

MAINE STATE LEGISLATURE

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119th MAINE LEGISLATURE

FIRST REGULAR SESSION-1999

Legislative Document

No. 1865

H.P. 1304

House of Representatives, March 16, 1999

An Act to Conform the Highway Defect Statute to the Maine Tort Claims Act.

Reference to the Committee on Judiciary suggested and ordered printed.

A handwritten signature in black ink that reads "Joseph W. Mayo".

JOSEPH W. MAYO, Clerk

Presented by Representative JABAR of Waterville.
Cosponsored by Representative LaVERDIERE of Wilton.

Be it enacted by the People of the State of Maine as follows:

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4 **Sec. 1. 14 MRSA §8104-A, sub-§4**, as enacted by PL 1987, c. 740, §4, is amended to read:

6 **4. Road construction, street cleaning or repair.** A
8 governmental entity is liable for its negligent acts or omissions
arising out of and occurring during the performance of
10 construction, street cleaning or repair operations on any
highway, town way, sidewalk, parking area, causeway, bridge,
12 airport runway or taxiway, including appurtenances necessary for
the control of those ways including, but not limited to, street
14 signs, traffic lights, parking meters and guardrails. A
governmental entity is ~~not~~ liable for any defect, lack of repair
or lack of sufficient railing in any highway, town way, sidewalk,
16 parking area, causeway, bridge, airport runway or taxiway or in
any appurtenance thereto.

18 **Sec. 2. 23 MRSA §3655**, as amended by PL 1979, c. 663, §138,
20 is repealed.

22 **Sec. 3. 23 MRSA §3656** is amended to read:

24 **§3656. Repair within 6 years; location conclusive**

26 When on trial of any such action or indictment as provided
for in ~~section 3655~~ Title 14, section 8104-A, subsection 4 if it
28 appears that the defendant county or town has made repairs on the
way or bridge within 6 years before the injury, ~~it shall the~~
30 defendant county or town may not deny the location of such that
way or bridge.

32 **Sec. 4. 35-A MRSA §2503, sub-§6**, as enacted by PL 1987, c.
34 141, Pt. A, §6, is amended to read:

36 **6. Liability.** Installation and maintenance of the facility
and its appurtenances in accordance with the terms of the permit
38 and the provisions of chapter 23 and this chapter relieve the
applicant of liability to others by reason of location of its
40 facility and appurtenances and ~~no a person has any right of~~
~~recovery~~ may not recover under Title 23, ~~section 3655, 14,~~
42 section 8104-A, subsection 4 because of the location,
installation and maintenance and the applicant ~~will be~~ is liable
44 only for acts of negligence in the installation or maintenance of
the facility and its appurtenances.

SUMMARY

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4 Current law allows a person to bring a civil action under
the highway laws against a town or county for damages incurred as
6 a result of a defect, failure to repair or lack of sufficient
railing on a highway or sidewalk, among other areas, as long as
the town or county had notice of the defect or omission. A
8 town's liability is limited to \$6,000.

10

However, under the Maine Tort Claims Act, government
12 entities are exempt from liability for any defect, lack of repair
or lack of sufficient railing in any highway or sidewalk, among
other areas, unless the area was under construction, street
14 cleaning or repair.

16

This bill reconciles the 2 laws by removing the exemption
under the Maine Tort Claims Act, thus making government entities
18 liable for defects, lack of repair or lack of sufficient railing.