Bill as Introduced

HB 1338 - AS INTRODUCED

2001 SESSION

01-2278
09/01

HOUSE BILL ***1338***

AN ACT clarifying that the judicial council is responsible for payment of indigent defense expenses.

SPONSORS: Rep. Mock, Carr 3

COMMITTEE: Judiciary

ANALYSIS

This bill clarifies that the judicial council is responsible for payment of indigent defense expenses.

This bill was requested by the judicial council.

Explanation: Matter added to current law appears in ***bold italics.***
Matter removed from current law appears [~~in brackets and struckthrough.~~]
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

01-2278
09/01

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand One

AN ACT clarifying that the judicial council is responsible for payment of indigent defense expenses.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 Payment of Expenses. Amend RSA 604-A:8 to read as follows:

604-A:8 Payment of Expenses.

I. Each claim and written statement in support thereof when approved by the court shall be forwarded to the [~~commissioner of administrative services~~] ***judicial council*** for payment. [~~The commissioner of administrative services may adopt rules, under RSA 541-A, in addition to the requirements of paragraph II, to carry out the provisions of this section.~~] ***The judicial council shall pay bills in accordance with supreme court rules regarding indigent defense, as well as any rules adopted by the commissioner of administrative services under RSA 604-A:10, IV.***

II. Statements submitted by counsel for payments of fees shall in each case be examined by the trial and appellate judges and certified by them as to the reasonableness of the fee requested and whether the defendant continued to be eligible for assignment of counsel during the duration of the trial. Such certificates shall be attached to the request for payment of counsel fees. Counsel must submit bills to the appropriate court for payment within 60 days of the disposition of a case unless the trial judge finds that there are extenuating circumstances. Courts shall, within 30 days of receipt, certify statements as outlined above and forward the certified statements to the [~~commissioner of administrative services~~] ***judicial council*** for payment.

2 Records Required. Amend RSA 604-A:10 to read as follows:

604-A:10 Rulemaking; Records Required; ***Judicial Council;*** Commissioner of Administrative Services.

I. The [~~commissioner of administrative services~~] ***judicial council*** shall keep records of the notification of eligibility and assignment of counsel as submitted by the courts of the state pursuant to supreme court order 81-5A and subsequent related orders. In addition to any other use the [~~commissioner of administrative services~~] ***judicial council*** shall make of these records, the [~~commissioner of administrative services~~] ***judicial council*** shall keep records including the following information and compile such information on a monthly basis:

(a) The name of the courts, including the location and the type of the court.

(b) The type of the case as defined by the most serious offense charged in the case, according to the following categories:

(1) Homicide

(2) Other felony

(3) Misdemeanor

(4) Juvenile

(5) Other

(c) Whether the case was assigned to a private attorney or a public defender.

II. When a final bill has been approved for payment to a private attorney, the [~~commissioner of administrative services~~] ***judicial council*** shall record the following information:

(a) The type of case as defined in RSA 604-A:10, I(b).

(b) The amount of the attorney's fee.

III. The [~~commissioner of administrative services~~] ***judicial council*** shall also compile the gross monthly cost for bills approved for payment for expenses other than counsel, including those pursuant to RSA 604-A:6.

IV. The commissioner of administrative services shall, with the approval of the attorney general, adopt rules pursuant to RSA 541-A, governing determinations of eligibility for payment of indigent defense expenditures, determinations of repayment schedules, financial and credit investigations and any other matters [~~he~~] ***the commissioner*** deems necessary or advisable for the performance of [~~his~~] duties under this chapter.

3 Effective Date. This act shall take effect 60 days after its passage.

Speakers

SIGN UP SHEET

To Register Opinion If Not Speaking

Bill # HB 1338 Date January 23, 2002

Committee Judiciary

**** Please Print All Information ****

Name	Address	Phone	Representing	(check one) Pro	Con
Sheila Evans	Concord	224-9105	NH Women's Lobby	X	

Hearing Minutes

HOUSE COMMITTEE ON JUDICIARY

PUBLIC HEARING ON HB 1338

BILL TITLE: clarifying that the judicial council is responsible for payment of indigent defense expenses.

DATE: January 23, 2002

LOB ROOM: 208 **Time Public Hearing Called to Order:** 11:20 a.m.

Time Adjourned: 11:45 a.m.

(please circle if present)

Committee Members: Reps. Mock, L. Jean, Jacobson, Bergin, Rowe, Ford, Dudley, Soltani, P. Woods, Rice, Leishman, Elliott, Reid, Wall, J. Pratt, Craig, J. Wood, Potter, Espiefs and Franklin.

Bill Sponsors: Rep. Mock

TESTIMONY

* Use asterisk if written testimony and/or amendments are submitted.

NOTE: This Public Hearing was presided over by Rep. L. Jean, Vice Chairman.

Rep. Bergin
- Introduced the bill for prime sponsor Rep. Henry Mock of Jackson, who, for personal reasons, was unable to attend
- Requested that all questions be deferred to Nina Gardner, who would be speaking next

*Nina Gardner, Judicial Council – supports
- Testified that she requested the bill be introduced by Rep. Mock
- It is a housekeeping bill to clean up some RSA's that are inconsistent with current practices, which was found by an auditor
- Don Hilliard requested in 1997 that the funds for criminal defense for individuals who have no funds and have been charged with a criminal act be transferred to her office. This transfer was accomplished through a budget footnote.
- Questions were asked by Reps. Bergin, Potter, Soltani, Franklin, Jean and Elliott.

Ken Robie – supports
- Told the committee that he was testifying for Commissioner Hilliard, who is in support of the bill, and to answer any questions
- Questions were asked by Reps. Elliott and Soltani

Pink Cards:

- *Nina Gardner, Executive Director, Judicial Council, 25 Capitol Street, Room 424, Concord, 271-3592. Supports the bill.
- Kenneth Robie, representing Administrative Services, Office of Cost Control, 271-1408. Supports the bill.

Respectfully submitted,

Rep. Larry G. Elliott
Assistant Committee Clerk

Testimony

FILE COPY

STATE OF NEW HAMPSHIRE
JUDICIAL COUNCIL

FINANCIAL AND COMPLIANCE
AUDIT REPORT
FOR THE YEAR ENDED JUNE 30, 2000

Observation No. 8 – Statutes Should Be Amended To Reflect Current Responsibilities

Observation:

When the appropriation and subsequent responsibility for indigent defense payments and other related activities were transferred in fiscal year 1998 from the Department of Administrative Services to the Council, RSAs 604-A:8 and 604-A:10, II, III were not amended to reflect the change in responsibilities.

- RSA 604-A:8 states that the commissioner of administrative services is responsible for the payment of indigent defense expenses.

- RSA 604-A:10, II states that the commissioner of administrative services is responsible for recording the case type and the attorney's fee once a final bill has been approved for payment to a private attorney.

- RSA 604-A:10, III requires the commissioner of administrative services to compile the gross monthly costs for bills approved for services other than counsel.

These activities are now the responsibility of the Council.

Recommendation:

The Council should seek legislation to amend RSA 604-A:8 and RSA 604-A:10, II, III to reflect current responsibilities.

Auditee Response:

We concur. A legislative member of the Judicial Council has sponsored the legislation recommended in this observation. A drafting request was filed for the upcoming 2002 legislative session which must be drafted in concert with the Department of Administrative Services.

THE STATE OF NEW HAMPSHIRE
JUDICIAL COUNCIL

Gary E. Hicks,, Chairman
Elizabeth D. Lown, Vice-Chairman
Ralph Brickett
Hon. John T. Broderick, Jr.
Gerald A.Daley
Alethea L. Froburg
David A. Garfunkel
Donald D. Goodnow
Sen. Ned Gordon
John B. Hammond
Peter E. Hutchins
Hon. Edwin W. Kelly

Nina C. Gardner, Executive Director
25 Capitol Street, Room 424
Concord, New Hampshire 03301-6312

Hon. John R. Maher
Lynn Mather, Ph.D.
W. Kent Martling
Joseph M. McDonough, III
Hon. Philip T. McLaughlin
Rep. Henry P. Mock
Hon. Walter L. Murphy
Pamela B. Neville
David L. Nixon
David N. Page
Michael A. Pignatelli
Peter Y. Wolfe

January 28, 2002

The Honorable Henry P. Mock, Chair
House Judiciary Committee
Room 208
Legislative Office Building
Concord NH 03301

Dear Rep. Mock:

The purpose of this letter is to briefly follow upon our telephone conversation today regarding the concerns that were raised last Wednesday during the hearing held on your bill, HB 1338, which you agreed to sponsor for the Judicial Council.

I am enclosing with this letter the excerpted section of the LBA Audit of the Judicial Council that serves as the basis for the need for this legislation. I distributed this to members of the Committee. I should mention that there was very sparse attendance on Wednesday, with probably no more than 10 members present during my testimony on the bill.

I am also providing you with the existing language that accompanied the transfer of the funding and bill payment responsibility within the budget from Administrative Services to the Judicial Council . Additional clarifying language was contained in the "trailer bill" for that session and became law at Chapter 351, Sections 7-11. Either by omission or by error, the language contained in HB 1338 was not included for some reason. Now the LBA Audit recommends that I address this omission through legislation, which is what you and I are attempting to do.

I would very much appreciate your assistance in attempting to clarify this matter with your Committee. As I explained to you today, Rep. Elliot and others were concerned that Commissioner Don Hill(Administrative Services) was, for a second day, seen as thwarting legislative intent and the law. His testimony the

previous day regarding the Dover-Durham District Court had offended some, most especially Rep. Elliot. My hope is that you can persuade the Committee that this corrective legislation is necessary as an audit finding, and that their action to pass this bill will get the Judicial Council out of the middle on this issue.

I expect to be out of the Office on medical leave for about a week or so recovering from surgery. If you need assistance, please contact the Office. It is not clear that I will immediately be able to speak after the surgery, so I may not be able to assist you directly. I will certainly contact you immediately upon my return.

I very much appreciate your efforts on behalf of the Judicial Council.

Sincerely yours,

Nina C. Gardner
Executive Director

cc: Joseph M. McDonough, III, Esquire
Chairman, NH Judicial Council

STATE OF NEW HAMPSHIRE
JUDICIAL COUNCIL

FINANCIAL AND COMPLIANCE
AUDIT REPORT
FOR THE YEAR ENDED JUNE 30, 2000

Observation No. 8 – Statutes Should Be Amended To Reflect Current Responsibilities

Observation:

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- RSA 604-A:8 states that the commissioner of administrative services is responsible for the payment of indigent defense expenses.
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- RSA 604-A:10, III requires the commissioner of administrative services to compile the gross monthly costs for bills approved for services other than counsel.

These activities are now the responsibility of the Council.

Recommendation:

The Council should seek legislation to amend RSA 604-A:8 and RSA 604-A:10, II, III to reflect current responsibilities.

Auditee Response:

We concur. A legislative member of the Judicial Council has sponsored the legislation recommended in this observation. A drafting request was filed for the upcoming 2002 legislative session which must be drafted in concert with the Department of Administrative Services.

351:4 New Hampshire Legal Assistance; Civil Legal Assistance to Low-Income Persons. Amend RSA by inserting after chapter 525 the following new chapter:

CHAPTER 525-A
CIVIL LEGAL ASSISTANCE

525-A:1 Civil Legal Assistance. Funds appropriated to New Hampshire Legal Assistance for the purposes of civil legal assistance shall be used only for the provision of civil legal representation to low-income persons in this state. New Hampshire Legal Assistance shall make reports to the judicial council by June 30 and December 31 of each year on its use of state funds.

351:5 Developmentally Disabled Waitlist; Funding. Notwithstanding the provisions of 1995, 310:63, PAU 05, 01, 05, 03, 01, class line 93, as inserted by 1997, HB 1-A shall be funded in part from the appropriation made to the department of health and human services in 1995, 310:63, III(b)(2).

351:6 Route 93 Borrow-a-Lane Project; Appropriation.

I. The department of transportation shall complete the physical improvements to Route 93 in Concord and Bow authorized in 1995, 308:43, including the construction of necessary roadway and signage, to create a temporary southbound lane on Route 93 in Concord and Bow which can be utilized on an as needed basis.

II. The sum of $30,000 is appropriated for the fiscal year ending June 30, 1998, and the sum of $30,000 is appropriated for the fiscal year ending June 30, 1999, to the department of transportation for the purposes of paragraph I of this section. This appropriation shall be a charge against the highway fund.

351:7 Guardian Ad Litem Services; Reference to Commissioner of Administrative Services Deleted. Amend RSA 490:26-f, V to read as follows:

V. The executive director of the judicial council, the commissioner of the department of health and human services, or the judicial branch, as may be appropriate, may authorize payments to such persons or organizations provided for under this section.

351:8 Contract Attorneys; Reference to Commissioner of Administrative Services Deleted. Amend RSA 604-A:2-b to read as follows:

604-A:2-b Contract Attorneys. The state of New Hampshire, by the judicial council and with the approval of governor and council, may, within the limits of available appropriations, contract with any qualified attorney in the state to provide for the representation of indigents in circumstances where, pursuant to RSA 604-B, the public defender program is unavailable to provide such representation. The executive director of the judicial council shall authorize payments to contract attorneys provided for under this section.

351:9 Contract Services; Reference to Commissioner of Administrative Services Deleted. Amend RSA 604-A:6-a to read as follows:

604-A:6-a Contract Services. The state of New Hampshire, by the judicial council and with the approval of governor and council, may, within the limits of appropriations, contract with qualified firms or individuals in the state to provide stenographic and clerical services where, pursuant to RSA 604-A:6, the defendant has been found to be eligible for such services. The executive director of the judicial council shall authorize payments to such individuals and firms as provided for under this section.

351:10 Indigent Defense; Transfers Within PAU. Notwithstanding RSA 9:16-a, the executive director of the judicial council, after certification to the

commissioner of administrative services that transfers are necessary to carry out the functions of indigent defense, is authorized to transfer funds among classes 90, 92, 93 and 94 within PAU 02, 18, 01, 00, 00.

351:11 Repeal. 1991, 355:105, relative to transfers within PAU for indigent defenders, is repealed.

351:12 New Paragraph; "Package X"; Commissioner of Department of Revenue Administration. Amend RSA 21-J:3 by inserting after paragraph XXIII the following new paragraph:

XXIV. Have the authority subject to appropriation to publish and distribute a "Package X" containing department-administered tax forms and instructions, and to recover reasonable costs for such publication, all of which shall be returned to the general fund as unrestricted revenue.

351:13 Salary Group Change; Executive Director, Governor's Commission on Disability. Amend RSA 94:1-a, I by:

I. Deleting in Group K:
Executive director, governor's commission on disability.
II. Inserting in Group L:
Executive director, governor's commission on disability.

351:14 "Office" to "Division" of Information Technology Management. Amend the section heading and introductory paragraph of RSA 21-I:67 to read as follows:

21-I:67 Division Established; Functions. There is hereby established within the department a division of information technology management, which shall be under the supervision of a director of information technology management, who shall be responsible for the following:

351:15 Funding Requirement Deleted. Amend RSA 21-I:67, III to read as follows:

III. Developing a formal information technology planning process for approving agency information technology plans.

351:16 Function Added. Amend RSA 21-I:67, V to read as follows:

V. Reviewing, assessing, and approving the feasibility of agency plans, including cost estimates and impacts on other agencies.

351:17 Director; Nomination; Qualifications; Compensation. RSA 21-I:68 is repealed and reenacted to read as follows:

21-I:68 Director; Qualifications; Compensation.

I. The commissioner of administrative services shall nominate a director of information technology management as provided in RSA 21-I:2, II.

II. The director of the division shall be qualified by reason of education and experience. The director shall possess a broad working knowledge, with demonstrated expertise and proven organizational skills in the field of information technology management.

III. The salary of the director of the division shall be as specified in RSA 94:1-a.

351:18 Change from "Office" to "Division". Amend the following RSA provisions by replacing "office" with "division": 9:4-b; 21-I:6, VIII; 21-I:14-b; the subdivision heading preceding 21-I:66; 21-I:69, IV; and 21-I:71, I and II(b).

351:19 Name Change; Singular Changed to Plural. Amend RSA 94:1-a, I by:

Voting Sheets

HOUSE COMMITTEE ON JUDICIARY

EXECUTIVE SESSION on HB 1338

BILL TITLE: **clarifying that the judicial council is responsible for payment of indigent defense expenses.**

DATE: February 6, 2002

LOB ROOM: 208

Amendments:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Motions: (OTP), OTP/A, ITL, Interim Study (Please circle one.)

Moved by Rep. Pratt

Seconded by Rep. Wall

Vote: 15-3 (Please attach record of roll call vote.)

Motions: OTP, OTP/A, ITL, Interim Study (Please circle one.)

Moved by Rep.

Seconded by Rep.

Vote: (Please attach record of roll call vote.)

CONSENT CALENDAR VOTE: YES

(Vote to place on Consent Calendar must be unanimous.)

Statement of Intent: Refer to Committee Report

Respectfully submitted,

Rep. Terri C. Dudley, Clerk

OFFICE OF THE HOUSE CLERK

2001 SESSION

:DICIARY

ll #: 1338 Title: clarifying that the judicial council is responsible for payment of indigent defense expenses

H Date: 1 / 23 / 02 Exec Session Date: 02 / 06 / 02

lotion: OTP Amendment #:

MEMBER	YEAS	NAYS
lock, Henry P, Chairman	✓	
:an, Loren J, Vice Chairman	✓	
icobson, Alf E	✓	
ergin, Peter F	—	
owe, Robert H	✓	
ord, Nancy M	✓	
)udley, Terri C	✓	
oltani, Tony F		✓
Voods, Phyllis L	✓	
Rice, Thomas		✓
.eishman, Peter R	✓	
Elliott, Larry G		✓
Reid, Christopher P	✓	
Wall, Janet G	✓	
Pratt, John M	✓	
Craig, James W	✓	
Wood, Jane	—	
Potter, Frances D	✓	
Espiefs, Peter S	✓	
Franklin, Peter E	✓	
TOTAL VOTE:	15	3

Printed: 12/27/2000

Committee Report

COMMITTEE REPORT

COMMITTEE: **Judiciary**

BILL NUMBER: **HB 1338**

TITLE: clarifying that the judicial council is responsible for payment of indigent defense expenses.

DATE: February 6, 2002 CONSENT CALENDAR YES ☒ NO ☐

☒ OUGHT TO PASS

☐ OUGHT TO PASS WITH AMENDMENT

☐ INEXPEDIENT TO LEGISLATE

☐ REFER TO COMMITTEE FOR INTERIM STUDY
(Available only in second year of biennium.)

STATEMENT OF INTENT
(Include Committee Vote)

This bill came about as the result of a recommendation from a legislative budget accounting audit which urged legislation specifying that the judicial council shall pay the expenses incurred by defense counsel for indigents. At the present time that responsibility, by legislation, is given to the commissioner of administrative services who, for many years, has subcontracted it out to the judicial council.

Vote 15-3.

Rep. John M. Pratt
FOR THE COMMITTEE

Original: House Clerk
cc: Committee Bill file

USE ANOTHER REPORT FOR MINORITY REPORT

CONSENT CALENDAR

Judiciary

HB 1338, clarifying that the judicial council is responsible for payment of indigent defense expenses.
OUGHT TO PASS

Rep. John M. Pratt for Judiciary: This bill came about as the result of a recommendation from a legislative budget accounting audit which urged legislation specifying that the judicial council shall pay the expenses incurred by defense counsel for indigents. At the present time that responsibility, by legislation, is given to the commissioner of administrative services who, for many years, has subcontracted it out to the judicial council. **Vote 15-3.**

Judiciary Committee

Blurb for HB 1338

John M. Pratt for Judiciary: ~~This bill specifies~~ that the Judicial Council shall pay the expenses incurred by defense counsel for indigents. At the present time that responsibility, by legislation, is given to the commissioner of administrative services, who, for many years, has subcontracted it out to the Judicial Council. Vote 15 to 3.

This bill came about as the result of a recommendation from ~~an~~ LBA audit which urged ~~the~~ legislation specifying that