

SCHOOL INSTALLMENT CONTRACTS

House Bill 4827 (Substitute H-1) First Analysis (6-11-97)

**Sponsor: Rep. Patricia Birkholz
Committee: Education**

THE APPARENT PROBLEM:

Lawyers and bond counsel for some school districts have told their clients that they cannot issue unqualified legal opinions that the districts have the authority to borrow to purchase school buses or to purchase real and personal property as they did before passage of the Revised School Code. The Revised School Code (Public Act 289 of 1995) took effect on July 1, 1996. One of the main features of the revised code is the elimination of "classes" of school districts with a distinct set of provisions for each and the designation instead of each school district as a "general powers" school district. (First class districts, however, were retained, a category that includes only Detroit.) The revised code says that a general powers school district has all of the rights, powers, and duties expressly stated in the code; can exercise a power implied or incident to any expressly stated power; and, except as provided by law, can exercise a power incidental to or appropriate to the performance of any function related to operation of the school district in the interests of public elementary and secondary education in the district. The bill creating the revised code (Senate Bill 679) also said that "unless expressly provided", the powers of a school board or district were not diminished by the "general powers" provisions or the revised code as a whole.

At the same time, the bill creating the revised code repealed numerous sections of the old code, some of which specifically authorized school boards and school districts to engage in specified activities. Section 1341 permitted school boards to purchase school buses and to issue obligations for periods for no longer than their useful life, not to exceed six years. Section 1262 authorized school boards to acquire real or personal property for school purposes by purchase, land contract, lease, with or without option to purchase, or title retaining contract. The section also permitted the sale, exchange, and lease of property. While these provisions specifying the powers of school districts were repealed, presumably to be replaced with the notion of "general powers", some other provisions specifying and limiting the powers of school districts were retained. In particular, Section 1351a was retained, a section that specifies that a school district may borrow money and issue bonds for purchasing, building, remodeling, etc., school buildings and related facilities and that prohibits

school districts from borrowing and issuing bonds for certain specified purposes, including upgrades to computer operating systems, media, and training, consulting, maintenance, and service contracts.

According to testimony provided to the House Education Committee, the result is that while many believe that the point of creating "general powers" school districts was to allow districts to engage in activities unless prohibited by law, some cautious school lawyers and bond counsel, including major firms, will not issue the unqualified opinions that financial institutions require before purchasing school district debt. This reportedly is making life difficult for many school districts hoping to borrow to purchase school buses and technology and to meet other needs. Legislation has been introduced to deal with this problem.

THE CONTENT OF THE BILL:

The bill would amend Public Act 99 of 1933, which authorizes villages, townships, and cities to enter into installment contracts and agreements for the purchase of lands, property, and equipment for public purposes in order: 1) to bring school districts under the act; and 2) to specifically permit a school board to enter into a contract to purchase telecommunication and technology-related services for school purposes to be paid for in installments not to exceed the length of the contract.

Under the bill, if the school board borrowed funds to pay for telecommunication and technology-related services, the total cost of principal, interest, and fees, and expenses of borrowed funds, could not exceed the total amount of the original service installment contract.

Public Act 99 permits the purchase of lands, property, or equipment for public purposes, to be paid for in installments over a period not to exceed 15 years and not to exceed the useful life of the property acquired. The outstanding balance of all such purchases, exclusive of interest, cannot exceed one and one-quarter percent of the equalized assessed value of the real and personal property in the jurisdiction at the date of the contract or agreement (with specific exceptions). The bill would

use the term "real or personal property" in place of "lands, property, or equipment", the term "governing body" in place of "legislative body", and the term "taxable value" in place of "equalized assessed value".

MCL 123.721 and 123.723

FISCAL IMPLICATIONS:

The House Fiscal Agency reports that the bill does not appear to have any fiscal impact on the state. (Fiscal Note dated 6-5-97)

ARGUMENTS:

For:

The bill would address obstacles school districts face in borrowing to purchase school buses and technology, and to meet other needs, by bringing school districts under an act that currently applies only to municipalities. The language in the act is similar to that appearing in the School Code prior to its revision. The provision added regarding the purchase of telecommunication and technology-related services is identical to that found in the old School Code. It should be noted that the bill is not amending the Revised School Code but a separate act that currently allows cities, villages, and townships to borrow to purchase lands, property, and equipment. This reportedly is in response to those who oppose simply restoring repealed provisions to the Revised School Code on the grounds that it would lead to a series of such amendments that would be contrary to the concept of general powers school districts.

Response:

While not opposing this bill, some people believe it should not have been needed. It is difficult to believe that legislation intended to enhance local control of schools by creating "general powers" school districts could be interpreted as preventing school districts from engaging in such a longstanding practice as issuing bonds to buy school buses.

POSITIONS:

Among those indicating support for the bill to the House Education Committee were the Michigan Association of School Administrators, the Michigan Education Association, the Michigan Bankers Association, the National Bank of Detroit, Ameritech, and the law firm of Miller, Canfield, Paddock, and Stone. (6-4-97)

Analyst: C. Couch

■ 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.