

MAINE STATE LEGISLATURE

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**LEGISLATIVE COUNCIL
November 26, 1996
REVISED AGENDA**

CALL TO ORDER

ROLL CALL

SUMMARY OF OCTOBER 28, 1996 COUNCIL MEETING

EXECUTIVE DIRECTOR'S REPORT

Item #1: Pre-Legislative Conference: Review of Program

Item #2: Legislative Budget: Follow-up to October Council Meeting

REPORTS FROM COUNCIL COMMITTEES

Committee on Information & Technology in the Legislature

Committee on Total Quality Management in the Legislature/Subcommittee on Rules

OLD BUSINESS

NEW BUSINESS

Item #1: Submission of Final Reports from Commission to Study Poverty Among Working Parents: Representative Edward J. Povich and Marc R. Muttu, Co-Chairs

Item #2: Submission of Annual Report of the Loring Development Authority of Maine (pursuant to statute, 5 MRSA § 13080-L)

Item #3: Review of the Maine Mental Health System: Submission of Final Reports (Majority and Minority Reports) by the Joint Standing Committee on Health & Human Services

ANNOUNCEMENTS AND REMARKS

ADJOURNMENT

SEN. JANE A. AMERO
CHAIR

REP. ELIZABETH H. MITCHELL
VICE-CHAIR



Lynn Randall
Legislative Council Info.

JEFFREY H. BUTLAND
R. LEO KIEFFER
MARK W. LAWRENCE
SEN. BEVERLY MINER BUSTIN
REP. DAN A. GWADOSKY
REP. PAUL F. JACQUES
REP. WALTER E. WHITCOMB
REP. JOSEPH G. CARLETON, JR.
SARAH C. TUBBESING
EXECUTIVE DIRECTOR

117th MAINE STATE LEGISLATURE

LEGISLATIVE COUNCIL

MEETING SUMMARY October 28, 1996 Approved November 26, 1996

CALL TO ORDER

The Council Chair, Senator Amero, called the Council meeting to order at 2:45 p.m. in the Legislative Council Chambers.

ROLL CALL

Senators:

Sen. Kieffer, Sen. Amero, Senator Bustin
Absent: President Butland, Sen. Lawrence

Representatives:

Speaker Gwadosky, Rep. Jacques, Rep. Whitcomb,
Rep. Carleton,
Absent: Rep. Mitchell

Legislative Officers:

Sally Tubbesing, Executive Director, Legislative Council
Lynn Randall, State Law Librarian
John Wakefield, Director, Office of Fiscal and
Program Review
David Boulter, Director, Office of Policy and
Legal Analysis
Margaret Matheson, Revisor of Statutes
May Ross, Secretary of the Senate
Joseph Mayo, Clerk of the House
Rose Marie Breton, Assistant for Administrative Services
David Elliott, Principal Analyst, Office of Policy and
Legal Analysis

SUMMARIES OF AUGUST 21 AND SEPTEMBER 30, 1996 COUNCIL MEETINGS

Motion: That the Summaries of both meetings be accepted and placed on file. (Motion by Rep. Jacques; second by Sen. Bustin; unanimous)

EXECUTIVE DIRECTOR'S REPORT

Sally Tubbesing presented the following items for the Council's consideration:

Item #1: Award of Legislative Printing Contracts for the 118th Biennium.

Ms. Tubbesing reported that the bids for printing various publications for the 118th Legislature had been opened the previous week and that the Bureau of Purchases had now had an opportunity both to examine the completeness of each bid and identify the low bidders for each contract. They are:

Document	Bid	Amount
Register	Pen Mor	\$41,236
Roster	Atkins	\$ 7,421
Legislative District Directory	J.S. McCarthy	\$ 1,788
LD's	Letter Systems	(15-16% decrease)
Amendments	Copy Center	(no price change)
Calendars	Letter Systems	(no price change)
Engrossers	Central Printing	(40% + decrease)
Legislative Record/ "Horseblanket"	Quality Copy	(4% increase)
News Summary	Quality Copy	(not previously bid)

Motion: That the Executive Director be authorized to enter contracts with the identified low bidders on each of the publications. (Motion by Rep. Jacques; second by Sen. Kieffer; unanimous).

Item #2: Personnel Activity

Ms. Tubbesing reported several developments related to staffing and requested Council authorization to take appropriate steps to address particular situations.

a. Completion of search to fill vacant Analyst position in OPLA.

Ms. Tubbesing reported that she had accepted David Boulter's recommendation to hire Phillip McCarthy to fill the vacant position and that Mr. McCarthy had already begun work.

No Council action was required.

b. Retirement: John Knox, Office of Policy and Legal Analysis

Ms. Tubbesing reported that Mr. Knox had decided to retire effective December 31, 1996, and recommended that the Council authorize filling the vacancy up to one month prior to his retirement in order to ensure that the Business & Economic Development Committee to which Mr. Knox had been assigned could undertake its work as soon as members were appointed.

Motion: That the Executive Director be authorized to hire Mr. Knox's successor up to one month prior to his date of retirement. (Motion by Sen. Bustin; second by Rep. Jacques, unanimous).

c. Request for Income Protection

Motion: That the Legislative Council award income protection in accordance with Council policy. (Motion by Rep. Jacques; second by Sen. Bustin; unanimous).

d. Vacant Secretarial Position in the Office of Fiscal & Program Review

Ms. Tubbesing reported that John Wakefield, Director of the Office, had recommended that the position be filled as a session-only position.

Motion: That John Wakefield be authorized to work with the Executive Director to fill the vacant secretarial position in his Office for the session. (Motion by Sen. Bustin; second by Rep. Jacques; unanimous).

e. Reappointments of John Wakefield and Margaret Matheson to new 3-year terms

Ms. Tubbesing reported that Mr. Wakefield and Ms. Matheson had completed their current 3-year appointment as Office Directors (Ms. Matheson's anniversary date would actually be in mid-November) and recommended that both individuals be appointed to new 3-year terms. She noted that the Personnel Committee had reviewed both individuals earlier in the summer.

Motion: That John Wakefield and Margaret E. Matheson be reappointed to new 3-year terms as Director of the Office of Fiscal & Program Review and Revisor of Statutes respectively. (Motion by Sen. Bustin; second by Rep. Carleton; unanimous).

f. Request to fill 2 vacant positions in Information Systems Office

Ms. Tubbesing stated that as the convening of the 118th Legislature nears, the "embargo" on filling the two vacant positions in the Information Systems Office has made it increasingly difficult to meet the expectations of both the Council and the various staff offices. She requested Council authorization to fill the two vacant positions noting, at the same time, that in her view, the staffing needs of this office exceed filling the two vacancies.

Rep. Carleton, who chairs the Committee on the Future of Technology in the Legislature, which was appointed by the Council in mid-summer, noted that the Committee is "just wading in at this point" and that he felt it would be a mistake to hire people before the Committee has a clearer sense of its direction.

Sen. Amero inquired when the Committee planned to have a report, and Rep. Carleton responded that he was sure it would require several additional meetings. Sen. Bustin then asked if it would be feasible to fill both positions on an "acting" basis -- for a period up to 1,000 hours.

In continued discussion, Council members offered the following points:

- Reiteration that it is not desirable to hire anyone on a permanent basis at this time. (Rep. Carleton)
- Observation that consultant fees, or payments to temporary employees can add up quickly and that the Council needs to be aware of being "penny-wise and pound foolish". (Rep. Jacques)
- Agreement that remaining Information Systems staff are overworked and need supplementation, but conviction that there are qualified people who are available to fill this need on a temporary basis. (Rep. Carleton)

Motion: That the Executive Director be directed to obtain consulting assistance or other temporary services to provide the support necessary to supplement the Information Systems staff. (Motion by Sen. Bustin; second by Rep. Jacques; unanimous)

Discussion: Sen. Kieffer clarified the intent of the motion, stating that these temporary arrangements should have a 90-day "sunset", pending completion of the work of Rep. Carleton's committee and the Council's review of its recommendations.

REPORTS FROM COUNCIL COMMITTEES

Strategic Planning Working Group

At Senator Amero's request, David Boulter briefly reported on the status of the Working Group's work. The Working Group had met the previous week to review further proposed revisions to the draft plan, and Mr. Boulter indicated that the Working Group would present its product to the Council after some additional review.

No Council action was required on this item.

Committee on Information & Technology in the Legislature

Rep. Carleton, Committee Chair, reported that the Committee had met twice and had completed a general review of the current uses of technology by legislative offices, as well as their needs, and had had a presentation by Robert Mayer, Chief Information Officer for the Executive Branch. The Committee's next steps will be to conduct a survey of legislators and to continue its exploration of ways to reduce paper in the legislative process.

No Council action was required on this item.

NEW BUSINESS

(This section of the agenda was taken up before Old Business with the assent of all members present).

Item #1: Proposed Schedule for Legislative Orientation for New Members

Ms. Tubbesing drew Council members' attention to materials in their packets which included proposed agendas and schedules for both the regional orientation meetings and the programs during the Pre-Legislative Conference the week of December 2.

Senator Kieffer asked why none of the regional meetings was scheduled for a northern Maine site. Ms. Tubbesing responded that a meeting had been slated for Houlton in 1994, but that it had been cancelled after both of the newly-elected members from the County had chosen to go to the Bangor meeting. She indicated that the proposed locations would be re-evaluated once the election results are available, and that the schedule could be reworked if necessary.

No Council action was required on this item.

Item #2: Request for Earmarking of Funds to Support Development of an Implementation Plan for Essential School Programs and Services (Letter from J. Duke Albanese, Commissioner of Education)

The Chair, Sen. Amero, recognized Commissioner of Education J. Duke Albanese, who was accompanied by Wes Bonney, a member of the State Board of Education. Commissioner Albanese described to Council members a major effort that the Department had launched to define "essential programs and services", a study which would ultimately tie state funds to the provision of "essential" programs. He noted that the Legislature had directed that the study be done, but that there had been no appropriation for the study and stated that it would be difficult to complete a credible study without funds. He questioned whether the remaining balance in the account that had been set up to fund the Commission on Higher Education Governance (balance of approximately \$29,000) could be redirected to this present purpose. Mr. Bonney added that the group conducting the study is at the point where it needs to have some research done, but that funds would be required to do this.

Sen. Amero asked John Wakefield to advise the Council on how a transfer of funds might be accomplished, and Mr. Wakefield responded that such a transfer would require action by the full Legislature. Mr. Wakefield further noted that the study of essential programs and services had been included in legislation that had passed during the Second Regular Session, but that the \$75,000 appropriation for the Study had been stripped. Rep. Jacques recalled that members of leadership had been told at the time that the Department would be able to find the necessary funds. Rep. Whitcomb observed that if all study requests went through the Council, this situation would not have

occurred. After brief discussion of other funding alternatives (e.g. the Governor's Contingency Account; introducing legislation to the 118th Legislature after it organizes), Council members agreed that although there seemed to be general support of the study, there was nothing they could do at this point in terms of funding. Sen. Amero thanked Commissioner Albanese and Mr. Bonney for sharing their ideas with the Council.

Item #3: Proposed Process for Legislative Review and Approval of Major Substantive Rules (Memo from David Boulter)

David Boulter and David Elliott drew Council members' attention to materials in their packet that had been designed to implement amendments to the APA that were adopted by the 117th Legislature. Mr. Boulter noted that the new law effects a significant change in the rules review process and that these materials strive to help committees employ a consistent process and to help departments understand what the Legislature expects in this process. He stated that as staff had worked to develop a plan for implementing the law, they had identified several areas where amendments to the original law appeared necessary in order to clarify legislative intent and avoid confusion.

The discussion that followed touched on both the amendments proposed in the memo and on the rules review process itself. The major points of the discussion focused on the need to codify rules (the official sets of agency rules are maintained by the Secretary of State, whose office has undertaken a project to electronically produce rules); on who determines whether a rule is "major or substantive" (this is a legislative determination); and on the nature of the appeal process in the event of disagreement (the Legislature has the final authority).

Motion: That the process for implementing the legislative review of agency rules outlined in the memo be ratified. (Motion by Rep. Jacques; second by Sen. Bustin; unanimous).

Item #4: Legislative Document Service: Proposed Fee Schedule for 118th/First Regular Session (Letter from Clerk Mayo)

Rep. Jacques offered a motion to adopt the proposed fee schedule; however, Clerk Mayo stated that this was simply a notification to the Council and that Council action was not required.

OLD BUSINESS

Item #1: Budget Request for FY 1998-FY 1999 Biennium for All Legislative Accounts (Item carried over from September Council Meeting)

The Chair, Senator Amero, noting that the deadline for submission of budget requests had been September 15, asked members present if they had questions about the materials that the Executive Director's Office had prepared and originally presented at the September Council meeting. Rep. Jacques questioned the appropriateness of having the outgoing Council take action related to a budget that would not take effect until next July 1. After discussion about taking no action on the budget request, Senator Amero asked John Wakefield to comment on the implications of submitting nothing. Mr. Wakefield responded that because the Governor is required by statute to submit a balanced budget, it is important that figures from both the judicial and legislative departments be available to meet this requirement. He further observed that if the Legislature submits nothing, the Governor has the authority to "plug in a number." Sen. Bustin asked what past Councils had done, and Sally Tubbesing responded that they had all submitted a Part I Budget, recognizing that the new Council would have an opportunity to review -- and rework -- anything that was submitted at this time.

Discussion centered on the issue of separation of powers, and there appeared to be consensus among those present that it was inappropriate for the Governor to set the initial budget for the Legislature, even though the Legislature would have an opportunity to rework this. Sen. Kieffer then expressed concern that the proposed budget request is \$2 million more than the current budget.

(This item was tabled until a quorum could be restored).

Discussion about what to submit as a budget request resumed. Sen. Kieffer advocated submitting a request for an amount equivalent to the Legislature's budget for the Fiscal 1996-1997 biennium. Rep. Carleton expressed concern, again, that it was nothing more than an exercise for an outgoing Council to submit a budget request that it would not have to assume responsibility for. Rep. Jacques concurred, noting that the new Legislature would have many new people with new ideas and that they, like the members of the current Legislature, would not want to have all of the decisions already made.

Motion: That the Council authorize submission of a budget request that is equal to the last biennial budget. (Motion by Sen. Bustin; second by Rep. Jacques; unanimous).

Item #2: Submission of Study Reports (Item carried over from September Council meeting)

- **Select Committee to Study Rate Increases in Nursing Homes**
- **Commission on Higher Education Governance**

ANNOUNCEMENTS AND REMARKS

None.

ADJOURNMENT

The Council meeting was adjourned at 4:50 p.m.

Thursday, December 5



Orientation for All Members

8:30 a.m. - 12:30 p.m.

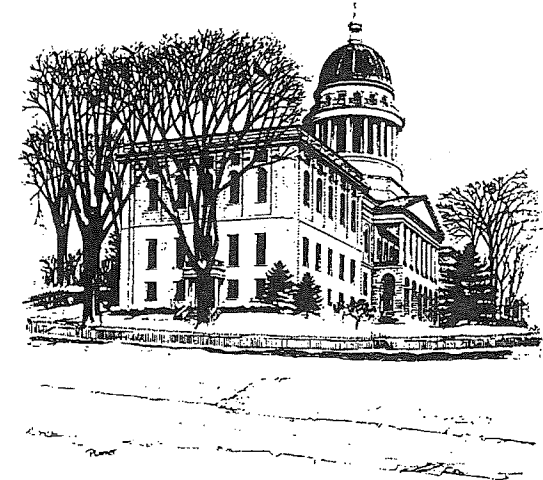
Support from Non-Partisan Staff Offices: Room 228,
Overview State House

- ◆ Staff Support in the Legislative Process
- ◆ Research and Information Services

PRE - LEGISLATIVE CONFERENCE

Each legislative session finds many members who are new to their duties, to legislative procedures and services, and to each other. The Pre-Legislative Conference is designed to acquaint new legislators with the essentials of the process and with the staff services and other resources available to assist members in carrying out their responsibilities.

The 1996 Pre-Legislative Conference is sponsored by the Legislative Council and organized and staffed by legislative agency personnel. The cost of the conference is paid by legislative appropriation.



LEGISLATIVE COUNCIL 117th LEGISLATURE

Senator Jane A. Amero, Chair
Representative Elizabeth H. Mitchell, Vice-Chair

SENATORS

Jeffrey H. Butland
R. Leo Kieffer
Mark W. Lawrence
Beverly M. Bustin

REPRESENTATIVES

Dan A. Gwadosky
Paul F. Jacques
Walter E. Whitcomb
Joseph G. Carleton, Jr.

ADVISORS

May Ross, Secretary of the Senate
Pamela Cahill, Assistant Secretary of the Senate
Joseph W. Mayo, Clerk of the House
Millicent MacFarland, Assistant Clerk of the House
Sally Tubbesing, Executive Director, Legislative Council
David Boulter, Director, Office of Policy & Legal Analysis
Margaret E. Matheson, Revisor of Statutes
Lynn E. Randall, State Law Librarian
John Wakefield, Director, Office of Fiscal & Program Review



118th LEGISLATURE

PRE-LEGISLATIVE CONFERENCE

December 2 - December 5, 1996

Sponsored by the Legislative Council

Monday, December 2



Orientation for New Legislators

10:00 a.m. - 11:00 a.m.

Registration

Third Floor Rotunda

Tours of the State House

11:00 a.m. - 12:00 noon

**The Legislative Branch:
Powers and Functions**

Hall of the House

Representative Richard H. Thompson

Donald N. Zillman, Dean

University of Maine School of Law

12:00 noon

Box Lunch

*Hall of Flags
Second Floor*

1:30 p.m. - 2:30 p.m.

**Offices of the Secretary and Clerk:
Responsibilities and Services
to Members**

Hall of the House

2:45 p.m. - 3:45 p.m.

Mock Sessions

*Senate Chamber &
Hall of the House*

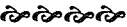
6:00 p.m.

Buffet Dinner

Hosted by Members of Leadership
of the 117th and 118th Legislatures

*Senator Inn
State Room*

Tuesday, December 3



Orientation for All Members

8:00 a.m. - 9:30 a.m.

Registration

Third Floor Rotunda

9:30 a.m.

Welcoming Remarks

Hall of the House

Honorable Jeffrey H. Butland

President of the Senate

Honorable Dan A. Gwadosky

Speaker of the House

9:45 - 12 noon

Democratic Caucus

Hall of the House

Republican Caucus

Senate Chamber

11:45 a.m. - 1:00 p.m.

Box Lunches Available

*Hall of Flags
Second Floor*

1:15 p.m. - 2:45 p.m.

Seminar on Legislative Ethics

Hall of the House

(as required by 1 MRSA, Section 1008)

Calvin MacKenzie, Chair

Commission on Governmental Ethics

Andrew Ketterer, Attorney General

Honorable Francis C. Marsano

Superior Court Justice

1:30 p.m.

Tours of the Blaine House

Assemble in Third

& the Maine State Museum

Floor Rotunda

for Legislators' Families

3:00 p.m. - 4:00 p.m.

Maine State Budget: An Overview

Room 228, State House

John Wakefield, Director

Jim Clair, Deputy Director

Office of Fiscal and Program Review

5:30 p.m.

Reception/Cash Bar & Banquet

Augusta Civic Center

Hosted by the 117th Legislative Council

Wednesday, December 4



118th Legislature Convenes

10:00 a.m.

Swearing in of Members

Senate Chambers

by Governor Angus S. King, Jr.

Hall of the House

Organization of the Senate and House

Election of Presiding Officers

Election of Secretary of the Senate and

Assistant Secretary of the Senate

Election of Clerk of the House and

Assistant Clerk of the House

The Legislature Will Proceed With Orders of the Day

2:00 p.m.

Joint Convention

Hall of the House

Election of Constitutional Officers

4:00 p.m.

Senate and House Reconvene

Senate Chamber &

Hall of the House

4:30 p.m.

Reception

Hosted by Governor Angus S. King, Jr.

and First Lady Mary J. Herman

Blaine House

SARAH C. TUBBESING
EXECUTIVE DIRECTOR
OF THE LEGISLATIVE COUNCIL

GERALD THIBAUT
INFORMATION SYSTEMS
MANAGER

TEEN ELLEN GRIFFIN
LEGISLATIVE INFORMATION OFFICE
MANAGER



MAINE STATE LEGISLATURE
OFFICE OF THE EXECUTIVE DIRECTOR
LEGISLATIVE COUNCIL

November 19, 1996

TO: Honorable Jane A. Amero, Chair
Honorable Elizabeth H. Mitchell, Vice-Chair
and Members of the Legislative Council

FROM: Sally *Sally*

SUBJECT: Legislative Budget Request for the 1998-1999 Biennium

Position Count

In my presentation of the Part I Budget Request at the October meeting I reported that we had included in the request only those positions that were funded and authorized to be filled in the current fiscal year. With Meg Matheson's assistance, however, we have identified 3 positions in the Revisor's Office that were included in our budget calculations but should not have been. These are all session-only Proofreader positions that were originally assigned to the Engrossing division. None of these positions has been filled or funded since 1991.

Rose has prepared revised totals to correct this error. This correction has the following impact on the proposed budget that we had prepared for the Legislative account:

	FY 98	FY 99
Original Request:	\$14,240,477	\$16,053,326
Revised Request:	\$14,154,351	\$15,958,790

I regret the error and would be happy to answer any questions you may have.

Statutory Requirements for Budget Submission

Since the Council's October meeting, Rose and I have met with the State Budget Officer, Jack Nicholas, to discuss the submission of the Legislature's budget request for the 1998-1999 biennium. Jack confirmed that the request approved by the Council does not conform to the requirements for a Part I budget as presented in the instructions issued by the Budget Office. Jack has further informed us that in order to conform to the requirements of state law, (5 MRSA § 1665), all budget requests must include "expenditure estimates (that) shall be classified to set forth the data by funds, organization units, character and objects of expenditure." This means that budget requests must be documented at the level of the major character and object categories (e.g. In-state Travel; Professional Services, etc.)

As you will recall, the Council's vote at the October 28 meeting set only a total budget request for each year of the biennium. Since this request would require substantial reductions in the Legislature's operating -- or current services -- budget, it will require further action by the Council to define how to allocate the proposed reductions.

LORING COMMERCE CENTRE

Brian N. Hamel
President

October 25, 1996

Ms. Sarah C. Tubbesing
Executive Director
State of Maine Legislative Council
State House Station #115
Augusta, ME 04333

Dear Ms. Tubbesing:

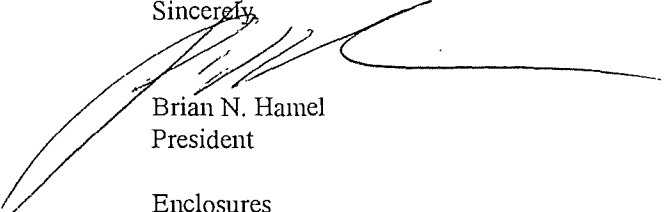
Pursuant to "Section 13080-L Annual Report" of the Loring Development Authority of Maine's (LDA) enabling legislation, enclosed please find a complete report on the activities of the LDA for the fiscal year ended June 30, 1996.

It is my intention to give a presentation on LDA activities and progress to the Business and Economic Development Committee during the next Legislative Session in Augusta and to provide them with a copy of this annual report package at the presentation.

As the enclosed materials document, we continue to make major strides in our redevelopment efforts and we remain confident that we will be an integral piece of Maine's economic future for years to come.

If you have any questions or need additional information, please call me.

Sincerely,

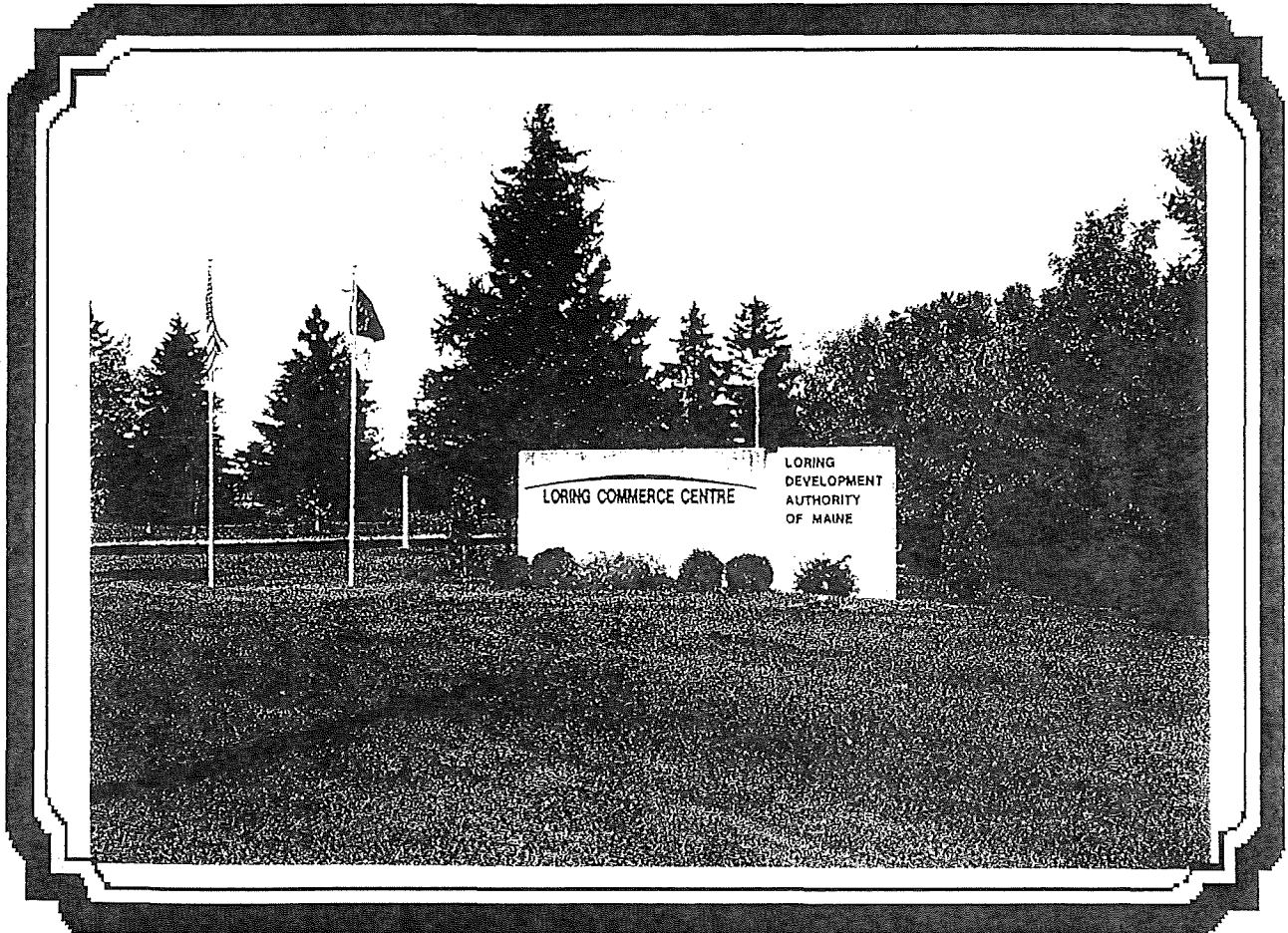


Brian N. Hamel
President


Enclosures

cc: Senator Philip E. Harriman - Business and Economic Development Committee Chair
Representative G. Steven Rowe - Business and Economic Development Committee Chair

LORING DEVELOPMENT AUTHORITY OF MAINE



ANNUAL REPORT
1996



LORING COMMERCE CENTRE

Loring Development Authority of Maine
Paragraph 13080-L Annual Report
July 1, 1995 through June 30, 1996

Paragraph 1A: A description of the Authority's operations:

"Description of the Authority's Operations and Status Report"

Paragraph 1B: An accounting of the Authority's receipts and expenditures, assets and liabilities at the end of the fiscal year:

Authority's Audited Financial Statements for the Year Ended June 30, 1996.

Paragraph 1C: A listing of all property transactions pursuant to Section 13080-D:

"Property Transactions During Fiscal Year 1996"

Paragraph 1D: An accounting of all activities of any special utility district formed under Section 13080-G:

None

Paragraph 1E: A listing of any property acquired by eminent domain under Section 13080-G:

None

Paragraph 1F: A listing of any bonds issued during the fiscal year 1996:

None

Paragraph 1G: A statement of the Authority's proposed and projected activities for the ensuing year:

"Subsequent Events and Proposed Activities for Fiscal Year 1997"

Paragraph 1H: Recommendation regarding further actions that may be suitable for achieving the purposes of this article:

"Further Actions Suitable for Achieving the Purposes of Article"

JOINT STANDING COMMITTEE
ON
HEALTH AND HUMAN SERVICES

117th Maine Legislature

Majority And Minority Reports
On
REVIEW OF
THE MAINE MENTAL HEALTH SYSTEM

November 22, 1996

Members supporting the Majority Report

Sen. Joan M. Pendexter, Senate Chair
Sen. John W. Benoit
Rep. Glenys P. Lovett
Rep. Jeffery G. Joyner
Rep. Jean Ginn Marvin
Rep. Robert J. Winglass
Rep. Henry L. Joy

Members supporting the Minority Report

Rep. Michael J. Fitzpatrick, House Chair
Sen. Rochelle M. Pingree
Rep. Birger T. Johnson
Rep. David Etnier
Rep. J. Elizabeth Mitchell
Rep. Kyle W. Jones

MEMORANDUM

DATE: November 22, 1996
TO: President Jeffrey H. Butland
Speaker Dan A. Gwadosky
FROM: Senator Joan M. Pendexter, Senate Chair
Representative Michael J. Fitzpatrick, House Chair
RE: Review of the Maine Mental Health System by the Joint
Standing Committee on Health and Human Services

You authorized the Joint Standing Committee on Health and Human Services to meet after the Second Regular Session to review the Maine mental health system.

We enclose for your study the majority and minority reports of the committee. Copies of the reports and the materials considered by the committee are on file in the State Law Library.

REVIEW OF THE MAINE MENTAL HEALTH SYSTEM

REPORT OF THE JOINT STANDING COMMITTEE ON HEALTH AND HUMAN SERVICES OCTOBER 1996

Beginning in June 1996, the Joint Standing Committee on Health and Human Services met regularly to review circumstances surrounding several deaths that occurred in the mental health system earlier in the year, and to report its findings and recommendations to the Legislature and the Commissioner of the Department of Mental Health, Mental Retardation and Substance Abuse Services. Heading the list of committee concerns were three main issues: the safety and well-being of AMHI patients; supervision of community-based treatment of non-compliant patients; and the public safety in cases of violent mental health patients.

A legislative investigation was determined to be necessary when neither an internal review nor an "independent" review succeeded in determining accountability and responsibility for the events leading up to the death of Wrendy Hayne, a patient at AMHI. Because state and federal laws protect the confidentiality of patient, medical and personnel records, a great deal of time was spent pursuing legal channels to obtain the information critical to a meaningful evaluation of specific incidents, including the death at AMHI and the two murders in Waterville, and to the development of the Committee's resulting conclusions and recommendations.

The committee was granted access by the court to specific confidential records, and was able to make some progress because of the voluntary testimony of Wrendy Hayne's parents and their release of portions of Ms. Hayne's records. In the absence of subpoena powers and a court order to compel testimony, the Committee was unable to require AMHI and Department employees to testify before the Committee. The confidentiality laws surrounding personnel records remained an insurmountable barrier; future investigations should benefit from changes the Committee recommends in this area. The pending criminal prosecution of the accused assailant in the Waterville murders also stopped Committee efforts to hear testimony in that case.

The Committee takes exception to the conclusion by the McDowell Commission that "... none of the recommended changes, alone or together, might have prevented the tragic outcome in this case [Wrendy Hayne's death]." The committee believes it is **more likely than not** that the death could have been prevented, if, at the time of Wrendy Hayne's death, the recommended changes had been in place and the then-existing policies and laws had been complied with.

RECOMMENDATIONS

Despite the many roadblocks created by confidentiality laws, the Committee was able to reach consensus on the following recommendations:

1. Governing body of AMHI. Revise the governing body of AMHI to include members of the community. These members should be nominated by the Governor and subject to the usual process of confirmation by the Legislature. This should be done within the parameters of State and federal accreditation standards. *Legislation is needed to carry out this recommendation.*

2. Patient advocacy. Using the Long Term Care Ombudsman Program as a model, establish an office of patient advocacy that operates independently from the Department. Families and volunteers from the community should be encouraged to participate. Transfer all current advocacy functions within the Department and contracted for by the Department to the new advocacy program. Fund the new advocacy program with the existing DMHMRSAS budget for advocacy services. *Legislation is needed to carry out this recommendation.*

3. Quality assurance; treatment. Make quality assurance the top priority of the state's mental health system and take a pro-active, aggressive approach to treatment.

4. Accountability and responsibility. Accountability and responsibility for patient treatment must be clearly defined within the institution and in the community.

5. Consent decree. Review the status of the AMHI consent decree with the court-appointed master Gerald Rodman. Clarify remaining mandates and the timeline for completing them. Obtain a progress report on the status of implementation to members of the 118th legislative Joint Standing Committee on Health and Human Services.

6. Legislative oversight. Increase legislative oversight through monthly progress reports and quarterly written reports by the DMHMRSAS to the Joint Standing Committee on Health and Human Services. Review all deaths in the public system within 30 days. Review all serious incidents within public system. For purposes of this recommendation, "public system" means all facilities licensed or serviced by the Department of Mental Health, Mental Retardation and Substance Abuse Services. *Legislation is necessary to carry out this recommendation.*

- a. The Commissioner should appoint a serious incident team immediately following a serious incident in the community, similar to the procedure in place for serious incidents within the institutions. The team should report to the Health and Human Services Committee within five days of the incident.

b. DMHMRSAS to report to the Committee all results of its site review of Kennebec Valley Mental Health Agency and recommend changes to current system of contracting and accountability between the Department and community-based agencies.

7. Future direction of mental health services. The Governor should make recommendations regarding the future direction of mental health services and care in institutions and in the community in his 1997-99 biennial budget proposal.

8. Other legislation. In addition to the recommendations listed above, the Committee recommends that the 118th Legislature address the following specific issues:

- a. Confidentiality issues - remove impediments to access to information for future investigations;
- b. Involuntary commitment procedures;
- c. Medication policy in institution-based and community-based services;
- d. Death reviews procedure.

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**Mental health review by the Health and Human Services Committee
collected documents and information July - October 1996**

SUBJECT	TYPE OF DOCUMENT	DESCRIPTION	DATE	SOURCE
AMHI	chart	position count at AMHI, 1995-1997	distributed 9/20/96	DMHMRSAS
AMHI	minutes	AMHI Medical Executive Committee minutes, re: staffing	6/26/96	DMHMRSAS
AMHI	by-laws	AMHI governing body by-laws	distributed 10/7/96	DMHMRSAS
AMHI	policy manual	mandatory reporting protocol: patient injuries; patient to patient incidents; patient sexual behavior; staff to patient incidents; allegations of abuse, neglect, exploitation	distributed 10/7/96	DMHMRSAS
AMHI	list	AMHI review team (McDowell task force) interview list	7/10/96	Donald McDowell
AMHI	letter	selection of Dr. William McFarlane, Chief of Psychiatry at MMC to chair AMHI review panel	7/8/96	DMHMRSAS
AMHI	consent decree plans, letters, analysis	communications re: plan for completing class member assessments and review of assessment plan	4/11/96, distributed 7/26/96	Gerald Rodman, Court Master, Katherine Greason, AAG
AMHI	compilation	AMHI psychiatric records, list of documents separate from medical record, incident reporting process, cover letter	7/26/96	DMHMRSAS
AMHI	letter	description of nonpatient chart documents and their availability	9/13/96	DMHMRSAS
AMHI	memo	list of AMHI staff in April, 1996	9/17/96	DMHMRSAS
AMHI	survey	key survey of New England area psychiatric hospitals	distributed 7/12/96	DMHMRSAS
AMHI	policy	policies for staffing dining room with CPR-certified staff; administration of CPR	1/96, distributed 7/12/96	DMHMRSAS
AMHI	contract and forms	contract between Maine Medical Assoc. and AMHI, standard peer review forms	distributed 10/7/96	Gordon Smith, MMA

SUBJECT	TYPE OF DOCUMENT	DESCRIPTION	DATE	SOURCE
AMHI - licensing	report	letter from federal HHS on AMHI deficiencies as found by DHS along with plan for correction, with transmittal memo	memo: 5/31/96 DMHMRSAS ltr: 5/23/96 USHHS letter: 5/2/96	DMHMRSAS
AMHI - licensing	letter	letter from HHS committee requesting info from DMHMRSAS	4/25/96	committee
AMHI - licensing	letter	letter from HHS committee requesting info from DHS	6/13/96	committee
AMHI - licensing	letters	DHS letter to AMHI re: conditional license because of noncompliance, with cover letter	DHS letter: 6/27/96 cover letter: 7/1/96	DHS DMHMRSAS
AMHI - licensing	letter and plan	letter from Acting Superintendent Bouffard, listing of deficiencies (by JCAHO, McDowell report, HCFS, DHS) and the DMHMRSAS's response or action taken	7/9/96	DMHMRSAS
AMHI - changes	memos	Written reprimands of Kathleen Whitzell and Diane Gilbert	6/25/96, distributed 7/19/96	DMHMRSAS
AMHI - changes	memo	changes taking place at AMHI, key policy	6/21/96	DMHMRSAS
AMHI - changes	memos	directive from Lowell, Gowler and Guilbault to physicians and program service managers: patient levels, sexual behavior policy, safety concerns, advanced directives	5/8/96, distributed 7/12/96	DMHMRSAS
AMHI - changes	memo	response to McDowell Report recommendations, as pertaining to BMHI	6/20/96	N. Lawrence Ventura, Supt., BMHI
AMHI - changes	press release	DMHMRSAS response to recommendations of McDowell task force	6/12/96	DMHMRSAS
AMHI - disciplinary actions	letter	letter re: access to disciplinary action records	7/26/96	Sen. Beverly Miner Bustin

SUBJECT	TYPE OF DOCUMENT	DESCRIPTION	DATE	SOURCE
AMHI - disciplinary actions	letter	reply to request for AMHI disciplinary records	8/1/96	DMHMRSAS
AMHI - disciplinary actions	letter	MSEA position on access to disciplinary action records	8/1/96	MSEA
Behavioral Health Network	letter	discussion of contract, role of Dr. Clark	7/17/96	DMHMRSAS
Behavioral Health Network	letters	letters from Attorney Begel re: contract	7/11 and 7/15/96	DMHMRSAS
Behavioral Health Network	letters, memos and contract	review of BHN contract and position of Dr. Clark by the Office of the Attorney General	7/24/96	Office of the Attorney General
Behavioral Health Network	compilation, brochure, descriptive materials	cover letter, details of BHN organization and activities, assessment form, info about the network, its purpose, service locations, member providers, services,	8/1/96	Grete Chandler, BHN
Behavioral Health Network	memo, executive order, rules	proposal for class member assessments, procedures and rules for contracts, grants and appeal of contracts, grants	distributed 8/2/96	BHN
Behavioral Health Network	letter	request that BHN seek a refund from Dr. Clark	8/19/96	DMHMRSAS
Behavioral Health Network	articles of incorporation	articles of incorporation of BHN as nonprofit corporation	distributed 9/13/96	BHN
Behavioral Health Network	chart	AMHI consent decree class member assessment statistics by region	9/6/96	DMHMRSAS
Behavioral Health Network	chart	AMHI consent decree class member assessment statistics by region	9/13/96	DMHMRSAS
DMHMRSAS	list	list of advisory groups or councils to DMHMRSAS	distributed 10/7/96	DMHMRSAS
DMHMRSAS	memo	background information on advocacy structure and funding	9/25/96	committee
DMHMRSAS	budget categories	summary by category of service and listing of agencies, as of 1/1/96	distributed 10/7/96	DMHMRSAS
DMHMRSAS	lists	DMHMRSAS agencies, funding and short descriptions	distributed 10/7/96	DMHMRSAS
DMHMRSAS	contract	contract with Liberty Healthcare	distributed 10/7/96	DMHMRSAS
DMHMRSAS	booklet	Rights of Recipients of Mental Health Services	distributed 7/96	DMHMRSAS

SUBJECT	TYPE OF DOCUMENT	DESCRIPTION	DATE	SOURCE
DMHMRSAS	vision statement and plans	progress towards a community-based system of care	distributed 7/19/96	DMHMRSAS
DMHMRSAS	memo	description of organization, duties and budget of Office of Advocacy	distributed 10/7/96	DMHMRSAS
DMHMRSAS	summary	information on out of state placements, contracts with agencies	distributed 7/25/96	DMHMRSAS
DMHMRSAS	list	listing of membership of Quality Improvement Councils	distributed 10/7/96	DMHMRSAS
DMHMRSAS	list	members of AMHI and BMHI Quality Improvement Councils	distributed 10/7/96	DMHMRSAS
Health and Human Services Committee work	memo	statement of mission and goals	adopted 7/12/96	committee
Health and Human Services Committee work	letter	letter from Attorney General Ketterer to Governor King re: employee testimony before the committee	9/19/96	Andrew Ketterer, Attorney General
Health and Human Services Committee work	article	mental health records confidentiality article	5/96	committee
Health and Human Services Committee work	letter	letter from Governor King re: committee work	9/20/96	Governor Angus King
Health and Human Services Committee work	list	options for governing boards of state psychiatric institutes	distributed 10/7/96	Dr. Steven Katz
Health and Human Services Committee	list	outline for discharged medical records	distributed 10/7/96	Dr. Steven Katz
KVMHC	critical incident review	process and results of review, plans	6/10/96	DMHMRSAS
KVMHC	letter	denial of access to confidential records; special events information	6/20/96	Stephen O'Donnell, Esq.
KVMHC	testimony	testimony of John Shaw, Exec. Director, KVMHC	7/26/96	John Shaw, KVMHC
KVMHC	letter and materials	Clozaril case statistics; policies and procedures concerning Clozaril use and monitoring; job description of Clozaril case manager; Clozaril monitoring	8/1/96	John Shaw, KVMHC

SUBJECT	TYPE OF DOCUMENT	DESCRIPTION	DATE	SOURCE
KVMHC	letter, memos	information re: Clozaril, protocols for monitoring medication	8/1/96	John Shaw, KVMHC
KVMHC	plan	plan for site visit of KVMHC by DMHMRSAS	distributed 8/23/96	DMHMRSAS
KVMHC	draft, report	report of site visit	distributed 11/15/96	DMHMRSAS
KVMHC	letter and attachments	KVMHC confidentiality agreement; coordinated services form; emergency alert procedures; Clozaril testing procedure clarification; Clozaril statistics;	8/8/96	KVMHC
Maine Task Force on Mental Health	list	members of task force	distributed 7/12/96	Governor King
Maine Task Force on Mental Health	Executive order	Executive order creating the Maine Task Force on Mental Health	5/20/96	Governor King
Maine Task Force on Mental Health	report	report of the Maine Task Force on Mental Health	10/22/96	DMHMRSAS
Wrendy Hayne	letter and draft court order	draft order to release McDowell report, report of McDowell task force to Commissioner Peet regarding the death of Wrendy Hayne	distributed 6/6/96	DMHMRSAS, Office of the Attorney General
Wrendy Hayne	waiver form	waiver signed by Janice Burns	8/16/96	committee
Wrendy Hayne	cover letter, two reviews	memo re: reviews of death of Wrendy Hayne	reviews dated 5/1/96, 6/22/96; memo dated 8/30/96	DMHMRSAS
Wrendy Hayne	letter	letter from Lawrence Bloom, Esq., re: patient records	9/5/96	L. Bloom, Esq.
Wrendy Hayne	letter	letter from Lawrence Bloom, Esq., re: patient records	9/13/96	L. Bloom, Esq.
Wrendy Hayne	letter	notice of claim of suit against the State and employees	9/27/96	E. Mehnert, Esq., and L. Bloom, Esq.
Wrendy Hayne	letter, petition, orders	cover letter, petition to authorize release of confidential records, order, supplemental order	8/15/96, 8/30/96, 9/19/96	Office of the Attorney General

SUBJECT

TYPE OF
DOCUMENT

DESCRIPTION

DATE

SOURCE

Wrendy Hayne	letter	letter re: release for public review of medical records	9/20/96	L. Bloom, Esq.
Wrendy Hayne	poem	poem	undated	Janice Burns
Wrendy Hayne	letter	description of requested nonpatient records and why they are not available	9/20/96	Office of the Attorney General

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MAINE STATE LEGISLATURE
Augusta, Maine 04333

REPORT AND RECOMMENDATIONS OF THE
DEMOCRATIC MEMBERS TO THE JOINT STANDING
COMMITTEE ON HEALTH AND HUMAN SERVICES

Review of Department of Mental Health and Retardation
September 20, 1996

Background

Since the beginning of 1996, there have been a series of tragedies and events that have created questions about the management of Maine's mental health system. In June, the Committee met to discuss their role in providing accountability and oversight over the Department of Mental Health and Retardation (DMHMR). On July 12, 1996, the Committee adopted its Mission and Goals (attached) and began a process that involved weekly meetings and hearings into the operations of the Department and its response to recent tragic events. Although the work of the Committee was scheduled to end September 1, 1996, the Committee has met three times in September. Now the Committee on Health and Human Services has completed its mission and goals and makes the following findings and recommendations.

Findings

System Problems

- The current mental health delivery system is in trouble and the Department's response has been slow and inadequate.
- Years of neglect, downsizing, funding cuts, and the lack of a comprehensive vision of an effective mental health delivery system are responsible for the chaotic system that now exists. The turnover in Commissioners has played a clear role in the lack of vision and leadership. These problems are long standing and can not be placed on one person.

- The mental health delivery system has been characterized by a lack of communication, coordination and cooperation among mental health service providers. There was very little monitoring of clients of mental health services who live in the community. As a result, the risk of tragedies and accidents was great.
- Inadequate departmental auditing and monitoring of services provided by community mental health service providers has resulted in an inability to measure and determine the adequacy, effectiveness, and timeliness of mental health services. This has jeopardized quality of care and access to care.
- There isn't a reliable central hot line which Maine citizens can use to report serious problems, emergencies, or threats to the public which involve mental health clients. There is no central telephone number that mental health clients or their families can use to obtain immediate help.

AMHI Problems

- AMHI lacks leadership from its top administrators. There is a culture or environment at AMHI that differs substantially from the environment of Bangor Mental Health Institute (BMHI) and hospitals in general. It is clear that at AMHI, the structure necessary to run a high quality health care facility was lacking.
- The culture at AMHI is characterized by a sense of employee powerlessness, low morale, fear of criticizing institutional policies and procedures, a top-down approach to operations, and instability with respect to treatment and services.
- The staffing problems, especially with the wide spread practice of using *locum tenens*, (temporary doctors) interfered with the collaboration of treatment teams and seriously jeopardized the continuity of care.
- There was an overall lack of accountability and inadequate supervision.
- There was a lack of security.

- Standard operating policies and procedures at AMHI were disregarded on occasion.
- Record keeping was sloppy and inaccurate.
- For some families of patients at AMHI, particularly those who are assertive and actively involved in the treatment of their family members, AMHI officials and supervisors were described as not communicative and not helpful.

Improvements to the Mental Health System Made by the 117th Legislature

Recognizing the tragic flaws in Maine's mental health system, the 117th Legislature in its Second Session reorganized the system and added new services that will build on existing emergency and outreach programs. These changes were the result of the DMHMR's AMHI Consent Decree Plan to Justice Nancy Mills, as well as LD 1704 and LD 1764.

LD 1704, which was passed by the Health and Human Services Committee by a unanimous vote, significantly reorganizes the Department into seven geographic dispersed regional entities. Each region will have a citizen council (Quality Improvement Council) that will participate with DMHMR in planning case management, medication management, treatment, in-home supports and rehabilitation programs and dedication management.

These reforms will also ensure that outcome based assessments on all service providers will be used as the basis for funding decisions. It also ensures that moneys saved by downsizing or reorganization within the Department will be reinvested to fund service for persons with mental illness.

The Legislature **added \$8.2 million in new funding** generated by the supplemental budget coupled with the reinvestment of savings which will create "bridge" funding to:

- Create an integrated crisis service system statewide which will include, at a minimum, a crisis phone line, 24 hour mobile outreach, crisis stabilization, residential and respite capability, 24 hour walk-in site and triage capacity, 24 hour psychiatric back-up, in-home service, and wrap-around capacity and access to acute hospitalization including involuntary capacity. Phone services, mobile services, triage and psychiatric services will be located in a single organization or agency.

- Develop additional emergency involuntary hospital beds
- Maintain positions at AMHI and BMHI through January 1997 to ensure a smooth transition to the new programs
- Add case worker to staff intensive case management programs and Assertive Treatment Teams (ACT) for individuals who may require daily support for purposes such as medication management.

Immediate Action Required

The Committee has gone as far as it can with available information. The Committee has received all reports, documentation, and papers requested from the Department. Further information is covered by confidentiality laws, and won't be made available to the Committee.

State and federal confidentiality laws protect all recipients of medical services with strict confidentiality provisions. These laws protect all recipients of mental health services as well. With the exception of the Burns family, there are no other patients or guardians who are willing to publicly disclose their personal medical records. To go further will jeopardize the state's case in prosecuting Harold Pulsifer and may jeopardize the state's ability to prosecute any other potential defendants in these cases.

Further meetings and publicity will jeopardize the State's ability to successfully prosecute defendants in the cases coming to trial.

It is time to end this investigation and concentrate on improving the system for the future.

Recommendations:

Committee Democrats make the following recommendations.

1. The Department must report to the Committee on it's continuing efforts to implement all recommendations of the McDowell Commission's Report, as well as comply with all conditions and time-lines from state and federal reviews of AMHI (JAICO, HCFA, DHS).

The Commissioner must:

- Make a final decision on the role and mission of AMHI and ensure and demonstrate that adequate community services are in place before further downsizing or closure occurs.
- Take immediate action to see that AMHI is in compliance with all current policies, such as proper notification to all legal guardians of any action taken in regards to patients.
- Dismiss all senior clinical management staff who were in charge at the time of the Haynes' death.
- Make Quality Assurance the top priority of the state's mental health system and take a proactive, aggressive approach to treatment issues.
- Ensure that communication and collaboration between units at AMHI is occurring and ongoing.
- Ensure that effective staff development and training takes place.
- Develop and implement policies, procedures and practices of working collaboratively with the families of patients at all state institutions and for all state funded services.
- Ensure that all criminal laws are enforced at state institutions and that there is communication and cooperation with local police and law enforcement.
- Creation of a Serious Incident Team (SIT) to take immediate action when a serious incident or death takes place. The SIT will conduct an audit of all agencies involved in the incident and connect with police, family members, and the community. The SIT Team will report to the Health and Human Services Committee within five days of the incident.

2. DMHMR will present to the Committee all results of the Department's Site Review of Kennebec Valley Mental Health Agency and make any recommendations for changes to the current system of contracting and accountability between the Department and community based agencies.

- The Department will comply with all state efforts to move towards performance based budgeting as soon as possible.
- Community based agencies will agree to cooperate with the Serious Incident Team in all investigations..

3. DMHMR must complete it's Systems Review of mental health services in the Waterville area and make recommendations for improving on the cooperation and collaboration among and between community based services for the mentally ill.

The Department must establish a well publicized, reliable, state-wide hot-line for citizens and mental health clients and their families to use in emergency situations and to obtain help.

4. DMHMR must present a progress report to the Health and Human Services Committee by November 22, 1996 on the implementation of the Department's Reorganization of services including but not limited to:

- New 24 hour Crisis Services
- Community collaboration among mental health service agencies and other effected community services i.e.) police, hospitals , homeless shelters, municipal offices, county jails, etc.
- Quality Improvement Councils
- Provider Service Networks
- Negotiations and written agreements with community hospitals on voluntary and involuntary committal.

5. Suggestions for the 118th Legislative Session

- Review of the state's Confidentiality laws.
- Review of Patient's Rights Laws and Committal Laws including the option of "Community Committal"
- Review of oversight responsibilities of Committees of Jurisdiction
- Determine adequate funding source for outpatient mental health services for uninsured and work with Maine Judicial system to avoid sentencing of uninsured people to (outpatient) services that are not available to them.
- Recommend that the Corrections Committee and the Health and Human Services Committee work together to develop a plan for collaboration between the Department of Corrections and DMHMR

MISSION AND GOALS OF JOINT STANDING COMMITTEE ON HEALTH AND HUMAN SERVICES IN REVIEW OF MENTAL HEALTH DEPARTMENT:

1. Provide a review of the five recent deaths (Haynes, Cunningham, Pulsifer, Bechard, and Lee cases) to determine the circumstances of those tragedies, define what led up to them, and to relate the findings to an analysis of the mental health delivery system.
2. Determine what policies were in place, but not followed, and what policies are needed to establish accountability and safety.
3. Review what has been done to address problems previously identified.
4. Review and recommend the need for disciplinary action if appropriate.
5. Review laws around confidentiality issues and ascertain changes to better protect the public if necessary.
6. Ensure positive changes for future directions including review of contracts between the Department and mental health service providers, and accountability for services rendered to those in care of the Dept.
7. Review any relevant legislation for consideration by the 118th Legislature including but not limited to, issues surrounding violence of some mental health clients toward the public, public safety, treatment for noncompliant patients, and commitment laws.
8. Finish date of September 1, 1996.