

MAINE STATE LEGISLATURE

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LEGISLATIVE RECORD

OF THE

***One Hundred and Eighth
Legislature***

OF THE

STATE OF MAINE

Volume II

May 26, 1977 to July 25, 1977

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**Senate Confirmation Session
September 16, 1977**

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tive relief. However, this is a new area in the law. It is not really a new area, but it is an extremely rarely used area which will require that the tenant run off to the Court and seek what he calls an injunctive relief. This is an affirmative injunctive relief, very rarely used in the law. What this would require is basically the Courts supervising the landlord to make sure that everything is being done properly.

This Bill becomes really dangerous in the long run. It becomes an ideal tenant Bill and very anti-landlord. I have a problem in seeing that this Bill becomes law. I would have been very happy with this Bill about six years ago when I was working as a legal aid in Boston. We could have really given it to the landlords on the chin over and over and over again, and just called the place unfit for human habitation. But you must remember one thing that has to come out here. What if the place is unfit for human habitation, and an individual, we will call him Charlie Brown, goes into an apartment building and wants to rent an apartment, and he sees the apartment, he approves of the apartment, there is an agreement, a contract to rent the apartment for X amount of dollars a week or a month or for the year. All of a sudden now the place becomes so unfit for human habitation because of causes not of his own, that he must run to the Court and get this affirmative injunctive relief. What would have caused the place to have become so uninhabitable in the space of time that he is in there?

Now I warn the members of this Body that the ones that I have seen have become uninhabitable over the years that I have done evictions or work with legal aid have generally been from the tenant himself. I recall the old days when a building was found uninhabitable, but that is because the tenant kept throwing his beer bottles through the windows, and after a while there were so many vacant spaces in places where there were formerly windows that the place became very cold and freezing.

Now if we pass this Bill, I think we are going to put a tremendous burden on the landlords in the State of Maine. If we, for example, force a landlord whose place has become uninhabitable because it has gone down to the point where it cannot be fixed, and the landlord seeks this affirmative injunctive relief from the Court the landlord cannot really go out of business any further. What he is going to have to do is fix the place. He is going to have to put the money up. He is going to have to stay in the business, because of this remedy that is almost never used today. So what we are saying here is you pass this Bill and you are going to have some real deep trouble.

I think that you should seriously read the portions of this Bill, read the Amendments and decide whether you really want to do this, because if this Bill passes you are going to have an awful lot of landlords who would rather stay out of the business, and at today's prices for homes you cannot afford to have too many landlords going out of business, so think about it very seriously before you do vote.

On Motion of Mr. Speers of Kennebec. Tabled until later in Today's Session. Pending the Motion of the Senator from Knox, Senator Collins, that the Senate accept the Majority Ought to Pass Report.

Divided Report

The Majority of the Committee on State Government on, RESOLUTION, Proposing an Amendment to the Constitution to Permit the Governor to Veto Items Contained in Bills Appropriating Money and Retaining the Power Within the Legislature to Override such Item Vetoes. (H. P. 1287) (L. D. 1520)

Reported that the same Ought Not to Pass.

Signed:

Senator:

MARTIN of Aroostook

Representatives:

CURRAN of S. Portland
BACHRACH of Brunswick
SILSBY of Ellsworth
LOCKE of Sebec
VALENTINE of York
MASTERTON of Cape Elizabeth
DIAMOND of Windham

The Minority of the same Committee on the same subject matter Reported that the same Ought to Pass.

Signed:

Senators:

COLLINS of Aroostook
SNOWE of Androscoggin

Representatives:

KANY of Waterville
CHURCHILL of Orland
STUBBS of Hallowell

Comes from the House, the Majority Report Read and Accepted.

Which Reports were Read.

The PRESIDENT Pro Tem: The Chair recognizes the Senator from Aroostook, Senator Collins.

Mr. COLLINS: Mr. President, I Move the Senate accept the Minority Ought to Pass Report, and would speak briefly to my Motion.

The PRESIDENT Pro Tem: The Senator has the floor.

Mr. COLLINS: Mr. President and Members of the Senate, this is a Bill that has been before this Body at another Session. It provides a management tool, I think, for the Chief Executive. It permits him to veto particular items in an Appropriations Bill, so that he does not have to make the judgment as to whether or not to accept or reject the entire budget. This ability is held in some 43 or 44 states, and I think it is time that the State of Maine also considered it.

The PRESIDENT Pro Tem: The Chair recognizes the Senator from Aroostook, Senator Martin.

Mr. MARTIN: Mr. President, I request a Division.

I think the Senator from Aroostook, Senator Collins, did an excellent job explaining the Bill. It is not a new idea. It was here in the last Session and it was soundly defeated in the last Session.

I strongly urge you to indefinitely postpone the Bill.

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

Mr. SPEERS: Mr. President and Members of the Senate, I hope it will not be considered a conflict of interest for me to be speaking on this Bill, and I am sure there are many who would dispute that it possibly could be, but I would urge this Body very strongly to accept the Minority Ought to Pass Report on this particular item.

This Bill has been introduced before, and this Body in its wisdom has passed the Bill before, and it seems to me to be eminently logical that the Chief Executive of this State should have the authority to identify those specific areas in an appropriations measure which he so very strongly disagrees with that he feels he must veto those particular items, and I would simply point out that the Legislature is giving up no more power than it has always had, because even if those specific items happen to be vetoed, they are returned to the Legislature and the Legislature has the opportunity, as it has with all vetoed items, of either sustaining or overriding the veto.

I would hope that the Senate would accept the Minority Ought to Pass Report on this Bill, and I would ask for a Roll Call.

The PRESIDENT Pro Tem: A Roll Call has been requested. In order for the Chair to order a Roll Call, it must be the expressed desire of one fifth of those Senators present and voting. Will all those Senators present in favor of a Roll

Call, please rise in their places to be counted.

Obviously, more than one-fifth having arisen, a Roll call is ordered.

The Chair recognizes the Senator from Penobscot, Senator Pray.

Mr. PRAY: Mr. President and Members of the Senate, in no way do I feel as if the good Majority Leader is going to have a conflict on this issue, but I would like to address one point one concern that I have on this issue.

I think it was the original intent of the Legislature, in separation of powers, and the fact that the Legislators were given the ability to accept the budget, and to amend certain Section of Legislation and then pass that Legislation on to the Governor for his total rejection or acceptance, and I think that if we accept this pending report today, that what we will be doing in attempt, we will be in a small way separating the powers of the Legislature. We will be passing on something to the Governor, something which we have not done in the past and which we have not seen fit to do in the past as the Legislature on the whole. I think that we should take careful consideration of that point before we continue on perhaps in this direction.

When I consider the Legislative process in the past, and the previous Session that I was here, and addressed a number of issues, particularly those within the budget process, I would be quite concerned with the actions of the Governor, the individual on the second floor, no matter present Governor or any future Governors. The powers that he would have to separate particular issues and to separate the Legislative Bodies on those issues. Many times there are Legislative matters that go through that some of us as individuals are opposed to. We can address that through the Amendment process here on the floor, or if there is something particular that we dislike then we can usually find an individual in either one Body or the other to address that issue through the Amendment process to take it out. I do not believe that we should be passing this on to any individual on the second floor.

The PRESIDENT Pro Tem: Is the Senate ready for the question. The pending question before the Senate is the Motion of the Senator from Aroostook, Senator Collins, that the Senate accept the Minority Ought to Pass Report of the Committee.

The doorkeepers will secure the Chamber.

The Secretary will Call the Roll.

YEA — Chapman, Collins, D.: Collins, S.: Curtis, Danton, Farley, Greeley, Hewes, Hichens, Huber, Jackson, Levine, Lovell, McNally, Morrell, O'Leary, Pierce, Redmond, Snowe, Speers, Trotzky.

NAY — Cummings, Mangan, Martin, Merrill, Minkowsky, Pray, Usher, Wyman.

ABSENT — Carpenter, Conley, Katz, Sewall.

21 Senators having voted in the affirmative, and 8 Senators in the negative, with 4 Senators being absent, the Motion to accept the Ought to Pass Report of the Committee does prevail.

The Bill Read Once, and Tomorrow Assigned for Second Reading.

Divided Report

The Majority of the Committee on Judiciary on, Bill, An Act Relating to Legal Representation and Indemnification of State Officers and Employees. (Emergency) (H. P. 1312) (L. D. 1559)

Reported that the same Ought to Pass in New Draft under new title: Bill, An Act to Revise the Maine Tort Claims Act. (H. P. 1679) (L. D. 1873)

Signed:

Senators:

COLLINS of Knox
CURTIS of Penobscot

Representatives:

BENNETT of Caribou
DEVOE of Orono

TARBELL, of Bangor
SEWALL, of Newcastle
GAUTHIER, of Sanford

The Minority of the same Committee on the same subject matter Reported that the same Ought to Pass in New Draft under new title: Bill, An Act to Revise the Maine Tort Claims Act. (H. P. 1680) (L. D. 1874)

Signed:

Senator:

MANGAN of Androscoggin

Representatives:

SPENCER of Standish
HOBBINS of Saco
NORRIS of Brewer
HENDERSON of Bangor
HUGHES of Auburn

Comes from the House, the Bill, in New Draft (H. P. 1680) (L. D. 1874) Passed to be Engrossed.

Which Reports were Read.

The PRESIDENT Pro Tem: The Chair recognizes the Senator from Knox Senator Collins.

Mr. COLLINS: Mr. President, I move passage of the Majority Ought to Pass in New Draft Report.

The PRESIDENT Pro Tem: The Chair recognizes the Senator from Androscoggin, Senator Mangan.

Mr. MANGAN: Mr. President, again I have to rise to oppose the Motion of the Chairman of Judiciary Committee, and I am a signer of the Minority Ought to Pass Report. There is basically only one distinction between the Majority Ought to Pass and the Minority Ought to Pass Report, and that basic distinction is called fairness.

As I look at this Bill, the Bill is basically a revision of the Maine Tort Claims Act, but the revision does simply one thing. It differs from the Bill that the Majority reported out in that it adds a provision in Section 8103, Subsection 1, that State employees are immune from Tort Liability to the same extent that the State is immune. What I foresee as quite a problem is that if the State is immune in a specific action and a State employee is thereby involved with that action, the person who is injured cannot sue the State of Maine. Therefore, the best place is to go against the State employee. It bothers me tremendously that the State should be so pure, sweet and clean it cannot be sued, and we are going to try to turn around and hit the State employee on it.

Now it is my impression that in those areas where the State is immune from suit, that State employee should automatically be immune from suit. In those areas where the State is not immune from suit, then the State employee is not immune from suit, and the Committee did get ample evidence that the cost of insurance for employees in the area where the State is not immune from suit has been found to be extremely reasonable.

What we are basically looking at here is the same Bill, 1873 and 1874, exactly the same Bill, with that one exception in 1874, which is the Minority Report. The Minority Report basically states let us be fair about all of this. If we are going to let the State get out of it because we are going to claim some sort of immunity, then the State employee who was involved in that same action should also be immune from being sued. Let us not leave the State employees wide open from law suits when the State of Maine will back off and say, ah ah, we are pure, we are sweet, we are immune. Do not touch us, but go after him. I feel that this protection under LD 1874 is important.

I think that we are here in the Legislature to pass legislation that is fair for everyone, and I think that we are the protectors of the people as far as Legislation is concerned, and I think that this fairness has to come through in its Legislation, and I think LD 1874 is the fairest one of the two to pass.

The PRESIDENT Pro Tem: The Chair recognizes the Senator from Knox, Senator Collins.

Mr. COLLINS: Mr. President, I am glad to join issue with my fellow Judiciary Member from Androscoggin, Senator Mangan, on the issue of fairness.

First, let me review just a bit where we are in governmental immunity. Prior to last October, it was a long established rule that governments were immune from suits, at least in the Tort Area. Last October the Court struck down that rule, saying that since it was a Court created rule that it felt it could unless the Legislature expressed a different policy.

The Legislature last January enacted the Maine Tort Claims Act, which reestablished the rule of sovereign immunity for governmental entities, but provided that commencing July 1st of this year there would be open to liability certain specific areas, particularly the areas of motor vehicle, equipment, construction and then the use and maintenance of public buildings, certain other carefully defined areas. The areas that we intended to open were areas where it appeared likely that an insurance program could be arranged within the reach of the pocketbooks of Maine communities and the State, if the State would wish to have that kind of protection. In some areas, the state prefers to be a self insurer. But for the small towns, it is vitally important that there be insurance in the areas where the town is exposed to liability.

We invited the insurance industry and the representatives of our towns and cities to continue to study this matter and to report back to the Judiciary Committee. This happened. The insurance industry found that they could insure the exposure. They found that the price was within reach, in general, but they also found certain flaws in the language, and they made some suggestions to our Committee. We met several times with representatives of the insurance industry, with representatives of our towns and cities, and members of State government departments. We also heard from the Maine State Employees Association and other organizations who represent employees.

We found as a result of this insurance study that in these areas where the State and other governmental entities were to become liable, that it was possible to insure the employees at a modest additional cost, and that modest additional cost seemed to be reasonable and within reach of most of our entities. So we decided to accept some changes in the existing Tort Claims Law, and to try to get those changes into effect by July 1st when the principal liability sections of the existing law become effective.

Having looked at the matter in this way, we then were faced with the question, should immunity be extended in the areas where the government is immune to the employees of government. And this is where we had the disagreement in the Committee. Senator Mangan's view is expressed with the language which makes the employee immune.

The view which the Majority of the Committee supported does not make the employee immune, but it does provide that the government may, may indemnify and may defend its employee if it sees fit. This is an important distinction, of course, and the question of fairness that is presented to us in this debate is, is it fair for the citizens of Maine to be deprived of all remedies when the citizen is injured by the action of a governmental employee in the scope of that employees work. If we are to pass the view as filed by Senator Mangan, we would be denying the citizen all redress, except to come to the Legislature with a special Bill asking for permission to sue the state. We have a few of those now. But I submit that this is not the best way to provide a redress for the citizen, because many citizens with small claims, small wrongs, will not find the courage or the money to arrange for this procedure of first going to the Legislature

and getting a special enactment, and then if he succeeds in the Legislature bringing suit against the State or against some other entity.

The argument is made sometimes that the State employee ought to be in the same position as the employee of any other large employer, like the power company or the telephone company or the paper company. Now if you work for one of these private employers, you are personally liable if you commit a Tort. It may be that your company will be named as a co-defendant and that the company will help or even carry the major burden of defending the action, but nonetheless you are personally responsible and liable if you are negligent and you are working for a private employer.

We do not think in our Majority view that the State employee should hold a superior position to that private employee. Now, in the areas of motor vehicles and buildings there is a provision to protect everyone through these various mechanisms and through the medium of insurance, but there are a great many areas where if we enact this immunity for the employee, we will be imposing a particular hardship on the private citizen who is injured. For example, patients in our Mental Health Institutions or in Community Health Centers, wherever government is providing services other than through motor vehicles and equipment and buildings. There are many areas of exposure where it seems to me that we ought not to deny the citizens the right to have redress against someone, and if the employee of the government is sued, and if he becomes liable to pay a judgment there is still the power of the government, if it deems it to be an appropriate case, to step in and indemnify by paying the Bill on behalf of its employee. So I submit that this is a case where fairness, as well as good governmental management, requires the passage of the Majority Report.

The PRESIDENT Pro Tem: The Chair recognizes the Senator from Penobscot, Senator Curtis.

Mr. CURTIS: Mr. President, I have signed and support the Majority Report, primarily because I believe that individuals should be responsible insofar as possible for the results of their own actions.

I would like to point out, however, that government is different in some respects, in that we now have, in Chapter 2 of the laws which were passed by this Legislature, a personal immunity for employees of government in particular areas, and those are the special areas that are unique to government action. Specifically they are Legislative or Quasi-Legislative actions, Judicial or Quasi-Judicial actions, and the performance or failure to exercise or perform a discretionary act, and I think that we would find that in those very special categories we have already provided the immunity which this Legislature has deemed to be wise, and that immunity would not be touched by the acceptance of the Majority Report.

The PRESIDENT Pro Tem: The Chair recognizes the Senator from Cumberland, Senator Merrill.

Mr. MERRILL: Mr. President, I would like to begin by making the request that when the vote is taken on this that, it be taken by the yeas and nays.

I would like to have the attention of the Senate, to make a couple of brief points about this Bill. The Senator from Knox, Senator Collins, has given a very lengthy and usually accurate and good description of all the things that are in this Bill that he would have us accept. I am afraid that during that explanation it may have seemed to some of you as if this is another one of those difficult lawyer's issues that you have to be a lawyer to understand, and I suggest that it is not. Nor is this, I suggest, an issue that should divide Democrats and Republicans, and I would point out that the position urged by the Minority of the Judiciary

Committee in regards to the protection of State employees is the same position that was taken in 1971 by a Committee of the 105th Legislature chaired by David Benson, vice-chaired by Kenneth McLeod, and which included the services of Harry Richardson. These people all took the position that the Minority of the Judiciary Committee has taken today, that the State employees and officers should be free from the possibility of suit. So this is not, I suggest, a Democrat or Republican issue, and it is not an issue that one has to be a lawyer to appreciate.

I suggest that the issue is really very simple, and there are obviously elements of fairness on both sides. But the issue is this; when a State employee acting within the scope of his duties is sued for an act from which the State has protected itself from liability, can that employee be sued or should he have the same protection that the State has. Now some will say that the individual that has been wronged or claims that he has been wronged has a right to redress that wrong, and I do not argue with that statement. But consider the position that the Legislature is taking if it accepts the Majority Report. The position is that the State should not allow itself to be sued for that act, that the employer should not allow itself to be sued, because the risk is too great. The State cannot afford to insure itself for that risk. Therefore, because we are fair minded men and women, we say that we will allow the employee to be sued for the same act, presumably with the same problems of calculating the possibility of something going wrong and dealing with it. I suggest that that is not the proper way to address the problem of having relief for people who have a wrong done to them, or claim they have a wrong done to them. There has to be a better way than that.

Now the way left in regards to the State is to bring a Bill before this Legislature, which has been done in nine cases this time, and in most cases those Bills are acted upon favorably by this Legislature and the right to sue the State is granted. As imperfect as that remedy is, I suggest that it is more commendable to the Legislature to leave as a remedy, than to say well you can just take an action against the State employee.

Let us look at it from the standpoint of the ability to pay for the claim. Who has the greater ability to pay — the State or the employee? The answer to that I think is obvious. We all know how many of our employees are paid such dismal wages.

Let us look at it from the standpoint of controlling conduct. Some people argue, you know, that the Tort Law, the ability to sue people for the wrong that you say they have done to you, is really a way to control primary conduct, to keep people from doing things that put themselves in that position. In other words, if it is a wrong to be negligent and to harm somebody, that the ability to sue for that negligence will control people and make them more careful about what they do. If you subscribe to that belief, and it is a debatable subject, then consider the position that we are in. The State is the employer, and certainly the one with as much ability to control the safeness or the unsafeness of conduct on the job as the employee is free from suit. What we are saying is that the employee who acts within the confines that are set up, and certainly there is an element there of the possibility to be negligent as well as on the part of the employer, if we say his conduct is so important to control that he is susceptible to suit. I suggest here again that is a distinction that is without merit, that if we are really concerned with controlling primary conduct, if that is the reason we want to leave liability for the employee, then we should be just as fast and just as quick to see that the State is liable for those acts as well, because the employer, in defining the job and what will be

done on the job, and in making available the safety rules and regulations, and making available the safety equipment, and seeing to it that the proper people are employed, and the proper atmosphere is created, is just as responsible in the average cases for seeing that the lack of negligence exists on the job, that good judgment exists on the job, as the employee that happens to be there.

Now these areas that we have excluded from suit are very difficult decisions to be made sometimes. The question that arises is after the Senator from Penobscot, Senator Curtis, speaks is what is meant by the exceptions that we have. Well I think the Legislative and Judicial are fairly clear. Everybody in this Chamber can understand what that is. But we have this final exemption which is discretionary action, and that, I suppose some Members of this Body could say is a sufficient exception from the right to sue the employee to take care of the problems that you might think of. For example, the person who works at South Portland decides to take a few boys out on some sort of outing, and one of those boys escapes and does something wrong and the person who took them out is sued. Now some of you here may believe that that would be a discretionary act on his part, and, therefore, he would be immune to suit. I am not sure of that, and that brings us to one of the problems with the position that was suggested by the Majority Committee, and that is because discretionary act of employees is one of the most litigated words that we have in our judicial system in this area of law, and if you look at the Federal experience in trying to define that, if you look at the experience of different states, you can predict that if we accept the approach of the Majority of the Committee, that we will have a great deal of litigation in our Superior Court over the years as to what is a discretionary act. It has happened in every other state that has tried to establish this distinction. It is a distinction that is very difficult to make, and sort of fades into wondering if it is meaningful when you get to the edges of it.

I suggest to the Senate that the position to take on this matter is to treat the employees the same way as the State is treated. Now I think when the Senator from Knox, Senator Collins, reviews the history it is important to try to figure out where the State employees were before the recent Supreme Court decision, and the subsequent action of this Legislature. And that was an issue of some discussion and some debate before those decisions were made. But there were Attorney General's opinions, as recent as a couple of years ago, which maintained that the State employees had this sort of immunity that this Bill here would give back to them. In other words, what I am suggesting to you is that there very well might be, and I believe that it is, that all that this Bill would do is give back to the State employees the same sort of immunity that they had before.

Our people ask the State, and we ask the people who work for the State to do some very difficult things, whether it is taking care of a road and having to tear it up while cars continue to pass over it, or whether it is taking care of people who are in an institution for the mentally ill, or whether it is asking a policeman to go out and deal with 10 or 15 drunks. The fact of the matter is that we ask our State employees to do some of the most difficult, unmanageable jobs that there are in our whole society. That is probably why government is doing them is because the private sector was not interested. I suggest that if the State is going to make itself immune, then we have to extend that some protection to State employees.

If the issue comes down in your mind to equity between the private employee and the public employee remember this, the public employee always has the pocket of his employer behind him. Because of the doctrine

of respondent superior there is always the possibility for the person to take the action against the employer. In fact, that is what is usually done. It is the employer's pocket that usually pays in these cases where the employee is acting within the scope of his duties.

We have closed that possibility by virtue of this act before us, and the Act passed previously as a possibility, and so the public employee does not stand in the same relationship to his employer, his employer has already used his extraordinary status with regards to the law to make himself immune from suit. I suggest that if it is too difficult for the State to insure, too high a risk for the insurance companies to calculate, then the only fair and equitable thing to do is to extend that same protection to our State employees, until that day as we are willing to lower the guard for the State, and then we should treat the State employees the same way.

(Off Record Remarks)

The PRESIDENT Pro Tem: The Chair recognizes the Senator from Androscoggin, Senator Mangan.

Mr. MANGAN: Mr. President and Members of the Senate, I took a jaunt yesterday afternoon over to the Secretary of State's office, Motor Vehicle Division, just to take care of a constituent problem, and while I was there I happened to be talking with a young lady. I was talking about salaries and wages and how much they made, and this young lady was making somewhere in the vicinity of \$130.00 to \$140.00 a week. She had been working with the Motor Vehicle Division for 28 years, and she was one of the highest paid employees in the Motor Vehicle Division in this special section that is involved there.

It bothers me to think that we are going to subject this employee to a law suit, because after all we have got to sue somebody. The State of Maine itself cannot be sued because it is a sovereign. It wants its own immunity. Now if the sovereign cannot be used under the rationale of the good Senator from Knox County, Senator Collins, if they cannot sue the State, then you have got to have some sort of redress for the poor citizen, and the poor citizen is going to have his redress against the poor State employee, because the state of Maine says, ah, we are out of it.

Now there is one way out of this. If the action or the accident or what have you happens in the scope of the employees work, we are not talking about something frivolous. He is not going for a trip on his own to get a Dairy Queen in Gardiner. We are talking about while he is doing his work, his day to day work, and in the scope of his work something happens, and the State says you cannot touch us, then the poor citizen who needs redress can go after the poor State employee, the one who grosses \$140.00 a week and takes home probably \$110.00.

Now, of course, the government may indemnify, but the word is may, it is not shall, it is may. They may not also. Now it bothers me tremendously that we eliminate the Legislature or Legislative action, we eliminate the Judiciary — they are the big ones. We eliminate discretionary action, and why we threw discretionary action in the Judiciary Committee was because so many town fathers came up to the Judiciary Committee and said look, if we make a decision one way or the other we could be sued. It is dangerous. If it is something in our discretion, then we will not have that many problems. If you do not put that in, then we are going to have a lot of people who are afraid to run for office, because they could be sued. However, if there is a problem and the State cannot be sued because they are immune, the ideal situation is go after the state employee. After all the \$110.00 a week and a family to support, he can afford to pay for all these law suits.

and the State of Maine may, if they decide, pay for it.

I again state very clearly, and I do not think anybody has disputed this matter, but it is a matter of fairness. If you want to be fair about all of this, if the State cannot be sued, eliminate the suit for the State employees. If the State can be sued, and we know that they can be sued in certain areas like motor vehicle areas where most of our State employees might end up with the actions anyway, then open it up. But if the State of Maine cannot be sued, eliminate the suit from the State employees. Let us be fair about all of this.

I urge you to vote against the Majority Ought to Pass Report.

The PRESIDENT Pro Tem: The Chair recognizes the Senator from Knox, Senator Collins.

Mr. COLLINS: Mr. President, I take exception to one point raised by the good Senator from Cumberland, Senator Merrill. He suggested to us that we were simply going back to the same immunity that State employees had under an Attorney General's opinion issued two or three years ago. That opinion was very carefully dissected by the Judiciary Committee last January, and Members of the Attorney General's staff were brought in to help us to understand it, and I would submit that the particular opinion was issued for a very limited purpose and had a very limited thrust to it, and that the present staff of the Attorney General's office virtually disowns it for anything other than its very narrow limited purpose, and I think it has no general applicability in the current scene.

So rather than going back to something that the Senator says was once had, what we would be doing if we undertake this new stand would be to make a radical departure from the historic rights of our citizens and creating a class of super citizens, which super citizen has no responsibility for his negligent acts because he works for the State. He becomes the immune super citizen.

I do not think that is sound public policy. I think we have to look at what is fair for the great bulk of our citizens and rely on the good sense of administration to take care of indemnity if and when it is deserved by a governmental employee.

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

Mr. SPEERS: Mr. President, I simply would like to express support for the minority position on this particular Bill. As has been said a number of times in the debate, if a private individual is working within the scope of his employment and happens to be negligent, the individual who is wronged has the opportunity to sue not only that individual but the employer as well, and, in fact, that almost universally is what happens.

But what the State of Maine has done has been to say that with its employees, we can leave them open for liability for a negligent act, but that the State itself will not accept the responsibility that would be the responsibility of the private employer.

Now we do have the option, which has been noted, that has been taken advantage of a number of times in this Session. It is taken advantage of in every Session that certainly I have been here, and that is, of course, the option to have an individual put in a Bill to ask permission to sue the State. It seems to me that although that certainly seems somewhat cumbersome, that that is the better approach to the problem than to leave the employee liable all on his own.

The PRESIDENT Pro Tem: Is the Senate ready for the question?

A Roll Call has been requested. In order for the Chair to order a Roll Call, it must be the expressed desire of one-fifth of those Senators

present and voting. Will all those Senators present in favor of a Roll Call, please rise in their places to be counted.

Obviously, more than one-fifth having arisen, a Roll call is ordered.

The Chair recognizes the Senator from Penobscot, Senator Curtis.

Mr. CURTIS: Mr. President, I would like to make just one quick point to be sure that people who have been listening to this debate understand that the employees that we are talking about are employees of all governmental entities, and not just the State. The employees would include employees of municipalities and counties and quasi-municipal organizations.

The PRESIDENT Pro Tem: The pending question before the Senate is the Motion by the Senator from Knox, Senator Collins, to accept the Majority Ought to Pass Report of the Committee.

The Chair recognizes the Senator from Cumberland, Senator Merrill.

Mr. MERRILL: Mr. President and Members of the Senate, I would just like to clear up what may be a misunderstanding after the Senator from Penobscot, Senator Curtis' statement. Indemnification, the possibility to indemnify applies to all employees, municipal as well as State. The question presented by the Minority Report, however, the question of immunity, would apply only to State employees and not County and Municipal.

The PRESIDENT Pro Tem: The Doorkeepers will secure the Chamber.

The Secretary will call the Roll.

ROLL CALL

YEA — Collins, D.; Collins, S.; Curtis, Hewes, Hichens, Huber, Lovell, Morrell, O'Leary, Redmond, Snowe, Trotzky, Wyman.

NAY — Chapman, Cummings, Danton, Farley, Greeley, Jackson, Levine, Mangan, Martin, McNally, Merrill, Minkowsky, Pierce, Pray, Speers, Usher.

ABSENT — Carpenter, Conley, Katz, Sewall.

13 Senators having voted in the affirmative, and 16 Senators in the negative, with 4 Senators being absent, the Motion to Accept the Majority Ought to Pass Report does not prevail.

Minority Ought to Pass Report accepted in concurrence.

The Bill (H. P. 1680) (L. D. 1874) Read Once, and Tomorrow Assigned for Second Reading.

Committee of Conference

The Committee of Conference on the disagreeing action of the two branches of the Legislature, on

AN ACT Authorizing Municipalities to Create Development Districts (H. P. 1216, L. D. 1482) have had the same under consideration, and ask leave to report: That the House recede from passing the bill to be engrossed as amended by House Amendment "A" (H-414), recede from adoption of House Amendment "A" (H-414), Indefinitely Postpone House Amendment "A" (H-414), adopt Committee of Conference Amendment "A" (H-590) submitted herewith, and pass the bill to be engrossed as amended by Committee of Conference Amendment "A".

That the Senate recede from passing the bill to be engrossed as amended by Committee Amendment "A" (H-377) and House Amendment "A" (H-414), recede from Adoption of Committee Amendment "A" (H-377), Indefinitely Postpone Committee Amendment "A" (H-377), recede from adoption of House Amendment "A" (H-414), Indefinitely Postpone House Amendment "A" (H-414), adopt Committee of Conference Amendment "A" (H-590) submitted herewith, and pass the bill to be engrossed as amended by Committee of Conference Amendment "A" (H-590) in concurrence.

On the Part of the House:

MacEACHERN of Lincoln
HENDERSON of Bangor

DRINKWATER of Belfast
On the Part of the Senate:
JACKSON of Cumberland
PIERCE of Kennebec
O'LEARY of Oxford

Comes from the House, the Report Read and Accepted.

Which Reports were Read and Accepted, in concurrence.

Senate

Leave to Withdraw

Mr. Collins for the Committee on State Government on, Bill, An Act to Articulate Lines of Authority for all State-Budgeted Programs. (S. P. 233) (L. D. 896)

Reported that the same be granted Leave to Withdraw.

Which Report was Read and Accepted.

Sent down for concurrence.

Divided Report

The Majority of the Committee on Labor on Bill, An Act Relating to Arbitration under the State Employees Labor Relations Act. (S. P. 150) (L. D. 392)

Reported that the same Ought to Pass as amended by Committee Amendment "A" (S-238).

Signed:

Representatives:

DUTREMBLE of Biddeford

McHENRY of Madawaska

LAFFIN of Westbrook

BUSTIN of Augusta

BEAULIEU of Portland

ELIAS of Madison

FLANAGAN of Portland

The Minority of the same Committee on the same subject matter Reported that the same Ought Not to Pass.

Signed:

Senators:

REDMOND of Somerset

McNALLY of Hancock

Representatives:

TARR of Bridgton

PELTIER of Houlton

LEWIS of Auburn

Which Reports were Read.

The PRESIDENT Pro Tem: The Chair recognizes the Senator from Hancock, Senator McNally.

Mr. McNALLY: Mr. President, I move the acceptance of the Ought Not to Pass Report, and would like to speak to my Motion.

The PRESIDENT Pro Tem: The Chair recognizes the same Senator.

Mr. McNALLY: Mr. President, this Bill I will try to explain and I am sure that if I have made a mistake on it that the good Senator from Penobscot who put it in will correct me.

This is the first of six Bills for binding arbitration, and it had a good long hearing. It had people from both sides speaking for and against, and binding arbitration, in case anybody is not too clear what it is, is an argument for it by the proponents of it, saying that it will speed up the differences between the employer and the employees. It is also, as an argument against it, is that once it has gone to binding arbitration, regardless of whether the arbitrator is an out-of-State person that has no knowledge as to what the needs of Maine are, or what the abilities they have to pay are, whatever they decide on, that is binding and will have to be paid for.

Now this Bill, if I understand it correctly the way it is written, and along with its Amendment, which says in the Amendment that the governor shall put in his budget any binding arbitration monies that has been agreed by them shall be funded, and also this Bill states that this will be taken up by the Legislature, which to me makes the Legislature sort of an arbitrator of labor disputes, and that is the reason