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SFA



BILL ANALYSIS

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Senate Bill 20 (Substitute S-1)
Senate Bill 21 (as introduced 1-30-01)
Sponsor: Senator Glenn D. Steil
Committee: Education

Date Completed: 10-29-01

CONTENT

Senate Bill 20 (S-1) would amend the Single Business Tax Act to do the following:

- Permit a taxpayer, for tax years beginning after December 31, 2001, and before January 1, 2024, to claim a credit for 10% of the amount of contributions to a public school facility authority (which a school district could create under Senate Bill 21).
- Exclude from "business income" income received under a lease with a public school facility authority from a school facility not owned by the authority.

Senate Bill 21 would create the "Public School Facility Authority Act" to do the following:

- Permit a public school district, other than a public school academy, to establish a public school facility authority.
- Specify that a school district would have to be located in a city that had a population over 170,000 and was the most populous city in a county with a population over 500,000 (i.e., the Grand Rapids City School District).
- Provide for the appointment of a five-member authority board.
- Specify duties of the authority, including receiving public school facilities from the district for a nominal fee; leasing public school facilities to the district for a nominal fee; selling, leasing, or purchasing property for projects involving a public school facility; and developing a public school facility.

- Create a public school facility authority fund.
- Prohibit the authority from levying a tax.
- Exempt from State and local taxes property of the authority, including property it leased to or from private persons.

The bills are tie-barred to each other.

Senate Bill 20 (S-1)

The bill would amend the definition of "business income" in the Single Business Tax (SBT) Act to provide that business income would not include income received or accrued by a taxpayer pursuant to a lease agreement with a public school facility authority from a public school facility that was owned by an entity other than that authority.

In addition, for tax years beginning after December 31, 2001, and before January 1, 2024, a taxpayer could claim a credit against the SBT equal to 10% of the amount the taxpayer contributed during the tax year to the authority. If the credit for a tax year and any carryforward of the credit exceeded the taxpayer's liability for the tax year, the excess portion could not be refunded but could be carried forward to offset tax liability in subsequent tax years for 10 years or until used up, whichever occurred first. The credit would have to be calculated after all other credits allowed under the Act were applied.

An affiliated group as defined in the Act, a controlled group of corporations as defined in the Internal Revenue Code and Federal regulations, or an entity under common control as defined in the Code, would have to

consolidate the eligible income or the contributions of the members of the affiliated group, member corporations of the controlled group, or entities under common control, and could claim only one credit under the bill whether or not a combined or consolidated return was filed.

The Department of Treasury would have to develop procedures to implement the bill.

Senate Bill 21

Creation of Authority

By resolution of the local school board, a district could establish a public school facility authority. On the date on which all of the certified copies of the resolutions establishing the authority were filed with the Secretary of State, the authority would be created. ("District" would mean a public school district located in whole or in part in a qualified city. A district would not include a public school academy. "Qualified city" would mean a city with a population of more than 170,000 that was the most populous city in a qualified county. "Qualified county" would mean a county with a population of more than 500,000 that contained a qualified city and that was not a charter county or a county with an optional unified form of government.)

Authority Board

The powers, duties, and functions of the authority would be vested in a board, which would consist of the following five members:

- Two members who were residents of the qualified city appointed by the local school board of the district, including one who was a member of the school board.
- One member who was a resident of the qualified city appointed by the mayor with approval of the city's legislative body.
- Two members who were residents of the qualified county appointed by the first three members at the first meeting of the board as the first item of business. These two members would have to be selected from a list of five candidates submitted by the board of directors of the chamber of commerce located in the qualified city. At least one would have to have experience in facilities management or construction. Every two years after the first appointment,

one member would have to be appointed at the first meeting of the board after the member's term expired.

Board members would be appointed for a term of four years, except that one member initially appointed by the local school board and one from the qualified county would have to be appointed for two-year terms. Subsequent members would have to be appointed for a term of four years.

Notwithstanding a charter provision of the qualified city to the contrary, a member of the legislative body or other city official of the qualified city would be eligible to serve as a member of the board.

Board members would have to serve without compensation. The district would have to provide administrative staff to the authority. The district could receive reimbursement for reasonable and necessary administrative expenses.

Records, material, or other data received, prepared, used, or retained by the authority that related to financial or proprietary information that was identified by the person submitting it and acknowledged by the board as confidential would not be subject to the disclosure requirements of the Freedom of Information Act. The board would be subject to the Open Meetings Act, but could meet in closed session pursuant to that Act to determine whether it acknowledged as confidential any financial or proprietary information submitted and considered by the person submitting it as confidential. ("Financial or proprietary information" would mean information that had not been publicly disseminated or that was unavailable from other sources, whose release could cause the person submitting the information competitive harm.)

Duties of the Authority

The authority could do all things necessary or convenient to carry out the purposes, objectives, and provisions of the bill and the purposes, objectives, and powers delegated to the authority or the board by other laws or executive orders, including receiving public school facilities from the district for a nominal fee; leasing public school facilities to the district for a nominal fee; developing a public

school facility; reimbursing the district for reasonable and necessary administrative expenses soliciting, receiving, and accepting from any source gifts, grants, loans, or contributions of money, property, or other things of value, and other aid or payment; and participating in any other way in a Federal, State, or local government program.

("Develop" would mean, unless the context clearly indicated a different meaning, to defray all or a part of the cost of purchasing, erecting, completing, remodeling, or equipping or reequipping school buildings, including library buildings, structures, athletic fields, playgrounds, or other facilities, or parts of or additions to those facilities; furnishing or refurbishing new or remodeled school buildings; and acquiring, preparing, developing, or improving sites, or parts of or additions to sites, for school buildings.)

The authority could hold, clear, remediate, improve, maintain, manage, control, sell, exchange, mortgage, and hold mortgages on and other security interests in, lease, as lessor or lessee, and obtain or grant easements and licenses on property that the authority acquired. A sale, exchange, lease, or other disposition of authority property would have to be to a person for a project involving a public school facility, which would have to be placed on that property in the form of a recordable restrictive covenant effective for not more than 20 years, except for property acquired by the authority and later determined by it not to be necessary for a public school facility, which could be sold or otherwise disposed of. Property being sold would have to be offered first to the district in which the property was located for the nominal fee for which it had been acquired, if the property had been acquired from the district. If property were sold, exchanged, or leased to a person to develop a project involving a public school facility, that person would have to execute an agreement, in recordable form, giving the authority a right of first refusal to reacquire the property for the same amount for which it was acquired from the authority if the property were sold, exchanged, leased, or transferred. Temporary or permanent interests, licenses, or other appropriate interests in property acquired by the authority could be conveyed or granted by the authority for utility, vehicular, or pedestrian traffic facilities, or related purposes not inconsistent

with the bill. The authority would not have the power to condemn property.

The development of a public school facility under the bill would be subject to Public Act 306 of 1937 and not to the Single State Construction Code Act. (Public Act 306 regulates the construction and remodeling of school buildings, and requires plans and specifications to be approved by the State Superintendent of Public Instruction.)

An authority established under the bill could not levy a tax.

The authority's accounts would be subject to annual audits by the State Auditor General or a certified public accountant selected by the authority. Copies of the audits would have to be forwarded annually to the State Treasurer, as provided in the Uniform Budgeting and Accounting Act. Records would have to be maintained according to generally accepted accounting principles. The authority would have to prepare and adopt an annual budget.

Other Provisions

The bill would create a public school facility authority fund for the authority, which would have to deposit all money received into the fund.

The bill states that property of the authority would be public property devoted to an essential public and governmental function and purpose, and income of the authority would be for a public purpose.

The authority's property, income, and operations would be exempt from all taxes of the State or a political subdivision of the State. Property of the authority that was leased to private persons would be exempt from any State or local tax. Property of the authority and property leased by the authority for use as a public school facility would be exempt from any ad valorem property taxes collected under the General Property Tax Act.

If the authority completed the purposes for which it was organized, it would have to be dissolved by resolution of the board. The authority's property and assets remaining after the satisfaction of the obligations of the authority would belong to the district in which the property was located.

Legislative Analyst: S. Lowe

FISCAL IMPACT

The bills would reduce State General Fund revenues by an unknown amount. The bills would affect single business tax revenues in two ways: 1) by exempting income received from a lease with a public school facility authority for property not owned by the authority, and 2) by creating a credit for donations to an authority. No precise information is available regarding how many taxpayers would use these provisions or would engage in new business activity with an authority, or the extent to which revenues would be affected.

The bills would affect business activity in two ways, both of which would reduce SBT revenues: 1) by enabling businesses to shift current business activities to take advantage of the credit and the income exemption, and 2) by stimulating new business activity through the exemptions and credits. New business activity related to the credit for donations and the acquisition of property would reduce revenues. New income generated by the bills would not affect revenues since by assumption such activity will not otherwise take place and no revenues will be realized. Shifts in existing economic activity to take advantage of the bills' provisions also would reduce revenue.

The Grand Rapids City School District is the only district in Michigan that would be able to create a public school facility authority under the bills. The following example illustrates the impact the bills could have. A recent proposal from the school district to renovate and expand four school buildings was estimated to cost \$40 million, less \$5.5 million for "value engineering" on the part of the contractors and developers. Further, according to data from the Michigan Department of Education, the Grand Rapids City School District spent approximately \$5 million in capital outlay funds. Assuming:

- 1) a business purchasing property from the authority would recoup its costs by leasing the property back over a 10-year period,
- 2) once the lease was completed, the property would be donated back to the

- authority, and
- 3) certain additional factors regarding the relationship between property values and the construction and renovation costs,

the bills would reduce net SBT revenues by \$0.9 million in the first year, approximately \$0.1 million per year afterward until the lease was completed, and an additional \$14.4 million in the year of the donation. In the year of the donation, the business also would experience a reduction in Federal tax liability of \$33.8 million. Under the bills, over the course of the 10 years, the business would receive \$49.2 million in State and Federal tax benefits from making \$40 million in renovations to the property.

Single business tax revenues would be reduced in four ways, only two of which would be created by the bills; the remaining losses would stem from current tax provisions that would apply to the business activity created/alterd by the bills: 1) the exemption for income from the lease, 2) the tax credit from the donation of facilities, 3) the investment tax credit that the business could claim upon purchasing the property, and 4) a reduction in the tax base in the year of the donation because the donation would be qualify as a charitable contribution, thus lowering both the Federal corporate income tax base and the SBT tax base.

The bills also would have an unknown fiscal impact on the Grand Rapids City School District and the City of Grand Rapids. To the extent that the Grand Rapids City School District would participate in arrangements with a public school facility authority, the district could experience changes in the timing and/or levels of certain expenses or revenues. The bills do not clearly describe how the authority would ensure that it had sufficient funds to cover the lease payments, given the increase in property values resulting from the improvements; so local units could experience some increase in expenses in the long term if the local units had to transfer funds to the authority to cover the lease payments.

The school district also could experience reduced costs associated with developing public school facilities if the proposed authority were able to generate more gifts, grants, loans, or contributions than the district otherwise may generate on its own. It is

unknown how "successful" the authority would be in reducing costs of development compared with members of the school district or the district itself seeking such assistance.

In addition, the School Aid Fund and local units within Grand Rapids could experience temporary increases in revenue from property taxes under the bills. While the affected properties are currently exempt and Senate Bill 20 (S-1) would extend the exemption to property owned by the authority or public school facilities leased by the authority, there could be periods in which the property was owned by a business but not yet ready for lease as a public school building. During any such periods, the business would pay property taxes to local units and would pay the State education tax. In the example above, the property taxes could total as much as \$3.8 million, of which approximately \$500,000 would be State education tax. The bills also could possibly increase School Aid Fund revenues under the real estate transfer tax since it is unclear whether the business would be responsible for such a tax upon donating the property to the authority. If the donation were subject to tax, the School Aid Fund would receive an additional \$930,000 under the example above.

Senate Bill 20 (S-1) does not define what would constitute a contribution for purposes of the proposed credit. If a contribution could include amounts contributed even if consideration were received, then the reduction in SBT revenues would be even greater. Similarly, if the bills were interpreted to allow transfer agreements between the authority and the business to be executed at below-market values in exchange for contributions, such agreements would reduce SBT revenues by a greater amount.

This estimate is preliminary and will be revised when more information is available.

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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.