

Possible Options for ELG Committee Action to Address Issues Identified with 20-7-101

prepared for the Education and Local Government Interim Committee

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Statute

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.*

(2) *Prior to adoption or amendment of any accreditation standard, the board shall submit each proposal to the education and local government interim committee for review. The interim committee shall request a fiscal analysis to be prepared by the legislative fiscal division. The legislative fiscal division shall provide its analysis to the interim committee and to the office of budget and program planning to be used in the preparation of the executive budget.*

(3) *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. A substantial fiscal impact is an amount that cannot be readily absorbed in the budget of an existing school district program.*

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

Background

As part of the overall discussion relating to the Legislature's role and responsibility in funding a basics system of free quality public elementary and secondary schools, the 2005 Legislature amended § 20-7-101 through [Senate Bill 152](#) to include a new requirement that the Board of Public Education must submit any proposals for new or amended accreditation standards to ELG for review, and ELG must request that the Legislative Fiscal Division (LFD) prepares a fiscal analysis of the additions or amendments. If the LFD concludes that the Board's proposal would have a substantial fiscal impact, defined as an amount that cannot be readily absorbed into a school's existing budget, then the proposal may not be implemented until after the next legislative session.

Issues Identified

At the September 2013 ELG meeting, committee staff presented [an overview](#) of the process by which the Board of Public Education adopts or amends K-12 accreditation standards. As discussed in that overview, 20-7-101 as written does not clearly and completely describe the process by which the Board of Public Education should propose changes or implement new or amended accreditation standards; likewise, questions have been raised about the required fiscal analysis and the role of the Legislative Fiscal Division in that analysis. As restated from the overview, issues identified include the following:

- A. The statute is only directed at the Education and Local Government Interim Committee. The statute does not identify an alternate body to receive any proposals from the Board during the

roughly 8 months surrounding a legislative session when there is not an ELG in existence.

- B. Section 20-7-101 requires ELG to request a fiscal analysis of every proposal from the Board. There isn't an exception for proposals that have little or no fiscal impact (e.g. amendments that merely "clean up" existing standards; a proposal that on its face has little or no fiscal impact).
- C. The statute does not clearly state that LFD must complete the fiscal analysis and ELG must review the analysis before the Board can adopt any new or amended standards. Rather, the statute only requires that ELG request the analysis and delays the implementation of new standards only if LFD concludes the proposal will have a substantial fiscal impact.
- D. Currently, the statute defines a substantial fiscal impact as "an amount that cannot be readily absorbed into the budget of an existing school district program." However, there is not a statutory definition of what it means for a cost to be "readily absorbed." In the most recent fiscal analysis related to proposed accreditation standards, [LFD had to develop](#) their own working definition for measuring whether costs could be "readily absorbed" into existing school budgets. Questions have been raised about whether this process in effect grants LFD authority over the Board's rulemaking process, since LFD's determination that a proposal would have a substantial fiscal impact causes its implementation to be delayed until after the next legislative session.
- E. The process described in 20-7-101 dictates that each accreditation standard proposal and its potential fiscal impact is considered in isolation. Conceivably, the Board could present multiple proposals over a period of time that, taken alone, don't separately create a substantial fiscal impact, but taken together, do.

Possible Options for Committee Action

The following options are provided for ELG's consideration. Each proposed option correlates with the same-lettered issue identified in the section above. The committee could (1) consider adopting all of these changes in a single committee bill, (2) pick and choose from among these options, or (3) start from scratch and rewrite the requirement and process for a fiscal analysis.

- A. (1) A bill draft could identify a standing committee to review proposed additions or amendments to the accreditation standards when the proposals are published during a legislative session.
(2) A bill draft could require that BPE present its proposal to a permanent joint committee.
- B. The committee could request a bill draft that leaves the fiscal analysis up to the discretion of the committee.
- C. A bill draft could clarify the timeline by which the process happens, including requirements that a certain action not be taken until the previous action is completed.

- D. (1) The committee could consider requesting a bill draft to provide a definition of “readily absorbable” or rewrite the definition of “substantial fiscal impact”.
- (2) The committee could address the underlying questions about LFD’s role. Suggestions for how to address the requirement for the fiscal analysis include:
- a. Require a third-party consultant to perform the fiscal analysis. The administration of the contract could stay with LFD, or ELG (or another interim committee or permanent joint committee) could administer this contract.
 - b. Require OPI to prepare a fiscal analysis as part of the process by which the Superintendent of Public Instruction makes recommendations to BPE.
 - c. Require BPE to prepare a fiscal analysis as part of the proposed adoption or amendment.

Regardless of who is responsible for analyzing a proposal’s fiscal impact, the bill draft could require that BPE present the fiscal analysis to the Legislative committee at the time the proposed adoption or amendment is presented.

- E. The committee could request a bill draft that would specify that any fiscal analysis performed must consider the context and previous adopted or amended standards within a defined period of time (the previous school year; the previous biennium; the last five years; etc.).