



**House
Legislative
Analysis
Section**

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House Bill 5082 as enrolled
Second Analysis (7-27-90)

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Sponsor: Rep. Terry London
House Committee: Education Mich. State Law Library
Senate Committee: Education and Mental Health

THE APPARENT PROBLEM:

Public Act 61 of 1987 put in place a procedure that requires prosecutors to notify the State Board of Education whenever a teacher is convicted of a sex-related offense or child abuse and allows the state board to automatically suspend the teacher's teaching certificate unless the teacher requests a hearing. (If a hearing is requested, the board could suspend the certificate based on the evidence presented.) The act was passed because state school officials were not routinely notified of such convictions; they only became aware of convictions if someone happened to notify them. This led, it was said, to teachers being convicted of crimes but maintaining their certificates and moving on to new, unsuspecting school districts. It has been proposed that the same procedure be established for school administrators.

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 a school administrator's certificate when the person holding the certificate is convicted of criminal sexual conduct in any degree, assault with intent to commit criminal sexual conduct in any degree, 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. County prosecutors would be required to notify the state board of such convictions.

The state board would have to notify the certificate-holder in writing of his or her right to a hearing. If the certificate-holder did not request one within 30 working days, the certificate would be suspended. If a hearing was held, the board could suspend the certificate based on the issues and evidence presented. After the completion of the person's sentence, 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.

A person whose conviction was reversed upon final appeal would have the certificate reinstated upon notifying the state board. If the suspension of the certificate had been the sole cause of discharge from a position, an administrator whose conviction was reversed upon final appeal 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 an administrator 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 an administrator 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.

The bill would also amend the section dealing with the procedure for acting against teachers convicted of sex-related crimes or child abuse to substitute for the term "teacher" the expression "a person who holds a teaching certificate." It would also specify in both the section dealing with teaching certificates and the section dealing with administrator's certificates that a person who holds both would be subject to both sections.

The bill would also amend an unrelated section of the School Code dealing with nutrition programs to specifically permit a primary school district (one that operates only elementary schools) and a fourth-class district that does not have a full kindergarten-to-twelfth-grade program to operate lunch and breakfast programs. (School districts operating K to 12 programs are required to operate such programs; primary and certain fourth class districts would be permitted to by the language of the bill. These districts already can operate such programs, but the language is intended to allow them to receive certain state funds to help support the food programs.)

MCL 380.1272a; 380.1535a; 380.1539a

FISCAL IMPLICATIONS:

The Department of Education reports that there will be minimal costs to the state as a result of the bill. (7-26-90)

ARGUMENTS:

For:

The bill would apply to school administrator certificates the same procedure already in the School Code for suspending teacher certificates when there is a conviction for a sex-related offense or child abuse. The aim of the bill, as with the earlier law applying to teachers, is to provide a means for the State Board of Education to act quickly against the certificates of educators convicted of certain kinds of crimes, at the same time protecting the rights of educators, including those whose convictions are later overturned. Prosecutors would have to notify the state board of any convictions so that they would not go unnoticed, and there would be an automatic suspension of the certificates of educators who did not request a hearing on the issue. Now, apparently, if the state board cannot locate a person who holds an administrator's certificate, it cannot suspend a certificate.

Against:

The bill does not go far enough. It ought to require the suspension of a certificate immediately pending a hearing rather than after a hearing has been held or after 30 working days if a hearing is not requested. And it ought to apply to all felonies. If this bill is enacted, state education

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officials would have to follow the old procedure to suspend the certificate of an administrator convicted of drug offenses, armed robbery, or even murder. Some people also believe that the bill should apply to all certified school personnel.

Response: The language in the bill for administrators is the same as now exists for teachers. Other issues can be dealt with another time.

Against:

The bill requires that administrators whose convictions are overturned on appeal be reinstated "with full rights and benefits" and to a position "he or she would have had" if continuously employed. Some people interpret this to mean a school district would have to provide back pay and place the administrator in a position that had already been filled. This penalizes school districts when they had no choice in the suspension by the state and would cause personnel complications in smaller districts that would be hardpressed to absorb another administrator. Besides, some districts might not want to rehire the administrator whose conviction was reversed, particularly if the reversal was on technical grounds.

Response: Administrators wrongfully charged and convicted deserve to regain their jobs and seniority as well as lost pay and benefits. These protections would be available only when an administrator lost a certificate solely due to a criminal conviction and then the conviction was reversed. This is the same language that applies to teachers.