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Health

PLAYGROUND EQUIPMENT SAFETY ACT

**House Bill 4101 as enrolled
Public Act 34 of 1997
House Committee: Regulatory Affairs
Senate Committee: Families, Mental
and Human Services**

**House Bill 4102 as enrolled
Public Act 16 of 1997
House Committee: Regulatory Affairs
Senate Committee: Economic Development,
International Trade and Regulatory
Affairs**

**Sponsor: Rep. Beverly Hammerstrom
Revised Second Analysis (1-15-99)**

House Bills 4101 and 4102 (1-15-99)

THE APPARENT PROBLEM:

The mother of Nancy Sibley, an Ann Arbor child who died when the drawstring of her coat snagged in a gap at the top of a school playground slide, has waged a safety campaign since her child's death to promote safer clothing and safer playground equipment for children. Mrs. Sibley first conducted a letter-writing crusade that galvanized the U.S. Consumer Product Safety Commission (CPSC) to persuade manufacturers to remove drawstrings from children's clothes. She then directed her campaign toward companies that manufacture children's playground equipment. As a result of her efforts, drawstrings have virtually disappeared from children's clothing, and some states have enacted laws requiring safety standards for playground equipment. Mrs. Sibley's campaign has spurred legislation to improve the safety of playground equipment in Michigan. Legislation is proposed that would require the manufacturers and assemblers of playground equipment to comply with CPSC and American Society for Testing and Materials (ASTM) safety guidelines. Appropriately, the bills have been named the "Nancy Bills," in memory of Nancy Sibley, and fines collected from violations of the bills' provisions would be deposited into the Children's Trust Fund.

THE CONTENT OF THE BILLS:

The bills would create the Playground Equipment Safety Act and would designate fines collected for violations of the act to the Children's Trust Fund.

House Bill 4102 would create the Playground Equipment Safety Act to specify that on or after May 1, 1998, a person engaged for compensation in the manufacture or assembly of public playground equipment in the state who failed to comply with standards set forth in the "Handbook for Public Playground Safety" published for the U.S. Consumer Products Safety Commission, and in the "Standard Consumer Safety Performance Specification for Playground Equipment for Public Use, ASTM F1487-93" published by the American Society for Testing and Materials, would be subject to a state civil infraction. Both publications would be incorporated by reference.

Violation of the bill would be a state civil infraction, and would subject an assembler of public playground equipment to a civil fine of \$1,000 or less, and a manufacturer of public playground equipment to a fine of up to \$10,000. Nonpayment of any fine or installment of a fine or costs could be remedied by means authorized under the Revised Judicature Act of 1961 (MCL 600.101 et al). Money collected under the bill would be deposited in the Children's Trust Fund within the state treasury.

The bill would specify that the CPSC and ASTM standards identified in the bill would be used to determine responsibility for a civil infraction, and would not establish liability for any separate civil actions brought to recover damages caused by the maintenance, repair, upkeep, manufacture, or assembly of public playground equipment. Also, in a separate civil action, the CPSC and ASTM standards would only have the relevance allowed by law or court rule. In a civil action to recover damages arising from the manufacture or assembly of public playground equipment, a finding of responsibility for a state civil infraction would not be admissible. The bill would further specify that 1) the governmental immunity enjoyed by a municipality, school district, or governmental entity would not be expanded, restricted, or otherwise altered by the bill's provisions; and, 2) the bill would not limit or alter -- and would be in addition to -- any other defenses, limitations, remedies, or rights a person might have by law.

Municipalities, school districts, and governmental entities that own and operate public playground equipment would be responsible for the maintenance, repair, and upkeep of the equipment according to the CPSC and ASTM standards identified in the bill. Current public playground equipment would be "grandfathered" in under the bill. For public playground equipment that existed before the bill's effective date, the CPSC and ASTM standards would apply to the maintenance, repair, and upkeep of the equipment only to the extent that the application of the standards were possible without requiring substantial alteration, removal, or replacement of the existing equipment.

"Person" would be defined as an individual, partnership, corporation, association, governmental entity, or other legal entity. "Public playground equipment" would include but not be limited to slides, climbers, seesaws, and swings that were designed for the recreational use of children and owned and operated by a local unit of government, school district, or any other governmental entity.

The bill would take effect on May 1, 1998.

House Bill 4101 would amend Public Act 249 of 1982 (MCL 21.171) to specify that any amounts received from civil fines imposed under the Playground Equipment Safety Act would be credited to the Children's Trust Fund. This would be in addition to amounts currently specified in the act appropriated under provisions of the Income Tax Act of 1967 (MCL 206.475) and the Child Abuse and Neglect Prevention Act (MCL 722.608).

The bills are tie-barred to each other.

BACKGROUND INFORMATION:

House Bills 4101 and 4102 are similar to legislation introduced in the 1995-96 legislative session (House Bills 5868 and 5869), which passed the House.

FISCAL IMPLICATIONS:

House Bill 4102 would require that fees collected for violation of the act be deposited into the Children's Trust Fund. The fund is administered by the state Child Abuse and Prevention Board and used to provide grants to local abuse and neglect councils for community-based programs. According to the House Fiscal Agency, local abuse councils in about 79 of the 83 counties received grants in fiscal year 1995-96 which required a local match. The HFA anticipates that the bill would increase state revenues by an indeterminate amount contingent upon the number of violations registered and amounts of fines assessed. The revenue increase would make available additional revenues for local anti-abuse and neglect grants. Though the bill does not appear to assign enforcement responsibility to a specific state agency or department, there could be some administrative costs associated with the bill's enforcement.

In addition, the bill would require that school districts and municipalities maintain, repair, and provide upkeep for equipment procured after the May 1, 1998 effective date (existing equipment would be grandfathered in). The equipment upkeep, repair, and maintenance could result in additional costs to governmental units, especially local units. According to the HFA, the costs to the municipalities and school districts would be contingent on the degree to which equipment required repair and maintenance in order to meet the applicable standards, and are therefore difficult to quantify at this time. Though the grandfather clause excluding existing equipment where compliance would result in substantial alteration, removal, or replacement would mitigate the costs of repairs to some equipment, there still could be an indeterminate increase in local costs in making nonsubstantial repairs to the existing equipment in compliance with the bill's provisions. (7-23-97)

According to the House Fiscal Agency House Bill 4101 would not have a state or local impact as it merely amends existing law to permit the deposit of money in the Children's Trust Fund. (7-25-97)

ARGUMENTS:

For:

House Bills 4101 and 4102 would signify that Michigan aspires to a higher level of safety in its public playgrounds. A nationwide survey of 443 playgrounds, conducted by the Consumer Federation of America and the U.S. Public Interest Research Group, and reported in an August 14, 1995, *Wall Street Journal* news article, indicated that more than 90 percent of playgrounds pose serious health and safety risks. In fact, the U.S. Consumer Product Safety Commission (CPSC) reports that more than 240,000 children required emergency care for injuries received in playground accidents in 1995. In addition, 19 children died between 1985 and 1996 from playground injuries. However, as the *Journal* news article indicates, there are no national safety standards in the U.S. for playground equipment, and only a handful of states have passed -- or are contemplating -- legislation requiring safety standards for them. (In contrast, European countries have adopted strict safety standards.)

The importance of requiring specific safety standards was demonstrated by the issue of drawstrings on children's clothing. When the problem was brought to the attention of the CPSC after the death of a child who died when the drawstring on her coat snagged in a gap at the top of a playground slide, tests were conducted on playground equipment to devise safety standards to prevent this from recurring. After two years, it was decided that no test could be devised to assure that drawstrings wouldn't catch in small gaps, and the CPSC persuaded clothing manufacturers to voluntarily remove drawstrings from children's clothes. Since then, there have been no accidents involving drawstrings, except for situations involving clothing manufactured prior to their removal.

For:

Though the penalties assessed under House Bill 4102 apply only to manufacturers who sell equipment and to private individuals or companies hired by school districts and municipalities to assemble the equipment, proponents of the bills stress that passage of the bills would go far in educating both manufacturers and those who (whether volunteers or paid workers) assemble or maintain playground equipment. According to Mrs. Sibley, all ten of the major manufacturers of playground equipment have indicated that they will comply with the national standards. However, problems can still arise from improper assembly or maintenance, which is mostly due to ignorance of what types of things could cause injury or how to rectify the problem. Reportedly, the school authorities responsible for the school playground where Nancy Sibley was fatally injured did not know that a repair kit was available for about \$15.00 that would have sealed the gap in the top of the slide. In fact, many people still do not know that gaps in certain equipment can pose serious health risks. The bills would bring a heightened awareness of the national

standards that do exist, and compliance with those standards would significantly reduce the risk of injuries and death on the state's playgrounds.

Response:

If the goal of House Bill 4102 is to make public playgrounds safer, then the language that would grandfather in existing equipment should be removed. As written, the bill's language would require schools and municipalities to bring potentially dangerous equipment up to the CPSC and ASTM standards only if the playground equipment could be repaired in a "nonsubstantial" manner. "Nonsubstantial" is a vague term open to many levels of interpretation, and so could be used by owners and operators of public playground equipment to circumvent the bill's requirements. Further, outdated equipment would not have to be removed or replaced. Children deserve to have the latest and safest playground equipment available.

Rebuttal:

To require the automatic removal and replacement of every piece of public playground equipment on a state-wide basis that does not meet the standards identified in the bill would be cost prohibitive and could raise Headlee implications. Further, some older equipment that does not completely meet the newer standards is not necessarily dangerous. For instance, the platform of a slide may be a quarter of an inch smaller than what the newer standards recommend, but does not pose a significantly increased risk of injuries. Further, page one of the "Public Playground Handbook for Safety" issued by the CPSC states that since the guidelines are not a CPSC standard (the guidelines are based on recommendations provided by the COMSIS commission) and are not mandatory requirements (on a national level), "the Commission is not endorsing them as the sole method to minimize injuries associated with playground equipment." Therefore, it can be assumed that some older equipment that would not meet the standards adopted by the bill could still be safe or could be modified to be safe, and therefore should not be required to be removed or replaced. However, as schools and local governments become more aware of the standards required for future equipment, and aware of the existence of repair kits and kits to modify existing equipment to meet the standards, the level of safety on the state's public playgrounds should raise considerably.

Against:

House Bill 4102 would require that manufacturers of public playground equipment comply with both the standards described in the "Public Playground Handbook for Safety" published by the U.S. Consumer Product Safety Commission (CPSC), and those contained in the "Standard Consumer Safety Performance Specification for Playground Equipment for Public Use, ASTM F1487-93," published by the American Society for Testing and Materials (ASTM).

However, the CPSC's safety guideline publication is outdated. It is based on recommendations provided to the CPSC in March, 1990, by a private contractor that tests playground equipment. According to the CPSC, the commission at one time published safety standards for public playground equipment, and safety standards for home playground equipment were published by ASTM. However, due to budget cutbacks, the CPSC no longer publishes these guidelines. Instead, the responsibility for publishing safety guidelines for both public and home playground equipment was given to ASTM. House Bill 4102 should be amended to refer solely to ASTM safety performance specifications.

In addition, it is reported that the ASTM has already updated its standards from the publication referenced in the bill, which raises the question as to which standard schools and local governments need to comply with -- the ASTM publication listed in the bill, or the new ASTM F1487-95. Further, the CPSC publication referenced in the bill reminds playground designers, installers, and operators to determine what federal and state requirements for accessibility are in effect. As the U.S. Access Board, also known as the Architectural and Transportation Barriers Compliance Board (an independent federal agency whose primary mission is accessibility for people with disabilities), is in the process of promulgating rules under the Americans with Disabilities Act (ADA) that would require playgrounds to meet specified accessibility criteria, some city parks and recreation departments have expressed concerns as to how the state and federal laws would play out against each other, and if one law would supersede the other.

Response:

The CPSC publication would still be of value because it is much more consumer friendly than the ASTM publication which deals more with manufacturing standards (e.g., the tensile strength of bolts). In the introduction of the CPSC publication, the commission states that it believes "the safety features in many of the recommendations in this handbook will contribute to greater equipment safety" and that the handbook "is expected to promote greater safety awareness among those who purchase, install, and maintain public playground equipment."

Secondly, it is not uncommon for laws that reference existing standards to need to be amended as industry standards change. Reportedly, plans are already underway to amend the reference to the ASTM standard specified in the bill. As to the concern between the bill's authority and impending federal rules under the ADA, typically when state and federal laws conflict, the more stringent requirement prevails. As the standards referenced in the state law would apply to manufacturing standards and assembly and maintenance standards, and the federal rules would most likely apply to making playgrounds accessible to children with

disabilities, the laws may not conflict at all. Since the bill would not take effect until next spring, and would primarily apply to new equipment purchases, schools and local governments should have some lead time to prepare to meet the challenges that the changes in state and federal law relating to public playgrounds will present.

Against:

House Bill 4102 leaves a number of questions unanswered and raises still others. For instance, rather than purchasing manufactured equipment, many communities hire a landscape architect or other design specialist to design play structures constructed mainly of wood. The play structures are often assembled under the supervision and oversight of the architect or designer by community volunteers. Since technically the structures have not been "manufactured" and the architect or designer is not doing the actual assembly, it is unclear if he or she would assume the liability of the manufacturer or the assembler, or both, for errors in design or assembly resulting in noncompliance with the standards identified in the bill. Secondly, the bill is silent on how the bill would be enforced. Generally, violations resulting in state civil infractions are enforced by a law enforcement officer issuing a ticket. Also, fines for tickets are typically less than a few hundred dollars. Higher fines are typically awarded in a hearing process. Yet, the bill would require police officers to issue tickets with fines as high as \$10,000 for manufacturing and \$1,000 for assembly violations that usually take a nationally certified inspector of playground equipment to identify. Therefore, a civil infraction may not be a proper enforcement mechanism. Also, earmarking fines from a specific infraction for a separate fund would be a departure from other existing state laws.

Further, since local governments and school districts usually do not have a certified inspector on staff, they would have to hire or contract inspectors to conduct inspections, or pay to have existing staffers trained appropriately to conduct regular inspections necessary to keep the equipment up to the bill's standards. This in turn raises the question of what is an appropriate inspection schedule. Reportedly, many city parks and recreation departments do not have the resources in staff or money to conduct the number of regular inspections to identify equipment problems that the bill may imply is necessary. Also, the bill is unclear as to how seasonal weather changes would affect the determination of compliance with the bill's requirements. For example, certain equipment such as slides, swings, and climbing apparatus are required to have soft landing surfaces (typically mulch). If the mulch is covered with a thick coating of ice in winter, would the school or municipality automatically be in noncompliance with the standards if workers were not dispatched to remove the

ice? Or, since the bill would state that the requirements were not to increase a school's or municipality's liability, does it even matter if the requirements are complied with or not? In short, the intent of the legislation is to protect children by identifying safe manufacturing and assembly standards, as well as repair and maintenance standards that would increase the safety of Michigan's public playgrounds. Does the bill have enough teeth in it to really make a difference?

Response:

As mentioned earlier, school districts and local governments will have to prepare for the changing requirements. However, there may be low-cost alternatives for meeting some of the challenges in meeting the required upkeep provisions of the bill. For instance, it is reported that some school districts are already exploring the possibility of training parent volunteers to conduct the regular maintenance checks that appear to be necessary under House Bill 4102. It is important to remember that the Playground Equipment Safety Act would take a proactive approach to ensuring safer conditions on the state's public playgrounds, as compared to the current situation where equipment is often checked only after an injury is reported.

Analyst: S. Stutzky

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