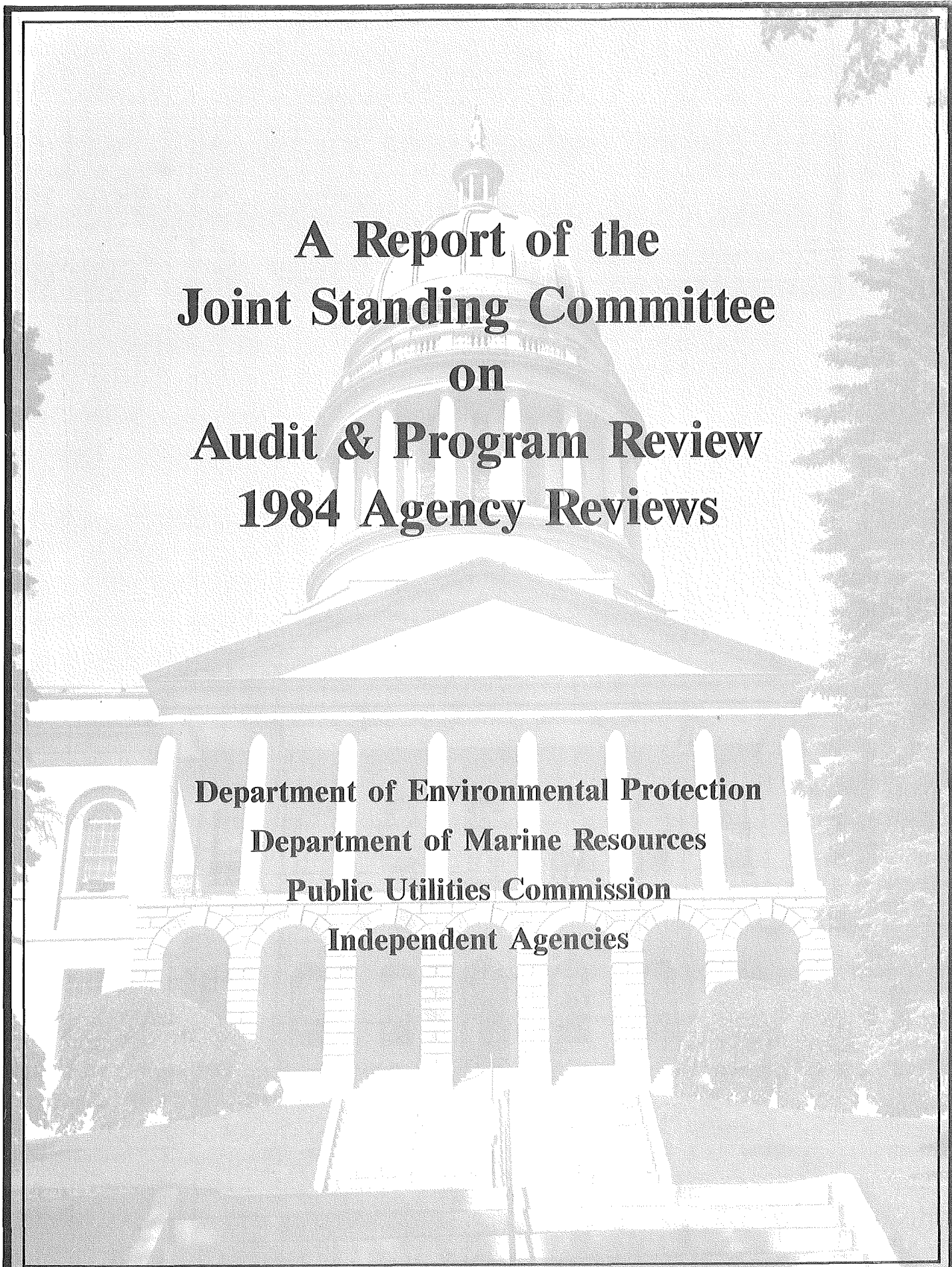


MAINE STATE LEGISLATURE

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**A Report of the
Joint Standing Committee
on
Audit & Program Review
1984 Agency Reviews**

**Department of Environmental Protection
Department of Marine Resources
Public Utilities Commission
Independent Agencies**

JOINT STANDING COMMITTEE ON AUDIT & PROGRAM REVIEW

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Neil Rolde, Chair
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Rep. Vinton Ridley
Rep. Nathaniel Crowley, Sr.
Rep. Harlan Baker
Rep. Harriet Robinson

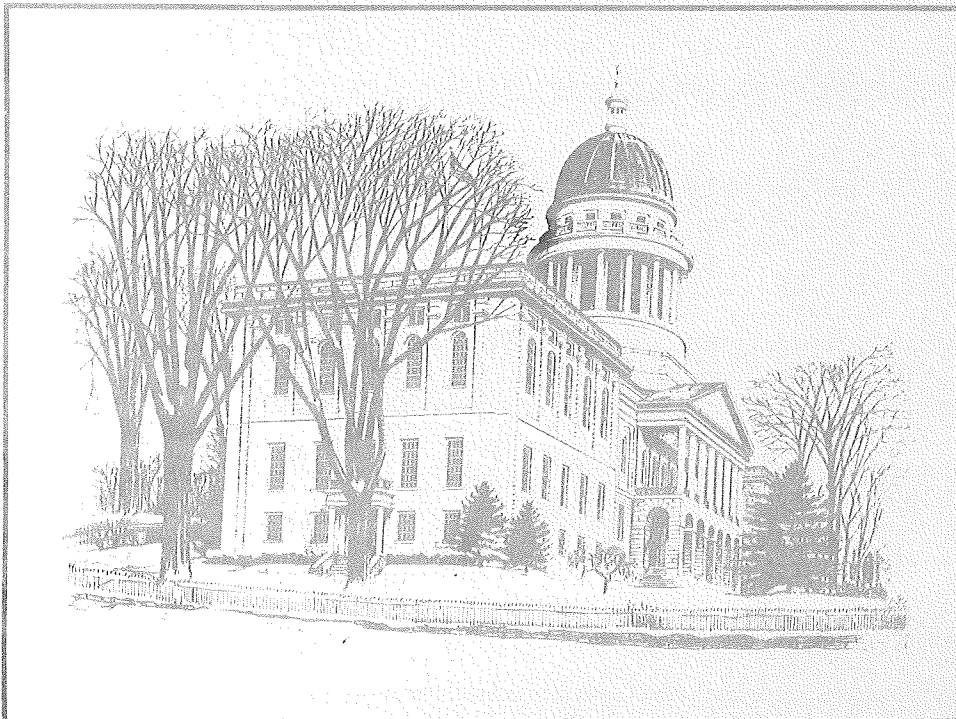
Joint Standing Committee on Taxation
Joint Standing Committee on Public Utilities
Joint Standing Committee on Appropriations & Financial Affairs
Joint Standing Committee on Energy & Natural Resources
Joint Standing Committee on Marine Resources
Joint Standing Committee on Public Utilities
Joint Standing Committee on Public Utilities

Staffed By:

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STATE OF MAINE

ONE HUNDRED AND ELEVENTH LEGISLATURE

COMMITTEE ON AUDIT AND PROGRAM REVIEW

January 31, 1985

Members of the Legislative Council:

It is our pleasure to transmit to you the sixth annual report of the Joint Standing Committee on Audit and Program Review. The recommendations contained in this report concern the Departments of Environmental Protection and Marine Resources and independent agencies such as the Public Utilities Commission, the Maine Development Foundation, the State Development Office, the Office of Energy Resources, the Atlantic Sea Run Salmon Commission, the State Board of Examiners of Psychologists, and others.

As we did last year, the Committee is making well over 100 recommendations for change. We reviewed volumes of material, and solicited and received much public comment. Combined, this represented hundreds of hours of work on behalf of committee and adjunct committee members.

Throughout the entire process, our major objectives have been to make state government more efficient and less costly while ensuring high levels of service to the citizens of Maine as well as improving legislative oversight of the Executive Branch.

As a result, you will find contained in this report constructive changes recommended at no cost to the public which should result in future savings and a revenue increase of approximately \$282,000 to the General Fund over the biennium.

For the second year, our process included legislative members from other joint standing committees. These individuals served as active committee members and brought their expertise to enrich and strengthen the review process. A public hearing will now be held on each of the Committee's recommendations. We urge the full Legislature to consider these proposals carefully, and we invite questions, comments, and input regarding any part of this report.

We would like to add that the Committee has received excellent cooperation from the agencies which we reviewed this year. The timeliness of their responses to our requests for information facilitated the entire audit process.

Finally, the absence of recommendations about a program does not necessarily mean that the Committee found that program to be operating at peak efficiency and effectiveness.

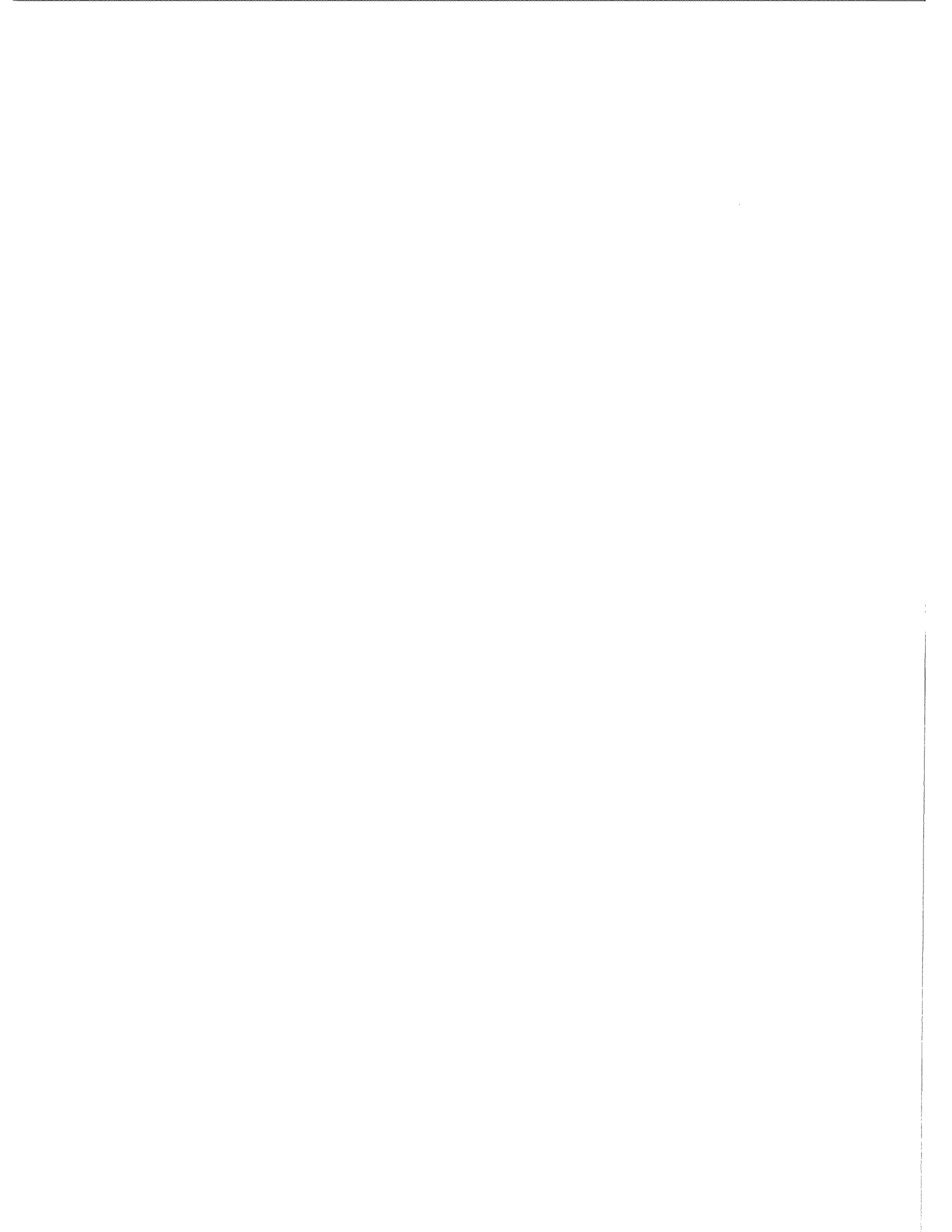


G. William Diamond
Senate Chairman

Sincerely,



Neil Rolde
House Chairman



COMMITTEE ORGANIZATION

AUDIT & PROGRAM REVIEW SUBCOMMITTEE #1

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Senator Michael Pearson, Chair
Senator G. William Diamond
Representative Neil Rolde
Senator James McBreairty
Representative Thomas Murphy, Jr.
Representative Douglas Curtis

Adjunct Members:

Senator R. Donald Twitchell
Representative Laurence Connolly, Jr.
Representative Vinton Ridley

Subcommittee Assignment:

DEPARTMENT OF ENVIRONMENTAL PROTECTION
MAINE STATE DEVELOPMENT OFFICE
SOIL & WATER CONSERVATION COMMISSION
SACO RIVER CORRIDOR COMMISSION

AUDIT & PROGRAM REVIEW SUBCOMMITTEE #2

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Representative Neil Rolde
Representative Robert Norton
Representative Herbert Clark
Representative Orland McPherson
Representative Jeffery Mills

Adjunct Member:

Representative Nathaniel Crowley, Sr.

Subcommittee Assignment:

DEPARTMENT OF MARINE RESOURCES
ATLANTIC STATES MARINE FISHERIES
COMMISSION
MAINE SARDINE COUNCIL
LOBSTER ADVISORY COUNCIL
ATLANTIC SEA-RUN SALMON COMMISSION
OFFICE OF ENERGY RESOURCES
STATE ENERGY RESOURCES ADVISORY BOARD

AUDIT & PROGRAM REVIEW
SUBCOMMITTEE #3

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Senator G. William Diamond
Representative Neil Rolde
Representative Edwin Randall

Adjunct Members:

Senator John Baldacci
Representative Harlan Baker
Representative Harriet Lewis-Robinson

Subcommittee Assignment:

PUBLIC UTILITIES COMMISSION
BOARD OF DIRECTORS, MAINE MUNICIPAL &
RURAL ELECTRIFICATION COOPERATIVE
AGENCY
LOW-LEVEL WASTE SITING COMMISSION
STATE BOARD OF EXAMINERS OF
PSYCHOLOGISTS
INSPECTION OF DAMS & RESERVOIRS
MAINE DEVELOPMENT FOUNDATION

The Committee extends its appreciation to Henry D. Aho for the illustrations appearing in the DEP section of the report.

Table of Contents

Letter of Transmittal.....	1
Committee Organization.....	5
Table of Contents.....	7
Summary of Recommendations.....	9
Report Highlights.....	29
Committee Report	
Department of Environmental Protection	
Description.....	33
Recommendations.....	38
Board of Environmental Protection.....	74
Department of Marine Resources	
Description.....	75
Recommendations.....	77
Public Utilities Commission	
Description.....	101
Recommendations.....	105
Office of Energy Resources.....	161
State Board of Examiners of Psychologists.....	175
Saco River Corridor Commission.....	187
Soil and Water Conservation Commission.....	189
Atlantic Sea Run Salmon Commission.....	192
Maine Sardine Council.....	194
Atlantic States Marine Fisheries Commission.....	195

Lobster Advisory Council.....	196
Maine Development Foundation.....	197
State Development Office.....	199
State Energy Resources Advisory Board.....	201
Low-Level Waste Siting Commission.....	202
Maine Municipal & Rural Electrification Cooperative Agency.....	204
Other Recommendations.....	205
Fiscal Impact.....	209

Summary of Recommendations

The Committee categorizes its changes into Statutory and Administrative Recommendations. The Committee's bill consists of the Statutory Recommendations. Administrative recommendations are implemented by the Agencies under review without statutory changes. In some instances, the Committee includes a finding which requires no further action but which highlights a particular situation. Recommendations include where possible the proposed change and the reason for this change. For more specific detail, refer to the body of the recommendation.

CATEGORY

RECOMMENDATION

DEPARTMENT OF ENVIRONMENTAL PROTECTION (DEP)

- | | | |
|----------------|----|---|
| ADMINISTRATIVE | 1. | Report to the Audit Committee on the effort to shorten and simplify licenses and permits issued by the Bureau of Air Quality Control by May 1, 1985. |
| STATUTORY | 2. | Transfer the administration of the Alteration of Rivers, Streams, & Brooks Act from the Department of Inland Fisheries & Wildlife (IF&W) to the DEP to consolidate regulatory functions. |
| STATUTORY | 3. | Charge a reasonable permitting fee for the administration of the Stream Alteration law. |
| ADMINISTRATIVE | 4. | Charge the DEP with amending its Administrative Regulations to require that comment be solicited from the Department of Inland Fisheries and Wildlife (IF&W) for each Stream Alteration permit application to ensure IF&W's review. |
| STATUTORY | 5. | Shift the major responsibility for administration of the Shoreland Zoning Law to the DEP from the State Planning Office (SPO) and transfer one position from the SPO to the DEP to administer the law. |

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- STATUTORY 6. Transfer the responsibility for administering the Minimum Lot Size Law from the DEP to the Department of Human Services (DHS) to consolidate waste water treatment laws.
- STATUTORY 7. Amend the Maine Coastal Protection Fund to allow the Fund to be used for costs incurred in the removal of an unlicensed discharge or threatened discharge of hazardous waste, including hiring and training of response personnel.
- STATUTORY 8. Establish a separate Underground Oil Storage Facility Cleanup Fund capped at \$1,000,000 plus interest and designated specifically for underground tank cleanup of contamination and restoration of drinkable water supplies.
- STATUTORY 9. Authorize the DEP to register existing underground petroleum storage tanks to protect the public's health, welfare, and safety.
- STATUTORY 10. Clarify DEP's authority to regulate existing underground petroleum storage tanks to protect the public's health, welfare, and safety.
- STATUTORY 11. Authorize the DEP to certify contractors who install underground petroleum storage tanks to improve the quality of installation and reduce environmental contamination.
- ADMINISTRATIVE 12. Require the DEP to intensify its efforts to recover clean-up costs disbursed from the Maine Coastal Protection Fund to ensure that the party responsible pays for the damage and that the Fund is properly reimbursed.
- STATUTORY 13. Establish a parallel provision requiring the Department to recover cleanup costs disbursed from the Underground Tank Clean-up Fund to ensure that the responsible party pays for the damage and that the Fund is properly reimbursed.
- STATUTORY 14. Change the title of the Maine Coastal Protection Fund to the Maine Oil Contamination Prevention and Clean-up Fund to be more representative of the Fund's function and use.

-
- ADMINISTRATIVE 15. Charge the Board of Environmental Protection with developing a policy to set priorities for the Underground Tank Program to ensure effective allocation of limited resources.
- STATUTORY 16. Increase the permitting fee from \$10 to \$25 for new or replacement underground oil storage facilities and ensure that these funds are used for program administration and public education.
- STATUTORY 17. Clarify that the discharge of hazardous waste is illegal to strengthen enforcement.
- STATUTORY 18. Transfer the regulatory responsibility over small solid waste facilities within the Land Use Regulation Commission's territory from LURC to DEP in order to consolidate regulatory action and eliminate duplication.
- ADMINISTRATIVE 19. Reaffirm that the Legislature intended 4 1/2 positions to work on the Uncontrolled Site Program and require that the 4 1/2 positions appropriated by PL 1983 Ch. 569 work primarily on the Uncontrolled Site program.
- ADMINISTRATIVE 20. Transfer the General Fund appropriation for the Senior Geologist in the Bureau of Oil and Hazardous Materials Control to an account that reflects the job responsibilities.
- ADMINISTRATIVE 21. Report to the Audit Committee on the reorganization underway of the Bureau of Oil and Hazardous Materials Control by May 1, 1985.
- ADMINISTRATIVE 22. Require that all employees record hours worked on all activities on which more than incidental time is spent so that proper accounting, journaling, and reimbursement shall occur.
- ADMINISTRATIVE 23. Report to the Audit Committee on the billing and compensation procedures used by the laboratory by May 1, 1985 for possible revision or amendment if needed at that time.

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- ADMINISTRATIVE 24. Improve capital equipment purchasing and bulk purchasing to:
- Ensure that capital equipment items purchased for both the Augusta headquarters and the regional office receive an Inventory Control Number immediately upon delivery;
 - Ensure that the Inventory Control Numbers are permanently affixed;
 - Computerize the capital equipment file card system; and
 - Consolidate certain purchases where quantity buying is possible and cost effective.
- STATUTORY 25. Change the Commissioner's annual reporting deadline to the Board of Environmental Protection on hazardous waste generation and handling in the state from October 1 to March 1 to coincide with the federal EPA reporting deadline.
- ADMINISTRATIVE 26. Require the DEP to sell the 1974 Ford front-end loader purchased in August 1982 because it is no longer needed.
- STATUTORY 27. Prohibit state agencies, except the Department of Transportation, (DOT) from purchasing heavy equipment unless the purchase is authorized by the Appropriations Committee.
- FINDING: 28. The Committee finds that the DEP has developed a unique, computerized system for tracing hazardous wastes. This system, when completely operable, will significantly increase the Department's capability to ensure the public's interest in the safe transportation, handling, disposal, and storage of hazardous wastes. Subsequently the Committee commends the DEP for this innovation.
- ADMINISTRATIVE 29. Develop a formal compliance/enforcement document for the Bureau of Oil & Hazardous Materials Control covering procedures, policies, and formats to strengthen enforcement. Report to the Committees on Audit & Program Review and Energy & Natural Resources by September 1, 1985.

-
- FINDING 30. The Committee finds that the combination of reduced federal participation and the outstanding needs for construction and rehabilitation of municipal wastewater treatment facilities require serious attention by the Department of Environmental Protection and the Legislature.
- FINDING 31. The Committee finds that respondents to a survey of 450 Maine towns and plantations indicate a need for:
- more technical assistance;
 - better communications; and
 - more information from DEP.
- STATUTORY 32. Continue the Inspection of Dams and Reservoirs Program under the provisions of the Maine Sunset Law given the importance of dams to public health and safety.
- ADMINISTRATIVE 33. Develop a list of proposed statutory changes and present the list to the Committee on Audit and Program Review by September 1, 1985.
- STATUTORY 34. Extend the review of the Board of Environmental Protection into the next review cycle to enable the Committee to review the Board's policies and procedures in more detail.

DEPARTMENT OF MARINE RESOURCES (DMR)

- FINDING 35. The Committee finds that maintaining the consent power of the Advisory Council is important to ensure continued success of the Department's operations.
- STATUTORY 36. Limit the membership of the Department of Marine Resources' Advisory Council to two consecutive terms to increase participation.

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- STATUTORY 37. Require the Marine Resources Advisory Council to submit its research report to the Marine Resources Committee to increase legislative oversight.
- ADMINISTRATION 38. Develop a plan to transfer the Wiscasset office to the new Rockland regional facility to achieve greater efficiencies and report to the Joint Standing Committees on Audit & Program Review and Marine Resources by May 1, 1985.
- STATUTORY 39. Eliminate the vacant position of Assistant to the Commissioner to increase legislative oversight.
- ADMINISTRATIVE 40. Establish a career ladder within the Bureau of Administration to increase the opportunity for upward mobility among staff members and submit a status report to the Joint Standing Committees on Audit and Marine Resources by September 1, 1985.
- ADMINISTRATIVE 41. Locate the Licensing Division within the Bureau of Administration to properly reflect its functions.
- STATUTORY 42. Adopt a uniform citation form for Marine Resources violations to increase patrol field time and decrease court time.
- STATUTORY 43. Establish a uniform statewide system in District Court to process minor Marine Resources' violations in order to streamline court procedures and complement the use of the uniform citation form.
- ADMINISTRATIVE 44. Require that DMR and IF&W investigate the need to obtain additional liability insurance in order to avoid potential lawsuits resulting from incidents of false arrest or deprivation of civil rights.
- FINDING 45. The Committee finds a need for stronger enforcement and supports DMR's request for six additional patrol officers.

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- ADMINISTRATIVE 46. Request that the Department of Personnel re-examine the salary inequity between chief enforcement officers and their subordinates in order to improve morale and encourage promotion from within and that the Department of Personnel report its findings to the Audit Committee by May 1, 1985.
- FINDING 47. Increase flight time of DMR's CESSNA 180 aircraft to strengthen enforcement and utilize the pilot's time more efficiently.
- FINDING 48. The Committee finds that increasing demands of the Federal Energy Regulatory Commission's re-licensing process for state hydro-power dams warrants an additional position.
- ADMINISTRATIVE 49. Proceed with the overhauling of the R/V Jubilee for marine research to make it operational given existing resources. Prior to the expenditure of funds beyond this level report to the Committees on Audit & Program Review and Marine Resources. In addition, submit by May 1, 1985 a detailed status report of the project to increase legislative oversight.
- STATUTORY 50. Repeal the Quahog Tax and its related Fund because the Tax no longer serves any useful purpose and in fact, may become an impediment to the development of a future quahog industry.
- FINDING 51. The Committee finds a need for a study by the Joint Standing Committee on Energy & Natural Resources on the planning process for hydropower development as it relates to the restoration of Maine's fisheries resource.
- STATUTORY 52. Amend the DMR statutes so that the commissioner serves at the pleasure of the Governor.

STATUTORY 53. Require that the Department of Marine Resources use its share of revenue from the gasoline tax for enforcement of boating and fishing laws.

PUBLIC UTILITIES COMMISSION (PUC)

STATUTORY 54. Continue the PUC because its mandate to regulate the public utilities of the State is critical to ensure: the continued availability of fundamental utility service at reasonable cost; a balance between the ratepayer and the investor; and broad oversight given the increased complexities in the field of regulation.

STATUTORY 55. Establish in statute the administrative authority of the Commission Chair to clarify organizational management.

STATUTORY 56. Identify in the PUC statutes the vote necessary for formal Commission action.

STATUTORY 57. Authorize the Commission to delegate certain routine areas of responsibility to expedite decisions and affirm present practice.

ADMINISTRATIVE 58. Recommend that the Joint Standing Committee on Judiciary study the provisions under which a PUC commissioner may be disqualified from voting and determine the need for statutory provisions governing such disqualification and the need for the appointment of a special commissioner.

ADMINISTRATIVE 59. Determine the feasibility of aligning staff positions with specific funding sources in order to place appointed positions on the General Fund and increase funding consistency within divisions. Report to the Audit

Committee by May 1, 1985 so that the Audit Committee can review the material with the Committees on Appropriations and Utilities.

- ADMINISTRATIVE 60. Centralize and categorize resource materials to promote greater efficiencies, curtail duplication costs, and facilitate retrieval.
- FINDING 61. The Committee finds that the PUC's present space is inadequate, inhibits efficient organization, and is inaccessible to the handicapped. Therefore, the Committee supports the Commission's need for better space.
- STATUTORY 62. Repeal the present statutory qualifications for the position of Director of Technical Analysis because they are outdated, inconsistent with other similar policy-influencing positions, and too restrictive.
- STATUTORY 63. Declassify the staff attorneys at the PUC to provide the Commission with greater flexibility in hiring and retaining qualified individuals.
- ADMINISTRATIVE 64. Expand and strengthen the function of the Consumer Assistance Division for the benefit of utility customers. In particular, the areas that need attention are:
- public education;
 - analysis of service/complaint problems; and
 - coordination with other service agencies.
- ADMINISTRATIVE 65. Require the Consumer Assistance Division to develop a three-copy standardized form on which the final resolution of complaints will be recorded; one copy shall be retained by CAD, one sent to the utility, and one to the consumer.

-
- STATUTORY 66. Upgrade the classification of the Chief Utility Accountant to enable the Commission to attract qualified candidates.
- STATUTORY 67. Increase the salary range of hearing reporters from 15 to 20 to enable the Commission to attract and retain qualified individuals.
- ADMINISTRATIVE 68. Explore the feasibility of using alternative technology in the recording and transcription of hearings because the use of new technology may be more cost effective than the current procedure.
- ADMINISTRATIVE 69. Develop an informal policy to mitigate the potential hardship transcript costs may impose on the ratepayer of small utilities.
- ADMINISTRATIVE 70. Use the newly formed position of paralegal to handle some of the routine clerical and scheduling functions now performed by the Hearing Examiner in order to promote greater staff efficiency.
- ADMINISTRATIVE 71. Revise and implement the Uniform System of Accounts for Water Utilities (Chapter 61) because the system is outdated.
- ADMINISTRATIVE 72. Assess the desirability of allowing the depreciation on contributed assets in determining revenue requirements and providing for the establishment of a capital reserve fund with these revenues. Determine the need for legislation and report to the Committees on Audit & Program Review and Utilities by May 1, 1985.
- ADMINISTRATIVE 73. Review the desirability of performing routine or occasional financial audits, as well as the need for any related staffing and report to the Committees on Audit & Program Review and Utilities by May 1, 1985.

-
- FINDING 74. The Committee finds that management audits can be a useful tool to increase utility performance and to detect problem areas before these problems become costly to utility ratepayers and shareholders.
- ADMINISTRATIVE 75. Ensure that the annual reports submitted by utilities receive wide circulation within the PUC to serve both an informational and preventative purpose.
- STATUTORY 76. Enable utilities and municipalities to contract for representation before the Commission from other than legal counsel in order to curtail unnecessary expenditures.
- ADMINISTRATIVE 77. Strengthen efforts to accelerate the rate-making proceedings for smaller utilities to avoid unnecessary expenditures.
- ADMINISTRATIVE 78. Provide for informal round-table discussions in adjudicatory proceedings whenever possible to curtail the number of written Data Requests.
- ADMINISTRATIVE 79. Develop a plan to consolidate the procedures by which Data Requests are made and report to the Committee on Audit and Program Review by May 1, 1985.
- FINDING 80. The Committee finds that telecommunications services in Maine:
- are rapidly changing due to technological advances and the divestiture of AT&T;
 - have significant impact on the state of Maine and will require increased regulatory activity in the short run to include the monitoring of industry construction investment;
 - are potential areas for future deregulation; and

-
- require that the state of Maine engage in comprehensive planning to accommodate these substantive changes.

- ADMINISTRATIVE 81. Request that the Public Advocate convene a study group of all concerned parties to examine the potential application of Incentive Regulation in Maine's regulatory setting. Report on the status and findings of such meetings by September 1, 1985 to the Committees on Audit & Program Review and Utilities.
- STATUTORY 82. Change the rate regulation of the consumer-owned electric utilities to expedite the rate-making process and minimize cost and because the current regulatory level is unnecessary for consumer-owned utilities.
- STATUTORY 83. Transfer safety jurisdiction for the Casco Bay Island Transit District from the PUC to the Department of Transportation to designate responsibility for public safety to the appropriate agency.
- STATUTORY 84. Change the number of petitioners required to initiate a rate hearing concerning the Casco Bay Island Transit District before the Commission to be more representative of CBITD users.
- STATUTORY 85. Repeal the provision which negates the Commission's regulatory authority in bankruptcy, foreclosure, or receivership proceedings.
- STATUTORY 86. Recodify the statutes governing the Public Utilities Commission.
- STATUTORY 87. Amend or repeal the following statutes because they are outdated given the Commission's current function.
- STATUTORY 88. Repeal the statute prohibiting a customer from recovering excess utility

charges prior to the customer's application for meter inspection to avoid unnecessary confusion.

STATUTORY 89. Repeal the language establishing the Older Citizens Lifeline Program because the program no longer exists. However, retain the statement of intent.

STATUTORY 90. Require the Commission to review the state laws governing the Commission's operation at least every five years to remove out-dated legislation beginning with Fiscal Year 1985.

OFFICE OF ENERGY RESOURCES

STATUTORY 91. Continue the Office of Energy Resources given the importance of energy issues to the State of Maine.

STATUTORY 92. Repeal the statutory requirement that OER submit an annual report to the Legislature to prevent duplication.

STATUTORY 93. Amend the statutory qualifications for the Director of OER to accurately reflect the position responsibilities.

STATUTORY 94. Clarify the statutes governing the Energy Resources Development Fund to clearly define the Fund's purpose.

STATUTORY 95. Repeal the statutory requirements governing the submission of the Energy Resources Development Fund annual report to the Legislature, and amend statutes to require inclusion of this report in OER's biennial comprehensive energy plan to promote more efficient and relevant reporting processes.

ADMINISTRATIVE 96. Identify those statutes which need strengthening for consideration by the Legislature and provide this

information to the Committees on Audit & Program Review and Energy and Natural Resources by May 1, 1985.

ADMINISTRATIVE 97. Integrate more of OER's activities into the public school curriculum to teach children the importance of energy conservation and the use of renewable resources. Submit a report to the Audit & Program Review Committee by September 1, 1985.

FINDING 98. The Committee finds the following regarding OER's emergency program efforts:

- decreased expenditure levels have diminished program readiness;
- should a drastic fuel shortage occur, OER's emergency plans may encounter some difficulty in implementation and administration; and
- Maine's dependence on imported fuel warrants continued fuel emergency planning.

ADMINISTRATIVE 99. Develop a training plan for those staff members who would be temporarily assigned to emergency programs during a fuel crisis and report to the Audit & Program Review Committee by September 1, 1985 with the plan.

STATUTORY 100. Eliminate required filing fees for obtaining certificates of energy efficiency for residential and non-residential buildings because these fees may serve as a deterrent to voluntary compliance.

ADMINISTRATIVE 101. Simplify the existing building standards for energy efficiency by eliminating existing climatic zones and emphasizing performance standards to strengthen voluntary compliance.

-
- STATUTORY 102. The Committee finds that the Municipal Bond Program should terminate once the remaining funds are expended because this program has served its purpose.
- ADMINISTRATIVE 103. Design future energy conservation bond programs with provisions for grants to small municipalities and for eligibility criteria to ensure that all towns can successfully compete for funds. Further strengthen monitoring efforts to ensure compliance.

STATE BOARD OF EXAMINERS OF PSYCHOLOGISTS

- STATUTORY 104. Continue the State Board of Examiners of Psychologists to insure that the citizens of Maine have available the highest standards in the practice of psychology.
- STATUTORY 105. Amend the statutory definition of "Psychologists" to reflect the changing role of practitioners.
- ADMINISTRATIVE 106. Expand the job function of psychological examiner to meet the overall psychological service needs of state and community mental health and mental retardation agencies as well as educational institutions.
- ADMINISTRATIVE 107. Charge the Department of Education, the Board of Education, the Board of Examiners of Psychologists, the Maine Psychological Association, and other interested or effected groups with submitting a recommendation to the Audit Committee by May 1, 1985 to resolve the problem of inadequate psychological services in the school system.

-
- STATUTORY 108. Increase the membership of the Board of Examiners of Psychologists by three members through the addition of a second public member and two professionals to ensure broader representation. Further, require that at least one member be a Psychological Examiner.
- STATUTORY 109. Reduce the membership term on the Board from five years to three years to encourage greater participation in the licensing process.
- STATUTORY 110. Reinforce the Board's authority to consider degrees other than those granted by Departments of Psychology, as meeting the criteria for licensure.
- STATUTORY 111. Authorize the Board of Examiners of Psychologists to promulgate rules regarding requirements for continuing education.
- STATUTORY 112. Remove the statutory provision which caps the license fee in order to enable the Board to set fees which cover the cost of operation.
- STATUTORY 113. Provide in rules and regulations more flexibility concerning the granting of temporary licenses.
- STATUTORY 114. Establish in rules and regulations an appeals process to include a 60-day time limit for decision by the Board.
- ADMINISTRATIVE 115. Continue efforts to organize and maintain a complete record keeping system.

SACO RIVER CORRIDOR COMMISSION

- STATUTORY 116. Continue the Saco River Corridor Commission because it serves a valuable

function in regulating land and water use in the Saco River Corridor.

STATUTORY 117. Designate the Saco River Corridor Commission as a corridor commission under the provisions of the Maine Rivers law to integrate the Commission's mandate with statewide efforts.

STATUTORY 118. Repeal the Commission's statutory responsibility to issue Certificates of Compliance as the Commission is unable to perform this function due to limited resources.

SOIL AND WATER CONSERVATION COMMISSION

STATUTORY 119. Continue the Soil and Water Conservation Commission in order to address the loss of fertile topsoil in Maine and the degradation of the land due to poor erosion control practices.

ADMINISTRATIVE 120. Require that ex officio commissioners appoint a single delegate to attend Commission meetings in their absence to ensure regular, routine, and consistent participation at SWCC meetings.

STATUTORY 121. Submit an annual report on the status of the Challenge Grant Program to the Joint Standing Committee on Agriculture for public hearing and critique.

ATLANTIC SEA RUN SALMON COMMISSION

STATUTORY 122. Continue the Atlantic Sea Run Salmon Commission for one year pending further review by the Audit & Program Review Committee.

-
- STATUTORY 123. Repeal and replace the statutory language governing the Atlantic Sea Run Salmon Commission to reflect its increasing responsibilities.

MAINE SARDINE COUNCIL

- STATUTORY 124. Continue the Maine Sardine Council for one year pending review by the Committee on Audit & Program Review.

ATLANTIC STATES MARINE FISHERIES COMMISSION

- STATUTORY 125. Continue Maine's participation in the Atlantic States Marine Fisheries Commission for one year pending review by the Committee on Audit & Program Review.

LOBSTER ADVISORY COUNCIL

- STATUTORY 126. Continue the Lobster Advisory Council for one year pending review by the Committee on Audit & Program Review.

MAINE DEVELOPMENT FOUNDATION

- STATUTORY 127. Continue the Maine Development Foundation because of the importance of the Foundation's economic development efforts in partnership with the private sector, community and regional agencies, and Maine state government.

STATE DEVELOPMENT OFFICE

STATUTORY 128. Continue the State Development Office because of the Office's efforts to create and retain jobs by supporting economic development activities within the state.

STATE ENERGY RESOURCES ADVISORY BOARD

STATUTORY 129. Continue the State Energy Resources Advisory Board for one year pending review by the Committee on Audit & Program Review.

LOW-LEVEL WASTE SITING COMMISSION

STATUTORY 130. Continue the Low-level Waste Siting Commission for one year pending review by the Committee on Audit & Program Review.

MAINE MUNICIPAL & RURAL ELECTRIFICATION COOPERATIVE AGENCY

STATUTORY 131. Continue the Board of Directors, Maine Municipal & Rural Electrification Cooperative Agency for one year pending review by the Committee on Audit & Program Review.

OTHER RECOMMENDATIONS

- STATUTORY 132. Require that the current \$25 driver license reinstatement fee be instituted upon order of the court to recover administrative expenses. However, provide that given good reason, the judge may waive this fee.
- STATUTORY 133. Place the authority for the final disposition of property seized during drug enforcement actions with the Commissioner of Finance and Administration to coordinate these decisions with the capital needs of all state agencies.

Report Highlights

During the past review cycle, the Committee on Audit and Program Review has compiled over 125 recommendations. This compilation consists of specific statutory and administrative changes which the Committee is recommending to improve the overall operation of those agencies reviewed. Also included in these recommendations are several findings made in reference to existing situations or circumstances which the Committee notes as being important.

All of these recommendations are the culmination of a year long comprehensive effort by the Committee to make constructive changes which will facilitate the more efficient and successful functioning of the agencies up for review. Some of the more significant and substantive changes recommended by the Committee are listed below:

DEPARTMENT OF ENVIRONMENTAL PROTECTION (DEP)

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| ADMINISTRATIVE | 1. | Report to the Audit Committee on the effort to shorten and simplify licenses and permits issued by the Bureau of Air Quality Control by May 1, 1985. |
| STATUTORY | 2 | Transfer the administration of the Alteration of Rivers, Streams, & Brooks Act from the Department of Inland Fisheries & Wildlife (IF&W) to the DEP to consolidate regulatory functions. |
| STATUTORY | 5. | Shift the major responsibility for administration of the Shoreland Zoning Law to the DEP from the State Planning Office (SPO) and transfer one position from the SPO to the DEP to administer the law. |
| STATUTORY | 8. | Establish a separate Underground Oil Storage Facility Clean-up Fund capped at \$1,000,000 plus interest and designated specifically for underground tank clean-up of contamination and restoration of drinkable water supplies. |

DEPARTMENT OF MARINE RESOURCES (DMR)

- ADMINISTRATIVE 41. Locate the Licensing Division within the Bureau of Administration to properly reflect its functions.
- STATUTORY 42. Adopt a uniform citation form for Marine Resources violations to increase patrol field time and decrease court time.
- STATUTORY 43. Establish a uniform statewide system in the District Court to process minor Marine Resources' violations in order to streamline court procedures and complement the use of the uniform citation form.

PUBLIC UTILITIES COMMISSION (PUC)

- ADMINISTRATIVE 60. Centralize and categorize resource materials to promote greater efficiencies, curtail duplication costs, and facilitate retrieval.
- ADMINISTRATIVE 61. Expand and strengthen the function of the Consumer Assistance Division for the benefit of utility customers. In particular, the areas that need attention are:
- public education;
 - analysis of service/complaint problems; and
 - coordination with other service agencies.
- STATUTORY 63. Declassify the staff attorneys at the PUC to provide the Commission with greater flexibility in hiring and retaining qualified individuals.

STATUTORY

82. Change the rate regulation of the consumer-owned electric utilities to expedite the rate-making process and minimize cost and because the current regulatory level is unnecessary for consumer-owned utilities.

OFFICE OF ENERGY RESOURCES (OER)

FINDING

98. The Committee finds the following regarding OER's emergency program efforts:

- decreased expenditure levels have diminished program readiness;
- should a drastic fuel shortage occur, OER's emergency plans may encounter some difficulty in implementation and administration; and
- Maine's dependence on imported fuel warrants continued fuel emergency planning.

STATUTORY

100. Eliminate required filing fees for obtaining certificates of energy efficiency for residential and non-residential buildings because these fees may serve as a deterrent to voluntary compliance.

ADMINISTRATIVE

101. Simplify the existing building standards for energy efficiency by eliminating existing climatic zones and emphasizing performance standards to strengthen voluntary compliance.

BOARD OF EXAMINERS OF PSYCHOLOGISTS

STATUTORY

105. Amend the statutory definition of "Psychologists" to reflect the changing role or practitioners.

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- STATUTORY 106. Expand the job function of Psychological Examiner to meet the overall psychological service needs of state and community mental health and mental retardation agencies as well as educational institutions.
- STATUTORY 108. Increase the membership of the Board of Examiners of Psychologists by three members through the addition of a second public member and two professionals to ensure broader representation. Further, require that at least one member be a Psychological Examiner.

OTHER RECOMMENDATIONS

- STATUTORY 123. Repeal and replace the statutory language governing the Atlantic Sea Run Salmon Commission to reflect its increasing responsibilities.
- STATUTORY 132. Require that the current \$25 driver license reinstatement fee be instituted upon order of the court to recover administrative expenses. However, provide that given good reason, the judge may waive this fee.
- STATUTORY 133. Place the authority for the final disposition of property seized during drug enforcement actions with the Commissioner of Finance & Administration to coordinate these decisions with the capital needs of all state agencies.

Department of Environmental Protection

DESCRIPTION

The Department of Environmental Protection (DEP) was created in 1972 to "protect and improve the quality of our natural environment and the resources which constitute it and to enhance the public's opportunity to enjoy the environment by directing growth and development". The ultimate statutory goal is to "preserve for all time an ecologically sound and aesthetically pleasing environment". (38 MRSA §341). At the same time, the Legislature created the Board of Environmental Protection from the old Environmental Improvement Commission to serve as the final decision-making authority on environmental issues coming before the Department. The present DEP has had a number of precursors, the earliest of which is the Sanitary Water Board which was established in 1941 to deal with water pollution.

The Department is a regulatory agency which issues permits to control and mitigate the impact of various types of development on the environment. The Department is primarily governed by Title 38 Chapter 2 and is required to ensure the:

- availability to the public of necessary information concerning environmental permits;
- provision of assistance to applicants in obtaining environmental permits; and
- coordination of application procedures and related requirements to reduce delay and duplication of effort.

The Commissioner has organized the Department into five Bureaus, described below.

The Department had FY 1984 expenditures of \$2,732,128 General Fund dollars, \$2,741,780 federal dollars, \$1,621,245 in dedicated revenue, and \$6,792,777 in bond funds for a total of \$13,887,929. The FY 1984 authorized position count is 254.

Board of Environmental Protection

The Board serves as the ultimate decision-making authority for the Department of Environmental Protection. It consists of ten

members appointed by the Governor, subject to review by the Joint Standing Committee on Energy & Natural Resources, and to confirmation by the Legislature. Members of the Board are chosen to represent the broadest possible interest and experience relevant to the Board's charge. Each member serves for a term of four years. Meetings are held not less than two times per year. In actual practice, the Board meets officially twice a month and attends public hearings and workshops as well.

Administration Bureau

The Bureau of Administration's primary functions are to provide the means by which the Commissioner will manage the Department and to provide support services to the Department and the Board of Environmental Protection. The Bureau's specific functions include responding to public inquiries and concerns; processing payroll, expense vouchers, and purchase requisitions; keeping financial and personnel records; preparing budget information and other reports for department management; developing and maintaining sufficient computer capability for the Department's needs; dealing with federal grants and other matters; and establishing communication and decision-making procedures.

To accomplish these functions, the Bureau is organized into the Office of Deputy Commissioner, Assistant to the Commissioner, the Administrative Services Division, the Computer Services Division, the Public Assistance Division, and the Management Planning Division as well as the Board of Environmental Protection.

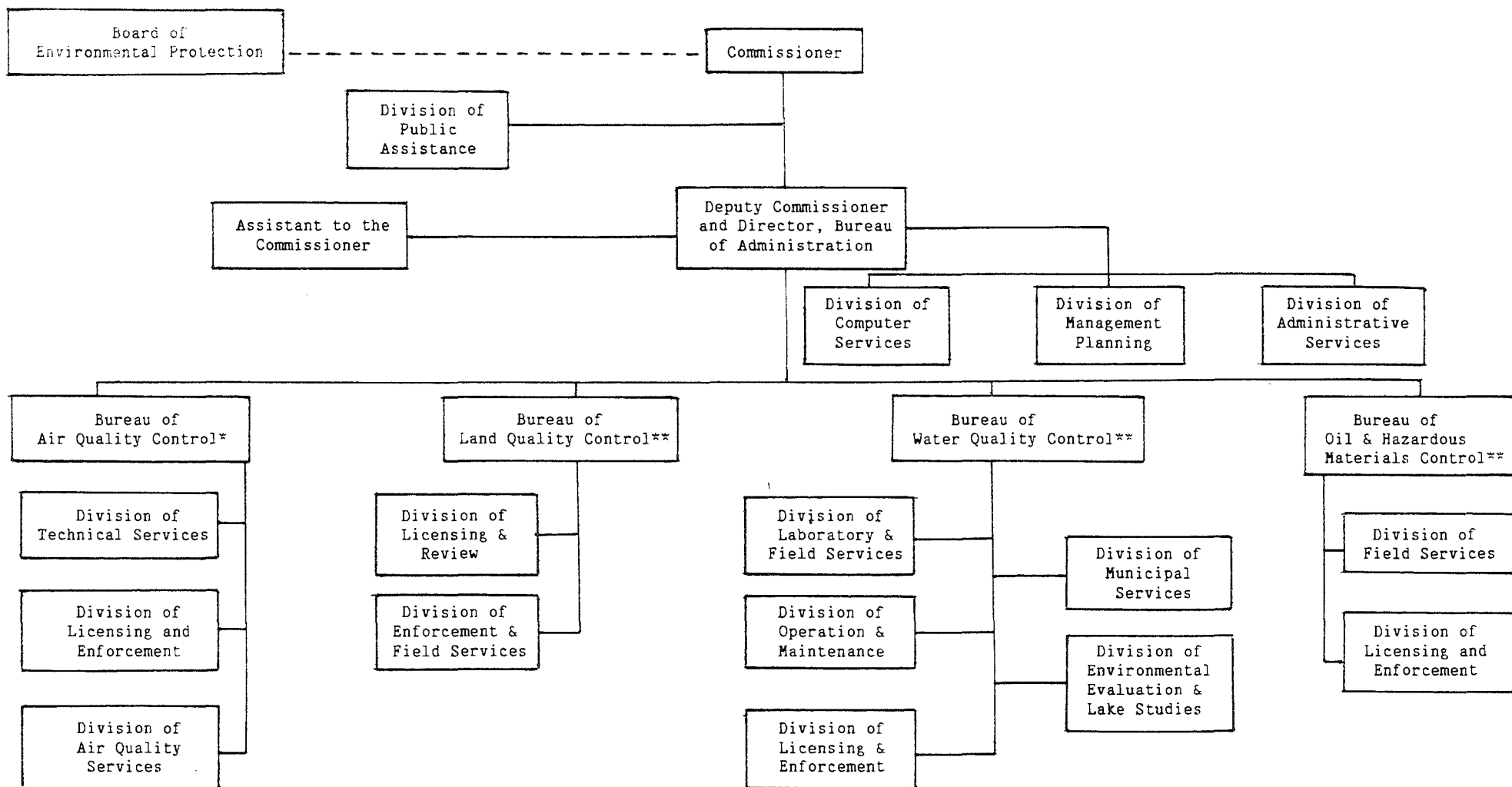
The Bureau's expenditures in FY 1984 were \$540,730 in General Funds, \$178,410 in federal funds, and \$19,748 in dedicated funds for a total of \$738,888.

The Bureau had 34 authorized positions in FY 1984.

Water Quality Control Bureau

The mandate of the Water Bureau is to abate and prevent pollution from discharges to water bodies. The Bureau fulfills its mandate by licensing discharges, enforcing laws and regulations, inspecting and monitoring licensed discharges, providing training and technical assistance to waste water treatment facility operators, and by recommending water resource use and protection policy.

DEPARTMENT OF ENVIRONMENTAL PROTECTION



* The Bureau of Air Quality Control has regional operations in Bangor and Portland

** The Bureau has regional operations in Bangor, Portland and Presque Isle

The Bureau is comprised of the Divisions of Licensing & Enforcement, Environmental Evaluations & Lake Studies, Operation & Maintenance, the Presque Isle Regional Office, and the Division of Laboratory Services which serves the entire Department.

The Division of Municipal Services, or the Sewage Construction Grants program, is also part of the Water Bureau. The Construction Grants program allocates federal funds on a priority basis to Maine towns to construct wastewater treatment facilities. In FY 1984, Maine's share of the federal dollars available for sewage facility construction was \$18,691,000. Most of Maine's share was funneled directly to towns according to the state's priority system. The Construction Grants Program itself spent \$770,293 in federal dollars for administration. The program also spent \$6,435,309 in bond money for facility construction totalling \$7,205,602 for the state's share of the Construction Grants Program. The program had 30 authorized positions in FY 1984.

The Bureau itself, minus the Construction Grants program, had 67 1/2 authorized positions in FY 1984 and budget expenditures of \$961,880 in General Funds, and \$765,794 in federal funds for a total of \$1,727,674.

Land Quality Control Bureau

The Land Bureau administers land use and development laws relating to solid waste, great ponds, site location of development, coastal wetlands, waterway development and conservation, dams, and septage. The Bureau consists of the Division of Licensing & Review, the Division of Enforcement and Field Services, the Recycling & Resource Recovery Unit, the Hydro Unit, and the Clerical Services Unit. The Bureau had an FY 1984 authorized position count of 35 1/2 with expenditures totalling \$732,982 General Fund dollars, \$59,150 in federal funds, dedicated revenue expenditures of \$6,263 and \$357,467 in solid waste bond funds for a total of \$1,155,863.

Oil & Hazardous Materials Bureau

The Oil & Hazardous Materials Bureau is the most recently formed of the DEP Bureaus, having been organized initially as a compilation of programs from other Bureaus in July 1980. The Bureau now has the highest level of expenditures* and a statutory mandate to deal with oil discharge prevention and pollution control, some types of solid

* the Water Bureau, if coupled with the Construction Grants Program, has a higher level of expenditures.

waste, hazardous matter, hazardous waste, uncontrolled hazardous substance sites, and low-level radioactive waste.

The Bureau is currently organized into a Division of Licensing & Enforcement and a Division of Field Services.

Its FY 1984 expenditures were \$148,870 in General Fund dollars, \$495,988 in federal funds, and \$1,595,234 in dedicated revenue for a total of \$2,240,092. The Bureau's FY 1984 authorized position count is 51 with 23 1/2 positions assigned primarily to hazardous materials work and 27 1/2 positions assigned to oil-related work.

Air Quality Control Bureau

The Legislature established the Air Quality Control Bureau "to control present and future sources of air contaminants to the end that air polluting activities shall be regulated in a manner that reasonably insures the continued health, safety and general welfare of the citizens of the State as well as protecting property values and plant and animal life". (Title 38 §581). As such, the Air Bureau administers the federal Clean Air Act in Maine and all Maine State laws dealing with air quality by administering a permitting program, operating a statewide monitoring network, enforcing air quality laws, rules and regulations, and responding to citizen inquiries and concerns.

The Bureau's FY 1984 expenditures totalled \$347,667 in General Fund dollars and \$472,144 in federal funds for a total of \$819,810. The Bureau had approximately 36 authorized positions in FY 1984.

- SOURCES:
- Expenditures: 1984 Analysis Sheets, Bureau of Accounts & Control.
 - Construction Grants Data: State of Maine Municipal Construction Grants Program, Fiscal Year 1984. Maine DEP.
 - Authorized Position Counts: FY 1984 & 1985 Budget Document.

ADMINISTRATIVE 1. Report to the Audit Committee on the effort to shorten and simplify licenses and permits issued by the Bureau of Air Quality Control by May 1, 1985.

During the course of its work the Committee has reviewed licenses issued by the Bureau of Air Quality Control to regulate emissions of various pollutants into the air. The Bureau operates an air emission source permitting system for 454 existing licensed sources. From October 1982 to September 1983, the Bureau renewed licenses for 119 existing facilities and issued 12 licenses for new sources. As a result of its work, the Committee finds the following:

- the lengthy, complex, and highly detailed nature of these licenses is not necessary and does not appreciably increase protection for the public's health and welfare;
- these lengthy and complex licenses do not necessarily serve the best interests of either DEP or the permittees;
- the Bureau of Air Quality Control is aware of and shares these concerns; and
- the Bureau is in the process of revising its licensing format to simplify and shorten its licenses while maintaining its statutory obligation to protect the public's health, safety, and welfare.

Therefore, the Committee recommends that the Bureau report to the Committee on its efforts to shorten licenses and permits on May 1, 1985 for review at that time.

STATUTORY 2. Transfer the administration of the Alteration of Rivers, Streams, & Brooks Act from the Department of Inland Fisheries & Wildlife (IF&W) to the DEP to consolidate regulatory functions.

The Alteration of Rivers, Streams, & Brooks Act, or the Stream Alteration law, regulates land use in or near rivers, streams, and brooks (12 MRSA §7776, et. seq.). Currently, the law is administered

by the Department of Inland Fisheries & Wildlife which issues approximately 150 permits per year.

The DEP is a regulatory agency which currently administers two laws that complement the Stream Alteration law; the Great Ponds law and the Site Location of Development law. The Great Ponds law regulates land use on a great pond or connecting stream (38 MRSA §392 and §393). The Site law regulates the location of development with respect to the natural environment of the State (38 MRSA §481) and as such, occasionally involves rivers, streams, or brooks. On a yearly basis about 10% of Site law permits and several Great Pond permits also require a Stream Alteration permit from IF&W. The Committee finds that transferring the Stream Alteration law to the DEP will consolidate complementary regulatory laws into a single regulatory agency and resolve any questions regarding proper agency jurisdiction.

Therefore, the Committee recommends that the Stream Alteration law be transferred from the IF&W to the DEP.

STATUTORY 3. Charge a reasonable permitting fee for the administration of the Stream Alteration law.

The Department of Inland Fisheries & Wildlife (IF&W) currently administers the Stream Alteration law and does not charge a permitting fee although it has the authority to do so (12 MRSA § 7777).

The DEP has the authority to charge applicants for costs incurred in administering licensing and permitting programs. Maximum fees were set by the 111th Legislature through the Maine Environmental Protection Fund (38 MRSA § 351, et. seq.). The actual permitting fees charged are set forth in the DEP's regulations (Me. Dept. of Environmental Protection, Reg. 50.2, January 1, 1984).

The Committee has recommended that the Stream Alteration law be transferred from the IF&W to the DEP. Accordingly, the Committee recommends that the DEP charge a permitting fee to partially recover its costs in administering the Stream Alteration law and to ensure a consistent departmental permitting process. The Committee further recommends that the fee be equivalent to that charged for a Great Pond permit which is currently \$2.50 for filing, \$15 for processing, and \$10 for licensing for a total of \$27.50.

Finally, the Committee finds that the Department is required by statute not to assess a permitting fee if a fee has been previously assessed for a separate but related application. (38 MRSA §353 sub-§4).

In the first year this recommendation is anticipated to generate \$4,125 in new revenues.

ADMINISTRATIVE 4. Charge the DEP with amending its Administrative Regulations to require that comment be solicited from the Department of Inland Fisheries and Wildlife (IF&W) for each Stream Alteration permit application to ensure IF&W's review.

The Committee has recommended that the administration of the Stream Alteration law (12 MRSA §7776, et. seq.) be transferred from the IF&W to DEP. In making the recommendation for transfer, the Committee fully recognizes the importance of the IF&W's continuing perspective on Stream Alteration permit requests. The Committee also acknowledges that the Board of Environmental Protection has made a practice of routinely considering IF&W comments it now receives on any permit application. Nevertheless, given the importance of IF&W input, the Committee finds a need to formalize this practice and therefore recommends that the DEP's Administrative Regulations be amended to require solicitation of IF&W comments for Stream Alteration permit applications.

STATUTORY 5. Shift the major responsibility for administration of the Shoreland Zoning Law to the DEP from the State Planning Office (SPO) and transfer one position from the SPO to the DEP to administer the law.

The Mandatory Zoning and Subdivision Control Act, known as the Shoreland Zoning Act, requires municipalities to enact an ordinance regulating land uses within 250 feet of any pond, river, or salt water body (12 MRSA §4811, et. seq.). After the town enacts an ordinance, it is also responsible for administration and enforcement through its Planning Board and Code Enforcement Officer. The DEP and

Land Use Regulation Commission (LURC) help the towns do this job by having available a prototype shoreland zoning ordinance for the towns to review. Also, two members each from the Board of Environmental Protection and LURC form a Shoreland Zoning Task Force to review town ordinances and perform related activities.

The SPO has been given the statutory responsibility of "coordinating" the efforts of state agencies and towns administering the law. Practically, the coordination role results in the SPO carrying the bulk of the state level administrative responsibility for the Shoreland Zoning Law. The SPO has designated approximately one-third of a position to carry out the coordination role.

The Committee recognizes that the division of responsibilities among this constellation of state agencies and towns contributes to a number of problems in administering the Shoreland Zoning Law. These problems include:

- lack of understanding of the law at the local level;
- no state field staff available to help the towns;
- the need for more technical assistance to the towns;
- difficulties in enforcement; and
- lack of uniformity among town ordinances.

Even though the Legislature took some significant steps to address the enforcement issues during the Second Regular Session of the 111th Legislature (PL 1984 Ch. 796), the Committee finds that more is needed to fully address the issues. The Committee notes that the DEP is primarily a regulatory agency equipped to handle regulatory matters and the SPO is not; the DEP has field staff to help the towns administer and the SPO does not; and towns would benefit by dealing with a single agency rather than several. Therefore, the Committee recommends that the administration of the Shoreland Zoning Law be shifted from the SPO to the DEP.

Furthermore, to ensure that the DEP has adequate personnel to handle this added responsibility, the Committee recommends the transfer of one position from the SPO to the DEP. These changes will result in more consistent and effective administration of the Shoreland Zoning Law.

STATUTORY

6. Transfer the responsibility for administering the Minimum Lot Size Law from the DEP to the Department of Human Services (DHS) to consolidate waste water treatment laws.
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The Minimum Lot Size Law is now administered by the DEP and regulates the siting of subsurface wastewater disposal systems (septic tanks) on any lot that is less than 20,000 square feet (12 MRSA Ch. 423-A). The law requires that a single family residential unit must be at least 20,000 square feet and have a set-back of 100 feet from any adjacent water body in order to install a subsurface waste disposal system. Any larger unit, such as multiple unit housing or a commercial/industrial establishment, must be sited on a proportionally larger lot in order to install a subsurface waste disposal system.

If a lot owner wishes to site a subsurface disposal system on a lot smaller than that specified above, than that person must apply to the DEP for a permit.

The DHS, Division of Health Engineering, regulates plumbing and subsurface waste disposal. Title 22, §42, mandates the DHS to adopt rules regulating plumbing and subsurface waste disposal including the licensing of people who evaluate subsurface waste disposal systems and plumbing facilities.

Currently, the DEP receives about 25 Minimum Lot Size permit applications per year. In most cases, the DEP solicits comments and recommendations from DHS on these permit applications.

The Committee finds that transferring the Minimum Lot Size law from DEP to DHS will require no new staff, result in little disruption of the permitting program, and consolidate subsurface waste disposal programs. Therefore, the Committee recommends that the Minimum Lot Size law be transferred from the Department of Environmental Protection to the Department of Human Services.

STATUTORY

7. Amend the Maine Coastal Protection Fund to allow the Fund to be used for costs incurred in the removal of an unlicensed discharge or threatened

discharge of hazardous waste, including hiring and training of response personnel.

Within the Bureau of Oil and Hazardous Materials Control, 23 1/2 positions are authorized to work on some aspect of hazardous waste and 27 1/2 positions are authorized to work on cleaning up and preventing oil spills. The positions break out as follows:

I. OIL COMPONENT

The Maine Coastal Protection Fund is used to clean up or prevent spills of oil, petroleum products, or their by-products. It has been in effect since 1970, is a non-lapsing, revolving fund, and is limited to \$6,000,000 (Title 38 §551, et. seq.).

The Fund is accumulated by charging license fees of one cent per barrel of oil transferred either between vessels or between vessels and onshore facilities by the licensee.

The Fund supports 27 1/2 authorized positions; 21 are filled at this time. Staff supported by the Maine Coastal

Protection Fund often work on hazardous waste. This time is properly journaled to the Hazardous Waste Fund (described below).

II. HAZARDOUS WASTE COMPONENT

- Hazardous Waste Fund

The Maine Hazardous Waste Fund is used to protect the public from spills and unlicensed discharges of hazardous waste and waste oil. It has been in effect since 1981, is a non-lapsing, revolving fund, and is limited to \$600,000 (Title 38 §1319-D et., seq.).

The Hazardous Waste Fund is accumulated from fees, penalties, interest, and other charges levied against generators who dispose or transport hazardous waste, transporters, owners/operators of hazardous waste treatment or disposal facilities, and waste oil dealers. The fees are set by schedule (38 MRSA §1319-I) and the amount of revenue collected has not been as large as anticipated. The original estimate was \$240,000-\$250,000 per year. The actual amount collected has been approximately \$180,000 per year.

The HWF currently supports five authorized positions, all of which are filled.

- Hazardous Waste Grant

The Hazardous Waste Grant is actually two federal supplementary grants to help the state operate its hazardous waste program. It currently supports 12 positions. All these positions work on hazardous waste in some capacity, including administration, enforcement, field services, and computer services.

The Grant is provided to the state under the condition that the state provide a 25% match. The Department now has difficulty providing that match since there are so few General Fund positions specifically dedicated to hazardous waste management.

- General Fund

The Uncontrolled Site Program was established to clean-up uncontrolled hazardous substance sites. The Legislature appropriated \$103,923 in FY 1984 and \$111,969 in FY 1985 for four and one half positions for this program. The General Fund also supports one Senior Geologist position which is assigned to various hazardous waste projects throughout the Bureau.

- Low-Level Waste Siting Fund

This Fund supports one position to work on low-level waste.

This information can be graphically displayed as follows:

HAZARDOUS WASTE COMPONENT		OIL COMPONENT	
<u>Funding Source</u>	<u>Authorized Positions</u>	<u>Funding Source</u>	<u>Authorized Positions</u>
Hazardous Waste Fund	5	Maine Coastal	
Hazardous Waste Grant	12	Protection Fund	27 1/2
General Fund	5 1/2		
Low-Level Waste Fund	1		
	23 1/2		

The Committee finds that the departmental resources now available for hazardous waste work are inadequate. As noted, the

amount of revenue collected for the Hazardous Waste Fund has not been as large as anticipated.

Furthermore, the Committee notes that 76 uncontrolled hazardous substance sites have been assessed by the Bureau over the last two years. Staff time required to make these assessments spans one day to several months and the number of sites requiring assessment and investigation is expected to increase. At this time, the Bureau's available resources appear to be fully extended in dealing with sixteen uncontrolled hazardous substance sites.

Furthermore, the Committee notes that allowing the MCPF to be used for hazardous waste work will have the additional benefit of increasing the state's eligibility for federal hazardous waste matching dollars. The MCPF could be used either to fund hazardous waste work directly or serve as the state share to attract additional federal matching dollars.

Therefore, the Committee recommends that the Maine Coastal Protection Fund be amended to allow the Fund to be used for costs incurred in the removal of an unlicensed discharge or threatened discharge of hazardous waste, including hiring and training of response personnel.

STATUTORY	8. Establish a separate Underground Oil Storage Facility Cleanup Fund capped at \$1,000,000 plus interest and designated specifically for underground tank cleanup of contamination and restoration of drinkable water supplies.
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I. BACKGROUND

The Underground Petroleum Storage Tank Program deals with leaking underground gasoline storage tanks. The Program estimates that there are between 2,700 and 23,000 underground tanks in the state which leak a conservative estimate of 11,000,000 gallons of petroleum product into the soil and groundwater each year; that equates to 30,000 gallons per day.

Currently, over 200 underground oil spills have been documented from leaking tanks from 1979 to 1984 (see figure 1). In that same time period, over 100 wells contaminated with petroleum have been identified.

Five and one third positions are currently assigned directly to the Underground Tank Program. Field staff also work on the Underground Tank Program as circumstances dictate. These positions are funded from the Maine Coastal Protection Fund.

The Maine Coastal Protection Fund is used to clean up or prevent spills of oil, petroleum products, or other by-products. It has been in effect since 1970, is a non-lapsing, revolving fund, and is limited to \$6,000,000 (Title 38 MRSA §551, et.seq.).

In establishing the Fund in 1970, the Legislature clearly was oriented toward the impact of oil on the seacoast, mentioning the Fund in regard to coastal waters, estuaries, tidal flats, and beaches. (38 MRSA §541). However, in adding language regarding pollution from underground tanks in 1983, the Legislature cited "the waters of the state, including the ground water resources" which are, of course, freshwater.

The Fund is accumulated by charging fees of one cent per barrel of oil transferred either between oil conveyance vessels or between vessels and onshore facilities.

The DEP has calculated the amount of time and salary devoted to Underground Tanks out of the Maine Coastal Protection Fund from FY 1983 to FY 1986 as follows:

STAFF TIME AND SALARY DEVOTED TO UNDERGROUND TANKS

	<u>% of MCPF Staff Time Devoted to Underground Tanks</u>	<u>MCPF Salary Devoted to Underground Tanks Program</u>
FY 83	25%	\$ 99,226
FY 84	44%	\$172,454
FY 85	55%	\$226,346
FY 86	55%	\$237,663*

*Does not include six new proposed positions. If six positions are authorized, salary for FY 1986 is proposed to be \$458,792.

When combined with All Other and Capital Equipment, the Department calculates the total cost of the Underground Tank Program for FY 1983 through FY 1986 to be:

	<u>FY 83</u>	<u>FY 84</u>	<u>FY 85</u>	<u>FY 86</u>
PS	\$ 99,226	\$172,454	\$ 226,346	\$ 458,792
AO	128,000	446,500	1,000,000	1,000,000
CAP	<u>50,000</u>	<u>74,000*</u>	<u>100,000</u>	<u>100,000</u>
TOTAL	\$277,226	\$692,954	\$1,326,346	\$1,558,792

* A portion of the capital was originally purchased through contractors under the All Other category.

II. PROPOSAL

In reviewing the problem of soil and groundwater contamination from underground tank seepage, the Committee finds the following:

- the language of the Maine Coastal Protection Fund creates confusion and uncertainty about whether the Fund can properly be used to clean up soil and groundwater contamination from underground tank seepage;
- maintaining a precise accounting of disbursements for underground tank cleanup is important and will become more important as the scope and nature of the problem becomes more apparent; and
- the level of resources needed to deal with the problem will increase over current levels and current resources are inadequate.

Therefore, the Committee recommends establishing a separate spill-over Underground Oil Storage Facility Cleanup Fund capped at \$1,000,000 plus interest and designated specifically for underground tank cleanup of contamination and restoration of drinkable water supplies.

To establish the Fund, the Committee recommends:

- raising the ceiling of the Maine Coastal Protection Fund from \$6,000,000 to \$7,000,000;
- certifying that the spillover Underground Oil Storage Facility Fund will accumulate from three main sources:
 - 1) the interest income from all fees collected for the Maine Coastal Protection Fund and for the Underground Tank Fund (at the current rate of one cent per gallon of oil transferred);

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- 2) fees deposited into the Maine Coastal Protection Fund over the current \$6,000,000 cap up to the new cap of \$7,000,000; and
 - 3) the small amount of revenues generated through permitting fees collected from new or replacement tanks;

- Shifting the five and one-third positions now working primarily on the Underground Tank Program from their present source of funding to the new Underground Oil Storage Facility Fund.

The Committee recommends the establishment of the Underground Tank Fund in recognition that significant quantities of flammable, combustible, and toxic materials are currently stored in underground storage facilities and that numerous incidents involving leaks or unlicensed discharges from these tanks are occurring at a rate which poses a significant threat to Maine's groundwater resources.

The creation of a separate Fund for underground tanks clearly indicates the Legislature's intent that fees from the Maine Coastal Protection Fund can be used to prevent and clean up oil contaminated groundwater. At the same time, \$6,000,000 will remain available in the Maine Coastal Protection Fund for marine oil spills as the Legislature had intended when it established the Fund in 1970.

STATUTORY 9. Authorize the DEP to register existing underground petroleum storage tanks to protect the public's health, welfare, and safety.

The Legislature required the DEP to "survey available records to identify, insofar as possible, all existing underground oil storage tanks in the state ... " in PL 1984 Ch. 785.

The DEP released the survey in October 1984, and estimated the total number of underground tanks in the state to range from 2,713 to over 23,000. To determine this range, the DEP used at least seven data bases on the numbers, locations, types, ages, or ownerships of tanks provided by Maine's Office of Energy Resources, the Maine State Fire Marshall's Office, the Departments of Environmental Protection and Agriculture, the Maine Oil Dealers Association, as well as other sources of information. Establishing the tank population more

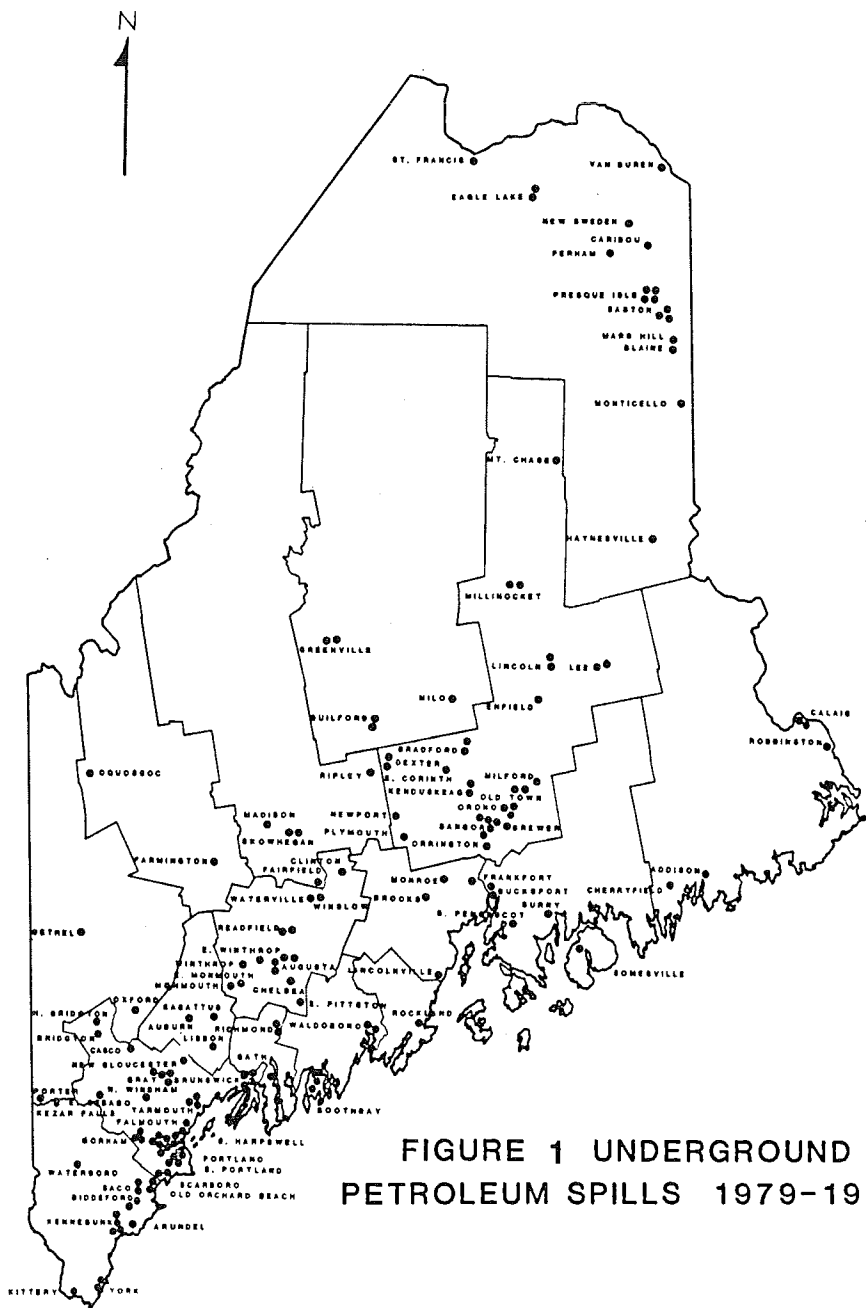


FIGURE 1 UNDERGROUND PETROLEUM SPILLS 1979-1983

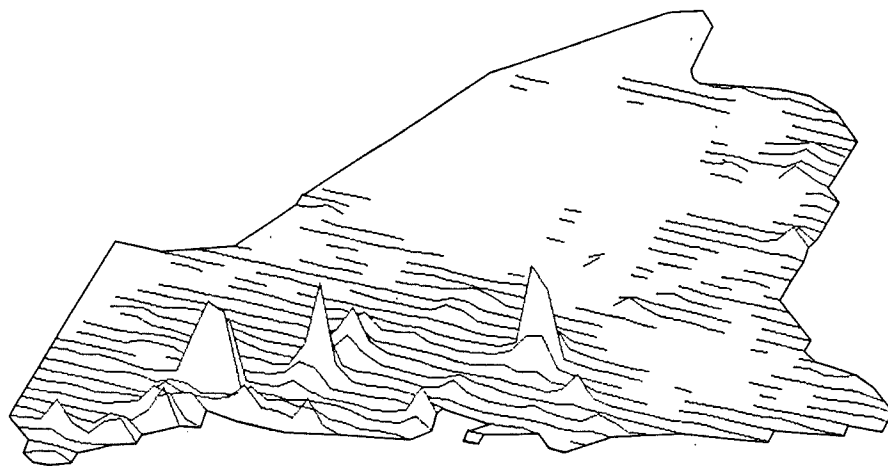


FIGURE 2 GEOGRAPHIC DISTRIBUTION OF UNDERGROUND TANKS PERMITTED BY THE MAINE FIRE MARSHAL

SOURCE: Survey of Existing Underground Oil Storage Tanks. A Summary Report. Maine Department of Environmental Protection. October 1984

precisely is not possible at this time and reflects the variability and unreliability of existing records to provide an accurate figure. The DEP comments that even the 23,000 figure is probably conservative since it does not include the abandoned tank population.

The DEP also reports that underground tanks appear to be concentrated around major population centers and are closely related to overall patterns of settlement (see Figure 2). In areas other than major population centers, tanks seem to be distributed fairly uniformly, except that very few tanks exist in unsettled parts of the state including northwestern and a part of eastern Maine. The tanks in Maine are owned by retail, commercial, residential, and public facilities.

Although mean tank age cannot be reliably estimated from existing data for Maine, it can be safely assumed that a large population of unprotected steel tanks exist in the state that have reached the age when they are likely to develop leaks. In fact, the majority of underground tanks in the state are virtually unprotected from corrosion damage.

The DEP does not have the statutory authority to register existing underground petroleum storage tanks. Its registration authority is currently limited to issuing permits for the installation of new or replacement underground tanks for which the Department may charge a fee (38 MRSA §545-A).

The Committee finds that significant quantities of flammable, combustible, and toxic materials are currently stored in underground tanks and that numerous incidents involving leaks or unlicensed discharges from these tanks are occurring at a rate that poses a serious threat to Maine's groundwater resources.

Therefore, the Committee recommends that DEP be authorized to register existing underground petroleum storage tanks.

STATUTORY 10. Clarify DEP's authority to regulate existing underground petroleum storage tanks to protect the public's health, welfare, and safety.

A recently released DEP survey estimates that there are between 2,700 and 23,000 underground petroleum storage tanks in Maine. Since

a national tank testing survey indicates that 20% to 50% of all underground tanks leak, 25% is a conservative estimate of the number of tanks leaking in Maine. At a leak rate of 1/2 gallon per hour for 10,000 tanks, an estimated 30,000 gallons of petroleum and related products leak into Maine's soil and groundwater each day, or 11,000,000 gallons are lost each year.

Each gallon of leaked product has the potential of contaminating 3/4 of a million gallons of groundwater to an undrinkable level.

The Board of Environmental Protection is authorized by 38 MRSA §546 to promulgate rules regarding the design, installation, and operating procedures for new and replacement underground oil storage facilities as well as for the safe abandonment or removal of underground oil storage facilities.



Title 38 §541 and §546 appear to provide general authorization for the Board of Environmental Protection to exercise the police powers of the state to deal with the threat to water quality posed by existing leaking underground tanks and to carry out the intent of the subchapter. However, the Committee finds a need to specifically authorize the Board of Environmental Protection to promulgate rules and regulations governing the operation and maintenance of existing underground petroleum storage tanks.

Therefore, the Committee recommends that the DEP's authority to regulate existing underground petroleum storage tanks be specifically stated.

STATUTORY 11. Authorize the DEP to certify contractors who install underground petroleum storage tanks to improve the quality of installation and reduce environmental contamination.

The DEP is not authorized to certify contractors who install underground petroleum storage tanks, nor are contractors required to meet any performance criteria for tank installation.

The Committee finds that incorrect installation is often a source of soil and groundwater contamination and that underground petroleum storage tanks are often installed incorrectly. For example, a loose fitting in piping connecting an underground tank with its gas pump was responsible for the loss of 10,000 gallons of gas in Robbinston, Maine. In Oquossoc, cracked fittings that were undetected for at least two years leaked hundreds of gallons of gasoline that poisoned a nearby wetland.

Therefore, the Committee recommends that the DEP be authorized to certify contractors who install underground petroleum storage tanks to improve the quality of installation and reduce environmental contamination.

ADMINISTRATIVE 12. Require the DEP to intensify its efforts to recover clean-up costs disbursed from the Maine Coastal Protection Fund to ensure that the party responsible pays for the damage and that the Fund is properly reimbursed.

Title 38 §551 sub-§6 requires the DEP to recover clean-up costs from the party(ies) responsible for damage due to oil contamination, unless the Department finds the amount involved too small or the likelihood of success too uncertain. The reimbursement process usually operates by the Department identifying and billing those responsible for spill disbursements. If complications arise, the Department turns the case over to the Office of Attorney General which continues the reimbursement process with the assistance of the DEP.

The amount of clean-up costs recovered from 1980 through 1984 is as follows:

	<u>1984</u>	<u>1983</u>	<u>1982</u>	<u>1981</u>	<u>1980</u>
Clean-up Costs	\$458,686	\$163,908	\$73,955	\$84,085	\$47,889
Spill Recoveries	69,134	23,516	19,749	15,071	49,049

The Committee recognizes that cleanup cost recovery is a continual process that may span fiscal years. The cleanup costs recovered during one fiscal year may be for spills that occurred in prior fiscal years.

The Committee finds that recovering clean-up costs from responsible parties whenever possible is important and justifiable. Therefore, the Committee recommends that the DEP be required to intensify its efforts to recover clean-up costs disbursed from the Maine Coastal Protection Fund to ensure that the party responsible pays for the damage and that the Fund is properly reimbursed.

In making this recommendation, the Committee recognizes the important role played by the Office of the Attorney General in the reimbursement process and that increased commitment and involvement from the Attorney General may be a significant factor in increasing the level of reimbursement.

STATUTORY 13. Establish a parallel provision requiring the Department to recover cleanup costs disbursed from the Underground Tank Clean-up Fund to ensure that the responsible party pays for the damage and that the Fund is properly reimbursed.

The proposed Underground Tank Clean-up Fund will be used to clean-up contamination from underground petroleum storage tanks and to replace or restore drinkable water supplies.

The Committee finds that those responsible for the contamination should be required to reimburse the Underground Tank Clean-up Fund for costs incurred. For example, from September 1983 to December 1984, approximately \$400,000 has been spent on cleaning up spills from underground oil spills. At this writing, an unsubstantial amount has been collected from those responsible for the oil contamination.

Therefore, the Committee recommends that a provision be established requiring the Department to recover cleanup costs disbursed from the Underground Tank Clean-up Fund to ensure that the responsible party pays for the damage and that the Fund is properly reimbursed, unless the Department finds the amount involved too small or the likelihood of success too uncertain.

STATUTORY 14. Change the title of the Maine Coastal Protection Fund to the Maine Oil Contamination Prevention and Clean-up Fund to be more representative of the Fund's function and use.

The Legislature established the Maine Coastal Protection Fund in 1970 to prevent and clean up oil spills in saltwater. In describing the original purpose of the Fund, the Legislature used words such as seacoast, coastal waters, estuaries, tidal flats, beaches, marine, and estuarine.

In 1983, the Legislature added language regarding oil pollution from inland underground petroleum storage tanks and included one reference to "the waters of the State, including the groundwater resources" (38 MRSA §541).

The Committee finds that the proper use of the Maine Coastal Protection Fund includes the protection and cleanup of inland groundwater resources from oil contamination.

Accordingly, the Committee finds that the original title of the Fund, emphasizing the word "coastal", is misleading and inaccurate.

Therefore, the Committee recommends that the title of Maine Coastal Protection Fund be changed to the Maine Oil Contamination Prevention and Clean-up Fund to be more representative of the Fund's function and use.

ADMINISTRATIVE 15. Charge the Board of Environmental Protection with developing a policy to set priorities for the Underground Tank Program to ensure effective allocation of limited resources.

The Underground Tank Program currently conducts a number of tasks. These include:

- inventorying the number of tanks in Maine;
- writing a comprehensive plan defining the nature and scope of the problem;
- investigating complaints about well contamination;
- conducting clean-up activity:
 - drilling both monitoring and recovery wells
 - removing contaminated soil in limited cases
 - leasing and installing charcoal filters; and
- conducting limited public education activities.

The Committee finds that the Underground Tank Program could be augmented by the following:

- replacing contaminated water supplies through measures including well drilling and extending public water to victims of well contamination;
- actively identifying abandoned oil tanks and contaminated sites;
- conducting more contamination analyses;
- researching new technologies;
- providing for ongoing planning; and
- increasing monitoring, inspections, and enforcement.

The Committee finds that these activities require varying amounts of staff time, equipment and financial resources and that no overall, comprehensive assessment of needs and priorities has apparently been set to help effectively match limited resources to tasks.

As the Board serves as the policy-setting body for the Department, the Committee recommends that the Board be charged with setting priorities for the Underground Tank Program to ensure effective allocation of limited resources.

STATUTORY 16. Increase the permitting fee from \$10 to \$25 for new or replacement underground oil storage facilities and ensure that these funds are used for program administration and public education.

The Legislature has established a permitting fee for the installation of new or replacement underground oil storage facilities. The Department has been directed to issue permits for new or replacement underground oil storage facilities which are located, designed, and constructed so as to protect the health and welfare of the people of the state and to protect the environment.

In reviewing this directive, the Committee finds that the fee for new or replacement tanks should be increased from \$10 to \$25 per tank or container and that the fee should be credited to the Underground Oil Storage Facility Clean-up Fund. Furthermore, the permitting fees should be used to cover the costs of administering the permitting program plus efforts to further the public's awareness of the problem.

Therefore the Committee recommends that the permitting fee be increased from \$10 to \$25 for new or replacement underground oil storage facilities and that these funds are used for program administration and public education.

STATUTORY 17. Clarify that the discharge of hazardous waste is illegal to strengthen enforcement.

The following statutes pertain to the area of hazardous waste.

- Title 38, Chapter 13, subchapter I governs the identification, management, transportation, treatment, and disposal of hazardous waste. This subchapter does not contain a direct prohibition against the discharge of hazardous waste;
- However, 38 MRS §1317-A in subchapter III specifically prohibits the discharge of hazardous matter into or upon water, land, or air. According to the United States Clean Water Act, the definition of hazardous matter includes

hazardous waste as well as other substances; therefore indirectly implying that discharging hazardous waste is prohibited; and

- Furthermore, 38 MRS §1318 sub-§§1 and 2 exempt any party responsible for a discharge of hazardous matter from criminal or civil penalties for that discharge if the responsible party immediately reports and removes the discharge.

The DEP has found that these present statutory provisions cause confusion when dealing with accidental discharges of hazardous waste for several reasons.

First, it is not clear whether discharging hazardous waste is illegal or not. Second, when considering hazardous waste as a subset of hazardous matter which clearly has a prohibition against illegal discharge, the DEP has found the escape clause for hazardous matter to be a loophole to assessing penalty.

The DEP maintains that the escape clause is a necessary provision for some circumstances. For example, accidental truck spills that are completely and immediately removed with no long lasting harm generally should be exempt from penalty. However, the escape clause has been used to claim exemption from penalty when the clean-up has not been complete and long-term soil and groundwater contamination has occurred.



The Committee finds that the current uncertainty regarding illegal discharges of hazardous waste should be

clarified. Therefore, the Committee recommends that a direct prohibition against the illegal discharge of hazardous waste be inserted in the statute.

In making this recommendation the Committee recognizes that this is the first step toward resolving statutory uncertainty governing hazardous waste and that future clarification is needed to establish the level of required enforcement.

STATUTORY 18. Transfer the regulatory responsibility over small solid waste facilities within the Land Use Regulation Commission's territory from LURC to DEP in order to consolidate regulatory action and eliminate duplication.

Currently, both DEP and LURC are responsible for regulating small solid waste facilities in LURC's territory. Consequently, the law requires that applicants must now receive permits from both state agencies. There are approximately 50 of these sites. In reviewing the situation, the Committee finds the following:

- DEP has the engineers and geologists needed to review solid waste permits whereas LURC does not;
- LURC would have to duplicate DEP's staff if given the sole responsibility for reviewing permits;
- DEP regulatory oversight will be no more burdensome than LURC's since DEP regulation can be tailored to fit small dumps; and
- DEP has the staff available to design regulatory requirements specific for each small dump site where LURC does not.

Therefore, the Committee recommends that DEP be given sole responsibility for regulating small solid waste facilities within LURC's territory.

ADMINISTRATIVE 19. Reaffirm that the Legislature intended 4 1/2 positions to work on the Uncontrolled Site Program and require that the 4 1/2 positions appropriated by PL 1983 Ch. 569 work primarily on the Uncontrolled Site program.

The Uncontrolled Site Program, established by PL 1983 Ch. 569, is the only program in the Bureau of Oil and Hazardous Materials Control supported by the General Fund. The program was established to abate, clean up, and mitigate threats to public health and the environment from uncontrolled hazardous substance sites (i.e. old dumping grounds for hazardous substances).

The Uncontrolled Site Program received appropriations of \$103,923 in FY 1984 and \$111,969 in FY 1985 to fund 4 1/2 positions. Three and one half of these positions have and do work on the Uncontrolled Site Program.

The fourth full-time position does not work primarily on Uncontrolled Sites; the position was established as a field position working out of the Bangor office. Staff time is divided between several Bureau programs.

The Committee determines that legislative intent was to devote 4 1/2 positions to the Uncontrolled Site Program. Because of the importance of this program to the people of Maine, the Committee recommends that all 4 1/2 positions appropriated work primarily on Uncontrolled Sites.

ADMINISTRATIVE 20. Transfer the General Fund appropriation for the Senior Geologist in the Bureau of Oil and Hazardous Materials Control to an account that reflects the job responsibilities.

In the First Session of the 111th Legislature, \$25,000 in FY 1984 and \$29,000 in FY 1985 were appropriated to support a Senior Geologist in the Bureau of Oil and Hazardous Materials Control. This position had been formerly supported through federal funds. The description of the job for which those funds were appropriated in PL 1983 Ch. 477 "B" is as follows:

"Provides funds for a Senior Geologist to resolve ground water contamination problems associated with hazardous waste and uncontrolled site investigations which were formerly provided through federal resources."

Since the only other General Fund account in the Bureau of Oil and Hazardous Materials Control at this time is the Uncontrolled Sites account (1530.7020), the General Fund appropriation for the

Senior Geologist was placed into the Uncontrolled Site Program account. However, the Senior Geologist is, in fact, working according to the above job description.

The Committee finds the placement of funds for the Senior Geologist position in the Uncontrolled Site account to be inappropriate since the Senior Geologist does not, and is not mandated to, work primarily on uncontrolled sites.

Therefore, the Committee recommends that the General Fund appropriation for the Senior Geologist be placed in an account unit that more accurately reflects the job responsibilities.

ADMINISTRATIVE 21. Report to the Audit Committee on the reorganization underway of the Bureau of Oil and Hazardous Materials Control by May 1, 1985.

The Committee has been concerned about the administrative and programmatic operation of the Bureau of Oil and Hazardous Materials Control. Recently, two key positions in the Bureau have been vacated (the Bureau Director and the Director of the Division of Field Services) and reorganization of the Bureau is underway. A new Bureau Director has been hired as of January 1985.

The Committee intends to review the reorganization of the Bureau in 1985 to ensure that the Bureau is operating efficiently, productively, and according to legislative mandate.

Therefore, the Committee recommends that the Department submit a report on the reorganization by May 1, 1985 for review and discussion.

ADMINISTRATIVE 22. Require that all employees record hours worked on all activities on which more than incidental time is spent so that proper accounting, journaling, and reimbursement shall occur.

DEP employees fill out biweekly time sheets (or salary vouchers) so that accounts dedicated to activities on which they work can be

properly charged. A review of these time sheets indicates that most employees are diligent about attributing their time accurately among various federal and dedicated revenue accounts. A small percentage of time sheets show work ostensibly performed in only one area, even though a comparison with job descriptions and conversations with supervisors indicate that some of this small percentage do, in fact, work in several different areas covered by several accounts.

The Committee recognizes that accounting for incidental work, especially for field personnel, is difficult and requires some administrative flexibility. However, the Committee finds that work that is more than incidental should be recorded on the biweekly time sheets. Accordingly, the Committee recommends that all DEP employees record hours worked on all activities on which more than incidental time is spent so that proper accounting, journaling, and reimbursement shall occur.

ADMINISTRATIVE 23. Report to the Audit Committee on the billing and compensation procedures used by the laboratory by May 1, 1985 for possible revision or amendment if needed at that time.

The DEP laboratory is a division of the Bureau of Water Quality Control, although it serves the lab needs of all the Bureaus. This placement is traditional since the lab began as part of the Water Bureau program. The Air Bureau developed its own lab capabilities in the early 70's and maintained separate facilities for almost ten years. As part of the departmental reorganization in 1981, the Air & Water Bureau developed a Memorandum of Understanding that combined the two labs although the lab remained part of the Water Bureau.

The time devoted to each DEP Bureau by the lab breaks down as follows:

<u>BUREAU</u>	<u>LABORATORY TIME</u>
Water	46%
Oil & Hazardous Materials	21%
Air	12%
Land	5%

Laboratory administration and overhead accounts for the remaining 16% of time.

The Lab Director estimates that the largest amount of dollars is spent on work for the Oil & Hazardous Materials Bureau since the most expensive lab resources are required for the Oil Bureau's work.

The Water Bureau uses two mechanisms to receive reimbursement from the other Bureaus in the Department for laboratory services rendered. The reimbursement mechanisms are as follows:

- Air Bureau

The Air Bureau supports a Chemist I General Fund position in the lab. The Air Bureau has done this since 1981, the arrangement is still in place and is satisfactory from the Bureau's perspective;

- Land Bureau

The Water Bureau does not bill the Land Bureau for laboratory services since it considers the Land Bureau's lab needs relatively minor; and

- Oil & Hazardous Materials Bureau (BOHMC)

Prior to July 1984, the BOHMC paid the Water Bureau for laboratory services by periodically purchasing equipment and supplies for the lab which were roughly comparable to the cost of the services rendered. As the BOHMC's lab costs increased, the Water Bureau no longer found this "bartering" system acceptable. Accordingly, a new billing system has been in place since July 1984 whereby the BOHMC is billed monthly for lab services rendered. The billing is based on the number of analyses done, equipment used, time required, and other pertinent factors.

The Committee finds that the billing and compensation mechanisms in place for laboratory services rendered now appear to be adequate and justifiable. However, the Committee recommends that these procedures be reviewed by May 1, 1985 to determine the need for amendment or revision at that time. Further, the Committee intends to review the administrative placement of the lab within the Department.

ADMINISTRATIVE 24. Improve capital equipment purchasing and bulk purchasing to:

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- Ensure that capital equipment items purchased for both the Augusta headquarters and the regional office receive an Inventory Control Number immediately upon delivery;
 - Ensure that the Inventory Control Numbers are permanently affixed;
 - Computerize the capital equipment file card system; and
 - Consolidate certain purchases where quantity buying is possible and cost effective.
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The Department purchased \$233,500 worth of capital equipment in FY 1984. Currently, capital equipment items receive an Inventory Control Number during the quarter in which they were purchased though not necessarily upon delivery. Accordingly, many capital equipment items do not receive an Inventory Control Number for months after the equipment is physically present in the Department. This delay occasionally creates problems in keeping track of the equipment.

Other issues requiring attention and resolution include the fact that Inventory Control Numbers routinely become illegible, that the manual file card system for capital equipment items is unwieldy and inflexible, and that no attempt is made to buy items in bulk when buying in bulk is possible and cost effective.

Therefore, the Committee recommends that the Department improve the capital equipment purchasing and bulk purchasing process to resolve these issues, and report to the Committee by September, 1985.

STATUTORY	25. Change the Commissioner's annual reporting deadline to the Board of Environmental Protection on hazardous waste generation and handling in the state from October 1 to March 1 to coincide with the federal EPA reporting deadline.
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Title 38 §1304-A(2) now requires the Commissioner to submit a report to the Board of Environmental Protection on hazardous waste

generation and handling activities in the state for the prior fiscal year by October 1. There are 300-400 generators who generate at least 200 kg. of hazardous waste per calendar month in Maine.

The EPA, however, has recently promulgated a regulation requiring hazardous waste generators and handlers to submit a report by March 1 covering their hazardous waste handling activities for the prior year. EPA will require the state to adopt the March 1 reporting deadline in order to receive Final Authorization to administer the federal hazardous waste program. When the state receives Final Authorization, the generators and handlers will submit their March 1st reports to the state DEP.

The DEP maintains that the two reporting deadlines of March 1 and October 1 could be combined without jeopardizing either EPA requirements or legislative intent. The Committee finds that a single reporting date will minimize information requests, facilitate data gathering, and reduce the reporting burden on hazardous waste generators and handlers.

Therefore, the Committee recommends that the Commissioner's annual reporting deadline to the Board of Environmental Protection on hazardous waste generation and handling in the state be changed from October 1 to March 1 to coincide with the EPA reporting deadline.

ADMINISTRATIVE 26. Require the DEP to sell the 1974 Ford front-end loader purchased in August 1982 because it is no longer needed.

In August 1982, the Department purchased a 1974 Ford front-end loader from the Department of Conservation for \$3,675. Repairs were made immediately which totalled \$889.

The loader was originally purchased to assist in the construction and maintenance of an oily waste disposal storage facility. The facility was never built, the loader was never used, nor is it being used now. The loader is in storage at the DEP garage.

The Committee finds that the Department's retention of the front-end loader is no longer justified.

Therefore, the Committee recommends that the DEP sell the 1974 Ford front-end loader because it is no longer needed.

STATUTORY 27. Prohibit state agencies, except the Department of Transportation, (DOT) from purchasing heavy equipment unless the purchase is authorized by the Appropriations Committee.

During the course of the review the Committee became aware of heavy equipment needs of the DEP and other state agencies. The DEP had purchased a 1974 Ford front-end loader to assist in the construction and maintenance of an oily waste disposal and storage facility. The facility was never built and the loader has not been used since the date of purchase. In recent years, other state agencies have requested funds to purchase front-end loaders for their own use including snow removal and general grounds work. For example, the Part IV Budget requests from Departments contain two requests for front-end loaders totalling \$10,000.

The Committee finds that state agencies should not necessarily accumulate their own inventory of heavy equipment. Therefore, the Committee recommends that state agencies, except DOT, be prohibited from purchasing heavy equipment and require that heavy equipment work be contracted out, unless the purchase is authorized by the Appropriations Committee. In making this recommendation the Committee intends to encourage state agencies to contract for heavy equipment work in order to achieve cost efficiencies.

FINDING: 28. The Committee finds that the DEP has developed a unique, computerized system for tracing hazardous wastes. This system, when completely operable, will significantly increase the Department's capability to ensure the public's interest in the safe transportation, handling, disposal, and storage of hazardous wastes. Subsequently the Committee commends the DEP for this innovation.

A manifest is a paper document that is used to:

- Identify the origin, quantity and composition of a hazardous waste shipment; and,

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- Track the movement of hazardous waste from the point of generation to any intermediate points and finally to its ultimate destination.

The Board of Environmental Protection is authorized to develop a manifest system for Maine. (38 MRSA §1303-A sub-§3B) For the last two years, DEP has been working to develop a computerized manifest system. The EPA has provided funds to support this effort.

The system is nearing completion and a number of final problems are being resolved. The major obstacle to 100% operation is the lack of EPA identification numbers for each hazardous waste facility in New England. Reportedly, EPA and DEP are communicating on this problem.

The chief of the Maine/New Hampshire Waste Programs Section at EPA Region I describes Maine's system as an "outstanding management tool for tracking manifests." He notes that Maine's system has created interest across the nation and calls Maine's system "very innovative". The primary benefits of the system are that:

- other states, such as all those in the northeast, could tie into the same system, providing consistent and easily accessible manifest information for the entire region. New Hampshire, Vermont, Rhode Island and Connecticut have expressed an interest in tying into Maine's system;
- more control over the transport of hazardous waste will be possible in that the computer will store substantially more information about the various elements of the entire system; and
- once the paper manifests are in the system, report filing deadlines will be closely monitored and any inconsistencies in the recorded information will be quickly noticed (such as one shipment arriving at multiple locations in a single day).

The system also provides information in areas related to the manifest itself, such as:

- the status of both the operator and vehicle licenses of the transporters;
- the status of transporter license fees;
- a crosscheck between the old DEP manifest and the new EPA form;

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- facility information: Name, mailing address, contact person, total quantity handled in previous year, types of waste handled, and the handling methods available at the facility; and
 - a check on the validity of the information entered.

Therefore, the Committee finds that the DEP has developed a unique, computerized system for tracing hazardous wastes. The system when completely operable will significantly increase the Department's capability to ensure the public's interest in the safe transportation, handling, disposal, and storage of hazardous wastes. Subsequently, the Committee commends the DEP for this innovation.

ADMINISTRATIVE 29. Develop a formal compliance/enforcement document for the Bureau of Oil & Hazardous Materials Control covering procedures, policies, and formats to strengthen enforcement. Report to the Committees on Audit & Program Review and Energy & Natural Resources by September 1, 1985.

In September, the EPA issued a mid-year review evaluating DEP's performance in implementing the federal hazardous waste programs. The review addressed program management and development, information management, permit activities, and compliance monitoring and enforcement activities.

The EPA review stressed the need for a formal policy regarding compliance and enforcement. In support of this observation, the review pointed out the following:

- field staff inspectors have no written guidelines to help them discern when a violation requires referral to the Licensing & Enforcement Division for formal action and when an informal response is appropriate;
- the lack of formalized procedures, policies, and formats has resulted in inconsistent enforcement responses for similar violations;
- enforcement mechanisms and tools are not standardized. (Letters of Deficiency and Notices of Violation do not have a standard format);

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- there are no guidelines for field staff regarding the timely submittal of compliance/enforcement documents to the Licensing & Enforcement Division; and
 - centralized compliance/enforcement files do not exist.

In accordance with these findings, the Committee recommends the development of a formal compliance/enforcement document for the Bureau of Oil & Hazardous Materials Control covering procedures, policies, and formats to strengthen enforcement. The Bureau shall report to the Committees on Audit & Program Review and Energy & Natural Resources by September 1, 1985.

FINDING 30. The Committee finds that the combination of reduced federal participation and the outstanding needs for construction and rehabilitation of municipal wastewater treatment facilities require serious attention by the Department of Environmental Protection and the Legislature.

Maine's Construction Grants Program is part of a national effort to eliminate the discharge of sewage and other pollutants into navigable waters by providing funds to construct municipal wastewater treatment facilities. Since 1972, the federal government has contributed 75% and the state at least 15% toward the construction costs for these facilities. The localities have provided the balance. As a result, over 435 million dollars have been invested in the construction of 104 sewage treatment plants which serve over 500,000 people.

The federal government has targeted 1988 as the date to complete all required municipal sewage treatment facilities. Presumably, after 1988 federal dollars will no longer be available. The work left to do falls into two categories:

- Construction of new facilities in communities which have never had public sewage systems; and
- Major rehabilitation and modification to existing facilities.

The estimated cost of the work remaining in the next three fiscal years totals \$146,399,000 and breaks out as follows:

<u>NEED</u>	<u># Communities</u>	<u>Cost</u>
Construction of new facilities	29	\$ 77,841,000
Rehabilitation or modification of existing facilities	<u>16</u>	<u>68,558,000</u>
TOTAL	45	\$146,399,000

In FY 1985, the traditional percentage of 75% contributed by the federal government was reduced to 55% and will remain at this reduced level. For the balance of the program, the state is left with the complex task of identifying and implementing a means to compensate for the unanticipated 20% reduction in federal support.

During the course of the review, an ad hoc committee was convened by the DEP to assess program priorities, evaluate needs, and consider various options to address the problem. As a result, a recommended option and level of state funding will be presented to the Legislature for its consideration in FY 1985.

FINDING

31. The Committee finds that respondents to a survey of 450 Maine towns and plantations indicate a need for:
- more technical assistance;
 - better communications; and
 - more information from DEP.
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An eight page survey with thirty-one questions queried 450 Maine towns and plantations about their interaction with the DEP. The Committee received a 37% response rate (166 towns). Several themes that featured prominently were the respondent's need for more technical assistance, information in general, and better communications with the DEP. The area cited by towns as having the highest frequency of DEP/town interaction was domestic, commercial, or industrial solid waste disposal. Presumably, this is the area in which more technical assistance would be welcomed by the respondents.

Selected responses from the survey are as follows:

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- 78% supported authorizing more DEP staff primarily in the areas of technical assistance and field staff, 19% supported less staff, and 2% were satisfied with current levels;
 - 59% characterized DEP's follow-up to requests for assistance or information as timely, 20% as generally slow, 8% as immediate, 6% as non-existent, and 6% had no comment;
 - 50% rated the length of the licensing/permitting process as reasonable, 24% as unreasonable, 2% other, and 24% had no comment;
 - 42% characterized the overall quality of their interaction with the DEP as satisfactory, 30% as adequate, 14% unsatisfactory, 10% as excellent, and 3% had no comment;
 - 37% characterized the degree of assistance provided by DEP for permit and licensing applications as satisfactory, 22% as adequate, 20% as excellent, 11% as unsatisfactory, and 9% had no comment; and
 - 34% characterized DEP's enforcement process as adequate, 26% as inept, 14% as handled quickly and professionally, and 26% no comment.

The intent of the Committee's finding is to highlight the major themes evident in the survey results. The Committee recognizes the importance of these responses and urges the Department to review its performance in these areas.

STATUTORY	32.	Continue the Inspection of Dams and Reservoirs Program under the provisions of the Maine Sunset Law given the importance of dams to public health and safety.
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The Inspection of Dams and Reservoirs is a relatively new incarnation of a program charged with the registration and inspection of dams. This program was under the aegis of the Department of Agriculture until 1983, and has since been shifted to the Department of Environmental Protection. At the time of this transfer, the applicable statutes underwent a comprehensive revision which resulted in a redefined mission.

The current statutes, known as the "Maine Dam Inspection Registration and Abandonment Act" (38 MRSA §815-842), consolidated and revamped several disparate statutes. In its new and revitalized form, the Dams Program has five major components which serve the following functions:

1. Registration. The program is charged with the responsibility of registering all dams that are two feet or more in height and have an impounding capacity of 15-acre feet or more. As of December 1984, the program had received registrations for approximately 660 dams; an estimated 100-150 registerable dams are thought to exist but have not yet been registered. The dam registration process is intended to provide an accurate picture of the number of dams in the state and to provide a data source for satisfying public inquiries about dam related issues. The yearly dam registration fee starts at twenty dollars with the option of paying for five years at a 10% discount. On a first time basis, these fees have generated about \$24,000 in FY 1984 and are expected to level out at about \$15,000 annually.
2. Public Information. The program is responsible for disseminating public information about dams and related issues. Program staff members rate this as an important and time consuming element of their current operation. Current phone requests for information average ten calls per day with significant fluctuations on a seasonal basis, most notably increasing during the summer.
3. Water Levels. The program is charged with the responsibility of responding to public concerns about fluctuating water levels in those bodies of water which are currently dammed. This process is initiated by a petition of affected lakeside ("littoral") landowners and culminates in public hearings and subsequent orders from the Board of Environmental Protection. To date, six petitions have been received and processed.
4. Inspections. Inspection of registered dams for structural and technical integrity is another important function of the Dams program. Current statutes provide \$100 per day, plus expenses for professional engineers to conduct dam inspections on an as-needed basis. Inspections can be generated through petitions or at the prerogative of program staff.
5. Abandoned Dams. The current statutes specify that as of

January 1, 1985 all unregistered dams will lapse into state ownership. The state will then attempt to give these dams away to interested parties with the condition that any needed repairs be made. Program staff anticipates that at least ten dams will fall into this category.

Given the relatively short life of the present Dams program, these various program components are in differing stages of implementation. As acknowledged by the staff, the registration, water levels and public information components are in place and functioning efficiently. The inspection process appears to be minimally adequate given the paucity of available funds and statutory authority. The abandoned dam component has not yet been applied in practice and needs to be re-evaluated after some actual experiences.

The program consists of two full-time staff positions and a part-time Clerk Typist. The Committee notes that the federally funded Environmental Services Specialist position will be discontinued as of March 31, 1985. DEP is requesting that the state continue this position in a permanent capacity. The Committee finds that if the Dams program were to lose what amounts to half of its current staff, it is likely that program effectiveness would be significantly compromised.

Information received by the Committee through contacts with various parties from the private, commercial, and public sectors who have interacted with this program reveal the present program to be highly regarded. The Committee's review of the Inspection of Dams and Reservoirs Program finds the program to be timely, efficient and responsive to those members of the Maine public who are directly affected by dams. Therefore, the Committee recommends that the Inspection of Dams and Reservoirs Program be continued under the provisions of the Maine Sunset Law given the importance of dams to public health and safety in Maine.

ADMINISTRATIVE 33. Develop a list of proposed statutory changes and present the list to the Committee on Audit and Program Review by September 1, 1985.

Despite the recent statutory revisions concerning the Inspection of Dams and Reservoirs Program, the eventual need for several significant changes has already become evident. The Committee recognizes that more time is needed for an accurate determination of

exactly what changes should be enacted. Accordingly, the Committee directs that a list of recommended statutory changes be developed for future action by the Legislature.

The Committee recommends that the report contain, but not be limited to, the following statutory problems, already identified by program staff and the review process:

- the need to reduce excessively stringent criteria for identification of registerable dams;
- the need for more appropriate compensation for engineering services and/or the need for a permanent engineering position;
- the need for an interim "consulting" phase in the water level petitioning process. (The Committee finds that not every public concern needs to result in the petitioning process, which, once activated, results in a loss of local control. Program staff members rightly point out that in many cases, they could help resolve water level disputes without resorting to the petitioning/hearing process, thereby saving a great deal of public monies);
- the need to exclude lobster pounds from program jurisdiction;
- the need to provide for an informal inspection procedure to reduce the inefficient use of costly formal inspections;
- the need to include log-driving dams under program jurisdiction; and
- implications of the state's recently acquired authority to take-over abandoned dams.

Therefore, the Committee recommends that a list of proposed statutory changes be developed and presented to the Committee on Audit & Program Review by September 1, 1985.

BOARD OF ENVIRONMENTAL PROTECTION

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- STATUTORY 34. Extend the review of the Board of Environmental Protection into the next review cycle to enable the Committee to review the Board's policies and procedures in more detail.
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The Board of Environmental Protection consists of ten members appointed by the Governor, subject to review by the Joint Standing Committee on Energy & Natural Resources, and to confirmation by the Legislature. Members of the Board are chosen to represent the broadest possible interest and experience relevant to the Board's charge. Each member serves for a term of four years. Meetings are held not less than two times per year. In actual practice, the Board meets officially twice a month and attends public hearings and workshops.

The Board's charge is to exercise the police powers of the state to control, abate, and prevent the pollution of the air, waters, coastal flats, and prevent diminution of the highest and best use of the natural environment of the State.

The Committee finds that the work of the Board is important and requires a more thorough review than present time limitations allow. Therefore, the Committee recommends that the review of the Board of Environmental Protection be extended into the next review cycle to enable the Committee to review its policies and procedures in more detail.

Department of Marine Resources

DESCRIPTION

The first vestige of the Department of Marine Resources was the Commissioners of Fisheries which was established in 1867. Since that time, a complicated series of changes has taken place eventuating in the 1973 establishment of today's DMR.

The Department is charged with:

- conservation and development of marine and estuarine resources;
- the furthering of scientific research;
- the promotion and development of Maine's coastal fishing industries; and
- the enforcement of all Marine Resources laws and regulations.

The Department consists of the Bureaus of Administration, Marine Development, Marine Patrol, and Marine Sciences.

The Department had expenditures which totaled approximately \$6 million in FY 1984. These expenditures primarily originated from the General Fund (\$4,098,281) with significant input from federal funds (\$1,301,054) and dedicated revenues (\$196,373). The Department has 145 full-time and 135 seasonal, part-time positions for a total of 158.5 positions. A summary of each of the Bureaus of the Department follows:

Bureau of Administration

As its name implies, the Bureau of Administration functions as the administrative arm of the entire Department. Specifically, the Bureau provides financial, personnel, and purchasing services. The Bureau processes all department licenses and carries out any specific administrative tasks required in the day-to-day operations of DMR. To accomplish these tasks, the Bureau of Administration is divided into Divisions of Accounting, Personnel, and Coordination, as well as a Council for Liaison/Administrative Hearings. The Bureau had eight full-time positions in FY 1984 and a budget of \$454,092.

DEPARTMENT OF MARINE RESOURCES

COMMISSIONER

ADVISORY COUNCIL

DEPUTY COMMISSIONER

BUREAU OF ADMINISTRATION

Accounting, Personnel and
Coordination Services

New England Fisheries
Management Council

Atlantic States Marine
Fisheries Commission

Atlantic Salmon
Commission

BUREAU OF MARINE DEVELOPMENT

Anadromous Division

Economic Development
Division

Fisheries Technology
Division

Industry Services
Division

Marketing Division

BUREAU OF MARINE SCIENCES

Administration and
Support Division

Population Ecology
Division

Resources Service
Division

BUREAU OF MARINE PATROL

Administration and
Licensing Division

Division I

Division II

Division III

Special Services
Division

Bureau of Marine Development

The Bureau of Marine Development is currently divided into five divisions: Marketing, Economic Development, Anadromous Fish Management, Fisheries Technology Service and Industrial Services. The Bureau is charged with providing promotional and marketing assistance to the commercial fishing industries, managing and conserving existing anadromous fish runs, conducting effective research and gear development, and providing inspection and quality assurance programs to state industries for purposes of protecting the public health and supporting the marketability of Maine seafood products. In FY 1984, the Bureau of Marine Development had 40 full-time positions and 3.5 part-time/seasonal positions and a budget of \$1,379,254.

Bureau of Marine Patrol

The Bureau of Marine Patrol is responsible for protecting and conserving the marine resources of the State of Maine, enforcing all state laws, and protecting the health and safety of the public. The Bureau of Marine Patrol has two divisions at its Hallowell headquarters; watercraft and licensing. The Bureau also has three regional offices.

In FY 1984 the Bureau of Marine Patrol had a staff of 48 full-time positions which include a major, a captain, 4 lieutenants, 6 sargeants, 1 marine patrol specialist, 29 marine patrol officers, 1 pilot, 1 boat captain, 1 marine mechanic and a clerical staff of three and operated with a budget of \$1,777,408.

Bureau of Marine Sciences

The Bureau of Marine Sciences is the primary state agency devoted to research pertaining to the conservation of marine resources. The Bureau is charged with the responsibility to establish and maintain research projects and programs which enhance the understanding of marine resources.

The Bureau of Marine Sciences is divided into three divisions; Administrative Services, Population Ecology, and Resource Services.

In FY 1984, the Bureau had 57 full-time employees and ten part-time/seasonal positions and a budget of \$1,919,538.

FINDING 35. The Committee finds that maintaining
the consent power of the Advisory

Council is important to ensure continued success of the Department's operations.

The principal function of the Department of Marine Resources Advisory Council is to provide the Commissioner with information and advice regarding the administration of the Department. In turn, the Commissioner is required to make an annual report to the Council on the progress of ongoing DMR research

Further statutory provisions clearly define and strengthen the Council's responsibilities. For example:

12 MRSA §6074. "The commissioner may, with the advice and consent of the advisory council, issue a special license for research, aquaculture or education..."

12 MRSA §6171. "1. Commissioner's powers. The commissioner may investigate conditions affecting marine resources and, with the advice and consent of the advisory council, may adopt or amend such regulations as he deems necessary to promote the conservation and propagation of marine organisms"; and

12 MRSA §6171-A. "Commissioner's powers. The commissioner may investigate conditions affecting conflicts among harvesters of marine organisms and, with the advice and consent of the advisory council, may adopt or amend regulations he deems necessary to prevent gear conflict and promote the optimum development of marine organisms."

These statutory provisions and others clearly invest the council with consent power and subsequent veto power over the Commissioner's actions. Under 12 MRSA §6171, Department rules are subject to the review and consent of the Council. In practice, however, the Council rarely exercises this veto power and is supportive of the Commissioner's actions.

The Committee finds that the Advisory Council serves a valuable check and balance function for the administration of the Department. The Council also provides worthwhile input towards the establishment of Department policy. Further, the Marine Resources Advisory Council is invested with the same consent power over rules held by the IF&W Advisory Council. A review of both Councils has shown that given the controversial nature encountered when establishing parameters for resource propagation and conservation, a Council can fulfill an important consent function. Therefore, the Committee recommends that the Advisory Council should retain its consent power as statutorily mandated.

STATUTORY

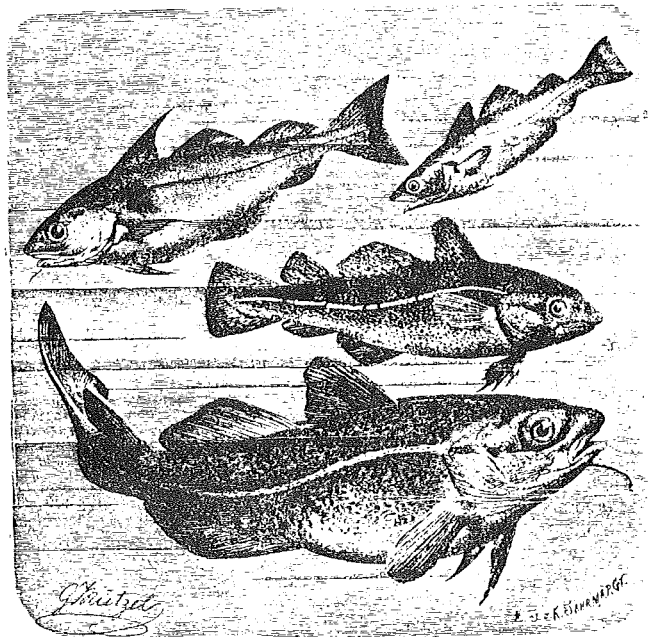
36. Limit the membership of the Department of Marine Resources' Advisory Council to two consecutive terms to increase participation.

The DMR Advisory Council has nine members. Its membership consists of one member from recreational fishing interests and eight members from commercial marine resource interests. By law, the membership must represent all the different types of fishing industry and all coastal areas in Maine. Members are appointed by the Governor and subject to legislative confirmation. The Council is required to meet four times during the year. In practice, the Council chooses to meet more frequently; monthly in the winter and bimonthly in the summer. The Council expended \$4,672 in FY 1984. Staff assistance is provided by DMR as needed.

Title 12, MRSA §6024 provides that "all members shall be appointed for a term of three years, except a vacancy shall be filled for the unexpired portion of the term in the same manner as an original appointment." This statute also specifies that "members shall serve until their successors are appointed."

During the course of its review, the Committee found the following:

- the proposed change in Board membership to two consecutive terms is likely to create more participation among affected individuals; and
- this increased participation will enrich the Council process through the addition of new perspectives.



Furthermore, the Committee notes that:

- Inland Fisheries and Wildlife has a two year limitation on their Council membership terms;
- there has been only one situation where a DMR council member was reappointed for a third term; and
- the executive branch has an unwritten policy which limits membership to two consecutive terms.

Accordingly, given the need for increased participation, the Committee recommends that the statutes be amended to limit Board membership to two consecutive terms.

STATUTORY 37. Require the Marine Resources Advisory Council to submit its research report to the Marine Resources Committee to increase legislative oversight.

Currently, DMR is required to submit its present research plan to the Marine Resources Advisory Council on a yearly basis (12 MRSA §6024). After reviewing this plan, the Council then submits the plan and any pertinent comments to the Legislature for review.

The Committee finds that the report is a useful guide to providing oversight and understanding of the Department's research activities. To facilitate the use of this report, the Committee finds that it would be beneficial to require the Department to submit the report to the Joint Standing Committee having jurisdiction over Marine Resources. This will provide the Maine Resources Committee with an opportunity to carefully review the Department's research programs.

Therefore, the Audit Committee recommends that the statutes be amended to require DMR to submit the report to the Committee on Marine Resources to increase legislative oversight.

ADMINISTRATION 38. Develop a plan to transfer the Wiscasset office to the new Rockland regional facility to achieve greater

efficiencies and report to the Joint Standing Committees on Audit & Program Review and Marine Resources by May 1, 1985.

The Bureau of Marine Patrol divides the state into three field Divisions with a lieutenant in charge of each Division. The Division's field offices are located in South Portland, Wiscasset and Ellsworth.

The Department of Marine Resources is presently working with the Region 8 Vocational Center of Rockland to construct a facility which features a two-bay maintenance area for the repair of their Marine Patrol boats and a small administrative office.

The proposed building site is located on state owned property at the head of the Rockland harbor and will have a launching facility. The building site center would be leased by DMR from Region 8 at the rate of \$1.00 for ten years.

As a part of its curriculum, Region 8 Vocational Center plans to provide students with the opportunity for construction of this facility. DMR is responsible for providing the materials.

The Department estimates the final cost to be approximately \$22,000 to be paid from their capital equipment account. The anticipated completion date of the project, which is already underway, is May 1985.

The current division field office is located in Wiscasset. The Department rents office space for \$250 a month. The office is staffed by a Lieutenant and a Sargeant.

The Committee finds that by moving the Wiscasset office to the Rockland office it would allow the Department to save \$3,000 a year in rent and would provide a more central location for storage of their boats.

In regard to the two employees at the Wiscasset office, the Committee suggests that the Department of Marine Resources assess the problems that may be posed by this transfer, and attempt to make reasonable efforts to mitigate the inconveniences that the move will create for the present staff.

Therefore, the Committee recommends that the Department of Marine Resources should continue with their plans to move their Wiscasset office to the new Rockland facility to provide a more central location and effect significant financial savings to the state.

STATUTORY 39. Eliminate the vacant position of Assistant to the Commissioner to increase legislative oversight.

The position of Assistant to the Commissioner for the Department of Marine Resources is authorized by Title 5 MRSA §711 as a major policy influencing position. The position has been vacant since its inception.

Marine Resources is one of a number of Departments in Maine state government which have statutory provisions establishing the Assistant to the Commissioner position. As the following table shows, not all of these departments utilize this authority.

TABLE 1

Departments Authorized to Have an Assistant to the Commissioner

<u>Active</u>	<u>Inactive</u>
Education & Cultural Services	Business Regulation
Environmental Protection	Conservation
Labor (for public information)	Finance & Administration
Personnel	Labor
Public Safety	Marine Resources
Transportation	

The Committee's review of job descriptions of those departments where this position is active has shown that in general such positions are used for special projects and public relations at the direction of the Commissioner. In most instances, the Assistant is given a great deal of latitude and is expected to display initiative and independence in the completion of assigned duties.

In response to the present administrative situation at DMR, the Committee finds the following:

- the assistant to the Commissioner appears to be unnecessary for the successful functioning of DMR;
- the deputy Commissioner at DMR assumes most of the traditional responsibilities of an assistant to the Commissioner; and

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- the Department of Marine Resources has a relatively small budget and staff and appears to have no pressing need for this position.

The Committee finds that the elimination of this position will increase legislative oversight. Conceivably, the Department could eliminate another position or positions and use the personal services dollars to fund this position. By doing so, the Department would be fulfilling the letter of the law but in effect would be circumventing the review of the Marine Resources Committee and the Legislature. Further, the Committee finds that enough time has elapsed since the position was created to necessitate that a policy position of this magnitude should have been filled had there been a real need for it. Therefore, the Committee recommends that the vacant position of Assistant to the Commissioner be eliminated to increase legislative oversight.

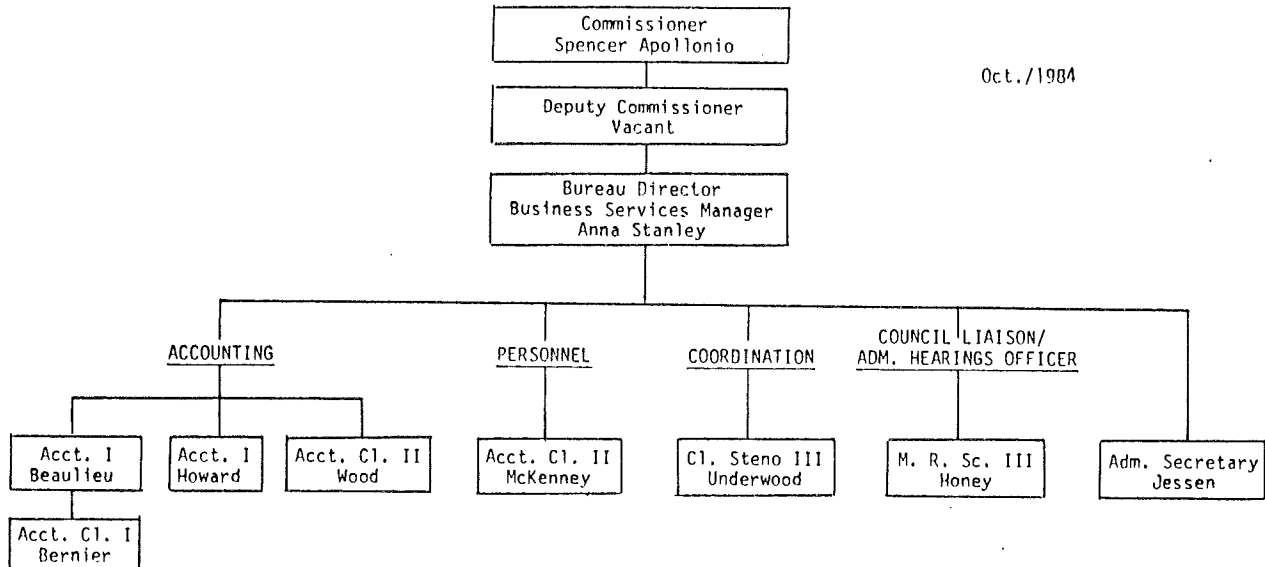
ADMINISTRATIVE 40. Establish a career ladder within the Bureau of Administration to increase the opportunity for upward mobility among staff members and submit a status report to the Joint Standing Committees on Audit and Marine Resources by September 1, 1985.

Title 12 M.R.S.A. Chapter 603 §6022 establishes the administrative unit of the Bureau of Administration within DMR. Its priorities are to receive, control, and expend funds received from legislative appropriations, private sources, federal programs and dedicated revenue sources, including fees from approximately twenty types of licenses and permits. Other priorities include implementing collective bargaining agreements, maintaining payroll and personnel records and participating in grievance hearings and arbitrations.

The Committee finds that there have been no significant promotions within the Bureau since 1980 and that staff turnover is a concern. This may be partially explained by the lack of an

established career ladder or any opportunity for upward mobility within the Bureau, as shown in the organizational chart below.

DEPARTMENT OF MARINE RESOURCES - BUREAU OF ADMINISTRATION



In recommendation #41 the Committee is recommending that the Licensing Division, given its administrative charge, be relocated to the Bureau of Administration. Given the opportunity posed by this proposed transfer and the need to provide career ladders to retain experienced personnel, the Committee recommends that the Bureau establish a career ladder to increase the chance of upward mobility among subordinate staff members and reduce potential turnover.

ADMINISTRATIVE 41. Locate the Licensing Division within the Bureau of Administration to properly reflect its functions.

The Licensing Division of the Department of Marine Resources is currently located within the Bureau of Marine Patrol. The Division

is charged with the responsibility of issuing and accounting for approximately 20,000 annual licenses. There are two basic categories of licenses: harvesting and dealer. Within these two categories there are 24 different types which include harvesting licenses for lobster and crab and retailing licenses for crawfish. The Licensing Division is currently staffed by a Clerk Typist II and a Clerk Typist III.

During its review, the Committee found the following concerning the function and operation of the Licensing Division:

- the Licensing Division is currently located within the Bureau of Marine Patrol to accommodate the frequent needs of Marine Patrol Officers for license information;
- all completed applications/licenses are immediately directed to the Accounting Department, which is housed within the Bureau of Administration, to be batched, matched for type and proper amount, stamped with date received, and reviewed for any inconsistencies before being sent to the Licensing Division;
- aside from the administrative responsibilities of the application/licensing process, the clerical staff of the Licensing Division are utilized for receptionist and information/referral duties at the Hallowell office; and
- the administrative staff of the Bureau of Marine Patrol spend a considerable amount of time dealing with questions raised by the licensing process; questions which can be more appropriately answered by other personnel.

The Committee finds that, given the contrasting organizational functions of each entity, the present location of the Licensing Division is inappropriate. The Licensing Division serves an administrative function which more appropriately complements the responsibilities of the Bureau of Administration. Further, the Committee finds that the present arrangement is likely to detract from the optimum performance of each Bureau. Accordingly, the Committee recommends the Licensing Division be transferred to the Bureau of Administration to more properly reflect its function and to ensure the more efficient operation of the Licensing Division and the Bureaus of Administration and Marine Patrol.

STATUTORY 42. Adopt a uniform citation form for Marine Resources violations to increase patrol field time and decrease court time.

Currently, the summons process administered by the Bureau of Marine Patrol for marine resources' violations goes according to the following sequence:

- a Marine Patrol Officer (MPO) issues a summons in the field;
- upon completion of the summons, the Marine Patrol Officer hand delivers it to the Clerk of the Courts;
- the Clerk of the Courts makes out the complaint report on a long form,
 - the Marine Patrol Officer has to review the long form for accuracy, swear to it, and then sign it;
- once the long form is signed by the MPO, the complaint report goes to the District Court; and
- if the defendent does not appear before the District Court, the judge will issue a court summons where:
 - the Marine Patrol Officer is then required to obtain the defendent's signature on the summons; or
 - if the defendent refuses to sign, the judge then issues an arrest warrant.

The Committee finds that:

- the requirement that the Marine Patrol Officer hand deliver the complaints to the Clerk of the District Court is unnecessary and an inefficient use of time;
- completion of the long form by the Clerk of the District Court is an unnecessary piece of paperwork and results in the inefficient use of staff time;
- given the superfluous nature of the long form, it is a further waste of staff time to require an MPO to review and swear to such a document;

-
- requiring the MPO to be present for each routine summons is unnecessary and constitutes an inefficient use of staff time; and
 - by streamlining this process, Marine Patrol Officers will be available for more field enforcement work.

Given the previously cited inefficiencies of the present summons process, the Committee recommends that a uniform citation form be developed which is similar to the uniform traffic ticket and complaint form used by the state police and the uniform citation forms being developed by the Department of Inland Fisheries and Wildlife. This form would be utilized statewide and would incorporate the following features in a clearly stated fashion:

- the defendant's signature does not constitute an admission of guilt;
- a refusal by the defendant to sign the summons does constitute a separate offense; and
- first time offenders may choose to waive their rights to trial and thus pay the designated fine.

Further, the Committee recommends that the current DMR statutes be amended to include the following revised summons procedure where:

- an MPO signs the summons;
- the defendant signs the summons;
- the summons is then routed to the Clerk of the District Court; and
- in event of an offense which requires the defendant to appear in court, the specific time and place, along with other pertinent information, is clearly indicated by the M.P. officer on the summons form.

Therefore, given the inadequate summons process currently in use, the Committee recommends the current DMR statutes be revised to provide for a uniform citation form to ensure both a more efficient use of staff time and a more effective court process.

STATUTORY 43. Establish a uniform statewide system in District Court to process minor Marine

Resources' violations in order to streamline court procedures and complement the use of the uniform citation form.

The current rules of the Maine judiciary system authorize District Court Judges to create a list of first-time offenders of marine resource laws who have elected to waive their right to trial and instead, pay the designated fine. Theoretically, the District Court system is then able to make a simple check as to the repeat status of each offender.

During its review, the Committee found that a uniform state-wide waiver fine list does not exist. Consequently, the fines charged for the same violation vary across the state. The Committee finds that the establishment of a uniform citation form for DMR violations as proposed in Recommendation 37, establishes the potential for an efficient, statewide system for monitoring and updating the list of first-time offenders.

To complement the use of this uniform form and ensure its implementation, as has been done with Inland Fisheries and Wildlife violations (4 MRSA §164 sub-§15), the Committee recommends that the District Court establish a uniform statewide court procedure. To facilitate the implementation of this process, the Committee proposes the adoption of statutory language parallel to that used for IF&W violations. The Committee finds that this administrative changeover is easily adaptable to the present district court system and will help to save personnel time and money while encouraging statewide consistency.

ADMINISTRATIVE 44. Require that DMR and IF&W investigate the need to obtain additional liability insurance in order to avoid potential lawsuits resulting from incidents of false arrest or deprivation of civil rights.

Currently, Marine Patrol Officers and wardens from the Department of Inland Fisheries and Wildlife do not have insurance coverage in the event of a civil right's claim stemming from their enforcement duties. Though not common in these jurisdictional areas, the potential for allegations concerning false arrest and deprivation of civil rights is a real possibility which needs to be addressed.

The Committee notes that a precedent for providing this type of insurance coverage for enforcement officers already exists within state government at the Department of Public Safety (DPS).

The professional liability policy utilized by DPS is available through Risk Management at the approximate annual cost of \$150 per covered officer and provides coverage of up to \$1.5 million per individual for the following items:

- False arrest,
- False imprisonment,
- Malicious prosecution,
- Assault and battery,
- Liable, slander, defamation of character, and
- Violation of property rights or civil rights.

The Committee finds that the total annual cost of such coverage for DMR (38 employees x \$150 = \$5,700) is minimal when contrasted against the protection it will provide. Therefore, the Committee recommends that DMR and the Department of Inland Fisheries & Wildlife explore the feasibility of obtaining liability insurance to adequately cover those personnel with arrest powers and report to the Committees on Audit & Program Review and Marine Resources by September 1, 1985.

FINDING 45. The Committee finds a need for stronger enforcement and supports DMR's request for six additional patrol officers.

The Bureau of Marine Patrol, formerly known as the Coastal Warden Service, was established to protect, manage, and conserve the renewable marine resources within the territorial limits of the state of Maine. The Marine Patrol officers are authorized to enforce all laws of the state with primary emphasis on marine resources. Their enforcement responsibilities include patrolling coastal areas for potential violations, checking licenses, and assisting in the prosecution of marine resource violations. Over the years, the Legislature has also expanded the areas of responsibility to include the enforcement of other state laws and regulations.

The scope of the Bureau's responsibilities has been widened over the past twenty years to include many new areas of activity which fall outside the traditional needs of the fishing industry and the marine environment. For example, some areas under federal law include the Bluefin Tuna Act, Endangered Species Act, and cooperation with the Federal Drug Enforcement Agency.

During its review, the Committee found that due to inadequate staffing levels, the Bureau of Marine Patrol is severely hampered in its efforts to fulfill its enforcement responsibilities. The Committee noted that there are occasions when ten officers are expected to provide adequate coverage for Maine's three thousand miles of coastline. An average of 16 officers are on duty each day to accomplish these patrol functions. At full strength, the Bureau is only able to provide one officer for every one hundred miles of coastline.

The Committee recognizes that some improvement in field enforcement may be achieved through efforts at internal reorganization, but given current funding levels, the Bureau cannot be faulted for its present efforts.

Further, the Committee finds that in order to effectively accomplish its legislative mandate, the Bureau of Marine Patrol will need an increase in personnel.

Accordingly, given the importance of DMR's overall mandate to protect and preserve marine resources and the currently inadequate staffing levels with which it is asked to accomplish this task, the Committee finds that the addition of six additional Marine Patrol officers is warranted.

ADMINISTRATIVE 46. Request that the Department of Personnel re-examine the salary inequity between chief enforcement officers and their subordinates in order to improve morale and encourage promotion from within and that the Department of Personnel report its findings to the Audit Committee by May 1, 1985.

A situation currently exists within the Department of Marine Resources where a subordinate makes more money than the supervisor. During its review, the Committee was alerted to the fact that there are several instances of this inequity across Maine state government. These instances include the positions of Chief Game Warden, Department of Inland Fisheries & Wildlife (IF&W), Director of Liquor Enforcement, Department of Public Safety (DPS), State Fire Marshall (DPS), State Police Major (DPS) and Director, Division of Forest Fire Control, Department of Conservation (DOC). Positions

with lesser responsibilities actually have the opportunity to make more money than their immediate supervisor's position. Consequently, the existing salary differences have led to a lack of interest by in-house staff in promotion to a more difficult position with lower pay.

The resulting salary inequity is the difference in salary schedules between standard and non-standard work weeks. Subordinates are required to work non-standard work weeks which involve overtime. As administrative managers, supervisors are ineligible for overtime compensation. When combined with regular salaries, this overtime compensation paid to subordinates results in total compensation which is greater than that of the supervisor.

Several efforts have been made to deal with this inequity:

- Legislation was passed in 1979 which enables the Governor to grant a salary differential to "a confidential employee who is at the maximum of his salary grade and who is earning less than a subordinate who is at the maximum of his salary grade and who is receiving non-standard premium pay pursuant to a labor agreement or salary differential, pursuant to this Act." (Ch. 739, PL 1979). However, present executive policy holds that such differentials create additional inequities between managers within and across departments, and therefore salary differentials are not currently granted; and
- The Department of Personnel is trying to remedy this inequity by limiting non-standard weeks through the collective bargaining process.

The Committee finds a need for the Department of Personnel to reexamine this reoccurring salary inequity, given the possible deleterious effect it may have upon morale and efforts to encourage internal promotion. Further, the Committee recommends that the Department of Personnel report its findings to the Audit & Program Review Committee by May 1, 1985.

FINDING 47. Increase flight time of DMR's CESSNA 180 aircraft to strengthen enforcement and utilize the pilot's time more efficiently.

The Department of Marine Resources has one CESSNA 180 aircraft

which is used as an intergral part of their enforcement operations. This enforcement use includes routine flights in support of ground patrols and responses to specific incidents which necessitate the need for air support.

The Bureau's pilot is classified as a range 23 non-standard employee (\$19,490 - \$26,686). This contrasts with Marine Patrol officers who are classified as a range 18 (\$14,123 - \$18,886) standard employee. When not engaged in flying duties, the pilot is utilized by Special Services in the repair and maintenance of watercraft. The pilot is also used as a training officer and on occasion will fill vacancies in routine patrols. In the past, the Department has stated that if the pilot were solely restricted to flying duties a great deal of time would be wasted through inclement weather, required aircraft maintenace, and lack of overall need.

At the onset of its review, the Committee determined that assigning the pilot to nonflying related duties was not cost effective and constituted an inefficient use of professional time. As a result of the Committee's interest in this issue, DMR has increased the flight time of the pilot from 180.9 hours in FY 83 to almost 600 hours in FY 1984. The Committee fully endorses this increased flight time and finds that the increased flight time:

- constitutes full time utilization of the aircraft, thus justifying a considerable cost to the people of the state of Maine;
- minimizes the inappropriate use of the pilot's time on nonflying related duties;
- reduces any previous need to rent or lease an additional aircraft; and
- conforms to policies governing existing aircraft use (IF&W) within state government.

Accordingly, the Committee fully supports DMR's efforts to increase flight time of their CESSNA 180 aircraft to enhance more effective marine patrol enforcement and to more effectively utilize the professional skills of the pilot.

FINDING 48. The Committee finds that increasing demands of the Federal Energy Regulatory Commission's re-licensing process for state hydro-power dams warrants an additional position.

Current Maine law requires that DMR undertake a detailed review of the licensing process for hydropower dams conducted by the Federal Energy Regulatory Commission (FERC). This review of the licensure process directly influences the content and direction of both the state rivers policy and the efforts to restore anadromous fish populations.

The current FERC licensure process involves three types of applications for hydropower dams in the state: 1) preliminary permits; 2) new licenses; and 3) relicensing. The licenses have a 50-year term. Considering that many new licenses were issued between 1930 and 1950, a large number of licenses will be coming up for renewal in the next 10 to 15 years. This upcoming surge in the licensure process underlines the continued need for adequate DMR review.

DMR estimates that the average license review takes one week to complete, and that in the future they will be processing 40 to 50 applications a year. DMR's typical review focuses on the following issues: safety; flooding; energy; and the impact upon fish. One problem common to all dams is the barrier that they pose to the efforts of anadromous fish to return to their fresh water spawning areas. To accommodate this need, the construction of fish passageways is necessary. In determining the need for fish passageways, DMR must consider and weigh a complicated host of environmental, social and economic factors.

To accomplish this review, DMR has two full-time staff people. The Committee finds that the present staffing levels are inadequate to the current work load and that the anticipated increase in dam applications will certainly exceed the capacity of the current staffing levels, resulting in an inadequate and incomplete review.

Therefore, given the direct impact of hydropower dams on many of the state's marine resources and the need to adequately assess that impact, the Committee recommends that DMR be authorized to establish an additional staff position for the expressed purpose of reviewing the FERC licensure process.

ADMINISTRATIVE 49. Proceed with the overhauling of the R/V Jubilee for marine research to make it operational given existing resources. Prior to the expenditure of funds beyond this level report to the Committees on Audit & Program Review

and Marine Resources. In addition, submit by May 1, 1985 a detailed status report of the project to increase legislative oversight.

In 1982, DMR acquired title to an eighty-three foot vessel named the "Jubilee". The boat had been seized in a narcotics arrest and forfeited to the DMR by the Department of Public Safety. DMR is in the process of refurbishing the vessel to provide year-round marine research capabilities.

To analyze the feasibility of restoring the Jubilee and future issues concerning subsequent state-owned ships, the Committee pursued and answered the following questions:

1. Since the Department already owned an eighty-one foot vessel (the "Challenge"), was selling that boat justified and how did the two vessels compare?
2. Exactly how would the state of Maine benefit from the acquisition of the Jubilee?
3. What are the yearly operational costs of the Jubilee? and
4. Exactly what expenditures will be needed to accomplish full conversion of the Jubilee to full operational status?

The Committee made the following conclusions based on data provided by DMR:

- when compared to the Challenge, the Jubilee is larger, faster, has a superior cruising range and will require approximately \$106,000 more in fixed annual costs to maintain and operate;
- to fully convert the Jubilee to intended research readiness will require expenditures of an additional \$190,000;
- expenditures totaling \$30,261 have already been made by DMR to cover storage, initial renovation, and insurance and efforts to advertise the sale of the Challenge;
- existing revenues to cover those additional expenses include;

\$108,000	-	sale of Challenge
20,000	-	various state agencies
<u>10,000</u>	-	UMO grant (potential)
\$138,000		TOTAL

-
-
- total expenditures will exceed total revenues by approximately \$82,000.

\$ 30,261	-	already expended
<u>190,000</u>	-	estimated renovation costs
\$220,261	-	total estimated expenditures
<u>- 138,000</u>	-	available revenues
\$ 82,000	-	total of uncovered costs

In its attempts to justify the increased cost of the Jubilee, the Committee identified the following benefits which may be realized by completion and successful annual operation of the vessel:

- the provision of needed, but previously unavailable, marine research capabilities;
- to conduct at-sea research for longer durations of time;
- the increased opportunity for other DMR vessels to pursue their original responsibilities;
- the attraction of additional marine research efforts to the Gulf of Maine, providing increased opportunities for the state's economy; and
- the elimination of costly chartering expenses currently used to accomplish this same type of research.

Therefore, the Committee emphasizes its concern over the lack of currently available funds necessary to complete the Jubilee. However, given the potential benefits of the Jubilee to function as an extremely valuable resource to marine research in the state of Maine, the Committee recommends that DMR use its currently available funds to accomplish operational status of the vessel and submit a report by May 1, 1985 which details the status of the work and DMR's subsequent efforts to secure additional funding necessary to complete the work.

STATUTORY	50.	Repeal the Quahog Tax and its related Fund because the Tax no longer serves any useful purpose and in fact, may become an impediment to the development of a future quahog industry.
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Quahogs (Venus mercenaria) are hardshell clams which are native to the Atlantic coast of North America. Historically, quahogs existed in great numbers in Maine, particularly in the Casco Bay Region. Up until the end of the 1950's there was a sizeable quahog industry. In response to the development of that industry and mounting concerns about the viability of the quahog population, legislation was enacted in the 1950's which established a Quahog Tax and Fund. The tax and its accompanying fund were intended to generate revenue (5% of landed value) to be used in furthering efforts to significantly increase the total quahog population and in conducting any relevant research.

However, given a serious decline in the quahog population, it appears that these efforts were inadequate. By 1960, quahogs were depleted as a viable fishery and the industry disappeared. However, the statutes pertaining to the tax and fund remained on the books even though no revenues were ever generated.

In 1977, due to disuse and apparent lack of need, the statutes were repealed, only to be reincarnated in a different form in 1981. The purpose behind the revival of a seldom used taxing mechanism for a non-existent industry appears to have been motivated by two reasons:

- such a tax and its depository fund would be useful in the event of recovery in the quahog population; and
- the emergence of a new industry centered around a totally different species, that of "mahogany quahogs" (Artica icelandica) necessitated legal exemption of this species from the burdens of an associated tax.

As a result, Maine statutes currently provide for a tax on a non-existent fishery (quahogs) and specifically exempts another somewhat similar species (mahogany quahogs) from the tax so as not to inhibit the efforts to develop this industry. The Committee finds that the tax no longer serves any useful purpose and may in fact hinder the development of a quahog industry, should the quahog (Venus mercenaria) population recover to significant levels. The Committee also finds the present legislation unnecessary if it exists merely to provide an exemption for mahogany quahogs.

Therefore, given the nonexistent need for such a tax and its funds, the Committee recommends that the statutes establishing a Quahog Tax and Fund be repealed.

FINDING 51. The Committee finds a need for a study by the Joint Standing Committee on

Energy & Natural Resources on the
planning process for hydropower
development as it relates to the
restoration of Maine's fisheries
resource.

Several areas of concern relating to the interrelationship of planning for the restoration of anadromous fish resources versus the planning and licensing process for hydropower development were raised during the Committee's review. These areas can be delineated into the following categories:

1. Restoration of fish and hydropower planning.

DMR has the statutory responsibility "to conserve, develop and restore anadromous fish resources" (12 MRSA §6121, sub-§1). As a result of this mandate, DMR has developed a long-range plan for one species of anadromous fish: alewives. The current population of alewives falls considerably short of estimated historical levels. Through extensive research, DMR has estimated that the appropriate habitats within the state of Maine can support an alewife population which would result in an annual harvest of 40 million pounds. Hydropower developers within the state question the degree to which alewife restoration should occur. Given the current annual harvest of three million, DMR's ten year goal of a six million pound statewide alewife harvest is felt to be a more reasonable than the 40-million figure.

The Committee has identified the following pros and cons for the annual 40 million pound alewife goal and its interrelationship to hydropower development:

PROS

- a clear statutory mandate exists to restore anadromous fish populations;
- developers who profit from the use of natural resources are responsible by federal and state law for any associated financial burden in the effort to maintain and restore that resource; and
- the lack of long-range hydropower development plans make it difficult for DMR to predict the effects of such planning on the resource.

CONS

- immediate compliance with long-range goals may represent an unreasonable financial burden on private development;
- the cost of such development may be borne by utility ratepayers;
- accomplishment of the long-range goal will result in a supply of alewives which vastly exceeds current commercial demand and storage capacity;
- accomplishment of the long-range goal may represent a threat to present efforts to restore salmon, another anadromous species; and
- considerable doubt remains regarding the ability of the present habitat to support such a large number of alewives.

Therefore, these opposing points of view raise unresolved questions concerning the cost-benefits associated with the efforts to restore anadromous fish.

2. Jurisdictional conflict concerning fish passageways.

The Committee also finds that a statutory conflict may exist between DMR's discretionary authority to require fish passageways on all new and existing dams and the Department of Environmental Protection's authority to issue permits for hydropower projects. As cited earlier, 12 MRSA §§6121-2 gives DMR the authority to require fish passageways to "conserve, develop or restore anadromous fish resources." However, 38 MRSA §§630-636 authorizes DEP as the sole agent from which a permit can be issued pertaining "to the construction of all hydropower projects and for the reconsideration and structural alteration of certain projects." The statutes go on to specify the "construction and maintenance of fish passage facilities" as one criteria for dam approval.

In conclusion, the Committee finds that, given their importance to the state of Maine, each of these issues requires further study. Therefore, the Committee recommends that the Joint Standing Committee on Energy and Natural Resources undertake a study on the planning process for hydropower development as it relates to the restoration of Maine's fisheries resources.

STATUTORY 52. Amend the DMR statutes so that the commissioner serves at the pleasure of the Governor.

The current DMR statutes provide that the commissioner has a term which is coterminous with that of the Governor (12 MRSA §6022). Most other commissioners serve during the pleasure of the governor.

The Committee finds that the current process by which the DMR commissioner is appointed is inconsistent with the appointive processes used for other members of the governor's cabinet. The Committee also finds that this inconsistency may inhibit the governor's ability to create a cabinet of his own choosing. Accordingly, the Committee recommends amending the statutes so that the DMR commissioner serves during the pleasure of the Governor.

STATUTORY 53. Require that the Department of Marine Resources use its share of revenue from the gasoline tax for enforcement of boating and fishing laws.

Since 1947, DMR has received a small percentage of the revenue collected from the gasoline tax. By statute, the Commissioner is charged with using these funds for "conducting research, development and propagation activities " (36 MRSA §2903-A).

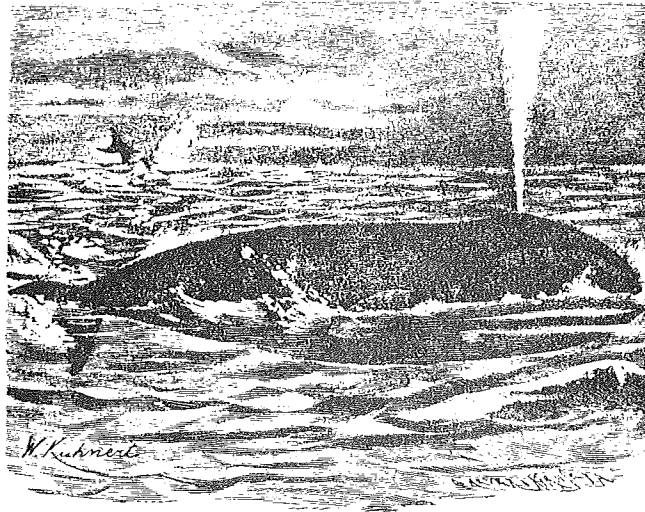
The Committee finds that although most departments accumulate small cash reserves during a fiscal year, DMR's ability to use these funds in a discretionary fashion is unusual for such a predictable revenue source. In FY 1984, the gas tax revenue received by the Department was approximately \$93,000 and is projected to rise sharply in FY 1986.

The Committee is concerned that DMR's flexibility in spending these funds conflicts with the Legislature's responsibilities for oversight and to establish the spending priorities of state agencies. Further, the Committee notes that gas tax revenues are usually spent in areas which bear some relation to the activities which generate the dollars. For example, in other state agencies such as the Departments of Transportation, and Inland Fisheries and Wildlife, and Conservation, the areas in which gas tax revenues are

spent include highway construction, law enforcement, and snowmobile trail and boating facility construction. These areas are related to the transportation activities that generate the revenue.

The Committee finds that using gas tax revenues to fund industry promotional programs is inconsistent with other uses of these revenues within Maine state government. Furthermore, though the Committee finds that research and development are important, this use of the gas tax primarily benefits the commercial fishing industry. An additional inconsistency exists with commercial motorboat users of gasoline who are allowed a refund of the gas taxes they pay.

Accordingly, the Committee finds that these funds should be used in a regular program area and that the enforcement of Maine laws is more closely related to the generation of the gas tax. Therefore, the Committee recommends that the Legislature require DMR to dedicate the gas tax to the enforcement of marine laws and regulations.



Public Utilities Commission

DESCRIPTION

The Public Utilities Commission is charged with protecting the public interest by ensuring that the utilities operating in the State of Maine render adequate and reliable service to the public at rates which are reasonable and just. The Commission is a quasi-judicial body with three members which sits as an adjudicatory body on specific cases involving rates, service, financing, and other activities of the various utilities it regulates. The Commission currently has jurisdiction over 148 water utilities, 17 electric utilities, 25 telephone and telegraph utilities, four water carriers, two gas utilities, and limited aspects of radio common carriers.

The Commission has a total staff count of 61 with 39 positions on the Regulatory Fund and 22 positions on the General Fund. In FY 1984, the Commission's total expenditures were approximately \$2,092,000.

The Commission is divided into five operating divisions with respective powers and duties as follows:

Administrative Division. This Division is responsible for planning and the day to day administration of the Commission. This office also works closely with the Commissioners in policy development and execution, coordination of inter-divisional work, and development and implementation of operational priorities.

Consumer Assistance Division. This Division is housed organizationally within the Administrative Division and receives, analyses and responds to complaints from Maine utility customers. In particular, the CAD is involved in the administration and implementation of Chapter 81 of the Commission's Rules, "Disconnection and Deposit Regulations for Residential Utility Service."

Legal Division. The Legal Division represents the Commission before federal and state courts and agencies. It provides examiners and advocates in cases before the Public Utilities Commission and assists in preparing and presenting the Commission with views on legislative proposals. Complete legal services are provided by the Division on all legal aspects of matters within the Commission's jurisdiction which range from major rate cases to individual consumer complaints.

Finance Division. This Division is responsible for conducting financial investigations and the analysis of specific telephone, electric, gas, and water utilities, and for conducting general financial studies and other research about Maine utilities. The Division analyzes all of the applications of public utilities to issue stocks, bonds, or notes. In addition, the Division prepares testimony and other material concerning rate of return and/or cost of capital for rate hearings and may prepare material concerning rate base, expenses, depreciation, and rate design. The Division assists in the preparation of questions to be used in any cross-examination of accounting and finance matters, presents direct testimony, and evaluates rate case exhibits as requested.

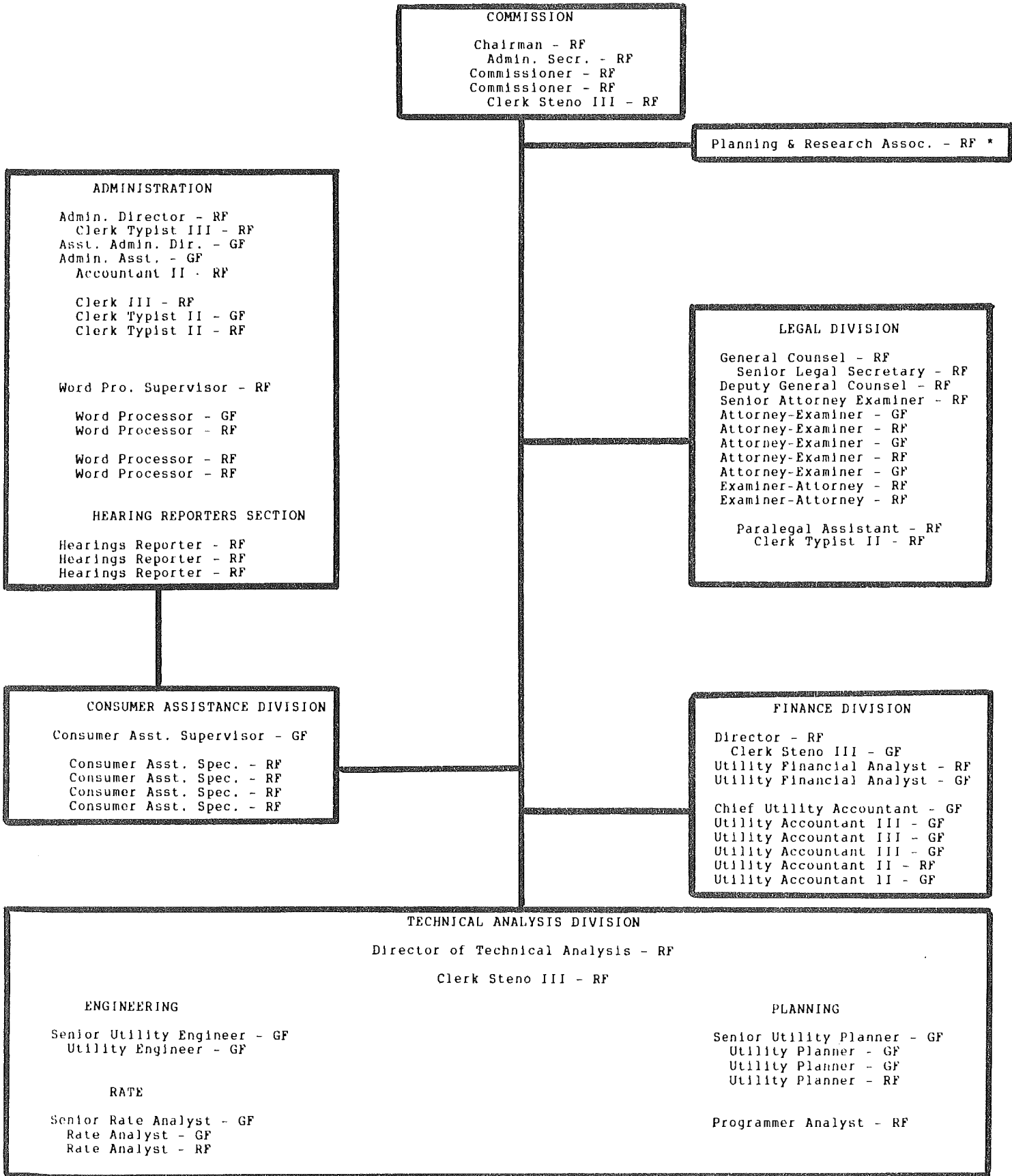
Technical Analysis Division. This Division analyzes the technical aspects of filings made by Maine's utilities. Specifically, the staff of the Division analyze and evaluate rate design exhibits, assist in the preparation of engineering cross-examination and testify as expert witnesses in rate proceedings. They prepare and review cost allocations and rate studies, conduct conferences with utilities and the public, review plans and specifications on all major utility construction projects, conduct on-site inspection of system improvements, advise regarding line extensions and system improvements, inspect gas pipelines to insure safety operations and conduct on-site investigations of gas explosions and accidents and those electrical accidents involving the loss of human life.

The Division staff also review and revise standards of service for all utilities, and review utility reporting, fuel clauses and cogeneration rates using computer modeling techniques. They provide assistance to the Consumer Assistance Division on customer complaints of a technical nature involving equipment, service, and line extensions.

During the past year the Commission has been involved in the following areas:

- the investigation of generic Seabrook issues;
- the investigation of the financial obligations of four Maine utilities in the Seabrook Nuclear Power Plant as related to requested rate increases for the recovery of costs in the cancelled Seabrook II Unit and the financial requirements of completing the continuation of Seabrook I;
- the ruling on 15 general rate cases in which requested rate increases totaled 61 million dollars; where 29 million dollars was granted and 32 million dollars was refused;

STATE OF MAINE
PUBLIC UTILITIES COMMISSION



GF - General Fund Total Positions - 22
 RF - Regulatory Fund. Total Positions - 39

*Special Project Position (not in count)

-
- the implementation of residential and commercial conservation programs and the continuing efforts to work with electric utilities toward the recovery of expenses;
 - the divestiture of the Bell operating companies from AT&T;
 - as an outgrowth of a NET rate case, the decision to require mandatory local measured service in certain exchanges on July 1, 1985;
 - the handling of 5,741 customer complaints/contracts;
 - determining the avoided costs and hence the maximum rates to be paid for power purchased from small power producer and cogenerators; and
 - legislative action to include the review of the Commission by the Joint Standing Committee on Audit & Program Review.

Source: taken from PUC annual reports.

STATUTORY

54. Continue the PUC because its mandate to regulate the public utilities of the State is critical to ensure: the continued availability of fundamental utility service at reasonable cost; a balance between the ratepayer and the investor; and broad oversight given the increased complexities in the field of regulation.
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The present day Maine Public Utilities Commission had its inception in the Board of Railroad Commissioners established in 1858, and the State Water Storage Commission. Since then, the PUC's regulatory jurisdiction has shifted and enlarged to encompass its current charge over 148 water utilities, 17 electric utilities, four water carriers, two gas utilities, and limited aspects of radio common carriers.

This increase in jurisdictional responsibility has been accompanied by issues which have become increasingly more complex and time consuming. Future issues involving the regulation of electrical and communications service, promise to continue this trend of increased jurisdictional responsibility and the need for highly technical information. Despite this, the fundamental mandate for regulation and subsequent public need for an effectively functioning PUC remains:

"Every public utility is required to furnish safe, reasonable, and adequate facilities. The rate, toll or charge ... shall be just and reasonable. In determining just and reasonable rates, the Commission shall provide such revenues to the utility as may be required to perform its public service and to attract necessary capital on just and reasonable terms." (35 MRSA §51)

The power to regulate is invested in the PUC by the Maine State Legislature, Congressional action and judicial determination. The Commission's authority over utilities is broad and includes the powers to give, take, compel or prohibit. These powers are substantial and reflect the seriousness with which the PUC must regard the effect of its decisions; decisions which impact daily upon every Maine citizen.

The Audit Review Committee recognized the importance of the Commission's charge throughout the entire process and therefore also approached its charge with the same seriousness.

The decision to regulate never represents a clean break with competition.* Utility regulation has at its core the economic theory of "natural monopoly". This theory encompasses the principal that the technology of certain industries or the character of the service provided requires that a customer can be served at the least cost or greatest net benefit by a single firm (or designated number of firms). In exchange for government regulation, a firm is usually granted monopoly rights. The firm is protected against the unrestricted entry of competition.

Maine, has through the laws governing the PUC, extended this monopoly right to utilities. By precluding an array of competing utilities, the PUC is assuming that one utility can provide the comprehensive utility needs of a region in a more planned and coordinated fashion. The presumption is that it is costly and inefficient to, for example, allow several companies to tear up the same streets to lay competing gas or water mains or to put up poles and run double telephone or electrical lines.

Further, again in exchange for the monopoly right a company guarantees to provide service to those areas which include markets that are not lucrative. Regulation limits the investor's risk by restricting market competition in the more lucrative areas and providing for a fair rate of return. The purpose of the regulatory body is to ensure that the regulated entity provides quality service to the public while performing in a cost-effective and efficient manner.

The Maine PUC is one of approximately 75 state utility commissions or authorities and seven federal commissions. The Commissioners and staff are committed to ensuring the provision of quality service at the least cost yet maintaining a fair return for the investor. Such determinations take the form of many simple and complex exchanges between Commission, staff, the regulated utilities, the Public Advocate, and numerous other agents. This forum for public protection was established in Maine law through the formation of the PUC. The Legislature determined that a quasi-judicial body is the most efficient agent to carry out such regulatory action.

The Audit Committee's review of the PUC brought the Commission under scrutiny at a time when significant issues were being debated: Seabrook, local measured service, and rate regulation for the major state utilities. Under the provisions of the Maine Sunset law, the

*(A. Kahn, The Economics of Regulation: Externalities & Institutional Issues.)

Public Utilities Commission terminates subject to continuation by legislative action. The Committee recommends without question that the PUC be continued to carry out its legislative mandate. In making this recommendation, the Committee recognizes the Commission and commission staff for their diligence and extra effort in dealing with a tremendous work load.

STATUTORY 55. Establish in statute the administrative authority of the Commission Chair to clarify organizational management.

The Public Utilities Commission is composed of three commissioners who are appointed by the Governor and confirmed by the Legislature. By tacit agreement, the Chair of the Commission is now responsible for the administration of the Commission. In turn, the day to day administrative responsibilities are delegated to the Administrative Director. There is no statutory charge which clearly distinguishes the role of Chair from the roles of the other two Commissioners; although one section enables the Chair to assign another Commissioner to a hearing (35 MRSA §299).

Given the importance of ensuring clearly delegated administrative functions within the Commission, and that the present authority of the Chair has been arrived at by consensus, the Committee recommends that the administrative authority of the Chair be statutorily established.

STATUTORY 56. Identify in the PUC statutes the vote necessary for formal Commission action.

The statutes governing the operation and procedures of the PUC do not contain a statement of the required vote for formal action taken by the Commission. This authority currently is provided by statutes outside Title 35, in particular the Administrative Procedure Act and the Rules of Construction. The Rules of Construction state that: "Words giving authority to 3 or more persons authorize a majority to act, when the enactment does not otherwise determine" (1 MRSA §71 sub-§3). Commission approval has been interpreted to mean the same vote by at least two members.

The Committee finds that PUC statutes should clearly indicate that a majority vote of the Commission is necessary for formal action. This will clarify any ambiguity which may occur, given the disqualification of any one commissioner and provide a convenient legal reference.

Therefore the Committee recommends that such language be established in statute to clarify the vote necessary for formal Commission action.

STATUTORY 57. Authorize the Commission to delegate certain routine areas of responsibility to expedite decisions and affirm present practice.

The PUC is charged with a wide range of jurisdictional responsibilities, some of which can be justifiably delegated. Currently, there is no statutory authority by which the Commission can clearly delegate responsibility to its staff. Though in fact Davis' Administrative Law indicates that an administrative agency by its nature needs to delegate responsibility, the degree to which delegation can or should occur is unclear. There is neither a statutory provision empowering the Commission to delegate, nor is there a statutory provision prohibiting such delegation. Therefore leaving the Commission's authority to delegate unclear.

Several state agencies clearly have the power to delegate. For example:

"The (Finance Authority of Maine) ... may establish standards pursuant to which it may delegate its powers and duties to its staff." (10 MRSA §969 sub-§5);

"The director (of the Maine State Housing Authority) may delegate to his employees and agents such powers and duties as he deems proper." (30 MRSA §4602); and

" ... The Executive Director (of the Health Care Finance Commission ... shall perform the duties delegated to him by the Commission." (22 MRSA §384)

The Committee notes that the Commission is beginning to delegate some areas of responsibility to its staff through a procedure of "delegation orders". For example, the Commission has delegated such

areas as waiver applications and approval of limited service contracts for water main extensions. In addition to the areas now being delegated, there appears to be a number of other routine, undisputed areas which also warrant delegation. Delegation of certain responsibilities is likely to expedite the decision-making process and may result in more efficient administrative functioning.

The Committee finds that delegation by the Commission should be encouraged and that such authority should be identified in statute. Therefore, the Committee recommends the Commission be authorized to delegate certain routine areas of decision-making. Clearly, however, the Committee intends that all final authority and responsibility shall remain with the Commission.

ADMINISTRATIVE 58. Recommend that the Joint Standing Committee on Judiciary study the provisions under which a PUC commissioner may be disqualified from voting and determine the need for statutory provisions governing such disqualification and the need for the appointment of a special commissioner.

Maine statutes provide for the appointment of three commissioners and the filling of any vacancy. However, no provision is made for the appointment of a temporary commissioner, as in the case of New Hampshire's statute which provides that:

"§363:20 Special Commissioner. If at any time a commissioner shall be disqualified or unable to perform the duties of his office, the governor upon application of the commission may (with the consent of the council) appoint a special commissioner to act in his place during the period of the commissioner's disqualification or inability to act."

Due to recent complications which involved the disqualification of one commissioner, New Hampshire had to exercise its statutory provision for the appointment of a special commissioner. Although Maine has not encountered any particular problem resulting from lack of authority to appoint a special commissioner, it may be an area which warrants some statutory guidance. For example, the Committee is concerned that under present law, given the disqualification of one commissioner, a rate increase under consideration takes effect if the remaining two commissioners disagree. Maine has experienced

situations in which the PUC commissioners have disqualified themselves. Furthermore, the Committee finds a need to clarify the criteria for disqualification for an administrative quasi-judicial body such as the Commission.

The Committee understands that the Doctrine of Judicial Necessity, which proscribes a theory of judicial disqualification, may be an adequate vehicle for addressing this problem, but questions whether a statutory provision would provide greater clarity. Given the legal questions involved, the Committee recommends that the Joint Standing Committee on Judiciary pursue this as a potential area for further study.

ADMINISTRATIVE 59. Determine the feasibility of aligning staff positions with specific funding sources in order to place appointed positions on the General Fund and increase funding consistency within divisions. Report to the Audit Committee by May 1, 1985 so that the Audit Committee can review the material with the Committees on Appropriations and Utilities.

The two main sources of revenue for the operation of the PUC are the General Fund and the Regulatory Fund. In FY 1985, the total operating budget of the Commission is \$2,294,979; 31% of this is from the General Fund and 69% is from the Regulatory Fund. The PUC's dependence on the Regulatory Fund has increased over time. Several funding sources depended upon in the past are no longer available. For example, with the deregulation of transportation in 1981, PUC's use of the Transportation Fund was phased out. In addition, \$300,000 of the PUC's General Fund appropriation was reappropriated to the newly created Public Advocate's Office in 1981. Since FY 1982, the amount of General Fund support has remained fairly constant. During this time, funding shifts or increases have been absorbed through the Regulatory Fund. (See Table 2 for more detailed information on funding sources and levels for the PUC.)

The Regulatory Fund comes from an assessment on the utilities. The percentage figure is derived from dividing the amount to be assessed by the total intrastate operating revenues for regulated utilities. For example, for Fiscal Year 1985 the formula is:

Amount to be Assessed	\$1,594,000
Total Intrastate Operating Revenues =	\$820,042,711 = .0019438011%

TABLE 2

PUBLIC UTILITIES COMMISSION - FUNDING ACTIVITY BY ACCOUNT

<u>REVENUE SOURCES</u>	<u>FY 1981</u>	<u>FY 1982</u>	<u>FY 1983</u>	<u>FY 1984</u>	<u>FY 1985</u>
Position Count	(79)	(77)	(54)	(57)	(61)
<u>GENERAL FUND</u>					
Appropriation	\$ 778,064	\$ 630,443	\$ 603,966	\$ 684,992	\$ 700,977
Encumbrances brought forward	- 0 -	2,278	1,138	- 0 -	- 0 -
<u>REGULATORY FUND</u>					
Assessment	150,000	\$450,000	1,300,000	1,498,335	1,594,000
Encumbrances brought forward	50,552	14,091	74,965	185,060	184,539
Balance brought forward	167,852	78,946	31,500	52,048	82,901
From Trans. Safety Fund	- 0 -	225,000	- 0 -	- 0 -	- 0 -
<u>TRANSPORTATION DIVISION</u>					
Allocation	892,681	509,790	- 0 -	- 0 -	- 0 -
Encumbrances brought forward	17,352	18,589	- 0 -	- 0 -	- 0 -
<u>FEDERAL FUNDS</u>					
Revenues	28,797	- 0 -	- 0 -	- 0 -	- 0 -
Encumbrances brought forward	- 0 -	2,195	- 0 -	- 0 -	- 0 -
Balance brought forward	15,406	20,616	685	88	60
<u>PURPA GRANT</u>					
Revenues	180,000	- 0 -	- 0 -	- 0 -	- 0 -
Encumbrances brought forward	69,556	69,593	- 0 -	- 0 -	- 0 -
Balance brought forward	107,910	159,692	765	765	- 0 -
<u>DECOMMISSIONING FUND</u>					
Filing fees	- 0 -	- 0 -	35,000	- 0 -	- 0 -
Encumbrances brought forward	- 0 -	- 0 -	- 0 -	20,883	300
<u>PURCHASE POWER FUND</u>					
Filing fees	- 0 -	- 0 -	64,528	- 0 -	- 0 -
Encumbrances brought forward	- 0 -	- 0 -	- 0 -	2,000	- 0 -
Balance brought forward	- 0 -	- 0 -	- 0 -	60,528	- 0 -
<u>REIMBURSEMENT FUND</u>					
Balance brought forward	- 0 -	- 0 -	- 0 -	- 0 -	3,387
TOTAL REVENUES	\$2,458,170	\$2,181,233	\$2,112,547	\$2,504,699	\$2,566,164

This percentage figure is then applied evenly across each individual utility's intrastate gross operating revenues to determine the amount assessed. Therefore, each utility pays the same proportion of its revenue into the Regulatory Fund.

In several instances, a utility is also required to submit a filing fee. These fees may be used to fund special services contracted by the Commission.

There are 39 positions funded by the Regulatory Fund and 22 positions funded by the General Fund for a total of 61 PUC staff positions. The shift of positions to the Regulatory Fund has been arrived at through the following process:

- four utility engineer positions were established in 1979;
- to accommodate the 1981 establishment of the Public Advocate's Office, ten positions were moved from the General Fund to the Regulatory Fund;
- the 1982 deregulation of transportation resulted in the transfer of 18 positions to the Regulatory Fund;
- three positions were added to the Regulatory Fund in the First Regular Session of the 111th Legislature; and
- four positions were added during the Second Session of the 111th Legislature.

In reviewing this process, the Committee finds that the shifts in funding sources over the years and the addition of new staff positions has resulted in a situation which is lacking a comprehensive effort to link funding sources to particular positions. Further, the Committee notes that there are confusing situations of intradivisional funding. The appointed positions are now funded by the Regulatory Fund which is contrary to the Committee's intent that appointed positions should be funded by the General Fund to negate any question of conflict of interest (see organization chart).

The Committee recommends that the Commission determine the feasibility of aligning staff positions with specific funding sources in order to place appointed positions on the General Fund and to increase funding consistency within divisions. The Committee asks the Commission to report on these possibilities by May 1, 1985 so that the Audit Committee can review the material with the Committees on Appropriations and Utilities.

This proposed realignment of staff positions may enable the Legislature to make more effective decisions regarding changes in both the General and Regulatory Funds. Further, the placement of appointive positions on the General Fund may eliminate the conflict of interest charges which occur when these types of positions are funded from a dedicated fund.

ADMINISTRATIVE 60. Centralize and categorize resource materials to promote greater efficiencies, curtail duplication costs, and facilitate retrieval.

The circulation, storage, and retrieval of information is critical to the daily operations of the Public Utilities Commission more so than other state agencies.

The information referenced by the Commission and staff falls into six major categories as follows:

- legal research materials;
- technical research materials;
- financial research materials;
- 25-30 periodicals;
- case files (which include correspondence and Data Requests); and
- generic utility information (annual reports and other basic information).

A brief survey of the Commission has indicated that to a great extent each division independently references, stores, and retrieves information. For example:

Central Administration

All information/correspondence initially passes through the Administrative Director's office to be manually logged and sorted. For correspondence relating to a case, a list of the staff is

attached and the material is circulated. When a case file is opened, ideally, a copy of all case information and related correspondence is filed. The exhibits presented during a hearing are maintained by the hearing reporter and presented, with the transcript. When a case is closed the file is updated and organized. It is only when a case is appealed that all information is formally listed and the documents numbered.

In practice, however, material placed in the file may be borrowed and not returned. Staff compensate for a lack of a comprehensive master file by maintaining individual files of their own cases.

Legal Division

The Legal Division has a small legal library which is updated by the secretary or Chief Counsel as time permits. Materials are not catalogued or clearly organized. In contrast to other divisions the existence of the library is an advancement. The Committee notes, however, the single room has limited work space for staff needs. Individual lawyers again compensate by maintaining their own case files, stockpiling research, and retrieving information. The lack of organized and accessible information creates inefficiencies where professional staff spend unnecessary time on information retrieval and again duplicate material for individual use.

Finance Division

The Director of Finance, realizing the need to centralize some information and maximize space, has adopted a system whereby each Division staff person's resource materials and information files are listed on the word processor and updated regularly. Therefore, a current resource list is potentially available to all staff within the Division at any time. Nevertheless, staff feel a need to continue to retain individual case file material. The Director has also established a policy of maintaining at least one central Division file of all data requested after a case is closed for reference purposes. Though these Division personnel may have a better sense of the resources available within the Division, there are few if any formal mechanisms for determining what resource material is located elsewhere in the Commission. Again, the Committee finds that a centralized system would save staff time, duplication costs, and potentially cut down on duplicate requests from utilities

Division of Technical Analysis

Staff in this Division have also traditionally maintained their own resource collections. The recent reorganization for this Division underscores the need to centralize resource materials. With the Division now organized according to function rather than utility type, the need for sharing resource materials will become more acute.

Consumer Assistance Division (CAD)

Contact with the Supervisor of CAD again indicates that this Division suffers from the lack of a centralized library resource.

The Committee finds, given the amount of material channeled into the PUC, the technical nature and requirements of the resource material used, and the need for more than one staff to reference such materials, that the Commission should centralize and catalogue library resources. This would serve to decrease the duplication of materials and cut costs by making case materials and other information easily retrievable. In making this recommendation, the Committee recognizes that the current space limitations have hampered efforts to centralize resources.

FINDING	61. The Committee finds that the PUC's present space is inadequate, inhibits efficient organization, and is inaccessible to the handicapped. Therefore, the Committee supports the Commission's need for better space.
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The Commission has occupied the same facility since 1975 without modification. At the end of June 1984, the firm of Terrien Architects was selected by the PUC to study, inventory, and redesign the PUC offices. The work involved an extensive inventory of existing space and the Commission's need for additional space. As a result, several plans were developed which range from redesigning the existing space to acquiring additional space. Each proposal is accompanied by a set of capital needs.

The Committee finds that the Terrien study documents the

Commission's acute need for additional space, the lack of appropriate work and storage space, the problems of visual and sound privacy, the inaccessibility to the handicapped, and the non-compliance with state and local building codes within the existing PUC office building.

The problems with the current PUC facilities are put in proper perspective when the crucial nature of the PUC's mission is considered. The PUC has statewide responsibility to regulate utilities which had assets in excess of 1.7 billion dollars in FY 1983. To accomplish its mandate on behalf of the Maine citizens, the PUC holds most of its 250 annual hearings in a room which is dismal, overcrowded, uncomfortable, and largely inaccessible to the handicapped.

The Committee finds that given the public charge and importance of the Commission's mandate, rectifying the current space problem is a high priority to ensure the Commission's continued effective operation. Therefore, the Committee supports the Commission's need for adequate space.

STATUTORY	62. Repeal the present statutory qualifications for the position of Director of Technical Analysis because they are outdated, inconsistent with other similar policy-influencing positions, and too restrictive.
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The PUC statutes provide that the Commission "shall appoint an administrative director, a director of finance and a director of technical analysis" (35 MRSA §1). In addition, "It shall appoint, with the approval of the Attorney General, a general counsel" and "subject to the Personnel Law, an assistant to the administrative director" (35 MRSA §1).

The Director of Technical Analysis is the only position within PUC which is governed by statutory qualifications. These qualifications are "a bachelor's degree in an appropriate field and 4 years' experience in engineering, or shall be registered as a professional engineer." The statutory qualifications were enacted by the First Regular Session of the 111th Legislature in response to a particular situation.

Since that time, the Division has undergone internal reorganization. Although technical expertise is still important,

this reorganization has resulted in a situation which necessitates a wider set of qualifications for the Director of Technical Analysis.

The Committee finds that the position of Director of Technical Analysis is one which requires a variety of skills which go beyond the current statutory restrictions. Further, such qualifications are inconsistent with other policy positions across state government and recruitment is difficult given the restrictive nature of these qualifications. Therefore, given the importance of this position to the successful functioning of the PUC, the Committee recommends that the current statutory qualifications be repealed. This recommendation entrusts the PUC with selecting a qualified individual.

STATUTORY	63. Declassify the staff attorneys at the PUC to provide the Commission with greater flexibility in hiring and retaining qualified individuals.
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There appears to be little consistency regarding the status of staff attorney positions in Maine state government. Several agencies such as the Attorney General's Office and the Housing Authority have the flexibility to establish salaries and set hiring policies. Staff attorney positions within these agencies have an unclassified status indicating a degree of latitude in their ability to attract qualified and desirable candidates.

This flexibility contrasts sharply with the classified status that staff attorney positions have with agencies like the PUC and the Department of Transportation. Staff attorneys for these agencies are hired according to the more restrictive state personnel process. The Committee finds these agencies are hampered in their efforts to hire qualified staff attorneys by inflexible pay ranges and limited career ladders.

The Committee finds that the PUC has encountered serious difficulty in the recruitment of senior staff attorneys. Of those on staff, one attorney has over five years of experience with the Commission and six attorneys have two years or less. Recent recruitment efforts by the Commission have attracted attorneys with minimal job experience. In part, this can be attributed to the lack of career mobility in the past within the Legal Division and the Commission's inflexibility to establish varied salary levels. This problem has been partially remedied by the recent Legal Division reorganization which creates a more attractive career ladder.

The lack of experienced attorneys creates inherent difficulties in dealing with complex utility cases and inevitably diminishes staff effectiveness. Also, the Committee finds that staff attorney positions at the PUC meet the "policy influencing" criteria by virtue of their job function and responsibilities. Therefore, the Committee recommends that the attorneys within the Legal Division at PUC be unclassified and placed outside the personnel system to enable the Commission to have greater flexibility in hiring and retaining staff attorneys.

Finally, the Committee notes that legislative oversight of these positions and their salaries will be provided by the legislative appropriation/allocation process.

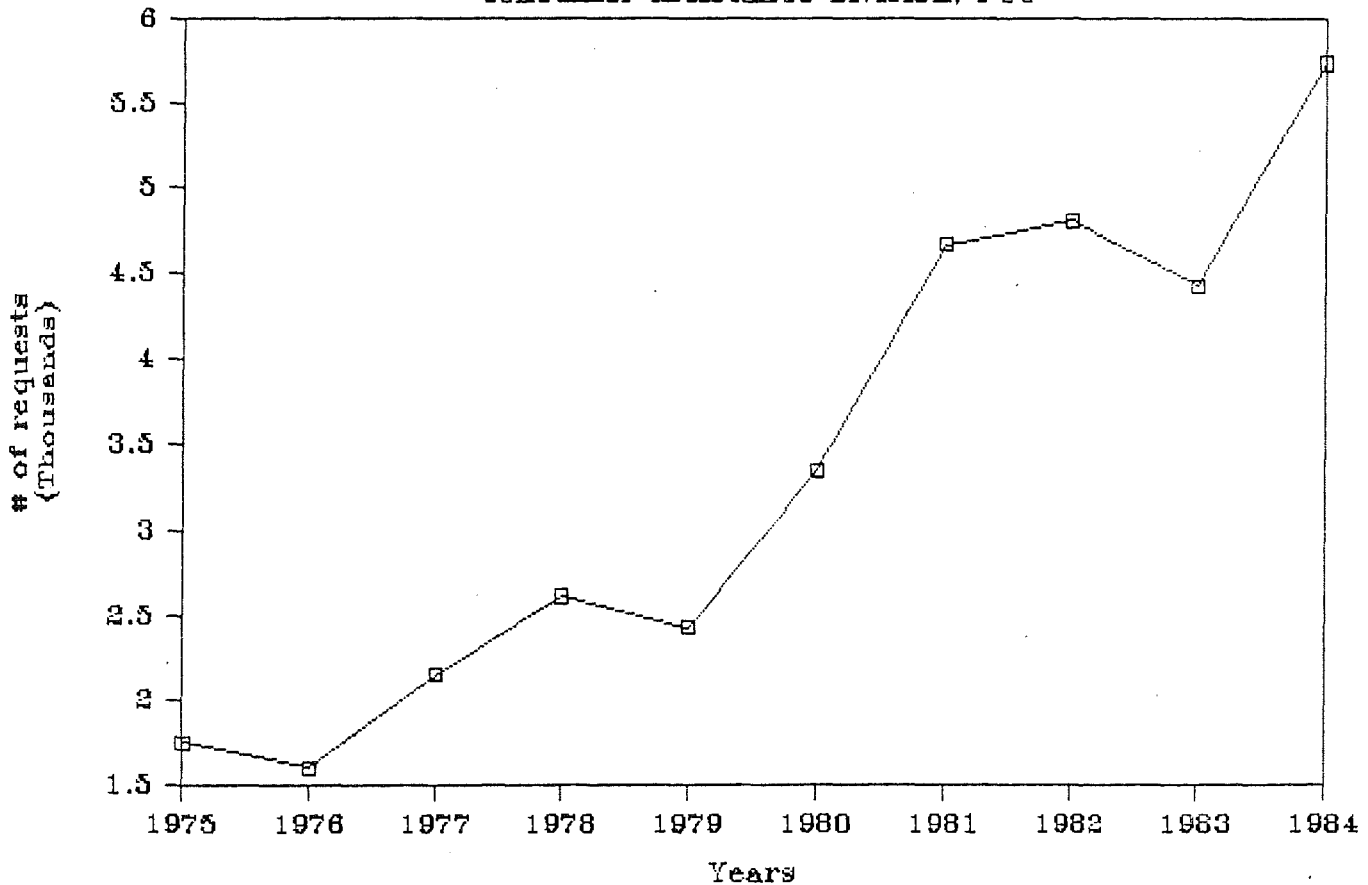
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- ADMINISTRATIVE 64. Expand and strengthen the function of the Consumer Assistance Division for the benefit of utility customers. In particular, the areas that need attention are:
- public education;
 - analysis of service/complaint problems; and
 - coordination with other service agencies.
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The PUC's Consumer Assistance Division was established in 1977 and is organizationally housed within the Administrative Director's Office (see organizational chart). Division staffing includes a Supervisor and four Consumer Assistance Specialists. In addition, the Division draws on the Commission's clerical and professional staff for assistance.

The purpose of CAD is to resolve consumer complaints against utility service, charges, and practices such as resolving payment problems and disconnections. Resolution of consumer complaints requires greatly varying amounts of staff time depending upon the complexity of the case. The number of complaints handled by CAD has grown dramatically over the past ten years as shown in the following graph:

REQUESTS FOR ASSISTANCE; 1975 - 1984

Consumer Assistance Division, PUC



Source: PUC annual reports and Audit staff.

During the course of the Audit Review, the Committee screened a number of consumer complaints and discussed the Division's responsibilities at great length. The Committee notes that occasionally CAD will bring a particular trend or area of concern regarding utility service to the Commissioners' attention and participate in formal proceedings. The Division does not provide any public education function nor undertake any detailed analysis of complaints.

Further, the Committee had the opportunity to meet with staff of the Pennsylvania Consumer Assistance Division. The Pennsylvania program emphasized:

- performing comparative analysis between utilities regarding consumer complaint rates and areas of complaint;
- conducting intra-company complaint rate analyses to determine if branch offices vary in their service provision and policies;
- tracking individual utility complaint rates over time to determine improvement or back sliding in handling of cases;
- performing service/complaint population studies relative to socio-economic groups to specifically target group problems and to develop preventative solutions; and
- auditing utility collections procedures including the utilities' write-offs as a proportion of revenues.

The Committee finds that the current charge, organization, staffing and location of CAD present a number of associated problems. These include:

- the CAD, while responsive to individual consumer complaints, has not had an opportunity to analyse trends within or across utilities;
- the CAD does not perform a public education function for preventative education;
- the staffing of CAD requires strengthening to handle complex issues and adopt a proactive posture;
- given the range of complexities handled by CAD, a varied staffing hierarchy may be more appropriate and provide a career ladder such as is done in the Attorney General's Consumer Assistance Division ;

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- the physical location of CAD is not easily visible or accessible to the public; and
 - the importance of CAD may warrant the creation of a Division equal in stature to other divisions.

The Committee recognizes that the current staff resources limit the scope of the CAD's potential. However, given the fact that increased resources and emphasis may save consumer utility dollars, the Committee recommends that the Consumer Assistance Division be expanded and strengthened for the benefit of utility customers. In particular, the Committee notes that public education, analysis of service/complaint problems, and coordination with other service agencies need increased attention by CAD.

ADMINISTRATIVE 65. Require the Consumer Assistance Division to develop a three-copy standardized form on which the final resolution of complaints will be recorded; one copy shall be retained by CAD, one sent to the utility, and one to the consumer.

The Consumer Assistance Division of the PUC exists to field complaints and queries from the general public concerning utility service. Since the inception of CAD, the total number of calls received annually has increased steadily, peaking most recently at 5,741 requests in 1984. Complaints vary in complexity and frequency. Most calls occur during the winter and concern disconnect notices. Consumers are able to telephone CAD via a toll-free number which is printed on all utility disconnect notices. This phone line is staffed continually during work hours and is maintained by an answering machine in off hours. PUC statistics indicate that:

- 87% of consumer initiated contacts occur by phone during working hours;
- 10% occur by mail;
- 2 - 3% occur by walk-ins; and
- less than 1% occur by phone after hours.

Routine contacts are processed by consumer assistance specialists, while the more complicated cases may be referred to the supervisor. Individual files are maintained on each case. Complaints are filed according to utility and utility group,

CAD's standard procedure is to negotiate problems verbally. A problem may be quickly resolved or require longer negotiation and study. The Committee has received comments that confusion as to the final agreement can result due to the lack of a written resolution retained by the CAD and distributed to the parties involved.

The Committee finds a need for a standardized resolution form which will streamline the process and provide exactly the same information to the CAD, the consumer and the utility at issue. The Committee recommends that a form be developed which features a format which yields pertinent information in a consistent fashion, a clearly understood statement of resolution, and provides a copy to each of the principle parties. The Committee finds such a form to be necessary given the crucial need for efficient and equitable processing of consumer utility complaints.

STATUTORY	66.	Upgrade the classification of the Chief Utility Accountant to enable the Commission to attract qualified candidates.
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The Finance Division has recently undergone a staff reorganization. At the time of this reorganization, three of the four utility financial analyst positions in the Finance Division were vacant; two since mid-1983 and one since the spring of 1984. These vacancies are indicative of the Division's larger problem in staff recruitment and retention.

Due to the reorganization, resources were reallocated to partially remedy a deteriorating situation. Circumstance had necessitated that the accounting staff's workload increase to compensate for the Commission's inability to hire financial analysts at the specified pay range. The reorganization reduced the existing number of financial analysts by two and increased the accounting staff by two. These changes provided needed career incentives and additional senior level positions.

In the process of this reorganization, the Commission requested funding for a Chief Utility Accountant at range 32. The Department

of Personnel in turn granted this at a level 30. The Committee finds that range 30 is inadequate to attract and retain highly qualified individuals for this position. Therefore, the Committee recommends that, if in the course of the normal personnel process the the position remains classified at range 30, the position should be reclassified through a statutory change.

STATUTORY 67. Increase the salary range of hearing reporters from 15 to 20 to enable the Commission to attract and retain qualified individuals.

The PUC employs three hearing reporters who are responsible for the transcription of hearings and other proceedings before the Commission and for ensuring that any transcripts are available to all parties in a case. The annual cost for hearing reporters totaled approximately \$69,000 in FY 1983 as follows:

Personal Services	\$62,000
All Other	5,000
Capital	<u>2,000</u>
	\$69,000

Hearing reporters are paid a salary and allowed to charge and retain a fee for transcripts. A number of other state agencies also employ either hearing or court reporters. The difference between hearing and court reporters is that court reporters must be able to record 25 words per minute more. This difference is translated into a pay range 26 for the court reporters while the hearing reporters are at range 15.

The Committee finds that across state agencies there is an inequity in the salaries and compensation for reporters who, given some small differences, have basically the same job function. These discrepancies have made attracting and retaining qualified individuals difficult for the Commission, with its pay range 15. Other factors which further add to the inequity between reporters include the transcript charges and use of state equipment (see Table 3 below).

TABLE 3

Cross-Agency Comparison

	<u>PUC</u> <u>Court Reporters</u>	<u>Worker's</u> <u>Compensation</u> <u>Commission</u>	<u>Labor</u> <u>Relations</u> <u>Board</u>	<u>Superior</u> <u>Court</u>
Pay Range	15 (\$12,272-\$16,203)	26 (\$19,115-\$26,291)	15	26 (Equiv)
Transcript Charge	\$1.50-page for 1st copy \$1.00-page for 2nd copy .25-page thereafter PUC & state agencies no charge	\$2.40-page for 1st 2 copies .25-page thereafter	charge varies with request copy for Bd. at no charge but entire transcript is not required	\$2.40-page for 1st 2 copies .25 thereafter no copies without charge
Use of State Zerox Equipment	Yes	No	Yes for Board No for Other	No

As Table 3 indicates, PUC reporters are limited to charging \$1.50 per page while other reporters charge \$2.40 per page. On the other hand, PUC reporters use state-owned equipment whereas other reporters must supply their own equipment. The Committee recognizes that the PUC reporters provide copies at no charge to state agencies. A rough estimate shows that this practice saves state agencies, primarily the PUC, \$64,000 in one fiscal year.

The Committee finds that these inequities create a situation which is difficult to resolve. However, to address PUC's difficulty in maintaining qualified hearing reporters while recognizing that the use of state-owned equipment is a direct subsidy, the Committee recommends that the pay range for PUC hearing reporters be increased from 15 to 20.

ADMINISTRATIVE 68. Explore the feasibility of using alternative technology in the recording and transcription of hearings because the use of new technology may be more cost effective than the current procedure.

The PUC is charged by statute to maintain "a full and complete record" (35 MRSA §1) of all proceedings held before the Commission. To ensure that this is done, the Commission employs three hearing reporters who are responsible for transcribing hearings and proceedings before the Commission and ensuring that such transcripts are available to all parties.

Upon review, the Committee finds that there may be alternatives to the present system which are less costly to the State and the parties involved. Various studies have compared the stenographic and audiotape methods which are available in terms of efficiency, cost, accessibility and quality. Generally, these studies have indicated that the transcript produced through an audiotape method is comparable to that of those done by stenographic method and can cost less. The court system in Maine is one agency which is exploring these options with favorable results.

Given the Commission's recent difficulties in recruiting and retaining hearing reporters and because an electronic system may in fact be less costly while producing the same results, the Committee recommends that the Public Utilities Commission explore the potential of using an electronic system in the future and report to the Joint

Standing Committees on Audit & Program Review and Utilities by
September 1, 1985.

ADMINISTRATIVE 69. Develop an informal policy to mitigate the potential hardship transcript costs may impose on the ratepayer of small utilities.

The regulation of utilities takes many different forms and involves different types of proceedings. These include rule-making proceedings, advisory rulings, adjudicatory proceedings, and complaints. In particular, the PUC rate hearings can involve the transcription of hours of hearing time.

During the course of its review, the Committee received testimony from some small utilities that the cost of purchasing transcripts represented a burden to ratepayers. Transcripts, in line with the court reporter professional standards, are the property of the PUC hearing reporters. With the exception of the PUC and other state agencies, any person, utility or agency must pay a charge of \$1.50 per page for the first copy of a transcript, \$1.00 per page for the second copy and \$.25 thereafter.

The Committee recognizes that this charge to the utility for a transcript is less than that charged in adjudicatory proceedings elsewhere in state government. However, the Committee finds that the expense of purchasing transcripts can be burdensome for a small utility which is a party in the case. For example, in a recent case Lubec Electric District, having gross intrastate operating revenues in 1983 of \$643,652, purchased an 800-page transcript, the cost of which equaled approximately \$1,200. Pro-rated over the District's customers this charge equals approximately \$1.00 per ratepayer.

To mitigate the potential hardship transcript costs may impose on the ratepayers of small utilities, the Committee recommends that the Commission work out an informal arrangement with these utilities. Discussion to date with Commission staff has indicated a willingness on behalf of the Commission to find an administrative resolution.

ADMINISTRATIVE 70. Use the newly formed position of paralegal to handle some of the routine

clerical and scheduling functions now performed by the Hearing Examiner in order to promote greater staff efficiency.

The Legal Division of the PUC is responsible for providing complete legal services to the Commission. During adjudicatory proceedings, the Legal Division's staff attorney serves a dual role of staff advisor and Hearing Examiner. As Hearing Examiner, the staff attorney:

- presides at hearings and rules upon motions including discovery disputes;
- ensures that all issues are raised which are of concern;
- prepares the Hearing Examiner's report in consultation with other staff advisors; and
- handles the mechanics of scheduling, processing information and other routine tasks.

A recent reorganization of the Division of Legal Services established a paralegal position. Along with using this position to undertake some of the basic legal research now performed by the staff attorneys, the Committee recommends that the position of paralegal be used to handle some of the routine clerical and scheduling functions now performed by the Hearing Examiner.

ADMINISTRATIVE 71. Revise and implement the Uniform System of Accounts for Water Utilities (Chapter 61) because the system is outdated.

Title 35 §53 requires that:

"Every public utility shall keep and render to the Commission in the manner and form prescribed by the Commission, uniform accounts of all business transacted. In formulating a system of accounting for any class of public utilities, the Commission shall consider any system of accounting established by any federal law, commission or department and any system authorized by the national association of such utilities."

To this end, the Commission adopted rules specifying that water utilities maintain a uniform system of accounts according to certain guidelines (Chapter 61).

The Committee finds that this uniform system dates back to 1936 and has become outdated. In fact, the present PUC requirements vary in several areas from Generally Accepted Accounting Principles as formulated by the National Finance & Accounting Standards Board. Such differences create unnecessary administrative accounting procedures for water utilities.

At this time the Commission has recognized the need to correct and implement a new system for water utilities. The Committee therefore reinforces this need by recommending that the PUC revise and implement a Uniform System of Accounts for Water Utilities and report to the Committee on Audit & Program Review and the Utilities Committee by September 1, 1985 with such revisions.

ADMINISTRATIVE 72. Assess the desirability of allowing the depreciation on contributed assets in determining revenue requirements and providing for the establishment of a capital reserve fund with these revenues. Determine the need for legislation and report to the Committees on Audit & Program Review and Utilities by May 1, 1985.

The Committee notes that current financial practices at the Commission disallow the recovery through revenues of depreciation on property contributed to a utility. For example, if a Water District were to receive a \$1,000,000 grant from the Farmers' Home Administration program (FmHA) to extend its water main, the District would not be allowed to depreciate this main or charge this depreciation as an expense in future rate filings because the grant is a "contributed asset". Since the purchase of the main is not a cost to the utility, it is not considered a recoverable item. This procedure is a standard accounting practice and is not unique to PUC.

Over time the water system will deteriorate due to ordinary wear and tear. In the future, replacement of the current system will be necessary. At that time because revenues have not included the cost of depreciation and have not been deposited into a capital reserve fund, the utility will need to borrow. This in turn means that the ratepayers, at that time, will pay the debt service cost plus the depreciation of the new assets.

Water utilities in Maine presented testimony indicating their interest in seeing a revision of this accounting practice. As of December 1984, at a minimum, \$9,000,000 in grants had been made to rural water districts from Farmers' Home. Other sources of contributed assets include Community Development Block Grants, Economic Development Agency funds, and private development. Examples of specific districts receiving such funds include Lubec Water District which received a \$310,000 FmHA grant for stand pipes, a pump station, transmission mains, and storage facilities and Bridgeton Water District which received \$509,000 for storage facilities, a distribution and transmission main, hydrants, meters, and other improvements.

In summary, the question before the Committee is whether the PUC should be authorized to allow the depreciation on contributed assets when determining revenue requirements. The answer depends upon how depreciation is viewed. The current practice treats depreciation as a mechanism for the recovery of initial cost. As the water districts receive these grants at no cost to them, recovery through depreciation is disallowed. On the other hand, if depreciation were viewed as a mechanism to reflect current use and need for future replacement, then these costs would be recoverable.

The Committee notes that changing this accounting practice may conflict with 35 MRSA §52 which states that:

"In determining reasonable and just rates, tolls and charges, the Commission shall fix a reasonable value upon the property of any public utility ... In fixing such reasonable value, the Commission shall give due consideration to evidence of the cost of the property when first devoted to public use, prudent acquisition cost to the utility, less depreciation on each, and any other factors or evidence materials ... , but such other factors shall not include current value."

Given the complexity of this question as it relates to the determination of the overall rate and the recovery of expenses, the Committee recommends that the Commission assess the desirability of both allowing for the depreciated recovery of contributed assets and providing for the establishment of a capital reserve fund. Further, the Committee recommends that the Commission determine the need for legislation and report to the Committees on Audit & Program Review and Utilities by May 1, 1985.

ADMINISTRATIVE 73. Review the desirability of performing routine or occasional financial audits,

as well as the need for any related staffing and report to the Committees on Audit & Program Review and Utilities by May 1, 1985.

The Commission presently has the following authority:

".....to inspect the books, accounts, papers, records and memoranda of any public utility in relation to its business affairs and to take copies thereof." (35 MRSA §5)

This statute along with other statutory provisions, authorizes the Commission to perform a financial audit of any utility. The Finance Division is responsible for:

- undertaking financial investigations and analyses of specific utility operations;
- conducting general financial studies pertaining to Maine utilities;
- analyzing all public utility applications to issue stocks, bonds, or other securities;
- advising the Commission on financial matters;
- preparing testimony and other material concerning revenue requirements and/or cost of capital in rate proceedings; and
- preparing material concerning the utility's rate base, expenses, depreciation, rate decisions, and other financial issues.

Although the statutes and Division jurisdiction clearly indicate that the Finance Division can perform financial audits of any utility, on-site utility audits occur infrequently due to limited staff resources. Further, the Commission staff does not undertake complete financial audits of utilities. In a given rate case, an indirect audit of a portion of the utility's financial information is usually conducted.

Utilities are required to have an independent CPA perform an annual financial audit and to file this report with the Commission and Public Advocate's Office. The larger electric utilities such as Central Maine Power, Maine Public Service, and Bangor Hydro-Electric, undergo routine on-site financial audits by the Federal Energy Regulatory Commission. These audits are utilized by PUC staff.

In its review, the Committee noted that other state utility Commissions conduct on-site audits. The Committee finds that more rigorous financial audits could be beneficial and warrant further consideration. For example, an audit could enable the Commission to obtain information before a case is filed and thus anticipate or prevent problem areas. Audits could also enable the Commission to more closely monitor cost allocations between the ratepayers and stockholders, and perhaps develop stronger communication and awareness between the Commission and utilities.

The Committee, however, also recognizes that financial audits are time consuming and that the question of whether the benefits outweigh the costs of on-site financial audits is unclear. Therefore, the Committee recommends that the PUC review the desirability of performing routine or occasional financial audits, assess the need for staff to perform this function and report to the Committees on Audit & Program Review and Utilities by May 1, 1985.

FINDING 74. The Committee finds that management audits can be a useful tool to increase utility performance and to detect problem areas before these problems become costly to utility ratepayers and shareholders.

In the first session of the 111th Legislature, the Public Utilities Commission was authorized to perform management audits as follows:

"The commission may require the performance of a management audit of the operations of any public utility in or to determine:

1. Construction programs.
2. Conduct of operations.
3. Minimizing or avoiding inefficiencies.
4. Other considerations."(35 MRSA §18)

An audit may be performed by an independent auditor and the cost is recovered from the ratepayer. An earlier statute provides that:

"The commission shall have authority to inquire into the management of the business of all public utilities and shall keep itself informed as to the manner and method in which each is conducted; and shall have the right to obtain from any public utility all necessary information to enable the Commission to perform its duties." (35 MRSA §4)

These sections clearly provide the commission with the authority to conduct management audits upon the Commission's determination.

A survey of other states has shown that states are using management audits as one regulatory tool. Often such audits provide input in a rate case or are undertaken as a result of a rate case order. In other instances, such audits serve as a general review and are not associated with a specific rate case. Aside from the initial audit, some states such as Missouri perform periodic implementation reviews to ensure that Commission recommendations have been adopted.

Maine has actively used this management audit provision within the past year by ordering four limited scope audits. Three were related to the reasonableness of utility construction programs in the Seabrook investigation involving Central Maine Power, Maine Public Service, and Bangor Hydro-Electric. The fourth audit was an audit of Continental Telephone Company's operations, in particular the plant and maintenance program for the purposes of determining the adequacy and reasonableness of service provided by the company. In addition to these four audits, the Commission has ordered two management audits of New England Telephone (NET) programs. One concerns NET's service ordering functions and the second, NET's construction planning program.

The Committee finds that recommendations from management audits can be immediately implemented and result in short-term cost savings or can require longer implementation periods with longer term payouts. Audited areas can include work force management, engineering productivity, planning and budgeting systems, materials management, training, thermal efficiency, commercial operations, and consumer assistance.

The Committee finds that management audits can be a useful tool to increase utility performance and to detect problem areas before these problems become costly to utility ratepayers and shareholders.

ADMINISTRATIVE 75. Ensure that the annual reports submitted by utilities receive wide

circulation within the PUC to serve both an informational and preventative purpose.

Utilities are presently required to submit annual financial reports to the Public Utilities Commission and to file a copy with the Public Advocate's Office (35 MRSA §1-A). According to the Director of the Finance Division, since 1982 these annual reports have been reviewed regularly by this Division. Any staff questions arising from the review of these reports are directed to the utility.

The Committee received conflicting information during its review on the degree to which these utility reports are circulated within the PUC. Wide circulation of utility annual reports within the Commission is important because information contained in these reports is often required in Commission proceedings. Testimony indicated that Data Requests made in adjudicatory proceedings occasionally solicit material which is already available in the utility's annual financial report filed with the Commission. Although one Division clearly reviews these reports, it is unclear as to what extent the Commissioners and commission staff screen the information. To address this situation, the Committee recommends that the Commission ensure that the annual reports submitted by utilities receive wide circulation within the PUC to serve both an informational and preventative purpose.

STATUTORY 76. Enable utilities and municipalities to contract for representation before the Commission from other than legal counsel in order to curtail unnecessary expenditures.

Representation before the Commission in proceedings is governed by 35 MRSA §315 which specifies that:

"the authorized appearance of an officer or employee of a corporation or partnership in any hearing, action or proceeding before the Commission in which the corporation or partnership is participating or desires to participate is not deemed to be an unauthorized practice of law and not subject to any criminal sanction. In order to facilitate the efficient processing of any proceeding, the Commission may, in its discretion, require the appearance of counsel on behalf of the corporation or partnership."

This statute does not enable a utility or other parties to hire representation from someone other than a lawyer. In particular, this limitation affects small utilities and governmental agencies who do not retain legal counsel because of budget constraints.

The Committee finds that for many small utility proceedings, effective representation may require someone other than Legal Counsel or an employee. In fact, small utilities upon occasion have been represented before the Commission by someone other than an employee, officer, or legal counsel in the past. This type of representation has raised questions about whether the representative is engaging in an unauthorized practice of law. This question of legality is also relevant to municipalities and other entities such as military bases when represented by other than legal counsel.

Further, the Committee finds that savings may occur if utilities and governmental agencies are allowed to contract with professionals other than legal counsel for representation. The Committee notes that the interest of the utility or governmental agency will dictate that competent representation is hired whether or not the representation is required to be legal counsel. In fact, an accountant or engineer, may be more representative in some circumstances. Therefore, the Committee recommends that utilities and governmental agencies be enabled to contract for representation before the Commission from other than legal counsel. The Committee further notes the current statute enables the Commission to require the appearance of legal counsel, thereby providing protection for appropriate representation if legal expertise is warranted.

ADMINISTRATIVE 77. Strengthen efforts to accelerate the rate-making proceedings for smaller utilities to avoid unnecessary expenditures.

Throughout the review, the Committee received testimony from small utilities that PUC's time period for deciding small utility rate cases is too lengthy and costly to the utility because of regulatory lag.*

* as defined in Recommendation 81

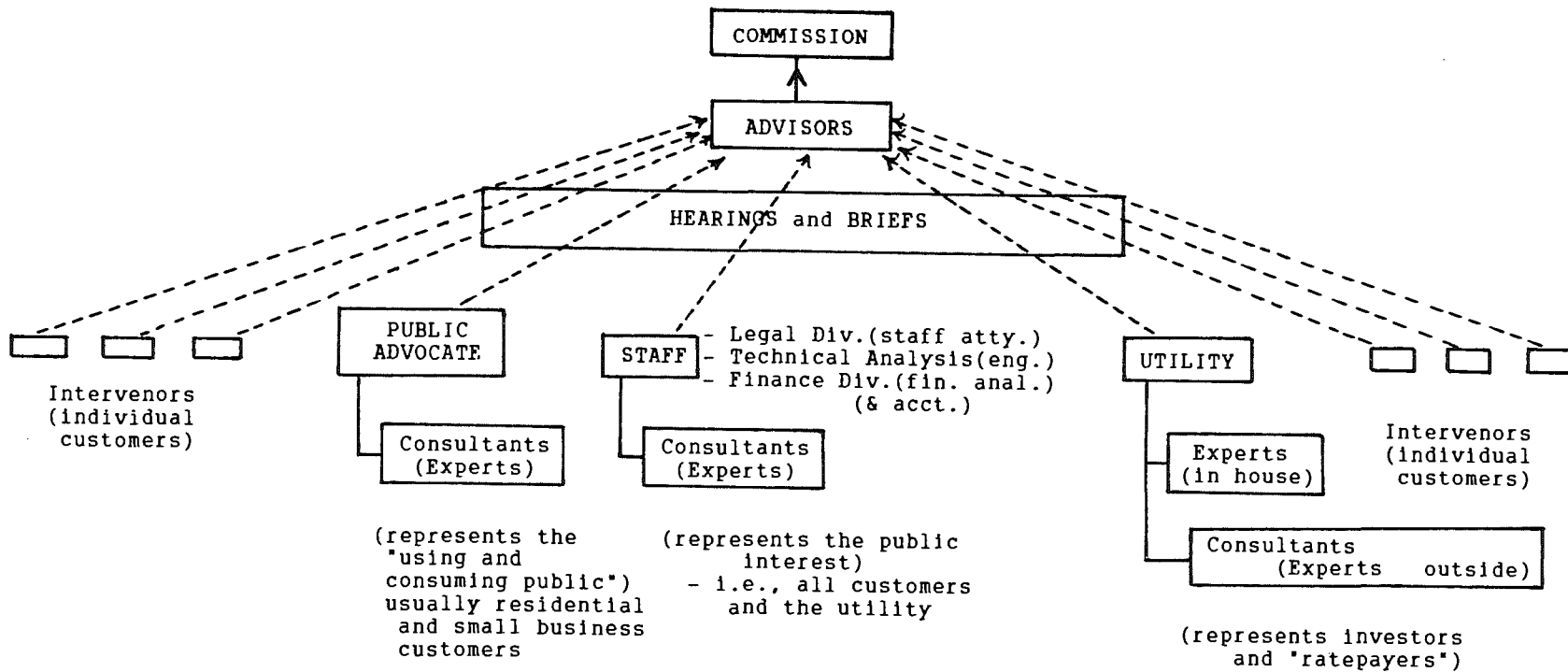
A review of the rate cases of those electric utilities which form the membership of the Dirigo Electric Cooperative shows the following information:

TABLE 4

	<u>Date</u> <u>Filed</u>	<u>Date of</u> <u>Commission</u> <u>Order</u>	<u># of</u> <u>Months</u>	<u>Amt.</u> <u>Requested</u>	<u>Amt.</u> <u>Received</u>	<u>%</u> <u>Received</u>
Stonington & Deer Isle	10-11-78	1-12-79	3 months	\$30,000	\$9,000	30%
Isle Au Haut	5-31-79	6-16-79	1 1/2 months	13,430	13,430	100%
Stonington & Deer Isle	11-29-78	8-31-79	9 months	30,289	15,701	52%
Swans Island	8-8-79	2-13-80	6 months	18,821	14,469	76%
Eastern Maine Electric						
Cooperative (EMEC)	8-3-79	4-28-80	8 1-2 months	493,403	493,403	100%
Madison	10-19-79	6-6-80	8 months	177,793	95,104	53%
Union River	3-31-80	6-20-80	3 months	23,935	28,441	119%
Fox Islands	12-19-79	6-25-80	6 months	87,394	72,793	83%
Kennebunk	8-20-80	5-11-81	9 months	180,793	102,969	57%
Lubec	3-3-81	9-10-81	6 months	70,327	69,144	98%
Stonington & Deer Isle	8-31-81	11-13-81	3 months	252,622	139,446	55%
Union River	7-16-81	3-17-82	8 months	53,611	51,343	96%
Swan's Island	10-4-82	11-3-82	1 month	24,867	22,106	89%
EMEC - Regular	9-15-82	6-17-83	9 months	1,058,633	553,150	52%
- Emergency	11-30-82	2-18-83	3 months	808,600	519,436*	
*included in Reg.						
Houlton	9-2-82	6-28-83	9 months	836,859	799,007	95%
Kennebunk	12-7-82	9-14-83	9 months	685,944	416,791	
		4-27-84			29,152	65%
Van Buren - Step 1						
interim amount	8-29-83	2-29-84	6 months			
total amount - Step 2		5-29-84	9 months	65,347	50,749	78%
Isle Au Haut	11-15-83	8-15-84	9 months	(7,500)	(7,500)	100%
Swans Island	5-21-84	8-30-84	3 months	13,200	16,007	121%

The statutes governing the establishment of rates provide that the Commission can suspend the proposed rate change but that the suspension may not exceed three months. The Commission, however, "may in its discretion extend the time of suspension for a further period of five months" (35 MRSA §69).

PUBLIC UTILITIES COMMISSION
The Adjudicatory Process



In the final phase of the adjudicatory process, the staff advisors prepare the Hearing Examiner's report and present it to the Commissioners for their consideration. This report contains the advisory staff's opinion on the resolution of the case under consideration. The Commissioners then issue their order based on all the information obtained through the adjudicatory proceeding.

It is this last five-month suspension period which small utilities often consider unnecessary given the relatively small size and complexity of their cases. Such extended suspensions may occur because of the Commission's workload and priorities rather than the intricacies of the case.

Small utilities indicate that relative to other utilities they can least afford the costs of extended postponement due to their size and revenues .

The Committee notes that the Commission has entered into agreements with the smaller electric and telephone utilities aimed at accelerating their cases. At the time of the Audit Review, the Committee received mixed comment about the success of these agreements. However, the Committee also found that little opportunity had emerged to test the mechanics of the accelerated process. Therefore, the Committee recommends that the Commission strengthen its efforts to accelerate the rate-proceedings for smaller utilities to avoid accruing unnecessary costs.

ADMINISTRATIVE 78. Provide for informal round-table discussions in adjudicatory proceedings whenever possible to curtail the number of written Data Requests.

ADMINISTRATIVE 79. Develop a plan to consolidate the procedures by which Data Requests are made and report to the Committee on Audit and Program Review by May 1, 1985.

Data Requests are part of the "Discovery" process in an adjudicatory proceeding which enable the Commission, advisors, and parties in a case to ask for further explanation and background information. Data Requests take the form of written requests and written responses, copies of which are distributed to each party in the proceeding. In major cases, this process can involve the circulation of thousands of pieces of paper and a tremendous amount of information. For example, during the Central Maine Power (CMP) rate case in 1983, CMP responded to over 1,000 Data Requests; over 500 were submitted by PUC staff, 371 were submitted by the Public Advocate and the balance by intervenors in the proceeding. Two consolidated New England Telephone cases also involved over 1,000 Data Requests.

During the course of its review, the Committee received testimony from many utilities stating that the Data Request process is costly and burdensome. The problems cited focused on two areas:

- the need for improved screening of Data Requests to eliminate requests which are irrelevant to that particular proceeding and which may be better handled outside the case on hand; and
- the need to consolidate duplicative requests.

The Committee notes that the Commission is working in coordination with utilities and the Public Advocate's Office to streamline the Data Request process; in part through the development of a computerized data base. The need for consolidation of Data Requests is underscored by the recent effort by the Public Advocate's Office to serve as a clearinghouse for Data Requests in one particular case.

The Committee received testimony that each Request be ruled on for admissibility by either the Commission or the Hearing Examiner. Upon inspection, however, the Committee finds that this practice could be administratively burdensome, prolong the hearing process, and costly. Further, the Committee finds that the Data Request process is critical to information dissemination, and that all parties to a proceeding have a "right to know" what all other parties have received. Also, the present procedure provides some recourse for any party aggrieved by a request for data considered to be irrelevant or duplicative. This recourse, however, in turn can be costly and time consuming.

The Committee finds that the recent efforts to computerize data and centralize and coordinate information will help to alleviate this problem. To resolve this issue, the Committee recommends that the Commission establish informal round-table discussions whenever possible to curtail the number of written Data Requests, that the Commission develop a plan to consolidate the procedures by which Data Requests are made, and report to the Committee on Audit and Program Review by May 1, 1985.

FINDING	80.	The Committee finds that telecommunications services in Maine:
		<ul style="list-style-type: none">• are rapidly changing due to technological advances and the divestiture of AT&T;

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- have significant impact on the state of Maine and will require increased regulatory activity in the short run to include the monitoring of industry construction investment;
 - are potential areas for future deregulation; and
 - require that the state of Maine engage in comprehensive planning to accommodate these substantive changes.
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In the course of its review of the PUC, the Committee devoted a great deal of time in reviewing and discussing the field of telecommunications. This included a comprehensive overview of:

- the historical development of the industry;
- the recent divestiture of AT&T and its subsequent impact on Maine;
- all PUC regulations governing telephone and telegraph companies, radio common carriers, and Cable TV;
- the extent to which services are provided by a particular company in the state, e.g. company size, service populations, territory, modernization and revenue;
- the regulatory activity of PUC over the past few years; and
- prospects for future change.

Relevant information was obtained from a variety of sources which included:

- testimony from interested individuals;
- discussion with staff members from various utilities, the State Planning Office, the PUC and the Office of Public Advocate; and
- material regarding national legislative trends from the National Conference of State Legislatures.

The materials collected were comprehensive and reflective of the

broad scope of issues confronting the Legislature, the PUC, the telecommunications industry, Maine business and the Maine citizenry. The effect that the changing area of telecommunications has had on Maine is just beginning and is characterized by:

- a process of rapid change within the industry, precipitated by recent technological advances and the divestiture of AT&T, requiring increasing regulatory and legislative involvement;
- a transition to a more competitive marketplace; a process which is far from complete; and
- potential areas for future deregulation with the emergence of new technology and the entry of service carriers into the market.

The future impact of this multi-faceted set of trends will have a profound impact on the state of Maine. The Committee notes that efforts are already being made on a statewide level to ensure Maine's successful adaptation to these developments. Specifically, the Governor's Task Force on Telecommunications will soon be issuing its report to provide some direction on these matters. At the very least, however, the Committee recommends that future statewide telecommunication planning efforts address the following issues:

- the present statutory definitions governing telephone and telegraph regulation should be re-examined and modified;
- the need for aggressive planning emphasizing a statewide approach;
- a recognition that, given the relative newness of the industry, determination of the appropriate roles for regulation, deregulation, competition and monopoly is in the formative stage;
- significant information still needs to be gathered concerning the cumulative effects of state/federal decisions regarding access charges, depreciation policies and the administrative costs associated with divestiture and how it affects various ratepayer classes;
- the concern that technological advances may bypass local telephone exchanges, but that this concern not be allowed to obscure the fundamental issue of competition;
- that issues concerning universal service will require legislative resolution;

- modernization brings with it the issues of local measured service and the reallocation of costs;
- changes which are likely to occur in customer service will require increased activity in the need for public education and protection;
- as the telecommunications industry changes, it is critical that regulation be both responsive and responsible; and
- PUC efforts to monitor interim construction investments by major carriers should be continued.

The Committee finds that, given the rapidly evolving nature of the telecommunications industry, it would be premature for the Committee to present a legislative package for consideration by the Legislature. However, in making these findings, the Committee intends to encourage continued movement towards a responsive and coordinated statewide approach to telecommunications issues.



EDISON'S TELEPHONOSCOPE (TRANSMITS LIGHT AS WELL AS SOUND).

ADMINISTRATIVE 81. Request that the Public Advocate convene a study group of all concerned parties to examine the potential application of Incentive Regulation in Maine's regulatory setting. Report on the status and findings of such meetings by September 1, 1985 to the Committees on Audit & Program Review and Utilities.

The Intent Behind Incentive Regulation

Incentive Regulation is intended to provide regulated utilities with incentives to improve performance.

To some, Incentive Regulation is equated with traditional regulatory oversight activities, e.g. the use of management audits and rewards and penalties based on prudency investigations or the purposeful use of regulatory lag* to provide utilities with incentives for minimizing costs. The Committee finds, however, that Incentive Regulation, in its new incarnation, can go beyond these areas to include a narrower definition which requires that the program:

- incorporate a specific intent to provide incentives for regulated utilities;
- establish targets by which performance can be measured; and
- provide rewards and/or penalties to the utilities based on their performance as measured against pre-determined standards.

In stressing the use of incentives as a primary motivator, the impetus for improved utility performance shifts from the regulatory body to the utility itself. Incentive Regulation is used to simulate price competition, as though the utility operated in a competitive, non-regulated market. At the same time, the sense of price competition is achieved without placing the utility's earnings at risk.

* the time period between a filing for rate adjustments and the implementation. Ordinarily the rate remains fixed during this period.

The Need for Incentive Regulation

Regulators have relied on traditional procedures to encourage the efficient performance of utilities. One such tool is regulatory lag where the time period between a utility's need for increased revenues and final approval by the regulatory body of the requested rate increase, forces the utility to "tighten its belt". In recent years however, inflation in essentially all inputs (labor, capital, fuel, etc.) to a utility's operation has resulted in briefer intervals between rate cases. The potential effectiveness of regulatory lag as an incentive for efficient operation, therefore, has been reduced. The introduction of automatic rate adjustments programs (for example, fuel cost adjustment clauses) and interim rate relief has further weakened the potential incentive effect of regulatory lag. Further, these rapidly increasing costs, the limited resources of regulatory agencies, the complexity of issues confronting utilities and regulators including deregulation and the deteriorating financial condition of some utilities, have increased concerns that utilities may not be achieving the desired levels of production efficiency.

In addition, the role of the public utility is changing as new functions are being added. This is seen especially in the electric industry with the movement towards co-generation and conservation efforts that expand the firm beyond simple generation, transmission, and distribution. These new functions cast the utility in the role of purchaser of power, loan officer, and energy conservationist.

Together, these circumstances have stimulated new regulatory efforts, i.e. Incentive Regulation, to encourage efficiency in the utility industry. One study done by the Edison Electric Institute indicates that there are 21 existing incentive programs in electric utility regulation and that 14 commissions are actively considering other such programs.

Objectives of Incentive Regulation

An incentive program may be targeted at improving the overall cost performance of a utility or at improving any one specific area. Incentive programs have been initiated by regulatory agencies, utilities, and others. Typically, the utility-initiated incentive programs take the form of incentive compensation plans that provide rewards for selected managers on the basis of their performance with respect to corporate and individual performance targets.

The Committee finds that the primary objective of Incentive Regulation should be to ensure that quality service is provided to customers at the lowest possible price. In achieving this objective, the Committee finds that the elements of an Incentive Regulation program should:

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- transfer to ratepayers the greatest possible share of the economic benefits associated with performance improvements;
 - provide a utility with a reasonable opportunity to earn a fair return on its investment;
 - provide signals to utility management to plan and operate efficiently, both in the long-run and the short-run;
 - distribute to utility investors a share of the benefits or losses resulting from changes in the utility's performance;
 - be applied in a fair and objective manner so as not to penalize or reward firms arbitrarily for performance results that are beyond the company management's control;
 - more strongly promote cost minimization than the traditional regulatory process;
 - provide clear direction as to desired social goals for the industry such as energy conservation or universal service;
 - encourage management to bargain aggressively in purchasing the firm's factor inputs (labor, capital, fuel, other materials, etc.);
 - eliminate opportunities whereby management is able to manipulate the program to earn rewards which are not passed on as benefits to ratepayers;
 - be structured so that the distribution of benefits or losses between a company and its ratepayers can be controlled in a fair and equitable manner;
 - have expected cost-savings that exceed the costs of the Incentive Regulation program; and
 - be administratively practical with designated benchmarks for joint review by the utility and regulatory body.

Incentive Regulation in Maine

Aside from the traditional regulatory measures which now include oversight tools such as management audits, Maine has undertaken some initiatives which can be regarded as Incentive Regulation. The most obvious is in electric utility rate design improvements for energy conservation techniques and innovations. The statute (35 MRSA §94) authorizes the Commission to establish rules which may include

"procedures which provide incentives and disincentives". In addition, the Commission has enabled Northern Utilities to realize a 10% gain to its shareholders on the profits achieved from sales of gas to interruptable customers. The remaining 90% is used to decrease the company's rates. In practice, this division of profits appears to benefit both the shareholder and ratepayer, thus providing an incentive to management for increasing sales to interruptable customers. A third example is a general practice where the Commission has, in the past, allowed a utility that sells an asset and realizes a capital gain to divide the gain between the shareholders (10%) and the ratepayers (90%).

Conclusion

Although regulation intrinsically has some incentive or disincentive, the Committee notes that rewards are proven stimuli to increased motivation. Therefore, the Committee finds that the potential application of Incentive Regulation within Maine's regulatory schemata warrants a focused comprehensive assessment. To provide a structured forum to determine the direction Incentive Regulation can take in Maine, the Committee recommends that the Public Advocate convene a study group comprised of individuals from the PUC, interested utilities, and others to discuss the application of Incentive Regulation in Maine. The Committee's intent is that discussion be a partnership between those involved in reviewing Maine's approach to date, national efforts in the area and in targeting the potential for Incentive Regulation. Further, the Committee asks that a report on the status and findings to date of such meetings be made to the Committees on Audit & Program Review and Utilities by September 1, 1985.

STATUTORY	82.	Change the rate regulation of the consumer-owned electric utilities to expedite the rate-making process and minimize cost and because the current regulatory level is unnecessary for consumer-owned utilities.
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Consumer-owned electric utilities fall into two categories: municipal utilities and electrification cooperatives. In Maine, there are eight municipal electric utilities and five cooperatives, four of which are rural electrification cooperatives. (see Table 5)

Rural Electrification Cooperatives were created to provide service to rural areas which were unattractive to the investor-owned utilities. These consumer-owned municipal utilities and the cooperatives recover from their rate-payers the actual cost of operations and funds to repay debts, but they do not pay dividends to shareholders. These utilities are governed by elected boards.

Table 5

<u>Municipal Electric Utilities</u>	<u>Gross Intrastate 1983 Revenues</u>
Bangor (municipal company)	no retail customers
Lewiston (municipal company)	no retail customers
Houlton Water Company	\$3,701,857
* Kennebec Light & Power District	\$2,985,497
* Madison Electric Works	\$1,316,270
Van Buren Light & Power District	\$ 841,548
* Matinicus Plantation Electric Co.	\$ 50,649
Lubec Water & Electric District	\$ 643,652
 <u>Rural Electrification Cooperatives</u>	 <u>Gross Intrastate 1983 Revenues</u>
* Eastern Maine Electric Cooperative	\$6,690,768
Fox Islands Electric Cooperative	\$ 646,108
Union River Electric Cooperative	\$ 457,273
Swan's Island Electric Cooperative	\$ 188,653
 <u>Electrification Cooperatives</u>	
Isle au Haut Electric Power Co.	\$ 34,332

The firms designated by an asterisk in Table 5 have some capacity to generate a portion of their electrical service needs and purchase the balance at wholesale rates from the larger investor-owned utilities. The firms not designated by an asterisk have no generation capacity and purchase 100% of their electricity from the larger investor-owned utilities.

Under current Maine statutes, the rate regulation governing the municipal electric utilities and the cooperatives is at the same level as the investor-owned electric utilities (35 MRSA §69). In contrast, a different regulatory level is in place for municipal and quasi-municipal water districts (see 35 MRSA §72 and §73). This regulatory level enables water districts to set their own rates within certain parameters. Even though all rates and proposed changes must be filed with the PUC, the PUC does not necessarily have to hold an adjudicatory proceeding. Instead of an automatic

adjudicatory rate proceeding, such rate review would occur upon petition by 15% of the utility's customers or 1,000, whichever is less. The Commission retains jurisdiction over security issuances, accounting procedures, service abandonment and other areas.

The Committee finds that the consumer-owned electric utilities should be regulated at a level comparable to that of the municipal and quasi-municipal water districts. The effect of the Committee's recommendation will be to enable the consumer-owned electric utilities to set their own rates within specified parameters subject to review by the Commission upon petition by consumers. Some of the reasons and aspects of the Committee's proposal are as listed.

- In general, these consumer-owned utilities are small in size and less complex than larger utilities and therefore, require a different level of rate regulation.
- The majority of these consumer-owned utilities purchase power with only four having some generation capacity. The purchase and sale of wholesale power is regulated by the Federal Energy Regulatory Commission.
- Consumer-owned electric utilities have no conflict of interest between customers and stockholders as the customers of these utilities are its owners. This means that any conflict arising from determining allocation between ratepayers and stockholders is avoided.
- Consumer-owned utilities have elected Boards which provides an automatic incentive for lower rates because management is accountable to its membership.
- Customers do use the Board-election process to indicate their position as with Eastern Maine Electric Cooperative where some Board members were not re-elected.
- Board meetings are open and rate-changes under the Committee's proposal are subject to public notice and hearing requirements. Public notice rules must be met and lead time allowed for comment and participation. Files are open to public inspection and review by the PUC at anytime. A utility is under the scrutiny of local officials, residents, and the local press.
- Consumer-owned utilities do not have a profit motive.
- Statutory provisions will be retained regarding quality of service, construction, issuance of securities, investment

decisions, expansion of capacity, uniform accounting and reporting, the PUC's right to investigate or conduct a management audit, and in all other regulatory areas presently under the jurisdiction of the PUC.

- A statutory provision will be inserted in Title 35 paralleling 35 MRSA §73 for water districts which will set the parameters for consumer-owned electric utilities under which rates can recover costs.
- Customers of these utilities will have the right of appeal to the PUC regarding rates considered to be discriminatory, unjust and unreasonable.
- Consumer-owned utilities can choose to retain their present level of rate regulation under this proposal.
- Other provisions within the Rural Electrification Cooperative Act and the Maine Municipal Power Act provide additional safeguards to consumers.
- The Legislature and/or PUC can monitor and review the success of this new level of regulation for consumer-owned electric utilities at any time.

In making this recommendation, the Committee recognizes that electric utility regulation is more complex than the regulation of water utilities. The Committee notes that these small utilities can and do benefit from the technical assistance and guidance the Commission and PUC staff may provide during a rate hearing. However, the Committee finds that access to such Commission expertise will remain available to these utilities and should increase if the PUC staff spends less time in formal proceedings.

Further, the Committee finds that Maine is one of only five states which fully regulates municipal electric utilities. Thirty states have no authority over municipal rates and the regulatory authority in the remaining 15 states, is limited or inconsequential.

The Audit Committee received comment that rate cases for small utilities are often delayed by the larger, complicated proceedings before the Commission. In an attempt to address this problem, the Commission agreed to try and accelerate these proceedings. The Committee finds that enabling these consumer-owned utilities to set rates without automatic PUC review, is a mechanism which will both accelerate the proceeding and reduce the costs to the utility's customers.

Finally, to more precisely assess the effectiveness' of the present regulatory level for water districts, the Committee solicited comments from the Commission. The Commission's response indicated a concern that water utilities may be collecting revenues in excess of their base operating needs under 35 MRSA §§72 and 73. However, to substantiate this concern would require further study to first determine if such a problem exists and second, if the problem, once identified results from §72 rate regulation. The Committee recognizes the Commission's concern but also notes that these water utilities avoid the problem of regulatory lag and that work pressure on the Commission and staff is relieved. The Committee expects that this recommendation will achieve these benefits for consumer-owned electric utilities.

Therefore, the Committee recommends that the level of regulation for consumer-owned electric utilities be changes to expedite the rate-making process, minimize cost, and prevent what appears to be an unnecessary level of regulation by the PUC.

STATUTORY	83. Transfer safety jurisdiction for the Casco Bay Island Transit District from the PUC to the Department of Transportation to designate responsibility for public safety to the appropriate agency.
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The PUC under Maine Revised Statute and Private and Special Law is charged with the regulatory authority for the Casco Bay Island Transit District and restricting entry of other passenger or property transport services within the Casco Bay. PUC's jurisdiction over CBITD extends to both economic and safety regulation. The historical development of how the PUC acquired its jurisdictional authority over the Transit District is as follows:

1885 - The People's Ferry was created by legislative charter to provide ferry service between Cape Elizabeth and Portland. The Legislature determined tolls to be charged and other specifications, as the PUC did not exist at the time to regulate such entities (P.L. 1885, Ch. 495).

1913 -The PUC was given general jurisdiction over water transportation (which was included in the definition of "common carrier") (P.L. 1913, Ch. 129).

1919 -The PUC was given entry regulation jurisdiction for transportation in Casco Bay, prohibiting any other ferry service between Portland and Peaks Island from landing on certain portions of Peaks Island without the written consent of the PUC (P.L. 1919, Ch. 94). Any ferry service authorized to serve in Casco Bay was also a public utility subject to the general jurisdiction of the Commission by virtue of the definitions of public utility and common carrier.

1953 - PUC entry regulation was broadened to provide that no ferry could operate between Portland and a number of specified islands in Casco Bay without the written consent of the Commission (P.L. 1953, Ch. 116).

1963 - The PUC's authority to regulate entry of other ferrys was reaffirmed by requiring any ferry providing transportation services in Casco Bay to obtain a permit from the PUC and to abide by PUC regulation (P & SL 1963, Ch. 174).

1981 - The Legislature created the Casco Bay Island Transit District (CBITD).

Safety regulation of CBITD falls under the generic PUC statutes governing public utilities which cite that every public utility is:

"required to furnish safe, reasonable and adequate facilities." (35 MRS §51)

Private and Special Law 1963, Chapter 174 further provides that:

"all authorized carriers shall maintain safe and adequate service to the islands of Casco Bay under rules and regulations promulgated by the PUC as to rates, schedules, and safety ... " and ... "any vessel authorized to be used under this section shall be examined at least once each year by the PUC or its authorized agent."

The responsibility to oversee safety and to annually inspect vessels in Casco Bay was assigned to the PUC prior to the deregulation of transportation. At that time, the PUC retained staff qualified to perform these functions. Since 1981 with the deregulation of transportation, the PUC has no longer had this in-house expertise. As a compromise, the PUC and CBITD have an agreement that the Coast Guard will perform safety inspections. However, the Committee finds that the results of such inspection could be better monitored and interpreted by the Department of Transportation (DOT).

DOT has responsibility for the operation of the state ferry system. This includes five ferry services and requires that DOT ensure that all vessels meet proper safety specifications. The safety checks on these vessels is done by both DOT and the Coast Guard. DOT will dry dock the vessel to provide annual maintenance while undertaking a comprehensive safety check.

The Committee finds that the safety jurisdiction for CBITD should be transferred from PUC to DOT. As DOT has boat maintenance facilities, engineering expertise, and responsibility for the state ferry service, the Committee finds that DOT is better equipped to carry out safety and inspection functions. Further, DOT is required by law to have an authorized representative on CBITD's Board and to ensure the ongoing provision of service to this geographic area should CBITD become insolvent.

For these reasons and because passenger safety is a serious area which warrants ongoing scrutiny, the Committee recommends that safety jurisdiction for CBITD be transferred from PUC to DOT.

STATUTORY	84. Change the number of petitioners required to initiate a rate hearing concerning the Casco Bay Island Transit District before the Commission to be more representative of CBITD users.
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Private and Special Law 1981, authorizes CBITD to set rates and tolls subject to public notice and filing with the PUC. The PUC is required to regulate the rates and tolls of the Casco Bay Island Transit District (CBITD), but an adjudicatory hearing is held by PUC only upon petition to the Commission by ten ratepayers who request in writing an investigation of the new charges.

In reviewing the Commission's jurisdiction over CBITD, the Committee received testimony questioning the need for PUC's continued regulatory authority over the CBITD. The Committee has carefully considered the issue of PUC regulation over CBITD. The Committee finds a need for maintaining PUC's oversight authority over rates set by the CBITD, given CBITD's monopoly right in the Casco Bay area. However, the Committee recommends that the number of petitioners necessary to initiate a PUC hearing be increased.

The Committee notes that the five islands served by CBITD support a permanent year-round population of 1,397.

During the summer months the population of the islands grows six-fold to 8,500 persons. The summer population growth consists of island property owners who reside on the islands seasonally, and visitors who rent houses on the islands. Following is a breakdown of the 1980 population of the islands:

	<u>Permanent</u>	<u>Summer</u>
Peaks	812	4500
Long	136	1200
Great Diamond	14	180
Long Diamond	9	150
Cliff	93	360
Chebeague	333	2000
	<u>1397</u>	<u>8330</u>

The Committee finds that the requirement for ten signatures to initiate a rate proceeding is an unreasonably low number when contrasted against the number of passengers served by CBITD and the nature of petition requirements for other utilities. For example, rate hearings for water districts, which have the same level of rate regulation, are generated by a petition from 15% of the customers served or 1,000, whichever is less. For the CBITD, ten signatures represents less than 1% of the year-round population and substantially less of the summer passenger service. The Committee recommends that the number of petitioners required to initiate a rate hearing for CBITD before the PUC be increased from 10 to 100. Given both the cost of an adjudicatory proceeding to the rate payers and because 100 petitioners are a more representative sample of passengers serviced by CBITD, this should work to maximize Commission time and minimize ratepayer expense while still providing an accessible vehicle for public appeal.

STATUTORY 85. Repeal the provision which negates the Commission's regulatory authority in bankruptcy, foreclosure, or receivership proceedings.

At present, 35 MRSA §212 requires a public utility to secure the approval of the PUC prior to abandoning all or any part of its plant, property or system necessary or useful in the performance of its duties to the public, or discontinuing the service which it is rendering to the public by the use of such facilities. The last

sentence of this section, however, exempts a utility in bankruptcy from having to secure the approval of the Commission if it abandons its facilities or discontinues service under order of the court as follows:

"This section does not apply to any action under any order of a court having and exercising jurisdiction over a public utility in bankruptcy, foreclosure or receivership proceedings." (35 MRSA §212)

The Committee recognizes that should a utility file a petition in bankruptcy, one of the legal problems would be the jurisdictional conflicts between the bankruptcy court and the state regulatory agency.

For example, the jurisdiction of the federal bankruptcy court generally preempts state regulatory authority. Otherwise enforceable state regulations that conflict with the federal Bankruptcy Code are rendered invalid when applied to a trustee operating under the jurisdiction of the bankruptcy court. On the other hand, some federal courts have recently held that a bankruptcy trustee's abandonment powers should be restricted in some circumstances by state regulation.

Given the uncertainty as to how courts will resolve the apparent conflict between federal/state jurisdictional interests, the Committee finds that Maine statutes should not relinquish whatever vestige of authority the PUC may hold over a bankrupted utility, as it may not be in the state's interest. Therefore, the Committee recommends that 35 MRSA §212 be amended by repealing the last sentence which negates the Commission's authority in any bankruptcy, foreclosure, or receivership proceedings.

STATUTORY	86.	Recodify the statutes governing the Public Utilities Commission.
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The Committee has reviewed the PUC statutes in detail and has determined that the statutes:

- are poorly organized;
- contain many outdated provisions and definitions;
- are not organized to reflect current regulatory trends and

contain sections pertaining to areas which are no longer within PUC's jurisdiction;

- are spread between the hard bound volume and the pocket part making referencing cumbersome; and
- create confusion for infrequent users.

The Committee finds that Public Utility Law is complex and dynamic. Further, the importance of the field demands clarity and well organized statutes. Therefore, the Committee recommends that the Joint Standing Committee on Utilities recodify the statutes over the next year.

Finally, the Committee is concerned that no clearly articulated statement of purpose for the Commission exists in statute and intends that a statement be inserted during the recodification process.

STATUTORY 87. Amend or repeal the following statutes because they are outdated given the Commission's current function.

1. Proposed change: Amend 35 MRSA §1 from:

"The Commission shall adopt and have a seal and be provided with an office at the State House in which its records shall be kept."

to

"The Commission shall be provided with office space."

Reason: The Commission does not have office space in the State House.

2. Proposed change: Amend 35 MRSA §1 by repealing the following sentence:

"The Commission shall have custody and control of all records, maps and papers pertaining to the offices of the former Board of Railroad Commissioners and the former State Water Storage Commission."

Reason: The Commission no longer has the custody of these records.

3. Proposed change: Amend 35 MRSA §2 by repealing the words!

"the office of Coordinator of Atomic Development Activities or"

Reason: The reference to the Coordinator of Atomic Development is outdated.

4. Proposed change: Wherever the words "Chapters 1 to 17" appear, replace them with the reference "this Title".

Reason: The original PUC statutes were contained in Chapters 1 to 17 of Title 35. The statutes governing the PUC now extend beyond Chapter 17 and this language may now be restrictive.

5. Proposed change: Repeal 35 MRSA §9 which provides that:

"The commission shall collect information relating to the water resources of the State, the flow of rivers and their drainage area, the location, nature and size of the lakes and ponds in the State and their respective value and capacity as storage reservoirs, underground storage reservoirs and such other hydrologic data as they may deem of value in devising the best methods for the improvement of the natural storage basins of the State and the creation of new storage reservoirs, with a view to conserving and utilizing the water resources of the State."

Reason: A survey of the Department of Conservation, Maine Geological Survey, DEP, PUC, and OER indicated that state agencies other than the PUC were handling the collection of water resources information.

6. Proposed change: Repeal 35 MRSA §10 which provides that:

"The commission may confer with the director or the representative of the United States Geological Survey and accepts its cooperation in the prosecution of hydrologic and geological surveys, and the preparation of a contour topographic survey and map of the State."

Reason: The Maine Geological Survey in the Department of Conservation now handles this function.

7. Proposed change: Repeal 35 MRSA §11 and §12 which provide that:

§11 "Every person, firm or corporation before commencing the erection of a dam for the purpose of developing any water power in this state, or the creation or improvement of a water storage basin or reservoir for the purpose of controlling the waters of any of the lakes or rivers of the State, shall file with said commission for its information and use copies of plans for the construction of any such dam or storage basin or reservoir, and a statement giving the location, height and nature of the proposed dam and appurtenant structures and the estimated power to be developed thereby. In case a dam is to be constructed solely for the purpose of water storage and not for the development of a water power at its site, plans and statements shall be filed with the commission showing the extent of the land to be flowed, the estimated number of cubic feet of water that may be stored and the estimated effect upon the flow of the stream or streams to be affected thereby."

§12. "The commission shall publish in its biennial report an account of its operations and include such data as it may deem advisable bearing on the water powers and water resources of the State; and may report upon a comprehensive and practical plan for the improvement and creation of such water storage basins and reservoirs as will tend to develop and conserve the water powers of the State. The commission may report so far as its investigations will permit on the development of the water powers of the State with reference to the general plan proposed so that the Legislature may have before it a comprehensive summary of the possibilities that lie in the development of the water powers of the State as a natural resource, and the necessary steps that should be taken by the State to further increase and conserve them.

So far as any proposed plan devised by the commission for the improvement and increase of water storage basins or reservoirs shall include the construction of a dam or dams upon or at the headwaters of any river or watercourse, the commission shall ascertain and report as nearly as may be the water storage capacity in cubic feet of the reservoir to be created, the recorded rainfall on the watershed above such proposed dam, and the maximum, minimum and average flow of water per second in cubic feet during each month in the year in said river or watercourse. It shall, as nearly as practicable, estimate the increased power that would be developed by such proposed dam in the rivers or streams to be affected thereby."

Reason: Other state agencies and the PUC consider these statutory provisions to be outdated and unnecessary because:

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- the DEP is responsible for issuing permits for all dams except those which may not require permits;
 - the Maine Geological Survey provides technical information and review of dam permits on request;
 - the Office of Energy Resources reviews plans and makes comments to the DEP on economic, energy and environmental aspects of the proposals; and
 - other state agencies such as Marine Resources, Inland Fisheries, and PUC are involved as needed.

STATUTORY

88. Repeal the statute prohibiting a customer from recovering excess utility charges prior to the customer's application for meter inspection to avoid unnecessary confusion.

A utility charges a customer for service consumed by installing a meter which measures the amount of the service provided to the customer. If the customer disagrees with the amount billed by the utility, the person may request that the meter be inspected to determine whether the meter is faulty.

If the meter is determined to be faulty, one section in 35 MRSA Chapter 175 states that the consumer is not entitled to reimbursement of excess charges paid prior to the consumer's request for meter inspection as follows:

"but such consumer shall not be entitled to recover back in whole or in part from such corporation, municipality, district or person any sums paid for service prior to the filing of his application." (35 MRSA §2404)

This prohibition of reimbursement prior to the request for inspection appears to be contrary to the Commission's present practice.

The Committee finds that such a reimbursement prohibition is not in the customer's best interest and creates confusion given current practice. Therefore, the Committee recommends that the statute prohibiting the customer from recovering excess utility charges prior to the customer's application for meter inspection be repealed. Further, the Committee notes that Chapter 175 should be reviewed for relevancy.

STATUTORY 89. Repeal the language establishing the Older Citizens Lifeline Program because the program no longer exists. However, retain the statement of intent.

In 1975, the Older Citizens Lifeline Electrical Service Law was enacted (35 MRSA Chapter 4). The intent of this law was "to insure an adequate electric utility service to older citizens at a price they can afford." This law created a one-year demonstration program which allowed low income elderly customers in selected communities to obtain electricity at rates lower than those paid by other residential customers.

Under the program, eligible low income elderly customers received a Lifeline rate of three cents per kilowatt hour for the first 500 kilowatt hours used each month without any additional charge for fuel. Above 500 kilowatt hours per month, Lifeline rates were the same as regular residential rates and included the fuel charge. The loss in revenue to the utilities was recaptured through a surcharge on the utility bills of other customers.

The PUC was responsible for operating the lifeline demonstration program and for reporting to the Legislature. Six communities were chosen and the Commission received assistance from the Division of Community Services in determining eligibility and in enrolling applicants.

The demonstration program had mixed success and was not continued by the Legislature. The legislation establishing the program, however, was never repealed. The Committee agrees with the intent of the program but finds that the enabling legislation is outdated because the program no longer exists. Therefore, the Committee recommends that the language establishing the Older Citizens Lifeline Program be repealed but the statement of intent be retained.

STATUTORY 90. Require the Commission to review the state laws governing the Commission's operation at least every five years to remove out-dated legislation beginning with Fiscal Year 1985.

A search through the Maine Revised Statutes has documented numerous sections of law which charge the PUC with responsibilities that are no longer pertinent. For example,

25 MRSA §2433 which governs smoking restrictions states that:

"This section shall not apply to passenger buses, except when operated upon routes authorized by a certificate issued by the Public Utilities Commission."

and 28 MRSA §1053 which governs the transportation of intoxicating liquor states:

"It shall be unlawful for common carriers and contract carriers duly authorized as such by the Public Utilities Commission to transport liquor to state stores,"

Both of these sections are outdated given the deregulation of transportation and with it PUC's jurisdiction.

The Maine Revised Statutes contain many such references, too numerous to list. Given this fact and because PUC's jurisdiction encompasses several changing fields of regulation, the Committee recommends that the Commission review the state laws governing the Commission's operation at least every five years to remove out-dated legislation. This will ensure some systematic purge of the statutes of unnecessary legislation.



Office of Energy Resources

STATUTORY 91. Continue the Office of Energy Resources given the importance of energy issues to the State of Maine.

The 106th Legislature first established the Office of Energy Resources on a temporary basis in 1973 to provide research and planning activities for energy concerns. Discontinued after less than a year, OER was reinstated under the executive branch after the 1974 energy crisis. Its mission since that time has been:

- to formulate and maintain a state comprehensive energy resources plan;
- to provide comprehensive emergency planning to deal with possible inequities in fuel distribution in the advent of another protracted fuel crisis;
- to provide energy policy analysis and recommendations to the Governor;
- to receive and administer federal funding for specified energy conservation and resource development in the state; and
- to provide the public with ongoing efforts to disseminate up-to-date information on energy conservation developments and techniques.

In addition to the specifically delegated duties and responsibilities, OER is responsible for administering, overseeing and staffing the following functions:

- the State Energy Resources Advisory Board;
- the Advisory Council on Energy Efficient Building Performance Standards; and
- the Maine Energy Resource Development Fund.

OER had expenditures of approximately two million dollars in FY 1984. This figure is roughly equal to OER's previous expenditure peak of 1.7 million dollars in FY 1983. Since 1977, there has been a significant change in primary funding sources. In FY 1981, the federal government was responsible for 91% of total OER expenditures. This contrasts with a 5% contribution from the General Fund in that same year. In FY 1984, federal funds declined to a 17% share of total OER expenditures. This trend is illustrated in the following graph and table.

In FY 1984, OER had 29 full-time employees. In keeping with the dip in overall expenditures, the total number of employees is down from a high of 41 in FY 1981.

The Committee finds that the Office of Energy Resources has been successful in accomplishing its primary tasks of information dissemination and planning in the areas of energy conservation and alternative energy forms. The Audit Committee therefore recommends that OER be continued under the provisions of the Maine Sunset Law.

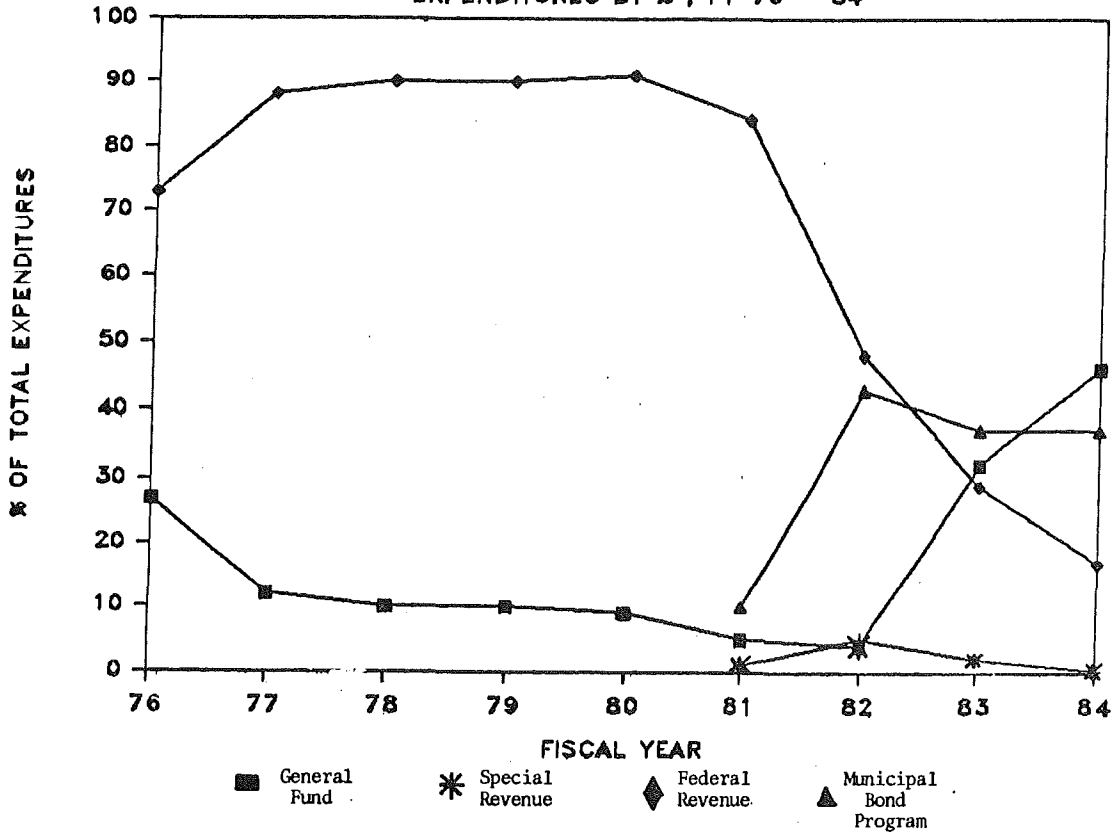
STATUTORY	92.	Repeal the statutory requirement that OER submit an annual report to the Legislature to prevent duplication.
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Under current law OER must submit a comprehensive energy plan every two years and must also submit an annual report on its activities and the implementation of the comprehensive plan. The most recent comprehensive Energy Resources Plan was issued by OER in September, 1983. The next report is due to be issued in September, 1985. OER has not yet submitted its annual implementation report to the Legislature for 1984.

The Audit Committee finds that every two years is a reasonable frequency to update the comprehensive plan given the current pace of energy development. The biennial plan provides information that is timely and also contains a report on the implementation of past recommendations. Therefore, the Audit Committee recommends the removal of the statutory requirement that OER submit an annual report to the Legislature to prevent duplication.

OER FUNDING SOURCES

EXPENDITURES BY %, FY 76 - 84



<u>FY</u>	<u>TOTAL EXPENDITURES</u>	<u>GENERAL FUND</u>	<u>% OF TOTAL</u>	<u>SPECIAL REVENUES¹</u>	<u>% OF TOTAL</u>	<u>FEDERAL REVENUES</u>	<u>% OF TOTAL</u>	<u>MUNICIPAL BOND PROGRAMS²</u>	<u>% OF TOTAL</u>
76	65110	17796	27			47314	73		
77	201859	24232	12			177627	88		
78	300112	28801	10			271311	90		
79	555106	56503	10			498601	90		
80	905566	86602	9			822964	91		
81	1539766	77478	5	14192	1	1296951	84	151145	10
82	1725041	72396	4	92917	5	824604	48	735124	43
83	1415102	450122	32	29229	2	406251	29	529500	37
84	2052300	942169	46	3202	.2	354338	17	752541	37

(1) The Special Revenues account represents funds received for printing and workshop costs with a one-time lump sum of approximately \$80,000 in oil over-charge money received in 1982.

(2) The Municipal Bond Program represents money administered through OER for the retrofitting of municipal buildings. The program has approximately \$330,000 left; all of which has been committed to various municipalities. All remaining monies from this fund should be expended by the end of FY 85.

STATUTORY 93. Amend the statutory qualifications for the Director of OER to accurately reflect the position responsibilities.

The chief executive officer of the Office of Energy Resources is the position of Director. The OER director is appointed by the Governor and has full cabinet status. The primary responsibilities of the position involve the administration and supervision of the office. Additional requirements include such non-technical functions as public relations work and maintaining contacts with other state and national officials.

Currently, state law requires that the Director of OER "shall have a background in engineering, economics, energy research or the administration of energy programs and shall be qualified to evaluate energy conservation or development proposals in terms of technical and economic feasibility" (5 MRSA §5004). Such specific requirements are the exception, not the rule, in standards for appointed positions.

The Audit Committee finds that such strict technical requirements are unnecessary given the job responsibilities. The Director has staff to provide the technical and economic analysis that OER requires. The administrative and supervisory skills which the Director must exhibit are essential to the successful functioning of OER and do not require a developed technical background. The Director should be familiar with and have experience in energy research or the administration of energy programs.

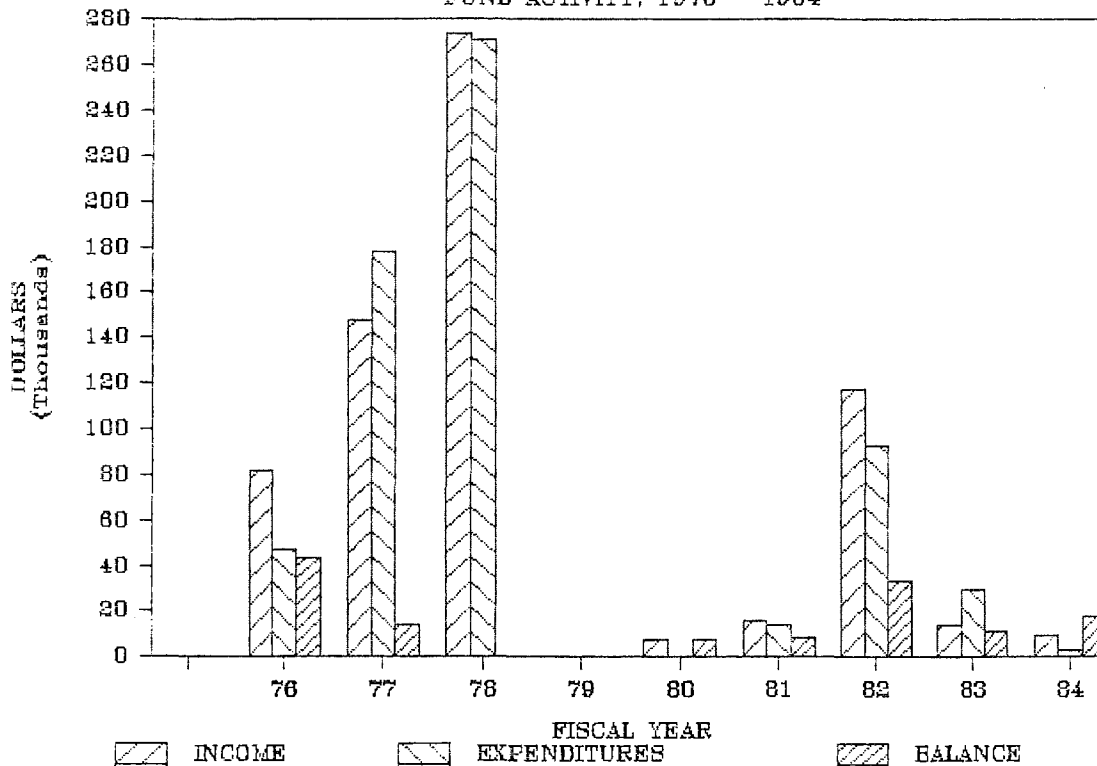
Accordingly, the Audit Committee recommends that statutory qualifications for Director of OER be amended to accurately reflect the position responsibilities.

STATUTORY 94. Clarify the statutes governing the Energy Resources Development Fund to clearly define the Fund's purpose.

The Energy Resources Development Fund (ERDF) was created in 1975 to receive money for energy research and development. Since that time, the ERDF has had a history of varied use:

ENERGY RESOURCES DEVELOPMENT FUND

FUND ACTIVITY; 1976 - 1984



The ERDF was used for the deposit of Department of Energy grants received by OER in 1977 and 1978. In 1982, \$80,000 in Chevron Oil overcharge monies were deposited in the ERDF. Through the years, the ERDF has been most frequently used as a special revenue account for the deposit of those monies which are neither federal nor state in origin.

The Committee recognizes the need for clarity in the ERDF statutes. The ERDF has been used as a vehicle to facilitate public/private efforts to encourage and fund energy research and development in the state of Maine. By continuing a fund which specifically accommodates private research monies, the Legislature will be furthering the development of energy resources at no additional cost to the state. Therefore, the Committee recommends that the ERDF statutes be clarified to reflect the Fund's original purpose to encourage energy research and development in Maine.

STATUTORY

95. Repeal the statutory requirements governing the submission of the Energy Resources Development Fund annual report to the Legislature, and amend statutes to require inclusion of this report in OER's biennial comprehensive energy plan to promote more efficient and relevant reporting processes.
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Title 5, §5005, requires OER to submit annually a report to the Legislature on the status of this Fund. In the past, use of the Fund has been sporadic, with a wide variation in application. The Committee has proposed statutory revisions for the Fund which will specify a research and development function. Given the limited purpose of the Fund and the relatively small amount of money involved, annual reporting on the status of the Fund represents unnecessary paperwork. Therefore, the Committee recommends that the current statutory requirements governing the submission of the Energy Resources Development Fund's annual report to the Legislature be repealed and that the statutes be amended to require inclusion of this report in OER's biennial comprehensive energy plan to promote more efficient and relevant reporting processes.

ADMINISTRATIVE

96. Identify those statutes which need strengthening for consideration by the Legislature and provide this information to the Committees on Audit & Program Review and Energy and Natural Resources by May 1, 1985.
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The Office of Energy Resources is empowered by Maine statute to:

- formulate and maintain a state comprehensive energy resources plan for the state;
- provide comprehensive emergency planning to ensure full and adequate statewide fuel distribution in the advent of another protracted fuel crisis;
- provide energy policy analysis and recommendations to the Governor;

-
- receive and administer federal funding for specified energy conservation and resource development in the state; and
 - provide the public with ongoing efforts to disseminate up-to-date information on energy conservation developments and techniques.

The statutes which pertain to the Office of Energy Resources are characterized by language which emphasizes desirability rather than authority. For example, a review of OER statutes reveals seven uses of the word "encourage" and six uses of the word "voluntary", words which prescribe a limited statutory mandate. The preponderance of this language is made clearer by the comparatively few instances of authoritative language, such as "empowered" (2), "mandatory" (1), and "enforce" (1).

The bulk of OER's current mandate is found in its planning and public information functions. Its most significant regulatory function is limited to fuel emergencies declared by the Governor.

The Audit Committee recognizes this lack of statutory authority and the limits that this lack of authority has placed on overall OER accomplishments. The Committee recommends that a list of statutes which OER feels need strengthening be developed by OER for submission to the Audit Committee so that further consideration may be given to the nature and scope of OER's statutory mandate.

ADMINISTRATIVE 97. Integrate more of OER's activities into the public school curriculum to teach children the importance of energy conservation and the use of renewable resources. Submit a report to the Audit & Program Review Committee by September 1, 1985.

Title 5 §5005, sub-§1, delegates the following educational function to OER:

"encouragement of voluntary energy conservation among state and local government, industry, business and the public for the most efficient utilization of available energy."

OER has made a significant effort to spread its message of energy

conservation to a wide range of people in Maine, including homeowners, business people, and local officials.

One of the objectives of the Energy Extension Service (EES), which serves as the out-reach component of OER, is to introduce conservation and renewable resource curricula into schools. Currently, EES is focusing on curriculum development and teacher training as the most effective means of reaching the largest number of students. OER estimates that 10% to 20% of total EES time is spent on school related projects.

The Committee finds that teaching the value of conservation and renewable resources to children, particularly of elementary school age, is a worthwhile, long-range investment, and that a greater percentage of EES staff time should be spent on school related projects. Children can learn more enthusiastically the habits necessary for conservation and may carry some of this enthusiasm home to their parents. Therefore, the Committee recommends that OER integrate more of its activities with the public school system to teach children the importance of energy conservation and the use of renewable resources, and report back to the Audit Committee with a proposed plan by September 1, 1985.

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- FINDING 98. The Committee finds the following regarding OER's emergency program efforts:
- decreased expenditure levels have diminished program readiness;
 - should a drastic fuel shortage occur, OER's emergency plans may encounter some difficulty in implementation and administration; and
 - Maine's dependence on imported fuel warrants continued fuel emergency planning.
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Several programs were created in the 1970's to help Maine cope with future emergency energy shortages. These programs are:

- State Set Aside which enables the Governor to require fuel suppliers to set aside 5% of total fuel delivered over a month's time;

- Emergency Planning which authorizes OER to create an emergency plan to insure a balanced fuel allocation within Maine; and
- Regional and National Emergency Planning which authorizes OER to coordinate emergency fuel shortage planning on a regional and national basis.

Justification for these programs can be found in Maine's comparatively heavy dependence on petroleum products to meet its current energy needs as shown in Table 6.

Table 6

Energy Needs By Type (1982)

	United States	Maine
Petroleum	42%	62%
Natural Gas	25%	
Coal	21%	2%
Wood		15%
Hydro	12%	10%
Nuclear		8%

compiled by: Audit staff

These programs were initiated with adequate staff support and funding. Since then, state and federal funding has been cut back. These cuts have resulted in a decline from the FY 1979 high of seven staff positions to the current (FY 1984) total of three positions on an as-needed basis. Since inception, the following funding developments for OER emergency programming have taken place:

- As reflected by total expenditures, funding has stabilized;

FY 79	\$ 55,689
FY 80	\$144,810
FY 81	\$ 18,819
FY 82	\$ 51,984
FY 83	\$ 58,137
FY 84	\$ 60,349

- As seen in the table below, reliance on federal funding in fiscal years 1979 through 1981 has given way to state assumption of most emergency programming costs;

Table 7

Expenditures by Funding Source

	<u>Federal</u>	<u>% of Total</u>	<u>State</u>	<u>% of Total</u>
FY 79	\$ 55,689	100	0	0
FY 80	144,810	100	0	0
FY 81	18,819	100	0	0
FY 82	11,580	22	\$40,404	78
FY 83	12,650	22	45,397	78
FY 84	13,244	22	47,105	78

compiled by: Audit staff

The practical effect of these developments is a stabilized level of funding which maintains these programs on a contingency basis.

The Committee finds that, given current funding levels, OER has done an adequate job in maintaining these programs for possible activation during a fuel crisis. These programs exist as contingency plans which will require temporary staff reassignment for implementation. Should a protracted fuel emergency occur, staff members have been designated on a rank order basis for temporary assignment.

Furthermore, the Committee finds that OER does not currently have adequate staffing to ensure the smooth and successful functioning of these programs should they need to be implemented. It would appear that this possible lack of optimal program functioning might result in a less than ideal situation for the citizens of Maine should another protracted fuel crisis occur.

The Audit Committee supports OER's effort to maintain these programs, and acknowledges that current funding levels are likely to inhibit the optimal implementation of these programs in the advent of an emergency.

ADMINISTRATIVE 99. Develop a training plan for those staff members who would be temporarily assigned to emergency programs during a fuel crisis and report to the Audit & Program Review Committee by September 1, 1985 with the plan.

In the existing contingency plans for emergency' program implementation, OER has specified the order in which staff members would be temporarily assigned to the emergency programs. However, the plan does not specify staff functions in the advent of a fuel emergency.

The Committee recommends further development of a clearly understood plan which outlines specific staff responsibilities in the advent of a protracted fuel crisis. The Committee finds that the development of such a plan would help to ensure the successful functioning of these programs at no additional state expense. Therefore, the Committee recommends the development of a training plan for those staff members who would be temporarily assigned to the emergency programs during a fuel crisis and report to the Audit Committee by September 1, 1985 with an outline of the plan.

STATUTORY	100. Eliminate required filing fees for obtaining certificates of energy efficiency for residential and non-residential buildings because these fees may serve as a deterrent to voluntary compliance.
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Under current law, any new building may be certified as energy efficient if a specific set of standards is adhered to during the construction process. The application of these standards is reviewed on a case-by-case basis by OER's Energy Audit Engineer for building standards. To obtain a Certificate of Energy Efficiency for any building, a filing fee of \$25 for residential buildings and \$50 for non-residential buildings is assessed.

OER's Energy Audit Engineer for building standards estimated that OER collected \$100 in fees during the past fiscal year (FY 1984). An additional provision in the statute empowers the OER Director to delegate this authority to qualified municipalities. The only municipality to utilize this provision is Portland and OER is not aware of any fees collected by that municipality.

The Audit Committee finds that this filing fee may actually serve as an impediment to compliance. By eliminating this fee, which has generated very little revenue, citizens may be encouraged to pursue the procurement of these certificates, thereby measurably increasing energy conservation efforts at no additional cost to the state. Therefore, the Committee recommends the elimination of required

filing fees for obtaining Certificates of Energy Efficiency for residential and non-residential buildings because these fees may serve as a deterrent to voluntary compliance.

ADMINISTRATIVE 101. Simplify the existing building standards for energy efficiency by eliminating existing climatic zones and emphasizing performance standards to strengthen voluntary compliance.

Presently, Maine has a voluntary set of building standards (10 MRSA §§1415 - 1420) regarding energy efficiency. As estimated by OER's Energy Audit Engineer for building standards, Maine's voluntary code has the following rate of compliance:

- 60% for single family dwellings;
- 70% for multi-family dwellings; and
- less than 50% for commercial/industrial buildings.

These figures were obtained via an OER survey which had a less than 10% response rate. Such a low rate casts reasonable doubt on the accuracy of these figures.

Maine's standards for energy efficiency for residential buildings are largely performance oriented, thus relatively uncomplicated and may have the effect of facilitating compliance. For example, section V-B of the Maine Energy Efficiency Building Performance Standards specifies that pipes carrying heated or cooled liquids through unconditioned spaces shall be insulated to achieve an overall thermal conductance of less than 50 BTU's per hour per linear foot of pipe. This particular performance standard for residential buildings does not specify what materials or method must be used to achieve the required result. It merely sets a standard to be achieved using whatever materials the builder chooses. Non-residential buildings, however, require a complicated adherence to both performance standards and the means by which these standards are accomplished.

Also, the existing set of building standards defines three distinct climatic zones within the state, each of which has different sets of standards. The Committee finds that these zones may discourage voluntary compliance with the standards.

The Audit Committee finds that simplification of the existing code may make the code more understandable, thereby facilitating a higher compliance rate and achieving greater energy conservation at no additional cost to the state. Therefore, the Committee recommends that the existing building standards for energy efficiency be simplified by eliminating existing climatic zones and emphasizing performance standards to strengthen voluntary compliance.

STATUTORY 102. The Committee finds that the Municipal Bond Program should terminate once the remaining funds are expended because this program has served its purpose.

The Municipal Bond Program was initiated by a bond issue approved by Maine voters in November 1979. The purpose of the program was to provide 2.5 million dollars for matching (50/50) grants to municipalities for the retrofitting of municipal buildings which were constructed before April 20, 1977.

This program, administered by OER, was utilized by many municipalities during 1980 and 1981, a period of time which coincided with the most recent fuel crisis. Since that time, demand appears to have leveled out and even declined.

The consensus is that the Municipal Bond Program was timely, well run, and quite successful. As of August 1984, all remaining funds had been committed. However, the Maine Municipal Association estimates that approximately \$250,000 would be required to fulfill the needs of those municipalities who have expressed an interest but have not received funding.

The Audit Committee agrees with the assessment that the Municipal Bond Program has been successful and that OER is to be commended for its implementation. However, given other bonding priorities, no compelling reason can be found at this time to justify its continuation. Therefore, the Committee finds that the Municipal Bond Program should terminate once the remaining funds have been expended because the program has served its purpose.

ADMINISTRATIVE 103. Design future energy conservation bond programs with provisions for grants to

small municipalities and for eligibility criteria to ensure that all towns can successfully compete for funds. Further strengthen monitoring efforts to ensure compliance.

In 1979, the Legislature provided for the sale of bonds to help local government entities finance energy conservation improvements in local government buildings other than schools or hospitals. By OER rule, for an improvement to be eligible for the program it must cost no more than \$2 per square foot of the improved building and must have a simple payback period of no more than 15 years.

Currently, municipalities receive no money until the project is completed, although OER will commit funds to projects in advance. While this is administratively simpler than granting the money at the beginning of a project and then insuring the work is carried out, small towns may be discouraged from using the program if they do not have the funds available. Therefore, the Audit Committee recommends that in future municipal programs, OER design a method for providing at least small municipalities with funds at the beginning of a project.

Currently, OER performs no systematic check on whether municipalities have expended the money according to guidelines. OER checks on them when an opportunity arises but does not make a rigorous sampling of projects. The Audit Committee recommends that future programs include at least a systematic sampling of projects to check for compliance.

State Board of Examiners of Psychologists

STATUTORY 104. Continue the State Board of Examiners of Psychologists to insure that the citizens of Maine have available the highest standards in the practice of psychology.

The Board of Examiners of Psychologists was created in 1953 (32 MRSA Chapter 243) for the purpose of certifying psychologists. Maine began licensing psychologists and psychological examiners when PL 1953, Chapter 243 was repealed and replaced with PL 1967 Chapter 321. As of May 1984, 250 psychologists and 95 psychological examiners were licensed by the Board.

The Board was established to provide Maine citizens with the highest standards in the practice of psychology. To achieve this goal, the Board has been given the powers and duties to license psychologists and psychological examiners, to investigate complaints and noncompliance, to establish rules, to conduct hearings, to employ assistants and to enter into contracts to carry out its responsibilities.

The Special Session of the 107th Legislature transferred the Board from independent status to the Department of Business Régulation. The Department provides administrative services which include: clerical staff, budgeting, accounting, purchasing, and office space. The Board clerk's salary is paid by the Department which is reimbursed by the Board on an actual use basis. The Commissioner of the Department of Business Régulation serves as liason between the Board and the Governor's Office.

Given the importance and nature of psychological services, the Committee finds that the State Board of Examiners of Psychologists should be continued. In the review, the Committee also found that the Board members were active and dedicated practitioners.

Further, the Committee finds that licensure of qualified psychologists and psychological examiners is necessary to ensure that the citizens of Maine are protected against false practitioners. Therefore, the Committee recommends that the State Board of Examiners of Psychologists be continued under the provisions of the Maine Sunset Law.

STATUTORY 105. Amend the statutory definition of "Psychologists" to reflect the changing role of practitioners.

In reviewing the present statutory definition of "psychologist" the Committee finds that the underlined portion of the definition below should be revised:

2. Psychologist. A person practices as a "psychologist" within the meaning of this chapter when he holds himself out to be a psychologist, or renders to individuals or to the public for remuneration and service involving the application of recognized principles, methods and procedures of the science and profession of psychology, such as interviewing or administering and interpreting tests of mental abilities, aptitudes, interests and personality characteristics, for such purposes as psychological evaluation or for educational or vocational selection, guidance or placement, or for such purposes as overall personality appraisal or classification, personality counseling, psychotherapy or personality readjustment (32 MRSA §3811).

This definition was established in 1967. Given the fact that the role of psychologist has expanded considerably over the past number of years, the underlined portion of this definition has become outdated. Therefore, the Committee recommends that the definition be changed by substituting the following words for those underlined:

"Services which may be provided by psychologists include diagnosing, assessing, and treating mental, emotional, and

psychological illness, disorders, problems and concerns, and evaluation and treatment of vocational, social, educational, behavioral, intellectual and learning and cognitive disorders. The above functions are performed through recognized psychological techniques such as but not limited to: psychological testing, psychological interviews, psychological assessments, psychotherapy, personality counseling, behavior modification, cognitive therapies, learning therapies, biofeedback, hypnotherapy, and psychological consultation to individuals and organizations."

This statutory change reflects the broad changes within the profession of psychology and will more aptly define the function and responsibilities of licensed psychologists in the State of Maine.

ADMINISTRATIVE 106. Expand the job function of psychological examiner to meet the overall psychological service needs of state and community mental health and mental retardation agencies as well as educational institutions.

The State Board of Examiners of Psychologists is responsible for the licensure of psychological examiners. A survey which the Committee sent to 118 community and state agencies that use or provide psychological services, indicated a need for an expansion of the role of psychological examiner. The profession of psychological examiners is currently limited by statute to "interviewing or administering and interpreting tests of mental abilities, aptitudes, interests, and personality characteristics, for such purposes as psychological evaluation or for educational or vocational selection, guidance or placement" (32 MRSA §3811).

The Committee also received testimony from both state and local community agencies. These agencies indicated the need for more flexibility in service delivery and that the job responsibilities of a psychological examiner need to be expanded. For example, the state-run agencies such as the Augusta Mental Health Institute and Pineland make daily use of psychological services. In the provision of these services, psychological examiners assist with the psychological rehabilitation of clients. It is not clear whether psychological examiners currently have the statutory authority to perform this type of service. A broadening of the responsibilities allowed by statute would enable psychological examiners, with appropriate supervision, to perform duties which are congruent with

their level of training and expertise. An expansion of the job responsibilities of psychological examiner will enable state and community agencies to provide quality service at a lower cost. The broadening of allowable job responsibilities of psychological examiners is also likely to ease some of the difficulties encountered by public schools in their acute need for adequate psychological services. Given appropriate supervision, schools will be able to use the services of Masters level professionals for the functions formerly filled exclusively by Doctoral level professionals with no concomitant drop-off in quality of services rendered.

Therefore, given the social and economic benefits which will result, the Committee recommends that the job function of psychological examiner be expanded to meet the overall psychological service needs of mental health and mental retardation institutions, community agencies, and educational institutions.

ADMINISTRATIVE 107. Charge the Department of Education, the Board of Education, the Board of Examiners of Psychologists, the Maine Psychological Association, and other interested or effected groups with submitting a recommendation to the Audit Committee by May 1, 1985 to resolve the problem of inadequate psychological services in the school system.

During the course of the Audit Review, the Committee became aware of a number of problems concerning school psychological services. These problems reflect the needs of school personnel and include:

- the difficulties encountered by schools with the Board's licensure process;
- the lack of fundamental knowledge of educational practice and theory possessed by some psychological practitioners working in the school system;
- the limited availability of practitioners to work in the school system; and
- the cost of securing psychological services.

A survey was sent by the Committee to all school superintendents which contained questions regarding the school's use and need for psychological services. The high 53% response rate to this questionnaire helps to document the conflict many school systems encounter between mandatory requirements to provide student diagnostic services and the difficulty in contracting for these services.

At this time, there are approximately 100 psychologists or psychological examiners practicing in the Maine school systems. Of these, only six are certified by the Department of Educational and Cultural Services (DECS). A school psychologist is a professional with training in psychology and education. Several statutes specify situations which require the involvement of a school psychologist. For example, the special education law involves school psychologists in the evaluation of some children and the formulation of their individual education plans.

In recent years, DECS has expended over one million dollars annually to reimburse schools for psychological services. To receive such reimbursement, the school must have any contract for psychological services approved by the Department.

In the past neither the DECS nor the Board has worked together to certify school psychologists. This resulted in a situation which required a dual licensure/certification process for those professionals who wished to be titled "school psychologist". The present DECS certification process is voluntary.

These problems have existed for a number of years. Many efforts have been made by groups and individuals to find resolution. At the conclusion of the research phase of the Committee's review, a desirable resolution still had not been achieved. The Committee finds that all interested parties need to have closer communication in their mutual efforts to resolve this problem. Therefore, the Committee recommends that the Department of Education, the Board of Education, the Board of Examiners of Psychologists, the Maine Psychological Association, and other interested or effected groups be charged with submitting a recommendation to the Audit Committee by May 1, 1985 to resolve the problem of inadequate psychological services in the school system.

STATUTORY 108. Increase the membership of the Board of Examiners of Psychologists by three members through the addition of a

second public member and two professionals to ensure broader representation. Further, require that at least one member be a Psychological Examiner.

STATUTORY 109. Reduce the membership term on the Board from five years to three years to encourage greater participation in the licensing process.

The State Board of Examiners of Psychologists now has six members appointed by the Governor who serve five year terms. Five members of the Board are statutorily required to be either licensed psychologists or psychological examiners; the sixth is a public member.

Currently, all five professional members of the Board are licensed psychologists; at this time there is no member exclusively licensed as a psychological examiner.

The Committee finds that there is broad support within the profession itself for requiring at least one Board member to be a psychological examiner. A survey conducted by the Committee of all licensees supports this finding as follows:

- out of 56 psychological examiners responding, 89% indicated that the examiners should have mandatory representation on the Board;
- out of 162 psychologists responding, 36% indicated that the examiners should have mandatory representation on the Board; and
- finally, 26% of all the psychologists responding on this issue indicated that they did not have strong feelings one way or the other.

Given the significant support of effected practitioners and since psychological examiners represent approximately 28% of all those licensed by the Board as of April 1984, the Committee recommends that at least one member of the Board be statutorily required to be a psychological examiner.

Furthermore, given the previously stated need (see Recommendation #105 and Recommendation #106) to broaden the definitions of

practitioners, the Committee recommends that further appointments of Board membership accurately reflect the broad field of psychological practice in the State of Maine. To achieve this goal, and to address the increasing workload of the Board, the Committee recommends that Board membership be expanded from six to nine members. Of these three new members, two shall be professional members and the third shall be another public member. The Committee received testimony from the Psychological Association, the Board itself, and the Department of Mental Health & Mental Retardation supporting the proposed expansion of the Board.

Finally, though the current Board is active and committed, the Committee notes that five-year terms may serve as a deterrent to attracting new members. Therefore, the Committee is recommending that the membership term on the Board be reduced from five years to three years to encourage greater participation in the licensing process.

STATUTORY 110. Reinforce the Board's authority to consider degrees other than those granted by Departments of Psychology, as meeting the criteria for licensure.

Prior to 1984, Maine statutes contained a provision specifying that the Board could grant a license if the applicant's degree was considered to be academically equivalent to that of a psychology degree. The Board's own rules and regulations also allowed for such an equivalency.

During the First Regular Session of the 111th Legislature, the language allowing equivalency was amended. Theoretically, the change still provides for an equivalency determination. In addition to the statutory change, the Board tightened its rules by 1) removing the statement of equivalency, and 2) expanding the psychology requirement from 60 hours to 72 hours.

As a result of this change in statutory language, a problem came before the Business Legislation Committee in the Second Regular Session of the 111th Legislature. Students enrolled in a Counselor Education program at the University of Maine were concerned that their degree would no longer be considered as meeting the equivalency requirement. At that time, the Board and Association testified that the students' concerns were unfounded given the Board's flexibility to consider individual degrees on a case-by-case basis. In addition,

the Business Legislation Committee, when voting "Leave to Withdraw" on this bill, noted that the issue would come before the Audit and Program Committee in its Sunset review.

The Committee finds that the Board's rules are unclear as to the status of equivalency programs. This is exemplified by the duplication in rules of accreditation provisions used by the American Association of State Psychology Board which include, among other criteria, that a program is administratively housed, identified and labeled as a psychology program. Further, the Committee finds that the statutory change created an ambiguity in the consideration of equivalency degrees.

Since that time, the Association has forwarded to the Committee the following recommendation:

"We recommend inclusion in the law of a specific requirement to the Board of Examiners to ensure that individuals who may have comprehensive training in psychology, but a degree that is labeled something else (such as an Ed.D.) can meet the requirements for licensure. Our language requires the Board to recognize that comprehensive training in psychology may be obtained in administrative units other than a Department of Psychology. We would require the Board to establish a more comprehensive list of colleges than they are currently using.

Individuals with degrees from institutions not on that more comprehensive list would be evaluated by the Board on a case-by-case basis."

In addition to the Association's proposal, the Committee has received comment from other individuals and agencies indicating that such clarification is desirable. Therefore, the Committee recommends adopting the proposed legislation to reinforce the Board's authority to consider degrees other than those granted by Departments of Psychology, as meeting the criteria for licensure.

STATUTORY 111. Authorize the Board of Examiners of
Psychologists to promulgate rules
regarding requirements for continuing
education.

Maine does not have any current statute which provides for continuing education requirements in the licensing process for

psychologists or psychological examiners. During its review of the Board, the Committee received testimony which supports the inclusion of continuing education requirements in the licensing process. Both the State Board and the Maine Psychological Association support an annual requirement of 20 hours of continuing education courses. In addition, the Committee conducted a statistically reliable survey (72% return rate of current Board licensees) which indicates strong support for continuing education requirements.

A review of other states reveals that at least 14 states currently have continuing education requirements for psychologists. These requirements range from 5 hours per year in West Virginia to 50 hours per year in the state of Washington. In addition, a significant number of state licensing boards in Maine have continuing education requirements. These include the Maine State Board of Social Worker Registration, Speech Pathologists and Audiologists, and the Board of Registration in Medicine.

The Committee finds that reasonable continuing education requirements can be a mechanism for ensuring the ongoing development of a practitioner's skill and competency. Therefore, the Committee recommends that the Board of Examiners of Psychologists be authorized to promulgate rules regarding continuing education requirements.

STATUTORY 112. Remove the statutory provision which caps the license fee in order to enable the Board to set fees which cover the cost of operation.

The Board of Psychological Examiner's actual annual revenues and expenditures for the past three years and the projected revenues and expenditures for FY 1985 and FY 1986 are shown in Table 8.

Table 8

	<u>1982</u>	<u>1983</u>	<u>1984</u>	<u>Projected</u> <u>1985</u>	<u>1986</u>
BAL. FOR.	\$ 5,393	\$ 9,143	\$ 4,260	\$ 9,589	\$ 139
TOT. REV.	\$15,258	\$ 6,800	24,217	6,000	25,975
TOT. EXP..	\$11,543	\$11,683	18,888	15,450	15,150

Revenues are generated from license application, examination, and renewal fees as provided in statute as follows:

"An application fee and an examination fee may be established by the Board in amounts which are reasonable and necessary for their respective purposes." (32 MRSA §3833)

Further, §3835 which governs biennial registration states that:

"Every person licensed under this chapter shall, on or before the biennial expiration date, submit an application for license renewal together with the biennial renewal fee of up to \$80."

These revenues are used to fund the administrative costs of the Board's operation. The Committee commends the Board's efforts to minimize expenditures by voluntarily waiving their right to receive per diem.

The Board fees within recent years have been subject to legislative action. An amendment in 1983 increased the fee from a \$40 cap up to an \$80 cap. However, with the proposed addition of three new members and the concomitant increase in Board workload, the Committee finds that the Board may need even greater flexibility in establishing fees than the statutes presently provide. Therefore, the Committee recommends that the statutory provision which caps the license fees be removed to enable the Board to set fees in rules to cover the cost of operation.

By general agreement, the Board members are not paid per diem which has helped to keep administrative costs down. However, with the addition of three new members on the Board and the potential for increased activity, the Committee can foresee that the Board may need to increase license fees. Therefore, to enable the Board to cover its costs of operation, the Committee recommends that the statutory provision which caps the license fee be removed to enable the Board to have greater flexibility in setting fees through rules and regulations.

STATUTORY	113.	Provide in rules and regulations more flexibility concerning the granting of temporary licenses.
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STATUTORY	114.	Establish in rules and regulations an appeals process to include a 60-day time limit for decision by the Board.
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Under present procedure, after the Board reviews an application for temporary licensure, the Secretary of the Board notifies the applicant in writing either to set an appointment for an oral examination or to request more information. Once the applicant's file is complete and the Board has conducted an oral examination, a temporary license may be granted. Should the oral examination be failed, the applicant is notified and the particular deficiencies are indicated.

The temporary license certificate authorizes an applicant to practice as a psychologist or psychological examiner in the State of Maine until the written test is taken. This practice is subject to supervision and is valid for no more than one year. Upon passage of the written exam, the applicant receives permanent licensure and upon failure, the temporary license is suspended or revoked. An applicant can appeal the Board's decision at various points in the licensure procedure.

During the Audit Review, the Committee received testimony indicating that the temporary licensure is cumbersome and increases the difficulty for agencies and schools to attract qualified out-of-state candidates. In addition, various agencies, including the Psychological Association, advocated a change in the Board's regulation to expedite the licensure process and enable persons to be hired and obtain supervision prior to final licensure.

Further, the Committee received testimony in support of the Board holding Appeals Hearings within sixty (60) days of the contested board decision. In view of the concern over these areas, the Committee is recommending that the Board promulgate rules to expedite the temporary licensure process and that the statutes be amended to require that an Appeals Hearing be held by the Board within sixty (60) days of receipt of request from the applicant.

ADMINISTRATIVE 115. Continue efforts to organize and maintain a complete record keeping system.

When the Committee first began its review of the Board, it was apparent that the system used by the Board for gathering relevant statistics was inadequate. Little coordination existed between the Board and the Department of Business, Occupational and Professional Regulation. As a result of this lack of coordination, the statistics collected were inconsistent, confusing and incomplete.

Since then, however, a great deal of time has been spent by Board members and the Department in reorganizing the Board's records and in compiling accurate statistics. The staff of the Department of Business, Occupational and Professional Regulation indicates that they plan to computerize various board records.

The Committee recommends that the State Board of Examiners of Psychologists and the Department of Business Regulation continue their efforts to organize and maintain a complete record keeping system.

Saco River Corridor Commission

STATUTORY 116. Continue the Saco River Corridor Commission because it serves a valuable function in regulating land and water use in the Saco River Corridor.

The purpose of the Saco River Corridor Commission is to provide regulatory protection to the Saco, Ossipee and Little Ossipee Rivers, an area which includes 130 miles of river and approximately 9,000 acres of land. The Commission also routinely provides information about the Corridor.

The Commission regulates land and water use in the areas of water quality and supply, fish and wildlife, soil erosion, flooding, esthetics, navigation and overcrowding in order to ensure public health, safety, and welfare (38 MRSA, Ch. 6).

The Commission consists of 40 members; one member and one alternate from each municipality within the Corridor. The members serve three-year, staggered terms without salary or reimbursement for expenses.

The Commission staff consists of one full-time Executive Director and one part-time Administrative Assistant, headquartered in Cornish.

The General Fund appropriation for FY 1984 was \$10,400. With county, municipal and miscellaneous funding, the Commission's available revenue in FY 1984 was \$31,400.

The Committee finds that the Saco River Corridor Commission serves a valuable function in regulating land and water use in the Saco River Corridor and recommends that the Commission be continued under the provisions of the Maine Sunset Law.

STATUTORY 117. Designate the Saco River Corridor Commission as a corridor commission

under the provisions of the Maine Rivers law to integrate the Commission's mandate with statewide efforts.

Title 30, Ch. 203-A, §1961 et. seq. was enacted by the Legislature in 1983 as part of the Maine Rivers law. Its purpose is to allow for the formation of a river corridor commission by two or more municipalities along a river segment. Although several groups abutting various rivers in the state have expressed interest in forming a river corridor commission pursuant to this Chapter, no corridor commissions have yet been created.

Any river corridor commission designated under Chapter 203-A is required to prepare and submit a biennial budget sufficient to cover operating and other expenses to the Commissioner of Conservation. This Chapter further requires the Commissioner of Conservation to request funds to match the funds raised by the corridor commission, up to a \$25,000 matching amount in any one year.

The Saco River Corridor Commission was established prior to the enactment of the Maine Rivers law. It is the only functioning river corridor commission in the state and has operated successfully with limited resources since its establishment eleven years ago. Therefore, to integrate the SRRC with the Maine Rivers law, the Committee recommends that the Saco River Corridor Commission be designated as a corridor commission under the corridor commission provision of the Maine Rivers law.

STATUTORY 118. Repeal the Commission's statutory responsibility to issue Certificates of Compliance as the Commission is unable to perform this function due to limited resources.

The law requires that the Commission issue a permit for development activities within the Corridor. Further, 38 MRSA §964 declares that a structure in the Corridor that has received a permit may not be used or occupied until the Commission has reviewed the project and issued a Certificate of Compliance. The Certificate of Compliance affirms that the project has been built in accordance with the permit. After receiving a request for a Certificate of

Compliance from the permittee, the Commission is required by statute to inspect the project and issue a Certificate within 30 days.

In practice, the Commission is not able to keep up with the demands for Certificates of Compliance due to lack of time and resources. In 1983, approximately 60 permits and only 17 Certificates were issued. Accordingly, about 40 1983 permittees are now occupying or using their structures illegally. The Commission now has a backlog of 200-300 permits accumulated since 1977 for which no Certificates of Compliance have been issued.

The Committee recognizes the importance of ensuring conformance with permit requirements for the protection of the resource. However, the Committee is concerned that because the Commission does not have adequate resources to monitor and enforce compliance, permittees have no choice but to occupy their structures illegally.

Therefore, the Committee recommends that this requirement be repealed. As the Commission will retain its authority to enforce compliance, the Committee expects the Commission to conduct enforcement as vigorously as resources allow.

Soil and Water Conservation Commission

STATUTORY	119.	Continue the Soil and Water Conservation Commission in order to address the loss of fertile topsoil in Maine and the degradation of the land due to poor erosion control practices.
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The Soil and Water Conservation Commission was established by the 90th Maine Legislature in 1941 in response to the Federal Soil Conservation Act passed in 1935. The Commission's purpose is to assist Maine farms to expand, improve, and prosper by providing for the conservation of the soil and water resources of the state. The focus of the Commission's work has been to address soil erosion and poor animal waste management which leads to water pollution.

The Commission itself meets once per month and consists of 11 members: The Dean of the College of Life Sciences and Agriculture at University of Maine at Orono; the Commissioners of Agriculture, Conservation, Inland Fisheries & Wildlife, and Marine Resources, who serve ex officio, and six soil and water conservation district supervisors. The federal Soil and Conservation Commission Conservationist works with the Commission as a technical advisor. The Commission works closely with farmers in the soil and water conservation districts on the local level as well as federal conservation agencies such as the U.S. Soil Conservation Service and the U.S. Agricultural Stabilization and Conservation Service.

The Commission has three staff people, an executive director, a soil scientist, and a secretary, all located within the Department of Agriculture. The staff assists the Commission in setting priorities and implementing its soil erosion control efforts in the state. The Commission has produced many significant soil management informational materials for use by farmers, state and local planning boards, private forestry companies, and commercial, industrial, and residential developers. The Commission's soil scientist reviews permit applications submitted to Maine's Department of Environmental Protection, the Land Use Regulation Commission, and the Department of Inland Fisheries & Wildlife to provide a soil conservation perspective. The soil scientist also provides technical services directly to the local soil and water conservation districts.

Another of the Commission's activities is the selection and funding of innovative soil and water conservation projects in the state. This program was authorized by the 111th Legislature, with an appropriation of \$100,000 in FY 1984 and \$100,000 in FY 1985 to fund these projects on a competitive basis. In the first year, 43 project applications were submitted to the Commission, totalling \$288,238, with \$51,022 in matching funds from local or county sources. The Commission awarded grants to 21 projects including: demonstrations of new minimum till techniques, a controlled experiment on the effects of Velpar in blueberry production, projects experimenting with new uses of industrial waste products in agriculture, and the development of brochures to help farmers and municipalities dispose of potato waste and septage.

The Commission itself received a General Fund legislative appropriation of \$239,734 in FY 1984.

The Committee finds that the efforts of the Soil and Water Conservation Commission have contributed to reducing soil erosion in Maine by 18% since 1979. Despite these efforts, soil erosion continues to be a serious problem in Maine, increasing at an average rate of five tons/acre/year, substantially above the rate at which

soil is replaced by natural processes. Accordingly, the Committee finds that the efforts of the Soil and Water Conservation Commission are needed to continue to address this loss of fertile topsoil and the degradation of the land due to poor erosion control practices and recommends that the Commission be continued under the Maine Sunset Law.

ADMINISTRATIVE 120. Require that ex officio commissioners appoint a single delegate to attend Commission meetings in their absence to ensure regular, routine, and consistent participation at SWCC meetings.

There are four ex officio commissioners who serve on the Soil and Water Conservation Commission. They are the state agency Commissioners of Agriculture, Conservation, Inland Fisheries & Wildlife, and Marine Resources.

Commissioners with ex officio status may delegate a representative to serve in his/her absence.

The Committee finds that the delegates to the SWCC often vary, resulting in uneven attendance and a different set of Soil and Water Conservation Commissioners and Commissioner-delegates at Commission meetings. This situation detracts from the effectiveness of the Soil and Water Conservation Commission. Therefore, the Committee requires that ex officio commissioners appoint a single delegate to attend Commission meetings in their absence to ensure regular, routine, and consistent participation at SWCC meetings.

STATUTORY 121. Submit an annual report on the status of the Challenge Grant Program to the Joint Standing Committee on Agriculture for public hearing and critique.

The Challenge Grant Program was established by the 111th Legislature to fund innovative soil and water conservation projects with \$100,000 appropriated for FY 1984 and FY 1985. (12 MRSA §206) The Soil and Water Conservation Commission administers this grant by reviewing project proposals according to established criteria. The

projects selected meet the legislatively mandated criteria of need, boldness of approach, program feasibility, reproducibility and verification of results.

In FY 1984, 43 project applications were submitted, valued at \$288,238 with \$51,022 committed in matching funds from local or county sources. Twenty-one projects were selected for funding including demonstrations of new minimum till techniques, a controlled experiment on the effects of Velpar in blueberry production, a number of projects experimenting with new uses of industrial waste products in agriculture, and the development of brochures to help farmers and municipalities dispose of potato waste and septage.

However, the legislation in enacting the Challenge Grant Program, did not require the submission of a status report to the Legislature describing the progress and impact of the program or the benefits to the people of Maine.

The Committee finds that the program is valuable and that its progress should be reported to the Legislature and the people of Maine. Therefore, the Committee recommends that a year-end report on the status of the Challenge Grant Program be prepared by the Soil & Water Conservation Commission for public hearing before the Joint Standing Committee on Agriculture to solicit public comment and provide an ongoing critique of the program.

Atlantic Sea Run Salmon Commission

STATUTORY	122. Continue the Atlantic Sea Run Salmon Commission for one year pending further review by the Audit & Program Review Committee.
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The Atlantic Sea Run Salmon Commission was created in 1947 to restore Atlantic Salmon to the rivers of the state. As a result of industrial construction and various forms of water pollution, the State of Maine has experienced a decline in the total population of Atlantic Salmon. However, since the establishment of the Commission, the numbers of Atlantic Salmon in Maine waters have increased considerably.

As recently as 1947, less than 10% of the historical salmon habitat was accessible to salmon. The size of the salmon resource at this time probably ranged from 1,500 to 2,000 fish. In 1984, the picture has significantly improved. About 36% of the original Atlantic Salmon habitat has been made accessible and the salmon population now ranges from 4,000 to 7,000 fish. For the balance of this century, the Commission's long-range goal is to restore 99% of the historical salmon habitat and produce home water returns of 20,000 to 35,000 salmon.

The Commission currently employs six full-time personnel. Expenditures for FY 1984 totalled \$232,000; with \$174,000 from the General Fund, \$50,000 from Federal Funds and the balance from Special Revenues.

Due to time limitations, the Audit Committee was unable to review the Atlantic Sea Run Salmon Commission. Therefore, the Committee recommends that the Atlantic Sea Run Salmon Commission be continued for one year pending a review by the Audit Committee.

STATUTORY 123. Repeal and replace the statutory language governing the Atlantic Sea Run Salmon Commission to reflect its increasing responsibilities.

The Atlantic Sea Run Salmon Commission is established by 12 MRSA §§6251-6253. The current makeup of the Commission consists of the Commissioner of Marine Resources, the Commissioner of Inland Fisheries and Wildlife, and a third public member appointed by the Governor. The Commissioner of Inland Fisheries and Wildlife is designated as the permanent chair and has sole authority over any administration and financial matters of the Commission.

The Committee finds that the current statutes establishing the Atlantic Sea Run Salmon Commission do not accurately reflect the Commission's present authority and responsibilities. Recently, the Commission and staff from the Attorney General's Office have presented revised statutory language for the Audit Committee's consideration. This language differs from the original statute by:

- charging the Commission with the research, planning, management, restoration and propagation of the Atlantic Sea Run Salmon;

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- providing for appropriate compensation for the public members;
 - clarifying that Commission decisions shall require at least two affirmative votes and that the Commission has the power to delegate authority;
 - enabling the Commission to hire staff;
 - authorizing the Commission to enter into contracts or other agreements and to receive and expend funds;
 - establishing the Commission's authority to promulgate regulations;
 - clarifying that any marine patrol officers, wardens, or other law enforcement officers may enforce the Commission's regulations; and
 - strengthening the Commission's authority to acquire property.

The Committee recommends that this revised language be enacted to clarify and strengthen the statutory provisions governing the Atlantic Sea Run Salmon Commission.

Maine Sardine Council

STATUTORY	124. Continue the Maine Sardine Council for one year pending review by the Committee on Audit & Program Review.
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The Maine Sardine Council was established in 1951 as an independent state agency authorized by the Sardine Tax Law (36 MRSA, Chapter 713, §§4691-4700). Its purpose is to promote, develop and stabilize the Maine Sardine Industry. The primary responsibilities of the Sardine Council are to foster and promote better methods of production, packing, merchandising and advertising in the industry through publicity, sales promotion, quality control, export market expansion, market and technical research and to develop, cooperate

with and enter into joint projects with state and federal agencies, national and international trade and other service organizations.

The Council presently consists of seven members (there can be no more than nine nor less than seven) serving five-year terms. Members are sardine packers operating within the state, appointed by the Commissioner of Marine Resources. The Council is staffed by four full-time, permanent employees: an Executive Director, Food Technologist, Food Inspector II, and Clerk Steno II. Seasonal employment includes: three Laboratory Assistants, a Quality Grader I, and a Data Control Clerk; all hired for various lengths of time. Additionally, the Council reimburses the Department of Agriculture for two full-time permanent employees; a Food Inspector Supervisor I and a Sardine Quality Grader II.

The Council is funded by dedicated revenue in the form of a 30 cent tax on each case of sardines. In FY 1984, the Council received \$222,470 in revenues and expended \$185,342. Due to time limits, the Committee on Audit and Program Review did not have the opportunity to review the operation of the Maine Sardine Council. Therefore, the Committee recommends that the Maine Sardine Council be continued for one year pending review by the Committee on Audit & Program Review.

Atlantic States Maine Fisheries Commission

STATUTORY	125.	Continue Maine's participation in the Atlantic States Marine Fisheries Commission for one year pending review by the Committee on Audit & Program Review.
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The coastal states of the continental United States are represented by three separate commissions: the Atlantic States Marine Fisheries Commission (ASMFC), Gulf States Marine Fisheries Commission, and the Pacific Marine Fisheries Commission.

The Atlantic States Marine Fisheries Commission (ASMFC) was established by a compact entered into by the various Atlantic Coastal States beginning in 1941. The participating states are Maine, New

Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia, and Florida.

The Commission's main focus is to provide for better utilization of marine, shell, and anadromous fisheries through an interstate compact of these 15 Atlantic coastal states.

Although the states determine all policy in their respective jurisdictions, the Commission provides a forum for the discussion and resolution of common problems and assists the states in developing joint programs. In addition, the Commission participates in the State-Federal Fisheries Management Program whose goal is to promote uniform management and protection of the nation's fisheries resources and viable commercial and recreational fishing industries.

The Commission is comprised of three members from each participating state as follows: the executive officer of the administrative agency charged with the conservation of marine fishery resources (e.g. Commissioner of Marine Resources), a member of the state Legislature designated by the commission or committee on interstate cooperation of such state, and a public member (Governor's appointee). The ASMFC has 45 Commissioners who meet annually to establish program direction and review progress of previously designated priority programs. Due to time limitations, the Joint Standing Committee on Audit and Program Review did not have the opportunity to review Maine's participation in the Commission. Therefore, the Committee recommends that Maine's participation in the Atlantic States Marine Fisheries Commission continue for one year pending review by the Committee on Audit and Program Review.

Lobster Advisory Council

STATUTORY	126.	Continue the Lobster Advisory Council for one year pending review by the Committee on Audit & Program Review.
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The Lobster Advisory Council was established in 1979 to "help conserve and promote the prosperity and welfare of the state and its

citizens and the lobster fishing that helps to support them" (12 MRSA §6462). To accomplish these goals, the Council advises the Commissioner of Marine Resources on lobster industry matters, reviews current lobster research programs and plans for research on stock, and annually submits to the Commissioner and the Marine Resources Advisory Council its recommendations on those programs and plans.

The Council consists of eleven members; each appointed by the Governor for three-year terms. Eight members must be holders of lobster and crab fishing licenses and represent Maine's eight coastal communities. Two members must be holders of wholesale seafood licenses and deal primarily in lobsters. One member must be a member of the public and shall not hold any of the licenses required above.

During FY 1983, a large part of the Council's time and effort was spent on the lobster trap limit issue. A subcommittee was developed in response to this issue and formulated a trap limit questionnaire which was sent to various members of the industry. This subcommittee is currently working toward a resolution of this complex issue.

Due to time limitations, the Joint Standing Committee on Audit & Program Review did not have the opportunity to review the Lobster Advisory Council and therefore recommends that the Council be continued for one year pending review by the Committee on Audit & Program Review.

Maine Development Foundation

STATUTORY	127.	Continue the Maine Development Foundation because of the importance of the Foundation's economic development efforts in partnership with the private sector, community and regional agencies, and Maine state government.
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The Maine Development Foundation began operation in 1977 to foster, support, and assist economic growth and revitalization in Maine. (10 MRSA, Ch. 107, §917 et. seq.) Created by the Legislature, the Foundation is unique in that it is a non-profit,

independent corporation rather than a government agency. The Foundation operates as a public/private partnership with a 15-member Board of Directors and corporators from both the public and private sectors.

The Foundation's programs are designed to enhance economic development and create jobs for the people of Maine. These programs can be categorized into three areas: business development and finance, client services, and economic issues.

In the area of business development and finance, the Foundation has:

- administered a federal loan program for qualified business expansion, relocations, and start-ups;
- administered loans to businesses in Aroostook County through the Potato Marketing Improvement Fund;
- cooperated in the development of the Maine Small Business Development Center housed at the University of Southern Maine; and
- spearheaded the construction of the new cargo port facility on Sears Island.

The Foundation provides management and technical assistance to Maine's businesses, particularly focusing on the state's existing small and medium-size businesses by:

- providing direct assistance in export market development;
- establishing an Environmental Regulatory Advisory Committee to provide a non-adversarial communication process between regulatory agency personnel and businesses;
- assisting the development of a Research Park in Orono; and
- supporting business people in their efforts to encourage out-of-state colleagues to expand into Maine through the Business Executives for the Enhancement of Maine, or BEEM program.

The Foundation has placed itself in a strategic position to examine emerging economic issues through the:

- establishment of a Technology Strategy for Maine Task Force to help create and retain Maine jobs; and
- establishment of a Task Force to assess the value of promoting the Maine origin of certain products as a marketing tool.

The Foundation operates with eight full-time positions and two part-time positions, receiving a General Fund appropriation of \$100,000 in FY 1984. With other sources of revenue including corporate revenues, fees, contract income, interest grants from public private organizations, and a balance forward, and others, the Foundation's available revenue in 1984 totalled \$497,393.

The Committee finds the Maine Development Foundation's economic development efforts in partnership with the private sector, community and regional agencies, and state government is important and should be continued under the provisions of the Maine Sunset Law.

State Development Office

STATUTORY 128. Continue the State Development Office because of the Office's efforts to create and retain jobs by supporting economic development activities within the state.

The State Development Office serves as the state's lead economic development agency. Its mandate is to create and retain jobs and generate additional state tax revenues by supporting the expansion and improvement of new and existing economic activities within the state (5 MRS §7001). The Office was created in 1975 when the 107th Legislature abolished the old Department of Commerce & Industry and reassigned its functions to other agencies.

The State Development Office carries out its mandate by promoting Maine as a business location, attracting new industry to the state, encouraging the expansion of Maine firms, and by promoting Maine as a tourist destination area. It has four Divisions.

SDO's Division of Business Assistance assists Maine businesses with federal, state, and local government regulations, permits and licensing procedures, financial packaging, staff training, and exporting issues. The Division also assists Maine businesses by conducting management seminars, producing business reference materials, and dealing with legislation regarding Maine's business climate.

The Division of Business Attraction encourages and assists new industries to establish operations in Maine. It provides out-of-state businesses with information on labor, wages, taxes, transportation, utilities, and environmental regulations in Maine and administers a marketing campaign which produces media advertisements, direct mail, trade missions, and promotional literature.

The 111th Legislature specifically delegated the promotion of tourism to the State Development Office in 1983. The SDO's Tourism Division attracts new tourist facilities to the state and assists existing facilities to expand. The Division's overriding goal is to create and retain jobs for Maine through the travel industry and travel-related businesses. Its promotional logo for FY 1985 appears here.



The Administrative Division is SDO's fourth division. The Office has an executive director and 20 staff people with a total General Fund appropriation of \$1,116,186 and federal funds of \$18,205 totalling \$1,134,391 for FY 1984.

As of the summer of 1984, the resources of the Office have been allocated to achieve its mandate as follows:

<u>Area</u>	<u>% Resources Allocated</u>
Tourism	40%
Business Attraction	31%
Business Assistance	21%
World Trade	5%
Community Development	2%
Community Industrial Building	1%

The Committee finds that the State Development Office is a progressive economic development office capable of providing new or expanded services to address the development needs of the people of the state of Maine.

Therefore, the Committee recommends that the State Development Office be continued because of the Office's efforts to create and retain jobs by supporting economic development activities within the state.

State Energy Resources Advisory Board

STATUTORY 129. Continue the State Energy Resources Advisory Board for one year pending review by the Committee on Audit & Program Review.

The state Energy Resources Advisory Board exists to provide an advisory function to the Governor, OER Director and Legislature on policy matters relating to energy resources, and the development and conservation of those resources.

By statute the Board is comprised of the following membership:

- one member of the House of Representatives; appointed by the Speaker of the House;
- one member of the Senate, appointed by the President of the Senate;
- a member of the Public Utilities Commission; and
- the Public Advocate.

All of the above mentioned members serve in an ex officio capacity. The Board also includes six members of the public to be appointed by the Governor according to the following specifications:

- one representative of industry;

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- one representative of labor;
 - one representative of the academic community;
 - two representatives of the general public; and
 - one representative of the business community.

The Board meets at the request of the OER Director; usually about three times per year. Staff functions are provided by OER personnel. Other than travel reimbursement and minimal staff support, the Board does not have any significant expenditures.

Due to time limitations, the Committee was not able to conduct a comprehensive review of the State Energy Resources Advisory Board. The Committee therefore recommends that the State Energy Resources Advisory Board be continued for one year pending review by the Audit & Program Review Committee.

Low-Level Waste Siting Commission

STATUTORY	130. Continue the Low-level Waste Siting Commission for one year pending review by the Committee on Audit & Program Review.
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The Low-level Waste Siting Commission is an eleven-member Commission formed in 1981 to undertake the following duties:

- study the management, transportation and disposal of low-level waste generated in or near this State;
- evaluate current radioactive waste classifications and propose alternatives, if appropriate;
- evaluate methods and criteria for siting low-level waste disposal facilities; and
- assist the Governor in regional efforts to manage low-level waste.

The membership of the Commission is composed of the Commissioner of Environmental Protection, the Commissioner of Human Services, the State Geologist, two Senators and Representatives from the majority party, one Senator and Representative from the minority party, and two people from an organization that is a low-level waste licensee.

The Commission has met periodically throughout the past two fiscal years in public sessions to hear reports from knowledgeable persons and to review materials generated both inside and outside the state. The Commission produced an interim progress report in June 1972 and interim recommendations to the Governor and the Legislature in February 1983.

The full Commission has continually reviewed and commented on drafts of a proposed Northeastern Low-Level Waste Disposal and Management Compact being negotiated among eleven Northeastern states. Four states have ratified the compact but Maine has chosen not to join based on the Commission's February 1984 report to the Legislature. The Commission is now considering Maine's other options and will make its recommendation to the 112th Legislature and the Governor.

The Legislature also established a Low-level Waste Siting Fund to carry out the purposes of the low-level waste siting subchapter; Title 38, Ch. 14-A., subch. III, §§ 1471, et. seq.

The Fund is accumulated by charging a service fee of \$10 per cubic foot on all low-level radioactive waste generated in Maine and shipped to commercial disposal facilities.

The Commission spent \$5,188 from the Low-level Waste Siting Fund in FY 1984. There are no legislatively authorized staff positions for the Commission although some staffing is provided by the Bureau of Oil & Hazardous Materials in the DEP.

The Committee finds that establishing a program for the safe management of low-level radioactive waste and providing capacity for its disposal either within the state or in regional facilities is important.

Therefore, the Committee recommends continuing the Low-level Waste Siting Commission for one year pending review by the Audit & Program Review Committee.

Maine Municipal & Rural Electrification Cooperative Agency

STATUTORY 131. Continue the Board of Directors, Maine Municipal & Rural Electrification Cooperative Agency for one year pending review by the Committee on Audit & Program Review.

The Maine Municipal and Rural Electrification Cooperative Agency Act was enacted in 1981. The purpose of this Act is to:

"provide a means for municipalities and rural electric cooperatives to develop an adequate, reliable and economical supply of electric power and energy". (35 MRSA Ch. 303)

The powers of the Agency created by this act reside with its Board of Directors. Currently, Board membership consists of eight representatives of municipal electric cooperatives, one representative of the general public and the Director of the Office of Energy Resources, all of whom are appointed by the Governor. In FY 1983, the Agency neither recieved nor expended funds.

The agency has the statutory authority:

- to accept grants or gifts;
- to acquire property, real or personal;
- to sell, lease, mortgage, exchange, or dispose of any real or personal property;
- to borrow funds and issue notes and bonds as provided for in the Act;
- to purchase electric power and energy; and
- to sell electric power and energy.

Due to time limitations the Committee did not have the opportunity to review this Agency. Therefore, the Committee recommends continuing the Board of Directors of the Maine Municipal & Rural Electrification Cooperative Agency for one year pending review by the Committee on Audit & Program Review.

Other Recommendations

STATUTORY	132. Require that the current \$25 driver license reinstatement fee be instituted upon order of the court to recover administrative expenses. However, provide that given good reason, the judge may waive this fee.
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In the development of the Uniform Summons process for Marine Resource violations, the Committee looked to the Uniform Traffic Ticket process as a model. Upon review, it was brought to the Committee's attention by members of the judiciary that the current procedures regarding a person's "failure to appear" in court regarding a traffic case and subsequent license suspension order results in an unrecovered cost to the state.

The procedure once a traffic ticket is issued is as follows:

1. the uniform traffic ticket identifies the court date and explains the waiver process, which enables a person to pay the fine in lieu of an appearance;
2. if the defendant elects not to appear in court or pay the fine then:
 - a. the court orders the suspension of the defendant's license;
 - b. the clerk prepares the suspension form and sends it to the Department of Motor Vehicles; and
 - c. the Department of Motor Vehicles sends a notice to the defendant stating that the "suspension will not be effective until ten days after the date of mailing;"

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3. upon receiving the suspension notice from Motor Vehicles the defendant can either:
 - a. appear in court before the ten-day grace period expires, pay the original fine and terminate the suspension of his license at no additional charge; or
 - b. fail to appear within the ten-day grace period and have his license suspended and then pay both the fine and a \$25 reinstatement fee after the ten days.

Figures obtained by the Committee document that the courts and the Department of Motor Vehicles annually handle an estimated 20,000 failures to appear. Again, in any one year approximately 12,000 traffic violators choose to restore their licenses. Of this number, 7,330 pay the \$25 reinstatement fee as required. However, the remaining 4,730 do not pay a \$25 reinstatement fee because they technically fall within the ten-day period where the suspension, though ordered and processed, has not taken effect.

The Committee finds, regardless of the time factor, that the work involved in the suspension and restoration of the license remains constant. Although nonpayment of a \$25 reinstatement fee within the ten-day grace period may be an incentive for early restoration and payment of the initial traffic fine, the Committee finds that this grace period may also encourage non-appearance. Such failures to appear are costly to the state in both time and money. Therefore, the Committee recommends that the \$25 reinstatement fee be a required payment immediately upon order of suspension. Further, given the involvement and time of both the court and the Division of Motor Vehicles, the Committee recommends that the revenues be deposited equally between the General Fund and the Highway Fund. This recommendation will result in an increase in annual revenues of approximately \$141,250 to the General Fund and a decrease of \$41,250 to the Highway Fund. The Highway Fund will decrease because it is no longer the sole repository for reinstatement fees. The Committee estimates that the proposed change will generate approximately \$282,000 in new revenues for the General Fund over the biennium.

Finally, the Committee recommends that a statutory provision be enacted to enable a judge to waive the fee in extenuating circumstances (such as a defendant's inability to pay) the \$25 fee.

STATUTORY

133. Place the authority for the final disposition of property seized during drug enforcement actions with the

Commissioner of Finance and Administration to coordinate these decisions with the capital needs of all state agencies.

Current Maine statutes include provisions for the procedure governing the disposition of property seized in connection with the delivery of illegal drugs. The applicable statutes (MRSA 22 §2387) specify that all manufacturing materials, means of conveyance, and moneys associated with the attempts to deliver illegal drugs may be seized by the state.

The existing process potentially involves federal agents, state and local law enforcement officers, and the judicial system. The first step in this process starts with the committing of a violation and the subsequent seizure by the state police of all associated materials and property.

Seized equipment is then placed in storage until the case has been resolved.

Either a District Attorney or the Attorney General may file a petition with the Superior Court to order forfeiture of the property to the state.

The Court conducts a hearing, reviews their findings and issues a final order which may specify forfeiture of the seized property to the state, which then has the option of disposing of the materials as it sees fit.

As mentioned earlier, there is a process for the state's disposition of all drug related seized property:

- all cash is deposited into the General Fund; and
- the Department of Public Safety (DPS) is the authorized state agency for the disposition of all materials seized in drug-related cases. DPS makes an initial assessment of the possible needs of the state police for any of the seized property and evaluates submitted requests by other state agencies for specific items. All unwanted items are designated as surplus property and put up for public auction.

In its review of the existing procedure for the disposition of drug related seized property, the Committee found the following:

- equipment disposition is a function most appropriately administered by the Department of Finance and Administration;

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- placing the existing policies and procedures for the disposition of surplus property within the Department of Finance and Administration is likely to result in more accountability and efficiency;
 - placing the state's authority to dispose of such property with the Department of Finance and Administration would allow deserving agencies more of an opportunity to acquire needed equipment; and
 - the assumption of these responsibilities by the Department of Finance and Administration would compliment their present duties in the administration of the capital equipment budgeting process within Maine state government.

Therefore, given the existing capabilities of the Department of Finance and Administration to oversee the equitable and efficient disposition of state-owned property, the Committee recommends that the statutory authority to dispose of all drug-related property seized by the state, be transferred from the Department of Public Safety to the Department of Finance and Administration.

Fiscal Impact of Committee Recommendations

<u>RECOMMENDATION</u>	<u>IMPACT</u>
Re: Charge for Stream Alteration Permit. (#3)	Increased revenues deposited into the Maine Environmental Protection Fund will amount to approximately \$4,125.
Re: Transfer of Shoreland Zoning Law to DEP from SDO. (#5)	One General Funded staff position totaling \$24,607 is being transferred from SDO to DEP. There is no fiscal impact.
Re: Establishment of the Underground Tank Fund. (#8)	The cap on the Maine Coastal Protection Fund will be raised from \$6,000,000 to \$7,000,000.
Re: Increased Recovery of disbursements from Underground Tank Fund and Maine Coastal Protection Fund. (#12 & #13)	Should result in an increase in funds recovered.
Re: Sale of Front End Loader. (#26)	Will increase revenues to the General Fund by approximately \$2,000.
Re: Establishment of Uniform Marine Citation Form. (#42)	Will result in unidentifiable savings for the Department of Marine Resources and the Court.
Re: Upgrading the position of Chief Utility Accountant. (#66)	No fiscal impact as the funds \$3,000 are available within current appropriations.
Re: Upgrading of three Hearing Reporters. (#67)	No fiscal impact as the funds, \$9,590, are currently in the Regulatory Fund assessment.
Re: Recodification of the PUC statutes. (#86)	An appropriation of approximately \$3,500 is required to enable the study committee to meet.

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| Re: | Addition of three new members to the State Board of Psychology. (#108) | Should result in an increased cost to be offset by an expected fee increase. |
| Re: | The charge of a \$25 reinstatement fee upon order of the court. (#132) | This recommendation should result in increased revenues of approximately \$242,500 to the General Fund over the biennium and a decrease of approximately \$82,500 to the Highway Fund. |

The total net impact to the General Fund is an expected increase in revenues of approximately \$142,750 in FY 1986 and \$139,250 in FY 1987.