[Similar Matter Filed During Past Session — See House No. 5480 of 1988.]

SENATE . . . . . No. 288

By Mr. Kraus, a petition (accompanied by bill, Senate, No. 288) of Richard A. Kraus for legislation relative to special education. Education, Arts and Humanities.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Eighty-Nine.

AN ACT RELATIVE TO SPECIAL EDUCATION.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. Notwithstanding the provisions of any general or special law to the contrary, rates determined by the Rate Setting Commission for programs pursuant to Chapter 71B of the General Laws shall be set annually for every program by the first Wednesday in February for the next fiscal year. If said commission fails to set said final annual rates on or before the first Wednesday in February, said rates then in effect shall continue to be in effect for the next fiscal year. Annual program rates may be adjusted prospectively to account for unanticipated rate year costs beyond the reasonable control of the provider, or to reflect costs attributable to extraordinary changes in volume, all as set forth in regulations of the Commission. No such rate may be adjusted retroactive to its effective date except to account for the results of administrative reviews, if any, as provided for in the regulations of the commission. Nothing herein shall exclude the commission from setting a rate for a new program established for the first rate under Chapter 71B of the General Laws, or individual or sole source rates as provided for in the regulations of the commission after the first Wednesday in February of any fiscal year.

SECTION 2. Section 5 of Chapter 71B of the General Laws as appearing in the 1986 Official Edition, is hereby amended by adding at the end of the first paragraph the following sentence: —

4 Any school committee so providing or arranging for the provision
5 of special education shall pay the approved budgeted costs for
6 such needs of each child in a residential placement for the balance
7 of the fiscal year, even if a child receiving such special education
8 moves to a different school district after September first,
9 notwithstanding the provisions of Chapter 59 section 21C of the
10 Massachusetts General Laws. If a child moves into the
11 Commonwealth during the school year and if services for said
12 child are required under this chapter, the state shall pay any costs
13 incurred for such service during the current fiscal year.

1 SECTION 3. Chapter 71B of the General Laws as appearing
2 in the 1986 Official Edition, is hereby amended by striking section
3 5A and inserting in place thereof the following section: —
4 Section 5A. Whenever a school age child with special needs is
5 determined by a school committee or the bureau of special
6 education appeals to be in need of a special education program
7 at a residential school pursuant to the procedures set forth in the
8 regulations promulgated by the department, the commonwealth
9 and the school committee responsible for providing the special
10 education program shall be jointly obligated to pay the cost of
11 the program. During any twelve month state fiscal accounting
12 period, the commonwealth shall pay sixty per cent of the first forty
13 thousand dollars, seventy percent of the next ten thousand dollars,
14 eighty percent of the next ten thousand dollars, and ninety percent
15 of any additional amount of the cost of an individual special
16 education placement, as determined by the rate setting
17 commission under sections thirty-one to forty-six, inclusive, of
18 chapter six A, and the school committee shall pay the remainder
19 of said costs. The obligation of the commonwealth to pay at a
20 rate in excess of sixty percent shall accrue when the total
21 cumulative cost to the school committee and the commonwealth
22 for an individual student in a fiscal year exceeds forty thousand
23 dollars.
24 In the alternative, the commonwealth shall pay seventy percent
25 of said cumulative cost in a fiscal year of an individual student's
26 placement if such cost exceeds one percent of the school
27 committee's prior year total annual operating budget, eighty
28 percent of the amount when said cost exceeds two percent of the

29 school committee's prior year total annual operating budget and
30 ninety percent of the amount when said cost exceeds three percent
31 of the school committee's prior year total annual operating
32 budget.
33 For services provided on or after July 1, 1989 payments by the
34 commonwealth shall be subject to the rules and regulations
35 promulgated by the commissioner of education. Upon such
36 verification and approval by the commissioner, the treasurer shall
37 be authorized to make such payments directly to the service
38 provider.
39 When a school age child with special needs residing in the
40 commonwealth has no father, mother or guardian living in the
41 commonwealth who can be found after reasonable efforts to do
42 so, the department will assign a school committee to provide a
43 special education program for that child. If such child is determined
44 by the school committee or the bureau of special education appeals
45 to be in need of a special education program at a day or residential
46 school, pursuant to the procedures set forth in the regulations
47 promulgated by the department, the commonwealth shall be
48 obligated to pay the cost of the day or residential program at the
49 rate established by the rate setting commission under sections
50 thirty-one to forty-six, inclusive, of chapter six A. The
51 commonwealth's obligation under this section shall become due
52 only after approval and verification by the department that all
53 costs incurred herein are reasonable and are for special education
54 programs at day or residential schools provided in accordance
55 with the standards and requirements prescribed by the regulations
56 promulgated under this chapter.
57 In undertaking such verification as may be required under this
58 section, the commissioner may require submission of any
59 information he deems necessary from any participating school or
60 institution.

1 SECTION 4. Chapter 71B of the General Laws, as appearing
2 in the 1986 Official Edition, is hereby amended by inserting after
3 section 11 the following section: —
4 Section 11A. There is hereby established a discretionary grant
5 program to be called the special education incentive grant
6 program. Subject to appropriation, the board of education

7 annually may award grants to school committees and to
8 educational collaboratives for the purpose of funding planning
9 costs and start-up programs which provide children with special
10 needs greater opportunities to participate with children without
11 special needs. In awarding grants, the Department shall give first
12 priority to programs developed for children currently attending
13 private day or residential programs pursuant to Chapter 71B.
14 Programs funded through this grant program must be placed
15 in operating, public school buildings, which buildings are
16 chronologically age appropriate for the children with special needs
17 and fully accessible to disabled persons. If a public school building
18 is not fully accessible a grant may be awarded if the school building
19 assistant bureau has recommended that the board of education
20 fund an application for school renovations or construction which
21 provides physical accessibility. Funds awarded under the special
22 education incentive grant programs may be used for program
23 planning, salaries of special education teachers, administrators or
24 other support staff, training of personnel, adaptive equipment, or
25 such other purposes as may be determined by the board as
26 necessary to permit special educational programs to begin
27 operation. Programs funded with these grants must comply with
28 standards developed by the Department of Education which
29 insure that to the maximum extent appropriate children with
30 special needs are educated with children without special needs in
31 academic and non-academic activities. Grant payments received
32 by school committees under this section shall be deposited with
33 the treasurer of such city, town, collaborative or regional school
34 district and held as a separate account and shall be expended by
35 the school committee or collaborative board of such city, town,
36 collaborative or regional school district without further
37 appropriation, notwithstanding the provisions of section fifty-
38 three of chapter forty-four, for the purposes of the special
39 education incentive grant. The Department shall report to the
40 Board regarding the degree to which students placed in programs
41 funded by the incentive grant program actually participate with
42 children without special needs.

1 SECTION 4. Nothing contained in this act shall affect the
2 obligaton of any agency of the commonwealth to pay for a
3 placement in a day or residential program made prior to the

4 effective date of this act. Any agreement between any agency of
5 the commonwealth and a school committee, whether formal or
6 informal, governing payment for services to a special needs child
7 shall continue in full force and shall not be superseded by this
8 act. The provisions of this act shall not affect the obligation of
9 any human services agency of the commonwealth to provide
10 services to children, aged three to twenty-two, inclusive, under any
11 provision of law in effect prior to the effective date of this act.

1 SECTION 5. This act shall take effect on July first, nineteen
2 hundred and eighty-nine.