

ALASKA STATE LEGISLATURE
HOUSE SPECIAL COMMITTEE ON EDUCATION

April 29, 2003
12:09 p.m.

MEMBERS PRESENT

Representative Carl Gatto, Chair
Representative Paul Seaton, Vice Chair
Representative Dan Ogg
Representative Peggy Wilson
Representative Kelly Wolf
Representative Les Gara
Representative Mary Kapsner

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

HOUSE BILL NO. 136

"An Act allowing persons to teach in the public schools for up to five months without a teaching certificate if the person has applied for a certificate and the application has not been acted upon by the Department of Education and Early Development; and providing for an effective date."

- MOVED CSHB 136(EDU) OUT OF COMMITTEE

PREVIOUS ACTION

BILL: HB 136

SHORT TITLE:TEACHER CERTIFICATION DEADLINE

SPONSOR(S): REPRESENTATIVE(S)GATTO

Jrn-Date	Jrn-Page		Action
02/26/03	0307	(H)	READ THE FIRST TIME - REFERRALS
02/26/03	0307	(H)	EDU, HES
04/17/03		(H)	EDU AT 6:00 AM CAPITOL 124
04/17/03		(H)	-- Meeting Canceled --
04/29/03		(H)	EDU AT 11:00 AM CAPITOL 124

WITNESS REGISTER

KEVIN SWEENEY, Legislative Liaison

Office of the Commissioner
Department of Education and Early Development
Juneau, Alaska

POSITION STATEMENT: Testified on HB 136 and answered questions from the members.

PAULA HARRISON, Director
Human and Resources and Labor Relations
Matanuska-Susitna Borough School District
Palmer, Alaska

POSITION STATEMENT: Testified in support of HB 136 and answered questions from the members.

ACTION NARRATIVE

TAPE 03-22, SIDE A

Number 0001

CHAIR CARL GATTO called the House Special Committee on Education meeting to order at 12:09 p.m. Representatives Gatto, Seaton, Ogg, Wolf, and Gara were present at the call to order. Representatives Wilson and Kapsner arrived as the meeting was in progress.

HB 136-TEACHER CERTIFICATION DEADLINE

Number 0056

CHAIR GATTO announced that the first order of business would be HOUSE BILL NO. 136, "An Act allowing persons to teach in the public schools for up to five months without a teaching certificate if the person has applied for a certificate and the application has not been acted upon by the Department of Education and Early Development; and providing for an effective date."

CHAIR GATTO, sponsor of HB 136, explained that the purpose of this bill is to provide an extension from three months to five months for school districts to allow individuals to continue to teach while they are awaiting their security clearance. He read the following statement into the record [original punctuation provided]:

Currently, teachers who are waiting to receive certification, with all of their paperwork submitted and approved in Juneau must wait until they are cleared through a fingerprint check for final certification. During the process they may teach for

up to three months. Unfortunately, three months is very rarely enough time for teachers to receive fingerprints. Often sending teachers out of the classroom on leave without pay is the only option available to a school district under statute when a teacher waits more than three months on fingerprints. The Department of Education has recently attempted to address this problem by issuing conditional certificates. Adding expense, a separate certification, and a new process is less efficient than this proposal. Extending the amount of time that a teacher can be in the classroom teaching while waiting on fingerprints from three months to five months eliminates the need for a separate conditional certification and resolves the problem of placing teachers on leave without pay.

CHAIR GATTO announced that he is handing the gavel over to Vice Chair Seaton, since he is the sponsor of the bill before the committee.

Number 0238

VICE CHAIR SEATON announced for the record that Representative Wilson has joined the committee.

CHAIR GATTO told the committee that in all fairness the Anchorage School District does not have a position statement on this bill because they have not had time to investigate the issue. The National Education Association (NEA) has not taken a position on it. However, the Matanuska-Susitna Borough School District has taken a position on it and there was someone on line, but the connection was lost. If that person comes back on line, it would be good if he/she were given the opportunity to testify on the bill.

Number 0327

KEVIN SWEENEY, Legislative Liaison, Office of the Commissioner, Department of Education and Early Development (EED), testified on HB 136 and answered questions from the members. He told the committee that EED is working with Chair Gatto and Senator Therriault on the issue of fingerprinting and obtaining certification. Rather than putting this legislation forward, the department would like to deal with this issue with the Department of Public Safety (DPS) and those processing the fingerprints. He believes that it is more beneficial to see

that the timeframe is shortened so the districts never have to worry about going to five-month options, as opposed to just admitting that there is a problem and allowing the timeframe to get even longer, whereby there could be a teacher in a classroom without having any idea of that person's criminal background history.

MR. SWEENEY said he knows that Chair Gatto supports the department's efforts and is looking for a way to solve the problem when there is a teacher who must go on leave without pay due to nothing he/she has done; it is unfair. The department hopes to come up with a better solution by the end of the session. The EED is working with the DPS. In fact, he'd spoken with their administrative services manager today and will be provided with a lot of information so the problem can be properly addressed.

Number 0462

VICE CHAIR SEATON said in the sponsor statement it refers to the department's issuing conditional permits as a way of dealing with this problem. Is that currently the department's practice?

MR. SWEENEY replied that he is unsure of that. The process is such that teachers apply for certification and the last thing that is done is the fingerprinting. Once a teacher gives his/her fingerprints for analysis, the teacher is given a three-month temporary certification. Probably what the department has tried to do in certain situations is if in three months the fingerprints are not back, the teacher is given another three-month temporary certification.

VICE CHAIR SEATON asked if there is any difference in the level of security that the state has for a teacher who is on a conditional permit and one that has been given an extension. He said since a conditional permit has been given, it provides districts with a comfort level. Does an extension to that permit change the district's comfort level with that individual?

Number 0641

MR. SWEENEY responded that three months is tough enough to swallow. In a perfect world the background check would be instant and no one would have to worry about someone being in the classroom without knowing, as well as possible with a fingerprints check, that the individual does not have a criminal background. It is critical when dealing with our children. Mr.

Sweeney said he has discussed this with teacher certification folks and they have said that the longer someone is allowed in the classroom, especially sexual predators, the more time these individuals are allowed to groom their victim. He said going from issuing a temporary certification from three to five months really scares the department. Three months is really the lesser of two evils.

Number 0669

PAULA HARRISON, Director, Human Resources and Labor Relations, Matanuska-Susitna Borough School District, testified in support of HB 136 and answered questions from the members. The intent in going from three to five months is basically due to the Department of Public Safety's inability to complete the background check in a timely manner. The conditional permits that are being issued now cost a lot of money for the department, instead of what was previously issued, which was a yellow card that meant the teachers could be in the classroom for 90 days. She assured the committee that the school district does not hire and place in the classroom any teacher that they have not done a thorough background investigation on. Ms. Harrison told the committee that the district fingerprints all the teachers in the district, even if they have been fingerprinted through the certification process. That is their requirement and that of many other school districts in the state. The reality is, the fingerprints are not coming back timely, and there is nothing the district can do. What happens is that the district then has to take someone who has been in the class for 90 days and tell them that person cannot be in the classroom anymore. Then the district puts someone else in the classroom until his or her certificate actually comes through.

Number 0788

MS. HARRISON said she is shocked that the EED has come out against this bill. She said she has been one-on-one with every certification director since 1997 about the problems the district has in getting fingerprints back in a timely manner. It would be helpful to have a conditional certification for five months because all the districts are waiting for the fingerprints to come back. She said in the rural districts it does not matter when the fingerprints come back because the teacher will remain in the classroom anyway. The larger districts really try to comply with the letter of the law and it puts districts in a difficult situation. For example, she said that she has a school psychologist whose fingerprints have been

run seven or eight times because of her disability. She knows she is never going to get a certificate, so Ms. Harrison said she has put this woman in a different retirement system because the district needs a school psychologist.

Number 0916

MS. HARRISON said that she strongly supports this legislation because it is not about sexual predators, but about districts trying to comply with the law. She assured the committee the district is thoroughly checking references before hiring teachers.

Number 0940

REPRESENTATIVE WILSON asked where in the certification process the fingerprinting takes place.

MS. HARRISON responded that fingerprinting is part of the application procedure with the state. No application is accepted without everything in the packet being completed. One part of that package is fingerprint cards. When the department issues a card saying everything has been completed with the exception of the fingerprint or criminal background check, that card allows districts to go ahead and hire an individual to be in the classroom for 90 days. Ms. Harrison told the committee if a teacher were to send in an application for certification without including fingerprint cards, the entire application would be returned to that person. She said that when Matanuska-Susitna Borough School District hires a teacher applicant, fingerprinting is the very first thing the district does before that teacher is in the classroom.

VICE CHAIR SEATON asked how long it takes for the district to get the results back.

MS. HARRISON replied that they do not have as much time to get them back as the department. Sometimes it can be as much as 120 days to get a response from the Federal Bureau of Investigation (FBI). When the district calls with concerns, DPS is very responsive. She said that the district sends their requests in daily. They do not hold them until there is a group. The day the district fingerprints the teacher applicant is the day it is sent to DPS. Maybe that is the holdup in certification in the EED. Perhaps they wait and batch them and send them in by groups. There has been this battle since 1997, and the districts cannot seem to get anywhere.

Number 1126

REPRESENTATIVE WILSON said that she can see this is a real problem for many districts. In talking with a number of people involved in the schools, she said she'd found what they would prefer is that the processing time for fingerprinting be speeded up, rather than extending the time a teacher can be in the classroom without having a background check completed. Carol Comeau of the Anchorage School District and Mary Francis of the Association of School Administrators both have concerns about this bill. Representative Wilson said all it would take is for one child to be harmed because the legislature looked at the wrong end in solving this problem and it would be a disaster. She asked if anyone from the DPS is available to answer some questions.

Number 1221

MR. SWEENEY told the committee that he has met with the administrative services manager of the Department Public Safety before coming to the meeting. She'd said she would provide him with statistics and information so that the committee can digest what is currently happening. He was told that DPS is transitioning from a mix of manual and automated systems to a fully automated system and they are expediting how long it takes. The FBI's response time has improved because they are on a fully automated system now. He was told if there is a backlog, it is mostly a workload issue. While the administrative services manager had explained that they are much faster than a couple of years ago, she could not assure him that fingerprint checks would be done in exactly three months or exactly five months. In most cases where it takes an extremely long period of time, it is because they are dealing with someone who has had a record way back in the past and they have to dig through records manually. Mr. Sweeney said he is hopeful there will be more information soon, as the manager is working on this issue today.

MR. SWEENEY clarified for the record that the EED recognizes that there is a problem here and have been talking with Chair Gatto's office about this. He said the department is fighting this bill because they want to find the best possible solution instead of taking just this one solution and running with it. Mr. Sweeney told the committee he has committed to Chair Gatto's and Senator Therriault's offices to work on a solution to this

problem that the department believes will protect children better.

Number 1358

VICE CHAIR SEATON thanked Ms. Sweeney for his comments, but reminded him that there are only 28 days left in the session and that raises some concern for a speedy resolution to this problem.

CHAIR GATTO commented that if DPS is able to speedup the process for getting fingerprints and background checks back in two months, then nothing in this bill would hinder the school district in any way because they would be ahead of schedule. The problem is that is not happening. He pointed out that with the enormous amount of background checks which are done before an individual is hired, if fingerprints did not exist, Matanuska-Susitna Borough School District would still be satisfied that their background checks would be sufficient to protect the children in the classroom. He asked Ms. Harrison if since 1997 there has ever been a fingerprint check come back that nullified the background check the district had done. Has any fingerprint check ever shown that the district had made an error in judgment?.

MS. HARRISON said no, that has never happened since she began work there in 1997. In that time, the district has hired over 800 teachers and it has never happened, not even once.

Number 1474

REPRESENTATIVE GARA asked Ms. Harrison why the school district does fingerprinting on top of what the state does. Is there a way to have only one entity do it so money could be saved?

MS. HARRISON replied that the school district requires it. The prospective teachers pay for the fingerprinting. Everyone in the district is fingerprinted, not just the teachers. Custodians, secretaries, classified staff, substitutes, or anyone that works in the school district must be fingerprinted.

REPRESENTATIVE GARA asked if there are benefits of double fingerprinting.

MS. HARRISON responded that she does not know what the benefit is to doing it or not. She said the school district gets back absolutely everything on an individual. She is not sure what

the state gets back because there are about 300 different classes of fingerprints and what information can be disseminated and to whom. Matanuska-Susitna Borough School District was fingerprinting long before the state required it.

REPRESENTATIVE GARA asked Mr. Sweeney, if the districts are doing fingerprinting and doing it faster than the state, whether there is any way to change the rule so the state is not doing a duplicate fingerprint. Could not the department piggyback on what the school districts are doing?

Number 1583

MR. SWEENEY responded that he really does not know the answer to that question. If the school districts are submitting fingerprints, it is most likely going to the same organization the department is submitting them to. He said he does not see the results coming any faster from the district than when it comes from the state.

REPRESENTATIVE GARA commented that the legislature is being told the state is spending too much money. The last time he had to get his fingerprints checked it was expensive. He said if there are two entities doing the check, it makes sense that only one entity should do it. He said he thinks either the school districts should refrain from it or the state should refrain. It is an economy that should be taken advantage of somewhere.

MS. HARRISON interjected that some individuals get a teaching certificate and may have it for six years before they are ever hired. One of the advantages of the district's doing the fingerprinting is that the check is very current when an employee is hired versus someone who was certified years before. Another point is that some teachers have never been fingerprinted because they were grandfathered into the system.

Number 1680

VICE CHAIR SEATON said that there may be a difference in the amount of information the state releases to a district. The district may be looking for additional information beyond what the state provides.

REPRESENTATIVE WILSON commented that her husband is a superintendent of schools, so she has seen what he has gone through when there is a hiring process going on. Not all schools do fingerprinting because they know it is being done

through the Department of Education and Early Development. She said it is wonderful that Ms. Harrison's district is so precise in doing background checks. Representative Wilson commented that there have been plenty of weekends that her husband has not been home because he was following up on references for prospective employees. He has mentioned that not all schools go through that rigorous process that he does. Unfortunately, the reality is that many schools are having such a hard time hiring teachers that they are glad to get someone. If the committee knew the scrutiny given every teacher was consistent, then this bill would not be a concern. However, there definitely is no consistency in hiring practices, so it is important to be concerned about that.

Number 1791

VICE CHAIR SEATON mentioned Chair Gatto's point that if the law were changed to allow teachers to remain in the classroom for up to five months without a teaching certificate and the process of getting the fingerprints back was speeded up, it would not leave a teacher in the classroom longer if the fingerprints come back in two or three months. Unless the committee is looking at five months, the department is not going to try to push to get fingerprints back earlier and it really will not have any effect in the classroom without fingerprint checks' coming back as fast as they can.

MR. SWEENEY responded that the director of administrative services in the Department of Public Safety mentioned to him that the fingerprints that take the longest amount of time to get back are the ones for which they have found some sort of criminal activity. The criminal activity was done a long time ago, so it is necessary to go back through the records manually and it takes much more time. So if that is the case, that scares him, he said. For 99.5 percent of the people, the new automated system will be streamlined and only take two months, but it is the exception to that rule, the one with the criminal history, who would be allowed to stay in the classroom for five months, if that is indeed the case.

VICE CHAIR SEATON noted for the record that Representative Kapsner joined the committee sometime ago.

Number 1918

CHAIR GATTO said this question is directed to Mr. Sweeney. He used the analogy of an individual submitting a claim to an

insurance company to pay a medical bill. The company has a time limit. If they do not meet that time limit, they are required to send a letter advising they are late. For such a small percentage of people, it would seem a simple process for the districts to be sent a letter saying this individual continues to be under investigation. This might be enough information for the district to pull the person out of the classroom, watch that individual, or do something. It is the other 99.5 percent that he is thinking about. He said he has watched Ms. Harrison work. She has a large district and a desk full of information and an added responsibility for each of these new teachers.

CHAIR GATTO said the legislature's goal has been to streamline government. There has been a small percentage that has been missed. How about if DPS just passes on a small bit of information that says the individual continues to be under investigation? Then the district can take action on the very small percentage of those people, rather than continually trying to get conditional permits and occupying valuable time that could be used for checking other teachers for other things. A lot of the education funding has been taken away, and yet they are expected to do more. This bill is a simple way of saying that although the district is not getting money, there is some relief. Hopefully, DPS could send a warning; even if it is unmerited, at least it would be some protection for the district.

VICE CHAIR SEATON commented that it is clear the department is working expeditiously with DPS to speed up the fingerprinting process, and with current homeland security issues, that is one of the things that will be worked on. However, there is a time lag here. Would a two-year sunset on the bill give the department enough time to implement the faster fingerprinting and paper relief for the districts for now? He asked Mr. Sweeney if he sees that as a mechanism that might work.

MR. SWEENEY replied that he cannot speak to that now. If it is the will of the committee to move this bill forward, he is not here to stop that from happening. He said he wants to work together to assure everyone's concerns are met. If that is the end product, it is something the department would deal with. He said this is just the first step for the bill and the discussion between the sponsor and the department will continue. He said everyone has the same end goal in mind and will work judiciously to meet it.

Number 2131

VICE CHAIR SEATON asked Chair Gatto if a sunset provision would take away some of the long-term worries that the department has and allow time for DPS to upgrade their systems. He said he believes that with homeland security taking on so much importance, he believes that process will be automated. VICE CHAIR SEATON asked Chair Gatto if he sees any harm in the bill sunseting.

CHAIR GATTO responded that he does not see a problem with a conceptual amendment in sunseting the bill because he would like to see the bill move through the process as quickly as possible. He said he believes there is enough support among the districts for it.

REPRESENTATIVE WILSON expressed her concern with the bill, but said she would be willing to vote to pass the bill from committee and look at it again in the House Health, Education and Social Services Standing Committee. Representative Wilson told the committee that she is concerned about the safety issue and wants to hear from other school districts.

REPRESENTATIVE WOLF told the committee he has serious concerns with the bill and cannot vote to pass the bill from committee. He said it takes only one day to sexually molest a child and this bill is asking for an additional 60 days.

REPRESENTATIVE GARA said he has a host of concerns about this bill. He asked Mr. Sweeney if the teachers are being charged for the fingerprinting for the state teaching certificate as well as the school district's fee for fingerprinting.

MR. SWEENEY replied that there are a group of fees associated with obtaining a teacher's certificate.

REPRESENTATIVE GARA commented that the state is undercompensating teachers and in some cases making them pay hundreds of dollars for extra fingerprints that are not needed. He asked the committee if it would be possible to insert an amendment in the bill that would say if a teacher has paid for fingerprints in one jurisdiction from either the district or the state within the last year, then it is not required for the other. This seems like an incredible burden on teachers. He asked Chair Gatto and Mr. Sweeney if they see any problem with this kind of amendment.

Number 2289

VICE CHAIR SEATON asked for clarification on what information each entity doing the fingerprinting transmits to other entities. He said the fingerprinting is done for a certain reason at one agency. But is the legislature telling that agency not only to certify that they did not find anything within their provisions, but also to share all the information obtained from the background check?

REPRESENTATIVE GARA commented that the most efficient system would be to appoint one agency to be responsible to gather fingerprints. The backup would be that if the district requires information, the legislature could require that the state share the information. Ideally, the state's background check should be good enough that the school districts do not require the same background check and teachers are not required to spend money for additional fingerprinting.

Number 2351

CHAIR GATTO responded that this is really straying from the purpose of the bill, but whatever the legislature says or does, the Matanuska-Susitna Borough School District will require fresh fingerprinting for every fresh applicant. He asked if Ms. Harrison would confirm that this is correct.

MS. HARRISON replied that is correct.

CHAIR GATTO went on to tell the committee that the liability is too great to permit that. He said that Representative Wolf addressed that issue in his comment that it only takes one day to sexually assault a child. Matanuska-Susitna Borough School District will continue to do background checks, and the cost will be charged to the applicant. He does not see a way out of this. Chair Gatto said that he knows there are small districts out there with one teacher and they are almost scared to lose this teacher after three months and be forced to remove the teacher from the classroom; so these districts will just choose to violate the law and allow the teacher to continue teaching, knowing that the district has already done a very significant background check. He summarized his comments by reiterating Ms. Harrison's statement that in all the years they have been hiring teachers, not even one time has there been a problem. This legislation satisfies the needs of the districts, he suggested.

Number 2429

VICE CHAIR SEATON ruled that Representative Gara's suggested amendment is outside the scope of the title of the bill being considered.

REPRESENTATIVE WILSON commented that in one of the school districts she represents, someone failed the background check, so it is not necessarily 100 percent.

CHAIR GATTO asked if the person's record was missed in the background check, but was discovered in the fingerprinting process.

REPRESENTATIVE WILSON responded that she does not know the details behind the discovery.

REPRESENTATIVE GARA commented, in response to Vice Chair Seaton's ruling against a possible amendment, that while the amendment may not fit in the purview of the bill, it fits right in the statutory provision and the committee can expand the title if necessary.

VICE CHAIR SEATON responded that he does not believe the legislature should be in the position of regulating a school district, the state, and the FBI. The purview of this bill is just talking about five months of teaching until the person gets a certificate back, not what the school districts do to accommodate their liability requirements.

REPRESENTATIVE GARA asked Ms. Harrison if it makes sense to have one centralized fingerprinting system for new hires. He said he would like her to consider this idea for another day. He also asked if the Matanuska-Susitna Borough School District is doing a more detailed background check with their fingerprints than the state.

MS. HARRISON responded that Alaska law determines the information provided to the districts based on the fingerprint check. The law also says what the Department of Education and Early Development can get back. She told the committee that information is not the same. Some small agencies like "Child Find" do not get as much information as a school district does. Districts get everything. She said she is not clear on what the state gets back, but that she is sure there are some restrictions on what they get back.

Number 2563

REPRESENTATIVE GARA told the committee he would leave the centralized fingerprinting system issue to the administration and ask them to look into this as an efficiency measure.

CHAIR GATTO commented that Representative Gara's choice is a wise one, since the Alaska constitution requires single-subject bills.

MR. SWEENEY said that the administration has made their position known on this bill. He believes Chair Gatto will work with the Department of Education and Early Development on this issue.

Number 2602

VICE CHAIR SEATON asked Chair Gatto if he would support a conceptual amendment to insert a two-year sunset on this bill.

CHAIR GATTO responded that while he does not prefer it, in the interest of moving the bill forward he will accept it. He asked Ms. Harrison if she sees a problem with a sunset provision.

MS. HARRISON replied that she does not see a problem with the sunset provision and believes this may help to get the fingerprints and background checks back more quickly.

CHAIR GATTO stated that he would accept a conceptual amendment for a two-year sunset on the bill.

REPRESENTATIVE GARA asked about possible inefficiency at the Department of Education and Early Development (EED) or the Department of Public Safety. He asked if this is an example of where the administration has cut staffing back too much. If the school districts are having less difficulty getting information back from the Department of Public Safety than the EED, then it suggests that there is inefficiency within the EED. Is that the case?

MR. SWEENEY responded that he is not sure that is the case. It might be a question for Ms. Harrison. Does the district get the fingerprint background check more quickly than the department?

Number 2705

MS. HARRISON told the committee she has the greatest respect for EED and the certification analysts. She said they work very hard, but are self-funded. They can only afford to hire as many people as the funds they bring in support. The question would

be how often they send the fingerprint cards in. The district sends the cards in on a daily basis. If the district fingerprints one person today, that fingerprint card is sent in the mail with a check to the Department of Public Safety. If the department is batching them or only sending them once per week or once every two weeks, that could be a problem. She said her district is getting the information back more quickly than the EED.

MR. SWEENEY commented that is something he will look into.

REPRESENTATIVE GARA pointed out if either department is understaffed, then the legislature needs to know. The legislature is in support of making efficiencies, but not at the expense of causing a public danger. He said he will wait to hear from the EED.

Number 2766

CHAIR GATTO moved to report CSHB 136 with a conceptual amendment of a two-year sunset out of committee with individual recommendations and the accompanying zero fiscal notes.

REPRESENTATIVE WOLF objected to the motion.

VICE CHAIR SEATON stated for the record that while the committee does not have the fiscal note before them, they have been advised that it is a zero fiscal note.

A roll call vote was taken. Representatives Seaton, Gara, Ogg, Wilson, and Gatto voted in favor of reporting CSHB 136 from committee. Representative Wolf voted against it. Therefore, CSHB 136(EDU) was reported out of the House Special Committee on Education by a vote of 5-1.

REPRESENTATIVE WILSON stated for the record that she is voting to move the bill to the next committee of referral and intends on getting more answers to questions on the bill.

REPRESENTATIVE WOLF commented that this bill is playing Russian roulette with our kids. It is inappropriate to put a sexual predator in our schools for even one day.

ADJOURNMENT

There being no further business before the committee, the House Special Committee on Education meeting was adjourned at 12:53 p.m.