

MAINE STATE LEGISLATURE

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REPORT C

JUDICIARY

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STATE OF MAINE

SENATE

131ST LEGISLATURE

FIRST SPECIAL SESSION

COMMITTEE AMENDMENT "B" to S P 587, L D 1468, "An Act to Ensure Equal Treatment by the Law Court by Requiring 7 Justices to Decide All Cases"

Amend the bill by striking out the title and substituting the following

'An Act to Ensure Equal Treatment by the Law Court'

Amend the bill by striking out all of sections 2 to 4 and inserting the following

'Sec. 2. 4 MRSA §51, as amended by PL 2007, c 518, §1, is further amended to read

§51. Constitution of court; concurrence required

~~When~~ Except as provided in this section, when sitting as a Law Court to determine questions of law arising in any civil or criminal action or proceeding, the Supreme Judicial Court Law Court must be composed as provided by rules adopted by that court and of the Chief Justice and 6 associate justices of the Supreme Judicial Court. The Law Court shall hear and determine such questions by the concurrence of a majority of the justices sitting and qualified to act

If, at any point in time prior to the issuance of a final judgment in any civil or criminal action or proceeding before the Law Court, the Chief Justice or any of the 6 associate justices of the Supreme Judicial Court are unavailable to sit or unqualified to act on the questions of law arising in the action or proceeding, the clerk of the Law Court shall notify the parties in writing of the reason that the justice will not participate on the Law Court panel

If, at any point in time prior to the issuance of a final judgment in any civil or criminal action or proceeding before the Law Court, fewer than the minimum number of justices required by the Maine Rules of Appellate Procedure are available to sit and qualified to act on the questions of law arising in the action or proceeding, the clerk of the Law Court shall randomly assign, from the pool of all Active Retired Justices of the Supreme Judicial Court appointed under section 6, a sufficient number of Active Retired Justices to sit on the panel so that the Law Court panel is composed of the required number of justices. If an

COMMITTEE AMENDMENT

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1 insufficient number of justices and Active Retired Justices of the Supreme Judicial Court
2 is available to sit and qualified to act on the questions of law arising in any civil or criminal
3 action or proceeding, the decision of the lower court must be deemed to have been affirmed

4 The designation of an Active Retired Justice of the Supreme Judicial Court to sit on a
5 panel of the Law Court must be docketed in the record of the civil or criminal action or
6 proceeding to which the justice has been assigned

7 The Supreme Judicial Court shall adopt rules necessary to carry out the requirements
8 of this section '

9 Amend the bill by relettering or renumbering any nonconsecutive Part letter or section
10 number to read consecutively

11 **SUMMARY**

12 Like the bill, this amendment, which is a minority report of the committee, requires
13 that, when the Supreme Judicial Court is sitting as a Law Court to determine questions of
14 law arising in any civil or criminal action or proceeding, the case must be decided by the
15 Chief Justice and all 6 associate justices of the Supreme Judicial Court if they are available
16 to sit and qualified to act on the action or proceeding

17 Unlike the bill, the amendment

18 1 Directs that, if the Chief Justice or any of the associate justices of the Supreme
19 Judicial Court is unavailable or unqualified to act on the action or proceeding, the clerk of
20 the Law Court is required to notify the parties in writing of the reason that the justice will
21 not participate on the Law Court panel,

22 2 Directs that, if fewer than the minimum number of justices required by the Maine
23 Rules of Appellate Procedure are available to sit and qualified to act, the clerk of the Law
24 Court is required to randomly assign a sufficient number of Active Retired Justices of the
25 Supreme Judicial Court to serve on the Law Court panel to ensure that the panel is
26 composed of the minimum number of justices, and

27 3 Provides that, if an insufficient number of justices and Active Retired Justices of
28 the Supreme Judicial Court is available to sit and qualified to act on the questions of law
29 arising in any civil or criminal action or proceeding before the Law Court, the decision of
30 the lower court must be deemed to have been affirmed

31 The amendment also changes the bill title

32 **FISCAL NOTE REQUIRED**

33 (See attached)



131st MAINE LEGISLATURE

LD 1468

LR 884(03)

An Act to Ensure Equal Treatment by the Law Court by Requiring 7 Justices to Decide All Cases

Fiscal Note for Bill as Amended by Committee Amendment "B(S-158)"

Committee: Judiciary

Fiscal Note Required: Yes

Fiscal Note

Potential current biennium cost increase - General Fund

Fiscal Detail and Notes

This bill directs the clerk of the Law Court to assign active retired justices of the Supreme Judicial Court to serve on a Law Court panel in instances when the minimum number of qualified Supreme Court justices required by the Maine Rules of Appellate Procedure are not available. The Judicial Department has indicated that such an instance is unlikely to occur and no funding is provided at this time for per diem payments to active retired justices.