



**House
Legislative
Analysis
Section**

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INSPECT SCHOOL CONSTRUCTION

House Bill 4143 as enrolled (Vetoed)
Second Analysis (1-27-95)

Sponsor: Rep. Vincent J. Porreca
House Committee: Education
Senate Committee: Labor

THE APPARENT PROBLEM:

In recent years, public attention has been focused on the problems of a middle school in the Woodhaven School District that has had to be almost wholly reconstructed even though it was originally built only in 1976. Reportedly, the exterior walls of the school were not properly connected to the building's steel frame and were in danger of collapsing. This case and others in which school buildings were discovered to have structural flaws have led some people to question the adequacy of oversight of school construction.

The construction of school buildings is subject to Public Act 306 of 1937 (the school construction act) and not to the State Construction Code Act. This means school buildings are not subject to the same set of structural, mechanical, and electrical standards as other buildings, nor are they subject to the same level of scrutiny. Public Act 306 is concerned mainly with fire safety and health inspections. It is generally understood that inspectors at the state and local level who typically oversee building projects do not have jurisdiction over the building of schools. The jurisdiction lies instead with the state school superintendent, who has apparently delegated the task to the state fire marshal, who provides fire safety inspections. The Department of Labor carries out electrical inspections for the state fire marshal. (In some cities, reportedly including Lansing and Detroit, school officials and municipal building departments collaborate but that is done voluntarily.) Schools are required to hire architects and, it is said, it is up to school districts to negotiate with architects for the desired level of building oversight services. Some people believe that it makes sense to subject the construction of school buildings to the same codes, permit process, plan reviews, and inspections to which other major buildings, including residential buildings, are subject.

THE CONTENT OF THE BILL:

The bill would, generally speaking, bring school buildings under the State Construction Code Act. The school building construction act (Public Act 306 of 1937) would be repealed.

The responsibility for administering and enforcing the code would lie with the director of the Bureau of Construction Codes in the Department of Labor. However, the director would be required to delegate the responsibility to the applicable local enforcing agency if both the school board and governing body of the local governmental subdivision certified annually to the construction code commission that full-time code officials, inspectors, and plan reviewers registered under the Building Officials and Inspectors Registration Act, would conduct plan reviews and inspections of school buildings.

If there was no delegation of responsibility, the state Bureau of Construction Codes would perform for school buildings all plan reviews and inspections required by the code. A school building could not be constructed, remodeled, or reconstructed after the effective date of the bill until written approval of the plans and specifications had been obtained from the bureau indicating the school building would be designed and constructed in conformance with the code. (This would not apply to any school building for which construction had begun before the effective date of the bill.) The bill would not affect the responsibilities of the state fire marshal under the Fire Prevention Code.

The bill would specify that the plans and specifications for a school building or remodeling project with construction costs that exceeded \$15,000 would have to be prepared and the construction supervised by a state licensed architect or professional engineer employed by or under

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contract with the school board. The architect who prepared the plans and specifications or who supervised the construction of any school building would be responsible for determining the building was resistant to fire and constructed in a workerlike manner, according to the plans and specifications.

A definition of "school building" would be added to the construction code. The definition would refer to a structure in which six or more pupils receive instruction. The term would also mean a structure owned, leased, or under the control of a public or private K to 12 school system or a community college or junior college. The term would not apply to a structure owned, leased, or under the control of a college or university nor would it apply to a dwelling unit (a private home).

The bill would eliminate a provision that reads "Locally adopted codes shall not apply to public or nonpublic schools within the governmental subdivision without concurrence by the school authorities having jurisdiction."

MCL 125.1502

BACKGROUND INFORMATION:

A separate but related issue is the question of who at the local level has authority over site selection and planning decisions when the construction of a school or school-related facility is proposed. As a result of a dispute over such matters in Birmingham between school and municipal officials, a provision was put in the School Code in 1990 that says a school board cannot design or build a school building to be used for instructional or noninstructional school purposes or design and implement the design for a school site unless the design and construction complies with Public Act 306 of 1937 (the school building construction law) but also says that the state superintendent "has sole and exclusive jurisdiction over the review and approval of plans and specifications for the construction, reconstruction, or remodeling of school buildings used for instructional or noninstructional school purposes and of site plans for those school buildings." (The Birmingham dispute reportedly was over tennis courts or the placement of fences around tennis courts.) This issue is not directly addressed in House Bill 4143 because the State Construction Code Act does not deal with planning and zoning issues. The bill would, however, repeal Public Act 306, and thus

have some impact on School Code provisions that cite that act. On this issue, municipal officials have argued that zoning and site plan review should be their responsibilities. School officials, meanwhile, have argued for at least a neutral zoning dispute resolution mechanism.

FISCAL IMPLICATIONS:

The Department of Labor testified on a similar bill in the 1991-92 legislative session that the fees it can charge under the State Construction Code Act for permits, plan reviews, and inspections will cover the costs of its responsibilities under the bill. (2-18-92)

ARGUMENTS:

For:

The aim of the bill is to make school buildings subject to the same construction codes and inspections as other major buildings and thereby avoid any repetition of the construction of structurally flawed, unsafe school buildings. The bill requires the Department of Labor to approve plans and oversee construction of schools or else delegate the responsibility to competent local officials. Currently, schools can be built without any oversight by state or local inspectors, except for checks for compliance with fire safety and health regulations. Under this proposal, schools will be subject to the permit, plan review, and inspection requirements of the state construction code and the code's structural, mechanical, electrical, and plumbing regulations.

The bill will protect students, school personnel, and the public, and save school districts the expense of repairing or even reconstructing flawed buildings. There appears to be no good reason why school buildings should not be subject to stringent codes and inspections. Also, some people argue that currently it is not clear where the responsibility lies for the costs associated with unsuccessful school building projects and that this bill will clarify that issue.

Against:

While the concept of improving the supervision of the construction of school buildings is a good one, there remain a number of concerns about this bill. School officials are concerned about the additional costs that may be involved under the process mandated by the bill. The Department of Labor

has said it typically charges in fees one-half of one percent of the total project cost for permits, plan reviews, and inspections. School districts now must pay fees to architects for the planning and oversight of school construction, and will continue to have some architect costs under this proposal, in addition to new fees from the state or from local building inspectors. School representatives are also concerned about the enforcement of duplicate codes with duplicate fees (e.g., the state construction code and the fire safety code) and about the qualifications of the people doing inspections at the local level. It should also be noted that the instances that give rise to this bill were unusual; they do not typically occur. It may be that there are alternative ways of preventing future occurrences without the costs that this bill imposes.

Against:

School boards should not have veto power over the authority of cities and townships to enforce construction codes. Under this bill, enforcement power would be delegated by the state to the local unit only if both the school board and the governing board of the local unit certified annually that the local unit met certain standards. This is not workable. It is bad enough that school boards get to play a role in this decision. To have the decision made annually is even worse. Could a local unit's inspection authority be halted halfway through a project, for example? Why should school buildings be treated any differently from office buildings, hospitals, churches, hotels, etc.? Local units with qualified inspectors should have the same unimpeded ability to enforce construction codes for school buildings as they do for these other buildings. The system now for other buildings does not permit someone constructing a building a choice of who will enforce construction codes.

Against:

The governor's veto message noted that his signing of the bill would have eliminated provisions of House Bill 4120 (which became Public Act 161 of 1993) passed by the legislature at about the same time and previously signed by the governor. For that reason, the veto message said, he was returning the bill without signature and without comment on the policy embodied within the bill.