

MAINE STATE LEGISLATURE

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One Hundred and Nineteenth Legislature
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Volume 4

Second Regular Session (Continued)
April 14, 2000 to May 12, 2000

Second Confirmation Session
August 31, 2000

Interim Communications Appendix

Senate Legislative Sentiments

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Senator **MICHAUD** of Penobscot moved the Senate **RECONSIDER** whereby it **PASSED TO BE ENACTED** the following:

An Act Regarding Length of Service, Retirement Age and Retirement Benefits for State Police Officers and Certain Other State Employees

S.P. 911 L.D. 2363
(C "A" S-643)

(In Senate, April 6, 2000, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (S-643).**)

(In House, April 7, 2000, **PASSED TO BE ENACTED.**)

(In Senate, April 24, 2000, **PASSED TO BE ENACTED**, in concurrence.)

On further motion by same Senator, **TABLED** until Later in Today's Session, pending the motion by same Senator to **RECONSIDER** whereby the Bill was **PASSED TO BE ENACTED**, in concurrence.

Off Record Remarks

Under suspension of the Rules, all matters thus acted upon were ordered sent down forthwith for concurrence.

On motion by Senator **PINGREE** of Knox, **RECESSED** until the sound of the bell.

After Recess

Senate called to order by the President.

ORDERS OF THE DAY

The Chair laid before the Senate the following Tabled and Later (4/14/00) Assigned matter:

Bill "An Act Concerning Fingerprinting and Background Checks for School Employees"

S.P. 987 L.D. 2540
(C "B" S-692)

Tabled - April 14, 2000, by Senator **BERUBE** of Androscoggin.

Pending - **FURTHER CONSIDERATION**

(In Senate, April 11, 2000, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "B" (S-692).**)

(In House, April 13, 2000, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (S-691)**, in **NON-CONCURRENCE.**)

On motion by Senator **MURRAY** of Penobscot, the Senate **RECEDED** from whereby the Bill was **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "B" (S-692).**

On further motion by same Senator, the Senate **RECEDED** from whereby it **ADOPTED** Committee Amendment "B" (S-692).

On further motion by same Senator, Senate Amendment "A" (S-735) to Committee Amendment "B" (S-692) **READ.**

THE PRESIDENT: The Chair recognizes the Senator from Penobscot, Senator Murray.

Senator **MURRAY:** Thank you Mr. President. Men and women of the Senate, I'd like to briefly address for you what the proposed Senate Amendment would do. Before that, I'd like to just refresh our memories for a minute. As you may recall, the other day, when the Senate took up this matter, we adopted Report B on this measure. Report B, basically, focused our attention on the fingerprinting issue to the new hires, or those individuals coming into the education profession, or new education personnel for the first time who would be subjected to a background check including fingerprints. Also there was a provision that allowed for individuals who were transferring from one school district to another school district to also be subjected to this type of background check if the superintendent of the hiring school district decided that was something he or she wanted to do. That report was adopted by a solid vote here in the Senate the last time we took up the matter.

Since that time, there have been some concerns that were raised, primarily on one or two issues. That's what the proposed Senate Amendment that's before you now attempts to address as it relates to Report B which focuses on those new hires. Specifically, one of the concerns that I heard raised was that to give the discretion to an individual superintendent to decide, in those circumstances of a move from one school district to another, was going to be problematic with the FBI in carrying out these particular background checks. Everything we have done in putting together Report B focused on what would be allowed under federal law, or federal regulations. I'm fairly confident that Report B still would meet all those federal requirements. However, to address this particular issue about the discretion and the concern that raised with the FBI, the Senate Amendment before you proposes to deal with that in this way. Rather than having the individual superintendent, that would be the hiring superintendent, make that decision on his or her own as to whether that individual would be subjected to a background check, the new language in the Senate Amendment allows for, or calls for, the local governing body of that school district to make a decision that in those circumstances where there is a transfer from one district to another, the local governing body will say, "We intend to subject all applicants in that category to that kind of a background check, or we'll choose not to subject any individuals in that category to a background check" So it eliminates the discretion on the part of the individual superintendent and leaves it with the governing body of the local school district.

I want to tell you that I've worked in the interim, during the past week. I've consulted with the State Police, who had raised this as an issue that the FBI may have concerns. I've communicated with the Colonel of the State Police and the Major from the State Police who was most directly involved with this. I've shared the language that's before you in the Senate Amendment. They believe it does address the issue of that discretion and the concern that the superintendent has with the discretion. Until such time as there is a law actually in front of the FBI, I don't think anyone is going to get anything more than that by way of a gauge of their comfort level. But it does certainly address this question of eliminating the individual discretion that a superintendent would have.

The other significant thing that the Senate Amendment before you proposes to do is address another issue that was raised. Namely the issue that was raised regarding the way that Report B was originally drafted. It could be argued that all applicants in the situation of a transfer from one district to another could be subjected to a background check. The language we have proposed to narrow that makes it clear that it would be only those applicants for whom the superintendent actually intends to extend an offer of employment that would be subjected to the background check. So this will cut down on the need for anyone who submits a paper application to have to go through that procedure and background check. The other minor change is the adopted language proposed by the State Police that removes some references to the federal law and federal language of an authorized agency. The State Police folks who I talked to didn't feel that was necessary and OPLA personnel who I talked with agreed. So we removed that language.

Finally, the only other change that this Senate Amendment proposes is to change the effective date from August 1st to August 15th of this year, which merely reflects the fact that it will unlikely be the 90 day period of time by the time we actually finally adjourn. We'd be needing an August 15th deadline as opposed to an August 1st. That, in sum and substance, is what this Senate Amendment proposes. I think it's important to emphasize, in my opinion, this does not substantively change what we voted on the other day in Report B and the focus of what Report B does. It merely clarifies some issues where concern was raised, and hopefully, gives a greater degree of comfort for those who had questions along those lines. I would urge you to support the pending motion so that we can move on to adopt this amendment and engross the Bill.

THE PRESIDENT: The Chair recognizes the Senator from Somerset, Senator Mills.

Senator MILLS: Mr. President. I have a question for anyone who might be able to answer.

THE PRESIDENT: The Senator from Somerset, Senator Mills, may pose his question through the Chair.

Senator MILLS: Mr. President, it is my understanding that we have so far fingerprinted approximately 13,000 people employed by school districts and school units throughout the state, including teachers, cafeteria workers, and school bus drivers. This represents about a quarter of the population of people employed by the various school units. My question is, is it the intention of the Bill, or is it the wording of the Bill, that those 13,000 fingerprints will be thrown out and not used or not followed through on?

THE PRESIDENT: The Senator from Somerset, Senator Mills, poses a question through the Chair to anyone who may be able to answer. The Chair recognizes the Senator from Penobscot, Senator Murray.

Senator MURRAY: Thank you Mr. President. Men and women of the Senate, to the extent any of those 13,000 would involve individuals who would not be subject to the fingerprinting under Report B, either in its current form or if amended, yes, those individual records would be destroyed and the individuals who have been subjected to that testing would be reimbursed for whatever expenditures they've made.

THE PRESIDENT: The Chair recognizes the Senator from Waldo, Senator Longley.

Senator LONGLEY: Thank you Mr. President. I stand in opposition to the pending motion. I do so because, having sat in the Judiciary Committee this year, we heard one story after another of serious instances of sexual abuse. Yes, the abuse they came to tell us about was done by teachers. If 99.99% of teachers aren't even going to think of this type of activity, unfortunately, we have what is arguably an epidemic out there. When one adult abuses one child, that child's life is ruined permanently. We know that that one adult out there, whomever he or she is, isn't just doing it to one child. He or she is a perpetrator and does it to many, many children. So if we catch one perpetrator, we save several children. I've heard some of you say, "Well, this fingerprinting won't catch those. It's not going to help. It's not going to solve the problem." My response is it's going to take a multiple of approaches, several different ways that we try to get to address the fact that there are predators out there and they're praying on children. If our vote, tonight, here in any way find just one and prevent that one from ruining another several children's lives, I think it's worth it. I didn't speak last time. I felt that everyone's votes were decided, so I decided to be quiet. But my silence and the silence of others of us was misinterpreted. So I'm here to stand tonight and say, when you press that button, you have a lot of responsibility. We have a very huge problem out there and children who have come before Judiciary now as adults tell stories that shake you to your core. I can't tell you what these children look like as adults. But they, with the best of their abilities, told us how their lives have been severely damaged. I think with this Bill we have the opportunity to save at least one child from that permanent damage. I just encourage you to take this vote very, very seriously. Thank you.

THE PRESIDENT: The Chair recognizes the Senator from York, Senator Libby.

Senator LIBBY: Thank you Mr. President. Men and women of the Senate, there are far more occasions of abuse outside of schools. It's been my experience, in my 8 years in the legislature, that there seems to be these sometimes well-meaning legislators who really want to do something about a particular problem, address a problem through the K-12 system. While there may be some good that comes from fingerprinting in the K-12 system, I think what we've come up with here is a pretty good compromise. To abandon the half decent compromise, frankly, I'd rather see no fingerprinting at all. This is a pretty good compromise. To abandon that would be, I think, a major

mistake. Again, because of the fact that is so much more abuse going on outside of the K-12 system, what is the proposal of the members of this Senate body, Mr. President, for coping with that. Will we continue to go on and on with new proposals to reach beyond K-12? Why did we start with K-12 in the first place? Those are my questions. If we can prevent transfers from coming in from out-of-state, for example, who may have a record in other states, and if this particular amendment is going to help do that and other things, then maybe that's the answer to the questions that we've all been asking. But isn't it funny that this particular Bill and this particular topic was the very first thing that this legislature was going to handle when we came in January. Isn't it funny that it's just about the last thing that we have dealt with. The reason for that, in my opinion, is because we don't have the perfect solution. We're not going to have the perfect solution to it. It's important that we have come up with a compromise that I don't like, you don't like, we all don't like, but, let's embrace it and go forward because the alternative to this is not very good. It will lead us down a slippery slope to going after a lot of other professions, an awful lot of other people who work in different fields, who come in contact with young children. I think that we ought to think twice before we do that. So I am ready to accept this amendment. It's the first I've heard of it. I'd rather have caucus on the issue and we have not done that in my caucus. But from everything I've heard and from everything I've read, I think it's the right thing to do. Thank you.

The Chair ordered a Division. 21 Senators having voted in the affirmative and 7 Senators having voted in the negative, the motion by Senator **MURRAY** of Penobscot to **ADOPT** Senate Amendment "A" (S-735) to Committee Amendment "B" (S-692), **PREVAILED**.

Senator **GOLDTHWAIT** of Hancock requested a Division.

On motion by Senator **AMERO** of Cumberland, supported by a Division of at least one-fifth of the members present and voting, a Roll Call was ordered.

The Doorkeepers secured the Chamber.

The Secretary opened the vote.

ROLL CALL (#401)

YEAS: Senators: **BENNETT, BERUBE, CASSIDY, DAGGETT, DAVIS, DOUGLASS, FERGUSON, HARRIMAN, KILKELLY, KONTOS, LIBBY, MICHAUD, MILLS, MURRAY, NUTTING, PARADIS, PENDLETON, PINGREE, RUHLIN, TREAT, THE PRESIDENT - MARK W. LAWRENCE**

NAYS: Senators: **ABROMSON, AMERO, GOLDTHWAIT, LAFOUNTAIN, LONGLEY, O'GARA, RAND**

ABSENT: Senators: **BENOIT, CAREY, CATHCART, KIEFFER, MACKINNON, MITCHELL**

EXCUSED: Senator: **SMALL**

21 Senators having voted in the affirmative and 7 Senators having voted in the negative, with 6 Senators being absent and 1

Senator being excused, Committee Amendment "B" (S-692) as Amended by Senate Amendment "A" (S-735) thereto, **ADOPTED**, in **NON-CONCURRENCE**.

PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "B" (S-692) AS AMENDED BY SENATE AMENDMENT "A" (S-735) thereto, in **NON-CONCURRENCE**.

Sent down for concurrence.

Senator **BENNETT** of Oxford was granted unanimous consent to address the Senate off the Record.

The Chair laid before the Senate the following Tabled and Later Today Assigned matter:

Emergency Measure

An Act to Clarify the Law Enforcement Authority of Game Wardens

S.P. 1088 L.D. 2691

Tabled - April 24, 2000, by Senator **PINGREE** of Knox.

Pending - **ENACTMENT**, in concurrence (Roll Call Requested)

(In House, April 14, 2000, **PASSED TO BE ENGROSSED**.)

On motion by Senator **PINGREE** of Knox, supported by a Division of at least one-fifth of the members present and voting, a Roll Call was ordered.

The Doorkeepers secured the Chamber.

The Secretary opened the vote.

ROLL CALL (#402)

YEAS: Senators: **ABROMSON, AMERO, BENNETT, BERUBE, CASSIDY, DAGGETT, DAVIS, DOUGLASS, FERGUSON, GOLDTHWAIT, HARRIMAN, KILKELLY, KONTOS, LAFOUNTAIN, LONGLEY, MICHAUD, MILLS, MURRAY, NUTTING, O'GARA, PARADIS, PENDLETON, PINGREE, RUHLIN, TREAT, THE PRESIDENT - MARK W. LAWRENCE**

NAYS: Senators: **LIBBY, RAND**

ABSENT: Senators: **BENOIT, CAREY, CATHCART, KIEFFER, MACKINNON, MITCHELL**

EXCUSED: Senator: **SMALL**