

MAINE STATE LEGISLATURE

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SECOND REGULAR SESSION

ONE HUNDRED AND THIRTEENTH LEGISLATURE

Legislative Document

No. 2501

S.P. 947 In Senate, March 10, 1988
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 Representative SMALL of Bath, Senator
RANDALL of Washington, Representative BOST of Orono.

STATE OF MAINE

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

AN ACT to Clarify and Correct Errors and
Omissions and to Improve the Laws
Relating to Education.

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

7 Sec. 1. 20-A MRSA §1, sub-§24-A, as enacted by
8 PL 1985, c. 789, §1 and 9, is repealed and the
9 following enacted in its place:

1 24-A. Residential placement. "Residential
2 placement" includes the placement in:

3 A. Any children's home defined in Title 22,
4 section 8101 and licensed pursuant to Title 22,
5 section 7801; or

6 B. Any skilled nursing facility or intermediate
7 care facility as defined in the Bureau of Medical
8 Services' rule governing the licensing and
9 functioning of skilled nursing facilities and
10 intermediate care facilities and licensed pursuant
11 to Title 22, chapter 405.

12 Sec. 2. 20-A MRSA §1, sub-§34-A, ¶B, as enacted
13 by PL 1985, c. 789, §§2 and 9, is amended to read:

14 B. Placed, with the recommendation of a Bureau of
15 Mental Retardation case manager or an employee of
16 the Office of Children's Services Bureau of
17 Children with Special Needs, Department of Mental
18 Health and Mental Retardation, with a person who
19 is not the child's parent, legal guardian or
20 relative;

21 Sec. 3. 20-A MRSA §253, sub-§1, as amended by
22 PL 1983, c. 859, Pt. A, §§1 and 25, is further amended
23 to read:

24 1. General duties. The commissioner shall
25 exercise the powers and perform the duties granted to
26 the office and enforce the requirements to the
27 department in of this Title and shall devote full
28 time to the duties of the office.

29 Sec. 4. 20-A MRSA §1051, sub-§1, as repealed
30 and replaced by PL 1983, c. 816, Pt. A, §10, is
31 repealed and the following enacted in its place:

32 1. Eligibility requirements. Only a person who
33 holds a state certificate of superintendence grade,
34 issued in accordance with chapter 501 or 502, is
35 eligible to be employed as a superintendent. A member
36 of the school board is not eligible to be employed as

1 superintendent in the school administrative unit which
2 the member represents.

3 Sec. 5. 20-A M RSA §1202, sub-§6, ¶F, as amended
4 by PL 1987, c. 402, Pt. A, §118, is further amended to
5 read:

6 F. If a school administrative district is to be
7 formed under this section, or and if the
8 proposed school administrative district plans to
9 contract with a designated private school for the
10 education of its students in grades 9 through 12,
11 voters shall act on the following article.

12 "Article : To see if the municipality
13 will vote to join with the municipalities
14 of to form a school
15 (naming them)
16 administrative district, which district is
17 hereby authorized and directed to accept the
18 contract offer of for
19 the schooling of pupils in grades 9 through
20 12."

21 Sec. 6. 20-A M RSA §1255, sub-§7, ¶C, as enacted
22 by PL 1981, c. 693, §§5 and 8, is amended to read:

23 C. Within 90 days of the first meeting, send a
24 report of their its plan to the state board
25 commissioner for approval. It may, within the
26 90-day limit, submit alternative plans for
27 apportionment.

28 Sec. 7. 20-A M RSA §1306, as enacted by PL 1981,
29 c. 693, §§5 and 8, is amended to read:

30 §1306. Budget format

31 The board of directors shall determine the budget
32 format unless it is established by the district
33 voters ~~petition-to-establish-it.~~

34 1. Petition. An article dealing with
35 establishing the budget format may be placed on the
36 next warrant if authorized by a majority vote of

1 the board or if a written petition of at least 10% of
2 the number of voters voting in the last gubernatorial
3 election in the municipalities within the district has
4 been presented to the board.

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

16 3. Effective date. A change in budget format
17 shall be voted on at least 90 days prior to the budget
18 year for which that change is to be effective.

19 **Sec. 8.** 20-A MRSa §1352, sub-§1, as enacted by
20 PL 1981, c. 693, §§5 and 8, is amended to read:

21 1. Municipal officers. The warrant shall direct
22 the municipal officers within the district to call a
23 referendum on a date and time determined by the board
24 of directors. A warrant shall be prepared and
25 distributed at least 30 days prior to the date of the
26 referendum, except that a warrant for a school
27 district budget referendum held in accordance with
28 section 1305, subsection 2, shall be prepared and
29 distributed at least 14 days prior to the date of the
30 referendum.

31 A. The warrant shall be directed to a resident of
32 the district by name, ordering the resident to
33 notify the municipal officers of each of the
34 municipalities within the district, to call a town
35 meeting or city election on the date specified by
36 the board of directors. No other date may be
37 used. The person who serves the warrant shall
38 make a return on the warrant stating the manner of
39 services and the time when it was given.

1 B. The warrant shall be served on the municipal
2 clerk of each of the municipalities within the
3 district by delivering an attested copy of the
4 warrant in hand within 3 days of the date of the
5 warrant. The municipal clerk, on receipt of the
6 warrant, shall immediately notify the municipal
7 officers within the municipality. The municipal
8 officers shall forthwith meet, countersign and
9 have the warrant posted.

10 C. The warrants and other notices for the
11 referendum shall be in the same manner as provided
12 in Title 21 21-A.

13 Sec. 9. 20-A MRSA §1409, as enacted by PL 1987,
14 c. 395, Pt. A, §65, is amended to read:

15 §1409. Rules

16 The state board commissioner may adopt rules to
17 carry out this subchapter.

18 Sec. 10. 20-A MRSA §6151, sub-§2, as enacted by
19 PL 1981, c. 693, §§5 and 8, is amended to read:

20 2. Penalty. A school administrative unit whose
21 superintendent fails to make the report shall be
22 subject to the penalties of section 6801 6801-A.

23 Sec. 11. 20-A MRSA §6152, as amended by PL
24 1983, c. 859, Pt. A, §§22 and 25, is further amended
25 to read:

26 §6152. Rules

27 The commissioner shall adopt rules, consistent
28 with federal and state laws, to carry out this
29 subchapter which are consistent with federal and state
30 requirements chapter.

31 Sec. 12. 20-A MRSA §6801-A, sub-§§2, 3 and 4,
32 as enacted by PL 1983, c. 859, Pt. A, §§24 and 25, are
33 amended to read:

34 2. Duty to withhold state subsidy. ff

1 Notwithstanding any other provision of law, if a
2 school administrative unit has failed to file any
3 financial report, audit or contract the reports
4 required by this Title sections 6004 and 6151, in
5 the format and within the time periods specified, the
6 commissioner shall may withhold state subsidy
7 payments until these documents reports are received.

8 3. Action by Attorney General. If compliance
9 cannot be achieved by withholding subsidy payment, or
10 if withholding would be an inappropriate or
11 unavailable remedy, or if a school or school unit
12 which is not eligible for state subsidy is out of
13 compliance with this Title, the commissioner may refer
14 the matter to the Attorney General for action. The
15 Attorney General may seek injunctive relief to enjoin
16 activities not in compliance with the governing law or
17 seek any other remedy authorized by law.

18 4. Other penalties. Nothing in this section
19 may preclude precludes the commissioner from
20 employing other penalties authorized in this Title or
21 authorized or required by federal law.

22 **Sec. 13.** 20-A MRSA §8401, as amended by PL
23 1985, c. 744, §1, is further amended to read:

24 §8401. Vocational centers

25 The vocational centers shall operate at Augusta;
26 Bath; Biddeford; School Administrative District No.
27 61, (Bridgton); Calais; Caribou; School Administrative
28 District No. 46, (Dexter); Ellsworth; School
29 Administrative District No. 9, (Farmington); School
30 Administrative District No. 27 (Fort Kent); Lewiston;
31 Machias; Madawaska; Portland; School Administrative
32 District No. 1, (Presque Isle); School Administrative
33 District No. 54, (Skowhegan); School Administrative
34 District No. 24, (Van Buren); Waterville; and
35 Westbrook.

36 **Sec. 14.** 20-A MRSA §12505, sub-§2, as enacted
37 by PL 1983, c. 859, Pt. F, §§1 and 2, is amended to
38 read:

1 2. Eligibility for graduate study or continuing
2 education loans. Graduate study or continuing
3 education loans shall be given only to a teacher in a
4 Maine school who has met other eligibility criteria
5 established by rule of the commissioner. Preference
6 shall be given to teachers of subjects which have been
7 determined to be underserved.

8 Sec. 15. 20-A MRSA §13003, sub-§1, ¶¶A and B,
9 as enacted by PL 1981, c. 693, §§5 and 8, are amended
10 to read:

11 A. Teach or perform any other professional
12 function defined by this Title or by the state
13 board as requiring certification in any public
14 elementary-or-secondary school in the State; or

15 B. Teach or perform any other professional
16 function defined by this Title in any private
17 school receiving basic approval under section 2901.

18 Sec. 16. 20-A MRSA §13020, sub-§2, as enacted
19 by PL 1983, c. 845, §4, is amended to read:

20 2. Grounds for revocation or suspension of a
21 certificate. The following are grounds for revocation
22 or suspension of a certificate issued under this Title:

23 A. Evidence that a person has injured the health
24 or welfare of a child through physical or sexual
25 abuse or exploitation shall be grounds for
26 revocation or suspension of a certificate.
27 Notwithstanding Title 5, chapter 341, a certified
28 court record that a person certificated under this
29 Title was convicted in any state or federal court
30 of a criminal offense involving the physical or
31 sexual abuse or exploitation of a child within the
32 previous 5 years shall be sufficient grounds for
33 revocation or suspension of that person's
34 certificate; and

35 B. Other grounds as may be established by the
36 state board in its rules relating to criminal
37 offenses not inconsistent with Title 5, chapter
38 341, fraud or gross incompetence; and

1 C. A certificate of superintendence grade may be
2 suspended or revoked upon a finding that the
3 superintendent has employed or retained
4 uncertified personnel in the school unit.

5 **Sec. 17.** 20-A MRSA §13020, sub-§5 is enacted to
6 read:

7 5. Subpoena power. In aid of the authority to
8 take action to deny, revoke or suspend certificates,
9 the commissioner may issue subpoenas in the name of
10 the office in accordance with the terms of Title 5,
11 section 9060, except that subpoena authority shall
12 apply to any stage of any investigation and shall not
13 be limited to an adjudicatory or judicial proceeding.

14 **Sec. 18.** 20-A MRSA §15613, sub-§5, ¶D, as
15 enacted by PL 1985, c. 789, §4, is amended to read:

16 D. In the fiscal year beginning July 1, 1987, and
17 every fiscal year thereafter, the commissioner
18 shall pay only approved special education costs
19 authorized by this subsection for state agency
20 clients and shall not allocate for those special
21 education costs incurred by the administrative
22 unit for state agency clients in the base years
23 starting July 1, 1985, and every base year
24 thereafter.

25 **Sec. 19.** 20-A MRSA §15620 is enacted to read:

26 §15620. Rulemaking

27 The commissioner may adopt rules pursuant to the
28 Maine Administrative Procedure Act, Title 5, chapter
29 375, to implement this chapter.

30 **Sec. 20.** 27 MRSA §408 is enacted to read:

31 §408. Rules

32 The Maine Arts Commission may adopt rules pursuant
33 to the Maine Administrative Procedure Act, Title 5,
34 chapter 375, to implement this chapter.

1 Sec. 21. 29 MRSA §2013, sub-§1, ¶B, as repealed
2 and replaced by PL 1973, c. 780, §4, is amended to
3 read:

4 B. ~~Must~~ Be at least 18 years of age and
5 ~~has have~~ held an operator's license for at least
6 one year;

7 Sec. 22. 29 MRSA §2013, sub-§1, ¶C, as amended
8 by PL 1975, c. 510, §38, is further amended to read:

9 C. Meet all training and special physical, mental
10 and moral requirements established by the
11 Commissioner of Educational and Cultural Services
12 and must pass an annual physical examination, with
13 the cost of such examination being borne by the
14 employer;

15 STATEMENT OF FACT

16 This bill would correct several inconsistencies in
17 the education laws, clarify sections which are
18 difficult to understand and make minor changes for
19 improvement in administration and implementation of
20 duties under the Maine Revised Statutes, Title 20-A.

21 Section 1 makes the definitions of residential
22 placements correspond to the statutory language in the
23 appropriate licensing authority. Rather than repeat
24 terms which are defined in another statute and which
25 may, from time to time, be amended to reflect current
26 practices, this statute is amended to cross reference
27 the appropriate licensing statute or regulation. This
28 is a technical change to the original language of the
29 statute, and does not represent a substantive change
30 from the portion of the statute which it would replace.

31 Section 2 replaces the reference to the now
32 defunct Office of Children's Services with its
33 successor agency, the Bureau of Children with Special
34 Needs.

35 Section 3 makes a technical correction.

1 Section 4 repeals the language pertaining to
2 revocation of a superintendent's certificate as a
3 result of employing uncertified personnel; the
4 language is incorrectly placed in the section on
5 selection of superintendents by school boards. The
6 same language is placed in the chapter on
7 certification of educational personnel.

8 Section 5 makes a technical correction for clarity.

9 Section 6 corrects an inadvertent omission.

10 Section 7 of the bill amends the language
11 pertaining to establishing and changing budget formats
12 in school administrative districts. Present language
13 is inconsistent and confusing.

14 Section 8 changes the notice period for a school
15 district budget referendum from 30 to 14 days.

16 Section 9 grants the commissioner rule-making
17 authority regarding Title 20-A, chapter 101,
18 subchapter VI, pertaining to reorganizations of school
19 administrative districts.

20 Section 10 corrects a reference.

21 Section 11 makes a technical change and authorizes
22 the commissioner to adopt rules for all the reports
23 and records mentioned in the chapter. Without
24 discernible reason, the rule-making authority is
25 limited to one type of report.

26 Section 12 makes changes in the enforcement
27 section to correct inconsistencies with Title 20-A,
28 section 15604, subsection 3.

29 Section 13 adds language pertaining to 3
30 municipalities to correspond to actual implementation.

31 Section 14 corrects an omission of rule-making
32 authorization in the Blaine House Scholars Program.

33 Section 15 corrects an inconsistency in language.

1 Title 20-A, section 13001 already requires the state
2 board to issue certification rules to cover "teachers
3 and other professional personnel." As it now reads,
4 Title 20-A, section 13001, subsection 1, paragraph A
5 is inconsistent with this law and with subsection 2 of
6 the same law.

7 Section 16 moves the language of Title 20-A,
8 section 1051 to the proper chapter on certification.

9 Section 17 allows the commissioner to issue
10 subpoenas in the context of investigations involving
11 possible denials, suspensions or revocations of
12 certificates.

13 Section 18 corrects an inadvertent omission.

14 Section 19 would give the commissioner authority
15 to issue rules regarding the School Finance Act. At
16 present, rule-making authority is limited to the
17 filing of one type of financial report, regarding
18 services to private schools, and whatever may be
19 implied from the Maine Administrative Procedure Act,
20 Title 5, chapter 375. It also makes the School
21 Finance Act consistent with Title 20-A, section 6152,
22 as amended.

23 Section 20 gives the Maine Arts Commission
24 rule-making authority.

25 Sections 21 and 22 amend the provision on school
26 bus operator requirements to authorize the
27 commissioner to adopt training requirements for school
28 bus drivers.

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