



## Montana Legislative Services Division

PO BOX 201706  
Helena, MT 59620-1706  
(406) 444-3064  
FAX (406) 444-3036

### Office of Research and Policy Analysis

TO: Education Interim Budget Committee  
FROM: Pad McCracken, LSD Research Analyst  
RE: Background on 20-7-101, MCA  
DATE: December 3, 2021

Chairman Bedey requested some background on 20-7-101, MCA, Standards of Accreditation for your work. The statute describes the process through which the Board of Public Education (BPE) adopts "accreditation standards" that all public elementary and secondary schools must meet, as well as any nonpublic school seeking accreditation.

"Accreditation standards" is defined in 20-1-101, MCA:

**20-1-101. Definitions.** As used in this title, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Accreditation standards" means the body of administrative rules governing standards such as:

- (a) school leadership;
- (b) educational opportunity;
- (c) academic requirements;
- (d) program area standards;
- (e) content and performance standards;
- (f) school facilities and records;
- (g) student assessment; and
- (h) general provisions.

...

Here is 20-7-101, MCA, in its current form:

**20-7-101. Standards of accreditation.** (1) Standards of accreditation for all schools must be adopted by the board of public education upon the recommendations of the superintendent of public instruction. The superintendent shall develop recommendations in accordance with subsection (2). The recommendations presented to the board must include an economic impact statement, as described in [2-4-405](#), prepared in consultation with the negotiated rulemaking committee under subsection (2).

(2) The accreditation standards recommended by the superintendent of public instruction must be developed through the negotiated rulemaking process under Title 2, chapter 5, part 1. The superintendent may form a negotiated rulemaking committee for accreditation standards to consider multiple proposals. The negotiated rulemaking

committee may not exist for longer than 2 years. The committee must represent the diverse circumstances of schools of all sizes across the state and must include representatives from the following groups:

- (a) school district trustees;
- (b) school administrators;
- (c) teachers;
- (d) school business officials;
- (e) parents; and
- (f) taxpayers.

(3) Prior to adoption or amendment of any accreditation standard, the board shall submit each proposal, including the economic impact statement required under subsection (1), to the education interim committee for review at least 1 month in advance of a scheduled committee meeting. Information provided during an interim must be provided to the legislature in accordance with [5-11-210](#).

(4) Unless the expenditures by school districts required under the proposal are determined by the education interim committee to be insubstantial expenditures that can be readily absorbed into the budgets of existing district programs, the board may not implement the standard until July 1 following the next regular legislative session and shall request that the same legislature fund implementation of the proposed standard.

(5) Standards for the retention of school records must be as provided in [20-1-212](#).

The statute received attention during the adoption of the "Montana Common Core Standards" in 2011-2013 and was ultimately modified in 2015 with [SB 345](#) (Arntzen).

The impetus to amend 20-7-101 was driven largely by two concerns:

1. Prior to 2015, the responsibility for evaluating the fiscal impact of changes to the accreditation standards fell to the legislative fiscal division. This was a heavy lift for division staff, well outside the scope of their regular duties, and raised some questions regarding the appropriateness of having division staff impede the constitutionally created and empowered Board of Public Education.<sup>1</sup>
2. A desire to see greater transparency and public involvement from the outset of any effort to change the accreditation standards.

During the 2013 Session, Senator Arntzen proposed [SB 302](#) to amend 20-7-101. The bill passed the Legislature but was vetoed by Governor Bullock. Its solution to concern #1 was to have a legislative body, the Education and Local Government Interim Committee (ELG)<sup>2</sup> during the interim and the Section E Joint Subcommittee during the session, first determine if a fiscal analysis was necessary, and if so, then contract with a

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<sup>1</sup> "If the fiscal analysis of the proposal is found by the legislative fiscal division to have a substantial fiscal impact, the board may not implement the standard until July 1 following the next regular legislative session and shall request that the same legislature fund implementation of the proposed standard." [20-7-101, MCA \(2013\)](#)

<sup>2</sup> The Education and Local Government Interim Committee was split into two committees in 2017.

qualified independent third party. The bill's fiscal note estimated a cost of about \$45,000 per year for this contracting.

In 2015, the approach was modified in SB 345 to require the Office of Public Instruction to utilize the negotiated rulemaking process in developing recommendations to the BPE for adoption or modification of the standards, and as part of that process, develop an accompanying economic impact statement to submit to the ELG, which then determines whether the costs of implementing the standards are substantial or insubstantial. If the committee finds the costs to be substantial, the BPE must wait to implement the standards until after the subsequent legislative session, during which the BPE must request funding for the implementation. SB 345 passed both chambers and was signed by Governor Bullock into law.

During the 2019-2020 interim, multiple content area standards were under review and a new set of content area standards for computer science was being considered. The process outlined under 20-7-101 was followed, with OPI forming negotiated rulemaking committees to work on the standards and develop economic impact statements for each proposal. The five sets of proposed standards and accompanying economic impact statements were submitted to the Education Interim Committee (EDIC) a month before the committee's final meeting of the interim.<sup>3</sup> Only the new standards for computer science were viewed by the OPI as requiring substantial expenditures to implement.<sup>4</sup> All of the standards had an implementation date of July 1, 2021.

The EDIC concurred with OPI's view and did not determine the costs of implementing the new computer science content standards to be insubstantial; this obligated the BPE under 20-7-101(4) to seek funding for the implementation of the Computer Science Standards from the 2021 Legislature. Members of this interim budget committee and your staff likely have a better recollection than I do of just how the BPE went about this, but it is my understanding that questions have arisen about this process and how it might be modified or better described in statute.

Another question is whether this committee, the Education Interim Budget Committee, is a better choice than the policy-focused Education Interim Committee to receive and evaluate the economic impact statements. The Education Interim Committee would still have a role in monitoring the development of any proposed changes to the accreditation standards under its agency monitoring and administrative rule review authority pursuant to [5-5-224](#). At the direction of and in consultation with Chairman Bedey, I have prepared the attached draft amending 20-7-101 to serve as a starting point for your discussion.

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<sup>3</sup> See bottom of: <https://leg.mt.gov/committees/interim/past-interim-committees/2019-2020/2019edic/opi-agency-oversight/>

<sup>4</sup> See final paragraph of executive summary on page 3 of: <https://leg.mt.gov/content/Committees/Interim/2019-2020/Education/Meetings/Sept-2020/Computer-Science-EIS.pdf>

1 \*\*\*\* BILL NO. \*\*\*\*  
2 INTRODUCED BY \*\*\*\*  
3 BY REQUEST OF THE \*\*\*\*  
4

5 A BILL FOR AN ACT ENTITLED: "AN ACT \*\*\*; AMENDING SECTION 20-7-101, MCA."  
6

7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:  
8

9 Section 1. Section 20-7-101, MCA, is amended to read:

10 "20-7-101. ~~Standards of accreditation~~ Accreditation standards -- process for adoption. (1)

11 ~~Standards of accreditation~~ (a) Accreditation standards, as defined in 20-1-101, for all schools must be adopted  
12 by the board of public education upon the recommendations of the superintendent of public instruction. The  
13 superintendent shall develop recommendations in accordance with subsection (2). The recommendations  
14 presented to the board must include an economic impact statement, as described in 2-4-405, prepared in  
15 consultation with the negotiated rulemaking committee under subsection (2).

16 (b) For accreditation standards addressing academic requirements, program area standards, or  
17 content and performance standards, the economic impact statement under subsection (1)(a) must include an  
18 analysis of the ability of school districts to implement the standard within the time constraints of the minimum  
19 aggregate hours established in 20-1-301. The intent of this subsection (1)(b) is to ensure that school districts  
20 have the capacity to adhere to the accreditation standards within a system of free quality public elementary and  
21 secondary schools.

22 (2) The accreditation standards recommended by the superintendent of public instruction must be  
23 developed through the negotiated rulemaking process under Title 2, chapter 5, part 1. The superintendent may  
24 form a negotiated rulemaking committee for accreditation standards to consider multiple proposals. The  
25 negotiated rulemaking committee may not exist for longer than 2 years. The committee must represent the  
26 diverse circumstances of schools of all sizes across the state and must include representatives from the  
27 following groups:

28 (a) school district trustees;

- 1 (b) school administrators;
- 2 (c) teachers;
- 3 (d) school business officials;
- 4 (e) parents; and
- 5 (f) taxpayers.

6 (3) Prior to adoption or amendment of any accreditation standard, the board shall submit each  
7 proposal, including the economic impact statement required under subsection (1), to:

8 (a) during the legislative interim, the education interim budget committee, established in 5-12-501, for  
9 review at least 1 month in advance of a scheduled committee meeting; or

10 (b) during a regular legislative session, the joint appropriations subcommittee for education.

11 ~~Information provided during an interim must be provided to the legislature in accordance with 5-11-210.~~

12 (4) Unless the expenditures by school districts required under the proposal are determined by the  
13 ~~education interim appropriate~~ committee under subsection (3) to be insubstantial expenditures that can be  
14 readily absorbed into the budgets of existing district programs, the board may not implement the standard until  
15 July 1 following the next regular legislative session under subsection (3)(a) or the current legislative session  
16 under subsection (3)(b) and the superintendent of public instruction shall request that the same legislature fund  
17 implementation of the proposed standard.

18 (5) Standards for the retention of school records must be as provided in 20-1-212."

19 - END -