

# Legislative Analysis



## DETROIT SCHOOL BOARD REFERENDUM

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**House Bill 4508 as enrolled**  
**Public Act 303 of 2004**

**Sponsor: Rep. Bill McConico**  
**House Committee: Commerce**  
**Senate Committee: Education**

**Complete to 8-26-04**

### A SUMMARY OF HOUSE BILL 4508 AS ENROLLED

**BRIEF SUMMARY:** Under the bill, voters in Detroit will decide on November 2, 2004 between two alternatives:

- 1) A traditional 11-member elected school board, 4 elected at large and 7 from districts, with the power to appoint a superintendent; or,
- 2) A 9-member school board elected from single-member districts, with the district's chief executive officer (CEO) appointed by the mayor with the approval of the school board.

A more detailed summary of the two alternatives contained in the bill follows later.

**BACKGROUND INFORMATION:** Public Act 10 of 1999 essentially suspended the powers and duties of the elected school board of the Detroit Public Schools and instead authorized the appointment of a seven-member school reform board by the mayor of the city. (One of the seven members for the first five years, however, is the state superintendent of instruction). The reform board was authorized to appoint a chief executive officer for the school district. The act further required that the question of whether to retain the new system be put before school district voters after five years. Specifically, the act required the question to be placed on the ballot at the next November general election occurring at least 90 days after the expiration of five years after the date of the initial appointment of the school reform board, which would have been the November 2004 general election. If voters voted to retain the reform school board and the chief executive officer, and the authority of the mayor to appoint the board, the question could not have been put on the ballot for another five years. If the voters voted not to retain the reform board system, a special election was to have been held to elect a new school board, which would become the governing board of the school district by the next July 1.

As originally introduced and passed in the House of Representatives, House Bill 4508 would have amended a single section of the Revised School Code to move the vote up a year, proposing that the vote on whether to retain the school reform board and the chief executive officer be held on November 4, 2003. However, House Bill 4508 was 'substituted' by the Senate to amend 38 sections of the Revised School Code, and to repeal

another. Under the new version of the bill, voters will choose on November 2, 2004 between either a traditional 11-member elected board or a 9-member elected board that would share most of its authority with the mayor of Detroit. If voters chose the latter, the mayor would nominate the school's superintendent (called the chief executive officer, or CEO) whom the board could approve or disapprove. The CEO would have authority to approve most of the district's contracts.

#### **DETAILED SUMMARY:**

***The Ballot Question.*** At the November 2, 2004 general election, voters in Detroit would be asked to approve or disapprove the following three-part question:

*Shall the Detroit Public Schools be reapportioned into 9 single-member election districts with district residency requirements, shall a new school board be elected according to these election districts to serve in the district, and shall the school district be governed by a chief executive officer nominated by the mayor of the City of Detroit and approved by the newly elected board? According to state law, a "yes" vote will result in the establishment of the 9 election districts, election of a school board, and appointment of a chief executive officer as described in this question, and a "no" vote will result in the school district being governed by the governance structure otherwise provided for a first class school district under part 6 of the Revised School Code, consisting of an 11-member school board for the school district with 4 members elected at-large and 7 members elected from election districts and with the school district governed by the 11-member school board.*

Yes \_\_\_\_\_  
No \_\_\_\_\_

Effective January 1, 2006, the school district would be governed by the system of governance selected by the voters — either the nine-member board with a CEO appointed by the mayor (the "Yes" votes), or the eleven-member board having the authority to select a school superintendent (the "No" votes).

#### ***If the ballot question is approved...***

If the ballot question is approved (that is to say, more people vote "Yes" than "No"), 20 sections of the code would be amended and the following events would unfold.

-Detroit election officials would be required to establish 9 voting districts within the school district boundaries within 90 days after the November 2, 2004 general election. (However, they could establish the voting districts before the date of that election.) The districts would be submitted to the State Board of Education for approval. (The district boundaries would be re-determined after each federal decennial census.)

-Nine members of the Detroit school board would be elected by voting districts at the November 2005 general election. Terms of office would be four years, except initially when in order to establish staggered terms, five of the board members' terms of office would be four years, and four members would serve two-year terms—designated by random draw. Terms would expire on December 31, and members would be elected at the November general elections.

-Candidates would have to be nominated by petitions containing not fewer than 250 or more than 500 signatures of registered school electors residing in their voting district, or candidates could pay a nonrefundable \$100 filing fee. No more than two candidates would be nominated at the primary election for each voting district.

-Vacancies on the board would be filled from among registered school electors of the voting district by a majority vote of the remaining school board members. However, a vacancy would not be filled if it occurred within 60 days of a primary election. Members of the school board could not hold, or be candidates for, any other elective office during their period of service, or for a period of one year after they left the board.

-Effective January 1, 2006, the Detroit Public Schools would have a board composed of nine elected members. The school board would hold its first meeting on the first Monday after January 1, 2006, and could elect a president, vice president, secretary, and other necessary or appropriate officers. (After the first election, board officers would be elected in January of each odd numbered year.)

-Effective January 1, 2006, the powers of the existing school reform board, its appointed CEO, and all other appointed officers would cease. However, the CEO would not be prohibited from serving as the interim CEO, and from retaining officers or employees.

-The school board would be required to appoint a CEO within 30 days after taking office on January 1, 2006, with the appointment of the initial CEO to take effect beginning on July 1, 2006 (or at the beginning of the school district's fiscal year). The CEO would be employed according to a contract, the term of which could not exceed four years, but which could be renewed.

-The mayor would submit to the school board the name of one nominee for the position of CEO, and the board would approve or disapprove the nominee. Approval would be by a majority vote. If the board did not approve the nominee, the mayor would be required to submit the name of a new nominee. A CEO could be removed from office either by the mayor, or by a majority of the board members with the mayor's approval. However, a CEO could not be removed without good cause.

-Until July 1, 2006, the person serving as CEO of the school district immediately before the school board took office on January 1, 2006 would act as the interim CEO. He would exercise all the powers and duties of the CEO until a permanent CEO was appointed and began work at the beginning of the school's fiscal year on July 1, 2006.

***CEO's powers and duties if ballot question is approved...***

The CEO would have authority over the expenditure of all school district funds, including proceeds from bonded indebtedness and other funds dedicated to capital projects. However, the CEO would have to submit an annual budget and annual procurement goals to the school board for approval. The CEO also would have rights and obligations under collective bargaining agreements and employment contracts entered into by the previous school board, or by a previous CEO; rights to prosecute and defend litigation; obligations under any judgments entered against the school district; rights and obligations under statute, rule, and common law; authority to delegate any of the CEO's powers and duties; and, all rights, duties, and obligations provided under the code or other state law for a school board, with a few exceptions.

The bill specifies that an appointed CEO could terminate any contract entered into by a previous school board or CEO except for a collective bargaining agreement. However, he or she could not terminate or diminish obligations to pay debt service on legally authorized bonds. The bill also specifies that each employee of the school district whose position is not covered by a collective bargaining agreement would be employed at the pleasure of the CEO (often referred to as "at will" employees).

***Appointments.*** The CEO would appoint a chief financial officer (CFO), a chief academic officer (CAO), a chief operations officer (COO), and a chief purchasing officer (CPO), and those officers would be employed at the will of the CEO. The bill specifies that the chief financial officer or other officer designated by the CEO would have the custody of all money belonging to the school district, and would be responsible for paying that money out. However, the funds would be deposited with institutions selected by the CEO (or his or her designee), and the interest derived would be paid into the general fund of the school district.

***Accountability.*** Within 90 days after his or her appointment and at least annually thereafter, the CEO would be required to develop and submit to the mayor, school board, and Department of Education a *school district improvement plan* that included at least detailed academic, financial, capital, and operational goals and benchmarks for improvement, and a description of strategies to be used to accomplish those goals. The plan also would have to include an assessment of available resources and recommendations for additional resources or changes in statute or rule, if any, needed to meet the goals and benchmarks. Finally, the plan would have to include an evaluation of local school governance issues, including criteria for establishing building-level governance.

In addition, the CEO would be required to submit *an annual report* to the mayor, school board, governor, and legislature, and make that report available to the community. The annual report would have to contain at least the following information:

-a summary of the initiatives that had been implemented to improve school quality;

-measurements that would be useful to determine improvement in school quality, indicating changes from baseline data compiled during the school year before the CEO's appointment, including at least all of the following: standardized test scores; dropout rates; daily attendance figures; enrollment figures; high school completion and other pertinent completion rates; changes made in course offerings; and the proportion of school district resources devoted to direct educational services; and,

-a description of long-term performance goals, which could include, for example, statewide averages or comparable measures of long-term improvement.

The CEO also would be required to submit *monthly reports* (all of which would be public records), to the school board, and also make them available to the community. The monthly report would have to contain at least all of the following: a) a summary of the initiatives that had been implemented to improve school quality; b) daily attendance figures; c) a description of steps taken to implement the CEO's school improvement plan; d) a description of the progress made toward achieving the goals and benchmarks set out in the plan; e) a description of progress made toward achieving the long-term performance goals; and f) a copy of any and all completed financial audits.

***Conflict of Interest.*** The CEO would be prohibited from appointing a person as chief financial officer who at the time of appointment has a pecuniary interest in a contract or subcontract to which the school district is a party. Further, the CEO must ensure that the school district does not award a contract or subcontract to the mayor, the CEO, the CFO, or a school board member, or to any of their spouses, spouses' siblings or children, siblings or siblings' spouses or children, children or children's spouses, or parents or parents' siblings or spouses. The bill specifies that the mayor, CEO, CFO, and school board members cannot have a direct or indirect pecuniary interest in any contract with the school district that causes a substantial conflict of interest. ["Substantial conflict of interest" is defined to mean that the pecuniary interest is of such substance as to induce action on the person's part to promote the contract for his or her own personal benefit. A contract between the school district and any of the following is *not* considered a conflict of interest: a) a corporation in which the person is a stockholder owning one percent or less of the total stock (if the stock is not listed on the stock exchange), or the stock has a present market value of \$25,000 or less (if the stock is listed on the stock exchange); b) a corporate trust, in which the person is a beneficiary, owns one percent or less of the total stock (if the stock is not listed on the stock exchange), or the stock has a present market value of \$25,000 or less (if the stock is listed on the stock exchange); and c) a professional limited liability company organized under Michigan law, if the person is an employee but not a member of the company.]

***Additional Powers and Duties of CEO.*** In addition to these powers and duties, the bill amends thirteen sections of the Revised School Code to specify that powers and duties customarily granted under the law to school boards would rest with the CEO, who, if the question were approved, could in these specific instances issue an order for any action that would otherwise be taken by resolution of the board. Among the duties of traditional school boards that would fall to the CEO are the following: a) using bond funds to retire

debt of an annexed school district; b) school district annexation; c) the management of real estate and personal property; d) developing the district's annual budget, together with annual tax estimates to determine the revenue needed for the "general fund", the "building and site fund", and the "debt retirement fund"; e) issuing and signing warrants for payrolls, bills, and accounts due; f) entering into contracts for the purchase of real estate, and for the construction, remodeling, or repairing of buildings; g) borrowing money to pay awards in condemnation proceedings; h) borrowing and issuing bonds, or making loans; i) managing the proceeds from the sales of buildings; j) issuing bonds for the purpose of purchasing sites for buildings, playgrounds, or athletic fields, and purchasing or erecting and equipping school buildings; k) collecting an excise tax on incomes received, earned, or otherwise acquired by corporations and residents; l) calling for elections to issue bonds; and m) calling for special elections.

***School board's duties if ballot question is approved...***

If the ballot question passes, the school board would be required to do the following:

- a) Monitor student performance;
- b) During June each year, receive, review, and approve the annual budget and procurement goals submitted by the CEO, including approval of the annual appropriation total for the school district's general operating fund and the general fund expenditure budget total for each of the following functions: instruction; student support services; instructional staff support services; school administration; business support services; operations and maintenance; student transportation services; central support services; and community services.
- c) Review all contracts totaling more than \$250,000 entered into by the CEO;
- d) Not later than August 31 each year, provide to the mayor of Detroit an annual evaluation of the performance of the CEO and make it available to the public (a task the board could accomplish by contracting with an independent auditor to conduct a performance and financial audit of the activities of the CEO);
- e) Form committees it considers necessary;
- f) Organize and establish community assistance teams to implement a cohesive, full service community school program that addresses the needs of the school population, including family, community, cultural, and recreational activities that promote the academic mission of the schools, and also projects that enhance voluntary parenting education, adult and family literacy, and parent and family involvement in education.

***If the ballot question is NOT approved...***

House Bill 4508 specifies that if the ballot question is not approved, the following events would unfold:

-Effective January 1, 2006, the school district would have a board composed of four members elected at-large and seven members elected by districts. The eleven members would be elected at the November 2005 general election.

-Their terms of office would be four years; however, there would be two-year terms for some members of the initial board so that not all board members would leave office at the same time. To accomplish this end, the initial four at-large members would serve four-year terms, and the initial seven members elected from districts would serve two-year terms.

***Four Board Members Elected At-Large.*** The four at-large candidates would be elected in November 2005 and every four years thereafter. All at-large candidates would be nominated at a primary election, and their nominating petitions would have to contain at least 500 but no more than 1,000 signatures of registered school electors. The petitions (and an affidavit) would be filed with the city clerk.

If a redetermination of the district boundaries had not been made by the local school board after the decennial census (in 2000), then the voting district boundary lines in effect immediately before the census would be used for the purpose of electing seven of the school board members. However, under the bill, a redetermination based on the census would have to be made by the school board no later than three months after election to the school board.

***Seven Board Members Elected from Districts.*** In the November 2005 general election, seven members of the board would be elected by voting districts for an initial term of two years, and all would begin their terms of office on January 1, 2006. At the November general election in 2007, and every four years thereafter, seven members of the board would be elected by voting districts for a term of four years. The candidates would be nominated by petitions having at least 250 but not more than 500 signatures of registered electors. Petitions and an affidavit would be filed with the city clerk. Not more than two candidates would be nominated at the primary election for each voting district.

***School board's duties if the ballot question is NOT approved...***

If the ballot question fails, the school board's duties would include the following functions:

- a) Central purchasing;
- b) Payroll;
- c) Employment, discharge, assignment, and promotion of teachers and other employees of the district;
- d) Contract negotiations for all employees subject to bargaining certification and the collective bargaining agreement;
- e) Property management and maintenance, and the use of educational facilities;
- f) Bonding;
- g) Special education programs;
- h) Allocation of funds for capital outlay and operations;
- i) Determination of the curriculum and the establishment of educational and testing programs; and,
- j) Adoption of a budget.

***Employment of Superintendent and Administrators.*** The board could appoint a superintendent of schools for a term not to exceed six years. The board also could employ

assistant superintendents, principals, assistant principals, guidance directors, and other administrators who did not assume tenure, for a term not to exceed three years. Administrative and personnel services would be provided on a centralized basis throughout the district, and could not be established on a voting district basis.

***Authority to Hire.*** The school board would have full power over employees and could specify the duties to be performed by them and fix the qualifications necessary for a position. However, those qualifications could not conflict with state, county, or municipal rules and qualifications.

***Employment Contracts.*** Employment would be under written contract. Notification of nonrenewal of contract would be given in writing not less than 90 days before the termination date of the contract of a superintendent of schools, and at least 60 days before the termination date of the contract of other administrators. If notice of nonrenewal was not given, then the contract would be considered renewed for an additional year. A notice of nonrenewal could be given only for a reason that was not arbitrary or capricious. Further, the board could not issue a notice of nonrenewal unless the affected person had been provided with at least 30 days' advance notice that a nonrenewal was being considered, with a written statement of the reasons. The affected person would be given the opportunity to meet with at least a majority of the board to discuss the reasons stated in the written statement, and that meeting could be open to the public or closed, as the affected person chooses. The failure to provide for a meeting, or the finding of a court that the reason for nonrenewal was arbitrary or capricious would result in the renewal of the affected person's contract for one year.

***School Board Officers.*** The school board would elect its officers during the month of January. The officers would be a president, vice-president, secretary, and treasurer. The president and vice-president would be elected biennially. The secretary and treasurer would be appointed by the board, but would not be members of the board, and would receive a salary fixed by the board. The duties of the president, vice-president, and secretary would be prescribed by the bylaws and regulations of the board. In contrast, the duties of the treasurer would be determined by the school district general superintendent, as approved by the board.

Officers of the board who handled funds belonging to the district would be required to give bonds for the faithful performance of their duties, in accord with the bylaws and regulations of the board. The premium of the bonds would be paid from the funds of the board.

***Treasurer's Duties.*** The school district treasurer would have custody of all money belonging to the school district and would pay out money. The funds would be deposited with depositories selected by the board, and the interest derived paid into the general fund of the board. Under the bill, the board would require from the school district treasurer a separate bond of at least \$200,000 to protect the funds of the board.

***Per Diems.*** The law specifies that each board member be paid a per diem allowance of \$30 for each board and subcommittee meeting attended, and for each authorized duty



performed. However the payments could not exceed a total of 52 each year. The bill specifies that this limitation could be removed by majority vote of the board.

**Accountability.** The school district board could, by a vote of two-thirds of the members serving, expel or remove from office a board member for corrupt or willful malfeasance or misfeasance in office, or for willful neglect of the duties of the member's office.

Regular meetings of the board would be held monthly, and at least seven meetings would be held in different voting districts. All proceedings and official actions would be a public record open to inspection.

The board would be required to make a complete annual audit of its financial transactions, and could employ a firm of certified public accountants to do so, or it could arrange to use the services of the Detroit city auditor. The audit report would be made to the board, and would be a public record. The board could publish the audit report by adding to it general school statistics, or it could publish general school statistics separately.

Every action of the board that would create a liability or debt, or one that originated the disposal or expenditure of property or money would have to be by 'yea' and 'nay' vote, entered upon the record.

At least every two years, the board would have to adopt policies and establish programs that provided for and encouraged the free flow of information between the school district and the community and that provided for and encouraged community input into educational matters. To that end, the board would have to provide for an autonomous school community organization in each school open to all parents and other residents of the school attendance area; and establish procedures for handling complaints, concerns, and recommendations received from parents and other members of the community.

**Vacancies.** Vacancies among either at-large or district members of the board would be filled by a majority vote of the remaining school board members. However, a vacancy would not be filled if it occurred within 60 days of a primary election. A candidate would have to be at least 18 years old, a registered school elector, and residing in the district in which he or she became a candidate. A member's moving from the voting district during his or her term of office would constitute a vacating of the office.

If a person elected failed to take the oath of office within 10 days after being served with notice of election by the city clerk, the vacancy would be filled as noted above.

MCL 380.3 et al.

## **FISCAL IMPACT:**

Section 20(20) of the State School Aid Act states that a school district with a school reform board in place under part 5a of the Revised School Code shall receive an adjustment to its foundation allowance that equals a total of \$15 million. Currently,

Detroit Public Schools is the only district that has a reform board in place and that qualifies for this funding.

#### **Prior to P.A. 303 of 2004**

Until P.A. 303 of 2004 was signed, the Revised School Code specified that a local election would be held in November of 2004 to determine whether or not to retain the current reform board. If voters elected not to continue the board, the new board would take office by July 1, 2005. This analysis assumes that under this scenario, the \$15 million would cease to be paid to the district in October of 2005, which is when the first payment of FY 2005-06 is made.

#### **P.A. 303 of 2004**

P.A. 303 changes the election described above, and therefore changes Detroit Public Schools' eligibility for the \$15 million in two ways. 1) It makes it impossible for the reform board described under part 5a of the Revised School Code to continue, eventually disqualifying Detroit Public Schools from receiving the \$15 million regardless of the outcome of the election, and 2) it changes the date on which the reform board ceases to exist, thereby delaying the time that the district ceases to receive the funding from October of 2005 to January of 2006. This means that the district would receive payments for 3 months more than it would have if voters had rejected the reform board under the former law. This would result in the district receiving approximately \$4 million more than it would have otherwise.

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