

MAINE STATE LEGISLATURE

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House Legislative Record
of the
One Hundred and Eighteenth Legislature
of the
State of Maine

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only if they act in good faith and according to generally accepted health care standards of practice. They cannot just go ahead and do something because a family member says they ought to do something, which is against their standards of practice for providing medical care. Providers are specifically authorized to decline to comply with decisions by surrogates which are contrary to generally accepted health care standards of practice.

I would also point out that in this amendment there are health care decisions acts which state specifically that surrogates cannot make decisions to withhold or withdraw life sustaining treatment. That is specifically not allowed for the surrogates to make that kind of decision. I would submit that there are all kinds of safeguards built into the system. We need to allow physicians in our medical care community to provide care that is needed without forever putting barriers and obstacles in their way before they can go ahead and provide good medical care. I urge passage of this bill.

The SPEAKER PRO TEM: The Chair recognizes the Representative from Bridgton, Representative Waterhouse.

Representative WATERHOUSE: Mr. Speaker, Ladies and Gentlemen of the House. To answer the query that was put forth by the previous speaker, that was one of the questions that I asked the medical profession in the committee, whether right now, under the present law, whether they go ahead and provide life saving treatment or necessary surgery. The answer to that is they do. For the Representatives concerned that that treatment isn't provided, right now it is provided 100 percent. I just want to refer to the good Representative from Newport, Representative Kasprzak, she made my point exactly. It has been my information that has been brought to me that these situations seldom go to probate court anyway, but isn't it great that some of them do? The one that the Representative from Newport mentioned, saved a life. That is why we have this type of thing. It may slow down the process a little bit and it may be inconvenient, but if it saves a life, isn't it worth it?

The SPEAKER PRO TEM: A roll call has been ordered. The pending question before the House is Passage to be Engrossed. All those in favor will vote yes, those opposed will vote no.

ROLL CALL NO. 481

YEA - Baker, Berry RL, Bolduc, Brennan, Brooks, Bruno, Bryant, Bull, Bunker, Cameron, Carleton, Chartrand, Cianchette, Colwell, Cowger, Davidson, Etnier, Fisher, Fisk, Frechette, Fuller, Gagne, Gagnon, Gamache, Gieringer, Gooley, Green, Hatch, Jabar, Jones KW, Joyner, Kane, Kerr, Kontos, LaVerdiere, Lindahl, Lovett, Mailhot, Marvin, Mayo, McKee, Mitchell JE, Morgan, Muse, Nass, O'Neal, O'Neil, Ott, Peavey, Pendleton, Perkins, Pieh, Povich, Powers, Quint, Rowe, Samson, Savage, Saxl JW, Saxl MV, Shannon, Shiah, Skoglund, Stevens, Tessier, Thompson, Townsend, Tripp, Volenik, Watson, Wright, Madam Speaker.

NAY - Ahearne, Bagley, Barth, Belanger DJ, Belanger IG, Berry DP, Bigl, Bodwell, Bouffard, Bragdon, Buck, Bumps, Campbell, Chick, Chizmar, Clark, Clukey, Cross, Desmond, Donnelly, Driscoll, Dunlap, Farnsworth, Foster, Gerry, Goodwin, Jones SL, Jones SA, Joy, Joyce, Kasprzak, Kneeland, Lane, Layton, Lemaire, Lemke, MacDougall, Mack, Madore, McAlevey, McElroy, Meres, Murphy, Nickerson, O'Brien, Paul, Perry, Pinkham RG, Pinkham WD, Plowman, Richard, Rines, Sanborn, Sirois, Snowe-Mello, Spear, Stanley, Stedman, Taylor, Tobin, Treadwell, True, Tuttle, Usher, Vedral, Vigue, Waterhouse, Wheeler EM, Wheeler GJ, Winglass, Winn, Winsor.

ABSENT - Dexter, Dutremble, Honey, Labrecque, Lemont, Poulin, Underwood.

Yes, 72; No, 72; Absent, 7; Excused, 0.

72 having voted in the affirmative and 72 voted in the negative, with 7 being absent, the Bill **FAILED** of **PASSAGE TO**

BE ENGROSSED as Amended and was sent up for concurrence.

Bill "An Act to Require the State to Be Responsible for the Costs of School Employee Record Checks and Fingerprinting"

(H.P. 1536) (L.D. 2163)

TABLED - March 20, 1998 (Till Later Today) by Representative SAXL of Portland.

PENDING - **ADOPTION OF COMMITTEE AMENDMENT "A" (H-976)**.

Representative LANE of Enfield **PRESENTED House Amendment "A" (H-986) to Committee Amendment "A" (H-976)**, which was **READ** by the Clerk.

The SPEAKER PRO TEM: The Chair recognizes the Representative from Enfield, Representative Lane.

Representative LANE: Mr. Speaker, Men and Women of the House. I call this my 'What is good for the goose is good for the gander' amendment, apparently, or the title of the movie, While You Were Sleeping. It seems as though while we were sleeping and while things were hitting our desks hot and heavy last spring, the bill was passed unanimous out of committee under the hammer. It was LD 503, "An Act to Provide for State and Federal Criminal Record Checks on Educational Personnel in the State." I am sure there were some very good reasons why this came out a unanimous Ought to Pass. I certainly don't deny that. I do know that I have had a few calls from teachers in my district who have been furious about this. What this does, basically, is requires all new school personnel or anyone coming up for recertification to pay for a fingerprint and criminal background check while applying for a job and to continue to do so when coming forward for recertification. My amendment, please listen, my amendment just simply asks those who are running for state office to put themselves to the same test.

Just to be clear, fingerprinting in the original LD, "The applicant shall submit two fingerprint cards bearing a legible rolled and flat impression of the applicants fingerprints prepared by the state or local law agency. So you have to go get your fingers smeared on a piece of black gooey stuff. This applies to individuals seeking initial certification or renewal as administrators, teachers or education specialists. Individuals seeking authorization or renewal and it also includes, but not limited to school bus drivers, custodians, coaches and secretaries." I don't know about you, but my husband has taught for 28 years and he is a dedicated teacher. This lady that we honored last week who is retiring after 31 years brought this to my attention. She is a dedicated teacher. Like I said, I am sure here is some very good reasons, but I think they need to be talked about and spoken into this record as to why we are faced with presuming that teachers, custodians, bus drivers, coaches, secretaries, perhaps substitute teachers and crossing guards are considered guilty of being perverts until proven innocent. I think this is an affront. The \$29 they are going to charge has nothing to do with it. It is a matter of honor and is questioning people's integrity and I would submit to you if you were to ask the public who they trust more, their teacher or their politician, I would be hard pressed to say they would probably say their politician.

I would ask you to support this amendment that would simply make those politicians submit themselves to the same testing. I thank you.

The SPEAKER PRO TEM: The Chair recognizes the Representative from Waterboro, Representative McAlevey.

Representative MCALEVEY: Mr. Speaker, Ladies and Gentlemen of the House. Last year the bill that was passed by this body required that teachers, like other licensed professionals in this state, pay to have their background checks done for

screening purposes. It was a long debate in committee. It came out of committee and it was enacted into law that school employees would subject themselves to a criminal background check. I am licensed by the state. Every two years I have to be relicensed. I pay every two years for a criminal background check. So do a lot of other individuals in this state. I do have a problem with the bill that we are looking at now as well as the amendment. I would move that we Indefinitely Postpone LD 2163 and all of its accompanying papers.

The SPEAKER PRO TEM: The motion is out of order.

The Chair recognizes the Representative from Augusta, Representative O'Brien.

Representative O'BRIEN: Mr. Speaker, Ladies and Gentlemen of the House. I would like to give a little background on this bill. We passed a law last time. I was a cosponsor of it. It went before the Education Committee and if my memory is correct, there was a lot of discussion, a lot of debate and it did pass unanimously through the Education Committee. What this does is require all school personnel, teachers, bus drivers, secretaries, janitors or anyone having direct contact with children in a school setting to have fingerprints done upon certification and recertification. From what I understand, in previous sessions, this bill came up in various forms. In the past it was rejected by the teacher's unions. Last year when this came forward they did not speak against this. They had no problem with it from my understanding and certainly did not speak against it. It was a compromise bill when it came out as it did.

The reason for the bill in the first place, as questioned by the good Representative, was that the Education Department has had a lot of increase from teachers and school personnel throughout the country calling Maine and asking if they do fingerprint checks. They are FBI checks. If they don't, they have been hanging up and saying thank you. If they do, it stops them from pursuing this. Granted, there are wonderful teachers. Last year my sister won a national award, my parents, my in-laws, many people in my family are in the education field. There are wonderful people in the education field. There are also some very harmful people in the education field, as in any field. There are several among us, perhaps. Who knows? That is not singling out the education field in my view. These are people on a daily basis that have direct contact with children. Some of them alone, bus drivers, janitors and many of us can talk about situations in our school districts where if this had been enforced, we would not have had this problem. I spoke to a Department of Education personnel within the past several days. He can cite two examples since this went into effect in September. Two examples that they know this precluded a very, very unfortunate incident. I would ask that this amendment be Indefinitely Postponed so that we can move on. Thank you.

Representative O'BRIEN of Augusta moved that **House Amendment "A" (H-986) to Committee Amendment "A" (H-976) be INDEFINITELY POSTPONED.**

The SPEAKER PRO TEM: The Chair recognizes the Representative from Freeport, Representative Bull.

Representative BULL: Thank you Mr. Speaker. I would like to pose a question of germaneness on this amendment.

Representative BULL of Freeport asked the Chair to **RULE** if **House Amendment "A" (H-986) to Committee Amendment "A" (H-976)** was germane to the Bill.

The SPEAKER PRO TEM: The Chair rules that the amendment before the body is not germane to the bill. The original bill pertains solely to the payment of expenses for school employees and the amendment pertains to other state employees.

The Chair **RULED** that **House Amendment "A" (H-986) to Committee Amendment "A" (H-976)** was not germane to the Bill.

Representative LANE of Enfield **PRESENTED House Amendment "B" (H-987) to Committee Amendment "A" (H-976)**, which was **READ** by the Clerk.

The SPEAKER PRO TEM: The Chair recognizes the Representative from Enfield, Representative Lane.

Representative LANE: Mr. Speaker, Men and Women of the House. My second amendment is a real amendment. The bill that came before the Legislature, the Education Committee, this year would require the state to be responsible to costs of school employee record checks and fingerprinting. It was worked very hard in committee. I understand that. Now it came out was saying the Department of Education is not liable if there aren't funds available to pay for it. The employee must pay the first time around for a criminal background check and fingerprinting and the Department of Education is liable for subsequent background checks unless they don't have the money. Therefore, if they don't have the money, guess who pays? It would be the employee again. This amendment I am introducing simply specifies that an applicant must submit to a Federal Bureau of Investigation criminal history record check and fingerprinting only if the Department of Education pays the expense of the background check and fingerprinting. I think this is only fair. Please give a little dignity back to our teachers. Please support my amendment. Thank you.

The SPEAKER PRO TEM: The Chair recognizes the Representative from Madison, Representative Richard.

Representative RICHARD: Mr. Speaker, Men and Women of the House. This is a bill that I have given a lot of thought to, a lot. After talking with the Representative who spoke previously, I have given it more thought. As we crafted the bill that was presented to us this year, we felt that this was so important that we wanted to be sure that the measure would get done. Therefore, we wrote into the bill the fact that if the money were not appropriated for the Department of Education to pay this, then the teachers would have to pay for it. I have given that a lot of thought having spent 31 years in classrooms and 25 of those years were in one school building in one community where everybody knew me and I thought how would I have felt if at about the 20th year somebody had said to me that you need to be fingerprinted and have your background checked. My first thought was I would have been angry. I wouldn't have liked that. They know me and they knew what my reputation was. Then, as I found out what is really going on, I thought, no, if I paid \$5 a year and that could prevent one child from being molested, it would be worth it. So, I came down on the side of the amendment that we have written. It was originally passed last year. This bill was passed last year. I think it went down under the hammer that it would be that the employee would have to pay the initial cost at first certification. Then, after that, further certification would have to pay again.

This is not a frivolous bill. This bill was devised after two years of study by a commission that was made up of the Maine Education Association, Maine School Management Association, Department of Safety, the Attorney General's Office and DHS. It was mentioned previously by the Representative from Augusta that we now have people calling the Department of Education from out-of-state and they will say, do you run an FBI check before you certify teachers? If the answer is yes, they hang up. No more conversation. Doesn't that tell you something? There is a lot going on out there. Every day as I drive down here, nearly 50 miles, every morning it bothers me to think that there are little children standing beside the road waiting for that big yellow bus and they have to have a parent standing with them.

You see it to as you drive into Augusta. There is a parent standing there with the children. You know why. They don't dare to leave those little children out there beside the road all by themselves. This is not only the teaching profession. I understand that now CNAs have to have this fingerprinting check. This is something that anybody who works with children will be having in the future.

It is important. We don't know what people do when they go on vacation. One school board member told me about a faithful teacher in their community who went to Florida for school vacation. No one would ever have known what that person did except there was a very small half inch report in the paper about his arrest. Teachers have the opportunity to travel all over the world on vacation. We like to think they are the good people wherever they go, that they are when they are in the community. That is not always true. I wish there were some other way that we could do this without asking the teachers to pay for it. We thought about this long and hard. The one good thing that we can report is that the Major from the State Police that talked to us said, they will have an electronic device by January. Therefore, after January, anyone would be fingerprinted only once then they could keep the fingerprints on record. They would do the criminal check at every time that certification was renewed, but they wouldn't have to go through the fingerprinting, which would be done electronically again, after having done it once.

So that this particular piece of legislation that was passed last year could continue on its way, I would urge you to defeat the proposed amendment. I would ask for Indefinite Postponement of the amendment and its accompanying papers.

Representative RICHARD of Madison moved that **House Amendment "B" (H-987) to Committee Amendment "A" (H-976) be INDEFINITELY POSTPONED.**

Representative LANE of Enfield **REQUESTED** a roll call on the motion to **INDEFINITELY POSTPONE House Amendment "B" (H-987) to Committee Amendment "A" (H-976).**

More than one-fifth of the members present expressed a desire for a roll call which was ordered.

The **SPEAKER PRO TEM:** The Chair recognizes the Representative from Bath, Representative Mayo.

Representative MAYO: Mr. Speaker, May I pose a question through the Chair?

The **SPEAKER PRO TEM:** The Representative may pose his question.

Representative MAYO: Mr. Speaker, Men and Women of the House. Is there a fiscal note on this particular amendment, which is, I believe, shifting a cost to the Department of Education?

The **SPEAKER PRO TEM:** The Representative from Bath, Representative Mayo has posed a question through the Chair to anyone who may care to respond. The Chair recognizes the Representative from Enfield, Representative Lane.

Representative LANE: Mr. Speaker, Men and Women of the House. Perhaps someone else could better answer this. I don't have a fiscal note attached to my amendment.

The **SPEAKER PRO TEM:** The Chair recognizes the Representative from Madison, Representative Richard.

Representative RICHARD: Mr. Speaker, Men and Women of the House. I think the question was, was there a fiscal note on the amendment or on the bill? Yes, you heard the answer to the amendment.

The **SPEAKER PRO TEM:** A roll call has been ordered. The pending question before the House is Indefinite Postponement of House Amendment "B" (H-987) to Committee Amendment "A" (H-976). All those in favor will vote yes, those opposed will vote no.

ROLL CALL NO. 482

YEA - Ahearn, Bagley, Belanger IG, Berry DP, Berry RL, Bigl, Bolduc, Bouffard, Bragdon, Brennan, Brooks, Bruno, Bryant, Bull, Bumps, Bunker, Cameron, Chartrand, Chizmar, Cianchette, Clark, Clukey, Colwell, Cowger, Cross, Davidson, Desmond, Donnelly, Driscoll, Dunlap, Etnier, Farnsworth, Fisher, Fisk, Frechette, Fuller, Gagnon, Gamache, Gieringer, Goodwin, Gooley, Green, Hatch, Jabar, Jones KW, Jones SL, Joyce, Joyner, Kane, Kerr, Kneeland, Kontos, LaVerdiere, Lemaire, Lindahl, Lovett, Madore, Mailhot, Marvin, Mayo, McAlevey, McElroy, McKee, Meres, Mitchell JE, Morgan, Muse, Nickerson, O'Brien, O'Neal, O'Neil, Ott, Paul, Peavey, Pendleton, Perry, Pieh, Povich, Powers, Quint, Richard, Rines, Rowe, Samson, Sanborn, Savage, Saxl JW, Saxl MV, Shannon, Shiah, Sirois, Snowe-Mello, Spear, Stanley, Stedman, Stevens, Tessier, Thompson, Townsend, Tripp, True, Tuttle, Usher, Vigue, Volenik, Watson, Wheeler EM, Wheeler GJ, Winglass, Winn, Winsor, Wright, Madam Speaker.

NAY - Barth, Belanger DJ, Bodwell, Buck, Campbell, Carleton, Chick, Foster, Gagne, Gerry, Jones SA, Joy, Kasprzak, Lane, Layton, Lemke, MacDougall, Mack, Murphy, Nass, Perkins, Pinkham RG, Pinkham WD, Plowman, Skoglund, Taylor, Tobin, Treadwell, Vedral, Waterhouse.

ABSENT - Baker, Dexter, Dutremble, Honey, Labrecque, Lemont, Poulin, Underwood.

Yes, 113; No, 30; Absent, 8; Excused, 0.

113 having voted in the affirmative and 30 voted in the negative, with 8 being absent, **House Amendment "B" (H-987) to Committee Amendment "A" (H-976) was INDEFINITELY POSTPONED.**

Subsequently, **Committee Amendment "A" (H-976) was ADOPTED.**

Under suspension of the rules the Bill was given its **SECOND READING** without **REFERENCE** to the Committee on **Bills in the Second Reading.**

Under further suspension of the rules the Bill was **PASSED TO BE ENGROSSED as Amended by Committee Amendment "A" (H-976)** and sent up for concurrence.

The Speaker resumed the Chair.

The House was called to order by the Speaker.

TABLED AND TODAY ASSIGNED

The Chair laid before the House the following items which were **TABLED** and today assigned:

SENATE DIVIDED REPORT - Majority (10) Ought to Pass as Amended by Committee Amendment "A" (S-547) - Minority (3) Ought to Pass as Amended by Committee Amendment "B" (S-548) - Committee on HEALTH AND HUMAN SERVICES on Bill "An Act to Improve the Efficiency of the Maine Public Drinking Water Control Program" (EMERGENCY)

(S.P. 776) (L.D. 2103)

- In Senate, Majority **OUGHT TO PASS AS AMENDED** Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (S-547).**

TABLED - March 20, 1998 by Representative KANE of Saco.
PENDING - ACCEPTANCE OF EITHER REPORT.

Representative MITCHELL of Portland moved that the House **ACCEPT** the Majority **Ought to Pass as Amended** Report.

The **SPEAKER:** The Chair recognizes the Representative from Portland, Representative Mitchell.