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BILL ANALYSIS

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House Bill 4402 (Substitute H-3 as passed by the House)
House Bill 4928 (Substitute H-1 as passed by the House)
House Bill 4930 (Substitute H-1 as passed by the House)
House Bill 4991 (as passed by the House)
Sponsor: Representative Goeff Hansen (H.B. 4402)
Representative Brian Palmer (H.B. 4928)
Representative Kevin Elsenheimer (H.B. 4930)
Representative Judy Emmons (H.B. 4991)

House Committee: Education
Senate Committee: Education

Date Completed: 8-25-05

CONTENT

The bills would amend the Revised School Code and the teachers' tenure Act to revise criminal background check requirements for school employees. The bills would do all of the following:

- Extend a requirement that certain applicants for school employment undergo criminal background checks to any applicant for school employment and individuals being assigned to work under contract in a school.
- Prohibit a school district, intermediate school district (ISD), public school academy (PSA), or nonpublic school from employing a person who had been convicted of a "listed offense" under the Sex Offenders Registration Act (SORA) (described in **BACKGROUND**, below).
- Provide that a teacher's tenure rights would be subject to requirements pertaining to license suspension for certain convictions and notification of those convictions.
- Include some SORA listed offenses in the crimes for which the Superintendent of Public Instruction must summarily suspend a person's teaching certificate or State Board of Education approval.
- Provide for the suspension of wages of a person who continued to work under a teaching certificate or State Board approval pending administrative proceedings after a

conviction for certain crimes, and the forfeiture of those wages if the person's certificate or approval were suspended or revoked.

- Prohibit the reinstatement of a person's teaching certificate or State Board approval if he or she were convicted of a SORA listed offense.
- Revise the notification requirements that apply when a person holding a teaching certificate or State Board approval is convicted of certain crimes.
- Require the Department of Information Technology to develop and implement a quarterly automated comparison of individuals holding teaching certificates or State Board approval, and other educational personnel, with criminal convictions.
- Require a person employed by, applying for employment with, or working under contract in, a school district, ISD, PSA, or nonpublic school to report if he or she were charged with or convicted of certain crimes, and prescribe criminal penalties for failing to report.

House Bills 4402 (H-3), 4928 (H-1), and 4930 (H-1) would amend the Revised School Code and House Bill 4991 would amend the teachers' tenure Act.

House Bills 4402 (H-3), 4928 (H-1), and 4930 (H-1) would take effect October 15, 2005, and are tie-barred to each other and to House Bill 4929 (which is similar to House Bill 4991). House Bill 4991 is tie-barred to House Bills 4402, 4928, and 4930.

House Bill 4402 (H-3)

Under the Revised School Code, when the board of a school district, local act school district, or ISD, or the governing body of a PSA or nonpublic school makes an offer of initial employment to an individual for a position as a teacher or school administrator, or for a position requiring State Board approval, the district, PSA, or nonpublic school must request a criminal history check on the individual from the criminal records division of the Michigan Department of State Police (MSP). Before employing the individual as a regular employee, the district, PSA, or nonpublic school must have received the MSP report.

In addition, the board of a school district, local act school district, or ISD, or the governing body of a PSA or nonpublic school must request the MSP to conduct a criminal records check through the Federal Bureau of Investigation (FBI) on an applicant for, or an individual who is hired for, a position as a teacher or school administrator, or a position requiring State Board approval.

Under the bill, these requirements would apply when a school board or governing body made an offer of any full-time or part-time employment or when school officials learned that an individual was being assigned to work regularly and continuously under contract in any of its schools.

In addition, under the bill, if the report from the State criminal history or FBI criminal records check received by a school district, ISD, PSA, or nonpublic school disclosed that an individual had been convicted of a listed offense under SORA, the school district, ISD, PSA, or nonpublic school could not employ the person in any capacity or allow him or her to work regularly and continuously under contract in any of its schools. If the report disclosed that an individual had been convicted of a felony other than a SORA listed offense, the district or school could not employ the person or allow him or her to work regularly and continuously under contract in any of its schools unless the

superintendent or chief administrator and the board of the district, ISD, PSA, or nonpublic school each specifically approved the employment or work assignment.

The bill specifies that, if a school official of a school district, ISD, PSA, or nonpublic school had notice that an individual had been convicted of a SORA listed offense, the board of the district, ISD, PSA, or nonpublic school could not employ that person in any capacity or allow him or her to work regularly and continuously under contract in any of its schools.

The bill also would delete references to a local act school district in the current provisions.

House Bill 4928 (H-1)

Suspension of Certificate or State Board Approval

Sections 1535a(1) and 1539b(1) of the Revised School Code require the Superintendent of Public Instruction (State Superintendent) to notify a person that his or her teaching certificate or State Board approval of employment may be suspended if he or she has been convicted of any felony or any of the following misdemeanors:

- Fourth-degree criminal sexual conduct (CSC) or an attempt to commit that offense.
- Third- or fourth-degree child abuse or an attempt to commit that offense.
- A misdemeanor involving cruelty, torture, or indecent exposure involving a child.
- A misdemeanor violation of Section 7410 of the Public Health Code (which prohibits the delivery of a Schedule 1 or 2 controlled substance that is a narcotic or cocaine, by a person who is 18 or older to a person who is under 18 and at least three years younger than the offender, or delivery on or within 1,000 feet of school property).
- Breaking and entering.
- Allowing a minor to possess or consume alcohol at a social gathering on premises under the offender's control.
- Accosting, soliciting, or enticing a child for immoral purposes.
- Indecent exposure.
- Larceny from a vacant building.
- Selling or furnishing alcohol to a minor.

The bill would include in that list 1) any misdemeanor that is a listed offense, and 2) a violation of a substantially similar law of another state, the United States, or a political subdivision of this State or another state. ("Listed offense" would mean that term as defined in SORA.)

Sections 1535a(2) and 1539b(2) provide for the summary suspension of the teaching certificate or State Board approval of a person who has been convicted of a crime listed below, if the Superintendent finds that the public health, safety, or welfare requires emergency action:

- Criminal sexual conduct in any degree, assault with intent to commit CSC, or an attempt to commit CSC in any degree.
- Felonious assault on a child, first-degree child abuse, or an attempt to commit first-degree child abuse.
- Cruelty, torture, or indecent exposure involving a child.
- Manufacture, delivery, or possession with intent to manufacture or deliver, of at least 1,000 grams of a Schedule 1 or 2 controlled substance that is narcotic or cocaine.
- Intentional or knowing possession of a Schedule 1 or 2 narcotic or cocaine.
- Delivery of a Schedule 1 or 2 narcotic or cocaine to a minor.
- A violation of Section 7410 of the Public Health Code (described above).
- Recruiting, inducing, or coercing a minor to commit a controlled substance felony.
- Assault with intent to commit murder.
- Armed assault with intent to steal.
- Attempted murder.
- Accosting, soliciting, or enticing a child for immoral purposes.
- First- or second-degree murder.
- Armed robbery.

The bill would include any other listed offense and a violation of a substantially similar law of another state, the United States, or a political subdivision of this or another state among the crimes for which summary suspension is required.

Under the Code, after a hearing, the State Superintendent may not take action against the teaching certificate or State Board approval of a person convicted of a crime listed in Section 1535a or 1539b unless the Superintendent finds that the conviction is reasonably and adversely related to the

person's present fitness to serve in an elementary or secondary school in Michigan.

Suspension/Forfeiture of Wages

The bill specifies that, if a person who entered a plea of guilty or no contest to, or who was found guilty of, a crime listed in Section 1535a(2) or 1539b(2) remained employed by a public school, school district, ISD, or nonpublic school during the pendency of the administrative proceedings against him or her, the school or district could not pay the person his or her wages, but would have to hold them in escrow in its own accounts until the State Superintendent made a final determination of whether to suspend or revoke the person's teaching certificate or State Board approval. If the State Superintendent suspended or revoked the certificate or approval, the wages held in escrow would have to be forfeited to the public school, school district, ISD, or nonpublic school. If the State Superintendent did not suspend or revoke the certificate or approval, the school or district would have to pay the person the wages held in escrow, without interest.

If a collective bargaining agreement for employees of a school district, ISD, or PSA were in effect as of the bill's effective date, and if the terms of that agreement were inconsistent with this provision of the bill, the provision would not apply to that school district, ISD, or PSA until after the agreement expired.

Reinstatement

Under the Code, after completing his or her sentence, a person may request a hearing before the State Superintendent on reinstatement of his or her teaching certificate or State Board approval. Based on the issues and evidence presented at the hearing, the Superintendent may reinstate, continue the suspension of, or permanently revoke the person's teaching certificate or State Board approval. The Superintendent may not reinstate a person's certificate or approval unless he or she finds that the person is currently fit to serve in an elementary or secondary school in Michigan and that reinstatement will not adversely affect the health, safety, and welfare of pupils. Under the bill, however, if a person's conviction were for a listed offense, the person would not be entitled to request a

reinstatement hearing, and the State Superintendent could not reinstate the person's teaching certificate or State Board approval.

The Code provides that, if a person's conviction is reversed upon final appeal, his or her teaching certificate must be reinstated when he or she notifies the State Superintendent of the reversal. Also, if the suspension of the person's teaching certificate was the sole cause of his or her discharge from employment, the person must be reinstated, when he or she notifies the appropriate school board of the reversal, with full rights and benefits, to the position the person would have had if he or she had been continuously employed. The bill also provides that, if any wages owed to the person had been forfeited, the public school, school district, ISD, or nonpublic school to which the wages were forfeited would have to repay them to the person.

Notification of Conviction

The Code requires the court and the prosecuting attorney in charge of a case in which a person who holds a teaching certificate or State Board approval is convicted of a crime listed in Section 1535a or 1539b, to notify the State Superintendent and any public school, school district, ISD, or nonpublic school in which the person is employed within 15 days after the date of the conviction. The bill specifies instead that if the prosecuting attorney in charge of a case received a form as provided under Section 1230d (proposed by House Bill 4930 (H-1)), the prosecuting attorney would have to notify the State Superintendent and any public school, school district, ISD, or nonpublic school in which the person was employed by forwarding a copy of the form to each within seven days after receiving it. If the court received a form under Section 1230d, the court would have to notify the State Superintendent and the school or district by forwarding a copy of the form and information regarding the sentence imposed on the person within seven days after the date of sentencing, even if the court were maintaining the file as a nonpublic record.

The bill would delete a requirement that a prosecuting attorney and court inquire whether a person convicted of a crime described in Section 1535a or 1539b holds a teaching certificate or State Board approval.

Under the Code, within five working days after receiving notification of a person's conviction from the prosecuting attorney or the court, the State Superintendent must request the court to provide a certified copy of the judgment of conviction and sentence and must pay any fees required by the court. The court must provide the certified copy within five working days after receiving the request and fees. The bill would change the deadlines from five working days to seven days and would require the State Superintendent to request the information after receiving notice from the prosecutor or court or learning through an authoritative source that a person who held a teaching certificate or State Board approval had been convicted of a crime listed in Section 1535a(1) or 1539b(1). The bill also would require the court to provide the information within seven days after receiving the request and fees or after entry of the judgment or other document, whichever was later, even if the court were maintaining the judgment or other document as a nonpublic record.

Automated Comparison

The bill would require the Department of Information Technology to work with the Michigan Department of Education (MDE) and the MSP to develop and implement an automated program that conducted a quarterly comparison of the list of individuals holding a teaching certificate or State Board approval with conviction information received by the MSP, including convictions contained in a nonpublic record.

House Bill 4930 (H-1)

Under the bill, if a person who was employed in any capacity by, who had applied for a position with, or who regularly and continuously worked under contract in, a school district, ISD, PSA, or nonpublic school were charged with a crime listed in Section 1535a(1) of the Revised School Code or a substantially similar law of another state, the United States, or a political subdivision of this or another state, he or she would have to report to the MDE and to the school district, ISD, PSA, or nonpublic school that he or she had been charged with the crime. The person would have to submit the report, within three business days after being charged, to the MDE and the superintendent of the school district or ISD or chief administrator of the

PSA or nonpublic school. The report would have to be on a form prescribed by the MDE.

If a person who was employed in any capacity by, or regularly and continuously worked under contract in, a school district, ISD, PSA, or nonpublic school entered a plea of guilty or no contest to, or were found guilty of any crime after having been charged with a crime listed in Section 1535a(1) or 1539b(1) of the Code, the person immediately would have to disclose to the court, on a form prescribed by the State Court Administrative Office, that he or she was so employed. The person immediately would have to provide a copy of that form to the prosecuting attorney in charge of the case, the State Superintendent, and the school district, ISD, PSA, or nonpublic school.

A violation of the reporting or disclosure requirements described above would be a felony punishable by imprisonment for up to two years and/or a maximum fine of \$2,000, if the crime involved were a SORA listed offense. Otherwise, a violation would be a misdemeanor punishable by up to one year's imprisonment and/or a maximum fine of \$1,000.

A person who violated the reporting or disclosure requirements also would be subject to discharge from his or her employment or termination of his or her contract. If, after providing notice and the opportunity for a hearing, the board of a school district, ISD, or PSA, found that a person employed by the district, ISD, or PSA had violated the bill, the board could discharge the person from employment. If a collective bargaining agreement that applied to the affected person were in effect as of the bill's effective date, however, and if that agreement did not comply with this provision of the bill, the provision would not apply to that district, ISD, or PSA until after the collective bargaining agreement expired.

If a person submitted a report that he or she had been charged with a crime listed in Section 1535a(1) and the person subsequently were not convicted of that crime, then he or she could request the MDE and the school district, ISD, PSA, or nonpublic school to delete the report from its records concerning that person. Upon receiving the request and documentation verifying that the person was not convicted

of the crime after the completion of judicial proceedings on the charge, the MDE and the school district, ISD, PSA, or nonpublic school would have to delete the report from its records concerning the person.

If the prosecuting attorney in charge of a case received a form required under the bill, he or she would have to forward a copy of the form, within seven days after receiving it, to any school district, ISD, PSA, or nonpublic school in which the person was employed. If the court received a form, it would have to notify any school district, ISD, PSA, or nonpublic school in which the person was employed by forwarding to each of them a copy of the form and information regarding the sentence imposed on the person within seven days after the date of sentencing, even if the court were maintaining the file as a nonpublic record.

The Department of Information Technology would have to work with the MDE and the MSP to develop and implement an automated program that did a quarterly comparison of the MDE's list of registered educational personnel with the conviction information received by the MSP, including convictions contained in a nonpublic record. After implementation of this program, if the quarterly comparison disclosed that a person on the MDE list had been convicted of a crime, the MSP would have to notify the school district, ISD, PSA, or nonpublic school in which the person was employed.

House Bill 4991

Under Article IV (Discharge, Demotion or Retirement) of the teachers' tenure Act, discharge or demotion of a teacher on continuing tenure may be made only for reasonable and just cause and only as provided under the Act. The bill specifies, however, that the rights of a teacher on continuing tenure under Article IV would be subject to Section 1230d of the Revised School Code (proposed by House Bill 4930 (H-1)) and Section 1535a of the Code (which House Bill 4928 (H-1) would amend). To the extent that any provision of Article IV was inconsistent with those sections of law, Article IV would not apply to the teacher.

MCL 380.1230 et al. (H.B. 4402)
380.1535a & 380.1539b (H.B. 4928)
Proposed MCL 380.1230d (H.B. 4930)
MCL 38.101 (H.B. 4991)

BACKGROUND

Under the Sex Offenders Registration Act (MCL 28.722), "listed offense" means any of the following:

- A first or subsequent conviction of accosting, enticing, or soliciting a child for immoral purposes (MCL 750.145a & 750.145b).
- Involvement in child sexually abusive activity or material (MCL 750.145c).
- Sodomy, if a victim is under 18 (MCL 750.158).
- A third or subsequent offense of engaging in indecent or obscene conduct in a public place or indecent exposure (MCL 750.167(1)(f) or 750.335a).
- Except for a juvenile disposition or adjudication, gross indecency, if a victim is under 18 (MCL 750.338, 750.338a, or 750.338b).
- Kidnapping, if a victim is under 18 (MCL 750.349).
- Kidnapping a child under 14 (MCL 750.350).
- Soliciting, accosting, or inviting another person to commit prostitution or an immoral act, if a victim is under 18 (MCL 750.448).
- Pandering for purposes of prostitution (MCL 750.455).
- First-, second-, third-, or fourth-degree CSC or assault with intent to commit CSC (MCL 750.520b-750.520e & 750.520g).
- Any other violation of a State or local law that, by its nature, constitutes a sexual offense against an individual under 18.
- An offense committed by a person who was, at the time of the offense, a "sexually delinquent person" as defined in the Michigan Penal Code (MCL 750.10a).
- An attempt or conspiracy to commit an offense listed above.
- An offense substantially similar to an offense listed above, under a law of the United States, any state, or any country, or under tribal or military law.

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

House Bill 4402 (H-3)

The bill would have no fiscal impact on the State.

School districts would incur the additional costs associated with a criminal background check on all newly hired personnel, which requires a payment of \$54 to the State Police. This would be an additional cost because currently only teachers and administrators are required to have criminal background checks.

House Bills 4928 (H-1) and 4930 (H-1)

Information Technology. The bills could result in a cost to the Department of Information Technology associated with developing and implementing an automated program that did a monthly comparison of educational personnel and criminal convictions. Information technology costs would range from \$100,000 to \$250,000.

Corrections. House Bill 4930 (H-1) would have an indeterminate fiscal impact on State and local government. There are no data to indicate how many individuals would be convicted of failing to report a criminal charge or conviction. Local units of government incur the costs of misdemeanor probation and incarceration in local facilities, both of which vary by county. The State incurs the cost of felony probation at an average annual cost of \$2,000 and the cost of incarceration in a State facility at an average annual cost of \$28,000.

House Bill 4991

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

Fiscal Analyst: Bruce Baker
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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.