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**CHARTER SCHOOL LAW
REVISIONS; EDUCATION
MANAGEMENT COMPANIES;
REMOVE UNIVERSITY "CAP"**

**House Bill 4148
Sponsor: Rep. Brian Palmer
Committee: Education**

Complete to 2-10-03

A SUMMARY OF HOUSE BILL 4148 AS INTRODUCED 2-5-03

House Bill 4148 would amend the Revised School Code to revise its provisions concerning public school academies (more customarily referred to as charter schools). The bill would revise the current provisions concerning charter school authorization to encourage more oversight by authorizing bodies; to allow a statewide chartering agency in the Bay Mills Community College, a tribal community college; to remove the charter school cap for state public university authorizing bodies; to allow a community college to charter public school academies in Detroit; to allow enrollment priorities in limited circumstances; to specify how charter schools borrow money and issue bonds, as well as allow legal agreements to finance operations; and, to provide for more disclosure by educational management organization corporations when they operate public schools or public school academies. A more complete description of the proposed revisions follows.

Authorizing body. Currently under the law that enables the creation of charter schools, "authorizing body" is defined to mean the following entities that issue a contract to begin a charter school: i) the board of a school district that operates grades K to 12; ii) an intermediate school district; iii) the board of a community college; or, iv) the governing board of a state public university. Under the bill, this provision would be retained.

Eliminating the "cap". Currently under the law, no more than 150 public school academies can be authorized by the governing boards of state public universities, and the total number of contracts issued by any one state public university cannot exceed 50 percent of the maximum combined total number. The bill would remove the "cap" for academies that could be authorized by higher education institutions.

Allow community college authorized charters in Detroit. Further and under the law, the board of a community college cannot issue a contract for a public school academy to operate in a school district of the first class (Detroit), and any charter school so authorized is prohibited from operating. House Bill 4148 would eliminate this prohibition.

Articles of Incorporation. Currently under the law, a charter school's proposed articles of incorporation must provide that the charter school is incorporated and that it is a governmental entity. This provision would be retained, and in addition the articles of incorporation would have to provide that the charter school also is a political subdivision of the state.

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Collective bargaining agreements. Currently the law specifies that an entity that wishes to obtain a contract to organize a charter school must apply to an authorizing body, and the application must include, among other things, the identification of the applicant; a list of the proposed members of the board of directors; the proposed articles of incorporation; a copy of the bylaws; documentation about governance; educational goals (including curricular and assessment opportunities, admission policies, school calendar and school day schedule, and the age or grade range of the students); descriptions of staff responsibilities and of the academy's governance structure; identification of the local and intermediate school districts in which the academy will be located; an agreement that the academy will comply with state and federal law applicable to public bodies or school districts; for academies authorized by school districts, an assurance that employees will be covered by the collective bargaining agreements that apply to other employees of the school district employed in similar classifications; and, a description of and address for the physical plant.

The bill would retain these provisions, and also require for a contract issued by an intermediate school district (ISD) that is a conversion of an existing program of the ISD, is a substantially similar program to an existing program of the ISD, or is a program or class managed by the ISD, an assurance that employees of the public school academy will be covered by the collective bargaining agreements that applied to other employees of the ISD employed in similar classifications in schools or programs that are not public school academies.

Authorizing fees. Under the law an authorizing body can charge a fee of up to three percent of the total state school aid received by the public school academy in the school year in which the fees or expenses are charged. Under the bill this provision would be retained. In addition, the bill specifies that all of the following would apply to the fee: a) as set forth in the contract, an authorizing body could use a portion of the fee to provide technical assistance to the public school academy; and, b) an authorizing body would be prohibited from using any portion of the fee for any purpose other than considering applications and issuing contracts, or for oversight of, technical assistance to, and direct academic support to the public school academy.

Public school academy contract. Currently the law specifies the components that must be included in the contract that is issued by an authorizing body, in order that a public school academy be organized. Generally, the provisions address the new academy's educational goals, contract compliance procedures, and a statement that the employees be covered by the collective bargaining agreement. The bill would retain these provisions and add six others.

More specifically and under the bill, the contract would be required to address:

1) assurances that employees of public school academies authorized by intermediate school districts (ISDs) will be covered by the collective bargaining agreements that apply to intermediate school districts under certain conditions,

2) a requirement that the board ensure compliance with conflict of interest laws applicable to public bodies,

3) a requirement that if the board entered into an agreement with an educational management company for operation or management of the academy, that agreement would have to comply with section 1320 of the bill (which concerns education management companies, described below),

4) a requirement that the authorizing body review and if necessary disapprove any agreement between the board and an educational management company before the agreement was final and valid,

5) a requirement that the board of directors demonstrate all of the following to the satisfaction of the authorizing body with regard to its student admission process: i) that the public school academy had made the following additional efforts to recruit students who were eligible for special education programs and services to apply for admission: a) reasonable efforts to advertise its enrollment openings in a newspaper of general circulation in the ISD in which the public school academy is located; b) inclusion in all student recruitment materials of a statement that appropriate special education services would be made available to students attending the school as required by law; iii) that the open enrollment period for the public school academy would be for a duration of at least four weeks, and

6) if requested, that the board report to the authorizing body the total compensation for each individual employee of the academy.

Property reversion to School Aid Fund; no state obligation for debt. Under the bill if an academy was no longer authorized to operate, title to all real personal property, interests in real or personal property, and other assets owned by the academy would revert to the state. Any money included in the assets and the net proceeds from the sale of the property or interests in the property, after payment of any debt, would be deposited in the School Aid Fund. Further and under the bill, an agreement, mortgage, loan, or other instrument of indebtedness entered into by a public school academy and a third party would not constitute an obligation, either general, special or moral, of this state or an authorizing body. In addition, the full faith and credit or the taxing power of the state or any agency of the state, or the full faith and credit of an authorizing body, could not be pledged for the payment of any academy bond, note, agreement, mortgage, loan, or other instrument of indebtedness. Finally, the bill specifies that this part would not impose any liability on the state or on an authorizing body for any debt incurred by a public school academy.

Enrollment priority. Under the law, a public school academy cannot charge tuition and cannot discriminate in its pupil admissions policies or practices on the basis of intellectual or athletic ability, measures of achievement or aptitude, status as a handicapped person, or any other basis that would be illegal if used by a school district. However, an academy can limit admission to students who are within a particular range of age or grade level, or on any other basis that would be legal if used by a school district.

The bill would retain these provisions but specify that an academy could give enrollment priority to one or more of the following: a) a sibling of a student enrolled in the academy; b) a child of a person who is employed by or at the public school academy or who is on the board of

directors of the public academy (as used here, “child” would include an adopted child or legal ward); and c) if the academy is a high school created pursuant to a joint application by two or more other public school academies (as described in section 511 of the bill), a student who attended and had completed the grade levels offered by one of those other public school academies.

Currently, an academy can include any grade up to grade 12, or any configuration of those grades, including kindergarten and early childhood education, as specified in its contract. The bill would retain this provision, but add these would be subject to the terms of the contract authorizing the public school academy.

Academies for drop-outs. Under the bill, authorizing bodies would be encouraged to issue contracts for academies for students who had dropped out of school, or otherwise had failed to complete high school.

Jointly sponsored high school. The bill specifies that two or more public school academies that did not operate grades 9 to 12 could jointly apply for a contract to establish a public school academy for some or all of those grades. This would not prohibit an academy that did not operate grades 9 to 12 (or any combination) from offering some or all of those grades under an existing contract with an authorizing body.

Borrowing; issuing bonds. Under the law, a public school academy can take action to carry out its purposes, including, among other things, to enter into binding legal agreements with persons or entities as necessary for the operation, management, and maintenance of the academy. Under the bill, these specifications would be retained, and in addition, binding legal agreements for financing would be allowed. Further, the bill specifies that an academy could take action to borrow money and issue bonds in accordance with section 1351a of the code [which concerns the borrowing of money and issuing of bonds by school districts, as well as restrictions on bond proceeds], except that the borrowing of money and issuance of bonds by an academy would not be subject to section 1351a(4) [which says a resident of a school district has standing to bring suit against the school district to enforce these provisions in a court having jurisdiction] or section 1351(2) to (4) [which set restrictions on bond amounts and caps on bonded indebtedness tied to the equalized valuation of taxable property; require votes of the people when limits are exceeded; set the maximum term of bonds; provide for refunding; and, provide that the bonds or notes issued by a school district or intermediate school district be full faith and credit tax limited obligations that pledge available levies, but that do not allow the levying of additional debt millage without a vote of the electorate].

Authorizing body oversight and responsibilities. The bill would require an authorizing body that issued a contract for a public school academy to do all of the following: a) ensure that the contract and the application for the contract comply with the requirements of this section of the law; b) within 10 days after issuing the contract, submit to the superintendent of public instruction a copy of the contract and of the application for the contract; c) adopt a resolution establishing the method of selection, length of term, and number of members of the board of each public school academy; d) oversee the operations of each public school academy operating under a contract issued by the authorizing body where the oversight is sufficient to ensure that

the authorizing body can certify that the public school academy is in compliance with statutes, rules, and terms of the contract (however, an authorizing body could enter into an agreement with another authorizing body to oversee an academy operating under a contract issued by the authorizing body); e) develop and implement a process for holding a public school academy board accountable for meeting performance standards and for implementing corrective action when an academy failed to meet those standards; g) take necessary measures to ensure that a public school academy board operated independently of any educational management company involved in the operations of the academy; g) oversee and ensure that the student admission process used by the academy was operated in a fair and open manner, and was in compliance with the contract; and, h) ensure that the board of the academy maintained and released information as necessary to comply with applicable law.

Revocation of contract; reconstitution of academy. The bill specifies that before an authorizing body revoked a contract, it could take corrective measures to avoid revocation. If it were appropriate considering the overall circumstances, the authorizing body could reconstitute the academy to improve student educational performance, or to avoid interruption of the educational process. An authorizing body could include a reconstitution provision in the contract that identified corrective measures, including but not limited to appointing a new board of directors or a trustee to take over operation of the academy. If an authorizing body revoked a contract, then it would be required to work with a school district or another academy (or a combination of the two) to ensure a smooth transition for the affected students. If the revocation occurred during the school year, the authorizing body, as the fiscal agent for the academy, would be required to return any school aid funds received that were attributable to the affected students to the state treasurer for deposit into the School Aid Fund, and the treasurer would be required to distribute funds to the school district or academy in which the students enrolled after revocation, following a methodology that would be established by the Department of Education and the Center for Educational Performance and Information.

Educational management companies. Beginning with contracts after the effective date of this legislation, if the governing board of a public school enters into a contract with an educational management company to carry out the operations of a public school, the governing board would be required to ensure all of the following:

- a) that the board had conducted sufficient due diligence to conclude that the management company had sufficient educational expertise and management experience to provide the agreed services;
- b) that the governing board would obtain independent legal counsel in all negotiations with the educational management company; and,
- c) if the governing board were the board of directors of an academy, that, under the contract between the board of directors and the educational management company, the company would provide to the board all financial and other information required to comply with the requirements concerning reporting that were contained in the contract between the board and its authorizing body under section 503 of the legislation.

The bill also specifies that beginning with contracts that were entered into after the effective date of this legislation, if the governing board of a public school entered into a contract with an educational management company to carry out the operations of a public school, the contract between the governing board and the company would be required to contain at least all of the following:

a) a provision requiring the management company to provide the governing board with information regarding any teachers, administrators, and support staff employed by the management company, including at least all of the following personal information: i) name; ii) education, including highest degree attained; iii) salary; iv) copy of teaching certificate or other required permit or credential, if required for the position; v) description of relevant experience; and, vi) employment record;

b) a provision requiring the management company to provide to the governing board information regarding the business operations of the public school, including at least all of the following: i) financial records and information concerning the operation of the school, including, but not limited to, budgets and detailed records of funds received from the state and other entities, expenditure of those funds, investment of those funds, carryover, and contractual arrangements or agreements entered into by the management company as an agent of the governing board; ii) financial records and information concerning leases to which the governing board was a party, including, but not limited to, leases for equipment, physical facility space, or institutional and educational materials; and iii) financial records and information concerning mortgages and loans to which the governing board was a party; and,

c) if the governing board was the board of directors of a public school academy, a provision requiring the management company to make information available to the board of directors concerning the operation and management of the public school academy, including at least all of the information necessary to comply with the requirements concerning reporting that were contained in the contract between the board of directors and its authorizing body under section 503 of this legislation.

Definitions. The bill would define "educational management company" to mean an entity that enters into an agreement with the governing board of a public school to provide comprehensive educational, administrative, management, or instructional services or staff to the public school. Further, the bill would define "entity" to mean a partnership, nonprofit or business corporation, labor organization, or any other association, corporation, trust, or other legal entity.

MCL 380.501 et al.

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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.