

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

2017

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34

Date: 6/8/2017

(Filing No. S-231)

JUDICIARY

Reproduced and distributed under the direction of the Secretary of the Senate.

**STATE OF MAINE
SENATE
128TH LEGISLATURE
FIRST REGULAR SESSION**

COMMITTEE AMENDMENT "A" to S.P. 423, L.D. 1260, "Resolve, To Establish the Commission To Create a Plan for the Establishment of a Probate Court System with Full-time Judges"

Amend the resolve by striking out the title and substituting the following:

'Resolve, To Establish the Commission To Create a Plan To Enhance the Efficiency and Effectiveness of the Probate Court System'

Amend the resolve by striking out all of the Preamble (page 1, lines 1 to 11 in L.D.) and inserting the following:

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

Whereas, the existing probate court system established pursuant to the Constitution of Maine, Article VI, Section 6 was conditionally repealed by a vote of the people of Maine in 1967; and

Whereas, a different probate court system has not been created since the repeal and the Legislature has not considered a plan to establish a probate court system; and

Whereas, this legislation is necessary to honor the intent of a long-standing vote of Maine people and ensure that Maine people currently have the same access to justice in all Maine courts; and

Whereas, the Commission To Create a Plan To Enhance the Efficiency and Effectiveness of the Probate Court System needs to start its work immediately to have enough time to complete its duties before the reporting date of December 6, 2017; 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'

Amend the resolve by striking out all of sections 1 and 2 and inserting the following:

COMMITTEE AMENDMENT

1 **'Sec. 1. Commission established. Resolved:** That the Commission To Create a
2 Plan To Enhance the Efficiency and Effectiveness of the Probate Court System, referred
3 to in this resolve as "the commission," is established; and be it further

4 **Sec. 2. Commission membership. Resolved:** That the commission consists of
5 13 members as follows:

6 1. Two members of the Senate appointed by the President of the Senate, including
7 one member from each of the 2 parties holding the largest number of seats in the
8 Legislature;

9 2. Two members of the House of Representatives appointed by the Speaker of the
10 House of Representatives, including members from each of the 2 parties holding the
11 largest number of seats in the Legislature;

12 3. Two members appointed by the Chief Justice of the Supreme Judicial Court;

13 4. One member who is a sitting Probate Court Judge, appointed by the Speaker of the
14 House of Representatives;

15 5. One member who is a register of probate, appointed by the President of the
16 Senate;

17 6. One member who is a judicial branch clerk, appointed by the Chief Justice of the
18 Supreme Judicial Court;

19 7. The chair of the Probate and Trust Law Advisory Commission or the chair's
20 designee;

21 8. The chair of the Family Law Advisory Commission or an attorney member of that
22 commission designated by the chair; and

23 9. Two members who represent the interests of counties, one appointed by the
24 President of the Senate and one appointed by the Speaker of the House of
25 Representatives.

26 The appointing authorities shall make every effort to ensure that appointments to the
27 commission represent diversity with regard to geography and population across the State;
28 and be it further'

29 Amend the resolve by striking out all of section 3 and inserting the following:

30 **'Sec. 3. Chairs; subcommittees. Resolved:** That the first-named Senate
31 member is the Senate chair and the first-named House of Representatives member is the
32 House chair of the commission. The chairs of the commission are authorized to establish
33 subcommittees to work on the duties listed in section 5 and to assist the commission; and
34 be it further'

35 Amend the resolve by striking out all of section 5 and inserting the following:

36 **'Sec. 5. Duties. Resolved:** That the commission shall create a plan for a more
37 efficient and effective probate court system. The commission may consider for inclusion
38 in the plan any features that the commission determines relevant, including, but not
39 limited to, features that will ensure timely, convenient and meaningful access to justice,
40 promote judicial responsibility and adherence to the code of judicial responsibility,

1 provide for qualified judges, provide for adequate professional staff, reflect efficient
2 practices in scheduling and case management throughout the system, allow for
3 convenient and consumer-friendly processing of matters that are not contested and reflect
4 economies of scale in all appropriate operational aspects. The commission shall describe
5 how the system would be funded. In making its funding recommendations, the
6 commission must consider a plan that ensures a level of payment and benefits that would
7 fairly compensate judges for their duties and prohibits them from practicing law during
8 their term of service; and be it further'

9 Amend the resolve in section 7 in the 2nd line (page 2, line 29 in L.D.) by striking out
10 the following: "Courts and" and inserting the following: 'Courts,'

11 Amend the resolve in section 7 in the 2nd line (page 2, line 29 in L.D.) by inserting
12 after the following: "probate" the following: 'and county officials'

13 Amend the resolve by adding before the summary the following:

14 '**Emergency clause.** In view of the emergency cited in the preamble, this
15 legislation takes effect when approved.'

16 SUMMARY

17 This amendment makes the following changes to the resolve.

18 1. It adds an emergency preamble and emergency clause to the resolve.

19 2. It changes the title of the resolve and renames the commission the Commission To
20 Create a Plan To Enhance the Efficiency and Effectiveness of the Probate Court System.
21 It does not require that the plan be based on full-time judges, although the commission is
22 not prohibited from including full-time judges in its plan.

23 3. It changes the membership of the commission from 15 members to 13 members.
24 It decreases from 3 to 2 the number of members who are members of the House of
25 Representatives and the number of members who are appointed by the Chief Justice of
26 the Supreme Judicial Court. It replaces 2 members who are members of the Maine State
27 Bar Association with 2 members who represent the interests of counties. It requires the
28 appointing authorities to make every effort to ensure that appointments to the commission
29 represent diversity with regard to geography and population across the State.

30 4. To provide flexibility to the commission to manage its work, it deletes the
31 requirement that subcommittees include individuals not on the commission.

32 5. It requires that the commission include in its funding recommendations a plan that
33 ensures the probate judges are provided payment and benefits that fairly compensate them
34 and prohibits them from practicing law during their service as Probate Court Judges.

35 6. It requires that county officials, in addition to the registers of probate and the
36 Administrative Office of the Courts, provide information and assistance when requested
37 by the commission.

FISCAL NOTE REQUIRED
(See attached)



128th MAINE LEGISLATURE

LD 1260

LR 1813(02)

Resolve, To Establish the Commission To Create a Plan for the Establishment of a Probate Court System with Full-time Judges

Fiscal Note for Bill as Amended by Committee Amendment "A" (S-231)

Committee: Judiciary

Fiscal Note Required: Yes

Fiscal Note

Legislative Cost/Study

Legislative Cost/Study

The general operating expenses of this study are projected to be \$2,250 in fiscal year 2017-18. The Legislature's proposed budget includes \$10,000 in fiscal year 2017-18 for legislative studies. Whether this amount is sufficient to fund all studies will depend on the number of studies authorized by the Legislative Council and the Legislature. The additional costs of providing staffing assistance to the study during the interim can be absorbed utilizing existing budgeted staff resources.

Fiscal Detail and Notes

Any additional costs to the Judicial Department are expected to be minor.