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**SFA**

BILL ANALYSIS

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House Bill 4617 (Substitute S-4 as reported)  
House Bill 4619 (Substitute S-2 as reported)  
Sponsor: Representative Ken Bradstreet (House Bill 4617)  
Representative Joanne Voorhees (House Bill 4619)  
House Committee: Education  
Senate Committee: Families, Mental Health and Human Services

Date Completed: 11-21-01

### **RATIONALE**

A number of school districts in Michigan operate before- and after-school child care programs. These programs are subject to Public Act 116 of 1973, which requires child care centers to be licensed by the Department of Consumer and Industry Services (DCIS). The school-based programs also must comply with the administrative rules promulgated under Public Act 116, which govern such areas as staffing, daily activities, discipline, and equipment. In addition, one of the rules requires a program director to be present full time for programs operating less than six continuous hours, or present at least six hours daily for programs operating six or more continuous hours. The rule also requires a program director to have specific credentials or educational credits (described in **BACKGROUND**, below).

These requirements evidently have been problematic for some school districts, where qualified program directors are not readily available. In some cases, a district operates a child care program at several different schools, which are supervised by a single program director. Since one program director cannot be present full time at each site, as required by the rule, the DCIS traditionally granted districts variances from the rule. In July 2000, however, the Department announced its intent to enforce the rule. Although the DCIS has encouraged schools to seek provisional certification, until they can fully comply, some districts believe that the requirements are overly burdensome, and could lead to the closure of their school-based child care programs. To address these concerns, it has been suggested that schools'

child care programs should be subject to a different set of regulations.

### **CONTENT**

**House Bill 4617 (S-4) would amend the Revised School Code to provide that, beginning July 2, 2002, if a school district or intermediate school district (ISD) operated or contracted for the operation of a before- or after-school program for children in kindergarten through eighth grade, the following would apply:**

- The program would have to have at least two adult staff members present whenever children were present, and comply with specific child-to-staff ratios.
- The program would have to provide certain daily activities and relationships.
- The program would have to be located at school in facilities comparable to rooms used by pupils during the regular school day.
- Criminal history checks of employees would have to be made.
- Staff members would have to be certified in CPR and first aid.
- The district would have to establish a policy addressing safety procedures.

The bill also would require the Department of Education, by March 1, 2002, to establish a model before- or after-school program policy. A program described in the bill would not be subject to the child care licensing Act (Public Act

116 of 1973).

**House Bill 4619 (S-2) would amend the child care licensing Act to exempt from the definition of "child care center" or "day care center" a facility or program for school-age children that was operated at school.**

The bills are tie-barred.

**House Bill 4617 (S-4)**

The Revised School Code provides that, if a school district or ISD operates a child care center, the center is subject to the requirements of the child care licensing Act. If a child care center established and operated by a school district or ISD is located in a school building that is approved and inspected by the State Fire Marshal or other similar authority for school purposes and is in compliance with school fire safety rules, however, the child care center is not subject to any fire prevention or fire safety requirements under the child care licensing Act. Under the bill, beginning July 1, 2002, "child care center" as used in these provisions would not include a program described below.

Beginning July 1, 2002, if a school district or ISD operated or contracted for the operation of a before- or after-school program for children in kindergarten through the eighth grade, the program would have to have at least two adult program staff members present at all times when children were present. The program also would have to have a child-to-adult staff member ratio as follows:

- For children in grades K to 3, no greater than either 20 children to one adult or the average pupil-to-teacher ratio during school hours in that district in regular K to 3 classrooms, whichever was less.
- For pupils in grades 4 to 8, no greater than either 25 children to one adult, or the average pupil-to-teacher ratio during school hours in that district in regular grade 4 to 8 classrooms.

Within three months after an adult staff member began to work in the program, he or she would have to hold valid certification in cardiopulmonary resuscitation (CPR) and basic first aid issued by the American Red Cross, American Heart Association, or a comparable organization or institution approved by the

Department of Education.

The program would have to be located at school in facilities comparable to rooms used by pupils during the regular school day. If food were served, the food service would have to comply with the same nutrition requirements that applied to food service by the district during the regular school day.

The program would have to provide daily activities and relationships that offered each child opportunities for physical, intellectual, and social development, including positive self-concept.

If the school district or ISD used its employees to staff the program, before assigning a staff member to work in the program, the school district or ISD would have to comply with Revised School Code requirements regarding a criminal history check of prospective employees to the same extent as if the individual were being hired as a teacher (MCL 380.1230 & 380.1230a). If the school district or ISD contracted for the operation or staffing of the program, the contract would have to contain assurance that the contracting person or entity would comply with those criminal history check requirements before assigning an individual to work in the program. The Department of State Police would have to provide information to a school district, ISD, or contracting person or entity requesting information for a criminal history check to the same extent as if the school district, ISD, or contracting person or entity were a school district making the request under the Revised School Code.

The board of the school district or ISD, in consultation with the director of the program and the principal of the school where the program was located, would have to develop, adopt, and annually review a policy concerning the program. At a minimum, the policy would have to address safety procedures for the program, including food safety, discipline, dispensing and storage of medication, and access to student emergency information and telephones. The board of the school district or ISD would have to make copies of the policy and of any annual reviews or revisions, available to the public.

By September 1 of each school year, the board of the school district or ISD would have to adopt and submit to the secretary of the ISD a resolution affirming that the program

and the corresponding policies complied with the bill. The submission would have to include a copy of the board's policy concerning the program.

By March 1, 2002, the Department of Education, in consultation with the Department of Consumer and Industry Services, would have to develop and make available to the public a model before- or after-school program policy that addressed human relationships; indoor environment; outdoor environment; activities; safety, health, and nutrition; and administration. In developing this policy, the Department of Education would have to give substantial consideration to similar factors in the requirements placed on child care centers under the child care licensing Act. A school district or ISD would not be required to use the model program policy.

Beginning July 1, 2002, the board of a school district or ISD would have to ensure that any written information published or distributed by the district concerning a before- or after-school program it operated included a statement in at least 10-point type notifying the public whether the program followed or deviated from the standards contained in the State model program policy.

### **House Bill 4619 (S-2)**

Under the child care licensing Act, "child care center" or "day care center" means a facility, other than a private residence, that receives one or more preschool or school-aged children for care for periods of less than 24 hours a day, and where the parents or guardians are not immediately available to the child, including a facility that provides care for not less than two consecutive weeks, regardless of the number of hours of care per day. A facility is generally described as a child care center, day care center, day nursery, nursery school, parent cooperative, preschool, play group, or drop-in center. "Child care center" or "day care center" does not include a religious class conducted by a religious organization or a facility operated by a religious organization, in which periods of attendance are limited as described in the Act.

The bill would add to these exceptions, beginning July 1, 2002, a facility or program for school-age children that was operated at school by a public school or by a person or entity with whom a public school contracted for services, according to provisions of the Revised School Code proposed by House Bill 4617.

MCL 380.1285a (H.B. 4617)  
722.111 (H.B. 4619)

### **BACKGROUND**

The administrative rules governing child care centers define "program director" as an adult responsible for developing, implementing, and directly supervising the total program for children (R 400.5101). In regard to a program director's qualifications, a center must ensure one of the following:

- The program director has completed at least 60 semester hours of credit at an accredited college or university and at least 12 semester hours in child development, child psychology, or early childhood education;
- The program director has been awarded the child development associate credential awarded by the Council for Early Childhood Professional Recognition or similar credential approved by the DCIS, and has completed at least 12 semester hours in child development, child psychology, or early childhood education at an accredited college or university;
- The program director has been awarded a Montessori credential by a Montessori teacher training institution recognized by the Montessori Accreditation Council for Teacher Education (R 400.5103).

### **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**

In many families, both parents are employed outside the home, and other families are single-parent households. In both of these situations, there might be a need for care and supervision of children after the end of the school day, but before parents return home from work. Also, in some cases, parents must

leave for work in the morning before classes begin. To address these situations, many school districts in Michigan offer programs that provide supervision and organized activities for children for a few hours, until school starts in the morning or until parents are able to take their children home in the afternoon. These school-based programs provide a safe environment for children at an affordable cost.

While before- and after-school programs should not be free from State regulation, they also should not be subjected to the sweeping rules that govern child care centers. School-based programs, after all, are operated by schools or under contract with schools, and are in facilities that accommodate children throughout the school day. Since school-based programs are not typical child care centers, it would make sense to tailor a separate set of standards to the needs of these programs. The bills represent a reasonable compromise between imposing overly broad rules on school-based programs and allowing them to operate without specific regulations. Some of the requirements in House Bill 4617 (S-4), such as those for staffing and daily activities, are quite similar to the rules. Other areas that are covered by the rules, such as discipline, medication, and indoor and outdoor environments, would be the subject of a policy developed by a school district or a model policy developed by the Department of Education. Furthermore, school districts would have to comply with requirements in the Revised School Code for criminal history checks on employees, something not specifically mandated by the present rules for child care centers. These provisions would ensure the safety of children without imposing unnecessary and burdensome requirements on school districts.

**Response:** It is understandable that school districts might have trouble finding enough program directors, given the low pay they receive and the criteria they must meet. Nevertheless, it is important to ensure that school-based programs would continue to be run by individuals with training and experience in child care. Since it appears that the program director requirements are the most problematic of the rules, perhaps the State should modify the rules to accommodate the needs of the school districts, instead of exempting school-based programs altogether from Public Act 116 and the rules.

### **Supporting Argument**

The bills would encourage communities to increase their use of school buildings, and solidify the facilities' rightful place as community centers. These buildings already are equipped and inspected with children in mind. Expanding their use would make the most of public investment for the benefit of more residents.

### **Opposing Argument**

All children are entitled to the same degree of health and safety protection. By exempting school-based child care programs from licensure requirements, the bills would relieve them of governmental oversight and accountability, and would remove any enforcement mechanisms that currently exist. Simply being in a school building and operated by a school district, or by someone under contract with a district, does not mean that a child care program would be part of the school program or would be run by qualified people, let alone educators. The bills contain virtually no criteria for program employees. Currently, at least one individual, the program director, must have specific credentials or educational credits. The bills, however, simply would require the presence of a minimum number of adults, who would be subject to criminal background checks.

Furthermore, requiring school districts and the Department of Education to develop policies does not mean that the policies would adequately safeguard children, meet their needs, or contain protections equivalent to the current rules. Even though the Department of Education would have to develop a model policy, and "give substantial consideration to similar factors" under Public Act 116, school districts would not have to follow the model policy, and the Department would have no oversight authority or responsibility.

**Response:** School districts ultimately would be accountable to the parents of children in the before- and after-school programs. Also, school policies would have to be available to the public, and districts would have to publicize whether they followed or deviated from the model policy. In addition, school boards would have to review their policies every year and affirm that they complied with the proposed requirements. Other states' experience has shown that government regulation is not a prerequisite for high-quality school-based child care programs.

### **Opposing Argument**

Although the bills would remove the licensing requirement for school-based programs, the proposed requirements would remain overly stringent. Requiring the presence of two adults whenever children were present would not always be feasible. If one staff member had to leave the premises briefly, and a child were injured during that time, the program's failure to meet this requirement could be a ground for liability. Also, since the proposed adult-to-child ratios are similar to those currently required, schools would get little or no relief in this respect. The requirement for daily activities and relationships also resembles the current rule, but it is questionable how this would be enforced. In addition, requiring every adult staff member to be certified in both CPR and first aid would be excessive; first aid training should be sufficient.

Finally, school districts that did not follow the model policy should not be required to publicize that fact. At this time, it is not known what the model policy would include, and a district's policy actually could be better than the model.

Legislative Analyst: S. Lowe

### **FISCAL IMPACT**

#### **House Bill 4617 (S-4)**

The bill would have no fiscal impact on the State.

If a school district or ISD were currently staffing these programs at higher ratios than the bill would allow, then there could be increased local costs to reduce the ratio to meet the requirements of the legislation. On the flip side, if districts or ISDs were staffing the programs at lower ratios, then cost savings could be realized if the districts or ISDs chose to increase the staff ratio to the ratio specified in the legislation.

In addition, districts or ISDs could face increased costs if they do not currently maintain two adult staffers at all times when children are present, or if programs currently offered do not provide opportunities for the developmental aspects described above. Requiring staff members to be certified in CPR and first aid could result in districts' having to

pay higher wages for these individuals, since they would have more skills.

#### **House Bill 4619 (S-2)**

The bill would eliminate the licensure of before- and after-school programs administered by a public school or by a contractor for the public school. There are approximately 800 of these programs currently. This change would result in a loss of fee revenue but also would result in a decrease of responsibility for the Department of Consumer and Industry Services. Therefore, there would be no net fiscal impact.

Fiscal Analyst: K. Summers-Coty  
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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.