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BILL ANALYSIS



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House Bill 5850 (Substitute H-2 as passed by the House)  
House Bill 5851 (as passed by the House)  
Sponsor: Representative Ruth Johnson  
House Committee: Education  
Senate Committee: Education

Date Completed: 9-29-04

## **CONTENT**

**House Bill 5850 (H-2) would amend the Revised School Code to establish criminal penalties for the use of ISD funds for certain purchases; for a knowing or intentional violation of the Code's competitive bidding requirements; and for the knowing or intentional misuse of bond proceeds.**

**House Bill 5851 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. These violations would be a Class H offense against the public trust, subject to a statutory maximum of one year's imprisonment. The bill is tie-barred to House Bill 5850.**

A more detailed description of House Bill 5850 (H-2) follows.

### Prohibited Purchases

Currently, it is a misdemeanor punishable by a maximum fine of \$500 and/or up to three months' imprisonment, for a school official, school board member, or other person to neglect or refuse to perform an act required by the Revised School Code, violate the Code, or knowingly permit a violation of the Code. The bill would make an exception to this provision, as described below.

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 other 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 crime 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	Minimum	Fine 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.

Competitive Bidding; Bond Proceeds

The bill would make it a crime 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 crime 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 crimes 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 crimes would not be subject to the penalties for prohibited purchases.

MCL 380.1804 et al. (H.B. 5850)  
777.13p (H.B. 5851)

Legislative Analyst: Suzanne Lowe

**FISCAL IMPACT**

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 crimes 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.

Fiscal Analyst: Bethany Wicksall

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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.