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SFA**BILL ANALYSIS**

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Senate Bill 1249 (Substitute S-1 as passed by the Senate)
House Bill 5272 (Substitute S-1 as reported)
Sponsor: Senator Shirley Johnson
Representative Randy Richardville (House Bill 5272)
Senate Committee: Education
House Committee: Education (House Bill 5272)

Date Completed: 11-27-00

RATIONALE

In order to cover teachers who are absent from the classroom due to illness, for personal reasons, or to participate in professional development activities, school districts hire substitute teachers to assume teaching duties temporarily. Generally, school districts accept applications from prospective substitute teachers, review credentials, and submit the applications to the Department of Education for review and the issuance of permits. Districts then develop a list of substitute teachers who are available daily for substitute teaching assignments. In some cases, school districts contract with intermediate school districts to provide teacher search and assignment services. Many school districts across the State apparently have had difficulty in finding a sufficient number of substitute teachers. For example, in 1999 the Southfield Public Schools reportedly experienced a shortage of substitute teachers on 25 school days. Daily shortages in that district ranged from 10 to as many as 21 unfilled positions. Anchor Bay School District officials reported that they need about a dozen substitutes a day to cover classes for teachers who are attending professional development activities or are unavailable due to illness. In other school districts where there is a shortage of full-time teachers, certificated teachers who made up a pool of available personnel to serve as substitutes have been hired for the full-time teacher positions, resulting in a lack of available substitutes.

The shortage of substitutes has been attributed to substandard pay, difficult working conditions, and numerous alternative job opportunities. Because finding an adequate number of qualified substitute teachers is difficult in some school districts, it has been suggested that school districts be allowed to contract with temporary-staffing agencies to help find people who may be interested in serving as substitute teachers, and that qualifications required of substitute teachers be eased to create a larger pool of available candidates.

Senate Bill 1249 (S-1) would amend the Revised School Code to:

- Permit the board of a school district or an intermediate school district (ISD) to enter into a contract with a person or entity for it to furnish substitute teachers to the school district or ISD as needed to carry out its operations.
- Specify provisions that would have to be included in a contract to furnish substitute teachers.
- Permit a district or ISD that contracted for substitute teachers to purchase liability insurance.
- Exempt substitute teachers from the Code's provisions on hiring and contracting with qualified teachers, including a requirement that a person hold a valid teaching certificate when a contract begins.
- Exempt substitute teachers who were employed by or under contract with a person or entity that contracted with a district or ISD from the Code's provisions on leave time, salary, and hiring privileges for substitute teachers.

CONTENT

House Bill 5272 (S-1) would amend the Revised School Code to permit the board of a school district or ISD to employ as a substitute teacher a person without a teaching certificate if the person had at least 90 hours in a planned program, up to 60 credits of which could be taken at an accredited community college and the balance at an institution having an approved teacher education program.

Currently, a school board or ISD board may employ a person without a teaching certificate as a substitute teacher if he or she has at least 90 semester hours of college credit from a college or university. The bill would retain this provision.

A more detailed description of Senate Bill 1249 (S-1) follows.

A contract would have to include the following provisions:

- Assurance that the person or entity would furnish the school district or ISD with certificated teachers in accordance with the Revised School Code and rules promulgated under it.
- Assurance that the person or entity would not furnish to the school district or ISD any teacher who, if employed directly by the school district or ISD, would be ineligible for employment as a substitute teacher under the Code.
- A description of the level of compensation and fringe benefits to be provided to employees of the person or entity who were assigned to the school district or ISD as substitute teachers.
- A description of the type and amounts of insurance coverage to be secured and maintained by the person or entity and the school district or ISD under the contract.

("Entity" would mean a partnership, nonprofit or business corporation, labor organization, limited liability company, or any other association, corporation, trust, or other legal entity.)

The contract also would have to include assurance that before assigning a person to serve as a substitute teacher in the school district or ISD, the person or entity would have to comply with the Code's requirements that a criminal history check of employment applicants be conducted. (The Code requires the board of a school district, local act school district, or ISD or the governing body of a public school academy or nonpublic school upon making an offer to a person of initial employment as a teacher or a school administrator or for a position requiring State Board of Education approval, to request from the Criminal Records Division of the State Police a criminal history check on the person, and before employing him or her as a regular

employee to have received the report from the State Police (MCL 380.123). In addition, a board or governing body must request the State Police to conduct a criminal records check through the FBI on an applicant, or person who is hired, for a position as a teacher or a school administrator or in a position requiring State Board approval (MCL 380.1230a).)

The person or entity would have to comply with respect to the individual to the same extent as if the person or entity were a school district employing the person as a substitute teacher, and would have to give the school district or ISD board the criminal history record information and the results of the criminal records check. The State Police would have to provide information to a person or entity requesting information under the bill to the same extent as if the person or entity were a school district making the request under the Code.

A school district or ISD that contracted with a person or entity for it to furnish substitute teachers could purchase liability insurance to indemnify and protect the district or ISD and the person or entity against losses or liabilities incurred by the district or ISD and the person or entity arising out of any claim for personal injury or property damage caused by the school district or ISD, its officers, employees, or agents. A school district or ISD could pay premiums for the insurance out of its operating funds. The bill specifies that the existence of any insurance policy indemnifying the school district or ISD and the person or entity against liability for damages would not be a waiver of any defense otherwise available to the school district or ISD in the defense of the claim.

The Code requires a school district to hire and contract with qualified teachers. Contracts must be in writing and signed on behalf of the school district; specify the agreed upon wages; and, be filed with the school board secretary with a copy furnished to the teacher. In addition, the Code specifies that a contract with a teacher is not valid unless the person holds a valid teaching certificate at the time the contractual period begins. A contract must terminate if the certificate expires by limitation and is not renewed immediately or if it is suspended or revoked by proper legal authority. The Code also permits a school board, after a teacher has been employed by the board for at least two years, to enter into a continuing contract with a certificated teacher. The bill specifies that under these provisions, "teacher" would not include a substitute teacher.

In addition, the Code provides that if a teacher is employed as a substitute with an assignment to one specific teaching position, then after 60 days of service in that assignment the teacher must be granted, for the duration of that assignment, leave time and other privileges granted to regular teachers

by the school district, including a salary that is not less than the minimum salary on the current salary schedule for that district. Also, a teacher employed as a substitute teacher for at least 150 days during a legal school year of at least 180 days, or employed as a substitute for at least 180 days in an ISD that operates any program for at least 220 days, must be given during the balance of the school year or during the next legal school year only, the first opportunity to accept or reject a contract for which the substitute teacher is qualified, after all other teachers of the district are reemployed in conformance with the terms of a master contract. The bill specifies that these provisions would not apply to a substitute teacher who was under contract with or employed by a person or entity that contracted with a school district or ISD pursuant to the bill.

Currently, a contract in a primary school district must require a teacher to keep certain information about pupils, grades, and attendance, which must be filed with the ISD superintendent and the board secretary at the end of the school year. A teacher in a primary school district is not entitled to receive the last payment for services until this report has been filed. The bill would delete these provisions.

MCL 380.1231 et al. (S.B. 1249)

MCL 380.1233 (H.B. 5272)

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

A series of Attorney General opinions issued over the past 38 years plus a 1979 judgment of the Oakland County Circuit Court have prohibited school districts from contracting with private employment agencies to provide substitute teachers. The most recent Attorney General opinion on this subject (Opinion No. 6915 of 1996) considered whether public school academies were subject to the Revised School Code's requirement that a school district "hire and contract with qualified teacher" (MCL 380.1231). The Attorney General noted that this provision had been interpreted as requiring school districts to contract directly with their teachers and prohibiting districts from contracting with an outside company to provide a school district with teachers who are employees of the company. The opinion also noted that in 1979 the Oakland County Circuit Court held that "school districts lack any lawful authority to contract with private agencies for the providing of substitute teachers" (*Scott Educational Services v Frank Kelley and Michigan, Berkley & Ferndale Education Assns.*). Michigan apparently is the only

state that prohibits school districts from contracting with employment agencies for services in which the agency solicits and hires substitute teachers. While school districts may use the assistance of another entity, such as an agency of a local ISD, to find substitute teaching candidates, only school districts can hire these individuals. Under the Senate bill, a school district could contract with an employment agency to provide substitute teachers who would be employees of the agency and could receive any benefits offered by the agency.

Response: While school districts may not contract with an employment agency for it to provide substitute teachers who are employees of the agency, districts may contract with an agency to search for individuals who could be hired as substitute teachers by the districts.

Supporting Argument

Some people estimate that the daily shortage of substitute teachers in public schools across the State ranges from 10% to as high as 20%. The shortage is attributed to relatively low pay, with substitutes earning statewide an average of \$65 a day. Substitute teachers also lack job security in a system where even long-term substitutes who work in one assignment for more than half a school year are not guaranteed a full-time job for the next school year. School districts seeking substitute teachers also must contend with a tight job market that offers alternative career opportunities to persons who otherwise might seek employment as substitute teachers. Given these factors, many school officials are frustrated over the time and effort required to find qualified individuals to staff classrooms on a temporary basis. A private temporary employment agency would be able to expand a school district's list of substitutes by using various means of advertising and contacts through other organizations, which might not be available to school districts. In addition, an agency could attract new substitutes by offering health benefits, vacation pay, and tax-deferred savings opportunities such as 401(k) plans, as well as other jobs when no substitute positions were available. While a school district would have to pay the agency a fee for this service, the district could use its administrative, teaching, and support staff more effectively instead of covering classes for absent teachers or using time to find qualified substitutes.

Response: It is not clear how temporary-staffing agencies could overcome substitute teacher shortages without some help from the school districts. If shortages are the result of substandard pay, for example, hiring a temporary agency would not change that, unless school districts were willing to increase pay for substitutes. School districts do not need the bill to increase substitute pay. In addition, a substitute who was hired by an agency and not a school district would be exempt from some

of the provisions of the Revised School Code, including provisions on teachers' contracts, leave, and salary. Thus, substitutes hired by private agencies could work in a school district but not have the opportunity to gain employment as a permanent teacher or earn contractual wages. Furthermore, substitute teachers hired by a school district can accrue retirement for their service. While an agency could permit substitutes to enroll in a tax-deferred savings plan, this would not be the same as a retirement plan. Furthermore, there is no guarantee that every employment agency would offer employee benefits, such as health insurance or tax-deferred savings programs.

Supporting Argument

To help alleviate the apparent shortage of substitute teachers and make the recruitment of substitutes easier, the qualifications required of a substitute should be changed. House Bill 5272 (S-1) would recognize that many people's college careers include study at a community college. Because many of the courses offered at two-year institutions are similar in content to those offered at four-year colleges and universities, people who have earned up to 60 credit hours at a community college often have the same knowledge of course content as those who earned the same credits at a four-year institution. Changing the minimum qualifications for substitute teachers to include community college course work could increase the number of individuals eligible for employment as substitute teachers.

Opposing Argument

Community colleges offer a wide variety of courses ranging from core academics, to vocational training and adult enrichment. While vocational and adult enrichment courses have educational value, they may not be appropriate in a teacher training curriculum. House Bill 5272 (S-1) does not specify the required content of the courses, which could result in people serving as substitute teachers even if their educational background was not academically appropriate for a classroom teacher. Furthermore, the bill would further weaken the qualifications for substitute teachers at a time when there is a demand for increased accountability in education. Before the Revised School Code was adopted in 1995, a substitute teacher who did not hold a valid teaching certificate had to have completed 120 semester hours at an accredited institution, including six hours of professional educational credit. If the State declared a district to be in an emergency due to a lack of substitutes, people could work as substitutes if they held a bachelor's degree with no educational credits or if they were in teacher education programs and had completed 90 hours toward certification.

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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.

The Revised School Code reduced these requirements to permit the board of a school district or ISD to employ a person without a teaching certificate if he or she has at least 90 hours of college credit from a college or university. Also, the bill would require a person to have at least 90 hours in a "planned program", but it does not define that term.

Response: Due to a shortage of substitute teachers, many school districts have to rely on staff members who are not educators to cover classes when teachers are absent, or have to combine classes so that one teacher can monitor several classes at once. Neither case is conducive to good learning. With House Bill 5272 (S-1), schools could hire individuals who are interested in working with children in a classroom setting.

Legislative Analyst: L. Arasim

FISCAL IMPACT

Senate Bill 1249 (S-1)

The bill would have no fiscal impact on State government.

A school district could realize a small saving if the cost of contracting for substitute teachers were less than the current cost of paying substitute teachers per diem wages. The amount of the possible saving would vary from district to district depending on the current wages paid to substitute teachers.

House Bill 5272 (S-1)

The bill would have no fiscal impact on State or local government.

Fiscal Analyst: J. Carrasco