

MAINE STATE LEGISLATURE

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120th MAINE LEGISLATURE

FIRST REGULAR SESSION-2001

Legislative Document

No. 271

H.P. 234

House of Representatives, January 23, 2001

An Act to Establish the Baxter Compensation Program.

(EMERGENCY)

Reported by Representative LaVERDIERE for the Committee to Develop a Compensation Program for Victims of Abuse at the Governor Baxter School for the Deaf pursuant to Resolve 1999, chapter 127, Part B.

Reference to the Joint Standing Committee on Judiciary suggested and printing ordered under Joint Rule 218.

Millicent M. MacFarland

MILLICENT M. MacFARLAND, Clerk

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

4
6 **Whereas,** former students of the Governor Baxter School for
the Deaf and the Maine School for the Deaf have been waiting for
years for the State to acknowledge the abuse they suffered; and

8
10 **Whereas,** it is important to start the compensation process
as expeditiously as possible; and

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

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

20 **Sec. 1. 5 MRSA §12004-G, sub-§26-E** is enacted to read:

22 26-E. Baxter Legislative 5 MRSA
Legislature Compensation Per Diem §22002
24 Authority and Expenses

26 **Sec. 2. 5 MRSA Pt. 28** is enacted to read:

28 PART 28

30 COMPENSATION AND REDRESS

32 CHAPTER 601

34 THE BAXTER COMPENSATION AUTHORITY

36 SUBCHAPTER I

38 GENERAL PROVISIONS

40 §22001. Definitions

42 As used in this chapter, the following terms have the
following meanings, unless the context otherwise indicates.

44
46 1. Abuse. "Abuse" means sexual abuse, physical abuse or
both.

48 2. Administrative expenses. "Administrative expenses"
means the expenses necessary for the operation of the program,
50 including the costs of the authority and stipends for legal and

2 financial advice for claimants, but not including compensation
3 payments.

4 3. Appeal board. "Appeal board" means the authority board
5 when acting to hear and decide appeals of the compensation
6 panel's decisions as provided in section 22005.

8 4. Authority. "Authority" means the Baxter Compensation
9 Authority established in section 12004-G, subsection 26-E.

10 5. Authority board or board. "Authority board" or "the
11 board" means the 5-member governing body described in section
12 22002, subsection 3.

14 6. Claimant. "Claimant" means a person who alleges having
15 suffered abuse while a student at the Maine School for the Deaf
16 or the Governor Baxter School for the Deaf and applies for
17 compensation from the program.

18 7. Claims consultant. "Claims consultant" means a person
19 employed by the program to assist claimants in preparing their
20 claims for submission to the compensation panel.

21 8. Compensation panel. "Compensation panel" means the
22 3-person panel appointed by the authority to hear claims and make
23 decisions, consisting of the determination of eligibility and
24 determination of the compensation amount, as provided in section
25 22004.

26 9. Final compensation decision. "Final compensation
27 decision" means the decision of the compensation panel with
28 regard to eligibility and level of compensation if it is not
29 appealed within 60 days of the decision, and the decision of the
30 appeal board if the decision of the compensation panel is
31 appealed.

32 10. Program. "Program" means the Baxter Compensation
33 Program established in section 22021.

34 11. Program director. "Program director" means the person
35 appointed by the authority to direct the program as provided in
36 section 22003.

37 12. Program principles. "The program principles" means the
38 compilation of theoretical and practical bases for operation of
39 the program as provided in section 22007.

40 13. Trust fund. "Trust fund" means the Governor Baxter
41 School for the Deaf Student Trust Fund established in Title 20-A,
42 section 7412.

2 **§22002. Baxter Compensation Authority**

4 **1. Established.** The Baxter Compensation Authority,
6 established in section 12004-G, subsection 26-E, is a public
8 instrumentality of the State, and the exercise by the authority
 of the powers conferred by this chapter is considered and held to
 be the performance of essential governmental functions.

10 **2. Purpose.** The authority is established to administer the
 Baxter Compensation Program.

12 **3. Members.** The authority board consists of 5 members, to
14 be appointed by the Governor, subject to review by the joint
16 standing committee of the Legislature having jurisdiction over
18 judiciary matters and confirmation by the Legislature.
 Collectively, the members must have knowledge and experience in
 deaf culture; abuse and its effects; the legal system; and
 redress and compensation principles.

20 **4. Chair; quorum.** The members of the board shall select a
22 chair from among the members. Three members constitute a
 quorum. Action taken by the board must be by majority vote.

24 **5. Powers.** The authority may:

26 **A.** Buy or lease real and personal property to carry out its
28 duties;

30 **B.** Establish positions and employ and contract with persons
32 to carry out its duties; and

34 **C.** Accept funds from all sources to be deposited in the
 trust fund.

36 **6. Duties.** The authority has the following duties.

38 **A.** The authority shall establish the Baxter Compensation
40 Program as provided in section 22021.

42 **B.** The authority shall appoint a program director as
 provided in section 22003.

44 **C.** The authority shall appoint a compensation panel as
46 provided in section 22004.

48 **D.** The authority board shall serve as the appeal board as
 provided in section 22005.

2 E. The authority shall complete the training and education
under section 22006.

4 F. The authority shall adopt program guidelines as provided
in section 22007.

6
8 G. The authority shall establish criteria for 3 tiers of
compensation based on the severity of abuse suffered by the
former students using well-established legal principles
10 governing awarding damages. The 3 tiers of compensation
are: \$25,000; \$60,000; and \$100,000.

12
14 H. The authority shall submit an annual written report by
January 15th of each year to the Governor, the Attorney
General and the joint standing committee of the Legislature
16 having jurisdiction over judiciary matters. The report must
include information on the following:

18
20 (1) The activities of the authority within the last 12
months;

22 (2) The number of employees and volunteers and their
responsibilities;

24
26 (3) Data pertaining to the following:

28 (a) Requests for information;

30 (b) Applications filed;

32 (c) Claims submitted to the compensation panel;

34 (d) Decisions made by the compensation panel, and
the nature of the decisions;

36 (e) Decisions appealed to the appeal board, and
the grounds for and outcomes of the appeals;

38
40 (f) Claims pending completion prior to being
submitted to the compensation panel;

42 (g) Claims pending decision by the compensation
panel;

44
46 (h) Claims pending resolution by the appeal
board; and

48 (i) Awards made and paid;

50 (4) Amount of compensation paid;

2 (5) Any other information that would help to evaluate
4 the performance of the program; and

6 (6) Any recommended legislation the authority
8 determines is necessary to carry out its duties.

10 I. The authority shall develop an evaluation process to
12 make ongoing determinations concerning the program's
14 effectiveness and operation within the program guidelines.

16 7. Application of laws. The authority is subject to the
18 budget, accounts and control and auditing requirements of Part 4.

20 8. Use of trust fund. The authority may use up to 15% of
22 the trust fund for administrative expenses.

24 **§22003. Program director**

26 The authority shall appoint a program director to serve as
28 staff to the authority and to direct the program.

30 **§22004. Compensation panel**

32 1. Appointment. The authority shall appoint 3 persons to
34 serve as the compensation panel. The compensation panel shall
36 make decisions about the eligibility of claimants and the
38 appropriate compensation payments to be made.

40 2. Qualifications. Collectively, the members of the
42 compensation panel must have the following qualifications:

44 A. Familiarity with the legal system, including experience
46 with:

48 (1) Weighing evidence and making decisions based on
50 that evidence; and

(2) Well-established legal principles that govern
 awarding damages;

B. Experience or knowledge of abuse and its effects; and

C. Experience or knowledge of deaf culture.

3. Chair. The compensation panel members shall select a
 chair from among the members.

4. Decision-making; quorum. The compensation panel members
 shall work together as collaboratively as possible. Decisions on

2 claims must be determined by a majority vote. All 3 members must
3 be present in order for a vote to be taken.

4 5. Training and education. Before handling any claims, the
5 compensation panel shall complete the training and education
6 under section 22006.

8 **§22005. Appeal board**

10 1. Appointment. The authority board shall serve as the
11 appeal board to hear and decide appeals of the decision of the
12 compensation panel.

14 2. Decisions. Decisions on claims must be determined by a
15 majority vote. Three members constitute a quorum.

16 **§22006. Training and education**

18 1. Training and education program. The program director
19 shall coordinate training and education for the members of the
20 authority, the program director and the compensation panel in the
21 following subject areas:

24 A. Deaf culture;

26 B. Physical and sexual abuse and its effects;

28 C. Basic applicable legal principles; and

30 D. Any other subject useful to the operation of the program.

32 2. Required. Members of the authority, the program
33 director and the compensation panel shall participate in the
34 training and education.

36 **§22007. Program principles and guidelines**

38 1. Duties. The program has the following duties.

40 A. The program shall provide American Sign Language
41 interpreters to ensure communication between program staff
42 and claimants, their families and friends and advocates
43 providing support.

44 B. The program shall explain to the claimants the
45 compensation process from initial contact with the program
46 through acceptance of the award, release of the State from
47 further liability and the making of the apology.

2 C. The program shall allow claimants to be accompanied in
4 all steps of the process by friends, family and other
6 support people.

8 D. The program shall promote provision of support and
10 immediate access to counseling resources for claimants
12 recounting their experiences, especially those disclosing
14 abuse for the first time.

16 E. The program shall inform as many former students as
18 possible about the program and give those students an
20 opportunity to apply for compensation.

22 F. The program shall work with former students and their
24 families in situations in which the former student is not
26 capable of making decisions concerning participation in the
28 program.

30 G. The program shall develop a plan for working with and
32 providing services to former students no longer living in
34 the State.

36 **2. Program guidelines.** The authority shall adopt program
38 guidelines as the theoretical and practical bases for the
40 operation of the program that are consistent with subsection 1,
42 using the following sources as guidance:

44 A. The final report of the Committee to Develop a
46 Compensation Program for Victims of Abuse at the Governor
48 Baxter School for the Deaf, established by Resolve 1999,
50 chapter 127, Part B;

B. The guiding principles that have been adopted and used
by other compensation programs as bases for operation of the
programs;

C. The report of the Law Commission of Canada, "Restoring
Dignity: Responding to Child Abuse in Canadian
Institutions," issued in 2000;

D. Judicial practice, in the State and elsewhere,
concerning the awarding of damages; and

E. Any other reports, rules or other sources the authority
determines useful.

3. Process. The program guidelines are not rules and the
authority is not required to proceed under the Maine
Administrative Procedure Act in adopting the program guidelines,
although the authority may hold public hearings and solicit

2 comments as provided in that Act. In developing the program
3 guidelines, the authority shall seek input from and work as
4 collaboratively as possible with all interested parties and
5 groups, including the deaf community.

6 **§22008. Status of members and employees**

8 **1. State employees.** Members and employees of the authority
9 may not be construed to be state employees for the purpose of the
10 state civil service provisions of Part 2 and chapter 372, and any
11 other purpose except for the following:

12 **A.** Employees of the authority are deemed state employees
13 for the purposes of the state retirement provisions of Part
14 20, and the state employee health insurance program under
15 chapter 13, subchapter II; and

16 **B.** For the purposes of the Maine Tort Claims Act, the
17 authority is deemed a governmental entity and its members
18 and employees are deemed employees as those terms are
19 defined in Title 14, section 8102.

20 **2. Limitation of liability.** A person who is a member of
21 the authority or an employee of the authority is not subject to
22 personal liability for having acted within the course and scope
23 of the person's membership or employment to carry out any power
24 or duty under this chapter. The authority shall indemnify a
25 member or employee of the authority against expenses actually and
26 necessarily incurred by the person in connection with the defense
27 of any action or proceeding in which the person is made a party
28 by reason of past or present association with the authority.

29 **§22009. Public proceedings and records; confidentiality**

30 **1. Public proceedings and records.** Except as provided in
31 subsection 2, all meetings and records of the authority are
32 subject to the provisions of Title 1, chapter 13, subchapter I.

33 **2. Confidential.** All information provided by a claimant or
34 a claimant's family is confidential until the claim is submitted
35 to the compensation panel. Once the claim is submitted to the
36 compensation panel, the claim is a public record.

37 **§22010. Repeal**

38 This chapter is repealed on July 1, 2007.

39 **SUBCHAPTER II**

40 **THE BAXTER COMPENSATION PROGRAM**

2 **§22021. Baxter Compensation Program**

4 **1. Purposes.** The purposes of the Baxter Compensation
6 Program are:

8 A. To provide compensation to former students who suffered
10 abuse by a state employee or as a result of state action or
 inaction while students at either the Maine School for the
 Deaf or the Governor Baxter School for the Deaf;

12 B. To assist in the victims' healing process by admitting
14 the State's responsibility for not protecting students from
16 abuse by a state employee or as a result of state action or
 inaction while the victims were attending the Maine School
 for the Deaf or the Governor Baxter School for the Deaf; and

18 C. To apologize to the students who were abused and to
20 their families.

22 **2. Program director; duties.** The program director shall
 direct the program.

24 A. The program director is responsible for hiring,
26 supervising and firing all employees authorized by the
 authority. The program director shall maintain only the
 number of employees necessary to operate the program.

28 B. The program director is responsible for the day-to-day
30 operations of the program, including overseeing the work of
 the claims consultants.

32 C. The program director shall report to the authority on a
34 regular basis as determined by the authority, and shall keep
 the authority informed about the program and its operation.

36 D. The program director shall maintain communication with
38 the deaf community and other potential beneficiaries of the
 program.

40 **3. Location; travel.** The program must be established in a
42 central office location. The program director and all program
44 personnel, including the claims consultants and the compensation
46 panel are based in the central office. Claim consultants may
 travel as needed to assist claimants in preparing their claims.
 The compensation panel may travel as needed to carry out its
 responsibilities.

48 **4. Claims consultants.** The program director shall hire a
50 sufficient number of claims consultants to work with the persons

2 applying for compensation. Claims consultants must be selected
3 to provide personal and professional diversity sufficient to
4 allow claimants to select the claims consultant with whom they
5 feel the most comfortable.

6 A. The qualifications for claims consultants include:

8 (1) Fluency in American Sign Language;

10 (2) Knowledge of or familiarity with abuse and its
11 effects;

12 (3) Knowledge of or familiarity with deaf culture;

14 (4) Ability to work with deaf interpreters;

16 (5) Ability to work with and refer claimants to
18 therapists and counselors.

20 B. The duties of claims consultants include:

22 (1) Working with claimants and potential claimants;

24 (2) Helping claimants prepare their materials for
25 submission to the compensation panel;

26 (3) Recording claimants' stories and experiences for
28 use in the claims process, including presentation to
29 the compensation panel in written, audio or audio
30 visual formats;

32 (4) Assisting claimants in collecting and
33 corroborating information;

34 (5) Explaining the compensation program process to
35 claimants;

36 (6) Explaining the decision of the compensation panel;

38 (7) Assisting claimants in assembling the materials
39 necessary to appeal the compensation panel's decision
40 to the appeal board;

41 (8) Referring claimants to a professional outside the
42 program in order to secure legal and financial advice;

43 (9) Referring claimants to counseling when
44 appropriate; and
45

(10) Other reasonable duties necessary for the operation of the program as assigned by the program director.

A claimant is not required to use the services of a claims consultant to file a claim for compensation.

§22022. Eligibility

A person is eligible to receive compensation if:

1. **Victim of abuse.** That person was abused by a state employee or as a result of state action or inaction while a student at the Maine School for the Deaf or the Governor Baxter School for the Deaf, and the abuse occurred either at the school or was associated with the school;

2. **Date of abuse.** The abuse occurred prior to January 1, 2001; and

3. **Filing deadline.** The claim for compensation is filed with the program by March 31, 2006.

§22023. Claim process

1. **Application.** A person may apply for compensation by submitting a completed claim form to the program.

2. **Submit to compensation panel.** The claimant or, if requested by the claimant, a claims consultant shall submit the information about the claim to the compensation panel.

§22024. Decision

The compensation panel shall issue a decision on each submitted claim. The decision consists of 2 parts.

1. **Eligibility determination.** The compensation panel shall determine whether the claimant is eligible to receive compensation. For the claimant to be eligible for compensation, the compensation panel must determine that:

A. The claimant was a student at the Maine School for the Deaf or the Governor Baxter School for the Deaf. The compensation panel may use reliable information in addition to the information included in the claim;

B. The allegation of abuse includes abuse that occurred before January 1, 2001; and

2 C. The claimant was abused by a state employee or as a
3 result of state action or inaction while a student at the
4 Maine School for the Deaf or the Governor Baxter School for
5 the Deaf. The compensation panel shall make this
6 determination if the compensation panel finds there is a
7 reasonable likelihood that the claimant was abused while a
8 student at the Maine School for the Deaf or the Governor
9 Baxter School for the Deaf. The abuse may have occurred at
10 either school or elsewhere, but the abuse must have been
11 associated with attendance or residence at either school
12 while the State was responsible for the claimant's care and
13 custody.

14 2. Determination of compensation amount. If the
15 compensation panel determines that the claimant is eligible under
16 subsection 1, the compensation panel shall review the claim to
17 determine the amount of compensation. The panel shall apply the
18 criteria adopted under section 22002, subsection 6, paragraph G,
19 to the facts of the claim to determine which level of
20 compensation is to be awarded. When making the determination,
21 the panel shall award compensation at the highest level that the
22 facts of the claim support.

23 3. Communication of the decision. The compensation panel
24 shall provide to the claims consultant who assisted the claimant
25 or, if no claims consultant assisted the claimant, to a claims
26 consultant a written statement of the decision, including
27 separate findings on each of the determinations. The claims
28 consultant shall provide the statement and explain its content
29 and meaning to the claimant. The claims consultant shall also
30 explain the options available to the claimant if the claimant is
31 not satisfied with the compensation panel's decision.

32 §22025. Appeal

33 1. Appeal. If the claimant is not satisfied with the final
34 decision of the compensation panel, the claimant may appeal the
35 decision to the appeal board. The appeal must be submitted
36 within 60 days of the communication of the decision to the
37 claimant, although the appeal board may extend the time limit for
38 good cause.

39 2. Appeal costs. If the claimant appeals the decision, the
40 claimant is responsible for paying the costs of the appeal as
41 follows.

42 A. If the claimant is appealing the compensation panel's
43 decision under section 22024, subsection 1 that the claimant
44 is not eligible for compensation, the claimant is not
45 required to pay any appeal costs.

2 B. If the claimant is appealing the compensation panel's
4 decision under section 22024, subsection 2 regarding the
level of compensation, the costs must be paid as follows:

6 (1) If the appeal board disagrees with the claimant
8 and upholds the compensation panel's decision, the
appeal cost is \$2,500, to be withheld from the
10 compensation payment; or

12 (2) If the appeal board agrees with the claimant and
14 increases the compensation award of the compensation
panel, the claimant is not required to pay any appeal
cost.

16 3. Assistance of claims consultant. At the request of a
18 claimant, a claims consultant shall assist the claimant in
assembling the materials necessary to appeal the decision.

20 4. Appeal on record and appeal documents. The appeal board
22 may make the decision on the appeal based solely on the record of
the claim and documents submitted with the appeal. The appeal
24 board is not required to conduct a hearing or take testimony, but
may do so if it so chooses.

26 5. Standard of review. The appeal board shall review the
28 decision of the compensation panel and may overrule the decision
only if the appeal board determines the decision of the
30 compensation panel is arbitrary and capricious.

32 6. Communication of decision. The appeal board shall
34 provide to the claims consultant a written statement of the
appeal board's decision. The claims consultant shall provide the
statement and explain its content and meaning to the claimant.

36 7. Decision final. The decision of the appeal board is
38 final and is not appealable to any court or other authority.

40 §22026. Acceptance

42 1. Notification. The claimant shall notify a claims
44 consultant whether the claimant will accept the compensation
awarded by the program.

46 2. Release. To receive payment of the compensation, the
48 claimant must release the State from any further liability by
signing a release form provided by the program.

50 3. Financial advice. A claims consultant shall provide to
the claimant who has been awarded compensation the names and

2 addresses of professionals who have agreed to work with claimants
3 to provide financial advice. The program shall contribute to
4 professional fees for financial advice and fees for interpreting
5 services for claimants to obtain and use the advice as provided
6 in section 22042.

7 **§22027. Payment**

8
9 The program shall pay compensation within 30 days of the
10 final compensation decision, or as soon thereafter as possible.

11 **§22028. Apology**

12
13 **1. Personal apology.** When the program pays compensation,
14 the State shall issue a personal apology to the claimant.

15 **2. Process.** The State shall issue the apology as follows.

16
17 **A.** The program director shall prepare the apology, and
18 deliver the document to the Legislature and the Governor.

19
20 **B.** The President of the Senate, the Speaker of the House of
21 Representatives and the Governor shall personally sign the
22 apology document.

23
24
25 **SUBCHAPTER III**

26
27 **SERVICES**

28
29 **§22041. Counseling**

30
31 **1. Referrals.** Claims consultants shall refer claimants and
32 their families for counseling when the claims consultants believe
33 such referral may be helpful.

34
35 **2. Counseling.** Claimants are eligible for counseling
36 without cost to them as provided through the Department of Mental
37 Health, Mental Retardation and Substance Abuse Services. The
38 Department of Mental Health, Mental Retardation and Substance
39 Abuse Services shall continue to provide counseling services for
40 former students of the Governor Baxter School for the Deaf and
41 the Maine School for the Deaf.

42
43 **§22042. Legal and financial advice**

44
45 The compensation program shall provide stipends to each
46 claimant of up to \$1,000 to secure legal advice and up to \$1,000
47 to secure financial advice at any time during the process and
48 about any aspect of that claimant's claim, including the amount
49 of the compensation award. The stipends may be used to pay the
50

2 costs of interpreting services to obtain and use the legal and
3 financial advice.

4 **Emergency clause.** In view of the emergency cited in the
5 preamble, this Act takes effect when approved.
6

8 SUMMARY

10 This bill is a recommendation of the Committee to Develop a
11 Compensation Program for Victims of Abuse at the Governor Baxter
12 School for the Deaf, created by Resolve 1999, chapter 127, Part
13 B. The committee's final report was submitted in December 2000.
14

15 This bill creates the Baxter Compensation Authority, which
16 establishes the Baxter Compensation Program to pay compensation
17 to the former students who were sexually or physically abused
18 while attending the Governor Baxter School for the Deaf or its
19 predecessor, the Maine School for the Deaf. The authority board
20 consists of 5 members appointed by the Governor, subject to
21 review by the joint standing committee of the Legislature having
22 jurisdiction over judiciary matters and confirmation by the
23 Legislature.
24

25 The Baxter Compensation Program will be run by a program
26 director, appointed by the authority board. Claims consultants
27 may help former students develop and file claims for
28 compensation. A 3-person compensation panel, appointed by the
29 authority, will review each claim individually and decide whether
30 the claimant is eligible for compensation and how much
31 compensation is appropriate. The claimant must show that there
32 is a reasonable likelihood that the claimant suffered abuse by a
33 state employee or because of the action or inaction of the State
34 while the claimant was a student at either the Governor Baxter
35 School for the Deaf or the Maine School for the Deaf. The
36 compensation panel will apply criteria adopted by the authority
37 board to determine which of 3 tiers of compensation applies,
38 based on the severity of the abuse as well as other factors. The
39 3 tiers of compensation are \$25,000, \$60,000 and \$100,000. The
40 claimant may appeal the decision of the compensation panel to the
41 authority board sitting as an appeal board. The appeal board may
42 overturn the compensation panel's decision only if it finds that
43 the decision was arbitrary and capricious. The final
44 compensation decision is not appealable to any court or other
45 tribunal. Claims must be filed by March 31, 2006. All
46 compensation must be paid out by July 1, 2007, when the program
47 ceases to exist.
48

2 The Baxter Compensation Authority shall report on an annual
basis to the Governor, the Attorney General and the joint
4 standing committee of the Legislature having jurisdiction over
judiciary matters.