

SFA

BILL ANALYSIS

Senate Fiscal Agency

• Lansing, Michigan 48909

• (517) 373-5383

RECEIVED
APR 17 1989*Mich. State Law Library*

Senate Bill 140 (as reported with amendments)
 Senate Bill 141 (Substitute S-1 as reported)
 Senate Bill 142 (as reported with amendment)
 Sponsor: Senator Harmon Cropsey
 Committee: Local Government and Veterans

Date Completed: 3-8-89

RATIONALE

For 34 years, cities, villages, school districts, townships, and counties seeking to establish a district library have been guided by Public Act 164 of 1955. The Act provides, in general, for presenting to the voters a proposal to establish a library, the appointment or election of a board of trustees, the board's powers, the funding of a library, and the withdrawal of a municipality from a library district. Some people contend that the Act is inadequate in setting up mechanisms to follow when establishing a library district. For example, the Act allows a tax to be levied for the establishment and operation of a library, upon approval by the voters in the district or a participating municipality. The Act does not, however, outline procedures for conducting the election, except in broad terms. Thus, situations have arisen over the years in which municipalities have taken steps on their own to implement certain provisions in the Act. In the case of millage elections, there reportedly have been instances when local governments in a district, such as a township and a city, have cooperated in developing procedures for conducting a millage election due to the absence of guidelines in Public Act 164. Another inadequacy, some people point out, is that the Act includes provisions for a municipality to follow when attempting to withdraw from a library district, but the Act contains no provisions for a municipality to follow when it may want to join a library district. Consequently, some people believe that

procedures for establishing and maintaining a district library should be specified in the law, that current practices of district libraries should be incorporated into the law, and that the law's current provisions should be revised so they can be applied meaningfully.

CONTENT

Senate Bill 140 would create the "District Library Establishment Act" to replace Public Act 164 of 1955. **Senate Bill 141 (S-1)** would amend the District Library Financing Act to add conditions that a district library would have to meet before it could issue bonds. **Senate Bill 142** would amend the Michigan Election Law to prescribe procedures for the recall of elective district library board members. Senate Bills 141 (S-1) and 142 are tied to Senate Bill 140.

Senate Bill 140

The bill would create the "District Library Establishment Act" to provide for the establishment and maintenance of district libraries by doing the following:

- Requiring that an agreement for establishing a district library be approved by the municipalities involved in establishing the library as well as by the State librarian.

S.B. 140-142 (3-8-89)

- Providing for the appointment or election of board members, and specifying their authority.
- Providing for funding the establishment and operation of a district library, including allowing an election on a proposed district-wide library tax.
- Permitting a tax of not more than two mills to be levied on taxable property in a municipality for district library purposes.
- Providing for a municipality to withdraw or be added to a district library.
- Repealing Public Act 164 of 1955 and providing that district libraries established under that Act would be considered established libraries under the bill.
- Specifying that a district library would constitute an authority under Section 6, Article IX of the State Constitution.

Establishing a District Library

Two or more municipalities (cities, villages, school districts, townships, or counties), except two or more school districts that hold their regularly scheduled elections on different dates, authorized by law to establish and maintain a library or library services jointly could establish a district library if each of the following requirements were satisfied:

- The public library governing board approved the establishment of the district library, if the proposed district contained a public library that was recognized by the Legislative Council as lawfully established for the purposes of the distribution of State aid and penal fines.
- Each municipality's legislative body identified in the agreement adopted a resolution that provided for the establishment of a district library and approved a district library agreement.

A county, township, city, or village that united with other municipalities to establish a district library could provide in the resolution that only a portion of its territory would be included in the district. The portion of a county to be included in the district would have to be

bounded by county, township, city, village, or school district boundaries. The portion of a township, city, or village to be included in the district would have to be bounded by its boundaries and by existing district library or school district public library boundaries.

Agreement

The agreement would have to provide for the creation of a board to govern the operation of the district library and set forth all of the following:

- The identity of the municipalities establishing the district library; the method of selection of board members either by election or appointment; and, if by appointment, the members' term of office and total number, and the number of board members to be appointed by each participating municipality's legislative body, and, if by election, the number of provisional board members to be appointed by the legislative body of each participating municipality.
- The percentage of funds needed for the establishment and operation of the district library to be supplied by each participating municipality.
- The procedure for amending the agreement, which would require the consent of the legislative bodies of at least two-thirds of the participating municipalities.
- A time period, at least one year, after the effective date of the agreement during which the adoption of a resolution to withdraw from the district library would be void.
- Any distribution of district library assets to take place upon the withdrawal of a participating municipality.
- Any other necessary provisions regarding the district library.

("School district" would mean one of the following: a local act school district, as defined in the School Code; or, a local school district, as defined in Public Act 451 of 1976; but, would not include a primary school district or a school district that holds meetings instead of elections.)

An agreement could provide that the district

library board was abolished and the district library terminated unless a district library millage, at a rate not less than a minimum number of mills stated in the agreement, was approved by the district electors on or before a date stated in the agreement. An agreement that contained such a provision would have to specify the manner in which the net assets of the district library would have to be distributed to the participating municipalities upon termination and would have to contain a plan for continuing public library service to all residents of the district after termination.

A board or the municipalities' legislative bodies would be required to submit to the State librarian the agreement or an amendment to the agreement within 10 days after it was adopted.

The State librarian would be required to approve an agreement or an amendment, or a revision in board structure, as provided in the bill, if it conformed to the bill's requirements. The State librarian would be required to disapprove the agreement, amendment, or revision if it did not conform. Within 30 days after the State librarian received the agreement, amendment, or revision, he or she would be required to send to the board or legislative bodies a written statement of approval or disapproval. If the agreement, amendment, or revision were disapproved, the State librarian would be required to explain in a written statement the reasons for disapproval, and the Legislative Council could not recognize the library as being lawfully established for the purposes of distribution of State aid and penal fines until the State librarian approved an amendment or revision that resulted in the agreement conforming to the bill's requirements. If the State librarian did not send a written statement of approval or disapproval, within 30 days after the date that the State librarian received the agreement, amendment, or revision, it would be considered approved.

Currently Established Libraries

Within one year after the bill's effective date, the board of a district library established pursuant to Public Act 164 of 1955 would be required to submit to the State librarian an organizational plan that included certain

information (concerning the municipalities establishing the district library; the number of board members, their method of selection, and terms of office; and operating funds) and would be required to revise the board structure and selection to conform to the bill's provisions for the appointment or election of board members, or the election of board members if the participating municipality were a school district. If the board of a district library established pursuant to Public Act 164 of 1955 complied with these provisions and the State librarian did not disapprove the revision of board structure and selection, such a district library would be considered established pursuant to the bill.

The bill specifies that a district library established pursuant to the bill would constitute an authority under Section 6 of Article IX of the State Constitution. (Section 6 provides that total property taxes cannot exceed 50 mills, but makes exceptions to that limitation for, among other things, an authority whose tax limitations are provided by law.)

Board Members

A candidate for appointment or election as a board member would have to be a qualified elector of the participating municipality and a resident of the district.

The office of board member would become vacant when the incumbent died, resigned, ceased to be a member of the district, was convicted of a felony, or was removed from office by the Governor pursuant to Section 10 of Article V of the State Constitution (for gross neglect of duty or corrupt conduct in office, or for any other misfeasance or malfeasance). The office of an appointed board member would become vacant when the incumbent ceased being a resident of the municipality that appointed the incumbent.

If an agreement prescribed appointed board members, the board would have to consist of at least five and not more than eight members. A term could not be more than four years. A member would have to serve until the appointment and qualification of a successor. A vacancy would have to be filled for the unexpired term by the municipality that appointed that member. The agreement also

could provide that the right to appoint one or more board members rotated between two or more municipalities.

The bill would provide procedures for the election of board members. If an agreement prescribed elected board members, the board would have to consist of seven members who were elected at large from the district, and a provisional board of seven members would have to be appointed. Provisional board members would have to hold office until their successors were elected and qualified. Board members would have to be elected on nonpartisan ballots. The bill would prescribe a schedule for board elections, procedures for filing a vacancy on the board, and separate election procedures for a school district that was a participating municipality.

Board Authority

A board could do one or more of the following:

- Establish, maintain, and operate a public library for the district.
- Appoint and remove officers from among its members.
- Appoint and remove a librarian or assistants and fix their compensation.
- Acquire real or personal property for library purposes by purchase, land contract, installment purchase contract, lease with or without option to purchase, or title retaining contract.
- Erect buildings.
- Supervise and control district library property.
- Enter into a contract to receive library-related service from, or give library-related service to, a library or a municipality within or without the district.
- Adopt bylaws and regulations, not inconsistent with the bill, governing the board and the district library.
- Propose and levy upon approval of the electors a tax for support of the district library.
- Borrow money pursuant to the District Library Financing Act.
- Issue bonds and borrow money pursuant to the District Library Financing Act.
- Accept gifts and grants for the district library. Money for the district library

would have to be paid to the board and deposited in a fund known as the district library fund. The board would exclusively control the expenditure of money deposited in the fund.

- Do any other thing necessary for conducting the district library service, whose cost would have to be charged against the district library fund.

A board could reimburse each board member for necessary expenses that the member incurred in the performance of official duties. A board could compensate its members for attending board meetings and would have to include the amount of compensation in the annual budget. Compensation could not exceed \$30 per board member per meeting. A board member could not be compensated for attending more than 52 meetings per year.

Operating Funds/Tax Levy

Subject to any limitation in the district library agreement on the amount of the district library annual budget, or the amount or percentage of an increase in the annual budget, or both, that applied in the absence of a district-wide tax approved by the voters, the board would be required annually to determine the amount of money needed for the establishment and operation of the district library and would have to state that amount in an annual budget. Of the amount that was not supplied by a district-wide tax, the legislative body of each participating municipality annually would have to pay to the board the percentage set forth in the agreement. A participating municipality could make the payment by appropriating money from its general fund or by levying a tax on the taxable property for district library purposes, or both.

All or part of the money needed for the establishment and operation of a district library could be supplied by a tax levied by the district library on the taxable property in the district. A district library could not levy a tax unless it was approved by the voters, as provided in the bill. A district library tax in effect or authorized to be levied by the district library established pursuant to Public Act 164 of 1955 could be levied at the rate and for the period of time originally authorized without being approved by the voters.

A participating municipality could not levy a tax for district library purposes on the municipality's taxable property, unless the tax were approved by a majority of the municipality's electors who voted on the proposal. The legislative body of a participating municipality would be required to certify a proposed tax to the municipality's clerk, or, if the municipality were a school district, to the secretary of the school board for inclusion on the ballot at least 60 days before the election date.

District-Wide Tax and Election

A library tax in effect or authorized to be levied by a participating municipality before the municipality became a party to an agreement could be levied at the rate and for the period of time originally authorized and used as a source of all or part of the percentage of money set forth in the agreement, unless prohibited by the millage authorization.

A district-wide tax or taxes could not exceed two mills. If one or more of the participating municipalities had a legally established public library with an authorized tax of more than two mills on the day before the bill's effective date, the district library could levy a tax or taxes of not more than the greatest number of mills authorized to be levied by any such participating municipality for its public library on the day before the bill's effective date.

An election for or recall of board members and an election for a district-wide tax would have to be conducted under the Michigan Election Law and applicable provisions of the School Code. A ballot proposal for a district-wide tax would have to state the amount of the millage.

If none of the participating municipalities were a school district, a district-wide tax proposal could not be placed on the ballot unless it was adopted by a resolution of the board and certified no later than 60 days before the election to the county clerk of each county in which all or part of the district was located for inclusion on the ballot. The proposal would have to be certified for inclusion on the ballot at the next general election, the State primary immediately preceding the general election, or a special election not occurring within 45 days

of a State primary or a general election, as specified by the board's resolution.

If one or more of the municipalities were school districts, a proposal for a district-wide tax could not be placed on the ballot unless it was adopted by board resolution and certified no later than 60 days before the election to the secretary of the school board of the largest participating school district. The board would have to certify the proposal for inclusion on the ballot at the next regularly scheduled election of school board members in the largest participating school district or at a special election not occurring within 45 days of a State primary or general election, as specified by the board's resolution. If there were more than one participating school district, the school board secretary to whom the ballot proposal was certified would be required to certify the proposal and election date to the secretary of the school board of every other participating school district and to election officials authorized by the bill to conduct the election in the participating municipalities or portions of the municipalities located within a nonparticipating school district.

If a special election were requested, within 10 days after receiving the proposal, the school board secretary to whom the resolution was certified by the board or the clerk of the largest county would be required to request approval of a special election date from the county election scheduling committee of the clerk's county or school board secretary's school district. The proposal would have to be submitted to the electors in the district on the date approved by the county election scheduling committee.

If a majority of the votes cast on the question of a district-wide tax were in favor of the proposal, the tax levy would be authorized. No more than two elections could be held in a calendar year on a district-wide tax proposal.

The bill also would prescribe procedures for conducting elections for board members or a district-wide tax when the election was held in conjunction with a general election or State primary, or special election; when none of the participating municipalities was a school district; when one or more municipalities was a school district; and, when all or a portion of a municipality was located within a

nonparticipating school district.

Withdrawal from District Library

Except to the extent that the agreement provided otherwise, a participating municipality in which a district library tax was in effect or authorized to be levied by the district library or the participating municipality could withdraw from the district library if each of the following requirements were satisfied:

- At least two months before the next regularly scheduled municipal election, the legislative body of the municipality adopted a resolution to withdraw on a date specified in the resolution. The date could not be less than six months after the next regularly scheduled municipal election.
- Notice of an election on the resolution was published in a newspaper of general circulation in the municipality at least 10 days before the next regularly scheduled election of the municipality following adoption of the resolution.
- The resolution was approved by a majority of the municipality's electors voting on it. If only a portion of the municipality's territory were included in the district, the vote would have to be conducted only in that portion.
- After approval of the resolution by the electors, the municipality's clerk or, if the municipality were a school district, the secretary of the school board filed with the Library of Michigan a copy of the official canvass statement and a certified copy of the resolution and filed with the board a copy of the official canvass statement and enough certified copies for the legislative bodies of each of the participating municipalities.
- Payment or the provision for payment was made to the district library or its creditors of all obligations of the municipality seeking to withdraw.
- The legislative body of the withdrawing municipality gave the Library of Michigan a plan for continuing, after the municipality no longer received library services from the district library, public library services for residents of the withdrawing municipality or the portion of the territory of the withdrawing

municipality that was included in the district.

A district library tax in effect or authorized to be levied by the district library or by the withdrawing municipality before the adoption of the withdrawal resolution would be levied in the municipality for its original purpose, but only for the period of time originally authorized and only so long as the board existed. A withdrawing municipality would continue to receive library services from the district library as long as the district-wide tax continued to be levied in the municipality and the district library remained in operation.

Except to the extent that the agreement provided otherwise, a participating municipality in which no district library tax was in effect or authorized to be levied by either the library or the participating municipality, could withdraw from the district library if all of the following conditions were satisfied:

- The municipality's legislative body adopted a resolution to withdraw from the district library on a specified date, which would have to follow the date of the resolution by at least one year.
- The municipality's clerk or, if the municipality were a school district, the school board secretary filed with the Library of Michigan a certified copy of the resolution and filed with the board enough certified copies of the resolution for distribution to the participating municipalities' legislative bodies.
- The bill's requirements on payment of obligations and development of a plan for continuation of library services were met.

After the municipality withdrew, the agreement would have to be amended to reflect the withdrawal.

Adding a Municipality

A municipality, other than a school district, could become a party to an existing agreement if the agreement's requirements concerning the addition were satisfied, or in the absence of requirements, if each of the following requirements were satisfied:

- The municipality's legislative body resolved by majority vote that the municipality become a participant and that all or a portion of the municipality's territory be added to the district.
- The resolution was conditioned on the board's adopting, within a specified time period, amendments to the agreement specified in the resolution. The amendments would have to reflect the addition to the district and include, changes in board representation or the percentage of funds needed for the establishment and operation of the district library to be supplied by each participating municipality after it became a party to the agreement.
- The board amended the agreement within a time and manner specified in the resolution. The amendment would have to be made by majority vote of the board members elected or appointed and serving, notwithstanding anything to the contrary in the procedure for amending the agreement.

If there were a district-wide library tax, the board would have to condition acceptance of the municipality or portion of the territory of the municipality into the district on the authorization of that tax by a majority of the electors of the municipality or portion of the territory of the municipality voting on the proposal.

Senate Bill 141 (Substitute S-1)

The bill would amend the District Library Financing Act to add conditions to those already in the Act that a district library would have to meet before it could borrow money or issue bonds or notes, including submitting the question to voters in the library district; and, would permit a district library to issue limited tax bonds or notes and negotiable bonds or notes, under certain circumstances, without a vote of the district's electors. The bill is tie-barred to Senate Bill 140.

Under the bill, a district library board would be prohibited from borrowing money or issuing bonds or notes for a sum that, together with the total outstanding bonded indebtedness of the district library, exceeded 5% of the State

equalized valuation (SEV) of the district's taxable property and could not issue general obligation unlimited tax bonds unless all of the following conditions were met:

- The board adopted a resolution that submitted to the district's electors the question of issuing general obligation unlimited tax bonds or notes.
- The question of issuing general obligation unlimited tax bonds or notes was certified by the board and the election was conducted in the manner provided for an election for district-wide tax in the proposed District Library Establishment Act.
- A majority of the qualified electors of the district voting on the question approved the issuance of the general obligation unlimited tax bonds.

Refunding bonds or part of a bond issue would not be considered to be within the 5% limitation, as specified in the bill, but would be considered to be authorized in addition to the 5% limitation.

Except as otherwise provided in the bill, a district library could issue limited tax bonds or notes by resolution of the board, or, could borrow money and issue its negotiable bonds and notes for refunding outstanding debt obligations of the district, without submitting the questions to the district's electors.

The bill also would repeal provisions that set limits on the amount of money a district library can borrow or the amount of bonds that a district can issue (MCL 397.286).

MCL 397.282 et al.

Senate Bill 142

The bill would amend the Michigan Election Law to prescribe procedures for the recall of elective district library board members. The bill is tie-barred to Senate Bill 140.

A petition demanding the recall of an elective district library board member would have to be filed with the clerk of the "largest" county. If the official with whom the recall petition was filed, were not required to give public notice of

the election concerning the office in question, the official would have to notify the official(s) required by the library laws of the State. In addition, a nominating petition for the office of district library board member would have to be signed by at least 3% of the number of persons voting in the library district at the last election at which district library board members were elected, and filed with the clerk of the largest county or, if a school district were a participating municipality, with the secretary of the "largest" participating school district. The officer with whom the recall petition was filed, upon certification of the votes cast on the recall question, would have to notify the district library board of the election results. (Under Senate Bill 140, "largest", if used in reference to a county, would mean the county having the most registered electors of a library district, as last reported to the county clerk pursuant to the Election Law. If used in reference to a participating school district, "largest" would mean the participating school district having the most electors voting at the last regularly scheduled school board election in the participating school district.)

MCL 168.960 et al.

FISCAL IMPACT

Senate Bill 140

Senate Bill 140 would have no fiscal impact on State government. The costs incurred by local library districts would depend on the number of districts established and the budgets of the district libraries. Anticipated costs would be the per diem cost of library board members, and costs associated with holding special elections to elect board members.

Senate Bill 141 (Substitute S-1)

Senate Bill 141 (S-1) would have no fiscal impact on State government. The impact on local library boards would depend on the size and duration of bonds issued under provisions of this Act.

Senate Bill 142

Senate Bill 142 would have no fiscal impact on State government. Local library districts would have expenses involved with holding the special

elections provided for in this bill.

ARGUMENTS

Supporting Argument

For more than 30 years, the State's 67 district libraries and the municipalities that form their districts through their own initiative have taken steps to accommodate the inadequacies of Public Act 164. For example, some townships have operated as a participant in a library district, even though the Act does not contain provisions on a municipality joining an established library district. In addition, some school districts that operate a public library are considering converting that library to a district library so the millage funds set aside in the school budget for the library could be used entirely for the schools. Yet, the current Act is silent on how such a conversion, including an election on the question and on the millage, could be handled. For example, the Kalamazoo School District reportedly is studying the possibility of converting its library to a district library involving the school district and the city of Kalamazoo. Yet, approximately 3% of the city is outside of the school district. Under Public Act 164, it is not clear how the election would be conducted and where voters outside of the school district would cast their ballots. Senate Bill 140 would clarify such vague aspects of the current Act, and would provide mechanisms for carrying out its provisions, which are lacking in Public Act 164.

Opposing Argument

Michigan's taxpayers already are overburdened with paying taxes to the State as well as local governments, school districts, and in some cases special taxing units such as community colleges. Taxpayers in this State cannot afford to pay more taxes. While Public Act 164 currently allows the levying of a tax for the establishment and operation of a district library, Senate Bill 141 (S-1) is viewed by some people as an expansion of a district library's ability to tax. Under the bill, a district library could borrow money or issue bonds or notes for an amount of up to 5% of the SEV of the district's taxable property, without a vote of the district's electors. It is feared that Senate Bill 141 (S-1) could obligate residents of a library district to a debt of the library with the taxpayers never having a chance to vote on the issue. Furthermore, some people view the bill

in a broader context of permitting government, once again, to get into debt and expecting the taxpayers to pay for it.

Response: Senate Bill 141 (S-1) along with Senate Bill 140 should be viewed as a restriction, and not an expansion, of a district library's ability to tax. Under Senate Bill 140, electors in a district library could not authorize the levy of more than two mills for library operating purposes, which would include operating expenses as well as debt service on nonvoted bonds. While Senate Bill 141 (S-1) would permit a district library to borrow money or issue bonds for an amount that did not exceed 5% of the SEV, without voter approval, a library district still would be subject to the two-mill limit, as proposed in Senate Bill 140. A district library could borrow no more without a vote than it could pay for out of its voted operating millage. If a district library wanted to levy taxes above the voted operating millage to pay debt, Senate Bill 141 (S-1) would require that a vote be held on the question.

Opposing Argument

Under Senate Bill 140, any municipality, other than a school district, could become a party to an existing district library agreement as long as the agreement's requirements concerning the addition were satisfied, or, in the absence of those requirements, the requirements outlined in the bill were satisfied. Some people question why school districts would be prohibited from joining an existing district library. Proponents of the bill contend that the potential for change in a school district's boundaries, due to property transfers, could make it difficult to maintain a district library's boundaries. Excluding school districts from joining a library district because of potential boundary changes would not be fair, however, since a municipality that was a member of a library district could annex land, which would result in a change not only in the municipality's boundaries but also in the district library's boundaries.

Response: The bill would not preclude a school district from joining a library district when that district was being formed. School districts would be precluded from joining a district library only after that district had been formed. Furthermore, the annexation of land to a municipality usually involves larger parcels of land than those involved in a school district property transfer. Thus, adjusting a district library's boundaries after an annexation would

be easier than making the adjustment when property transfers occurred.

Legislative Analyst: L. Arasim

Fiscal Analyst: G. Olson

A8990\S140A

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.