SFA BILL ANALYSIS

Senate Fiscal Agency • Lansing, Michigan 48909 • (517) 373-5383

House Bill 5082 (Substitute S-2 as reported)
Sponsor: Representative Terry London
House Committee: Education
Senate Committee: Education and Mental Health

Date Completed: 2-13-90

RATIONALE

Public Act 61 of 1987 requires county prosecutors to notify the State Board of Education whenever a teacher is convicted of a sex-related offense or child abuse and establishes a procedure for the State Board to follow, including suspension of a teaching certificate, when a teacher has been convicted of such offenses. Prior to Public Act 61, Michigan had neither requirements nor a system for reporting felony convictions of teachers to the Department of Education. The Department had to rely 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 were certified or seeking certification to teach in Michigan. While Public Act 61 rectified this situation, the same circumstances exist today for school administrators. In 1986, the Legislature enacted Public Act 163, which provides for the certification of local and intermediate school district administrators by the State Board. While the State Board may certify school administrators, the only procedure available for revocation, outlined in the rules of the State Board, is considered to be cumbersome and expensive. There is no procedure in the School Code. Some people believe that revocation procedures, which would be similar to those used for teachers, should be instituted for school administrators, who have been convicted of sex-related offenses and who, because of their instructional responsibilities, may come into contact with children.

In regard to a separate issue, Public Act 451 of 1976 requires the board of K-12 school districts to establish and operate school lunch, breakfast, and supplemental milk programs. This State program reflects the provisions of a Federal school lunch, breakfast, and milk program in which all nonpublic and public schools--including K-6 and K-8 school districts as well as K-12 districts--may participate and receive Federal reimbursement for offering these programs. Federal funds comprise 95% of the funding for meal programs in school districts that choose to participate. The State contributes up to 2 cents for each reduced-priced meal and up to 5 cents for each free meal served. The State's contribution, however, is designated only for K-12 districts that are required to offer these programs under Public Act 451. Other school districts are not eligible for the State funds. In the 1989 budget year, however, the Department of Education apparently failed to remove the noneligible districts when State payments for school meals were made. Consequently, some non-K-12 districts mistakenly received State funds and were requested to return the money. Some people believe that by allocating funds only to K-12 districts, the State discriminates against

small school districts that also offer similar meal programs and are eligible to receive Federal funds.

CONTENT

The bill would amend the School Code to:

- **Establish a procedure for the State Board of Education to follow, including suspension of a school administrator's certificate, when an administrator was convicted of a criminal sexual conduct offense, or another offense against a child, as specified in the bill.**
- **Provide for reinstatement of a school administrator's certificate.**
- **Require a county prosecuting attorney, in the county where the administrator was convicted, to notify the State Board of that conviction.**
- **Provide for an administrator 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.**
- **Permit the board of a primary school district or a fourth class school district that does not operate a K to 12 program to establish school lunch and/or breakfast programs.**

Conviction of Criminal Sexual Conduct

The prosecuting attorney of the county in which an administrator 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 Education of that conviction.

Suspension of Administrator Certificate

Upon an administrator's conviction of an offense described above, the State Board would be required to give the administrator written notice of his or her right to a hearing before the Board.

If the administrator did not avail himself or herself of this right within 30 working days after receiving the written notification, his or her school administrator's certificate 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 administrator's certificate.

Reinstatement of Administrator's Certificate

After completing his or her sentence, an administrator could request a hearing before the State Board on reinstatement of his or her school administrator's certificate. Based on the issues and evidence presented at the hearing, the State Board could reinstate, continue the suspension of, or permanently revoke the administrator's school administrator's certificate.

If an administrator's conviction were reversed upon final appeal, his or her school administrator's certificate would have to be reinstated upon his or her notifying the State Board of the reversal. In addition, upon notifying the appropriate local or intermediate school board, the administrator would have to be reinstated with full rights and benefits to the position he or she would have had if he or she had been employed continuously if the suspension of the school administrator's 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 an administrator 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 an administrator.

Lunch, Breakfast Programs

Under the bill, the board of a primary school district or a fourth class school district that did not operate a K to 12 program could establish a lunch and/or breakfast program that would be available to all full-time pupils enrolled and in regular daily attendance at each school in the district. Establishment of a breakfast program would be contingent on whether 20% or more of the lunches served the immediately preceding year were free or reduced-price lunches.

The bill would delete provisions on the establishment of a supplemental milk program.

MCL 380.1272a et al.

SENATE COMMITTEE ACTION

The Senate Committee on Education and Mental Health adopted a substitute bill (S-2) that added provisions concerning school lunch and breakfast programs.

FISCAL IMPACT

Primary and fourth class school districts that are not K to 12 school districts and that would establish school lunch and/or breakfast programs would have added costs. Reimbursement for a portion of the costs could be sought by the school district from the State. The State would pro rate the local districts' requests for reimbursement among the State's existing appropriations for school lunches ($125,068,200) and school breakfasts ($328,500) among all the districts that have a lunch and/or breakfast program.

There are 39 non-K to 12 school districts. It is not known how many of these districts would establish a lunch or breakfast program or what the size of the program would be. However, it is anticipated that the overall impact would be negligible.

The bill's provisions pertaining to the suspension of a school administrator's certificate would have no fiscal impact on State or local government.

ARGUMENTS

Supporting Argument

When a school administrator is convicted of a felony, the Department of Education is not aware of the conviction unless it is notified by a county prosecutor, local police agency, news report, parent, or interested party. By requiring a county prosecutor in the county where the administrator was convicted to notify the State Board of the conviction, the bill would expedite the Department's ability to take action when an administrator is convicted. It would be less likely that convicted felons were able to "slip through the cracks" as now occurs due to the lack of reporting requirements, and end up serving as an administrator in the State's schools. The bill also would help prevent persons convicted of felonies in other states from obtaining a school administrator's certificate in Michigan.

Supporting Argument

The bill would provide a means for the State Board to act quickly against the certificate of administrators convicted of sex-related offenses and child abuse. Currently, the Department must follow cumbersome procedures that are outlined in State Board rules. Under the bill, the State Board would be required to give an administrator written notice of his or her right to a hearing before the State Board. If the administrator did not take advantage of this right within 30 working days after receiving the notice, the administrator certificate would be suspended. This provision would accelerate the process for suspending the certificate. Furthermore, in addition to suspending the administrator certificate, the State Board could proceed under Public Act 61 of 1987 to suspend the individual's teaching certificate.

Supporting Argument

All school districts that offer a school lunch and breakfast program must comply with Federal guidelines in offering these programs. Thus, smaller districts--including those that offer K-6 and K-8--programs must meet the same requirements as larger K-12 districts. The smaller districts, however, are not eligible for State reimbursement. It appears that the State discriminates against these smaller districts by awarding financial reimbursement only to K-12 districts. The non-K-12 districts should be

eligible for this reimbursement, as are their larger counterparts.

Response: The K-12 districts are mandated by the State to offer these meal programs, while the smaller districts are not required to do so. Thus, the K-12 districts should be assisted financially for providing these mandated programs.

Opposing Argument

The bill does not go far enough, and should address all felonies. Even if the bill were enacted, the Department of Education still would have to follow current procedures to seek suspension of a certificate of an administrator 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, administrators convicted of felonies--other than sex or child abuse offenses--still could end up working 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 school administrators is warranted. The State has an inherent interest in protecting children, and that includes keeping convicted felons out of school buildings.

Opposing Argument

The bill would allow automatic suspension of the certificate upon notice of conviction only if the administrator did not avail himself or herself of the right to a hearing. Therefore, a convicted felon could continue to serve in a school district with a valid certificate pending the outcome of the hearing process to suspend or revoke the administrator's certificate.

Response: Giving a school administrator the opportunity for a hearing is necessary to protect the individual's right to due process.

Opposing Argument

The bill would require that an administrator whose conviction was reversed upon final appeal be reinstated, with full rights and benefits, to the position that the administrator would have had if he or she had been employed continuously, if the suspension of the certificate were the sole cause of discharge from employment. Some school officials interpret this provision as requiring local districts to compensate the administrator for back pay and place him or her in the position that 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 administrator because the certificate was suspended by the State. Further, it is not clear what school districts would do with the administrator who currently holds the position that the suspended administrator previously held. While larger districts more easily could absorb that person into the system, medium-size 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 would not necessarily want to rehire a person who conviction was reversed, especially if the reversal were on technical grounds.

Response: Administrators 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 administrator who lost a certificate based solely on a criminal conviction and then regained the certificate when the conviction was reversed.

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