# MAINE STATE LEGISLATURE

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# A Report of the Joint Standing Committee on Audit & Program Review 1985 Agency Reviews

# Volume I Department of Business, Occupational and Professional Regulation Maine State Commission on the Arts and the Humanities Maine State Museum Independent Agencies

#### JOINT STANDING COMMITTEE ON AUDIT & PROGRAM REVIEW

#### 1985-86 Committee Members

#### Senate

G. William Diamond, Chair Zachary E. Matthews Mary-Ellen Maybury

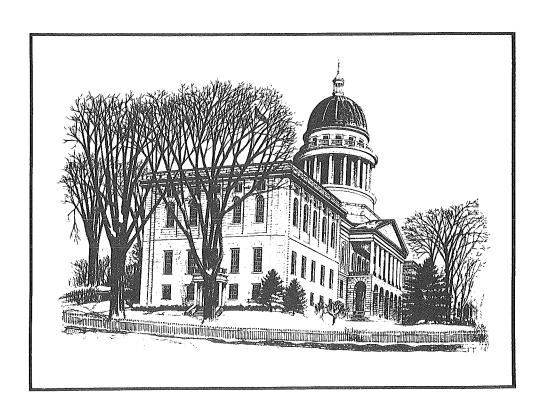
# House

Neil Rolde, Chair Ruth Joseph Phyllis R. Erwin Harold M. Macomber Norman O. Racine P. Kelley Simpson Orland G. McPherson Edwin C. Randall Pamela L. Cahill Donald F. Sproul

#### Adjunct Committee Members

Rep. James R. Handy Rep. Robert E. Murray, Jr. Joint Standing Committee on Education
Joint Standing Committee on Business and Commerce

Staffed By:
Maine State Legislature
Office of Fiscal and Program Review
(289-1635)



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#### STATE OF MAINE

### ONE HUNDERED AND TWELFTH LEGISLATURE

#### COMMITTEE ON AUDIT AND PROGRAM REVIEW

### February 21, 1986

Members of the Legislative Council:

It is our pleasure to transmit to you the seventh annual report of the Joint Standing Committee on Audit & Program Review. The recommendations contained in this report concern several diverse parts of Maine State Government. The Department Business, Occupational and Professional Regulation reviewed as well as the three Bureaus that are a part of it; Insurance and Consumer Credit Protection. Committee also reviewed the Maine State Museum and the Maine State Commission on the Arts and the Humanities and a number of independent agencies.

In this report, the Committee is making numerous recommendations for change. We reviewed volumes of material, and solicited and received much public comment. Combined, this represented hundreds of hours of work on behalf of committee and adjunct committee members.

Throughout the entire process, our major objectives have been to make state government more efficient and less costly while ensuring high levels of service to the citizens of Maine as well as improving legislative oversight of the Executive Branch.

As a result, you will find contained in this report constructive changes recommended at no cost to the public which should result in future savings to Maine taxpayers.

As in past years, our process included legislative members from other joint standing committees. These individuals served as active committee members and brought their expertise to enrich and strengthen the review process. A public hearing will now be held on each of the Committee's recommendations. We urge the full Legislature to consider these proposals carefully, and we invite questions, comments, and input regarding any part of this report.

This volume contains only a part of the Committee's work of the past year. In the next few months, we will be submitting a report on professional licensing boards, and studies concerning Emergency Medical and Child Protective Services in the State of Maine.

The broader scope of these efforts is a measure of the success of the review process, and reflects the continued cooperation of other Legislative Committees and those agencies being reviewed.

Finally, the absence of recommendations about a program does not necessarily mean that the Committee found that program to be operating at peak efficiency and effectiveness.

Sincerely,

G. William Diamond Senate Chairman

Neil Rolde House Chairman

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# COMMITTEE ORGANIZATION

AUDIT & PROGRAM REVIEW SUBCOMMITTEE #1

Members: Representative Norman Racine, Chair

Senator G. William Diamond
Representative Neil Rolde
Senator Zachary E. Matthews
Senator Mary-Ellen Maybury
Representative Ruth Joseph
Representative Phyllis R. Erwin

Representative Edwin C. Randall Representative Pamela C. Cahill

Adjunct Members: Representative Robert E. Murray, Jr.

Joint Standing Committee on

Business and Commerce

Subcommittee Assignment: DEPARTMENT OF BUSINESS, OCCUPATIONAL

AND PROFESSIONAL REGULATION

AUDIT & PROGRAM REVIEW

SUBCOMMITTEE #2

Adjunct Members:

Members: Representative Orland G. McPherson,

Chair

Senator G. William Diamond
Representative Neil Rolde
Senator Zachary E. Matthews
Senator Mary-Ellen Maybury
Representative Norman O. Racine
Representative Edwin C. Randall

Representative Edwin C. Randall

Representative James R. Handy

Joint Standing Committee on Education

Subcommittee Assignment: MAINE STATE MUSEUM

MAINE STATE COMMISSION ON THE ARTS

AND THE HUMANITIES

The Committee categorizes its changes into Statutory and Administrative Recommendations. The Committee's bill consists of the Statutory Recommendations. Administrative recommendations are implemented by the Agencies under review without statutory changes. In some instances, the Committee includes a finding requires no further action but which highlights particular situation. Recommendations include, where possible, the proposed change and the reason for this change. specific detail, refer to the body of the recommendation.

CATEGORY

RECOMMENDATION

# Department of Business, Occupational and Professional Regulation

STATUTORY

1. Repeal the statutes which require the licensure of itinerant photographers because licensure no longer serves the public interest.

STATUTORY

2.

3.

Transfer the responsibility regulating the Sellers o £ Business Opportunities from the Division Licensing Enforcement and Securities Division of the Bureau of Banking to help ensure that appropriate expertise is available to effectively implement this regulatory function.

STATUTORY

Change all references to "licensure" in the statutes regarding the regulation of itinerant vendors to "registration" to accurately reflect the degree of intended regulation.

FINDING

4.

Committee finds the The that Department of Business Regulation is operating out of inadequate space that significantly impairs its regulatory function. The Committee intends to monitor this situation closely, and if necessary, make recommendations which provide the Department with adequate space.

ADMINISTRATIVE 5.

Create an in-house space management and micrographics advisory committee representatives from with unit. require Departmental Further that this Advisory Committee report to Committee on Audit Program & Review by February 1, 1987.

ADMINISTRATIVE 6.

Require the Archives Advisory Board to update the disposition schedules for the Department and report to the Committee with the updated schedules by February 1, 1987.

ADMINISTRATIVE 7.

Require the Department's Computer Advisory Committee to meet on a regular basis to address ongoing computer problems.

ADMINISTRATIVE 8.

Revise the next edition of the Department's manual for board members to incorporate additional sections as recommended by the Committee. Continue to distribute this manual to new members as they are appointed.

ADMINISTRATIVE 9.

Provide relevant materials to each new member of boards internal to the Department to ensure that board members function most effectively.

ADMINISTRATIVE 10.

Subscribe to the NDIS on behalf of all internal boards to help ensure the continued protection of the public health and welfare.

FINDING 11. Committee finds the National Disciplinary Information System to be a valuable and essential part of the effort to regulate professions in the State of Maine. The Committee urges "affiliated" each o£ the "independent" professional licensing boards in the State to subscribe to NDIS at the earliest possible date. ADMINISTRATIVE 12. Designate one day per week as

DMINISTRATIVE 12. Designate one day per week as a testing day for applicants for certain professions and schedule a private room to provide an optimal testing environment.

ADMINISTRATIVE 13. Require that future financial reports made by boards internal to the Department, include all Departmental expenditures to reflect their total cost of operation.

ADMINISTRATIVE 14. Require that the Arborist and Substance Abuse Boards, update the Committees on Audit & Program Review and Business & Commerce by February 1, 1986, on their financial condition.

ADMINISTRATIVE 15. Require the Department to report to the Committees on Audit & Program Review and Business & Commerce by February 1, 1987, on any other Boards that are in unsound financial condition.

STATUTORY 16. Provide a uniform statutory definition of "public member" to ensure that public members are unaffiliated with the regulated profession.

# Bureau of Banking

17. the Bureau's STATUTORY Change examination schedule to a 36 month cycle to provide the Bureau with more flexibility and to increase the effective use of staff resources.

ADMINISTRATIVE	18.	Develop a public education program and report to the Committee on Audit & Program Review with a proposal by September 1, 1986.
ADMINISTRATIVE	19.	Increase the visibility of the consumer assistance function to ensure that consumers are adequately informed of the Bureau's efforts in this area.
ADMINISTRATIVE	20.	Develop a plan to recodify the Banking statutes. Report to the Committees on Audit & Program Review and Business & Commerce by September 1, 1986.
STATUTORY	21.	Continue the review of the Securities Division under the Maine Sunset Law.
	Bureau of	Consumer Credit Protection
ADMINISTRATIVE	22.	Require that the Chair of the Council of Advisors on Consumer Credit be responsible for scheduling, structuring and administering meetings of the Council with the Superintendent's assistance to strengthen the Council's function.
ADMINISTRATIVE	23.	Require that Council members receive copies of all routine Bureau mailings to ensure that they have necessary information to effectively advise the Bureau.
FINDING	24.	The Committee finds that the Bureau of Consumer Credit Protection should be maintained in its present organizational structure to ensure consumer credit protection in the State of Maine.
STATUTORY	25.	Repeal the requirement that the Superintendent be a resident of the State for two years prior to appointment because this requirement is unnecessary.

ADMINISTRATIVE	26.	Announce examinations to minimize unnecessary inconveniences to the creditor industry.
ADMINISTRATIVE	27.	Identify and explain to the creditor industry the most frequently violated sections of the major laws administered by the Bureau to increase creditor compliance. Report to the Committees on Audit & Program Review and Business & Commerce by February 1, 1987.
STATUTORY	28.	Provide for the confidentiality of records held by the Bureau to ensure appropriate consumer protection.
STATUTORY	29.	Amend the Maine Consumer Credit Code to include a provision which allows for certain unintentional first time errors, without penalty, to recognize this type of creditor error.
STATUTORY	30.	Extend the grace period for creditor correction of errors from 15 to 60 days to create conformity within the Code and to facilitate creditor compliance.
STATUTORY	31.	Amend the Consumer Credit Code to provide at least a 30 day due period for invoices to create more consistency within the Code.
STATUTORY	32.	Repeal the Administrative Procedure and Judicial Review section of the Code because this section is duplicative. Relocate useful sections elsewhere in the Code.
ADMINISTRATIVE	33.	Increase efforts to encourage creditor filing and report to the Audit & Program Review Committee by February 1, 1987.

STATUTORY :	34.	Amend the provision in the Consumer Credit Code which voids credit transactions made by an unlicensed lender to ensure a more reasonable penalty.
ADMINISTRATIVE	35.	Develop a publication for consumer use which seeks to explain what consumer rights are protected by the Fair Credit Reporting Act. Report on these efforts to the Committees on Audit & Program Review Review and Business & Commerce by February 1, 1987.
STATUTORY	36.	Amend the Plain Language Law to require that consumer leases be written in plain language to help ensure that consumers understand the terms of their lease.
ADMINISTRATIVE	37.	Develop model Plain Language forms for credit sales to encourage the voluntary use of these forms by the creditor industry; report to the Committees on Audit & Program Review and Business and Commerce by February 1, 1987.
STATUTORY	38.	Repeal the Insurance Premium Finance Company Act because most of the law is duplicative. Relocate the unique provision to the Consumer Credit Code.
STATUTORY	39.	Repeal the Home Repair Financing Act because most of the law is duplicative. Relocate unique provisions to the Consumer Credit Code.
	Виз	reau of Insurance

FINDING 40. The Committee finds that the inability of the Bureau of Insurance to attract and retain individuals for certain highly specialized professional positions is a serious problem which significantly inhibits the Bureau's effectiveness.

recording of complaints and inquiries received by telephone, to ensure consistency. ADMINISTRATIVE 42. Develop series of а outreach priorities. Report to the Committees on Audit & Program Review and Business & Commerce by February 1, 1987. ADMINISTRATIVE Make every effort to fill the position 43. of Claims Examiner within the Consumer Service Division to ensure effective outreach services. STATUTORY 44. Deauthorize position the Clerk-Typist I because it is no longer needed. ADMINISTRATIVE 45. Require that future examination reports are signed by the Division Diractor and the actuary to increase staff accountability. ADMINISTRATIVE 46. Develop a plan for improving administration of the self-insurance because present regulatory program administration is inadequate ensuring effective and responsive regulation. Report to the Committees on Audit & Program Review and Business & Commerce by Feb. 1, 1987. ADMINISTRATIVE 47. Develop a checklist to be used as an informal tool in the review of Life Insurance policies and Health rates to ensure consistent review. Submit this list to the Committee on Audit & Program Review by February 1, 1987. Develop guidelines for the review of ADMINISTRATIVE 48. Property and Casualty form filings to help ensure consistency. Submit these guidelines to the Committee on Audit &

Program Review by February 1, 1987.

Develop an

intake form for

ADMINISTRATIVE

41.

ADMINISTRATIVE	49.	Develop a plan to reduce the backlog of licensure applications to ensure a more efficient process. Submit this plan to the Committee on Audit & Program Review by February 1, 1987.
ADMINISTRATIVE	50.	Require that Central Computer Services and the Bureau of Insurance develop adequate computer programs. Report to the Audit & Program Review Committee by September 1, 1986.
	Ma	nine State Museum
STATUTORY	51.	Continue the Maine State Museum under the provisions of the Maine Sunset Law.
STATUTORY	52.	Reorganize the Museum staff to strengthen middle management and increase effectiveness. Report to the Committees on Audit & Program Review and Education by February 1, 1987, with an assessment.
STATUTORY	53.	Amend the statutes to facilitate the process by which the Museum acquires, disposes and stores artifacts.
STATUTORY	54.	Require that the Bureau of Public Improvements provide the State Museum and the State Law Library with adequate storage space prior to their relocation from the Burleigh and Nash buildings.
FINDING	55.	The Committee finds that the Museum's current request for increased computer capabilities will facilitate the daily functioning of the Museum.
ADMINISTRATIVE	56.	Enable the Museum to develop a computerized system which can provide financial information for the Department on a regular basis.
FINDING	57.	The Committee finds that the present exhibition policy of the Maine State Museum Commission continues to reflect original legislative intent.

FINDING

58.

The Committee commends the Maine State Museum staff, under the direction of the current Director, Paul Rivard for the effective use of limited state monies in the completion of exhibits which consistently distinguish the accomplishments of Maine citizens and are a credit to the State.

# Maine State Commission on the Arts and the Humanities

ADMINISTRATIVE	59.	Develop plans to increase outreach functions of the Museum. Report to the Committees on Audit & Program Review and Education by February 1, 1987.
STATUTORY	60.	Continue the Maine State Commission on the Arts and the Humanities under the provisions of the Maine Sunset Law.
STATUTORY	61.	Change the title of the Maine Commission on the Arts and the Humanities to the Maine Arts Commission to accurately reflect the Commission's mandate.
STATUTORY	62.	Broaden the criteria for membership on the Commission to increase public representation.
FINDING	63.	The Committee finds that the Commission's proposed reorganization will result in greater efficiencies.
FINDING	64.	The Committee finds the Maine State Commission on the Arts and the Humanities to be a state agency which consistently utilizes limited state funding to produce exemplary programming for Maine's citizens.
FINDING	65.	The Committee finds that Commission members should receive reimbursement for expenses incurred in fulfilling their Commission responsibilities.

# Advisory Commission on Radioactive Waste

STATUTORY

66. Continue the Advisory Commission on Radioactive Waste under the provisions of the Maine Sunset Law.

# Maine Sardine Council

STATUTORY

67. Continue the Maine Sardine Council under the provisions of the Maine Sunset Law.

# State Energy Resources Advisory Board

STATUTORY

68. Discontinue the State Energy Resources Advisory Board under the provisions of the Maine Sunset Law because it is no longer necessary.

# Atlantic States Marine Fisheries Commission

STATUTORY

69. Continue Maine's participation in the Atlantic States Marine Fisheries Commission under the provisions of the Maine Sunset Law.

# Maine Municipal and Rural Electrification Cooperative Agency

STATUTORY

70. Continue the Maine Municipal and Rural Electrification Cooperative Agency under the provisions of the Maine Sunset Law.

STATUTORY

71. Eliminate the January 1, 1981, restriction to enable any cooperatives or municipalities organized after that date to make use of this chapter.

# Lobster Advisory Council

STATUTORY

72. Continue the Lobster Advisory Council under the provisions of the Maine Sunset Law.

STATUTORY

73. Increase the statutory limit on reimbursement to reflect inflation.

# Oil and Solid Fuel Board

STATUTORY

74.

Continue the Oil and Solid Fuel Board for one year pending review by the Committee on Audit & Program Review.

# State Board of Examiners of Psychologists

**STATUTORY** 

75.

Continue the State Board of Examiners of Psychologists to ensure that the citizens of Maine have available the highest standards in the practice of psychology.

In this report, the Committee on Audit and Program Review is making well over 70 recommendations for change in the Department of Business, Occupational and Professional Regulation, which includes the Bureaus of Banking, Consumer Credit Protection and Insurance and two Bureaus within the Department of Educational and Cultural Services: the Maine State Museum and the Maine State Commission on the Arts and the Humanities. recommendations are the result of hundreds of hours of study and deliberation by Committee and adjunct Committee members. results are recommendations which will serve to tighten the management and fiscal accountability of the agencies, resolve a number of complex issues, save General Fund expenditures, make efficient οf dedicated revenues, use and increase legislative oversight.

The goal of the Audit Committee is to increase governmental efficiency by recommending improvements in agency management, organization, program delivery, and fiscal accountability. The Audit process itself provides the Legislature with a particularly effective tool to increase legislative oversight over all of State Government.

To accomplish its work, the Audit Committee routinely engages in extensive research regarding the overall functioning of each agency under the review. The Committee compares agencies in Maine to their counterparts in other states by letters which request pertinent information about how these agencies function and with what resources. In addition, the Committee surveys the Maine public regarding each of the agencies being reviewed.

The results of this year's review are summarized for each agency as follows:

# + Department of Business, Occupational and Professional Regulation

The Committee is making a number of recommendations to encourage the more effective utilization of Department wide resources (Rec. 4, 5, 6 and 7). Other recommendations eliminate the unnecessary regulation of itinerant photographers (Rec. 1), transfer the regulation of sellers of business opportunities to the Securities Division of the Bureau of Banking (Rec. 2) and clarify the regulation of itinerant vendors (Rec. 3).

The Committee also made a number of recommendations concerning professional licensing boards which improve fiscal accountability and legislative oversight (Rec. 13, 14 and 15).

Finally, the Committee strengthened the role of public members by creating a uniform statutory definition which applies to all professional licensing boards in the State of Maine (Rec. 16).

# + Bureau of Banking

The Committee amended the examination cycle to create more administrative flexibility (Rec. 17). The Committee also strengthened the outreach and public information functions of the Bureau (Rec. 18 and 19) and initiated a recodification of the outmoded structure of banking laws (Rec. 20).

# + Bureau of Consumer Credit Protection

The Committee made a number of recommendations to modify those laws which provide the consumer with certain protections in regards to credit transactions. In particular, the Committee is recommending that the Consumer Credit Code be amended to allow certain creditors first time errors without penalty (Rec. 29) and changes the provision which voids loans made by unlicensed lenders (Rec. 34). The Committee recommended that the Bureau reduce creditor violations publicizing commonly by violated sections of the law to the creditor industry (Rec. 27) and that the Bureau adopt a policy of announced examinations 26). Finally, the Committee increased consumer credit protection by requiring consumer leases to be written in plain language (Rec. 36).

#### + Bureau of Insurance

The Committee scrutinized the policy quidelines used by the Bureau to administrate complex insurance regulations and made a number of recommendations to strengthen and clarify these quidelines 49). (Rec. 46 The Committee also recommendations to improve the Bureau's outreach activities (Rec. 41, 42 and 43) and to facilitate the effective use of computer (Rec. programming 50). Finally, the Committee states intention to develop a solution to the Bureau's serious inability attract and retain individuals for certain professional positions (Rec. 40).

#### + Maine State Museum

To achieve cost savings of approximately \$10,000 to the General Fund, to strengthen middle management and to increase administrative efficiencies, the Committee is recommending that the Museum staff be reorganized (Rec. 52). The Committee is also proposing several recommendations which ensure adequate storage space for the Museum's collections (Rec. 54) and reduce the size of that collection without a decrease in quality, thereby reducing future expensive storage costs (Rec. 53).

#### + Maine State Commission on the Arts and the Humanities

To reflect the current scope of the Commission's programming, the Committee is recommending that the title of the Commission be changed to the Maine Arts Commission (Rec. 61). In addition, the Committee intends that public representation on the Commission be increased by broadening the criteria for Commission membership (Rec. 62).

# + Independent Agencies

The Committee is recommending the continuation of a number of modifications. smaller agencies with some important particular, the recommendation to continue the Maine Municipal Rural Electrification Cooperative Agency also features a recommendation to increase the public's opportunity to benefit this 71). Finally, from the provisions οf law (Rec. Committee voted to discontinue the State Resources Energy Advisory Board because it is unnecessary (Rec. 68).

In conclusion, the Committee's report contains these and many other recommendations. Some are simple housekeeping measures while others are more substantive. The combined impact of these recommendations will work to significantly improve those areas under review.

# Department of Business, Occupational and Professional Regulation \_\_\_

#### DESCRIPTION

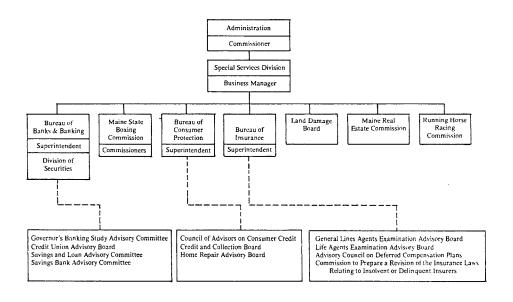
The Department of Business, Occupational and Professional Regulation is the department within Maine State Government which is charged with the responsibility of regulating "financial institutions, insurance companies, commercial sports, grantors of consumer credit and to license and regulate professions and occupations." (10 MRSA §8001) The Department is composed of the following bureaus, commissions and internal professional licensing boards:

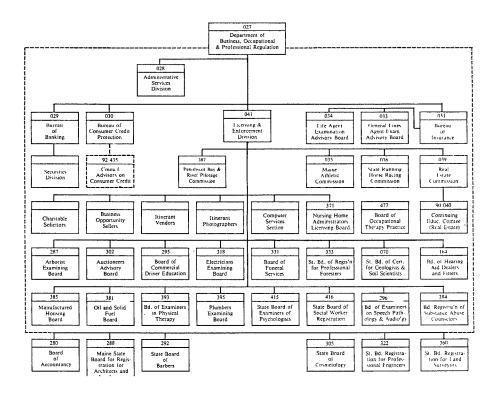
- Bureau of Banking;
- Bureau of Consumer Credit Protection;
- Bureau of Insurance;
- Maine Athletic Commission;
- Maine State Pilotage Commission;
- Real Estate Commission;
- Arborist Examining Board;
- Auctioneers Advisory Board;
- Board of Commercial Driver Education;
- Electricians' Examining Board;
- State Board of Registration for Professional Foresters;
- State Board of Funeral Service;
- State Board of Certification for Geologists and Soil Scientists;
- Board of Hearing Aid Dealers and Fitters;
- Manufactured Housing Board;
- Nursing Home Administrators Licensing Board;
- Board of Occupational Therapy Practice;
- Board of Examiners in Physical Therapy;
- Plumbers' Examining Board;
- State Board of Examiners of Psychologists;
- Board of Registration of Dietetic Practice;
- Board of Respiratory Care Practitioners;
- State Board of Social Worker Registration;
- Board of Examiners on Speech Pathology and Audiology; and
- Board of Registration of Substance Abuse Counselors.

# Growth of the Department of Business, Occupational and Professional Regulation

1973

1985





The Department also provides budgetary and personnel assistance and acts as liaison to the Governor for the following affiliated boards:

- Board of Accountancy;
- Maine State Board for Registration of Architects and Landscape Architects;
- State Board of Barbers;
- State Board of Cosmetology;
- State Board of Registration for Professional Engineers; and
- State Board of Registration for Land Surveyors.

There are also a number of **independent** professional licensing boards which have no connection with the Department.

The Department was created in 1973 to achieve an administrative consolidation of the various agencies. Since that time, the number of agencies within the Department has increased dramatically. This growth is illustrated by Diagram 1.

All of these various boards, bureaus and commissions placed within the Department function independently making the Department unique within Maine State Government. As presently structured, the Commissioner of the Department has no "authority to exercise or interfere with the exercise of discretionary regulatory or licensing authority granted by statute to the bureaus, boards or commissions within the department..." (10 MRSA §8002 sub §2)

The chief executive officer of the Department is the Commissioner, who is nominated by the Governor and confirmed by the Legislature. The Commissioner has the authority to:

- prepare the budget for the Department;
- transfer personnel within the Department;
- coordinate purchase and use of equipment for the Department;
- review the functions and operations of all boards, bureaus and commissions within the Department to ensure that they are accomplishing their statutory mandates; and
- act as the liaison within the Department and between the Department and the Governor.

The Department of Business Regulation has 13 authorized positions. (This figure does not include the employees of the various agencies included under the Department's umbrella.) Aside from the Commissioner's office, the Department is divided into two line divisions:

# Division of Licensing and Enforcement

This division provides administrative and technical support for the various professional licensing boards which are a part of the Department. The Division also provides computer services for all agencies within the Department. There are eight authorized positions:

- Director;
- Clerk (5);
- Director of Computer Services; and
- Data Control Specialist.

# Division of Administrative Services

This division provides accounting, personnel management and purchasing services for all of the agencies within the Department. There are six authorized positions:

- Director;
- Secretary;
- Stenographer;
- Accountant (2); and
- Account Clerk.

Funding for the Department comes from several different sources. The Commissioner's office is funded from the General The Division of Licensing and Enforcement depends on a pro-rata share of the dedicated revenues of each board Finally, the Administrative Services Division assesses serves. agency within the Department for its use οf administrative services offered by the Division. With exception of the Superintendent's office, the origin of these funds are the dedicated revenues collected by each of In 1985, the total expenditures for the Department amounted to \$448,867; a figure which has remained fairly constant in recent years.

The Maine Sunset Law stipulates that a review be conducted the Department of Business, Occupational and Professional Regulation. To accomplish this requirement, the Committee reviewed the Department itself and the Bureaus of Banking, Credit Protection and Insurance. Each professional licensing boards which are either a part of, or affiliated with the Department, have different Sunset dates. Committee will be conducting Sunset Reviews for most of these boards in the upcoming year.

STATUTORY

1.

Repeal the statutes which require the licensure of itinerant photographers because licensure no longer serves the public interest.

Maine law (32 MRSA §2951-2961) currently requires that all itinerant photographers must be licensed with the State and pay a biennial fee of \$200. Itinerant Photographers are defined as those photographers having no regularly established place of business in the State.

This law was enacted in 1954. At that time, it appeared that the public interest may have been threatened by the lack of accountability of some of these entrepreneurs.

In recent times, the public need for such a set of statutes has diminished. The Director of the Division of Licensing and Enforcement in the Department of Business Regulation reports that only two companies register every year, and that in recent years no complaints about itinerant photographers have been received from the public.

The modern day equivalent of the itinerant photographers are the photographic services offered by large chain stores on a periodic basis. The Committee finds that the licensure requirement is largely ignored and has been replaced by the need of these large chain stores to preserve their reputation by offering reputable photographic services.

Therefore, the Committee recommends that the statutes requiring the licensure of itinerant photographers be repealed because licensure is no longer necessary to protect the public interest.

STATUTORY

2. Transfer the responsibility for regulating the Sellers ο£ Business Opportunities from the Division οf Licensing and Enforcement to the Division of the Bureau of Banking to help ensure that appropriate expertise is available to most effectively implement this regulatory function.

Presently, the responsibility for regulating Sellers of Business Opportunities, (those who sell franchises in the State of Maine) rests with the Division of Licensing and Enforcement. The Division receives two or three of these applications annually. This regulation (32 MRSA §§4691 - 4700) takes the form of a registration format which mandates that Sellers of Business Opportunities submit a Disclosure Statement, which includes detailed financial information. The purpose of the information is to establish the financial viability of the applicant.

To analyze this package, the Division has the part-time services of one clerk and the Director, neither of whom have had the financial training necessary to evaluate such a document.

Consequently, when the Division receives one of these disclosure statement packages, the statements are checked off as having been submitted. The Committee finds that:

- the Division does not have the personnel nor the expertise necessary for a detailed analysis of each disclosure statement;
- the regulation of Sellers of Business Opportunities resembles the regulation of Sellers of Securities;
- most states regard them as one and the same and regulate them as securities; and
- the Securities Division of the Bureau of Banking has the personnel with the necessary expertise for analyzing disclosure statements.

Therefore, in order to accomplish the most effective regulation of the Sellers of Business Opportunities, the Committee recommends that the responsibility for this function be transferred from the Division of Licensing and Enforcement to the Securities Division of the Bureau of Banking.

STATUTORY 3.

Change all references to "licensure" in the statutes regarding the regulation of itinerant vendors to "registration" to accurately reflect the degree of intended regulation.

During its review, the Committee found that the current Maine statutes make inconsistent usage of certain regulatory terms. For example, the statutes make no consistent distinction between the terms "licensure", "certification", and "registration".

The Committee also found that many states have developed precise definitions for the use of these terms. These terms are generally used to define the different levels of professional regulation. These differing levels correspond to the need to protect the public health and welfare as follows:

Most Restrictive

#### Licensure

Prohibits anyone from practicing a certain profession without a license. Licensure usually requires a strict set of educational and professional criteria.

# <u>Certification</u>

Gives state recognition to certain professionals who have met specific educational and professional requirements. Certification does not generally prohibit practice by an uncertified professional. Least Restrictive

## Registration

Requires that any individual wishing to practice a particular profession, register his intent to do so with the state by providing a name and address. Registration does not generally require certain educational and professional criteria.

Itinerant Vendors are currently regulated by reference to "licensure" (32 MRSA §§4681-4689). To receive a license an individual must do the following:

- fill out an application which requires the name and address of applicant; the names of all employees; a record of any recent court judgements against applicant; a statement of yearly gross revenues; the name and address of the person to whom required security deposit can be returned;
- pay a license fee (\$15 for companies and \$5 for individuals); and
- make a security deposit of \$10,000 or a sum equal to anticipated yearly gross revenues, whichever is less.

The Committee finds these requirements do not conform to those situations where professional licensing is usually required. The Committee notes that the term "licensure" should be used for those professions which are essential to maintaining the public health and welfare or for those professions which commonly generate a great many complaints from the public. The Division of Licensing and Enforcement has not received any complaints about itinerant vendors in recent years.

Because of the absence of public complaints, the Committee also finds that itinerant vendors pose neither a serious threat inconvenience to the public welfare. health and further finds that the current requirements licensure as an itinerant vendor more accurately resemble the term "registration" as currently used by many other states. Therefore, to accurately reflect the intended level of regulation Committee itinerant vendors, the recommends that pertinent statutes be changed to use the word "registration" provide instead of "licensure". This change will statutory clarity and will encourage the appropriate consistent use of terms used to designate the different levels of professional regulation in current Maine Law.

FINDING

4.

Committee finds that Department of Business Regulation operating out of inadequate space that significantly impairs regulatory function. its Committee intends to monitor this situation closely, and necessary, make recommendations which will provide the Department with adequate space.

When the review of the Department was initiated, the Committee went on a tour of the Department's facilities in Hallowell. At that time, the Committee became concerned with Department's lack of space. The Committee finds that inadequate space can inhibit the optimal functioning of an agency.

To evaluate the current space usage of the Department, space management guidelines formulated by the Bureau of Public Improvements (BPI) were used as a measurement tool. These guidelines specify space requirements according to job function.

The Committee validated these guidelines through consultation with a prominent private architectural firm. The Committee then used these guidelines to assess the current use of space in the Department. The results are as follows:

#### UNITS WITH ADEQUATE SPACE

- Division of Licensing and Enforcement has 1,033 square feet of useable space; needs a range of 720 - 1,020 (by BPI guidelines);
- Real Estate Commission has 725 square feet of useable space; needs a range of 640 - 800 (by BPI guidelines);
- Administrative Services Division has 356 square feet of useable space; needs a range of 300-420 (by BPI quidelines);
- Commissioner's Office has 390 square feet of useable space; needs a range of 350 - 600 (by BPI quidelines);
- Bureau of Consumer Credit Protection has 1,024 square feet of useable space; needs a range of 804 - 1,270 (by BPI quidelines);

#### UNITS WITH MARGINAL SPACE

Bureau of Insurance; has 3,699 square feet of useable space; needs a range of 3,734 - 5,380 (by BPI guidelines); and

# UNITS WITH INADEQUATE SPACE

Bureau of Banking has 1,506 square feet of useable space; needs a range of 1,760 - 2,890 (by BPI guidelines). The Committee concluded that the Bureau of Banking has some significant space problems, which are adversely affecting its ability to accomplish its statutory responsibilities. In particular, the Committee finds that the Securities Division is currently operating from a severely limited space. The Committee also finds that the current space occupied by the Bureau of Insurance is marginally adequate. When the Bureau of Insurance fills all of its authorized positions, the present space will become inadequate.

Recent developments have complicated the Committee's attempts to resolve this problem. For example, the Governor is proposing to consolidate all professional licensing boards into a Bureau of Professional Regulation within the Department. The Committee finds that this proposal will drastically outstrip the current facilities. The Committee has learned that the details of the Governor's proposal include a solution for the space needs of this Bureau.

Given the unresolved status of the Governor's proposal and it's tremendous impact upon the space requirements of the Department, the Committee finds that it would not be constructive to propose a solution at this time. In making this finding, the Committee recognizes the seriousness of the current space problem and, if necessary, the need to follow through with a recommended solution.

ADMINISTRATIVE 5.

Create an in-house space management and micrographics advisory committee representatives from each Departmental unit. Further require that this Advisory Committee report to the Committee Review Audit & Program February 1, 1987.

In its consideration of the Department's space problems, the Committee concluded that there are several strategies which could maximize space use. One recent technology of increasing popularity is micrographics; a process which records the greatly reduced photographic images of documents on film. The efficient and judicious use of micrographics encourages the retention of essential documents in a format which represents tremendous space savings to an organization.

A 1980 report entitled "Administrative Support Services in Maine State Government" authored by the Governor's Management Task Force, addresses the issue of micrographics. In this report, the Task Force recommended that "....the departments and agencies of Maine state government be encouraged to increase the use of microfilm/microfiche as a space saving device. Departments should conduct a cost analysis evaluation of their file storage needs, and where savings can be demonstrated, a change to micrographics should be implemented."

The Committee finds that within the Department of Business, Occupational, and Professional Regulation, there could be greater utilization of micrographics. Occasional initiatives by individual program units of the Department have been taken only to be discouraged by the imposing price and start-up delay of transferring information to micrographics. However, by pooling the resources of the individual program units, the Department will be able to employ micrographics more efficiently. The effective use of micrographics will ease space requirements and improve the Department's ability to accomplish its regulatory tasks.

To achieve these goals, the Committee recommends that the Commissioner appoint an in-house committee to study the issues of micrographics and the associated issue of maximum efficiency in space utilization. This advisory committee should:

- assess present departmental space utilization and space saving techniques;
- investigate the feasibility of employing a management consultant to assess the overall Departmental space situation and to make recommendations; and
- determine how departmental resources can be better utilized to effect more efficient information retrieval and space use.

The Committee also recommends that this in-house space management and micrographics Advisory Committee report to the Committee on Audit & Program Review by February 1, 1987, with the results of their efforts.

ADMINISTRATIVE 6.

Require the Archives Advisory Board to update the disposition schedules for the Department and report to the Committee with the updated schedules by February 1, 1987.

The Maine State Archives Advisory Board is responsible for determining which state agency files will be saved and in what manner. The Archives Advisory Board makes this determination by developing disposition schedules. In the course of the Committee's review of space management, the Maine State Archives was contacted to discuss records disposition for the Department.

The Committee found that most of the current disposition schedules were developed by the Board ten years ago and have not been updated. Many of the Department's rules and statutes have changed since that time. For example, many of the boards created in the last ten years do not have disposition schedules.

The Committee finds that the lack of updated disposition schedules contributes to the current space problems of the Department and creates difficulties in retrieving information.

that the Committee recommends the Therefore, update the disposition schedules for Advisory Board Department to ensure that records are being processed and stored to maximize the use of office and storage space. The Committee also recommends that the Archives Advisory Board report to the Audit & Program Review Committee with the updated schedules by February 1, 1987.

In making this recommendation, the Committee expects to achieve cost savings due to the more appropriate use of space both within the Department and the Archives.

ADMINISTRATIVE 7.

Require the Department's Computer Advisory Committee to meet on a regular basis to address ongoing computer problems.

To address the computerization needs of the Department, an in-house Computer Advisory Committee was established by the Commissioner in January of 1985. This advisory committee consists of six representatives of the different agencies within the Department. The initial phase of their review was completed in April of 1985 by issuing a series of recommendations to the Commissioner regarding the Department's computerization needs.

To accomplish their review, the Advisory Committee reviewed their own computer facilities and compared them to systems within Advisory Committee recommended similar agencies. The purchase of a softwear program that had the potential for meeting many of the Department's own needs. The program has purchased for a total cost of \$1,800 and has been operational since the end of May 1985. This program meets virtually all of the Department's accounting needs and some of its budgetary The Department's additional computerization needs could be fulfilled through the purchase of a data base management package known as FOCUS for approximately \$1,000. The Advisory Committee's decision was to delay that purchase for a year's time in order to fully implement the new program and to reassess the existing needs.

The Audit Committee commends the efforts and decisions of the Department's Computer Advisory Committee because the overall efficiency of the Department has improved. The Audit Committee recommends that the Advisory Committee continue to meet on a regular basis to address computer needs of the Department.

ADMINISTRATIVE 8.

Revise the next edition of the Department's manual for board members to incorporate additional sections as recommended by the Committee. Continue to distribute this manual to new members as they are appointed.

The Commissioner of the Department has recently completed a manual for all board members of the State of Maine. The purpose of this manual is to acquaint board members with the intent and implementation of professional regulation. The Committee compared Maine's manual to others from Maryland, Michigan, California and New Jersey. Maine's manual appears to have some features which compare favorably and others which may need future improvements.

The Committee finds that the completed manual contains useful information concerning:

- the conducting and recording of meetings;
- the conducting and recording of hearings; and
- rule-making.

Committee also finds The that this manual well is organized, information contains relevant and serves an educational function. However, to maximize its use, the Committee notes that there are a number of areas which could be strengthened by providing:

- further information about board mechanics;
- further information about the testing procedures used by boards;
- further information about the role distinctions between public and professional members; and
- a section designed to help orient new public members.

To ensure the most effective functioning of occupational/professional regulation in the State of Maine, the Committee therefore recommends that the next edition of the Department's manual for board members be revised to incorporate additional sections as recommended by the Committee. The Committee further recommends that this manual continue to be distributed to new board members as they are appointed.

ADMINISTRATIVE 9.

Provide relevant materials to each new member of boards internal to the Department to ensure that board members function most effectively.

Presently, new members of boards that are internal to the Department, receive a limited orientation. This orientation currently consists of a letter of welcome from the Commissioner, a copy of the recently completed manual, and any informal orientation that the Board itself provides. In addition, all board members (internal, affiliated, independent) are invited to an annual conference of board members held by the Department.

An informal survey conducted by the Committee of board members, documents that this orientation is appreciated and that many board members desire more efforts in this direction.

Therefore, the Committee finds a need for a more extensive orientation and recommends that each board internal to the Department, provide the following to each new board member:

- the manual developed by the Department;
- a copy of the statutes governing that particular board;
- the rules and regulations of that board;
- a copy of the Administrative Procedures Act; and
- copies of board minutes for the past year.

The Committee also finds that the distribution of these materials will help to ensure the effective functioning of board members in the effort to regulate occupations and professions in the State of Maine.

#### ADMINISTRATIVE 10.

Subscribe to the NDIS on behalf of all internal boards to help ensure the continued protection of the public health and welfare.

Currently, the Department of Business Regulation has no routine procedure for checking the records of any professional who is regulated in another state and then applies to be regulated in Maine. This lack of procedure may result in authorizing someone to practice in Maine without knowing whether he or she has been disciplined in another state and why. The Committee finds that the impact of such a scenario may be a threat to the public welfare; a consequence which professional regulation is designed to prevent.

In addition to the large number of regulated professionals in the State, as of 12/31/84, there were 1231 non-residents regulated in the various professions discussed below. The costs of conducting a background investigation for new applicants and out-of-state professionals would require staff time and resources which are not currently available to the Department.

In response to the high cost factor, which for many years resulted in a nationwide lack of disciplinary information, the National Clearinghouse on Licensure, Enforcement and Regulation (CLEAR) has developed the National Disciplinary Information The NDIS is available by subscription to state System (NDIS). regulatory boards, state agencies, and offices of Attorney The NDIS provides licensees a report on those disciplined in each of the subscribing states. These reports provide the following information by profession disciplined individual:

- full name;
- date of birth;
- date and type of disciplinary action taken;
- length of action;
- any other professional licenses held by individual; and
- the name of the state authority taking action.

Based on current NDIS membership list there are 12 states that now subscribe for all of their boards, including Vermont, Connecticut and New York. In addition, Rhode Island intended to join on a state-wide basis by the end of 1985 and Massachusetts is actively considering full state membership.

The NDIS can supply information from at least four states on the following professions which are regulated by internal boards in Maine:

- Nursing Home Administrators;
- Athletics;
- Funeral Service;
- Physical Therapy;
- Psychologists;
- Real Estate:
- Social Workers; and
- Speech Pathologists.

NDIS services are available to CLEAR Members, of which Maine is one, at the following annual costs:

- A. Licensing Boards with 2,499 or fewer licensees \$75;
- B. Licensing Boards with 2,500 or more licensees \$150; and
- C. Maximum fee per state \$1,500.

Based on the most recent figures concerning the total number of Maine licensees in each profession currently monitored by the NDIS, the Department of Business Regulation could subscribe for an annual fee of \$675; ( $\underline{1}$  board x \$150 = \$150,  $\underline{7}$  boards x \$75 = \$525). The Committee finds that the benefits from subscribing far outweigh the cost of this fee.

Therefore, the Committee recommends that the Department proceed with its plans to subscribe to NDIS on behalf of all internal boards so as to further protect the health and welfare of Maine's public.

FINDING

11.

The Committee finds the National Disciplinary Information System to be a valuable and essential part of the effort to regulate professions in the State Maine. The Committee urges each "affiliated" the "independent" professional licensing boards in the State to subscribe to NDIS at the earliest possible date.

Due to the current structure of Occupational and Professional regulation in the State, many of the licensing boards exist apart from the Department of Business, Occupational and Professional Regulation and as such are not affected by Recommendation #10 regarding adoption of the NDIS.

Substantial NDIS services are available for those boards which are external to the Department. The NDIS can supply information from at least four states on the following professions, all of which are regulated in Maine:

- Accountancy;
- Architects;
- Landscape Architects;
- Barbers;
- Cosmetologists;
- Engineers;
- Land Surveyors;
- Chiropractors;
- Dentists;
- Medicine;

- Nursing;
- Optometry;
- Osteopathy;
- Pharmacy;
- Podiatry; and
- Veterinarians.

The Committee finds that the services offered by NDIS are invaluable in helping to identify unscrupulous professionals and to ensure that they do not practice in the State of Maine. each οf Accordingly, the Committee strongly urges external professional licensing boards which are Department of Business Regulation to subscribe to NDIS at the earliest possible date.

### ADMINISTRATIVE 12.

Designate one day per week as a testing day for applicants for certain professions and schedule a private room to provide an optimal testing environment.

During the course of its review, the Committee became concerned about certain testing procedures currently followed by the Division of Licensing and Enforcement.

Most of the boards that are within the Department have a consistently large number of applicants who need to be scheduled for examination on a regular basis in a large facility. However, several of the boards have only a small number of applicants. To accommodate these individuals, the Division has scheduled tests on an individual basis.

This individual testing takes place in testing facilities that are often inadequate. The individuals being tested are usually asked to take the exam at whatever desk space within the Division is not being used at that time. Recently, however, the Division has secured a large table for testing purposes and has isolated it to some degree with sound barriers.

The Committee finds that this situation, due to the constant noise and distraction of normal office work, is not an optimal testing environment. However, the Committee does recognize the constraints imposed by current space and staff limitations.

Therefore, in order to help ensure that applicants are tested in a quiet, non-disruptive environment, the Committee recommends that one day per week be designated as a testing day for these individuals and the Department schedule private testing space on a regular basis.

# ADMINISTRATIVE 13.

Require that future financial reports made by boards internal to the Department, include all Departmental expenditures to reflect their total cost of operation.

Several of the boards which are internal to the Department have had a troubled financial history. In recent years the Board of Registration of Substance Abuse Counselors and the Arborist Examining Board have not had sufficient income to meet expenses. To help these two boards meet their total expenses, the Department has not charged the boards for clerical expenses but instead has maintained a balance for each as shown below:

# Balance for Clerical Services Owed to the Department

<u>Arborist</u>	
1982 \$3,104	\$2,244
1983 \$5,862	\$4,047
1984 \$5,987	\$3,891
1985 (thru 3/85) \$5,987	\$7,527

In effect, these expenses have been carried by the Department and have not appeared in the financial reports issued by the boards, resulting in an understatement of their total expenditures.

To ensure that true operating costs are accurately reflected, the Committee recommends that future financial reports made by the Department and by internal boards, include all Departmental expenditures to reflect their total cost of operation.

### ADMINISTRATIVE 14.

Require that the Arborist and Substance Abuse Boards, update the Committees on Audit & Program Review and Business & Commerce by February 1, 1986, on their financial condition.

# ADMINISTRATIVE 15.

Require the Department to report to the Committees on Audit &Program Review and Business & Commerce by February 1, 1987, on any other Boards that are in unsound financial condition.

As mentioned in Recommendation #13, the Arborist and Substance Abuse Boards' total expenditures have been partly subsidized by the Department. The financial problems of these boards are a result of two factors; the small number of individuals regulated by the Boards and the low biennial licensure fees of each Board (\$10 for Arborist and \$25 for Substance Abuse).

To remedy their financial plight, the Boards have significantly increased their licensure fees; Arborist to \$30 and Substance Abuse to \$50. The Department projects that this increase will help the Boards to meet yearly expenses and to gradually pay back their debts to the Department over the next three to four years.

Based on the Committee's calculations, the Arborist Board will repay its debt in a little over two years and the Substance Abuse Board will need more than seven years to repay its debt (see Box for detailed formula).

# FORMULA USED FOR THE COMMITTEE'S CALCULATIONS

0	Average annual revenues Fee increase Projected average income Average expenditures Projected ending balance	5919 -3347		\$ 2232	Abuse (double fee income)	
	Arborist  \$5987 (balance owed to Department)  divided by  2572 (projected average yearly balance)  2.32 years (projected length of pay back)					
	Substance Abuse					
	\$7525 (balance owed to Department) divided by $\frac{1012}{7.43}$ (projected average yearly balance $\frac{1012}{7.43}$ years (projected length of		ly balance)			

In order to achieve appropriate legislative oversight and to ensure that this inequity of board revenue to board expenditure is remedied, the Committee recommends that the Department and Boards report to the Committees on Audit & Program Review and Business & Commerce by February 1, 1987, on their financial condition and in particular the status of the balance owed. The Committee also recommends that the Department report to the Committees by February 1, 1987, on any other boards that are in unsound financial condition.

pay back)

STATUTORY 16. Provide a uniform statutory definition of "public member" to ensure that public members are unaffiliated with the regulated profession.

Historically, the composition of professional licensing boards in Maine has evolved to include the appointment of at least one public member. Including the public perspective is important in achieving the primary regulatory purpose of protecting the public health and welfare.

Maine statutes specify the inclusion of public members for each professional regulatory board. However, there is no consistent statutory criteria for a public member. Typically, the Maine statutes make the following reference to public members:

"....and one of whom shall be a representative of the public" (32 MRSA §1601, sub §1 - Cosmetologists).

This lack of criteria may result in the appointment of public members who have either a professional, financial, or personal tie to the profession regulated. The Committee finds that the appointment of individuals with such ties violates the intent of including public members.

A survey of other states reveals a wide range of statutory definitions for the term "public member." For example, New Hampshire's definition falls within the middle range of definitions used by other states as follows:

"The public member of the board shall be a person who is a consumer of services provided by those regulated by the board and who is not, and never was, a member of the profession or the spouse of any such person, and who does not have, and never has had, a material financial interest in either the provision οf services or an directly related including to, representation of the board or profession for a fee at any time during the 5 years preceding appointment."

The Committee found that a statutory definition of public member is needed and that such a definition should include the following features:

- public members shall have no substantial financial interest in the regulated profession; and
- former or current licensees of the regulated profession shall not be public members.

members public οf Therefore, to help ensure that professional regulatory boards have а background which is free association with the regulated οf relatively any professions, the Committee recommends that the Maine statutes include the above definition for public members. The Committee also recommends that this definition apply only to those public appointed after enactment of the proposed statutory members change.

#### DESCRIPTION

The Bureau of Banking had its inception in 1831 with the appointment of two Commissioners who were required to examine each incorporated bank at least once a year. The Commissioners' responsibilities were later expanded to include authorization to supervise every state bank and savings bank and to set forth procedures to guard against unsafe practices. In 1868, the two Bank Commissioners were replaced with a single Examiner of Banks and Insurance Companies. The Examiner was charged with making annual examinations of banks and insurance companies. Two years later, a separate Office of Insurance Commissioner was created with the provision that this person could not at the same time serve as the Examiner of Banks. In 1909, legislation was enacted granting general supervisory powers over banks, mergers, In 1909, legislation was The title of Bank Examiner was also changed and new charters. back to Bank Commissioner. Since that time, the Commissioner's duties have expanded and now include the regulation of credit unions.

Under the plan for State Government reorganization, the Bureau of Banks and Banking was placed within the Department of Business Regulation in October 1973 with the Bank Commissioner's title being changed to Superintendent. In 1975, the legislature enacted a new, progressive Banking Code. In early 1985, a reorganization of the Bureau's administrative staff was accomplished. In that same year, the legislature also enacted a new, more comprehensive Securities Act.

"to The statutory charge of the bureau assure is the stability efficiency οf all strength, and to assure reasonable and orderly competition, institutions, thereby encouraging the development and expansion of financial services advantageous to the public welfare and to maintain close cooperation with other supervisory authorities." MRSA §111). In carrying out this charge the Bureau supervises approximately 17 trust companies, 19 savings banks, 6 savings & associations, and 21 credit unions. The accomplishes this supervision through a process of on-site examinations and the continual monitoring of the stability of each financial institution.

The Bureau's chief administrator is the Superintendent. The Bureau is divided into three Divisions, each with the following responsibilities:

- <u>Division of Research and Administration</u> This Division has three primary functions:
- 1. To provide administrative support through:
  - the supervision and development of training for all Bureau personnel;
  - the supervision of Division personnel and supervision of most Bureau clerical support;
  - overseeing the Bureau budget with the exception of the Securities Division;
  - drafting legislation and rulemaking; and
  - acting as legislative liaison;
- 2. To provide research analysis through:
  - the development and maintenance of a computer system used for the surveillance and monitoring of financial institutions; and
  - the compilation of statistical information and reports;
- 3. To provide consumer assistance through:
  - a regular response to consumer complaints; and
  - the filing and analyzing of complaints.

In addition, this Division reviews applications for mergers and consolidations and undertakes special projects as assigned. The Division staff includes a Deputy Superintendent, Principal Examiner, Senior Examiner, and several clerical support positions.

- <u>Division of Examination</u> This Division is responsible for undertaking the examination for all state chartered financial institutions to determine:
  - the financial safety and soundness of each institution;
  - an evaluation of the data processing capabilities of each institution;
  - the management, organization, and expertise of a particular financial institution;
  - the compliance of a particular institution with state and federal laws and regulations;

- the organization, costs and services of any financial institution;
- the performance of trust departments for each institution; and
- other areas as required.

In addition, this Division works with federal insuring agencies to facilitate joint examinations and is involved in the determination of inter and intra-state mergers and consolidations or the establishment of new branch and satellite facilities. Staff for this Division includes a Deputy Superintendent, four Principal Examiners, six Senior Examiners, and three Bank Examiners. There are also a number of vacant examiner positions which are not needed at this time.

• <u>Securities Division</u> - This Division is responsible for the enforcement of the Maine Securities Act. Staff for this division include the Securities Administrator, Supervisor of Enforcement, Supervisor of Registration, Securities Examiner, Securities Investigator, and two clerical support staff.

The primary function of the Securities Division is to register securities to be offered for sale in Maine. The Division is also responsible for licensing agents or broker-dealers who wish to sell securities in the state.

The Bureau is also responsible for submitting an annual report to the legislature on the condition of financial institutions. This report provides statistical documentation on the status of Maine's financial institutions and their lending in the State of Maine.

In FY 1985, the Bureau had 27 authorized positions and had expenditures of approximately \$905,000. Of this total, 81% is generated by fees assessed on a financial institution for the cost of examination and by an assessment of at least seven cents levied for each \$1,000 of the total average deposits held by that financial institution.

STATUTORY 17.

Change the Bureau's examination schedule to a 36 month cycle to provide the Bureau with more flexibility and to increase the effective use of staff resources.

Maine statutes currently require that "the superintendent shall examine each financial institution subject to his supervision and regulation at least once in every eighteen months, or more frequently as he may determine" (9-B MRSA §221). This present language reflects a significant change from the statutes in 1977. At that time, the statute read "annually, or more frequently as he may determine." One purpose for this change was that the Bureau had insufficient resources to conduct all examinations within the specified time period.

The Bureau has interpreted the present statutory language to direct the establishment of an 18 month examination cycle. It has not been interpreted to mean that each institution shall be examined once every 18 months. Under current Bureau policy, a financial institution may be examined at the beginning of one 18 month cycle and could conceivably not be examined again until the end of the next 18 month cycle.

The Bureau has indicated that the present system of month cycles is an inefficient mechanism for the scheduling of examinations. The 18 month cycle has caused continual difficulties in the efforts to coordinate with examination agencies.

At the present time, the various federal examination agencies are re-evaluating their examination cycles. Criteria is being considered which would base examination frequency on institution size and previous stability. The Committee finds that any changes on the federal level will create additional problems for the Bureau's effort to effectively coordinate the examination process.

The Committee also finds that the Bureau of Banking is increasing its off-site monitoring of financial institutions. To assess this function, the Committee reviewed the various forms sent to financial institutions for the collection of monitoring data and the reports developed from this information. The Bureau has also developed its computer data system to include a hook-up with the Federal Depository Insurance Corporation.

The Committee finds that an increase in off-site monitoring efforts provides tools that go beyond the traditional examination process to help ensure the financial viability of an institution.

The Committee further finds that in spite of these recent technological advances, the Bureau is not able to maximize the effective use of Bureau resources within the constraints of the present 18 month cycle.

Therefore, the Committee recommends that the present 18 month cycle be changed to a 36 month cycle to provide the Bureau with more flexibility and to increase the effective use of staff resources. In making this recommendation, the Committee intends to ensure that examinations of each financial institution occur at least once every three years and more freugently as required.

#### ADMINISTRATIVE 18.

Develop a public education program and report to the Committee on Audit & Program Review with a proposal by September 1, 1986.

In carrying out its statutory charge, the Bureau has undertaken several informal and formal public education efforts. These educational efforts have included:

- radio spots and press releases;
- providing information to college students;
- the production of informational pamphlets on such topics as selected interest rates;
- the development of rule requirements for public disclosure;
- attendance/speaking at civic groups, conferences or seminars; and
- the annual banking conference.

During its review, the Committee found that the Bureau does not have any formal public education plan in place at this time. Aside from A Consumer's Guide, developed in 1980, and the required statistical reports, there are no public informational materials currently produced by the Bureau. On occasion, the Bureau does, however, issue press releases and gives attention to public disclosure.

The Committee finds that given the rapidly changing financial industry, Maine consumers would benefit from a planned educational program. Therefore, the Committee recommends that the Bureau renew its efforts to develop a public education program. Further, the Committee recommends that the Bureau report to the Committee on Audit & Program Review with a proposal by September 1, 1986.

ADMINISTRATIVE 19.

Increase the visibility of the consumer assistance function to ensure that consumers are adequately informed of the Bureau's efforts in this area.

The Committee's review of the Bureau of Banking's consumer assistance function shows the Bureau received over 1,000 telephone inquiries in FY 1985. Of this number, approximately 20% were recorded as consumer complaints. A random sample taken of these complaints indicated that they fall into the following categories:

0	Deposit account problems	35.4%
0	Loan-processing problems	
	(pre-closing)	10.8%
	(post-closing)	27.7%
6	Other	10.7%
0	Loan denials	6.2%
0	Billing errors	4.6%
0	Deed problems	4.6%
		100%

The Committe finds that presently there is no visible effort by the Bureau to publicize this consumer assistance function. Members of the public are referred to the Bureau by other state agencies or locate the Bureau through their own initiative.

The Committee also finds that because of the rapidly changing field of financial regulation, the consumer is often at a disadvantage and that the Bureau's consumer assistance efforts need to be publicized. The Committee finds that several simple steps can be developed to increase the Bureau's visibility. These steps include:

- sending out an informational flyer and scheduling meetings with key referral agencies to acquaint them with the Bureau's consumer assistance function;
- developing and disseminating a consumer complaint form to financial institutions; and
- publicizing the Bureau's phone number and a brief description of the fee/service disclosure information provided by banks to customers.

In making this recommendation, the Committee finds that these changes can be implemented by the Bureau at little cost while providing significantly increased consumer assistance efforts.

#### ADMINISTRATIVE 20.

Develop a plan to recodify the Banking statutes. Report to the Committees on Audit & Program Review and Business & Commerce by September 1, 1986.

The Banking Code (9-B MRSA) was last recodified in 1975. At the time, this effort represented a major modernization of the Banking Code. However, since that time, many changes have occurred in the field of banking including:

- the enactment of interstate banking in 1982;
- the expansion of satellite offices and decrease in branching;
- the development of new products and services; and
- the expansion of banking powers beyond traditional institutional boundaries.

The Committee finds that, as a result of these significant changes, the present structure and format of the Code is cumbersome, confusing and outdated. As presently constructed, the Code's delegation of authority to specific financial institutions does not accurately reflect current financial realities. In addition, the Committee finds that the current construction of the Code is likely to discourage and deter public understanding and usage of it.

The Committee determined that although the Bureau has the resources to formulate a proposed recodification, that until recently, such a move might have been premature. The review process has provided an opportunity for such a possibility to be carefully considered. Comments received by the Committee from both the banking industry and the Superintendent indicate a consensus that a recodification should be attempted.

Therefore, the Committee recommends that the Bureau develop a plan to recodify the Banking Statutes and report with this plan and proposed implementation to the Committees on Audit & Program Review and Business & Commerce by September 1, 1986.

# LIVE LOBSTER TERRORIZES



# BANK TELLER

McKEESPORT, PA. -A man successfully held up the Union Manor Bank this morning, using a live lobster as a weapon. Police Chief Rich Hurst told reporters that his men are on the lookout for the robber, caught in the act by the bank's security camera. The teller, Mrs. Della Candle, said, "I was terrified! The thing just kept clicking its claws at me. I thought I was going to lose my nose or something!" The thief got away with over \$3,000 and Mrs. Candle's lunch bag.

STATUTORY

21.

Continue the review of the Securities Division under the Maine Sunset Law.

The Securities Division is one of three divisions within the Bureau of Banking. The division has seven authorized positions which include the Securities Administrator, Supervisor of Enforcement, Supervisor of Registration, Securities Examiner, Securities Investigator, and two clerical support staff.

As previously mentioned, the primary function of the Securities Division is to register securities to be offered for sale in Maine and to license agents or broker-dealers who wish to sell securities in the state.

The Maine "Dealers in Securities" law was enacted in 1913 and the Bank Commissioner was charged with its administration. In 1931, the term "securities" was expanded to include land and property situated outside of Maine and the enforcement effort was expanded with the authorization of a full-time examiner. Several other amendments were enacted in the 1970's which provided for exemptions from the law for certain dealers, agents, securities and transactions.

Significant changes made in 1980 and 1981 added new enforcement authority. The Division also enforces the Takeover Bid Disclosure Law which was enacted in 1978.

During this past legislative session, a number of changes in the Securities Division occurred. These changes include:

- the enactment of a new, comprehensive Securities Act (Public Law, Chapter 400) effective September 1, 1985;
- the appointment of a new Administrator to the Securities Division; and
- a reorganization of staff responsibilities within the Division with the addition of two new positions - one to supervise the registration function, and another to coordinate and expand the enforcement activities.

The Committee finds that due to the recent organizational changes in the Securities Division, and time limitations of the present Audit process, a review of the Securities Division would be more meaningful at a later date. Therefore, the Committee recommends that the Securities Division be continued for future review under the Maine Sunset law.

#### DESCRIPTION

The Bureau of Consumer Credit Protection was created by the Legislature in 1975 to administer a new law; Maine's Consumer Credit Code. Originally, the Bureau was part of the Bureau of Banking's Division of Personal and Consumer Finance. Until 1982, the Bureau was known as the Bureau of Consumer Protection. The name was changed at that time to clarify the Bureau's mandate.

The Bureau exists to regulate consumer <u>credit</u> protection. To achieve consumer credit protection in the State of Maine, the Bureau has been charged with administering the following laws:

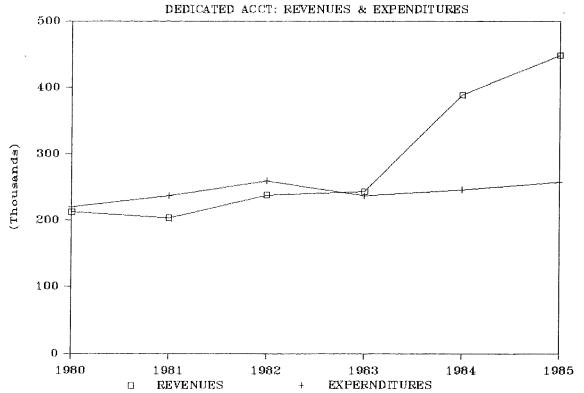
- Maine Consumer Credit Code;
- Truth-in-Lending;
- Home Repair Financing Act;
- Plain Language Law;
- Fair Credit Reporting Act;
- Insurance Premium Finance Company Act; and
- Collection Agency Law.

Funding for the Bureau comes largely from dedicated revenues. These dedicated revenues come from two principal sources:

- filing fees (\$20) required of every creditor doing business in the State of Maine; and
- volume fees, \$25 per \$100,000 of credit extended in the State, which are assessed to any creditor who actually does business in the State.

As shown in Graph 1, the Bureau had some difficulty a few years ago in raising enough dedicated revenues to meet its expenses:

GRAPH 1
BUREAU OF CONSUMER CREDIT PROTECTION



During the 1981 - 1982 time period, the Bureau had to borrow money from the Governor's Contingency Fund to cover a continuing revenue shortfall. Since that time, the Bureau's revenue problems have largely been solved by the following changes:

- shifting responsibility for the Superintendent's salary to the General Fund; and
- raising the volume fee from \$15 per \$100,000 credit extended to its present level of \$25 per \$100,000 extended.

Currently the Bureau has ten authorized positions, nine of which are filled.

# Council of Advisors on Consumer Credit

ADMINISTRATIVE 22.

Require that the Chair of Council of Advisors on Consumer Credit be responsible scheduling, structuring and meetings administering o f Council with the Superintendent's assistance to strengthen Council's function.

The Council of Advisors on Consumer Credit was established in 1975 as a part of the Consumer Credit Code (9-A MRSA §6-301 thru 6-304). The Council consists of 12 members representing the creditor industry and public, each of whom are appointed by the Governor for four-year terms. The Chair of the Council is designated by the Governor. The Council exists to advise and consult with the Superintendent of the Bureau regarding administration of the Maine Consumer Credit Code.

In recent years the role of the Chair of the Council has changed. Formerly, the Chair was more involved in the scheduling of Council meetings, determining the agenda and the taking and publishing of Council minutes. Presently, these duties are accomplished by the Superintendent.

The Committee finds that, given the advisory function of the Council, it is important to clearly separate and define the roles of the Chair and the Superintendent. The Committee also finds that there is a conflict when an advisory board is convened and run by the administrator it is supposed to advise. Finally, the Committee finds that the advisory function is weakened by a lack of independence.

Therefore, to ensure that the Council functions effectively as an advisory body, the Committee recommends that the Chair of the Council reassume responsibilities for scheduling, structuring and administering Council meetings.

ADMINISTRATIVE 23.

Require that Council members receive copies of all routine Bureau mailings to ensure that they have necessary information to effectively advise the Bureau.

During the review, the Committee found that Council members do not receive all of the routine Bureau mailings. These mailings include newsletters, hearing notices, and rule making notices. Given the Council's advisory function, the Committee determines that complete information is necessary to enable the Council to accurately advise the Superintendent in the administration of the Bureau.

Therefore, the Committee recommends that council members receive copies of all routine Bureau mailings to ensure that they have necessary information to effectively advise the Bureau.

FINDING

24.

The Committee finds that the Bureau of Consumer Credit Protection should be maintained in its present organizational structure to ensure consumer credit protection in the State of Maine.

During its review, the Committee carefully considered the overall organizational framework by which the consumer credit protection laws are administered in Maine. The Bureau of Consumer Credit Protection is the agency currently charged with this responsibility. The Bureau was compared by the Committee with the other regulatory bodies within the Department of Business Regulation with regard to approach, measurable results, identifiable trends and their relationships with the regulated industries.

Through this process, the Committee identified several concerns of a common theme regarding the Bureau of Consumer Credit Protection. In no particular order, these concerns were as follows:

- past history of an adversarial relationship between the Bureau and creditor industry which predates οf administration the present superintendent. stemming from the inflexibility of the Consumer Credit Code and the Bureau's administration of it:
- a specific tension between the Bureau and a sizeable segment of creditors - that of the banking industry; and
- the effect of two separate examination processes administered by the Bureaus of Banking and Consumer Credit Protection on those creditors who fall under the jurisdiction of each bureau.

The Committee received testimony which suggested that these concerns may be resulting in a growing trend in which financial institutions decide to remove themselves from the Bureau Consumer Credit Protection's jurisdiction by switching from state The Committee charter. determined federal to federal administration of state law was perceived by some to be somewhat less rigorous than the Bureau's. Some of the testimony on this subject suggested that this trend could be reversed by either consolidating the examination process for financial institutions regulated by the Bureau of Banking within that Bureau or by dissolving the Bureau of Consumer Credit Protection and creating a division of consumer protection within the Bureau of Banking to administer all of the laws relating to consumer credit protection.

The Committee finds that good public policy is predicated on the uniform administration of a particular set of laws. Accordingly, the Committee finds that simply transferring administrative responsibility for a set of laws ought not to result in a qualitatively different enforcement effort. Therefore, the Committee does not find upon initial review that an alleged trend in a switching from federal to state charter would be reversed by transferring any measure of the responsibility for administering consumer credit protection laws to the Bureau of Banking.

The Committee is concerned about any instances where a financial institution switches from state to federal charter due to the weakening of state jurisdiction and corresponding authority. However, the Committee finds that this trend should be examined on its own with legislative action taking a positive approach to make state charters more attractive.

After carefully assessing these concerns and all of the possible ramifications, the Committee finds that the present organizational structure is the most effective means of ensuring consumer credit protection. Effective consumer credit protection requires administration by an agency whose sole responsibility is protect the consumer in matters of represent and protection. This need for а separate agency reflects Committee's concern for the growing involvement of consumers in increasingly sophisticated credit transactions and the possible regulatory conflict which could exist for an agency like the Bureau of Banking were it to have jurisdiction to administer  $1 \, \mathrm{aws}$  . The Committee determined that the Banking's regulatory mandate to ensure the solvency of financial occasionally be in could institutions conflict with aggressive regulatory effort needed to achieve effective consumer credit protection.

Throughout the review process, the Committee made recommendations contained in this report which will result in a more flexible and equitable consumer credit code. The Committee also makes a number of recommendations which encourage greater flexibility from the Bureau of Consumer Credit Protection in its administration of these laws. The intended goals οf Committee's recommendations are to create a less adversarial climate and a more effective regulatory effort.

In making this finding, the Committee wishes to emphasize that the Bureau of Consumer Credit Protection is the appropriate and most effective vehicle for achieving consumer credit protection in the State of Maine.

STATUTORY

25.

Repeal the requirement that the Superintendent be a resident of the State for two years prior to appointment because this requirement is unnecessary.

Current Maine law specifies that the Superintendent of the Bureau of Consumer Credit Protection must have been a resident of the State of Maine for two years prior to appointment (9-A MRSA §6-103). Enacted in 1973, the provision was intended to help ensure that the position be filled by someone with credentials in the credit field which could be directly verified by local experience. The Committee finds that this provision has been ignored in past selections of the Superintendent.

A search of current Maine statutes reveals a similar two year in-state residency requirement for those individuals who either wish to obtain licenses to run an employment agency or want to become real estate brokers. No other comparable position in Maine State Government has a two year in-state residency requirement.

The Committee finds that a two year residency requirement for the Superintendent is neither essential nor relevant to the position. Therefore, the Committee recommends that the residency requirement for the Superintendent be repealed because it is unnecessary.

ADMINISTRATIVE 26.

Announce examinations to minimize unnecessary inconveniences to the creditor industry.

The Bureau's examination process is designed to obtain a thorough overview of a particular creditor's compliance with the Code and other relevant laws administered by the Bureau. To accomplish this, the following steps are undertaken:

- the examination is conducted at the creditors place of business;
- the creditor is required to provide requested documentation of any consumer credit transaction, which include initial disclosures, credit denials, form content, terms of contract and repossession provisions, etc;
- these documents are examined in light of the various sections of the relevant laws;
- violations are noted by the examiner in a report which is screened by the Bureau prior to submission to the creditor;
- upon receipt of the report, the creditor has several options which include compliance or a challenge of the report's cited violations; and

• in response to any challenged report, the Bureau has the authority to call an adjudicatory hearing or file suit in Superior Court (Bureau findings from the adjudicatory process are subject to judicial appeal).

The Committee finds that the Bureau currently examines most creditors without prior notification. This policy has been recently modified for smaller creditors. These creditors are now contacted two weeks prior to the examination to determine whether they will be able to conveniently provide the required information. This new policy was instituted in response to a number of situations in which the creditor did not have the personnel available for completion of the examination.

In its review, the Committee found that each of the other regulatory Bureaus within the Department, Banking and Insurance, have a policy of notifying examinees at least one week prior to the anticipated date of examination. In addition to making this advance notice, the other Bureaus also indicate what information will be required for the examination.

Although the Committee finds that unannounced examinations are warranted for those creditors who have not complied with the law in the past, the Committee also finds that the Bureau's present policy of unannounced examinations represents an unnecessary inconvenience to the creditor industry. Therefore, the Committee recommends that the Bureau modify its examination policy by:

- providing a week's notice to most creditors of an impending examination;
- developing written materials which describe the types of information required in the examination; and
- retaining unannounced examinations for those creditors who have experienced difficulties in the past.

In making this recommendation, the Committee finds that announced examinations will facilitate the examination process for both the examinee and the Bureau without jeopardizing compliance.

ADMINISTRATIVE 27.

Identify and explain to the creditor industry the most frequently violated sections of the major laws administered by the Bureau to increase creditor compliance. Report to the Committees on Audit & Program Review and Business & Commerce by February 1, 1987.

The Committee conducted a detailed analysis of the Bureau's administration of the Consumer Credit Code, Maine's Truth In Lending Law (Article VIII of the Code) and the Fair Credit Reporting Act for FY 1983 - FY 1985. This analysis utilized data gathered from the results of the Bureau's examination process to determine:

- which section of the law(s) were violated most frequently;
- which type of creditor violated certain sections of the law(s) most frequently; and
- was there any significant correlation between creditor type and the following:
  - total number of creditor violations in a given year;
  - total volume fees paid to the Bureau for a given year;
  - total number of creditors examined by the Bureau in a given year;
  - total number of transactions reviewed in a given year; and
  - total amount of restitutions made in a given year.

The Committee's analysis showed that Trust Companies, Savings Banks and Retail Companies were those creditors examined most frequently by the Bureau for that three year period. The Committee found that these three most frequently examined types of creditors did not correspond to creditor types who incurred

the greatest number of Consumer Credit Code violations for that same time period. The creditor types who did incur the most violations were Savings Banks, Retail Companies and Insurance Premium Finance Companies.

This analysis further indicated that for each of the major laws administered by the Bureau there were three particular sections of each law violated most frequently by creditors in the State of Maine. These results are summarized below:

- Consumer Credit Code (1129 total violations)
  - §2-501: details what additional charges are allowable; accounted for 32% (372) of all creditor violations;
  - §5-111: details the process by which a consumer can cure a default; accounted for 16% (183) of all creditor violations; and
  - §2-510: details the rebate due to consumer upon prepayment; accounted for 12% (138) of all creditor violations;
- Truth-in-Lending (3498 total violations)
  - §8-205 through §8-207, §8-202: details what constitutes other incorrect disclosure statements; accounted for 38% (1340) of all creditor violations;
  - §8-105: details the format for disclosure of finance charges; accounted for 22% (721) of all creditor violations; and
  - \_ §8-106: details the format for the disclosure of the annual percentage rate; accounted for 18% (659) of all creditor violations.
- Fair Credit Reporting Act (2287 total violations)

- §1320 sub §1 (A) (3): requires a creditor to disclose in writing to a consumer his right to receive a copy of a credit report about him; accounted for 45% (1046) of all creditor violations;
- §1320 sub §1 (A) 2: requires a creditor to disclose in writing to a consumer the name, street, address and telephone number of credit reporting agency making a report about that consumer; accounted for 30% (703) of all creditor violations; and
- §1320 sub §1, (A) (1): requires a creditor to state in writing to a consumer that its action was based in whole or in part by a consumer credit report; accounted for 11% (253) of all creditor violations.

The Committee also concluded that other than size, there was no significant correlation between a particular type of creditor and that creditor's share of total violations. In other words, the Committee found that there were not any particular segments of the creditor industry that had a share of violations which was dramatically disproportional to its share of the total creditor industry in the State of Maine.

The Committee finds that the results of this analysis can be used by the Bureau to improve creditor compliance. In addition, the Committee finds that there is a significant need for both the Bureau and the creditor industry to increase their efforts to understand and educate themselves about which parts of the consumer credit laws are frequently violated. Therefore, the Committee recommends that the Bureau identify and explain to the creditor industry the most frequently violated sections of the major laws administered by the Bureau. In addition, the Committee recommends that the Bureau report to the Committees on Audit & Program Review and Business & Commerce by February 1, 1987, with a report on these efforts.

# The Maine Consumer Credit Code

The Maine Consumer Credit Code (CCC), assertively acts to create, through law, a set of protections for the consumer. A major premise of the CCC is that the consumer is at an inherent disadvantage in the great majority of consumer credit transactions.

The Consumer Credit Code has evolved from a long series of laws which gradually established protections for the consumer in credit transactions. Maine's Consumer Credit Code, adapted from a proposed Uniform Credit Code, seeks to achieve the following goals:

- To consistently regulate credit transactions to benefit both creditors and consumers;
- To provide necessary legal protections for the consumer who often is not familiar with complex credit transactions;
- To ensure the availability of credit at rates which, while profitable to creditors, are accessible to consumers.



"Do you have loans for somebody who just needs money?"

The Uniform Consumer Credit Code was developed in the late 1960's with the hope that most or all states would adopt it to achieve a consistent intra-state regulatory effort. Maine enacted its version of the Consumer Credit Code in 1975 and was one of nine states to enact some form of the Uniform Code. Since that time, two states have repealed their version of the Consumer Credit Code.

Presently, like other laws under the Bureau's responsibility, the Consumer Credit Code is administered through a vigorous examination procedure. As mandated by statute, the costs of this examination process are borne by the examinee. Whenever possible, the Bureau consolidates the examination process by examining a creditor for all of the laws under its jurisdiction at one sitting. This policy reduces costs to the creditor and streamlines the Bureau's administration of these laws.

STATUTORY 28.

Provide for the confidentiality of records held by the Bureau to ensure appropriate consumer protection.

During the review of the Bureaus of Consumer Credit Protection and Banking, the Committee received testimony concerning the lack of confidentiality provided by the Consumer Credit Code. One incident in particular, resulted in the public disclosure of records identifiable to particular consumers. situation highlighted the inconsistency between the Banking Code protection to the consumer contains clear confidentiality of financial records and accounts and the lack of such a provision under the Consumer Credit Code. Disclosure, with some exceptions, cannot be made under the Banking Code without the consumer's authorization. To the contrary, these records became public when obtained by the Bureau of Consumer Credit Protection during the course of its routine responsibilities.

The Committee found that the confidentiality provisions of the Banking Code did not prohibit public disclosure under the Consumer Credit Code. The result of this is an inconsistent treatment of financial records by these two sets of laws. In addition, a consumer's right to privacy is jeopardized by the Consumer Credit Code's lack of appropriate protection.

To resolve this inequity and to ensure that a consumer's identity is protected while balancing the public's right to know, the Committee recommends a statutory change to include a section in the Consumer Credit Code which states that all applicable records of the Bureau of Consumer Credit Protection shall be public with the exception of:

- Any information which is identifiable to a particular consumer unless related to an administrative hearing or judicial proceeding;
- 2. Any information submitted to the Bureau in confidence which the Superintendent deems necessary to maintain as confidential; and
- 3. Any other information as specified in rules by the Superintendent.

The Committee recommends the adoption of such language to provide the necessary level of confidentiality protections for records maintained by the Bureau of Consumer Credit Protection.

STATUTORY

29.

Amend the Maine Consumer Credit Code to include a provision which allows for certain unintentional first time errors, without penalty, to recognize this type of creditor error.

With one exception, the Maine Consumer Credit Code currently does not recognize nor provide for the possibility of legitimate errors on the part of creditors. The Committee finds that many sections of the code could be violated without grievously injuring consumers through unintentional creditor errors. Currently, the Code requires automatic penalties for all creditor violations.

During its review, the Committee determined that not all violations deserve automatic penalties. Currently, the Code does not enable the Superintendent to consider the unintentional nature of the violation when levying a penalty. To provide this option, the Committee recommends that the Maine Consumer Credit Code be amended to include a provision which allows for certain unintentional first time errors, without penalty, to recognize this type of creditor error.

STATUTORY

30.

Extend the grace period for creditor correction of errors from 15 to 60 days to create conformity within the Code to facilitate creditor compliance.

Currently, the Consumer Credit Code provides a 15 day grace period by which a creditor can correct any errors discovered either by the creditor or through the Bureau's examination process (9 MRSA §5-201 (7)). The Code does not penalize creditors choosing to correct an error within 15 days.

The Committee determined that there are two problems associated with the 15 day grace period:

- this time frame does not correspond to other time frames with which the Bureau deals. example, the corresponding parts of Maine's Truth in Lending Law (9A MRSA §8-208 specify a 60 day grace period for creditors to rectify errors. This disparity often causes administrative problems for the Bureau in that they have two different time frames to enforce for the same The Committee finds violation. that consistent time frame will simplify administration of the law; and
- from the creditors perspective, rectifying a discovered error within 15 days may be difficult. A 60 day grace period may provide a more realistic opportunity for creditors to demonstrate their good intentions by remedying an error.

Therefore, to create conformity within the Maine Consumer Credit Code and to facilitate creditor compliance, the Committee recommends that the Code be amended to extend the grace period from 15 to 60 days.

STATUTORY

31.

32.

Amend the Consumer Credit Code to provide at least a 30 day due period for invoices to create more consistency within the Code.

The Consumer Credit Code currently specifies in several sections that creditors must pay invoices received from the Bureau within 30 days. These invoices reflect charges incurred during the examination process.

The Committee finds that the present 30 day limit for the payment of invoices is one example of many different time frame specifications within the Code, few of which correspond to one another in a consistent fashion. The Committee determined that by amending this part of the Code to specify not less than 30 days, the Superintendent would have more flexibility to effectively coordinate the receipt of invoices with other comparable time frames.

Therefore, to create more consistency within the Code which will result in administrative efficiencies for both the Bureau and the creditor industry, the Committee recommends that the Consumer Credit Code be amended to allow at least a 30 days due period on invoices owed to the Bureau.

STATUTORY

Repeal the Administrative Procedure and Judicial Review section of the Code because this section is duplicative. Relocate useful sections elsewhere in the Code.

Maine's version of the Consumer Credit Code contains a section entitled "Administrative Procedure and Judicial Review" (9A MRSA §§6-401 thru 6-414). This section of the Code specifies the process by which the Bureau carries out its regulatory charge.

The 1974 version of the Uniform Consumer Credit Code, upon which Maine's Consumer Credit Code was modeled, states that this portion of the Code was "...intended for adoption only in those which enacted adequate administrative states have not an to procedure act which would apply the actions Administrator under this Act" (p. 266). The Committee finds that because Maine enacted a strong Administrative Procedures Act in 1977, this part of the Code is not necessary.

In reviewing the Administrative section of the Consumer Credit Code, the Committee has determined that most of it is duplicative and confusing. A great deal of this material exists in a clearer form in the Administrative Procedures Act.

The Committee also finds that several provisions of this section are unique and should be relocated elsewhere in the Code. In particular, the Committee recommends that the following sections be relocated:

- §6-403 sub  $\S 1$ mandates that the administrator formulate rules and procedures concerning the operation of This sub-section agency office. also specifies that he maintain and make decisions available all rules and reached by the agency; and
- §2 provides sub that administrator must notify a licensee of intention to seek suspension license the revocation of a before actually started. process has This provision helps to ensure licensee has adequate notice and the opportunity to respond.

Therefore, the Committee recommends repeal of the Administrative Procedure and Judicial Review section of the Code because this section is duplicative and that useful sections be relocated elsewhere in the Code.

ADMINISTRATIVE 33.

Increase efforts to encourage creditor filing and report to the Audit & Program Review Committee by February 1, 1987.

STATUTORY

34.

Amend the provision in the Consumer Credit Code which voids credit transactions made by an unlicensed lender to ensure a more reasonable penalty.

All creditors subject to the Maine Consumer Credit Code (9A MRSA) are required to file annually with the Bureau. This filing serves two purposes; to authorize individuals and companies to extend credit and to provide a roster of authorized creditors. The filing process requires an initial filing fee of \$20. In FY 1985, a total of 1713 creditors filed with the Bureau.

Recently, there have been several incidents where creditors have failed to file with the Bureau, yet continue to make credit transactions within the state. Current Maine law states that any credit transaction made by a creditor who has not filed with the Bureau is void (9A MRSA  $\S5-201$ , sub  $\S2$ ).

A recent application of this law resulted in one instance where an unlicensed creditor had to make approximately \$750,000 in restitutions. The Committee determined that because creditors do conform to the rest of violations of this section of the Consumer Credit Code are more of an affront to the regulatory process and do not necessarily pose a threat to consumers.

a reasonable penalty, the Committee ensure more recommends a modification of the Code which will effectively discourage "unlicensed" lending, yet not be overly punitive. the brief, the modified penalty would prohibit unlicensed creditor from collecting any interest on transactions made in the The Committee also recommends that the Bureau increase its efforts to encourage creditor filing and report to the Audit & Program Review Committee by February 1, 1987.

# Truth-In-Lending (TIL)

Maine currently has the responsibility for administering the federal Truth-In-Lending Act (PL 90-321). This law requires the creditor to clearly disclose the terms and rates used in any credit transaction. Regulation Z, formulated by the Board of Governors οf the Federal Reserve System to implement provides that individual states can apply for and receive an exemption from federal enforcement if the following conditions are met:

- (1) The State law is substantially similar to the federal law or,....affords the consumer greater protection than the federal law; and
- (2) There is adequate provision for enforcement.

(Reg. Z, §226.29)

In 1968, Maine was the first state to receive this exemption. In response to the federal Truth-in-Lending Simplification Act which was enacted in 1980, Maine repealed its version (Article 7 of the Consumer Credit Code) and enacted Article 8 which conformed to the new federal version. In 1981, Maine successfully reapplied for exemption.

Although both the Consumer Credit Code and Truth-In-Lending address the same subject matter, that of consumer credit protection, they do so from distinctly different perspectives. In brief, the Consumer Credit Code sets allowable rates and procedures, whereas Truth-in-Lending requires disclosure of those rates and procedures.

## FAIR CREDIT REPORTING ACT

The Fair Credit Reporting Act (10 MRSA §§1311-1328) exists to adequately protect those consumers who have been the subject of credit reports. This Act parallels the federal Fair Credit Reporting Act and was enacted in 1977 to gain state authority to more closely scrutinize and enforce the basic tenets of the federal version.

Key features of this law include the following:

- it requires adequate and conspicuous notice to any consumer who is the subject of a credit report;
- it requires that upon request, consumers receive all pertinent information contained in a report; and
- it provides a procedure by which a consumer can correct inaccurate information.

The Act is administered by the Bureau in several different ways:

- creditors examined for the Consumer Credit Code and Truth-in-Lending are at same time reviewed for compliance with the Fair Credit Reporting Act;
- the seven credit reporting agencies in the state are examined regularly on a two year basis; and
- efforts are made to inform the Maine consumer about his rights under this Act.

The Bureau gives this law a very high priority because of the impact that incorrect information can have upon a consumer's effort to receive credit.

#### ADMINISTRATIVE 35.

Develop publication for а which consumer use seeks to explain what consumer rights are by the Fair protected Report on these Reporting Act. efforts to the Committees Audit & Program Review Review and Business & Commerce by February 1, 1987.

Presently, the Bureau of Consumer Credit Protection does not have any publication which explains to consumers their rights under the Fair Credit Reporting Act. The Committee finds that there is a real and pressing need for this type of information to increase consumer awareness of their rights. Development of such a document has been discussed by the Bureau for several years but as of the present date, no substantive steps have been taken to initiate this project.

Therefore, the Committee recommends that the Bureau develop a publication to increase consumer awareness and report to the Committees on Audit & Program Review and Business & Commerce by February 1, 1987.

## Collection Agency Law

The Collection Agency Law (32 MRSA §§571-584), functions as another program administered by the Bureau of Consumer Credit Protection. This law exists to ensure that the collection of consumer debts by a party other than the original creditor be fairly handled. The law also exists to ensure that monies paid by consumers to collection agencies are paid to the original creditor.

The law was enacted in 1965 and was originally administered by the then Department of Banks and Banking. Responsibility for administration of the law was transferred to the Bureau of Consumer Credit Protection upon its creation in 1975.

The law is administered by the Bureau primarily through the following:

- regular examination of licensed collection agencies;
- a review of licensee at license renewal time; and
- by responding to consumer complaints.

To ensure compliance, the Bureau's primary enforcement mechanism is the authority to order that restitutions be made to consumers. Recently, through the Bureau's examination process, two collection agencies have been found guilty of failing to remit collected funds to the original creditor. Both agencies have been shut down and it is these actions which account for the large restitution figures shown below:

FY	Number of Agencies Examined	Violations <u>Cited</u>	Total stitutions
1983	20	17	0
1984	8	7	\$ 39,305
1985	1	2	\$ 26,034 *

\*Relates to examination results of 1984.

In FY 1985, the Bureau licensed 31 collection agencies under the provisions of this law. Of the 171 written complaints received by the Bureau during the second half of that year, 14 were in reference to the Collection Agency Law.

75

## Plain Language Law

The Plain Language Law (10 MRSA §§1121-1126) is one of the laws administered by the Bureau of Consumer Credit Protection. Enacted in 1979, the law stipulates that all consumer loan agreements written after October 1, 1982, be written in language which will, "enable the average consumer, who makes a reasonable effort under ordinary circumstances, to read and understand the terms of loan documents without having to obtain the assistance of a professionals" (§1121).

The Law is limited to loan documents and thus does not apply to credit sale or lease documents. The Plain Language Law includes the following features:

- it relies exclusively on the Superintendent for a challenge of any loan document thought to be in violation;
- language required by any federal or state document is excluded; in practice this includes many loan documents such as those issued by the Maine State Housing Authority; and
- loan documents can be submitted, along with a \$25 fee, to the Bureau for certification.

The following is a representation of the total fees collected and the number of documents certified in each of the past six fiscal years:

	Filing fees received	Number of documents reviewed	
1980	\$ 50	2	
1981	175	7	
1982	1,575	63	
1983	4,900	196	
1984	1,700	68	
1985	2,100	84	

Staffing for the administration of this law is provided by the Deputy Superintendent who reviews each document. The Superintendent oversees this process and is responsible for any enforcement actions taken by the Bureau. STATUTORY

36.

Amend the Plain Language Law to require that consumer leases be written in plain language to help ensure that consumers understand the terms of their lease.

ADMINISTRATIVE 37.

Develop model Plain Language forms credit for sales encourage the voluntary use these forms by the creditor industry; report to Committees on Audit & Program Review and Business & Commerce by February 1, 1987.

Maine's Plain Language Law requires that all consumer loans be written in plain language. However, when the Plain Language Law was enacted, it did not include other types of consumer credit transactions, such as credit sales and leases.

In reviewing the two types of credit transactions not included in the Plain Language Law, the Committee determined that:

- consumer leases are increasing in popularity and tend to be written in language which is quite complicated for the average consumer to understand; and
- most consumer credit sales are less complicated.

Accordingly, the Committee finds that the different degrees of complexity require two different approaches.

The complexity of consumer leases requires their inclusion under the law, and the Committee recommends that this change be made. However, credit sales are simpler and can be addressed by encouraging voluntary compliance.

To accomplish this, the Committee recommends that the Bureau develop a model credit sales form which is written in plain language. Furthermore, the Committee recommends that the form be distributed to the creditor industry to encourage voluntary use and that a report be submitted to the Committees on Audit & Program Review and Business & Commerce by February 1, 1987.

In making this recommendation, the Committee intends to facilitate consumer understanding of the documents used in credit transactions.

# Insurance Premium Finance Company Act

The Insurance Premium Finance Company Act (IPFCA) functions as another of the programs administered by the Bureau of Consumer Credit Protection, and exists to provide legal protections to consumers who seek to finance insurance premiums.

The law was enacted in 1975 and coincided with the enactment of the Consumer Credit Code and the creation of the Bureau of Consumer Credit Protection. The original law applied to both businesses and consumers. However, in 1983, businesses were excluded to keep the focus on consumers. The Committee finds that significant features of the Insurance Premium Finance Company Act are similar or identical to the provisions of the Consumer Credit Code.

The Insurance Premium Finance Company Act is administered in large part through the Bureau's examination process. Recent results of this examination process show the following:

<u>FY</u>	Licensees <u>Examined</u>	IPFCA <u>Violations</u>	IPFCA <u>Restitutions</u>
1983	16	75	\$ 1,473
1984	0	0	\$ 831 <b>*</b>
1985	. 5	3	\$ 20

<sup>\*</sup>Relates to results of previous examinations.

The number of companies licensed under this Act has declined from 18 in 1983 to the present figure of 13.

STATUTORY 38.

Repeal the Insurance Premium Finance Company Act because most of the law is duplicative. Relocate the unique provision to the Consumer Credit Code.

During its review of the Insurance Premium Finance Company Act (IPFCA), the Committee determined that it is strikingly similar to the Consumer Credit Code in purpose, content and structure. The principal difference is that the IPFCA singles out the regulation of insurance premium finance transactions whereas the Consumer Credit Code does not delineate such specific industry transactions.

The Committee finds that the protections afforded by IPFCA are contained within the Consumer Credit Code with one exception: a ceiling on allowed finance charges. The Committee determines that this provision of the IPFCA is unique and important and should be relocated to the Code.

Therefore, the Committee recommends that the Insurance Premium Finance Company Act be repealed because most of the law is duplicative and that the unique provision be relocated to the Consumer Credit Code.

# Home Repair Financing Act

STATUTORY

Repeal the Home Repair Financing Act because most of the law is duplicative. Relocate unique provisions to the Consumer Credit Code.

Maine statutes currently contain a section referred to as the "Home Repair Financing Act" (9 MRSA  $\S\S3721-3753$ ). This set of statutes was enacted in 1965 to regulate those in the home repair profession who offer their own financing. The act has three principal features:

- it imposes disclosure requirements upon home repair financers;
- it limits contract terms; and

39.

 it requires licensure of those home repair professionals who offer financing of their own work.

The first two items are already covered by Maine's Consumer The Committee finds that the Consumer Credit Code Credit Code. more comprehensive in ensuring these same protections. Apparently, the duplication occurred when the Home Repair Financing Act was not repealed upon enactment of the Code in At that time, there was uncertainty whether the Home Repair Financing Act contained provisions which were not covered by the Code.

The Superintendent of the Bureau of Consumer Credit Protection has reviewed the Act and concludes that there is only one provision which is not duplicated by the Code. The Act requires disclosure of the status of the professional's workers compensation status.

To collect additional information, the Committee surveyed the ten states that have adopted Consumer Credit Codes similar to Maine's. This survey indicates that:

- none of these states have a separate set of statutes to regulate home repair finances; and
- home repair financing falls under the provision of their existing Consumer Credit Codes.

Therefore, the Committee recommends that the Home Repair Financing Act be repealed because most of the law is duplicative. To ensure continued consumer credit protection, the Committee also recommends that unique provisions be relocated to the Consumer Credit Code.

#### DESCRIPTION

State regulation of the insurance industry began in 1868 when the position of the state Bank and Insurance Examiner was established. Two years later, in 1870, the dual examination function was split into two separate offices, one for Banking and one for Insurance. The Office of Insurance Commissioner name change in 1959 becoming underwent Insurance the Department. Finally, in the state government reorganization that took place in the early 1970's, the agency was renamed the Bureau of Insurance and placed within the newly created Department of Business, Occupational and Professional Regulation.

The Bureau receives administrative, budgetary and personnel services from the Department of Business, Occupational and Professional Regulation. The Commissioner of the Department acts as a liaison with the Governor and is responsible for ensuring that the Bureau fulfill its statutory mandate.



The Bureau of Insurance exists to administer the statutory intent of Titles 24 and 24-A. These statutes seek to regulate state authorized insurance companies with the ultimate regulatory goal of protecting the public. To accomplish this goal, the Bureau is empowered to regulate the insurance industry through the licensure of individuals: agents, brokers, The Bureau also administers the licensure adjusters. companies. This licensure process is a vehicle to ensure public protection for institutions such as insurance companies, rating organizations, non-profit hospitals, health service organizations automobile road service organizations. In FY 1985, the Bureau licensed 1557 individuals and a total of nine companies.

Another important tool used by the Bureau to protect the public, is the review and approval process required for insurance rates and policies written in the State of Maine.

The chief executive officer of the Bureau is the Superintendent who is appointed by the Governor for a five year term. The Superintendent's position is the only Bureau position funded from the General Fund. In FY 1985, the Bureau had 45 authorized full-time positions, and had total expenditures of \$1,366,714.

The Bureau is divided into seven administrative units; five of which are line divisions. The other two functional divisions, that of actuarial and legal, provide services to the line divisions on an as-needed basis. The following is a brief listing of the line divisions and their primary responsibilities and current authorized staff levels:

- Property and Casualty Division: reviews property and casualty rates and policies; four authorized positions;
- <u>Life and Health Division</u>: reviews life and health policies; four authorized positions;
- <u>Consumer Services Division</u>: receives and resolves inquiries, complaints, requests from the public; four authorized positions;
- <u>Licensing Division</u>: issues licences to the individuals and organizations regulated by the Department; seven authorized positions; and

Examination Division: examines insurance companies and institutions for overall financial solvency and compliance with state law, reviews the application of companies who intend to sell insurance and administers the Self-Insurance Regulatory Program; 18 authorized positions.

In addition, the Bureau is comprised of several Associations and Boards:

- Maine Self-Insurance Guarantee Association: provides a financial mechanism for covering the default of a self-insurer;
- Maine Life and Health Insurance Guaranty
   <u>Association</u>: provides a financial mechanism
   for covering the default of those insurers
   offering life and health policies;
- Maine Insurance Guaranty Association: provides a financial mechanism for covering the default of those insurers offering property and casualty policies;
- Life Agent Examination Advisory Board: advises the Superintendent regarding the content and administration of life and health agents examinations; and
- General Lines Agent Examination Advisory
  Board: advises the Superintendent of the
  content and administration of property and
  casualty agents examinations.

recent years, the Bureau of Insurance has been substantially reorganized. A reorganization in 1984 resulted in the creation of 23 authorized positions. To provide adequate for these positions, the Legislature created a funding mechanism which levies various assessments on insurance companies doing business in the State of Maine. This assessment process adjusts up or down according to the financial needs of the Bureau. When combined with recent license fee increases, the implementation of this funding mechanism provides the Bureau with effectively carry out its regulatory funds to responsibilities.

The impact of the new funding mechanism is illustrated by Table 1.

TABLE 1.

FISCAL YEAR	REVENUES	PERSONAL SERVICES EXPENDITURES	TOTAL EXPENDITURES	ENDING BALANCE	
1979	\$ 385,639	\$ 253,799	\$ 478,826	\$ 500,829	
1980	707,962	323,081	736,773	472,018	
1981	509,940	462,208	716,884	265,238	
1982	1,370,270	546,173	753,600	881,969	
1983	628,820	524,971	716,000	795,371	
1984	1,415,144	524,112	855,269	1,355,205	
1985	817,981	749,488	1,366,714	718,634	
Projected					
1986	\$1,392,700	\$1,217,366	\$1,706,716	\$ 404,618	
1987	1,384,200	1,278,234	1,742,034	46,784	

FINDING 40.

The Committee finds that the inability of the Bureau of Insurance to attract and retain individuals for certain highly specialized professional positions is a serious problem which significantly inhibits the Bureau's effectiveness.

During its review of the Bureau of Insurance, the Committee found that over the course of the past five years, the Bureau has been unable to attract and retain individuals to fill many of the professional positions. The Committee finds that the Bureau's inability to attract and retain essential staff has coincided with a period of crisis in the insurance industry.

Because of these personnel problems, the Bureau has not been able to adequately respond to many of the critical issues affecting today's insurance market such as soaring rates and the unavailability of many liability policies.

The Bureau's personnel problem is most evident within the Examination Division. This Division is currently unable to fill more than 25% of its professional positions. Also, there is no professional staff member within that Division who has been there longer than a year and a half.

This situation persists despite continued recruitment efforts by the Bureau and the Department of Personnel. Several thousand dollars have been spent on advertising for these positions in recent years with no positive results.

The Committee finds that one cause of this problem lies in the inherent limitations of the Hay Point System which is used by the Department of Personnel to determine the pay range of a particular position. The criteria for this system focuses on a comparison with other similar state jobs and does not provide for the impact of salaries paid in the private sector.

Testimony received indicated that there appear to be a number of positions in Maine State government which require sophisticated financial expertise, for which the Hay System does not provide salaries which are competitive with those offered in the private sector. According to the Department of Personnel, many of the vacant positions within the Bureau of Insurance fall into this category.

The Department of Personnel holds that the statutory mandates of the Hay System prohibit them from being more flexible in reclassifying particular positions to a higher pay range.

The Committee recognizes that the situation is somewhat unusual in that, unlike many State agencies which depend on the General Fund, the Bureau has the necessary dedicated revenues to pay competitive salaries but cannot obtain authorization through current state law to do so.

In making this finding, the Committee recognizes that the Bureau's difficulty in filling these positions significantly impairs their ability to adequately carry out their regulatory responsibilities. If necessary, the Committee intends to develop a recommendation to solve the Bureau's personnel crisis for consideration by the 112th Legislature. The Committee is still actively considering the full realm of reasonable solutions and is not, at the time this report is being finalized, prepared to issue a final recommendation regarding this issue.

ADMINISTRATIVE 41.

Develop an intake form for the recording of complaints and inquiries received by telephone, to ensure consistency.

The Consumer Services Division is that part of the Bureau which receives and resolves consumer inquiries and complaints. Many of the 3,236 complaints and inquiries handled by the Division in FY 1985 were received by telephone.

The Committee determined that Division personnel initially record these complaints/inquiries on blank paper. Specific information about each phone call is then transferred into a log book. A file is opened on each complaint and/or inquiry which has not been resolved during the initial phone conversation.

On occasion, certain complaints and inquiries received by telephone are handled by other Divisions within the Bureau. These complaints/inquiries are then forwarded to the Consumer Services Division for further action and subsequent entry into the appropriate logbook.

The Committee finds that this practice may occasionally result in the inconsistent recording of initial information by personnel outside of the Consumer Services Division. The Committee further finds that more consistency could be achieved through the development of an intake form for Bureau wide use.

Therefore, to ensure consistency, the Committee recommends that the Bureau develop an intake form for the recording of complaints and inquiries received by telephone.

ADMINISTRATIVE 42.

Develop a series of outreach priorities. Report to the Committees on Audit & Program Review and Business & Commerce by February 1, 1987.

The Consumer Services Division is responsible for processing and resolving complaints and inquiries from consumers regarding insurance matters. During its review, the Committee determined that virtually no time is spent outside of the office in outreach activities.

In the past ten years, several such activities have been conducted with unsatisfactory results. In brief, these activities were as follows:

- Advertised visits by Division personnel to public locations in Portland and Bangor. These visits were conducted by the Division staff on a weekly basis and were intended to provide the public with the opportunity to ask questions about insurance. In the beginning these visits were well attended with public participation then dropping off to the point where one citizen would stop by during the whole day. Instituted in 1972, the program was discontinued in 1974 because the expense did not seem warranted in lieu of the low public turnout;
- Telephone Hotline. During the early 1980's, the Division maintained a toll free hotline for consumer inquiries and complaints. The hotline was discontinued several years ago because of the following reasons:
  - inappropriate use by citizens wanting information about state government;
  - inappropriate use by insurance agents registering complaints; and
  - inappropriate use by citizens with less than substantive concerns regarding insurance matters.
- Publications. The Bureau's overall effort to produce publications containing public information about insurance has been sporadic. Several publications have been published by the Bureau in the past ten years but most of these now appear to be out of date. The most relevant and useful Bureau publications appear to be the various insurance comparison reports which are updated annually by the actuarial staff. The Consumer Services Division also distributes several up-to-date insurance publications prepared by the U.S. Department of Health and Welfare.

The Committee further found that the Bureau currently relies upon an informal network of outside agencies and organizations to funnel public inquiries and complaints to the Consumer Services Division. This network includes the following:

- Attorney General's office;
- Private attorneys;
- Individual agents;
- Pine Tree Legal;
- Northeast Combat;
- Legislators; and
- Congressional Offices.

By looking at other states, the Committee determined that many have insurance departments with a more vigorous outreach effort than currently exists in Maine.

The Committee finds that given the complicated nature of insurance transactions, consumer complaints and inquiries matters should active outreach regarding these have an component. Recommendation #43 recommends that the currently vacant position of Contract Examiner be filled and utilized in an outreach capacity. The Committee finds a further need for the Bureau to develop a series of outreach priorities which will serve as a basis for the future planning and development of this function.

Therefore, the Committee recommends that the Bureau develop a series of outreach priorities and report to the Committee on Audit & Program Review by February 1, 1987.

#### ADMINISTRATIVE 43.

Make every effort to fill the position of Claims Examiner within the Consumer Services Division to ensure effective outreach services.

The Consumer Services Division exists to process and resolve any consumer complaints and inquiries received by the Bureau. In FY 1985, the Division processed a total of 3236 complaints and inquiries. Currently the Division has four authorized positions:

- Supervisor;
- 2 Claims Examiners; and
- Clerk Steno III

During its review, the Committee found that one of the Claims Examiner positions has not been filled since 1971. Due to competing demands, the filling of this position has not been a Bureau priority.

The Committee finds that outreach programming is important to fulfill the public's need for insurance information. For example, the Committee received testimony from the Maine Committee on Aging which illustrates the acute needs of Maine's elderly for information and assistance regarding insurance matters.

In keeping with its conclusion that the Consumer Services Division needs to increase its outreach function, the Committee recommends that the position of Claims Examiner be filled and utilized immediately in an outreach capacity.

STATUTORY 44.

Deauthorize the position of Clerk-Typist I because it is no longer needed.

During its review, the Committee determined that there is an authorized position of Clerk Typist I in the Licensing Division which has been vacant for a number of years. The Division Supervisor was under the impression that this position had been deleted years ago. The Bureau does not plan to have it filled. The Committee finds that this position is unnecessary.

Therefore, because this position of Clerk-Typist I is no longer necessary, the Committee recommends that it be deauthorized.

ADMINISTRATIVE 45.

Require that future examination reports are signed by the Division Director and the actuary to increase staff accountability.

The Examination Division is responsible for conducting examinations of all insurance companies licensed to do business in Maine. As a matter of practicality, the Bureau only examines those 30 companies which are based (domiciled) in Maine. For the 671 licensed out-of-state (foreign) companies, the Bureau utilizes the examination conducted by the originating state, as well as their own review of the company's annual statement.

To accomplish the examination of a domiciled company, which is required by law at least once every five years, the Division conducts an extensive on-site review of the financial and operational components of a company. The overriding purpose of the examination is to establish the current financial stability of the company and its ability to meet future obligations.

The results of the examination process are summarized by report Division а form. These reports recommendations made by the examining team and are presented to the board of directors of the examined company. The board has the right to challenge any of the contents or vote to formally accept the report as written. Formal acceptance of the report the board's decision indicates to implement the itemized recommendations.

The Committee determined that current Bureau policy requires that the report be signed by the on-site examining team, which usually consists of several examiners of differing ranks. The Committee also found that other division personnel often play a significant role in the development of the report, but that their involvement is not currently indicated through signature.

Specifically, many examinations utilize the services of one the Bureau actuaries to develop sophisticated projections ο£ regarding the adequacy of a particular company's These projections can have significant impact on the practices. overall contents of the report. The Committee finds that involvement is crucial and needs to be actuarial clearly attributed to the report.

The Committee also determined that all examination reports are routinely reviewed by the Division Director prior to submission to the company. The Committee finds that this review is an important contribution and also needs to be clearly indicated by signature.

Therefore, the Committee recommends that examination reports be signed by the Division Director and actuary to increase staff accountability.

ADMINISTRATIVE 46.

Develop a plan for improving the administration of the self-insurance regulatory program because present administration is inadequate to ensuring effective and responsive regulation. Report to the Committees on Audit & Program Review and Business & Commerce by Feb. 1, 1987.

The Examination Division is currently responsible for the administration ο£ the self-insurance regulatory program. Transferred to the Bureau in 1981, this program provides employers with the opportunity to offer their own Worker's approximately Compensation policies. There are 60 licensed self-insurers in Maine, a figure which has held steady in recent years; the four to five new applicants that are licensed each year are counter balanced by an equal number of dropouts.

To become self-insured, an employer must submit a licensure application which demonstrates financial solvency and the capacity to cover future claims. The licensure criteria are specified by statute and require the applicant to submit a great deal of information; all of which requires careful scrutiny by the Division.

The Committee has determined that, as with other regulatory responsibilities of the Bureau, certain factors have inhibited the Bureau's ability to effectively administer the self-insurance regulatory program:

- the Bureau has experienced significant difficulty in filling the professional positions needed to administer this program;
- the Bureau has not been able to acquire or develop adequate computer softwear programming; and
- since 1981, the Bureau has received little or no specific funding for this program.

As a consequence of these deficiencies, the Bureau has not been able to develop a desirable framework for the administration law. The Committee found that although responsibility for administering the self-insurance regulatory program has been assigned to the Examination Division, practice, it has been parceled out on a day-to-day basis to whichever Bureau employee is most available at that time.

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In FY 1985, the Life and Health Division reviewed a total of 10,068 forms for approval, and subsequently disapproved 548 of them for use in Maine. Currently, the Division has four authorized positions.

The Committee determined that the present review process for Life and Health Contract forms relies extensively on an examiner's knowledge of the statutes. The Committee also determined that there is no set of guidelines or stated Division policy for the review of these forms other than the use of the Maine Insurance Code.

In reviewing the present process, the Committee finds that because of the length and complicated nature of the Code, there is potential for varying individual interpretation and simple lack of familiarity with all relevant sections on the part of the examiner. The Committee also finds that the potential for inconsistency in form and rate review could be significantly reduced by the development of a non-binding checklist which summarizes the requirements of the Maine Insurance Code.

Therefore, to ensure consistency, the Committee recommends that the Bureau develop a checklist to be used as an informal tool in the review of Life & Health Insurance forms and rates. The Committee also recommends that this checklist be submitted to the Committee on Audit & Program Review by February 1, 1987.

ADMINISTRATIVE 48.

Develop guidelines for the review of Property and Casualty form filings to help ensure consistency. Submit these guidelines to the Committee on Audit & Program Review by February 1, 1987.

The Property and Casualty Division has the responsibility of ensuring that insurance covering personal (private automobile and homeowners) and commercial (professional liability) lines is offered through policies which conform to the specifications of the Maine Insurance Code. To accomplish this task, the Property and Casualty Division reviews each policy which is submitted to the Bureau, to review for proper form and adequate rates.

In FY 1985, the Property and Casualty Division reviewed a total of 2,779 forms. Of this total, an estimated 10-15% required modification and 2-3% were ultimately disapproved.

The Committee determined that the Property and Casualty statutes do not contain many provisions which either require or prohibit specific content of these types of insurance contracts. Instead, these statutes give considerable latitude to the regulator to measure policies against time tested practices and standards common to the property and casualty insurance industry.

Committee also determined that the Property Casualty Division does not have a clearly defined procedural guidelines or a uniform set of criteria by which an analyst can review form filings. Presently, the Division relies on an evolving, case by case consideration of the merits of each The Committee finds that the lack of any clearly understood set of policy quidelines is detrimental consistent and efficient review of property and casualty forms.

Therefore, the Committee recommends that the Bureau develop guidelines for the review of Property and Casualty form filings to help ensure consistency. The Committee further recommends that these guidelines be submitted to the Committee on Audit & Program Review by February 1, 1987.

ADMINISTRATIVE 49.

Develop a plan to reduce the backlog of licensure applications to ensure a more efficient process. Submit this plan to the Committee on Audit & Program Review by February 1, 1987.

Current Maine law specifies an exacting set of criteria which must be met by any insurance company desiring a license to do business in the State for the first time. The purpose of this licensure process is to ensure that a company be in sound financial condition and able to meet the potential obligations of future claims.

The Committee finds that this licensure process is essential to protecting the interests of the Maine public. Given the crucial nature of this task, the Committee also finds that a tremendous investment of time and resources is required from both the applicant and the Bureau to complete the process.

During its review, the Committee determined the Bureau has a current backlog of 228 pending applications. The Committee found this backlog is attributable to several factors:

- many of the professional positions within the Examination Division have not been filled for a number of years, inhibiting the Bureau's ability to process the applications more quickly; and
- a lack of adequate computer softwear programming slows down the Bureau's ability to efficiently review applications.

The finds that this backlog of pending Committee applications is excessive and restricts the ability of sound insurance companies to do business in Maine. The Committee insurance companies to do business in Maine. recognizes the factors which handicap the Bureau's ability to significantly reduce this backlog, and has personnel and computer programming problems addressed the separate in recommendations contained in this report. Having taken these actions, the Committee sees a need for the Bureau effectively coordinate the use of its resources.

Therefore, the Committee recommends that the Bureau develop a plan to reduce the backlog of licensure applications to ensure a more efficient process. The Committee further recommends that this plan be submitted to the Committee on Audit & Program Review by February 1, 1987.

ADMINISTRATIVE 50.

Require that Central Computer Services and the Bureau of Insurance develop adequate computer programs. Report to the Audit & Program Review Committee by September 1, 1986.

The Bureau of Insurance has a unique and complicated set of regulatory responsibilities. In recent years, the Bureau has experienced some difficulty in obtaining and developing computer programming which will adequately accomplish some of the Bureau's sophisticated analysis in a more efficient fashion. Without this programming, the Bureau has conducted these reviews manually. The Committee finds that this situation is time consuming and inefficient.

Central Computer Services has worked with the Bureau in the past to improve this lack of adequate programming. In recent years, because of Central Computer Services' own personnel problems and the uniqueness of these programming needs, this collaborative effort has slowed down.

result of these inefficiences, the Bureau accumulated a significant backlog of pending applications and has inefficient administrative structure. Therefore, Committee recommends that Central Computer Services and the Bureau of Insurance work together towards the development of programming. To accomplish adequate this, the Committee recognizes that Central Computer Services needs to strengthen its The Committee also recommends that these agencies personnel. report to the Audit & Program Review Committee with the results of this effort by September 1, 1986.

STATUTORY

51.

Continue the Maine State Museum under the provisions of the Maine Sunset Law.

The Maine State Museum has a statutory mandate to preserve and exhibit the environmental and cultural richness of the State (3 MRSA  $\S507$ , sub  $\S8$  (A)). The present Museum contains exhibitions which emphasize the natural and social/political history of Maine.

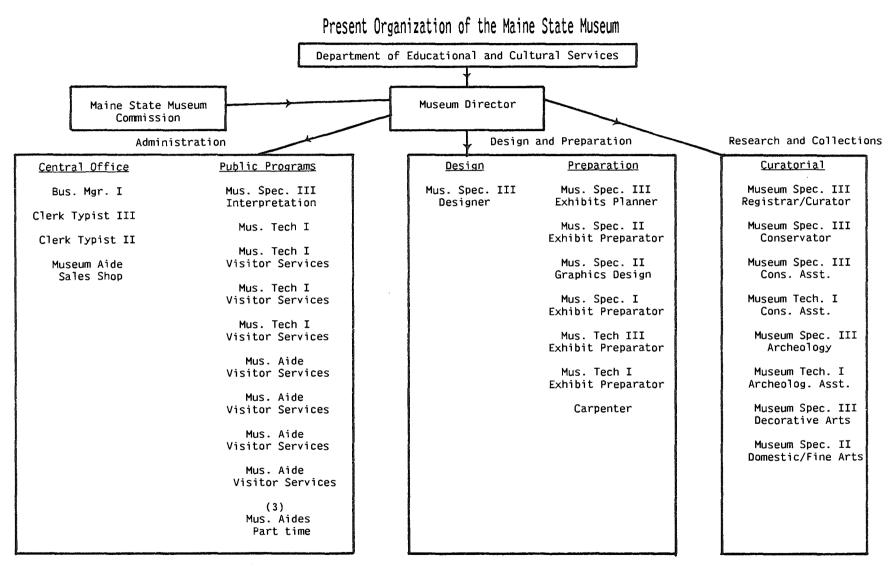
The Museum was created in the 1830's when the Legislature authorized cabinet space in the State House for the exhibition of natural history items. Up until the 1960's, the Museum continued to provide various exhibits in the State House. During this time period, the Museum was housed organizationally within several different agencies and departments.

In 1965, the Legislature removed the Museum from the jurisdiction of the Parks and Recreation Commission and established it as an independent agency. In that same year, Maine voters approved a 4.5 million dollar bond issue for a cultural building to house the Museum, the Maine State Library and the Maine State Archives. In 1971, the Museum moved into its new facility and also became part of the newly organized Department of Educational and Cultural Services.

The Museum has its own policy making commission which is composed of 15 members appointed by the Governor for six year terms. The Commission is statutorily empowered to administer those applicable statutes, develop policy, prescribe and delegate duties of the Director, and make recommendations to the Legislature regarding the functioning of the Museum.

The Museum submits its initial budgetary and personnel requests through the Department of Educational and Cultural Services. The Commissioner of that Department also provides a liaison with the Governor. In FY 1985, the Museum had 27 authorized full-time positions. Diagram 2 illustrates the present structure of the Museum:

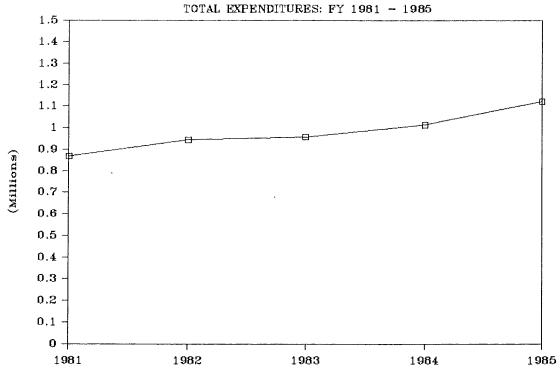
#### DIAGRAM 2



In FY 1985, the Maine State Museum had expenditures of \$1,288,738. Of this figure, \$1,096,738 were derived from the General Fund, \$175,000 from the Federal government and \$117,000 from dedicated revenues. The proportions reflected by these numbers have been consistent over the past several years.

Graph 2 provides an analysis of the total expenditures for the most recent five-year period. This graph illustrates a steady increase in Museum expenditures for that time period.

graph 2 MAINE STATE MUSEUM



The Committee conducted a comprehensive review of the statutory mandate of the Museum and its success in filling that mandate. The Committee finds that the unique history of Maine deserves a highly professional effort to document and exhibit artifacts which illustrate the social and environmental background of the State.

Therefore, the Committee recommends that the Maine State Museum be continued under the provisions of the Maine Sunset Law because the need to preserve and exhibit the environmental and cultural richness of the State of Maine continues to be a relevant priority and that the present Museum is fulfilling that mandate.

STATUTORY 52.

Reorganize the Museum staff to strengthen middle management and increase effectiveness. Report to the Committees on Audit & Program Review and Education by February 1, 1987, with an assessment.

During its review, the Committee determined that the present organization of the Museum needs improvement in several areas.

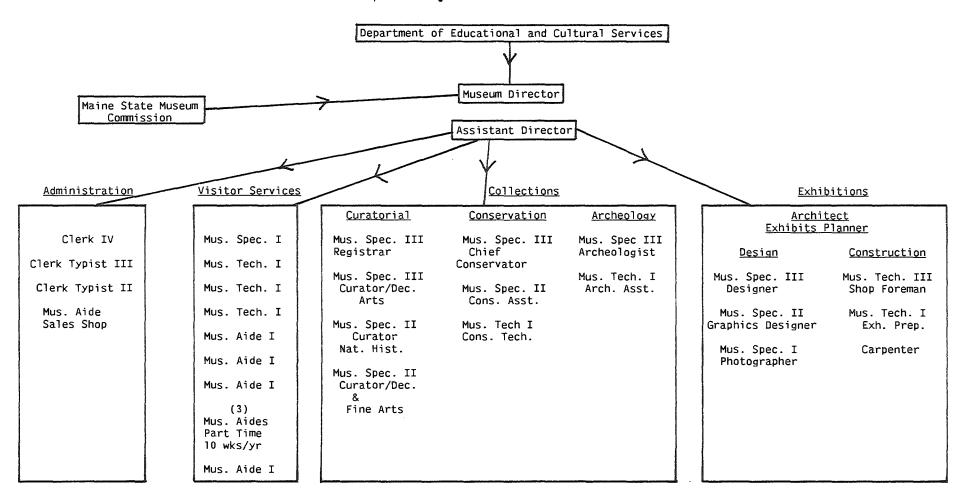
As illustrated in Diagram 2, the Committee found that the different divisions within the Museum report directly to the Museum Director. As a result, the present organizational structure places an excessive set of responsibilities on the Director. Aside from implementing the policy of the Maine State Museum Commission and processing the Museum's budgetary and personnel needs with the Department of Educational and Cultural Services, the Director is now responsible for the daily operation of each line division.

The Committee finds that the administrative demands of the Museum warrant an additional position of Assistant Director. The Committee envisions that this position could be utilized to help the Director to administer the daily needs of the Museum.

The Committee also finds that, because of several recent vacancies, there is an opportunity to redefine these positions to create greater efficiencies and cost savings without significantly altering other currently filled positions. The proposed changes, with the new position of Assistant Director, are as follows:

•	POSITIONS TO BE DELETED		
	Business Manager I Museum Specialist III Museum Specialist III Museum Technician I Other Savings	\$ 22,131 31,013 27,019 17,950 3,806	
	• Sub Total	\$101,919	
	<ul><li>Retirement &amp; other</li><li>State Benefits at</li><li>22% of sub total</li></ul>	22,422	
	• Total Savings	\$124,341	

Proposed Reorganization of the Maine State Museum



0	POSITI	COSTS	
	Clerk IV Architect Assistant Director Museum Specialist I		\$ 17,264 32,219 24,586 19,344
	•	Sub Total	\$ 93,413
	•	Retirement and other State Benefits at 22% of sub total	20,551
	•	Total Costs	113,964
	•	Total savings minus	124,341
	•	Total Costs	-113,964
	•	Total Savings to State of Proposed Reorganization	\$ 10,377

This proposed reorganization (Diagram 3) will realign existing divisions to streamline management decisions and to maximize personnel utilization in the following manner:

### I. Assistant Director

Authorize this position to strengthen middle management; will assume some of the managerial responsibilities for each division;

### II. Administration Division

Eliminate the vacant position of Business Manager I, assign many of those duties to Assistant Director and the newly authorized Clerk IV position. Consolidate the administrative needs of the Museum in one division;

### III. Visitor Services Division

Eliminate the vacant position of Museum Specialist III, assign many of those duties to Assistant Director and the newly authorized Museum Specialist I position. Consolidate the Visitor Services function into one division;

### IV. Collections Division

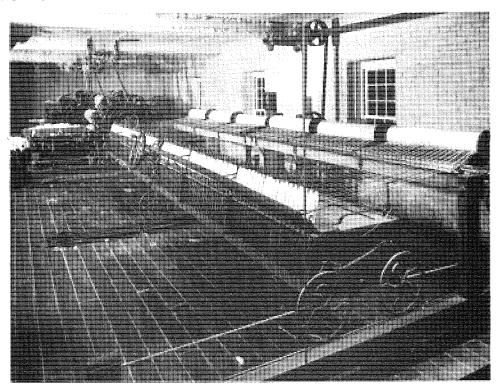
Consolidate the curatorial, conservation and archeological aspects of collections management into one division; and

### V. Exhibitions Divisions

Authorize a new position of Architect to strengthen middle management. Consolidate the design and construction function of exhibition development into one division.

The Committee finds that this reorganization will strengthen middle management, and utilize existing personnel more efficiently, while providing significant cost savings to the State. The Committee further finds that this reorganization will enable the Museum to more effectively work to preserve and exhibit Maine's cultural and environmental history.

Therefore, the Committee recommends that the Museum staff be reorganized to create more middle management positions to achieve greater utilization of current staff resources. The Committee also recommends that the Museum report to the Committees on Audit & Program Review and Education by February 1, 1987, with an assessment of the results of this recommendation.



STATUTORY

53.

Amend the statutes to facilitate the process by which the Museum acquires, disposes and stores artifacts.

Currently, the Museum has a vast collection of historical artifacts in storage. These artifacts have been acquired either through citizen donation or purchase by the Museum.

During its review, the Committee determined the following regarding the Museum's storage of artifacts:

- the process of accepting donated artifacts is a complicated one which requires a great deal of staff time;
- current storage needs of the Museum require approximately 18,500 square feet of space;
- a great many of the artifacts stored by the Museum are duplicative and unnecessary;
- the total storage needs of the collection could be reduced to 8,500 sq. ft. by removing duplicative and unnecessary artifacts without affecting the overall quality of the collection; and
- the present Museum statutes do not specify any process by which the Museum can purchase artifacts nor do the statutes act to define and limit the size of the Museum's storage collections.

The Committee finds that there is a continuing need for the Museum to develop and maintain its storage collection. The Committee also finds that the size of the collection could be significantly reduced and the process of artifact acquisition and disposal be made more efficient by amending the statutes to include the following:

 authorization for the Museum to be able to dispose of unnecessary artifacts by offering them back to the original donor;

- a directive that the Museum shall strive to maintain and upgrade the quality of its collections with regards to the limits of available storage space; and
- authorization for the Museum to apply the funds generated from the sale of unnecessary artifacts towards the acquisition of needed artifacts.

Therefore, the Committee recommends that the statutes be amended to facilitate the process by which the Museum acquires, disposes, and stores artifacts. This recommendation will ensure future savings by the more efficient use of costly and scarce storage space and will encourage the continued development of a valuable Museum collection.

STATUTORY

54.

Require that the Bureau of Public Improvements provide the State Museum and the State Law Library with adequate storage space prior to their relocation from the Burleigh and Nash buildings.

The Committee's review of the Maine State Museum revealed that there is a problem concerning adequate storage for museum artifacts. To state the situation briefly:

- the Museum currently uses the entire Burleigh Building and two barns for storage; all of which are in marginal physical condition;
- the Legislature has appropriated funds for the renovation of the Burleigh building as office space, thus making the eviction of the museum imminent; and
- the Legislature has also appropriated \$750,000 for the construction of a storage facility. This facility has not yet been built. Further plans for this facility appear to be consistently held up by larger issues relating to the future location of other governmental agencies.

The Committee's interest in this issue has been to ensure that the collections of the museum receive adequate storage facilities. The Committee toured the storage locations and became aware of the value of many of the artifacts currently in storage. The conditions under which these artifacts are stored are of concern to the Committee. The Committee finds that although the present storage space is seriously inadequate, the absence of any appropriate alternative is a strong deterrent to moving these artifacts at the present time. Several criteria for adequate storage have been determined by the Committee to be:

- permanence of the facility;
- reasonable consideration of access and growth needs of the museum;
- reasonable security measures; and
- adequate climate controls; humidity and temperature as needed.

In addition to the Museum's storage problems, there is an identical problem with the State Law Library. Currently, the Library is storing valuable materials in the Nash building which is in the State Capital complex. This building is also scheduled for renovation. The Law Library may be moved without any adequate replacement.

The Committee finds that the intent of the legislature to have adequate storage has been clear. Aside from the currently appropriated money for the construction of a storage facility, the legislature appropriated \$500,000 in 1981 for a similar purpose. The storage facility was not built at that time because the money was used by the Governor to cover significant revenue shortfalls.

The Committee finds that because the authorized storage facility does not yet exist, the Maine State Museum and the State Law Library may be moved from their already inadequate storage facilities to ones that are even less satisfactory. The final consequence might be the loss of valuable historical artifacts and written materials; the preservation of which is the statutory mandate of both agencies.

Therefore, the Committee recommends that the Bureau of Public Improvements provide the Museum and the State Law Library with adequate storage space prior to their relocation from the Burleigh and Nash buildings.

FINDING

55.

The Committee finds that the Museum's current request for increased computer capabilities will facilitate the daily functioning of the Museum.

During its review, the Committee determined that like many other state agencies, the Maine State Museum has a need to utilize computers effectively, but that its needs are unique and do not significantly relate to the overall State computer system. Presently, computer use at the Museum is limited to:

- cataloging and analyzing of archeological artifacts through the use of a micro-computer;
- word processing of a limited nature for the central office; and
- several instances of employees utilizing their own personal micro-computers.

The Committee finds that the computer needs of the Museum, while not extensive, do go substantially beyond the services currently available. The Committee determines that the Museum is in need of the following applications:

- Management the Museum Collections than cataloging more responsible for archeological artifacts, over 1,000,000 40,000 natural history artifacts and more artifacts. 30,000 historical Presently, this cataloging is done manually;
- Preservation Records interviews with present Museum staff indicates that present documentation of preservation efforts is inadequate. The Committee finds this type of documentation could be facilitated through increased computerization;
- Scheduling of School Groups The Museum is currently involved in scheduling presentations and tours at the Museum, the Blaine House, the State House and Fort Western. The Committee finds this scheduling has been increasing and could also be facilitated through the use of appropriate computerization;

- Word Processing and Mailings The Museum staff is continually involved in writing numerous articles and papers for professional publication. In addition, the Museum also produces many newsletters and mailings. The Committee finds that all of these activities could be accomplished more quickly and at less cost with adequate word processing functions; and
- Business Records and Budgeting The financial records of the Museum are kept manually on a daily basis. These records are reconciled monthly with printouts from Central Computer Services. As discussed in Recommendation #56, the Museum's need for financial recordkeeping could be improved by increased computerization.

The Committee finds the computerization needs of the Museum could be fullfilled by the purchase of the following equipment:

- 4 IBM-PCs (\$2,500 each, total \$10,000);
- 1 IBM-PC-AT for Collections Management (\$4,500 total);
- 1 Portable PC (\$2,500 total);
- Several letter quality printers as needed (range of \$150 to \$400); and
- l high quality printer (\$1,300 total)

The total for the purchase of this equipment at March 1985 prices is approximately \$19,000. The Museum proposes to purchase this equipment over the next several years.

In its review of this issue, the Committee finds that in order to purchase this equipment, approval is required from the Data Processing Planning Committee within DECS, Central Computer Services and the Bureau of the Budget. The Committee further finds that the computer needs of the Museum are unique and do not significantly impact upon any of the larger computer issues currently being faced by most of Maine State Government.

Therefore, the Committee finds that the Museum's current request for increased computer capabilities will facilitate the daily functioning of the Museum.

ADMINISTRATIVE 56.

Enable the Museum to develop a computerized system which can provide financial information for the Department on a regular basis.

Currently, the Department of Educational and Cultural Services (DECS) is in the process of implementing a computer system which features an active on-line hook-up with Central (CCS). This connection provides updated, Computer Services detailed financial information for each account This link with CCS has been accomplished by the part Department. of DECS which is located in Augusta and by four of the six Vocational Technical Institutes (VTI). Several organizational units within DECS remain unconnected to CCS:

- the remaining two VTI's;
- the Maine State Museum;
- the Maine Commission on the Arts and the Humanities;
- the Maine Historic Preservation Commission; and
- the Maine State Library.

The Committee finds that this connection to CCS will involve a significant monthly cost to the Museum. Currently, the VTI's which are connected to CCS are paying, depending on the size of the institution, \$150 to \$500 monthly. No precise estimate is currently available for the Museum's cost. However the Committee determined that given the size of the Museum, their fee is likely to be under \$150 monthly.

The Committee finds that the potential conveniences to DECS from such a link-up are outweighed by the following factors:

- the monthly costs, while perhaps insignificant to larger agencies, would impact significantly on the Museum's budget and would result in less money being spent on Museum programming; and
- the Museum would not receive much benefit from a direct linkup with CCS.

The current DECS Commissioner indicated his agreement to an alternative approach which requires the Museum and bureaus to submit updated data which could be transferred to the Department's data banks. The Committee finds that this financial data keeping system would meet the Department's needs while avoiding the excessive costs of a direct CCS linkup. Committee recognizes that to accomplish this, the Museum and the cultural bureaus will need to eventually develop their computer facilities: which offset a cost is by increased efficiencies.

Therefore, to reduce unnecessary costs and to facilitate the Department's need for financial data, the Committee recommends that the Museum be enabled to develop a computerized system which can provide financial information for DECS on a regular basis.

FINDING

57.

The Committee finds that the present exhibition policy of the Maine State Museum Commission continues to reflect original legislative intent.

In the Declaration of Policy (27 MRSA §81) contained in the Museum statutes, the Museum is given a broad mandate "to preserve and exhibit the environmental and cultural richness of the state."

In its interpretation of that mandate, the Maine State Museum Commission has consistently placed an emphasis on the development of exhibitions and collections which reflect the socio/political and natural history of the State. The Maine State Museum has decided not to branch into the arts field because there are already several private art museums of great distinction in the State. On occasion, the Museum does acquire works of art but only when they relate to the development of a particular exhibit or historical theme.

During its review, the Committee found that the Commission's decision not to compete in the arts field is an appropriate one that clearly reflects legislative intent of the current statutes. The Committee also found that there is no compelling need for the Museum to emphasize art exhibitions.

Therefore, the Committee finds that the present exhibition policy of the Maine State Museum Commission continues to reflect original legislative intent and should not be altered.

Therefore, in order to encourage outreach programming at the Museum, the Committee recommends that such plans be developed and the results be reported to the Committees on Audit & Program Review and Education by February 1, 1987.

# Maine State Commission on the Arts and the Humanities

STATUTORY

60.

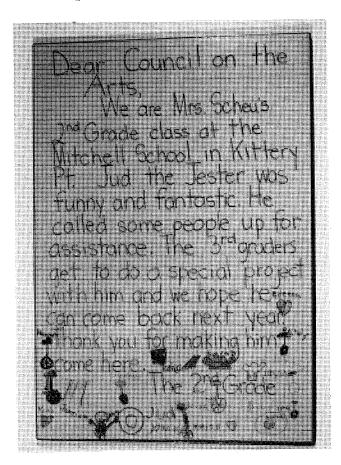
Continue the Maine State Commission on the Arts and the Humanities under the provisions of the Maine Sunset Law.

The Maine State Commission on the Arts and the Humanities was created by the Legislature in 1966. Prior to that, arts and other cultural concerns were handled by the Arts Commission, an advisory board created by the Governor in 1933, and by another body known as the Governor's Council on Arts and Culture. The later agency recommended that the Governor create a permanent organization for the arts in state government. The Commission was created as an independent agency with policy-making authority. In 1971, the Commission was placed within the newly redesigned Department of Educational and Cultural Services with the Commission retaining its policy-making authority.

As outlined in statute (27 MRSA  $\S404$ ), the Commission is created to accomplish the following objectives:

- Encouragement stimulate public interest and participation in various cultural activities in the state;
- Freedom to encourage cultural freedom of expression;
- Surveys to survey and ascertain the various cultural institutions and activities within the state; and
- Works of Art advise the state on those decisions relating to art acquisitions and commissions.

The Commission is composed of 15 to 21 members. Members are appointed by the Governor for three-year terms. The chairman and vice-chairman are also appointed by the Governor and serve at his pleasure. Commission members are entitled to reimbursement for expenses incurred by attending Commission meetings.



The Commission employs ll staff members. Day to day administrative leadership is provided by the Executive Director. Six of the positions are full time and are funded from the General Fund. Of the remaining positions, one full-time position is federally funded, another is contracted through the New England Foundation for the Arts, two are part-time with different funding sources, and one is a non-paid management intership for graduate students.

Although the Commission is located within the Department of Educational & Cultural Services, the Commissioner does not have authority over daily operations. The Department provides personnel and budgetary services, as well as liaison with the Legislature and the Governor.

The Commission relies on 12 advisory panels which provide expertise in the following cultural areas:

- Artist in Residence;
- community arts;
- crafts;
- dance;
- literature;
- media arts;
- museums;
- music;
- Percent for Art;
- theater;
- traditional arts; and
- visual arts.

These 12 panels, consisting of a total of 80 members, provide peer review for the Commission's deliberations. Upon request, advisory board members do receive reimbursement for expenses. Reimbursement for advisory members is a matter of commission policy and is not established by statute.

To carry out its legislatively mandated objectives, the Commission has three major program areas. The first area provides services and information to individual artists and the general public. Tangible outputs include:

- scheduling of conferences, workshops and meetings;
- publishing of a monthly cultural calendar;
- providing technical and consultant assistance;
- cultivating media exposure;
- developing publications;
- advising on publicity efforts; and
- promoting Maine arts.

The focus of the second area is the awarding of grants and assisting with the development of grant proposals. In this area, the Commission provides financial and logistical support to such programs as:

- Artists in Residence;
- Maine Touring artists;
- Regional Arts;
- New England Foundation for the Arts;
- general grants to cultural institutions; and
- funding for special projects known as Discipline Grants.

The third and final program area, Percent for Art, was authorized by the Legislature in 1979. This program provides that 1% of public building costs can be used to acquire or commission an original work of art. This program has a ceiling of \$25,000 per project and is optional for public schools. In administering this program, the Commission provides support services such as:

- coordinating art advisory selection committees;
- maintaining an ongoing artist slide registry;
- advising artists on selection processes; and
- overseeing contractual arrangements.

The Commission has a variety of state, federal and private funding sources. The Commission's revenues have risen steadily over the past five years, from \$637,535 in FY 1982 to \$834,690 in FY 1985. The Committee found that over the past 5 years, that the General Fund has steadily increased its proportional share of the Commission's total revenues:

#### Revenue source

	State		Federa	1	Private	<u> </u>	<u>Total</u>
1980	\$194,419	29%	\$478,545	71%	\$3,005	*	\$675,969
1981	191,766	29%	477,269	71%	2,113	*	671,148
1982	209,036	33%	428,053	67%	446	*	637,535
1983	257,295	40%	382,400	60%	0	*	639,695
1984	257,286	39%	408,255	61%	5	*	665,546
1985	324,758	39%	509,572	61%	360	*	834,690

<sup>\*</sup>less than 1%

Given the successful manner in which the arts are being provided to the people of the State of Maine, the Committee recommends that the Maine Commission on the Arts and the Humanities be continued under the provisions of the Maine Sunset Law.

STATUTORY

61.

Change the title of the Maine Commission on the Arts and the Humanities to the Maine Arts Commission to accurately reflect the Commission's mandate.

As presently constituted, the Commission deals primarily with programs relating to the Arts. The Committee finds that contrary to its present title, the Commission does not initiate Humanities programming and its overall involvement in such programming is peripheral.

The present title of the Commission reflects its original As in most other states, Maine's Commission was established to be the state vehicle for receiving federal funds the creation of programs which further the arts and Since that time, federal funding sources have moved humanities. away from placing this dual emphasis in one agency. As a result, Commission has never fully developed its humanities programming, because federal funds for that purpose have since been directed to the Maine Humanities Council, which is not a state agency.

In the Committee's review of the Commission, letters requesting certain data were sent to comparable art agencies in other states. Of the 20 states that replied, five had agencies that had "Arts and Humanities" in their titles. The other 15 had titles with only the words "Arts". The Committee finds that these results suggest that many states have decided to reflect the singular function of their arts agencies by deleting any reference to the word, "Humanities".

The Committee also invited both the Commission and the Maine Humanities Council to comment on the appropriateness of the present title. The Commission favored retention of the present title because that title is felt to reflect the true breadth of the Commission's mandate. On the other hand, the Maine Humanities Council strongly asserted that the use of the word "Humanities" in both titles creates a great deal of unnecessary public confusion.

The Committee finds that the total impact of the following factors warrant a change in the present title of the Commission:

- present Commission emphasis on <a href="mailto:arts">arts</a>
  programming;
- the trend among other states to refer to their comparable agency with the word "Arts" without reference to "Humanities"; and
- confusion over the roles of the Commission on the Arts and the Humanities and the Maine Humanities Council.

Therefore, to properly represent the present mission of the Commission and to reduce public confusion over the present roles of the Commission and the Maine Humanities Council, the Committee recommends that the present title be simplified to "The Maine Arts Commission."

STATUTORY

62.

Broaden the criteria for membership on the Commission to increase public representation.

Commission statutes currently specify that Commission membership be "......broadly representative of all artistic and cultural fields, to be appointed by the Governor from among citizens of Maine who are widely known for their competence and experience in connection with these fields" (27 MRSA §401).

The Committee finds that the present criteria limits membership to those individuals with expertise in the arts The Committee also finds that most current Commission field. members do not conform to the narrow statutory criteria. Finally, the Committee determined that membership criteria for other state boards are specified to include a broader representation of total public interest, while striving provide expertise and interest in that particular field.

Therefore, to help reflect present practice and to provide for broad public representation, the Committee recommends that the statutory criteria for membership be changed to emphasize an interest in the arts.

FINDING

63.

The Committee finds that the Commission's proposed reorganization will result in greater efficiencies.

The Commission has been in the process of reorganizing for the past several years. The purposes of this reorganization are to:

- provide needed middle management;
- provide staff stability;
- upgrade certain professional positions to reflect the job requirements so as to attract qualified applicants; and
- acquire needed clerical positions.

This reorganization effort is being accomplished in two stages:

**Stage 1**- Creating the position of Assistant Director to fulfill the need for middle management (approximate cost of \$21,500 to \$29,500); and

**Stage 2-** One proposal which encompasses several changes:

- Moving the current coordinator position for Community Arts within the state personnel system without changing the federal funding;
- Upgrading the current Administrative Assistant's position from range 15 to range 21 (approximate cost \$3,000 to \$5,000);
- Upgrading the three Associate positions from range 21 to range 24 (approximate cost of \$2,500 to \$4,000 for each position); and
- Creating a Clerk-Typist III position at range 12 (approximate cost of \$12,000 to \$16,500).

With some modification, the first stage has received approval and has been implemented. This new middle management position has been authorized as a Senior Associate, range 26. Although the Commission did not receive the title of Assistant Director, with the higher pay range, the Committee finds the Senior Associate will enable the Commission to carry out its programs more efficiently.

The second stage of reorganization is presently in the process of negotiation and assessment with the Departments of Educational and Cultural Services and Personnel.

The Committee finds that in recent years, the Commission has continued to develop and refine high quality programming in the arts for the people of Maine. The Committee further finds that the Commission's proposed reorganization will enable them to more efficiently administer this programming.

FINDING

64.

The Committee finds the Maine State Commission on the Arts and the Humanities to be a state agency which consistently utilizes limited state funding to produce exemplary programming for Maine's citizens.

diverse Maine is a state with a rich and cultural background. Over the years, Maine citizens have expressed a growing interest in learning more about the arts which reflect The Maine State Commission on the their cultural background. and the Humanities represents the response from state government to further stimulate and encourage this interest in arts in the State of Maine.

The Committee's review finds that the Commission is functioning effectively. The Commission represents an exemplary use of limited state resources. It is the purpose of this finding to acknowledge the excellence and importance of the Commission's work in providing programs of interest to Maine's public.

Therefore, the Committee finds the Maine State Commission on the Arts and the Humanities to be a state agency which consistently utilizes limited state funding to produce exemplary programming for Maine's citizens.

FINDING

65.

The Committee finds that Commission members should receive reimbursement for expenses incurred in fulfilling their Commission responsibilities.

Commission members are statutorily entitled to reimbursement for expenses incurred in fulfilling Commission responsibilities (5 MRSA §12004). However, since the Commission's inception, reimbursement for members has not been approved as a part of the final budget submitted to the Legislature.

In its review, the Committee found that the Commission has continually requested reimbursement in its original budget proposals. These budget requests are submitted through the Department of Educational and Cultural Services to the Bureau of the Budget. During this budgetary review process, these requests for reimbursement have been deleted; consequently these funds have never been legislatively appropriated.

Because funds have never been appropriated, Commission members have not generally requested reimbursement. When Commission members request reimbursement, it is paid to them from other Commission accounts. The Committee finds that the practical effect of this practice is to deplete funds available for program implementation. In recent years, the Commission has been providing approximately \$3,000 annually for reimbursement expenses.



The Committee determines that full annual reimbursement costs for an 18 member commission would be approximately \$12,000 to \$13,000.

The Committee finds that the Commission members should receive reimbursement for expenses incurred in fulfilling their Commission responsibilities and encourages the Department of Education and Cultural Services to accomplish this goal.

STATUTORY

66.

Continue the Advisory Commission on Radioactive Waste under the provisions of the Maine Sunset Law.

The Advisory Commission on Radioactive Waste was first known as the Low-Level Waste Siting Commission and was created by the Legislature in 1981 to deal with the emerging problem of low-level radioactive waste. Low-level waste consists of articles of apparel worn by workers, tools and other implements which have not been exposed to a high level of radiation.

The original 11 member Commission consisted of the Commissioners of Department of Environmental Protection and Department of Human Services, the State Geologist, designated legislators, and low-level waste licensees.

The Commission spent \$5,188 to support its activities in FY 1984 from the Low-Level Waste Siting Fund. The Fund was to be used soley for Commission activities and revenues were generated by charging a service fee of \$10 per cubic foot on all radioactive waste generated in Maine and shipped to commercial disposal facilities. Ninety-five percent of the Fund came from Maine Yankee, the balance came from the Portsmouth-Kittery Shipyard, and Jackson Lab.

The first session of the 112th Legislature created the Advisory Commission on Radioactive Waste, (38 MRSA §§1453 & 1454) the successor to the former Low-Level Waste Siting Commission. The new Advisory Commission has 13 members: the previous 11 members plus two public members.

The purpose of the Advisory Commission is broader than that of the Low Level Waste Siting Commission. Its charge is to advise the Governor and the Legislature on the safe management, transportation, storage, and disposal of all types of radioactive waste, including not only low-level waste but also high-level waste. High-level waste is defined as the nuclear fuel itself (Uranium 235) and its degraded products once the fuel is spent.

The former Low-Level Waste Siting Fund has been transformed into the Radioactive Waste Evaluation Fund. The law passed in the First Session of the 112th Legislaure sets a ceiling for the Fund of \$100,000 for FY 1986 and \$150,000 for FY 1987. The revenues for this fund are generated in much the same way as the original fund.

In FY 1985, the Advisory Commission on Radioactive Waste had two authorized positions: Clerk Typist II and Environment Services Specialist IV.

The Committee finds that since its inception, the Commission has met frequently to address its statutory mandate. Given the recent concerns about the disposal of radioactive waste in the State of Maine, the Committee finds a need for an agency solely devoted to this issue. Therefore, the Committee recommends that the Advisory Commission on Radioactive Waste be continued under the provisions of the Maine Sunset Law.

#### Maine Sardine Council \_\_\_

STATUTORY

67. Continue the Maine Sardine Council under the provisions of

the Maine Sunset Law.

The Maine Sardine Council was established in 1951 as an independent state agency authorized by the Sardine Tax Law (36 MRSA, Chapter 713, §§4691-4700). Its purpose is to promote, The primary develop and stabilize the Maine sardine industry. responsibilities of the Sardine Council are to foster and promote methods production, packing, merchandising better ο£ advertising in the industry through publicity, sales promotion, quality control, export market expansion, market and technical research and to develop, cooperate with and enter into joint federal agencies, national with state and international trade and other service organizations.

The Council presently consists of seven members (there can be no more than nine nor less than seven) serving five-year terms. Members are sardine packers operating within the state, appointed by the Commissioner of Marine Resources. The Council is staffed by four full-time, permanent employees: an Executive Director, Food Technologist, Food Inspector II, and Clerk Steno II. Seasonal employment includes a Quality Grader I, and a Data Control Clerk; each hired for various lengths of time.

Additionally, the Council reimburses the Department of Agriculture for two full-time permanent employees; a Food Inspector Supervisor I and a Sardine Quality Grader II.

The Council is funded by dedicated revenue in the form of a 30 cent tax on each case of sardines. In FY 1985, the Council received \$168,501 in revenues and expended \$198,692. The Council was able to offset this shortfall in revenues by utilizing a balance brought forward. In recent years, the Council has experienced some financial distress since its revenues are so closely tied to the health of the sardine industry. The overall annual catch of the industry has been improving thus it is anticipated that future revenues will keep pace with Council expenditures.

Due to time limitations and work demand, the Committee was unable to thoroughly review the operations of the Maine Sardine Council. However, the Committee recommends that the Maine Sardine Coundil be continued under the provisions of the Maine Sunset Law.

## State Energy Resources Advisory Board \_\_

STATUTORY

68.

Discontinue the State Energy Resources Advisory Board under the provisions of the Maine Sunset Law because it is no longer necessary.

The State Energy Resources Advisory Board (ERAB) exists to provide an advisory function to the Governor, the Director of the Office of Energy Resources, and the Legislature on policy matters relating to energy resources, and the development and conservation of those resources.

By statute the Board is comprised of the following ex-officio membership:

- one member of the House of Representatives;
   appointed by the Speaker of the House;
- one member of the Senate, appointed by the President of the Senate;

- one member of the Public Utilities Commission; and
- the Public Advocate.

The Board also includes six members of the public to be appointed by the Governor according to the following specifications:

- one representative of industry;
- one representative of labor;
- one representative of the academic community;
- two representatives of the general public; and
- one representative of the business community.

The Board meets at the request of the OER Director and is required by statute to meet three times per year. Staff functions are provided by OER personnel. Board members are not entitled to reimbursement, thus the Board does not have any significant expenditures.

In its review, the Committee found that ERAB was active in the mid to late 1970's. Since that time, ERAB meetings:

- were held infrequently and only once (1985) fulfilled the statutory requirement of 3 meetings per year;
- were sporadically attended, with the continual absence of many key members; and
- did not produce many substantive policy recommendations.

The Committee also found that there was little evidence in that five year span that ERAB had fulfilled its statutory mandate to advise the Legislature on matters of energy policy. The Committee received comments from the Joint Standing Committee on Energy and Natural Resources, which indicated that the members were unaware of any ERAB activity for the five years nor had they received any communication.

The Committee finds that because of the infrequency with which it met, the failure to fulfill its statutory mandate to advise the legislature and the lack of firm evidence about the value of its prescribed advisory function, that ERAB is no longer necessary to the continued development of energy policy in the State of Maine. The Committee also finds that the Office of Energy Resources, the Governor's Office, and the Legislature already receive, through informal and formal channels, the advice necessary to formulate energy policy. Further, the Committee finds that the Director of OER or the Governor have the authority to convene such a group when needed.

Therefore, the Committee recommends that the State Energy Resources Advisory Board be discontinued under the provisions of the Maine Sunset Law because it is no longer necessary to the development of energy policy in the State of Maine.

#### **Atlantic States Marine Fisheries Commission** \_\_\_

STATUTORY

69.

Continue Maine's participation in the Atlantic States Marine Fisheries Commission under the provisions of the Maine Sunset Law.

The coastal states of the continental United States are represented by three separate commissions: the Atlantic States Marine Fisheries Commission, Gulf States Marine Fisheries Commission, and the Pacific Marine Fisheries Commission.

The Atlantic States Marine Fisheries Commission was established by a compact entered into by the various Atlantic coastal states beginning in 1941. The participating states are Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia and Florida.

The Commission's main focus is to provide for better utilization of marine, shell, and anadromous fisheries through an interstate compact of these 15 Atlantic coastal states.

Although the states determine all policy respective jurisdictions, the Commission provides a forum for the discussion and resolution of common problems and assists the states in developing joint programs. In addition, the Commission participates in the State-Federal Fisheries Management Program whose goal is to promote uniform management and protection of the nation's fisheries resources and viable commercial recreational fishing industries.

The Commission is comprised of three members from each participating state agency as follows: the executive officer of the administrative agency charged with the conservation of marine fishery resources (e.g. Commissioner of Marine Resources), a member of the state Legislature designated by the commission or committee on interstate cooperation of such state, and a public member (Governor's appointee). The Commission has 45 Commissioners who meet annually to establish program direction and review progress of previously designated priority programs.

Commission activities are supported by an appropriation from each member state. The amount of this appropriation is proportional to the value of each state's annual catch. In FY 1985, Maine's General Fund appropriation for the Commission was \$13,785.

Due to time limitations and work demand, the Committee was unable to thoroughly review the operations of the Atlantic States Marine Fisheries Commission. However, the Committee recommends that Maine's participation in the Atlantic States Marine Fisheries Commission be continued under the Maine Sunset Law.

# Maine Municipal and Rural Electrification Cooperative Agency

STATUTORY	70.	Continue the Maine Municipal and Rural Electrification Cooperative Agency under the provisions of the Maine Sunset Law.
STATUTORY	71.	Eliminate the January 1, 1981, restriction to enable any cooperatives or municipalities organized after that date to make use of this chapter.

The Maine Municipal and Rural Electrification Cooperative Agency Act (MMRECA) was enacted in 1981. The purpose of this Act is to:

"provide a means for municipalities and rural electric cooperatives to develop an adequate, reliable and economical supply of electric power and energy" (35 MRSA Ch. 303).

MMRECA exists as a potential funding mechanism by which certain municipalities and rural electric cooperatives can group together to provide electric power and benefit from significant federal and state tax breaks. The intended benefit to the Maine public is the lower cost of energy and the increased availability of electric power.

The powers of the Agency created by this Act reside with its Board of Directors. Currently, Board membership consists of eight representatives of municipal electric cooperatives, one representative of the general public and the Director of the Office of Energy Resources. In FY 1985, the Agency neither received nor expended funds. The Agency has the statutory authority to:

- accept grants or gifts;
- acquire property, real or personal;
- sell, lease, mortgage, exchange, or dispose of any real or personal property;
- borrow funds and issue notes and bonds as provided for in the Act;
- purchase electric power and energy; and
- sell electric power and energy.

After its creation, MMRECA did, on occasion, meet for several years, but made no significant attempts to exercise any of its statutory authority. In recent years, MMRECA has not convened partly because of the lapsed appointments of many board members. Recent changes in the statutes have created a new appointment process for board members which allows MMRECA members to appoint their own representatives. This change should result in a board with few vacancies and thus make it easier for the board to convene when needed.

In its review, the Committee determined that membership is statutorily limited to those municipalities and rural electric cooperatives which existed as of January 1, 1981. limitation specified in order to discourage This was possibility that such bodies would be incorporated merely benefit from the advantages of this law. The Committee finds date limitation results in uneven treatment prohibiting corporations formed after 1981 from accessing provisions of this Act. The Committee also finds that this date limitation may result in uneven treatment under the law for members of the Maine public.

Upon conclusion of its review, the Committee makes two recommendations concerning MMRECA. The first is that MMRECA be continued under the provisions of the Maine Sunset Law to ensure that this mechanism be available for future use. The Committee's second recommendation is that the date limiting MMRECA membership be repealed because it unfairly restricts membership to existing municipalities and rural electric cooperatives as of January 1, 1981.

### Lobster Advisory Council \_

STATUTORY 72.

Continue the Lobster Advisory Council under the provisions of the Maine Sunset Law.

The Lobster Advisory Council was established in 1979 to "help conserve and promote the prosperity and welfare of the state and its citizens and the lobster fishing that helps to support them" (12 MRSA §6462). To accomplish these goals, the Council advises the Commissioner of Marine Resources on lobster industry matters, reviews current lobster research programs and plans for research on stock, and annually submits to the Commissioner and the Marine Resources Advisory Council its recommendations on those programs and plans.

The Council consists of 11 members; each appointed by the Governor for three-year terms. Eight members must be holders of lobster and crab fishing licenses and represent Maine's eight coastal communities. Two members are holders of wholesale seafood licenses and deal primarily in lobsters. One member must be a member of the public and shall not hold any of the lobster or crab licenses.

As in past years, during FY 1985, a large part of the Council's time and effort was spent on the lobster trap limit issue. In addition, the Council was instrumental in sponsoring legislation which allowed lobster license fees to be used in the support hatcheries managed by the lobstering industry.

The Council receives staff support from the Department of Marine Resources. Expenditures are limited to reimbursement to Council members for their attendance of Council meetings. 1985, the Council met eight times and incurred \$2,417 reimbursement costs.

Due to time limitations and work demand, the Committee was unable to thoroughly review the operations of the Lobster Advisory Council. However, the Committee recommends that the Lobster Advisory Council be continued under the provisions of the Maine Sunset Law.

73. Increase the statutory limit on STATUTORY reimbursement reflect to inflation.

During its review of the Lobster Advisory Council, the Committee determined the following:

- the statutes limit annual reimbursement of Council members to \$2,000;
- all Council expenditures are from Department of Marine Resources funds;
- the \$2,000 figure dates back to the 1979 creation of the Council and was included to limit the funds that the Department οf Marine Resources would have to spend on Council meetings; and
- the Council had expenditures of \$2,417 in FY 1985 which exceeded the statutory limit.

The Committee finds that because of the effects inflation, the real purchasing power of the \$2,000 figure established in 1979 has declined and needs to be updated. Therefore, to reflect the impact of inflation, the Committee recommends that the statutory cap of Council expenditures be and intends that the Council and the 133 \$2,500 increased to Department work to ensure that the Council stay within this limit.

STATUTORY

74.

Continue the Oil and Solid Fuel Board for one year pending review by the Committee on Audit & Program Review.

The Oil and Solid Fuel Board was established by the Legislature in 1955 (32 MRSA §2351). The Board's purpose is to protect the public health and welfare regarding the safe installation of oil and solid fuel burners and the competency of those professional installers.

To accomplish this mandate, the Board is authorized to do the following:

- prescribe minimum requirements for the installation of burners;
- ensure the competency of the installers through licensure;
- investigate any complaints regarding possible violation of the law; and
- discipline any professional installer who violates the law.

The Oil and Solid Fuel Board consists of a total of five members, appointed by the Governor for two year terms:

- three licensed installers;
- one representative of the solid fuel industry; and
- one public member.

In addition, the Commissioners of Business Regulation and Public Safety serve as ex-officio members. The Chair is elected on a yearly basis by the Board.

The Board met ten times and had expenditures of \$99,166 in FY 1985. Currently, there are three authorized positions:

- two Compliance Officers; and
- one Clerk Typist III.

The Committee on Audit & Program Review will be reviewing most of the Boards which are a part of the Department of Business Regulation during the upcoming year. To consolidate this effort, the Committee plans to review the Oil and Solid Fuel Board at that time.

Therefore, the Committee recommends that the Oil and Solid Fuel Board be continued for one year under the provisions of the Maine Sunset Law.

### State Board of Examiners of Psychologists \_\_\_\_

STATUTORY

75.

Continue the State Board οf Psychologists Examiners of ensure that the citizens of Maine available the highest the practice standards in psychology.

The Board was established to provide Maine citizens with the highest standards in the practice of psychology. To achieve this goal, the Board has been given the powers and duties to license psychologists and psychological examiners, to investigate complaints and noncompliance, to establish rules, to conduct hearings, to employ assistants and to enter into contracts to carry out its responsibilities.

The Special Session of the 107th Legislature transferred the Board from independent status to the Department of Business Regulation. The Department provides administrative clerical staff, budgeting, include: accounting, purchasing, and office space. The Board clerk's salary is paid by the Department which is reimbursed by the Board on an actual The Commissioner of the Department of Business use basis. Regulation serves as liaison between the Board and the Governor's Office.

In FY 1985, the Board had 369 licensees: 276 psychologists and 93 psychological examiners. Throughout the year, the Board held 12 meetings, and conducted 31 oral exams and 4 hearings. It licensed 32 new psychologists and 10 new psychological examiners.

During the initial review of the Board in the First Session the Committee received Regular Session. comments concerning the operations of the Board. In particular, the Committee received extensive testimony concerning the lack of available psychologists to work in the schools. To address this the Committee created a subcommittee, comprised members from both the Board of Examiners of Psychologists and the The purpose of this subcommittee is to State Board of Education. ioint licensure/certification criteria for school psychologists to facilitate the licensure of this group. addition, the Audit Committee recommended several other statutory Board of Examiners composition of the οf in the Psychologists which were enacted by the full legislature. provide a period for the implementation and assessment of these changes the Committee voted to continue the Board for one year pending additional review.

At this time, the Committee has reviewed the Board's work recommended made this implementing the changes legislative session. Given the assurance that these changes are being effectively implemented, the Committee recommends that the under of Psychologists be continued Examiners Board of making this Maine Sunset Law. In provisions οf the recommendation, the Committee proposes some technical clarifications to the legislation enacted in the First Regular Session.

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#### Addendum to Recommendations 1985 Audit Report 2971N

<u>Recommendation</u> <u>Motion</u>

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Department	of Business, Occupational and Progresional	Regulation
Stat. 1.	Repeal the licensure of itinerant photographers.	OTP
Stat. 2.	Transfer responsibility for regulating Sellers of Business Opportunities to Securities Division, Bureau of Banking (accomplished by other legislation).	ONTP
Stat. 3.	Change level of regulation for itinerant vendors from "licensure" to "registration"	OTP'.
Find. 4.	Department of Business Regulation has significant space problems.	OTP
Adm. 5.	Create in-house space management and micrographics advisory committee.	OTP
Adm. 6.	Require Archives to update disposition schedules. Amended recommendation (see copy) extends the date for reporting back to the Committee and recommends high degree of Departmental involvement.	OTPA
Adm. 7.	Require computer advisory committee to continue meeting.	OTP
Adm. 8.	Revise next edition of manual for board members.	OTP
Adm. 9.	Provide materials to new board members.	OTP
Adm. 10.	Subscribe to NDIS for all internal boards.	OTP
Find. 11.	Urge all affiliated and independent boards to subscribe to NDIS.	OTP
Adm. 12.	Designate specific day and schedule private room for the testing of certain professionals.	e OTP
Adm. 13.	Require that internal boards include all Departmental expenditures in future financial statements.	OTP
Adm. 14.	Require that Arborists and Substance Abuse Boards update Audit & Program Review Committee.	e OTP

Adm. 15.	Require that Department update Legislative Committees on boards in unsound financial condition.	OTP
Stat. 16.	Create a definition for public members of professional licensing boards.	OTP
	Bureau of Banking	
Stat. 17.	Change the required examination schedule to 36 months.	OTP
Adm. 18.	Develop a public education program.	OTP
Adm. 19.	Increase visibility of consumer assistance function.	OTP
Adm. 20.	Develop plan to recodify Banking Code.	OTP
Stat. 21.	Continue Sunset Review of Securities Division.	OTP
-	Bureau of Consumer Credit Protection	
Adm. 22.	Require that Chair of the Council of Advisors on Consumer Credit reassume responsibility for meetings.	OTP
Adm. 23.	Require that Council members receive Bureau mailings.	OTP
Find. 24.	Maintain the Bureau of Consumer Credit Protection to ensure adequate regulation.	OTP
Stat. 25.	Repeal 2 year residence requirement for Superintendent.	OTP
Adm. 26.	Announce upcoming creditor examinations.	OTP
Adm. 27.	Identify most commonly violated of major consumer credit protection laws.	OTP
Stat. 28.	Provide for confidentiality of certain Bureau records. Amended recommendation included minor statutory revisions.	OTPA
Stat. 29.	Amend CCC to allow for certain first time, bona fide creditor errors.	OTP
Stat. 30	Amend CCC to increase grace for correction of creditor errors to 60 days.	·OTP
Stat. 31.	Amend CCC to allow for at least 30 day due period for creditor invoices to the Bureau.	OTP
Stat. 32.	Repeal APA part of CCC 2 -	OTP

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Adm. 33	Increase efforts to encourage creditor filing.	OTP
Stat. 34.	Modify penalty for unlicensed lending.	OTP
Adm. 35.	Develop publication explaining Fair Credit Reporting Act.	OTP ·
Stat, 36.	Require that consumer leases be written in plain language.	OTP
Adm. 37.	Develop model plain language forms for credit sales.	OTP
Stat. 38.	Repeal Insurance Premium Finance Company Act.	OTP
Stat. 39.	Repeal Home Repair Financing Act. Amended recommendation deletes requirement that home repair contractors who offer financing must disclose Workers Compensation status.	OTPA .
	New Recommendations	
Stat. 39A.	Amend dollar amounts in CCC (see copy.)	OTP
Stat. 39B.	Delete reference in CCC to federal regulation of interest rates (see copy).	OTP
_	Bureau of Insurance	
Find. 40.	Bureau of Insurance has a serious problem in attracting and retaining individuals to many professional positions.	OTP
Adm. 41.	Develop intake form.	OTP
Adm. 42.	Develop outreach priorities.	OTP
Adm. 43.	Fill position of Claims Examiner.	OTP
Stat. 44.	Deauthorize Clerk Typist I position.	OTP
Adm. 45.	Require examination reports be signed by Actuary and Division Director.	OTP
Adm. 46.	Develop plan for administration of self-insurance regulatory problems.	OTP
Adm. 47.	Develop checklist for review of life and health insurance forms.	OTP
Adm. 48.	Develop guidelines for review of proper and casualty form filings.	OTP
Adm. 49.	Develop plan to reduce backlog of licensure applications 3 -	OTP

Adm. 50.	Require that Bureau and CCS develop computer programming.	OTP
	Maine State Museum	
Stat. 51.	Continue the Museum under the Sunset Law.	OTP
Stat. 52.	Reorganize Museum Staff. Amended recommendation (see copy) makes additional minor personnel changes.	OTPA
Stat. 53.	Facilitate the Museum's process of artifact acquisition and disposition.	OTP
Stat. 54.	Require that BPI provide adequate storage facilities.	OTP
Find. 55.	Museum's computer requests will result in greater efficiencies.	OTP
Adm. 56.	Enable Museum to develop a computer system to update financial records of Department.	OTP
Find. 57.	Present exhibition policies represent original legislative intent.	OTP
Find. 58.	Commends the Museum for its performance.	OTP
Adm. 59.	Develop plans to increase outreach activities.	OTP
<u>Mai</u>	ne Commission on the Arts and the Humanities	
Stat. 60.	Continue the Commission under the Sunset Law.	OTP
Stat. 61.	Change title to "Maine Arts Commission".	OTP
Stat. 62.	Broaden criteria for Commission membership.	OTP
Find. 63.	Proposed reorganization will result in greater efficiencies.	OTP
Find. 64.	Commends the Commission for exemplary programming.	OTP
Find. 65.	Commission members should be reimbursed for expenses.	OTP
	Advisory Commission on Radioactive Waste	
Stat. 66.	Continue the Commission under the Sunset Law.	OTP

## Maine Sardine Council

Stat.	67.	Continue the Council under the Sunset Law.	OTP
		State Energy Resources Advisory Board	
Stat.	68.	Discontinue the Board under the Sunset Law. Atlantic States Marine Fisheries Commission	OTP
Stat.	69.	Continue Maine's participation under the Sunset Law.	OTP
Ma	ine Mu	nicipal and Rural Electrification Cooperative	Agency
Stat.	70.	Continue the Agency under the Sunset Law.	OTP
Stat.	71.	Eliminate January 1, 1981, restriction	OTP
		Lobster Advisory Council	
Stat.	72.	Continue the Council under the Sunset Law.	OTP
Stat.	73.	Increase limit on reimbursements.	OTP
		Oil and Solid Fuel Board	
Stat.	74.	Continue for one year under the Sunset Law.	OTP
		State Board of Examiners of Psychologists	
Stat.	75.	Continue the Board under the Sunset Law. Amended recommendation (see copy) continues Board for one year.	OTPA

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ADMINISTRATIVE 6. (As amended)

Require the State Archivist to update the disposition schedules for the Department and report to the Committee with the updated schedules by May 1, 1987.

The Maine State Archivist is responsible for determining which state agency files will be saved and in what manner. The Archivist makes this determination by developing disposition schedules in consultation with the Archives Advisory Board. In the course of the Committee's review of space management, the Maine State Archives was contacted to discuss records disposition for the Department.

The Committee found that most of the current disposition schedules were developed ten years ago and have not been updated. Many of the Department's rules and statutes have changed since that time. For example, many of the boards created in the last ten years do not have disposition schedules.

The Committee finds that the lack of updated disposition schedules contributes to the current space problems of the Department and creates difficulties in retrieving information.

Therefore, the Committee recommends that the State Archivist update the disposition schedules for the Department to ensure that records are being processed and stored to maximize the use of office and storage space. The Committee also recommends that the Archivist report to the Audit & Program Review Committee with the updated schedules by May 1, 1987.

In making this recommendation, the Committee expects to achieve cost savings due to the more appropriate use of space within the Department.

## Addendum

During the public hearing held regarding this recommendation, the Committee received testimony which indicated that:

 the State Archivist, not the Archives Advisory Board, has the primary responsibility for formulating disposition schedules;

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- the likely impact of the Committee's recommendation would be to disrupt the current priorities of the Archivist and would pose an unwarranted burden on an already over-wroked three person staff; and
- even if the disposition schedules are updated, there may not be any space to store many of the Department's records.

In amending this recommendation, the Committee intends to reflect the information that was gathered through the public hearing process. In addition to postponing the report-back date, the Committee also recommends that the Department be heavily utilized by the Archivist to help determine what records currently generated by the Department need to be saved and in what manner.

Finally, the Committee also recommends that if there still is a significant problem regarding the lack of space for the storage of state records as of May 1, 1987, that the State Archivist submit a report to the Audit & Program Review Committee on that date which details the space available at that time, as well as current and projected needs.

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STATUTORY 39A.

Amend the Code by adjusting dollar amount figures to ensure a properly functioning set of Consumer Credit Protection laws.

During its public hearing process, the Committee received a request for a further series of amendments to the Code. At that time, the Committee decided to study these requests in more detail.

The proposed amendments are the result of a study committee formed by the Superintendent of the Bureau of Consumer Credit Protection who has the authority to convene such studies under §6-104 (1) (D) of the Code. This study committee, consisting of representatives of the creditor industry along with representatives of the Bureau, met four times in late 1985 and early 1986. The study committee identified several discernable problems with the CCC.

- §1-106 provides for automatic adjustments for the dollar amounts specified in the Code in accordance with the inflationary indices of the Consumer Price Index. In brief, since the Code's enactment in .1975, these dollar amounts have increased by 130%. As represented on this study committee, the creditor industry contends that these increases are unrealistic and end up circumventing many of the original purposes of the Code. For example, §1-301 (11) specifies that a "consumer credit sale" is limited to a financed amount which does not exceed \$57,500. The original limit of the Code was \$25,000. The creditor industry in Maine reports that perhaps less than 1% of all consumer loans are for amounts larger than \$25,000, and that for those instances the new requirements of the Code often inhibit the financing for relatively affluent consumers who seek to make luxury purchases. Aside from the excessiveness ο£ Code, the creditor the industry holds that it is extremely difficult keep their personnel updated as to the frequently changing dollar limits of the Code. With one exception (Wisconsin), Maine has the highest dollar amount figures for any CCC state.
- In another issue related to the adjustment feature, the study committee also took issue with the definition of small loans and some of the requirements associated with them. Briefly stated, the Code's dollar limits which define small loans, have been adjusted upwards for inflation and will soon include many loans made by the Federal Housing Administration or the Maine State Housing Authority.

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Most significantly, the Code places certain limitations on these loans which are likely to drastically decrease the willingness of either of these agencies to enter into loans of these amounts (\$2,500) or less.

- Another related point of contention raised by the Study Committee was the arbitrary definition of small loans and certain requirements by which these loans could be made. Originally, the Code stated that:
  - Loans under \$300 must not have more than 25 monthly payments; and
  - Loans under \$1,000 but more than \$300 must not have more than 37 monthly payments.

Since enactment, these figures have been adjusted upwards to \$690 and \$2,300 respectively. The creditor industry contends that these provisions impact negatively upon many elderly consumers who cannot afford the payments resulting from this mandated payment schedule.

As a result of these basic concerns, the Audit Committee recommends the following changes be made in the Code:

- #1. The dollar amounts in the Code relating to jurisdictional limits in the case of consumer sales, consumer loans and consumer leases should be adjusted downwards to \$25,000;
- #2. The adjustment formula in  $\S1-106$  should be modified in several ways:
  - Adjustments to be made every  $\frac{4}{2}$  years instead of the present figure of 2;
  - Permanently increase the increment of required change from 10% to 20%; and
  - Give the administrator some flexibility in pushing for dollar amounts in certain cases;
- #3. Change other dollar amounts in the Code to provide more realistic definitions by which the Code operates; and
- #4. Change the section on small loans to specify that loans under \$1,000 not have more than 25 monthly payments. Loans over \$1,000 could have whatever number of payments that is agreeable to both the consumer and the creditor.

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STATUTORY 39B

Amend the Code to delete an outdated reference to the federal regulation of interest rates to ensure that the Code continue to offer the same level of consumer protection.

During its public hearing process, the Committee received testimony which indicated that there is a section within the Consumer Credit Code (9-A MRSA §3-310 sub §4) which exempts certain variable rate loans from other requirements of the Code. The section also identifies these loans by reference to the federal regulation of interest rates. Testimony received by the Committee indicated that the federal regulation of interest rates has ended as of April 1, 1986, and because of the manner in which these interest rates are exclusively identified by federal regulation, this section will be inoperative.

Therefore, to ensure that the Consumer Credit Code continues to offer the same degree of protection to consumers, the Committee recommends that the reference to the federal regulation of interest rates be deleted.

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STATUTORY

52.

Reorganize the Museum staff to strengthen middle management and increase effectiveness. Report to the Committees on Audit & Program Review and Education by February 1, 1987, with an assessment.

During its public hearing process, the Committee received additional information regarding specifics on the proposed reorganization. As a result of this information, the Committee recommended that the following adjustments be made:

• Delete Clerk Typist II Position (Administration)

Add Clerk Steno III Position (Administration)

\$ 949.

(Justification: Present reorganization plan neglected to consider specific needs of the Maine State Museum Commission and, in particular the on-going need for stenographic skills.)

• Delete Museum Technician I (Archaeology)

Add Museum Specialist I (Archaeology) \$ 1,654.

(Justification: Present job description and pay level no longer appropriately reflects the scope of duties on this position).

• Delete Museum Specialist (Exhibit Preparation)

Add Museum Specialist II (Conservation) \$ 2,379.

(Justification: Present position has been vacant for eight months due to absence of qualified candidates. It is clear that the present pay level is inadequate to attract qualified applicants for conservation projects.)

Total Costs.....\$ 4,983.

Previous Savings..... 10,910.

New Total Savings..... 5,927.

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STATUTORY 75. (As Amended)

Continue the State Board of Examiners of Psychologists for one year pending review by the Committee on Audit & Program Review.

Upon further consideration of the many recent statutory changes concerning this Board, the Committee recommends that the Board of Examiners of Psychologists be continued for one year. In particular, the Committee finds a continuing need in the State for school psychological services and plans to closely review the progress of the Board's efforts to implement these changes.