

MAINE STATE LEGISLATURE

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

ONE HUNDRED AND TENTH LEGISLATURE

Legislative Document

No. 1475

H. P. 1251 House of Representatives, March 25, 1981
Referred to the Committee on Judiciary. Sent up for concurrence and
ordered printed.

EDWIN H. PERT, Clerk

Presented by Representative Joyce of Portland.

Cosponsors: Representative Reeves of Newport, Senator Kerry of York and
Representative Carrier of Westbrook.

STATE OF MAINE

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

**AN ACT to Establish the Procedure for Payment for Attorneys' Fees Awards
Against the State.**

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

Whereas, one effect of the recent decision of the United States Supreme Court in
Maine vs. Thiboutot may be to increase the numbers and amounts of attorneys'
fees awarded by the courts to successful litigants against the State; and

Whereas, there are various court cases pending against the State which may
result in awards of attorney fees at any time; and

Whereas, there is a need to establish a procedure for paying court awarded
attorney fees; 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 enacted by the People of the State of Maine, as follows:

5 MRSA § 1512 is enacted to read:

§ 1512. Payment of attorneys' fees awards

No agent or officer of the State or any department or agency thereof may expend any state funds or state administered funds to pay attorneys' fees awarded by any court against the State or its departments or agencies or its officers or employees when sued in their official capacity, until funds for payment of the award have been appropriated by the Legislature.

This provision shall not apply to payment of attorneys' fees as provided elsewhere in these statutes.

All property, assets and interests of the State are exempt from any attachment or execution sought for the enforcement of an award of attorneys' fees.

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

STATEMENT OF FACT

In *Maine vs. Thiboutot*, U.S. (1980), the United States Supreme Court held that a plaintiff has a cause of action against any defendant, including a state, under United States Code, Title 42, Section 1983, the Civil Rights Act, for illegal administration of any program created by federal statute. The court also held that successful litigants in these suits may apply for awards of attorneys' fees as provided by United States Code, Title 42, Section 1988, the Civil Rights Attorneys Fees Awards Act.

Since the State must proceed on the assumption that it is administering federally created programs in an appropriate manner, it is impossible to predict or budget for possible attorneys' fees awards as the result of future or even pending litigation. Therefore, it is necessary to specify the appropriate procedure to be used for payment of these awards. The purpose of this bill is to identify legislative appropriation as the appropriate procedure for meeting these unpredictable and unbudgeted expenses of government.