

MAINE STATE LEGISLATURE

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REP. HANNAH M. PINGREE
CHAIR

SEN. ELIZABETH H. MITCHELL
VICE-CHAIR

EXECUTIVE DIRECTOR
DAVID E. BOULTER



SEN. PHILIP L. BARTLETT II
SEN. KEVIN L. RAYE
SEN. LISA T. MARRACHE
SEN. JONATHAN T. E. COURTNEY
REP. JOHN F. PIOTTI
REP. JOSHUA A. TARDY
REP. SETH A. BERRY
REP. PHILIP A. CURTIS

124TH MAINE STATE LEGISLATURE
LEGISLATIVE COUNCIL

**MEETING OF LEGISLATIVE COUNCIL
FEBRUARY 25, 2010
1:30 P.M.**

REVISED AGENDA

<u>Page</u>	<u>Item</u>	<u>Action</u>
	CALL TO ORDER	
	ROLL CALL	
1	SUMMARY OF THE JANUARY 21, 2010 MEETING OF THE LEGISLATIVE COUNCIL	Acceptance
	REPORTS FROM EXECUTIVE DIRECTOR AND STAFF OFFICE DIRECTORS	
11	▪ Executive Director's Report (Mr. Boulter)	Information
12	▪ Fiscal Report (Mr. Pennoyer)	Information
	REPORTS FROM COUNCIL COMMITTEES	
	• Personnel Committee (Speaker Pingree, Chair) (No Report)	
17	• State House Facilities Committee (Rep. Piotti, Chair) <ul style="list-style-type: none">• Request to Darken Dome in Support of WWF's "Earth Hour 2010" & Relevant Legislative Council Policy	Decision
23	• Budget Subcommittee (Senate President Mitchell, Chair) <ul style="list-style-type: none">• FY2010-2011 Budget Adjustment Recommendations	Decision
	• CSG Annual Meeting Planning Subcommittee (Sen. Bartlett & Rep. Smith, Co-chairs)	

OLD BUSINESS

- | | | |
|-----------|---|--------------------|
| 25 | Item #1: Council Actions Taken By Ballot (No Action Required)
List of actions taken by ballot by the Legislative Council
since its January 21, 2010 meeting. (ATTACHED) | Information |
|-----------|---|--------------------|

NEW BUSINESS

- | | | |
|-----------|--|-----------------------|
| 26 | Item #1: Consideration of After Deadline Bill Requests / Addendum | Roll Call Vote |
| 29 | Item #2: Government Evaluation Act Review of the Maine Pilotage Commission
(Report from Joint Standing Committee On Transportation) | Acceptance |
| 31 | Item #3: Report of the Commissioner Pursuant to Resolve 2009, Ch. 73 - Sunrise Review (Department of Professional & Financial Regulation)
[Full copy of report available upon request] | Acceptance |
| 34 | Item #4: Report of the Commissioner Pursuant to Resolve 2009, Ch. 74 Sunrise Review (Department of Professional & Financial Regulation)
[Full copy of report available upon request] | Acceptance |
| 39 | Item #5: Year 2008 Insurance Fraud and Abuse Annual Report (Department of Professional & Financial Regulation) | Information |
| 50 | Item #6: Preliminary Report: The Health Insurance Market in Maine
(Department of Professional & Financial Regulation)
[Full copy of report available upon request] | Information |

ANNOUNCEMENTS AND REMARKS

ADJOURNMENT

REP. HANNAH M. PINGREE
CHAIR

SEN. ELIZABETH H. MITCHELL
VICE-CHAIR

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124TH MAINE STATE LEGISLATURE
LEGISLATIVE COUNCIL

MEETING SUMMARY
January 21, 2010

CALL TO ORDER

Legislative Council Chair, Speaker Pingree called the January 2010 Legislative Council meeting to order at 10:02 A.M. in the Legislative Council Chambers.

ROLL CALL

Senators: Senate President Elizabeth Mitchell, Sen. Philip Bartlett, Sen. Kevin Raye, Sen. Jonathan Courtney

Sen. Lisa Marraché [arrived after the start of the meeting]

Representatives: Speaker Hannah Pingree, Rep. John Piotti, Rep. Seth Berry, Rep. Joshua Tardy, Rep. Philip Curtis

Legislative Officers: Joy O'Brien, Secretary of the Senate
Millicent MacFarland, Clerk of the House
Michael Cote, Assistant Clerk of the House
David E. Boulter, Executive Director of the Legislative Council
Debra Olken, Human Resources Director
Patrick Norton, Director, Office of Policy & Legal Analysis
Grant Pennoyer, Director, Office of Fiscal and Program Review
John Barden, Director, Law and Legislative Reference Library
Beth Ashcroft, Director, Office of Program Evaluation & Government Accountability

Chair Pingree convened the meeting at 10:03 A.M. with a quorum of members present.

SUMMARY OF DECEMBER 17, 2009 MEETING OF LEGISLATIVE COUNCIL

Motion: That the Meeting Summary of December 17, 2009 be accepted and placed on file.
Motion by Senator Mitchell. Second by Senator Bartlett. **Motion passed unanimous. (9-0)**
[Senator Marraché absent for vote.]

Chair Pingree asked if there was any objection to taking 1 item out of order. There was no objection. The council voted 9 – 0 to take Item 1 out of order. The Chair then moved to **New Business, Items 1.**

NEW BUSINESS

Item #1: Consideration of After Deadline Bill Requests / Addendum

Legislative Council Chair Pingree noted that a number of bill requests related to taxation had been tabled at the October Council meeting awaiting the outcome of the November referendum. With respect to those bill requests, the council acted on them as follows.

Motion: That all taxation-related legislative requests for bills that had been tabled at either the Legislative Council's October or November meetings, specifically LRs 2371, 2068, 2141, 2497, 2088, 2239, 2309, 2431, 2299, 2042, and 2238 not be authorized for introduction in the 2nd Regular Session of the 124th Legislature. Motion by Representative Piotti. Second by Senator Courtney.

Motion passed unanimous. (9-0) [Senator Mitchell absent for vote]

The Legislative Council then proceeded to consider and vote on the other bill requests in accordance with the previously adopted protocol. Of the 44 bill requests, the council authorized 20 requests for introduction in the 2nd Regular Session of the 124th Legislature, 18 failed to be authorized, 1 was withdrawn by the sponsor, and 5 were tabled until a future Legislative Council meeting. The Legislative Council's actions on the requests are included on the attached list.

The Legislative Council then returned to the other items on its agenda.

REPORTS FROM EXECUTIVE DIRECTOR AND COUNCIL OFFICES

Executive Director's Report

David Boulter, Executive Director of the Legislative Council, reported on the following:

1. Participation in on-site health programs
The H1N1 and season flu clinic held on January 12th was well attended, with 334 influenza vaccinations administered to legislators and employees. This was the second of two flu clinics held; over 165 seasonal flu shots were administered during the earlier flu clinic.

Sixteen legislative employees, representing nearly all legislative offices, participated in a CPR training class held at the State House on January 19th. The goal is to encourage legislative staff to be fully informed on the fundamentals of CPR, first aid and use of an AED should an emergency arise.
2. Email notification of expense payments to legislators
As reported earlier, legislators may now receive email notification using their designated email address whenever a state payment is made to their financial account. This notification allows legislators to know when deposits are to be made to their accounts along with transaction details. Since it was announced one week ago, 70 legislators have registered for this free service.
3. Library as potential repository for rules adopted by reference
The Law and Legislative Reference Library is pursuing discussions with the Secretary of State's office about becoming a designated repository for adopted state rules and standards that do not appear in full text in agency rules including those incorporated

by reference, such as fire, plumbing and building codes. As a repository, the library would become a readily accessible resource for agencies, other librarians, legislators and patrons who are seeking access to those rules and codes.

4. Preparation of Legislators' tax packets

Legislator tax packets for calendar year 2009 prepared by the Office of the Executive Director will be distributed to all legislators on Thursday, January 28th. The packet provides important tax information related to legislator payments that legislators will need in order to prepare their 2009 income tax returns.

Fiscal Report

Grant Pennoyer, Director, Office of Fiscal and Program Review, reported the following.

Revenue Update

Total General Fund Revenue - FY 2010 (\$'s in Millions)

	Budget	Actual	Var.	% Var.	Prior Year	% Growth
December	\$213.2	\$243.4	\$30.2	14.2%	\$241.5	0.8%
FYTD	\$1,175.1	\$1,208.1	\$33.0	2.8%	\$1,285.8	-6.0%

General Fund revenue in December was \$30.2 million (14.2%) over budget and was \$33.0 million (2.8%) over budget for the first half of FY 2010 based on the revised budgeted amounts of the December 2009 Revenue Forecast. General Fund revenue collections for the first half of FY 2010 declined 6.0% from the same period in FY 2009.

With the exception of Sales and Use taxes and Service Provider tax, all major General Fund tax categories were above budget with Corporate Income Tax leading the way at \$12.6 million over budget in December and for the fiscal year-to-date (FYTD). While December's positive performance is good news, a majority of this positive variance for December is related to timing issues. Over the course of this fiscal year much of this positive variance will be offset. Cigarette Tax and Transfers to Tax Relief Programs, which contributed just under \$10 million to December's positive variances, are the most significant examples of temporary variances that will likely be offset in January. \$2.8 million of the positive variance in the Other Revenue category was from Milk Pool distributions. That positive variance will be eliminated by the end of FY 2010.

Individual Income Tax estimated payments, which are due January 15th, were over budget in December. Some of this may represent greater than budgeted early payments by taxpayers to reduce their 2009 federal income tax liability. These early payments in December will reduce January receipts, potentially increase refunds or reduce final payments due April 15th.

December's Sales Tax performance, although under budget in December, was much closer to revised targets and is virtually on target for the first half of FY 2010. However, the Service Provider Tax, which was not adjusted in the December forecast, has fallen further below projections and was \$0.8 million (3.1%) below projections for the first half of FY 2010. Consumption of taxable goods and services remains weak. January revenue representing the remainder of holiday sales will be an important indicator for the next revenue forecast update.

Total Highway Fund Revenue - FY 2010 (\$'s in Millions)

	Budget	Actual	Var.	% Var.	Prior Year	% Growth
December	\$22.6	\$23.7	\$1.1	4.9%	\$26.4	-10.2%
FYTD	\$135.8	\$139.5	\$3.7	2.7%	\$145.0	-3.8%

Highway Fund revenue was \$1.1 million (4.9%) over budget in December. Primarily due to the gasoline tax portion of the Fuel Taxes category, the total variance for the FYTD was \$3.7 million (2.7%). Because the gasoline tax was not adjusted in the December forecast, the monthly distribution of budgeted revenue was also not adjusted. That monthly distribution had built up a positive variance of \$2.8 million for the gasoline tax through November.

With the exception of motor vehicle inspection fees, there were no other major variances from the revised revenue forecast. Motor vehicle inspection fees varied widely last fiscal year from month to month, but did average out close to budget by the close of the fiscal year. Expectations are the same for this fiscal year.

Cash Balances

Presented below is a summary of the State's average cash balances in December 2009 compared to December 2008. The reliance on internal borrowing to meet General Fund cash flow needs was at its highest level ever at \$300.0 million last month, \$175.0 million higher than December 2008. The December average balance for the total cash pool was \$330.2 million, almost \$74.3 million less than last December and significantly below the historical average (2001 to 2008) of \$523.9 million.

The State Treasurer and State Controller have been evaluating cash needs and cash flow projections. Their current assessment is that the cash pool can support this high level of internal borrowing through January (current budget assumptions had assumed internal borrowing through December).

The Dirigo Health Fund made some progress with the receipt of additional revenue from the final installment of the previously assessed savings offset payments. The average balance in the fund exclusive of the \$25 million General Fund cash advance was -\$16.1 million in December. With just 6 months remaining, it will be very difficult for Dirigo Health to reverse that \$16.1 million negative balance in order to repay the General Fund before the end of FY 2010.

Average balances for federal funds in December remained substantially negative as they were in the previous 2 months. This substantial negative balance was primarily related to MaineCare spending. The Department of Health and Human Services has not provided an explanation for the substantial negative balances. It appears to be coincident with unusually large payments related to hospital settlements. A similar negative balance occurred in May 2009 when another very large payment for hospital settlements occurred.

Summary of Treasurer's Cash Pool		
December Average Daily Balances		
Millions of \$'s		
	2008	2009
General Fund (GF) Total	\$20.2	\$16.3
General Fund (GF) Detail:		
Budget Stabilization Fund	\$130.9	\$0.2
Reserve for Operating Capital	\$40.6	\$0.0
Tax Anticipation Notes	\$0.0	\$0.0
Internal Borrowing	\$125.0	\$300.0
Other General Fund Cash	(\$276.3)	(\$283.9)
Other Spec. Rev. - Interest to GF	\$39.9	(\$15.9)
Other State Funds - Interest to GF	(\$13.1)	\$15.1
Highway Fund	\$11.8	\$20.4
Other Spec., Rev. - Retaining Interest	\$62.3	\$38.6
Other State Funds	\$204.9	\$152.4
Independent Agency Funds	\$78.5	\$103.2
Total Cash Pool	\$404.5	\$330.2

Winter Revenue Forecast Schedule

The Consensus Economic Forecasting Commission (CEFC) will meet on Monday, January 25th at 9:30AM in the Legislative Council Chambers to begin the winter forecast process. The Revenue Forecasting Committee will meet toward the end of February (very likely during the last week) to conclude the update of the revenue forecast in time for the March 1st reporting deadline.

EXECUTIVE SESSION

Motion: That, in accordance with 1 MRSA section 405, subsection 6, the Legislative Council enter into an executive session for the purposes of considering or discussing the results of the Personnel Committee's search process and resulting recommendations for appointment of a new Director of Information Services and a Director of the Office of the Revisor of Statutes, and also to discuss information from counsel with respect to a matter in litigation. **Motion by Senator Mitchell. Second by Representative Tardy. Motion passed unanimous. (8-0).** [Senator Marraché, Senator Raye absent for vote]

The Council recessed at approximately 10:56 a.m. to go into an executive session.

The Legislative Council adjourned its executive session at 11:19 a.m. Motion by Senator Mitchell. Second by Representative Berry. **Motion passed unanimous (8-0-0-2).** [Senator Bartlett and Representative Tardy absent for vote]

The Chair reconvened the Legislative Council meeting at 11:20 a.m.

REPORTS FROM COUNCIL COMMITTEES

1. Personnel Committee

Speaker Pingree, chair of the Personnel Committee reported on the following.

The Personnel Committee's Interview Panel began a search process in late summer to recruit for the positions of Revisor of Statutes and Director of Information Technology (IS Director). The panel conducted an extensive recruitment process, advertising nationally, online, and in Maine newspapers. The panel met frequently over a period of months, establishing position qualifications, reviewing applications, interviewing candidates and contacting references. The recruitment process has now been concluded and two very strong candidates are being recommended for appointment.

The interview panel considered over 120 applicants for the Director of Information Technology position and after preliminary screening narrowed the list to a top tier list. The panel interviewed five highly qualified individuals, some in the public sector and some in private sector, and conducted several second interviews. After careful consideration, the panel has recommended unanimously that current deputy director Scott Clark's educational background as well as his extensive experience here in the Legislature during the past 9 1/2 years and as an IT director with another branch of government would serve the Legislature well as it continues to improve its technological systems and capacity.

Similarly, the Revisor position produced applications from 21 well-qualified candidates, four of whom the panel interviewed. Again after careful consideration, the panel is recommending unanimously that current ROS Principal Analyst Suzanne Gresser be appointed as director of the Office of the Revisor of Statutes. With her 20+ years of experience as an attorney in the Revisor's Office and exemplary credentials, the committee is confident that Suzanne can lead the Revisor's office in a progressive and effective manner.

The challenges and needs of the legislature will continue to evolve as it confronts both new and old issues. The Personnel Committee is confident that both Mr. Clark and Ms. Gresser will be effective directors in leading their offices with skill and foresight.

Motion: That upon the unanimous recommendation of the Personnel Committee, the Legislative Council appoint Scott Clark of Augusta as director of the Office of Information Services for a 3-year term, commencing on Monday, January 25, 2010, pursuant to 3 MRSA, section 162, subsection 6, and that Mr. Clark's initial salary in the position be established at salary grade 14, step 7; further that, the executive director, in consultation with the director, establish performance standards and goals for the director's position and make such operational and organizational improvements as necessary to assure an effective Office of Information Services.

Motion by Representative Pingree. Second by Representative Piotti and Senator Raye.

Motion passed unanimous. (8-0) [Senator Bartlett and Representative Tardy absent for vote.]

Council Chair Pingree congratulated Mr. Clark on his appointment. She said there is considerable excitement about how best to improve legislative operations using technology including re-establishing an information technology committee that would meet periodically. She said she would be seeking volunteers from the council to sit on a committee.

Motion: That upon the unanimous recommendation of the Personnel Committee, the Legislative Council appoint Suzanne Gresser of Freeport as director of the Office of the Revisor of Statutes for a 3-year term, commencing on Monday, January 25, 2010, pursuant to 3 MRSA, section 162, subsection 6, and that Ms. Gresser's initial salary in the position be established at salary grade 14, step 6; further that, the executive director, in consultation with the director, establish performance standards and goals for the director's position and make such operational and organizational improvements as necessary to assure an effective Office of the Revisor of Statutes.

Motion by Representative Pingree. Second by Senator Raye. **Motion passed unanimous. (9-0)** [Representative Tardy absent for vote.]

Council Chair Pingree thanked the interview panel members for their work and stated that they should feel proud that the selected candidates were internal to the legislature, which speaks well of those offices and how hard they work.

2. State House Facilities Committee

Facilities Committee Chair Piotti stated that he had no report but he would be speaking to Mr. Boulter about scheduling a facilities committee meeting next month to discuss several items related to facilities.

3. Budget Subcommittee

Budget Subcommittee Chair Mitchell stated that she had no report but the budget work is really just beginning. Legislative Council Chair Pingree mentioned that, on behalf of the Council, she had sent a letter to the Joint Standing Committee on Appropriations and Financial Affairs indicating that the Council was planning to meet its budget adjustment target of \$2.2 million, as proposed in the Governor's supplemental budget bill. The Council must decide if that target is achievable and if so, how to achieve it. President Mitchell noted that all legislative operations will be looked at, but keeping in mind that the legislature is a separate, co-equal branch of government as the Council strives to meet the target.

4. CSG Annual Meeting Planning Subcommittee

(No Report)

ITEM 1: Legislative Council Actions Taken by Ballot

A copy of the list of actions taken by ballot by the Legislative Council since its December 17, 2009 meeting was included in the Council's packet of information. No further action by the Legislative Council was required.

Chair Pingree then proceeded to **Item 2** under New Business.

NEW BUSINESS

Receipts of reports:

ITEM #2: 2009 Annual Report of Midcoast Regional Redevelopment Authority

- ITEM #3: Study on the Feasibility of and the Process for the Creation of an Insurance Fraud Division within the Bureau of Insurance (Maine Bureau of Insurance)**
- ITEM #4: Review and Evaluation of LD 425, An Act to Require Private Insurance Coverage for Certain Services for Children with Disabilities (Maine Bureau of Insurance)**
- ITEM #5: Final Report of the Study Commission Regarding Teachers' Compensation**
- ITEM #6: Report on the State of Competition in the Maine Workers' Compensation Market (Maine Bureau of Insurance)**
- ITEM #7: Final Report of the Commission to Study Energy Infrastructure**
- ITEM #8: Review and Evaluation of LD 1198 – An Act to Reform Insurance Coverage to Include Diagnosis for Autism Spectrum Disorders (Maine Bureau of Insurance)**
- ITEM #9: Fourth Annual Report of the Right to Know Advisory Committee**
- ITEM #10: Final Report: Initiative to Streamline State Government (Joint Standing Committee on Appropriations and Financial Affairs)**

Motion: To accept the following reports and place them on file.

- *2009 Annual Report of Midcoast Regional Redevelopment Authority*
- *Study on the Feasibility of and the Process for the Creation of an Insurance Fraud Division within the Bureau of Insurance;*
- *Review and Evaluation of LD 425, An Act to Require Private Insurance Coverage for Certain Services for Children with Disabilities;*
- *Final Report of the Study Commission Regarding Teachers' Compensation;*
- *Report on the State of Competition in the Maine Workers' Compensation Market;*
- *Final Report of the Commission to Study Energy Infrastructure;*
- *Review and Evaluation of LD 1198 – An Act to Reform Insurance Coverage to Include Diagnosis for Autism Spectrum Disorders;*
- *Fourth Annual Report of the Right to Know Advisory Committee;*
- *Final Report: Initiative to Streamline State Government.*

Motion by Senator Bartlett. Second by Senator Raye. **Motion passed unanimous (9-0).**
[Representative Piotti absent for vote]

ITEM # 11: Government Evaluation Act Review of the Maine Human Rights Commission (Joint Standing Committee on Judiciary)

The letter from the committee was presented for informational purposes only. The full report was submitted to the legislature. No Legislative Council action was required.

ITEM #12: 2009 OPEGA Annual Report on Activities and Performance
 [Presentation by OPEGA Director Beth Ashcroft]

Ms. Ashcroft presented OPEGA's *Annual Report on Activities and Performance* for 2009. She proceeded to summarize the major components of the report. Ms. Ashcroft explained that the report is divided into three major categories: summary of the reports issued in 2009 and their results (page 19); assessment of OPEGA's performance on its strategic plan and objectives (page 6); and a five year review of OPEGA inputs, outputs and outcomes (page 3).

Reports Issued

In 2009, OPEGA issued five reports, four of which related to projects initiated in 2008 under the direction of the Government Oversight Committee of the 123rd Legislature. The reports were:

- *Final Report on MaineCare Children's Outpatient Mental Health Services*
- *Final Report on MaineCare Durable Medical Equipment and Medical Supplies*
- *Final Report on a Fund for a Healthy Maine Programs*
- *Information Brief on a Fund for a Healthy Maine Programs*
- *Final Report on Maine State Prison Management Issues*

Phase I of the Fund for a Healthy Maine Programs assessment addressed how Maine compares with other states in preventative health expenditures and phase II was a broad analysis of the effectiveness and efficiencies of activities.

In each report, key issues, required actions and recommendations were identified. Appendix C of the annual report summarizes the 19 reports issued by OPEGA during its five year existence and OPEGA's impact for those projects.

OPEGA's Performance

In February 2009, OPEGA developed a strategic plan designed to elevate OPEGA's performance. The plan established goals, objectives and performance measures to judge OPEGA's progress. A number of performance measures have target dates of December 2010, although progress toward those is noted in the report. Ms. Ashcroft explained that OPEGA has some goals and objectives that will be challenging to meet, including those related to conducting audits, evaluations and reviews on topics that are of primary interest to the legislature. OPEGA is exploring ways to make its work products more accessible and useful to legislators.

Five Year Plan

Ms. Ashcroft reminded the Legislative Council that the office was created five years ago. The cost effectiveness and efficiency of OPEGA and the Government Oversight Committee can be assessed by considering the resources expended (inputs), outputs produced and ultimately the outcomes achieved as a result. The report provides a snapshot of those factors. Ms. Ashcroft invited the Legislative Council members to provide her with feedback on the usefulness of those factors as indicators of performance. She concluded her remarks by saying she plans to work more with the office and the Government Oversight Committee to improve OPEGA's overall performance. Ms. Ashcroft then invited the council members to ask questions.

President Mitchell reflected on her time as a member of the oversight committee and asked Ms. Ashcroft to whether she felt the OPEGA statutes gave the office sufficient authority to analyze programs and make qualitative determinations as to which programs in a department are more

effective than others. By way of example, she mentioned children's mental health care where across the board budget cuts are being proposed, and asked how OPEGA could help the legislature understand where to focus limited funds.

Ms. Ashcroft responded that she felt current law was sufficient to allow those assessments. She said the focus of the assessment is principally driven by the question posed. Many of the topics OPEGA has dealt have been more general in nature so the results of the assessments have not produced that kind of information or system changes for improved effectiveness.

Speaker Pingree asked about the resources OPEGA expended on the Fund for a Healthy Maine Programs assessment in light of the availability of relevant information from other sources such as NCSL. Ms. Ashcroft responded by saying the report was divided into two components. The first component was a comparative assessment and OPEGA did utilize available externally-produced data. The second component, effectiveness/efficiencies assessment, required more internal assessment. The work required two analysts for several months, though not on a full-time basis.

Speaker Pingree noted that in spite of the staff time and readily available data for that assessment, OPEGA's report did not appear to result in quantifiable savings recommendations or identification of programs that are not working effectively. Ms. Ashcroft agreed. Senator Raye noted that, as a former Government Oversight Committee member, he realizes that decisions on the issues to be evaluated are at the direction of the Government Oversight Committee.

President Mitchell reiterated her concern that the reports issued by OPEGA to-date appear to have little immediate relevance to the legislature's priorities of closing the budget shortfall and identifying programs that work or do not work well. Senator Bartlett noted that it appears that a good deal of time appears to be spent on getting OPEGA staff up to speed on information that other staff, including OPLA and NCSL, already have. He suggested seeking out ways to better utilize OPEGA staff without duplicating information gathering efforts. Ms. Ashcroft agreed, indicating that better coordination and utilization of internal resources is important, including policy committees and staff offices such as OFPR and OPLA. She pointed out OPEGA has learned a great deal in its five years but state government is very large, and more expertise will need to be developed to better identify programs that are not useful.

In response to a question, Ms. Ashcroft explained that the double asterisks in Appendix C of the report indicate those areas where potential fiscal impacts are likely to be higher than the impact shown. Speaker Pingree concluded by noting that the report identifies "past costs that could have been avoided." She commented that emphasis should be on avoidance of future costs, rather than already incurred past costs. Ms. Ashcroft commented that the intent was to identify areas where the state is at risk for unnecessarily incurring those costs again in the future if corrective measures are not taken.

ANNOUNCEMENTS AND REMARKS

None

ADJOURNMENT

The Legislative Council meeting was adjourned at 11:54 A.M. Motion by Senator Mitchell. Second by Senator Raye. **Motion to adjourn passed, unanimous. (8-0)** [Representative Piotti and Representative Berry absent for vote.]

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MAINE STATE LEGISLATURE

OFFICE OF THE EXECUTIVE DIRECTOR
LEGISLATIVE COUNCIL

**Executive Director's Report
February 25, 2010**

1. YMCA's Youth in Government Program
The Maine YMCA will hold its annual Youth in Government program for high school youth on Friday through Sunday, March 5 - 7, 2010. Activities will begin at about noon on Friday. About 80 students will participate.
2. YMCA's Youth in Government Program – Part 2
At the urging of the Legislative Council, the Maine YMCA has agreed to try holding its Youth in Government program in the fall rather than the spring. Numerous school activities in the fall create scheduling challenges but a November date seems achievable without losing participating schools. The Maine YMCA requests approval to hold its program during the 2nd week in November. If approved, the program would begin this fall (November 12-14, 2010).
3. Legislative Memorial Scholarship Auction
The Legislative Scholarship auction will be held on Tuesday, March 16th at the Augusta Civic Center, beginning at 5:00 p.m. Tickets are still available, and item donations are still being accepted.

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Fiscal Briefing

Legislative Council Meeting – February 25, 2010

Prepared by the Office of Fiscal & Program Review

1. Revenue Update (also see attached tables)

Total General Fund Revenue - FY 2010 (\$'s in Millions)

	Budget	Actual	Var.	% Var.	Prior Year	% Growth
January	\$229.8	\$243.4	\$13.5	5.9%	\$251.3	-3.2%
FYTD	\$1,404.9	\$1,451.4	\$46.5	3.3%	\$1,537.1	-5.6%

General Fund revenue was \$13.5 million (5.9%) over budget in January, resulting in a \$46.5 million (3.3%) positive variance for the fiscal year-to-date (FYTD). This strong performance was primarily attributable to the Individual Income Tax and the Corporate Income Tax, which offset continuing weakness in sales tax collections. General Fund revenue collections for the first half of FY 2010 declined 5.6% from the same period in FY 2009.

Through January, the Individual Income Tax has built up a \$20.7 million cushion over the December 2009 revenue forecast. Some of this positive variance related to withholding and refunds is likely a timing issue between months, however final estimated payments for the 2009 tax year, which were due January 15th, performed well. The Revenue Forecast Committee (RFC) revised Individual Income Tax estimates upward by \$13.4 million in FY 2010 and \$2.0 million in FY 2011.

Corporate Income Tax has performed very well in the 2 months since the last forecast, building up a positive variance of the FYTD through January of \$23.5 million. Tax year 2008 was a better year than estimated last November and national forecasts for corporate profitability, while still negative, have improved since the December 2009 revenue forecast. As a result, the RFC revised Corporate Income Tax estimates upward by \$29.7 million in FY 2010 and \$36.7 million in FY 2011.

Sales Tax performance was closer to revised targets, but it still remains under budget for the FYTD through January by \$2.1 million, \$2.6 million when the Service Provider Tax is included with Sales and Use Tax. Consumption of taxable goods and services remains weak. The RFC revised Sales and Use Tax estimates downward by \$13.8 million in FY 2010 and \$17.0 million in FY 2011.

Total Highway Fund Revenue - FY 2010 (\$'s in Millions)

	Budget	Actual	Var.	% Var.	Prior Year	% Growth
January	\$23.6	\$25.0	\$1.5	6.2%	\$24.8	0.9%
FYTD	\$159.4	\$164.5	\$5.1	3.2%	\$169.8	-3.1%

Highway Fund revenue was \$1.5 million (6.2%) over budget in January and was \$5.1 million (3.2%) over budget for the FYTD. The Fuel Taxes category, which was \$5.1 million over budget for the FYTD, continues to be the primary reason for this positive variance. The RFC's sales and excise tax model has been unable to capture the recent performance in this category. In this most recent forecast, the RFC completed ignored the recommendations of the tax model and reverted back to the forecast prior to the December 2009 revenue revisions. This restores \$5.0 million in FY 2010 and \$4.8 million in FY 2011. Overall, the RFC increased Highway Fund revenue estimates for the 2010-2011 biennium by \$9.4 million. The Fuel Tax increase was reduced by a modest net reduction in other categories.

Revenue from motor vehicle registrations and fees remained modestly under budget for the FYTD. Long-term trailer revenue had a very strong month in January, offsetting other negative variances in this category. Title fee revenue also had accumulated a positive variance through January. Motor vehicle inspection sticker revenue rebounded strongly in January, erasing a negative variance through December of \$0.5 million.

2. Cash Balances

Presented below is a summary of the State's average cash balances in January 2010 compared to January 2009. The reliance on internal borrowing to meet General Fund cash flow needs remained at \$300 million again in January. The January average balance for the total cash pool was \$350.6 million, almost \$74.3 million less than last January and significantly below the historical average (2002 to 2009) of \$571.1 million.

The State Treasurer and State Controller have been evaluating cash needs and cash flow projections. Their current assessment is that the cash pool can support this high level of internal borrowing through February (current budget assumptions had assumed internal borrowing through December). They feel that some additional internal borrowing capacity remains. Cash flow over the next few weeks will be evaluated carefully and often to determine the timing of any external borrowing that may be required.

The Dirigo Health Fund has made some progress over the last 2 months toward building up a cash balance sufficient to refund a portion of the \$25 million General Fund cash advance. In January, the average balance excluding the cash advance was -\$13.3 million. Dirigo returned \$11.0 million of the \$25 million advance through February 11th will implement the necessary initiatives to repay the remaining \$14 million by the end of this fiscal year.

Average balances in the Federal Expenditures Fund have shown some improvement from the lowest average of -\$40.0 million in October 2009. January's negative balance was \$21.9 million, which is still unusually high.

Summary of Treasurer's Cash Pool		
January Average Daily Balances		
Millions of \$'s		
	2008	2009
General Fund (GF) Total	\$41.4	\$41.5
General Fund (GF) Detail:		
Budget Stabilization Fund	\$125.8	\$0.2
Reserve for Operating Capital	\$40.6	\$0.0
Tax Anticipation Notes	\$0.0	\$0.0
Internal Borrowing	\$195.5	\$300.0
Other General Fund Cash	(\$320.5)	(\$258.8)
Other Spec. Rev. - Interest to GF	\$9.0	(\$12.2)
Other State Funds - Interest to GF	(\$11.3)	\$11.6
Highway Fund	\$20.8	\$19.6
Other Spec. Rev. - Retaining Interest	\$44.3	\$44.7
Other State Funds	\$198.0	\$149.3
Independent Agency Funds	\$78.6	\$96.2
Total Cash Pool	\$380.9	\$350.6

3. March 2010 Revenue Forecast

The Revenue Forecasting Committee (RFC) met on Tuesday, February 23, 2010 to revise the revenue projections for the General Fund and Highway Fund prior to the March 1st reporting deadline. The table below summarizes the changes adopted by the RFC on Tuesday. For the General Fund and Highway Fund, the reversed some of the downward adjustments approved in the December 2009 forecast. The March 2010 forecast added back \$51.0 million to General Fund resources for the 2010-2011 biennium. Highway Fund revenue was increased by \$9.4 million. For other revenue sources, the RFC made small downward revisions to the Fund for a Healthy Maine revenue forecast and made no adjustments to the MaineCare Dedicated Revenue Taxes.

Summary of March 2010 Revenue Revisions

General Fund Summary

	FY09 Actual	FY10	FY11	FY12	FY13
Current Forecast	\$2,811,368,295	\$2,649,211,742	\$2,721,503,989	\$2,776,628,302	\$2,889,913,034
Annual % Growth	-9.0%	-5.8%	2.7%	2.0%	4.1%
Net Increase (Decrease)		\$29,817,638	\$21,158,388	\$2,336,418	\$7,111,403
Revised Forecast	\$2,811,368,295	\$2,679,029,380	\$2,742,662,377	\$2,778,964,720	\$2,897,024,437
Annual % Growth	-9.0%	-4.7%	2.4%	1.3%	4.2%

Highway Fund Summary

	FY09 Actual	FY10	FY11	FY12	FY13
Current Forecast	\$324,242,149	\$305,488,175	\$301,626,331	\$306,856,435	\$311,455,041
Annual % Growth	-1.2%	-5.8%	-7.0%	0.4%	3.3%
Net Increase (Decrease)		\$4,003,591	\$5,440,038	\$5,209,059	\$6,430,059
Revised Forecast	\$324,242,149	\$309,491,766	\$307,066,369	\$312,065,494	\$317,885,100
Annual % Growth	-1.2%	-4.5%	-0.8%	1.6%	1.9%

Fund for a Healthy Maine Summary

	FY09 Actual	FY10	FY11	FY12	FY13
Current Forecast	\$68,409,736	\$59,398,770	\$56,433,315	\$62,835,233	\$63,455,718
Annual % Growth	10.3%	-13.2%	-17.5%	5.8%	12.4%
Net Increase (Decrease)		(\$6,807)	(\$9,779)	(\$14,856)	(\$109,354)
Revised Forecast	\$68,409,736	\$59,391,963	\$56,423,536	\$62,820,377	\$63,346,364
Annual % Growth	10.3%	-13.2%	-5.0%	11.3%	0.8%

Medicaid/MaineCare Dedicated Revenue Taxes Summary

	FY09 Actual	FY10	FY11	FY12	FY13
Current Forecast	\$138,029,363	\$138,327,254	\$137,555,805	\$137,555,805	\$137,555,805
Annual % Growth	6.0%	0.2%	-0.3%	-0.6%	0.0%
Net Increase (Decrease)		\$0	\$0	\$0	\$0
Revised Forecast	\$138,029,363	\$138,327,254	\$137,555,805	\$137,555,805	\$137,555,805
Annual % Growth	6.0%	0.2%	-0.6%	0.0%	0.0%

The General Fund shortfall to be addressed as part of the Supplemental Budget deliberations has been reduced by this forecast from \$408.4 million to \$357.5 million (see table below).

Summary of General Fund Shortfall – 2010-2011 Biennium

	FY 2010	FY 2011	Biennium
Negative Ending Balances from FY 2009	(\$22.3)	(\$2.5)	(\$24.8)
December 2009 Revenue Revision	(\$209.4)	(\$174.2)	(\$383.6)
March 2010 Revenue Revision	\$29.8	\$21.2	\$51.0
Ending General Fund Balances	(\$201.9)	(\$155.6)	(\$357.5)

General Fund and Highway Fund Revenue
Fiscal Year Ending June 30, 2010
Reflecting Budgeted Amounts Through December 2009 Revenue Forecast

JANUARY 2010 REVENUE VARIANCE REPORT

Revenue Line	January '10 Budget	January '10 Actual	January '10 Variance	FY10 YTD Budget	FY10 YTD Actual	FY10 YTD Variance	FY10 YTD Variance %	FY10 Budgeted Totals
General Fund								
Sales and Use Tax	91,239,258	89,108,629.48	(2,130,628.52)	487,847,845	485,707,905.47	(2,139,939.53)	-0.4%	897,654,270
Service Provider Tax	4,663,245	4,963,967.65	300,722.65	28,664,852	28,210,114.19	(454,737.81)	-1.6%	55,590,852
Individual Income Tax	121,698,000	137,027,469.87	15,329,469.87	734,689,452	755,375,858.83	20,686,406.83	2.8%	1,277,980,000
Corporate Income Tax	2,400,000	13,358,756.37	10,958,756.37	64,406,408	87,937,625.32	23,531,217.32	36.5%	118,045,922
Cigarette and Tobacco Tax	10,948,996	10,386,180.20	(562,815.80)	85,050,425	87,472,977.25	2,422,552.25	2.8%	140,139,902
Insurance Companies Tax	62,153	23,022.48	(39,130.52)	12,007,935	12,901,263.32	893,328.32	7.4%	71,985,000
Estate Tax	2,245,136	1,509,021.84	(736,114.16)	13,881,453	15,348,569.90	1,467,116.90	10.6%	29,593,253
Other Taxes and Fees	9,654,456	10,672,040.25	1,017,584.25	76,323,585	76,030,298.11	(293,286.89)	-0.4%	147,251,531
Fines, Forfeits and Penalties	2,296,670	2,220,260.90	(76,409.10)	19,114,822	19,247,844.88	133,022.88	0.7%	32,201,846
Income from Investments	(55,112)	(10,037.37)	45,074.63	193,185	176,037.26	(17,147.74)	-8.9%	(192,418)
Transfer from Lottery Commission	4,762,916	4,005,283.62	(757,632.38)	29,530,040	30,188,611.90	658,571.90	2.2%	49,534,250
Transfers to Tax Relief Programs	(12,230,335)	(23,145,573.62)	(10,915,238.62)	(94,183,663)	(98,755,343.94)	(4,571,680.94)	-4.9%	(112,059,862)
Transfers for Municipal Revenue Sharing	(8,860,724)	(9,763,798.24)	(903,074.24)	(60,901,641)	(61,804,508.71)	(902,867.71)	-1.5%	(100,888,428)
Other Revenue	1,018,628	3,001,266.06	1,982,638.06	8,283,877	13,376,011.71	5,092,134.71	61.5%	40,408,604
Totals	229,843,287	243,356,489.49	13,513,202.49	1,404,908,575	1,451,413,265.49	46,504,690.49	3.3%	2,647,244,722
Highway Fund								
Fuel Taxes	16,631,851	17,500,703.56	868,852.56	109,281,412	114,346,338.33	5,064,926.33	4.6%	215,292,026
Motor Vehicle Registration and Fees	6,072,472	5,818,265.96	(254,206.04)	41,141,157	40,978,126.07	(163,030.93)	-0.4%	76,043,693
Inspection Fees	200,886	768,108.50	567,222.50	2,412,553	2,462,863.07	50,310.07	2.1%	4,046,915
Fines, Forfeits and Penalties	133,523	90,161.40	(43,361.60)	983,974	940,612.69	(43,361.31)	-4.4%	1,745,049
Income from Investments	8,000	9,685.87	1,685.87	79,445	81,904.78	2,459.78	3.1%	144,622
Other Revenue	519,354	847,085.72	327,731.72	5,512,648	5,725,140.48	212,492.48	3.9%	8,215,870
Totals	23,566,086	25,034,011.01	1,467,925.01	159,411,189	164,534,985.42	5,123,796.42	3.2%	305,488,175

Comparison of Actual Year-to-Date Revenue Through January of Each Fiscal Year

REVENUE CATEGORY	FY 2006	% Chg	FY 2007	% Chg	FY 2008	% Chg	FY 2009	% Chg	FY 2010	% Chg
GENERAL FUND										
Sales and Use Tax	\$513,456,218.41	3.7%	\$532,632,785.75	3.7%	\$535,259,894.34	0.5%	\$516,785,238.55	-3.5%	\$485,707,905.47	-6.0%
Service Provider Tax	\$23,022,256.14	8.0%	\$23,872,776.86	3.7%	\$26,018,109.49	9.0%	\$27,146,408.24	4.3%	\$28,210,114.19	3.9%
Individual Income Tax	\$746,293,732.81	4.1%	\$784,297,902.72	5.1%	\$822,619,978.15	4.9%	\$837,027,625.09	1.8%	\$755,375,858.83	-9.8%
Corporate Income Tax	\$94,895,605.08	40.0%	\$79,080,475.60	-16.7%	\$82,070,802.73	3.8%	\$73,130,993.82	-10.9%	\$87,937,625.32	20.2%
Cigarette and Tobacco Tax	\$87,587,650.83	51.0%	\$96,340,925.68	10.0%	\$91,173,441.48	-5.4%	\$87,752,681.97	-3.8%	\$87,472,977.25	-0.3%
Insurance Companies Tax	\$11,890,563.34	-20.4%	\$11,583,827.28	-2.6%	\$13,503,086.88	16.6%	\$12,622,255.96	-6.5%	\$12,901,263.32	2.2%
Estate Tax	\$49,367,403.81	182.8%	\$31,082,350.51	-37.0%	\$14,656,738.91	-52.8%	\$15,680,049.64	7.0%	\$15,348,569.90	-2.1%
Other Taxes and Fees	\$70,221,961.92	6.4%	\$74,986,914.20	6.8%	\$72,617,142.92	-3.2%	\$72,115,812.04	-0.7%	\$76,030,298.11	5.4%
Fines, Forfeits and Penalties	\$19,403,203.92	0.3%	\$22,804,295.19	17.5%	\$25,631,825.80	12.4%	\$24,775,428.81	-3.3%	\$19,247,844.88	-22.3%
Earnings on Investments	\$3,458,620.13	49.7%	\$1,614,548.75	-53.3%	\$2,085,953.64	29.2%	\$1,423,471.83	-31.8%	\$176,037.26	-87.6%
Lottery Transfers	\$28,970,855.82	-2.2%	\$29,901,429.08	3.2%	\$29,185,662.34	-2.4%	\$29,601,408.07	1.4%	\$30,188,611.90	2.0%
Transfer from Lottery Commission	(\$91,043,464.42)	-271.6%	(\$83,602,815.35)	8.2%	(\$93,913,556.87)	-12.3%	(\$108,822,567.62)	-15.9%	(\$98,755,343.94)	9.3%
Transfers to Tax Relief Programs	(\$65,617,841.75)	-10.3%	(\$63,150,337.41)	3.8%	(\$70,052,740.85)	-10.9%	(\$68,608,655.14)	2.1%	(\$61,804,508.71)	9.9%
Transfers for Municipal Revenue Sharing	\$27,257,698.67	-65.9%	\$20,108,872.09	-26.2%	\$20,922,433.82	4.0%	\$16,497,550.61	-21.1%	\$13,376,011.71	-18.9%
Other Revenue	\$1,519,164,464.71	1.0%	\$1,561,553,950.95	2.8%	\$1,571,778,772.78	0.7%	\$1,537,127,701.87	-2.2%	\$1,451,413,265.49	-5.6%
HIGHWAY FUND										
Fuel Taxes	\$114,789,282.40	-1.1%	\$115,902,925.01	1.0%	\$116,015,919.59	0.1%	\$112,140,686.49	-3.3%	\$114,346,338.33	2.0%
Motor Vehicle Registration and Fees	\$46,751,990.29	6.2%	\$46,098,179.22	-1.4%	\$46,030,094.48	-0.1%	\$47,489,413.85	3.2%	\$40,978,126.07	-13.7%
Inspection Fees	\$2,673,189.39	4.7%	\$2,740,108.40	2.5%	\$2,655,790.20	-3.1%	\$2,218,224.73	-16.5%	\$2,462,863.07	11.0%
Fines	\$1,056,699.39	2.3%	\$1,013,164.37	-4.1%	\$1,045,069.09	3.1%	\$1,015,836.96	-2.8%	\$940,612.69	-7.4%
Income from Investments	\$956,578.43	99.6%	\$469,611.99	-50.9%	\$885,140.27	88.5%	\$341,733.55	-61.4%	\$81,904.78	-76.0%
Other Revenue	\$6,378,015.68	10.9%	\$6,021,032.19	-5.6%	\$6,630,788.43	10.1%	\$6,633,500.87	0.0%	\$5,725,140.48	-13.7%
TOTAL HIGHWAY FUND REVENUE	\$172,605,755.58	1.6%	\$172,245,021.18	-0.2%	\$173,262,802.06	0.6%	\$169,839,396.45	-2.0%	\$164,534,985.42	-3.1%

Boulter, David

Subject: RE: Request to Participate in Earth Hour 2010

Importance: High

Legislative Council Matter

From: Elsie Flemings [<mailto:elsie.flemings@gmail.com>]

Sent: Tuesday, February 02, 2010 8:37 PM

To: Hannah Pingree; John Piotti; Seth Berry; duchesne@midmaine.com; Hinck, RepJon

Subject: Fwd: Participate in Earth Hour 2010

Hi all,

Do you think there is any chance our state house would do something like this? I got several requests about this last year as well. They are asking the state house and governor's mansion to participate in "Earth Hour" and turn off all non-essential lights for an hour at 8:30pm on March 27th. Could be some good opportunity for outreach if we did it? Although I guess depending on where we are with the budget, it could be a tough time?

Thanks,
Elsie

----- Forwarded message -----

From: Tricia Harrison <tricia.harrison@jax.org>

Date: Tue, Feb 2, 2010 at 2:16 PM

Subject: Participate in Earth Hour 2010

To: RepElsie.Flemings@legislature.maine.gov

Feb 2, 2010

Representative Elspeth Flemings
2 State House Station
Augusta, ME 04333

Dear Representative Flemings,

Climate change is happening all around us and its pace is accelerating.

From melting ice caps to increasingly intense weather patterns, climate change is already impacting life on Earth.

In a bold statement of collective concern for our planet, millions of people around the world will turn off their lights for one hour--Earth Hour--on March 27, 2010 at 8:30 p.m. local time.

Led by World Wildlife Fund, Earth Hour is the largest event of its kind in the world. In 2009, nearly one

2/10/2010

P17

billion people from 4,100 cities in

87 countries participated, as well as international landmarks including the Golden Gate Bridge, Empire State Building, Eiffel Tower and Great Pyramids, and the city skylines of Las Vegas, Hong Kong and Tel Aviv.

I am writing to ask that our state participate in Earth Hour 2010.

Participation is easy. By agreeing to turn off all non-essential lighting in the governor's mansion and state capitol during the event, we will join cities, states, individuals, corporate and government leaders across the country and around the world in calling for action to save our planet for future generations. Earth Hour reminds us that by working together, we can make a difference in solving one of the most critical issues of our time.

Earth Hour also provides an excellent forum for citizens to hold meaningful conversations about the ways in which all of us can act to be part of the solution which is why I encourage you to make our state a participant in Earth Hour 2010.

Additional details are available at www.EarthHour.org or you can contact WWF at

EarthHour@wwfus.org for additional assistance.

Our community cares about the environment. I very much hope that you will choose to participate and help send a powerful message to the world that the U.S. is a leader in the movement to address climate change.

Sincerely,

Mrs. Tricia Harrison

PO Box 52

Hulls Cove, ME 04644-0052

20728835



Press Release

SHARE

WWF's Earth Hour Returns for 2010 in Largest Call for Action on Climate Change in History

Mount Rushmore, Las Vegas Strip, Empire State Building, Golden Gate Bridge and other US Landmarks to "turn out" for the planet at 8:30 pm on Saturday, March 27

For Release: Jan 19, 2010
Dan Forman
dan.forman@wwfus.org
(202) 495-4546

6
tweets

retweet

Boletín de prensa en español



Earth Hour 2010

On Saturday, March 27th at 8:30 pm local time join hundreds of millions of people around the world in calling for action on climate change.

WASHINGTON, DC, January 19, 2010 – World Wildlife Fund announced today that Earth Hour 2010 will take place on Saturday, March 27 from 8:30 pm to 9:30 pm, with many of the nation's most iconic landmarks dimming their lights for one hour in what is expected to be the largest call for action on climate change in history.

The initial list of US landmarks taking part in this global climate event includes Mount Rushmore, Empire State Building, the "Welcome to Fabulous Las Vegas," Harrah's Caesar Palace and the MGM Mirage on the Las Vegas Strip and San Francisco's Golden Gate Bridge. New Earth Hour participants in 2010 will include Montezuma Castle National Monument in Arizona and the Soldiers and Sailors Monument in Indianapolis. Other local landmarks taking part include Atlanta's Bank of America building and the Pike Place Market sign in Seattle, with many more expected to sign on in the days ahead.

WWF officials said they are hopeful of Earth Hour participation in all 50 US states, as Americans from every walk of life, in communities large and small, symbolically dim their lights in solidarity for climate action with hundreds of millions of people around the world. The event will have special significance to Americans in the wake of a US government report from June 2009 which found that every region of the nation is experiencing significant, adverse impacts from climate change including droughts, floods, heat waves and wildfires. A study released in

November 2009 by WWF and the insurance company Allianz SE warned that by mid-century, rising global sea levels caused by climate change could increase risks to more than \$7 trillion in buildings, transportation infrastructure, and other assets in major U.S. coastal cities, including Boston, Houston, Los Angeles, New York and San Francisco.

"Climate change is real and it's happening right now in the US, impacting our water resources, energy supplies, transportation, agriculture and health, putting our livelihoods and economic future at risk in every part of the country," said WWF Climate Director Keya Chatterjee. "Earth Hour is a way for people across the US to join together with people from throughout the world to signal their concern about climate change and send a message about the urgent need for action."

"Earth Hour directly links with Department of Interior and National Park Service priorities," said Mount Rushmore National Memorial Superintendent Gerard Baker. "Our stewardship mission is to manage this country's most treasured landscapes unimpaired for the enjoyment of future generations. This mission is being challenged particularly by climate change. As stewards of our national parks, especially considering the challenges of climate change, we must be visible leaders to demonstrate commitment to energy and water conservation... and to use our parks to teach the public about climate change and the ways citizens can reduce their carbon footprints."

A number of organizations have also pledged their support for Earth Hour and will encourage their supporters and the public to take part including Goddard Systems, Inc., HandsOn Network, American Federation of Teachers, NAACP, National Coalition on Black Civic Participation, National Park Service's WebRangers, American Bird Conservancy, Jane Goodall's Roots & Shoots, Focus the Nation, National Association of Secondary School Principals, National Association of Student Councils, National Honor Society, National Junior Honor Society, National Science Teachers Association, National Association of Neighborhoods, Apartment and Office Building Association of Metropolitan Washington and Reverb, a non-profit organization that greens concert tours.

"We want children to think about how we all impact the environment in our daily lives and how each one of us can make a difference. Earth Hour provides a great opportunity to accomplish that," said Joseph Schumacher, CEO of Goddard Systems, Inc., a national childcare franchise and national supporter of Earth Hour 2010. "As educators and as parents, we want to help children understand that how they care for and protect the earth will affect future generations"

"Climate change is the most urgent issue facing our planet today, and we need to unite the world around meaningful action," Chatterjee said. "With a simple flick of the switch, Americans will not only be sending a signal that they want solutions to the climate crisis, but they'll be helping to turn the lights out on our nation's dangerous dependency on foreign oil, and an unsustainable economic future. That's a powerful message that everyone around the world will be able to see bright and clear on March 27th."

Note to Editors:

Footage and photographs of *Earth Hour* 09 being observed are available upon request.

Photos and footage: <https://www.myearthhour.org/news/for-media>

Logos: <https://www.myearthhour.org/tools>

Earth Hour 2010 Video: <https://www.myearthhour.org/earth-hour-video>

Follow *Earth Hour* on twitter: www.Twitter.com/EarthHourUS

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ABOUT EARTH HOUR :

Since its inception three years ago, *Earth Hour* has captured the world's imagination becoming a global phenomenon. Last year, for *Earth Hour* 2009 nearly one billion people in 4,100 cities in 87 countries on seven continents turned out. In the U.S. alone, 80 million Americans and 318 cities officially voted for action with their light switch. These people and municipalities were joined by iconic landmarks including: the Las Vegas Strip, the Chrysler and Empire State Buildings in New York City, the Space Needle in Seattle, Church of Latter-Day Saints Temple in Salt Lake City, the Gateway Arch in St. Louis and the National Cathedral in Washington DC. International landmarks that turned off their lights included the Great Pyramids of Giza, Parthenon in Athens, St. Peter's Basilica in Vatican City, Big Ben and Houses of Parliament in London, Paris' Elysee Palace and Eiffel Tower, Beijing's Birds Nest and Water Cube, Symphony of Lights in Hong Kong, Sydney's Opera House and Christ de Redeemer status in Rio de Janeiro.

**Legislative Council Policy Relevant to Request
By Rep. Flemings to Darken the State House In Support of World Wildlife Fund's
"Earth Hour 2010"**

February 2010

Policy:

That as a matter of general policy, the Legislative Council not grant requests to light the State House dome or display legislative lights in various colors in support of, opposition to, or in recognition of various groups or causes. In exceptional circumstances, the presiding officers may waive the policy to grant approval.

The policy was adopted by the Legislative Council by unanimous vote on February 24, 2005.

Background:

The Legislative Council had considered a request from the American Heart Association to light the State House dome in red. Although the request was considered to be for a worthy cause, the council was concerned that granting the request would set a precedent for lighting the dome in support of various causes, some of which inevitably could politicize or offend.

The State House Facilities Committee voted unanimously at that time to recommend that the Legislative Council adopt a policy that such requests not be granted. The Legislative Council adopted such a policy on February 24, 2005. Since that time, the Legislative Council has adhered to its policy without exception.

G:\Council\124th Legislative Council\Agenda\Legislative Council Policy Relevant to Request.doc

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

2 **PART CC**

3 **Sec. CC-1. Legislature; lapsed balances; fiscal year 2009-10.**

4 Notwithstanding any other provision of law, \$1,096,299 of unencumbered balance
5 forward from the various program accounts and line categories in the legislative accounts,
6 as specified by the Executive Director of the Legislative Council, lapses to the General
7 Fund in fiscal year 2009-10. The executive director shall review the legislative accounts
8 and identify to the State Controller and State Budget Officer by May 15, 2010 the
9 unencumbered balance forward amounts by account and line category totaling \$1,096,299
10 that will lapse to the General Fund to achieve targeted savings for fiscal year 2009-10.

11 **Sec. CC-2. Legislature; lapsed balances; fiscal year 2010-11.**

12 Notwithstanding any other provision of law, \$1,198,166 of unencumbered balance
13 forward from the various program accounts and line categories in the legislative accounts,
14 as specified by the Executive Director of the Legislative Council, lapses to the General
15 Fund in fiscal year 2010-11. The executive director shall review the legislative accounts
16 and identify to the State Controller and State Budget Officer by May 15, 2011 the
17 unencumbered balance forward amounts by account and line category totaling \$1,198,166
18 that will lapse to the General Fund to achieve targeted savings for fiscal year 2010-11.

19

Fiscal Note

	FY 2009-10	FY 2010-11	FY 2011-12	FY 2012-13
Transfers				
General Fund	\$1,096,299	\$1,198,166	\$0	\$0

20

SUMMARY

21

PART CC

22 This Part provides that a total of \$1,096,299 from legislative accounts within the
23 Legislature lapses to the General Fund in fiscal year 2009-10 and a total of \$1,198,166
24 from legislative accounts within the Legislature lapses to the General Fund in fiscal year
25 2010-11. As a result of the downward adjustments to General Fund revenue for the
26 current fiscal year, these adjustments will achieve savings of \$1,096,299 in fiscal year
27 2009-10 and \$1,198,166 in fiscal year 2010-11 for the legislative branch.

Please AMEND Part A, Section 1 of LD 1671 as follows:

Administrative and Financial Services, Department of

Please amend page 2, lines 5 through 12, as follows:

CURRENT

DEPARTMENTS AND AGENCIES-STATEWIDE 0016

2009-10 2010-11

Initiative: Reduces funding from departments and agencies statewide from projected savings in Personal Services achieved through a rate reduction for retiree health insurance.

GENERAL FUND
Personal Services

(19,430,058)

Total 0 (19,430,058)

HIGHWAY FUND - Informational
Personal Services

(6,048,200)

Total 0 (6,048,200)

REVISED

DEPARTMENTS AND AGENCIES-STATEWIDE 0016

2009-10 2010-11

Initiative: Reduces funding from departments and agencies statewide from projected savings in Personal Services achieved through a rate reduction for retiree health insurance.

GENERAL FUND
Personal Services

(19,326,214)

Total 0 (19,326,214)

HIGHWAY FUND - Informational
Personal Services

(6,048,200)

Total 0 (6,048,200)

**Legislative Council Actions
Taken by Ballot Since the
January 21, 2010 Council Meeting**

Request for Introduction of Legislation

- A. LR 2583 **Resolve, to Make the Rules Concerning the Site Location of Development Laws Major Substantive Rules**

Submitted by: Senator Seth Goodall
Accepted: February 2, 2010 Vote: 10 – 0 in favor

- B. LR 2582 **An Act to Prohibit Surcharges on the Use of Debit Cards**

Submitted by: Representative Sharon Treat
Accepted: February 3, 2010 Vote: 9 – 1 in favor

- C. LR 2581 **JOINT RESOLUTION MEMORIALIZING CONGRESS TO ISSUE THE \$250 ONE-TIME PAYMENT TO SOCIAL SECURITY RECIPIENTS**

Submitted by: Representative James Campbell
Accepted: February 4, 2010 Vote: 10 – 0 in favor

- D. LR 2577 **An Act to Exempt Personal Constituent Information from Freedom of Access**

Submitted by: Representative Dawn Hill
Accepted: February 11, 2010 Vote: 7 – 3 in favor

- E. LR 2593 **An Act to Make Certain MaineCare Rules Regarding Service Provided through the Department of Education Major Substantive Rules**

Submitted by: Senator Justin L. Alford
Accepted: February 17, 2010 Vote: 10 – 0 in favor

- F. LR 2610 **An Act to Create Jobs in the State**

Submitted by: Senator Elizabeth Mitchell
Accepted: February 18, 2010 Vote: 6 – 4 in favor

- G. LR 2607 **An Act to Exempt Certain Necessary Auxiliary School Buildings' New Heating Systems from Referendum Requirements**

Submitted by: Representative Joshua Tardy
Accepted: February 22, 2010 Vote: 9 – 0 in favor
(Rep. Berry did not vote)

Legislative Council
After Deadline Requests to Introduce Legislation
Second Regular Session 124th Legislature
February 25, 2010

Action

SPONSOR: **Rep. Adams, Herbert C.**
LR 2608 An Act To Decriminalize Violations of Rules Adopted by
the Baxter State Park Authority

SPONSOR: **Sen. Bowman, Peter B.**
LR 2574 An Act Relating to the Governor's Duty To Review
National Guard Federalization Orders

SPONSOR: **Rep. Cebra, Richard M.**
LR 2595 An Act To Require That Maine Welfare Recipients
Submit To Random Drug Testing

SPONSOR: **Sen. Gooley, Walter R.**
LR 2606 An Act To Prohibit Texting while Operating a Motor
Vehicle

SPONSOR: **Rep. Langley, Brian D.**
LR 2585 An Act To Require Insurance Companies To Provide
Claims Data Information

Potentially similar request: LR 2564 (Rep. Nelson)

Potentially similar request: LR 2594 (Rep. Sarty)

SPONSOR: **Sen. Mitchell, Elizabeth H.**
LR 2610 ~~An Act To Create Jobs in the State~~

Accepted by Ballot
2/18/2010

SPONSOR: **Sen. Perry, Joseph C.**
LR 2601 An Act To Establish the Feature Motion Picture Fair
Business Practices Act

SPONSOR: **Rep. Sarty, Jr., Ralph W.**
LR 2594 An Act To Allow School Districts and Municipalities the
Option To Seek Less Expensive Health Insurance
Alternatives

Potentially similar request: LR 2585 (Rep. Langley)

Potentially similar request: LR 2564 (Rep. Nelson)

SPONSOR:

LR 2607

Rep. Tardy, Joshua A.

~~An Act To Exempt Certain Necessary Auxiliary School
Buildings' New Heating Systems from Referendum
Requirements~~

Accepted by ballot
2/22/2010

JOINT RESOLUTION

SPONSOR:

LR 2602

Rep. Legg, Edward P.

JOINT RESOLUTION MEMORIALIZING THE
PRESIDENT OF THE UNITED STATES AND THE
UNITED STATES CONGRESS TO ENACT THE
LYME AND TICK-BORNE DISEASES PREVENTION,
EDUCATION AND RESEARCH ACT OF 2009

TABLED BY THE LEGISLATIVE COUNCIL

Action

SPONSOR:

LR 2564

Rep. Nelson, Mary P.

Resolve, To Explore Ways To Allow School Districts and
Municipalities To Seek Savings through Self-insurance
for Teachers' Health Insurance

TABLED 01/21/10

Potentially similar request: LR 2585 (Rep. Langley)

Potentially similar request: LR 2594 (Rep. Sarty)

SPONSOR:

LR 2507

Sen. Perry, Joseph C.

An Act Regarding the Suspension of a Person's License If
That Person Is Charged with Operating a Motor Vehicle
while under the Influence of Drugs

TABLED 01/21/10

JOINT RESOLUTION

SPONSOR:

LR 2529

Rep. Russell, Diane Marie

JOINT RESOLUTION MEMORIALIZING THE
PRESIDENT OF THE UNITED STATES AND THE
UNITED STATES CONGRESS TO SUPPORT A
STRONG CLEAN ENERGY BILL

TABLED 01/21/10

ADDENDUM
LEGISLATIVE COUNCIL
AFTER DEADLINE REQUEST TO INTRODUCE LEGISLATION
SECOND REGULAR SESSION 124th LEGISLATURE
February 25, 2010

Action

SPONSOR: **Rep. Dill, Cynthia A.**
LR 2618 Resolve, Directing Maine Revenue Services To Report
 to the Legislature on Future Compliance with the
 Streamlined Sales and Use Tax Agreement Compact

SPONSOR: **Sen. Nutting, John M.**
LR 2623 An Act To Enhance Fire Suppression Activity through
 Enforcement of the Commercial Forestry Excise Tax

JOINT RESOLUTION

SPONSOR: **Sen. Marrache, Lisa T.**
LR 2617 JOINT RESOLUTION MEMORIALIZING
 CONGRESS TO MAKE EXEMPTIONS FROM THE
 ETHANOL FUEL PROVISIONS OF THE FEDERAL
 CLEAN AIR ACT

JOINT RESOLUTION

SPONSOR: **Rep. Shaw, Michael A.**
LR 2619 JOINT RESOLUTION MEMORIALIZING THE
 UNITED STATES NAVY TO NAME A NEW BATH
 IRON WORKS ARLEIGH BURKE DESTROYER THE
 USS BELKNAP

SENATE

DENNIS S. DAMON, District 28, Chair
JOSEPH C. PERRY, District 32
WALTER R. GOOLEY, District 18

KAREN NADEAU-DRILLEN, Legislative Analyst
SUZANNE ROY, Fiscal Analyst
KATHIE BILODEAU, Committee Clerk



HOUSE

EDWARD J. MAZUREK, Rockland, Chair
GEORGE HOGAN, Old Orchard Beach
ANN E. PEOPLES, Westbrook
CHARLES KENNETH THERIAULT, Madawaska
CHARLES W. HARLOW, Portland
MICHAEL E. CAREY, Lewiston
WILLIAM P. BROWNE, Vassalboro
DOUGLAS A. THOMAS, Ripley
RICHARD M. CEBRA, Naples
KIMBERLEY C. ROSEN, Bucksport

State of Maine
ONE HUNDRED AND TWENTY-FOURTH LEGISLATURE
COMMITTEE ON TRANSPORTATION

January 26, 2010

To: The Honorable Hannah M. Pingree, Chair, Legislative Council
The Honorable Elizabeth H. Mitchell, Vice Chair, Legislative Council

From: Senator Dennis S. Damon, Chair *SD*
Representative Edward J. Mazurek, Chair *EJM*
Joint Standing Committee on Transportation

Re: Government Evaluation Act Review of the Maine Pilotage Commission

This memorandum is to inform you that the Joint Standing Committee on Transportation has submitted its findings from the review and evaluation of the Maine Pilotage Commission under the State Government Evaluation Act to the Legislature pursuant to Title 3 Maine Revised Statutes, chapter 35.

Cc: Members, Legislative Council
Executive Director, Legislative Council

G:\COMMITTEES\TRA\GEA\ME Pilotage Commission\GEA memo - MPC.doc

JOINT STANDING COMMITTEE ON TRANSPORTATION

Review of the Maine Pilotage Commission Pursuant to the Government Evaluation Act

The Government Evaluation Act:

The Government Evaluation Act ("Act") provides for a system of periodic review of the efficacy and performance of state government agencies. The law, enacted in the 117th Legislature to replace the Government Audit and Program Review Program, substitutes a legislative audit of each agency with an agency self-assessment.

The keystone to the Act is the agency program evaluation report, which consists of a number of components required by the statute. Essentially, the report is an agency self-assessment that the committee of jurisdiction uses as a starting point for its evaluation of the agency's effectiveness, efficiency and performance. The report must include the following: the agency's enabling statutes; program descriptions; organizational structure, position count and job classifications; compliance with federal and state health and safety laws; ten-year financial summaries; regulatory agenda; coordinated efforts with other state agencies; constituencies served by the agency; alternative delivery systems; emerging issues for the agency; comparison of state laws to federal laws; policies regarding use of personal information; and public filing requirements.

Review Process:

Pursuant to the requirements of the Act, the Joint Standing Committee on Transportation notified the Maine Turnpike Authority by letter of its intent to review the Authority on April 21, 2009. The Turnpike submitted its Program Evaluation Report on October 5, 2009. The Administrator of the Maine Pilotage Commission, Kevin J. Rousseau, presented the report to the Committee on January 12, 2010.

Findings of Review:

The Maine Pilotage Commission is established by law under Title 5, section 12004-A, subsection 40. The Maine Pilotage Commission (MPC) functions to provide maximum safety from the dangers of navigation for vessels entering or leaving certain bodies of water in the State of Maine. All foreign flagged vessels and American vessels under register with a draft of nine feet or more are required to take a state-licensed pilot.

The MPC establishes standards for licensing pilots, promulgates rules, and investigates marine incidents involving possible pilot misconduct to ensure that pilotage continues to remain safe and reliable along the Maine coast. Currently, 11 licensed active pilots and three inactive pilots guide vessels through waters over which the MPC has jurisdiction.

The largest emerging issue for the MPC is the need to maintain eligible pilots in areas where there is minimal coverage or traffic. Given the necessarily stringent licensing requirements, the apprenticeship and development of pilot candidates is a long process that often is the culmination of a successful maritime career.

The Joint Standing Committee on Transportation unanimously finds that the Maine Pilotage Commission is operating within its statutory authority.



DEPARTMENT OF

Professional & Financial Regulation

STATE OF MAINE

- OFFICE OF SECURITIES
- BUREAU OF INSURANCE
- CONSUMER CREDIT PROTECTION
- BUREAU OF FINANCIAL INSTITUTIONS
- OFFICE OF LICENSING AND REGISTRATION

Report of the Commissioner

Department of Professional and Financial Regulation

**Submitted to the
Joint Standing Committee on
Business, Research and Economic Development**

Pursuant to Resolve 2009, Ch. 73

**Directing the Department of Professional and Financial
Regulation to Conduct a Sunrise Review Regarding the
Proposal to License Wetland Scientists**

February 15, 2010

Criteria 11: Mandated benefits (not applicable)

Criteria 12: Minimal competence

The proponent explains that minimal competence in the field of wetland science is based on the 1987 Corps of Engineers Wetland Delineation manual in combination with extensive field experience, continuing education, and an understanding of evolving state and federal laws and regulations. The proponent believes the licensing program required in LD 1240 would be consistent with these standards for competence, and provide assurance to the public that licensed wetland scientists in Maine have met minimal requirements.

Two opponents did not respond to this survey item. Colen Peters essentially agrees with the proponent regarding the basis for evaluating minimal competence. Mr. Peters, however, believes currently available educational and training opportunities are adequate to help wetland scientists enhance their knowledge and skills. He also says current laws and regulations, including the Maine Natural Resources Protection Act, provide appropriate oversight and he suggests that land owners have the ability to make determinations about certain wetland projects and the hiring of competent professionals.

Criteria 13: Financial analysis

The proponent estimates that 200 individuals would seek licensure soon after the establishment of a licensing program for wetland scientists in Maine. In its survey response, MAWS proposes a license and renewal fee of \$140, with one-time exam cost of \$225. The proponent recommends using the existing administrative structure of the Board of Certification for Soil Scientists and Geologists in order to limit costs.

Department Analysis: State professional and occupational license programs in Maine must by law be financially self-supporting through license fees and all regulatory costs of the program must be borne by licensees.

→ *Conclusions and Recommendations*

The Department of Professional and Financial Regulation was charged by the Legislature to conduct an "independent assessment" of responses to evaluation criteria from the group proposing regulation, as well as from opponents and other interested parties. The assessment process must focus exclusively on the criteria outlined in Maine law.

A licensing program should not be established to confer status or recognition on a profession or occupation. Licensing should also not be used to exclude practitioners or for economic purposes.

Both the proponent and opponents of licensure in this case indicate that wetland scientists possess specialized knowledge and skills. They also agree that wetland projects in Maine

are overseen and currently regulated by the DEP and LURC. The question is whether the public is able to select qualified wetland scientists in the absence of licensure of wetland scientists, and whether state licensing is required to safeguard the public.

As noted earlier, the third criterion addresses the key Sunrise Review issue of public health and safety. Is the public welfare jeopardized by the absence of a state licensing program for wetland scientists? That is the central point of the sunrise review process. In this case, the proponent—Dale Knapp on behalf of the Maine Association of Wetland Scientists (MAWS)--provided only general statements about the potential for harm that can be caused by inadequately trained wetland scientists. No specific examples of health and safety problems were provided.

As a matter of public policy, a state should only impose licensing requirements as an exercise of its constitutional police power when the state has solid evidence that the safety of the public at large is in jeopardy and the state must act to protect its citizens from harm. Based on the information received, the Department concludes that proponents have not substantiated that the public health, welfare and safety is being threatened or harmed without a state licensing program for the 100-200 potential licensees. Without a strong showing of public harm, the burden and expense of state licensure cannot be justified.

This conclusion is based on the following factors:

- The Maine Association of Wetland Scientists has adopted a standard of conduct for its members designed to ensure that high standards of performance are maintained.
- The Department of Environmental Protection and the Land Use Regulatory Commission have existing statutory authority to oversee and protect Maine wetlands;
- There is no credible evidence that the public health, safety and welfare of Maine citizens is at risk without state licensure of wetland scientists.

For these reasons, the Department recommends that the Committee not pursue LD 1240.



DEPARTMENT OF

Professional & Financial Regulation

STATE OF MAINE

- OFFICE OF SECURITIES
- BUREAU OF INSURANCE
- CONSUMER CREDIT PROTECTION
- BUREAU OF FINANCIAL INSTITUTIONS
- OFFICE OF LICENSING AND REGISTRATION

Report of the Commissioner

Department of Professional and Financial Regulation

**Submitted to the
Joint Standing Committee on
Business, Research and Economic Development**

Pursuant to Resolve 2009, Ch. 74

**Directing the Department of Professional and Financial
Regulation to Conduct a Sunrise Review Regarding the
Proposal to License Certain Mechanical Trades**

February 15, 2010

Criteria 10: Previous efforts

The Office of State Fire Marshal reiterated that licensing of fire sprinkler contractors has existed in Maine since 1990. No other respondents addressed this survey item.

Department Analysis: LD 1278, containing language identical to LD 1241 was submitted to the 123rd Maine Legislature. LD 1278 was introduced and voted Ought Not to Pass.

Criteria 11: Mandated Benefits (not applicable)

Criteria 12: Minimal competence

Only the Office of State Fire Marshal addressed this survey item. The Office states that the 5 years of work in the field of fire protection systems, as would be required by LD 1241, is "excessive compared to the online course provided by the American Fire Sprinkler Association, and also the course provided by the National Fire Sprinkler Association."

Department Analysis: none necessary

Criteria 13: Financial analysis

Only the Plumbing Heating Cooling Contractors Association of Greater Boston addressed this survey item. The organization commented that "the state can charge enough for the licenses to cover the expense of licensing and monitoring."

Department Analysis: Without information on the size of the potential licensee pool, it is not possible to provide meaningful financial analysis. State professional and occupational licensing programs in Maine must, by law, be financially self-supporting through collection of license fees, and all regulatory costs must be borne by licensees.

Conclusions and Recommendations

The Department of Professional and Financial Regulation was charged by the 124th Legislature to conduct an "independent assessment" of responses to evaluation criteria from the group proposing state regulation in LD 1241, as well as from opponents of state regulation and other interested parties. The assessment process must focus exclusively on the criteria outlined in Maine law.

As a matter of public policy, a state should only impose licensing requirements as an exercise of state police power when the state has solid evidence that the safety of the

public is jeopardized and the state must act to protect citizens from harm. A state licensing program should not be established to confer status or recognition on a profession or occupation, nor should a state exercise its police power through licensing to exclude practitioners or for economic purposes. *The sole purpose of state licensing programs is to provide the public with protection against unsafe and unethical service providers.*

The original bill provides for new state regulation of individuals who provide "certain mechanical services." As the term is used in LD 1241, "certain mechanical services" encompasses: 1) pipefitting; 2) sheet metal work; 3) installation, maintenance and repair of refrigeration and air conditioning systems; and 4) fire sprinkler fitting. The bill also provides for licensing of individuals and businesses that act as "mechanical contractors."

For ease of analysis, the issue of whether Maine should impose licensure requirements on fire sprinkler fitters (individuals) as contemplated by LD 1241 is addressed separately from the other proposed license categories. Maine already requires fire sprinkler contractors to be licensed.

1. Proposed Regulation of Fire Sprinkler Fitters and Fire Sprinkler Installation Contractors

The Maine Department of Public Safety (DPS) has statutory authority to license and regulate fire sprinkler installation companies and contractors. Installation plans of licensed companies (contractors) are subject to review and approval by the technical staff of the Fire Marshal's Office. Only companies licensed by the Department of Public Safety are authorized to install fire sprinkler systems in Maine. This regulatory program has been in place since 1990. See, 32 MRSA sec. 1371 et seq.

The current licensing program within DPS focuses on the licensing of companies that are in the business of installing fire sprinkler systems. By law, licensed fire sprinkler contractors must retain, either by employment or contract, at least one "certified responsible managing supervisor." A certified responsible managing supervisor may also be a fire sprinkler system contractor. A Certified Responsible Managing Supervisor must be either:

- a) certified by the National Institute for the Certification in Engineering Technologies at Level III for fire protection automatic sprinkler systems layout; or
- b) licensed by the State as a professional engineer with 5 years experience in the field of fire protection, mechanical, piping, or related engineering fields.

Under this regulatory structure, individuals who may be employed by licensed contractors as "fitters" are adequately trained and supervised by the licensed contractor.

Recommendation:

The Department has received no information indicating that the current state licensing structure within the Department of Public Safety for fire sprinkler contractors is inadequate in any way. No information regarding potential public harm in the absence of additional regulation of contractors and new regulation of fire sprinkler fitters was submitted in response to the sunrise survey. The Department of Professional and Financial Regulation concludes that additional regulation of fire sprinkler companies and/or new state regulation of fire sprinkler fitters is not warranted.³ Therefore, the Department recommends that no action be taken with regard to new or expanded licensing requirements on either fire sprinkler fitters or fire sprinkler contractors.

2. Proposed regulation of pipefitters, sheet metal workers; installers and repair technicians for refrigeration and air conditioning systems; and mechanical contractors.

LD 1241 suggests that the State impose licensing requirements on individuals performing pipefitting, sheet metal work, installation, maintenance and repair of refrigeration and air conditioning systems and on mechanical contractors. Current Maine law, however, provides public protection in the areas of residential and commercial plumbing, oil and solid fuel heating installations and maintenance; propane and natural gas heating and cooling installations and maintenance; and electrical installations and maintenance through the operation of various state licensing programs. These activities and functions described above are regulated by the Plumbers' Examining Board, the Oil and Solid Fuel Board, the Propane and Natural Gas Board and the Electricians' Examining Board, respectively. In addition, the Boiler and Pressure Vessel Board licenses and regulates individuals who operate and repair high pressure boilers and pressure vessels.

HVAC and refrigeration companies that sell and install heating, ventilation, refrigeration and air conditioning systems use ductwork fabricated by companies that employ sheet metal workers. When a residential or commercial consumer purchases an air conditioning system, the consumer typically does not contact a sheet metal worker to fabricate ductwork for the system. Rather, the consumer purchases the system from the company that employs licensed plumbers and electricians to install the system. The HVAC company determines which suppliers of ductwork are reputable. The consumer relies on the HVAC company to stand behind the system if the system requires adjustment or repairs. Sheet metal workers are employed in manufacturing and mill operations and by companies that construct sheet metal components for use in residential and commercial settings. Manufacturing companies, industrial plants and mills are responsible for hiring and training individuals to perform sheet metal work, as well as pipefitting.

³ A sunrise review conducted by the Department on the subject of fire sprinkler and fire alarm contractor regulation resulted in a January 2007 report entitled: **Sunrise Review of LD 1508, An Act to Regulate Fire Alarm Contractors**. The Department's report on LD 1508 concluded that existing regulation within the Department of Public Safety was more than adequate to protect the public.

Manufacturers of refrigeration and air conditioning equipment used in residential, commercial or industrial settings employ a wide variety of individuals to build or fabricate their equipment, including licensed electricians and individuals with EPA-issued refrigeration technician certification.⁴

That said, some states have established HVACR licensing boards populated by individuals who have state licenses that permit them to do business as heating, cooling, ventilation, and refrigeration contractors. Massachusetts, Delaware and Alabama, for example, each have licensing boards that license and regulate the businesses of these contractors.

In Maine, the trend, with few exceptions, is to license individuals rather than businesses.

Recommendation:

The threshold question in any sunrise review study is whether the public welfare is jeopardized in the absence of state regulation of a particular occupation or profession or group of occupations. If the answer is yes, then this report would need to address all aspects of regulation that flow from the determination that the public should be protected from a particular group of individuals performing or offering a specific service or product.

The Department concludes that proponents have not made a case for state regulation. Proponents of regulation have provided only general statements about the potential for harm that might occur without regulation. No specific examples of health and safety problems in Maine were substantiated and none have been identified through Department research. Nor have proponents provided usable information about the estimated numbers of individuals and businesses that would be affected by new licensure requirements.

Based on the information submitted by proponents and opponents of LD 1241, the Department concludes that 1) public health and safety of Maine citizens is not jeopardized in the absence of a new licensing program for pipefitters, sheet metal workers, installers and repairers of refrigeration and air conditioning systems and mechanical contractors; and 2) that state action to impose licensing requirements is not warranted.

For the reasons state above, the Department recommends that the Committee not pursue LD 1241.

⁴ Section 608 of the Clean Air Act of 1990, as amended, codified at Title 42, Chapter 85 of the US Code Annotated, requires technicians who perform maintenance, service, repair, or dispose of equipment that could be reasonably expected to release refrigerants into the atmosphere to be certified by the Environmental Protection Agency. Technicians are required to pass an EPA-approved test given by an EPA-approved certifying organization to become certified under the mandatory program. Section 608 Technician Certification credentials do not expire.



JOHN ELIAS BALDACCI
GOVERNOR

STATE OF MAINE
DEPARTMENT OF PROFESSIONAL
AND FINANCIAL REGULATION
BUREAU OF INSURANCE
34 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0034

MILA KOFMAN
SUPERINTENDENT

February 12, 2010

Senator Peter Bowman, Senate Chair
Representative Sharon Treat, House Chair
Joint Standing Committee on Insurance and Financial Services
100 State House Station
Augusta, ME 04333-0003

Re: Year 2008 Insurance Fraud Report

Dear Senator Bowman, Representative Treat, and Members of the Committee:

This letter and accompanying information constitutes the Bureau's Annual Report on Insurance Fraud to the Joint Standing Committee on Insurance and Financial Services. The data contained in this report is based upon annual survey information which insurers are required to report to the Bureau pursuant to 24-A M.R.S.A. §2186 and Maine Insurance Rule Chapter 920. The most recent data covers calendar year 2008.

The first table in this report illustrates aggregate information regarding cases of suspected fraud for 2005 through 2008. This four year summary shows an overall decrease of over 23 percent in the number of suspected cases of fraud reported since 2005. The largest percentage decreases over the prior year were in automobile insurance, worker's compensation and general liability. The largest percentage increase in the past year was reported in property insurance. Insurers are not required to report the reason for increases or decreases in the number of suspected cases of fraud.

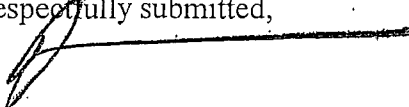
Attached tables provide aggregate data by type of insurance, type of suspected fraudulent insurance acts reported to the Bureau, as it has been reported by insurers. Reported cases include faked property damage, inflated financial loss, faked or exaggerated injury, a history of prior suspect claims and false information on insurance applications. Category labeled "other" includes property and vehicle arson, auto thefts, fraudulent death claims and questionable ownership issues.

Bureau of Insurance
2008 Fraud and Abuse Report

The Bureau of Insurance will continue to collect information on suspected fraud claims. In the coming years, additional data will help us to gain a better understanding of the extent of insurance fraud and abuse in Maine.

If you have any questions concerning this report, do not hesitate to contact me.

Respectfully submitted,



Mila Kofman
Superintendent

cc: Members of Insurance and Financial Services Committee; Anne L. Head, Commissioner;
Colleen McCarthy Reid, Legislative Analyst

2008 Maine Fraud and Abuse Annual Report

Table 1. Number of Suspected Cases of Fraud Reported by Line of Insurance

	2008	2007	2006	2005
Automobile	672	973	1,080	1,058
Workers' Compensation	276	350	291	285
General Liability	66	109	84	86
Life	27	24	25	8
Health	195	260	333	369
Inland Marine	8	7	19	16
Property	303	280	293	288
Other Lines	78	90	98	40
Total	1,625	2,093	2,223	2,150

Table 2. Total Number of Suspected Fraud Claims by Type of Insurance:

Personal Lines	
2005	1,428
2006	1,317
2007	1,196
2008	937

Commercial Lines	
2005	713
2006	848
2007	764
2008	656

Table 3. Types of Suspected Fraudulent Insurance Acts Reported

Claimant May Have:

Faked Property Damage	
2005	343
2006	309
2007	315
2008	212

Inflated Financial Loss	
2005	146
2006	155
2007	151
2008	127

Faked/Exaggerated Injury	
2005	349
2006	366
2007	423
2008	519

Staged Accident/Injury	
2005	44
2006	75
2007	45
2008	130

Been Known To File Suspect Claims, Including Faking, Exaggerating, or Extending Total or Partial Disability	
2005	172
2006	138
2007	190
2008	237

Other	
2005	199
2006	249
2007	234
2008	232

Note: There can be more than one act of suspected fraudulent insurance activity per claim.

Legal Provider May Have:

Hired or Paid Cappers/Chasers to Recruit Clients	
2005	0
2006	0
2007	0
2008	3

Charged Fees Inconsistent with Services Provided	
2005	0
2006	0
2007	0
2008	0

Other	
2005	1
2006	1
2007	1
2008	7

Note: There can be more than one act of suspected fraudulent insurance activity per claim.

Medical Provider May Have:

Provided an Inaccurate /Incomplete History

2005	33
2006	16
2007	1
2008	20

Billed for Services Not Provided

2005	32
2006	5
2007	2
2008	6

Upcoded or Billed for Excessive Treatments

2005	47
2006	21
2007	5
2008	8

Unbundled Services

2005	33
2006	16
2007	0
2008	1

Received Compensation for Referral to Medical or Legal Providers

2005	11
2006	15
2007	0
2008	0

Hired or Paid Cappers/Chasers to Recruit Clients

2005	0
2006	0
2007	0
2008	0

Fabricated Services

2005	3
2006	1
2007	0
2008	3

Operated Without a License	
2005	57
2006	15
2007	1
2008	1

Other	
2005	7
2006	5
2007	7
2008	6

Note: There can be more than one act of suspected fraudulent insurance activity per claim.

Other Person or Entity May Have:

Received/Paid Compensation for Referral	
2005	0
2006	0
2007	0
2008	0

Fabricated Services	
2005	1
2006	0
2007	0
2008	2

Charged Inconsistent with Services Provided	
2005	1
2006	9
2007	1
2008	2

Provided an Inaccurate/Incomplete History, or Submitted False or Inaccurate Information to Obtain an Insurance Policy or to Reduce an Insurance Premium	
2005	368
2006	389
2007	236
2008	101

Other	
2005	2
2006	3
2007	9
2008	14

Note: There can be more than one act of suspected fraudulent insurance activity per claim.

Table 4. Number of Cases Reported/Referred to Law Enforcement Agency:

County Attorney's Office	
2005	9
2006	8
2007	7
2008	4

U.S. Attorney's Office	
2005	2
2006	5
2007	1
2008	15

Other Law Enforcement	
2005	69
2006	32
2007	44
2008	34

Workers' Compensation Board Abuse and Fraud Unit	
2005	31
2006	22
2007	36
2008	23

National Insurance Crime Bureau	
2005	218
2006	126
2007	209
2008	252

Other, Including U.S. Postal Authorities	
2005	1
2006	7
2007	3
2008	10

Note: These totals will not match the total number of reported fraud and abuse cases because not every case is referred to a law enforcement agency. These cases are not duplicate referrals.

Table 5. Amount of Money NOT Paid on Suspected Fraudulent Cases:

Year	Amount
2005	\$7,037,871
2006	\$5,666,380
2007	\$7,956,277
2008	\$9,731,510

Note: One auto insurer that reports a number of suspected fraud claims does not track and report the amount of money not paid on suspected cases.



DEPARTMENT OF

**Professional &
Financial Regulation**

STATE OF MAINE

- OFFICE OF SECURITIES
- BUREAU OF INSURANCE
- CONSUMER CREDIT PROTECTION
- BUREAU OF FINANCIAL INSTITUTIONS
- OFFICE OF LICENSING AND REGISTRATION

PRELIMINARY REPORT: THE HEALTH INSURANCE MARKET IN MAINE

**PREPARED BY BUREAU OF INSURANCE STAFF
FEBRUARY 2010**

John Elias Baldacci
Governor

Mila Kofman
Superintendent

Anne L. Head
Commissioner

I. INTRODUCTION

This report is submitted pursuant to P.L. 2009, ch. 439, § D-4, which directs the Superintendent of Insurance to:

review possible ways to improve the availability and affordability of the State's individual health insurance market, including, but not limited to, increases in the minimum loss-ratio standards applicable to that market and consideration of an insurer's loss experience in all lines of insurance marketed by a carrier in this State when reviewing health insurance rate filings [and to] report the results of the review, including any recommendations for legislation, to the Joint Standing Committee on Insurance and Financial Services.

This is a preliminary report. Options for future state reforms will vary depending on what (if any) federal reforms are enacted. The U.S. House of Representatives passed H.R. 3962, the Affordable Health Care for America Act, on November 7, 2009. The U.S. Senate passed H.R. 3590, the Patient Protection and Affordable Care Act, on December 24, 2009. The Bureau will supplement this report after the nature and extent of any federal health reform legislation is known.

This preliminary report provides background on both Maine's individual and small group markets, including information about types of policies available, prices, number of insurers, market share, and medical loss ratios, as well as standards and consumer protections under current law. Unless otherwise indicated, the data on the Maine insurance market are from annual reports filed by health insurers pursuant to Bureau of Insurance Rule 945 and from insurers' rate filings.¹ The report summarizes some of the insurance reforms in the two pending federal bills, and how they relate to the Maine market.

¹ The reports are available at: http://www.maine.gov/pfr/insurance/consumer/financial_results_health_insurers.htm, http://www.maine.gov/pfr/insurance/employer/snapshot_individual.htm, and http://www.maine.gov/pfr/insurance/employer/snapshot_small_group.htm

II. OVERVIEW OF THE INDIVIDUAL AND SMALL GROUP MARKETS

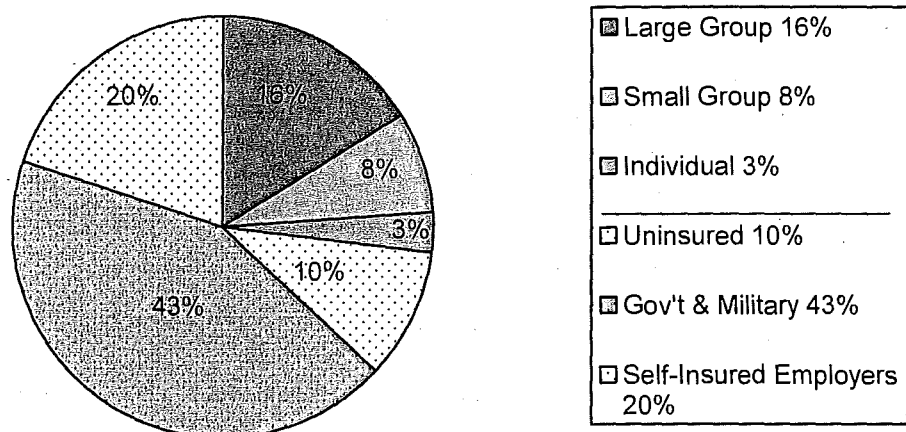
This section of the report provides information on the individual and small group health insurance markets in Maine.

A. SOURCES OF COVERAGE

According to the most recent data available, approximately 40,000 Mainers have major medical coverage in Maine's individual market, and approximately 106,000 have coverage as employees or dependents in the small group market. Maine's uninsured rate of 9.6% is the sixth lowest in the nation, well below the national average of 15.4%.²

The following chart shows the sources of coverage by percentage of the Maine population. Slightly more than a quarter of the population has individual or group health insurance coverage that is regulated by the Bureau of Insurance. The others are covered by Medicare, MaineCare (Medicaid), military, self-insured employer plans exempt from state insurance regulation, or are uninsured.

Sources of Coverage in Maine

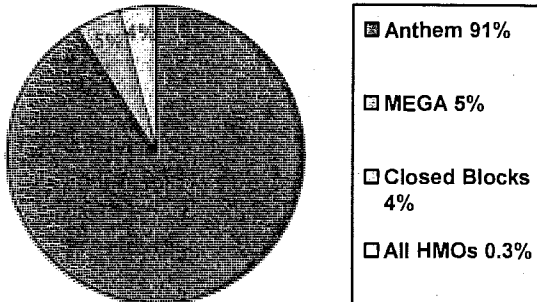


² See Current Population Survey, compiled jointly by the U.S. Census Bureau and Bureau of Labor Statistics, and the health coverage statistics compiled by the Kaiser Family Foundation at <http://www.statehealthfacts.org>.

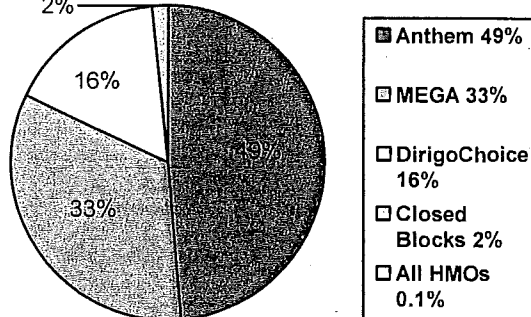
B. INSURERS AND MARKET SHARE

The following charts show the market shares of insurers in the individual and small group markets – providing a comparison between the markets before and after State health care financing reforms.³

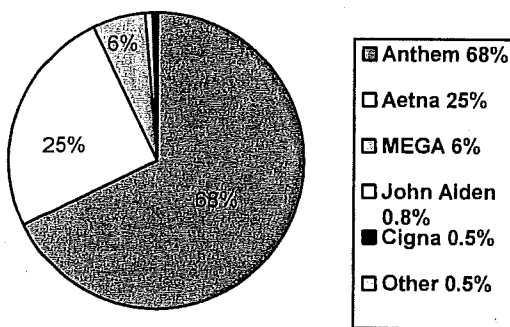
ME Individual Market Share 2004



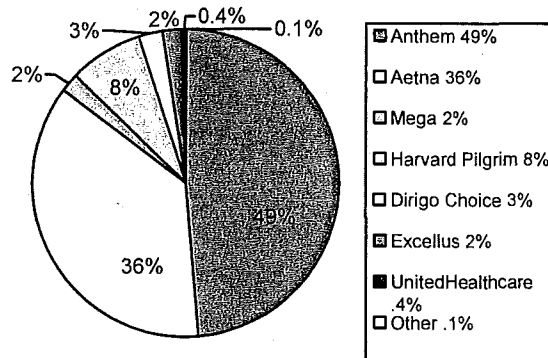
ME Individual Market Share 2009



ME Small Group Market Share 2004

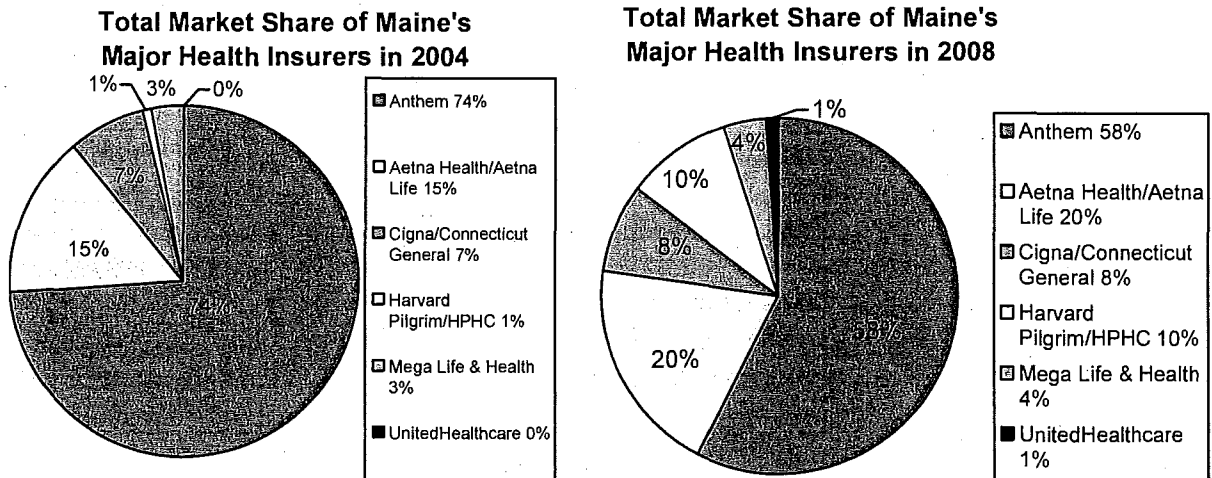


ME Small Group Market Share 2008



³ Individual market data as of December 31, 2004, and September 30, 2009, small group data as of December 31, 2004, and December 31, 2008. "Closed blocks" consist of individual policies written by insurers that have left the market but continue to renew existing policies. Affiliated companies are recorded together in these charts. HPHC is an insurance subsidiary of Harvard Pilgrim, which currently provides the coverage for DirigoChoice enrollees. Harvard Pilgrim small group figures include HPHC's private market coverage, but not DirigoChoice.

Total market share of the major health insurers is shown below. This reflects the insurers' individual, small group and large group business in Maine.



The following table shows total Maine health insurance premium in 2008, by company and by market sector, along with the change from the previous year. These figures include Dirigo Health Plan premium, so the changes for Anthem and Harvard Pilgrim reflect the transfer of DirigoChoice coverage from Anthem to HPHC as of January 1, 2008.

2008 Maine Premiums								
Insurers	Totals		Large Group		Small Group		Individual	
	12/31/08	% Change	12/31/08	% Change	12/31/08	% Change	12/31/08	% Change
Aetna Health Inc & Aetna Life Ins. Co	\$278,628,101	17%	\$154,913,707	14%	\$123,583,562	22%	130,832	25%
Anthem Health Plans of ME Inc.	\$928,388,393	-8%	\$635,899,126	3%	\$225,316,648	-20%	\$67,172,619	-38%
Cigna Healthcare of Me Inc & Connecticut General Life Ins. Co.	\$143,006,708	13%	\$142,942,246	13%	\$0	0%	\$64,462	-17%
Harvard Pilgrim Health Care Inc. and HPHC	\$151,925,919	74%	\$46,007,999	-8%	\$50,838,450	38%	\$55,079,470	(new to market) 4
MEGA Life & Health Ins. Co.	\$27,025,064	14%	\$0	0%	\$5,475,463	-25% ⁵	\$21,549,601	31%
United Healthcare Ins. Co.	\$11,152,427	39%	\$9,428,899	37%	\$1,723,528	48%	\$0	0%
All Other Companies	\$9,248,451	-23%	\$3,858,380	-34%	\$1,572,883	-8%	\$3,817,188	-14%
Totals:	\$1,549,375,063	3%	\$993,050,356	6%	\$408,510,534	-5%	\$147,814,172	14%

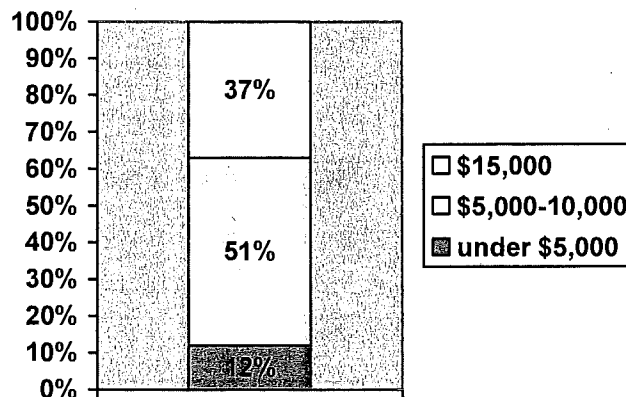
⁴ HPHC wrote no individual business before 2008. Harvard Pilgrim had six covered lives in individual HMO products in 2007.

⁵ Renewal business only. Ceased writing new small group business in 2004.

C. TYPE OF COVERAGE

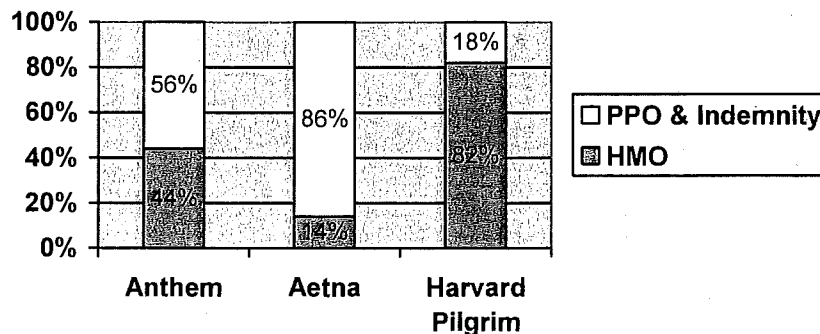
There has been significant movement in the market away from coverage with relatively low deductibles. This is especially pronounced in the individual market. Although statistics on the type of plan purchased are not reported on a market-wide basis, rate filing information from Anthem, the largest health insurer, shows that approximately 88% of Anthem's individual enrollees have deductibles of \$5000 per year or higher, with almost 37% covered under policies that have a \$15,000 annual individual deductible and a \$30,000 family deductible.

Annual Deductibles for Anthem Enrollees in Maine



HMO coverage in the individual market represents only one-tenth of one percent (0.1%) of the covered lives. HMO coverage in the small group market accounts for one-third of the covered lives.⁶

Maine Small Group Coverage by Type



⁶ Anthem provides HMO coverage through its HMO Maine business unit. All other HMOs in Maine are incorporated as separate companies. PPO data for Harvard Pilgrim excludes HPHC's DirigoChoice coverage.

D. PREMIUMS

The average premium per covered life in 2008 was \$299 per month (approximately \$3600 per year) for individual coverage, \$324 per month (approximately \$3900 per year) for small group coverage, and \$380 for large group coverage. However, these prices are not comparable because the products purchased differ in each sector of the market. More comprehensive benefits and lower deductibles are more common in the large group market, where the employer is more likely to pay a substantial share of the premium.⁷ The following table shows the 2008 average monthly premium per person. It is important to note that these “per covered life” estimates are averages and do not reflect what businesses and individuals are actually charged. The actual price depends on the benefits package purchased and adjustments for permissible rating factors such as age.

2008 Average Monthly Premium per Person in Maine						
	Large Group		Small Group		Individual	
	2008	% Change	2008	% Change	2008	% Change
Aetna (Aetna Health Inc & Aetna Life Ins. Co.)	\$387	9%	\$282	-4%	\$221	65%
Anthem Health Plans of ME Inc.	\$379	5%	\$347	9%	\$254	-19%
CIGNA (Cigna Healthcare of ME Inc. & Connecticut General Life Ins. Co)	\$421	26%	\$0	0%	\$366	-13%
Harvard Pilgrim Health Care Inc.	\$258	-19%	\$370	12%	\$519	-54%
Mega Life & Health Ins. Co.	\$0	0%	\$202	-8%	\$174	4%
United Healthcare Ins. Co.	\$452	31%	\$279	-16%	\$0	0%
Total:	\$380	8%	\$324	5%	\$299	6%

Note: The average premium is calculated by dividing the premium from the 2008 Premium table by the number of member months.

A recent Commonwealth Fund report lists Maine as the state with the ninth-highest premiums for employer-sponsored coverage in 2008. Massachusetts was highest, followed by Minnesota, New Hampshire, Indiana, Connecticut, Delaware, Alaska, Rhode Island and Maine, in that order.⁸

Premiums for health insurance have been increasing across the country. Average family premiums for employer-sponsored coverage increased from \$9249 in 2003 to \$12,298 in 2008.⁹ This year, Oregon’s largest individual health insurer has requested a 25.3% rate increase in

⁷ There are 166 people in the individual market (0.4% of the total enrollment) with coverage under standardized plans offered pursuant to Bureau of Insurance Rule 750. Depending on the insurer and the plan design prices range from \$678.40 to \$1068.42 for single coverage, and from \$1663.45 to \$2619.80 for family coverage per month.

⁸ See Schoen, Nicholson, & Rustgi, “Paying the Price: How Health Insurance Premiums Are Eating Up Middle-Class Incomes,” available at <http://www.commonwealthfund.org/Publications.aspx>.

⁹ See Schoen, Nicholson, & Rustgi, “Paying the Price: How Health Insurance Premiums Are Eating Up Middle-Class Incomes,” available at <http://www.commonwealthfund.org/Publications.aspx>.

addition to the 24.4% increase last year according to news reports.¹⁰ In California, rate increases of up to 39% have been announced; the insurer indicated that rates may be adjusted more frequently than its typical yearly increases.¹¹ According to news reports, rate increases in Indiana are up to 38%.¹² In Rhode Island, insurers had deferred rate increases last year at the request of the Health Insurance Commissioner, but recently requested small group increases ranging from 4% to 14.6%.¹³ A few of the states reporting increases last year are Michigan (56% requested, 22% approved)¹⁴, Pennsylvania (46.5% requested¹⁵, 15% approved¹⁶), and Connecticut (22% to 30% requested, 13% to 20% approved).¹⁷

¹⁰ See "Insurers Ready Another Round of Double-Digit Hikes," The Lund Report, February 4, 2010: http://www.thelundreport.org/resource/insurers_ready_another_round_of_double_digit_hikes

¹¹ Insurance Commissioner Poizner has requested that the insurer postpone implementation of the rate increase <http://www.insurance.ca.gov/0400-news/0100-press-releases/2010/release020-10.cfm>

See also "Anthem Blue Cross dramatically raising rates," Los Angeles Times, February 5, 2010: <http://www.latimes.com/business/la-fi-insure-anthem5-2010feb05,0,3002094.story>

¹² See "Hoosiers livid over insurance increases," Indianapolis Star, February 11, 2010: <http://www.indystar.com/apps/pbcs.dll/article?AID=/20100211/BUSINESS03/2110419>

¹³ See "Lynch seeks hearing on insurance rates," Providence Journal, February 12, 2010: http://www.projo.com/news/stategovernment/content/AG_REACTS_TO_HIKES_02-12_10_TBHE6VQ_v14.3b3e406.html

¹⁴ Final Order Granting Rate Increase for BCBSM Nongroup and Group Conversion Subscribers, Order Comm'r (Aug. 12, 2009).

¹⁵ Blue Cross of Northeastern Pennsylvania Filing # 1535-BLC-33-PPO-BASERATE

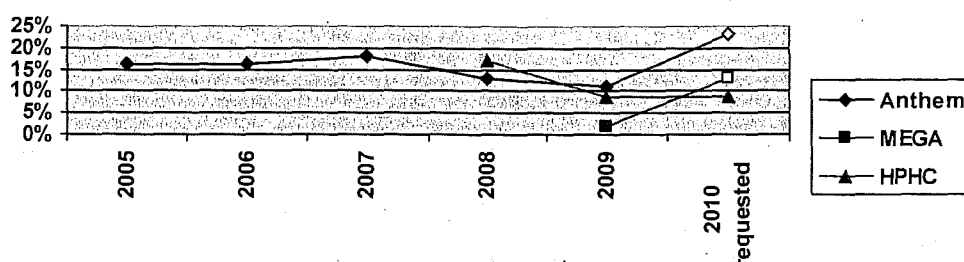
¹⁶ E-mail from Melissa Fox, Deputy Press Secretary, Pennsylvania Insurance Department, Communications Office (Feb. 4, 2010, 14:20 EST) (on file with author).

¹⁷ Proposed Rate Increase Application of Anthem Blue Cross and Blue Shield, Docket No. LH09-51, Order Comm'r (Aug. 6, 2009).

The following charts show the rate increase history over the last five years for the three major carriers in the individual and small group markets in Maine:

Maine Individual Market Rate Increases						
	2005	2006	2007	2008	2009	2010
Anthem	16%	16%	18%	13%	11%	23% request
MEGA ¹⁸	N/A	N/A	N/A	N/A	2%	13% request
HPHC	(entered market 2008)			17 ¹⁹ %	9% ²⁰	9%

Maine Individual Market Rate Increases



Maine Small Group Market Rate Increases ²¹						
	2005	2006	2007	2008	2009	2010
Anthem	13%	7%	15%	10%	16%	20%
Aetna	10%	10%	12%	9%	15%	25%
Harvard Pilgrim	(entered market 2006)		9%	15%	13%	15%

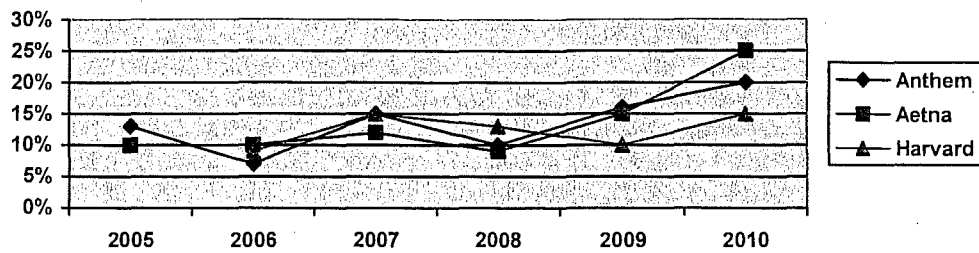
¹⁸ Averages are not available for rate changes in 2005 through 2008. The most significant was a 14% rate reduction for the "catastrophic" plan, which represents the majority of MEGA's individual business, and a 10% rate increase for the same plan in 2008 and for the required standardized plans. Also in 2008, rates for the scheduled benefit plan were reduced by 25%. In addition, there were rate increases and decreases in 2005 and 2008 that applied only to certain optional benefits.

¹⁹ This is the 2008 rate increase for DirigoChoice individual coverage, which was issued by Anthem in 2007.

²⁰ In its rate filings, HPHC indicated that the rate increase would have been 11% if the benefits had remained at 2008 levels.

²¹ The earliest data in the Bureau's market snapshot series is for May 2005 renewals.

Maine Small Group Market Rate Increases



The table below shows the average increases for individual market products with most enrollment -- requested rate and approved rate.

Maine: HealthChoice Individual Rate Increases

Effective Date	Requested	Approved
January 2001	23.5%	23.5%
February 2002	13.6%	12.7%
January 2003	7.1%	3.4%
March 2005	14.7%	14.5%
March 2006	19.8%	16.3%
January 2007	20.5%	16.7%
January 2008	18.6%	12.5%
July 2009	18.5%	10.9%
Pending request for effective date July 2010	23.6%	Pending rate hearing

The following table includes average annual small group rate increases between 2001 and 2009. This table does not show requests. Most small group coverage has been exempt from the prior review rate approval process,²² because it was issued on a guaranteed loss ratio basis, meaning that it is subject to premium refunds if benefit payments do not equal or exceed 78% of premium.

²² Rate review in Maine did not apply to any group rates taking effect before 2004.

Maine: average annual small group increases	
Year	Average
2001	33%
2002	29%
2003	16%
2004	6%
2005	13%
2006	8%
2007	14%
2008	10%
2009	15%
2010	21%

E. MEDICAL LOSS RATIOS, PROFIT INFORMATION, AND DIVIDENDS

The following tables show medical loss ratios and underwriting gain (a way to measure the profitability of a line of business, before taxes and investment income), expressed as a percentage of premium, for each of the major insurers in the individual and small group markets, and combined figures for each market.

Maine's Small Group and Individual Market: MLR and Underwriting Gain/Loss

Maine Small Group Loss Ratios

	2004	2005	2006	2007	2008	5 year average
Aetna Health Inc	78%	76%	81%	83%	87%	80%
Aetna Life Ins Co	67%	64%	74%	77%	76%	74%
Anthem	76%	79%	79%	79%	82%	79%
Harvard Pilgrim Health Care	112%	76%	94%	91%	86%	89%
HPHC Insurance Company	entered market 2006		75%	95%	86%	87%
Small Group Totals (5 Companies)	76%	77%	79%	81%	82%	79%

Maine Individual Loss Ratios

	2004	2005	2006	2007	2008	5 year average
Anthem	83%	90%	90%	88%	85%	88%
MEGA (before refunds) ²³	14%	43%	38%	53%	62%	51%
HPHC Insurance Company	entered market 2008				90%	90%
Individual Totals (3 Companies)	81%	87%	85%	84%	83%	84%

Maine Small Group Underwriting Gain

	2004	2005	2006	2007	2008	5 year average
Aetna Health Inc	8%	11%	3%	4%	-3%	6%
Aetna Life Ins Co	8%	17%	10%	8%	10%	10%
Anthem	12%	11%	10%	9%	5%	10%
Harvard Pilgrim Health Care ²⁴	-20%	12%	-9%	-5%	1%	-3%
HPHC Insurance Company	entered market 2006		8%	-12%	1%	-2%
Small Group Totals (5 Companies)	11%	11%	8%	7%	5%	8%

Maine Individual Underwriting Gain

	2004	2005	2006	2007	2008	5 year average
Anthem	-4%	-7%	-5%	1%	5%	-2%
MEGA (before refunds)	10%	3%	12%	-1%	-11%	-2%
HPHC Insurance Company	entered market 2008				0%	0%
Individual Totals (3 Companies)	-4%	-6%	-3%	0%	1%	-2%

²³ In 2008, the Bureau of Insurance found that MEGA Life & Health Insurance Company used a flawed method to determine premiums for individual health insurance policies. To remedy the violations of law, the insurer agreed to refund \$4.6 million plus interest to policyholders in Maine and to pay a fine of \$1 million to the State's general fund.

²⁴ Harvard Pilgrim is a nonprofit health plan.

In Maine, three nationwide insurance groups conduct some or all of their health insurance business through Maine subsidiaries.²⁵ These insurers have paid the following dividends to their parent companies in the last five years, shown in dollars and as a percentage of premium:²⁶

Maine: Dividends Paid					
INSURER	2005	2006	2007	2008	2009 (as of third quarter)
Anthem	0	\$35,600,000 (3.3%)	\$40,400,000 (3.8%)	\$75,700,000 (7.6%)	\$47,700,000 (6.3%)
Aetna	\$12,100,000 (6.9%)	0	\$4,400,000 (2.8%)	\$18,400,000 (12.1%)	\$6,200,000 (6.1%)
Cigna	\$18,700,000 (29.1%)	\$3,000,000 (5.3%)	0	\$4,500,000 (36.7%)	N/A ²⁷

Note: percentage information in table represents proportion of each Maine premium dollar that went to parent company out of state.

III. REGULATORY FRAMEWORK

A. MAINE'S REGULATORY FRAMEWORK

1. Guaranteed issue and rating reforms

Maine has been a pioneer in the areas of guaranteed issue and rating reforms. The Maine Continuity of Coverage Act was first enacted in 1990,²⁸ and guaranteed issue and community rating were extended to the individual market in 1993.²⁹ All Maine residents who are not eligible for Medicare have the right to buy health insurance from any insurer selling coverage in the individual market, and all small businesses have the same guaranteed issue right in the small group market.

²⁵ New York Governor David Paterson announced on December 10, 2009, that the New York Insurance Department "has received requests from three New York State insurers or their subsidiaries to issue dividends of more than \$1.2 billion, which will be sent to out-of-state corporate parents. The requests follow initial dividend actions from the same three insurers last year that totaled \$948 million." The Governor's press release, "Increase from Last Year Reinforces Need to Give Insurance Department the Authority to Review Insurance Rates," may be found at <http://www.ins.state.ny.us/press/2009/p0912102.htm>.

²⁶ Information on insurer dividends and investments in subsidiaries for prior years is available from the Bureau. Note that historically, many insurers have a practice of declaring dividends once per year.

²⁷ Cigna has discontinued offering HMO plans in many states, including Maine. It is closing its Maine subsidiary and renewing subscribers are being offered PPO coverage with another Cigna company.

²⁸ 24-A M.R.S.A. §§ 2848 through 2850-D, enacted by P.L. 1989, chapter 867.

²⁹ 24-A M.R.S.A. § 2736-C, enacted by P.L. 1993, chapter 477.

The following rate standards apply:

- Individual market: gender, health status/claims experience, and policy duration prohibited; age and geography allowed but limited to a maximum variation of 1.5 to 1 (for both factors combined).³⁰ Nonsmoker discounts allowed but must be actuarially justified.
- Small group market (2-50): gender, health status/claims experience, and policy duration prohibited; age, geography, and industry allowed but limited to a maximum variation of 1.5 to 1 (for all three factors combined). Smoking status, participation in wellness programs, and group size variations allowed but must be actuarially justified.
- Self-employed (groups of 1): Must be offered small group coverage; small group rate restrictions apply. If the insurer offers individual market coverage, then it does not have to offer small group coverage to groups of one; individual market rate restrictions apply.

Insurers also vary rates based on how many family members are covered, *e.g.*, single, two adults, children.

2. Premium rate approval and medical loss ratio requirements

The Bureau of Insurance reviews individual health insurance rates prior to their use by insurers.³¹ Since 1993, Maine law has required a 65% medical loss ratio for individual health insurance.³² This means that at least 65 cents of every premium dollar must be spent by the insurer on medical care and services. After an investigation by the Bureau, pursuant to a consent agreement, MEGA paid a \$1 million fine and refunded \$4.6 million plus interest to individual policyholders for charging excessive rates that were based on improper loss ratio calculations.³³

Small group rates are subject to review by the Bureau in certain circumstances. Medical loss ratio requirements and rate review were extended to small group coverage as part of the Dirigo health reform act in 2003.³⁴ If an insurer guarantees a three year medical loss ratio averaging at least 78%, Maine law does not require rates to be approved by the Superintendent. Refunds are required if the insurer fails to achieve the 78% medical loss ratio. Aetna refunded \$6.6 million in 2008 to small businesses under this provision. Maine law requires all other small group rates to be filed and approved prior to their use, and to meet a 75% loss ratio standard.

The Bureau holds public hearings on most major health insurance rate filings that are subject to prior approval. The insurer must prove by a preponderance of the evidence that the rates it has filed will meet the minimum loss ratio standards and are neither excessive, inadequate nor

³⁰ Pursuant to 24-A M.R.S.A. § 2736-C(2)(D)(4), insurers may reduce rates for the lower age brackets to reflect savings from the Maine Individual Reinsurance Association, as long as the maximum rate variation for any product does not exceed 2½ to 1 for age and geography combined. However, the Maine Individual Reinsurance Association is not operational because its funding mechanism was repealed.

³¹ 24-A M.R.S.A. § 2736.

³² 24-A M.R.S.A. § 2736-C(5), enacted by P.L. 1993, chapter 477.

³³ See *In re MEGA Life and Health Insurance Company Rates for Individual Health Plans*, No. INS-07-1010 (April 3, 2008, amended May 27, 2008).

³⁴ 24-A M.R.S.A. §§ 2808-B(2-B) & (2-C), enacted by P.L. 2003, chapter 469.

unfairly discriminatory.³⁵ The Maine Attorney General usually participates as a party in rate hearings on behalf of consumers.

B. FEDERAL INITIATIVES

The discussion below summarizes a few provisions in the House (H.R. 3590) and Senate (H.R. 3962) bills, and does not include all the proposed changes that would impact cost, delivery or financing of medical care.³⁶

The insurance-related changes generally would not preempt existing Maine laws. The approach in the legislation is a federal “floor,” which means the federal standards would be minimums and states could have stronger consumer protections.

1. Guaranteed issue and rating reforms

The federal government has enacted certain reforms applicable to private health insurance. Enacted in 1996, HIPAA³⁷ required insurers to offer coverage on a guaranteed-issue basis to all small businesses, but had only limited protections for people relying on the individual market. HIPAA did not establish standards for premiums. In other words, unless states had standards, insurers could use a variety of factors to vary rates, for example charging higher rates to small businesses with older and sicker workers. In the 1980s, continuation rights (known as COBRA) were enacted.³⁸ COBRA requires employers with 20 or more workers to allow people who no longer qualify for coverage, e.g., no longer employed, divorced, etc. to continue that coverage for a period of time.

Under current proposals, both the U. S. House and Senate bills would extend guaranteed issue rights to the individual market in every state, and establish “exchanges” to facilitate access to health insurance coverage. These bills would also establish rating standards. Insurers would be prohibited from setting premiums based on health status or claims experience – in individual and small group markets. Rates based on gender would not be allowed. Variation based on the size of a small business would also be prohibited. Under the House bill, premiums for any given health insurance policy may vary only based on one’s age, geographic area and family composition. The House bill would limit variation based on age to 2:1, while the Senate bill would limit variation based on age to 3:1. The Senate bill would also allow variation based on tobacco use, limited to 1.5:1.³⁹

³⁵ 24-A M.R.S.A. § 2736-A.

³⁶ For example, the bills contain funding for community health centers, expand public programs like Medicaid, have Medicare reforms, health care quality research, liability reform pilot projects, and funding for a range of private and public initiatives.

³⁷ Health Insurance Portability and Accountability Act of 1996, Pub. L. 104-191.

³⁸ See Consolidated Omnibus Budget Reconciliation Act of 1985, Pub.L. 99-272.

³⁹ The Senate bill includes a 10-state pilot project that would allow discounts in the individual market for participation in wellness programs.

2. Minimum coverage levels (actuarial value)

Both bills would require a qualified plan to cover an essential package of health care services, based on a typical employer health plan, and to have a minimum actuarial value. In the House bill, the plan must be actuarially equivalent to at least 70% of the full actuarial value of the covered benefit package. In the Senate bill, the minimum is 60%, except for individuals who are under 30 or are unable to afford a qualified plan. A plan with an actuarial value of 60% means that a covered person pays approximately 40% of the total cost of covered medical care and services, and the insurer pays 60%. By comparison, the \$15,000 deductible plan currently purchased in Maine by approximately 37% of Anthem's individual enrollees – this is 16.8% of the total individual market – has an estimated actuarial value of approximately 27%, according to estimates from Anthem.⁴⁰

3. Subsidized coverage

Both the House and Senate bills would pay for a portion of the premium for low- and moderate-income families and individuals. The premium credit (also called “subsidies”) would be based on one's income level and the cost of coverage. This would be available to all individuals and families with income up to four times the federal poverty level (FPL) who are not eligible for Medicaid. As of October 2009 federal poverty level for a family of four is \$22,050. A family of four with income up to \$88,200 would be eligible for some assistance.

In addition to the reduction in premium, both bills would lower out-of-pocket expenses like deductibles, copayments, and coinsurance. The House bill would lower out of pocket expenses for everyone who is eligible for the premium credits. The Senate bill would lower out of pocket expenses for people with incomes of up to two times FPL, currently \$44,000 for a family of four.

For example, a family of four with income of \$46,419 (median income in Maine in 2008) would pay a monthly premium of \$233 under the House bill. Additional subsidies would cut in half the average out of pocket cost (including deductible, coinsurance, and copays); and out of pocket costs could not be greater than \$2000 per person per year.⁴¹ Under the Senate bill, the premium would be \$258 per month with an out-of-pocket limit of \$5000 (this is a 70% actuarial value plan, meaning that the average out of pocket cost would be 30%).⁴²

4. Individual and employer responsibility

Under both bills, with limited exceptions such as financial hardship, all people would be required to have either individual or job-based health insurance.

Both bills would require employers to help pay for coverage. However, both bills exempt small businesses from these requirements. Large and mid-sized employers would be required to offer

⁴⁰ “Health Care Reform Premium Impact in Maine,” WellPoint Corp. (Oct. 2009). Explanations of the underlying actuarial data were provided to the Bureau of Insurance by Anthem.

⁴¹ The base plan would have a 70% actuarial value, meaning the consumer's average out-of-pocket share is approximately 30%. The House cost sharing subsidies for this income level would increase the actuarial value to 85%, meaning the consumer's share would be reduced by half, to 15%.

⁴² Based on the Kaiser Family Foundation Subsidy Calculator, <http://healthreform.kff.org/SubsidyCalculator.aspx>.

coverage to their workers or pay a fee. The Senate bill exempts businesses with 50 or fewer workers. Others would have to pay a fee of \$750 per worker if coverage is not provided by the employer. The House bill would require businesses with payroll of \$500,000 and higher to either provide coverage (paying for at least 72.5% of premium) or pay a fee of 8% of payroll. Employers with payroll between \$500,000 and \$1 million would pay a reduced fee.

5. Loss ratio requirements

Both federal bills would establish medical loss ratio (MLR) requirements for group market coverage. The Senate bill would also establish MLR requirements for individual market coverage. These require insurers to pay a specified percentage of what they collect in premiums for medical care and services. Minimum MLR standards would be the following:

- House bill: 85% for large group and small group;
- Senate bill: 85% for large group; 80% for small group and for individual coverage.

Both bills would use premium net of taxes and fees, rather than the total premium, as the base for the MLR. The Senate bill would consider “activities that improve health care quality” as part of medical care or service expenses in calculating whether the insurer has met the minimum requirement. Maine’s MLR is different – subtracting taxes is not allowed. Except for an adjustment for Dirigo savings offset payments, MLR in Maine is simply the ratio of claims to earned premium.⁴³

6. Immediate help for individuals and businesses

Although both bills provide grants to the states for making coverage available to the uninsured, assistance under the Senate bill generally would be limited to high-risk pools. Under the House bill, these grants would also be available to states like Maine that have already enacted guaranteed-issue reforms and make coverage available to the uninsured through public-private partnerships such as DirigoChoice.

The Senate bill would also provide assistance beginning in tax year 2010 directly to small businesses, through a tax credit for providing coverage to low- and moderate-wage workers. The employer must have 25 or fewer workers and must contribute at least 50% of the premium. The full credit would be available to businesses with 10 or fewer workers and average annual wages of less than \$25,000, and phases out as firm size and average wage increase. The House bill includes tax credits for small businesses, beginning in 2013.

7. Health insurance exchange

Both bills establish health insurance exchanges, which would facilitate enrollment in health coverage and the administration of premium subsidies, determine whether health insurance products meet the standards for qualified health plans, and provide a web based informational tool for consumers to make it easier to shop for health insurance, to compare policies and to buy coverage. The Senate bill would allow states to establish and operate these. Federal regulators

⁴³ 24-A M.R.S.A. §§ 2736-C(5); 2808-B(2-B)(A) & (2-C)(C).

would establish these if a state is not willing or unable to do so. The House bill would set up one national exchange but allow states to opt-out and establish their own.

Individuals and small businesses would be able to purchase coverage through these exchanges. In the Senate bill, small businesses would be able to purchase coverage through Small Business Health Options exchanges, or “SHOP” for short. This is based on the SHOP Act sponsored by Senator Olympia Snowe.

8. Risk adjustment

Both bills include risk adjustment provisions, intended to ensure that prices for different health insurance policies are based on the benefits provided and not on differences in the health of the populations enrolled in each. The Senate bill would apply risk adjustment within the individual market and within the small group market both in and out of the exchanges (except for grandfathered plans). The Senate bill allows states to merge the individual and small group markets for rating purposes. The House bill adjusts risk within the exchange.

	House Bill	Senate Bill	Maine
Guaranteed Issue for individual market coverage	✓	✓	✓
Rating Reforms for individual and small group markets	✓	✓	✓
Premium and out of pocket cost subsidies for individuals	✓	✓	*
Tax credits for small businesses	✓	✓	
Individual Responsibility	✓	✓	
Required contribution by employers	✓	✓	
Medical Loss Ratio	✓	✓	✓

*DirigoChoice

IV. CONCLUSION

Options for continuing to address ways to improve access, affordability and security of health insurance for Mainers will depend on the nature and extent of federal health care reforms and flexibility for states to move ahead building on federal reforms. The Bureau will supplement this preliminary report.

APPENDIX A: Federal Health Reform Bills summary prepared by Kaiser Family Foundation
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APPENDIX B: Market Snapshot – individual medical

APPENDIX C: Market Snapshot – small group health