

# MAINE STATE LEGISLATURE

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Senate Legislative Record  
One Hundred and Twentieth Legislature  
State of Maine

Volume 2

First Regular Session (Continued)  
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First Confirmation Session  
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Second Confirmation Session  
December 6, 2001

Second Regular Session  
January 2, 2002 to April 1, 2002

Pages 912 - 1844

Senate called to order by the President.

**ORDERS OF THE DAY**

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

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

S.P. 322 L.D. 1090  
(S "A" S-347)

Tabled - June 18, 2001, by President Pro Tem **BENNETT** of Oxford

Pending - **FURTHER CONSIDERATION**

(In House, June 13, 2001, **PASSED TO BE ENACTED.**)

(In Senate, June 13, 2001, on motion by Senator **EDMONDS** of Cumberland, **RULES SUSPENDED**. On further motion by same Senator, **RECONSIDERED PASSAGE TO BE ENGROSSED**. On further motion by same Senator, Senate Amendment "A" (S-347) **READ** and **ADOPTED**. Subsequently, **PASSED TO BE ENGROSSED AS AMENDED BY SENATE AMENDMENT "A" (S-347)**, in **NON-CONCURRENCE**.)

(In House, June 13, 2001, **PASSED TO BE ENACTED**, in **NON-CONCURRENCE**.)

Senator **FERGUSON** of Oxford moved the Senate **RECEDE** and **CONCUR**.

**THE PRESIDENT:** The Chair recognizes the Senator from Aroostook, Senator Martin.

Senator **MARTIN:** Thank you very much, Mr. President and members of the Senate. I have no desire to prolong the agony of this and another bill. But I do think that it is important to make some comments about the history of fingerprinting because I think so many members in this body were not here when all this took place and I think it ought to be placed, if none other, so that others in the future can look at what is being said. Let me just begin by indicating to you that I was a co-chair of the Education Committee along with the Senator from Sagadahoc, Senator Small. I was then a member of the House and obviously she was a member of the this body. The initial proposal that came forth was to get the records from DHS to see if there had been any child abusers in the school systems. That would be what they would use to determine whether or not certification should be continued or not continued. Subsequent to that, a number of us felt very uncomfortable with that, and at that point, the Maine Teachers Association, now the MEA, basically came forth with the proposal that you have that is now on the books. I was one of those very uncomfortable with the whole question of fingerprinting and the whole question of what was being contemplated. So what we have now on the books is there because of the efforts of the MEA. You would think today that the legislature and some members of the legislature are the

greatest enemies to the MEA that have ever walked the face of the earth. This is, frankly, very disturbing to me. The problem, obviously, is that now we've started. We now have 1,400 teachers and other school personnel who have been blemished because of the information that leaked out. Right or wrong, and I don't know the answer to that. I was involved in trying to see whether there was a way that we could deal with the issue of that information being released. That was done with a number of the Senators in this body. We thought that we could separate the issues and try to deal with the question of releasing the information to determine how many certifications, in fact, had been denied. Then, of course, the marriage took place, and subsequent to that, we then came up with the bill being referred to a Committee of Conference and from there it would never see the light of day. So now you have a situation where this figure is now outstanding, and I don't care how much you try to correct it, it doesn't matter what we do, the press and the citizens of this state will continue to point out that there are 1,400 persons in the school system in this state who have marks against them. I had hoped that the MEA would have allowed the other bill to go forth so that we could narrow those numbers down to those whose certifications will not be renewed and not to everyone who has now been blemished by that announcement. That, to me, is very disturbing. That fact and the responsibility for the lack of that being not provided to the citizens of Maine lies squarely on the shoulders of the leadership of the MEA and not on the teachers of this state. They are singularly responsible so that now the citizens of this state will continue to believe that there are 1,400 people who now have blemishes, how small we don't know, whether or not certification will be denied, that's what they are going to hear. Now the next piece will now go to simply repeal the entire law and that will now go to the Chief Executive. Imagine now what your constituents and mine will think. That with lack of information, lack of knowledge, but knowing there are 1,400, we now are going to consider the repeal of fingerprinting, knowing that 1,400 people in this state, working with the children of this state, have blemishes against them, which could be all the way from driving under the influence to sexual child abuse. That is what it says. As we vote on this legislation today, as it goes to the Chief Executive, just think about that. What message are we giving? What message are we delivering to the citizens of this state? I agree with the Senator from Piscataquis, Senator Davis, who told me before we started this. Let's get rid of it. There is no hope. There appears no way to reach to where we ought to go. But to me it still doesn't feel right. It doesn't feel right because we all know that this vote today will come back to haunt us. There is absolutely no question about that in my mind. We'll all pay the price and perhaps we ought to.

**THE PRESIDENT:** The Chair recognizes the Senator from Sagadahoc, Senator Small.

Senator **SMALL:** Thank you, Mr. President. Men and women of the Senate. I understand that nobody's mind is going to be changed at this juncture. That's really not my intent for now speaking. I first want to request a roll call when the vote is taken. I also wanted to explain just very briefly, why we originally enacted this. Particularly for the new members who are here and voting on this today and this bill has not had the benefit of a public hearing. Perhaps you might be interested in a little of the details that led up to this. Something that might have come out had we had a public hearing on this. But of course, we haven't. I think the good Senator from Aroostook, Senator Martin, talked a

little bit about the genesis of this bill and how it came to the committee. But we had it on more than one occasion in front of our committee for re-debate. It was brought back again last session when the cost of fingerprinting was a big issue. Once again, there was a real hard look at what this legislation would do and how we could refine the bill and perhaps make it a little bit more palatable. Certainly, the undertaking of the cost by the state was one of those attempts to make it a little less onerous for the teachers and the support personnel that would have to undergo this. There has been a lot of talk about this bill as not necessary. That we don't need it. That it is really not going to stop child abuse. I would concur that this is not going to stop child abuse. Child abuse is out there in many different forms, in our families, and in other places. This is not designed to stop child abuse. It is an attempt to make sure that we don't have people with convictions in our school system. Something they have to fill out when they do an application for a school and for their certification. Obviously, there is a clause that says have you been convicted of any felonies? One assumes that most of the time when people put down 'no' that they are being truthful. But on those rare occasions when they are being untruthful, probably the most accurate way of checking on this is to do a background search. Now some states don't do fingerprinting, they just conduct background searches. This would entail having to go to every state that offers this and do those individually. Obviously that would be very expensive, very cumbersome, and not every state participates in this. So the one way to be able to check with all 50 states is to do the fingerprinting and to go through the FBI. When we looked at whether we needed this or not, some of the information that came forward to our committee was that in the past ten years, without the criminal background check and through what we call dumb luck, they were able to find 42 teachers and support staff and administrators who would have been disqualified from holding a license in our public schools, license or approval. It was through someone reporting them, someone reading about them in a newspaper, an article about a conviction out-of-state that brought this to the attention of the personnel in the departments so that they were able to take away their certification. Of the 42 individuals that they found in the last ten years, 27 individuals had convictions for sexual abuse or sexual contact with a minor child. Of those, three-quarters were long-time employees of the school system. The result of those people were assaults on over 50 children in the school system. This was over ten years, and as I said, through dumb luck. Now the question we have to ask ourselves is, did we get them all? Did we get all the convicted child molesters, child abusers, through that happenstance of uncovering these people? I suppose we may never know. If this bill were to go forward, and we were not offered an opportunity to release the data that the department is currently holding on the number of people who were denied certification, I guess we won't know. We'll just have to wonder whether those 42 that we found in the last ten years, and some of you have read the cases in previous handouts. We'll just have to wonder whether we've taken care of the people that had previous convictions, which we asked for information on in the application, whether we got that all. That is a decision that I had to make. It's a decision that each and every one will have to make. But before I close, for those that feel that somehow this legislation is putting down teachers or casting aspersions on teachers and support personnel, I think that is the farthest thing from our minds. It certainly was when we were on the committee. We served on the Education Committee because we value education and you cannot value education without valuing the

teachers that are the number one reason why children succeed or don't succeed. Not only that, the Education Committee was made up, I believe, primarily of educators, former educators, people who had worked at the University system. So it wasn't people with any sort of vendetta against educational personnel. It was people who had a sincere duty and devotion to education and to the children that it serves. I just want to read to you remarks that were made in 1997. It was testimony of the MEA legal council who appeared before our committee. His remarks, I will take just a portion of to spare you some of the lengthiness of it, said, 'where federal record checks are necessary and appropriate if the department is to carry out its existing duty to screen certification candidates for criminal convictions which may disqualify them' and then it goes on, 'we recognize that it is reasonable for any school employee who has access to children to be subject to the same record checks.' They endorsed this proposal. Now I understand that they have chanced their mind and have, for whatever reason, taken back their support of this. But I think it should be understood within this body that at the time that we were going forward with this we did have the support of the teachers' union, we had the support of the teachers that served on our committee, and we had the support of the school boards and the administrators and the PTA because we felt that this was one step that we could do not to eradicate child abuse but to assure that people who had prior convictions would not have access to our children within the school system. So I hope you will consider this when we cast our votes that are pretty much already cast in stone. But I just wanted to allow an opportunity, particularly for the new people here, to get a little bit more information on where the bill came from and what the deliberations were in the Education Committee at that time. I thank you very much, Mr. President.

Senator **SMALL** of Sagadahoc requested a Roll Call.

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

Senator **MITCHELL:** Thank you, Mr. President. Women and men of the Senate. You have just listened to the good Senator from Aroostook, Senator Martin, and the good Senator from Sagadahoc, Senator Small, who have given you an in-depth explanation of the tireless hours that have been spent, the consent of the teachers, of the teachers' union, MEA, and of all of the work that went into putting this law into effect. The monies that we have invested into this so that we could protect pedophiles from coming from out-of-state to here. To protect so that when people come out from after serving a jail sentence for assaulting children that they know they're not free to be able to achieve a job or acquire a job in a state where there is no fingerprint requirements and the fact that there are 40 states, as you already know, who do have a fingerprinting law in effect. I know decision have already been made, but I would ask you, after listening to these two good Senators, to think about changing your decision on voting on the Recede and Concur. I would move that we Recede so that we can move on to Indefinitely Postpone. We don't need to have this go to our Governor and we don't need to have it come back under a veto situation. We can maintain our credibility for the work we've done in the past and stand on solid ground on what we need to do in the future. Work towards the end of the fingerprinting, protect our people in this state. If we need to address this in two years, fine. After we've had facts that are proven and we have reason and rational

other than emotion to make that decision. So I would move that we Recede.

Senator **MITCHELL** of Penobscot moved the Senate **RECEDE**.

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

Senator **MCALLEVEY:** Thank you, Mr. President. Men and women of the Senate. I would just like to add one very brief comment that I haven't heard discussed very often. First of all, I have confidence in this chamber. We represent everyone in this state, moms, dads, and children, in how we vote today. There is an unintended consequence should this fingerprinting law be repealed. That is that we would then become a sponge for people who may want to move into the state from elsewhere for all those wrong reasons. I don't think I need to go into them because I've already articulated what I thought about that 00.1% of people who masquerade as educators and support staff to get at children. But I would ask you to search your souls and disregard any action that the Executive may take and vote to protect children. Vote for their interests. We are the last line of defense for them. I'd ask you to look in your heart and do what you believe is in the best interest for protecting our children. If repealing this law is in their best interest, so be it. I don't happen to think it is and I think that many other people in this chamber also stand with me and others and believe that we are here to protect children. Is it perfect? No it isn't. Most of what we do for legislation is not perfect. But it is a start. Thank you.

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

Senator **MILLS:** Mr. President and men and women of the Senate. Just as the good Senator from Aroostook, Senator Martin, was speaking, I was reflecting back over my law practice for the past 28 years. I haven't done a lot of criminal law work but I have done some. It just hit me that I have actually represented at least three people who were ultimately convicted or who plead guilty to the sexual abuse of children. I can bring those names and those faces back to mind very clearly. I want to tell you something that is fairly scary. They were very likable people. They were very socially acceptable. They were fairly smart people, all three of them. I swear to you, you would never have any idea from knowing them that they would be capable of such a thing. Indeed, their close family members expressed as much incredulity as anyone that such things could happen. The only thing, to this day, that separates them out from the rest of society is the fact that they have a criminal conviction. Their fingerprints are on file here in the State of Maine. They are all out of jail, out of prison, at this point. They didn't serve very long sentences, thanks to me. But they did serve time. They did have a conviction. I hope and pray that in each case it was an isolated event, which is what lead to the rather short sentences in each case, and that they won't be repeaters. But we don't have any idea, no one can predict whether they will or not. So if you think there is some other way of knowing, trust me, there isn't. They walk among us daily. There is no little badge that allows you to discriminate or to distinguish these people from others in our society. I, at times, wish that we had some of the same customs and traditions as Parliament has. When you go over there and somebody is speaking and you approve of what they are saying, you can shout hurrah and yea and hip hip. If you don't approve

of what they're saying, you can boo and hiss and malign the speaker. It's very rowdy and somewhat refreshing, I think. I just wanted to say that I was listening to the good Senator from Aroostook, Senator Martin, and I just wanted to say, me to, hip hip, hurrah. Thank you.

The Chair ordered a Division.

On motion by Senator **MITCHELL** of Penobscot, 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 (#143)

**YEAS:** Senators: BENNETT, CARPENTER, DOUGLASS, GOLDTHWAIT, LAFOUNTAIN, LEMONT, LONGLEY, MARTIN, MCALLEVEY, MILLS, MITCHELL, O'GARA, PENDLETON, ROTUNDO, SAWYER, SMALL, TURNER

**NAYS:** Senators: BROMLEY, CATHCART, DAGGETT, DAVIS, EDMONDS, FERGUSON, GAGNON, KILKELLY, KNEELAND, RAND, SAVAGE, SHOREY, TREAT, WOODCOCK, YOUNGBLOOD, THE PRESIDENT - MICHAEL H. MICHAUD

**ABSENT:** Senators: ABROMSON, NUTTING

17 Senators having voted in the affirmative and 16 Senators having voted in the negative, with 2 Senators being absent, the motion by Senator **MITCHELL** of Penobscot to **RECEDE**, **PREVAILED**.

Senator **ROTUNDO** of Androscoggin moved the Bill and accompanying papers be **INDEFINITELY POSTPONED**, in **NON-CONCURRENCE**.

The Chair ordered a Division.

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

**THE PRESIDENT:** The Chair recognizes the Senator from Cumberland, Senator Turner.

Senator **TURNER:** Thank you, Mr. President. Ladies and gentlemen of the Senate. I would encourage you to vote in favor of this motion, recognizing that the information that really is needed to make an informed decision lies somewhere dead or dying between the two chambers of this institution. Until we have that information, I don't think, in good conscience, we can do anything but take the action that is before us which is to Indefinitely Postpone. I would encourage that you vote in that fashion. Thank you.

**THE PRESIDENT:** The pending question before the Senate is the motion by the Senator from Androscoggin, Senator Rotundo to Indefinitely Postpone the Bill and accompanying papers, in Non-Concurrence. A Roll Call has been ordered. Is the Senate ready for the question?

The Doorkeepers secured the Chamber.

The Secretary opened the vote.

**ROLL CALL (#144)**

**YEAS:** Senators: CARPENTER, DOUGLASS, GOLDTHWAIT, LAFOUNTAIN, LEMONT, LONGLEY, MARTIN, MCALEVEY, MILLS, MITCHELL, O'GARA, PENDLETON, ROTUNDO, SAWYER, SMALL, TURNER

**NAYS:** Senators: BENNETT, BROMLEY, CATHCART, DAGGETT, DAVIS, EDMONDS, FERGUSON, GAGNON, KILKELLY, KNEELAND, RAND, SAVAGE, SHOREY, TREAT, WOODCOCK, YOUNGBLOOD, THE PRESIDENT - MICHAEL H. MICHAUD

**ABSENT:** Senators: ABROMSON, NUTTING

16 Senators having voted in the affirmative and 17 Senators having voted in the negative, with 2 Senators being absent, the motion by Senator **ROTUNDO** of Androscoggin to **INDEFINITELY POSTPONE** the Bill and accompanying papers, in **NON-CONCURRENCE, FAILED**.

President Pro Tem **BENNETT** of Oxford moved the Bill and accompanying papers be **COMMITTED** to the Committee on **EDUCATION AND CULTURAL AFFAIRS**, in **NON-CONCURRENCE**.

The Chair ordered a Division.

On motion by President Pro Tem **BENNETT** of Oxford, 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 (#145)**

**YEAS:** Senators: BENNETT, CARPENTER, DOUGLASS, GOLDTHWAIT, LAFOUNTAIN, LEMONT, LONGLEY, MARTIN, MCALEVEY, MILLS, MITCHELL, O'GARA, PENDLETON, ROTUNDO, SAWYER, TURNER

**NAYS:** Senators: BROMLEY, CATHCART, DAGGETT, DAVIS, EDMONDS, FERGUSON, GAGNON, KILKELLY, KNEELAND, RAND, SAVAGE, SHOREY, SMALL, TREAT, WOODCOCK, YOUNGBLOOD, THE PRESIDENT - MICHAEL H. MICHAUD

**ABSENT:** Senators: ABROMSON, NUTTING

16 Senators having voted in the affirmative and 17 Senators having voted in the negative, with 2 Senators being absent, the motion by President Pro Tem **BENNETT** of Oxford to **COMMIT** the Bill and accompanying papers to the Committee on **EDUCATION AND CULTURAL AFFAIRS**, in **NON-CONCURRENCE, FAILED**.

Senator **DAGGETT** of Kennebec moved the Senate **CONCUR**.

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

President Pro Tem **BENNETT** of Oxford moved the Bill and accompanying papers be **INDEFINITELY POSTPONED**, in **NON-CONCURRENCE**. Subsequently, same Senator requested and received leave of the Senate to withdraw his motion to **INDEFINITELY POSTPONE** the Bill and accompanying papers, in **NON-CONCURRENCE**.

The same Senator moved to **TABLE** until Later in Today's Session, pending the motion by Senator **DAGGETT** of Kennebec to **CONCUR**. (Roll Call Ordered)

At the request of Senator **FERGUSON** of Oxford a Division was had. 23 Senators having voted in the affirmative and 10 Senators having voted in the negative, the motion by President Pro Tem **BENNETT** of Oxford to **TABLE** until Later in Today's Session, pending the motion by Senator **DAGGETT** of Kennebec to **CONCUR, PREVAILED**. (Roll Call Ordered)

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

An Act to Amend the Laws Governed by the Commission on Governmental Ethics and Election Practices  
H.P. 1013 L.D. 1350  
(C "A" H-602)

Tabled - June 18, 2001, by Senator **DAGGETT** of Kennebec

Pending - **ENACTMENT**, in concurrence

(In Senate, June 13, 2001, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-602)**, in concurrence.)

(In House, June 18, 2001, **PASSED TO BE ENACTED**.)

**PASSED TO BE ENACTED** and having been signed by the President, was presented by the Secretary to the Governor for his approval.

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Senate at Ease.