

SENATE No. 1833

Senate, May 22, 2013 -- Text of amendment (416) (offered by Senator Chang-Diaz) to the Ways and Means amendment (Senate, No. 3) to the House Bill making appropriations for the fiscal year 2014 for the maintenance of the departments, boards, commissions, institutions and certain activities of the Commonwealth, for interest, sinking fund and serial bond requirements and for certain permanent improvements.

The Commonwealth of Massachusetts

In the Year Two Thousand Thirteen

Relative to Chapter 459 of the Acts of 2010

Ms. Chang-Diaz moved that the bill be amended by striking out sections 20, 21, and 22 in their entirety; and further moves to amend the bill by adding the following sections:

“SECTION XXX. Section 167A of chapter 6 of the General Laws, as appearing in the 2012 Official Edition, is hereby amended by inserting after the last sentence in subsection (e) the following words:- “(iii) the collection, storage, access, dissemination, content organization and use of fingerprint-based checks of the state and national criminal history databases”.

SECTION YYY. Section 1 of chapter 459 of the Acts of 2012 is hereby amended by striking out Section 1 in its entirety and inserting in place thereof the following section:-

Section 1. Subsection (a) of section 7 of chapter 15D of the General Laws, as appearing in the 2010 Official Edition, is hereby amended by adding the following paragraphs:-

(a)(i) As part of the department’s licensing and background record check process, the department shall conduct fingerprint-based checks of the state and national criminal history databases, as authorized by Public Law 92-544, before issuing any license. The fingerprint-based checks shall be conducted on any applicant for a family child care, small group and school age, large group and school age, residential and placement license or family child care assistant certificate. The fingerprint-based checks shall also be required for any household member, age 15 or older, or person regularly on the premises, age 15 or older, of applicants for family child care licensure and for all in-home non-relative department funded caregivers. Authorized department staff may receive all criminal offender record information and the results of checks of state and national criminal history databases, under Public Law 92-544, in accordance with the law. When the department obtains the results of checks of state and national criminal history databases, it shall

treat the information according to sections 167 through 178, inclusive, of chapter 6 and the regulations thereto regarding criminal offender record information.

(a)(ii) As part of the department's licensing and background record check process, the department shall conduct fingerprint-based checks of the state and national criminal history databases, as authorized by Public Law 92-544, to determine the suitability of all applicants for employment, interns, or volunteers who have the potential for unsupervised contact with children in any department licensed or funded program. The fingerprint-based checks shall also be required to determine the suitability of any individual who provides transportation services on behalf of any department licensed or funded program. Authorized department staff may receive all criminal offender record information and the results of checks of state and national criminal history databases, under Public Law 92-544, in accordance with the law. When the department obtains the results of checks of state and national criminal history databases, it shall treat the information according to sections 167 through 178, inclusive, of chapter 6 and the regulations thereto regarding criminal offender record information.

(a)(iii) As part of the department's licensing and background record check process, the department shall conduct fingerprint-based checks of the state and national criminal history databases, as authorized by 42 U.S.C. section 16962, for all applicants to be adoptive or foster parents and their household members age 15 or older. Authorized department staff may receive all criminal offender record information and the results of checks of state and national criminal history databases, under 42 U.S.C. section 16962, in accordance with the law. When the department obtains the results of checks of state and national criminal history databases, it shall treat the information according to sections 167 through 178, inclusive, of chapter 6 and the regulations thereto regarding criminal offender record information.

(a)(iv) As part of the department's licensing and background record check process, the department shall obtain from the sex offender registry board all current sex offender registration information, pursuant to sections 178i and 178j of chapter 6, associated with the address of the center, home, program or facility.

SECTION ZZZ. Section 2 of chapter 459 of the Acts of 2012 is hereby amended by striking out Section 2 in its entirety and inserting in place thereof the following section:-

Section 2. Subsection (b) of said section 7 of chapter 15D, as so appearing, is hereby amended by adding the following paragraphs:-

As part of the department's approval process, the department shall conduct fingerprint-based checks of the state and national criminal history databases, under Public Law 92-544, before issuing any approval. The fingerprint-based checks of the state and national criminal history databases shall also be conducted, under Public Law 92-544, to determine the suitability of all applicants for employment, interns, or volunteers who have the potential for unsupervised contact with children in any department approved program. The fingerprint-based checks shall

also be required to determine the suitability of any individual who provides transportation services on behalf of any department approved program. Authorized department staff may receive all criminal offender record information and the results of checks of state and national criminal history information databases, under this subsection, in accordance with the law. When the department obtains the results of checks of state and national criminal information databases, it shall treat the information according to sections 167 through 178, inclusive, of chapter 6 and the regulations thereto regarding criminal offender record information.

As part of the department's approval process, the department shall obtain from the sex offender registry board all current sex offender registration information, pursuant to sections 178i and 178j of chapter 6, associated with the address of the center, home, program or facility before issuing any approval.

SECTION AAAA. Section 3 of chapter 459 of the acts of 2012 is hereby stricken in its entirety.

SECTION BBBB. Subsection (d) of section 8 of chapter 15D of the General Laws, as amended by section 4 of chapter 459 of the acts of 2012, is hereby amended by inserting in the last sentence of section 4 after the words "42 U.S.C section 16962" the following words:- "for potential adoptive and foster parents and their household members age 15 or older; Public Law 92-544 for all licensing matters as set forth by the department and for all applicants for employment, interns or volunteers in any department licensed, funded or approved program".

SECTION CCCC. Section (d) of section 8 of chapter 15D of the General Laws, as amended by section 4 of chapter 459 of the acts of 2012, is hereby amended by inserting after the last sentence of section 4 the following paragraph:

The board shall adopt regulations establishing that each person providing child care or support services with the potential for unsupervised contact with children in any program or facility licensed, funded, or approved by the department, as well as any household members or persons regularly on the premises of family child care and large family child care homes, any prospective adoptive and foster parents and their household members, any department funded caregivers, and any individual who provides transportation services on behalf of any department licensed, funded or approved program shall be subject to a sexual offender registry information check pursuant to sections 178i and 178j of chapter 6. The regulations shall also establish the conditions in which the department may deny an application for a license, license renewal or approval, employment, or department funding, as well as deny prospective adoptive and foster parents based upon the information obtained from the sex offender registry search. The board shall also adopt regulations establishing an address search of the sex offender registry for purposes of licensing, license renewal or approval of school-aged child care programs, child care centers, family child care homes, placement agencies or large family child care homes, family foster care that is not supervised and approved by a placement agency, group care facilities or temporary shelter facilities, including the conditions in which the department may deny an

application for a license, license renewal or approval based upon the information obtained from the address search of the sex offender registry.

SECTION DDDD. Section 8 of chapter 15D of the General Laws, as amended by section 5 of chapter 459 of the acts of 2012, is hereby amended by striking out the first paragraph and inserting in place thereof the following paragraph:-

(j) Fingerprints, as referenced in subsections (a) and (b) of section 7 and subsection (d) of this section, shall be submitted to the identification section of the department of state police for a state criminal history check and forwarded to the Federal Bureau of Investigation for a national criminal history check, according to the policies and procedures established by the identification section and by the department of criminal justice information services. Fingerprint submissions may be retained by the Federal Bureau of Investigation, the state identification section, and the department of criminal justice information services for the purpose of assisting the department in its review of suitability for initial or continued licensure, certification, or approval. The department of criminal justice information services may disseminate the results of a state and national criminal history checks to the department of early education and care to determine the suitability of : (i) any current holder of or applicant for a family child care, small group and school age, large group and school age, and residential and placement license, or family child care assistant certificate; (ii) all current and prospective employees in any department licensed, funded or approved program, who have the potential for unsupervised contact with children; (iii) all household members, age 15 or older, or persons regularly on the premises, age 15 or older, of current family child care providers and applicants for family child care licensure; (iv) all in-home non-relative department funded caregivers; (v) all adoptive or foster parent applicants and their household members age 15 or older; and (vi) any individual who provides transportation services on behalf of any department licensed, funded or approved program. If the department receives information from a fingerprint-based check that does not include any final disposition or is otherwise incomplete, the department may request that an applicant, either new or renewing, provide additional information to assist the department in determining the suitability of the individual for licensure, certification, approval, funding or employment.

For the purposes of this section, a “conditional employee” is an individual who has the potential for unsupervised contact with children who a department licensed, funded or approved program or a provider of transportation services on behalf of any department licensed, funded or approved program, hires without first obtaining the results of a state and national fingerprint-based criminal history check because the employer determines that hiring the individual is necessary. A department licensed, funded or approved program, or a provider of transportation services on behalf of any department licensed, funded or approved program, may hire conditional employees under the following circumstances:

Until the Commonwealth has fully implemented a system for forwarding fingerprints to the Federal Bureau of Investigation for a national criminal history check and providing the results of

those checks to the department, the department licensed, approved or funded program, or the provider of transportation services on behalf of any department licensed, funded or approved program, may hire individuals without first obtaining the results of a state and national fingerprint-based criminal background check if the employer has first obtained the results of a criminal offender record information check and department of children and families background record check, as required by the department, on the individual(s).

Once the Commonwealth has fully implemented a system for forwarding fingerprints to the Federal Bureau of Investigation for a national criminal history check and providing the results of those checks to the department:

(a) Programs or transportation providers shall require employees hired for September, 2013 or thereafter without the results of state and national fingerprint-based criminal history checks to submit fingerprints for state and national criminal history checks within a reasonable period of time; and;

(b) Programs or transportation providers may hire individuals without first obtaining the results of a state and national fingerprint-based criminal history check in limited circumstances. The board of early education and care shall in a manner provided by law and in accordance with chapter 15D of the general laws, promulgate regulations necessary to carry out this section. These regulations shall address the circumstances under which a program or transportation provider may hire a conditional employee.

Notwithstanding any laws to the contrary, if a program or transportation provider seeks to hire a conditional employee, the program or transportation provider may request that the individual provide additional information regarding his or her history of criminal convictions, if any, to assist the program or transportation provider in determining the individual's suitability for unsupervised contact with children; provided however, that no unsupervised contact with children shall occur prior to the program or transportation provider obtaining the results of a sexual offender registry information check pursuant to sections 178i and 178j of chapter 6.

SECTION EEEE. Section 8 of chapter 15D of the General Laws, as amended by section 5 of chapter 459 of the acts of 2012, is hereby amended by striking out the third paragraph beginning with the words "All persons required to submit fingerprints" and inserting in place thereof the following paragraph:-

All persons required to submit fingerprints pursuant to this chapter, including but not limited to, (i) any current holder of or applicant for a family child care, small group and school age, large group and school age, and residential and placement license, or family child care assistant certificate; (ii) all current and prospective employees in any department licensed, funded or approved program, who have the potential for unsupervised contact with children; (iii) all household members, age 15 or older, or persons regularly on the premises, age 15 or older, of

current family child care providers and applicants for family child care licensure; (iv) all in-home non-relative department funded caregivers; (v) all adoptive or foster parent applicants and their household members age 15 or older; and (vi) any individual who provides transportation services on behalf of any department licensed, funded or approved program, shall pay a fee, to be established by the department in consultation with the secretary of public safety and security, to offset the costs of operating and administering a fingerprint-based criminal background check system. The fee shall not exceed \$35 per person. The fee may increase accordingly if the Federal Bureau of Investigation increases its fingerprint background check service fee. The department licensed, funded or approved programs may reimburse applicants for employment for all or part of the fee on the grounds of financial hardship. Any fees collected from fingerprinting activity under this chapter shall be deposited into the Fingerprint-Based Background Check Trust Fund, established under section 2HHHH of chapter 29.

SECTION FFFF. Section 2HHHH of chapter 29 of the General Laws, as amended by section 6 of chapter 459 of the acts of 2012, is hereby amended by striking out the first paragraph in its entirety and inserting in place thereof the following paragraphs:-

Section 2HHHH. There shall be established and set up on the books of the commonwealth a separate fund to be known as the Fingerprint-Based Background Check Trust Fund, which will consist of all fees collected for the purposes enumerated in chapter 459 of the acts of 2012. Amounts credited to the fund shall be available, without further appropriation, to the executive office of public safety and security to carry out fingerprint-based state and national criminal background checks for the purposes of employment, professional licensure and other non-criminal justice purposes.

For the purpose of accommodating discrepancies between the receipt of revenue and related expenditures for implementing fingerprint-based checks of the state and national criminal history databases, as authorized by chapter 459 of the acts of 2012, the executive office of public safety and security may incur expenses and the comptroller may certify for payment amounts not to exceed the most recent revenue estimate, provided further that the fund shall be in balance by the end of the fiscal year. Revenues deposited in the fund that are unexpended at the end of the fiscal year shall not revert to the General Fund and shall be available for expenditure in the following fiscal year.

SECTION GGGG. Section 38R of chapter 71 of the General Laws, as amended by section 7 of chapter 459 of the acts of 2012, is hereby amended by striking out the first paragraph and inserting in place thereof the following paragraph:-

Section 38R. In a manner prescribed by the board of elementary and secondary education, the school committee and superintendent of any city, town or regional school district and the principal or other administrator, by whatever title the position be known, of a public or private school, including a special education school program approved under chapter 71B, shall obtain

periodically, but not less than every 3 years, from the department of criminal justice information services all available criminal offender record information for any current or prospective employee or volunteer within the school district who may have direct and unmonitored contact with children, including any individual who regularly provides school related transportation to children. Said school committee, superintendent or principal or other administrator shall also have access to and may obtain all criminal offender record information for any subcontractor or laborer commissioned by the school committee or school or employed by the city or town to perform work on school grounds, who may have direct and unmonitored contact with children.

SECTION HHHH. Section 38R of chapter 71 of the General Laws, as amended by section 7 of chapter 459 of the acts of 2012, is hereby amended by striking out the second paragraph and inserting in place thereof the following paragraph:-

The school committee, superintendent of any city, town or regional school district or the principal or other administrator, by whatever title the position be known, of a public or private school, including a special education school program approved under chapter 71B, shall also obtain a state and national fingerprint-based criminal background check, under 42 U.S.C. section 16962, to determine the suitability of current and prospective school employees who may have direct and unmonitored contact with children. For the purpose of this section, employees shall include any apprentice, intern, or student teacher who may have direct and unmonitored contact with children. The school committee shall only obtain a state and national fingerprint-based criminal background check for current and prospective employees for whom the school committee has direct hiring authority. The superintendent, principal or other administrator shall also obtain a state and national fingerprint-based criminal background check for any individual who regularly provides school related transportation to children. Said school committee, superintendent or principal or other administrator may obtain a state and national fingerprint-based criminal background check, as authorized by 42 U.S.C. section 16962, for any volunteer or subcontractor or laborer commissioned by the school committee or school or employed by the city or town to perform work on school grounds, who may have direct and unmonitored contact with children. Fingerprints shall be submitted to the identification section of the department of state police for a state criminal history check and forwarded to the Federal Bureau of Investigation for a national criminal history check, according to the policies and procedures established by the identification section and by the department of criminal justice information services. Fingerprint submissions may be retained by the Federal Bureau of Investigation, the state identification section, and the department of criminal justice information services for the purpose of assisting employers authorized under this chapter to ensure the continued suitability of those individuals. The department of criminal justice information services may disseminate the results of the state and national criminal background checks to: a school committee, superintendent, principal or the designee of the school committee, superintendent or principal, to determine the suitability of current and prospective employees of the school employer; and to the department of elementary and secondary education to determine the suitability of applicants for

license and licensed educators who may have direct and unmonitored contact with children; provided that the department of criminal justice information services may disseminate to a school committee only results for current and prospective employees for whom the school committee has direct hiring authority.

SECTION III. Section 38R of chapter 71 of the General Laws, as amended by section 7 of chapter 459 of the acts of 2012, is hereby amended by striking out the first two sentences of the third paragraph and inserting in place thereof:

Entities that receive the results of national criminal background checks shall treat the information in accordance with sections 167 through 178, inclusive, of chapter 6 and the regulations thereto regarding criminal offender record information. Notwithstanding the provisions of sections 4(9) and 4(9 1/2) of chapter 151B of the General Laws, if a school employer receives criminal record information from the state and national fingerprint-based criminal background checks that includes no disposition or is otherwise incomplete, the school employer may request that an individual provide additional information regarding the results of the criminal background checks to assist the school employer in determining suitability for direct and unmonitored contact with children.

SECTION JJJJ. Section 38R of chapter 71 of the General Laws, as amended by section 7 of chapter 459 of the acts of 2012, is hereby amended by striking out the first sentence of paragraph four beginning with “The board of early education and care shall” and inserting in place thereof the following sentences:-

The board of elementary and secondary education shall in a manner provided by law and in accordance with this section and sections 167 through 178, inclusive, of chapter 6 and the regulations thereto, promulgate regulations necessary to carry out this section. These regulations shall address the circumstances under which a school employer may rely on a suitability determination made by a previous Massachusetts school employer or the department of elementary and secondary education, in lieu of obtaining a new state and national criminal history background check. The factors identified in the regulations shall include, but need not be limited to: the date of the previous suitability determination; the individual’s employment history; and the individual’s state(s) of residence(s) since the previous suitability determination. If an employer chooses to conduct a new state and national finger-print based criminal history background check, rather than rely on a previous suitability determination, the employer shall pay the fees for the new check.

SECTION KKKK. Section 38R of chapter 71 of the General Laws, as amended by section 7 of chapter 459 of the acts of 2012, is hereby amended by inserting in the second sentence of the fourth paragraph after the word “section 16962”, the following words:- “and Public Law 92-544”.

SECTION LLLL. Section 38R of chapter 71 of the General Laws, as amended by section 7 of chapter 459 of the acts of 2012, is hereby amended by striking the last sentence in the fourth paragraph and replacing it with the following sentence:- The regulations may reflect a phased-in schedule for the fingerprint-based background checks of individuals whose employment or service began prior to the 2013-2014 school year.

SECTION MMMM. Section 38R of chapter 71 of the General Laws, as amended by section 7 of chapter 459 of the acts of 2012, is hereby amended by striking out, in the last sentence of section 7, the words “The fee” and inserting in place thereof the following words:- “Any fees collected from fingerprinting activity under this chapter”.

SECTION NNNN. Section 38R of chapter 71 of the General Laws, as amended by section 8C of chapter 459 of the acts of 2012, is hereby amended by striking out Section 8C in its entirety and inserting in place thereof the following section:-

Section 8C. For the purposes of this section, a “conditional employee” is an individual who may have direct and unmonitored contact with children who a school employer hires without first obtaining the results of a state and national fingerprint-based criminal history check because the employer determines that hiring the individual is necessary. School employers may hire conditional employees under the following circumstances:

Until the Commonwealth has fully implemented a system for forwarding fingerprints to the Federal Bureau of Investigation for a national criminal history check and providing the results of those checks to school employers, school employers may hire individuals without first obtaining the results of a state and national fingerprint-based criminal history check if the school employer has obtained from the Massachusetts department of criminal justice information services all available criminal offender record information on the individual(s).

Once the Commonwealth has fully implemented a system for forwarding fingerprints to the Federal Bureau of Investigation for a national criminal history check and providing the results of those checks to school employers:

- 1) school employers shall require employees hired for the 2013-14 school year or thereafter without the results of a state and national fingerprint-based criminal history check to submit fingerprints for a state and national criminal history check within a reasonable period of time; and
- 2) school employers may hire individuals without first obtaining the results of a state and national fingerprint-based criminal history check in limited circumstances. The board of elementary and secondary education shall in a manner provided by law and in accordance with this section, promulgate regulations necessary to carry out this section. These regulations shall address the circumstances under which a school employer may hire a conditional employee.

Notwithstanding the provisions of sections 4(9) and 4(9 1/2) of chapter 151B of the General Laws, if a school employer seeks to hire a conditional employee, the school employer may request that an individual provide additional information regarding his or her history of criminal convictions, other than juvenile or sealed convictions, to assist the school employer in determining suitability for direct and unmonitored contact with children.

SECTION OOOO. Section 9 of chapter 459 of the Acts of 2012 is hereby amended by striking out section 9 in its entirety and inserting in place thereof the following section:-

Section 9. Sections 1 and 2 of this act shall apply to all new applicants for licensure, certification or approval, for all household members, age 15 or older, or persons regularly on the premises, age 15 or older, of applicants for family child care licensure, for all applicants to be adoptive or foster parents and their household members age 15 or older, and for all in-home non-relative department funded caregiver applicants, submitted on or after September 1, 2013. All individuals who are currently licensed, certified or approved by the department of early education and care, all household members, age 15 or older, or persons regularly on the premises, age 15 or older of family child care licensees, as well as all in-home non-relative department funded caregivers, shall be required to comply with the requirements of this act upon renewal of licensure, certification, approval or funding, no later than September 1, 2016. Sections 1 and 2 of this act shall also apply to prospective employees in any department of early education and care licensed, funded or approved program who have the potential for unsupervised contact with children, including those providing transportation services on behalf of any department licensed, funded or approved program, hired to begin employment on or after September 1, 2013. Employees in any department of early education and care licensed, funded or approved programs who have the potential for unsupervised contact with children, including those providing transportation services on behalf of any early education and care department licensed, funded or approved program hired prior to that date shall submit fingerprints for state and national criminal history checks no later than September 1, 2016.

Should a state and national fingerprint-based criminal check not be available through the department by September 1, 2013, then all new applications for licensure, certification or approval, all household members, age 15 or older, or persons regularly on the premises, age 15 or older, of applicants for family child care licensure, all applicants to be adoptive or foster parents and their household members age 15 or older, and all in-home non-relative department funded caregiver applicants who apply on or after September 1, 2013, must undergo such a check as soon it becomes available.

Should a state and national fingerprint-based criminal check not be available through the department at the time an application for renewal of a department issued license, certificate, approval or funding request is due, then the applicant for renewal must undergo such a check as soon it becomes available but not later than September 1, 2016.

Should a state and national fingerprint-based criminal check not be available through the department by September 1, 2013, then any prospective employee in any department of early education and care licensed, funded or approved program who has the potential for unsupervised contact with children, including those providing transportation services on behalf of any department licensed, funded or approved program, hired to begin employment on or after September 1, 2013, will be hired conditionally as set forth in this act.

Should a state and national fingerprint-based criminal check not be available through the department by September 1, 2013, then any employee in any department licensed, funded or approved program who has the potential for unsupervised contact with children, including those providing transportation services on behalf of any department licensed, funded or approved program, hired prior to September 1, 2013, who is undergoing a department required periodic CORI and DCF background record checks investigation, may continue employment conditionally as set forth in this act, but must undergo such a check not later than September 1, 2016.

Section 7 and Section 8C of this act shall apply to all individuals in K-12 education whose employment or service for a school or district begins in or after the 2013-2014 school year. Individuals in K-12 education whose employment or service began before the 2013-2014 school year shall submit fingerprints for state and national criminal history checks on a phased-in basis prior to the beginning of the 2016-2017 school year.