

MAINE STATE LEGISLATURE

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STATE OF MAINE
ONE HUNDRED AND TENTH LEGISLATURE
COMMITTEE ON EDUCATION

April 2, 1981

Representative Elizabeth H. Mitchell
Chairman
Legislative Council
State House
Augusta, Maine 04333

Dear Representative Mitchell:

Attached is the Study Report of the Joint Standing Committee on Education pursuant to SP 580 of the 108th Legislature. The report has two bills. The first is the revision of Title 20, Education Laws. We recommend that this bill be submitted to the First Regular Session of the 110th Legislature. The second is "AN ACT to Remove Legislators from Membership on Educational Boards Under Multi-State Compacts." We recommend that this same bill be submitted to the Second Regular Session of the 110th Legislature.

Howard M. Trotzky
Senate Chairman

Sincerely,

Lawrence E. Connolly, Jr.
House Chairman

REPORT OF THE JOINT STANDING COMMITTEE ON EDUCATION.

REVISION OF THE EDUCATION LAWS.

INTRODUCTION

For several years, the Department of Education and the Joint Standing Committee on Education have considered and discussed the need for a complete revision of Title 20 of the Maine Revised Statutes, the education laws. The Legislative Council directed the office of Legislative Assistants to prepare a revision (SP 580, 108th Legislature). This revision was prepared in consultation with the Department and the Committee.

The principle of the revision is that it would contain no substantive changes in the law. Of necessity, minor internal conflicts, ambiguities and uncertainties are resolved or corrected to accord with present interpretations and usage. In addition, the language of Title 20 was altered to conform to drafting principles and current language usage. However, no changes are made in the principles or policies embodied in the education laws.

The revision of Title 20 has been reviewed by both the Committee and the Department. After review and discussion, the revision was approved by the Committee for submission to the First Regular Session of the 110th Legislature.

During the review, the Committee also considered several issues raised during the drafting of the revision that appear to involve at least some degree of substance. The Committee directed that

these issues be discussed in the report, and that separate legislation be prepared for these issues where appropriate.

REPORT

The revision of Title 20 is intended to provide a clear and concise reorganization of the laws relating to education. It is not intended to substantively alter the education laws, or to resolve several concerns about substantive issues that are present in the current education laws. These issues are raised in this report and its accompanying legislation for consideration by the Legislature.

Substantive Issues.

The following substantive issues are raised by the present education laws:

1. Education Commissions.

The present statutes (20 MRSA §§2751 et seq. and §§2901 et seq.) provide for the creation of the New England Board of Higher Education and the Education Commission of the States. These Commissions are part of multi-state compacts that provide for cooperation among several states on education issues. The Maine membership on these Commissions includes both Executive and Legislative Branch members (20 MRSA §§2803 & 2922). The compacts' provisions also include authority for the Commissions to exercise many apparently "Executive Branch" functions; such as appointing a "director", establishing personnel policies, receiving and dispensing funds and formulating policies (20 MRSA §§2754, 2903 & 2904).

The combination of Legislators with a board that performs "Executive Branch functions" has been found to raise a constitutional problem based on the Maine Constitution's provisions on "separation of powers" (Maine Constitution Article III) and the "appointments clause" (Maine Constitution Article V, Part I, Section 8). An Attorney General ruling (Attorney General Report: Re: Maine-Canadian Exchange Advisory Commission, September 16, 1977) has found the appointment of Legislators to such an "Executive" body to be unconstitutional under the Maine Constitution. (Copy Attached)

As the Compact for Education anticipates this problem, and provides for alternate membership where "the laws of the state prevent legislators from serving on the commission," the Committee has included with this report draft legislation that would adopt this alternative in Maine. The Committee has also included draft legislation to remove the Legislative members from the Higher Education Compact.

2. Scripture reading.

The present provision on Scripture reading in schools has been declared to be unconstitutional and "null and void". (1963-64 Attorney General Report 61, 97). However, the Legislature has refused to repeal it. Thus it remains in the revision, as 20-A MRSA §3804.

The Legislature should again consider whether this section should be repealed.

3. Unorganized Territory Taxes.

In the provisions governing assessment and taxation of the Unorganized Territory there are extensive provisions on the method and procedure for levying taxes for education. (20 MRSA §§1451-1461 & 1462-1478). However, in 1972 the Legislature also enacted two provisions (20 MRSA §§ 1461-A & 1479) that effectively repeal the methods of assessing these taxes on the Unorganized Territory. These 1972 enactments provide for General Fund appropriations in lieu of the statutory assessments.

Because of the complexity of the issues posed by the prior legislative action, the Committee did not delete the superceded sections. However, the Committee recommends that these conflicting provisions be harmonized and that the assessment provisions be rewritten to delete the superfluous material.

4. School board qualifications, limitations, and powers.

As the revision makes clear, there are several different types of governing bodies for school administrative units. In the revision, the general authority of these bodies (generically called "school boards") is established in one chapter (20-A MRSA ch. 101). These provisions make clear that over the years various restrictions, limitations and powers that apply to one type of school board do not apply to other types.

For example:

- There are employment and residence restrictions on members of some boards, but not on others (20-A MRSA §§1451 & 1705).

- The provisions on bid procedures apply to vocational regions and school administrative districts, but not other school administrative units.

- The provisions on property disposal, both for real and personal property, apply only to school administrative districts (20-A MRSA §§1456 & 1459).

The Committee recommends that each of these provisions be reviewed to determine if it should apply to all school boards, rather than to only a certain type of board. It appears in most instances that these restrictions, limitations and powers should apply generally.

5. "Capital outlay purposes".

There is some confusion in the present education laws concerning capital expenditures. The School Finance Act (20 MRSA §4741 et seq.) almost exclusively uses the terms "major capital costs" and "minor capital costs". These terms are expressly defined in that Act (20 MRSA §4743, sub §§ 13 & 14). However, elsewhere in the education laws those terms rarely appear. In their place is used the "outdated" term "capital outlay purposes". [In Title 20-A in the bill, this term appears in §§1404, sub §4, paragraph B; 1511, sub §2; 1512, first paragraph & sub §1; 4355, sub §1 and 5759, 1st ¶.] This term is not defined in Title 20, but was used extensively prior to the enactment of the School Finance Act.

The Committee recommends that "capital outlay purposes" either be defined in the "Title-wide definitions", or that it be replaced with "major and minor capital costs", with that term defined in the "Title-wide definitions" by a cross-reference to the definitions in the School Finance Act. The Committee did not

direct that these terms be combined because it is unclear in the present statute whether they are identical terms. The general opinion is that they are not, though further consideration is necessary to properly define "capital outlay purposes".

6. Unnecessary provisions.

There are several provisions in the revision that are unnecessary. Though they serve no legal purpose, however, they may provide a statement of policy or intent that is important.

For example, 20-A MRSA §10104 authorizes the State Board of Education to include certain items of federal aid in their budget estimate. This provision is redundant, as it duplicates the State Board's general powers, and is thus unnecessary. However, it may provide an important statement of policy that should be preserved in some other form.

The Committee recommends that these provisions be deleted, or, if they represent important policy statements, be rewritten to clearly express the policy.

7. Indians.

The education laws have several provisions relating directly or indirectly to Maine's Indians. Some of these provisions were affected by the Maine Indian Land Claims Settlement legislation. However, as the federal legislation was still pending during the period of this revision, and as this issue is complex and controversial, the revision makes no substantive change in the present laws.

The Committee recommends, in particular, that two areas relating to Indians be carefully reviewed:

- The School Finance Act should be reviewed for consistency with the federal and State Indian Land Claims Acts.

- A provision in the North American Indian Scholarship Act limits funds to Penobscot or Passamaquoddy students because they are eligible for Federal Bureau of Indian Affairs funds. The provision expressly does not apply that limitation to Maliseet students "who are not eligible for Federal Bureau of Indian Affairs Scholarship assistance" (20-A MRSA §8106). However, under the Federal Settlement Act, Maliseets are eligible for that assistance.

Revision Policy.

The revision style and format is based on current drafting principles applied in the Maine Legislature. Thus, a great deal of superfluous or redundant language has been removed. The revision incorporates standard language and drafting style throughout.

The revision also extensively reorganizes the education laws into a more functional format. It is designed to be more accessible to the general public, while retaining the legal language necessary to adequately express legislative purposes and intentions.

The present education laws contain many provisions that by their own terms are no longer applicable. With one exception, these have all been eliminated. The exception is the chapter relating to school construction prior to 1977. Because this chapter is the basis for bonding authority, and those bonds are still outstanding, the chapter is still legally important. Thus,

it has been retained. However, it is retained in the present Title 20, is not repealed and has not been rewritten in the revision.

Finally, the revision has adopted standardized terminology throughout the education laws. The standard terms are defined in a Title-wide definition section at the beginning of the Title. Though this use of standard terms has resulted in some minor changes in meanings or words between the present laws and the revision, it has also provided clear and precise definitions for many terms that are undefined in the present statute. This should assist in avoiding controversy in applying these laws.

The most basic policy in developing this revision has been to avoid substantive change in the education laws. Though the dividing line between substantive and nonsubstantive changes is occasionally difficult to distinguish, the policy has been followed as far as practically possible. When the present law was ambiguous or unclear, the revision has sought to resolve the ambiguity or provide clarity. In doing so, the advice of the Department of Education and Cultural Services was sought to avoid inadvertant substantive changes.

Schedule.

The Committee anticipates that the bill containing the revision will be ready for introduction to the 110th Legislature in the first part of April, 1981. Because it is such a large and comprehensive bill, and because it affects many people, the consideration of the revision will involve lengthy debate, discussion and study.

The Legislature will also be considering and acting on many other bills that relate to the education laws and Title 20. As the revision repeals virtually all of Title 20, those other education bills will have to be incorporated at some point in the revision.

Because of these two problems, the Committee recommends that the revision bill be acted on and reported out of the Committee to the floor before the end of the First Regular Session. The Committee then recommends that the bill be "held over" for the Second Session; and that during the interim the Committee prepare a second bill to incorporate into the revision all the education bills enacted during that session. If warranted by major issues or changes in the Committee's reported bill, the Committee also recommends that public hearings be held during the interim.

Finally, the Committee recommends that both these bills then be enacted in the first two weeks of the Second Regular Session.

The Committee believes that this schedule would provide more than sufficient time for careful and thorough legislative and public consideration of the revision bill. It may be possible to complete enactment during the First Regular Session. If this is possible, the Committee would encourage enactment as soon as possible.

AN ACT TO REMOVE LEGISLATORS
FROM MEMBERSHIP ON EDUCATIONAL
BOARDS UNDER MULTI-STATE COMPACTS

Be it enacted by the People of the State of Maine, as follows:

Sec.1.20 MRSA §2803, first sentence is amended.

Of the 8 members who shall represent the State of Maine, one shall be the Chancellor of the University of Maine ex officio in office at the time being and one shall be the Commissioner of Educational and Cultural Services ex officio in office at the time being, 4 and 6 shall be named by the Governor for 2-year terms. ~~one shall be a member of the Senate appointed by the President of the Senate and one shall be a member of the House of Representatives appointed by the Speaker of the House.~~

Sec.2.20 MRSA §2922 is repealed.

Statement of Fact.

This bill is part of the Committee on Education's study of the revision in the Education laws. The bill removes the legislative members from the New England Board of Higher Education and the Maine Education Council. The Board and Council are part of two multi-state compacts relating to education. Legislative membership on the Board and Council raises questions of constitutionality under the "separation of powers" and "appointments" clauses of the Maine Constitution. This problem may also occur in other compacts the State has entered into.