

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)



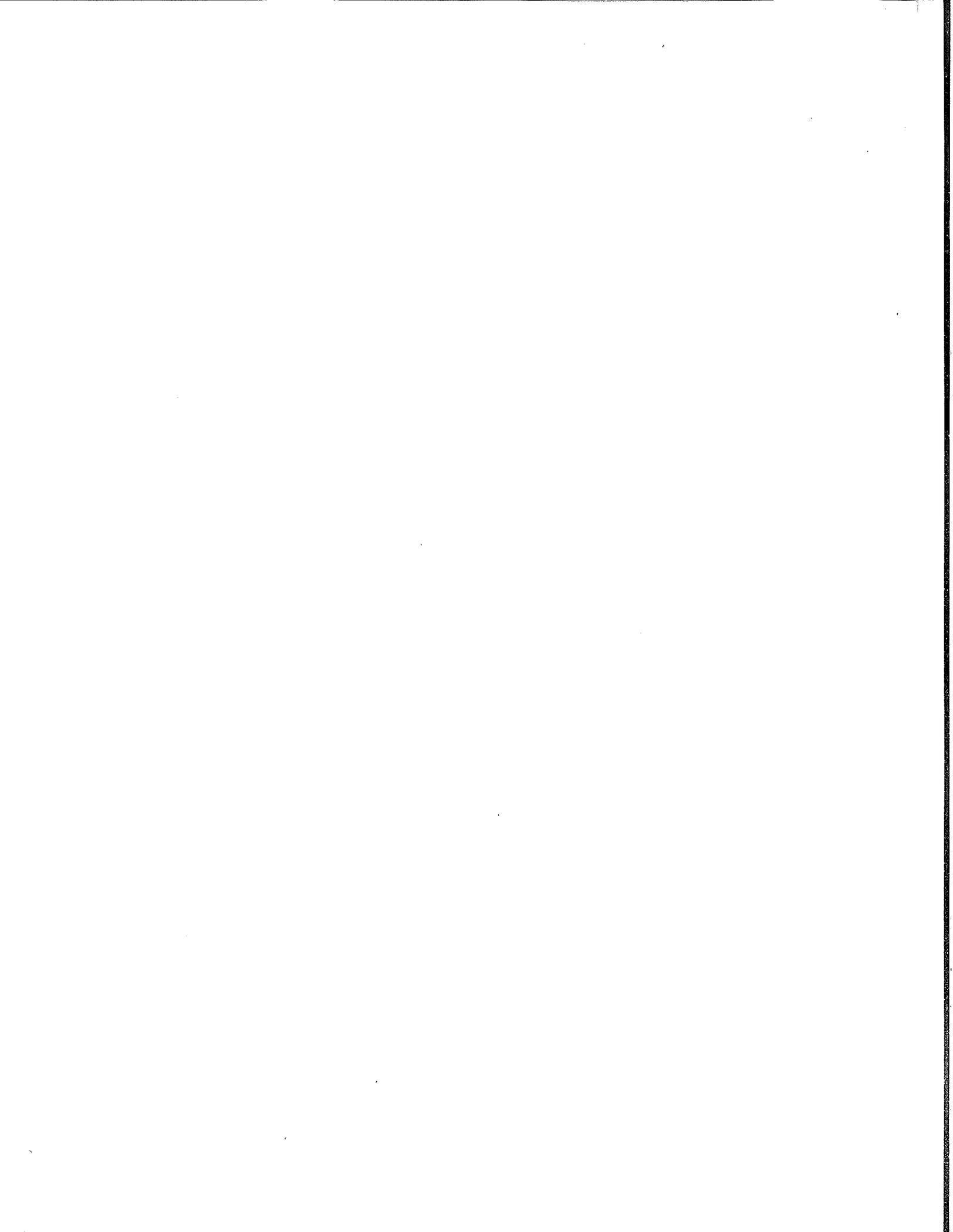
Review of

DEPARTMENT OF ADMINISTRATION

- Bureau of Public Improvements
- Bureau of Human Resources
- Bureau of Employee Relations
- State Employee Health Insurance Program
- State Civil Service Appeals Board
- Educational Leave Advisory Board

Joint Standing Committee on Audit and Program Review 1988-1989





SENATE

BEVERLY MINER BUSTIN, DISTRICT 19, CHAIR
GEORGETTE B. BERUBE, DISTRICT 16
LINDA CURTIS BRAWN, DISTRICT 21

STAFF

OFFICE OF FISCAL AND PROGRAM REVIEW
CHERYL RING, PRINCIPAL ANALYST
LOCK KIERMAIER, ANALYST
KATHRYN VAN NOTE, ANALYST



HOUSE

NEIL ROLDE, YORK, CHAIR
PHYLLIS R. ERWIN, RUMFORD
HARRIET A. KETOVER, PORTLAND
BEVERLY C. DAGGETT, AUGUSTA
HAROLD M. MACOMBER, SOUTH PORTLAND
JOHN A. ALIBERTI, LEWISTON
GEORGE A. TOWNSEND, EASTPORT
ELEANOR M. MURPHY, BERWICK
CATHERINE KOCH LEBOWITZ, BANGOR
WESLEY FARNUM, SOUTH BERWICK

STATE OF MAINE
ONE HUNDRED AND FOURTEENTH LEGISLATURE
COMMITTEE ON AUDIT AND PROGRAM REVIEW

June 1989

Members of the Legislative Council,

We are pleased to transmit the Committee's 1988--1989 report to you in three volumes. To simplify our process and reduce costs, this year the Committee used draft reports to circulate its initial recommendations. These three volumes represent our final conclusions about the agencies under review. The report includes statutory and administrative recommendations and findings on the:

- Department of Administration;
- Department of Labor;
- Maine Labor Relations Board;
- Workers' Compensation Commission;
- Professional Regulatory Boards;
- Advisory Commission on Radioactive Waste;
- Department of Human Services;
- SCAN Team Language;
- Emergency Medical Services;
- State Civil Service Appeals Board;
- Educational Leave Advisory Board; and
- Maine State Retirement System

In addition to the diligent work of the Committee members, we would like to particularly thank the adjunct members who served on our subcommittees from other Joint Standing Committees; their expertise enriched and strengthened the review process.

The Committee's recommendations will serve to improve state agency performance and efficiency by increasing management and fiscal accountability, resolving complex issues, clarifying Legislative intent and increasing Legislative oversight. We invite questions, comments and input regarding any part of this report.

Sincerely,

Handwritten signature of Beverly M. Bustin.

Beverly M. Bustin
Senate Chair

Handwritten signature of Neil Rolde.

Neil Rolde
House Chair

TABLE OF CONTENTS

SUBCOMMITTEE #1 MEMBERSHIP.	1
THE COMMITTEE PROCESS	3
SUMMARY OF RECOMMENDATIONS	5
DEPARTMENT OF ADMINISTRATION	21
BUREAU OF PUBLIC IMPROVEMENTS	25
BUREAU OF HUMAN RESOURCES	63
BUREAU OF EMPLOYEE RELATIONS	87
STATE EMPLOYEE HEALTH INSURANCE PROGRAM	113
STATE CIVIL SERVICE APPEALS BOARD	127
EDUCATIONAL LEAVE ADVISORY BOARD	137



AUDIT & PROGRAM REVIEW
SUBCOMMITTEE #1

- Bureau of Human Resources;
- State Civil Service Appeals Board;
- Educational Leave Advisory Board;
- Bureau of Employee Relations;
- Bureau of Public Improvements;
- State Employee Health Commission;
- State Employee Health Insurance Program;
- Maine State Retirement System

MEMBERS:

Representative Neil Rolde,
Co-Chair
Representative Eleanor Murphy,
Co-Chair
Senator Georgette Berube
Representative Wesley Farnum
Representative Beverly Daggett
Representative Phyllis Erwin
Representative Harriet Ketover
Representative Harry Macomber
Representative John A. Aliberti

ADJUNCT MEMBERS:

Representative Jean Dellert
Joint Standing Committee on Aging,
Retirement and Veterans
Representative John Jalbert
Joint Standing Committee on Aging,
Retirement and Veterans
Representative Ruth Joseph
Joint Standing Committee on State
and Local Government
Representative Dorothy A. Rotondi
Joint Standing Committee on State
and Local Government

EX-OFFICIO:

Senator Beverly Bustin

THE COMMITTEE PROCESS

The Joint Standing Committee on Audit & Program Review was created in 1977 to administer Maine's Sunset Act which "requires the Legislature to evaluate the need for an performance of present and future departments and agencies on a periodic basis." (3 MRSA Ch. 23). To carry out its mandate, the overriding goal of the Audit Committee is to increase governmental efficiency by recommending improvements in agency management, organization, program delivery, and fiscal accountability.

The Committee process unfolds in five distinct phases, which can be briefly described follows:

PHASE ONE: RECEIPT OF PROGRAM REPORTS

The law requires that agencies due for review must submit a Program Report to the Committee. The Program, or Justification, Report prepared by the agency provides baseline data used to orient staff and Committee to the agency's programs and finances.

PHASE TWO: REVIEW BEGINS

At the start of each review, the Committee Chairs divide the full Committee into subcommittees, appoint subcommittee chairs and assign each subcommittee responsibility for a portion of the total review. Each subcommittee is augmented by at least one member from the committee of jurisdiction in the Legislature; i.e. the subcommittee reviewing the administration and management of the University of Maine System will include a member of the Education Committee.

PHASE THREE: SUBCOMMITTEE MEETINGS

The subcommittees created by the Committee meet frequently when the Legislature is in session and every three to four weeks between the sessions to discuss issues regarding the agency and make recommendations for change. Staff will prepare material for the subcommittee's deliberation and present it to the subcommittee in one of several forms; as an option paper, discussion paper, or information paper. The Committee has found that these formats facilitate its process by cogently and objectively describing the topic for discussion and the points necessary for expeditious decision-making. These subcommittee meetings are not formal hearings but are open to the public and are usually well attended by interested parties. The subcommittees conduct their business in an open manner, inviting comment and providing a forum for all views to be heard and aired.

PHASE FOUR: FULL COMMITTEE MEETINGS

The full Audit & Program Review Committee considers the recommendations made by each subcommittee. These meetings are another opportunity for the public to express its views.

PHASE FIVE: THE LEGISLATURE

Following the full Committee's acceptance of subcommittee recommendations, Committee staff prepare a text and draft a bill containing all the Committee's recommendations for change. The Committee introduces its bill into the Legislative session in progress and the bill is then referred to the Audit & Program Review Committee. As a final avenue for public comment prior to reaching the floor, the Committee holds public hearings and work sessions on all its recommendations. After the Committee concludes deliberations and amendments, the bill is amended and placed on the calendar for consideration by the entire Legislature.

SUMMARY OF RECOMMENDATIONS

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 which requires no further action but which highlights a particular situation. Recommendations include, where possible, the proposed change and the reason for this change. For more specific detail, refer to the narrative of the recommendations.

BUREAU OF PUBLIC IMPROVEMENTS

ADMINISTRATIVE 1. Request a written communication from the Office of Fiscal and Program Review which specifies the public improvement projects funded by the Joint Standing Committee on Appropriations and Financial Affairs.

ADMINISTRATIVE 2. To improve accountability, implement an administrative process in which funds appropriated to the Bureau of Public Improvements for specific public improvement projects are not journaled to State agencies until the Bureau has received a request from the agency to initiate the project.

FINDING

3.

The Joint Standing Committee on Audit & Program Review finds that the former use of financial orders to award contracts for public improvement projects represented an unnecessary and inefficient process. The Committee further finds that the present use of a "letter of intent" provides adequate opportunity for budgetary review and authorization.

FINDING

4.

The Joint Standing Committee on Audit & Program Review finds that trades crews within the Property Management Division of the Bureau of Public Improvements are understaffed. Further, the Committee finds that this understaffing has resulted in inadequate maintenance for state facilities.

ADMINISTRATIVE

5.

Direct the Department of Administration to track the use of temporary employment contracts and report to the Joint Standing Committees on Audit & Program Review and State and Local Government in a year's time.

STATUTORY

6. Increase from \$25,000 to \$50,000 the statutory threshold by which private contractors are required to be bonded for public improvement projects to provide more opportunities for smaller non-bonded contractors to work on public improvement projects.
-
-

STATUTORY

7. Authorize the Bureau of Public Improvements to accept bids for a public improvement project from non-bonded contractors in those instances where the project has gone out to public bid and no bids have been received by bonded contractors in order to improve overall efficiency of the public improvement process.
-
-

ADMINISTRATIVE

8. Develop efforts to work with the Small Business Administration to publicize and educate contractors about the existence of the Surety Bond Guarantee Program. Report to the Joint Standing Committee on Audit & Program Review in one year's time on efforts to use this program more frequently.
-
-

ADMINISTRATIVE 9

Include in future public advertising for public improvement projects a statement indicating that bonding may be available for qualified contractors through the Surety Bond Guarantee Program administered by the Small Business Administration.

STATUTORY 10.

Increase from \$25,000 to \$100,000, the statutory threshold by which the Bureau of Public Improvements must review and approve all public improvement projects undertaken by public schools.

STATUTORY 11.

Specify in current law that the Bureau of Public Improvements is available for consultation with public schools for public improvement projects costing less than \$100,000.

ADMINISTRATIVE 12.

Develop a revised liquidated damages schedule which features a two-tier system by which a contractor who fails to complete on a timely basis is assessed for any subsequent costs incurred by the owner.

STATUTORY 13. Authorize the Bureau of Public Improvements's Director to approve public improvement contracts which include financial incentives for early completion when it can be proved that such completion will result in savings to the state or owner.

ADMINISTRATIVE 14. Develop a checklist to be used in the Bureau of Public Improvements' project folders to help ensure that all procedural requirements are completed.

STATUTORY 15. Establish that the Bureau of Public Improvements's Director may refuse, subject to appeal, to release project plans/specifications for bidding purposes to contractors who have either not satisfactorily performed on previous public improvement projects, have inadequate resources to complete a project or have been convicted of criminal acts relative to construction projects.

ADMINISTRATIVE 16. Update fee schedules for architects and engineers to provide more adequate compensation and to improve Bureau efficiency.

STATUTORY

17.

Transfer the central telephone switchboard and all associated positions from the Bureau of Public Improvements to the Office of Information Services (Telecommunications Division) to more properly align similar duties and areas of responsibility.

STATUTORY

18.

Change the funding source for the salaries for central telephone switchboard personnel from the General Fund to the Telecommunications Enterprise Fund to ensure that state agencies pay for these services in a proportional fashion.

FINDING

19.

The Joint Standing Committee on Audit & Program Review finds that the central telephone switchboard operators and supervisor should resubmit their reclassification requests to the Bureau of Human Resources.

ADMINISTRATIVE 20.

Work with the Maine Chapter of the AIA, and when appropriate, the Maine School Management Association and the Associated General Contractors of Maine, to review the adequacy of the document used to contract for services with architects and engineers. Report to the Joint Standing Committee on Audit & Program Review in a year's time on the results of this review.

STATUTORY 21.

Clarify the Bureau of Public Improvements's statutory relationship and responsibilities with the state's public institutions of higher education.

STATUTORY 22.

Repeal an obsolete and unnecessary statutory reference to the Bureau of Public Improvements' responsibility for drug related seized property.

STATUTORY

23.

Upon the retirement of the current incumbent, transfer the Information and Tour Guide position from the Bureau of Public Improvements to the Maine State Museum to more properly align similar duties and areas of responsibility.

FINDING

24.

The Joint Standing Committee on Audit & Program Review finds that the current cost estimates for asbestos abatement efforts in public facilities drastically exceed the available funding. Further, the Committee finds that unless additional funding is provided, available funding may be depleted by January of 1990.

BUREAU OF HUMAN RESOURCES

ADMINISTRATIVE

25.

Submit a detailed report on the status of the decentralization effort to the Committees on Audit & Program Review and State & Local Government during the compliance phase of the review.

ADMINISTRATIVE 26. Develop a plan to reduce the present two year period needed to resolve employee reclassification/reallocation appeals which go to arbitration. Submit this plan by June 1, 1989 to the Joint Standing Committees on Audit & Program Review and State and Local Government. Submit a status report by January 1, 1990.

BUREAU OF EMPLOYEE RELATIONS

ADMINISTRATIVE 27. Identify the status of unresolved employee grievances filed in 1984, 1985 and 1986. Report to the Joint Standing Committees on Audit & Program Review and State and Local Government by June 1, 1989, with a plan to resolve these grievances. Submit a status report by January 1, 1990.

ADMINISTRATIVE 28. Develop a plan to reduce the present two year period needed to resolve those employee grievances which go to arbitration. Submit this plan by June 1, 1989, to the Joint Standing Committees on Audit & Program Review and State and Local Government. Submit a status report by January 1, 1990.

ADMINISTRATIVE 29. Develop a plan to settle employee grievances going to arbitration which were filed in 1987-1988 within two year's time or less. Submit this plan by June 1, 1989, to the Joint Standing Committees on Audit & Program Review and State and Local Government. Submit a status report by January 1, 1990.

FINDING 30. The Joint Standing Committee on Audit & Program Review finds that state employees are entitled by law to express their opinion as individuals on matters of public policy. To reiterate this fundamental right, the Committee will send a letter to each State employee explaining the contents of current law.

STATUTORY 31. Amend current law to clarify that State employees have a right to respond to any Legislative inquiry.

STATUTORY 32. Extend existing protections ensuring the right of State employees to express their personal opinion to the Legislature on matters of public policy to all employees of agencies authorized by State law.

STATUTORY

33. Authorize the use of up to 15% of the Risk Management Fund to indemnify workers' compensation losses incurred by State agencies. Specify that such indemnifications will be repaid by formal agreement signed by the agency and that such repayments must be made within the biennium in which the claim is paid.
-
-

FINDING

34. The Joint Standing Committee on Audit & Program Review finds that the recent administrative decision of the Commissioner of Administration to have the Workers' Compensation Unit report directly to the Commissioner, is an appropriate decision which helps to ensure a higher priority for the efficient management of the State Workers' Compensation program.
-
-

ADMINISTRATIVE

35. Work towards decentralizing the administration of the Workers' Compensation program to the Departments of Transportation and Mental Health and Mental Retardation. Report to the Joint Standing Committees on Audit & Program Review, State and Local Government, and Appropriation and Financial Affairs during the compliance phase on the current status of this effort.
-
-

ADMINISTRATIVE 36.

Initiate a Safety and Loss Prevention Program which includes the creation of a State Safety Committee. Specify that this program be funded through use of the Risk Management Fund and that the program report directly to the Commissioner. Report to the Joint Standing Committees on Audit & Program Review, State and Local Government, and Appropriations and Financial Affairs during the compliance phase on current implementation efforts.

FINDING 37.

The Joint Standing Committee on Audit & Program Review finds that many state employees with workers' compensation claims are adversely effected by the current inability of many state agencies to make timely payments in accordance with Maine law. The Committee finds that the establishment of a proposed revolving central pay fund to be used by state agencies to pay workers' compensation claims may result in more timely payments from state agencies and will help to ensure compliance with State and Federal law.

ADMINISTRATIVE 38. Restructure the existing contract with Fred S. James Company to more effectively utilize their expertise. Submit a report on the current contractual relationship to the Joint Standing Committees on Audit & Program Review, State and Local Government, and Appropriations and Financial Affairs during the compliance phase of review.

ADMINISTRATIVE 39. Direct the Commissioner to work towards clarifying roles and responsibilities in the Workers' Compensation program, improve continuity of legal services from the Attorney General's office and develop proposals for budgeting and payment of workers' compensation costs from State agencies. Report to the Joint Standing Committees on Audit & Program Review and State and Local Government during the compliance phase of the review on current status of these efforts.

**STATE EMPLOYEE HEALTH COMMISSION AND
STATE EMPLOYEE HEALTH INSURANCE PROGRAM**

STATUTORY 40. Continue the State Employee Health Commission for 10 years under the provisions of the Maine Sunset Law.

ADMINISTRATIVE 41. Direct the State Employee Health Commission to adopt an administrative procedure which requires specific written authorization before journaled funds can be expended.

STATUTORY 42. Amend current law to require that the State Employee Health Commission enter into signed contracts with group insurance carriers within 90 days of the bid award. Further amend current law to authorize the Commissioner of Administration to grant waivers, for extenuating circumstances, to the 90 day requirement.

STATUTORY 43. Amend current law to clarify the responsibilities of the State Employee Health Insurance Program and the Bureau of State Employee Health.

STATE CIVIL SERVICE APPEALS BOARD

STATUTORY 44. Continue the State Civil Service Appeals Board for 10 years under the provisions of the Maine Sunset Law.

STATUTORY

45.

Establish a separate activity within the Commissioner's appropriation account for the State Civil Service Appeals Board. Transfer Board funding from the Bureau of Human Resources's account to the Commissioner's account to promote a more autonomous relationship between the State Civil Service Appeals Board and the Bureau of Human Resources.

ADMINISTRATIVE

46.

Direct that the State Civil Service Appeals Board should receive clerical/support services from the Commissioner's office, to promote a more autonomous relationship between the State Civil Service Appeals Board and the Bureau of Human Resources.

ADMINISTRATIVE

47.

Direct the Bureau of Human Resources to provide training in use of the Hay Classification System to newly appointed members of the State Civil Service Appeals Board.

ADMINISTRATIVE 48. Develop a brief, informational publication for distribution to all State employees who fall under the Board's jurisdiction which describes the role of the State Civil Service Appeals Board. Distribute copies of this publication to applicable new State employees as they are hired.

EDUCATIONAL LEAVE ADVISORY BOARD

STATUTORY 49. Continue the Educational Leave Advisory Board for one year under the provisions of the Maine Sunset law.

ADMINISTRATIVE 50. Conduct a detailed review of the current adequacy of governing statutes and existing guidelines. Submit a written report concerning the results of this review, and any subsequent recommendations, to the Joint Standing Committees on Audit & Program Review and State and Local Government by January 1, 1990.

STATUTORY 51. Increase the membership of the Educational Leave Advisory Board to ensure needed representation from both management and labor.

DEPARTMENT OF ADMINISTRATION

The Department of Administration exists to provide central administrative services to other departments and agencies of Maine State Government. The Department of Administration is unusual when compared to other state agencies in that it generally does not provide services to the Maine public.

The Department of Administration is a relatively new part of Maine State Government; having been created by PL 1985, Ch. 785. This law represented a major change in the manner in which administrative and financial management services were provided to departments and agencies within Maine State Government.

Several significant organizational changes were made during this reorganization:

- The former Office of the Commissioner of Personnel was renamed as the Bureau of Human Resources and placed within the Department of Administration;
- The former Department of Finance and Administration was split into the Departments of Finance and Administration with a delegation to each of the corresponding responsibilities of financial/budgetary management and administrative services;
- The former Governor's Office of Employee Relations was renamed as the Bureau of Employee Relations and placed within the Department of Administration;
- The Department of Administration also included a new organizational unit titled as the Office of Information Services headed by a Deputy Commissioner. This office has the responsibility of two organizational units: Telecommunications which was formerly a part of the Bureau of Public Improvements and the Bureau of Data Processing which was formerly known as Central Computer Services and had a direct reporting relationship to the former Commissioner of the Department of Finance and Administration; and

-
- Another new organizational unit, the Bureau of State Employee Health, was created to administer health programs for state employees.

As presently constituted, the Department of Administration has 10 principal organizational units. The organization of the Department of Administration is depicted in the accompanying chart. Brief descriptions of each organizational unit are as follows:

- Commissioner. Functions as the Chief Executive Officer for the Department;
- Division of Administrative Services. Provides financial, personnel and other management support services within the Department of Administration;
- State Employee Health Commission. Responsible for securing and overseeing all state employee health insurance policies, as well as advising the Bureau of State Employee Health on all employee health and wellness programs;
- State Employee Health Insurance Program. Administers health and dental insurance programs offered to state employees;
- Office of Information Services. Provides strategic planning, centralized computer and telecommunication services for all parts of Maine State Government;
- Bureau of State Employee Health. Administers programming to improve the health and well being of Maine State Employees;
- Bureau of Employee Relations. Acts as the state's representative in the collective bargaining process with state employees and administers the state's workers' compensation program;
- Bureau of Public Improvements. Responsible for administering and maintaining all state owned facilities as well as coordinating the efforts to lease space for state agencies;
- Bureau of Purchases. Responsible for the purchase of all services, supplies, materials and equipment needed by Maine State Government;

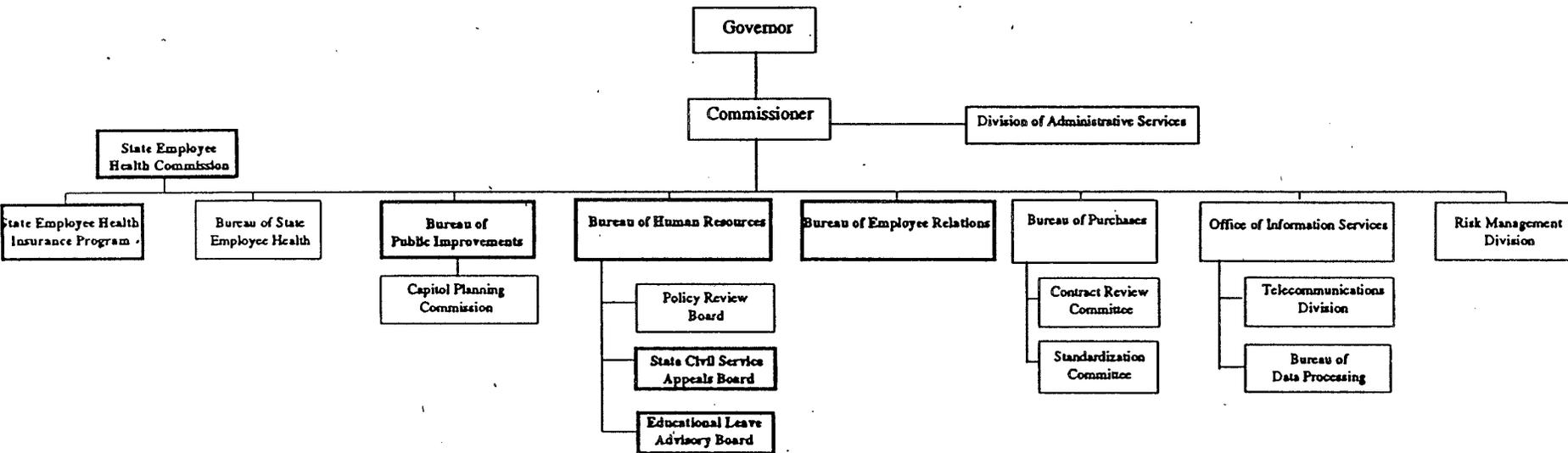
-
- Risk Management Division. Administers all insurance programs purchased to cover the operations and activities of Maine State Government; and
 - Bureau of Human Resources. Administers the personnel process for all parts of Maine State Government.
 - State Civil Service Appeals Board. Hears employee grievances and reclassification/reallocation appeals for all state employees not covered by the terms of a collective bargaining agreement; and
 - Educational Leave Advisory Board. Approves all educational leaves with a duration of longer than one week.

During the 1988 review, the Committee has been mandated by current Maine law to review the following parts of the Department of Administration.

- Bureau of Public Improvements;
- Bureau of Human Resources;
- Bureau of Employee Relations;
- State Employee Health Commission;
- State Employee Health Insurance Program;
- State Civil Service Appeals Board; and
- Educational Leave Advisory Board.

The remaining parts of the Department of Administration are scheduled to be reviewed by the Committee in 1989.

Department of Administration
Organizational Chart: Agencies Under Current Review



Compiled by Audit Staff
May 1989

BUREAU OF PUBLIC IMPROVEMENTS

Purpose and Responsibilities:

The Bureau of Public Improvements is that part of Maine state government which is responsible for the maintenance and administration of all state owned facilities (5 MRSA §1742). The Bureau has the statutory responsibility to oversee, review and approve all public improvements for facilities used by Maine state government. Under the provisions of current law, "public improvements" (5 MRSA §1741) are defined as any "construction, major alteration and repair" of state owned or leased facilities. In addition, "public improvements" are also defined to include any construction, alteration and repair costing in excess of \$25,000 for public school facilities. The definition of "public improvements" specifically excludes State roadwork which is the responsibility of the Department of Transportation.

The Bureau has a long list of specific statutory powers and duties which include facilities planning, development of statewide public improvement budget, provision of technical advice and approval of public improvement plans for all state agencies and school administrative units, adoption of procedures for the selection of architects and engineers who work on state and public school public improvement projects, approval of the selection of those same architects and engineers, oversight of most phases of public improvement construction, maintenance of all state facilities in the capitol complex area in Augusta, assignment of space in state owned facilities for state agencies, approval of all facility leases, administration of air quality standards for state owned facilities and identification and correction of all asbestos related problems in state owned facilities and school administrative units.

History

The responsibilities of the Bureau of Public Improvements were first entrusted to the Superintendent of Public Buildings, a position established by the Governor in 1837. At that time, the Superintendent was responsible for maintaining public buildings and their furniture. In 1943, the Superintendent's duties were expanded to include many held by today's Bureau.

The Bureau of Public Improvements was established in 1957 and placed within the Department of Finance and Administration. In 1971, the Bureau was assigned its present day responsibilities with regards to school administrative units.

During the past 15 years the Bureau has also been assigned responsibilities for leased space, telecommunications, oversight of the architectural procurement process, energy conservation programs for state facilities and public schools, air quality standards, and asbestos abatement.

Bureau of Public Improvements
Organizational Chart:
Major Units, Executive Officers,
Functions, and Staffing

Commissioner, Department of Administration

Director

Title of Organizational Unit	Division of Property Management	Property Records	Clerical	Professional Services Division	Division of Safety and Environmental Services	Space Management/ Lease Division
Chief Executive Officer	Superintendent of Buildings	None	Clerk IV	Chief Engineer	Director	Chief
Primary Function(s)	Maintain the operation of state owned buildings in the Capitol area.	Maintains listings of all State owned Properties.	Provide, through a pooling arrangement, secretarial/ staffing for entire Bureau.	Review, inspect and approve Public Improvements for State owned facilities.	Identification and Correction of asbestos Problems in State owned Facilities.	Develop Facility planning, coordinate leasing of State space.
Total Staffing	181	2	6	11	7	2

Compiled by Audit Staff April 1989
ID #180

The Bureau of Public Improvements was included in the new Department of Administration after the 1986 reorganization of the former Department of Finance and Administration. In 1987, the telecommunications function was transferred from the Bureau to the Office of Information Services within the Department of Administration.

Method of Operation, Organization, Staffing:

As specified by law, the Bureau has ultimate responsibility for 1,284 state owned facilities; as counted in a 1986 inventory. Aside from the buildings located in the capitol area complex, this total includes the facilities used by all state departments and agencies with regional or remote buildings and grounds, correctional and mental health facilities, Maine Vocational-Technical System, Maine Maritime Academy, Supreme Judicial Court, and armories. Facilities of the Baxter State Park Authority and the University of Maine System are excluded from the Bureau's jurisdiction.

To accomplish these responsibilities the Bureau of Public Improvements is organized into 4 formal divisions with several additional organizational units for specific functions. A brief overview of the current method of operation is listed below and is depicted in the accompanying chart.

Director

The chief executive officer of the Bureau of Public Improvements is the Director. The Director is appointed by the Commissioner of the Department of Administration and reports directly to that individual.

Property Management Division

Through its Property Management Division, the Bureau provides direct maintenance services for the total 45 buildings in the Capitol Complex. This total includes buildings at the Augusta Mental Health Institute used by other state agencies and buildings at the Hallowell Annex.

Maintenance of other state owned and leased facilities that are not in close proximity to the Augusta area are contracted out under the direct supervision and review of the Property Management Division. The Property Management Division is currently staffed by a total of 182 positions. The chief executive officer of the Division is the Superintendent of Buildings who reports directly to the Bureau Director.

Professional Services Division

Oversight, review and approval of public improvement projects are accomplished by the Professional Services Division. Briefly stated, the Professional Services Division accomplishes these responsibilities by acting as an approving agent for work contracted to private architects and engineers. Upon review, the Committee found that very little architectural/engineering work for public improvement projects originates from the Bureau; instead the Bureau's professional staff is used to review and approve the work done by private professionals.

Additionally, the Division is involved in the monthly on-site inspection of all public school construction projects and for monitoring life cycle energy costs for state buildings. The Professional Services Division is also responsible for putting together a biennial budget of prioritized public improvement projects for all of Maine state government.

At the present time, the Professional Services Division is staffed by a total of 11 positions. The Division is headed by a Chief Engineer who reports directly to the Bureau Director.

Upon review, the Committee noted that while staffing for the Division has remained unchanged for a number of years, the provision's overall responsibilities have significantly increased, most notably in the volume of overall construction activities.

Space Management/Lease Division

Facility planning and leasing are direct service components of the newly organized Space Management/Leasing Division. Long range space planning is in the process of being linked to the budgetary process currently used by state government. State agencies will be asked to provide estimates of future space needs. These estimates will be collected by the Division and assembled into a specific long range plan for foreseeable space needs of state government. The leasing of private facilities for state use is either done by the Division directly or coordinated and approved by the Division.

Currently the Space Management/Leasing Division is staffed by a total of 2 positions. The Division is headed by a Director who reports directly to the Bureau Director.

Division of Safety and Environmental Services

The identification and correction of asbestos problems in state owned facilities and those of school administrative units are accomplished by the newly established (1987) Division of Safety and Environmental Services. The Division accomplishes its duties by conducting surveys, identifying problems in particular facilities and by administering and coordinating the actual

abatement process which is performed by contracted removal teams from the private sector. Recently, the Division has also assumed responsibilities for administering a federally funded asbestos abatement program for private schools, administering recently enacted air quality standards in state facilities, coordinating the state's response to hazardous materials generated by state facilities, and coordinating the effort to ensure the compliance of state agencies with state laws regarding the management of chemicals in the work place.

Currently the Division of Safety & Environmental Services is staffed by a total of 8 positions. The Division is led by a Director who reports directly to the Bureau Director.

Property Records

Listings and data relating to state owned real estate are accomplished at the Bureau by a total of 2 positions. This activity reports directly to the Bureau Director without a middle management level.

Clerical

Secretarial and support staff functions at the Bureau are provided through a pooling arrangement consisting of a total of 4 positions. This secretarial pool is coordinated by a Clerk IV position who reports directly to the Bureau Director.

Funding and Expenditures

As a service provider agency for the rest of Maine state government, the Bureau of Public Improvements has a relatively complex set of funding and expenditure circumstances. Upon review, the Committee found that expenditures for public improvements for Maine state government are appropriated in a number of different ways.

First, the Bureau has its own budget and expenditures; i.e. those funds which are necessary to maintain the Bureau's own staffing and operational expenses.

Appropriations for State public improvement projects are sometimes made directly to the Bureau of Public Improvements and then journaled to the agency for which the public improvement is intended. On occasion, funds are appropriated to the Bureau for a specific public improvement project which are not journaled back to the agency benefitting from the public improvement. On other occasions, state agencies sometimes receive direct appropriations for public improvement projects. Finally, certain activities at

the Bureau such as energy conservation, asbestos management, maintenance of the Department of Transportation facility, are funded through non-general fund sources; oil overcharge monies, general obligation bonds, and dedicated revenues respectively.

In accordance with its recently expanded list of responsibilities, total appropriations, allocations and authorized fund carry-overs have increased steadily in recent years: \$7.3 million in FY 1986 to \$24 million in FY 1989. These totals include all expenditures which are Bureau responsibilities with the exception of public school construction costs. In FY 1989, 55.5% of the Bureau's operating budget was provided by monies from the General Fund.

ADMINISTRATIVE 1.

Request a written communication from the Office of Fiscal and Program Review which specifies the public improvement projects funded by the Joint Standing Committee on Appropriations and Financial Affairs.

As the state agency which is responsible for state owned facilities, the Bureau of Public Improvements has the accompanying responsibility for developing and administering a capital improvements budget for Maine State Government.

In May of the last year of the biennium, the Bureau sends out forms to all state agencies to be used to submit their requests for capital improvement funding. After completion by the agency, these forms are returned to the Bureau and evaluated for overall need, concept and accuracy of cost estimate. The Bureau then prioritizes these requests and categorizes them by department. (A separate prioritization is also made for statewide repairs; i.e. repairs and minor improvements costing more than \$5,000 each).

The Bureau then submits its proposed state-wide budget for Capital Construction, Repairs and Improvements to the Bureau of the Budget. The Bureau of the Budget evaluates the Bureau of Public Improvements' request and incorporates its own recommendation into the overall budget for the Governor's consideration and approval. The Governor's final biennial budget is then submitted to the Legislature for approval.

The Governor's budget is referred to the Joint Standing Committee on Appropriations and Financial Affairs. In recent years, the Capital Improvements section of the budget has been evaluated by the Appropriations Committee in light of what total funding is available for capital improvements. In practice, the Appropriations Committee will fund those prioritized Capital Improvement projects whose accumulated costs fall within the available funding total.

For example, if the Governor indicated to the Appropriations Committee that \$1,000,000 was available for capital

improvements, according to recent practice, the Committee may fund the list of prioritized projects until a cumulative total near \$1,000,000 had been reached or decide on a different funding total than that recommended by the Governor. On occasion, the Appropriations Committee will reprioritize the list of projects by dropping or adding certain projects to the funded total.

The final Capital Improvements budget is represented by a one line Total in the Appropriations bill. As written in recent years, the Appropriations bill does not specify which projects have been approved for funding.

The Audit & Program Review Committee found that the present appropriation process relies on the prioritized list of projects included in the final budget document. In recent years, a tacit understanding has existed between the Appropriations Committee and the Bureau that approved projects included on the prioritized list are those which can be funded by available monies.

The Audit & Program Review Committee also found that recently this process does not appear to have worked well. For example, during the First Regular Session of the 113th Legislature, the Appropriations Committee initially approved the prioritized list to a certain funding total. After this initial approval, a reprioritized list was apparently submitted by the Executive branch late in the session. As a result, there was some doubt on the part of the Appropriations Committee as to exactly which Capital Improvement projects received Legislative approval from the 113th Legislature. The Department of Administration has a list of those projects which they believed had received Legislative approval.

Further, the Audit & Program Review Committee found that a formal written communication from the Appropriations Committee to the Bureau of Public Improvements could serve as a firm indication as to which projects had received Legislative approval. The use of such a communication in the future would provide a clearer, well documented statement of Legislative intent. Therefore, the Committee recommends that the Bureau of Public Improvements request a written communication from the Office of Fiscal and Program Review which specifies the public improvement projects funded by the Joint Standing Committee on Appropriations and Financial Affairs.

ADMINISTRATIVE 2.

To improve accountability, implement an administrative process in which funds appropriated to the Bureau of Public Improvements for specific public improvement projects are not journaled to State agencies until the Bureau has received a request from the agency to initiate the project.

Most capital improvement funds are appropriated directly to Bureau account #1075.2, "Capital Construction and Repairs". From this account, funds for the Bureau designated projects remain with the Bureau, to be spent and administered by the Bureau of Public Improvements. On occasion, individual Capital Improvement projects are appropriated by line item directly to a particular agency.

A significant number of other projects have been designated as projects to be administered by the owner agency. Funds for these projects are journaled from the Bureau account 1075.2 to ".9" accounts of other agencies. After journaling, the Bureau is not responsible for the administration of that project and only becomes involved in approving plans, architect selection and construction. However, each public improvement project is initiated only by Bureau approval of a Form 21 (Request for Approval of a Public Improvement) submitted by a State agency.

In reviewing the aforementioned practice of journaling funds to agencies for their particular capital improvement projects, the Committee found that on occasion these journaled funds have been used for other purposes. Consequently, for the projects to be completed, the Legislature has had to appropriate more funds at a later date. Further, the Committee found that the need for multiple appropriations for the same project would be significantly reduced if funds were not journaled to the owner agency until the Bureau has received a Form 21 from the agency initiating the start of the project. Adoption of this policy would increase accountability in several ways:

- because the Bureau would still "have" the funds, agencies would not be able to move these funds within their own

accounts to fund another purpose. Once funds have been journaled, the Bureau loses any oversight as to their use; subsequent financial orders do not specify the original funding account;

- legislative intent would be more closely followed; and
- the Bureau would have a more accurate idea of the status of approved Capital Improvement projects within Maine State Government.

Therefore, to improve accountability, the Joint Standing Committee on Audit & Program Review recommends that the Bureau of Public Improvements implement an administrative process in which funds appropriated to the Bureau of Public Improvements for specific public improvement projects are not journaled to State agencies until the Bureau has received a request from the agency to initiate the project.

FINDING

3.

The Joint Standing Committee on Audit & Program Review finds that the former use of financial orders to award contracts for public improvement projects represented an unnecessary and inefficient process. The Committee further finds that the present use of a "letter of intent" provides adequate opportunity for budgetary review and authorization.

Upon review of the process by which major public improvement projects are completed, the Committee found that up until 1989, public improvement projects were being awarded to the lowest bidding contractor by use of financial orders. Financial orders are generally used to approve a change in the use of previously authorized funds in Maine State government. The Financial Order process is authorized by 5 MRSA 1585.

At the present time, financial orders are initiated by an agency which needs to use funds in a different manner than originally approved through legislative appropriation. Financial orders are approved by the Commissioner of the agency, forwarded

to the Bureau of the Budget for review and approval and then sent to the Governor once a month for approval. All financial orders are reviewed on behalf of the Legislature by the Joint Standing Committee on Appropriations and Financial Affairs.

The use of financial orders is limited in several ways:

- funds may be transferred only within the agency to whom the funds were originally appropriated; and
- funds must be used in the same fiscal year in which they were originally appropriated.

Upon review, the Committee found that in the case of public improvements projects, financial orders were being used to approve the expenditure of appropriations already authorized by the Legislature. In other words, these funds were not being used in a way different from that specified by original legislative appropriation. The Committee further found that under that practice, contracts could not be awarded to the lowest bidder until a financial order has been approved. This practice significantly delayed the Bureau's ability to award contracts in a timely manner. On occasion, this delay resulted in the contractor dropping out of the project.

During the course of the Committee's review of the Bureau of Public Improvements, the practice of using financial orders to current public improvement contracts was discontinued. In its place, the Bureau now uses a standardized letter of intent which is sent to the successful bidder as the notification of the awarding of the contract. This standardized letter contains a complete list of all bidders and the amounts bid and an identification of the account number. Copies of the letter of intent are signed by the Bureau Director and forwarded to:

- the involved agency;
- Division of Risk Management;
- Architect;
- Commissioner, Department of Administration;
- Bureau of the Budget;
- Chief Financial Officer, Department of Administration; and
- Director, Office of Fiscal and Program Review.

The Committee finds that the new "letter of intent" process provides the Bureau of the Budget with an adequate opportunity to review the contract award and to verify the availability of

funds. If the Bureau of the Budget finds any kind of problem in the awarding of a particular contract, final contract execution can be postponed or cancelled.

Therefore, the Joint Standing Committee on Audit & Program Review finds that the former use of financial orders to award contracts for public improvement projects represented an unnecessary and inefficient process. The Committee further finds that the present use of a "letter of intent" provides adequate opportunity for budgetary review and authorization.

FINDING

4.

The Joint Standing Committee on Audit & Program Review finds that trades crews within the Property Management Division of the Bureau of Public Improvements are understaffed. Further, the Committee finds that this understaffing has resulted in inadequate maintenance for state facilities.

The Property Management Division is that part of the Bureau of Public Improvements which has responsibility for most of the "trades" crews (electricians, carpenters, painters) who conduct routine maintenance and limited new construction for all state owned buildings in the Capitol Area Complex in Augusta. In reviewing the Division's total range of responsibility and the currently available resources, the Committee made use of a recent internal Bureau study which documented current workloads of the Division and made comparisons to similar data gathered from several other states. Most significantly, this report documented that:

- most available time is used by the Division's trades crews for completing renovations (64%), special requests (18%) and service calls (11.5%); and
- only 3.5% of the trades crews useable workday is available for routine building maintenance. When calculated on a ratio of available staffing to the total number of state buildings (43), 1.98 staff hours are currently available for each building for monthly maintenance.

From this report, the Committee concluded that there is a significant shortfall in the number of authorized positions needed to adequately accomplish the Division's many responsibilities. The Committee also concluded that the deferral of needed building maintenance results in significantly greater long term expenses for the state. Inadequately maintained buildings have a much shorter life span and must be replaced by more costly new construction.

Therefore, the Joint Standing Committee on Audit & Program Review finds that trades crews within the Property Management Division of the Bureau of Public Improvements are understaffed. Further, the Committee finds that this understaffing has resulted in inadequate maintenance for state facilities. In conjunction with the issuance of this finding, the Committee has sent a letter to the Governor which outlines the premises of this finding and urges that authorization for additional positions be included in the FY 1990-1991 budget.

ADMINISTRATIVE 5. Direct the Department of Administration to track the use of temporary employment contracts and report to the Joint Standing Committees on Audit & Program Review and State and Local Government in a year's time.

In reviewing the Bureau's method of operation, the Committee received information which indicated that the Bureau had occasional need to contract for temporary labor. The Bureau's infrequent use of temporary contracts is necessitated by special projects such as moving, construction, and additional clerical work for which no regular Bureau staff are available.

Current law (5 MRS §1812) authorizes the state Purchasing Agent to establish, within certain limitations, which services can be performed by independent contractors. The limitations set by statute are certain enumerated services which include window cleaning, elevator repair, and laundry. In essence, the Purchasing Agent is authorized to approve contracts with independent contractors for services not specifically excluded by statute.

In accordance with the authority accorded by 5 MRS §1812, the State Purchasing Agent has promulgated a set of procedures entitled as "contracts for special services" which is included as

a section of the current Manual of Financial Procedures. Prior to December of 1988, agencies were allowed to informally contract for special services costing less than \$600 by following certain requirements:

- a determination that sufficient funds exist to pay for the contracted service;
- selection of a contractor at an equitable price;
- approval from the Department head; and
- submission of invoice for payment by the Bureau of Accounts and Control.

A major limitation of this informal contract, aside from the \$600 limit, was that only one contract could be issued to each individual during a particular calendar year.

The informal contract procedure had not been revised since 1974. The Committee found that, when adjusted for inflation by using the "Gross National Product Price Deflator for State and Local Government Purchases", the \$600 figure had a present day value of \$1,139.

In accordance with the earlier cited statutory authority, in December of 1988, the State Purchasing Agent increased the dollar limit on informal contracts to \$1,200.

After careful consideration of the present process by which informal, "temporary" contracts are used by state agencies like the Bureau of Public Improvements, the Committee concluded that more information is needed as to the frequency with which state agencies are using temporary contracts, particularly since the dollar limit has been doubled. The Committee notes that the State Purchasing Agent is focussing on improving data collection in this realm and that the Committee is scheduled to review the State Purchasing Agent during next year's review.

Therefore, the Joint Standing Committee on Audit & Program Review directs the Department of Administration to track the use of temporary employment contracts and report to the Joint Standing Committees on Audit & Program Review and State and Local Government in a year's time.

STATUTORY

6. Increase from \$25,000 to \$50,000 the statutory threshold by which private contractors are required to be bonded for public improvement projects to provide more opportunities for smaller non-bonded contractors to work on public improvement projects.
-
-

As mentioned earlier, the Bureau of Public Improvements has the responsibility for administering the process by which all public improvement projects are awarded. In administering this responsibility, the Bureau must enforce several statutory provisions. Most notably, current Maine law (14 MRSA §871) requires that for all public improvements projects (including state, municipal and quasi-municipal) costing more than \$25,000, private contractors must have the following:

- performance bond - which ensures that work specified in the Public Improvement contract will be completed as stated; and
- payment bond - which ensures that all subcontractor bills will be paid by the contractor as specified in the contract.

Upon review, the Committee found that the \$25,000 benchmark was last changed by the Legislature in 1985.

Information obtained by the Committee from private surety companies suggested that it can be difficult for a small contractor to get bonded, especially for the first time. Although the requirements vary from company to company, and are often adjusted for the particular circumstances of the involved contractor, contractors are usually required to provide detailed financial statements and extensive documentation relating to past experience and performance.

Upon review, the Committee found that because of inflation, many public improvement projects of a relatively minor nature have costs which are greater than \$25,000. The Committee also found that the bonding requirement is intended to protect the state from losses due to failure of the contractor to adequately complete the project as specified by contract. The Committee further found that the state and other public entities would not incur significant risk for projects costing up to \$50,000 completed by non-bonded contractors and that the present \$25,000 requirement represents an unnecessary burden to small private contractors.

Therefore, the Committee recommends that current law be amended to increase from \$25,000 to \$50,000 the statutory threshold by which private contractors are required to be bonded for public improvement projects to provide more opportunities for smaller non-bonded contractors to work on public improvement projects.

STATUTORY

7.

Authorize the Bureau of Public Improvements to accept bids for a public improvement project from non-bonded contractors in those instances where the project has gone out to public bid and no bids have been received by bonded contractors in order to improve overall efficiency of the public improvement process.

Concurrent to its findings in the previous recommendation, the Committee also found that there may be instances in which no qualified bonded contractors have chosen to bid on a particular public improvement project, regardless of cost. The Committee noted that there may be non-bonded contractors who have an interest in bidding on a public improvement project for which no bids from a bonded contractor have been received. Finally, the Committee found that in such a case, the Bureau Director has adequate authority to ensure that the state would only contract with a reputable and dependable private contractor.

The Committee finds that the aforementioned bonding requirements of current law have the effect of prohibiting the state from completing those public improvement projects for which no bonded contractor has submitted a bid.

Therefore, to improve the overall efficiency of the public improvement process, the Joint Standing Committee on Audit & Program Review recommends that the Bureau of Public Improvements be authorized to accept bids for a public improvement project from non-bonded contractors in those instances where the project has gone out to public bid and no bids have been received by bonded contractors.

ADMINISTRATIVE 8.

Develop efforts to work with the Small Business Administration to publicize and educate contractors about the existence of the Surety Bond Guarantee Program. Report to the Joint Standing Committee on Audit & Program Review in one year's time on efforts to use this program more frequently.

ADMINISTRATIVE 9

Include in future public advertising for public improvement projects a statement indicating that bonding may be available for qualified contractors through the Surety Bond Guarantee Program administered by the Small Business Administration.

During the Committee's review of the various issues surrounding bonding requirements for public improvement contractors, the Committee obtained information regarding the Surety Bond Guarantee Program offered by the federal Small Business Administration.

The Surety Bond Guarantee Program is designed to assist small businesses that have had difficulties in getting bonded for federal, state, municipal or private projects. While a small business is still required to submit the same types of detailed financial statements as commonly required by surety companies, the Surety Bond Guarantee Program is more liberal in their criteria and seeks to assist small businesses in their efforts to become bonded for the first time. The program operates by offering to guarantee to surety companies that the program will assume 80% of the total surety for a qualified small business should that small business fail to complete the particular project.

Currently, the Surety Bond Guarantee Program for the New England area is administered out of a Boston office with a total staff of two. According to the regional program administrator, the Surety Bond Guarantee Program has been used only several times by Maine contractors and is not well known in Maine. The Surety Bond Guarantee Program is interested in whatever cooperative outreach efforts which can be developed.

The Committee found that increased use of the Surety Bond Guarantee Program would be of significant benefit towards enabling small contractors in Maine to become bonded for the purpose of bidding on public improvement projects.

Therefore, the Joint Standing Committee on Audit & Program Review recommends that the Bureau of Public Improvements develop efforts to work with the Small Business Administration to publicize and educate contractors about the existence of the Surety Bond Guarantee Program. The Committee further recommends that the Bureau report to the Joint Standing Committee on Audit & Program Review in one year's time on efforts to use this program more frequently.

To further encourage future use of the Surety Bond Guarantee program, the Committee also recommends that the Bureau of Public Improvements include in future public advertising for public improvement projects, a statement indicating that bonding may be available for qualified contractors through the Surety Bond Guarantee Program administered by the Small Business Administration.

STATUTORY	10.	Increase from \$25,000 to \$100,000, the statutory threshold by which the Bureau of Public Improvements must review and approve all public improvement projects undertaken by public schools.
-----------	-----	---

STATUTORY	11.	Specify in current law that the Bureau of Public Improvements is available for consultation with public schools for any public improvement project regardless of cost.
-----------	-----	--

As one of its many statutory duties, the Bureau of Public Improvements has responsibility [5 MRSA §1742 (7)] for reviewing and approving any public improvement costing more than \$25,000 undertaken by public schools in Maine. Upon review, the Committee found that involvement of the Bureau in public school construction has been mandated by the Legislature because of the large amounts of state funds which are spent directly on public school construction. Most recently, in FY 1988, the State Board of Education approved more than \$62 million in expenditures for public school construction.

Prior to 1971, school construction and repairs costing more than \$5,000 were approved by the Commissioner of the Department of Educational and Cultural Services. In 1971, the law was changed to increase the threshold to \$10,000 and to require the joint approval of the Commissioner of the Department of Educational and Cultural Services, the Bureau of Public Improvements' Director, the Department of Human Services and the State Fire Marshal. The threshold was again increased in 1973 to \$25,000. In 1983, the threshold was changed in the education law (20-A MRSA §15903) to \$50,000 but the Bureau law (5 MRSA §1741) was left unchanged at \$25,000. The Committee found that, in practice, the lower figure of \$25,000 has continued to be used as the criteria for Bureau approval.

A compilation of school construction projects either constructed or in the process of being constructed from 1985 to 1987 shows the following:

- 4 projects costing between 0-\$25,000;
- 7 projects costing between \$25,000 - \$50,000;
- 9 projects costing between \$50,000 - \$75,000;
- 5 projects costing between \$75,000 - \$100,000;
- 8 projects costing between \$100,000 - \$200,000;
- 5 projects costing between \$200,000 - \$300,000;
- 4 projects costing between \$300,000 - \$400,000;
- 12 projects costing between \$400,000 - \$500,000;
- 22 projects costing between \$500,000 - \$1,000,000;
- 19 projects costing between \$1,000,000 - \$2,000,000;
- 14 projects costing between \$2 Mil - \$3 ; and
- 2 projects costing between \$3 Mil - \$4 .

After reviewing all pertinent information, the Committee found that the present Bureau threshold of \$25,000 is unnecessary. The Committee found that approval of projects at the \$25,000 level represents an inefficient use of scarce resources - both for the Bureau and for local school administrative units. The Committee also found that the Bureau should be available for consultation for any public improvement project, regardless of cost, undertaken by local schools.

Therefore, the Joint Standing Committee on Audit & Program Review recommends that the statutory threshold by which the Bureau of Public Improvements must review and approve all public improvement projects undertaken by public schools be increased from \$25,000 to \$100,000. Further, the Committee recommends that current law be amended to specify that the Bureau be available for consultation with public schools for any public improvement projects regardless of cost.

ADMINISTRATIVE 12.

Develop a revised liquidated damages schedule which features a two-tier system by which a contractor who fails to complete on a timely basis is assessed for any subsequent costs incurred by the owner.

Each of the construction contract forms used by the Bureau of Public Improvements contain provisions in their instructions to bidders, which provide a schedule for liquidated damages. In essence, a certain liquidated damage fee is assessed for each calendar day that the contracted work remains uncompleted beyond the specified date of completion. Liquidated damages are not intended to be a penalty to the contractor but rather to compensate the owner for expenses incurred as a result of the uncompleted work. The Bureau has two schedules for liquidating damages which have not been revised for at least seven years:

Public Schools

<u>Original Contract Amount</u>	<u>Amount of Liquidated Damages Per Day</u>
More than \$ 10,000 and less than \$ 100,000	\$ 50.00
More than 100,000 and less than 250,000	75.00
More than 250,000 and less than 500,000	100.00
More than 500,000 and less than 1,000,000	200.00
More than 1,000,000 and less than 3,000,000	300.00
3,000,000 and more	500.00

State Agencies

More than \$ 10,000 and less than \$ 100,000	\$ 50.00
More than 100,000 and less than 250,000	75.00
More than 250,000 and less than 500,000	100.00
More than 500,000 and less than 1,000,000	200.00
More than 1,000,000 and less than 3,000,000	500.00

The Committee found that the current Bureau schedules for liquidated damages do not adequately represent dollar amounts necessary to compensate the owner. Using current costs, the Committee found that the State would be forced to pay close to \$1,000 per day to rent space to replace a \$3 million facility that had not been completed on time. Under the present liquidating damages schedule, the owner (State) could only receive \$500 per day in damages from the contractor.

The Committee received information from school superintendents which indicated that the current liquidated damage figures were not sufficient leverage to induce some contractors to finish the facility by the agreed upon completion date. In a case related to the Committee, the involved contractor indicated little concern about the possibility of liquidated damages being assessed for late completion. The Committee found that the financial gain represented by new projects sometimes outweigh the financial assessments authorized by the current schedule.

After extensive review, the Committee found that the present method of assessing liquidated damages is inadequate. The inadequacy of the present method has several dimensions. First, the schedules do not adequately reflect the true costs incurred by the owner if a public improvement project is not completed on time. Secondly, and even more importantly, the present method does not adequately identify, and appropriately assess, the responsible parties for the financial consequences that may result from a failure to complete a public improvement project on time.

To remedy this situation, the Committee is recommending that a fundamentally restructured method of assessing liquidated damages be adopted by the Bureau of Public Improvements. This new method makes use of a two-tier system in which:

- the first tier would apply to instances where the completion date has been passed and covers administrative costs at a flat rate in the vicinity of \$340 per day; and
- the second tier would apply when a failure to complete on time results in additional costs to the owner.

The Committee suggests that liquidated damages assessed at the second tier may not exceed actual costs incurred by the owner and should be subject to approval by the Bureau Director.

Therefore, the Joint Standing Committee on Audit & Program Review recommends that the Bureau of Public Improvements develop a revised liquidating damages schedule which features a two-tier system by which a contractor who fails to complete on a timely basis is assessed for any subsequent costs incurred by the owner.

STATUTORY

13.

Authorize the Bureau of Public Improvements' Director to approve public improvement contracts which include financial incentives for early completion when it can be proved that such completion will result in savings to the state or owner.

During the review of the issues surrounding liquidating damages, the Committee learned that the Department of Transportation has made use of financial incentives, stipulated in contract, for early completion of public improvement projects under their jurisdiction. In one recent case involving bridge construction, the contractor finished ahead of schedule and benefitted from a pre-agreed upon schedule which resulted in the payment of several million dollars in incentives. The Committee noted that these arrangements are used only when it can be demonstrated that early completion will save the owner considerable expenses.

The Committee found that there are public improvement projects under the Bureau's authority, for which a contract with financial incentives for early completion could be used to great advantage and possible savings to the state and other public entities. The Committee notes that the Bureau Director does not currently have the statutory authority to approve contracts with financial incentives for early completion.

Therefore, to improve the state's ability to have public improvement projects completed on a timely basis, the Joint Standing Committee on Audit & Program Review recommends that current law be amended to authorize the Bureau of Public Improvements' Director to approve public improvement contracts which include financial incentives for early completion when it can be proved that such completion will result in savings to the state or owner.

ADMINISTRATIVE

14.

Develop a checklist to be used in the Bureau of Public Improvements' project folders to help ensure that all procedural requirements are completed.

As required by state and federal law, the Department of Audit routinely audits all agencies within Maine state government for appropriateness of financial transactions and procedures, as well as administrative management. As a part of its own review of every state agency, the Committee routinely communicates with the Department of Audit to review their most recent audit of the agency currently under Committee review. The Department of Audit conducted an audit of the Bureau of Public Improvements which was concurrent with the Committee's review of that same agency.

In essence, the Department's audit effort focussed on current management procedures within the Bureau. Twelve randomly selected folders were extensively reviewed for compliance with Bureau rule and procedure. The results of the Bureau audit showed a significant number of instances where required documentation had not been completed.

Upon review of these results, the Committee agreed with findings of the Department of Audit that inadequate or incomplete documentation may possibly hinder or delay final project completion. In addition, the Committee found that lack of required documentation may adversely affect the outcome of any legal proceeding concerning a public improvement project.

To support the findings of the Department of Audit regarding lack of required documentation, the Committee found that the Bureau could prevent future occurrences of the same type by developing a standardized check list of required documents to be included in each folder. This list should include the following:

- Copy of legislative appropriation;
- Bureau Form 21;
- Advertisement for Architect/Engineer;
- Summary sheet of Architect/Engineer interviews;
- Contract with Architect/Engineer;
- Certificate of Insurance for the Architect/Engineer;
- Review comments on project development;
- Wage Determination;
- Advertisement for Construction Bids;
- Bids;
- Bid Review Sheet;
- Bid Opening Tabulation;
- Letter of Intent;
- Notice to proceed;
- Construction Contract;

-
- Performance & Payment Bonds;
 - Minutes of Pre-construction meeting;
 - Bureau Field Reviewers Reports;
 - Architect/Engineer Daily inspection reports;
 - Payment Requisitions;
 - Change Orders;
 - Lien Release;
 - Statement of all bills paid;
 - Consent of Surety;
 - Required sign offs;
 - Minutes of regularly scheduled meetings;
 - Notice of substantial completion;
 - Minutes of inspection at end of 1 year warranty; and
 - General Correspondence.

The Committee suggests that this standardized check off list include a format which permits the individuals responsible for each document to indicate with their dated signature that this document has been placed in the folder.

Therefore, the Committee recommends that the Bureau of Public Improvements develop a checklist to be used in project folders to help ensure that all procedural requirements are completed.

STATUTORY	15.	<p>Establish that the Bureau of Public Improvements's Director may refuse, subject to appeal, to release project plans/specifications for bidding purposes to contractors who have either not satisfactorily performed on previous public improvement projects, have inadequate resources to complete a project or have been convicted of criminal acts relative to construction projects.</p>
-----------	-----	--

To gather information about the Bureau of Public Improvements, the Committee conducted surveys of state and public school administrators who interact with the Bureau on a regular basis. Through this surveying process, the Committee received a number of comments which advocated the need for a strengthening of the Bureau's authority to help ensure the timely completion of public improvement projects.

A review of the Bureau's governing statutes shows that the Bureau of Public Improvements is not empowered to exclude those contractors who have consistently completed public improvement projects in either an untimely, inadequate or unsatisfactory fashion. A number of survey respondents documented negative experiences they have had with particular contractors.

After further review of these allegations, the Committee found that the great majority of private contractors complete public improvement projects as specified by contract. However, the Committee also found that a small number of contractors have consistently failed to adequately fulfill their contractual obligations for public improvement projects.

The Committee further found that the Bureau's present lack of any authority to exclude those few contractors who have clearly and consistently failed to adequately fulfill contracts for public improvement projects, constitutes an adverse effect on the state's public improvement process. The Committee found that the Bureau Director should be authorized by law to refuse to release plans/specifications for the purpose of bidding on proposed public improvement projects to those contractors who:

- have failed to complete prior construction projects on a timely basis, and when the failure to do so has created a hardship for the owner;
- have had a historic inability to complete projects of a similar nature;
- do not appear, in the opinion of the Bureau Director, to have sufficient resources to adequately complete the work; or
- have been convicted of criminal acts relative to construction projects.

The Committee also found that such statutory authorization should include an appeals process by which a contractor excluded from receiving plans/specifications could appeal the decision of the Bureau Director to the Commissioner of Administration. The appeals process would allow the appellant to bid on a particular project, subject to a final decision by the Commissioner. If the Commissioner ruled in the Director's favor, the appellant's bid would be disallowed.

Therefore, the Committee recommends that current law be amended to establish that the Bureau Director may refuse, subject to appeal, to release project plans/specifications for bidding purposes to contractors who have either not satisfactorily performed on previous public improvement projects, have inadequate resources to complete a project or have been convicted of criminal acts relative to construction projects.

ADMINISTRATIVE	16.	Update fee schedules for architects and engineers to provide more adequate compensation and to improve Bureau efficiency.
----------------	-----	---

Within the Bureau of Public Improvements, the Division of Professional Services has the responsibility for approving the selection of architects and engineers to be used on public improvement projects. Current law (5 MRSA §1742 (6)) also authorizes the division to adopt procedures to be used by state agencies and school administrative units in the selection of architects and engineers. Finally, current law specifies that architects and engineers are to be selected on the basis of "professional competency and qualifications required for the type of services contemplated at fair and reasonable prices".

To accomplish its statutory responsibilities, the Bureau has developed a document entitled as the "Architectural and Engineering Services Procurement Manual". This document consists of rules, guidelines and examples to be used by state agencies in the selection process.

Fees for the selected architect/engineer are negotiated on the basis of separate recommended fee schedules for architects and engineers provided in the Procurement Manual. These fee schedules, unrevised since 1980, rely on two factors for a determination of a percentage rate of pay:

- cost of project; and
- degree of complexity.

The Bureau allows architects/engineers to request an exemption from these schedules when it is felt that the requirements of the project necessitate a higher fee. The Committee found that in recent practice, because these schedules have been unrevised for at least 8 years, virtually every architect and engineer will request a fee exemption from the

Bureau in a lengthy and time consuming process for both parties. The Committee found that these schedules for architects/engineers are regarded by both the Bureau and involved architects/engineers as badly out of date and in need of revision.

The Committee also found that the present fee schedules for architects/engineers should be revised by the Bureau as follows:

1. Increase the present fee schedule by 2%;
2. Include a statement that the schedule is a guideline only, and the owner and professional may negotiate a lower fee; and
3. Include a statement that if the owner and professional negotiates a higher fee than is reflected on the schedule, the professional must submit a written explanation for the reason for the higher fee to the Director of the Bureau of Public Improvements prior to the Director's consideration of the professional contract.

Therefore, the Committee recommends that the Bureau of Public Improvements update fee schedules for architects and engineers to provide more adequate compensation and to improve Bureau efficiency.

STATUTORY

17. Transfer the central telephone switchboard and all associated positions from the Bureau of Public Improvements to the Office of Information Services (Telecommunications Division) to more properly align similar duties and areas of responsibility.
-

At the present time, the Property Management Division within the Bureau of Public Improvements has responsibility for the central telephone switchboard. The central telephone switchboard provides operator services for calls in the statehouse complex and is staffed by a total of 7 authorized positions.

The central switchboard has been housed within the Bureau for a number of years. In 1987, the Telecommunications Division was transferred from the Bureau to the Office of Information

Services within the Department of Administration. For unexplained reasons, the switchboard responsibilities and staffing were not transferred at the same time.

Upon review, the Committee found that the present organizational location of the switchboard creates administrative problems and acts as a drain on current Bureau resources. Finally, it is the Office of Information Services, not the Bureau, which is currently responsible for all planning and programming implementation associated with the central telephone switchboard. It appears that switchboard activities have increased in recent years resulting in needs for additional operator positions. To provide these positions, the Bureau has had to "give up" 3 custodial positions which were reclassified into needed switchboard positions.

The Committee found that the present organizational placement of the central telephone switchboard in the Bureau of Public Improvements is inappropriate to the Bureau's current set of responsibilities. Further, the Committee found that the central telephone switchboard is inexorably linked to the Telecommunications Division within the Office of Information Services and should be placed in closer organizational proximity to that entity.

Therefore, the Committee recommends that the central telephone switchboard and all associated positions be transferred from the Bureau of Public Improvements to the Office of Information Services (Telecommunications Division) to more properly align similar duties and areas of responsibility.

STATUTORY	18.	Change the funding source for the salaries for central telephone switchboard personnel from the General Fund to the Telecommunications Enterprise Fund to ensure that state agencies pay for these services in a proportional fashion.
-----------	-----	--

The salaries for the central telephone switchboard operators and their supervisor are currently appropriated from the General Fund. As stated earlier, the central telephone switchboard provides services to all state offices located in the capital complex.

Presently, the Telecommunications Division is funded

through use of the Intergovernmental Telecommunications Fund. This type of fund is referred to as an Internal Service Fund. Internal Service Funds somewhat resemble private sector financing principals in that user fees are collected as revenue. However, Internal Service Funds, such as the Intergovernmental Telecommunications Fund, collect only those user fees needed to fund an activity or program on a break even basis.

Given the results of the previous recommendation, in which the Committee has recommended the organizational transfer of the central telephone switchboard to the Telecommunications Division within the Office of Information Services, the Committee carefully reviewed the possible need to change funding sources. If the funding source for the salaries of operators/supervisors were to be changed from the General Fund to the Intergovernmental Telecommunications Fund, this would mean that each agency would be paying a share of the cost of providing this service. Each agency's share would be proportionate to their use of the State's telephone system. In this arrangement, agency costs would be met through whatever funding source is used to fund the operations of that agency.

Upon final review, the Committee found that changing the funding source for these salaries to the Intergovernmental Telecommunications Fund will result in total savings to the General Fund of \$145,667 (FY 1990) and \$147,513 (FY 1991). To assist those General Fund agencies that may have difficulty in absorbing the additional costs of paying for their share of these salaries, the Committee is recommending that \$50,000 of the total savings be reappropriated to a special Telecommunications Reserve Fund. Agencies with a significant need of funding to pay for these costs will be able to apply to the State Budget Officer for use of the reserve fund.

The Committee found that the costs of state telephone services presently provided by the Telecommunication Division are funded according to use by state agencies. The Committee further found that the organizational transfer of the central telephone switchboard to the Telecommunications Division should be accomplished in tandem with a corresponding change in funding sources. The costs of providing the services of the central telephone switchboard should be borne on a proportional basis by all user agencies.

Therefore, the Committee recommends that the funding source for central telephone switchboard operators and their supervisor be changed from the General Fund to the Telecommunications Enterprise Fund to ensure that state agencies pay for these services in an proportional fashion.

FINDING

19.

The Joint Standing Committee on Audit & Program Review finds that the central telephone switchboard operators and supervisor should resubmit their reclassification requests to the Bureau of Human Resources.

Upon review of the previously mentioned issues regarding the central telephone switchboard operators and supervisor, the Committee considered additional information concerning the current classifications of these positions. These positions are currently classified as follows:

- Switchboard Operator as Range 7; and
- Switchboard Supervisor as Range 9.

In 1982, the Switchboard Operators requested a reclassification to a range 9. As a rationale for this change, the switchboard operators cited the new skills that were needed to operate the state's newly installed (1982) LCDS computer system which facilitates remote access calls from state employees who had use of remote access ID numbers. The switchboard operators also claimed that their jobs now required more demanding human relations skills and should be reclassified accordingly.

After review of this reclassification request, the former Department of Personnel denied the request having concluded that the job of switchboard operator had not significantly changed. Through the Maine State Employees Association, the Switchboard Operators appealed this decision. The appeal was denied by an independent arbitrator in 1985. In essence, the arbitrator agreed with the Department in concluding that the operator's new LCDS responsibilities did not require the operators to enter data but instead to punch in ID numbers supplied by remote access callers. The arbitrator also concluded that the present responsibilities of operators are limited to "making telephone contact between two parties. They have no more responsibility than routing calls."

The present incumbents continue to maintain that these positions are not properly classified. To support this claim, the operators and their supervisor cite significant changes in both job conditions and responsibilities during the past 5 years.

The Committee found that enough changes may have taken place with these positions since 1982 to warrant a reconsideration of their present classifications. In particular, the Committee notes that comparisons with similar positions in the private sector may be relevant to a further consideration of this issue. Finally, the Committee found that any future review of these classifications should address the topic of whether the present titles adequately describe current responsibilities.

Therefore, the Committee finds that the central telephone switchboard operator and supervisor should resubmit their reclassification requests to the Bureau of Human Resources.

ADMINISTRATIVE 20.

Work with the Maine Chapter of the AIA, and when appropriate, the Maine School Management Association and the Associated General Contractors of Maine, to review the adequacy of the document used to contract for services with architects and engineers. Report to the Joint Standing Committee on Audit & Program Review in a year's time on the results of this review.

To help fulfill its statutory mandate to adopt procedures for the procurement of professional architectural and engineering services for public improvements (5 MRSA §1742 (6)), the Bureau currently uses a standardized contractual form referred to as Form 72.

Upon review, the Committee found that Form 72 has not been revised since 1972. To aid in its review of the Bureau's use of this form, the Committee received information from the Maine Chapter of the American Institute of Architects (AIA) which indicated that in 1987, the AIA had comprehensively revised its recommended standardized contractual document to be used by Architects and Engineers for public improvements.

After comparing Form 72 to the revised AIA document, the Committee concluded that Form 72 has several weaknesses. These weaknesses include:

- lack of specificity regarding owner responsibilities in the contractual

-
- relationship;
 - lack of adequate definition for specific terms such as "termination, suspension and abandonment"; and
 - lack of any dispute resolution process.

The Committee found that Form 72 is in need of revision and that the Bureau should involve the Maine Chapter of the AIA and other organizations whose members are often parties to the public improvement process, in the efforts to revise this document.

Therefore, the Committee recommends that the Bureau work with the Maine Chapter of the AIA, and when appropriate, Maine School Management Association and the Associated General Contractors of Maine to review the adequacy of the document used to contract for services with architects and engineers. Report to the Joint Standing Committee on Audit & Program Review in a year's time on the results of this review.

STATUTORY	21.	Clarify the Bureau of Public Improvements's statutory relationship and responsibilities with the state's public institutions of higher education.
-----------	-----	---

Current law (5 MRSA §1741), defines a public improvement as, "...the construction, major alteration or repair of buildings or public works now owned or leased or hereafter constructed, acquired or leased by the State of Maine or any department, officer, board, commission or agency thereof....." (Emphasis added). Current law also clearly identifies the Bureau of Public Improvements as the state agency with the overall responsibility for public improvements.

In its efforts to administer its statutory responsibilities, the Bureau has developed differing relationships with each of the public institutions of higher education in the state: the University of Maine System, the Maine Vocational-Technical System and the Maine Maritime Academy. The statutory authorization for the development of these relationships is the earlier cited reference to state agencies. As stated in the Committee's previous review of the University of Maine System and Maine Maritime Academy, these institutions (along with the Maine Vocational-Technical System) are generally held to be "agencies of the state" for the purposes of which they were created.

Upon further review, the Committee obtained a legal opinion from the Attorney General which stated that under current law, the Bureau may provide certain services to state agencies such as Maine Vocational-Technical System and Maine Maritime Academy but is not obligated to do so.

In particular, the Committee found that the University of Maine System does not currently receive any services from the Bureau nor is the University of Maine System in need of these services. As discussed in last year's review of the University of Maine System, the Committee found that the University of Maine System has a facilities office which adequately provides services to the System.

The Committee also found that the Bureau is providing a number of services to the Maine Vocational-Technical System and Maine Maritime Academy. These services include technical assistance in the development and maintenance of long range public improvement program, professional advice, approval of plans, inspection of materials and equipment, inspection of completed projects, maintaining a file of public improvement plans; and maintaining a record of construction costs.

After careful review, the Committee found that the present Bureau relationships with the University of Maine System, Maine Vocational-Technical System and Maine Maritime Academy are appropriate and need to be clarified in statute. In addition to the services already being provided by the Bureau to the Maine Vocational-Technical System and the Maine Maritime Academy, the Committee found that the Bureau should be clearly authorized to provide the following services:

- to demolish, subject to the Governor's approval, hazardous buildings;
- to lease or approve all leasing of premises; and
- to approve, subject to certain limitations, all public improvement projects in concept.

Therefore, the Committee recommends that current law be amended to clarify the Bureau's statutory relationship and responsibilities with the state's public institutions of higher education.

STATUTORY

22.

Repeal an obsolete and unnecessary statutory reference to the Bureau of Public Improvements' responsibility for drug related seized property.

Current law [5 MRSA §1742 (22)] lists a responsibility for the Bureau regarding drug-related seized property. This section reads as follows:

"Drug-related seized property. To review and comment on all records provided by the Commissioner of Public Safety relating to the disposition of drug-related seized property pursuant to Title 22, section 2387, subsection 5"

A review of 22 MRSA 2387(5) shows that it was repealed in 1987 and replaced by 15 MRSA §5821 which contains a lengthy definition of drug related seized property. During its review of the Bureau, the Committee found that the Bureau was not aware of this responsibility and has never carried out this duty.

Upon further review, the Committee found that drug related seized property is considered to be a topic under the province of the Department of Public Safety. In response to a direct inquiry from the Committee, the current Commissioner of Public Safety stated that the only possible rationale for Bureau involvement with the topic of drug related seized property might be in the Bureau's responsibility to inventory all removable equipment [5 MRSA §1742 (10)].

The Committee found no compelling reason for mandating continuing Bureau responsibility for drug related seized property. Therefore, the Committee recommends that current law be amended to repeal this obsolete and unnecessary statutory reference to Bureau responsibility for drug related seized property.

STATUTORY

23.

Upon the retirement of the current incumbent, transfer the Information and Tour Guide position from the Bureau of Public Improvements to the Maine State Museum to more properly align similar duties and areas of responsibility.

Currently, staffing for the Property Management Division within the Bureau of Public Improvements includes the Information and Tour Guide position. The Information and Tour Guide reports to the Superintendent of Buildings and has several responsibilities:

- to conduct guided tours of the State House;
- to coordinate exhibitions in the State House display cases; and
- to perform clerical and related duties as assigned.

Upon review, the Committee found that the Information and Tour Guide position dates back to the 1960s. When the current incumbent first assumed the position in 1969, the position was one of three which were part of Capitol Police under the Bureau of Public Improvements. By 1975, the other two positions were eliminated through attrition. During that same year, the Capitol Police had been transferred to the Department of Public Safety. Later on, the Tour Guide position was transferred back to the Bureau.

The Committee found that the current responsibilities of this position do not correspond well to the mission and purpose of the Bureau of Public Improvements; namely to oversee and maintain state owned facilities. Instead, the Committee found that this position is more logically aligned with the Maine State Museum which has a statutory mandate to preserve and exhibit the environmental and cultural richness of the State.

The Committee also found that any contemplated transfer of this position should be contingent upon the retirement of the current incumbent who has served in this position with distinction. Therefore, the Committee recommends that upon the

retirement of the current incumbent, the Information and Tour Guide position should be transferred to the Maine State Museum to more properly align similar duties and areas of responsibility.

FINDING 24. The Joint Standing Committee on Audit & Program Review finds that the current cost estimates for asbestos abatement efforts in public facilities drastically exceed the available funding. Further, the Committee finds that unless additional funding is provided, available funding may be depleted by January of 1990.

During its review of the Division of Safety and Environmental Services within the Bureau of Public Improvements, the Committee carefully considered the manner in which state monies have been provided for asbestos abatement activities in public facilities.

In 1986, a \$6 million bond issue was approved by the voters in a public referendum for the purposes of identifying and correcting asbestos problems in state facilities. Another \$6 million bond issue was also approved by the voters in 1987. The scope of the second bond issue was expanded to include funding for asbestos removal in public school facilities.

As of March 1989, some \$8,566,000 of the total \$12 million available had been expended. These expenditures have funded an extensive federally required survey of public facilities (\$3.4 million) asbestos removal projects in state facilities and public schools (\$4.7 million) and retainage for certain projects under completion (\$.25 million). The two Bond issues had unexpended balances of \$1,158,892 and \$2,860,323 respectively as of the end of March 1989. Current projections indicate that the remaining funds may be depleted by January of 1990.

Results of the aforementioned survey conducted by the Division of Safety and Environmental Services show that it will cost more than \$50 million for the most serious known abatement needs of state and public school buildings.

The Committee finds that there is a shortfall of at least \$50 million in monies necessary to fund asbestos abatement efforts

in state and public school facilities. Further, the Committee finds that current asbestos removal costs far outstrip the financial capacity of most State agencies and school administrative units and that this situation represents a significant threat to the continued health and safety of many State employees, school children and school personnel.

Given that available funding may be depleted by January of 1990, the Committee finds that there is a paramount need for the Legislature to promptly consider and approve an additional bond issue to be sent to the voters for public referendum. The Committee will be directly communicating the results of this finding to the Joint Standing Committee on Appropriations and Financial Affairs for their consideration.



BUREAU OF HUMAN RESOURCES

Purpose and Responsibilities

The Bureau of Human Resources is the organizational unit within the Department of Administration which administers the civil service system for the agencies of Maine State Government. Currently, the Bureau has a relatively new statutory mandate to act as a service agency which provides a more flexible personnel system in a decentralized fashion to state agencies.

The Bureau of Human Resources has a long list of statutory responsibilities (5 MRSA C. 372). These responsibilities can be paraphrased as follows:

- to administer a personnel system which ensures that positions with similar duties and responsibilities receive similar pay and are treated equitably and consistently;
- to ensure that all applicants for positions within the civil service system are afforded a fair and equitable opportunity to obtain employment on the basis of merit and fitness;
- to develop and administer a training system to ensure that: agencies are provided organizational consulting services; managers and supervisors possess sufficient skills for effective personnel management; and employees receive technical and generic workplace skills;
- to oversee and maintain a list of eligible individuals for different classifications within Maine state government;
- to provide necessary technical assistance to state agencies; and
- to establish and implement a job performance evaluation process.

History

The state's first civil service system was statutorily established in 1937 to parallel the enactment of federal civil service law. At that time, authority for administering the state's personnel system was placed with a 3 member Personnel Board and a Bureau of Personnel within the Department of Finance. Since then, administration of the state's civil service system has undergone a number of significant changes. In 1941, the Bureau's status was elevated to that of an independent agency. The Bureau's Director, formerly jointly appointed by the Governor and the Personnel Board, was now appointed solely by the Board and served at its pleasure. The Personnel Board was authorized in 1947 to appoint a State Advisory Council on Personnel, members of which included representatives from the Legislature, Governor's Office, Governor's Executive Council, department heads, employee's association, Budget office and the public. In 1953, membership of the Personnel Board was increased from three to five. The two new members were a state employee who was a member of the Maine State Employees Association, and a department head. Membership of the Board underwent yet another change in 1975 by legislation which stipulated that all members would be public members. Thus, the Maine State Employees Association and department head memberships were discontinued. Also, in that same year, the State Advisory Council on Personnel was discontinued.

Another major change was instituted by the Legislature in 1976 by elevating the Bureau to a cabinet level Department of Personnel. The new Department was headed by a Commissioner who was given sole decision making responsibility for the Department; a responsibility formerly shared with the State Personnel Board. The Board's functions were redefined as a body with advisory and adjudicatory responsibilities. During that same year, the Legislature authorized (1976 PL 5 ch. 147) implementation of the Hay Classification System. The Hay System evaluates positions on the basis of four criteria: know-how, - problem solving, accountability and working conditions. From this evaluative process, groups of similar jobs (classifications) are determined and then assigned to congruent pay ranges. The Hay System is still in use today, though the overall plan is currently the legislatively mandated subject of a separate (from compensation levels) collective bargaining process. Concurrent to the establishment of the Hay System, the Legislature also established the Temporary Compensation Review Board to act as an appeals body for initial classification decisions made under the Hay System. Eventually, more than half of the initial classifications were revised by the Temporary Compensation Review Board.

Most recently, as a consequence of a review conducted by the Committee on State and Local Government, which was initiated by a recommendation of the Audit & Program Review Committee, the Department of Personnel was reorganized in 1987 as the Bureau of Human Resources and placed within the newly established Department of Administration. The enacting legislation specified a mandate for the Bureau to function as a service provider for the personnel needs of state agencies. The mandate also directed the Bureau to operate with flexibility and to strive to decentralize personnel management to the agencies. This same legislation also specified that the Hay System would be subject to collective bargaining, the results of which are due by March 15, 1990.

The 1987 reorganization had two other significant features. First, the State Personnel Board was discontinued and replaced by the State Civil Service Appeals Board. Second, the Policy Review Board was established to provide the Director with advice and counsel on policy decisions for the Bureau. Membership of the Policy Review Board is comprised of two members from the private sector, one member from the Governor's office and one member each from the five largest state agencies.

Method of Operation, Organization and Staffing

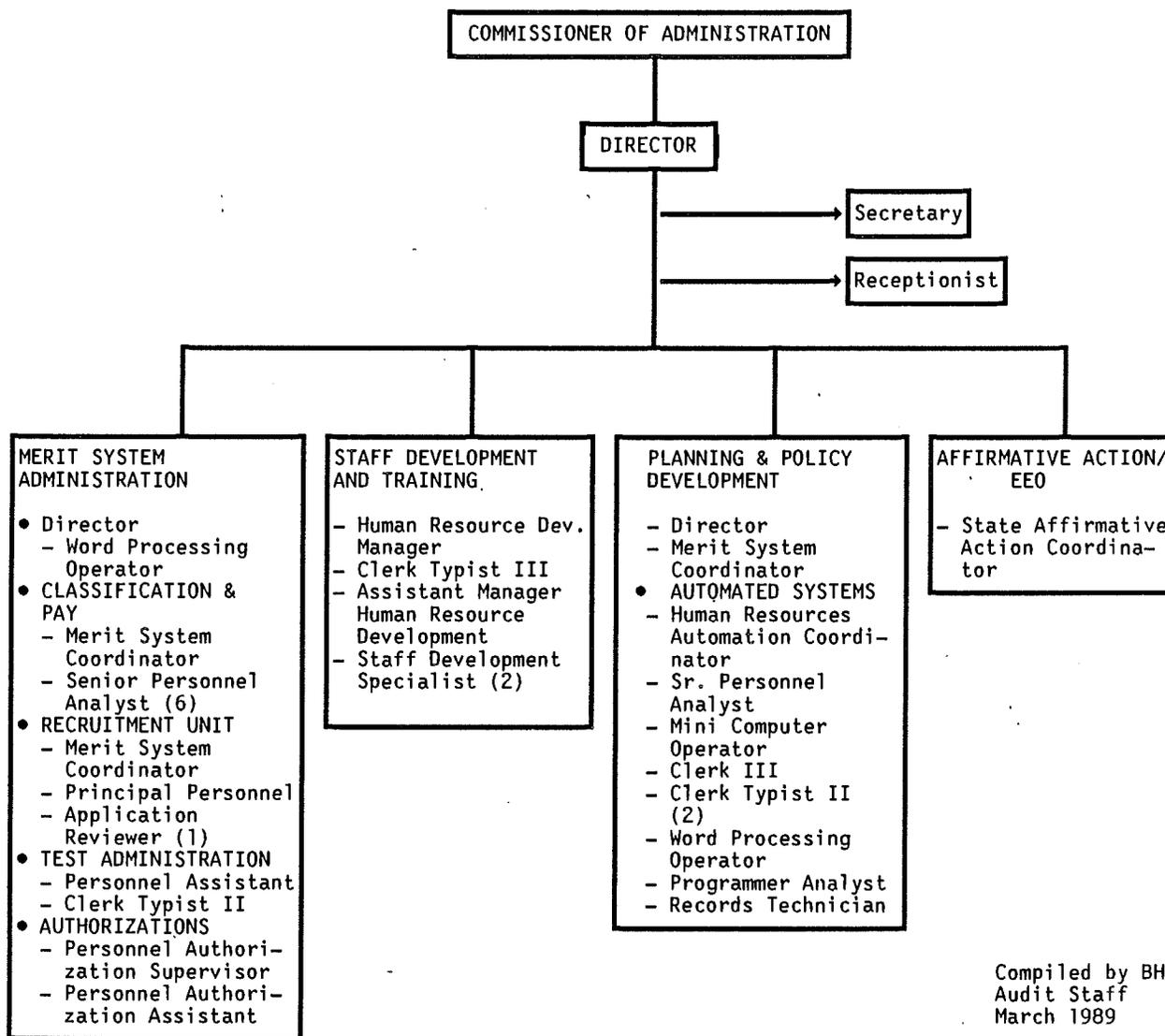
Any description of the current method of operation, organization and staffing of the Bureau of Human Resources must include a clear recognition of the many changes that have either been recently accomplished, are in the process of being implemented or are in a planning process for change in the near future. These change processes stem from the various legislative directives contained in the recent reorganization legislation.

The Bureau's current method of operation is most easily understood by a review of the current organizational structure as described below and depicted in the accompanying chart.

The Director is the chief executive officer of the Bureau who reports directly to the Commissioner of the Department of Administration. The Director has complete policy making authority but is required to work closely with the Policy Review Board in developing appropriate policy decisions and methods of implementation. The Director has a support staff which includes an administrative secretary and a receptionist used for Bureau-wide service.

The largest organizational unit in the Bureau is designated as Merit System Administration. Much of what is popularly considered to be responsibilities and duties of the civil service system is accomplished by this unit. Currently, this unit provides services to line agencies in a complicated process which is predicated upon Bureau involvement as a processor and an approval authority.

BUREAU OF HUMAN RESOURCES
ORGANIZATIONAL STRUCTURE AND POSITIONS



Compiled by BHR
Audit Staff
March 1989

The Merit System Administration Unit is headed by the Merit System Administrator who oversees a number of functional responsibilities for the Bureau:

-
1. Classification/Compensation - also referred to in many quarters as the "Job Analysis Section". This sub-unit is responsible for position classification, job evaluation, and representing the Bureau of Human Resources in appeals and arbitrations.

This organizational unit is staffed by a Merit System Coordinator and six Senior Personnel Analysts, who are shared with the recruitment sub-unit.

2. Authorizations - This sub-unit has broad responsibilities for oversight and verification of personnel transactions and salary authorizations. Specific responsibilities include the review and authorizations of agency personnel transactions which result in a change status for a particular employee such as completion of probation, suspension, and leave of absence.

This unit also has responsibilities for any change in compensation for a particular employee including schedule adjustment and for the coordination of position actions (approval, funding) with the Bureau of the Budget.

Activities within this unit are staffed by an Authorizations Supervisor and an Authorizations Assistant.

3. Recruitment - This organizational unit, headed by a Merit System Coordinator and with staff shared with the Classification/Compensation sub-unit, has several distinct responsibilities. First, this unit administers procedures and process for agency recruitment of qualified applicants. This particular activity is staffed by a Principal Personnel Analyst, a Personnel Assistant and an Application Reviewer. This unit has just recently been created to improve the Bureau performance in meeting recruitment responsibilities, test construction and validation, providing requested information to applicants and administering training and experience evaluations.

This unit also has specific responsibilities which include the maintenance of received applications for employment, scheduling and administering written and oral tests in Augusta, as well as in areas throughout the state, and tracking progress of applicants through register/certification process. Activities within this unit are staffed by a Personnel Assistant and a Clerk Typist II; and

4. Employment Registers - this last organizational part of the Merit System Administration unit is responsible for maintaining centralized employment registers for use by line agencies. This unit also has the important responsibility of establishing certifications (based on merit) of top candidates within each register. This activity is staffed by a Personnel Assistant and a Clerk Typist III.

Another major organizational unit within the Bureau is the **Policy and Planning Division** which has a rather broad and varied set of responsibilities which include policy development, planning, authorization of exceptions to the standard personnel process, rulemaking, staff support to Labor/Management Committees, business activities of the Bureau and administration of the Bureau's automated personnel records system.

The Policy and Planning Division is staffed by a Director, Merit System Coordinator for Research, Human Resources Automation Coordinator, Senior Personnel Analyst, Mini-Computer Operator, Clerk III, Clerk Typist II (3), Word Processing Operator, and Programmer Analyst.

The **Training and Development** unit offers centralized training services to line agencies. This unit has recently completed planning to decentralize a great deal of training responsibilities and is now in the process of implementing a pilot project for decentralization. If pilot implementation goes smoothly, it is anticipated that decentralization of training programs will be completed in the spring of 1991.

Specific responsibilities currently administered by this unit include assessing training needs throughout Maine state government, developing program and curriculum development, training the "trainers", conducting training workshops and conferences, conducting statutorily mandated new employee

orientation and management training, evaluation of training effectiveness, providing requested management and employee consultation services to state agencies, establishing and participating in education and training development, developing and implementing a new performance appraisal instrument, and providing staff support to the Policy Review Board and administering the Governor's Employee Recognition Program.

The Training and Development Unit is staffed by a Director, Training and Development, an Assistant Manager Human Resources Development, a Staff Development Specialist IV, and a Clerk Typist II. The Training and Development Unit also makes use of a "cadre" of 19 state employees, from line agencies, who have been trained to train other state employees.

The smallest of the major functional units within the Bureau of Human Resources is the **Equal Employment Opportunity/Affirmative Action** unit. Primary responsibilities for this unit include reviewing of the state's civil service system to ensure that illegal employment biases are not practiced, and monitoring of the Affirmative Action Plans developed by each agency as required by Federal and State law.

This unit also provides consultation, technical advice and guidance upon request to line agencies, investigation and monitoring of complaints received with regards to an agency's Affirmative Action Plan, and staff training.

Equal Employment/Affirmative Action responsibilities for the Bureau are accomplished by one staff position; the Affirmative Action Coordinator. The work of the Affirmative Action Coordinator is augmented by designated Affirmative Action Officers within each agency.

Funding and Expenditures

With the exception of the cost of training programs which are funded by means of revolving agency fee accounts, funding for the Bureau of Human Resources comes exclusively from the General Fund. In recent years, the Bureau of Human Resources has had the following total expenditures:

FY 83	\$ 968,548.48
FY 84	1,063,226.94
FY 85	1,151,294.21
FY 86	1,255,306.02
FY 87	1,459,512.26
FY 88	1,509,238.00
FY 89	1,561,513.00

In recent years, approximately 76% of total Bureau expenditures have been for personal services. The remaining 24% have covered All Other (operating) expenses.

ADMINISTRATIVE	25.	Submit a detailed report on the status of the decentralization effort to the Committees on Audit & Program Review and State & Local Government during the compliance phase of the review.
----------------	-----	---

As mentioned previously, the Bureau of Human Resources was the subject of a recent reorganization initiated by the Legislature in 1986. This reorganization, which was effective July 1, 1987, changed the Bureau from a separate Department of Personnel to an organizational unit within the newly created Department of Administration.

Integral to this reorganization was a redefined statutory mandate which directed the Bureau to function as a service organization which operates flexibly to meet the human resource needs of state agencies. The Legislature also specified that the Bureau must act "to decentralize personnel management among the various departments and agencies of the state...deemed in the best interest of efficient administration" [5 MRSA §7036 (23)].

The Committee found that to accomplish this newly defined mandate, the Bureau has embarked in a dialogue with all state agencies as to how the current process might best be changed. Most recently, on November 7-8, 1988, the Bureau sponsored a planning conference in Bethel, Maine which was attended by approximately 70 people who have responsibility for personnel administration and management for state agencies. The stated goal of this meeting was to create a new and different means of managing human resources for state agencies in the most effective way possible.

The assembled group identified a lengthy list of which functions will be subject to decentralization and restructuring. Throughout the process, the Bureau reiterated the notion that decentralization would be "tailored" to the particular needs and circumstances of each agency. In other words, decentralization will only occur subject to the desire, and subsequent ability, of the agency to assume functions and responsibilities currently performed by the Bureau of Human Resources. Briefly stated, the functions which will be decentralized are as follows:

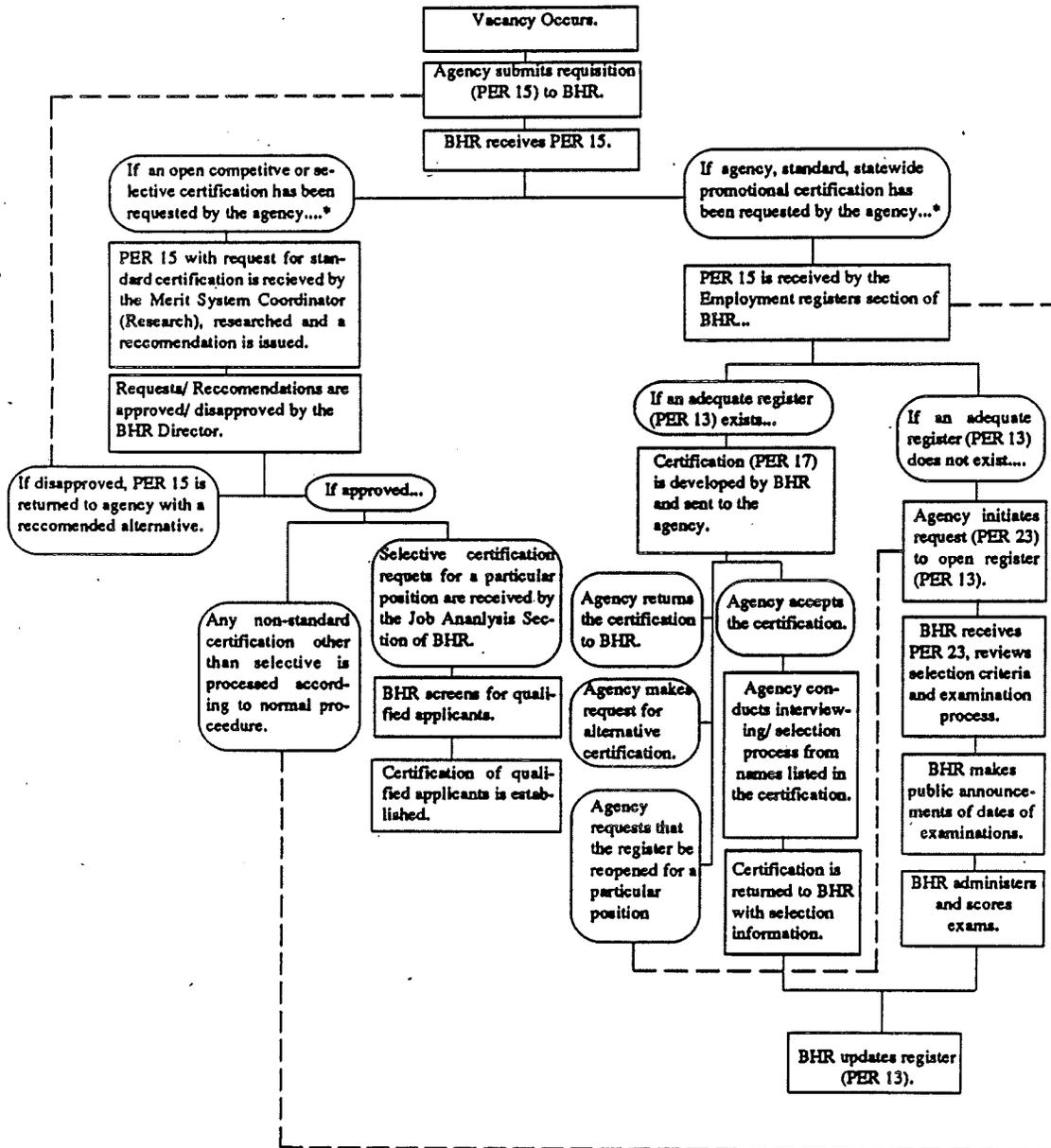
-
- establishment of new positions;
 - reclassification of existing positions;
 - authority to select desired certification method;
 - authority to conduct personnel transactions;
 - authority to administer recruitment, examination and selection process;
 - authority to transfer/demote within the agency;
 - authority to verify direct hire applications;
 - authority to approve special merits;
 - authority to hire above Step A;
 - authority to extend probationary periods for state employees;
 - authority to extend acting capacity appointments; and
 - authority to approve requests for educational leave subject to the approval of the Educational Leave Advisory Board.

The Committee found that many of these functions are currently administered by the Bureau in an inefficient process which requires an inordinate amount of paperwork. The Committee has documented each of these processes in the accompanying flow charts. The Bethel conference determined which functions will be decentralized. The conference did not determine when and how these changes will be implemented. The Bethel conference decided that a working group would be convened to oversee a series of subject specific task forces to develop and implement the decentralization of these responsibilities. These task forces will also propose a number of needed rule revisions as well as identify issues of decentralization which may be subject to collective bargaining.

The Committee further found that after these changes are implemented, the Bureau of Human Resources will be functioning as an agency which:

- provides technical advice and assistance to state agencies;
- audits all human resource transactions and decisions made by agencies;
- handles all reclassification arbitrations;
- maintains official personnel records;
- conducts "selective" certifications for state agencies;

Bureau of Human Resources
Flow Chart 1
 Register/ Certification Process
 for Filling Position Vacancies



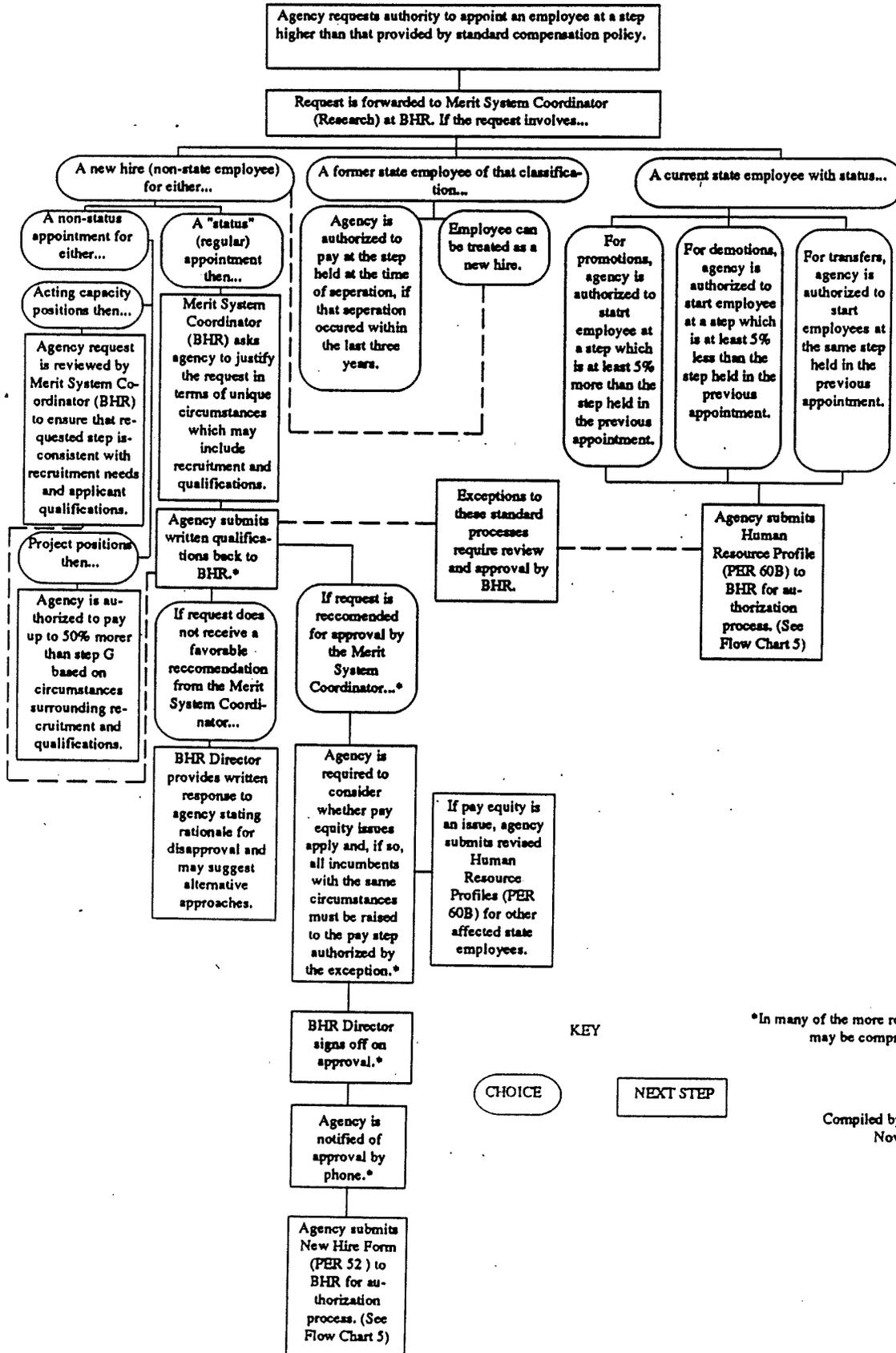
*Approval of certification method by BHR may be influenced by Affirmative Action considerations.

KEY

CHOICE

NEXT STEP

Bureau of Human Resources
Flow Chart 2
Salary Exception Process

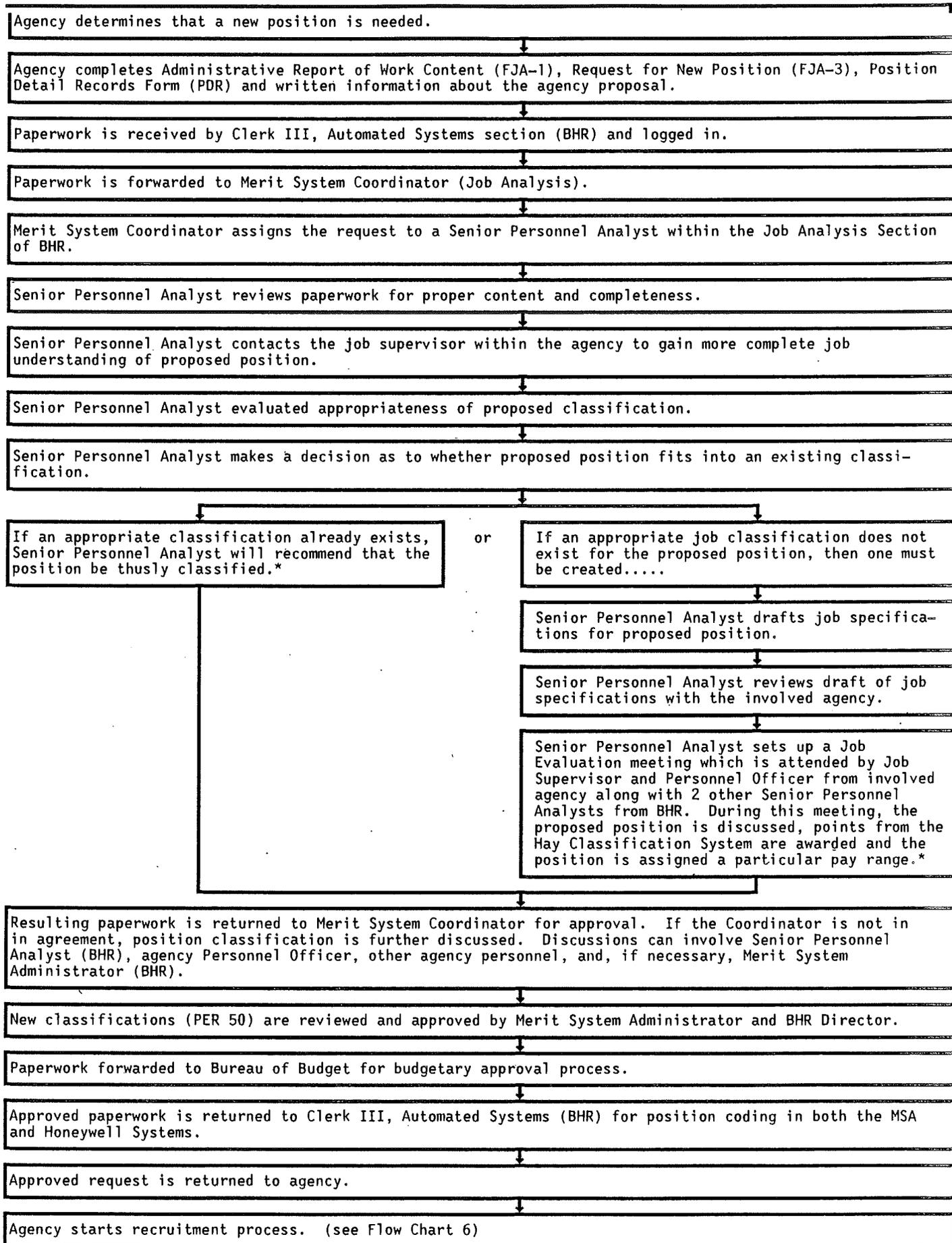


*In many of the more routine cases, these approval steps may be compressed and/or bypassed.

KEY
 CHOICE NEXT STEP

Compiled by Audit & BHR Staff
 November 1988

BUREAU OF HUMAN RESOURCES
Flow Chart 3: Process for creating new positions



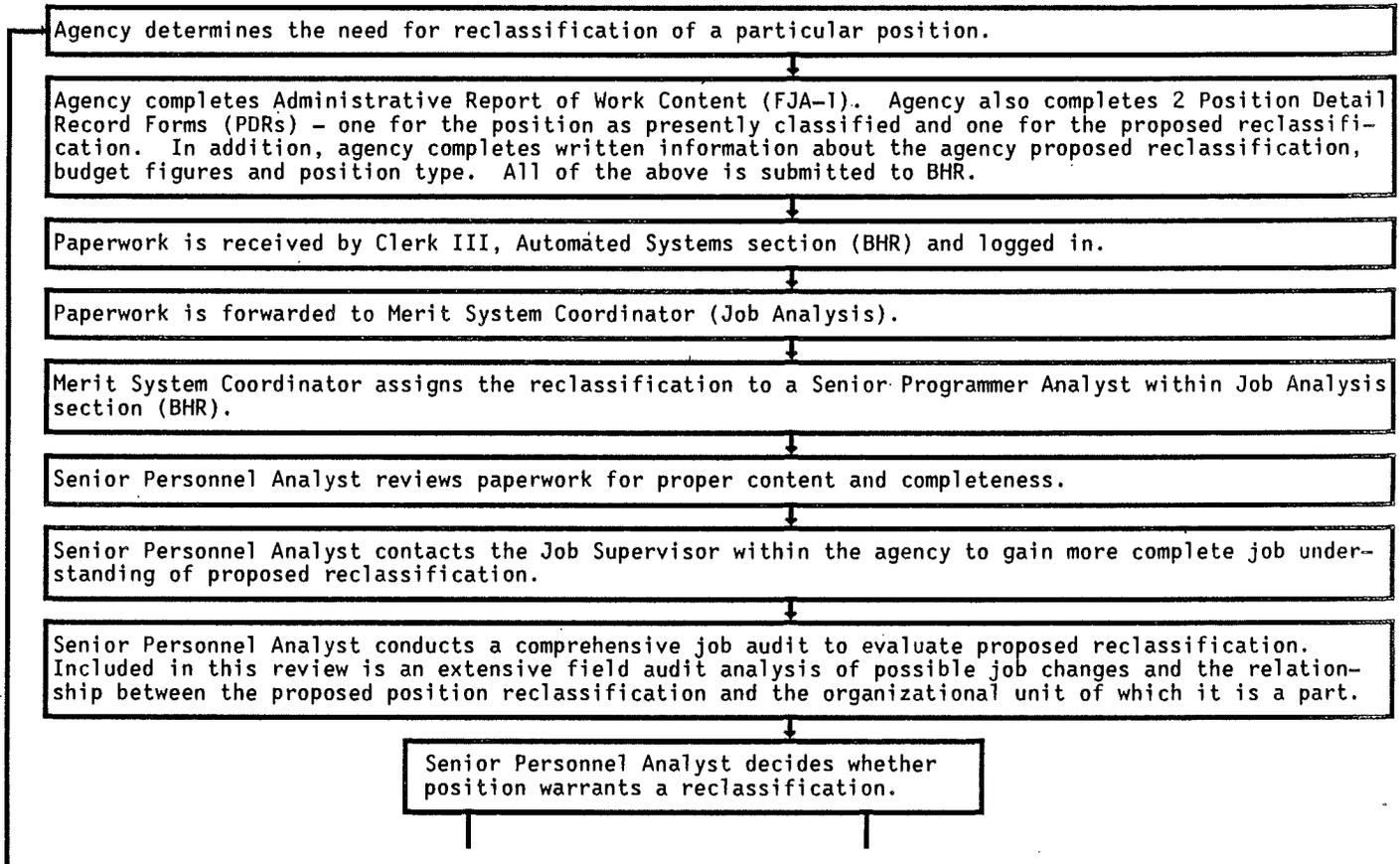
* All MSEA and AFSME bargaining unit employees have a binding arbitration process for appealing classification decisions made by BHR. All other state employees not covered by these bargaining agreements may appeal classification decisions made by BHR to the State Civil Service Appeals Board.

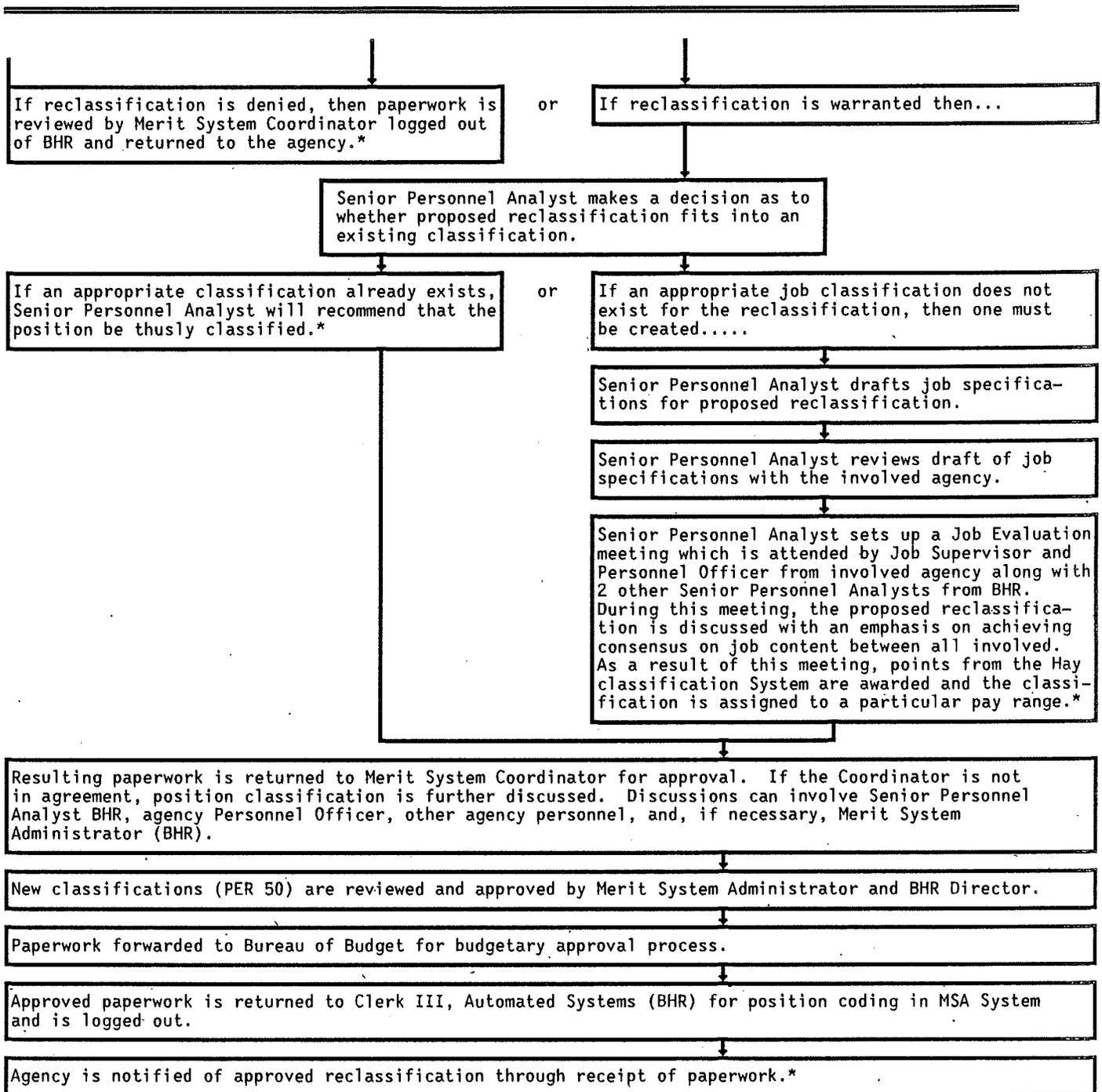


BUREAU OF HUMAN RESOURCES

Flow Chart 4

Process for Position
Reclassification





* All MSEA and AFSME bargaining unit employees have a binding arbitration process for appealing classification decisions made by BHR. All other state employees not covered by these bargaining agreements may appeal classification decisions made by BHR to the State Civil Service Appeals Board.

Compiled by BHR
and Audit Staff
November 1988
ID #23

BUREAU OF HUMAN RESOURCES

Flow Chart 5: Authorization Process

Agency wishes to conduct a personnel transaction. Transaction can include: New Hire, Probation, Reemployment after Termination; Recall from Layoff; Termination, Transfer, Temporary Salary Change/ Acting Capacity; Salary Change; Begin Leave with Pay; Begin Leave without Pay; Extend authorized Leave; End Leave.

Transaction is entered into MSA (automated) system by either....

Automated Systems section at BHR, on behalf of those agencies which do not have the technical capability to do so. Such agencies forward their hard copy of proposed transaction to BHR.

OR

The agency themselves. Most agencies have the technical capability to enter changes into MSA System, i.e. these agencies are "on line".

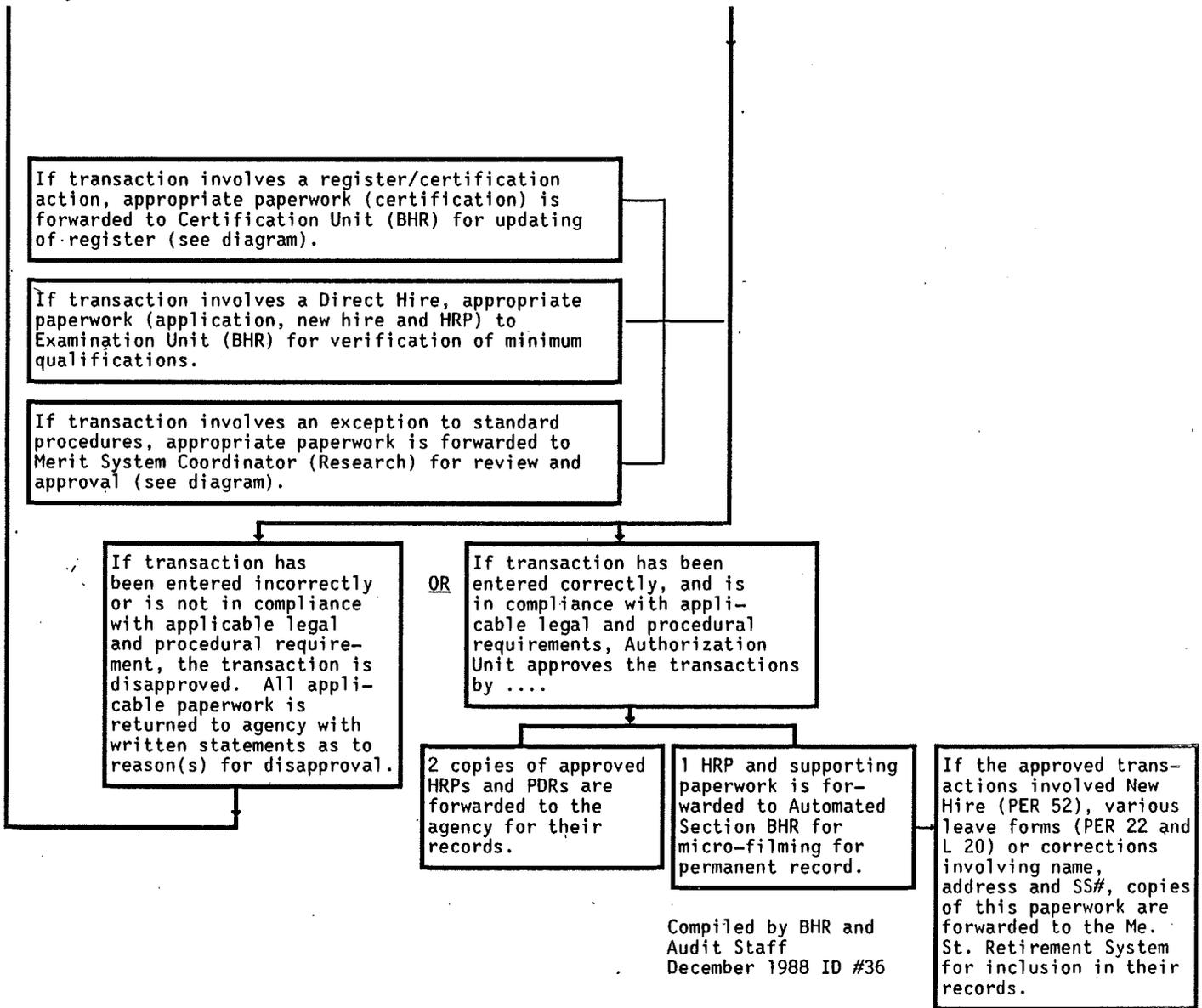
Concurrent with initial entrance of transaction into MSA system, agency forwards applicable forms to BHR which can include:

- New Hire (PER 52)
- Termination (PER 54)
- Employment Eligibility Verification (Federal Form J-9)
- Draft of revised Human Resource Profile (PER 60)
- Draft of revised Position Detail Record (PER 51-A)
- Position Detail Record (PER 1-A)
- Application for Employment in Classified Service (PER 1-3)
- Certification (PER 17)
- Notice of Dismissal/Suspension from State Employment (PER 29 AU)

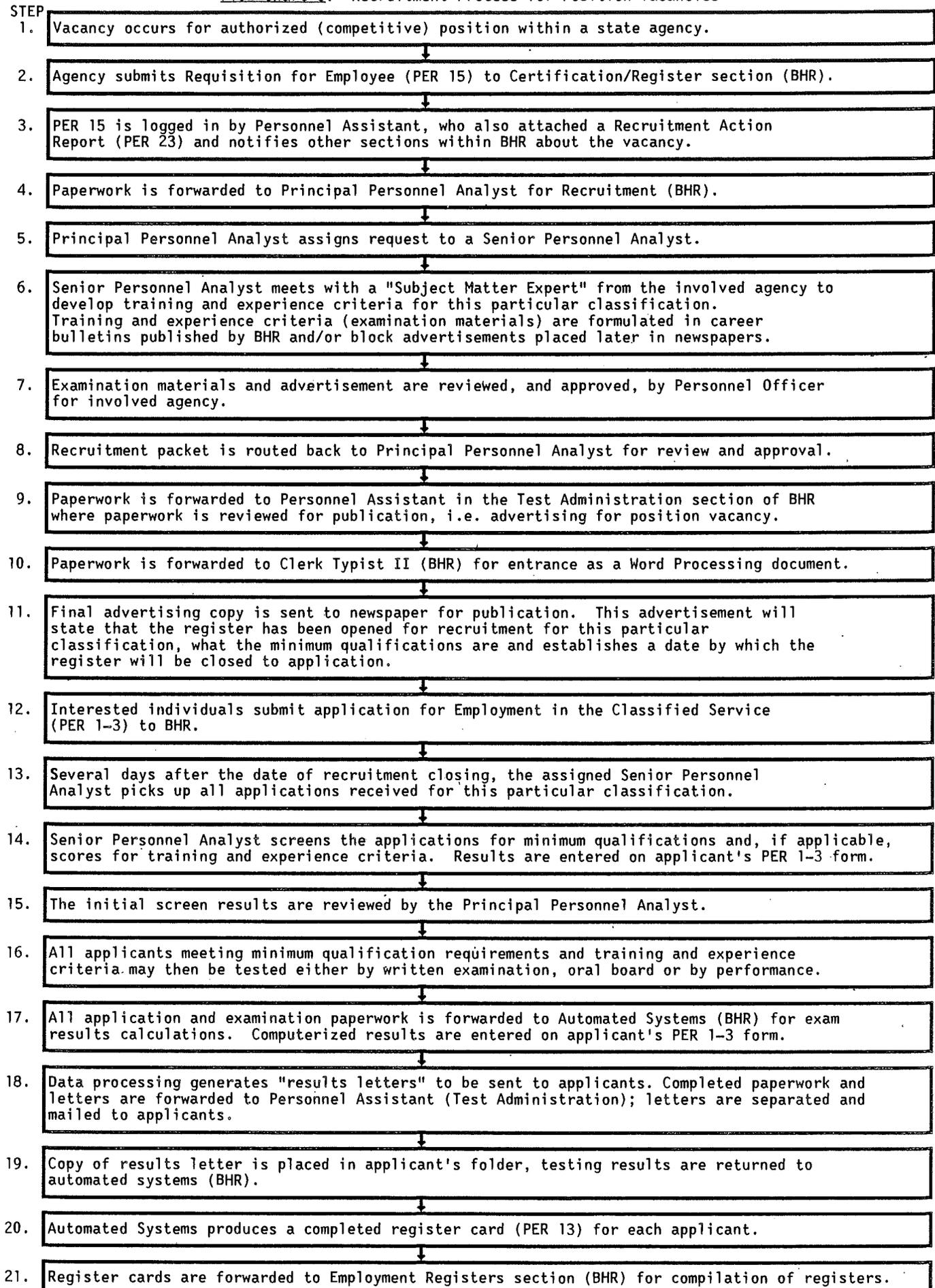
Transactions entered into MSA are processed by batch mode overnight by the Bureau of Data Processing (BDP)

Depending on the transaction, BDP prints revised copies of Human Resource Profile (PER 60) and Position Detail Records (PER 51 A), and forwards them to Clerk Typist II at Automated Systems (BHR) to match up with draft hard copies submitted by agency.

Agency drafts and corresponding MSA printouts are forwarded to Authorizations Section (BHR). Each transaction, with supporting documentation, is reviewed for correctness of MSA entry and for approval purposes in light of applicable law, rules, procedure and collective bargaining agreements.



BUREAU OF HUMAN RESOURCES
Flow Chart 6: Recruitment Process for Position Vacancies*

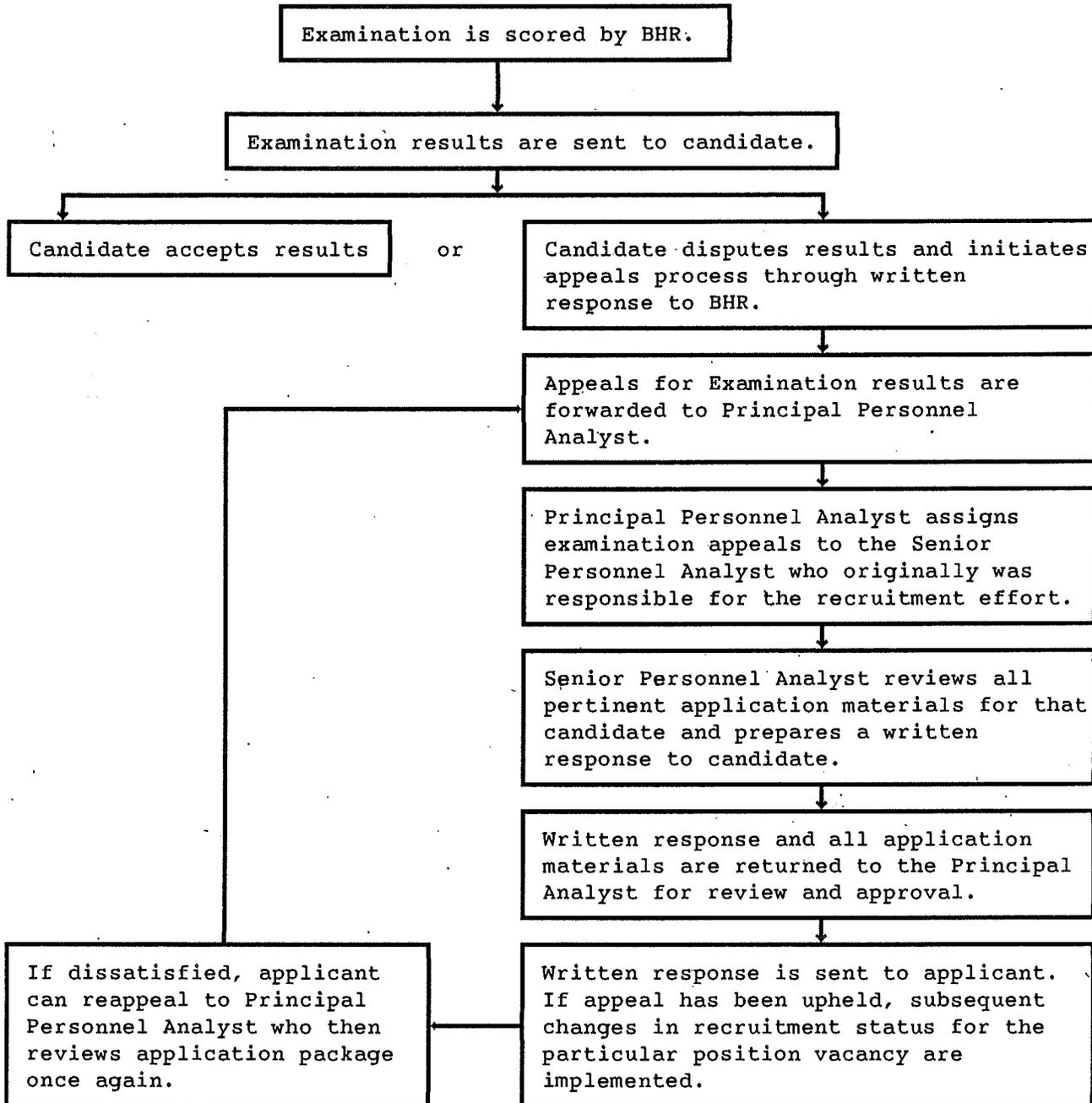


* Classifications that are open to continuous recruitment are not subject to this process. See instead Flow Chart 8.

BUREAU OF HUMAN RESOURCES

Flow Chart 7

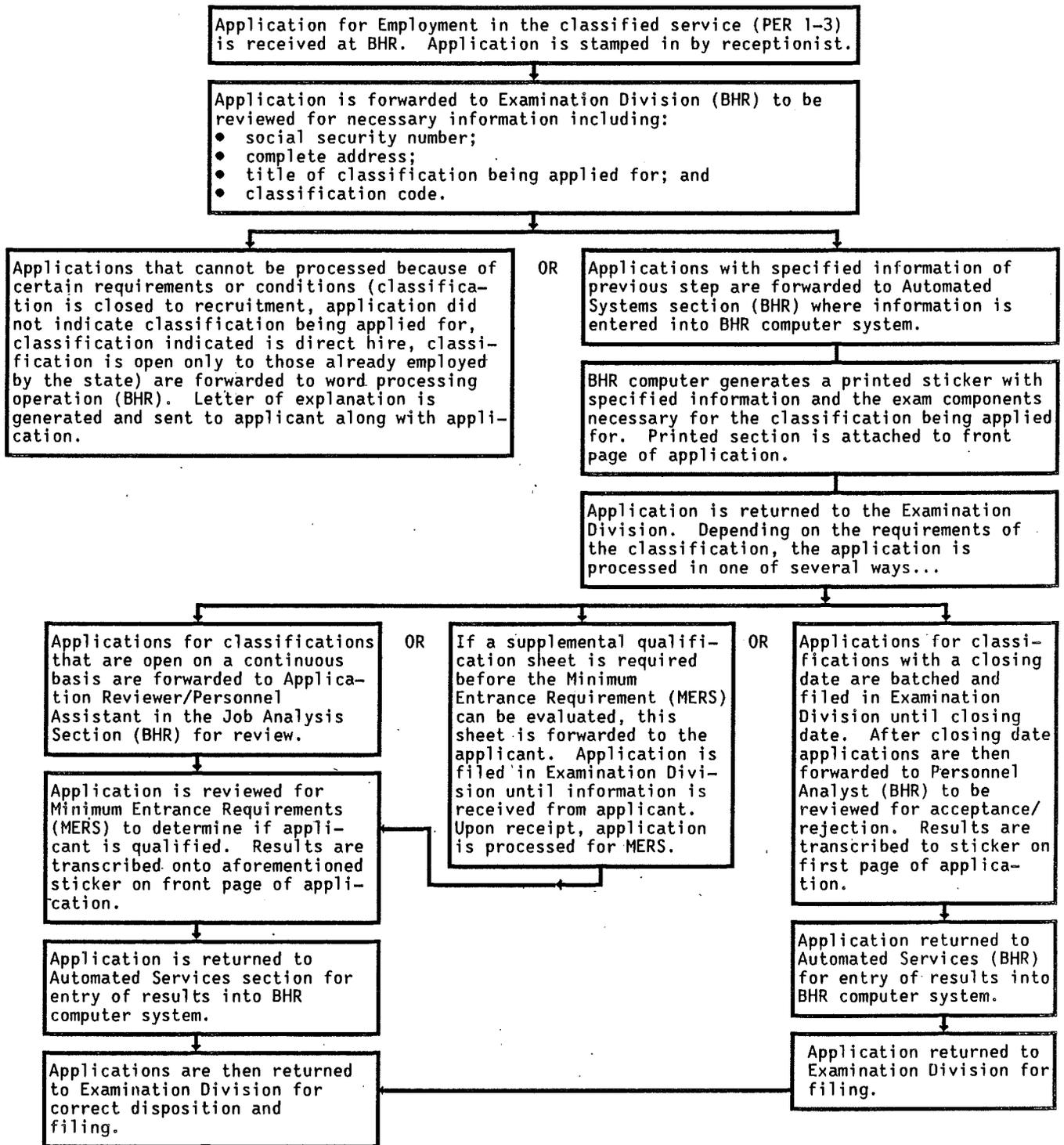
Examination Appeals Process

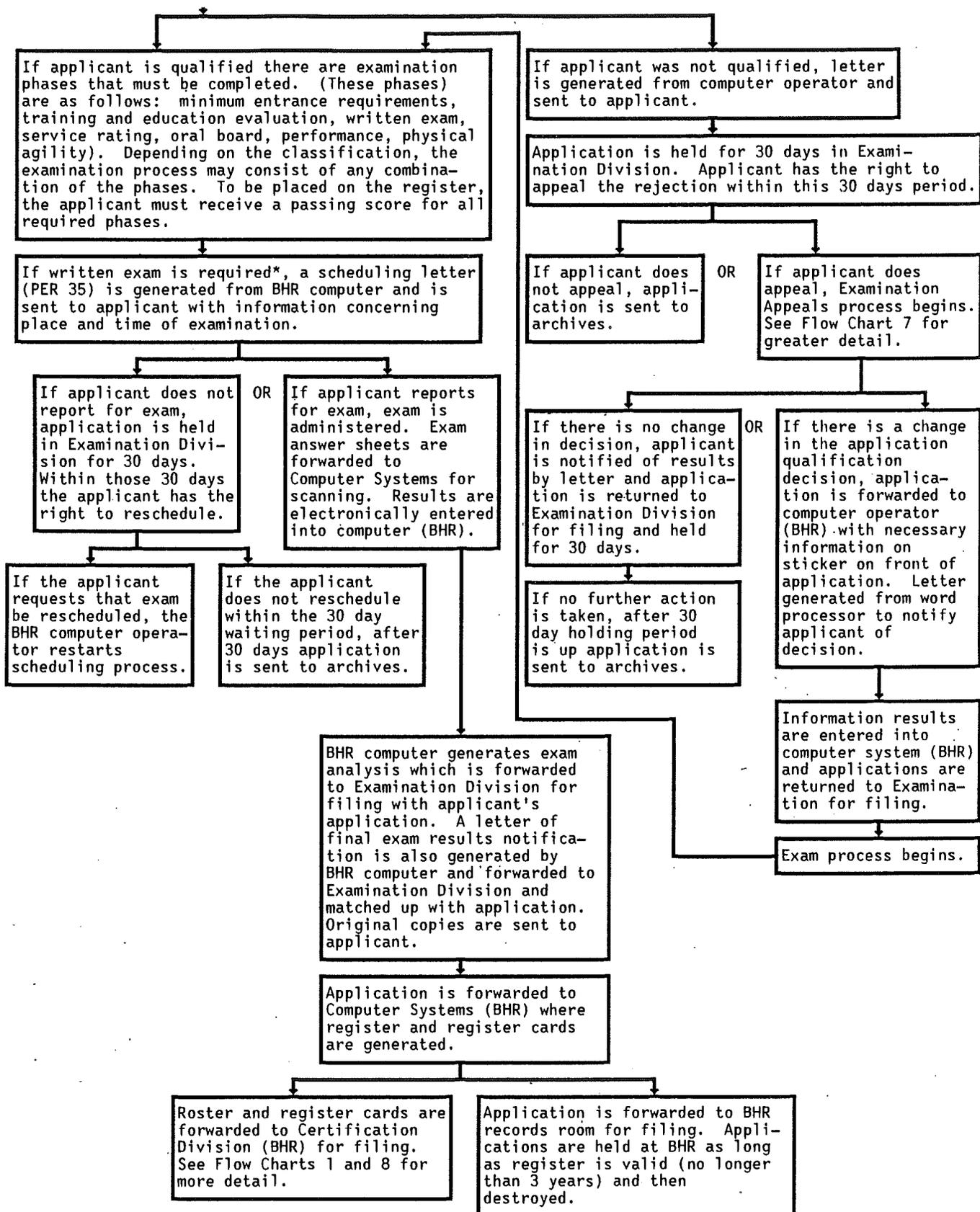


BUREAU OF HUMAN RESOURCES

Flow Chart 8

Test Administration Process





* Processes for service rating, oral boards, performance and physical agility are identical to process for written examinations.

-
- administers recruitment/exam process for classifications used by many agencies; and
 - establishes and reviews salary ranges for all job classifications.

In considering the manner in which the Bureau was proceeding with decentralization, the Committee took several steps. First, as mentioned earlier, an extensive effort was made to document, through the use of 9 different flow charts (see copies), the various personnel processes administered by the Bureau of Human Resources. The purpose of these efforts was to provide a "snapshot" of the present heavily centralized processes so as to compare them to the decentralized processes which should be at least partially implemented in a year's time. Next, before issuing any formal recommendation, the Committee requested that the Bureau develop and submit a proposed schedule for implementation of the decentralization effort. The Committee carefully reviewed the proposed schedule and found that it reflected appropriate priorities.

Upon final review, the Committee found that the Bureau of Human Resources should use the proposed schedule as the basis for implementing its plans to decentralize many of its responsibilities to line agencies. The Committee found that successful decentralization will result in a more effective and efficient personnel effort throughout State government.

Therefore, the Committee recommends that the Bureau of Human Resources submit a detailed report on the status of decentralization efforts to the Joint Standing Committees on Audit & Program Review and State and Local Government during the compliance review. The Committee notes that the submitted report should be based upon the aforementioned schedule and should seek to illustrate the effects of decentralization as compared to the previously mentioned administrative flow charts developed by the Committee.

ADMINISTRATIVE 26.

Develop a plan to reduce the present two year period needed to resolve employee reclassification/reallocation appeals which go to arbitration. Submit this plan by June 1, 1989 to the Joint Standing Committees on Audit & Program Review and State and Local Government. Submit a status report by January 1, 1990.

Each of the current collective bargaining agreements between the State and the employees contains a provision which establishes a process by which employees can appeal reclassification/reallocation decisions made by the Bureau of Human Resources. Such appeals are made to an independent arbitrator who is authorized to issue binding decisions.

Upon review, the Committee found that in recent years this process has been plagued by a continual two-year backlog of cases waiting for arbitration. For example, the Committee received information which indicated that, as of January 1988, there was a backlog of 69 cases waiting to go to arbitration. By March of 1989, that figure had not changed. The Committee found that, in fact, a large number of cases (78) had been processed during that time span but that the number of new cases had exceeded the pace by which appeals were being resolved.

The Committee found that the present two-year delay significantly hinders the efficient functioning of both management and labor. Unresolved cases awaiting final resolution tend to slow down and impede related day-to-day decision making which needs to take place. The Committee also found that to some extent, the present delays could be attributable to several factors:

- large number of appeals being filed;
- increasing length of arbitration hearings;
- difficulty in scheduling independent arbitrators; and
- staff limitations on both sides.

Therefore, the Committee recommends that the Bureau of Human Resources develop a plan to reduce the present two year period needed to resolve employee reclassification/reallocation appeals which go to arbitration. The Committee also recommends that the Bureau of Human Resources submit this plan by June 1, 1989 to the Joint Standing Committees on Audit & Program Review and State and Local Government and that a status report be submitted to these same Committees by January 1, 1990.



BUREAU OF EMPLOYEE RELATIONS

Purpose and Areas of Responsibility

The Bureau of Employee Relations is the organizational unit within state government which is responsible for conducting negotiations for collective bargaining agreements with state employee unions. In practice, the Bureau of Employee Relations functions as the Governor's designee for all matters concerning the collective bargaining process and for the development and implementation of employee relations policies for all departments and agencies within Maine State Government. The Bureau also has the responsibility of managing and coordinating the administration of worker compensation claims for all state employees. As specified by statute [26 MRSA §979-A (5) A (6-C)], the Bureau has the following responsibilities:

- to develop and execute employee relations' policies, objectives and strategies in a manner which is consistent with the Governor's overall objectives;
- to conduct negotiations with designated employee bargaining agents;
- to administer and interpret collective bargaining agreements for the benefit of all state departments and agencies;
- to represent the state in all legal proceedings which emanate from the collective bargaining process such as bargaining unit determination, elections and prohibited practices complaints;
- to coordinate the compilation of all data necessary to the collective bargaining process and implementation thereof;
- to coordinate the state's approach to all instances of negotiating, mediation, fact finding, arbitration and other legal proceedings; and
- to provide necessary technical advice and training to state agencies for implementation and administration of collective bargaining agreements.

History

The predecessor to the current Bureau of Employee Relations was known as the Office of Employee Relations and existed as part of the Governor's Office for the purpose of conducting the collective bargaining process for the state. The establishment of this function coincides with the advent of collective bargaining for public employees in the mid-1970's.

In 1981, the Governor's Office of Employee Relations was placed by Executive Order of the Governor under the Commissioner of Personnel. At that point, it was authorized that the office be headed by a Director of Employee Relations, who was appointed by, and responsible to, the Commissioner.

In 1983, the Governor, through use of another Executive Order, significantly expanded the Bureau's responsibilities by transferring the State's Workers' Compensation Program from the Maine Insurance Advisory Board to the Bureau, then known as the Governor's Office of Employee Relations.

Finally, in 1986, the Office of Employee Relations was removed from the former Department of Personnel, reestablished as the Bureau of Employee Relations and placed within the newly created Department of Administration.

Method of Operation, Organization and Staffing

To accomplish its mandated responsibilities, the Bureau is divided into two organizational units: Labor Relations and Workers' Compensation. The following sections will briefly describe the Bureau's methods of operation and staffing levels from that organizational perspective.

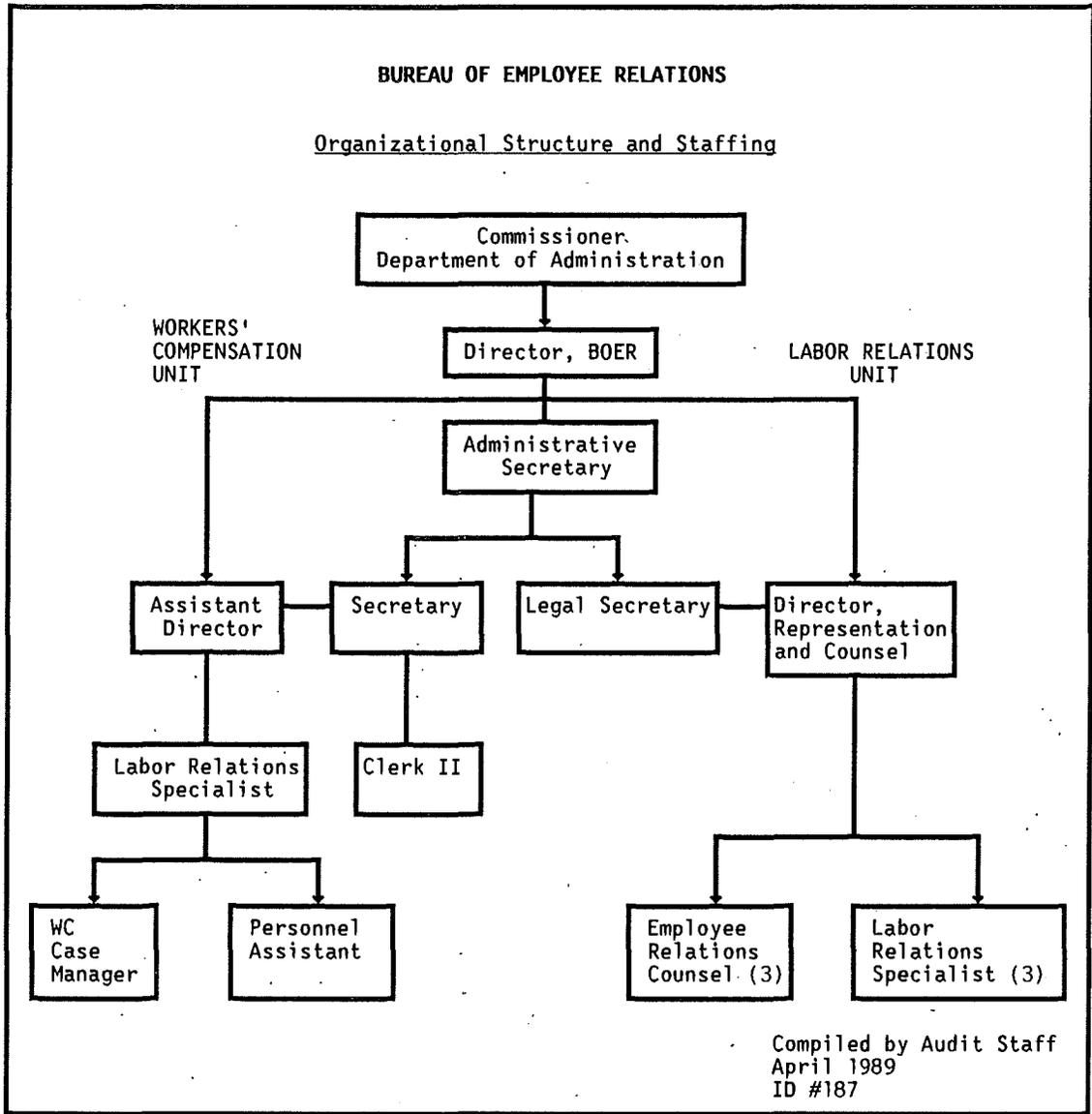
The Bureau of Employee Relations is headed by a Director who is appointed by the Commissioner of Administration and serves at his/her pleasure. The Bureau's Director has responsibility for overseeing all of the Bureau's mandated duties and has the direct services of an administrative secretary for support staff.

The Labor Relations Unit is responsible for the following activities:

- collective bargaining - The Bureau of Employee Relations organizes and develops the state's collective bargaining team and is responsible for the development of management strategy. The Bureau is responsible for the state's role in the impasse resolution process (Mediation, Fact Finding and Arbitration);

BUREAU OF EMPLOYEE RELATIONS

Organizational Structure and Staffing



Compiled by Audit Staff
April 1989
ID #187

-
- negotiations - in a process similar to that of collective bargaining, the Bureau organizes a management team to handle negotiations pertaining to the state's compensation system, unit clarification, classification issues, salary market adjustments and managerial issues concerning changes in hours and work schedules for agencies of state government;
 - implementation and administration of agreements - the Bureau is responsible for printing collective bargaining agreements and distributing them to state agencies. In addition, the Bureau provides interpretation and technical advice to state agencies as to proper administration of these agreements. Finally, the Bureau also participates in several contractually established Labor/Management Committees;
 - handling grievances - as specified in recent collective bargaining agreements, the present procedure for handling employee grievances is a four step process. The third step is placed with the Bureau and involves a formal process of review and judgment.

The Labor Relations Unit consists of a Chief Counsel, 3 attorney counsels and 3 labor relations specialists. This unit has the support staff services of a legal secretary.

The **Workers' Compensation Unit** is responsible for administering and coordinating the state's response to claims filed by employees under the Workers' Compensation Act. Currently, this unit also makes use of the Fred S. James Company, through a contractual arrangement, to provide bill processing services.

The Workers' Compensation Unit is headed by an Assistant Director. Staffing for this unit includes a Labor Relations Specialist, a Workers' Compensation Specialist, and a Personnel Assistant. Support services for this unit are provided by a Secretary and a Clerk Typist II.

Funding and Expenditures

The Bureau of Employee Relations receives all of its funds from the General Fund. In recent years, two factors have impacted on the Bureau's funding. The Training Unit was transferred in 1985 to the Bureau of Human Resources. Annual expenditures for this function are approximately \$140,000. In addition, total staffing for the Workers' Compensation Unit has increased in recent years.

Total Funds Expended
by the Bureau of
Employee Relations

FY 1986	\$832,154
FY 1987	702,389
FY 1988	768,830
FY 1989	796,085

In recent years, an average of 67% of total expenditures was used for Personal Services. The remaining 33% is generally spent for the "All Other" with a very small percentage for Capital Improvements.

ADMINISTRATIVE 27. Identify the status of unresolved employee grievances filed in 1984, 1985 and 1986. Report to the Joint Standing Committees on Audit & Program Review and State and Local Government by June 1, 1989, with a plan to resolve these grievances. Submit a status report by January 1, 1990.

ADMINISTRATIVE 28. Develop a plan to reduce the present two year period needed to resolve those employee grievances which go to arbitration. Submit this plan by June 1, 1989, to the Joint Standing Committees on Audit & Program Review and State and Local Government. Submit a status report by January 1, 1990.

ADMINISTRATIVE 29.

Develop a plan to settle employee grievances going to arbitration which were filed in 1987-1988 within two year's time or less. Submit this plan by June 1, 1989, to the Joint Standing Committees on Audit & Program Review and State and Local Government. Submit a status report by January 1, 1990.

As one of its statutory duties, the Bureau of Employee Relations has the responsibility for coordinating the State's approach to all instances of collective bargaining, mediation, fact finding, arbitration and other legal proceedings [26 MRSA §979-A (5) A (6-C)]. In practice, recent collective bargaining agreements have specified the Bureau's role and responsibilities in the resolution of employee grievances.

The present grievance process varies in detail according to the collective bargaining agreements reached with each bargaining unit. However, the basic grievance process can be described as having four basic steps:

- Step 1. Employee files a grievance with the immediate supervisor who attempts to resolve the grievance. If unresolved....
- Step 2. Grievance is reviewed by departmental head. If still unresolved....
- Step 3. Grievance is reviewed by the Bureau. If still unresolved....
- Step 4. Grievance is resolved through binding arbitration. The Bureau represents the State in all arbitration proceedings.

During the review process, the Committee received information which indicated that a number of grievances originally filed in 1984 through 1986 remain unresolved. In addition, there appears to be a two year backlog of unresolved employee grievances which are scheduled to go to arbitration.

Upon review, the Committee found that lingering unresolved grievances significantly impair the overall effectiveness of the employee grievance procedure. In addition, the Committee further found that the present two year backlog represents an unacceptable delay for both management and labor.

Therefore, the Committee recommends that the Bureau take three actions. First, that the present status of employee grievances filed in 1984, 1985 and 1986 be identified. Second, that a plan be developed to reduce the present two year period needed to resolve those employee grievances which go to arbitration. Finally, that a plan be developed to settle employee grievances going to arbitration which were filed in 1987-1988 within two year's time or less. Each of these actions is to be accomplished by a plan of action which is to be submitted by June 1, 1989 to the Joint Standing Committees on Audit & Program Review and State and Local Government with status reports to these same Committees by January 1, 1990.

FINDING

30.

The Joint Standing Committee on Audit & Program Review finds that state employees are entitled by law to express their opinion as individuals on matters of public policy. To reiterate this fundamental right, the Committee will send a letter to each State employee explaining the contents of current law.

During its review of the Bureau of Employee Relations, the Committee carefully considered the Bureau's responsibilities for representing state government in the labor relations process. During the information gathering process, the issue of employee harassment by the state agencies for which they work was singled out for attention by the Committee. Recently, members of the Committee have received several allegations from State employees that the employees have been harassed by their employing State agency, for efforts to communicate their opinion on matters of public policy to members of the Legislature.

Upon further review, the Committee found that current law clearly prohibits any harassment of state employees who wish to express their personal opinions on public policy issues to the Legislature. Chapter 2 of Title 5, MRSA is entitled, "Testimony Provided by State Employees to Legislative Committees" and includes the following provisions:

- State employees have the right to testify before Legislative committees on their own time;

-
- supervisors of State employees are prohibited from discharging, threatening, or discriminating against any State employee who has exercised their right to testify before the Legislature;
 - any testimony provided to the Legislature shall not be slanderous or libelous; and
 - employees who choose to testify on their own time may not represent their agency without authorization from the Commissioner or Director of that agency.

During the review of this issue, the Committee noted the recent (4/1/89) issuance of an Executive Order by Governor John R. McKernan, Jr. This order establishes a Code of Ethics and Conduct for the Executive Branch of Maine State Government. The 4th Code reads as follows:

"Approach organization and operational duties with a positive attitude and constructively support open communication, cooperation, creativity, dedication and compassion."

The accompanying text to that Code reminded State executives that, "Public employees have a right to make public their criticism on matters of public concern, but it is their personal and professional responsibility not to misrepresent fact and to act in good faith. Employees need to make it clear when they are acting as an official representative of their organization and when they are exercising their rights as an individual."

The Committee on Audit & Program Review commends Governor McKernan for his initiative in establishing this Code of Ethics and for his emphasis on the rights of state employees to express their personal opinions on matters of public policy.

To further the intent of the Governor's Code which was distributed to State executives, the Joint Standing Committee on Audit & Program Review finds that state employees are entitled by law to express their opinion as individuals on matters of public policy. To reiterate this fundamental right, the Committee will send a letter to each State employee explaining the contents of current law.

STATUTORY

31.

Amend current law to clarify that State employees have a right to respond to any Legislative inquiry.

The Committee found that current law (5 MRSA, Chapter 2) does not explicitly state that State employees have a right to respond to Legislative inquiries; either by a Legislative committee or by an individual legislator.

As a routine part of the review of every State agency, the Committee surveys the constituency served by that agency. To collect information about the agencies within the Department of Administration, which is a service provider to other State agencies, the Committee surveyed those State employees most affected by the Department's operation. During the surveying process, the Committee received a number of responses from State employees which indicated their reluctance to freely express their personal opinion for fear of possible harassment from their employing agency.

The Committee found that in order to function effectively as one of the three branches of government, the Legislature must be able to freely solicit the personal opinions of State employees on matters of public policy. In turn, State employees should be able to provide their opinions to the Legislature without any fear of harassment from their employing agency or other parts of State government.

Therefore, the Committee recommends that current law be amended to clarify that State employees have a right to respond to any Legislative inquiry.

STATUTORY

32.

Extend existing protections ensuring the right of State employees to express their personal opinion to the Legislature on matters of public policy to all employees of agencies authorized by State law.

During the review of the rights of State employees to express their personal opinions to the Legislature, the Committee

carefully examined the contents of 5 MRSA, Chapter 2, "Testimony Provided by State Employees to Legislative Committees." In particular, the Committee noted the present wording of 5 MRSA §21 (4) which defines State employees as, "...any employee subject to Chapters 51 to 57, except non-partisan staff of the Legislature."

The Committee found that the present wording of subsection 4 is lacking in several respects. First, the reference to Chapters 51 to 57 is outdated. Chapters 51 to 57, commonly referred to as the "Personnel Laws" were repealed in 1986 and replaced by Chapter 372, "State Civil Service System". Second, even if the current definition were to be updated with a correct reference to Chapter 372, this definition would not include employees of "semi-autonomous" State agencies such as the Maine State Retirement System, the Finance Authority of Maine, the Maine State Housing Authority, the University of Maine System, the Maine Vocational Technical System and the Maine Maritime Academy. Each of these agencies is established by Maine law and functions as an agency of the State for the purposes for which they were established. Technically, none of the employees of these, and other semi-autonomous agencies, are considered to be "State employees" or members of the State Civil Service System as defined by Chapter 372.

The Committee found that because of their statutorily established origins, and their receipt of large amounts of public monies, the operations and policies of semi-autonomous State agencies should always be subject to legislative scrutiny and review. The Committee further found that employees of these agencies should be subject to the same protections afforded to members of the State civil service with regards to the right to provide personal testimony to the Legislature on matters of public policy. Any abrogation of the ability of these employees to provide information to the Legislature constitutes a significant impediment to the Legislature's ability to adequately scrutinize and review these semi-autonomous State agencies.

Therefore, the Committee recommends that current law be amended to extend existing protections ensuring the right of State employees to express their personal opinion to the Legislature on matters of public policy to all employees of agencies authorized by State law.

STATUTORY

33.

Authorize the use of up to 15% of the Risk Management Fund to indemnify workers' compensation losses incurred by State agencies. Specify that such indemnifications will be repaid by formal agreement signed by the agency and that such repayments must be made within the biennium in which the claim is paid.

In reviewing the manner in which state agencies pay the cost of workers' compensation claims filed by their employees, the Committee received information from the Bureau of the Budget which indicated that larger agencies can budget for workers' compensation costs but these costs are included as "All Other". Smaller agencies are not currently allowed to budget for workers' compensation costs.

The Committee found that most agencies do not have funds budgeted for workers' compensation costs and must resort to emergency appropriation requests to the Legislature. The lack of immediately available funds has made it difficult for many state agencies to comply with the provisions of state law which require that the employer pay all costs within 10 days of final claim resolution.

Results from the Committee's various surveying efforts documented the difficulty that many state agencies have had in paying workers' compensation costs on a timely basis:

- 23% of recent workers' compensation claimants had not had their bills paid within the required time period; and
- 32% of the State workers' compensation administrators surveyed stated that their agency did not have adequate funds to cover workers' compensation costs.

Recently, to settle a number (4) of larger lump sum workers' compensation settlements, state agencies have been permitted to "borrow" from the Risk Management Fund by signing a promissory note of repayment. By doing this, agencies have been able to make relatively prompt payments for certain workers' compensation claims, and then go to the Legislature for an

emergency appropriation to reimburse these one year promissory notes. According to information received from the Department of Administration, all promissory notes have been paid in full.

During a recent financial audit of the Department of Administration, this practice has been questioned by the Department of Audit. It is the Department of Audit's opinion that the Risk Management Fund statutes do not explicitly authorize this practice, and that without such explicit authorization, this practice should not take place.

The Attorney General's office is of the opinion that the practice of using the Risk Management Fund to indemnify workers' compensation costs incurred by State agencies is well within the parameters of current law. As stated by current law, (5 MRSA §1731), the Risk Management Fund is "...created to indemnify the State for self insured retention losses [Emphasis added] and related loss adjustment expenses from those perils insured against under a deductible or self-insured retention program, as recommended by the Director and approved by the Commissioner." The Attorney General's office holds that the State is self insured for workers' compensation costs and that the practice described above, amounts to indemnification as authorized by 5 MRSA §1731.

Upon careful review, the Committee found that State agencies should be allowed to continue this practice, but only under an explicit statutory authority which establishes appropriate parameters and safeguards. The Committee further found that authorization of this practice will improve the ability of state agencies to pay large workers' compensation claims on a more timely basis and will consequently benefit those State employees suffering from a significant work related injury.

Therefore, the Committee recommends that current law be amended to authorize the use of up to 15% of the Risk Management Fund to indemnify workers' compensation losses incurred by State agencies. Amended law should also specify that such indemnifications would be repaid by formal agreement signed by the agency and that such repayments must be made within the biennium in which the claim is paid.

FINDING

34.

The Joint Standing Committee on Audit & Program Review finds that the recent administrative decision of the Commissioner of Administration to have the Workers' Compensation Unit report directly to the Commissioner, is an appropriate decision which helps to ensure a higher priority for the efficient management of the State Workers' Compensation program.

Currently, the Bureau of Employee Relations is composed of two organizational units: the Labor Relations Unit and the Workers' Compensation Unit. The Committee found that this organizational structure is the result of an administrative decision and is not mandated by law. In fact, current law does not specifically mention either unit. The Bureau itself is established by statute [26 MRSA-A (5) A (6-C)] but the listed areas of responsibility pertain solely to the activities of what is called the Labor Relations Unit. Further, the Committee found that there is no mention in current law of the state's need for a program to administer the state's (as an employer) workers' compensation program.

Upon review, the Committee found that up until 1980, the Department of Transportation had the responsibility of administering the Workers' Compensation program for the state. In 1980, then Governor Joseph E. Brennan issued an executive order which placed the responsibility for administering the program with Maine Insurance Advisory Board and contracted with the Fred S. James & Company of Maine to:

- develop data pertaining to state employee workers' compensation claims;
- conduct professional evaluations and investigations of workers' compensation claims;
- improve administration of the program; and
- reduce financial costs and time loss resulting from workers' compensation claims.

In 1983, Governor Brennan issued another Executive Order which again transferred the unit; this time placing it within the Governor's Office of Employee Relations which was then part of the

Department of Personnel. Finally, in 1986, the Legislature reorganized many administrative service agencies into the newly created Department of Administration. Under the present arrangement, the Workers' Compensation unit remains within the former Governor's Office of Employee Relations, now existing as the Bureau of Employee Relations within the Department of Administration.

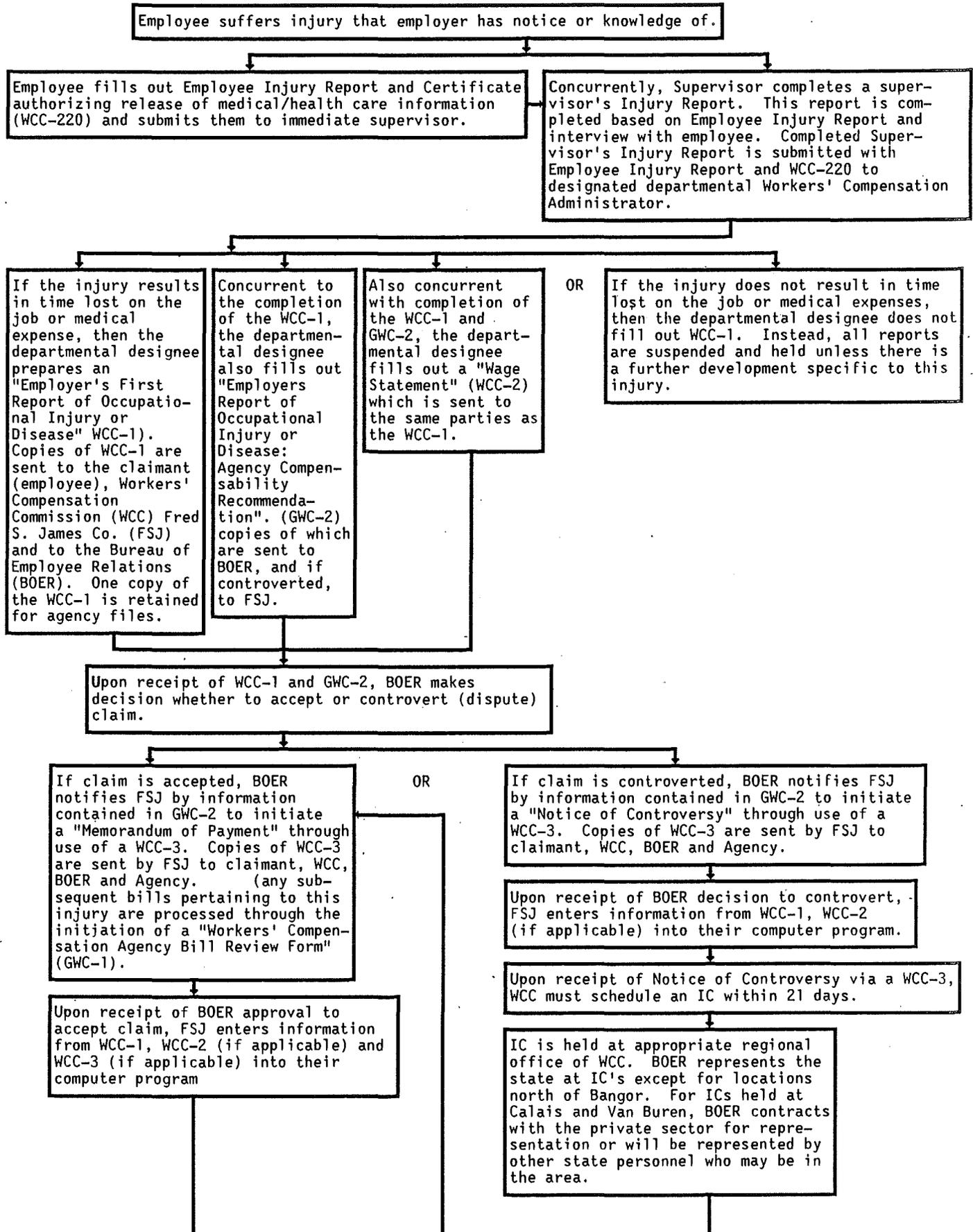
At the present time, the Workers' Compensation Unit exists by virtue of Governor Brennan's 1983 Executive Order (and its predecessor) and past budgetary authorizations. As reflected by past Executive Orders and past practice, the Workers' Compensation Unit is generally held responsible for coordinating the state's administration of its self-insured Workers' Compensation program. More specifically, the program is expected to provide effective case management of Workers' Compensation claims to reduce the total costs of the Workers' Compensation program. Presently, the Workers' Compensation Unit has a full time staff of six positions and an annual budget of nearly \$390,000.

During the review of the Bureau of Employee Relations, the Committee considered recent data which indicated an ever increasing total for total workers' compensation claims paid to state employees; from more than \$3 million in 1983 to \$8.3 million in 1988.

The Committee found that the growing costs of workers' compensation claims for state employees warrants a more explicit and concerted effort to administer a carefully designed and thoughtfully administered program. The Committee also noted that the present Commissioner of Administration has recently implemented an administrative decision to have the Workers' Compensation Unit report directly to the Commissioner. The Committee found that, at the present time, the Commissioner's decision is the most cost effective, and preferable alternative.

Therefore, the Joint Standing Committee on Audit & Program Review finds that the recent administrative decision of the Commissioner of Administration to have the Workers' Compensation Unit report directly to the Commissioner, is an appropriate decision which helps to ensure a higher priority for the efficient management of the State's Workers' Compensation program.

PROCESS USED TO ADMINISTER WORKERS' COMPENSATION CLAIMS FILED BY STATE EMPLOYEES
ID #57



FSJ then generates a "Payment Authorization" which is sent to the agency to authorize them to make compensation payment(s) to claimant. FSJ also prepares a "Discontinuance, suspension, or modification of Compensation" (WCC-4) by providing name, social security number, address and date of injury for use by the agency when the employee returns to work. WCC-4 is sent to agency for future use.

Upon receipt of Payment Authorization from FSJ, agency attaches it to their payroll sheet and forwards to the Bureau of Accounts and Control.

Accounts and Control processes and authorizes issuance of check by Treasurer of State.

Treasurer of State issues check to claimant.

If the IC results are in favor of the claimant...

OR If the IC results are in favor of BOER/Agency.

BOER can accept claim.

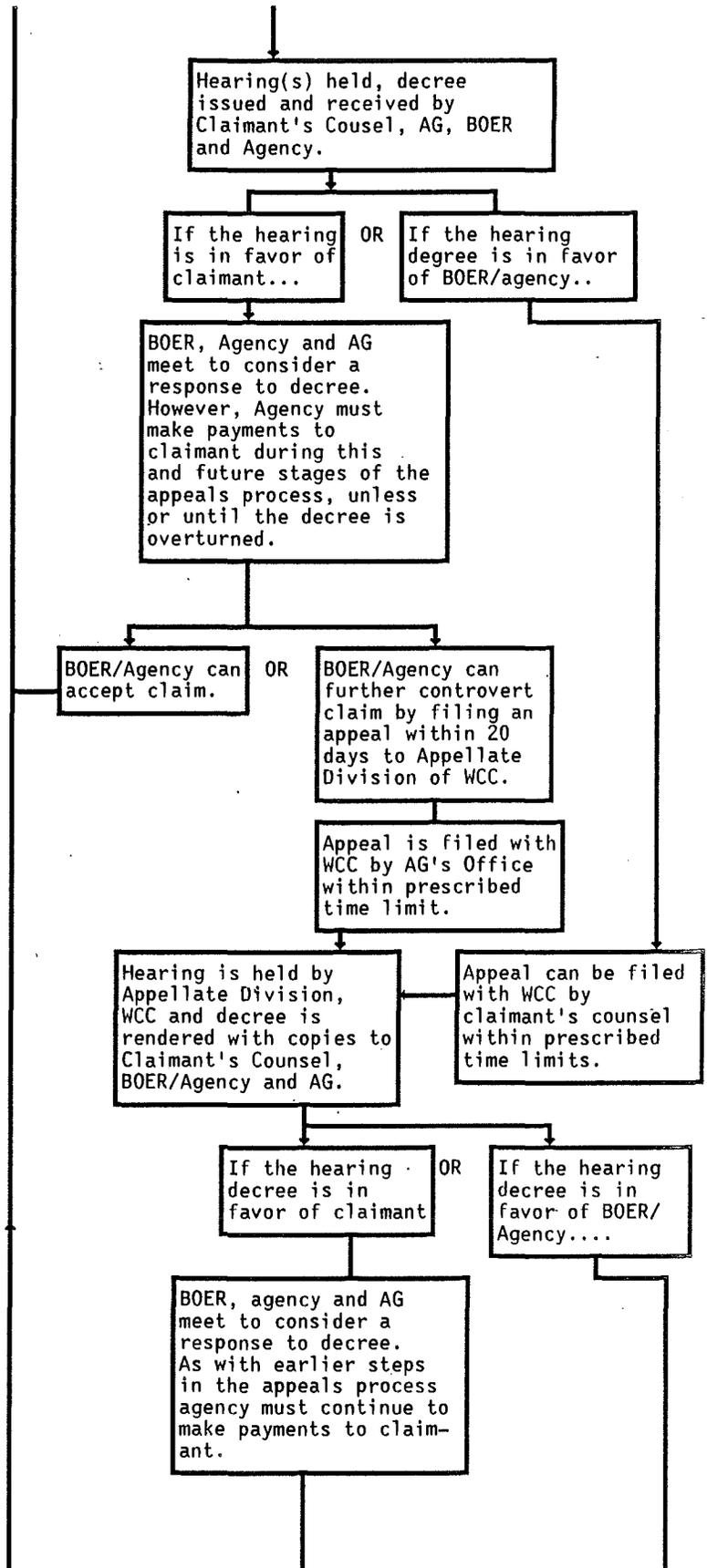
OR Take no action.

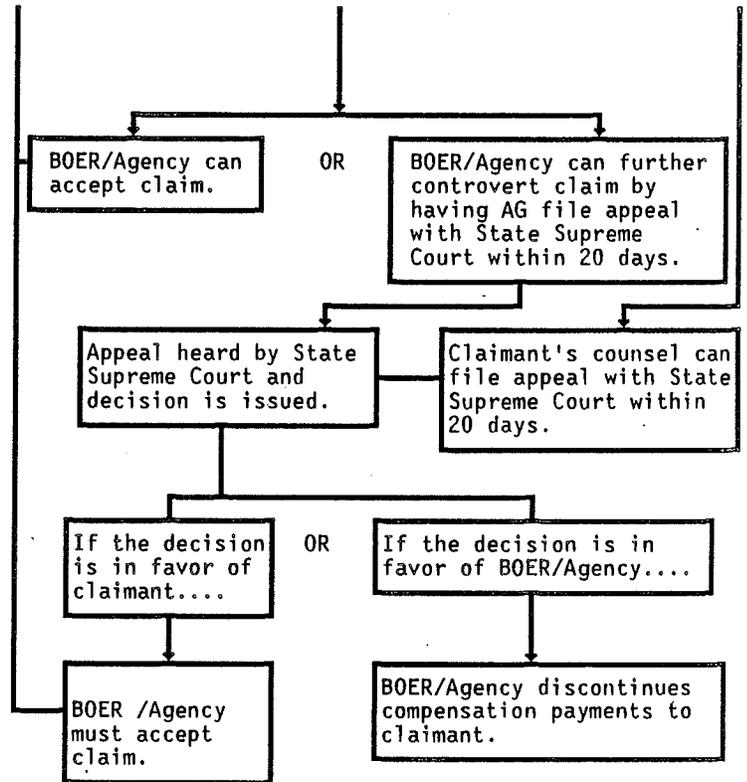
After 7 days of no action by agency/BOER the claimant retains legal counsel if he/she wishes to further pursue claim.

Claimant's counsel files "Petition for Award of Compensation" (WCC Form) with Agency/BOER copies to WCC.

Agency/BOER must respond to Petition within 10 days of receipt. BOER contacts Attorney General's (AG) Office for Legal response to petition. Copies of response sent Claimant's Counsel, WCC, BOER and Dt's Counsel, WCC, BOER and Agency.

Hearing(s) scheduled by WCC at appropriate regional offices.





Compiled by BOER and
Audit Staff Jan. 1989

ADMINISTRATIVE 35.

Work towards decentralizing the administration of the Workers' Compensation program to the Departments of Transportation and Mental Health and Mental Retardation. Report to the Joint Standing Committees on Audit & Program Review, State and Local Government, and Appropriations and Financial Affairs during the compliance phase on the current status of this effort.

After review of the State's current administration of the State's Workers' Compensation Program, the Committee found that two agencies, the Departments of Transportation (33%) and Mental Health & Mental Retardation (23%), accounted for more than half of the total percentage of State workers' compensation claims for FY 1988.

The Committee found that these two departments, due to the amount of workers' compensation activity, have a nucleus of staff necessary to assume day-to-day responsibility for administering many of the tasks currently performed for them by the Workers' Compensation Unit. Further, the Committee found that the present administrative process could be simplified for these two largest users by eliminating the steps which require involvement of the centralized Workers' Compensation Unit. Similarly, the Committee found that the existing Workers' Compensation Unit is of a relatively small size (6 positions) and will be able to provide more effective centralized program administration for the remainder of State government.

The Committee notes that under a proposal developed by the Commissioner of Administration, both the Departments of Transportation and Mental Health and Mental Retardation will administer their workers' compensation programs in accordance with policies and procedures determined by the Workers' Compensation Unit. The Workers' Compensation Unit will also be responsible for overseeing and auditing the administration of the workers' compensation program by the Departments of Transportation and Mental Health and Mental Retardation. Finally, in a following recommendation, the Committee has recommended the restructuring of the contract with Fred S. James & Company. One of the new contractual responsibilities will be the provision of consulting services to the Departments of Transportation and Mental Health and Mental Retardation by Fred S. James & Company to implement an effective decentralization effort.

Therefore, the Joint Standing Committee on Audit & Program Review recommends that the Workers' Compensation Unit work towards decentralizing the administration of the Workers' Compensation program to the Department of Transportation and Mental Health and Mental Retardation. The Committee also recommends that the Commissioner submit a report to the Joint Standing Committees on Audit & Program Review, State and Local Government, and Appropriations and Financial Affairs during the compliance phase on the current status of this effort.

ADMINISTRATIVE 36.

Initiate a Safety and Loss Prevention Program which includes the creation of a State Safety Committee. Specify that this program be funded through use of the Risk Management Fund and that the program report directly to the Commissioner. Report to the Joint Standing Committees on Audit & Program Review, State and Local Government, and Appropriations and Financial Affairs during the compliance phase on current implementation efforts.

The Committee's review of the State's workers' compensation program revealed that, as an employer, the State does not have a program designed to reduce workers' compensation costs through safety and loss prevention. The Committee noted that many employers in the private sector have safety and loss prevention programs which have significantly reduced their workers' compensation costs.

The Committee found that such a program could be funded at a cost of \$43,200 through use of loss prevention monies in the Risk Management Fund and that the use of these monies can be authorized through existing administrative powers of the Commissioner. The Committee also recommends that a State Safety Committee be created by Executive Order of the Governor to advise in program development and administration.

Finally, the Committee found that, given the need for a Safety and Loss Prevention Program, that this program should have a direct reporting relationship to the Commissioner. The Committee recommends that the Safety and Loss Prevention Program be established as a separate entity and not as part of an existing organizational unit within the Department of Administration.

Therefore, the Joint Standing Committee on Audit & Program Review recommends that the Commissioner of Administration initiate a Safety and Loss Prevention Program which includes the creation of a State Safety Committee. The Committee specifies that this program be funded through use of the Risk Management Fund and that the program report directly to the Commissioner. The Committee also recommends that the Commissioner report to the Joint Standing Committees on Audit & Program Review, State and Local Government, and Appropriations and Financial Affairs during the compliance phase on current implementation efforts.

FINDING 37. The Joint Standing Committee on Audit & Program Review finds that many state employees with workers' compensation claims are adversely effected by the current inability of many state agencies to make timely payments in accordance with Maine law. The Committee finds that the establishment of a proposed revolving central pay fund to be used by state agencies to pay workers' compensation claims may result in more timely payments from state agencies and will help to ensure compliance with State and Federal law.

As a part of the Committee's review of the Workers' Compensation Unit, the Committee conducted surveys of State employees who had recently filed workers' compensation claims and state administrators who have responsibility for administering the workers' compensation responsibilities of line agencies. The results of both surveys suggest that significant problems exist in the current manner in which workers' compensation costs are funded by state government:

- 23% of State employees who had filed a workers' compensation claim stated that payment for their workers' compensation bills had taken longer than 90 days; and
- 32% of the State workers' compensation administrators stated that their agency did not have adequate funds to cover workers' compensation costs.

Upon further review, the Committee found that the current budgetary process does not allow most state agencies to budget for workers' compensation costs. Several of the larger agencies are permitted to include anticipated workers' compensation costs within their All Other costs. However, smaller agencies do not presently have funds which are budgeted for workers' compensation costs.

As a result, most agencies do not have any funds which are budgeted for workers' compensation costs. When a workers' compensation cost is incurred, the agency will attempt to temporarily transfer existing funds and then submit an emergency appropriation request to the Legislature. Also, in the recent past, several agencies have been allowed to "borrow" against the Risk Management Fund to pay on large workers' compensation settlements. Agencies then reimburse the Risk Management Fund after receipt of an emergency appropriations from the Legislature.

The Committee found that the 1990-1991 budget that has been submitted by the Governor to the Legislature for approval includes a request for \$1 million in new funding to establish a central revolving fund to be used by state agencies to pay for workers' compensation costs. Upon further review, the Committee found that this proposal deserves serious consideration. When coupled with the Committee's earlier recommendation that State agencies be authorized to engage in short term use of the Risk Management Fund to pay workers' compensation claims, the Committee found that both proposals are likely to significantly improve the ability of State agencies to pay their workers' compensation costs in a more timely fashion.

The Committee also noted that the State has received recent notification from several federal agencies that the State's present method for funding workers' compensation costs is unacceptable and in violation of current federal regulations. These agencies, which include the U.S. Department of Agriculture, Food and Nutrition Service and Department of Health and Human Services, have threatened the loss of federal funding for a large number of programs if the State does not implement a system in which all agencies are assessed in an equitable fashion for workers' compensation costs.

Therefore, the Joint Standing Committee on Audit & Program Review finds that many state employees with workers' compensation claims are adversely effected by the current inability of many state agencies to make timely workers' compensation payments in accordance with Maine law. The Committee finds that the establishment of a proposed revolving central pay fund to be used by state agencies to pay workers' compensation claims may result in more timely payments from state agencies and will help to assure compliance with State and Federal law.

ADMINISTRATIVE 38.

Restructure the existing contract with Fred S. James Company to more effectively utilize their expertise. Submit a report on the current contractual relationship to the Joint Standing Committees on Audit & Program Review, State and Local Government, and Appropriations and Financial Affairs during the compliance phase of review .

As mentioned earlier, since 1980 the State has contracted with Fred S. James & Co. for certain workers' compensation services. The original contract with the James Company specified a claims management set of services in which the James Company had significant responsibilities for administering and managing a claim through to final settlement. Since then, the State's contractual relationship with the James Company has evolved into one in which the James Company provides claims processing services which include monthly claims and expense reports, quarterly loss analysis reports, and monthly transaction reports.

Upon review, the Committee found that the scope of these contracted services changed because the State could only continue to offer a certain amount of money, which, after inflation, did not increase at a rate sufficient to keep pace with the James Company's cost of doing business. As a result, the State had a relatively fixed amount of money (ranging from \$75,000 in FY 81 to \$139,000 in FY 89) to receive a reduced array of services from the James Company.

The Commissioner of Administration has proposed that the existing James contract be restructured at the current cost of \$140,000 as follows:

- The James Company will train the state to bring the bill processing function in-house by 12/31/89 at an approximate cost of \$94,000. This estimate includes personnel costs for two project positions and necessary computer programming and hardware and would be funded as an administrative cost charged to the proposed Central Payment Fund;

-
- The James Company will provide training and support to the Departments of Transportation and Mental Health and Mental Retardation in the effort to decentralize;
 - The James Company will do special case "work ups" on all presently open workers' compensation cases and provide case management through resolution;
 - In the last quarter, the James Company will do an evaluation of decentralized efforts at the Departments of Transportation and Mental Health and Mental Retardation; and
 - The James Company will provide technical advice to the workers' compensation program with regards to policy and procedures;

The Committee found that a restructured contract with the Fred S. James Company, as described above, would represent the most appropriate and effective use of State resources and the expertise of a private company such as the Fred S. James Company. Upon final review, the Committee noted that because of financial constraints of available state monies, a newly negotiated contract with Fred S. James company may not include all of the provisions listed above.

Therefore, the Joint Standing Committee on Audit & Program Review recommends that the Department of Administration restructure the existing contract with Fred S. James Company to more effectively utilize their expertise. The Committee also recommends that the Department submit a report on the current contractual relationship to the Joint Standing Committees on Audit & Program Review, State and Local Government, and Appropriations and Financial Affairs during the compliance phase of review.

ADMINISTRATIVE 39.

Direct the Commissioner to work towards clarifying roles and responsibilities in the Workers' Compensation program, improve continuity of legal services from the Attorney General's office and develop proposals for budgeting and payment of workers' compensation costs from State agencies. Report to the Joint Standing Committees on Audit & Program Review, State and Local Government and Appropriations and Financial Affairs during the compliance phase of the review on current status of these efforts.

The Committee also considered a number of additional proposals designed to improve the State's administration of its Workers' Compensation program. The contemplated changes in the administration of the State's workers' compensation program will involve a number of significant differences in what types of tasks are performed and by whom. The Committee found that to be effective, this change process will require the redefining of many roles.

During the review of the State's workers' compensation program, the Committee received information which indicated a lack of continuity in legal services provided by the Office of the Attorney General for the Workers' Compensation Unit. The Committee is familiar with this issue from past reviews; in many cases there is a frequent turnover in the individuals who serve state agencies as Assistant Attorneys General. The Committee found that the continuity of legal services provided to the Workers' Compensation Unit is important given the potential liabilities associated with the workers' compensation process.

Finally, as discussed earlier, currently most state agencies are not allowed to budget for workers' compensation costs. The Committee found that as a result, State agencies frequently do not have adequate funds to pay workers' compensation costs to employees on a timely basis. The Committee further found that constructive alternatives to the present process need be developed, tested and implemented. The Committee noted that implementation of the proposed Central Workers' Compensation Management Fund may very well satisfy the aforementioned need for a constructive alternative to the present workers' compensation budgetary process.

Therefore, the Joint Standing Committee on Audit & Program Review recommends that the Commissioner of Administration work towards clarifying roles and responsibilities in the workers' compensation program, improving continuity of legal services from the Attorney General's office and developing proposals for budgeting and payment of workers' compensation costs from state agencies. The Committee also recommends that the Commissioner submit a report on current status of these efforts to the Joint Standing Committees on Audit & Program Review and State and Local Government during the compliance phase of the review.

STATE EMPLOYEE HEALTH INSURANCE PROGRAM

Purpose and Responsibilities

The State Employee Health Insurance Program is that part of Maine State government which is responsible for administering various employee health insurance programs. Current Maine law (5 MRSA §286) authorizes the Commissioner of the Department of Administration to administer the employee health insurance program "through offices, systems, consultants and staff necessary to provide cost effective, accessible and responsible services to eligible employees and retirees."

History

Prior to 1968, state government did not provide or administer health insurance programs for state employees. Instead, employees enrolled at their own cost in health insurance programs that were carried by the Maine State Employee Association. In order to enroll in the Maine State Employee Association health insurance programs, one had to be a member of that organization.

In response to allegations from some state employees who felt that they were forced to join the union if they wished to have health insurance coverage, during the late 1960's the state began to take responsibility for employee health insurance programs. First, the state became the holder of employee health insurance policies. Next, the state began making contributions to assume part of the cost of health insurance policies for its employees. Finally, the Legislature created the Board of Trustees, Accident and Sickness or Health Insurance Program. The Board was responsible for determining the provisions of health insurance programs and administering the same for all of state government. By statute, the 5 member Board consisted of:

- 2 members appointed by the Maine State Employees Association;
- 1 retired state employee appointed by the Retired State Employees Association; and
- 2 members appointed by the Governor.

From 1968 through 1981, largely by circumstance, the state health insurance program was administered by the state controller's office. Apparently, the Controller at that time also happened to be a member of the Board and agreed to assume administrative responsibilities for the program.

In 1981, the Legislature authorized the position of Executive Director for the program. Administration of the program was significantly improved in 1982 through creation of a centralized health insurance office within the former Department of Finance and Administration.

Other major historical milestones of the State Employee Health Insurance Program of the mid-1980's include the State's agreement, through the collective bargaining process, to pay 50% of employee's dependent share of health insurance premiums and the inclusion of dental insurance coverage for all state employees.

Finally, in recent years, two other significant organizational changes have taken place. First, the Health Insurance Program, and the Board, were placed within the newly created Department of Administration upon the creation of that entity in 1986. During that same year, the Board of Trustees was discontinued by the Legislature and replaced by a new body, the State Employee Health Commission. There appear to have been several reasons for the former Board's demise. First, recognized employee bargaining organizations other than Maine State Employees Association were not represented on the Board. In addition, many issues associated with the increasing complexity of health related costs were not being adequately addressed by the Board.

Method of Operation

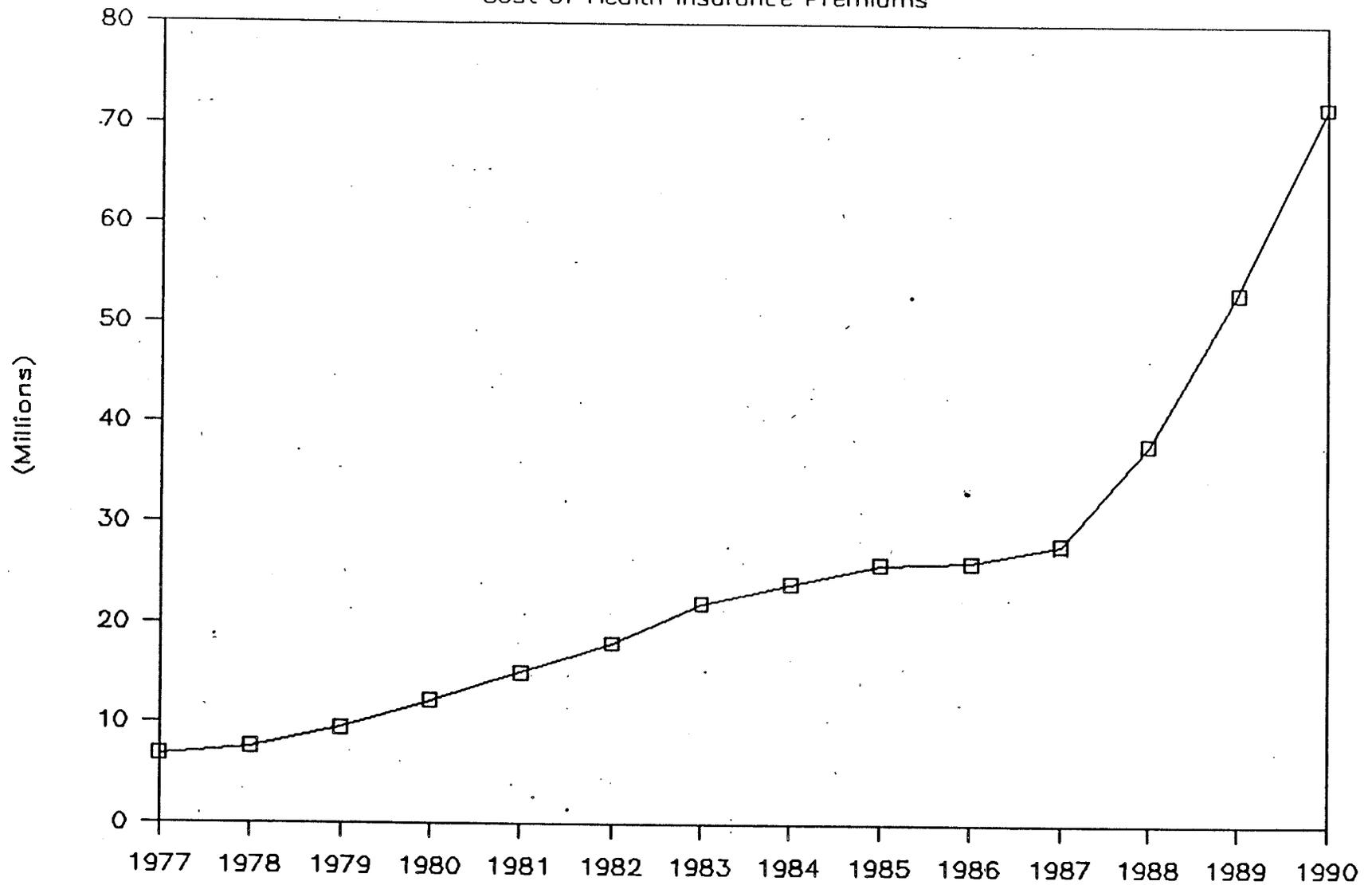
The State Employee Health Insurance Program acts as the administrator for the various group insurance programs which are offered by the state for its employees. The program administers policies (or programs) which have been authorized by the Commission. The Commission is authorized by law (5 MRSA §285(7)) to offer policies which contain provisions which are consistent with the terms of the various collective bargaining agreements that exist between the state and recognized employee bargaining units. The following group insurance programs for health and dental coverage are currently being offered by the state. The cost of these coverages in recent years is depicted in the accompanying graph.

- Blue Cross is offered by the non-profit Associated Hospital Services of Maine and provides coverage for hospitalization or "fixed overhead costs";
- Blue Shield is also offered by the Non-Profit Associated Hospital Services of Maine and provides 80% coverage of physician's (medical/surgical) services;

St. Employees Health Insurance Program

115

Cost of Health Insurance Premiums



-
- Blue Alliance is offered by the for-profit Blue Alliance Mutual Insurance Company of Maine and provides major medical coverage for state employees. "Major medical" coverage can be defined as miscellaneous medical expenses. Currently, this policy provides 80% of expenses for the first \$3,000 in covered costs and 100% thereafter to a maximum cost of \$1,000,000; and
 - Dental coverage is provided by Northeast Delta Dental.

In addition to these policies, the Commission has also initiated two other voluntary programs to benefit state employees:

- Paid Prescriptions Plan. This program allows state employees, on a voluntary basis, to receive drugs needed for acute care (21 day supply, 1 refill) from Maine drug stores by presenting a "PAID" ID card and paying a small deductible fee ranging from \$3 to \$5; and
- Mail Service Prescription Program. This program enables state employees to receive maintenance prescription drugs (90 day supply maximum) by mail order prescription at no cost.

The Commission is required by law (5 MRSA §285(5)) to purchase group insurance policies and programs through a competitive bidding process, although current law does not specify how frequently policies must be put out to bid. The Commission put all of its policies and programs out to bid in 1988.

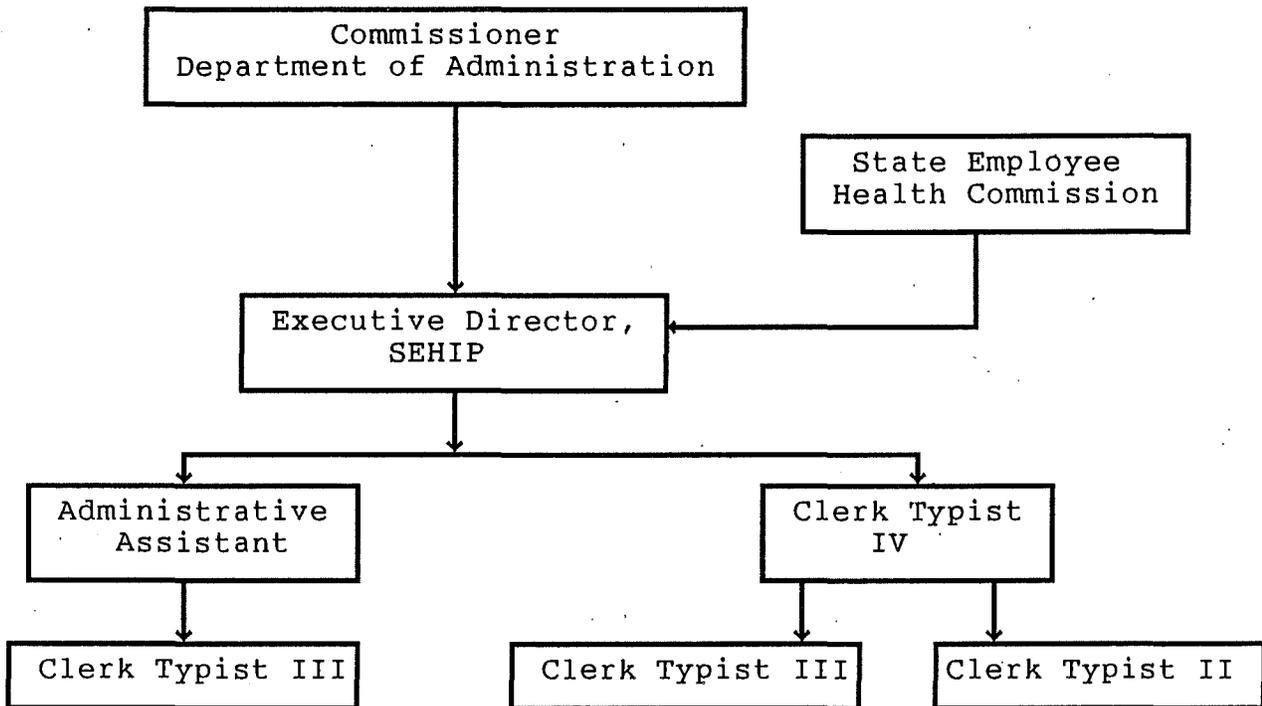
Staffing

To administer the state's responsibilities in providing these group insurance programs, the State Employee Health Insurance Program has a total of 6 full time staff consisting of an Executive Director, Administrative Assistant, Clerk IV, 2 Clerk Typist IIIs, and a Clerk Typist II.

The program staff perform the day-to-day administrative tasks required for program implementation. To a large extent, the various insurance carriers actually administer the various policies. Program staff are primarily involved in responding to inquiries from state employees, processing applications, solving various administrative problems and educating employees about the program.

STATE EMPLOYEE HEALTH
INSURANCE PROGRAM

Organization and Staffing



Compiled by Audit
Staff April 1989

Finally, the Program employs a private consulting firm, Meidinger and Hanson, for certain actuarial projections and data. Services from Mercer et al are paid for on a contractual pay-as-you-go basis. Current annual costs are in the \$60,000 range.

Funding and Expenditures

At the present time, the State Employee Health Commission has certain authorities (5 MRSA §286 and §956) to fund the activities under its jurisdiction. Neither the State Employee Health Commission, the State Employee Health Insurance Program nor the Bureau of State Employee Health receive any monies from the General Fund.

The State Employee Health Insurance Program has negotiated an administrative fee of 80¢ per capita with Blue Cross and a similarly based fee of 16¢ from Delta. This money provides the funding to cover the administrative costs of the program and brings in anywhere from \$12,000 to \$17,000 a month to the program. In recent years, these revenue sources have proved to be more than adequate to cover expenditures of the program:

	<u>FY 86</u>	<u>FY 87</u>	<u>FY 88</u>	<u>FY 89</u> (projected)
<u>Expenditures</u>				
Personal Services	79,131	93,542	136,491	148,881
All Other	45,386	403,489*	111,422	112,536
Capital Improve- ments	<u>1,139</u>	<u>16,945</u>	<u>5,000</u>	<u>5,000</u>
Total	125,656	513,976	252,913	266,417
Ending Balance	194,585	212,568	224,655	223,238

* This abnormally large expenditure represented an accumulated dividend (\$360,000) received from the carrier for administrative costs; the money was returned to the program to lower the cost of premiums.

STATUTORY	40.	Continue the State Employee Health Commission for 10 years under the provisions of the Maine Sunset Law.
-----------	-----	--

In 1968 the Legislature created the Board of Trustees, Accident and Sickness or Health Insurance. The Board was responsible for determining the provisions of health insurance programs and administering the same for all of state government. By statute, the 5 member Board consisted of 2 members appointed by the Maine State Employees Association, 1 retired state employee appointed by the Retired State Employees Association, and 2 members appointed by the Governor.

The Board of Trustees was discontinued by the legislature in 1988. The Committee found that there appear to have been several reasons for the Board's demise:

- recognized employee bargaining organizations other than MSEA were not represented on the Board; and
- recent trends of increasing complexity of health related costs were not being adequately addressed by the Board, thus the Board was becoming somewhat ineffective.

In 1988, the Legislature replaced the former board with a newly created (5 MRS §285-A) State Employee Health Commission. The State Employee Health Commission consists of 1 labor member appointed by each recognized bargaining unit (3 in total), 1 labor member appointed by largest recognized bargaining unit, 1 labor member appointed by retiree chapter of MSEA, 4 management members appointed by the Commissioner of Administration, 1 management member appointed by the court administrator, and the Director of the Bureau of State Employee Health as ex-officio member.

The Commission has a similar, but broader, set of responsibilities as the former Board of Trustees. Like the Board, the Commission serves as a trustee for the various health insurance policies administered by the State Employee Health Insurance Program. The Commission is also responsible for advising the Director of the Bureau of State Employee Health on health insurance issues, other health and wellness issues, the employee assistance program, and the use of the State Employee Health Internal Service Fund account.

During the course of the review, the Committee has carefully considered many of the Commission's activities, particularly with regards to the State Employee Health Insurance Program. The Committee notes that the responsibilities of the Commission will receive further scrutiny from another perspective when the Committee reviews the Bureau of State Employee Health during the next review cycle.

The Committee found a continuing need for the existence of the State Employee Health Commission. The Committee carries out its responsibilities for employee insurance and health related issues in a constructive manner which maximizes the participation of both management and labor.

Therefore, the Committee recommends that the State Employee Health Commission be continued for 10 years under the provisions of the Maine Sunset Law.

ADMINISTRATIVE 41.

Direct the State Employee Health Commission to adopt an administrative procedure which requires specific written authorization before journaled funds can be expended.

As one of their various responsibilities to collect the funds necessary to administer employee health programs, the State Employee Health Commission has negotiated with Blue Cross for reimbursement of a 5% savings from the Blue Cross premium paid by state employees. In discussions with the Commission, Blue Cross guaranteed that a 5% savings could be realized through their administration of the managed care program. Under the terms of this agreement, Blue Cross agreed to reimburse the Commission on a monthly basis in amounts equal to 5% of the total cost of the Blue Cross premium for state employees. In turn, the Commission agreed to use the 5% savings monies for employee wellness programs and benefit enhancements.

Since April 1988, the State Employee Health Insurance Program has received a monthly check from Blue Cross/Blue Shield. This check includes an administrative fee and the 5% savings. The administrative fee portion is retained in the Health Insurance Program account and is used to fund the administrative costs of the State Employee Health Insurance Program. The 5% savings has been journaled, on a monthly basis, to the Bureau of State Employee Health account to be used by the State Employee Health Commission. During the time period of January 1988 to April 1989, the State Employee Health Commission collected a total of slightly more than \$1.5 million.

The funds that are journaled to the Bureau of State Employee Health, are done so under the authority vested by 5 MRSA §286 which authorizes the Commission to collect the funds to be used for the purpose of state employee health insurance programs as it so determines. As mentioned earlier, the agreement between Blue Cross and the Commission provides that the returned funds will be used for employee wellness programs (to improve employee health thereby reducing future risk) and for benefit enhancement.

Once journaled over to the Bureau of State Employee Health account, the funds are retained in a separate activity and have been used by the State Employee Health Commission for several different purposes:

-
- to partially fund the cost of expanded dental health coverage for State employees (\$486,000);
 - to fund a pilot workers' compensation prevention program for State employees (\$45,000);
 - to contract with private firms for consulting purposes (\$186,000); and
 - to cover certain operational and administrative costs incurred by the Bureau of State Employee Health and the Commission (\$16,000).

The Committee found that, as of April 1989, the State Employee Health Commission had a projected balance of \$843,385 of unspent funds collected from the 5% savings agreement with Blue Cross/Blue Shield. The Committee notes that because the State Employee Health Commission has decided to transfer responsibility for the managed care portion of the health plan from Blue Cross/Blue Shield to Health Professionals Review, the 5% savings agreement with Blue Cross/Blue Shield will end on May 1, 1989. The State Employee Health Commission plans to use the unexpended balance of the monies accrued from the 5% savings agreement to fund commission programming and expenses for the near future.

After careful review of the current procedure used by the State Employee Health Commission to receive and expend the funds obtained through the 5% savings agreement, the Committee found that the present process sometimes results in the issuance of financial orders authorizing the expenditure of funds for programming not finally approved by the State Employee Health Commission. The present administrative procedure does not adequately address the need for a definitive spending plan developed by the State Employee Health Commission, and subsequent written approval before expenditure of funds can occur through the use of a financial order.

More specifically, the Committee recommends that the State Employee Health Commission adopt the following procedure:

1. Journalled funds are received from the State Employee Health Insurance Program by the Bureau of State Employee Health;
2. The State Employee Health Commission develops a spending plan for journalled funds;
3. Journalled funds are allotted for expenditure through financial order;

4. The Commission provides written authorization to the Bureau to expend journaled funds according to spending plan; and

5. Funds are expended.

Therefore, the Committee recommends that the State Employee Health Commission adopt an administrative procedure which requires specific written authorization before journaled funds can be expended.

STATUTORY	42.	Amend current law to require that the State Employee Health Commission enter into signed contracts with group insurance carriers within 90 days of the bid award. Further amend current law to authorize the Commissioner of Administration to grant waivers, for extenuating circumstances, to the 90 day requirement.
-----------	-----	---

Current law (5 MRS §285) requires the State Employee Health Commission to "purchase, by competitive bidding, from one or more insurance companies or nonprofit organizations, or both, a policy or policies of group accident and sickness or health insurance". The applicable statutes do not specify what means the State Employee Health Commission might use to purchase these policies.

Upon review, the Committee found that prior to 1986 the State Employee Health Commission did not have written contracts with health insurance carriers. Starting in 1986, yearly contracts, which could be renewed by letters of agreement, were adopted as standard practice. Most recently, the Commission had a contract with Blue Cross/Blue Shield which expired on May 1, 1988. From that date to February 22, 1989 the Commission continued its relationship with Blue Cross/Blue Shield without a signed contract. On February 22, 1989, the State Employee Health Insurance Program secured a fully executed one year contract with Blue Cross/Blue Shield which was retroactive to the May 1, 1988 expiration date of the previous contract.

In recent years, when health insurance policies have been purchased without benefit of fully executed contracts, the Commission has relied upon the following devices, in lieu of a contract, to specify policy coverage:

-
- The formal response submitted by insurance carrier(s) to the initial request for proposals. This lengthy document details the proposed coverages to be offered by the carrier if its bid is accepted by the Commission;
 - The letter of bid acceptance from the Commission to successful bidder. This letter specifies that the carrier's bid, as described in the above proposal, has been accepted by the Commission; and
 - The acceptance of premiums and provision of coverage by the carrier. The acceptance of premiums by the carrier, and subsequent provision of coverage as specified in the original proposal has been understood by the Commission to constitute acceptance by the carrier to provide coverage as specified in the original proposal.

The Committee found that health insurance policies which are being provided without the legal assurances of a fully executed contract, represent a potential legal liability of serious magnitude to both the carrier and to state employees. If for some reason, a legal challenge was raised by one party or another as to the provisions of existing coverage, serious questions regarding the binding nature of the existing arrangement would be likely to arise.

The Committee concluded that it is necessary for the Commission to be required by law to purchase policies through a fully executed contractual agreement. In reaching this conclusion, the Committee recognized that both the Commission and the insurance carrier will need a reasonable amount of time after the date of bid acceptance, to draw up and execute a formal contractual agreement. Finally, the Committee recognized that, on occasion, extenuating circumstances may arise which would require a longer amount of time to secure a fully executed contract.

Therefore, the Committee recommends that current law be amended to require that the State Employee Health Commission enter into signed contracts with group insurance carriers within 90 days of the bid award. In addition, the Committee recommends that the Commissioner of Administration be authorized to grant a waiver, in extenuating circumstances, to the 90 day limit.

STATUTORY

43.

Amend current law to clarify the responsibilities of the State Employee Health Insurance Program and the Bureau of State Employee Health.

The State Employee Health Insurance Program has a statutory responsibility (5 MRSA §285-286) to administer group health insurance programs offered for state employees as directed by the State Employee Health Insurance Commission. The Program is headed by an Executive Director.

Another agency also under the Board's jurisdiction, the Bureau of State Employee Health, has a statutory responsibility (5 MRSA §954-946) for establishing, providing and improving programs to minimize risks to employee health. The Bureau of State Employee Health is also headed by a Director.

Upon review of the various statutory mandates for the State Employee Health Insurance Program and the Bureau of State Employee Health, the Committee found a number of instances in current law where the specific program responsibilities for the State Employee Health Insurance Program have been confused with those of the Bureau of State Employee Health:

- "The State Employee Health Commission is established to...advise the Director of State Employee Health (Emphasis Added) on health insurance issues..." [5 MRSA §285-A]; and
- Another section of law (5 MRSA §954) refers to the Bureau of State Employee Health's responsibility, "to provide and administer health insurance for state employees".

The Committee found that original legislative intent was to delegate responsibility for matters involving state employee health insurance to the State Employee Health Insurance Program. Although closely related in many topics and programming efforts, the Bureau of State Employee Health has a separate mandate, "to promote the health and safety of state employees." (5 MRSA §954). The Committee further found that the earlier cited statutory language represent inconsistencies which are contrary to legislative intent.

Therefore, the Committee recommends that current law be amended to clarify the responsibilities of State Employee Health Insurance Program and Bureau of State Employee Health.



STATE CIVIL SERVICE APPEALS BOARD

STATUTORY 44. Continue the State Civil Service Appeals Board for 10 years under the provisions of the Maine Sunset Law.

The State Civil Service Appeals Board is an independent board created by Maine law to mediate employee/employer grievances and to hear the classification/allocation appeals of classified and unclassified personnel who are excluded by law from the collective bargaining process. Most of these employees are referred to as "confidential employees" and are generally in those positions which are considered to be policy influencing or have direct access to information handled by policy influencing positions. Upon review, the Committee found that the Board also hears appeals from those non-confidential employees whose collective bargaining agreement may not specify or include an appeals procedure.

As specified by law (5 MRSA §7081-7085), the State Civil Service Appeals Board has the following responsibilities:

- to administer their law;
- to employ assistants necessary to carry out their responsibilities;
- to report biennially to the Governor and the Legislature on the Board's activities and any recommendations that it might have;
- to mediate grievances and disputes between state agencies and those state employees who are not covered under collective bargaining;
- to hear appeals for classification and reclassification decisions made by the Bureau of Human Resources for those of same employees identified above; and
- to issue rules in accordance with the Administrative Procedures Act to administer its responsibilities.

The State Civil Service Appeals Board was established on July 1, 1986. Upon its creation, the State Civil Service Appeals Board assumed its primary duties of grievance mediation and classification appeals from the former State Personnel Board which had had those responsibilities since 1981.

The State Civil Service Appeals Board is composed of 5 members. Current law (5 MRSA §7081) specifies that members must have experience in personnel management or labor relations. No more than 3 members of the board may belong to the same political party and board members may not be state employees. Board members are appointed by the Governor for 5 year terms. Gubernatorial appointments are subject to review by the Joint Standing Committee on State and Local Government and confirmation by the Legislature. By law [5 MRSA §12004 (3) A (3)], Board members are paid \$50 per day.

The State Civil Service Appeals Board meets when a confidential employee wishes to either appeal a classification - reclassification decision made by the Bureau of Human Resources or to file an employee grievance.

The State Civil Service Appeals Board conducts its hearings as an adjudicatory proceeding under the Administrative Procedures Act. By law (5 MRSA §7082 (4)), confidential employees are allowed to be represented by a designated representative of their choosing. Board proceedings make use of opening and closing statements from both parties, evidence, and witnesses. The Board is authorized to issue subpoenas.

The State Civil Service Appeals Board currently uses rules inherited from its various predecessors. It appears that the contents of the rules have not been reviewed for possible revision for a number of years. In recognition of this fact, in January of 1989, the State Civil Service Appeals Board asked its Assistant Attorney General to review the rules and make any subsequent recommendations for revision. The redraft of the rules will be considered by the Board during their May 1989 meeting.

Since its creation in January of 1986, the State Civil Service Appeals Board has met 17 times: once in 1986, three times in 1987 and 12 times in 1987. Attendance at Board meetings was as follows:

- 1 meeting was attended by all 5 members;
- 2 meetings were attended by 4 members; and
- 14 meetings were attended by 3 members.

From these 16 meetings, the State Civil Service Appeals Board heard 12 reclassification appeals. Of these appeals:

- 9 decisions were issued in the Bureau of Human Resources' favor;
- 2 decisions were issued which upheld the appellant; and

-
- 1 appeal was settled without a State Civil Service Appeals Board decision, although the settlement was a compromise which resulted in a higher range for the employee.

As of March 1989, the State Civil Service Appeals Board had not heard any grievances. Before a grievance can come before the board, the board's governing statutes prescribe the following grievance procedure which resembles that which is included in each of the collective bargaining agreements:

- First the employee orally notifies the immediate supervisor within 7 working days of the grievable incident. The supervisor has 3 working days from date of notification to make an oral decision;
- Second, if the employee is dissatisfied with supervisor's oral decision, the employee may file a written grievance with the supervisor within 10 working days of oral decision. The supervisor then has 10 working days to issue a written decision;
- Third, if dissatisfied with the written decision, the employee may appeal this decision in writing within 20 working days with the department head who must meet with the employee and has 5 working days to issue a written decision;
- Fourth, if dissatisfied with the department head's written decision, the employee may appeal that decision within 7 days of meeting with department head, to the Director of the Bureau of Human Resources who has 10 working days to issue a written decision;
- Finally, if dissatisfied with the Director's written decision, the employee may appeal that decision within 10 working days of receipt to the State Civil Service Appeals Board. The State Civil Service Appeals Board has 30 working days in which to issue a written decision, which is final and binding.

As a practical matter, the Board has had an organizational relationship to the Bureau of Human Resources which is not specified in statute. In past years, the predecessors to the State Civil Service Appeals Board were provided with professional staff support by the former Department of Personnel. After the 1986 reorganization, the Bureau of Human Resources was no longer willing to provide this staff support, maintaining that because it was a defendant in all reclassification decisions before the board, it would be inappropriate for the Bureau to be providing staff support.

Since 1986, the State Civil Service Appeals Board has continued to receive clerical support services from the Bureau of Human Resources. Currently, the Bureau of Human Resources' Administrative Secretary attends each State Civil Service Appeals Board meeting in its entirety to take minutes and spends an additional 3 - 4 hours after each meeting in preparing the minutes and other written materials.

In lieu of any other more appropriate administrative unit, State Civil Service Appeals Board expenditures are paid through the Bureau of Human Resources' appropriation. For FY 1988, the State Civil Service Appeals Board had the following expenses:

- \$ 750.00 per diem;
- \$ 300.00 room rental;
- \$ 75.12 general operating expenses;
- \$ 55.00 printing; and
- \$ 510.67 travel expenses

\$1,697.99 TOTAL EXPENSES

Given its unique responsibilities to hear both reclassification/reallocation and employee grievance appeals, for employees not covered by the terms of a collective bargaining agreement, the Committee finds that there is a continuing need for the Board's existence. The Committee has issued a number of recommendations which are designed to ensure the Board's autonomy from the Bureau of Human Resources, improve its effectiveness and increase its visibility to those state employees it is intended to serve.

Therefore, the Committee recommends that the State Civil Service Appeals Board be continued for 10 years under the provisions of the Maine Sunset Law.

STATUTORY

45.

Establish a separate activity within the Commissioner's appropriation account for the State Civil Service Appeals Board. Transfer Board funding from the Bureau of Human Resources's account to the Commissioner's account to promote a more autonomous relationship between the State Civil Service Appeals Board and the Bureau of Human Resources.

Funding for the State Civil Service Appeals Board is currently appropriated to the Board through the Bureau of Human Resources. Funding for the State Civil Service Appeals Board is not separately identified but included as an All Other expense for the Bureau of Human Resources. Statutes for the State Civil Service Appeals Board make no mention of how funds are to be appropriated to the Board. For FY 1988, the Board had total expenses of \$1,697.99. The Committee found that similar amounts have been budgeted for the State Civil Service Appeals Board for the 1990-1991 biennium.

Since the Bureau of Human Resources is always the defendant in reclassification/reallocation appeals made to the Board, the Committee found that the present method by which funding is provided for the State Civil Service Appeals Board is inappropriate. Further, the Committee found that, whenever possible, the State Civil Service Appeals Board should have a more autonomous relationship with the Bureau of Human Resources.

To remedy the current means of providing funding to the State Civil Service Appeals Board, the Committee found that the Commissioner of Administration's account could be used for the State Civil Service Appeals Board, by establishing a separate activity for the Board within that account. Existing State Civil Service Appeals Board funding could be transferred from the Bureau of Human Resources' account.

The Committee found that use of the Commissioner's account offers the following advantages:

- funds for the State Civil Service Appeals Board would be removed from the Bureau of Human Resources, thus establishing a more autonomous relationship between the Bureau of Human Resources and the Board;

-
- the Commissioner's office of the Department of Administration is the most appropriate organizational location for the placement of the State Civil Service Appeals Board appropriation. The State Civil Service Appeals Board provides a service to certain State employees; the Department of Administration is the part of Maine State government which provides most services to other State agencies; and
 - The Commissioner's office can assist the State Civil Service Appeals Board in administering their account. The Committee found that given the very part-time nature of the Board's work and that it has no employees, it is not advisable for the Board to have its own appropriation account.

Therefore, the Committee recommends that a separate activity within the Commissioner's appropriation account be established for the State Civil Service Appeals Board. The Committee further recommended that Board funding be transferred from the Bureau of Human Resources' account to the Commissioner's account to promote a more autonomous relationship between the State Civil Service Appeals Board and the Bureau of Human Resources.

ADMINISTRATIVE 46.

Direct that the State Civil Service Appeals Board should receive clerical/support services from the Commissioner's office, to promote a more autonomous relationship between the State Civil Service Appeals Board and the Bureau of Human Resources.

Currently, the State Civil Service Appeals Board receives, at no additional cost, clerical support services from the Bureau of Human Resources. The Bureau of Human Resources's Administrative Secretary, provides these services to the Board as needed. The Committee found that the Administrative Secretary takes minutes for every Board meeting and spends up to 4 hours after each meeting in preparing the minutes and performing other support services for the Board.

In keeping with the previous recommendation to transfer the State Civil Service Appeals Board funding from the Bureau of Human Resources to the Commissioner's office, the Committee found that it is not appropriate to have Bureau of Human Resources's staff providing services to the Board.

After careful consideration of a number of possible alternatives to the current situation, the Committee found that clerical/support services could be provided at no additional cost by existing staffing in the Commissioner of Administration's office. Like the previous recommendation, provision of necessary clerical/support services from the Commissioner's office, rather than Bureau of Human Resources, will help to promote an appropriately autonomous relationship between an adjudicatory body and defendant.

Therefore, to promote a more autonomous relationship between the State Civil Service Appeals Board and the Bureau of Human Resources, the Committee directs that the State Civil Service Appeals Board should receive necessary clerical/support services from the Commissioner's office.

ADMINISTRATIVE 47.

Direct the Bureau of Human Resources to provide training in use of the Hay Classification System to newly appointed members of the State Civil Service Appeals Board.

Upon review, the Committee found that Board members who have served for a number of years, have received training in the use of the Hay System from the former Department of Personnel. Newly appointed members have not had specific training in the job classification tenets of the Hay System. The current State Civil Service Appeals Board Chair communicated to the Committee that such training is essential for newly appointed Board members.

The Committee considered several alternative means of providing the needed training to Board members. First, training for State Civil Service Appeals Board members could be provided by the Bureau of Human Resources's Merit System Coordinator. The advantage to this possibility is the Bureau's familiarity with the Hay System as used in Maine and the availability of this training at no extra cost. The possible drawback to this alternative is that the Merit System Coordinator represents the Bureau of Human Resources as the defendant in all reclass appeals brought to the Board.

Another alternative is to have training provided for Board members by representatives of Hay Associates. However, the Committee found several significant drawbacks to this alternative:

- The Committee found that, it costs nearly \$2,000 per day for representatives of the Hay System to visit Maine. Currently, the State Civil Service Appeals Board is only budgeted at about \$1,700 per year; and
- The Committee noted that Hay representatives are not well versed in the particulars of Maine's application of the Hay System.

The Committee concluded, that given the present circumstances, the best alternative is to have newly appointed Board members receive training in use of the Hay System from the Bureau of Human Resources. Such training can be provided at no additional cost to either the Bureau of Human Resources or the Board. The Committee cautions that such training should clearly acknowledge the Bureau's ongoing role as a defendant in all reclassification/reallocation appeals that are brought to the Board.

Therefore, the Committee directs the Bureau of Human Resources to provide training in use of the Hay Classification System to newly appointed members of the State Civil Service Appeals Board.

ADMINISTRATIVE 48.

Develop a brief, informational publication for distribution to all State employees who fall under the Board's jurisdiction which describes the role of the State Civil Service Appeals Board. Distribute copies of this publication to applicable new State employees as they are hired.

During the course of the review of the State Civil Service Appeals Board, the Committee considered information which indicated that confidential and other State employees under the Board's jurisdiction, have not recently received any written information which clearly describes their various rights of appeal to the Board.

The Committee found that it is necessary to periodically provide these State employees with information concerning their various rights of appeal to the Board. The Committee also found that newly hired State employees under the Board's purview should be provided with a copy of this publication. The Committee found that current Board funding would cover the expenses of printing and distributing a brief informational publication about the State Civil Service Appeals Board to those State employees.

Therefore, the Committee recommends that the State Civil Service Appeals Board develop a brief, informational publication for distribution to all State employees who fall under the Board's jurisdiction, which describes the role of the State Civil Service Appeals Board. The Committee further recommends that the Board distribute copies of this publication to applicable new State employees as they are hired.

EDUCATIONAL LEAVE ADVISORY BOARD

STATUTORY 49. Continue the Educational Leave Advisory Board for one year under the provisions of the Maine Sunset law.

The Educational Leave Advisory Board was established in 1974 by Maine law (5 MRSA §§721 - 727) to, "...review and authorize all educational leave requests from classified and unclassified state employees for duration of more than one week." Current law states that in performing this function, the Board must consult with the Bureau of Human Resources.

By law, the Educational Leave Advisory Board is composed of 3 members: the Director of the Bureau of Human Resources, who serves as Chair, the Commissioner (or designee) of the Department of Educational and Cultural Services, and a state employee appointed by the Governor for a 3 year term. Board members are not entitled to compensation for their specific board related duties.

The Board is also responsible for developing rules which establish procedures for employees to apply for educational leaves, to approve applications, to maintain an up-to-date register of approved educational leaves, and to seek advice from the involved department head on the merits of a requested educational leave.

Upon review, the Committee found that the topic of educational leave is also being addressed by 2 other entities. The 1987-1989 MSEA contracts stipulate that "the Labor/Management Committee shall also study current educational leave policies and procedures. The Committee shall report its findings to the Policy Review Board..." This Labor/Management Committee has met on a number of occasions and has collected information on the educational leave policies for each state agency. As of April 1989, the Labor/Management Committee has not met since December 1988, nor has it yet made a report to the Policy Review Board.

The Policy Review Board consists of 9 members and has a statutory mandate to advise the Department of Administration on all issues relating to personnel administration. One of its specific tasks is to "Examine educational leave and training policies and procedures of each department and make recommendations that will further career incentives and employee motivation in each department (5 MRSA §7042 (3)). According to

the current chair of the Policy Review Board, the Policy Review Board has discussed the issue of educational leave on a number of occasions but has not spent a great deal of time on this topic. The Policy Review Board has directed the Bureau of Human Resources' Training Unit to collect data about current agency educational leave policies.

In practice, the Board does not meet as a body. Instead, employee educational leave requests are forwarded to the Bureau of Human Resources' Director. Once received, the applications are reviewed by the Director and a Bureau staff member. Subsequent to this review, the Bureau of Human Resources' Director will issue a recommendation regarding a specific application and circulate the complete application package to other Board members for their consideration.

In reviewing an application, Board members consider recommendations from the employing agency, terms (length) and conditions (financial compensation) of the proposed leave, likely benefit(s) to employee and employer, usefulness of the educational program to needs of the state, and possible impact of the proposed leave on the agency's program and operational responsibilities.

In recent years, the Board has averaged some 23 requests for education leave per year. In FY 1988, the Educational Leave Advisory Board received 21 proposals and approved 17 of them. The 21 requests came from 4 agencies with 17 requests from the Department of Mental Health and Mental Retardation. The approved requests included 8 for bachelor degree programs, 1 for a master's degree program, 2 for a doctorate degree, 2 for nursing certificate programs, and 4 were for recreational/occupational therapy programs. In addition, 13 of the approved leaves were for part-time leave with pay, 1 was for part-time leave without pay, and 3 were for full-time leave without pay.

Current law (5 MRSA §725) prohibits the Board from receiving and/or using state funds to administer its responsibilities. Finally, 5 MRSA §725 allows the Board to "apply for and accept donations and contributions from any other source to further assist it in carrying out the purposes of this chapter."

After reviewing all aspects of the Educational Leave Advisory Board, the Committee found a current need for the Board's continued existence. However, the Committee noted that the topic of educational leave is the subject of several mandated studies; the ultimate results of which, may or may not, suggest a continued need for the Board as presently authorized. In a subsequent recommendation, the Committee is directing the Board to report to this Committee, as well as the Committee on State and Local Government on the results of a detailed study regarding the adequacy of their governing statutes and existing guidelines. The Committee expects to use this study to help determine whether there will be a continuing need for the Board to exist.

Therefore, the Committee recommends that the Educational Leave Advisory Board be continued for 1 year under the provisions of the Maine Sunset Law.

ADMINISTRATIVE 50.

Conduct a detailed review of the current adequacy of governing statutes and existing guidelines. Submit a written report concerning the results of this review, and any subsequent recommendations, to the Joint Standing Committees on Audit & Program Review and State and Local Government by January 1, 1990.

As mentioned earlier, current law (5 MRSA §724) authorizes the Board to establish, by rule and regulation, "...procedures for applying, processing and granting of educational leave to classified and unclassified employees...and may adopt other regulations as it finds necessary to administer this chapter."

The Committee found that the Board's rulemaking authority appears to be quite broad in light of the rest of the Board's governing statutes which place only two strictures; the Board must consider for approval all educational leave requests for durations of more than one week, and the Board must seek the advice of the employee's agency on the merits of the employee's educational leave request.

The current Board Guidelines were developed by the Board upon its creation in 1974. These guidelines have not been revised since that date. The Committee found the present guidelines are deficient in the following respects:

- lack of an up-to-date, precise definition of what constitutes an educational leave;
- a clarification of the purpose of educational leaves;
- lack of definition for the use of "seniority determination"; and
- unresolved issues surrounding the retention of benefits by employees on an approved educational leave.

As described in the previous recommendation, "educational leave" is a topic mandated for study by 2 other entities: The Policy Review Board and a Labor/Management Committee. The Committee found a striking degree of inter-relatedness in the mandates for each of these bodies: both bodies have a mandate to study educational leave and 1 body (Labor/Management Committee) is to report its findings to the other (Policy Review Board). The Committee notes that the Management chair of the Labor/Management Committee is also the Director of Training and Staff Development at the Bureau of Human Resources and that that same individual currently serves as the gubernatorially appointed Educational Leave Advisory Board member.

The Committee found a need to consolidate the various review efforts and suggests that the report emanating from this recommendation may also be used to satisfy the other previously cited mandates.

Therefore, the Committee recommends that the Educational Leave Advisory Board conduct a detailed review of the current adequacy of governing statutes and existing guidelines. The Board shall submit a written report concerning the results of this review, any subsequent recommendations, to the Joint Standing Committees on Audit & Program Review and State and Local Government by January 1, 1990.

STATUTORY	51.	Increase the membership of the Educational Leave Advisory Board to ensure needed representation from both management and labor.
-----------	-----	---

As specified by current law (5 MRS §723), the Educational Leave Advisory Board is composed of 3 members: the Director of Bureau of Human Resources, who serves as Chair, the Commissioner of Educational & Cultural Services (or designee), a "State employee" appointed by the Governor for a three year term.

Upon review, the Committee found that the current State employee member of the Board is the Director of Staff Training and Development from the Bureau of Human Resources whose formal job classification is listed as "Manager, Human Resource Development". The Committee also found that current law merely requires that the appointed member be a "State employee" and does not further define who that State employee shall be. The Committee noted that under the provisions of current law, the Manager of State Training and Development is indeed a state employee but that this position is a confidential, managerial employee and is not included as a member of a collective bargaining unit.

After careful review, the Committee concluded that current Board membership as specified by statute is in need of several revisions. First, the current State employee member who is the Director of Staff Training and Development from the Bureau of Human Resources, is not representative of a great majority of State employees who are members of bargaining units. However, the Committee found that because of that position's responsibilities for training and development, it is necessary to include, by statute, that position as a permanent member of the Educational Leave Advisory Board.

Secondly, the Committee found a continuing need for significant representation on the Educational Leave Advisory Board by State employees. The Committee further found that State employee membership should be increased from one to two, and that current law should be amended to specify that at least one state employee member be a member of a collective bargaining unit.

Therefore, the Committee recommends that the membership of the Educational Leave Advisory Board be expanded to ensure needed representation from both management and labor.