

Agency of Education Comments Regarding S. 217 and H. 562

S. 217

The bill contains two (2) significant policy proposals that directly affect public education. The first proposal is a study to evaluate whether educator licensing should remain with the Agency of Education; the second key piece is a proposal to transfer licensure of certain educators to the exclusive (licensure) jurisdiction of the Secretary of State/OPR.

The Proposed Study

AOE believes that the legislature should not order a study by OPR, as to whether educator licensure should remain with AOE, or be transferred to Secretary of State/OPR. At the very least, this proposal, which carries huge public policy implications, should be fully considered by the education committees of the General Assembly. AOE strongly opposes any effort to transfer educator licensure from AOE to OPR. To the extent this would be considered by the legislature for some policy reason(s), it seems inherently unfair that OPR would conduct the underlying study. How could this possibly be considered a fair, independent and impartial process if the entity conducting the study is the same entity advising the legislature on whether or not it (OPR) should take over this function? Such a process defies logic.

From a policy perspective, AOE believes it makes no sense to go through the exercise of a review of our licensure processes by OPR. Federal law requires that educator licensing and teacher function as an integrated process through the State's Education Agency. See Pub. L. 114-95. Accordingly, federal funding for AOE is tied to these requirements, including a robust licensure process within the State's Education Agency that credentials high quality licensees ("high quality teachers") to lead and teach in our public schools. There is no sound public policy basis for the legislature to order this study. Any outcome that recommends a change to the *status quo* would be incompatible with federal law. Furthermore, a recent federal study on professional licensure consolidation (as OPR proposes at our state level) was explicitly rejected in the educator context for these very reasons.

Practically speaking, AOE's licensing process is ranked first in the nation by for promoting student safety, according to a long term 50 state study of educator licensure systems by *USA Today*, which was just published in February 2016. A summary of this report is on file with the Senate Education Committee. Of equal import is the fact that we have amazing, high quality teachers in the State of Vermont. This is due in large part to our robust (but fair) educator licensure process which is a peer-based system established by the (teacher majority) Vermont Standards Board for Professional Educators. There is no evidence that the current system is broken and in need of being fixed. A call for a study about the very existence of the present scheme should be supported by the evidence. Here, there is none.

Transfer of Certain Educators from AOE to OPR for Licensure

In addition to transferring educator licensure to OPR, S. 217 calls for the immediate transfer of all educator licensees who also hold a clinical license to the sole jurisdiction of OPR. This includes, for example, school nurses, school psychologists, and school based speech language pathologists.

Vermont Standards Board (VSBPE) Chair Steven John, among others in the education field, has filed comments on this proposal. AOE is in accord with Chairman John, and many other education leaders and stakeholders, who have voiced their grave concerns about removing these educators from educator licensure. Mr. John's comments are already on file with the Senate Education Committee, and they are fully incorporated herein by reference.

Also incorporated by reference is the letter of Secretary Holcombe to Senator Cummings dated March 11, 2016. The Agency of Education was the subject of a series of scurrilous allegations in a fundraising solicitation by "Campaign for Vermont." This fundraising solicitation was based on a letter filed with the Senate Government Operations Committee by the Office of the Vermont Secretary of State. See attached. In that letter, the Secretary of State's Office directly accused the AOE of engaging in unlawful activity with respect to its licensure process. The Secretary of State's Office never contacted the AOE ahead of time to inquire or discuss, nor did the Secretary of State's Office provide the AOE the basic courtesy of a carbon copy. AOE only learned of these incendiary allegations upon learning of the "Campaign for Vermont" fundraising solicitation, which essentially restated the (baseless) allegations of the Secretary of State's Office. Secretary Holcombe's letter of March 11, 2016 (on file with Senate Education Committee) directly addresses and rebuts the allegations of the Secretary of State/Campaign for Vermont.

H. 562

This bill would create a direct oversight role for OPR over all licensure credentialing and certification, including educator licensure. This is a major change to the current educator licensure scheme, affecting over 17,000 educator licensees. Before a change of this magnitude, the education committees should be made aware, fully briefed, and debate the issue. Unfortunately, this did not happen in the House. H. 562 passed in the House without any review by the House Education Committee. The AOE was never made aware that H. 562 contained this significant public policy change affecting public education until the bill was set for a third reading in the House. For much of the same reasons that AOE opposes any OPR study about moving educator licensure to OPR, AOE also opposes a direct oversight role of educator licensure by OPR. OPR is in the business of regulating professions to protect consumers, who have a choice in the marketplace. Our children are not consumers. When a student enters through the door of a classroom, that student gets the teacher hired by the local school district. If a consumer does not like a certain barber, for example (that is licensed by OPR), the consumer can choose another barber. Kids do not have that option for obvious reasons, including the fact that education is compelled by Vermont law (as opposed to discretionary consumer services, like going to the barber). Fundamentally, we need to maintain a robust education-focused licensure system for educators that operates out of the State's Education Agency (which supervises and directs the laws related to public education) with the sole executive authority to conduct this process. There is no evidence to support the notion that OPR taking on an oversight function of educator licensure will do a single thing to improve student outcomes. At a minimum, there should be a fair, robust, and transparent debate in the

legislature that fully involves the education committees of both bodies before a change of this magnitude and scope is even considered.

Constitutional Issues

H. 562 at Section 1 proposes to transfer a (constitutional) legislative oversight function of the legislative branch to the sole purview of the executive branch, through an expansion of the powers and duties of the Secretary of State/Office of Professional Regulation. This would offend the separation of powers doctrine, See Vt. Const. ch. II, § 6. (Section 2 provides that " the Supreme Legislative power shall be exercised by a Senate and a House of Representatives."). Moreover, the proposed law would encroach upon the Governor's (supreme) governing and executive powers at Ch. II §§ 1 and 3 of the Vermont Constitution. This is because the power of the Secretary of State to review a licensure entity would be expanded within or without its "jurisdiction"; whether or not OPR acts as the administering office of the particular licensing entity, including agencies and departments of the Governor's Administration, not currently subject to any oversight by the Office of Professional Regulation. As noted above, for the AOE, this would mean that OPR would take on a direct oversight role of the Agency, and the Vermont Standards Board for Professional Educators, to which the AOE provides administrative services.

Background

Act No. 183 of 1978 established the current scheme of legislative oversight of the review of licensing statutes, boards, and commission. This law ensures that the legislature is able to oversee the executive branch's administration of these statutes. The policy rationale underlying Act 183 was that "the legislature needs to know what the boards are doing, ensure their accountability and determine whether they have adequate resources to carry out the intent of the legislature" because the legislature empowers boards and commissions to act/exist by statute.

H. 562 would end the longstanding statutory (and constitutional) oversight role of the legislature and make OPR regulatory bodies subject to review by OPR. Therefore, OPR would be in the position of reviewing the very regulatory bodies for which it provides administrative services under its statutory powers and duties; this is an obvious and inherent conflict of interest that illustrates the logic of the current (legislative oversight) scheme and the illogical scheme as proposed by H. 562. Similar schemes in other states have been rejected under a similar "separation of powers" analysis. See e.g. Chiles v. Children A,B,C,D,E, & F, 589 So.2d 260, 265 (Fla. 1991). In Chiles, the Florida Supreme Court found that the Legislature's responsibility was "totally abandoned" because "the power to reduce, nullify, or change [the Legislature's] priorities is given over to the total discretion of another branch of government." Id. If the Secretary of State has a free hand to review the administrative rules promulgated within or without his or her jurisdiction across all agencies or departments of the executive branch, he or she can totally negate a legislative policy decision that lies at the core of the legislative function. See Hunter v. State, 177 Vt. 339, 865 A.2d 381, 390 (Vt. 2004).

Conclusion

S. 217 and H. 562 propose a sweeping expansion of the powers and duties of the Secretary of State. These bills have not been subjected to adequate scrutiny with respect to the very serious impact that each would have on public education. Moreover, the constitutional questions

regarding H. 562 are very serious. The bill encroaches upon inherent legislative functions and the separation of powers.