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SAFE SCHOOLS LEGISLATION

House Bill 4240

Sponsor: Rep. Clark Bisbee

House Bill 4241

Sponsor: Rep. Gerald Van Woerkom

Committee: Education

Complete to 2-10-99

A SUMMARY OF HOUSE BILLS 4240 AND 4241 (SUBSTITUTES H-1)

House Bill 4240 (H-1) would amend the Revised School Code to require a school board to implement a local law enforcement agreement in order to report incidents that threaten school safety, and to implement an expulsion policy for students who assault others while at school. (The expulsion policy for students who assault others would be similar to the existing expulsion policy for students who have weapons in school.) House Bill 4241 (H-1) also would amend the Revised School Code, to enable chartering of strict discipline public school academies. The bills are tie-barred, so neither would take effect unless the other also was enacted into law.

House Bill 4240 (H-1) would amend the Revised School Code (MCL 380.1308 and 380.1311a) to require a school board to work with local law enforcement agencies, child protection agencies, county prosecutors, appropriate probation officers, and other appropriate organizations to establish and implement a memorandum of understanding, signed by the parties involved, to facilitate reporting of incidents affecting school safety. The memorandum would have to establish procedures to be followed when a reportable incident occurred at school, and it could address procedures for reporting incidents involving dangerous weapons (as required under Section 1313). "At school" would be defined to mean in a classroom, elsewhere on school premises, on a school bus or other school-related vehicle, or at a school-sponsored activity or event whether or not it is held on school premises. The local *law enforcement memorandum of understanding* would have to address at least the following:

- * law enforcement protocols and priorities for the reporting process. Protocols would have to be developed with the cooperation of the appropriate state or local law enforcement agency. Law enforcement priorities would have to include at least investigation of incidents, identification of those involved, and assistance in preventing such incidents.

- * definition of the types of incidents requiring reporting to law enforcement and response by law enforcement, taking into account the intent of the actor and the circumstances surrounding the incident. This definition would have to include incidents of sexual harassment that should be reported.

* protocols for responding to reportable incidents, addressing at least initial notification and reporting by school officials; the information to be provided by school officials; the initial response by law enforcement and child protection agencies, tailored for, respectively, incidents in progress, incidents not in progress, and incidents involving delayed reporting; and custody of the actors.

* the amount and nature of assistance to be provided by school officials and the scope of their involvement in law enforcement procedures, including the requirement that school officials notify the parent or legal guardian of a minor student who was a victim or witness when law enforcement authorities interview the student.

* any other matters that would facilitate reporting of incidents affecting school safety and the exchange of other information affecting school safety.

The bill specifies that reporting of this information by a school district or by school personnel would be subject to the federal Family Educational Rights and Privacy Act of 1974. However, if a pupil is involved in an incident that is reported to law enforcement according to the memorandum of understanding, then upon request by school officials, the parent or legal guardian would be required to execute any waivers or consents necessary to allow school officials access to school, court, or other pertinent records concerning the incident.

Reporting Under the Law Enforcement Agreement. Under the bill, if school officials determined an incident had occurred at school that is required to be reported to law enforcement agencies or child protection agencies, or both, the superintendent would have to immediately report that finding to the appropriate state or local law enforcement agency and the appropriate state or local child protection agency. If provided in a memorandum of understanding, a local law enforcement agency that has jurisdiction over a school building of a school district would be required to report to school officials in a building the incidents reported to the agency that alleged the commission of a crime that either occurred within 1,000 feet of the school or that involved a student or staff member as a victim or alleged perpetrator. Upon request, school officials would have to provide the law enforcement agency with any information needed to provide such a report.

Role of Prosecutor and Circuit Court. In addition, if provided in the memorandum of understanding, the county prosecutor would be required to notify a school district of any criminal or juvenile court action initiated or taken against a student of the district, including but not limited to convictions, adjudications, and dispositions. This notification would be made either to the local school district superintendent or to the intermediate superintendent. If the latter, the intermediate superintendent would be required to forward the information to the appropriate local superintendent, and upon receipt of such information, a local superintendent would be required to share the information with appropriate school building personnel. Further, under the bill, prosecutors could inquire of school-age individuals involved in a court action which school district, if any, they attended as students. Finally, if provided for in the memorandum of understanding, the circuit court would be required to inform an appropriate school administrator of the name of the individual assigned to monitor a convicted or adjudicated youth attending a public school and of how that individual may be contacted.

School Board Disciplinary Policy. House Bill 4240 also would require a school board to implement a disciplinary policy for students who commit assaults at school. At a minimum, this policy would be required to provide that a school board expel a pupil age 12 or older from the school district if the pupil commits an assault and battery; if the assault and battery is reported to the school board by the victim, or if the victim is unable to report, by another person on the victim's behalf; and, if the school board determines that an assault and battery did in fact occur. The expulsion from the district would be permanent, subject to reinstatement under certain conditions.

Expulsion. Any student 12 or over would be expelled who commits any assault and battery on a teacher or other school employee or on a person acting as a volunteer, or on another pupil if it results in serious or aggravated injury or if it constitutes an assault with a dangerous weapon. If a person is expelled, the district would be required to enter the expulsion on the student's record, and include the reason for the expulsion. Unless the expelled student were admitted, at the district's discretion, to an alternative education program or to a strict discipline public school academy, a person expelled by a district would be expelled from all public schools in Michigan, and the officials of a school district would not be allowed to enroll the individual unless he or she had been formally reinstated. Further, if admitted to an alternative program within the district, the district would be required to ensure that assaultive individuals are physically separated at all times during the school day from the general school population. If an expelled student was not provided an alternative education program, the school district could arrange for the intermediate school district to provide appropriate instructional services to the individual at home, although the school district would not have to spend more money providing the service than the amount of the district's foundation allowance for the student.

Mental Health Services Referral. Under the bill, if a school board expels an individual, within 3 days of the expulsion it would be required to refer the individual to the appropriate county community mental health agency or other appropriate human services agency and to notify the individual's parent or legal guardian, or, if the individual is 18 or older or an emancipated minor, the individual.

Reinstatement. Under the House Bill 4240, assaultive students could be reinstated if they petitioned the expelling school board. If denied reinstatement by the expelling school board, they could petition another school district. A petition of reinstatement could be initiated 150 or more days after the expulsion date; however, the individual could not be reinstated until 180 days after the expulsion date. Under the bill, a school board would not be required to provide any assistance in preparing the petition; however, upon request a school board would be required to make available a form for a petition. Ten days after receiving a petition, a school board would be required to form a committee to review the petition. The five-person committee would consist of two school board members, one school administrator, one teacher, and one parent. The superintendent of the school district would be required to prepare background information on the case for the committee, and not later than ten days after their appointment, the members of the committee would be required to review the petition and submit a recommendation to the school board. The recommendation could be for unconditional reinstatement, for conditional reinstatement, or against reinstatement, and it would have to be accompanied by an explanation.

Reinstatement Conditions. Under the bill, a recommendation for reinstatement would have to consider all of the following:

- *the extent to which reinstatement would create a risk of harm to students or personnel;
- *the extent to which reinstatement would create a risk of school district liability or individual liability for school board or school district personnel;
- *the age and maturity of the individual;
- *the individual's school record before the expulsion incident;
- *the individual's attitude about the expulsion incident;
- *the individual's behavior since expulsion and the prospects for remediation; and,
- *the degree of cooperation and support provided by the parent or legal guardian, including but not limited to their receptiveness toward possible conditions placed on the reinstatement.

Reinstatement Decision. At the next regularly scheduled meeting of the school board, the board would be required to make a reinstatement decision. A school board could require agreement, in writing, to specific conditions. Those conditions could include agreement to a behavior contract that could involve an outside agency; an anger management program or appropriate counseling; periodic progress reviews; and specified immediate consequences for failure to abide by a condition. Under the bill, a parent or legal guardian could propose conditions in a petition for reinstatement. A school board or the authorizing body of a public school academy that complied with this provision would not be liable for damages for expelling a pupil.

Department of Education's Role. The Department of Education would be required to develop and distribute to all school districts a form for a reinstatement petition, and could designate the form already in use for petitions for reinstatement under provisions requiring expulsion for possession of a weapon in school. A local school board would be required to use its locally-adopted due process policy in expulsion proceedings, and the department would be required to develop and distribute a model due process policy that school districts could adopt for use in reinstatement proceedings. Further, the bill specifies that these reinstatement provisions would not diminish the due process rights under federal law or the rights of a student who has been determined to be eligible for special education programs and services.

Reporting Assaults to Law Enforcement Agencies and State Department. Under the bill, a school board would be required to report all assaults occurring at school to appropriate state or local law enforcement officials and prosecutors within three school days.

Annual Reports. Further, in order to obtain an accurate local and statewide picture of school crime and to develop the partnerships necessary to plan and implement school safety programs, at least annually each school board would be required to report incidents of crime

occurring at school within the school district to the Department of Education. The report would include at least crimes involving physical violence, gang-related activity, illegal possession of a controlled substance (or controlled substance analogue) or other intoxicant, trespassing, and property crimes including but not limited to theft and vandalism. For a property crime, the report would be required to include an estimate of the cost to the school district resulting from the property crime. The bill specifies that the reporting requirements are intended to help policy makers design appropriate prevention and intervention programs; provide continuous assessment tools to revise and refine school safety programs; assist schools and school districts to identify their most pressing safety issues, and to enhance campus safety; and, foster partnerships for safe learning environments. In addition, under the bill, each school district would be required to submit to the department a report stating the number of pupils expelled under the expulsion policy during the immediately preceding year, including a brief description of the incident that caused each expulsion.

Foundation Allowance for Expelled Students. If a pupil expelled from a school district is enrolled by a public school sponsored alternative education program or a public school academy during the period of expulsion, those programs would be immediately eligible for the prorated share of either the public school academy's foundation allowance, or the expelling school district's foundation allowance, whichever is higher.

Office of Safe Schools. If an individual was expelled, it would be the parent or guardian's responsibility to locate a suitable educational program and enroll the individual during the expulsion. The Office of Safe Schools in the Department of Education would be required to compile and periodically distribute to school districts information about existing alternative education programs or schools and nonpublic schools that may be open to enrollment of students who are expelled. The Office of Safe Schools also would be required to provide technical assistance to school districts and to the authorizing bodies for public school academies, and other interested parties in developing alternative education programs in geographic areas that are not being served.

House Bill 4241 (H-1) would be known as the Safe Schools and Communities Act. The bill would add provisions to the Revised School Code (MCL 380.1311 et al.) to enable the creation of a *strict discipline public school academy*. Public school academies are customarily called charter schools. The bill would allow any authorizing body of charter schools (a local school district board, an intermediate school board, a community college board, or a state public university board) to charter a strict discipline public school academy that is organized and administered under the direction of a board of directors as a nonprofit corporation. However, to the extent disqualified under the state or federal constitution, a strict discipline academy could not be organized by a church or other religious organization, and could not have any organizational or contractual affiliation with or constitute a church or other religious organization. Further, a local or intermediate school district board could not charter a strict discipline public school academy outside its district boundaries. A community college board would be subject to that same restriction, and also would be prohibited from chartering a school within the boundaries of a first class school district (Detroit) and would be specifically allowed to charter a school on a federal military installation outside its boundaries under certain circumstances.

Academy Application. Under the bill, the application to an authorizing group would be required to include at least all of the following:

- *identification of the applicant for the contract;
- *a list of the proposed members of the board and a description of the qualifications and method for appointment or election;
- *the proposed articles of incorporation, which would have to include the academy's name, purposes and specification that the academy is a governmental entity, name of the authorizing body, the proposed time when the articles of incorporation would be effective, and other matters necessary for the articles of incorporation;
- *a copy of the proposed bylaws;
- *documentation meeting the application requirements of the authorizing body, including at least the academy's governance structure, a copy of the educational goals, the curricula to be offered and methods of assessment (the bill would require MEAP tests or an assessment instrument developed for a state-endorsed high school diploma), an admission policy (and notice to the public), the school calendar and school day schedule, and the age or grade range of pupils to be enrolled;
- *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 applicable state and federal laws;
- *for school district academies, an assurance that employees of the academy will be covered by the collective bargaining agreements; and,
- *a description of and address for the proposed physical plant.

Authorizing Body Oversight. Under House Bill 4241, an authorizing body would be required to oversee academies, or contract with others to do so. If the state board found that an authorizing body was not engaging in appropriate oversight, the state board could suspend the authorizing body's power to issue contracts to new academies. The authorizing body would be prohibited from charging an application or oversight fee that exceeds three percent of the total state school aid of the academy, although other kinds of services could be provided at additional cost. An academy would be presumed to be legally organized if it exercised the franchises and privileges of an academy for at least two years.

Petition. The bill specifies that contracts for academies would have to be issued on a competitive basis. If a school district did not issue a contract, the applicant could petition the

school board to place the question on the ballot to be decided by the school electors. The petition would have to contain the same information as the application, be signed by at least 15 percent of the school electors, and be filed with the secretary of the school board. If the board received a petition, it would have to place the question on the ballot at the next annual school election held within 60 days.

State Department of Education's Role. Within 10 days after issuing a contract for a strict discipline academy, the board of the authorizing body would be required to submit the contract and application to the State Board of Education. An authorizing body would be required to adopt a resolution establishing the method of selection, length of term, and number of members of the board of directors for each academy in its jurisdiction.

Academy Contract. The bill requires that a contract to organize and administer an academy contain at least all of the following:

- *the academy's educational goals and the methods by which it will be held accountable;
- *a description of the method to be used to monitor the academy's compliance with applicable law and its performance in meeting its targeted educational objectives;
- *a description for amending the contract during its term;
- *all the matters set forth in the application for the contract;
- *if authorized by a school district, an agreement that employees of the academy will be covered by collective bargaining agreements;
- *procedures and grounds for revoking the contract;
- *a description and address for the physical plant; and,
- *requirements and procedures for financial audits.

Governmental Immunity. House Bill 4241 would require that all strict discipline academies comply with the Open Meetings Act, the Freedom of Information Act, and other applicable laws. The bill also specifies that the academy and its incorporators, board members, officers, employees, and volunteers would have governmental immunity. Further, an authorizing body and its board members, officers, and employees would be immune from civil liability, both personally and professionally, for any acts or omissions in authorizing an academy if the members reasonably believed they acted within their scope of authority.

Taxation. Under the bill, a strict discipline academy would be exempt from all taxation on its earnings and property. However, an academy could not levy property taxes or other taxes for any purpose. An academy could hold its own buildings and real estate. It could proceed under uniform condemnation procedures, but only with the express, written permission of the authorizing

body in each instance of condemnation and only after just compensation had been determined and paid. Taxes levied or bonds issued by a school district with a contract to operate an academy could be used to support the operation or facilities of an academy. An academy could be located in all or part of an existing public school building, but would be required to operate at the single site specified in the application.

Tuition. The bill would prohibit a strict discipline academy from charging tuition, and specify that it could not discriminate in its pupil admission 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 could limit admission to pupils 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.

Types of Pupils. A strict discipline academy could be established to enroll one or more of the following types of pupils:

- *those placed in the academy by a court or by the Family Independence Agency under the direction of a court;

- *those who have been expelled for weapons; and

- *those who have been expelled for assault.

If the academy was established to enroll these kinds of pupils, then the academy could limit enrollment only to those pupils, and would not be required to keep these kinds of pupils separated from each other.

Except for a foreign exchange student who is not a United States citizen, a strict discipline academy would be prohibited from enrolling pupils who are not residents of this state. Enrollment would be open to all individuals who reside in this state and who meet the admission policy, or in the instance of academies authorized by bodies with certain geographic boundaries, the academy would be open to all pupils who reside within the geographic boundaries of the authorizing body.

Adult Education Programs. A strict discipline academy would be allowed to include any grade up to grade 12 or any configuration of those grades, including kindergarten and early childhood education, as specified in its contract. If specified in its contract, an academy could also operate an adult basic education program, adult high school completion program, or general education development (GED) testing preparation program.

Corporate Rights and Responsibilities. Under the bill, a strict discipline academy may take action to carry out the purposes for which it was incorporated, including:

- *to sue and be sued in its name;

*to acquire, hold, own, lease, condemn, convey, and otherwise manage real and personal property for educational purposes;

*to receive and disburse funds for lawful purposes;

*to enter into binding legal agreements;

*to incur temporary debt; and,

*to solicit and accept grants or gifts for educational purposes, and permit the establishment of one or more nonprofit corporations to assist the academy in the furtherance of its public purposes.

Desegregation Orders. If an academy was operated by a school district that is subject to a court desegregation order, pupil selection at the academy would be subject to that order.

Certificated Teachers. House Bill 4241 would require a strict discipline public school academy to use certificated teachers. However, academies operated by a state public university could use full-time, tenured or tenure-track faculty members as classroom teachers, and academies operated by a community college could use as teachers full-time faculty who have at least 5 years' experience in teaching the particular subject matter they would teach in the academy. Further, either could use noncertificated individuals to teach in any situation in which a school district is permitted to use noncertificated teachers.

Fiscal Agent and Contract Revocation. House Bill 4241 specifies that a strict discipline academy could develop and implement new teaching techniques or methods. However, if it did so, it would be required to report those to the authorizing body and to the State Board of Education. Further, an academy would be allowed to employ or contract with personnel as necessary for operations, with the approval of the authorizing body. Under the bill, the authorizing body would be the fiscal agent for the academy, and state school aid payments would be paid to the authorizing body, and it, in turn, would be required to forward the payments to the academy. The authorizing body would have the responsibility to oversee contract compliance, and it could revoke a contract if one or more of the following occurred:

*failure to meet the educational goals set forth in the contract;

*failure to comply with all applicable laws;

*failure to meet generally accepted public sector accounting principles; or

*the existence of one or more other grounds for revocation, as specified in the contract.

The decision to revoke a contract would rest solely with the authorizing body, and would not be subject to review by a court or any state agency. Further, an authorizing body that revoked

a contract would not be liable for that action to the academy, the public school academy corporation, a pupil of the academy, the parent or guardian of a pupil, or any other person.

Strict Discipline Academy Report. Not later than one year after the effective date of the bill, the State Board of Education would be required to submit a comprehensive report with findings and recommendations to the House and Senate Committees on Education. The report would evaluate strict discipline public school academies generally, and would contain for each academy a copy of its mission statement, attendance statistics and dropout rate, aggregate assessment test scores, projections of financial stability, and number of and comments on supervisory visits by the authorizing body.

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.