

MAINE STATE LEGISLATURE

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ONE HUNDRED AND EIGHTH LEGISLATURE

Legislative Document

No. 1020

H. P. 813

House of Representatives, March 15, 1977

On Motion of Mr. Lynch of Livermore Falls referred to the Committee on Education. Sent up for concurrence and 1,800 ordered printed.

EDWIN H. PERT, Clerk

Presented by Mr. Bagley of Winthrop.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-SEVEN

AN ACT Relating to Teacher Standards and Certification.

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

Sec. 1. 20 MRSA § 59, as repealed and replaced by PL 1975, c. 551, § 1, is repealed.

Sec. 2. 20 MRSA c. 203, as last amended by PL 1975, c. 551, § 2, is repealed.

Sec. 3. 20 MRSA c. 204 is enacted to read:

CHAPTER 204

TEACHER STANDARDS AND CERTIFICATION ACT

§ 1761. Short title

This chapter shall be known and may be cited as the "Teacher Standards and Certification Act."

§ 1762. Policy and purpose

Teaching in the State of Maine is declared to be a professional practice. In order to achieve the highest possible educational standards in the State of Maine, highly qualified professional teachers must be attracted, retained and stimulated to optimum performance. These objectives can be accomplished most effectively if the preparation, licensing and certain aspects of performance of teachers are regulated by the teaching profession.

It is the purpose of this chapter to establish a regulatory agency, a structure and procedures which will enable the teaching profession, through

qualified members, to control and regulate the preparation, licensing and certain aspects of performance of those persons who teach or perform educational duties in the educational institutions of this State.

§ 1763. Definitions

As used in this chapter, unless the context otherwise indicates, the following words shall have the following meanings.

1. Commission. "Commission" means the Teacher Standards and Certification Commission.

2. Educational duties. "Educational duties" means the performance of functions other than teacher which customarily involve direct contact with students, or are in support of teaching, in schools or other institutions at which attendance fulfills the compulsory education law of the State of Maine. Educational duties include, for example, but without limitation, the functions performed by school physicians, nurses and other medical personnel, by psychologists, by speech therapists and by teacher assistants. It does not include, for example, but without limitation, functions performed by clerical, maintenance, cafeteria and kitchen workers.

3. Person. "Person" means any individual, firm, corporation, partnership, organization or body politic.

4. Professional teacher organization. "Professional teacher organization" means one or more organizations, agencies, committees, councils or groups of any kind, more than half of the membership of which is composed of professional teachers and which exists primarily for the purpose of elevating the character of and advancing the interests of the teaching profession. Such organization and any parent or related organization shall be considered a single organization for the purposes of section 1765.

5. Teacher. "Teacher" means any person who engages in the practice of teaching.

6. Teaching. "Teaching" means instructing, supervising, administering or directing instruction in education programs in schools or other institutions at which attendance fulfills the compulsory education law of the State of Maine.

§ 1764. Teacher Standards and Certification Commission

1. Establishment. There is hereby established as an agency of the State of Maine the Teacher Standards and Certification Commission which shall be composed of 13 commissioners, one of whom shall be designated as chairman, to be appointed in the manner provided for in section 1765. Of the first commissioners appointed, 5 shall continue in office for 2 years, 4 for 3 years, and 4, including the chairman, for 4 years, respectively. Their successors shall be appointed for terms of 4 years each, except that any person chosen to fill a vacancy shall be appointed only for the unexpired term of the commissioner whom he shall succeed. Upon the expiration of his term of office, a commissioner shall continue to serve until his successor shall have been appointed and shall have qualified. No person may be appointed more than

once to fill an unexpired term nor more than twice to full terms. The Governor shall designate one commissioner to serve as chairman during the term of his appointment to the commission. No person may serve as chairman for more than 4 years.

The Governor may remove any member of the commission or the chairman from his position as chairman for inefficiency, neglect of duty or malfeasance in office, but for no other reason. No commissioner shall participate in any matter before the commission in which he has a pecuniary interest, personal bias or other conflict of interest.

2. Compensation of commissioners. Commissioners shall serve without compensation, but shall be reimbursed for their actual and necessary expenses incurred in the performance of official commission business. A member of the commission who is an employee of an agency of the State of Maine, or any of its political subdivisions, shall be permitted to attend commission meetings and perform other commission duties without loss of income or other benefits. A member of the commission who is employed by a private institution shall be reimbursed by the commission for any income lost as a result of attendance at commission meetings or performance of other official commission duties. An agency of the State of Maine, or any of its political subdivisions, which employs a person to replace such members during their performance of commission duties, or incur other additional expenses as a result of such performance, shall be reimbursed by the commission for the actual amount of any costs so incurred.

3. Quorum, principal office and seal. Seven of the members of the commission shall constitute a quorum of the commission. The principal office of the commission shall be in Augusta, but the commission may act and exercise all of its powers at any other place. The commission shall have an official seal which shall be judicially noticed.

4. Commission employees. The commission is authorized to employ, subject to the Personnel Law, such attorneys, experts and other employees as it may from time to time find necessary for the proper performance of its duties and for whom the necessary funds are appropriated. The chairman shall appoint a staff director, who shall be subject to the Personnel Law.

§ 1765. Appointment of commissioners

1. Nominations for appointment.

A. The Governor shall appoint members of the commission, by and with the advice and consent of the Joint Standing Committee on Education, only from among the qualified candidates nominated as provided herein.

(1) Any professional teachers organization may submit for such vacant position on the commission one nomination of a qualified candidate to the Governor for each 2,000 members in good standing who hold valid certificates issued by the commission. In the case of the first commissioners to be appointed under this chapter, any professional teachers organization may submit for each vacant position on the commission one nomination to the Governor for each 1,500 members in good standing

who hold valid teaching certificates issued by the Maine State Board of Education.

(2) One qualified candidate may be nominated for each vacant position by petition signed by 100 persons holding valid certificates issued by the commission. In the case of the first commissioners to be appointed under this chapter, one qualified candidate may be nominated for each vacant position on the commission by a petition signed by 50 persons holding valid teaching certificates issued by the State Board of Education. No person may sign more than one nominating petition for each vacant position. Any petition bearing the name of a person who has signed another petition for the same vacant position shall not be valid.

(3) All nominations shall be reviewed for validity and compliance with the provisions of this chapter by the Attorney General, who shall advise the Governor accordingly.

B. Unless withdrawn, a nominee shall remain eligible for appointment for one year from the date of submission, provided the nominee remains qualified for appointment. Nominations may be withdrawn by written request of the nominee or in the same manner as nominated as set forth in paragraph A, subparagraphs (1) and (2).

C. Nominations for the first commissioners to be appointed under this chapter shall be submitted to the Governor not later than 90 days from the date of enactment of this chapter. Thereafter, nominations shall be submitted to the Governor at his request. If no nomination is submitted to the Governor within 90 days of the date of request, the Governor may appoint any qualified person, with the advice and consent of the Joint Standing Committee on Education.

2. Qualifications for appointment.

A. All of the commissioners shall have the following qualifications at the time of their appointments, except that subparagraph (3) shall not apply to the public member :

(1) Resident of the State, and resident for at least one year prior to appointment;

(2) At least 25 years of age; and

(3) Actively engaged in the State, and for at least 3 years prior to appointment, in the practice of teaching or the performance of educational duties or as a faculty member of a higher education institution engaged in the preparation of teachers.

B. The appointment of any member of the commission shall automatically terminate 30 days after the date such member is no longer a resident of the State or is no longer actively engaged in the practice of teaching or in the performance of educational duties or as a faculty member of a higher education institution engaged in the preparation of teachers or no longer holds a valid license issued by the commission where such a certificate was a requirement for appointment.

C. Seven members of the commission shall each, at the time of appointment, hold a valid basic or advanced certificate issued by the commission, except that 7 of the first commissioners appointed under this chapter shall each hold a valid teaching certificate issued by the State Board of Education and shall be engaged on a full-time basis in the practice of teaching in grades nursery through 12 and shall not be a supervisor or administrator.

D. Two members of the commission shall each, at the time of appointment, hold a valid basic or advanced certificate issued by the commission, except that 2 of the first commissioners appointed under this chapter shall each hold a valid teaching certificate issued by the State Board of Education and shall be engaged on a full-time basis in the practice of teaching as a supervisor or administrator.

E. Two members of the commission shall each, at the time of appointment, be engaged on a full-time basis as a faculty member of an accredited higher education institution engaged in the preparation of teachers.

F. One member of the commission shall, at the time of appointment, hold a valid Education Specialist certificate issued by the commission, except that one of the first commissioners appointed under this chapter shall be licensed to practice a trade or profession other than teaching in the State and shall be engaged on a full-time basis in the performance of educational duties.

G. One member of the commission shall be a public member who shall be appointed by the Governor.

§ 1766. Issuance of certificates

1. Minimum requirements for certificates. The commission shall issue certificates of the following classes to applicants with the following minimum qualifications:

A. Basic certificate to be granted to persons with a bachelor's degree acceptable to the commission;

B. Advanced certificate to be granted to persons with one or more advanced degrees, or the equivalent, acceptable to the commissioner and teaching experience acceptable to the commission;

C. Education Specialist certificate to be granted to persons trained and licensed in trades or professions, other than teaching, who perform education duties other than teaching; or

D. Assistant certificate to be granted to persons who are not qualified for another class of certificate under this chapter and who perform education duties.

2. Further certification requirements. The commission shall, by rule-making proceedings in accordance with section 1771, promulgate and place into effect, within one year from the effective date of this chapter, the minimum academic teaching competence and personal requirements for each class of certificate. Such requirements may be revised by the commission

from time to time. The commission is authorized, pursuant to regulations to be adopted by it, to waive or grant exceptions from such requirements in appropriate cases, provided the commission may not waive or grant exceptions from any of the requirements set forth in subsection 1. It is the intent of the Legislature that the commission shall not engage merely in the prescription of certain courses of study and unit counting in developing minimum certification requirements.

3. **Teaching certificate holders.** Any person who, prior to one year from the effective date of the rules promulgated pursuant to subsection 2, holds a valid teaching certificate issued by the State Board of Education shall, upon application and payment of the prescribed fee, be granted a certificate of a class most nearly equivalent to the class of certificate held at the time of application, notwithstanding any other provision of this chapter.

4. **Reciprocal certification.** Any person who holds a certificate as a teacher issued by an agency of another state of the United States or a foreign country shall, upon application and payment of the prescribed fee, be granted a certificate of a class equivalent to the class of certificate held at the time of application, if the state of the United States or the foreign country which certified the applicant accords similar recognition to teachers certified in the State of Maine and provided the general level of qualifications required of persons certified in such other state or foreign country at the time the applicant was certified were no lower than those required of persons certified in the State of Maine at the same time.

5. **Hearing.** Any person denied a certificate by the commission shall be entitled to a hearing.

§ 1767. Revocation or suspension of certificates

1. **Grounds for revocation or suspension.** The commission is authorized to revoke or suspend a certificate granted pursuant to this chapter on the following grounds:

A. Conviction by a court of competent jurisdiction of a crime which the commission determines to be of such a nature as to render the person convicted unfit to practice teaching or perform educational duties. The commission shall compile, maintain and publish a list of such crimes;

B. Fraud or misrepresentation in obtaining a certificate; or

C. Other just and sufficient cause which renders a person unfit to practice teaching or perform educational duties.

2. **Notice and hearing.** No certificate may be suspended or revoked without prior notice and opportunity for hearing, except that the commission may, in its discretion, without prior notice or hearing, suspend for up to one year the certificate of any person convicted of a crime as set forth in subsection 1, paragraph A. The burden of proof shall be on the commission in any proceeding to suspend or revoke a certificate. No certificate may be suspended

or revoked except by majority vote of the full commission, notwithstanding any other provision of this chapter.

3. **Complaints.** Any person may file a complaint with the commission seeking suspension or revocation of a certificate issued by the commission. Such complaints shall be in a form prescribed by the commission and shall be verified under oath by the complainant or a duly authorized officer of a complainant. If the commission determines that a complaint alleges facts which, if true, would require revocation or suspension of a certificate, it shall promptly institute a hearing. Whenever the commission is of the opinion that a complaint does not state facts which warrant a hearing, such complaint may be dismissed. The commission may institute a hearing looking toward suspension or revocation of a certificate on its own motion.

4. **Intervention.** Any person may be permitted to intervene and participate in commission hearings on suspension or revocation of certificates upon a showing of an interest in that proceeding.

5. **Reinstatement.** Any person whose certificate has been suspended or revoked may apply to the commission for vacation of the suspension or reinstatement of the certificate.

§ 1768. Unauthorized practice of teaching prohibited

It shall be unlawful for any person to engage in the practice of teaching, or performance of educational duties in any public elementary or secondary school in the State of Maine without a valid certificate from the Teacher Standards and Certification Commission. It shall be unlawful for any person to direct or permit a noncertified person to practice teaching or perform educational duties knowing that such person is noncertified. If the commission finds that there is an emergency need for teachers or persons to perform educational duties in any part of the State, and that it is in the public interest, it may authorize noncertified persons to practice teaching or perform educational duties in the affected part of the State for the duration of the emergency. Notwithstanding the provisions of Title 17-A, section 4, violation of this section shall be punishable by imprisonment for not more than 6 months and by a fine of not more than \$5,000.

§ 1769. Accreditation

1. **Authority to accredit.** The commission shall investigate, study, evaluate and accredit teacher preparation institutions.

2. **Standards for accreditation.** The commission shall, by rule-making proceedings in accordance with section 1771, promulgate and place into effect within one year from the effective date of this chapter the procedures and standards governing accreditation. The commission may, in its discretion, adopt as its own, with or without modification, accreditation standards, procedures or findings made by other accrediting agencies.

3. **Reciprocal accreditation.** The commission is authorized to enter into agreements with agencies of other states for reciprocal accreditation of teacher preparation institutions.

§ 1770. Procedures

1. **General.** The commission shall conduct its proceedings in accordance with the provisions of this chapter and the Administrative Code, Title 5, chapters 301 to 307. Any person may be heard by the commission in person or by attorney. Every vote and official act of the commission shall be entered on record. All hearings and rule-making proceedings shall be open to the public. A stenographic record shall be made of every hearing before the commission.

2. **Subpoenas.** For the purposes of this chapter, the commission shall have the power to require by subpoena the attendance and testimony of witnesses and the production of all books, papers and documents relating to any matter under investigation. Subpoenas shall be issued by the commission upon application by any party to a proceeding before the commission and a showing of general relevance and reasonable scope. Witnesses summoned before the commission shall be paid the same fees and mileage paid witnesses in courts of the State. In case of disobedience to a subpoena, the commission may apply to the Kennebec County Superior Court for an order requiring the person subpoenaed to appear before the commission and testify and produce books, papers or documents if so ordered. Failure to obey such order of the court may be punished by the court as contempt.

3. **Hearing.** One or more commissioners, or a hearing examiner or other officer appointment by the commission, shall preside at hearings.

§ 1771. Rule-making

The commission is authorized to establish such rules, regulations and procedures as are necessary to the exercise of its functions under this chapter. Interpretative rules, general statements of policy and rules of commission organization, procedure and practice may be promulgated without prior public notice and hearing. All other rules and regulations shall be promulgated by the commission only after public notice and an opportunity to participate in the rule-making has been afforded all interested persons. Any person, association, corporation or agency of government shall be permitted to participate in commission rule-making proceedings.

§ 1772. Judicial review

1. **Aggrieved by final decision.** A person who has exhausted all administrative remedies available within the commission and who is aggrieved by a final decision of the commission is entitled to judicial review. A preliminary, procedural or intermediate commission action or ruling is immediately reviewable if review of the final commission action would not provide an adequate remedy.

2. **Filing of petition.** A proceeding for review is instituted by filing a petition in the Kennebec County Superior Court within 30 days after service of the final decision of the commission. Copies of the petition for review shall be served upon the commission and all parties of record.

3. **Granting of stay.** The filing of the petition does not itself stay enforcement of the commission's decision. The commission may grant, or the reviewing court may order, a stay upon appropriate terms.

4. Court review. The review shall be conducted by the court without a jury and shall be confined to the record.

5. Court decision. The court shall not substitute its judgment for that of the commission as to the weight of the evidence on questions of fact. The court may affirm the decision of the commission or remand the case for further proceedings. The court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions or decisions are:

- A. In violation of constitutional or statutory provisions;
- B. In excess of the statutory authority of the commission;
- C. Made upon unlawful procedure;
- D. Affected by other error of law;
- E. Unsupported by substantial evidence on the record as a whole; or
- F. Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

§ 1173. Expert witnesses

1. Panel of expert witnesses. In any proceeding before the commission involving the granting, suspension or revocation of a certificate, or in other proceedings in which expert testimony on the practice of teaching, the performance of educational duties or the preparation of teachers is required, the commission shall hear evidence from a qualified expert witness or witnesses selected by the parties to the proceeding before the commission from a panel of impartial expert witnesses appointed by the commission. The commission shall establish and publish procedures for the appointment by the commission and selection by parties of expert witnesses. A majority of the panel of expert witnesses shall at all times be composed of persons actively engaged on a full-time basis in the State in the practice of teaching or the performance of educational duties.

2. Reimbursement. Members of the panel of expert witnesses shall serve without compensation, but shall be reimbursed for their actual and necessary expenses incurred in the performance of official commission business. A member of the panel of expert witnesses who is an employee of an agency of the State, or any of its political subdivisions, shall be permitted to testify as a panel member without loss of income or other benefits. A member of the panel of expert witnesses who is employed by a private institution shall be reimbursed from the commission for any income lost as a result of testifying as a panel member. An agency of the State, or any of its political subdivisions, which employs a member of the panel of expert witnesses and employs a person to replace such member during his testimony, or incurs other additional expenses as a result of such performance, shall be reimbursed from the commission for the actual amount of any costs so incurred.

§ 1774. Delegation of functions

The commission may, by majority vote, from time to time make such provisions as it deems appropriate authorizing the performance by a commissioner or commissioners, employee or other agent of the commission of any

function given the commission in this chapter, except as provided in section 1771, subsection 2.

§ 1775. Annual report

The commission shall submit to the Governor and the Legislature and shall publish an annual report of the commission's work and such additional information collected by the commission as it may wish to include. The commission may make legislative recommendations to the Governor and Legislature at any time.

Sec. 4. Transfers. That portion of the personnel, assets, liabilities, contracts, property, records and unexpended balances of appropriations and other funds employed, held by or available to the Department of Educational and Cultural Services offices of the State Board of Education for carrying out the duties and functions assigned to the commission under this chapter are hereby transferred to the commission.

Sec. 5. Appointment of commission members. Members of the commission provided for in this chapter may be appointed at any time after the date of enactment of this chapter and may take office immediately upon appointment.

STATEMENT OF FACT

The purpose of this bill is to place the responsibility and the control for certification of teachers under the Teacher Standards and Certification Act. The 106th Legislature established an advisory commission to the State Board of Education for the specific purpose of revising the historic method of teacher certification. Up to this time, little or no change has taken place.

The Teacher Standards and Certification Commission would be representative of the profession and be responsible for providing qualified professional personnel to teach in our public schools. The commission would be self-supporting through its certification fee-setting authority which could save the State some \$95,000 annually. This bill ultimately seeks to give to professional educators the same responsibility for controlling its profession as do other professional groups like the legal, medical and business professions.