

# MAINE STATE LEGISLATURE

The following document is provided by the  
**LAW AND LEGISLATIVE DIGITAL LIBRARY**  
at the Maine State Law and Legislative Reference Library  
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied  
(searchable text may contain some errors and/or omissions)

**Legislative Record**  
**House of Representatives**  
**One Hundred and Twenty-Second Legislature**  
**State of Maine**

**Volume II**

**First Special Session**

May 26, 2005 – June 17, 2005

**Second Special Session**

July 29, 2005

**Second Regular Session**

January 4, 2006 - April 6, 2006

Pages 737-1487

**REPORTS OF COMMITTEE  
Committee of Conference**

Report of the Committee of Conference on the disagreeing action of the two branches of the Legislature on Bill "An Act To Improve the Water Quality of Hall Pond in Paris"

(H.P. 306) (L.D. 421)

has had the same under consideration, and asks leave to report:

That they are **UNABLE TO AGREE.**

Signed:

Representatives:

WATSON of Bath  
WHEELER of Kittery  
HANLEY of Paris

Senators:

BRYANT of Oxford  
STRIMLING of Cumberland  
RAYE of Washington

The Committee of Conference Report was **READ** and **ACCEPTED** and sent for concurrence.

---

**REPORTS OF COMMITTEE  
Divided Report**

Majority Report of the Committee on **JUDICIARY** reporting **Ought to Pass as Amended by Committee Amendment "A"** (H-657) on Bill "An Act To Amend the Maine Tort Claims Act"

(H.P. 655) (L.D. 936)

Signed:

Senators:

HOBBINS of York  
BROMLEY of Cumberland  
HASTINGS of Oxford

Representatives:

PELLETIER-SIMPSON of Auburn  
FAIRCLOTH of Bangor  
GERZOFISKY of Brunswick  
CANAVAN of Waterville  
BRYANT of Windham  
DUNN of Bangor  
NASS of Acton

Minority Report of the same Committee reporting **Ought Not to Pass** on same Bill.

Signed:

Representative:

CARR of Lincoln

**READ.**

Representative FAIRCLOTH of Bangor moved that the House **ACCEPT** the Majority **Ought to Pass as Amended** Report.

The **SPEAKER**: The Chair recognizes the Representative from Lincoln, Representative Carr.

Representative **CARR**: Thank you Mr. Speaker. Mr. Speaker, Ladies and Gentlemen of the House. I want to take a moment to discuss this a little bit more and you will see that I am the lone person on this, but maybe the one that has a great deal of experience along the lines of what we are talking about. This bill, in my opinion, may be one of the most important bills that we have addressed in this body this year.

It deals with overturning a Maine Supreme Court decision as it relates to court claims. It deals with a 4-3 Maine Supreme Court decision under the Norton Case and that involved a Cumberland County Deputy Sheriff responding to an emergency situation that involved a crash and it unfortunately killed two young people and was a very unfortunate situation that happened. But, for those of you who are or have been police

officers, firemen, EMTs, driven ambulances or otherwise responded to emergency situations you should pay attention to what this decision might do.

I am sure that you will be told that this decision was different than what people understood and the Maine Court claims and how it was actually interpreted as far as immunity goes for those responders who have to make instantaneous decisions on whether to respond fast or to not respond fast.

Police officers receive a great deal of training in emergency response and driving fast. At the academy they go through a week of direct training on the course in addition to the time that is spent in the classroom. Firemen also receive some training as to that as well as all of the people who do respond.

Because rescue people are required to respond at speeds greater than what the public is supposed to travel at they have been given immunity in matters of discretion. I want to use this an example that I am most familiar with. A police officer is involved in a high-speed chase. What the court said was that it is not just the first decision that is made on whether or not to start the chase. The court said that along the way during this chase there will be other things that come up. There will be vehicles that will come from side roads and you will be coming to areas where there is traffic and congestion, you may come to a school zone and so there are a number of discretionary decisions that have to be made along the way. It is not just whether you should chase or you should not chase. It entails all of those other things. It is the same thing for a fireman driving a fire truck. He has to make those decisions along the way as he has to travel to the fire scene. Should he stop at a stoplight or should he continue through the stoplight? These are all decisions that must be made and, as I understand it, if we pass this bill the decision would be made when you start the chase that you decided to start it, but any other thing that you do along the way will not be forgiven.

I am not going to take a lot of time other than to put some things on the record, but I want to remind you that, for those of you who live in the Waterville, Oakland, Pittsfield area, I received a letter from several of the police officers, EMTs and firemen who are very concerned and I am not sure how many other people did. I made a copy for some of the other members. There are actually 56 names from the small area around Waterville and they are showing their concern on this bill if it were passed, which would overturn the ruling of the Maine Supreme Court. I would ask for you to follow my light on this. I know that you will hear some other testimony but what you basically have is a bill that is trial lawyers versus police, fire and EMTs. Thank you Mr. Speaker.

The **SPEAKER**: The Chair recognizes the Representative from Farmington, Representative Mills.

Representative **MILLS**: Thank you Mr. Speaker. Mr. Speaker, Ladies and Gentlemen of the House. This is my bill and it does not severely change the standards that we have been accustomed to. In fact, it reverses a court ruling in 2003. Before that court ruling, all emergency responders and all other municipalities, counties and state government assumed that people were responsible for their actions and possibly subject to lawsuit if they performed their actions negligently while operating a motor vehicle in any context.

The Maine Tort Claims Act makes people subject to liability for any negligent operation of a motor vehicle. In another section of the act it states that for discretionary decisions and functions people are not liable. They are completely immune. What the law court did was say that one trumps the other and that the discretionary functions provision of the Tort Claims Act trumps the negligent operation of a motor vehicle section of the act.

The irony is that under the court case if you are negligent in operating a motor vehicle and have a fender bender than you are liable. If you are negligent in operating a motor vehicle and you killed two innocent children in a motor vehicle with their mother you are not liable because in that case the officer was operating in violation of policy, in violation of her training, in violation of standards of negligence that apply to high speed pursuit and in that case the officer was going more than 25 miles an hour over the limit on a the busy Route 302 in Raymond in violation of stated policy and, arguably, not in response to an emergency call, reportedly distracted and reportedly operating in a negligent manner.

The mother of the two children testified before the Judiciary Committee. It was the first time she testified in front of any public body about the death of her two children. When she described the evening that she had with her only two children and how they drove home from a restaurant that evening and how they were operating in accordance with law and how they stopped to make a left turn and how they never saw the deputy's vehicle coming from way, way, way behind and arguably without her siren, the evidence is unclear, and argueably not in response to an emergency call and how that private vehicle, operating in accordance with law, was smashed to bits and how those two children died in her arms and she was never able to do a thing about it. Ladies and Gentlemen the law court took those facts and made the deputy completely immune from lawsuit. Those two children and their mother never had their day in court. They were never even allowed the opportunity to make their case that the deputy was negligent.

This bill reverses that case decision. This bill does not reverse practice, because since 1943, up until this law court decision of 2003 everyone assumed that officers and responders of all sorts were, in fact, liable for the negligent operation of a motor vehicle in a high speed chase, in an emergency response situation and in any situation. This is an inconsistency and an injustice that we must fix and the law court has asked us to look at this. There were three opinions in the courts decision and they say that the Legislature hasn't clarified this way or the three dissenters say that they don't think that the Majority opinion is right in the first place but think that the Legislature ought to look at it and fix it. Ladies and Gentlemen it is what we must do. It is important to see what the bill is about. It is only two lines long. It is also important to understand what it is not about. With all due respect to the Representative from Lincoln with whom I have worked for three years and am very proud to have worked with, it is not about second guessing the judgment of a police officer. It is not about second-guessing the decision to engage in a high-speed pursuit or the decision to engage in an emergency response. That decision is completely immune. It was, is and shall be completely immune whether this bill passes or not. The officer is immune from any liability for making that decision, but if an officer violates well-known policies - we have had high-speed pursuit policies on the books for many years and have had statewide protocols for many years - to such an extent that they are negligent in how they operate a motor vehicle in an emergency response decision then the victims should have their day in court. It is as simple as that. Ladies and Gentlemen I ask you to follow my light and vote for the Majority Ought to Pass as Amended Report on this bill. Thank you.

The SPEAKER: The Chair recognizes the Representative from Levant, Representative Greeley.

Representative **GREELEY**: Thank you Mr. Speaker. Mr. Speaker, Ladies and Gentlemen of the House. I don't make it a point to speak on the floor. I have not spoken on a bill this year and it is hard to do. The situation that the Representative from

Farmington, Representative Mills describes is horrifically tragic and part of the police training is that police officers have to watch that video every year. It was very hard to get through and it is mandatory training to watch that.

I would just like to express my own personal issues with this and would like to relate a little story because I think that I am afraid that what may happen is that when emergency personnel are responding to an emergency situation they will be so concerned about being liable for doing something wrong that they will be overly cautious and I can cite one example. I used to work with a gentleman who is a Waterville policeman and his first name is Lincoln. He doesn't work there now, he works elsewhere in Maine, but Lincoln got a call to go to a convent in Waterville back in the '90s where a man was assaulting some nuns and Lincoln drove quite quickly with his lights and sirens on to be able to respond to this convent where one nun had been killed and the man was in the process of attempting to stab the second. When Lincoln arrived - he had drove quite quickly to get there because his number one concern was to get there to save a life - I am sure he went over the speed limit and did some things where he would be liable, but he got there safely and just in time to save another nun from being stabbed. He was the first one in the convent with his weapon out and he pointed the weapon at the man as the man was just about to put the knife into the nun, he was actually in motion with the knife when Lincoln arrived. He told him to put the knife down and the man did. Officer Ryder, had this law been in effect when the officer was responding, may not have taken the chance in trying to get there. If this passes many of us will be delayed in our responses because of being too cautious.

Ladies and Gentlemen of the House I work as a police officer when I am not here. I worked 32.5 hours this last weekend at \$12.74 an hour. That is my pay. \$12.74 an hour and I don't know that I want to take a chance with three kids and a house payment for \$12.74 an hour because I might have made a mistake trying to get to what I perceive to be an emergency situation as quickly as I felt I should get there. I do not want to be in a situation where I am second-guessing myself wondering do I get to that domestic, do I get to that problem as fast as possible or do I follow the speed limit and completely stop at every stop sign because if I make a mistake on the way there I could be held personally responsible and we have a shortage of quality emergency personnel in this state. Many fire departments are always at a deficit and I think that if this passes this will cause more turnovers in police and fire departments. I appreciate your patience and time.

The SPEAKER: The Chair recognizes the Representative from Auburn, Representative Pelletier-Simpson.

Representative **PELLETIER-SIMPSON**: Thank you Mr. Speaker. Mr. Speaker, Men and Women of the House. I am not a lawyer or a police officer but I find this bill pretty interesting and I would like to try to explain some of this to the rest of us in layman's terms.

Ordinarily as a governmental entity we have sovereign immunity, both municipalities and the state and the Legislature in the past decided that it was in the best interest of fairness to wave that immunity with some exceptions and one of them being the ownership, maintenance and use of vehicles. A governmental entity is liable for its negligent acts or omissions in its ownership, maintenance or use of any motor vehicle. That was understood to be the law and things have changed with this court decision and I would read part of Chief Saufley's opinion just to give you a little more information. "The analysis diverges, however, with regard to the possibility of separating the whether of the emergency response from the how of the emergency

response." So, the question is not about whether you should respond and whether or not that decision carries over into how one responds. She goes on to say that it is within the Legislature's province to decide if in the future these two concepts should be separated and whether one or both should not be shielded from liability for negligence.

In my personal opinion, given the fact that we waived immunity for negligent acts with the use of a motor vehicle, I thought that we should put the law back into effect so that the decision whether to act would be protected, but how you act once you make that decision should not make one immune from liability if one behaves in a negligent fashion. As to whether or not a police officer is personally liable, I would like to read the statutes to you. "When the governmental entity is liable, the governmental entity shall, with the consent of the employee, assume the defense and shall indemnify any employee against a claim which arises out of an act or omission occurring within the course and scope of employment for which sovereign immunity has been waived under the section having to do with automobiles." I think the police are protected and the general public needs protection as well. Thank you.

The Chair ordered a division on the motion to **ACCEPT** the Majority Ought to Pass as Amended Report.

The SPEAKER: The Chair recognizes the Representative from Lincoln, Representative Carr.

Representative CARR: Thank you Mr. Speaker. Mr. Speaker, Men and Women of the House. I would like to order a roll call Mr. Speaker. Thank you.

Representative CARR of Lincoln REQUESTED a roll call on the motion to **ACCEPT** the Majority Ought to Pass as Amended Report.

More than one-fifth of the members present expressed a desire for a roll call which was ordered.

The SPEAKER: A roll call has been ordered. The pending question before the House is Acceptance of the Majority Ought to Pass as Amended Report. All those in favor will vote yes, those opposed will vote no.

**ROLL CALL NO. 276**

YEA - Adams, Ash, Babbidge, Barstow, Beaudette, Blanchard, Blanchette, Bliss, Brannigan, Brautigam, Bryant, Burns, Cain, Clark, Craven, Cummings, Driscoll, Duchesne, Dudley, Dugay, Dunn, Duplessie, Eberle, Eder, Faircloth, Farrington, Fischer, Fisher, Gerzofsky, Goldman, Grose, Harlow, Hogan, Hutton, Jennings, Koffman, Lerman, Lundeen, Makas, Marley, Marraché, Mazurek, Merrill, Miller, Mills, Moody, Norton, O'Brien, Paradis, Patrick, Pelletier-Simpson, Percy, Perry, Pilon, Pineau, Pingree, Piotti, Rines, Sampson, Saviello, Schatz, Seavey, Sherman, Smith N, Smith W, Thompson, Tuttle, Twomey, Valentino, Walcott, Watson, Webster, Wheeler, Woodbury, Mr. Speaker.

NAY - Annis, Austin, Berube, Bierman, Bishop, Bowen, Bowles, Brown R, Browne W, Bryant-Deschenes, Campbell, Canavan, Carr, Cebra, Churchill, Clough, Collins, Cressey, Crosthwaite, Curley, Curtis, Daigle, Davis G, Davis K, Duprey, Edgecomb, Emery, Finch, Fitts, Fletcher, Flood, Glynn, Greeley, Hall, Hamper, Hanley B, Hanley S, Hotham, Jacobsen, Jodrey, Joy, Kaelin, Lansley, Lewin, Lindell, Marean, McCormick, McFadden, McKane, McKenney, McLeod, Millett, Moore G, Moulton, Muse, Nass, Nutting, Ott, Pinkham, Plummer, Rector, Richardson D, Richardson E, Richardson M, Richardson W, Robinson, Rosen, Shields, Stedman, Sykes, Tardy, Thomas, Trahan, Vaughan.

ABSENT - Crosby, Jackson.

Yes, 75; No, 74; Absent, 2; Excused, 0.

75 having voted in the affirmative and 74 voted in the negative, with 2 being absent, and accordingly the Majority Ought to Pass as Amended Report was **ACCEPTED**.

The Bill was **READ ONCE**. Committee Amendment "A" (H-657) was **READ** by the Clerk and **ADOPTED**. The Bill was assigned for **SECOND READING** later in today's session.

**REPORTS OF COMMITTEE**  
**Divided Report**

Majority Report of the Committee on **TAXATION** reporting **Ought Not to Pass** on Bill "An Act To Amend the Revaluation Process by Municipalities"

(S.P. 550) (L.D. 1563)

Signed:

Senators:

PERRY of Penobscot  
COURTNEY of York  
STRIMLING of Cumberland

Representatives:

HANLEY of Paris  
CLARK of Millinocket  
McCORMICK of West Gardiner  
WOODBURY of Yarmouth  
CLOUGH of Scarborough  
PINEAU of Jay  
HUTTON of Bowdoinham  
BIERMAN of Sorrento  
WATSON of Bath

Minority Report of the same Committee reporting **Ought to Pass as Amended by Committee Amendment "A" (S-303)** on same Bill.

Signed:

Representative:

SEAVEY of Kennebunkport

Came from the Senate with the Minority **OUGHT TO PASS AS AMENDED** Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (S-303)**.

**READ.**

On motion of Representative **WOODBURY** of Yarmouth, the Majority **Ought Not to Pass** Report was **ACCEPTED** in **NON-CONCURRENCE** and sent for concurrence.

By unanimous consent, all matters having been acted upon were **ORDERED SENT FORTHWITH**.

The Chair laid before the House the following item which was **TABLED** earlier in today's session:

**HOUSE DIVIDED REPORT** - Majority (8) **Ought to Pass as Amended by Committee Amendment "A" (H-636)** - Minority (5) **Ought to Pass as Amended by Committee Amendment "B" (H-637)** - Committee on **HEALTH AND HUMAN SERVICES** on Resolve, Regarding Legislative Review of Chapter 101: Establishment of the Capital Investment Fund, a Major Substantive Rule of the Governor's Office of Health Policy and Finance (**EMERGENCY**)

(H.P. 36) (L.D. 33)

Which was **TABLED** by Representative **PINGREE** of North Haven pending her motion to **ACCEPT** the Majority **Ought to Pass as Amended** Report.

The SPEAKER: The Chair recognizes the Representative from Auburn, Representative Shields.