

**STATE OF NEW HAMPSHIRE
PROPERTY AND CASUALTY
LOSS CONTROL PROGRAM**

**PERFORMANCE AUDIT REPORT
NOVEMBER 1993**

TO THE FISCAL COMMITTEE OF THE GENERAL COURT:

We have conducted an audit of the property and casualty loss control program used by the State of New Hampshire to address the recommendation made to you by the joint Legislative Performance Audit and Oversight Committee for us to review the State's risk management program. The first part of the recommendation was addressed by our report on the Workers' Compensation Program for State Employees which was presented to you and accepted in April 1993. This audit addresses the final part of the Fiscal Committee's request and completes our examination of New Hampshire's risk management program. The audit was conducted in accordance with generally accepted governmental auditing standards and accordingly included such procedures as we considered necessary in the circumstances.

The objectives of our audit were to determine the extent to which the State, on a continuing basis, has identified loss exposure for its property and programs; to assess the efficiency with which the State has managed its risk management program, including claims activity; to ascertain whether the State has implemented sufficient programs to effectively control losses; and to evaluate the effectiveness of the State's risk management administration.

This report is the result of our evaluation of the information noted above and is intended solely to inform the Fiscal Committee of our findings and should not be used for any other purpose. This restriction is not intended to limit the distribution of this report, which upon acceptance by the Fiscal Committee is a matter of public record.

Office of Legislative Budget Assistant
OFFICE OF LEGISLATIVE BUDGET ASSISTANT

November 1993

THIS PAGE INTENTIONALLY LEFT BLANK

**STATE OF NEW HAMPSHIRE
PROPERTY AND CASUALTY LOSS CONTROL PROGRAM**

TABLE OF CONTENTS

	<u>PAGE</u>
EXECUTIVE SUMMARY	1
RECOMMENDATION SUMMARY	11
INTRODUCTION, ANALYSIS, AND CONCLUSION	
1. <i>INTRODUCTION</i>	15
1.1 SCOPE AND OBJECTIVES	15
1.2 METHODOLOGY	15
1.3 OVERVIEW OF RISK MANAGEMENT	17
2. <i>NEW HAMPSHIRE'S RISK MANAGEMENT PROGRAM</i>	22
2.1 STATUTORY FRAMEWORK	22
2.2 RISK ADMINISTRATION	23
2.21 DEPARTMENT OF ADMINISTRATIVE SERVICES	23
2.22 BOARD OF APPROVAL	24
2.23 BOARD OF CLAIMS	25
2.24 DEPARTMENT OF JUSTICE	28
2.25 OTHER DEPARTMENTS - TRANSPORTATION AND CORRECTIONS	29
2.3 RISK IDENTIFICATION	30
2.4 RISK EVALUATION	30
2.41 STATE-OWNED SKI AREAS INSURANCE	32
2.42 OFF-HIGHWAY RECREATIONAL VEHICLE LANDOWNER LIABILITY INSURANCE	33
2.43 FOSTER PARENT LIABILITY INSURANCE	34
2.5 RISK CONTROL	35
2.51 RISK ASSUMPTION	35
2.52 RISK REDUCTION	37
2.53 RISK TRANSFER	38
2.6 COST OF THE PROGRAM	39
2.61 BUREAU OF RISK MANAGEMENT	39
2.62 CLAIMS AGAINST THE STATE	40
2.63 INSURANCE PREMIUMS	41
3. <i>FLEET AUTOMOBILE LIABILITY INSURANCE: A CASE STUDY</i>	43
3.1 FLEET POLICY PREMIUMS, CLAIMS, AND LOSSES	43
3.2 REQUEST FOR PROPOSALS	46
3.3 DEPARTMENT OF INSURANCE ANALYSIS	46
3.4 BOARD OF APPROVAL & GOVERNOR AND COUNCIL ACTIONS	47
3.5 DEFENSIVE DRIVER COURSE	47
3.6 LACK OF OVERSIGHT	48

TABLE OF CONTENTS (Continued)

PAGE

INTRODUCTION, ANALYSIS, AND CONCLUSION (Continued)

4. CONCLUSION 49

OBSERVATIONS AND RECOMMENDATIONS

1. INADEQUATE PROGRAM DATA MAINTAINED 51

2. LACK OF WRITTEN OPERATING POLICIES AND PROCEDURES 53

3. LOSS PREVENTION GUIDELINES HAVE NOT BEEN DEVELOPED 54

4. NO POLICY STATEMENT REGARDING RISK MANAGEMENT 55

5. BOARD OF APPROVAL SHOULD BE ABOLISHED 56

6. LACK OF COORDINATION AMONG BUREAU OF RISK MANAGEMENT,
BOARD OF APPROVAL, BOARD OF CLAIMS, AND
DEPARTMENT OF JUSTICE 57

7. BOARD OF CLAIMS PROCESS SHOULD BE STRENGTHENED 57

8. NO IDENTIFICATION OF LOSS EXPOSURE 58

9. NO EVALUATION OF THE FREQUENCY AND SEVERITY OF RISK 60

10. STATE ADMINISTRATION OF COMMERCIAL INSURANCE
CONTRACTS IS INEFFICIENT 60

11. INADEQUATE MONITORING OF COMMERCIAL
INSURANCE CONTRACTS 62

12. NO COMPREHENSIVE PROGRAM FOR COMPETITIVELY
BIDDING INSURANCE COVERAGE 63

13. NO COMPREHENSIVE RISK REDUCTION PROGRAM 65

14. NONCOMPLIANCE WITH FLEET AUTOMOBILE
INSURANCE CONTRACT 66

15. DEFENSIVE DRIVING COURSE IS NOT COMPETITIVELY BID 67

16. INADEQUATE STATE MONITORING OF DEFENSIVE
DRIVING COURSE 69

17. BUREAU OF RISK MANAGEMENT SHOULD BE MERGED
WITH THE WORKERS' COMPENSATION COMMISSION 70

18. COORDINATION BETWEEN THE BUREAU OF RISK MANAGEMENT
AND STATE AGENCIES IS INSUFFICIENT 71

TABLE OF CONTENTS (Continued)

PAGE

APPENDICES

A. RESPONSE FROM DEPARTMENT OF ADMINISTRATIVE SERVICES	A-1
B. RISK MANAGEMENT STATUTES	B-1
SELF INSURANCE (RSA 99-D:3)	B-1
SOVEREIGN IMMUNITY (RSA 99-D:1)	B-1
CLAIMS AGAINST THE STATE (RSA 541-B)	B-2
BUREAU OF RISK MANAGEMENT (RSA 21-I:8(II))	B-9
BOARD OF APPROVAL (RSA 93-B:2)	B-10
C. EXECUTIVE ORDER 89-2	C-1
D. SUMMARY OF INSURANCE POLICIES APRIL 1993	D-1

ABBREVIATIONS

BOA	Board of Approval
BOC	Board of Claims
BRM	Bureau of Risk Management
DDC	Defensive Driver Course
DAS	Department of Administrative Services
DOC	Department of Corrections
DOI	Department of Insurance
DRED	Department of Resources and Economic Development
DRA	Department of Revenue Administration
DOT	Department of Transportation
DCYS	Division for Children and Youth Services
NHIFS	New Hampshire Integrated Financial System
OHRV	Off-Highway Recreational Vehicle
PRIMA	Public Risk Management Association
RFP	Request for Proposal
STRIMA	State Risk Management Association
WCC	Workers' Compensation Commission

LIST OF FIGURES

FIGURE 1	COMMERCIAL INSURANCE POLICIES	2
FIGURE 2	FLEET AUTOMOBILE INSURANCE POLICY PREMIUMS AND LOSSES	4
FIGURE 3	FLEET AUTOMOBILE INSURANCE POLICY CLAIMS ACTIVITY	4
FIGURE 4	DRED SKI AREAS INSURANCE POLICY	6
FIGURE 5	DRED OFF-HIGHWAY RECREATIONAL VEHICLE LANDOWNER LIABILITY INSURANCE POLICY	6
FIGURE 6	DCYS FOSTER PARENT INSURANCE POLICY	7
FIGURE 1.1	MODEL RISK MANAGEMENT PROCESS	19
FIGURE 2.1	BOARD OF CLAIMS, PROCESS FOR CLAIMS NOT EXCEEDING \$50,000	27

TABLE OF CONTENTS (Continued)

	<u>PAGE</u>
LIST OF TABLES	
TABLE 1	CLAIMS AGAINST THE STATE 8
TABLE 2.1	BOARD OF CLAIMS ACTIVITIES 26
TABLE 2.2	CLAIMS SETTLED BY THE DEPARTMENT OF JUSTICE 28
TABLE 2.3	PREMIUMS AND LOSSES FOR INSURANCE POLICIES WITH FOUR HIGHEST PREMIUMS 31
TABLE 2.4	STATE-OWNED SKI AREAS INSURANCE PREMIUMS AND LOSSES 32
TABLE 2.5	STATE-OWNED SKI AREAS INSURANCE CLAIMS ACTIVITY 33
TABLE 2.6	FOSTER PARENT INSURANCE PREMIUMS AND LOSSES 34
TABLE 2.7	FOSTER PARENT INSURANCE CLAIMS ACTIVITY 35
TABLE 2.8	COMPARISON OF SELECTED SELF-REPORTED VARIABLES FOR NEW HAMPSHIRE AND THE OTHER NEW ENGLAND STATES 37
TABLE 2.9	BUREAU OF RISK MANAGEMENT EXPENDITURES 40
TABLE 2.10	CLAIMS AGAINST THE STATE 41
TABLE 2.11	CURRENT INSURANCE POLICIES PURCHASED THROUGH THE BUREAU 42
TABLE 3.1	FLEET AUTOMOBILE INSURANCE POLICY PREMIUMS AND LOSSES 44
TABLE 3.2	FLEET AUTOMOBILE INSURANCE POLICY CLAIMS ACTIVITY 45

STATE OF NEW HAMPSHIRE PROPERTY AND CASUALTY LOSS CONTROL PROGRAM

EXECUTIVE SUMMARY

THE PROGRAM

The State's risk management program is administered by the Bureau of Risk Management in the Department of Administrative Services. A model risk management program encompasses the identification, evaluation, and systematic control of risk through a combination of risk reduction, risk elimination, risk retention, and risk transference techniques. The State's risk management program consists mainly of purchasing commercial insurance.

Although the State commercially-insures selected assets and programs through a combination of 24 insurance policies, it largely functions on a pay-as-you-go basis, funding losses as current expenses. Assets and programs not specifically covered by insurance policies are self-insured against loss. However, because the State does not maintain loss reserves, it is more accurate to describe New Hampshire as "uninsured" or "self-funded" against most property and casualty losses.

Since the Bureau of Risk Management was established in 1984, it has been staffed by one person, the risk management administrator. The administrator reports to the director of the Division of Accounting Services and as specified in RSA 21-I:8 (II), the duties of the bureau include:

- identifying loss exposure for all State real and personal property and for personal injury;
- developing and operating risk reduction programs in accordance with loss prevention guidelines adopted by the DAS commissioner;
- identifying cost effective means for protecting against various types of losses, including self-funding, commercial insurance purchases, and risk assumption;
- preparing bid specifications for use by the State when seeking commercial insurance; and
- purchasing liability insurance under a fleet policy covering the operation of State-owned vehicles and motorboats, after consultation with the Board of Approval, and the commissioner of administrative services.

EXECUTIVE SUMMARY (Continued)

FIGURE 2

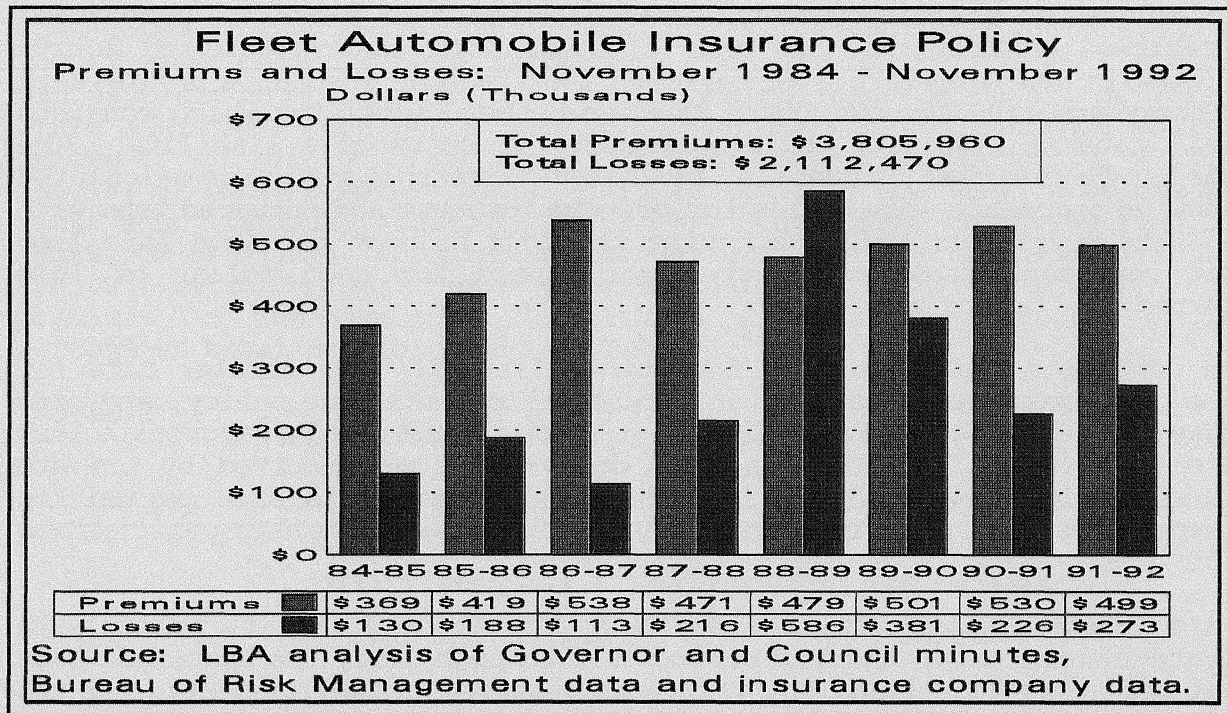
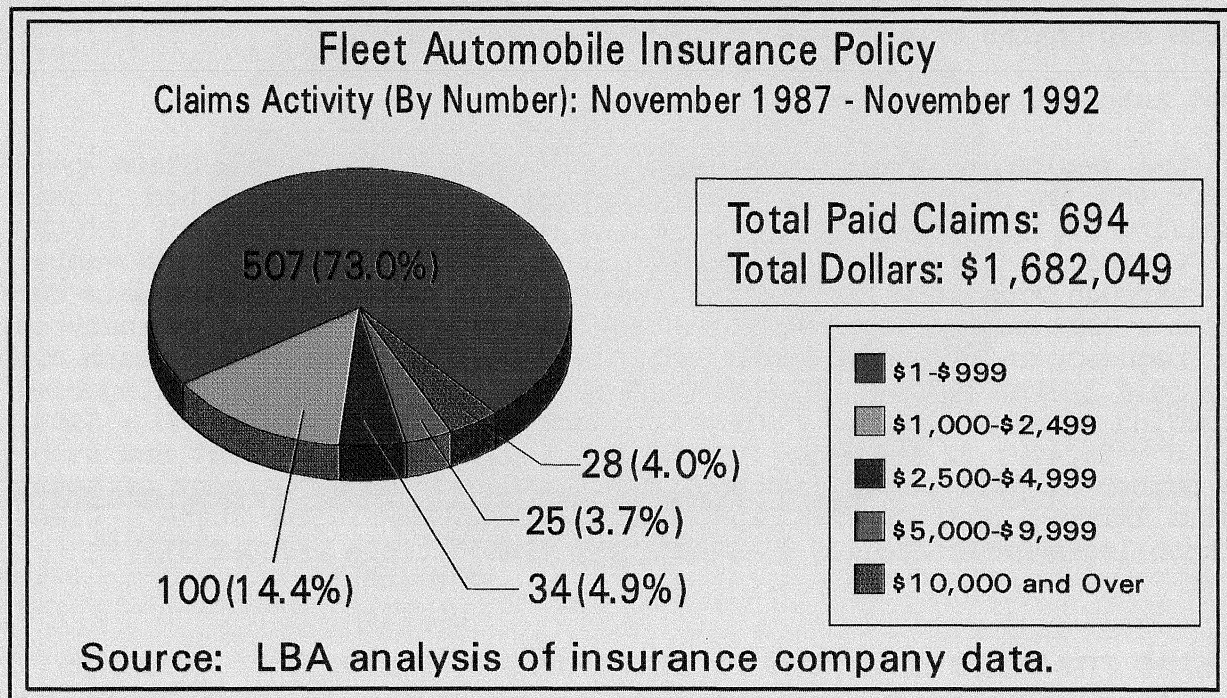


FIGURE 3



EXECUTIVE SUMMARY (Continued)

LOSSES AND CLAIMS OF FOUR POLICIES WITH HIGHEST PREMIUMS (Continued)

State-Owned Ski Areas Insurance

For the period November 1987 through November 1992, the State paid premiums of \$483,072. There were 14 losses for the period totaling \$331,495 (includes reserves retained by the insurer) (FIGURE 4). Of the 14 losses paid, nine (64.3%) were over \$4,999 and totaled \$322,614 (97.3%) of losses paid. The five losses under \$5,000 totaled \$8,881 (2.7%) of total losses. The insurance policy has a deductible of \$1,000 per claim.

Off-Highway Recreational Vehicle Landowner Liability Insurance

For the period January 1988 through January 1993, the State paid a total of \$419,700 in premiums. The premium for each of the five years of the policy was \$83,940. During the five-year period, there were four losses paid for \$211,964 (including reserves retained by the insurer). The insurance policy has a deductible of \$500 per claim (FIGURE 5).

Foster Parent Liability Insurance

For the period October 1989 through October 1992, the State paid a total of \$246,000 in premiums. There were 42 claims paid over the period totaling \$23,561. No reserves were set aside by the insurance company. Losses under \$1,000 accounted for 29 (69.0%) of the 42 claims and totaled \$5,694 (24.2%) of losses paid. The remaining 13 (31.0%) claims were over \$999 and totaled \$17,867 (75.8%) of total losses. The insurance policy has a deductible of \$500 per claim for foster parents' property and a \$250 deductible for bodily injury and damage to others' property (FIGURE 6).

FIGURE 4

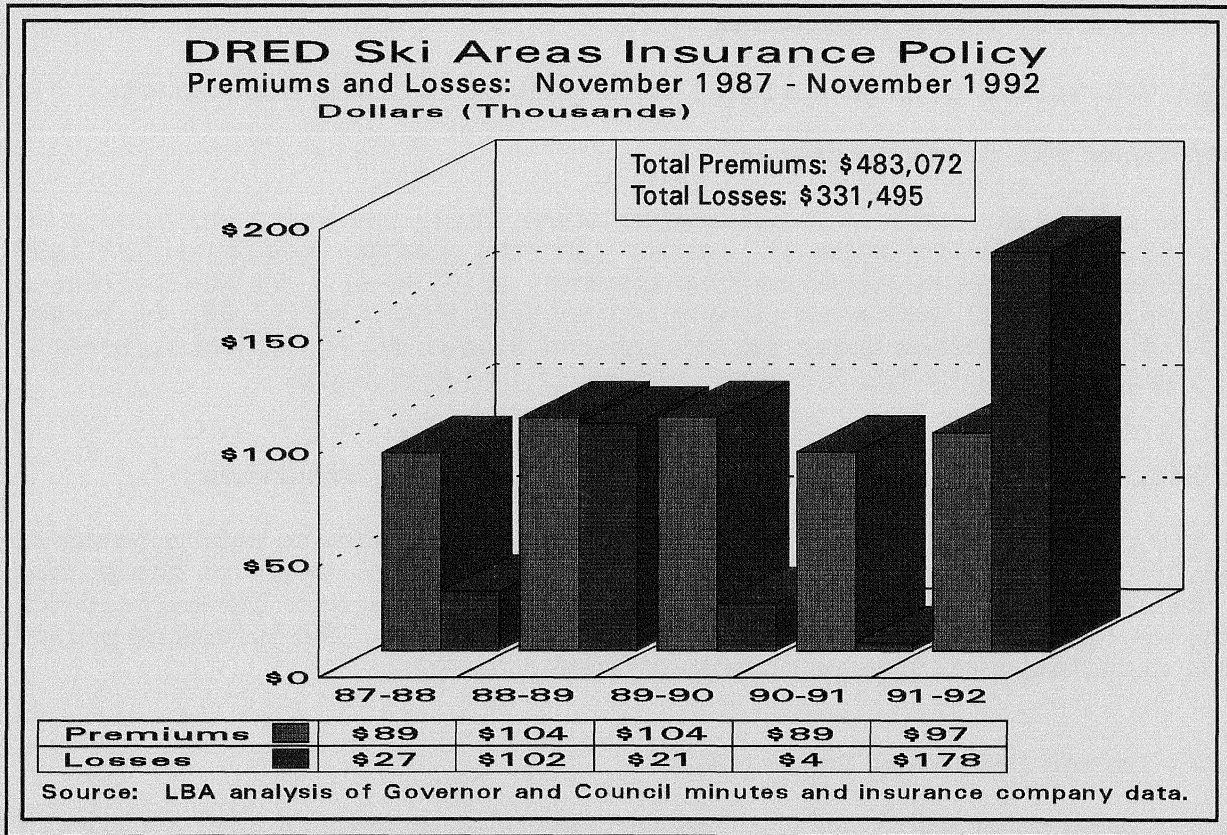
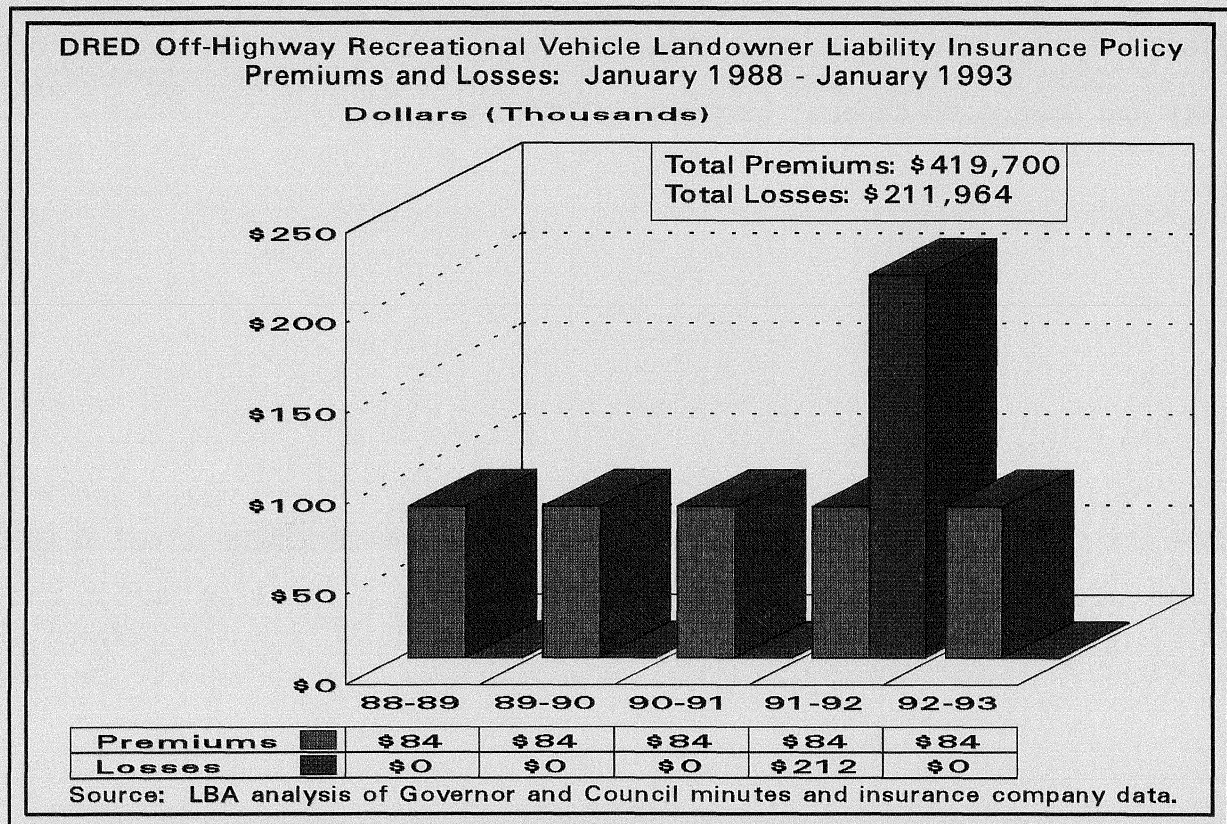


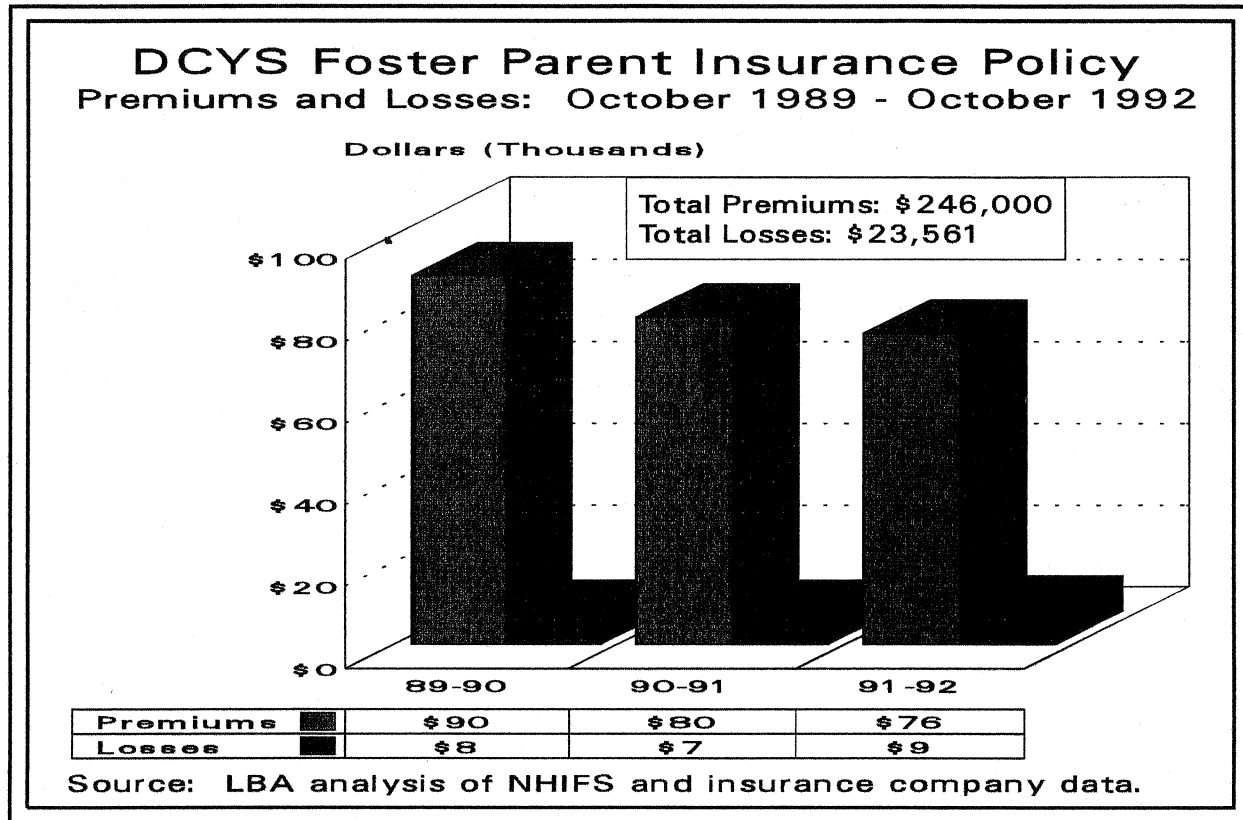
FIGURE 5



EXECUTIVE SUMMARY (Continued)

LOSSES AND CLAIMS OF FOUR POLICIES WITH HIGHEST PREMIUMS (Continued)

FIGURE 6



Claims Against the State

Aside from losses paid by insurance policies, the State spent \$3,192,122 for 1,014 claims against the State during various time periods from January 1984 through June 1993. Of that amount, \$2,741,556 (85.9%) resulted from 71 settlements handled by the Department of Justice and \$450,566 (14.1%) for 943 claims paid through the Board of Claims, Department of Corrections, and Department of Transportation (TABLE 1).

EXECUTIVE SUMMARY (Continued)

LOSSES AND CLAIMS OF FOUR POLICIES WITH HIGHEST PREMIUMS (Continued)

TABLE 1

CLAIMS AGAINST THE STATE

AGENCY	PERIOD	# OF PAID CLAIMS	\$ OF PAID CLAIMS
DEPARTMENT OF JUSTICE	7/86-6/93	71	\$2,741,556
BOARD OF CLAIMS	1/84-12/92	448	413,274
DEPARTMENT OF TRANSPORTATION	7/85-6/93	118	26,715
DEPARTMENT OF CORRECTIONS	7/88-6/93	377*	10,577
TOTAL		1,014	\$3,192,122
* Represents the number of claims filed. Agency cannot verify number of paid claims.			
Source: LBA analysis of NHIFS and agency data.			

PROGRAM ADMINISTRATION AND MANAGEMENT OVERSIGHT

New Hampshire Laws of 1983, Chapter 416:40, established the Department of Administrative Services and assigned primary management and coordination duties for the State's risk management program to that department. RSA 21-I:8 (II) established the Bureau of Risk Management as a bureau within the Division of Accounting Services. This bureau, under the supervision of an unclassified administrator, is charged with the day-to-day administration of risk management activities.

We found very little done by the bureau to facilitate the effective administration of the risk management program. For example, we found no statement of risk management policy goals and objectives; no coordination of agency safety programs; inadequate records and the complete lack of a meaningful record-keeping system (including a lack of claims and loss data); little or no coordination among State agencies assigned responsibilities for purchasing commercial insurance and for settling claims; and no loss control guidelines or other written policies and procedures.

EXECUTIVE SUMMARY (Continued)

SUMMARY OF AUDIT OBSERVATIONS

Major observations are summarized below and page references are made to a more detailed description in the report.

- Bureau of Risk Management (BRM) did not maintain adequate program data. (p. 51)
- BRM and the Workers' Compensation Commission should be merged. (p. 70)
- Board Of Approval should be abolished. (p. 56)
- BRM did not identify loss exposure, develop and operate risk reduction programs, identify cost effective means for protecting against loss, or adopt loss prevention guidelines as required by law. (p. 54-65)
- BRM had no written policies and procedures, and no policy statement regarding risk management. (p. 53,55)
- BRM had no comprehensive program for competitively bidding insurance coverage. (p. 63)
- BRM inadequately monitored insurance contracts. (p. 62)
- BRM did not facilitate coordination among State agencies involved with risk management. (p. 71)

CONCLUSION

The State's 10-year-old risk management program has not been efficiently or effectively managed. Responsibility for this lack of effort rests, for the most part, with past management of the Department of Administrative Services. Although a Bureau of Risk Management was created by State law and given very specific tasks, there was essentially no risk management program as that concept is widely understood. Moreover, the public policy of the State was to self-insure, however, little effort had gone into identifying, evaluating, and controlling risk. There was at best an inefficiently managed insurance purchasing program which management at all levels of the department did not adequately monitor.

Present management of the department concurs with our findings leading to this conclusion and has expressed a desire to seek improvements in the risk management program. These improvements do not have to be costly to be effective. First, a comprehensive policy statement regarding risk management goals and objectives should be established and widely disseminated to State agencies. This statement should be the initial step in developing written policies and procedures and a risk management manual. Second, the department should assume the lead in coordinating improved risk

EXECUTIVE SUMMARY (Continued)

CONCLUSION (Continued)

control and claims management among agencies with risk management responsibilities including the Board of Claims and the Department of Justice as well as other State agencies. Third, the department should strengthen the bureau's record-keeping ability so that appropriate risk management program data can be collected and maintained. This will allow the State to evaluate frequency and severity of losses and better utilize deductibles and other risk assumption techniques.

In addition to the proposals given above, we further suggest DAS and the Legislature review the current structure of the program and consider merging the functions of the Workers' Compensation Commission and its staff with the Bureau of Risk Management. As a result of such a merger one administrator position could be eliminated in favor of adding two staff devoted exclusively to employee safety and loss control activities. This would be a much more efficient and effective use of limited resources.

Staff resources and budget in the average risk management program usually comprise a small part of the total resources of the organization. The State's risk management program does not need to be more expensive to become much more efficient and effective.

RECOMMENDATION SUMMARY



**STATE OF NEW HAMPSHIRE
PROPERTY AND CASUALTY LOSS CONTROL PROGRAM**

RECOMMENDATION SUMMARY

OBS. NO.	PAGE	REQUIRES LEGISLATIVE ACTION YES/NO	RECOMMENDATION	AGENCY RESPONSE
1	51	NO	Focus attention on identification, collection, evaluation, and maintenance of basic information on potential and actual losses.	Concur
2	53	NO	Develop and implement comprehensive written operating policies and procedures for the Bureau of Risk Management.	Concur
3	54	NO	Develop a risk management manual for use by all State agencies.	Concur
4	55	NO	Department should take the lead in guiding and directing the risk management program and its priorities. A comprehensive statement of policy goals and objectives should be developed.	Concur
5	56	YES	Repeal RSA 93-B:2 to abolish the Board of Approval.	Concur
6	57	NO	The department should assume the lead in coordinating the necessary agencies to improve risk control and claims management.	Concur

RECOMMENDATION SUMMARY
(Continued)

OBS. NO.	PAGE	REQUIRES LEGISLATIVE ACTION YES/NO	RECOMMENDATION	AGENCY RESPONSE
7	57	YES	Seek revision of RSA 541-B:2 to administratively attach the Board of Claims to DAS.	Concur
	58	YES	Seek repeal of RSA 228:29 and amend RSA 541-B:9(V) to grant New Hampshire Hospital and DOT the same authority as DOC to settle claims under \$500.	Concur
	58	YES	Seek revision of RSA 541-B:8 to allow board decisions to be made by a majority of the quorum present.	Concur
8	58	NO	Develop and implement procedures to identify the State's loss exposure for all real and personal property as well as for personal injury liabilities.	Concur
9	60	NO	At least annually, analyze the frequency and severity of risks and loss by type of asset to develop a baseline of information from which to plan risk reduction programs.	Concur
10	60	NO	Periodically identify and analyze the most cost-effective means for protecting the State's assets against various types of losses.	Concur

**RECOMMENDATION SUMMARY
(Continued)**

OBS. NO.	PAGE	REQUIRES LEGISLATIVE ACTION YES/NO	RECOMMENDATION	AGENCY RESPONSE
11	62	NO	Monitor all insurance contracts closely to ensure the State only enters into agreements in its best interests.	Concur
12	63	NO	Establish a comprehensive program to competitively bid all necessary insurance contracts.	Concur
13	65	NO	Conduct a comprehensive evaluation of risk exposure. Develop and implement loss prevention guidelines and risk reduction programs.	Concur
14	66	NO	Monitor insurance contracts more carefully to ensure that all requirements pertaining to the contracts and any subcontracts are met.	Concur
15	67	NO	Require competitive bidding of the defensive driver course.	Concur

**RECOMMENDATION SUMMARY
(Continued)**

OBS. NO.	PAGE	REQUIRES LEGISLATIVE ACTION YES/NO	RECOMMENDATION	AGENCY RESPONSE
16	69	NO	Monitor the defensive driver course carefully to ensure that only appropriate State employees take the course and funding levels are appropriately determined.	Concur
17	70	YES	Seek revision of RSA 21-I:8 and 21-I:23 to merge the Workers' Compensation Commission with the Bureau of Risk Management. Eliminate one administrator position and add two staff devoted to employee safety and loss control activities.	Concur
18	71	NO	Increase coordination between the Bureau of Risk Management and State agencies.	Concur

INTRODUCTION, ANALYSIS, AND CONCLUSION

STATE OF NEW HAMPSHIRE PROPERTY AND CASUALTY LOSS CONTROL PROGRAM

INTRODUCTION, ANALYSIS, AND CONCLUSION

1. INTRODUCTION

We performed our audit of New Hampshire's property and casualty loss control program to address the final part of the recommendation made to the Fiscal Committee by the joint Legislative Performance Audit and Oversight Committee for us to review the State's risk management program. This audit was conducted in accordance with generally accepted governmental auditing standards and accordingly included such procedures as we considered necessary in the circumstances.

1.1 SCOPE AND OBJECTIVES

This report describes and analyzes the efficiency and effectiveness of the State's property and casualty loss control program (hereafter referred to as "risk management"), its current and historical costs, and alternatives to the current administrative structure of the risk management program. Our audit focused on the 10-year period from fiscal year 1984 through fiscal year 1993 and addressed the following specific objectives:

- Determine the extent to which the State, on a continuing basis, has identified loss exposure for its property and programs;
- Assess the efficiency with which the State has managed its risk management program, including claims activity;
- Ascertain whether the State has implemented sufficient programs to effectively control losses; and
- Evaluate the effectiveness of the State's risk management administration.

1.2 METHODOLOGY

To obtain background information and develop an overall understanding of risk management, we reviewed reports and journal articles published by professionally recognized governmental and nongovernmental organizations including the Council of State Governments, National Conference of State Legislatures, the Public Risk Management Association (PRIMA), the State Risk Management Association (STRIMA), and various commercial insurance companies. We also reviewed audits and reports from other states including

1. INTRODUCTION (Continued)

1.2 METHODOLOGY (Continued)

Arizona, Colorado, Connecticut, Georgia, Maine, Michigan, Minnesota, Missouri, Montana, New York, North Dakota, Oregon, Oklahoma, Rhode Island, South Dakota, Utah, and Wisconsin.

To obtain background information about New Hampshire's risk management program and potential problem areas, we interviewed the Bureau of Risk Management and Workers' Compensation Commission administrators, officials and employees from the Department of Justice, Department of Administrative Services, Department of Banking, Board of Claims, Department of Corrections, Department of Cultural Affairs, Department of Insurance, New Hampshire Municipal Association, New Hampshire Safety Council, New Hampshire Traffic Safety Institute, Department of Revenue Administration, Secretary of State, Department of Transportation, University System of New Hampshire, and representatives from the State Employees Association. We also analyzed the results from two telephone surveys of various State agencies.

We examined an extensive list of documents pertaining to the Board of Approval, Board of Claims, Bureau of Risk Management, and Department of Administrative Services operations. We also reviewed New Hampshire statutes and administrative rules, attorney general's opinions, organization charts, annual reports, policies and procedures, inter-office memoranda, and minutes of meetings of the Governor and Council, Fiscal Committee, and BOA.

In evaluating the efficiency of the program, we analyzed expenditure data from the State's accounting system (NHIFS) for seven of the fiscal years in the period, and loss data obtained from commercial insurance companies and the Department of Insurance. To assess the program's effectiveness and extent of management controls, we reviewed DAS policies, procedures, and administrative rules; conducted structured interviews with DAS and BOA officials and representatives from State agencies having commercial insurance; and analyzed the current 24 commercial insurance policies and related documents.

In identifying alternatives to the State's current risk management program, we conducted structured interviews with representatives from the New Hampshire Municipal Association, New England Risk Management Association, and four commercial insurance companies. We also conducted structured interviews with risk management officials from the other five New England states to determine how New Hampshire compares with those states in funding methods, administrative procedures, and loss control activities.

1. INTRODUCTION (Continued)

1.3 OVERVIEW OF RISK MANAGEMENT

"Risk" is defined as any exposure to the chance of injury or loss. For example, risk can include risks to real property - fire, flood, explosion, storm, and vandalism; risks to personal property; risks to employees - workers' compensation issues; and risks from general liability issues - wrongful acts (torts), errors and omissions, professional malpractice, and civil rights violations.

The need to systematically manage risk is essential for government to exert increased control over limited resources. Risk management encompasses the identification, evaluation, and methodical controlling of losses or potential losses through a combination of reduction, elimination, assumption, or transference activities. There are multiple facets involved in an organization's effective management of risk. Risk identification requires an organization to review its assets and programs to determine the potential exposure to damage, destruction, theft, or liability. Risk evaluation requires the organization to analyze its exposure in terms of probable frequency and potential severity of loss. Risk control requires the organization to systematically manage its identified exposures through a combination of reduction, elimination, assumption, or risk transference techniques. Risk reduction is often achieved through devices such as safety programs. Risk elimination can involve the use of sovereign immunity or the dropping of risky programs or activities. Risk assumption frequently involves the use of deductibles or self insurance. Risk transference typically involves the purchase of insurance or the use of "hold harmless" or "indemnification" agreements in contracts.

A combination of risk control methods may be used depending on need. A hybrid of these methods may also be used within a given program. For example, an agency may insure its fleet of automobiles through a combination of commercial and self-insurance or may entirely commercially or self-insure losses of other assets through damage, destruction, or theft. Even with commercial insurance an agency may use a "stop loss" method of coverage. That is, the agency pays a designated deductible for each loss but no more than an agreed upon maximum in total losses within a specified period. After the dollar ceiling is reached, "catastrophic" losses may be insured by an "excess" or "umbrella" policy.

We interviewed three commercial insurers, as well as a representative of the New Hampshire Municipal Association's Property-Liability Insurance Trust, to determine basic administrative requirements for an effective risk management program. An effective risk management program requires a policy statement articulating the program's goals, objectives, and philosophy. The policy statement should also contain such things as safety program directives and various methods to be used in implementing safety and loss

1. INTRODUCTION (Continued)

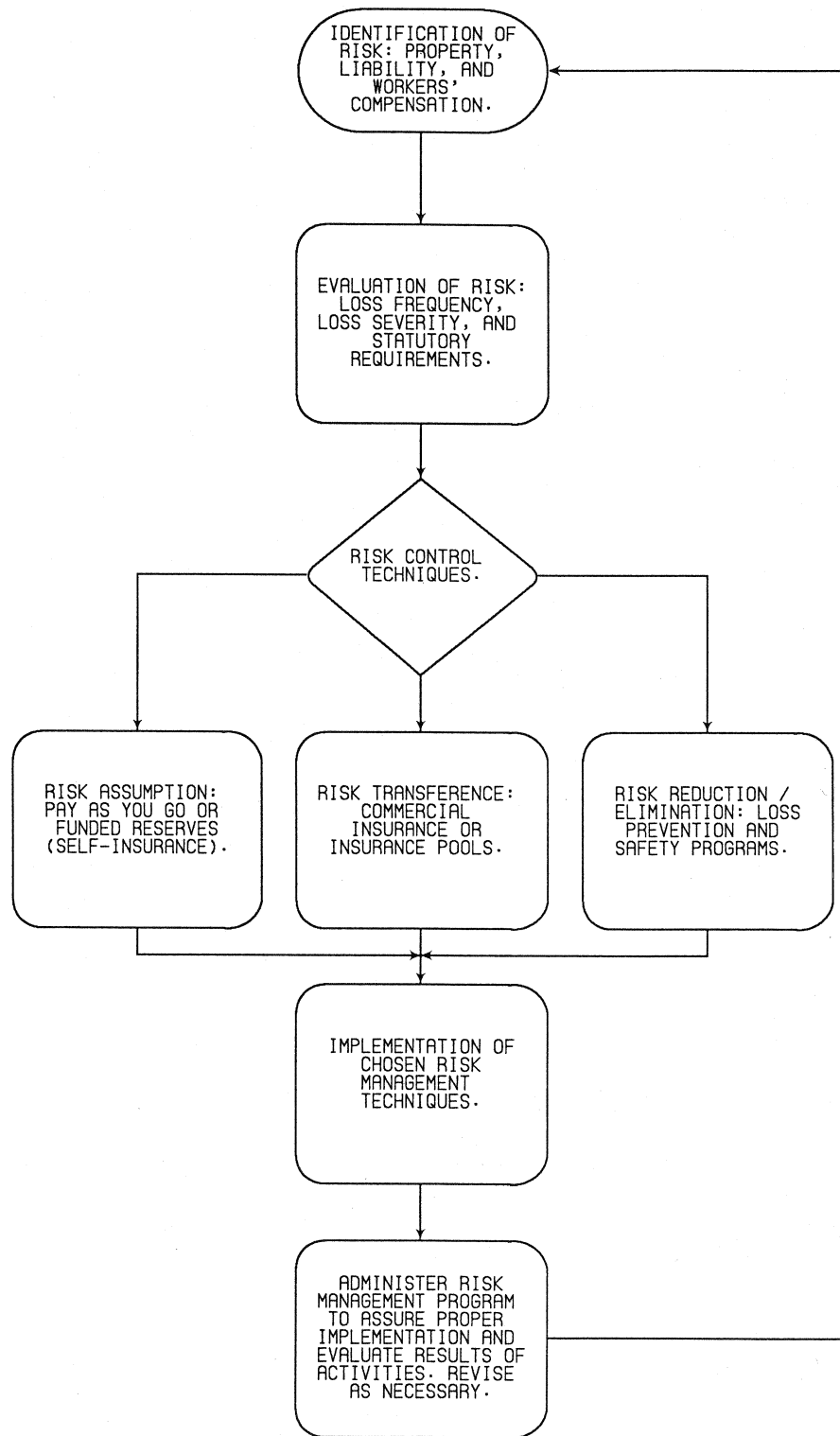
1.3 OVERVIEW OF RISK MANAGEMENT (Continued)

control measures. Administrative and organizational authority and relationships should be clearly described. There should be guidance pertaining to claims reporting procedures, deadlines, and timetables. Further, an effective risk management program should provide detailed safety and loss control guidelines. Most importantly, basic administrative requirements for an effective program require adequate records and recordkeeping. Those records should include detailed descriptions of losses, including type of loss, amount paid, amount set aside to pay for expenses related to the claim, date and location of accident, department or agency, as well as potential loss exposures. Those items are then analyzed by the risk management office to determine actual or potential areas of loss. Loss information should be kept a minimum of three years, but longer periods are desirable for trend analysis (FIGURE 1.1).

1. INTRODUCTION (Continued)

FIGURE 1.1

MODEL RISK MANAGEMENT PROCESS



Source: LBA.

1. INTRODUCTION (Continued)

1.3 OVERVIEW OF RISK MANAGEMENT (Continued)

Risk management is becoming increasingly important for governmental entities nationwide. A March 1992 survey conducted by PRIMA confirmed that risk management has evolved and grown in importance to the public sector since an earlier survey done in 1987. Some selected characteristics of risk management programs taken from the survey are noted below.

- Number of Years in Existence - 21.1 percent report their risk management programs have existed for less than four years, 38 percent from four to seven years, 17 percent from eight to 10 years, and 23.9 percent for longer than 11 years. (New Hampshire's program has existed for 10 years).
- Budget - 8.1 percent report their annual budgets for risk management activities are less than \$25,000, 6.4 percent are between \$25,000-49,999, 11 percent are between \$50,000-99,999, 32.2 percent are between \$100,000-499,999, and 20.2 percent have budgets exceeding \$500,000. 22.1 percent did not report their budgets. (In New Hampshire the annual budget for the Bureau of Risk Management was \$56,405 in FY 1993).
- Staffing - 30.1 percent report having no full-time staff assigned to risk management, 30.8 percent have one full-time staff person, 12.7 percent have two full-time staff, 8.1 percent have three full-time staff, and 18.3 percent have four or more full-time staff. (New Hampshire's program has one full-time employee).
- Professional Credentials - 24.1 percent of respondents have an Associate in Risk Management (ARM) designation and 6.4 percent have a Chartered Property Casualty Underwriter (CPCU) designation. 69.5 percent did not report having professional credentials.
- Claims Management - 23.3 percent handle their claims through a combination of insurance companies, third-party administrators (TPAs), and in-house; 19.5 percent use TPAs exclusively; and 17.1 percent handle claims through TPAs and in-house. 40.1 percent used other various methods. (The New Hampshire program handles claims through a combination of insurance companies and in-house).
- Number of Claims - Of those respondents who process at least some of their claims in-house, 23.3 percent handle fewer than 50 claims annually, 10.2 percent handle between 50-99, 34.4 percent handle between 100-499, and 32.1 percent handle more than 500 claims annually. (From all sources New Hampshire claims processed in-house number more than 500 annually).

1. INTRODUCTION (Continued)

1.3 OVERVIEW OF RISK MANAGEMENT (Continued)

The remaining sections of this report provide analyses of various aspects of New Hampshire's risk management program, as well as several issues which affect the efficiency and effectiveness of the program. Section two describes how New Hampshire's program is administered and analyzes some costs associated with the program. Section three assesses the adequacy of the program's management controls through the use of a case study of the State's fleet automobile insurance program. Section four presents some overall conclusions on the current program and proposes alternatives to the way State government administers risk management services.

STATE OF NEW HAMPSHIRE PROPERTY AND CASUALTY LOSS CONTROL PROGRAM

2. NEW HAMPSHIRE'S RISK MANAGEMENT PROGRAM

In section 1.3 we described components found in a model risk management program. In this section we examine the State's program and compare it to the model program. We begin by describing some important laws dealing with risk management in New Hampshire State government. Next we describe the administrative structure of the State's program and identify several key agencies. Then we compare steps taken by the State's risk management administrator to identify, evaluate, and control risk. Finally, we look at some of the costs associated with risk management efforts.

2.1 STATUTORY FRAMEWORK

The State's risk management program is impacted by several important State laws. Three of the most important statutes deal with the policy of requiring the State to self-insure (RSA 99-D:3), with sovereign immunity (RSA 99-D:1), and with placing limitations on damages (RSA 541-B:14).

Self-insurance is the announced public policy of the State. RSA 99-D:3 requires the State, or any department or agency thereof, to self-insure against all damages, losses and expenses except to the extent that insurance coverage is obtained.

In areas where risk exposure deals with the State's liability to others, sovereign immunity is the most significant law relating to risk management because it precludes filing a lawsuit against the State without the State's consent. Over the years sovereign immunity has been modified. Today the State may be liable where the injurious activity was "proprietary" rather than "governmental" i.e., where the injury was caused by the State acting in its capacity as a commercial entity rather than that of a sovereign. RSA 99-D:1 adopts sovereign immunity as the law of New Hampshire. Immunity is extended to officers and employees of the State when those officers or employees are acting within the scope of their official duty and not in a wanton or reckless manner.

Also, the State may be liable in circumstances where it has waived sovereign immunity. RSA 541-B:14 is a limited waiver of sovereign immunity allowing awards in claims arising out of any single incident against any agency for damages in tort actions not to exceed \$250,000 per claimant and \$2 million per any single incident, or the proceeds from any insurance policy, whichever amount is greater.

2. NEW HAMPSHIRE'S RISK MANAGEMENT PROGRAM (Continued)

2.2 RISK ADMINISTRATION

How effectively a risk management program is administered is vitally important. While every State agency shares some duty for risk management activities, primary responsibilities are divided among four State agencies. These four agencies include Department of Administrative Services, Board of Approval, Board of Claims, and Department of Justice (attorney general).

2.21 Department of Administrative Services

New Hampshire Laws of 1983, Chapter 416:40, established the Department of Administrative Services and assigned primary management and coordination duties for the State's risk management program to that department. RSA 21-I:8 (II) established the Bureau of Risk Management within the Division of Accounting Services. This bureau, under the supervision of an unclassified administrator, is charged with the day-to-day administration of risk management activities.

Pursuant to RSA 21-I:8 (II) the major responsibilities for the administrator of the Bureau of Risk Management include the following:

- identifying loss exposure for all State real and personal property and for personal injury;
- developing and operating risk reduction programs in accordance with loss prevention guidelines adopted by the DAS commissioner;
- identifying cost effective means for protecting against various types of losses, including self-funding, commercial insurance purchases and risk assumption;
- preparing bid specifications for use by the State when seeking commercial insurance; and
- purchasing liability insurance under a fleet policy covering the operation of State-owned vehicles and motorboats, after consultation with the Board of Approval, and the commissioner of administrative services.

Administration of the State's risk management program is a concern. We found very little done by the bureau to facilitate the effective administration of the risk management program. For example, we found no statement of risk management policy goals and objectives; no coordination of agency safety programs; inadequate records and a complete lack of a meaningful record-keeping system (including a lack of claims and loss data); little or no coordination among State agencies assigned responsibilities for purchasing commercial insurance and for settling claims; and no loss control

2. NEW HAMPSHIRE'S RISK MANAGEMENT PROGRAM (Continued)

2.2 RISK ADMINISTRATION (Continued)

2.21 Department of Administrative Services (Continued)

guidelines or other written policies and procedures. (For a complete discussion on this subject including our recommendations and the agency's comments, see Observations #1, #2, #3 and #4 on pages 51-55.)

The bureau did produce three reports during the audit period. The first was a report issued in 1985 providing a general overview of risk management, including areas of statutory responsibility for the bureau, status of the insurance market, bureau activities, and a listing of commercial insurance coverage. The second report, a three-page update in 1989, listed the bureau's activities over an unspecified time period. The third report is a series of memoranda the bureau produced entitled "Governor's Monthly Report" updating the comptroller on the bureau's activities. The reports were divided into two sections. The first section reported problems with the State's fleet automobile liability policy. The second section listed other issues, such as meetings attended by the bureau administrator or the status of various RFPs. The information provided by bureau reports was of limited value. It was clear from these reports that the primary activity of the bureau was the purchase of commercial insurance.

2.22 Board of Approval

The Board of Approval (BOA) was established by New Hampshire Laws of 1950, Chapter 5 (Part 24:7) to approve the amount and sufficiency of surety bonds. Pursuant to RSA 21-I:8 (II)(e) the board has taken on additional responsibilities for approving the purchase of commercial insurance. The three-member board consists of the attorney general and the commissioners of revenue administration and banking.

Although the board does not explicitly have management oversight responsibilities over the bureau, the fact that the administrator must obtain board approval before purchasing commercial insurance for the State gives the board a statutory function supervisory in nature. Board members expressed frustration over not having any administrative control over the administrator. They characterized their interaction with the administrator as minimal. Interaction between the bureau and the BOA was primarily at board meetings which occurred on average between three and six times per year. Members told us they regularly requested policy-related loss data and insurance RFPs but never received the requested information. The administrator only provided information at board meetings and usually the information consisted of nothing more than a hand-written work sheet listing the bidder name, the amount of the bid, and a copy of the RFP. Although the bureau administrator prepared minutes of BOA meetings, members reported that they did not receive copies.

2. NEW HAMPSHIRE'S RISK MANAGEMENT PROGRAM (Continued)

2.2 RISK ADMINISTRATION (Continued)

2.22 Board of Approval (Continued)

None of the three BOA board members thinks the BOA in its present form is necessary any longer. **(For a complete discussion on this subject including our recommendation and the agency's comments, see Observation #5 on page 56.)**

2.23 Board of Claims

The Board of Claims was established in 1977 by RSA 541-B:2 to investigate, conduct hearings, and render or deny awards on claims made against any State agency. The five-member board is comprised of two members chosen by the Governor, one member from each house of the Legislature chosen by the presiding officer of that house, and the chairman of the board chosen by the Chief Justice of the State Supreme Court. The board has exclusive jurisdiction involving claims not exceeding \$5,000 and concurrent jurisdiction with the superior courts in claims in excess of \$5,000 and not exceeding \$50,000. The superior courts have exclusive jurisdiction for claims over \$50,000. The board has no jurisdiction in workers' compensation, unemployment compensation, or eminent domain cases.

When an accident, injury, or loss occurs, the injured party may file a claim against the State with the Board of Claims by notifying the secretary of state or the agency involved. Once the claim has been filed it is forwarded to the Board of Claims. The Board of Claims then sends the claimant a claim form which the claimant completes and files with the secretary of state. The secretary of state notifies the claimant, the agency, and the attorney general of the date of the next board hearing (written notice of the hearing date must be provided at least ten days prior to the date of the hearing).

Upon receipt of the claim, the agency conducts an investigation and forwards the results to the Department of Justice. The attorney general and the claimant may try to reach a settlement. If a settlement is reached, the Board of Claims must also approve. If the attorney general and the claimant cannot agree on a settlement, the claim is heard by the board. In the case of uncontested claims, the board may authorize payment based upon review of the record without holding a hearing.

If a claimant is satisfied with the board's ruling, the claim is settled. However, if the claimant is not satisfied, the claimant may choose to appeal the decision to the State Supreme Court, which makes the final ruling on the claim (FIGURE 2.1). **(For a complete discussion on this subject including our recommendations and the agency's comments, see Observations #6 and #7 on page 57.)**

2. NEW HAMPSHIRE'S RISK MANAGEMENT PROGRAM (Continued)

2.2 RISK ADMINISTRATION (Continued)

2.23 Board of Claims (Continued)

For calendar years 1984 through 1992, 783 claims were filed with the Board of Claims. Of those, 448 (57.2%) were awarded by the board for a total of \$413,274. The number of new claims filed in a given year ranged from a high of 181 (1985) to a low of 51 (1992). Of the claims awarded, 335 (74.8%) were settled the same year they were brought. The remaining claims were carried over at least one year before they were settled.

Over the nine-year period, claims were brought against 32 different State agencies. Five agencies accounted for 661 (84.4%) of the claims filed. The five State departments with the highest number of claims brought against them were corrections, health and human services, transportation, safety, and resources and economic development (TABLE 2.1).

TABLE 2.1

**BOARD OF CLAIMS ACTIVITIES
(CY 1984 - 1992)**

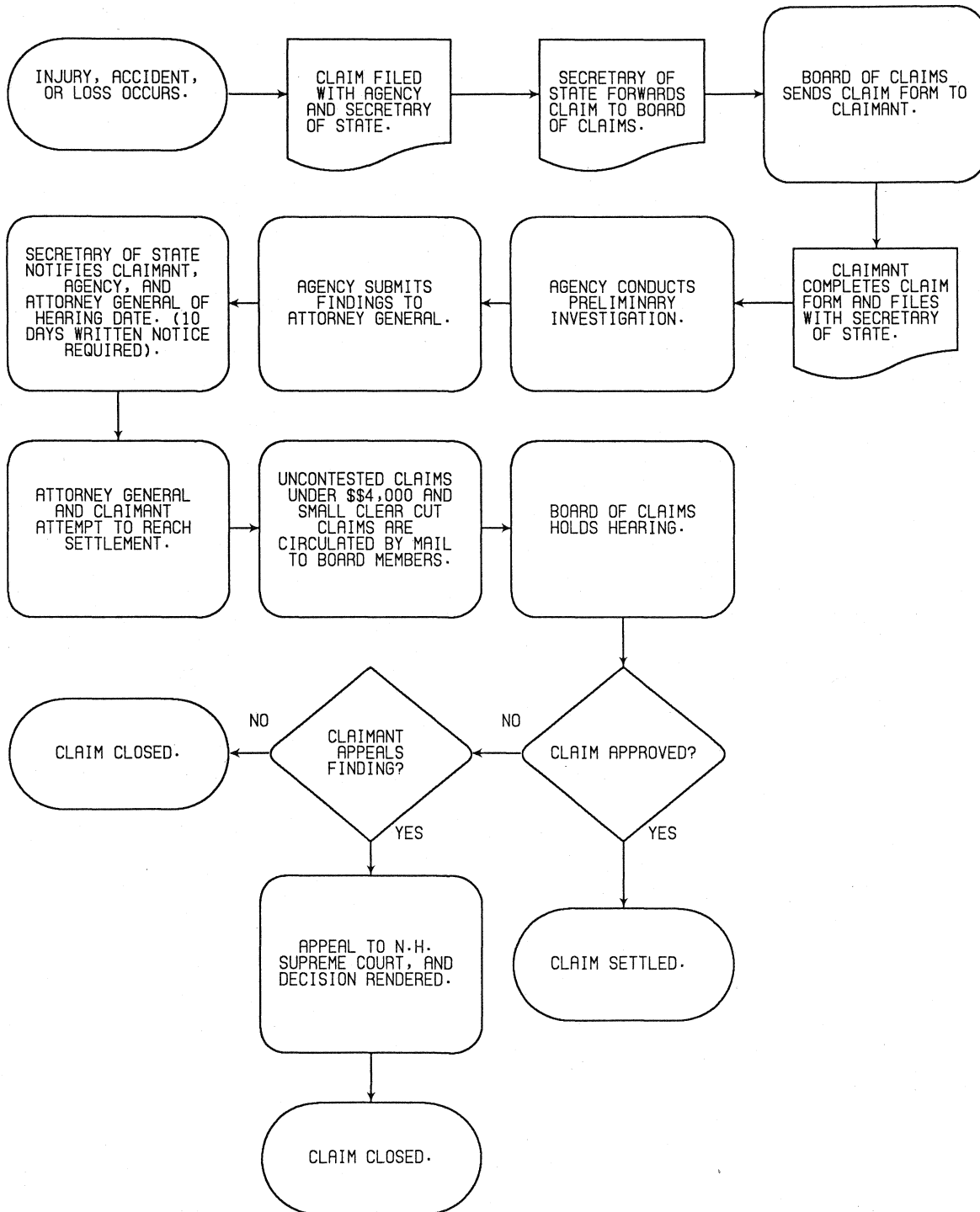
DEPARTMENT	CLAIMS FILED	CLAIMS PAID	AMOUNT PAID
Corrections	252	117	\$ 69,176
Health and Human Services	235	163	38,288
Transportation	76	31	156,098
Safety	66	46	29,927
Resources & Economic Development	32	15	12,704
Other Departments	122	76	107,081
TOTAL	783	448	\$413,274

Source: LBA analysis of Board of Claims data.

2. NEW HAMPSHIRE'S RISK MANAGEMENT PROGRAM (Continued)

FIGURE 2.1

BOARD OF CLAIMS PROCESS FOR CLAIMS NOT EXCEEDING \$50,000



Source: Board of Claims and LBA analysis of New Hampshire statutes.

2. NEW HAMPSHIRE'S RISK MANAGEMENT PROGRAM (Continued)

2.2 RISK ADMINISTRATION (Continued)

2.24 Department of Justice

The attorney general is authorized pursuant to RSA 99-D:2 to represent and defend the State and State employees against any claim for damages when the employees were acting within the scope of official duty and not in a wanton or reckless manner. Claims against the State handled by the Department of Justice include sexual harassment, personal injury, wrongful death, and civil and constitutional violations.

Each State agency has an assigned assistant attorney general who initially reviews the claim. Legal counsel is then assigned based on the complexity and dollar value of the claim. The agency conducts an investigation and makes a recommendation to the attorney general as to whether the claim should be settled or contested. The attorney general then assesses the potential dollar damages and tries to close the claim as soon as possible either by settling or filing a motion to dismiss the claim. A claim that is neither settled nor dismissed will be heard by either the Board of Claims or the superior court depending upon the dollar amount involved and where the claimant brings the claim. Where an award is made either through settlement or judgment, payment is made from State "funds not otherwise appropriated."

During the period FY 1987 through FY 1993, the attorney general settled 71 claims on behalf of the State. The 71 claims totalled \$2,741,556 (TABLE 2.2). We also note that subsequent to our field work and through the first six months of FY 1994 the department settled \$1,702,739 in claims including one medical malpractice claim in the amount of \$1,466,667.

TABLE 2.2

**CLAIMS SETTLED BY THE DEPARTMENT OF JUSTICE
(FY 1987-1993)**

FISCAL YEAR	NUMBER OF CLAIMS SETTLED	AMOUNT OF CLAIMS SETTLED
1987	8	\$ 527,438
1988	5	312,280
1989	7	208,599
1990	16	620,187
1991	7	93,244
1992	10	358,827
1993	18	620,981
TOTAL	71	\$2,741,556

Source: LBA analysis of Department of Justice data.

2. NEW HAMPSHIRE'S RISK MANAGEMENT PROGRAM (Continued)

2.2 RISK ADMINISTRATION (Continued)

2.25 Other Departments - Transportation and Corrections

Two other departments are regularly involved in settling small claims against the State. Those departments are Transportation and Corrections. The Department of Transportation (DOT), pursuant to RSA 228:29, with the approval of Governor and Council, may settle small claims of \$600 or less. If the claim is more than \$600 it is forwarded to the Board of Claims.

The DOT claims process operates as follows: the claimant contacts the commissioner's office. The commissioner's office forwards the claim to the Bureau of Administration and Contracts. A claim file is opened and an investigation undertaken. The investigation includes contacting the particular DOT district or bureau office where the claim originated and asking that office for comment on the circumstances of the incident. If the Bureau of Administration and Contracts approves the claim, the bureau contacts Governor and Council for authorization to make the payment.

A claimant dissatisfied with DOT's action may appeal to the Transportation Appeals Board. If the claimant is still dissatisfied, an appeal can be taken to the State Supreme Court.

For the period FY 1986 through FY 1993, there were 199 claims of \$600 or less brought against DOT. Of the 199 claims, 118 (59.3%) were paid. The 118 paid claims totalled \$26,715.

In accordance with RSA 541-B:9 (V), the Department of Corrections (DOC) has the authority to settle claims under \$500 against the State prison. If the claim is \$500 or more, it is forwarded to the Board of Claims. The majority of claims are filed by inmates. The process works as follows: the inmate completes a property claim form obtained from DOC and sends it to the assistant commissioner. The Bureau of Security then conducts an investigation to determine the facts surrounding the claim. Based on the investigation, the assistant commissioner makes a decision to either deny or approve the claim and an order is sent to the secretary of state. The order is the authorization for the action to be taken. If payment has been ordered, the secretary of state contacts the State treasurer to issue a payment for the approved claim. If the claim is denied, the inmate has a right to a hearing before the assistant commissioner.

For the period FY 1989 through FY 1993, there were 377 claims under \$500 filed against DOC. The department paid \$10,577 for claims under \$500, but cannot verify the number of claims paid.

2. NEW HAMPSHIRE'S RISK MANAGEMENT PROGRAM (Continued)

2.3 RISK IDENTIFICATION

The first step in any risk management program is to identify all risk or exposure to loss for the organization's real and personal property as well as to identify the potential liability or exposure to loss from personal injuries. As previously noted, RSA 21-I:8 (II)(a) requires the bureau to identify, on a continuing basis, loss exposure for all State-owned real and personal property as well as personal injury liability. In addition, identification of risk requires continuing analysis of the State's actual or potential vulnerability to various claims, including such issues as errors and omissions, professional malpractice, sexual harassment, and civil rights violations. We found no evidence that the bureau had made any effort to identify the State's overall exposure to risk of loss. **(For a complete discussion on this subject including our recommendations and the agency's comments, see Observations #8 and #9 on pages 58-60.)**

2.4 RISK EVALUATION

The second step in a risk management program, once risks have been identified, is to evaluate the information obtained. Risk evaluation is essential if risk control strategies are to be developed and implemented. As noted above, we found no evidence the bureau identified loss exposure for the State. Without sufficient information detailing where and to what extent the State has exposure to loss, an evaluation is impractical, if not impossible.

We performed some limited risk evaluation. Our evaluation consisted of analyzing premiums and losses for the four State insurance policies with the largest dollar annual premiums to determine their efficiency relative to insurance industry standards. For each of the four policies, we calculated the loss ratio. Loss ratio represents the amount of premium paid for each dollar of loss incurred and is calculated by dividing the premium paid by the loss incurred.

We also evaluated the frequency and severity of losses paid by the four insurance policies to determine the size of claims most often made against the policies. Furthermore, analyzing the frequency and severity of claims allowed us to examine the efficiency of deductibles.

Of the current 24 insurance policies, the four with the largest premiums were fleet automobile, State-owned ski areas, State-owned and leased trails for off-highway recreational vehicles, and the foster parent program. These four policies accounted for \$786,844 (85.7%) of current FY 1993 annual premiums and \$4,954,732 in premiums for policy periods November 1984 through January 1993. Losses for the four policies were nearly \$2.7 million during the period (TABLE 2.3).

2. NEW HAMPSHIRE'S RISK MANAGEMENT PROGRAM (Continued)

2.4 RISK EVALUATION (Continued)

TABLE 2.3

**PREMIUMS AND LOSSES FOR INSURANCE POLICIES
WITH FOUR HIGHEST PREMIUMS
(AS OF APRIL 1993)**

POLICY	POLICY PERIOD	PREMIUM	LOSS	LOSS RATIO
FLEET AUTOMOBILE	11/84- 11/92	\$3,805,960	\$2,112,470	\$1.80
SKI AREAS	11/87- 11/92	483,072	331,495	\$1.46
OHRV TRAILS	1/88- 1/93	419,700	211,964	\$1.98
FOSTER PARENTS	10/89- 10/92	246,000	23,561	\$10.44
TOTAL		\$4,954,732	\$2,679,490	\$1.85
<p>Note: Loss ratio represents the amount of premium paid for each dollar of loss incurred. It is calculated by dividing the premium paid by the loss incurred.</p> <p>Source: LBA analysis of insurance company data.</p>				

We also reviewed A.M. Best Database Services premium and loss data for companies writing "other liability" insurance policies (all general liability policies except for automobile liability) and commercial automobile liability policies in New Hampshire for the years 1990 through 1992. We compared "other liability" data to premium and loss data for the DCYS foster parent policy, DRED ski areas policy, and DRED off-highway recreational vehicle policy for the years 1990 through 1992. For this period, companies writing "other liability" policies in the State averaged a loss ratio of \$2.64. For this same period, the loss ratio for the three State-purchased insurance policies was \$1.80.

For the period 1990 through 1992, according to A.M. Best Database Services data, the statewide average loss ratio for automobile liability insurance policies was \$1.65. For this same period, the loss ratio for the State's fleet automobile liability insurance policy was \$1.74. The loss ratio for the State's fleet automobile liability insurance exceeded industry standards by about five percent. Refer to Section three (page 43) for a

2. NEW HAMPSHIRE'S RISK MANAGEMENT PROGRAM (Continued)

2.4 RISK EVALUATION (Continued)

discussion of the fleet automobile insurance policy. (For a complete discussion on this subject including our recommendations and the agency's comments, see Observations #10, #11, and #12 on pages 60-63.)

2.41 State-Owned Ski Areas Insurance

The general liability insurance for Cannon Mountain in Franconia and for Mt. Sunapee in Newbury covers liabilities for bodily injury and property damage to a maximum of \$300,000 annually for all claims. For the period November 1987 through November 1992, the State paid a total of \$483,072 in premiums. There were 14 losses for the period totaling \$331,495. The loss ratio for the period was \$1.46 (TABLE 2.4).

TABLE 2.4

**STATE-OWNED SKI AREAS INSURANCE
PREMIUMS AND LOSSES
(NOVEMBER 1987 - NOVEMBER 1992)**

POLICY YEAR*	PREMIUM	LOSS	LOSS RATIO
1988	\$ 88,500	\$26,711	\$3.31
1989	104,000	101,678	\$1.02
1990	104,200	21,378	\$4.87
1991	88,900	3,766	\$23.61
1992	97,472	177,962	\$.55
TOTAL	\$483,072	\$331,495	\$1.46
* The policy year runs from November to November.			
Source: LBA analysis of Governor and Council minutes and insurance company data.			

To analyze the frequency and severity of losses, losses were placed in five different categories according to their severity. The five categories were: \$1 - \$999; \$1,000 - \$2,499; \$2,500 - \$4,999; \$5,000 - \$9,999; and \$10,000 and over. The insurance policy has a deductible of \$1,000 per claim (TABLE 2.5).

2. NEW HAMPSHIRE'S RISK MANAGEMENT PROGRAM (Continued)

2.4 RISK EVALUATION (Continued)

2.41 State-Owned Ski Areas Insurance (Continued)

TABLE 2.5

**STATE-OWNED SKI AREAS INSURANCE
CLAIMS ACTIVITY
(NOVEMBER 1987 - NOVEMBER 1992)**

AMOUNT OF CLAIM AWARDED	NUMBER OF CLAIMS	PERCENT OF TOTAL	TOTAL PAID CLAIMS	PERCENT OF TOTAL
\$1 - \$999	2	14.3%	\$465	0.1%
\$1,000 - \$2,499	1	7.1%	1,521	0.5%
\$2,500 - \$4,999	2	14.3%	6,895	2.1%
\$5,000 - \$9,999	3	21.4%	23,514	7.1%
\$10,000 and Over	6	42.9%	299,100	90.2%
TOTAL	14	100.0%	\$331,495	100.0%

Source: LBA analysis of insurance company data.

Of the 14 losses paid, nine (64.3%) were over \$4,999. The nine losses over \$4,999 totaled \$322,614 (97.3%) of losses paid. The five losses under \$5,000 totaled \$8,881 (2.7% of total losses).

2.42 Off-Highway Recreational Vehicle Landowner Liability Insurance

Coverage for this program is provided by four general liability policies. Each provides insurance against bodily injury and property damage arising from incidents occurring on State-owned and leased property and trails on private property. The program contains a \$500 deductible on the first policy. The total coverage provided by all four policies is an aggregate \$2 million with each policy providing successive layers of \$500,000 in coverage. For the period January 1988 through January 1993, the State paid a total of \$419,700 in premiums (the annual premiums total \$83,940). During the five-year period, there were four losses paid for \$211,964. The loss ratio for the period was \$1.98.

2. NEW HAMPSHIRE'S RISK MANAGEMENT PROGRAM (Continued)

2.4 RISK EVALUATION (Continued)

2.43 Foster Parent Liability Insurance

This comprehensive general liability policy insures foster parents and foster homes in various locations throughout the State for bodily injury liability and property damage. The aggregate for both coverages is \$500,000. For the period October 1989 through October 1992, the State paid a total of \$246,000 in premiums. There were 42 claims paid over the period totaling \$23,561. The loss ratio for the period was \$10.44 (TABLE 2.6).

TABLE 2.6

**FOSTER PARENT INSURANCE
PREMIUMS AND LOSSES
(OCTOBER 1989 - OCTOBER 1992)**

POLICY YEAR*	PREMIUM	LOSS	LOSS RATIO
1990	\$ 90,000	\$ 7,512	\$11.98
1991	79,950	7,459	\$10.72
1992	76,050	8,590	\$8.85
TOTAL	\$246,000	\$23,561	\$10.44
* The policy year runs from October to October.			
Source: LBA analysis of NHIFS and insurance company data.			

To analyze the frequency and severity of the 42 paid claims, we placed the claims into five different categories according to their severity. The five categories were: \$1 - \$499; \$500 - \$999; \$1,000 - \$1,499; \$1,500 - \$1,999; and \$2,000 and over. The insurance policy has a deductible of \$500 per claim for foster parents' property and a \$250 deductible for bodily injury and damage to others' property (TABLE 2.7).

2. NEW HAMPSHIRE'S RISK MANAGEMENT PROGRAM (Continued)

2.4 RISK EVALUATION (Continued)

2.43 Foster Parent Liability Insurance (Continued)

TABLE 2.7

**FOSTER PARENT INSURANCE
CLAIMS ACTIVITY
(OCTOBER 1989 - OCTOBER 1992)**

AMOUNT OF CLAIM AWARDED	NUMBER OF CLAIMS	PERCENT OF TOTAL	TOTAL PAID CLAIMS	PERCENT OF TOTAL
\$1 - \$499	27	64.3%	\$ 3,817	16.2%
\$500 - \$999	2	4.8%	1,877	8.0%
\$1,000 - \$1,499	9	21.4%	11,068	47.0%
\$1,500 - \$1,999	3	7.1%	4,745	20.1%
\$2,000 and Over	1	2.4%	2,054	8.7%
TOTAL	42	100.0%	\$23,561	100.0%

Source: LBA analysis of NHIFS and insurance company data.

Losses under \$1,000 accounted for 29 (69.1%) of the 42 claims and totalled \$5,694 (24.2%) of losses paid. The remaining 13 (30.9%) claims were over \$1,000 and totalled \$17,867 (75.8% of total losses).

2.5 RISK CONTROL

As described earlier, risk control is generally accomplished in three ways. The State may assume the risk, the risk may be transferred to someone else, or the risk may be reduced or eliminated through various techniques.

2.51 Risk Assumption

RSA 99-D:3 specifies as public policy the State's desire to generally assume all risks and to self-insure against all losses incurred. Self-insurance requires the maintenance of adequate reserves to fund losses. The State does not maintain any self-insurance reserves for risks it has assumed in full. It is, therefore, more accurate to describe the State as "uninsured" or "self-funded" for losses occurring in areas not commercially-insured because no reserve fund exists from which to pay losses. However, New Hampshire is not alone in this regard as all five other New England states reported self-insuring for property and casualty losses in essentially the same manner (TABLE 2.8).

2. NEW HAMPSHIRE'S RISK MANAGEMENT PROGRAM (Continued)

2.5 RISK CONTROL (Continued)

2.51 Risk Assumption (Continued)

In addition to assuming all of a certain risk, there is the commonly used strategy of assuming part of a risk by insuring with the use of deductibles. While some insurance policies purchased by the State utilize deductibles, we found no evidence that the bureau had performed any analysis regarding appropriate deductibles for most insurance policies. For example, the fleet automobile insurance, the policy with the most costly premium, does not include a deductible even though over 87 percent of paid losses are under \$2,500 each.

2. NEW HAMPSHIRE'S RISK MANAGEMENT PROGRAM (Continued)

2.5 RISK CONTROL (Continued)

2.51 Risk Assumption (Continued)

TABLE 2.8

**COMPARISON OF SELECTED SELF-REPORTED VARIABLES
FOR NEW HAMPSHIRE AND THE OTHER NEW ENGLAND STATES
(FY 1991)**

STATE	INSURANCE METHOD	PURCHASE COMMERCIAL INSURANCE	AUTO LIABILITY LOSS RATIO	BID	LOSS PREVENTION PROGRAM
CT	SELF	PARTIAL	\$2.50	YES	YES
ME	SELF	PARTIAL	\$2.26	YES	YES
MA	SELF	NO	\$1.41	N/A	NO
NH	SELF	PARTIAL	\$2.34*	YES	PARTIAL
RI	SELF	NO	\$1.77	N/A	YES
VT	SELF	PARTIAL	\$2.44	YES	YES

Notes: "LOSS RATIO" represents the amount of premium paid for each dollar of loss incurred. The loss ratio represents the statewide average. "BID" represents whether the state competitively bids for commercial insurance policies. "LOSS PREVENTION PROGRAM" indicates whether the state has a comprehensive loss prevention program.

*This figure represents the loss ratio for State government's fleet automobile policy. For N.H., the statewide average loss ratio for commercial automobile liability insurance was \$1.79.

Source: LBA analysis of data provided by New England states, A.M. Best, and STRIMA.

2.52 Risk Reduction

RSA 21-I:14 (II) requires the commissioner of DAS to adopt rules relative to development of loss prevention guidelines for the purpose of risk management. Neither rules nor loss prevention guidelines were ever developed. RSA 21-I:8 (II) (b) requires the bureau administrator to develop

2. NEW HAMPSHIRE'S RISK MANAGEMENT PROGRAM (Continued)

2.5 RISK CONTROL (Continued)

2.52 Risk Reduction (Continued)

and operate risk reduction programs in accordance with these guidelines. However, without loss prevention guidelines, it would be very difficult, if not impossible, for the bureau to develop and operate efficient and effective risk reduction programs.

The bureau administrator identified five State risk reduction programs. The five programs, essentially safety programs, were: the defensive driving course; boiler and pressure vessel inspections; ski area lifts, lift equipment, and tramway inspections; fleet automobile insurance carrier-provided safety programs; and bureau assistance to State agencies. Three of these programs were provided to the State by insurance companies as part of State-purchased insurance policies: boiler and pressure vessel inspections; ski area lifts, lift equipment, and tramway engineering inspections; and fleet automobile insurance carrier provided safety programs. By comparison, the State of Maine's 1991-1992 Annual Report of the Division of Risk Management stated that Maine had 47 different programs targeting loss prevention and employee safety.

The bureau administrator stated that the assistance he provided to State agencies constituted a risk reduction program. He indicated to us that he attended meetings and gave presentations at the State technical schools and at DOT safety meetings. The administrator was unable, however, to provide documentation of the meetings and presentations. In addition, the administrator was unable to provide evidence of the types of assistance delivered to State agencies. We conducted a telephone survey of State agencies that purchased insurance policies, other than fleet automobile liability, through the bureau. Of the 14 respondents, 12 (85.7%) reported the bureau did not assist their agency in any risk-related area other than the purchase of insurance. **(For a complete discussion on this subject including our recommendation and the agency's comments, see Observation #13 on page 65.)**

2.53 Risk Transfer

In New Hampshire a primary method of risk control is the purchase of insurance. Indeed, the majority of costs directly associated with the risk management program stemmed from the premiums paid for insurance policies. As of April 30, 1993, the Bureau of Risk Management reported the State had procured 20 insurance policies which covered a variety of loss exposures for 11 State agencies and four insurance policies (discussed earlier) which provided coverage for multiple agencies.

2. NEW HAMPSHIRE'S RISK MANAGEMENT PROGRAM (Continued)

2.6 COST OF THE PROGRAM

We reviewed data obtained from NHIFS, the Board of Claims, commercial insurers, the Bureau of Risk Management, the Department of Justice, the Department of Corrections, the Department of Transportation, and comparative industry data from the Department of Insurance and the A.M. Best Company to analyze the cost of the State's risk management program.

After reviewing the data, we identified three areas of cost for the risk management program.

- Administrative cost of the Bureau of Risk Management;
- Claims against the State settled by the Board of Claims, Department of Justice, Department of Corrections, and Department of Transportation; and
- State-purchased commercial insurance policy premiums.

2.61 Bureau of Risk Management

From the establishment of the bureau in FY 1984 through FY 1993, the administrator has been the only full-time staff assigned to risk management. Between FY 1984 - FY 1987, risk management was combined budgetarily with benefits administration and operational analysis making comparison difficult. Between FY 1988 - FY 1993, Bureau of Risk Management expenditures, primarily the administrator's salary and benefits, were \$296,932 (TABLE 2.9).

2. NEW HAMPSHIRE'S RISK MANAGEMENT PROGRAM (Continued)

2.6 COST OF THE PROGRAM (Continued)

2.61 Bureau of Risk Management (Continued)

TABLE 2.9

**BUREAU OF RISK MANAGEMENT EXPENDITURES
(FY 1988-1993)**

FISCAL YEAR	EXPENDITURES	% CHANGE
1988	\$ 42,859	
1989	55,005	28.3%
1990	47,471	- 13.7%
1991	49,553	4.4%
1992	50,393	1.7%
1993	51,651	2.5%
1988 - 1993	\$296,932	20.5%
Note: Between FY 1984 - 1987, risk management was combined budgetarily with benefits administration and operational analysis.		
Source: LBA analysis of Statements of Appropriation.		

2.62 Claims Against the State

Aside from losses paid by insurance policies, the State spent \$3,192,122 for 1,014 claims against the State during various time periods from January 1984 through June 1993. Of that amount, \$2,741,556 (85.9%) resulted from 71 settlements handled by the Department of Justice and \$450,566 (14.1%) for 943 claims paid through the Board of Claims, Department of Corrections, and Department of Transportation (TABLE 2.10).

2. NEW HAMPSHIRE'S RISK MANAGEMENT PROGRAM (Continued)

2.6 COST OF THE PROGRAM (Continued)

2.62 Claims Against the State (Continued)

TABLE 2.10

CLAIMS AGAINST THE STATE

AGENCY	PERIOD	# OF PAID CLAIMS	\$ OF PAID CLAIMS
DEPARTMENT OF JUSTICE	7/86- 6/93	71	\$2,741,556
BOARD OF CLAIMS	1/84- 12/92	448	413,274
DEPARTMENT OF TRANSPORTATION	7/85- 6/93	118	26,715
DEPARTMENT OF CORRECTIONS	7/88- 6/93	377*	10,577
TOTAL		1,014	\$3,192,122
* Represents the number of claims filed. Agency cannot verify number of paid claims.			
Source: LBA analysis of NHIFS and agency data.			

2.63 Insurance Premiums

State agencies were responsible for funding the cost of insurance. The Bureau of Risk Management assisted agencies in procuring insurance. The insurance company billed the agency for the cost of the premium and the agency paid the insurance company directly. In the case of the fleet automobile insurance policy, which covered a number of State agencies, agencies contributed a pro rata share of the premium based upon the number of vehicles in their fleet. The insurance company calculated a bill for each State agency based on its vehicle inventory. All bills were delivered to the Bureau of Risk Management, which reviewed the bills to ensure correctness. The bills were then distributed by the bureau to the State agencies. The most recent annual premium paid for fleet insurance purchased by the State was \$529,724 out of a total of \$917,646 in insurance premiums paid (Table 2.11).

2. NEW HAMPSHIRE'S RISK MANAGEMENT PROGRAM (Continued)

2.6 COST OF THE PROGRAM (Continued)

2.63 Insurance Premiums (Continued)

TABLE 2.11

**COMMERCIAL INSURANCE POLICIES PURCHASED THROUGH THE BUREAU
AS OF APRIL 1993**

AGENCY	AREA OF COVERAGE	ANNUAL PREMIUM
VARIOUS	FLEET AUTO*	\$529,724
DRED	SKI AREAS*	102,980
DRED	OFF-HWY REC. VEH.*	83,940
CHILDREN & YOUTH	FOSTER HOMES	70,200
ENVIRONMENTAL SRVS.	PROPERTY*	30,878
HEALTH & HUMAN SRVS.	FOOD STAMPS*	21,588
VARIOUS	BOILERS	19,735
VARIOUS	WATERCRAFT*	16,570
ALL	EMPLOYEE BOND*	10,474
REVENUE	REGISTER OF DEEDS*	9,656
SAFETY	AIRCRAFT	6,711
LIQUOR COMM.	FIRE*	4,688
NH TECH-BERLIN	TRUCK PROGRAM	2,550
EMPLOY. SECURITY	FIRE	2,516
DRED	ANTIQUÉ SNOWMOBILES	938
DRED	BUILDINGS/ARTS	778
ENVIRONMENTAL SRVS.	WORK BOAT	750
ENVIRONMENTAL SRVS.	FIRE	660
GOVERNOR'S OFFICE	HEAT LOSS SYSTEMS	533
ENVIRONMENTAL SRVS.	WATER WORKS BLDGS.	499
HEALTH & HUMAN SRVS.	PORTABLE COMPUTERS	385
DRED	PROPERTY DAMAGE	314
FISH & GAME	ART WORK	300
ENVIRONMENTAL SRVS.	PROPERTY/FIRE	279
TOTAL		\$917,646
* Required by statute.		
Source: Bureau of Risk Management.		

**STATE OF NEW HAMPSHIRE
PROPERTY AND CASUALTY LOSS CONTROL PROGRAM**

3. FLEET AUTOMOBILE LIABILITY INSURANCE: A CASE STUDY

This section describes how the bureau purchased the State's fleet automobile liability insurance policy (the "fleet policy") and how the bureau managed that insurance contract. Because the bureau's risk management activities have focused almost entirely on the purchase of commercial insurance, this case study in many ways is helpful in illustrating how the bureau operated.

RSA 21-I:8 (II)(e) requires the bureau to consult with and obtain approval from the BOA and the commissioner of DAS before purchasing the fleet policy. The fleet policy provides liability coverage for bodily injury and property damage caused by the State's vehicles and drivers to non-State vehicles and drivers. The current limits of liability are \$300,000 per person and \$500,000 per occurrence. The fleet policy provides first dollar coverage, that means there is no deductible. The State spent more than \$500,000 in FY 1993 to insure over 2,600 vehicles. The fleet policy has been competitively bid in 1984, 1987, and 1990.

3.1 FLEET POLICY PREMIUMS, CLAIMS, AND LOSSES

For the period November 1984 through November 1992, the State paid \$3,805,960 in premiums for the fleet policy and had losses totalling \$2,112,470. The ratio of premium dollars to losses for the period was \$1.80. That means that for every dollar the insurance company paid for losses the State paid \$1.80 in premiums (TABLE 3.1).

3. FLEET AUTOMOBILE LIABILITY INSURANCE: A CASE STUDY (Continued)

3.1 FLEET POLICY PREMIUMS, CLAIMS, AND LOSSES (Continued)

TABLE 3.1

**FLEET AUTOMOBILE INSURANCE POLICY
PREMIUMS AND LOSSES
(NOVEMBER 1984 - NOVEMBER 1992)**

POLICY YEAR*	PREMIUM	LOSS	LOSS RATIO
1985	\$ 368,855	\$ 129,569	\$2.85
1986	419,002	187,671	\$2.23
1987	538,338	113,181	\$4.76
1988	471,438	215,806	\$2.19
1989	479,312	586,072	\$0.82
1990	500,722	381,028	\$1.31
1991	529,727	226,348	\$2.34
1992	498,566	272,795	\$1.83
TOTAL	\$3,805,960	\$2,112,470	\$1.80
<p>* The policy year runs from November to November.</p> <p>Source: LBA analysis of Governor and Council minutes, Bureau of Risk Management data, and insurance company data.</p>			

Claims data detailing individual losses were not available for the November 1984 through October 1987 period. However, we were able to obtain detailed claims data for the period November 1987 through November 1992. For this five-year period, we analyzed the frequency and severity of losses. Claims were placed in six different categories according to their severity as evidenced by dollar amount. The six categories were: denied (\$0); \$1 - \$999; \$1,000 - \$2,499; \$2,500 - \$4,999; \$5,000 - \$9,999; and \$10,000 and over. The category with the largest number of claims was "\$1 - \$999" with 507 claims (45.2% of all claims) paying a total of \$198,941 (11.8% of all claims dollars). The category with the largest dollar value of paid claims was "\$10,000 and over" with just 28 (2.5% of all claims) claims paying \$1,036,941 (61.6% of all claims dollars) (TABLE 3.2).

3. FLEET AUTOMOBILE LIABILITY INSURANCE: A CASE STUDY (Continued)

3.1 FLEET POLICY PREMIUMS, CLAIMS, AND LOSSES (Continued)

TABLE 3.2

**FLEET AUTOMOBILE INSURANCE POLICY
CLAIMS ACTIVITY
(NOVEMBER 1987 - NOVEMBER 1992)**

AMOUNT OF CLAIM AWARDED	NUMBER OF CLAIMS	PERCENT OF TOTAL	TOTAL PAID CLAIMS	PERCENT OF TOTAL
\$0 (Denied)	428	38.1%		
\$1 - \$999	507	45.2%	\$ 198,941	11.8%
\$1,000 - \$2,499	100	8.9%	149,339	8.9%
\$2,500 - \$4,999	34	3.0%	121,732	7.3%
\$5,000 - \$9,999	25	2.3%	175,096	10.4%
\$10,000 and Over	28	2.5%	1,036,941	61.6%
TOTAL	1,122	100.0%	\$1,682,049	100.0%
Source: LBA analysis of Bureau of Risk Management and insurance company data.				

The FY 1993 premium for the fleet policy (\$529,724) accounted for 57.7 percent of all premiums (\$917,646) paid by the State for the year. Subsequent to our field work the State awarded a bid in the amount of \$446,040 for the fleet policy for FY 1994. Given the large proportion and dollar amount of premium this single policy represents, it seemed reasonable to us that there would be sufficient, credible evidence showing that the bureau provided an appropriate and adequate level of management attention to this insurance contract. However, this was not the case. There was little evidence to suggest the fleet policy received adequate management attention. We therefore question the level of management attention given to all commercial insurance policies purchased by the bureau on behalf of the State. Insurance policies purchased by the State should be monitored much more carefully if the State is to have the most efficient and effective insurance coverage possible.

3. FLEET AUTOMOBILE LIABILITY INSURANCE: A CASE STUDY (Continued)

3.2 REQUEST FOR PROPOSALS

The process the State used in 1990 to obtain a fleet policy began with the bureau preparing and issuing a request for proposals (RFP) to insurance agents (the "bidders"). The RFP stated that the term of the coverage was three years with years two and three subject to renewal by mutual agreement. The successful bidder was chosen on the basis of its bid price for year one. The RFP also required the successful bidder to provide a defensive driver course. This RFP was issued by the bureau on September 10, 1990.

The bureau administrator reported mailing 27 RFPs to bidders, but this could not be verified. Further, we have been unable to determine who prepared the bid list, when it was developed, how a bidder was added to or deleted from the bid list, or how many proposals the bureau actively sought from bidders. RFPs from bidders were returned to the Division of Plant and Property Management where they are opened by personnel from the Bureau of Purchase and Property. The bid opening was conducted on October 11, 1990. Although the bureau reported mailing 27 RFPs to bidders and we note that over 80 insurers were writing automobile liability coverage in the State at that time, the State received just two bids.

After the bids were opened, they were given to the risk management administrator, who prepared a summary of the proposals. The summary included bid price, the agent, agency name, and underwriter's name. The summary was then sent to the Department of Insurance (DOI) for verification of licensure as required by RSA 21-I:8 (II)(e). This was DOI's only involvement in the bid process.

The bureau administrator stated that bidders were generally allowed a minimum of 30 days in which to complete and return an RFP. Several insurance agents told us that 30 days was not enough time in which to prepare a response. The State held no pre-bid conference.

3.3 DEPARTMENT OF INSURANCE ANALYSIS

The risk management administrator told us that he considered recommending a bid award to only those proposals which complied with bid specifications. However, when we asked the DOI to analyze the two bids submitted in 1990 (for purposes of discussion these bids have been designated by us as "Agency A" and "Agency B"), officials could not determine if either of the two proposals actually met bid specifications. The DOI told us that the bid specifications should have been more detailed in terms of loss history and exact location of the vehicles.

3. FLEET AUTOMOBILE LIABILITY INSURANCE: A CASE STUDY (Continued)

3.3 DEPARTMENT OF INSURANCE ANALYSIS (Continued)

According to the DOI, improvement in preparing bid specifications would contribute to more informative bids in the future. The DOI also noted several concerns with the rate calculations for premiums in both bids. For example, the DOI review found that although Agency A's bid was dated October 11, 1990, it included rates which had expired September 30, 1990. A new rate filing was in effect October 1, 1990.

3.4 BOARD OF APPROVAL & GOVERNOR AND COUNCIL ACTIONS

The bureau next presented the two fleet policy bids to the Board of Approval on October 19, 1990. The bid from Agency A was in the amount of \$541,011 and that from Agency B was in the amount of \$557,474. The "bottom line" for each bid was determined according to the bid specifications by applying a rate per vehicle times the number of State vehicles in that class for each of several vehicle classifications and then summing the product of all the various class calculations. In addition, Agency A's bid included a \$45,000 fee for providing the defensive driver course, while Agency B's bid was silent concerning the defensive driver course. The board accepted the lower bid of \$541,011 from Agency A.

Two months later, on December 19, 1990, Governor and Council approved the insurance contract for the fleet policy awarding the bid to Agency A but in the amount of \$529,728. Although the total amount of the bid was lower than that previously approved by the BOA, each of the individual vehicle rates submitted by the bureau to Governor and Council were higher than those in the document previously approved by the Board of Approval. We found no documentary evidence which could either explain or justify these increases in individual vehicle classification rates or in the corresponding decreases in the number of State vehicles in many classes.

3.5 DEFENSIVE DRIVER COURSE

Executive Order 89-2 (see Appendix C) requires employees operating State vehicles take a defensive driver course before being allowed to operate a State vehicle. Employees must also take a refresher course at least once every three years. We found no evidence of coordination to ensure that the bureau or State agencies tracked State employees needing to take the initial course and refresher course to see if they actually took the courses. Further, the bureau administrator did not check course rosters to determine if those taking the course were State employees and, if so, whether they needed to take the courses.

3. FLEET AUTOMOBILE LIABILITY INSURANCE: A CASE STUDY (Continued)

3.5 DEFENSIVE DRIVER COURSE (Continued)

In order to provide the required defensive driver course, the State's fleet insurer contracted with two organizations which actually performed the services. Each organization was given an allotment to provide a certain percentage of the services. This allotment was determined by the bureau administrator despite his having assured us that he had nothing to do with the defensive driver course and that all services were determined solely by the insurer. There is no evidence to suggest that allotment determinations were based on an organization's price or its program's efficiency or effectiveness.

Each organization providing defensive driver course services included within its corporate structure a State employee either as an officer or director of the organization or both. The contract between the State and the insurer prohibited the insurer from subcontracting to organizations employing State employees. **(For a complete discussion on this subject including our recommendations and the agency's comments, see Observations #14, #15, and #16 on pages 66-69.)**

3.6 LACK OF OVERSIGHT

In addition to problems with the defensive driver course noted above, the bureau's monitoring of the fleet insurance policy was also deficient in other areas. For example, the successful bidder offered 50 hours of safety and engineering services as part of its bid. Despite the bureau administrator telling us that he was satisfied with the provision of those services, we found no evidence the bureau had done anything to track either the quantity or quality of the safety and engineering services provided.

Additionally, the bureau in its "Governor's Monthly Report" noted numerous unspecified problems with the fleet policy insurer but still renewed the policy in 1991 and 1992. The State paid premiums of \$498,566 for the 1991 renewal and \$529,724 for the 1992 renewal despite a reduction of approximately 400 vehicles in the State's fleet during the renewal periods. Despite requests from us, the bureau was unable to provide either documentation that the unspecified problems had been resolved or that the resulting premium increases were justified. Regarding the premium increases specifically, there was no indication that the bureau had done any review or analysis of fleet policy loss data. Review and analysis could have been helpful in identifying areas of loss and in determining whether or at what levels deductibles might have been appropriate in helping to reduce claims losses and hence premiums.

**STATE OF NEW HAMPSHIRE
PROPERTY AND CASUALTY LOSS CONTROL PROGRAM**

4. CONCLUSION

The State's 10-year-old risk management program has not been efficiently or effectively managed. Responsibility for this lack of effort rests, for the most part, with past management of the Department of Administrative Services. Although a Bureau of Risk Management was created by State law and given very specific tasks, there was essentially no risk management program as that concept is widely understood. Moreover, the public policy of the State was to self-insure, however, little effort had gone into identifying, evaluating, and controlling risk. There was at best an inefficiently managed insurance purchasing program which management at all levels of the department did not adequately monitor.

Present management of the department concurs with our findings leading to this conclusion and has expressed a desire to seek improvements in the risk management program. These improvements do not have to be costly to be effective. First, a comprehensive policy statement regarding risk management goals and objectives should be established and widely disseminated to State agencies. This statement should be the initial step in developing written policies and procedures and a risk management manual. Second, the department should assume the lead in coordinating improved risk control and claims management among agencies with risk management responsibilities including the Board of Claims and the Department of Justice as well as other State agencies. Third, the department should strengthen the bureau's record-keeping ability so that appropriate risk management program data can be collected and maintained. This will allow the State to evaluate frequency and severity of losses and better utilize deductibles and other risk assumption techniques.

In addition to proposals given above, we further suggest DAS and the Legislature review the current structure of the program and consider merging the functions of the Workers' Compensation Commission and its staff with the Bureau of Risk Management. As a result of such a merger one administrator position could be eliminated in favor of adding two staff devoted exclusively to employee safety and loss control activities. This would be a much more efficient and effective use of limited resources. **(For a complete discussion on this subject including our recommendations and the agency's comments, see Observations #17 and #18 on pages 70-71.)**

Staff resources and budget in the average risk management program usually comprise a small part of the total resources of the organization. The State's risk management program does not need to be more expensive to become much more efficient and effective.

THIS PAGE INTENTIONALLY LEFT BLANK

**STATE OF NEW HAMPSHIRE
PROPERTY AND CASUALTY LOSS CONTROL PROGRAM**

OBSERVATIONS AND RECOMMENDATIONS

OBSERVATION NO. 1: INADEQUATE PROGRAM DATA MAINTAINED

The single most important deficiency of the State's risk management program is its failure to maintain adequate program data. Responsibility for maintaining adequate data rests with the administrator of the Bureau of Risk Management pursuant to RSA 21-I:8 (II).

It is an accepted maxim of public administration that "Managers can't manage a program unless they know what's going on." Common sense and good business practice tells us that effective supervision of the State's risk management program requires the bureau to identify, collect, evaluate, and maintain basic data on potential loss exposures as well as actual losses. However, as the following illustrate, we found little evidence the administrator attempted in any proactive, meaningful, or comprehensive manner to assemble or coordinate the assembly of baseline data relative to identifying, evaluating, controlling, and managing potential or actual losses:

- The BRM does not have data identifying risks to State real and personal property including the State House, the Legislative Office Building, the State Library, and the State House Annex (buildings in close proximity to one another and therefore potentially subject to one catastrophic loss).
- The BRM does not have data identifying risks associated with business interruptions in such key agencies as the Sweepstakes Commission, the Liquor Commission, or the Department of Revenue Administration.
- With the exception of limited information pertaining to automobile liability insurance claims, the BRM does not have data identifying risks of bodily injury, property damage, or personal injury to third parties including injuries as a result of such wrongful acts as trespass, assault, battery, discrimination, harassment, libel, slander, defamation, invasion of privacy, false arrest, and false imprisonment (risks often associated with general liability, professional malpractice, and errors and omissions insurance).
- The BRM has little or no useful information on claims against or losses sustained by State agencies in any loss exposure area and therefore is not able to provide meaningful data analysis or evaluation on the frequency and severity of those claims and losses to individual agencies. Basic data evaluating frequency and severity are critical if agencies are to develop strategies for controlling risk.

OBSERVATION NO. 1: INADEQUATE PROGRAM DATA MAINTAINED (Continued)

- The BRM has no data documenting how, if at all, State agencies have responded or are responding to control potential loss exposure through such risk control techniques as elimination, reduction, transfer, or retention. Those risk control strategies require practical information so that rational policies and procedures can be developed for such eventualities as 1) discontinuing unnecessary operations, 2) selling surplus property, 3) requiring use of "hold harmless" agreements and certificates of insurance in State contracts, 4) accomplishing safety inspections and preventive maintenance, 5) for disaster recovery planning, 6) purchasing basic, excess, and catastrophic insurance coverage through competitive bidding, and 7) use of deductibles and other self-insurance mechanisms.

Professional risk management literature has provided us with two key facts. First, many successful risk management programs have very small staffs (1-3 persons being common). Second, information management is very often the critical factor in overseeing a successful risk management program, including programs where self-insurance plays a primary role. Without adequate program data, the State's risk management program is not only without substance, it may also be giving officials including legislators a false sense of security.

RECOMMENDATION:

The Bureau of Risk Management should focus serious attention on identification, collection, evaluation, and maintenance of basic information on potential loss exposures and actual losses as noted above. Specifically, the bureau should maintain detailed and complete information relating to insurance coverage purchased by any State agency, including bidders lists, bid specifications, and supporting documentation, copies of insurance policies, and the cost of premiums paid; maintain detailed and complete information on all claims owed to or paid by the State from whatever source including deductibles and claims or losses paid by any State agency, claims authorized by the Board of Claims, and settlements negotiated by the Office of the Attorney General.

If, in carrying out its responsibilities for information management, the Bureau of Risk Management finds State agencies are not cooperating, it should not hesitate to request an executive order or other appropriate assistance from the Governor.

OBSERVATION NO. 1: INADEQUATE PROGRAM DATA MAINTAINED (Continued)

AUDITEE RESPONSE:

We concur and have begun to identify, collect, and evaluate information related to insurance policies presently in force. The BRM has recently been restructured where it has absorbed the Workers' Compensation Commission for State Employees where it has benefitted from administrative support already staffed with the commission. The commissioner of DAS and BRM/WCC administrator are collectively working on developing a strategy and business plan to ensure identification and collection of all data necessary to properly identify and analyze risk and its associated costs. A recent TQM project involved the capture and reporting of all vehicles owned or leased by the State. This detail was stored on a Lotus program and was utilized by BRM in October 1993 when the automobile fleet liability insurance was put out to bid. The department is presently examining how and where this inventory should be maintained on a perpetual basis.

OBSERVATION NO. 2: LACK OF WRITTEN OPERATING POLICIES AND PROCEDURES

The Bureau of Risk Management has no written operating policies and procedures to govern its daily activities and other major bureau functions, such as the purchase of insurance policies. Consequently, there are no procedures for claims reporting, contract review, outside technical assistance, safety and loss control guidelines, deadlines and timetables, and funding considerations as these relate to risk management. Having written policies and procedures is a basic management responsibility. Written guidelines ensure mutual understanding of operations and responsibilities, assigns accountability, and assists with continuity of operations over time.

If the bureau continues to operate without written operating policies and procedures, resources may be used inefficiently, a lack of understanding of responsibilities and priorities may develop, and continuity of daily activities may be disrupted if changes occur in department personnel. For example, the bureau is unaware if State agencies are independently purchasing insurance without the guidance of the bureau. Written policies and procedures would increase agency awareness of the appropriate steps to follow in the insurance acquisition process and would reduce the risk of agencies purchasing insurance without the assistance of the bureau, thereby eliminating the potential for over-insuring for some areas and under-insuring for others. Another area where written policies are necessary is the process for identifying loss exposure for State real and personal property. Currently, there are no formal procedures for the bureau and State agencies to follow when performing this task. Written policies and procedures would serve to outline the steps to be taken in the process, and would clearly define the activities of the bureau, thereby reducing the risk of bureau goals and objectives not being achieved.

OBSERVATION NO. 2: LACK OF WRITTEN OPERATING POLICIES AND PROCEDURES
(Continued)

RECOMMENDATION:

We recommend the Department of Administrative Services develop and implement comprehensive written operating procedures and policies for the daily activities and major functions of the Bureau of Risk Management. These procedures should ensure the goals and objectives of the bureau are carried out in an efficient and effective manner, and that mutual understanding of bureau responsibilities between the Department of Administrative Services and State agencies is achieved.

AUDITEE RESPONSE:

We concur that comprehensive written operating policies and procedures are needed for the Bureau of Risk Management. This project will be undertaken after the risk management reorganization and staffing concerns are finalized, as procedures necessary to carry out risk management's goals will be greatly dependent on resources available.

OBSERVATION NO. 3: LOSS PREVENTION GUIDELINES HAVE NOT BEEN DEVELOPED

The State has not established loss prevention guidelines as required by law. RSA 21-I:14 (II) requires the commissioner of the Department of Administrative Services to develop loss prevention guidelines for the purposes of risk management. No evidence was found to indicate that loss prevention guidelines were ever developed even though the statute requiring these guidelines has been in effect since July 1983. Loss prevention guidelines should be an integral part of the State's risk management program because they could prescribe the procedures and desirable behaviors necessary to ensure a safe work environment. The guidelines could take the form of a risk management manual which could address facets of the program such as claims reporting, technical assistance, data retention and use, and employee safety.

If the State continues to operate the program without loss prevention guidelines, government agencies will not have the guidance and information necessary to implement effective loss reduction and prevention strategies. Furthermore, when losses do occur there will be no criteria to ensure uniform handling of claims from State employees or third parties.

RECOMMENDATION:

We recommend the Department of Administrative Services develop a risk management manual for use by all State agencies. The manual, which should be reviewed and updated on a periodic basis, should be distributed to all agencies. Loss prevention guidelines and appropriate claims procedures should be clearly specified in the manual.

OBSERVATION NO. 3: LOSS PREVENTION GUIDELINES HAVE NOT BEEN DEVELOPED
(Continued)

AUDITEE RESPONSE:

We concur that the department with the assistance of BRM/WCC needs to develop a risk management manual for use by all State agencies. This manual will initially take the form of providing for basic loss prevention guidelines and include proper claim reporting methods. The long-term goal will be to develop this manual to include a more detailed and comprehensive publication incorporating tailored loss prevention guidelines for individual State agencies as required. The administrator of BRM/WCC with the commissioner of DAS are identifying team members within the department and other departments to assist in the development of this manual. This project will be undertaken after risk management reorganization and staffing concerns are finalized, as procedures necessary to carry out risk management's goals will be greatly dependent on resources available.

OBSERVATION NO. 4: NO POLICY STATEMENT REGARDING RISK MANAGEMENT

The State does not have a policy statement regarding risk management. A comprehensive policy statement would address goals, objectives, and philosophy; safety programs; risk management methods to be used; contract review procedures; administrative and organizational authority; risk evaluation methods; and records use and retention. It would appear logical for the Bureau of Risk Management (the central office statutorily charged with risk management responsibilities) to develop such a statement with input from department management and appropriate outside sources. This statement of policy goals and objectives would lend guidance to State agencies and promote uniformity of loss prevention procedures across State government. Moreover, if there were strong management support of the risk management program, loss reduction and prevention could assume a higher priority than has apparently been the case in the past.

Continuing to operate the State's risk management program without specific policy guidance from the department will contribute to the ongoing ineffectiveness and inefficiencies noted in other observations.

RECOMMENDATION:

We recommend the Department of Administrative Services take the lead in guiding and directing the risk management program and its priorities. A comprehensive statement of policy goals and objectives should be established as soon as possible.

AUDITEE RESPONSE:

We concur that the department needs to take the lead in providing a comprehensive statement of policy goals and objectives for BRM. The commissioner of DAS is currently establishing such a policy which will be incorporated into the risk management policy and procedures manual referred to in Observation 3.

OBSERVATION NO. 5: BOARD OF APPROVAL SHOULD BE ABOLISHED

The Board of Approval should be abolished. Under RSA 93-B:2, the board consists of the attorney general, commissioner of revenue administration, and commissioner of banking. The board is charged to "...determine the amount, where no amount is specified, and the sufficiency of the surety; and such other duties as may be provided by law; and no bond shall be valid until approved by said board." In addition to its statutorily-defined responsibilities, the BOA reviews and approves commercial insurance purchases with annual premiums exceeding \$1,000, according to the administrator of the Bureau of Risk Management.

In interviews BOA board members indicated the Bureau of Risk Management had been ineffective in providing adequate background information about pending commercial insurance purchases.

- Several issues were disclosed: copies of RFPs, bid responses, and related loss data were not made available to the board prior to board meetings;
- No explanation or analysis was ever provided by the bureau administrator to the board justifying the acquisition of commercial insurance as opposed to self-insuring; and
- Formal minutes were not prepared and distributed to board members documenting their actions.

The composition of the BOA board as it is presently constituted does not bear a logical relationship to its purpose. The BOA was originally established to approve the amount and sufficiency of surety bonds and has taken on the added responsibility of approving the purchase of commercial insurance. An employee blanket bond has replaced individual surety bonds and Governor and Council provide responsible oversight and approval of insurance contracts. None of the three BOA board members thinks the BOA in its present form is necessary any longer.

RECOMMENDATION:

We recommend the Department of Administrative Services seek appropriate legislative action to repeal RSA 93-B:2 and abolish the Board of Approval.

AUDITEE RESPONSE:

We concur with this observation as stated. In addition, the Department of Administrative Services plans to establish written policies and procedures in order to make the approval process for insurance purchases more effective and efficient.

OBSERVATION NO. 6: LACK OF COORDINATION AMONG BUREAU OF RISK MANAGEMENT, BOARD OF APPROVAL, BOARD OF CLAIMS, AND DEPARTMENT OF JUSTICE

The State's risk management program lacks the coordination necessary to facilitate effective and efficient loss control practices. Because risk management affects every agency in State government, it is essential for those charged with administering this function to communicate and share information on a regular basis. In addition to increasing awareness of the various components of risk exposure, periodic contact would help to ensure that the appropriate risk control strategies are considered from programmatic and legal perspectives. According to representatives from agencies involved in risk management activities (i.e., Board of Approval, Board of Claims, and Department of Justice) there has been little or no contact among themselves and the Bureau of Risk Management since the inception of the bureau in 1984. In our prior audit of the State Workers' Compensation Program (January 1993), we also found that the Workers' Compensation Commission had no contact with the Bureau of Risk Management. It is in the State's best interest for all agencies involved in the areas of personal injury, real and personal property losses, and general liability to communicate and develop a linkage whereby a comprehensive risk control strategy will be implemented.

Without enhanced coordination and communication among the various parties, the State will continue to operate a fragmented and largely ineffective risk management program which uses State resources inefficiently.

RECOMMENDATION:

We recommend the Department of Administrative Services assume the lead in coordinating the agencies mentioned above to improve the risk control and claims management aspects of the State's risk management program.

AUDITEE RESPONSE:

We concur that these agencies need to coordinate efforts to most effectively control risk and claims management for the State in total. The commissioner of DAS is presently planning the reorganization of the BRM to include coordination with the Board of Claims and Department of Justice.

OBSERVATION NO. 7: BOARD OF CLAIMS PROCESS SHOULD BE STRENGTHENED

The Board of Claims process should be strengthened. In order to assess the Board of Claims process we reviewed relevant statutes, interviewed the board chairman, and reviewed and analyzed board annual reports. Our review disclosed the following:

- The Board of Claims has had no contact with the Bureau of Risk Management. Increasing the involvement of the Bureau of Risk Management would allow the bureau to evaluate claims against the

OBSERVATION NO. 7: BOARD OF CLAIMS PROCESS SHOULD BE STRENGTHENED
(Continued)

State and reconcile them with the State's commercial insurance coverage. Also, the bureau would be able to analyze claims and develop loss prevention programs based on the analysis.

- Two State agencies (Corrections and Transportation) with numerous, straight-forward small claims have been given authority in two different statutes (RSA 541-B:9 (V) and RSA 228:29) to settle those claims within differing amounts (\$500 and \$600 respectively). Another State agency (New Hampshire Hospital) with similar small claims lacks that authority.
- The Board of Claims is comprised of five board members. Under RSA 541-B:8, a majority of the board constitutes a quorum to conduct hearings and, "...a vote of at least 3 members voting in favor is required to adopt and approve any matter considered by it." Therefore, in the situation where only three members are present, the vote must be unanimous if a claim is to be resolved.

RECOMMENDATION:

We recommend the following: 1) Revise RSA 541-B:2 to administratively attach the Board of Claims to the Department of Administrative Services in order to increase the involvement of the Bureau of Risk Management and to add administrative support to the board; 2) Repeal RSA 228:29 and add a new paragraph to RSA 541-B:9 (V) granting the Department of Transportation authority to settle claims in the same manner and amount (\$500) as the Department of Corrections, and add an additional paragraph to RSA 541-B:9 (V) granting the New Hampshire Hospital authority to settle claims in the same manner and amount (\$500) as the Department of Transportation; and 3) Revise RSA 541-B:8 to allow decisions to be made by the majority of the quorum present to increase the efficiency of the claims process.

AUDITEE RESPONSE:

We concur that the Board of Claims process should be strengthened. The DAS and Department of Justice are currently exploring advantages and disadvantages involved with attaching the board to this department.

OBSERVATION NO. 8: NO IDENTIFICATION OF LOSS EXPOSURE

The Bureau of Risk Management has failed to identify loss exposure for all State real and personal property as required by law. RSA 21-I:8 (II) (a) requires the bureau to identify loss exposure for all State real and personal property and for personal injury on a continuing basis. The administrator of the bureau confirmed that identification of loss exposure does not occur. The apparent lack of management controls and oversight has contributed to a situation where the bureau has not been held accountable for complying with this statutory requirement.

OBSERVATION NO. 8: NO IDENTIFICATION OF LOSS EXPOSURE (Continued)

Identification of loss exposure is a primary step in guarding against loss for real and personal property. Identification of exposure would include recognizing the areas and magnitude of where the State is vulnerable to personal injury lawsuits. Examples would include alleged civil rights violations, professional malpractice, and other torts. In addition, a systematic review of the inventories of all State properties and an assessment of the potential replacement costs is necessary. An analysis of inventory reliability is fundamental because a determination must be made of what and how much the State owns at a given point in time before exposure can be measured. For example, an analysis of loss exposure would identify facilities that are susceptible to fire or lack sufficient security systems. Once these facilities have been identified, it is possible to take steps to reduce the risk of fire, theft, and business interruption, whether by improving alarm systems or making structural changes.

Until identification of loss exposure occurs, it is not possible for the State to take steps to control and reduce loss for all State real and personal property. If a disaster were to occur, it would be impossible to calculate the loss to the State because there is no comprehensive inventory of all State properties.

RECOMMENDATION:

We recommend the Department of Administrative Services develop and implement procedures to identify the State's loss exposure for all real and personal property as well as personal injury liabilities. In addition, these procedures should include coordination activities with other agencies and outside parties. For example, the department could develop a checklist for agency use and that agencies would be responsible for risk identification. Moreover, these procedures should ensure compliance with existing statutes, contribute to a reliable inventory listing of all State properties, and a reasonable assessment of replacement value for the State's real property.

AUDITEE RESPONSE:

We concur and are currently developing a plan to coordinate efforts and resources. The BRM, Purchase and Property, all State agencies, and the business supervisors are currently developing a business plan to ensure proper identification and collection of obvious risk exposures across the State, as well as a comprehensive inventory at each State agency level. This detail would be received and coordinated by BRM to allow for analysis and recommendation as to the most cost-effective method in which to handle varied exposures.

The commissioner of Administrative Services and administrator of BRM/WCC are also discussing future staffing considerations to best meet the needs of the State for continuous development and improvement of loss control functions.

OBSERVATION NO. 9: NO EVALUATION OF THE FREQUENCY AND SEVERITY OF RISK

The State has not evaluated the frequency and severity of the various risks of exposure it faces. There is no evidence of any attempt to evaluate the number and dollar amount of losses in any category of risk. The Bureau of Risk Management is required by RSA 21-I:8 (II) (a) to identify loss exposure for all State real and personal property and for personal injury. According to the administrator of the bureau, identification of loss exposure has not occurred primarily because of limited staffing. However, according to information obtained from a national association of risk management professionals, the majority of risk management departments across the country have two full-time staff or less. Moreover, as part of the continuum of risk management, evaluation and identification are fundamental steps the State must take before control or prevention of risk can occur.

Without an analysis of historical loss data and a study of the frequency and severity of losses, the State cannot effectively manage its risk or target reduction and prevention programs in the most efficient manner.

RECOMMENDATION:

We recommend the Department of Administrative Services develop and implement procedures to periodically evaluate the State's various risks, after risk identification has occurred. Specifically, the department should analyze the frequency and severity of risks and losses by type of asset to develop a baseline of information from which to plan risk reduction and prevention programs. This evaluation should take place at least annually.

AUDITEE RESPONSE:

We concur that procedures need to be developed and implemented to periodically evaluate the frequency and severity of risk. Our corrective action has been covered and included in our responses to Observations 2 through 4.

OBSERVATION NO. 10: STATE ADMINISTRATION OF COMMERCIAL INSURANCE CONTRACTS IS INEFFICIENT

The administration of commercial insurance contracts by the Bureau of Risk Management is inefficient. The bureau has not conducted an analysis to identify cost-effective means for protecting the State against various types of losses as required by law. RSA 21-I:8(II) (c) requires the bureau to "...identify cost effective means for protecting against various types of losses, including self-funding, commercial insurance purchases and risk assumption... ." A cost-benefit analysis would ensure that State real and personal property is protected in an efficient and effective manner.

OBSERVATION NO. 10: STATE ADMINISTRATION OF COMMERCIAL INSURANCE CONTRACTS IS INEFFICIENT (Continued)

Failure to identify the most cost-effective means for protecting the State's assets against loss could lead to waste and an inefficient use of resources. For example, the State has a liability insurance policy for its fleet automobiles, which is required by RSA 21-I:8(II)(e). For the period November 1984 through November 1992, the State paid \$3,805,960 in premiums and experienced \$2,112,470 in losses. In simpler terms, the State paid \$1.80 in premiums for every \$1.00 in losses. Another example is the foster parents program administered by the Division for Children and Youth Services (DCYS). The state paid \$246,000 in premiums for the DCYS program and had \$23,561 in losses between 1989-1992 or a ratio of \$10.44 to \$1.00. A third example is the program to insure State ski areas administered by the Department of Resources and Economic and Development (DRED). The State paid \$483,072 in premiums for DRED ski areas and had \$331,495 in losses between 1987-1992 or a ratio of \$1.46 to \$1.00.

The bureau should examine more efficient options for insuring the State assets and programs. Aside from these three policies, the bureau's monthly reports show the State currently has twenty-one insurance policies covering a variety of State agencies and programs. There is no evidence to demonstrate these policies provide the most cost-effective means available for protecting against loss in these areas. Furthermore, the bureau does not perform a cost-benefit analysis to examine the benefits of commercially insuring State property that is not currently commercially insured. A cost-benefit analysis would ensure the State is protected against loss in the most efficient and effective manner possible.

RECOMMENDATION:

We recommend the Department of Administrative Services develop and implement procedures to periodically identify and evaluate the most cost-effective means for protecting the State's assets against various types of losses. Evaluation and analysis may include that of insurance deductibles currently paid by the State, obtaining catastrophic insurance coverage, or obtaining a "stop-loss" insurance policy for currently self-insured risks, whereby the State pays for claims up to a certain amount and then the insurance policy is activated. The department may also review the efficiency of the State contacting insurance companies directly as opposed to working through an insurance agent who in turn contacts the insurance company. Finally, an analysis of the strengths and weaknesses of self-administration of a risk management program, the employment of a third-party administrator to process claims, or some combination thereof, would also be of benefit to the State.

AUDITEE RESPONSE:

We concur that procedures to periodically identify and evaluate the most cost-effective means for protecting the State's assets against various risks needs to be developed and implemented. Evaluation and analysis of this area are targeted to begin with insurance policies currently in force. Future objectives include evaluations and analysis of assets and risks

OBSERVATION NO. 10: STATE ADMINISTRATION OF COMMERCIAL INSURANCE CONTRACTS IS INEFFICIENT (Continued)

AUDITEE RESPONSE (Continued):

currently self-insured for consideration of alternative risk reduction methods. Although inappropriate, this task is often left as the last step in the risk assessment process, as managing the day-to-day activity for a singly-staffed department requires a reactive management style versus the proactive management style which is more effective and desirable. The reorganization and staffing needs presently being considered for BRM will hopefully allow for this step to be taken at shorter intervals and on a consistent basis.

OBSERVATION NO. 11: INADEQUATE MONITORING OF COMMERCIAL INSURANCE CONTRACTS

The State has inadequately monitored its commercial insurance contracts. RSA 21-I:8 (II)(e) authorizes the Bureau of Risk Management to purchase fleet liability insurance for the State's vehicles and motorboats, as well as any other insurance a State agency may be authorized or required to furnish. According to bureau records, the State had 24 insurance policies with an aggregate annual premium of \$917,646 as of April 1993. These policies cover various agency programs such as fleet vehicles, foster parents, ski areas, off-highway recreational vehicles, boilers/pressure vessels, food stamps, and employee faithful performance bonds.

As noted in other observations, we found the bureau maintained inadequate data on the State's risk exposure and administered insurance contracts in an inefficient manner. Our examination also disclosed that the bureau had no loss data on hand or evidence of monitoring of any kind related to these insurance contracts. For example, the State contracted with an insurance company in 1990 to provide fleet liability coverage at specified rates for a three-year period. However, the rates approved by Governor and Council were higher than those listed in the insurer's original bid documents. No evidence was found to justify this discrepancy. The rates increased again in the second and third years of the contract even though the number of vehicles in the fleet actually decreased by roughly 400 units. Again, no evidence was found to either justify the rate increases or to document any discussion between the bureau (as the State's agent) and the insurer. This failure to monitor the insurance contract and question rate increases may have cost the State thousands of dollars in excess premiums. Of the \$917,646 aggregate premium cited earlier, \$529,724 (57.7%) was for the fleet liability coverage alone.

OBSERVATION NO. 11: INADEQUATE MONITORING OF COMMERCIAL INSURANCE CONTRACTS
(Continued)

RECOMMENDATION:

We recommend the Department of Administrative Services closely monitor all insurance contracts to ensure that the State enters into agreements which are in its best interests and receives the benefit of its bargain. We also recommend that an analysis be performed before any insurer is selected to determine whether the desired coverage will be provided in the most efficient manner possible.

AUDITEE RESPONSE:

We concur that all insurance contracts need to be closely monitored to ensure the best interest of the State are met. We also concur that analysis is needed into historical trending of coverages, premiums paid, and loss detail before any insurer is selected to determine whether or not insurance is the most cost-effective method in managing the risk. Historical data necessary to accurately perform such analysis is currently being gathered where one policy at a time will be examined and analysis completed before recommendation can be made related to policy renewal, avoidance of the risk, limit and/or reduction of risk, or retention of risk utilizing self-insurance as an alternative. This process is planned to occur over an extended period of time where BRM currently consists of only one staff member possessing this expertise. These goals may be realized much more quickly if staffing and other resources are made available to BRM.

OBSERVATION NO. 12: NO COMPREHENSIVE PROGRAM FOR COMPETITIVELY BIDDING
INSURANCE COVERAGE

The Bureau of Risk Management has no comprehensive program for competitive bidding of insurance contracts and may be violating State purchasing rules. Although RSA 21-I:8 (II)(e) authorizes the Bureau of Risk Management to purchase insurance for State agencies, it appears the bureau may be violating State purchasing rules by not uniformly using competitive bidding to acquire commercial insurance. RSA 21-I:11 (III) requires the State to use competitive bidding for all purchases except when (a) the best interests of the state are served and the purchase is not more than \$2,000; (b) after a reasonable investigation, the service is available from only one source; (c) after a reasonable investigation, the service has a fixed market price from all available sources; or (d) in the opinion of the Governor, an emergency exists which requires the immediate procurement of supplies.

Competitive bidding would help to ensure that the State receives goods and services in the most cost-effective manner. In addition, strong competitive bidding promotes objectivity in the selection of outside vendors. As an example of weak competitive bidding, our review of the distribution of vendor payments for insurance premiums between FY 1986-1992 disclosed that

OBSERVATION NO. 12: NO COMPREHENSIVE PROGRAM FOR COMPETITIVELY BIDDING INSURANCE COVERAGE (Continued)

the State paid \$3.4 million (65.4%) of the \$5.2 million in total premiums to just two different insurance agencies. Another example was disclosed in our review of the fleet automobile liability policy. According to the bureau administrator, during the last renewal period (November 1990) only two insurers submitted bids to underwrite the fleet liability policy. We question why only two of the 80 insurers (2.5%) writing automobile liability policies in New Hampshire at that time would be interested in receiving the State's business of roughly \$500,000 in annual premiums.

Other unusual items we observed related to the insurance acquisition process which could not be explained by the bureau administrator included:

- How, when, why and by whom insurance RFPs were developed.
- How many bidders for each insured program were actively sought.
- Why the successful fleet liability bidder did not provide coverage as specified in the bid documents. For example, the State paid a \$44,284 premium for "mobile equipment" when it was specifically excluded in the actual policy.
- Why the fleet liability contract approved by Governor and Council contained rates higher than those submitted by the successful bidder.
- Why some insurance coverage was competitively bid and some was not.

RECOMMENDATION:

We recommend the Department of Administrative Services establish a comprehensive program to competitively bid all necessary insurance contracts, unless the insured program is such that competitive bidding is impractical. For example, the type of coverage desired is only handled through one company licensed in New Hampshire. The department should seek assistance from the State Department of Insurance to develop a comprehensive list of insurers licensed to underwrite policies for the various programs the State currently insures. Once the bidder list is developed, it should be reviewed and updated on a periodic basis. If the department thinks particular programs' insurance should not comply with RSA 21-I:11 (III), sufficient documentation of the reasons why competitive bidding is impractical should be retained in department files with the appropriate management approvals.

AUDITEE RESPONSE:

We concur that the department needs to establish a comprehensive program to competitively bid all necessary insurance contracts, where appropriate. The current administrator of BRM is working with the Insurance Department to develop a menu of credentials/certification to identify qualified bidders and insurers licensed to underwrite all lines of commercial business and

OBSERVATION NO. 12: NO COMPREHENSIVE PROGRAM FOR COMPETITIVELY BIDDING INSURANCE COVERAGE (Continued)

AUDITEE RESPONSE (Continued):

specialty lines as well. Procedures and guidelines will be reviewed and updated on a periodic basis. Detailed documentation will also be recorded and maintained whenever programs' insurance are found not to comply with RSA 21-I:11(III).

OBSERVATION NO. 13: NO COMPREHENSIVE RISK REDUCTION PROGRAM

The State does not have a comprehensive risk reduction program. RSA 21-I:8 (II)(b) requires the Bureau of Risk Management to be responsible for several functions including, "...developing and operating risk reduction programs, in accordance with the loss prevention guidelines adopted pursuant to RSA 21-I:14 (II)." However, loss prevention guidelines have never been adopted and no evidence has been provided by the Department of Administrative Services that these guidelines will be adopted in the near future.

According to the administrator of the Bureau of Risk Management, the State had five safety programs as of April 28, 1993. These programs include: safety inspections for boiler and pressure vessels and State ski area equipment; the distribution of information on safety practices by the commercial insurance carrier for the fleet automobile policy to some agencies; a defensive driver course; and the administrator's daily contacts with agency personnel on the topic of risk management.

However, we question the adequacy and effectiveness of these programs because the Bureau of Risk Management has not identified the current or potential risks facing the State or the severity and frequency of these risks as evidenced by the lack of loss prevention guidelines. Furthermore, the safety programs noted above are primarily the result of provisions in commercial insurance policies rather than a State initiative for a comprehensive risk reduction program for State property and employees. In addition, the bureau administrator indicated that a great deal of time is spent maintaining insurance programs; however, the administrator was unaware of which agencies have the legal authority to purchase commercial insurance or any analysis of insurance information. Moreover, the administrator had no documentation of planning and maintenance activities for the audit period FY 1984-1993. Without a comprehensive risk reduction program the State cannot control its risks nor reduce the future exposure to risks.

OBSERVATION NO. 13: NO COMPREHENSIVE RISK REDUCTION PROGRAM (Continued)

RECOMMENDATION:

We recommend the Department of Administrative Services conduct a comprehensive evaluation of New Hampshire's risk exposure. At a minimum this evaluation should include identifying current and potential risks, determining the frequency and severity of past losses, and determining how to control the risks through reducing, eliminating, retaining, or transferring the risk, or some combination of the above. Based on this evaluation we recommend the department develop and implement loss prevention guidelines tailored to the State's needs. Current safety programs should be reviewed and modified, if necessary, based on the new guidelines. Finally, the department should develop and implement a comprehensive risk reduction program for State property and employees.

AUDITEE RESPONSE:

We concur that a comprehensive evaluation of New Hampshire's risk exposure is necessary on a continual basis. Loss prevention programs tailored to the risks most costly and most frequently incurred by the State would have a significant impact on reducing expenditures. The first step toward implementation of a statewide risk reduction program is coordination of data related to this area with input from the Board of Claims, Attorney General's office, and all State agencies related to identification of claims and losses most frequently handled. To properly administer a risk reduction program statewide, BRM must staff or contract with personnel specializing in the loss control area. These issues are being addressed by the administrator of BRM/WCC with the commissioner of DAS in an effort to determine the most cost-effective solution.

OBSERVATION NO. 14: NONCOMPLIANCE WITH FLEET AUTOMOBILE INSURANCE CONTRACT

The administration of the State's defensive driving course (DDC) does not comply with the requirements of the contract between the insurer's agent and the State. The insurer's agent for the State's fleet automobile liability insurance, subcontracts with two providers (hereinafter identified as "DDC provider 1" and "DDC provider 2") to furnish DDCs for State employees who operate State-owned vehicles (the defensive driving course is required by Executive Order 89-2). Section 6.2 of the contract between the State and insurer's agent states that "...the Contractor shall not hire, and shall permit no subcontractor or other person, firm or corporation with whom it is engaged in a combined effort to perform the services, to hire any person who has a contractual relationship with the State, or who is a State officer or employee, elected or appointed." However, the president of DDC provider 1 and the vice-president and the treasurer for DDC provider 2 are all State employees. The insurer agent's relationship with DDC provider 1 and DDC provider 2 violate this prohibition.

OBSERVATION NO. 14: NONCOMPLIANCE WITH FLEET AUTOMOBILE INSURANCE CONTRACT
(Continued)

The administrator stated he was not aware of the prohibition to subcontract with State employees. The restriction is part of the standard State Request for Proposal (RFP) the bureau compiles and distributes for the fleet automobile liability insurance policy. The administrator of the bureau should be aware of the content of the documents he uses in the bid process. The standard RFP is used by the bureau for all insurance policies it has acquired through competitive bidding on behalf of the State.

In addition to noncompliance with the State's RFP, the fact that officers and directors of DDC provider 1 and DDC provider 2 are also State employees creates a relationship which the public could view as inappropriate. Public officials should ensure their actions are free from any appearance of impropriety. Also, because State agencies may choose which course provider they wish to use, the officers and directors of DDC provider 1 and DDC provider 2 as State employees may influence which provider is selected.

RECOMMENDATION:

We recommend the Department of Administrative Services more carefully monitor its contracts to ensure that all requirements pertaining to contracts and any resulting subcontracts are met.

AUDITEE RESPONSE:

We concur with this observation as stated where all contracts need to be reviewed and monitored to ensure requirements are complied with. The present administrator has revised procedures related to defensive driving to comply with requirements between the insurance agency and the State. Continued study of this program is underway for consideration of further revisions if found to be in the best interest of the State.

OBSERVATION NO. 15: DEFENSIVE DRIVING COURSE IS NOT COMPETITIVELY BID

The defensive driving course (DDC) for State employees is not competitively bid even though there are 15 providers certified to offer the course in New Hampshire. The course is funded through the fleet automobile liability insurance policy. The insurer's agent, which subcontracts with two providers for the DDC (hereinafter identified as "DDC provider 1" and "DDC provider 2"), receives \$45,000 per year from the State, as part of the insurance premium, to provide the course. The Bureau of Risk Management allocates funding for each of the DDC providers. The providers charge different amounts for training State employees. This practice has led to a situation where the State is paying two different prices for the same service.

OBSERVATION NO. 15: DEFENSIVE DRIVING COURSE IS NOT COMPETITIVELY BID
(Continued)

The basis for the allocation of funding between the two providers is unclear. The administrator of the bureau sends a memo to the providers informing them of their funding level for the year. For the period November 1992 through November 1993, DDC provider 2 was allocated \$30,000 and DDC provider 1 was allocated \$15,000. Neither of the course providers could explain how the bureau's allocation process works. DDC provider 1 charges \$100 to train State employees to be course instructors, does not charge for the refresher course instructors are required to take every three years, and charges \$15 per State employee taking the defensive driving course. DDC provider 2 charges \$100 for instructor training, \$33 for the instructor refresher course, and \$25 per employee. On six occasions, between August 8, 1991 and June 4, 1993, a third certified DDC provider contacted the Bureau of Risk Management to find out how to become a provider of the DDC for State employees. Correspondence from the third provider to the bureau states that the third provider would provide the course at \$13 per employee trained. Also, the third provider would use all of its own instructors, thereby eliminating the other two providers charge of \$100 per instructor trained. Clearly, the State is not getting the lowest possible price for the defensive driving course. Furthermore, the Department of Safety has certified 15 different organizations within the State to teach defensive driving. Allowing 15 organizations to bid on the State's defensive driving course would increase competition and allow the State to select the best option.

RECOMMENDATION:

We recommend that, where appropriate, the Department of Administrative Services require the fleet auto insurance agent to competitively bid the defensive driving course to ensure the most efficient use of State resources. The process used to allocate defensive driving course funding should be documented if more than one provider is used.

AUDITEE RESPONSE:

We concur that if the defensive driver course is to continue in its present format that it be competitively bid. We also concur that the process and rationale for allocating funding for this course be documented, if provided by more than one vendor. The current administrator of BRM is also investigating other possible alternatives which might be available to provide the DDC and ensure the most efficient use of State resources.

OBSERVATION NO. 16: INADEQUATE STATE MONITORING OF DEFENSIVE DRIVING COURSE

The State has not adequately monitored the administration of the defensive driving course (DDC) offered to its employees. The insurer's agent, which subcontracts with two DDC providers, receives \$45,000 per year from the State, as part of the fleet automobile insurance premium, to provide the course. The Bureau of Risk Management circulated a memo in February 1991 to State agencies, informing them that they may contact either of the two providers to furnish the DDC for their employees. Executive Order 89-2 requires every State employee who drives a State-owned vehicle to receive DDC training and complete a refresher course every three years. At the end of each course, DDC providers submit a roster of State employees attending the course to the insurer's agent, who then pays the providers based on the number of course participants. Copies of the rosters are also forwarded to the Bureau of Risk Management. However, neither the insurer's agent nor the bureau take steps to verify whether all employees listed on the rosters actually attended the course or whether all participants listed on the roster are State employees. This could lead to a situation where the State is paying for employees who did not take the course and for individuals who are not State employees. In a September 1, 1993 interview, an official of one of the DDC providers stated that he knew of at least two instances where employees of non-State agencies were allowed to take the course at State expense. The course rosters should be reviewed to ensure the State is only paying for State employees to take the course and that all employees listed on the roster actually attended the course.

We have found no evidence of any analysis to determine: how many State employees take the course during the year; how many State employees require the course; if State employees who do not need the course are taking it; and whether all State employees who require the course are taking it. Because this information is unknown, it is not possible to determine if the appropriate employees are receiving training.

Furthermore, the lack of data raises questions over whether the \$45,000 allocated for the DDC is appropriate. Correspondence from the two DDC providers reveals that the funding has been inadequate. For example, between November 1991 and November 1992, one DDC provider exceeded its \$15,000 allocation by \$2,265. The provider was not reimbursed for the amount over its allocation. In an interview, an official of one of the DDC providers indicated the allocation for the current policy period would be exceeded as well. If the number of State employees requiring the course was determined, then the allocation could be developed based on the actual number of employees trained, as the charge for the course is based on the number of employees.

RECOMMENDATION:

We recommend the Department of Administrative Services carefully monitor DDC participation to ensure that only State employees needing the course are trained; that all State employees required to take the course do in fact receive training; and that any funds not utilized for DDC purposes be returned to the State by the insurer. Also, the appropriate funding level for the DDC should be determined.

OBSERVATION NO. 16: INADEQUATE STATE MONITORING OF DEFENSIVE DRIVING COURSE
(Continued)

AUDITEE RESPONSE:

We concur that the BRM should monitor the participation and administration of the DDC to ensure that only State employees attend these courses at the State's expense (if any expense is involved), and that those employees required and/or most needing the training are attending and successfully passing the course. Exceptions should be noted and further corrective action addressed which best limits further exposure and expense to the State. The present administrator of the BRM and the commissioner of DAS are working collectively towards a solution for funding loss prevention services in total, to include the DDC when needed.

OBSERVATION NO. 17: BUREAU OF RISK MANAGEMENT SHOULD BE MERGED WITH THE WORKERS' COMPENSATION COMMISSION

The Bureau of Risk Management has been ineffective in administering the State's risk management services. Reorganization of risk management service delivery in combination with merging the workers' compensation function would improve the program. Since the bureau's inception in 1984, it has consisted of one professional staff member, the risk management administrator. The bureau's governing statute (RSA 21-I:8 (II)) assigns responsibility for a broad range of risk management activities but does not provide for any investigative or administrative support. Partly because of this lack of administrative support, the bureau has functioned more aptly as the State's insurance purchasing agent for the past 10 years. From interviews with the bureau administrator and a review of bureau records, it is clear that the vast majority of bureau activities concentrated on purchasing commercial insurance. Insurance acquisition is only a small component of the bureau's statutory responsibilities and the risk management discipline in general.

Moreover, because commercial insurance dominated the bureau's operations other significant facets of the program were neglected. These areas include identification and evaluation of loss exposure for real and personal property, the risk of exposure for personal injuries, the development and implementation of coordinated risk reduction programs, and periodic cost-benefit analyses of current insurance policies to determine whether commercially-insuring a particular asset or program is in the best interest of the State.

The Workers' Compensation Commission, which was established within the Department of Administrative Services in 1983, handles the claims management function for State employees. The commission consisted of five staff as of January 1993 when our audit report of workers' compensation was produced. Combining these two functions is logical and consistent with private sector practices. In addition, these two functions are both within the Department of Administrative Services. With such a merger the elimination of one

OBSERVATION NO. 17: BUREAU OF RISK MANAGEMENT SHOULD BE MERGED WITH THE WORKERS' COMPENSATION COMMISSION (Continued)

administrator position would allow two staff to be added at little or no additional cost. These staff positions could be devoted entirely to employee safety and loss control activities. These two staff persons, with appropriate management involvement, could focus their attention on the deficiencies noted above to improve the State's various risk exposures.

RECOMMENDATION:

We recommend the Department of Administrative Services consider seeking legislative revision of RSA 21-I:8 and 21-I:23 to combine the functions of the Workers' Compensation Commission with the Bureau of Risk Management. We further recommend that one administrator position, that of the unclassified risk management administrator, be eliminated allowing additional staff for employee safety and loss control activities.

AUDITEE RESPONSE:

We concur that the functions of the Workers' Compensation Commission should be combined with the Bureau of Risk Management for both to operate most effectively. The commissioner of DAS has already begun to take corrective action by assigning the duties of the administrator of the BRM to the administrator of the WCC. Although this involved only a temporary reclassification, further discussions and recommendations are being proposed to permanently consolidate the two departments, eliminating the vacant unclassified position in exchange for two additional staff members with a loss control/safety background. Revised legislation of RSA 21-I:8 and 21-I:23 to combine these functions is currently being worked on.

OBSERVATION NO. 18: COORDINATION BETWEEN THE BUREAU OF RISK MANAGEMENT AND STATE AGENCIES IS INSUFFICIENT

The Bureau of Risk Management (BRM) has failed to effectively coordinate risk management activities between the bureau and other State agencies as required by RSA 21-I:8 (II). Responsibility to coordinate risk management activities lies solely with the bureau. Effective coordination requires frequent communication with those agencies receiving services.

We conducted 14 telephone surveys of State agencies having agency-specific insurance policies purchased through the BRM as of April 30, 1993. None of the 14 respondents indicated more than occasional contact with the bureau and when contact occurred, 10 respondents stated they initiated it.

We also conducted seven telephone surveys of selected State agencies with vehicles insured by the fleet automobile insurance policy. All seven of the respondents indicated that neither BRM nor insurance companies provided them with loss data.

OBSERVATION NO. 18: COORDINATION BETWEEN THE BUREAU OF RISK MANAGEMENT AND STATE AGENCIES IS INSUFFICIENT (Continued)

A properly organized and functioning State risk management program should have an administrator who acts as a conduit for information between insurance companies and other State agencies. As a conduit, the administrator should request and forward loss information to the State agencies on a periodic basis. The administrator should also provide the State agencies copies of their RFPs and insurance policies. In addition, the administrator should periodically identify and evaluate loss exposure which requires on site examination.

Without sufficient coordination, desired goals may not be achieved. Increased communication between the BRM and the State agencies would increase their knowledge of insurance coverage. Poor coordination results in an inefficient and ineffective risk management program. Areas of loss may go unnoticed and potential areas of loss may go unrecognized. Because State agencies do not receive loss data, they are unaware of the areas in which they are experiencing loss and are therefore unable to protect themselves from these losses.

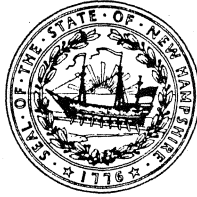
RECOMMENDATION:

We recommend that coordination between the Bureau of Risk Management and the various State agencies increase. We also recommend regular consultation with top management of other State agencies to determine their insurance and risk management needs. State agencies should be supplied with appropriate RFPs and insurance policies. Loss data should also be supplied on a regular basis. In addition, a process should be established for State agencies to notify the BRM of claims so the bureau is aware of areas of exposure and can act to protect the State's assets.

AUDITEE RESPONSE:

We concur that coordination between the BRM and State agencies needs to increase. We are presently exploring various methods which would most effectively accomplish this goal in a consistent manner. Written policies and procedures would certainly be a start, coupled with the addition of staff in the area of loss control would certainly heighten our visibility and generate interaction related to claims and exposures would become routine. The current administrator has begun taking corrective measures by educating and counseling in terms of risk management functions or a specific need has been identified. It is a most difficult and cumbersome process for one person to educate and advise all State agencies. Additional staffing is vital to accomplish this task effectively on an ongoing basis.

APPENDIX A



State of New Hampshire
DEPARTMENT OF ADMINISTRATIVE SERVICES
OFFICE OF THE COMMISSIONER
State House Annex - Room 120
Concord, New Hampshire 03301

PATRICK DUFFY
Commissioner
(603) 271-3201

DONALD S. HILL
Assistant Commissioner
(603) 271-3202

January 24, 1994

Mr. Michael L. Buckley, Director of Audits
Office of Legislative Budget Assistant - Audit Div.
Concord, New Hampshire 03301

Dear Mr. Buckley:

We would like to thank the Legislative Budget Assistant's (LBA) Office for allowing us the opportunity to respond to the findings of this audit.

Present management of the Department of Administrative Services concurs with recommendations and conclusions defined within the audit. This Department is committed to implementing improvements which will result in the most efficient and cost effective operation. Improvements in the Risk Management program have already been actively pursued and realized in critical areas.

As of August 1993, the Bureau of Risk Management and the Worker's Compensation Commission have been temporarily consolidated until a formal consolidation can be pursued through the legislative process. Immediate improvements were made in the areas of administrative support and record keeping. The Department has been successful in reducing insurance premium and other costs associated with loss control by approximately \$85,000 annually in the Fleet Auto liability area, and \$13,000 annually in the liability policy for the ski areas.

The other State programs with insurance policies presently in force are under study. Consideration is being given to the elimination of future insurance purchases which would result in a potential savings of \$120,000 annually.

This audit has been a positive experience for the Department, and we will work to bring about the changes recommended in the report.

Sincerely,


Patrick Duffy

A-1

THIS PAGE INTENTIONALLY LEFT BLANK

APPENDIX B



APPENDIX B

RISK MANAGEMENT STATUTES

SELF-INSURANCE (RSA 99-D:3)

The State, or any department or agency thereof, shall self-insure against all such damages, losses, and expenses except to the extent that insurance coverage is obtained under the authority of RSA 412:3. The fiscal committee of the general court shall study alternative means to self-insurance by the State and shall report its findings to the general court not later than January 31, 1979. The fiscal committee shall be free to seek the assistance of the insurance department, the attorney general's office, and any other resource individuals (Emphasis Added).

SOVEREIGN IMMUNITY (RSA 99-D:1)

It is the intent of this chapter to protect state officers, trustees, officials, employees, and members of the general court who are subject to claims and civil actions arising from acts committed within the scope of their official duty while in the course of their employment for the state and not in a wanton or reckless manner. It is not intended to create a new remedy for injured persons or to waive the State's sovereign immunity which is extended by law to state officers, trustees, officials, and employees. The doctrine of sovereign immunity of the State, and by extension of that doctrine, the official immunity of officers, trustees, officials, or employees of the state or any agency thereof acting within the scope of official duty and not in a wanton or reckless manner, except as otherwise expressly provided by statute, is hereby adopted as the law of the State. The immunity of the state's officers, trustees, officials, and employees as set forth herein shall be applicable to all claims and civil actions, which claims or actions arise against such officers, trustees, officials, and employees in their personal capacity or official capacity, or both such capacities, from acts or omissions within the scope of their official duty while in the course of their employment for the state and not in a wanton or reckless manner (Emphasis Added).

**CLAIMS AGAINST THE STATE
(RSA 541-B)**

541-B:1 Definitions. In this chapter:

- I. "Agency" means all departments, boards, offices, commissions, institutions, other instrumentalities of state government, including but not limited to the New Hampshire port authority, the New Hampshire housing finance authority, New Hampshire energy authority, and the Pease development authority, and the general court, including any official or employee of same when acting in the scope of his elected or appointed capacity, but excluding political subdivisions of the State. [Amended 1985, 412:4. 1990, 161:3, effective June 1, 1990.]
- II. "Board" means the Board of Claims established by RSA 541-B:2.
- II-a. "Claim" means any request for monetary relief for either:
 - (a) Bodily injury, personal injury, death, or property damages caused by the failure of the state or state officers, trustees, officials, employees, or members of the general court to follow the appropriate standard of care when that duty was owed to the person making the claim, including any right of action for money damages which either expressly or by implication arises from any law, unless another remedy for such claim is expressly provided by law; or
 - (b) Property damages suffered by a state employee or official during the performance of that employee's or official's duties while on state business where compensation is appropriate under principles of equity and good conscience. [Added 1985, 412:5. Amended 1988, 36:1, effective January 1, 1989.]
- III. "Claimant" means any person who files a claim pursuant to this chapter.
- IV. [Repealed 1985, 412:15, I, effective July 3, 1985.]
- V. "Person" means any individual, partnership, association, corporation, or political subdivision.
- VI. "Political subdivision" means any village district, school district, town, city, county, or unincorporated place in the State.

541-B:2 Board Established. There is hereby organized, constituted, and established a 5-member board of claims for the state.

541-B:3 Appointment and Qualifications of Board Members.

- I. The governor shall appoint 2 competent persons to serve as board members; preferably each shall be a member of the New Hampshire Bar Association.
- II. The chief justice of the New Hampshire supreme court shall appoint the chairman of the board. The chairman shall be a judicial referee, if one is available, but if not, then the chairman shall be a member of the New Hampshire Bar Association.

CLAIMS AGAINST THE STATE (RSA 541-B) (Continued)

541-B:3 Appointment and Qualifications of Board Members (Continued).

- III. The president of the senate shall appoint one member of the senate and the speaker of the house of representatives shall appoint one member of the house of representatives, to serve as board members.
- IV. All members shall be residents of the state and if any member ceases to be a resident of this state a vacancy is created.

541-B:4 Term.

- I. Each board member except the legislative members shall serve a 6-year term; however, on the initial appointment the chairman shall be appointed for six years and the other two appointees shall be appointed to a 4-year term and a 2-year term respectively. The two legislative members shall serve a term which is co-terminous with their terms as legislators; provided, however, that a legislative member shall not serve as a board member for a term which exceeds 6 years.
- II. (a) In the event of a vacancy on said board for any reason which is created by the two members appointed pursuant to RSA 541-B:3, I, the provisions of RSA 21:33-a shall apply.
(b) If the position of chairman of the board becomes vacant, the provisions of RSA 21:33-a shall apply except that the appointment shall be by the chief justice of the New Hampshire supreme court.
(c) A vacancy on the board for any reason which is created by either of the 2 legislative members appointed pursuant to RSA 541-B:3, III, shall be filled by the president of the senate or the speaker of the house of representatives, as appropriate, pursuant to RSA 541-B:3, III.

541-B:5 Disqualification of Board Member. A board member may disqualify himself relative to any matter before the board or if the board votes that any member has or may have a conflict of interest in any matter before the board, that member shall be disqualified to sit as a board member on that particular matter. In the event of any disqualification, the governor by the authority of RSA 21:33-a, the chief justice of the supreme court by the authority of RSA 541-B:3, II, the president of the senate or the speaker of the house of representatives, as appropriate, by the authority of RSA 541-B:3, III, shall appoint an interim member to the board to serve only as to that matter. The interim member shall have the same qualifications as the disqualified member.

541-B:6 Removal. The governor may at any time remove a board member for cause, including malfeasance, misfeasance, inefficiency in office, or incapacity or unfitness to perform his duties. The attorney general or chief justice of the superior court may petition for such removal, setting forth the grounds and reasons therefor. No board member shall be removed without a public hearing before the governor and council upon such petition, giving the member due notice thereof not less than 30 days before the hearing.

CLAIMS AGAINST THE STATE (RSA 541-B) (Continued)

541-B:7 Compensation. Each nonlegislative member shall not receive more than \$65 and his reasonable expenses in each quarter; the legislative board members shall be entitled to legislative mileage only. Any interim board member appointed shall be compensated in like manner while serving on the board.

541-B:8 Quorum. A majority of the board shall constitute a quorum to conduct hearings and a vote of at least 3 members voting in favor is required to adopt and approve any matter considered by it.

541-B:9 Jurisdiction.

- I. Claims under this chapter shall be brought solely in accordance with the provisions of this chapter.
- II. The board shall have original and exclusive jurisdiction to investigate, conduct hearings and make decisions, and render or deny awards on all claims under this chapter not exceeding \$5,000 against any agency, except those claims arising under workers' compensation, unemployment compensation, eminent domain proceedings, RSA 110-B:73, RSA 207:22-25, RSA 228:29, and RSA 491:8.
- III. The board shall have concurrent jurisdiction to investigate, conduct hearings and make decisions, and render or deny awards, except those claims arising under workers' compensation, unemployment compensation, eminent domain proceedings, RSA 110-B:73, RSA 207:22-25, RSA 228:29, and RSA 491:8, with the superior court on all claims in excess of \$5,000, but not exceeding \$50,000, against any agency.
- IV. Except as otherwise provided, the superior court shall have original and exclusive jurisdiction of all claims in excess of \$50,000 against any agency.
- V. Notwithstanding paragraph II, the department of corrections shall have exclusive jurisdiction to investigate, conduct hearings and make decisions, and render or deny awards on claims against the state prison when the amount involved is less than \$500. [Added 1987, 14:3, effective April 3, 1987.]
- VI. The board of claims may authorize payment of uncontested claims based upon a review of the record, without holding a hearing. [Added 1987, 14:3, effective April 3, 1987.]

541-B:10 Powers and Duties of the Board.

- I. The board shall have the power to adopt and amend all rules of procedure not inconsistent with the constitution or laws of the state, which reasonably may be necessary for the proper performance of its duties and the regulation of the proceedings before it.

CLAIMS AGAINST THE STATE (RSA 541-B) (Continued)

541-B:10 Powers and Duties of the Board (Continued).

- II. The board shall not be bound by common law or statutory rules of evidence, but may admit all testimony having a reasonable probative value. It may exclude evidence which is in the opinion of the board immaterial, irrelevant, or unduly repetitious.
- III. The board may subpoena witnesses and compel their attendance, and also may require the production of books, papers, and documents. Any member of the board may administer oaths or affirmations to witnesses appearing before it. Any person failing or refusing to obey any subpoena or order of the board may be proceeded against in the same manner as for refusal to obey any other subpoena.
- IV. The findings and recommendations of the board or any payment of a claim authorized by said board shall only be subject to a judicial appeal by the petitioner in accordance with RSA 541. The board may by unanimous action order a rehearing on any matter before it, if in its opinion there are sufficient equitable reasons on behalf of any party to the proceedings so that a rehearing should be granted; provided, however, no rehearing on any matter shall be permitted after the board has authorized a payment of a claim. [Amended 1985, 412:7, effective July 3, 1985.]
- V. The board shall adopt and have an official seal.

541-B:11 Procedure. The procedure for the filing and adjudication of claims is as follows:

- I. The claimant shall first file the claim in writing with the agency involved.
- II. When a claim has been filed with any agency, the head of the agency shall make or cause to be made a preliminary investigation and provide the attorney general with the results of such investigation.
- III. Any person initiating a claim with the board under the provisions of RSA 541-B:9, II or III shall file the claim with the secretary of state, who shall forward the claim to the board.
- IV. The secretary of state shall notify the agency, the attorney general and the claimant of the next scheduled quarterly meeting of the board and of the pertinent information as to when the claim has been scheduled for a hearing. The claimant, attorney general, and agency shall have at least 10 days' written notice of the date, time, and place of the hearing.

CLAIMS AGAINST THE STATE (RSA 541-B) (Continued)

541-B:11 Procedure (Continued).

- V. When a claim is forwarded to the board by the secretary of state, the board shall schedule such claim for a hearing no later than the next succeeding quarterly meeting of the board, if the board has met in the current quarter or not enough time is left within said quarter to comply with the notice required pursuant to paragraph IV. Upon the request of any party, the board may continue any claim until a succeeding quarterly meeting in order that the party may perform necessary and adequate discovery.
- VI. The claimant may represent himself or he may be represented by an attorney. The claimant may subpoena witnesses and compel their attendance, and also may require the production of books, papers, and documents. The attorney general shall represent the agency.
- VII. All hearings before the board shall be subject to the provisions of RSA 91-A.

541-B:12 Recommendations to General Court.

[Repealed 1985, 412:15, II, effective July 3, 1985.]

541-B:13 Payment of Claims. Whenever the board by majority vote finds that payment to a claimant is justified, or a judgment by the superior court becomes final, the governor shall draw his warrant for said payment out of any money in the treasury not otherwise appropriated, and said sums are hereby appropriated.

541-B:14 Limitation on Action and Claims.

- I. All claims arising out of any single incident against any agency for damages in tort actions shall be limited to an award not to exceed \$250,000 per claimant and \$2,000,000 per any single incident, or the proceeds from any insurance policy procured pursuant to RSA 412:3, whichever amount is greater; except that no claim for punitive damages may be awarded under this chapter.
- II. If a claim is filed against the State for time unjustly served in the State prison when a person is found to be innocent of the crime for which he was convicted and receives a full pardon by the Governor and Council, such a claim shall be limited to an award not to exceed \$20,000.
- III. The payment of interest shall be granted on any award authorized under this chapter at the rate provided in RSA 336:1 in the same manner as is provided for in civil actions generally.
- IV. Any claim submitted under this chapter shall be brought within 3 years of the date of the alleged bodily injury, personal injury or property damage, or the wrongful death resulting from bodily injury; provided, however, that the agency is notified by mail within 180 days of the alleged injury or property damage sustained by the claimant. Such notification may be made either

CLAIMS AGAINST THE STATE (RSA 541-B) (Continued)

541-B:14 Limitation on Action and Claims (Continued).

by the claimant or an appropriate representative of the claimant. Failure to give notice to the agency as required by this section shall not bar the commencement of any action within the applicable limitation period.

541-B:15 Claimants' Rights Against Others. The adjudication by the board or the superior court on any claim before it shall not deprive the claimant of any other legal rights he may have against another party.

541-B:16 Settlement. Any payment made pursuant to this chapter shall be in full settlement of any liability on behalf of the agency which was subject to the claim and no further action may be instituted in any court of law for recovery of damages against that agency on any matter arising out of that particular claim.

541-B:17 Fees. The board is authorized to establish reasonable fees not to exceed any comparable fees authorized for the superior court for the filing of claims, providing copies of the proceedings, transcripts or records, or other documents which may be required by the board.

541-B:18 Attorneys' Fees. No attorney representing a claimant shall charge or collect fees for legal services rendered to the claimant unless the fees have been approved by the board or the superior court, as the case may be. In determining the amount of allowable fees, the board or the superior court shall consider, among other things, the nature, length, and complexity of the services performed, the usual and customary charge for work of like kind, and the benefits resulting to the claimant as a result of the legal services performed.

541-B:19 Exceptions.

- I. Without otherwise limiting or defining the sovereign immunity of the state and its agencies, the provisions of this chapter shall not apply to:
 - (a) Any claim which is based upon the exercise of a legislative or judicial function.
 - (b) Any claim based upon an act or omission of a state officer, employee, or official when such officer, employee, or official is exercising due care in the execution of any statute or any rule of a state agency.
 - (c) Any claim based upon the exercise or performance or the failure to exercise or perform a discretionary executive or planning function or duty on the part of the state or any state agency or a state officer, employee, or official acting within the scope of his office or employment.

CLAIMS AGAINST THE STATE (RSA 541-B) (Continued)

541-B:19 Exceptions (Continued).

- (d) Any claim arising out of an intentional tort, including assault, battery, false imprisonment, false arrest, intentional mental distress, malicious prosecution, malicious abuse of process, libel, slander, misrepresentation, deceit, invasion of privacy, interference with advantageous relations, or interference with contractual relations, provided that the employee whose conduct gives rise to the claim reasonably believes, at the time of the acts or omissions complained of, that his conduct was lawful, and provided further that the acts complained of were within the scope of official duties of the employee for the state.

541-B:20 Right to Jury Trial. In any action in the superior court pursuant to this chapter there shall be a right to a jury trial and the action shall be tried to a justice of the superior court in the ordinary course.

541-B:21 Claims Arising from the Clinical Operation and Administration of the New Hampshire Hospital.

- I. Without otherwise limiting or defining the sovereign immunity of the State and its agencies, this chapter shall apply to all claims against any nonprofit entity, or any employee, trustee, or director of such nonprofit entity when acting in the scope of his elected or appointed capacity, providing clinical services in accordance with any contract entered into by the division of mental health and developmental services for the clinical operation and administration of the New Hampshire hospital pursuant to RSA 135-C:3 and RSA 135-C:4.
- II. The limitations on awards provided in RSA 541-B:14 shall not be increased by the proceeds from any insurance policy procured by a nonprofit entity, or any employee of such entity, included under RSA 541-B:21, I.
- III. This section shall apply only to claims arising out of incidents occurring on or after July 1, 1988, and prior to July 1, 1999.

541-B:22 Oversight Committee For Claims Arising from the Clinical Operations and Administration of the New Hampshire Hospital.

- I. There is hereby established a legislative oversight committee to review claims arising under RSA 541-B:21 and 99-D:8. The committee members shall be as follows:
 - (a) Two members of the house of representatives, appointed by the speaker of the house.
 - (b) Two members of the senate, appointed by the senate president.
- II. The committee shall report its findings to the General Court every 2 years. The first report shall be made no later than one year from the effective date of this section.
- III. The members of the committee shall receive mileage at the legislative rate when attending to the duties of the committee.

**BUREAU OF RISK MANAGEMENT
(RSA 21-I:8(II))**

21-I:8 Division of Accounting Services. There is hereby established within the department the division of accounting services under the supervision of an unclassified director of accounting services, who shall also be known as the comptroller. The comptroller shall direct the state's fiscal accounting systems, using generally accepted accounting principles and taking full advantage of all benefits of automated data processing applications, to the end that the fiscal affairs of all state agencies and departments will be adequately and uniformly serviced and that periodic financial and management reports will be available to serve the various needs of all state agencies and the executive and legislative branches in their decision making processes. The division shall include the following internal organizational units:

- I. [Paragraph I describes the Bureau of Accounting].
- II. The bureau of risk management under the supervision of an unclassified risk management administrator, nominated by the commissioner of administrative services for appointment by the governor, with the consent of the council, who shall be qualified by education and experience and shall serve for a term of 4 years. The risk management administrator shall be responsible for the following functions, in accordance with applicable laws: [Amended 1989, 396:9, effective June 5, 1989.]
 - (a) Identifying loss exposure for all state real and personal property and for personal injury, except as otherwise provided by law, on a continuing basis.
 - (b) Developing and operating risk reduction programs, in accordance with the loss prevention guidelines adopted pursuant to RSA 21-I:14, II.
 - (c) Identifying cost effective means for protecting against various types of losses, including self-funding, commercial insurance purchases and risk assumption, and recommending to the governor and the general court actions to be taken through the budget process to implement such means.
 - (d) Preparing bid specifications for use by the state when seeking commercial insurance.
 - (e) After consultation with, and approval by, the board of approval as established by RSA 93-B, and the commissioner of administrative services, purchasing liability insurance under a fleet policy covering the operation of state-owned vehicles and motorboats, and such other insurance and surety bonds as any state department, agency, or official may now or hereafter be legally authorized to secure, or required to furnish; provided that approval shall not be granted for any such insurance or surety bonds unless the same have been negotiated for, are procured from and the premium therefor is to be paid to a resident agent of an insurance company registered and licensed to do business

BUREAU OF RISK MANAGEMENT (RSA 21-I:8(II)) (Continued)

in this state. With the exception of any risk located outside the state, no such insurance company or resident agent, personally or by another, shall allow, give or pay, directly or indirectly, to any nonresident agent or nonresident broker any part of the commission on the sale of such insurance or surety bonds. The insurance commissioner may suspend or revoke the license of any resident agent or insurance company violating the provisions hereof.

**BOARD OF APPROVAL
(RSA 93-B:2)**

There is hereby established a board consisting of the attorney general, the commissioner of revenue administration, and the bank commissioner whose duty it shall be to determine the amount, where no amount is specified, and the sufficiency of the surety; and such other duties as may be provided by law; and no bond shall be valid until approved by said board. The insurance commissioner is to furnish advice and information as required by the board.

APPENDIX C



APPENDIX C

EXECUTIVE ORDER 89-2

AN ORDER relative to
intensification of the Highway Safety Defensive Driving
Program for all State employees
driving State-owned vehicles.

WHEREAS, the State of New Hampshire owns and operates approximately 3,000 vehicles for State business; and

WHEREAS, since 1972, an effective accident reduction program has been conducted for State employees; and

WHEREAS, it is sound public policy to make every effort to reduce both the number and the severity of accidents; and

WHEREAS, the State of New Hampshire receives favorable rating for the fleet auto liability insurance in consideration of the employees good driving record which is partly attributable to the defensive driving courses;

NOW, THEREFORE, I, JUDD GREGG, Governor of the State of New Hampshire, by virtue of the authority vested in me pursuant to Part II, Article 41 of the New Hampshire Constitution, do hereby rescind any and all prior executive orders dealing with highway defensive driving programs that are not consistent with this order and in place thereof do hereby order that:

1. Each department head review the status of the highway safety program within his agency.
2. Each department head cooperate with his departmental safety supervisor to make certain that compliance with the program under the direction of the Bureau of Risk Management is assured.

Compliance shall include the following:

- a. That each department head make certain there is a system established for checking the prior motor vehicle records of prospective State employees who will be driving State-owned vehicles and take appropriate action to prevent use of State-owned vehicles by persons with poor driving records.

EXECUTIVE ORDER 89-2 (Continued)

- b. That each department head will make certain that he or she receives a timely report of every accident and notifies the insurance carrier and the Bureau of Risk Management.
- c. That each department head make certain that there is a departmental accident review committee that will review every accident involving departmental employees and take appropriate action.
- d. That each department head make certain that every employee in his agency who drives a State-owned vehicle shall have completed a defensive driving course, and each such employee shall be required to take a refresher defensive driving course every three years.

Given under my hand and seal at the Executive Chambers in Concord, this 25th day of January, in the year of Our Lord, one thousand nine hundred and eighty-nine.

Signed by Judd Gregg,
Governor of New Hampshire

APPENDIX D

APPENDIX D

SUMMARY OF INSURANCE POLICIES (AS OF APRIL 1993)

	AGENCY	AREAS OF COVERAGE	ANNUAL PREMIUM	DEDUCTIBLE	LIABILITY LIMITS
1	Various	CGL for fleet vehicles	\$529,724	\$ -0-	(1)
2	DRED	CGL for ski areas	\$102,980	\$1,000	BI: \$300,000 PD: \$300,000
3	DRED	PD/CGL for owned/leased trails	\$83,940	\$500	(2)
4	DCYS	CGL for 600 foster homes	\$70,200	CGL: \$250 PD: \$500	CGL: \$500,000 PD: \$5,000/home
5	DES	PD caused by boilers at Winnepesaukee River Basin	\$30,878	\$10,000	\$33 million
6	HHS	Theft of food stamps	\$21,588	\$100,000	\$10 million
7	Various	PD caused by boilers	\$19,735	\$5,000	\$2 million
8	Various	BI/PD for watercraft	\$16,570	\$ -0-	(3)
9	All	Faithful performance bond for employees	\$10,474	\$1,000	\$100,000/person
10	DRA	Employee faithful performance bond for registers of deeds and deputies	\$9,656	\$ -0-	Unlisted
11	Safety	PD/CGL for two aircraft	\$6,711	(4)	\$1 million
12	Liquor	Fire to warehouse	\$4,688	\$25,000	PP: \$1 million RP: \$4.3 million

D-1

**SUMMARY OF INSURANCE POLICIES
(AS OF APRIL 1993) (Continued)**

	AGENCY	AREAS OF COVERAGE	ANNUAL PREMIUM	DEDUCTIBLE	LIABILITY LIMITS
13	NHTC- Berlin	Collision/comprehensive for one tractor and four trailers	\$2,550	\$100 comp. \$250 coll.	\$103,300
14	Employ. Security	Fire to property	\$2,516	\$25,000	PP: \$1.5 million RP: \$750,000- \$1 million
15	DRED	PD for antique snowmobiles	\$938	\$250	\$75,000
16	DRED	PD for four buildings and fine arts	\$778	PP: \$250 RP: \$500	PP: \$3,000- \$17,500 RP: \$40,000- \$125,000
17	DES	Work boat, protection/ indemnity	\$750	\$605	\$60,500- \$300,000
18	DES	Fire damage to dwelling at Murphy Dam	\$660	\$250	\$118,000
19	Governor	PD for two heat loss detection systems	\$533	\$250	\$26,525
20	DES	PD/CGL for three water works buildings	\$499	\$250	CGL: \$300,000 PP: \$6,000- \$77,000 RP: \$5,000- \$50,000
21	HHS	Portable computers	\$385	(5)	\$27,496
22	DRED	PD for two buildings and PP	\$314	\$250	\$25,000- \$35,000

**SUMMARY OF INSURANCE POLICIES
(AS OF APRIL 1993) (Continued)**

AGENCY	AREAS OF COVERAGE	ANNUAL PREMIUM	DEDUCTIBLE	LIABILITY LIMITS	
23	F&G	Loss or damage to artwork	\$300	\$100	\$20,030
24	DES	PP and fire to dwelling	\$279	\$100	\$75,366
TOTAL		<u>\$917,646</u>			

D-3

Abbreviations: BI bodily injury
 CGL comprehensive general liability
 PP personal property
 PD property damage
 RP real property

Notes: (1) BI: \$300,000/person and \$500,000/occurrence.
 PD: \$50,000/occurrence.

(2) BI: \$500,000/occurrence with \$2 million aggregate limit.
 PD: \$50,000/occurrence with \$500,000 aggregate limit.

(3) BI: \$250,000/person and \$1 million/occurrence.
 PD: \$250,000/occurrence.

(4) \$100 while stationary, \$500 while in motion.

(5) \$1,000 for mechanical breakdown and \$100 for other losses.

PERFORMANCE AUDITS
ISSUED BY
OFFICE OF LEGISLATIVE BUDGET ASSISTANT

<u>NAME OF REPORT</u>	<u>DATE</u>
<u>Review of the Management and Use of State Owned Passenger Vehicles and Privately Owned Vehicles Used at State Expense</u>	August 1984
<u>Management Review of the Policies and Procedures of the Division of Plant and Property Management</u>	June 1984
<u>Review of the Public Employees Deferred Compensation Plan</u>	December 1987
<u>Review of the Allocation of Highway Fund Resources to Support Agencies and Programs</u>	March 1988
<u>Review of the Indigent Defense Program</u>	January 1989
<u>Hazardous Waste Management Program</u>	June 1989
<u>Mental Health Services System</u>	January 1990
<u>Department of Administrative Services, Division of Plant and Property Management State Procurement and Property Management Services</u>	June 1990
<u>Developmental Services System</u>	April 1991
<u>Prison Expansion</u>	April 1992
<u>Workers' Compensation Program for State Employees</u>	January 1993
<u>Child Settlement Program</u>	March 1993

Copies of the above reports may be received by request from:

Office of Legislative Budget Assistant
Room 102 State House
Concord, New Hampshire 03301
(603) 271-2785

