

OFFICE OF POLICY AND LEGAL ANALYSIS

To: Members, Joint Standing Committee on Education and Cultural Affairs
From: Hillary Risler, Esq., Legislative Analyst
Date: February 24, 2021
Subj: **LD 278, “An Act To Establish a Process for the Consideration and Implementation of Changes to Mandated Instruction or Training for Students” (Brennan)**

SUMMARY

1. It establishes the Review Committee on Proposed Legislation as a board with minimal authority and provides that members are not entitled to compensation.
2. It requires the joint standing committee of the Legislature that considers proposed legislation that would establish or substantially expand mandated instruction or training for students in elementary or secondary school to hold a public hearing on the proposal and then either vote to:
 - Request that the Commissioner of Education convene the Review Committee to review the proposal and report to the committee by a specific date chosen in consultation with the DOE; *or*
 - Hold a work session to work and vote on the proposed legislation.
3. It requires the Commissioner of Education to appoint the Review Committee members, including teachers, administrators, and content specialists within DOE and a representative of an association of statewide curriculum leaders, and requires the review committee to invite the sponsor of the proposed legislation to participate in its evaluation.
4. It provides that, as part of the evaluation, the Review Committee must analyze the positive and negative effects of the proposed legislation and the costs to implement the proposal.
5. It requires the Commissioner of Education or the commissioner's designee to present the final report of the Review Committee to the committee

TESTIMONY

- **Proponents**

- This bill will help committee members understand whether a proposed mandated curriculum is already taught, the value of teaching it, and if valuable, the structure needed to be put in place to prepare teachers to teach it
- Establishing a standing review committee would enable the legislative process, when applied to curriculum and training mandates, to be in sync with the already established process for reviewing and updating the Maine Learning Results
- This process will help address the concerns that as new legislation is brought forward requesting additional standards more would be mandated without replacing anything and that some of the proposals may already exist in another content area of the Maine Learning Results
- This approach to reviews of curriculum mandates would give a fair analysis of whether the proposed addition is needed or feasible
- MSSA/MSBA suggested explicitly adding a superintendent and school board member to part of the review committee

- **Opponents**

- While acknowledging the challenge of curriculum mandates a more complicated and cumbersome process is not the solution and that the real review process should be in the committee, not an extra process or middle step with the DOE

- **Neither For Nor Against:** None

BACKGROUND INFORMATION:

- 129th Legislature, Second Regular Session: Committee unanimously voted OTP-A; Passed to be enacted in the House and Senate; Governor's Pocket Veto, Dec. 2, 2020
- The bill is based on a similar procedure established in Title 5, Section 12015:

Title 5: ADMINISTRATIVE PROCEDURES AND SERVICES

Part 18: ADMINISTRATIVE PROCEDURES

Chapter 379: BOARDS, COMMISSIONS, COMMITTEES AND SIMILAR ORGANIZATIONS

Subchapter 2: ORGANIZATION AND OPERATION

§12015. New boards

Any boards established on or after July 25, 1984 shall conform to the following provisions.

3. Sunrise review required. Any joint standing committee of the Legislature that considers proposed legislation to establish a board to license or otherwise regulate an occupation or profession not previously regulated or to substantially expand regulation of an occupation or profession currently regulated shall evaluate whether the occupation or profession should be regulated or further regulated. For the purposes of this section, "substantially expand regulation" means to add a new regulatory category or to expand the scope of practice for current practitioners. In order to evaluate this legislation, the joint standing committee shall, without a public hearing, briefly and informally review legislation referred to the committee that proposes a new occupational or professional board or substantial expansion of regulation and an applicant's answers pertaining to evaluation criteria as required by [Title 32, section 60-J](#). Following this informal review, the committee shall:

A. Immediately hold a public hearing to accept information addressing the evaluation criteria listed in Title 32, section 60-J from any professional or occupational group or organization, any individual or any other interested party who is a proponent or opponent of the legislation;

B. Request that the Commissioner of Professional and Financial Regulation conduct an independent assessment of the applicant's answers to the evaluation criteria listed in Title 32, section 60-J and report the commissioner's findings back to the committee by a specific date; or

C. Request that the Commissioner of Professional and Financial Regulation establish a technical committee to assess the applicant's answers to the evaluation criteria listed in Title 32, section 60-J following the procedures of Title 32, chapter 1-A, subchapter II and report its findings to the commissioner within 6 months of establishment of the committee.

Any recommendation by a joint standing committee to the full Legislature for the establishment or expansion of jurisdiction of an occupational or professional regulatory board must include a written statement describing the manner in which the assessment of answers to the evaluation criteria was conducted and a concise summary of the evaluation.

COMMITTEE REQUESTS FOR ADDITIONAL INFORMATION:

- Historical perspective
- Constitutional considerations
- Curriculum areas that are currently mandated in State law and how those occurred

Article VIII. Part First. Education.

Section 1. Legislature shall require towns to support public schools; duty of Legislature. A general diffusion of the advantages of education being essential to the preservation of the rights and liberties of the people; to promote this important object, the Legislature are authorized, and it shall be their duty to require, the several towns to make suitable provision, at their own expense, for the support and maintenance of public schools

Title 20-A: EDUCATION Part 1: GENERAL PROVISIONS Chapter 1: GENERAL PROVISIONS

§2. Policy on public education

The state policy on public education is as follows.

1. State responsibility for public education. In accordance with the Constitution of Maine, Article VIII, the Legislature shall enact the laws that are necessary to assure that all school administrative units make suitable provisions for the support and maintenance of the public schools. It is the intent of the Legislature that every person within the age limitations prescribed by state statutes shall be provided an opportunity to receive the benefits of a free public education.

2. Local control of public education. It is the intent of the Legislature that the control and management of the public schools shall be vested in the legislative and governing bodies of local school administrative units, as long as those units are in compliance with appropriate state statutes.

POTENTIAL ISSUES OR TECHNICAL PROBLEMS:

- Potential timing issue regarding legislative sessions
- Please note the following provision from the Legislators' Handbook for the 130th Maine Legislature:

Part I: Legislative Procedures

Section D: Limits on Legislative Power

Subsection 2: Other Relevant Constitutional Provisions

b. Binding future Legislatures. It is a commonly accepted principle of law that one Legislature may not, by enactment of a law, restrict the actions of a future Legislature. Such restrictions, if they are to be binding, must be found in the Maine Constitution, the United States Constitution or federal law. This does not mean an attempt to bind may not be enacted, only that it lacks a legal mechanism for enforcement. Enactment of a statute purporting to require a future Legislature to take a specific action is no more than an advisory expression of legislative intent. A future Legislature is not bound by the previous enactment.

PRELIMINARY FISCAL IMPACT STATEMENT:

- Not yet determined