

MAINE STATE LEGISLATURE

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(Governor's Bill)
FIRST REGULAR SESSION
ONE HUNDRED AND THIRTEENTH LEGISLATURE

Legislative Document

No. 1658

S.P. 552 In Senate, May 22, 1987
Submitted by the Department of Educational and Cultural
Services pursuant to Joint Rule 24.

Reference to the Committee on Education suggested and
ordered printed.

JOY J. O'BRIEN, Secretary of the Senate

Presented by Senator ESTES of York.

Cosponsored by Senator RANDALL of Washington,
Representative SMALL of Bath, Representative GOULD of
Greenville.

STATE OF MAINE

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

1 AN ACT to Correct, Amend and Improve the Laws
2 Relating to Education.
3

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

6 Sec. 1. 20-A MRSA §253, sub-§1, as amended by PL
7 1983, c. 859, Pt. A, §§1 and 25, is further amended
8 to read:

9 1. General duties. The commissioner shall exer-
10 cise the powers and perform the duties granted to the
11 office and enforce the requirements ~~to the department~~
12 in of this Title and shall devote full time to the
13 duties of the office.

1 Sec. 2. 20-A MRSA §1051, sub-§1, as repealed and
2 replaced by PL 1983, c. 816, Pt. A, §10, is repealed
3 and the following enacted in its place:

4 1. Eligibility requirements. Only a person who
5 holds a state certificate of superintendence grade,
6 issued in accordance with chapter 501 or 502, is eli-
7 gible to be employed as a superintendent. A member
8 of the school board is not eligible to be employed as
9 superintendent in the school administrative unit
10 which the member represents.

11 Sec. 3. 20-A MRSA §1202, sub-§6, ¶F, as enacted
12 by PL 1981, c. 693, §§5 and 8, is amended to read:

13 F. If a school administrative district is to be
14 formed under this section ~~1202~~--~~subsection--27~~
15 ~~paragraph-D7--or~~ and if the proposed school admin-
16 istrative district plans to contract with a des-
17 ignated private school for the education of its
18 students in grades 9 through 12, voters shall act
19 on the following article.

20 "Article : To see if the municipality
21 will vote to join with the municipalities of
22 _____ to form a school adminis-
23 trative
24 (naming them)
25 district, which district is hereby autho-
26 rized and directed to accept the contract
27 offer of _____ for
28 the schooling of pupils in grades 9 through
29 12."

30 Sec. 4. 20-A MRSA §1306, as enacted by PL 1981,
31 c. 693, §§5 and 8, is amended to read:

32 §1306. Budget format

33 The board of directors shall determine the budget
34 format unless it is established by the district vot-
35 ers ~~petition-to-establish-it.~~

36 1. Petition. An article ~~dealing----with~~
37 establishing the budget format may be placed on the
38 next warrant if authorized by a majority vote of the
39 board or if a written petition of at least 10% of the

1 number of voters voting in the last gubernatorial
2 election in the municipalities within the district
3 has been presented to the board.

4 2. Meeting. A school budget format may be es-
5 tablished by the district voters if the lesser of ei-
6 ther 20% of the number of registered voters or 200
7 registered voters vote on an appropriate warrant ar-
8 ticle and a majority approve it. The meeting shall
9 be called and held as provided for ~~district-approval~~
10 ~~procedures budget meetings~~ under sections ~~1351--to~~
11 ~~1354~~ 1303, 1304 or under sections 1351 to 1354 if the
12 directors so choose or if the voting at district bud-
13 get meetings is done within each member municipality.

14 3. Effective date. A change in budget format
15 shall be voted on at least 90 days prior to the bud-
16 get year for which that change is to be effective.

17 Sec. 5. 20-A MRSa §1401, sub-§1, ¶B, as enacted
18 by PL 1981, c. 693, §§5 and 8, is amended to read:

19 B. The agreement may contain a new method of
20 sharing costs among the member municipalities of
21 the district in accordance with section 1301.
22 The article set out in section ~~1203~~ 1202, subsec-
23 tion 6, paragraph D, authorizing units to vote on
24 alternate methods of sharing costs shall be used
25 if the agreement recommended by the state board
26 contains a provision for using one of the alter-
27 nate methods of sharing costs.

28 Sec. 6. 20-A MRSa §6151, sub-§2, as enacted by
29 PL 1981, c. 693, §§5 and 8, is amended to read:

30 2. Penalty. A school administrative unit whose
31 superintendent fails to make the report shall be sub-
32 ject to the penalties of section ~~680±~~ 6801-A.

33 Sec. 7. 20-A MRSa §6152, as amended by PL 1983,
34 c. 859, Pt. A, §§22 and 25, is repealed and the fol-
35 lowing is enacted in its place:

36 §6152. Rules

37 The commissioner shall adopt rules, consistent
38 with federal and state law, to carry out this chap-
39 ter.

1 Sec. 8. 20-A MRSA §6801-A, sub-§§2, 3 and 4, as
2 enacted by PL 1983, c. 859, Pt. A, §§24 and 25, are
3 amended to read:

4 2. Duty to withhold state subsidy. ~~¶~~ Notwith-
5 standing any other provision of law, if a school ad-
6 ministrative unit has failed to file ~~any financial~~
7 ~~report, audit or contract required by this Title~~ the
8 reports required by sections 6004 and 6151, in the
9 format and within the time periods specified, the
10 commissioner shall withhold state subsidy payments
11 until these documents reports are received.

12 3. Action by Attorney General. If compliance
13 cannot be achieved by withholding subsidy payment, or
14 if withholding would be an inappropriate or
15 unavailable remedy, or if a school or school unit
16 which is not eligible for state subsidy is out of
17 compliance with this Title, the commissioner may re-
18 fer the matter to the Attorney General for action.
19 The Attorney General may institute injunction actions
20 to enjoin activities not in compliance with the gov-
21 erning law or seek such other remedy as is authorized
22 by law.

23 4. Other penalties. Nothing in this section may
24 preclude ~~precludes~~ the commissioner from employing
25 other penalties authorized in this Title or autho-
26 rized or required by federal law.

27 Sec. 9. 20-A MRSA §6801-A, sub-§5, as amended by
28 PL 1985, c. 797, §39, is repealed and the following
29 enacted in its place:

30 5. Complaint process. A complaint that alleges
31 that a school administrative unit or other agency or
32 person governed by this Title is not in compliance
33 with the requirements of this Title or of rules
34 adopted or orders issued by the department may be
35 filed by any person.

36 Sec. 10. 20-A MRSA §8401, as amended by PL 1985,
37 c. 744, §1, is further amended to read:

38 §8401. Vocational centers

1 The vocational centers shall operate at Augusta;
2 Bath; Biddeford; School Administrative District No.
3 61, (Bridgton); Calais; Caribou; School Administra-
4 tive District No. 46, (Dexter); Ellsworth; School Ad-
5 ministrative District No. 9, (Farmington); School Ad-
6 ministrative District No. 27 (Fort Kent); Lewiston;
7 Machias; Madawaska; Portland; School Administrative
8 District No. 1, (Presque Isle); School Administrative
9 District No. 54, (Skowhegan); School Administrative
10 District No. 24, (Van Buren); Waterville; and
11 Westbrook.

12 **Sec. 11. 20-A MRSA §9501, sub-§1, as amended by**
13 **PL 1983, c. 841, §2, is further amended to read:**

14 1. Requirement of license. Any person located
15 either within or outside the State shall obtain a li-
16 cense from the commissioner before operating or main-
17 taining any proprietary school or before collecting
18 any tuition, fee or other charge ~~for--operating--or~~
19 maintaining on behalf of or soliciting for any pro-
20 prietary school within the State or before soliciting
21 by personal contact within the State on behalf of any
22 proprietary school located outside the State.

23 **Sec. 12. 20-A MRSA §11808, as amended by PL**
24 **1985, c. 455, §§9 and 11, is further amended to read:**

25 §11808. Nonlapsing fund

26 Any unexpended money appropriated by the Legisla-
27 ture under section 11805 shall not lapse, but shall
28 be carried forward to the following year to be ex-
29 pended by the department for the purpose of purchas-
30 ing positions at medical schools and recruitment ac-
31 tivities related to this chapter. ~~Moneys~~ Money re-
32 turned to the State shall be deposited in a an inter-
33 est earning revolving account, to be expended for the
34 purpose of purchasing contract spaces at medical
35 schools and recruitment activities related to this
36 chapter.

37 **Sec. 13. 20-A MRSA §13001, sub-§6, as repealed**
38 **by PL 1983, c. 845, §§1 and 7, is amended to read:**

39 6. Grounds for revocation or suspension of a
40 certificate. The following shall be grounds for revo-

1 cation or suspension of a certificate issued under
2 this Title.

3 A. Evidence that a person has injured the health
4 or welfare of a child through physical or sexual
5 abuse or exploitation shall be grounds for revo-
6 cation or suspension of a certificate. Notwith-
7 standing the provisions of Title 5, chapter 341,
8 a certified court record that a person certifi-
9 cated under this Title was convicted in any state
10 or federal court of a criminal offense involving
11 the physical or sexual abuse or exploitation of a
12 child within the previous 5 years shall be suffi-
13 cient grounds for revocation or suspension of
14 that person's certificate;--and.

15 B. Other grounds relating to fraud or criminal
16 offenses not inconsistent with the provisions of
17 Title 5, chapter 341, or gross incompetence, as
18 may be established by rules of the State Board of
19 Education shall be grounds for revocation or sus-
20 pension of a certificate.

21 C. A certificate of superintendence grade may be
22 suspended or revoked upon a finding that the su-
23 perintendent has employed or retained uncertified
24 personnel in the school unit.

25 Sec. 14. 20-A MRSA §13002, as enacted by PL
26 1981, c. 693, §§5 and 8, is amended by adding at the
27 end a new paragraph to read:

28 In aid of the authority to take action to deny,
29 revoke or suspend certificates, the commissioner may
30 issue subpoenas in the name of the office in accord-
31 ance with the terms of Title 5, section 9060, except
32 that the subpoena authority shall apply to any stage
33 of an investigation and shall not be limited to an
34 adjudicatory or judicial proceeding.

35 Sec. 15. 20-A MRSA §13003, sub-§1, ¶A, as en-
36 acted by PL 1981, c. 693, §§5 and 8, is repealed and
37 the following enacted in its place:

38 A. Teach or perform any other professional func-
39 tion defined by this Title or by the State Board
40 as requiring certification in any public school
41 in the State; or

1 Sec. 16. 20-A MRSA §13004, sub-§1, as enacted by
2 PL 1981, c. 693, §§5 and 8, is amended to read:

3 1. Records. The commissioner shall keep a list
4 of certified teachers and other professional
5 personnel. This list shall be a public record. The
6 commissioner shall send copies of the list to school
7 boards and superintendents on their request.

8 Sec. 17. 20-A MRSA §13004, sub-§2, as amended by
9 PL 1983, c. 806, §92, is further amended to read:

10 2. Records confidential. Transcripts, recommen-
11 dations and other documents submitted in support of
12 an application for certification or collected by the
13 department for verification of certification records
14 and maintained in the office of the commissioner
15 shall be confidential. They may only be made availa-
16 ble to the following:

- 17 A. School boards and superintendents;
- 18 B. Authorized personnel of the department in
19 fulfilling assigned duties; and
- 20 C. Individuals and their representatives who re-
21 quest to examine their own records; and
- 22 D. Authorized representatives of the State or
23 any state agency for any lawful purpose.

24 Sec. 18. 20-A MRSA §13004, sub-§2-A, as enacted
25 by PL 1983, c. 470, §11, is amended to read:

26 2-A. Complaints confidential. Complaints,
27 charges or accusations made and investigated pursuant
28 to section 13001 or chapter 502, replies to those
29 complaints, charges or accusations, and any other in-
30 formation or materials that may result in action to
31 deny, revoke or suspend certification shall be confi-
32 dential. Any charges or information filed by the
33 commissioner with the Administrative Court in support
34 of a petition to revoke or suspend certification and,
35 any pleadings or evidence filed in an adjudicatory
36 proceeding, any decision of the court or of the com-
37 missioner after an adjudicatory hearing and any con-
38 sent agreement shall be public records.

1 **Sec. 19.** 20-A MRSa §13020, sub-§2, as enacted by
2 PL 1983, c. 845, §4, is amended to read:

3 **2. Grounds for revocation or suspension of a**
4 **certificate.** The following are grounds for revocation
5 or suspension of a certificate issued under this Ti-
6 tle:

7 **A.** Evidence that a person has injured the health
8 or welfare of a child through physical or sexual
9 abuse or exploitation shall be grounds for revo-
10 cation or suspension of a certificate. Notwith-
11 standing Title 5, chapter 341, a certified court
12 record that a person certificated under this Ti-
13 tle was convicted in any state or federal court
14 of a criminal offense involving the physical or
15 sexual abuse or exploitation of a child within
16 the previous 5 years shall be sufficient grounds
17 for revocation or suspension of that person's
18 certificate; ~~and.~~

19 **B.** Other grounds as may be established by the
20 state board in its rules relating to criminal of-
21 fenses not inconsistent with Title 5, chapter
22 341, fraud or gross incompetence shall be grounds
23 for revocation or suspension of a certificate.

24 **C.** A certificate of superintendence grade may be
25 suspended or revoked upon a finding that the su-
26 perintendent has employed or retained uncertified
27 personnel in the school unit.

28 **Sec. 20.** 20-A MRSa §13020, sub-§5 is enacted to
29 read:

30 **5. Subpoena power.** In aid of the authority to
31 take action to deny, revoke or suspend certificates,
32 the commissioner may issue subpoenas in the name of
33 the office in accordance with the terms of Title 5,
34 section 9060, except that subpoena authority shall
35 apply to any stage of any investigation and shall not
36 be limited to an adjudicatory or judicial proceeding.

37 **Sec. 21.** 20-A MRSa §15006, as enacted by PL
38 1985, c. 744, §8, is repealed.

1 **Sec. 22. 20-A MRSA §15604, sub-§3, as enacted by**
2 **PL 1983, c. 859, Pt. G, §§2 and 4, is amended to**
3 **read:**

4 **3. Required reports; subsidy payments withheld.**
5 **A school administrative unit shall provide the commissioner with information which the commissioner requests to carry out the purposes of this chapter, according to time schedules which the commissioner shall establish.**

10 ~~The commissioner may withhold monthly subsidy payments from a school administrative unit when~~ **When information is not filed in specified format and content and within specified time schedules the enforcement actions in section 6801-A shall apply.**

15 **Sec. 23. 20-A §15620 is enacted to read:**

16 §15620. Rulemaking

17 The commissioner may adopt rules to implement
18 this chapter.

19 **Sec. 24. 20-A MRSA §15903, sub-§5, as enacted by**
20 **PL 1981, c. 693, §§5 and 8, is amended to read:**

21 **5. Inspection and compliance.** If it appears to
22 the commissioner that the school construction project
23 has not been completed in conformity with the approved plans and specifications, the commissioner may cause an inspection of the project to be made. The commissioner shall notify the building committee of the findings of the investigation and of any changes required. The building committee shall make the changes within a reasonable period of time. Failure to do so shall render the school administrative unit liable to the penalties provided in section ~~6801~~
24 **6801-A.**

33 **Sec. 25. 20-A MRSA §15904, sub-§1, as repealed**
34 **and replaced by PL 1985, c. 570, §1 and c. 737, Pt.**
35 **A, §46, is repealed and the following enacted in its**
36 **place:**

37 1. Municipals schools. In a municipality where
38 the responsibility for final adoption of the school

1 budget is vested in a municipal council by municipal
2 charter or in a town meeting, the vote shall be by
3 referendum in accordance with the appropriate provi-
4 sions set forth in Title 21-A and Title 30, except
5 that the filing requirement contained in Title 30,
6 section 2061, subsection 4, does not apply.

7 Sec. 26. 20-A MRS §15904, sub-§5 is enacted to
8 read:

9 5. Filing requirement; not applicable. The fil-
10 ing requirement contained in Title 30, section 2061,
11 subsection 4, shall not apply to referendum votes on
12 school construction projects.

13 Sec. 27. 20-A MRS §15909, sub-§2, ¶A, as
14 amended by PL 1985, c. 248, §9, and c. 506, Pt. B,
15 §§17 and 18, is repealed and the following enacted in
16 its place:

17 A. The amount to be bonded shall be determined
18 by reducing the total cost of the project by the
19 following deductions:

20 (1) The initial local share;

21 (1-A) The initial state share as defined in
22 section 15914, subsection 3, when the ini-
23 tial state share has been approved for cur-
24 rent fiscal year funding;

25 (2) Proceeds from insured losses;

26 (3) Money from federal sources; and

27 (4) Other noneducational funds, except
28 gifts and money from federal revenue sharing
29 sources.

30 Sec. 28. 29 MRS §2013, sub-§1, ¶B, as repealed
31 and replaced by PL 1973, c. 780, §4, is amended to
32 read:

33 B. Must--be Be at least 18 years of age and has
34 have held an operator's license for at least one
35 year;

1 Section 7 makes a grammatical change and autho-
2 rizes the commissioner to adopt rules for all the re-
3 ports and records mentioned in this chapter. Without
4 discernable reason, the rule-making authority is lim-
5 ited to one type of report.

6 Sections 8 and 9 make changes in the enforcement
7 section to correct inconsistencies with Title 20-A,
8 section 15604, subsection 3. Section 9 also removes
9 the difficult requirement that complaints of noncom-
10 pliance be filed according to strict petition re-
11 quirements. Such a requirement is inconsistent with
12 other provisions of law and is an impediment to ap-
13 propriate investigations and enforcement actions.

14 Section 10 adds language pertaining to 3 municipi-
15 talities to correspond to actual implementation.

16 Section 11 authorizes the department to license
17 persons who solicit within the State for out-of-state
18 proprietary schools. Licensing of this type was done
19 under previous law and is consistent with the prac-
20 tice of a majority of other states.

21 Section 12 requires that money appropriated, but
22 not used, for medical school contracts be placed in
23 an interest-earning revolving account. This should
24 increase the amount of money available for use in
25 this program.

26 Section 13 replaces the language deleted from Ti-
27 tle 20-A, section 1051.

28 Section 14 authorizes the Commissioner of Educa-
29 tional and Cultural Services to issue subpoenas to
30 aid in the investigation of allegations of misconduct
31 by certified personnel. Similar authority is
32 granted to other licensing agencies of the State as
33 found in Title 32.

34 Section 15 corrects an inconsistency in language.
35 Title 20-A, section 13001, already requires the State
36 Board to issue certification rules to cover "teachers
37 and other professional personnel." As it now reads,
38 Title 20-A, section 13001, subsection 1, paragraph A,
39 is inconsistent with this law and with subsection 2.

1 Sections 16, 17 and 18 resolve an inconsistency
2 in the law. Title 20-A requires the department to
3 certify "teachers and other professional personnel."
4 Records must be kept of "other professional person-
5 nel." By adding Title 20-A, section 13004, subsec-
6 tion 1, paragraph D, the certification records will
7 remain nonpublic records, but will be available to
8 the Maine Retirement System, as already required by
9 Title 5, the Bureau of Taxation, criminal justice
10 agencies and other state agencies which may need to
11 review them to fulfill their statutory duties.

12 Section 19 moves the language of Title 20-A, sec-
13 tion 1051 to the proper chapter on certification.

14 Section 20 amends chapter 502, the new certifica-
15 tion law, to authorize subpoenas for investigations.
16 This is consistent with the amendment proposed for
17 the current certification law.

18 Section 21 repeals language which was enacted
19 twice during the last session. The same language re-
20 mains in Title 20-A, section 15007.

21 Section 22 is amended to be consistent with Title
22 20-A, section 6801-A.

23 Section 23 gives the commissioner authority to
24 issue rules regarding the School Finance Act. At
25 present, rule-making authority is limited to the fil-
26 ing of one type of financial report, regarding ser-
27 vices to private schools, and whatever can be implied
28 from the Maine Administrative Procedure Act, Title 5,
29 chapter 375.

30 Section 24 updates a reference. Title 20-A, sec-
31 tion 6801 has been replaced by section 6801-A.

32 Section 25 repeals one version of Title 20-A,
33 section 15904, subsection 1, and leaves a similar
34 version of the same provision.

35 Section 26 removes a filing requirement in elec-
36 tion laws pertaining to school construction projects
37 which confused local officials and bond counsel for
38 some time. The filing requirement has been elimi-
39 nated for municipal referenda for some time and this

1 change merely extends the language to referenda in
2 all types of school units.

3 Section 27 repeals 2 versions of Title 20-A, sec-
4 tion 15909, subsection 2, paragraph A, enacted by 2
5 bills during the last session and replaces them with
6 one section.

7 Sections 28 and 29 amend the provision on school
8 bus operator requirements to authorize the commis-
9 sioner to adopt training requirements for school bus
10 drivers.

11 Section 30 provides a sunset date for sections 13
12 and 14 of the bill in order to reflect the intent of
13 Public Law 1983, chapter 845, section 7.

14 2652051987