

By Mr. Lemanski of Chicopee, petition of David P. Magnani that the Division of Purchased Services be authorized to grant relief for certain procedures of educational services. State Administration.

**The Commonwealth of Massachusetts**

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

AN ACT GRANTING EXTRAORDINARY RELIEF FOR CERTAIN PROVIDERS OF EDUCATIONAL SERVICES.

1 *Whereas*, The deferred operation of this act would tend to  
2 defeat its purpose, which is to allow the division of purchased  
3 services to grant relief for certain providers of educational  
4 services, therefore, it is declared to be an emergency law, necessary  
5 for the immediate preservation of the public convenience.

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

1 Notwithstanding the provisions of any general or special law  
2 to the contrary, including the provisions of section 43 of chapter  
3 150 of the acts of 1990, if requested in writing on or after July  
4 first, nineteen hundred and ninety, by a provider of services in  
5 a program approved pursuant to chapter seventy-one B of the  
6 General Laws ("approved services"), the division of purchased  
7 services, established pursuant to section 42 of chapter 150 of the  
8 acts of 1990, shall, without issuing a regulation therefore, adjust  
9 the rate for such a provider in effect during fiscal year beginning  
10 July first, nineteen hundred and ninety, upon demonstration by  
11 such provider that:

12 (a) the procurement or construction of additional space was  
13 approved by actions taken by the department of education and  
14 the rate setting commission or the independent review board as  
15 established by section ninety-eight of chapter 240 of the acts of  
16 nineteen hundred and eighty-nine and as most recently amended  
17 by section 137 of chapter 653 of the acts of nineteen hundred and

18 eighty-nine during the fiscal year commencing July first nineteen  
19 hundred and eighty-nine.

20 b) (i) the lease of space it uses for purposes of providing  
21 approved services (the "current lease") has expired, has been  
22 terminated, or has not been renewed (or will expire, will be  
23 terminated, or will not be renewed during the fiscal year beginning  
24 July first, nineteen hundred and ninety), (ii) in order to continue  
25 to provide approved services said program must enter into a new  
26 lease either at the same premises or elsewhere (the "new lease")  
27 at a rent in excess of the rent being paid under the current lease,  
28 provided that said increase in rent from the current lease to the  
29 new lease is greater than six percent per applicable rental period  
30 and that the rent under the new lease is not in excess of fair market  
31 rent for the type and location of space that will be subject to the  
32 new lease; and (iii) the relationship between the provider and the  
33 lessor under the new lease is not that of related parties; or

34 (c) it has suffered a catastrophic event, such as fire, that  
35 jeopardizes its ability to provide approved services, provided that  
36 such event is not in its nature financial despite its having financial  
37 implication for the program.

38 A rate adjustment granted pursuant to subparagraph (a) above  
39 shall be sufficient to permit the provider to pay the costs associated  
40 with the procurement of construction of additional space. A rate  
41 adjustment granted pursuant to subparagraph (b) above shall be  
42 sufficient to permit the provider to make rent payments under the  
43 new lease. A rate adjustment granted pursuant to subparagraph  
44 (c) above shall be sufficient to permit the provider to provide  
45 approved services at a level equivalent to the level it was providing  
46 prior to the occurrence of the catastrophic event.

47 The division shall act expeditiously upon any request for a rate  
48 adjustment filed by a provider hereunder, and in any event shall  
49 take final action to adjust the program's rate based on such request  
50 within thirty (30) days of its receipt of adequate documentation  
51 submitted by the program to justify an adjustment pursuant to  
52 either subparagraph (a), (b) or (c) above.

53 Any provider aggrieved by the division's action or failure to act  
54 with respect to a request hereunder may file an appeal with the  
55 division of administrative law appeals in accordance with section  
56 four H of chapter seven of the General Laws. The question on

57 appeal of a decision of the division of purchased services shall be  
58 whether said division, in taking the action challenged by the  
59 aggrieved party or in failing to act as requested by the aggrieved  
60 party, has violated applicable provisions of the law or has abused  
61 its discretion.

62 For the purposes of this section, the term "related party" shall  
63 have the same definition as that contained in the most recently  
64 effective regulation of the rate setting commission governing rates  
65 of payment for providers of approved services.

