

Legislative Analysis



SCHOOLS: COMPETITIVE BIDDING FOR NON-INSTRUCTIONAL SERVICES

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House Bill 4306 (Substitute H-4)

Sponsor: Rep. Dave Agema

Committee: Education

First Analysis (3-23-11)

BRIEF SUMMARY: The bill would require competitive bidding for the provision of food, custodial, and transportation services in school districts, beginning July 1, 2012.

FISCAL IMPACT: The bill would have no fiscal impact on the State and an indeterminate fiscal impact on school districts. While privatization of certain non-instructional services and competitive bidding may allow districts to find savings, many districts have already moved in this direction when savings are to be found. Requiring a competitive bid process may create additional administrative costs for a district, which may be offset by newly achieved contract savings.

However, there are cost considerations related to the Michigan Public School Employees' Retirement System (MPERS). Since 2003, the total number of active employees in MPERS has dropped from its high of 327,000 to 242,500 in 2010. This reduction of almost 26 percent occurred over the same period while the pupil population declined by just 7 percent. Privatization is one of the factors contributing to this decline.

The declining payroll base increases the MPERS employer contribution rate because total contributions must still be collected, but on a smaller base. This shifts the savings for some districts across all districts in the system. According to the Office of Retirement Services (ORS), approximately 5 percentage points of the FY 2011-12 employer contribution for pension (estimated at almost 16 percent) can be attributed to the overall drop in the active member population since 2003. A portion of the increased retiree health care contribution rate can also be attributed to this drop, but that data is not currently available.

THE APPARENT PROBLEM:

The Michigan Department of Treasury reports a trend toward financial crisis in local governmental units and school districts throughout Michigan because of the state's economic downturn. During the last decade, the state has lost over 800,000 jobs, over half in manufacturing, and the automotive industry has been significantly reduced in size. Further, the housing crisis in Michigan has been profound: the state has the sixth highest mortgage foreclosure rate in the nation; and the taxable value of houses has dropped an estimated 32 percent in the state's seven southeastern counties (according to the Southeast Michigan Council of Governments), and about 16 percent elsewhere in Michigan. Consequently, property taxes--which are based on a home's value and which serve as the main revenue stream for local units of government--have plummeted. As a

result, even customarily well-managed counties, cities, towns, villages, townships, and school districts are facing financial crisis as their budgets have dropped precipitously.

As the economy rebounds, the recovery for local units of government and school districts will be slowed by the provisions of Proposal A (the school funding proposal adopted by the voters in 1993) and the Headlee Amendment to the State Constitution (adopted by the voters in 1979), since both limit the growth in local revenue, holding the increase in a parcel's property taxes to an amount equal to five percent or the rate of inflation, whichever is less. Consequently, some analysts argue that local government and school districts expenditures must be permanently recalibrated--that is, all local government and school costs including personnel costs must be reduced overall by 20- to 25-percent--requiring many politically unpopular decisions.

For these reasons, many local government and school officials may need the technical assistance available in the Department of Treasury's local government rapid response intervention team, and the state superintendent of public instruction. And, the state may well need the ability to intervene in order to avoid bankruptcies in counties, townships, cities, towns, villages, and school districts. Bills have been enacted into law already this legislative session that would enable the governor, state treasurer, and superintendent of public instruction to place local governments or school districts into receivership, and appoint an emergency manager who will have the power and authority to make sweeping change, including the ability to abrogate collectively bargained contracts, and to suspend collective bargaining for up to five years, thereby enabling the emergency manager to reduce personnel costs unilaterally and quickly, returning the local government or school district to financial health.

Among the costs in Michigan's 551 local school districts is the cost of non-instructional services: custodial, transportation, and food services. A recent survey of schools done by the Mackinac Center for Public Policy in 2010 found that nearly 49 percent of school districts (a total of 269 school districts) currently contract out at least a portion of one of these services. More specifically, 31.2 percent of districts contract out for food services, 26.3 percent contract out for custodial services, and 9.3 percent contract out for transportation services. The Mackinac Center reports that new contracts in 2010 were expected to save \$16.7 million for schools. See *Background Information*.

In order to save public funds and cut unnecessary costs, legislation has been introduced to require school officials to competitively bid their non-instructional services.

THE CONTENT OF THE BILL:

House Bill 4306 (H-4) would amend the Revised School Code (MCL 380.1245) to require competitive bidding for certain non-instructional services provided in public schools, beginning July 1, 2012.

The bill requires that the governing board of a school district, an intermediate school district, or a charter school that directly employs personnel to provide custodial, transportation, or food services obtain competitive bids for the provision of these services. The bill specifies that a school district or charter school may contract with any

person or entity to provide these services, or may have the services provided on an employment basis by a group of its employees after obtaining competitive bids.

Under the bill, before entering into or renewing a contract or collective bargaining agreement for these non-instructional services, the school governing board would have to obtain competitive bids on the provision of the services. The competitive bidding process adopted by the school district or charter school could be based on the process already prescribed for competitive bidding of construction contracts under Section 1267 of the code. Further, the bidding process would have to require that all bids received be made available for inspection on the website of the school district or charter school within 10 days after the deadline for the submission of bids.

Within 30 days after entering into or renewing a contract or collective bargaining agreement, the board of a school district or charter school would have to include on its website a posting that identified the bid selected, or other action taken.

The bill specifies that these requirements would not apply to any of the following:

- A contract of less than the threshold amount provided under Section 1267 for competitive bidding, as adjusted each year;
- The provision of food services, if the revenues that the school district or charter school received from its food service program exceeded the costs of the operation of the program, as determined for the most recent school fiscal year for which the data were available; or
- An administration function in support of a service described above, if that function was normally carried out at a different administrative level than the actual provision of the service, such as planning, routing, or training.

Finally, the bill notes that a contractor who provided food services for a school district or charter school would be encouraged to provide those services using fresh and local foods in a manner consistent with the purposes of the Farm-to-School Procurement Act, Public Act 315 of 2008, MCL 388.841 to 388.844.

BACKGROUND INFORMATION:

For more information about school privatization reports published by the Mackinac Center for Public Policy, visit their website at <http://www.mackinac.org/13626>

ARGUMENTS:

For:

Proponents of the bill note that a survey of schools done by the Mackinac Center for Public Policy in 2010 found that nearly 49 percent of school districts--a total of 269 school districts--currently contract out at least a portion of one of these services. More specifically, 31.2 percent of districts contract out for food services, 26.3 percent contract out for custodial services, and 9.3 percent contract out for transportation services. The

Mackinac Center reports that new contracts in 2010 were expected to save \$16.7 million for schools.

According to committee testimony, school districts officials often show cost savings when they bid out non-instructional services, and they report high satisfaction rates when they privatize those services. For example, Grand Rapids Public Schools privatized their busing in 2005, saving the district an estimated \$19 million.

In addition, the Grand Blanc Community School District has long privatized services, beginning in 1996 with the work of school custodians, and then extending the practice to the hiring of substitute teachers. The district superintendent and business manager estimate they save \$33,499 each year for each custodian they remove from the school payroll. As of July 2010, Grand Blanc Community Schools contracted out for many services, including: custodial, clerical, crossing guards, noon-hour supervisors, hall monitors, administrators (including principals, food service, and directors), police liaisons, and substitute teachers, substitute bus drivers, and substitute instructional assistants. Overall, district officials say their savings for all classifications during the 2010-2011 Fiscal Year will be \$2,212,000. Of that amount, \$1,977,000 is attributable to cost-savings from custodial contracting, and \$235,000 will be saved by contracting the services of all other groups.

This bill offers all of Michigan's school districts an opportunity to save money as the economy in our state continues its recovery.

Against:

Opponents of this bill say it is unnecessary. They point-out that already school officials throughout Michigan are contracting to provide non-instructional services, when they judge that this management approach works best in their local school districts. Some who testified in opposition to the bill noted that this "bill continues a pattern of the State of Michigan injecting itself into the decisions that local school boards have had the freedom to act on for decades." They continue: "Our school districts have effectively had market-based choices for years, choices that some seek to now restrict."

Opponents of the bill who favor local control and independent and professional decision-making argue that school officials need not be told by policymakers in Lansing how to best run their schools. They note that a bill like this one--a new policy that some claim is yet another unfunded mandate--"handcuffs school districts to an inflexible approach to solving serious problems requiring innovative and nimble management. It does not account for nor recognize school district history, location, or initiative when problem solving." They note that the bill is redundant, because the Revised School Code contains, among other provisions enabling shared services, a general powers provision at MCL 380.11a(4), where it states: "A general powers school district may enter into agreements or cooperative arrangements with other entities, public or private, or join organizations as part of performing the functions of the school district."

Against:

Those in opposition to the bill also say the bill could well deny jobs to local workers, and also deny local citizens accountability. They point-out that during House Education committee deliberations, three amendments were defeated that would have required

school officials to give consideration to Michigan-based businesses that employ residents of this state, and would have required contractors to give consideration to hiring employees laid-off as a result of the contract, as well as to hiring residents of the school district of intermediate school district.

The spokesperson for the Cheboygan Area School District, an 18-year custodian, reminded the House Education Committee members: "More than 90 percent of (our) transportation, custodial and food service employees are local tax paying residents of the district where we serve. We take great pride in the safety, and appearance of the facilities where we work." She continued: "Many years ago the Cheboygan School District did privatize the food service department with terrible results. The so-called savings that school was supposed to realize were not to be. The cost of repair and replacement for the kitchen equipment cost more than the savings that were promised. The workers supplied by the outside privatizing company did not have a vested interest in our school, students, or community, and performed poorly."

Opponents of the bill say this legislation will make taxpayer accountability difficult to achieve. That is because a fourth amendment was defeated by the House Education Committee members that would have required contractor transparency. As it now stands, school officials need not post any contracts on their websites--only bids. The bill should be amended to require that any contract be posted to the school district's website. That posting should display a contract that specifically states the contract's term, the amount paid for services, and a provision that requires a detailed report of all expenditures paid under the contract, a report that also will be posted on-line for taxpayers to review.

POSITIONS:

The National Federation of Independent Business supports the bill. (3-2-11)

The Detroit Regional Chamber of Commerce supports the bill. (3-9-11)

The Michigan Association of School Boards supports the bill as amended. (3-23-11)

The Michigan Association of Public School Academies supports the bill. (3-23-11)

The Michigan Association of School Boards is neutral on the bill. (3-9-11)

Oakland Schools opposes the bill. (3-23-11)

The Institute for Research on Labor, Employment, and the Economy opposes the bill. (3-9-11)

Macomb Intermediate School District opposes the bill as written. (3-9-11)

Brighton Area Schools opposes the bill. (3-9-11)

The Pupil Transportation Management Institute opposes the bill. (3-9-11)

Okemos, Williamston, and Springport Food Services oppose the bill. (3-9-11)

School Food Service of Plymouth Canton Community Schools opposes the bill. (3-9-11)

The United Auto Workers oppose the bill. (3-2-11)

MAPT/ESA Legislative Group opposes the bill in its current form. (3-2-11)

The Michigan AFL-CIO opposes the bill. (3-2-11)

Michigan Education Association opposes the bill. (3-2-11)

The International Union of Operating Engineers, Local 324 opposes the bill. (3-2-11)

Michigan AFSCME opposes the bill. (3-2-11)

The American Federation of Teachers-Michigan opposes the bill. (3-2-11)

School Food Service opposes the bill. (3-2-11)

Keep the Vote/No Takeover opposes the bill. (3-2-11)

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■ 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.