

# MAINE STATE LEGISLATURE

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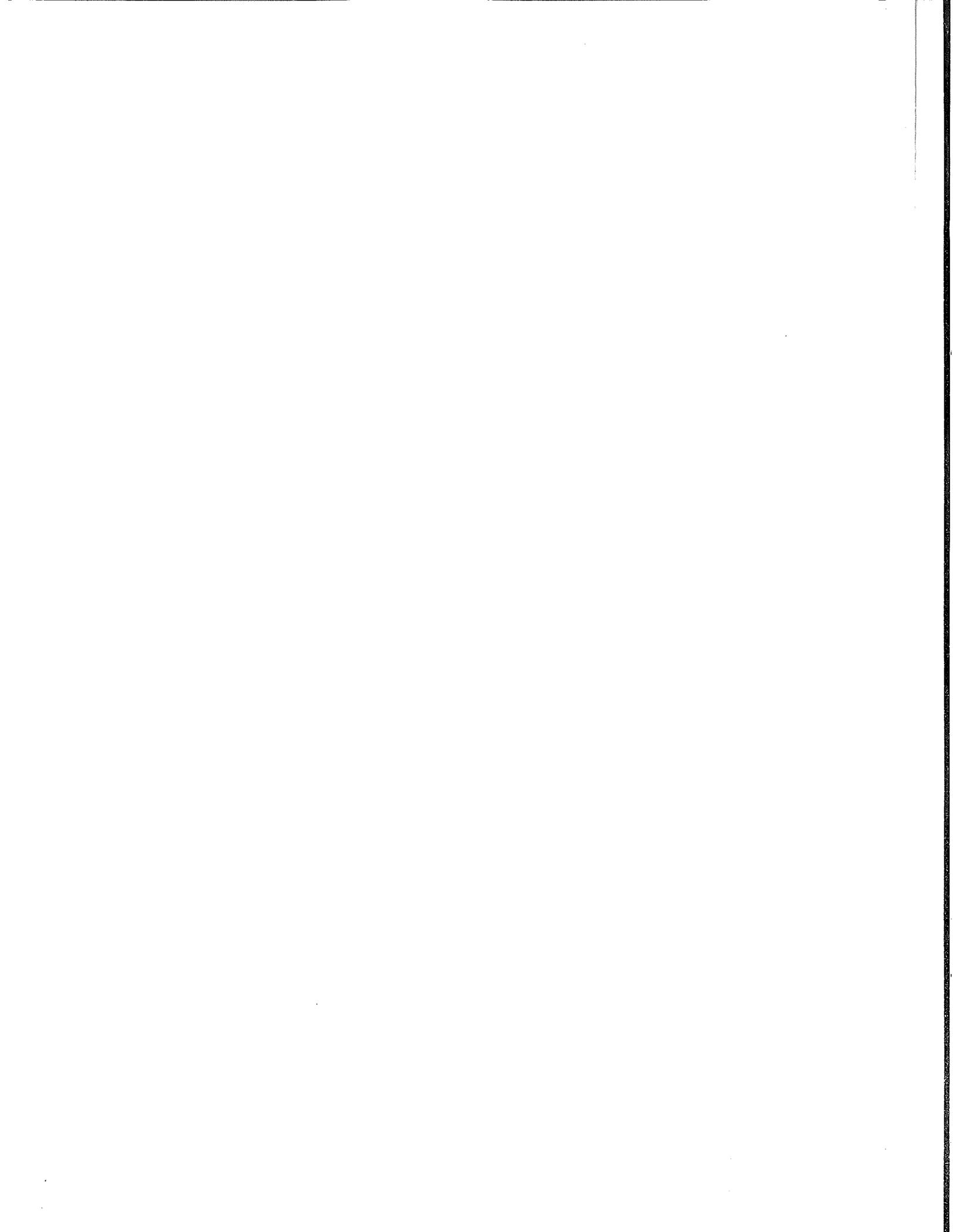


# Review of

- Finance Authority of Maine
- Office of the Treasurer of State
- Maine Municipal Bond Bank
- Department of Audit
- Bureau of Capitol Security

## Joint Standing Committee on Audit and Program Review 1989-1990



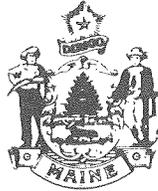


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 GEORGETTE B. BERUBE, DISTRICT-16  
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OFFICE OF FISCAL AND PROGRAM REVIEW  
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STATE OF MAINE  
 ONE HUNDRED AND FOURTEENTH LEGISLATURE  
 COMMITTEE ON AUDIT AND PROGRAM REVIEW

April 1990

Members of the Legislative Council,

We are pleased to transmit the Committee's 1989-1990 report to you in four volumes. To simplify our process and reduce costs, this year the Committee used draft reports to circulate its initial recommendations. These four volumes represent our final conclusions about the agencies under review. The report includes statutory and administrative recommendations and findings on the:

- Department of Finance
  - Bureau of the Budget
  - Bureau of Taxation
- Finance Authority of Maine
- Office of the State Treasurer
- Maine Municipal Bond Bank
- Department of Audit
- Bureau of Capitol Security
- Maine's child welfare service delivery system;
- Department of Administration, Part II
  - Office of Information Services;
  - Bureau of Purchases;
  - Bureau of State Employee Health;
  - Division of Risk Management;
  - Capitol Planning Commission;
  - Educational Leave Advisory Board;
- Maine State Board of Licensure for Architects and Landscape Architects;
- Board of Trustees, University of Maine System; and
- Maine Emergency Medical Services 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 and the many agency staff and public who assisted the Committee in its deliberations. 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.

  
 Beverly M. Bustin  
 Senate Chair

Sincerely,

  
 Neil Rolde  
 House Chair



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## TABLE OF CONTENTS

SUBCOMMITTEE MEMBERSHIP . . . . .	1
THE COMMITTEE PROCESS . . . . .	3
SUMMARY OF RECOMMENDATIONS . . . . .	5
FINANCE AUTHORITY OF MAINE . . . . .	9
OFFICE OF THE TREASURER OF STATE . . . . .	37
MAINE MUNICIPAL BOND BANK . . . . .	49
DEPARTMENT OF AUDIT . . . . .	57
BUREAU OF CAPITOL SECURITY . . . . .	69



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## COMMITTEE ORGANIZATION

### SUBCOMMITTEE #2 REVIEW ASSIGNMENT

- Department of Finance
  - Bureau of the Budget
  - Bureau of Taxation
- Finance Authority of Maine
- Office of the State Treasurer
- Maine Municipal Bond Bank
- Department of Audit
- Bureau of Capitol Security

### MEMBERS:

Representative George Townsend,  
Subcommittee Chair

Senator Beverly M. Bustin  
Senator Georgette Berube  
Senator Linda Brawn  
Representative Neil Rolde  
Representative Phyllis Erwin  
Representative Harriet Ketover  
Representative Beverly Daggett  
Representative John Aliberti  
Representative Eleanor Murphy  
Representative Catharine Lebowitz  
Representative Wesley Farnum

### ADJUNCT MEMBERS:

Representative Wilfred Bell  
Joint Standing Committee on  
Housing and Economic Development



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## THE COMMITTEE PROCESS

The Joint Standing Committee on Audit & Program Review was created in 1977 to administer Maine's Sunset Act which "provides for a system of periodic justification of agencies and independent agencies of State Government in order to evaluate their efficacy and performance " [3 MRSA Ch. 33 §921 et. seq.]. To carry out its mandate, the 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:

### **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 Maine's child welfare service delivery system will include a member of the Human Resources 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 to between the sessions to discuss issues regarding the agency and to 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.

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**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 this bill into the Legislative session in progress and the legislation 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 final deliberations and amendments, the bill is amended and placed on the calendar for consideration by the entire Legislature.

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## SUMMARY OF RECOMMENDATIONS

The Committee makes both Statutory and Administrative recommendations. In some instances, the Committee will issue a finding which requires no action but which highlights a particular situation. The Committee's bill consists of the Statutory Recommendations. Administrative recommendations are implemented by the agencies under review without statutory changes. A simple listing of the Committee's recommendations and findings appears here. Narratives describing the background and rationale for these proposed changes appear throughout the reports.

### FINANCE AUTHORITY OF MAINE

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- |           |    |  |
|-----------|----|--|
| STATUTORY | 1. | Alter the composition and nominating authority for and expand the responsibilities of the Maine Veterans' Small Business Loan Board, in order to increase utilization of the loan insurance program by veterans. |
|-----------|----|--|
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- |           |    |   |
|-----------|----|---|
| STATUTORY | 2. | Authorize the Maine Veterans' Small Business Loan Board to take action on veterans' loan insurance applications requiring a 100% loan guarantee, for small business loans of up to \$75,000, in order to increase veteran participation in the administration of the program. |
|-----------|----|---|
- 
- 
- |           |    |   |
|-----------|----|---|
| STATUTORY | 3. | Authorize the Finance Authority of Maine to insure 100% of a veteran's small business loan of up to \$75,000, in order to increase veterans' access to loans. |
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STATUTORY

4. Amend the definition of "veteran" for the purposes of the Veterans' Small Business Loan Program, in order to attain consistency with the definition used by the Bureau of Veterans' Services.
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ADMINISTRATIVE

5. Direct the Finance Authority of Maine to solicit proposals for the expansion of the Job-Start Program to one new region each year, up to eight participating community action agencies, in order to increase access to and activity in the program.
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STATUTORY

6. Instruct participating agencies to accept applications from any Maine resident eligible for the Job-Start Program, regardless of whether the applicant resides in the region normally served by the agency, in order to eliminate discrimination based on location of residence.
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STATUTORY

7. Decrease the percentage of administrative funds that community action agencies must provide to the Job-Start Program, in order to alleviate some of the cost burden experienced by participating agencies and encourage increased activity in the program.
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STATUTORY

8. Authorize the Finance Authority of Maine to expend up to \$10,000 annually in administrative Job-Start Program funds for each community action agency with which it contracts for the program, in order to allow effective expansion of the program.
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ADMINISTRATIVE

9. Encourage participating agencies to explore options resulting in an advantageous cooperation with private economic development agencies, in order that the program may benefit from the small business development expertise available from this source.
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STATUTORY

10. Repeal the Industrial Stability Program, in order to eliminate an unused, unfunded program from State law.
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ADMINISTRATIVE

11. Direct FAME to assist the Department of Environmental Protection by assessing the financial condition of businesses liable for hazardous materials related costs and determining feasible payment schedules, in order to assure that businesses are not forced into bankruptcy by environmental liability.
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**OFFICE OF THE TREASURER OF STATE**

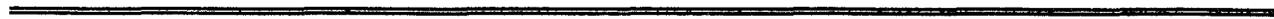
No recommendations.

**MAINE MUNICIPAL BOND BANK**

No recommendations.

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**FINANCE AUTHORITY OF MAINE**



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## FINANCE AUTHORITY OF MAINE

### INTRODUCTION

The Finance Authority of Maine was established to enable and promote responsible economic development in the State. In 1983, when the Authority was created, the Legislature found a need statewide to:

- enlarge opportunities for gainful employment;
- ensure the preservation and betterment of the economy and living standards;
- provide a more healthy environment through restoration of purity to the air, water and earth;
- stimulate private investment;
- assist in financing, planning, development, acquisition, construction, improvement, expansion and operation of business and natural resource enterprises and other eligible projects; and
- increase access of small businesses and veterans to financing at reasonable terms and rates.  
(10 MRSA §962)

FAME was assigned the task of addressing these needs, by providing "one stop shopping" financing expertise for businesses, municipalities, and natural resource entrepreneurs at a time characterized by fluctuating, variable interest rates and economic uncertainty.

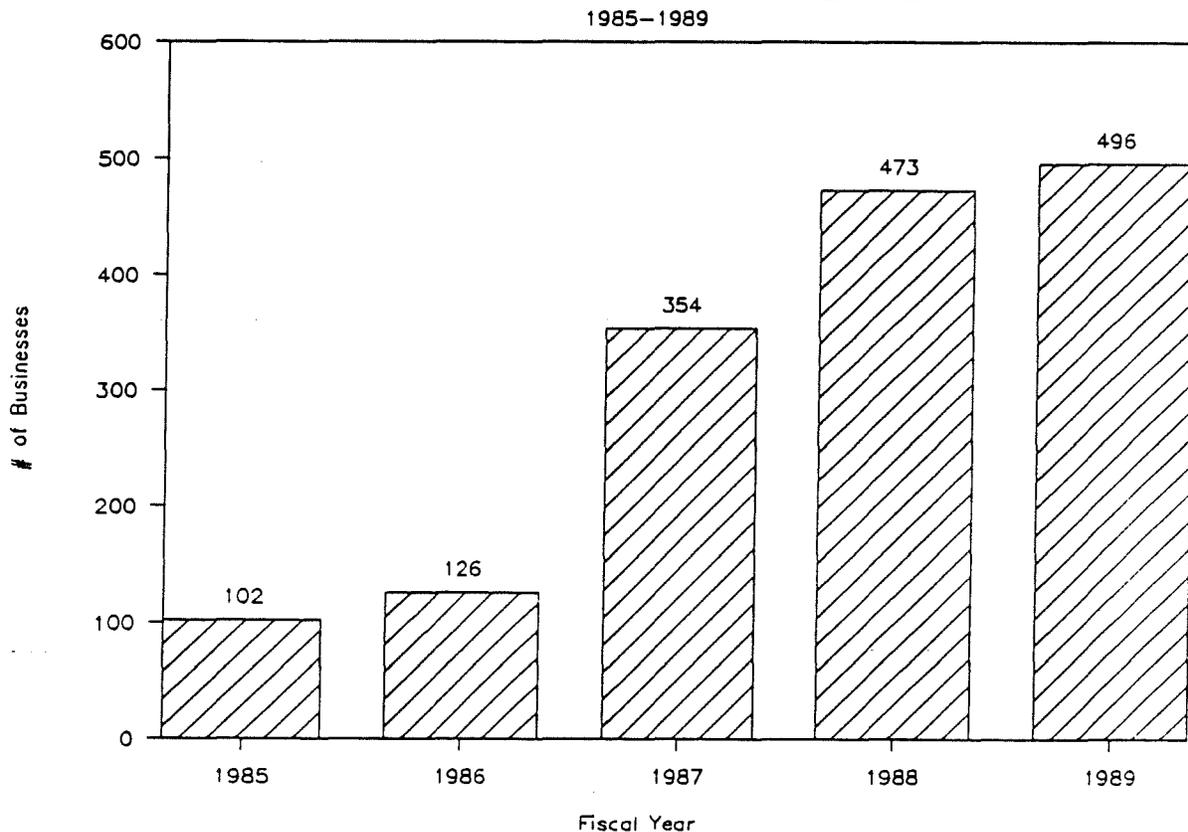
### HISTORY

FAME replaced three previously existing agencies: the Maine Guarantee Authority (MGA) established in 1957, the Maine Small Business Loan Authority (1977) and the Maine Veterans' Small Business Loan Authority (1973). The Maine Guarantee Authority had experienced difficulties with unsuccessful investments, most notably the sugar beet industry loan guarantee. MGA's default rate was approximately 25%. FAME inherited, at its creation, all of the assets and liabilities of its predecessors, which totaled \$8,136,852.

## PROGRAMS

The Finance Authority of Maine administers a multitude of programs designed to fulfill its mandate. Programs are grouped into two broad categories: business development and natural resources. The graph below demonstrates the increase in FAME's assistance to the business community from 1985 to the present, followed by a brief discription of each program.

### FAME ASSISTED BUSINESSES



- **Commercial Loan Insurance Program.** Through this program, FAME will insure up to 90% of a commercial loan (not to exceed \$7,000,000) by a business borrower who would be denied financing by the lender without this insurance. Borrowers must exhibit a reasonable ability to repay the loan and have sufficient collateral. The business must be located in the State, and the project must demonstrate public benefit (increased jobs, municipal tax base, etc.). The program works in cooperation with local lending institutions and bond

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underwriters, who originate and service the loans, provide construction loans or interim financing without insurance, and maintain at least 10% of a loan uninsured. These loans are backed by the State's pledge to issue general obligation bonds, if necessary, to repay the loan in case of default. FAME maintains a cash reserve which provides the first source of funds in the event of a default. If required, the Governor's contingency account would be tapped second, proceeds of state issued bonds, third. FAME reports that its current reserve is approximately \$8,500,000. Legislation passed in 1988 (P.L. 1987, c. 697) requires the Governor to transfer to FAME's capital reserve account from the State Contingent Account "the amount, if any, necessary to restore ... the reserve requirement established by the authority". This requirement has resulted in a \$1 million per year transfer to FAME's cash reserves. The reserve requirement established by the Authority has been set at \$10,000,000. Currently, FAME has insurance commitments on approximately \$59 million in commercial loans.

After enjoying a year (FY 89) with a default rate of 0%, FAME staff report that they are currently experiencing the effects of the recent softening in Maine's economy. FAME has paid out on two major defaults this year, with combined losses of over \$2,000,000, and expects to see additional losses in the coming months. FAME employs a six level risk classification system for its entire loan insurance portfolio, including small business and commercial loans and bonds. The status of each loan is monitored on a monthly basis. While the Authority's goal is, of course, no losses, it is FAME's assigned responsibility to take risks. Although FAME employs extensive expertise to determine the viability and repayment ability of the enterprises it backs, an occasional "failure" is not unexpected.

- **Small Business and Veterans' Small Business Insurance Programs.** Similar to commercial loan insurance, FAME will insure up to 85% of a small business loan up to a maximum of \$500,000 (\$600,000 for veterans). In FY 89 FAME insured 107 small business loans, insuring \$7,316,455 out of a total of \$12,534,032 borrowed (58%). FAME's total loan insurance commitments for small business, including veterans', is over \$14.5 million. Loans of \$50,000 or less constitute approximately 45% of FAME's loan insurance commitments. The veterans' program is administered with the assistance of the Veterans' Small Business Loan Board. The program and board are the subject of several recommendations which appear later in this report.

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- **SMART-E Tax Exempt Bonds.** The federal Tax Reform Act of 1986 severely limited the types of projects that can be funded by tax exempt bonds, e.g. small issue or industrial development bonds, now restricted to manufacturing enterprises and public projects such as schools and solid waste facilities. The Authority issued just under \$18,000,000 in tax exempt bonds in FY 89, compared to \$97,000,000 approved under the municipal securities approval program in FY 86. The tax exemption for manufacturing was due to sunset in December of 1989. As a result of an intensive national lobbying effort, Congress granted a 9 month extension through September of 1990. This subject will be discussed further later in this report.

Through this program FAME will finance up to 90% of a loan to a manufacturing enterprise to acquire land and depreciable assets. FAME groups several small loans and issues tax exempt bonds to finance the projects. Because the interest to bond holders is tax exempt, the interest rate paid by the borrower is lower than conventional commercial financing. The Authority offers a similar program for businesses ineligible for tax exempt financing.

- **Linked Investment for Commercial Enterprises.** The State Treasurer, as authorized by the Maine Legislature (5 MRSA §135), may invest up to \$4 million per year in financial institutions at reduced interest rates (2% below the current rate). The financial institutions, in turn, provide a comparably reduced rate to small commercial manufacturing and exporting enterprises, using the lender's loan approval policies. The State Treasurer must determine that at least one job will be created for every \$20,000 deposited at reduced yield. FAME assists the State Treasurer in administering this program, and the corresponding **Linked Investment for Agricultural Loans** (an additional \$4,000,000). Estimated lost revenue to the State for both programs, if fully utilized, is \$160,000 annually.
- **Maine Seed Capital Tax Credit Program.** Authorized by the Legislature in 1988 (PL 1987 C. 854), this program offers a tax credit for investors willing to invest \$10,000 to \$50,000 in a Maine business whose annual revenues do not exceed \$200,000 and whose product or service is sold predominately (at least 70%) out of state. The tax credit equals 30% of the investment, taken over 2 or more years. The investment must remain in the business for at least 5 years, with no current income to the investor in the 5 year period.

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The program is capped at \$2,000,000 in total tax credits through FY 91. Five hundred thousand dollars (\$500,000) in tax credit authorization was reserved by statute for "natural resource enterprises" and an additional \$500,000 for eligible investments in "job opportunity zones" as designated by Title 5, c. 403. In fiscal year 1989, FAME approved credits for 7 investors who invested a total of \$90,000 in 2 newly established Maine concerns.

- **Pine Tree Partnership Grant Program.** Established by the Legislature in 1985, this program provides matching grants of up to \$5,000 for technology research and project development by small businesses, defined as those with 30 or fewer employees and net worth not exceeding \$250,000. The Pine Tree Partnership Grant Program carried an original General Fund appropriation of \$150,000 in FY 86, and received an additional \$50,000 in FY 88. The Pine Tree Partnership Fund Board solicits grant proposals and makes the awards. FAME administers the program, reviews progress reports submitted by grantees. Proposed FY 90 funding for the program failed to survive the budget process.
- **Maine Opportunity Grants Program.** Operated by FAME in cooperation with the Department of Economic & Community Development, the program provides direct grants of up to \$1,250 to businesses creating or expanding job opportunities in one of Maine's four designated job opportunity zones. The program is capped at \$250,000 per year. Jobs created must provide at least 30 hours per week, 48 weeks per year of employment, and pay at least 120% of the state minimum wage, currently \$4.62/hr. Rules indicate that a fringe benefit package may or may not be provided, however FAME staff could not recall a grant for a job that did not include fringe benefits. Original rules required higher wages, but were amended to the current level due to the Job Opportunity Zone Steering Committee reactions to the original wage requirement, which had exceeded that offered by grant applicants in almost all cases.
- **Maine Job Start Program.** Created by the Legislature in 1984, this program was designed to enable low income people to obtain below market rate financing of up to \$10,000 for their small business enterprise. The program was originally funded as a one year pilot program in cooperation with 3 community action agencies: Aroostook County Action Program, Community Concepts, Inc. (Androscoggin and Oxford counties), and Washington/Hancock Community Agency. The Legislature

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subsequently extended the pilot program. The CAPS are responsible for intake, loan application review and approval, and for employing all available small business technical assistance and counselling resources available to assist job-start loan applicants (10 MRSA §1100-N). FAME provides necessary technical assistance to the CAPS, and program-wide administration. The program is funded through a \$180,000 General Fund appropriation, which includes \$10,000 per CAP per year for administration, but no administrative funds for FAME.

The program has been awarded a \$250,000 grant by the federal Department of Human Services that will be used for training and technical assistance for Job Start borrowers. FAME will receive \$27,000 over two years to implement the grant proposal.

The Job Start Program is the subject of several Committee recommendations that appear later in this report.

- **Borrower Assistance Program.** The purpose of this program is to provide a network of organizations throughout the State capable of disseminating information about and accepting applications for FAME's programs. Participation in this program has increased threefold since 1986. FAME currently certifies 24 organizations as Borrower Assistants (listed in Appendix D).
- **Export Financing Assistance.** FAME is approved as an Administrator of the Export Credit Umbrella Insurance Program. The program consists of a group of insurers which acts as an agent to the Export-Import Bank (Eximbank) to insure payment for U.S. exports by foreign buyers. This repayment insurance allows U.S. exporters to offer more competitive payment terms, thereby expanding international markets. The program also insures lines of credit provided by lenders to Maine exporters through the Small Business Loan Insurance Program.
- **Agricultural Operating Loan Insurance Program.** This program is designed to assist farmers who do not meet the criteria of the Farmers' Home Association guarantee program obtain short term credit for current year operating expenses. Loans are insured up to 75% of the principal amount for the term of the business cycle (maximum 15 months).

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- **Linked Investment for Agricultural Loans.** Discussed under the similar Linked Investment for Commercial Enterprises Program.
  - **Potato Marketing Improvement Fund.** Administered by FAME on behalf of the Department of Agriculture, the program provides direct loans to potato growers of up to 55% of project costs for construction or retrofitting of modern potato storage facilities or packing lines. Since its inception in 1983, the PMIF has helped finance the construction, or retrofitting of 72 potato storage facilities, increasing storage capacity by over 2.6 million hundredweight. The PMIF has financed \$3.5 million out of total project costs of approximately \$9 million. Loans are made for a maximum term of 10 years at 5% interest.
  - **Energy Conservation Loan Program.** In 1987, FAME was allocated \$3,350,000 of Maine's share of the Exxon and Stripper Well overcharge settlement, in order to provide interest rate subsidies on energy conservation loans made to businesses, agricultural enterprises, and non-profit organizations in the state. Any of these entities which used oil currently or between 1973-1980 for space, water, or process heating were eligible for an interest rate subsidy. Loan proceeds must be used to weatherize or retrofit buildings in order to reduce energy consumption. Subsidies resulted in an effective annual interest rate of 3% on 518 energy conservation loans over the 2 1/2 year duration of the program. Funds allocated to FAME for the program have been fully expended.
  - **Maine Capital Network.** FAME maintains a confidential data base of investors and business investment opportunities for the purpose of matching potential investors with businesses seeking investment capital. Interested parties complete questionnaires about the type and level of investment they either need or would like to make. FAME matches the information by computer and sends the potential investor the business's questionnaire information. If the investor is interested, FAME provides each party with the other's name, whereupon FAME's involvement ends. The authority does follow up to discover whether the exchange resulted in an investment. To date, 20 investor/business matches and two introductions have occurred as a result of this service.

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- **Underground Oil Tank Removal and Replacement Program.** Originally established in 1987, this program was amended in 1989 to increase its utilization. Previously, the program provided 100% loan insurance to lenders for the removal, replacement, and disposal of underground oil storage tanks. In certain limited cases, the program could provide a direct loan of up to \$25,000. The borrower had to be the owner of the facility and engaged in the marketing or distribution of oil, petroleum, or petroleum by-products to entities other than the owner, and needed to prove inability to obtain financing from any other source for the required project. The Authority's statutory mortgage insurance ceiling was raised by \$5,000,000 to fund the project. In addition, the Authority received \$1,000,000 of the \$13,000,000 bond issue approved by voters in November of 1988 to create a revolving loan fund to assist businesses and nonprofit organizations in the removal (as compared to replacement) of underground oil storage tanks. The maximum amount of a loan was \$25,000 at 7% interest over not more than 10 years.

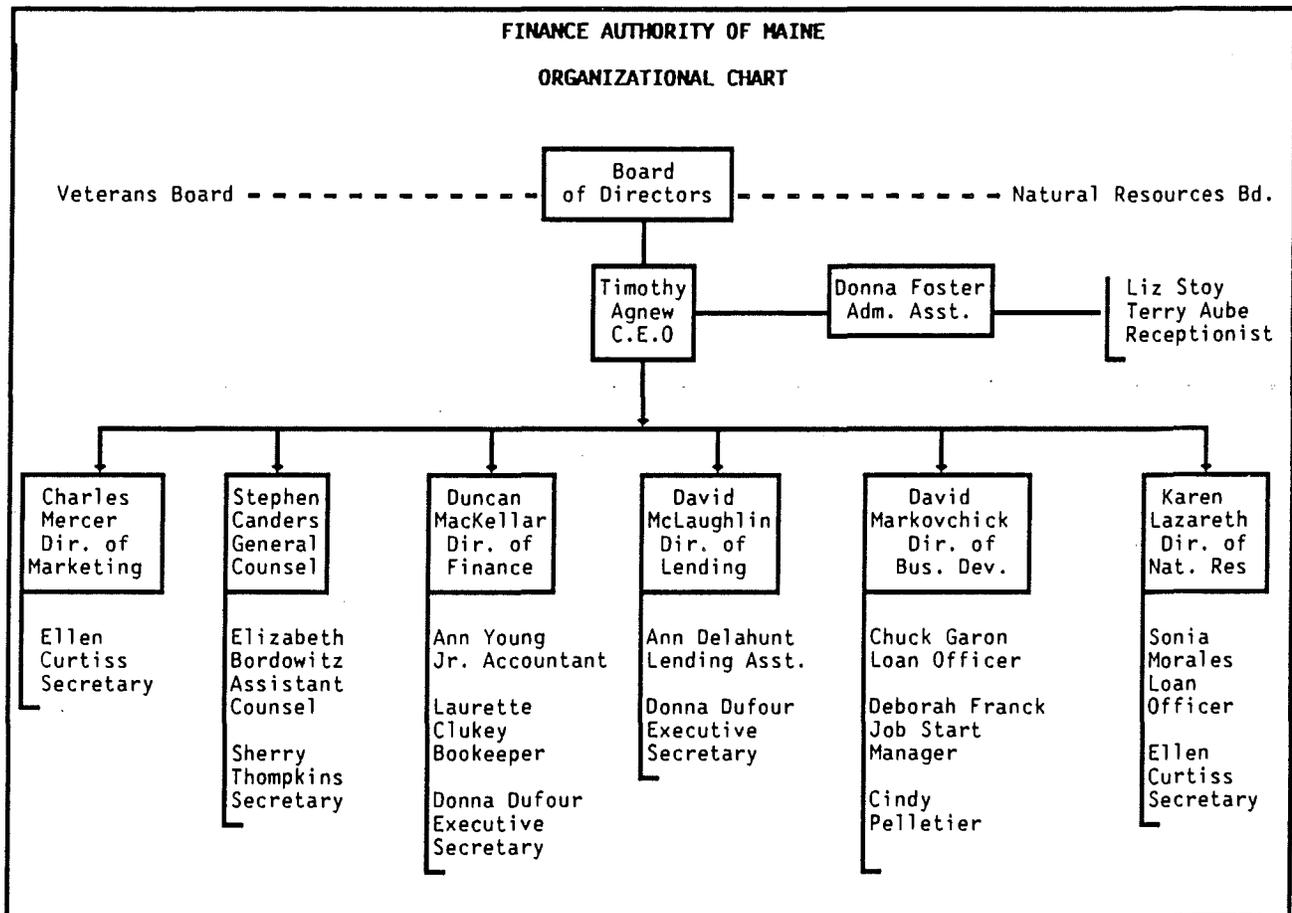
The 1989 legislation (P.L. 1989, c. 543) combined the two programs, provided for more direct loans and grants, removed the "funding source of last resort" requirement, and set interest rates linked to income. A 6¢ per barrel tax on gas and oil was imposed to fund the program, a residential component of which will be administered by the Maine State Housing Authority.

In 1988, the Legislature directed the Authority to initiate a similar program to help businesses which have been illegally discharging waste into bodies of water. The Authority can insure 100% of loans up to \$1,000,000, or provide direct loans of not more than \$50,000 to eligible business waste water system owners, however FAME was never provided with funding for direct loans. In the case of insured loans, the Authority receives a 1% per year premium on the beginning unpaid principal balance.

- Adaptive Equipment Loan Program.** Funded through a bond issue passed by Maine voters in 1988, FAME administers this \$5,000,000 revolving loan fund in conjunction with Alpha One, a community based advocacy group of disabled citizens and their supporters. Long term loans are made available to citizens and businesses to purchase equipment that enhances a person's independence at home, in the workplace, or in the community. Loans are considered by a nine member board, the majority of whom are people with disabilities.

### ORGANIZATION

The Finance Authority of Maine employs 20 people in 19 positions (the receptionist position is job shared). An organizational chart appears below.



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An additional director has been hired to head the new student financial assistance arm of the Authority. Nine additional positions will be transferred from the Department of Educational and Cultural Services to the Authority to carry out this new legislative mandate. Further discussion of this issue appears later in this report.

Activities of the Authority are overseen by a Board of Directors. As statutorily dictated, the 13 voting members of the authority are:

- the Commissioner of Economic and Community Development;
- one natural resources commissioner (currently the Commissioner of Agriculture);
- the State Treasurer, ex-officio;
- two veterans, chosen from the at large membership of the Maine Veterans' Small Business Loan Board;
- two members chosen from the public members of the Natural Resources Financing and Marketing Board;
- one certified public accountant;
- one attorney;
- one commercial banker; and
- three at large members.

All members are appointed by the Governor, and the latter six are subject to confirmation by the Legislature.

In addition to the Board of Directors, several other boards have been established to provide consultation on specific programs or program areas. These boards are the:

- Natural Resources Financing and Marketing Board;
- Lenders Advisory Board
- Pine Tree Partnership Fund Board;
- Veterans' Small Business Loan Insurance Board; and
- Adaptive Equipment Loan Fund Board.

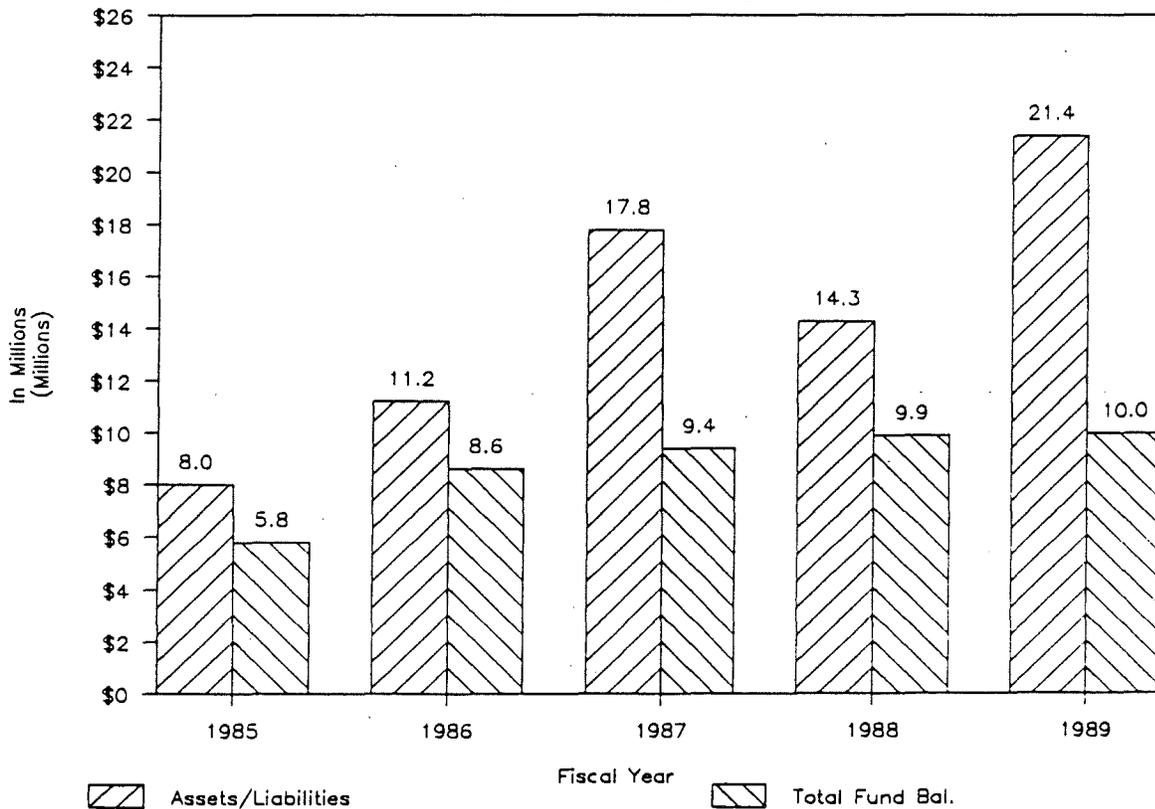
Currently pending legislation establishes the Maine Education Assistance Board, to advise the Authority on matters related to their new responsibilities to administer the State's student financial assistance programs. Two members of this Board are to be selected by the Governor to serve on the Finance Authority of Maine Board of Directors.

## FUNDING

FAME's operating expenses for fiscal year 1989 were \$1,061,613, of which \$319,881 were provided by General Fund appropriations with the remainder derived from FAME investments, loan insurance premiums, interest on notes receivable, and other program revenues. The \$180,000 General Fund appropriation for the Job Start program and \$911,000 in energy conservation loan interest subsidies are not included in the above figure, due to the "pass-through" nature of these funds.

FAME's assets and liabilities as of June 30, 1989 totaled \$21,400,767. The graph below displays the increase in FAME's balance sheet (267%) and total fund balance (72%) between fiscal years 1985 and 1989. FAME's operating expenses increased 41% over the same 4 year period.

### FAME ASSETS AND LIABILITIES & TOTAL FUND BALANCE



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## **Environmental Liability**

FAME inherited from the Maine Guarantee Authority a property in Saco previously owned by the Saco Tanning Corporation that was used to dispose of certain tannery wastes. The property is now listed on the EPA's Superfund National Priorities List and the State Department of Environmental Protection has also designated the site as an Uncontrolled Hazardous Substance site pursuant to Title 38 §1365. Since FAME is the current owner of the site, both the EPA and the DEP have named the Authority potentially liable for clean-up costs, currently conservatively estimated at approximately \$12 million depending on whether the site is capped or the materials are actually removed. The EPA has recently determined that capping would be adequate, providing the State can ensure that the site will never be developed or otherwise disturbed. In June of 1989, the Legislature enacted an emergency resolve declaring the site a wildlife preserve, in response to the EPA's stipulation.

FAME is denying liability for clean up costs based on a provision of the Superfund Act which exempts from liability units of government which acquire hazardous waste sites involuntarily. According to FAME staff, the EPA has verbally discounted FAME's legal arguments but has not yet stated its reasons in writing. Federal law requires that if no liable party is found, that the State must cover 10% of the costs of restoring the site.

The Authority is also being sued in connection with a Waterville property which was sold by the MGA in 1983. The EPA has taken action against the current owner in connection with some lagoons on the property which contain hazardous waste materials which were deposited before MGA's ownership. The current owner is claiming that FAME is liable for all penalties and damages, however several legal arguments render the Authority's liability unclear at this time. The case is currently undergoing discovery.

## **Federal Sunset on Tax-Exempt Bonds**

On June 16th of 1989, the Legislature passed a joint resolution urging Congress and the President to retain tax exempt industrial development bonds for manufacturing industries, that were due to sunset in December.

The Tax Reform Act of 1986 severely restricted the types of projects eligible for tax exempt bonding. Prior to 1986, almost any type of development project was eligible, subject to an overall ceiling. Since 1986, eligible private projects have been limited to manufacturing enterprises. In 1988, FAME issued nearly \$25,000,000 in tax exempt bonds for 14 manufacturers. Tax exempt bonds are extremely attractive and low-risk investments, and provide the manufacturing industry with lower interest financing

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that helps them remain competitive internationally. Since bonds are sold on the secondary market, considerable capital flows into the state from outside its borders. In addition, FAME derives a significant source of income from its bond issuance and annual credit enhancement (insurance) fees. In FY 89, FAME began using its moral obligation authority to back tax exempt bonds, enabling the Authority to retain its mortgage insurance capacity for traditional loan insurance.

Due to an intensive national lobbying effort, Congress granted a nine month extension on tax exempt bonds, through September of 1990. While FAME is actively lobbying Maine's Congressional delegation, and is working with other states to coordinate efforts on a national basis through the Council of Industrial Development Bond Issues to have the program extended permanently, staff expressed cautious optimism about another short term extension only.

FAME predicts an increase in other investments, taxable bonds for example, should the sunset be implemented. However a significant source of lower interest rate financing for Maine manufacturers will be eliminated.

### **Student Financial Assistance**

During the waning hours of the 1989 legislative session, FAME was assigned responsibility for providing "a comprehensive, consolidated system of student financial assistance programs" (P.L. 1989, c. 559). The legislation also created a 15 member Student Financial Aid Transition Advisory Committee to advise the Legislature, the Governor, and the Finance Authority of Maine on the implementation of the consolidated program and the transition from current to new methods of providing student financial aid services.

The Transition Committee was responsible for determining the make-up and responsibilities of a permanent advisory board which will continue to advise FAME on the consolidated student financing program and the necessary transfer of positions, funds, and obligations to FAME from the Department of Educational and Cultural Services and the Maine Educational Loan Authority. The Transition Committee's report was submitted to the Joint Standing Committee on Education in November, which met in December to draft the necessary transition enabling legislation.

As this report goes to print, this legislation, LD 2216, is still being considered by the Legislature, however, it is anticipated that the bill will proceed through enactment.

These new responsibilities pose a number of additional considerations for FAME, among them the relocation necessitated by a 50% increase in staff. The Authority will continue to work with and seek assistance from all involved parties, in order to ensure a smooth transition.

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**Maine Veterans' Small Business Loan Board**

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STATUTORY            1.            Alter the composition and nominating authority for and expand the responsibilities of the Maine Veterans' Small Business Loan Board, in order to increase utilization of the loan insurance program by veterans.

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STATUTORY            2.            Authorize the Maine Veterans' Small Business Loan Board to take action on veterans' loan insurance applications requiring a 100% loan guarantee, for small business loans of up to \$75,000, in order to increase veteran participation in the administration of the program.

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STATUTORY            3.            Authorize the Finance Authority of Maine to insure 100% of a veteran's small business loan of up to \$75,000, in order to increase veterans' access to loans.

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Maine's Constitution provides up to \$4,000,000 in loan insurance authority for small business loans to veterans. Prior to the creation of the Finance Authority of Maine in 1984, the Veterans' Small Business Loan Program was administered by the Maine Veterans' Small Business Loan Authority Board, established in 1974 by Public Law 1973, Chapter 600. This separate Veterans' Loan Authority was one of three agencies folded into the Finance Authority of Maine in 1984, at which time the Finance Authority staff took over the loan approval function. The mandated responsibilities of the Board became primarily advisory, both to veterans and FAME staff.

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Currently, the Committee finds that the Veterans' Loan Board is inactive, with only two of the eight appointed members serving current terms. The Governor's office reports an inability to fill vacancies on the Board, because the responsibilities of the Board are limited and its role unclear. Absent its loan approval responsibilities, many former members appeared to feel that the Board no longer served a useful purpose. In addition, the Finance Authority reports little interest in the program by veterans, with only one or two applications for loan insurance each year.

In hearings before the Committee, Finance Authority staff testified that:

- the program did not appear to fill any existing need, as indicated by the lack of interest in the program;
- the aging of the veteran population is creating an ever-shrinking pool of veterans potentially interested in starting small businesses;
- mailings to over 600 veterans had elicited only about six requests for presentations to veterans' groups;
- a direct loan program may be needed because many potential applicants have poor or no credit histories, and therefore are denied by lending institutions in spite of the 85% loan guarantee available through FAME; and
- FAME believes that its five day timeframe for loan approval better serves veterans.

While the option of discontinuing the Veterans' Small Business Loan Board was considered, testimony before the Committee by representatives of several veterans groups expressed the following:

- the Maine Veterans' Coordinating Committee was unanimously opposed to discontinuation of the Board;
- most veterans did not appear to know about the loan insurance program;
- current Board members did not represent active veterans' groups;
- veterans felt the Authority had not adequately promoted the program;
- veterans' groups themselves had neglected to adequately publicize the program;
- loan approval authority should rest with the Board, thereby increasing interest in Board membership; and
- there was a veteran population who could benefit from the program.

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Due to the strong interest shown by veterans, the Committee finds that revitalizing the Veterans' Loan Board is preferable at this time to discontinuing it. The Committee finds also that the Maine Veterans' Coordinating Committee is made up of representatives of seven active veterans' organizations with broad membership bases. The Committee also finds compelling the need to encourage lending institutions to provide more access to funding to veterans.

Several veterans also stated that the previous Veterans' Loan Authority Board had served as a source of advice, support, and technical assistance to veterans planning to embark on small business ventures. The Committee finds this to represent an important and valuable role for the current Board.

Therefore, the Committee recommends that the composition and responsibilities of the Maine Veterans' Small Business Loan Board be redefined, in order to increase utilization of the loan insurance program for veterans, and authorize the Finance Authority of Maine to insure 100% of a veteran's small business loan of up to \$75,000, in order to increase veterans' access to loans. The Committee also recommends that the Board have loan insurance application review and approval authority over those loans that require a 100% FAME guarantee, in order that the Board be informed about these higher risk loans and can serve as a resource for the veterans applying for them.

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STATUTORY

4. Amend the definition of "veteran" for the purposes of the Veterans' Small Business Loan Program, in order to attain consistency with the definition used by the Bureau of Veterans' Services.
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Currently, the definition of "veteran" that appears in the statute governing the Veterans' Small Business Loan Program is inconsistent with the definition that the Bureau of Veterans' Services uses to determine eligibility for programs and services. The Committee finds that amending the definition serves two purposes: creating consistency, and expanding the veteran population eligible for loan insurance under the program to include those who participated in conflicts such as Grenada, Lebanon, and the Persian Gulf. The Committee supports both of these outcomes, therefore, the Committee recommends amending the definition of "veteran" for the purposes of the Veterans' Small Business Loan Program, in order to attain consistency with the definition used by the Bureau of Veterans' Services and expand eligibility for the program.

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**JOB START PROGRAM**

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ADMINISTRATIVE    5.        Direct the Finance Authority of Maine to solicit proposals for the expansion of the Job-Start Program to one new region each year, up to eight participating community action agencies, in order to increase access to and activity in the program.

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STATUTORY        6.        Instruct participating agencies to accept applications from any Maine resident eligible for the Job-Start Program, regardless of whether the applicant resides in the region normally served by the agency, in order to eliminate discrimination based on location of residence.

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STATUTORY        7.        Decrease the percentage of administrative funds that community action agencies must provide to the Job-Start Program, in order to alleviate some of the cost burden experienced by participating agencies and encourage increased activity in the program.

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STATUTORY        8.        Authorize the Finance Authority of Maine to expend up to \$10,000 annually in administrative Job-Start Program funds for each community action agency with which it contracts for the program, in order to allow effective expansion of the program.

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The Job-Start Program was created by the Legislature in 1984 to enable low income individuals to obtain below market rate financing of up to \$10,000 for small business enterprises. Although written as a statewide program, Job-Start was originally funded as a one year pilot program, in cooperation with 3 community action agencies covering 5 counties: Aroostook, Androscoggin, Oxford, Washington and Hancock. The Legislature subsequently extended the pilot program, but participation remained limited to the initial three CAP agencies.

The original appropriation of \$235,000 included \$35,000 for FAME's administrative expenses. Ten percent of the remaining \$200,000 (\$20,000) was authorized to be used for "administrative expenses and counseling services" by the 3 CAP agencies and the authority. FAME never expended its share of administrative funds, leaving it in the Job Start Account to cover additional CAP expenses. Beginning in fiscal year 1988, the Legislature provided an additional \$30,000 per year (\$10,000 for each CAP) for administrative expenses. By law, CAPs must contribute at least 50% of administrative monies necessary to run the program. FAME requires CAPs to document these expenditures before receiving matching funds from FAME.

The law also provides that all interest received through the program, either by loan payments or investments of the Fund balance, may be used for administrative costs, primarily for the CAPS. While the law indicates that the 10% administrative allowance of the loan fund appropriation was only authorized for the first year of the program, FAME has administered the program allowing 10% of each year's Job-Start Loan Fund appropriation, in addition to the additional appropriations, for administrative costs. Again, administrative monies have been disbursed only to the CAPS. FAME has administered the program using funds earned through its mortgage insurance program. Thus far, no interest income has been disbursed for administrative costs.

In 1986, the Legislature reiterated its desire to have the program be administered statewide by stating in an unallocated section of an appropriations bill: "The Finance Authority of Maine shall expand the Job-Start program to any region of the state served by community action agencies. This expansion shall be made only to the extent of funds currently available for this program" (P.L. 1985 Ch. 761, Sec. 19). At that time, FAME was anticipating a considerably higher volume of loan activity with the 3 existing agencies, so did not attempt to expand the program. In addition, the program had turned out to be very expensive administratively, and FAME did not consider their staff resources sufficient for program expansion.

At the present time, however, it would appear that the volume of loans handled by the 3 participating CAP agencies will remain more or less constant. Since the Legislature has continued to appropriate funds to the Job-Start Program each year, program funds currently exceed what is required to operate the program on the current "pilot" scale.

Below is shown the statistical history of the program, including appropriations, administrative expenses, money loaned, principal and interest received and current balances in loanable funds and administrative allowances.

SUMMARY OF APPROPRIATIONS FOR JOB-START

Fiscal Year	Total Appropriation	Loan Fund	CAP Admin.	FAME Admin.
1985	\$ 235,000	\$180,000	\$ 20,000	\$35,000**
1986	150,000	135,000	15,000	0
1987	150,000	135,000	15,000	0
1988	180,000	135,000	45,000	0
1989	180,000	135,000	45,000	0
1990	<u>180,000</u>	<u>150,000</u>	<u>30,000</u>	<u>0</u>
	\$1,075,000	\$870,000	\$170,000	\$35,000

\* Law indicates that the \$15,000/yr allocated to administrative expenses may not have been original legislative intent.

\*\* FAME never used these funds for their admin costs.

SUMMARY OF JOB-START LOAN FUND ACTIVITY  
(as of 7/1/89)

Total Loans Made	Principal Repaid	Principal Lost to Default	Interest Paid on Loans	Investment Interest	Total Admin Funds Disbursed
\$613,600	\$235,997	\$17,716	\$54,065	\$113,207	\$139,730

Total loan funds available: \$532,758  
 Total Admin funds available: 192,181  
 \$724,939

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The Committee heard testimony that the Job-start Program was expensive to administer for both the CAP agencies and the Finance Authority of Maine. Community action agencies cited the reduction in federal funding as putting a severe strain on their limited resources, and contributing to their decreased ability to provide the matching funds for Job-start administration currently required under the law. While enthusiastic and supportive of the program generally, CAP agencies indicated that the administrative burden served as a disincentive to a more active promotion of the program in their regions.

The Finance Authority of Maine, which has been absorbing approximately \$50,000 in administrative costs associated with the Job-start Program each year, stated that current staff resources would not permit expansion of the program without an administrative allowance to cover the increased costs.

The Committee finds that the Legislature has repeatedly expressed its intent for the Job-start Program to be available statewide, as funding permits. It appears that current funding and program utilization levels allow for program expansion. The Committee recognizes, however, that the program requires a substantial commitment of time and energy by both local community action agencies and the Finance Authority, and therefore seeks to expand the program in an orderly and manageable manner. Therefore the Committee recommends expansion of the program to one new region served by a community action agency each year, until 8 agencies are participating in the program. The Committee finds that 8 participating agencies will ensure adequate access to the eligible population statewide.

The Committee also finds, however, that the current availability of the program in only 5 counties discriminates against residents of this State who do not live in those counties. Therefore the Committee recommends that while the program is being gradually expanded statewide, that participating CAP agencies accept applications from eligible state residents regardless of whether the applicant resides in the region normally served by the agency. A participating agency retains the right to refuse an application from any person who resides in a region served by another participating agency.

In addition, the Committee recommends that the percentage of administrative funds required to be provided by the CAP agencies be reduced from 50 to 30 percent, and that the Finance Authority be permitted to allocate \$10,000 per participating CAP agency for administrative expenses of the authority, beginning in fiscal year 1991.

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ADMINISTRATIVE 9.

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Encourage participating agencies to explore options resulting in an advantageous cooperation with private economic development agencies, in order that the program may benefit from the small business development expertise available from this source.

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During Committee discussions on the expansion of the Job-start program, FAME suggested opening up agency participation to include non-profit, economic development agencies as a way of possibly reducing the program's administrative costs. These agencies already have considerable expertise in small business issues and, it was suggested, may be capable of effectively administering the program while requiring less training, consultation, and administration resources from the Authority. The Committee finds that CAP agencies, however, have more immediate access to and experience with the population that the program is intended to serve, and may be better able to identify possible program participants. The agencies currently participating in the Job-start Program testified that, having survived the many trials of the implementation phase of the program in their regions, they would be willing and able to advise new CAPs on streamlining the start up process.

The Committee finds that the interests of the target population are best served by continuing administration of the program through community action agencies. The Committee's inquiry revealed, however, that ways may exist for the CAPs to work with private economic development agencies to take advantage of the small business development expertise and experience with the target population that these agencies possess.

Therefore the Committee encourages participating CAP agencies to explore options resulting in an advantageous cooperation with private economic development agencies, in order that the program may benefit from the small business development expertise available from this source.

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STATUTORY

10.

Repeal the Industrial Stability Program, in order to eliminate an unused, unfunded program from State law.

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The Industrial Stability Program (10 MRSA §1035 et seq.) was created as a two year pilot program in 1985 to assist Keyes Fibre Company, which employs over 800 people and was experiencing financial difficulty due to high electricity costs. Nine hundred thousand dollars (\$900,000) were appropriated to pay the firm's electricity costs over a two year period (FY 86 and 87) "provided that it engages in a program to reduce its electricity costs".

The law was constructed to be available only if the firm's "net annual costs for electrical energy are greater than 10% of the total manufacturing costs at the facility at the time of application." In addition, the assistance to be provided was "an amount equal to the difference between the electric rates in effect on July 1, 1985, and those in effect at any later date during the period in which the firm is eligible for state assistance...". Electricity rates did not increase substantially during the two year eligibility period, however, and the company never applied for the funds. Unused, the \$900,000 lapsed back to the General Fund in FY 88.

The Committee finds that the circumstances under which the Industrial Stability Program was created no longer exist, that the program was never used, is not currently funded, and has eligibility requirements so specific as to exclude all but a single enterprise. Therefore the Committee recommends repeal of the Industrial Stability Program, in order to eliminate an unused, unfunded program from State law.

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ADMINISTRATIVE

11.

Direct FAME to assist the Department of Environmental Protection by assessing the financial condition of businesses liable for hazardous materials related costs and determining feasible payment schedules, in order to assure that businesses are not forced into bankruptcy by environmental liability.

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In its discussions about the various programs administered by FAME, hazardous materials liability of small businesses emerged as an issue of grave concern to the Committee. Whether the expertise of the Finance Authority might be employed as part of a solution to this problem was explored. Specifically discussed was whether FAME could administer a program similar to the Underground Tank Program, which could provide either direct loans or insure loans to businesses to clean up hazardous waste sites for which a business has been deemed a responsible party.

Current law allows the Department of Environmental Protection to clean up a site that poses a public health risk and then to attempt to recover the cost of the clean up from the responsible parties. The latter process has frequently involved lengthy and expensive litigation.

Various aspects and components of the hazardous materials liability problem were discussed. Key points arrived at were that:

- any action should be part of a statewide or preferably nationwide plan to deal with the hazardous waste problem;
- no comprehensive plan currently exists;
- funding and liability issues are constantly changing;
- insured loans are unlikely to be effective because the banks have shown themselves to be generally unwilling to give these types of loans under any circumstances;
- a direct loan program administered by FAME would require a substantial funding source (i.e. a bond issue);
- such loans are likely to entail high risk;
- it is currently unclear whether such a program would address an existing need;
- any funding source would complete the Department of Environmental Protection's needs for additional resources;
- a loan program would not help these small business owners who acknowledged adequate resources to repay the loan; and
- any assumption of liability by the State is a major policy decision with potentially huge financial implications.

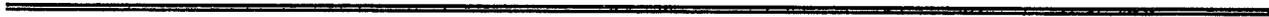
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For all of the above reasons, the Committee finds that an effective solution to the problem is likely to require national attention, in order to gain successful, equitable results.

The Committee finds, however, that FAME could offer its financial expertise to the Department of Environmental Protection to assess the financial condition of businesses which are deemed responsible parties in a hazardous waste clean-up situation. FAME's role would be to advise the Department of Environmental Protection as to how much financial burden could be borne by a company without posing a risk of bankruptcy, so that a feasible repayment schedule could be arranged. In this way, at least some level of financial responsibility will be retained by the polluter, without the loss of jobs that results from the failure of a business.

Therefore, the Committee directs FAME to assist the Department of Environmental Protection by assessing the financial condition of businesses liable for hazardous materials related costs and determining feasible payment schedules, in order to assure that businesses are not forced into bankruptcy by environmental liability.





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**OFFICE OF THE TREASURER OF STATE**



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## OFFICE OF THE TREASURER OF STATE

### ORIGIN

Article V of the Constitution of Maine authorizes the position of State Treasurer, who is elected each biennium by the 1st Regular Session of the Legislature. The post has existed since Maine became a state in 1820.

### PURPOSE

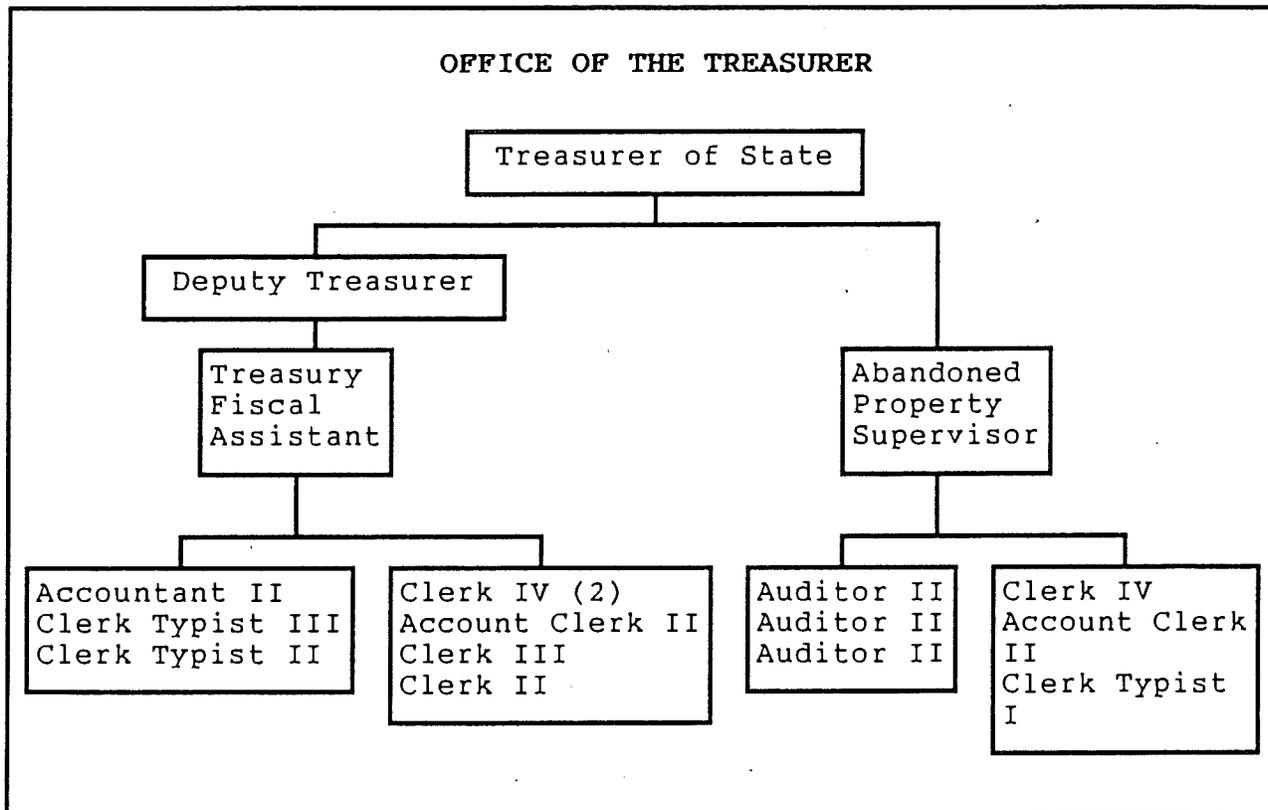
The Office of the Treasurer performs the banking function for the State of Maine. The Office monitors all of the State's financial transactions; on warrant of the Controller, disburses all State checks (except unemployment); receives State funds from the various agencies; invests all funds not immediately required for cash flow; maintains and reconciles deposit and checking accounts; distributes investment revenue to the various agencies whose funds it invests; maintains relationships with credit rating agencies; records and distributes municipal revenue sharing funds; manages the State's trust funds; advises the Legislature on the impact of bond issues; prepares official bond statements; issues bonds; advises the Governor and Legislature on debt management issues; and administers the State's abandoned property law.

In addition to overseeing the above activities, the Treasurer of State serves on the boards of the:

- Maine Municipal Bond Bank;
- Maine State Housing Authority;
- Finance Authority of Maine;
- Maine State Retirement System;
- Maine Court Facilities Authority;
- Health and Higher Education Facilities Authority;
- Maine Educational Loan Authority;
- Maine School Building Authority; and
- Adaptive Equipment Loan Board.

### ORGANIZATION

The Office of the Treasurer has a staff of 18, divided into two divisions: Fiscal (11 positions) and Abandoned Property (7 positions). An organizational chart for the Treasury is shown below.



The Committee acknowledges an imminent need for more staff to carry out the essential functions of this office.

#### FUNDING AND EXPENDITURES

The funds allocated or appropriated to the Treasurer of State fall into three categories: municipal revenue sharing, debt service, and the Office's general operating budget.

**Municipal Revenue Sharing** - Pursuant to Title 30, section 5055, 5.1% of sales, use, and income tax revenues, plus a constant amount of \$237,000 per month (also from sales and use taxes) is transferred to the Treasurer for disbursement to cities and towns under the State's municipal revenue sharing program. In fiscal year 1989, approximately \$63.7 million was "shared" with Maine's 492 municipalities. Projected amounts budgeted for revenue sharing for fiscal years 1990 and 1991 were originally \$68.4 and \$75.4 million respectively, however, the revenue shortfall currently being experienced by the State has reduced the projected amounts to \$61.5 and \$66.8 million, a decrease of \$15.5 million over the biennium.

**Debt Service** - Debt service is the payment of principal and interest on outstanding bonds. When the Treasury prepares its biennial budget request, it must include sufficient funds to pay the already existing debt service plus a projected amount for bond issues that may be approved and issued during the biennium. Actual debt service payments for General Fund bonds in FY 89 totalled \$45,913,461. The Treasurer requested \$51.9 and \$54.9 million for the current and next fiscal years for debt service, however these amounts were reduced by \$5 million and \$4.25 million respectively by the Bureau of the Budget, due to an anticipated decrease in the amount of new bond issuance from originally projected levels. The Appropriations Committee reduced the debt service appropriation by an additional \$1.75 million for FY 91 during the original budget proceedings, reasoning that this amount could be recovered by the money earned on General Fund bond proceeds pursuant to Title 5, section 151-A. Just under \$4.5 million of these earnings were used for debt service costs in FY 89. The balance in the account, as of March 1990, was approximately \$6.6 million, however the Treasurer's Office reports that nearly all of this will be required to pay the current year's (FY 1990) debt service. An additional \$3.4 million deappropriation from debt service for FY 91 is expected, as part of the revenue shortfall resolution currently being deliberated. An additional appropriation could become necessary in FY 91, if bond proceed earnings are insufficient to cover the necessary debt service payments.

The Treasury intends to defer increases in debt service payments by delays in bond issuance and use of bond anticipation notes (BANs). The first debt service payment on a bond issue is due six months from issuance, whereas interest on bond anticipation notes can be postponed for up to one year. The use of BANs does result in overall higher interest costs to the State for the bonded projects, because no principal repayment occurs until the actual bonds are issued and begin being repaid. BANs represent, in effect, an interest only payment on the loan.

**General Operating Budget** - Expenditures for the operation of the Office of the Treasurer totalled \$876,551 for the fiscal year ending June 30, 1989, as follows:

	\$	%
Personal Services	\$512,606	58%
All Other	350,158	40%
Capital Expenditures	13,787	2%

State contracts for financial services (i.e. checking accounts, financial consulting, and bond underwriting) all undergo a bidding process, with the contract awarded to the lowest bidder. Fleet Bank now services all three of the State's primary checking accounts: general operating (including human services), payroll, and retirement.

Since 1984, federal law requires that all bonds be registered. State Street Bank & Trust of Boston serves as registrar, transfer and paying agent for all state bonds issued since that year. A \$10,000 per year contract with Lazard-Freres recently replaced Prudential-Bache as the state's financial advisor. The switch was precipitated by the transfer to Lazard-Freres of the personnel at Prudential-Bache familiar with Maine's economic history, activities, and needs.

**ABANDONED PROPERTY**

The Office of the Treasurer has administered the State's Unclaimed Property law (Title 33, C. 37, post) since its adoption in 1979. Under the law, each business in the State holding abandoned property is required to file an abandoned property report with the Treasurer. Simply defined, abandoned property is any tangible or intangible property "held, issued or owed in the ordinary course of a holder's business and has remained unclaimed by the owner for more than 5 years after it became payable or distributable... [or] returnable." (33 MRSA §1803).

The Abandoned Property Division has a staff of 7. Three auditors perform audits of private entities to determine whether abandoned property is being reported and turned over to the State as required by law. Over the last several years, Division staff has audited banks, public utilities, insurance companies, and some of the State's larger corporations.

By law, all cash in the Abandoned Property Fund in excess of \$150,000, including proceeds of the public sale of tangible property, must be transferred to the General Fund. The following displays the results of the activities of the Abandoned Property Division for FY 1989.

	<u>Cash</u>	<u>Tangible Property</u>
Turned over to State	\$2,531,333	\$251,794
Returned to Claimants	\$ 364,891	\$158,357
Transferred to GF	\$1,924,635*	

\* includes liquidated tangible property

**TREASURER'S CASH POOL**

The Treasurer's Cash Pool consists of all State money not currently needed for cash flow, which is then pooled and invested. The amount of the Cash Pool fluctuates daily, generally between \$410 and \$450 million dollars. State money is invested using low risk, high return and liquidity criteria. The terms of the State's investments vary from overnight (repurchase agreements) to a year (some longer term certificates of deposit).

Investments are statutorily limited to terms of two years or less. While the State's portfolio mix changes daily, the following represents average State investments on any given day:

<u>Type</u>	<u>% of Cash Pool</u>
High grade commercial paper	65-75%
U.S. Treasury bills	10-20%
Certificates of deposit	10-20%
Repurchase agreements	1-3%

#### BONDED DEBT

As of June 30, 1989, total state bonded debt, including General Fund, Highway, and self-liquidating bonds, equalled \$338,100,000 (principal only). Interest on the principal adds another \$109,590,146 to debt service requirements, for a total of \$447,690,146. A breakdown of bonds by funding source is shown below.

#### Maine's Bonded Debt as of June 30, 1989

<u>Repayment Source</u>	<u>Principal</u>	<u>Interest</u>	<u>% of Total Bonded Debt.</u>
General Fund	\$221,645,000	\$63,428,467	62.3%
Highway Fund	98,850,000	41,117,873	30.6%
Self-Liquidating	17,605,000	5,043,806	7.1%

During the 1970's and early 1980's, Maine had a debt reduction bonding policy of new issues no greater than 90% of the principal retired in a given year. In 1984, the State Planning Office published a report, Maine State Bond Policy, authored by ex-FAME CEO Stan Provus. The report analyzed the then current bonding policy within the context of Maine's changing economy, infrastructure requirements, credit rating criteria, comparison with other state's policies, and other factors. The report recommended a "7% of own source revenue" rule as a bonded debt cap, meaning that total annual debt service requirements (principal and interest) should not exceed 7% of undedicated revenues such as sales and use taxes, income, property, inheritance, public utilities taxes, etc, in addition to Highway Fund revenue.

Total debt service payments made on Maine's bonded debt in fiscal year 1989 equalled \$64,611,875. The General Fund bond portion (71%) totalled \$45,913,461, which represents 3.3% of estimated General Fund revenue for FY 89. The Committee finds that Maine is well within acceptable debt service ratio standards.

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Claire Cohen, the representative of Moody's Investors' Service who has worked with Maine over the last several years, reported that Maine was very highly regarded in the bond markets and that the current State Treasurer represents the State ably and well.

Maine is rated AAA by Standard & Poor's and AA1 by Moody's. Ms. Cohen indicated that factors inhibiting AAA rating from Moody's (a particular goal of the State Treasurer) included a still low (though significantly improved) general level of wealth in the State and the wide economic disparity between urban centers (specifically Portland) and the rest of the State.

### SPACE REQUIREMENTS

During its review, the Committee heard testimony from the State Treasurer about the need for more square footage in which to carry out the Treasury's operations.

Since allocation of space for state government is the responsibility of the Bureau of Public Improvements (BPI), an assessment of Treasury's current location and space needs was solicited from the Bureau by the Committee. It was discovered that in 1988, BPI performed a state government-wide survey to determine the scope of additional space requirements. The survey used accepted space per function formulas for the various government functions. The Bureau reported that their estimates assumed the use of existing furniture and equipment, and that they were "fairly generous" in their recommendations.

The results of the BPI assessment of the space needs of the Treasurer's Office indicated that they could use twice as much space as they now occupy. BPI also reported suggesting to the State Treasurer that the current space could be more effectively managed using modular furniture, horizontal files, etc. The Treasurer, however, reported that there was no money in the Office's budget for new furniture, though it would appear that no specific cost estimate was done.

The Committee finds that space is a recurring issue throughout State Government. Last session the Legislature passed and funded a resolve creating a Special Committee on the New Capitol Area Master Plan, instructing "that work on the development of a new master plan for the orderly development of future state buildings, grounds, and traffic routes in the capitol area of Augusta shall be initiated as soon as possible..." (Resolve 1989, C. 60).

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The Committee finds also that the Treasurer's Office can not be moved away from the Bureau of Accounts and Control, as these two entities' functions are intimately connected on a daily basis. While the Committee understands that there are many agencies in need of and competing for limited space, the Committee feels that the essential nature of the functions performed by the Office of the Treasurer requires that the Office be assisted in addressing its space needs. In a letter to the Capital Planning Commission, the Committee requested that this assistance be provided.

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



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WESLEY FARNUM, SOUTH BERWICK

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

November 27, 1989

Jon Oxman, Chairperson  
Capital Planning Commission  
Bureau of Public Improvements  
State House Station #77  
Augusta, ME 04333

Dear Jon,

As you may be aware, the Committee on Audit & Program Review has been conducting its review of the Office of the State Treasurer. The issue of space has emerged as an item of significant concern to the Committee.

The Committee understands that Cheryl Kelly of the Bureau of Public Improvements conducted a survey of state agencies last year, in order to ascertain the magnitude of the need for additional space for State Government operations. According to Ms. Kelly, utilizing a standard space-per-function method for determining space needs, it was estimated that the State Treasurer's office needed twice the square footage than it currently occupies. In addition, the Committee acknowledges an imminent need for additional staff in the Treasurer's Office, a need which cannot be filled due to current space restrictions.

The Committee understands that factors such as the intimate working relationship between the Treasurer's Office and the Bureau of Accounts and Control complicate efforts to find a workable solution to the problem. However, the Committee feels that the essential nature of the functions of the Office of the Treasurer requires that a request for adequate space be responded to promptly and effectively. Accordingly, we would appreciate the Commission's attention to assisting the Treasurer to address the space needs in his office. Thank you.

Sincerely,

Beverly M. Bustin  
Senate Chair

Neil Rolde  
House Chair

George Townsend  
Subcommittee Chair





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**MAINE MUNICIPAL BOND BANK**



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## MAINE MUNICIPAL BOND BANK

### ORIGIN AND PURPOSE

The Maine Municipal Bond Bank (MMBB) was established in 1972 (PL 1971 C. 558) in order to provide governmental units (municipalities, school districts, water and sewer districts) with access to long term borrowing for capital projects at lower interest rates, and to reduce bond issuance and processing costs. Prior to 1972, according to the Bank's Director, individual governmental units were faced with issuing their own bonds, funding capital construction through their annual budgets, or, in some cases, simply not doing major capital construction projects.

### OPERATIONS

The Maine Municipal Bond Bank operates within the specific procedures and requirements set forth in their 70 page General Bond Resolution, adopted in 1973, plus 2 Supplemental Resolutions, adopted in 1977 and 1983.

The Bank is able to reduce the costs of long-term borrowing for municipalities by pooling several smaller projects into one, larger bond issue. The Bank issues bonds in its own name, and uses the bond proceeds to make loans to governmental units for their capital projects, secured by municipal bonds. The Maine Municipal Bond Bank is rated AA by both Standard and Poor and Moody's, a rating unachievable by many individual Maine municipalities and districts. A good credit rating translates into high demand and lower interest rates for the Bank's bond offerings, which is of significant benefit to the Bank's borrowers.

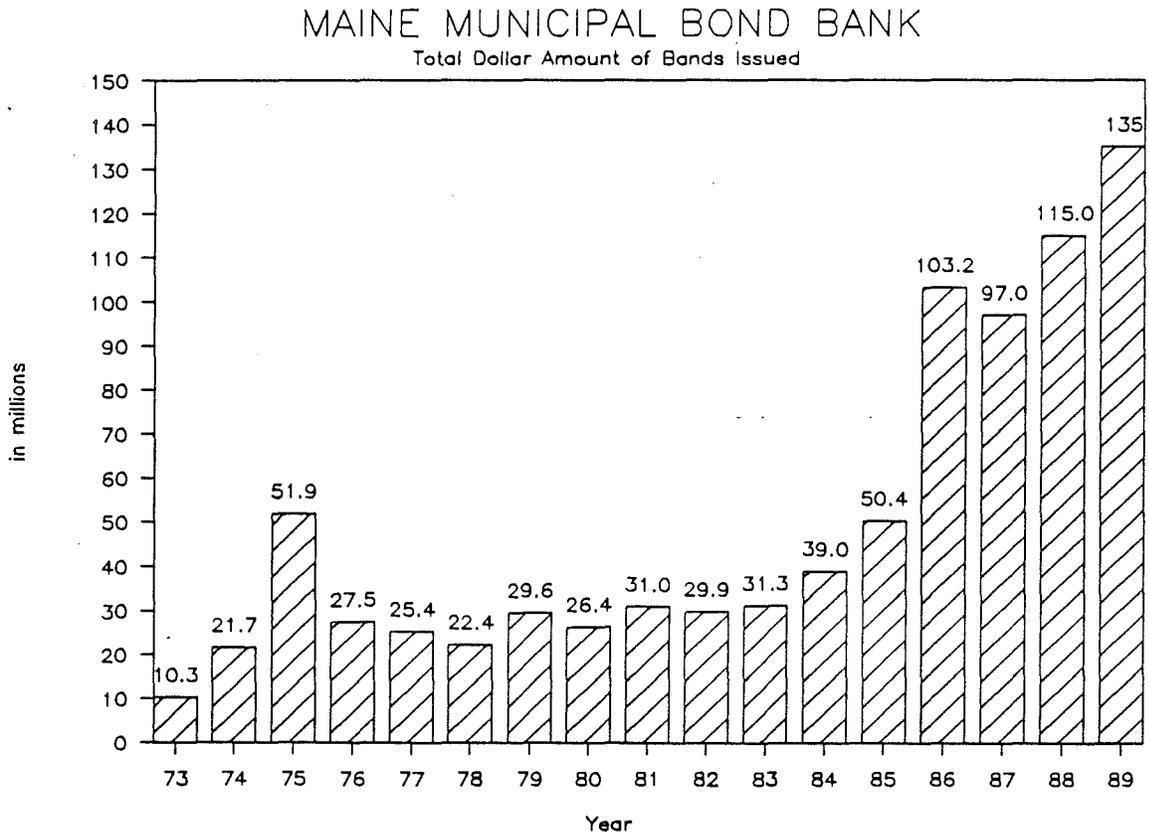
A governmental unit that seeks funding through the Bond Bank must submit a detailed loan application, which contains information about the proposed project, the source of funds which will be used to repay the loan, permits or approval required for the project, amount of existing debt, largest employers and taxpayers located in the borrower's district, property valuation, tax rate, population, unemployment, revenues and expenditures, and additional capital improvements proposed for the unit for the following 5 years. Applications are reviewed by the Bank's Board of Commissioners for:

- 1) eligibility of the project for tax exempt financing; and
- 2) reasonable ability to repay the loan.

Applications are occasionally rejected, but the Bond Bank will provide financial consulting to those unsuccessful municipalities, to assist them in attaining a firmer financial footing.

Bonds are usually issued by the Bank 2 to 3 times a year. In FY 89, the Bank issued bonds totalling \$151,148,500. These bonds, in turn, funded 135 projects for 119 different governmental units. Total face value of bonds outstanding as of June 30, 1989 was \$594,450,000, entailing an additional \$353,760,689 in interest, for total debt service requirements of \$948.2 million over the next 30 years.

The graph below displays the total amount of bonds issued by the Bank in each year since its creation.



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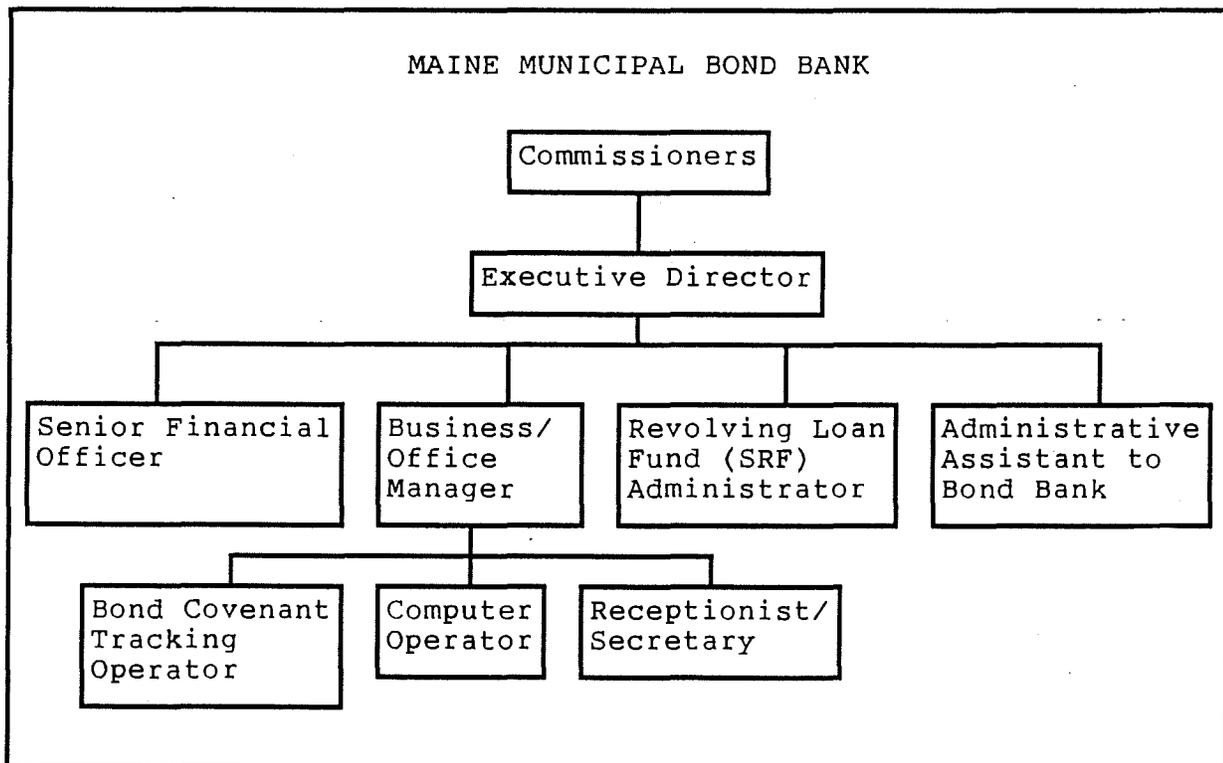
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## ORGANIZATION AND STAFFING

The Maine Municipal Bond Bank consists of a five member Board of Commissioners, which includes the Treasurer of State and the Superintendent of Banking, ex-officio, and 3 members appointed by the Governor for 3 year terms. Three members constitute a quorum, and any actions or decisions of the Bank may be made by an affirmative vote of any three members, notwithstanding any vacancies on the Board.

The Board of Commissioners also serves as the Board of the Maine Public Utilities Financing Bank.

The Maine Municipal Bond Bank has a staff of 8, which it shares with the Maine Health & Higher Education Facilities Authority, the Maine Court Facilities Authority, and the Maine Public Utilities Financing Bank. The State Revolving Loan Fund program for wastewater treatment facilities also contributes administrative dollars to the Bond Bank, which administers the program in conjunction with the Department of Environmental Protection. An organizational chart of the Bond Bank is displayed below:



While each staff member's time commitment to each entity or program varies, the overall effect of this shared staffing is to provide each body with a wider range of talents and expertise than any one of them could afford on its own.

Funding for staff is provided proportionately by each entity according to the time allotted by each staff member to its activities. The breakdown for the current fiscal year (1990) is shown below.

<u>Authority</u>	% of total Personal <u>Services \$</u>	\$
MMBB	34.5%	\$ 95,979
SRL Fund	26.3%	73,127
MHHEFA	25.6%	71,220
MCFA	8.0%	22,408
MPUF	5.6%	15,508
	100%	\$278,242

#### FUNDING AND FUNDS

Total operating expenditures of the Bond Bank were a little over \$1.2 million in FY 89, of which approximately \$1 million is attributable to Bond Bank activities.

The Maine Municipal Bond Bank receives no General Fund appropriations. Prior to the federal Tax Reform Act of 1986, the Bank paid all its administrative costs through earnings on its investment activities. The 1986 Act severely limited the amount that a bonding entity can earn through arbitrage (reinvestment of bond proceeds at higher yield). Essentially, any yield over what is paid to bondholders must now be rebated to the federal government. Costs of bond issuance and administrative expenses can not be subtracted from this "excess yield" before the rebate calculation is made. Because the Bond Bank had healthy reserves at the time of the tax law changes, and because the Bank still holds a substantial number of pre-1986 investments which are not subject to the federal "yield rebate", a portion of the operating costs of the Bank have continued to be funded from their "surplus". However, direct fees charged to the governmental units who procure funding through the Bond Bank make up the balance, and will be increasingly required as the Bank's General Fund balance is depleted.

As set forth in the Resolution, the Bond Bank maintains the following funds and accounts:

- 
- 1) the **General Fund** - comprised of general, operating, interest, principal and redemption accounts;
  - 2) the **Reserve Fund**; and
  - 3) the **Supplemental Reserve Fund** - divided into general reserve and special reserve accounts.

The **General Fund** basically fulfills the function of the Bank's operating account, with revenue coming in from the municipalities, (principal and interest payments) interest income and bond proceeds, and expenditures in the form of loans to governmental units, bond issuance costs and operating expenses of the Bank.

Pursuant to the Resolution, the **Reserve Fund** is required to maintain a balance equal to 1 year's principal and interest payments due on all outstanding debt. As of June 30, 1989, the balance in the Reserve Fund was approximately \$76 million. When bonds are issued, the Bank adds an amount equal to the required reserve for that issue to the total face value of the bonds. The reserve bonds are then "paid off" as part of principal and interest on the bonds that they are insuring.

The **Supplemental Reserve Fund** was established by the First Supplemental Resolution to the General Bond Resolution, adopted in 1977, to provide further credit enhancement for the Bank's bonds. The general supplemental reserve account is used to make up any deficiencies in the principal and interest accounts when those payments are due, and to maintain the required debt service balance in the Reserve Fund. The special supplemental reserve account is used to reduce the principal balance of loans to governmental units, in the event the Bank issues Refunding Bonds to pay off higher interest bonds outstanding. As of the end of August, 1989, the balances in the general and special supplemental reserve accounts were \$3,914,767 and \$2,178,001, respectively.

#### **STATE REVOLVING LOAN FUND**

In 1987, the State designated the Bond Bank as the entity charged with administering the State Revolving Loan Fund for wastewater treatment facilities, in conjunction with the Department of Environmental Protection, pursuant to the Federal Water Pollution Control Act (Title VI). In FY 89, the Bank received a capitalization grant from Title VI funds of \$7,364,095, in the form of a letter of credit. These funds can only be drawn upon when needed for actual construction costs. Matching state funds of \$1.8 million (from general obligation bond proceeds), as required by the federal grant, were also supplied to the Bank. The Bank will use these monies to leverage additional funds for the revolving loan program by issuing bonds, keeping the grant money in a debt service account as security. The State will be receiving these grants from the federal government (with the required state match) for the next 5 years.

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The interest rate on the loans will be set at 2% below the market rate. The first three loans from the Fund (to Brunswick, Lisbon, and Portland) have been completed.

#### COMPETITION BY REGIONAL BANKS

One issue of potential concern brought to the Committee's attention by the Bond Bank's Director is competition by regional banks (e.g. Fleet, Key) for the loan business of the most credit worthy governmental units. The reason this competition could pose a problem is that, in the long term, it could constitute a threat to the Bond Bank's credit rating. As stated previously, the Bank pools several small projects for a bond issue. If the "cream" (loans to the most credit worthy units) is skimmed off the top of the pool, the net effect is to reduce the overall attractiveness of the Bank's issues.

The appeal to some municipalities of a commercial bank over the Bond Bank is a bank's ability to provide more-or-less "instant money", whereas the Bond Bank generally only issues bonds about twice a year. The Bank's Executive Director stated that the problem appeared to be more one of marketing than a real service problem, in that the Bond Bank can issue bonds for a single project or issue a bond anticipation note, in order to address a unit's need for immediate financing. The Bank's Director indicated that the Bond Bank will be taking steps to more effectively communicate with municipalities about the Bank's ability to provide ready access to capital financing.

#### COMMENTS FROM MAINE MUNICIPAL ASSOCIATION

Because Maine's municipalities are the "consumers" of the Bond Bank's "goods and services", the Committee solicited comments about the MMBB from the Maine Municipal Association. An MMA representative responded by stating that he was not aware of a single complaint from a municipality about the service, treatment, or advice obtained through the Bond Bank. To the contrary, it was felt that the Bank had always gone out of their way to provide whatever financial services or advice might be needed by the municipalities. The only potential concern expressed was the hope that the added responsibilities of the other authorities (Health and Higher Education, Courts, Public Utilities and the State Revolving Loan Fund) would not detract from the Bond Bank's primary focus on the financial needs of municipalities. The Maine Municipal Association agreed that sharing staff seemed to be an efficient way to broaden the professional expertise available to each entity. The Committee finds that staff expansion has allowed the Maine Municipal Bond Bank to serve all of the agencies better and more professionally than ever before.

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**DEPARTMENT OF AUDIT**



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## DEPARTMENT OF AUDIT

The powers and duties of the Department of Audit are primarily established by the Legislature in Title 5, Chapter 11, §§241 et. seq. In general, the statute gives the Department auditing duties at four levels of government and in all three branches of government, i.e. at the municipal, county, state, and federal level and in the executive, legislative, and judicial branches. Specifically, the law (5 MRSA §243) gives the Department of Audit authority to:

- perform a **postaudit** of all accounts and other financial records of **state government**, including 1) the judiciary and 2) the Executive Department of the Governor (excluding the Governor's Expense Account);
- serve as **staff agency** to the **Legislature** or to the **Governor** in making investigations of any phase of the state's finances;
- install uniform accounting systems and perform annual postaudits of all accounts and financial records for the **counties**;
- install uniform accounting systems and perform audits for **cities, towns, and villages**;
- install uniform accounting systems and perform an annual audit and postaudit of the municipal cost component and the **Unorganized Territory Education and Services Fund**;
- install uniform accounting systems and perform postaudits for **probation officers**; and
- perform postaudits of all accounts and financial records of any **organization requesting** or receiving an **appropriation** from state government.

In addition, the statute authorizes the Department to "review and study **departmental budgets and capital programs** for better and efficient management of State government" and to "review and study expenditures of the **dedicated funds** of independent **boards** and commissions". The State Auditor has commented that these authorities are historical and that the Department conducts work in these areas on an as-needed basis.

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In practical terms, the authorities listed in statute result in the Department issuing more audits than any other public or private group in the state. Examples of the types of reports issued follow.

- State Auditor's Annual Report which now serves as the management letter for the Single Audit for the State (which is the system of internal control and federal compliance reporting mandated by the federal Single Audit Act of 1984);
- individual Audit Reports for entire departments or any component thereof;
- audits for approximately 250 towns per year;
- postaudits of the financial records for the Superior, District, and Administrative Courts;
- postaudits of the financial records of any organization receiving or requesting an appropriation from State government;
- postaudits of each of the 16 counties; and
- special audits done at the request of the Legislature or Governor.

In addition, section 244 of Title 5 specifically charges the State Auditor with "conduct[ing] a continuous postaudit of the accounts, books, records, and other evidences of financial transactions kept in the Department of Finance or in the other departments and agencies of the State Government. [The State Auditor] shall...publish a report for each fiscal year, setting forth the essential facts of such audit in summary form, within the following fiscal year..." In the past, the Department carried out this responsibility by performing an annual postaudit of every state agency regardless of its size, complexity, perceived audit risk, or the results of prior audits. As a means of containing costs and increasing efficiency, postaudits to be performed are now selected according to the degree of audit risk. As a result, fewer audits are done each year but each is conducted to a higher standard of quality. More time is spent on each to ensure that the audit is done according to Generally Accepted Accounting Principles, with a focus on the major accounts and with the use of a standardized audit procedure and increased reliance on computers.

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## II. STATE AUDITOR

The statute mandates that the State Auditor shall be the head of the Department of Audit (5 MRSA §241).

The State Auditor must either be 1) a Certified Public Accountant or 2) a college graduate with not less than 6 years of experience as a professional accountant or auditor, including a minimum of 5 years of auditing experience, of which not less than 4 years shall have been in a supervisory capacity.

The State Auditor is not a Constitutional officer but is elected by the Legislature by a joint ballot of both houses, as is the case for Constitutional officers (i.e. Attorney General, Secretary of State, and State Treasurer). The State Auditor is elected for a term of 4 years; the Constitutional officers are elected biennially.

## III. ORGANIZATION

In 1883, the Legislature created a "Committee to Examine Accounts of the State Treasurer". This three-member Committee was replaced in 1907 by a State Auditor, who was designated as the head of the Department of Audit in 1931.

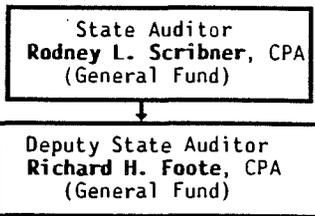
Today, the statute authorizes the State Auditor to organize the department in the "manner deem[ed] best suited to the accomplishments of its functions. [The Department] shall have such auditors, assistants, and employees as the State Auditor may require..." The chart below describes the major organizational units of the Department, including the organizational heads, primary function of each unit, staffing, funding source, and FY 88 expenditures.

According to the State Auditor, the Department of Audit is technically part of the Executive Branch of government i.e. the Department's employees are subject to the Civil Service Law (5 MRSA §242) and are included in MSEA bargaining. The State Auditor comments that in practical terms however, the Department is part of the Legislative Branch, functioning like an independent auditor. For example, all the Department's reports are presented to the President of the Senate and the Speaker of the House; the State Auditor does not sit as part of the Governor's Cabinet; the State Auditor occasionally conducts special audits at the request of the Legislature; and the State Auditor is elected by the Legislature, rather than appointed by the Governor.

DEPARTMENT OF AUDIT

SHOWING;

Major Organizational Units; Organizational Heads; Primary Function; Staffing, Funding Source; FY 88 Expenditures as of July 20, 1989



Organizational Unit	ADMINISTRATIVE DIVISION	DEPARTMENTAL BUREAU	COURTS DIVISION	MUNICIPAL BUREAU	UNORGANIZED TERRITORY PROGRAM
Organizational Head(s)	Director of Planning & Training - <b>Doreen Sheive</b> Business Manager - <b>Eleanor Rackley</b>	Assistant Director of Audits - <b>Carol Lehto</b> , CPA, CIA Assistant Director of Audits - <b>Michael Poulin</b>	Director of Audits - <b>Robert A. Paradis</b>	Director of Audits - <b>William R. McLean</b>	Fiscal Administrator - <b>Joseph Plourde</b>
Primary Function	To provide leadership and managerial and administrative support to staff	To perform the Single Audit of the State of Maine; perform independent postaudits of state agencies; serve as a staff agency to Legislature or to the Governor; and to safeguard the assets of the state	To perform a postaudit of all financial records of the Superior District, and Administrative Courts annually	To provide audit services to municipalities, counties, and school administrative units; establish accounting systems for counties and municipalities	To ensure that the Unorganized Territory Education and Service Fund is expended consistent to statute; publish an annual financial report of the Fund
Staffing/Funding Source	<u>General Fund</u> Director of Planning & Training Business Manager I (1) Clerk Typist II* <u>Dedicated Revenue</u> Administrative Secretary* Secretary Clerk Typist III* Clerk Typist II* 7	All positions are <u>General Fund</u> (2) Assistant Director of Audits (7) Auditor IIIs (2 vacancies) (8) Auditor IIs (9) Auditor Is (1 vacancy) 26	All positions are <u>General Fund</u> Director of Audits (1) Auditor III vacant (2) Auditor IIs (1) Auditor I 5	<u>Dedicated Revenue</u> Director of Audits 5 Auditor IIIs (2 vacant) 3 Auditor IIs 4 Auditor Is *Bureau also includes 4 positions in the Administrative Division 13	<u>General Fund</u> Fiscal Administrator *Program also includes 1 position in the Administrative Division 1
Total					
FY 88 Expenditures Actual	(Expenditures Incorporated in account for Departmental Bureau, Municipal Bureau, and Unorganized Territory Program)	\$1,145,529.40	(Incorporated in Departmental Bureau - total \$146,461.66)	\$410,147.45	\$64,079.05

Compiled by Audit Staff  
July 1989

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#### IV. FUNDING AND EXPENDITURES

The financial resources and expenditures for each of the units within the Department are tracked using two General Fund accounts and one Dedicated Revenue account. In fiscal year 1989, expenditures totalled \$1,743,724 with an ending balance of \$165,925, as follows:

<b>TOTAL RESOURCES</b>	<b>\$1,909,649</b>
Personal Services	1,524,941
All Other	216,023
Capital Expenditures	<u>2,760</u>
<b>Total Expenditures</b>	<b>\$1,743,724</b>
Ending Balance	165,925

#### RECOMMENDATIONS

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STATUTORY	16.	Repeal the provision requiring the State Auditor to keep records on old bonds already maintained by the Treasurer of State in order to eliminate redundant record keeping.
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Current law authorizes the State Treasurer to issue, sell, cancel, and retain bonds on behalf of the State of Maine [5 MRSA Chapter 7]. In addition to requiring the State Treasurer to maintain a register of all such bonds, current law also requires the State Auditor to "keep a record of all...bonds..."[received by the Treasurer of State for exchange, cancellation, and retention].

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The Committee finds that the mandate to maintain a record of bonds in the State Auditor's office duplicates record-keeping required of the State Treasurer. In addition, the Committee finds that the Treasurer's records serve as an adequate account of state bonds in that the Department of Audit is statutorily responsible for auditing the records of the State Treasurer each year and that, in fact, a third record of the bonds are maintained in the banking community in Boston. Finally, the Committee notes a statutory inconsistency in that 5 MRSA §244 specifically forbids the State Auditor from maintaining records of State agency accounts which the Department of Audit is responsible for auditing.

Accordingly, the Committee recommends the repeal of the statutory provision requiring the State Auditor to duplicate record-keeping practices already performed by the Treasurer of State for old bonds.

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STATUTORY	17.	Allow the State Auditor to contract for an external audit of the Unorganized Territory Education and Services Fund which is administered by the Department, in order to avoid the appearance of a conflict of interest.
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Current law places the position of Fiscal Administrator of the Unorganized Territory *within the Department of Audit* [5 MRSA § 246] and gives the Fiscal Administrator the following duties:

- to review, analyze, and investigate budgets and expenditures of all counties and state agencies requesting funds from the Unorganized Territory Education and Services Fund [UTES Fund];
- to report to the Legislature regarding the Administrator's oversight of the Unorganized Territory Education and Services Fund;
- to publish an annual financial report of the UTES Fund;
- to attend public hearings as necessary on county budgets relating to the unorganized territory; and
- to design forms to be used by counties and agencies for requesting funds, for contracting services, and to report actual annual expenses of agencies for reimbursement from the Unorganized Territory Education and Services Fund.

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Furthermore, 5 MRSA § 243 sub-§ 3-A authorizes the Department of Audit to "...perform an annual audit of the municipal cost component and the Unorganized Territory Education and Services Fund..."

Title 36, the taxation statutes, provides more detail of Legislative intent regarding the Department's oversight of the Unorganized Territory Education and Services Fund by declaring that:

"the Unorganized Territory Education and Services Fund and each account of the municipal cost component shall be audited annually by the Department of Audit... The expenses of these auditing services... shall be paid out of the Unorganized Territory Education and Services Fund. The audit shall be performed in accordance with generally accepted auditing standards and procedures..."(36 MRSA §1609).

Accordingly, the Committee finds that the objective of the Department's fiscal administration of the Unorganized Territory is to ensure that the Unorganized Territory Education and Services Fund is expended in accordance with the statutory mandate to provide services to the unorganized territory.

In its review of the administration of the Fund, the Committee finds that an apparent conflict may be caused by locating the Fiscal Administrator who oversees the Unorganized Territory and Education Services Fund within the Department and the statutory mandate requiring the Department to also audit this Fund. The State Auditor notes that:

- proximity of the administration and the auditing function of the UTES Fund within the same Department could be perceived as a conflict; and
- the licensing standards set by the Board of Accountancy forbid the Department from strictly fulfilling the statutory requirement calling for an audit. In practice, the Department fulfills the reporting obligation required by statute by performing what is called a "compilation", rather than an audit, in order to not abrogate licensing standards and professional ethics.

The State Auditor reports that he has received no complaints or statements of concern from the Legislature nor the other users of the report that the annual report is a compilation rather than an audit.

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Accordingly, the Committee recommends allowing the Department to contract for an external audit of the Unorganized Territory Education and Services Fund which is administered by the Department, in order to avoid the appearance of a conflict of interest.

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STATUTORY	18.	Factor a proportional amount of the State Auditor's salary expense into the rate charged to municipalities for the performance of audits in order to offset the General Fund costs of the State Auditor.
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Current law sets the salary of the State Auditor within range 88 [3 MRSA §162-B] with an increase to Range 89 scheduled for December 1990. Funds for 100% of the salary are appropriated from the General Fund.

Approximately three-quarters of the Department's expenses are supported by the General Fund. However, the Municipal Bureau of the Department, charged with providing audit services and accounting systems to municipalities, counties, and school administrative districts, is entirely supported through dedicated revenue collected as fees from towns, counties, and other entities for audits done by the Bureau. In recent years, the dedicated revenue generated to support the activities of the Municipal Bureau ranged from approximately \$410,000 in FY 1988 to a projected amount of some \$624,000 in FY 1990.

The Committee notes that although the State Auditor is not a Constitutional officer, the position is often considered in the same light as Constitutional officers. For example, the State Auditor is elected by the Legislature in the same way as are Constitutional officers. Also, the State Compensation Commission deliberates the State Auditor's salary in conjunction with the salaries of the Constitutional officers (i.e. State Treasurer, Secretary of State, and Attorney General).

A review of the way in which each of these positions is funded reveals that the salary of the Secretary of State is supported 50% by the General Fund and 50% by the Highway Fund. This apportionment reflects the portion of the Secretary's time devoted to the Department's Division of Motor Vehicles, which is funded by the Highway Fund. Both the State Treasurer's office and the central office of the Attorney General are supported entirely by the General Fund.

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In considering the option of apportioning a percentage of the Auditor's salary to the Department's dedicated revenue account, the Committee finds that: approximately one-third of the State Auditor's time is spent on the work of the Municipal Bureau; incorporating a prorated percentage of the State Auditor's salary expense into the municipal audit rate would be consistent with the practice of a private firm; prorating this cost may not require an increase in audit fees in the immediate future, since an adjustment was just made in 1989; and an apportionment of this nature is fair and justified.

Accordingly, the Committee recommends factoring a proportional amount of the State Auditor's salary expense into the rate charged to municipalities for the performance of audits in order to offset the General Fund costs of the State Auditor.

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STATUTORY	19.	Amend an inconsistent statutory reference to the term of the State Auditor, in order to clarify legislative intent and correct a statutory contradiction.
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Current law specifies that the State Auditor shall be "elected by the Legislature by a joint ballot of the Senators and Representatives in convention and shall hold office for a term of four years or until [the Auditor's] successor is elected and qualified" [5 MRSA § 241]. The State Auditor's term of office has been four years since at least 1944. Accordingly, the incumbent State Auditor is serving a four year term of office.

However, in 1983, another provision was added to the law for the sole purpose of providing for an orderly transition between the out-going State Auditor and the State Auditor-elect. This provision, however, appears to have introduced an error into the statutes governing the State Auditor's Department by referring to the "biennial election of the State Auditor" [5 MRSA § 241-A].

A review of the 1983 Legislative Document enacting the transition provision appears to shed some light on the incorrect reference to the biennial election in that, in addition to establishing a transition period for the State Auditor-elect, the LD also established a transition period for the Secretary of State and the State Treasurer, employing precisely the same language. In the case of the State Treasurer and the Secretary of State, reference to the "biennial election" is correct in that both Secretaries are "chosen biennially by joint ballot of the Senators and Representatives in convention" [Article V, Part Second and Third, §§1 of the Maine Constitution]. The Statement of Fact appears to

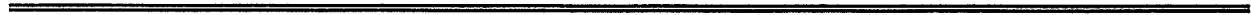
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erroneously consider all three positions to be Constitutional officers, elected biennially. The Statement of Fact also appears to make clear that the Legislature did not intend to affect the term of office, only to assure a smooth transition, by declaring that "this bill does not affect the date or manner of election but rather provides that the date of qualification [for the Officer-elect], by taking the oath of office, be delayed for a short period of time."

Accordingly, the Committee recommends amending the inconsistent statutory reference to the term of the State Auditor, in order to clarify legislative intent and correct a statutory contradiction.

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**BUREAU OF CAPITOL SECURITY**



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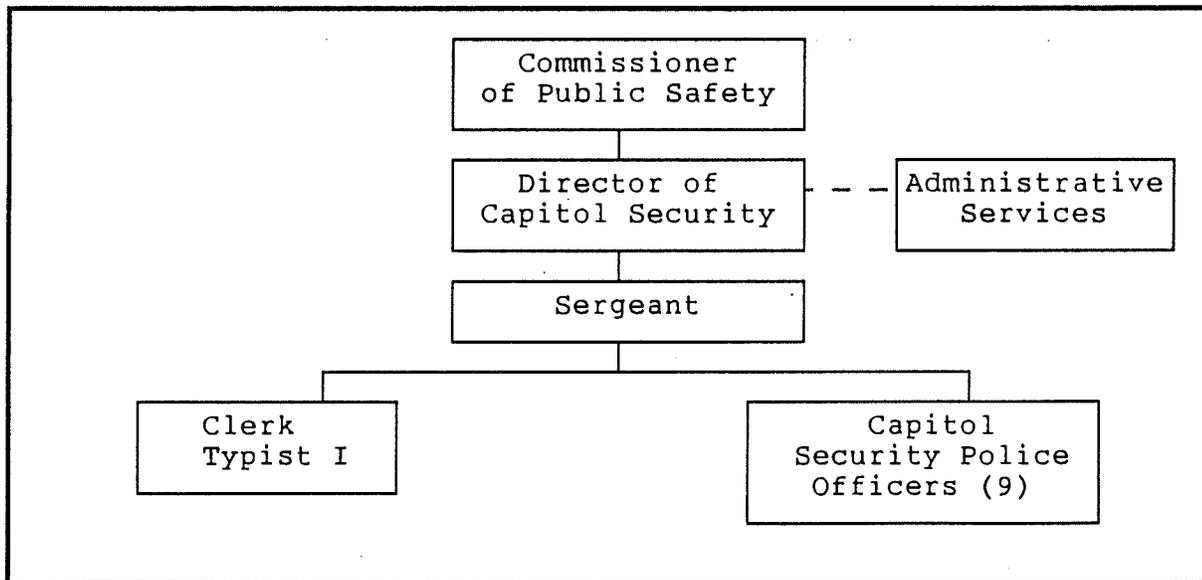
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## BUREAU OF CAPITOL SECURITY

According to the Attorney General's Office, current law is "not a model of clarity" regarding the powers and duties of Capitol Security Officers. On one hand, current law endows Capitol Security Officers with the broad arrest powers of a sheriff but, on the other hand, another provision of current law restricts Security Officers' authority to the mere "patrol [of] all the public ways and parking areas" in the Capitol area. Furthermore, current law makes no mention of the extent of security officers' duties regarding enforcement of Maine's criminal code or motor vehicle code. The Bureau's standard operating procedure states that the principal function of a Capitol Security Officer is the prevention of crime, and that police powers, such as arrest, may be used only for situations in which no other alternatives are feasible. Recommendations 20 and 21 clarify legislative intent regarding the powers and duties of Capitol Security Officers.

Prior to 1977, securing the Capitol area was the responsibility of the Bureau of Public Improvements within the then Department of Finance and Administration. In 1977, the Bureau of Capitol Security was created within the Department of Public Safety and charged with the Capitol area security responsibility.

The organizational chart indicates that current staffing of the Bureau includes the Director, one Sergeant, one Clerk Typist I, and nine Capitol Security Officers.



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Security officers are scheduled to provide 24 hour coverage. In FY 1988, Bureau personnel processed 2500 complaints, investigated one bomb threat and 26 automobile accidents, and issued over 5000 parking tickets (generating more than \$16,000 to the State's General Fund). Capitol Security Officers work in conjunction with the City of Augusta's Public Safety Police Bureau when a crime is committed in the Capitol area. For minor crimes, Capitol Security Officers take the lead in investigation and submit a report to the Augusta police. For more substantive crimes, the lead roll is assumed by Augusta police.

Capitol Security Officers must be high school graduates who have successfully completed a two-week, 100 hour basic police training course at the Maine Criminal Justice Academy's Reserve Officers School. The training includes instruction in the use of firearms carried by Security Officers, who must annually requalify in the firearm's use.

The Bureau is entirely supported by the General Fund. Expenditures in FY 1989 totalled \$315,265 as follows:

Personal Services	\$290,689
All Other	24,576

#### RECOMMENDATIONS

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| STATUTORY | 20. | Clarify the powers and duties of Capitol Security Officers in statute to enhance the efficiency of security operations. |
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- |                |     |   |
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| ADMINISTRATIVE | 21. | Clarify the scope of Capitol Security Officer's authority in the Committee's report to ensure consistent enforcement of violations within the officers' jurisdiction. |
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STATUTORY

22.

Relocate the nightwatch positions from the Department of Administration to the Bureau of Capitol Security, subject to the positions' retention in the Supplemental Budget.

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Prior to the establishment of the Bureau of Capitol Security in 1977, the security function was part of the Department of Finance and Administration, Bureau of Public Improvements. At that time, the Bureau of Public Improvements employed both night watchpeople and custodians to perform the required functions. However, in 1977, when the more professional security force was created, several former night watchpeople became officers. They were provided with uniforms, basic police training, and cruisers to perform their newly established duties.

As stated previously, current law governing the enforcement authority of Capitol Security Officers is ambiguous, ranging from the "patrol of public ways and parking areas... [25 MRSA § 908 2nd ¶] to the "power of arrest of a sheriff in the Capitol Area" [25 MRSA §2908 1st. ¶]. In practice, Security Officers not only enforce parking rules and provide security, but also enforce some violations contained in Maine's criminal code such as criminal mischief or criminal trespass.

The Attorney General's Office has indicated that current law technically authorizes enforcement of parking and security rules only; current law neither authorizes enforcement of criminal code violations nor motor vehicle laws.

Furthermore, a study conducted by the Committee indicates some degree of uncertainty among Security Officers regarding the extent of the Officers' enforcement authority. Of the eleven officers polled:

**CAPITOL SECURITY OFFICERS**

**ANSWERED**

10 or 90%

Title 17-A Assault, Criminal Trespass, etc.

4 or 36%

Title 25 Parking and Security Related Violations

4 or 36%

Title 29 Motor Vehicle Laws

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To clarify enforcement authority, the Committee recommends that the statute clearly authorize jurisdiction over parking and security matters, giving the Commissioner authority to augment this jurisdiction with selected other violations through rule.

The Committee notes that additional enforcement authority beyond parking and security violations that may be granted by the Commissioner through rule may include, but need not be limited to:

- Failure to stop at a stop sign
- Operating the wrong way on a one way street
- Following too closely
- Operating a motor vehicle without headlights
- Failure to dim headlights to approaching traffic
- Failure to dim headlights when following another vehicle
- Illegally parking on a public way
- Loud and unnecessary tire noise
- Failure to use child safety seat
- Failure to secure child with a seatbelt
- Failure to produce proof of insurance upon demand
- Operating a motor vehicle with an expired license
- Operating a motor vehicle without a license
- Operating a motor vehicle without proper class of license
- Failure to produce license upon demand
- Operating a motor vehicle in violation of learners permit
- Operating a motorcycle on permit during nighttime
- Carrying passenger on motorcycle while on a permit
- Allowing permittee to operate a motor vehicle while licensee is under the influence of intoxicating liquor
- Operating a motor vehicle beyond license restriction
- Displaying a suspended license
- Operating a motor vehicle on a public way after license suspended
- Operating a motor vehicle while an habitual offender
- Operating an unregistered motor vehicle
- Allowing an unregistered motor vehicle to be operated on a public way
- Failure to produce registration upon demand
- Failure to display a front registration plate
- Towing an unregistered trailer
- Towing a trailer during the nighttime without rear lighting
- Passing a stopped school bus

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- Imprudent speed (state conditions)
  - Failure to display a current and valid certificate of inspection
  - Inadequate exhaust system
  - Operating a motor vehicle with inadequate tires (visual check)
  - Operating a motor vehicle with inadequate tread (tread depth)
  - Operating a motor vehicle out of season with studded tires
  - Failure to yield to a pedestrian on a sidewalk
  - Littering
  - Littering from a motor vehicle
  - Drinking liquor while operating a motor vehicle on a public way
  - Driving to endanger persons/property
  - Operating a motor vehicle after license suspended
  - Operating a motor vehicle while an habitual offender
  - Failure or refusal to give correct name and address
  - Failure to stop for a uniformed police officer
  - Eluding a uniformed police officer
  - Failure to yield upon entering a public way
  - Failure to yield to an emergency vehicle
  - Failure to yield at a stop sign
  - Unsafe passing
  - Failure to signal a turn
  - Failure to report accident by quickest means
  - Failure to give name and address at the scene of an accident
  - Leaving the scene of an accident with property damage only
  - Failure to notify owner or operator of a collision with an unattended motor vehicle
  - Operating a motorcycle with an expired license
  - Operating a motorized bicycle without a license
  - Failure to produce license upon demand
  - Operating a motorcycle on a permit during the nighttime
  - Failure to wear a helmet while operating a motorcycle on a permit
  - Operating a snowmobile on public way
  - Operating an ATV on a public way

Furthermore, in an effort to consolidate related security functions, the Committee recommends relocating the nightwatch positions from the Department of Administration to the Bureau of Capitol Security, subject to the positions' retention in the Supplemental Budget.

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STATUTORY            23.            Require Capitol Security Officers to be subject to in-service training and continuing education in order to ensure adequate training.

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ADMINISTRATIVE    24.            Recommend that the Bureau accept the offer extended by the Chief of the Veterans Administration Police and Security Services to make use of training tapes, manuals, and courses of instruction for the edification of Capitol Security Officers.

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The Capitol Security police officer is an investigative and protective services position which requires general supervision and independently carries out assignments within established guidelines. This position is at range 12, the same level as a Clerk Typist III position. A security officer must annually demonstrate competency with a firearm and must participate in a two-week basic police training course at the reserve officers' school. In addition, these officers receive special training from staff from the Augusta Mental Health Institute in dealing with mentally ill patients.

A survey of Capitol Security personnel conducted as a routine part of the Committee's review, indicated that:

- 90% of the staff felt that additional training should be provided by the Bureau of Capitol Security.
- 91% of the staff indicated that an increase in training would improve their individual effectiveness and self esteem.
- the participants of the survey identified the following specific training topics as beneficial:

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- Non Abusive Psychological Physical  
Intervention training (NAPPI)
  - Review of Officers Reserve School
  - Emergency Medical Technician Training
  - 12 week municipal training (Maine Criminal  
Justice Academy)
  - First aid training and CPR Review
  - Additional fire arms training
  - Bomb threats and search and procedures  
training
  - Additional training on arrest procedures  
and accident investigations

In examining the need for additional training, the Committee notes that current law exempts Security Officers employed by the Department of Public Safety from certain training standards and requirements [25 MRSA. §2801-B] provided by the Maine Criminal Justice Academy.

In addition, the Committee received testimony from the Chief of the Veterans Police and Security Service offering the Bureau the use of training materials used by the VA on topics such as CPR; hospital security; police response to assaultive patients; basic communication skills; bomb search training; and interview and interrogation techniques.

In recognition of the importance of the security function, the Committee recommends that Capitol Security Officers be subject to appropriate in-service training and continuing education requirements provided both in-house and by the Maine Criminal Justice Academy. Additionally, the Committee recommends that the Bureau accept the offer extended by the Chief of the Veterans Administration Police and Security Services to make use of training tapes, manuals, and courses of instruction for the edification of Capitol Security Officers.