



Olds Plaza Building, 10th Floor
Lansing, Michigan 48909
Phone: 517/373-6466

SCHOOLS: JOB APPLICANTS

House Bill 5060 as enrolled
Public Act 189 of 1996
Second Analysis (7-24-96)

Sponsor: Rep. Harold S. Voorhees
House Committee: Education
Senate Committee: Education

THE APPARENT PROBLEM:

According to press reports, there have been a number of cases in recent years where a school district reached a secret settlement agreement with a teacher allowing the teacher to leave rather than faces charges of unprofessional conduct. In some cases, these teachers have gone on to other school districts. In one widely publicized case, a music teacher left a Michigan school district where he had engaged in sexual relationships with students only to be accused of similar behavior in Florida. While reaching secret agreements might appear in some cases to be the best approach since it avoids both bad publicity and a lengthy, costly set of hearings, some people believe the practice puts children at risk. Legislation has been introduced to prohibit agreements that suppress information about unprofessional conduct by teachers and other school personnel and to require school districts to exchange information about previous unprofessional behavior when an applicant for a job is being evaluated.

THE CONTENT OF THE BILL:

The bill would amend the School Code in the following ways.

-- The board or an official of a school district, local act school district, intermediate school district, public school academy (charter school), or a non-public school would be prohibited from entering into a collective bargaining agreement, individual employment contract, resignation agreement, severance agreement, or any other contract or agreement that had the effect of suppressing information about unprofessional conduct of an employee or former employee or of expunging information about that conduct from personnel records. Any provision of a contract or agreement contrary to this would be void and unenforceable. This would not restrict the expungement from a personnel file of information about alleged unprofessional conduct that had not been substantiated.

-- Before hiring an applicant for employment, school districts and schools would be required to request the

applicant to sign a statement authorizing his or her current or former employers to disclose any unprofessional conduct by the applicant and to make available copies of all documents in the employee's personnel record relating to the unprofessional conduct. The statement would also release the current or former employers (and employees acting on their behalf) from any liability from releasing the information and waive any written notice required by the Bullard-Plawecki Employee Right To Know Act. Information would have to be sought from at least the current employer or, if the applicant was not employed, the immediately previous employer. The request would have to include a copy of the applicant's signed statement. A district or school could not hire an applicant who did not sign such a statement. The bill says it would not prevent a district or school from requesting or requiring applicants to provide other information.

-- The term "unprofessional conduct" would mean one or more acts of misconduct; one or more acts of immorality, moral turpitude, or inappropriate behavior involving a minor; or commission of a crime involving a minor. A criminal conviction would not be an essential element of determining whether or not a particular act constituted unprofessional behavior.

-- Upon receiving a request, an employer would have 20 business days to provide the requested information and copies of documents. Employers and employees acting on their behalf would be immune from civil liability when disclosing information in good faith. The employer or employees would be presumed to be acting in good faith unless a preponderance of the evidence established that the employer or employee knew the information disclosed was false or misleading; that the information was disclosed with a reckless disregard for the truth; or that the disclosure was specifically prohibited by a state or federal statute.

-- Information received could be used only for the purpose of evaluating an applicant's qualifications for

House Bill 5060 (7-24-96)

employment. Except as otherwise provided by law, information could not be disclosed to anyone not directly involved in the process of evaluating the applicant (except to the applicant). A person who violated the provision would be guilty of a misdemeanor punishable by a fine of not more than \$10,000, but would not be subject to the penalties in Section 1804 (which provides penalties for the neglect or refusal to perform a required act under the School Code).

MCL 380.1230b

FISCAL IMPLICATIONS:

The House Fiscal Agency has said of an earlier version of the bill that it has no direct state or local fiscal impact. The HFA added, however, that "there is the potential for a secondary, indeterminate, cost impact to local school districts for increased litigation expenses regarding the disclosure of personnel information, notwithstanding the consent and waiver provisions of the bill." (Fiscal Note dated 10-31-95)

ARGUMENTS:

For:

The aim of the bill is to protect students by keeping teachers (and others) with a record of unprofessional conduct out of the schools. It would prohibit agreements between schools and employees under which information about unprofessional conduct is suppressed. It would require school districts to request information about such conduct from previous employers (which some districts already do) and require the previous employers to provide it. A district would not be able to hire a person who was unwilling to sign a statement agreeing to the release of such information from previous employers. News accounts have revealed that teachers can be pushed out of one district for unprofessional conduct, including sexual abuse of students, and move on to positions in other districts because secret agreements suppress information about their employment history. The bill protects employers that release such information in good faith, but also contains safeguards to protect against the distribution of false information.

Against:

One likely effect of this bill will be more litigation for school districts who want to terminate the employment of teachers who have been charged with unprofessional conduct. Obviously districts have felt justified in reaching agreements that suppress the reasons why a teacher is leaving. (It is not known how many of those cases involve situations in which children are in any kind of danger.) School districts are run by elected officials;

they can make these determinations. There is also the possibility that people will face difficulty obtaining new employment because of charges in a personnel record that were never proven. The definition of "unprofessional conduct" is somewhat vague, including, among other things, acts of "misconduct", "moral turpitude" and "inappropriate behavior." An earlier version of the bill required that unprofessional conduct be conduct that constituted a threat to the health or safety of another person and that resulted in separation from employment.

Response:

Supporters of the bill say the definition of unprofessional conduct is based on terms that can be found in case law.

Analyst: C. Couch

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.