

MAINE STATE LEGISLATURE

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LEGISLATIVE RECORD

OF THE

***One Hundred and Eighth
Legislature***

OF THE

STATE OF MAINE

Volume I

January 5, 1977 to May 25, 1977

KJ PRINTING
AUGUSTA, MAINE

Mr. MERRILL: Mr. President and members of the Senate, speaking only as a Senator from Cumberland, which of course is the only way I can speak, not holding a position of leadership as does the previous speaker. I want to say that I share many of his concerns, but I am not sure that the remedy that he suggests is the proper one or necessary one. As I understand the bill before us, it will give us plenty of time to make changes as time goes on before there will be any major changes in the position that the State faces, or the municipalities face in terms of ability to sue. In point of fact, I would like to respond to one specific area that the Senator from Cumberland, Senator Conley, has raised, because it is near and dear to my heart, and that is the area of the liability exposure on the part of those people who the State employs in its service, and municipalities employ in its service.

This Bill is certainly not a giant step, but a step forward in regard to those employees. They are in a better position now than they were a year and a half ago, or a day ago, or should I say a better position in two ways. In the narrow area that caused our governments to be sued. The total that they could be sued for, the \$300,000.00 total, that umbrella covers the employee as well, so the total recovery against the employee and the governmental entity cannot exceed \$300,000.00, in that narrow area of action that puts the State employee in a position which is at least as good as an employee in the private sector.

And looking at it in a very frank and honest way, what that means to an employee is he, in fact, is going to end up paying little or nothing in any case, because obviously the deep pocket that is available is the pocket that the Plaintiff is going to go after, and, woe, as great a trouble as we have financially in this State of ours, we are better off than most of the people we employ.

Outside of that area that we are opening up to be sued, there is at least provision for something that I have been working on for a couple of years, and had a Bill in to deal with it specifically last time, — the provision to help the public employee, the concern with pre-judgment attachments. It would at least say to the employee that we ask to go in and do our dirty work, for example in a mental institution, where he is faced with decisions every day, although being a paid employee and making judgments and decisions that he can be possibly sued for, to at least say to that employee that in the period of the suit your house will not be attached, and provide some sort of protection to that person. I don't think it is enough, but I think we are a lot better off than we were two days ago, and a lot better off than we were when the doctrine of sovereign immunity was alive and well in this State:

I would like to see at least that much, that step forward, enacted into law. Although this certainly isn't a giant step forward, for the people we employ and it represents, I think, an injustice in the sense that we leave the employees open to suit, a step that we ourselves are unwilling to be open to. It is a step in the right direction, and I think a step that we should take at this time. It certainly is not a step away from the concerns that the Senator from Cumberland, Senator Conley, raises.

Finally, let me say, there is no way to reach the ideals that the Senator from Cumberland proposes. There is no better example of the truth than what we were told before we began this work, that there is no solution to some of our problems. In the area of dealing with Governmental immunity, there is no way to say I want the Plaintiffs to be able to recover for actual damages done, but I don't want there to be a great exposure of the taxpayers. What one takes, the other will give. So it is a balancing

act at best. And then you have the other concerns that have to come forward and play a role as well, such as the concerns of the people for the State employee, and try to treat him fairly.

Any solution that you come to is not going to meet the ideals that the Senator from Cumberland, Senator Conley, has laid out. So it will be a balance, and I think as I said at the outset, this balance may be more conservative than I would like it to be, but certainly it will put us in a posture of taking a step away from the doctrine of sovereign immunity, which has all of the flaws that the Senator from Cumberland raises, only worse. It certainly isn't envisioned by the people who presented the work of the Committee here before the Senate today as a final solution, and I judge by the words that we have heard representing the opinion of the Committee by the Chairman, the Senator from Knox, Senator Collins, that they will be open and acceptable to proposed changes and improvements in what they have carved out here, and which they admit to be the beginning of a work of fashioning, slowly and carefully, the State exceptions to the doctrine of sovereign immunity.

The PRESIDENT: Is it now the pleasure of the Senate to accept the Ought to Pass new draft of the Committee?

Which report was Accepted. Under suspension of the rules, the Bill, in New Draft, Read Twice and Passed to be Engrossed. Sent down forthwith for concurrence.

Papers from the House Joint Resolution

A Joint Resolution in Memoriam:
WHEREAS, the Legislature has learned with deep regret of the death of Patricia K. Dunne, Treasurer of Cumberland County, (H. P. 118)
Comes from the House. Read and Adopted.

Which was Read and Adopted, in concurrence.

Joint Order

An Expression of Legislative Sentiment recognizing:

WHEREAS, Wellington Higgins of Winthrop Celebrated the 103rd Anniversary of his birth on January 25, 1977. (H. P. 139)

Comes from the House, Read and Passed.
Which was Read and Passed, in concurrence.

Joint Order

ORDERED, the Senate concurring, that the Joint Standing Committee on Local and County Government be directed to bring out a Resolve or Resolves for Laying of the County Taxes for the Years Nineteen Hundred and Seventy-seven and Nineteen Hundred and Seventy-eight. (H. D. 138)

Comes from the House. Read and Passed.
Which was Read.

The PRESIDENT: The Chair recognizes the Senator from Cumberland, Senator Jackson.

Mr. JACKSON: I move that this item be tabled.

The PRESIDENT: The Chair recognizes the Senator from Kennebec, Senator Speers.

Mr. SPEERS: I move this item lie on the table for one Legislative day.

The PRESIDENT: The Senator from Kennebec, Senator Speers, now moves that Item 1-3, H. P. 138, be tabled for one Legislative day, pending passage. Is this the pleasure of the Senate. It is a Vote.

Bills received from the House requiring reference to Committee were acted upon in concurrence.

Department of State

January 26, 1977

To the Honorable Senate of the
108th Legislature of the
State of Maine:

Examination of the initiative petitions relating to "An Act to Repeal the State Property Tax" filed with this office on January 19, 1977 has been completed.

The minimum number of valid signatures required to initiate this legislation has been determined to be 36,395. Our examination of these petitions reveals the following:

Number of petitions received 486

Number of valid signatures 46,583

In view of the foregoing determination of the number of valid signatures, it would appear that these petitions have met the constitutional requirements of the minimum of 36,395 valid signatures.

Respectfully,
MARKHAM L. GARTLEY
Secretary of State
(S. P. 85)

Which was Read and with accompanying papers Ordered Placed on File.

Under Suspension of the Rules, sent down forthwith for concurrence.

Out of Order and Under suspension of the Rules:

On motion by Mr. Speers of Kennebec,
ORDERED, The House concurring, that the communication together with bill, "An Act to Repeal the State Property Tax," Initiated Bill (I. B. 1) and accompanying petitions, be referred to the Joint Standing Committee on Judiciary for an investigation and report as to the sufficiency of the petitions; with the power on the part of the committee to subpoena witnesses. (S. P. 87)

Which was Read.

The PRESIDENT: The Chair recognizes the Senator from Kennebec, Senator Speers.

Mr. SPEERS: Mr. President, by accepting the former communication just prior to this item, the Legislature has now received the initiated Bill from the Secretary of State's Office.

In presenting this Order I do not mean in any way to indicate, or even raise questions as to the sufficiency, or raise doubt as to the validity of the petitions which have been sent to us. This matter is simply a routine matter, which is done with every initiated Bill that comes before the Legislature, and I would, therefore, move the passage of this Order.

Which was Read.

Under further suspension of the Rules, sent down forthwith for concurrence.

Department of Conservation

January 24, 1977

President of the Senate
Speaker of the House
State House
Augusta, ME 04333
Gentlemen.

I am pleased to submit herewith the first Biennial Report of the Bureau of Public Lands. The Report is submitted in accordance with the provisions of Title 12 M.R.S.A. §553.C. I would like to take this opportunity to extend my thanks to the members of the Legislature with whom we have worked, the several State agencies upon whom we have called for advice and assistance during the past two years and, especially, to the able and dedicated staff of this Bureau.

Respectfully submitted,
(Signed) LEE M. SCHEPPS
Director
Bureau of Public Lands
(H. P. 140)

Came from the House, Read and with accompanying papers, Ordered Placed on File.

Which was Read and with accompanying papers, Ordered Placed on File in concurrence.

Department of Indian Affairs

January 25, 1977

Mr. Edwin H. Pert