

# MAINE STATE LEGISLATURE

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FIRST REGULAR SESSION

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ONE HUNDRED AND TENTH LEGISLATURE

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**Legislative Document**

**No. 909**

S. P. 319

In Senate, February 18, 1981

Referred to the Committee on Education. Sent down for concurrence and ordered printed.

MAY M. ROSS, Secretary of the Senate

Presented by Senator Pray of Penobscot.

Cosponsor: Senator Violette of Aroostook.

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STATE OF MAINE

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IN THE YEAR OF OUR LORD NINETEEN HUNDRED AND EIGHTY-ONE

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**AN ACT Related to Teacher Standards and Certification.**

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

Sec. 1. 20 MRSA c. 203, as amended, is repealed.

Sec. 2. 20 MRSA c. 203-A is enacted to read:

**CHAPTER 203-A**

**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 is declared to be a professional practice. In order to achieve the highest possible educational standards in the State, 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 Act 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 Act, unless the context indicates otherwise, the following terms 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 teaching 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 "Educational duties" include, but are not limited to, the functions performed by school physicians, nurses and other medical personnel, by psychologists, by speech therapists and by teacher assistants. They do 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 teachers organization. "Professional teachers organization" means one or more organizations, agencies, committees, councils or groups of any kind, more than 1/2 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. The 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 educational programs in schools or other institutions at which attendance fulfills the compulsory education law of the State.

### § 1764. Teacher Standards and Certification Commission

1. Establishment. There is established, as an agency of the State, the Teacher Standards and Certification Commission which shall be composed of 5 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, 2 shall continue in office for 2 years, 2 for 3 years and one, 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 has been appointed and has qualified. No person may be appointed more than once to fill an unexpired term or 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 may 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, 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 from the State Treasury for any income lost as a result of attendance at commission meetings or performance of other official commission duties. An agency of the State, or any of its political subdivisions, which employs a member of the commission and employs a person to replace the member during his performance of commission duties, or incurs other additional expenses as a result of that performance, shall be reimbursed from the State Treasury for the actual amount of any costs so incurred.

3. Quorum and principal office. Three 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.

4. Commission employees. The commission is authorized to employ, subject to the civil service laws of the State, 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 is subject to the civil service laws.

#### § 1765. Appointment of commissioners

1. Nominations for appointment. Nominations for appointment of commissioners shall be made as follows:

A. The Governor shall appoint members of the commission, by and with the advice and consent of the Senate, only from among the qualified candidates nominated as provided in this subsection.

(1) Any professional teachers' organization may submit, for each vacant position on the commission, one nomination of a qualified candidate to the Governor for each 5,000 members in good standing who hold valid licenses issued by the commission. In the case of the first commissioners to be appointed under this Act, any professional teachers' organization may submit, for each vacant position on the commission, one nomination to the Governor for each 5,000 members in good standing who hold valid teaching certificates issued by the State Board of Education.

(2) One qualified candidate each shall be nominated by the Maine School Management Association, the State Board of Education and by the Governor, a member of the public.

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

B. Unless withdrawn, a nominee remains eligible for appointment for one year from the date of submission, provided the nominee remains qualified for appointment. Nominations may be withdrawn:

(1) By written request of the nominee; or

(2) In the same manner as nominated, as set forth in paragraph A, subparagraphs (1) and (2).

C. The appointment of any member of the commission automatically terminates 30 days after the date that member is no longer a resident of the State or, in the case of a teacher, 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 license was a requirement for appointment.

D. Teacher members of the commission must each, at the time of appointment, hold a valid teaching certificate issued by the commission, except that the first commissioners appointed under this Act must 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 may not be a supervisor or administrator.

E. All subsequent teacher members of the commission must each, at the time of appointment, hold a valid teaching certificate issued by the commission.

#### § 1766. Licensing authority

1. Minimum requirements for certificates. The commission shall issue certificates of the following classes to applicants who meet the certification requirements set forth by the commission.

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 Act, the minimum academic teaching competence and personal requirements for certification under the Act. These 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 the 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 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 under 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 the same as held at the time of application, notwithstanding any other provision of this Act.

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, if the state of the United States or the foreign country which certified the applicants 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 this State at the same time.

5. Hearing. Any person denied a certificate by the commission is entitled to a hearing.

#### § 1767. Revocation or suspension of certificate

1. Grounds for revocation or suspension. The commission is authorized to revoke or suspend a certificate granted pursuant to this Act 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 these 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 of 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 Act.

3. **Complaints.** Any person may file a complaint with the commission seeking suspension or revocation of a certificate issued by the commission. The 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 a commission is of the opinion that a complaint does not state facts which warrant a hearing, the 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 showing of an interest in the 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 is unlawful for any person to engage in the practice of teaching or the performance of educational duties in the State without a valid certificate from the State Teacher Standards and Certification Commission. It is unlawful for any person to direct or permit a noncertified person to practice teaching or perform educational duties knowing that the person is noncertified. If the commission finds that there is an emergency need for teachers or persons to perform educational duties, he may issue temporary certificates for persons who do not hold a valid certificate so that these persons may engage in teaching or perform other educational duties in the affected part of the State for the duration of the emergency. Violation of this section is a Class E crime.

#### § 1769. Accreditation

1. **Authority to accredit.** The commission shall investigate, study, evaluate and credit 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 Act 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 this Act and the Maine Administrative Procedure Act. Any person may be heard by the commission in person or by attorney. Every vote and official act of the commission shall be entered of 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 Act, the commission may 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 summonsed 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 the order of the court may be punished by the court as contempt.

3. **Hearings.** One or more commissioners or a hearing examiner or other officer appointed 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 Act. Interpretative rules, general statements of policy, 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. **Entitlement.** 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. Stay of enforcement. 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. Review conducted by court without jury. The review shall be conducted by the court without a jury and shall be confined to the record.

5. Reversal or modification of 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.

#### § 1773. 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 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. Compensation of expert witnesses. 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, may 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 State Treasury 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 the member during his testimony, or incurs other additional expenses as a result of the performance, shall be reimbursed from the State Treasury 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 any commissioner or commissioners, employee or other agent of the commission of any function given the commission in this Act, except as provided in section 1767, 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.

#### § 1776. Appropriations

The commission shall assign such fees as it deems appropriate to provide for the adequate funding of the commission, except that in the first year of the Act the Legislature shall appropriate moneys adequate to carry out the intent of the Act.

**Sec. 3. 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 of the State Board of Education for carrying out the duties and functions assigned to the commission under this Act are transferred to the commission.

#### STATEMENT OF FACT

This bill will 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 money. 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.