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MEMBERSHIP REIMBURSEMENTS

House Bill 6035 (Substitute H-4) First Analysis (9-25-98)

Sponsor: Rep. Sharon Gire
Committee: Education

THE APPARENT PROBLEM:

Under the School Code, a public school district may enter into a shared time contractual agreement if a private school that is operating an academic program approaches the public school and requests that the public school offer certain non-core courses (such as band, cosmetology or other vocational classes) that the private school does not. When this kind of contractual agreement is negotiated, the private school receives the membership aid for the students it promises to serve, and the private school shares a portion of the membership aid with the public school district.

Recently, a private school involved in this kind of shared time contractual relationship has received state membership aid but has not offered the academic program to the number of students that were specified in the contract. Neither has the private school shared its membership aid with the public school district that was a party to its contract. According to committee testimony, the private school, which was located in its contractual partner's school district, expected to transport its students from another nearby school district where they resided. (See *BACKGROUND INFORMATION*.)

In instances such as these when the provisions of a shared time contractual agreement are not fulfilled, it seems clear that the private school should reimburse the taxpayers for the unused or misspent student membership aid. It also seems clear that a school district has a cause of legal action when faced with a breach of contract. To those ends, some argue that a school district needs the state's statutory authority, as well as the possibility of backing by the state's attorney general, in order to undertake court action.

THE CONTENT OF THE BILL:

House Bill 6035 (H-4) would amend the State School Aid Act to require that an individual or private entity reimburse the district or intermediate district for money received if memberships attributable to a

contractual shared time agreement are disallowed by the Department of Education. Under the bill, the individual or entity would be required to reimburse the district the full amount of the payment or consideration received, and the attorney general would be permitted to take action to enforce the reimbursement.

House Bill 6035 would not prohibit a parent of a minor enrolled in a private school or of a home-schooled minor from also enrolling the child in a curricular offering being provided by the district at the private school site. However, state school aid would be provided for a minor under these conditions only if all of the following apply: the private school site is located or the students are educated inside the geographic boundaries of the district; the private school is registered with the Department of Education and meets all state reporting requirements; the instruction is scheduled to occur during the regular school day; the instruction is provided directly by an employee of the district or of an intermediate district; the curricular offering is also available to full-time pupils at a public school site; and the curricular offering is restricted to nonessential elective courses for pupils in grades one to 12.

Under the bill, a minor enrolled in a program as described by the bill would be defined as a part-time pupil for purposes of state aid.

MCL 388.17766b

BACKGROUND INFORMATION:

According to committee testimony, the Mt. Clemens School District entered into a shared time agreement with a private school called the Barons Academy, operated by an agency called ECC. After the contract was entered into, it became clear that the academy was not educating the number of students it had intended to serve--between 800 and 1,000. Instead, an audit conducted by the Macomb County

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Intermediate School District found about 60 students. The audit was appealed by the parties to the shared time agreement, and the Department of Education upheld the ISD's audit findings.

The total tax dollars subject to reimbursement are not known, since the provisions of the contract were not available during the House Education Committee's deliberations. However, in discussion a representative of the ISD suggested that Barons Academy received membership aid for between 800 and 1,000 students (although it enrolled about 60 students) and if, for example, the academy had received \$5,600 for each of 800 students it intended to serve, then its total school aid membership payment would be \$4,480,000.

FISCAL IMPLICATIONS:

Fiscal information is not available. However, it should be noted that this issue has also been addressed in House Bill 5516, which has been enrolled and presented to the governor. That bill makes a supplemental appropriation for K-12 school aid.

ARGUMENTS:

For:

This legislation will help a school district that, according to testimony, has been misled by a private school to reclaim tax dollars that have been misspent. Currently, shared time agreements are governed by rules and regulations that are being rewritten by the Department of Education. When the local school district seeks to recover its lost funds, this statute and the possibility of assistance from the state's attorney general will undergird the district's effort. The district needs the full power and authority of the state behind it in order to be successful in a court of law.

Against:

This legislation is unnecessary. Schools authorities--both appointed administrators and elected school board members--have a legal authority to offer instruction, and a part of that authority is the responsibility to identify scrupulous partners who can provide high quality educational services. It is customary for the partners in these joint ventures to describe their rights and responsibilities in contracts, enforceable in courts of law. These business decisions require competent

management, backed up by carefully developed and complete financial information, and sound legal advice. If provisions of the contract are violated and it becomes apparent that legal contracts have been breached, the aggrieved parties to the contract have a cause of action in a court of law. School authorities do not need a state statute to begin court action to reclaim district membership aid.

Response:

This version of the bill is improved. An earlier draft of the bill would have shifted responsibility of poor shared time agreements from the local district to the state, and absolved local school districts from the financial impact of those agreements by requiring reimbursement by the private school to the state, and by offsetting the public school district's lost membership aid in future aid payments. This bill has removed those provisions. As redrafted, the legislation makes clear that any legal cause of action rests with the local school district, and not the state.

Against:

This legislation is not only legally unnecessary, it is educationally unwise. First, it seems to coddle school authorities, shielding them from their responsibility for bad business decisions. State educational policy should not in any way excuse or condone bogus school counts. Overstating enrollment is a serious violation of the law, and it must never be undertaken by parties in shared time agreements to increase school membership aid. A second reason this legislation is unwise is that it specifies a half-dozen conditions that private educational entities must meet in order to be eligible for membership aid to pay for services they could offer together with a public school district. These conditions are rigid and inflexible, and they could well serve to prevent public-private partnerships that allow for genuine reforms that are educationally sound. Conditions like these seek to make educational decision making people-proof. Instead, the goal of educational policy should be to encourage innovation with research-based information and best practice.

Response:

These conditions would serve as a checklist for public school officials, reducing the complexity of the educational decisions that must be made by school managers. Had these straightforward conditions been in place, the particular shared time agreement that prompts this legislation could not have been entered into by the public school district.

POSITIONS:

The Office of the Attorney General supports the bill.
(9-25-98)

The Macomb Intermediate School District supports the
bill. (9-24-98)

The Michigan Middle Cities Education Association
supports the bill. (9-24-98)

Analyst: J. Hunault

■ 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.