

MAINE STATE LEGISLATURE

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THE MAINE TORT CLAIMS ACT

Report of a Study by the
JOINT STANDING COMMITTEE ON JUDICIARY
to the
111th Maine Legislature
January, 1984

Study Subcommittee:

Sen. Samuel Collins (Chair)
Sen. Paul Violette
Rep. Robert Carrier
Rep. Martin Hayden
Rep. John Joyce

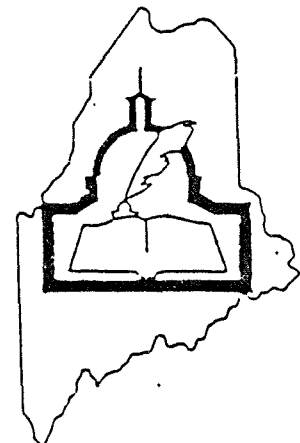
Additional Members of the Full Committee:

Sen. Richard Trafton (Chair)
Rep. Barry Hobbins (Chair)
Rep. Sharon Benoit
Rep. David Soule
Rep. Lloyd Drinkwater
Rep. James Reeves
Rep. Christopher Livesay
Rep. Ruth Foster

Staff:

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A STUDY OF THE MAINE TORT CLAIMS ACT

BACKGROUND

Seven years ago the Legislature enacted the Maine Tort Claims Act. Since that time governmental entities and their employees have been immune from suit on any and all tort claims seeking recovery of damages except as expressly provided by statute.

During the First Regular Session of the 111th Legislature, two bills were heard before the Joint Standing Committee on the Judiciary addressing the issue of liability of employees of governmental entities. ID 482, AN ACT to Limit the Personal Liability of Municipal Employees under the Maine Tort Claims Act, sought to extend to municipal and county employees the same limits on personal liability that exist for state employees. This bill received a divided committee report and was indefinitely postponed by both houses of the Legislature. The second bill, ID 829, AN ACT to Amend the Maine Tort Claims Act, proposed a major decrease in the protection the Tort Claims Act gives to governmental entities and their employees. Prior to taking any action on ID 829 the Judiciary Committee wished to study the operation of the Maine Tort Claims Act based on the experience to date. Accordingly ID 829 was withdrawn and the Judiciary Committee sought approval for a study of the Maine Tort Claims Act. The study was authorized for the interim following the First Regular Session of the 111th Legislature. This report contains the results of that study.

PROCEDURE

The Committee appointed a subcommittee of five members to study the Tort Claims Act and report to the full Committee. The subcommittee members include Senator Collins, Chairman; Senator Violette, Representative Carrier, Representative Hayden, and Representative Joyce. The subcommittee met in August, 1983, in a public meeting. Comments were received by the subcommittee from Richard Dutting, a consulting Civil Engineer from Pittsfield, and Kay Rand, a representative of the Maine Municipal Association. In addition to receiving comments from the public, the subcommittee discussed briefly the history of the enactment of the Maine Tort Claims Act and the current provisions of that Act and reviewed current literature from legal periodicals.

Since the Office of the Attorney General represents the State in all tort claims against the State, that Office was consulted to ascertain their experience under the Maine Tort Claims Act. Assistant Attorney General Robert Stolt indicated that the State had experienced no major problems with the current statutory provisions of the Maine Tort Claims Act. He further indicated that the experience under the Act was too limited to consider amending the Act at this time and suggested that a longer time period would be necessary to effectively evaluate the operation of the Act.

In December, the full Committee met to consider the findings and recommendation of the subcommittee.

FINDINGS AND RECOMMENDATION

The Committee finds that in the seven years since enactment of the Maine Tort Claims Act there have been no serious widespread problems identified. It would appear advisable to allow additional time for the law to be tested and interpreted in the courts before any legislative change be instituted to amend the Act. In view of these findings, the Committee recommends that the Maine Tort Claims Act not be amended at the present time.