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BILL ANALYSIS

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Senate Bills 925 and 926 (as introduced 10-20-09)  
Sponsor: Senator Buzz Thomas  
Committee: Education

Date Completed: 11-5-09

### **CONTENT**

**Senate Bill 925 would create Part 6E (Schools of Excellence) of the Revised School Code to do the following:**

- Allow an authorizing body (the board of a school district or intermediate school district, a community college, or a State public university) to issue a contract to organize and operate a school of excellence (SOE).
- Permit a person or entity that had operated a highly accredited public school academy or a public school in another state to receive a contract to organize and operate an SOE.
- Permit a limited number of contracts to be issued to a person or entity that did not meet that requirement.
- Permit a person or entity, if a school district rejected an application for a contract to organize and operate an SOE, to petition the board to have the question of issuing a contract placed on the ballot in the next school election.
- Require a contract for an SOE to include the school's educational objectives, the method of monitoring its performance, and other information.
- Permit the authorizing body to revoke a contract if an SOE failed to meet its educational objectives or other grounds existed.
- Prohibit an SOE from charging tuition or discriminating in its admission policies on any basis that would be illegal if used by a school district.
- Require an SOE to use certificated teachers, with some exceptions.

- Require employees of an SOE authorized by a school district to be covered by the collective bargaining agreements that applied to district employees in similar classifications in non-SOE schools.

The bill also would include an SOE within the Code's definitions of "public school" and "public school academy".

**Senate Bill 926 would amend the State School Aid Act to require transition payments to be made to a district for the first three full fiscal years that an SOE within the district was in operation, if membership at any SOE within the district exceeded a certain amount.**

The two bills are tie-barred to one another, and are described in detail below.

### **Senate Bill 925**

#### School of Excellence

An SOE would be a school district for the purposes of Article IX, Section 11 of the State Constitution (which established the State School Aid Fund) and for receiving school aid under the State School Aid Act. It would be subject to the leadership and general supervision of the State Board of Education over all public education under Article VIII, Section 3 of the State Constitution (which invests the Board with general supervision over all public education in the State except institutions of higher education). The SOE would be a body corporate and a governmental agency.

Except as described below, an authorizing body could not issue a contract to operate an SOE unless the person or entity had, for at least three years immediately preceding the date of application, operated a public school academy (PSA) that had received an accreditation grade of "A" on the annual school report card issued by the Department of Education, or unless the person or entity had operated a public school in another state that had been given the highest designation under that state's accountability system for at least three consecutive years.

An authorizing body could issue up to five contracts per calendar year to a person or entity that did not meet either of those requirements, although the combined total of contracts issued by all authorizing bodies under that provision could not exceed 25.

An SOE would have to be organized under the Nonprofit Corporation Act, except that it would not be required to comply with certain requirements of that Act that deal with education corporations and educational foundations.

To the extent disqualified under the State or Federal Constitution, an SOE could not be organized by a church or other religious organization and could not have any organizational or contractual affiliation with or constitute a church or other religious organization.

The authorizing body would be the fiscal agent for the SOE. A State school aid payment for an SOE would have to be paid to the authorizing body, which would then forward the payment to the SOE.

#### Authorizing Body

Any of the following could act as an authorizing body to issue a contract to organize and operate an SOE:

- The board of a school district that operates grades K to 12.
- An intermediate school board.
- The board of a community college.
- The governing board of a State public university.

The board of a school district or intermediate school district (ISD) could not issue a contract for an SOE to operate outside the district's or ISD's boundaries,

and the board of a community college could not issue a contract to operate an SOE outside the boundaries of the community college district or in a first class school district.

The board of a community college also could issue a contract for one SOE to operate on the grounds of an active or closed Federal military installation located outside the boundaries of the community college district, or could operate an SOE on the grounds of such a military installation, if the installation were not located within the boundaries of any community college district and the college previously had offered courses on the grounds of the military installation for at least 10 years.

Admission to an SOE authorized by the board of a community college on the grounds of a Federal military installation would have to be open to all pupils who resided in the county in which the installation was located.

#### Application

To obtain a contract to operate one or more SOEs, one or more people or an entity could apply to an authorizing body. The application would have to include the following:

- Identification of the applicant.
- A list of the proposed members of the SOE's board of directors and a description of the qualifications and methods for appointment or election of board members.
- The proposed articles of incorporation, which would have to include the name and purposes of the proposed SOE, the name of the authorizing body, the proposed time when the articles would be effective, and other matters considered expedient.
- A copy of the proposed bylaws of the SOE.
- Descriptions of staff responsibilities.
- An agreement that the SOE would comply with Part 6E and all applicable State and Federal law.
- A description of and address for the proposed physical plant in which the SOE would be located.

An application also would have to contain documentation meeting the application

requirements of the authorizing body, including the governance structure of the SOE; a copy of its educational goals, the curricula to be offered, and methods of pupil assessment to be used; and the admission policy and criteria to be maintained by the SOE.

An application to the board of a school district, ISD, or community college would have to identify the local and intermediate school districts in which the SOE would be located.

For an SOE authorized by a school district, the application would have to include an assurance that employees of the SOE would be covered by the collective bargaining agreements applicable to other district employees employed in similar classifications.

#### Fees

An authorizing body could not charge a fee, or require reimbursement of expenses, for considering an application, issuing a contract, or providing oversight of a contract in an amount that exceeded 3% of the total State school aid received by the SOE in the year in which the fees or expenses were charged.

#### Contract

An authorizing body would not be required to issue a contract to any person or entity. Contracts would be issued on a competitive basis taking into consideration the resources available, the population to be served, and the educational goals to be achieved by the proposed SOE.

If a person or entity applied to the board of a school district for a contract to organize and operate an SOE, and the board did not issue that contract, the applicant could petition the board to place the question of issuing the contract on the ballot, to be decided by the school electors of the district. The petition would have to be signed by at least 15% of the total number of school electors of that district. If the board received a petition that met those requirements, it would have to place the question on the ballot at its next regular school election held at least 60 days after receiving the petition. If a majority of the school electors voting on the question voted

to issue the contract, the board would have to issue the contract.

A contract issued to organize and administer an SOE would have to contain at least all of the following:

- The educational goals of the SOE and the methods by which it would be held accountable.
- A description of the method to be used to monitor the SOE's compliance with applicable law and its performance in meeting its educational objectives.
- A description of the process for amending the contract.
- All the information in the application for the contract.
- Procedures and grounds for revoking the contract.
- A description of and address for the proposed physical plant in which the SOE would be located.
- Requirements and procedures for financial audits, which would have to be conducted at least annually by a certified public accountant.

For an SOE authorized by a school district, the contract also would have to include an agreement that employees of the SOE would be covered by the collective bargaining agreements applicable to district employees in similar classifications in schools that were not SOEs.

An authorizing body would have to oversee, or contract with an ISD, community college, or State public university to oversee, each SOE operating under a contract issued by the authorizing body. If the State Board of Education found that an authorizing body was not engaging in appropriate continuing oversight, the State Board could suspend the body's power to issue new contracts to organize and operate SOEs. A contract issued by the authorizing body before the suspension would not be affected by the suspension.

#### Contract Revocation

A contract issued under Part 6E could be revoked by the authorizing body if it determined that one of the following had occurred:

- The SOE failed to abide by and meet the educational goals set forth in the contract.
- The SOE failed to comply with all applicable law.
- The SOE failed to meet generally accepted public sector accounting principles.
- One or more other grounds for revocation, as specified in the contract, existed.

The decision of an authorizing body to revoke a contract would be solely within the discretion of the body, would be final, and would not be subject to review by a court or any State agency. An authorizing body that revoked a contract would not be liable for that action to the SOE, the SOE corporation, a pupil of the SOE, the parent or guardian of a pupil, or any other person.

#### Powers & Duties of an SOE

An SOE would have to comply with all applicable law, including the Open Meetings Act, the Freedom of Information Act, and other specific statutes. An SOE and its incorporators, board members, officers, employees, and volunteers would have governmental immunity. An authorizing body and its board members, officers, and employees would be immune from civil liability, both personally and professionally, for an act or omission in authorizing the SOE if the body or the person acted or reasonably believed he or she acted within the authorizing body's or the person's scope of authority.

A school of excellence would be exempt from all taxation on its earnings and property, and conveyances to or from an SOE would be exempt from all taxation.

An SOE could not levy ad valorem property taxes or another tax for any purpose.

If a school district or ISD obtained a contract to operate one or more SOEs, its power to levy taxes would not be affected by the operation of the SOE. Revenue from taxes levied or bonds issued by a school district or ISD under the Code could be used to support the operation or facilities of an SOE in the same manner as that revenue may be used to support school district or ISD operations and facilities.

An SOE could acquire, hold, and own in its own name buildings and other property for school purposes, and other real and personal property as necessary or convenient to fulfill its purposes.

An SOE also could borrow money and issue bonds in accordance with the Code and the Revised Municipal Finance Act. Bonds would be full faith and credit obligations of the SOE.

An SOE could be located in all or part of an existing public school building, and could not operate except at the single site requested for the configuration of grades that would use the site, as specified in the contract.

#### Admission Policies

An SOE could not charge tuition, and could not discriminate in its pupil admissions policies or practices on the basis of intellectual or athletic ability, measures of achievement or aptitude, status as a student with a disability, or any other basis that would be illegal if used by a school district.

An SOE could limit admission to pupils within a particular age range or grade level or on any other basis that would be legal if used by a school district.

If the authorizing body were a school district, ISD, or community college, enrollment in the SOE could be open to all pupils residing in the State who met the admission policy, and would have to be open to all pupils residing within the geographic boundaries of the authorizing body who met the admission policy.

For an SOE authorized by a State public university, enrollment would have to be open to all pupils residing in the State who meet the admission policy.

If there were more applications to enroll in an SOE than there were spaces available, pupils would have to be selected to attend using a random selection process. Priority could be given to a sibling of a pupil enrolled in the SOE. An SOE would have to allow any pupil who was enrolled in the SOE in the previous year to enroll in the SOE in the appropriate grade unless that grade were not offered at the SOE.

An SOE could include any grade up to grade 12 or any configuration of those grades, including kindergarten and early childhood education, as specified in its contract. An SOE also could operate an adult basic education program, adult high school completion program, or general education development testing preparation program, if specified in its contract. The authorizing body could approve amendment of a contract with respect to ages of pupils or grades offered.

If an SOE were operated by a school district that was subject to a court desegregation order, pupil selection at the SOE would be subject to that order.

#### Teacher Certification

Except as otherwise provided by law, an SOE would have to use certificated teachers according to State Board of Education rule.

An SOE operated by a State public university or community college could use a noncertificated individual as a classroom teacher if the individual were a full-time tenured or tenure track faculty member employed by the university, or were a full-time member of the community college faculty who had at least five years' experience at that community college in teaching the subject matter that he or she was teaching at the SOE.

#### Teaching Techniques

An SOE could develop and implement new teaching techniques or methods, or significant revisions to known teaching techniques or methods, and would have to report those to the authorizing body and the State Board of Education, to be made available to the public.

#### **Senate Bill 926**

Under the bill, beginning with 2010-2011, for the first three fiscal years in which an SOE located within a school district was operating, if the number of pupils who resided in the district and were members of any SOE in the district exceeded 2% of the total district membership, the district would be eligible for a transition payment.

The amount of the payment would be calculated based on the district's total

membership and the per-pupil allocation for the SOE.

For the first full fiscal year in which an SOE located within the district was educating pupils, the amount of the payment would be 0.8 times the district's membership times the per-pupil allocation for the SOE under the State School Aid Act.

For the second full fiscal year, the amount of the payment would be 0.6 times the district's membership times the per-pupil allocation for the SOE.

For the third full fiscal year, the amount of the payment would be 0.4 times the district's membership times the per-pupil allocation for the SOE.

A district would not be eligible for a transition payment for more than the first three fiscal years that an SOE was operating within the district, although if a new SOE located in the district began operations after that three-year period, the district would be eligible to begin receiving a new transition payment for the new SOE.

MCL 308.5 et al. (S.B. 925)  
388.1603 et al. (S.B. 926)

Legislative Analyst: Curtis Walker

#### **FISCAL IMPACT**

##### **Senate Bill 925**

State: To the extent that the creation of schools of excellence yielded more students who were either retained in school or brought back into the public school system when they otherwise would have dropped out, the State would incur higher school aid budget costs, equal to the number of these students multiplied by the per-pupil foundation allowance. To the extent that students in public schools simply transferred from one school to another, there would be no State costs, though individual school districts' finances would be affected by the pupil migration.

The Department of Education would incur costs in administering the additional contract applications, similar to costs incurred now by the Charter Schools unit at the Department.

Local: As mentioned above, local school districts whose pupils decided to transfer to a new school of excellence would see declining revenue based on how many students transferred. This is similar to the phenomenon that exists under current law with respect to public school academies (i.e., charter schools).

up 80% of the per-pupil funding for students who transferred to the schools of excellence.

Fiscal Analyst: Kathryn Summers

### **Senate Bill 926**

State: As written, the bill would impose a fairly substantial cost on the State. The calculation for the transition payments in the bill would pay the resident district (not the school of excellence) a first-year transition payment equal to 80% of the district's *total* membership, multiplied by the foundation allowance of the school of excellence, if at least 2% of the resident district's pupils attended the school of excellence. For example, a resident district with 10,000 students and a school of excellence in its boundaries with a per-pupil foundation allowance of \$7,500 would receive a transition payment equal to 10,000 students X 80% X \$7,500, or \$60.0 million.

If the bill is intended (and rewritten) to require a transition payment commensurate with the number of pupils who transferred out of the resident district and into the school of excellence, then, in the example above, the payment to the resident district (if 5% of its students transferred to the school of excellence) would be 5% X 10,000 students X 80% X \$7,500, or \$3.0 million.

Currently, approximately 105,000 pupils attend 233 charter schools. If 25 new schools of excellence were opened with a total population around 11,000 students (proportionately equivalent to the numbers of students currently attending charter schools), and if those schools drew at least 2% of the resident districts' pupils (triggering the transition payment) and if the language were amended to reflect the second calculation described above, the bill could cost up to \$66.0 million statewide, with payments distributed to affected districts.

Local: Local districts receiving transition payments as described above would see increased revenue equal to the transition payments, but (in the second calculation) would have a net loss in district funding since the transition payments would make

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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.