



**House
Legislative
Analysis
Section**

Washington Square Building, Suite 1025
Lansing, Michigan 48909
Phone: 517/373-6466

TEACHER CERTIFICATES: SEX OFFENSES

House Bill 4347 (Substitute H-2)
First Analysis (5-11-87)

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Sponsor: Rep. Victor C. Krause
Committee: Education

Mich. State Law Library

THE APPARENT PROBLEM:

There have been reports of teachers convicted of sex-related offenses and child abuse retaining their teaching certificates and moving on to teach in new schools in this and other states. School officials cite a recent case in which a teacher previously convicted of child abuse repeated the offense while working as a substitute teacher on a certificate that had not been suspended because he could not be located to be notified of a hearing. This would be less likely to happen if there were better mechanisms in place for reporting teachers' criminal convictions to the State Board of Education and if there were a separate, special procedure for the board to follow in acting against the certificates of such teachers.

THE CONTENT OF THE BILL:

The bill would amend the School Code to establish a procedure for the State Board of Education to follow in acting against the certificate of a teacher convicted of a felony or misdemeanor involving sexual conduct, child abuse, immoral conduct contributing to the delinquency of a minor, or moral turpitude. County prosecutors would be required to notify the state board of such convictions.

The state board would have to notify the teacher in writing of his or her right to a hearing. If the teacher did not request one within 30 working days, the certificate would be suspended. If a hearing were held, the board could suspend the certificate based on the issues and evidence presented. After the expiration of the teacher's sentence or probation, he or she could request a reinstatement hearing before the state board. Based on the issues and evidence presented at that hearing, the board could reinstate the certificate, continue the suspension, or permanently revoke the certificate.

If the suspension of the teaching certificate had been the sole cause of discharge, a teacher whose conviction was reversed upon final appeal would have the certificate reinstated and would be reinstated with full rights and benefits to the position he or she would have had if he or she had been continuously employed.

The bill would stipulate that it should not be construed to prohibit a teacher from seeking monetary compensation from a school board or intermediate school board if that right was available under a collective bargaining agreement or another statute, nor should it be construed to limit the rights and powers to discipline or discharge a teacher granted to a district under a collective bargaining agreement, the School Code, or another statute.

The state board would be authorized to promulgate rules to implement the bill's provisions.

MCL 380.653 et al.

FISCAL IMPLICATIONS:

There is no fiscal information at present.

ARGUMENTS:

For:

The bill would provide a means for the State Board of Education to act quickly against the certificates of schoolteachers convicted of sex-related offenses and child abuse, at the same time protecting the rights of teachers, including those of teachers whose convictions are overturned. Prosecutors would have to notify the state board of appropriate convictions so that they did not escape notice. The certificates of teachers who did not request hearings would be suspended automatically so that they would not be able to move to new positions simply because the board could not locate them. Hearings would be held when requested and the board would decide in each case whether the conviction warranted suspension of the certificate. After the sentence or probation had been served, the board would, upon request, determine whether the certificate should be restored.

Against:

The bill requires that teachers whose convictions are overturned on appeal be reinstated "with full rights and benefits." This means, in some interpretations, back pay from the school district. It does not seem fair for the school district to be penalized financially in a case in which the courts make an error and in which the state has revoked a certificate. Further, a teacher whose conviction is overturned is to be reinstated to a position "he or she would have had" if continuously employed. This introduces an element of speculation that could lead to litigation over the rightful position for the reinstated teacher. It should be noted that although a teacher might eventually get a conviction reversed, perhaps for technical reasons, that does not mean the school district would want him or her back in the classroom.

Response: Teachers who are wrongfully charged and convicted deserve to regain the seniority they lose. The bill acknowledges that teachers in such circumstances not only lose their jobs but lose opportunities to apply for new openings. Obviously, they deserve any back pay and other benefits lost. These protections are only for the teacher who loses a certificate based solely on a criminal conviction and then regains the certificate when the conviction is reversed.

POSITIONS:

The Department of Education supports the bill. (5-7-87)

The Michigan Association of School Boards supports the bill, although with reservations about the reinstatement provisions. (5-5-87)

The Michigan Education Association supports the substitute bill. (5-5-87)

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The Michigan Association of School Administrators supports the bill, with reservations about the obligation of local school districts to pay back pay. (5-5-87)

The Michigan Federation of Teachers supports the bill. (5-5-87)