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BILL ANALYSIS

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House Bill 4347 (Substitute H-4 as reported without amendment)**Sponsor: Representative Victor C. Krause****House Committee: Education****Senate Committee: Education and Mental Health****Date Completed: 6-10-87*****RATIONALE***

Michigan has neither requirements nor a system for reporting felony convictions of certified school personnel to the Department of Education. The Department currently relies on ad hoc contacts with county prosecutors and teacher certification programs in other states as well as news reports to receive notice of persons convicted of felonies who are certified or seeking certification to teach in Michigan. Due to this lack of reporting requirements, teachers convicted of felonies — including sex-related offenses and child abuse — have been able to retain their certificates. While the Department has established procedures for suspending a certificate, the Department cannot take any action toward suspension if it has not learned of the conviction. Consequently, these teachers are able to teach in other districts in the State, which have no knowledge of the conviction, or are moving to other states to teach. Some people believe this kind of occurrence would be less likely to happen if there were better mechanisms for reporting teachers' felony convictions to the State board of education.

CONTENT

The bill would amend the School Code to:

- Establish a procedure for the State board of education to follow, including suspension of a teaching certificate, when a teacher was convicted of a criminal sexual conduct offense, or another offense against a child, as specified in the bill.
- Provide for reinstatement of the teaching certificate.
- Require a county prosecuting attorney, in the county where the teacher was convicted, to notify the State board of that conviction.
- Provide for a teacher to seek monetary compensation from a school board if that right were available under a collective bargaining agreement or another statute.
- Require the State board to promulgate rules to implement the bill.

Conviction of Criminal Sexual Conduct

The prosecuting attorney of the county in which a teacher was convicted of criminal sexual conduct in any degree, assault with intent to commit criminal sexual conduct, an attempt to commit criminal sexual conduct in any degree, felonious assault on a child, child abuse, or cruelty, torture, or indecent exposure involving a child, would be required to notify the State board of that conviction.

Suspension of Teaching Certificate

Upon a teacher's conviction of criminal sexual conduct in any degree, assault with intent to commit criminal sexual

conduct, an attempt to commit criminal sexual conduct in any degree, felonious assault on a child, child abuse, or cruelty, torture, or indecent exposure involving a child, the State board would be required to give the teacher written notice of his or her right to a hearing before the State board.

If the teacher did not avail himself or herself of this right within 30 working days after receipt of the written notification, the teaching certificate of the teacher would have to be suspended. If a hearing took place, based on the issues and evidence presented at the hearing, the State board could suspend the teacher's teaching certificate.

Reinstatement of Teaching Certificate

After completion of a teacher's sentence, the teacher could request a hearing before the State board on reinstatement of his or her teaching certificate. Based on the issues and evidence presented at the hearing, the State board could reinstate, continue the suspension, or permanently revoke the teacher's teaching certificate.

A teacher whose conviction was reversed upon final appeal would have to:

- Have his or her teaching certificate reinstated upon his or her notification of that fact to the State board.
- Be reinstated, upon his or her notification of that fact to the appropriate local or intermediate school board, with full rights and benefits, to the position the teacher would have had had if he or she had been continuously employed if the suspension of the teaching certificate had been the sole cause of his or her discharge from employment.

Collective Bargaining Agreement Rights

The bill specifies that it could not be construed to do either of the following:

- Prohibit a teacher from seeking monetary compensation from a school board or intermediate school board if that right were available under a collective bargaining agreement or another statute.
- Limit the rights and powers granted to a school district or intermediate school district under a collective bargaining agreement, the School Code, or another statute to discipline or discharge a teacher.

Proposed MCL 380.1535a

FISCAL IMPACT

This bill would have an indeterminate fiscal impact on the State. The fiscal effects of this bill on State resources would depend on the number of State board hearings that

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occurred to review the certification status of teachers convicted of the crimes specified in the bill.

The costs of the bill to local units would derive from the provision that county prosecuting attorneys would have to notify the State board of education of teacher convictions with regard to the crimes specified in the bill. At this time information is not available on the number of such convictions. Accordingly, the potential costs to local units are indeterminate.

ARGUMENTS

Supporting Argument

When a teacher is convicted of a felony, the Department of Education is not aware of the conviction unless it is notified by a superintendent, county prosecutor, local police agency, news report, parent, or interested party. The Department receives approximately 500 notices a year from across the country and between 20 to 30 reports a year from around the State. By requiring a county prosecutor in the county where the teacher was convicted to notify the State board of the conviction, the bill would strengthen the Department's ability to take action when a teacher is convicted. It would be less likely that convicted felons would be able to "slip through the cracks" as now occurs due to the lack of reporting requirements, and end up teaching in the State's schools. The bill would strengthen the Department's ability to take necessary action when a teacher is convicted of certain felonies and would assist in preventing persons convicted of felonies in other states from obtaining a teaching certificate in Michigan.

Supporting Argument

The bill would provide a means for the State board of education to act quickly against the certificate of teachers convicted of sex-related offenses and child abuse. Currently, the Department must follow procedures outlined in the Administrative Procedures Act and administrative rules of the State board before suspending a certificate. This procedure involves locating the person, notifying him or her of a hearing, and conducting a pre-hearing and formal hearing, before the State board can act on the suspension. This can take months, according to Department officials. Further, although a local district may choose to take action against a teacher through the Teacher Tenure's Act, that process requires a hearing before the Tenure Commission with the teacher present. Under the bill, the State board would be required to give the teacher written notice of his or her right to a hearing before the State board. If the teacher did not avail himself or herself of this right within 30 working days after receiving the notice, the teaching certificate would be suspended. This provision would accelerate the process for suspending the certificate, which currently requires a number of steps and can be stymied when a convicted felon refuses to respond to a hearing notice.

Response: The bill would allow automatic suspension of the certificate upon notice of conviction only if the teacher did not avail himself or herself of the right to a hearing. Therefore, a convicted felon could continue to serve in a classroom with a valid certificate pending the outcome of the hearing process to suspend or revoke the teaching certificate. Several states automatically suspend a teaching certificate upon notice of a felony conviction, and California automatically suspends a certificate upon arrest for a felony.

Supporting Argument

The bill would preserve basic due process guarantees by requiring notice and an opportunity for a hearing, as well

as allowing a convicted felon to seek reinstatement of the suspended certificate at the expiration of the term of sentence or probation. By allowing reinstatement only after the sentence or probation, the bill would tighten provisions for reinstatement, since teachers convicted of a felony and on probation now can apply at any time for reinstatement of the certificate.

Response: The protection of due process rights would be strengthened if the bill required notice to be given by certified mail, return receipt requested, or by personal service.

Opposing Argument

The bill does not go far enough, and should address all felonies. Even if the bill were enacted, the Department of Education would still have to follow current procedures to seek suspension of a certificate of a teacher who was convicted of murder, certain drug charges, or kidnapping. The process is slow and notification to the Department of these convictions is unreliable. Thus, teachers convicted of felonies — other than those related to sex offenses — still could end up teaching in Michigan schools, without the Department's having any knowledge of this. A convicted felon now cannot run for public office, join the military, or belong to a law enforcement agency. Similar treatment of teachers is warranted. The State has an inherent interest in protecting children, and that includes keeping convicted felons out of classrooms.

Response: While it is understandable that there should be procedures to keep all convicted felons out of the classrooms, the bill would address those convicted of sex-related offenses, which make up 90% to 95% of the cases of which the Department now learns.

Opposing Argument

The bill would require that a teacher whose conviction was reversed upon final appeal be reinstated, with full rights and benefits, to the position the teacher would have had if he or she had been continuously employed, if the suspension of the certificate were the sole cause for discharge from employment. Some school officials interpret this provision as requiring local districts to compensate the teacher for back pay and place him or her in the position he or she would have had, even though that position may be filled. It is not clear why a local district should be liable for back pay when the district had no choice in the suspension and could not have employed the teacher because the certificate was suspended by the State. Further, it is not clear what school districts would do with the teacher who currently holds the position that the suspended teacher previously held. While larger districts more easily could absorb that person into the system, medium and small districts would be hard pressed to find a position for that teacher. These provisions could present a financial burden for local districts. Besides, some districts may not want to rehire a person whose conviction was reversed, especially if the reversal were on technical grounds.

Response: Teachers who were wrongfully charged and convicted deserve to regain their job and seniority in the profession, as well as lost pay and benefits. These protections would be available only for the teacher who lost a certificate based solely on a criminal conviction and then regained the certificate when the conviction was reversed.

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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.