

MAINE STATE LEGISLATURE

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Review of

- Alcohol and Drug Abuse Planning Committee
- Eminent Domain/Sale of Surplus Property
- Underground Petroleum Storage Facilities
- Maine Conservation School
- Professional Regulatory Boards

Joint Standing Committee on Audit and Program Review

1987 - 1988



SENATE

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RAYNOLD THERIAULT, DISTRICT 1
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STAFF

OFFICE OF FISCAL AND PROGRAM REVIEW
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STATE OF MAINE
ONE HUNDRED AND THIRTEENTH LEGISLATURE
COMMITTEE ON AUDIT AND PROGRAM REVIEW

March 1988

Members of the Legislative Council:

We are pleased to transmit the Committee's 1987-1988 report to you in four volumes. The report includes statutory and administrative recommendations and findings on the:

- + Board of Trustees of the University of Maine System;
- + State Government Internship Program Advisory Committee;
- + Advisory Committee on Maine Public Broadcasting;
- + Board of Trustees of the Maine Maritime Academy;
- + Maine Conservation School;
- + DEP - Underground Petroleum Storage Tanks;
- + DOT - Eminent Domain/Sale of Surplus Property;
- + Alcohol and Drug Abuse Planning Committee;
- + Board of Commissioners of the Profession of Pharmacy;
- + Board of Examiners of Psychologists;
- + Maine Occupational Information Coordinating Committee;
- + Arborist Examining Board;
- + Electricians' Examining Board;
- + State Board of Social Worker Licensure; and
- + Maine Uniform Accounting and Auditing Practices Act.

In addition to the diligent work of the Committee members, we would like to particularly thank the adjunct members who served on our subcommittees from other Joint Standing Committees; their expertise enriched and strengthened the review process.

The Committee's recommendations will serve to improve state agency performance and efficiency by increasing management and fiscal accountability, resolving complex issues, clarifying Legislative intent, and increasing Legislative oversight. We urge the full Legislature to consider our proposals carefully and we invite questions, comments, and input regarding any part of this report.

Sincerely,

Beverly M. Bustin
Senate Chair

Neil Rolde
House Chair

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Committee Organization

AUDIT & PROGRAM REVIEW SUBCOMMITTEE #2

**Board of Commissioners of the
Profession of Pharmacy
Alcohol and Drug Abuse Planning Committee
Child Welfare Services
Electricians' Examining Board
State Board of Social Worker Licensure**

Members:

**Senator Beverly M. Bustin, Chair
Representative Neil Rolde, Chair
Senator Mary-Ellen Maybury
Representative Ruth Joseph
Representative Phyllis Erwin
Representative Ada K. Brown
Representative Harriet Ketover
Representative Eleanor Murphy
Representative Wesley Farnum**

Adjunct Members:

Representative Charlene B. Rydell
Joint Standing Committee on
Banking and Insurance
Representative Carol M. Allen
Joint Standing Committee on
Business Legislation
Representative Margaret Pruitt Clark
Joint Standing Committee on
Human Resources
Representative Jo Anne D. Lapointe
Joint Standing Committee on
Human Resources
Representative Jean T. Dellert
Joint Standing Committee on
Human Resources

Committee Organization

**AUDIT & PROGRAM REVIEW
SUBCOMMITTEE #3**

**Department of Environmental
Protection; Underground Petroleum Storage
Facilities
Department of Transportation;
Eminent Domain/Sale of Surplus Property;
Maine Conservation School**

Members:

**Representative Ruth Joseph, Co-Chair
Representative Phyllis Erwin, Co-Chair
Senator Beverly M. Bustin
Representative Neil Rolde
Representative Norman O. Racine
Representative Ada K. Brown
Representative Eleanor Murphy
Representative Wesley Farnum**

Adjunct Members:

**Representative James Reed Coles
Joint Standing Committee on
Energy and Natural Resources
Representative Willis Lord
Joint Standing Committee on
Energy and Natural Resources**

THE COMMITTEE PROCESS

The Joint Standing Committee on Audit & Program Review was created in 1977 to administer Maine's Sunset Act which "requires the Legislature to evaluate the need for and performance of present and future departments and agencies on a periodic basis." (3 MRSA Ch. 23) To carry out its mandate, the overriding goal of the Audit Committee is to increase governmental efficiency by recommending improvements in agency management, organization, program delivery, and fiscal accountability.

The Committee process unfolds in five distinct phases, which can be briefly described as follows:

PHASE ONE: RECEIPT OF PROGRAM REPORTS

The law requires that agencies due for review must submit a Program Report to the Committee in the year prior to review. The Program, or Justification, Report prepared by the agency provides baseline data used to orient staff and Committee to the agency's programs and finances.

PHASE TWO: REVIEW BEGINS

At the start of each review, the Committee Chairs divide the full Committee into subcommittees, appoint subcommittee chairs and assign each subcommittee responsibility for a portion of the total review. Each subcommittee is augmented by at least one member from the committee of jurisdiction in the Legislature; i.e. the subcommittee reviewing the administration and management of the University of Maine System will include a member of the Education Committee.

PHASE THREE: SUBCOMMITTEE MEETINGS

The subcommittees created by the Committee meet frequently when the Legislature is in session and every three to four weeks between the sessions to discuss issues regarding the agency and make recommendations for change. Staff will prepare material for the subcommittee's deliberation and present it to the subcommittee in one of several forms; as an option paper, discussion paper, or information paper. The Committee has found that these formats facilitate its process by cogently and objectively describing the topic for discussion and the points necessary for expeditious decision-making. These subcommittee meetings are not formal hearings but are open to the public and are usually well attended by interested parties. The subcommittees conduct their business in an open manner, inviting comment and providing a forum for all views to be heard and aired.

PHASE FOUR: FULL COMMITTEE MEETINGS

The full Audit and Program Review Committee considers the recommendations made by each subcommittee. These meetings are another opportunity for the public to express its views.

PHASE FIVE: THE LEGISLATURE

Following the full Committee's acceptance of subcommittee recommendations, Committee staff prepare a text and draft a bill containing all the Committee's recommendations for change. The Committee introduces its bill into the Legislative session in progress and the bill is then referred to the Audit and Program Review Committee. As a final avenue for public comment prior to reaching the floor, the Committee holds public hearings and work sessions on all its recommendations. After the Committee concludes deliberations and amendments, the bill is reprinted and placed on the agenda for consideration by the entire Legislature.

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 narrative of the recommendations.

EMINENT DOMAIN/SALE OF SURPLUS PROPERTY

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|-----------|----|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| STATUTORY | 1. | Direct that the state's share of the gross proceeds from the sale, lease, or vacating of surplus property be deposited into the account of origin and expended only upon allocation by the Legislature in order to increase accountability. Furthermore, the Federal Government's pro rata share of proceeds from the sale of surplus property should be deposited in the account from which the funds originated. |
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|----------------|----|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| ADMINISTRATIVE | 2. | Offer the right of first refusal on surplus property to former owners unless the parcel is not economically viable in order to ensure that the sale of surplus property is equitable. |
|----------------|----|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
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|-----------|----|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| STATUTORY | 3. | Amend current law to specify that the property owner or a designated representative shall be given an opportunity to accompany the appraiser during the appraiser's inspection of the property. |
|-----------|----|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
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FINDING

4.

The Committee finds that no more appropriate index than fair market value exists, at this time, upon which to calculate the sale price of surplus property.

DEP - UNDERGROUND PETROLEUM STORAGE FACILITIES

STATUTORY

5.

Expand the definition of responsible party to include former owners or operators to ensure that liability is equitably distributed.

STATUTORY

6.

Exempt individuals who can demonstrate that they neither knew nor had reason to know of their ownership of an underground oil storage facility from consideration as a responsible party in order to insulate these tank owners from liability.

STATUTORY

7.

Authorize the imposition of punitive damages against any responsible party who fails to comply with a clean-up order without sufficient cause in order to encourage prompt removal or remediation of oil contamination.

ADMINISTRATIVE 8. Submit the Department's Project Priority List establishing clean-up priorities for leaking underground oil storage facilities annually to the Energy and Natural Resources Committee to ensure Legislative oversight.

FINDING 9. The Committee finds that the Underground Oil Storage Facilities and Ground Water Protection law applies to all tanks and instances of contamination, regardless of the date of installation or occurrence. Furthermore, the Committee affirms that the retroactivity and universal applicability of the law is essential in preserving the public health and welfare.

MAINE CONSERVATION SCHOOL

STATUTORY 10. Continue state support of the Maine Conservation School under the provisions of the Maine Sunset Law because of the importance of the School's work in conservation education.

STATUTORY 11. Clarify the nature of the State's involvement with the Maine Conservation School and allow the incumbent Executive Director of the School to retain status as a state employee who serves at the pleasure of the Board in order to further the goal of providing conservation education in Maine.

STATUTORY 12. Authorize the Executive Director of the Maine Conservation School to raise funds on behalf of the School in his status as a state employee.

FINDING 13. The Committee finds that the Board of the Maine Conservation School should provide the Director with clerical and maintenance support in order to effectively carry out the mission of the School.

ADMINISTRATIVE 14. Recommend that the Board of the Maine Conservation School amend its by-laws to enable either the head administrative officer or a designee of member state agencies to serve on the Board.

CHILD WELFARE SERVICES

ADMINISTRATIVE 15. Continue the Committee's review of Maine's child welfare services delivery system to address ongoing issues.

FINDING

16.

The Committee finds that the Interdepartmental Committee should continue its efforts to minimize out-of-state placements, recognizing that placing children in out-of-state treatment facilities cannot be entirely eliminated. Furthermore, the Committee finds that additional in-state placement slots should be established in order to increase the availability of appropriate treatment resources in-state.

ADMINISTRATIVE

17.

Direct the Interdepartmental Committee to submit a report describing the array of services currently available to support children who "age-out" of the substitute care system as well as any additional resources that may be needed to facilitate the transition into self-sufficient adulthood. Report to the Joint Standing Committees on Audit & Program Review and Human Resources by January 1, 1989.

STATUTORY 18. Provide funding for the Office of Child Welfare Services Ombudsman to represent the best interests of children and others involved in the child welfare system by:

1. providing oversight of child welfare services offered by state Agencies;
2. increasing accountability of State service providers; and
3. providing an avenue of recourse for people who have problems, issues, concerns, or complaints regarding State child welfare services.

ALCOHOL AND DRUG ABUSE PLANNING COMMITTEE

STATUTORY 19. Add the Department of Public Safety to the Alcohol and Drug Abuse Planning Committee.

STATUTORY 20. Designate the Commissioner of Public Safety as Chair of the Alcohol and Drug Abuse Planning Committee for the purpose of supervising the planning staff.

STATUTORY 21. Direct the Alcohol and Drug Abuse Planning Committee to issue recommendations to the Legislature on the use of all substance abuse funds. Further, mandate the Alcohol and Drug Abuse Planning Committee to submit a biennial, unified budget for all substance abuse services.

ADMINISTRATIVE 22. Direct the Maine Council on Alcohol and Drug Abuse Prevention and Treatment and the ADPC to review the Council's role in the state planning process. Report to the Audit and Program Review Committee by December 15, 1988.

ADMINISTRATIVE 23. Direct the ADPC to involve the Maine Council on Alcohol and Drug Abuse Prevention and Treatment in every phase of the state planning process.

STATUTORY 24. Provide the Maine Council on Alcohol and Drug Abuse Prevention and Treatment with advisory input into the appointment of the Planning Director.

STATUTORY 25. Clarify that Council members' appointments shall commence and expire on the first of June.

STATUTORY 26. Reorganize the State Act on Alcoholism and Drug Abuse to segregate policy statements from program provisions.

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- STATUTORY 27. Allocate \$135,095 of the Alcohol Premium Fund to support a treatment evaluation system that will review the effectiveness of the state's substance abuse treatment services and protect the integrity of the existing service system.
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- ADMINISTRATIVE 28. Direct the ADPC to limit its proposed treatment evaluation system to a maximum budget of \$150,000/year in order to ensure that the system is cost-effective.
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- ADMINISTRATIVE 29. Implement a revised form of the ADPC's proposed baseline data collection system for substance abuse services.
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- ADMINISTRATIVE 30. Establish a follow-up information system by directing the ADPC to contract with a research agency to conduct biennial follow-up interviews.
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- ADMINISTRATIVE 31. Direct the ADPC to attach a cover letter to the evaluation system to clarify the nature of the client's prospective participation in the evaluation system.
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ADMINISTRATIVE 32. Direct the Alcohol and Drug Abuse Planning Committee to streamline state substance abuse contracting procedures in order to reduce duplicative and unnecessary paperwork.

ADMINISTRATIVE 33. Direct the Alcohol and Drug Abuse Planning Committee to regularly update its mailing list in order to improve the dissemination of public information.

ADMINISTRATIVE 34. Direct the Department of Human Services to adopt certain rules concerning the administration of the DEEP program.

FINDING 35. The Committee finds that the Legislature should weigh the costs and benefits of establishing a Department of Substance Abuse Services in order to improve the delivery of substance abuse services.

STATE BOARD OF EXAMINERS OF PSYCHOLOGISTS

STATUTORY 36. Continue the State Board of Examiners of Psychologists for ten years pursuant to the Maine Sunset Law.

MAINE OCCUPATIONAL INFORMATION COORDINATING COMMITTEE

STATUTORY	37.	Continue the Maine Occupational Information Coordinating Committee for ten years pursuant to the Maine Sunset Law.
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ELECTRICIANS' EXAMINING BOARD

STATUTORY	38.	Continue the Electricians' Examining Board under the provisions of the Maine Sunset Laws.
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STATUTORY	39.	Decrease the length of an appointment to the Electricians' Examining Board to 3 years and increase the limit on the total number of appointments to 3.
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STATUTORY	40.	Clarify that reciprocal licenses shall not be denied on the basis of current residency.
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ADMINISTRATIVE	41.	Direct the Board to institute a policy on conflict of interest.
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ADMINISTRATIVE	42.	Direct the Electricians' Examining Board to report on its financial status during the 1988 Compliance Reviews.
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STATUTORY 43. Update the definition of
"electrical installations" to
reflect changes in the field.

STATUTORY 44. Authorize the Board to set permit
and inspection fees through the
public rule-making process.

STATUTORY 45. Require all applicants for Master
electrician's licenses to
complete a 45 hour code course
prior to taking the licensing
examination.

STATUTORY 46. Separate the examination fee from
the licensing application fee.

STATUTORY 47. Change the Apprentice and Helper
electrician licensing fees from
\$10 a year to a cap of not more
than \$20 a year.

STATE BOARD OF SOCIAL WORKER LICENSURE

STATUTORY 48. Continue the State Board of
Social Worker Licensure for one
year under the provisions of the
Maine Sunset Law.

STATUTORY

49.

*Amended
by
the
Board*

Authorize the Board to waive up to one year of post-graduate clinical experience for qualifying LCSW candidates.

STATUTORY

50.

Direct the Board of Social Worker Licensure to accommodate the special needs or handicapping conditions of licensing applicants.

FINDING

51.

The Committee finds that state employed social workers are subject to state licensing laws.

MAINE UNIFORM ACCOUNTING AND AUDITING PRACTICES ACT

ADMINISTRATIVE

52.

Require the Division of Community Services to synchronize its compliance audit with the financial audits conducted by Community Action Agencies within four months from the end of each agency's fiscal year. Report to the Audit & Program Review Committee on September 30, 1988 with a schedule of coordinated audits to be performed and submit a compliance report on September 30, 1989.

LD 2602

Sec. 66. 32 MRSA §7053, sub-§1, as repealed and replaced by PL 1987 c. 395, Pt. B, §14, is amended to read:

1. Licensed clinical social worker. To be qualified as a licensed clinical social worker, an applicant shall have demonstrated to the satisfaction of the board adherence to the ethics of the social work profession; shall have successfully completed the examination prescribed by the board; and shall have received either:

A. A masters or doctoral degree in social work or social welfare from an accredited educational institution, in a clinical concentration:

(1) Shall have subsequently completed 2 years of social work experience with 96 hours of consultation in a clinical setting; or

(2) Shall have demonstrated 2 years of full-time clinical social work experience or its equivalent and have completed the graduate degree prior to January 1, 1987, and have completed 2 years of subsequent social work experience with 96 hours of consultation in a private setting; or

B. A masters or doctoral degree in social work in a nonclinical concentration from an accredited educational institution:

(1) Shall have subsequently completed 4 years of social work experience with 192 hours of consultation in a clinical setting; or

(2) Shall have demonstrated 2 years of full-time clinical social work experience or its equivalent and have completed the graduate degree prior to January 1, 1987, and have completed 4 years of subsequent social work experience with 192 hours of consultation in a private setting.

The Board may waive up to 1 year of the ~~subsequent 2 years of~~ social work experience post-M.S.W. Clinical experience requirement pursuant to this subsection for those candidates who demonstrate to the satisfaction of the board equivalent clinical experience prior to receiving the Masters Degree in Social Work.

*accepted
1-88*

A license may be renewed up to 90 days after the date of its expiration upon payment of a late fee of \$10 in addition to the renewal fee. Any person who submits an application for renewal more than 90 days after the license expiration date shall be subject to all the requirements governing new applicants under this chapter, except that the board may in its discretion, giving due consideration to the protection of the public, waive examination or other requirements, [if the renewal application shows active and continued practice up to five years after expiration.] The board may levy ^a penalties for non-renewal for ~~triple the renewal fee for each renewal the individual worked unlicensed.~~

Sup to 8800

DEPARTMENT OF TRANSPORTATION

EMINENT DOMAIN

AND

SALE OF SURPLUS PROPERTY



INTRODUCTION

THE NATURE OF EMINENT DOMAIN

The Joint Standing Committee on Audit & Program Review administers Maine's Sunset Act (3 MRSA Ch. 23) which requires the Legislature to periodically evaluate the performance of agencies and programs in State government. This year, the Committee has completed a review of the process of eminent domain used by the Department of Transportation. The Department exercises eminent domain to carry out its mandate to construct and maintain the State's highways. The Committee considered the Department's policies, practices, and procedures regarding eminent domain and focussed particular attention on the Department's sale of property acquired via eminent domain.

The following is a summary of some of the information reviewed by the Committee and its subsequent recommendations.

Eminent domain is not a law or rule but a process that can be defined as "**the power of the sovereign to take property for public use without the owner's consent**" (2 § 1.11). The "sovereign's" power of eminent domain does not flow from the Constitution, the statutes, or any other document. Rather, the power of eminent domain is **inherent** to government, it cannot be repealed or abrogated; "it comes into being instantly with the establishment of the government and continues as long as the government endures" (2 § 1.14 [2]). In fact, the sovereign's power of eminent domain would be unlimited were it not for the two limitations placed on it by the Fifth and Fourteenth Amendments. The Fifth Amendment declares that, "...nor shall private property be taken for public use, without just compensation" (4), thus imposing the two limitations that private property may only be taken for 1) public use and 2) only after just compensation has been given.

In addition, the due process clause in the Fourteenth Amendment, adopted one hundred years after ratification of the Constitution, placed a third limitation on the government's power to exercise eminent domain that "no person shall be deprived of life, liberty, or property without due process of law" (1 Eminent Domain § 7).

In interpreting the power of eminent domain, the courts have clearly stated that: "private property rights are not absolute but are held subject to the implied condition that they shall not be used for any purpose that injures or impairs the public interest" (5). Also, "when the United States needs, for public use, private property which it cannot acquire by negotiation and purchase, it has the undoubted right to acquire

such property by the exercise of the power of eminent domain, with or without the consent...of the state in which the law is situated....Such an authority is essential to independent existence and perpetuity" (1 Eminent Domain §10).

Each state Legislature also possesses the power of eminent domain within the state's own boundaries and "in this respect, the several states are distinct and independent of each other, respectively possessing and exercising the power for their own purposes or their own public welfare" (1 Eminent Domain § 13).

The literature points out that the prohibition in the Fourteenth Amendment against the taking of private property for public use makes no mention of whether private property could be taken for private use, with or without just compensation. Decades of case law, however, have settled this question. Such was not always the case. In both Europe and America prior to the ratification of the Fifth Amendment, eminent domain was routinely exercised for purposes such as construction of private mills, roads, or the drainage of private lands. The colonial government routinely constructed public roads across private lands without any compensation and would peremptorily transfer land from one owner to another if the land was not developed to satisfaction. The rationale behind this unfettered exercise of eminent domain was the state's assumption that it's role was to make the individual unselfishly devote himself to the common good and to promote economic development.

The issue of what constitutes a "**public use**" has been a question of particular judicial interest, especially since "the term is elastic and keeps pace with changing conditions" (1 Eminent Domain § 27). Nicholas notes that, "...the phrase 'public use,'... is incapable of a precise and comprehensive definition of universal application. Thus, the courts have upheld the taking of private property for many different purposes considered to be "public use". As example, in 1832, the Maine Supreme Court upheld the taking of private land for a horse ferry because it was, "so far a work of public interest as to justify the taking of private property for its establishment...(6). In 1954, the courts upheld the taking of private land in Portland in order to raze the slums built upon it since the "elimination of slums can be found to be a direct benefit and advantage to all of the people" because public use includes, "the prevention of evil or protection of community against disease, juvenile delinquency, and other social evils"(7).

The courts have written extensively on the respective roles of the Legislative, judicial, and executive branches of government in exercising the power of eminent domain.

Decisions solely within the Legislature's purview, not reviewable by the judiciary, are:

- the extent or amount of land which may be taken for public use;
- the question of public exigency (i.e. the necessity for condemnation); and
- the delegation of the right to exercise eminent domain.

However, the following issues are reviewable by the judicial branch:

- whether the purpose of the taking is indeed public or actually private; and
- whether eminent domain is exercised in good faith. (8)

Finally, since the right to exercise eminent domain is inherent only with the sovereign, "the executive branch of the government cannot, without the authority of some statute, proceed to condemn property for its own use" (1 Eminent Domain § 5). However, the Legislature clearly has the right to delegate the power to exercise eminent domain to instruments of its choosing; and, "once authority is given..., the matter ceases to be wholly legislative -- the executive authorities may then decide whether the power will be invoked and to what extent" (1 Eminent Domain § 5). In Maine, as in most states, the Legislature has delegated the right to exercise eminent domain to:

- the Governor;
- state agencies;
- municipalities;
- counties;
- utilities; and
- quasi-municipal entities (e.g. Councils of Governments)

(See Appendix A, page 32, for more detail)

Excess condemnation, or the taking of more property than is directly necessary for the public improvement, has been upheld by the courts based upon a number of theories of what constitutes public use. For example, the remnant theory allows excess taking when the taking will leave the owners with parcels of such size and shape as to be practically worthless. The courts have reasoned that it will be less expensive in the end for the condemnor to "take and pay for the whole of such lots, and devote the remnants to municipal purposes, or...sell them for a fair price, than to engage in protracted litigation over the question of damages to the remaining land with each owner" (3 § 7.25 [1] [a]).

Finally, the literature points out that the power to sell lands taken by eminent domain when it is determined that they are no longer needed for public use "is latent in every taking" (1 Eminent Domain § 142 and 3 § 7.09). Thus, land which has been held in fee (i.e. all the rights are owned by the "taker"), which is "not necessary for the public use may lawfully be sold to private purchasers" (1 Eminent Domain § 142). In cases where the condemnor holds all the rights to the property, the law is also clear that the former owners retain no rights to the land nor the option for first refusal.

REFERENCES

Documents

1. American Jurisprudence. 2nd Edition. Vol. 26. Lawyers Co-operative Publishing Company. Rochester, New York. 1966.
2. Nichols on Eminent Domain. Vol 1. Julius Sackman. Matthew Bender Publishing. New York. 1985.
3. Nichols on Eminent Domain. Vol 2A. Julius Sackman. Matthew Bender Publishing. New York. 1987.
4. United States Constitution. Amendment V.
5. Yale Law Journal. Vol. 94, 1984-85.

Cases

6. Buck v. Kilgore (1972) Me., 298 A 2d 107.
7. Inhabitants of York Harbor Village Corporation v. Libby (1928) 126 Me. 537, 140 A. 382..
8. Day v. Stetson (1832) 8 Me. (8 Greenl.) 365.
9. Ulmer v. Lime Rock R. Co. (1904) 98 Me. 579, 57 A. 1001, 66 L.R.A. 387.
10. Crommet v. City of Portland (1954) 150 Me. 217, 107 A. 2d 841.)
11. Brown v. Gerald (1905) 100 Me. 351, GIA. 785, 70 L.R.A. 472, 109 Am. St. Rep. 526.
12. Brown v. Kennebec Water District. (1911) Me. 227, 79 A. 907.
13. Note #9. Article 1 §21 of the Constitution of Maine (pg 598 of Vol 1 of the Maine Revised Statutes Annotated).
14. Richmond v. Carneal, 129 Va 388, 106 SE 403, 14 ALR 1341.
15. Indigo Realty Co. v. City of Charleston. 281 S.C. 234, 314 S.E. 2d 601 (1984).

**THE PROCESS OF EMINENT DOMAIN
AS EXERCISED BY MAINE'S DEPARTMENT OF TRANSPORTATION**

The statutes authorizing the Department's use of eminent domain are explicit about how eminent domain should be used. Statutory requirements include issuing a notice of condemnation, appraising the property, offering just compensation, authorizing the taking of an uneconomic remnant at the owner's request, and relocating people whose property is taken. To carry out the taking process, the Department's Right of Way Division employs Civil Engineers, Right of Way Appraisers, and Field Inspectors.

In examining the process of eminent domain during the course of the review, the Committee found that the taking process is one component of a multi-faceted construction project and can be described as follows in ten steps:

Steps Eminent Domain Process	Action
1	Staff personally contact owner to fill out and sign Property Owner Report which requests information on boundary line, water supply, sewage system, cellar drain, underground storage tanks, and any existing right-of-way (ROW) with a sketch of the property.
2	Public Hearing held at which maps and the first specifics of the Project are available and discussed. Verbal and written comments accepted.
3	The final ROW maps are drawn.
4	DOT's ROW Appraisers make a fair market appraisal of the property to provide "just compensation".
5	DOT staff meet with owner to review the Department's Offer Letter, which explains the basis for DOT's determination of just compensation for the land to be acquired.
6	Date established for condemnation and "Statement of Determined Damages" sent to owner.
7	Taking filed in the Registry of Deeds. Check sent to owner.

-
-
- 8 60 day "negotiation period" begins in which owners may discuss disagreements regarding compensation with DOT.
 - 9 Negotiations closed. Parcels still "unsettled" after 60 days referred to the State Claims Commission either by DOT or at the request of the landowner.
 - 10 Extra work orders or change orders could increase or decrease the ROW requiring condemnation.

Finally, the Committee found that DOT payments to property owners for property rights acquired for the last five federal fiscal years are:

	<u>Acquisition Costs</u>	<u>Relocation Payments</u>	<u>Total</u>
FFY 83	\$2,176,476	\$168,548	\$2,345,024
FFY 84	1,959,025	697,168	2,656,193
FFY 85	1,151,981	293,065	1,445,046
FFY 86	1,021,915	163,084	1,184,999
FFY 87	<u>1,785,395</u>	<u>49,745</u>	<u>1,835,140</u>
Total	\$8,094,792	\$1,371,610	\$9,466,402

STATUTORY

1. Direct that the state's share of the gross proceeds from the sale, lease, or vacating of surplus property be deposited into the account of origin and expended only upon allocation by the Legislature in order to increase accountability. Furthermore, the Federal Government's pro rata share of proceeds from the sale of surplus property should be deposited in the account from which the funds originated.
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Currently, the state's share of the proceeds of the sale of property taken by eminent domain is accounted for by the Department of Transportation on the basis of whether the property was originally purchased with a combination of state and federal money (i.e. "state-federal" property) or whether the property was originally purchased solely with state funds (i.e. "state" property).

For properties purchased with a combination of state and federal money, the bookkeeping of the sale of surplus property is managed in one of two ways:

- a. if the project and its account are still open, the proceeds are placed in the project's account; or
- b. if the original project is completed and its account is closed, the proceeds are deposited in an account of an open project with the same state-federal ratio as the project for which the land was originally taken. In this way, proceeds from sales are used to defray the cost of an ongoing project.

For FY 1987, the proceeds from the sale of "state-federal" surplus property totalled \$173,800. The state's share of these proceeds amounts to \$18,800.

For projects purchased solely with state funds, all proceeds are placed in a single account which is intended to be transferred back to an adjustment account at years end.

For FY 1987, the gross proceeds from the sale of "state" surplus property totalled \$191,700. The Committee found that the Department charged \$73,270 of administrative costs against the gross proceeds, leaving a net balance of \$118,430 as follows:

Total gross proceeds FY 87 - sale of "state" surplus property	\$191,700
Less Administrative Costs	<u>73,270</u>
Total <u>net</u> proceeds FY 87	<u>\$118,430</u>

Furthermore, the Committee found that this account had not been closed in prior years and carried a total account balance at the close of FY 1987 of \$312,045.

In considering the Department's practice of charging administrative costs against the gross proceeds of surplus property sales, the Committee finds the following:

- theoretically, the costs of these personnel and resources should have already been allocated from the Highway Fund;
- heretofore, the Department has not been accountable to the Legislature regarding its practice of deducting administrative costs; and
- any administrative costs incurred by the sale of property not already covered by the Highway Fund allocation should be specifically included in the Department's budget request for Legislative consideration.

Accordingly, the Committee finds that administrative costs should no longer be deducted from gross proceeds of property sales and that the Department should be more accountable to the Legislature regarding its proceeds from the sale of surplus property.

Therefore, the Committee directs that the gross proceeds from the sale, lease, or vacating of surplus property be deposited into the account of origin and expended only upon allocation by the Legislature in order to increase accountability. Furthermore, the Federal Government's pro rata share of proceeds from the sale of "state-federal" property should be deposited in the account from which the funds originated.

ADMINISTRATIVE	2.	Offer the right of first refusal on surplus property to former owners unless the parcel is not economically viable in order to ensure that the sale of surplus property is equitable.
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Private property taken for a public purpose via eminent domain may later become surplus for a number of reasons. These reasons include a change in the final construction plans, an abandonment of a portion of the original project, a taking of an extra remnant at the owner's request, or because the public purpose for which the land was originally taken changes or terminates.

In examining the law, the Committee finds that Maine law is silent on the issue of the right of first refusal in the event surplus properties are sold. Nevertheless, the Legislature has clearly expressed its intent via other means that the owner from whom the property was originally taken should be given the right of first refusal. The Committee found that the DOT has recognized Legislative intent in its policy manual by directing that "surplus property will be offered for sale to the former owner [at fair market value], when feasible." In response to a recent directive from the Federal Highway Administration, the Maine DOT has stepped up its efforts to sell properties that have become surplus. Since 1982, the majority of these sales have been under \$5,000, as indicated by the following chart:

Price Range of Parcels Sold Since 1982

<u>Sales Price</u>	<u># of Parcels</u>
Under \$5,000	106
\$5,001-\$10,000	19
\$10,001-\$50,000	23
\$50,001-\$100,000	3
\$100,001-\$500,000	1
Over \$500,000	1

The Committee found that most of the surplus properties in recent years were in fact sold back to the former owner. However, the caveat "when feasible" was necessary to allow the Department to by-pass the former owner in instances where the parcel being sold was not economically viable. The Committee finds that a parcel's economic viability is defined by and dependent on three factors:

1. whether the appraisal indicates that the sale of the parcel, as is, is not likely to produce the highest monetary return;
2. whether local zoning regulations allow the parcel to be developed; and

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3. whether sale of the parcel as is would injure the integrity of an adjacent piece.

Parcels that may lack economic viability include undersized remnants, remnants that significantly jut into a larger whole, or those which are "marooned", having no independent access.

The Committee finds that the Department's policy of giving the former owner the right of first refusal, when feasible, is more solicitous of former owners than required by federal law or the courts. A pamphlet (undated) from the General Services Administration, (the federal agency responsible for disposing of surplus property), states that former owners from whom the Federal Government acquired surplus property do not have any priority in its subsequent sale and that "former owners interested in repurchasing their former holdings [may] bid for them in open competition with others....;" Similarly, the Law Courts are clear that when the condemnor holds all rights to the property, former owners retain no lingering rights, including the option for first refusal.

The Committee finds that giving the right of first refusal to former owners continues to be strongly supported by the Legislature. However, the Committee also finds that former owners need not be granted the right of first refusal in those cases when the parcel is not economically viable in its own right. In order to reaffirm Legislative intent that former owners be given the right of first refusal and to clarify these instances in which this option need not be offered, the Committee recommends that the Department of Transportation offer the right of first refusal on surplus property to former owners unless the parcel is not economically viable in order to ensure that the sale of surplus property is equitable.

STATUTORY

3. Amend current law to specify that the property owner or a designated representative shall be given an opportunity to accompany the appraiser during the appraiser's inspection of the property.
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Department of Transportation Right-of-Way Appraisers are required to make a fair market appraisal of a condemned property in order to meet the Constitutional requirement of providing "just compensation."

Before making the appraisal, state law includes a general directive to "contact the owner or one of the owners or his designated representative if reasonably possible" (23 MRSA § 153). In reviewing this law, the Committee finds that the directive to "contact the owner" is non-specific and does not make clear the reason why the owner should be contacted. In practice, Department personnel interpret the statute as directing that the owner be notified and invited to accompany the appraiser during the appraisal if the owner's location is known, and he or she is living, ambulatory, or resides within the State.

On the other hand, Federal law specifically directs that "the owner or his designated representative shall be given an opportunity to accompany the appraiser during his inspection of the property" (PL 91-646. Section 301. Sub-§ 2). The Committee finds that this language clarifies the intent that the federal appraiser must contact the owner for the specific purpose of giving the owner an opportunity to accompany the appraiser during the appraisal.

The Committee finds that providing the opportunity for the owner to specifically accompany the appraiser during the appraisal of the property is important and that state law should be consistent with federal law in this regard.

Accordingly, the Committee recommends that the statute be amended to specify that the property owner or a designated representative be given an opportunity to accompany the appraiser during the appraiser's inspection of the property.

FINDING

4.

The Committee finds that no more appropriate index than fair market value exists, at this time, upon which to calculate the sale price of surplus property.

The Legislature has delegated to the Department of Transportation the authority to take property as deemed necessary primarily in regard to state highways.

Accordingly, the Department has purchased property for highway projects over the last five fiscal years for approximately \$8,000,000.

As noted previously, the Department may also sell property taken by eminent domain that is no longer needed for the public purpose for which it was taken.

In both cases of buying or selling property, the Department currently bases the purchase price and the selling price on the fair market value of the property. Black's Law Dictionary defines fair market value as:

"...the price that the asset would bring by bona fide bargaining between well-informed buyers and sellers at the date of acquisition. Usually the fair market price will be the price at which bona fide sales have been consummated for assets of like type, quality, and quantity in a particular market at the time of acquisition..."

The Department's Right of Way Division currently employs three right-of-way appraiser IIIs, two right-of-way appraiser IIs, and eight right-of-way appraiser Is whose job assignments include determining the fair market value of property to be taken or sold.

The Department is required to buy property at fair market value because of the constitutional requirement that the landowner be justly compensated for the property; the Department considers buying land at the price the market will bear to be the most just method of compensating the owner.

In regard to the price at which surplus property is sold, the Committee finds the following:

1. since the taxpayers of Maine pay fair market value for the property, the taxpayers should expect and deserve to receive fair market value if the property is sold;
2. the role of the Department in selling property is to determine the fairest and highest price for the people of Maine which the Committee determines to be its fair market value;
3. the federal government requires that the maximum dollar value be sought when properties acquired with federal-aid money are sold. In a recent letter to the Department, the Federal Highway Administration confirmed that properties must be sold "in a manner assuring the greatest net return" which means "states must receive fair market value" for the parcels

sold. The federal government has further stated that in the event a property is sold at less than fair market value, "the full market value credit is still due the Federal Highway Administration, limited of course to its pro-rata share"; and

- 4) the open market value is the fairest standard to use in buying and selling property in that the value of property appears to fluctuate independently from other indices, such as inflation. If, for example, property were to be sold using a formula based on time and the inflation rate, the Committee finds that in some cases, the asking price would be more than the fair market value and, in some cases, the asking price could be less than the fair market value.

In response to the Committee's inquiry regarding the federal policy of basing the sale price of surplus property on fair market value, Senator Cohen's reply is illustrative of the entire delegation. He said, "I am not aware of any sentiment at the federal level for using a standard other than fair market value when selling government owned surplus property. The Administration has made the identification and sale of excess federal real property an important part of its deficit reduction program. Given the current federal budget deficit and the importance of exploring all responsible means of restoring the federal government to fiscal balance, it is unlikely that either the Administration or the Congress would be open to authorizing the sale of excess federal property for less than fair market value."

Accordingly, the Committee finds that no more appropriate index than fair market value exists, at this time, upon which to calculate the sale price of surplus property.

Appendix A

-DELEGATION BY THE LEGISLATURE-

THE TAKING OF LAND BY EMINENT DOMAIN

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The following lists a number of provisions in the statutes through which the Legislature has delegated the power of eminent domain to instrumentalities of its choosing. In most cases, the Legislature has specified the reason for which eminent domain may be exercised. This list may not be all inclusive.

I. MUNICIPALITIES

13 MRSA § 1181 Burying grounds

The municipal officers of any town may on petition of 10 voters enlarge any public cemetery or burying ground or incorporated cemetery or burying ground within their town by taking land of adjacent owners, to be paid for by the town or otherwise as the municipal officers may direct, when in their judgment public necessity requires it.

30 MRSA § 4854 Community Development

In exercising the powers of eminent domain the municipal officers shall act in accordance with the following procedures:

1. Adoption of resolution of condemnation;
2. Filing, bonds, & notice;
3. Unknown ownership;
4. Agreement & cancellation of binds;
5. Complaint to Superior Court;
6. Conflicting ownership;
7. Appeal; etc.,,

30 MRSA § 4001 Acquisition of Land for Parks, Squares, etc.

Municipality (municipal officers) may take suitable lands for public parks, squares, open areas, playgrounds, buildings for municipal purposes or a public library building, upon petition in writing signed by at least 30 of its taxpaying citizens, with the consent of the owner of any dwelling house occupied by the owner or his/her family.

6 MRSA § 122 Land and air rights

As a matter of public exigency, a city or town may take land for use as an airport or landing field...

II. COUNTY

6 MRSA § 122 Land and air rights

As a matter of public exigency, a county or authorized state agency may take land for use as an airport or landing field...

III. EXECUTIVE BRANCH

A. GOVERNOR

1 MRSA § 13 lands or right-of-way for forts, railroads, lighthouses and arsenals

When the public exigencies require it, the Governor may take in the name of the State, by purchase and deed, or in the manner denoted, any lands or rights-of-way, for the purpose of erecting, using or maintaining any fort, fortification, arsenal, military connection, way, railroad, lighthouse, beacon, or other aid to navigation, with all necessary rights, powers and privileges incident to therein use, and may deliver possession and cede the jurisdiction thereof to the United States, on such terms as are deemed expedient.

1 MRSA § 814 Expansion of State Government in the Capitol Area

Whenever the Governor determines that public exigencies require the construction of additional buildings, structures, parking spaces or other facilities for the expansion of State Government in the Capitol Area, he may purchase or take by eminent domain real estate in Augusta.

37-B MRSA § 821 Real Property for Public Uses

When the Governor has issued a proclamation in accordance with section 742 and, when in his judgment for the protection and welfare of the State and its

inhabitants, the situation requires it as a matter of public necessity or convenience, he may take possession of any real or personal property located within the State for public uses in furtherance in this chapter.

B. DEPARTMENT OF TRANSPORTATION

23 MRSA § 154 Notice of condemnation for highway construction

If the Department of Transportation determines that public exigency requires the taking of such property or any interest therein forthwith, or is unable to purchase such property and interest therein, or the necessary ways and access thereto at what it deems a reasonable valuation, or if the title is defective, it shall file in the registry of deeds for the county or registry district where the land is located a notice of condemnation which shall contain a description of the project specifying the property and the interest therein taken and the name or names of the determined.

30 MRSA § 2460 relocation, removal or disposal of junkyards

If the Department of Transportation determines that topography of the land adjacent to any portion of a highway incorporated in the Interstate or Primary System will not permit adequate screening, as required in section 2451 to 2460, or that adequate screening would not be economically feasible, it may acquire by gift, purchase or condemnation such interests in property as may be necessary to secure the relocation, removal or disposal of such automobile graves or junkyards.

C. DEPARTMENT OF INLAND FISHERIES AND WILDLIFE

12 MRSA § 7754. Conservation of endangered species.

1. The commissioner may establish such programs as are necessary to bring any endangered or threatened species to the point where it is no longer endangered or threatened. including:

A. Acquisition of land or aquatic habitat or interests therein, as provided in section 154.

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- B. Propagation;
 - C. Live trapping;
 - D. Transplantation; and
 - E. In the extraordinary case where population pressures within a given group ecosystem cannot be otherwise relieved, regulated taking.

12 MRSA § 7652. Wildlife management areas and public access sites.

1. Acquisition of land.

A. The commissioner may acquire in the name of the State, by gift, bequest or otherwise, real and personal and convenient operation of a wildlife management area or public access sites to Merrymeeting Bay.

B. The Commission may purchase, lease or take and hold, for and in behalf of the State as for public uses, land and all materials in and upon it or rights necessary for the purpose of establishing, erecting and operating wildlife management areas.

(C., D., & E)

12 MRSA § 7671 Hatcheries and feeding stations

1. Acquisition of land.

B. The commissioner may purchase, lease or take and hold, for and in behalf of the State as for public uses, land and all materials in and upon it or rights necessary for the purpose of establishing, erecting and operating fish hatcheries or fish feeding stations.

D. DEPARTMENT OF ENVIRONMENTAL PROTECTION

38 MRSA § 568 Acquisition of property; authority.

The department is authorized to acquire, by purchase, lease, condemnation, donation or otherwise, any real property or any interest in real property that the board in its discretion determines, by 2/3 majority vote, is necessary to conduct a remedial action under this subchapter. There shall be no cause of action to compel the board to acquire any interest in real property under this subchapter.

A. The board may use the authority on this subsection for a remedial action only if, before an interest in real estate is acquired under this subsection, the municipality in which the interest to be acquired is located assures the

board through a contract or other legal agreement that the municipality will accept transfer of the interest following completion of the remedial action.

E. DEPARTMENT OF CONSERVATION

Bureau of Parks and Recreation

12 MRSA § 602, sub - § 12

Eminent domain. When land is taken by eminent domain, the proceedings for such purpose shall be in accordance with Title 35-A, chapter 65;

12 MRSA § 668. Manner of acquisition by eminent domain

Any acquisition of property by the bureau by eminent domain pursuant to section 667 shall be made in the manner provided in Title 35-A, chapter 65;

12 MRSA § 667 Allagash Wilderness Waterway

Within the restricted area the Bureau of Park and Recreation is empowered to acquire by eminent domain on behalf of the State, any land improvements of interest (within the Allagash Wilderness Waterway), water power rights.....

IV. COUNCILS OF GOVERNMENT

30 MRSA § 1983 Similar power to municipalities

The council may, by appropriate action of the governing bodies of the member municipalities, exercise such other powers as are exercised or capable of exercise separately or jointly, by the member governments and necessary or desirable for dealing with problems of local concern.

V. LEGISLATURE

38 MRSA § 1453 Consent of Legislature for federal radioactive waste storage facilities.

Notwithstanding any other provision of law, this State does not consent to the acquisition by the Federal Government, by purchase, condemnation, lease, easement or by any other means, of any land, building or other

structure, above or below ground, or in or under the waters of the State for use in storing, depositing or treating high-level or low-level radioactive waste materials. The Legislature may consent, by prior affirmative vote, to such activities, except that consent is expressly withheld for any such activity undertaken in connection with the deep geological disposal of high-level radioactive waste as provided in section 1461-A.

VI. UTILITIES

A. Maine Municipal and Rural Electrification Cooperative Agency.

35-A MRSA § 4134 Acquisition of property

1. Eminent domain. The agency may acquire by the exercise of the power of eminent domain any real property, or any interest in real property, which it determines necessary for its purposes under this chapter, after the adoption by it of a resolution declaring the acquisition of the real property or interest in it described in the resolution necessary for those purposes.

B. Natural Gas Pipeline Utilities

23 MRSA § 4504 Eminent domain to operate a pipeline

Upon the filing of the certification of public convenience and necessity....the commission determines that a taking by eminent domain is necessary may take and hold by right of eminent domain lands that are necessary to the safe, economical and efficient operation of the pipeline....

Nothing in this section authorizes a corporation to take by eminent domain property or facilities or another public utility, used or acquired for use in the performance of a public duty, unless expressly authorized in this section by an Act of the Legislature.

C. Municipal Electric Districts

35-A MRSA § 3911 Eminent domain.

A district may exercise the right of eminent domain under the same conditions and for the same purpose as other electric utilities under section 3136. Title to property acquired shall be taken in the name of the district.

35-A MRSA § 3136. Electric utilities have eminent domain for transmission lines.

1. Land necessary for location of transmission lines carrying 5,000 volts. Any electric utility may take and hold by right of eminent domain lands and easements necessary for the proper location of its transmission lines which are designed to carry voltages of 5,000 volts or more and of necessary appurtenances, located within the territory in which the utility is authorized to do public business, in the same manner and under the same conditions as set forth in chapter 65

D. Water Companies

35 MRSA § 3241. Rights of parties to procedure.

Water companies may exercise the right to eminent domain for obtaining sources of supply and locations for storage and for the protection thereof and locations for transmission and distribution of water to the public under this chapter 265.

E. Maine Port Authority

23 MRSA § 4425 Acquisition of land for improvement to existing or construction of facilities.

Land required for improvement to existing facilities or construction of new facilities undertaken by the Maine Port Authority or in cooperation with the Department of Transportation may be acquired for these purposes in the same manner as provided in section 154.

F. Sanitary Districts

38 MRSA § 1152 Right of Eminent Domain

Each sanitary district...is authorized...to acquire and hold real personal property necessary or convenient for its purposes, and is granted the right of eminent domain, and for such purposes is authorized to take and hold, either by exercising its right of eminent domain or by purchase,...as for public use any land, real estate,... sewers,...or drainage rights...

VII. SCHOOL DISTRICTS

20-A MRSA § 16101 Authority of condemnation.

1. Conditions. A school administrative unit may condemn land for the construction or enlargement of school buildings and playgrounds when;

The owner of property refuses to sell;

The parties are unable to agree on a price within 60 days of the first offer; or

The owner resides outside the State and has no authorized agent or attorney within the State.

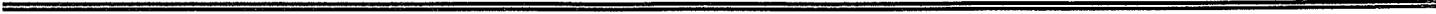
2. School administrative units. Municipalities, School administrative districts, and Community school districts may condemn land for school construction.

Restrictions. School administrative units may not condemn lots exceeding 25 acres for one project.



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DEPARTMENT OF ENVIRONMENTAL PROTECTION
UNDERGROUND PETROLEUM STORAGE FACILITIES



DEPARTMENT OF ENVIRONMENTAL PROTECTION

STATUTORY

5.

Expand the definition of responsible party to include former owners or operators to ensure that liability is equitably distributed.

Currently, the law requires the Department of Environmental Protection to seek reimbursement for cleaning-up oil contamination from an underground tank from the party responsible for the leak. Current Maine law defines "responsible party" as:

- A. The owner or operator of the underground oil storage facility where a prohibited discharge has occurred;
- B. The person to whom the underground oil storage facility where a prohibited discharge has occurred is registered;
- C. Any person other than those identified in paragraph A or B who caused the prohibited discharge of oil or who had custody or control of the oil at the time of the prohibited discharge. (38 MRSA § 562)

The legal phrase "responsible party" is not used to imply guilt but to assign legal responsibility and accountability. In this way, the Legislature has intended to spread the burden of clean-up equitably among owners, registrants, former owners, and the State's Groundwater Clean-up Fund.

Contrary to this Legislative intent, the Committee finds that the current definition has the effect of including the current owner as a responsible party without question, while excluding the former owner. The former owner is only included if the Department can prove that the former owner owned the tank at the time of the discharge. In this way, the current definition places a greater share of the responsibility for clean-up on the current owner than on the former owner.

The Committee finds that the practical effect of the current definition is unfair in that:

- many current tank owners are small business people, whereas former owners are often major oil companies;

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- tanks owned by a series of individuals often leak over a period of many years prior to discovery and therefore, current owners may have to shoulder the clean-up liability for past owners;
 - former owners who may have owned the leaking tank far longer than a current owner may not be required to assume any of the liability; and
 - proper clean-up is often expensive and beyond the means of a single owner.

The Committee finds that treating former owners the same as current owners will serve to:

- facilitate the process leading to eventual clean-up;
- eliminate the presently uneven distribution of responsibility for clean-up; and
- shift the burden for negotiating clean-up responsibility away from the Department onto the responsible parties.

Therefore, the Committee recommends that the definition of responsible party be expanded to include former owners or operators to ensure that liability is equitably distributed.

STATUTORY

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6. Exempt individuals who can demonstrate that they neither knew nor had reason to know of their ownership of an underground oil storage facility from consideration as a responsible party in order to insulate these tank owners from liability.
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Currently, the Department of Environmental Protection estimates that 26,000 petroleum storage tanks are buried in Maine. Although all of these tanks are subject to the registration requirement enacted in 1985, some tanks may not be registered because their ownership and/or whereabouts are unknown. Furthermore, notification of the existence of a tank is not required in a mortgage deed or other permanent document that would be transferred from one owner to the next. As a result, some property owners may not be aware of the presence of a tank on their property until contamination appears in soil or drinking water.

As mentioned earlier, the current definition of "responsible party" includes the owner of a tank, regardless of whether or not the owner is aware of the tank's existence and often excludes former owners, unless the Department can show proof through hydrogeologic testing that the leak occurred at the time the former owner "had custody or control of the oil at the time of the prohibited discharge" (38MRSA §562.10).

The Committee finds that owners who neither know nor have reason to know of the existence of a leaking tank on their property should not be held as responsible parties. In these cases, liability should not be placed on an owner who had no opportunity to prevent the tank from contaminating, either by proper management or removal. The Committee notes that the State's clean-up fund is available for spills for which no responsible party is identified.

Finally, the Committee finds that this exclusion would only apply to a narrow group of owners who neither knew nor had reason to know. For example, this exemption would not apply to:

- a. A gas station owner who had only recently purchased the property. He or she had "reason to know" of the existence of the tank because tanks are an integral component of gas stations and, therefore, the new owner had had an opportunity to investigate possible leakage prior to purchase;
- b. A farmer who had used a tank to fill farm vehicles years ago but who has retired and left the tank in the ground. He or she could still be classified as a responsible party since he or she knew the tank existed, had reason to know that tanks can leak, and had the opportunity to take action to prevent contamination; or

c. A person who purchased a home with a deed that indicated the presence of the tank but the new owner had neither read the deed nor been apprised that the deed indicated the presence of a tank on the property. The new owner could be held as a responsible party since he or she "had reason to know" of the presence of the tank, regardless of whether he or she actually did.

Accordingly, the Committee recommends that an owner who can demonstrate that he or she neither knew nor had reason to know of their ownership of an underground oil storage facility be exempted from consideration as a responsible party in order to insulate these tank owners from liability.

STATUTORY	7.	Authorize the imposition of punitive damages against any responsible party who fails to comply with a clean-up order without sufficient cause in order to encourage prompt removal or remediation of oil contamination.
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In the event that a discharge of oil contaminates a water supply or poses a threat to public health or the environment, current law (38 MRSA §568) authorizes the Commissioner of the Department of Environmental Protection to order the party responsible for the contamination to cease the discharge immediately and to take remedial action, such as cleaning up the contamination and restoring or replacing contaminated water supplies. The original intent of the provision authorizing clean-up orders was to maximize the speedy clean-up of contamination, place responsibility for clean-up on the party responsible for the contamination in the first instance, and target state clean-up dollars to spills where no other clean-up resources are available. In practice, the Commissioner has used his discretion to issue clean-up orders only to responsible parties who possess the resources to successfully comply with the order. In those cases where no clean-up order is issued, the law authorizes the Department to clean-up and remediate the contamination and requires the Department to seek reimbursement from the responsible party for the clean-up costs.

The Department of Environmental Protection has issued a total of four clean-up orders since the law's enactment in 1985. In three of these instances, the responsible party has chosen to appeal the order, effectively delaying actual clean-up action. The grounds upon which the appeals were based varied but all three shared a common challenge to the law's retroactivity. The earliest appeal was not upheld and the responsible party has since complied with the order. Two other appeals are currently being argued in Superior Court and no action has yet been taken on the most recently issued order.

The Committee finds that:

- ordering those responsible for contamination who are capable of conducting clean-up operations maximizes clean-up efforts;
- the right of a responsible party to make a good faith appeal of the order with impunity must be preserved; and
- financial incentives which encourage prompt compliance with a clean-up order are appropriate and would be beneficial in protecting the public health and welfare.

Therefore, the Committee recommends authorizing the imposition of punitive damages against any responsible party who fails to comply with a clean-up order without sufficient cause in order to encourage prompt removal or remediation of oil contamination.

ADMINISTRATIVE 8.

Submit the Department's Project Priority List establishing clean-up priorities for leaking underground oil storage facilities annually to the Energy and Natural Resources Committee to ensure Legislative oversight.

The number of underground petroleum storage tanks in Maine is estimated to be approximately 26,000. Since 1980, over 350 water wells have been contaminated by oil leaking from those tanks and 283 additional wells are at risk of contamination.

To gauge jeopardy to health and welfare as an aid in establishing priorities for clean-up efforts, the Department has developed a "Project Priority List" for leaking underground oil storage facilities. Each spill is weighted according to a number of criteria which include the degree of contamination or probable contamination to water supplies, the number of users of contaminated and potentially contaminated water supplies, the degree of dependency of users to the water supplies involved, and the ability of the responsible party to initiate clean-up action independent of State resources.

The Committee finds that the Project Priority List is a key document in the State's efforts to effectively address the problem of leaking underground oil storage facilities and requires legislative review and input. Therefore, the Committee recommends that the Project Priority List establishing clean-up priorities for leaking underground oil storage facilities be submitted for review annually by the Energy and Natural Resources Committee to ensure adequate legislative oversight.

FINDING	9.	The Committee finds that the Underground Oil Storage Facilities and Ground Water Protection law applies to all tanks and instances of contamination, regardless of the date of installation or occurrence. Furthermore, the Committee affirms that the retroactivity and universal applicability of the law is essential in preserving the public health and welfare.
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The Underground Oil Storage Facilities and Ground Water Protection law (38 MRSA §561 et. seq.) protects the quality of soil and groundwater by requiring proper design, installation, monitoring, maintenance, and operating procedures for underground oil storage facilities.

In the event the Department finds that an illegal discharge of oil has occurred, the law authorizes the Commissioner to order a responsible party to cease the discharge and mitigate the contamination (38 MRSa §568). Since the law was enacted in 1985, the Commissioner of the Department of Environmental Protection has issued four clean-up orders to parties responsible for oil contamination from leaking underground tanks. Three orders have been appealed and each appeal has included a challenge to the law's retroactivity. (The fourth has only been recently issued.)

The Committee has examined the issue of retroactivity and finds that the language of the law clearly applies to all tanks, regardless of when the tanks were installed or a leak occurred. As the Committee which drafted the original law, the Committee affirms that the law was enacted to address the problems created by both past and present contamination from underground oil storage tanks.

Therefore, the Committee reasserts Legislative intent that the Underground Oil Storage Facilities and Ground Water Protection law is intended to apply to all tanks and instances of contamination, regardless of the date of installation or occurrence. Furthermore, the Committee affirms that the retroactivity and universal applicability of the law is essential in preserving the public health and welfare.



THE MAINE CONSERVATION SCHOOL



MAINE CONSERVATION SCHOOL

STATUTORY 10. Continue state support of the Maine Conservation School under the provisions of the Maine Sunset Law because of the importance of the School's work in conservation education.

In 1955, Lillian Rogers Waterhouse conveyed her 200 acre summer homestead in Bryant Pond, Maine, to a private organization known as the the Maine Fish and Game Association. Her intent was to dedicate her property to the study of natural resource conservation in perpetuity. Shortly thereafter, the (then) Maine State Department of Inland Fisheries and Game worked with the private Fish and Game Association to draft a cooperative and joint educational plan for the School and to transfer the responsibility for the School's operation to a private Foundation. In 1957, the Legislature agreed to support the goals of the private School by funding the position of Executive Director at the School. The Legislature also made the Governor an ex-officio Chair of the School's Board and included the Commissioners of various state agencies as Board members. In 1972, the Executive Director position was transferred from the Department of Inland Fisheries and Wildlife to the Department of Educational and Cultural Services in recognition of the primary educational emphasis of the School.

Today, the private, non-profit Conservation Education Foundation of Maine continues to hold title to the Maine Conservation School. According to its by-laws, the purpose of the Conservation Education Foundation is to "foster, through education, an understanding of Maine's environment and to instill a sense of individual responsibility for conserving our natural resources." Accordingly, the School provides conservation education programs during the spring, summer, and fall and is closed during the winter.

The **Student Program** is available to junior and senior high school students throughout the spring and fall. The sessions are week-long residential programs that cover basic ecological topics including habitat, water, geology, soils, plant growth and development, forestry, and others. The 1987 fee for this program was \$75.00/student.

Teacher Workshops are offered during the summer. Four and one-half Continuing Education Units are offered through the University of Maine for the successful completion of a workshop and may be applied toward Maine teacher recertification. One workshop is designed for the classroom teacher, group leader or individual to enhance awareness, knowledge, and skill in selected areas of natural history and outdoor environmental education. The other workshop is for elementary/middle school teachers or youth group leaders and is designed to foster a clearer understanding of Maine's natural resources and how conservation education can be incorporated into their curriculum or youth program. The 1987 fee for the program was \$125.00/teacher/week.

The School has also been used for conservation education of participants in the Elderhostel program, members of the Maine State Grange, and migrant students, and other special groups.

To carry out these residential programs, the Board employs up to three teachers, a cook, an assistant cook, and a summer intern.

During the last year, the Board and Executive Director have taken steps to reverse a trend of declining enrollments with a more aggressive promotional campaign, an influx of new Board members, updating and revision of curriculum, and the initiation of community outreach and fundraising.

Due to the importance of the School's mission, the interest in conservation education in Maine, and the revitalized leadership of the Board and the Executive Director, the Committee recommends continuing state support for the Maine Conservation School under the provisions of the Maine Sunset Law.

STATUTORY

11. Clarify the nature of the State's involvement with the Maine Conservation School and allow the incumbent Executive Director of the School to retain status as a state employee who serves at the pleasure of the Board in order to further the goal of providing conservation education in Maine.
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STATUTORY

12.

Authorize the Executive Director of the Maine Conservation School to raise funds on behalf of the School in his status as a state employee.

The by-laws governing the Maine Conservation School state that its "Board of Directors shall have complete control and management of the affairs of the Foundation, including the right to solicit and borrow money or property as specified in the corporate charter." Accordingly, the Board makes all decisions regarding the programming, operation, and management of the School.

Currently, the position of Executive Director is classified as an Education Specialist II position within the Department of Educational and Cultural Services. Education Specialist II's are placed within Pay Range 24, which pays from \$20,654.40 to \$28,184.00/year (not including fringe). The incumbent Director is a first-time state employee and has been in the position since April 1987.

Total salary and related expenses paid from the state's General Fund for the Executive Director position have ranged from \$23,000 to \$36,000 over the last four years. The financial statement for FY 86 shows other revenues of \$53,597 and expenses of \$50,925 with a fund balance at year's end of \$149,439.

The present job description for the Executive Director is a product of a collaborative effort of DECS' Division of School Operations and the Maine Conservation School Board. It includes preparing and teaching curricula; scheduling classes; managing staff, physical plant, and finances; and promoting the School. Currently, the tasks of hiring, assigning job tasks, evaluating performance, and termination are unevenly split. The state assumes primary responsibility for hiring, terminating, and reviewing performance. The Board has responsibility for assigning tasks and responsibilities.

Thus, the Committee finds that the relationship among the State, Executive Director, and School could be characterized as "mutual interdependence". All parties recognize the following benefits:

- the School serves as a vehicle by which the State meets its objectives in conservation education;

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- the Board relies on State funding for its Executive Director; and
 - the Executive Director is dependent not only on the State as the source of his salary but also on the Board which provides the institutional framework for program delivery.

However, the Committee also finds that the current relationship between the Board and the State imposes certain limitations on achieving the mutual goal of conservation education. For example:

- from the Board's perspective, the status of the Executive Director as a state employee complicates personnel management;
- many established state personnel procedures are not applicable to the Education Specialist II position;
- the Executive Director is prohibited from performing fundraising activities on behalf of the School due to his status as a State employee; and
- as the Executive Director's employer, the State not only assumes liability for the position but is also subject to the Board's independent management decisions.

To retain the benefits of the State's involvement with the School, protect the interests of the incumbent serving as the School's Executive Director, and yet resolve the issues that arise as a result of the unique State-School relationship, the Committee recommends:

- authorizing the Board to carry sole supervisory and management responsibility over the Executive Director position;
- grandfathering the incumbent Executive Director as a state employee who is exempt from the State Civil Service Law and who serves at the pleasure of the Board;

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- abolishing the Education Specialist II position which serves as the Executive Director when the incumbent terminates his employment;
 - directing the Department of Educational and Cultural Services to include in its Part I budget, funds adequate to pay the salary, fringe benefits, and support services presently being provided by the Department; and
 - directing that any funds appropriated by the Legislature shall be paid to the School in the form of a grant in order to maximize the Board's control over the position.

In this way, the Committee intends to clarify the nature of the State's involvement with the Maine Conservation School and further the goal of providing conservation education in Maine.

Finally, the Committee recommends exempting the Executive Director from the statutory prohibition against state employees participating in any proceeding in which they have a direct and substantial financial interest in order to allow the Executive Director to perform the normal fund-raising activities for the non-profit School.

FINDING

13.

The Committee finds that the Board of the Maine Conservation School should provide the Director with clerical and maintenance support in order to effectively carry out the mission of the School.

As noted earlier, the mission of the Maine Conservation School is to "foster, through education, an understanding of Maine's environment and to instill a sense of individual responsibility for conserving our natural resources." To fulfill this mission, the School operates a residential educational program in conservation for school groups and others every week from April to October. The employees hired by the Board in recent years to operate the School include a cook, assistant cook, student intern, and up to three teachers. The School does

not have employees who perform regular clerical or maintenance duties, nor standard office equipment such as an electric typewriter or word processor, copier, or adequate filing space.

As a result, the Committee found that the Executive Director personally assumes a broad array of duties, including:

- preparing an annual financial report and a projected operating budget for the upcoming year, managing the operating budget, billing, depositing cash receipts, and maintaining all financial records;
- administering Board policies, the recording of minutes and other basic Board support functions;
- hiring, training, supervising, and evaluating teaching and support staff;
- preparing and teaching curricula to students;
- arranging and supervising the food service;
- maintaining and operating the physical plant; and
- producing and distributing informational material and contacting students and educators throughout the State on a regular basis.

The Committee finds that the provision of adequate clerical and maintenance support would enhance the resources of the School, enable the Executive Director to devote a greater percentage of his time to programming, and better serve the School's educational mission.

Therefore, the Committee finds that the Board of the Maine Conservation School should provide clerical and maintenance support in order to assist the Director in carrying out the mission of the School.

ADMINISTRATIVE 14.

Recommend that the Board of the Maine Conservation School amend its by-laws to enable either the head administrative officer or a designee of member state agencies to serve on the Board.

Currently, the by-laws for the Maine Conservation School declare that the Board shall consist of 18 members as follows:

- the "head administrative officer" of the Departments of Educational and Cultural Services, Conservation, Inland Fisheries and Wildlife, Administration, Marine Resources, and Environmental Protection;
- six members representing statewide or regional conservation or environmental organizations; and
- six members who are either conservationists or who represent land conservation/environmental organizations.

The Committee found that the Commissioners, as the agency's head administrative officers, often attended the early Board meetings in person. A review of Board minutes reveals that, since 1983, state agencies have tended to be represented by Commissioners' designees, rather than by the Commissioners themselves.

The Committee finds that retaining state agency representation on the Maine Conservation School Board is valuable in order to facilitate resource-sharing and communication between the State and the School and to further the State's interest in the school through direct participation in its operation and management. However, in recognition that these same goals may also be achieved by a designee of the Commissioner in the event the Commissioner is unable to attend, the Committee recommends that the Board amend its by-laws to enable either the head administrative officer of member state agencies or a designee to serve on the Board.



CHILD WELFARE SERVICES



CHILD WELFARE SERVICES

ADMINISTRATIVE 15. Continue the Committee's review of Maine's child welfare services delivery system to address ongoing issues.

In the third year of its review of Maine's child welfare service delivery system, the Committee has continued to explore the system's ability to meet increasing demands to protect and support children and their families. Despite the Department of Human Services's expenditure of \$28.5 million in FY 1987, the Committee is aware of cases where children seem not to have benefited from involvement within the system and that the child protective system appears to be inherently adversarial and confrontational. Other issues of continuing interest include the overburdened foster care system, the overwhelming nature of the job of a Human Services Caseworker, the need to clarify Legislative intent regarding the definition of abuse and neglect, the need for more communication and coordination among all aspects of the child welfare services delivery system, and the need to not only respond in the short-term to suspected abuse and neglect but also incorporate long-term strategies aimed at prevention.

The Committee finds that the task of protecting children from abuse and neglect involves every institution in our society - including state government, the courts, and law enforcement. The issue of specific Legislative concern is the responsibilities and conduct of state government when carrying out its part of the child welfare services delivery system.

The Committee has identified a need to continue to examine the role of State government in the context of the Committee's specific concerns about caseworker retention, the lack of placement resources, the lack of judicial or legal resources, primary prevention, and new types of forums that may be needed in the child welfare system. Accordingly, the Committee plans to continue its review of Maine's child welfare services delivery system through the next year to address these ongoing issues.

FINDING

16.

The Committee finds that the Interdepartmental Committee should continue its efforts to minimize out-of-state placements, recognizing that placing children in out-of-state treatment facilities cannot be entirely eliminated. Furthermore, the Committee finds that additional in-state placement slots should be established in order to increase the availability of appropriate treatment resources in-state.

ADMINISTRATIVE

17.

Direct the Interdepartmental Committee to submit a report describing the array of services currently available to support children who "age-out" of the substitute care system as well as any additional resources that may be needed to facilitate the transition into self-sufficient adulthood. Report to the Joint Standing Committees on Audit & Program Review and Human Resources by January 1, 1989.

In reviewing the placement of children in out-of-state substitute care facilities last year, the Committee found that substantial amounts of financial and staff resources were consumed by out-of-state placements.

For example, it cost the Department of Human Services \$75,000 to place 36 children in out-of-state facilities in August 1986. Placing 30 children out-of-state in February 1987 cost the Department of Human Services \$67,000. Furthermore, for the last three years, the out-of-state placement account has been overcommitted, requiring the Department to transfer in additional funds from other accounts.

In addition, the Committee found that:

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- Department of Human Services' out-of-state placements has risen by over 80% since 1982;
 - the effectiveness of the placements was objectively unknown; and
 - a systematic procedure to match the needs of the child with the correct facility did not exist.

As a result, the Committee directed the Interdepartmental Committee (IDC) to "identify and implement a course of action to immediately minimize the number of children placed in substitute care facilities out-of-state."

An implementation plan submitted to the Committee by the IDC Commissioners in January 1988 was designed to minimize the out-of-state placement of Department of Human Services' wards over the course of four years. It was proposed that funding for the plan would come from a combination of new dollars and dollars currently used for out-of-state placement that would be freed up when children "age-out" of the system. However, in presenting their report, the IDC Commissioners concluded that they did not "endorse the expenditure of additional resources to implement this plan at this time". The IDC Commissioners noted that the Department of Human Services had begun the process of reducing out-of-state placements by developing additional placement resources in Maine and called for more research to "further refine this plan and identify possible funding sources."

In considering the IDC report in the context of the Committee's deliberations on out-of-state placements, the Committee concluded that:

- in-state placements are not necessarily less costly than out-of-state placements;
- a significant percentage of Maine children require out-of-state placement because no appropriate facility exists in-state;
- the transition from out-of-state to in-state placements will require new funds in combination with current dollars because of high facility development costs and lag time;
- out-of-state placement cannot be entirely eliminated because the development of highly specialized in-state facilities may not be cost-effective;

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- spending in-state placement dollars is generally preferable over supporting out-of-state facilities;
 - a reduction of out-of-state placements will only occur by increasing the number of slots in current in-state facilities and by building new types of treatment facilities not currently available in Maine, particularly professional foster homes and psychiatric/therapeutic group homes;
 - treatment progress can be better monitored when children are being treated within the state; and
 - state planning and resources can be better targeted if more data is available on program effectiveness.

Accordingly, the Committee finds that the Interdepartmental Committee should continue its efforts to minimize out-of-state placements, recognizing that placing children in out-of-state treatment facilities cannot be entirely eliminated, and that additional in-state placement slots should be established.

Furthermore, to assist the Department and Legislature in providing resources needed to achieve self-sufficient adulthood, the Committee recommends that the IDC report to the Joint Standing Committees on Audit & Program Review and Human Resources by January 1, 1989 describing the array of services currently available to help young adults to ease out of the substitute care system and any additional resources that may be needed to facilitate that transition.

STATUTORY

18.

Provide funding for the Office of Child Welfare Services Ombudsman to represent the best interests of children and others involved in the child welfare system by:

1. providing oversight of child welfare services offered by state Agencies;
 2. increasing accountability of State service providers; and
 3. providing an avenue of recourse for people who have problems, issues, concerns, or complaints regarding State child welfare services.
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Last year, the Committee recommended establishment of an Office of Child Welfare Services Ombudsman, consisting of an Ombudsman and one clerical position. The office was enacted into law (22 MRSA Subchapter X) but did not receive Legislative funding. As a result, the Office exists only in law.

The testimony and information received by the Committee this year has renewed the Committee's resolve to seek funding for the Office. As the statute indicates, the Ombudsman is a gubernatorial appointee that will play a special and relatively new role in state government.

The primary purpose of the Ombudsman position will be to provide oversight of child welfare services offered by state agencies, increase the accountability of state service providers, and provide an avenue of recourse for people who have problems, issues, concerns, complaints, or questions regarding child welfare services in this state. In order to achieve these goals, the Ombudsman's duties will include:

- A. Fielding questions, concerns, and complaints from people involved in the state's child welfare services system.
- B. Recommending specific or special action to appropriate personnel including the Governor, Commissioner, or staff;

C. Consulting with and advising the Department on operational and management problems and sensitive case situations through direct verbal communication, memos, reports, or meetings; and

D. Evaluating procedures and policies and suggesting revisions as needed.

In carrying out these functions, the Ombudsman is not intended to serve as an advocate for any individual, nor supercede any avenue of recourse or review currently available to service recipients. Neither will the Ombudsman have discretion over any of the powers, duties, or responsibilities of the state service providers.

The Committee found that FY 1987 expenditures for Child Welfare Services by the Department of Human Services increased by about 10% over 1986, from \$26,000,000 to \$28,557,000. (This expenditure for child welfare services is the sum of five accounts and includes General Fund, Dedicated Fund, and Federal Block Grant revenues.) Despite these expenditures, the Committee finds that child abuse and neglect continues to be a problem of significant proportion. For instance:

- 1986 referrals of suspected child abuse and neglect increased in Maine by 7% over 1985, up to 13,063 referrals from 12,549;
- 19% of the cases served in 1986 were sexual abuse cases; and
- The 13,063 referrals in 1986 represent a 75% increase over 1982 referrals.

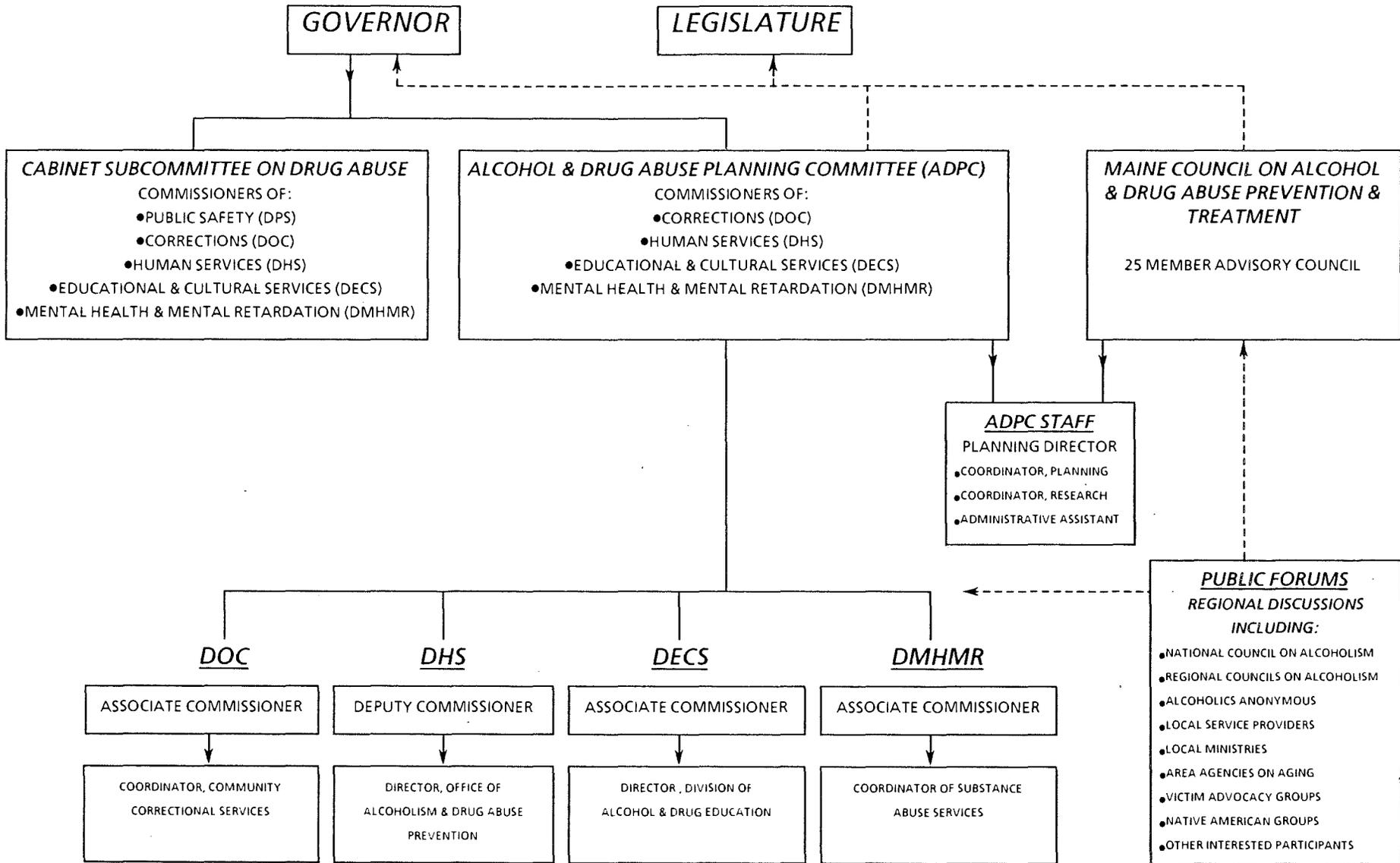
As a result, the Committee finds that more resources need to be devoted to finding new and creative solutions to the problem of child abuse and neglect. The Committee finds that the Office of Child Welfare Services Ombudsman will serve as a much needed resource in this regard.

Accordingly, the Committee recommends that funding be provided for the Office to represent the best interests of children and others involved in the child welfare system.

ALCOHOL AND DRUG ABUSE PLANNING COMMITTEE

OVERVIEW OF THE STATE SUBSTANCE ABUSE SERVICE PLANNING SYSTEM

72



LEGEND:
 ——— DENOTES LINES OF AUTHORITY
 - - - - - DENOTES ADVISORY PARTICIPATION

ALCOHOL AND DRUG ABUSE PLANNING COMMITTEE

The Audit and Program Review Committee was charged with the responsibility to review the state's interdepartmental efforts to cooperate, communicate and coordinate substance abuse services in order to provide an efficient and effective set of services for the state.

In reviewing these services, the Committee first identified the existing spectrum of advisory and administrative Committees. These Committees are displayed in the overview of the state substance abuse service planning system.

In fiscal year 1987, this system distributed \$9,056,000 to provide substance abuse services throughout Maine. In fiscal year 1988, the state will be distributing an estimated 12,380,217 from the following sources:

	<u>FY 1987</u>	<u>%</u>	<u>FY 1988</u>	<u>%</u>
Alcohol Premium Fund:	\$4,203,381	46.4%	\$ 5,370,063	43.3%
General Fund:	\$2,684,917	29.6%	\$ 2,917,812	23.5%
Federal Funds:	\$1,611,697	17.8%	\$ 3,093,383	24.9%
Special Revenues:	\$ <u>556,605</u>	<u>6.2%</u>	\$ <u>998,959</u>	<u>8.1%</u>
Total Funds:	\$9,056,600	100.0%	\$12,380,217	100.0%

The Committee focused on the Alcohol and Drug Abuse Planning Committee (ADPC) as it is charged with supervising the state departments' cooperative efforts. The Committee is comprised of the Commissioners from the following 4 departments, one of whom serves as chair. (22 MRSA §7131)

- Department of Corrections;
- Department of Educational and Cultural Services;
- Department of Human Services; and
- Department of Mental Health and Mental Retardation.

According to current law (22 MRSA §7132), the ADPC is mandated to do the following:

- Coordinate, with the advice of the Maine Council on Alcohol and Drug Abuse Prevention and Treatment, all drug abuse prevention, education, treatment and research activities;

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- Act as an interagency liaison for activities relating to drug abuse or drug dependent persons;
 - Supervise the planning of drug abuse activities by the four departments;
 - Establish uniform data standards, compatible with federal standards, to be used by all programs receiving state funds for drug abuse, prevention, education, treatment and research;
 - Prepare and submit the following reports to the Legislature:
 1. annual evaluations of the past year's progress in meeting established goals, as well as objectives for Premium Fund allocations.
 2. biennial comprehensive plans containing measurable goals and performance indicators for state services.
 3. every 4 years, a state needs assessment of the current costs and existing needs for services in the state, including considerations of geographical disparities and special populations.
 - Make recommendations to the respective branches of government and consult with any state agency on drug related policies, priorities and objectives.
 - Be advised by all agencies of state government of their proposed fiscal activities, especially budget requests and expenditures concurrent with their submission to the Governor and the Budget office. Also be advised of proposed legislation, policy, fiscal activities and administrative activities relating to drug abuse prevention.

The Committee also briefly reviewed the Maine Council on Alcohol and Drug Abuse Prevention and Treatment as it relates to the ADPC's activities.

The Council is a 25 member committee, appointed by the Governor and the Legislature, who have an education, training, experience, knowledge, expertise and interest in drug abuse prevention and training. Appointments must be selected from among "outstanding people in the field of corrections, education, health, law, law enforcement, manpower, medicine, mental health, mental retardation, science, social science and related areas" who reside in different geographical areas of the state and represent experiential diversity and concern for drug abuse prevention and treatment.(22 MRSA §7108).

According to state law, (22 MRSA §7110) the Maine Council is mandated to:

- advise, consult, and assist the Executive and Legislative branches of government and the Judicial Council;
- advocate for prevention and treatment activities at national, state and community levels;
- advocate on behalf of individual citizens in class actions;
- serve as the advisory council to state agencies as mandated under the Federal U.S. Drug Abuse Office and Treatment Act of 1972 and the U.S. Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970;
- in cooperation with the planning committee, review and evaluate state department activities on prevention and treatment of drug abuse;
- in cooperation with the planning committee, keep the public informed by collecting and disseminating information, conducting, commissioning and publishing studies and reports; and
- provide public forums, including statewide and regional conferences, workshops and other meetings.

Further, the Committee received input from the Governor's Cabinet Subcommittee on Drug Abuse. This committee was formed by Gov. McKernan to focus on the problem of drug abuse from the interdepartmental perspectives of prevention, education, treatment and law enforcement.

The Committee found that each of these groups have an important and vital role in effectively developing and coordinating these services. The recommendations that follow are intended to clarify the relationships of these groups and improve the coordination, communication and cooperation of the state's substance abuse service system.

The following recommendations are organized into 3 primary groups. The first set addresses issues of organizational composition and responsibilities. The second set addresses issues related to the state's evaluation of the current service system. And the final set makes recommendations for improving the administrative tasks associated with delivering a comprehensive set of substance abuse services to the state.

STATUTORY	19.	Add the Department of Public Safety to the Alcohol and Drug Abuse Planning Committee.
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In reviewing the state's spectrum of participating agencies in substance abuse prevention and treatment, the Committee found that the Department of Public Safety:

- is consistently involved in substance abuse prevention activities, particularly as they relate to drinking and driving;
- is responsible for introducing a substantial amount of federal prevention funds into the state service system; and
- chairs the Governor's Cabinet Subcommittee on Drug Abuse.

The Committee finds that the Legislature intended the Alcohol and Drug Abuse Planning Committee to consist of all state departments having regular substance abuse treatment and prevention activities.

Therefore, the Committee recommends that the Department of Public Safety should be added to the Alcohol and Drug Abuse Planning Committee.

STATUTORY 20. Designate the Commissioner of Public Safety as Chair of the Alcohol and Drug Abuse Planning Committee for the purpose of supervising the planning staff.

In its review of the ADPC's interdepartmental communications, the Committee found that the flow of decision-making authority among the alcohol service providers is unclear.

According to current law, the planning staff is under the general supervision of the planning committee (i.e., the 4 Commissioners) but the planning director is also held responsible for carrying out the ADPC duties. (22 MRSA § 7133). The Committee found that due to this dual level of responsibility and authority, the relationship between the planning staff, the department Commissioners and the department program staff needed to be clarified.

The Committee finds that effective interdepartmental coordination as intended in the Act requires the following:

- a well-defined line of communication that clearly identifies interdepartmental lines of authority.
- preservation of a direct line of communication between the planning director and the Commissioners;
- designation of a chair to oversee planning activities.

The Committee reviewed each of the departments' roles in substance abuse services and found that the areas of greatest controversy were related to:

- planning the state's treatment service system; and

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- developing recommendations for the allocation of the Alcohol Premium Fund.

Furthermore, the Committee found that the Department of Public Safety is in a neutral position regarding the ADPC's most controversial areas and thus could serve effectively as chair of the ADPC.

Accordingly, the Committee recommends that the Department of Public Safety should serve as Chair to the Alcohol and Drug Abuse Planning Committee.

STATUTORY	21.	Direct the Alcohol and Drug Abuse Planning Committee to issue recommendations to the Legislature on the use of all substance abuse funds. Further, mandate the Alcohol and Drug Abuse Planning Committee to submit a biennial, unified budget for all substance abuse services.
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Current law requires the ADPC to submit regular reports to the Legislature on the following matters (22 MRSA §7132):

- annually: a. evaluations of the prior year's progress towards the stated goals; and b. recommendations for the allocation of Alcohol Premium Fund dollars.
- biennially: a. comprehensive plan for the biennium containing measurable goals and performance indicators.
- every 4 yrs: a. estimates of state costs due to drug abuse; and b. estimates of the state's need for various types of services.

Each of the planning reports require consideration of all state substance abuse activities, regardless of funding source. However, the ADPC is only required to submit recommendations for one funding source, the Alcohol Premium Fund.

In practice, the ADPC issues a report to the Legislature that summarizes all activity of the past year and makes planning recommendations for the next fiscal year, regardless of the funding source.

The Committee found that the ADPC's planning reports could be of greater use to the Legislature if they clearly identified each funding source supporting each recommendation in the proposed state plan. Further, the Committee found that the Premium Fund allocation request should be presented to the Legislature as a unified budget in order to clarify the impact of individual substance abuse allocations and appropriations.

Therefore, the Committee found that the statutes should be amended to require the ADPC to submit recommendations to the Legislature on the use of all substance abuse funds. Furthermore, the ADPC should submit a biennial unified budget for all substance abuse services.

ADMINISTRATIVE	22.	Direct the Maine Council on Alcohol and Drug Abuse Prevention and Treatment and the ADPC to review the Council's role in the state planning process. Report to the Audit and Program Review Committee by December 15, 1988.
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ADMINISTRATIVE	23.	Direct the ADPC to involve the Maine Council on Alcohol and Drug Abuse Prevention and Treatment in every phase of the state planning process.
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In its review of the state planning process, the Committee received much testimony on the need to increase the public and professional participation in developing the state plan.

Current law requires the 4 departments to develop a state plan under the supervision of the ADPC. In addition, the law provides for public comment to be incorporated through the Maine Council on Alcohol and Drug Abuse Prevention and Treatment's mandate to attach their comments to the Commissioner's recommendations.

However, in reviewing the Council's participation in the planning process, the Committee found that the Council is only selectively involved in the ADPC planning process. Currently, the Council participates in public hearings for special populations and in the review of new priorities for the state plan. However, the Council has not been actively involved in reviewing the on-going programs that are annually submitted in the ADPC state plan.

The Committee finds that the Maine Council needs to be involved in all phases of the planning process in order to effectively incorporate public comment.

Further, the Committee recognizes that the Council is currently reviewing its mandate in order to better define its role in the planning process. However, the Committee recommends that the Council should include these issues in its discussions:

- the Council's participation in the planning process;
- the Council composition;
- the Council's relationship to the state's regional councils on alcoholism; and
- the availability of stipends and staffing.

Therefore, the Committee directs the ADPC to involve the Maine Council on Alcohol and Drug Abuse Prevention and Treatment in every phase of the state planning process. Further, the Committee recommends that the Maine Council on Alcohol and Drug Abuse Prevention and Treatment and the ADPC should review the Council's role in the state planning process and report to the Committee on Audit and Program Review by December 15, 1988.

STATUTORY

24.

Provide the Maine Council on Alcohol and Drug Abuse Prevention and Treatment with advisory input into the appointment of the Planning Director.

The Maine Council on Alcohol and Drug Abuse Prevention and Treatment serves as the public advisory body to the Governor and the Legislature on state substance abuse service needs. The Council has authority to oversee and comment on all ADPC proposals at the time of submission and is staffed and financed by the ADPC planning director and staff.

According to current law, the Planning Director is appointed by the Commissioners with the approval of the Governor. The Council has no input into the appointment process.

However, one of the responsibilities of the ADPC planning staff is to staff the Maine Council.

Therefore, the Committee recommends that the Maine Council on Alcohol and Drug Abuse Prevention and Treatment should have advisory input into the appointment of the Planning Director.

STATUTORY 25. Clarify that Council members' appointments shall commence and expire on the first of June.

The Committee finds that members of the Maine Council on Alcohol and Drug Abuse are appointed at several times throughout the year.

The Committee further finds that having members' terms begin and end at different times during the year is disruptive to the Council's activities.

Therefore, the Committee recommends that all appointments to the Maine Council on Alcohol and Drug Abuse should commence and expire on the first of June.

STATUTORY 26. Reorganize the State Act on Alcoholism and Drug Abuse to segregate policy statements from program provisions.

The State Act on Alcoholism and Drug Abuse defines the state's policy on substance abuse services. (22 MRSA Ch. 1601) Specifically, it provides for the following:

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- establishes and defines the two policy bodies concerned with substance abuse (the ADPC and the Maine Council on Alcohol and Drug Abuse Prevention and Treatment).
 - defines state policy on the coordination of state agencies serving substance abusers.
 - establishes and defines the service delivery program in the Department of Human Services (OADAP).

However, the Act does not contain the enabling legislation for any other substance abuse program.

Prior to 1983, the Department of Human Services (DHS) was the lead state agency responsible for coordinating all state substance abuse services. However in 1983, concurrent with the creation of the Premium Tax Fund, the Legislature established the Alcohol and Drug Abuse Planning Committee (ADPC) as a non-departmental unit and transferred DHS's interdepartmental responsibilities to the ADPC. (22 MRSA Ch. 1601) However, DHS's enabling legislation remained intertwined in the Act with the language that sets state policy.

In 1986, the Legislature authorized a second substance abuse program and placed its enabling legislation within its respective department's statutes. The Committee finds it is feasible that other state substance abuse programs may be statutorily authorized in the future. The Committee further finds that this enabling legislation would also be placed within the respective departments' statutes.

Therefore, the Committee recommends removing the program specific language from the State Act and replacing the program specific language in the general department statutes which follow, but are external to, the State Act on Alcoholism and Drug Abuse. This would clarify the State Act as a policy statement and make the location of the DHS program specific language consistent with the statutory authorization of programs in other state departments.

STATUTORY

27.

Allocate \$135,095 of the Alcohol Premium Fund to support a treatment evaluation system that will review the effectiveness of the state's substance abuse treatment services and protect the integrity of the existing service system.

ADMINISTRATIVE

28.

Direct the ADPC to limit its proposed treatment evaluation system to a maximum budget of \$150,000/year in order to ensure that the system is cost-effective.

Current law mandates the ADPC to report annually to the Legislature on the past year's progress in obtaining the state's planned goals and objectives for substance abuse services.
(22 MRSA §7132)

In response to this mandate, the ADPC has annually prepared a document that contains contract compliance summaries illustrating the number and cost of services provided by each agency during the past year. However, the ADPC does not yet have a system to measure the quality of these services.

The ADPC is currently developing a system to measure the quality of these services. The 3 state departments that contract for treatment services are developing a treatment evaluation system based on evaluations used by other states. In addition, the Department of Educational and Cultural Services is developing a prevention/education evaluation system under the direction of a federal grant.

The ADPC's proposed treatment evaluation system is comprised of two parts:

1. The development of an unduplicated baseline data collection system to describe the numbers and characteristics of Maine's substance abuse clients. This information would be derived from standardized state intake, case plan and discharge forms developed by the ADPC to document the state's purchased services; and

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2. The collection of follow-up information on discharged state clients which will allow comparison with the original state intake information and will demonstrate the outcomes of state clients 6 months after discharge.

The Committee invited members of professional research agencies and service provider agencies to review the proposed evaluation system and comment on its methods and effectiveness. The original proposal included the following:

- several sets of detailed information forms;
- 6, 12, and 18 month follow-up interviews with discharged clients; and
- an annual cost of \$210,000 in employees, computer services and telephone services to collect, enter and analyze the data.

The Committee found that the proposed treatment evaluation system would meet the state's information needs. However, the Committee also found that further revisions of the system could reduce its cost and increase its value for the state of Maine.

Therefore, although the Committee initially recommended that the ADPC should consolidate the system cost to a maximum budget of \$150,000 a year, the ADPC has been able to reduce the estimated cost to 135,095 a year.

Therefore, the Committee recommends an allocation of \$135,095 from the Premium Fund to support the revised treatment evaluation system.

ADMINISTRATIVE 29.

Implement a revised form of the ADPC's proposed baseline data collection system for substance abuse services.

ADMINISTRATIVE 30.

Establish a follow-up information system by directing the ADPC to contract with a research agency to conduct biennial follow-up interviews.

During the Committee's review of the ADPC's proposed evaluation system, several issues were exceptionally controversial. These include:

- the anticipated costs and benefits of the proposed system;
- the appropriateness of the data collection forms, including the length and content;
- the proposed method for de-identifying client intake information; and
- the impact of using state employees to contact former substance abuse clients after they had left the sponsored services.

The Committee also discussed the limitations of the system in that it only summarizes the condition of the state sponsored substance abuse client and does not include any measure of the effectiveness of the state's substance abuse programs in general.

Lastly, the Committee found that the state currently collects information on the effectiveness of substance abuse treatment programs through the state facility licensing mandate. The Committee found that this information is indicative of program quality and is used in other states to measure standards of quality but that it is not incorporated in the state's evaluation plans.

The Committee supports the concept of the treatment evaluation system as proposed but recommends the following changes:

- further refinement of the proposed forms;

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- an opinion from the Attorney General's Office concerning the effectiveness of the de-identification code in protecting the clients' right to confidentiality;
 - required participation for all contracted substance abuse services; and
 - supplementation of the information system with facility licensing data.

Therefore, the Committee recommends implementing a revised form of the ADPC's proposed baseline data collection system and establishing a biennial follow-up information system that includes contracting with a research agency to conduct the interviews.

ADMINISTRATIVE 31.

Direct the ADPC to attach a cover letter to the evaluation system to clarify the nature of the client's prospective participation in the evaluation system.

In its review of substance abuse treatment in Maine, the Committee found that a common element among all programs is the need to establish a client/counselor relationship based on trust. Accordingly, the Committee finds that the proposed evaluation system must not interfere with this crucial element of success in substance abuse treatment programs. In particular, the Committee finds that the client must not consider the evaluation system to be coercive or to abridge his or her confidentiality or quality of treatment.

As a result, the Committee finds that the proposed evaluation system must clearly state that:

- The client's participation in the evaluation system is voluntary; and
- Non-participation in the evaluation system does not limit the client's rights to state-funded services.

Finally, the Committee finds that the client must clearly understand that he or she may be contacted by someone not employed by the counseling agency should he or she choose to participate in the proposed evaluation system.

Hence, the Committee recommends that the ADPC should attach a cover letter to the evaluation system to clarify the nature of the clients' prospective participation in the system.

ADMINISTRATIVE 32. Direct the Alcohol and Drug Abuse Planning Committee to streamline state substance abuse contracting procedures in order to reduce duplicative and unnecessary paperwork.

Currently, the state purchases most of its drug abuse treatment services from private service providers. However, the Committee found that state contracts for these services may vary according to the contracting department and sometimes vary within the department.

Differences may exist between departments in the:

- contract negotiation procedures;
- contract instruments;
- contract monitoring procedures; or
- contract review procedures.

The Committee further found that these variances can result in duplicate administrative requirements such as the following:

- negotiation of several contracts with different state departments;
- assignment of more than one contract officer within state departments;
- different reporting formats required for different departments; or
- different measures of service used by different departments.

The Committee found that these variances often result in an excessive amount of duplicative paperwork before the service providers can process state clients.

However, the Committee also found that the state departments have successfully consolidated some alcohol contract procedures, such as:

- jointly funding services by more than one department through a consolidated contract using a single reporting form for each department; and
- jointly contracting with other service areas within a department to purchase a variety of services from one provider.

The Committee recognizes that the ADPC has thus far focused its coordination activities on planning issues but finds that it is necessary for the state to begin to comprehensively address streamlining the administrative tasks associated with these services.

Accordingly, the Committee finds that implementation of the following measures, on a case by case basis, could help streamline the state's contracting methods for substance abuse services:

- establishing a lead agency to negotiate state contracts with the private provider;
- consolidating reporting requirements into one format for each of the department's contracts;
- establishing a single interdepartmental contract for use with service providers who only provide alcohol services.

The Committee recognizes that the needs of the service providers and the state agencies will vary. However, the Committee also recognizes that measures can be taken to reduce the administrative burden associated with serving state clients. Therefore, the Committee recommends that the ADPC should streamline state substance abuse contracting procedures in order to reduce duplicative and unnecessary paperwork.

ADMINISTRATIVE 33. Direct the Alcohol and Drug Abuse Planning Committee to regularly update its mailing list in order to improve the dissemination of public information.

The ADPC is the state's interdepartmental planning unit for state activities related to substance abuse. The ADPC is staffed by an office of 4 employees which also staff the Maine Council on Alcohol and Drug Abuse Prevention and Treatment.

The Maine Council, as one of its statutory obligations, is mandated to disseminate information to the public on state planning activities. The ADPC staff carries out these and other administrative tasks for the Council. In light of these responsibilities, the ADPC maintains a mailing list of approximately 1200 individuals who are interested in the state's substance abuse planning activities.

During the course of the review, the Committee noted that the ADPC's mailing list appeared to be outdated. As information dissemination is vital to planning the state's substance abuse services, the Committee recommends that the ADPC should regularly update its mailing lists.

ADMINISTRATIVE 34. Direct the Department of Human Services to adopt certain rules concerning the administration of the DEEP program.

Last session, the Legislature placed the DHS Driver Education and Evaluation Program (DEEP) in statute. The legislation required the Department to implement several new programs and change some existing program features. In addition, the establishment of DEEP in statute left several issues unresolved. These issues include the following:

- The new law provided that OUI'ers could have their DHS/DEEP education and assessment program waived due to participation in certain other programs. However, the law did not define what programs qualify in lieu of a DHS/DEEP program.

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- The new law required classes to be more widely available. Accordingly, the department increased the number of classes and sites by employing many local instructors in lieu of the few state instructors.

However, the Committee finds that the following requires clarification:

- standards for DEEP instructor qualifications and payment schedules;
- rules to define the frequency that courses will be offered;
- rules to verify the distance or length of time a DEEP participant may be expected to wait prior to acceptance into a course; and
- rules to define the qualification criteria for waiving participation in the DHS/DEEP program.

Accordingly, the Committee directs the Department of Human Services to adopt certain rules concerning the administration of the DEEP program.

FINDING	35.	The Committee finds that the Legislature should weigh the costs and benefits of establishing a Department of Substance Abuse Services in order to improve the delivery of substance abuse services.
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The Committee, in reviewing the state's effectiveness in coordinating substance abuse services, issued recommendations to improve several administrative areas:

- streamlining substance abuse contract procedures;

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- clarifying the relationship of the Planning Director to the 4 Commissioners and department staff; and
 - increasing public participation in the planning process.

However, the Committee recognizes that another means of streamlining the communication, cooperation and coordination of these services may be to establish an Executive Office of Substance Abuse Services.

The Committee recognizes that there may be some benefit in consolidating substance abuse contracts, contract officers, auditing procedures, and state planning for substance abuse services under one agency.

However, the Committee also found that establishing an Executive Office may result in duplications of certain state services, such as the following:

- new office space to physically contain the employees;
- additional funding to support the new office;
- additional employees to replace the individual departments' losses where employees worked with more than one account; and
- inhibited communications between the substance abuse divisions and areas in other departments which serve these same populations.

Therefore, in light of the potential and currently indeterminate costs and benefits to the state, the Committee finds that the Legislature should further weigh the costs and benefits of establishing a Department of Substance Abuse Services as a means of improving state substance abuse service delivery.



PROFESSIONAL REGULATORY BOARDS



STATE BOARD OF EXAMINERS OF PSYCHOLOGISTS

STATUTORY 36. Continue the State Board of Examiners of Psychologists for ten years pursuant to the Maine Sunset Law.

The Board of Examiners of Psychologists (32 MRSA §3811 et. seq.) is a nine member Board appointed by the Governor to regulate two levels of psychological practice: psychological examiners and psychologists. In 1987, the number of professionals regulated by the Board totalled 414; 327 psychologists and 87 psychological examiners.

The Board has been included on the Committee's review agenda for the past three years to enable the Committee to conduct a thorough review of the Board and its practices. Over the review period, the Committee has made recommendations regarding:

- the definition of mental illness;
- the services of a psychological examiner;
- Board membership;
- licensure eligibility;
- supervision of psychological examiners;
- continuing education;
- fee caps;
- hearing requests;
- record keeping;
- quorum; and
- school psychologists.

In reviewing the licensure process last year, the Committee found that occasional long delays in the application phase and apparently conflicting instructions created unnecessary frustration and hardship for potential licensees.

As a result of last year's recommendations from the Committee, the Department of Professional and Financial Regulation has increased the administrative support for the Board from a quarter to a third of one board clerk's time and is in the process of implementing additional reorganization measures that should provide even more administrative support to the Board. Furthermore, the Board has recently contracted with a psychologist who will respond to applicant's questions in order to streamline the licensing process.

The Committee finds that implementation of prior recommendations and the Board's efforts to operate a more efficient licensing and regulatory process have successfully addressed the past concerns with the Board's operation.

Accordingly, the Committee recommends continuing the Board of Examiners of Psychologists for ten years pursuant to the Maine Sunset Law.

MAINE OCCUPATIONAL INFORMATION COORDINATING COMMITTEE

STATUTORY	37.	Continue the Maine Occupational Information Coordinating Committee for ten years pursuant to the Maine Sunset Law.
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Last year, the Committee reviewed the Maine Occupational Information Coordinating Committee and continued MOICC for one year, pending receipt of the Governor's recommendations on coordination among the human resource development programs in state government.

The Statutory Membership of MOICC consists of:

- Commissioner of Labor (Chair of the Committee);
- Commissioner of Educational and Cultural Services;
- Commissioner of Human Services;
- Director of the State Development Office;
- Director of the State Planning Office;
- Chair of the Maine Job Training Council;
- Chair of the State Board of Education;
- and
- Chair of the Board of Trustees of the Maine Vocational Technical Institute System.

MOICC is not a data collection agency but rather collects information from the various divisions in the Departments of Labor and Educational and Cultural Services and combines this information in systems with end user needs in mind. Some of the systems include:

- the Career Information Delivery System (CIDS);
- the Occupational Information System;
- the Maine Economic Development Data System; and
- the Tourist Information System.

MOICC also has a Work Education Resource Center and has put on a conference for Career Education/Career Information. As part of CIDS, MOICC provides grants to Local Educational Agencies to assist them with getting connected with CIDS. State support has made MOICC the lowest cost provider of CIDS.

The Maine Occupational Information Coordinating Committee (MOICC) coordinates and supports the development, maintenance and operation of a comprehensive career, occupational, and economic data-based system. MOICC is mandated to "foster" communication and coordination of education, employment and training programs." Information systems are established to provide "comprehensive career and occupational information required for the coordination and efficient delivery of all employment and training programs in the state and to support the state's economic development initiatives."

The Committee finds that the Maine Occupational Information Coordinating Committee continues to serve a useful and important purpose in providing comprehensive career and occupational information in Maine.

Therefore, the Committee recommends continuing the Maine Occupational Information Coordinating Committee for ten years pursuant to the Maine Sunset Law.

ELECTRICIANS' EXAMINING BOARD

STATUTORY	38.	Continue the Electricians' Examining Board under the provisions of the Maine Sunset Laws.
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Last year, the Electricians' Examining Board was continued for one year pending further legislative review. During the past year, the Committee reviewed the following administrative practices of the Board:

- The Board's cooperation with the Department of Professional and Financial Regulation and its adherence to the advice of their Assistant Attorney General.
- The appropriateness of the current length of appointment to the Board.
- The Board's policy on conflict of interest issues.
- The Board's purchase of a licensing exam that is developed, administered and scored by a professional examination group.
- The Board's procedures for issuing reciprocal licenses.
- The Board's fiscal practices, including their recommendations concerning a consistently large balance carried forward each year.

As a result of the review, the Committee finds that the Board has successfully addressed the Committee's concerns regarding operation and management. Therefore, the Committee recommends that the Electricians' Examining board be continued under the provisions of the Maine Sunset Laws.

Bob Steward
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STATUTORY

39.

Decrease the length of an appointment to the Electricians' Examining Board to 3 years and increase the limit on the total number of appointments to 3.

Members of the Electricians' Examining Board are currently appointed for 5 year terms and their appointments are limited to 2 full terms of service.

Of the 40 professional licensing boards in Maine, 18 or 48% serve appointment terms of 3 years. Furthermore, 28% or 11 of the boards are limited to 3 terms of appointments, as follows:

- 2 terms: 20 boards
- 3 terms: 11 boards
- 4 terms: 1 board
- unlimited: 8 boards

In its review of the Electricians' Examining Board, the Committee finds that shorter terms would serve to:

- enable a greater number of professionals to serve on the Board;
- encourage the involvement of more professionals on the Board; and
- prohibit against stagnant perspectives in the regulation of this field.

Furthermore, the Committee finds that lengthening the number of terms of service from 2 to 3 years will maintain the continuity necessary for the Board to protect the public health and welfare.

Therefore, the Committee recommends that appointments to the Electricians' Examining Board should be decreased to 3 year appointments to 3 years and that the limit on the number of appointments should be increased to 3 terms of service.

STATUTORY

40.

Clarify that reciprocal licenses shall not be denied on the basis of current residency.

Current law authorizes the Board to promulgate rules regarding reciprocal licensing with other states which maintain electrical standards at least equal to Maine. (32 MRSA § 1153).

Under that authority, the Board has promulgated rules that define reciprocal requirements as follows:

"Any person holding a valid license as a master electrician, journeyman electrician or limited electrician in the states of New Hampshire, Vermont or Commonwealth of Massachusetts, who has met the licensing standard of such states, shall be eligible for licensure to the same degree in the state of Maine. Applicants for such licensure shall not be required to pass an examination, but are otherwise required to make application as required in 32 MRSA § 1202, and pay the fee provided in § 1203."

Currently, the Electricians' Examining Board does not issue reciprocal licenses to electricians unless they:

- are currently licensed in Massachusetts, Vermont, or New Hampshire; and
- live in the state of licensure.

In 1985 the Attorney General's Office reviewed the board's practice of requiring current residency and found that the Board had no legal right to require reciprocal applicants to live in the state of original licensure. Therefore, the Board could not legally deny reciprocal licenses on the basis of current residency.

Furthermore, the Committee found that the Board has not been issuing reciprocal licenses to electricians licensed in states other than Massachusetts, New Hampshire or Vermont.

As current law provides authorization to issue reciprocal licenses to any electrician licensed in another state which maintains electrical standards at least equal to Maine, the Committee found that the Electricians' Examining Board should not restrict reciprocal licenses to electricians from New England.

Accordingly, the Committee recommends that the statutes be amended to clarify that reciprocal licenses shall not be denied on the basis of current residency.

ADMINISTRATIVE 41.

Direct the Board to institute a policy on conflict of interest.

Current state law contains provisions to govern the activities of certain public officials in order to define and protect against potential conflicts of interest. For example, Legislators' activities are guided by two sections of law:

- 1 MRSA § 1002-1017: Legislative ethics and the protection of the public;
- 3 MRSA § 312-A - 326: Lobbyist disclosure and the protection of the legislative process;

State employees are regulated by another section of law:

- 5 MRSA § 18: Regulates state employees, classified and unclassified; and employees of the National Guard, the University of Maine, the Maine Maritime Academy, the Vocational Technical Institutes and members of advisory groups.

In its recent review of state laws as they pertain to conflict of interest for public servants, the Joint Standing Committee on State and Local Government recently noted that no laws govern the activities of regulatory board members and requested the Department of Professional and Financial Regulation to study and formulate a report on conflicts of interest as they relate to the issuance, suspension, and revocation of professional licenses.

Concurrently, in its review of the Electricians' Examining Board, the Joint Standing Committee on Audit and Program Review found that a need exists for this board to review its responsibility as a state regulatory board and to develop a policy regarding conflicts of interest as they relate to this responsibility. The Committee found that members of professional regulatory boards are entrusted to protect the public health, safety and welfare, and therefore, should not be involved in activities that are or give the appearance of being a conflict of interest.

Therefore, the Committee recommends that the Electricians' Examining Board should institute a policy on conflicts of interest.

ADMINISTRATIVE 42. Direct the Electricians' Examining Board to report on its financial status during the 1988 Compliance Reviews.

Last year, the Committee found at least 7 of the state's regulatory boards have consistently large fiscal balances at the close of each fiscal year. The Committee recommended that the Commissioner of Professional and Financial Regulation should review the revenues and expenditures of the state regulatory boards for possible reduction of fees as authorized under 5 MRSA §151.

This year the Department testified on behalf of the Electricians' Examining Board regarding its current carrying balance. The Department cited several projected expenditures which may effect the Board's current balance in the coming year. For example, the Board is considering the following administrative changes:

- acquiring additional office space to meet the clerical needs of regularly issuing over 7000 licenses;
- establishing a computerized filing system for licensing records; and
- possibly subsidizing the costs of the licensing examination.

Therefore, in recognition of the Board's plans, the Committee recommends that the Electricians' Examining Board report to the Audit & Program Review Committee on its financial status during the 1988 Compliance reviews.

STATUTORY 43. Update the definition of "electrical installations" to reflect changes in the field.

*P. 53
See 43*

The current definition of "electrical installations" has not been updated since 1964. However, the revised licensing laws indicate that the electrical field has changed immensely in the past 20 years.

The Committee found that as state laws changed to reflect changes in the National Electrical Code and safe electrical practices, the definition of "electrical installations" was never changed to reflect current standards.

Therefore, the Committee recommends updating the definition of "electrical installations" to reflect changes in the field.

STATUTORY

44.

Authorize the Board to set permit and inspection fees through the public rule-making process.

*B. 54
2012*

Current law establishes a fee schedule for electrical service permits which range from 20 cents to 20 dollars. (32 MRSA § 1102-B; sub-§4) These fees are to be charged in addition to an inspection fee, which when combined, is required by law to be at least \$13.50.

The Committee finds that establishing permit fees through the public rule-making process is more appropriate than placing the fee structure in statute. This would be consistent with other fee setting procedures in the Department of Professional and Financial Regulation and would allow fee-setting by rule rather than requiring a statutory amendment.

Therefore, the Committee recommends that the Electricians' Examining Board should be authorized to set permit and inspection fees through the public rule-making process.

STATUTORY

45.

Require all applicants for Master electrician's licenses to complete a 45 hour code course prior to taking the licensing examination.

Current law allows journeyman electrician and limited license electricians to take the examination for a Master electrician's license without completing any of the educational requirements if they were licensed prior to July 1987 and had completed 12,000 hours of work experience. (32 MRSA §1202, sub-§ 1, ¶B) However, some of these candidates may not have been required to take any course on the National Electrical Code under the earlier licensing provisions.

Current licensing laws require all applicants for the journeyman electrician and all other applicants for the Master electrician license to complete 576 hours of education, including at least 45 hours in a current code course.

The Committee finds that knowledge of the National Electrical Code is essential to a Master electrician's ability to safely make electrical installations.

Therefore, the Committee recommends that all applicants for Master electrician licenses should be required to complete a 45 hour code course prior to taking the licensing examination.

STATUTORY	46.	Separate the examination fee from the licensing application fee.
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Current law authorizes the Electricians' Examining Board to charge one combined fee for an electrician's examination and a licensing application. (32 MRSA § 1203)

However, the Electricians' Examining Board has begun to contract with a national examination agency to purchase licensing exams. The fees for these exams are set by the examination company and must be paid in addition to the state's administrative costs of processing licensing applications.

Therefore, the Committee finds that the examination fees and licensing application fees should be separated in statute.

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P. 57*

STATUTORY

47.

Change the Apprentice and Helper electrician licensing fees from \$10 a year to a cap of not more than \$20 a year.

*B.S. 11
June 53*

Current law establishes an annual licensing fee of \$10 for apprentice and helper electricians.

However, the Committee found that a licensing fee of \$10 a year was inadequate in meeting the administrative costs associated with licensing applicants. The Department of Professional and Financial Regulation currently charges \$10 as a late fee to cover the additional costs of reprocessing expired licenses.

Therefore, in recognition of the current administrative costs associated with licensing applicants, the Committee recommends that the statutory licensing fee should be changed to a cap of not more than \$20 a year.

BOARD OF SOCIAL WORKER LICENSURE

STATUTORY	48.	Continue the State Board of Social Worker Licensure for one year under the provisions of the Maine Sunset Law.
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Last year, the Committee reviewed the regulatory activities of the State Board of Social Worker Licensure. At that time, the Legislature continued the Board for one year pending further review of some of the Board's administrative procedures.

This year the Committee's review included the following social work issues:

- accommodation of the disabled during the licensing examination process;
- recognition of post-graduate clinical experience prior to the 1983 change in the licensing laws; and
- definition of "clinical setting" as required for LCSW qualifications.

The Committee finds that each of these issues result in unwarranted difficulties for applicants to become licensed. In particular, the Committee finds that the Board's failure to define what constitutes a "clinical setting" is confusing to licensure candidates and serves to delay the licensure process.

The Committee further finds that these issues are vital to aspiring social workers trying to qualify for a Maine license. Even more importantly, the Committee finds that these issues are critical to the state as it attempts to fill vacant social worker positions. Therefore, the Committee recommends that the Board be continued for one year under the provisions of the Maine Sunset Law.

STATUTORY

49.

Authorize the Board to waive up to one year of post-graduate clinical experience for qualifying LCSW candidates.

In 1983, the social worker statutes underwent major revisions which resulted in more stringent licensing requirements. One change restricted entry into private clinical practice to Licensed Clinical Social Workers (LCSW). The LCSW license requires candidates to meet the following requirements:

1. Completion of a Masters degree in Social Work; and
2. Two years of post-graduate supervised clinical experience.

The Committee finds that some LCSW applicants have had extensive clinical, post-graduate experience prior to entering a Masters degree program in social work, but that the law does not authorize the Board to recognize that experience in the licensure process.

The Committee finds that recognizing extensive prior clinical experience would be beneficial, reasonable, and would maintain the high standard of the profession. The Committee further finds that individuals who have had at least 5 years of post-graduate clinical experience should be eligible to have at least a year of post-MSW experience waived.

Therefore, the Committee recommends that the Board be authorized to waive up to one year of post-graduate clinical experience for qualifying LCSW candidates.

STATUTORY

50.

Direct the Board of Social Worker Licensure to accommodate the special needs or handicapping conditions of licensing applicants.

Last year the Committee found that certain individuals who had demonstrated competencies through other accreditation processes and had proven professional credibility, were unable to become licensed in Maine due to learning disabilities or other special needs which affected their ability to take the state exam as currently offered.

In response, the Committee directed the Board to develop some type of alternative examination method that could address the individual special needs of licensing applicants.

The Committee recognizes the efforts of the Board of Social Worker Licensure in developing a Board procedure for addressing applicants' disabilities. The Board has proposed that all examination/licensing applications will include a statement to inform applicants of the availability of alternative examinations and to provide directions for initiating this process.

The Committee further recommends that the statutes be amended to reflect the Board's policy, and the state's efforts, in accommodating the special needs or handicapping conditions of licensing applicants.

FINDING 51. The Committee finds that state employed social workers are subject to state licensing laws.

In 1985, the social worker licensing law was amended to require anyone who represents themselves to the public, or uses the title of, a social worker to be licensed by the state board as a social worker. (32 MRSA § 7002) The law further mandates that all licensed social workers (LSW) must have clinical supervision and that those social workers employed by the Department of Human Services could receive the mandated consultation in a manner prescribed by the department. (32 MRSA § 7053-A)

The 1985 law contained a clause to provide for licensure without examination for any person employed in a social worker position and applying for licensure prior to July 1, 1987. However, last session a bill was submitted to extend the licensure without examination provision to February 1, 1988 in order to accommodate 500 to 600 state employees.

The Committee finds that most state employed social workers are now licensed but that some confusion regarding the applicability of the law to state employed social workers may still exist.

Accordingly, the Committee affirms that Legislative intent is that state-employed social workers are subject to state licensing laws.

MAINE UNIFORM ACCOUNTING AND AUDITING PRACTICES ACT

ADMINISTRATIVE 52. Require the Division of Community Services to synchronize its compliance audit with the financial audits conducted by Community Action Agencies within four months from the end of each agency's fiscal year. Report to the Audit & Program Review Committee on September 30, 1988 with a schedule of coordinated audits to be performed and submit a compliance report on September 30, 1989.

In 1984, the Committee directed the State Auditor to work with a transition committee to develop and implement uniform accounting and auditing practices for funds contracted by the state (5 MRSA §1655). To comply with the law, the Division of Community Services within the Executive Department was designated as the lead agency to implement the "single audit" recommendation for the community action agencies or "CAP"s (5 MRSA Ch. 330).

In reviewing the status of the "Maine Uniform Accounting and Auditing Practices Act" (MAAP) for community agencies (5 MRSA Ch 148-B), the Committee finds that the goal to eliminate multiple audits for the CAPs has not yet been totally achieved. Although the Division of Community Services has consolidated its compliance audits as necessary for each CAP, the financial audit performed by the CAPs is separate and distinct from the Division of Community Services' compliance audit.

The Committee finds that the benefits of a single audit can be achieved by requiring the Division of Community Services to perform its compliance audit synchronously with the CAP's financial audit. Furthermore, the Committee understands that the Division of Community Services will complete its compliance audit within four months from the close of each CAP's fiscal year in order to ensure that the CAPs are able to comply with their federal financial reporting requirements.

Therefore, the Committee recommends that the Division of Community Services synchronize its compliance audit with the financial audits conducted by Community Action Agencies within four months from the end of each agency's fiscal year. Report to the Audit & Program Review Committee on September 30, 1988 with a schedule of audits to be performed and submit a compliance report on September 30, 1989.

SENATE

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STATE OF MAINE
ONE HUNDRED AND THIRTEENTH LEGISLATURE
COMMITTEE ON AUDIT AND PROGRAM REVIEW

- Alcohol and Drug Abuse Planning Committee
- Eminent Domain/Sale of Surplus Property
- Underground Petroleum Storage Facilities
- Maine Conservation School
- Professional Regulatory Boards

ADDENDUM 1987 - 1988

VOLUME 3 OF 4

ADDENDUM VOLUME 3

INTRODUCTION

As a final part of its report on the work done by subcommittee #3, the Committee on Audit & Program Review has assembled a number of documents in the form of this addendum. The purpose of this short volume is to document final Committee action, include additional recommendations (which are bold faced), and update and revise several pieces of information contained in the original report.

**FINAL DISPOSITION OF
COMMITTEE RECOMMENDATIONS
VOLUME 3
1987-1988 Committee Report**

<u>RECOMMENDATION</u>	<u>DESCRIPTION</u>	<u>MOTION</u>
I. EMINENT DOMAIN/SALE OF SURPLUS PROPERTY		
Stat.	1. State's share of gross proceeds from sale of surplus property be deposited into account of origin.	OTP
Adm.	2. Right of first refusal on surplus property offered to former owner.	OTP
Stat.	3. Property owner be given an opportunity to accompany appraiser.	OTP
Finding	4. Calculating the sale price of surplus property on fair market value.	OTP
II. DEP - UNDERGROUND PETROLEUM STORAGE FACILITIES		
Stat.	5. Definition of responsible party includes former owners. Amendment clarifies that a person who would otherwise be a responsible party shall not be subject to liability if that person can establish that the violation was caused by a 3rd party, or an act of God or war, or combination.	OTP-AM
Stat.	6. Exempt individuals who neither know nor had reason to know of their ownership of a tank.	OTP
Stat.	7. Authorize the imposition of punitive damages.	OTP
Adm.	8. Submit Project Priority List.	OTP
Finding	9. Finding on retroactivity.	OTP
III. MAINE CONSERVATION SCHOOL		
Stat.	10. Continue state support.	OTP
Stat.	11. Clarify the nature of state's involvement.	OTP

Stat.	12.	Authorize Executive Director to raise funds.	OTP
Finding	13.	Finding on clerical and maintenance support.	OTP
Adm.	14.	Head administrative officer or designee of member state agencies to serve on the board.	OTP

IV. CHILD WELFARE SERVICES

Adm.	15.	Continue the review.	OTP
Finding	16.	Finding on out-of-state placements.	OTP
Adm.	17.	Report on children who "age-out" of the substitute care system.	OTP
Stat.	18.	Funding for the Child Welfare Services Ombudsman.	OTP
Adm.	18-A.	Report on investigation of suspected child abuse and neglect in out-of-home settings.	OTP

V. ALCOHOL AND DRUG ABUSE PLANNING COMMITTEE

Stat. Rec.	19.	Add the Department of Public Safety to the ADPC.	OTP
Stat. Rec.	20.	Designate the Commissioner of Public Safety as Chair of the ADPC.	OTP
Stat. Rec.	21.	Require the ADPC to report on all funds and submit a unified budget to the Legislature.	OTP
Adm. Rec.	22.	Review the role of the Maine Council on Alcohol and Drug Abuse Prevention.	OTP
Adm. Rec.	23.	Involve the Maine Council in every phase of the state planning process.	OTP
Stat. Rec.	24.	Provide the Maine Council with advisory input into the appointment of the Planning Director.	OTP
Stat. Rec.	25.	Begin and end Council members' appointments on June 1.	OTP

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| Stat. Rec. | 26. | Reorganize the State Act on Alcoholism and Drug Abuse. | OTP |
| Stat. Rec. | 27. | Allocate 135,000 to fund a treatment evaluation system. | OTP |
| Adm. Rec. | 28. | Establish the maximum budget for a treatment evaluation system. | OTP |
| Adm. Rec. | 29. | Revise the ADPC's proposed baseline data collection forms. | OTP |
| Adm. Rec. | 30. | Contract with a research agency to conduct biennial follow-up interviews of discharged clients. Amend to clarify that the state will not be given the names of individuals interviewed by the research agency. | OTP-AM |
| Adm. Rec. | 31. | Require a cover letter clarifying the voluntary nature of client participation in the evaluation system. | OTP |
| Adm. Rec. | 32. | Streamline contracting procedures for substance abuse services. | OTP |
| Adm. Rec. | 33. | Regularly update the ADPC mailing list. | OTP |
| Adm. Rec. | 34. | Direct the DHS to adopt certain rules regarding the DEEP program. | OTP |
| Finding | 35. | Weigh the costs and benefits of establishing a Department of Substance Abuse Services. | OTP |

VI. STATE BOARD OF EXAMINERS OF PSYCHOLOGISTS

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| Stat. Rec. | 36. | Continue the State Board of Examiners of Psychologists | OTP |
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VII. MAINE OCCUPATIONAL INFORMATION COORDINATING COMMITTEE

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| Stat. Rec. | 37. | Continue the Maine Occupational Information Coordinating Committee. | OTP |
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VIII. ELECTRICIANS' EXAMINING BOARD

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| Stat. Rec. | 38. | Continue the Electricians' Examining Board. Amended to continue for one year and to extend the Board's authority to charge penalty fees and waive licensing requirements for late license renewals. | OTP-AM |
| Stat. Rec. | 39. | Decrease the length of a Board appointment and increase the maximum number of appointments. | OTP |
| Stat. Rec. | 40. | Clarify that reciprocal licenses shall not be denied on the basis of residency. | OTP |
| Adm. Rec. | 41. | Direct the Board to institute a policy on conflict of interests. | OTP |
| Adm. Rec. | 42. | Direct the Board to report on its financial status during the 1988 compliance reviews. | OTP |
| Stat. Rec. | 43. | Update the definition of "electrical installations". Amended to exempt from licensure installers of telephone, telegraph, cable and closed circuit television, data communications and sound equipment while requiring that these installations meet the standards of the national electrical code. | OTP-AM |
| Stat. Rec. | 44. | Set electrical permit and inspection fees through the public rulemaking process. | OTP |
| Stat. Rec. | 45. | Require all applicants for master electricians' licenses to complete an electrical code course. | OTP |
| Stat. Rec. | 46. | Separate the examination fee from the licensing fee. Amended to clarify the biennial fees. | OTP-AM |
| Stat. Rec. | 47. | Set a cap for apprentice and helper electricians' licensing fees. | OTP |

IX. STATE BOARD OF SOCIAL WORKER LICENSURE

- Stat. Rec. 48. Continue the State Board of Social Worker Licemsure for one year. OTP
- Stat. Rec. 49. Authorize the Board to waive up to one year of post-MSW clinical experience for qualifying LCSW candidates. Amended to clarify the qualifying experience as being prior to completion of a Masters degree in Social Work. OTP-AM
- Stat. Rec. 50. Direct the Board to accommodate special needs of licensing applicants. OTP
- Finding 51. Clarify that state employed social workers are subject to state licensing laws. OTP

X. MAINE UNIFORM ACCOUNTING AND AUDITING PRACTICES ACT

- Adm. Rec. 52. Synchronize compliance audits with financial audits. OTP

ADMINISTRATIVE 18-A.

Require the Department of Human Services to report to the Audit & Program Review Committee by July 1, 1988, regarding the implementation and effectiveness of the interdepartmental procedures for investigating and resolving allegations of child abuse and neglect in out-of-home settings.

During the biennium of the 113th Legislature, the Committee made a number of significant recommendations regarding the investigation of suspected abuse and neglect in out-of-home settings. The first was to establish an Out-of-Home Abuse and Neglect Investigating Team to investigate suspected abuse and neglect in child-caring institutions. The second was to recommend passage of legislation to allow relevant communication and clarify responsibilities among the Departments of Human Services, Corrections, and Mental Health and Mental Retardation regarding institutional investigations.

In making these recommendations, the Committee recognizes the need to take a special approach to investigations in out-of-home settings to ensure that the investigation is thorough, comprehensive, and fair.

In order to ensure that these goals are met, the Committee recommends that the Department of Human Services report by July 1, 1988 regarding the implementation and effectiveness of the interdepartmental procedures for investigating and resolving allegations of child abuse and neglect in out-of-home settings.