

# MAINE STATE LEGISLATURE

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ONE HUNDRED AND FIFTH LEGISLATURE

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**Legislative Document**

**No. 394**

H. P. 294

House of Representatives, January 27, 1971

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

BERTHA W. JOHNSON, Clerk

Presented by Mr. Jalbert of Lewiston.

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STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED  
SEVENTY-ONE

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**AN ACT Creating the Nonpublic Elementary Education Assistance Act.**

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**Emergency preamble.** Whereas, a number of administrative units having control of public schools face the possibility that nonpublic elementary schools located within their area may be closed; and

Whereas, the Legislature has determined that it is in the public interest that the local administrative units shall be permitted to authorize the expenditure of public funds to assist said nonpublic schools; and

Whereas, municipal budgets must be immediately determined by the various subordinate administrative units levying taxes for support of public education; and

Whereas, the immediate availability of assistance to nonpublic schools may prevent further closings of said schools; and

Whereas, if said nonpublic schools are closed in some or all of the local administrative units, and any substantial number of the pupils thereof are immediately transferred to the public schools, there will of necessity be overcrowded and unsafe school facilities until the local units can build or acquire adequate facilities to relieve the impact; and

Whereas, said closings could create a demand for additional qualified teachers in substantial numbers without adequate time to plan for and to hire them; and

Whereas, the Legislature must act to prevent any possible interruption or disruption of the education of Maine children; 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. R. S., T. 20, part 7, additional. Title 20 of the Revised Statutes is amended by adding a new part 7, to read as follows:

### PART 7

## NONPUBLIC ELEMENTARY EDUCATION ASSISTANCE ACT

### CHAPTER 514

## NONPUBLIC ELEMENTARY EDUCATION ASSISTANCE ACT

### § 3801. Declaration of findings and intent

The Legislature finds and declares:

1. Elementary education crisis. That a crisis in elementary education exists in the nation and in the State of Maine involving rapidly increasing costs occasioned by the rise in school population and new and increasingly costly demands upon education generally. The general impact of inflation upon the economy has complicated the struggle of the State to find sources by which to finance education while attempting to finance other burdens which are also state governmental responsibilities;

2. Compulsory school attendance. That the requirements of the compulsory school attendance laws of the State may be legally fulfilled through appropriate attendance at nonpublic educational facilities;

3. Education public purpose. That the education of children generally and at the elementary level in particular is today recognized as a public purpose, and that nonpublic education through providing instruction in secular subjects makes an important contribution to the achievement of such public purpose and that the governmental duty to support public education generally may be in part fulfilled through the government support of those purely secular educational subjects and objectives achieved through nonpublic education;

4. Freedom of choice. The freedom to choose nonpublic education, provided it meets reasonable state standards, is a fundamental and basic right of all citizens of the State;

5. State's educational duty. That the State, in the fulfillment of its duties to provide education generally to its citizens, and elementary pupils in particular, has the right to enter into contracts for the purchase of needed educational services with persons or institutions, whether public or nonpublic, sectarian or nonsectarian;

6. Purchase of secular education. That should the present trend toward the closing of nonpublic schools continue, the burden cast upon the public

school systems in the various cities and towns will cause intolerable local financial burdens and will also result in the need for every substantially increased assistance at the state level, and that the public interest would best be served through the purchase of secular educational services from non-public schools, under certain specific conditions.

### § 3802. Definitions

The following terms, whenever used or referred to in this chapter, shall have the following meanings, except in those instances where the context clearly indicates otherwise:

1. **Academic year.** "Academic year" shall mean the normal school year beginning in September and ending in June and in any event shall mean that portion of the calendar year in which a public or public school operates to satisfy the requirements of section 855.

2. **Administrative unit.** "Administrative unit" shall be as defined in section 851.

3. **Commissioner of Education.** "Commissioner of Education" shall be as defined in section 101.

4. **Elementary school.** "Elementary school" shall be understood to include that part of the school organization of an administrative unit in which is offered a program of studies preceding that offered by an approved secondary school as defined by section 1281 and shall generally mean kindergarten through grade 8.

5. **Instructional materials.** "Instructional materials" shall mean books, periodicals, documents, pamphlets, photographs, reproductions, pictorial or graphic works, musical scores, maps, charts, globes, sound recordings, including but not limited to those on discs and tapes; processed slides, transparencies, films, filmstrips, kinescopes and video tapes, or any other printed and published materials of a similar nature made by any method now developed or hereafter to be developed. The term includes those printed and published instructional materials, and also portable instructional equipment, suitable for and to be used by pupils in elementary schools and which with reasonable care and use may be expected to last more than one year, said instructional materials being limited to those which are presently used or have been in use within 5 years preceding the effective date of this Act in a public school, or instructional materials submitted to and approved by the Commissioner of Education. The term does not include furniture, nonportable equipment or items normally affixed to the realty or forming a part of a building structure.

6. **Instructional supplies.** "Instructional supplies" shall include, but not necessarily be limited to, paper, chalk, pencils, crayons, art supplies, scientific supplies, nonreusable workbooks and other items not specifically defined in this chapter, which are used and consumed in the teaching of secular subjects to pupils.

7. Nonpublic school. "Nonpublic school" shall mean any elementary school other than a public school within the State wherein a pupil may legally fulfill the compulsory school attendance requirements of law.

8. Pupil or student. "Pupil" or "student" shall mean a resident of the State who is in attendance in a nonpublic elementary school located within the State wherein he complies with the requirements of the compulsory school attendance law.

9. Purchase of secular educational services. "Purchase of secular educational services" shall mean the purchase by an administrative unit, from a nonpublic school, pursuant to contract, of secular educational service at the reasonable cost thereof.

10. Reasonable cost. "Reasonable cost" shall mean the actual cost to a nonpublic school of providing a secular education service and shall be deemed to include solely the cost pertaining thereto of teachers' salaries, textbooks, instructional materials and instructional supplies. The reasonable cost of teachers' salaries as used in this chapter shall be deemed to be limited to the salary paid in the public school system of the administrative unit for a teacher of similar experience and education, or the actual cost, whichever is the lower.

11. Secular education service. "Secular education service" shall mean the providing of instruction in a secular subject.

12. Secular subject. "Secular subject" shall mean any course which is presented in the curricula of the public schools of the State and shall not include any subject matter expressing religious teaching, or the morals or forms of worship of any sect.

13. State Board of Education. "State Board of Education" shall be as defined in section 51.

14. Teacher. "Teacher" shall mean a person engaged in rendering secular educational service under this Act who shall be duly certified by the State Board of Education and who shall only teach secular subjects. Teachers shall not include school superintendents, principals or other administrators of a nonpublic school.

15. Textbook. "Textbook" shall mean any books, reusable workbooks or manuals, whether bound or in looseleaf form, intended for use as a principal source of study material for a given class or group of students, a copy of which is available for the individual use of each pupil in such class or group, said textbooks being limited to those which are presently used or have been in use within 5 years preceding the effective date of this Act in a public school, or textbooks submitted to and approved by the Commissioner of Education.

#### § 3803. Administration—rules and regulations

In order to make uniform the administration of this chapter and to assist in the auditing of any expenditures hereunder by state and local officials and to insure strict compliance with all the terms and conditions imposed in this

chapter, the Commissioner of Education is authorized to establish rules and regulations, forms of application and contracts, and such other documents and forms as he shall deem necessary to carry out the purposes of this chapter, and require the use of same by all administrative units.

#### § 3804. Purchase of secular educational service

The administrative units are authorized to contract and pay for secular education service, provided that as a condition precedent for contract and payment by the administrative unit purchasing the secular educational service from a nonpublic school the appropriate body having jurisdiction over the public schools in the administrative unit shall first determine that:

1. Closing effect on property tax rate. That closing of a nonpublic school or schools educating its residents would have an adverse effect upon the unit's property tax rate; or

2. Classroom space. The closing of a nonpublic school or schools would cause a burden on the public school system by creating a shortage of or overcrowding of existing public classroom space, with resulting disruption of the education of the children involved.

#### § 3805. Application

Applications for reimbursement of secular education service under this chapter shall be made by the appropriate officials of a nonpublic school or schools on or before January 1st to the appropriate body having jurisdiction over the public schools in the administrative unit within which the nonpublic school is located. The application shall be on such forms and under such conditions as the Commissioner of Education has prescribed pursuant to section 3803.

The application shall be based on the actual, where known, and the estimated expenditures for secular education service by the nonpublic school for the current academic year. The local administrative unit reviewing the application of a nonpublic school may, in its discretion, decide to appropriate for the purchase of secular educational service the maximum amount within the limitations of this chapter or any amount less than the maximum amount.

#### § 3806. Determination

The appropriate body having jurisdiction over the public schools in the administrative unit shall notify the proper officials of the applicant nonpublic school or schools as to the amount of secular educational service which it wishes to purchase within 20 days after its budget has been approved by the administrative unit.

The payment so determined and authorized shall be made by the administrative unit in 3 equal installments payable on the first day of October, January and April of the academic year following the filing and acceptance of the application.

### § 3807. Records

Any nonpublic school seeking such payment shall maintain such accounting procedures, including the maintenance of separate funds and accounts, pertaining to the cost of secular education service so as to establish that it actually expended in support of said service an amount of money equal to the amount sought in reimbursement. Such separate accounts shall be subject to audit by the Commissioner of Education and the State Auditor or the administrative unit.

### § 3808. Limitation of reimbursement

In no event shall a nonpublic school be paid in excess of the cost actually expended by it in rendering secular educational service and shall not be paid unless in full compliance with the requirements and standards of this chapter.

### § 3809. Contracts limited to one year

The purchase of secular educational service from a nonpublic school by an administrative unit shall be done on a year-to-year basis and shall be subject to the annual appropriation process of that administrative unit.

### § 3810. General purpose aid

A municipality or administrative unit which purchases educational service pursuant to this chapter shall be allowed to compute a certain number of nonpublic elementary school pupils in the computation of the amount of that municipality's or administrative unit's equalization dollars for general purpose aid as provided by chapter 512. The number of nonpublic elementary school pupils which shall be used in computing the amount of general purpose aid shall be determined by chapter 512, notwithstanding the fact that said pupils do not appear upon the so-called public school census report which is filed annually with the Commissioner of Education nor any other provisions of the general purpose aid law to the contrary.

### § 3811. Teachers

Teachers in a nonpublic school shall not by reason of this chapter be deemed to be members of the State or any administrative unit, or be entitled to any of the rights or benefits provided by statute to public school teachers.

### § 3812. Liberal construction

Sections 3801 to 3812, being necessary for the welfare of the State and its inhabitants, shall be liberally construed to effect the purposes thereof.

Sec. 2. R. S., T. 20, § 3732, amended. Section 3732 of Title 20 of the Revised Statutes, as enacted by section 2 of chapter 496 of the public laws of 1969, and as amended, is further amended by adding at the end the following:

For the purpose of computing the amount of equalization dollars a municipality shall receive if it purchases educational services from a nonpublic school pursuant to chapter 514, there shall be added to the number of pupils in the municipality as determined by the average of the October 1st—April 1st counts, the average for the 2 fiscal years preceding the convening of the

Legislature, a number of nonpublic school elementary pupils determined by the following formula :

“X” shall equal the number of nonpublic elementary school pupils to be added. “A” shall equal the amount of dollars reimbursed to the nonpublic school on a per pupil basis. “B” shall equal the per pupil operational cost of the public elementary school system of the municipality which purchases educational services pursuant to chapter 514. “C” shall equal the total number of nonpublic elementary school pupils of the municipality.

$$\frac{A \times C}{B} = X$$

“X” as determined above shall be multiplied by the per pupil reimbursement rate as established for the administrative unit. “X” shall not be used in determining the per pupil valuation.

**Sec. 3. Transitional provision.** Academic year 1971-72—For the purpose of providing payment funds for the academic year 1971-72, a nonpublic school shall submit an application by March 1, 1971. The application submitted on this date shall be based on the actual, where known, and the estimated nonpublic school expenditures for the academic year 1970-71, for the rendering of secular education service. If this application is approved by the administrative unit purchasing the secular education service and the secular education service meets the standards and requirements set forth in this chapter, the administrative unit may initiate payments for educational service rendered, commencing on October 1, 1971.

**Sec. 4. Appropriation.** There is appropriated from the General Fund to the Department of Education the sum of \$1,000,000 to carry out the purposes of this Act. The breakdown shall be as follows:

	1971-72	1972-73
EDUCATIONAL, DEPARTMENT OF		
All Other	\$250,000	\$750,000

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

### STATEMENT OF FACT

The purpose of this legislation is to allow the municipalities and school administrative districts to purchase secular educational services from nonpublic elementary schools. It will also authorize those cities and towns, which do purchase secular educational services, to compute a portion of the students who are educated pursuant to the contracts entered into by the school administrative unit and the nonpublic schools, as public school students for state subsidy purposes.