

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

EMERGENCY
FIRST REGULAR SESSION

ONE HUNDRED AND TENTH LEGISLATURE

Legislative Document

No. 298

H. P. 220

House of Representatives, January 14, 1981

Submitted by the Department of Educational and Cultural Services pursuant to Joint Rule 24.

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

EDWIN H. PERT, Clerk

Presented by Mr. Connolly of Portland.

STATE OF MAINE

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

AN ACT to Make Corrections and Clarifications in the Education Laws.

Emergency preamble. Whereas, Acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, Acts of previous Legislatures have resulted in certain technical errors and inconsistencies in the education laws of Maine; and

Whereas, these errors and inconsistencies create uncertainties and confusion in interpreting legislative intent; and

Whereas, it is essential that these uncertainties and this confusion be resolved in order to prevent any injustice or hardship from the citizens of Maine; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

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

Sec. 1. 5 MRSA § 8002, sub-§ 2, first sentence, as enacted by PL 1977, c. 551, § 3, is amended to read:

“Agency” means any body of State Government authorized by law to adopt rules, to issue licenses or to take final action in adjudicatory proceedings, including, but not limited to, every authority, board, bureau, commission, department or officer of the State Government so authorized; but the term shall not include the Legislature, Governor, courts, University of Maine, Maine Maritime Academy, **vocational-technical institutes**, school ~~districts~~ **administrative units**, special purpose districts or municipalities, counties or other political subdivisions of the State.

Sec. 2. 20 MRSA § 51, sub-§ 3, ¶B, as enacted by PL 1971, c. 610, § 4, is amended to read:

B. It shall be the responsibility of the State Board of Education to exercise the following specific powers and to perform the following duties in accordance with the statutes: Make recommendations to the Legislature for the efficient conduct of the public schools of the State; approve the formation of School Administrative Districts; establish, maintain and operate state technical and vocational institutes and schools of practical nursing; act upon applications for additions to and dissolution of School Administrative Districts; establish requirements for approval and accreditation of elementary and secondary schools; adjust subsidy to an administrative unit when the expenditures for education in such unit show evidence of manipulation to gain an unfair advantage or are adjudged excessive; grant permission for administrative units to enter into agreements for cooperative educational purposes; act upon articles of agreements for creation of an Interstate School District; develop and adopt a plan for the establishment of regional technical and vocational centers; approve standards for school construction; approve projects for state construction aid; approve the formation of community school districts; approve isolated secondary schools; obtain information regarding applications for granting degrees and make a recommendation to the Legislature; recommend funds to the Bureau of the Budget for equalization of educational opportunity; establish a student loan insurance program; serve as state agency for administering federal funds ~~and~~; serve as an appeals board for unclassified personnel **establish standards for the certification of teachers and other professional personnel.**

Sec. 3. 20 MRSA § 102, sub-§ 18, 2nd sentence, as enacted by PL 1977, c. 497, § 1, is amended to read:

No medication shall be administered ~~by unlicensed personnel~~ at these schools except as provided by written prescription of a physician or dentist ~~or~~ and by the written permission of the parent or guardian of the individual receiving the medication.

Sec. 4. 20 MRSA § 213, last ¶, first sentence as last amended by PL 1973, c. 571, § 71, is further amended to read:

The board may, in addition to the power conferred in this section, approve the formation of a School Administrative District which had not less than 50 resident

secondary pupils educated at public expense in grades 9 through 12 as indicated in the last return to the commissioner under section 966, provided that on the date of the approval there was on file with the board a contract offer duly authorized and executed running to the proposed School Administrative District from a municipality having 100 or more resident pupils educated at public expense in grades 9 through 12 as indicated on the last return to the commissioner under section 966, to take and educate all pupils in grades 9 through 12 in the proposed School Administrative District for a period of from ~~5 to 20~~ **2 to 10** years.

Sec. 5. 20 MRSA § 255, first ¶, as last amended by PL 1971, c. 180, § 3, is further amended to read:

When it is necessary to hold a district meeting to approve the issuance of bonds or notes for ~~capital outlay purposes~~ **school construction projects as defined in section 3471**, to approve a change in the selection of a school building site, to approve a change in the method of sharing costs among the member municipalities, to approve an agreement to add another municipality or municipalities to the School Administrative District, to approve an agreement to transfer a participating municipality to another School Administrative District, to approve an agreement to merge with another School Administrative District, or to approve a proposed lease agreement with the Maine School Building Authority, or to authorize the school directors to contract for the schooling of secondary pupils, or to authorize the school directors to dispose of real property, or to accept or reject a prospective gift, the school directors shall be authorized to call such meeting as follows→.

Sec. 6. 20 MRSA § 225, sub-§ 2, ¶I, first sentence, as enacted by PL 1977, c. 195, is amended to read:

When requested by 10% of the number of voters voting for the gubernatorial candidates at the last statewide election in the municipalities comprising the district within 7 days of any prior district meeting, the directors shall call a district meeting **in accordance with this section** to be held within ~~30~~ **60** days of the presentation of the petition to reconsider any prior district meeting vote under this section.

Sec. 7. 20 MRSA § 226, sub-§ 3, last ¶, 3rd sentence, as enacted by PL 1975, c. 738, § 1, is amended to read:

The budget format shall be that prescribed by a majority of the school directors until such time as 20% of the numbers of registered voters certified by the several town or city clerks to the secretary of the school district, **or 200, whichever is less**, vote on an appropriate warrant article prescribing the school budget format.

Sec. 8. 20 MRSA § 305, first ¶, 6th sentence, as amended by PL 1975, c. 510, § 11, is further amended to read:

If a budget for the operation of the School Administrative District is not approved prior to June ~~1st~~ **30th**, the budget as submitted by the school directors for operational expenses, reserve fund and capital outlay purposes shall be

automatically considered the budget approved for operational expenses in the ensuing year, and the other amounts submitted for payment of bonds falling due and interest thereon, including temporary loans for capital purposes and rentals and other charges provided in any contract, lease or agreement with the Maine School Building Authority, shall be added together and the total amount assessed as follows.

Sec. 9. 20 MRSA § 372, sub-§ 2, ¶ E, as amended by PL 1979, c. 691, § 2, is further amended to read:

E. A vacancy, whether caused by death, by resignation or by being absent from the member ~~towns town~~ for more than 90 days, shall be filled by appointment by the municipal officers of the ~~towns town~~ which the former trustee represented until a successor trustee is elected for the unexpired term, if any, at the next annual town meeting in that town.

Sec. 10. 20 MRSA § 374-A is enacted to read:

§ 374-A. Authority to accept gifts

1. Outright or in trust. A community school district may accept and receive money or other property, outright or in trust, for any specified benevolent or educational purpose.

A. When the school committee receives written notice from a prospective donor or his representative of a proposed gift, outright or in trust, it shall submit the matter to the next regular meeting of the committee, and shall within 10 days after the meeting, send written notice of its acceptance or rejection.

B. If the gift is in trust the committee shall either deposit or invest trust funds according to Title 30, section 5051.

2. Conditional. A community school district may accept and receive money or other property as a conditional gift for any specified benevolent or educational purpose.

When the committee receives written notice from a prospective donor or his representative of a proposed gift, they shall submit the matter to the next regular meeting of the legislative body or shall call a special meeting for that purpose, and shall within 10 days after the meeting, send written notice of its acceptance or rejection.

Sec. 11. 20 MRSA § 912, 2nd ¶, as enacted by PL 1977, c. 690, § 7, is amended by adding at the end a new sentence to read:

Once the contract has been entered into, the sending administrative unit shall file a copy of the contract with the department.

Sec. 12. 20 MRSA § 1281, sub-§ 6, as last amended by PL 1975, c. 293, § 4, is repealed and the following enacted in its place:

6. Hygienic facilities and equipment. It has safe and hygienic facilities, adequate equipment and supplies, all of which comply with the regulations established by the Department of Human Services and the Department of Educational and Cultural Services.

Sec. 13. 20 MRSA § 1289, as last amended by PL 1979, c. 670, § 9, is further amended by adding after the first sentence a new sentence to read:

If such a contract is agreed to, then a copy of the contract shall be placed on file with the department by the sending unit.

Sec. 14. 20 MRSA § 2232, as last amended by PL 1973, c. 571, § 71, is further amended to read:

§ 2232. Loan insurance program established

The State Board of Education is authorized to establish a student loan insurance program to insure payment of loans to Maine students which meets the requirements of federal acts and statutes relating to federal, state and private programs of low-interest insured loans to students in institutions of higher education, as provided in the Higher Education Act of 1965, and regulations adopted pursuant thereto, for a state loan insurance program. To this end, the faith and credit of the State of Maine is pledged consistent with the terms and limitations of the Constitution of Maine, Article VIII, section 2.

Sec. 15. 20 MRSA § 4743, sub-§ 16, ¶¶ F and G, as enacted by PL 1977, c. 625, § 8, are amended to read:

F. Special education programs defined in subsection ~~17~~ 18;

G. Vocational education programs defined in subsection ~~21~~ 23; and

Sec. 16. 20 MRSA § 4748, sub-§ 4, as amended by PL 1979, c. 670, § 21, is repealed and the following enacted in its place:

4. Special education allocation; state wards.

A. The special education allocation shall be the expenditures for special education programs operated or contracted for by the administrative unit and the expenditures for special education tuition or board, or both. Medical costs shall not be allowable as a part of a tuition charge.

B. Special education tuition and board for state wards and other pupils placed directly by the State shall be paid by the State in the year of allocation at 100% of the actual cost.

Sec. 17. 20 MRSA § 4748, sub-§ 7, ¶ D, sub-¶ (3), as enacted by PL 1979, c. 670, § 22, is amended to read:

(3) The sum of the member ~~unit's~~ units' state allocations for vocational region debt service shall be the region's state allocation for debt service.

Sec. 18. 20 MRSA § 4749, sub-§ 2, ¶ A, as enacted by PL 1977, c. 625, § 8, is amended to read:

A. The commissioner, with the approval of the State Board of Education, shall determine geographic isolation if a unit **operates a school which** is located an unreasonably long distance from another ~~unit or~~ school facility or is situated in a location which has unique problems in transporting students to another school unit.

Sec. 19. 20 MRSA § 4749, sub-§ 4, ¶ A, first sentence, as enacted by PL 1977, c. 625, § 8, is amended to read:

A unit may qualify for an unusual enrollment ~~subsidy~~ **adjustment to the state-local allocation** whenever the increase in pupils between October 1st of the year of allocation of funds and October 1st of the year prior to the year of allocation of funds is 3% or more.

Sec. 20. 20 MRSA § 4749, sub-§ 4, ¶¶ D and E, as enacted by PL 1977, c. 625, § 8, are repealed.

Sec. 21. 20 MRSA § 4751, sub-§ 3, as enacted by PL 1977, c. 625, § 8, and as last amended by PL 1979, c. 246, § 2; and as repealed and replaced by PL 1979, c. 568, § 5 and last amended by PL 1979, c. 711, Pt. D, § 6, is repealed and the following enacted in its place:

3. **Local leeway. Provisions concerning local leeway are as follows.**

A. The legislative body of an administrative unit may, in addition to the unit's state-local allocation under sections 4748 and 4749, authorize an additional expenditure for either elementary or secondary pupils, or both, not to exceed a local appropriation for each municipality of 1.2 mills on the state valuation in effect on July 1st or \$125 per pupil, whichever is less, for the 1980-81 year of distribution. No unit may participate in local leeway unless it has raised the minimum amount of its local allocation, as computed by the commissioner under subsection 1, paragraph A or as provided under subsection 1, paragraph D.

B. Any unit may appropriate funds under this subsection no later than 90 days following the final adoption of the school budget. Any unit may file a request for a waiver of this requirement with the State Board of Education. If any unit files a request and demonstrates to the satisfaction of the State Board of Education that unusual circumstances require additional appropriations under this subsection in order to avoid serious educational hardship in the unit, the State Board of Education may grant the unit a waiver and authorize these additional appropriations.

C. The local appropriations shall be divided equally over a 12-month period.

D. The funds appropriated under this subsection shall be called "local leeway."

(1) The purpose of these appropriations is to provide that all administrative units may raise and appropriate at least the amount per pupil established at the computed mill rate for that year under this subsection to supplement the

adjusted allocations when necessary in the judgment of the local administrative units.

(2) The amount appropriated by the Legislature under section 4747, subsection 6 shall be the maximum state obligation under this subsection.

E. Administrative units are authorized to establish an "accounts receivable" in anticipation of state aid under this subsection when the fiscal year closes on June 30th.

F. If the authorization for additional funds by an administrative unit under this subsection exceeds the maximum levy for any municipality within the administrative unit, the commissioner shall add to the allocation of the unit for the unit's fiscal year a sum which equals the excess over the maximum levy of any municipality within the unit.

G. If the additional school levy authorized under this subsection fails to produce the amount per pupil established at the computed mill rate for that year under this subsection, the commissioner shall add to the allocation of the unit for the unit's fiscal year a sum which, when combined with the local levy under this section, equals the amount per pupil established at the computed mill rate for that year under this subsection. This sum shall be paid annually to the unit no later than December 31st for the previous 12-month period.

H. If the administrative unit raises less than the maximum allowed under this subsection, the levy on any municipality within the administrative unit shall be in the same proportion as the municipality's share is to the total when the maximum amount allowed is raised.

I. If the administrative unit raises less than the maximum allowed under this subsection, the State shall pay its share in the same proportion to the maximum state share that the amount raised locally is to the maximum local share.

J. An article in substantially the following form is to be used when any municipality, School Administrative District or community school district is considering the appropriation of additional local funds under this subsection: Article : To see what sum the municipality or district shall appropriate from local leeway for school purposes (recommended total \$, local share \$, state share \$), and to see if the municipality or district shall raise the local share of \$.

K. The provisions of paragraph I shall not apply to any unit whose local allocation is equal to or greater than its state-local allocation, but the unit shall report to the commissioner the amount of the appropriation for local leeway.

Sec. 22. 27 MRSA § 110, sub-§ 5, as enacted by PL 1973 sk1 626, § 6, is repealed and the following enacted in its place:

5. District council. "District council" means an advisory body representing a constituency of participating libraries within a geographical district.

Sec. 23. 27 MRSA § 114, sub-§ 2, ¶A, as enacted by PL 1973, c. 626, § 6, is repealed and the following enacted in its place:

A. Serve as an advisory body for the districts.

Sec. 24. 27 MRSA § 117, sub-§ 1, first ¶, as enacted by PL 1973, c. 626, § 6, is repealed and the following enacted in its place:

The district consultant shall serve as secretary of the district council and further shall:

Sec. 25. 27 MRSA § 117, sub-§ 1, ¶D, as enacted by PL 1973, c. 626, § 6, is amended to read:

D. Provide liaison between the district, other districts and ~~state agencies~~ the Maine State Library;

Sec. 26. 27 MRSA § 117, sub-§ 1, ¶F, as enacted by PL 1973, c. 626, § 6, is repealed and the following enacted in its place:

F. Work with area reference and resource center staff members in planning area reference and interlibrary loan service; and

Sec. 27. 29 MRSA § 2015, sub-§ 2, as enacted by PL 1973, c. 780, § 4, is repealed and the following enacted in its place:

2. Exhaust pipe. The exhaust pipe shall be entirely outside the passenger compartment of every school bus.

Emergency clause. In view of the emergency cited in the preamble, this Act shall take effect when approved.

STATEMENT OF FACT

The sections of the bill make the following corrections in the education laws.

Sec. 1. With the enactment of Title 20, chapter 303-A, "Vocational-Technical Institutes," there is confusion as to whether the State Board of Education must adopt all policies regarding the operation of the institution in accordance with the rule-making requirements of the Maine Administrative Procedure Act. This section would place the vocational-technical institutes in the same position as the University of Maine, Maine Maritime Academy and the school administrative units, which has been substituted for the term school districts since school administrative unit is defined within Title 20, while the term "school districts" does not have a definition.

Sec. 2. Title 20, section 51, subsection 3, limits the State Board of Education's authority to the powers specifically set forth in subsection 3. Pursuant to Title 20, section 59, the state board has specific duties with regard to teacher certification. This language would eliminate the apparent conflict caused by the lack of reference in section 51 to the board's authority regarding teacher certification.

Sec. 3. This amendment eliminates the confusion as to whether the written permission of the parent or guardian is required as well as the written prescription of the physician or dentist. It also eliminates the statutory requirement that the person actually dispensing the medication be licensed as medical personnel.

Sec. 4. The amendment from 5 to 20 years to read 2 to 10 years is consistent with Title 20, section 213-A, subsection 2, paragraph D which was enacted by Public Law 1979, chapter 431, section 1.

Sec. 5. "Capital outlay purposes" is a term of art which is no longer used and has been replaced by the term "school construction projects" which is defined in Title 20, section 3471.

Sec. 6. This amendment clarifies the requirement that subsequent district meetings to reconsider actions taken under Title 20, section 225 must be referendum style meetings and the same requirements for holding the initial meeting would apply for holding subsequent meetings. It also extends the time from 30 days to 60 days to allow the board of directors sufficient time to publish and circulate their warrants at least 30 days prior to the reconsideration referendum.

Sec. 7. The language found in the School Finance Act of Title 20, section 4755, subsection 3 sets the limit at 20% of the number of votes cast at the most recent gubernatorial election, or 200, whichever is less. The amendment conforms the language found in Title 20, section 226, subsection 3 to the language found in Title 20, section 4755, subsection 3.

Sec. 8. This amendment changes the date from June 1st to June 30th so as to be consistent with the June 30th deadline set forth in the School Finance Act in Title 20, section 4755, subsection 2, paragraph B.

Sec. 9. This amendment clarifies the issue of whether a vacancy exists if the trustee is absent from the town which he represents but is residing in another town within the community school district.

Sec. 10. All other administrative units have specific authority to accept gifts by virtue of their being part of a municipality or in the case of a School Administrative District they have the authority under Title 20, section 308. Since administrative units may use the proceeds from gifts to meet their share under the School Finance Act or under the school construction project laws there is some confusion as to whether community school districts impliedly have that authorization by virtue of their existence as a quasi-municipal corporation. To eliminate that confusion the enactment of Title 20, section 374-A is needed.

Sec. 11. By requiring the filing of a copy of these contracts with the department, the commissioner's authorization to pay delinquent tuition bills will be simplified and the confusion regarding whether there is a legitimate contract in effect will also be eliminated.

Sec. 12. This amendment replaces the Department of Health and Welfare and the Department of Education with their new titles of the Department of Human Services and the Department of Educational and Cultural Services.

Sec. 13. The purpose of this amendment is to provide the department with information regarding contracts for secondary school students and with evidence to assist the commissioner in making his determination as to whether a given unit is responsible for tuition payments as contemplated under Title 20, sections 1289-1292.

Sec. 14. By specifically incorporating by reference the federal regulations adopted pursuant to the Higher Education Act of 1965, the issue of whether parents of Maine students would be eligible to receive loans under this program is clarified. The federal regulations, effective January 1, 1981, will authorize parents as well as students to receive these loans.

Sec. 15. These changes replace incorrect citations with the correct citations.

Sec. 16. The paragraph was needed during the transition period 1978-1980 when special education allocations moved from current year to 2-year-old base year costs. The language is no longer needed.

Sec. 17. The amendment is a correction only to make the term plural rather than singular.

Sec. 18. The purpose of this amendment is to clarify the terms under which geographic isolation would be identified.

Sec. 19 and 20. Adjustments for unusual enrollment increases are made to the state-local allocation; subsidy per se is determined by the state valuation of the unit subsidy index and was not properly used under the existing paragraph. Also, paragraphs D and E are unnecessary since the appropriations bill for general purpose aid includes the language that allows the use of unexpended balances in the total account to avoid proration of payments for any individual programs including geographic isolation grant programs.

Sec. 21. Title 20, section 4751, subsection 3 appears in 2 separate versions in the Revised Statutes. The language found in these 2 versions of subsection 3 is not identical. This section repeals these 2 versions and replaces them with one subsection 3 which retains the salient points set forth in both of the present versions.

Sec. 22-26-Sections 22 through 26 clarify the role of the district council and of the district consultant.

Sec. 27. The repealed language is in conflict with current design and engineering standards of certain national manufacturers of school buses. The replacement language will allow the Department of Educational and Cultural Services to promulgate construction standards, as authorized by Title 29, section 2018, which will allow alternate exhaust pipe routing which will enhance safety. This will also reduce construction and maintenance costs.