

MAINE STATE LEGISLATURE

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State of Maine

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Second Regular Session

January 2, 2002 – March 6, 2002

Pages 890-1770

ABSENT - Dugay, Koffman, Labrecque, Landry, Lovett, Marrache, Matthews, Mayo, Mitchell, Patrick, Perry, Tobin J, Watson.

Yes, 89; No, 49; Absent, 13; Excused, 0.

89 having voted in the affirmative and 49 voted in the negative, with 13 being absent, and accordingly the Mandate **FAILED PASSAGE TO BE ENACTED** and was sent to the Senate.

The following item was taken up out of order by unanimous consent:

SENATE PAPERS

Reported Out of Committee Pursuant to Joint Order

Bill "An Act to Repeal the Requirement that School Employees be Fingerprinted"

(S.P. 322) (L.D. 1090)

- In Senate, **REFERRED** to the Committee on **EDUCATION AND CULTURAL AFFAIRS** on February 22, 2001.

- In House, **REFERRED** to the Committee on **EDUCATION AND CULTURAL AFFAIRS** on February 22, 2001, in concurrence.

- **REPORTED OUT** of Committee pursuant to Joint Order (S.P. 647).

Came from the Senate, under suspension of the rules, the Bill **READ TWICE** and **PASSED TO BE ENGROSSED**.

The Bill was **READ ONCE**.

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

Representative NORBERT of Portland assumed the Chair. The House was called to order by the Speaker Pro Tem.

Representative RICHARD of Madison moved that the Bill and all accompanying papers be **INDEFINITELY POSTPONED**.

Representative TRACY of Rome **REQUESTED** a roll call on the motion to **INDEFINITELY POSTPONE** the Bill and all accompanying papers.

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 Freeport, Representative Bull.

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

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

Representative **BULL**: Mr. Speaker, Ladies and Gentlemen of the House. To any members of the Education Committee who could answer this, has there been a public hearing on this bill before it was voted to carry over?

The **SPEAKER PRO TEM**: The Representative from Freeport, Representative Bull has posed a question through the Chair to anyone who may care to respond. The Chair recognizes the Representative from Madison, Representative Richard.

Representative **RICHARD**: Mr. Speaker, Men and Women of the House. This was discussed in committee, but not necessarily with a public hearing. It was voted to carry it over. It was the committee's intent to find out the information that was in the other bill before we worked on this bill.

The **SPEAKER PRO TEM**: A roll call has been ordered. The pending question before the House is Indefinite Postponement of

the Bill and all Accompanying Papers. All those in favor will vote yes, those opposed will vote no.

ROLL CALL NO. 384

YEA - Andrews, Bagley, Baker, Belanger, Berry RL, Bouffard, Bowles, Brannigan, Bruno, Bull, Bumps, Bunker, Clough, Cressey, Daigle, Desmond, Duncan, Dunlap, Estes, Etnier, Foster, Glynn, Hawes, Heidrich, Honey, Kane, Labrecque, Ledwin, Lemoine, Lessard, Mailhot, McKee, Murphy E, Muse C, Muse K, Norbert, Nutting, O'Brien JA, O'Neil, Perkins, Quint, Richard, Savage, Schneider, Shields, Stedman, Tobin D, Treadwell, Usher, Weston, Winsor, Young, Mr. Speaker.

NAY - Annis, Ash, Berry DP, Blanchette, Bliss, Brooks, Bryant, Buck, Canavan, Carr, Chase, Chick, Chizmar, Clark, Collins, Colwell, Cote, Cowger, Crabtree, Cummings, Davis, Dorr, Dudley, Dugay, Duplessie, Duprey, Fisher, Fuller, Gagne, Gerzofsky, Goodwin, Gooley, Green, Hall, Haskell, Hatch, Hutton, Jacobs, Jodrey, Jones, Kasprzak, LaVerdiere, Laverriere-Boucher, Lundeen, MacDougall, Madore, Marley, Marrache, Mayo, McDonough, McGlocklin, McGowan, McKenney, McLaughlin, McNeil, Mendros, Michael, Michaud, Morrison, Murphy T, Nass, Norton, O'Brien LL, Paradis, Patrick, Peavey, Perry, Pineau, Pinkham, Povich, Richardson, Rines, Rosen, Simpson, Skoglund, Smith, Snowe-Mello, Stanley, Sullivan, Tarazewich, Tessier, Thomas, Tracy, Trahan, Tuttle, Twomey, Volenik, Waterhouse, Wheeler EM, Wheeler GJ.

ABSENT - Koffman, Landry, Lovett, Matthews, Mitchell, Sherman, Tobin J, Watson.

Yes, 53; No, 90; Absent, 8; Excused, 0.

53 having voted in the affirmative and 90 voted in the negative, with 8 being absent, and accordingly the motion to **INDEFINITELY POSTPONE** the Bill and all accompanying papers **FAILED**.

Representative **BULL** of Freeport **REQUESTED** a roll call on **PASSAGE TO BE ENGROSSED**.

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

On motion of Representative **TRAHAN** of Waldoboro, **TABLED** pending **PASSAGE TO BE ENGROSSED** and later today assigned. (Roll Call Ordered)

The Chair laid before the House the following item which was **TABLED** earlier in today's session:

Bill "An Act to Repeal the Requirement that School Employees be Fingerprinted"

(S.P. 322) (L.D. 1090)

Which was **TABLED** by Representative **TRAHAN** of Waldoboro pending **PASSAGE TO BE ENGROSSED**. (Roll Call Ordered)

The **SPEAKER PRO TEM**: The Chair recognizes the Representative from Penobscot, Representative Perkins.

Representative **PERKINS**: Mr. Speaker, Men and Women of the House. I have been asked by two or three people why I switched my vote on this. I would like it to go on record anyway. As I said a week ago, I have been against mass fingerprinting, gathering up people who have been teaching in communities for 15 or 20 years and fingerprinting. I have been against that. I have not been against new hires, however. Last week when we had this vote, I voted for the repeal. I was frustrated by the situation where it was tied in. What I wanted was some information. I said this last week too. I did vote for the repeal. I was hoping that we could get them separated, those two issues. We did, but for some reason the bill whereby we could get some gross information, categories at least, failed. I voted against the repeal today and I will tell you why. This frustrates me

immensely when the very people that asked for my vote to repeal this are the ones that will not allow any information to be divulged. I know two years ago the bill we passed said that this will be confidential, but, friends, we make the law and as far as confidentiality goes, we could change the law enough to allow broad categories, child protective issues in DHS, an enormous amount of confidentiality, but you can find broad categories. That is all we ask for. To me, it is disingenuous and very frustrating for the same people to ask for my vote to repeal when I can't even find out any information as to the three-fourths of the people that have been fingerprinted. Thank you.

The SPEAKER PRO TEM: The Chair recognizes the Representative from Bangor, Representative Baker.

Representative **BAKER**: Mr. Speaker, Men and Women of the House. I stand with some reluctance because I know how weary everyone is of the debate, but I just want to mention a couple of things. The fingerprinting law, which has already been costly, which has already been in effect and many, many people have been fingerprinted, was designed to do two things. One, it will determine who in the school system has lied, basically, on their forms about whether or not they have a prior conviction. Sexual predators find children. They can be clergymen. They can be scout leaders. They can be stepparents. They can be parents. Sexual molesters have a disease that is virtually impossible to cure. There is a very high repeat rate and recidivism rate. We put our children at risk when we refuse this safeguard. The second thing that fingerprinting will do is to join the over 40 other states that require fingerprinting for licensing, over 40 states. Maine is not in the flow the way most of the states are going on this issue. Because we will be something like one in less than 10 states who do not require fingerprinting for licensing of teachers, bus drivers or drivers ed people. I just saw in the paper today that conviction. We open our state up to become a haven for those who want to be in a position of safeguarding children, but who cannot be responsible and cannot be counted on to protect those children.

Let me remind you that in the last five years there have been 27 convictions of child molestation in our schools. That is without fingerprinting. Can you imagine what it will mean for Maine to be one of the few states where our children do not have this guarantee? I would appeal to you to think very carefully about what it means to require children to be in the care of adults for this many hours of the day and for us, the Legislature, to refuse the guarantee that at least those with whom we are placing our children, grandchildren, friends, nieces or nephews are in the hands of those who do not have a prior conviction.

One last word, the 1,328 convictions that have shown up of those 27,000 people who have been fingerprinted, those convictions do not include any traffic violations. They do not include OUIs. You can possess an ounce and a quarter of marijuana and you do not show up on this list. I am concerned that there is a lot of misinformation out there about those 1,328 convictions. I ask Maine to stay in step with the rest of the nation, not to open our doors to those who need refuge from states that have determined that this is one small way, but one extremely important measure, that they can take to protect their children. Thank you.

The SPEAKER PRO TEM: The Chair recognizes the Representative from Augusta, Representative O'Brien.

Representative **O'BRIEN**: Mr. Speaker, Colleagues of the House. I will not go into a lengthy debate such as I did last week. I just wanted to point out a few things that I didn't mention last week. One, several months ago before we began this session, there were several newspaper articles entitled, *Maine Becoming a Haven for Child Molesters*. I was contacted because I previously had been a member of the Criminal Justice

Committee. They were talking about not fingerprinting of the teachers, but they were talking about our sex offenders and how they can slip through the cracks because of several things, not tight enough sexual registration and notification law, interstate compact, those things we have taken care of this session, I am proud to say. The other issue is exactly what Representative Baker mentioned. As I did say last time I spoke on this, one of the reasons I agreed to cosponsor this five years ago was the fact that we were getting calls saying, the Education Department was getting calls saying, are you a fingerprinting state? When they said no, they said, would you send me an application? What is going to happen now, as increasingly more and more states are becoming fingerprinting states, the majority of the states are fingerprinting states, we will, in fact, become a haven. Despite all the measures we have done and other bills and other measures, that is a good thing, but as more and more states come on and we say we are going to back off and not do it, I will tell you that it is going to happen.

In regards to the idea of just doing new hires, I will tell you the cases that I have mentioned earlier were not new hires. They were school personnel that had indeed been in the school system for many, many years. 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. A green paper is being circulated that has on it an article that was in the *Bangor Daily News* this weekend. This particular article has a number of flaws in it. One of the major ones is that a number of people will say that I thought fingerprinting was just for child molesting, but yet they are including other things in that too. Those of you who are teachers know that when you apply for certification, you have to fill out a form and on that form it asks questions, this was before fingerprinting. You had to fill out the form and on that form it asks if you have been convicted of certain crimes. If you had, you were supposed to supply the information regarding that. As we worked on this law last year, that was one of the last things that we considered. What if fingerprinting shows up somebody who has not been truthful on the forms that they signed when they got the certification? That is when we said we won't go back more than three years. Anything that has happened in that three-year period of time, we will review it with the opportunity for repeal. This particular article sounds like that is something we put in the law last year. That has been on the books for a long time. Some of you know that. This is not anything new. The part of it that is new is there is a way to review it, which there had not been before. If somebody said that no, I have not been convicted of anything, there was no way of knowing if they had. This particular article has many flaws in it and, therefore, I would urge you as you read it to give you that consideration.

The SPEAKER PRO TEM: A roll call having been previously 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. 385

YEA - Annis, Ash, Berry DP, Blanchette, Bliss, Brooks, Bryant, Buck, Canavan, Carr, Chase, Chick, Clark, Collins, Colwell, Cowger, Crabtree, Cressey, Cummings, Davis, Dorr, Dugay, Duncan, Duplessie, Duprey, Fisher, Fuller, Gagne, Gerzofsky, Goodwin, Gooley, Green, Hall, Haskell, Hatch, Hutton, Jacobs, Jodrey, Jones, Kasprzak, LaVerdiere, Laverriere-Boucher, Lundeen, MacDougall, Madore, Marley, Marrache, Mayo, McDonough, McGlocklin, McGowan, McLaughlin, McNeil, Mendros, Michael, Michaud, Mitchell, Morrison, Murphy T, Nass, Norton, O'Brien LL, Paradis, Patrick, Peavey, Pineau, Pinkham, Povich, Richardson, Rines, Sherman,

Simpson, Skoglund, Smith, Snowe-Mello, Stanley, Sullivan, Tarazewich, Tessier, Thomas, Tracy, Trahan, Twomey, Volenik, Waterhouse, Wheeler EM.

NAY - Andrews, Bagley, Baker, Belanger, Berry RL, Bouffard, Bowles, Brannigan, Bruno, Bull, Bumps, Bunker, Chizmar, Clough, Cote, Daigle, Desmond, Dudley, Dunlap, Estes, Etnier, Foster, Glynn, Hawes, Heidrich, Honey, Kane, Labrecque, Ledwin, Lemoine, Lessard, Mailhot, McKee, McKenney, Murphy E, Muse C, Muse K, Norbert, Nutting, O'Brien JA, O'Neil, Perkins, Perry, Quint, Richard, Rosen, Savage, Schneider, Shields, Stedman, Tobin D, Treadwell, Usher, Weston, Wheeler GJ, Winsor, Young, Mr. Speaker.

ABSENT - Koffman, Landry, Lovett, Matthews, Tobin J, Tuttle, Watson.

Yes, 86; No, 58; Absent, 7; Excused, 0.

86 having voted in the affirmative and 58 voted in the negative, with 7 being absent, and accordingly the Bill was **PASSED TO BE ENGROSSED** in concurrence.

By unanimous consent, all matters having been acted upon were **ORDERED SENT FORTHWITH** with the exception of matters being held.

The Speaker resumed the Chair.
The House was called to order by the Speaker.

MATTER PENDING RULING

An Act to Implement Maine's System of Learning Results
(S.P. 582) (L.D. 1760)
(C. "A" S-303)

TABLED – June 7, 2001 by Speaker SAXL of Portland.
PENDING – RULING OF THE CHAIR.

The **SPEAKER**: The chair has considered the question of the Representative from Bridgton, Representative Waterhouse, as to the constitutionality, and thus propriety, of LD 1760 under Rule 107 of the House Rules of the 120th Legislature.

The question before the chair is specifically whether LD 1760 is a mandate as defined in the Maine Constitution, and would thus require a two-thirds vote for enactment, Constitution of Maine, Article 9, Section 21. According to House Rule 522, "The rules of parliamentary practice comprised in *Mason's Rules* govern the House in all cases in which they are applicable and in which they are not consistent" with the rules of the House and the Joint Rules. In this case, where a member seeks a ruling upon the constitutionality of a bill, Section 578, paragraph 6 of *Mason's Rules* states, "It is not the right of the presiding officer to rule upon the constitutionality of bills, because that authority belongs to the House." Therefore, the chair shall not rule upon the constitutionality, and thus propriety, of LD 1760.

However, the chair shall give some guidance regarding this matter. Although the determination of constitutionality is for the House to decide through your vote on this bill, the Office of Fiscal and Program Review, pursuant to Joint Rule 312, "has the sole responsibility for preparing all fiscal notes," and thus the sole responsibility for attaching any mandate preamble if one is needed in their judgment. OFPR attached a fiscal note to LD 1760 that you may use for guidance. However, OFPR did not attach a mandate preamble to the bill.

The pending question before the House is passage to be enacted.

Pursuant to paragraph 6 of Section 578 of *Mason's Manual*, the Chair did not rule on the constitutionality of this bill.

The **SPEAKER**: A roll call having been previously ordered. The pending question before the House is Enactment. All those in favor will vote yes, those opposed will vote no.

ROLL CALL NO. 386

YEA - Andrews, Bagley, Baker, Belanger, Berry DP, Berry RL, Bliss, Bouffard, Bowles, Brannigan, Brooks, Bruno, Bryant, Bull, Bumps, Bunker, Chick, Chizmar, Clark, Clough, Collins, Colwell, Cote, Cowger, Crabtree, Cummings, Daigle, Davis, Desmond, Dudley, Dunlap, Duplessie, Estes, Etnier, Fisher, Fuller, Gagne, Gerzofsky, Glynn, Gooley, Green, Hall, Hatch, Hawes, Heidrich, Honey, Hutton, Jacobs, Kane, LaVerdiere, Ledwin, Lemoine, Lessard, Lundeen, Madore, Mailhot, Marley, Mayo, McDonough, McGlocklin, McGowan, McKee, McKenney, McLaughlin, McNeil, Michaud, Mitchell, Morrison, Murphy E, Murphy T, Muse C, Norbert, Norton, Nutting, O'Brien JA, O'Neil, Patrick, Peavey, Perry, Pineau, Povich, Quint, Richard, Richardson, Rines, Rosen, Savage, Schneider, Shields, Smith, Stanley, Tarazewich, Tessier, Tobin D, Tracy, Tuttle, Weston, Wheeler GJ, Winsor, Young, Mr. Speaker.

NAY - Annis, Ash, Buck, Canavan, Carr, Chase, Cressey, Dorr, Dugay, Duncan, Duprey, Foster, Goodwin, Haskell, Jodrey, Kasprzak, Labrecque, Laverriere-Boucher, MacDougall, Marrache, Mendros, Michael, Muse K, Nass, Paradis, Perkins, Pinkham, Sherman, Simpson, Skoglund, Snowe-Mello, Stedman, Sullivan, Thomas, Trahan, Treadwell, Twomey, Usher, Volenik, Waterhouse, Wheeler EM.

ABSENT - Blanchette, Jones, Koffman, Landry, Lovett, Matthews, O'Brien LL, Tobin J, Watson.

Yes, 101; No, 41; Absent, 9; Excused, 0.

101 having voted in the affirmative and 41 voted in the negative, with 9 being absent, and accordingly the Bill was **PASSED TO BE ENACTED**, signed by the Speaker and sent to the Senate.

The following item was taken up out of order by unanimous consent:

ORDERS

On motion of Representative **GOODWIN** of Pembroke, the following Joint Order: (H.P. 1374)

ORDERED, the Senate concurring, that Bill, "An Act to Repeal the Presidential Preference Primary Elections," H.P. 960, L.D. 1273, and all its accompanying papers, be recalled from the legislative files to the House.

The Joint Order was **READ**.

The Chair ordered a division on **PASSAGE**.

Representative **GOODWIN** of Pembroke **REQUESTED** a roll call on **PASSAGE**.

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

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

Pursuant to Joint Rule 404, this Joint Order required the affirmative vote of two-thirds of those present for **PASSAGE**.

ROLL CALL NO. 387

YEA - Andrews, Baker, Belanger, Berry RL, Bliss, Bouffard, Brannigan, Bryant, Buck, Bunker, Canavan, Carr, Chase, Chick, Chizmar, Clark, Collins, Colwell, Cote, Cowger, Cummings, Dorr, Dudley, Dugay, Duncan, Dunlap, Duplessie, Estes, Etnier, Fisher, Fuller, Gagne, Gerzofsky, Glynn, Goodwin, Gooley, Green, Hall, Haskell, Hatch, Hawes, Heidrich, Hutton, Jacobs, Jodrey, Kane, Kasprzak, Labrecque, LaVerdiere, Laverriere-Boucher, Lemoine, Lessard, Lundeen, Mailhot, Marley, McDonough, McGlocklin, McGowan, McKee, McKenney,