



**House  
Legislative  
Analysis  
Section**

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**SCHOOL EMPLOYEES: SEX OFFENSES**

**House Bill 5635 (Substitute H-1)**  
**First Analysis (5-31-90)**

05 12 1990

**Sponsor: Rep. Robert DeMars**  
**Committee: Education**

***THE APPARENT PROBLEM:***

Public Act 61 of 1987 and Public Act 35 of 1990 established procedures that require prosecutors to notify the State Board of Education whenever a teacher or school administrator is convicted of a sex-related offense or child abuse, and allow the state board to automatically suspend certification of either of these types of school employees unless the convicted person requests a hearing. (If a hearing is requested, the board may suspend a certificate based on the evidence presented.) These acts were passed apparently because state education 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 such school employees being convicted of crimes but maintaining their certificates and moving on to new, unsuspecting school districts. There exist other types of school personnel who also must get similar state board certification or approval (such as school nurses, psychiatrists, social workers, and the like) before they can work in these positions, and some people feel the same procedure should be established for these types of school employees.

***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 certification of certain school employees requiring state board approval (except for teachers and administrators) if a school employee 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. School districts and county prosecutors would be required to notify the state board of such convictions. The bill is tie-barred to House Bill 5082 (which was enacted this year as Public Act 35).

The state board would have to notify such a convicted person in writing of his or her right to a hearing. If the person did not request one within 30 days, his or her "state board approval" (which would mean a license, certificate, endorsement, permit, approval, or other evidence of qualification determined by the state board to work for a school district, except a teacher's or administrator's certificate) would have to be suspended. If a hearing was held, the board could suspend approval based on the issues and evidence presented. After 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 approval, continue the suspension, or permanently revoke the person's certification.

A school employee whose conviction was reversed upon final appeal would have to have his or her state board approval reinstated upon notifying the state board. If the

suspension of approval had been the sole cause of discharge, a school employee 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 further specifies that it could not be construed to:

- prohibit such a school employee 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;
- limit the rights and powers to discipline or discharge such a person granted to a school district under a collective bargaining agreement, the School Code, or another statute;
- exempt such a convicted person from other sections of the act that provide for action to be taken against certain school personnel convicted of sex offenses (under Public Act 61 of 1987 and Public Act 35 of 1990) if the person was a certified teacher or administrator; nor
- limit a state licensing body's ability to take action against such a person's license or registration for the same conviction.

The state board would have to make available to prosecuting attorneys a list of school operations that commonly require state board approval, and could promulgate rules to implement the bill's provisions.

MCL 380.1281a

***FISCAL IMPLICATIONS:***

According to the Department of Education, the bill would not affect state expenditures. (5-30-90)

***ARGUMENTS:***

***For:***

The bill would apply to school employees such as nurses, social workers, special education instructors, and others requiring approval by the State Board of Education to work in these positions the same procedure already in the School Code for suspending certificates of teachers and administrators convicted of sex-related offenses or child abuse. The bill's aim, as with the other acts, is to provide a means for the state board to act quickly against the certification of these types of school employees convicted of certain kinds of crimes, and at the same time protect the rights of such persons, including those whose convictions later were overturned. Prosecutors and school districts would have to notify the state board of convictions to ensure that they would not go unnoticed, and an automatic suspension of board approval would result when a convicted person failed to request a hearing on the issue. In addition, as it applies to a host of school occupations

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that require state board approval, the bill would require the state board to notify prosecuting attorneys of the types of school occupations involved and, thus, could aid in identifying sex offenders who were in close contact with children.

***Against:***

The bill does not go far enough. It ought to require suspension of certification immediately pending a hearing rather than after a hearing has been held or after 30 working days if no hearing was requested. And it should apply to all felonies. If this bill is enacted, state education officials would have to follow the old procedure to suspend certification of a school employee convicted of drug offenses, armed robbery, or even murder.

***Response:*** The bill simply intends to apply provisions relating to sex offenses by certain state board certified school personnel the same as these now apply to teachers and administrators. Other issues could be dealt with later, and then applied uniformly to all school employees.

***Against:***

The bill would require that persons whose convictions were 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 person in a position that had already been filled. This could penalize districts when they had no choice in the suspension by the state and could cause personnel problems in smaller districts that would be hardpressed to absorb another employee. Besides, some districts might not want to rehire such a person whose conviction was overturned, especially if the reversal was for technical reasons.

***Response:*** School employees 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 a person lost certification solely due to a criminal conviction and then the conviction was reversed. This same language now applies to both teachers and administrators.

***SUGGESTED AMENDMENTS:***

The Department of Education suggests amending the bill to expand state board authority to suspend its approval for a school employee convicted of any felony, and to provide that immediate suspension of approval could be issued upon conviction. (5-30-90)

***POSITIONS:***

The Department of Education would support the bill if its suggested amendments were adopted. (5-30-90)