

**House Bill 4395 (Substitute H-3)
First Analysis (5-20-97)**

**Sponsor: Rep. James Agee
Committee: Education**

THE APPARENT PROBLEM:

One of the most controversial reform measures that accompanied the overhaul of Michigan's school finance system in 1993-94 was the authorization of public school academies or charter schools. In Michigan, a public school academy is an independent public school organized as a nonprofit organization, funded on a per-pupil basis from the state school aid fund, and operated under a contract issued by an authorizing body. An academy is also subject to the "leadership and general supervision" of the State Board of Education and must comply with the same laws as traditional public schools. Contracts can be issued by the boards of local and intermediate school districts, community colleges, and state public universities. People interested in operating a charter school must apply to an authorizing body. While there is no overall limit on the number of contracts that can be issued, universities are limited to a total of 100 through 1997, 125 through 1998, and 150 thereafter, and no single university can issue more than one-half of the total issued by universities as a whole. Currently, about 80 charter schools are operating in Michigan; they exist in 29 counties, according to information from the Department of Education. (A majority of the contracts have been issued by universities, and about half of all of them by one school, Central Michigan University.) Generally, the schools receive the per-pupil grant available to schools in the local district in which they operate, subject to a maximum amount (currently about \$5,800). They cannot charge tuition and are required to fill seats by lottery.

Supporters of the charter school concept say that it allows for the creation of new public schools where innovation can flourish, where new teaching and learning strategies can be developed, where teachers can be empowered, or where a particular philosophy or approach (whether experimental or traditional) can be applied. Such schools, say proponents, can help students not otherwise well served in the public schools, and can provide different kinds of curriculums, management systems, or facilities than typically found in school districts. They are free of the bureaucracy associated with school districts. Charter schools or public school academies are also a means of injecting additional parental choice into public education. Where

successful, they can provide the kind of competition that will encourage improvement in the traditional public schools.

Critics of charter schools doubt that they can have much overall positive effect on the public school system, are suspicious of the notion that "marketing" schools will lead inevitably to informed parental choice, are concerned that "deregulation" will mean denying teachers their traditional protections and cutting teacher pay (while enriching school organizers), and they worry about the diversion of funds from the traditional public schools, which lose funding as they lose students, but whose costs remain fixed. They also are concerned about private (and religiously oriented) schools becoming publicly funded charter schools with much the same student body as before. They point to alleged financial abuses and educational inadequacies in some of the state's new charter schools, and argue that the schools should have stricter state oversight if they are to be recipients of state tax dollars.

The Revised School Code says an authorizing body must oversee, or contract with an intermediate school district, community college, or state public university to oversee, each academy operating under a contract it has issued, and that the "oversight shall be sufficient to ensure that the authorizing body can certify that the public school academy is in compliance with statute, rules, and the terms of the contract." Legislation has been introduced that would require an authorizing body to file an annual report with the state for each contract it has issued describing its oversight program and delineating its findings.

THE CONTENT OF THE BILL:

The bill would amend sections of the Revised School Code dealing with public school academies (or charter schools) to:

a) require that each body that authorizes an academy annually file an oversight report with the State Board of Education containing information as specified in the bill;

b) permit the State Board of Education to revoke the power of an authorizing body to issue new contracts (rather than only suspend them, as is the case now) and to order the repayment of any fee collected for issuing a contract or providing oversight of a contract, if it finds the authorizing body is not engaging in appropriate continuing oversight;

c) specify that all property of an academy is state property and that property and assets of an academy would revert to the state if it ceased operations;

d) require a public school academy to notify the parent or legal guardian of each applicant for enrollment that the academy is required by law to provide special education programs and services designed to develop the maximum potential of each student eligible for special education; and

e) require that each school district, intermediate school district, and public school academy, at least annually, submit to the Department of Education a list of school buildings they own that are not being used and require the director of the Department of Management and Budget to submit a list of the buildings the state owns that are not being used. The department would have to compile this information and make it available to any interested person on request.

Oversight Report. The oversight report would have to be accompanied by a written certification of its accuracy signed by the chief administrator of the authorizing body and by the president of the elected governing board. It would have to contain at least the following information:

-- the number of staff assigned to oversight activities, both generally and for the specific contract, on a full-time equated basis.

-- the qualifications, including any professional certification, of staff assigned to oversight activities, both generally and for the specific contract.

-- oversight activities conducted at the site of the academy.

-- any non-compliance with statute, rules, or the terms of the contract found in the course of the oversight and any areas of performance found to be in need of improvement.

-- a description of the specific evidence that led to each finding of non-compliance or need for improvement.

-- specific plans for remediation of each non-compliance.

-- specific suggestions and plans for improvement of performance.

-- an assurance that the authorizing body has made appropriate inquiry and has determined that the academy is in compliance with statutory provisions regarding religious affiliations.

-- an assurance that the authorizing body has made appropriate inquiry and has determined that the academy is in compliance with all applicable law, including, but not limited to, those specified in the sections of the Revised School Code addressing academies. (These include the Open Meetings Act, the Freedom of Information Act, the Public Employee Relations Act, and provisions regarding payment of prevailing wages on state projects and competitive bidding.)

-- assurance that the authorizing body has examined standardized test scores and other relevant data to determine that the academy is fulfilling the academic goals specified in the contract.

-- assurance that the authorizing body has examined the qualifications of the academy's instructional staff and has determined that the academy is in compliance with statutory requirements on the use of certificated teachers and non-certificated teachers.

Public School Academy Property. The bill states that all property of a public school academy is state property. If an academy ceases to operate, title to all real and personal property, interests in real or personal property, and other assets of a public school academy would revert to the state. Any money included in those assets and the net proceeds from the sale of the property or interests in property, after payment of any debt secured by the property or interest in property, would have to be deposited in the state school aid fund. The bill would specify that this new provision "does not impose any liability on this state for any debt incurred by a public school academy."

(Note: There are two different sets of provisions dealing with public school academies in the Revised School Code, with the latter set in effect while the former set is in litigation. The bill would put the same amendments into both sets of provisions.)

MCL 380.502 et al.

FISCAL IMPLICATIONS:

The House Fiscal Agency reports that state costs could increase to an indeterminate extent from the need to review reports submitted by public school academy authorizing bodies, but notes that if the task is assigned to existing staff, there might not be an increase. Also,

says the HFA, revenue could increase if an academy closed, because the bill would direct proceeds from the sale of the property to the school aid fund. Costs would increase marginally for authorizing bodies. (Fiscal Note dated 5-2-97)

ARGUMENTS:

For:

The principal aim of the bill is to ensure that the authorizing bodies issuing charters to public school academies (or charter schools) are engaging in the appropriate oversight activities. The bill does not add to the regulatory burdens of charter schools; it imposes no new regulations or reporting requirements on the academies themselves. The bill is primarily directed at the authorizing bodies and asks them to issue a report on their oversight activities. Charter schools are relatively new entities in the state, and they are proliferating fairly rapidly. Charters are being issued by a small number of authorizing bodies, and about half of the current schools have been authorized by one university. There is concern about whether the oversight already called for in the Revised School Code is being carried out as intended given this rapid growth and given the large (and growing) number of schools that must be supervised by a small number of authorizing bodies. Also, there have been allegations of financial abuse and educational shortcomings made against some of the state's charter schools, as well as fears about undue religious influence and about the backdoor channeling of public money to essentially private schools. If charter schools are to fulfill their promise of introducing innovation and promoting school reform, it is essential that the appropriate oversight take place to ensure that the laws of the state and the constitution are being followed.

The code allows an oversight body to receive up to three percent of an academy's state school aid for considering an application, issuing a contract, and providing oversight. The bill asks the authorizing body to report to the State Board of Education on who's doing the oversight and what their qualifications are, what activities they are engaged in, what they are finding out, and, where there are compliance or performance problems, what they are doing about them. The bill seeks assurances from the oversight body that they are making the appropriate inquiries so that they can certify that an academy is complying with all appropriate state laws and is fulfilling its educational goals. Currently, there is a cap on the number of charters that can be issued by public universities, which have issued the majority of charters thus far, and an additional cap on the percentage of the total number that can be issued by any one university. Proponents of charter schools want these caps removed. How could such an action be taken

until the public is assured that the public funds distributed to the existing schools are being spent appropriately and in accordance with state law? The bill simply requires a report by authorizing bodies and gives them an opportunity to demonstrate how they are carrying out their existing oversight responsibilities.

Against:

The current regulation of public school academies or charter schools is adequate. This bill is unnecessary and really intends to retard the growth of these increasingly popular institutions. In fact, if anything, charter schools are over-regulated. An academy must meet all of the state laws that apply to traditional public schools. Its students must take the same standardized tests as students in traditional public schools. An academy is under the supervision of the State Board of Education, which can deny it state aid, and, for some matters, it must answer to the intermediate school district. It must also meet the terms of the charter issued by its authorizing body, which is charged with overseeing the academy and can revoke the charter. (The state board, in turn, can suspend the authorizing body's power to issue new contracts if the authorizing body is not engaged in appropriate oversight.) It must be organized as a nonprofit organization and is subject to the Nonprofit Corporation Act. It is governed by a board of directors. And, perhaps most importantly, it is under the scrutiny of parents, who are under no compulsion to enroll their children or keep their children enrolled. This is more than sufficient scrutiny of public school academies and, indeed, of their authorizing bodies (all of which have governing bodies themselves and are subject to the scrutiny that accompanies state appropriations).

One aspect of the charter school concept is the notion of creating schools that will be free of the traditional bureaucratic regulatory systems and instead will operate under a consumer-response (or market) model. The ultimate judgment, then, is supposed to be with parents. Many of the charter schools reportedly have large waiting lists, which is one indication of consumer satisfaction. A number of parents with children in charter schools testified in opposition to the bill. This bill runs counter to the competition and choice approach, and emphasizes the heavy hand of regulation. While some schools may have suffered problems as they got underway, these have been and will continue to be addressed (often with significant public and press scrutiny) under the current law. The bill will waste the resources of oversight bodies by making them engage in comprehensive inquiries to see if each and every law is being met rather than allowing them to address identifiable real problems when they occur.

POSITIONS:

The Michigan Association of School Boards supports the bill. (5-15-97)

The Michigan Education Association supports the bill. (5-14-97)

The Michigan Federation of Teachers and School Related Personnel supports the bill. (4-30-97)

The Michigan Association of School Administrators supports the bill. (5-19-97)

The Governor's Special Advisor on Charter School Development testified in opposition to the bill. (5-7-97)

The Michigan Association of Public School Academies is strongly opposed to the bill. (5-7-97)

The President of the Board of Directors of the Renaissance Public School Academy testified in opposition to the bill. (5-14-97)

Analyst: C. Couch
