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SFA**BILL ANALYSIS**

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Senate Bill 358 (Substitute S-2 as passed by the Senate)
Senate Bill 670 (Substitute S-2 as passed by the Senate)
Sponsor: Senator Bev Hammerstrom
Committee: Human Resources and Labor

Date Completed: 11-4-02

RATIONALE

Public Act 306 of 1937 regulates the construction, reconstruction, and remodeling of public and private school buildings. The Act requires the State Superintendent of Public Instruction, who heads the Department of Education, to give written approval of any plans and specifications before a project is begun. The Act also requires the State Fire Marshal to inspect any building at least twice during construction to determine whether the construction complies with the Act. In addition, the Act specifies that the architect or engineer who prepares the plans and specifications or supervises the construction of a school building is responsible for constructing the building of adequate strength to resist fire and in accordance with the approved plans and specifications.

While school buildings are subject to Public Act 306, they are not subject to the Single State Construction Code Act. Consequently, State and local inspectors, who oversee other construction projects, do not have jurisdiction over the construction and remodeling of school buildings. Although the State Superintendent has a formal agreement with the Department of Consumer and Industry Services (DCIS) for it to serve as the Superintendent's agent for approving the fire safety and electrical components of a school building's construction, the Department of Education neither maintains staff with expertise in building construction nor has any other arrangement with the DCIS to review school construction projects. Thus, the structural, mechanical, and plumbing components of school buildings that are being built or remodeled are inspected only if school officials and local building authorities voluntarily collaborate.

Reportedly, in the past decade there have been incidents in which problems were found in the construction of school buildings. A school building in the Woodhaven School District had to be almost entirely reconstructed, even though it was less than 20 years old. Structural problems were found in Gaylord High School, built in 1994. In Flushing, four workers were killed and two were injured when a wall collapsed at the construction site of Flushing High School. Because of these and other instances in which school buildings were discovered to have structural flaws, some people believe that Public Act 306 should require the DCIS to be the enforcing agency for the Act and to approve and oversee school construction plans and projects; or to delegate the responsibility to a local agency under certain circumstances.

CONTENT

Senate Bill 358 (S-2) would amend Public Act 306 of 1937 to provide that the Department of Consumer and Industry Services would be responsible for the administration and enforcement of the Act and the Single State Construction Code Act in each school building in Michigan, unless the DCIS delegated that responsibility as provided in the bill. Senate Bill 670 (S-2) would amend Public Act 306 to prescribe penalties for certain persons who violated school construction regulations.

Senate Bill 358 (S-2)

The bill would delete the current requirement that the Superintendent of Public Instruction approve plans and specifications for school building construction.

The bill provides that a school building covered by bond issues that were approved by the Department of Treasury after July 1, 2002, could not be constructed, remodeled, or reconstructed in Michigan until the DCIS gave written approval of the plans and specifications, indicating that the building would be designed and constructed in conformance with the State Construction Code. This requirement would not apply to any school building for which construction was covered by bond issues that were approved by the Department of Treasury before July 1, 2002.

For school buildings covered by bonds approved by the Department of Treasury before July 1, 2002, the plans and specifications would have to be submitted to the DCIS for approval; the DCIS could not grant approval until it had received a certification from the appropriate health department relative to water supply, sanitation, and food handling, and certification relative to fire safety as required in Section 3 of the Act. (Section 3 requires each school building, twice during construction, to be inspected by the DCIS relative to fire safety, unless the school district and the local unit in which the building is located certify that fire safety inspections and fire safety measures for the school are provided for by municipal ordinance.)

The DCIS would have to develop a plan for conducting no-cost, walk-through safety inspections of school buildings constructed, remodeled, or reconstructed in Michigan since January 1, 1978. Inspections by DCIS staff would have to be conducted with the permission of the superintendent of the school district in which a building was located. If the school building were determined to be structurally compromised, the DCIS would have to provide a draft report to the superintendent before releasing the final report.

Responsibility for school building inspections could be delegated to an independent third party, designated in the contract governing the construction, remodeling, or reconstruction of a school building. The independent third party would be responsible for all inspections required to ensure compliance with the State Construction Code. The school authority would have to verify that

the independent third party named was knowledgeable about construction practices and codes and otherwise qualified to conduct the inspections. The name of the independent third party to be responsible for conducting inspections would have to be submitted to the DCIS with the plans and specifications required under the bill. If the DCIS determined that the independent third party was not qualified to conduct the inspections or was not an independent third party, it would have to disapprove of the designation and notify the school authority. All inspection reports prepared by the person designated by the school authority would have to be sent to the DCIS upon completion of the inspection. The DCIS could return a report for further work if there were questions relating to the scope of the inspection or whether the construction, remodeling, or reconstruction met the requirements of the Code.

If an independent third party were not designated, the DCIS would have to perform the inspections required to ensure compliance with the Code, unless the Department delegated responsibility for administering and enforcing the Act, as provided in the bill. Also, unless responsibility was delegated, the DCIS would have to perform for school buildings all plan reviews within 60 days from the date plans were filed or considered approved, and perform inspections within five business days as required by the State Construction Code.

The DCIS would be the enforcing agency for Public Act 306. The Department would have to delegate responsibility for the administration and enforcement of the Act to an applicable agency, however, if both the school board and the governing body of the local unit of government had annually certified to the DCIS, in a manner it prescribed, that full-time Code officials, inspectors, and plan reviewers registered under the Building Officials and Inspectors Registration Act would conduct plan reviews and school building inspections.

The bill states that it would not affect the responsibilities of the DCIS under the Fire Prevention Code. The Bureau of Construction Codes and the Office of Fire Safety in the DCIS jointly would have to develop procedures to use plans and specifications submitted in carrying out the requirements of the Act and the Fire Prevention Code. A certificate of occupancy could not be issued by the

appropriate code enforcement agency until a certificate of approval had been issued under that Code.

Public Act 306 specifies that a public or private school building, or any additions to it, may not be erected, remodeled, or reconstructed except in conformity with certain conditions. The first condition is that all plans and specifications for buildings must be prepared by, and the construction supervised by, a Michigan-registered architect or engineer. The bill would retain this provision, but also allow supervision by another person qualified to supervise construction. The bill would delete a requirement that, before construction, reconstruction or remodeling, written approval of the plans and specifications be obtained from the Superintendent of Public Instruction or the Superintendent's authorized agent. Under the provision to be deleted, the Superintendent may not issue his or her approval until securing, in writing, the approval of the State Fire Marshal or the appropriate municipal official, when certification is made relative to factors concerning fire safety, and the approval of the health department having jurisdiction relative to factors affecting water supply, sanitation, and food handling.

Another condition that must be met under the Act is that every room enclosing a heating unit be enclosed by walls of fire-resisting materials and equipped with automatically closing fire doors. Heating units may not be located directly beneath any portion of a school building or addition constructed or reconstructed after the Act's effective date. Under the bill, this prohibition would apply to a building or addition constructed or reconstructed after January 1, 2002.

In addition, that Act provides that these heating-unit regulations may not be construed to require the removal of an existing heating plant from beneath an existing building when an addition to the building is constructed, unless the State Superintendent of Public Instruction or the Superintendent's authorized agent, acting jointly with the State Fire Marshal, requires the removal. Under the bill, only the Department could require removal.

The Act requires the Superintendent of Public Instruction to publish an informative bulletin that sets forth good school building planning

procedures and interprets the Act clearly. The bulletin must be prepared in cooperation with the State Fire Marshal and the State Health Commissioner and must be consistent with recognized good practice as evidenced by standards adopted by nationally recognized authorities in the fields of fire protection and health. The bill would delete these requirements.

Senate Bill 670 (S-2)

The bill would prescribe penalties for licensed architects and engineers, and construction supervisors who violated certain school construction regulations.

Currently, the architect or engineer preparing plans and specifications or supervising construction of a school building is responsible for constructing the building of adequate strength so as to resist fire, and constructing it in a workmanlike manner. The bill provides, instead, that a licensed architect or engineer preparing plans and specifications of a school building would be responsible for assuring that the design documents provided for a structure with sufficient structural strength and fire resistance, and that the building would meet all applicable codes, standards, and regulations. The person supervising the construction of a school building would be responsible for the construction in conformance with the approved plans and specifications prepared by the licensed architect or engineer.

A person who violated these provisions would be subject to a State civil infraction punishable by a civil fine of up to \$10,000. A person who knowingly violated the bill would be guilty of a misdemeanor punishable by a fine of up to \$10,000, imprisonment for up to 180 days, or both.

MCL 388.851 et al. (S.B. 358)
388.852 (S.B. 670)

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

The lack of mandatory inspection of school buildings under construction poses serious

safety issues. Currently, no State or local building authority is required to certify that the State Construction Code is being met when the foundation, walls, roof, or other components of a school building are being erected. The existence of unsafe and unsound schools demonstrates that the standards for school construction currently provided under Public Act 306 are not sufficient. Unlike the standards in the State Construction Code, which are based on nationally recognized codes and are updated regularly, the standards in Public Act 306 are minimal and provide little protection to the public and children in Michigan schools.

Senate Bill 358 (S-2) would give the DCIS explicit responsibility for the administration and enforcement of Public Act 306 and the Single State Construction Code Act in Michigan school buildings, and would remove provisions authorizing the State Superintendent to approve plans and specifications for school building construction. As a result, the DCIS would have to approve plans and oversee school construction projects or delegate the responsibility to competent local officials. Together, Senate Bills 358 (S-2) and 670 (S-2) would prevent future construction of structurally flawed schools and would save school districts the expense of repairing or even reconstructing unsound buildings. More importantly, the bills would help ensure a safe environment for students, as well as protect school personnel and the public.

Opposing Argument

Senate Bill 358 (S-2) could result in additional costs for school districts, which already must pay fees to architects for the planning and oversight of school construction. Submission of plans and specifications for school buildings to the DCIS could result in school districts' being charged fees for permits, plan reviews, and inspections. Some school officials also are concerned about potential delays in completing school construction projects if State inspections were required. Currently, only the State Fire Marshal is required to inspect a school construction project to determine whether it complies with Public Act 306. As a result of the bill, school districts would have to deal with other agencies, such as the DCIS Bureau of Construction Codes.

Response: The bill contains no mention of new or increased fees for permits, plan reviews, or inspections. Permits for

construction projects are the purview of local units of government. Further, the bill specifically would require the DCIS to develop a plan for conducting no-cost walk-through safety inspections.

As for potential delays to construction projects caused by inspections or plan reviews, the bill specifies that all plan reviews performed by the DCIS would have to be completed within 60 days from being filed, and all inspections would have to be performed within five business days.

Opposing Argument

While there was widespread press coverage regarding the tragedy in Flushing, and other school construction problems, the vast majority of school construction projects experience no life-threatening events or substantial structural defects. Nearly all school buildings remain safe and sturdy for long periods of time. The bills are an unnecessary overreaction. When a school district spends millions of dollars for a school, it is in the best interest of the district to see to it that the facility is properly planned, built, and inspected.

Response: Just one school, built in a faulty manner that threatens the well-being of children, teachers, and parents, is one too many. Students, school personnel, and visitors deserve the same level of safety in schools that they enjoy in almost any other public structure they enter. The bills would ensure that schools were built under the same construction requirements that apply to other buildings.

Legislative Analyst: George Towne

FISCAL IMPACT

Senate Bill 358 (S-2)

Department of Consumer and Industry Services. The Department's Bureau of Construction Codes could incur increased costs as this bill provides: 1) Schools could designate a third party to perform inspections but the DCIS would have the authority to review and disapprove of the third party. 2) The Bureau would have to review all reports prepared by a third party inspector. 3) The Bureau would have to do all plan reviews on school buildings being remodeled or constructed that were not reviewed by a

delegated local authority. 4) The Bureau would have to inspect all school buildings being remodeled or constructed that were not inspected by a third party contractor or a delegated local authority.

According to the Department, the existing fee schedule of 0.5% of total construction costs would be used to cover the costs associated with these regulatory responsibilities.

Additionally, the Department would have to develop a plan for conducting no-cost walk-through safety inspections, which would be performed by Bureau staff. This requirement would not generate revenue for the Bureau.

Department of Community Health. The elimination of the Department of Community Health's supply, sanitation, and food handling responsibilities would not affect fee collections as school buildings are exempted from such fees. The decreased number of such inspections could lead indirectly to savings for the Department.

Local Government. Local school districts would experience an indeterminate fiscal impact from this legislation. Currently, school districts pay fees to the Office of Fire Safety for inspection services. Since the bill would eliminate this requirement, districts would experience savings. However, the bill would require inspections by one of three entities: 1) a qualified third party, 2) local government agencies, or 3) the Bureau of Construction Codes. It is reasonable to assume that savings from the elimination of fire safety plan reviews would be offset by costs associated with inspections from one of these entities.

An additional cost could be incurred by local school districts under this legislation if a school district used a third party (and paid fees to this third party for inspections), and further had to pay the Department for its review of the third party's reports and credentials.

Senate Bill 670 (S-2)

The bill would have no fiscal impact on the Department of Consumer and Industry Services. The bill would have an indeterminate fiscal impact on local revenues as there is no information regarding the number of penalties that would be imposed

annually.

Offenders convicted of a misdemeanor would be subject to probation or incarceration in a local facility. Local units would incur the cost of probation as well as the cost of incarceration, which may vary between \$27 and \$62 per day.

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.