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STATE OF MAINE

ONE HUNDRED AND TWENTY-SIXTH LEGISLATURE

COMMITTEE ON JUDICIARY

January 31, 2013

TO: Senator Dawn Hill, Senate Chair
Representative Margaret Rotundo, House Chair
Joint Standing Committee on Appropriations and Financial Affairs

FROM: Senator Linda M. Valentino, Senate Chair *L.M.V.*
Representative Charles R. Priest, House Chair
Joint Standing Committee on Judiciary

Re: Judiciary Committee Recommendations on Supplemental Budget (LR 1045)

Thank you for the opportunity to provide our recommendations concerning the Emergency FY13 Supplemental Budget, LR 1045. Included in the Governor's proposals are changes to the FY13 Budget for the Department of the Attorney General, the Judicial Branch and the Maine Commission on Indigent Legal Services. Our recommendations are as follows.

- **Department of the Attorney General**

The Judiciary Committee unanimously supports the proposed budget contained in LR 1045 for the Department of the Attorney General except for Ref# 55. (Approve Ref ## 47, 48, 49, 53, 45 and 51; table Ref #55) The Judiciary Committee tabled Ref # 55 at the request of Attorney General Mills. The proposal reflects a proposed transfer of a position in the tobacco enforcement program from the Department of the Attorney General to the Department of Health and Human Services. Attorney General Mills is reconsidering whether the transfer is necessary, and is in discussions with DHHS Commissioner Mayhew about transferring the position. We support Attorney General Mills' decision to keep the position within the Department of the Attorney General, but will not oppose going forward with the proposed change if the

Attorney General and Commissioner Mayhew agree that doing so will make the tobacco enforcement program the most effective.

- **Judicial Branch**

The Judiciary Committee unanimously supports the E FY13 Supplemental Budget as it affects the Judicial Branch. (Ref ## 373, 375, 377 and Part Z)

- **Maine Commission on Indigent Legal Services**

The Judiciary Committee unanimously supports Ref# 338 that reduces the appropriation for Personal Services within the Maine Commission on Indigent Legal Services (MCILS). In contrast, the Judiciary Committee opposes the \$65,000 cut to the All Other account, identified as Ref # 339. Instead, we unanimously support fully funding the MCILS to cover all the costs necessary to provide the constitutionally required services the Commission was created to ensure are delivered. The MCILS received sufficient funding – through an additional Supplemental Budget appropriation and an emergency allocation crafted by the Governor – for FY12 and was able to enter FY13 with no debts due attorneys. Those instances of additional funding were not, however, built into the Commission’s baseline budget for FY13, meaning the MCILS’s projected costs would be at least \$1.4 million above what was appropriated for FY13.

It is important that the Legislature as a whole recognize and take responsibility for the constitutionally-required representation of individuals when their liberty is in jeopardy - through criminal proceedings or involuntary commitment proceedings - or when the State has started proceedings that may result in the loss of custody of their children. *See* U.S. Const. amend. VI (“In all criminal prosecutions, the accused shall enjoy the right...to have the assistance of counsel for his defense.”); Me Const. art. I, § 6; *Gideon v. Wainwright*, 372 U.S. 335, 342 (1963) (held that the sixth amendment right to counsel was binding on the states through the due process clause because representation by counsel was “fundamental and essential to a fair trial.”); *State v. Watson*, 2006 ME 80, ¶ 14 (“The right to counsel afforded by article I, section 6 of the Maine Constitution is commensurate with that of the Sixth Amendment of the federal constitution.”). If legal representation is not available in these situations, the ultimate result is that the State will not be able to proceed with criminal prosecutions, nor will it be able to protect children who are subject to serious abuse or neglect. We believe this to be an untenable outcome, and strongly support funding to cover the legal representation costs. MCILS estimates that the E FY13 Supplemental Budget should include an additional \$1,787,428 to cover those costs through June 30, 2013.

The Judiciary Committee also recommends that support be provided for enhancing the financial screening capability of the Commission. Financial screeners constructively create revenue by identifying resources that potentially-indigent defendants can contribute to their defense. Enhancing this capability may be accomplished by increasing

the number of financial screeners – there are currently only six, and they usually work in the most populous areas – or by exploring creative ways to provide the screening function, such as through video conferencing, project screeners or contract screeners. The Commission has included this subject on their next agenda, and we support those efforts. We look forward to receiving their recommendations for improving the financial screening process.

In summary, the Judiciary Committee unanimously recommends that the \$65,000 reduction be eliminated (Ref# 339) and an additional appropriation of \$1,787,428 be included. Not included as a funding recommendation at this time is our support for the enhancement of the financial screening capability to free up more funding for additional representation.

Thank you.

Attachment: Budget worksheet

Sec. A-4. Appropriations and allocations.

The following appropriations and allocations are made.

JUDICIARY

ATTORNEY GENERAL, DEPARTMENT OF THE

Administration - Attorney General 0310

Initiative: Reduces funding for Personal Services by managing vacancies. This initiative relates to curtailment of allotments.

Ref. #: 47 One Time Committee Vote: 11-0 IN AFA Vote: _____

GENERAL FUND	2012-13	2013-14	2014-15
Personal Services	(\$102,000)	\$0	\$0
GENERAL FUND TOTAL	(\$102,000)	\$0	\$0

Administration - Attorney General 0310

Initiative: Reduces All Other funding by eliminating computer replacement in the current fiscal year. This initiative relates to curtailment of allotments.

Ref. #: 48 One Time Committee Vote: 11-0 IN AFA Vote: _____

GENERAL FUND	2012-13	2013-14	2014-15
All Other	(\$12,000)	\$0	\$0
GENERAL FUND TOTAL	(\$12,000)	\$0	\$0

Administration - Attorney General 0310

Initiative: Reorganizes one Secretary Associate Legal position to a Medical Examiner Assistant position and transfers the position from the Administration - Attorney General program to the Chief Medical Examiner - Office of program.

Ref. #: 49 One Time Committee Vote: 11-0 IN AFA Vote: _____

GENERAL FUND	2012-13	2013-14	2014-15
POSITIONS - LEGISLATIVE COUNT	(1,000)	0,000	0,000
Personal Services	(\$16,233)	\$0	\$0
All Other	(\$308)	\$0	\$0
GENERAL FUND TOTAL	(\$16,541)	\$0	\$0

Chief Medical Examiner - Office of 0412

Initiative: Reorganizes one Secretary Associate Legal position to a Medical Examiner Assistant position and transfers the position from the Administration - Attorney General program to the Chief Medical Examiner - Office of program.

Ref. #: 53 One Time Committee Vote: 11-0 IN AFA Vote: _____

GENERAL FUND	2012-13	2013-14	2014-15
POSITIONS - LEGISLATIVE COUNT	1.000	0.000	0.000
Personal Services	\$16,233	\$0	\$0
All Other	\$308	\$0	\$0
GENERAL FUND TOTAL	\$16,541	\$0	\$0

Civil Rights 0039

Initiative: Reduces All Other funding by suspending the annual spring conference for the civil rights team project. This initiative relates to curtailment of allotments.

Ref. #: 45 One Time Committee Vote: 12-0 IN AFA Vote: _____

GENERAL FUND	2012-13	2013-14	2014-15
All Other	(\$9,000)	\$0	\$0
GENERAL FUND TOTAL	(\$9,000)	\$0	\$0

District Attorneys Salaries 0409

Initiative: Reduces funding for Personal Services by managing vacancies. This initiative relates to curtailment of allotments.

Ref. #: 51 One Time Committee Vote: 12-0 IN AFA Vote: _____

GENERAL FUND	2012-13	2013-14	2014-15
Personal Services	(\$63,291)	\$0	\$0
GENERAL FUND TOTAL	(\$63,291)	\$0	\$0

Human Services Division 0696

Initiative: Transfers one Secretary Specialist position assigned to the tobacco enforcement program from the Department of the Attorney General to the Department of Health and Human Services, Maine Center for Disease Control and Prevention.

Ref. #: 55 One Time Committee Vote: TABLE 12-0 AFA Vote: _____

OTHER SPECIAL REVENUE FUNDS	2012-13	2013-14	2014-15
POSITIONS - LEGISLATIVE COUNT	(1.000)	0.000	0.000
Personal Services	(\$17,244)	\$0	\$0
All Other	(\$581)	\$0	\$0
OTHER SPECIAL REVENUE FUNDS TOTAL	(\$17,825)	\$0	\$0

ATTORNEY GENERAL, DEPARTMENT OF THE

DEPARTMENT TOTALS	2012-13	2013-14	2014-15
GENERAL FUND	(\$186,291)	\$0	\$0
OTHER SPECIAL REVENUE FUNDS	(\$17,825)	\$0	\$0
DEPARTMENT TOTAL - ALL FUNDS	(\$204,116)	\$0	\$0

Sec. A-27. Appropriations and allocations. The following appropriations and allocations are made.

INDIGENT LEGAL SERVICES, MAINE COMMISSION ON

Maine Commission on Indigent Legal Services Z112

Initiative: Reduces funding to reflect Personal Services savings. This initiative relates to curtailment of allotments.

Ref. #: 338 One Time Committee Vote: 12-0 IN AFA Vote: _____

	2012-13	2013-14	2014-15
GENERAL FUND			
Personal Services	(\$75,810)	\$0	\$0
GENERAL FUND TOTAL	(\$75,810)	\$0	\$0

Maine Commission on Indigent Legal Services Z112

Initiative: Reduces funding for indigent legal services. This initiative relates to curtailment of allotments.

Ref. #: 339 One Time Committee Vote: 12-0 OUT AFA Vote: _____

+ Amendment

	2012-13	2013-14	2014-15
GENERAL FUND			
All Other	(\$65,000)	\$0	\$0
GENERAL FUND TOTAL	(\$65,000)	\$0	\$0

INDIGENT LEGAL SERVICES, MAINE COMMISSION ON

DEPARTMENT TOTALS	2012-13	2013-14	2014-15
GENERAL FUND	(\$140,810)	\$0	\$0
DEPARTMENT TOTAL - ALL FUNDS	(\$140,810)	\$0	\$0

Sec. A-29. Appropriations and allocations. The following appropriations and allocations are made.

JUDICIAL DEPARTMENT

Courts - Supreme, Superior and District 0063

Initiative: Provides funding to bring allocations in line with available resources projected by the Revenue Forecasting Committee in December 2012.

Ref. #: 373 One Time Committee Vote: 11-0 IN AFA Vote: _____

OTHER SPECIAL REVENUE FUNDS	2012-13	2013-14	2014-15
All Other	\$18,014	\$0	\$0
OTHER SPECIAL REVENUE FUNDS TOTAL	\$18,014	\$0	\$0

Courts - Supreme, Superior and District 0063

Initiative: Reduces funding to bring allocations in line with available resources projected by the Revenue Forecasting Committee in December 2012.

Ref. #: 375 One Time Committee Vote: 10-0 IN AFA Vote: _____

OTHER SPECIAL REVENUE FUNDS	2012-13	2013-14	2014-15
All Other	(\$22,337)	\$0	\$0
OTHER SPECIAL REVENUE FUNDS TOTAL	(\$22,337)	\$0	\$0

Judicial - Debt Service Z097

Initiative: Reduces funding for debt service. This initiative relates to curtailment of allotments.

Ref. #: 377 One Time Committee Vote: 10-0 IN AFA Vote: _____

GENERAL FUND	2012-13	2013-14	2014-15
All Other	(\$233,000)	\$0	\$0
GENERAL FUND TOTAL	(\$233,000)	\$0	\$0

JUDICIAL DEPARTMENT

DEPARTMENT TOTALS	2012-13	2013-14	2014-15
GENERAL FUND	(\$233,000)	\$0	\$0
OTHER SPECIAL REVENUE FUNDS	(\$4,323)	\$0	\$0
DEPARTMENT TOTAL - ALL FUNDS	(\$237,323)	\$0	\$0

PART Z

Sec. Z-1. Personal Services balances; Judicial Department; transfers authorized.

Notwithstanding any other provision of law, in fiscal year 2012-13 only, the Judicial Department is authorized to transfer available balances of Personal Services appropriations, after all salary, benefit and other obligations are met, to the All Other line category in the Judicial Department – Supreme JD and Superior Courts General Fund account.

**SUMMARY
PART Z**

This Part authorizes the Judicial Department to transfer, in fiscal year 2012-13 only, all remaining Personal Services balances to the All Other line category in the Judicial Department – Supreme JD And Superior Courts General Fund account.

JUD 11-0 IN