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BILL ANALYSIS

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House Bill 5457 (Substitute S-3 as reported)
House Bill 5475 (Substitute S-2 as reported)
House Bill 5627 (Substitute S-1 as reported)
House Bill 5839 (Substitute S-2 as reported)
House Bill 5850 (Substitute S-2 as reported)
House Bill 5851 (as reported without amendment)
House Bill 5921 (Substitute S-1 as reported)
Sponsor: Representative Brian Palmer (H.B. 5457)
Representative Ruth Johnson (H.B. 5475, 5627, 5839, 5850, 5851, & 5921)
House Committee: Education
Senate Committee: Education

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RATIONALE

In September 2001, voters in the Oakland County Intermediate School District (ISD) approved a \$66 million annual millage increase that proponents said was necessary for special education and vocational-technical education. Of the taxes raised, however, \$18 million was used to help pay for a new \$29 million administration building, and \$9 million was spent on a fiber optic network. Meanwhile, concerns about other expenditures of the district were being raised. Disclosures by ISD employees and investigations by the news media, particularly the *Detroit Free Press*, revealed that millions of dollars had been awarded in no-bid contracts--sometimes involving ISD officials' family members--and hundreds of thousands were spent on travel expenses, alcohol, and expensive gifts. These developments led to investigations by the Attorney General, the Oakland County sheriff, and the FBI, the firing and prosecution of the ISD's superintendent, the resignation of three of the district's board members, a probe by a House of Representatives committee, and widespread calls for reform.

Several measures were enacted earlier in 2004 to address aspects of the problems that occurred in Oakland County and possibly in other ISDs. These amendments allow the recall and removal of ISD board members, revise procedures for the election

of ISD board members, and impose competitive bidding requirements on ISDs (as described below in **BACKGROUND**). Many people believe that additional amendments are needed to restrict ISDs' use of millage and bond revenue, limit expenditures by ISD board members, establish criminal penalties, require the disclosure of conflicts of interest, require ISDs to provide detailed information about expenditures, and subject ISDs to random audits.

CONTENT

The bills would amend various statutes to do the following:

- **Prohibit ISDs from using the proceeds of a tax levied for special education or vocational-education operating purposes, or bonds issued for special education or vocational-education facilities, for any other purpose.**
- **Require an ISD to repay its special education or vocational-education program operating fund, from its general operating fund, the amount of proceeds used for other purposes.**
- **Limit the duration of a tax levied by an ISD for operating purposes.**
- **Establish criminal penalties for the use of ISD funds for certain**

- purchases, and for an intentional or knowing violation of competitive bidding requirements or misuse of bond proceeds.**
- **Require ISDs to implement a conflict of interest policy and a policy to prohibit the use of ISD funds for certain purchases.**
 - **Prohibit ISDs from entering into a contract in which a board member or administrator had a substantial conflict of interest.**
 - **Require ISD board members, administrators, and employees to report their relationship with a business with which the ISD was considering entering into a contract.**
 - **Limit board members' and administrators' acceptance of money, goods, and services from people doing business with the district.**
 - **Require an ISD board to establish a policy requiring pretravel and posttravel approval of all district-funded travel by a board member or employee.**
 - **Provide that ISDs would be subject to random audits conducted by independent auditors under the direction of the Department of Treasury.**
 - **Require ISDs to post on their websites information concerning travel expenses, contracts, employee compensation, and other matters.**

- Whether board members, administrators, and employees were adhering to conflict of interest policies adopted by the board or required by State law.
- Whether board members, administrators, and employees were adhering to travel guidelines and practices adopted by the board or required by State law.
- Whether a modification to an existing contract that resulted in an additional financial obligation to the ISD was made during the audit period and the modification was not competitively bid.
- Whether the ISD's policies and practices for responding to Freedom of Information Act (FOIA) requests and its actual responses during the audit period were in compliance with FOIA, including whether the costs charged for responding to requests exceeded the costs permitted under FOIA.
- Whether the ISD had accurately accounted for and reported all information related to stipends, salaries, benefits, or other compensation paid to administrators.
- Whether the ISD had used public funds in violation of law to pay for food, gifts, or other items not used for instructional purposes.
- Whether proceeds from a tax levied for vocational-technical education operating purposes or for special education operating purposes had been spent for a purpose other than the purposes for which the tax was levied.

The bills are described in detail below.

House Bill 5457 (S-3)

The bill would amend the Revised School Code to provide that ISDs would be subject to a random audit conducted by an independent auditor under the direction of the Treasury Department. The random audits would be in addition to the annual financial audits currently required under the Code. An audit conducted under the bill would have to be based in part on an examination of an ISD's accounts, financial records, and accounting procedures, and would have to address at least three of the following aspects of the ISD's operations:

- Whether the intermediate school board members, administrators, and employees were adhering to ethics policies adopted by the board or required by State law.

(The reference above to conflict of interest policies would include policies and practices with regard to contracts in which an intermediate school board member, an ISD administrator, or an ISD employee who was involved in the contracting process, or a member of the family of a board member, administrator, or employee, had a substantial conflict of interest (as defined in House Bill 5921 (S-1)); and policies and practices with regard to an ISD administrator's negotiating, handling, presenting, or recommending a contract in which the administrator or a family member had a substantial conflict of interest.)

The Department would have to select the ISDs to be audited on a random basis. Between July 1 and July 15 of each year, the Department would have to announce the districts that would be subject to an audit that year for the immediately preceding

school fiscal year. The Department would have to select five ISDs for audit every two years. It also could direct an audit of one or more additional ISDs selected by the Department as it considered necessary.

Upon the Department's request, an ISD would have to notify the Department of the name, address, and contact person of the independent auditor selected by the intermediate school board to perform the annual financial audit for the district. The Department would have to enter into an agreed-upon procedures agreement with the selected independent auditor, identifying the matters to be audited and establishing the rate of payment to oversee the conduct of the audit by the auditor to the extent the Department considered necessary. The rate of payment could not exceed the rate the Department would charge for the same type of audit unless the board already was under contract with an auditing firm for the year to be audited.

The intermediate school board and ISD officials would have to provide all information requested by the independent auditor or the Department, and would have to cooperate with them to the fullest extent possible.

The independent auditor would have to submit an audit report to the Center for Educational Performance and Information as it prescribed. The Center would have to submit a copy of the audit report to the Department, the applicable intermediate school board, the Senate and House standing committees with jurisdiction over education legislation, and the Department of Education.

If the Department of Treasury determined that an audit conducted under the bill disclosed that the intermediate school board or any ISD official or employee had violated any State law governing the district's financial operations, then the Department would have to notify the ISD of that determination. If the district disputed the determination or claimed that the situation had been corrected, the ISD could submit an appeal of the determination to the Department within 15 days after receiving it. The Department would have to consider the appeal within 30 days.

If the Department did not, within the 30-day period, make an affirmative finding that the determination was incorrect or that the situation had been corrected, it would have to file a copy of the report with the Attorney General. The Attorney General would have to review the report and, if he or she considered it appropriate, commence proceedings against the board, official, or employee, or direct the prosecuting attorney for the county where the violation occurred to do so. The proceedings would have to include at least a civil action for the recovery of any public money determined by the audit to have been illegally spent, and for the recovery of any public property determined to have been converted or misappropriated.

The Treasury Department would have to pay the costs of the additional audits conducted under the bill. This obligation would be limited to the amount of a separate line item appropriation identified for the purpose of funding the Department's duties under the bill, and included in the annual act making appropriations for the Department.

The bill would take effect on July 1, 2006.

House Bill 5475 (S-2)

Posting Requirement

The bill would amend the Revised School Code to require every ISD, by December 31 each year, to post on its website a report containing specified information for the immediately preceding school year, in the form and manner prescribed by the Department of Education. An ISD would have to maintain the report on its website only for the most recent reporting period, but would have to retain paper copies of previous reports for at least 10 years.

The Department would have to include on its website a link to the page on each ISD's website that included the required report. The Department would have to work with ISDs to determine the form and manner for posting the report.

General Information

An ISD's report would have to include all of the following "general information":

-- The amount of the ISD's total budget.

- The number of full-time equated pupils served by the ISD.
- The number of people employed by the ISD.
- The number of constituent districts, public school academies, and nonpublic schools served by the ISD.

Travel Expenses

For each intermediate school board member or ISD employee who had travel expenses during the school fiscal year that totaled over \$3,000 and were paid for with ISD funds, an ISD would have to report the total cost of air travel, overnight lodging, car rental, and meals; the dates, purpose, and locations of travel; and the name and position of the board member or employee.

This requirement would not apply to any of the following:

- Round-trip air travel on a scheduled airline from a location in the Upper Peninsula to a location in the Lower Peninsula, or chartered round-trip air travel from an Upper Peninsula location to a Lower Peninsula location if the cost of the chartered air travel were less than the published cost of the same travel on a scheduled airline.
- Travel expenses for air or boat travel for work-related purposes within this State between an island and the mainland.
- Expenses for travel within the boundaries of the ISD for work-related purposes.
- Mileage reimbursement.

Beginning in 2006, the monetary amount specified for travel expense reporting would have to be adjusted each January 1 according to the annual average percentage increase or decrease in the Detroit consumer price index—all items. The adjustment would apply only to expenditures or violations occurring after the date of the adjustment.

Contracts & Contract Modifications

An ISD's report would have to include a description of each contract, other than an employment contract or a contract for fiber optic or cable equipment, that the ISD entered into during the school fiscal year and that 1) obligated the district for more than \$100,000; 2) was not competitively bid and obligated the ISD for more than

\$25,000; or 3) was entered into with an entity in which a board member or administrator, or a member of that person's family, was known by the ISD to have a monetary interest. The description would have to include the subject matter of the contract; whether it was competitively bid or was a single source contract; and the name and position of each individual who signed the contract on behalf of the ISD. (A board member or administrator, or a member of that person's family, would not be considered to have a monetary interest in particular contracts described in the bill.)

The report would have to list and describe the use of all motor vehicles weighing 7,500 pounds or less that were owned or leased by the ISD during the school fiscal year and not reported among the contracts described above.

The report would have to describe a modification made during the school fiscal year to an existing contract and the total amount of the additional and total financial obligation, if the modification resulted in an additional financial obligation owed by the ISD over \$100,000 or resulted in a total financial obligation owed by the ISD from the existing contract exceeding \$100,000, or if the modification were to an existing contract that was not competitively bid and the modification resulted in an additional financial obligation over \$25,000 or resulted in the total financial obligation from the existing contract exceeding \$25,000.

The required reporting of contract and contract modifications would not apply to a contract for utilities or a contract for an annuity or retirement benefit in which all employees were eligible to participate, unless the contract were for payment of a commission to a third-party broker for securing one of those contracts.

Fiber Optic or Cable Equipment

An ISD would have to report total costs incurred during the school fiscal year, and the source or sources of money spent during the year, for fiber optic or cable equipment and operating system software for fiber optic or cable equipment networks. The description of the sources of money would have to specify the amount used from each of the separate funds maintained by the ISD and used from each other source.

Employee Compensation

For each ISD employee with a compensation package having a total annual monetary value in the top 3% among the ISD's employees, an ISD would have to report the dollar value of the following: the employee's salary; all expense accounts provided for the employee and all reimbursed expenses; and any bonus, stipend, or other form of supplemental compensation (i.e., any payment or benefit made available to that employee that was not generally made available to all teaching, administrative, and executive-level employees of the ISD).

If an ISD had fewer than three employees in the top 3% of employees described in this provision, it would have to include the required information for each employee with a compensation package having a total monetary value in the top three among its employees. If the ISD had more than 20 employees in the top 3%, it would have to include the required information for each employee with a compensation package having a monetary value in the top 20 among the ISD's employees.

Public Relations, Legal Services, Etc.

An ISD's report would have to include payments made during the school fiscal year to people who were not ISD employees for public relations, polling, lobbying, or legal services, and a description of the services received by the ISD in return.

For each person who was not an employee or nonemployee described above, to whom the ISD was required to issue a Federal income tax form 1099 that showed payments over \$25,000 during the school fiscal year, the ISD would have to report the total amount paid to the individual, a description of the project or projects for which he or she was contracted, and the services he or she provided.

The report would have to include the amount and percentage of the ISD's total budget that was spent on administrative costs (as defined in the Michigan Public School Accounting Manual), and public relations, surveys, polling, lobbying, and legal services.

Effective Date; Tie-Bar

The bill would take effect on July 1, 2006. It is tie-barred to House Bill 5627.

House Bill 5627 (S-1)

The State School Aid Act requires every ISD to submit comprehensive financial data to Center for Educational Information and Performance, by November 1 each year. The bill would require an ISD's report also to include the website address where the Department of Education could gain access to the report that would be required under Section 620 of the Revised School Code (proposed by House Bill 5475).

The bill is tie-barred to House Bill 5475, and would take effect on January 1, 2005.

House Bill 5839 (S-2)

Audit Reports; Repayment

The bill would amend the Revised School Code to prohibit an ISD that levied a tax for area vocational-technical education program operating purposes, or special education operating purposes, from using the proceeds from the tax for any other purpose. An ISD levying a tax for either of those purposes would have to submit to the Department of Treasury a copy of the audit report from the audit of the ISD under Section 622 or 622a for the particular time period. (Section 622 requires ISDs to have their books audited annually. Section 622a, proposed by House Bill 5457, would require additional random audits.)

If the Department determined from the audit report that the proceeds from the tax had been used for a purpose other than vocational-technical education or special education program operating purposes, as applicable, the Department would have to notify the ISD of that determination. If the ISD disputed the determination or claimed that the situation had been corrected, the ISD could submit an appeal of the determination to the Department within 15 days after receiving it. The Department would have to consider the appeal within 30 days.

If the Department did not make an affirmative finding within the 30-day period that the determination was inaccurate or

that the situation had been corrected, then the Department would have to file a copy of the report with the Attorney General. The Attorney General would have to review the report and, if he or she considered it appropriate, commence appropriate proceedings against the intermediate school board or the official or employee, or direct the prosecuting attorney for the county in which the violation occurred to do so. The proceedings would have to include at least a civil action for the recovery of any public money determined by the audit to have been illegally spent and for the recovery of any public property determined to have been converted or misappropriated.

In addition, the ISD would have to repay from its general operating fund to its area vocational-technical education program operating fund, or to its special education program operating fund, as applicable, an amount equal to the amount the Treasury Department determined had been used for a purpose other than vocational-technical education or special education program operating purposes.

For the purpose of these provisions, the Departments of Education and Treasury would have to develop and make available to ISDs a definition of area vocational-technical education program operating purposes and a definition of special education operating purposes.

Bond Proceeds

The Code authorizes an ISD, with voter approval, to issue bonds to defray the cost of buildings and other facilities for vocational-technical education and/or special education. The bill would prohibit an ISD from using the proceeds from these bonds for any purpose other than facilities used for vocational-technical education or special education purposes, as applicable. If a facility were to be used for a different purpose, proceeds from the bonds or millage levied to repay the bonds could be used only for that portion of the facility that was used for providing vocational-technical education or special education programs and services.

Duration of Tax

For a tax authorized after the bill's effective date for ISD operating purposes, the duration of the authorization could not

exceed 20 years. With the approval of the intermediate school electors, the authorization could be renewed for a maximum of 20 years. The duration of the authorization would have to be stated in the ballot question concerning the levy or renewal of the tax.

The proposed 20-year maximum duration also would apply to millage levies for vocational-technical education program operating purposes, and/or special education program operating purposes.

House Bill 5850 (S-2)

Competitive Bidding; Bond Proceeds

The bill would amend the Revised School Code to make it a felony for a person knowingly or intentionally to violate the competitive bidding requirements of Section 1267 of the Code, or knowingly or intentionally to permit or consent to a violation of those requirements. (Under Section 1267, a school board must obtain competitive bids before beginning construction of a new school building, or the addition to or repair of an existing building, subject to exceptions for emergency repair, work costing under \$17,932, and repair work normally performed.)

The bill also would make it a felony for a person knowingly or intentionally to use the proceeds of bonds issued under the Code for a purpose other than the purpose for which the bonds were issued, or knowingly or intentionally to permit or consent to such a misuse of bond proceeds.

Both felonies would be punishable by a maximum fine of 10% of the cost of the project involved in the violation and/or imprisonment for up to one year. The offenses would not be subject to the penalties for prohibited purchases.

Prohibited Purchases

The bill would prohibit a person from using ISD funds or other public funds under the control of an ISD to purchase alcoholic beverages, jewelry, gifts, golf fees, or any item whose purchase or possession is illegal.

The prohibition would not apply to the use of public funds to purchase a plaque, medal, trophy, or other award for the recognition of

an employee, volunteer, or pupil, if the purchase did not exceed \$100 per recipient. Beginning in 2005, this amount would have to be adjusted each January 1 pursuant to the annual average percentage increase or decrease in the Detroit consumer price index—all items. The adjustment would apply only to expenditures or violations occurring after the date the amount was adjusted.

A person who violated this prohibition would be guilty of a misdemeanor punishable by imprisonment for up to 93 days and/or a fine. The amount of the fine would depend upon the cumulative amount of the funds that were misused, as shown in Table 1. The prescribed penalty would be in addition to any other penalty provided by law. The court also would have to order the person to make restitution to the affected ISD.

Table 1

Cumulative Amount	Fine	
	Minimum	Maximum
Under \$5,000	NA	\$1,000
\$5,000 - \$9,999	\$1,000	\$2,000
\$10,000 - \$14,999	\$2,000	\$3,000
\$15,000 - \$24,999	\$3,000	\$4,000
\$25,000 or more	\$4,000	NA

NA = Not applicable

The bill would define “public funds” as funds generated from taxes levied under the Revised School Code, State appropriations of State or Federal funds, or payments to the ISD for services. The term would not include contributions made for a specific purpose by an ISD board member or employee, another individual, or a private entity.

House Bill 5851

The bill would amend the Code of Criminal Procedure to include in the sentencing guidelines violations of the Revised School Code involving competitive bidding or the misuse of bond proceeds, as provided by House Bill 5850. These violations would be Class H felonies against the public trust, subject to a statutory maximum of one year’s imprisonment.

The bill is tie-barred to House Bill 5850.

House Bill 5921 (S-1)

Conflict of Interest; Acceptance of Goods

The bill would amend the Revised School Code to require each intermediate school board, by July 1, 2005, to adopt and implement a conflict of interest policy designed to avoid conflicts of interest by ISD officials and employees.

Also by July 1, 2005, each intermediate school board would have to adopt and implement a policy to prohibit the use of ISD funds or other public funds under the ISD’s control for purchasing alcoholic beverages, jewelry, gifts, golf fees, or any item whose purchase or possession is illegal. The policy could allow the use of public funds for the purchase of a plaque, medal, trophy, or other award for the recognition of an employee, volunteer, or pupil if the purchase did not exceed \$100 per recipient. (The bill would define “public funds” as funds generated from taxes levied under the Code, State appropriations of State or Federal funds, or payments to the ISD for services by a constituent district or any other person. The term would not include voluntary contributions made for a specific purpose by an ISD board member or employee, another individual, or a private entity.)

The Department of Education would have to develop, and distribute to ISDs, a model policy meeting these requirements and a model conflict of interest policy.

The bill would prohibit an intermediate school board member or an ISD administrator, in any one-month period, from accepting any money, goods, or services with a value over \$44 from a person doing business with the ISD or seeking to do business with the ISD, if the board member or administrator did not provide goods or services of equal value in exchange. This would not apply to a gift or reward already prohibited under Section 1805. (That section makes it a misdemeanor for a school superintendent, official, principal, or teacher to act as the agent for a 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.)

The bill also would prohibit an intermediate school board from entering into a proposed contract in which a board member or administrator had a "substantial conflict of interest". That term would mean a conflict of interest on the part of an intermediate school board member or ISD administrator in respect to a contract with the district "that is of such substance as to induce action on his or her part to promote the contract for his or her personal benefit". The bill describes types of contracts in which there would be no substantial conflict of interest.

Beginning in 2005, the monetary amounts specified above would have to be adjusted each January 1 according to the annual average percentage increase or decrease in the Detroit consumer price index—all items. The adjustment would apply only to expenditures or violations occurring after the date the amount was adjusted.

Disclosure of Interest

The bill would require disclosure by an intermediate school board member, an ISD administrator, or an ISD employee who recommended, negotiated, or was authorized to sign a contract on behalf of the ISD, if he or she either were employed by or under contract with a business enterprise with which the ISD was considering entering into a contract. A board member, administrator, or employee also would have to make a disclosure if the person knew that he or she had a family member who had an ownership interest in or was employed by a business enterprise with which the ISD was considering entering into a contract.

The board member, administrator, or employee would have to disclose the employment, contractual relationship, or ownership interest to the intermediate school board at a public meeting of the board before it entered into the contract. The board then would have to vote at a public meeting on whether it considered the relationship described in the disclosure to be a conflict of interest. The board could not enter into the contract without first voting at a public meeting to do so.

("Family member" would mean a person's spouse or spouse's sibling or child; a person's sibling or sibling's spouse or child;

a person's child or child's spouse; or a person's parent or parent's spouse. The term would include these relationships as created by adoption or marriage.)

Moral Turpitude

The bill would require an intermediate school board to ensure that each employment contract with a school administrator employed by the ISD included a provision prohibiting the administrator from engaging in conduct involving moral turpitude. The contract also would have to allow the board to void the contract if the administrator violated the prohibition.

Travel Approval

The Code requires an ISD board to establish a policy requiring board approval of all travel outside the State by a board member or an ISD employee that is paid for or reimbursed by the district. Under the bill, the policy would have to require approval of all travel (not just out-of-State travel). The policy also would have to require a board member or employee to submit both a pretravel authorization form detailing estimated expenses, and a posttravel form detailing and verifying actual expenses. The policy would have to require approval of both forms.

ISD Board Membership

Under the Code, intermediate school board members are elected biennially in one of two ways. Either they are elected by an electoral body composed of one person designated by the board of each constituent district, or they are elected by popular vote of the district's electors (if the board submits to electors the question of electing board members in this manner and the voters approve it).

An ISD board elected by an electoral body has five members, and a board elected by popular vote has seven members. Under the bill, a five-member intermediate school board could change the number of board members to seven, by resolution. Before adopting the resolution, the board would have to hold at least two public hearings. If a board determined that the terms of its members should be staggered differently than provided under the Code or any bylaws of the board due to a change in the number

of board members, the board could adopt bylaws or amend its bylaws to change the way that members' terms were staggered. The bylaws also could alter the current terms of members to implement the change in the way terms were staggered.

Presently, a member of the board of a constituent district is eligible for election or appointment to the intermediate school board. Under the bill, this would apply until the 2005 intermediate school board election. Beginning with that election, not more than three members of the ISD board could also be serving at the same time as a member of the board of a constituent district or board of directors of a public school academy. If the ISD board had more than three members serving on September 1, 2004, who also were on the board of a constituent district, the bill's limitation would not apply to that ISD board until the current term of those ISD board members expired.

Proposed MCL 380.622a (H.B. 5457)
Proposed MCL 380.620 (H.B. 5475)
MCL 388.1618 (H.B. 5627)
380.681 et al. (H.B. 5839)
380.1804 et al. (H.B. 5850)
777.13p (H.B. 5851)
380.611 et al. (H.B. 5921)

BACKGROUND

Intermediate School Districts in Michigan

Public Act 190 of 1962 organized Michigan's 83 county school districts into 57 intermediate school districts. Each ISD is responsible for providing its constituent local school districts with administrative and instructional services, primarily in the areas of special education and vocational-technical education. Some ISDs also help local districts to provide professional development, improve student achievement, increase parental involvement, maintain computer networks, and undertake other projects. Intermediate school districts receive general operating funds and special education funds from the State, and some ISDs receive various categorical grants (e.g., vocational education, and math and science center funding). With voter approval, ISDs also may levy property taxes and issue bonds.

Recently Enacted Legislation

Public Acts 232, 233, and 234 amended the Revised School and took effect on July 21, 2004.

Public Act 232 requires ISD boards to obtain competitive bids before beginning construction on a new or existing school building, and makes ISD construction bids subject to requirements that govern bids sought by a school board. The Act also requires an ISD board to post an advertisement for a bid on either the Department of Management and Budget website or a website maintained by a school organization, in addition to advertising in a newspaper. An advertisement for bids must be accompanied by a statement disclosing any familial relationship between the bidder and a member of the ISD board or the superintendent. (These advertising requirements also apply to school districts and public school academies.)

Public Act 233 revised the procedure for designating a constituent school district's representative to the electoral body that selects ISD board members. The Act requires a school district's board to designate its representative by resolution. The resolution must identify the candidate the board supports for each position to be filled on the ISD board, and direct its representative to vote for that person, at least on the first ballot taken by the electoral body. The school board must consider the resolution at not fewer than two public meetings before adopting it. In addition, the meeting of an electoral body must comply with the Open Meetings Act.

Under Public Act 234, ISD board members may be recalled by the district's voters (if the members were elected by the voters) or removed from office by the boards of the constituent districts (if the ISD board members were elected by an electoral body). Under certain circumstances, the Governor may remove an ISD board member from office. The Act also requires ISD budgets to be reviewed by the boards of the constituent districts, requires ISD boards to establish a policy for out-of-State travel by board members or employees that is paid for by the district, and requires all officers of an ISD board to be board members.

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

This package of bills would continue the reforms begun earlier this year by Public Acts 232, 233, and 234, to address the types of abuse that took place in the Oakland County ISD. While the situation in that county provided the impetus for this legislation, investigations revealed the inappropriate use of funds in at least one other ISD. Without the changes proposed, there is the potential that other ISD boards could divert millage intended for special education or vocational-technical education, award contracts to board members, officials, or employees (or their relatives) who have a conflict of interest, and lavishly spend taxpayers' money for unnecessary travel and expensive gifts--all without the knowledge or approval of the constituent districts or the public. Although the actions of Oakland County's ISD superintendent and at least some board members violated the public trust, there was little that actually violated the law and the taxpayers and parents were left with minimal or no recourse.

The bills would prohibit the type of misdeeds that took place in Oakland County and ensure greater accountability to the public. The regulations would apply both to ISD boards and to individuals. For example, ISD boards would be prohibited from entering into contracts in which a board member or administrator had a conflict of interest, and board members, administrators, and employees would have to disclose potential conflicts of interest. Intermediate school boards also would be subject to random audits and rigorous disclosure requirements regarding travel expenses, contracts, employee compensation, and the use of motor vehicles, as well as expenditures for fiber optic and cable equipment, lobbying, and public relations.

Furthermore, if an ISD levied taxes or issued bonds for special education or vocational-technical education, it would have to submit an audit report to the Treasury Department, the proceeds would have to be used for the intended purpose or repaid from the ISD's general operating fund, and the intentional

misuse of bond proceeds would be a felony. In addition, the authorization for a tax levy could not exceed 20 years.

While these proposals cannot reverse the damage that was inflicted on Oakland County taxpayers, they would help ensure that similar abuses were not repeated there or in other ISDs. The bills also could help restore public confidence in Michigan's intermediate school districts. When they function properly, ISDs provide valuable services to schoolchildren and local school districts.

Response: These bills are a direct response to the misconduct within the Oakland County ISD, and may be an overreaction for the State's 56 other ISDs. While some other ISD boards might have misspent funds or entered into contracts in which a conflict of interest existed, there is nothing to suggest any abuse that begins to compare with what occurred in Oakland County. The proposal that could be especially troublesome to ISDs is House Bill 5475 (S-3), which would require them to post a great deal of detailed information on their websites. Compiling the data would be extremely labor-intensive, and not all ISDs would have the staff to devote to it. Anyone who wants this information already can request it under the Freedom of Information Act. In addition, the proposed random audits are not necessary. Intermediate school districts are subject to performance audits, as well as financial audits, under other State and Federal laws.

The reforms already made by Public Acts 232, 233, and 234, in combination with existing law, should be given a chance to work before more drastic measures are enacted.

Opposing Argument

The Senate substitutes represent a watered-down version of the bills that were passed by the House. In particular, the House version of House Bill 5839 would empower ISD electors to reconsider a previously approved millage for special education or vocational-technical education, if an audit revealed that the proceeds had been used for a different purpose and the Treasury Department did not disagree with that determination. Under this version, the proportion of the millage that was misspent could be reconsidered if at least 10% of the ISD voters petitioned the district for

reconsideration. (If the taxes were being used to repay debt secured by bonds, however, the voters could not reconsider the millage until the debt had been retired.)

This proposal is an crucial element of the legislation to reform ISDs and make them accountable. It is essential to give the Oakland County taxpayers relief from the millage that less than 8% of the ISD's voters approved on September 25, 2001, in a special election held after a scheduled primary election. The special election cost the district more than \$350,000, which included the costs of consultants, signs, mailings, and a video. Furthermore, voters were told that the district needed another \$66 million annually for special education and vocational-education students, while it already had a \$16 million cash reserve for special education (*Detroit Free Press*, "District had millions, got voters to OK more", 1-20-04). Clearly, the ISD's electors were duped, and now homeowners are subject to permanent tax increases of approximately \$52 on a \$150,000 home and \$175 on a \$275,000 home. Without an opportunity to reconsider the millage approved in 2001, Oakland County taxpayers will continue to have no relief.

Response: Rescinding an approved millage, or a portion of it, would not relieve the district of its obligation to make services available to the children who need them, especially special education pupils. It is the individual wrongdoers, not the students, who should be punished. Under the House-passed bill, the results of an audit could lead to a millage reconsideration, but audits can contain errors (such as misidentifying an installment contract as a loan) that can skew the results. The bill would have given an ISD only 15 days to appeal an audit determination to the Treasury Department, which would have had only 30 days to consider the appeal.

Furthermore, allowing a millage reconsideration would have a negative impact on an ISD's debt ratings, and therefore costs, because rating organizations look at both the revenue stream to repay the debt and the operating programs that are funded. Vendors doing business with schools also look at their revenue stream when determining contract amounts. Although the bill would have protected the revenue to repay a bond issue, it still would

have affected pricing and raised costs to the ISD.

In addition, the proposal would have made ISDs the only tax-levying authority to face this sort of sanction. While the property owners in Oakland County must continue to pay the increased millage, the money that was misappropriated has been repaid, and the tax revenue collected will provide needed services to special education and vocational-technical education students.

Legislative Analyst: Suzanne Lowe

FISCAL IMPACT

House Bill 5457 (S-3)

The bill would have an indeterminate impact on the Department of Treasury depending on the number of audit hours required. The average cost of contracted audits is approximately \$85 per hour. Under the bill, amounts spent for audits would be contingent upon annual appropriations. Costs to the Department of Attorney General would depend on the number of reports citing violations of State laws filed with the Attorney General.

House Bill 5475 (S-2)

The bill would have no fiscal impact on State government. Intermediate school districts would face increased staff time and reporting costs implementing this legislation. Some of the type and level of detailed information required to be collected under the bill currently might not be individually collected. Each ISD's level of detailed reporting and accounting, and the quantity of activities undertaken by each ISD that would have to be reported, would determine the final cost to the ISD of preparing a yearly report containing the information required under this legislation.

House Bill 5627 (S-1)

The bill would have no fiscal impact on State or local government.

House Bill 5839 (S-2)

There potentially could be an indeterminate cost to the Department of Treasury for administrative expenses if the Department did not have the personnel in place to

conduct the audit reviews and/or appeals process as prescribed in the bill. Though the costs are indeterminate, they would be minimal.

If an audit review disclosed that funds were misused, the intermediate school district would have to repay to its vocational-technical education program operating fund, or its special education operating fund, the amount of funds determined to have been misused. The funds would be paid from the ISD's general operating fund, thus decreasing the amount of general operating funds available for other purposes.

House Bills 5850 (S-2) and 5851

The bills would have an indeterminate fiscal impact on State and local government. There are no data to indicate how many offenders would be convicted of the proposed crimes. An offender convicted of either of the proposed Class H felonies would be eligible to receive a sentencing guidelines minimum sentence range of 0-1 month to 5-8 months. Local units would incur the costs of misdemeanor probation and incarceration in a local facility, which vary by county. The State would incur the cost of felony probation at an average annual cost of \$1,800.

House Bill 5921 (S-1)

The Department of Education would face increased staff time and materials costs related to the requirement that the Department develop and distribute a model conflict of interest policy and a model policy defining allowable uses of public funds by ISDs. Also, the requirement that an ISD board approve all ISD-funded travel *before* it took place could necessitate additional board meetings and impose additional board meeting costs, if travel were last-minute and necessary and could not be approved at a regularly scheduled board meeting.

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.