

# MAINE STATE LEGISLATURE

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**LEGISLATIVE RECORD**

OF THE

***One Hundred and Eighth  
Legislature***

OF THE

STATE OF MAINE

**Volume II**

**May 26, 1977 to July 25, 1977**

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**Senate Confirmation Session  
September 16, 1977**

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KJ PRINTING  
AUGUSTA, MAINE

be delayed for the approximately 400 employees which have already been placed in the seven State bargaining units.

6. I feel that it would increase the cost of contract negotiations and administration without resulting in a commensurate benefit to the employees affected, State administration or the citizens of Maine.

7. Finally, I believe this legislation is not necessary to ensure that the interest of the VTI faculty will be adequately represented in collective bargaining under the existing determinations made by the Maine Labor Relations Board.

For these reasons I hope that the Legislature will resist this first attempt to subvert the collective bargaining process by involving itself in the administration of the State's collective bargaining law which is the responsibility of the professional staff of the Maine Labor Relations Board. This is unnecessary and counterproductive legislation, and, if it becomes law, will only encourage other groups to resort to similar acts to achieve their means through legislative channels rather than through the orderly process under the State Employees Labor Relations Act.

Very truly yours,

Signed:

JAMES B. LONGLEY

The Communication was read and ordered placed on file.

The SPEAKER: The Chair recognizes the gentleman from Augusta, Mr. Bustin.

Mr. BUSTIN: Mr. Speaker, Men and Women of the House: I will be very brief in asking the House to maintain its record in favor of this particular piece of legislation. The last vote we had in here on the bill was at least 99 members in favor of it and the enactor went under the hammer. The essence of the bill, to refresh your memories, is to allow the faculties of the vocational-technical institutes to bargain on their own with their employer, the State Board of Education.

You will remember that we cited as the reason for the basic, philosophical reason for this bill was the deterioration of morale at these institutions and the loss of employees because of the horrendous bad news that they received under the original Hay Report. They lost their salary structure, they lost many of their benefits, 60 percent of the faculty received no raises, they were given no recognition for their degrees or their experience and the institutions are having extreme difficulty in attracting competent personnel to run the programs. What is at stake, regardless of the labor issues involved in this specific measure, which the Governor addresses only, and in most of those, in error, the central issue is the program in the vocational-technical institutes.

For example, three Department chairpersons in the Eastern Maine Vocational-Technical Institute in Bangor have resigned to go into private employment. Further, electronic instructors from Central Maine Vocational Institute have gone to work for the Digital Corporation and there has been comparative loss of key personnel at the Southern Maine Vocational-Technical Institute.

I would hope that the House would maintain its record behind this bill, push it across the goal line, override this veto.

The SPEAKER: The Chair recognizes the gentleman from Cumberland, Mr. Garsoe.

Mr. GARSOE: Mr. Speaker, Ladies and Gentlemen of the House: I won't take issue with anything that my friend, the gentleman from Augusta, has said, because in essence, it is all true. There has been a lack of specific concern directed toward this small group of employees but I think there is something larger at stake here than even the hardship that may have been worked to this date on these people, and what is

at stake is the overall management of state government.

When this bill, this collective bargaining bill that was designed to cure all the ills of all employees was introduced, we did place a strict requirement that we avoid excessive fragmentation. These people have had their day in court in proposing the structure of the unit that they wish to have. They were denied. They had access to an appeal. The appeal was denied, and I submit that is was denied, basically, on the basis that is represented in the Governor's message, the overall interest to the State of Maine.

I hope we won't start taking the first step down the road that, could lead us into the New York type situation where the City of New York, to my understanding, deals with something over a hundred separate units. These people are in a unit along with other people performing the same type of work, and I just can't believe that they don't have an avenue to correct their problems through collective bargaining without going to the extent of creating three bargaining units for 400 people in light of the present situation which has eight bargaining units for 12,000 to 14,000 people, so I hope you can today sustain the Governor.

The SPEAKER: The Chair recognizes the gentleman from Lisbon Falls, Mr. Tierney.

Mr. TIERNEY: Mr. Speaker, Men and Women of the House: Very briefly, this House rejected the various arguments made by my good friend from Cumberland by an overwhelming majority when he made those arguments prior to today. Since that time, two things have happened which make this bill even more necessary. The first thing was the total failure of the temporary compensation review board, by their own admission, to deal with the very real problems which exist with our VTI instructors.

I spent a great amount of time with Roger Snow who is the Chairman of that committee, and with Pat Ryan who is one of the employer representatives, and we found that the appeal procedure we established for the Hay Commission just could not take care of the very unique problems which exist in our VTI structure, so if you care about the quality of VTI education, you will vote to override this morning.

The second thing which has changed, ladies and gentlemen and Speaker of the House, is that there is an appropriation on this bill which was added with the unanimous vote of leadership, with the notable exception of the good gentleman from Cumberland who did oppose it in order to give Lanny Mosher's office additional personnel to help with this bargaining process, so the bill is responsibly funded and it will give the Office of State Employee Relations the needed manpower they need to do this and to adequately represent the state in this matter.

The SPEAKER: The pending question is, shall Bill, "An Act to Provide a Uniform Basis for Recognizing the Right of the University of Maine Employees, Maine Maritime Academy Employees, Vocational-Technical Institute Employees and State Schools for Practical Nursing Employees to Join Labor Organizations," H. P. 1144, L. D. 1391, become law notwithstanding the objections of the Governor? Pursuant to the Constitution, the vote will be taken by the yeas and nays. This requires a two-thirds vote of the members present and voting. All those in favor of this Bill becoming law notwithstanding the objections of the Governor will vote yes; those opposed will vote no.

#### ROLL CALL

YEA — Austin Bachrach, Bagley, Beaulieu, Bennett, Benoit, Berry, Berube, Biron, Birt, Blodgett, Boudreau, A.; Boudreau, P.; Brenerman, Brown, K.C.; Bustin, Carey,

Carrier, Carroll, Chonko, Churchill, Clark, Connolly, Cote, Cox, Cunningham, Curran, Davies, Diamond, Dow, Durgin, Dutremble, Eilas, Flanagan, Fowlie, Gill, Gillis, Goodwin, H.; Goodwin, K.; Green, Greenlaw, Hall, Henderson, Hickey, Higgins, Howe, Huber, Hughes, Jacques, Jalbert, Jensen, Joyce, Kane, Kany, Kelleher, Kilcoyne, Laffin, LaPlante, LeBlanc, Lewis, Locke, Lunt, MacEachern, Mahany, Marshall, Martin, A.; Masterton, Maxwell, McBreairey, McHenry, McKean, Mills, Mitchell, Moody, Nadeau, Najarian, Nelson, M.; Nelson, N.; Peakes, Pearson, Peltier, Peterson, Plourde, Post, Prescott, Quinn, Raymond, Rideout, Shute, Spencer, Strout, Stubbs, Talbot, Tarbell, Tarr Teague, Theriault, Tierney, Tozier, Trafton, Truman, Twitchell, Valentine, Wilfong, Wood, Wyman, The Speaker.

NAY — Aloupis, Ault, Brown, K.L.; Bunker, Burns, Carter, D.; Carter, F.; Conners, Devoe, Dexter, Drinkwater, Dudley, Fenlason, Garsoe, Gould, Gray, Hunter, Hutchings, Immonen, Jackson, Littlefield, Lizotte, Lougee, Lynch, Mackel, Masterman, McPherson, Morton, Palmer, Perkins, Rollins, Sewall, Silsby, Smith, Sprowl, Stover, Torrey, Whittemore.

ABSENT — Gauthier, Hobbins, Kerry, McMahon, Norris, Tyndale.

Yes, 107; No, 38; Absent, 6.

The SPEAKER: One hundred seven having voted in the affirmative and thirty-eight in the negative, with six being absent, the veto is not sustained.

Sent up for concurrence.

The following Communication: (H. P. 1845)

STATE OF MAINE  
OFFICE OF THE GOVERNOR  
AUGUSTA, MAINE  
July 19, 1977

To: The Honorable Members of the Senate and House of Representatives of the Maine 108th Legislature:

I am returning without my signature and approval H. P. 1680, L. D. 1874, An Act to Revise the Maine Tort Claims Act.

I have carefully studied this bill and the decision to veto it has not been an easy one. I understand that certain sections of this bill are very important to municipalities because these sections better define the areas of municipal, as well as state, responsibility and liability. Unfortunately, another part of the same bill contains the controversial proposal which would virtually extend blanket immunity for everyone who works for the State.

I cannot allow this bill to become law because of the following concerns relative to serious policy questions and practical problems, which I feel warrant reconsideration by the Legislature.

1. It seems that this extension of sovereign immunity to State employees for virtually all negligence where the damages are property damage, injury or death is contrary to the purpose of the original undertaking to eliminate sovereign immunity. Previously we made a policy decision to eliminate the defense of sovereign immunity in certain instances and provide the usual legal remedies for an injured party; yet this bill would have the effect of again reimposing immunity for a wide range of negligent conduct.

2. The Tort Claims Act, which currently is in effect, already establishes a greater degree of protection for State employees than existed prior to this legislative session. Up until the beginning of this Session, the State was completely immune from suit and State employees were completely liable for their negligence just as their counterparts were and still are in the private sector. In response to this situation, the Tort Claims Act extended immunity to State

employees in specific areas, including those areas involving discretionary judgment.

3. By extending immunity to employees for their own negligence, we are creating a special class of citizens who would enjoy the unusual status of not even being responsible for their own negligence. I question the justification for creating such a privileged class at this time, and I also question this extension as a matter of policy.

4. Do we want to risk the possibility of lowering the standards of conduct in State Government to the potential detriment of all other citizens? This bill could have that effect, and in that regard could be very costly and unfair to Maine taxpayers. I feel it is incumbent that we not act precipitously and that we take no drastic action without compelling reasons or justification.

5. This bill extends this unusual status of immunity only to State employees and does not extend it to local and county employees. I am advised that there is no policy justification for drawing this arbitrary line. On the contrary, I am advised that the only reason State employees are included to the exclusion of local and county employees is on the basis of political influence and lobbying power.

6 This bill also requires that the State defend the employee in situations involving negligence or alleged negligence, and also requires the State either to insure or indemnify the employee up to \$10,000, after which blanket immunity is granted. Currently, when deciding whether or not to defend and or indemnify an employee, the State decides whether or not the employee was acting within the scope of employment during the time of the alleged negligence. Under this bill, the State no longer has the discretion to decide if the employee was acting within the scope of his or her employment and it is conceivable that the first lawsuit brought under this act will be against the State by an employee or employee organization seeking to compel the State to defend and indemnify or insure. In other words, the first taxpayer dollars under this act could be consumed in defending the State against lawsuits by employees who in the State's opinion were not acting within the scope of their employment.

7. My staff has researched to determine if there are instances under the current law where the State has failed to represent or indemnify an employee who was being sued because of alleged wrongs arising from the scope of the employee's employment. We are not aware of any instance where the State did not properly defend and indemnify the employee. The State's record in this regard has been very fair: I know of no instances where there has been abuse or neglect on the State's part. In short, under the current system the State already can do exactly what this bill would mandate, and I am advised that the State has in the past performed equitably and fairly with respect to protecting the rights of State employees.

8. There are also considerable insurance problems arising out of this legislation, and it is questionable whether or not the State will be able to purchase insurance, or purchase insurance at a reasonable, affordable price.

In summary, I have not been made aware of any justification at this time for creating this extension of immunity. The Tort Claims Act has not even been in effect one full month. In fact, this bill seems to be directly contrary to the approach of proceeding deliberately and cautiously with respect to eliminating the rights of our citizens as this bill would establish a special class of protected employees and grant them a privileged status not being granted to their counterparts in the private sector and in local and county government.

For these reasons, I respectfully request that you sustain my veto of this measure.

Very truly yours,

Signed:

JAMES B. LONGLEY  
Governor

The Communication was read and ordered placed on file.

The SPEAKER: The pending question is, shall Bill "An Act to Revise the Maine Tort Claims Act," House Paper 1680, L. D. 1874, become law notwithstanding the objections of the Governor? Pursuant to the Constitution, the vote will be taken by the yeas and nays. This requires a two-thirds vote of the members present and voting. All those in favor of this Bill becoming law notwithstanding the objections of the Governor will vote yes; those opposed will vote no.

#### ROLL CALL

YEA — Aloupis, Ault, Austin, Bachrach, Bagley, Beaulieu, Bennett, Benoit, Berry Berube, Biron, Birt, Blodgett, Boudreau, A.; Boudreau, P.; Brenerman, Brown, K. L.; Bunker, Burns, Bustin, Carey, Carrier, Carroll, Carter, D.; Carter, F.; Chonko, Churchill, Clark, Connolly, Cote, Cox, Cunningham, Curran, Davies, Devoe, Dexter, Diamond, Dow, Drinkwater, Durgin, Dutremble, Elias, Fenlason, Flanagan, Fowlie, Garsoe, Gill, Goodwin, H.; Goodwin, K.; Gould, Gray, Green, Greenlaw, Hall, Henderson, Hickey, Higgins, Howe, Huber, Hughes, Hutchings, Immonen, Jackson, Jacques, Jalbert, Jensen, Joyce, Kane, Kany, Kelleher, Kilcoyne, Laffin, LaPlante, LeBlanc, Lewis, Littlefield, Lizotte, Locke, Lougee, Lunt, Lynch, MacEachern, Mackel, Mahany, Marshall, Martin, A.; Masterman, Masterton, Maxwell, McBrairy, McHenry, McKean, McMahon, McPherson, Mills, Mitchell, Moody, Morton, Nadeau, Najarian, Nelson, M.; Nelson, N.; Palmer, Peakes, Pearson, Peltier, Perkins, Peterson, Plourde, Post, Prescott, Quinn, Rideout, Rollins, Sewall, Shute, Silsby, Smith, Spencer, Sprowl, Stover, Strout, Stubbs, Talbot, Tarbell, Tarr, Teague, Theriault, Tierney, Torrey, Tozier, Trafton, Truman, Twitchell, Valentine, Whittemore, Wilfong, Wood, Wyman, The Speaker.

NAY — Brown, K. C.; Connors, Dudley, Gillis, Hunter, Raymond.

ABSENT — Gauthier, Hobbins, Kerry, Norris, Tyndale.

Yes, 140; No, 6; Absent, 5.

The SPEAKER: One hundred forty having voted in the affirmative and six in the negative, with five being absent, the Governor's veto is not sustained.

Sent up for concurrence.

The following Communication:

STATE OF MAINE  
OFFICE OF THE GOVERNOR  
Augusta, Maine

July 19, 1977

TO: The Honorable Members of the Senate and House of Representatives of the 108th Maine Legislature

I am returning without my signature and approval H.P. 1476, L. D. 1709, RESOLVE, to Authorize the Maine Guarantee Authority to Issue a Payment In Lieu of Taxes to The Town of Pittsfield.

Several months ago, I received a request from legislators in the Pittsfield area who wanted me to intervene with the Maine Guarantee Authority regarding this very same matter. At that time, I agreed only to assist these legislators to the extent of requesting that the Maine Guarantee Authority provide a timely response to the questions raised regarding whether or not the Maine Guarantee Authority would or should pay taxes on the Carriage House Inn to the Town of Pittsfield. In the letter dated March 22nd I made it clear "I would not interject myself into the business of the MGA and felt that any communication between the Maine Guarantee Authority with respect to the

problem should be done by them (the involved legislators) directly if they desired to have it done at all."

With the passing of this bill, my staff has now had the opportunity to review the substance of it and I regret that I must return it to the Legislature for your reconsideration.

I am deeply concerned with the precedent that this bill would establish. As we can all appreciate, part of the activity in which the Maine Guarantee Authority engages may very well involve a high risk quotient since the involved businesses often are experiencing problems or difficulties which, although hopefully salvageable, require the extraordinary and special assistance of the Guarantee Authority. In fact, I am also advised that it is often the municipalities and local officials who seek, invite, and welcome participation by the Maine Guarantee Authority in some of these business ventures. Often, either directly or indirectly, it is clear that the towns are the beneficiaries of the State's effort and taxpayer dollars through the Maine Guarantee Authority.

With respect to this particular situation, I am advised by the Maine Guarantee Authority that, they have never before paid property taxes in instances where the Maine Guarantee Authority actually has held title to the particular property, since the MGA itself is a tax-exempt entity. However, they have and do indirectly subsidize the property taxes of these projects when the projects are functioning and still ongoing. When the projects fail or otherwise cease, the Maine Guarantee Authority again takes title to the property until it can be disposed of. It is during this interval, that the Maine Guarantee Authority is not responsible for taxes. If the Legislature is going to make a judgment with respect to the Maine Guarantee Authority's liability in this regard, this I believe they should do on a policy basis, and not on a piece-meal basis. The legislation would force the latter.

In summary, while I can appreciate the concerns of the Pittsfield legislators in their desire to best represent their constituents, there are important State considerations with respect to this bill. It is not as if municipalities do not benefit from the Maine Guarantee Authority attempting to salvage businesses and industries and facilitate industrial development. The fact is, the municipalities benefit and often have property taxes subsidized on property that would otherwise go unsold and or unproductive. To now require that the Maine Guarantee Authority assume taxes for the period during which they hold title, seems to be a drastic diversion from existing policy, and I believe that it is a step that should be measured and taken deliberately, it taken at all, with consideration for the precedent and advisability of requiring yet another expenditure of taxpayer dollars.

For these reasons, I respectfully request that you sustain my veto of this measure.

Very truly yours

Signed:

JAMES B. LONGLEY  
James B Longley

The SPEAKER: The Chair recognizes the gentleman from Pittsfield, Mr. Wyman.

Mr. WYMAN: Mr. Speaker, Ladies and Gentlemen of the House: This bill is once more before us. I am sure you are probably familiar with it, at least generally that there is such a bill to reimburse or to make a payment to the town of Pittsfield for its tax loss.

I feel much as Winston Churchill did when he said "never have so many given so much" and I would paraphrase that by saying "never have so many given so much for such a small little bill" but I appreciate your great sacrifice and help that you have given me all along on the bill.