

# 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

**Communication**  
Office of the Governor

July 20, 1977

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

I am as of this date returning without my signature and approval H. P. 1482, L. D. 1698, Resolve, Directing the Bureau of Taxation to Provide Credits for the Commuter's Income Tax Imposed by New Hampshire for the period January 1, 1975 to March 19, 1975.

While I fully understand and am sympathetic to the motivation behind this particular bill, which will relieve Maine taxpayers who have paid an illegal commuter tax to the State of New Hampshire, I cannot in good conscience support this measure for the following reasons:

1. The State of New Hampshire has created this problem by imposing upon some of our citizens an illegal commuter tax and I feel that it is unfair to ask that all taxpayers of Maine be asked to carry a financial burden that rightfully should be borne by the State of New Hampshire:

2. We have been advised by the Attorney General's Office that should this bill become law the State of Maine may be unable to recover from New Hampshire the \$120,000 in question since Maine taxpayers, reimbursed through our tax credit, will no longer be "aggrieved" by the State of New Hampshire. I could not in good conscience explain to all taxpayers of Maine that I have allowed \$120,000 of Maine's money to be spent to correct a problem created by New Hampshire, while New Hampshire might never be forced to pay one cent towards reimbursing Maine citizens or the State of Maine;

3. We must also be careful to avoid the unfortunate precedent that this bill would create. The State of New Hampshire has aggrieved certain citizens of our state, and those citizens have a legal remedy against the State of New Hampshire which our Attorney General is pursuing. For the Legislature to inject itself into this legal process by attempting to rectify the situation and compensate those citizens, thereby undercutting the legal process, would be unfortunate. While I am told that the legal remedy may be time consuming, I am advised that it is the appropriate course to pursue in order to rectify the situation so that Maine citizens may be compensated but not at the expense of the entire citizenry of the State.

While I understand the efforts of the sponsors of this bill to represent to the best of their abilities the frustrated and burdened taxpayers of their area, I must point out that the Legislature and this Governor have a responsibility to the taxpayers of this entire state, and I question the advisability of taking any action which I am advised may undermine the legal arm of the State.

While I am sympathetic to the plight of these taxpayers and while I can understand their frustration, I must urge the Legislature to retain their perspective in addressing this question by keeping in mind that the party responsible for this entire affair, the State of New Hampshire, should be the party burdened with financially solving this problem. I do not believe that it is a question of should the State help or assist. The question is when, and I am advised that the best answer is after the State has had the opportunity to pursue the legal remedies which are available to it on behalf of the aggrieved parties. For these reasons I respectfully request that you sustain my veto.

Signed:

Sincerely,  
JAMES B. LONGLEY  
Governor  
(H. P. 1848)

Comes from the House, Read and Ordered Placed on File.

Which was Read and Ordered Placed on File in concurrence.

The accompanying Resolve, Directing the Bureau of Taxation to Provide Credits for the Commuter's Income Tax Imposed by New Hampshire for the Period January 1, 1975 to March 19, 1975. (H. P. 1482) (L. D. 1698)

Comes from the House with the following endorsement:

In the House, July 25, this Resolve, having been returned by the Governor together with his objections to the same pursuant to the provisions of the Constitution of the State of Maine, after reconsideration the House proceeded to vote on the question: 'Shall this Resolve become a law notwithstanding the objections of the Governor?'

One hundred thirty-seven voted in favor and seven against, accordingly it was the vote of the House that the Resolve become a law notwithstanding the objections of the Governor, since two-thirds of the members of the House so voted.

Signed:

EDWIN H. PERT  
Clerk of the House

The PRESIDENT: The Chair recognizes the Senator from York, Senator Hichens.

Mr. HICHENS: Mr. President and Members of the Senate: I am not going to talk to any extent on this bill. I think you all know the merits of the bill. In all fairness to the people along the Southern area of the State of Maine who are unfairly taxed by the State of New Hampshire, and the court case which is now pending, whereas some were instructed, not officially, that they did not have to pay the tax, and others very dutifully went along and paid it and have since been double taxed, this is a fair reimbursement to those people. Hopefully the court will rule that the State of New Hampshire has to reimburse the State of Maine, but in all fairness to the people who have tried to be fair with our state I would hope that you would vote to override the Governor's veto.

The PRESIDENT: Is the Senate ready for the question? The pending question before the Senate is shall this bill become a law not withstanding the objections of the Governor.

According to the Constitution, the vote will be taken by the yeas and nays.

A vote of yes will be in favor of the bill.

A vote of no will be in favor of sustaining the veto of the Governor.

The Doorkeepers will secure the Chamber.

The Secretary will call the Roll.

**ROLL CALL**

YEA — Carpenter, Chapman, Collins, D.; Collins, S.; Conley, Cummings, Curtis, Danton, Farley, Greeley, Hewes, Hichens, Huber, Jackson, Katz, Levine, Lovell, Mangan, Martin, McNally, Merrill, Minkowsky, Morrell, O'Leary, Pierce, Pray, Redmond, Snowe, Speers, Trotzky, Usher, Wyman, Sewall.

33 Senators having voted in the affirmative, and no Senators in the negative, and 33 being more than two-thirds of the membership present, it is the vote of the Senate that this bill become a law notwithstanding the objections of the Governor. The Secretary will present the bill to the Secretary of State.

**Communication**  
Office of the Governor

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 un-

derstand 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  
(H. P. 1845)

Comes from the House, Read and Ordered Placed on File.

Which was Read and Ordered Placed on File in concurrence.

The accompanying Bill, "An Act to Revise the Maine Tort Claims Act." (H. P. 1680) (L. D. 1874)

Comes from the House with the following endorsement:

In the House, July 25, 1977, this Bill, having been returned by the Governor together with his objections to the same pursuant to the provisions of the Constitution of the State of Maine, after reconsideration the House proceeded to vote on the question: 'Shall this Bill become a law notwithstanding the objections of the Governor?'

140 voted in favor and 6 against, and accordingly, it was the vote of the House that the Bill become a law, notwithstanding the objections of the Governor, since two-thirds of the members of the House so voted.

Signed:

EDWIN H. PERT  
Clerk of the House

The PRESIDENT: The Chair recognizes the Senator from Knox, Senator Collins.

Mr. COLLINS: Mr. President and Members of the Senate: The Governor has pitched his veto around the same philosophical problems which I espoused when this matter was debated at length in this Senate.

However, this whole area of law is a balancing act. The demand of our state employees for a measure of protection has been presented in some form to every Legislature in the past 14 years. I feel that the compromise adopted by this bill is a fair compromise. Most of us are insured by our business organizations for liability, but this does not make us more negligent. No one likes to be sued, even when they have good insurance, and state employees remain liable for suit within the \$10,000.00 area in which they are not immune. The State itself will insure most of this exposure and when in-

surance cannot be obtained, the State will defend its employee when the negligence was in the course and scope of the employment.

Discussions between the Maine Insurance Advisory Board Office and Finance Commissioner O'Sullivan indicate that there are adequate funds for such insurance as is contemplated. This is consistent with our previous policy of opening up liability where insurance is obtainable at a reasonable cost.

There are other important things in this bill that must be considered. The Governor's veto creates an extremely serious problem for every municipality or Governmental entity in the State of Maine.

You will recall that we adopted the Maine Tort Claims Act last February after rather hasty action necessitated at the beginning of the Session because of action by the Supreme Judicial Court. We knew when we passed it that it was not perfect and we restored the immunity situation for the time being and opened up certain areas of liability commencing July first.

We asked the Insurance Industry to find out for us what they could insure and what it would cost. And they met our request and came back and gave us better words, better definitions and certain suggestions about improving the Act to make it insurable. The original Act created certain liability, substantial liability for a small town, especially, which is either totally uninsurable or not insurable at a reasonable cost. The purpose of this revision, the basic reason for it in the beginning, is to reduce the non-insurable areas to a minimum and the cost to a reasonable level. Failure to enact the amendment, leaves towns vulnerable to judgments far in excess of any reasonable ability to pay out of their own tax revenues.

One important area to think about here is the liability for what we call Existence Hazards of streets, roads, and other public ways. In some states there have been gigantic judgments in this area and we must more clearly define this area and have done so in this amendment. Another area that is important is every utility district. Public utility districts which are imperiled by lack of a pollution limitation. We have made provision that the liability applies here only to the sudden accidental type of thing. The longer range of slow pollution type of thing is something that I just cannot at the present juncture of the insurance industries work be insured by most of our utility districts.

So if we are not to jeopardize the financial security of our other governmental entity in the State of Maine, we have some overriding reasons in this area alone for overriding the Governor's veto.

I am sure there are others here who know the insurance side of this better than I, but I would certainly urge that we vote yes on the pending question.

The PRESIDENT: The Chair recognizes the Senator from Sagadahoc, Senator Chapman.

Mr. CHAPMAN: Mr. President and Members of the Senate: This bill is the result of a large amount of hours of intensive study on the part of the members of the Legislature and the insurance industry, legal profession and others.

The cost of insurance to the 497 individual communities will escalate substantially if this veto is not overridden. Being close to the insurance industry I am acutely aware of this particular problem and should this not pass, some communities will very likely find it difficult to get proper insurance, some possibly not at all and those that can will probably get it at a significantly higher cost. Further there is a great concern that a number of major insurance companies might feel that they must withdraw from the market place in this particular area of coverage, out of concern for the exposures that will exist, that are not accep-

table at any price, as far as they are concerned.

In terms of taxpayer costs the reduction in potential liability to both State and towns under this bill far exceeds the modest additional costs because of the immunity provisions for state employees for which the Governor has expressed concern. I urge the Senate to override this veto.

The PRESIDENT: Is the Senate ready for the question? The pending question before the Senate, is shall this bill become a law not withstanding the objections of the Governor.

According to the Constitution, the vote will be taken by the yeas and nays.

A vote of yes will be in favor of the bill.

A vote of no will be in favor of sustaining the veto of the Governor.

The Doorkeepers will secure the Chamber.

The Secretary will call the Roll.

#### ROLL CALL

YEA — Carpenter, Chapman, Collins, D.; Collins, S.; Conley, Cummings, Curtis, Danton, Farley, Greeley, Hewes, Hichens, Huber, Jackson, Katz, Levine, Lovell, Mangan, Martin, McNally, Merrill, Minkowsky, Morrell, Pierce, Pray, Redmond, Snowe, Speers, Trotzky, Usher, Wyman, Sewall.

NAY — O'Leary.

32 Senators having voted in the affirmative, and 1 Senator in the negative, and 32 being more than two-thirds of the membership present, it is the vote of the Senate that this bill become a law not withstanding the objections of the Governor.

The Secretary will present the Bill to the Secretary of State.

#### Communication

Office of the Governor

July 18, 1977

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

I am this date returning without my signature and approval H. P. 1144, L. D. 1391, 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.

I disapprove of this bill for several reasons:

1. I am advised that it is an attempt by one particular union, which has already failed to persuade the Maine Labor Relations Board of the merits of its unit proposals in hearings and appeals held under the State Employee Labor Relations Act, to subvert the purposes of that Act and to impose, by statute, bargaining units which competent professionals have found to be inappropriate.

2. It would set an adverse precedent for other special interest groups elsewhere in State Government to go to the Legislature to establish small fragmentary units for their own selfish purposes contrary to the provisions in the State Employees Labor Relations Act which state: "The State shall be considered as a single employer and employee relations, policies and practices throughout State service shall be as consistent as practicable."

3. I am advised that it would conflict with the Personnel Laws and organization of State Government by requiring that certain employees in the Department of Educational and Cultural Services are not State employees for collective bargaining purposes but would be covered by the collective bargaining law enacted for the University of Maine.

4. It would place employees in the same State classifications in different bargaining units, thereby creating a situation which could result in different terms and conditions of employment for employees doing the same work in different State agencies.

5. Because Maine Labor Relations Board