

SENATE BILL REPORT

SB 5533

As Reported By Senate Committee On:
Education, February 3, 2004

Title: An act relating to the hiring of school district employees.

Brief Description: Establishing provisions for disclosure of misconduct by applicants for school district employment.

Sponsors: Senators Kohl-Welles, Johnson, McAuliffe, Carlson, Keiser, Rasmussen and Kline.

Brief History:

Committee Activity: Education: 2/18/03, 3/5/03 [DPS]; 1/20/04, 2/3/04 [DP2S].

SENATE COMMITTEE ON EDUCATION

Majority Report: That Second Substitute Senate Bill No. 5533 be substituted therefor, and the second substitute bill do pass.

Signed by Senators Johnson, Chair; Finkbeiner, Vice Chair; Carlson, Eide, McAuliffe, Pflug, Rasmussen and Schmidt.

Staff: Heather Lewis-Lechner (786-7448)

Background: Under current law, a school district must perform a fingerprint-record check when hiring a staff person who will have regularly scheduled unsupervised access to children. All classroom teachers must have a fingerprint record check when they apply for their teaching certificate.

Under the Public Disclosure Act, public records maintained by an agency concerning its own employees are available for public inspection unless a specific provision of the law exempts the record from disclosure. The act applies to personnel files held by school districts and permits a hiring school district to request records from another school district that was the prior employer of an applicant. The act does not require one school district to request any records. The act contains an extensive list of statutory exemptions to disclosure that includes an exemption for personal information of public employees to the extent that disclosure would violate that employee's "right to privacy" and an exemption for the residential addresses and phone numbers of the employee.

A person's "right to privacy" is violated only if disclosure of the information about the person (1) would be highly offensive to a reasonable person, and (2) is not a legitimate concern to the public.

Summary of Second Substitute Bill: Certificated and classified school district employees who apply to another school district must sign a release authorizing the disclosure of any sexual misconduct information, including any related documents in their personnel files. Hiring school districts must request from all of the applicant's previous school district

employers any information about that employee's sexual misconduct including related documents. The information must be provided within 20 days of receiving the request.

School districts that provide the required information are provided immunity when the information is provided in good faith. Sexual misconduct information is only used to evaluate the applicant's qualifications for the position for which he or she has applied and the information is not disclosed to anyone not directly involved in the evaluation process. A person who wrongfully discloses information is guilty of a misdemeanor.

School districts that are considering applicants for certificated positions must request verification of the applicant's certification status and sexual misconduct information in the applicant's files from the Office of the Superintendent of Public Instruction (OSPI).

Applicants may be employed on a conditional basis pending review of any sexual misconduct information. School districts must not hire an applicant who refuses to sign the release.

Starting on September 1, 2004, school districts are prohibited from entering into employment contracts or severance agreements which call for sealing records of verbal or physical abuse or sexual misconduct. This prohibition does not apply to existing contracts or agreements.

The State Board of Education defines "verbal abuse," "physical abuse" and "sexual misconduct" for application to both classified and certificated employees for purposes of this bill. The definition adopted by the board must include a requirement that the school district make a determination that there is sufficient information to conclude that the abuse or misconduct occurred and that the employee is leaving due to that misconduct.

Second Substitute Bill Compared to Original Bill: The type of misconduct covered by the bill, in most instances, is limited to sexual misconduct. All current and past employers are included in the provisions of the bill rather than just current employers or the immediately prior employer. The types of disciplinary action that cannot be sealed or expunged from the personnel files are expanded to include verbal and physical abuse and sexual misconduct. The State Board of Education is given the authority to define verbal and physical abuse and sexual misconduct. The definition of "sexual misconduct" adopted by the State Board of Education must include a requirement that the school district make a determination that there is sufficient information to conclude that the misconduct occurred and that the employee is leaving due to that misconduct. Personnel files are expanded to include all files the prior district holds which are related to sexual misconduct. Districts must provide parents with information regarding their rights under the Washington Public Disclosure Act to request public records regarding school employee disciplinary action. What OSPI reports to the national database is expanded to include all types of disciplinary actions to the extent they are accepted by the national database and requires OSPI to suggest modifications to the national database if all forms of disciplinary actions are not accepted.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Testimony For: There are loopholes in current law that allow students to continue to be victimized. While it is recognized by everyone that the majority of our teachers are dedicated to providing our state's children with a safe learning environment, there are a select few that take advantage of the trust and confidence given them and abuse our children. These few must be sent a strong message that they cannot hide and continue to prey. This bill is about protecting our children and the intent is to only deal with those situations where there is documented guilt not just mere allegations or accusations. These cases are not only detrimentally impacting Washington's children they are also costing our taxpayers money and wasting state resources since many of the cases are settled for large amounts. This bill will give schools the tools they need to learn what they need to know about the people they are hiring in order to keep our children safe while also protecting them from liability. This bill also deals with a major problem of schools agreeing to seal a record in order to get rid of a problematic employee. This is information parents have a right to know. Students need to know that they are safe and parents need to be able to trust the system to protect their children. We must figure out how to both prevent this abuse and intervene. A code of conduct task force has been formed by OSPI to deal with this issue and to advise Superintendent Bergeson on how best to fix rules and regulations. OSPI supports increased sharing of information on proven sexual misconduct and expanding reporting requirements. This bill was worked on extensively last session and input from many interested parties was taken. The version that is before the committee this year is a tool that will work and will help protect kids.

Testimony Against: There are legitimate times when a record should be able to be expunged from an employee's file that should be considered. We need to make sure there are protections for those employees who are unfairly accused. In the past there have been problems with employees who have been accused and then the charges were deemed unfounded but the schools refused to ever officially say the employee was "not guilty" and so the employee's life is forever affected.

Testified: PRO: Senator Kohl-Welles, prime sponsor; Senator Benton, sponsor; Abby Rice, citizen; Ed and Dianne Lundberg, citizens; Roland Thompson, Allied Daily Newspapers of WA; Michele L. Earl-Hubbard, citizen; Larry Davis, SBE; PRO W/CONCERNS: Barbara Mertens, WASA; Greg Williamson, OSPI; Dan Steele, WSSDA; David Westberg, Stationary Engineers; Concerns: Lucinda Young, WEA; Ed Triezenberg, Carpenters Union.

Signed In/Did Not Testify: PRO W/CONCERNS: Randy Hathaway, WA School Personnel Assoc.