

# MAINE STATE LEGISLATURE

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# 131st MAINE LEGISLATURE

## FIRST SPECIAL SESSION-2023

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Legislative Document

No. 1468

S.P. 587

In Senate, April 5, 2023

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

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Reference to the Committee on Judiciary suggested and ordered printed.

A handwritten signature in black ink, appearing to read 'D M Grant'.

DAREK M. GRANT  
Secretary of the Senate

Presented by Senator BENNETT of Oxford.

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

2 **Sec. 1. 4 MRSA §6**, as amended by PL 2019, c. 475, §35, is further amended to  
3 read:

4 **§6. Active Retired Justices**

5 Any Justice of the Supreme Judicial Court, who has retired from the court under this  
6 chapter in effect prior to December 1, 1984, or any Justice of the Supreme Judicial Court  
7 who retires or terminates service on the court in accordance with chapter 27, except for a  
8 disability retirement, is eligible for appointment as an Active Retired Justice of the Supreme  
9 Judicial Court as provided. The Governor may, subject to review by the joint standing  
10 committee of the Legislature having jurisdiction over judiciary and to confirmation by the  
11 Legislature, appoint any eligible justice as an Active Retired Justice of the Supreme Judicial  
12 Court for a term of 7 years, unless sooner removed, and that justice may be reappointed for  
13 a like term. Any justice appointed and designated as an Active Retired Justice of the  
14 Supreme Judicial Court constitutes a part of the court from which the Justice retired and  
15 has the same jurisdiction and is subject to the same restrictions as before retirement, except  
16 that the Active Retired Justice may only be assigned to sit on civil or criminal actions and  
17 proceedings before the Law Court as provided in section 51 and may act only in the all  
18 other cases and matters and hold court only at the terms and times as directed and assigned  
19 by the Chief Justice of the Supreme Judicial Court. The Chief Justice is empowered and  
20 authorized to assign and designate an Active Retired Justice of the Supreme Judicial Court  
21 as to that justice's services and may direct as to which term of the Law Court the Active  
22 Retired Justice attends, and, except as provided in section 51, may order the Active Retired  
23 Justice to hear all matters and issue all orders, notices, decrees and judgments in vacation  
24 that any Justice of the Supreme Judicial Court is authorized to hear or issue.

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

27 **§51. Constitution of court; concurrence required**

28 When sitting as a Law Court to determine questions of law arising in any civil or  
29 criminal action or proceeding, the Supreme Judicial Court must be composed as provided  
30 ~~by rules adopted by that court~~ of a panel of 7 justices and shall hear and determine such  
31 questions by the concurrence of a majority of the 7 justices sitting and qualified to act in  
32 accordance with this section.

33 If, at any point in time prior to the issuance of a final judgment in any civil or criminal  
34 action or proceeding before the Law Court, fewer than 7 Justices of the Supreme Judicial  
35 Court are available to sit and qualified to act on the questions of law arising in the action  
36 or proceeding, the clerk of the Law Court shall randomly assign, from the pool of all Active  
37 Retired Justices of the Supreme Judicial Court appointed under section 6, a sufficient  
38 number of Active Retired Justices to sit on the panel so that the panel is composed of a total  
39 of 7 justices. If an insufficient number of justices and Active Retired Justices of the  
40 Supreme Judicial Court is available to sit and qualified to act on the questions of law arising  
41 in any civil or criminal action or proceeding before the Law Court, the clerk of the Law  
42 Court shall, in addition to assigning all available and qualified Active Retired Justices of  
43 the Supreme Judicial Court to sit on the panel, randomly assign, from the pool of all Justices  
44 of the Superior Court qualified for assignment to the Law Court under section 123 and of

1 all Judges of the District Court qualified for assignment to the Law Court under section  
2 157-F, a sufficient number of Justices of the Superior Court and Judges of the District Court  
3 to sit on the panel as justices to ensure that the panel is composed of a total of 7 justices.

4 The designation of an Active Retired Justice of the Supreme Judicial Court, a Justice  
5 of the Superior Court or a Judge of the District Court to sit on a panel of the Law Court  
6 must be docketed in the record of the action or proceeding to which the justice or judge has  
7 been assigned.

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

10 **Sec. 3. 4 MRSA §123** is enacted to read:

11 **§123. Justice of the Superior Court eligible to sit on the Law Court**

12 The clerk of the Law Court may assign any Justice of the Superior Court who has  
13 served for at least 5 years as a Justice of the Superior Court and who has volunteered for  
14 assignment to the Law Court to sit on the panel for a civil or criminal action or proceeding  
15 before the Law Court as provided in section 51. When so assigned, the justice has the same  
16 authority and jurisdiction as a regular Justice of the Supreme Judicial Court and may issue  
17 all orders, notices and opinions that a Justice of the Supreme Judicial Court sitting on the  
18 panel for the same action or proceeding may issue.

19 **Sec. 4. 4 MRSA §157-F** is enacted to read:

20 **§157-F. Judge of the District Court eligible to sit on the Law Court**

21 The clerk of the Law Court may assign any Judge of the District Court who has served  
22 for at least 5 years as a Judge of the District Court and who has volunteered for assignment  
23 to the Law Court to sit on the panel for a civil or criminal action or proceeding before the  
24 Law Court as provided in section 51. When so assigned, the judge has the same authority  
25 and jurisdiction as a regular Justice of the Supreme Judicial Court and may issue all orders,  
26 notices and opinions that a Justice of the Supreme Judicial Court sitting on the panel for  
27 the same action or proceeding may issue.

28 **SUMMARY**

29 This bill requires that, when the Supreme Judicial Court is sitting as a Law Court to  
30 determine questions of law arising in any civil or criminal action or proceeding, the case  
31 must be decided by all 7 Justices of the Supreme Judicial Court if they are available to sit  
32 and qualified to act on the proceeding.

33 In the event that less than all 7 Justices of the Supreme Judicial Court are available to  
34 sit and qualified to act, the clerk of the Law Court must randomly assign a sufficient number  
35 of Active Retired Justices of the Supreme Judicial Court to serve on the Law Court panel  
36 to ensure that the panel of the Law Court is composed of 7 justices. If an insufficient  
37 number of Active Retired Justices of the Supreme Judicial Court is available to serve, the  
38 clerk of the Law Court must, in addition to assigning all available and qualified Active  
39 Retired Justices of the Supreme Judicial Court, randomly assign a sufficient number of  
40 Justices of the Superior Court and Judges of the District Court to sit as justices on the panel  
41 to ensure that the panel is composed of a total of 7 justices. Any Justice of the Superior  
42 Court or Judge of the District Court with at least 5 years of experience who has volunteered

1 for assignment to the Law Court is eligible for assignment to sit on a panel of the Law  
2 Court under the bill.