

Legislative Analysis



REVISE ALBION COLLEGE CHARTER

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Senate Bill 396 as reported without amendment

Sponsor: Sen. Randy Richardville

House Committee: Education

Senate Committee: Education

First Analysis (10-26-11)

BRIEF SUMMARY: The bill would update the statute that governs Albion College to revise the membership of the college's board of trustees and their terms of office, and also to limit the liability of volunteers, including trustees.

FISCAL IMPACT: The bill would have no state or local fiscal impact

THE APPARENT PROBLEM:

Albion College is an independent, coeducational, residential college that was founded in 1835 by the United Methodist Church. One of Michigan's oldest colleges, Albion is located in south-central Michigan, in Calhoun County. It has a student enrollment of about 1,600 students, and offers 31 academic majors. The cost of annual tuition, room, and board is about \$40,000. See *Background Information*.

A Michigan statute, adopted by the legislature in 1857, originally chartered Albion College, at the request of the Methodist Church. That state statute serves as the college's legal articles of incorporation. In order to periodically update the articles of incorporation, the statute must be amended.

Legislation has been introduced to update the law that charters Albion College in three ways: to provide appropriate legal protection and indemnification for volunteers and trustees (in keeping with the Nonprofit Corporation Act); to allow greater flexibility when constituting the membership of the college board of trustees; and to repeal outdated sections of the statute concerning the selection of the college president.

THE CONTENT OF THE BILL:

The bill would amend Public Act 72 of 1857 (MCL 390.702) which governs Albion College, to do the following:

- Revise the membership of the college's board of trustees.
- Revise the trustees' terms of office.
- Provide that volunteer trustees and non-trustee volunteers who were officers would not be liable to the college for monetary damages for a breach of fiduciary duty, subject to certain exceptions.

- Provide that the college would assume liability for acts or omissions of volunteer trustees and non-trustee volunteers, if certain conditions were met.

A detailed description of the bill follows.

Board Membership & Terms of Office. Now the law requires the board of Albion College to consist of 33 trustees, including the president of the college and the following:

- The resident bishop of the Michigan area of the United Methodist Church.
- An ordained active minister and a layperson of the United Methodist Church designated by the West Michigan Annual Conference.
- An ordained active minister and a layperson of the United Methodist Church designated by the Detroit Annual Conference.
- A layperson of the United Methodist Church designated alternately by the West Michigan Annual Conference and the Detroit Annual Conference.
- Six trustees designated by the Albion College Alumni Association.
- Twenty trustees designated by the remaining trustees.

In contrast, Senate Bill 396 would require the board to consist of not more than 33 members, including the president of the college and the following:

- Up to six trustees appointed by the United Methodist Church.
- Up to two recent graduates of the college, appointed by the college president.
- Up to six trustees appointed by the Albion College Alumni Association.
- Up to 20 trustees appointed by the trustees then in office.

Under the bill, the number of trustees in each group would be determined by the board.

Now the law requires that each trustee serve a three-year term until a successor is appointed. Under Senate Bill 396, except for the recent graduates, the appointed trustees would have three-year terms, unless otherwise provided in the college's bylaws. In contrast, the term of office of a recent graduate would be two years, although the board could appoint an individual for a one-year term so the terms of those trustees would be staggered. The bill also specifies that, except for a trustee who was a recent graduate, an appointed trustee could serve in office only until the term expired, regardless of whether a successor had been appointed. Further, the bylaws adopted by the board could limit the number of consecutive terms an individual could serve.

Liability to the College. Senate Bill 396 provides that a volunteer trustee or a non-trustee volunteer who was an officer of the college would have no personal liability to the college for monetary damages for a breach of the trustee's or officer's fiduciary duty. However, this provision would not eliminate or limit the liability of a trustee or officer for any of the following:

- A breach of the trustee's or officer's duty of loyalty to the college.
- Acts or omissions that were not in good faith or that involved intentional misconduct or a knowing violation of law.

- Any distribution of assets of the college in violation of applicable law.
- A transaction from which the trustee or officer derived an improper personal benefit.
- An act or omission occurring before the bill's effective date.
- Any act or omission that was grossly negligent.

[Note: The bill would define "volunteer trustee" as a trustee who does not receive anything of more than nominal value from the college for serving as a trustee other than reasonable per diem compensation and reimbursement for actual, reasonable, and necessary expenses incurred by a trustee in that capacity.

"Non-trustee volunteer" would mean an individual, other than a volunteer trustee, performing services for the college who does not receive compensation or any other type of consideration for the services other than reimbursement for expenses actually incurred.]

Assumption of Liability. Under Senate Bill 396, while the college is tax exempt under Section 501(c)(3) of the Internal Revenue Code, the college would assume all liability to any person other than itself for all acts or omissions of a volunteer trustee incurred in the good faith performance of duties.

The college also would assume the liability for all acts or omissions of a person who was a volunteer trustee or non-trustee volunteer occurring on or after the bill's effective date if all of the following were met:

- The person was acting or reasonably believed he or she was acting within the scope of his or her authority.
- The volunteer was acting in good faith.
- The volunteer's conduct did not amount to gross negligence or willful and wanton misconduct.
- The volunteer's conduct was not an intentional tort.
- The volunteer's conduct was not a tort arising out of the ownership, maintenance, or use of a motor vehicle for which tort liability may be imposed under Section 3135 of the Insurance Code.

[Note: Section 3135 of the Insurance Code retains tort liability for non-economic loss if an injured person suffers death, serious impairment of body function, or serious permanent disfigurement caused by the ownership, maintenance, or use of a motor vehicle.]

Under Senate Bill 396, a claim for monetary damages for an act or omission of a volunteer trustee or a non-trustee volunteer could not be brought or maintained against that person. Instead, the claim would have to be brought and maintained against the college.

Repealed Sections. The bill would repeal Sections 4 and 8 of Public Act 72 of 1857. Currently, Section 4 requires the college president to be elected by the board and

provides that a majority of the trustees constitute a quorum for the transaction of business. Section 8 provides that the Michigan and Detroit Annual Conferences of the Methodist Episcopal Church and the Alumni Association of Albion College have the power to appoint visitors to the college, and the Superintendent of Public Instruction may appoint three visitors annually. Section 8 also requires the board to report on the condition of the college to the Michigan and Detroit Annual Conferences, the Alumni Association, and the Superintendent of Public Instruction.

HOUSE COMMITTEE ACTION:

The House Education Committee reported out the Senate-passed version of Senate Bill 396 without amendments.

BACKGROUND INFORMATION:

For more information about Albion College, visit <http://www.albion.edu>.

ARGUMENTS:

For:

This bill is necessary in order to update the articles of incorporation that govern one of Michigan's oldest institutions of higher education, Albion College. The bill does that in three ways: (1) by providing appropriate legal protection and indemnification for college volunteers and trustees (in keeping with the Nonprofit Corporation Act); (2) by allowing greater flexibility when constituting the membership of the college board of trustees; and (3) by repealing outdated sections of the statute concerning the selection of the college president. These changes in the statute are wholly supported by the United Methodist Church.

Some have asked, Is it necessary for Albion College to have state approval for changes in its governance and operations, since it is a private independent college? The answer is, Yes. Throughout the United States, higher education policy requires that all colleges, public and private, obtain specific state authority to grant degrees, and Albion College is no exception. Without that state authority, students at the college are not eligible for the federal government's student financial aid programs--neither grants nor loans.

POSITIONS:

The Association of Independent Colleges and Universities supports the bill. (10-19-11)

Albion College supports the bill. (10-19-11)

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