State Lawmakers Assert Influence Over Standards

By Catherine Gewertz

Resentful that a massive wave of common-standards adoptions four years ago bypassed their chambers and subjected them to intense political heat, state lawmakers are taking steps to claim some of the authority that state boards of education have traditionally held over academic standards.

In just the past year and a half, 10 states have enacted laws that place new restrictions or specifications on how state boards may adopt academic expectations. Altogether, 50 bills have been introduced in 22 states during that time period that seek to change the procedures by which standards are developed, reviewed, or adopted, according to a special analysis conducted for Education Week by the National Conference of State Legislatures, which tracks state legislative activity.

Many such measures died in committee, but others signaled strong political support by advancing through one or both chambers. When bills succeeded in becoming law, they were nearly always in Republican-controlled states.

Daniel G. Thatcher, a senior policy specialist at the NCSL, said the Denver-based organization has heard a good deal of criticism from state legislators and their constituents about how common-core adoptions "seemed to be a fly-by-night operation with little public input." Some lawmakers also have told the group’s staff members that the state boards’ actions “denigrated their plenary power over statewide education,” Mr. Thatcher said.

As drivers of legislation, such sentiments have the potential to make major shifts in authority over the setting of academic standards, which play a key role in shaping K-12 education. In more than 40 states, sole power over standards is held by elected or appointed state boards of education, panels that meet publicly but are little known outside professional education circles. In the other states, decisionmaking authority lies with the state superintendent or commissioner of education, or is shared by a variety of officials or entities, such as the state board, commissioner, department of education, and legislature.

Legislative efforts to shift that authority have drawn some resistance.

“I’m concerned, because writing a law that allows state legislators to evaluate standards is attempting to make educators out of politicians,” said Ann Coody, a teacher who now serves as a Republican state representative in Oklahoma, and opposed such a measure in her state.
In fact, the National Association of State Boards of Education contends that the new Oklahoma law is unconstitutional.

**Reshaping a Process**

Legislatures have taken differing tacks in their bids to reshape the standards-adoption process. Some have left power with state boards, but imposed new requirements to ensure more public input. Others have inserted themselves directly into the process by repealing standards, ordering new ones, or asserting rewrite power over drafts.

**Setting Academic Standards: Who Decides?**

View a timeline of common-core adoption and backlash and see highlights of laws that states have passed, or are considering, that impose new restrictions on state boards' power to adopt new standards or choose new assessments.

A pair of laws in Indiana illustrates the more aggressive approach. In a law signed by Republican Gov. Mike Pence in May 2013, lawmakers barred the implementation of the Common Core State Standards, which the state board had adopted in August 2010, until a legislative review could be conducted. It ordered new standards, set up a panel to help write them, and required that parents be included on that panel.

The law went a step beyond asking for new standards: It required the new set to “use the common core standards as the base model,” but only enough to preserve the state’s federal waiver from key provisions of the No Child Left Behind law. Another law, signed by Gov. Pence this March, nullified the state’s adoption of the standards, clearing the way for the new ones.

The South Carolina legislature, too, has a new, more powerful role in how standards are developed. Under the terms of a bill signed into law in late May by Republican Gov. Nikki R. Haley, new standards that are developed by an organization other than the state education department must be approved by a joint resolution of the General Assembly.

In Utah, a revision of the standards-development process focuses only on public input. A law signed in April by Republican Gov. Gary Herbert leaves approval authority with the state board, but creates a host of new requirements to ensure broad public input.

One year before adopting new standards, the state board must form new standards-review commissions in each of seven content areas, which will be charged with reviewing the draft standards and submitting recommendations to the board. The board must consider the input of those groups.
The Utah law also specifies who should serve on those panels: In each content area, the state board chair may choose seven people, including teachers, business people, or university faculty members who have expertise in the subject. The speaker of the House of Representatives and the Senate president may each choose five parents of public schoolchildren. Once a final draft is produced, the board must hold a 90-day comment period that includes three public hearings in different regions of the state.

Rep. Dana L. Layton, the chief sponsor of the Utah legislation, said she tried to be “very careful not to step on the constitutional duties of the state board” in drafting her bill. But she felt compelled to respond to constituents who sent her emails and drew her aside at town hall meetings.

“They felt betrayed that the state board had adopted an entire new set of standards without even publicizing it,” said Ms. Layton, a Republican who is running for re-election after two years in the legislature. “It felt to them like it happened in the middle of the night.”

Utah Department of Education spokesman Mark Peterson defended the adoption process as fully public.

The state board discussed and held a preliminary vote on the standards in June 2010, and then gave the standards final approval in August of that year, he said. Notice of all board meetings is posted on the department’s website and on a state website for notice of public meetings, he said, and highlights of each board meeting are sent to about 350 people, including news reporters, district and charter school leaders, teacher associations, the governor’s office, and all the members of the state legislature.

**Shifting Lines**

When state boards were first created in the early 1800s, the central rationale was to facilitate an expert focus on education, since state lawmakers’ attention was spread over many issues, experts say. The new legislative moves worry those who see value in that clear separation of authority.

If lawmakers become too deeply involved in state boards’ work, it risks producing policymaking that is “not grounded in educational philosophy and understanding, but in politics,” said Brenda L. Welburn, who was the president of the National Association of State Boards of Education from 1984 to 2012. The new laws that give legislatures more say over academic standards illustrate her concern, she said.
“I don’t believe they did that because the standards aren’t good,” said Ms. Welburn, a common-core supporter. “It’s a political pissing match because they were left out. It has nothing to do with education quality.”

Having state lawmakers more involved in education decisions is likely to mean that decisions are made by those who have been less immersed in the nuances of the issue, said Jeffrey R. Henig, the chairman of the department of education policy and social analysis at Teachers College, Columbia University. But a potential benefit is that education questions are more likely to be “battled out in the open,” where voters can boot out legislators whose voting records they oppose, he said.

“If things are going on in the relatively low-visibility world of state boards of education, things can get done over a long period without the public knowing a lot about it, and not knowing how to re-steer that,” he said. “Then you get a backlash once people realize what’s happened.”

The crop of new bills that chip away at state board authority falls in line with a recent trend that has shifted education decisionmaking away from the local level, and from single-purpose boards, to the levels of general-purpose state and federal government, said Mr. Henig, whose 2013 book, The End of Exceptionalism in American Education, explored that subject. The rise of “education governors,” who play a much bigger role in school policy, and the expansion of mayoral control over schools, also reflects that trend, Mr. Henig said.

Oklahoma’s new law, signed by Republican Gov. Mary Fallin on June 5, is among those with the most far-reaching effects on the state board’s authority over standards. It requires the board to create new standards in English/language arts and mathematics, and to work with new players—the higher education regents board, state career and technology education board, and the Department of Commerce—in doing that. New proposed standards must be submitted to the legislature and approved by a joint resolution.

Claiming A Role

But the section of Oklahoma’s law that has drawn the most attention is one that gives lawmakers a potent new power: the right to make revisions to proposed standards. That provision set off alarm bells at the National Association of State Boards of Education, and prompted its lawyer to fire off a letter to Gov. Fallin in late May arguing that the law is unconstitutional. The action infringes on the state board’s constitutional authority and violates the separation of powers, allowing the legislature to become “enmeshed in executive branch operations,” wrote attorney Robert G. McCampbell.
“When you get legislatures that intimately involved with the affairs of an executive agency, going standard by standard, giving instructions to the executive branch, that’s a separation of powers issue,” he said in an interview.

Rep. Jason Nelson, a Republican who co-authored the bill, said lawmakers were simply “writing down what we’ve had the power to do all along.” He could not recall a time that the legislature used that authority to question the board’s standards. But he said he considers that power to be well within the purview of elected lawmakers.

“Anything that has the force and effect of law is a fair thing for the legislature to review and tweak,” he said.

Several states took preemptive strikes at common standards. Texas enacted a law in June 2013 that prohibited the board from adopting the Common Core State Standards. In March of this year, South Dakota enacted a law forbidding the state board from adopting any standards “drafted by a multistate consortium which are intended for adoption in two or more states.” That measure is likely a swipe at the Next Generation Science Standards—a set of common standards issued last year by a coalition of states and national organizations—since South Dakota has not reversed its adoption of the common core, which covers only math and English/language arts. A Tennessee proposal that became law in May says the state may not adopt common standards in any subject other than math and English/language arts.

The new wave of laws is not limited to common standards. Some of them also take aim at the assessments states are selecting to gauge mastery of the standards.

The Tennessee and Indiana laws, for instance, suspended or ended the state’s participation in PARCC (the Partnership for Assessment of Readiness for College and Careers) or Smarter Balanced, the two federally subsidized state consortia that are designing tests for the common standards. Language written into the North Carolina budget in 2013 specified that the state board must seek the permission of the General Assembly before procuring a new assessment. A pair of bills pending in Michigan proposes to transfer authority over testing to the state treasury department.

‘We Had to Rein Them In’

The Missouri legislature took aim at the standards-adoption process, passing a bill in mid-May that beefs up requirements for public input. The measure, which Democratic Gov. Jay Nixon has until July 15 to sign, illustrates the tensions between the roles of the state board and the legislature.
Work groups to advise the state board on standards had already been in place, but the new measure would revamp the composition of those groups to include people chosen by the leaders of each legislative chamber, as well as by the governor, lieutenant governor, state chamber of commerce, higher education commission, and state school boards association.

The work groups would have to report monthly to the legislature on their progress before submitting recommendations to the state board. The board would have to conduct at least three public hearings before adopting those recommendations, and seek “advice and counsel” not only from the school, parent, and business communities, as it was already obligated to do, but also from the General Assembly.

Part of what drove the measure was the desire to funnel more parents into the standards-development process, and to get a “better balance” of input from both liberals and conservatives, said Nina Dean, the legislative aide to Rep. Kurt Bahr, a Republican who co-sponsored the measure. Lawmakers also wanted to signal to the state board and Department of Education that they “can’t circumvent the legislature” when key pieces of the education system, such as academic expectations, are being revised.

“Quite frankly, we felt like we had to rein them in a bit,” said Ms. Dean. “They had gone rogue. They did this without telling anyone about it, only sending us a notice after the fact.”

“That’s not exactly the way it happened,” responded Stan Archie, who was a member of the Missouri state board when it adopted the common core in June 2010. The board conducted all of its discussions on the common core, and its vote, in public as it’s required to do, and members also “talked informally” with members of the legislature, he said.

“There was no hidden agenda,” Mr. Archie said. “We were as up front as we possibly could be.”

Peter F. Herschend, the board’s current president, said that he sees the proposed law not as a comment on the quality of the standards themselves, but as fallout of the pressure exerted on the legislature by those who see the standards—which were developed by states with the coordination of Washington-based groups—as an intrusion by “outside forces” on local curriculum decisions. As long as lawmakers are not dictating what should be in the standards, he said, requiring more input and better communication is fine with him.

“I think what the legislature said is, ‘Make sure you’ve listened.’ And we hear that, loud and clear,” Mr. Herschend said.
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<thead>
<tr>
<th>Year</th>
<th>Event/Comment</th>
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<tr>
<td>2010</td>
<td><strong>COMMON-CORE STANDARDS RELEASED</strong></td>
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<td>The Common Core State Standards were developed in 2009 and 2010 after mounting calls from governors, state schools chiefs, and national education groups for shared, higher academic expectations for K-12 education. The standards were drafted by panels of writers from education organizations such as ACT Inc. and the College Board, as well as teachers, college professors, and state department of education officials, with significant financing from the Bill &amp; Melinda Gates Foundation. The final standards were released in June 2010.</td>
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<td>2010-11</td>
<td><strong>WAVE OF ACTION</strong></td>
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<td>In a span of only 21 months, 46 states and the District of Columbia adopted the common-core standards. That wave of adoptions was fueled in part by the U.S. Department of Education's Race to the Top competition, which gave states a better chance of winning millions in grant money if they adopted the common core or other standards focused on college- and career-readiness.</td>
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<td>2012-13</td>
<td><strong>ADOPTION AUTHORITY</strong></td>
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<td>The adoption of academic standards is typically done by policymakers who are little known outside education circles: state boards of education or the state commissioner of education. As a result, many people hadn't heard of the standards until several years later, when some critics charged that they were a federal intrusion into local school decisions.</td>
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<td>2013-14</td>
<td><strong>LEGISLATIVE BACKLASH</strong></td>
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<td>Lawmakers in 22 states introduced at least 50 bills that attempted to change the process for adopting academic standards. Some sought to ensure broader input into standards decisions. Others aimed to shift some of state boards’ traditional power over standards to legislatures, or to new panels appointed with legislative input. At least 10 bills became law.</td>
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New State Laws Change Standards-Adoption Process

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