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SFA



BILL ANALYSIS

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Senate Bill 358 (as enrolled)
Senate Bill 670 (as enrolled)
Sponsor: Senator Bev Hammerstrom
Senate Committee: Human Resources and Labor
House Committee: Regulatory Reform

PUBLIC ACT 628 of 2002
PUBLIC ACT 627 of 2002

Date Completed: 1-30-03

RATIONALE

Public Act 306 of 1937 regulates the construction, reconstruction, and remodeling of public and private school buildings. The Act required the State Superintendent of Public Instruction, who heads the Department of Education, to give written approval of any plans and specifications before a project was begun. In addition, the Act specified that the architect or engineer who prepared the plans and specifications or supervised the construction of a school building was responsible for constructing the building of adequate strength to resist fire and in accordance with the approved plans and specifications.

While school buildings are subject to Public Act 306, they were not subject to the Single State Construction Code Act. Consequently, State and local inspectors, who oversee other construction projects, did not have jurisdiction over the construction and remodeling of school buildings. Although the State Superintendent had a formal agreement with the Department of Consumer and Industry Services (DCIS) for it to serve as the Superintendent's agent for approving the fire safety and electrical components of a school building's construction, the Department of Education neither maintained staff with expertise in building construction nor had any other arrangement with the DCIS to review school construction projects. Thus, the structural, mechanical, and plumbing components of school buildings that were being built or remodeled were inspected only if school officials and local building authorities voluntarily collaborated.

Reportedly, in the past decade there have been incidents in which problems were found in the construction of school buildings. A

school building in the Woodhaven School District had to be almost entirely reconstructed, even though it was less than 20 years old. Structural problems were found in Gaylord High School, built in 1994. In Flushing, four workers were killed and two were injured when a wall collapsed at the construction site of Flushing High School. Because of these and other instances in which school buildings were discovered to have structural flaws, some people believed that Public Act 306 should require the DCIS to be the enforcing agency for the Act and to approve and oversee school construction plans and projects; or to delegate the responsibility to a local agency under certain circumstances.

CONTENT

Senate Bill 358 amended Public Act 306 of 1937 to provide that the Department of Consumer and Industry Services is responsible for the administration and enforcement of the Act and the Single State Construction Code Act in each school building in Michigan, unless the DCIS delegates that responsibility as provided in the bill. Senate Bill 670 amended Public Act 306 to prescribe penalties for certain persons who violate school construction regulations.

Senate Bill 358

The bill deleted the requirement that the Superintendent of Public Instruction approve plans and specifications for school building construction.

The bill provides that a school building covered by bond issues that are approved by the Department of Treasury after July 1,

2003, may not be constructed, remodeled, or reconstructed in Michigan until the DCIS gives written approval of the plans and specifications, indicating that the building will be designed and constructed in conformance with the State Construction Code. This requirement does not apply to any school building for which construction is covered by bond issues approved by the Department of Treasury before July 1, 2003.

For school buildings covered by bonds approved by the Department of Treasury before July 1, 2003, the plans and specifications must be submitted to the DCIS for approval; the DCIS may not grant approval until it has received a certification from the appropriate health department relative to water supply, sanitation, and food handling, and certification relative to fire safety as required in Section 3 of the Act. (Section 3 requires each school building, twice during construction, to be inspected by the DCIS relative to fire safety, unless the school district and the local unit in which the building is located certify that fire safety inspections and fire safety measures for the school are provided for by municipal ordinance.)

The bill provides that responsibility for school building inspections may be delegated to an independent third party, designated in the contract governing the construction, remodeling, or reconstruction of a school building. The independent third party is responsible for all inspections required to ensure compliance with the State Construction Code. The school authority must verify that the independent third party named is knowledgeable about construction practices and codes and otherwise qualified to conduct the inspections. The name of the independent third party must be submitted to the DCIS with the plans and specifications required under the bill. If the DCIS determines that the independent third party is not qualified to conduct the inspections or is not an independent third party, it must disapprove the designation and notify the school authority. All inspection reports prepared by the person designated by the school authority must be sent to the DCIS upon completion of the inspection. The DCIS may return a report for further work if there are questions relating to the scope of the inspection or whether the construction, remodeling, or reconstruction meets the requirements of the Code.

If an independent third party is not designated, the DCIS must perform the inspections required to ensure compliance with the Code, unless the Department delegates responsibility for administering and enforcing the Act, as provided in the bill. Also, unless responsibility is delegated, the DCIS must perform for school buildings all plan reviews within 60 days from the date plans are filed or considered approved, and perform inspections within five business days as required by the State Construction Code.

The bill specifies that the DCIS is the enforcing agency for Public Act 306. The Department must delegate responsibility for the administration and enforcement of the Act to an applicable agency, however, if both the school board and the governing body of the local unit of government have annually certified to the DCIS, in a manner it prescribes, that full-time Code officials, inspectors, and plan reviewers registered under the Building Officials and Inspectors Registration Act will conduct plan reviews and school building inspections.

The bill states that it does not affect the responsibilities of the DCIS under the Fire Prevention Code. The Bureau of Construction Codes and the Office of Fire Safety in the DCIS jointly must develop procedures to use plans and specifications submitted in carrying out the requirements of the Act and the Fire Prevention Code. The appropriate code enforcement agency may not issue a certificate of occupancy until a certificate of approval has been issued under that Code.

Public Act 306 specifies that a public or private school building, or any additions to it, may not be erected, remodeled, or reconstructed except in conformity with certain conditions. The first condition is that all plans and specifications for buildings must be prepared by, and the construction supervised by, a Michigan-registered architect or engineer. The bill retains this provision, but also allows supervision by another person qualified to supervise construction. The bill deleted a requirement that, before construction, reconstruction or remodeling, written approval of the plans and specifications be obtained from the Superintendent of Public Instruction or the Superintendent's authorized agent. (Under the deleted provision, the Superintendent could not issue his or her

approval until securing the approval of the State Fire Marshal or the appropriate municipal official, when certification was made relative to factors concerning fire safety, and the approval of the health department having jurisdiction relative to factors affecting water supply, sanitation, and food handling.)

Another condition that must be met under the Act is that every room enclosing a heating unit be enclosed by walls of fire-resisting materials and equipped with automatically closing fire doors. Heating units may not be located directly beneath any portion of a school building or addition constructed or reconstructed after the Act's effective date. Under the bill, this prohibition applies to a building or addition constructed or reconstructed after January 1, 2003.

In addition, that Act provided that these heating-unit regulations could not be construed to require the removal of an existing heating plant from beneath an existing building when an addition to the building was constructed, unless the State Superintendent of Public Instruction or the Superintendent's authorized agent, acting jointly with the State Fire Marshal, required the removal. Under the bill, only the Department may require removal.

The Act required the Superintendent of Public Instruction to publish an informative bulletin that set forth good school building planning procedures and interpreted the Act clearly. The bulletin had to be prepared in cooperation with the State Fire Marshal and the State Health Commissioner, and be consistent with recognized good practice as evidenced by standards adopted by nationally recognized authorities in the fields of fire protection and health. The bill deleted these requirements.

Senate Bill 670

The bill prescribes penalties for licensed architects and engineers, and construction supervisors who violate certain school construction regulations.

Previously, the architect or engineer preparing plans and specifications or supervising construction of a school building was responsible for constructing the building of adequate strength so as to resist fire, and constructing it in a workmanlike manner. The

bill provides, instead, that a licensed architect or engineer preparing plans and specifications of a school building is responsible for assuring that the design documents provide for a structure with sufficient structural strength and fire resistance, and that the building meets all applicable codes, standards, and regulations. The person supervising the construction of a school building is responsible for the construction in conformance with the approved plans and specifications prepared by the licensed architect or engineer.

A person who violates these provisions is subject to a State civil infraction punishable by a civil fine of up to \$10,000. A person who knowingly violates the bill is guilty of a misdemeanor punishable by a fine of up to \$10,000, imprisonment for up to 180 days, or both.

MCL 388.851 et al. (S.B. 358)
388.852 (S.B. 670)

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

The lack of mandatory inspection of school buildings under construction has posed serious safety issues. Previously, no State or local building authority was required to certify that the State Construction Code was being met when the foundation, walls, roof, or other components of a school building were being erected. The existence of unsafe and unsound schools demonstrates that the standards for school construction provided under Public Act 306 were not sufficient. Unlike the standards in the State Construction Code, which are based on nationally recognized codes and are updated regularly, the standards in Public Act 306 were minimal and provided little protection to the public and children in Michigan schools.

Senate Bill 358 gives the DCIS explicit responsibility for the administration and enforcement of Public Act 306 and the Single State Construction Code Act in Michigan school buildings, and removes provisions authorizing the State Superintendent to approve plans and specifications for school building construction. As a result, the DCIS

must approve plans and oversee school construction projects or delegate the responsibility to competent local officials. Together, Senate Bills 358 and 670 will prevent future construction of structurally flawed schools and save school districts the expense of repairing or even reconstructing unsound buildings. More importantly, the bills will help ensure a safe environment for students, as well as protect school personnel and the public.

Opposing Argument

Senate Bill 358 may result in additional costs for school districts, which already must pay fees to architects for the planning and oversight of school construction. Submission of plans and specifications for school buildings to the DCIS might result in school districts' being charged fees for permits, plan reviews, and inspections. Some school officials also are concerned about potential delays in completing school construction projects because State inspections are required. As a result of the bill, school districts will have to deal with other agencies, such as the DCIS Bureau of Construction Codes.

Response: The bill contains no mention of new or increased fees for permits, plan reviews, or inspections. Permits for construction projects are with the purview of local units of government.

As for potential delays to construction projects caused by inspections or plan reviews, the bill specifies that all plan reviews performed by the DCIS must be completed within 60 days from being filed, and all inspections must be performed within five business days.

Opposing Argument

While there was widespread press coverage regarding the tragedy in Flushing, and other school construction problems, the vast majority of school construction projects experience no life-threatening events or substantial structural defects. Nearly all school buildings remain safe and sturdy for long periods of time. The bills are an unnecessary overreaction. When a school district spends millions of dollars for a school, it is in the best interest of the district to see to it that the facility is properly planned, built, and inspected.

Response: Just one school, built in a faulty manner that threatens the well-being of children, teachers, and parents, is one too many. Students, school personnel, and

visitors deserve the same level of safety in schools that they enjoy in almost any other public structure they enter. The bills will ensure that schools are built under the same construction requirements that apply to other buildings.

Legislative Analyst: George Towne

FISCAL IMPACT

Senate Bill 358

Department of Consumer and Industry Services. The Department's Bureau of Construction Codes may incur increased costs as this bill provides: 1) Schools may designate a third party to perform inspections but the DCIS will have the authority to review and disapprove of the third party. 2) The Bureau must review all reports prepared by a third party inspector. 3) The Bureau must do all plan reviews on school buildings being remodeled or constructed that are not reviewed by a delegated local authority. 4) The Bureau must inspect all school buildings being remodeled or constructed that are not inspected by a third party contractor or a delegated local authority.

According to the Department, the existing fee schedule of 0.5% of total construction costs will be used to cover the costs associated with these regulatory responsibilities.

Department of Community Health. The elimination of the Department of Community Health's supply, sanitation, and food handling responsibilities will not affect fee collections as school buildings are exempted from such fees. The decreased number of such inspections may lead indirectly to savings for the Department.

Local Government. Local school districts will experience an indeterminate fiscal impact from this legislation. Previously, school districts paid fees to the Office of Fire Safety for inspection services. Since the bill eliminates this requirement, districts will experience savings. However, the bill requires inspections by one of three entities: 1) a qualified third party, 2) local government agencies, or 3) the Bureau of Construction Codes. It is reasonable to assume that savings from the elimination of fire safety plan reviews will be offset by costs associated with inspections from one of these entities.

Local school districts might incur an additional cost under this legislation if a school district uses a third party (and pays fees to this third party for inspections), and further must pay the Department for its review of the third party's reports and credentials.

Senate Bill 670

The bill will have no fiscal impact on the Department of Consumer and Industry Services. The bill will have an indeterminate fiscal impact on local revenues, as there is no information regarding the number of penalties that will be imposed annually.

Offenders convicted of a misdemeanor will be subject to probation or incarceration in a local facility. Local units will incur the cost of probation as well as the cost of incarceration, which may vary between \$27 and \$62 per day.

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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.