



130th MAINE LEGISLATURE

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Legislative Document

No. 1687

H.P. 1256

House of Representatives, May 6, 2021

An Act To Improve the Provision of Indigent Legal Services

(EMERGENCY)

Reported by Representative HARNETT of Gardiner for the Joint Standing Committee on Judiciary pursuant to the Maine Revised Statutes, Title 4, section 1804, subsection 3, paragraph H.

Reference to the Committee on Judiciary suggested and ordered printed pursuant to Joint Rule 218.

A handwritten signature in cursive script that reads "R B. Hunt".

ROBERT B. HUNT
Clerk

1 **Emergency preamble.** Whereas, acts and resolves of the Legislature do not
2 become effective until 90 days after adjournment unless enacted as emergencies; and

3 **Whereas,** the State's constitutional and statutory obligations include ensuring that
4 each person facing a potential loss of liberty in a criminal or juvenile proceeding is provided
5 with effective representation at every critical stage of the proceeding and also include
6 providing counsel services to indigent parents in child protection proceedings and to
7 individuals in hearings for involuntary commitment; and

8 **Whereas,** the Sixth Amendment Center identified significant challenges that the State
9 faces in fulfilling its statutory and constitutional obligations; and

10 **Whereas,** it is important for the State to begin to address these significant challenges
11 as soon as possible; and

12 **Whereas,** in the judgment of the Legislature, these facts create an emergency within
13 the meaning of the Constitution of Maine and require the following legislation as
14 immediately necessary for the preservation of the public peace, health and safety; now,
15 therefore,

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

17 **Sec. 1. 2 MRSA §6, sub-§12,** as enacted by PL 2009, c. 419, §1, is amended to
18 read:

19 **12. Range ~~52~~ 37.** The salary of the executive director of the Maine Commission on
20 Indigent Legal Services is within salary range ~~52~~ 37.

21 **Sec. 2. 4 MRSA §1804, sub-§3, ¶A,** as enacted by PL 2009, c. 419, §2, is amended
22 to read:

23 A. Develop and maintain a system that ~~uses~~ may employ attorneys, use appointed
24 private attorneys, ~~contracts and contract~~ and contract with individual attorneys or groups of
25 attorneys ~~and~~. The commission shall consider other programs necessary to provide
26 quality and efficient indigent legal services;

27 **Sec. 3. 4 MRSA §1804, sub-§3, ¶M,** as amended by PL 2019, c. 427, §3, is further
28 amended to read:

29 M. Establish procedures for handling complaints about the performance of counsel
30 providing indigent legal services; ~~and~~

31 **Sec. 4. 4 MRSA §1804, sub-§3, ¶N,** as enacted by PL 2019, c. 427, §4, is amended
32 to read:

33 N. Develop a procedure for approving requests by counsel for authorization to file a
34 petition as described in section 1802, subsection 4, paragraph D.; and

35 **Sec. 5. 4 MRSA §1804, sub-§3, ¶O** is enacted to read:

36 O. Establish a system to audit all financial requests and payments that includes the
37 authority to recoup payments when necessary. The commission may summon persons
38 and subpoena witnesses and compel their attendance, require production of evidence,
39 administer oaths and examine any person under oath as part of an audit. Any summons

1 or subpoena may be served by registered mail with return receipt. Subpoenas issued
2 under this paragraph may be enforced by the Superior Court.

3 **Sec. 6. 4 MRSA §1804, sub-§4, ¶D**, as amended by PL 2013, c. 368, Pt. RRR, §1
4 and affected by §4, is further amended to read:

5 D. Adopt rules to carry out the purposes of this chapter. Rules adopted pursuant to this
6 paragraph are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A,
7 except that rules adopted to establish ~~standards under subsection 2, paragraph B~~ and
8 rates of compensation for assigned counsel and contract counsel under subsection ~~2~~ 3,
9 paragraph F are major substantive rules as defined in Title 5, chapter 375, subchapter
10 2-A; and

11 **Sec. 7. 4 MRSA §1805, sub-§9-A** is enacted to read:

12 **9-A. Audits; recoupment.** Conduct audits of all financial requests and payments and
13 recoup payments when necessary. The executive director may exercise the subpoena
14 power of the commission granted under section 1804, subsection 3, paragraph O;

15 **Sec. 8. Carrying balance fiscal year 2020-21; Maine Commission on**
16 **Indigent Legal Services.** Notwithstanding any provision of law to the contrary, the
17 State Controller shall carry any remaining fiscal year 2020-21 balance in the Maine
18 Commission on Indigent Legal Services program, General Fund into fiscal year 2021-22.

19 **Sec. 9. Carrying balance fiscal year 2021-22; Maine Commission on**
20 **Indigent Legal Services.** Notwithstanding any provision of law to the contrary, the State
21 Controller shall carry any remaining fiscal year 2021-22 balance in the Maine Commission
22 on Indigent Legal Services program, General Fund into fiscal year 2022-23.

23 **Sec. 10. Appropriations and allocations.** The following appropriations and
24 allocations are made.

25 **INDIGENT LEGAL SERVICES, MAINE COMMISSION ON**

26 **Maine Commission on Indigent Legal Services Z112**

27 Initiative: Establishes and appropriates funds for one Office Support Supervisor position
28 and provides funding for related All Other costs.

29 GENERAL FUND	2021-22	2022-23
30 POSITIONS - LEGISLATIVE COUNT	1.000	1.000
31 Personal Services	\$87,871	\$90,682
32 All Other	\$7,642	\$4,392
33		
34 GENERAL FUND TOTAL	\$95,513	\$95,074

35 **Maine Commission on Indigent Legal Services Z112**

36 Initiative: Establishes and appropriates funds for 3 Public Service Manager II positions and
37 4 Paralegal positions to provide an additional attorney and paralegal for the attorney
38 supervision subdivision and an additional paralegal for the auditing subdivision and to
39 create the training subdivision, consisting of one attorney and one paralegal, and the
40 investigating subdivision, consisting of one attorney and one paralegal. Also provides funds
41 for All Other costs.

1	GENERAL FUND	2021-22	2022-23
2	POSITIONS - LEGISLATIVE COUNT	7,000	7,000
3	Personal Services	\$707,775	\$730,423
4	All Other	\$54,715	\$31,965
5			
6	GENERAL FUND TOTAL	<u>\$762,490</u>	<u>\$762,388</u>
7	Maine Commission on Indigent Legal Services Z112		
8	Initiative: Appropriates funds for the cost of changing the salary range of the executive		
9	director from 52 to 37.		
10	GENERAL FUND	2021-22	2022-23
11	Personal Services	\$9,152	\$9,152
12			
13	GENERAL FUND TOTAL	<u>\$9,152</u>	<u>\$9,152</u>
14	Maine Commission on Indigent Legal Services Z112		
15	Initiative: Appropriates funds to increase reimbursement for indigent legal services from		
16	\$60 per hour to \$80 per hour.		
17	GENERAL FUND	2021-22	2022-23
18	All Other	\$5,732,980	\$5,732,980
19			
20	GENERAL FUND TOTAL	<u>\$5,732,980</u>	<u>\$5,732,980</u>
21	Maine Commission on Indigent Legal Services Z112		
22	Initiative: Establishes and appropriates funds for one Public Service Manager III position		
23	and one Paralegal position beginning in fiscal year 2021-22 and 2 additional Public Service		
24	Manager II positions beginning in fiscal year 2022-23. Also provides funding for All Other		
25	costs.		
26	GENERAL FUND	2021-22	2022-23
27	POSITIONS - LEGISLATIVE COUNT	2,000	4,000
28	Personal Services	\$242,917	\$484,171
29	All Other	\$210,646	\$142,646
30			
31	GENERAL FUND TOTAL	<u>\$453,563</u>	<u>\$626,817</u>
32	Maine Commission on Indigent Legal Services Z112		
33	Initiative: Provides additional funding to reflect projected costs of the Maine Commission		
34	on Indigent Legal Services.		
35	GENERAL FUND	2021-22	2022-23
36	All Other	\$2,804,980	\$2,804,980
37			
38	GENERAL FUND TOTAL	<u>\$2,804,980</u>	<u>\$2,804,980</u>
39	Maine Commission on Indigent Legal Services Z112		
40	Initiative: Establishes and appropriates funds for 4 Public Service Manager II positions and		
41	2 Paralegal positions to lead and staff the attorney supervision subdivision and the auditing		
42	subdivision. Also provides funding for All Other costs.		

1	GENERAL FUND	2021-22	2022-23
2	POSITIONS - LEGISLATIVE COUNT	6.000	6.000
3	Personal Services	\$670,116	\$691,559
4	All Other	\$47,073	\$27,573
5			
6	GENERAL FUND TOTAL	<u>\$717,189</u>	<u>\$719,132</u>

8	INDIGENT LEGAL SERVICES, MAINE		
9	COMMISSION ON		
10	DEPARTMENT TOTALS	2021-22	2022-23
11			
12	GENERAL FUND	\$10,575,867	\$10,750,523
13			
14	DEPARTMENT TOTAL - ALL FUNDS	<u>\$10,575,867</u>	<u>\$10,750,523</u>

15 **Emergency clause.** In view of the emergency cited in the preamble, this legislation
16 takes effect when approved.

17 **SUMMARY**

18 This bill makes the following changes to the provisions governing the Maine
19 Commission on Indigent Legal Services.

20 1. It changes the salary range of the executive director of the commission from 52 to
21 37, resulting in a higher top salary.

22 2. It authorizes the commission to directly employ attorneys to provide legal services
23 to indigent clients. It also requires the commission to establish an audit system and allow
24 the recoupment of payments when appropriate. The commission is given subpoena power,
25 enforceable in the Superior Court, to conduct the audits. It directs the executive director to
26 carry out the audits and seek recoupment. It authorizes the executive director to exercise
27 the subpoena power on behalf of the commission.

28 3. Current law provides that rules governing standards and training for attorneys are
29 major substantive rules. This bill changes those rules to be routine technical and also
30 corrects a cross-reference in the commission's rule-making authority.

31 4. It provides that any remaining balance in the Maine Commission on Indigent Legal
32 Services program, General Fund in fiscal year 2020-21 be carried into 2021-22 and fiscal
33 year 2021-22 be carried into 2022-23.

34 5. It provides funding to the commission to fully staff the commission; to increase the
35 salary of the executive director; to increase the hourly rate from \$60 per hour to \$80 per
36 hour for attorneys providing legal services; to establish an appellate public defender, which
37 includes one attorney and one paralegal in fiscal year 2021-22 and 2 additional attorneys
38 in fiscal year 2022-23; and provides further funding.