

MAINE STATE LEGISLATURE

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DATE: 4/10/2000

(Filing No. S-691)

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STATE OF MAINE
SENATE
119TH LEGISLATURE
SECOND REGULAR SESSION

COMMITTEE AMENDMENT "A" to S.P. 987, L.D. 2540, Bill, "An Act Concerning Fingerprinting and Background Checks for School Employees"

Amend the bill by striking out everything after the enacting clause and before the summary and inserting in its place the following:

Sec. 1. 20-A MRSA §6103, sub-§1, as amended by PL 1997, c. 452, §3, is further amended to read:

1. Conviction data obtained. The commissioner shall obtain criminal history record information containing a record of conviction data from the Maine Criminal Justice Information System for any person applying for certification, authorization, approval or renewal. The commissioner may rely on information provided by the Maine Criminal Justice Information System within 24 months prior to the issuance of a certificate, authorization, approval or renewal.

Sec. 2. 20-A MRSA §6103, sub-§4, as enacted by PL 1995, c. 547, §5, is repealed and the following enacted in its place:

4. Expenses of criminal history record check. The department shall pay the expenses of the criminal history record check. Except for any portion of the payment that constitutes the processing fee charged by the Federal Bureau of Investigation, all money received by the Maine State Police for purposes of this section must be paid to the Treasurer of State. The money must be applied to the expenses of administration incurred by the Department of Public Safety.

2 **Sec. 3. 20-A MRS §6103, sub-§10** is enacted to read:

4 10. Implementation. The requirements of this section must
6 be implemented as follows.

8 A. The fingerprinting and approval process must be phased
10 in for all persons regularly employed in schools during the
12 1999-2000 school year who require department approval to
14 continue in their positions and who have not been
16 fingerprinted pursuant to this section prior to the
18 effective date of this subsection. The department shall
20 issue to each of those persons a temporary approval card
22 valid through a specified year from 2001 through 2004.
24 Prior to July 1st of the year specified on the temporary
26 approval card, each person must meet the requirements of
28 this section.

30 B. Persons employed as substitute teachers or educational
32 personnel must meet the requirements of this section by
34 January 1, 2001.

36 C. Persons placed under contract by a school subject to the
38 requirements of this section must meet these requirements by
40 July 1, 2002.

42 D. Persons subject to the requirements of this section who
44 begin work after July 1, 2000 in a school subject to the
46 requirements of this section must meet these requirements
48 prior to their 20th day of work.

Sec. 4. 20-A MRS §13011, sub-§1, ¶E, as amended by PL 1997,
c. 452, §5, is further amended to read:

 E. Certify or authorize personnel who provide early
childhood educational programs or developmental therapy to
children with disabilities from birth to under 9 years of
age in the home, in community-based special purpose and
integrated programs and in public schools; and

Sec. 5. 20-A MRS §13011, sub-§1, ¶F, as enacted by PL 1997,
c. 452, §6, is repealed and the following enacted in its place:

F. Approve persons for whom certification or authorization
is not required prior to being hired or being placed under
contract by a public school; and

Sec. 6. 20-A MRS §13011, sub-§1, ¶G is enacted to read:

2 G. Approve persons for whom certification or authorization
3 is not required prior to being hired or being placed under
4 contract by a private school approved for tuition purposes
5 under section 2902 that enrolls 60% or more publicly funded
6 students.

7 **Sec. 7. 20-A MRSA §13020**, as enacted by PL 1983, c. 845, §4,
8 is amended to read:

9 **§13020. Revocation or suspension of a certificate,**
10 **authorization or approval**

11 **1. General.** The state board's rules adopted under this
12 chapter shall must specify the procedure to be followed by the
13 commissioner in seeking the revocation or suspension of a
14 certificate, authorization or approval in the Administrative
15 Court and shall must authorize the commissioner to enter into a
16 consent agreement with any certificated, authorized or approved
17 person in lieu of initiating or completing a proceeding in the
18 Administrative Court.
19

20 **2. Grounds for revocation or suspension of a certificate,**
21 **authorization or approval.** The following are grounds for
22 revocation or suspension of a certificate, authorization or
23 approval issued under this Title:
24

25 **A.** Evidence that a person has injured the health or welfare
26 of a child through physical or sexual abuse or exploitation
27 shall--be are grounds for revocation or suspension of a
28 certificate, authorization or approval. Notwithstanding
29 Title 5, chapter 341, a certified court record that a person
30 certificated, authorized or approved under this Title was
31 convicted in any state or federal court of a criminal
32 offense involving the physical or sexual abuse or
33 exploitation of a child within the previous 5 years shall--be
34 is sufficient grounds for revocation or suspension of that
35 person's certificate, authorization or approval; and
36

37 **B.** Other grounds as may be established by the state board
38 in its rules relating to criminal offenses not inconsistent
39 with Title 5, chapter 341, fraud or gross incompetence.
40

41 **3. Denial of certificate, authorization or approval for**
42 **prior immoral conduct.** Evidence that an applicant for initial
43 certification, authorization or approval or for a renewal has
44 injured the health or welfare of a child through physical or
45 sexual abuse or exploitation is grounds for a denial of a
46 certificate, authorization or approval. Notwithstanding Title 5,
47 chapter 341, every a person, who, within 5 years of the
48 application for initial certification, authorization or approval
49
50

2 or renewal, has been convicted in any state or federal court of a
3 criminal offense involving the physical or sexual abuse or
4 exploitation of a child, may be presumed by the commissioner to
5 lack good moral character for the purposes of this chapter. This
6 presumption shall-be is a rebuttable presumption. Notwithstanding
7 Title 5, chapter 341, the commissioner shall-be is entitled to
8 consider all records of prior criminal convictions involving
9 child abuse or exploitation in determining an applicant's
10 eligibility for a certificate, authorization or approval.

11 3-A. Grounds for denial, revocation, suspension or
12 nonrenewal. Grounds for denial of a certificate, authorization
13 or approval related to criminal offenses, fraud or gross
14 incompetence may be established by the state board in its rules
15 in accordance with Title 5, chapter 341. Except as provided in
16 this section and Title 5, chapter 341, consideration of prior
17 criminal convictions as an element of fitness to be certified,
18 authorized, approved or renewed is appropriate within 3 years of
19 the applicant's final discharge, if any, from a correctional
20 system. Beyond the 3 years, an applicant with a prior criminal
21 conviction who applies for certification, authorization or
22 approval with no additional convictions must be considered in the
23 same manner as an applicant for certification, authorization or
24 approval who has no prior criminal convictions for the purposes
25 of certification, authorization, approval or renewal decisions.

26 The following are grounds for revocation, suspension or
27 nonrenewal:

28 A. A crime punishable by a term of imprisonment of one year
29 or more as long as the period of time since the applicant's
30 final discharge from the sentence is within the time frame
31 permitted by Title 5, chapter 341;

32 B. A conviction that is excepted by statute to which Title
33 5, chapter 341 does not apply; or

34 C. A conviction of a crime that relates directly to the
35 certification, authorization or approval sought by the
36 applicant or that demonstrates conduct that may endanger a
37 child as determined by the department.

38 The applicant has the burden of proving that the applicant is
39 sufficiently rehabilitated to warrant the public trust.

40 4. Reinstatement of certificate, authorization or approval.
41 Revoked certificates, authorizations or approvals may only be
42 reinstated in accordance with state board rules. The following
43 provisions govern the reinstatement of any certificate,
44 authorization or approval revoked for reasons of child abuse or
45 exploitation.

2 A. Notwithstanding Title 5, chapter 341, ~~no~~ a certificate,
4 authorization or approval revoked for reasons of child abuse
6 or exploitation may not be reinstated within 5 years of the
8 revocation and in no case less than 3 years from the
expiration of probation or parole or discharge from
imprisonment for a criminal conviction involving child abuse
or exploitation.

10 B. In determining whether a certificate, authorization or
12 approval may be reinstated, the commissioner shall determine
14 whether the applicant has been sufficiently rehabilitated to
16 warrant the public trust. The applicant ~~shall~~ is
18 required to demonstrate sufficient evidence of
rehabilitation, notwithstanding Title 5, chapter 341, and
the commissioner shall state in writing the basis for any
decision ~~which~~ that denies reinstatement of a certificate,
authorization or approval.

20 C. Denial of reinstatement pursuant to paragraph B may be
22 appealed to the Superior Court.

24 **Sec. 8. Reimbursement for costs of fingerprinting and criminal**
history record check. The Commissioner of Public Safety, upon
26 receipt of proof determined to be adequate by the commissioner,
shall reimburse those persons, including contracted services
28 providers, schools and school districts, who during the period of
September 1, 1999 to the effective date of this Act have paid for
30 the fingerprinting and conducting of the needed state and federal
criminal history record checks by the Department of Public
32 Safety, Bureau of State Police, State Bureau of Identification,
as required by the Maine Revised Statutes, Title 20-A, section
6103.

34 **Sec. 9. Reimbursement.** Any unexpended funds allocated from
36 Other Special Revenue funds in fiscal years 1999-00 and 2000-01
to the Department of Public Safety to carry out the purposes of
38 the Maine Revised Statutes, Title 20-A, section 6103 must be
deallocated and used to reimburse persons and schools who paid
40 for criminal history record checks during the period of September
1, 1999 to the effective date of this Act.

42 **Sec. 10. Appropriation.** The following funds are appropriated
44 from the General Fund to carry out the purposes of this Act.

46 2000-01
48 **PUBLIC SAFETY, DEPARTMENT OF**

2 **Fingerprint and Background
Information - State Expense**

4 All Other \$901,130

6 Appropriates funds for the costs of
8 conducting background checks and
10 fingerprinting for school employees and for
12 the cost of providing rebates to those
14 individuals who have already paid for the
16 required background checks.

18 **Sec. 11. Allocation.** The following funds are allocated from
20 Other Special Revenue funds to carry out the purposes of this Act.

22 **2000-01**

24 **PUBLIC SAFETY,
DEPARTMENT OF**

26 **Bureau of State Police**

28 All Other (\$392,000)

30 Deallocates funds that are no longer
32 necessary to reflect the required cost of
34 background checks and fingerprinting for
36 school employees.'

38 Further amend the bill by inserting at the end before the
40 summary the following:

42 **FISCAL NOTE**

44 **2000-01**

46 **APPROPRIATIONS/ALLOCATIONS**

48 General Fund \$901,130
50 Other Funds (392,000)

REVENUES

Other Funds (\$392,000)

This bill includes a General Fund appropriation of \$901,130
in fiscal year 2000-01 for the State Bureau of Identification
within the Department of Public Safety to cover the costs of
processing background checks and fingerprinting of certain school

2 employees and for a portion of the costs of providing rebates to
3 those individuals who have already paid for the required
4 background checks. Of this amount, \$245,592 will be used for a
5 portion of the costs of the rebates, along with the unexpended
6 balance of dedicated revenue collected by the Department of
7 Public Safety from fees for conducting background checks. This
8 amount is estimated to be \$586,608 and represents the net amount
9 available for rebates after deducting the expenses incurred by
10 the department for those fingerprint and background checks that
11 will have been conducted through April 30, 2000. The total
12 estimated amount to be rebated from these two sources is \$832,200.

13
14 The balance of the appropriation, \$655,538, is needed to
15 cover the costs of processing background checks and
16 fingerprinting of certain school employees. The estimated future
17 costs will be approximately \$593,684 and \$620,193 in fiscal years
18 2001-02 and 2002-03, respectively. The future costs of
19 processing background checks and fingerprinting for certified
20 individuals not currently employed as teachers and for certain
21 contracted service providers can not be determined at this time.

22 The bill also includes an Other Special Revenue funds
23 deallocation of \$392,000 in fiscal year 2000-01 for the Bureau of
24 State Police within the Department of Public Safety to reflect
25 the change in funding source for the cost of processing
26 background checks and fingerprinting of certain school
27 employees. In addition, the change in funding responsibility
28 will result in a corresponding decrease of Other Special Revenue
29 funds collected by the department in fiscal year 2000-01 from
30 fees for background checks and fingerprinting.

31
32 The Department of Education will incur some minor additional
33 costs to administer the issuance of temporary approval cards and
34 to collect certain data pertaining to contracted service
35 providers. These costs can be absorbed within the department's
36 existing budgeted resources.'

37

38

SUMMARY *JB*
Report "A"

39 This amendment is ~~the majority report~~ of the committee.

40

41
42 1. It provides payment of the full \$49 cost for all
43 employees of public schools and approved private schools, and for
44 all substitutes, but not subsequent costs such as the cost of
45 obtaining court documents if required.

46
47 2. It postpones the fingerprinting requirement for
48 certified individuals not employed in a school until they become
49 so employed.
50

2 3. It provides a 2-year delay for contracted service
3 providers, to allow data collection on the number of providers
4 and to permit compliance in the remaining time frame for all
5 employed personnel.

6
7 4. It provides a 6-month delay for substitutes to permit
8 compliance for regular employees in the remaining time frame. It
9 provides a 5-year phase-in for the 13,400 other individuals in
10 the approval category to permit compliance in the remaining time
11 frame. Since the Department of Education has not had to maintain
12 accurate records of the number of individuals in the approval
13 category in the past, numbers were inaccurate and there is
14 insufficient time to complete all fingerprinting and record
15 checks without a phase-in. This permits more stability in the
16 number of individuals to be reviewed and processed in each year
17 in the future.

18
19 5. It clarifies that individuals employed in private
20 schools approved for tuition purposes and for whom certification
21 and authorization is not required prior to their being hired or
22 placed under contract are not subject to fingerprinting and
23 record checks unless that school enrolls 60% or more publicly
24 funded students.

25 6. It establishes the procedures and grounds for denial,
26 revocation, suspension or reinstatement of certification,
27 authorization or approval of educational personnel and expands
28 the authority of the Commissioner of Education to deny, revoke,
29 suspend or reinstate the authorization or approval of educational
30 personnel who are subject to the authorization and approval
31 requirements under Title 20-A, chapters 501 and 502.

32
33 7. It requires the Commissioner of Public Safety to
34 reimburse those persons, schools or school districts who, between
35 September 1, 1999 and the effective date of this Act, paid for
36 fingerprinting and criminal history record checks.

37
38 8. It adds an appropriation section, an allocation section
39 and a fiscal note.
40