

MAINE STATE LEGISLATURE

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LEGISLATIVE RECORD

OF THE

One Hundred And Fifteenth Legislature

OF THE

State Of Maine

VOLUME VII

SECOND REGULAR SESSION

Senate

March 10, 1992 to March 31, 1992

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SECOND CONFIRMATION SESSION

May 20, 1992

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FOURTH CONFIRMATION SESSION

November 19, 1992

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HOUSE AND SENATE LEGISLATIVE SENTIMENTS

December 5, 1990 to December 1, 1992

"student/teacher ratio in Maine was 14.5 to 1 whereas the national average is 17.2 to 1." Maine had the fifth lowest student/teacher ratio. I think we have to keep those in proper context when we are discussing this bill.

I would urge you to support the Governor on this action.

The SPEAKER: The Chair recognizes the Representative from Westbrook, Representative O'Gara.

Representative O'GARA: Mr. Speaker, Ladies and Gentlemen of the House: I must pick up right off the bat on the first comment of the previous speaker who said that we are in the midst of (or will be doing for the next several years) changes like we have never seen before. I submit to the legislature and this body, what is wrong with this change? Why not even at least consider this change?

The teaching profession -- the Governor's veto message mentioned that he is concerned that the Teachers Association could use this provision to narrowly control entry into the profession. The previous speaker said that we are not doing a good job, that the public feels we are not doing a good job. In my judgment, I feel that in fact, if teachers were more involved in the selection of those who are responsible for our children and the changes that may or may not come, as the Representative mentioned, that in my judgment, we would be doing a better job. I believe teachers should be involved. If this board, given other professions, I know the Governor has made the statement that plumber's boards and other boards of that nature do not have public funds, I think that is a smoke screen. I think the fact that we demand that these boards have their profession, their peers, observing and scrutinizing the work that their members do, is very important to be sure. But to say that we can't extend that same right and responsibility to the most, if not the most important professions in the State of Maine, just flies in the face of what is fair and what is just.

I would again stress that what the previous speaker said, that we will be seeing great amount of changes and I submit to you that this is a change that we need to face up to and to submit.

I urge you to vote to override the Governor's veto.

After reconsideration, the House proceeded to vote on the question, "Shall this bill become law notwithstanding the objections of the Governor." Pursuant to the Constitution, a two-thirds vote of the members present and voting being necessary, a roll call was taken.

ROLL CALL NO. 486V

YEA - Adams, Aliberti, Anderson, Anthony, Bell, Boutilier, Cahill, M.; Carroll, D.; Cathcart, Clark, H.; Coles, Constantine, Cote, Crowley, Daggett, DiPietro, Dore, Duffy, Erwin, Farnsworth, Farnum, Gean, Goodridge, Gould, R. A.; Graham, Gray, Gurney, Gwadosky, Hale, Handy, Heeschen, Hogle, Holt, Hussey, Jalbert, Joseph, Kerr, Ketterer, Kilkelly, Kontos, Larrivee, Lawrence, Lemke, Lerman, Luther, Macomber, Mahany, Manning, Martin, H.; McKeen, Melendy, Michael, Mitchell, J.; Morrison, Nadeau, O'Dea, O'Gara, Oliver, Paradis, J.; Paradis, P.; Pfeiffer, Pineau, Plourde, Poulin, Pouliot, Powers, Rand, Richardson, Ricker, Rotondi, Ruhlin, Rydell, Saint Onge, Simonds, Simpson, Stevens, P.; Swazey, Townsend, Tracy, Waterman, Wentworth, The Speaker.

NAY - Aikman, Ault, Bailey, H.; Bailey, R.; Barth, Bennett, Bowers, Butland, Carleton, Carroll, J.; Chonko, Donnelly, Duplessis, Farren, Foss, Garland, Hanley, Hastings, Heino, Hichborn, Hichens, Kutasi, Lebowitz, Libby, Lipman, Look, Lord, MacBride, Marsano, Merrill, Michaud, Murphy, Nash, Norton, Ott, Parent, Pendexter, Pendleton, Pines, Reed, G.; Reed, W.; Richards, Salisbury, Savage, Sheltra, Skoglund, Spear, Stevens, A.; Stevenson, Strout, Tamaro, Tardy, Tupper, Vigue, Whitcomb.

ABSENT - Cashman, Clark, M.; Dutremble, L.; Greenlaw, Hepburn, Jacques, Marsh, McHenry, Mitchell, E.; Nutting, Paul, Small, Treat.

Yes, 82; No, 55; Absent, 13; Vacant, 1; Paired, 0; Excused, 0.

82 having voted in the affirmative and 55 in the negative with 13 being absent and 1 vacant, the veto was sustained..

The following Communication:

STATE OF MAINE
OFFICE OF THE GOVERNOR
AUGUSTA, MAINE 04333

October 3, 1992

The Honorable Members of the 115th Legislature:

I am returning, without my signature or approval, L.D. 2028, H.P. 1416 "AN ACT To Clarify Municipal Approval of Payments of Public School Funds and Awards of Hardship Fund Assistance". This bill alters the provisions of the hardship fund created by P.L. 1991, c. 625 to create a loan program for public schools funded out of any potential surplus in fiscal 1992. Since fiscal 1992 closed on June 30th of this year, I consider this bill moot.

Even so, I object to the provisions of this bill which would have created the presumption that any surplus be deposited into a fund from which loans can be drawn. Our experience of the last few years suggests that any unexpected surplus ought to be retained in the general fund rather than be committed immediately to further use, even if that use is in a revolving loan program.

Finally, this bill is in conflict with the budget bill enacted this spring, L.D. 2185. To amend the law in one bill, as L.D. 2028 does, and then repeal it in another, as L.D. 2185 does, creates unnecessary conflict and confusion. For these reasons, I urge you to sustain my veto of L.D. 2028.

Sincerely,

S/John R. McKernan, Jr.
Governor

Was read and ordered placed on file.

The accompanying Bill "An Act to Clarify Municipal Approval of Payments of Public School Funds and Awards of Hardship Fund Assistance" (H.P. 1416) (L.D. 2028).

After reconsideration, the House proceeded to

vote on the question "Shall this Bill become a law notwithstanding the objections of the Governor?" Pursuant to the Constitution, a two-thirds vote of the members present and voting being necessary, a roll call was taken.

ROLL CALL NO. 487V

YEA - Adams, Aliberti, Bell, Boutilier, Cahill, M.; Cathcart, Chonko, Clark, H.; Crowley, Daggett, Dipietro, Duffy, Erwin, Farnsworth, Gean, Graham, Gurney, Gwadosky, Hale, Handy, Heeschen, Hoglund, Holt, Joseph, Kerr, Ketterer, Kilkelly, Kontos, Larrivee, Lawrence, Lemke, Lerman, Luther, Macomber, Mahany, Manning, Martin, H.; McHenry, McKeen, Melendy, Michael, Mitchell, J.; Nadeau, O'Dea, O'Gara, Oliver, Paradis, J.; Paradis, P.; Pfeiffer, Pineau, Plourde, Poulin, Pouliot, Powers, Rand, Richardson, Ricker, Rotondi, Saint Onge, Simonds, Simpson, Skoglund, Swazey, Tammaro, Townsend, Tracy, Waterman, Wentworth, The Speaker.

NAY - Aikman, Anderson, Anthony, Ault, Bailey, H.; Bailey, R.; Barth, Bennett, Bowers, Butland, Carleton, Carroll, D.; Carroll, J.; Coles, Constantine, Donnelly, Dore, Duplessis, Farnum, Farren, Foss, Garland, Goodridge, Gould, R. A.; Gray, Hanley, Hastings, Heino, Hichborn, Hichens, Hussey, Jalbert, Kutasi, Lebowitz, Libby, Lipman, Look, Lord, MacBride, Marsano, Merrill, Michaud, Morrison, Murphy, Nash, Norton, Ott, Parent, Pendexter, Pendleton, Pines, Reed, G.; Reed, W.; Richards, Ruhlin, Rydell, Salisbury, Savage, Sheltra, Spear, Stevens, A.; Stevens, P.; Stevenson, Strout, Tardy, Tupper, Vigue, Whitcomb.

ABSENT - Cashman, Clark, M.; Cote, Dutremble, L.; Greenlaw, Hepburn, Jacques, Marsh, Mitchell, E.; Nutting, Paul, Small, Treat.

Yes, 69; No, 68; Absent, 13; Vacant, 1; Paired, 0; Excused, 0.

69 having voted in the affirmative and 68 in the negative with 13 being absent and 1 vacant, the veto was sustained.

The following Communication:
STATE OF MAINE
OFFICE OF THE GOVERNOR
AUGUSTA, MAINE 04333

October 3, 1992

To The Honorable Members of the 115th Legislature:

I am returning, without my signature or approval, H.P. 1515, L.D. 2127, "AN ACT to Provide a Private Remedy for Violation of the Lead Poisoning Control Act." L.D. 2127 amends the Maine Lead Poisoning Control Act by adding the following:

"A violation of this Chapter is a prima-facie evidence of a violation of the Maine Unfair Trade Practices Act in an action for equitable relief."

A one-sentence bill would appear to be innocuous. But the reference of L.D. 2127 to the Maine Unfair Practice's Act, 5 MRSA Chapter 10, has broad implications. The essential and critical point for the members of the Legislature to understand is that L.D. 2127 adopts, by reference, the requirement

that a prevailing plaintiff be awarded reasonable attorney fees and costs in relation to an action for equitable relief. I believe that this provision will encourage plaintiffs to bring suit, increasing the amount of litigation in our system and the costs that it imposes on our economy. It should be noted that the provision for attorney's fees applies only to plaintiffs, and not to defendants, even if the defendant prevails.

For these reasons, I respectfully ask for your support in sustaining this veto.

Sincerely,

S/John R. McKernan, Jr.
Governor

Was read and ordered placed on file.

The accompanying Bill "An Act to Provide a Private Remedy for Violation of the Lead Poisoning Control Act" (H.P. 1515) (L.D. 2127).

The SPEAKER: The Chair recognizes the Representative from Scarborough, Representative Pendexter.

Representative PENDEXTER: Mr. Speaker, Men and Women of the House: Maine is to be commended for the stand it has taken against lead poisoning. Twenty years ago, the Lead Poisoning Control Act was passed by the legislature which was considered model legislation by most. This past session we added to it. Maine can levy fines and punishment against violators. We are not powerless when it comes to enforcing lead poisoning statutes.

As a health professional who has provided health care for children for over 20 years, I do not take lightly the fact that I must rise and oppose legislation on lead poisoning. Having worked out of the Munjoy Hill Health Station for four years, ten years ago, I come to you very well versed on the issue. In that capacity, I managed care of children with lead poisoning and I know very well the problems involved. There is a national wave in this country to get the lead out of America. Some of you in this body believe that that should be so, but I say to you, we need to be realistic about the fact that people do live and have to live in lead paint environments.

I say to you today that perhaps we are all (right now) sitting in a lead painted environment because I am sure there is lead paint in this room.

We need to differentiate between lead presence and lead hazards. Those who advocate to get all of the lead out at all costs need to review the lesson asbestos has taught us. For the past 20 years, class action suits against the paint industry have been unsuccessful. This legislation just perpetuates the process because the bottom line with this bill is to bring class action suits against the paint industry.

Kids afflicted with lead poisoning and families of these children do not care about suing the paint industry but they do care about the health of their children and they care about dealing with the lead paint hazards in their environment.

Let our efforts and resources provide for public information and education and prevention efforts rather than paying for attorney fees that this bill allows. Let's not use our precious resources to line