

MAINE STATE LEGISLATURE

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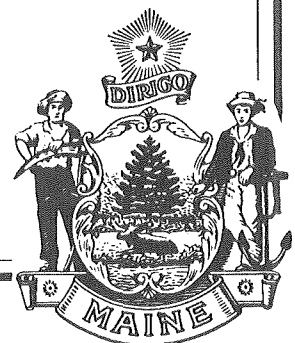


Review of

MAINE'S CHILD SUPPORT ENFORCEMENT PROGRAM
DEPARTMENT OF DEFENSE & VETERANS' SERVICES
DEPARTMENT OF ATTORNEY GENERAL
MAINE EMERGENCY MEDICAL SERVICES
STATE BOARD OF VETERINARY MEDICINE
AGRICULTURAL BOARDS & COMMISSIONS
CAPITOL PLANNING COMMISSION
EDUCATIONAL LEAVE ADVISORY BOARD
BUREAU OF CAPITOL SECURITY

Joint Standing Committee on Audit and Program Review 1990 - 1991

Volume 3 of 3



SENATE

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JOHN J. CLEVELAND, DISTRICT 22
DONALD L. RICH, DISTRICT 27

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OFFICE OF FISCAL AND PROGRAM REVIEW
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KATHRYN VAN NOTE, ANALYST



STATE OF MAINE

ONE HUNDRED AND FIFTEENTH LEGISLATURE COMMITTEE ON AUDIT AND PROGRAM REVIEW

April 22, 1991

HOUSE

PHYLLIS R. ERWIN, RUMFORD, CHAIR
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CATHARINE KOCH LEBOWITZ, BANGOR
WESLEY FARNUM, SOUTH BERWICK

The Honorable Charles P. Pray, Chair
The Honorable Dan A. Gwadosky, Vice-Chair
Members of the Legislative Council:

Pursuant to 3 MRSA §925, we are pleased to submit to the Legislature the final findings and recommendations required to implement the Committee's 1990-1991 study of the following agencies:

- Department of Finance
 - Taxation
 - Administrative Services
 - Accounts & Control
 - Alcoholic Beverages
 - Lottery
- State Liquor Commission
- State Lottery Commission
- Board of Property Tax Review
- Maine Human Rights Commission
- Maine Commission for Women
- Maine High Risk Insurance Organization
- Capital Planning Commission
- Educational Leave Advisory Board
- Maine Technical College System
- Department of the Attorney General
- Department of Defense and Veterans' Services
- Department of Human Services
 - Child Support Enforcement
- State Planning Office
- State Harness Racing Commission
- Board of Pesticides Control
- Board of Veterinary Medicine
- Agricultural Bargaining Board
- Seed Potato Board
- Maine Milk Commission
- Dairy Promotions Board
- Dairy & Nutrition Council
- Maine Blueberry Commission
 - Blueberry Advisory Committee

We would like to thank the following legislators who served from other joint standing committees for providing additional expertise and experience to the Committee's review process:

- Representative Patrick Paradis, Judiciary;
- Representative Peter Manning, Human Resources;
- Representative James Handy, Education;
- Representative John Jalbert, Aging, Retirement & Veterans;
- Representative Robert Tardy, Agriculture; and
- Representative Susan Dore, Taxation.

We also note that these reviews were initiated by the 114th Legislature and would like to especially thank Neil Rolde who served as House Chair at that time as well as Senators Georgette Berube and Linda Curtis Brawn who do not currently serve on the Committee.

Sincerely,


Beverly M. Bustin
Senate Chair


Phyllis R. Erwin
House Chair

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COMMITTEE ASSIGNMENT & MEMBERSHIP

JOINT STANDING COMMITTEE ON AUDIT & PROGRAM REVIEW 1990-91 REVIEW SCHEDULE

- Department of Finance
 - Taxation
 - Administrative Services
 - Accounts & Control
 - Alcoholic Beverages
 - Lottery
- State Liquor Commission
- State Lottery Commission
- Board of Property Tax Review
- Maine Human Rights Commission
- Maine Commission for Women
- Maine High Risk Insurance Organization
- Capitol Planning Commission
- Educational Leave Advisory Board
- Maine Technical College System
- Department of the Attorney General
- Department of Defense and Veterans' Services
- Department of Human Services
 - Child Support Enforcement
- State Planning Office
- State Harness Racing Commission
- Board of Pesticides Control
- Board of Veterinary Medicine
- Agricultural Bargaining Board
- Seed Potato Board
- Maine Milk Commission
- Dairy Promotions Board
- Dairy & Nutrition Council
- Maine Blueberry Commission
 - Blueberry Advisory Committee

COMMITTEE MEMBERSHIP

- Senator Beverly Miner Bustin, Chair
- Senator John J. Cleveland
- Senator Donald L. Rich
- Representative Phyllis R. Erwin*, Chair
- Representative Harriet A. Ketover*
- Representative Beverly C. Daggett
- Representative Harold M. Macomber
- Representative John A. Aliberti
- Representative George A. Townsend
- Representative William Lemke
- Representative Catherine Koch Lebowitz
- Representative Eleanor M. Murphy
- Representative Wesley Farnum

* served as Subcommittee Chair for the review

Adjunct Members:

- Representative Patrick Paradis, Judiciary
- Representative Peter Manning, Human Resources
- Representative James Handy, Education
- Representative John Jalbert, Aging, Retirement & Veterans
- Representative Robert Tardy, Agriculture
- Representative Susan Dore, Taxation

THE COMMITTEE PROCESS

The Joint Standing Committee on Audit and Program Review was created in 1977 to administer Maine's Sunset Act which "provides for a system of periodic justification of agencies and independent agencies of State Government in order to evaluate their efficacy and performance" (3 MRSA §921 et. seq.). To carry out its mandate, the 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:

PHASE ONE: RECEIPT OF PROGRAM REPORTS

The law requires that agencies due for review must submit a Program Report to the Committee. The Program Report (otherwise referred to as the 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 cycle, the Committee Chairs divide the full Committee into subcommittees, appoint subcommittee chairs and assign each subcommittee responsibility for a portion of the reviews scheduled for the year. Adjunct members are requested from the legislative committee of jurisdiction for each agency under review, e.g. the subcommittee reviewing the administration and management of the Maine Technical College 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 about every four weeks between legislative sessions to discuss issues regarding the agency and make recommendations for change. Staff 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 the 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 aired. The subcommittee's recommendations generally take three forms: findings, administrative recommendations, and statutory recommendations.

PHASE FOUR: FULL COMMITTEE MEETINGS

When the subcommittees have completed their work, the full Committee on Audit and Program Review reconvenes to consider and either accept or reject 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 passage of subcommittee recommendations, Committee staff prepare a text containing all the Committee's findings and recommendations for change, and draft a bill encompassing those requiring statutory amendment. 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 makes both statutory and administrative recommendations. In some instances, the Committee will issue a finding which requires no action but which highlights a particular situation. The Committee's proposed legislation consists of all of the statutory recommendations made during the review cycle. Administrative recommendations are implemented by the agencies under review without statutory changes. A simply listing of the Committee's recommendations and findings appears here. Narratives describing the background and rationale for these proposed changes appear throughout the report.

CHILD SUPPORT ENFORCEMENT PROGRAM

STATUTORY	101.	Update statutory language regarding support of children and spouses in order to expunge references to gender and impose an equal burden on married men and women for spousal support.
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ADMINISTRATIVE	102.	Recommend that limited information sharing occur between the Division of Child Support Enforcement and Recovery and the Bureau of Taxation in order to assist the Division in carrying out its mandate to ensure that both parents support their children and that taxpayers are relieved of the burden of supporting other people's children.
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FINDING

103.

The Committee finds that the mandate of Maine's Child Welfare Services Ombudsman should be broadened to include child support enforcement cases in order to advise, assist, and represent the best interests of individuals involved in Maine's child support system.

DEPARTMENT OF DEFENSE AND VETERANS' SERVICES

STATUTORY

104.

Distinguish the duties of the Director of the Military Bureau from the duties of the Deputy Adjutant General in order to ensure adequate administrative and military oversight of the Department in the event the Adjutant General is unable to act.

STATUTORY

105.

Institute an annual meeting between each emergency management organization at the county level and MEMA in order to review performance of the county organization in meeting federal and state mandates and to jointly set goals.

STATUTORY	106.	Direct the Maine Emergency Management Agency to provide an annual report to emergency management organizations at the county level in order to ensure that the local organizations are fully informed about the degree to which the locality is prepared for emergencies.
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FINDING	107.	The Committee finds that efforts of the Maine Emergency Management Agency to improve cooperation between state and county emergency management organizations are commendable and serve to improve the working relationship between the two groups.
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ADMINISTRATIVE	108.	Update the administrative rules for the Veterans' Financial Assistance program in order to ensure consistent and proper operation of the program.
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ADMINISTRATIVE	109.	Publish a brochure describing what state educational benefits are available to dependents of veterans in order to provide more visibility for the program and increase participation.
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DEPARTMENT OF ATTORNEY GENERAL

ADMINISTRATIVE	110.	Implement the concept of billing non-General Fund agencies for hours of legal services rendered, through use of a special revenue account. Report to the Committee during the compliance review on the status of this concept.
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ADMINISTRATIVE	111.	Conduct a study of the desirability and feasibility of incorporating the District Attorneys and the Public Advocate into the Department of Attorney General. Report to the Joint Standing Committee on Audit and Program Review during the compliance review on the results of this study and the current status of these entities.
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ADMINISTRATIVE	112.	Direct that the Department of Human Services and the Department of Attorney General work together to develop a detailed plan needed to accomplish a smooth transfer of funding for the unit which provides legal services to the Department of Human Services. Submit this plan by July 1, 1991 to the Committee.
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ADMINISTRATIVE	113.	Develop a report on the changes implemented in the Department of Attorney General during the past year. Include in this report a section on recent trends in legal coverage, for the purpose of reducing the amount of litigation. Report to the Committee during the compliance review on these issues.
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MAINE BLUEBERRY COMMISSION

STATUTORY	114.	Continue the Maine Blueberry Commission under the provisions of the Maine Sunset Law.
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THE MAINE BLUEBERRY ADVISORY COMMITTEE

STATUTORY	115.	Continue the Maine Blueberry Advisory Committee under the provisions of the Maine Sunset Law.
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MAINE STATE HARNESS RACING COMMISSION

STATUTORY	116.	Continue the Maine Harness Racing Commission pursuant to the Maine Sunset law.
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FINDING	117.	The Committee finds that the report of the Commission to Study the Harness Racing Industry in Maine is commendable and supports the Commission's findings, recommendations, and proposed legislation.
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ADMINISTRATIVE	118.	Report, at the compliance review, on the effectiveness of the Maine Standardbred Breeders Stakes program to promote and improve the standardbred horse racing industry in Maine
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BOARD OF PESTICIDES CONTROL

STATUTORY	119.	Specify that the two public members on the Board of Pesticides Control must have a demonstrated interest in environmental protection, in order to retain needed expertise on the Board but also ensure balanced decision-making in the public's best interest.
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FINDING

120.

The Committee finds that the Board of Pesticides Control should serve as the lead State agency in developing a groundwater management plan for pesticides, in order to meet federal requirements and provide necessary coordination.

STATUTORY

121.

Continue the Board of Pesticides Control pursuant to the Maine Sunset law because of the continuing need to regulate the labeling, distribution, storage, transportation, use, and disposal of pesticides.

**JOINT RECOMMENDATION
BOARD OF PESTICIDES CONTROL
AND
MAINE EMERGENCY MEDICAL SERVICES**

ADMINISTRATIVE

122.

Recommend that the Board of Pesticides Control and Maine Emergency Medical Services consult with the Bureau of Insurance, Department of Administration, private insurers, and any interested others to identify a means to secure affordable liability coverage for these groups' respective clientele. Submit a proposal to the Joint Standing Committees on Banking and Insurance and Audit and Program Review by May 15, 1991 for possible resolution of this issue by the Banking and Insurance Committee prior to the end of the session in progress.

MAINE EMERGENCY MEDICAL SERVICES

STATUTORY	123.	Relocate Maine Emergency Medical Services (MEMS) from the Department of Human Services to the Department of Public Safety and diversify MEMS's revenue base in order to organizationally align similar programs, ensure adequate financial support for emergency medical services in Maine, and improve Maine's statewide emergency medical services delivery system.
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THE MAINE MILK COMMISSION

STATUTORY	124.	Continue the Maine Milk Commission pursuant to Maine Sunset Law.
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FINDING	125.	The Committee finds that the potential administrative funding shortfall of the Maine Milk Commission and the continuing need for minimum price regulation should be reviewed by the joint standing committee having jurisdiction over agriculture.
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STATUTORY

126.

Authorize the use of non-brand specific milk promotions or coupons in conjunction with other products to provide a reduction in the price of milk to the consumer without conflicting with minimum price regulation.

FINDING

127.

The Committee finds that funds collected pursuant to the Maine Milk Pool should be accounted for as a fiduciary fund in accordance with the State Auditor's recommendation in order to more accurately reflect the purpose of these funds.

**MAINE DAIRY PROMOTION BOARD
AND MAINE DAIRY AND NUTRITION COUNCIL**

STATUTORY

128.

Continue the Maine Dairy Promotion Board and the Maine Dairy and Nutrition Council which, collectively conduct the Maine Milk Program pursuant to the Maine Sunset Law.

STATUTORY

129.

Extend the maximum length of service on both the Maine Dairy Promotion Board and the Maine Dairy and Nutrition Council from one consecutive 4-year term to two consecutive 4-year terms in order to improve the experience and effectiveness of Board and Council members.

STATUTORY

130.

Consolidate statutory language governing the Maine Dairy and Promotion Board and the Maine Dairy and Nutrition Council with other milk related statutes.

MAINE SEED POTATO BOARD

STATUTORY

131.

Authorize the Maine Potato Board to fund the deficit of the Seed Potato Board for the single fiscal year of 1991.

ADMINISTRATIVE

132.

In tandem with the recommendation of the Joint Standing Committee on Appropriations and Financial Affairs, establish a working committee composed of representatives of the Legislature, the Maine Potato Board, the Seed Potato Board, the University of Maine, the Department of Agriculture, and an agricultural business consultant, to review the means by which foundation seed potatoes are produced and distributed to Maine's potato industry in order to make recommendations to increase efficiency and streamline operations.

STATUTORY	133.	Continue the Seed Potato Board under the provisions of the Maine Sunset law.
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STATE PLANNING OFFICE

STATUTORY	134.	Continue the State Planning Office for one year, under the provisions of the Maine Sunset Act.
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STATE BOARD OF VETERINARY MEDICINE

STATUTORY	135.	Continue the State Board of Veterinary Medicine under the provisions of the Maine Sunset Law.
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MAINE AGRICULTURAL BARGAINING BOARD

STATUTORY	136.	Continue the Maine Agricultural Bargaining Board under the provisions of the Maine Sunset Law.
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CAPITOL PLANNING COMMISSION

STATUTORY	137.	Continue the Capitol Planning Commission for one year, pending completion of the work of the Special Committee on the New Capitol Area Master Plan.
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EDUCATIONAL LEAVE ADVISORY BOARD

STATUTORY	138.	Continue the Educational Leave Advisory Board under the provisions of the Maine Sunset Law.
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STATUTORY	139.	Establish an Educational Leave Scholarship Fund account to provide a funding mechanism for deserving educational leave requests by state employees.
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STATUTORY	140.	Authorize the Educational Leave Advisory Board to retroactively approve certain justifiable requests for educational leave.
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STATUTORY	141.	Authorize the Educational Leave Advisory Board to approve educational leave requests of 30 days or more.
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BUREAU OF CAPITOL SECURITY

ADMINISTRATIVE 142.

As part of Standard Operating Procedure, specify that the Commissioner of Public Safety, or designee, may void a notice of a parking violation only upon presentation by the alleged offender of mitigating circumstances which were not known to the issuing capitol security police officer or for circumstances in which the capitol security police officer was clearly in error. On each ticket briefly note the mitigating circumstance or error upon which a voidance is based.

MAINE'S CHILD SUPPORT ENFORCEMENT PROGRAM

CHILD SUPPORT ENFORCEMENT IN MAINE

Maine's current Child Support Enforcement system was created in 1975 with the passage of two pieces of landmark legislation; one federal and one state. First, Congress created the national child support enforcement program with the enactment of Title IV-D of the Social Security Act [P.L. 93-647]. The Maine Legislature followed suit by enacting what was called the "Alternative Method of Child Support Enforcement" [P.L.1975 c. 532].

Since 1975, both federal and state child support enforcement laws have been amended many times to strengthen government's response to the escalating problem of parental non-support. In 1984, Congress directed the states to:

- * Provide child support services uniformly to all families in need of support enforcement services, regardless of the family's status as a recipient of public assistance;
- * Incorporate proven enforcement techniques into state programs, including mandatory income withholding and expedited procedures for establishing and enforcing child support orders;
- * Use federal funding incentives to stimulate and reward improved state program performance; and
- * Cooperate with other states in enforcing child support obligations across state lines [PL 98-378].

The federal government's abiding interest in child support is explained by Louis Sullivan, Secretary of the United States Department of Health and Human Services, in an annual report to Congress:

"Increasingly, I am aware of the need for the Child Support Enforcement program to reflect a firm focus on family and children, not only to ensure that parents financially support their children, but also to foster a real sense of connection between children and their family members. We must counteract any acceptance of the idea that it is all right for either parent to abandon a child ..." [U.S. Department of

Health and Human Services. Office of Child Support Enforcement. Child Support Enforcement. Thirteenth Annual Report to Congress Volume I. Forward. for the Period Ending September 30, 1988]

The United States Department of Health and Human Services also reports that, "[b]oth the 1975 implementing legislation and the 1984 Amendments were inspired by dramatic changes in our social structure - and the growing instability of marital relationships, the feminization of poverty, and increases in out-of-wedlock births, especially among teenagers. ...[A]lmost nine out of every ten children who are receiving welfare through Aid to Families with Dependent Children (AFDC) have a living parent absent from the home" [U.S. Department of Health and Human Services. Office of Child Support Enforcement. A Guide for Judges in Child Support Enforcement. 2nd edition. page 1. October 13, 1987 quoting the Social Security Administration, 1979 AFDC Recipient Characteristics Study, Pub. 13-11729 (Washington, DC: U.S. Govt. Print.Off., June 1982), Table 18.].

Accordingly, Congress was motivated to create the Child Support Enforcement Program due to:

- decreasing standards of living for female-headed households;
- increasing public assistance expenditures to support needy dependent children; and
- a judicial system unable to address child non-support through traditional court procedures.

The federal Office of Child Support Enforcement within the Department of Health and Human Services has primary administrative, regulatory, and technical assistance responsibilities and delegates the administration of each program to the State "IV-D" agencies (after the relevant Title in the Social Security Act). The federal mandate obligates Maine's child support enforcement program to achieve two goals:

- 1st: Ensure that financial support is provided from both parents for every Maine child in single parent households; and
- 2nd: Reimburse the State and Federal governments for AFDC monies paid to custodial parents for the support of their dependent children by imposing and collecting a child support obligation debt on the parent who is absent from the home, i.e. the Absent Parent.

State Program

Maine law is also clear about the need for both men and women to provide unconditional financial support for their children [19 MRSA §§442 and 443]. The Maine statute and federal mandate combine to create the obligation of an absent parent to support his or her children and a debt to be repaid to the taxpayer if the custodial parent receives AFDC public assistance.

Maine's child support enforcement program enforces these obligations by performing five functions:

- * Imposing child support obligations on absent parents;
- * Enforcing, collecting, monitoring, and distributing child support obligations, by collecting all current and past-due support payments;
- * Finding Absent Parents in order to establish, review, enforce, or collect child support obligations;
- * Establishing paternity for children born out-of-wedlock; and
- * Reciprocating with other states in the performance of the first four functions.

The Legislature has also recently given the Support Enforcement Division within DHS the responsibility of investigating fraud, attempted fraud, commingling, or misapplication of all funds administered or distributed by DHS.

In 1976, eleven additional enforcement agents were hired in Maine to administer the amplified child support enforcement program, bringing the total number of agents in the State at that time to 22. As a result, collections increased 172% from 1975 to 1976; going from \$906,311 to \$2,463,873. Child support collections have continued to increase in Maine, as indicated in the following table:

<u>YEAR</u>	<u>Collected child support</u>
1980	\$ 4,944,686
1981	\$ 5,677,285
1982	\$7,465,393

1983	\$10,234,934
1984	\$12,051,885
1985	\$14,120,830
1986	\$17,730,925
1987	\$22,421,315
1988	\$27,206,863
1989	\$34,612,106
1990	\$38,198,891
1991 estimated	\$40,500,000 - \$41,100,000

Every other aspect of Maine's program has also continued to grow since 1975. The number of Enforcement Agents has increased in order to deal with burgeoning caseloads along with concomitant increases in total support obligations:

<u>Year</u>	<u>Caseload</u>	<u>Enforcement Agents</u>	<u>Child Support Obligations Enforced</u>
1980	21,519	22	1,140
1981	30,993	22	3,109
1982	31,613	46	3,388
1983	32,549	46	3,374
1984	31,864	46	3,657
1985	36,830	46	4,093
1986	41,762	66	4,891
1987	42,451	66	5,217
1988	45,102	66	5,648
1989	46,047	78	6,381
1990	48,387	78.5	6,236
1991 est.	50,000	78.5	6,350

Unpaid child support debts owed by absent parents continues to grow, with the cumulative arrearage in Maine since 1977 totalling \$187,803,488.

Organization and Funding

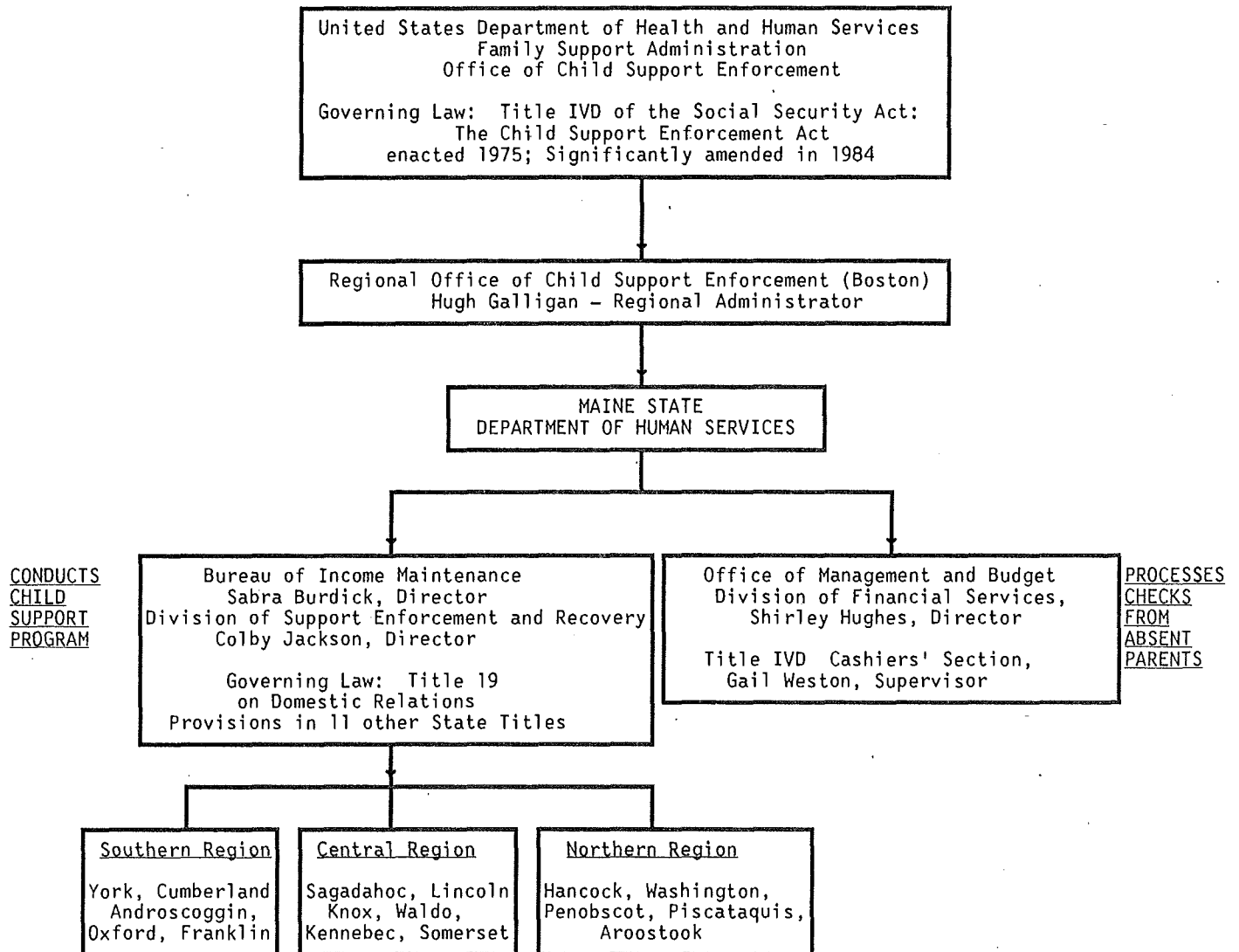
Maine's child support enforcement program is administered by two Divisions within the Department of Human Services:

- Division of Support Enforcement and Recovery; and
- Division of Financial Services, the IV-D Cashier's Section.

The following organizational chart indicates that the Division of Support Enforcement and Recovery is responsible for performing the five functions just listed, and the IV-D Cashier's Section processes the checks received from Absent Parents.

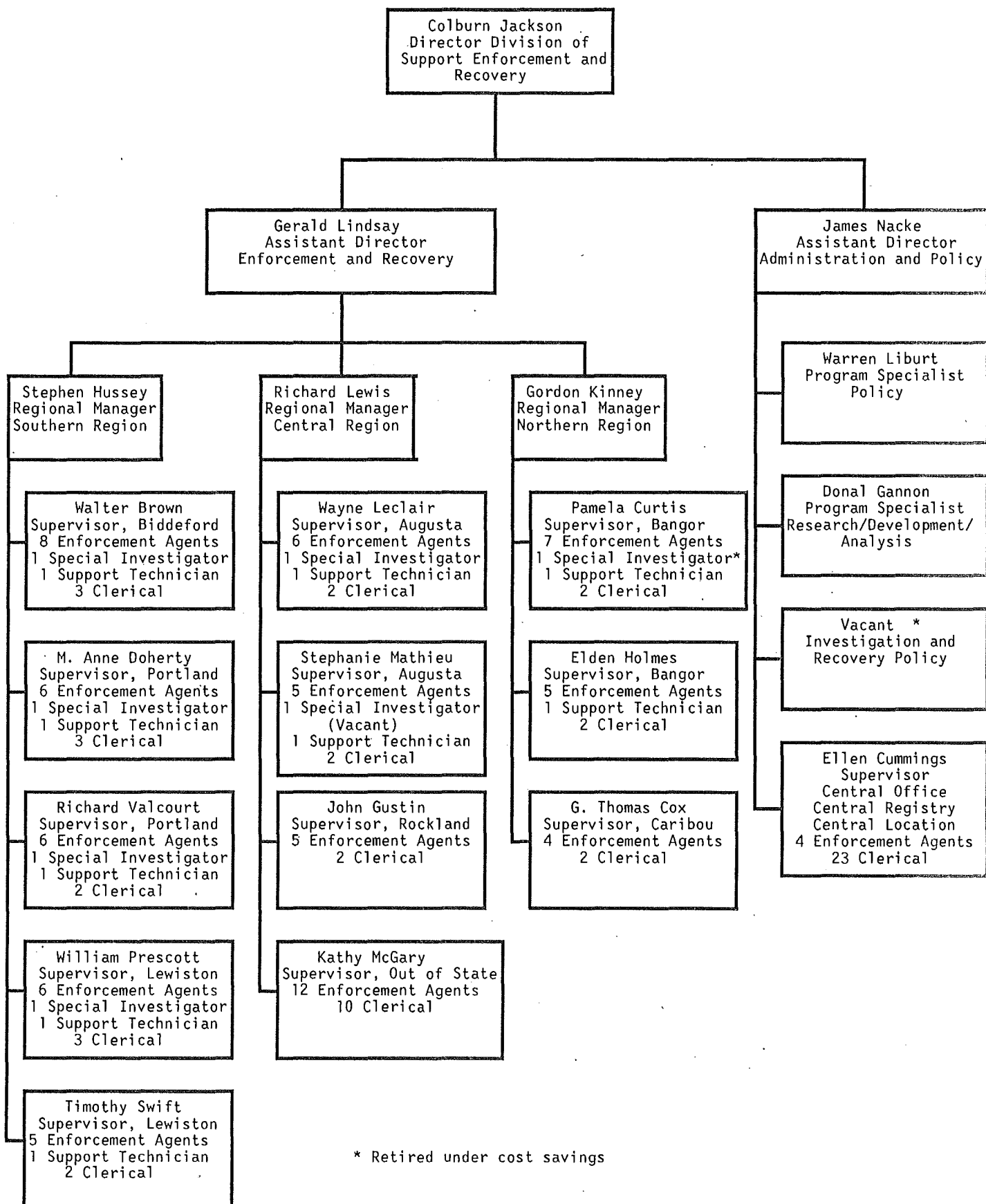
MAINE'S SUPPORT ENFORCEMENT PROGRAM

ORGANIZATIONAL HIERARCHY AND GOVERNING LAW



The Division of Support Enforcement and Recovery has offices and staff in all primary DHS offices throughout the State and divides itself into three regions, i.e. southern, central, and northern. Child support enforcement staffing includes 78.5 Enforcement Agents, three Regional Managers, twelve District Supervisors, 9 Support Technicians, and clerical and central office staff. The Division also includes special investigators for the division's fraud investigation and recovery function.

**DIVISION OF SUPPORT ENFORCEMENT
AND
RECOVERY**



Administrative Authority

The Enforcement Agents within the Division of Support Enforcement and Recovery have been given a number of administrative authorities to accomplish the objectives of the program and to augment judicial support enforcement efforts. In endowing the Division with these authorities, the Legislature intended "to provide... remedies [in addition to the court] for the enforcement of support for dependent children and spouses and former spouses caring for dependent children by establishing an alternative method directed to the real and personal property of the [absent] parents [19 MRSA §491].

Notable examples of the Division's administrative authority include:

- imposing a child support obligation on the absent parent through administrative hearing;
- enforcing child support obligations by ordering employers to withhold wages of absent parents and submit the withheld wages to the child support program; garnishing bank accounts, workers' compensation, and unemployment benefits; listing the absent parent's child support payments with consumer credit reporting agencies; intercepting federal and state tax refunds; and placing liens or foreclosing on real and personal property;
- obligating the absent parent to maintain health insurance coverage for dependent children and to pay medical expenses; and
- establishing paternity for children with unacknowledged fathers by locating the putative father and inviting him to voluntarily admit paternity or submit to a blood test, or, failing these remedies, referring the case to the Attorney General for court action.

Both federal and State law ensure full due-process rights to the absent parent and the custodial parent. For example, 19 MRSA §515 guarantees that the absent parent or the Department may move for a review of any action by serving a request for a review, together with an affidavit stating the grounds upon which the request is based, upon the other party. Also, 19 MRSA §516 states that any person who is aggrieved by any final action of

the Division may seek review of that action. Administrative remedies must be exhausted prior to court review.

Federal Computer System

A significant administrative tool has recently been made available to Maine's child support program in the form of the "New England Child Support Enforcement System", or NECSES, a federally-supported project to computerize Maine's child support program. This effort has been implemented by the national firm of Deloitte & Touche and has two primary components:

- computerization of administrative and enforcement processes within the Department, both for case management and financial management; and
- an electronic billing and check processing system, conducted under contract by the State Street Bank and Trust Company of Boston, to electronically account for absent parents' child support payments.

In regard to the first component, the design, development, and testing of the system is now complete and implementation has occurred statewide. Deloitte & Touche is currently providing post implementation support and remediation. Benefits of the computerized system include:

- minimizing manual record keeping and manual case processing;
- providing immediate access to key information;
- simplifying financial inquiries and speeding-up the timeliness of financial processing, including automatic calculation of support payments and AFDC distribution to the family and state and federal accounts;
- improving management and control of support enforcement cases;
- ensuring consistent and complete case handling;
- freeing-up more time to handle exceptional cases;
- improving reporting capability;

-
- locating absent parents and establishing support obligations,
 - speeding-up response to inquiries; and
 - improving compliance with federal and state law.

Deloitte & Touche anticipates that the system will help increase child support collections significantly in the next three years, with nearly a 100% increase over current levels within five years.

At this time, the State Street Bank and Trust Company in Boston has been hired to process payments submitted by individual absent parents who do not submit payments via automatic wage withholding. These payments from individuals account for about 25% of all Maine's child support payments. (The Cashiers within DHS process the 75% balance of Maine's child support payments which are made via automatic wage withholding.)

Accordingly, services provided by State Street Bank for individual, non-wage withholding payments, include:

- * receiving child support payments mailed to the bank;
- * maintaining a deposit account for Maine;
- * producing, folding, stuffing, and mailing a monthly Statement of Account, or bill, to each absent parent on forms which are customized, designed, and supplied by State Street Bank. The Statement of Account (See Appendix) includes the absent parent's current obligation due, past due amount, and confirmation of payments received in the prior billing cycle. Each Statement of Account includes six tear-off coupons at the bottom of the Statement, to be used by the absent parent to accompany each support payment; the benefit of the tear-off coupon is that each is imprinted with a computer code that can be electronically read by an optical scanner (similar to the bar code system used in the supermarket);
- * processing the support payments received, crediting the absent parent's account and forwarding the coupons, the adding machine tape, and the deposit receipt each night to DHS's IV-D Cashiers Section for final processing and check production the following morning.

In addition, the State Street Bank and Trust Company is not required to handle payments which are submitted without complete information or that are in any way not straightforward. Payments which fall in the "atypical" category are forwarded by the bank to the DHS IV-D Cashiers for further review and ultimate disposition, which include checks that:

- + are unsigned;
- + bear any message;
- + contain discrepancies between figures or which are otherwise illegible;
- + are post-dated so that the check will be received by the drawee bank prior to the date of the check; and
- + other checks which the bank determines should not be deposited into the Account.

For 1989, State Street Bank and Trust Company processed 96,899 payments and produced 213,313 bills to Absent Parents, with amount billed totalling \$162,293.

All other support enforcement payments are processed by sixteen "IV-D" Cashier's within DHS's Division of Financial Services. 1,500 to 3,000 pieces of mail are received daily by the clerks from employers withholding wages of absent parents, from the military with absent parents in the service, and from out-of-state courts which are serving as the broker for absent parents' payments. Prior to the implementation of the NECSES computer system, check processing was a complex, multi-step process largely dependent on manual sorting, searching, and recording. Upon review, the Committee found that the computer system is making a significant difference in the Cashiers' overall efficiency. Most notably, the Cashiers are now able to process each check fully on the day received and to close out each month's payments on the last day of the month, rather than extend the close-out into the first few days of the succeeding month due to lag-time in check processing.

The Child Support Table

In October 1989, the Department adopted a table, which has subsequently been enacted into law (19 MRSA § 303-A), which calculates the amount of child support due from the absent parent.

The schedule of support amounts is based on the following premises:

1. Both parents bear the social and legal responsibility for supporting their children, and each should share the economic responsibility in proportion to his or her income.
2. The subsistence needs of each parent should be taken into account, but in virtually no event should the child support obligations be set at zero.
3. Child support must cover a child's basic needs as a first priority. However, to the extent that a parent's income exceeds that necessary to provide him or her with a subsistence-level standard of living, the child is entitled to share the benefits of such additional income.
4. A child should receive the same proportion of parental income that he or she would have received if the parents lived together. (Department of Human Services. Maine Child Support Enforcement Manual. Ch. 6. page 19)

The amounts set by the table are also based on four assumptions, as follows:

1. The amount of income expended on behalf of a child is directly related to the cumulative income of the child's parents.
2. The percentage of parental income expended on behalf of a child decreases as parental income increases.
3. The cost of supporting a child between the ages of 12 to 18 is substantially greater than the cost of supporting a younger child.
4. Including a specific child support payment on the table for annual gross incomes less than \$6,000 is not practicable.

Accordingly, for parents whose combined annual gross income is \$6,000, the table requires a weekly child support payment of \$16 for a single child or \$3/child for six children. The obligation is pro-rated between the two parents, with each responsible for a proportion equal to their earnings. For a

combined gross annual income of \$10,200, the table calls for a weekly child support payment of \$35 for a single child or \$11/child for six children. The table specifies weekly payments for one to six children for combined annual gross incomes ranging from \$6,000 to \$126,000. [Maine Child Support Enforcement Manual. Child Support Table. Chapter 6. Revised effective 10/12/89).

Congress's last major amendment of the federal Child Support Enforcement Act in 1988 required Maine to implement, by 1993, a means by which all support amounts enforced by the Division of Child Support Enforcement would be reviewed, with the intent of modifying all orders which did not comply with the new Guidelines in the Support Enforcement Table [PL 100-485, Sec. 103]. Thereafter, the Act requires that each obligation be reviewed and modified every 36 months. In this way, Congress intended to ensure that child support obligations are set at a reasonable level and are uniform.

Maine's Division estimates that triennial reviews will require that 10,000 to 11,000 obligations be reviewed annually. The "review and modification" mandate will not only affect the Division, but also the court system since many of the orders originated in the court, which will have the responsibility to review its own orders. Initially, the majority of support orders will require modification in order to comply with the Guidelines since many obligations have been set at levels lower than the recently enacted Guidelines. The Committee found that the process by which orders will be modified has not yet been set in law or rule, but if administrative hearings are deemed to be required prior to modifying an order, substantial staff additions will be required. The Committee concluded that current staff levels would not be adequate.

The Division has recently submitted a plan for the Legislature's consideration to accomplish the federally mandated review and modification of child support orders, in consultation with the Supreme Judicial Court, the Family Law Section of the Maine State Bar Association, and Pine Tree Legal Assistance, Incorporated.

Cost of Maine's Child Support Enforcement Program

The administrative cost of Maine's child support enforcement program is reported according to the federal fiscal year as:

1986-87	\$5,608,744
1987-88	\$6,252,625
1988-89	\$7,576,001
1989-90	\$9,376,000
1990-91 (est.)	\$9,615,746 (source: Division)

According to federal figures, Maine's program has continued to collect more dollars in child support than have been spent to administer the program:

**Cost Effectiveness of Maine's Child
Support Program**

Support Dollars Collected Versus
Administrative Dollars Spent

	<u>Collected vs. Spent</u>	<u>National Average</u>
1984	\$3.75 to \$1	\$3.29
1985	\$3.98 to \$1	\$3.31
1986	\$3.74 to \$1	\$3.45
1987	\$3.75 to \$1	\$3.68
1988	\$4.01 to \$1	\$3.94
1989	\$4.14 to \$1	Not available
1990	\$3.82 to \$1	Not available

Maine's program is funded by a combination of state, federal, and dedicated dollars. Federal dollars are funneled into Maine's program primarily in two ways. First, the federal government reimburses the state for approximately 66% of the state's administrative expenses. Second, the federal government provides financial rewards, or "incentives" to states based on the state's efficiency in collecting support payments as compared to the amount of administrative overhead. As reported above, Maine's level of efficiency has earned Maine incentive payments from the federal government totalling:

1984	\$1,154,424
1985	\$1,253,225
1986	\$1,612,000
1987	\$1,692,000
1988	\$2,407,000

The dedicated revenue available for program administration is allocated from child support collections and is limited by State law. For the last five fiscal years, the cap available for allocation is:

<u>Fiscal Year</u>	<u>Cap</u>
1986-87	\$ 800,000
1987-88	950,000
1988-89	1,425,000
1989-90	1,800,000
1990-91	2,654,000

The \$375,000 increase in the cap for FY 90 will provide additional federal funds of \$1,475,000. The increase in the FY 91 cap will generate an additional \$4,262,319 of federal funds.

State General Fund dollars are appropriated to the program through the administrative account of the Bureau of Income Maintenance, are accounted for separately, and support approximately 30% of the total cost of the program.

Reimbursement of Public Assistance

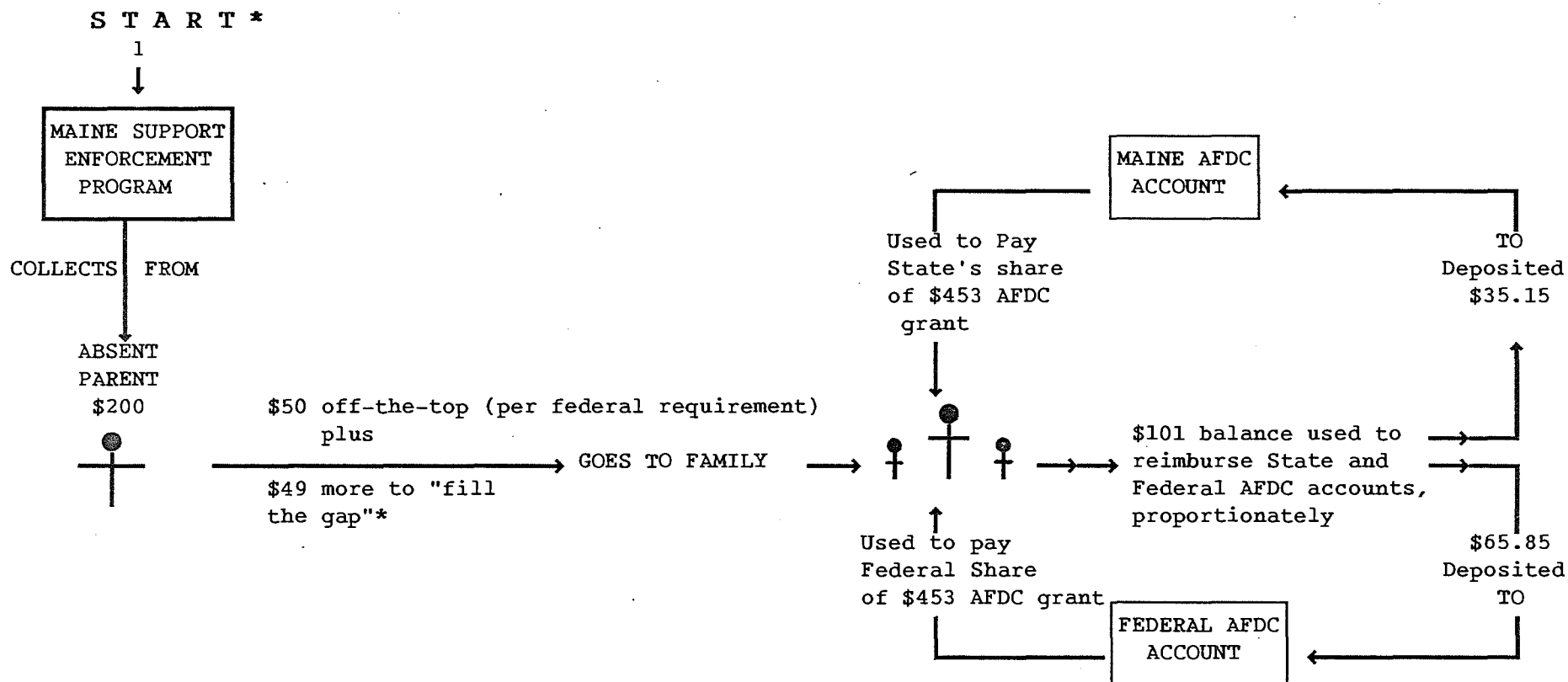
As indicated earlier, child support payments are used not only to support an absent parent's children and a small portion of the administrative costs of the State's enforcement program, but also to reimburse public coffers for financial assistance given to families through the Aid to Families with Dependent Children program. Both federal and state law is predicated on the principle that receipt of public assistance for children imposes a debt due to the taxpayers to be repaid by the children's absent parent. After a percentage of the absent parent's check is distributed to the absent parent's children, the remainder is deposited proportionally into federal and state AFDC accounts, to be paid out again in the form of AFDC grants to families. The State's share of child support collections retained to reimburse the State's AFDC account for the past five fiscal years was as follows:

1984	\$2,823,562
1985	\$2,524,615
1986	\$2,486,654
1987	\$2,905,430
1988	\$2,962,738

Maine has consistently recovered a percentage of AFDC grants through child support collections which is greater than the national average [data from D.H.S. and U.S. Department of Health and Human Services, 13th Annual Report to Congress. Table 55]:

	<u>Maine AFDC</u> <u>Recovery Rate</u>	<u>National</u> <u>Average</u>
1984	14.0%	7.0%
1985	13.4%	7.3%
1986	16.7%	8.6%
1987	20.6%	9.1%
1988	21.1%	9.7%
1989	26.1%	10.1%
1990	23.1%	12.1% (regional average)

The collection and reimbursement process for families receiving public AFDC assistance is illustrated simply by the accompanying flow chart.



* Assumptions for Model:

- GAP amounts to \$199 which is the difference between family's AFDC grant of \$453 and "Need Standard" of \$652
- Family earns \$150/month towards filling the gap of \$199; therefore \$49 from Child Support payment fills remainder
- State contributes 34.80% and Federal contributes 65.20% of family's AFDC grant

Exemptions

Maine law also exempts an absent parent from paying child support under three conditions. The first instance is when the absent parent is receiving public assistance for children in his or her current household. In this circumstance, an absent parent is excused from supporting his or her children in a previous family. The second instance in which an absent parent is no longer required to support his or her children is when the absent parent's disposable weekly income falls to an amount equal to 30 times the federal minimum hourly wage; i.e. \$114.00 disposable per week (or \$3.80 times 30). Third, certain property of an absent parent is legally exempt from attachment for a child support debt. Exempt property includes [14 MRSA §4422]:

- \$7,500 in the value of the Absent Parent's residence;
- \$1,200 in the value of the Absent Parent's motor vehicle; and
- portions of other types of properties including furniture, jewelry, tools of the trade, cooking stoves, food provisions, farm implements, a commercial boat, and various contracts and benefits.

STATUTORY	101.	Update statutory language regarding support of children and spouses in order to expunge references to gender and impose an equal burden on married men and women for spousal support.
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In 1955, Maine law was enacted to clarify the duty of married men and women to support not only their spouse and children, but their parents as well. A married man was mandated to support his wife and children unconditionally, and his parents when in need. The 1955 law required a married woman to support her child unconditionally, but provided that she need support her husband and parents only when they were in need.

In 1983, adult children were no longer required by law to support parents in need but the obligation to support spouse and child remained. Every man was required to "support his wife and his child" and every woman was required to "support her child, and her husband [only] when in need" [19 MRSA §§442 and 443].

Accordingly, current law clearly establishes the duty of men and women to support their children. The law imposes the duty to support a child equally, requiring both parents to support their child without exception or condition. The intent of the Legislature is straightforward, based upon a belief that parents have an unconditional duty to support their child.

Accordingly, State Government has a duty to enforce State law and does so through the Division of Support Enforcement and Recovery's efforts at locating absent parents, establishing child support orders, and collecting child support payments. The Division's authority to administer the child support program flows directly from that section of law which obligates parents to support their children regardless of circumstances.

However, in reviewing this law, the Committee also noted that the law does not impose the duty of spousal support equally on men and women; current law requires a married man to support his wife without exception but limits the married woman's duty to support her husband only when the husband is in need.

In considering the implications of this unequal burden, the Committee notes that the U.S. Supreme Court has struck down laws imposing unequal duties as unconstitutional. For example, one observer has written that, "the Court will strike down laws giving preference to women in the economic area if the justices believe that those laws are not reasonable means of compensating for past discrimination against women as a class" [John E. Nowak et al., Constitutional Law, 2nd ed.(St. Paul, Minn: West Publishing Co., 1983) p. 723].

In Orr v. Orr [440 U.S. 268 (1979)], the U.S. Supreme Court struck down as unconstitutional an Alabama statute in which husbands, but not wives, could be required to pay alimony. The majority opinion rejected "the permissibility of any goal of the state related to insuring that the husband was allocated primary responsibility for the family; the Court has consistently rejected any state interest in keeping men in a role of primary responsibility in the family" [Ibid., p. 723].

Finally, the Committee notes that, since these provisions in Maine law regarding spousal support have apparently not been challenged in court, the constitutionality of the language remains an open question. Nevertheless, the Committee finds that

the public interest would be well served by updating the law and recommends using gender-neutral terms and imposing the duty to support spouses equally on married men and women.

ADMINISTRATIVE 102.

Recommend that limited information sharing occur between the Division of Child Support Enforcement and Recovery and the Bureau of Taxation in order to assist the Division in carrying out its mandate to ensure that both parents support their children and that taxpayers are relieved of the burden of supporting other people's children.

Federal and state law governing Maine's child support program is grounded in several assumptions. First, both parents, if living and able, should contribute to the support of their children, regardless of whether the parents live together or apart. Second, taxpayers have an interest in absent parents paying child support since a portion of the payment is used to reimburse public coffers for Aid to Families with Dependent Children assistance.

Successfully delivering a support check to a dependent child is dependent on two prerequisites. First, the child's absent parent must be located. Second, the absent parent's financial obligation to the child must be determined based on that person's income. Much of the Division of Support Enforcement and Recovery's time is spent performing these two tasks.

As shown in the following table, the Division's success in finding absent parents and determining income is made more difficult by the failure of more than 50% of absent parents in the Division's caseload to report any income to Maine's Department of Labor:

	Number of In-State Absent Parents	Number Not Reporting Income (%)
February 1989	34,570	19,274 (56%)
February 1990	35,024	19,484 (56%)
November 1990	36,000	20,500 (57%)

In addition, the Committee found that about 9,000 of the absent parents in November 1990 who did report, reported incomes that were not adequate to maintain subsistence. Yet, records show that this same group of absent parents reporting insubstantial incomes have also not applied for public assistance in the form of Aid to Families with Dependent Children, Supplemental Security Income, or Medicaid. Accordingly, the Committee concludes that these Absent Parents may, in fact, earn more income than is reported, with a proportionally greater capacity to support their children than would at first be expected. The Committee found that a significant number of non-reporting absent parents are self-employed or covertly-employed and do have sufficient, but hidden, assets with which to contribute to the support of their children.

National statistics confirm that Maine's situation is not unique. In its Annual Report to Congress, the U.S. Department of Health and Human Services reported that, "[t]he failure of absent parents to support their children is a continuing problem for millions of women and children in this country" [U.S. Department of Health and Human Services. Office of Child Support Enforcement. Child Support Enforcement, Thirteenth Annual Report to Congress. Vol. I. page 5. 1988.] In 1985, 4.4 million women heading households with children under 18 were due child support yet only 48% received the full amount owed. 26% received partial payment, and 26% received no support from the absent parent [Current Population Reports, Series P-23, No. 154, Child Support and Alimony: 1985, March, 1989]. A recent article reports that, "only one-fourth of single-parent families receive child support, a significant reason why half of all single-parent families are poor, compared with only 12 percent of two-parent families [Steven D. Gold, "Replacing an Impossible Dream," State Legislatures, February 1991, pp.24-25].

The Committee finds that the Division of Support Enforcement has entered into information-sharing agreements with a number of state and federal agencies to assist the Division in locating absent parents and identifying their income. For

example, the Department of Labor supplies computer-matched income and employment information; the Division of Motor Vehicles provides last-known addresses and vehicular assets of the Absent Parent; the Workers' Compensation Commission provides information about injury settlements; and the federal Internal Revenue Service provides the address from which a tax return was filed. The Committee also notes that the Department of Inland Fisheries and Wildlife may soon be providing information to the Division regarding licensure of watercraft and off-road vehicles of absent parents which could be subject to liens.

The Committee further notes that another means for securing information about an absent parent's whereabouts and income could come from Maine's Bureau of Taxation. Current law now authorizes the "disclosure to an authorized representative of the Department of Human Services of the most recent address of a delinquent payor of child support when a written request containing the payor's Social Security number is made by the Department" [36 MRSA §191, sub-§2, ¶10]. Regardless of the statutory authorization, prior to the Committee's review, no administrative means had been arranged by the parties to share appropriate information. Following a request by the Committee, a Working Agreement was developed whereby the Bureau of Taxation agreed to match its list of sales tax registrants against a list of social security numbers of delinquent absent parents supplied by the Division. If a match turns up, the address of the sales tax payor will be supplied to the Division of Support Enforcement. In this way, the Division will have another means to obtain an address of an absent parent whose registration as a sales tax payor would seemingly indicate an ability to pay delinquent support obligations.

In making this recommendation, the Committee notes that the match with sales tax lists will not only assist the Division in securing financial support for dependent children from their absent parent but should also diminish the need for tax monies to be paid out in the form of public assistance. Accordingly, the Committee recommends that limited information sharing occur between the Division of Child Support Enforcement and Recovery and the Bureau of Taxation to assist the Division in locating absent parents and setting child support obligations consistent with income.

MANDATORY WAGE WITHHOLDING

Louis Sullivan, Secretary of the U.S. Department of Health and Human Services, has characterized withholding wages of an Absent Parent as "the most effective tool for enforcing child support obligations". Congress has been in agreement with Secretary Sullivan's assessment since 1984, when Congress ordered

the states to withhold wages of absent parents whose child support payments were in arrears and to insert a provision in all newly-issued support orders to authorize wage withholding should an arrearage occur. Four years later, Congress strengthened its wage withholding requirements by ordering the states to commence wage withholding immediately for support orders enforced by the Division after November, 1990, without waiting for an arrearage to occur, and to require immediate wage withholding for all orders as of 1994, regardless of whether the Division is involved in the order's enforcement.

In the 114th Second Regular Legislative Session, the Maine State Legislature enacted legislation recommended by the Joint Standing Committee on the Judiciary to enable Maine to comply with federal requirements for immediate wage withholding. However, the Judiciary Committee expressed a number of concerns with mandatory wage withholding, which prompted that Committee to specify that the enabling language would automatically repeal by April 1, 1991. The Judiciary Committee's concerns are summarized as follows:

- * mandatory income withholding represents too much federal intrusion into a matter that is a state prerogative;
- * mandatory withholding would impose an unnecessary, unfair, and costly burden upon the employers of absent parents who may have paid child support voluntarily; and
- * mandated payroll deduction of child support could impersonalize a very important aspect of the absent parent's relationship with his or her child.

Due to its growing importance as a pivotal enforcement technique and initial concerns which paralleled those expressed by the Judiciary Committee, the Audit Committee carefully reviewed the issue of mandatory income withholding. In the final analysis, the Audit Committee concluded that mandatory income withholding is an enforcement technique which will continue to be required for federal support of state programs and which has proven effective in securing child support from parents for their dependent children. Accordingly, the Audit Committee communicated its findings to the Joint Standing Committee on the Judiciary by means of a letter, included in the Appendix, and recommended that the state continue to adhere to the federal income withholding mandate by repealing the enabling language's automatic termination date of April 1, 1991.

FINDING

103.

The Committee finds that the mandate of Maine's Child Welfare Services Ombudsman should be broadened to include child support enforcement cases in order to advise, assist, and represent the best interests of individuals involved in Maine's child support system.

Enforcement Agents in the State's child support enforcement program are charged with four objectives: locating an absent parent, imposing a child support obligation, collecting the support payment, and, when necessary, establishing paternity. After these objectives have been accomplished, Cashiers within the Division of Financial Services receive the support checks from Absent Parents in order to record and distribute the payments to Custodial Parents.

The Committee found that although the goals and objectives of the child support enforcement program are simple, the actual implementation and administration of the program is complex. For example, the State collects child support payments primarily for children whose parents receive Aid to Families with Dependent Children, but, upon request, the Division may also be involved in collecting support payments for families who do not receive AFDC grants. In fiscal year 1989, the number of families served in-state and out-of-state by the Division numbered approximately 46,000, involving a custodial parent, an absent parent, and their children. The work of locating absent parents routinely involves coordination with state and federal agencies such as the Division of Motor Vehicles, the Department of Labor, the Division of Employment Security, the Bureau of Taxation, and others who might know the whereabouts of an absent parent such as relatives, friends, or former employers. Establishing paternity involves interaction with courts and attorneys. Distributing the payment involves many complex accounting transactions, including sorting a minimum of 1500 pieces of mail each day, confirming key information about the absent parent, calculating the correct amount due to the custodial parent, and disbursing the check.

Actual case histories reviewed by the Committee demonstrated that collecting money from absent parents on behalf of the children is inherently controversial. Case records show that the perspective as absent parents is that the Division often pursues payment to excess. In contrast, custodial parents charge that the Division is unresponsive and ineffective in collecting payments due through a court or administrative order. In considering the cases, the Committee found that many extenuating circumstances contributed to the frustration and dissatisfaction of people involved in the child support system. For example, the Committee found that checks and other information submitted to the Division may have incomplete or incorrect information; poor communication between the Division and involved parties contributed to significant misunderstanding and misperception; departmental delays occurred in processing payments and other paperwork; and delays in communication among federal, state, and local governments created dissatisfaction as did inadequate information available to the department prior to taking action.

As a result of the complexity of the daily operation, the potential for miscommunication and misunderstanding, and the inherent controversy and dissension among the parties, the Committee finds a need to provide a liaison for people involved in the child support system, similar to the function performed by the Child Welfare Services Ombudsman for people involved in Maine's child protective system.

The statutory mandate of Maine's Child Welfare Services Ombudsman is to "represent the best interests of individuals involved in the state's child welfare system ... and to investigate and resolve complaints against state agencies which may be infringing on the rights of individuals involved in the State's child welfare system" [22 MRSA subcX-A]. To carry out this mandate, the Ombudsman conducts a broad-based operation which includes:

- providing ombudsman services to individual citizens involved in child welfare matters;
- advising, consulting, and assisting the executive and legislative branches of State Government, especially the Governor, on activities of State Government related to child welfare;
- reviewing and evaluating state and federal policies relating to the provision of child welfare services;
- receiving and addressing inquiries, complaints,

problems, or requests for information and assistance regarding the state's child welfare system;

- conducting, researching, gathering facts, and evaluating procedures regarding the state's child welfare services; and
- serving as a coordinator for all components of the state's child welfare services system.

The Ombudsman position is solely advisory in nature and is not endowed with any administrative authority or responsibility. The source of the Ombudsman's authority lies in the position's direct access to State decision-makers at the highest levels to whom suggestions for remedial action can be provided as needed.

The Committee finds that individuals involved in Maine's child support enforcement system would benefit from the services of an ombudsman, just as individuals involved in Maine's child protection services system now benefit from the services of Maine's Child Welfare Services Ombudsman. By broadening the incumbent Ombudsman's function to embrace not only Maine's child welfare service delivery system but also Maine's child support enforcement system, disgruntled individuals would have access to an impartial agency outside of the Department of Human Services. The Ombudsman's office would then be available to these individuals to assist the individuals in finding resources, gaining access to State employees and programs, and resolving issues of concern and frustration, not only to the individuals but to the Department as well. In issuing this finding, the Committee also notes that federal matching funds would be available to assist in supporting an additional position that would be needed by the Ombudsman's office if its mandate were broadened to incorporate child support cases.

APPENDICES

September 12, 1990

Honorable Barry J. Hobbins, Senate Chair
Honorable Patrick E. Paradis, House Chair
Joint Standing Committee on Judiciary
114th Maine Legislature
State House Room 438
Augusta, Maine 04333

Dear Senator Hobbins and Representative Paradis:

As chairs of the Audit and Program Review Committee, we are writing to alert you to our concerns regarding the April 1, 1991 sunset date placed last session on the language mandating automatic wage withholding for child support cases handled by the Division of Support Enforcement and Recovery [PL 1989 Ch. 877, 19 MRSA §498-C, sub-§9]. We have concluded that the implications of the termination date are sufficiently serious that we are respectfully requesting that the Committee on Judiciary remove the April termination date as the Committee's first priority in the upcoming session.

Our concern stems from our current review of Maine's child support enforcement system (which will conclude in January 1991). During the course of our work, we have reviewed the issue of wage withholding, as mandated in the federal Family Support Act of 1988. As you know, to comply with this mandate, the Committee on the Judiciary recommended, and the Legislature enacted, PL 877 in the last session of the Legislature (as attached). The State law uses almost precisely the same language as the federal government suggests in its mandate, with the significant exception of the April 1 termination date. Our concerns can be summarized as follows:

**CONGRESS APPEARS INTENT ON RELYING UPON MANDATORY WAGE
WITHHOLDING TO ENFORCE CHILD SUPPORT OBLIGATIONS**

Since 1984, Congress has been amending the nation's child support enforcement program to steadily increase reliance on wage withholding as a means of collecting child support debts. Congress

has apparently been interested in wage withholding because, according to Louis Sullivan, Secretary of U.S. Department of Health and Human Services, "wage withholding is the most effective tool for enforcing child support obligations. It taps the parent's income at its source and becomes a regularly deducted item, such as income taxes and social security taxes. Regular wage deductions for child support assure children of getting their support payments on time and in the correct amount. Accumulated arrearages can be eliminated and a continuing, stable pattern of payment established...." [Wage Withholding for Child Support. An Employer's Guide for Small Business. U.S. Department of Health and Human Services. Office of Child Support Enforcement. no date]

EVEN IN MAINE, STATISTICS SHOW THAT ABSENT PARENTS OFTEN DO NOT VOLUNTARILY PAY THEIR CHILD SUPPORT OBLIGATIONS

The Division of Support Enforcement and Recovery reports that, out of ~14,000 Absent Parents who pay child support each month, approximately 6,000 pay their obligation through wage withholding; the majority of which was involuntarily established due to the accumulation of arrearages. Also, from ~1977 to today, total child support obligations amounted to \$407,814,529, yet only \$220,011,041 has been paid, totalling an arrearage of \$187,803,488 for the period.

Finally, it can be noted that even in a place of employment with relatively high salaries, such as Bath Iron Works, the Division enforces ~500 involuntary withholdings; a figure which may more broadly imply that the level of voluntary compliance is low overall.

CONGRESS HAS INCLUDED PROVISIONS TO MITIGATE THE BURDEN IMPOSED ON EMPLOYERS WHO WILL WITHHOLD EMPLOYEE'S WAGES

In considering this point, it is important to note that many employers have been withholding child support obligations from employees' paychecks

since 1984. 1984 was the year when Congress authorized that wages be withheld for employees who are 30 days or more in arrears; adding employees whose cases are being enforced by DHS (now without regard to whether arrearages exist) may not pose a significant extra burden on already existing administrative systems.

However, to assist the employer with wage withholding, Congress has allowed employers to:

- * retain a fee (up to \$3) from the absent parent to offset the administrative costs of implementing withholding; and
- * combine all support payments required to be withheld for multiple employees into a single payment for forwarding to the state agency or court.

MANDATORY WAGE WITHHOLDING WILL BETTER ENSURE THAT TAXPAYERS WILL NOT NECESSARILY BE REQUIRED TO SUPPORT OTHER PEOPLE'S CHILDREN

"Withholding wages ensures that [the responsibility for supporting children] is shouldered by the people who are legally and morally responsible, their parents, and not the taxpayers." [Wage Withholding for Child Support. An Employer's Guide for Small Business. U.S. Department of Health and Human Services. Office of Child Support Enforcement. no date]

THE CONSEQUENCES OF NON-COMPLIANCE INCLUDE DISAPPROVAL OF THE STATE'S CHILD SUPPORT ENFORCEMENT PLAN, LOSS OF FEDERAL ADMINISTRATIVE SUPPORT OF MAINE'S PROGRAM, AND LOSS OF FEDERAL AFDC FUNDS

Mr. Hugh Galligan, Regional Administrator of the Family Support Administration, writes (as attached):

"...If Maine does not amend its [Support Enforcement] State Plan... immediate suspension of all Federal payments for that State's Child

Support Enforcement Program [will occur, which] would amount to approximately \$6 million in federal administrative payments per year.

Maine may also be...subject to further reductions in [federal AFDC] funding for failure to comply..."

**EXEMPTIONS FROM THE FEDERAL MANDATE TO WITHHOLD WAGES
CAN ONLY BE GRANTED IF A MORE EFFECTIVE METHOD IS
SUBSTITUTED**

Mr. Galligan writes in his letter that "income withholding is the most efficient method of collecting child support... We therefore find no basis for concluding that not implementing immediate income withholding will increase the effectiveness and efficiency of your Child Support Program."

In consideration of these points, we strongly recommend that the Judiciary Committee take action to ensure compliance with the federal mandate by repealing the termination date. In this way, the effectiveness of Maine's child support enforcement program will increase, federal support of our child support enforcement program will continue, and federal AFDC dollars will continue to be available.

Sincerely,

Harriet Ketover
Subcommittee chair

Beverly M. Bustin
Senate Chair

Neil Rolde
House Chair

cc: Members of the Jt. St. Com. on Judiciary
Peggy Reinsch, Analyst

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MONTHLY CHILD SUPPORT BILL
AND
STATEMENT OF ACCOUNT

Prepared by State Street Bank & Trust Company

DIVISION OF HUMAN SERVICES
STATE HOUSE STATION 11
AUGUSTA, MAINE 04333

MAKE CHECK OR MONEY ORDER PAYABLE TO:
TREASURER, STATE OF MAINE

MAIL PAYMENT TO:
CHILD SUPPORT REGIONAL
PROCESSING CENTER
P.O. BOX 1356
BOSTON, MA 02205-1356

Always include your case ID number
on all correspondence.

* SEE REVERSE SIDE FOR ADDITIONAL INFORMATION

CLIENT NAME CLIENT ID NO.

WEEKLY MONTHLY

AMOUNT DUE FOR CURRENT SUPPORT
AMOUNT DUE FOR ARREARS
TOTAL AMOUNT EXPECTED
AMOUNT RECEIVED LAST MONTH

OUTSTANDING BALANCE

To remove coupon(s), carefully detach along dotted lines

FORM CSFME (CSD) REV. 03/88

COUPON
5

CASE ID:

PAYOR:

AMOUNT ENCLOSED	CHECK NUMBER
\$	

ADDRESS CHANGE

CASE ID:

Please provide corrections or changes to your name or address
and return with your payment coupon.

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DEPARTMENT OF DEFENSE AND VETERANS' SERVICES

INTRODUCTION

DEPARTMENT OF DEFENSE AND VETERANS' SERVICES

The former Department of "Military, Civil Defense, and Veterans' Services" was created in 1972 by consolidating the administrative offices of the Adjutant General with the State's civil defense programs and incorporating veterans' services as a Bureau within the new Department. The Department's title has been "Defense and Veterans' Services" since 1975.

The statutory purpose of the Department of Defense and Veterans' Services is to "coordinate and improve the discharge of the State Government's responsibility for military affairs, veterans' services, and civil emergency preparedness matters" [37-B MRSA § 1]. More specifically, the Department handles all records, circulars, correspondence, and personnel management for the military.

The Commissioner of the Department is the Adjutant General who, as required by Maine's Constitution, is appointed by the Governor [Maine Constitution, art 7 sec. 3] and serves at the Governor's pleasure and is subordinate only to the Governor [37-B MRSA §3]. In addition, the law requires that the Adjutant General must:

- not hold a grade above major general;
- hold or have held a commission of at least field grade or equivalent in the state military forces, the United States Armed Forces, or a reserve component;
- have served at least five years in one or more of those forces; and
- meet the criteria for federal recognition in the grade to which appointed as prescribed by regulations governing the United States National Guard [37-B §§3 and 107].

The statute specifies the Adjutant General's powers and duties [37-B MRSA §3] as:

- efficiently administering the department;

-
- managing the department's budget and personnel;
 - serving as liaison between the state and federal military establishments, including administering federal funds made available to the State for military purposes;
 - discharging various duties regarding reports and other documents on the condition of the military forces; and
 - managing the operation, care, repair, construction and disposition of all military property and facilities, consistent with state and federal requirements.

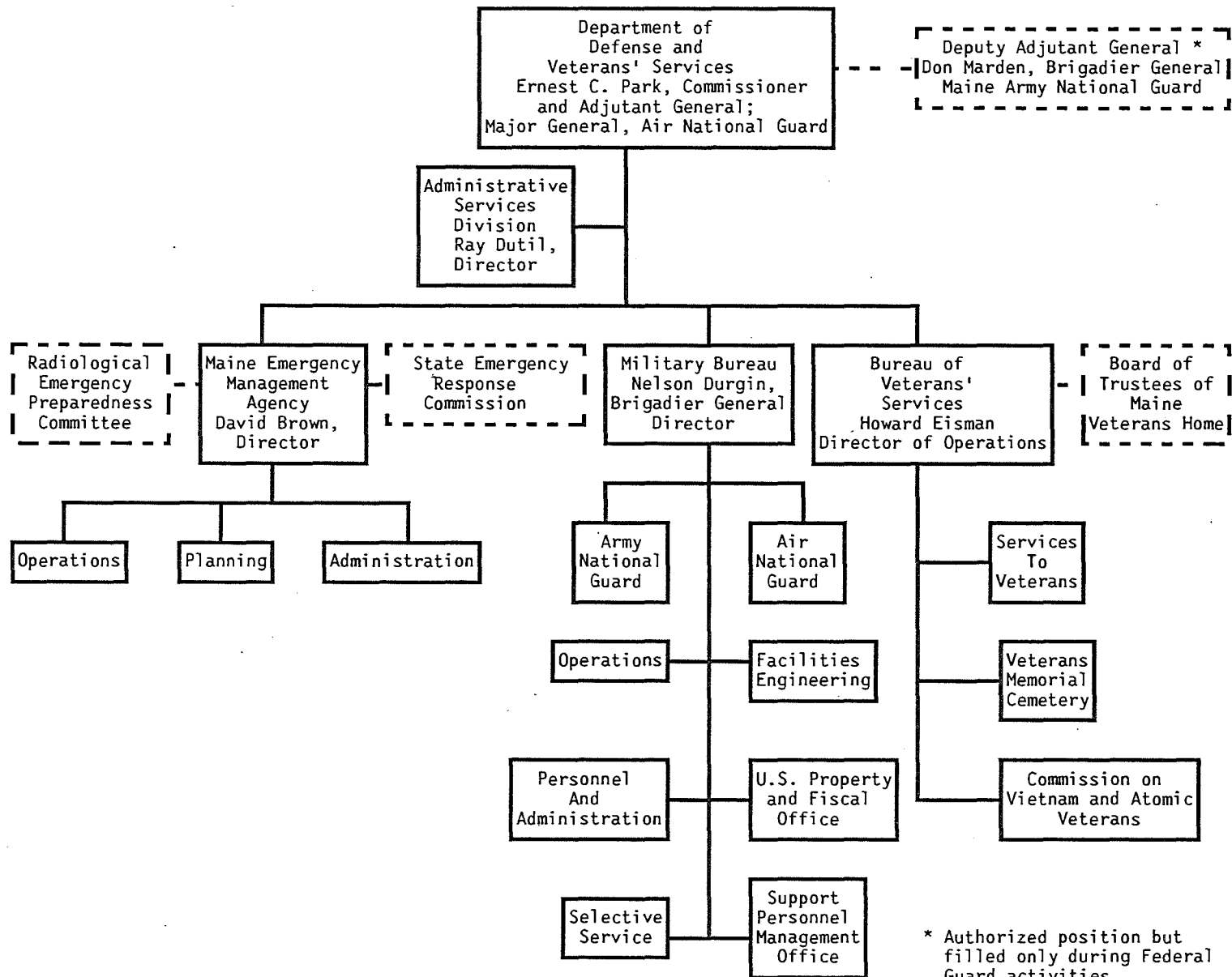
The Adjutant General is also responsible for appointing the Directors of each of the Bureaus [37-B MRSA §4] which are set in statute as the Military Bureau, the Bureau of Veterans' Services, and the Maine Emergency Management Agency [37-B MRSA §2].

The Deputy Adjutant General for the department has all the powers, responsibilities, and duties of the Adjutant General when the Adjutant General is absent or unable to act, or, if the office is vacant, until the Adjutant General vacancy is filled by the Governor. By statute, the Adjutant General is required to fill the position of Deputy either with the assistant adjutant general for the Air National Guard or by the assistant adjutant general for the Army National Guard. The incumbent Deputy is from the Army National Guard; the incumbent Director of the Military Bureau serves concurrently as the assistant adjutant general for the Air National Guard. Finally, the incumbent Deputy Adjutant General is not a state employee; therefore the Deputy does not in practice perform administrative duties in lieu of the Adjutant General but is prepared to command during Federal guard activities.

The department is organized as indicated in the organizational chart below:

ORGANIZATION

DEPARTMENT OF DEFENSE AND VETERANS' SERVICES



In FY 1989, the Department received 52.4% of its funding from the federal government, 44.1% from the state general fund, and 3.5% from dedicated sources, as follows:

**FY 1989
Total Funds Available**

GF	\$ 6,377,443
FF	\$ 7,582,845
<u>DR</u>	<u>\$ 500,098</u>
	\$14,460,386

As of February 11, 1991, the Department had a total of 269 authorized positions, 160 (59.5%) supported by the General Fund, 106 (39.4%) funded by federal funds, and three (1.1%) funded by dedicated revenues. Of the 269 authorized positions, 6 are on Leave Without Pay, 14 positions are frozen, and 43 positions are vacant for a total of 63, or 23% of the Department's workforce.

THE MILITARY BUREAU

The Military Bureau is the largest Bureau of the Department, with 71.4% of the Department's workforce and approximately 50% of the Department's expenditures. The current Bureau was created in 1972 as the successor of the former Office of the Adjutant General. The statute endows the Military Bureau with "jurisdiction over and responsibility for the administration of the state military forces" [37-B MRSA §101] which are defined primarily as the Maine Army National Guard and the Maine Air National Guard [37-B MRSA §102]. The Bureau has been administered by a Director since 1988 when the Deputy Adjutant General was relieved of this administrative duty [PL. 1987 c.634]. The statute specifies that the Director must be appointed by the Adjutant General but does not specify particular qualifications or duties.

In practice, the Bureau discharges its mandate by providing facilities, support personnel, and armories throughout the State to enable the Maine Army National Guard and the Maine Air National Guard to train and to maintain equipment necessary to meet two primary missions. The first part of the Guard's dual mission is to maintain a "military readiness posture" so that it can respond immediately if called into action by the President or Congress to protect American interests anywhere in the world. The Guard, then, has the capacity to respond quickly and serve as the "first line of defense". The second part of the Guard's mission is to provide, when required, an emergency force of well-prepared soldiers and air crew ready to respond to various

natural disasters, emergencies, public safety, and civil disturbance needs.

In addition to the two functions cited above, the Maine National Guard has recently engaged in drug enforcement activities within Maine. Through the auspices of the National Defense Appropriation of 1989, the National Guard assisted the State in counteracting illegal drug activities. In cooperation with the Department of Public Safety and the Bureau of Interdepartmental Drug Enforcement, the Adjutant General can, upon request of the Commissioner of Public Safety, assist in the identification, surveillance, transportation, and investigation of illicit drug-related activities. The Bureau reports that nearly \$700,000 in federal funds have been generated to support drug enforcement activities of the Maine National Guard in the past 18 months.

Maine's Army National Guard and Air National Guard consists of approximately 4000 personnel. As of February 1991, about 400 members of the Guard have been called to active duty in the Persian Gulf. The Guard in Maine is organized into the following units:

The Maine Army National Guard:

1. Headquarters and Headquarters Detachment - State Area Command (Augusta)
2. Troop Command (from Augusta)
 - A. 286th Service and Support Battalion - Headquarters and Headquarters Detachment (Gardiner)
 - a. 152nd Heavy Equipment Maintenance Company (Augusta)
 - b. 1136th Transportation Company - Light and Medium Trucking (Brunswick and Bath)
 - c. 314th Medical Company (Millinocket and Gardiner)
 - d. Company B, 3rd Battalion, 172nd Infantry - Mountain (Rumford and Brewer)
 - B. 1st Battalion 152nd Field Artillery (Caribou)
 - C. 112th Medical Company - Air Ambulance (Bangor)

-
- D. Company C, 1st Battalion, 192 Aviation (Bangor).
 - E. 195th Army Guard Band (Bangor)
 - F. 121st Public Affairs Detachment (Augusta)
 - G. 181st Air Traffic Controllers (Bangor)
 - H. 3620th Transportation Detachment - Movement Control (Augusta)
- 3. 240th Engineer Group - Headquarters and Headquarters Company (Waterville)
 - A. 133rd Engineer Battalion - Combat, Heavy (Portland)
 - B. 262nd Engineer Battalion - Combat, Corps (Bangor)

The Maine Air National Guard:

- 1. 101st Air Refueling Wing (Bangor)
 - A. 132nd Air Refueling Squadron (Bangor)
 - B. 101st Consolidated Aircraft Maintenance Squadron (Bangor)
 - C. 101st Resources Management Squadron (Bangor)
 - D. 101st United States Air Force Clinic (Bangor)
 - E. 101st United States Air Force Clinic OOMC (South Portland)
 - F. 101st Mission Support Squadron (Bangor)
 - G. 101st Civil Engineering Squadron (Bangor)
 - H. 101st Security Police Flight (Bangor)
 - I. 101st Mission Support Flight (Bangor)
 - J. 101st Services Flight (Bangor)
- 2. 243rd Engineering Installation Squadron (South Portland)
- 3. 265th Combat Communication Squadron (South Portland)

Both the Constitution and Maine law declare that the Governor serves as the "Commander-in-Chief of the army and navy of the State, and of the militia, except for components thereof which may, at times, be in the service of the United States" [Article 5, Part 1, §7 and 37-B MRSA §103]. As Commander-in-Chief, the statute calls on the Governor to prescribe orders, rules, and other administrative procedures necessary to maintain the standard of organization and armament for the state military forces required. Also, the Governor establishes administrative procedures necessary to insure that adequate numbers of officers, warrant officers, and enlisted men are appointed, commissioned, and enlisted into the state military forces.

In the event the Army National Guard is employed "in support of civil authorities in the protection of life, property, and preservation of peace, order and public safety", it is commanded and controlled by staff organized by the Adjutant General as the State Area Command, or STARC [37B MRSA §112]. In the event of mobilization of some or all Army National Guard units by the President of the United States, the STARC unit is required to assist the State in organizing and training a militia, if required, perform command and control functions in support of civil authorities, as directed, and prepare to reconstitute the Army National Guard and Air National Guard when units are relieved from federal service.

The Maine Army National Guard has developed a Future Plan spanning the years 1988 to 2013. The Executive Summary lists some of the more significant conclusions of the Future Plan as follows:

1. "...our soldiers are proud of their association with the National Guard and are generally satisfied with it. The only area evaluated as generally negative was facilities;
2. One environmental factor which will have a significant impact on the future is demographics. Maine's population is moving to the Southern part of the State [and we] have not reacted to this trend in force structure or facilities;
3. As the population base of available males decreases, the Maine Army National Guard will have to look more closely at recruiting females in available positions to help maintain strength; [and]
4. As the federal government continues to assume a

greater fraction of the financial responsibility for the Guard, the ability of the Guard to assume national defense roles will increase, but at the expense of the State's control..."

In FY 1989, the Military Bureau's revenue stream included a state appropriation of \$3.1 million, federal funding of \$3.9 million, and almost \$160,000 in dedicated revenue as follows:

**FISCAL YEAR 1989
FINANCIAL OVERVIEW
MILITARY BUREAU**

		<u>TOTAL FUNDS AVAILABLE</u>	<u>EXPENDITURES</u>			<u>UNEXPENDED JUNE 30</u>	
<u>FUNDING SOURCE</u>	<u>ACCOUNT NUMBER</u>	<u>TOTAL FUNDS AVAILABLE</u>	<u>PERSONAL SERVICES</u>	<u>ALL OTHER</u>	<u>CAPITAL</u>	<u>LAPSED</u>	<u>CARRIED</u>
GF	1632.1	\$3,178,375	\$2,161,572	\$ 978,250	--	\$33,375	\$ 5,178
FF	3632.1	\$3,935,537	\$2,098,097	\$1,373,475	\$24,419		\$439,546
DR	4632.1	\$ 159,107		\$ 122,895			\$ 36,212

As of February 11, 1991, the Military Bureau had 192 authorized positions; 101 supported by the General Fund and 91 supported by federal funds with no personnel supported by dedicated revenues. The positions are located primarily in Augusta and Bangor, but are also located in facilities across the state, including South Portland, Belfast, Calais, Caribou, Fort Kent, Lewiston, Millinocket, Norway, Presque Isle, Sanford, Waterville, Gilead, and Westbrook.

MAINE EMERGENCY MANAGEMENT AGENCY

The Maine Emergency Management Agency (MEMA) administers the Maine Civil Emergency Preparedness Act (37-B MRSA Ch. 13. §701 et seq.) which requires the director of MEMA, subject to the direction and control of the Adjutant General, to carry out a program of civil emergency preparedness. Accordingly, the Director of MEMA coordinates and cooperates with organizations at all levels of government to ensure appropriate readiness in order to "minimize and repair injury and damage resulting from disasters or catastrophies caused by enemy attacks, sabotage, riots or other hostile action, or by fire, flood, earthquake or other natural or human-made causes". Services required to be

available in the event of a disaster include "firefighting, police, medical and health, emergency welfare, rescue, engineering, air raid warning and communications services; radiological, chemical and other special weapons defense; evacuation of persons from stricken areas; economic stabilization; allocation of critical materials in short supply; emergency transportation; and any other activities related to civilian protection" [37-B MRSA §703, sub-§1].

To support emergency planning efforts of local organizations for civil emergency preparedness, MEMA provides coordination and distributes federal revenue on a 1:1 reimbursable basis. In Fiscal Year 1990, MEMA distributed \$397,599 in federal funds to 16 county and 37 municipal emergency management agencies.

As a consequence of its broad mandate, the Maine Emergency Management Agency administers state mandated programs in the following areas:

- State Civil Emergency Preparedness Programs [37-B. Ch. 13. subc. II];
- Local Civil Emergency Preparedness Programs [37-B MRSA subc. III];
- Hazardous Materials [37-B MRSA subc. III-A];
- Search and Rescue Planning [37-B MRSA subc. V];
- Interstate Civil Defense and Disaster; [37-B MRSA c. 15]
- Nuclear Emergency Planning; [37-B MRSA c. 17]
- Sabotage Prevention; [37-B MRSA c. 19]; and
- Dams and Reservoirs [37-B MRSA c. 21 and 22].

As part of its contract with the Federal Emergency Management Agency, MEMA conducts the following federal programs:

- the Emergency Management Assistance Program;
- Radiological Protection Program;
- Radiological Instrument Maintenance and Calibration program;
- Facility Survey of buildings to determine adequacy for sheltering in various emergencies;

-
- Emergency Management Instruction;
 - Community Assistance Program;
 - Disaster Preparedness Improvement program to plan mitigation measures in the event of a disaster;
 - Direction Control and Warning, which is a communications network; and
 - Hazardous Materials Training.

The law provides that, in the event of a disaster beyond local control, the Governor may assume direct operational control over all or any part of the civil emergency preparedness and public safety functions within the State. These functions include the stockpiling of emergency reserves of products or materials that appear to be in short supply [37-B §741].

Also, whenever a disaster or civil emergency exists or appears imminent, the Governor must, by proclamation, declare a state of emergency in the State or any section of the State. An executive proclamation of an emergency automatically activates the emergency preparedness plans applicable to the affected areas and serves as the authority for the deployment and use of any forces or resources to which the plan applies. Again, the statute gives the Governor relatively broad authority with which to cope with the disaster emergency [37-B §742].

Finally, whenever the President has declared a major disaster in the State, the Governor may accept a grant of financial assistance from the Federal Government, apply for a public assistance grant from the Federal Government on behalf of both the State and local governments for the purposes of repairing or replacing publicly owned facilities within the disaster area, or apply for a loan from the Federal Government on behalf of a unit of local government [37-B §744].

Response to Releases of Hazardous Materials

The State Emergency Response Commission oversees the implementation of a comprehensive program of planning and training for effective emergency response to releases of hazardous materials (P.L. 1989 c. 464). The Legislature allocated dedicated funds from the Emergency Response Commission Fund to the Maine Emergency Management Agency to manage and coordinate data base information and to provide liaisons to the State Emergency

Response Commission, local emergency planning committees, and the industrial facilities throughout the State that manufacture, use, store, or process extremely hazardous substances. The Director of the Maine Emergency Management Agency also serves as chair of the State Emergency Response Commission, which also includes the Commissioners (or designees) of Environmental Protection, Human Services, Labor, and Transportation; the Director of the Office of Emergency Medical Services; the Chief of the State Police; and representatives from municipal government, the Maine Fire Chiefs' Association, a professional firefighters' union, private commerce and industry, volunteer firefighters, an environmental organization representative of the general public, and organized labor.

Search and Rescue Plan

The 114th Legislature also required the Director of the Maine Emergency Management Agency to prepare a state search and rescue plan encompassing all activities including land, sea, and air searches for persons, boats, and airplanes. Responsibility for execution of the plan rests with the individual state agencies that have responsibility for the area being searched for downed aircraft (P.L. 1987. Ch. 489).

Interstate Civil Defense and Disaster Compact

The Interstate Civil Defense and Disaster Compact of which Maine is a member, was enacted in 1972 to "provide mutual aid among the states in meeting any emergency or disaster arising from natural or human-made causes". Disasters contemplated include:

"enemy invasion, sabotage, subversive acts and direct attack by bombs, shellfire, and atomic, radiological, chemical, or bacteriological means and other weapons"[37-B MRSA §901].

In the event of enemy action, emergency, or disaster, States which are party to the Compact agree to incorporate the resources essential to the safety, care, and welfare of the people into a plan of mutual aid among the states' civil emergency preparedness agencies.

The Compact governs uniform standards, practices, and rules among the participating states' agencies; proper response to a request for mutual aid; rendering special skills needed to any party state; liability; supplementary agreements; compensation and death benefits to injured members of the civil emergency preparedness forces; reimbursement for aid rendered;

evacuation; participation of the federal civil emergency preparedness agency; and withdrawal from the Compact.

Nuclear Emergency Planning

In 1981, the Legislature found that "there is a possibility of an accident at any nuclear power plant and that a major accident could create significant hazards to human health and the environment, which are unique to this method of electric power generation" (37-B §952). As a result, the Legislature created the Radiological Emergency Preparedness Committee, with the Director of the Maine Emergency Management Agency serving as chair. The purpose of the Committee is, "in conjunction with all municipalities and state agencies which are required to provide assistance, prepare an Emergency Radiological Response Plan deemed necessary to protect the public and property in the State from hazards or dangers from radiation or radioactive materials, nuclear materials, or the occurrence of a radiological incident as a result of the presence of...radioactive materials...in this State [37-B §954 (2)].

Dams and Reservoirs - Safety and Inspection

MEMA is also responsible for providing for "emergency plans and actions for the safe operation of dams and reservoirs in the State in order to protect life and property" [37-B §§1065 and 1053]. The law requires MEMA to consult with other relevant state agencies on matters pertaining to the technical aspects of the administration of this chapter and in emergency situations which may require the aid and assistance of those agencies. Current law authorizes MEMA to make necessary investigations and inspections of dams and reservoirs for the purpose of enabling MEMA to make decisions which are compatible with the economy and protection of life and property and, for the purpose of determining compliance with law and rule. In the event of violation of the law, MEMA may institute injunctive proceedings or other civil action as needed. When an emergency situation arises, the agency must warn the public of the emergency and employ all reasonable remedial means necessary to protect life and property.

Chapter 22 of Title 37-B requires MEMA to promulgate standards for the construction or reconstruction of high or significant hazard dams by July 1, 1990. The Director of MEMA is required to hire one or more professional engineers to serve as dam inspector. By June 1, 1995, the director must, at a minimum, inspect all "high and significant" hazard dams in the State and other dams which constitute a potential threat to

public safety. The purpose of the inspections will be to reevaluate and ascertain the downstream hazard classification of each dam and to correct unsafe conditions.

One and 1/2 positions authorized to carry out the dam safety program and funded by the General Fund have not been filled due to budget constraints.

Organization, Funding and Personnel

As illustrated on the department organizational chart, MEMA is organized into three divisions:

- Administration;
- Planning; and
- Operations

To track its budget in Fiscal Year 1989, MEMA uses two General Fund accounts, four Federal Fund accounts, and three Dedicated Revenue accounts:

MAINE EMERGENCY MANAGEMENT AGENCY

FISCAL YEAR 1989 FINANCIAL OVERVIEW

FUNDING SOURCE	ACCOUNT NUMBER	TOTAL FUNDS AVAILABLE	PERSONAL SERVICES	EXPENDITURES		UNEXPENDED JUNE 30	
		AVAILABLE		ALL OTHER	CAPITAL	LAPSED	CARRIED
GF	1635.1	\$1,183,388	\$195,769	\$ 794,526	\$31,187	\$8,423	\$153,483
FF	3635.1	\$ 794,157	\$226,203	\$ 446,876	\$22,709		\$ 98,369
FF	3635.3	\$2,243,869		\$2,243,869			
FF	3635.4	\$ 85,137	\$ 55,596	\$ 17,274			\$ 12,267
FF	3635.5	\$ 121,511	\$ 76,663	\$ 24,124	\$ 4,498		\$ 16,226
DR	4635.4	\$ 4,487				\$ 4,487	
DR	4635.2	\$ 335,451		\$ 128,039	\$41,126		\$166,286

As of February 11, 1991, MEMA had a total of 31 authorized positions; 14 supported by the General Fund, 14 supported by federal funds, and 3 supported by dedicated revenues. Of these 31 positions, 10 are vacant, leaving 21 filled positions.

BUREAU OF VETERANS' SERVICES

History and Purpose

The purpose of the Bureau of Veterans' Services is to provide services to Maine Veterans and their dependents who seek assistance through various benefit programs by providing housing, medical, and hospital care, educational aid and compensation or pension based on disabilities and survivors' benefits.

The Legislature's intent in providing these services to veterans is to ensure that veterans:

1. receive all entitlements due under the law;
2. are relieved to the extent possible of financial hardship;
3. receive every opportunity for self-improvement through higher education; and
4. are afforded proper recognition for their service and sacrifice to the Nation" [37-B §501].

Historical highlights for the Bureau include:

1945 - the Executive Council of the Legislature created the Division of Veterans' Affairs, precursor to the Bureau;

1947 - a Claims Assistance office was opened at the Veterans' Administration Center at Togus;

1963 - the Division was renamed as the "Department of Veterans' Services";

1970 - the Maine Veterans' Memorial Cemetery was opened; and

1972 - the Division was reorganized as the Bureau of Veterans' Services and placed within the Department of Defense of Veterans' Services

Overview of Services

The primary service offered to veterans by the Bureau is assistance in claiming and obtaining the various state and

federal benefits to which veterans are entitled in connection with service in the Armed Forces of the United States.

In addition, the Bureau also:

- administers a program of financial aid to needy disabled veterans and their dependents;
- awards educational benefits to children, spouses, or widows/widowers of veterans who die or became 100% permanently and totally disabled because of service in the U S. Armed Forces;
- issues certificates of eligibility to war veterans seeking state guarantees of small business loans;
- keeps and maintains records of military service of all Maine veterans; and
- provides burial and perpetual grave care at the Maine Veterans Memorial Cemetery for war veterans discharged under honorable conditions and to eligible members of their immediate family [37-B MRSA c.7].

The Committee notes that approximately 153,000 veterans and their dependents reside in Maine and that the Bureau serves as the advocate/liaison for approximately 23,000 veterans who have claims with the federal Veterans Administration. To receive these services from the Bureau, the veteran must officially appoint the Bureau as his or her representative by endowing the Bureau with the "Power of Attorney" concerning matters before the Veterans Administration. As a result, the Bureau has assisted in acquiring approximately \$90 million dollars in federal benefits for Maine veterans and their dependents (approximately \$4,000 per veteran).

Veterans' Counselors and the Veterans' Claims Specialist

The Bureau delivers benefits to Maine veterans by employing 9 Veterans' Counselors, located throughout the state, who:

- interview and counsel veterans and/or their dependents in order to provide information and determine eligibility for benefits from the Veterans' Administration, including non-service connected pension, compensation, hospitalization, education, home loans, and insurance;

-
- counsel and advise applicants on general problems which may relate to income, housing, health, education, and family situation;
 - originate claims for veterans and/or dependents in order to assist them in applying for benefits;
 - investigate and obtain relevant information concerning veterans in order to fully document claims; and
 - monitor cases on a continuing basis.

In general, the Bureau's one Veterans' Claims Specialist has the responsibility to:

- oversee the operations of the Veterans' Claims Office at the VA Center at Togus in order to insure claims are processed for veterans' benefits;
- review adjudicated decisions rendered by the VA;
- write appeal briefs, represent veterans or dependents at appeal hearings, and monitor contested claims; and
- coordinate activities with VA officials in order to expedite claims processing and resolve veterans' problems.

Veterans' Financial Assistance

The Bureau administers a program of financial assistance for veterans who either have served honorably in the U S. Armed Forces during any federally recognized period of conflict, are disabled and a resident of the State, or have died and at the time of death have been a resident of the State (37-B MRSA §505 et seq.).

Financial assistance must be granted if the applicant is:

- an eligible veteran (as defined above) who is single, a Maine resident; and in dire need; or to a
- spouse, dependent child, or dependent parent of an eligible veteran if the spouse, child, or parent is a resident and in need;

The Bureau's Financial Assistance program is intended to help the veteran over the short term. If the veteran continues to be disabled and cannot work for a period over six months or so, the Counselor assists the veteran in applying for a federal VA pension.

In recent years the following monies have been appropriated from the General Fund to provide financial assistance to veterans:

**APPROPRIATIONS FROM THE GENERAL FUND FOR
VETERANS FINANCIAL ASSISTANCE**

<u>FY</u>	<u>General Fund Appropriation</u>
1984	\$264,843
1985	317,985
1986	241,645
1987	199,219
1988	162,766
1989	211,687
1990	145,021

Educational Benefits

Post secondary educational benefits are available to a child or spouse of a veteran who:

- has served in the military or naval forces of the United States and entered the service from Maine or resided in Maine for 5 years immediately preceding application for aid;
- has a total permanent disability resulting from a service-connected disability as a result of service;
- was killed in action;
- has died from a service-connected disability as a result of service;
- at the time of death, was totally and permanently disabled due to service-connected disability, but whose death was not related to the service-connected disability; or

-
- is a member of the Armed Forces on active duty who has been listed for more than 90 days as missing in action, captured, or forcibly detained or interned in the line of duty by a foreign government or power [37-B MRSA §505, sub-§2, ¶A, sub-¶(3)].

A spouse or child of a qualifying veteran who attends a private institution of higher learning is eligible for \$300 per semester to defray the costs of tuition, matriculation fees, board, room rent, books, and supplies. A spouse or child of a qualifying veteran who attends an in-state publicly supported college is eligible for waiver of tuition [37-B MRSA §505].

Benefits offered by other agencies

The Bureau also provides information and directory assistance to veterans regarding other types of benefits offered by state agencies such as FAME; the Departments of Conservation, Inland Fisheries and Wildlife, Labor, and Human Services; the Bureaus of Motor Vehicles and Taxation; the Secretary of State, and the Maine Veterans' Home.

Assistance to Vietnam and Atomic Veterans

In 1989, the Commission on Vietnam and Atomic Veterans was established. At that same time, the Bureau was given the responsibility to administer an advocacy and educational program for Vietnam and atomic veterans regarding exposure to radiation and toxic chemicals, particularly agent orange and was required to provide staffing for the Commission.

The eight member Commission consists of five veterans, the Director of the Bureau of Veterans' Services, the Director of Disease Control, and a person knowledgeable in conducting publicity campaigns. The duty of the Commission is to advise the Bureau of Veterans' Services on matters concerning Vietnam and atomic veterans, assist the Bureau in developing a registry of Vietnam veterans and of atomic veterans, develop methods to reach out to Vietnam and atomic veterans who need assistance, advocate for Vietnam and atomic veterans, study medical and other problems faced by Vietnam and atomic veterans and their families, and report each year to the Committee on Aging, Retirement, and Veterans' Services.

The Commission's primary accomplishment thus far is to design and send out a survey to Vietnam and atomic veterans to gather data about the medical effect of agent orange and radiation on veterans and their offspring.

The Commission is due to terminate on June 30, 1991.

Organization of the Bureau

Currently, the Bureau is administered by a Director of Operations which is a project position created upon the retirement of the former Bureau Director. Since the former director retired under cost savings measures, the position may not now be filled. However, the position has not been deauthorized and may be filled at some time in the future. The Director of Operations is expected to fulfill the duties of the Director, which includes supervising the operation of the Bureau, managing the Bureau's budget and personnel, serving as an agent for Maine veterans, and maintaining a permanent record of all Maine residents who have served in the armed services since WWII [37-B MRSA §§502 and 503]. The Director of the Bureau also statutorily serves on the Board of the Maine Veterans' Home.

The departmental organizational chart indicates that the Bureau of Veterans' Services consists of two major divisions and a new program:

- Services to Veterans Division;
- Veterans Memorial Cemetery; and
- the Commission on Vietnam and Atomic Veterans.

In addition, the Bureau is linked with the Maine Veterans' Home through the Director's membership on the Home's Board of Trustees. The Maine Veteran's Home is independent from the Bureau and is a body corporate.

The Bureau Director and other central services are located in the basement of the State Office Building. Veterans' Counselors are located in eight towns and make itinerant visits to other areas in the region:

Regional Office

Bangor

Caribou

Lewiston

Itinerant Services

Dover-Foxcroft; Greenville;
Millinocket; Lincoln; Patten;
Newport

Fort Kent; Houlton

Norway; Rumford

Machias	Calais; Eastport; Lubec;
Portland	Ellsworth
Rockland	Saco; Bridgton; Sanford;
Waterville	Belfast; Brunswick
Augusta - VA Center, Togus Central Office, SOB	Farmington; Skowhegan; Jackman

Finally, the aforementioned Veterans' Claims Specialist is located at the VA Center at Togus.

Veterans' Memorial Cemetery

The Maine Veterans' Memorial Cemetery is located in Augusta and serves as a permanent memorial in honor of Maine's war veterans. The cemetery was opened in 1970 with more than 150 acres which could eventually contain 120,000 graves. About 50 acres are presently developed.

The statute limits the land acquired for the Veterans' Memorial Cemetery to not more than 200 acres which must be located near the center of population of the State. The director is also authorized to take land by eminent domain, as well as by purchase, gift, or other methods [37-B §504].

The Superintendent of the Cemetery is appointed by the director and, according to statute, must be competent and trustworthy, as well as an honorably discharged war veteran or a war veteran currently a member of the armed services in nonactive or reserve status [37-B §504(2)]. The Superintendent is charged with arranging for personnel, material, and equipment which is necessary for adequate maintenance of the cemetery.

The 114th Second Regular Session of the Legislature clarified that veterans not only have the option of burial at the cemetery, but that the Director of the Bureau must "allow the earth burial in the cemetery of any eligible veteran who requests burial in the cemetery and that the director must allow the veteran the option of crypt burial if crypt space exists. All burials must be without charge" [37-B §504 sub-§A-1 ¶B].

A veteran is eligible for burial in the cemetery if he or she:

- has served on active duty during any federally recognized period of conflict and has received an honorable discharge, was a resident of Maine at the time of entering military service or at the time of death;
- has served in the Maine National Guard and died as a result of injury, disease, or illness sustained while serving actively; or
- has served at any time and was killed or died as a result of hostile action and was a resident of Maine at the time of entering military service or at the time of death.

An eligible dependent of a veteran may be buried in the cemetery if, at the date of the dependent's death, the veteran would have been eligible for burial. Dependents may be buried in the earth or placed in a crypt adjacent to the veteran without charge under certain conditions. Remains of eligible veterans previously buried in other locations may be reinterred in the cemetery upon request.

Funding and Personnel

For Fiscal Year 1989, the Bureau of Veterans' Services tracked its revenue and expenditures using three General Fund Accounts, one Federal Fund account, and one Dedicated Revenue Account:

BUREAU OF VETERANS' SERVICE

FISCAL YEAR 1989
FINANCIAL OVERVIEW

FUNDING SOURCE	ACCOUNT NUMBER	TOTAL FUNDS AVAILABLE	PERSONAL SERVICES	EXPENDITURES		UNEXPENDED JUNE 30	
				ALL OTHER	CAPITAL	LAPSED	CARRIED
GF	1637.1	\$ 193,114	\$153,830	\$ 37,180	\$ 2,080	\$ 24.	
GF	1637.2	\$1,051,948	\$611,839	\$ 431,876		7,038	\$ 1,195
FF	3637.1	\$ 402,634	8,536	\$ 77,755	2,172		314,171
DR	4637.1	\$ 1,053				\$ 1,053	

As of February 11, 1991, the Bureau had a total of 38 authorized positions; 37 supported by the General Fund and one funded with federal revenue. Of the 38 positions, 6 are currently vacant, leaving a total of 32 filled positions. With the exception of clerical employees, personnel who work full-time at the Bureau must have served on active duty in either WW I, WW II, the Korean War, or the Vietnam War [37-B MRSA §503, sub-§1].

ADMINISTRATIVE SERVICES DIVISION

The Administrative Services Division provides centralized services for planning, data processing, budgeting, accounting, purchasing authorization, auditing, personnel management, affirmative action, training, and other administrative functions. The Division assists the Commissioner, Bureau Director, and Program Managers in the daily operations of the agency. This assistance takes the form of:

- * preparing biennial budget requests, annual work programs, and financial and budget order;
- * initiating purchase requisitions and orders when appropriate;
- * processing invoice and contract payments, including workers' compensation obligations;
- * billing for Armory rentals, federal service contracts, and other funds due the State;
- * maintaining revenue and expenditure ledgers, accounts receivable, and real property/capital equipment inventory control records, and an Armory Rental Log;
- * processing personnel actions, including labor related activities;
- * maintaining agency personnel and time records;
- * providing training and orientation sessions for supervisory personnel, and new employees; and
- * conducting internal audit reviews and providing other administrative services as required.

The Administrative Services Division tracks its revenue and expenditures with two General Fund accounts:

ADMINISTRATIVE SERVICES DIVISION

FISCAL YEAR 1989
FINANCIAL OVERVIEW

FUNDING SOURCE	ACCOUNT NUMBER	TOTAL FUNDS AVAILABLE	EXPENDITURES			UNEXPENDED JUNE 30	
		TOTAL FUNDS AVAILABLE	PERSONAL SERVICES	ALL OTHER	CAPITAL	LAPSED	CARRIED
GF	1630.1	\$ 265,638	\$262,568	\$ 2,126	\$ 215	\$ 129	\$ 600
GF	1639.9	\$ 504,980		\$ 292,043	\$76,030	\$23,457	\$113,450

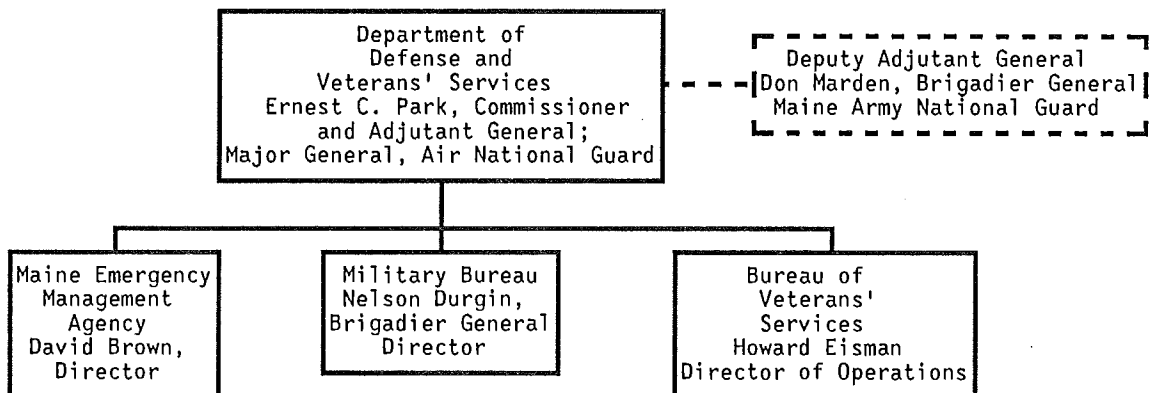
As of February 11, 1991, the Division had 8 authorized positions with no vacancies.

STATUTORY	104.	Distinguish the duties of the Director of the Military Bureau from the duties of the Deputy Adjutant General in order to ensure adequate administrative and military oversight of the Department in the event the Adjutant General is unable to act.
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The administrative leadership of the Department of Defense and Veterans' Services is illustrated by the chart below and includes:

- the Adjutant General, who also serves as Commissioner;
- the Deputy Adjutant General, who also holds the federally-designated position of assistant adjutant general for the Army National Guard; and
- Three Bureau Directors; i.e.:
 - * Director of the Military Bureau;

- * Director of the Bureau of Veterans' Services; and
- * Director of the Maine Emergency Management Agency.



The statute currently provides the Deputy Adjutant General with the "powers, responsibilities, and duties of the Adjutant General in the event of the Adjutant General's absence or inability to act..." [37-B MRSA §108]. The Committee finds that, in practice, the incumbent Deputy Adjutant General presides over federal military affairs, including commanding the Guard during various training sessions or actual mobilization and representing the National Guard in other capacities. Consistent with the "citizen-soldier" concept of the National Guard, the incumbent Deputy Adjutant General is a civilian who also serves as a Brigadier General in the Army National Guard. Since the incumbent is not a state employee, that individual has no assigned responsibility for the administration of the Department itself.

The Committee noted that the Director of the Military Bureau is a state-authorized position. (The incumbent also is a Brigadier General in the Air National Guard but this credential is not a statutory prerequisite to appointment as the Director of the Bureau.)

The Military Bureau is the largest Bureau of the Department, with 71.4% of the Department's workforce and approximately 50% of the Department's expenditures.

The Bureau has had its own Director since 1988. In 1972, when the Department was created, the statute specified that the Adjutant General would serve both as the administrative head of the Department and as the Director of the Military Bureau [P.L. 1971, c.580]. In 1974, the statute was changed to specify that the Adjutant General would serve solely as the Commissioner of the Department and that the Deputy Adjutant General would serve dually as the Director of the Military Bureau [P.L. 1973, c.709]. Finally, in 1988, the law was amended again to authorize a new position of Director of the Military Bureau and relieved the Deputy Adjutant General of this responsibility [P.L.1987, c.634]. To summarize, the leadership of the Military Bureau since 1972 is illustrated below:

<u>YEAR</u>	<u>MILITARY BUREAU DIRECTED BY:</u>
1972	Adjutant General
1974	Deputy Adjutant General
1988	Bureau Director

The Committee found that current law does not specifically authorize the Director of the Military Bureau to perform department-wide administrative tasks in the absence of the Adjutant General. However, in practice, the Committee finds that the Adjutant General has assigned the Director responsibility for many administrative tasks in the absence of the Adjutant General, rather than the Deputy Adjutant General because:

- the position of Director is a state-authorized position, i.e. the position is a state employee;
- the Military Bureau is the largest Bureau within the Department;
- the Deputy Adjutant General has duties targeted toward military matters rather than the administration and operation of the Department and is not a state employee; and
- historically, the position charged with directing the Military Bureau has had department-wide administrative responsibilities.

The Committee finds that current department-wide administrative duties routinely performed by the Director of the Military Bureau on behalf of the Adjutant General include:

-
- communicating with the Budget Office about the department-wide budget;
 - serving as Legislative liaison, including preparation of testimony and interpretation of Departmental position and policy;
 - resolving personnel issues;
 - interacting with the Governor's office; and
 - handling various types of paperwork from the Department's Division of Administrative Services, including approving payments on contracts let by the Department.

In considering this matter, the Committee concludes that the administration of the Department would be facilitated if the Director of the Military Bureau were clearly authorized to perform department-wide administrative duties as assigned. In this way, the statute would be consistent with current practice and administrative matters would not necessarily be delayed pending the personal attention of the Adjutant General. Also, no additional funds or position classification would be necessary. Accordingly, the Committee recommends that, in the absence of the Adjutant General, the Director of the Military Bureau be authorized to perform department-wide administrative duties as assigned and that the duties of the Deputy Adjutant General be limited to jurisdiction over military matters.

STATUTORY

105.

Institute an annual meeting between each emergency management organization at the county level and MEMA in order to review performance of the county organization in meeting federal and state mandates and to jointly set goals.

STATUTORY	106.	Direct the Maine Emergency Management Agency to provide an annual report to emergency management organizations at the county level in order to ensure that the local organizations are fully informed about the degree to which the locality is prepared for emergencies.
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FINDING	107.	The Committee finds that efforts of the Maine Emergency Management Agency to improve cooperation between state and county emergency management organizations are commendable and serve to improve the working relationship between the two groups.
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During the course of its review, the Committee found that the law governing emergency management jointly apportions administrative and financial responsibility between local agencies and the State Emergency Management Agency (i.e. MEMA). The State-level agency, MEMA, is directed to provide overall coordination of the various municipal, county and regional levels emergency management planning efforts [37-B MRSA §704 ¶3]. In at least one case, the law not only requires state coordination of activities, but also authorizes direct state control over local agencies. For example, although never exercised, the Governor has the legal authority to determine which municipalities will be allowed to establish their own emergency management agencies and which municipalities must participate in interjurisdictional agencies [37-B MRSA §781, sub-§1].

An important financial function performed by MEMA is to allocate federal funds to emergency management agencies at the county and municipal levels. County emergency management agencies are required to match federal dollars on a 1:1 basis and

to submit invoices for reimbursement to MEMA. The Committee finds that the local financial commitment to emergency management planning varies considerably from county to county. Some counties' commitment to emergency management planning translates into a willingness to budget more than the federally reimbursable amount; others, however, receive few federal dollars due to the county's lesser commitment to emergency management planning within its jurisdiction.

In fiscal year 1990, the total allocation distributed to sixteen county and thirty-seven municipal emergency management agencies was \$397,599, as listed below. The projected allocation for fiscal year 91 is \$393,594.

**1990 FEDERAL PASS-THROUGH TO
COUNTY AND TOWN
EMERGENCY MANAGEMENT ORGANIZATIONS**

Androscoggin County \$48,181 Aroostook County \$15,797 Cumberland County \$54,337

Town - \$6,915

Auburn
Lewiston
Madawaska
Presque Isle

Town - \$15,156

Caribou
Houlton
Westbrook
Windham

Town - \$7,637

Brunswick
Portland

Franklin County \$10,937

Town - \$600

Farmington
Mount Desert
Orland

Hancock County \$15,498

Town - \$ 0

Ellsworth
Mount Desert
Orland

Kennebec County \$14,078

Town - \$8,822

Augusta
Gardiner
Hallowell
Waterville
Winslow

Knox County \$20,068

Town - \$1,327

Camden
Rockland
Rockport
Thomaston

Lincoln County \$21,507

Oxford County \$21,795

Town - \$1,741

Mexico
South Paris

Penobscot County \$18,531

Town - \$11,010

Piscataquis County \$9,623

Sagadahoc County \$5,944

Bangor
Brewer
Hampden
Hermion
Lincoln, Town of
Orono

Somerset County \$14,046

Waldo County \$22,787

Washington County \$12,038

Town - \$344

Town - \$1,000

Skowhegan

Belfast
Searsport

York \$34,330

Town - \$3,550

Biddeford
Kittery
Sanford

In a number of other significant instances, current law authorizes local organizations to take unilateral action, without requiring state oversight or involvement. For example, the appointment of a municipal or county civil emergency preparedness director by the respective governing body does not require approval from the MEMA Director. Accordingly, the Committee finds that municipal or county directors serve at the pleasure of the town council or County Commissioners and tend to emphasize the goals set by these governing bodies, having no official connection to the state level agency, MEMA. Only the appointment of a director for an interjurisdictional agency requires State approval, and no interjurisdictional agencies have been established in Maine [37-B MRSA §782].

As a result of the statutory relationship between local emergency management organizations and MEMA, the Committee finds that:

- the network of emergency management agencies at the municipal, county, and State levels does not always interact in a coordinated and integrated fashion;
- commitment to emergency management planning, as well as financial support, varies from organization to organization at the local and county level;

-
- the quality of communication between agencies at the local level and MEMA also varies considerably;
 - administering complex emergency management programs is challenging and successfully meeting state and federal mandates requires considerable effort at the local and county level;
 - the allegiance of county directors lies, in the first instance, with the priorities of the County Commissioners, rather than with state personnel or priorities; and
 - MEMA's ability to encourage local organizations to comply with state and federal emergency management goals is limited to diplomacy and persuasion.

Finally, the Committee finds that the nature of the relationship between State and county emergency management agencies is inextricably entwined with the much broader issue of state vs. county Government and that modifying the statutory relationship between emergency management agencies at the state and county levels would first require a change in the relationship between state and county government.

Accordingly, the Committee finds a need to ensure a more coordinated state-wide effort of civil emergency preparedness and to provide opportunities for more communication and interaction between county emergency management agencies and MEMA without disrupting the statutory relationship between county, local, and State emergency management organizations. Therefore, the Committee recommends that an annual meeting be held between each emergency management agency at the county level and MEMA in order to review performance of the county organization in meeting federal and state mandates and to jointly set goals. In addition, the Committee recommends that MEMA provide an annual report to emergency management organizations at the county level in order to ensure that the local organizations are fully informed about the degree to which the locality is prepared for emergencies. Finally, the Committee finds that the efforts of MEMA to improve cooperation between the state and county emergency management organizations are commendable and serve to improve the working relationship between the two groups.

ADMINISTRATIVE 108.

Update the administrative rules for the Veterans' Financial Assistance program in order to ensure consistent and proper operation of the program.

The Veterans' Financial Assistance (VFA) program administered by the Bureau of Veterans' Services is available to veterans who:

- have served honorably in the U.S. Armed Forces during any federally recognized period of conflict;
- are disabled; and;
- reside in the state.

A spouse, dependent child, or dependent parent of a veteran is eligible for financial assistance through the program if the veteran has died and at the time of death had been a resident of the State (37-B MRSA §505 et.seq.).

The Committee finds that Legislative intent in providing financial assistance to eligible veterans is to ensure that veterans are relieved of financial hardship to the greatest extent possible and are afforded proper recognition for their service and sacrifice to the nation [37-B MRSA §501].

If a veteran's eligibility for assistance is confirmed according to the above criteria, the law requires that financial assistance be awarded to a veteran who is single, a Maine resident and "in dire need". A spouse or dependent child or parent of an eligible veteran must be awarded financial assistance if that person is a resident and "in need" (37-B MRSA §505).

In addition to basing financial assistance on the extent of the need, the statute also requires the Bureau to factor in three other criteria (37-B §505 sub-§1 ¶E):

- the resources of the veteran, and his or her dependents, which are available to provide the dependents with a reasonable subsistence compatible with health and decency;

- the current cost of an average standard of living; and
- unique factors that may apply on a case-by-case basis.

The Bureau's rules used to administer the VFA program were promulgated in 1986. The Committee finds that the intent of the rules is to ensure that the VFA program is administered consistently from region-to-region. Accordingly, the rules seek to provide common definitions of statutory terms and clarify eligibility criteria, qualifying service, disability, eligibility of relatives, and other administrative considerations.

In practice, the Committee finds that nine Veterans' Counselors who administer the program throughout the state do so according to a blending of Legislative intent and Bureau rules, which include a table of monthly awards. The Counselor is responsible for determining whether the veteran meets the statutory requirement of need, additional resources which may be available to provide "reasonable subsistence" to dependents, and level of award necessary to "relieve the veteran to the extent possible of financial hardship". Following the Counselor's assessment of these factors, the Counselor calculates the veteran's award by deducting available income from the relevant figure in the table below and awarding the difference:

<u># of Recipients</u>	<u>Award per month</u>
Single Veteran	\$310
plus one dependent	\$392
plus two dependents	\$454
plus three dependents	\$516
plus four dependents	\$578
plus five dependents	\$640
plus six dependents	\$702
plus seven dependents	\$764
plus eight dependents	\$826
plus nine dependents	\$888
plus ten dependents	\$950
plus eleven dependents	\$1012

The Committee notes that the Bureau is directed to give preference to applications for financial assistance where the death or disability of the veteran is due to military service [37-B §505 sub-§1 ¶C sub-¶(4)] and to require proof of the veteran's disability and the disability's effect on the veteran's ability to provide for him or herself and dependents [37-B §505 sub-§1 ¶D].

The Veterans' Financial Assistance Program is funded by appropriations from the General Fund. Funding totals for the past seven years are as follows:

**APPROPRIATIONS FROM THE GENERAL FUND FOR
THE VETERANS' FINANCIAL ASSISTANCE PROGRAM**

<u>FY</u>	<u>General Fund Appropriation</u>
1984	\$264,843
1985	317,985
1986	241,645
1987	199,219
1988	162,766
1989	211,687
1990	145,021

The Committee notes that the Bureau's Financial Assistance program is only intended to help the veteran over the short term and that awards are generally modest; the average award for fiscal years 1988 and 1989 was \$658 per veteran. If the veteran continues to be disabled and cannot work for a period over six months or so, the Counselor assists the veteran in applying for a federal VA pension or loan.

Also, the Committee notes that any person denied financial assistance or who is not satisfied with the amount may appeal. However, less than 2% of veterans have appealed an award decision in the last few years.

In reviewing the VFA program and its administration, the Committee finds that the Bureau's rules are intended to provide the Veterans' Counselors with guidance. Instead, the Committee found that the current rules are outdated, confusing, ambiguous, and of little practical use in ensuring consistency of application. Nevertheless, the Committee, despite the inadequacy of the current rules, the Bureau administers the VFA program in accordance with Legislative intent by adhering to the Legislative Statement of Purpose; i.e. to relieve veterans of financial hardship to the extent possible, provide all entitlements due under the law, and provide proper recognition for veterans' service and sacrifice to the nation [37-B MRSA §501].

However, the Committee notes that a review of the VFA rules reveals, at a minimum, the following apparent deficiencies:

- lack of definition in statute or rule of "in

dire need" and "in need" (Rule 2.04, A and B);

- no specificity regarding the degree or type of disability that would make a veteran eligible for assistance (Rule 2.05, A and D);
- no quantification of the degree of loss of income that must be suffered in order to be eligible for assistance (Rule 2.05, B);
- lack of clarity regarding the denial of assistance if the veteran "can do light work and has no job to return to" (Rule 2.05C);
- unclear provisions which could be variously interpreted
- lack of definition regarding what constitutes "total need" (Rule 3.01 A);
- confusing directives regarding computing earned income and the award (Rule 3.01 B 1);
- lack of clarity regarding grounds for denial of assistance (Rule 4.02 A); and
- apparently incorrect references;

Accordingly, the Committee recommends that the administrative rules for the Veterans' Financial Assistance program be updated in order to ensure consistent and proper operation of the program over the long term.

ADMINISTRATIVE 109.

Publish a brochure describing what state educational benefits are available to dependents of veterans in order to provide more visibility for the program and increase participation.

Post secondary educational benefits from the State are available to a child or spouse of a veteran who:

-
- has served in the military or naval forces of the United States and entered the service from Maine or resided in Maine for 5 years immediately preceding application for aid;
 - has a total permanent disability resulting from a service-connected disability as a result of service;
 - was killed in action;
 - has died from a service-connected disability as a result of service;
 - at the time of death, was totally and permanently disabled due to service-connected disability, but whose death was not related to the service-connected disability; or
 - is a member of the Armed Forces on active duty who has been listed for more than 90 days as missing in action, captured, or forcibly detained or interned in the line of duty by a foreign government or power [37-B MRSA §505, sub-§2, ¶A, sub-¶(3)].

The Committee finds that Legislative intent in providing educational benefits to spouses and children of eligible veterans is to support dependents of veterans, provide opportunities for self-improvement through higher education, and to properly recognize the veteran's service and sacrifice to the nation [37-B MRSA §501].

The Committee notes that a dependent spouse or child of an eligible veteran, who is attending a private college, is eligible for a maximum grant of \$300 per year toward the cost of higher education for no more than 8 semesters of attendance or 6 consecutive academic years. These educational benefits are intended to be used for tuition, matriculation fees, board, room rent, books, and supplies [37-B MRSA §505, sub-§2, ¶B]. This program is funded by appropriation from the General Fund. Recent General Fund appropriations are as follows:

**GENERAL FUND APPROPRIATIONS:
EDUCATIONAL BENEFITS
FOR CHILDREN AND SPOUSES OF ELIGIBLE VETERANS**

<u>FY</u>	<u>GF Appropriation</u>
1984	\$19,031
1985	12,965

1986	9,765
1987	6,740
1988	5,825
1989	4,620
1990	6,412

Dependent spouses and children of eligible veterans who attend state-supported post-secondary vocational schools or colleges are eligible for waiver of tuition by the school. Accordingly, the University of Maine System, the Technical College System, and the Maine Maritime Academy are mandated to grant tuition waivers for students in this category. Spouses and children whose tuition is waived are not eligible for the \$300 per year grant available to students matriculated in a private institution [37-B MRSA §505, sub-§2, ¶¶B and C].

The Committee notes that the University System funds tuition waivers currently for about 100 students in this program, amounting to ~\$172,000 for 1989-1990 and that the number of students participating in this benefit program is as follows:

**Educational Benefits
Available to Veterans' Dependents**

As of June 1990

For Students Matriculated in:

	<u>State Supported Institution</u>	<u>Private In-State Institution</u>	<u>Private Out of State Institutions</u>	<u>Total</u>
Students receiving benefits	134	11	21	166
Students eligible but not currently receiving benefits	89	17	15	121
Total	223	28	36	287

Upon review, the Committee found that information about the Educational Benefits program is made available to veterans through veterans' service organizations throughout the state, upon request by the Bureau, by word-of-mouth, and, to some extent, by public institutions.

However, noting the declining amount of benefits provided

by the program since 1984, the Committee concludes that low visibility among schools, guidance counselors, veterans and their service organizations, and public institutions is limiting the program's participation rate. Accordingly, the Committee recommends that the Bureau publish a brochure describing the state's educational benefits available to dependent relatives of eligible veterans in order to provide more visibility for the program and to increase participation.

DEPARTMENT OF ATTORNEY GENERAL

DEPARTMENT OF ATTORNEY GENERAL

PURPOSE AND MANDATE

The primary purpose of the Office of the Attorney General is to provide legal services to agencies of the Executive Branch in State Government and to provide legal representation for these same agencies in courts of law. The Office of Attorney General is established by Article IX, section 11 of the Maine Constitution which states that, "the Attorney General shall be chosen by a joint ballot of the Senators and Representatives in convention."

The Department of Attorney General is established by statute (5 MRSA §191 et. seq.). In addition to the aforementioned responsibilities of providing legal services and representation in court for agencies in the executive branch, the Attorney General has the following mandates:

- to prosecute all claims for the state;
- to enforce the proper administration of funds given to, and managed by, public charities;
- to provide opinions on questions of law as requested by the Governor, heads of state agencies, or by members of the Legislature;
- to create a criminal division for the purpose of coordinating and prosecuting all homicides and major crimes in the State of Maine;
- to establish a state fraud division for the purpose of investigating and prosecuting any act of fraud or attempted fraud against the state;
- to enforce the State Unfair Trade Practices Act;
- to enforce the State Antitrust Laws; and
- to promulgate rules pertaining to strip searches and body cavity searches.

HISTORY

The Office of the Attorney General was first established in 1820 with the formal adoption of the Maine Constitution. During

the early history of this office, the Attorney General was a single individual who worked part-time in this position and had no other employees.

A major change occurred in 1905 when the Legislature enacted statutes which established the Department of Attorney General and spelled out many of the same duties listed earlier. Also, during that same year, the Attorney General received the first additional staff for the office; an Assistant Attorney General. However, the Attorney General continued to serve part-time until the Legislature required by law enacted in 1972 that the Attorney General serve in the position as full time.

METHOD OF OPERATION, ORGANIZATION AND STAFFING

The provisions of current law (5 MRSA §191) contain a number of strictures which significantly affect the manner in which the Department of Attorney General operates:

- the Attorney General must render all legal services required by state agencies or officials, or approve the provision of these services;
- no state official may function as legal counsel, or employ private legal counsel, without written approval from the Attorney General;
- Whenever the Legislature has authorized an agency to employ legal counsel, the Attorney General must give written approval;
- the Attorney General must function in a full time capacity and may not work in private practice;
- the Attorney General is not allowed to serve as an officer or director of any corporation established in Maine as a profit making enterprise;
- the Attorney General may appoint Deputy Attorneys General, Assistant Attorneys General, Staff Attorneys, and Research Assistants;
- the Attorney General has the authority to determine salaries for Research Assistants, Law Office Manager, and Deputy Attorneys General;

-
- salaries for Staff Attorneys, Assistant Attorneys General, and Secretaries are established by the Attorney General, subject to the Governor's approval. Salaries must, in the aggregate, fall within the appropriation authorized by the Legislature;
 - the Attorney General may authorize a Deputy Attorney General to represent the Attorney General during time of absence;
 - the Attorney General may also employ, subject to the Civil Service Law, state Criminal Inspectors and additional clerks as necessary; and
 - the Attorney General may act to advise District Attorneys.

As currently structured, the Department of Attorney General is led by the Attorney General who is assisted by a Chief Deputy Attorney General. As shown in Chart 1, the department is organized into nine divisions; 7 of which are headed by a Deputy Attorney General. The Department of Attorney General has a total of 118 positions.

A detailed description of the method of operation, organization, staffing, and funding source(s) for each division are included below:

ADMINISTRATION/BUSINESS OFFICE

PURPOSE

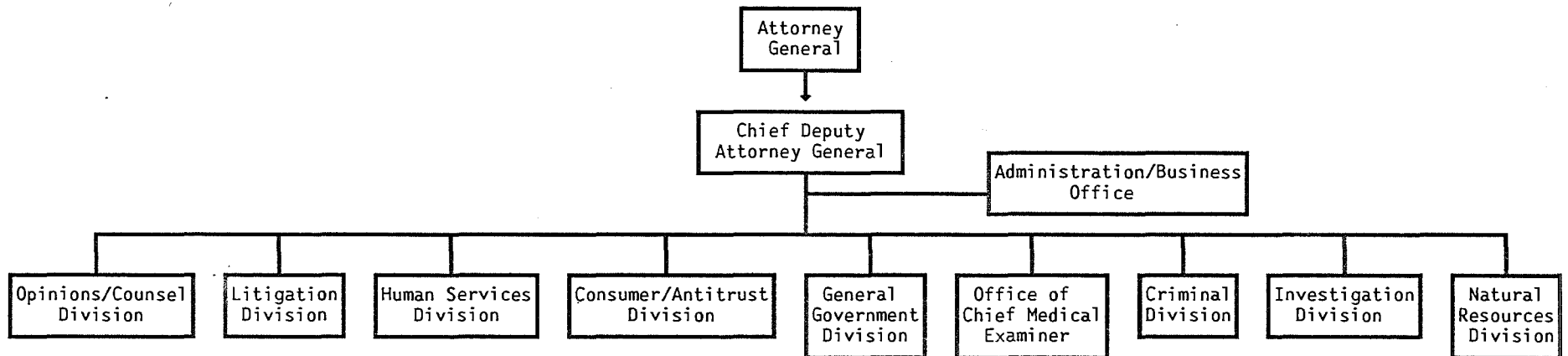
The Department of Attorney General has a basic administrative structure to provide executive leadership, administrative decision making for department wide issues, and to administer accounting, personnel, budgetary, and bill paying duties. This administrative structure is generally referred to as the Administration (Unit) and the Business Office.

METHOD OF OPERATION

The overall administrative structure in the Department of Attorney General is relatively simple. This structure is depicted in Chart 2 and summarized briefly below:

- Attorney General - has the following responsibilities:

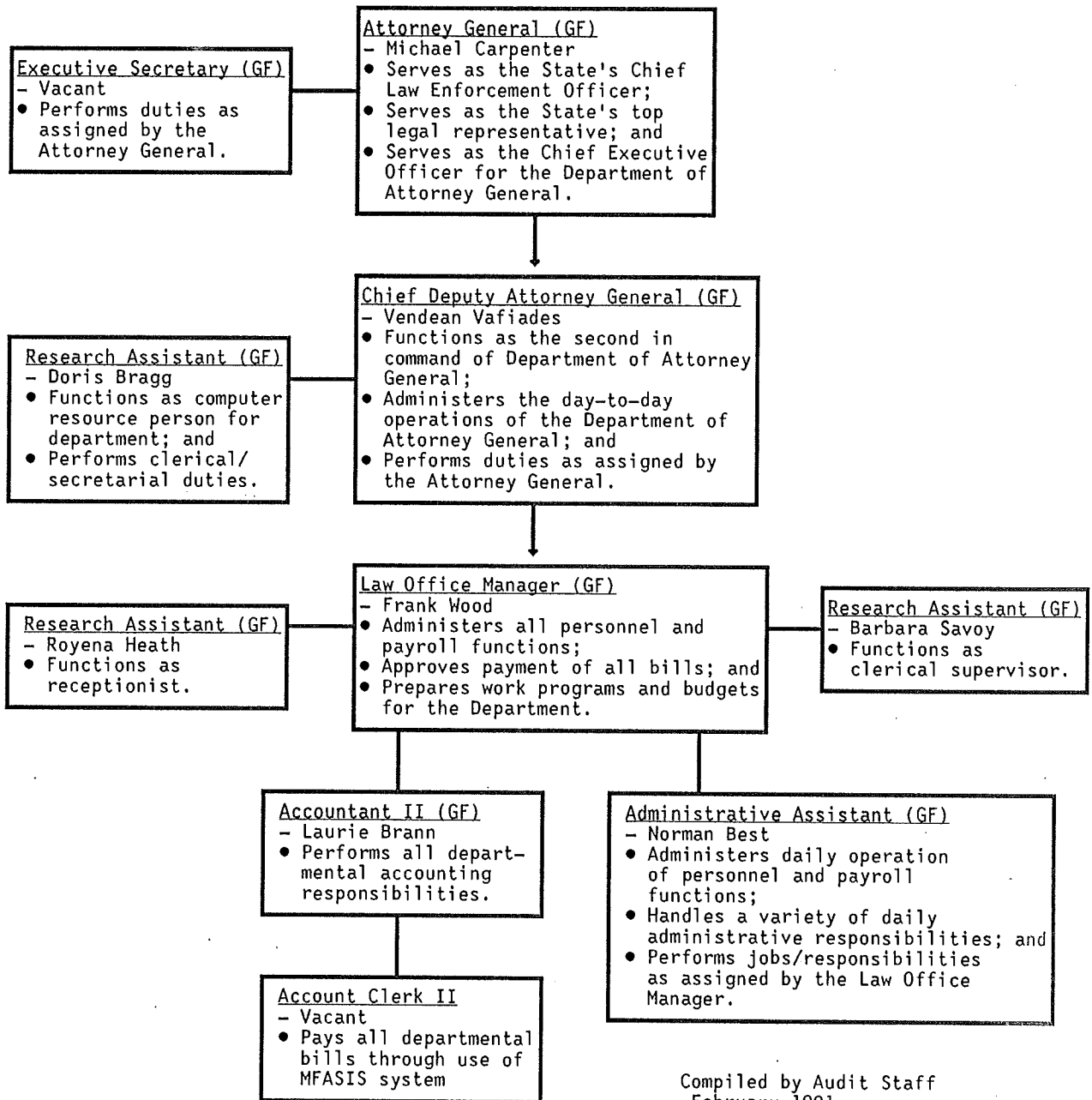
CHART 1
DEPARTMENT OF ATTORNEY GENERAL:
ORGANIZATION



Compiled by Audit Staff
February 1991

CHART 2
DEPARTMENT OF ATTORNEY GENERAL:
ADMINISTRATION

Organizational Structure, Position Count,
Duties, and Funding Sources



Compiled by Audit Staff
 February 1991

-
- serves as the state's chief law enforcement officer;
 - serves as the state's top legal representative; and
 - serves as the chief executive officer for the Department of Attorney General.

The Attorney General is elected for a 2 year term by the Legislature. The current Attorney General is Michael Carpenter who was sworn in as Attorney General on January 4, 1991;

- Chief Deputy Attorney General - has the following responsibilities:
 - functions as the second in command of the Department of Attorney General;
 - administers the day-to-day operations of the Department of Attorney General; and
 - performs duties as assigned by the Attorney General.
- Support Staff - The Attorney General and the Deputy Attorney General have the following support staff positions:
 - Executive Secretary - works in a support capacity for the Attorney General; and
 - Research Assistant - serves as a Department wide computer support person and provides clerical and secretarial support services;
- Law Office Manager - In essence, the Law Office Manager functions as the department's Business Manager, and has the following responsibilities:
 - administers all personnel and payroll functions;
 - approves payment of all bills; and
 - prepares work programs and budgets for the Department.

-
- Administrative Assistant - has the following responsibilities:
 - administers daily operation of personnel and payroll functions;
 - handles a variety of daily administrative responsibilities; and
 - performs jobs/responsibilities as assigned by the Law Office Manager;
 - Accountant II - performs all departmental accounting responsibilities;
 - Account Clerk II - pays all departmental bills through use of the MFASIS System. This position is currently vacant;
 - Other - Several other positions report directly to the Law Office Manager:
 - Research Assistant - functions as department wide clerical/secretarial supervisor; and
 - Research Assistant - functions as department receptionist.

FUNDING

All of the executive, administrative, and support positions described above are funded by appropriation from the General Fund.

OPINIONS/COUNSEL DIVISION

PURPOSE

The Opinions/Counsel Division has two primary functional responsibilities. First, the Opinions/Counsel Division is responsible for providing legal opinions to satisfy the requirements of 5 MRSA §195 which states that:

"The Attorney General shall give his written opinion upon questions of law submitted to him by the Governor, by the head of any state department of any of the State agencies or by either branch of the Legislature or any members of the Legislature on legislative matters.";

Second, although not indicated in its name, the Opinions/Counsel Division provides legal representation for a number of state agencies that for the most part interact with the public on a continual basis:

- Department of Administration (excluding the Bureau of Employee Relations which has its own attorneys and the Division of Risk Management which gets its legal representation from the Litigation Division);
- Department of Corrections;
- Maine State Museum;
- Maine State Library;
- Maine Arts Commission;
- Maine Historic Preservation Commission;
- Division of Community Services;
- Department of Education;
- Department of Inland Fisheries and Wildlife;
- Department of Mental Health and Mental Retardation;
- Maine State Retirement System; and
- Bureau of Elections, Secretary of State.

METHOD OF OPERATION

The Opinions/Counsel Division accomplishes its 2 primary responsibilities in very different ways. The rendering of legal opinions is accomplished by the Division's head, Deputy Attorney General Cabanne Howard.

In essence, the Deputy Attorney General receives requests

for legal opinions, screens out inappropriate requests, researches the issue, and drafts an opinion for the approval and signature of the Attorney General. The Committee found that the Attorney General is presently issuing an average of 12 written opinions a year. This represents a significant reduction from the 1970's during which the Attorney General issued hundreds of written opinions. The Attorney General has sought to limit the number of written legal opinions by not acting upon:

- daily requests for more routine legal advice; and
- requests from municipalities for legal advice or opinions.

The Committee also found that most of the daily requests for legal advice can be fulfilled by conversation or written letter without an issuance of a formal written opinion from the Attorney General. Written opinions from the Attorney General are currently limited to questions about the constitutionality of proposed legislation and disagreements between the legislative and executive branches.

Aside from the responsibility for producing legal opinions on appropriate topics, the Deputy Attorney General has the following responsibilities:

- administers the Division;
- represents the Attorney General on various committees;
- administers the hiring process for all lawyers within the Department of Attorney General; and
- provides legal representation to the Department of Inland Fisheries and Wildlife and to the Bureau of Elections within the Secretary of State's Office.

The remainder of the Division's legal staff provides legal representation to a number of state agencies. These assignments are depicted in Chart 3 and briefly described below:

- Assistant Attorney General Terrance Brennan provides legal representation for the Department of Corrections and the Department of Administration (excluding the Bureau of Employee Relations and the Division of Risk Management);
- Assistant Attorney General Diane Sleek provides

legal representation for the Department of Corrections and the Division of Community Services;

- Assistant Attorney General Peter Stewart provides legal representation for the Department of Education, the Maine Arts Commission, and the Maine State Library;
- Assistant Attorney General Jeffrey Frankel provides legal representation for the Department of Education, the Maine State Museum, and the Maine Historic Preservation Commission;
- Assistant Attorney General Richard Bergeron provides legal representation to the Department of Mental Health and Mental Retardation;
- Assistant Attorney General Gwendolyn Thomas provides legal representation to the Department of Mental Health and Mental Retardation; and
- Assistant Attorney General Polly Frawley provides legal representation for the Maine State Retirement System.

The Opinions/Counsel Division also has the services of 2 Senior Legal Secretaries, one of whom is technically an employee of the Department of Education.

FUNDING

Most of the positions in the Opinions/Counsel Division are funded by appropriations from the General Fund. The 2 exceptions are the Assistant Attorney General position filled by Terrance Brennan which is funded with federal monies and the Assistant Attorney General position filled by Polly Frawley which is funded with dedicated revenue from the Maine State Retirement System.

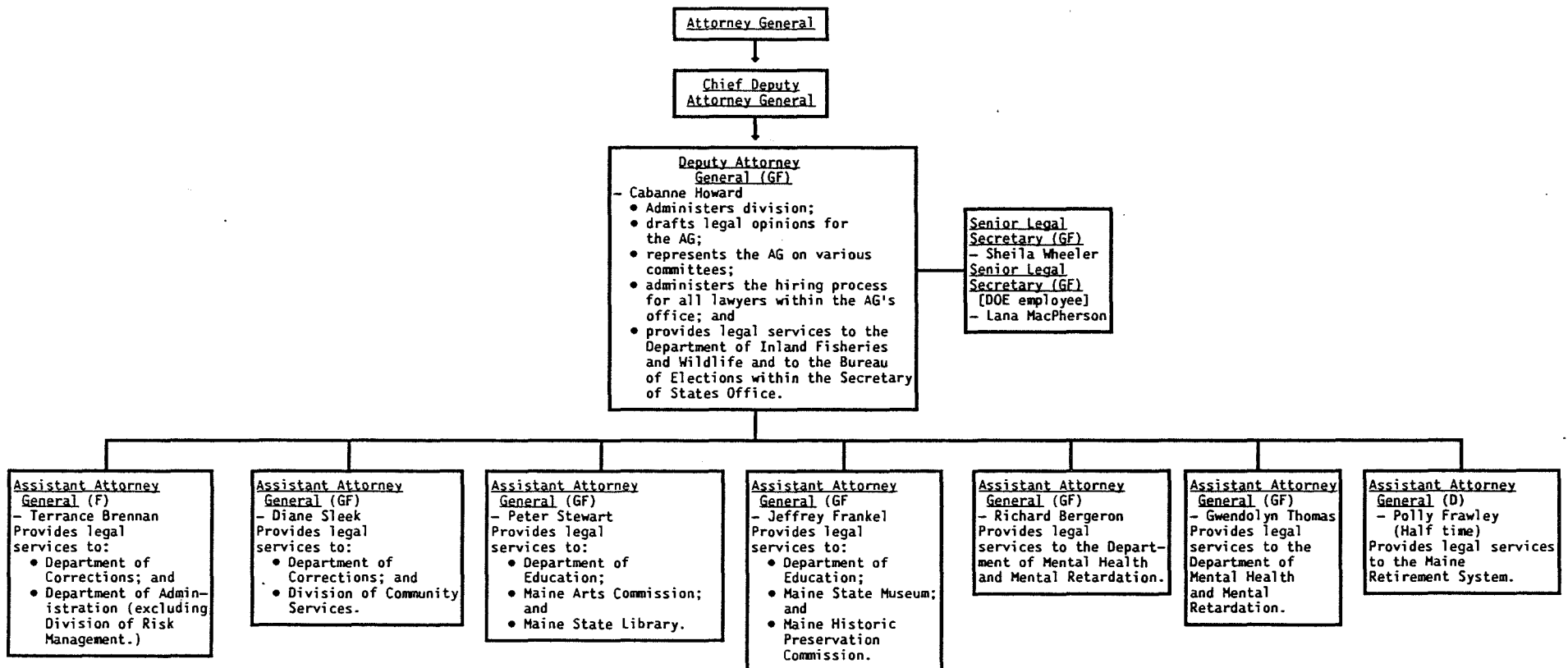
LITIGATION DIVISION

PURPOSE

The Litigation Division has a versatile set of responsibilities. As its name implies, the Litigation Division specializes in handling many of the litigation cases that the State of Maine is involved in. More specifically, the Division has several identifiable tasks:

CHART 3
DEPARTMENT OF ATTORNEY GENERAL
Opinions/Counsel [Division]

Organizations Structure, Position Count,
Duties, and Funding Sources



(GF) = General Fund (D) = Dedicated Revenue

Compiled by Audit Staff
December 1990

-
- to handle most of the defensive monetary claims (in which the State gets sued) against the State; these include tort and civil rights claims;
 - to handle many of the more involved litigation cases, including affirmative enforcement cases, which require litigation experience; and
 - to review and assist, when necessary, other divisions within the Department of Attorney General with litigation cases.

METHOD OF OPERATION AND STAFFING

The Litigation Division is primarily made up of lawyers who have had substantial experience in litigation cases. To some extent, lawyers in this division work on subject areas in which they have some direct experience such as past representation of a particular agency, but the most important criteria is extensive litigation experience.

The Division is headed by a Deputy Attorney General, the current incumbent being Mr. Thomas Warren. The Deputy Attorney General reports directly to the Attorney General, or that person's designee. Currently, the Deputy Attorney General has the following responsibilities:

- administers the Division;
- reviews most civil complaints being handled by the Department of Attorney General;
- reviews all civil appellate briefs, and some criminal appellate briefs;
- reviews all court decisions relating to state agencies to determine future course of action;
- monitors all litigation cases handled by the Department of Attorney General; and
- personally handles some litigation cases.

The rest of the Division's legal staff consists of 7 Assistant Attorney General positions. As depicted in Chart 4, all of the Assistant Attorney General positions handle litigation cases. However, each of the positions has a specified function or

speciality including, in some cases, providing legal representation for certain agencies:

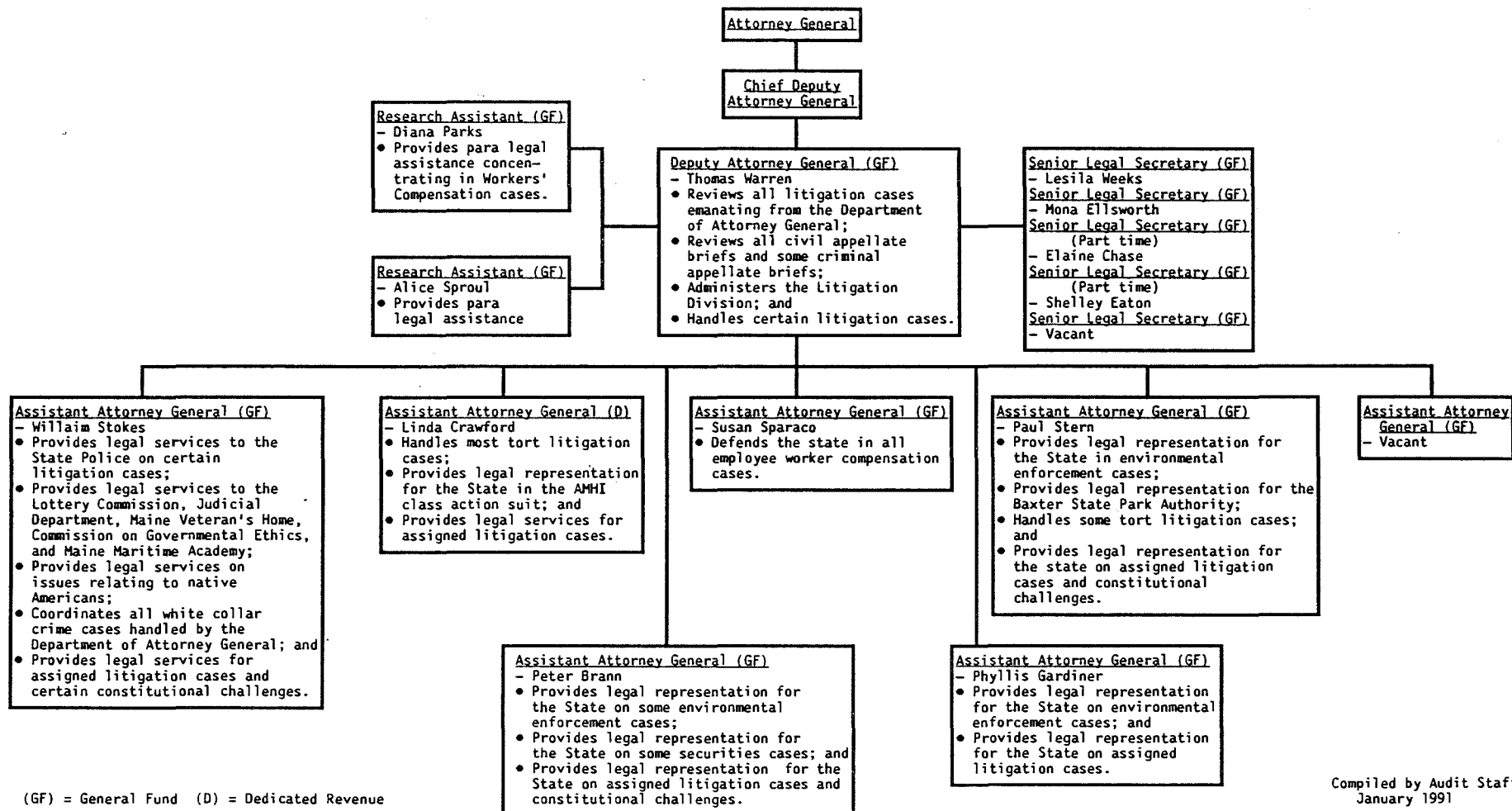
- Assistant Attorney General William Stokes provides legal representation for the State Police, Judicial Department, Lottery Commission, Maine Veterans' Home, Commission on Governmental Ethics, and Maine Maritime Academy. This position also handles legal matters relating to Native Americans, coordinates the handling of all white collar crime cases, and provides legal services for assigned litigation cases and certain constitutional cases;
- Assistant Attorney General Peter Brann provides legal representation for the State on some environmental enforcement cases, some securities cases, assigned litigation cases and certain constitutional challenges;
- Assistant Attorney General Linda Crawford provides legal representation for the State on most tort cases (including most Risk Management cases), the Augusta Mental Health Institute Class Action suit, and assigned litigation cases;
- Assistant Attorney General Phyllis Gardiner provides legal representation for the State primarily in environmental enforcement cases and in some assigned litigation cases;
- Assistant Attorney General Susan Sparaco provides legal representation for the State in all employee worker compensation cases; and
- Assistant Attorney General Paul Stern provides legal representation for the State on some environmental enforcement cases, some tort litigation cases, assigned litigation cases and constitutional challenges, and provides legal representation for the Baxter State Park Authority.

The Division's remaining Assistant Attorney General position is currently vacant and is not expected to be filled in the near future because of the State's current budgetary problems. In addition, the Division has 2 paralegal positions.

The Division also has a total of 5 support staff positions, though not all of them are full time:

CHART 4
DEPARTMENT OF ATTORNEY GENERAL
Litigation Division

Organizational Structure, Position Count,
Duties, and Funding Sources



Compiled by Audit Staff
January 1991

-
- 2 full time Senior Legal Secretary positions;
 - 2 part time Senior Legal Secretary positions; and
 - 1 full time Senior Legal Secretary position which is vacant and likely to remain so during the State's budgetary problems.

FUNDING

With the exception of one Assistant Attorney General (Linda Crawford) who works for and is paid by the Division of Risk Management, the remaining positions within the Litigation Division are funded by appropriations from the General Fund.

HUMAN SERVICES DIVISION

PURPOSE

Upon review, the Committee found that the Human Services Division is unique in several respects. As its name indicates, this division of the Department of Attorney General provides legal representation for the Department of Human Services. The Human Services Division is the only division within the Department of Attorney General which serves just one agency in Maine State Government. The Human Services Division is also the largest division in the Department of Attorney General.

METHOD OF OPERATION AND STAFFING

The Human Services Division is headed by a Deputy Attorney General, the present incumbent being Mr. Christopher Leighton. The Deputy Attorney General reports directly to the Attorney General, or that person's designee.

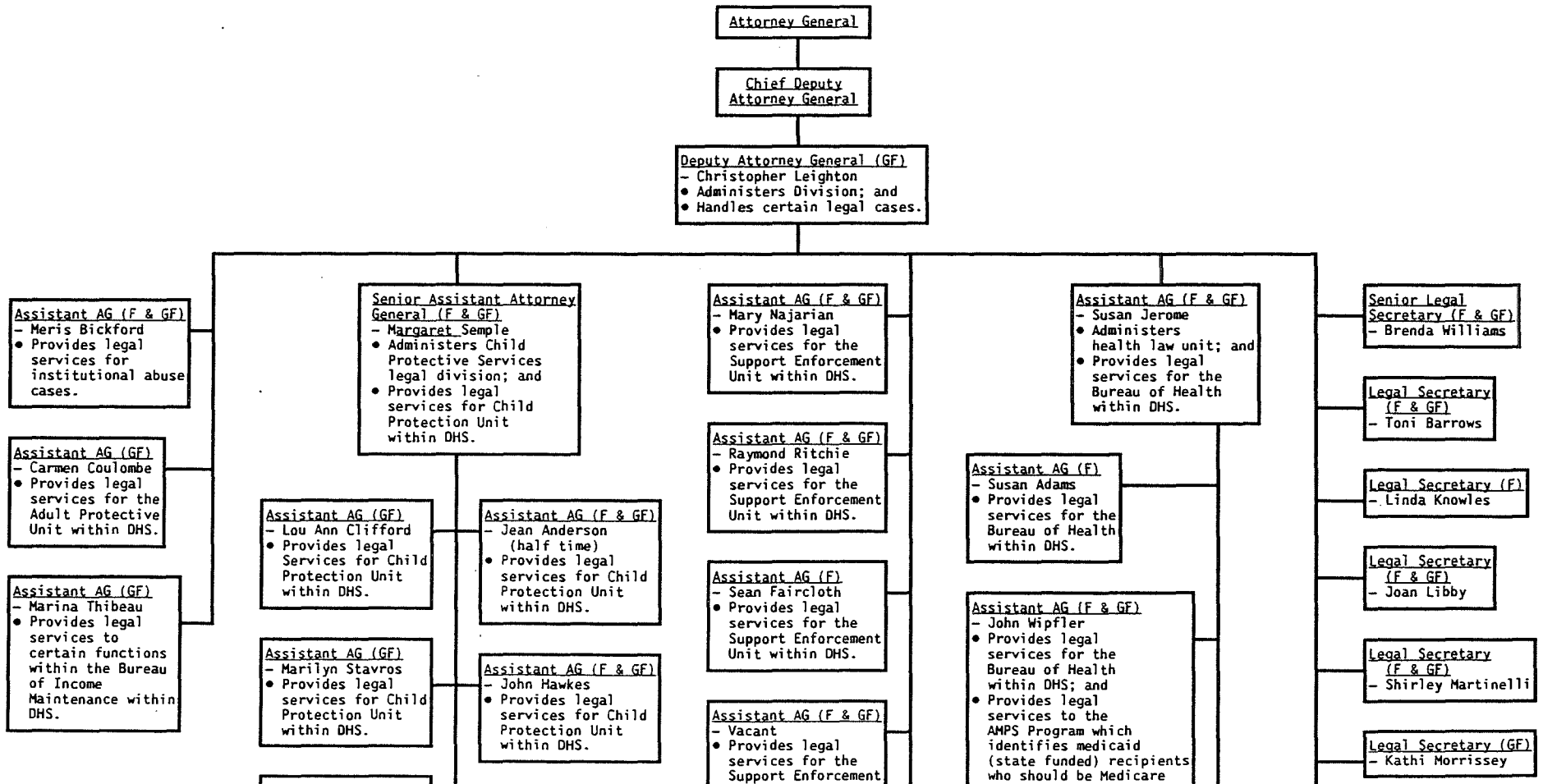
The Human Services Division is composed of several sizable organizational units, most of which correspond to major parts of the Department of Human Services. Several of the units within the Human Services Division have a designated leader who supervises the unit and reports directly to the Deputy Attorney General. Other units within the Division do not have a managerial position; the individuals within these units report directly to the Deputy Attorney General.

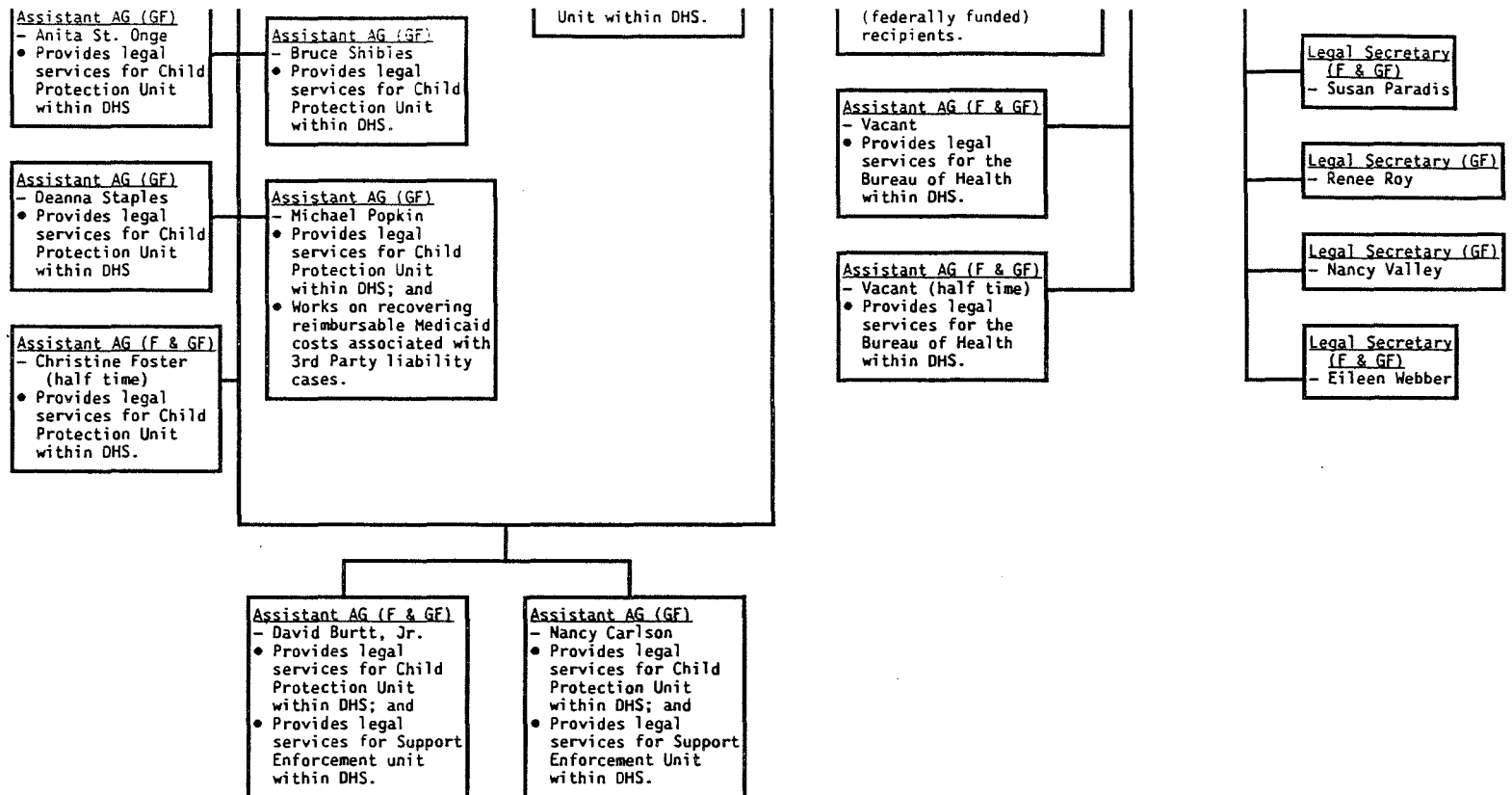
The overall organizational structure and the names of

current incumbents for each position within the Human Services Division is depicted in Chart 5 and is summarized briefly below:

- Deputy Attorney General - administers the division and personally handles a number of legal cases;
- Child Protective Services Division - This organizational unit provides legal representation and advice to the Child Protection Unit which is under the Bureau of Social Services at the Department of Human Services. This part of the Human Services Division is headed by a Senior Assistant Attorney General and is staffed by a total of eleven Assistant Attorney General positions. Of these eleven positions, 7 are full-time positions that work exclusively for the Child Protection Unit, 2 of the positions are half-time and work exclusively for the unit, and the remaining 2 positions are full time but split their time between Child Protective Services and Support Enforcement.
- Support Enforcement - This organizational unit provides legal representation and advice to the Support Enforcement Unit which is under the Bureau of Income Maintenance at the Department of Human Services. The Support Enforcement section within the Human Services Division does not have a designated leader. Instead, each of the Assistant Attorney General positions reports directly to the Deputy Attorney General. There are a total of 6 Assistant Attorney General positions providing legal services to the Support Enforcement Unit at the Department of Human Services. Of these 6 positions, 3 are full time, an additional full time position is vacant, and 2 are the full time Assistant Attorneys General mentioned earlier who split their time between Child Protective Services and Support Enforcement;
- Bureau of Health Unit - This organizational unit provides legal representation and advice to the Bureau of Health within the Department of Human Services. This unit within the Human Services Division is headed by an Assistant Attorney

CHART 5
DEPARTMENT OF ATTORNEY GENERAL
Human Services Division
Organizational Structure, Position Count,
Duties, and Funding Sources





(GF) = General Fund (F) = Federal Funds

Compiled by Audit Staff
January 1991

General who reports directly to the Deputy Attorney General. In addition, the unit has a total of 4 other Assistant Attorney General positions. Of these positions, 2 are currently vacant and not likely to be filled because of the State's current budgetary problems. In addition, one of the 2 filled positions provides legal representation to the AMPS program which identifies state funded Medicaid recipients who should be under the federally funded Medicare program;

- Other functions - There are also 3 other Assistant Attorney General positions who report directly to the Deputy Attorney General; each of whom has a district functional responsibility:
 - first, one Assistant Attorney General position provides legal representation and advice for institutional abuse cases;
 - second, one Assistant Attorney General position provides legal representation and advice for the Division of Adult Services which is under the Bureau of Social Services at the Department of Human Services; and
 - third, one Assistant Attorney General position provides legal representation and advice for the Bureau of Income Maintenance at the Department of Human Services;
- Support Staff - The Human Services Division has a total of 10 positions to provide secretarial and clerical support. Of these 10 positions, 1 is a Senior Legal Secretary and 9 are Legal Secretaries.

FUNDING

The Human Services Division is also unique in that its employees are funded as Department of Human Services employees. This situation is the last evidence of the former location of the Human Services Division in the Department of Human Services main office facility. The Human Services Division was united with the rest of the Department of the Attorney General in the State Office Building in 1990.

CONSUMER/ANTITRUST DIVISION

PURPOSE

The Consumer/Antitrust Division within the Department of Attorney General is unique in that it does not provide any legal representation or advice to state agencies. Instead, the Consumer/Antitrust Division has several other distinct responsibilities:

- to mediate consumer disputes;
- to develop materials designed to educate consumers;
- to bring consumer enforcement actions;
- to enforce antitrust laws;
- to develop necessary consumer and antitrust legislation; and
- to intervene on behalf of consumers in Blue Cross rate hearings before the Bureau of Insurance.

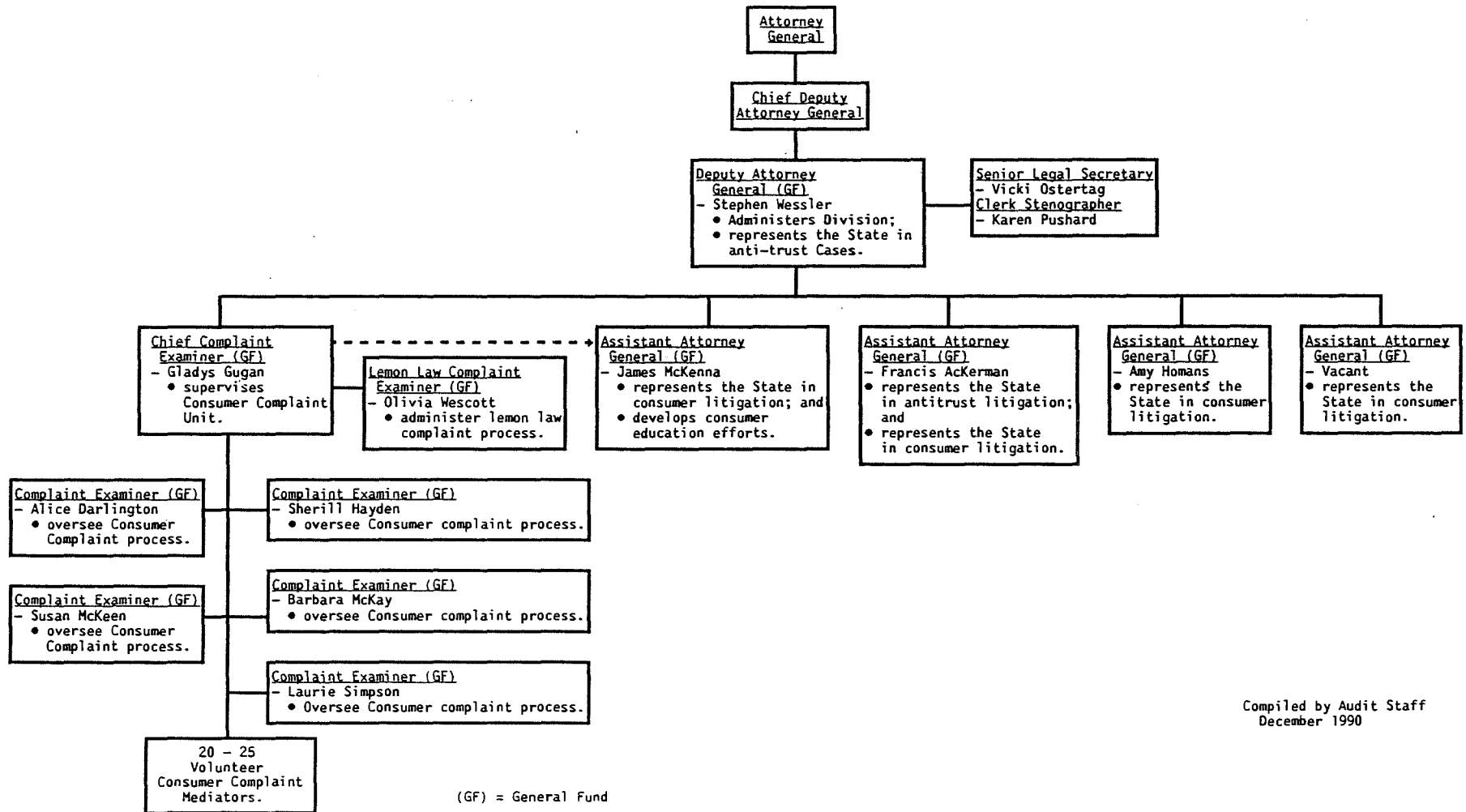
METHOD OF OPERATION AND STAFFING

The Consumer/Antitrust Division is headed by a Deputy Attorney General; the current incumbent being Mr. Steven Wessler. The Deputy Attorney General reports directly to the Attorney General or that person's designee.

The organizational structure and tasks of the Consumer/Antitrust Division is shown in Chart 6 and is summarized below:

- Deputy Attorney General - administers the Division and represents the State in antitrust cases;
- Consumer Complaint Unit - This unit exists to receive and, when possible, to successfully mediate disputes between consumers and private merchants. The Consumer Complaint Unit makes use of a group of 20 - 25 volunteers to receive consumer complaints and attempts to mediate resolutions to significant disputes. The volunteer mediators have the following profiles:

CHART 6
DEPARTMENT OF ATTORNEY GENERAL
Consumer/Antitrust Division
Organizational Structure, Position Count,
Duties, and Funding Sources



Compiled by Audit Staff
December 1990

-
- tend to be housewives with grown children;
or
 - younger women without children; or
 - retired business people.

The volunteers are recruited to serve as mediators for 6 month periods. The Consumer/Antitrust Division conducts training sessions for the volunteers twice a year.

The volunteer mediators do all of their work by telephone and do not meet face-to-face with consumers or merchants because such meetings take too much time and can have a very emotional setting.

For FY 90, the volunteer mediators received more than 11,000 inquiries. These inquiries took the form of phone calls, letters, or walk-ins. The volunteer mediators were able to resolve approximately 9,500 of the inquiries without mediation by answering questions, providing information, and by suggesting solutions. The remaining 1,500 inquiries were resolved by mediation conducted by the volunteers. As one measure of the program's success, consumers recovered more than \$350,000 during FY 90 through the efforts of the Consumer Complaint Unit.

The volunteers are supervised and advised by a professional staff which consists of a Chief Complaint Examiner and 5 Complaint Examiners.

In addition, the Consumer Complaint Unit also has a Lemon Law Complaint Examiner to process consumer complaints under the so-called Lemon Law. In brief, the Lemon Law establishes a process by which a consumer can go to binding arbitration to be compensated for a new car which is alleged to be significantly defective;

- Consumer and Antitrust Legal Unit - This unit consists of 4 Assistant Attorney General positions which provide several legal services. All 4 of the positions represent the State in consumer litigation. This type of case requires discretionary judgment on the part of the Division as to which cases should be pursued through the legal process. Two of the four Assistant Attorneys General have a caseload of some 25 - 30 consumer litigation. A third Assistant Attorney General also has a decidedly consumer litigation focus but also works on developing consumer education materials and acts as an advisor to the Consumer Complaint Unit.

The fourth Assistant Attorney General position works mostly on antitrust litigation and has an average caseload of 5 - 6 cases at any one time. In brief, the state's antitrust laws have the purpose of:

- prohibiting price fixing; and
- preventing private companies from getting so big so as limit meaningful competition; and
- Support Staff - The Consumer/Antitrust Division has a Senior Legal Secretary and a Clerk Stenographer to provide clerical and secretarial support services.

FUNDING

All of the positions in the Consumer/Antitrust Division are funded by appropriation from the General Fund.

GENERAL GOVERNMENT DIVISION

PURPOSE

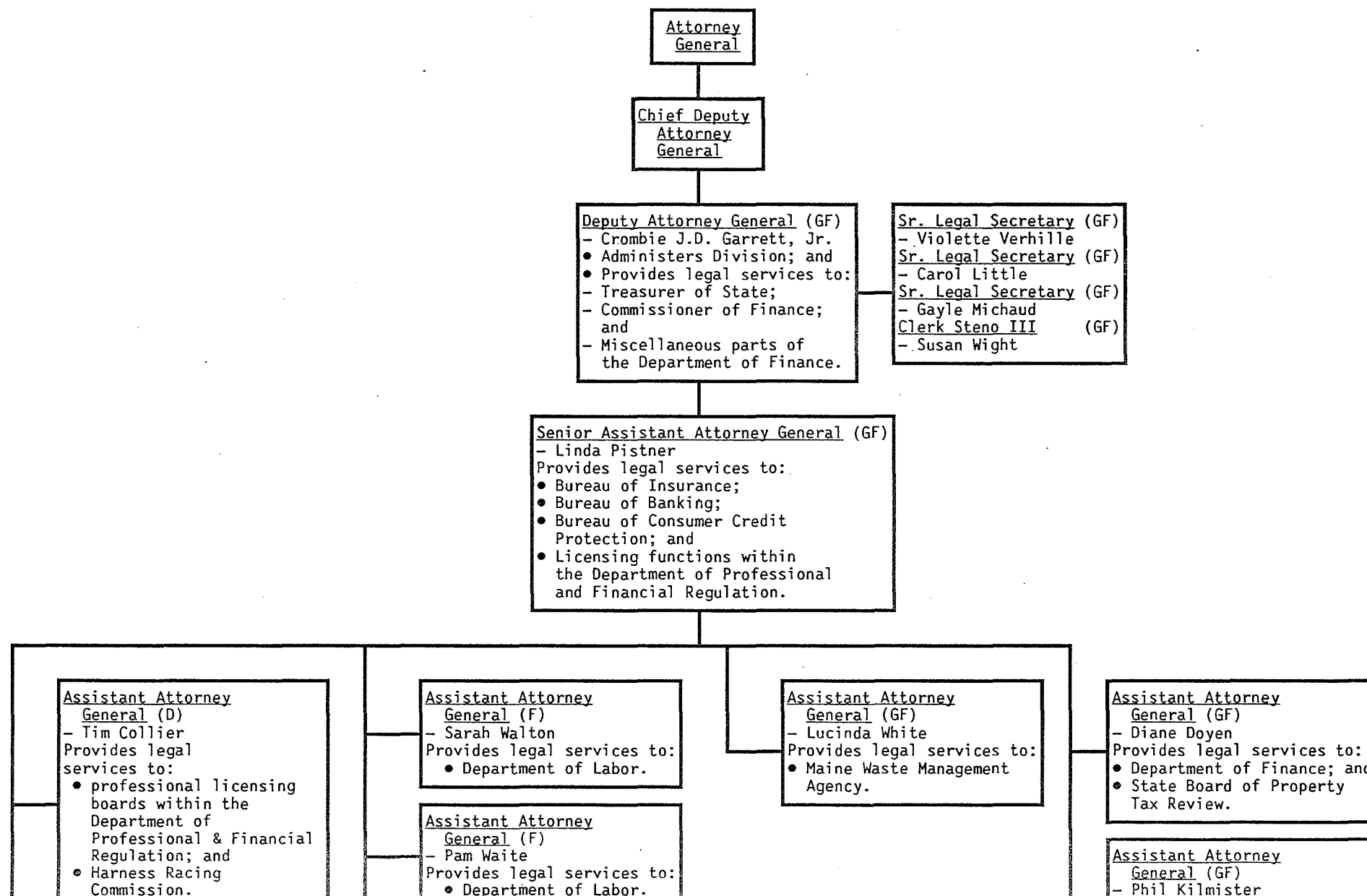
The General Government Division provides legal services for certain agencies within the Executive Branch. Upon review, the Committee found that the General Government Division provides services to a group of state agencies which can best be described as "business oriented" agencies; i.e. those agencies concerned with regulating certain activities of the private sector. The agencies currently served by the General Government Division are as follows:

- Department of Finance;
- Department of Labor;
- Department of Professional and Financial Regulation;
- State Harness Racing Commission;
- Corporations Division, Secretary of State;
- Treasury Department; and
- Maine Waste Management Agency.

**CHART 7
DEPARTMENT OF ATTORNEY GENERAL**

General Government Division

Organizational Structure, Position Count, Duties,
and Funding Sources



Assistant Attorney General (GF)
- Vacant
Provides legal services to:
• professional licensing boards within the Department of Professional and Financial Regulation.

Assistant Attorney General (GF)
- Ken Lehman
Provides legal services to:
• professional licensing boards affiliated with the Department of Professional and Financial Regulation.

Assistant Attorney General (D)
- Kathy Bubar
Provides legal services to:
• Professional licensing Boards within the Department of Professional and Financial Regulation.

Assistant Attorney General (D)
- Linda Conti
Provides legal services to:
• Bureau of Banking;
• Bureau of Insurance;
• Abandoned Property Division within Treasurer of State's Office.

Assistant Attorney General (D)
- Robert Wake
Provides legal services to:
• Bureau of Insurance

Assistant Attorney General (F)
- Gwendolyn Thomas
Provides legal services to:
• Department of Labor

Provides legal services to:
• Department of Finance
• Bureau of Alcoholic Beverages; and
• State Liquor Commission.

Assistant Attorney General (GF)
- Cliff Olson
Provides legal services to:
• Bureau of Taxation.

Assistant Attorney General (GF)
- Mary Jean Crouter
Provides legal services to:
• Department of Finance.

Assistant Attorney General (GF)
- David Bower
Provides legal services to:
• Department of Finance; and
• Corporations Division of Secretary of State's Office.

(GF) = General Fund (F) = Federal Funds (D) = Dedicated Revenues

Compiled by Audit Staff
December 1990

STAFFING AND METHOD OF OPERATION

The Division has 16 attorney positions to provide services to the agencies listed above. Each of the lawyers is assigned a particular agency or group of agencies to which he or she provides legal representation or advice.

As depicted in Chart 7, the Division is headed by a Deputy Attorney General, the current incumbent being Mr. Combie J.D. Garrett Jr. (Technically, although Mr. Garrett is referred to as a Deputy Attorney General, he is formally classified as a Senior Assistant Attorney General.) Aside from the administrative duties of this position, the Deputy Attorney General also provides legal services to certain state agencies.

Next in the organizational hierarchy is a Senior Assistant Attorney General. The other lawyers have a general reporting relationship to the Senior Assistant Attorney General, who then reports to the Deputy Attorney General. However it is clear that any staff lawyer can interact directly with the Deputy Attorney General. Like the Deputy Attorney General, the Senior Assistant Attorney General also provides legal services to a number of state agencies.

The Division's remaining lawyers all function as direct legal service providers to state agencies. A complete list of the Division's lawyers and their agency assignments is as follows:

- Crombie J.D. Garrett, Jr., Deputy Attorney General:
 - Treasurer of State;
 - Commissioner of Finance; and
 - Miscellaneous parts of the Department of Finance;
- Linda Pistner; Senior Assistant Attorney General:
 - Bureaus of Banking, Consumer Credit Protection, and Insurance; and
 - Licensing functions within the Department of Professional and Financial Regulation;
- Timothy Collier, Assistant Attorney General:
 - Maine Athletic Commission;
 - State Board of Barbers;
 - State Board of Cosmetology;

-
- Board of Licensing of Dietetic Practice;
 - Electricians' Examining Board;
 - State Board of Licensure for Professional Foresters;
 - State Harness Racing Commission;
 - Manufactured Housing Board;
 - State Board of Nursing;
 - Maine State Pilotage Commission;
 - Plumber's Examining Board; and
 - State Board of Veterinary Medicine.

- Katheleen Bubar; Assistant Attorney General:

- Arborist Examining Board;
- State Board for Licensure of Architects and Landscape Architects;
- Board of Licensing of Auctioneers;
- Board of Commercial Driver Education;
- Board of Dental Examiners;
- State Board of Registration for Professional Engineers;
- State Board of Funeral Homes;
- State Board of Certification for Geologists and Soil Scientists;
- Board of Licensure of Professional Land Surveyors;
- Nursing Home Administrators Licensing Board;
- Board of Occupational Therapy Practices;
- Oil and Solid Fuel Board;
- State Board of Optometry;
- Board of Commissioners of the Profession of Pharmacy;
- Board of Licensure of Railroad Personnel;
- Board of Respiratory Care Practitioners;
- Board of Examiners on Speech Pathology and Audiology; and
- State Board of Substance Abuse Counselors;

- Vacant, Assistant Attorney General:

- Board of Accountancy;
- Acupuncture Licensing Board;
- Board of Chiropractic Examination and Registration;
- Board of Counseling Professionals;
- Board of Hearing Aid Dealers and Fitters;
- Board of Examiners in Physical Therapy;
- State Board of Examiners of Psychologists;
- Radiologic Technology Board of Examiners;

-
- Board of Real Estate Appraisers;
 - Maine Real Estate Commission; and
 - State Board of Social Worker Licensure;
 - Kenneth Lehman, Assistant Attorney General:
 - Board of Registration in Medicine;
 - Board of Osteopath Examination and Registration; and
 - Examiners of Podiatrists;
 - Linda Conti, Assistant Attorney General:
 - Bureau of Banking;
 - Bureau of Insurance; and
 - Abandoned Property Division within Treasurer of State's Office;
 - Robert Wake, Assistant Attorney General:
 - Bureau of Insurance;
 - Sarah Walton, Assistant Attorney General:
 - Department of Labor;
 - Pamela Waite, Assistant Attorney General:
 - Department of Labor;
 - Gwendolyn Thomas, Assistant Attorney General:
 - Department of Labor;
 - Lucinda White, Assistant Attorney General:
 - Maine Waste Management Agency;
 - Diane Doyen, Assistant Attorney General:
 - Department of Finance; and
 - State Board of Property Tax Review;
 - Phillip Kilmister, Assistant Attorney General:
 - Department of Finance;
 - Bureau of Alcoholic Beverages; and
 - State Liquor Commission;

-
- Clifford Olson, Assistant Attorney General:
 - Bureau of Taxation;
 - Mary Jean Crouter, Assistant Attorney General:
 - Department of Finance; and
 - David Bower, Assistant Attorney General:
 - Department of Finance; and
 - Corporations Division within the Secretary of state's Office.

This division has a support staff which is comprised of 3 Senior Legal Secretaries and 1 Clerk Stenographer III.

Like the rest of the Attorney General's office, the lawyers within this division have their primary offices within the State Office Building, although several also have use of office space in the agency served by that attorney.

FUNDING

There are 3 primary funding sources for the different lawyer positions. These funding sources correspond to the funding sources of the client agencies themselves:

- General Fund provides primary funding for the Treasurer, Department of Finance, Secretary of State, and Maine Waste Management Agency;
- Federal Funds provide primary funding for the Department of Labor; and
- Dedicated Revenues provide the primary funding for all the financial regulatory bureaus and professional licensing boards within the Department of Professional and Financial Regulation.

CRIMINAL DIVISION

PURPOSE

The Criminal Division within the Department of Attorney General is established by law (5 MRSA §200A) to, "... coordinate all criminal investigation and prosecution for the purpose of improving law enforcement within the State of Maine." This

statutory provision also authorizes the Attorney General to "... have full responsibility for the direction and control of all investigation and prosecution of homicides and such other major crimes as the Attorney General may deem necessary for the peace and good order of the State of Maine."

METHOD OF OPERATION AND STAFFING

The Criminal Division is among the larger divisions within the Department of Attorney General and is a bit more organizationally complex than some of the smaller divisions.

Like the other divisions, the Criminal Division is headed by a Deputy Attorney General, the current incumbent being Mr. Fernand Larochelle. The Deputy Attorney General reports directly to the Attorney General or that person's designee. The Deputy Attorney General's current responsibilities include the following:

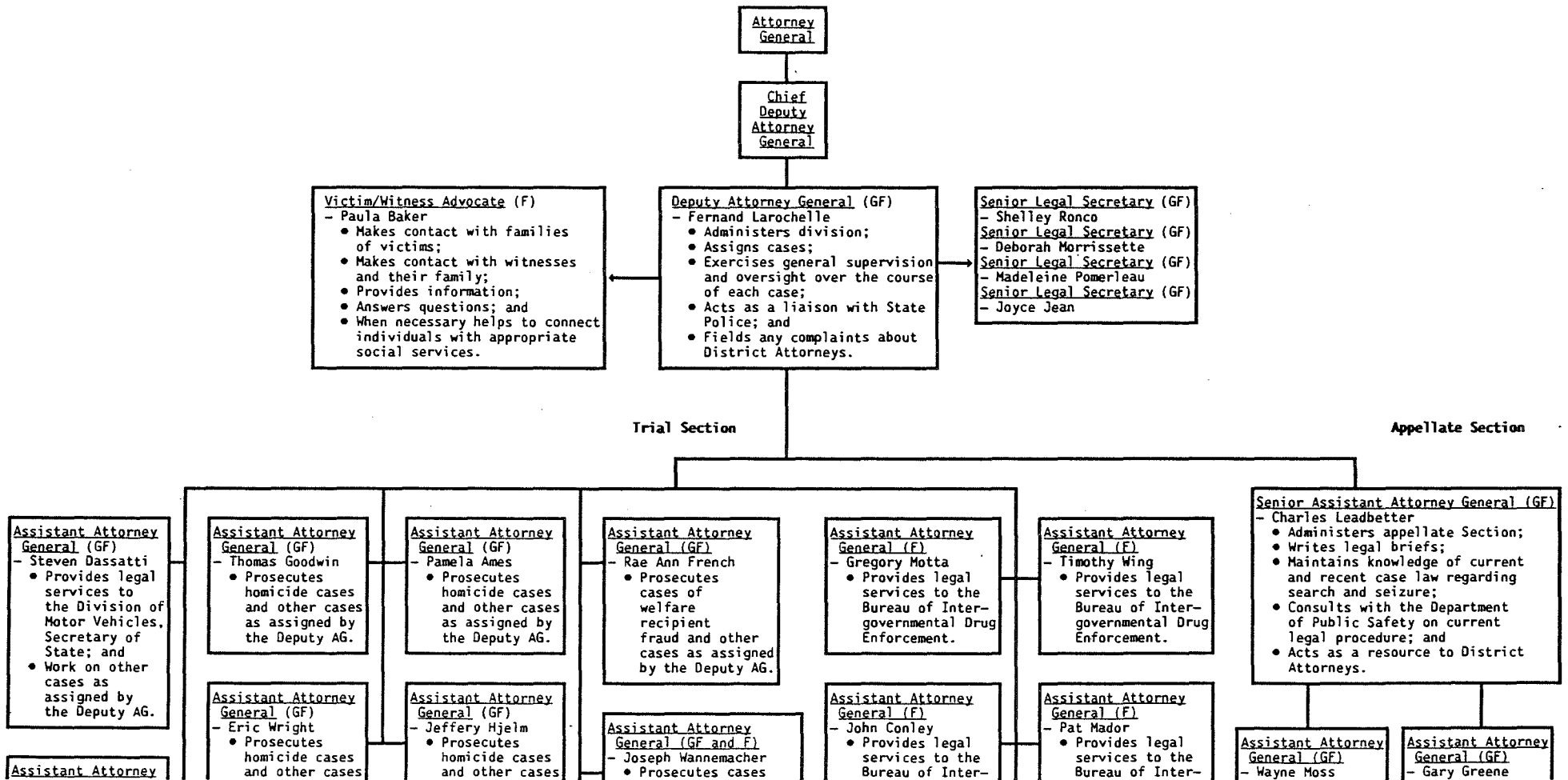
- administers the Division;
- assigns cases;
- exercises general supervision and oversight over the course of each case;
- functions as a liaison with the State Police; and
- fields any complaints from the public and District Attorneys.

A number of individuals and organizational units report directly to the Deputy Attorney General. Each of these separate reporting relationships is described below and depicted in Chart 7:

- Support Staff - The Criminal Division has a total of 4 Senior Legal Secretaries to provide clerical and secretarial services;
- Victim/Witness Advocate - This position is fairly new to the Criminal Division and provides a number of crucial services:
 - makes contact with families of homicide victims;
 - makes contact with witnesses and their families;
 - provides information about legal process to families of victims and witnesses and their families; and

**CHART 8
DEPARTMENT OF ATTORNEY GENERAL:
CRIMINAL DIVISION**

Organizational Structure, Position Count,
Duties, and Funding Sources



General (GF)
 - Donald Macomber
 • Provides legal services to the Division of Motor Vehicles, Secretary of State; and
 • Work on other cases assigned by the Deputy AG.

as assigned by the Deputy AG.

as assigned by the Deputy AG.

of welfare provider fraud and cases as assigned by the Deputy AG.

Assistant Attorney General (GF)
 - Vacant
 • Provides legal services to the Department of Public Safety;
 • Works on Extradition requests;
 • Responsible for legal filing on drug forfeiture cases emanating from York and Cumberland Counties;
 • Serves as legal advisor to the Governor's Board on Executive Clemency; and
 • Other cases as assigned by the Deputy AG.

governmental Drug Enforcement.

Assistant Attorney General (F)
 - Evert Fowle
 • Provides legal services to the Bureau of Inter-governmental Drug Enforcement.

governmental Drug Enforcement.

Assistant Attorney General (F)
 - Lisa Marchese
 • Provides legal services to the Bureau of Inter-governmental Drug Enforcement.

• Same duties as Senior Assistant Attorney General without the supervision responsibilities.

• Same duties as Senior Assistant Attorney General without the supervision responsibilities.

(GF) = General Fund (F) = Federal

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 December 1990

- when necessary, helps to connect individuals with appropriate social services.

- Appellate Section - This organizational unit has several primary responsibilities which include:

- The writing of legal briefs for criminal cases which are appealed to the State Supreme Judicial Court;

- Maintaining an up-to-date knowledge of search and seizure law and the Miranda Decision and its progeny. This field of law is constantly changing in significant ways;

- Communicating on continual basis with the Department of Public Safety to keep them current on acceptable legal procedures; and

- functioning as resource for District Attorneys.

The Appellate Division is headed by a Senior Assistant Attorney General and is staffed by 2 Assistant Attorney General positions;

- BIDE Attorneys - The Bureau of Intergovernmental Drug Enforcement (BIDE), which is a part of the Department of Public Safety, functions as a joint effort between federal and state government to interdict, investigate, and prosecute drug cases occurring in the State of Maine. The Criminal Division organizationally houses the 6 Assistant Attorney General positions which provide legal services to the Bureau of Intergovernmental Drug Enforcement. These attorneys function as prosecutors in many of the drug cases handled by the Bureau of Intergovernmental Drug Enforcement;
- Homicide Unit - As mentioned earlier, the Criminal Division has statutory responsibility for all homicides occurring in the State. However, as a matter of practice, vehicular homicides are handled by the local District Attorneys. The Criminal Division has four Assistant Attorney General positions to handle homicides and other cases assigned to them by the Deputy Attorney General. The Homicide Unit receives its investigative

help from the Criminal Investigation Division (CID) of the State Police as well as the Detective Divisions of the Portland and Bangor Police Departments. The Criminal Investigation Division consists of approximately 20 - 25 positions and works closely with the Homicide Unit to investigate homicides and statewide burglaries. To avoid any appearance of impropriety, the Criminal Investigation Division does not investigate any homicide caused by State Police. These homicides are investigated by the Investigation Division within the Department of Attorney General;

- Welfare Fraud - The Criminal Division has 2 Assistant Attorney General positions to prosecute instances of welfare fraud. One of the positions focuses on recipient fraud and the other focuses on provider fraud. The Committee found that these Assistant Attorney General positions are located within the Criminal Division instead of the Human Services Division because these types of fraud are classified as criminal acts (as opposed to civil). One of these Assistant Attorneys General also prosecutes other types of cases assigned by the Deputy Attorney General.
- Other functions - The Criminal Division also has 3 other Assistant Attorney General positions. Two of these positions provide legal representation for the Division of Motor Vehicles within the Secretary of State's Office and work on other cases assigned by the Deputy Attorney General. The remaining Assistant Attorney General has the following responsibilities:
 - provides legal representation for the Department of Public Safety;
 - works on extradition requests;
 - responsible for legal filings on drug forfeiture cases emanating from York and Cumberland Counties;
 - serves as legal advisor to the Governor's Board on Executive Clemency; and'
 - other cases as assigned by the Deputy Attorney General.

FUNDING

Most of the positions within the Criminal Division are

funded by appropriation from the General Fund. The exceptions are as follows:

- the 6 Bureau of Intergovernmental Drug Enforcement Assistant Attorney General positions are funded by a federal grant;
- the Victim/Witness Advocate is funded with federal money; and
- the Assistant Attorney General position which prosecutes cases of welfare provider fraud is funded by a combination of General Fund and federal monies.

OFFICE OF CHIEF MEDICAL EXAMINER

PURPOSE AND AUTHORIZATION

The Office of Chief Medical Examiner exists to establish the cause of certain human deaths. As specified in current Maine law (22 MRSA §3025), the following cases require the certification and completion of reports of death by the Office of Chief Medical Examiner:

- deaths which are not due to natural disease or are not readily certifiable by a physician; and
- any traumatic death or death due to poisoning.

In general, the task of the Chief Medical Examiner, or any duly authorized designee, is to determine the following:

- Who died?
- What was the date and time of death?
- Where was the place of death?
- What was the cause of death?
- What was the manner of death, i.e. was it a homicide, accident, suicide, or natural death?

In addition, the Chief Medical Examiner is authorized, at his or her discretion, to "compile and preserve records and data relating to criminal prosecution, public health, public safety and vital statistics, as these relate to his responsibilities." [22 MRSA §3022 (3)].

METHOD OF OPERATION AND STAFFING

The Office of Chief Medical Examiner is headed by the Chief Medical Examiner. Organizationally, the office is a part of the Department of Attorney General. However, in practical terms, the Office of the Chief Medical Examiner functions as an entity which is independent of the Attorney General. The office is most closely linked to the Department of Attorney General for administrative purposes; i.e. budget, accounting, personnel etc.

By law, [22 MRSA §3022 (1)] the Chief Medical Examiner must be a state licensed doctor of medicine or osteopathy who is an expert in forensic pathology. The Chief Medical Examiner is appointed by the Governor for 7 year terms. The current Chief Medical Examiner is Dr. Henry Ryan who has served in that capacity since 1976.

In brief, the Chief Medical Examiner has the following responsibilities:

- to administer the Office of Chief Medical Examiner;
- to review all cases subject to the office's jurisdiction;
- to appoint local medical examiners; and
- when necessary, to personally conduct investigations of cases handled by the Office.

Upon review, the Committee found that the Office accepts approximately 1,100 cases per year as potential homicides or questionable deaths. The Office does not accept some 600 cases per year. The unaccepted cases do not fall under the Office's statutory responsibility.

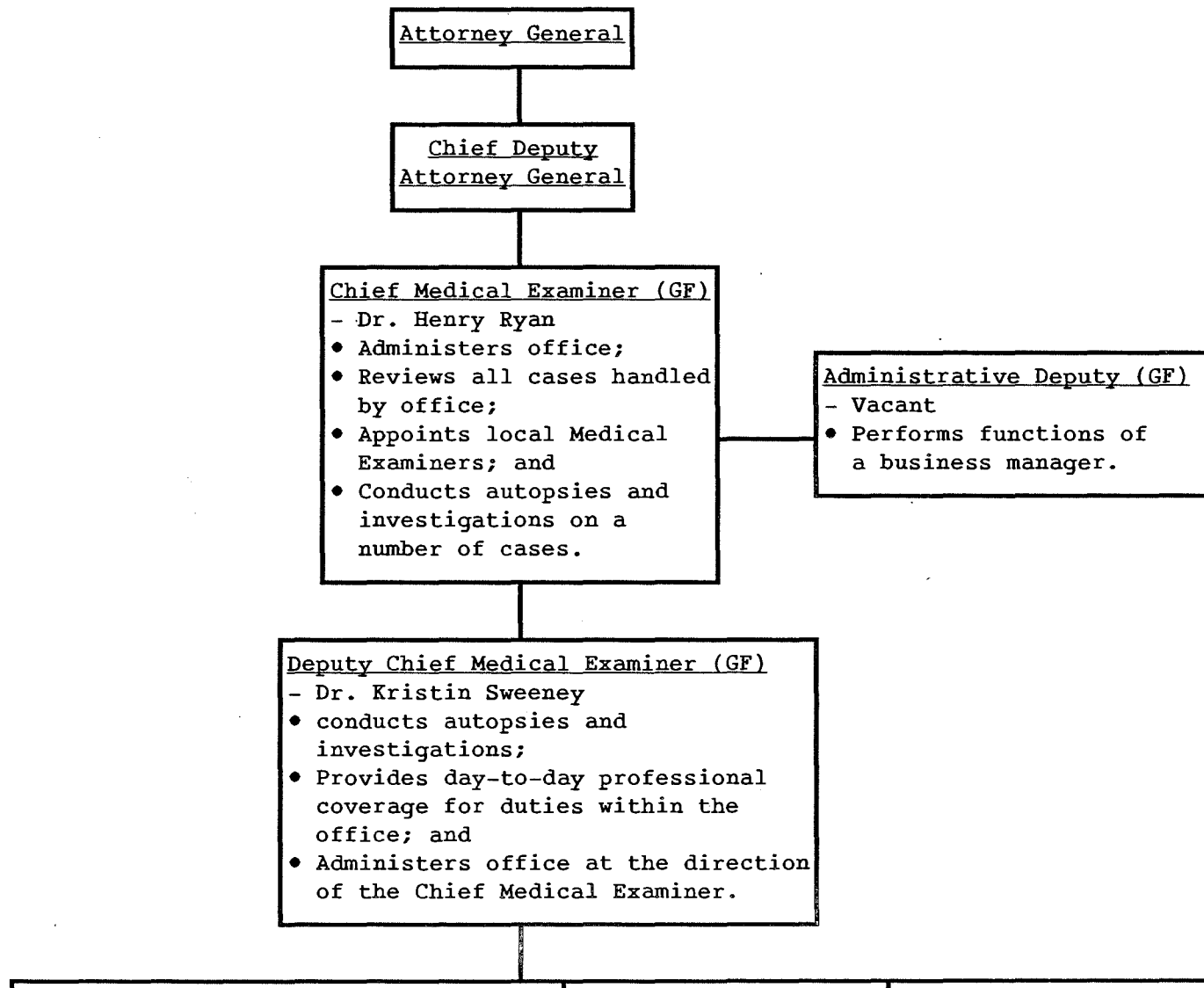
Of the approximately 1100 accepted cases, the Office conducts approximately 300 autopsies per year. Autopsies are conducted under the following circumstances:

- when there is no other way of determining the cause of death; or
- there is a need to provide documentation for known criminal cases.

Currently, the Chief Medical Examiner conducts autopsies at Kennebec Valley Medical Center which charges \$125 per body for the use of its morgue.

CHART 9
DEPARTMENT OF ATTORNEY GENERAL
Office of Chief Medical Examiner

Organizational Structure, Position Count,
Duties, and Funding Sources



Medical Examiner
Assistant (GF)

- P. Toman
- Assists during autopsies;
- Handle evidence and specimens;
- Deal with all non-office supplies;
- Maintain data collection through report writing;
- Take photographs at autopsies and;
- Maintain missing persons file.

Medical Examiner
Assistant (GF)

- R. Goodrich
- Assists during autopsies;
- Handle evidence and specimens;
- Deal with all non-office supplies;
- Maintain data collection through report writing;
- Take photographs at autopsies and;
- Maintain missing persons file.

Diener (GF)

- Vacant
- Performs physical tasks such as moving bodies.

Medical Secretary (GF)

- S. Hickey
- Transcribes autopsy reports and other medically related reports.

Clerk Typist III

- S. Thayer
- Performs needed clerical and secretarial work.

GF = General Fund

Compiled by Audit Staff
January 1990

The Chief Medical Examiner accomplishes many of the Office's statutory duties through the use of local Medical Examiners. Under the provisions of current law (22 MRSA §3023), the Chief Medical Examiner has the authority to appoint local Medical Examiners who must be licensed physicians and residents of the state. The Committee found that there are some 200 Medical Examiners in the State.

The Chief Medical Examiner uses the local Medical Examiners to determine the cause of death in pertinent cases that occur in their localities or regions. The basic process is as follows:

1. a death is discovered;
2. the Office of Chief Medical Examiner is contacted through use of an "800" telephone number;
3. The Office determines whether the case falls under the Office's jurisdiction;
4. If so, the Office contacts the nearest (and available) Medical Examiner;
5. The Medical Examiner examines the body to determine the circumstances of death; and
6. The Medical Examiner submits a written report to the Chief Medical Examiner with any accompanying recommendations such as the need for further testing and/or an autopsy.

The Office of the Chief Medical Examiner has the following filled positions:

- Chief Medical Examiner;
- Deputy Chief Medical Examiner;
- 2 Medical Examiner Assistants;
- Medical Secretary; and
- Clerk Typist III.

FUNDING

All of the positions within the Office of Chief Medical Examiner are funded by appropriations from the General Fund.

INVESTIGATION DIVISION

PURPOSE

The Investigation Division is one of the 2 divisions within the Department of Attorney General which does not have lawyers among its staff. The Investigation Division exists to investigate a number of different types of cases as they occur. The Division's responsibilities include:

- Investigating any instances of fraud against the State of Maine;
- Investigating any alleged lack of integrity by units of Maine State Government;
- Investigating any cases involving the conduct of law enforcement and government officials;
- Investigating any homicide caused by police;
- Investigating cases of workplace fatalities to determine if grounds for manslaughter exist;
- Conducting certain investigations at the requests of local District Attorneys; and
- Conducting training workshops on how to prevent/detect fraud and on investigative techniques.

The legal authority for the activities of this Division can be found in the statutes pertaining to the Department of Attorney General:

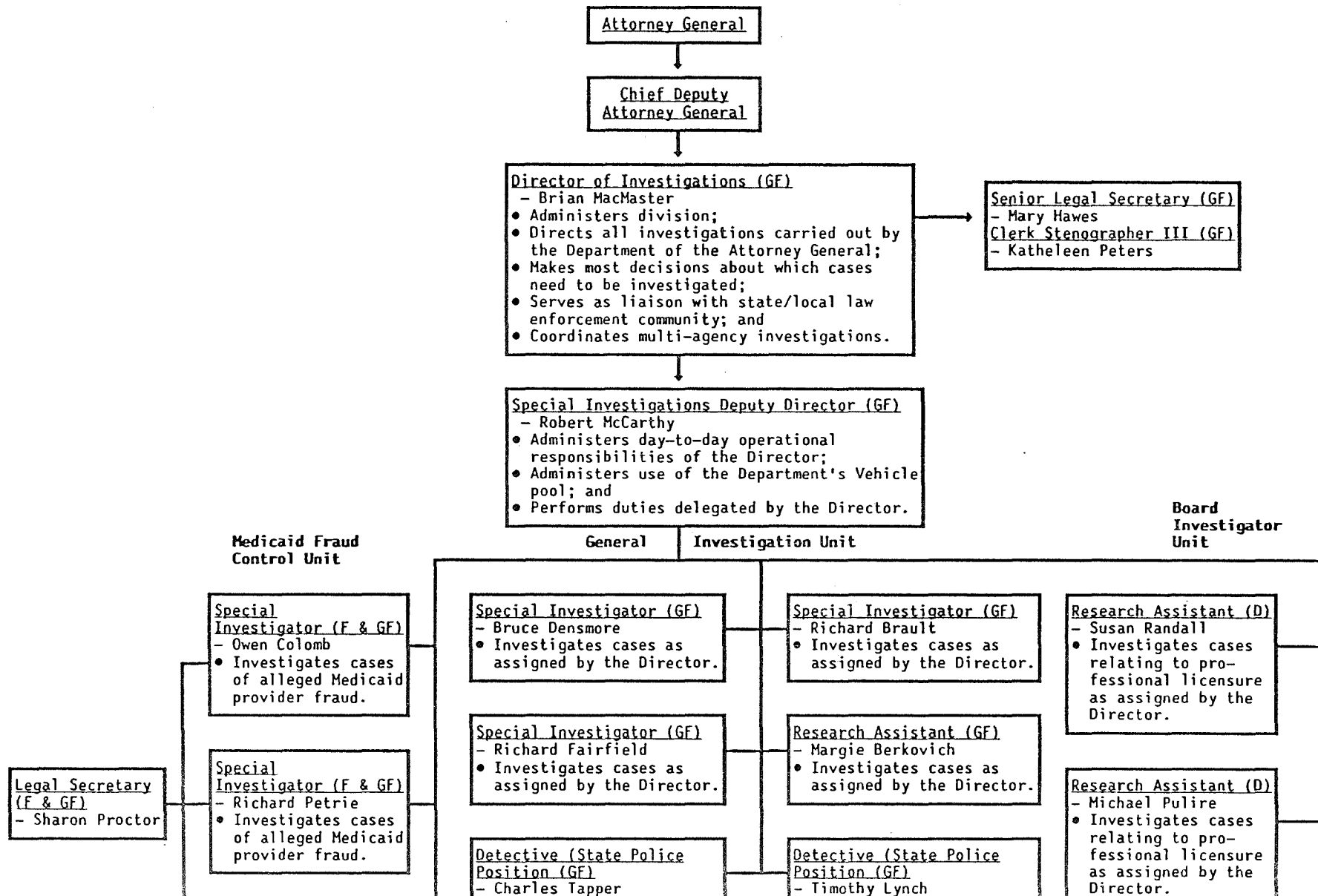
- 5 MRSA §200A - authorizes the establishment of a "Criminal Division" to coordinate all criminal investigation ... for the purpose of improving law enforcement." This provision also authorizes the Attorney General to be responsible for "the direction and control of all investigation and prosecution of homicides and such other major crimes";
- 5 MRSA §200C - authorizes the Attorney General to establish a "State Fraud Division" to investigate and prosecute any act of fraud or attempted fraud against the State; and

-
- 5 MRSA §202 - authorizes the Attorney General to employ detectives for the "detection, arrest and apprehension of persons who commit crime in this State."

STAFFING AND METHOD OF OPERATION

The Investigation Division is divided into a number of organizational units, each with a specific task(s). The responsibilities, staffing, and method of operation for each of these units is shown in Chart 10 and described below:

- Director of Investigations - functions as the division's chief executive officer who reports directly to the Attorney General. The current Director is Mr. Brian MacMaster. At the present time, the Director's responsibilities include:
 - personally conduct politically sensitive investigations;
 - direct all investigations emanating from the Department of Attorney General, with the exception of any homicides not caused by police;
 - make most decisions as to which cases need to be investigated;
 - functions as the division's chief administrator;
 - serves as liaison between the Department of Attorney General and the state law enforcement community; and
 - coordinates multi-agency investigations involving such agencies as the FBI, DEA, and EPA.
- Special Investigations Deputy Director - functions as the Division's second in command. The present incumbent, Mr. Robert McCarthy, has the following responsibilities:
 - Administers day-to-day operational responsibilities of the Division as assigned by the Director;



Special
Investigator (F & GF)
- Richard Stocker
• Investigates cases
of alleged Medicaid
provider fraud.

• Investigates cases as
assigned by the Director.

• Investigates cases as
assigned by the Director.

Compiled by Audit Staff
December 1990

(GF) = General Fund (F) = Federal Funds (D) = Dedicated Revenues

-
- Administers use of the Department's motor vehicle pool; and
 - Performs duties delegated by the Director;
 - Medicaid Fraud Control Unit - this organizational unit investigates cases of alleged Medicaid provider fraud. The unit is staffed by 3 Special Investigator positions and 1 Legal Secretary position;
 - General Investigation Unit - this organizational unit investigates a wide array of cases; the only exceptions being Medicaid fraud and professional licensing violations. The unit is staffed by 3 Special Investigators, 1 Research Assistant (whose job duties are identical to the Special Investigators), and 2 Detectives. The Detective positions are State Police positions which are permanently assigned to the Division;
 - Board Investigation Unit - this organizational unit provides investigative services for cases involving misconduct for the professionals regulated by the more than 40 professional licensing boards authorized under state law. The unit is staffed by 2 Research Assistants who function as Special Investigators; and
 - Support Staff - Excluding the Medicaid Fraud Control Unit which has its own Legal Secretary, the Investigation Division has a support staff which consists of a Senior Legal Secretary and a Clerk Stenographer III.

FUNDING

The Investigation Division has 3 funding sources:

- General Fund supports the salaries for the Director and Deputy Director positions, the 2 support staff not involved with the Medicaid Fraud Control Unit, all of the positions within the General Investigation Unit, and a portion of the salaries for the positions within the Medicaid Fraud Control Unit;

-
- Federal Funds support a portion of the salaries for the Medicaid Fraud Unit; and
 - Dedicated Revenues collected by the various professional licensing boards support the salaries for the 2 positions within the Board Investigation Unit.

NATURAL RESOURCES DIVISION

PURPOSE

The Natural Resources Division is one of the organizational units within the Department of Attorney General which provides legal representation for a number of agencies within the Executive Branch. As its name implies, the Natural Resource Division provides legal representation to a grouping of state agencies which, for the most part, have something to do with the topic of natural resources. The following agencies currently receive their legal representation from the Natural Resources Division:

- Department of Agriculture, Food and Rural Resources (including the Maine Milk Commission, the Pesticides Control Board and other associated Boards and Commissions, except for the State Harness Racing Commission which is provided legal representation by the General Government Division);
- Department of Conservation (including the Land Use Regulation Commission);
- Department of Defense and Veterans' Services (including the Maine Emergency Management Agency);
- Department of Economic and Community Development (including the Maine Science and Technology Commission);
- Department and Board of Environmental Protection;
- Department of Marine Resources;
- State Planning Office; and
- Land for Maine's Future Board.

METHOD OF OPERATION AND STAFFING

The Natural Resources Division is headed by a Deputy Attorney General; the current incumbent being Mr. Jeffrey Pidot. The Deputy Attorney General reports directly to the Attorney General or that position's designee. At the present time the Deputy Attorney General has the following responsibilities:

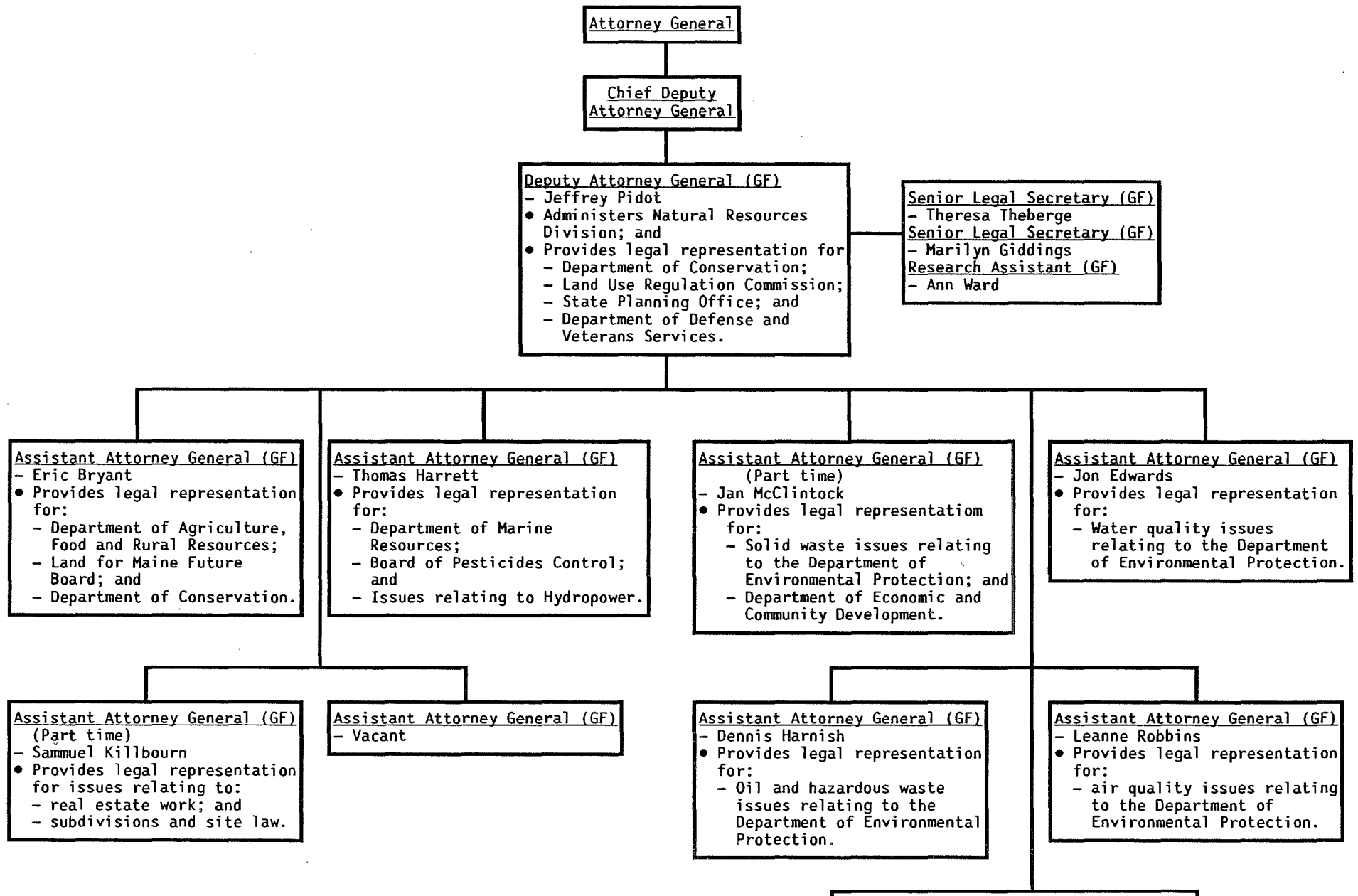
- Supervises and assists the other attorneys in the Division; and
- Provides legal services to the Department of Conservation, the Land Use Regulation Commission, the State Planning Office, and the Department of Defense and Veterans' Services.

The rest of the Division's legal staff consists of 11 Assistant Attorney General positions, only 8 of which are filled as of January 1991. As depicted in chart 11 and described below, each of the Assistant Attorney General positions has a fairly specific list of agency assignments, but also provides assistance in other areas as work demands require:

- Assistant Attorney General Samuel Kilbourne - provides legal representation and services relating to real estate work needed by many agencies of state government and also works on subdivision and site law issues;
- Assistant Attorney General Eric Bryant - provides legal services and representation relating to the Department of Agriculture, Food and Rural Resources, Land for Maine Future Board, and also provides legal assistance to the Department of Conservation;
- Assistant Attorney General Thom Harnnett - provides legal services and representation relating to the Department of Marine Resources, Board of Pesticides Control, and works on legal issues relating to hydropower use and regulation;
- Assistant Attorney General Jon Edwards - provides legal services and representation relating to water quality issues under the domain of the Department of Environmental Protection;

CHART 11
DEPARTMENT OF ATTORNEY GENERAL:
Natural Resources Division

Organizational Structure, Position Count,
Duties, and Funding Sources



Assistant Attorney General (GF)
- Peggy McClosky
• Provides legal representation for:
- Land quality issues relating to the Department of Environmental Protection.

Assistant Attorney General (D)
- Vacant
• Will provide legal representation for issues relating to the Oil Conveyance Fund.

Assistant Attorney General (D)
- Vacant
• Will provide legal representation for issues relating to the Oil Conveyance Fund.

(GF) = General Fund (D) = Dedicated Revenue

Compiled by Audit Staff
January 1991

-
- Assistant Attorney General Leanne Robbin - provides legal services and representation relating to air quality issues under the domain of the Department of Environmental Protection; and works on criminal enforcement of environment laws;
 - Assistant Attorney General Dennis Harnish - provides legal services and representation relating to oil and hazardous materials issues under the domain of the Department of Environmental Protection; and to the Maine Emergency Management Agency within the Department of Defense;
 - Assistant Attorney General Peggy McCloskey - provides legal services and representation relating to land quality issues under the domain of the Department of Environmental Protection; and
 - Assistant Attorney General Jan McClintock - provides legal services and representation relating to solid waste issues under the domain of the Department of Environmental Protection and to the Department of Economic and Community Development, especially growth management issues.

The 3 remaining Assistant Attorney General positions are vacant. One of the three positions is funded by the General Fund and is likely to remain vacant due to the current budgetary situation. The remaining two positions were newly authorized by the 114th Legislature to do work on legal issues relating to the Oil Conveyance Fund. These 2 positions are funded with dedicated revenues from the Oil Conveyance Fund. Upon review, the Committee found that these positions will be filled shortly.

FUNDING

With the exception of the 2 Assistant Attorney General positions funded by dedicated revenues of the Oil Conveyance Fund and the positions partially funded by dedicated revenues collected by boards within the Department of Agriculture, all of the positions in the Natural Resources Division are funded by appropriations from the General Fund.

ADMINISTRATIVE 110.

Implement the concept of billing non-General Fund agencies for hours of legal services rendered, through use of a special revenue account. Report to the Committee during the compliance review on the status of this concept.

During the course of its review of the Department of the Attorney General, the Committee noted that the Department provides legal services and representation to a number of non-General Fund agencies. In these cases, such as professional licensing boards and the Maine State Retirement System, the agencies are funded by dedicated revenues collected by the agencies to fund the cost of their operations. For the most part, the Department of Attorney General has entered into agreements with these agencies which provide a certain number of Assistant Attorney General positions to deliver legal services. In turn, the dedicated revenue agencies agree to fund the salary costs of these positions.

Upon review, the Committee found that the Department of Attorney General does not charge these dedicated revenue agencies on an hourly basis for actual services received. The Committee further found that the Department will often provide services in excess of the agreed upon position(s). For example, the Maine State Retirement System pays for the half-time services of one Assistant Attorney General. However, the Department often provides the legal services of other Assistant Attorneys General. These attorneys are funded by the General Fund and yet the Retirement System is not currently billed for these additional services.

In light of the state's recent budgetary difficulties, and the subsequent General Fund budget reductions, the Committee found that the Department of Attorney General ought to be able to charge non-General Fund agencies on an hourly basis for services provided. The Committee further found that such billing will provide additional revenue to the Department on an equitable basis. In addition, by increasing the accountability of the use of attorney work hours, this billing concept is eventually likely to allow Assistant Attorneys General funded by the General Fund to focus more on providing services to General Fund agencies.

The Committee also noted that the Department of Attorney General is presently submitting proposed legislation to the Legislature which would provide the Attorney General with the clear statutory authority to charge non-General Fund Agencies for legal services on a hourly basis. The Committee endorses this concept and recommends that the Department of Attorney General implement the concept of billing non-General Fund agencies for hours of legal services rendered, through use of a special revenue account. Report to the Committee during the compliance review on the status of this concept.

ADMINISTRATIVE	111.	Conduct a study of the desirability and feasibility of incorporating the District Attorneys and the Public Advocate into the Department of Attorney General. Report to the Committee during the compliance review on the results of this study and the current status of these entities.
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During the course of its review of the Department of Attorney General, the Committee took note of two other organizational entities which are related in differing degrees to the Department.

First, the District Attorneys are included within the Department for budgetary and administrative functions, but for the most part, function quite independently of the Attorney General. By law (5 MRSA §199), the Attorney General is authorized to consult with and advise the eight District Attorneys. The Attorney General can, at his or her discretion, act in place of the District Attorneys who are charged with a responsibility to represent the state on a regional basis in all civil and criminal proceedings. The District Attorneys are elected for 2 year terms and serve in eight prosecutorial districts.

The Office of Public Advocate is another state agency which is related to the Department of Attorney General. The Public Advocate is charged by law (35-A MRSA §1701), with the responsibility of representing the public before the Public Utilities Commission, federal agencies, and in applicable court cases. In addition, the Public Advocate is also mandated to represent the public in all workers' compensation rate proceedings.

The Office of Public Advocate is currently part of the Executive Department (headed by the Office of Governor) within the executive branch. Prior to the establishment of the Office of Public Advocate, the Office's functions were handled by the Department of Attorney General.

After having considered the relatedness of these two entities to the Department of Attorney General, the Committee considered whether their overall effectiveness and efficiency might be improved by strengthening the existing organizational relationship between the Attorney General and the District Attorneys and by transferring the Office of Public Advocate to the Department of Attorney General.

The Committee found that both of these ideas may have some merit but that the ideas need closer scrutiny. Therefore, the Committee recommends that the Department of Attorney General conduct a study of the desirability and feasibility of incorporating the District Attorneys and the Public Advocate into the Department of Attorney General. Report to the Committee during the compliance review on the results of this study and the current status of these entities.

ADMINISTRATIVE 112.

Direct that the Department of Human Services and the Department of Attorney General work together to develop a detailed plan needed to accomplish a smooth transfer of funding for the unit which provides legal services to the Department of Human Services. Submit this plan by July 1, 1991 to the Committee.

As mentioned earlier in this report, the Human Services Division of the Department of Attorney General provides legal services and representation to the Department of Human Services. Until 1990, the Division of Human Services was physically located within the main Department of Human Services office facility on State Street. At that time, the Division was moved into the State Office Building to be united with the rest of the Department of Attorney General.

Upon review, the Committee found that the funding for the Division is still appropriated or allocated to the Department of

Human Services and that this is the only instance of this type of funding arrangement involving the Department of Attorney General.

The Committee noted that the present funding arrangement requires a continual series of financial journaling between the two departments. Upon review, the Committee found that this process represents an inefficient use of time for both Departments and that for maximum efficiency, and to reflect the true organizational status of the Division of Human Services, the funding for the Division ought to be appropriated or allocated to the Department of Attorney General. However, the Committee also found that there are a number of unresolved technicalities and that these questions need to be clearly resolved before the transfer is accomplished.

Therefore, the Joint Standing Committee on Audit and Program Review directs that the Department of Human Services and the Department of Attorney General work together to develop a detailed plan needed to accomplish a smooth transfer of funding for the unit which provides legal services to the Department of Human Services. Submit this plan by July 1, 1991 to the Committee.

ADMINISTRATIVE 113.

Develop a report on the changes implemented in the Department of Attorney General during the past year. Include in this report a section on recent trends in legal coverage, for the purpose of reducing the amount of litigation. Report to the Committee during the compliance review on these issues.

As stated in the beginning of this report, the Committee's review process spans a three year time period. The third and final year is used by the Committee to ensure compliance with its earlier recommendations and to revisit any issues of particular interest. During its review of the Department of Attorney General, the Committee expressed its concern about the ever increasing amount of litigation that the Department is involved in. The Committee also registered its interest in the changes that may take place within the Department under the new leadership of the recently elected Attorney General Michael Carpenter.

The Committee found that the trends in litigation and changes within the Department are important subjects that can be most effectively addressed during the compliance phase of the review process. Therefore, the Joint Standing on Audit and Program Review recommends that the Attorney General develop a report on the changes implemented in the Department of Attorney General during the past year. Include in this report a section on recent trends in legal coverage, for the purpose of reducing the amount of litigation. Report to the Committee during the compliance review on these issues.

**MAINE BLUEBERRY COMMISSION
MAINE BLUEBERRY ADVISORY COMMITTEE**

MAINE BLUEBERRY COMMISSION

STATUTORY	114.	Continue the Maine Blueberry Commission under the provisions of the Maine Sunset Law.
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The Maine Blueberry Commission was established in 1945 in response to a serious crop problem experienced by the blueberry industry at that time which adversely impacted blueberry sales. To assist in addressing the problem, the Maine Legislature established an industry tax designed to generate funds for the Maine Blueberry Commission to be used for research and extension programs to improve the production and marketing of blueberries.

The Commission is directed by statute to:

- administer blueberry tax funds for the promotion and expansion of market opportunities for blueberries;
- appoint members to the Blueberry Advisory Committee and work with the University of Maine to develop extension and research programs beneficial to the blueberry industry;
- develop programs with trade associations and organizations to promote and improve the blueberry industry;
- work effectively with state and federal agencies; and
- participate in trade shows, fairs, and public relations activities to promote the blueberry industry [36 MRSA c.701].

The Blueberry Commission has eight members, appointed by the Commissioner of Agriculture, Food and Rural Resources for staggered 4 year terms. Members must be active in and representative of the blueberry industry, with 3 members representing growers and 5 members representing processors. The Commission elects a chairperson annually from among its members [36 MRSA §4312-B].

The Chair has the statutory authority to "appoint an executive director or such personnel as he deems necessary to administer policies and programs established by the commission" (36 MRSA §4312-B, sub-§4). Prior to 1988, the Maine Blueberry Commission employed an executive director part time. In that year, the position was expanded to full time, and a part time clerical person was brought on to perform the administrative tasks necessitated by the blueberry tax programs.

The Commission is funded by dedicated revenue derived from the Blueberry Tax, which is levied at the rate of 1 cent per pound of blueberries produced or processed in the State. This tax provides revenue to the Commission of approximately 1/2 million dollars annually. The Commission's revenue fluctuates with crop production, and because crop yields for the last six years have been bountiful, the Commission has been provided with funding levels sufficient to carry out its mandate.

Title 36 MRSA §4311-A provides that the first \$20,000 in blueberry tax revenue each year accrue to the General Fund as undedicated revenue. All subsequent collections must be allocated by the Commission subject to the following restrictions:

- \$85,000 (or more if deemed appropriate by the commission) for research and extension programs at the University of Maine
 - Most of the research and all of the extension activities are programmed through the Maine Agricultural Experiment Station and the Cooperative Extension Service at the University of Maine. Also, the Experiment Station maintains a research farm known as Blueberry Hill in the town of Jonesboro.
- At least 25% for market development and promotion
 - These activities are carried out primarily through the allocation of funds to two trade organizations: the Wild Blueberry Association of North America and the North American Blueberry Council. These organizations conduct blueberry promotions for the export market as well as national promotion for the domestic markets. Special emphasis is given to the food service trade such as restaurants, bakeries and lunch programs.
- No more than 15% for administration:

-
- Provides funds for an executive director, a secretary, computer equipment, and general operating expenses.
 - The balance of funds are to be used for research and promotion at the discretion of the Commission:
 - Activities have included expenditures for items such as exhibits at trade shows, fairs and participation at the Eastern States Exposition in West Springfield, Massachusetts, the seventh largest agricultural exposition in the world.

The Audit and Program Review Committee finds that the Maine Blueberry Commission efficiently addresses its statutory mandate and provides a valuable service to the blueberry industry of Maine. In view of these findings, the Committee recommends that the Maine Blueberry Commission be continued under the provisions of the Maine Sunset Law.

The Maine Blueberry Advisory Committee

STATUTORY	115.	Continue the Maine Blueberry Advisory Committee under the provisions of the Maine Sunset Law.
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The Maine Blueberry Advisory Committee was established in 1945 as a component of the Blueberry Tax Program. Its purpose is to work with the Directors of the Maine Agricultural Experiment Station and the Cooperative Extension Service of the University of Maine System to develop and approve a budget and work plans for research and extension programs related to the production and marketing of blueberries (36 MRSA §4312).

The Advisory Committee is comprised of seven members, appointed by the Maine Blueberry Commission for four year terms. Members must be active in and representative of the blueberry industry. Advisory Committee members elect their own chairperson.

The Blueberry Advisory Committee meets 4 - 5 times a year

with the above stated University System Directors. This body is not authorized to receive or to expend funds.

The Audit and Program Review Committee's review finds that the Maine Blueberry Advisory Committee is functioning effectively as mandated, and therefore recommends its continuation under the provisions of the Maine Sunset Law.

MAINE STATE HARNESS RACING COMMISSION

MAINE STATE HARNESS RACING COMMISSION

STATUTORY	116.	Continue the Maine Harness Racing Commission pursuant to the Maine Sunset law.
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FINDING	117.	The Committee finds that the report of the Commission to Study the Harness Racing Industry in Maine is commendable and supports the Commission's findings, recommendations, and proposed legislation.
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The Maine State Harness Racing Commission consists of five members appointed by the Governor to regulate parimutuel harness horse racing in Maine (8 MRSA c.11). The Commission regulates harness racing by licensing participants, inspecting tracks, testing horses and drivers, and enforcing state law and regulation. The industry has been regulated by the State since 1935, when parimutuel wagering at harness horse races was legalized in an effort to rejuvenate flagging attendance at agricultural fairs. Today, the Commission's regulatory activities affect 5,000 racehorse owners, drivers, trainers, and grooms; 500 parimutuel employees, managers, officials, photo finish operators, timers, and concessionaires; up to 10,000 harness racing fans; and ~50,000 members of the public who attend agricultural fairs.

Membership of the Commission was increased from three to the current number of five in 1984 (P.L. 1983, c. 812 §55). These gubernatorial appointments are reviewed by the joint standing committee of the Legislature having jurisdiction over agriculture and are subject to confirmation by the Legislature. Members serve three year terms. No more than three members may be of the same political party but both major political parties must be

represented on the Commission. One member must, in some capacity, be connected with agricultural societies which operate parimutuel racing. All members must be "interested in the establishment and development of a Maine breed of standardbred horse [with no] pecuniary interest in harness racing or the sale of pari-mutuel pools licensed by the Commission" [8 MRSA §261]. The Commission elects a chair from its membership and meets at least once per month. The Commissioner of Agriculture or designee serves ex-officio as secretary to the Commission, but is not a voting member.

The Commission's purpose is to:

- promulgate rules and regulations for the operation of all harness horse races or meets held for public exhibition in Maine and for the operation of race tracks;
- license any person, association, or corporation desiring to hold a harness horse race or meet;
- assign racing dates;
- regulate the sale of parimutuel pools and to oversee the apportionment of the pool;
- supervise racing activities and impose fines and license suspensions for infractions of law or rule; and
- encourage and promote the breeding of a strain of Maine standardbred horse (8 MRSA §281 et.seq.).

In 1989, the Commission licensed the following associations and participants and generated \$21,913 in fees for the General Fund:

3	Commercial meets
9	Agricultural fairs
3	Non-commercial meets
2,175	Horse owners
568	Drivers
898	Trainers
1,318	Grooms
172	Officials
284	Parimutuel clerks

The amount bet on parimutuel racing, known as the "handle",

is substantial. Using a complex formula according to statutory directive (7 MRSA §62 and 8 MRSA §§274 and 275), the handle is distributed among the winning bettors, the purse supplement, the fund to promote the development of a Maine breed of standardbred horse, Maine's agricultural fairs, commercial meets, and the State General Fund. The total handle for five fiscal years is:

Calendar Year	Total Handle
1985	\$35,950,000
1986	\$37,467,000
1987	\$45,192,000
1988	\$44,321,000
1989	\$41,020,747

Harness racing revenues contributed to the General Fund in fiscal year 1989 totalled \$676,620 and in fiscal year 1990 totalled \$590,221.

The Commissioner of Agriculture, Food, and Rural Resources is authorized to employ personnel to carry out the Harness Racing Commission's regulatory mandate (8 MRSA §264). Accordingly, the Department employs seven full time, four seasonal full time, five seasonal part time, and one intermittent seasonal employee for this purpose, as displayed in the chart below.

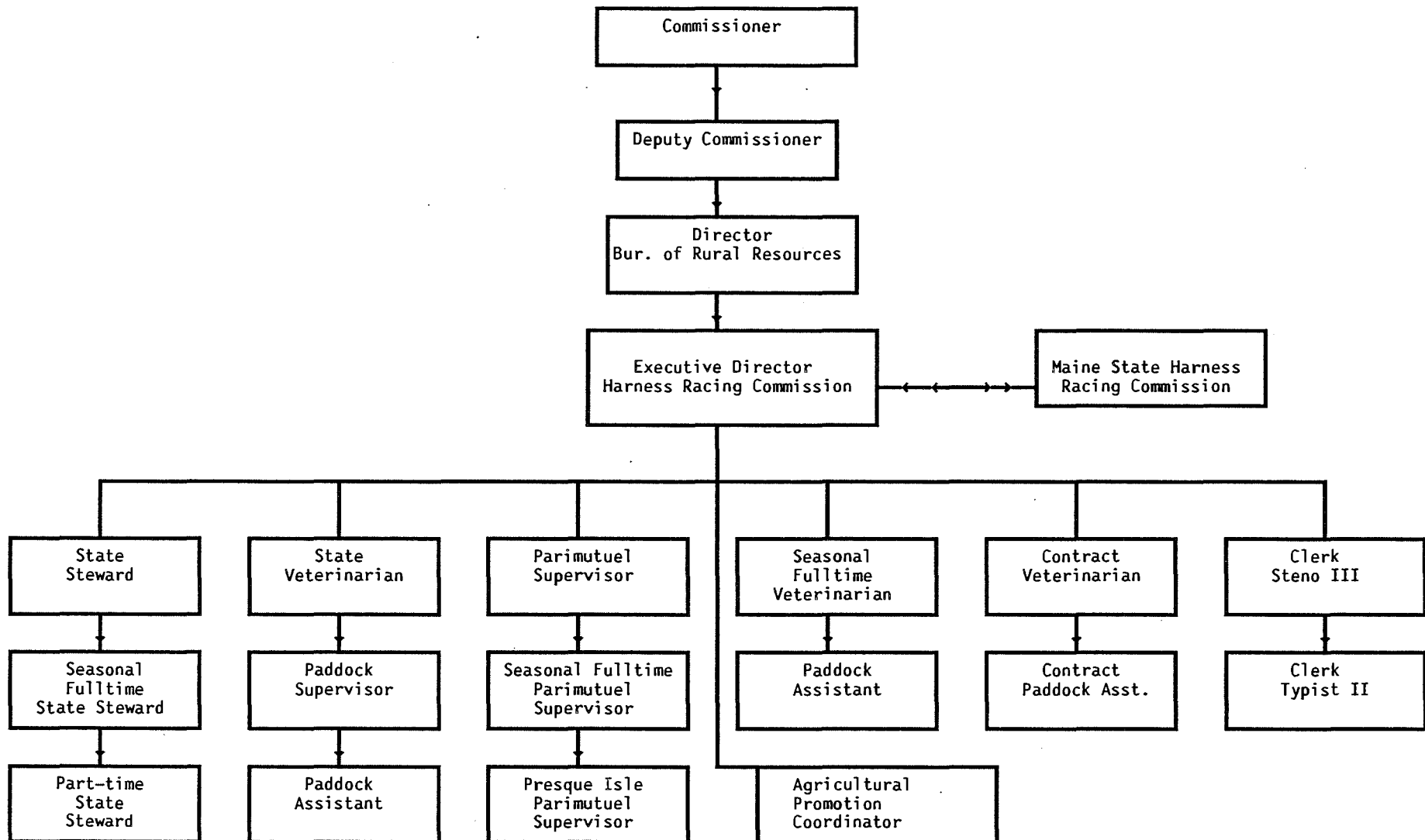
All positions are supported by the General Fund except for one, which is paid from the Commission's dedicated revenue account. Expenditures in both accounts for fiscal year 1990 are as follows:

	General Fund	Dedicated Revenue
Personal Services	\$ 276,651	\$ 27,826
All Other	\$ 171,527	1,018,398
Capital Expenditures	\$ 2,156	0
	\$ 450,334	1,046,224

Fees for laboratory analysis of medications and illegal drugging of horses have increased in recent years, amounting to about 53% of the Commission's fiscal year 1990 All Other expenses in the General Fund account. Stipends paid to the commercial meets, extended meets, and sire stakes fund from the handle, combined with the purse supplement contribution, accounts for 97% of the fiscal year 1990 dedicated revenue.

The Committee found that harness racing in Maine is in transition. Since 1970, harness horse racing and parimutuel

MAINE STATE HARNESS RACING COMMISSION*
 Department of Agriculture, Food and Rural Resources



* All positions are GF except Agricultural Promotion Coordinator which is paid from the dedicated revenue account

betting declined in popularity throughout New England. Concerns about illegal drugging of horses; failure to impose timely penalties on violators; controversy in assigning race dates to tracks; resignations of two Commission members, the long-time Executive Director, and the state steward; termination of the Lewiston Raceway; outdated rules; the need to improve training and safety; and various allegations of cheating and race fixing has mired the industry in controversy and confusion in recent years.

In addition to an earlier study commission, an investigation and report from the Maine Attorney General's office, and recent legislation, the Legislature established a Commission to Study the Harness Racing Industry in 1990 (P.L. 1989 c. 787). The Commission consisted of eleven members; two Senators, four Representatives, and one member representing each of the following categories: drivers, trainers, breeders, the public, and the Maine Association of Agricultural Fairs. The Commission's mandate was to examine the industry's viability, review the regulation of the harness racing industry, examine the role and duties of the State Harness Racing Commission, examine the laws and rules governing the industry with the goal of establishing better enforcement mechanisms for violations, investigate the ability of industry participants to earn a living, examine the need to establish a list of rights and due process procedures for horse owners and others while participating in a meet, and examine any other issue that threatens the integrity and stability of the industry.

In response to the Commission's establishment and ambitious agenda, the Audit Committee agreed to defer further inquiry on its part into the Commission's operation, pending receipt of the Commission's findings and recommendations.

The Commission's November 1990 report contained recommendations for change in three main areas: the operation and composition of the Commission itself, the enforcement of laws and rules, and raising the limits on license fees and fines. The Commission's recommendations have been introduced into the first session of the 115th Legislature as LD 402.

In reviewing the Commission's findings and recommendations, the Committee commends the Commission for the breadth and depth of its work and endorses the Committee's recommendations and proposed legislation.

Accordingly, recognizing the need to continue to provide regulation and oversight, and to ensure the viability of the harness racing industry in Maine, the Committee recommends continuing the Maine Harness Racing Commission pursuant to the Maine Sunset Law.

ADMINISTRATIVE 118.

Report, at the compliance review, on the effectiveness of the Maine Standardbred Breeders Stakes program to promote and improve the standardbred horse racing industry in Maine

The Legislature authorized the Maine Harness Racing Commission in 1935 to "encourage and promote the breeding of a strain of Maine standardbred horse and ... encourage donations of (a strain of Maine standardbred horse) by licensees or others ... for breeding purposes" (P.L. 1935. ch. .130 §23). In 1973, the Legislature reaffirmed and strengthened its directive to the Commission by authorizing the Commission to establish a Maine Standardbred Breeder Stakes Program and to:

- define a strain of Maine standardbred horse;
- establish necessary fees for horses and races to support the program;
- establish a trust account entitled the Sire Stakes Fund to supplement purses, support costs of administration, and other appropriate expenses of operating the breeding program; and to
- submit an annual report to the Commissioner of Agriculture (P.L. 1973 ch. .788 §31-A).

The Breeder Stakes Program is intended to support harness racing's significant contribution to Maine's economy. The 1989-1990 Directory-Yearbook of the Maine Standardbred Breeders and Owners Association reports that harness racing contributes 110 million dollars annually to Maine's economy by financially supporting goods and services related to harness racing. These goods and services include all those related to farms and farming, as well as trainers, drivers, grooms, veterinarians, blacksmiths, grain and equipment suppliers, and other professional services directly related to harness racing. According to the Directory, harness racing can also be considered Maine's fourth largest agricultural product when the wagering handle is compared with farmers' market prices for agricultural commodities in 1987, as follows:

Potatoes	\$108,000,000
Dairy Products	91,000,000
Eggs	87,000,000
Harness Racing	44,000,000
Beef	20,000,000
Apples	20,000,000
Blueberries	20,000,000

As a final component of the Committee's review of the Maine Harness Racing Commission, the Committee expressed interest in reviewing additional information on the effectiveness of Maine's breeder stakes program in carrying out its legislative mandate. Recognizing that time available is insufficient to review the Breeder Stakes program to the Committee's satisfaction, the Committee directs the Commission to report on the effectiveness of the program during the compliance review phase of the audit and program review.

BOARD OF PESTICIDES CONTROL

BOARD OF PESTICIDES CONTROL

ORIGIN AND PURPOSE

The Board of Pesticides Control was established in 1965 to protect the public health and safety and the public interest in the soils, water, forests, wildlife, agricultural and other resources by assuring the proper use of chemical pesticides [22 MRSA §1471-A]. The original Board was made up of the Commissioners of seven state agencies: Agriculture, Human Services, Conservation, Inland Fisheries and Wildlife, Marine Resources, Transportation and Environmental Protection, and the Chair of the Public Utilities Commission. The Board first received funding in 1969, was first staffed in 1970, and was placed within the Department of Agriculture in 1973.

In 1980, the Legislature dissolved and reconstituted the Board (P.L. 1979, c. 644) to be comprised of seven public members, appointed by the Governor subject to approval by the Agriculture Committee, for staggered four year terms. In 1981, the authority previously resting with the Commissioner of Agriculture to register pesticides was transferred to the Board [P.L.1981 c.112 §1].

ACTIVITIES

The Board of Pesticides Control is statutorily mandated to "regulate in the public interest the labeling, distribution, storage, transportation, use and disposal of pesticides" (22 MRSA §1471-A), noting that herbicides are included in the definition of pesticide for the purposes of this chapter. The Board carries out its legislative mandate through the following activities:

- registering pesticide products to ensure safe use under Maine conditions;
- licensing of applicators and dealers to ensure proper handling and application of pesticides;
- monitoring and enforcing to ensure that pesticide products are sold and used properly; and
- educating both users and the general public to encourage safe handling and increase knowledge about potential risks associated with pesticides [22 MRSA c.258-A].

Specific responsibilities and activities of the Board of Pesticides Control include:

Registration of pesticides - The Board registers approximately 5,000 pesticide products a year. The accompanying fees are deposited in the dedicated pesticides control fund to cover general operating costs of the Board and the Department of Agriculture's Integrated Pest Management Program. Also, these funds are used for hazard assessments conducted on selected pesticides; the periodic hazard assessments alert the Board to the need to review and possibly modify the registration status of these pesticides.

Licensing of pesticide and applicators and dealers - The Board certifies and licenses private and commercial pesticide applicators and all dealers selling restricted use pesticides to assure that pesticides used in the state will be handled properly to prevent human or environmental harm. In 1990 there were 1,993 private applicators licensed for a three-year period, and 1,039 commercial applicators and 72 pesticide dealers licensed on an annual basis.

In 1989, legislation was enacted to require licensing of general use pesticide dealers (P.L. 1989, c.93 §2). The Board is currently in the process of urging all department and hardware stores, lawn and garden centers and other general use retailers to comply with this new requirement. As of August 1990, the Board had licensed approximately 397 general use pesticide dealers.

Monitoring and enforcement - The Board monitors the sale and application of pesticides and investigates complaints of misuse. This responsibility includes inspection of application equipment, storage and disposal areas; observation of applications; sampling pesticides in use or storage; and sampling pesticide residues on crops, foliage, soil, water or elsewhere in the environment. Violations of the Board's rules are subject to enforcement action, which could include the suspension or revocation of applicator or dealer license, and imposition of fines. The Board carried out 801 inspections in fiscal year 1990, resulting in 52 enforcement actions.

Drift management - After several years of developmental efforts, specific drift regulations became effective in January of 1988. The Board's inspectors spend a high percentage of their time making courtesy inspections to be sure applicators understand the need to identify and protect sensitive areas, and are aware of record keeping and notification requirements. The majority of the relatively small number of complaints and violations investigated by the Board relate to this particular function.

Returnable pesticide containers - 1990 marked the sixth year of implementation of a program for safely disposing restricted use containers. Dealers and applicators have come to recognize that this program addresses a major waste disposal problem, and compliance continues to be very favorable with over 99% of the returned containers meeting the triple rinsed standard.

Obsolete pesticide pickup - A Special Session of the 113th Legislature appropriated \$100,000 for the Board to continue its collection program to remove and dispose of cancelled or otherwise unuseable pesticides held by homeowners and applicators. During spring 1989, the Board's staff picked up over 22 tons of material at approximately 175 sites and delivered the material to a contractor for transportation to out-of-state disposal facilities.

ORGANIZATION AND STAFFING

Qualifications for three of the Commission members are prescribed by statute to include persons knowledgeable about pesticide use in agriculture, forestry, and commercial application, while one person must have a medical background and another be either an agronomist or entomologist at the University of Maine with integrated pest management experience. The remaining two public members are selected to represent different geographic areas of the state (22 MRSA §1471-B).

The Board annually elects a chair from its membership. The Board's director is hired by the Commissioner of Agriculture, with the approval of the Board. The director has the authority to hire, subject to Civil Service Law, whatever staff the director determines necessary, subject to the approval of the Commissioner and Board. Current Board staff include the following thirteen positions in addition to the director: a

chief of certification and enforcement, a toxicologist, a pesticides registrar, a certification and licensing specialist, a public information officer, two full-time and four seasonal inspectors, an office manager, and a secretary. Overall supervision is provided by the director. An organizational chart of the Board of Pesticides Control appears on the following page.

FUNDING and EXPENDITURES

The Board of Pesticides Control is supported by funds from the following sources:

- **Pesticide Control Fund**

This is a dedicated account consisting primarily of pesticide product registrations and to a lesser extent, exam and license fees for all but governmental applicators (who are statutorily exempt from paying fees). It supports the salaries of 9 1/2 full-time staff and one seasonal inspector plus their associated expenses. This source also funds the majority of the non-personnel expenses of the Board, as well as the Department of Agriculture's integrated pest management program.

	<u>FY 1989</u>	<u>FY 1990</u>	<u>FY 1991</u>
Revenues	\$780,637	\$854,756	\$903,064
Expenditures	\$502,881	\$573,692	\$593,552

- **Federal Grant Funds**

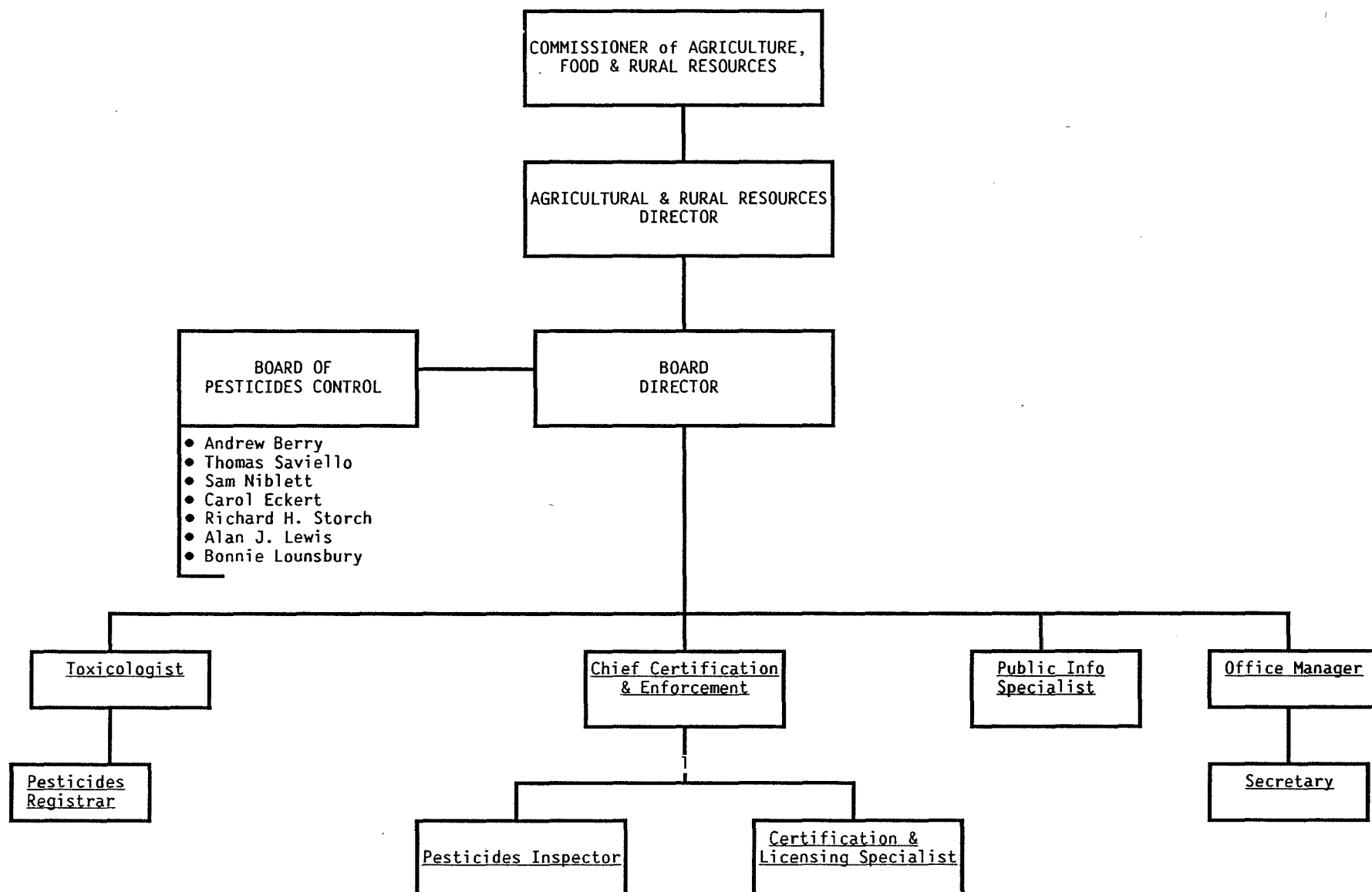
The Board currently receives federal funds under a cooperative agreement with EPA to partially support applicator certification and pesticide enforcement activities. Currently, these funds support the salaries of 1 1/2 full-time staff and two seasonal employees.

Although federal funding has experienced a gradual decline over the past several years, the current trend is for increases to support major new U.S. Environmental Protection Agency initiatives dealing with endangered species, groundwater protection and farmworker safety. The Board has hired another secretary and a project Research and Planning Associate during Federal FY 1990.

	<u>FY 1989</u>	<u>FY 1990</u>	<u>FY 1991</u>
Revenues	\$259,298	\$265,137	\$284,686
Expenditures	\$189,161	\$175,451	\$180,521

BOARD OF PESTICIDES CONTROL

ORGANIZATIONAL CHART



• General Fund

Prior to the current fiscal year, the Board received General Fund dollars sufficient to cover the director's salary and the majority of the non-personnel administrative expenses of the agency. Due to the State's stressed financial condition and in light of the substantial balances in the Board's dedicated and federal accounts, the General Fund appropriation was eliminated, and position authorization for the director was transferred to the dedicated Pesticide Control Fund account.

	<u>FY 1989</u>	<u>FY 1990</u>	<u>FY 1991</u>
Appropriations	\$200,193	\$48,557	-0-
Expenditures	\$169,659	\$78,663	\$ 428

STATUTORY	119.	Specify that the two public members on the Board of Pesticides Control must have a demonstrated interest in environmental protection, in order to retain needed expertise on the Board but also ensure balanced decision-making in the public's best interest.
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Currently, four of the seven members of the Board of Pesticides Control are licensed pesticide applicators. The Committee found that during the course of their term, these Board members may be in a position to make decisions on pesticide licensure and application which may have some bearing on personal finances. Also, the Committee found that as licensed applicators, these Board members may be subject to enforcement action by Board staff.

In the Committee's discussion of this issue, the Committee noted that a perceived conflict-of-interest exists but also found that:

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- successfully carrying out the mandate of the Board requires Board members with technical and practical expertise in the application and management of pesticides, available only through hands-on experience;
 - if expertise now provided by the Board's membership were eliminated, parallel expertise would continue to be necessary and would be purchased on a contractual basis at significant additional expense;
 - no preferential treatment or skewed decision-making by the Board is apparent;
 - one of the licensed applicators is also a specialist in integrated pest management, a technique which stresses nonchemical methods of pest control; and
 - the current makeup of the Board of Pesticides Control appears to be effectively fulfilling its mandated functions.

The Committee also notes that the two public members currently serving on the Board have a strong and demonstrated interest in and concern for environmental protection. The Committee finds that this interest is essential to the effective protection of the public health and welfare in the regulation of pesticides, and should be a required voice on the Board. Therefore the Committee recommends amending the statute to specify that the two public members on the Board of Pesticides Control will have a demonstrated interest in environmental protection, in order to retain needed expertise on the Board but ensure balanced decision-making in the public's best interest.

FINDING

120.

The Committee finds that the Board of Pesticides Control should serve as the lead State agency in developing a groundwater management plan for pesticides, in order to meet federal requirements and provide necessary coordination.

The Committee finds that the threat of ground water contamination by the use of pesticides in the state of Maine is a serious issue. For example, the Commission to Study the Use of Herbicides reports that returning pesticide-contaminated ground water back to a potable state is virtually impossible and that almost 50% of Maine's population relies on ground water for its drinking supply. Additionally, nearly 90% of all rural residents obtain drinking water from wells or springs fed from the groundwater.

In 1985, the Maine Legislature revised its Ground Water Protection Program pursuant to Title 38, section 401 to include a legislative finding that indicates that ground water resources of the state may be threatened by certain agricultural chemicals and practices, but that the nature and extent of this impact is largely unknown. Recently, the Maine Geological Survey completed a 3-year study of ground water contamination in Maine and reported positive indications for pesticide contamination in 26 of the 229 wells sampled. As a result of that study, the Maine Geological Survey has identified the following findings concerning ground water contamination in Maine:

- although pesticide residues are present in ground water in Maine, detectable concentrations were low in the wells sampled;
- data indicate that bedrock wells are more at risk of pesticide contamination than sand and gravel aquifers; and
- pesticides applied to potatoes may pose the greatest threat to ground water contamination in Maine because potatoes account for approximately 60% of all pesticides used in the State.

The Committee finds that a State Ground Water Management Plan should be developed for the following reasons:

- studies have shown that many domestic wells in agricultural areas of Maine contain pesticide residues, some of which are above established health advisories;
- such a plan is consistent with the state's overall strategy for protecting ground water resources, emphasizing prevention rather than relying on post-contamination mitigation; and
- the EPA is encouraging states to develop plans

by providing funds for that purpose and that registration of a number of important products in the near future will be dependent upon the existence of an approved plan.

The Committee notes that the Board of Pesticides Control is responding to the federal directive and public concerns by developing a plan to protect Maine's groundwater from pesticide contamination. With a \$53,000 grant provided to the Board by the U.S. Environmental Protection Agency, the Board has hired a planner to develop a ground water protection plan. The Committee also notes that the Board of Pesticides Control has performed extensive research and taken the administrative step of forming a planning committee and three working subcommittees. The planning committee has prepared a draft plan that was presented to the Board on December 7, 1990. The Committee understands that this plan is only in draft stage and that Board staff will seek public input before a final proposal is submitted to EPA for its approval.

Throughout the planning and early stages of developing a groundwater protection plan, Board staff have been working closely with personnel in the Maine Department of Environmental Protection, the Maine Geological Survey, and the Department of Human Services to develop an effective plan. However, to ensure ultimate success in developing an effective and coordinated state-wide plan, the Committee finds that one agency in State government needs to be designated as the lead coordinating agency. Accordingly, recognizing the Board of Pesticides Control's regulatory authority to modify pesticide application and its activities to-date toward the development of a plan, the Committee recommends that the Board of Pesticides Control serve as the lead State agency in developing a groundwater management plan for pesticides, in order to meet federal requirements and provide necessary coordination.

STATUTORY

121.

Continue the Board of Pesticides Control pursuant to the Maine Sunset law because of the continuing need to regulate the labeling, distribution, storage, transportation, use, and disposal of pesticides.

The Committee has reviewed in detail the purpose, organization, and activities of the Board of Pesticides Control [22 MRSA c.258-A]. Testimony presented by several interested parties including industry, environmental, and state government representatives was heard and considered by the Committee during its deliberations.

The Committee finds that the Board of Pesticides Control fulfills its mandate to regulate the labeling, distribution, storage, transportation, use and disposal of pesticides, and that these activities continue to represent a compelling public interest. Therefore the Committee recommends continuing the Board of Pesticides Control pursuant to the provisions of the Maine Sunset law.

JOINT RECOMMENDATION
BOARD OF PESTICIDES CONTROL
AND
MAINE EMERGENCY MEDICAL SERVICES

ADMINISTRATIVE	122.	Recommend that the Board of Pesticides Control and Maine Emergency Medical Services consult with the Bureau of Insurance, Department of Administration, private insurers, and any interested others to identify a means to secure affordable liability coverage for these groups' respective clientele. Submit a proposal to the Joint Standing Committees on Banking and Insurance and Audit and Program Review by May 15, 1991 for possible resolution of this issue by the Banking and Insurance Committee prior to the end of the session in progress.
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Commercial applicators of pesticides have been required to provide the Board of Pesticides Control with proof of financial responsibility for pesticide application, i.e. insurance, since 1975 [P.L.1975 c.397, §2]. The requirement was extended to spray contracting firms in 1983 [P.L. 1983 c.819]. Private applicators may also be required by the Board to provide proof of insurance [22 MRSA §1471-D, sub-§4].

In reviewing this requirement, the Committee found that chemical/pollution liability insurance coverage is no longer as readily available or affordable as it has been in the past. Large full-time businesses reportedly have been able to acquire pollution/chemical liability insurance but the cost of the premium is reportedly prohibitive for smaller businesses in Maine.

In considering the need to retain an insurance requirement for commercial applicators and spray contracting firms, the Committee finds that:

- pesticide application carries substantial environmental risks with potentially serious consequences if misapplied;
- compliance with the current requirement to provide the Board with proof of financial responsibility is difficult since insurance is not available, or, if available, only at high cost at a reasonable cost;
- insurance coverage for pesticide applicators is essential for the protection of the people, property, and environment of this State; and that
- the State continues to have a compelling interest in protecting the public from potential injury and property damage from pesticide or herbicide application.

Similarly, in reviewing Maine's emergency medical services system, the Committee notes that emergency medical services in Maine are provided extensively by a state-wide network of volunteers and that a reported lack of available and affordable liability insurance serves to deter volunteers from training and serving as emergency medical providers. Furthermore, the Committee found that if the volunteer network of providers were to collapse due to lack of insurance, replacing the volunteer network with paid workers would reportedly cost \$20 million.

In 1988-1989, the Committee made an administrative recommendation asking the Division of Risk Management within the Department of Administration to work with Maine Emergency Medical Services (MEMS) at solving the EMS insurance problem. In the first analysis, the Committee considered and rejected a proposal to provide insurance to these non-governmental entities through the State Insurance Pool, which is an Internal Service Fund, for three reasons:

- commingling "private" premiums paid by non-governmental entities with "public" premiums paid by State agencies is unacceptable;
- the federal government had expressed strong opposition to insuring non-governmental entities

through the State Insurance Pool since the State Insurance Pool contains some percentage of federal dollars; and

- the private insurance industry opposes the establishment of a State mechanism to manage the risk of non-governmental entities.

As an alternative approach, the Committee considered extending liability insurance to non-governmental entities by establishing an Enterprise account, to be administered by the Division of Risk Management within the Department of Administration. A number of Enterprise accounts are established in State government to account for state services provided to the general public on a user-charge basis. Enterprise accounts are intended to be self-supporting, but may not always achieve this goal. The two principal Enterprise Funds in State Government are administered by the Bureau of Alcoholic Beverages to control the sale of alcoholic beverages and the Department of Transportation to operate the Augusta State Airport, marine ports, and ferry services. Four other Enterprise Funds are used for Prison Industries, Seed Potato Board, Maine State Lottery, and the Potato Marketing Board.

The proposed Enterprise Account considered by the Committee is intended to insure and pay losses for non-governmental entities, as follows:

- non-governmental entities or activities that are determined by the Commissioner to be essential to the performance of a state government program or mandate. A number of these are currently insured through the State Insurance Pool. Funds attributable to these non-governmental entities would be removed from the State Insurance Pool and deposited into the Enterprise Account;
- pesticide applicators; and
- EMS people and services.

In exploring this option, the Committee found that the Independent Insurance Agents Association of Maine vigorously oppose the concept, maintaining that:

- the proposal would place State government in direct and unacceptable competition with free enterprise;

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- the issue is not one of insurance availability, but rather insurance affordability;
 - all potential options to address the apparent problem have not been thoroughly considered; and that
 - insuring non-governmental entities may expose the State to a greater degree of risk or liability than the Legislature should be willing to assume.

On the other hand, the Committee notes that the emergency medical services community maintains that:

- in many real-life instances, insurance is not available at any cost (thereby discussion of affordability in these cases is irrelevant). Emergency medical services in Bangor, Portland, Livermore Falls, and Windsor have been unable to obtain insurance for personnel under the age of 21-25 and a service in Unity is currently unable to obtain insurance for its Board of Directors;
- the private insurance industry has taken no initiative since the insurance problem has been identified in the last five years to assist these non-governmental entities with procuring available and affordable insurance, thereby justifying state intervention;
- although, as noted, emergency medical personnel have no insurance available in some cases, coverage apparently continues to be available to services (i.e. companies). However, the Committee notes that the insurance premiums for one service in Waterville have increased 50% in four years, from \$50,000 to \$101,000 and that a service in Belgrade pays \$1,400 per year for professional liability insurance for 12 individuals who make less than 50 calls per year; and
- the risk of providing liability insurance for emergency medical services in Maine is manageable, given that only three or four suits have been brought in Maine over the last five years out of approximately 600,000 runs. The Committee notes that the Division of Risk

Management reports that the risk of insuring EMS vehicles is no greater than the risk of insuring State police cars, currently insured through the State Pool.

In regard to pesticides applicators, the Committee finds that insurance appears to be available from a company based in Utah, for a premium of approximately \$1,000.

To summarize, at this juncture, the Committee finds that:

- making insurance available, and affordable, to Maine's emergency medical services and personnel, as well as to pesticides applicators, is important;
- wide differences of opinion exist regarding the nature of the problem and the best way to address and resolve the problem;
- the State Bureau of Insurance has the capacity to provide market assistance to private entities in need of insurance;
- in addition to insuring through the establishment of an Enterprise Fund, other possibilities may include creating an association to establish eligibility for a group insurance plan, exploring the option of participating in a risk retention group, or possibly creating a joint underwriting association, and
- at least two private insurers have expressed an interest in working with the State to provide insurance to non-governmental entities.

Accordingly, the Committee recommends that Maine Emergency Medical Services, and the Board of Pesticides Control, consult with the Bureau of Insurance, Department of Administration, private insurers, and any interested others to identify a means to secure affordable liability coverage for these groups' respective clientele. Discussion should continue to include all means considered by the Audit Committee, as well as any others that may be identified by the working group. Submit a proposal to the Joint Standing Committees on Banking and Insurance and Audit and Program Review by May 15, 1991 for possible resolution of this issue by the Banking and Insurance Committee prior to the end of the session in progress.

MAINE EMERGENCY MEDICAL SERVICES

MAINE EMERGENCY MEDICAL SERVICES

STATUTORY	123.	Relocate Maine Emergency Medical Services (MEMS) from the Department of Human Services to the Department of Public Safety and diversify MEMS's revenue base in order to organizationally align similar programs, ensure adequate financial support for emergency medical services in Maine, and improve Maine's statewide emergency medical services delivery system.
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In 1985-86, the Committee reviewed Maine Emergency Medical Services and made a number of recommendations to strengthen the Board's oversight and administrative authority, improve licensure requirements, realign service delivery regions, and generally improve the delivery of statewide emergency medical services. Since that time, the Committee has continued its interest in Maine Emergency Medical Services and has made a number of changes in the program's operation. Currently, Maine Emergency Medical Services consists of a Director and eight staff (with two frozen unfilled positions) in the Augusta central office, an Emergency Medical Services Board, and 6 regional councils. The central office staff are state employees who license emergency medical personnel and services and who regulate the delivery of emergency medical services throughout the state. The Board consists of 13 members, one member for each of the six regional councils and seven others consisting of a physician, an attorney, a professional nurse, and representatives of a for-profit ambulance service, a not-for-profit ambulance service, a first responder service, and the public (32 MRSA §88 sub-§1 ¶A). The board is authorized to delineate six Regions and Regional Councils within the State. Within the respective region, each Council is authorized to establish a regional medical control committee, appoint a regional medical director, advise the board on licensing issues, test EMS personnel, develop a certification and decertification process for advanced emergency medical services persons, nominate candidates for Board membership, and establish regional goals (32 MRSA §89 sub-§2).

During the course of its 1990-91 review, the Committee considered and ultimately rejected a proposal to separate MEMS from State Government because of the need to ensure adequate state oversight of Maine's emergency medical service delivery system and ensure that MEMS's employees retain membership and privileges in the state civil service system.

However, noting that emergency medical services consists of both a medical component and a public safety component, the Committee considered the relative merits of MEMS's current placement within the Department of Human Services versus relocating MEMS within the Department of Public Safety. The Committee ultimately found that MEMS would be better placed within the Department of Public Safety for the following reasons:

- Public Safety has considerable experience working with a varied array of administrative boards (i.e. Board of Trustees of the Maine Criminal Justice Academy, E-911 Advisory Committee, the Intergovernmental Drug Enforcement Policy Board, and the Governor's Highway Safety Council) and is better equipped to integrate the MEMS board into its current organizational structure;
- Public Safety is responsible for a number of emergency communication systems, such as the E-911 program,
- the Bureau of Highway Safety within the Department has areas of responsibility that complement MEMS's; and
- the Department's training responsibilities dovetail well with MEMS's training needs.

In addition, the Committee finds that MEMS's current revenue sources, the General Fund and the federal Preventive Health and Health Services Block Grant, are declining and that MEMS has a need to expand and diversify its revenue base. Accordingly, the Committee concludes that MEMS must be authorized to collect licensure fees, application fees, examination fees, course and conference fees, tuition, and other charges determined necessary by the board for the efficient operation of Maine's emergency medical services system and to deposit these funds into a nonlapsing dedicated account.

Finally, the Committee recommends that MEMS consult with the Bureau of Human Resources to arrange special personnel classification for staff currently designated as "licensing agents" in order to reflect more precisely these positions' job functions.

Accordingly, the Committee recommends relocating Maine Emergency Medical Services from the Department of Human Services to the Department of Public Safety and to diversify its revenue base in order to organizationally align similar programs, ensure adequate financial support for emergency medical services in Maine, and improve Maine's statewide emergency medical services delivery system.

**THE MAINE MILK COMMISSION
MAINE DAIRY PROMOTION BOARD
MAINE DAIRY & NUTRITION COUNCIL**

THE MAINE MILK COMMISSION

STATUTORY	124.	Continue the Maine Milk Commission pursuant to the Maine Sunset Law.
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FINDING	125.	The Committee finds that the potential administrative funding shortfall of the Maine Milk Commission and the continuing need for minimum price regulation should be reviewed by the joint standing committee having jurisdiction over agriculture.
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The Maine Milk Commission regulates the minimum wholesale and retail prices to be paid to producers (dairy farmers), dealers (dairies) and retail stores for milk received, purchased, stored, manufactured, processed, distributed or otherwise handled within the state. Minimum prices are established and adjusted by the Commission after investigations and public hearings. Prices set by the Commission are required to be "just and reasonable, taking into consideration the public health and welfare and the insuring of an adequate supply of pure wholesome milk to the inhabitants of this State." However, the Commission is specifically directed to consider the effect of its pricing decisions on the ability of the Maine Dairy Industry to compete in supplying milk to Maine consumers.

The Maine Milk Commission is part of the Bureau of Public Services within the Department of Agriculture, Food and Rural Resources, which also include the Animal Welfare Board and the Division of Regulation. The Commission as a regulatory agency has significant powers over dealers, including subpoena power, in order to ensure access to the records and figures necessary to administer the law. The Commission may also act as an intervener or mediator in disputes among consumers, dairies, and dairy farmers, any of whom may petition the Commission to address an issue.

Minimum milk prices have been established since 1935 with the passage of the Maine Milk Control Law. The Maine Milk Control Board (the name of the Maine Milk Commission until 1951) was created to provide general economic supervision of the dairy industry. It was originally comprised of the Commissioner of Agriculture and four industry representatives. In 1951, a consumer was added to the Board and the name was changed to the Maine Milk Commission.

In 1975, the law was dramatically changed, prohibiting representatives of the dairy industry or certain others with a potential conflict of interest from serving on the Commission. All members of the Commission, except the Commissioner of Agriculture, or the Commissioner's designee serving ex officio, must be consumers. In addition, prices were based on "Boston Market" prices as determined by Federal Milk Order adjusted to account for the additional cost of producing and transporting in Maine according to a theoretical model.

From 1975 to approximately 1981, the minimum prices established by the Commission were sufficiently high to allow most dairies and supermarkets to set their wholesale and retail prices at the minimums. The premiums above "Boston Market" prices determined by the theoretical model were too high. At one point in 1981, the prices controls actually fell apart. The Legislature filled the void by enacting minimum prices overriding the veto of Governor Brennan.

The Maine Milk Commission's rather stormy history continued through 1984 with the establishment of the Maine Milk Pool by Public Laws of 1983, chapter 573. This Act and several other Commission orders and decisions were challenged in court. In particular, the Maine Milk Pool was initially challenged by Maine Market Farmers and was ruled unconstitutional by the Superior Court. However, this decision was overruled by the Maine Supreme Judicial Court.

MAINE MILK POOL

The Maine Milk Commission, through an arrangement with the Department of Agriculture, Food and Rural Resources, administers the Maine Milk Pool. The pooling concept was a department initiated piece of legislation established to offset the differences in profitability between Maine dairy farmers selling on the Maine Market versus those selling on the "Boston Market". The intent of the pool is to avoid "destructive competition" within the more lucrative Maine market.

Very simply, each Maine Market dealer pays its dairy farmers the Boston Market price and must pay the difference or premium that would have been received by the Maine market farmers into the Pool, which is then distributed to all dairy farmers in the State equally by formula. The Milk Pool also serves as the collector of the fees per hundredweight for the Maine Milk Program. Administrative costs to administer the Maine Milk pool are also deducted prior to redistribution through the pool.

FUNDING AND STAFFING

The Maine Milk Commission is currently staffed by 5 employees: the Executive Director, 2 Auditor II's, a Secretary, and a Data Control Clerk. The Commission's largest expenditure category is grants/subsidies indicating redistribution through the Milk Pool and payments to the Maine Milk Program. The next largest groups of expenditures are Personal Services and Contractual Services.

Because the Milk Commission license fees are limited by statute, there has been growing pressure on this fixed revenue source, a \$1 annual license fee for each licensed dealer and a 5¢ per hundredweight fee on all milk handled in Maine, one-half paid by the farmers and one-half by dealers. This is demonstrated by the declining ending balances in the account, which as of June 30, 1990 was \$17,314 or 0.7% of the total annual expenditures. Only the Data Control Clerk and some other minor costs directly associated with the Milk Pool data collections are charged as administrative expenses to the Maine Milk Pool. The other 4 positions and all other expenses are funded by Milk Commission licenses and fees.

The Committee finds that, in addition to difficult issues facing the dairy industry, the Maine Milk Commission itself is also facing difficult financial issues due to the stagnation of its fees for its regulatory functions as mentioned above. The regulatory functions and fees are separate from the operations of the Maine Milk Pool. The Maine Milk Commission may deduct the cost of administering the milk pool from the funds collected for redistribution. On the other hand, Commission expenditures, particularly personal services expenditures, continue to grow. This has put significant pressure on the Commission's fixed revenue source which is set by statute. The Commission and the Department of Agriculture, Food, and Rural Resources have pursued several other methods to alleviate the burden on its fixed revenue source such as:

- Better allocating of costs to the Maine Milk Pool. Only one position is currently assigned

to the Maine Milk Pool and only those costs directly related to these positions have been assigned to the Milk Pool. The Committee noted that there are a number of positions and costs which could be accurately allocated to the Milk Pool.

- Reorganizing to eliminate one vacant Auditor Position due to a recent retirement. The Commission has proposed to reinstate this position, downgrade the Auditor to Research Assistant with the end result of upgrading a Data Control Specialist to Research Assistant so that some minor auditing functions can be done by this position.

These solutions will alleviate the budgeting problem in the short-run. However, the long-term trends will again result in a situation where growing expenses will out pace fixed revenues.

The Maine Milk Commission regulates milk prices at all levels, with the intent of providing wholesome Maine milk at reasonable prices and, according to 7 MRSA §2954, §§ 2 and 4, must balance the needs of Maine consumers against the health of the Maine dairy industry. This difficult balancing act has become even more difficult as a result of these recent price reductions. December minimum prices are so low that many Maine farmers will be forced to get out of the business. December milk prices have dropped significantly and, at \$14.62 per hundredweight, are below the average cost to produce the milk by Maine farmers. According to a recent study, the average cost to produce milk in Maine is \$17.17. However, if the Milk Commission maintains minimum prices at too high a level during this period of oversupply, dairies and retailers could be forced to look out-of-state for their milk suppliers.

There are still some within the dairy industry in Maine who espouse price deregulation and/or the elimination of the Maine Milk Commission. This sentiment is particularly strong among large retailers who feel that they would benefit from price deregulation and, in turn, so would the consumer as prices might be lowered overall. Most Maine Dairies have not actively supported the Milk Commission and price regulation in recent years out of fear of alienating the large retailers. However, most Maine Dairies could be adversely affected by price deregulation relative to multi-state dairies. Maine producers, dairy farmers, are still the main beneficiaries of price regulation and the effects of milk pooling.

The Committee finds that the Maine Milk Commission continues to perform a necessary service, however, the regulatory

economic environment for milk and milk products is at a crucial period. This combined with the pending funding problems of the Commission and the complexity of this subject prompts the Committee to ask the Joint Standing Committee on Agriculture to continue to review the regulatory requirements for the Maine Dairy Industry and the means to fund the Commission if continued regulation is desired.

STATUTORY	126.	Authorize the use of non-brand specific milk promotions or coupons in conjunction with other products to provide a reduction in the price of milk to the consumer without conflicting with minimum price regulation.
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Currently, the statutes of the Maine Milk Commission (7 MRSA §2954, sub-§7) prohibit the use of coupons or any promotion which would be contrary to the Milk Commission's, mandate to establish minimum prices for milk at all levels. Specifically, that section prohibits any discount, rebate, gratuity, advertising allowance or combination price for milk with any other commodity. Under current Maine law, even those coupons and promotions which are not brand specific are prohibited. For example, a national cookie or cereal company can not offer coupons which offer milk at a reduced price at the retail level in combination with the purchase of the cookies or cereal.

The Milk Commission is constantly reviewing requests by Maine Dairies, national food product companies, and other organizations for either advertising on milk containers or special promotions related to milk and dairy products. The commission must judge them with respect to the language of that section of the statutes.

The Committee received testimony regarding the implication of changing the law to allow price related milk promotions such as couponing. For example, both the Maine Dairy Promotion Board and the Maine Dairy and Nutrition Council have discussed the issue and expressed support for non-brand promotions in conjunction with other products.

The Committee finds that non-brand specific milk promotions

in combination with other products would benefit the consumer without conflicting with minimum price regulation. Accordingly, the Committee recommends that non-brand specific milk promotions or coupons be authorized to reduce the cost of milk to the consumer without conflicting with minimum price regulation.

FINDING	127.	The Committee finds that funds collected pursuant to the Maine Milk Pool should be accounted for as a fiduciary fund in accordance with the State Auditor's recommendation in order to more accurately reflect the purpose of these funds.
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The Maine Milk Pool collects funds from milk dealers, i.e. the dairies, for redistribution to farmers in order to offset the difference in profitability between the farmers selling on the "Maine Market" and those selling on the "Boston Market." These funds are collected by the Maine Milk Commission as the agent for the State. The redistribution of these funds is established in statute (7 MRSA C. 611, 3153).

This relationship is clearly a fiduciary or trust relationship with the Maine Milk Commission acting as the trustee to assure the appropriate redistribution of funds collected from private citizens and redistributed to private citizens. The Maine Milk Commission currently credits collections for the Maine Milk Pool to a Special Revenue Account, which is the same account as the Milk Commission's operations account. These functions are distinguished only as separate activities within that account.

The Committee notes that the most recent State Auditor's report indicated that these funds were reported incorrectly as other special revenue and expenditures, thereby distorting the actual expenditures of State government. The State Auditor, therefore, recommended that funds collected from the Maine Milk Producers pursuant to the Maine Milk Pool be credited to a Fiduciary Fund type.

However, the Committee notes that the Auditor's report is unclear on the treatment of the funds for the Maine Milk Program which are also collected through the milk pool. The funds of the Maine Milk Program are special taxes for a specific government

purpose and, therefore, do not fit the trust relationship of other milk pool funds. The accounting of these particular milk program funds has been distorted by the recording of these funds as "Grants" to the Maine Milk Program from the Milk Pool instead of "Transfers." This results in a double counting of other special revenue funds, both in terms of revenues and expenditures.

The Committee finds that the funds collected pursuant to the Maine Milk Pool are more accurately portrayed as fiduciary funds rather than other special revenue. Therefore, the Committee concurs with the recent finding of the State Auditor that these funds be established as fiduciary funds.

**MAINE DAIRY PROMOTION BOARD
AND MAINE DAIRY AND NUTRITION COUNCIL**

Maine Milk Program

STATUTORY	128.	Continue the Maine Dairy Promotion Board and the Maine Dairy and Nutrition Council which, collectively conduct the Maine Milk Program pursuant to the Maine Sunset Law.
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The Maine Milk Program within the Department of Agriculture, Food and Rural Resources consists of two closely related entities or programs, the Maine Dairy Promotion Board and the Maine Dairy and Nutrition Council. These programs are grouped under the Bureau of Agricultural Marketing along with the Department's several other Food and Agricultural Promotion and Research programs.

The "Maine Milk Program" does not include the Milk Quality Laboratory and the Dairy Inspection Program of the Division of Regulation. The Maine Milk Program also is distinct and separate from the Maine Milk Commission which is a regulatory body primarily representing the interests of the general public, and also insures a minimum return for Maine milk producers (dairy farmers).

The Maine Milk Program's primary purpose is to promote

dairy products and the welfare of the dairy industry in the state. The Maine Dairy Promotion Board is the advertising and promotional aspect of the program established to "promote the prosperity and welfare of the Dairy Industry of the State of Maine by fostering promotional, educational, advertising and research programs". Cost effectiveness has resulted in the use of the nationally sponsored and developed programs. The Board "places" selected national advertising in the local Maine markets and distributes the selected national promotional materials in the State. The Board also sponsors numerous promotional events such as shopping mall displays, fair exhibits, trade show promotions and industry public relations programs.

The Board was originally established as the Maine Milk Tax Committee in 1953 which oversaw the collection of a fee or tax assessed on Maine dairy farmers for a promotion program. In 1983, coinciding with the passage of the Dairy and Tobacco Adjustment Act at the Federal level, the name was changed to the Maine Dairy Promotion Board.

The Maine Dairy and Nutrition Council was established to develop nutrition education programs to teach consumers what to eat and why, and to aid in the training of professionals in the science of nutrition. These programs are aimed at promoting milk and dairy foods as an essential part of a healthy diet and in so doing ensuring the welfare of the Dairy Industry in the state.

The Council was originally established in 1949 as the Maine Milk Advisory Committee under the supervision of the Maine Development Commission. In 1951, it was renamed the Maine Dairy Council Committee and was incorporated into the Department of Agriculture in 1969. It was finally renamed the Maine Dairy and Nutrition Council in 1975.

The Maine Dairy Promotion Board consists of 4 dairy farmers and the Commissioner of Agriculture, Food and Rural Resources. The dairy farmers are appointed to the Board by the Commissioner on the recommendation of the various producer associations, individuals or unorganized groups of producers in the State. Members serve four-year terms on a rotating basis. The 4 producer members must include 2 producers selling on the Maine market and 2 selling on the Boston Market. The producers selling on the same market can not belong to the same agricultural cooperative or sell their milk to the same dealer. In addition, no person may be appointed to consecutive 4-year terms.

The Maine Dairy and Nutrition Council consists of 5 members; 4 producers and 1 dealer. The Commissioner makes the appointments for 4-year terms on a rotating basis based on the recommendations of the various industry groups. The 4 producer

members are subject to the same market distribution requirements as appointments to the Maine Dairy Promotion Board. Council members, as with the Maine Dairy Promotion Board members, may not be appointed to consecutive 4-year terms.

Since 1983, the federal government has decided to regulate and encourage the promotion of the Dairy Industry with the enactment of the Dairy and Tobacco Adjustment Act of 1983.

"It is in the public interest to authorize the establishment ... of an orderly procedure for financing ... and carrying out a coordinated program of promotion ... to strengthen the dairy industry's position in the marketplace and ... maintain and expand domestic and foreign markets ... for ... dairy products produced in the United States."

This Act authorized the collection of a fee of \$0.15 per hundredweight (cwt) of fluid milk from milk producer or dairy farmers by the National Dairy Promotion and Research Board, a quasi-government agency. This fee results in total collections of approximately \$210 million nationally. However, persons responsible for submitting the fee, dairy processors, may take a credit of up to \$0.10/cwt for payments made to qualified state and regional promotion programs such as the payments made to the Maine Milk Program. The National Dairy Promotion and Research Board works closely with other promotion organizations which have been in existence prior to 1983. The largest of these is the United Dairy Industry Association (UDIA), a federation of several dairy promotion organizations and nutrition education and research groups/councils. UDIA includes such organizations as the American Dairy Association (advertising and marketing services), the National Dairy Council (nutrition education and research) and Dairy Research Inc. (product and process research and development).

The Maine Dairy Promotion Board is a member organization of UDIA. The Maine Dairy and Nutrition Council is one of the affiliated Dairy Council Units of UDIA. Member and affiliated organizations such as the Maine Milk Program pool resources, in a sense, to develop the highest quality promotional and educational materials possible, which would be too expensive to produce locally, besides being duplicative. The programs and materials are currently being developed on a user pay basis with the member organizations deciding whether to participate. The cost to the local promotion boards and nutrition councils depends on the number of participants in each promotion or nutrition education program.

The Committee notes that a comparison of the Maine Milk Program to those of other states is difficult due to the diversity

among the states. Several New England states have no equivalent programs but rely on regional organizations such as Milk Promotional Services, Inc. in Montpelier, Vermont for promotional services. (Maine also contracts with Milk Promotion Services, Inc. for certain promotion programs.) Other states use private independent organizations organized within the state, but not established by statute.

The Maine Milk Program is a qualified program under the Federal law and therefore \$0.10/cwt of the funds collected for the Maine Milk Program are credited toward the \$0.15/cwt federal assessment. Maine actually collects more than the \$0.10/cwt for the Maine Milk Program. In addition to the 10 cents for promotion collected from dairy farmers (\$0.02/cwt of which is turned over to the Maine Dairy and Nutrition Council), \$0.015/cwt is assessed on Maine milk dealers based on the milk produced and sold on the Maine Market for Maine Dairy and Nutrition Council activities.

The Committee finds that revenues have generally exceeded expenditures for these dedicated revenue accounts and, at the end of fiscal year 1988-89, the balances were in excess of 25% of the 1988-89 expenditures. Part of these excess balances were due to a lengthy vacancy in the director position during fiscal year 1988-89. In addition to the salary savings, the vacancy resulted in a lack of leadership at a time when UDIA was implementing a new user pay program for promotional and other programs.

Currently, the Maine Dairy Promotion Board employs a director and a part-time secretary (Clerk Typist II). The Director whose salary and benefits are paid from the Maine Dairy Promotion Board funds actually serves as the Director for both programs. The Maine Dairy and Nutrition Council employs two Nutritionists, a secretary (Clerk Typist IV), and a part-time shipping clerk (Stores Clerk). Whereas the majority of the expenditures of the Dairy and Nutrition Council (approximately 65%) were for Personal Services, over 85% of the Maine Dairy Promotion Board's expenditures were directed at promotional items and, therefore, were contractual services or grants.

The Committee finds that the Maine Dairy Promotion Board and the Maine Dairy and Nutrition Council (referred to collectively as the Maine Milk Program) continue to serve a valuable service to the Dairy industry and the consuming public and, therefore, should be continued pursuant to the Maine Sunset Law.

STATUTORY

129.

Extend the maximum length of service on both the Maine Dairy Promotion Board and the Maine Dairy and Nutrition Council from one consecutive 4-year term to two consecutive 4-year terms in order to improve the experience and effectiveness of Board and Council members.

Prior to 1983, members of both the Maine Dairy Promotion Board and the Maine Dairy and Nutrition Council had served two year terms with no restriction on the number of consecutive terms that could be served. As a result, a number of members of both the Board and Council were repeatedly reappointed and were perceived as "monopolizing" the agenda and prohibiting other members of the dairy industry from serving. Accordingly, in 1983, the Legislature extended a single term of service from two to four years, but limited service to one term only.

During the course of its review, the Committee considered testimony regarding the one-term limitation on members' service. The Committee found that members of the Board and Council reported needing several years to become accustomed with their responsibilities, both the Council and Board could benefit from members in a second term who had gained experience during a first term, and that a complete turnover of membership every four years reduced the Board's and Council's effectiveness in carrying out mandates. However, the Committee also found that unrestricted terms of service should be avoided in order to allow new membership on a fairly regular basis.

Therefore, the Committee recommends that the members of the Maine Dairy Promotion Board and the Maine Dairy and Nutrition Council be authorized to serve two consecutive four-year terms to provide continuity and experience to the Board and Council and enhance the effectiveness of both organizations.

STATUTORY

130.

Consolidate statutory language governing the Maine Dairy and Promotion Board and the Maine Dairy and Nutrition Council with other milk related statutes.

Both the Maine Dairy Promotion Board and the Maine Dairy and Nutrition Council were originally authorized in Title 36 when the Board, then known as the "Maine Milk Tax Committee" was associated with the Maine milk tax, which was administered by the State Tax Assessor, also located at that time in Title 36. With the creation of the Maine Milk Pool in 1983, all references to the milk tax were moved to Title 7 and the State Tax Assessor no longer had any administrative oversight responsibility. Currently, the majority of milk and milk related statutes are found in Title 7. However, the governing language for the Maine Dairy Promotion Board and the Maine Dairy and Nutrition Council continue to be placed in Title 36 with a number of agricultural taxes and commodities such as blueberries and potatoes.

In order to improve access to milk-related law, the Committee recommends consolidating language governing the Maine Dairy Promotion Board and the Maine Dairy and Nutrition Council in Title 7 with other milk related statutes.

SEED POTATO BOARD

SEED POTATO BOARD

ORIGIN AND PURPOSE

The Seed Potato Board was established in April of 1945 to foster and improve the seed potato industry of the State of Maine. The original Board consisted of the Commissioner of Agriculture, who served as the Board's Chair, and six members appointed by the Governor from specified areas of the State for terms of three years. The Seed Potato Board was formed to ensure an adequate supply of foundation seed potatoes for the state's commercial seed potato producers, and ultimately, for Maine's potato industry. Initially, foundation seed was grown in isolated areas by private growers under contract to the Board. In 1947, the Board decided to purchase a farm in the Aroostook County town of Masardis, enabling it to better control and supervise the production of foundation seedstocks.

Pursuant to 7 MRSA §2154, the Seed Potato Board's mandate is to "produce such acreages of foundation seed potatoes of various varieties for distribution to the potato growers of this state". Other responsibilities of the Board include working with the Maine Agricultural Experiment Station of the University of Maine to conduct an annual program of foundation seed potatoes and establishing rules and regulations pertaining to its program of production, distribution and sale of seed potatoes. The Board is authorized to purchase farm real estate and farm equipment for the purpose of producing acreages of seed potatoes. In addition to holdings in Maine, the Seed Potato Board operates a 70 acre seed farm in Florida, where winter testing of seed potatoes is conducted.

ORGANIZATION AND STAFFING

The current Seed Potato Board is comprised of eight members, appointed by the Commissioner of Agriculture. All appointed members must be representatives of the potato industry, seven from Aroostook County and one from elsewhere in the State. One appointed member must be primarily a tablestock producer and another primarily a processor producer. Members can serve for 2 consecutive three year terms. The Board annually elects a chair and a secretary. Traditionally, the Director of the Division of Plant Industry with the Department of Agriculture serves as the secretary to the Board.

The Seed Potato Board employs a staff of 17 to carry out

its programs. A program director oversees the day-to-day operation of the Board and supervises a plant pathology technologist, who oversees the greenhouse, laboratory and disease testing programs, and three agricultural workers, each of whom oversees a particular program (the Porter Farm field program, the Florida farm disease-testing program, and the Sangerville new variety development program). Each of these managers directs the activities of a staff of full and temporary employees.

The Program Director seeks broad policy direction from the Seed Potato Board and the Maine Department of Agriculture, and makes the day-to-day decisions on work to be performed.

An organizational chart for the Seed Potato Board appears on the following page.

BOARD OBJECTIVES

Specific objectives of the Seed Potato Board include the following.

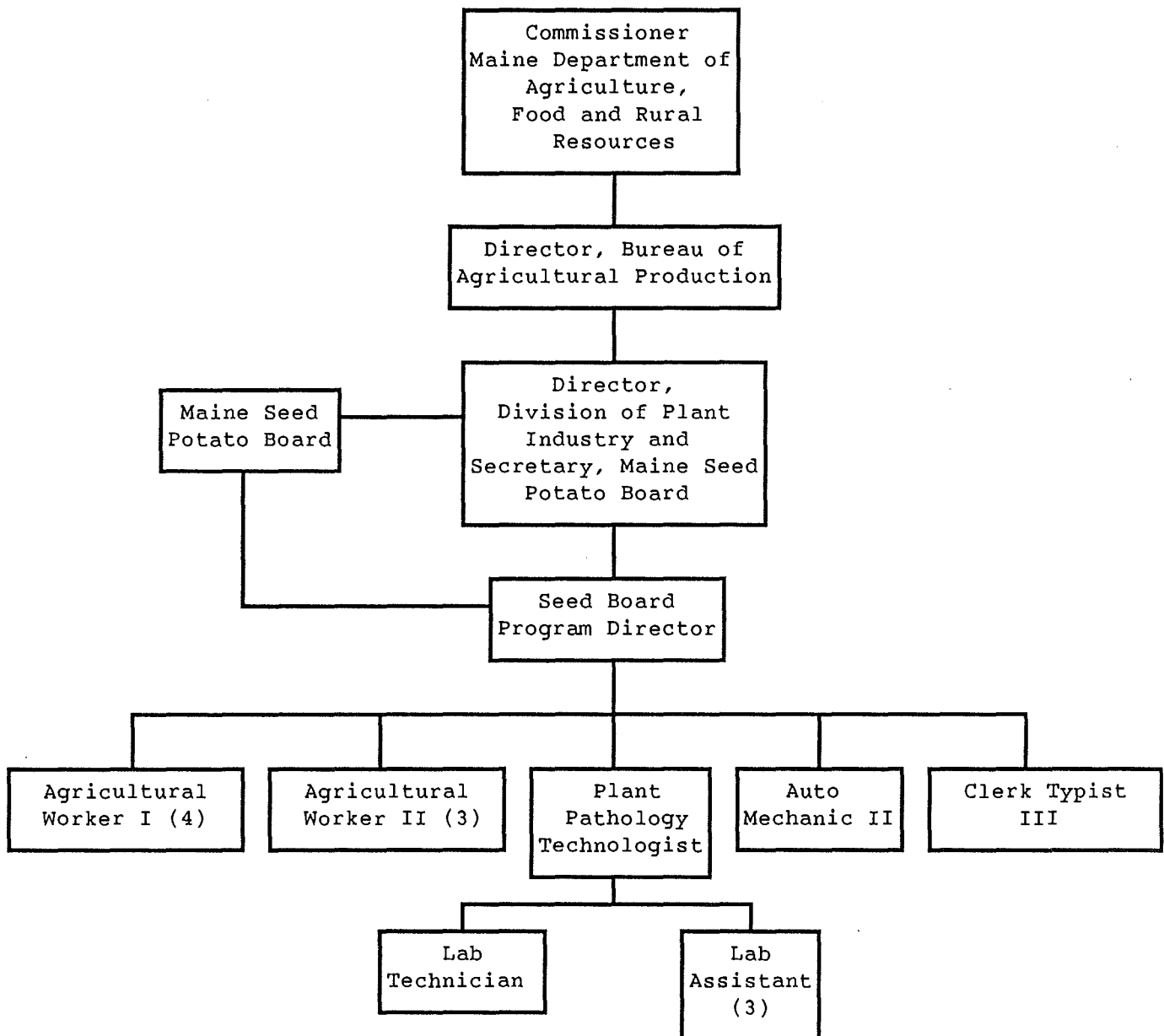
- **Seed Potato Needs**

The first priority of the Seed Potato Board is to produce a sufficient quantity of the appropriate seed potato varieties for Maine's seed industry. In fiscal year 1990, the Maine Seed Potato Board sold 19,893 hundredweight (cwt.) of seed to Maine potato growers. All of the seed was derived from the nuclear seed program, which involves laboratory techniques and greenhouse culture to provide the starting material for the Board's crop. This starting material is pathogen-tested by the most sensitive serological tests available to ensure that it is free of injurious diseases which can severely limit the quality of the crop.

- **Post Harvest Disease Testing**

The Seed Potato Board also manages the post harvest disease testing program, conducted at its farm in Homestead, Florida. Under current regulations, growers submit samples from their fields and seedlots that are entered for certification with the Division of Plant Industry of the Maine Department of Agriculture. Samples are received in October, treated to break dormancy and transported to Florida in early November. Planting is generally finished by late November and growth is adequate by early January for disease inspection by the staff. Data handling is computerized and results are available to growers by mid-January.

MAINE SEED POTATO BOARD



• **New or Experimental Varieties**

The Board must produce a sufficient quantity of seed of new and experimental varieties for testing and evaluation in the northeastern United States. This seed is currently produced by a seed potato producer in Sangerville, Maine under contract with the Board. The project is supervised by one of the Board's senior staff members. Seedlings and varieties are planted, harvested and stored each year for evaluation. Beginning in 1991, the project will be moved to the Porter Farm in Masardis.

FUNDING AND EXPENDITURES

The Seed Potato Board is supported by funds from the General Fund, federal funds, revenue derived from the farms in Maine and Florida, and other miscellaneous sources. The following is a summary of revenues and actual expenditures for fiscal year 1990:

Revenues		Expenditures	
General Fund	\$ 260,000	Positions	(17)
Federal Funds	25,000	Personal Services	467,853
-USDA Project		All Other	524,540
		Capital	<u>33,858</u>
Other Sources		TOTAL	\$1,026,251
- Masardis, Maine			
Seed Potato Sales	469,182		
- Homestead, Florida			
Post Harvest Test			
Samples	118,320		
Rental of Land	92,025		
- Other	<u>45,372</u>		
TOTAL	\$1,009,899		

As can be seen from the above display, expenditures of the Board exceeded revenues in fiscal year 1990, a situation that has occurred in four of the last six years, as illustrated in the following financial summary.

Maine Seed Potato Board

Financial Summary

<u>Item</u>	<u>FY 85</u>	<u>FY 86</u>	<u>FY 87</u>	<u>FY 88</u>	<u>FY 89</u>	<u>FY 90</u>
Balance F'ward	210,708	72,206	-12,097	14,627	93,804	29,431

Revenues	747,289	881,084	889,828	966,580	1,096,325	1,009,899	
Expenditure	885,791	965,387	863,104	887,403	1,160,699	1,026,251	
Gain or Loss	-138,502	-84,303	26,724	79,177	-64,374	-16,352	
Ending Balance	72,206	-12,097	14,627	93,804	29,430	13,078	

The secretary of the Board anticipates that the Board's programs will face another deficit year for FY 91.

Many recent technological changes have occurred at the Masardis farm which have increased the cost of operating the Board's programs. The laboratory and greenhouse operation have required additional staff. Also, more sophisticated tests to evaluate the disease content of potatoes at both the Masardis and Florida farms have increased.

Another factor contributing to the financial inconsistencies of the Maine Seed Potato Board is the impact of the collective bargaining agreement. The required cost-of-living increases significantly impact the Board's budget, of which 46% consists of personnel costs.

In an attempt to reduce expenditures, the Seed Potato Board has instituted a policy to postpone purchasing any noncritical new capital equipment at either of the two farms. Most of the farm equipment owned by the Board is forty to fifty years old. The Board testified that it is only a matter of time before this equipment begins to fail.

COST CONTAINMENT MEASURES

Two years ago the Maine Seed Potato Board established a subcommittee to review its ongoing financial condition and make recommendations for change. The following represents the subcommittee's proposed cost containment measures, as implemented by the Board in an attempt to carry out its programs within the constraints of its budget.

1. Transferred the Foundation Roguing Program to the Seed Potato Certification Program. Estimated savings - \$3-5,000. This action also freed one staff member from supervising the program so that he could spend more time at the Porter Farm, reducing the need for overtime among other staff members.
2. Increased the price of seed from Porter Farm from \$22 to \$24 cwt. Estimated increase in revenues - \$32,000.

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3. Increased the Florida Test fees from \$55 per sample to \$60-70 per sample, depending on the class of seed to be evaluated. Estimated increase in revenues - \$15,000.
 4. Required pre-contracting of all varieties with sales of less than 100 cwt. and prohibit the production of varieties for which there is a demand of less than 50 cwt.
 5. Reduced the number of varieties produced at the Porter Farm from 96 to 60, reducing the labor needed to clean and disinfect crop handling equipment between varieties.
 6. Reduced the acreage produced at the Porter Farm from 103 to 94. Estimated savings in fertilizer and chemicals - \$3,000. Also reduced the labor needed to plant, rogue, cultivate, and harvest the crop.
 7. Authorized the Program Director to purchase various pieces of equipment, e.g. 2,000 feet of irrigation pipe, a used traveling irrigation unit, new pressure-washing equipment, etc., which were reported to reduce labor costs.
 8. Sold Nuclear 3 seed from the Porter Farm at a premium over Nuclear 4 seed, given sufficient availability.

The Secretary of the Board testified that the cost containment measures implemented by the Board will not resolve this ongoing financial problem and estimated that the Board will experience an operating deficit of approximately \$30,000 to \$40,000 for fiscal year 1991. When the 7% collective bargaining wage increase scheduled for July 1, 1991 is factored in, the deficit for fiscal year 1992 may be even worse, according to the secretary.

STATUTORY

131.

Authorize the Maine Potato Board to fund the deficit of the Seed Potato Board for the single fiscal year of 1991.

ADMINISTRATIVE 132.

In tandem with the recommendation of the Joint Standing Committee on Appropriations and Financial Affairs, establish a working committee composed of representatives of the Legislature, the Maine Potato Board, the Seed Potato Board, the University of Maine, the Department of Agriculture, and an agricultural business consultant, to review the means by which foundation seed potatoes are produced and distributed to Maine's potato industry in order to make recommendations to increase efficiency and streamline operations.

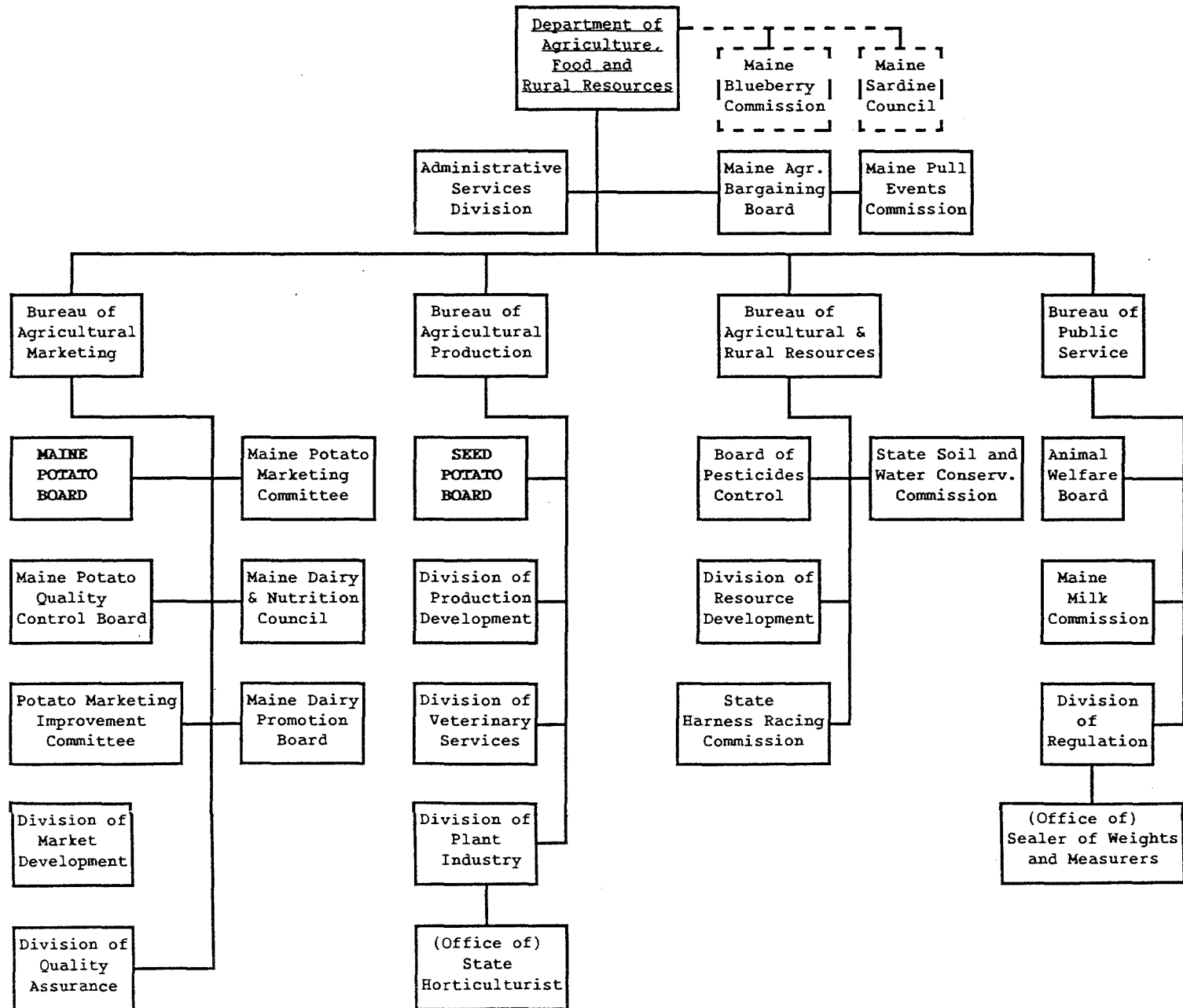
STATUTORY 133.

Continue the Seed Potato Board under the provisions of the Maine Sunset law.

In order to address the chronic deficit of the Seed Potato Board, the Committee consulted with other entities in the potato industry, particularly the Maine Potato Board. The Maine Potato Board is an eleven-member Board of potato growers, processors, and shippers who cooperatively solve problems and address issues in the industry. In this way, the Maine Potato Board serves to ensure the health and the advancement of the Maine potato industry in the public interest and for the public good. The chart below shows the organizational relationship between the Maine Potato Board and the Maine Seed Board within the Department of Agriculture.

The Committee notes that the studies, research, marketing, and promotion undertaken by the Maine Potato Board, as well as the Board itself, are entirely supported by the Potato Tax, a tax of \$.05 per hundredweight on all potatoes grown in Maine and that the dedicated account contains a positive balance.

ORGANIZATIONAL CHART
DEPARTMENT OF AGRICULTURE, FOOD AND RURAL RESOURCES



Furthermore, the Committee notes that the Legislature has enacted a recommendation from the Joint Standing Committee on Appropriations and Financial Affairs establishing a "Commission to Study the State's Seed Farms" (P.L. 1991 chapter 9 Part F). The Study Commission is directed to examine the "history, functions, and responsibilities of the operations of the Porter Farm and the Homestead Farm" and to submit a report for "improving the efficiency and effectiveness of the farms" by June 1, 1991. As a result of its own review, the Audit Committee also identified a need for a knowledgeable Working Group to convene and review the Maine Seed Board's projected deficit and overall operation in order to ensure efficient operation and to avoid future shortfalls.

Accordingly, the Committee recommends that the Maine Potato Board be authorized to fund the deficit of the Seed Potato Board for the single fiscal year of 1991. Additionally, in tandem with the recommendation of the Joint Standing Committee on Appropriations and Financial Affairs, the Committee recommends the establishment of a working committee composed of representatives of the Legislature, the Maine Potato Board, the Seed Potato Board, the University of Maine, the Department of Agriculture, and an agricultural business consultant, to review the way in which the legislative mandate of the Seed Potato Board is carried out and to make recommendations to increase efficiency and streamline operations.

Finally, the Committee finds that the Seed Potato Board is effectively fulfilling an important legislative mandate, and should continue to do so. Therefore the Committee recommends continuation of the Seed Potato Board under the provisions of the Maine Sunset Act.

STATE PLANNING OFFICE

STATE PLANNING OFFICE

STATUTORY	134.	Continue the State Planning Office for one year, under the provisions of the Maine Sunset Law.
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Established in 1968 as an agency of the Executive Department, the primary purpose of the State Planning Office is to assist the Governor, Legislature, and other state agencies by identifying current development-related problems and opportunities, providing guidance for the economic, social, and physical development of the State; providing a framework for intergovernmental planning and coordination of planning activities at the federal, state, regional and local levels.

Due to the Audit Committee's demanding 1990-91 review schedule and the complexity of the issues encountered in other scheduled reviews, the Committee was not able to perform the review of the State Planning Office prior to its unexpectedly early deadline for completion. The Committee notes also that this agency has been targeted by another legislative committee, for consolidation with the Department of Economic and Community Development, however this proposal had not been finalized by the time the Audit Committee's bill was drafted.

The Committee finds that continuing the State Planning Office for one year will serve to schedule the agency for review during the next cycle, in the event that it is not disbanded by the Legislature. Therefore the Committee recommends continuing the State Planning Office for one year, under the provisions of the Maine Sunset law.

STATE BOARD OF VETERINARY MEDICINE

STATE BOARD OF VETERINARY MEDICINE

STATUTORY	135.	Continue the State Board of Veterinary Medicine under the provisions of the Maine Sunset Law.
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The State Board of Veterinary Medicine was first known as the Board of Veterinary Examiners when it was created in 1905 as an independent entity. The Board was established to protect the public interest through the regulation of the practice of veterinary medicine in the State of Maine in order to maintain high professional standards.

The Board is composed of six members appointed by the Governor for five year terms. Current law specifies that five members shall be licensed Maine veterinarians who are residents of this State, graduates of a veterinary school, and who have been licensed to practice veterinary medicine in Maine for the five years preceding their appointment. The sixth member represents the public.

The Board was assigned to the Department of Agriculture in October of 1973 and transferred to the Department of Professional and Financial Regulation in September of 1986. The Department provides support services to the Board, as well as legal counsel. The day to day operations are conducted by the Board Clerk, with assistance by the Health Board Coordinator and Director of the Division of Licensing and Enforcement with the Department of Professional and Financial Regulation.

Currently, the Board has 785 licensees: 547 veterinarians and 238 animal technicians. By law, the Board is required to meet at least once a year. The following is a tabulation of the meetings of the Board and the number of examinations conducted for the past six fiscal years:

<u>Fiscal Year</u>	<u>Number of Board Meetings</u>	<u>Examinations Held</u>
1989-90	6	2
1988-89	4	2
1987-88	6	3

1986-87	8	1
1985-86	5	1
1984-85	5	1

The Board receives and resolves complaints and continues to do so on a regular basis. During the past few years, the Committee finds that the Board has refined its complaint procedure to deal in a more timely manner with complaints against veterinarians, animal technicians and persons engaging in unlicensed or otherwise unlawful practice of veterinary medicine. The increased availability and use of legal counsel in these matters has been helpful to the Board in determining appropriate and prompt responses to complaints, especially those calling for disciplinary measures. Currently, the Committee notes that one Board ruling is being appealed to the Maine Superior Court.

During FY 90, the Board promulgated new rules mandating a minimum of 12 hours of continuing education every year in order to remain licensed.

The Board is funded exclusively through dedicated revenues generated from application and license fees paid by animal technicians and veterinarians in Maine. In FY 1990, the Board:

- collected revenues of \$21,176
- incurred expenditures of \$16,809
- maintained a balance of \$35,329 as of June 30, 1990.

Upon consideration of whether the Board needed to be continued, the Committee concluded that, to protect the public health and welfare, the veterinary profession requires continued state regulation. Therefore, the Committee recommends that the State Board of Veterinary Medicine be continued under the provisions of the Maine Sunset law.

MAINE AGRICULTURAL BARGAINING BOARD

MAINE AGRICULTURAL BARGAINING BOARD

STATUTORY	136.	Continue the Maine Agricultural Bargaining Board under the provisions of the Maine Sunset Law.
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The Maine Agricultural Bargaining Board was established by the 106th Legislature in 1973. The Board was established to provide a mechanism by which producers of agricultural products can bargain with handlers for the best price and best terms of the sale. This mechanism includes certifying organizations of producers, requiring handlers and qualified associations to bargain in good faith and overseeing the mediation process, as well as binding arbitration.

The Board is composed of five members and two alternates appointed by the Governor. One member represents the interests of producers, one member represents the interests of handlers, and three are public members. One member and one alternate are chosen from a list of names submitted by agricultural producer organizations and one member and one alternate are chosen from a list of names submitted by processors of agricultural products. These members may not serve more than 2 terms in succession. This limitation does not apply to the public members or to the alternates, all of whom serve 3 year terms.

The Maine Agricultural Bargaining Board is charged with the following:

- qualifying producer associations;
- hearing and ruling on complaints that a party is refusing to bargain;
- receiving mediator and arbitrator reports and preparing contracts based on the arbitrator's report;
- hearing and ruling on complaints of unfair practices; and
- asking the Superior Court for enforcement of its orders with respect to refusal to bargain or unfair practices.

At the request of the Joint Standing Committee on Agriculture, the Legislative Council, in July of 1989, authorized a 5 person committee to study the Agricultural Marketing and Bargaining Act. The committee focused upon the mediation and arbitration process and submitted legislation to implement its recommendations. The portions of the bill establishing a written mediator's report and references to the report's use by an arbitrator were deleted. Other statutory recommendations were enacted into law during the 2nd Regular Session of the 114th Legislature. Public Law 1989, c. 703, clarifies that a public member of the Maine Agricultural Bargaining Board may not have conflicting interests while serving on the board. This bill also repealed and replaced existing language governing the arbitration process that was amended by PL 1989, c. 201 and enacted criteria for arbitrators to use in making their decisions on unresolved matters.

Organizationally the Board is located within the Department of Agriculture, Food and Rural Resources. The Department provides support services to the Board through the Commissioner's Office and the Office of the Director, Bureau of Public Service.

In 1979, the Committee on Audit and Program Review recommended elimination of the General Fund appropriation to the Maine Agricultural Bargaining Board because the Board had no regularly scheduled meetings.

Beginning in fiscal year 1980-81, the Board no longer received a \$3,000 appropriation for each year of the biennium. Board expenditures, since that time, have been absorbed within the Department of Agriculture, Food and Rural Resources, Administrative Services Division. Expenditures are primarily made for per diem and expenses of board members and transcription services. Members of the board are compensated at the rate of \$75 per day and are authorized to receive expenses as well.

The board does not charge fees, therefore no revenue is generated. All costs of mediation or arbitration are paid directly by the parties involved.

The December 1989 Final Report of the Study Committee on the Agricultural Marketing and Bargaining Act included an administrative recommendation that the Agricultural Bargaining Board should adopt rules as directed in 13 MRSA §1956, sub-§6 to further clarify the role of mediators and arbitrators. The Committee notes that proposed rules were drafted in June of 1990 with a public rulemaking hearing held in the fall of 1990.

In order to ensure that these rules would be promulgated in a timely fashion, the Committee required the Maine Agricultural Bargaining Board to report to the Committee by January 1, 1991 regarding the status of the rules. The Committee finds that the rules are in the final stages of promulgation and are due to take effect before this report is published.

Upon consideration of whether the Board needed to be continued, the Committee concluded that the Board meets a public need which is not duplicated by any other state agency. Therefore, the Committee recommends that the Maine Agricultural Bargaining Board be continued under the provisions of the Maine Sunset law.

CAPITOL PLANNING COMMISSION

CAPITOL PLANNING COMMISSION

STATUTORY	137.	Continue the Capitol Planning Commission for one year, pending completion of the work of the Special Committee on the New Capitol Area Master Plan.
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The Capitol Planning Commission is established in Maine law (5 MRSA, Chapter 14-A) to institute the development of a master plan to guide future State policy in the expansion of the State's physical plant and in the locating of state buildings and other public improvements in the Capitol area; to submit the completed plan to the Legislature for adoption; and to submit amendments as it deems necessary to the Legislature for adoption and inclusion in the official State master plan. The intended policy for development of the Capitol area is to proceed with economy, careful planning, aesthetic consideration, and with due regard to the public interests involved.

The Capitol Planning Commission was originally established in 1967, and recreated in 1973 following a one year hiatus. The Commission consists of the Director of the State Planning Office, a member of the Augusta City Council and 7 members appointed by the Governor representing the Capitol district, the city, and the State. In addition, the Director of the Bureau of Public Improvements serves as secretariat for the Commission.

In 1989, the Legislature created the Special Committee on the New Capitol Area Master Plan to oversee the competition and selection of a master planner for the Capitol area. Four members of the Capitol Planning Commission serve on the Special Committee, including the Chair, who chairs both bodies.

The Committee finds that the work of the Special Committee has superseded that of the Commission and caused the temporary suspension of the activities of the commission. Therefore, the Committee recommends continuing the Capitol Planning Commission for one year, under the provisions of Maine law, pending completion of the work of the Special Committee on the New Capitol Area Master Plan.

EDUCATIONAL LEAVE ADVISORY BOARD

EDUCATIONAL LEAVE ADVISORY BOARD

STATUTORY	138.	Continue the Educational Leave Advisory Board under the provisions of the Maine Sunset Law.
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The Educational Leave Advisory Board was established in 1974 to, "....review and authorize all educational leave requests from classified and unclassified state employees for a duration of more than one week." (5 MRSA §§721 - 727) Current law states that in performing this function, the Board must consult with the Bureau of Human Resources.

By law, the Educational Leave Advisory Board is composed of 5 members: The Director of the Bureau of Human Resources, who serves as Chair, the Commissioner (or designee) of the Department of Educational and Cultural Services, the manager of human resource development within the Bureau of Human Resources, and 2 state employees appointed by the Governor for 3 year terms. Board members are not entitled to compensation for their specific board related duties.

The Board is also responsible for developing rules which establish procedures for employees to apply for educational leaves, approving applications, maintaining an up-to-date register of approved educational leaves, and seeking advice from the involved department head on the merits of a requested educational leave.

In practice, the Board does not meet as a body. Instead employee educational leave requests are forwarded to the Bureau of Human Resources' Director. Once received, the applications are reviewed by the Director and a Bureau staff member. After review, the Bureau of Human Resources' Director will issue a recommendation regarding a specific application and circulate the complete application package to other Board members for their consideration.

In reviewing an application, Board members consider recommendations from the employing agency, terms (length) and conditions (financial compensation) of the proposed leave, likely benefit(s) to employee and employer, usefulness of the educational program to needs of the state, and possible impact of the proposed leave on the agency's program and operational responsibilities.

In recent years, the Board has averaged 23 requests for educational leave per year. In FY 1990, the Educational Leave Advisory Board received 14 proposals and approved all of them. The 14 requests came from two agencies; thirteen of the requests came from the Department of Mental Health and Mental Retardation, and one from the Department of Transportation. The approved requests included six for bachelor degree programs, two for a master's degree program, and six for associate degree programs. In addition, seven of the approved leaves were for part-time leave with pay, three were for part-time leave without pay, and four were for full-time leave without pay.

Current law (5 MRSA §725) prohibits the Board from receiving and/or using state funds to administer its responsibilities. Finally, current law also allows the Board to "apply for and accept donations and contributions from any other source to further assist it in carrying out the purposes of this chapter."

As part of the Committee's 1989-90 review, the Educational Leave Advisory Board was continued for one year, with a directive from the Committee to conduct a detailed review of the current adequacy of governing statutes and existing guidelines and submit a written report concerning the results of this review, and any subsequent recommendations, to the Joint Standing Committee on Audit and Program Review and State and Local Government by October 1, 1990.

The Educational Leave Advisory Board has completed the required report and has submitted several recommended statutory changes which the Committee has adopted as formal recommendations included in this report. The Joint Standing Committee on Audit and Program Review finds that the Educational Leave Advisory Board serves a valuable purpose in reviewing and approving educational leaves of significant duration for state employees. Therefore, the Joint Standing Committee on Audit and Program Review recommends that the Educational Leave Advisory Board be continued under the provisions of Maine Law.

STATUTORY

139.

Establish an Educational Leave Scholarship Fund account to provide a funding mechanism for deserving educational leave requests by state employees.

Upon review, the Committee found that the Educational Leave Advisory Board does not have any legal authority to accept funds which could be used to help pay for the costs related to a worthwhile educational leave request by a state employee. The Committee further found that the Board needs to have the authority to accept funds to be used for educational leaves.

Therefore, the Joint Standing Committee on Audit and Program Review recommends that current law be amended to establish an Educational Leave Scholarship Fund account to provide a funding mechanism for deserving educational leave requests by state employees.

STATUTORY

140.

Authorize the Educational Leave Advisory Board to retroactively approve certain justifiable requests for educational leave.

Upon review, the Committee found that at the present time, the Educational Leave Advisory Board does not have any statutory authority to approve worthwhile educational leave requests which, due to unavoidable circumstances, were submitted retroactively. The Committee also found that on occasion, there will be a situation in which an employee has a legitimate reason for submitting a retroactive educational leave request and that the Board should have the authority to consider those requests.

Therefore, the Joint Standing Committee on Audit and Program Review recommends that current law be amended to authorize the Educational Leave Advisory Board to retroactively approve certain justifiable requests for educational leave.

STATUTORY

141.

Authorize the Educational Leave Advisory Board to approve educational leave requests of 30 days or more.

Upon review, the Committee noted that the Educational Leave Advisory Board is currently authorized to approve all requests for educational leave that are for one week or more. The Committee found that many of the current training and educational opportunities available to state employees are for a duration of less than one month. The Committee further found that the Board cannot effectively approve the multitude of shorter educational leave requests which are being generated and that this task can be accomplished by the employing agency. Finally, the Committee found that the Educational Leave Advisory Board should be focussing on approving more substantive educational leave requests of a duration of longer than a month.

Therefore, the Joint Standing Committee on Audit and Program Review recommends that current law be amended to authorize the Educational Leave Advisory Board to approve educational leave requests of 30 days or more.

BUREAU OF CAPITOL SECURITY

BUREAU OF CAPITOL SECURITY

ADMINISTRATIVE 142.

As part of Standard Operating Procedure, specify that the Commissioner of Public Safety, or designee, may void a notice of a parking violation only upon presentation by the alleged offender of mitigating circumstances which were not known to the issuing capitol security police officer or for circumstances in which the capitol security police officer was clearly in error. On each ticket briefly note the mitigating circumstance or error upon which a voidance is based.

State law authorizes the Commissioner of the Department of Public Safety to "enforce rules ... governing the use of public ways and parking areas maintained by the state at the capitol area..." and authorizes the Commissioner to waive court action against a violator if the violator pays a specified fee [25 MRSA §2906].

Chapter 42, §4 of the Bureau of Capitol Security's rules used to administer the law sets the parking fees as follows:

Parking in Handicapped area	\$5.00
Parking in Legislative area	\$4.00
Parking in Reserved area	\$4.00
Parking in Travel lane	\$4.00
Parking in Outside Agency area	\$3.00
Overtime parking	\$3.00
Improper parking	\$3.00
No Parking zone	\$3.00
All other violations	\$3.00

The Bureau's parking rules also indicate that fees are due and payable within 14 days of issuance and, if not paid within seventy-two hours of date of issue, are subject to a \$2.00 increase.

The Committee finds that one provision in Chapter 42, §4 of the Bureau's rules implies that the Chief of Capitol Security is endowed with the authority to give dispensation to parking violators because those that fail to pay the ticket, without receiving "approval" from the Chief, are subject to court action; i.e.:

"Failure to pay [parking] fees within the applicable specified time *without approval of the Chief of Capitol Security* may void the waiver of court action ..." [italics added]

Each year, the Committee notes that officers from the Bureau of Capitol Security issue between 5000 and 6000 notices of parking violations to vehicles which are parked illegally and contrary to current parking policy. Although unwritten, the Committee finds that current policy governing the Bureau's approach to parking and traffic flow within the Capitol complex is two-fold:

- to ensure an orderly flow of traffic through the Capitol complex unobstructed by parked vehicles; and
- to control parking each day for large groups of the public seeking access to the State House without unnecessarily obstructing the public's right to approach and enter the State House.

A review of tickets issued showed that 824 tickets were voided in 1989 and that 603 were voided in 1990. In addition, the Committee found that:

- tickets are voided only by the two senior officials, Chief Donald Suitter or Sergeant Lachance (with a few exceptions);
- records frequently showed that not all tickets issued to a single violator were voided; voided tickets and "live" tickets often appeared in the record for a single violator;
- tickets are routinely voided as a matter of course;
- a few violators with multiple tickets have none of their tickets voided and appear to be paying their tickets on a payment plan worked out with Capitol Security;

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- tickets issued to legislators and legislative staff are among those routinely voided;
 - no overt favoritism to specific individuals is apparent from a perusal of the 1989/1990 records; and
 - to the casual observer, no discernible policy governing the voiding of tickets is readily apparent.

The Committee finds that the goal of controlling parking without inhibiting access to the Capitol Complex is important. However, the Committee also finds that the circumstances under which a ticket may be voided are undefined, with little guidance in rule or law as to what conditions would justify ticket avoidance. Therefore, the Committee recommends that the Bureau amend its Standard Operating Procedure to specify that the Commissioner of Public Safety, or designee, may void a notice of a parking violation only upon presentation by the alleged offender of mitigating circumstances which were not known to the issuing capitol security police officer or for circumstances in which the capitol security police officer was clearly in error. In making this recommendation, the Committee expects that the mitigating circumstance or error upon which the avoidance is based will be briefly noted on each ticket.
