

# MAINE STATE LEGISLATURE

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STATE OF MAINE  
ONE HUNDRED AND EIGHTH LEGISLATURE  
**COMMITTEE ON JUDICIARY**

December 6, 1977

John Martin, Chairman  
Legislative Council  
State House  
Augusta, Maine 04333

Dear Representative Martin:

The Joint Standing Committee on Judiciary on its study of the Maine Tort Claims Act as provided in Section 4 of Chapter 2 of the Public Laws of 1977 is pleased to submit its report. The Committee reviewed the issues of governmental immunity and liability of governmental employees. Legislation provided in the report addresses a problem relating to procedures for filing tort claims and other types of claims.

Sincerely,

*Samuel W. Collins*

Sen. Samuel W. Collins, Jr.  
Senate Chairman

*Richard A. Spencer*  
Rep. Richard A. Spencer  
House Chairman

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STATE OF MAINE  
ONE HUNDRED AND EIGHTH LEGISLATURE  
COMMITTEE ON JUDICIARY

FIRST DRAFT

Report of the Joint Standing Committee  
on Judiciary

Study of the Maine Tort Claims Act

December 1, 1977

Thomas P. Downing, Legislative Assistant

The Joint Standing Committee on Judiciary was ordered by the 107th Legislature to study the issues of governmental immunity, including the questions of liability of governmental employees, the question of the removal from immunity of further areas of governmental activity and the feasibility of establishing a state fund or joint underwriting association to assist municipalities with their insurance problems. The study order was contained in Section 4 of Chapter 2 of the Public Laws of 1977, which is the Maine Tort Claims Act.

Later in the same session, the Legislature enacted Chapter 578 of the Public Laws, a major revision of the Tort Claims Act. That bill changed the treatment of the liability of state employees and defined in greater detail the areas of governmental liability and immunity, two of the aspects that the committee had been directed to study.

Because these changes have been made, because the law, as amended, has been in effect only since July 1, 1977, as far as exposure to liability is concerned and because very few claims had been filed by the study's reporting date, the committee felt that it would not be necessary or appropriate to make any further major changes in the law. Further problems may arise as experience with the law is developed.

The only immediate problem that came to the committee's attention was a possible confusion between the administrative procedures for filing tort claims under the act and the procedures for filing other types of claims with the State Claims Board. The committee therefore recommends passage of a bill to clarify this situation. A copy of the proposed bill is attached as an appendix to this report. The bill is explained in detail in its Statement of Fact.

The bill also repeals the provision of the original bill that automatically repealed the law as of February 1, 1979.

AN ACT to Amend the Maine Tort Claims Act.

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

Sec. 1. 5 MRSA §1510, sub-§1, first ¶, first sentence, as enacted by PL 1975, c. 771, §69, is amended to read:

Every claim against the State or any of its agents, which ~~is~~ can not be submitted or paid under a specific statutory provision other than this section and which does not exceed the sum of \$2,000, shall be submitted to the State Claims Board, which shall approve, partially approve or disapprove that claim.

Sec. 2. 5 MRSA §1510, sub-§1, first ¶, as enacted by PL 1975, c. 771, §69, is amended by adding at the end a new sentence to read:

A claim submitted under this section shall not be disapproved solely because a claim based on the same facts was submitted under a different statutory procedure and was disallowed.

Sec. 3. 14 MRSA §8107, sub-§4, first paragraph, as enacted by PL 1977, c. 2, §2, is amended by adding at the end a new sentence to read:

A claim filed under this section shall not be held invalid solely because a claim based on the same facts was filed under a different statutory procedure and was disallowed.

Sec. 4. The second sentence of the first paragraph of Section 5 of Chapter 2 of the Public Laws of 1977 is repealed.

Statement of Fact

This bill is the result of the study by the Joint Standing Committee on Judiciary of tort claims against governmental entities that was ordered by the Legislature as part of the emergency passage of the Maine Tort Claims Act at the beginning of the First Regular Session. Most of the areas that the committee was directed to study were treated by the passage later in the session of a bill, Chapter 578 of the Public Laws, that made major revisions in the act.

Very few claims had been filed under the act by the time the study was completed. The only immediate problem that came to the committee's attention was a possible confusion between the administrative procedures for filing tort claims and the procedures for filing with the State Claims Board.

The first section of the bill clarifies a provision of the law on the State Claims Board.

The second and third sections of the bill make clear that a person who submits a claim to the wrong agency will be able to file it with the correct agency without any prejudice because of

the mistake.

Section 4 of the bill repeals the provision of the original bill that stated the Tort Claims Act would remain in effect only until February 1, 1979. The law will therefore not be automatically repealed on that date and will remain in effect.