



Maine Human Rights Commission

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February 27, 2023

The Honorable Margaret Rotundo, Senate Chair
The Honorable Melanie Sachs, House Chair
Joint Standing Committee on Appropriations and Financial Affairs
5 State House Station, Augusta, ME 04333-0005

The Honorable Anne Carney, Senate Chair
The Honorable Matthew Moonen, House Chair
Joint Standing Committee on Judiciary
100 State House Station, Augusta, ME 04333-0100

Re: LD 258, the 2024-2025 Biennial Budget

To the Joint Standing Committees on Appropriations and Financial Affairs and on the Judiciary:

The Maine Human Rights Commission ("Commission") appreciates the opportunity to comment on the initiatives regarding the Commission within LD 258, "An Act Making Unified Appropriations and Allocations for the Expenditures of State Government... for the Fiscal Years Ending June 30, 2023, June 30, 2024 and June 30, 2025" (the "Biennial Budget"). The Commission, which was established in 1971 and is a non-partisan, quasi-independent entity with a single program (Human Rights Commission – Regulation 0150), is charged with attempting to prevent discrimination in employment, housing, access to public accommodations, education, extension of credit and offensive names, and serves the public interest by providing an administrative body to evaluate discrimination complaints in lieu of direct court filings. The Commission investigates, conciliates, and at times litigates discrimination cases under the Maine Human Rights Act ("MHRA") and the Maine Whistleblowers' Protection Act ("MWPA"). The Commission also provides public guidance on interpretations of the law and makes recommendations for legislation concerning infringements on human rights in Maine. 5 M.R.S. §§ 4566(7), (11). Five Governor-appointed volunteer Commissioners of diverse political parties are appointed by a Governor, and those Commissioners appoint an Executive Director, a Commission Counsel, and staff to perform the agency functions.

Given the COVID-19 pandemic and housing crises of the past three years, the Commission's ability to meet statutory requirements for investigation, resolution, and litigation has been deeply tested. Simply put, more resources are needed for the agency to meet statutory obligations. We are extremely grateful for the Governor's proposal to do just that in her Biennial Budget initiatives, found on pages 435-438 of Part A along with our agency's baseline budget.

The Agency's Structure and Activities

In a given year, the Commission receives ~600-800 intake questionnaires submissions and ~700-800 new complaint filings¹, issues ~175-280 investigator reports, and processes/closes ~700-800 cases. In a good year, staying current with this work is a challenge for the Commission's small staff. When the FY2022-2023 Biennial Budget went into effect, the Commission had 13.5 full-time positions, ten of which (equivalent to ~8.5 FTE positions) were funded in whole or part by the General Fund ("GF"). The other Commission positions are funded by federal partnership agreements with the U.S. Equal Employment Opportunity Commission ("EEOC") and the U.S. Department of Housing and Urban Development ("HUD") under which generally the Commission investigates complaints that are filed in Maine but also are "dual-filed" with HUD or EEOC because the allegations implicate federal jurisdiction.² HUD or EEOC also can refer to the Commission cases that they receive which implicate discrimination in Maine.

During the COVID pandemic (particularly 2020 and 2021) the Commission received significantly higher case filings (~8-10% more) than has been typical in recent times.

HISTORICAL CASE ACTIVITY DATA 2013 - 2022

FISCAL YEAR	2022	2021	2020	2019	2018	2017	2016	2015	2014	2013
ACTIVE CASES FY	863	842	768 ^{iv}	710	795	726	756	684	713	746
+ CASES FILED	614	760	775	715	709	687	611	739	654	651
- CASES CLOSED	717	713	701	748	755	615	621	667	683	684
ACTIVE CASES FY END	760	863	842	677	749	798	723	756	684	713

In the COVID-era FY2020 and FY2021 fiscal years, the number of housing, public accommodation, and education cases filed with the Commission skyrocketed to never-before-seen levels.

HISTORICAL CASES FILED BY JURISDICTION FY 2013 - 2022

AREA of JURISDICTION Fiscal Year	2022	2021	2020	2019	2018	2017	2016	2015	2014	2013
EMPLOYMENT	291 (47.4%) ^y	435	554	508	492	482	480	548	518	483
HOUSING	98 (16%)	133	124	106	113	103	60	92	73	104
PUBLIC ACCOMMODATION	123 (20%)	172	110	128	104	105	71	98	63	64
EDUCATION	31 (5%)	21	18	17	14	5	5	8	3	3
CREDIT EXTENSION	-	-	-	2	-	-	2	2	-	-
OFFENSIVE NAMES	-	-	-	-	-	-	-	-	-	-
TOTALS	614	760	806	761	723	695	618	748	656	654

¹ For each signed, notarized complaint received, our staff: review it (and what may be many claims within it) for jurisdiction; prepare requests for information/documents; notify the respondent, receive their answers and send them to the complainant; receive complainant information/documents supporting the complaint; review for administrative dismissal; and consider or offer mediation. Typically, by the end of this initial case processing (every step of which is logged into at least one database), the case has been with our agency for 5-6 months.

² The Commission receives ~\$600,000-700,000 per year in funding from our federal worksharing contracts, amounts determined each year based on work completed in a prior fiscal year and dependent on federal funds availability. In the current budget year, the Commission is projected to receive \$599,728 in federal funds.

Each of these types of cases tends to be prioritized for handling due to ongoing relationships between parties, as people who have filed claims continue to live, seek access, or attend school at the entities they sued. The increase in COVID/housing cases needing priority processing unfortunately coincided with a time when the Commission (like many State agencies and private sector workplaces) experienced high rates of absences and leaves among Commission staff, all of which strained agency resources and led to case processing and investigation delays in cases not designated as needing priority handling. Under the MHRA, the Commission must complete investigation within two years of receiving a complaint, *but in housing cases investigation must be complete within 100 days*. The intensive processing, investigating and documenting demands required for HUD dual-filed housing complaints effectively requires our Investigators to set aside as much of their non-housing work as possible for periods of time. Additionally, under both the MHRA and our HUD worksharing agreement, *the Commission is required to file a court enforcement action for any dual-filed housing case which does not resolve voluntarily after a reasonable-grounds finding*. Housing cases dual-filed with HUD present time- and resource-intensive demands on Commission staff at literally every point in our agency process, from intake and initial pleading through completed investigation and onto court enforcement. The Commission trains all staff to share the required tasks on dual-filed housing cases.

Maine's housing crisis has been startlingly evident in record numbers of Commission housing filings, a dramatically increased housing caseload that put tremendous pressure on our agency staff and pushed much non-housing work to the back burner until statutory deadlines for those cases loomed. The Commission's excellent investigators share intake and investigation tasks for dual-filed housing cases, but our Commission Counsel has not been so fortunate, as she must review the evidence and proposed determinations in every single case in which our agency issues an Investigator's Report. Commission Counsel does that work while simultaneously (a) litigating court enforcement actions in unresolved reasonable-grounds dual-filed housing cases, (b) drafting proposed statutory amendments, (c) drafting proposed regulatory changes and assisting our agency and Commissioners in the rulemaking process, (d) providing information to the Legislature on proposed measures impacting the MHRA, Commission or other issues related to the right to a human life with dignity in Maine, (e) counseling agency staff about ongoing legal issues, (f) issuing guidance and advisory opinions as needed, and too many other items to mention. Additionally, as more housing cases are investigated, there has been an increase in the number of cause findings in HUD-dual-filed housing cases; given the MHRA's requirement that the Commission file court enforcement actions for all HUD-dual-filed housing cases in which cause is found and which do not resolve, the number of court actions Commission Counsel has had to file and litigate in court also has skyrocketed. At the moment, there are approximately 13 court actions pending, and another five cases that our Counsel must file in court. Despite the Herculean efforts of Commission Counsel, she is only one person. The demands created by housing case increases have directly impacted the Commission's ability to issue Investigator's Reports in the past two years,³ and our agency's case backlog ballooned during 2020 and 2021, a hole out of which Commission staff are working to dig.

FY 2024-2025 Biennium Funding and Initiatives.

The Commission's baseline Part A budget for FY24-25 is \$2,498,569, which serves as the starting point for discussion today.

³ As noted in the Commission's Annual Reports, the Commission's ability to issue Investigator's Reports has decreased significantly in recent years, from 280 in FY2019 to 155 in FY2022.

Securing Personnel Resources (First, Second, and Third Initiatives)

In order to meet statutory mandates, the Commission needs to secure existing personnel resources, and increase them.

First Initiative – New Investigator Position (100% GF).

	2023-24	2024-25
Initiative: Establishes one Maine Human Rights Investigator position to allow the agency to meet statutory requirements for completing investigations and address a significant case inventory arising out of increased and more complex case filings due to the COVID-19 pandemic. This initiative also provides funding for related All Other costs.		
GENERAL FUND		
Positions - LEGISLATIVE COUNT	1,000	1,000
Personal Services	94,712	90,735
All Other	4,235	4,235
Total	98,947	94,970

The housing/pandemic crises have led to such a heavy load of housing investigation and litigation for the Commission that the agency has had to divert existing investigator resources to allow Commission Counsel keep up with statutory obligations. About a year ago, one Commission investigator with housing litigation experience was assigned litigation tasks to assist Commission Counsel. Taking on litigation and other legal matters to assist Commission Counsel necessitated this investigator reducing their work on housing and non-housing investigations alike. This may be the first (or second) time in its history that the Commission has a Deputy Commission Counsel. While the Commission is exceedingly grateful for the six investigator positions it has, one of those positions is held by a Deputy Commission Counsel whose time predominantly must be spent on litigation and related matters. This leaves our investigative staff with a Lead Investigator and five MHR Investigators to handle the year-over-year increase in housing complaints filed with our agency and the associated burdens that goes with it, all of which is pushing our agency's ability to meet statutory requirements to the brink. The First Initiative will replace the diverted MHR Investigator resource that is now working on statutorily-required litigation, and allow the Commission to reduce its backlog of cases and speed up processing time.

Second Initiative – Permanency for An Existing Investigator Position (100% Federal Expenditures)

	2023-24	2024-25
Initiative: Continues and makes permanent one Maine Human Rights Investigator position previously continued by Financial Order 002251 F3 and reduces All Other to fund the position.		
FEDERAL EXPENDITURES FUND		
Positions - LEGISLATIVE COUNT	1,000	1,000
Personal Services	82,439	86,387
All Other	(82,439)	(86,387)
Total	0	0

When the COVID-19 pandemic hit halfway through FY 2020, and the Office of the Governor required state agencies to find GF savings, the Commission was able to avoid cutting positions or its program by managing vacancies, reorganizing supervisory duties from three positions, and having one Paralegal voluntarily determine to reduce work to part-time. The Office of the Governor's curtailment decreased the Commission's GF monies with a \$12,000 reduction of "All Other" funds for Commission meetings (renting meeting space for, and providing security at, monthly public meetings) and with a \$37,550 reduction of "Personal Services" funds which had

been allotted as part of salary and benefits payments for a staffer who voluntarily reduced their hours. As the FY2020-2022 Biennial Budget was stripped down to mostly COVID-related initiatives, the reduction to 13.5 staffers was rolled over into the agency's baseline budget going forward into the next Biennial Budget. The position in question was subsequently reclassified into a MHR Investigator position, with the reduction in full-time status addressed by Financial Order. The Commission sought to remedy this and return to 14 full-time staffers as part of the FY2022-2023 Biennial Budget process, an initiative that the Judiciary Committee approved given there was no impact on the GF,⁴ but which was not included in the final budget passed. This Second Initiative requires nothing from the General Fund, and will make permanent the personnel activity intended in the last Legislative session.

Third Initiative – New Business Manager I Position (100% GF)

	2023-24	2024-25
Initiative: Establishes one Business Manager I position to provide billing, collections and accounting services due to an increase in cases and contracted mediations and conciliations. This initiative also provides funding for related All Other costs.		
GENERAL FUND		
Positions - LEGISLATIVE COUNT	1,000	1,000
Personal Services	85,846	90,981
All Other	4,439	4,439
Total	90,285	95,420

The Commission offers parties opportunities for resolution in a great many cases. The Commission's Third Party Neutral Mediation Program, which operates at no cost to the General Fund because it is an economical fee-for-service model using neutral vendors, has become extremely successful and refers approximately 80 or so cases to contracted mediators each year. This offers tremendous value to parties, and results in many resolved cases, but also generates a lot of party payment, referral, and other paperwork that must be redacted before external payment processing, because the MHRA requires our agency to keep party and case names confidential. Commission staff also must process numerous other account receivables (such as FOAA and copy request payments) and payable, all of which can require time-consuming fund allocation, redaction, and use of several different State accounting systems. While the Commission has attempted for many years to handle internally the increasing volume of checks, refunds, invoices, referrals, and credit card materials, this task now occupies one Secretary Associate Legal staffer almost entirely, and exceeds our ability to manage without new resources. The Third Initiative will allow the Commission to hire a Business Manager I to handle billing, collection, and accounting services, and will allow the staffer handling these now to return to the important case processing, archiving, and other Commission work for which they were hired.

Increasing State Services Supporting Agency Operations (Fourth, Eighth, Ninth and Tenth Initiatives)

The increased demand for and upon Commission services has in turn led our agency to need increased

⁴ The Initiative continues and makes permanent one MHR Investigator position and reduces All Other to fund the position. This position (split 75% EEOC and 25% HUD funds within the same program) is dedicated to completing investigations in support of two longstanding federal worksharing agreements. This position was originally established by Financial Order 002251 F3, which ends on June 10, 2024. Funds are no longer required in the All Other line because operating expenditures are anticipated to be lower than budgeted.

support from several State resources in order for us to meet statutory mandates.

Fourth Initiative – Statewide Technology Services (100% GF)

	2023-24	2024-25
Initiative: Provides funding for statewide technology services provided by the Department of Administrative and Financial Services, Office of Information Technology.		
GENERAL FUND		
All Other	1,122	1,122
Total	1,122	1,122

The Commission had, for more than a decade, strived to manage all its information technology (“IT”) in-house. As years passed and IT has become more complex - especially with the pandemic and an instant leap to electronic case management and remote meetings/work – IT demands have exceeded our ability to handle in-house. Accordingly, the Fourth Initiative seeks additional funding for the Commission to transition fully to being supported for IT needs by the Office of Information Technology (“MaineIT”) within the Department of Administrative and Financial Services (“DAFS”), allowing dedicated focus on our statutory purpose and obligations. Moving the Commission under the State of MaineIT support system allows us to leverage existing hardware, applications, network access and security already in place, freeing our office to fully focus on our primary mission while MaineIT takes over management of all IT functions. The Commission also will have a dedicated support person that can manage agency IT functions, provide timely response to any IT issues, and provide a pathway for resolution and elevation in a manner that frees Commission staff to focus on our statutory functions.

Eighth Initiative – Statewide Insurance Coverage Funds Increase (100% GF)

	2023-24	2024-25
Initiative: Provides funding for statewide insurance coverage provided through the Department of Administrative and Financial Services, Division of Risk Management based on claims experience, coverage increases, attorney fees on claims, and actuarially recommended reserves.		
GENERAL FUND		
All Other	3,920	3,920
Total	3,920	3,920

This Initiative seeks funds to pay increased costs that the DAFS Division of Risk Management has assessed the Commission based on claims experience, coverage increases, attorney fees on claims, and actuarially recommended reserves. It is our understanding that the increase in assessment is based on a routine actuarial review for our agency across multiple lines of insurance (tort, property, employee bond, vehicle liability, and cyberactivity). This will assure that the Commission itself and its staff are adequately insured for statutorily-required agency activity.

Ninth Initiative – Human Resources Service Center Funds Increase (100% GF)

	2023-24	2024-25
Initiative: Provides funding for the Department's share of the cost for the financial and human resources service center within the Department of Administrative and Financial Services.		
GENERAL FUND		
All Other	25,040	25,939
Total	25,040	25,939

The Ninth Initiative would provide increased funding for the Commission's share of the cost for the financial and human resources service center within DAFS. DAFS Service Centers provide centralized accounting, payroll, budgeting and human resources services to departments and agencies. Service Centers are established as internal service funds intended to recoup their costs through billings to departments and agencies for services provided. The Service Center expenses have increased due to negotiated and benefit changes to Personal Services as well as increases in operational costs. This recoupment process results in increased billing rates to departments and agencies such as that presented in the Ninth Initiative.

Tenth Initiative –IT Services for Commissioners (100% GF)

	2023-24	2024-25
Initiative: Provides funding for the Maine Human Rights Commission to move fully into the MainelT support model.		
GENERAL FUND		
All Other	575	575
Total	575	575

The Tenth Initiative will provide funding for the Commission to provision our five volunteer Commissioners with OneDrive access supported by MainelT, to allow Commissioners to access public hearing and meeting materials with technology assistance. Like the Fourth Initiative regarding increasing MainelT services to Commission staff, this move to bring our Commissioners into MainelT support is necessary because agency staff can no longer manage all IT needs internally. The Tenth Initiative likely would have been combined with the Fourth Initiative but for the late-date nature of its addition to the Biennial Budget.

Providing Conciliation in Reasonable-Grounds Cases (Sixth Initiative, 100% GF)

	2023-24	2024-25
Initiative: Provides funding for conciliation services pursuant to Maine Revised Statutes, Title 5, section 4612, subsection 3.		
GENERAL FUND		
All Other	2,400	2,400
Total	2,400	2,400

In every case in which the Commission votes to find reasonable grounds to believe that unlawful discrimination/retaliation occurred, the MHRA requires the Commission to offer the parties an opportunity to conciliate the matter, with the Commission participating as a party in the public interest. Historically, the Commission used existing staffers to conduct conciliation sessions, as there has never (to our knowledge) been any budget allocation for the statutorily-required conciliation function. In recent years, the Commission has shifted to leveraging the existing roster of trained mediators with experience in MHRA matters from its Third Party Neutral Mediaion Program to perform mediations and post-reasonable-grounds conciliations, as each of those people has agreed to conduct mediations for an economical small fee. The results of using these mediators has proven extremely positive; in just the last three fiscal years, mediators have successfully conciliated 37 cases to resolutions including remedies for the complainant and also in the public interest. Providing funding dedicated to conciliation will allow the Commission to continue utilizing these trained mediators to resolve reasonable-grounds cases.

Reimbursing Commissioners' Mileage to Attend Public Hearings (Seventh Initiative, 100% GF)

	2023-24	2024-25
Initiative: Provides funding for commissioners' mileage payments.		
GENERAL FUND		
All Other	3,594	3,594
Total	3,594	3,594

Our five Commissioners come to public meetings 11-12 times per year to conduct agency business, each receiving a statutorily-proscribed \$25 per diem for each meeting they attended. Our current Commissioners hail from all over Maine – Presque Isle, Farmington, Cumberland, Augusta, and Hallowell – providing a geographic diversity that is extremely valuable in deciding Commission cases, and some drive a number of hours to attend our public meetings. The Seventh Initiative will ensure that the citizens who have volunteered to serve the Maine public in conducting Commission business do not have to themselves pay for the privilege of doing so.

Adjusting Federal Fund Allocations (Fifth initiative, 0% General Fund)

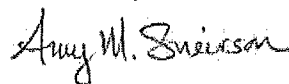
	2023-24	2024-25
Initiative: Provides funding to bring allocations in line with projected revenue.		
FEDERAL EXPENDITURES FUND		
All Other	100,025	90,895
Total	100,025	90,895

As discussed above, the Commission has received, investigated, closed, and litigated substantially more dual-filed housing cases than it has in the past, with accordingly higher HUD payments to the Commission per case resolution. The Fifth Initiative seeks to more accurately reflect baseline budget amounts for these payments along with the related increase in STACAP rates⁵ on the HUD funds in the Commission's accounts. There is no cost to the GF associated with this update.

Summary

The Maine Human Rights Commission needs more resources just to maintain its operations within statutory requirements. The Commission is grateful to the Governor for including these initiatives in her Biennial Budget proposal, and also appreciates your consideration of these initiatives for our agency. Thank you for allowing the Commission the opportunity to provide this testimony, and please do not hesitate to ask us to provide additional information as needed.

Sincerely,



Amy M. Sneirson
Executive Director

Cc: Commissioners

⁵ The State provides un-billed central services to State programs that operate with federal and/or special revenue funds. In order to recover the costs of providing these services, the State must prepare a Statewide Indirect Cost Allocation Plan or STACAP. The plan is used to develop indirect cost rates, which are used to bill the Federal and special revenue fund units, their "fair share" of the indirect costs.