

MAINE STATE LEGISLATURE

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STATE OF MAINE
128TH LEGISLATURE
FIRST SPECIAL, SECOND REGULAR AND SECOND SPECIAL SESSIONS



Summaries of bills, adopted amendments and laws enacted or finally passed

JOINT STANDING COMMITTEE ON JUDICIARY

October 2018

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STATE OF MAINE

128TH LEGISLATURE

FIRST SPECIAL, SECOND REGULAR AND SECOND SPECIAL SESSIONS



LEGISLATIVE DIGEST OF BILL SUMMARIES AND ENACTED LAWS

This *Legislative Digest of Bill Summaries and Enacted Laws* contain summaries of all LDs and adopted amendments and all laws enacted or finally passed during the First Special, Second Regular and Second Special Sessions of the 128th Maine Legislature.

The *Digest* is arranged alphabetically by committee and within each committee by Legislative Document (LD) number. The committee report(s), prime sponsor and lead co-sponsor(s), if designated, are listed below each LD title. All adopted amendments are summarized and listed by paper number. A subject index is included with each committee. An appendix provides a summary of relevant session statistics.

Final action on each LD is noted to the right of the LD title. The following describes the various final actions.

CARRIED OVER..... carried over to a subsequent session of the Legislature
CON RES XXX..... chapter # of constitutional resolution passed by both houses
CONF CMTE UNABLE TO AGREE..... Committee of Conference unable to agree; legislation died
DIED BETWEEN HOUSES..... House & Senate disagreed; legislation died
DIED IN CONCURRENCE..... defeated in each house, but on different motions; legislation died
DIED ON ADJOURNMENT..... action incomplete when session ended; legislation died
EMERGENCY..... enacted law takes effect sooner than 90 days after session adjournment
FAILED, EMERGENCY ENACTMENT or FINAL PASSAGE..... emergency failed to receive required 2/3 vote
FAILED, ENACTMENT or FINAL PASSAGE..... failed to receive final majority vote
FAILED, MANDATE ENACTMENT..... legislation proposing local mandate failed required 2/3 vote
HELD BY GOVERNOR..... Governor has not signed; final disposition to be determined at subsequent session
LEAVE TO WITHDRAW..... sponsor's request to withdraw legislation granted
NOT PROPERLY BEFORE THE BODY..... ruled out of order by the presiding officer; legislation died
INDEF PP..... indefinitely postponed; legislation died
ONTP, ACCEPTED, MAJORITY, MINORITY or REPORT X... ought-not-to-pass report accepted; legislation died
P&S XXX..... chapter # of enacted private & special law
PUBLIC XXX..... chapter # of enacted public law
RESOLVE XXX..... chapter # of finally passed resolve
VETO SUSTAINED..... Legislature failed to override Governor's veto

The effective dates for non-emergency legislation enacted in the First Special, Second Regular or Second Special Sessions of the 128th Legislature are: Monday, February 5, 2018; Wednesday, August 1, 2018; and Thursday, December 13, 2018, respectively. The effective date for legislation enacted as an emergency measure may be found in the enacted law summary for that legislation.

Joint Standing Committee on Judiciary

(LD 1838, Criminal Justice and Public Safety Committee) is conduct that can be subject to protection from harassment orders and protection from abuse orders.

LD 1793 An Act To Ensure Propane Delivery during Emergencies

ONTP

<u>Sponsor(s)</u>	<u>Committee Report</u>	<u>Amendments Adopted</u>
DIAMOND B FAY J	ONTP	

This bill allows a person who is not the owner of a liquefied petroleum gas container to fill or refill that container with propane during the period for which the Governor has issued an emergency declaration relating to heating fuel shortages, if the owner of the container authorizes that person to fill or refill the container. The bill does not require a person who is authorized by an owner to fill or refill a liquefied petroleum gas container to fill or refill that container. The bill provides a limitation of liability for the liquefied petroleum gas container owner and the person who fills or refills the container.

LD 1812 Resolve, Directing an Independent, Nonpartisan, Objective Evaluation of the Provision of Indigent Legal Services

**RESOLVE 52
EMERGENCY**

<u>Sponsor(s)</u>	<u>Committee Report</u>	<u>Amendments Adopted</u>
	OTP-AM ONTP	H-657

This resolve is a recommendation of the Working Group to Improve the Provision of Indigent Legal Services. It directs the Legislative Council to contract for an independent, nonpartisan, objective evaluation of and report on the provision of indigent legal services with a nonprofit organization that conducts such evaluations. The joint standing committee of the 129th Legislature having jurisdiction over judiciary matters is authorized to report out legislation based on the report.

Committee Amendment "A" (H-657)

This amendment is the majority report of the committee. It replaces the appropriations and allocations section in the resolve to transfer funds from the All Other account of the Maine Commission on Indigent Legal Services to pay for the independent, nonpartisan study.

Enacted Law Summary

Resolve 2017, chapter 52 directs the Legislative Council to contract for an independent, nonpartisan, objective evaluation of and report on the provision of indigent legal services with a nonprofit organization that conducts such evaluations. The joint standing committee of the 129th Legislature having jurisdiction over judiciary matters is authorized to report out legislation based on the report.

Chapter 52 was finally passed as an emergency measure effective April 21, 2018.

LD 1817 An Act To Implement the Recommendations of the Working Group To Improve the Provision of Indigent Legal Services Concerning the Membership of the Maine Commission on Indigent Legal Services

**PUBLIC 430
EMERGENCY**

<u>Sponsor(s)</u>	<u>Committee Report</u>	<u>Amendments Adopted</u>
	OTP-AM ONTP	H-756

Joint Standing Committee on Judiciary

This bill was reported out of committee in the Second Regular session of the 128th Legislature. The bill was carried over the the next special session by joint order S.P. 748.

This bill is a recommendation of the Working Group to Improve the Provision of Indigent Legal Services. It amends the makeup of the Maine Commission on Indigent Legal Services, based on suggestions of the Sixth Amendment Center, to include appointments suggested by the Dean of the University of Maine School of Law and the president of a statewide organization representing attorneys. It also increases the number of appointments from a list suggested by the Chief Justice of the Supreme Judicial Court from one to two. The number of members required for a quorum is adjusted from three to five.

In order to ensure the independence of the commission and ensure no appearance of conflict of interest, the bill prohibits the appointment to the commission of a person who is a sitting judge, prosecutor, law enforcement official or indigent legal services provider, or an employee of such a person.

Committee Amendment "A" (H-756)

This amendment is the majority report of the committee. This amendment replaces the bill while retaining the original purpose to expand the membership of the Maine Commission on Indigent Legal Services.

Like the bill, the amendment expands the number of commission members from five to nine. The Governor is still responsible for appointing all members. The amendment increases the number to be appointed from a list of qualified potential appointees provided by the Chief Justice of the Supreme Judicial Court from one, as in current law, to three. The amendment requires one appointment from a list of qualified potential appointees submitted by the Maine State Bar Association and one appointed from a list provided by a statewide organization, other than the Maine State Bar Association, that represents criminal defense attorneys. These members must provide indigent legal services as a majority of their practices, and are nonvoting members of the Commission. The amendment requires the Governor to appoint a member who has experience in administration and finance as well as a member who has experience providing representation in child protection proceedings.

Current law requires appointees to have the knowledge and skills required to ensure that quality of representation is provided in each area of law. The amendment removes the skill requirement. The amendment provides that no more than seven members may be attorneys engaged in the active practice of law.

The amendment also addresses issues regarding potential conflicts of interest. It provides that no voting members may receive compensation from the commission, other than the per diem and expenses authorized by statute, while a member of the commission. The limitation on compensation from the commission also applies to a member whose immediate family member living in the same household is receiving compensation from the commission. The limitation on compensation does not apply to any member serving on the commission on April 1, 2018, for the duration of that member's term. In addition, the amendment makes ineligible for appointment a person who is a sitting judge, a prosecutor or a law enforcement official or an employee of any of these individuals.

The amendment addresses the issue of how many members constitute a quorum. The amended language defines a quorum as a majority of the current voting members, which will allow the commission to function as it transitions from five members to seven voting members. As four additional members will be appointed to the commission, the amendment directs the Governor to designate one of the new members to serve a full three-year term, two members to serve an initial two-year term and one member to serve an initial term of one year.

Enacted Law Summary

Public Law 2017, chapter 430 is based on a recommendation of the Working Group to Improve the Provision of Indigent Legal Services. It amends the makeup of the Maine Commission on Indigent Legal Services, based on suggestions of the Sixth Amendment Center, to expand the number of commission members from five to nine. The Governor is still responsible for appointing all members. The number to be appointed from a list of qualified

Joint Standing Committee on Judiciary

potential appointees provided by the Chief Justice of the Supreme Judicial Court is increased from one, as in current law, to three. Chapter 430 requires one appointment from a list of qualified potential appointees submitted by the Maine State Bar Association and one appointed from a list provided by a statewide organization, other than the Maine State Bar Association, that represents criminal defense attorneys. These members must provide indigent legal services as a majority of their practices, and are nonvoting members of the Commission. Chapter 430 requires the Governor to appoint a member who has experience in administration and finance as well as a member who has experience providing representation in child protection proceedings. Chapter 430 provides that no more than seven members may be attorneys engaged in the active practice of law.

Chapter 430 also addresses issues regarding potential conflicts of interest. It provides that no voting members may receive compensation from the commission, other than the per diem and expenses authorized by statute, while a member of the commission. The limitation on compensation from the commission also applies to a member whose immediate family member living in the same household is receiving compensation from the commission. The limitation on compensation does not apply to any member serving on the commission on April 1, 2018 for the duration of that member's term. In addition, Chapter 430 makes ineligible for appointment a person who is a sitting judge, a prosecutor or a law enforcement official or an employee of any of these individuals.

Chapter 430 addresses the issue of how many members constitute a quorum. A quorum is defined as a majority of the current voting members, which will allow the commission to function as it transitions from five members to seven voting members. As four additional members will be appointed to the commission, chapter 430 directs the Governor to designate one of the new members to serve a full three-year term, two members to serve an initial two-year term and one member to serve an initial term of one year.

Public Law 2017, chapter 430 was enacted as an emergency measure effective July 1, 2018.

LD 1821 An Act To Implement Recommendations of the Right To Know Advisory Committee Concerning Freedom of Access Training for Public Officials

Died Between Houses

<u>Sponsor(s)</u>	<u>Committee Report</u>	<u>Amendments Adopted</u>
	OTP-AM ONTP	H-680

Current law requires officials elected to certain positions to complete training on the requirements of the Freedom of Access Act but does not require officials appointed to those positions to complete that training. This bill implements the recommendation of the Right To Know Advisory Committee that appointed officials also be required to complete the training.

Committee Amendment "A" (H-680)

This amendment is the majority report of the committee. It adds a mandate preamble to the bill. The costs incurred by local governments to comply with the bill's provisions have been estimated to be insignificant.

LD 1827 An Act To Amend the Maine Uniform Trust Code Regarding Reporting by Trustees and the Duties of Trustees to Settlers

PUBLIC 349

<u>Sponsor(s)</u>	<u>Committee Report</u>	<u>Amendments Adopted</u>
CARDONE B HILL D	OTP-AM	H-636

This bill amends the Maine Uniform Trust Code in two ways. First, it corrects a gap in the statute governing a trustee's duties with regard to reporting to a beneficiary or another person designated by the trust's settlor. The