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SFA BILL ANALYSIS

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Senate Bill 157 (as reported without amendment)
Sponsor: Senator Martha G. Scott
Committee: Education

Date Completed: 4-2-03

RATIONALE

Public Act 10 of 1999 amended the Revised School Code to create an appointed "school reform board" for the Detroit school district. The Act required the Mayor of Detroit to appoint a seven-member school reform board consisting of the State Superintendent of Public Instruction and six other members, a majority of whom must be electors of the school district. The Act then required the reform board to appoint, by unanimous vote, a chief executive officer (CEO), who assumed the powers, rights, duties, and obligations of the 11-member elected board. The reform board and the appointed CEO effectively replace the elected board for a period of five years, after which the question of retaining the appointed board and the CEO for another five years is to be decided by the voters of Detroit. If the voters decide against retaining them, a new board will be elected.

The vote on whether to retain the school reform board and its CEO, currently Dr. Kenneth Burnley, presently is scheduled to take place at the November 2004 general election. Some want to accelerate this vote because they question the appointed board's legitimacy, they believe that the board has not made significant improvements to the school system, or they consider the issue a distraction to meaningful reform efforts.

CONTENT

The bill would amend the Revised School Code to require that the question of whether to retain the school reform board and chief executive officer of a first class school district, and the authority to appoint them, be placed on the ballot at the August 2003 primary election in the city in which the district is located. Currently, that question must be placed on the ballot in the November 2004 general election. (The Code defines a district of the first class as one with a pupil membership of at least 100,000, i.e., the Detroit Public Schools.)

Under the Code, if the ballot question is approved by a majority of the school electors voting on it, all of the following apply: The school reform board and the chief executive officer continue in place in the district; the authority of the mayor to appoint members of the school reform board continues; and the question may be placed on the ballot again after the expiration of five years following the election at which the question is approved, if sufficient petitions are filed.

If the ballot question is not approved, the school reform board must arrange with local election officials for the election of a new elected school board for the school district. This election must be at a special election held as soon as practicable, but not sooner than 90 days after the election on the ballot question.

The bill would retain these provisions.

MCL 280.375

BACKGROUND

In September 1999, a lawsuit challenging Public Act 10 was filed in the United States District Court for the Eastern District of Michigan (*Moore, et al.* v *Detroit School Reform Board, et al.*) The complaint alleged the following:

1) The Act violated the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution and a similar provision in the

Michigan Constitution by denying Detroit's citizens the right to vote for their city's school board and by prohibiting Detroit's elected school board members from being appointed to the school reform board.

2) The Act deprived Detroit's citizens of the right to vote on the basis of their race, in violation of Section 2 of the Federal Voting Rights Act (which provides that "[n]o voting qualification or prerequisite to voting or standard, practice, or procedure shall be imposed or applied by any State or political subdivision in a manner which results in a denial or abridgment of the right of any citizen of the United States to vote on account of race or color...").

3) The Act violated the Fourteenth and Fifteenth Amendments to the U.S. Constitution and the Equal Protection Clause of the Michigan Constitution because it allegedly was enacted with the intent of denying Detroit's citizens the right to vote on account of their race.

4) The Act conflicted with Article IV, Section 29 of the Michigan Constitution because it was a local act that was not approved by a two-thirds vote of the Michigan Legislature and a majority vote of Detroit's citizens.

5) The Act deprived Detroit's citizens of their right to elect a school board in violation of the Due Process Clause of the Fourteenth Amendment to the U.S. Constitution and a similar provision in the Michigan Constitution.

6) The defendants violated the First Amendment to the U.S. Constitution by, among other things, penalizing Detroit's voters for opposing the plans of then-Governor Engler and then-Detroit Mayor Archer.

In August 2000, the defendants filed motions for summary judgment, and the plaintiffs filed a motion for partial summary judgment. After conducting a hearing on the motions, the District Court granted summary judgment in favor of the defendants in October 2000. The plaintiffs appealed all aspects of that decision except the Court's dismissal of the First Amendment claim. On June 12, 2002, the U.S. Court of Appeals for the Sixth Circuit affirmed the decision of the District Court.

On February 24, 2003, the United States Supreme Court denied leave to appeal.

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

When Public Act 10 was enacted, its opponents claimed that the legislation was a hostile takeover that violated the right of voters to choose their own local school officials. They argued that such a move violated the Voting Rights Act and provisions of the United States and Michigan Constitutions. Further, they claimed that the Detroit Public Schools neither was the worst district nor the worst urban district in the State, and that the legislation did not set objective performance standards by which *any* school district in Michigan would be considered eligible for takeover by the State.

Despite the outcome of the legal challenge to Public Act 10, the Act in effect disenfranchised the citizens of Detroit. Essentially, Detroit residents have experienced taxation without representation for nearly four years. Moving up the date of the election to retain or remove the reform board and its CEO from November 2004 to August 2003 would restore Detroiters' voting rights over a year earlier than presently scheduled.

Supporting Argument

Four years after the enactment of Public Act 10, the reform board has failed to institute significant improvements. In fact, Detroit public schools were in better shape prior to 1999. For example, the district had a $93 million budget surplus at the end of the 1997-98 fiscal year; reportedly, it is now $100 million in the red. Then, graduation rates were increasing; according to testimony before the Senate Education Committee, they are now decreasing. Michigan Education Assessment Program (MEAP) scores were on the rise before the takeover; now, compared with other districts' scores, they are declining.

Further, under the management of the reform board, $80 million in bond money went toward "summer clean-up programs" instead of brick-and-mortar improvements. These programs spent money intended for infrastructure

improvements on mowing grass and washing floors. Allegedly, the reform board continued to misuse money by allocating $1.53 million to media relations. Simply put, the reform board has reformed little or nothing. It is time to give the people of Detroit a chance to replace the appointed board with one elected by the people.

Supporting Argument

The establishment of the school reform board has resulted in a wall of bureaucracy that has estranged citizens. Some parents now find it more difficult to resolve conflicts with teachers, and a contractor testified that he had difficulty meeting with the reform board to discuss collecting money he was owed. The fact that these officials are not elected seems to immunize them from the checks and balances that a democracy is supposed to provide.

Opposing Argument

According to its proponents, Public Act 10 primarily was designed to raise student achievement in the Detroit public school system by rooting out ineffectual management and focusing decision-making and accountability on a single elected official, the Mayor of Detroit. Supporters of the Act cited statistics demonstrating that the Detroit schools were plagued by high drop-out rates, poor test scores, crumbling buildings, and misuse of public funds. Many claimed that constant differences among elected school board members and school administrators got in the way of significant school reform.

In other words, the Detroit public schools were in terrible shape before the reform board was created. A $1.5 billion construction bond issue passed in 1994 went largely unspent: An April 1998 audit revealed that, in four years, school management had spent a mere $6.3 million, with little visible results. Some of this must be blamed on the 11-member elected board, which spent much of its time disagreeing while schools endured leaky roofs and lack of supplies. Dr. Burnley, however, and his predecessor, Dr. David Adamany, have worked hard to rebuild the system. According to an article in *The Detroit News* (3-31-03), Dr. Burnley has implemented new financial controls, kept the books balanced, modernized school facilities, and closed old and underused schools. The reform program is just over two-thirds of the way through its tenure and should be allowed to play out its full five years. Requiring an election this summer would impede improvement efforts that are under way.

Legislative Analyst: Claire Layman

FISCAL IMPACT

The bill would have no fiscal impact on State government. If the question were on the ballot of an already scheduled election, such as a primary election as stated in the bill, then there would be no additional cost. However, if the question were presented on its own in a special election, the cost to the City of Detroit to hold the election would be an estimated $1.2 million to $1.5 million, according to recent election costs.

Fiscal Analyst: Joe Carrasco

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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.