

## **INTERMEDIATE SCHOOL DISTRICTS: AUDITS; SPECIAL EDUCATION MILLAGES; PENALTIES FOR MISUSE OF FUNDS; AND CONFLICTS OF INTEREST**

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**House Bill 5627**

**House Bill 5839**

**House Bill 5850-5851**

**House Bill 5921**

**Sponsor: Rep. Ruth Johnson**

**Committee: Education**

**Complete to 6-22-04**

**A SUMMARY OF HOUSE BILLS 5627, 5839, 5850, 5851, 5921 AS INTRODUCED 3-9-04, 4-29-04, 5-4-04, 5-4-04, AND 5-18-04, RESPECTIVELY**

### **House Bill 5627 (Annual Audit Information)**

The bill would amend the State School Aid Act (MCL 388.1607 and 388.1618) to require that certain kinds of information be included in an intermediate school district's annual audit.

More specifically, the bill requires that the audit of an intermediate district's financial records (now required under law) also include an examination of all records relating to salaries, benefits, or other compensation for personnel; contracts entered into by the district; travel by district board members or employees; expenditures from millage revenue and bond proceeds; costs and expenditures for capital improvements; and any other records necessary to prepare the audit report. Further, the audit report submitted to the Department of Education, as a result of the audit, would have to include detailed descriptions of all of the following:

- a) for each intermediate district administrator, the total value of salary, fringe benefits, and any other compensation provided to the administrator and the value of each component part of the compensation package provided to the administrator;
- b) each sole source contract entered into by the intermediate district during the audit period, if any; (under the bill, the department would prescribe a definition of "sole source contract" for this purpose);
- c) each contract entered into by the intermediate district during the audit period with an entity in which a board member or school administrator of the intermediate district, or a family member of a board member or school administrator of the intermediate district, had a pecuniary interest, if any;
- d) each modification made during the audit period to an existing contract if the modification resulted in an additional financial obligation to the intermediate district in excess of \$20,000 and was not competitively bid;

- e) the district's travel guidelines and practices and the costs and purposes of all travel by board members or employees during the audit period that was paid in whole or part from district funds;
- f) each purchase of real property;
- g) costs incurred during the audit period for fiber optic equipment, computer hardware, computer software, and other technology;
- h) for each new construction, renovation, or other capital improvement project involving real property owned or under the control of the intermediate district that was begun, completed, or in progress during the audit period, the projected and actual costs of the project, and the source of all funds expended for the project;
- i) for any type of millage levied by the district, all expenditures from the millage revenue during the audit period;
- j) for all bonds issued by the district, all expenditures from the bond proceeds during the audit period;
- k) the amount and percentage of the districts' budget that was spent on each of the following: (i) administration costs; (ii) capital improvements described in subdivisions f, g, and h, above; (iii) maintenance of the capital improvements described in (ii), above; (iv) public relations, surveys, polling, lobbying, and attorneys, either directly or indirectly; and (v) direct services to students.

#### **House Bill 5839 (Uses for Special Ed. and Vocational Ed. Revenues)**

The bill would amend the Revised School Code (MCL 380.687 and 380.1731) to specify the uses for special education and vocational education bond proceeds and millages. Under the bill, beginning on the effective date of the legislation, the duration of any millage levied by an intermediate school district for operating purposes, debt retirement purposes, or any other purposes could not exceed 25 years. Further, the millage could be renewed with the approval of the intermediate school electors for a period not to exceed 25 years.

Further, the bill would prohibit an ISD from using the proceeds from bonds issued or refunded, or taxes levied to repay bonds, for any purposes other than those described under the two sections of the code concerning vocational technical facilities and special education facilities. If such a facility was to be used for purposes other than providing such programs and services, proceeds from bonds issued or refunded, or from millage levied to repay bonds issued or refunded, could be used only for that portion of the facility that was used for providing the appropriate programs and services. An ISD that issued or refunded bonds and levied a tax would be required to have an independent audit conducted annually on the uses of the bond proceeds, and the millage levied, and to submit the audit report to the Department of Treasury. If the treasury department determined from the audit report that the bond proceeds or millage had been used for an unauthorized purpose, then the authorization for the bond millage could be reconsidered at the next ISD election, or at a special election called for that purpose, if not less than 10 percent of the intermediate school electors petitioned the ISD to reconsider the millage.

### **House Bill 5850 (Penalties for Misusing School Funds)**

The bill would amend the Revised School Code (380.1804) to provide penalties for the misuse of school district or intermediate school district funds.

Under the bill, a person would be prohibited from using school district or ISD funds, or other public funds under the control of the districts, for purchasing alcoholic beverages, jewelry, gifts, tickets for entertainment or sporting events, fees for golf or other recreational activities, or any item the purchase or possession of which was illegal. Further, a person could not provide public funds to a third party for any of these purposes.

The bill specifies that in addition to any other penalty provided by law, a person who violated this section would be guilty of a misdemeanor punishable by imprisonment for not more than 93 days or a fine, or both. The amount of the fine would be as follows:

- a) if the cumulative amount of the funds used in violation was less than \$5,000, then a fine of \$1,000;
- b) if the amount of funds used was at least \$5,000 and less than \$10,000, then a fine of \$2,000;
- c) if the amount was at least \$10,000 and less than \$15,000, then a fine of \$3,000;
- d) if the amount was at least \$15,000 and less than \$25,000, then a fine of \$4,000; and,
- e) if the cumulative amount of the funds that were used by the person in violation was \$25,000 or more, then a fine of \$5,000.

Further, the bill would require a court to order a person convicted of such a violation to make restitution to the affected school district or intermediate school district.

The bill also specifies that a person who knowingly or intentionally violated the competitive bidding requirements under the code, or who permitted or consented to such a violation, would be guilty of a felony punishable by a fine in an amount equal to not more than 10 percent of the cost of the project involved in the violation, or imprisonment for not more than one year, or both.

Finally under the bill, a person who knowingly or intentionally used the proceeds of bonds issued under this act for a purpose other than that stated in the ballot proposal authorizing the issuance of the bonds, or who permitted or consented to such a misuse, would be guilty of a felony punishable by a fine in an amount equal to not more than 10 percent of the cost of the project involved in the violation, or imprisonment for not more than one year, or both. [In both instances, the bill specifies that the violator would not be subject to the penalties of section 1804. Section 1804 of the Revised School Code concerns neglect or refusal to perform acts, and it specifies that a school official or member of a school board or an intermediate school board, or other person who neglects or refuses to perform an action required under the code, or who violates or knowingly

permits or consents to a violation, is guilty of a misdemeanor punishable by a fine of not more than \$500, or imprisonment for not more than three months, or both.]

### **House Bill 5851 (Sentencing Guidelines)**

The bill would amend the Code of Criminal Procedure (MCL 777.13p) to create the sentencing guidelines for the two new crimes—the first, failing to comply with school competitive bidding processes; and the second, the improper use of school bond proceeds. In both instances the crimes would be categorized as crimes against the public trust (category H), and the state maximum incarceration would be for a period of one year.

House Bill 5851 is tie-barred to House Bill 5850 so that it could not become law unless House Bill 5850 also were enacted.

### **House Bill 5921 (Conflict of Interest)**

The bill would amend the Revised School Code (MCL 380.612) to create a conflict of interest policy for intermediate school district officials and employees, and also prohibit members of constituent district boards of education from serving on an intermediate school board.

The bill specifies that beginning with the June 2004 school election, a member of a board of a constituent district, or of the board of directors of a public school academy, would not be eligible to election or appointment to membership on the intermediate school board. Beginning July 1, 2004, a member of an intermediate school board would be prohibited from holding any other elective public office, including but not limited to, office as a member of the board of a constituent district, and could not serve as a member of the board of directors of a public school academy. If a member of an intermediate school board violated this subsection, then the member would forfeit his or her office as a member of the intermediate school board.

The bill requires that not later than July 1, 2004, each intermediate school board adopt and implement a conflict of interest policy designed to avoid conflicts of interest by intermediate school district officials and employees. Not later than that date, each intermediate school board would be required to adopt and implement a policy to prohibit the use of ISD funds, or other public funds, to purchase alcoholic beverages, jewelry, gifts, tickets for entertainment or sporting events, fees for golf or other recreational activities, or any item the purchase or possession of which was illegal. The policy would also have to include a prohibition on providing public funds to third parties for any of these purchases, and include monetary penalties for violation of the policy.

Under the bill, the Department of Education would be required to develop and distribute a model conflict of interest policy, and a model policy meeting the requirements noted above.

The bill also specifies that in any one-month period, an intermediate school board member or intermediate school district administrator would be prohibited from accepting from a person who did business, or who sought to do business, with the ISD, any money, goods, or services with a value in excess of \$44, if the board member or official did not provide goods or services of equal value in exchange. [The bill specifies that this subsection would not apply to a gift or reward already prohibited under section 1805 of the code. Section 1805 concerns penalties for accepting gifts, and says that a superintendent of public instruction, intermediate superintendent, school officer, superintendent, principal, or teacher of schools shall not act as agent for an author, publisher, or seller of schoolbooks, or school apparatus, or receive a gift or reward for his or her influence in recommending the purchase or use of a schoolbook apparatus, or furniture. A person who violates this section of the school code is guilty of a misdemeanor punishable by a fine of not more than \$500, or imprisonment for not more than three months, or both.]

Under the bill, an intermediate school board would be prohibited from entering into a contract with, and a contractor of an ISD could not use as a subcontractor on a contract with the ISD, any business enterprise that met any of the following:

- a) an intermediate school board member or school administrator of the ISD was employed by, or under contract with, the business enterprise;
- b) a board member or administrator of the ISD had an ownership interest in the business enterprise; and,
- c) a board member or administrator of the ISD had a business affiliation with the business enterprise.

Finally, the bill would require that an intermediate school board ensure that each employment contract with a school administrator employed by the ISD include both a provision prohibiting the school administrator from engaging in conduct involving moral turpitude, and a provision allowing the intermediate school board to void the contract if the school administrator violated the provision prohibiting conduct involving moral turpitude.

#### **FISCAL IMPACT:**

**House Bill 5627** would have no state fiscal impact. By expanding the information required to be included in an ISD audit, the bill could increase audit costs to local intermediate districts by an indeterminate amount.

#### **House Bill 5839**

**State Impact.** HB 5839 could have a minor, indeterminate fiscal impact to the Department of Treasury, which would need to use staff time to review the millage audits and determine whether they conformed to the requirements of this bill.

**Local Impact.** HB 5839 would create a local fiscal impact by limiting the duration for which intermediate school districts may levy mills to 25 years, unless the mills are renewed. This could reduce the length of time that ISDs receive revenue from operating, debt retirement, special education, vocational education, and other millages. It could also reduce the time period that local taxpayers would pay these taxes. The bill's requirement that an ISD have an independent annual audit of the uses of the bond proceeds would create a minor, indeterminate cost to ISDs, as they would need to pay for the audits.

### **House Bills 5850 and 5851**

House Bill 5850 would have no significant fiscal impact on the state and could increase local correctional costs. The bill would create a 93-day misdemeanor and a one-year felony; a sentence of incarceration for either offense would have to be served in the county jail. Probation supervision of misdemeanants is a local responsibility, while felony probation supervision falls to the state, at a current cost of roughly \$4.50 per day. The bill also would provide for penal fines in amounts dependant on the circumstances of the offenses; thus, the bill could increase the amounts of penal fine revenues going to local libraries, which are the constitutionally-designated recipients of such revenues.

House Bill 5851 would provide for sentencing guidelines for the felony to be established by HB 5850, and would have no direct fiscal impact.

### **House Bill 5921**

**State Impact.** HB 5921 would require the Department of Education to expend an indeterminate amount of staff time to develop a model conflict of interest policy and a model policy for complying with the spending prohibitions contained in the bill.

**Local Impact.** This bill would prohibit the expenditure of ISD funds on alcoholic beverages, jewelry, gifts, tickets for entertainment or sporting events, fees for golf or other recreational activities, or items that are illegal. To the extent that ISD funds are currently spent on the prohibited items, dollars would be freed up for expenditure on other goods and services.

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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.