

REVISIONS TO CHARTER SCHOOL LAW

House Bill 4800 (Substitute H-2) First Analysis (6-12-01)

Sponsor: Rep. Wayne Kuipers
Committee: Education

THE APPARENT PROBLEM:

Legislation authorizing the creation of public school academies, or charter schools, was an experimental school reform measure that accompanied the overhaul of Michigan's school finance system in 1993-94. In their original conception, charter schools were thought to hold particular promise among a number of thoughtful educational reforms in school governance and structure. It was hoped that charter schools would be smaller and less bureaucratic schools, free of excessive regulation; places where adults and children could learn together more easily than was the case in larger, anonymous settings. In return for its charter, it was assumed a smaller school would demonstrate a capacity to innovate, and that, in turn, would lead to higher academic achievement and richer student performance. It also was assumed the charter school would catalyze change in nearby schools, as teachers and students in them exchanged their knowledge and know-how with their counterparts elsewhere in the public school system.

In Michigan, a public school academy or charter school is an independent public school organized as a nonprofit organization, funded on a per-pupil basis from the state school aid fund, and operated under a contract issued by an authorizing body. An academy is also subject to the "leadership and general supervision" of the State Board of Education and must comply with the same laws as traditional public schools.

People interested in operating a charter school must apply to an authorizing body. Contracts can be issued by the boards of local and intermediate school districts, community colleges, and state public universities. Generally, the schools receive the per-pupil grant available to schools in the local district in which they operate plus \$500, subject to a maximum amount (currently capped at \$6,500 or the district's foundation grant, whichever is the lower amount), and then they also raise funds from other granting foundations and borrow from financial institutions.

Charter schools cannot charge tuition and they are required to fill seats by lottery. However, they choose their location and hence the overall socio-economic status of their students, and they can and do turn away students after the official "count" days which set their total population, and hence determine the amount of their per-pupil state financial aid.

According to the Department of Education, there were 171 charter schools operating in Michigan as of March 2001, and the teachers in them guide the learning of about 50,000 students.

While there is no overall limit on the number of charter school contracts that can be issued in Michigan, the universities (considered to be one set of authorizing agents) are limited to a total of 150, and no single university can issue more than one-half of the total issued by all universities as a whole. Unlike other states, most charter schools in Michigan hold contracts that have been issued by universities. Fifty-eight (58) academy charters have been issued by one school, Central Michigan University--about 39 percent of all university-authorized public school academies. Because the total number of university-authorized charter schools has reached the maximum number allowed under the law, the public and press often talk about a charter school "cap."

Supporters of the charter school concept say that there is great demand for additional charter schools, from organizers and parents. Many would like to see the cap on university-chartered schools lifted so that public demand will not be frustrated. According to the Western Michigan University Evaluation Center report of charter schools published in 1999, new charter schools are categorized in four ways--as converted private schools, converted public schools, "Mom and Pop" schools, or as franchise or "cookie cutter" schools---and at their start they are difficult to capitalize. See *BACKGROUND INFORMATION* below. To help schools raise start-up capital, some have argued they should be able to borrow and to sell

bonds to finance their debt. Further, proponents of both charter schools and intra-district school choice also say that the schools should be explicitly exempt from collective bargaining agreements, since collectively bargained contracts thwart innovative practices and sometimes stand in the way of parent-teacher conferencing, arrangements for students' independent studies, and after-school tutoring. Proponents also have argued that some leeway should be provided in admission policies to allow the children of a charter school's staff to enroll, and to enable siblings to attend school together.

Others, those generally more wary and sometimes vigorously opposed to the development of more charter schools, have noted the proliferation of for-profit franchise schools operated by education management organizations (or EMOs, similar in their early conception to HMOs, or health management organizations), and have expressed alarm at this move toward privatization. Indeed, in Michigan, about 70 percent of the charter schools have contracts with private for-profit companies such as Edison, the Leona Group, National Heritage Academies, or Mosaica, and others. As private groups have refused state officials access to their records and information, investigations and at least one court suit have been undertaken in order to learn how state tax dollars are spent. Those critical of these sorts of arrangements argue that private franchise groups that get tax dollars to operate should be required to open their records in ways that make them accountable to taxpayers. They also note that the authorizing authorities for charter schools (most especially Central Michigan University) have had difficulty removing the board members of financially mismanaged charter schools. Consequently they propose that the oversight functions of authorizing agencies be strengthened. Finally, competitors of charter schools note that charter schools should be required to enroll and educate high-cost students, such as special education students, in the same ways that public schools meet this challenge.

For these reasons and others, legislation has been introduced.

THE CONTENT OF THE BILL:

House Bill 4800 would amend the Revised School Code to revise its provisions concerning public school academies (more customarily referred to as charter schools). The bill would retain the current provisions concerning charter school authorization, but gradually increase the charter school cap for university authorizing bodies; give priority to

academies that set measurable educational goals and benchmarks (including plans to close student achievement gaps based on race, gender, or socioeconomic status); exempt charter schools from collective bargaining; allow enrollment priorities in limited circumstances; clarify the approval process for personnel agreements; specify how charter schools borrow money and issue bonds, as well as allow legal agreements to finance operations; establish procedures to remove board members and fill vacancies; require that educational management organizations be named if they are to operate charter schools, or specify the provisions of such contracts; and, require special education programs. A more complete description of the proposed revisions follows.

Authorizing body. Currently under the law that enables the creation of charter schools, "authorizing body" is defined to mean the following entities that issue a contract to begin a charter school: i) the board of a school district that operates grades K to 12; ii) an intermediate school district; iii) the board of a community college; or, iv) the governing board of a state public university. Under the bill, these provisions would be retained.

Lifting the "cap". Currently under the law, no more than 150 public school academies can be authorized by the governing boards of state public universities, and the total number of contracts issued by any one state public university cannot exceed 50 percent of the maximum combined total number. Further and under the law, the board of a community college cannot issue a contract for a public school academy to operate in a school district of the first class. (Under the code, there is one school district of the first class in Michigan, and that is the Detroit Public School District.) In contrast, the bill specifies that the number of public school academies could not exceed 150 through the year 2000, 200 through the year 2001, and 250 through the year 2002. Further, after 2002, the maximum number of contracts that could be issued by state public universities would increase by 25 each year. However, beginning in 2001 not more than 10 percent of the contracts issued by state public universities during a calendar year could be for public school academies located in a school district of the first class (Detroit). In addition, the bill specifies that the board of a community college located in a county with a population of at least 2 million could issue a contract for a public school academy to operate anywhere within the boundaries of that county.

Collective bargaining agreements; educational management organizations. Currently the law specifies that an entity that wishes to obtain a contract to organize a charter school must apply to an authorizing body, and the application must include, among other things, the identification of the applicant; a list of the proposed members of the board of directors; the proposed articles of incorporation; a copy of the bylaws; documentation about governance; educational goals (including curricular and assessment opportunities, admission policies, school calendar and school day schedule, and the age or grade range of the students); 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 state and federal law applicable to public bodies or school districts; for academies authorized by school districts, an assurance that employees will be covered by the collective bargaining agreements that apply to other employees of the school district employed in similar classifications; and, a description of and address for the physical plant.

House Bill 4800 would make four changes in the requirements that are embodied in this application. Under the bill, an academy authorized by a school district would no longer have to provide assurances that employees will be covered by the collective bargaining agreements that apply to other employees, since that provision would be eliminated. In addition, the requirement to describe the governance structure would be eliminated. Further, a new provision would require that if an educational management organization were expected to be involved in operating the public school academy, then the application would be required to include the name and principal officers of the educational management organization, if that information was available. Finally, the provision of the application assuring compliance with federal and state statutes governing public bodies or school districts would be retained, and extended to also specify that this agreement would not relieve another governmental entity of its enforcement or supervisory responsibility under any other law.

With regard to the new requirement to specify the involvement of any educational management organization, under the existing law, within 10 days after issuing a contract for a public school academy, the board of the authorizing body must submit a copy of the contract and of the application to the state board. Under the bill, applications would no longer be submitted to the state board, and instead, within 10

days after issuing a contract for a public school academy, the authorizing body would be required to submit a copy of that contract and of the agreement between the public school academy and an educational management organization, if applicable, to the superintendent of public instruction.

Petition voters to issue contract. Currently a person or entity that applies to a school district board for a contract to operate one or more public school academies can petition to place the question on the ballot, if the board members do not vote to issue the contract. Under the law, that petition must contain all of the information required in the application to the board, and the petition must be signed by at least 15 percent of the total number of school electors in the school district. In contrast, the bill specifies that the petition contain a concise summary of all the information required on the application, and the signatures of at least 15 percent of the school electors that voted in the most recent regular school election.

Measurable achievement goals and gaps. House Bill 4800 specifies that in considering applications for contracts, an authorizing body could consider the qualifications of the applicant and the proposed board of directors. Further, under the bill an authorizing body would be required to give priority to those applicants that propose significant academic achievement goals, which could include reductions in achievement gaps such as gaps identified among pupils by race, gender, or socioeconomic status. Further, under existing law, the contract must detail the educational goals the public school academy is to achieve and the methods by which it will be held accountable. The law also says that to the extent applicable, the pupil performance of the academy must be assessed using at least a Michigan Educational Assessment Program (MEAP) test or another acceptable assessment instrument for a state-endorsed high school diploma. The bill would require instead that educational goals for the academy be "measurable educational goals for pupil performance," and it further specifies that this provision could contain an agreement to meet annual benchmarks for adequate yearly progress, or value-added results as measured by MEAP tests and other performance measures. It also would eliminate the out-dated reference to the state-endorsed high school diploma.

Boards of directors; oath; vacancies; terms. Under the bill, all of the following would apply to the board of directors of a public school academy. First, a member of the board would be a public officer, and before entering upon the duties of the office, would

be required to take the constitutional oath of office for public officers prescribed under Section 1 of Article XI of the State Constitution of 1963.

Second, a vacancy in the office of a member would occur immediately, without declaration by an officer, or acceptance by the board of directors or one of its members, or an authorizing body, upon one the following events: i) the death of the incumbent, or the incumbent's being adjudicated insane or being found to be mentally incompetent by a proper court; ii) the incumbent's resignation; iii) the incumbent's removal from office; iv) the incumbent's conviction of a felony; v) the incumbent's appointment being declared void by the authorizing body or a competent court; vi) the incumbent's neglect or failure to file the acceptance of office with the authorizing body, or to take the oath of office; vii) the incumbent's ceasing to possess the legal qualifications for holding office; or viii) the incumbent ceasing to reside in this state.

Third, except as otherwise directed by the authorizing body, the term of office for a member of the board of directors would begin on July 1 of the year in which the appointment was made. Members of the board could be appointed to serve more than one term in office, but the length of the term could not exceed four years. Further, the terms of the initial board would be determined by the authorizing body.

Dissolution of a public school academy. Under the bill, if a public school academy was no longer authorized to operate, title to all real and personal property, interests in real or personal property, and other assets owned by the academy would revert to the state. Any money included in those assets and the net proceeds from the sale of the property or interests, after payment of any debt, would be deposited in the state school aid fund.

Further, an agreement, mortgage, loan, or other instrument of indebtedness entered into by an academy and a third party would not constitute an obligation, either general, special, or moral, of the state or an authorizing body. Neither the full faith and credit, or the taxing power of the state or any agency of the state, or the full faith and credit of an authorizing body, could be pledged for the payment of any public school academy agreement, mortgage, loan, or other instrument of indebtedness. Finally, the bill specifies that this part would not impose any liability on the state or on an authorizing body for any debt incurred by a public school academy.

Enrollment priority. Under the law, a public school academy cannot charge tuition and cannot

discriminate in its pupil admissions 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 can limit admission to students 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.

House Bill 4800 retains these provisions but specifies that an academy could give enrollment priority to one or more of the following: a) a sibling of a student enrolled in the academy; or, b) a child of a person who was employed by or at the academy at least an average of 20 hours a week during the school year. (As used in this subdivision, "child" is defined to include an adopted child or a legal ward.)

Currently, an academy can include any grade up to grade 12, or any configuration of those grades, including kindergarten and early childhood education, as specified in its contract. The bill would retain this provision, but add these would be subject to the terms of the contract authorizing the public school academy.

Borrowing; issuing bonds. Under the law, a public school academy can take action to carry out its purposes, including among other things, to enter into binding legal agreements with persons or entities as necessary for the operation, management, and maintenance of the academy. Under the bill, these specifications would be retained, and in addition, binding legal agreements for financing would be allowed. Further, the bill specifies that an academy could take action to borrow money and issue bonds in accordance with section 1351a of the code [which concerns the borrowing of money and issuing of bonds by school districts, as well as restrictions on bond proceeds], except that the borrowing of money and issuance of bonds by an academy would not be subject to section 1351a(5) [which says a resident of a school district has standing to bring suit against the school district to enforce these provisions in a court having jurisdiction] or section 1351(2) to (4) [which set restrictions on bond amounts and caps on bonded indebtedness tied to the equalized valuation of taxable property; require votes of the people when limits are exceeded; set the maximum term of bonds; provide for refunding; and, provide that the bonds or notes issued by a school district or intermediate school district be full faith and credit tax limited obligations that pledge available levies, but that do not allow the levying of additional debt millage without a vote of the electorate].

Personnel agreements; eliminate approval of authorizing body. Under the law, an academy can employ or contract with personnel, and prescribe their duties, and fix their compensation, with the approval of the authorizing body. The bill would delete the requirement that the authorizing body approve the contract.

Responsibilities of authorizing bodies; state aid; contracts; removing officers. House Bill 4800 clarifies that the authorizing body for a public school academy would be the fiscal agent for state school aid funds (rather than fiscal agent for the charter school), and would be responsible to see there was compliance by the academy's board of directors with its contract and all applicable law. The bill also clarifies that the decision of an authorizing body to issue, renew, or revoke a contract is solely within its discretion, and is not subject to review by a court or any state agency. In particular, House Bill 4800 specifies two new conditions under which a contract issued could be revoked by the authorizing body: a) if it were determined that a board member, officer, employee, or agent of the public school academy neglected or refused to do or perform an act required under the Revised School Code; and b) if a board member, officer, employee, or agent of the public school academy provided false or misleading information or documentation to the authorizing body or the Department of Education, in connection with an act required under the code. Further, an authorizing body that did not issue or reissue a contract, or that revoked a contract, would not be liable for that action under the bill. Finally, the bill specifies that an authorizing body could remove or suspend a member of a board of directors of an academy from office for gross neglect of duty, corrupt conduct in office, knowing violation of a contract, nepotism, or for any other misfeasance or malfeasance, and would be required to report the reasons to the superintendent of public instruction.

Intermediate school district boards to have charter school representatives. House Bill 4800 specifies that if the combined total number of students enrolled in public school academies located in an intermediate school district that did not elect its board members was at least equal to three percent of the ISD's total membership, there would be an additional member of the intermediate school board representing public school academies. The additional member would be appointed by the public school academies located in the district, at a joint meeting of the boards of directors of all of the academies. The term of office and date of appointment of the charter school member would be the same as that provided for

elected members of public school districts. Further, the bill specifies that the member appointed and serving under this provision would be in addition to the other elected members, and would have all the same rights and duties as those members.

Under the law, the members of the intermediate school board are elected biennially on the first Monday in June by a group of electors that consists of one member of the board of each constituent school district, and each of those members is designated by his or her respective board. House Bill 4800 would require that representatives of public school academies serve on the electing committee. If there were one or more public school academies located within the intermediate school district, one or more representatives of those academies would be selected to serve on the electing committee and participate in the biennial election. The public school academy representative or representatives would be selected at a joint meeting of the boards of directors of all of the public school academies located within the intermediate school district. The number of public school academy representatives on the electing committee would be determined by the percentage of students in the ISD enrolled in public school academies for the school year ending that June, as follows: a) if the percentage of those students was less than five percent of the combined total student membership in the ISD, then one public school academy representative; b) if the percentage of students was at least five percent and less than 10 percent, then two academy representatives; and c) if 10 percent or more, then three academy representatives.

Building leases; prohibition. House Bill 4800 would prohibit the board of a school district or the board of directors of a public school academy from leasing a school building from a person who was a board member or employee of that school district or public school academy.

Educational management organizations. Under the bill, if the governing board of a public school entered into a contract with an educational management organization, the contract would be required to contain at least all of the following provisions: a) that the governing board had conducted sufficient due diligence to be certain that the organization had sufficient financial resources, educational services capacity, and managerial experience to provide the contracted services; b) that the governing board of the public school had retained independent legal counsel in negotiating the contract with the educational management organization; c) agreements

that the financial, educational, and student records pertaining to the public school and its pupils were public records, and the property of the public school and, except as required by applicable law, that the organization agreed to make the records available in accord with the Freedom of Information Act; d) if applicable, assurances that the organization would furnish the public school with certificated teachers in accordance the school code; e) if applicable, assurance that the organization would not furnish any teacher who, if employed directly by the public school, would be ineligible for employment; f) that the organization would provide the public school with the necessary financial information, including the object or function level amount of administrative and instructional salaries and benefits, as applicable, for the public school to meet its reporting responsibilities under the school code and the State School Aid Act of 1979; g) if applicable, assurance that, if the organization purchased equipment, materials, and supplies on behalf of, or as the agent of, the public school, that equipment would remain the property of the public school, however this would not apply to property of any type that was owned by the educational management organization; and, h) the names of the principal officers of the educational management organization.

These provisions would apply only to contracts entered into after the effective date of the bill. Further, the bill would define “educational management organization” to mean any person or entity providing administrative, managerial, educational, or instructional support, or employee benefit services to a public school as permitted under the code. The bill would define “entity” to mean a partnership, nonprofit or business corporation, labor organization, or any other association, corporation, limited liability company, trust, or other legal entity.

Special education programs; ISD special education responsibilities; penalties. The bill would require public school academies to provide special education programs and services to the same extent as is required for a local school district.

Further, current law requires intermediate school districts to develop and continually evaluate and modify their special education plans with all of their constituent school districts and to coordinate special education programs and services operated or contracted for by those constituent school districts, and submit that plan to the superintendent of public instruction. The bill would amend this provision to require ISDs to also include public school academies located within their boundaries in this evaluation and

planning. (Throughout this section of the bill, references to state board of education are updated to conform with Executive Order 1999-12, and the phrase “state board of education” is replaced with “superintendent of public instruction.”)

The bill also would require that any student admission or recruitment materials prepared for, or distributed by, a public school include a statement that special education services required by law will be made available to students attending the school. Further, the bill would require the Department of Education to prepare and make available a model statement that could be used for these purposes. In addition, any employee of the governing board of a public school, or any other person, who knowingly or willfully violated this provision or caused it to be violated would be guilty of a misdemeanor punishable by a fine of not more than \$100 or imprisonment for not more than 30 days, or both.

Employee dismissals; contract cancellations. Under the law, the board of a school district or intermediate school district can dismiss from employment and cancel the contract of a superintendent, principal, or teacher who neglects or refuses to comply with the Revised School Code. House Bill 4800 would extend this provision to the boards of directors of public school academies.

Compliance with public school laws. Finally, House Bill 4800 specifies that a public school academy would be required to comply with any provision of the school code that applied specifically by reference to public school academies (as opposed to provisions of the act that would apply specifically by reference to a public school). House Bill 4800 would retain the provisions that require compliance with the Open Meetings Act, the Freedom of Information Act, the Public Employment Relations Act, and the prevailing wage act, as well as seven sections of the code concerning missing students’ records; enrollment information; discrimination based on race, color, or sex; bilingual instruction; the regulation of school building design and construction; construction contracts and competitive bidding; and, written policies to guide the procurement of supplies, materials, equipment, and services.

BACKGROUND INFORMATION:

Charter school growth. Charter schools are public schools that have autonomy from selected state and local rules in exchange for accepting greater responsibility for student performance. Some say they are part of a 30-year trend toward privatization

that seeks to alter the size and scope of publicly operated service organizations. A decade ago in 1991, Minnesota became the first state to pass a charter school law. A year later an educational management organization (or, EMO) called Educational Alternatives, Inc. (now called the TessaracT Group, Inc.) contracted to operate one school in Miami, Florida. By 1999-2000, thirty-six states and the District of Columbia had adopted legislation enabling charter schools, and almost 1,800 charter schools were operating across the nation. Here in Michigan the first charter law was overturned by the Michigan Supreme Court on several constitutional grounds. A modified bill was enacted in 1994. As of March 2001, there are about 50,000 Michigan students in 171 charter schools, about three percent of the all students in the state. Michigan has the third largest number of charter schools in the nation: Arizona has 300 charter schools; California, about 250; Michigan has 171; Florida and Texas each have over 100. According to reports, one in every 11 students in Washington, D.C. attends a charter school.

Charter school research and evaluation. Since 1995, the U.S. Department of Education has funded a number of national studies designed to ascertain where charter schools are located, whom they serve, what programs they offer, and how well they serve students. The effort includes a National Study of Charter Schools (begun in 1995), a National Evaluation of the Federal Public Charter School Program (begun in 1998), and since 1999, a survey of all charter schools as a special component of the department's Schools and Staffing Survey (SASS). The department also has sponsored three major studies of special issues affecting charter schools: research to determine charter schools' accountability (a two-year study begun in 1997 by the Center on Reinventing Public Education at the University of Washington in Seattle); research to determine charter schools' effectiveness serving students with disabilities (a two-year study begun in 1997 at Westat, Inc. in Durham, North Carolina); and, a two-year research project begun in 1998 to study charter school finance undertaken by Policy Associates, Inc. and the American Federation of Teachers.) Further, research has been funded to evaluate growth in student achievement, undertaken by the Center for School Change at the University of Minnesota's Humphrey Institute of Public Affairs.

For information about each of the studies and more, visit the U.S. Department of Education research web site at www.ed.gov/pubs/ResearchToday.

In addition, an up to date overview of 34 research reports about charter school effects is available on the Phi Delta Kappa Public School Advocacy web site, www.pdkintl.org. That site reviews charter school developments throughout the nation and provides analyses by state, including summaries of more in-depth research reports undertaken in the states of California, Colorado, Minnesota (which had the earliest charter school law in 1991), Arizona, Massachusetts, and Michigan.

Michigan's charter schools have been the subject of two kinds of research oversight, and both published reports about the Michigan experience received national attention in 1999. The first report stratifies statistics that measure the achievement (using 7th grade MEAP math tests) and the location of charter school students, and contrasts those findings to the students' counterparts in public schools. These relationships are then used to provide a geographic image, or map, of particular charter school effects. Further, the report notes the low incidence of intellectual innovation in charter schools (that is, experimentation in teaching, learning, curriculum and assessment), and the higher incidence of innovation in charter school governance, especially the proliferation of private educational management organizations. The report's findings are accompanied by policy recommendations that would alter some of the charter schools' effects. This report, published by three researchers at Michigan State University, is available at www.epc.msu.edu.

A second comprehensive report uses both formative and summative evaluation techniques (and both quantitative and qualitative research methods) to study 51 of Michigan's charter schools, about half of all charter schools in the state when the study was undertaken between October 1997 and December 1998. The evaluation consists of the following: a three-part charter school survey (directed to teachers and staff, students in grades 5 through 12, and parents and guardians); a three-part school climate survey (directed to the same three groups, except that in this instance the students were in grades 6 through 12); interviews with stakeholders including traditional public school superintendents and school personnel, MDE officials, representatives of authorizing agencies, management companies, and community representatives; demographic data, financial data, and MEAP test scores analysis for the last three years for the charter schools and their host districts; and, a review of documents, school portfolios, and student work. The report was published in 1999 by two researchers at the Western Michigan University

Evaluation Center, and is available at www.libofmich.lib.mi.us/services/bibs/choice.

Charter school student achievement; graduation and dropout rates. There are no definitive studies to compare student achievement between Michigan charter school students with comparable students in their host school districts. Very preliminary findings about academic achievement and other educational indicators are reported in the charter schools evaluation conducted by the Evaluation Center at Western Michigan University and published in 1999. These findings are reported on pages 19 through 22 of the report summary under sections called "Demonstrating Success" and "MEAP Test Scores." The evaluation report notes that "as a group, the public school academies have significantly lower MEAP scores than their host districts. However, a school-by-school comparison showed that students in some PSAs have higher scores the students in their host districts. When comparing two- and three-year gains, we find that the schools in the host districts have larger gains, on the whole, than do the PSAs. *It is important to note that the overall picture is very mixed.* [emphasis added] Even while one school is far behind its host district in grade 4 reading, for example, it may be outperforming the host district in reading at another grade level or in another subject area." The evaluation report also notes that "several schools employ only standardized tests to measure student achievement success," and reports that "there is a trend toward greater use of standardized tests to demonstrate success in PSAs."

The evaluation also notes that generally, graduation rates are not available because few PSAs provide instruction at the high school level. Among the ten that did report graduation rates during the 1996-97 school year, four had higher graduation rates and six PSAs had lower graduation rates than their host districts. Further, the evaluation report notes that "on the whole, the PSAs had higher dropout rates than did their host districts. Three of the 11 PSAs for which comparable data were available for the 1996-97 school year had lower rates of dropouts than their host districts. These three schools reported 0 percent dropouts, and were the only schools that had dropout rates lower than the state average of 6.1 percent. The other eight schools had dropout rates that ranged from seven to 51 percent, with most falling between 19 and 33 percent."

Teacher experience in charter schools. According to the evaluation of Michigan charter schools published in 1999 by the Evaluation Center at Western Michigan University, the teachers in Michigan's

charter schools are young and inexperienced. Although nearly all are certified and working in their major or minor learning discipline with a bachelor's degree, the report notes, "on average, the teachers and staff had 6.4 years of experience as educators." The report continues: "There is clearly a large gap between the teachers, with an average of 5.9 years, and the principals/directors, with 19.5 years of experience. A considerable percentage of the teachers (most in their twenties) are in their first or second year of teaching. About 40 percent of the accrued experience of teachers and staff was in private and/or parochial schools. The bulk of the experienced teachers in the Michigan charter schools are in the conversion schools. Charter school teachers in Michigan are relatively weak when compared with the directors, who have considerably more experience, education, authority, and salary than teachers." The evaluation concludes: "The relative age, formal education levels, and amount of working experience of these charter school teachers is markedly lower than charter school teachers in other states. (In Connecticut, where we are conducting a similar evaluation, the classroom teachers had, on average, nearly 30 percent more experience than the classroom teachers in Michigan's PSAs.)."

Small innovative schools that work. When small innovative schools work, they do so because they allow well-qualified teachers to engage learners in ways that enable them to demonstrate intellectual integrity, as well as high levels of scholarly achievement and meaningful community performance. In order to ensure this kind of success, Chicago education reformers support the growth of small public high schools, having 500 or fewer students. When these schools get underway, they rely on a governing faculty—a group of veteran teachers with urban education experience who are deeply knowledgeable about their learning disciplines and human development. The reformers have selected this reform strategy because research and experience have demonstrated that teachers teach best only what they know best. Further, recent research shows that high quality curriculum actually delivered to students in the classroom is the variable with the single greatest impact on student achievement. The 'learned curriculum' is what counts. High quality curriculum generally means curriculum having five characteristics: high quality materials (sometimes called the 'intended curriculum'); coherence of educational content (buffered from disruptive influences); high and appropriate academic expectations for all students; well prepared teachers; and a positive school culture.

The research demonstrates, too, that changes in school governance, however innovative, seldom increase achievement. However, school governance can interfere with achievement. Nonetheless, removing negative influences on school effectiveness is not the same as providing positive influence.

FISCAL IMPLICATIONS:

The House Fiscal Agency notes that the current cap in the number of public school academies (PSAs) that may be chartered by public universities is 150 schools, a cap which was reached in the fall of 2000. House Bill 4800 would raise the cap on university-chartered schools by 50 schools in fiscal year 2001, and an additional 50 in fiscal year 2002, and by an additional 25 each year thereafter. Since the school year which occurs in fiscal year 2001 is nearly complete for most districts, this bill would essentially raise the cap by 100 schools for fiscal year 2002.

The average size of a new public school academy is expected to be approximately 300 students, for a total of 30,000 additional students in fiscal year 2002 and 7,500 additional students in each subsequent year. (This analysis assumes that the cap will be reached each year.) It is estimated that 25 percent of students in these new charter schools will transfer from nonpublic schools, or in the case of kindergarten students, would have otherwise enrolled in a nonpublic school. It is assumed that the remaining 75 percent would transfer from existing public schools, creating no additional cost to the state. This means that there would be approximately 7,500 additional pupils in the public school system in fiscal year 2002, and 1,875 additional pupils in fiscal year 2003 and each subsequent year.

In fiscal year 2002, charter schools will receive a per pupil foundation allowance equal to that of the surrounding school district or \$6,800 per pupil, whichever is less. In fiscal year 2003, the limit is \$7,000. Multiplying the per-pupil amounts by the estimated additional pupils in the public school system yields an estimated additional cost to the state of \$51.0 million in fiscal year 2002, and \$13.1 million in fiscal year 2003. (6-4-01)

ARGUMENTS:

For:

Proponents argue that more charter schools are needed in order to jump-start educational innovation. Public school systems are generally large, bureaucratic organizations that are difficult to

change, and in which uniform approaches to teaching, learning, and assessment are the norm. Changes in school structures and governance can spur innovation in public schools, and among the most promising experimental school reforms of this kind are those embodied in the charter school movement.

The potential to spur innovation would increase if charter schools were able to operate outside the many laws and regulations that constrain schools. This legislation would explicitly require charter schools to abide by those portions of the school code that address public school academies, and help to free them from the rules that govern public schools generally. This bill, coupled with the "ed flex" legislation (House Bills 4760 and 4761), would give charter school leaders more opportunity to try bold new approaches that improve teaching and assessment. Free from the onerous burden of excessive laws and rules, charter schools' administrators could focus their attention on achievement and spend their time more productively engaged with students and their learning.

In its brochure entitled "Despair and Hope", the Michigan Association of Public School Academies notes an excerpt from a column called "Accountability Via Transparency" that was written by Chester Finn, Bruno Manno and Gregg Vanourek and published by *Education Week* on 2-26-00. The authors say that today's modal form of public school accountability depends on rules and compliance: schools are made to follow lots of regulations, their activities are micro-managed, and enforcers and bureaucratic controls keep anyone from doing anything untoward. These advocates of charter schools and parental choice say that charter schools invite a different approach: accountability propelled mostly by public marketplaces in which a school's clients and stakeholders reward its success, punish its failure, and send it signals about what needs to change.

Proponents of charter schools say that smaller and less bureaucratic schools, free of excessive regulation, are more likely to be places where adults and children can learn together more easily than is customarily the case in larger, anonymous settings. Public school academies, in return for a charter from an authorizing body, can demonstrate a capacity to innovate, and that, in turn, leads to higher academic achievement and richer student performance. In addition to higher intellectual standards for students, the adults in smaller innovative school settings have more stimulating learning and working conditions,

and are better able to establish collegial norms among faculty and staff.

Further, as educational innovators, Michigan's 171 charter schools catalyze change in nearby schools, as teachers and students in public school academies exchange their knowledge and know-how with their counterparts elsewhere in the public school system.

For:

The proponents of charter schools argue that more schools are needed in order to give parents more educational choice. Parents know what's best for their children, including the best kinds of educational programs, and in Michigan, parents' demand for more charter schools outstrips the supply. More charter schools would give parents more say in the education of their children. An array of educational choices allows parents to declare their market preferences, and in making a choice among the options, to increase their satisfaction with the educational product they select. Parents who are satisfied with their educational choice tend to become involved in their children's educational experience, and children with supportive parents tend to like school and earn high marks in achievement.

Indeed, the evaluation of Michigan charter schools published by the Evaluation Center at Western Michigan University in 1999 notes in the school climate portion of the evaluation that "In the parent survey, 75.1 percent of the respondents agreed or strongly agreed with the statement 'I am satisfied with the school's curriculum'." Further, "among parents surveyed, 69.1 percent agreed or strongly agreed that they 'were satisfied with the instruction,' and 71.8 percent agreed or strongly agreed that 'Teachers are challenged to be effective'."

Against:

Some who favor charter school innovation but who oppose an increase in charter schools now, argue that charter school growth should be slowed until the private companies that manage schools open their books and records to the taxpayers, and where necessary, remove their bad actors. Further, they argue for slow and controlled growth, until there is substantial evidence of improved academic achievement for students, and more educational innovation demonstrated by faculty and administrators. More evidence of academic achievement and innovation can best be accomplished if the smaller charter schools compete on the same playing field as other public schools—following the same laws and rules.

Michigan is among the top three states (surpassed only by Arizona and California) in the number of charter schools it authorizes. The speed of the movement's growth in Michigan has created two unintended consequences: the proliferation of charter school competition overwhelms public schools located in the poorest urban areas of the state; and, fully 70 percent of the charter schools are managed by private companies that often claim they are not accountable to explain how they spend public tax dollars. At least one private company has been taken to court, and other investigations are pending. According to the evaluation of charters schools published in 1999 by the Evaluation Center at Western Michigan University, there are five kinds of private management companies and they vary in the kinds of services they offer. Some schools expressed concern with the management companies, primarily due to the issue of control over the curriculum and focus of the school. At a few schools, the staff and parents were angry and upset that their management companies had assumed a tight control over the schools. Finally, the evaluation report notes that increasingly, parents and board members do not choose management companies, but instead, management companies go in search of a 'community' to host its schools. In fact, at several schools the evaluators were informed that the impetus behind the school was not a local group of parents or educators; rather, it was the management company.

Some opponents of further growth also fear the proliferation of state-funded, taxpayer supported religious charter schools, and question their constitutionality. A front-page article in *The Wall Street Journal* (9-15-99) noted the problem in an article entitled "Old-Time Religion Gets a Boost at a Chain of Charter Schools: Many Christian Parents Opt for No-Cost Academies Run by J. C. Huizenga, Backlash from Evangelicals." The report describes the growth of National Heritage Academies which operate in Michigan as charter schools, and notes the competition the academies provide for Grand Rapids Christian Schools where enrollment has fallen nearly 10 percent in six years.

These problems—excessive competition and lack of accountability—can be managed if the growth of charter schools is slowed, and if those charter schools already authorized operate under the same laws as do public schools.

Against:

Already, public charter schools have come at a high cost to the public school system that prepares youngsters for the responsibility of citizenship in an

highly pluralistic democracy. When too many school academies compete with the public schools in the poorest areas of the state, the academies divert the per pupil foundation allowance from the neediest school systems. The public funds are diverted from school buildings that serve the many, to a single charter school building that serves the few. Further, the public school community becomes balkanized, as children learn to suspect diversity and distrust integration. If the growth of charter schools in Michigan continues unchecked, the weakened public schools will become increasingly unable to compete and they will be left behind, under-financed and unable to serve the very neediest of students in the state's urban areas.

Already, charter school competition in the state's poorest urban areas is draining badly needed financial resources from public schools in precisely the manner that some researchers predicted. Those who opposed using market-based accountability to measure public schools said throughout the 1990s that the worldwide emergence of accountability movements in education would account for a shift to uniform standards, niche markets, standardized testing, and entrepreneurship. Today, they note that the consequence of these market concepts applied in an educational setting is an over-reliance on uniform curriculum, rote learning, and on standardized testing, and they are sharply critical of the effects of these test-dependent kinds of accountability measures on equity in school settings. In particular, researchers at universities in the United States (for example, at Wisconsin, Harvard, Columbia, and Georgia), as well as in Britain and Australia, who study the impact of standardized curriculum and the effects of standardized testing assert that the market does not encourage diversity in curriculum, pedagogy, organization, clientele, or even image, and, what is of equal significance, markets consistently exacerbate differences in access and outcome based on race, ethnicity, and class.

POSITIONS:

The Michigan Council of Charter School Authorizers supports the bill. (6-8-01)

The Michigan School Board Leaders Association supports the bill. (5-24-01)

The Michigan Catholic Conference supports the bill. (6-5-01)

The Michigan Chamber of Commerce supports the bill. (6-8-01)

The Detroit Regional Chamber of Commerce supports the bill. (6-8-01)

The National Federation of Independent Business-Michigan Chapter supports the bill. (6-8-01)

The Michigan Manufacturers Association supports the bill. (6-8-01)

Choices for Children of Grand Rapids supports the bill. (6-5-01)

The Michigan Association of Public School Academies supports the bills. (6-12-01)

The superintendent of public instruction supports charter schools but is opposed to the bill in its current form. (6-8-01)

The Michigan Association of School Boards opposes the bill. (6-8-01)

The Michigan Association of Secondary School Principals opposes the bill. (6-8-01)

Middle Cities Education Association opposes the bill. (6-8-01)

Oakland Schools opposes the bill. (6-8-01)

The Michigan Education Association opposes the bill. (6-8-01)

The Michigan Federation of Teachers and School-Related Personnel strongly opposes the bill. (6-8-01)

The American Civil Liberties Association opposes the bill. (6-11-01)

A representative of the Michigan Association of School Administrators testified in opposition to the bill in its current form. (6-7-01)

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.