

MAINE STATE LEGISLATURE

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(EMERGENCY)

ONE HUNDRED AND EIGHTH LEGISLATURE

Legislative Document

No. 1051

H. P. 856

House of Representatives, March 16, 1977

On Motion of Ms. Goodwin of Bath referred to the Committee on Appropriations and Financial Affairs. Sent up for concurrence and ordered printed.

EDWIN H. PERT, Clerk

Presented by Mr. Morton of Farmington.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-SEVEN

RESOLVE, Appropriating \$225,665.36 for Unpaid Liability of State of Maine to Eleanor Turner, as Administratrix of the Estate of Durwood G. Turner, Durwood G. Turner, Jr., David G. Turner, Ellen S. Turner and Francis Fitzmaurice.

Whereas, Acts and resolves of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, Eleanor Turner, as Administratrix of the Estate of Durwood G. Turner, Durwood G. Turner, Jr., David G. Turner, and Ellen S. Turner, all of North Chesterville, County of Franklin and State of Maine, and Francis Fitzmaurice of New Vineyard, County of Franklin and State of Maine, hereinafter sometimes collectively referred to as the "Judgment Creditors," were authorized by Chapter 9 of the Resolves of the 107th Legislature to bring a civil action against the State of Maine as a result of the death of Durwood G. Turner and the severe and permanent injuries sustained by Durwood G. Turner, Jr., David G. Turner, Ellen S. Turner and Francis Fitzmaurice as a result of an automobile accident on the Knowlton Corner Road, a State highway in Farmington, Maine on July 7, 1971, which accident, death and injuries allegedly were caused solely by the negligence of the State of Maine Highway Department; and

Whereas, following trial of said civil action before a Justice of the Superior Court sitting with jury, a verdict was returned and judgments were entered against the State of Maine in favor of Eleanor Turner, as Administratrix of the Estate of Durwood G. Turner, in the amount of \$384,763.50 together with interest and costs and against the State of Maine in favor of Durwood G. Turner, Jr., in the amount of \$10,037 together with interest and costs and against the State of Maine in favor of David G. Turner, in the amount of

\$5,287 together with interest and costs and against the State of Maine in favor of Eleanor S. Turner, in the amount of \$8,100 together with interest and costs and against the State of Maine in favor of Francis Fitzmaurice, in the amount of \$27,000 together with interest and costs; and

Whereas, the Legislative Resolve authorizing said civil action provided, in pertinent part, "Any judgment that may be recovered against the State of Maine in said civil action shall be payable from the General Highway Fund on final process issued by said Superior Court or, if appealed, the Supreme Judicial Court, and costs may be taxed for the parties as they recover in said action. Any recovery in said action, including any adjudicated right of contribution or indemnification, shall not be in excess of Two Hundred Fifty Thousand Dollars (\$250,000) including costs;" and

Whereas, the appeal of the State of Maine from said judgments was dismissed by the Supreme Judicial Court on September 15, 1976; and

Whereas, by certification of the Supreme Judicial Court on January 26, 1977 said judgments entered against the State of Maine now are final; and

Whereas, the total amount of said judgments against the State of Maine, as entered by the Superior Court and made final by the Supreme Judicial Court, exceeds the amount of recovery set forth in the Legislative Resolve authorizing said civil action; and

Whereas, the amount of the judgment entered in favor of the Estate of Durwood G. Turner on the jury verdict against the State of Maine, including interest and costs, amounts to \$445,670.58 as of January 26, 1977; and

Whereas, the amount of the judgment entered in favor of Durwood G. Turner, Jr. on the jury verdict against the State of Maine, including interest and costs, amounts to \$11,474.63 as of January 26, 1977; and

Whereas, the amount of the judgment entered in favor of David G. Turner on the jury verdict against the State of Maine, including interest and costs, amounts to \$6,044.27 as of January 26, 1977; and

Whereas, the amount of the judgment entered in favor of Ellen S. Turner on the jury verdict against the State of Maine, including interest and costs, amounts to \$9,260.18 as of January 26, 1977; and

Whereas, the amount of the judgment entered in favor of Francis Fitzmaurice on the jury verdict against the State of Maine, including interest and costs, amounts to \$33,215.80 as of January 26, 1977; and

Whereas, the \$250,000 limitation on recovery imposed by the Legislative Resolve authorizing said civil action may limit the pro rata damages recoverable by the Estate of Durwood G. Turner to \$220,240 and by Durwood G. Turner, Jr. to \$5,660 and by David G. Turner to \$2,982.50 and by Ellen S. Turner to \$4,567.50 and by Francis Fitzmaurice to \$16,550; and

Whereas, the Estate of Durwood G. Turner, Durwood G. Turner, Jr., David G. Turner, Ellen S. Turner and Francis Fitzmaurice have been delayed since the death of Durwood G. Turner and their injuries on July 7, 1971 from recovering any damages as a result of the injuries they sustained solely as a result of the negligence of the State of Maine Highway Department; and

Whereas, such delay has worked a great hardship upon all Judgment Creditors; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore, be it

Appropriation. Resolved: That there is appropriated from the State Treasury the sum of \$255,665.36 to compensate in full the Estate of Durwood G. Turner for his death which was caused solely by the negligence of the State of Maine; Durwood G. Turner, Jr. for the injuries he sustained solely as a result of the negligence of the State of Maine, David G. Turner for the injuries he sustained solely as a result of the negligence of the State of Maine, Ellen S. Turner for the injuries she sustained solely as a result of the negligence of the State of Maine and Francis Fitzmaurice for the injuries he sustained solely as a result of the negligence of the State and the Treasurer of State hereby is authorized and directed to pay the sum hereby appropriated as follows:

Eleanor Turner, as Administratrix of the Estate of Durwood G. Turner	\$225,430.58
Durwood G. Turner, Jr.	5,814.53
David G. Turner	3,061.77
Ellen S. Turner	4,692.68
Francis Fitzmaurice	16,665.80

Emergency clause. In view of the Emergency cited in the preamble, this resolve shall take effect when approved.

STATEMENT OF FACT

The purpose of this bill is to appropriate funds to pay in full the liability of the State of Maine to the victims of a 1971 fatal automobile accident which a judge and jury found to be caused solely by the then State Highway Department.

This bill requires an appropriation of \$255,665.36.