

MAINE STATE LEGISLATURE

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131st MAINE LEGISLATURE

SECOND REGULAR SESSION-2024

Legislative Document

No. 2192

H.P. 1405

House of Representatives, January 25, 2024

**Resolve, to Ensure That the Independent Commission to Investigate
the Facts of the Tragedy in Lewiston Has Necessary Authority to
Discharge Its Fact-finding Mission**

(EMERGENCY)

Reference to the Committee on Judiciary suggested and ordered printed.

A handwritten signature in cursive script that reads "Robert B. Hunt".

ROBERT B. HUNT
Clerk

Presented by Speaker TALBOT ROSS of Portland. (GOVERNOR'S BILL)
Cosponsored by President JACKSON of Aroostook and
Representative: FAULKINGHAM of Winter Harbor, Senator: STEWART of Aroostook.

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

3 **Whereas,** Governor Janet T. Mills, by executive order of November 9, 2023,
4 established the Independent Commission to Investigate the Facts of the Tragedy in
5 Lewiston; and

6 **Whereas,** the independent commission was established for the purpose of conducting
7 a thorough and objective investigation into the facts and circumstances of what happened
8 on that tragic night in Lewiston, the months that led up to it and the police response to it;
9 and

10 **Whereas,** the families of the victims and all people of the State deserve to know the
11 truth about what happened; and

12 **Whereas,** in order to fulfill its fact-finding mission, the independent commission
13 requires the ability to issue subpoenas to compel the testimony of witnesses and the
14 production of documents and have access to agency records that may not otherwise be
15 subject to disclosure under state law; and

16 **Whereas,** this legislation needs to take effect before the expiration of the 90-day
17 period in order for the independent commission to complete its work in a timely fashion;
18 and

19 **Whereas,** in the judgment of the Legislature, these facts create an emergency within
20 the meaning of the Constitution of Maine and require the following legislation as
21 immediately necessary for the preservation of the public peace, health and safety; now,
22 therefore, be it

23 **Sec. 1. Definitions. Resolved:** That, as used in this resolve, the following terms
24 have the following meanings.

25 1. "Chair" means the chair of the independent commission.

26 2. "Independent commission" means the Independent Commission to Investigate the
27 Facts of the Tragedy in Lewiston, established by executive order of Governor Janet T. Mills
28 on November 9, 2023.

29 **Sec. 2. Issuance of subpoenas. Resolved:** That, by a majority vote of its
30 members, the independent commission may issue subpoenas to compel the testimony of
31 witnesses and the production of documents in accordance with this resolve.

32 **Sec. 3. Notice to witnesses. Resolved:** That a reasonable time before a witness
33 testifies, a prospective witness must be notified of the investigation's subject matter and
34 provided with a copy of this resolve. The information required by this section must be
35 presented at the time of service of the subpoena.

36 **Sec. 4. Oaths. Resolved:** That all testimony of subpoenaed witnesses must be under
37 oath administered by the chair or the chair's designee.

38 **Sec. 5. Testimony of witnesses under subpoena. Resolved:** That the
39 independent commission's staff and its members may take testimony of witnesses under
40 subpoena. All testimony of witnesses under subpoena must be taken in open session, except

1 upon request of a witness or by a majority vote of the members of the independent
2 commission, in which case testimony may be taken in executive session.

3 **Sec. 6. Transcripts of testimony of witnesses under subpoena. Resolved:**
4 That the independent commission shall prepare a transcript of all testimony of witnesses
5 taken under subpoena. A witness is entitled to obtain a copy of the transcript of the
6 witness's own testimony, except that the independent commission may delay the release of
7 a transcript until the independent commission determines that release will not compromise
8 the integrity of its investigation.

9 **Sec. 7. Release of testimony under subpoena. Resolved:** That the independent
10 commission, by a majority vote of its members, may release transcripts of witness
11 testimony taken under subpoena, except that a transcript of the testimony may not be
12 released without first affording the witness who gave the testimony or the witness's counsel
13 an opportunity to object to the proposed release. The chair or the chair's designee shall rule
14 on an objection. The ruling of the chair or the chair's designee may be overruled by a
15 majority vote of the independent commission's members.

16 **Sec. 8. Request for court to compel compliance; legal representation.**
17 **Resolved:** That the independent commission, by a majority vote of its members, may
18 apply to the Superior Court to compel compliance with a subpoena and may by lawful
19 process seek to compel compliance in any state, federal or military court or tribunal. The
20 Attorney General, the Attorney General's designee or private counsel approved by the
21 Attorney General may represent the independent commission in such proceedings.

22 **Sec. 9. Availability of counsel to witnesses under subpoena; objections;**
23 **privileges. Resolved:** That a witness appearing before the independent commission
24 under subpoena may have counsel present to advise the witness at all times. The witness or
25 counsel may, during the time the witness is giving testimony, object to any action of the
26 independent commission that is detrimental to the witness's interests and is entitled to have
27 a ruling by the chair or the chair's designee on the objection. The witness must be given
28 the benefit of any privilege that the witness could claim in court as a party to a civil action,
29 except that the chair or the chair's designee may direct compliance with any request for
30 testimony to which an objection or claim of privilege has been made. The direction of the
31 chair or the chair's designee may be overruled by a majority vote of the independent
32 commission's members.

33 **Sec. 10. Access to state agency records not otherwise subject to disclosure.**
34 **Resolved:** That, notwithstanding any provision of law to the contrary, the independent
35 commission, by a majority vote of its members, is authorized to request and receive records
36 in the possession of any state agency or instrumentality that the independent commission
37 determines are necessary to fulfill its fact-finding mission, including confidential records
38 and records not otherwise subject to public disclosure. The members of the independent
39 commission and its staff are authorized to review records received under this section solely
40 for the purpose of fulfilling the independent commission's fact-finding mission. During
41 meetings of the independent commission, the contents of confidential records and records
42 not otherwise subject to public disclosure may be reviewed only in executive session.

43 **Emergency clause.** In view of the emergency cited in the preamble, this legislation
44 takes effect when approved.

1 **SUMMARY**

2 This resolve authorizes the Independent Commission to Investigate the Facts of the
3 Tragedy in Lewiston to issue subpoenas to compel the testimony of witnesses and the
4 production of documents. It also authorizes the independent commission to request and
5 receive records in the possession of any state agency or instrumentality that it determines
6 are necessary to fulfill the independent commission's fact-finding mission, including
7 confidential records and records not otherwise subject to public disclosure.