

MAINE STATE LEGISLATURE

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Senate Legislative Record
One Hundred and Nineteenth Legislature
State of Maine

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

Index

Pages 2332 - 2615

After Recess

Senate called to order by the President.

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

QUORUM CALL

The Chair noted the absence of the Senator from Sagadahoc, Senator **SMALL** and further excused the same Senator from today's Roll Call votes.

The Doorkeepers secured the Chamber.

The Secretary opened the vote.

ROLL CALL (#419)

PRESENT Senators: ABROMSON, AMERO, BENNETT, CASSIDY, CATHCART, DAVIS, DOUGLASS, FERGUSON, GOLDTHWAIT, HARRIMAN, KILKELLY, LAFOUNTAIN, LIBBY, MILLS, MURRAY, PARADIS, PINGREE, RAND, TREAT, THE PRESIDENT - MARK W. LAWRENCE

EXCUSED: Senator: SMALL

20 Senators having answered the Roll with 1 Senator being excused, the Chair declared a quorum present.

Out of order and under suspension of the Rules, the Senate considered the following:

COMMUNICATIONS

The Following Communication: S.C. 657

**STATE OF MAINE
OFFICE OF THE GOVERNOR
1 STATE HOUSE STATION
AUGUSTA, MAINE 04333**

April 26, 2000

Dear Members of the 119th Legislature,

Enclosed please find S.P. 987, L.D. 2540, "An Act Concerning Fingerprinting and Background Checks for School Employees," which I am returning without my signature or approval.

This bill repeals the existing law requiring all school employees, both current and future, to undergo background checks for criminal history, based on fingerprints, at the time of licensing or renewal by the Department of Education. The bill requires background checks only for new applicants for licensure or new employees after August 15, 2000. The bill exempts all current school employees from background checks, unless the school employee subsequently seeks employment in a different school district. For individuals who are employed in schools as of August 15, 2000, who subsequently change employer, each local school board in the state would determine whether this sub-class of new employees would also be subject to background checks, based on fingerprints.

As you know, Maine has recently been recognized for having the finest K-12 educational system in America. A central reason for this success is a spectacularly dedicated, experienced and capable teaching faculty and staff. As a parent who has had children in Maine's public schools for over 25 years (the total will be 38 years when Molly finishes high school), I can attest to this fact without reservation.

Let there be no doubt that the overwhelming majority of these extraordinary educators are of outstanding and unblemished character. Unfortunately, tragic experience has also taught us that in any group of 50,000 individuals, there are likely to be a small minority who pose a threat to society, in this case, to the very children entrusted to their care. The law which this veto leaves intact is in no way an accusation or indictment of any individual or group; it is instead a simple recognition of our responsibility to take cognizance of an unfortunate, but compelling statistical fact.

The damage that even a handful of the wrong people can do to children is immeasurable and the victims of such damage will be scarred for life.

The existing law requiring background checks for all school employees is a sensible safeguard to protect our children from individuals with proven criminal convictions. The Department of Education has long had rules prohibiting individuals with dangerous convictions from working in our schools. Criminal history records checks, based on fingerprinting, provide the only systematic, consistent, and accurate means to enforce this prohibition. Importantly, the law sends a strong message that should deter individuals with serious convictions from seeking or continuing employment in Maine schools.

The existing law is a carefully crafted measure that was studied extensively by all stakeholders prior to enactment by the Legislature in 1997. The process for conducting background checks is designed to be constitutional, to be consistent, to ensure confidentiality of all criminal records, and to be narrowly tailored to focus on recent, serious criminal convictions which show that an individual poses a threat to children.

All stakeholders endorsed this sensible precaution when it was presented in 1997. A number of groups representing educators, parents, school boards, advocates for victims of sexual assault, and citizens continue to strongly support this safeguard for students.

Maine's adoption of a background check requirement for school employees makes Maine's practice consistent with the national standard. Thirty-four other states require background checks using fingerprints. Twenty-one of those states, like Maine, require checks for all school employees without an exemption for current employees.

The background check is a device for prevention, not accusation, and is a uniformly applied requirement for all school employees. Many other professions require background checks. Until 1972, all Maine school children were fingerprinted for safety reasons. Numerous other Maine residents have been fingerprinted, including more than 150,000 who were printed incidental to military service. Mary and I were fingerprinted in 1994 as part of the adoption process – and I did not view this in any way as an accusation, but rather as a reasonable precaution where a child's life and welfare was at stake.

The approach in L.D. 2540 is an unacceptable substitute for existing law. L.D. 2540 would exempt more than 47,000 current employees from background checks. Thus, the bill would only ensure that a fraction of school employees -- the new hires -- would have clean records -- and it would take over 30 years to provide that assurance for all employees. It strikes me as disingenuous at best that those who oppose this process on the grounds of principle seem prepared to impose the process they find so objectionable on others, but not themselves.

L.D. 2540 is laden with ambiguities about which employees would be covered and when background checks would be conducted. With regard to the narrow circumstances under which current school employees may be screened if they change employers, the bill creates a patchwork of protection to be determined by each local school board – and imposes the cost of these background checks on local school districts.

I cannot support an approach which reduces the existing safeguard to such inconsistency and incompleteness. More than 16,000 school employees have already been fingerprinted. It is a mistake to alter a sensible policy in mid-course and waste considerable resources already invested in protecting children.

There is broad consensus that if the State mandates background checks for school employees, the State – and not the employee – should pay the cost of the checks. In addition, it is necessary to make adjustments to the timeframes for fingerprinting and running criminal history records checks on several categories of school employees and contractors in order to successfully implement the existing law. I stand ready to work with the Legislature to resolve both of these concerns, but in a form that is not coupled with the poor public policy of exempting current school employees.

The most compelling argument to me, and the ultimate reason I cannot sign this bill, is the stark fact that if we take this step and effectively exempt almost 50,000 people from this sensible and non-intrusive requirement, some day two, five, or ten years from now, we will awaken to news of a horrendous case which could have been prevented – and all of us who supported this proposal – including me if I sign it – will bear a full measure of responsibility. This I cannot and will not do.

I want to end this message with a somewhat unusual plea directed to those dedicated, skilled, and conscientious educators who believe that compliance with this law requires such a compromise of their principles that they feel compelled to leave their honorable and vitally important profession. Please rethink this position – you are not being accused and you are not being subjected to a process any different from that applied to tens of thousands of your fellow citizens. To those of us who place our children into your care each day, this is neither a brand nor an accusation, and it will only become so through your own words and actions. Our children need principled leaders, teachers, and mentors, but in this case, the principle being asserted simply does not rise to a level which would justify leaving the students to whom you have given so much.

For the reasons outlined above, I believe that background checks as a safeguard for children should be required in a fair and consistent manner for all school employees. I am in firm opposition to L.D. 2540 and I respectfully urge you to sustain my veto.

Sincerely,

S/Angus S. King, Jr.
Governor

READ and ORDERED PLACED ON FILE.

The Accompanying Bill:

An Act Concerning Fingerprinting and Background Checks for School Employees

S.P. 987 L.D. 2540
(S "A" S-735 to C "B" S-692)

The President laid before the Senate the following: "Shall this Bill become Law notwithstanding the objections of the Governor?"

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

Senator **MURRAY:** Thank you Mr. President. Men and women of the Senate, I rise this evening with a heavy heart to address the issue before us. About 3 hours ago this body overwhelmingly enacted this measure before us in a strong vote to endorse L.D. 2540. Although I rise with a heavy heart, I am somewhat amused and envious.

I recall in my college days, and I confess to you in my days since that time, I've had to struggle mightily to put pen to paper and come up with something that I thought was a work product that I could at least be happy with, let alone be proud of. So, I applaud the Governor for his ability to be able to craft such a lengthy and eloquent veto message in such a short period of time. It's certainly something I could never have done anywhere near as well. I agree with many of the concepts that he asserts in his veto message. The specific praise that he presents to the teaching community and staff members in our schools throughout the state, I wholeheartedly agree with. He cites as a central reason for the great success of the K through 12 system in this state, the spectacularly dedicated experienced and capable teaching faculty and staff. He goes on, at the conclusion of his letter, to note that our children need principled leaders, teachers,

and mentors. I couldn't have said that better myself. I wholeheartedly agree with him because we certainly do need that.

I part company with the Governor, however, on the bulk of the rest of his message. I'm perplexed at some of its inherent inconsistencies and reasoning as the basis for his decision not to support the law that we so recently sent to him. Let me articulate a few of those for you, if I may ask your indulgence, Mr. President. The Governor, as part of his message, lauds the current law, the law that was passed by the legislature in 1997, as being one that was crafted carefully and studied extensively. It had the endorsement and support of different stakeholders throughout the state. He lauds that Bill as being the one he holds up with admiration and as the one that we should now look to in endorsing and supporting. Yet, at the same time, his own veto message seems to acknowledge the fact that that same law he lauds on page 2 - on page 3 - requires adjustments. Changes in time frames for fingerprinting. Additional costs that weren't dealt with. Additional categories of school employees that aren't covered. Additional time that's necessary to deal with the issue of contracted services. All without a solution to those same problems and merely an extension of his willingness to work with us.

You can't have it both ways in my opinion. You can't hold this law up as the beacon that he attempts to do while at the same time recognizing its shortfalls and not proposing any solutions. The Governor lauds the fact that there were stakeholders in 1997 who supported this Bill. He seems to suggest that ought to be the basis for which we climb on board and endorse that measure again today. While I think we all understand how that stakeholder process can work in the committee settings, and how sometimes it works well. But sometimes that stakeholder process tends, to if not exclude, to fail to include the very players for whom the law is aimed at addressing. That, quite frankly, men and women of the Senate and Mr. President, is what happened when that law was enacted 2 or 3 years ago. It was only when that law began to be implemented that its true effect became known far and wide. And it's from that point forward that the issue really began to receive the scrutiny, the effort and the attention of all of us. So the Governor lauds the participation 3 years ago of the stakeholders, but seems to forget or ignore the participation of everyone here this year. It seems more than a little strange to me that we have now had a position, this issue, dealt with perhaps more than any other issue in front of this legislature or perhaps even in front of the public for the last 6 months. It has been the subject of countless editorials, articles, e-mails both from our constituents and some we've sent to them. It has been unlike the passage of the law 2 to 3 years ago. The subject of, some might say, endless debate in these very chambers. But at a very minimum, hours of debate. Heartfelt debate both in this chamber and at the other end of the hall. When this law was passed 3 years ago there was zero debate in the House or the Senate. Why we can turn our heads away, ignore, or cast aside the effort, attention, and debate that has gone on this year which yielded the enactment by both this body and the other body of the Bill that is now in front of us, while at the same time lauding the efforts of only the stakeholders 3 years ago, is a position I cannot understand or accept.

There are other inconsistencies with the position that's presented to us in the veto message tonight that I don't need to go into in any great detail. Suffice it to say the humble opinion of this one senator is that the arguments set forth before us are not

compelling. I am disappointed that there would be an attempt to thwart the will of the legislature and its positions in enacting this Bill. There was a great deal of effort involved on a number of people's parts at trying to address the very concerns that the Governor articulates with the current law. The product of that was this Bill before us tonight. The Bill that we're asked to make law notwithstanding the Governor's objections, which I urge you to do, is the most reasoned, rational, and sensible approach to the issue that was presented to us dealing with the safety of our children and the background checks of our educational personnel.

None of us, despite the Governor's best intentions and desires, or the intentions and desires of any of us, can make our schools as safe as we want them to be. The Bill before us can't do that. Current law can't do that. Nothing we can do, despite our best intentions, could ever do that. That is not the type of world we live in. We are called upon and can only do the best we can to balance the desires for safety and respect those whom we call upon to teach our young and to subject themselves to the whims of any legislature or governor. The Bill before you focuses our efforts in the best way possible to address those unknowns that we know the least about. It addresses the issue of safety in a way that's most targeted toward producing the best result possible, because there are no guarantees, no matter what position we may adopt or what position we may be left with. The strength of the Bill before you, and the one I ask you to continue to support, is that it is not only promoting the safety of children in targeting our resources and efforts at the best means possible, it also maintains the respect and the value that we need to convey to those teachers and staff members who struggle, work, labor, and produce fruit in our school systems throughout the state.

My great concern at the actions of the Governor is that the result will have the effect of not making our schools any safer but have the great detrimental effect of making our schools a worse place to be. I hope I'm wrong on that. I have never hoped to have been wrong on anything as strongly as that. But without the measure that's before us that continues to respect those individuals, and to the contrary, suggests to them something far less than respect, the effect of that, in my opinion, will be that our schools will have changed. Unfortunately, changed dramatically. I hope, as the Governor indicates in his veto message, that those individuals that he lauds early in his letter chose to continue in our school systems because it is truly their contributions, whether as a teacher, or a cafeteria worker, or a crossing guard, that contributes to the end product that makes our experience as a community, and more importantly, our children's experience as young individuals learning the experience it was meant to be. I hope I am wrong my friends in the Senate and Mr. President. But I think our course of action tonight to ensure that we don't make that mistake is to continue to support this measure, notwithstanding the Governor's disapproval. For all those reasons, and many more unspoken, I urge you to join with me in voting to make this Bill law notwithstanding the Governor's objections. Thank you, Mr. President.

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

Senator **LIBBY:** Thank you Mr. President. Men and women of the Senate, I beg to differ somewhat with my good friend and colleague, the Senator from Penobscot, who just spoke. I differ with him on this one issue. It is possible to put together an eloquent speech and/or written testimony in less than 3 hours

because it just happened. I think that the Senator from Penobscot speaks for my beliefs. I believe that, because of this veto, more professions down the road face the same threat. The threat of being offended, violated, and asked to be treated like criminals. What are those professions? Professions like psychologists, professions like occupational therapists, professions like nursery school attendants, professions like even all parents, who actually do come in contact with children and what dangers do they pose? This is a question that should be evaluated whether it is a public or a private event. Whether it is a public or privately funded occurrence. I, for one, feel that until we have had that thorough discussion of all of the professions involved, it is a waste of the public's money, \$2 million worth of money, to focus on one profession. To discriminate against one profession. That one profession is the profession that we should hold more dear than maybe any other profession in the State of Maine. That is teaching. Teaching young people. The success of teaching young people, and the shame that comes with what's associated with the law that was passed in 1997.

I'm going to give you a few examples tonight, none that I'm particularly feeling too good about right now. But I'll give you one example. First I'd like to start with the example of the young teacher, 30 years old, who made a mistake about 11 years ago and was convicted of a crime in another state. The mistake was probably compounded by, in the initial certification, filling out a form and probably lying on the form and saying that they had never been convicted of a crime. That individual, and there are actually many, will now be exposed. Should they be exposed? Maybe they should because they lied on an application. Have they had the opportunity to make up for their past mistakes? I don't know if they should. I don't know if that issue has been debated. I, frankly, think there is an awful lot of those that we're going to find. What were the crimes? Well, it depends on the Department of Education. It depends on whether or not it's a crime that they view as a danger to children. It depends on the length of time that it has been since the crime was committed. So am I making an excuse for those people? No, not at all, I'm just pointing out there's one ramification that we don't want to talk about and that is there are some teachers who are about to lose their jobs because they will not be recertified because they did not admit on their application that they were convicted of a crime in Florida during spring break of their sophomore year in college. Fortunately, I wasn't one of them, but they're out there.

More importantly than issues like that where there are some questions as to whether or not those people should be teaching or not, there are issues that haven't been debated. More importantly though is treating other people with common decency. Treating people in the profession that is teaching with common decency. Does this new law do that? New, yeah, it's 3 years old but it's just being implemented now. I say that this law does not treat those teachers with common decency, with common courtesy. If you explore the statute, I think it's in Title 13, I can't remember now, you will see what the reasons are for being fingerprinted in the State of Maine. It starts with being a criminal, or a convict. It goes on to talk about other heinous crimes. Then it gets down to, I think, D or E and it says teachers. I'm not proud of that, when I read that passage, because there is no other profession in there that it applies to. We have to treat our teachers with a great deal more respect than we're treating them with right now. Frankly, there have only been a few people who have shown leadership to try to prevent that. The leadership that I'm talking about is the leadership that has been displayed by the good Senator from Penobscot. The good Senator from

Penobscot apparently listened to the debate and heard the Department of Education here in the State of Maine say months ago that the real problem, for example, was people applying for Maine jobs from out-of-state. The L.D. that we're discussing now, L.D. 2540, takes care of that problem. That was the major problem that was outlined to us as legislators. The major problem, the big concern, not the 25-year veteran, but somebody coming in from out-of-state. On that basis I feel that this Bill is not pandering and I've heard that it is. This Bill, I believe, is a simple and distinct recognition that the legislature in 1997 made a mistake. The fact that this Bill passed the body with such a strong vote is also, I believe, an indication that this body made a mistake in 1997 by passing it without even a word of debate. The testimony said it all. The problem is with new hires and this Bill takes care of that problem.

I know I'm not supposed to, or at least I don't believe I'm supposed to, Mr. President, discuss anything that has been written by the Executive Branch in answer to the reason for a veto. But possibly I can speak about that. I'm being encouraged to speak about that. I want to point out then one solid sentence that I, with all the greatest respect for our Chief Executive - I have the greatest respect for our Chief Executive. We agree on many issues and we disagree on some. I remember at the end of a really heated debate. I left the chamber and the Chief Executive was standing outside the chamber. I said to him, "I'm sorry that I disagreed with you Governor" and he said, "That's okay, my wife disagrees with me sometimes." I said to him, "If your wife disagrees with you on this issue, she's with me and you ought to reconsider."

The passage in the veto message that bothers me especially is I think a clear message to the members of this body. The passage is this, "It strikes me as disingenuous at best that those who oppose this process on the grounds of principle seem prepared to impose the process they find so objectionable on others, but not themselves." I disagree with that statement. I disagree with it greatly because it gets to the heart of the Bill that we have in front of us now. I do not believe that this is a disingenuous Bill. I believe that this Bill is a thoughtful, caring approach to a problem that the people of Maine have identified for us. That the people of Maine have asked us to reconsider. Shall we or shall we not reconsider when we make a mistake? I say that we shall, and just like a time some months ago when we decided that a Bill should be overridden, a \$100,000 bill for Meals on Wheels, that it should be overridden. We did make the right decision because this body did listen to the testimony. Just like then, I believe it now, we should override this veto. I ask you to join me in doing so. I thank you very much.

THE PRESIDENT: The Chair recognizes the Senator from Hancock, Senator Goldthwait.

Senator **GOLDTHWAIT:** Thank you Mr. President. Ladies and gentlemen of the Senate, I find myself in a bit of a dilemma here because I have voted against all versions of the fingerprinting Bill since they have been introduced. Unlike those previous occasions, tonight I don't have the opportunity to vote either "for" or "against" a Bill. I have an opportunity to vote for 1 of 2 versions of something that I don't agree with or approve of.

So I simply wanted to state for the record, without reiterating my previous arguments, that I do oppose the fingerprinting of teachers. I will be required by our rules to cast a vote on this matter, but I do so reluctantly and with the clear understanding

that I am opposed to fingerprinting of school employees. Thank you.

THE PRESIDENT: The Chair recognizes the Senator from Oxford, Senator Bennett.

Senator **BENNETT:** Thank you Mr. President. Fellow members of the Senate, I just had the opportunity to read this veto message from the Chief Executive. One paragraph stands out to me that I think merits a bit of discussion. That is the paragraph, it's kind of long, forgive me, but to give the whole sentence, I have to read the whole paragraph. I guess that maybe an occupational hazard of writing quickly is writing longwindedly. But he writes, "The most compelling argument to me, and the ultimate reason I cannot sign this bill, is the stark fact that if we take this step and effectively exempt almost 50,000 people from this sensible and non-intrusive requirement, someday 2, 5, or 10 years from now, we will awaken to news of a horrendous case which could have been prevented - and all of us who supported this proposal - including me if I sign it," he writes "will bear a full measure of responsibility. This I cannot and will not do."

I take exception to that paragraph. Does the Governor take responsibility for all the abuse that is happening now in the state, because of the failure of state agencies to aggressively enforce current laws regarding child abuse? I don't think so. This really gets to the heart of the question before us today. Which is, why are we focusing on this single area when there is so much abuse going on in this state? It doesn't relate to anything our schools and our educators are doing. I received an e-mail just the other day, actually it appears it was yesterday. It seems like weeks ago. It is from a woman who works for an agency, a not-for-profit agency in my district, that covers Androscoggin and Oxford Counties. She sees first hand the abuse that occurs in this state. She writes, in a very compelling way, this. And I quote, "It is very frustrating to hear the rhetoric regarding teachers and fingerprinting when the State of Maine has so many children who have been reported as being abused by their parents or other family caretakers that are not being seen by our program or child protective services. Even though we have 22 licensed social workers on board in the 3 western Maine counties in our Family Support Program, we have over 100 families on our waiting list for services. There are 91 families that we can't get to in Androscoggin County and 12 and counting in Oxford County. The Community Intervention Program, Family Support Program, needs to expand to meet the needs of these children. Lots of Maine children are being abused in their homes. That is a fact." She writes, "How many children have been abused in schools in the past ten years?" She concludes in this way, "It is frustrating that much of our legislature's time and energy is being taken up by the teacher issue when teachers are not statistically the people who abuse Maine kids. Parents and their adult boyfriends are the people who are abusing Maine kids. Let's put our time and resources toward the real issue please."

In my view, the current law is much more about perception of doing something about abuse of children. It's much more about the liability concerns of state agencies and of our schools than it is about doing something meaningful to help curb abuse. For that reason, I will be voting to make this Bill become law notwithstanding the objections of the Governor. I encourage you to do the same. Thank you, Mr. President.

In accordance with Article 4, Part 3, Section 2, of the Constitution, the vote was taken by the Yeas and Nays.

A vote of yes was in favor of the Bill.

A vote of no was in favor of sustaining the veto of the Governor.

ROLL CALL (#420)

YEAS: Senators: BENNETT, CASSIDY, CATHCART, DAGGETT, DAVIS, DOUGLASS, FERGUSON, GOLDTHWAIT, HARRIMAN, KILKELLY, KONTOS, LIBBY, MICHAUD, MURRAY, NUTTING, PARADIS, PINGREE, RAND, RUHLIN, TREAT, THE PRESIDENT MARK W. LAWRENCE

NAYS: Senators: ABROMSON, AMERO, LAFOUNTAIN, MILLS, O'GARA

ABSENT: Senators: BENOIT, BERUBE, CAREY, KIEFFER, LONGLEY, MACKINNON, MITCHELL, PENDLETON

EXCUSED: Senator: SMALL

21 Senators having voted in the affirmative and 5 Senators having voted in the negative, with 8 Senators being absent and 1 Senator being excused, and 21 being more than two-thirds of the members present and voting, it was the vote of the Senate that the veto of the Governor be **OVERRIDDEN** and the Bill become law notwithstanding the objections of the Governor.

Under suspension of the Rules, ordered sent down forthwith for concurrence.

Off Record Remarks

Out of order and under suspension of the Rules, the Senate considered the following:

REPORTS OF COMMITTEES

Senate

Divided Report

The Majority of the Committees on **JUDICIARY** and **BUSINESS AND ECONOMIC DEVELOPMENT** on Bill "An Act to Establish Requirements for the Removal of Directors of Certain Maine Business Corporations before the Expiration of Their Established Terms" (EMERGENCY)

S.P. 1089 L.D. 2693

Reported that the same **Ought to Pass as Amended by Committee Amendment "A" (S-740).**

Signed:

Senators:
TREAT of Kennebec
KONTOS of Cumberland