HLS 16RS-895 ORIGINAL

2016 Regular Session

HOUSE BILL NO. 818

BY REPRESENTATIVE MACK

CRIMINAL/PROCEDURE: Amends provisions of law regarding the provision of indigent defense services

1	AN ACT
2	To amend and reenact R.S. 15:143(14), 146(A)(3), (B)(1) and (3), and (C), 149.2(D),
3	150(A), (C), and (E) and to enact R.S. 15:148(D), 150(F), (G), and (H), 162(I) and
4	167(E), and to repeal R.S. 15:146(B)(4), (5), and (6) and (D), relative to indigent
5	defender services; to amend provisions of the Louisiana Public Defender Act; to
6	amend membership requirements for members of the State Public Defender Board;
7	to reduce the number of members on the board; to provide with respect to the powers
8	and duties of the board; to provide for the removal of board members; to provide for
9	the authority of the board; to provide for rulemaking; to provide for the salaries of
10	board members; to provide with respect to the hiring of executive staff positions for
11	the board; to provide with respect to the dispersal of funds; to provide with respect
12	to the delivery of indigent defender services; to provide for definitions; and to
13	provide for related matters.
14	Be it enacted by the Legislature of Louisiana:
15	Section 1. R.S. 15:143(14), 146(A)(3), (B)(1) and (3), and (C), 149.2(D), 150(A),
16	(C), and (E) are hereby amended reenacted and R.S. 15:148(D), 150(F), (G), and (H), 162(I)
17	and 167(E) are hereby enacted to read as follows:
18	§143. Definitions
19	As used in this Part, the following words have the following meanings:
20	* * *

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CODING: Words in struck through type are deletions from existing law; words <u>underscored</u> are additions.

1	(14) "State Public Defender" means the person in the employment of the
2	board chosen to administer the statewide public defender system for the delivery of
3	public defender services. administrative control of the services provided to the
4	district defender offices and the funding provided by the state general fund
5	appropriation of the state of Louisiana, as provided by law.
6	* * *
7	§146. Louisiana Public Defender Board
8	A.
9	* * *
10	(3) Members of the Indigent Defense Assistance Board serving on August
11	15, 2007, shall continue to serve as members of the Louisiana Public Defender Board
12	without limitation of their term. On August 1, 2016, the term of office of all
13	members serving on the public defender board shall terminate effective on that date.
14	The governor shall appoint the State Public Defender and chairman of the board,
15	which shall serve as the board pending the following appointments:
16	(a) Two of the interim members will be either confirmed as appointees of the
17	governor or replaced by his appointees for a term of four years at serve at the
18	pleasure of the governor.
19	(b) One of the three interim members will be either confirmed as appointee
20	of the chief justice of the Louisiana Supreme Court or replaced by her appointee for
21	a term of four years.
22	(c) Within sixty days of the end of the 2016 Regular Session of the Louisiana
23	Legislature, two additional board members shall be appointed by the president of the
24	Senate and the speaker of the House of Representatives, respectively, to serve for a
25	renewable term of four years.
26	(d) The Louisiana Association of Criminal Defense Lawyers shall provide
27	the chief justice of the Louisiana Supreme Court with three candidates for
28	appointment to the board as the local defender representative, to serve for a
29	renewable term of three years.

1	(e) The appointees of the speaker of the House of Representatives and
2	president of the Senate, and the Louisiana Association of Criminal Defense Lawyers
3	shall be subject to confirmation by the Senate.
4	(f) Three members shall suffice for a quorum so long as the chairman of the
5	board is present for the meeting or has certified his approval of the agenda.
6	(g) A member is disqualified by law upon missing a fourth duly noticed
7	meeting within eighteen months, and the board may disqualify a member based on
8	three absences in a period of ten months.
9	* * *
10	B.(1) The board shall consist of fifteen seven members. The board members
11	shall be compensated on the same basis at the same terms and in the same amount
12	as the Louisiana State University Board of Supervisors.
13	* * *
14	(3) The members shall be selected as follows:
15	(a) The governor shall appoint two members and shall designate the
16	chairman. Two of the interim members will be either confirmed as appointees of the
17	governor or replaced by his appointees for a term of four years at serve at the
18	pleasure of the governor.
19	(b) The chief justice of the Supreme Court of Louisiana shall appoint two
20	members; one member shall be a juvenile justice advocate; the other shall be a
21	retired judge with criminal law experience. One of the three interim members will
22	be either confirmed as appointee of the chief justice of the Louisiana Supreme Court
23	or replaced by her appointee for a term of four years.
24	(c) The president of the Senate and the speaker of the House of
25	Representatives shall each appoint one member. Within sixty days of the
26	adjournment sine die of the 2016 Regular Session, two additional board members
27	shall be appointed by the president of the Senate and the speaker of the House of
28	Representatives, respectively, to serve for a renewable term of four years.

1	(d) The governor shall appoint one member representing the Louisiana State
2	University Paul M. Hebert Law Center who is an active employee, retired employee
3	or has an academic association with the Paul M. Hebert Law Center. The Louisiana
4	Association of Criminal Defense Lawyers shall provide the chief justice of the
5	Louisiana Supreme Court with three candidates for appointment to the board as the
6	local defender representative, to serve for a renewable term of three years.
7	(e) The governor shall appoint one member representing the Loyola
8	University School of Law who is an active employee, retired employee or has an
9	academic association with the Loyola University School of Law. The appointees of
10	the speaker of the House of Representatives and president of the Senate, and the
11	Louisiana Association of Criminal Defense Lawyers shall be subject to confirmation
12	by the Senate.
13	(f) The governor shall appoint one member representing the Southern
14	University Law Center who is an active employee, retired employee or has an
15	academic association with the Southern University Law Center.
16	(g) The governor shall appoint one member representing the Tulane
17	University School of Law who is an active employee, retired employee or has an
18	academic association with the Tulane University School of Law.
19	(h) The president of the Louisiana State Bar Association shall appoint two
20	members.
21	(i) The president of the Louisiana Chapter of the Louis A. Martinet Society
22	shall appoint one member.
23	(j) The chairman of the Louisiana State Law Institute's Children Code
24	Committee shall appoint one member.
25	(k) The executive director of the Louisiana Interchurch Conference shall
26	appoint one member.
27	(l) All appointments to the board shall be subject to confirmation by the
28	Senate.

1	(4) A vacancy on the board shall be filled in the same manner as the original
2	appointment.
3	(5) Members of the board shall serve staggered terms of four years, after
4	initial terms as follows:
5	(a) Two members shall be immediately appointed to a four-year term by the
6	chief justice of the Louisiana Supreme Court.
7	(b) One member shall be immediately appointed to a two-year term by the
8	governor representing the Louisiana State University Paul M. Hebert Law Center.
9	(c) One member shall be immediately appointed to a three-year term by the
10	governor representing the Loyola University School of Law.
11	(d) One member shall be immediately appointed to a three-year term by the
12	governor representing the Southern University Law Center.
13	(e) One member shall be immediately appointed to a four-year term by the
14	governor representing the Tulane University School of Law.
15	(f) Upon the first expiration of the term or resignation by a current appointee
16	of the governor, one member shall be appointed to a four-year term by the executive
17	director of the Louisiana Interchurch Conference.
18	(g) Upon the first expiration of the term or resignation by a current appointee
19	of the president of the Senate, one member shall be appointed to a two-year term by
20	the president of the Louisiana State Bar Association.
21	(h) Upon the second expiration of the term or resignation by a current
22	appointee of the president of the Senate, one member shall be appointed to a four-
23	year term by the president of the Louisiana State Bar Association.
24	(i) Upon the third expiration of the term or resignation by a current appointee
25	of the president of the Senate, one member shall be appointed to a three-year term
26	by the president of the Senate.
27	(j) Upon the first expiration of the term or resignation by a current appointee
28	of the speaker of the House of Representatives, one member shall be appointed to a

1	two-year term by the president of the Louisiana Chapter of the Louis A. Martinet
2	Society.
3	(k) Upon the second expiration of the term or resignation by a current
4	appointee of the speaker of the House of Representatives, one member shall be
5	appointed to a four-year term by the chairman of the Louisiana State Law Institute's
6	Children Code Committee.
7	(1) Upon the third expiration of the term or resignation by a current appointee
8	of the speaker of the House of Representatives, one member shall be appointed to a
9	three-year term by the speaker of the House of Representatives.
10	(6) In addition there shall be two ex officio, nonvoting members of the board
11	who shall not be counted or be permitted to be counted for purposes of the number
12	of members necessary to take board action or the number of members necessary to
13	establish a quorum. In all other respects they have all the duties, authority,
14	requirements, and benefits, except per diem, of any other board member. Each of the
15	following organizations shall appoint one such member:
15 16	following organizations shall appoint one such member: (a) The Louisiana Association of Criminal Defense Lawyers.
16	(a) The Louisiana Association of Criminal Defense Lawyers.
16 17	(a) The Louisiana Association of Criminal Defense Lawyers.(b) The Louisiana Public Defender's Association.
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1	(2) Upon review of board member attendance, if a board member has been
2	excessively absent from board meetings, the chairman shall inform the board of the
3	absences and shall send written notice on behalf of the board to the member
4	requesting that the member resign his position on the board. If the member refuses
5	to resign, the board shall remove the member for excessive absences in accordance
6	with the provisions of this Subsection. A member is disqualified by law upon
7	missing a fourth duly noticed meeting within eighteen months, and the board may
8	disqualify a member based on three absences in a period of ten months.
9	* * *
10	§148. Rulemaking; considerations in developing rules
11	* * *
12	D. Providing that the board shall retain such professionals as it deems
13	necessary to conduct a review of and to recommend further amendments to the Pubic
14	Defender Act in the Regular Session of 2018.
15	* * *
16	§149.2. Offices; meetings
17	* * *
18	D. The board shall conduct a majority of its meetings per year in East Baton
19	Rouge Parish. (1) The board shall compile regulations and rules for the public
20	defender system in digital or other format and shall not enact any rule, regulation or
21	mandate without first placing the provisions on same on an agenda thirty days before
22	the date of adoption, and further shall provide notice and summary information to
23	the governor, the chief justice of the Louisiana Supreme Court and the attorney
24	general as well as other interested associations at least fifteen days in advance of the
25	meeting to introduce the rule.
26	(2) The board shall accept public comment on any item up for final adoption,
27	provided that repetitive comments since the introduction of the rule need not be
28	taken.

1	(3) The board shall adopt all rules pursuant to the provisions of the
2	Administrative Procedure Act.
3	§150. Executive staff for board; general qualifications
4	A. The board shall may employ a state public defender, a deputy public
5	defender- director of training, a deputy public defender-director of juvenile defender
6	services, a budget officer, a technology and management officer, a trial-level
7	compliance officer, and a juvenile justice compliance officer who shall function as
8	executive staff for the board.
9	* * *
10	C. The executive staff positions shall be permanent, full-time employees of
11	the board and these employees shall may not otherwise engage in the practice of law,
12	where applicable, or engage in any other business or profession. In developing
13	training, the board shall encourage and enter into such agreements for continuing
14	legal education and training as the board finds will provide improved knowledge,
15	skill and availability of lawyer for the specialized work of public defenders.
16	* * *
17	E. The salaries of the executive staff, except for the state public defender,
18	shall may be established by the board.
19	F.(1) When the board contracts with a non-governmental entity to provide
20	services to indigents for legal services, the entity shall be performing that work only
21	in Louisiana or on Louisiana cases in the federal system. Further, the employees and
22	managers of such entity shall be full-time and not otherwise engage in the practice
23	of law, nor any other business other than passive investments for income.
24	(2) The board shall not disburse funds to a non-governmental entity unless
25	it establishes a benefit to the function of the board under the law, and unless services
26	are actually delivered in the fiscal year of the agreement. Under no circumstances
27	shall the board disburse state funds for the purpose of savings, reserves or other
28	purposes related primarily to the economic health of the non-governmental entity or
29	its owners and employees.

1	G. Any service which the board seeks, other than the Louisiana Appellate
2	Project or the capital Appellate Project, which are statewide programs, shall be
3	subject to an application process by which the board provides objective deliverables
4	and allows the district defenders to make application upon the same terms as a non-
5	governmental entity to provide services in that district or a regional area for services
6	consistent with the rest of this Act.
7	H. No provision of Louisiana law authorizing return or rollback of funds
8	from government programs to the division of administration shall apply to the board
9	account during an emergency shortfall in funding as certified by the board with the
10	approval of the chief justice of the Louisiana Supreme Court.
11	* * *
12	§162. Vacancies in position of district public defender; formation of district public
13	defender selection committee; powers and duties of committee; process for
14	filling vacancy for district public defender; interim district public defender
15	* * *
16	I. Board staff shall not require of the district defenders offices any response
17	other than during a natural emergency with a due date less than six working days
18	from the first full day since the request is received. The board shall abandon paper
19	reports and shall make every effort to rely on searchable digital date in order to
20	reduce costs of operation.
21	* * *
22	§167. Louisiana Public Defender Fund
23	* * *
24	E. The board shall dedicate and disburse seventy-five percent of the entirety
25	of its annual budget and its funds in the Louisiana Public Defender Fund as defined
26	in Subsection A of this Section each fiscal year to the district defender offices and
27	their Indigent Defender Funds as defined in R.S. 15:168(A) in the various judicial
28	districts throughout the state. Any funds disbursed to any district defender office

pursuant to R.S. 15:150(G) shall be paid in addition to the mandatory seventy-five

percent of dedicated and disbursed funds required in this Subsection.

* * * *

DIGEST

Section 2. R.S. 15:146(B)(4), (5), and (6) and (D) are hereby repealed in its entirety.

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 818 Original

2016 Regular Session

Mack

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

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

<u>Proposed law</u> removes all existing board members serving on the effective date of <u>proposed law</u> and reduces the number of board members <u>from</u> 11 <u>to</u> 7.

<u>Proposed law</u> provides that board members shall be compensated on the same basis and in the same amount as the Louisiana State University Board of Supervisors.

<u>Present law</u> (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.

<u>Present law</u> (R.S. 15:148) provides for the adoption of rules to implement the provisions of <u>present law</u> and requires that the rules be adopted pursuant to the APA. <u>Present law</u> provides that oversight of the rules shall be conducted by the House Committee on Administration of Criminal Justice and the Senate Committee on Judiciary C.

<u>Proposed law</u> retains <u>present law</u> and provides that it will retain professionals necessary to provide a report to the legislative committees in the 2018 Regular Session.

<u>Present law</u> (R.S. 15:150) provides that the board shall hire an executive staff consisting of a state public defender, a deputy public defender-director of training, a deputy public defender-director of juvenile defender services, a budget officer, a technology and management officer, a trial-level compliance officer, and a juvenile justice compliance officer.

<u>Present law</u> changes <u>present law</u> to allow the board discretion in hiring executive staff.

<u>Present law</u> (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.

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<u>Present law</u> (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.

<u>Proposed law</u> retains these provisions of <u>present law</u> and further provides that the board shall dedicate and disburse 75% 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.

<u>Proposed law</u> provides that any funds disbursed to any district defender shall be paid in addition to the mandatory 75% of dedicated and disbursed funds required by <u>proposed law</u>.

(Amends R.S. 15:143(14), 146(A)(3), (B)(1) and (3) and (C), 149.2(D), 150(A), (C), and (E); Adds R.S. 15:148(D), 150(F), (G), and (H), 162(I) and 167(E); Repeals R.S. 15:146(D)(B)(4), (5), and (6))