

MAINE STATE LEGISLATURE

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One Hundred and Nineteenth Legislature
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NAYS: Senators: ABROMSON, CASSIDY, CATHCART, DAGGETT, DAVIS, DOUGLASS, FERGUSON, GOLDTHWAIT, KIEFFER, KILKELLY, KONTOS, LIBBY, MACKINNON, MICHAUD, MILLS, MITCHELL, NUTTING, O'GARA, PARADIS, PENDLETON, PINGREE, RAND, RUHLIN, SMALL, THE PRESIDENT - MARK W. LAWRENCE

ABSENT: Senators: LAFOUNTAIN, MURRAY

8 Senators having voted in the affirmative and 25 Senators having voted in the negative, with 2 Senators being absent, the motion by Senator **AMERO** of Cumberland to **RECONSIDER** whereby Bill **FAILED ENACTMENT**, in **NON-CONCURRENCE**, **FAILED**.

Sent down for concurrence.

Under suspension of the Rules, all matters thus acted upon were ordered sent down forthwith for concurrence.

The Chair laid before the Senate the following Tabled and Later (5/26/99) Assigned matter:

Bill "An Act to Amend the Maine Tort Claims Act"
H.P. 825 L.D. 1148

Tabled - May 26, 1999, by Senator **LAFOUNTAIN** of York.

Pending - motion by Senator **LONGLEY** of Waldo to **INDEFINITELY POSTPONE** Bill and accompanying papers, in **NON-CONCURRENCE** (Division Requested)

(In House, May 26, 1999, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-691).**)

(In Senate, May 26, 1999, Report **READ** and **ACCEPTED**, in concurrence. Committee Amendment "A" (H-691) **READ** and **FAILED ADOPTION**, in **NON-CONCURRENCE**. Subsequently, Senator **LONGLEY** of Waldo moved to **INDEFINITELY POSTPONE** Bill and accompanying papers, in **NON-CONCURRENCE**.)

Senator **LONGLEY** of Waldo requested and received leave of the Senate to withdraw her motion to **INDEFINITELY POSTPONE** Bill and accompanying papers, in **NON-CONCURRENCE**.

On further motion by same Senator, the Senate **RECONSIDERED** whereby it **FAILED** to **ADOPT** Committee Amendment "A" (H-691).

On further motion by same Senator, Senate Amendment "A" (S-355) to Committee Amendment "A" (H-691) **READ**.

THE PRESIDENT: The Chair recognizes the Senator from Waldo, Senator Longley.

Senator **LONGLEY:** Thank you Mr. President. Colleagues in the Senate, as a refresher, yesterday I mentioned there was a unanimous Committee Report concerning Y2K exemption of liability for municipalities and after that vote I had second thoughts and decided rather than call the Committee back I would make my alternative Amendment on the floor. What this Amendment does, or what the current issue before you now does, is it would Amend that Bill that exempts municipalities from liability for Y2K issues and this is the Amendment: provided the municipality made reasonable efforts to do what everybody else in all parts of our computer world are doing, which is to try to be Y2K compliant. So it simply adds a reasonable effort requirement which in my legal opinion could be easily satisfied by making calls, attending a seminar, taking any steps to show that the municipality tried but couldn't accomplish its goal. I need this Amendment because I had trouble saying we will do this for municipalities only. It also applies to the State. We will do this for the public sector only but not the private sector. That's why I had my second thoughts after the unanimous Committee Report. But no, I don't feel that that's fair. I think if we do for one, we should do for the other. At this point the reasonable effort requirement on municipalities makes me feel better about supporting this unanimous Committee Report. I hope I've made sense. Thank you.

THE PRESIDENT: The Chair recognizes the Senator from Franklin, Senator Benoit.

Senator **BENOIT:** Thank you Mr. President. May it please the Senate, let me start off with an apology to you, Mr. President, and to the members of this Body. Yesterday afternoon when this matter came up I was somewhat taken aback and did not have on my thinking cap when things started to go astray in this situation. I stood and I didn't make a whole lot of sense and then that was reflected on the board behind you, Mr. President. I apologize for that and that's my fault. I was in a sense prepared for what happened by reason of rumor. But I'm not much on rumor in my work. So when things unfolded, I still was somewhat taken aback. I am in a quandary but I'm going to cut bait here on this motion. I feel that the original Bill, a unanimous Report of the Judiciary Committee, was a good Bill and the whole Committee felt that way. That's the way it came to us. But I fight for the right of the good Senator from Waldo, Senator Longley, to express her concern and present this Amendment. She has every right to do that. The quandary I have is that I believe the original Bill to be better than what it will end up being with the attachment of the Amendment. I say that respectfully for this reason, over lunch I went down to the law library and I fished out the case law, the decisional law, in the country on the words "reasonable effort" because that's what this Amendment will do. It will say that in this Y2K problem, municipalities will be protected from civil suits but they must have made reasonable efforts to prevent or remedy a failure or malfunction that arises out of the Y2K. And I thought two winters ago we had an ice storm in this state; Mother Nature and Jack Frost got together and we had an ice storm out of it. And I will ask you this. Did anybody sue a municipality or a utility as a result of the ice storm? No. And why? Because everybody understands that in something that happens like that you can't fault the municipality. You can't fault the utility, CMP. What are they supposed to do when they hear there's an ice storm coming, cut down all the trees to prevent litigation? No. This is a storm, this Y2K situation, Mr. President. It's a storm. We've been preparing for this storm for weeks, months and years

even. We still may not have it right. There still may be problems that give rise to litigation. And the thing that bothers me is that this Amendment and I'm going to end up supporting it because if I don't I'm getting zero. I liked the original Bill better. The Amendment is going to bring litigation because people are going to be able to say out of the Y2K situation gee I don't think the town took reasonable efforts. I'm going to sue the town for what happened. The traffic light didn't work. The water treatment plant malfunctioned. Whatever. Gee, did the town make reasonable efforts? I think I'll go to court. We're going to have case law just like there is around the country on what is the meaning of reasonable effort. What does it mean? So I'm between a rock and a hard place. If I don't support this Amendment that doesn't make this Bill as good as it was originally I may lose everything. I don't like the feeling there but there's not a whole lot I can do about it. Seven states have laws on the books like the original Bill proposed. Yes, some of the States do have a standard of reasonable effort. I don't know how many, Minnesota does and that's where this comes from. Forty-three other States are taking up legislation like this. We need something on the books like this. We'd be the only State if we don't have some legislation on the subject and that would be a pitiful result. Again, respectfully, I support the Amendment. The alternative, I can't live with zero. I can't live with zero on this subject. So I have expressed myself. I've had my day in court, Mr. President, on this and that's all we can ask for. And I thank you, Sir.

THE PRESIDENT: The Chair recognizes the Senator from Cumberland, Senator Pendleton

Senator **PENDLETON:** Thank you, Mr. President. Men and women of the Senate, may I ask a question through the chair?

THE PRESIDENT: The Senator may pose her question.

Senator **PENDLETON:** Thank you. Very humbly, I'm a little confused about the Parliamentary Procedure. If this Amendment fails does that mean the whole Committee Amendment and the Bill fails?

THE PRESIDENT: The Chair would answer in the negative. The pending question should this Amendment Fail is the Adoption of Committee Amendment "A".

Senator **PENDLETON:** Can I pose another question?

THE PRESIDENT: The Senator may pose her question.

Senator **PENDLETON:** So if this Amendment fails, does that mean we lose the Committee Amendment as well?

THE PRESIDENT: The Chair would answer in the negative. The pending question at that time before the Senate would be Adoption of Committee Amendment "A" and it would be up to the Senate as to whether or not it wanted to Adopt Committee Amendment "A".

Senator **PENDLETON:** Thank you Mr. President. May I speak to the issue.

THE PRESIDENT: The Senator may proceed.

Senator **PENDLETON:** Thank you Mr. President. Men and women of the Senate, humbly I have to tell you that I have never served on any kind of municipal board at all. The first time I ever served in any government position, much to my surprise at even being in a government position, was when I was in the other Body. I'm a homemaker, a nurse and a seamstress. This Amendment I'm very much opposed to, because if someone came to me and said Peggy, I want you to make me a dress that fits and I want you to have a reasonable effort to prevent or remedy any failure or malfunction of this garment. How would I know how it was going to fit because reasonable effort, what does that mean? Does it mean I can make the seams half way, this way, that way. Does it mean I can make it too long. Does it mean it's going to fit or not fit? To me it's totally confusing. What is reasonable effort? If I can't figure out how to make a garment with a reasonable effort than I can't understand how any municipality could make any kind of reasonable effort that just has no definition. So I just would ask you please vote Against this Amendment so that we can go on to the original Committee Bill and the Committee Amendment. Thank you.

THE PRESIDENT: The Chair recognizes the Senator from Franklin, Senator Benoit.

Senator **BENOIT:** Thank you Mr. President. May it please the Senate, in light of the remarks just made by the good Senator from Cumberland, Senator Pendleton, she has built a fire within me. I feel as though I've just come from stoking the furnace downstairs. I am going to follow her lead on this despite what I have said previously. But then again, when I said I was between a rock and a hard place, and I appreciate the position she has expressed and she has my support in it. Thank you, sir.

THE PRESIDENT: The Chair recognizes the Senator from York, Senator Libby.

Senator **LIBBY:** Thank you Mr. President. Has there been a request for a Division made yet?

THE PRESIDENT: The Chair would order a Division whenever there is debate on two sides of an issue.

The Chair ordered a Division. 14 Senators having voted in the affirmative and 16 Senators having voted in the negative, the motion by Senator **LONGLEY** of Waldo to **ADOPT** Senate Amendment "A" (S-355) to Committee Amendment "A" (H-691), **FAILED**.

Committee Amendment "A" (H-691) **ADOPTED**, in concurrence.

Under suspension of the Rules, **READ A SECOND TIME** and **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-691)**, in concurrence.

The Chair laid before the Senate the following Tabled and Later (5/26/99) Assigned matter:

Bill "An Act to Increase the Deer Hunting Day by 15 Minutes"

H.P 30 L.D. 39