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Report of the Planning Advisory Council

January, 1991



Jon A. Lund, Chairman

Mathew H. Eddy

Mark A. Kearns

John M. Lord

Rebecca Warren Seel

Susan Thomas

Brenda York

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1991

PLANNING ADVISORY COUNCIL

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January, 1991

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John R. McKernan, Jr.
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Susan S. Thomas

STATE OF MAINE

PLANNING ADVISORY COUNCIL

January 31, 1991

The Honorable John R. McKernan, Jr.
Governor, State of Maine
State House Station #1
Augusta, Maine 04333

Dear Governor McKernan:

The Planning Advisory Council is pleased to submit its 1991 Annual Report, as required by Title 30-A, section 4341, subsection 3, paragraph F.

The Council met six times over the course of 1990 to prepare this report and had finalized the recommendations at a meeting on October 10, 1990. In light of the budgetary constraints that currently face the State, we postponed submission of the report until we were able to be briefed on proposed cuts to the budget of the Growth Management Program for Fiscal Year 1991, as well as for the next biennium, at a meeting on January 16.

The Council recognizes that the State faces a serious budget shortfall and accepts the inevitability of decreased funding levels to the Growth Management Program. When confronting tough budget decisions, the Council, in its advisory role to the Growth Management Program, would ask you to keep a couple of priorities in mind. First, the Council believes, as regrettable as this action might be, that extending the Planning Grant Program beyond 1994 is preferable to abandoning the commitments the laws makes to assist municipalities in the implementation of plans already developed or being developed.

Second, the Council also believes that decreasing the amount of the Planning Grant to individual municipalities would be more damaging to the Growth Management Program than extending the Planning Grant offers

Department of Economic
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beyond 1994.

The Council's 1991 Annual Report contains one, perhaps two, recommendations that require increased funding. The first is increased support to Maine's regional councils. The analysis of the need for increased funding to regional councils that is contained in this report is extremely beneficial and will be used by the Office to guide the development of future regional council contracts. If the increased funding that this analysis concludes is necessary is not available, this analysis will also assist the Council and the Office in determining which tasks will be abandoned or reduced.

The second recommendation that may require additional funding concerns the requirement in the Growth Management Act to reimburse municipalities for the salaries of their code enforcement officers while they are in training. The Council report does present an alternative to increased funding that would duplicate a cost-sharing program similar to the statute for training of local law enforcement officers.

Before closing, the Council wishes to share our gratitude for the unwavering support that you personally, and your Administration generally, have given to the Growth Management Program. That support has brought the lofty goals of the Program within reach.

On behalf of the Council, I'd be pleased to meet with you at your convenience to discuss the recommendations contained in this report.

Sincerely,

A handwritten signature in dark ink, reading "Mark A. Kearns". The signature is fluid and cursive, with the first name "Mark" being the most prominent part.

Mark A. Kearns
Chair

cc: Members, Planning Advisory Council

PLANNING ADVISORY COUNCIL

ANNUAL REPORT

1991

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EXECUTIVE SUMMARY

PLANNING ADVISORY COUNCIL

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1991

The Planning Advisory Council finds, in its review of Maine's Growth Management Program, that the Program has successfully met a number of important challenges since its inception in 1988. The Program has been the recipient of awards from the Maine Association of Planners and the Northern New England Association of Planners. The first plans coming in for review are clearly promoting the goals of the Growth Management Act and speak well for the Program.

A number of challenges continue to confront the Program and, in the view of the Planning Advisory Council, require action by the Governor and the Legislature, to remedy.

1. Regional Council Jurisdictional Boundaries. Regional councils are critical to the delivery of the Growth Management Program. The Council recommends that the official regional council jurisdictional boundaries be reviewed by the Office in consultation with the Maine Association of Regional Councils. Recommendations developed should be submitted to the Governor to be officially adopted by Executive Order, after review of the Council. These boundaries should form the basis of all future allocations to regional councils by the Office.

2. Regional Council Funding. As more and more municipalities enter the Growth Management Program, the work load of regional councils increases, in some cases, dramatically. The Council recommends that the level of funding to regional councils be increased to accommodate this increased workload.

3. Municipal Planning Grants. The Council recommends that the base amount for Municipal Planning Grant allocations be increased from \$15,000 to \$18,000. It is further recommended that the increase be funded within currently projected funding levels (\$1.2 million/year). The Council does not intend that the increase delay the deadline for any municipality beyond the July, 1996 deadline recommended in our 1990 Annual Report. If the planning grant appropriations need to be increased, the Council recommends that adjustments be made for Round 7 in FY 1995. The Council also recommends that up to \$185,000 be reserved from next year's funding of Round 4 to offer Round 3 municipalities the increase reflected in this recommendation to augment their contract and work plan.

4. Code Enforcement Training Reimbursement. The Council recommends that \$200,000 be appropriated annually to support the requirement in the Growth Management Act that municipalities be reimbursed by the Office for the costs of training and certifying code enforcement officers. If funding is not appropriated for this purpose, the Council recommends that a cost-sharing plan be enacted, similar to the plan currently existing for training of law enforcement officers.
5. OCP Legal Needs. The Council recommends that the Office continue to work with the Attorney General's Office to ensure that OCP's legal needs are properly evaluated and met.
6. Submission of Zoning Ordinances. The Council recommends that the Office be given the authority to extend the deadline for submission of a zoning ordinance to the state for review beyond the 12 months currently allowed by the Act.
7. State Agency Resource Needs (DEP). The Council recommends that sufficient funding be provided to support a request for additional resources equivalent to one full-time staff person for the Department of Environmental Protection beginning with Fiscal Year 1992, ending in Fiscal Year 1994, unless recommended for continuation by the Council.

PLANNING ADVISORY COUNCIL

ANNUAL REPORT

JANUARY, 1991

I. Program Update

During 1990, the Office of Comprehensive Planning has initiated three new growth management programs, officially begun the formal review of local comprehensive plans, and maintained a strong commitment to the improvement of existing programs. The Governor and the Legislature have supported this challenge and brought it within reach by providing additional staff and municipal grant resources when they have been requested.

Highlights of the Office's accomplishments during 1990 include the first applications and awards under the Municipal Legal Defense Fund; the first round of planning grant offers to Tier II municipalities; continuation of an ambitious program to inventory natural resources to fill gaps in local planning data; development and initiation of a Municipal Implementation Grant Program; actual delivery of three segments of the Code Enforcement Officer Training Program; and a successful launching of the Review and Comment of comprehensive plans of Round I municipalities.

The Office's efforts have been recognized by the Maine Association of Planners and the Northern New England Chapter of the American Planning Association with awards for excellence in planning. Maine's Growth Management Program has been the subject of exhaustive review by The Taubman Center at the John F. Kennedy School of Government at Harvard University, by the Lincoln Institute on Land Policy, and by the Edmund S. Muskie Institute at the University of Southern Maine.

1990 has been a challenging and rewarding year.

Municipal Legal Defense Fund: The Municipal Legal Defense Fund is a matching grant program designed to assist municipalities in the pursuit of legal actions regarding the enforcement and defense of municipal land use ordinances. The issues raised must be of statewide significance. The Fund is an important recognition that effective, fair, and vigorous enforcement of land use ordinances and regulations is critical to successful growth management in Maine.

The Fund has been available to municipalities since October 1, 1989, when rules governing its administration were adopted. Since that time, the Office has reviewed five applications and made four awards. Kennebunkport received the first award of \$5,000 to reimburse the municipality for a portion of the legal expenses incurred defending their land use ordinance against a constitutional challenge. Kennebunkport received a second award of \$2,500; Cape Elizabeth received an award of \$2,600 and Falmouth received an award of \$13,441.76. In all cases these funds were made available to offset some of the expenses incurred in pursuing legal actions of statewide significance that have implications for every municipality.

Planning Program: A third round of planning grant offers was made to Tier II municipalities, totalling \$1,292,238. Offers were based on a priority list developed by the Office of all Tier II municipalities (those experiencing population increases greater than 5% between 1980-1987). In order to guarantee every municipality a complete two years to develop the comprehensive plan, and, in order to stagger the submission of comprehensive plans to manage the Review and Comment Program, the Office split the offers up into six monthly segments. The result is that submittal deadlines for Round 3 municipalities will be staggered over six months between July, 1992 and December, 1992, two years after the planning grant offer.

Natural Resource Inventories: Wildlife habitat mapping was conducted in cooperation with the Maine Department of Inland Fisheries and Wildlife (IF&W). Significant Wildlife Habitat Maps were completed for all Round 2 municipalities using the IF&W data.

A contract with The Nature Conservancy gave the Office computer mapping capabilities that identifies locations of sensitive habitats.

The Office secured \$1,500 from The Nature Conservancy for a cooperative pilot project with IF&W to map critical salmon habitats.

Three technical assistance reports were prepared in cooperation with IF&W, recommending standard procedures for taking inventory of two endangered wildlife species and one significant wildlife habitat.

The Office transferred \$6,500 to IF&W for surveys of rare and endangered wildlife species. To date, new sites for all target species have been discovered, including species that are extremely rare worldwide. Data from these finds will be shared with local comprehensive planning committees.

The Office provided \$33,742 to three subcontracting entities to survey unique natural habitats in a 100-town study area. This data was heretofore nonexistent. Preliminary findings include: locating 50 state-listed plants, and finding only a few remaining examples of undisturbed natural areas; locating eight state endangered species in 10 towns; and discovering plants in Maine that had never been known to occur.

Municipal Implementation Grant Program: Guidelines for administration of this matching grant program were finalized in September, 1990. Only those Tier I municipalities that have submitted a comprehensive plan for Review and Comment are eligible for this program. The funds may be used for any purpose directly related to the preparation of policies, programs, and land use ordinances implementing a comprehensive plan consistent with the Comprehensive Planning and Land Use Regulation Act. The maximum grant award is \$12,500 per municipality. The Office has also secured federal Coastal Zone Management funds to offer each coastal municipality in Round 1 an additional \$5,000 to implement the State's coastal policies.

Code Enforcement Officer Training Program: In compliance with the Office's mandate to establish and deliver basic and advanced training for local Code Enforcement Officers, a Basic Curriculum of 14 topics relevant to most local land use regulations was developed. The Office has begun to develop topics for Advanced Programs.

During 1990, Basic Curriculum offerings were made in the areas of Environmental Issues, Mandatory Shoreland Zoning/Floodplain Management, Legal Enforcement Issues and Techniques, and Building Codes. Training sessions at four technical colleges throughout the state provided a wide geographic representation. 451 municipalities were represented during at least one of the sessions. Total attendance at all the sessions exceeded 600.

Review and Comment Program: Three sets of administrative rules were adopted during 1990 to create the framework for the review of local comprehensive plans. A Procedural Rule for Submittal and Review of Municipal Comprehensive Plans became effective January 22, 1990.

The Comprehensive Plan Submittal Deadline Rule became effective July 7, 1990. This rule revises the deadlines established by the Growth Management Act for submittal of proposed comprehensive plans to the Office for review. The deadline revisions are based on the availability of planning grants. Deadlines are adjusted to give each municipality 2 years following the offer of a planning grant to develop the

plan and submit it for review.

The third rule, the Comprehensive Plan Review Criteria Rule also became effective on July 7, 1990. This rule establishes the criteria the Office will use to review comprehensive plans for consistency with the goals and guidelines of the Growth Management Act. The Office will use this rule to review and comment on proposed plans, and to review the plan component of local growth management programs for which certification has been requested.

A mock review was conducted during the spring of 1990, using plans adopted by the Towns of Arrowsic and Madison. The mock review tested the Review Criteria Rule and the ability of the Office, regional councils and other state agencies to meet the time frame and goals for plan review established by the Growth Management Act. As a result of the mock review, several office policies were reexamined and refined in consultation with the growth management coordinators in each of the regional councils.

Richmond was the first municipality to submit a plan for Review and Comment. Although found to be deficient in a few areas, the Richmond plan withstood an exhaustive review to represent a major step forward in state-of-the-art planning in Maine, as well as an important benchmark for the Growth Management Program. By December 31, 1990, 34 more Round I plans had been submitted to the Office for review and comment.

II. Regional Council Delivery System

The Council's 1990 report recommended that regional council needs and performance be carefully monitored during 1990, and that adjustments to current levels of funding (\$600,000 per year) under the Growth Management Program be considered in light of Tier I experience. The Council has undertaken a review of this issue and presents two recommendations. One recommendation deals with the configuration of regional council jurisdictional boundaries and the other recommendation deals with the level of funding currently made available to regional councils to fulfill their obligations under the Growth Management Act.

The Council has affirmed its belief that regional councils are critical to the delivery of the Growth Management Program. If regional councils had not existed in 1988 when the Growth Management Act was enacted, the Act would have had to create a substitute. Maine's small municipalities rely on regional councils for professional planning assistance. The need for regional planning to effectively deal with a number of critical growth management issues becomes more apparent with each comprehensive plan

review. Technical assistance must be more accessible than Augusta can provide.

The quality of planning and technical assistance among Maine's 11 regional jurisdictions has always ebbed and peaked, as it continues to do. Capacity most always seems to depend on the ability of the regional council to retain key professional staff. When such a staff member leaves, capacity drops and doesn't peak again until a new staff member is trained and gains experience. The ability of councils to retain key professional staff almost always depends on financial stability. More and more, financial stability depends on reliable levels of state support.

A. Regional Council Jurisdictional Boundaries

Regional councils in Maine are incorporated as a Regional Planning Commission or a Council of Governments. They have existed in Maine since a system of planning and development districts was established by Executive Order dated January 26, 1972. The boundaries created by that Executive Order have remained relatively unchanged since that time (see attached map, **Official Planning and Development Districts and their Comprehensive Planning Agencies, November 1971**).

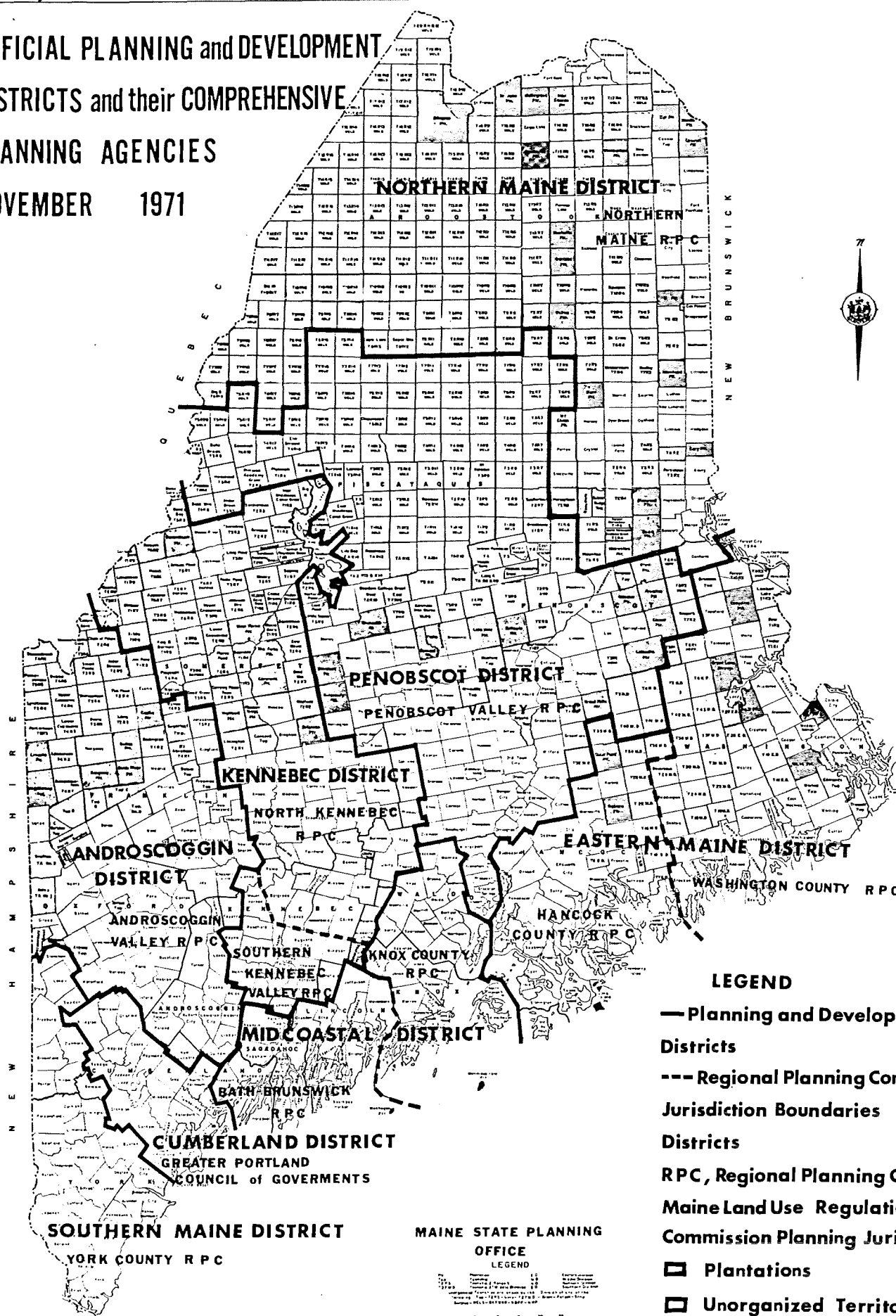
10 of the 11 regional planning jurisdictions have been steadily served by a regional council since the inception of the boundaries. The exception is the Southern Mid-Coast Regional Planning jurisdiction (Bath-Brunswick RPC on the 1971 map) which saw their regional council fail in the late 1970s. That jurisdiction includes most of Lincoln County, all of Sagadahoc County, and Brunswick and Harpswell in Cumberland County.

In 1988, when the Growth Management Act was passed, no regional council was yet serving the Southern MidCoast jurisdiction. The state had been working with municipal officials from the area for a couple of years in the hope of resurrecting a regional council to serve the entire jurisdiction. Negotiations began to break down between Sagadahoc County officials and Lincoln County officials. By the summer of 1988, each county had decided to go its own way. Lincoln County formed its own regional council (Municipal Resource and Planning Office of Lincoln County) under the auspices of the county government. Sagadahoc County contracted for services with the Southern Kennebec Planning and Development Council, the regional council serving the greater Augusta region. In 1990, Sagadahoc County and the Southern Kennebec Planning and Development Council formed a joint corporation, called Capital Coastal Council of Governments. The jurisdictional boundaries have never been redrawn and it is not the intent of Capital

OFFICIAL PLANNING and DEVELOPMENT

DISTRICTS and their COMPREHENSIVE PLANNING AGENCIES

NOVEMBER 1971



Coastal Council of Governments to request such a move.

In 1988 and 1989, the Office allocated one-half the money set aside for the Southern MidCoast jurisdiction to Lincoln County and the other half to Sagadahoc County, upon agreement of both groups. In 1990, the Office continued to allocate the growth management funds in the same way, with 1/2 going to Lincoln County, and the other half now going to Capital Coastal Council of Governments to serve Sagadahoc County. Lincoln County believes that this is unfair and their Executive Director, Robert Pratt, presented his concerns to the Council at the meeting of September 19, 1990 (see minutes in the Appendix). Lincoln County believes they deserve the full \$35,000 base allocation and that Capital Coastal's allocation should be reduced to \$35,000.

The Council believes that there are long-term issues raised by this short-term allocation problem. Under state law, any two or more municipalities can join together to form a council of governments. If the state must support, in equal fashion, every regional council that formed in such a manner we would wreak havoc with the regional council delivery system, which the Council believes is critical to sound growth management in Maine. The danger exists, should Lincoln County be entitled to a full base allocation, for the current delivery system to become further fragmented, exacerbating the issue of regional council capacity.

RECOMMENDATION: In order to maintain an effective and equitable system of delivering technical assistance and planning services to municipalities through regional councils, the Council recommends that the Office fund only one regional council in each of the 11 regional council planning jurisdictions, as they have been designated by Executive Order.

To address the situation that currently exists with regard to the funding of two regional councils for the planning jurisdiction that includes Sagadahoc County, Lincoln County, Brunswick and Harpswell, the Council recommends that the Office work with the Maine Association of Regional Councils, officials from the Municipal Resource and Planning Office of Lincoln County and Capital Coastal Council of Governments to recommend revisions to the delineation of jurisdictions to be officially adopted by Executive Order, after review by the Council.

B. Regional Council Funding Levels

The Growth Management Act creates a number of responsibilities for regional councils. First, as technical assistance providers, second as regional planning agencies responsible for developing regional policies, and third, as

the reviewer of local comprehensive plans to determine consistency with regional policies and the plans of neighboring municipalities.

\$600,000 has been appropriated each year since 1988 to support these regional functions. The money is allocated as follows: \$35,000 as base level support to each regional planning jurisdiction and the remainder based on the number of Tier I, Tier II or Tier III municipalities in the jurisdiction. 1988 and 1989 dollars were allocated based on Tier I, 1990 based on Tier II.

To determine the adequacy of this funding level, the Council developed an analysis based on our experience with Tier I municipalities. From that experience, the Council was able to identify the primary activities that each regional council performed under the Growth Management Program and to assign an estimated amount of hours per municipality/year to each task.

It is very important to note that these work load assumptions do not include the task of regional policy development. The Council views this task as critical to the success of the Growth Management Act, and one that cannot be overlooked. This analysis, however, concerns itself with only the technical assistance that councils provide directly to municipalities during the growth management process.

Regional Council Work Load Assumptions

<u>Activity</u>	<u>Hours Per Municipality/Year</u>
*Planning Grant Contract Administration/ Setting up Tasks include: Setting up committees Planning grant contract development Preparation of preliminary assessment Distribution of data packets Assistance in obtaining professional help	80
*Monitoring of Planning Process Tasks include: Review meeting materials and minutes Regular contact with chair Attend public forums Regular contact with consultant Review of draft plans	50

*Regional Plan Review	12
*Implementation Grant Contract Administration	15
Tasks include:	
Grant contract development	
Assistance in obtaining professional help	
*Monitoring of Zoning Ordinance Development	25
Tasks include:	
Review meeting materials and minutes	
Regular contact with chair	
Attend public forums	
Review drafts	
*Regional Review of Zoning Ordinance	12
*Certification Administration	10
Tasks include:	
Review of drafts	
Troubleshooting	

Using these workload assumptions, the Council projected the number of hours each council would need to meet their responsibilities to all municipalities (Tier I, Tier II and Tier III) through 1997-98. The Council also assumed that all municipalities would receive a planning grant offer by July, 1994, or by Round 7, and projected the allocation of municipalities in each round among regional councils.

Projected Regional Council Work Load/Round

1988-89:	Round 1 - planning grant contract administration; monitoring of planning process
1989-90:	Round 1 - monitoring of planning process Round 2 - planning grant contract administration
1990-91:	Round 1 - regional plan review; implementation Round 2 - monitoring of planning process Round 3 - planning grant contract administration
1991-92:	Round 1 - zoning ordinance development/review Round 2 - regional plan review; implementation grant contract administration Round 3 - monitoring of planning process Round 4 - planning grant contract administration

1992-93: Round 1 - certification administration
Round 2 - zoning ordinance development/review
Round 3 - regional plan review; implementation grant contract administration
Round 4 - monitoring of planning process
Round 5 - planning grant contract administration

1993-94: Round 2 - certification administration
Round 3 - zoning ordinance development/review
Round 4 - regional plan review; implementation grant contract administration
Round 5 - monitoring of planning process
Round 6 - planning grant contract administration

1994-95: Round 3 - certification administration
Round 4 - zoning ordinance development/review
Round 5 - regional plan review; implementation grant contract administration
Round 6 - monitoring of planning process
Round 7 - planning grant contract administration
Round 1 - second planning grant

1995-96: Round 4 - certification administration
Round 5 - zoning ordinance development/review
Round 6 - regional plan review; implementation grant contract administration
Round 7 - monitoring of planning process
Round 1 - regional plan review of updates; second implementation grant
Round 2 - second planning grant

1996-97: Round 5 - certification administration
Round 6 - zoning ordinance development/review
Round 7 - regional plan review; implementation grant contract administration
Round 1: regional review of zoning ordinance updates
Round 2: regional plan review of updates; second implementation grant
Round 3: second planning grant

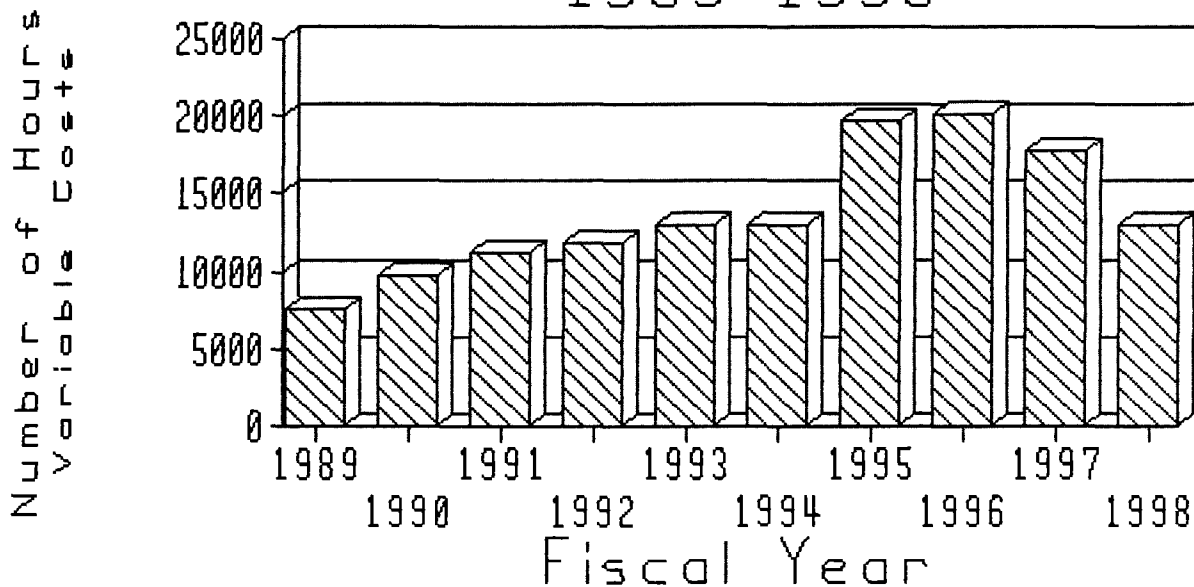
1997-98: Round 6 - certification administration
Round 7 - zoning ordinance development/review
Round 1 - certification administration of revisions
Round 2 - regional review of zoning ordinance updates
Round 3 - regional plan review of updates; second implementation grant
Round 4 - second planning grant

Number of Municipalities/Round/Regional Council

	<u>Rounds</u>						
	<u>1</u>	<u>2</u>	<u>3</u>	<u>4</u>	<u>5</u>	<u>6</u>	<u>7</u>
AVCOG	2	15	11	8	7	7	7
CCCOG	4	11	6	3	3	3	2
EMCPC	2	9	11	4	2	2	1
GPCOG	9	6	2	0	2	2	1
HCPC	2	5	15	3	4	4	4
MRPOLC	5	4	4	2	1	0	0
NKRPC	4	11	7	4	6	6	7
NMRPC	2	1	7	0	15	15	16
PVCOG	5	13	8	17	10	10	11
SMRPC	21	9	4	2	1	1	1
WCPC	2	2	3	0	12	12	12
LURC			2	10	10	10	10

TOTAL RC WORKLOAD

1989-1998



NOTE: See the end of the report for individual regional council workloads.

This analysis demonstrates dramatic fluctuations, year to year in regional council work load. As municipalities pass through the growth management process (comprehensive planning, state review, implementation, state review, state certification review) the tasks each regional council must perform vary depending on the number of municipalities in each phase of the process. It can be noted from the regional council workload assumptions, that the greatest investment in time is made during the two years the municipality is developing its comprehensive plan. Since few regional councils or municipalities have advanced to the next phase, the work load assumptions assigned to those tasks will have to be reviewed as the program matures to determine their accuracy. For the purposes of this analysis, it seems clear that the projected hours for regional plan review, implementation grant administration, monitoring of zoning ordinance development, regional review of zoning ordinances and certification administration are conservative, and may very well be too conservative. The experience we've garnered with respect to the reviews we've conducted this far would indicate that 12 hours for a regional review is too little.

It is the feeling of the Council, that the fixed costs

or non-town specific services required by the Growth Management Act (regional assessments, regional planning and interlocal planning) should constitute 50%, minimally, of the regional council workload, which would leave \$300,000 available from the full \$600,000 allotment available to buy hours for the performance of the town specific or variable costs. (These are referred to as variable costs because the costs will vary depending on the number of municipalities in each phase of the process.)

In order to determine the adequacy of the funding currently provided to regional councils, the Council divided the \$300,000 available for variable costs by \$40/hour, a figure agreed upon by regional councils as representative of their labor, indirect and direct costs. At that rate, the state is currently purchasing 7,517 hours of service toward these tasks. In Fiscal Year 1990, we estimate that regional councils must devote 9,780 hours toward these tasks. In Fiscal Year 1991, the estimate is 11,236 hours. and in Fiscal Year 1992, 11,808 hours. To pay for the services expected of regional councils in Fiscal Year 1992, the appropriation for these tasks should increase from \$300,000 to \$471,640.

RECOMMENDATION: The Council recommends that the funding to regional councils should be increased by \$171,640 to pay for the town-specific tasks that are required by the Growth Management Act. Further, it is the sense of the Council that funding currently provided to cover regional assessments, regional planning and interlocal planning is adequate to cover 75% of these regional council tasks. The Council believes that this cost-sharing is adequate since it is the same level of state support provided for local planning.

The Council further recommends that state support for the variable regional council workload should be adjusted annually for inflation, beginning with Fiscal Year 1993.

III. Level of Planning Grants

Three independent analyses prepared by three regional councils (Southern Maine Regional Planning Commission, Androscoggin Valley Council of Governments, and North Kennebec Regional Planning Commission) present evidence that the planning grant project minimum of \$15,000 is insufficient, confirming the general impression the Office has gathered during the first three rounds of planning grants.

SMRPC generally concludes that approximately \$3000 more is needed to allow for the necessary time the consultant planner must spend with the local comprehensive planning committee at meetings and to attend public forums.

AVCOG shares with us two project budgets for Oxford and Otisfield, two plans they are under contract to do. They estimate total project costs for Oxford at \$29,412 where the state currently only recognizes a total project cost (state share and local share) of \$25,570, a difference of \$3,842.

AVCOG estimates Otisfield's total project costs to be \$17,896, with the state recognizing \$16,846, a difference of \$1,050. The AVCOG analysis does not include billings for all the monthly meetings attended of the local comprehensive planning committees. If such billings were included, it would add \$2,250 to each of the totals above, making the unmet balance \$6,092 for Oxford and \$3,300 for Otisfield.

NKRPC suggests that the base amount of \$15,000 be increased to \$20,000, based on their work with several smaller municipalities in their region.

All three regional councils agree that the planning grant amounts for larger municipalities may be adequate.

An analysis conducted by Market Decisions, a private consultant firm working with several Tier I municipalities, concluded that a typical plan budget requires, minimally, \$20,000, breaking down as follows:

Inventory and Analysis	\$12,000
Base Map	1,000
Public Participation	
Community Survey	3,000
Policy/Implementation	
Strategies, i.e. (committee	
meetings, travel time, meeting	
preparation @ \$500/meeting,	
8 meetings minimum	4,000

CURRENT LEVEL OF EXPENDITURES/PLANNING GRANT PROGRAM

Round 1	\$1,058,065
Round 2	1,363,494
Round 3	1,292,238
Round 4	1,200,000 (proposed)
Round 5	1,200,000 (proposed)
Round 6	1,200,000 (proposed)
Round 7	1,200,000 (proposed)

These funding levels provide \$8,513,797 to support the Planning Grant Program over the seven years that will be necessary to reach every Maine municipality. We currently project that only \$7,765,769 will be necessary to offer each

municipality a planning grant at current levels, leaving an excess in Round 7 of \$748,028. This assumption does not anticipate future planning grant offers to help municipalities pay for mandated updates to their comprehensive plans every five years, a policy the Council must address in the near future.

Increasing the minimum project allocation from its current level of \$15,000 to \$18,000 would require distribute an additional \$1,144,929 to Maine municipalities in Rounds 4 through 7. To achieve such an increase, total appropriations would have to increased by \$393,000 (\$1,144,929 - \$748,028), at some point by Fiscal Year 1995.

RECOMMENDATION: The Council recommends that the base planning grant total project amount be increased from \$15,000 to \$18,000, increasing the state share from its current minimum of \$11,250 to \$13,500. This recommendation does not contemplate an increase in the maximum project cost, currently at \$80,000.

The Council further recommends that the increase be accommodated within projected funding levels, as they were determined by last year's Council report. The Council does not intend that the increase delay the deadline for any municipality beyond the July 1, 1996 deadline recommended in last year's report. If the planning grant appropriations need to be increased by the level currently assumed (\$393,000), the Council recommends that this adjustment be made in Fiscal Year 1995 in Round 7.

IV. Code Enforcement Training Reimbursement

The Growth Management Act (Title 30-A, section 4344, subsection 6, requires the Office to administer a program of training and financial assistance for municipal code enforcement officers. That subsection states, in part, that ...the program shall provide funding for educational expenses leading to certification under section 4451 and salary reimbursement while in training.

No money has been appropriated for this purpose. Last year the Council recommended that the Office design the training programs to minimize costs to the municipalities. Courses have been offered through the Vocational Technical Colleges. No registration fees have been charged. Course materials have been provided at no costs. Instructors have donated their time to the Office.

Frustration is increasing among members of the code enforcement community that their salary costs are not being reimbursed. Some municipalities have refused to consider the time in training as time worked and have withheld

compensation from their code enforcement officer.

The Council estimates that it would require \$200,000 annually to fully fund a reimbursement program. This amount is based on the following assumptions:

1. A per diem is the only practical way to reimburse for salaries since officers are paid in a variety of different ways (egs. fees only, contracted hourly rates). Part-time officers are often privately employed as electricians, engineers or contractors. The statute does not intend that private employers receive reimbursement under this program, yet the same amount of training time will be lost to them as to the employing municipality. For these reasons, the Council recommends a per diem at the rate of \$50/day be used to calculate the level of reimbursement.

2. 10 days of training per year, and 400 code enforcement officers statewide.

The alternative to the state-funded reimbursement program is to enact a cost-sharing arrangement similar to the current statute for full and part-time law enforcement officers. Such a cost-sharing arrangement, in its most general form, would require a municipality that hires a code enforcement officer that had already received training to reimburse the municipality that paid for the training.

RECOMMENDATION: The Council recommends that \$200,000 be appropriated to support the Office's mandate to provide reimbursement to municipalities for the salaries of their code enforcement officers while in training. If money is not available for this purpose, the Council recommends that a cost-sharing arrangement be enacted similar to the statute that currently exists for full and part-time law enforcement officers, as follows:

30-A, section 4451, subsection 8, is enacted to read:

8. Sharing of training costs

A. Definitions. As used in this subsection, unless the context otherwise indicates, the following terms have the following meanings.

(1) "Governmental entity" means the State, any county, any city, town, or plantation, or any quasi-municipal incorporation or special purpose district, including, but not limited to, any water district, sanitary district or watershed district.

(2) "Training" means the basic or advanced training of local code enforcement officers provided or approved

by the Office of Comprehensive Land Use Planning for the purposes of certification or recertification as required by this section.

(3) "Training costs" includes the following costs when they are paid by the governmental entity:

(a) The full cost of the salary paid to the code enforcement officer while in training;

(b) The full cost of any tuition or registration charged for the training; and,

(c) In the event that the code enforcement officer is not paid a salary by the employing governmental entity, then the full cost of a per diem calculated at \$50.00 per day, or at the rate of the actual per diem, whichever is less.

B. Reimbursement for training costs. Whenever a code enforcement officer, receiving training under this section, on or after July 1, 1989, while on the payroll of a particular governmental entity, is subsequently hired by another governmental entity in a similar capacity within 5 years of receiving any training, the governmental entity shall reimburse the first governmental entity according to the following formula:

(1) If the officer is hired by the other governmental entity during the first year after receiving any training, the governmental entity shall reimburse the first governmental entity the full cost of the training costs.

(2) If the officer is hired by the other governmental entity during the 2nd year after receiving any training, the governmental entity shall reimburse the first governmental entity 80% of the training costs.

(3) If the officer is hired by the other governmental entity during the 3rd year after receiving any training, the governmental entity shall reimburse the first governmental entity 60% of the training costs.

(4) If the officer is hired by the other governmental entity during the 4th year after receiving any training, the governmental entity shall reimburse the first governmental entity 40% of the training costs.

(5) If the officer is hired by the other governmental entity during the 5th year after receiving any training, the governmental entity shall reimburse the first governmental entity 20% of the training costs.

(6) If the officer received training more than 5 years before subsequently being hired by the other governmental entity, that governmental entity shall not be obligated to reimburse the first governmental entity.

C. If the officer is subsequently hired by additional governmental entities within 5 years of receiving training, each of those governmental entities shall be liable to the governmental employer immediately preceding it for the training costs paid by that governmental entity under this subsection. The extent of financial liability shall be determined according to the formula established by this subsection.

D. Reimbursement shall not be required when the trained officer hired by a governmental entity has had employment with a prior governmental entity terminated at the discretion of the governmental entity.

V. OCP's Legal Needs

When the Legislature enacted the Growth Management Law in April of 1988, they included an appropriation in the budget (\$37,000) for "an Assistant Attorney General assigned to the Department of Economic and Community Development to assist in the design of ordinances, review of comprehensive plans, and administration of the Legal Defense Fund".

It's clear that the Office does not enjoy the services of a full-time Assistant Attorney General. It is also clear that the Attorney General's office does not have the resources to provide full-time assistance. It's unclear whether the Office requires the full-time assistance of an Assistant Attorney General, or whether the tasks identified in the 1988 appropriation are the priority legal needs facing the Office.

Perhaps of higher priority for the time of an assistant attorney general are the review of zoning ordinances, assisting with potential appeals by municipality of the Office's determinations regarding certification of plans, and certification of local code enforcement officers.

Review of zoning ordinances. Municipalities potentially face a tougher legal challenge as a result of the Act in defending their land use ordinances. State law has always required a comprehensive plan as the legal support for a townwide zoning ordinance. Now, however, the zoning and other land use ordinances have to be supported by a **consistent** comprehensive plan. That hurdle places legal importance on the Office's review of the zoning ordinance.

Such a review, will, it is anticipated, be seen as a declaration of consistency. As a result, a legal review to determine consistency may be necessary, in some unique cases.

Certification appeals. The Office's decision with respect to certification of local growth management programs constitutes final administrative action. The Attorney General's office may be called upon to defend the Office's decisions.

Code enforcement officer certification. When and if the Office decides to deny certification to a local code enforcement officer, the Office may be depriving him or her of their ability to pursue their chosen career, one in which they may have years already invested. The Attorney General's office may be called upon to defend the Office's decisions.

Administration of the Legal Defense Fund. Determination of statewide significance is a critical factor in making awards from the Fund. That determination depends on a strong legal knowledge of existing land use case law as well as of municipal land use law and operations.

RECOMMENDATION: The Council recommends that the Office continue to work with the Attorney General's office to ensure that OCP's legal needs are properly evaluated and met.

VI. Extension for Submission of Zoning Ordinances

Municipalities are required to submit zoning ordinances to the state for review one year after their deadline for submission of their comprehensive plan. This period of time may be inadequate. The Act gives the state 60 days, or two months, to review the comprehensive plan. This two months comes out of the 12 month period the municipality has to develop the zoning ordinance.

In cases where municipalities have numerous, and sometimes significant, changes to make to their comprehensive plan in response to the state's review, even less time is available to develop the zoning ordinance.

RECOMMENDATION: The Council recommends that the Office be given the authority to extend the deadline for submission of a zoning ordinance to the state for review beyond the 12 months currently allowed by statute (12 months from the deadline for submission of the plan for review and comment). This extension may be warranted in instances where review of the comprehensive plan, and the municipality's reaction to the review comments, uses up a large portion of the 12 months available.

The Council suggests the following language:

SECTION 1. 30-A MRSA, section 4313, subsection 2 is amended to read:

2. **Zoning ordinances.** Any zoning ordinance not consistent with a comprehensive plan adopted according to this subchapter is void 18 months after the applicable date established under section 4343, subsection 1-~~7~~, except if the office has extended the deadline up to an additional six months pursuant to section 4343, subsection 1-B, in which case the zoning ordinance is void six months after the extended deadline.

SECTION 2. 30-A MRSA, section 4326, subsection 5 is amended to read:

5. **Implementation program.** An implementation program shall be adopted that is consistent with the strategies in subsection 3. A zoning ordinance shall be adopted within 18 months of the applicable deadline established in section 4343, subsection 1, with the remainder of the strategies adopted according to the timetable set in the plan and the provisions of section 4313. If the office has extended the deadline up to an additional six months pursuant to section 4343, subsection 1-B, a zoning ordinance shall be adopted within six months after the extended deadline, with the remainder of the strategies adopted according to the timetable set in the plan and the provisions of section 4313.

SECTION 3. 30-A MRSA, section 4343, subsection 1-B is repealed and replaced with the following:

1-B. **Zoning ordinance; schedule.** Municipalities shall follow the following schedule for zoning ordinance submission.

A. Each municipality shall submit for review a zoning ordinance proposed as part of its implementation program within one year of the applicable date for submission of the comprehensive plan established under subsection 1.

B. Each municipality may request up to a six month extension of the zoning ordinance submission deadline determined under paragraph A. The Office shall revise the submission deadline by up to six additional months if the office finds that the municipality has made a good faith effort to develop a plan consistent with this subchapter and that the municipality is likely to be eligible for state assistance under section 4344, subsection 4.

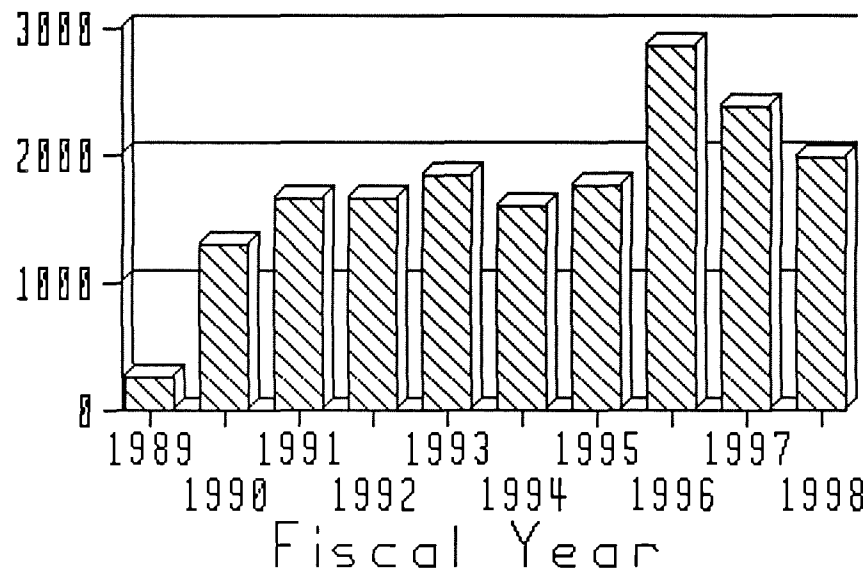
VII. State Agency Resource Needs

The Council's preliminary assessment, as contained in our 1990 annual report, concluded that the Department of Environmental Protection required additional staff support to assume their responsibilities under the Growth Management Act. The Council was not prepared at that time, however, to request that position until further clarification of DEP's role in providing technical assistance to municipalities was reached. Since that time, it has become apparent that DEP, particularly the Bureau of Water Quality Control, has an important role to play in assisting municipalities with the development of local comprehensive plans and in the review of those plans.

RECOMMENDATION: The Council recommends that sufficient funding be provided to support a request for additional resources equivalent to one full-time staff person for the Department of Environmental Protection beginning with Fiscal Year 1992, ending in Fiscal Year 1994, unless recommended for continuation by the Council.

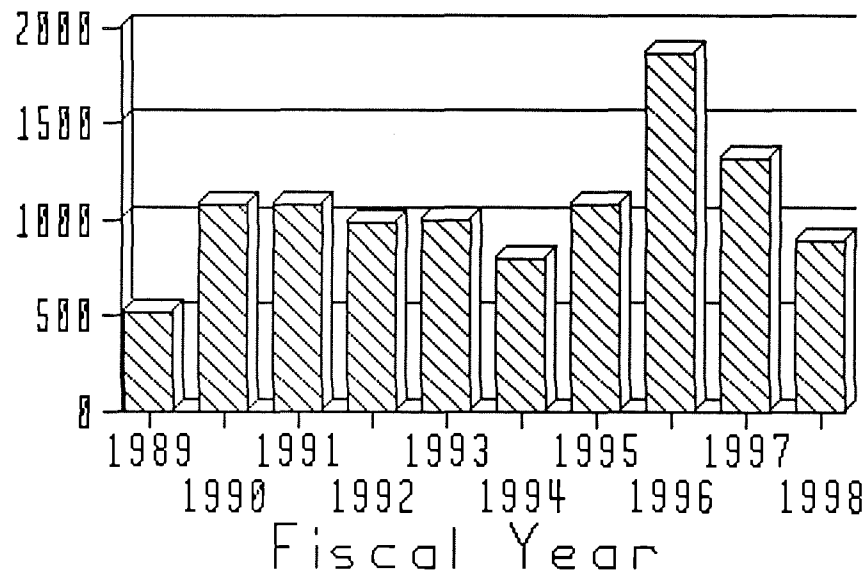
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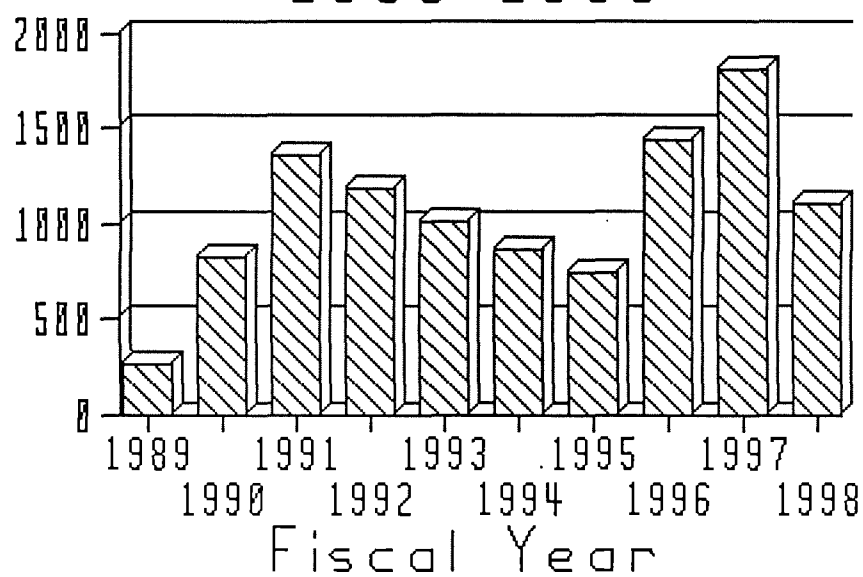
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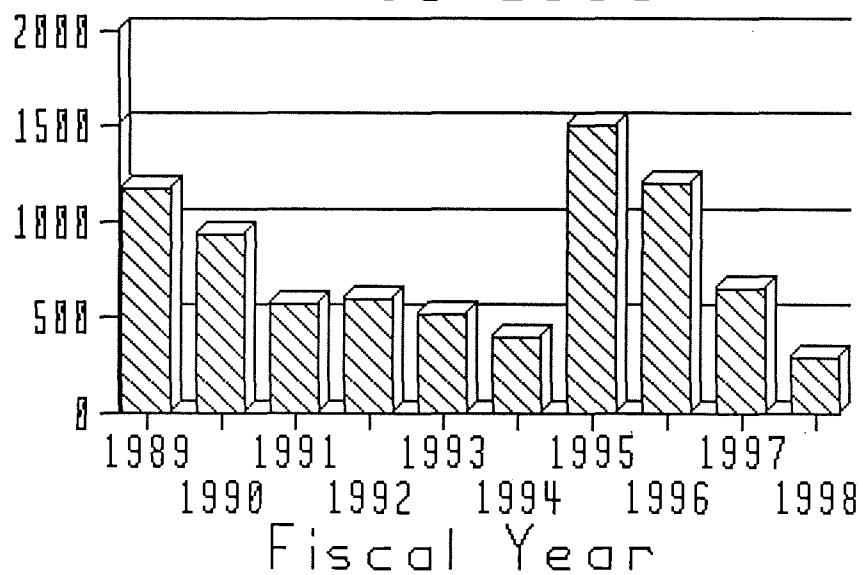
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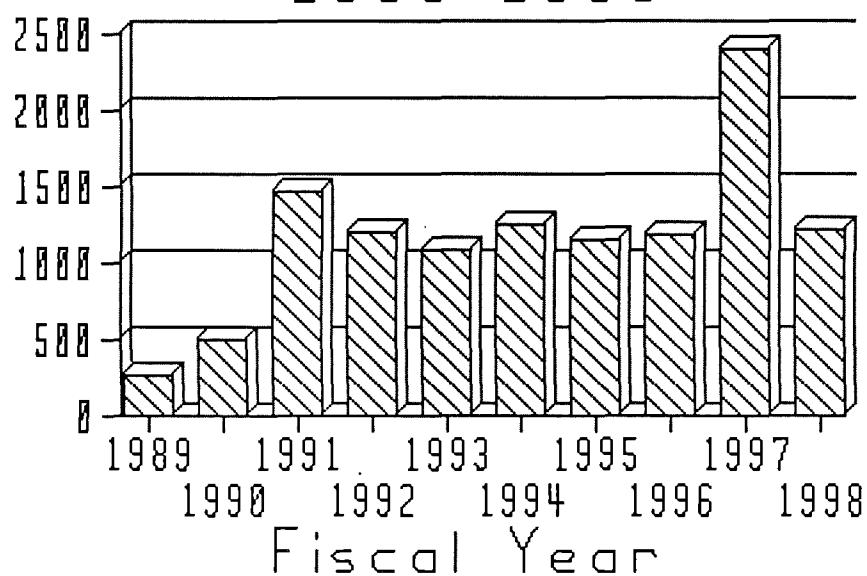
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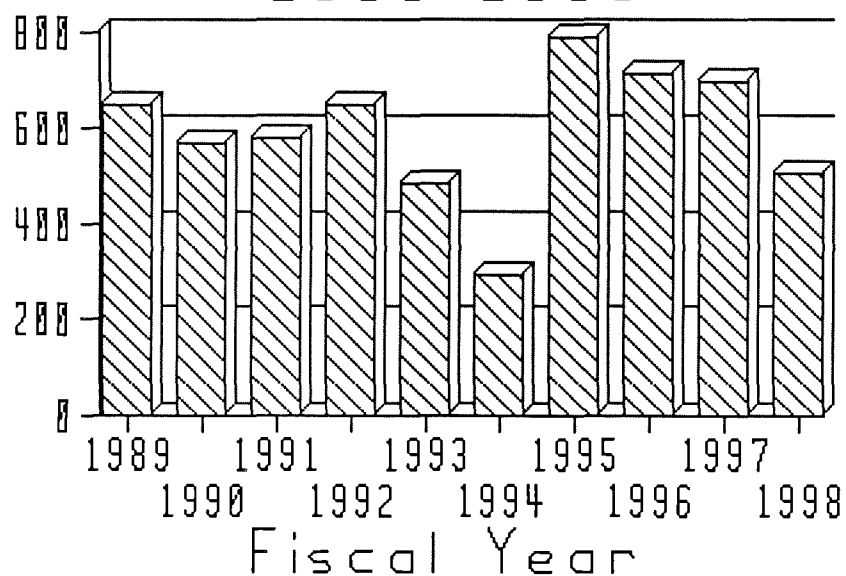
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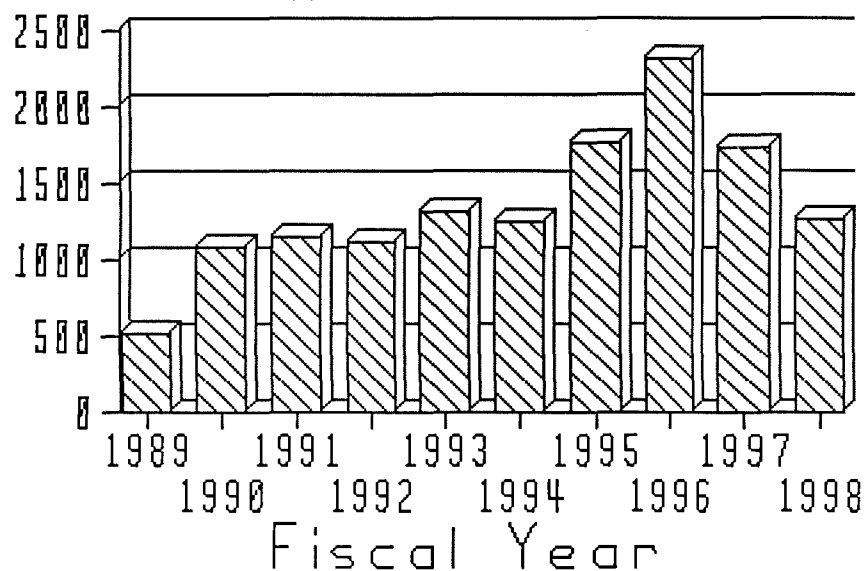
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Number of Hours
Variable Costs

NKRPC WORKLOAD 1989-1998



Number of Hours
Variable Costs

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