

# MAINE STATE LEGISLATURE

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L.D. 2492

(Filing No. H-759 )

STATE OF MAINE  
HOUSE OF REPRESENTATIVES  
111TH LEGISLATURE  
THIRD SPECIAL SESSION

HOUSE AMENDMENT "G" to H.P. 1895, L.D. 2492,  
Bill, "AN ACT to Implement the Recommendations of the  
Commission on the Status of Education in Maine."

Amend the bill by striking out all of PART J and  
inserting in its place the following:

'PART J

Sec. 1. 26 MRSA §962, sub-§3-A is enacted to  
read:

3-A. Economic issue. "Economic issue" means an  
issue that concerns wages, pensions or insurance.

Sec. 2. 26 MRSA §965, sub-§4, as amended by PL  
1975, c. 564, §18, is further amended to read:

4. Arbitration. In addition to the 30-day period  
referred to in subsection 3, the parties shall have  
15 more days, making a total period of 45 days from  
the submission of findings and recommendations, in  
which to make a good faith effort to resolve their  
controversy.

If the parties have not resolved their controversy by  
the end of said 45-day period, they may jointly agree  
to an arbitration procedure which will result in a  
binding determination of their controversy. Such de-  
terminations will be subject to review by the Superi-  
or Court in the manner specified by section 972.

If they do not jointly agree to such an arbitration  
procedure within 10 days after the end of said 45-day  
period, then either party may, by written notice to  
the other, request that their differences be submit-

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1       ted to a board of 3 arbitrators. The bargaining  
2       agent and the public employer shall within 5 days of  
3       such request each select and name one arbitrator and  
4       shall immediately thereafter notify each other in  
5       writing of the name and address of the person so se-  
6       lected. The 2 arbitrators so selected and named  
7       shall, within 10 days from such request, agree upon  
8       and select and name a neutral arbitrator. If either  
9       party shall not select its arbitrator or if the 2 ar-  
10      bitrators shall fail to agree upon, select and name a  
11      neutral arbitrator within said 10 days, either party  
12      may request the American Arbitration Association to  
13      utilize its procedures for the selection of the neu-  
14      tral arbitrator. As soon as possible after receipt of  
15      such request, the neutral arbitrator will be selected  
16      in accordance with rules and procedures prescribed by  
17      the American Arbitration Association for making such  
18      selection. The neutral arbitrator so selected will  
19      not, without the consent of both parties, be the same  
20      person who was selected as mediator pursuant to sub-  
21      section 2 nor any member of the fact-finding board  
22      selected pursuant to subsection 3. As soon as possi-  
23      ble after the selection of the neutral arbitrator,  
24      the 3 arbitrators or if either party shall not have  
25      selected its arbitrator, the 2 arbitrators, as the  
26      case may be, shall meet with the parties or their  
27      representatives, or both, forthwith, either jointly  
28      or separately, make inquiries and investigations,  
29      hold hearings, or take such other steps as they deem  
30      appropriate. If the neutral arbitrator is selected by  
31      utilizing the procedures of the American Arbitration  
32      Association, the arbitration proceedings will be con-  
33      ducted in accordance with the rules and procedures of  
34      the American Arbitration Association. The hearing  
35      shall be informal, and the rules of evidence prevail-  
36      ing in judicial proceedings shall not be binding.  
37      Any and all documentary evidence and other data  
38      deemed relevant by the arbitrators may be received in  
39      evidence. The arbitrators shall have the power to ad-  
40      minister oaths and to require by subpoena the attend-  
41      ance and testimony of witnesses, the production of  
42      books, records and other evidence relative or perti-

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1       nent to the issues represented to them for determina-  
2       tion.

3       If the controversy is not resolved by the parties  
4       themselves, the arbitrators shall proceed as follows:  
5       With respect to a controversy over salaries, pensions  
6       and insurance, the arbitrators will recommend terms  
7       of settlement and may make findings of fact; such  
8       recommendations and findings will be advisory only  
9       and will be made, if reasonably possible, within 30  
10      days after the selection of the neutral arbitrator;  
11      the arbitrators may in their discretion, make such  
12      recommendations and findings public, and either party  
13      may make such recommendations and findings public if  
14      agreement is not reached with respect to such find-  
15      ings and recommendations within 10 days after their  
16      receipt from the arbitrators; with respect to a con-  
17      troversy over subjects other than salaries, pensions  
18      and insurance, the arbitrators shall make determina-  
19      tions with respect thereto if reasonably possible  
20      within 30 days after the selection of the neutral ar-  
21      bitrator; such determinations may be made public by  
22      the arbitrators or either party; and if made by a ma-  
23      jority of the arbitrators, such determinations will  
24      be binding on both parties and the parties will enter  
25      an agreement or take whatever other action that may  
26      be appropriate to carry out and effectuate such bind-  
27      ing determinations; and such determinations will be  
28      subject to review by the Superior Court in the manner  
29      specified by section 972. The results of all arbi-  
30      tration proceedings, recommendations and awards con-  
31      ducted under this section shall be filed with the  
32      Maine Labor Relations Board at the offices of its ex-  
33      ecutive director simultaneously with the submission  
34      of the recommendations and award to the parties. In  
35      the event the parties settle their dispute during the  
36      arbitration proceeding, the arbitrator or the chair-  
37      man of the arbitration panel will submit a report of  
38      his activities to the Executive Director of the Maine  
39      Labor Relations Board not more than 5 days after the  
40      arbitration proceeding has terminated.

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1 The provisions of this subsection shall not apply to  
2 arbitration involving teachers and public employers  
3 of teachers.

4 Sec. 3. 26 MRSA §965, sub-§4-A is enacted to  
5 read:

6 4-A. Arbitration involving teachers. This  
7 subsection shall apply only to arbitration involving  
8 teachers and public employers of teachers.

9 A. A bargaining agent may request arbitration  
10 only when:

11 (1) A period of 45 days has passed from the  
12 submission of the findings and recommenda-  
13 tions contained in the fact-finders' report,  
14 which 45-day period consists of the 30-day  
15 period referred to in subsection 3, plus 15  
16 more days; and

17 (2) Either 60 days have passed since the  
18 expiration date of the most recent collec-  
19 tive bargaining agreement for the bargaining  
20 unit, or the bargaining unit has never pre-  
21 viously had a collective bargaining agree-  
22 ment.

23 B. The bargaining agent shall make the request  
24 for arbitration by notifying the executive direc-  
25 tor and by serving written notice upon the em-  
26 ployer or its representative.

27 C. Upon notice of the bargaining agent's request  
28 for arbitration, the parties shall have 7 days  
29 from receipt of the notice to jointly agree to an  
30 arbitration procedure which shall result in a  
31 binding determination of their controversy; the  
32 agreed upon plan shall include the number of ar-  
33 bitrators, the means of selection of the arbitra-  
34 tors and the form of arbitration. The agreed  
35 upon plan shall be filed within the 7-day period

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1           with the executive director.

2           D. When the parties do not agree upon an arbit-  
3           ration procedure as provided for in paragraph C,  
4           either party to the dispute may implement the  
5           procedures provided for in this subsection by no-  
6           tifying the executive director and the other par-  
7           ty to the dispute of the failure to agree. Upon  
8           -serving that notice, the serving party shall re-  
9           quest the American Arbitration Association to  
10           submit to each of the parties identical lists of  
11           7 names of arbitrators who would be eligible and  
12           available to act as a neutral arbitrator in the  
13           existing controversy. Within 7 days from the  
14           date when both parties are in receipt of the  
15           list, they shall meet for the purpose of select-  
16           ing an arbitrator. Selection of the single ar-  
17           bitrator shall be by means prescribed by the  
18           American Arbitration Association.

19           Upon notice of selection, the arbitrator shall  
20           set the time and place for a hearing to be held  
21           within the municipality involved or within the  
22           municipality wherein the governmental unit in-  
23           volved is located.

24           The arbitrator shall call the hearing within 14  
25           days of his notice of selection. If the selected  
26           arbitrator can not begin the hearing within the  
27           14-day period, he may ask the executive director  
28           for an extension. The executive director may, at  
29           his discretion, grant the extension which may be  
30           to a time certain or until the arbitrator has  
31           completed other specified duties. The decision  
32           of the executive director to grant or not to  
33           grant an extension is final. At least 7 days  
34           prior to the hearing, the arbitrator shall pro-  
35           vide notice of the time and place of the hearing  
36           to the employer, bargaining agent and executive  
37           director.

38           Not less than 2 days prior to the commencement of

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1       the hearing, each party shall file with the execu-  
2       tive director and the arbitrator and deliver to  
3       the other party a proposed collective bargaining  
4       agreement, in numbered paragraphs, which that  
5       party is willing to execute and the cost data for  
6       all provisions of the proposed agreement. At the  
7       commencement of the hearing, each party shall  
8       file with the arbitrator a reply setting forth  
9       those paragraphs of the proposed agreement of the  
10       other party which it is willing to accept, and  
11       those paragraphs of the proposed agreement of the  
12       other party which it is unwilling to accept, to-  
13       gether with any alternative contract language  
14       which it would accept in lieu of those paragraphs  
15       which it is unwilling to accept. At any time  
16       prior to the expiration of the 10-day period af-  
17       ter the taking of the testimony, the parties may  
18       jointly file with the arbitrator stipulations  
19       setting forth the agreement provisions which both  
20       parties have agreed to accept. Within 5 days af-  
21       ter the conclusion of taking testimony, the arbi-  
22       trator shall forward to each party and to the ex-  
23       ecutive director an arbitration statement, set-  
24       ting forth in numbered paragraphs all agreement  
25       provisions agreed upon by both parties in the  
26       proposed agreements, the replies and the stipula-  
27       tions, and stating, in numbered paragraphs, those  
28       issues which are resolved. The arbitration  
29       statement shall set forth in numbered paragraphs  
30       all of the unresolved items and identify which of  
31       the unresolved items are economic issues. The  
32       determination of the arbitrator as to the issues  
33       in dispute and as to which issues are economic  
34       shall be conclusive. Within 10 days after the  
35       conclusion of the taking of testimony, the par-  
36       ties shall file with the arbitrator, with a copy  
37       to the opposing party, its statement of last best  
38       offer setting forth, in numbered paragraphs cor-  
39       responding to the statement of unresolved issues  
40       contained in the arbitration statement, the final  
41       agreement proposed by that party. Within 20 days  
42       after the last day for filing the statements of

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1           last best offer, the arbitrator shall issue his  
2           decision on all unresolved issues set forth in  
3           the arbitration statement. A copy of the deci-  
4           sion shall be distributed to each party and to  
5           the executive director. The arbitrator shall  
6           treat each unresolved issue set forth in the ar-  
7           bitration statement as a separate question to be  
8           decided by him. In deciding each economic issue,  
9           the arbitrator shall accept the final provision  
10          relating to such unresolved issue as contained in  
11          the statement of last best offer of one party or  
12          the other party. In deciding all other ques-  
13          tions, the arbitrator shall accept the final pro-  
14          vision relating to such unresolved issue as con-  
15          tained in the statement of last best offer of one  
16          party or the other party, except when the arbi-  
17          trator finds that a more equitable resolution of  
18          the question may be reached by the arbitrator  
19          writing a different provision than either party  
20          offered on the question.

21          Within 10 days after the issuance of the  
22          arbitrator's decision, the parties shall sign an  
23          agreement binding each party to the decision, un-  
24          less within that 10-day period the parties both  
25          agree to a different agreement and execute that  
26          agreement in the form of a binding contract.  
27          When the final contract differs from the  
28          arbitrator's decision, a copy of the contract  
29          shall be forwarded to the executive director.

30          The arbitration hearing shall be conducted in ac-  
31          cordance with the rules and procedures of the  
32          American Arbitration Association. The hearing  
33          shall be informal, and the rules of evidence pre-  
34          vailing in judicial proceedings shall not be  
35          binding. Any documentary evidence and other data  
36          deemed relevant by the arbitrator may be received  
37          in evidence. The fact-finders' report will be in  
38          all cases the first evidence received by the ar-  
39          bitrator.



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1       E. The arbitrator or each of the arbitrators, in  
2       those cases where the parties have agreed to a  
3       procedure requiring more than one arbitrator,  
4       shall have the power to administer oaths and to  
5       require by subpoena the attendance and testimony  
6       of witnesses, and the production of books,  
7       records and other evidence relative or pertinent  
8       to the issues presented to them for determina-  
9       tion.

10       F. The final decision of the arbitrator or arbi-  
11       trators shall be subject to review by the Superi-  
12       or Court in the manner specified by section 972.

13       G. In reaching a decision under this paragraph,  
14       the arbitrator shall consider the following fac-  
15       tors:

16               (1) The negotiations between the parties  
17               prior to arbitration;

18               (2) The interests and welfare of the public  
19               and financial ability of the governmental  
20               unit to finance the cost items proposed by  
21               each party to the dispute;

22               (3) Changes in the cost of living;

23               (4) The interests and welfare of the em-  
24               ployee group;

25               (5) Comparison of the wages, hours and  
26               working conditions, including, but not lim-  
27               ited to, hazards of the job, of the employ-  
28               ees involved in the arbitration proceeding  
29               with the wages, hours and working conditions  
30               of other employees performing similar ser-  
31               vices in public and private employment in  
32               other jurisdictions competing in the same  
33               labor market;

34               (6) The overall compensation presently re-

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1 ceived by the employees, including direct  
2 wage compensation, vacation, holidays and  
3 excused time, insurance and pensions, medi-  
4 cal and hospitalization benefits, the conti-  
5 nuity and stability of employment and all  
6 other benefits needed;

7 (7) Such other factors not confined to this  
8 paragraph which are normally and  
9 traditionally taken into consideration in  
10 the determination of wages, hours and work-  
11 ing conditions through voluntary collective  
12 bargaining, mediation, fact-finding, arbi-  
13 tration or otherwise between the parties, in  
14 the public service or in private employment,  
15 including wage and price statistics compiled  
16 by the State or Federal Government;

17 (8) The need of the public employer for  
18 qualified employees;

19 (9) Conditions of employment in similar oc-  
20 cupations outside the governmental unit;

21 (10) The need to maintain appropriate rela-  
22 tionships between different occupations in  
23 the governmental unit; and

24 (11) The need to establish fair and reason-  
25 able conditions in relation to job qualifi-  
26 cations and responsibilities.

27 H. Nothing in this subsection in any way limits  
28 or restricts the right of public employees and  
29 their employers to arbitrate issues that arise  
30 under a contract, that is, so-called grievance  
31 arbitration.'

32 STATEMENT OF FACT

33 This amendment removes the Part of the bill pro-

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1     viding teacher recognition grants and mandates bind-  
2     ing arbitration including last best offer in contract  
3     disputes between teachers and administrative units.

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Filed by Rep. Mike Michaud of E. Millinocket  
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