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BILL ANALYSIS

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Senate Bill 601 (Substitute S-3 as passed by the Senate)
Senate Bill 609 (Substitute S-2 as passed by the Senate)
Senate Bill 610 (Substitute S-2 as passed by the Senate)
Senate Bill 611 (Substitute S-1 as passed by the Senate)
Senate Bill 612 (Substitute S-2 as passed by the Senate)
Sponsor: Senator Gerald Van Woerkom (S.B. 601)
 Senator Wayne Kuipers (S.B. 609 & 610)
 Senator Jason E. Allen (S.B. 611)
 Senator Shirley Johnson (S.B. 612)

Committee: Education

Date Completed: 8-9-05

RATIONALE

In April and May 2005, *The Detroit News* published a series of articles detailing the employment of sex offenders and other criminals by Michigan schools, day care centers, and other institutions in which employees have frequent contact with children. According to one article, the newspaper found that at least 35 Michigan school employees or recent hires had been charged with or convicted of sexual misconduct in the previous 15 months and had victimized approximately 50 children during that time ("State fails to stop teacher sex abuse", 4-24-05).

Also, in August 2004, the Auditor General released a report of a performance audit of the Office of Professional Preparation Services (OPPS), the entity within the Michigan Department of Education (MDE) responsible for ensuring that those employed in elementary or secondary schools with instructional responsibilities have valid credentials for their positions. The OPPS audit report found that the Office was not effective in ensuring that school employees complied with certification requirements, and recommended that it be more proactive in helping to ensure that licensed school personnel with criminal convictions are reported to the MDE as required by law. The MDE agreed and the OPPS apparently has requested assistance

from the Michigan Department of State Police (MSP) in reviewing license records against the MSP's Law Enforcement Information Network (LEIN) on a quarterly basis.

On May 3, 2005, Governor Jennifer Granholm sent a letter to legislative leaders of both parties urging them to pass legislation that would deny convicted sex offenders access to children in this State. Among other things, she encouraged the Legislature to enact laws requiring entities such as schools and child care centers to complete background checks on all employees and prohibit anyone registered under the Sex Offenders Registration Act (SORA) from working for such entities. It has been suggested that schools should be required to perform background checks on all current and prospective employees and contractors; that school employees and contractors should be required to report to the MDE and the school if they are charged with certain crimes and to disclose their employment to the prosecuting attorney and the court if they plead guilty or no contest or are found guilty; that courts and prosecutors be required to notify the MDE and school officials when employees are charged with or convicted of certain offenses; and that the salary of a school employee or contractor who pleads guilty or no contest or

is found guilty of certain crimes should be held in escrow upon suspension and forfeited if the Superintendent of Public Instruction (State Superintendent) makes a final determination to suspend or revoke the person's teaching certificate or State Board of Education approval.

CONTENT

The bills would amend various statutes 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 hiring or employing a person who had been convicted of a "listed offense" under SORA (described in **BACKGROUND**, below).
- Require a district, ISD, PSA, or nonpublic school to conduct an internet name-based criminal history check of each employee or contractor working in its schools.
- 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 State Superintendent 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 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.**

Senate Bills 601 (S-3), 610 (S-2), and 612 (S-2) would amend the Revised School Code; Senate Bill 609 (S-2) would amend the teachers' tenure Act; and Senate Bill 611 (S-1) would amend the Code of Criminal Procedure.

Senate Bills 601 (S-3), 609 (S-2), 610 (S-2), and 612 (S-2) are tie-barred to each other. Senate Bills 611 (S-1) and 612 (S-2) are tie-barred to each other. The bills would take effect October 15, 2005.

Senate Bill 601 (S-3)

Under the Revised School Code, when 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 Department of State Police. 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 specifically approved the employment or work assignment in writing.

The bill specifies that, if a school official of a school district, ISD, PSA, or nonpublic school had notice from a report from a State criminal history or FBI criminal records check that an individual had been convicted of a SORA listed offense, the board of the district, ISD, PSA, or nonpublic school could not hire that person for employment 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.

In addition, the board of a school district, ISD, PSA, or nonpublic school would have to ensure that a name-based criminal history check was performed on each employee and each person who was assigned to work regularly and continuously in any of its schools. The criminal history background check would have to use the criminal history database maintained by the MSP, as accessed through the MSP's Internet Criminal History Access Tool (ICHAT) or a successor tool made available on the internet by the MSP. The background check would have to be conducted on each affected person within one year after the bill's effective date. A board would not have

to conduct a name-based background check on a person, however, if the board had documentation that an FBI criminal records check was conducted on the person at the time he or she was initially employed by the board or assigned to work in any of its schools.

Senate Bill 609 (S-2)

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 Senate Bill 612 (S-2)) and Section 1535a of the Code (which Senate Bill 610 (S-2) 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.

For the purposes of Article IV, a conviction for a violation of Section 1230d or for a violation of one of the crimes listed in Section 1535a(1) or (2) would be considered to be reasonably and adversely related to the person's ability to serve in an elementary or secondary school and would be sufficient grounds to support the discharge or demotion of a teacher on continuing tenure.

In addition, under the Act, if a teacher is suspended, his or her salary must continue during the suspension. If the teacher is convicted of a felony, however, the controlling board may discontinue the teacher's salary effective upon the date of conviction. Under the bill, the controlling board would have to discontinue the teacher's salary upon conviction of a felony that is a SORA listed offense.

Senate Bill 610 (S-2)

Suspension of Certificate or State Board Approval

Sections 1535a(1) and 1539b(1) of the Revised School Code require the Superintendent of Public Instruction 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 any misdemeanor that is a listed offense and 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 all of the following offenses among the crimes for which summary suspension is required:

- A second or subsequent conviction of accosting, enticing, or soliciting a child for immoral purposes (MCL 750.145b).
- Involvement in child sexually abusive activity or material (MCL 750.145c).
- Kidnapping a child under 14 (MCL 750.350).
- Pandering for purposes of prostitution (MCL 750.455).
- Sodomy, if a victim is under 18 (MCL 750.158).
- 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).
- 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 (i.e., any person whose sexual behavior is characterized by repetitive or compulsive acts that indicate a disregard of consequences or the recognized rights of others, or by the use of force upon another person in attempting sexual relations or by the commission of sexual aggressions against children under 16) (MCL 750.10a).
- An attempt or conspiracy to commit an offense listed in Sections 1535a(2) and 1539b(2), (except felonious assault on a child; first-degree child abuse; cruelty, torture, or indecent exposure involving a child; or a controlled substance violation).
- A violation of a substantially similar law of another state, the United States, or a political subdivision of this State or another state.

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 or 1539b were suspended from active duty 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 employing the person could not pay the person his or her wages, but would have to hold the wages 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 a person completes his or her sentence, he or she 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 the wages 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 Senate Bill 612 (S-2)), 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 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.

Senate Bill 611 (S-1)

The bill would include in the sentencing guidelines failure by a school employee to report a charge or conviction (as Senate Bill 612 (S-2) would require). The offense would be a Class G felony against the public safety, with a statutory maximum sentence of two years' imprisonment.

Senate Bill 612 (S-2)

Under the bill, if a person who was employed in any capacity by, had applied for a position with, or 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) or (2) of the Revised School Code (as amended by Senate Bill 610 (S-2)) or a substantially similar law of another state, the United States, or a political subdivision of the State 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 one business day after being arraigned, 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 (2) or 1539b(1) or (2) 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 superintendent or chief administrator of 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 felony. If the crime involved were a misdemeanor, 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) or (2) 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 the State Superintendent and the superintendent or chief administrator of 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 the State Superintendent and the superintendent or chief administrator of 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 superintendent or chief administrator of the school district, ISD, PSA, or nonpublic school in which the person was employed.

MCL 380.1230 et al. (S.B. 601)
38.101 et al. (S.B. 609)

380.1535a & 380.1539b (S.B. 610)
777.13p (S.B. 611)
Proposed MCL 380.1230d (S.B. 612)

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.

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

Children are among the most vulnerable members of society, and the State must do all it can to protect them from harm, especially in places like schools where they gather on a regular basis and from predatory adults who work in those settings. Child victims of sex crimes can suffer ill effects for years. According to the *Detroit News*, they may lose trust in authority figures, experience compromised physical health, and perform poorly in school; later in life, the victims are more likely to abuse alcohol and drugs and may have difficulty forming intimate relationships ("Schools, Granholm pledge to curb abuse by teachers", 4-25-05). Also, parents deserve the assurance that their children's teachers and other school personnel are not dangerous criminals.

Those with abusive tendencies toward children may seek employment at locations frequented by children, such as schools, because it can afford them easy access to potential victims. In addition, teachers and other school staff often are admired by the children they serve and are trusted by parents, allowing them ample opportunity to victimize children without scrutiny. This makes it imperative that school employees and contractors are thoroughly screened and that known sex offenders are kept out of schools. By requiring that all school employees and contractors undergo State and Federal criminal background checks before being hired or assigned to work in schools, requiring criminal background checks on current employees and contractors, establishing a procedure for periodic comparisons of school employment lists with criminal convictions, and making it easier to suspend certain employees, revoke teachers' tenure in some cases, and withhold and forfeit the salary of some suspended employees, the bills would go a long way toward providing better protection to Michigan's students and peace of mind for their parents.

Response: The bills may be too strict in some respects. Some SORA listed offenses are relatively minor and should not necessarily lead to permanent revocation of a teaching certificate. Perhaps the bills should provide for a hearing after a conviction, with a rebuttable presumption of a teacher's being unfit to teach. Also, a person with a conviction of a listed offense should not be prevented from ever having his or her teaching certificate reinstated.

There may be circumstances under which it would be appropriate for someone with a revoked certificate eventually to teach again. If such a person met certain standards and could show changes in his or her conduct, the State Superintendent should have the discretion to reinstate the person's certificate.

Supporting Argument

The 2004 Auditor General's report recommended that the MDE be more proactive in ensuring that teachers and other licensed school personnel with criminal convictions are reported to the Department. By requiring that school employees, applicants, and contractors report to the MDE and the district or school, in a timely manner and on a form prescribed by the Department, when they were charged with certain crimes, Senate Bill 612 (S-2) would help the Department to comply with that recommendation. The bill also would require employees and contractors who pleaded guilty or no contest, or who were found guilty, to disclose their school employment to the prosecuting attorney and the court, and Senate Bill 610 (S-2) would tighten up the requirements that the court and the prosecuting attorney notify the State Superintendent and the employing district or school.

Opposing Argument

The legislation should focus only on the teaching certificates of teachers who commit sex offenses, without amending the teachers' tenure Act. Revoking a teacher's tenure affects only the position in which the teacher has achieved tenure, while suspending or revoking a teacher's certificate makes it impossible for him or her to move to other teaching positions. Sanctions against the certificate would prove much more effective in keeping a sex offender away from children. In addition, making the tenure Act subject to provisions of the Revised School Code could be confusing to the tenure commission, which enforces the tenure system, not the Revised School Code.

In addition, suspending a convicted teacher without pay and without a hearing before the tenure commission could violate due process and be an unconstitutional taking of a property interest.

Response: The amendments to the teachers' tenure Act proposed in Senate Bill 609 (S-2) would make the Act consistent

with proposed amendments regarding reporting requirements and the salary escrow provisions of other bills in the package. In addition, the other bills do focus on sanctions against a teaching certificate or State Board approval of employment.

Opposing Argument

Efforts to protect children at school and other places where they congregate should not rely on sex offender registry information. Much of the information in Michigan's sex offender registry may be misleading, especially if the goal of the registry is to protect the public—particularly children—from sexual predators. Since many of the people required to register are not, and never have been, a danger to the public, prohibiting someone with a SORA listed offense from ever serving as a teacher would be unreasonable. Senate committees have heard testimony from relatives of men and boys who are required to be registered because they had sex with willing partners who were too young to consent legally to sexual relations. These registrants pose no danger to school children and should not be prohibited from teaching. Indeed, a *Detroit News* editorial called the effectiveness of the registry into question, saying it "amounts to ongoing punishment of people who have served their sentence and supposedly paid their debt to society". The editorial urged the State "to revisit the whole idea of stigmatizing some offenders well past their prison terms" ("Sex Offender Registry Is Vindictive Punishment", 2-2-05).

Also, the registry covers a broad range of offenders, many of whom did not commit acts against children, but the bills' employment restrictions would not be limited to those offenders who may be a danger to kids. As a *Detroit Free Press* editorial pointed out, "the bills do not take into account that not every convicted sex offender...is a predator or pedophile" ("Child Safety", 6-29-05).

In addition, the sex offender registry should not be relied upon to provide accurate information. According to a July 2005 Auditor General's report on a performance audit of the Department of State Police's sex offender registries, the Department "did not always ensure the accuracy and completeness of data within the sex offender registries" and did not verify registrants' names and addresses entered by local law

enforcement agencies. The report's findings also state that incomplete and inaccurate information could give the public a false sense of security.

Response: While the bills refer to SORA listed offenses, they do not provide for the MDE or districts or schools to rely on sex offender registry information to make decisions about the employment of school personnel or contractors. The background checks would be done through the State Police or the FBI, as they currently are for prospective teachers and some other school employees, or through the MSP's online ICHAT system. Other factors affecting the employment or contractual status of teachers and others would be determined by self-reporting of criminal charges and notification of pleas or convictions from prosecutors and courts, not through a check of the sex offender registry.

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

Senate Bill 601 (S-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.

The bill also would require existing school employees to undergo a name criminal history check through the State Police ICHAT. The cost of a name check is \$10 for a for-profit business, and there is no charge for a nonprofit or governmental entity. It should be noted that the Governor has proposed, for FY 2005-06, that nonprofit and governmental agencies be charged \$3 for each criminal history name check.

Senate Bill 609 (S-2)

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

Senate Bills 610 (S-2) and 612 (S-2)

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 those with teaching certificates and criminal convictions. Information technology costs would range from \$100,000 to \$250,000

The bill would have no fiscal impact on local government.

Senate Bills 611 (S-1) and 612 (S-2)

The bills 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.

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.