

MAINE STATE LEGISLATURE

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1 FIRST REGULAR SESSION
2

3 ONE HUNDRED AND ELEVENTH LEGISLATURE
4

5 Legislative Document

No. 1428

6
7 H.P. 1082

House of Representatives, April 6, 1983

8 Referred to the Committee on Judiciary. Sent up for concurrence and
9 ordered printed.

10 EDWIN H. PERT, Clerk

Presented by Representative Andrews of Portland.

Cosponsors: Representative Reeves of Pittston, Representative Hobbins of
11 Saco and Representative Hayden of Durham.

12 STATE OF MAINE
13

14 IN THE YEAR OF OUR LORD
15 NINETEEN HUNDRED AND EIGHTY-THREE
16

17 AN ACT to Create a Board of Review
18 for the Judiciary.
19

20 Be it enacted by the People of the State of Maine as
21 follows:

22 Sec. 1. 4 MRSA §9-B, as amended by PL 1979, c.
23 490, §1, is repealed.

24 Sec. 2. 4 MRSA c. 8 is enacted to read:

25 CHAPTER 8

26 BOARD OF REVIEW OF THE JUDICIARY

27 §421. Establishment and composition

28 There is established a Board of Review of the
29 Judiciary consisting of 7 members to receive and
30 investigate complaints concerning the performance of

1 misconduct of any Justice of the Supreme Judicial
2 Court or Superior Court, or of any Judge of the Dis-
3 trict Court, Probate Court or Administrative Court.
4 The board may also investigate whether any judge on
5 the Supreme Judicial Court, Superior Court, Probate
6 Court or Administrative Court is suffering from a
7 physical or mental condition which substantially
8 impairs his ability to perform his duties as a judge.

9 1. Judicial membership. Two members of the
10 board shall be either active or Active Retired Jus-
11 tices of the Supreme Judicial Court or Superior
12 Court, active or Active Retired Judges of the Dis-
13 trict Court or active Judges of Probate. At no time
14 may the 2 judiciary members be members of the same
15 court. The 2 judiciary members shall be appointed by
16 the Governor subject to confirmation by the joint
17 standing committee of the Legislature having juris-
18 isdiction over judiciary.

19 2. Attorney membership. Two members of the
20 board shall be attorneys-at-law admitted to practice
21 in the State. The 2 attorney members of the board
22 shall be appointed by the Governor, subject to con-
23 firmation of the joint standing committee of the
24 Legislature having jurisdiction over judiciary.

25 3. Citizen membership. Three members of the
26 board shall be representatives of the general public
27 of the State and shall not be attorneys or members of
28 the judiciary. The 3 citizen members of the board
29 shall be appointed by the Governor, subject to con-
30 firmation by the joint standing committee of the
31 Legislature having jurisdiction over judiciary.

32 4. Chairman; quorum. The Governor shall appoint
33 a chairman of the board and, from time to time, the
34 board may designate from its members a vice-chairman
35 and secretary. A quorum of the board shall consist
36 of 5 members and no action may be taken by the board
37 except by vote of a majority of the full board.

38 5. Terms. The term of each member of the board
39 shall be for 6 years, except that initial appoint-
40 ments shall be as follows in order to achieve stag-
41 gered terms.

1 A. One judiciary member shall be appointed to a
2 6-year term and the other judiciary member shall
3 be appointed to a 4-year term.

4 B. One attorney member shall be appointed to a
5 4-year term and one attorney member shall be
6 appointed to a 2-year term.

7 C. One public member shall be appointed to a
8 6-year term, the 2nd public member shall be
9 appointed to a 4-year term and the 3rd public
10 member shall be appointed to a 2-year term.

11 D. No member may serve more than one term in
12 office, provided that the members appointed to
13 serve 2 years or less of an initial or unexpired
14 term shall not be considered to have served the
15 equivalent of a term for purposes of this subsec-
16 tion.

17 §422. Compensation, expenses and budget

18 The board may establish offices, employ an execu-
19 tive secretary and counsel and make arrangements for
20 such secretarial and other assistance as the board
21 reasonably requires. The board shall have a budget
22 approved by the Legislature.

23 Members of the board shall receive no salary or
24 other compensation, but shall receive their necessary
25 administrative and traveling expenses incurred while
26 actually engaged in the discharge of their official
27 duties.

28 §423. Complaints

29 The board shall receive complaints concerning the
30 performance or misconduct of any Justice of the
31 Supreme Judicial Court or Superior Court, or of any
32 Judge of the District Court, Probate Court or Admin-
33 istrative Court. The board shall also receive and
34 investigate complaints concerning the fitness of any
35 judge to continue in office.

36 The board shall also have authority to hear
37 claims of workers' compensation commissioners as to

1 just cause for failing to meet the requirements of
2 Title 39, section 99-B.

3 Upon receipt of any complaint, the board or its
4 designee shall communicate the complaint to the
5 person complained against and shall provide that
6 person with a copy of any written complaint. The
7 person complained against shall have reasonable
8 opportunity to respond to the complaint. The board
9 shall conduct any further investigation as it deems
10 fit. If the board determines that the complaint is
11 unfounded, the board shall dismiss the matter, noti-
12 fying any complainant of its actions and of its
13 reasons therefor.

14 All actions taken by the board and records of the
15 board prior to the hearing are confidential.

16 §424. Hearing

17 The board shall hold a hearing at the request of
18 a member of the board or the person whose conduct is
19 being investigated. At that hearing, the person
20 under investigation shall be entitled to counsel, to
21 call witnesses and shall have the right to cross-
22 examine witnesses. The board shall have subpoena
23 power and every witness shall be sworn. The hearing
24 shall be before the board and shall be recorded. All
25 hearings before the board shall be open to the
26 public.

27 §425. Disposition

28 If, after completion of the board's investigation
29 and hearing, if any, the board determines that the
30 person under investigation has violated the laws of
31 Maine, the nature of which violation casts into doubt
32 his continued willingness to conform his conduct to
33 the Code of Judicial Conduct, as applicable, or that
34 the person has violated the Code of Judicial Conduct,
35 as applicable, or that the person under investigation
36 is suffering from a mental and physical condition
37 which substantially impairs his ability to perform
38 his duties as a judge, the board shall file a report
39 of its findings with the Supreme Judicial Court, the
40 Governor and the joint standing committee of the
41 Legislature having jurisdiction over judiciary,

1 together with a statement of the alleged charges, a
2 recommendation as to action, the transcript of any
3 hearing and any exhibits considered by the board.

4 §426. Confirmation hearings

5 If any person the board is currently investiga-
6 ting under this chapter is also being reconsidered
7 for reconfirmation by the joint standing committee of
8 the Legislature having jurisdiction over judiciary,
9 the board may, in its discretion, notify the commit-
10 tee that a complaint has been received against that
11 person and that it is currently being investigated.
12 The board may adopt rules for the conduct of its
13 operations under this chapter in accordance with the
14 Maine Administrative Procedure Act, Title 5, chapter
15 375.

16 Sec. 3. 39 MRSA §99-B, as enacted by PL 1979, c.
17 490, §2, is amended to read:

18 §99-B. Prompt decision required

19 The commissioner who hears a case pursuant to
20 section 99 shall render his decision no later than 30
21 days after each party has completed presenting its
22 case. Whenever the commissioner exceeds the limit
23 contained in this section, compensation to him shall
24 be forfeited effective the day after the 30th day and
25 for each day until the decision has been issued; pro-
26 vided that this provision shall not apply in any case
27 for which the commissioner has shown just cause, as
28 determined by the committee on judicial responsibil-
29 ity and disability established pursuant to Title 4,
30 section 9-B 423, for delay beyond 30 days.

31 STATEMENT OF FACT

32 The purpose of this bill is to establish a board
33 of review of the judiciary to hear complaints from
34 any person against any member of the Maine Judiciary
35 Committee. The board would be comprised of 7 mem-
36 bers: Two active or active retired members of the
37 judiciary; 2 attorneys; and 3 public members. All
38 members will be appointed by the Governor.

