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## CHARTER SCHOOL LAW REVISIONS; EDUCATION MANAGEMENT COMPANIES; SPECIAL PURPOSE ACADEMIES

### House Bill 4800 (Substitute H-4) Second Analysis (5-1-02)

**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 187 charter schools operating in Michigan as of March 2002, and the teachers in them guide the learning of about 65,000 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. Boards of public universities authorize 147 charter schools, while in contrast local school districts authorize 13; intermediate school districts authorize 23; and community college boards authorize four public school academies. About 40 percent of all charter school students attend school in academies that have been chartered by one university, Central Michigan University. 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

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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 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.

During the last two legislative sessions, the positions of proponents and opponents of charter schools have reached an impasse on several issues: collective bargaining; lifting the cap for university-authorized charters; public accountability for education

management corporations; and, oversight of authorizing bodies and public school academy governing boards. At the request of the governor and legislature an eight-member panel was convened, called the Charter School Commission, chaired by Peter McPherson, the president of Michigan State University. Other members included the superintendent of public instruction Tom Watkins, the president of the Michigan Education Association, a member of public school board, a member of a Detroit charter school, an assistant professor of educational leadership from Western Michigan University, and an attorney appointed by the governor. The commission members convened two four-hour public hearings (one in Grand Rapids and the second in Detroit), and then met privately to consider points of compromise during about three months. In April 2002, the commission issued a report called *Charter Schools in Michigan*, signed by all members but the superintendent of public instruction. That report and others concerning charter schools and the impact of consumer choice in an educational system are available at the web site of the Education Policy Center at Michigan State University ([www.epc.msu.edu](http://www.epc.msu.edu)).

To implement many of the recommendations of the Charter School Commission, 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 create new regulatory responsibilities for the superintendent of public instruction; substantially revise the current provisions concerning charter school authorization to encourage oversight, and to establish a state-wide chartering agency in the Bay Mills Community College, a tribal community college; increase to 230 the charter school cap for “higher education” (formerly “university”) authorizing bodies; give priority to academies that were established as special purpose schools to serve underachieving students; allow enrollment priorities in limited circumstances; specify how charter schools borrow money and issue bonds, as well as allow legal agreements to finance operations; and, provide for more disclosure by educational management organization corporations when they operate public schools or public school academies. 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, however, category iv, "state public university" would be revised. The bill would replace the definition for "state public university" with a definition for "institution of higher education with statewide jurisdiction" and then define that phrase to mean a state public university or a federal tribally controlled community college that is recognized under the Tribally Controlled Community College Assistance Act of 1978, and is determined by the department to meet the requirements for accreditation by a recognized regional accrediting body.

Further, the bill specifies that a contract issued by the board of a federal tribally controlled community college under this provision before the effective date of the bill would continue to be considered to be issued under subdivision iii, rather than under subdivision iv.

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 two types of public school academies--special purpose public school academies, and regular or general education public school academies--and it would set limits on their growth. Overall, the "cap" for academies that could be authorized by higher education institutions would increase from 150 to a total of 230--an additional 55 general education academies, and the bill would add up to 175 special purpose academies. The growth would be regulated as follows.

*Regular charter school growth.* Specifically, general education academy growth could:

- increase by five academies to 155 through 2002;

- increase by 10 to 165 academies through 2003;
- increase by 10 to 175 academies through 2004;
- increase by 10 to 185 academies through 2005;
- increase by 10 to 195 academies through 2006; and,
- increase by 10 to 205 academies thereafter.

However, the combined total issued by all governing boards of higher education institutions could not exceed two times the combined total number issued during the preceding calendar year (except this restriction could not reduce the total number issued to fewer than two year each year). Further and under the bill, if less than the maximum total contracts were issued between 2004 and 2008, the un-issued number could be issued after 2008.

*Special purpose charter school growth.* The bill would provide for 15 new special purpose academies each year for five years (2003 through 2007), and then also 10 new special purpose academies for another 10 years (2008 through 2017). More specifically, the bill would define "special purpose public school academy" to mean an academy that met the requirements of section 510 of the law, and was so identified in its contract. Under section 510 of the bill, a public school academy would qualify as a special purpose public school academy if it met *all* of the following:

a) the contract issued to the academy identified it as a special purpose academy and was contingent upon the academy continuing to qualify as a special purpose academy (although the bill would allow for re-designation as a regular academy; see below);

b) at least 50 percent of the students enrolled were "enrollment priority pupils" (see definition that follows), and all of the following applied: i) the academy determined whether a student was an enrollment priority student at the time he or she applied, and that as part of the application process and absent documentation, a parent or legal guardian would be given an opportunity to elect whether the child would be so designated, and only if so identified by the parent, then designated "enrollment priority" by the academy; ii) once an enrollment priority designation had been given and documented, then the designation would continue as long as the student was enrolled; and iii) post-enrollment designation with documentation and parental consent to the designation would be possible.

Special purpose academy; enrollment priority pupil. Under the bill, "enrollment priority pupil" would mean a student who met at least one of the following:

a) if enrolled in grades K to 3, the academy had documented that the student met at least one of the following: i) was a victim of child abuse or neglect; ii) was below grade level in English language and community skills, or in mathematics; iii) was eligible for a federal free or reduced-price lunch subsidy; iv) had an atypical behavior or attendance pattern; v) had a family history of school failure, incarceration, or substance abuse;

b) if the student was enrolled in grade 4 or above, the academy had documented that the student met at least one of the following: i) was a victim of child abuse or neglect; ii) was below grade level in English language and communication skills, or in mathematics; iii) was a pregnant teenager or teenage parent; iv) was eligible for a federal free or reduced-price lunch subsidy; v) had an atypical behavior or attendance pattern; or vi) had a family history of school failure, incarceration, or substance abuse.

c) the student had not achieve at least a score of moderate on the most recent MEAP reading or mathematics test, or did not achieve at least a score of novice on the most recent MEAP science test;

d) if enrolled in grades K to 3, the student was at risk of not meeting the state model core academic curriculum content standards in English language, communication skills or mathematics; or,

e) the student was eligible for special education programs and services.

Regulated growth of special purpose academies. The bill specifies that all of the following would apply to the number of contracts that could be issued for special purpose public school academies by governing boards of institutions of higher education with statewide jurisdiction:

i) for 2003 to 2007, the combined total number of contracts that could be issued could not exceed 15 per calendar year;

ii) for 2008 to 2017, the combined total that could be issued could not exceed 10 per calendar year;

iii) if the total number on contracts issued between 2003 and 2007, and also for 2008 was less than the maximum, those contracts could be issued after 2008; and

iv) for 2004 to 2008, the combined total number of contracts that could be issued could not exceed two times the combined total number of contracts issued during the preceding year (except this restriction could not reduce the maximum allowed to less than two each year).

Special purpose academy; modified random selection. Under the bill, a special purpose academy could use a modified random selection process to ensure that it continued to maintain a student body that was at least 50 percent enrollment priority students. Under a modified random selection process, the academy could divide its pool of applicants into two groups, one group consisting of priority enrollment students and the other consisting of other students, and then select applicants for enrollment from each group on a random basis in a proportion designed to ensure that its student body was at least 50 percent enrollment priority students.

Special purpose academy; re-designation as regular academy. Under the bill, an authorizing body that issued a contract for a special purpose academy would be required to work with the academy to maintain a student body that was at least 50 percent enrollment priority students. If the authorizer determined the academy did not meet this requirement and it failed to do so for a two-year period, then the authorizing body would be required to issue a contract that did not require the academy to be a special purpose academy. If it could not do so, it would be required to reconstitute the academy, or to revoke its contract.

Special purpose academy; special mission. The bill specifies that to the extent permitted by state and federal law, a special purpose public school academy could have a special mission or focus, or target a specific student population to the same extent as any other public school academy, as long as the special purpose academy continued to meet the requirements of the legislation. The bill also specifies that this provision could not infringe upon the rights of students under section 2 of Article VIII of the state constitution of 1963 (which provides for a system of free public education without discrimination as to religion, creed, race, color or national origin; and prohibits public aid to nonpublic schools).

Temporary combined limit for higher education institutions; per school district. The bill specifies that for 2002 to 2007, the combined total number of contracts that could be issued (both regular and special purpose contracts) to be located in any one

school district could not exceed two per calendar year.

Temporary combined limit for higher education institutions; Detroit. The bill specifies that for 2002 to 2004, the combined total number of contracts that could be issued (both regular and special purpose contracts) to be located in the Detroit public school district could not exceed one each calendar year. However, during this two-year period, a contract could not be issued without the prior approval of the mayor of the city.

Higher education institution authorizers; superintendent oversight; contract limits. The bill specifies that the superintendent of public instruction would monitor the issuance of contracts under this subsection of the law. The bill also specifies that from 2005 to 2008, a higher education governing board could issue only one contract for a public school academy that is *not* a special purpose academy for each contract it issues that would create a special purpose public school academy. However, under the bill these limitations would not apply to a reissued or reconstituted contract for a public school academy, or a new contract that was issued by an authorizing body within six months after revocation of an existing contract.

Collective bargaining agreements. 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.

The bill would retain these provisions, and also require for a contract issued by an intermediate school district (ISD) that is a conversion of an

existing program of the ISD, is a substantially similar program to an existing program of the ISD, or is a program or class managed by the ISD, an assurance that employees of the public school academy will be covered by the collective bargaining agreements that applied to other employees of the ISD employed in similar classifications in schools or programs that are not public school academies.

Authorizing fees. Under the law an authorizing body can charge a fee of up to three percent of the total state school aid received by the public school academy in the school year in which the fees or expenses are charged. Under the bill this provision would be retained. In addition, the bill specifies that all of the following would apply to the fee: a) as set forth in the contract, an authorizing body could use a portion of the fee to provide technical assistance to the public school academy; b) an authorizing body would be required to use a portion of the fee to pay costs associated with the acquisition and scoring of assessments required under the law (however, this subdivision would not apply after the state implemented the state assessment requirements under the federal No Child Left Behind Act of 2001); and, c) an authorizing body would be prohibited from using any portion of the fee for any purpose other than considering applications and issuing contracts, or for oversight of, technical assistance to, and direct academic support to the public school academy.

Public school academy contract. Currently the law specifies the components that must be included in the contract that is issued by an authorizing body, in order that a public school academy be organized. Generally, the provisions address the new academy's educational goals, contract compliance procedures, and a statement that the employees be covered by the collective bargaining agreement. The bill would retain these provisions and add more than a dozen others.

More specifically and under the bill, the contract would be required to address:

- 1) assurances that employees of public school academies will be covered by the collective bargaining agreements that apply to intermediate school districts under certain conditions,
- 2) a requirement that the board ensure compliance with conflict of interest laws applicable to public bodies,
- 3) a requirement that the board prohibit specifically identified family relationships between board

members, people who have various interests in an educational management company involved in the operation of the academy, and employees of the academy (with the contract identifying the specific prohibited relationships),

4) a requirement that the board make information concerning its operation and management available to the public and to the authorizing body in the same manner as is required by state law for school districts,

5) a requirement that the board collect, maintain, and provide to the authorizing body at least all of the following information concerning the operation and management of the academy: i) a copy of the contract; ii) a list of the board members including name, address, and term of office; copies of policies approved by the board; board meeting agendas and minutes; the budget and any amendments; copies of bills paid; iii) quarterly financial reports; iv) a current list of teachers, their salaries, copies of their teaching certificates or permits, evidence of criminal background and records checks for all teachers and administrators; v) curriculum documents and materials given to the authorizing body; vi) proof of insurance; vii) copies of facility leases or deeds, or both, and of any equipment leases; viii) copies of any management contract or services contract approved by the board; ix) all health and safety reports and certificates, including those relating to fire safety, environmental matters, asbestos inspection, boiler inspection, and food service; x) if required, a letter of continuous use issued by the superintendent of public instruction for any school building occupied by the academy; and, xi) any other information specifically required under the school code to be maintained by and available from school districts,

6) a requirement that if the board entered into an agreement with an educational management company for operation or management of the academy, that agreement would have to comply with section 1320 of the bill (which concerns education management companies, described below),

7) a requirement that the authorizing body review and if necessary disapprove any agreement between the board and an educational management company before the agreement was final and valid,

8) a requirement that the board of directors demonstrate all of the following to the satisfaction of the authorizing body with regard to its student admission process: i) that the public school academy had made the following additional efforts to recruit students who were eligible for special education

programs and services to apply for admission: a) reasonable efforts to advertise its enrollment openings in a newspaper of general circulation in the ISD in which the public school academy is located; b) inclusion in all student recruitment materials of a statement that appropriate special education services would be made available to students attending the school as required by law; iii) that the open enrollment period for the public school academy would be for a duration of at least four weeks, and

9) a requirement that the board prohibit any individual from being employed by the academy in more than one full-time position and simultaneously being compensated at a full-time rate for each of those positions, and

10) if requested, that the board report to the authorizing body the total compensation for each individual employee of the academy.

Notice to schools in 30-mile radius. Under the bill, before issuing a contract for an academy, an authorizing body would be required to notify the board of the school district in which the proposed academy would be located, and the board of any school district located within a 30-mile radius of the proposed academy, that it intended to issue the contract, and further to give those school boards at least 30 days to submit comments to the authorizing body on the proposed contract.

Property reversion to School Aid Fund; no state obligation for debt. Under the bill if an academy was no longer authorized to operate, title to all real personal property, interests in real or personal property, and other assets owned by the academy would revert to the state. Any money included in the assets and the net proceeds from the sale of the property or interests in the property, after payment of any debt, would be deposited in the School Aid Fund. Further and under the bill, an agreement, mortgage, loan, or other instrument of indebtedness entered into by a public school academy and a third party would not constitute an obligation, either general, special or moral, of this state or an authorizing body. In addition, 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 not be pledged for the payment of any academy bond, note, 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.

The bill would retain these provisions but specify that an academy could give enrollment priority to one or more of the following: a) a sibling of a student enrolled in the academy; b) if the academy is a high school created pursuant to a joint application by two or more other public school academies (as described in section 511 of the bill), a student who attended and had completed the grade levels offered by one of those other public school academies; and, c) if the academy was a special purpose public school academy, an enrollment priority applicant selected under section 510 of the bill.

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.

Academies for drop-outs. Under the bill, authorizing bodies would be encouraged to issue contracts for academies for students who had dropped out of school, or otherwise had failed to complete high school.

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(4) [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].

Authorizing body oversight and responsibilities. The bill would eliminate provisions in the existing law that provide for the accountability of authorizing bodies to the state board of education. Instead, the bill would require an authorizing body that issued a contract for a public school academy to do all of the following: a) ensure that the contract and the application for the contract comply with the requirements of this section of the law; b) comply with the notification and comment requirements before issuing a contract; c) within 10 days after issuing the contract, submit to the superintendent of public instruction a copy of the contract and of the application for the contract; d) adopt a resolution establishing the method of selection, length of term, and number of members of the board of each public school academy; e) oversee the operations of each public school academy operating under a contract issued by the authorizing body (however, an authorizing body could enter into an agreement with another authorizing body to oversee an academy operating under a contract issued by the authorizing body; f) develop and implement a process for holding a public school academy board accountable for meeting performance standards and for implementing corrective action when an academy failed to meet those standards; g) take necessary measures to ensure that a public school academy board operated independently of any educational management company involved in the operations of the academy; h) oversee and ensure that the student admission process used by the academy was operated in a fair and open manner, and was in compliance with the contract; i) ensure that the board of the academy maintained and released information as necessary to comply with applicable law; and, j) if the authorizing body was the governing board of an institution of higher education with statewide jurisdiction that is a federal tribally controlled community college, comply with section 1475 (which concerns federal tribally controlled community college boards and college level courses).

Revocation of contract; reconstitution of academy. The bill specifies that before an authorizing body revoked a contract, it could take corrective measures to avoid revocation. If it were appropriate considering the overall circumstances, the authorizing body could reconstitute the academy to improve student educational performance, or to avoid interruption of the educational process. An authorizing body could include a reconstitution provision in the contract that identified corrective measures, including but not limited to appointing a new board of directors or a trustee to take over operation of the academy. If an authorizing body revoked a contract, then it would be required to work with a school district or another academy (or a combination of the two) to ensure a smooth transition for the affected students. If the revocation occurred during the school year, the authorizing body, as the fiscal agent for the academy, would be required to return any school aid funds received that were attributable to the affected students to the state treasurer for deposit into the School Aid Fund, and the treasurer would be required to distribute funds to the school district or academy in which the students enrolled after revocation, following a methodology that would be established by the Department of Education and the Center for Educational Performance and Information. If an authorizing body revoked a contract, it could issue a new contract within the six-month period following the revocation without certain limitations. However, if the contract that was revoked was for a special purpose public school academy, the new contract also would be required to be for a special purpose academy.

Superintendent of public instruction oversight and responsibility. Under the bill, the superintendent of public instruction would have new oversight responsibilities for authorizing bodies that issue contracts to public school academies. The bill would require the superintendent to do all of the following:

- a) establish a contract submission process;
- b) establish a contract monitoring process;
- c) establish academic standards to include at least the following: i) the minimum expected average achievement gain for each subject area assessed (aligned with the adequate yearly progress requirements of the federal No Child Left Behind Act of 2001); ii) in consultation with the Department of Treasury, the specific standardized assessment instruments to be used for testing (considering at least a nationally recognized non-referenced assessment that could include a computer adaptive

testing method); iii) an opportunity for authorizing bodies to coordinate on the selection of standardized assessment instruments to ensure that the cost was reasonable; iv) the methods and procedures by which the assessment results would be reported to parents, the public, and the individual academies' authorizing bodies through an academy's annual education report; and v) procedures to require the authorizing body to track the academic progress of each public school academy it authorized;

d) promulgate rules to establish a process for the periodic certification of eligible governing boards to serve as authorizing bodies, including among other things i) a certification process that occurred on an advertised schedule with a periodic certification review once every five years; and ii) standards for certification based only on the performance of the governing board in the following matters: a) holding an academy board accountable for meeting academic performance standards; b) enforcing the terms of the contract; c) ensuring compliance with this section of the legislation; d) demonstrating fiscal responsibility; iii) a certification panel to assist in the process; iv) an opportunity for authorizing bodies to correct deficiencies cited by the panel; and, v) reinstatement of an authorizing body after deficiencies had been corrected.

Under the bill, the superintendent could revoke an authorizing body's authority to issue a contract only if he or she determined either of the following: a) the authorizing body had failed to establish high expectations for its academies and had failed to act effectively to correct the situation; or b) the authorizing body had failed to insist that an academy take appropriate action when it determined that the academy had engaged in significant or continuous violations of the law. Before initiating revocation, the superintendent would be required to provide written notice to the authorizing body, which would be given an opportunity to respond to the possible violation and take corrective action. If the violation was not corrected in accord with a plan and timetable, the superintendent could initiate a revocation hearing which would be conducted as a contested case proceeding under the Administrative Procedures Act.

If the superintendent revoked an authorizing body's authority to issue contracts, all of the following would apply: a) any existing contract issued by the authorizing body would remain valid; and, b) the authorizing body would enter into an agreement with another authorizing body to provide oversight.



The bill specifies that this section of the legislation would not infringe on the constitutional autonomy of an institution of higher education with statewide jurisdiction that is a state public university described in section 4, 5, or 6 of Article VIII of the state constitution of 1963.

Annual assessments in grades 3 through 8. Beginning in the next school year commencing after the effective date of the bill, the board of directors of a public school academy would be required to ensure that all students enrolled in grades three through eight in the academy be administered annual assessments covering the core academic curriculum content standards in mathematics and reading, as required under the federal No Child Left Behind Act of 2001. To the extent that they were available and appropriate for a subject area and grade level, Michigan Education Assessment Program (MEAP) assessments could be used for the purposes of this provision. The bill specifies that an academy would be required to measure and report progress on the assessment scores in the manner prescribed by the superintendent of public instruction. Further, the bill specifies that this provision would not apply after the state implemented the state assessment requirements under the federal No Child Left Behind Act of 2001.

Jointly sponsored high school. The bill specifies that two or more public school academies that did not operate grades 9 to 12 could jointly apply for a contract to establish a public school academy for some or all of those grades. This would not prohibit an academy that did not operate grades 9 to 12 (or any combination) from offering some or all of those grades under an existing contract with an authorizing body.

Notice of new school opening or closing. Under the bill, if the board of a school district or the board of an academy determined that it would open a new school building, or close an existing school building, then the board would be required to provide adequate public notification of the proposed opening or closing to the general public, and to other school districts and school academies located within a 30-mile radius of the proposed new school or school closing by publishing a notice in a newspaper of general circulation in this area, within 30-days after making the determination.

Educational management companies. Beginning with contracts after the effective date of this legislation, if the governing board of a public school enters into a contract with an educational management company to carry out the operations of a

public school, the governing board would be required to ensure all of the following:

- a) that the board had conducted sufficient due diligence to conclude that the management company had sufficient educational expertise and management experience to provide the agreed services;
- b) that the governing board would obtain independent legal counsel in all negotiations with the educational management company; and,
- c) if the governing board were the board of directors of an academy, that, under the contract between the board of directors and the educational management company, the company would provide to the board all financial and other information required to comply with the requirements concerning reporting that were contained in the contract between the board and its authorizing body under section 503 of the legislation.

The bill also specifies that beginning with contracts that were entered into after the effective date of this legislation, if the governing board of a public school entered into a contract with an educational management company to carry out the operations of a public school, the contract between the governing board and the company would be required to contain at least all of the following:

- a) a provision requiring the management company to provide the governing board with information regarding any teachers, administrators, and support staff employed by the management company, including at least all of the following personal information: i) name; ii) education, including highest degree attained; iii) salary; iv) copy of teaching certificate or other required permit or credential, if required for the position; v) description of relevant experience; and, vi) employment record;
- b) a provision requiring the management company to provide to the governing board information regarding the business operations of the public school, including at least all of the following: i) financial records and information concerning the operation of the school, including, but not limited to, budgets and detailed records of funds received from the state and other entities, expenditure of those funds, investment of those funds, carryover, and contractual arrangements or agreements entered into by the management company as an agent of the governing board; ii) financial records and information concerning leases to which the governing board was a party, including, but not limited to, leases for equipment, physical facility space, or institutional

and educational materials; and iii) financial records and information concerning mortgages and loans to which the governing board was a party; and,

c) if the governing board was the board of directors of a public school academy, a provision requiring the management company to make information available to the board of directors concerning the operation and management of the public school academy, including at least all of the information necessary to comply with the requirements concerning reporting that were contained in the contract between the board of directors and its authorizing body under section 503 of this legislation.

Definitions. The bill would define "educational management company" to mean an entity that enters into an agreement with the governing board of a public school to provide comprehensive educational, administrative, management, or instructional services or staff to the public school. Further, the bill would define "entity" to mean a partnership, nonprofit or business corporation, labor organization, or any other association, corporation, trust, or other legal entity.

MCL 380.501 et al.

## ***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](http://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](http://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 7<sup>th</sup> 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](http://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](http://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 (H-4) would raise the cap on university-chartered schools by 130 schools from calendar year 2002 to calendar year 2007, and an additional 100 from calendar year 2008 to calendar year 2017. The total number of new public school academies would be 230. The bill would create a new category of schools called "special purpose" public school academies, in which at least 50 percent

of the students would meet certain at-risk eligibility requirements.

The average size of a new public school academy is expected to be approximately 250 students, and it is assumed that schools would open in the fall of this year, so that schools opening in calendar year 2002 would receive a fiscal year 2003 foundation allowance. It is also assumed that the cap would be reached in each year. While it is unknown how many new public school academy students would transfer from nonpublic schools, it could reasonably be assumed that between 20 percent and 40 percent would transfer from nonpublic or home schools or, in the case of kindergarten students, would have otherwise enrolled in a nonpublic school. To the extent that larger percentages transfer from nonpublic schools, the estimate of state costs would be low. It also is assumed that the remaining 60 percent to 80 percent of students in new public school academies would transfer from existing public schools, creating no additional cost to the state, but creating a local fiscal impact to the school districts.

*Year 1 state costs.* If these assumptions held true, there would be approximately 250 to 500 additional students in the public school system who would enroll in new public school academies in calendar year 2002 (which would be fiscal year 2003). Multiplying these new enrollments by the maximum foundation allowance for fiscal year 2003 of \$7,000 per pupil would indicate an additional state cost of \$1.8 million to \$3.5 million. [The public school academy foundation grant is the lower of either the maximum foundation allowance or the foundation allowance of the district in which the academy is located, which could be as low as \$6,700 in fiscal year 2003. If the new academies had lower foundation allowances than the \$7,000 per pupil assumed for these calculations, then this estimate of state costs would be high.]

*Year 1 local district costs.* There also would be a revenue loss to the local school districts from which the 60-80 percent of the students would transfer of between \$5.3 million and \$7.0 million.

*Year 2 state costs.* According to the House Fiscal Agency the cost in future years would depend on the level of the foundation allowance which is set annually by the legislature. Assuming that the foundation allowance increased by 3.1 percent in fiscal year 2004 (the same percent it increased in fiscal year 2003), the cost of the additional 25 schools in fiscal year 2004 plus the ongoing cost of the school created a year earlier would be between

\$10.8 million if 20 percent transferred from nonpublic schools, and it would be \$21.6 million if 40 percent transferred.

Year 2 local district costs. There would also be a revenue loss to the local school districts from which the 60-80 percent of the students would transfer of between \$32.5 million and \$43.3 million.

*Subsequent year costs.* A similar impact would be realized annually through fiscal year 2008 (calendar year 2007) due to the creation of new schools, and continuing support of schools already created under the higher cap. Beginning in fiscal year 2009 through fiscal year 2018, the additional annual cost would be reduced, as the limit was increased by 10 schools annually, rather than 25 schools each year. (4-29-02)

## **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'."

***For:***

This bill breaks an impasse that opponents and proponents of charter schools reached, by lifting the cap on university-authorized public school academies from 150 to 230. As more charter schools are created, parents will have more choices, and children will have more educational opportunity. Having a choice is an all-important characteristic of school success. "It promises solutions to a variety of educational problems, including problems of cost and efficiency, quality and effectiveness, and issues of diversity," according to Michigan State University researchers David Plank and Gary Sykes in their paper "How Choice Changes the Education System: A Michigan Case Study," published in December 1998. They continue, "It is consequently politically appealing to a wide variety of constituencies, while opposition to expanding choice remains fragmented and incoherent." In their view, "the array of educational choices available to U.S. parents is likely to continue to expand, with vouchers on the not-very distant horizon in Michigan and other states."

***Response:***

Plank and Sykes observe, however, that "considered in terms of reform strategy, expanding opportunities for choice is a relatively weak intervention for two main reasons. First, we have uncovered no evidence that providing parents with the opportunity to choose the schools their children attend brings about improvement in the quality of schooling that children receive. Choice enables parents to bring about a closer match between their own preferences about schooling and the values or pedagogical practices of the schools that their children attend, which is in itself a powerful argument in its favor. For now, however, the case that choice and the ensuing competition among schools will increase the efficiency and effectiveness of all schools at best remains open. Second, 'choice' is a profoundly conservative reform strategy in its failure to address the larger issues of social and economic context within which parents in fact make choices . . . allowing parents to make choices does not in itself affect the array of choices available to them, and the most desirable choices may remain unattainable for

reasons of transportation, distance, or exclusion." Plank and Sykes conclude, ". . . choice may make the worst schools somewhat better than before, but they will nevertheless remain the worst schools . . . the current enthusiasm for educational choice strikes us as an instance of a broader effort to shift the responsibility for addressing deeply-rooted social and economic problems out of the public sphere . . . both by disparaging the capacity of public institutions to solve public problems and by simultaneously depriving them of the resources that would be required to bring about significant improvement in their performance."

***For:***

This legislation provides for more oversight of education management companies when either public schools or public school academies enter into a contract with a private company for their services. If a public school board enters into a contract, the bill would require the board to exercise due diligence to ensure sufficient educational expertise and management experience, as well as to obtain independent legal counsel in all negotiations with the company.

If the governing board were the board of directors of an academy, then under the contract between the academy and the company, the company would be required to provide all financial and other information required to comply with the provisions of the academy's contract with its authorizing body. That contract, in turn, would require more than a dozen new accountability provisions, including assurances that employees would be covered by collective bargaining agreements; compliance with conflict of interest laws; the explicit identification of prohibited family and business relationships when people have various interests in an educational management company; assurances that information would be available to the public in the same manner as the law requires for school districts; eleven separate components of information concerning the operation and management of the public school academy (for example, the contract, a list of board members and the book of minutes, the budget, quarterly financial reports, teacher salaries and certificates, copies of leases or deeds, copies of curriculum documents, copies of management contracts or services contracts, and more); the requirement that the authorizing body review and accept or reject the contract with the education management company; open admissions processes, including an open enrollment period for at least four weeks; the requirement that the board prohibit any individual from being employed by the academy in

more than one full-time position and simultaneously being compensated at a full-time rate for each of those positions; and, if requested, that the board report to the authorizing body the total compensation for each individual employee of the academy.

Taken together, the information an authorizing body requires from an academy about its operations--whether or not an educational management company has contracted with the charter school--should serve to make public much more information about the private companies' roles and responsibilities for public school education. Equally important, the new oversight and accountability provisions allow taxpayers to know for the first time whether their tax dollars are being properly spent by the private education companies.

**For:**

An intriguing aspect of this legislation is the proposal to create 'special purpose' charter schools. Under this legislation, public school academies could enroll high priority students--those who are low achievers, poor and eligible for school lunch subsidies, discipline problems, pregnant, drug- or court-involved, or victims of child abuse or neglect. These school-age children desperately need the attention of caring adults in their lives, as well as high-quality teachers who guide their intellectual growth and development, offering them the opportunity to experience the satisfaction of academic achievement. Special schools for the children whom adults have put 'at-risk' are a very positive aspect of the compromise that has been proposed by the Commission on Charter Schools, and for that reason this legislation should be supported.

**Response:**

Educational researchers have established pretty clearly that a heterogeneous school experience in which educators adopt equitable grouping practices is most effective for all students, and most especially effective for those who have difficulty learning. For example, for several decades, efforts to integrate and de-track schools have been a top priority for those who promote eliminating the Black-White achievement gap. In contrast to these efforts, separate institutions set aside for the low achiever, and curricular practices that "track" like-achieving students together, have been thoroughly discredited by at least a couple strands of research, that which follows student achievement among slower learners to ascertain impediments to their learning, and that which studies the motivation of learners when their self-esteem has been challenged by low expectations in comparison to their peers. According to a research

summary prepared by the North Carolina Education Research Council, "grouping can be helpful if students are grouped strictly on the basis of their skills in each specific subject to be taught, and if the teacher actually does pitch instruction to the right skill level and pace for each group. Students who are skilled in reading are not necessarily skilled in mathematics, and vice-versa. So using reading scores to assign students to groups or classes that are kept intact for all subjects does not reduce the range of skills in most subjects enough to make it possible to target instruction . . . students must be reassessed often and reassigned to groups as appropriate." Groups should not ever be a reflection of a fixed level of general intelligence. The report continues, "by grouping students for only one or two subjects, grouping them differently for different subjects, and regrouping them on the basis of frequent reassessment, teachers can reduce the range of skills in each group without communicating that little is expected, demanded, or offered to students in low groups. In contrast . . . keeping students in the same groups or classes for all subjects tends to stigmatize students in low groups. It seems to tell them that not much is expected or will be demanded of them. And it deprives them of the opportunity to learn the more advanced material available to students in higher groups." (*NCERC Policy Brief*, June 2001)

**Against:**

Michigan State University researchers David Arsen and David Plank of the Education Policy Center at MSU have cited the need for public accountability in Michigan's charter school laws, and also the need to rein in for-profit companies. In columns that appeared in the *Detroit News* (2-9-01) and the *Lansing State Journal* (3-5-01), Arsen and Plank argue that if Bay Mills Community College, a tribal college, continues to charter public school academies anywhere in the state, there will be an enormous loophole in the law. That loophole would remain, even if Bay Mills is brought in under the cap imposed on higher education institutions as is proposed by Substitute H-4. The loophole that would remain is this: charter schools were intended to be community schools--schools chartered by home-town people and governed by adults who would be accountable to the parents of the children who selected them. The governing board and the parents would work together to provide alternative educational opportunity for some of the community's children who had little or no success in the traditional public school.

However, the Bay Mills statewide charter capability would be a wide-open invitation to for-profit management companies to choose sites anywhere in

the state, rather than be chosen by the governing board of a charter school whose members were accountable to the parents of those who attend. When a for-profit management company selects a city, and then owns the school building, to whom is the school's governing board most accountable? The corporation, or the parents? As the researchers point out, "clear lines of accountability get tangled . . . when private management companies take the lead in obtaining charters. Companies often own the building in which the school is located. The company, not the school, employs the teachers and administrators. The company many even take an active role in choosing members of the charter school board. Under these circumstances, it's not clear how there can be an arms-length performance-based contract between the school board and the management company. The board has almost no leverage. After all, it's tough for a board to terminate a management contract if the company owns the school building."

As Plank and Arsen note, "Private companies manage the vast majority of the schools chartered by universities in Michigan. Lots of states have charter schools, but no other state is as attractive to for-profit management companies as Michigan. The big role assumed by for-profit companies . . . raises troubling questions about accountability."

#### ***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 charter 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 Manufacturers Association supports the bill. (4-25-02)

University Public School (at Wayne State University) supports the bill. (4-30-02)

A representative of the Michigan Education Association testified in support of the bill. (4-30-02)

A representative of the Michigan Association of Public School Academies testified in support of the bill. (4-30-02)

A representative of Choices for Children testified in support of the bill and raised concerns. (4-30-02)

A representative of the Michigan Federation of Teachers and School Related Personnel testified in opposition to the bill. (4-30-02)

A representative of the Michigan AFL-CIO testified in opposition to the bill. (4-30-02)

A representative of the UAW International Union testified in opposition to the bill. (4-30-02)

A representative of the Michigan Association of School Boards testified in opposition to the bill. (4-30-02)

A representative of the Metropolitan Detroit Alliance of Charter Schools testified in opposition to the bill. (4-30-02)

A representative of the American Federation of School Administrators and Supervisors testified in opposition to the bill. (4-30-02)

A representative of the American Civil Liberties Association testified to raise concerns about the bill. (4-30-02)

Oakland Schools opposes the bill. (4-30-02)

Middle Cities Education Association opposes the bill. (4-30-02)

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.