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Senate Bill 213 (as reported without amendment)
Sponsor: Senator Shirley Johnson
Committee: Education

Date Completed: 11-5-01

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 21 unfilled positions. 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 districts be allowed to contract with temporary-staffing agencies to help find people who may be interested in serving as substitute teachers.

CONTENT

The bill 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.**

A contract would have to include the following provisions:

- Assurance that the person or entity would furnish the school district or ISD with qualified 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.

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

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 anywhere from \$60 to \$120 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 individuals 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 saving 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. 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 saving plan, this would not be the same as a retirement plan. There is no guarantee, either, that every employment agency would offer employee benefits, such as health insurance or tax-deferred saving programs.

Opposing Argument

By allowing a school district to hire its substitutes through an agency, the bill could have long-lasting, detrimental effects on substitute teachers and, possibly, the students with whom they work. For example, the bill essentially would permit a school district to contract its substitute teaching services exclusively through one agency. That agency could in turn offer fewer benefits and lower salaries than the district did. Furthermore, the bill would remove some of the safeguards meant to protect a long-term substitute. Currently, a substitute who teaches 60 days in one teaching position must be granted the same leave time and benefits, including salary, as a full-time teacher; a substitute who works 150 days out of a 180-day school year must be given the first opportunity to reject or accept a contract for which that teacher is certified. Under the bill, these privileges would not apply to substitute teachers hired through an employment agency. This means that agency teachers could perform the same work as full-time teachers, but work indefinitely without the same benefits, salary, or contract as their peers. This could prove detrimental to the students because, under the Revised School Code, substitutes are not

required to be certified, or even degreed. Students could find themselves for a full year in a classroom with a teacher who had never completed college or been interviewed by the district.

Response: This bill would allow both school districts and substitute teachers greater flexibility. If a substitute teacher found the working conditions, salary, or benefits offered through a school district superior to those offered through an agency, he or she could choose to work for that district or another one nearby. There are enough districts in dire need of substitutes that finding work would not be difficult. Furthermore, the reverse may be true: An employment agency's benefits could prove superior to a district's. In some cases, employment agencies offer health care benefits and paid vacations. Giving employees a choice could only benefit a system desperately in need of able-bodied people. Lastly, not all substitute teachers are seeking a full-time teaching job. Some, including those who are not certified, enjoy the work and the contact with young people, but do not desire the pressures and responsibilities that come with full-time, professional teaching. For these people, working through an employment agency might be a more attractive option than working through a district.

Legislative Analyst: C. Layman

FISCAL IMPACT

The bill would have no fiscal impact on State government.

Districts or ISDs choosing to purchase liability insurance for contracted substitute teachers would incur the total cost of that insurance and would purchase such insurance with their general fund operating revenues. The remaining proposals in the bill would have no fiscal impact.

Fiscal Analyst: J. 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.