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FINAL REPORT
of the
JOINT STANDING COMMITTEE ON
APPROPRIATIONS AND FINANCIAL AFFAIRS

on

A STUDY OF:

THE MANNER IN WHICH NEW AND EXPANDED SERVICES
IN FEDERAL AND "DEDICATED" FUNDS SHOULD BE
PRESENTED TO THE LEGISLATURE FOR REVIEW

and

THE MANNER IN WHICH FINANCIAL ORDERS ARE
CURRENTLY USED DURING THE LEGISLATIVE SESSION

FEBRUARY 1990

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Rep. Donald V. Carter, Chair
Rep. Lorraine N. Chonko

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MAR 19 1990

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I N T R O D U C T I O N

During the First Regular Session of the 114th Legislature, the Joint Standing Committee on Appropriations and Financial Affairs spent time discussing, as it has numerous times in the past, a variety of budget management issues. Topics included:

- the increased number of financial order transactions (during and between legislative sessions);
- the use of financial orders during the legislative session;
- the establishment of federally-funded and dedicated funded positions by financial order;
- the responsibility of the state when federal funds are eliminated or diminished; and
- the lack of information to the Appropriations Committee from departments and agencies when federal grant awards are increased or decreased in relation to budgeted data.

The Appropriations Committee resolved some of these issues by incorporating statutory language into various legislative documents before it. However, the Committee could not reach consensus on two of the issues before them and decided to organize an interim subcommittee to study these issues in greater detail.

One issue involved the way in which new and expanded federal and dedicated fund budget requests are presented to the Legislature for its review. The second issue involved the Executive Branch's use of "financial orders"* during legislative sessions and the Committee's preference toward completing budgetary transactions via legislation rather than by financial order.

The Appropriations Committee recommended, and the 114th Legislature concurred, that an interim study should be conducted on

* Financial orders provide a means of completing a number of budgetary functions necessary for the proper operation of state government. These functions include allotting funds appropriated or allocated by the Legislature into quarterly allotments; transferring funds appropriated or allocated by the Legislature into different intra-departmental accounts; moving appropriated or allocated funds from one quarter to another; increasing allotments due to receipt of new funds; decreasing allotments; etc. See Title 5, section 1585 of the Revised Statutes for additional information.

these issues. The Subcommittee was charged with investigating the issues further and providing recommendations, if necessary, to the Second Regular Session of the 114th Legislature.

M E T H O D

The Joint Standing Committee on Appropriations and Financial affairs organized a five-member subcommittee to conduct the study. The subcommittee was comprised of the following committee members:

Rep. Donald V. Carter, Subcommittee Chair
Sen. Joseph C. Brannigan
Rep. Lorraine C. Chonko
Rep. Judith C. Foss
Rep. Patrick K. McGowan

The objectives of the subcommittee were established in PL 1989, c. 501 and are presented below:

- To study the manner in which new and expanded services in Federal Expenditure funds, Federal Block Grant funds, Other Special Revenue funds, internal services funds and general ledger funds should be presented to the Legislature for review; and
- To study the manner in which financial orders, as authorized in the Maine Revised Statutes, Title 5, section 1585, are currently used during the legislative session.

Appendix A provides a copy of the subcommittee's authorizing legislation.

The subcommittee held four public meetings during the fall of 1989. Each meeting was attended by the Commissioner of Finance and/or a representative from the Bureau of the Budget.

Each of the meetings focused on some element of data collection and review that would be needed to complete the study. Subcommittee members also utilized the meetings for a broader discussion of the normative and positive aspects of budget management in Maine State Government. The information and topics reviewed at each meeting is summarized below:

- 9/89 • Definition of data needs, "current services" budget, "new and expanded" budget; and

- Discussion of impact of federal funding shifts and new mandates on state government.
- 10/89 • Review of preliminary data: Survey of Other Northeastern States;
 - Analysis of recent federal shifts in funding; and
 - Analysis of financial order activity (FY 1987 and FY 1989).
- 11/89 • Review of completed Survey Results (see Appendix B);
 - Review and discussion of Option Papers (see Appendix C; and
 - Discussion of tentative findings and recommendations
- 12/89 • Review and Discussion of Federal/Dedicated Funds Subcommittee proposal (see Appendix D); and
 - Formulate findings and recommendations for Final Report.

The survey of other northeastern states referred to above provided particularly valuable information to the subcommittee. The office equivalents of Maine's Legislative Office of Fiscal and Program Review were contacted via telephone in the states listed in Table 1. Each state was queried on their Legislature's approach to resolving federal and dedicated fund budget requests and their use of financial orders. Survey results are provided in Appendix B.

Table 1: Northeastern States Participating in the Subcommittee Survey

Connecticut	New York
Maryland	Pennsylvania
New Hampshire	Rhode Island
New Jersey	Vermont

The subcommittee met in early February 1990 to review their draft report in its entirety and to transmit that document to the full Appropriations Committee for its review.

O V E R V I E W

PRESENTATION OF NEW AND EXPANDED SERVICES IN FEDERAL AND "DEDICATED" FUNDS TO THE LEGISLATURE FOR REVIEW

Ever since Maine State Government adopted a "unified budget system in 1984 (whereby the state's biennial budget would reflect all funding sources), the Joint Standing Committee on Appropriations and Financial Affairs has found it difficult to devote the same level of review to federal funds and the various "dedicated" funds (such as "other special revenue funds", "internal service funds", and "general ledger funds") as it does to the General Fund. It has been the consensus of committee members, both past and present, that there was insufficient time during the legislative sessions for detailed reviews of requests from these funds if the remainder of the committee's work was to be completed.

There has been a growing concern among committee members, however, that the committee must, to a certain extent, re-prioritize its workload so that more time can be spent on these portions of the state budget. Reasons for this concern include:

- Decreasing federal participation in certain programs with corresponding requests from the department(s) affected seeking General Fund support;
- Increased sensitivity on the part of committee members to unfunded federal mandates;
- Requests from "dedicated fund" programs seeking subsidies from the General Fund (most notably the Highway Fund and the Alcohol Premium Fund);
- The establishment in federal and dedicated fund programs of new positions and/or additional program allocations by financial order during and between legislative sessions. The perception among committee members is that establishing these allocations by financial order creates unchecked growth in state government and is contrary to oversight of the General Fund budget; and
- The inclusion of "new and expanded services" within the "current services" budget for federal and dedicated funds.

Since the establishment of the unified budget, the Executive

Branch has submitted "current services" budgets (i.e., "Part 1") for the General Fund that include only the cost to maintain services at their current level. General Fund "Part 1" budgets only include new or additional costs if they are necessary to maintain current service levels (e.g., collective bargaining impacts, increased or decreased program caseloads, etc.). The "current services" budgets submitted by the Executive Branch for federal and dedicated funds, meanwhile, have included "new and expanded services" (e.g., new positions, new program funding, etc.) within the Part 1 submittal. Committee members have found this practice to be inconsistent.

The subcommittee's survey results indicated that most of the northeastern states, due to time and staffing constraints, focus on their General Fund and spend proportionately less time on federal and dedicated fund budgets. Even most of those Legislature's (n=6) that indicated that they "...take an active role in reviewing federal and dedicated fund budgets" also indicated (n=4) that they spend less time on these budgets than they spend reviewing General Fund requests. All states contacted said that, like Maine, "new and expanded service" requests for federal and dedicated funds are not distinguished from "current service" budgets. It was interesting to note, however, that most of these same states did not distinguish between "current services" and "new and expanded services" in their General Fund budgets as well. These states wanted additional information on Maine's General Fund "Part 1" and "Part 2" budget process.

USE OF FINANCIAL ORDERS DURING THE LEGISLATIVE SESSION

The number of financial orders being processed have increased considerably in the recent past. For example, 213 transactions relating to the transfer of funds only were processed during fiscal year 1986-87. In FY 1988-89, there were 424 transactions for this same purpose.

The Joint Standing Committee on Appropriations and Financial Affairs recognizes the importance of financial orders as the tool to administer the state budget once enacted by the Legislature and signed by the Governor. At the same time, however, committee members have expressed concern over the following:

- Financial Orders being presented to the Appropriations Committee for its review (as established under Title 5, section 1585 of the Revised Statutes) when the

Legislature is in session and the Appropriations Committee has a budget bill before it;

- The increased number of transactions performed by financial order.
- The appearance that financial orders are being used to circumvent legislative intent; and
- The "emergency" nature of most financial orders, as discussed in Title 5, section 1585 of the Revised Statutes, is not readily apparent.

Under current procedures, each financial order must be received by the Appropriations Committee, but the committee does not have the statutory authority to block the approval of a financial order. The Appropriations Committee is authorized by Title 5, section 1585 of the Revised Statutes to waive the 30-day waiting period established for all financial orders.

The subcommittee's survey results indicated that most of the Legislatures in the northeastern states play a limited role in the review and approval of financial orders, as does the Maine Legislature. In fact, some of these Legislatures, including Maryland, New Jersey, and New York, only review financial orders over a certain dollar limit. In other states, such as Rhode Island and Vermont, the Governor is not required to notify the Legislature at all when processing financial orders.

Given the concerns cited above, however, subcommittee members were more interested in pursuing a greater, rather than lesser, role in the financial order process. In an option paper presented to the subcommittee (see Appendix C), members weighed the pro's and con's of adopting a financial order review and approval process similar to New Hampshire's. The Fiscal Committee of New Hampshire's General Court must give prior approval to all transfers and has the power to veto any proposal. The New Hampshire Legislature has placed significant restrictions on the ability of departments and agencies to transfer funds within and between certain line-items in their budget. Appendix B provides more details on how New Hampshire and the other northeastern states organize their financial order processes.

During the subcommittee's review of this issue, members requested the State Budget Officer, Mr. G. William Buker, to comment on the impact placing additional restrictions on the financial order process would have on his office's management of the state budget. Mr. Buker submitted written comments to the subcommittee that

suggested additional restrictions would negatively impact the operation of state government. His comments are presented below:

- "The law that brought both federal fund and dedicated revenue funds under line category control and the requirement for allocations created a considerable increase in the number of financial orders needed. The operation of a business with expenditures of \$2.5 billion annually needs a certain amount of flexibility";
- "Under the current budget and accounting systems it would be very difficult to place a restriction (at) a level below the line category. It may destroy the Unified Budget concept"; and
- "The capability to transfer funds is a necessary part of the day to day operation of state government. It is not only necessary to carry out legislative intent, but it is necessary to be able to move quickly in many cases. I believe the legislative process would be too cumbersome to handle all actions now processed by financial orders. A financial order would be required to implement any (financial) action taken by the Legislature."

F I N D I N G S

The Joint Standing Committee on Appropriations and Financial Affairs finds that:

1. The committee needs to take a more active role in reviewing federal and dedicated fund budget requests;
2. A standing subcommittee on federal and dedicated funds would enable the Appropriations Committee to have a greater understanding of federal and dedicated fund issues;
3. A Federal/Dedicated Funds Subcommittee would be most effective if, in its initial stages, it is limited to reviewing federal fund requests only during the legislative sessions. During the interim, the subcommittee will be most effective if it compiles historical and program data for both federal and dedicated funds in a report form that can be submitted to the full Appropriations Committee membership for their review and use;

4. A subcommittee will place a significant time burden on the members appointed, especially during the legislative sessions. The subcommittee will be most effective if attendance at meetings is strong and the subcommittee, during the legislative sessions, can complete its review and report to the full committee in an expeditious manner;
5. A standing subcommittee will have a significant impact on committee staff, especially during the legislative sessions. The committee reserves the right to request an additional analyst in order to accommodate the additional workload if necessary. Limiting session reviews to federal fund requests only will be one means of lessening the impact on staff;
6. Establishing a subcommittee will be most effective if it is initiated in time for a report to the First Regular Session of the 115th Legislature;
7. All "new and expanded service" requests for federal and dedicated funds would be more effectively reviewed by the Legislature if they were presented in the "Part 2" budget bill;
8. There are many benefits to establishing a separate subcommittee which would be responsible for reviewing financial orders. However, given time and staffing constraints, this subcommittee should not be established at this time;
9. It would be difficult to implement any additional restrictions on the financial order process at this time;
10. Additional detail is required concerning the amount of financial order transactions completed by the various departments and agencies of state government;
11. Title 5, section 1583 of the Revised Statutes, which is intended to prohibit a state agent, officer or employee from exceeding his/her appropriation, needs to be clarified; and
12. Title 5, section 1669 of the Revised Statutes, which requires all departments and agencies of state government to notify the Office of Fiscal and Program Review within 10 working days when federal funds are increased or decreased, lacks a requirement to notify the Office of Fiscal and Program Review of the General Fund "match" dollars that will be required or freed up as a result of federal funding changes.

13. P.L. 1989, c. 501, Part P, section 48, which prohibits any positions intended to be "ongoing" from being created unless funds are specifically appropriated or allocated by the Legislature, is unallocated, non-statutory language. It would be more appropriately placed in the Revised Statutes in order to continue this prohibition into future fiscal years.

R E C O M M E N D A T I O N S

The Joint Standing Committee on Appropriations and Financial Affairs recommends the following:

1. A Federal/Dedicated Funds Subcommittee, comprised of five members of the Appropriations Committee, should be established on an ongoing basis. During legislative sessions, this subcommittee should be restricted to only reviewing federal funds in detail. During the interim, this subcommittee should compile historical and program data on federal and dedicated funds in report form for review and use by the Appropriations Committee. Appendix D provides additional details on implementing this recommendation;
2. The Governor should be required to present "new and expanded services" funding requests for federal and dedicated funds in the "Part 2" budget, as happens now with the "new and expanded services" budget requests for the General Fund and Highway Fund;
3. In order to provide additional data on financial order activity, the Commissioner of Finance should request each department and agency of state government to summarize the number and type of financial orders they have transacted for the last five fiscal years and submit that data to the Appropriations Committee no later than April 1, 1990;
4. The Bureau of the Budget in its review of proposed financial orders, should scrutinize all requests for waiver of the 30-day waiting period and apply true "emergency" criteria before recommending to the Governor that the 30-day waiting period be waived. The criteria developed by the Bureau of the Budget should be distributed to the Legislative Office of Fiscal and Program Review and all departments and agencies.
5. Title 5, section 1583 of the Revised Statutes, should be clarified as follows:

§1583. Exceeding appropriation, allocation and authorized available resources prohibited.

Any agent, officer or employee of the State who either affixes a written signature, a facsimile or uses an electronic signature to authorize expenditures, to make legally binding commitments or to establish written policy and procedure which together and in the aggregate exceed the resources approved by the Legislature and authorized by law for a fiscal year for an appropriation or allocation account shall be held personally liable for the amount in excess of those resources. If a commissioner, an agency head and other state official determines that the resources made available to an appropriation or allocation account are going to be insufficient to implement or to continue a program authorized and funded by the Legislature he or she must take the steps necessary to stay within the resources available. If a decision is made to curtail a program, the Committee on Appropriations and Financial Affairs must be notified thirty working days before the curtailment is to go into effect.

6. Title 5, section 1669 of the Revised Statutes should be amended to require all departments and agencies, when notifying the Legislative Office of Fiscal and Program Review of federal funding increases or decreases, to include information on the General Fund "match" that will be required or freed up as a result of the federal funding action.
7. PL 1989, chapter 501, Part P, section 48, currently unallocated, non-statutory language, should be included in the Revised Statutes to ensure that the prohibition against establishing federal and dedicated fund positions by financial order will continue. The prohibition should also be expanded to include any new and expanded program expenditure being established by financial order that is intended to be ongoing.

APPENDIX A:

**COPY OF AUTHORIZING LEGISLATION
FOR STUDY SUBCOMMITTEE**

P.L. 1989, C. 501, Part P. Section 46
(as amended by P.L. 1989, C.)

Sec. 46. Joint Standing Committee of Appropriations and Financial Affairs; study. The Joint Standing Committee on Appropriations and Financial Affairs shall conduct a study of the following: the manner in which new and expanded services in Federal Expenditure funds, Federal Block Grant funds, Other Special Revenue funds, internal service funds and general ledger funds should be presented to the Legislature for review; and the manner in which financial orders, as authorized in the Maine Revised Statutes, Title 5, section 1585, are currently used during the legislative session.

The committee shall organize a subcommittee to investigate these issues.

The committee members shall receive the legislative per diem, as defined in the Maine Revised Statutes, Title 3, section 2. Members shall be reimbursed for expenses upon application to the Executive Director of the Legislative Council.

The committee shall issue a report, together with any proposed legislation, to the Second Regular Session of the 114th Legislature by February 15, 1990.

APPENDIX B:

SURVEY OF OTHER NORTHEASTERN STATES

PART 2/FINANCIAL ORDERS SUBCOMMITTEE
SURVEY RESULTS

STATE: Connecticut(CT), Maryland (MD), New Hampshire (NH), New Jersey (NJ), New York (NY), Pennsylvania (PA), Rhode Island (RI), Vermont (VT), Maine (ME)

A. FEDERAL AND DEDICATED FUNDS

1. Does the Governor present a "unified budget" to the Legislature (all funds)?

<u>YES</u>	<u>NO</u>
CT, MD, NH, NJ, NY, PA, RI, VT, ME.	--

2. Does your Appropriations Committee(s) take an active role in reviewing federal fund and dedicated fund budgets?

<u>YES</u>	<u>NO</u>
MD, NH, NJ, NY, PA, VT.	CT, NJ, RI, ME.

(SEE NOTES)

3. Does the Committee(s) spend at least as much time on these funds as they spend on the General Fund?

<u>MORE THAN GEN. FUND</u>	<u>LESS THAN GEN. FUND</u>	<u>SAME AMOUNT AS GEN. FUND</u>
--	CT, MD, NJ, NY, PA, RI, ME.	NH, VT.

(SEE NOTES)

4. In preparing your annual/biennial budgets (choose one), are "current services" for federal and dedicated funds distinguished from "new and expanded services"?

<u>DISTINGUISHED</u>	<u>COMBINED</u>
--	CT, MD, NH, NJ, NY, PA, RI, VT, ME.

(SEE NOTES)

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5. Does your Appropriations Committee(s) have any special mechanisms in place to deal with federal and/or dedicated funds (such as a standing subcommittee specifically established to review federal budgets; etc.)?

NONE

CT, MD, NH, NJ, NY, RI, VT, ME.

(Exception: Federal Block Grant Funds are handled more like the General Fund, with specific public hearings, due to federal requirements)

YES

PA.

(SEE NOTES)

6. Do you have a process in place to track increased costs to your state when the federal government decreases funding or passes along a mandate to you?

YES

MD, PA, VT, ME.

NO

CT, MD, NH, NJ
NY, RI, ME.

(SEE NOTES)

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B. FINANCIAL ORDERS

1. Does your state have a process by which the Executive Branch can shift funds appropriated or allocated by the Legislature (eg, between line-items, between accounts, etc.)?

<u>YES</u>	<u>NO</u>
CT, MD, NH, NJ	PA.
NY, RI, VT, ME.	

(SEE NOTES)

2. In Maine, statutory language prohibits the Governor from transferring funds between departments. What sort of restrictions does your Legislature place on the transfer of funds?

<u>NO TRANSFER BETWEEN DEPARTMENTS</u>	<u>NO TRANSFERS ALLOWED</u>
CT, MD, NH, NY, RI, VT, ME.	PA.

TRANSFERS ALLOWED BETWEEN DEPARTMENTS
NJ. (under certain circumstances)

(SEE NOTES)

3. Is the Appropriations Committee involved in reviewing financial orders?

<u>YES</u>	<u>NO</u>
CT, MD, NH, NJ	PA, RI.
NY, VT, ME.	

(SEE NOTES)

4. Are there any special problems or issues that you face (in Legislative Finance) when dealing with the transfer of general fund appropriations or federal/dedicated allocations?

NONE
CT, MD, NH, PA, VT.

(SEE NOTES)

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N O T E S
(to Survey Results)

A. FEDERAL AND DEDICATED FUNDS

QUESTION #2:

- CT Federal Block Grant Funds are reviewed, however, as closely as General Fund Budgets..
- MD Federal and "Special" Funds constitute a significant percentage of the state's budget and need to be actively reviewed.
- NJ "Active" role in reviewing federal block grant funds.
- RI Cursory review; examine significant changes only.
- ME Role in reviewing federal and dedicated funds is increasing but still limited to major policy or funding changes.

QUESTION #3:

- MD Estimate of time spent on respective budgets:
 60% General Fund
 25-30% "Special"/Transportation Funds
 10-15% Federal Funds
- NH Only "minor federal or dedicated funded programs receive less review time than the amount of time spent on General Fund programs; otherwise, all programs are evaluated equally, regardless of funding source.
- NJ In general, federal and dedicated funds receive less time than the General Fund. However, most programs requiring a state match require an equal level of review.

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QUESTION #4:

- CT The legislative budget document does not distinguish "current services" from "new and expanded", but the Governor's budget document does break out federal and special revenue expenditures by identifying current services and the total amount recommended.
- MD Legislature's Department of Fiscal Services makes an estimate of "current services" budget in order to scrutinize Governor's budget proposal. Governor doesn't have to delineate "current services" v. "new and expanded services" although he/she must address significant/major changes in his "Budget Message".
- NH Executive Departments must clearly identify "current services" (ie, "maintenance") from "new and expanded services"; because NH does program budgeting both levels of services are delineated and evaluated.
- NJ No "current services" projections unless requested by committee(s) or legislators.
- NY The narrative explanation of the budget would identify any "new or expanded services" and their effect on the program.
- PA Allocations are made based upon what will be available. Budget may note difference in fund availability.
- RI Governor combines "new and expanded services" and "current services; sets a target for budget in conjunction with revenues. Departments then prepare "restrained funding requests" or "special papers" requesting from the Governor additional funds outside of his recommended budget. If a department is "cut" in a "current services" item in order to accommodate a Governor's "new and expanded" item, the department can make other adjustments in order to restore the needed "current service" item.
- VT Budgets reflect all sources of funding; attempt to prioritize using state dollars first.

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QUESTION #5:

- CT There are subcommittees of the Appropriations Committee established to review the financial aspects of specific issues (eg, housing, education, etc.). These subcommittees would look at all funds available to a specific issue but no subcommittee would deal with federal and/or dedicated funds only.
- MD Standing committees that review agency budgets would review federal and "special" funds.
- NH No specific mechanism other than Fiscal Committee's role. Review role for legislature; acceptance of funds and planning expenditures rests with the Governor. Federal Block Grant Funds hearing held (per federal requirements).
- NJ When there was a Joint Appropriations Committee, members organized a federal funds subcommittee (the Joint Appropriations Committee is no longer in place). Subcommittee compiled and reviewed federal funding information. Otherwise, public hearings are held on federal block grants and the Legislative Budget and Finance Office reviews federal funding.
- PA Each agency is required to submit a legislative Request to Approve Federal Funds form (RAFF) and must provide information on each grant. Funds cannot be expended without specific legislative approval.
- RI Learn of problems from special interest groups at hearings or from legislators who have been contacted by constituents, etc.

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QUESTION #6:

- CT There is no formal process in place. An agency must provide notification and bring any problem to the attention of the Governor. No notification to legislative offices is required unless it pertains to federal block grants.
- MD Federal Funding decreases: If a federal grant is discontinued, the agency must provide, prior to the Governor's budget submission, an analysis of the impact to the program and whether the department is requesting state dollars to replace lost federal dollars from the Governor. The Governor does not have to include the request in his/her submission. Similar department analysis is required if federal funds are reduced by 25%.
- NH Governor can accept federal funds but information on spending federal funds has to be presented to the Fiscal Committee of the General Court.
- NY No formal process within the Legislative Branch to track federal decreases or mandates. The Executive Branch is required to notify the Legislature of any impact after the fact. Legislature takes no action; any reductions or increased costs would be reflected in the following budget.
- PA There is an ongoing tracking system as part of legislative oversight. Agencies cannot spend unless funds are available.
- RI Track changes in federal funding via budget hearings and word of mouth. Legislative office prepares historical funding data.
- VT Committee chairs are notified. Agencies are required to provide information as to impact if federal funds are reduced or if a federal mandate will result in increased costs to the state.
- ME Recent statutory changes to 5 MRSA §1669 requires all departments and agencies to contact Legislative Office of Fiscal and Program Review within 10 working days of any official notification from the federal government concerning potential or actual increases or decreases in present funding. Departments and agencies must submit proposed plan of administration concerning the notification to Office of Fiscal and Program Review within 25 working days.

No process to track federal "mandates".

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N O T E S
(on Survey Results)

B. FINANCIAL ORDERS

QUESTION #1

- CT A Financial Advisory Committee, which is made up of 5 members of the Appropriations Committee and 4 Executive Branch members (including the Governor), is set up to act upon line category transfers, transfers between accounts and to appropriate funds if matching state funds are required to meet the conditions of a grant award. All such actions go before this FAC. Each agency must complete an application detailing the needed change, and submits same to the Office of Policy and Management (an arm of the Governor). OPM will recommend the action or disapprove it. It then goes before the FAC for final disposition.
- MD Two types of "budget amendments" (ie, financial orders):
 (a) One type would be an ordinary transfer between two accounts within a department. Legislature's Department of Fiscal Services is sent a copy after "budget amendment" has been approved; and
 (b) The other type allows additional federal or "special" funds to be brought into the budget. These "budget amendments" are reviewed only by the Legislature before the Governor approves.
- NH Process is called "Appropriation Transfer Limitation". The Fiscal Committee of the General Court, which meets approximately once each month, must give prior approval to transfers. Fiscal Committee can "veto" any proposal, but because of the transfer limitations cited in Question #2, departments are careful and not many are vetoed.
- NJ Process is specified annually in appropriations act; system cuts down on those transfers requiring legislative approval. Two types of transfers:
 (a) If the transfer is greater than \$8,000, department or agency submits the transfer to Legislative Budget and Finance Office for review and approval. Director of that Office informs Joint Budget Committee of his plan of action; Committee reviews plan of action; and
 (b) If the transfer is less than \$8,000, no legislative review role.
- NY The Executive Branch can shift up to 5% of an appropriation between line items or accounts. Must notify Legislature's Finance Office of such action. Transfers greater than 5% require legislative action.

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(Question #1 continued)

- PA There is no transfer process due to legislature's full-time status. Governor has, through interagency agreements, shifted within appropriations (now being questioned).
- RI Legislature doesn't see transfers on a systematic basis; initiated and approved by Executive Branch.
- VT Governor has authority to permit transfers; not required to notify legislative Branch.
- ME Legislature has review role only; can waive 30-day waiting period on financial order effective dates if transfer is an "emergency" or can block Governor's emergency waiver requests.

QUESTION #2

- CT No transfers between departments (if duties of a department are transferred elsewhere as a result of legislation, related funds may be transferred to implement what the Legislature initiated).
- MD No transfers between departments (on occasion, appropriation language is included in budget bills to specifically prohibit or restrict transfers in certain areas).
- NH In addition to restricting transfers between departments, listed below are other restrictions that apply:
- (a) Funds can be transferred into "equipment" but not out (RSA 9:17-a(I));
 - (b) Funds cannot be transferred in or out of "out-of-state travel" (RSA 9:17-a (II))
 - (c) Funds cannot be transferred in or out of "permanent personal services" (RSA 9:17-a (IIa));
 - (d) Funds cannot be transferred into fish and game department for land acquisition (RSA 9:17-b); and
 - (e) Limitations on transferring "employee benefit" funds (RSA 9:17-c)
- NJ Duties can be transferred between departments (except the Legislature). Process is called "discharge obligations". Process is overseen by Executive Branch's Director of Budgeting and Accounting with information copies only to Legislature's Budget and Finance Office.
- PA No Executive Branch transfers permitted
- VT Interdepartmental transfers cannot take place unless included in a supplemental budget and approved by the Legislature.

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QUESTION #3

- CT Appropriations Committee is involved in reviewing financial orders, to the extent 5 members serve on the Financial Advisory Committee.
- MD The two Appropriations Committees meet biweekly or monthly during off-session; hearing would be held on controversial "budget amendments". The Legislature's Department of Fiscal Services monitors the "budget amendments" for the committees.
- NJ Joint Budget Committee is involved in the review (see Question #1) comprised of 3 Senators and 3 Representatives.
- NY Only to the extent that the Finance Office is provided with notification of Executive Branch action.
- PA Legislature is full-time. Therefore all actions involving state finances are reviewed by the Appropriations Committees. There are no financial orders processed.
- RI Informal review only; House fiscal staff may see a controversial transfer request; no formal review process for Legislature.
- VT During the off-session, Joint Fiscal Committee meets once a month to deal with issues such as accepting federal money and expending additional federal/dedicated funds. During the Legislative sessions, a special bill must be submitted to accept these funds.

QUESTION #4:

- NH Through the Fiscal Committee's review, issues come to light and are resolved by the Committee. Not many transfers are denied because the limitations are clear.
- NY Number of transfers have decreased since utilizing GAAP accounting systems.
- RI Would benefit from being involved; but no role now.

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QUESTION #5

- NY Budgets have become more reflective of actual needs and has resulted in fewer adjustments being made.
- PA Full-time Legislature provides for a great deal of control over the expenditure of funds.
- VT If the Governor announces across-the-board cuts and/or selective cuts, they must be held in abeyance; funds cannot be used for any other purpose. Only the Legislature can take such action and the various committees have, and would, intervene when such cuts are announced. Therefore, the Legislature can offset any action taken by the Governor in this regard.

APPENDIX C:
OPTION PAPERS PRESENTED
TO THE SUBCOMMITTEE

O P T I O N P A P E R

I. ISSUE

Should the Appropriations Committee organize a standing subcommittee to review federal and dedicated fund budget requests?

II. BACKGROUND

Federal and dedicated fund budgets are not reviewed as closely as General Fund budget requests by the Appropriations Committee. This is largely a function of insufficient time. Concerns have been expressed by Appropriation Committee members with regard to departments' discretion and flexibility to accept and expend these funds when future funding or level of funding is uncertain. Uncertainty as to the level of continued funding can place a greater burden on state resources and warrants scrutiny and fiscal oversight.

III. OPTION #1

Organize a standing subcommittee of the Appropriations Committee to review federal and dedicated fund budget requests.

Pros

- Would provide for an in-depth review of these funds, address the likelihood of continued funding, and whether state funding would be requested if federal or dedicated funds were to be discontinued or become unavailable.
- Would address changes in federal law and provide an opportunity to identify anticipated shifts from federal or dedicated funds to General Fund resources.
- Would allow the full committee to continue to focus attention on the General Fund budget.
- Would provide an opportunity to clarify issues and compile pertinent information.

Cons

- Would require additional time and effort from committee members, committee staff and department personnel.
- Would be easy to overwhelm this subcommittee in the details of department programs and budgets.

IV. OPTION #2

Organize subcommittees by "policy areas" to review total budget (all funds) of individual departments.

Pros

- Would provide the "big picture" of each department's programs; i.e. funding, workload, objectives, priorities.
- Would identify those programs matched with General Fund dollars and assess matching rate changes.
- Would address changes in federal law and provide an opportunity to identify anticipated shifts from federal or dedicated funds to General Fund resources.
- Would provide an opportunity to clarify issues and compile pertinent information.

Cons

- Would require additional time and effort from committee members, committee staff and department personnel.
- Might prove difficult to coordinate all subcommittees, especially in concluding their work "on time".

V. OPTION #3

Continue current level of review.

Pros

- Time is not available under current system to expand committee's review role.

Cons

- Will not expand the committee's knowledge of programs which are integral to understanding the entire state budget, including those which may require additional appropriations from the General Fund.
- Will not alleviate the concerns expressed by the committee.

O P T I O N P A P E R

I. ISSUE

Should the Governor be required to present "new and expanded" funding requests for federal and dedicated funds in the "Part 2" budget?

II. BACKGROUND

Any Part I and Part 2 items for federal and dedicated funds are usually included in the Part I budget (ie, "current services" budget). There is no differentiation between current services or new and expanded services. There have been concerns expressed, such as: 1) this has provided for few controls on the growth in state government; 2) departments are able to utilize such funds to do something the Legislature had formerly rejected; and 3) new positions can be added for which there is limited scrutiny and for which funding may eventually be reduced or eliminated.

III. OPTION #1

Require the Governor to present "new and expanded" funding requests for federal and dedicated funds in the "Part 2" budget.

Pros

- Would provide differentiation from current services budget for all funding sources.
- Would address source of new or additional funds and the need for the level of requested funding.
- Would require supporting documentation for program and would submit all funds to the same level of scrutiny.
- Would address changes in federal law.
- Would highlight new developments which may affect the department.

Cons

- May encourage departments and agencies to allot such funds through financial order process rather than seeking legislative allocation.
- Would increase the size of the Part 2 budget bill.
- May require an increase in the number of days for which public hearings are scheduled.
- May increase the number of Part 2 changes received after the bill is printed.
- Would require additional time to analyze information and for the departments to compile the required detail.

IV. OPTION #2

Require additional information and supporting documentation by departments for all federal and dedicated funds, rather than requiring "new or expanded" funding requests in the Part 2 budget.

Pros

- Would identify current services as well as new or expanded services budget amounts.
- Would provide additional data in support of requested budget to assist the committee in decision making.
- Would assist in analyzing requests.
- Would identify changes in federal laws.
- Would not require separate Part 2 budget bill for federal and dedicated funds.

Cons

- Would require additional time to analyze information and for the departments to compile the required detail.
- May require an increase in the number of days for which Part I public hearings are scheduled.

V. OPTION #3

Continue the current policy of including "new and expanded" services within the Part I budget for federal and dedicated funds.

Pros

- Would not require separate Part 2 for federal and dedicated funds.
- Would not place additional time demands on the Appropriations Committee

Cons

- No distinction between current services and new or expanded services budget amounts for federal and dedicated funds..
- The benefits of the proposed new program or expansion of an existing program would not be addressed individually.
- See Pros for Option #1

O P T I O N P A P E R

I. ISSUE

Should the Legislature place additional restrictions on the financial order process?

II. BACKGROUND

The number of financial orders being processed have increased considerably. For example, during FY 1987 there were 213 transactions processed through financial orders which related to transfer of funds only; in FY 1989, there were 424 transactions for this same group. Some legislators are concerned that, in some cases, departments may be attempting to circumvent legislative intent. The "emergency" nature of most financial orders is not readily apparent. Also, some Committee members are concerned about the number of financial orders processed during the sessions.

Under current procedures, each financial order must be received by the Appropriations Committee, but the Committee does not have any statutory authority to block the approval of financial orders. The Appropriations Committee is authorized by Title 5 section 1585 of the Revised Statutes to waive the 30-day waiting period before the transfer would take place. The Committee has no veto power over financial orders.

III. OPTION #1

Adopt controls and place restrictions on what can be processed through financial orders (similar to New Hampshire's restrictions). For example: 1) limit the amount of funds which can be transferred or effected; 2) prohibit transfer of funds from capital to any other use or purpose; 3) further restrict transfer out of personal services funds; and 4) no funds in or out from out-of-state travel.

Pros:

- Would encourage more accurate budgeting
- Would reduce the number of financial orders processed.

Cons:

- Would require statutory changes
- May be opposed by Executive Branch.

IV. OPTION #2

Organize a standing subcommittee to regularly review financial orders.

Pros

- Would provide a mechanism for an "expertise" within the committee and for the committee to become more aware of changes taking place within department budgets
- Would eliminate the need to contact various members to approve "30-day" waiver requests.

Cons

- Would require additional time and input from committee members who serve on the subcommittee, as well as committee staff.
- Does not address the substantive issue of limiting or decreasing the number of financial orders processed.

V. OPTION #3

Adopt controls and place restrictions on what can be processed through financial orders and organize a standing subcommittee to regularly review financial orders.

Pros

- Would encourage more accurate budgeting.
- Would reduce the number of financial orders processed.
- Would provide a mechanism for committee to become more aware of changes taking place within department budgets.
- Would eliminate the need to contact various members to approve "30-day" waiver requests

Cons

- Would require statutory changes
- May be opposed by Executive Branch
- Would require additional time and input from committee members who serve on the subcommittee, as well as committee staff.

VI. OPTION #4

Eliminate the financial order process during legislative sessions.

Pros

- Would require adjustments to be submitted in legislation for the Legislature's consideration.
- Would increase legislative oversight over unplanned and unbudgeted activity.
- Would encourage better planning and more accurate budgeting.
- Would reduce the number of financial orders processed.

Cons

- Could seriously affect the ability of departments and agencies to adjust their financial resources to meet emergencies, unknown needs, etc.
- Would require statutory changes.
- May be opposed by the Executive Branch.
- May delay implementation of specific activities or services.

VII. OPTION #5

Continue current financial order process.

Pros

- Nothing drastically wrong with current system.

Cons

- Will not alleviate the concerns expressed by the committee.

APPENDIX D:

**PROPOSAL FOR A FEDERAL AND
DEDICATED FUNDS SUBCOMMITTEE**

**PROPOSAL FOR A
FEDERAL AND DEDICATED FUNDS SUBCOMMITTEE
OF THE APPROPRIATIONS COMMITTEE**

Members: 5 (to be appointed by the Committee Chairs).

Subcommittee Chair: To be selected by the Committee Chairs from the 5 subcommittee members to serve as subcommittee chair for that Legislative biennium.

Objective: (1) To examine and/or conduct research on new and expanded federal and dedicated fund budget requests and to report all findings and recommendations to the Appropriations Committee;
(2) To compile historical and program data on federal and dedicated fund programs in a report format for use by the Appropriations Committee;
(3) To monitor federal budgeting activities; and
(4) To conduct special studies on federal and dedicated fund issues as needed.

Method: During Legislative Sessions - (a) hold worksessions following Appropriations Committee public hearings on budget bills to specifically examine "new and expanded services" federal fund budget requests; report findings and funding recommendations to Appropriations Committee (see Attachment #1); and (b) hold worksessions on other federal fund issues as needed.

During off-session - (a) hold meetings periodically to compile historical and program data in report form (see Attachment #2) on federal/dedicated fund programs; goal would be an annual January report to Appropriations Committee on federal/dedicated program details; and (b) hold meetings on other federal/dedicated fund issues as needed.

Time Implications: Legislators - definite negative impact during sessions; will need to find/allot time for subcommittee meetings. Less of an impact during off-sessions but subcommittee members will have to make a commitment to attend these meetings if process is to be successful.

- 2 -

Staff - Unable to perform this function during sessions without additional assistance; would anticipate having to hire another legislative analyst and distributing all "policy area" assignments more evenly. Approximate First Year Cost: \$45,000-\$50,000 (including salary, benefits, equipment, etc.). Would have an impact on OFPR's secretarial staff; may need to submit a request for additional secretarial support as well.

Less of an impact during off-sessions; might be able to absorb this function if number of ad hoc commission/committee staffing assignments given to OFPR in the off-sessions is reduced. Addition of one full-time analyst would allow proposed function to be completed while maintaining existing functions.

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ANSWER THE FOLLOWING QUESTIONS
(USE ADDITIONAL SHEETS IF NECESSARY)

1. What are the program objectives?

2. Why is the state providing this service?

3. Does this duplicate or overlap with something another department, agency, or organization is doing? YES_____ NO_____
If Yes, please explain._____

4. Are there any federally imposed restraints in the use of these funds?
YES_____ NO_____
If Yes, what are they?_____

5. What is the likelihood that funding will continue?

6. Will General Fund support be requested if federal or dedicated funds were reduced or unavailable?
YES_____ NO_____

7. What benefit, if any, would be foregone if this program was eliminated?

8. What are the consequences if the request for new or expanded services is denied?

ATTACHMENT #2

FEDERAL AND DEDICATED FUND
REPORT

Department: _____
Program Name _____
Program Director _____
Account # _____

1. HISTORICAL DATA

a. Please complete the following information for the last five state fiscal years plus the current/upcoming biennium.

BUDGET FOR THIS PROGRAM

<u>FY</u>	<u>General</u> <u>Fund</u>	<u>Federal</u> <u>Funds</u>	<u>Dedicated</u> <u>Fund</u>	<u>Total</u>
91				
90				

ACTUAL EXPENDITURES FOR THIS PROGRAM

89
88
87
86
85

b. What is the specific funding source for this federal/dedicated program?
(Choose one)

List funding source: _____

c. Required/Actual State General Fund Match

<u>FY</u>	<u>%</u>	<u>Match</u>	<u>\$</u>
91			
90			

89
88
87
86
85

d. Specific Budget Data for your federal/dedicated fund program only:

Actual Expenditures		Budget	
<u>FY 88</u>	<u>FY 89</u>	<u>FY 90</u>	<u>FY 91</u>

Positions
 Personal Services
 All Other
 Capital Expenditures
 Total
 Unexpended Balance Fwd.

2. PROGRAM DATA

a. In brief, what are the objectives of this federal/dedicated fund program? _____

b. Please provide some specific statistical indicator(s) of how these federal and dedicated funds are used (eg., # of clients served, # of cases completed, # of miles paved, etc.)? If these funds are used for administrative support, please provide some indicator(s) that correlate expenditures to workload. (Attach additional sheets as necessary):

FY Indicator: _____

91
 90
 89
 88

c. Are you aware of any issues that will negatively affect the continued level of federal/dedicated funding for this program? (If yes, please so indicate): _____

d. Other Comments: _____

APPENDIX E:
PROPOSED LEGISLATION

PURSUANT TO PL 1989, c.501, Part P, Section 46

Sec. 1. 3 MRSA §521-A is enacted to read:

§ 521-A. Federal and Dedicated Funds Subcommittee

The Joint Standing Committee of the Legislature having jurisdiction over appropriations and financial affairs is authorized to establish a subcommittee for the following purposes:

1. To examine and/or conduct research on new and expanded federal fund budget requests and to report all findings and recommendations to the Appropriations Committee;
2. To compile historical and program data on federal and dedicated fund programs in a report format for use by the Appropriations Committee;
3. To monitor federal budgeting activities; and
4. To conduct special studies on federal and dedicated fund issues as needed.

The subcommittee members are to be appointed by the chairs of the Joint Standing Committee on Appropriations and Financial Affairs. One subcommittee member is to be selected by the committee chairs to serve as subcommittee chair for that legislative biennium. The subcommittee may meet monthly or as often as is deemed necessary. Members of the subcommittee are entitled to receive legislative per diem and to be reimbursed for expenses as defined in the Maine Revised Statutes, Title 3, section 2, upon application to the Executive Director of the Legislative Council.

Sec. 2. 5 MRSA Sec. 1581, as amended by PL 1959, c. 33, is further amended by adding a sentence to read:

In the first regular session of each Legislature, the Governor shall present funding requests that distinguish between current services and new and expanded services, as defined in 5 MRSA Sec. 1661, for all funding sources including the General Fund, Highway Fund, Federal Expenditure Fund, Federal Block Grant Fund, Other Special Revenue Funds, and any other funds of the State.

Sec. 3. 5 MRSA, §1583, as amended by PL 1977, c. 696, §42, is repealed and the following is enacted in its place:

§1583. Exceeding appropriation, allocation and authorized available resources prohibited.

Any agent, officer or employee of the State who either affixes a written signature, a facsimile or uses an electronic signature to authorize expenditures, to make legally binding commitments or to establish written policy and procedure which together and in the aggregate exceed the resources approved by the Legislature and

authorized by law for a fiscal year for an appropriation or allocation account shall be held personally liable for the amount in excess of those resources. If a commissioner, an agency head and other state officials determines that the resources made available to an appropriation or allocation account are going to be insufficient to implement or to continue a program authorized and funded by the Legislature he or she must take the steps necessary to stay within the resources available. If a decision is made to curtail a program, the Committee on Appropriations and Financial Affairs must be notified thirty working days before the curtailment is to go into effect.

Sec. 4. 5 MRSA, §1661, as amended by PL 1987, c. 402, §A, 39, is repealed and the following enacted in its place:

§ 1661. Definitions

1. Governor-elect. The words "Governor-elect", whenever used in this chapter and chapter 145, shall be held to mean the candidate most recently elected to the office of Governor of the State of Maine in the November election for choice of Governor, or his successor.

2. Current Services. The words "current services" means budget estimates based upon the costs of continuing all current legislatively authorized programs at present levels.

3. New or Expanded Services. "New or expanded services" means new programs or initiatives or the expansion of existing programs beyond the scope of those programs already established, recognized or approved by the Legislature.

Sec. 5. 5 MRSA §1667-A, sub-§1 is enacted to read:

Prohibition. No positions, or any other program expenditures, which are intended to be ongoing may be created with any state or federal funds unless those funds are specifically appropriated or allocated by the Legislature.

Sec. 6.5 MRSA §1669, as amended by PL 1989, c. 7, Pt. O, §2, is further amended to read:

§ 1669. Federal funds

No state department or agency may make expenditures of any federal funds or expenditures in anticipation of receipt of federal funds for any new or expanded programs, unless such federal funds are approved by the Legislature. The Governor may authorize the expenditure of such federal funds for a period not to exceed 12 calendar months and shall notify the Office of Fiscal and Program Review of such action.

All departments and agencies that receive federal funds shall, within 10 working days of receipt of any official notification from the Federal Government concerning the potential or actual increase or reduction in present funding, submit a copy of that notification to the Director of the Legislative Office of Fiscal and Program Review. A statement outlining the extent to which a General Fund appropriation will be required to match federal funding increases or can be reduced due to decreased federal funding shall accompany each notification. In addition, departments and agencies shall, within 25 working days of that notification, submit in writing to the Director of the Legislative Office of Fiscal and Program Review their proposed plan of action to address the notification which may include an appeal or an outline of the options that will be examined in detail and a time frame for the examination.

Section 7. Appropriation. The following funds are appropriated from the General Fund to carry out the purposes of this Act.

LEGISLATURE

1990-91

Legislature

Personal Services	\$1,650
All Other	2,500

Provides funds for the per diem and related expenses of the Federal and Dedicated Funds Subcommittee of the Joint Standing Committee on Appropriations and Financial Affairs.

**LEGISLATURE
TOTAL**

\$4,150

FISCAL NOTE

The Federal and Dedicated Funds Subcommittee created in this legislation will create additional workload to non-partisan legislative staff, the exact nature of which cannot be determined at this time. A request for additional staff assistance may have to be presented to a future Legislature.

STATEMENT OF FACT

This legislation implements the recommendations of the Appropriations Committee's interim subcommittee studying the manner in which new and expanded services are presented to the Legislature for review.

Section 1 authorizes the Appropriations Committee to organize an ongoing subcommittee to review federal and dedicated funding issues.

Section 2 clarifies that all new and expanded service requests, regardless of the funding source, must be presented to the Legislature in such a way as to distinguish between new and expanded services and current services.

Section 3 strengthens and clarifies the statutory language which prohibits a state employee from exceeding approved resources.

Section 4 defines "current services" and "new and expanded services" as currently used in a budgeting context.

Section 5 places into the Revised Statutes language that is currently unallocated.

Section 6 clarifies an existing provision of law.