

MAINE STATE LEGISLATURE

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L.D. 923

(Filing No. H-158)

STATE OF MAINE
HOUSE OF REPRESENTATIVES
113TH LEGISLATURE
FIRST REGULAR SESSION

HOUSE AMENDMENT "A" to H.P. 682, L.D. 923,
Bill, "AN ACT to Amend the Maine Tort Claims Act."

Amend the bill by striking out all of section 1
and inserting in its place the following:

'Sec. 1. 14 MRSA §8111, sub-§1, ¶¶B and C, as
enacted by PL 1977, c. 2, §2, are amended to read:

B. The undertaking, or failure to undertake, any
judicial or quasi-judicial act, including, but
not limited to, the granting, granting with con-
ditions, refusal to grant or revocation of any
license, permit, order or other administrative
approval or denial; or

C. The performance or failure to exercise or
perform a discretionary function or duty, whether
or not the discretion is abused; and whether or
not the statute, charter, ordinance, order, reso-
lution, regulation or resolve under which the
discretionary function or duty is performed is
valid; or

Sec. 2. 14 MRSA §8111, sub-§1, ¶D is enacted to
read:

D. An intentional act or omission within the
course and scope of their employment and for
which the governmental entity is not liable; pro-
vided that such immunity shall not exist in any
case in which an employee's actions are found to
have been in bad faith.

Sec. 3. 14 MRSA §8112, sub-§1, as repealed and
replaced by PL 1977, c. 578, §4, is repealed and the
following enacted in its place:

HOUSE AMENDMENT "A" to H.P. 682, L.D. 923

1 1. When governmental entity is not liable. A
2 governmental entity, with the consent of the employ-
3 ee, shall assume the defense of and, in its discre-
4 tion, may indemnify any employee against a claim
5 which arises out of an act or omission occurring
6 within the course or scope of his employment and for
7 which the governmental entity is not liable.

8 If the defense of its employee will otherwise create
9 a conflict of interest between the governmental enti-
10 ty and the employee, the governmental entity shall be
11 liable for reasonable fees for the employee's attor-
12 ney and for his court costs, except in the event that
13 the employee is determined to be criminally liable
14 for the acts or omissions in question.

15 This subsection does not apply if the employee
16 settles the claim without the consent of the govern-
17 mental entity.

18 This subsection does not apply if notice is not re-
19 quired to have been filed as provided in section
20 8107, if the employee does not notify the governmen-
21 tal entity within 30 days after receiving actual
22 written notice of the claim against him or within 15
23 days after the service of a summons and complaint
24 upon him, and if the governmental entity is preju-
25 diced thereby.'

26 Further amend the bill by renumbering the sec-
27 tions to read consecutively.

HOUSE AMENDMENT "A" to H.P. 682, L.D. 923

1 STATEMENT OF FACT

2 The amendment retains a governmental entity's
3 discretion in indemnifying employee acts or omissions
4 and further provides a qualified immunity for govern-
5 mental employee good faith acts or omissions within
6 the scope of employment. The amendment also clarifies
7 that a governmental entity will not have to defend
8 an employee for an act or omission for which he
9 has been found criminally liable.

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Filed by Rep. Paradis of Augusta
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