

# MAINE STATE LEGISLATURE

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(EMERGENCY)  
(Governor's Bill)  
FIRST REGULAR SESSION

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ONE HUNDRED AND TENTH LEGISLATURE

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**Legislative Document**

**No. 1220**

H. P. 1032

House of Representatives, March 11, 1981

Referred to the Committee on Appropriations and Financial Affairs. Sent up for concurrence and ordered printed.

EDWIN H. PERT, Clerk

Presented by Representative Kelleher of Bangor.

Cosponsor: Representative Drinkwater of Belfast.

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STATE OF MAINE

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IN THE YEAR OF OUR LORD NINETEEN HUNDRED AND EIGHTY-ONE

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**RESOLVE, Appropriating Funds for Attorneys' Fees and Costs in the Case of  
Thiboutot v. Maine.**

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

Whereas, certain fees and costs of attorneys have been billed; and

Whereas, such fees and costs have been determined to be awarded by the Superior Court in an action captioned **Thiboutot v. State of Maine**, Docket No. CA-76-33; and

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

**Superior Court Order on Petition for Attorneys' Fees. Resolved:** That there is appropriated from the General Fund the sum of \$57,464.28 for the purpose of paying attorneys' fees and costs as follows:

Attorneys: Robert Mittel	\$26,423.78
Hugh Calkins	10,243.90
Howard H. Dana	11,623.61
Charles R. Peck	500.00
the law firm of Goodwin, Proctor & Hoar	2,803.49
and Pine Tree Legal Assistance, Inc.	5,869.50
Total	<u>\$57,464.28</u>

The appropriated funds shall be paid to the listed attorneys and organizations only upon the condition that the payment releases the State from any and all further liability to such attorneys and organizations arising out of, or in conjunction with, the litigation cited in the preamble.

**Emergency clause.** In view of the emergency cited in this preamble, this resolve shall take effect when approved.

#### STATEMENT OF FACT

The purpose of this bill is to award counsel fees in accordance with the judgment of the Superior Court in the case of **Thiboutot v. State of Maine**.

This judgment is the culmination of litigation begun in 1976 arising out of a dispute over the meaning of laws governing the disbursement of Aid to Families with Dependent Children benefits to the plaintiffs, and the class they represented, part of which funds were supplied by the Federal Government through a program administered by Maine's Department of Human Services. As a result of the judgment, the estimated 25 families of the class are eligible to receive an average \$1,000 per family per year in additional Aid to Families with Dependent Children benefits.

Attorneys for the plaintiffs, including both Pine Tree Legal Assistance, Inc. and private counsel, sought attorneys' fees as well. The Superior Court was directed to award such fees by a decision of the Supreme Judicial Court in **Thiboutot v. Maine**, 405 A.2d 330, Me. 1979.

The State appealed the award of attorneys' fees to the United States Supreme Court. In the case of **Maine v. Thiboutot**, U.S., 100 S. Ct. 2502, (1980), the Court, in a 6-3 decision broadened the interpretation of United States Code, Title 42, Sections 1983 and 1988, so that for the first time attorneys' fees could be awarded against states for violations of federal statutes even if no civil rights had been violated.

Following the judgment, plaintiffs' attorneys claimed \$137,335.49 in attorneys'

fees. The State disputed that claim and the Superior Court recently adjudged \$57,464.28 to be due. This sum is allocated as stated in the bill.

The State has no fund specifically designated for the payment of attorneys' fees in Section 1983 actions, nor does the Commissioner of Human Services have any authority to shift funds designated for Aid to Families with Dependent Children benefits to payments of attorneys' fees.

Therefore, if any payment is to be made, it should come from the General Fund pursuant to legislative authorization.