

# MAINE STATE LEGISLATURE

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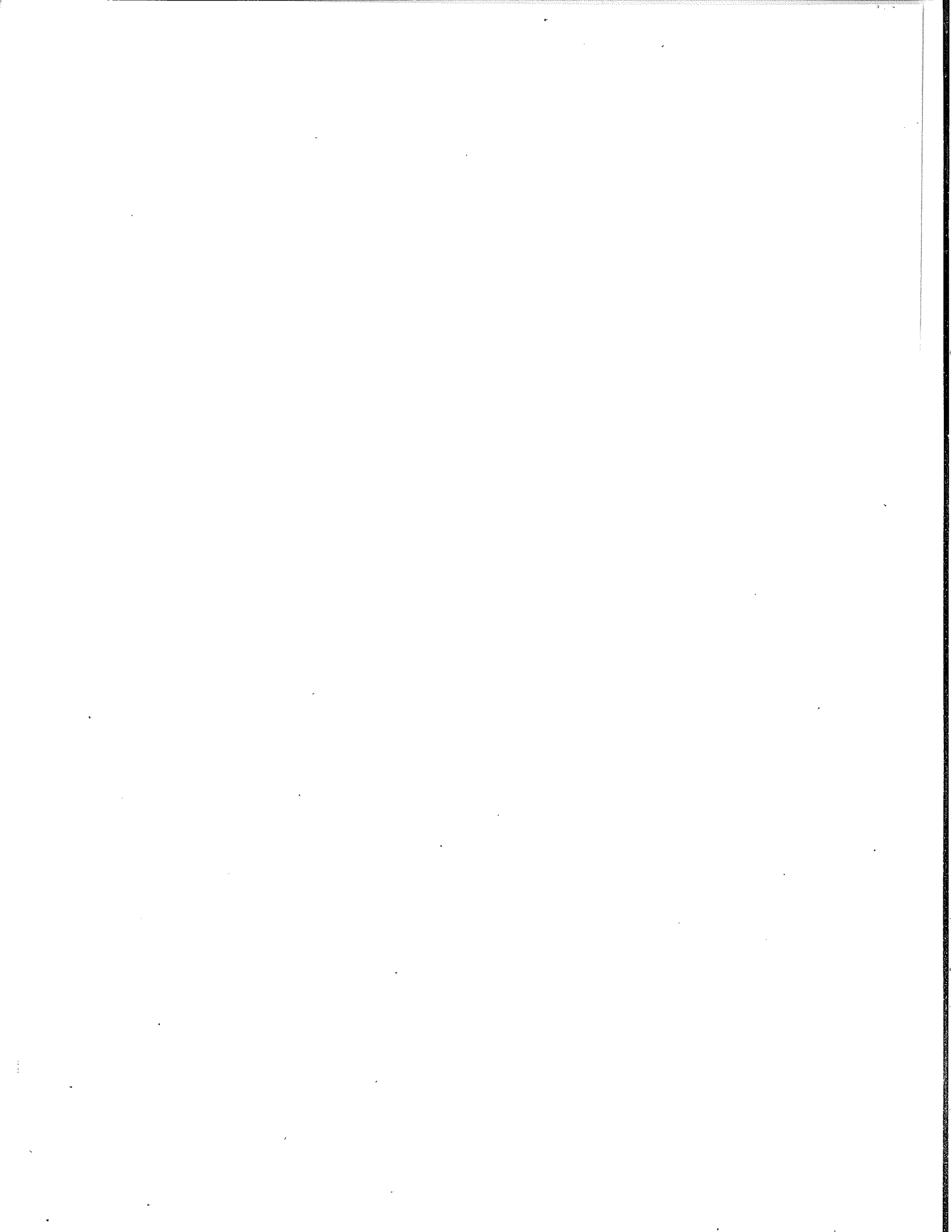


# Review of

- Workers' Compensation Commission
- Professional Regulatory Boards
- Advisory Commission on Radioactive Waste
- Department of Human Services
- SCAN Team Language
- Emergency Medical Services

## Joint Standing Committee on Audit and Program Review 1988-1989





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

June 1989

Members of the Legislative Council,

We are pleased to transmit the Committee's 1988--1989 report to you in three volumes. To simplify our process and reduce costs, this year the Committee used draft reports to circulate its initial recommendations. These three volumes represent our final conclusions about the agencies under review. The report includes statutory and administrative recommendations and findings on the:

- Department of Administration;
- Department of Labor;
- Maine Labor Relations Board;
- Workers' Compensation Commission;
- Professional Regulatory Boards;
- Advisory Commission on Radioactive Waste;
- Department of Human Services;
- SCAN Team Language;
- Emergency Medical Services;
- State Civil Service Appeals Board;
- Educational Leave Advisory Board; and
- Maine State Retirement System

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 invite questions, comments and input regarding any part of this report.

Sincerely,

Handwritten signature of Beverly M. Bustin.

Beverly M. Bustin  
Senate Chair

Handwritten signature of Neil Rolde.

Neil Rolde  
House Chair



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COMMITTEE ORGANIZATION

AUDIT & PROGRAM REVIEW  
SUBCOMMITTEE #2

Department of Labor;  
• Maine Labor Relations  
Board;  
Workers' Compensation  
Commission;  
Advisory Committee on  
Low-Level Radioactive Waste;  
State Board of Social Worker  
Licensure;  
Electricians' Examining Board;  
State Board of Accountancy;  
Department of Human Services;  
SCAN;  
Emergency Medical Services

MEMBERS:

Senator Beverly Bustin,  
Co-Chair  
Representative Harriet  
Ketover, Co-Chair  
Senator Linda Curtis Brawn  
Representative Eleanor Murphy  
Representative Wesley Farnum  
Representative Beverly Daggett  
Representative Phyllis Erwin  
Representative Catharine Koch  
Lebowitz  
Representative George A.  
Townsend

EX-OFFICIO:

Representative Neil Rolde





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## 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 an 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 follows:

### PHASE ONE: RECEIPT OF PROGRAM REPORTS

The law requires that agencies due for review must submit a Program Report to the Committee. 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.

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**PHASE FOUR: FULL COMMITTEE MEETINGS**

The full Audit & 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 & 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 amended and placed on the calendar for consideration by the entire Legislature.

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## 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.

### WORKERS' COMPENSATION COMMISSION

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- |           |    |   |
|-----------|----|---|
| STATUTORY | 1. | Continue Maine's Workers' Compensation Commission pursuant to the Sunset Law. |
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- |           |    |   |
|-----------|----|---|
| STATUTORY | 2. | Update certain provisions in the workers' compensation law to promote clarity and accuracy. |
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- |                |    |   |
|----------------|----|---|
| ADMINISTRATIVE | 3. | Record administrative salary expense within a single activity to enhance accountability and review. |
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ADMINISTRATIVE 4. Ensure that Employee Assistants receive a copy of the employer's "First Report of Occupational Injury" prior to scheduling an Informal Conference to facilitate early resolution of the disputed claim.

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STATUTORY 5. Clarify that all appointments to the Commission shall be made for a complete term, as opposed to the balance of an unexpired term, in order to parallel judicial appointments, assist recruitment, and clarify Legislative intent.

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STATUTORY 6. Increase Commissioners' terms of appointment in order to encourage retention.

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FINDING 7. The Committee finds that a review of Commissioner salaries should be undertaken by the State Compensation Commission with particular emphasis on the turnover in Commission ranks caused by promotion to the District Court judiciary, in order to ensure that current salaries are fair, reasonable, and competitive.

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ADMINISTRATIVE 8. Direct the Commission to conduct a comprehensive study on the value of the Early-Pay system. Report to the Joint Standing Committees on Audit and Program Review and Labor at the compliance review.

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ADMINISTRATIVE 9. Publish a comprehensive manual to serve as an informational/training guide for employees, employers, insurance carriers, physicians, and all other interested parties.

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#### PLUMBERS' EXAMINING BOARD

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STATUTORY 10. Direct the Department of Human Services and the Maine Plumbers' Examining Board to work cooperatively in adopting a nationally consistent internal plumbing code.

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STATUTORY 11. Authorize the state plumbing inspector to order compliance with the internal plumbing code with the consent of the local plumbing inspector.

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**BOARD OF ACCOUNTANCY**

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|           |     |   |
|-----------|-----|---|
| STATUTORY | 12. | Continue the Board of Accountancy for ten years pursuant to the Maine Sunset Law. |
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| STATUTORY | 13. | Correct certain references and grammatical constructions in the Board of Accountancy statute to clarify Legislative intent. |
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**ELECTRICIANS' EXAMINING BOARD**

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|           |     |  |
|-----------|-----|--|
| STATUTORY | 14. | Continue the Electricians' Examining Board under the provisions of the Maine Sunset law. |
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|-----------|-----|---|
| STATUTORY | 15. | Credit graduates of an approved course in refrigeration with 4000 hours of experience toward licensure in order to recognize the value of the formal education. |
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STATE BOARD OF SOCIAL WORKER LICENSURE

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STATUTORY            16.            Continue the State Board of  
Social Worker Licensure under the  
provisions of the Maine Sunset Law

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ADVISORY COMMISSION ON RADIOACTIVE WASTE

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STATUTORY            17.            Continue the Advisory Commission  
on Radioactive Waste until June  
1993 pursuant to Maine's Sunset  
Law to enable the Commission to  
continue its efforts to address  
the problems of radioactive waste  
management in Maine.

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DEPARTMENT OF HUMAN SERVICES

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STATUTORY            18.            Reinstate enabling language for  
hospital based Suspected Child  
Abuse and Neglect Committees and  
Family Support Teams to reflect  
Legislative intent.

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STATUTORY            19.            Continue the Department of Human  
Services's authority to disclose  
relevant information in its  
records regarding school  
employees to the Commissioner of  
Educational and Cultural Services.

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## EMERGENCY MEDICAL SERVICES

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ADMINISTRATIVE 20. Direct the Risk Management Division in the Department of Administration to advise the Maine Office of Emergency Medical Services in identifying solutions to address the insurance needs of the emergency medical services system in Maine.

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## WORKERS' COMPENSATION COMMISSION

The Workers' Compensation Commission was established in 1916 to replace the courts as the forum in which to settle work place injury claims disputes. At the turn of the century, an unprecedented number of workers were being injured in the increasingly mechanized work place causing a concomitant number of court suits from workers seeking redress. The Legislature found court litigation an unsatisfactory means of addressing work place injury; high costs and duress were imposed on both employees and employers, adequate compensation was not necessarily guaranteed to employees, and employers were exposed to unlimited liability. Thus, the Legislature enacted the "Workmen's [sic] Compensation Act" to create a "new and wider remedy for victims of industrial accidents and a new tribunal for the administration of such remedy [Nadeau v. Caribou Water, Light & Power Co. (1919) 118 Me. 325, 108 A. 190]. In effect, the Legislature was declaring that, "those losses which can properly be said to be a consequence of industrial activity will be borne by the industry while those losses which are a consequence of life in general will be borne by the individual [Comeau v. Maine Coastal Services (1982) Me., 449 A.2d 362].

From the employees' perspective, the new system of providing benefits guaranteed certain compensation for lost wages and medical costs without requiring litigation or the need to prove employer negligence. The law also barred employers from relying on three common law defenses that heretofore had been mainstays in successfully opposing employees' compensation requests. From the employers' perspective, liability was limited by barring injured workers from suing covered employers for full wages, punitive damages, and pain and suffering in court.

Today, the law continues to charge the Commission with "ensuring the efficient delivery of compensation to injured workers at a reasonable cost to employers", as well as deciding each case on its merits, favoring neither the employee nor the employer (39 MRSA 94-A sub-3). In addition to adjudicating disputes, the Commission is also charged with investigating abuse of the system, receiving first reports of occupational injury, verifying insurance coverage of employers, and monitoring rehabilitation activities.

The Commission employs two procedures for settling claims disputes. The first, used only for injuries sustained prior to 1984, is called the "Agreement System", so named because it requires the employee, employer, and insurance carrier to sign an agreement assigning compensation benefits. The first step in the Agreement System requires the insurance company to adjust the

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claim and draft the proposed settlement agreement. If the agreement is satisfactory, it is signed by all three parties. If the proposed agreement is not satisfactory to the employee, the employee may file a Petition requesting the Workers' Compensation Commission to enter into the case and adjudicate the dispute.

The Legislature found the Agreement process unsatisfactory, primarily because reaching agreement among all three parties without the assistance of a neutral arbitrator is often difficult, time-consuming, and expensive. As a result, the Legislature established a new system of compensating injured workers known as the "Early-Pay" or "Direct Pay" system. This system of compensation is used for injuries sustained after January 1, 1984 and thus is the primary system currently used to adjudicate disputes. The Legislature intended the "Early-Pay" system to compensate injured employees more promptly and directly than did the Agreement System by:

- mandating early involvement of the Commission in settlement resolution;
- assisting the employee in preparing for the first phase of settlement resolution by means of 13 Workers' Compensation Employee Assistants distributed throughout the state;
- eliminating the need for attorneys at the first phase of dispute resolution, the Informal Conference; and
- setting certain payment and process deadlines, including an ultimate deadline by which any claim is automatically deemed compensable unless the carrier takes action on the claim.

The statute provides for three dispute resolution schedules depending upon whether the claim is for incapacity, impairment, or for medical bills. "Impairment" refers to a disability in the medical or physical sense, as evidenced by obvious bodily injury or testified to by medical reports. "Incapacity" refers to an injury that impairs the worker's earning capacity or ability to earn wages. As shown by the accompanying chart, claims for incapacity are due and payable within 14 days after the employer has notice or knowledge of the injury or death. Claims for impairment are due and payable within 90 days following notice to the employer that the employee has attained "maximum medical improvement" from the injury. Claims for the costs of medicines; nursing; medical, surgical, or hospital services; and mechanical or surgical aids are due and payable within 90 days from the date a bill is submitted to the employer requesting payment.

However, at any point up to these deadlines when compensation would otherwise become automatic, the employer or insurance carrier may controvert, or dispute, the claim by filing a "Notice of Controversy" with the Commission.

| Day 1  | By Day 7                              | By Day 14  | By Day 44   | By Day 90  |
|--|---------------------------------------|--|---|--|
| <u>I. CLAIMS FOR INCAPACITY</u><br><br>Employer aware of employee's work-related injury or death               | Employer reports injury to Commission | Employer/Carrier pays compensation benefits<br><br>OR                                      |   |  |
|  |                                       | Employer/Carrier pays compensation benefit, <u>pending further investigation</u><br><br>OR | Employer/Carrier disputes claim after further investigation. Informal Conference scheduled<br><br>OR<br>Employer/Carrier does NOT dispute claim after further investigation. Pays compensation. |  |
|  |                                       | Employer/Carrier disputes claim. Informal Conference scheduled.                            |   |  |
| <u>II. CLAIMS FOR IMPAIRMENT</u><br><br>Employer notified Employee has attained "maximum medical improvement". |                                       |  |   | Employer/Carrier pays compensation benefits<br><br>OR<br>Employer/Carrier disputes claim. Informal Conference scheduled. |
| <u>III. CLAIMS FOR MEDICAL EXPENSES</u><br><br>Employer receives request for payment of medical expenses.      |                                       |  |   | Employer/Carrier pays bill.<br><br>OR<br>Employer/Carrier disputes bill. Informal Conference scheduled.                  |

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The Notice of Controversy fully describes the reason why the employer/carrier disputes the employee's claim. Reasons for controverting include disagreement regarding whether the injury was work related, insufficient medical information, disagreement regarding the reasonableness of medical treatment for which compensation is claimed, contention that the employee amplified the severity of the injury, contention that the employee had not met the statutory requirement for notification, disagreement regarding the correct apportionment for liability among multiple insurers, or other reasons which the employer asserts may limit or eliminate the employer's liability.

Upon filing of a Notice of Controversy, the law requires that "the matter...be referred to a Commissioner, who shall schedule an Informal Conference to be held no later than three weeks from the date of that filing" [39 MRSA §94-B(1)]. As such, the Informal Conference is the first step in the main process used to settle disputes. The Legislature intended this Conference to be informal and exhorted the Commissioner to "make every effort to resolve any controversies or misunderstandings [by making] inquiry in such manner as is best calculated to ascertain the substantial rights of the parties..." [39 MRSA §94-B(2)]. The Commissioner will usually ask the carrier to explain the nature of the carrier's disagreement with the claim, hear the worker's description of the injury, review medical documentation, and ensure that each party has access to the same information. At the conclusion of the Informal Conference, which may be of short duration, the Commissioner may issue an advisory opinion regarding the compensability of the claim and the degree of employer/carrier liability.

The Commissioner's opinion, however, is non-binding. Any party dissatisfied with the opinion may file a Petition requesting that the claim be litigated at the next step in the dispute resolution process, the Formal Hearing. By rule, the Formal Hearing is held within 30 days of receipt of a Petition filed subsequent to an Informal Conference. Formal Hearings are conducted according to the Maine Rules of Evidence with the Commissioner acting as judge and attorneys for both sides representing their clients. The decision made by the Commissioner from the Formal Hearing is binding but may be appealed to the Workers' Compensation Commission appellate panel within 20 days by filing a notice of appeal with the Commission.

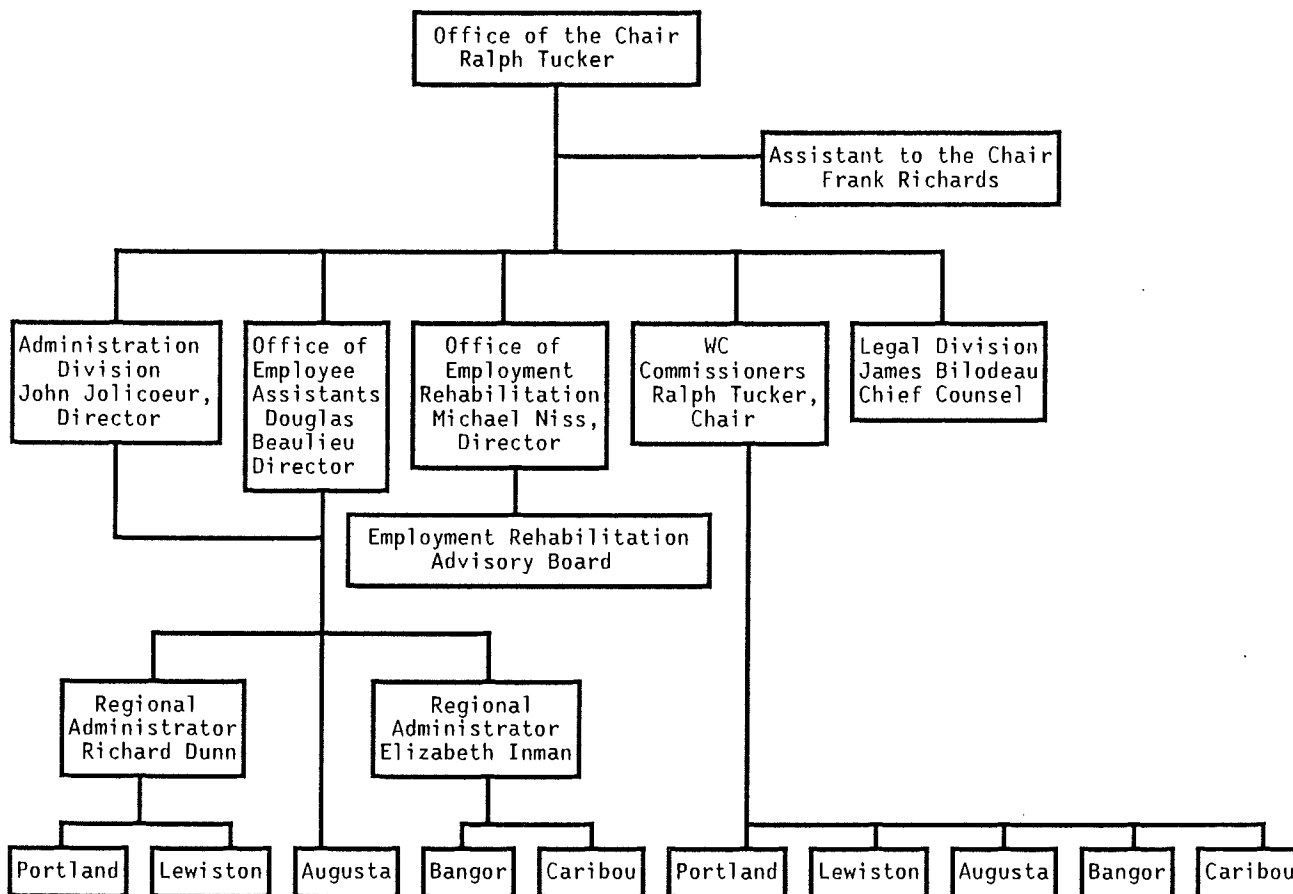
Each appellate panel consists of at least two Commissioners, usually three in practice. The members of each panel are appointed by the Chair of the Commission from those currently serving as Commissioners, except that the Commissioner who issued the decision may not sit on the appellate panel. The appellate panel may reverse, affirm, or modify any decree of the Commission. Decisions from the appellate panel may be appealed directly to the State Supreme Judicial Court. The Law Court has discretion about whether to accept and hear the appeal.

In 1987, the Commission tallied 75,326 notices of work-place injuries filed by employers, received 14,304 requests for Informal Conferences and ultimately held 7,079, conducted 5,814 Formal Hearings, and heard 153 appeals of decisions from the Formal Hearings. The Law Court heard 2 cases from 34 appeal requests filed.

The Commission carries out its mandate with 114 employees in six major units of organization, as shown below.

WORKERS' COMPENSATION COMMISSION

Showing Major Units of Organization



The Chairman not only serves as one of the 12 Compensation Commissioners but also as the chief executive officer of the agency. The other eleven Workers' Compensation Commissioners serve in a judicial capacity to hear and decide disputed claims for compensation using three decision-making forums: informal conferences, formal hearings, and appeals hearings. The Administration Division, the largest in the agency, processes the bulk of the paperwork associated with the compensation process. Thirteen Employee Assistants within the Office of Employee Assistants assist injured workers in preparing for the first step in the dispute resolution process, the Informal Conference. The Office of Employment Rehabilitation, created in 1986, facilitates the rehabilitation of workers incapacitated for more than 120 days back to suitable employment. The Legal Division, containing the Abuse Investigation Unit and the Appellate Division, investigates reports of alleged fraud or abuse of the compensation system and hears appeals of compensation decisions.

The Commission is entirely supported by General Fund dollars. Staffing and expenditures for FY 1988 and FY 1989 are as follows:

|                      | FY 1988            | FY 1989          |
|----------------------|--------------------|------------------|
|                      | <u>Actual Exp.</u> | <u>Budget</u>    |
| Positions            | (109)              | (117)            |
| Personal Services    | \$2,865,740.00     | \$3,491,449.00   |
| All Other            | 676,391.00         | 753,102.00       |
| Capital Expenditures | <u>47,049.00</u>   | <u>45,165.00</u> |
| TOTAL                | \$3,589,180.00     | \$4,289,716.00   |

In addition, the Commission is responsible for administering two other funds, both of which are held in trust by the Treasurer of State. Neither fund contributes to the support of the Commission's operations. The Employment Rehabilitation Fund was established in June 1985 to provide a wage credit as an incentive for employers to hire an injured worker who has completed an approved rehabilitation plan; reimburse an insurer or employer for the costs of an approved rehabilitation plan which did not succeed in returning the employee to suitable work within six months of plan completion; and reimburse an insurer or employer for an apportioned amount of additional loss of earning capacity as a result of a second injury.

The Fund does not lapse and is funded by an assessment on insurers of 1% actual paid losses during the previous calendar quarter, which may be waived if the Fund is equal to or exceeds the amount of money deposited from the prior assessment. In FY 1988, resources in the Fund totalled \$369,543. \$33,074 of wage credits were paid out and \$46,856 was reimbursed to employers for failed rehabilitation plans for total expenditures from the Fund of \$79,930. The balance of \$289,613 was carried forward.

The Second Injury Fund serves as an employer incentive to hire workers who have suffered a permanent impairment from a work related injury in a prior job. In the event the worker is injured in the new job which, in combination with the earlier preexisting injury causes total permanent incapacity, the employer is still liable for compensating the worker for the full extent of the injuries. At the same time, however, the employer is eligible for reimbursement from the Second Injury Fund for the portion of the cumulative injury attributable to the first injury. Funds flow into the Second Injury Fund from employers who deposit benefits due to an employee who suffered fatal injuries and who has no dependents. In FY 88, fund balances showed total resources available of \$616,025, cash payment expenditures of \$123,540, and a balance carried forward of \$492,485.

The Workers' Compensation Commission has been experiencing substantial growth in the 1980's. In the early 1980's, Commissioners were made full-time and the Appellate Division was created. By mid-decade, regional offices were established; the Office of Employee Assistants was created; the new process for dispute resolution, the "Early-Pay process, was established; and the Office of Employment Rehabilitation and the Abuse Investigation Unit was created. In 1987, 19 new positions were added including two additional Commissioners and a Personnel Officer. In 1988, two more Employee Assistants and a clerical position were added.

These changes were made in response to substantial growth in the dispute resolution process, as indicated by the following table:

|      | Reports<br>of<br>Injury | Informal<br>Conferences | Decisions<br>from<br>Formal<br>Hearings* | Number of<br>Commissioners |
|------|-------------------------|-------------------------|--|----------------------------|
| 1983 | 49,214                  | Not established         | 2,968                                    | 7                          |
| 1984 | 63,838                  | 2,337                   | 3,524                                    | 9                          |
| 1985 | 64,033                  | 3,086                   | 4,711                                    | 9                          |
| 1986 | 67,984                  | 5,842                   | 5,063                                    | 9                          |
| 1987 | 75,326                  | 7,079                   | 5,814                                    | 12                         |

(\* More than one formal hearing may be required to reach a decision.)

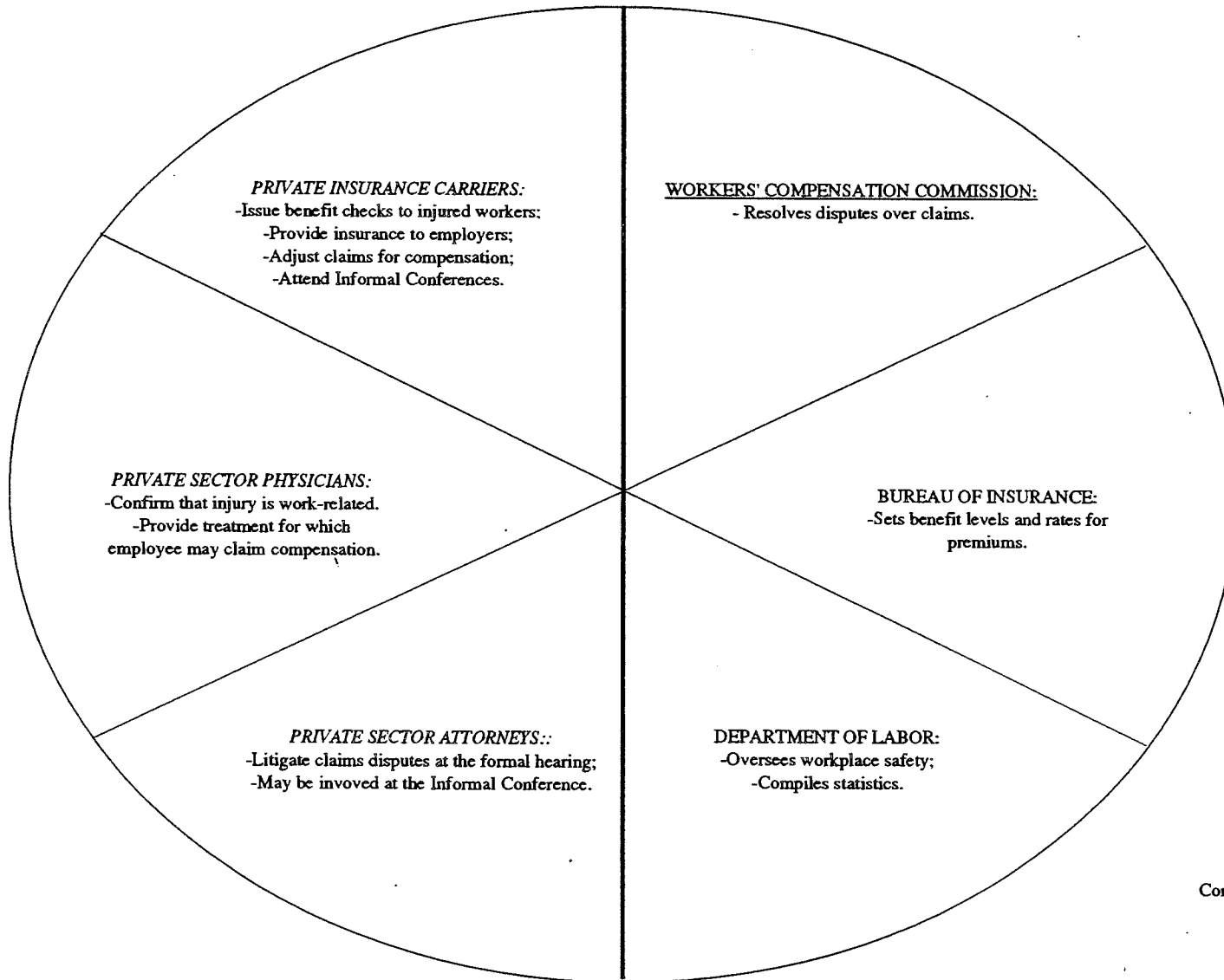
Finally, Maine's Workers' Compensation Commission is just one component of a network of public and private entities whose efforts combine to compensate workers for disabilities resulting from work-place injuries. As shown in the accompanying diagram, the dispute resolution function performed by the Commission combines with the work of the Bureau of Insurance and the Department of Labor to make up the public sector's contribution. In the private sector, insurance carriers, physicians, and attorneys all play a significant role in the compensation process.



**MAINE'S SYSTEM OF COMPENSATING INJURED WORKERS:  
An Interrelationship of Public and Private Entities**

**PRIVATE  
SECTOR**

**PUBLIC  
SECTOR**



Compiled by Audit Staff  
May 1989

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STATUTORY

1.

Continue Maine's Workers' Compensation Commission pursuant to the Sunset Law.

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Maine workers who are injured on-the-job in Maine are entitled by law to compensation primarily for lost earning capacity and medical costs due to the injury. Most private and all public employers in Maine are required to carry insurance to cover claims for compensation due to worker injuries. If a covered employer or insurance company disagrees for any reason with a worker's claim for compensation, the claim may be controverted by filing notice with the Maine Workers' Compensation Commission. The primary responsibility of the Commission is to hear and resolve disputes which arise between employers and employees regarding requests for compensation for workplace injuries "at a reasonable cost to employers...favoring neither the employee nor the employer".

In 1987, the Commission received over 75,000 reports of work-place injuries, held 7,079 Informal Conferences, issued 5,814 decisions from formal hearing, and heard 153 appeals. Thirty-four of the Commission's decisions were petitioned to the State Supreme Judicial Court and, of these, the Court chose to hear only two.

In examining this complex system of dispute resolution, the Committee posed two key questions:

- are claims disputes between employee/employer resolved fairly and expeditiously; and
- could improvements be made in the process that would further Legislative intent?

The Committee has taken a broad-based view of the current system by soliciting testimony and input from labor representatives, injured workers, management and employer representatives, the insurance industry, Workers' Compensation Commission Commissioners, the Chair of the Commission, and staff. As a result, the Committee finds that the Commission is an important component of Maine's system of compensating workers for work-place injuries and that the Commission continues to strive to provide fair and swift resolution of disputes. Therefore, the Committee recommends that the Workers' Compensation Commission be continued pursuant to the Sunset law.

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STATUTORY

2.

Update certain provisions in the workers' compensation law to promote clarity and accuracy.

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When the workers' compensation law was enacted in 1915, employers were authorized to continue using their own system of employee benefits if the employer's system had been in use on January 1, 1915 and was equivalent to or better than the system required by the Act.

Sixty-six years later, the Legislature withdrew this grandfathering option by declaring that any substitute benefit plans still in place would be illegal after June 30, 1983. However, the Legislature neglected to repeal the actual grandfathering language at the same time; thus the grandfathering language remains in law today exerting no practical effect. The Committee finds that the language should be removed from codified law.

Also, the Committee finds that two outdated references to the "Department of Manpower Affairs" in the workers' compensation law should be updated.

Accordingly, the Committee recommends updating certain provisions in the workers' compensation law to promote clarity and accuracy.

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ADMINISTRATIVE

3.

Record administrative salary expense within a single activity to enhance accountability and review.

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Since the Workers' Compensation Commission is supported entirely by a General Fund appropriation, one General Fund account is used to record the majority of the Commission's revenue and expenditures; such as:

- salaries of permanent, seasonal, and project employees;
- miscellaneous professional fees;

- 
- travel expense, meals and lodging;
  - telephone;
  - postage; and
  - printing, binding and copying.

To track expenses more easily, the Commission expenses are grouped into three subcategories, known as "activities". A review of the three activities indicates that one expense item; i.e. administrative salary and benefit expense, is variously recorded within two activities.

Since salaries and benefits have been recorded within two separate activities, the total expense for these two items is not readily apparent and can only be obtained by adding corresponding figures from the two activities.

The Committee finds that recording administrative salary and benefit expense within a single activity would enhance accountability and review of Commission finances. Accordingly, the Committee recommends that these expenses be recorded within a single activity.

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ADMINISTRATIVE 4.

Ensure that Employee Assistants receive a copy of the employer's "First Report of Occupational Injury" prior to scheduling an Informal Conference to facilitate early resolution of the disputed claim.

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Within seven days after notice or knowledge by an employer that a worker has received a work-related injury which caused the employee to lose one day's work or required the services of a physician, the law requires the employer to file an "Employer's First Report of Injury" with the employer's insurance carrier and with the Commission in Augusta. The First Report form includes a broad range of detailed information about the employee, injury, and circumstances, including the date, time, and location of the injury; full details describing the events which resulted in the injury or disease; and description of the injury or disease and part of the body affected. If a claim for benefits arises from the injury, the employer may either pay the claim outright, or dispute the claim by filing a Notice of Controversy, or "NOC" with the Commission.

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In practical terms, the first step in the dispute resolution process is initiated by mailing a copy of the First Report of Injury and the Notice of Controversy to one of thirteen Employee Assistants across the State. The Employee Assistant schedules an Informal Conference, reviews the information contained in the two reports, and commences to advise the employee and mediate the dispute, seeking a resolution prior to the scheduled date of the Informal Conference. However, in some cases, the Committee finds that the Employee Assistant may be hampered from scheduling an Informal Conference due to failing to receive a copy of the First Report of Injury as a companion to the Notice of Controversy (NOC). Although the reasons for not including a First Report of Injury with the NOC vary, the Committee finds that not having the information contained in the First Report may serve to delay scheduling of the Informal Conference and/or mediation of the dispute by the Employee Assistant.

Accordingly, the Committee recommends that Employee Assistants receive a copy of the employer's "First Report of Occupational Injury" prior to scheduling an Informal Conference to facilitate early resolution of the disputed claim.

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| STATUTORY | 5. | Clarify that all appointments to the Commission shall be made for a complete term, as opposed to the balance of an unexpired term, in order to parallel judicial appointments, assist recruitment, and clarify Legislative intent. |
|-----------|----|--|

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The law currently contains two provisions regarding the appointment process to the Commission. The first provision directs that the Commission Chair shall be appointed by the Governor for a term of five years and the other Commissioners for terms of four years each (Title 39 §91 sub-§1). The second provision directs that "in case of a vacancy occurring through death, resignation, or removal, the Governor shall appoint a successor for the whole term of the member whose place he takes...(39 MRSA §91 sub-§2).

Upon review, the Committee finds that the two directives could be interpreted as having contradictory meanings. Even though the first unequivocally states that appointments shall be made for complete terms of 4 or 5 years, the second could be interpreted as implying that appointments should be for the balance of a vacated term.

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A search for original Legislative intent in this matter reveals that the enabling language enacted in 1915 declared unambiguously that appointments were to be made for the whole term, at that time, of three years. The term of appointment remained clear until 1929, when the language was changed to "the whole term of the member whose place he takes", giving rise to the confusion that exists today. Even though appointment for one complete term has been the practice followed by Governors since 1929, the Committee finds that the possibility of confusion hampers the appointment process and does not reflect current Legislative intent.

To augment the clarity of the original language specifying that appointments should be made for a complete term, the Committee points out that:

- appointments to the Supreme Judicial, Superior, and District Courts are made for whole seven year terms, regardless of whether the newly appointed judge is filling a vacancy left by a predecessor;
- paralleling Commissioner terms with judicial terms is appropriate and reflects the judicial nature of the position;
- since Commissioners work independently from each other, their terms need not be relative to each other; and
- the Commission is not mandated to maintain a certain type of composition which would presuppose that appointments be made for unexpired terms.

Finally, the law requires each Commissioner and Chairman to devote full time to the duties of the office, not hold any other public office or employment, nor practice law during the term of office (39 MRSA §91 sub-§4). Commissioners are also required to be persons learned in the law and members of good standing of the Maine bar. Since appointees are usually required to leave an established law practice, the Committee finds that recruitment to the Commission would be seriously hampered if appointments were made for some fraction of a full term, rather than for one full term.

Accordingly, the Committee recommends that the statute clarify that all appointments to the Commission be made for a complete term, as opposed to the balance of an unexpired term, in order to parallel judicial appointments, assist recruitment, and clarify Legislative intent.

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STATUTORY

6. Increase Commissioners' terms of appointment in order to encourage retention.

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Current law designates that the Workers' Compensation Commissioner designated by the Governor as Chair, "shall be appointed for the term of 5 years" and that the other Commissioners are appointed for terms "of 4 years each" [39 MRSA §91].

In considering the relationship between this length-of-term and retention of Commissioners, the Committee first notes that a total of eight Commissioners have left the Commission out of 20 appointments since 1980; five to accept appointment to the District Court and three to return to private practice. The Committee also compared terms for Maine Commissioners with Workers' Compensation Commissioners in other states and found that terms varied from two years in Vermont to life-time tenure in Rhode Island, revealing no apparent pattern for length-of-term across the nation. In looking at judges in Maine, the Committee found that justices of the Maine court system serve seven year terms. Finally, the Committee's poll of Commissioners showed that the majority favored lengthening terms of appointments as a means of increasing retention.

As a result, the Committee concludes that increasing terms of appointment from 5 years to 7 for the Chair of the Commission and 4 years to 6 for the Commissioners would benefit the dispute-resolution process by:

- providing greater job stability to Commissioners;
- equating Commissioners' terms with judicial terms;
- retaining cumulative experience within the ranks of the Commissioners; and
- reducing "lag-time" caused by the need to fill vacant positions.

Accordingly, the Committee recommends increasing terms of appointment for Commissioners in order to encourage retention.

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FINDING

7.

The Committee finds that a review of Commissioner salaries should be undertaken by the State Compensation Commission with particular emphasis on the turnover in Commission ranks caused by promotion to the District Court judiciary, in order to ensure that current salaries are fair, reasonable, and competitive.

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For FY 1988 and thereafter, the statute sets the salary for the Chair of the Commission precisely at Range 91 Step H (\$66,560.00 or \$63,398.40 with state paid retirement) and the Commissioners' salaries at Range 90 Step H (\$62,732.80 or \$59,737.60 with state paid retirement) [2 MRSA §7 sub-§ 2]. The formula for the salaries of District Court judges also appears in statute (4 MRSA §157) for FY 89 and thereafter as follows:

|                             |          |
|-----------------------------|----------|
| Associate Judge             | \$70,176 |
| Deputy Chief Judge @ 102.5% | \$71,930 |
| Chief Judge @ 105%          | \$73,685 |

Salaries for Commissioners have not always been specifically set in statute. When Commissioners were made full-time in 1980, their salaries were simply made commensurate with judicial salaries in the District Court; the Commission Chair received the same salary as the Chief Judge of the District Court and the Commissioners' pay equaled that of District Court judges. It was in 1984 that the salaries of Workers' Compensation Commission Commissioners were unlinked from District Court judges and placed directly into statute [PL 1983 c. 863]. In considering the issue of salary and retention, the Committee notes that five of the 20 Commissioners appointed since 1980 have left the Commission to accept District Court appointments.

The Committee also notes that the Maine State Compensation Commission has reviewed the salaries for Workers' Compensation Commissioners in 1984 and again in 1986, as part of its duties to review the compensation of the Governor, justices, and judges, constitutional officers, legislators, and others. In its 1984 Report, the State Compensation Commission recommended that even though the duties of the Commissioners had increased during the last several years, the Commissioners' salary and retirement benefits should not be tied to the Judiciary. The Compensation Commission's 1986 Report reasserted these findings and recommendations, noting that it "was unable to develop a rationale for re-tying... Commissioners' salaries to judicial salaries."



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In considering the implications of this issue, the Committee finds that linking Commissioners' salaries with the judiciary in some way may serve to retain Commissioners who otherwise may accept appointment to judicial ranks, increase the morale and prestige of the Workers' Compensation Commission Commissioners, and reflect the quasi-judicial role of the Commissioners. However, cognizant that the State Compensation Commission could develop no rationale for linking the salaries in two separate reviews of the matter, the Committee takes no direct action on the matter at this time and instead finds that a review of Commissioner salaries should be undertaken by the State Compensation Commission with particular emphasis on the turnover in Commission ranks caused by promotion to the District Court judiciary, in order to ensure that current salaries are fair, reasonable, and competitive.

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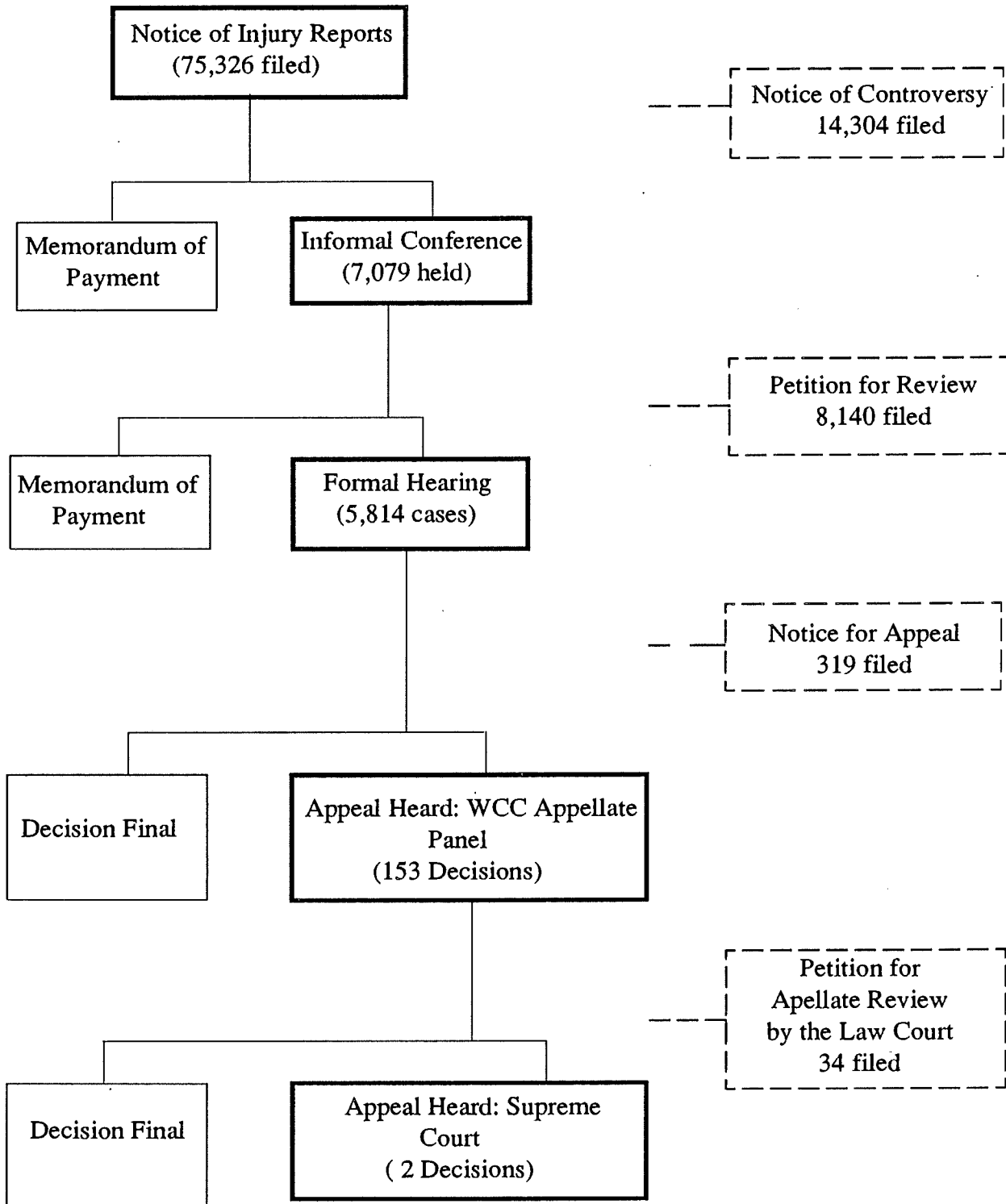
ADMINISTRATIVE 8.

Direct the Commission to conduct a comprehensive study on the value of the Early-Pay system. Report to the Joint Standing Committees on Audit and Program Review and Labor at the compliance review.

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Prior to 1984, the first step in the dispute resolution process was litigation at a formal hearing, attended by attorneys, presided over by a Commissioner acting as a judge, and conducted according to the formal Maine Rules of Civil Procedure. In 1984, the Legislature preceded the formal step of litigation with an "Informal Conference" and called this new system of dispute-resolution the "early-pay" process. The Early-Pay system is a five-step dispute resolution process that can be graphically described as follows:

**Workers' Compensation Commission  
Flow Chart of Compensation Process  
-Annotated with 1987 Data-**



Compiled by Audit Staff  
June 1988

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The intent of the Informal Conference was to inject a spirit of informality in the first step of dispute resolution, allowing the Commissioner and participants broad latitude to explore the issues, share perceptions and information, and reach a fair and speedy settlement of the dispute. However, recognizing that due process for all participants could not be strictly guaranteed using such informal methods, the Legislature authorized the Commissioner to issue an advisory opinion only, rather than a binding decision, at the Informal Conference. If settlement in the informal setting was not achieved, then the dispute was to proceed to litigation in a formal setting using formal rules of procedure and a binding decision.

In considering the Early-Pay system as a whole, the record indicates that the Legislature also intended to:

- ensure that the level of compensation legally due the employee was determined within a mandated time period;
- provide the injured worker with information and free advocacy by assigning a state Employee Assistant to each case;
- reduce the involvement of attorneys in the first step;
- settle cases in a non-litigious environment;
- reduce the costs of settling disputes;
- be less confrontational and formal than the old system; and
- provide an open and informal forum for information sharing.

During the course of its review, the Committee sought to determine the value of the Informal Conference in resolving disputes and proportionally reducing litigation at the formal hearing as well as the degree to which the original goals of the Informal Conference have been realized. The Committee found that, although injured workers are better informed than before through the help of the Employee Assistants, documenting other benefits brought about by the Informal Conference is difficult. The difficulty stems from the dearth of available data prior to the onset of the early-pay system in 1984 with which to make comparisons. Looking at figures collected in 1985 showing that 5,432 NOCS were filed to trigger an Informal Conference, the Committee notes that in the same period, 4,717 cases were litigated at formal hearing. The Committee finds that the slight reduction of litigated cases over NOCS provides little evidence to argue that Informal Conferences significantly reduce litigation. Anecdotal evidence received by the Committee implies that Informal Conferences may succeed in resolving simple disputes caused by misunderstanding or inadequate information-sharing but are less effective in resolving disputes of a more serious or complex nature.

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Furthermore, the Committee finds that the early-pay system has not totally achieved the benefits hoped for in 1984 in that:

- the mandate to schedule an Informal Conference within three weeks of receipt of a Notice of Controversy is rarely met and scheduling routinely takes 45 days or more;
- some employees continue to experience delay and hardship in not receiving appropriate compensatory benefits as promptly as legally mandated;
- the success of the Informal Conference in resolving disputes is dependent not only on the actions and knowledge of Commissioners, Employee Assistants, and other Commission staff but also on participants outside the scope of the Commission's jurisdiction, primarily insurance adjusters, physicians, attorneys, employers, and employees; and
- the Informal Conference often serves as an extension of the adjustment process, altering the focus of the Conference from dispute resolution to information sharing.

In discussing the role of the insurance industry relative to achieving the original goals of the early-pay process, the Committee finds that inadequate adjustment procedures, lack of preparedness at the Informal Conference, and confusion regarding the carrier's position on a controverted claim often serve to stymie efforts to resolve the claim at the Informal Conference. The Committee understands from members of the industry that steps are being taken by the industry to improve its ability to assist in reaching prompt resolution of disputes. Furthermore, positive effects from these efforts should be discernible within the coming year.

In summary, the Committee continues to support the concept of the Informal Conference and its original goal to serve as a forum where disputes are settled fairly, promptly, inexpensively, and without the need for a lawyer. However, the Committee also finds that the value of the Informal Conference in settling disputes is unclear and that private parties (such as insurance adjusters and physicians) at the Informal Conference may serve to slow the process and hamper its effectiveness in resolving disputes.

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As a result, the Committee finds a need for more information and analysis regarding the effectiveness of the Informal Conference in resolving disputes and minimizing litigation as well as any reforms that may be needed to achieve the original intent. In particular, the Committee cites the need for information on the value of the early-pay system in:

- assuring prompt payment to injured workers;
- reducing litigation; and
- reducing attorney involvement; as well as
- the efforts of the insurance industry to improve the efficiency of the industry's role in dispute resolution at the Informal Conference.

Accordingly, the Committee directs the Commission to conduct a comprehensive study on the value of the Early-Pay system. Report to the Joint Standing Committees on Audit and Program Review and Labor at the compliance review.

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ADMINISTRATIVE 9.

Publish a comprehensive manual to serve as an informational/training guide for employees, employers, insurance carriers, physicians, and all other interested parties.

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As noted earlier, Maine's system of compensating people for work-place injuries arises from the combined efforts of a public/private conglomerate. The public entities of the Workers' Compensation Commission, Bureau of Insurance, and Department of Labor combine forces with private insurance carriers, attorneys, and physicians to ultimately determine the compensability of an injury, the degree of employer/carrier liability, and the payment of benefits to the worker.

The interrelationship of these various participants is particularly apparent in the first step of the dispute-resolution process administered by the Workers' Compensation Commission, the Informal Conference. Commissioners, Employee Assistants, insurance carriers, private attorneys, and physicians all have a significant effect in facilitating or hampering dispute resolution.

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In reviewing the dynamics of this public/private mix at the Informal Conference, the Committee finds that the ability of the Informal Conference to resolve disputes is directly influenced by the degree of preparedness of the participants, the degree of familiarity with the law, the availability of needed medical reports, and the degree of clarity about roles and responsibilities that must be performed in order to ensure that Legislative intent is carried out.

As a result, the Committee finds that making more information available to private parties about the process and their respective roles in it should serve to streamline the process. The Committee notes that the law currently requires the Chair to "prepare, publish, and distribute an illustrated booklet explaining, in informal and readily understandable language, the rights and responsibilities of both employers and employees." The current booklet, the Employer/Insurer Guide to Maine Workers' Compensation was published in January 1984 and has not been revised since. The Committee finds that updating the Guide and broadening its scope to explain the law in detail and include the rights, roles, and responsibilities of employees, insurance adjusters, physicians, and other participants, is an appropriate means to provide educational material and improve the process, without diminishing the Commission's resources devoted to adjudicatory disputes.

Therefore, the Committee recommends publishing a comprehensive manual to serve as an informational/training guide for employees, employers, insurance carriers, physicians, and all other interested parties.

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## PLUMBERS' EXAMINING BOARD

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STATUTORY            10.            Direct the Department of Human Services and the Maine Plumbers' Examining Board to work cooperatively in adopting a nationally consistent internal plumbing code.

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STATUTORY            11.            Authorize the state plumbing inspector to order compliance with the internal plumbing code with the consent of the local plumbing inspector.

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The Plumbers' Examining Board is housed within the Department of Professional and Financial Regulation. By law, the Governor appoints 2 Master plumbers, two Journeyman plumbers, and one public member to serve on the Board for four year terms [32MRS § 3401]. The Board is responsible for the professional regulation of plumbers, including licensing, investigating complaints, and suspending, revoking, or denying licenses.

However, the Board is not responsible for administering the Maine Internal Plumbing Code. Rather, the administration of the Code is the responsibility of the Division of Health Engineering, within the Department of Human Services (DHS). The Code provides minimum specifications for internal plumbing systems, including design, materials, and installation methods. Accordingly, DHS is responsible for ensuring the public's health and safety regarding potable water, waste water, and hot water heating systems by overseeing the installation, alteration, and replacement of pipes, vents, drains, fixtures, and other internal plumbing apparatus. In addition, the Department has been responsible for certifying Plumbing Inspectors at the local level to enforce the Code.

The state organization for licensing and code enforcement for the plumbing trade can be graphically represented as follows:

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## PLUMBING TRADE

### Current State Organization for Licensing and Code Enforcement Functions

DPFR

DHS

PLUMBERS' EXAMINING  
BOARD

DIVISION OF  
HEALTH ENGINEERING

- Licenses Plumbers (based on Code)
- Investigates complaints
- Suspends/revokes Licenses
- Administers internal plumbing code with local plumbing inspector

In considering the option of consolidating code administration with the licensing function carried out by the Plumbers' Examining Board, the Committee finds that consolidation would create undue hardship to municipalities and local plumbing inspectors and impose an administrative burden at the local level. At the same time, the Committee finds that the plumbing trade would benefit from a greater degree of cooperation and coordination between the two state agencies involved. Furthermore, the Board currently is powerless to require restitution when plumbing fixtures are installed contrary to code.

Accordingly, the Committee intends to ensure that the Board and Department work cooperatively to adopt a nationally consistent internal plumbing code and that the Board has some degree of enforcement authority over the code without impinging on the current enforcement authority of the local plumbing inspector. Therefore, the Committee directs the Department and Board to cooperatively adopt a nationally recognized plumbing code and authorizes the state plumbing inspector to order compliance with the internal plumbing code with the consent of the local plumbing inspector.



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## BOARD OF ACCOUNTANCY

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STATUTORY            12.            Continue the Board of Accountancy for ten years pursuant to the Maine Sunset Law.

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The purpose of the Maine State Board of Accountancy is to protect the public health and welfare by regulating Certified Public Accountants (CPAs), Public Accountants (PAs), and the practice of public accountancy. During 1988, the Board issued 72 licenses and 7 permits to firms to practice amounting to approximately 1,244 regulated professionals.

The statute governing the Board of Accountancy was recently recodified by the 113th Legislature (PL 1987, Ch. 489). As a result, major changes occurred to Board operation, such as making the Board internal to the Department of Professional and Financial Regulation, updating the definition of public accountancy, clarifying what services may be provided by unlicensed practitioners, clarifying administrative procedures, clarifying the experience requirement for applicants who have experience in various state agencies, and specifying continuing professional education requirements.

Currently, the Board is composed of five members appointed by the Governor for three year terms; three Certified Public Accountants, one Public Accountant (who currently serves as chair), and one public member. The Board meets at such times and places as may be fixed by the Board at the call of the chair or a majority of the Board members. Also, three members of the Board constitute a quorum, provided that at least one of the three members is either the public member or the Public Accountant member.

The Board carries out its charge by:

- granting certificates to individuals who wish to call themselves CPAs or PAs, and by;
- issuing permits to individuals or firms who wish to practice public accountancy.

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In addition, the Board has the authority to:

- conduct investigations and legal proceedings;
- take testimony;
- procure the attendance of witnesses before the Board;
- provide educational programs for the benefit of the public, licensees, and licensees' employees;
- promulgate rules, including rules of "professional conduct;
- enter into contracts;
- establish application and examination fees; and
- suspend or revoke a certificate or permit, refuse to issue or renew a certificate or permit, place a licensee on probation, or censure a licensee.

Individuals who apply for a CPA or PA certificate must meet certain standards of good character, education, examination, and experience as well as pay the prescribed fee. In considering the standard for two years of experience prior to licensure, the Committee notes that the Board is preparing to promulgate 7 criteria in rule to define, for the first time, exactly what constitutes acceptable experience. Also, current law specifies that state auditors and revenue agents shall be eligible to accrue experience towards the licensure requirement at a rate of 50%.

The Committee has discussed the implications of extending the 50% experience credit to insurance company examiners employed by Maine's Bureau of Insurance, as well as to other categories of professionals. The Committee concludes that current law extending credit to state auditors and revenue agents should be retained and that the pending rules to be used by the Board in weighing applicants' experience credentials should establish an objective standard for the experience of all other applicants. With the understanding that the Committee expects the Board to proffer credit for experience in each case where the applicant's experience meets the criteria in rule, the Committee takes no action at this time, preferring instead to allow the Board to administer its licensure program according to current law and Legislative intent as stated herein. However, the Committee does intend to carefully review the Board's decisions regarding approval of experience at the compliance review.

In addition to determining whether candidates meet the four standards for certification, the Board also issues permits for certified individuals and firms to engage in the practice of public accountancy in Maine. Permits to practice are issued and renewed for one year periods. An individual seeking renewal of a permit must show that he or she has fulfilled requirements of continuing professional education consisting of not less than 12 hours in each one-year period and not less than 72 hours in any 3-year period.

The Board receives no General Fund support. Its revenue comes exclusively from dedicated fees and penalties paid by CPAs and PAs. Board expenses include salary for a Board clerk located within the Department of Professional and Financial Regulation as well as per diem for Board members, printing, postage, a professional journal subscription, national dues, and telephone. The revenue and expenditure totals for two fiscal years are displayed below.

|                        | FY 88<br><u>Actual</u> | FY 89<br><u>Budgeted</u> |
|------------------------|------------------------|--------------------------|
| Resources              | \$83,133               | \$71,000                 |
| Expenditures           | \$65,955               | \$71,000                 |
| Amount Carried Forward | \$17,178               | -                        |

The Committee finds that the Board's regulation of CPAs, PAs, and the practice of public accountancy is important to protect the public health and welfare and recommends that the Board be continued for 10 years pursuant to the Maine Sunset Law.

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| STATUTORY | 13. | Correct certain references and grammatical constructions in the Board of Accountancy statute to clarify Legislative intent. |
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In reviewing the statutes governing the Board of Accountancy, the Committee finds that certain references to other sections of statute were not accurately transposed during the recodification of the statute two years ago. As a result, the references are incorrect and do not reflect Legislative intent. For example, the section governing membership on the Board [32 MRSA §12213] refers the reader to two incorrect sections regarding permits for firms and revocation or suspension of certificates. Instead, the provision for Board membership should refer to the sections on certifying CPAs and PAs.

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The Committee also finds that the provision regarding renewal (32 MRSA §12251 sub-§5) contains an unintelligible sentence which should be clarified.

Therefore, the Committee recommends correcting certain references and grammatical constructions in the Board of Accountancy statute to clarify Legislative intent.

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## ELECTRICIANS' EXAMINING BOARD

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STATUTORY            14.            Continue        the        Electricians'  
Examining        Board        under        the  
provisions      of the      Maine      Sunset  
law.

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During the past three years, the Committee has made many recommendations regarding the Electricians' Examining Board's operation, method of administering the law regulating electricians, terms of appointment, conflict of interest, permit and inspection fees, and licensure requirements. Last year, the Committee continued its inquiry in order to follow-up on prior years' recommendations, continue oversight of Board operations, clarify Legislative intent regarding reciprocal licensure, establish an appeal procedure for applicants who are denied licensure, and review Board finances.

Over the past year, the Committee finds that the Board has clarified its procedures regarding reciprocal licensure by ensuring that out-of-state license applicants meet the same standards as in-state applicants in order to qualify for licensure; established an appeal procedure for denied applicants that adequately protect due process rights; improved its cooperative relationship with the Department of Professional and Financial Regulation and the Attorney General's office; and demonstrated a satisfactory level of performance.

Accordingly, the Committee recommends continuing the Electricians' Examining Board pursuant to Maine's Sunset law.

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STATUTORY            15.            Credit graduates of an approved  
course in refrigeration with 4000  
hours of experience toward  
licensure in order to recognize  
the value of the formal education.

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During the Committee's 1987 review of the Electricians' Examining Board, the Committee specified that a limited electrician in refrigeration must show 270 hours of electrical education as approved by the Board and 6,000 hours of experience to be eligible for licensure. In the interim, a question has arisen on whether the Legislature intended to grant graduates of an approved refrigeration course credit towards the experience requirement.

In considering this question, the Committee finds that the refrigeration course offered at the Eastern Maine Vocational-Technical Institute is the only one available in Maine; students currently enrolled in the Eastern Maine Vocational-Technical Institute course understood that they would be granted credit towards the experience requirement upon graduation; the Legislature now grants 4000 hours of experience credit to Journeyman applicants who are Vocational-Technical Institute graduates; a graduate of the Eastern Maine Vocational-Technical Institute course has the level of education and experience to qualify for a credit of 4000 hours towards the licensure requirement; and licensure requirements should reflect graduation from an approved course of study.

Accordingly, the Committee recommends crediting graduates of an approved course in refrigeration with 4000 hours of experience toward licensure to recognize the value of the formal education.

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**STATE BOARD OF SOCIAL WORKER LICENSURE**

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STATUTORY            16.            Continue the State Board of Social Worker Licensure under the provisions of the Maine Sunset Law

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This is the third year of the Committee's review of the seven member Board of Social Worker Licensure. The Committee has made numerous recommendations during its review regarding consultation, post-graduate experience requirements, examination methods, and Legislative intent. The issues specifically under review this year included:

- accommodation for examination of applicants with special needs;
- clarification of licensure requirements regarding practice in a clinical setting; and
- consultation requirements for license renewal of Licensed Social Workers.

In reviewing the Board this year, the Committee notes that the Board regulates the profession of social work in order to ensure high standards of practice for the protection of the public [32 MRSA §7001-A et. seq.]. "Social work" is defined as "engaging in psychosocial evaluation and intervention, including therapy, to effect a change in the feelings, attitudes, and behavior of a client. Social work may also include engaging in community organization, social planning, administration, and research" [32 MRSA §7001-A(11)].

The Board regulates approximately 2,800 licensees. For the last three calendar years, licenses issued are as follows:

|                                  | <u>1987</u> | <u>1988</u> | <u>1989</u><br><u>TO DATE</u> |
|----------------------------------|-------------|-------------|-------------------------------|
| Licensed Clinical Social Worker; | 78          | 50          | 5                             |
| Licensed Master Social Worker;   | 63          | 85          | 101                           |
| Licensed Social Worker.          | 569         | 1027        | 161                           |

The Board is composed of 2 Licensed Social Workers, 2 Public Members, and 3 members who are either Licensed Clinical Social Workers, Licensed Master Social Workers, or Certified Social Worker-Independent Practice (at least one of whom must practice in a non-clinical setting). The law also requires that each level of licensure must be represented on the board. The board's duties include:

- evaluating the qualifications and supervising the examination of applicants for licensure;
- investigating all complaints made to it and all cases of noncompliance with the law;
- adopting rules to carry out the law; and
- conducting hearings to assist with investigations and to determine whether grounds exist for suspension, revocation, or denial of a license.

Organizationally, the Board is "internal" to the Department of Professional and Financial Regulation which means that the Board is provided with clerical, administrative, and budgetary support services from the Department. In addition, the Commissioner of Professional and Financial Regulation acts as a liaison between the Board and the Governor. However, the Commissioner does not have any authority to intervene with any of the discretionary, regulatory, or licensing authorities granted by statute to the Board.

The Board relies exclusively on dedicated revenues from license, renewal, and examination fees to fund its activities. Resources and expenditures for the Board for two fiscal years are as follows:

|                 | <u>Actual FY 88</u> | <u>Budgeted FY 89</u> |
|-----------------|---------------------|-----------------------|
| Total Resources | \$192,444           | \$188,722             |
| Expenditures    | 46,972              | 58,230                |
| Carried Forward | 145,472             | 130,492               |

In response to the Committee's concerns regarding the need to provide special accommodations for examination of applicants with special needs, the Board has submitted a proposal which the Committee approved as part of this year's review. The Board proposes to retain its requirement that all licensure applicants pass the standard national examination. However, special accommodations will be extended to applicants who:

1. meet all the licensure criteria required in statute;



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2. submit documentation of the disability from an appropriately licensed health care professional who is providing diagnosis and/or treatment; and
  3. submit an "Application for Examination Accommodations" and a signed release form to allow the Board to contact the licensed health care professional who is providing diagnosis and/or treatment.

The applicant may request any type of support services or accommodations that they have used in the past and which would be required for the examination, including:

- a recording for the blind;
- readers;
- a private testing room;
- interpreters;
- taped text;
- extended time;
- a tape recorder; or
- an auditory trainer

On another issue of concern, the Committee sent letters to the Commissioners of the Departments of Human Services, Corrections, and Mental Health and Mental Retardation regarding the need for Licensed Social Workers (LSWs) to receive "consultation" prior to relicensure. The Committee pointed out that the law requires grandfathered LSWs to demonstrate two years of consultation to be eligible for relicensure in February 1991. The Committee encouraged these Departments to support their LSWs in acquiring the needed consultation. After reviewing the responses received, the Committee is satisfied that the Departments, as well as affiliated private agencies, are aware of and will support the need for LSWs to demonstrate two years of consultation prior to relicensure.

Finally, the Committee also approved the Board's efforts in working with the National Association of Social Workers in Maine to establish a mutually satisfactory definition of the term "clinical setting" in Board rules.

In light of the recent progress made by the Board in addressing Legislative concern and recognizing the importance of continued regulation of professional social work services, the Committee recommends that the State Board of Social Worker Licensure be continued under the provisions of the Maine Sunset Law.

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## ADVISORY COMMISSION ON RADIOACTIVE WASTE

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STATUTORY            17.            Continue the Advisory Commission on Radioactive Waste until June 1993 pursuant to Maine's Sunset Law to enable the Commission to continue its efforts to address the problems of radioactive waste management in Maine.

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The Advisory Commission on Radioactive Waste consists of 14 members appointed by the Governor, the President of the Senate, and the Speaker of the House of Representatives. The members are as follows:

- Representative James Mitchell, Chair;
- Commissioner Dean Marriott, DEP, Vice Chair;
- Senator Stephen Bost;
- Senator Margaret Ludwig
- Senator Judy Kany;
- Representative Reed Coles;
- Representative Willis Lord;
- Walter Anderson, State Geologist;
- Joseph Blinick, Licensee Member;
- G. Douglas Whittier, Licensee Member;
- Donald Hoxie, DHS;
- Nancy Holland, Public Member
- Theresa Secord, Public Member
- Stephen Ward, Governor's Office.

The Advisory Commission met six times in 1988 to "advise the Governor and the Legislature on matters relating to radioactive waste management". The Commission's statutory duties are to:

- Study the management, transportation, storage, and disposal of radioactive waste, including low-level and high-level radioactive waste generated in or near this State;
- Evaluate methods and criteria for siting and constructing low-level radioactive waste disposal or storage facilities;
- Evaluate methods and criteria for siting and constructing high-level radioactive waste repositories or storage facilities;

- Advise the Governor and the Legislature on the findings and recommendations of the Commission;
- Assist the Governor in regional efforts to manage radioactive waste; and
- Provide opportunities for public input, disseminate information to the general public and promote public understanding concerning radioactive waste issues.

The Commission's activities are supported by the Radioactive Waste Evaluation Fund, which was created in 1987 as the successor to the Low-Level Waste Siting Fund. Funds are provided by a service fee assessed on all low-level radioactive waste generated in Maine which is either shipped to commercial low-level radioactive waste disposal facilities, stored awaiting disposal at a commercial low-level radioactive waste disposal facility or stored for any other purpose. 50% of the service fee is based on waste volume and 50% on the radioactivity of the waste generated in the previous calendar year, but each generator is assessed an annual fee of at least \$300. The following generators paid a service fee in FY 1988 as follows:

|                                  |                  |
|----------------------------------|------------------|
| Maine Yankee                     | \$380,667        |
| Jackson Labs                     | 2,437            |
| Univ. of Maine                   | 3,177            |
| Foundation for Blood<br>Research | 1,871            |
| Mt. Desert Bio                   | 1,606            |
| International Paper              | 1,132            |
| FMC Corp.                        | 600              |
| Georgia Pacific                  | 600              |
| Bates College                    | 600              |
| Fraser Paper                     | 600              |
| Maine Medical Center             | <u>1,132</u>     |
|                                  | <u>\$394,422</u> |

The Commission is staffed by an Environmental Services Specialist IV, an Environmental Services Specialist III (currently vacant), two half-time Clerk-Typist IIIs, and two half-time Planning and Resource Associate I's, for a total of four full-time positions. Staff's mandate is to work with the Commission regarding the federal high-level waste disposal program and the State's progress toward meeting its obligation to provide a low-level waste disposal facility; assist the State in meeting

federal deadlines imposed by the Low-Level Radioactive Waste Policy Amendments Act; provide the State with a mechanism to oversee and review the findings and recommendations of the newly created Radioactive Waste Authority; prepare and disseminate information to the public in the form of newsletters, press releases, video presentations, various reports, and a reference handbook; develop regulations for storage and disposal facilities in Maine; and review applications for on-site storage.

Two dedicated revenue accounts are used to track the Commission's budget; one for the Commission itself and one for its staff. The 14 member Commission budget for two fiscal years is as follows:

|                     | FY 1988<br><u>Actual</u> | 1989<br><u>Budgeted</u> |
|---------------------|--------------------------|-------------------------|
| Resources Available | \$67,526                 | \$142,251               |
| Expenditures        | \$10,452                 | \$ 21,041               |
| Carried Forward     | \$57,074                 | \$121,210               |

The staff budget for two fiscal years is as follows:

|                     | FY 1988<br><u>Actual</u> | FY 1989<br><u>Budgeted</u> |
|---------------------|--------------------------|----------------------------|
| Resources Available | \$158,074                | \$164,114                  |
| Expenditures        | \$143,030                | \$155,464                  |
| Carried Forward     | \$ 15,044                | \$ 8,650                   |

In FY 88, 63% of expenditures were for personal services and 34% were in the All Other category for professional fees, travel, telephone, rent, printing, office supplies, etc.

The federal Low-level Radioactive Waste Policy Amendments Act, passed in 1985, mandates the states to assume responsibility for the disposal of low-level radioactive waste by 12/31/92. The law allows the states to meet the obligation to provide for disposal of low-level waste in one of two ways: by siting their own disposal facility, or by entering into a cooperative agreement, or "compact", with other states. To ensure that the states are moving toward the 1992 deadline assiduously, the law requires each state to meet a series of imposed checkpoints for progress.

By 1/1/90 Each state must file a site application with the NRC, or a written alternative disposal plan.

By 1/1/92 Each state must file a complete license application with the Nuclear Regulatory Commission for low-level waste disposal.

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By 1/1/93 Each state must begin to dispose of its own low-level waste.

By 1/1/96 If a state has no low-level waste disposal facility by this date, the state must, upon the request of the generator or owner of the waste, be prepared to "take title to the waste...as soon after 1/1/96, as the generator or owner notifies the State that the waste is available for shipment."

The Committee finds that the Advisory Commission on Radioactive Waste is integral to Maine's success in addressing the problems of radioactive waste management and solving its low-level radioactive waste disposal dilemma by the federal deadline of 1992. Accordingly, the Committee recommends continuation of the Advisory Commission through 1992 at which time the Commission will again be subject to review to ensure adequate Legislative oversight and involvement in the Commission's important work.

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## DEPARTMENT OF HUMAN SERVICES

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STATUTORY            18.            Reinstatement enabling language for hospital based Suspected Child Abuse and Neglect Committees and Family Support Teams to reflect Legislative intent.

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In 1985, the Legislature enacted legislation to identify and manage child abuse and neglect cases at hospitals by establishing Hospital Based Suspected Child Abuse and Neglect Committees and Family Support Teams.

A Suspected Child Abuse and Neglect Committee is a committee composed of public and private community agencies, hospital departments, and the Department of Human Services. The committee meets regularly to provide ongoing development and monitoring of specialized family support teams and treatment protocols.

The Family Support Team is coordinated by a team manager who is hired by the participating hospital. The team uses a multidisciplinary approach to:

- evaluate suspected cases of child abuse which are initially identified in hospital emergency rooms, inpatient pediatric departments, and ambulatory clinics;
- reviews the nature, extent, and severity of abuse or neglect and the needs of the child and other family members; and
- develops a case plan prescription for the treatment, management and follow-up of the child abuse victim and their families.

The enabling legislation also contained a provision repealing the law on October 1, 1987. The reason for the repeal provision is not known to the Department or members of the SCAN Team. Funding for the SCAN Teams has continued, however, in the Part I budget.

The Committee finds that the intent of the Legislature is to continue the important work performed by the SCAN Teams to address child abuse and neglect. Therefore, the Committee recommends reinstating the enabling language for hospital based Suspected Child Abuse and Neglect Committees and Family Support Teams.

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STATUTORY

19.

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Continue the Department of Human Services's authority to disclose relevant information in its records regarding school employees to the Commissioner of Educational and Cultural Services.

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Last year, the Legislature mandated the Department of Human Services to disclose relevant information in its records regarding school employees to the Commissioner of the Department of Educational and Cultural Services. This authority augmented a prior requirement that the Department of Human Services release information in its records to the Commissioner of Educational and Cultural Services regarding certified teachers (22 M RSA §4008 sub-§F). At the time of enactment, the Legislature placed a termination date on this authority of June 30, 1989, pending additional review by the Audit and Program Review Committee.

The Committee finds that this disclosure authority is a vital source of information-sharing between departments and is an important tool in the State's ability to address child abuse and neglect. Furthermore, the Committee finds that confidentiality of names is assured by law in that information or materials that may result in action to deny, revoke, or suspend certification is confidential.

Therefore, the Committee recommends continuing the Department of Human Services's authority to disclose relevant information in its records regarding school employees and certified teachers to the Commissioner of Educational and Cultural Services.

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## EMERGENCY MEDICAL SERVICES

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ADMINISTRATIVE 20. Direct the Risk Management Division in the Department of Administration to assist the Maine Office of Emergency Medical Services in identifying solutions to address the insurance needs of the emergency medical services system in Maine.

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In 1985, the Committee reviewed and revised Maine's emergency medical services system. The Committee's recommendations, as a whole, shifted more responsibility for promoting and providing a comprehensive and effective emergency medical services system across the state to the Board of Emergency Medical Services, as opposed to the office within the Department of Human Services. In addition, the recommendations served to provide licensees with additional rights, ensure the involvement of the EMS community in goals planning, increase the involvement of the state medical director on the EMS Board, and streamline licensure/certification of personnel.

The intent of the Legislature in creating a central entity to coordinate and integrate all state activities concerning emergency medical services is to provide overall planning, evaluation, and regulation of EMS services and to create a statewide medical services system with standards for all providers of EMS services. The statewide EMS system is intended to provide prompt, efficient, and effective emergency medical care, effective communication between pre-hospital care providers and hospitals, and to provide the safe handling and transportation of the sick and injured.

The Office of Emergency Medical Services within the Department of Human Services staffs and reports to the State Board of Emergency Medical Services, licenses EMS personnel and coordinates the state system on a day-to-day basis. The Emergency Medical Services Board consists of 13 members and is the policy-making group responsible for insuring an effective statewide emergency medical services system. A total of 218 EMS services operate in the state; 186 are ambulance services and 32 are first responder rescue services. Forty-seven of the 218 services provide advance life support at the Critical Care-Paramedic level, 113 provide Intermediate-Advance Life Support, and 58 provide Basic Life Support services, with 3,000 individuals licensed as EMS providers in the state.



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During the recent review of the System, the Committee found that recruitment and operations of EMS personnel continue to be hampered by the lack of available liability insurance. In discussing the matter with the Commissioner of Administration and the Director of the Division of Risk Management, the Committee found that the Director is in a position to advise the EMS Office on how best to proceed in addressing the insurance issue. Possible courses of action may include:

- consolidation of insurances into one policy;
- buying individual insurance coverage;
- self-insuring;
- participating in the Maine Municipal Association insurance pool; or
- establishing risk-retention groups.

Accordingly, given the pressing need to procure adequate liability insurance for Maine's emergency medical services system, the Committee directs the Risk Management Division in the Department of Administration to assist the Maine Office of Emergency Medical Services in identifying solutions to address the insurance needs of the emergency medical services system in Maine.