

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE
ONE HUNDRED AND FOURTEENTH LEGISLATURE
FIRST REGULAR SESSION

December 7, 1988 to July 1, 1989

Chapters 1 - 502

THE GENERAL EFFECTIVE DATE FOR
NON-EMERGENCY LAWS IS
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TITLE 3, SECTION 163-A, SUBSECTION 4.

J.S. McCarthy Company
Augusta, Maine
1989

PUBLIC LAWS
OF THE
STATE OF MAINE

AS PASSED AT THE
FIRST REGULAR SESSION

of the
ONE HUNDRED AND FOURTEENTH LEGISLATURE

1989

CHAPTER 66

H.P. 282 - L.D. 394

**An Act to Extend the Toll Call Discount
Given to Deaf, Hearing Impaired or
Speech Impaired Persons**

Be it enacted by the People of the State of Maine as follows:

35-A MRSA §7302, sub-§1, as enacted by PL 1987, c. 141, Pt. A, §6, is amended to read:

1. Rate reduction. The commission shall establish a 70% rate reduction for intrastate toll calls from deaf and hearing impaired and speech impaired persons who must rely on teletypewriters for residential telephone communications. This reduction shall also apply to intrastate toll calls made by agencies, certified by the Division of Deafness in the Department of Human Services as eligible to receive a discount, while providing vocal relay services to deaf, hearing impaired and speech impaired persons, as well as to community service centers serving deaf, hearing impaired and speech impaired persons, certified by the Division of Deafness of the Department of Human Services as eligible to receive a discount. The costs incurred by a telephone company under this subsection are just and reasonable expenses for rate-making purposes.

See title page for effective date.

CHAPTER 67

S.P. 286 - L.D. 750

**An Act to Amend the Laws Relating to the Maine
Insurance Guaranty Association and the Maine
Life and Health Insurance Guaranty Association**

Emergency preamble. Whereas, Acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, the Maine Insurance Guaranty Association and the Maine Health and Life Insurance Association are organizations which provide guaranty funds which ensure payment of claims to covered individuals and organizations when insurers become insolvent; and

Whereas, the funding mechanism for these organizations needs to be modified to ensure that the guaranty funds will be sufficient to cover claims on an ongoing basis; and

Whereas, the funding mechanism needs to be modified immediately in order that the funds will have sufficient assets to cover claims of individuals insured by companies which have recently become insolvent; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the

Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 24-A MRSA §4433, sub-§2, as amended by PL 1987, c. 707, §§4 - 6, is further amended to read:

2. Exceptions. ~~Except that this~~ This subchapter shall not apply as to:

- A. Contracts of reinsurance;
- B. Mortgage guaranty insurance;
- C. Credit insurance;
- D. Insurance contracts procured as surplus lines coverage pursuant to chapter 19;
- E. Title insurance; ~~and~~
- F. Financial guaranty insurance: ; and
- G. Contracts of workers' compensation excess insurance issued to workers' compensation self-insurers approved under Title 39, section 23 by any insurer after the effective date of this paragraph, or in the case of a contract which automatically renews, not later than one year after the effective date of this paragraph.

Sec. 2. 24-A MRSA §4435, sub-§6, as amended by PL 1987, c. 769, Pt. B, §5, is further amended to read:

6. Member insurer. "Member insurer" means any authorized insurer which writes any kind of insurance to which this subchapter applies. If an insurer is authorized at the time of an insolvency and subsequently is approved to withdraw its license authority for the kinds of insurance covered by any account to which claims relating to the insolvency are allocated, the withdrawn insurer shall continue to be a member of each account solely for purposes of assessments relating to claims resulting from the insolvency until these claims are paid or otherwise extinguished.

Sec. 3. 24-A MRSA §4435, sub-§7, as amended by PL 1985, c. 279, §2, is further amended to read:

7. Net direct written premiums. "Net direct written premiums" means direct gross premiums written on insurance policies to which this subchapter applies, less return premiums thereon and dividends paid or credited to policyholders on such direct business. "Net direct written premiums" does not include premiums on contracts between insurers or reinsurers or premiums written through the United States Government Flood Insurance Program. For purposes of assessment against insurers pursuant to section 4440-B, "net direct written premium" means the average for the 5 calendar years prior to the year of assessment of premiums written on contracts of excess workers' compen-

sation insurance issued to workers' compensation self-insurers approved under Title 39, section 23.

Sec. 4. 24-A MRSA §4435, sub-§§9 and 10 are enacted to read:

9. Line of credit. "Line of credit" means an irrevocable stand-by commitment whereby the association or member insurer and a qualified financial institution or group of qualified financial institutions enter into a formal and binding contract in which the qualified financial institution or group of qualified financial institutions agree to lend a certain amount of money within a stated period of time. The terms and conditions of any line of credit shall be established by rules adopted jointly by the Bureau of Banking and the Bureau of Insurance.

10. Qualified financial institution. "Qualified financial institution" means one which is insured by the Federal Deposit Insurance Corporation, Federal Savings and Loan Insurance Corporation or a successor federal deposit insurance agency or agencies, and has an equity capital to assets ratio of 6.5% or greater, as determined in accordance with generally accepted accounting principles.

Sec. 5. 24-A MRSA §4438, sub-§1, ¶C, as enacted by PL 1969, c. 561, is amended to read:

C. Allocate claims paid and expenses incurred among the 3 accounts separately; and assess member insurers separately for each account in amounts necessary to pay:

- (1) The obligations of the association under paragraph A, subsequent to an insolvency, the obligations of the accounts for shortfalls under section 4440-A, and for preinsolvency assessments, if required by section 4440, subsection 3, paragraph B;
- (2) The expenses of handling covered claims subsequent to an insolvency;
- (3) The cost of examinations under section 4445; and
- (4) Other expenses authorized by this subchapter;

Sec. 6. 24-A MRSA §4440, sub-§1, as amended by PL 1985, c. 279, §6, is further amended to read:

1. Proportion. The assessments of each member insurer provided for under section 4438, shall be in the proportion that the net direct written premiums of the member insurer for the calendar year preceding the assessment on the kinds of insurance in the account bears to the net direct written premiums of all member insurers for the same calendar year on the kinds of insurance in the account, except that assessments to cover a shortfall in any account shall be determined in accordance with section 4440-A. In the case of a withdrawn insurer, the average of its net direct written premium for the 5 calendar years prior to withdrawal

shall be used as its assessment base for any year following withdrawal in which the insurer has no net direct written premium.

Sec. 7. 24-A MRSA §4440, sub-§3, as enacted by PL 1969, c. 561, is repealed and the following enacted in its place:

3. Limitation; types of assessments. Assessments shall be made as follows.

A. Each member insurer may be assessed in any calendar year on any account an amount up to 2% of that member insurer's net direct written premiums for the next preceding calendar year on the kinds of insurance in the account for purposes of paying claims and expenses of that account.

B. To the extent that the maximum 2% has not been assessed, an assessment of up to that member's proportionate share of the applicable maximum as set forth in this paragraph shall be assessed when immediately necessary for the payment of claims and expenses. Any amount drawn by the association under any line of credit shall be considered a payment toward the member insurer's obligation provided for in this section. The maximum line of credit or preinsolvency assessment for each account shall be as follows:

<u>Account</u>	<u>Maximum</u>
<u>Workers' compensation</u>	<u>\$2,000,000</u>
<u>Automobile</u>	<u>\$1,700,000</u>
<u>All other</u>	<u>\$1,300,000</u>

(1) The association shall obtain a line of credit for the benefit of each account, in an amount not to exceed the applicable maximum to ensure the immediate availability of funds for purposes of future claims and expenses attributable to an insurer insolvency in that account. The line of credit shall be obtained from qualified financial institutions. At no time may a qualified financial institution participate in the line of credit in excess of 20% of its equity capital. The line of credit shall provide for a 30-day notice of termination or nonrenewal to the superintendent and the association and shall provide funding to the association within one business day of receipt of written notice from the superintendent of an insolvent insurer in that account as defined in section 4435, subsection 5. Each member insurer upon receipt of notice from the association shall make immediate payment for its proportionate share of the amount borrowed based on the premium for the preceding calendar year. The line of credit provided for in this paragraph shall be subject to prior review and approval by the superintendent at the time of origination and any subsequent renewal.

(2) If the association cannot obtain a line of credit, a member insurer may obtain a line of credit from a qualified financial institution or may extend a line of credit itself directly to and for the benefit of the member insurer's account by submitting to the association a duly authorized and executed line of credit agreement providing that the member insurer shall provide funding to the association under the line of credit within one business day of receipt of a written notice from the superintendent of an insolvent insurer as defined in section 4435, subsection 5, and receipt of a written request from the association for a drawdown under the line of credit. The line of credit agreement shall be subject to prior review and approval by the superintendent at the time of origination and any subsequent renewal. It shall include such commercially reasonable provisions as the association or the superintendent may deem advisable, including a provision that the line of credit is irrevocable or for a stated period of time and provides for a 30-day notice to the association and the superintendent that the line is being terminated or not renewed. Any line of credit issued under this paragraph may be replaced with another line of credit and the existing line of credit shall be released by the association once a substitute line of credit has been provided or the assessment provided for in this paragraph has been paid.

(3) If a line of credit is not given as provided for in subparagraph (2), the member insurer shall be responsible for payment of an assessment of up to that member's proportionate share of the applicable maximum as set forth in this paragraph which shall be paid into a preinsolvency assessment fund in each account. Funds in each account shall only be used for the payment of claims and expenses of an insolvent insurer in that account.

(4) All materials and information submitted or considered under this paragraph shall be matters of public record.

Sec. 8. 24-A MRSA §§4440-A and 4440-B are enacted to read:

§4440-A. Special assessment

1. Special assessment. If the maximum assessment, together with the other assets of the association in any account, does not provide in any one year in any account an amount sufficient to make all necessary payments from that account, the shortfall shall be assessed as an obligation of the other accounts of the association, with each member insurer's assessment to be in the proportion that its net direct written premiums for the calendar year preceding the assessment on the kinds of insurance in the accounts to be assessed

bears to the total net direct written premiums of all member insurers for the same calendar year on the kinds of insurance in those accounts. The total of assessments against a member insurer under this section and section 4440 for any account in any one calendar year shall not exceed 2% of that member's net direct written premium on the kinds of insurance written in that account for the next preceding calendar year.

2. Limit on assessment. Subject to the 2% limitation, for any member insurer which has surplus of less than \$12,000,000 and either a ratio of total net direct written premium to total surplus greater than 2 or net income of less than \$250,000 for the year preceding the assessment, an assessment made under this section shall not exceed 5% of the average of that member insurer's net income over the 3 years prior to the year in which the assessment is made. For purposes of this subsection, "net income" means the sum of underwriting income and investment income, net of dividends to policyholders and federal and foreign income taxes incurred, as reported on the insurer's annual statement filed with the superintendent. "Total surplus" means surplus as regards policyholders, as reported on the insurer's annual statement filed with the superintendent.

3. Repealer. This section is repealed 91 days after adjournment of the Second Regular Session of the 114th Legislature.

§4440-B. Assessment of excess insurers

For purposes of assessments to pay claims resulting from policies of excess workers' compensation insurance issued to workers' compensation self-insurers, assessments shall include any authorized insurer which, at the time of the insolvency giving rise to those claims, was a member insurer and wrote one or more policies of excess workers' compensation insurance issued to workers' compensation self-insurers. This section is repealed on May 1, 1999.

Sec. 9. 24-A MRSA §4449, as amended by PL 1987, c. 707, §12, is further amended by adding a new paragraph at the end to read:

This section does not authorize a stay of proceedings before the Workers' Compensation Commission, or of proceedings in Superior Court to enforce orders of the Workers' Compensation Commission. A stay of workers' compensation proceedings before the Workers' Compensation Commission or the Superior Court may be granted if otherwise authorized by law, provided that good cause for a stay exists and that reasonable diligence was exhibited by the insurer, the employer, the association and their counsel to proceed with the proceeding prior to the insolvency.

Sec. 10. 24-A MRSA §4605, sub-§6, as enacted by PL 1983, c. 846, is amended to read:

6. Member insurer. "Member insurer" means any person authorized to transact in this State any kind of insurance to which this chapter applies under section 4603. If an insurer is authorized at the time of an insolvency and subsequently is approved to withdraw its license authority for the kinds of insurance covered by any account to which claims

relating to the insolvency are allocated, the withdrawn insurer shall continue to be a member of each such account for purposes of claims relating to the insolvency until these claims are paid or otherwise extinguished and shall be subject to Class B, Class C and Class E assessments attributable to these claims. In calculating assessments for any year after withdrawal in which the withdrawn insurer has no premium for any kind of insurance which is to be used as a basis for assessments under the terms of this chapter, the average of the withdrawn insurer's premium for the prior 5 calendar years shall be used as its basis for assessment.

Sec. 11. 24-A MRS §4605, sub-§§11 and 12 are enacted to read:

11. Line of credit. "Line of credit" means an irrevocable stand-by commitment whereby the association or member insurer and a qualified financial institution or group of qualified financial institutions enter into a formal and binding contract in which the qualified financial institution or group of qualified financial institutions agree to lend a certain amount of money within a stated period of time. The terms and conditions of any line of credit shall be established by rules adopted jointly by the Bureau of Banking and the Bureau of Insurance.

12. Qualified financial institution. "Qualified financial institution" means one which is insured by the Federal Deposit Insurance Corporation, Federal Savings and Loan Insurance Corporation or a successor federal deposit insurance agency or agencies, and has an equity capital to assets ratio of 6.5% or greater, as determined in accordance with generally accepted accounting principles.

Sec. 12. 24-A MRS §4609, sub-§2, as enacted by PL 1983, c. 846, is amended to read:

2. Classes of assessments. There shall be 3 ~~5~~ classes of assessments, as follows.

A. Class A assessments shall be made for the purpose of meeting administrative costs and other general expenses not related to a particular impaired insurer.

B. Class B assessments shall be made to the extent necessary to carry out the powers and duties of the association under section 4608 with regard to an impaired domestic insurer.

C. Class C assessments shall be made to the extent necessary to carry out the powers and duties of the association under section 4608 with regard to an impaired foreign or alien insurer.

D. To the extent that the maximum 2% has not been assessed, an assessment of up to that member's proportionate share of the applicable maximum as set forth in this paragraph shall be assessed when immediately necessary for the payment of claims and expenses. Payment of this assessment shall be assured by one of the means set forth in this paragraph. Any amount drawn by the association under any line

of credit shall be considered a payment toward the member insurer's obligation provided for in this paragraph. The maximum line of credit or preinsolvency assessment for each account shall be as follows:

<u>Account</u>	<u>Maximum</u>
<u>Life</u>	<u>\$1,400,000</u>
<u>Health</u>	<u>\$1,500,000</u>
<u>Annuity</u>	<u>\$500,000</u>

(1) The association shall obtain a line of credit for the benefit of each account, in an amount not to exceed the applicable maximum to ensure the immediate availability of funds for purposes of future claims and expenses attributable to an insurer insolvency in that account. That line of credit shall be obtained from a qualified financial institution. At no time may a qualified financial institution participate in a line of credit in excess of 20% of its equity capital. The line of credit shall provide for a 30-day notice of termination or nonrenewal to the superintendent and the association and shall provide funding to the association within one business day of receipt of notice from the superintendent of an impaired insurer in that account as defined in section 4605. Each member insurer upon notice from the association shall make immediate payment for its proportionate share of the amount borrowed based on the premium for the preceding calendar year. The line of credit provided for in this paragraph shall be subject to prior review and approval by the superintendent at the time of origination and at any subsequent renewal.

(2) If the association cannot obtain a line of credit, a member insurer may obtain a line of credit from a qualified financial institution or may extend a line of credit itself directly to and for the benefit of the member insurer's account by submitting to the association a duly authorized and executed line of credit agreement providing that the member insurer shall provide funding to the association under the line of credit within one business day of receipt of a written notice from the superintendent of an impaired insurer as defined in section 4605 and receipt of a written request from the association for a drawdown under the line of credit. The line of credit agreement shall be subject to prior review and approval by the superintendent at the time of origination and at any subsequent renewal. It shall include such commercially reasonable provisions as the association or the superintendent may deem advisable, including a provision that the line of credit is irrevocable or for a stated period of time and

provides for a 30-day notice to the association and the superintendent that the line is being terminated or not renewed. Any line of credit issued under this paragraph may be replaced with another line of credit and the existing line of credit shall be released by the association once a substitute line of credit has been provided or the assessment provided for in this paragraph has been paid.

(3) If a line of credit is not given as provided for in subparagraph (2), the member insurer shall be responsible for payment of an assessment of up to that member's proportionate share of the applicable maximum as set forth in this paragraph which shall be paid into a preinsolvency assessment fund in each account. Funds in each account shall only be used for the payment of claims and expenses of an insolvent insurer in that account.

(4) All materials and information submitted or considered under this paragraph shall be matters of public record.

E. Class E assessments shall be made to the extent necessary to carry out the powers and duties of the association under subsection 8.

Sec. 13. 24-A MRSA §4609, sub-§3, ¶A, as enacted by PL 1983, c. 846, is amended to read:

A. The amount of any Class A, Class D or Class E assessment for each account shall be determined by the board. The amount of any Class B or Class C assessment shall be divided among the accounts in the proportion that the present value of the liabilities for each account of the impaired insurer bears to the total liabilities of the impaired insurer. This paragraph shall not be a factor in the determination as to whether the protection provided by ~~statutes~~ laws for residents of this State by the domiciliary jurisdiction of a foreign or alien insurer; is or is not substantially similar to the protection provided by this chapter for residents of other states.

Sec. 14. 24-A MRSA §4609, sub-§§5 and 6, as enacted by PL 1983, c. 846, are amended to read:

5. Additional assessment for abatements or deferrals. In the event an assessment against a member insurer is abated or deferred, in whole or in part, because of the limitations set forth in subsection 4, the amount by which the assessment is abated or deferred; shall be assessed against the other member insurers in a manner consistent with the basis for assessments set forth in this section. ~~If the maximum assessment, together with the other assets of the association in any account, does not provide in any one year in that account an amount sufficient to carry out the responsibilities of the association, the necessary additional funds shall be assessed as soon thereafter as permitted by this chapter.~~

6. Refunds. The board may, subject to the preinsolvency funding requirement of section 4609, subsection 2, paragraph D, by an equitable method as established in the plan of operation, refund to member insurers, in proportion to the contribution of each insurer to that account, the amount by which the assets of the account exceed the amount the board finds is necessary to carry out during the coming year the obligations of the association with regard to that account, including assets accruing from net realized gains and income from investments. A reasonable amount may be retained in any account to provide funds for the continuing expenses of the association and for future losses if refunds are impractical.

Sec. 15. 24-A MRSA §4609, sub-§8 is enacted to read:

8. Assessment shortfalls. If the maximum assessment, together with the other assets of the association in any account, does not provide in any one year in any one account an amount sufficient to make all necessary payments from that account, the shortfall shall be assessed as an obligation of the other accounts of the association. Each member insurer's assessment shall be in the proportion that its premium for the calendar year preceding the assessment on the kinds of insurance in the accounts to be assessed bears to the total premium of all member insurers for the same calendar year on the kinds of insurance in those accounts. The total of assessments against a member insurer for shortfalls under this section and section 4440 in any one calendar year shall not exceed 2% of that member insurer's premiums in this State or for policies covered by the account. This section is repealed 91 days after the adjournment of the Second Regular Session of the 114th Legislature.

Sec. 16. Legislative Study. The Joint Standing Committee on Banking and Insurance shall study the current operation of state guarantee funds and make recommendations to change or strengthen the current system. The committee shall study issues such as the feasibility of a circuit breaker on assessments and the appropriate manner of paying claims of insolvent insurers and self-insurers.

1. Study methods. In examining these issues, the committee may hold informational sessions and public hearings, determine and summarize legislative actions undertaken in other states, perform a survey of literature to determine alternative methods of assuring payment of insureds' claims, review historical data on assessments and claims payments of the associations and perform such other study as it deems appropriate.

2. Findings. The committee shall report its findings, together with any necessary implementing legislation, to the Second Regular Session of the 114th Legislature no later than December 1, 1989.

3. Staff assistance and funding. The committee shall request funding, staffing and clerical assistance from the Legislative Council. The Bureau of Insurance, the Maine Insurance Guaranty Association, the Maine Life and Health Insurance Guaranty Association and the Maine Self-insur-

ance Guarantee Association shall provide information and assistance as needed to the committee.

Emergency clause. In view of the emergency cited in the preamble, this Act shall take effect when approved.

Effective April 27, 1989.

CHAPTER 68

H.P. 69 - L.D. 93

An Act Making Unified Appropriations and Allocations for the Expenditures of State Government, General Fund, and Changing Certain Provisions of the Law Necessary to the Proper Operations of State Government for the Fiscal Years Ending June 30, 1990 and June 30, 1991

Emergency preamble. Whereas, Acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, the 90-day period may not terminate until after the beginning of the next fiscal year; and

Whereas, certain obligations and expenses incident to the operation of state departments and institutions will become due and payable immediately; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

Be it enacted by the People of the State of Maine as follows:

PART A

Sec. 1. Appropriations and allocations. In order to provide for necessary expenditures of State Government and other purposes for the fiscal years ending June 30, 1990 and June 30, 1991, the following sums as designated in the following tabulations are appropriated or allocated out of any money not otherwise appropriated or allocated.

Sec. 2. Allotments required. Upon receipt of allotments duly approved by the Governor based upon work programs submitted to the State Budget Officer, the State Controller shall authorize expenditures of these funds, together with expenditures for other purposes necessary to the conduct of State Government on the basis of these allotments and not otherwise. Allotments for Personal Services, Capital Expenditures and amounts for All Other departmental expenses shall not exceed the amounts shown in the budget document or as they may be revised by the joint standing committee of the Legislature having jurisdiction over these appropriations and allocations, unless recommended by the State Budget Officer and approved by the Governor in accordance with established law.

Sec. 3. Personal Services funding. The amounts provided for Personal Services in the General Fund, Highway Fund and Department of Inland Fisheries and Wildlife funds are subject to the provision that the total number of permanent positions and the costs thereof in any account shall not, during either year of the biennium, either exceed the authorized position numbers shown in parentheses which are used by the Legislature in computing the total dollars to be made available for Personal Services or deviate from the specific cost components upon which appropriations and allocations are based except as provided for in section 6. The State Budget Officer may require any department or agency to submit information considered necessary to assure compliance with this provision. In other funds, the numbers in parentheses are estimates of full-time equivalents.

Savings accrued within appropriations or allocations made for Personal Services may be used for payment of nonrecurring Personal Services costs, such as those relating to: unbudgeted overtime; acting capacity appointments; retroactive compensation for reclassifications or reallocations; retroactive or one-time settlements related to arbitrator or court decisions; and required additional retirement contributions, when recommended by the department or agency head and approved by the State Budget Officer.

The amounts appropriated or allocated for Personal Services include funds for the State's share of state employees' retirement. The State Controller shall transfer the State's share to the Maine State Retirement System as soon as practicable after each payroll is paid.

Sec. 4. Workers' compensation positions. Limited period positions may be established for former regular employees of the State who are presently receiving workers' compensation payments from the State when that action will enable those employees to return to productive employment with the State. These positions may be established, providing funds are available, only until those employees can be returned to regular positions.

Notwithstanding any other restriction on funds appropriated or allocated, the State Budget Officer may, after determining that funds are available, either approve the use of these funds or recommend appropriate action to the Governor when the Governor's approval is required.

Available funds may include amounts appropriated or allocated for Personal Services, including funds in any salary account or special account for state employee salary increases, All Other, Capital Expenditures and unallocated.

Sec. 5. Personal Services policy and review. The Bureau of the Budget, during this biennium, shall continually review with all departments the status of their manpower levels and staffing patterns for the purpose of determining whether funds and positions are being utilized and managed in the most economical and efficient manner to accomplish the intent of the Legislature. Permanent positions for which funds are appropriated or allocated shall be classified positions, unless specifically designated otherwise by the Legislature. It shall be the responsibility of the Director of the Bureau of Human Resources and the State