a school district. The EAA would continue to exist as stated in the bill and under the interlocal agreement, notwithstanding the withdrawal of Detroit Public Schools (DPS) or Eastern Michigan University (EMU).

Authority Board, Executive Committee, & Chancellor

The bill would require the EAA to have an Authority Board as set forth in the interlocal agreement. The agreement states that the

Authority Board is responsible for authorizing and approving the annual audit of the EAA, evaluating the Authority's performance, and, if required by law, reviewing acts of the executive committee. The Board must consist of 11 members, two appointed by DPS, two appointed by EMU, and seven appointed by the Governor. Under the bill, if a vacancy arose with the appointing district or university no longer a party to the interlocal agreement, the member would instead be appointed by the Governor. Beginning January 1, 2014, the bill would change the number of Board members and process by which members are chosen. The Board would consist of seven members, with all seven appointed by the Governor. Five would be selected with the advice and consent of the Senate, one would be selected from among a list of three nominees submitted by the Senate Majority Leader, and one would be selected from among a list of three nominees submitted by the Speaker of the House. Board members would serve terms of four years, except of those first appointed by the Governor, one would serve for one year, two for two years, and two for three years.

The bill would require the EAA to have an executive committee as set forth in the interlocal agreement. The agreement states the executive committee is responsible for exercising the powers of the EAA, including appointing the Chancellor, making inquiries, conducting studies or investigations, holding hearings, and receiving comments from the public; it also provides that the committee may consult with outside experts to perform its duties. The committee must consist of five members, including a chairperson, appointed by the Governor, with at least one member selected from each of DPS's and EMU's appointed Authority Board members. Under the bill, if a vacancy arose with the appointing district or university no longer a party to the interlocal agreement, the member would instead be appointed by the Governor. The executive committee would be required to adopt ethics policies governing the conduct of its members, Authority Board members, and officers and employees of the EAA, and establish policies and procedures requiring disclosure of familial or business relationships that could give rise to a conflict of interest.

Under the interlocal agreement, meetings of the Authority Board and executive

committee must comply with the Open Meetings Act (OMA), use majority vote, and have a majority of members (quorum) for business transactions. Members of the Authority Board and executive committee serve without compensation, but may be reimbursed for actual and necessary expenses.

The bill would require the Chancellor of the EAA to administer all programs, funds, personnel, facilities, contracts, and all other administrative and academic functions of the Authority, subject to oversight by the executive committee as provided in the interlocal agreement. Before January 1, 2014, the Chancellor would be appointed and subject to oversight by the executive committee; thereafter, he or she would be appointed and subject to oversight by the Authority Board.

State Reform District

Generally, under current law, the State Superintendent publishes an annual list of the lowest achieving 5% of all public schools in the State, and the school boards of those lowest achieving districts work with the State School Reform/Redesign Officer to implement a redesign plan, as part of the State School Reform/Redesign School District.

Under the bill, the State Superintendent would be required to notify the State School Redesign Officer (currently, the State School Reform/Redesign Officer) if a public school had been on the list of the lowest achieving 5% of all public schools, statewide, for three consecutive years. The State Reform District (currently, the State School Reform/Redesign School District) would function as a political subdivision that was a party to a contract transferring the powers, duties, rights, obligations, functions, and responsibilities of the State Reform District to a special authority. Those powers, duties, rights, obligations, functions, and responsibilities of the District would be transferred to and vested in and under the control of the EAA. The Authority could perform the functions of the Department as the State education agency for a school placed within the State Reform District and under the control of the Authority. The EAA would be entitled to receive Federal funds otherwise payable to the Department.

The bill would require Redesign Officer to issue an order placing a public school in the State Reform District and under the control of the EAA if any of the following occurred:

- The Redesign Officer received notice that a public school had been on the list of the lowest achieving 5% of all public schools, statewide, for three consecutive years.
- The Officer disapproved the redesign plan submitted by a school.
- The Officer determined that the redesign plan was not achieving satisfactory results.

If a school were placed in the Reform District, under the control of the EAA, the Authority's Chancellor would be required to impose one of the four school intervention models under the Federal incentive grant program for the lowest achieving schools, or another model approved under Federal law. If the Chancellor determined that a redesign plan previously adopted was not achieving satisfactory results, he or she could adopt an alternative school intervention model for that school.

The Chancellor (as opposed to the Redesign Officer, as stated in current law) would act as superintendent of the State Reform District, with all the powers, duties, rights, obligations, functions, and responsibilities of a superintendent, and all other powers and duties otherwise vested in the school board or other school officers previously operating a school placed in the State Reform District.

The Chancellor would direct the expenditure of all funds and have full control over curriculum and discretionary spending at the school, for schools operating under the control of the EAA. For a schools operating under a redesign plan, the State School Redesign Officer would direct the expenditure of all funds and the principal, or other school leader designated by the Officer, would have full control over curriculum and discretionary spending at the school. The Governor (as opposed to the State Superintendent) would appoint the State School Redesign Officer. If a school were placed under the control of a chief executive officer, he or she could adopt an appropriate intervention model for the school and would direct the expenditure of all funds and have full control over

curriculum and discretionary spending at the school.

The bill would eliminate provisions of the Code that require the addendum to a collective bargaining agreement to allow for certain changes that are necessary to implement school intervention models. The bill also would eliminate a provision that employees working for a school subject to a turnaround model continue to retain and accrue seniority rights in the school district according to the collective bargaining agreement.

Under the bill, if the Chancellor imposed an intervention school intervention model not prohibited by Federal law, collective bargaining agreements applicable to employees working at the public school before the imposition would not apply to those at the school after the imposition of the alternative model. Furthermore, after such an imposition, employees working at the school would not accrue seniority rights in the school district or credible service under the Public School Employees Retirement Act, and compensation remuneration paid for work at the school would not constitute compensation or remuneration as an employee under the Public School Employees Retirement Act.

The bill would allow the State Superintendent to release a school from the imposed school improvement measures upon the recommendation of the Chancellor.

The bill would eliminate a provision that a transformation model cannot be implemented for more than 50% of lowest achieving schools, if there are more than nine of these schools.

EAA Activities

The bill would permit the EAA to enter into agreements or cooperative arrangements with other entities, or join organizations as part of performing the functions of the Authority, and establish nonprofit corporations on its behalf.

The EAA could acquire property, or rights or interests in property, for any purpose the Authority determined necessary to achieve its purposes. All agreements regarding property of the EAA would have to be approved by the executive committee. The

EAA also could take a number of actions with respect to acquired property, or rights or interests in property, including conveying, selling, transferring, exchanging, leasing as lessor, or otherwise disposing of the property.

The EAA could receive, disburse, and pledge money; incur temporary debt; and borrow money and issue bonds in accordance with Part VI of the Revised Municipal Finance Act. Bonds issued would be full faith and credit obligations of the EAA, pledging its general funds. Any instrument of indebtedness entered into by the Authority would not constitute an obligation of the State or of a party to the interlocal agreement. Furthermore, the full faith and credit or taxing power of the State, any State agency, or a party to the interlocal agreement could not be pledged for the payment of any EAA instrument of indebtedness. Additionally, the EAA could not levy ad valorem property taxes or another tax for any purpose; this would not affect the taxing ability of those districts with a school or schools operated, managed, authorized, established, or overseen by the Authority.

The bill would permit the EAA to do all of the following:

- Educate pupils in grades K-12, preschool, lifelong education, adult education, community education, training, enrichment, and recreational programs.
- Provide for the safety and welfare of pupils.
- Employ or contract with personnel, prescribe their duties, and fix their compensation.
- Implement and maintain a method for compensation, including compensation based on performance, accomplishments, and assignment in a subject area or school that was difficult to find employees to staff.
- Use an adjunct instructor, public university faculty member with subject matter experience, or community college faculty member with five years of subject matter experience, as a classroom teacher in any grade.
- Use noncertificated teachers in situations in which other public schools are authorized to do so, and certificated teachers according to Superintendent of

Public Instruction (State Superintendent) rule.

- Develop and implement new teaching techniques or methods.
- Use any instructional technique or delivery method that may be used by other public schools or school districts.
- Enter into an agreement with a school district or public school academy (PSA) to provide or receive services.
- Contract with a qualified provider for energy conservation improvements to public school facilities.
- Grant high school credit in a foreign language or American Sign Language to a pupil who demonstrated proficiency outside of a high school curriculum.

The bill would require the EAA to develop, maintain, and make publically available a single, searchable financial data website, containing public information relating to the acquisition and expenditure of money by the Authority.

The EAA and parties to the interlocal agreement would have governmental immunity under the bill.

School Buildings

If a school had an emergency financial manager (under Public Act 72 of 1990) or emergency manager (under the recently repealed Public Act 4 of 2011), the bill would require the manager to promptly inventory all buildings being used or previously used as a school by the district and determine if they were suitable for use as school buildings, whether they would be used by the school district, could be redeployed for use by one or more public schools and were available for purchase or lease by a nonpublic school, or were unsuitable for use as a school building. The title to a school building redeployed would remain with the school district, but the management, maintenance, and operation of the building as a school would be performed by the eligible public school to which the building was being redeployed. The bill would require the manager to apply hoteling concepts where appropriate.

The bill would define a number of terms, including the following:

- "Hoteling" would mean making a school building available for use by multiple

educational and community institutions, including use of a building by one or more eligible public or nonpublic schools.

- "Eligible public school" would mean a PSA, authorizing body for a PSA, the EAA, an achievement school, or a university school.
- "Achievement school" would mean a public school operated, managed, authorized, established, or overseen by the achievement authority.
- "University school" would mean an instructional program operated by a State public university and funded under Section 23 of the State School Aid Act, or a laboratory school or teacher training school maintained by a State public university.
- "Redeploy" would mean the process by which a school building owned by a district is made available for use by an eligible public school.

The bill would require each school district, statewide, to inform the Department of Education and provide it with an updated annual list of buildings previously used for classroom instruction that were closed, unused, or unoccupied. The Department would have to make the list available on its website. The board of a district owning such a building would be required to maintain the building in a condition that was suitable for use as a school building. If the district indicated the building could be reclaimed for classroom instruction during the two-year period after the building first appeared on the list, then the Department would designate the building as "unavailable" until after that time period. The district then would have to reuse the building for classroom instruction within one year after the building was reclaimed; otherwise, the building would return to the Department's list and would not be eligible to be reclaimed again (unless it was not being used for classroom instruction by an eligible school and the district demonstrated, to the satisfaction of the State Superintendent, that it had a legitimate need to reclaim the building based on enrollment growth in the district).

The bill would require an eligible public school that intended to use a school building from the list to send a letter of intent to the State Superintendent, who would then notify the district that owned the building. The district that owned the building would have

63 days after receiving the notice to lease or sell the building to the eligible public school, for fair market value as long as it was being used for classroom instruction by the eligible public school.

If the building were being leased and it were not used for classroom instruction within two years after it was leased, or the eligible school leasing the building closed or ceased using it for classroom instruction, the building would be placed back on the Department's list. During the lease, the school leasing the building would be responsible for the direct expenses related to the building, including utilities, insurance, maintenance, repairs, and remodeling. The district that owned the building would be responsible for any debt incurred for or liens that attached to the school building before it was leased.

If the building were sold and it were not used for classroom instruction within two years after it was acquired, or the eligible school that acquired the building closed or ceased using it for classroom instruction, the State could exercise a right of reversion, terminating the eligible school's estate in the building; the building then would be placed back on the Department's list. A building that had appeared on the list for at least 48 months could be sold or disposed of in any manner the school board of the district owning the building considered appropriate.

MCL 380.3 et al.

FISCAL IMPACT

State Impact

The EAA receives the same per-pupil foundation allowance of the school district in which the school that is taken control of is located. The EAA also functions as an authorizing body and may authorize school buildings it takes control of as charter schools. Charter schools (PSAs) have a statutory maximum per-pupil foundation allowance of \$7,110. Therefore under the bill, barring a future change in law, the State would not see an increase in costs associated with foundation allowance expenditure. For every school authorized as a charter school by the EAA, whose foundation allowance was above the charter school maximum, before the conversion into an achievement school, the State would see

savings in foundation allowance expenditure. In the EAA's first year of operation, 12 schools were managed by the EAA, while three were authorized as charter schools. The State saw a reduction of \$80 for every pupil in one of those three districts, previously enrolled in the DPS district, as a result in the reduction of foundation allowance between DPS's \$7,190 and the statutory maximum of \$7,110.

Under the bill, there could be various administrative costs associated with the additional data reporting requirements for the EAA, and requirement that the Department publish and maintain a list of closed, unused, or unoccupied buildings.

Local Impact

Local school districts that had a school building placed under the control of the EAA would see a direct reduction in their per-pupil foundation allowance, for every pupil who did not return to the district (whether he or she was enrolled in the achievement school, or pursued a public option outside the district or nonpublic alternative). Such control also would result in reduced overhead costs for a district due to the EAA's control of the building and its operations. Thus far, only schools from the Detroit Public Schools have been placed under the control of the EAA. Based on the EAA's fall 2012 pupil count and DPS's per-pupil foundation allowance, and due to the conversion of 15 of its schools into achievement schools, the district has lost in the range of \$68.0 million in foundation revenue.

Local school districts that have closed, unused, or unoccupied buildings in poor condition could experience significant costs under the bill as a result of the requirement that districts maintain such buildings in a condition suitable for use as a school building.

The provision of the bill that would require the sale or lease of school property in certain instances at "fair market value" would have an indeterminate fiscal impact on local districts. To the extent that districts are selling buildings above fair market value, these districts could see a decrease in return for the sale of the property.

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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.