



**House
Legislative
Analysis
Section**

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MIDWESTERN HIGHER EDUCATION COMPACT

House Bill 5618 (Substitute H-2)
First Analysis (5-29-90)

APR 12 1990

Sponsor: Rep. James A. Kosteva
Committee: Colleges & Universities

THE APPARENT PROBLEM:

The Midwest region is home to a number of excellent higher education institutions. State officials in the region have strived to maintain the outstanding quality of higher education despite funding restrictions, economic problems in such areas as manufacturing and agriculture, and cutbacks in federal aid. Many states apparently are finding it difficult to, by themselves, offer their residents all of the educational opportunities and resources needed to prepare students for a fast-changing and increasing technological society. In response to similar problems, state officials in New England, the South, and the West have turned to regional voluntary cooperation — using interstate compacts — as a way to ensure that these states are effectively able to provide quality, cost-effective higher education programs. With the intent of providing more opportunities and services within higher education — by providing greater access to academic programs and shared research opportunities, technology, and information on higher education issues to citizens within the region — legislation has been introduced to include Michigan within a proposed Midwestern Higher Education Compact.

THE CONTENT OF THE BILL:

The bill would provide for Michigan to enter into a proposed Midwestern Higher Education Compact with other Midwestern states. The compact's purpose would be to provide greater higher education opportunities and services for citizens of the states that were parties to the compact.

Midwestern Higher Education Commission. The compact would create the Midwestern Higher Education Commission, which would be a body corporate of each participating state. The commission would have all responsibilities, powers, and duties prescribed under the compact, including the power to sue and be sued, and other powers that could be conferred on it by subsequent action of the respective legislatures of the participating states according to the compact's terms.

The commission would consist of five resident members of each state as follows:

- the governor or his or her designee who would serve during the governor's tenure in office;
- two legislators, one from each house (except Nebraska, which could appoint two legislators from its unicameral legislature), who would serve two-year terms and be appointed by the appropriate appointing authority in each house of the legislature; and
- two other at-large members, at least one of whom would have to be chosen from the field of higher education.

One of the two at-large members initially appointed in each state would serve a 2-year term, while the other — and any regularly-appointed successor to either member — would serve a 4-year term. The at-large members would

be appointed, and all vacancies would be filled, in a manner specified by the appointing state's laws. Any commissioner who was appointed to fill a vacancy would serve until the end of the incomplete term.

The commission would select annually from among its members a chairperson, vice chairperson, and a treasurer; also, it would appoint an executive director who would act as the commission's secretary and serve at its pleasure. As the commission determined, these officers and similar personnel would be bonded in amounts as the commission could require. The commission would have to meet at least once per calendar year, though the chairperson could call additional meetings. However, if a majority of the commission's members of three or more participating states requested more meetings, the chairperson would have to call additional ones. Public notice of all meetings would have to be given, and all meetings would be open to the public.

Each state represented at a commission meeting would be entitled to one vote, and a majority of member states would constitute a quorum for transacting business unless a larger quorum was required by the commission's bylaws.

Makeup of Michigan's Delegation. The state's five voting commission members would include all of the following:

- the governor or his or her designee;
- one member of the state Senate, appointed by the Senate majority leader;
- one member of the state House of Representatives, appointed by the speaker of the House; and
- two at-large members appointed by the governor.

In addition to these, the governor would appoint the designee of the State Board of Education to serve as a non-voting member of the state's delegation. This person, however, would not be a member of the commission nor would he or she have a vote in decisions made by the state's members. A vacancy in a position in the state's delegation would be filled for the remainder of an unexpired term in the same way the position was initially filled.

The Commission's Powers, Duties. The commission would adopt a seal and suitable bylaws governing its management and operations and in its bylaws would provide for the personnel policies and programs of the commission, irrespective of a particular member state's civil service, personnel, or other merit system laws. The commission would have to submit a budget to the governor and legislature of each member state, at a time and for a specific period as could be required, which recommended a specific amount or amounts to be appropriated by each participating state.

The commission would have to report annually to the legislatures and governors of participating states, to the Midwestern Governor's Conference, and to the Midwestern Legislative Conference of the Council of State Governments concerning its activities during the preceding year. The

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reports would also have to include any recommendations that were made by the commission.

The commission could:

- borrow, accept, or contract for the services of personnel from any state or the U.S., or any of its subdivisions or agencies, from any interstate agency, or from any institution, foundation, person, firm, or corporation;
- accept for any of its purposes or functions under the compact any and all donations, and grants of money, equipment, supplies, materials, and services (conditional or otherwise) from any state or the U.S. (or its agencies, subdivisions), from any interstate agency, or from any institution, foundation, person, firm, or corporation, and could receive, utilize, or dispose of these;
- enter into agreements with any other interstate education organizations or agencies, with higher education institutions located in non-member states, and with any U.S. states to provide adequate programs and services in higher education for citizens of the member states (although the commission would have to determine, after negotiations with such groups, the cost of providing higher education programs and services for the use of these agreements);
- establish and maintain offices which would have to be located within one or more of the participating states;
- establish committees and hire staff as it deemed necessary for carrying out its functions; and
- provide for actual and necessary expenses for its members' attendance at official commission meetings or meetings of its designated committees.

Commission Activities. The commission would have to collect data on the long-range effects of the compact and, by the end of the fourth year from the compact's effective date and biennially thereafter, would review its accomplishments and make recommendations to the governors and legislatures of the participating states on the compact's continuance.

The commission would study issues in higher education of particular concern to the Midwestern region, including what needs existed for higher education programs and services in the member states and what resources were available to meet those needs. Occasionally, the commission would have to prepare research reports on these issues to present to each participating state's governor and legislature, and to other interested parties. In conducting these studies, the commission could confer with any national or regional planning body and could draft and recommend suggested legislation for the various compacting states dealing with higher education problems.

The commission would have to study the need to provide adequate programs and services in higher education, such as undergraduate, graduate, or professional student exchanges in the region. If a need for "exchange in a field" was apparent, the commission could enter into agreements with any higher education institution and with any of the member states to provide programs and services in higher education for the member states' citizens. After the cost to provide these under an agreement was determined, contracting states would have to contribute the funds not otherwise provided to carry out an agreement. The commission could also serve as the administrative and fiscal agent in carrying out any of these agreements and could provide services and research in other areas of regional concern. Finally, the commission would have to serve as a clearinghouse on information regarding higher education activities among agencies and institutions.

Finance. Funds needed to finance the commission's general operations would have to be appropriated to the commission by the compacting states when authorized by the respective legislatures in equal apportionment among the states. The commission could not incur any debts prior to securing appropriations to pay them, nor could it pledge credit of any of the participating states except by and with a state's authority.

An accurate account of all receipts and disbursements would have to be kept by the commission, and these would be subject to the commission's audit and accounting procedures established under its bylaws. However, all receipts and fund disbursements would have to be audited yearly by a certified or licensed public accountant; this accounting report would be included in and become part of the commission's annual report. The commission's accounts would have to be open at any reasonable time for inspection by duly authorized representatives of the participating states and persons authorized by the commission.

Eligible Compacting States. Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota, and Wisconsin would be eligible to join the compact, while other states could only join if approved by a majority of the member states. The compact would take effect if the legislatures of five party states enacted the compact into law by December 31, 1995.

Withdrawal, Default, and Termination. A state could withdraw from the compact by repealing its own state's compact law, but withdrawal would not take effect until two years after the effective date of the repeal. A withdrawing state would be liable for any debts it incurred on account of its party status up to the effective date of withdrawal. However, if a state had specifically committed itself to perform an obligation extending beyond the effective withdrawal date, it would remain liable to the extent of the obligation.

If a state defaulted in the performance of any of its obligations, assumed or imposed, according to the compact's provisions, all rights, privileges, and benefits conferred by the compact — or agreements made under it — would be suspended from the default's effective date (as fixed by the commission). The commission would stipulate the conditions and maximum time for compliance under which the defaulting state could resume its regular status. If a default was not remedied as set forth by the commission, the compact with the defaulting state could be terminated by a majority vote of the other member states. A defaulting state, likewise, could be reinstated if it performed all acts and obligations stipulated by the commission.

Validity of Compact. Provisions entered into under the compact would be severable: if any phrase, clause, sentence, or provision in the compact was declared unconstitutional by any state or the U.S., or the compact's applicability to any government, agency, person, or circumstance was held invalid, the validity of the remainder of the compact and its applicability to any of these would not be affected. If the compact was considered unconstitutional by a participating state, it would remain in full force and effect for the remaining states, as well as for the affected state relative to all severable matters. The compact's provisions entered into as specified would be liberally construed to effectuate the compact's purposes.

BACKGROUND INFORMATION:

Midwestern states twice have attempted to establish a higher education compact. After an attempt to form a compact failed in the mid-1960s, in 1976 the Education Committee of the Midwestern Conference — now known as the Midwestern Legislative Conference of the Council of State Governments — began working on a compact with advice from the Midwestern Governors' Conference. In 1977 the compact was endorsed by the Executive Committee of the Midwestern Conference and the states began to take legislative action on the compact. That compact stipulated that six states join by the end of 1981 in order for the compact to become operational; however, only four states (Ohio, Minnesota, Nebraska, and South Dakota) had passed enabling legislation by the deadline that would have activated the compact.

Currently, legislation recommending participation in the Midwestern compact has been approved by one legislative house in Kansas, Minnesota, and Missouri. (In addition to House Bill 5618, Michigan has similar legislation pending — Senate Bill 866 — before the Senate.) Also, the Nebraska legislature is considering the proposal during the current legislative session.

FISCAL IMPLICATIONS:

According to the Senate Fiscal Agency in its analysis of a substantially similar bill, Senate Bill 866, entering the compact would cost the state \$58,000 for annual membership dues, but would have no fiscal impact on local governments. Also, according to the Senate Fiscal Agency, membership fees would be payable as soon as five states had officially joined the compact, and the money raised from these fees would be used to finance the commission's work. The state could save money if collaborative efforts with other states decreased the need for new educational programs and services in Michigan. Appropriations to the commission could increase in subsequent years but such a change would have to be approved by the legislature on an annual basis. (4-3-90)

ARGUMENTS:

For:

Budget restrictions and economic problems continue to limit the financial resources that states can tap for investing in higher education. The future needs of post-secondary education will demand that states use dollars spent on higher education in the most cost-effective way, and that services provided to students will enable them to work effectively in an increasingly complex economy and society. Cooperation among Midwestern states, and among the educational sectors of those states, could perpetuate high quality post-secondary educational programs without placing greater burdens on the resources of each state in the region. The bill could help the state's higher education institutions work in coordination with other states' schools to offer programs and services that were best able to meet the needs of citizens in each state. Similar compacts in other regions of the country have helped their cooperating states in achieving their economic and social needs by, for instance, identifying local and regional needs for technically and professionally educated persons, promoting excellence in higher education through greater effectiveness and efficiency of programs while reducing duplication of programs among states, and striving to ensure that students have better access to educational opportunities. Under the compact Michigan and other Midwestern states, likewise, could provide residents with

access to programs on a reciprocal, reduced-tuition basis, offer greater access to research on higher education issues, encourage interstate and interinstitutional academic planning to conserve and efficiently use resources, identify programs for recruitment and retention of minorities in higher education, and facilitate the sharing of telecommunications technology, programs, and resources among participating states. The compact could foster cooperation and collaboration among Midwestern states, their colleges and universities, and all individuals concerned with the quality of higher education.

Against:

Other states that are part of the Midwest region and would be included in the compact have different demographic characteristics than Michigan, which could make it difficult for the participating states to effectively address issues in ways that would improve the educational climate in the various states.

Response: The compact of 13 Western states includes member states whose size and character range from the arctic ruggedness of Alaska to the tropical islands of Hawaii. Despite these differences, the states have joined together with one goal in mind: to make quality higher education available to as many residents as possible at the lowest possible cost. Certainly the states of the Midwest share this goal.

Against:

If the compact were enacted member states would be assessed for annual membership dues, estimated to be \$58,000, which would be used to finance the work of the Midwest Higher Education Commission. Furthermore, Michigan and other states in the compact could end up financing some of the costs associated with a professional student exchange program, if such a program were established in the Midwest as was done in the Western compact. Under that exchange program, students have access to professional programs such as those in the health field. Students pay resident tuition and the state that sends them to another state's program pays an additional "support fee" established by the education commission and appropriated by state legislatures.

Response: The compact proposed under the bill would not infringe on the powers of each participating state to control its own institutions, or in any way limit a state's flexibility in making decisions affecting higher education. Collaboration and cooperation in a program would be entirely voluntary. Thus, states within the compact would decide themselves whether to even adopt a program similar to the Western compact's exchange program; it could not be imposed on them. Incidentally, exchange programs such as that set up among Western states have saved taxpayers millions of dollars as those states have not had to establish and operate duplicate, competing, and expensive programs.

Against:

A multitude of other higher education organizations and associations already exists, each with goals similar to those of such a compact. The bill would merely duplicate these efforts. Further, the money that would be needed to join the compact could be better spent on the specific needs of the state's post-secondary schools.

SUGGESTED AMENDMENTS:

The State Board of Education suggests amending the bill to provide that 1) one of the at-large commission members would be state-board appointed, 2) one at-large member would serve a two-year term, representing, on a rotating basis, public universities, community colleges, and independent, non-profit colleges and universities, and 3) the colleges and universities not represented by the rotating at-large position could appoint an individual to serve as an ex officio member who would not have a vote in decisions made by the commission. (4-6-90)

POSITIONS:

The State Board of Education would support the bill with its suggested amendments. (4-17-90)