

2016 Regular Session

HOUSE BILL NO. 1137 (Substitute for House Bill No. 818 by Representative Mack)

BY REPRESENTATIVE MACK

CRIMINAL/PROCEDURE: Provides with respect to indigent defense

1 AN ACT

2 To amend and reenact R.S. 15:146 and to enact R.S. 15:162(I), 166, and 167(E), relative to

3 indigent defender services; to amend provisions of the Louisiana Public Defender

4 Act; to provide for membership of the Louisiana Public Defender Board; to reduce

5 the number of members on the board; to provide with respect to the powers and

6 duties of the board; to provide relative to member qualifications; to provide with

7 respect to the dispersal of funds; to provide with respect to the delivery of indigent

8 defender services; to provide definitions; and to provide for related matters.

9 Be it enacted by the Legislature of Louisiana:

10 Section 1. R.S. 15:146 is hereby amended and reenacted and R.S. 15:162(I), 166,

11 and 167(E) are hereby enacted to read as follows:

12 §146. Louisiana Public Defender Board

13 A.(1) There is hereby created and established as a state agency within the

14 office of the governor the Louisiana Public Defender Board to provide for the

15 supervision, administration, and delivery of a statewide public defender system,

16 which must deliver uniform public defender services in all courts in this state. The

17 board shall be a body corporate with the power to sue and be sued.

1 (2) The board and its agents and employees shall be subject to the Code of
2 Governmental Ethics, the law relative to public records and open meetings, the law
3 relative to public bid and procurement, and all other provisions of law applicable to
4 state agencies.

5 (3) ~~Members of the Indigent Defense Assistance Board serving on August~~
6 ~~15, 2007, shall continue to serve as members of the Louisiana Public Defender Board~~
7 ~~without limitation of their term.~~ The two members of the Louisiana Public Defender
8 Board appointed by the president of the Louisiana State Bar Association, the member
9 appointed by the chairman of the Louisiana State Law Institutes Children's Code
10 Committee, the member appointed by the Louisiana Interchurch Conference, the two
11 members appointed by the governor and the four members appointed by the governor
12 and nominated by the four law schools, as provided in this Section, shall terminate
13 their service on August 1, 2016.

14 (4) To the extent practicable, the board shall be comprised of members who
15 reflect the racial and gender makeup of the general population of the state, and who
16 are geographically representative of all portions of the state.

17 (5) When a vacancy occurs, whether by expiration of a term, resignation, or
18 other event, the board staff shall submit to the appointing entity a list identifying the
19 residency of the current board members by congressional district, and request that,
20 to the extent possible, the entity make the appointment from the residents of under-
21 represented districts.

22 B.(1) The board shall consist of ~~fifteen~~ eleven members.

23 (2) Persons appointed to the board shall have significant experience in the
24 defense of criminal proceedings or shall have demonstrated a strong commitment to
25 quality representation in indigent defense matters. No person shall be appointed to
26 the board that has received compensation to be an elected judge, elected official,
27 judicial officer, prosecutor, law enforcement official, indigent defense provider, or
28 employees of all such persons, within a two-year period prior to appointment. No
29 active part-time, full-time, contract or court-appointed indigent defense provider, or

1 active employees of such persons, may be appointed to serve on the board as a voting
2 member. No person having an official responsibility to the board, administratively
3 or financially, or their employee shall be appointed to the board ~~until two years have~~
4 ~~expired from the time the person held such position and the date of appointment to~~
5 ~~the board~~ during their term of office. The majority of board members shall be
6 current members of the Louisiana State Bar Association. Representatives of the
7 client community shall not be prohibited from serving as voting members of the
8 board. ~~With the exception of mandatory affiliation of the Louisiana State Bar~~
9 ~~Association, no state or local association of lawyers shall have more than one active~~
10 ~~board member or officer as a voting member of the Louisiana Public Defender~~
11 ~~Board.~~

12 (3) The members shall be selected as follows:

13 (a) The governor shall appoint ~~two~~ five members one from each appellate
14 court district and shall designate the chairman.

15 (b) The five members shall be appointed from a list of three nominees
16 submitted to the governor by a majority of the district public defenders providing
17 public defender services in each appellate district.

18 (b)(c) The chief justice of the Supreme Court of Louisiana shall appoint ~~two~~
19 ~~members~~ one member; ~~one member shall be a juvenile justice advocate; the other~~
20 ~~shall be a retired judge with criminal law experience.~~

21 (e)(d) The president of the Senate and the speaker of the House of
22 Representatives shall each appoint one member.

23 (d) The governor shall appoint one member representing the Louisiana State
24 University Paul M. Hebert Law Center who is an active employee, retired employee
25 or has an academic association with the Paul M. Hebert Law Center.

26 (e) ~~The governor shall appoint one member representing the Loyola~~
27 ~~University School of Law who is an active employee, retired employee or has an~~
28 ~~academic association with the Loyola University School of Law.~~

1 ~~(f) The governor shall appoint one member representing the Southern~~
2 ~~University Law Center who is an active employee, retired employee or has an~~
3 ~~academic association with the Southern University Law Center.~~

4 ~~(g) The governor shall appoint one member representing the Tulane~~
5 ~~University School of Law who is an active employee, retired employee or has an~~
6 ~~academic association with the Tulane University School of Law.~~

7 ~~(h)~~(e) The president of the Louisiana State Bar Association shall appoint two
8 members. The two members shall be appointed from a list of names submitted by
9 the Louisiana State Bar Association Criminal Justice Committee. One member shall
10 reside in either the Second or Third Appellate Court and one member shall reside in
11 the First, Fourth, or Fifth Appellate Court district.

12 ~~(i)~~(f) The president of the Louisiana Chapter of the Louis A. Martinet
13 Society shall appoint one member.

14 ~~(j) The chairman of the Louisiana State Law Institute's Children Code~~
15 ~~Committee shall appoint one member.~~

16 ~~(k) The executive director of the Louisiana Interchurch Conference shall~~
17 ~~appoint one member.~~

18 ~~(l)~~(g) All appointments to the board shall be subject to confirmation by the
19 Senate.

20 (4) A vacancy on the board shall be filled in the same manner as the original
21 appointment.

22 (5) Members of the board shall serve staggered terms of four years, ~~after~~
23 ~~initial terms as follows:~~

24 ~~(a) Two members shall be immediately appointed to a four-year term by the~~
25 ~~chief justice of the Louisiana Supreme Court.~~

26 ~~(b) One member shall be immediately appointed to a two-year term by the~~
27 ~~governor representing the Louisiana State University Paul M. Hebert Law Center.~~

28 ~~(c) One member shall be immediately appointed to a three-year term by the~~
29 ~~governor representing the Loyola University School of Law.~~

1 ~~(d) One member shall be immediately appointed to a three-year term by the~~
2 ~~governor representing the Southern University Law Center.~~

3 ~~(e) One member shall be immediately appointed to a four-year term by the~~
4 ~~governor representing the Tulane University School of Law.~~

5 ~~(f) Upon the first expiration of the term or resignation by a current appointee~~
6 ~~of the governor, one member shall be appointed to a four-year term by the executive~~
7 ~~director of the Louisiana Interchurch Conference.~~

8 ~~(g) Upon the first expiration of the term or resignation by a current appointee~~
9 ~~of the president of the Senate, one member shall be appointed to a two-year term by~~
10 ~~the president of the Louisiana State Bar Association.~~

11 ~~(h) Upon the second expiration of the term or resignation by a current~~
12 ~~appointee of the president of the Senate, one member shall be appointed to a four-~~
13 ~~year term by the president of the Louisiana State Bar Association.~~

14 ~~(i) Upon the third expiration of the term or resignation by a current appointee~~
15 ~~of the president of the Senate, one member shall be appointed to a three-year term~~
16 ~~by the president of the Senate.~~

17 ~~(j) Upon the first expiration of the term or resignation by a current appointee~~
18 ~~of the speaker of the House of Representatives, one member shall be appointed to a~~
19 ~~two-year term by the president of the Louisiana Chapter of the Louis A. Martinet~~
20 ~~Society.~~

21 ~~(k) Upon the second expiration of the term or resignation by a current~~
22 ~~appointee of the speaker of the House of Representatives, one member shall be~~
23 ~~appointed to a four-year term by the chairman of the Louisiana State Law Institute's~~
24 ~~Children Code Committee.~~

25 ~~(l) Upon the third expiration of the term or resignation by a current appointee~~
26 ~~of the speaker of the House of Representatives, one member shall be appointed to a~~
27 ~~three-year term by the speaker of the House of Representatives.~~

28 ~~(6) In addition there shall be two ex officio, nonvoting members of the board~~
29 ~~who shall not be counted or be permitted to be counted for purposes of the number~~

1 of members necessary to take board action or the number of members necessary to
2 establish a quorum. In all other respects they have all the duties, authority,
3 requirements, and benefits, except per diem, of any other board member. Each of the
4 following organizations shall appoint one such member:

5 (a) ~~The Louisiana Association of Criminal Defense Lawyers.~~

6 (b) ~~The Louisiana Public Defender's Association.~~

7 ~~C. Nothing in this Section shall limit the length of the term for any board~~
8 ~~members serving on the Indigent Defense Assistance Board on August 15, 2007,~~
9 ~~except that they may be removed for just cause, or as provided in Subsection D of~~
10 ~~this Section. However, members who have not previously been confirmed by the~~
11 ~~Senate, shall be subject to Senate confirmation.~~

12 ~~D.C.~~(1) A member may be removed for excessive absences from meetings.
13 For the purposes of this Subsection, "excessive absences" means ~~failure to attend~~
14 ~~three consecutive meetings or more than fifty percent of the meetings of the board~~
15 ~~conducted during a year~~ missing four duly noticed meetings within a period of
16 eighteen months or three duly noticed meetings within a period of ten months.

17 (2) Upon review of board member attendance, if a board member has been
18 excessively absent from board meetings, the chairman shall inform the board of the
19 absences and shall send written notice on behalf of the board to the member
20 requesting that the member resign his position on the board. If the member refuses
21 to resign, the board shall remove the member for excessive absences in accordance
22 with the provisions of this Subsection.

23 (3) If a member is removed as provided by this Subsection, the board shall
24 send written notice to the member informing him of his removal and notify the
25 appropriate appointing authority of the vacancy on the board.

26 ~~E.D.~~ The board shall notify the appropriate appointing authority of any board
27 vacancy which occurs for any reason.

28 * * *

1 §162. Vacancies in position of district public defender; formation of district public
2 defender selection committee; powers and duties of committee; process for
3 filling vacancy for district public defender; interim district public defender

4 * * *

5 I.(1) Board staff shall not require of the district public defenders or their staff
6 any response with a due date less than six working days from the first full day since
7 the request is received, other than during a natural emergency. The time period
8 provided for in this Paragraph shall not include responses requested by the governor,
9 the House Committee on Administration of Criminal Justice, or the Senate
10 Committee on Judiciary C.

11 (2) The board shall make every effort to abandon paper reports and shall
12 make every effort to rely on searchable digital data in order to reduce costs of
13 operation.

14 * * *

15 §166. Disbursement of funds

16 A. The board shall not disburse funds to a non-governmental entity unless
17 it establishes a benefit to the function of the board pursuant to law, and unless
18 services are actually delivered. Under no circumstances shall the board disburse
19 state funds for the purpose of savings, reserves, or other purposes related primarily
20 to the economic health of the non-governmental entity or its owners and employees.

21 B. Any service which the board seeks, other than the Louisiana Appellate
22 Project or the Capital Appellate Project, which are statewide programs, shall be
23 subject to an application process by which the board provides objective deliverables
24 and allows the district defenders to make application upon the same terms as a non-
25 governmental entity to provide services in that district or a regional area for services
26 as provided by law.

27 C. No provision of Louisiana law authorizing the return or rollback of funds
28 from governmental programs to the division of administration shall apply to the

1 board account during an emergency shortfall in funding as certified by the board

2 with the approval of the chief justice of the Louisiana Supreme Court.

3 §167. Louisiana Public Defender Fund

4 * * *

5 E. The board shall dedicate and disburse at least sixty-five percent of the

6 entirety of its annual budget and its funds in the Louisiana Public Defender Fund as

7 defined in Subsection A of this Section each fiscal year to the district defender

8 offices and their indigent defender funds as defined in R.S. 15:168(A) in the various

9 judicial districts throughout the state. Any funds disbursed to any district defender

10 office pursuant to R.S. 15:150(G) shall be paid in addition to the minimum

11 mandatory sixty-five percent of dedicated and disbursed funds required in this

12 Subsection. The provisions of this Subsection shall not apply to statutorily dedicated

13 funds or funds received through the awarding of grants.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 1137 Engrossed

2016 Regular Session

Mack

Abstract: Amends provisions of law regarding the Louisiana Public Defender Board.

Present law (R.S. 15:146) creates the Louisiana Public Defender Board (LPDB) and provides that the board shall consist of eleven members.

Proposed law reduces the number of board members from 11 to 9.

Present law (R.S. 15:147) provides that except for the inherent regulatory authority of the Louisiana Supreme Court provided for in La. Const. Art. V, §5 regarding the regulation of the practice of law, the LPDB shall have all regulatory authority, control, supervision, and jurisdiction, including auditing and enforcement, and all power incidental or necessary to such regulatory authority, control, supervision, and jurisdiction over all aspects of the delivery of public defender services throughout the courts of the state of Louisiana.

Proposed law retains present law.

Present law (R.S. 15:167) provides for the creation of the Louisiana Public Defender Fund and the composition of the fund, administration of the fund, and use of monies from the fund.

Present law (R.S. 15:168) further provides that there is hereby created within each judicial district an indigent defender fund which shall be administered by the district public defender.

Proposed law retains these provisions of present law and further provides that the board shall dedicate and disburse at least 65% of the entirety of its annual budget and its funds in the Louisiana Public Defender Fund each fiscal year to the district defender offices and their indigent defender funds in the various judicial districts throughout the state.

Proposed law provides that any funds disbursed to any district defender shall be paid in addition to the minimum mandatory 65% of dedicated and disbursed funds required by proposed law.

(Amends R.S. 15:146; Adds R.S. 15:162(I), 166, and 167(E))