

Louisiana House of Representatives



Select Committee on Fiscal Affairs

FINAL REPORT
March 23, 2001

Jerry Luke LeBlanc
Chairman

Bryant O. Hammett, Jr.
Vice Chairman

Charlie DeWitt
Speaker

Emile "Peppi" Bruneau
Speaker Pro Tempore

**SELECT COMMITTEE ON FISCAL AFFAIRS
FINAL REPORT**

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**HOUSE OF REPRESENTATIVES
SELECT COMMITTEE ON FISCAL AFFAIRS**

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Emile "Peppi" Bruneau, Speaker Pro Tempore*

March 23, 2001

The Honorable Charlie DeWitt
Speaker of the Louisiana House of Representatives
1st Floor, State Capitol
Baton Rouge, LA 70802

Re: Select Committee on Fiscal Affairs (SCOFA) Final Report

Dear Speaker DeWitt:

On behalf of the members of the committee, I submit to you the Final Report of the House Select Committee on Fiscal Affairs. Your charge to the committee last August was to examine all aspects of the state budget, both spending and revenue issues, and find viable options to alleviate the state's continuing fiscal concerns. During the past six months, the committee has vigorously committed itself to this task, holding almost weekly hearings, receiving hours of testimony, examining staff research and analysis, and reviewing hundreds of pages of additional materials submitted in response to information requests arising from the committee's hearings.

This report summarizes the results of the committee's work. The Findings and Options contained in the report provide an outline of actions which could be taken to address some of the state's most pressing fiscal problems. Many of these options do not produce an immediate savings, but instead call for a change in priorities that would result in cost savings and increased efficiency in the future.

Implementation of many of the proposed options will require statutory change. Legislation for several of these has been prefiled in the Regular Session. Other options can be accomplished through agency rule changes or other administrative actions by state agencies, some of which may require direction through legislative resolution. Amendments to the General Appropriations Bill would be sufficient to implement certain of these proposed options, and in certain areas, further study is recommended.

The Honorable Charlie DeWitt
March 23, 2001
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Also on behalf of the committee, I want to thank you for appointing this committee and calling on us to undertake this effort. It has proven to be a valuable and enlightening experience for those of us who have served on the committee, and it is our hope that this report will assist the House of Representatives in its deliberations on state fiscal issues.

Sincerely,

Jerry Luke LeBlanc
Chairman

JLL/JSV/lfb

SELECT COMMITTEE ON FISCAL AFFAIRS

The House Select Committee on Fiscal Affairs was appointed by Speaker Charlie DeWitt in August 2000. The committee was charged by the Speaker with studying ways to alter state spending and revamp state tax and revenue collection with the goal of developing productive and achievable options for addressing the state's continuing fiscal problems. All areas of the state and political perspectives were represented on this 21-member committee.

The committee met for the first time on Wednesday, August 23 and elected Representative Jerry LeBlanc as Chairman and Representative Bryant Hammett as Vice Chairman. The committee held 25 meetings during the interim from September 2000 through January 2001, examining many areas of state fiscal policy. Among the areas reviewed by this committee were the following:

- **Collections/Receivables** - The committee reviewed the revenue collection practices of various state agencies, including the Department of Revenue, Department of Wildlife and Fisheries, and the Office of Motor Vehicles in the Department of Public Safety and Corrections. These agencies had substantial amounts of uncollected revenues over the past several years. Despite recent efforts to address these problems, the committee discovered that additional technological and procedural improvements could enhance collection efforts. As a result of the committee's hearings, improved processes have already been put in place and options for further changes are contained in this report. The committee also examined state agency policies for writing off bad debt to determine if that process is consistent with sound business and government accounting practice, prompting initial development of a statewide collections and receivables policy. Several options to assist the Department of Revenue in its revenue collection efforts are also included in the report.
- **Duplication** - The committee held extensive hearings on the Legislative Auditor's *Report on Overlap, Duplication and Fragmentation Across Executive Branch Departments* to identify efficiencies which can be implemented in state government. Among the areas discussed and included in this report are consolidation of museum operations, now split between the Department of State and Department of Culture, Recreation and Tourism, and consolidation of workforce training programs of the Departments of Labor and Economic Development. The committee also considered the issue of consolidation of the Departments of Elections and Department of State.
- **Special Treasury Funds** – The committee examined in detail all special treasury funds. The state treasury contains over 290 dedicated funds representing a budgeted amount of \$2.2 billion. Additionally, mandated expenditures for the Minimum Foundation Program, Revenue Sharing and other distributions total over \$2.5 billion. In a fiscal crisis, these dedications and required expenditures restrict the ability of the administration and legislature to distribute reductions to all areas of the budget, resulting in a disproportionate impact on health care and higher education. The

committee identified numerous inactive funds that could be repealed and many others which should be revised or consolidated.

- **State/Local Government Fiscal Relationships** - Testimony from representatives of municipalities, police juries, sheriffs, and school boards focused on how state policy affects the ability of local governments to raise funds and respond to local needs. State tax exemptions which affect local revenues, including the industrial tax exemption, were discussed, including testimony from local assessors. This report contains options for undertaking a detailed reexamination of state/local financial relationships, as well as options for reevaluation of components of the industrial tax exemption in light of current economic development priorities.
- **Health Care Issues** - Discussions of health care financing issues focused on pharmacy costs, care for the uninsured, and mental health and developmental disability services. Data presented to the committee highlighted the major "cost drivers" for Medicaid spending, and demonstrated that state services for the mentally ill and developmentally disabled in Louisiana rely more heavily than other states on institutional rather than community care. This report includes options to promote use of community services while preserving necessary institutional beds, including vigorous pursuit of federal waiver options. Options to control costs in the pharmacy program are also identified.
- **TANF** - As a result of welfare reform, the number of recipients and resources required for cash assistance have declined and a large balance of unobligated TANF funds has accumulated. This report includes numerous options for using this unobligated balance, combined with the flexibility of the block grant structure, to support programs that would reduce future dependency.
- **Education** – The committee discussed many education areas, among which were Charter Schools, TOPS, and the Minimum Foundation Program. The report includes options to address both financial and programmatic issues in the Charter Schools and TOPS programs, and use of MFP funds for teacher pay increases.
- **Corrections** - The committee examined the dramatic growth in prison population and costs. State and federal sentencing guidelines, including mandatory minimum terms, requiring 85% of sentences to be served, and "three strikes" laws, have had a tremendous impact on this growth. The number of aging and chronically ill inmates is also increasing. Suggested options to reduce costs and reduce recidivism rates include enhanced exercise of existing parole authority, review of mandatory minimums to determine effectiveness, better basic education and job skills training, and increased use of alternatives to incarceration such as drug courts.

The report format includes an Executive Summary which lists Findings of the committee and associated Options for addressing each Finding. These are organized according to subject areas considered by the committee, generally in the schedule order contained in the General Appropriation Bill. The Executive Summary is followed by the full report, which contains detailed information for each Finding and each Option, including Background and Description, Estimated Fiscal Impact, and Action Required to Implement. Further analysis and information developed by the committee study is included in Appendix for selected subject areas.

Implementation of many of the proposed options will require statutory change. Other options can be accomplished through agency rule changes or other administrative actions by state agencies, some of which may require direction through legislative resolution. Amendments to the General Appropriation Bill would be sufficient to implement certain of these proposed options, and in certain areas, further study is recommended.

EXECUTIVE SUMMARY

A. DEPARTMENT OF ELECTIONS AND STATE

FINDING: The state currently has two departments headed by statewide elected officials which perform election functions. The Legislative Auditor's Office found the functions of these two departments overlap. Also, the Select Council on Revenues and Expenditures in Louisiana's Future (SECURE) recommended abolishing the Department of Elections and merging all election functions into the Department of State.

OPTION 1: Merge the Department of Elections and Registration with the Department of State.

B. MUSEUMS

FINDING: The state currently operates two separate museum systems in two separate departments both headed by statewide elected officials. Both the costs and performance of these facilities varies considerably. The Legislative Auditor's Office found the functions of these systems to overlap and recommended consolidation of these programs.

OPTION 1: Consolidate the museum programs of the Secretary of State and the Department of Culture, Recreation and Tourism under one agency. This action would not take place until new terms for elected officials begin.

C. TEN-YEAR INDUSTRIAL PROPERTY TAX EXEMPTION PROGRAM

FINDING: During the course of its deliberations, the SCOFA committee heard the results of a study conducted on the ten-year industrial property tax exemption program. This study revealed that while new locations produce more jobs, investment, and pay more state and local sales taxes, the program attracts few new facilities. Other findings showed that exemptions were concentrated in certain areas and industries, and that the program does not foster the growth of high-tech industry.

OPTION 1: Ensure greater accountability of those granted exemptions especially related to job creation, length of stay in the state, and the types of projects that are funded.

OPTION 2: Evaluate the category "miscellaneous capital additions" and the feasibility of shortening the exemption period for this category, in order to maximize benefit to the state and minimize costs. Explore/investigate the possibility of restructuring the program in order to attract more new locations.

OPTION 3: Reevaluate the ten-year tax industrial property tax exemption program in light of current economic development priorities and reevaluate the necessity of granting automatic five-year extensions of the exemptions.

OPTION 4: Develop a more targeted incentive program that would focus on developing the state's high-tech industry.

D. COORDINATION OF WORKFORCE TRAINING PROGRAMS

FINDING: The committee discussed potentially overlapping functions and missions of the \$50 million Department of Labor Incumbent Worker Training Program and the \$6.5 million Department of Economic Development Workforce Development Training program. Because each program has different funding sources and targets a different population, duplication has been minimized. However, the potential for additional efficiencies through merger of program administration or functions, should be investigated, especially given the disparity in resources between the two programs.

OPTION 1: In light of a possible Department of Economic Development reorganization and continuing state budgetary problems, the state should explore possible cost savings that could be generated from consolidating the administrative and/or programmatic functions of the Workforce Development programs of the Department of Labor and the Department of Economic Development.

E. DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONS CORRECTIONS SERVICES

GROWTH IN PRISON POPULATIONS

FINDING: From Fiscal Year 1994/95 through Fiscal Year 2000/2001 the prison population has grown by 50%; from 25,260 to 38,000 inmates. Expenditures over this same period increased by \$254.6 million, a 70% increase. Changes in state and federal sentencing guidelines over the past 5 years have had a tremendous impact on the growth in prison populations. This includes mandatory minimum terms, requirements that a minimum 85% of the sentence is served, and "three strikes" laws. Additionally, since many of the state's inmates are being incarcerated for longer periods and, with no chance of parole, the number of aging and chronically ill inmates is increasing.

OPTION 1: The Parole Board should review parole considerations for inmates who meet the criteria for early release under R. S. 15:574.4 and R.S. 15:574.20

FINDING: Mandated sentencing guidelines reduce judicial discretion in sentencing offenders to alternative community intervention and supervision programs which are more cost efficient and help in reducing recidivism.

OPTION 1: Review minimum mandatory sentencing guidelines to allow for increased participation in alternative programs. (Note: this would not change the enumerated crimes of violence and the 85% sentence served as required by the federal government to qualify for VOITIS funds.) A number of different programs and their estimated fiscal impact are discussed in this report.

FINDING: Correctional education programs help inmates break the cycle of criminal activity by providing the knowledge and skills necessary to succeed. Effective programs focus on helping inmates develop problem solving and decision-making skills. A new national study outlines overwhelming evidence linking prison-based education programs to dramatically reduced recidivism rates and crime prevention, finding such programs among the most effective of all crime prevention programs.

OPTION 1: Funding sources should be identified to supplement the programs that have proven successful in reducing recidivism.

FINDING: Recidivism rates for the Intensive Motivational Program for Alternative Correctional Treatment (IMPACT) program participants have been consistently lower than non-participants.

OPTION 1: Expand the provisions of R.S. 15:574.4(A) and C.Cr.P.Art.901. to allow a greater number of inmates to become eligible for IMPACT program participation.

FINDING: The Supreme Court has recently ruled that the District Attorneys are to act as gatekeeper in recommending who should participate the drug courts. The court said that there was no indication in the enabling legislation that created drug courts that anyone other than the DA was given power to propose defendants to the program. This has created conflicts across the state in terms of utilizing the drug courts as alternative sanctions to incarceration (instead of pre-trial diversion programs).

OPTION 1: Amend the law to allow for both District Attorneys and Judges to share in the authority to recommend participants to drug courts.

F. MEDICAID DRUG PROGRAM

FINDING: Drug Costs are a major reason that Medicaid payments are rising, but the state has few effective tools to deal with the rising cost or usage of prescription drugs.

OPTION 1: *Open Drug Formulary* – In order to evaluate cost savings and benefits that could be realized through prior authorization of drugs, DHH should prepare proposed policies, procedures, and fiscal impacts for its prior authorization proposal. DHH should also prepare an assessment of how prior authorization may affect clients and retail pharmacists, including any health care outcome effects.

OPTION 2: *Retail Pharmacy Reimbursement for Drugs* - The committee recognized that retail pharmacies are not the primary cause of increasing drug costs. It urges DHH not to continue reducing reimbursements to retail pharmacists.

OPTION 3: *Drug Rebates and Bulk-purchase* - DHH should pursue additional rebates in those instances where they are cost effective. If prior authorization were to receive legislative approval, DHH should provide for waiver of this requirement if manufacturers agree to additional rebates of at least 5% greater than the National Rebate Program.

OPTION 4: *Generic Drugs* - DHH should consider additional provider and Medicaid client incentives to encourage more generic drug use, including:

- Lower co-payments for generic drugs
- Better reimbursement rates for generic drugs
- Physician education about generic substitution
- Expanded electronic therapeutic authorization

OPTION 5: *Other Issues* – Require DHH to activate the various boards and committees involved in setting Medicaid drug policies and solicit their input on cost saving measures.

G. SERVICES FOR MR/DD CITIZENS

FINDING: Louisiana lags behind most other states in moving to community care for its developmentally disabled citizens. Remaining programs for disabled citizens are functionally separate from each other and are scattered among several agencies.

OPTION 1: *Eligibility and coordination of MR/DD services* - Require DHH and DSS to present formal recommendations on eligibility and coordination of services that can be implemented in the budget for FY 01-02.

OPTION 2: Reallocate resources toward community-based care. DHH should:

- Make greater efforts to move developmental center residents into the community when adequate community-based care is available.

- Develop and recommend options to consolidate state developmental center populations and to reduce physical facility and administrative costs.
- Develop and recommend cost-neutral ways to shift resources from residential care (state developmental centers and private ICF/MR group homes) to non-residential home and community-based services.

OPTION 3: DHH should develop alternatives to the MR/DD waiver that will expand access to services at a reasonable and affordable cost per person.

H. MENTAL HEALTH

FINDING: Louisiana's public mental health service mix is out of balance with the nation. It has more hospital and less community-based care than the average state. Providing a more balanced mix of public mental health services – one that better meets consumer needs, incorporates a broader range of treatment types, and is more cost effective – will likely require innovative efforts to leverage additional non-state (federal or local government or private sector) resources to enhance community-based care.

OPTION 1: Reduce the number of uninsured in the population served by the public mental health system by increasing efforts to enroll this population in the Medicaid Program.

OPTION 2: Explore the feasibility of making more community-based mental health services eligible for Medicaid reimbursement.

OPTION 3: Amend state law to produce more effective screening and treatment of the mentally ill individuals in the criminal justice system.

OPTION 4: Renegotiate LSU-OMH contracts on psychiatric acute unit operations to minimize the state funds required.

I. HEALTH CARE FOR THE UNINSURED

FINDING: Louisiana's current approach to indigent health care lacks a comprehensive understanding of the health care needs of the state, and should be redirected to achieve specific policy priorities and outcomes, such as reducing the number of people who lack health insurance coverage, increasing access to community-based and primary health care, reducing excess hospital capacity, and improving the state's low health status rankings.

OPTION 1: Expand Medicaid/LaCHIP eligibility to narrow the gap in health insurance coverage between children and adults.

OPTION 2: Increase or reallocate existing uncompensated care payments to non-state hospitals.

J. UNOBLIGATED TEMPORARY ASSISTANCE TO NEEDY FAMILIES (TANF) BLOCK GRANT FUNDS

FINDING: Since its implementation in 1997, welfare reform has caused a significant decline in the number of recipients and the resources devoted to cash assistance. Consequently, a large balance of unused funds has accumulated. This unobligated balance, combined with the flexibility of the block grant structure, make TANF funds a significant source of revenue to support programs aimed at the needy in a time when state general funds are constrained.

OPTION 1: Require that unobligated TANF funds be spent on cash assistance before any state Maintenance of Effort (MOE) dollars or new TANF block grant funds are used for this purpose.

OPTION 2: Increase the education level of recipients, ex-recipients, and the working poor such as noncustodial parents; and provide job retention and advancement services.

OPTION 3: Help specific populations attain better paying jobs by providing post-employment and job retention services, or advanced skills training. One area of focus is incarcerated noncustodial parents nearing release.

OPTION 4: Enhancing the ability of certain poor populations to accumulate savings through the use of Individual Development Accounts.

OPTION 5: Use TANF/MOE funds to expand the Drug Court program by \$2 million in order to promote work and job preparation and reduce the incidence of out-of-wedlock births.

OPTION 6: Segregate or separate state MOE funds to provide assistance to recipients who are currently taking advantage of the “earned income disregard.”

OPTION 7: Reexamine the state policy to commingle state MOE dollars with federal TANF funds. Segregate or separate a portion of the state MOE funds in order to increase spending flexibility. Assess the needs of Louisiana’s poor populations. Investigate programs that have been developed in other states in order to identify ways to address these needs using the increased flexibility and the ability to design non-assistance programs with TANF funds.

OPTION 8: Reexamine the definition of an “eligible family” as set in the state TANF plan. Set varying levels of eligibility to increase the number of people who can be served by different TANF- and MOE-funded programs.

OPTION 9: Increase legislative oversight of TANF block grant and child care block grant spending by requiring the submission of the federal quarterly ACF-196 and ACF 696 reports and other reports to the appropriate legislative agencies, committees and their staffs.

K. DEPARTMENT OF REVENUE

Finding: Department of Revenue, due to a lack of consistent collection policies and procedures and a failure to aggressively pursue delinquent taxpayers, has failed to adequately collect taxes, penalties, and interest owed to the state. As of June 1999, a total of \$308 million in state taxes had not been collected from delinquent taxpayers. The department should take steps to become more aggressive with its current collection mechanisms and develop a consistent policy and procedure regarding collections of delinquent taxes.

OPTION 1: Enhance the Department's ability to maximize in-state collections by encouraging new policies and procedures to more effectively utilize existing departmental or state resources and personnel or by expanding the department's authority to use private collection agencies to include in-state uncollectibles.

OPTION 2: Amend R.S. 47:1580(C) to interrupt prescription if a taxpayer fails to file any state tax return.

OPTION 3: Amend R.S. 47:1580(A)(4) to provide more specific language to clarify the meaning of "false or fraudulent" return.

OPTION 4: Amend the crime of issuing worthless checks, R.S. 14:71, to clarify that the term "thing of value" includes taxes and other payments to the Department of Revenue, and expand application to include any worthless check tendered to any state agency.

OPTION 5: Apply existing sales tax cease and desist provisions to all taxes collected by a third party on behalf of the state, such as income withholding taxes and certain gasoline taxes.

OPTION 6: Conduct further research to determine the feasibility of requiring applicants for certain permits and licenses and contract bidders on goods and services to state departments and government agencies to obtain state tax clearances.

OPTION 7: Expand the Department of Revenue's authority to issue refunds of overpayments.

OPTION 8: Authorize the Department of Revenue to publish the names of delinquent taxpayers once their tax liabilities have become collectible by distraint and sale.

L. EDUCATION

CHARTER SCHOOLS

FINDING: The number and cost associated with Type 2 charter schools has continued to increase since school systems are not required to transfer local funds to a Type 2 charter school. State funds are provided in lieu of local funds for Type 2 charter schools.

OPTION 1: Require that a Type 2 charter school shall receive the local per pupil funding amount for each pupil from the local school district in which the pupil would otherwise be enrolled if he was not enrolled in a Type 2 charter school and was attending a public school.

FINDING: A Type 2 charter school may not be funded at a per pupil amount other than that specified in the charter school legislation.

OPTION 1: Authorize BESE to determine the Type 2 charter school per pupil funding amount up to but not to exceed the per pupil amount specified in the charter school legislation.

FINDING: By BESE policy, funding for Type 2 charter schools is based on the October 1 pupil count. Charter school law does not specifically authorize a second pupil count to reflect changes after October 1 in the number of pupils served in the Spring Semester.

OPTION 1: Provide for a second pupil count during the Spring Semester which would be used to determine that period's funding for Type 2 charter schools.

FINDING: A charter school which fails to open and serve pupils is required to refund all allocated money to the state or the local school district as appropriate although a major portion of the initial funding has already been spent. The charter school law is not specific if the charter school closes for any reason.

OPTION 1: Require that "all cash on hand attributed to state or local funding be returned" to the state or to the local school system rather than requiring the return of all money allocated if the charter school fails to open. Expand this requirement to a charter school that "closes for any reason."

FINDING: Charter school law states that all students no matter their age shall count for funding purposes whereas the MFP membership definition by BESE limits the student count to those in kindergarten through age 21 with certain exceptions for special education children.

OPTION 1: Provide that, for purposes of funding, the age requirements of students served in charter schools correspond with the age requirements established by BESE for MFP purposes for students served by the public school systems.

FINDING: General Educational Development (GED) students enrolled in Type 2 charter schools generate the same per pupil funding amount as do regular students enrolled in those charter schools.

OPTION 1: Authorize BESE to limit Type 2 charter school per pupil funding for students seeking a GED equivalency diploma.

M. TUITION OPPORTUNITY PROGRAM FOR STUDENTS (TOPS)

FINDING: Remedial courses required by a higher education institution and repeated/deleted courses are considered in the accumulation of college credit hours to maintain a TOPS award.

OPTION 1: Discontinue inclusion of remedial courses and repeated/deleted courses in the accumulation of college credit hours necessary to maintain a TOPS award.

FINDING: Sixty-one percent of students who forfeited TOPS awards for failure to maintain the minimum college GPA or full-time enrollment had ACT Composite Test Scores ranging between 19 and 22.

OPTION 1: Improving the number of students capable of maintaining a TOPS award should be a top priority to be discussed in conjunction with the development of the community college system. As Louisiana strives to provide increased opportunities to attend community colleges in all regions of the state, eligibility criteria for TOPS could be reviewed. For example, ACT scores between 20 and 22 could become a standard eligibility requirement for TOPS awards to be used at community colleges and then transferable to a four-year institution upon successful completion of the community college program. ACT scores of 23 and above could become a standard eligibility requirement for a TOPS award to be used at a four-year institution. Such a policy of using ACT scores to distinguish entry levels for college is, of course, dependent on providing more opportunities for students to attend community colleges and, perhaps even then, only in extreme fiscal circumstances.

FINDING: Seven high schools (four public and three private) voluntarily reported that not all TOPS required courses are being offered this academic year.

OPTION 1: Extend the waiver of the TOPS required courses or offer courses through programs such as the Virtual High School program sponsored by the state Department of Education, distance learning programs and courses offered through correspondence.

FINDING: General Educational Development (GED) students seeking an equivalency diploma are not eligible for a TOPS award.

OPTION 1: Provide standard eligibility requirements for students with a GED equivalency diploma to qualify for TOPS. The requirements could be at the level required for high school graduates, with exceptions for GPA and core curriculum. Or an alternate requirement could be used of an ACT score at least three points higher than the minimum ACT as is done currently for home study and students graduating from an approved out-of-state high school.

N. MINIMUM FOUNDATION PROGRAM

FINDING: The Louisiana 1999-00 average classroom teacher salary was \$33,109 which placed the state 14th in National Education Association data for the SREB states which demonstrates that teacher pay needs to be a greater priority within the resources of the MFP.

OPTION 1: Require that new funds appropriated in the MFP be used to increase classroom teacher pay.

FINDING: School systems will have a reduction in retirement costs in 2001-02.

OPTION 1: Request that BESE provide for an adjustment in state MFP funds for 2001-02 as a result of the decrease in employer contribution costs in Teachers' Retirement and the use of a credit in School Employees' Retirement.

O. COLLECTIONS/RECEIVABLES

FINDING: Due to a lack of comprehensive collections and receivables policies, the state is failing to collect revenues owed in fees, fines, penalties and state taxes. As of September 2000, approximately \$776 million was reported as outstanding receivables and of that amount \$361million is estimated to be uncollectible.

OPTION 1: Create a computerized database, which could be used by all state agencies to house information on individuals and businesses that write NSF checks.

OPTION 2: Establish a comprehensive receivable and collection policy and procedure which would include the requirement that all state agencies use the receivable and collections procedures. The policy would also include a separate policy directive relative to NSF checks.

OPTION 3: Establish a central collection function within the Division of Administration or other state agency and further require participation by all state agencies.

OPTION 4: Amend R.S. 47:299.2 to allow for all agencies to use offset of income tax refunds for receivables.

OPTION 5: Revise the law to allow for local retailers and others to collect outstanding receivables on behalf of the Department of Wildlife and Fisheries.

P. REVIEW OF SPECIAL TREASURY FUNDS

FINDING: There are more than 300 special funds in the state treasury which are currently authorized by statute and constitution. \$2 billion of the state budget is funded through dedicated revenues. These dedications restrict the flexibility of the governor and legislature in addressing revenue shortfalls and budget problems. The committee conducted three hearings to review these funds on a departmental basis with respect to functionality and activity and developed the following options associated with this issue.

OPTION 1: Repeal inactive special treasury funds.

OPTION 2: The Classroom-Based Technology Fund and Teacher Supplies Fund should be modified to allow use of remaining balances for other purposes which are more appropriate for the amount of available money in the funds, or should be repealed and balances used for a related or other purpose. The balances in these funds are insufficient to allow effective distribution for the required uses of the monies.

OPTION 3: Abolish the Louisiana Charter School Start-Up Loan Fund or transfer a portion of its balance to the State General Fund.

OPTION 4: Revise the Telecommunications for the Deaf Fund to expand the allowable uses for these monies, since the fund balance is much larger than is necessary to satisfy the current purposes of the fund.

OPTION 5: Repeal the Louisiana Employment Opportunity Loan Fund since the fund is no longer used and currently holds a lingering balance of approximately \$500,000.

OPTION 6: Repeal the Administrative Fund (Department of Insurance) unless the fees on health insurance providers which provide the source of monies in this fund are increased to a level which makes retention and usage of this fund practical. The Department of Insurance may seek to have legislation introduced this session to increase such fees.

OPTION 7: Repeal the Louisiana Tax Commission Expense Fund, the Refund Offset Fund, and the Louisiana Consumer Credit Education, and budget these monies as self-generated revenues rather than as dedicated revenues.

OPTION 8: Repeal the Vocational Technical Enterprise Fund, and budget these monies as self-generated revenues rather than as dedicated revenues.

OPTION 9: The Fraud Detection Fund, the Louisiana Blind Vendor's Trust Fund, and the Traumatic Head and Spinal Cord Injury Trust Fund have all accumulated rather large balances due to budgetary restriction on the expenditure of these monies. Either expenditure authority in the budget should be increased to allow for use of these funds pursuant to current fund mandates, or the funds should be revised to expand the purposes for which appropriations from the funds may be made. In the case of the Fraud Detection Fund, such monies could also be converted to self-generated revenues for the Department of Social Services.

OPTION 10: The Mineral Audit and Collection Fund should be combined with the Legal Support Fund since both funds are used by the Department of Natural Resources and relate to the audit and collection functions.

OPTION 11: The Volunteer Firefighters Insurance Premium Fund could be eliminated and the funding for the premiums it supports could be allocated and distributed from the 2% Fire Insurance Premium Fund.

OPTION 12: Repeal the Drug Treatment Fund since the source of revenues for the fund is negligible, and the fund is unnecessary for the provision of the services supported by it. These monies could be budgeted through the state general fund.

Q. STATE GOVERNMENT – LOCAL GOVERNMENT FISCAL RESPONSIBILITIES

FINDING: In Louisiana there is no clear delineation of fiscal responsibilities between state and local government. State spending on local functions totals more than \$2.5 billion annually which consumes nearly 28% of the state's own source revenues. The largest portions of this spending are for funding local elementary and secondary education, funding portions of the monthly salaries of parish and municipal law enforcement and fire protection officers, parish and municipal judges, constables, and justices of the peace, and funding of revenue sharing, parish road funds, and mass transit. Such huge transfer funding by the state of traditionally local functions presents problems of accountability, engenders questions about the adequacy of the state and local government revenue bases, and creates barriers to efficient delivery of services at both the state and the local level.

OPTION 1: Before the state can evaluate an appropriate revenue base to meet its needs, it must first begin a process of sorting out the fiscal responsibilities between the state and its local governments to determine: 1) what services should be provided by government; 2) which level of government should finance each of those services; and 3) which level of government should deliver those services. This process should be undertaken either through an existing entity, such as the Louisiana Advisory Commission on Intergovernmental Relations, or through a special committee or task force created specifically for this purpose.

R. USE OF STATE RIGHT-OF-WAY FOR FIBER OPTIC CABLE

FINDING: OTD has issued permits for installation of fiber optic cable on interstate right-of-way for a one-time fee of \$5,000 per mile. This fee will be offset by an in-kind payment in the form of permanent access for DOTD to fiber optic communications when cable is installed.

OPTION 1: A statewide policy should be designed to insure maximum return to the state for access to state right-of-way for installation of fiber optic cable, including appropriate access by all state agencies to available fiber optic communications. This policy should incorporate the strategic technology initiatives contained in Vision 2020.

DEPARTMENT OF ELECTIONS AND STATE

FINDING: The state currently has two departments headed by statewide elected officials which perform election functions. The Legislative Auditor's Office found the functions of these two departments overlap. Also, the Select Council on Revenues and Expenditures in Louisiana's Future (SECURE) recommended abolishing the Department of Elections and merging all election functions into the Department of State.

OPTION 1: Merge the Department of Elections and Registration with the Department of State.

Description And Background: In Louisiana, election functions are divided between the Secretary of State (chief elections officer) and the Commissioner of Elections. Before 1956, all election functions were within the Department of the State. In 1956, all duties were transferred to the Board of Voting Machines, which the Louisiana Constitution of 1974 later changed to the Department of Elections and Registration. (*See Appendix pp. 1-2*).

The Secretary of State is designated by the Constitution as the chief elections officer of the state. The Secretary of State administers all laws relating to elections, except voter registration and the custody of voting machines which the Constitution places under the administration of the Commissioner of Elections. (*See Appendix pp. 3-4*).

According to an audit of the Department of Elections and Registration conducted by the Legislative Auditor's Office (June 1996), there is some duplication of effort with the Secretary of State. Both departments work together on issues such as assembling and checking ballots and financing and obtaining reimbursements from the local government's share of expense.

In addition, the Select Council on Revenues and Expenditures in Louisiana's Future (SECURE) recommended consolidation of the two departments by placing all election duties in the Department of State and abolishing the Department of Elections and Registration. SECURE estimated that 10-15 positions could be eliminated by a consolidation, which would achieve savings of \$500,000 in administrative costs. According to the report, having two departments with elections functions results in fragmented elections activities, diffused accountability, and inefficient use of state funds. It may also confuse citizens who have questions or need to register to vote.

Estimated Fiscal Impact: SECURE estimated that 10-15 positions could be eliminated by a consolidation, which would achieve savings of \$500,000 in administrative costs. This is believed to be an extremely conservative estimate.

According to fiscal note preparations on several prefiled consolidation bills, the savings will be a minimum of \$1 million.

Action Required To Implement: Legislation to abolish the Department of Elections and transfer all duties to the Department of State. According to Article IV, Section 20 of the Constitution, such a consolidation would require a two-thirds vote of both houses of the legislature; however, this would not reduce the term of the incumbent commissioner of elections.

MUSEUMS

FINDING: The state currently operates two separate museum systems in two separate departments both headed by statewide elected officials. Both the costs and performance of these facilities varies considerably. The Legislative Auditor's Office found the functions of these systems to overlap and recommended consolidation of these programs

OPTION 1: Consolidate the museum programs of the Secretary of State and the Department of Culture, Recreation and Tourism under one agency. This action would not take place until new terms for elected officials begin.

Description And Background:

Department of Culture, Recreation and Tourism – Office of State Museum

The Louisiana State Museum System established by R.S. 25:341 in the Department of Culture, Recreation, and Tourism, Office of State Museums operates a total of eleven museums. Nine are in the New Orleans Area (Cabildo, Presbytere, Lower Pontalba Building, Madame John's Legacy, Old U.S. Mint, Jackson House, Creole House, and 1000 Charters St.) all of which are accredited by the American Association of Museums (AAM). The other properties in the system are the Wedell-Williams Aviation Museum in St. Mary Parish and the Old Courthouse in Natchitoches both of which have facility issues to clear up before they can reach 100% accreditation.

R.S.25: 342 requires that the Louisiana State Museum System shall exercise its powers, duties, and functions "in accordance with professional museum practices as established by the American Association of Museums."

- This system's projected total funding level for FY 00-01 is \$4,318,111. There are a total of 114 authorized positions (*See Table 1 - Appendix p. 5*). The cost per visitor ranges from \$13 for the New Orleans Museums to \$30 for the Old Courthouse Museum and \$62 for the Wedell Williams Museum (*See Table 2 - Appendix p. 6*).

Department of State – Museums Program

Five museums have been transferred to the Secretary of State pursuant to R.S. 36:744. These museums are the Old State Capitol in Baton Rouge, Louisiana State Exhibit Museum in Shreveport, Louisiana Cotton Museum in Lake Providence, Caddo-Pine Island Museum in Oil City, and the E.D. White Museum in Thibodaux.

According to state law, four out of five museum boards for the Department of State direct the museums to maintain accreditation standards. These are the Louisiana State Exhibit Museum, E.D. White Museum, Louisiana State Cotton Museum, and Caddo-Pine Island Oil Museum.

R.S. 25: 379.2 - R.S. 25:380.43 provides in pertinent part that the museum boards shall prepare a “budget and plan for funding sufficient to maintain standards necessary to qualify for and maintain the accreditation of the American Association of Museums.” Secretary of State Museums are currently **not** accredited by the American Association of Museums (AAM).

- For FY 00-01, these facilities have a funding level of \$1,647,550 with 31 authorized positions (*See Appendix p. 7 - Table 3*). Cost per visitor ranges from \$3 per visitor at the Louisiana State Exhibit Museum to \$60 per visitor at the E.D. White Museum (*See Appendix p. 7 - Table 4*).

Estimated Fiscal Impact: If the two museum programs were consolidated, total State General Fund savings are estimated at \$175,200, with elimination of 4 positions.

This estimate assumes that the on site administration of museums currently under the **Secretary of State** would continue due to the difficulty of establishing a centralized administration because of the distance between the sites. However, elimination of the museum program coordinator position would save **\$88,800** per year in salary and related benefits.

It is estimated that the **Department of Culture, Recreation, and Tourism**, Office of State Museum could eliminate 3 positions with a total of \$86,400 in salaries and related benefits (2 clerical positions - \$33,600 total; 1 information systems specialist – 52,800 total).

Action Required To Implement: Legislation would be required to consolidate all museums under one agency. The legislation should allow operation of a two-tiered museum system, which would encompass both accredited and non-accredited museums, specifying continued accreditation requirements for those facilities currently accredited.

TEN-YEAR INDUSTRIAL PROPERTY TAX EXEMPTION PROGRAM

FINDING: During the course of its deliberations, the SCOFA committee heard the results of a study conducted on the ten-year industrial property tax exemption program. This study revealed that while new locations produce more jobs, investment, and pay more state and local sales taxes, the program attracts few new facilities. Other findings showed that exemptions were concentrated in certain areas and industries, and that the program does not foster the growth of high-tech industry.

Vigorous economic performance and the perception of widespread prosperity in the United States are almost taken for granted now. However, while most states continue to experience sustained (although slowed) economic growth, Louisiana has entered a precarious time. After running six straight years of surpluses, Governor Foster was forced to issue several executive orders in 1999, 2000, and 2001 to head off potential budgetary deficits at the end of fiscal years 1998-99, 1999-00 2000-1001. This performance highlights the importance of government interventions aimed at increasing the state's economic viability. One economic development incentive program, and the focus of this presentation, is the ten-year industrial property tax exemption.

Specifically, the program is targeted at manufacturing establishments as defined in the state constitution to be an existing plant or establishment "which engages in the business of working raw materials into wares." (Article VII, § 21) A House Fiscal Division study examined 5,851 of the 6,038 applications approved between 1990 and 1999. (*See Appendix pp. 9-19*)

Descriptive statistics on the exemptions that were studied draw a picture of the areas of the state that are most impacted by the program, which industries are more likely to use the program, and what types of projects are likely to be funded through the exemption. Overall, the 5,851 applications studied totaled \$19.2 billion in manufacturing investment, \$2.6 billion in tax relief, and created 304,335 jobs, over 40,000 of which were permanent jobs. On average, each project received over \$451,605 in tax relief and generated approximately \$126,313 in sales taxes, created 52 jobs (7 of which were permanent), and attracted over \$3.3 million in manufacturing investment.

The major findings presented below show that:

- While on average, new locations produce more jobs, investment, and pay more state and local sales taxes, the program attracts few new facilities.
- Exemptions are concentrated in certain areas and industries.
- The program does not foster the growth of high-tech industry.

These findings and others which arose through the committee discussions form the basis of the options presented on this program.

OPTION 1: Ensure greater accountability of those granted exemptions especially related to job creation, length of stay in the state, and the types of projects that are funded.

This could entail instituting a job creation requirement and the development of other performance criteria and a system for the systematic review of performance over the period of the exemption. Such a system would involve the collection of more detailed data and the submission of periodic reports from the company. It could also involve instituting “clawback” provisions if companies do not maintain a certain level of investment or employment. The state may also conduct more periodic audits to assess whether the company actually created and retained the jobs over the exemption period. Examples of accountability provisions included in tax incentive programs in other states are provided in the Appendix. (See Appendix pp. 21-30)

Background And Description: The constitutional provision creating the program does not create an entitlement. The constitution states that:

“Notwithstanding any contrary provision of this Section, the State Board of Commerce and Industry or its successor, with the approval of the governor, *may* enter into contracts for the exemption from ad valorem taxes of a new manufacturing establishment or an addition to an existing manufacturing establishment, on such terms and conditions as the board, with the approval of the governor, deems in the best interest of the state.

The exemption shall be for an initial term of no more than five calendar years, and *may* be renewed for an additional five years. All property exempted shall be listed on the assessment rolls and submitted to the Louisiana Tax Commission or its successor, but no taxes shall be collected thereon during the period of exemption.

The terms "manufacturing establishment" and "addition" as used herein mean a new plant or establishment or an addition or additions to any existing plant or establishment which engages in the business of working raw materials into wares suitable for use or which gives new shapes, qualities or combinations to matter which already has gone through some artificial process. (Article VII, § 21(F))”

The provision of industrial tax exemptions is to be based on what the Board of Commerce and Industry deems is in the state’s best interest. The state, namely the Department of Economic Development, has the authority to promulgate rules governing the operation of the program. These rules can be modified to maximize the benefit to the state for each exemption that is granted. However, current regulations governing the program make no attempt to define what is in the state’s best interest, or to maximize the benefit to the state. Moreover, inspection audits are conducted only to verify that the construction took place and that the facility was built.

Estimated Fiscal Impact: Unknown

Action Required To Implement: Promulgation of rules at minimum.

OPTION 2: Evaluate the category “miscellaneous capital additions” and the feasibility of shortening the exemption period for this category, in order to maximize benefit to the state and minimize costs. Explore/investigate the possibility of restructuring the program in order to attract more new locations.

Background And Description: The study conducted on exemptions awarded between 1990 and 1999 showed that only 5% or 292 applications approved during the 1990s were for new plant locations. The bulk of applications, 62% or 3633 were for “miscellaneous capital additions (MCAs).”

The rules define an MCA to be “an accumulation, over a 12-month period of small capital outlay purchases totaling a maximum of \$5,000,000”. (LAC 13: 505 [6]) Applications for this exemption type are submitted after expenditures occur. Small capital outlay purchases include anything that remains on the plant-site, such as valves, heat exchangers, phone lines, railroad tracks, piping, etc. There is no limitation on the number of MCA applications a company can file.

Applications for miscellaneous capital had a low return rate over the 10-year exemption period when compared to new locations and expansion projects in terms of permanent jobs (12,196 total and 3 on average), investment (\$6.1 billion total and \$1.7 million on average) or sales taxes paid (\$229 million total and \$63,036 on average). Moreover, the low average amount of tax relief or \$155,269 over the life of the exemption, raises doubts about whether the exemption was a deciding factor in the company’s decision to add capital to its operations. However, the average tax relief awarded to a particular company could be significantly higher to the extent that certain companies file several MCAs at the same time period.

Given the above discussion, there is some question as to whether this type of application provides a real incentive. Specifically, if a particular company did not receive this exemption would they realistically leave the state? Since many of the firms that have filed an MCA are receiving exemptions for expansions or new locations, this does not seem to be a real threat. In addition, the state needs to determine whether such an exemption is worth the amount of investment by conducting real cost benefit analyses on each project. Lastly, the small amount of new locations over the 10-year study period raises questions about the program’s effectiveness in attracting new companies. Changes in the regional and global economies call for more innovative tools that better address business needs and that would provide more effective in attracting new facilities.

Estimated Fiscal Impact: Unknown

Action Required To Implement: Promulgation of rules

OPTION 3: Reevaluate the ten-year tax industrial property tax exemption program in light of current economic development priorities. Reevaluate the necessity of granting automatic five-year extensions of the exemptions.

Background And Description: Companies such as Fruit of the Loom have received incentives and, within a few years laid off thousands of employees. Assessments of a company's financial stability and market potential should be conducted to head off similar situations. This will help assess the company's viability and whether they will continue to operate and provide economic benefit to the state during the length of the exemption period.

The state should also investigate the possibility of giving varying levels and types of exemptions for different projects according to their merit and attractiveness. For example, new locations would receive a greater exemption than other types of expansions. Another example would be to grant a 100% exemption in the first year and a lesser percentage in the out years.

These approaches address the concern that companies may leave after having been granted an exemption, before their time period is up. It also would reward companies that are more likely to remain in the state when their exemption period is over.

Estimated Fiscal Impact: Unknown

Action Required To Implement: Promulgation of rules at minimum

OPTION 4: Develop a more targeted incentive program that would focus on developing the state's high-tech industry.

Background And Description: The American Electronics Association (AEA) uses 45 separate four-digit Standard Industrial Classification (SIC) codes to define high-technology industries. AEA's definition consists of codes that fall into three main categories—high-tech manufacturing, communications services and software and computer-related services. According to this definition, between 1990 and 1999 only 70 applications in "high-technology" industries were approved. These applications generated over \$64.7 million in investments, were awarded \$11.1 million in tax exemptions and created 983 new jobs, almost half of which were permanent.

The ten-year industrial tax exemption program was not designed to enhance the growth of the high-tech sector, largely because most high-tech businesses provide services. The goals of the State's 20-year comprehensive plan for economic development, Vision 2020, describe the move towards diversifying the state economy. In light of these goals, the state needs an effective incentive program that would allow the growth of such firms.

Estimated Fiscal Impact: Unknown

Action Required To Implement: Promulgation of rules at minimum or statutory provisions.

COORDINATION OF WORKFORCE TRAINING PROGRAMS

FINDING: The committee discussed potentially overlapping functions and missions of the \$50 million Department of Labor Incumbent Worker Training Program with the \$6.5 million Department of Economic Development Workforce Development Training Program. Because each program has different funding sources and targets a different population, duplication has been minimized. However, the potential for additional efficiencies through merger of program administration or functions, should be investigated, especially given the disparity in resources between the two programs.

OPTION 1: In light of a possible Department of Economic Development reorganization and the continuing state budgetary problems, the state should explore possible cost savings that could be generated from consolidating the administrative and/or programmatic functions of the Workforce Development programs of the Department of Labor and the Department of Economic Development. The state should also investigate a more equitable realignment of resources for those efforts.

Background And Description:

Department of Labor – Incumbent Worker Training Program

History: Created by Act 1053 in the 1997 Regular Session and Amended by Act 197 of the 1999 Regular Session.

Funding: A total of \$50 million may be deposited in the Workforce Development and Training Account, a special account under the Employment Security Administration Fund within a given fiscal year as long as the Unemployment Insurance Trust Fund maintains a balance of \$1.4 billion or more. The account was created from a deduction in the unemployment insurance tax and is designated as a Statutory Dedication.

Purpose: Its main purpose is to provide upgrade training to incumbent workers who are currently in entry-level positions. The idea is that as a result of the training, workers will be promoted thus opening up more entry-level positions. The use of public training institutions (technical and community colleges) is also encouraged. The program began accepting applications in November 1998.

Restrictions: An employer benefiting from the program must have been in the state for at least three years, must be contributing to the workforce development training account, and be in full compliance with Louisiana unemployment compensation insurance laws. No one company can receive a grant equaling greater than 5% of total funding available within a fiscal year and companies can receive only one grant within a 24-month period.

General Statistics: An analysis of revenue collections for the 2000 calendar year shows that as of September 2000 the balance was \$41,767,647. Approximately 70 applications have been approved totaling \$14,543,696 while the expenditures at the end of the same month equal \$2,937,355. The estimated duration of each project is 23 months.

Department Of Economic Development – Workforce Development and Training Fund

History: Created by Act 483 in 1995, and received funding beginning in FY 96-97.

Funding: The \$6.5 million program is a statutory dedication, which receives monies generated by a reduction in vendors compensation deductions.

Purpose: The program provides customized training funds to businesses that either want to locate in Louisiana or want to expand or modernize existing facilities. This program is often marketed as part of an incentive package to attract industries to locate in Louisiana.

Restrictions: The current cap per award is \$500,000. Employers benefiting from the program must be in full compliance with Louisiana unemployment compensation insurance laws, and the award should be reasonably expected to be a factor in the company's locations, investment and/or expansion decisions. While the law and rules do allow for incumbent worker training, the Department focuses on those who are expanding or locating and who have been in the state for less than three years in order to avoid duplication of services with the Department of Labor.

Based on the characteristics of each program, a merge would require several statutory changes depending on the structure of the merge. For example, the source of funding for the Workforce Development and Training Fund in DED could be changed or it could be eliminated if a portion of the Incumbent Worker Training (IWT) fund were designated for the purposes of the DED program. In this case, provisions would have to be made for the vendor's compensation monies to go to other purposes. In addition, designating a portion of the IWT fund for other purposes would require a change in the statutory provision, which restricts the Department of Labor's IWT program to businesses that have been in the state for three or more years.

Estimated Fiscal Impact: Merging administrative functions could result in some cost savings. The state could save \$6.5 million in state general fund every year if the IWT fund purposes were expanded to include the goals of the DED Workforce Training program. This would free up State General Fund for other purposes such as other economic development activities.

Action Required to Implement: Statutory changes and interagency transfer agreements.

**DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONS
CORRECTIONS SERVICES**

GROWTH IN PRISON POPULATIONS

FINDING: From Fiscal Year 1994/95 through Fiscal Year 2000/2001 the prison population has grown by 50%; from 25,260 to 38,000 inmates. Expenditures over this same period increased by \$254.6 million, a 70% increase. Changes in state and federal sentencing guidelines over the past 5 years have had a tremendous impact on the growth in prison populations. This includes mandatory minimum terms, requirements that a minimum 85% of the sentence is served, and “three strikes “ laws. Additionally, since many of the state’s inmates are being incarcerated for longer periods and, with no chance of parole, the number of aging and chronically ill inmates is increasing.

The committee reviewed a great deal of historical and statistical information on offenders in state prisons, as well as information on effective community and institutional programs that decrease recidivism and help to prevent crime. Some of these alternatives are seeing limited use in Louisiana and may be worthy of expansion. People who are committed for violent offenses should be incarcerated for long term; however there are alternatives for low level drug and property offenders who could be more efficiently and effectively dealt with in the community. These alternatives would cost the state less money than it is currently spending and be more effective in terms of results. For instance, low-level drug offenders (possession only) could be diverted to drug courts which are less costly and more effective. Restorative Justice initiatives for low level property offenders allow them to make restitution, fix damage done to their surroundings, and participate in job skills, education and drug treatment programs. In general, the best strategies to reduce growth in incarceration are investments in basic education, values clarification skills, job skills programs and drug treatment programs.

It is important to consider that, in most cases, a short-term investment of new dollars must be made in order to realize the long-term benefit. It is generally not possible to expect to reduce the cost of incarceration by an amount equivalent to the expenditure on drug treatment, education, job skills training and other programs in the initial fiscal year of implementation.

OPTION 1: The Parole Board should review parole considerations for inmates who meet the criteria for early release under R. S. 15:574.4 and R.S. 15:574.20

Description and Background: **R.S. 15:574.4** allows parole consideration for inmates who received sentences of 30+ years (except lifers) who have served at least 20 years and who are at least 45 years of age. Similar consideration may be reasonable for inmates with life sentences who are at least 60 years of age and who have served at least 30 to 40 years. In the past three years, fewer than 25 inmates have been granted parole considerations in accordance with this law.

R.S. 15:574.20 allows for medical parole consideration for inmates by the Board of Parole (is not available to any inmate who is awaiting execution or who has a contagious disease).

An inmate eligible for consideration for release under the program shall be any person who, because of an existing medical or physical condition, is determined by the department to be within one of the following designations:

- (1) "*Permanently incapacitated inmate*" which shall mean any person who, by reason of an existing physical or medical condition, is so permanently and irreversibly physically incapacitated that he does not constitute a danger to himself or to society; or
- (2) "*Terminally ill inmate*" which shall mean any person who, because of an existing medical condition, is irreversibly terminally ill, and who by reason of the condition does not constitute a danger to himself or to society.

These inmates are currently receiving some medical care through the LSU Health Care Services Division (LSUHSC). LSUHSC currently absorbs the cost of inmates admitted to their Intensive Care Unit. However, in a recent ruling HCFA determined that these inmates must be granted an unconditional parole before they would qualify for Medicare. In the past three years, only two inmates have been granted parole considerations in accordance with this law.

Estimated Fiscal Impact: There are currently 1,350 inmates age 45 or older who have served 20 or more years that may qualify under **R.S. 15:574.4** for early release. Approximately 68 of these inmates are age 60 or older and have served 30 or more years (3 on death row, 673 lifers and 674 regular offenders). The average cost to incarcerate each of these individuals (including some health care costs, but excluding LSU Health Care Services) is \$17,748. Annual expenditures for these individuals totals over \$22 million.

There are currently 30 inmates that qualify under **R.S. 15:574.20** for medical parole. The average cost to incarcerate these individuals currently ranges from \$17,859 to \$20,929 annually (\$535,770 to \$627,870 total costs). These figures are DPS&C expenditures only and do not represent the services provided by LSU Health Care Services Division.

Action Required to Implement: Resolution to urge and require the Parole Board to review parole considerations for inmates who meet the criteria for these early release programs.

FINDING: Mandated sentencing guidelines reduce judicial discretion in sentencing offenders to alternative community intervention and supervision programs which are more cost efficient and help in reducing recidivism.

OPTION 1: Review minimum mandatory sentencing guidelines to allow for increased participation in alternative programs. (See Appendix pp. 31-38) (Note: this would not change the enumerated crimes of violence and the 85% sentence served as required by the federal government to qualify for VOITIS funds.) A number of different programs and their estimated fiscal impact are identified below:

DRUG COURTS

Description and Background: Drug Courts are special courts given the responsibility to handle cases involving less serious drug-using offenders through a supervision and treatment program. These programs include frequent drug testing, judicial and probation supervision, drug counseling, treatment, educational opportunities, and the use of sanctions and incentives. The court works with offenders who have no previous drug convictions or history of violence. Almost all drug courts exclude offenders charged with sales of drugs, possession for sale of drugs, or other serious offenses. Funding under the Crime Bill excludes participation by any offender who has been charged with a violent offense or who has a prior conviction for a violent crime. Offenders are placed on supervised probation and assigned a probation and parole officer who closely monitors the offenders activities and conducts frequent drug screens, as well as confirms attendance at substance abuse counseling, work and/or educational programming. The offender is returned to court periodically where the officer reports on progress made. If there is non-compliance, the judge can take immediate action to sanction the offender. According to a national survey by the Department of Justice, 70 percent of all drug court participants have either finished the program or stayed in treatment; 90 percent of drug tests have been clean; and the recidivism rate for program graduates is only 4 percent, compared to well over 50 percent for defendants who go through the "traditional adjudication process."

Louisiana presently has 14 active adult drug courts and 11 juvenile drug courts. With all sources of funding, drug courts have the treatment capacity to serve 1,339 adults and 445 juveniles (1,784 total). DHH Office of Addictive Disorders reports that some 2,266 persons have been admitted to Louisiana's drug court system this year. Of that number, 178 have successfully completed the program and 1,471 remain in active status. Seventy-five percent of the successful participants are gainfully employed; 33% have obtained either their GED or high school diploma. National retention rates are 70%; Louisiana reports a rate of 74%.

Estimated Fiscal Impact: It has been demonstrated that drug courts reduce the cost of adjudicating low level drug offenders. Substantial benefits include reduced recidivism and days of incarceration, shorter supervision periods, increased employment and higher levels of social functioning, all generating significant long-term savings to taxpayers. The average cost of incarcerating adult offenders in state correctional facilities or local jails

for FY 01-02 is projected to cost \$12,300 per year, (juvenile incarceration costs are \$46,700 per year). The cost of an adult drug court slot is \$3,600 for a two-year treatment program (\$5,000 for juveniles). The existing 1,784 drug court slots currently cost the state approximately \$7 million annually. Providing an additional \$2 million in funding for adult and juvenile drug court slots could save the state \$24 million in incarceration costs over the next two years.

RESTORATIVE JUSTICE

Description and Background: Restorative Justice is not any one program or process. It recognizes that, to heal the effects of crime, we must attend to the needs of the individual victims and communities that have been harmed to reduce the likelihood of their reoccurrence. One example of the program is the Reparative Probation program in the State of Vermont. The program offers an alternative to traditional probation and incarceration. The offender appears before a reparative board, a panel of trained citizen volunteers. The victim is not required to be present. The board works with the offender to establish what he can do to repair the wrong that has been done. The outcome is a signed agreement, an “action plan” that the offender agrees to follow. He has 90 days to fulfill the terms of the agreement. If he fails to complete the terms of the agreement, the offender is returned to court. In two years, the board met with 2,421 offenders; only 233 (9%) negatively terminated their agreement and were returned to court.

Estimated Fiscal Impact: Cannot be determined at this point in time.

VICTIM OFFENDER MEDIATION

Description and Background: Victim Offender Mediation (VOM) has been implemented in several jurisdictions through the country. VOM provides an opportunity for victims of crime, primarily low level property offenses and minor assaults, to meet their offenders in the presence of a trained mediator. The goal is to hold offenders directly accountable while providing important support and assistance to victims. With the aid of trained mediators, the victims are able to let the offenders know how the crime affected them, receive answers to their questions and be directly involved in developing restitution plans that hold the offenders financially accountable for the losses they caused. Failure to complete the restitution agreement results in further court-imposed consequences. A recent survey conducted by the University of Minnesota, School of Social Work, identified 289 VOM programs currently in operation in communities throughout the United States. Over 60 percent of the VOM programs were operated by either church or community-based organizations.

In Louisiana, recently enacted legislation (Ch.C. Arts. 435-445) allows for mediation as a new option for juvenile offenders in delinquency and other proceedings. The court may order a referral for mediation between the alleged victim and offender. The parties must attend scheduled sessions and attempt to mediate in good faith, but are not required to reach an agreement. With grant funding, this concept is being piloted in Jefferson Parish. The success of this option is contingent upon funding for mediators. There are many adult and juvenile offenders in state custody for low-level offenses that might possibly be considered for mediation or other types of restorative efforts, whereby the offender could

repair the harm done by performing community services, work to earn money to repay or replace what is owed, etc. victimized, allows for more active involvement of crime victims and community members in the justice process and reduces further criminal behavior. The cost to implement these programs is minimal using volunteer citizens while the economic and social impact would be significant.

Estimated Fiscal Impact: Currently, there are 226 juvenile offenders in state custody for low-level property offenses at a cost of \$111 per day. Nearly \$4.5 million could have been saved if only half of these offenders were diverted to a mediation program. In the adult population, there are approximately 650 first offenders whose most serious crime ranges from worthless checks, attempted theft, attempted simple burglary to theft of items valued at less than \$500. If half of these offenders had been diverted through mediation efforts, an annual savings of approximately \$3.5 million may have resulted, or at least have freed these beds for utilization by higher priority violent and chronic offenders.

Action Required to Implement: Legislation would eliminate some mandatory sentencing guidelines to allow for judicial discretion in sentencing practices. (There are a number of approaches to adjusting these guidelines, including the elimination of minimum mandatory sentences for attempts of the enumerated crimes.) Appropriations would provide funding for implementation and expansion of existing programs.

FINDING: Correctional education programs help inmates break the cycle of criminal activity by providing the knowledge and skills necessary to succeed. Effective programs focus on helping inmates develop problem solving and decision-making skills. A new national study outlines overwhelming evidence linking prison-based education programs to dramatically reduced recidivism rates and crime prevention, finding such programs among the most effective of all crime prevention programs.

OPTION 1: Funding sources should be identified to supplement the programs that have proven successful in reducing recidivism.

JOB SKILLS EDUCATION PROGRAM (JSEP)

Description and Background: JSEP continues to be an effective vehicle for inmates seeking to increase their academic and vocational potential. A computer-based, three-component learning system developed by the U.S. Army, JSEP includes: 1) an education module; 2) a vocational module; and 3) an after-care treatment program. During the 1998/99 school year, 1,191 adult inmates completed JSEP. Of these, 436 were referred for aftercare services through the Division of Probation and Parole. The recidivism rate for this group of parolees was 14.2% compared to 31.1% for non-JSEP parolees.

Estimated Fiscal Impact: The program is currently funded at five institutions at an operating cost of approximately \$610,000 (estimated annual recurring costs of \$135,000 for each existing program includes salaries, supplies and computer maintenance.) The Department hopes to expand the program to include all adult institutions at a total cost of \$1.1 million. The cost per location is \$288,390, the facilities without the program include Phelps Correctional Center, Louisiana State Penitentiary, Work Training Facility/North, and David Wade Correctional Center.

PROJECT METAMORPHOSIS

Description and Background: Project Metamorphosis is a three-year grant-funded program currently located at Elayn Hunt Correctional Center, Louisiana Correctional Institute for Women and Avoyelles Correctional Center. The goal of the program is to reduce recidivism through higher post-release employment and wage rates and increased vocational, cognitive and employability skills. Program components include life skills, employability/work maturity skills, literacy, vocational training, job or school placement and follow-up.

Estimated Fiscal Impact: This nationally recognized program has operated since 1997 and has served 1,243 adult inmates. Inmates released in 1999 who participated in Project Metamorphosis had a recidivism rate of 15.8% compared to 22.1% for the general inmate population. This decreased rate of recidivism for Project Metamorphosis participants could generate an annual savings of nearly \$900,000. The Department will be unable to continue this program after the grant expires in Spring 2001 because of the lack of a state general fund appropriation. While the grant has paid for the equipment needed to operate the program, recurring costs average \$380,000 annually for salaries and supplies.

RESOCIALIZATION

Description and Background: Recidivism rates for youth in the Texas Youth Commission (TYC) have declined across the board since 1993. Texas officials attribute this reduction to specialized treatment programs and a behavior modification program called "Resocialization." Currently, the TYC has the resources to offer this specialized treatment to only 40% of the youth who need it. It was found that the youth who completed the specialized treatment were rearrested or reincarcerated at a much lower rate than youth who didn't have access to the special programs. The "Resocialization" program is based upon the premise that youth who have been "socialized" to a delinquent/crime prone subculture, must be held accountable for their behavior, and must be helped to understand and to develop the skills necessary to become positive, pro-social individuals. The Department has proposed a five-tier behavior modification program similar to "Resocialization" built upon the principles of youth development. Participation in the behavior modification program along with the academic, vocational and treatment services available at the juvenile correctional facilities will have a significant, positive impact on the behavior of the offenders and will return them to their communities better equipped to live as productive citizens.

Estimated Fiscal Impact: Full implementation is expected to take approximately two years and cost between \$500,000 and \$750,000. The bulk of the cost is for curriculum development and training of direct care personnel. Return on this investment is expected to be a greater chance of success upon release. Recidivism for offenders released in 1994 currently stands at 63.5%. Seventy-three percent of these recidivated as adults.

Action Required to Implement: Increase funding for these programs in the General Appropriation Bill

FINDING: Recidivism rates for the Intensive Motivational Program for Alternative Correctional Treatment (IMPACT) program participants have been consistently lower than non-participants.

OPTION 1: Expand the provisions of R.S. 15:574.4(A) and C.Cr.P.Art.901. to allow a greater number of inmates to become eligible for IMPACT program participation.

Description and Background: The Intensive Motivational Program for Alternative Correctional Treatment (IMPACT) is an intensive incarceration program located at Elayn Hunt Correctional Center (EHCC). It is a rigorous multi-faceted program emphasizing discipline, education and rehabilitative therapeutic programs in substance abuse and values re-orientation. IMPACT was authorized by statute in 1986 and currently has a capacity of 200.

Statutory eligibility states that a participant must be:

- Parole eligible;
- Convicted of a non-violent first felony offense or;
- Convicted of a non-violent second felony offense and have never served time in a state prison; or
- Convicted of a first or second offense for possession of cocaine; or
- Convicted of a first offense for distribution, dispensing, or possession with intent to produce, manufacture, distribute, or dispense cocaine when the amount of cocaine involved was 28 grams or less; and
- Be sentenced to state custody for seven years or less.

In addition, each IMPACT candidate undergoes extensive evaluation of suitability criteria prior to eligibility, including consideration of the following:

- Outstanding felony charges;
- Mental or physical health problems that would preclude safe program participation after reasonable accommodations are made or that would require accommodations that would preclude obtaining the fundamentals of the program;
- Significant long-term history of assaultive behavior;

- An assaultive escape within the last five years;
- Sex offenders.

IMPACT has evolved since its inception in a number of ways. Over the years, the original military boot-camp style program has become predominately a “drug treatment” program. The current format of the program is designed to meet the programmatic needs of the chronic substance abuser. It focuses on altering behavior by changing the way the trainee thinks, while forcing the individual to examine the quality of current relationships and evaluate life goals. In 1995, a Job Skills Educational Program (JSEP) was added to the curriculum. JSEP incorporated a self-motivated computer based educational module that allows offenders instructional opportunities in over 220 vocational job prescriptions including GED and college preparatory. In 1997, Moral Recognition Therapy, a sixteen-step program created for the anti-social substance abuser was also added. In June 1998, a fast-track ship fitting/welding vocational component was initiated that provides 200 hours of training in vocations that will provide numerous job opportunities upon release. A proposal to create a 180 hour fast-track carpentry program for IMPACT inmates is in the planning stages. Upon completion of the program, inmates will be qualified for entry-level jobs in the building and construction field. This program is proposed to be the start of a core of trades programs to teach building construction skills. By investing in marketable skills, the inmates have a greater chance at securing employment upon release.

The most efficient indicator of the success of this program is tracking the recidivism rates of participants. Recidivism for the 1997 IMPACT graduates shows that 61% are still living successfully in the community, while 78% of the 1998 graduates remain in the community. Statistics reflect that 54% of the 1997 general population releases and 63% of the 1998 releases remain in the community. Recidivism rates for IMPACT participants have consistently been lower than non-participants. This indicates that IMPACT participants, serving a shorter sentence, are committing fewer crimes than those who serve their sentences through traditional incarceration.

Estimated Fiscal Impact: Currently, the average length of incarceration for an inmate in the IMPACT program is 10.3 months. Incarceration costs for this inmate are approximately \$9,610. A similarly profiled inmate traditionally incarcerated would have an average sentence of 5.5 years, and actually serve approximately 2.75 years. Incarceration costs for this inmate are approximately \$31,155. Thus, for each IMPACT class of 200 there is an estimated cost savings of approximately \$4.2 million. As of June 2000, 2,405 inmates have successfully completed this program. This has resulted in an approximate savings of \$51.5 million in operational costs over the thirteen-year history of the program. It also calculates into a capital cost savings of \$13.75 million (\$25,000/bed), by saving the cost of constructing a new 550 bed facility that would have been needed for these offenders.

One time costs of conversion of 79 beds to an IMPACT unit would cost \$882,717 and result in operational savings of \$1.7 million.

The cost of the fast-track carpentry program is estimated to cost \$18,675 to produce 10 graduates in the first class cycle. Subsequent classes will cost \$10,900 per cycle and approximately 6 class cycles can be completed in one fiscal year. Total annual costs are estimated at \$73,100 for 60 inmates.

Action Required to Implement: Legislation would eliminate statutory restrictions on eligibility and allow DOC discretion in determining program participation. Additional funding in the General Appropriation Bill would allow for expansion of the program.

FINDING: The Supreme Court has recently ruled that the District Attorneys are to act as gatekeeper in recommending who should participate the drug courts. The court said that there was no indication in the enabling legislation that created drug courts that anyone other than the DA was given power to propose defendants to the program. This has created conflicts across the state in terms of utilizing the drug courts as alternative sanctions to incarceration (instead of pre-trial diversion programs).

OPTION 1: Amend the law to allow for both District Attorneys and Judges to share in the authority to recommend participants to drug courts.

Description and Background: Drug Courts are special courts given the responsibility to handle cases involving less serious drug-using offenders through a supervision and treatment program. These programs include frequent drug testing, judicial and probation supervision, drug counseling, treatment, educational opportunities, and the use of sanctions and incentives. The court works with offenders who have no previous drug convictions or history of violence. Almost all drug courts exclude offenders charged with sales of drugs, possession for sale of drugs, or other serious offenses. Funding under the Crime Bill excludes participation by any offender who has been charged with a violent offense or who has a prior conviction for a violent crime. Offenders are placed on supervised probation and assigned a probation and parole officer who closely monitors the offenders activities and conducts frequent drug screens, as well as confirms attendance at substance abuse counseling, work and/or educational programming. The offender is returned to court periodically where the officer reports on progress made. If there is non-compliance, the judge can take immediate action to sanction the offender. According to a national survey by the Department of Justice, 70 percent of all drug court participants have either finished the program or stayed in treatment; 90 percent of drug tests have been clean; and the recidivism rate for program graduates is only 4 percent, compared to well over 50 percent for defendants who go through the "traditional adjudication process."

Estimated Fiscal Impact: It has been demonstrated that drug courts reduce the cost of adjudicating low level drug offenders. Substantial benefits include reduced recidivism and days of incarceration, shorter supervision periods, increased employment and higher levels of social functioning, all generating significant long-term savings to taxpayers. The average cost of incarcerating adult offenders in state correctional facilities or local jails for FY 01-02 is projected to cost \$12,300 per year, (juvenile incarceration costs are \$46,700 per year). The cost of an adult drug court slot is \$3,600 for a two-year treatment

program (\$5,000 for juveniles). The existing 1,784 drug court slots currently cost the state approximately \$7 million annually. Providing an additional \$2 million in funding for adult and juvenile drug court slots could save the state \$24 million in incarceration costs over the next two years.

Action Required to Implement: Legislation would clarify who is authorized to direct offenders to drug courts.

MEDICAID DRUG PROGRAM

FINDING: Drug Costs are a major reason that Medicaid payments are rising, but the state has few effective tools to deal with the rising cost or usage of prescription drugs.

Payments for prescription drugs are a large and rapidly escalating cost in the Medicaid program. Medicaid expenditures for prescription drugs in 99-00 were \$452 million for some 11.33 million prescriptions. Rebates from the National Medicaid Rebate Program were about 19% of this amount, or \$85 million. This reduced the net prescription drug cost to some \$367 million.

Medicaid drug expenditures have averaged a 3.1% growth annually since 1996-97. National research shows that there are several factors contributing to this cost increase. These include:

- New, more expensive drugs coming to market more quickly
- More extensive use of drugs for a wider variety of conditions
- High inflationary price increase, particularly in the spring of 1998

Rapidly rising drug expenditures have propelled prescription drugs to the third largest Medicaid expenditure for 2000-01. DHH projects that drug spending could double by 04-05, which will make it the largest single expenditure category of the Medicaid program. There is some evidence that increased drug usage will reduce long-term cost of other health care services, such as hospitalization. However, these savings have not been quick to show up in other health care expenditures.

Prescription drug coverage is among the broadest of Medicaid programs in terms of utilization. 1998-00 data show that over 578,000 or about 80% of all Medicaid clients used prescription drugs that year. Only physician's services are accessed by a larger number of Medicaid clients.

DHH data show that, despite the escalation of total pharmacy spending, drug costs per person in Louisiana have grown less than in other states. In 1993, Louisiana ranked eighth in drug costs per Medicaid eligible; in 1998, it ranked 40th. DHH credits this decline to effective management, including policies that: establish maximum allowable costs for multi-source drugs; encourage generic substitution when possible; provide most-favored customer rates on dispensing fees; and provide some point-of-sale oversight of excessive drug use (PRO-DUR).

OPTION 1: *Open Drug Formulary* – In order to evaluate cost savings and benefits that could be realized through prior authorization of drugs, DHH should prepare proposed policies, procedures, and fiscal impacts for its prior authorization proposal. DHH should also prepare an assessment of how prior authorization may affect clients and retail pharmacists, including any health care outcome effects.

Description and Background: DHH stated that it needs greater statutory flexibility to manage Medicaid drug costs. Since 1989, the Medicaid Open Formulary law (R.S. 46:153.3(B)(3)) has required Medicaid to pay for any FDA-approved drug prescribed to a Medicaid client. Since 1991, our ability to restrict drugs that Medicaid must cover also has been affected by the National Rebate Program. DHH also stated that excluding certain drugs from the Medicaid Formulary could jeopardize participation in the National Rebate Program.

However, DHH believes that the state open formulary law also has kept DHH from using cost-constraining tools used successfully in other states. Examples include prior authorization and payment only for particular drugs in a therapeutic category. Other states have implemented such restrictions without losing participation in the National Rebate Program. DHH attempted to obtain statutory changes to allow prior authorization of certain drugs in 1999, and it indicated it would again propose such legislation in 2001.

Drug manufacturing and retail pharmacy representatives testified against a restrictive drug formulary. They stated that such actions had not been cost-effective in other states and would drive up other health care costs. Retail pharmacy spokesmen indicated that administering such a program could be costly and create problems for providing drugs in some cases.

Estimated Fiscal Impact: The savings from formulary restrictions will depend on the extent to which restrictions occur.

Action Required to Implement: Statutory change to the open formulary law.

OPTION 2: Retail Pharmacy Reimbursement for Drugs - The committee recognized that retail pharmacies are not the primary cause of increasing drug costs. It urges DHH not to continue reducing reimbursements to retail pharmacists. However, the committee made no recommendations concerning the two-tiered reimbursement system, the dispensing fee, or the co-payment.

Description and Background: In June, 2000, DHH implemented a permanent rule that reimburses drug costs to chain pharmacies (11 or more stores) at a lower price than the reimbursement to independent pharmacies. This rule reflected the results of a cost study commissioned by DHH in 1999. Two companies, Walgreen's and Wal Mart, have sued DHH, alleging that the two-tiered reimbursement is illegal. DHH's position is that the lower rate for chain pharmacies is justified by the chain's lower drug acquisition costs, as document in its cost study. It believes that its actions regarding the drug costs reimbursement are reasonable and it expects to defend its actions in court.

DHH also reimburses pharmacists with a dispensing fee for each prescription. The maximum fee is \$5.77, but pharmacists may not charge more than their "usual and customary" charge. Consequently, Medicaid generally pays less than the maximum fee \$5.77. IN 199-00, the dispensing fee averaged only about \$4.42 per prescription.

Pharmacy manufacturer representatives did not testify on the retail payment issue. Chain retail pharmacy spokesmen stated that there was no evidence of lower acquisitions costs for chain pharmacies that would justify the two-tiered reimbursement. Small retail pharmacy spokesmen also stated that the reimbursement rate was too low generally. They also testified that many pharmacies have difficulty collecting the co-payment from the Medicaid client. This fee, which rises from \$.50 to \$3.00 with the prescription costs, is deducted from the Medicaid payment. However, the pharmacy may not refuse to fill the prescription if the client cannot pay the co-payment. According to retail pharmacy spokesmen, uncollected co-payments are a significant loss to the industry.

Estimated Fiscal Impact: Not applicable.

Action Required to Implement: Not applicable unless the Legislature wishes to communicate specific instructions to DHH via a resolution or Appropriations Act amendment.

OPTION 3: Drug Rebates and Bulk-purchase - DHH should pursue additional rebates in those instances where they are cost effective. If prior authorization were to receive legislative approval, DHH should provide for waiver of this requirement if manufacturers agree to additional rebates of at least 5% greater than the National Rebate Program.

Description and Background: Several committee members expressed interest in how the state could obtain lower prices for drugs without reducing further the amounts paid to retail pharmacies. The two methods discussed were bulk purchases of drugs and additional rebates from drug manufacturers.

DHH testified that bulk purchase agreements would be likely to void the rebates received under the National Rebate Program. Staff inquiry of other states that had used or investigated bulk purchases confirmed that drugs obtained through bulk-purchase programs generally do not qualify for the manufacturer's rebate.

Drug manufacture representatives testified that under the National Rebate Program, states get the "best price" with the exception of two classes of trade – the U.S. veteran's affairs and the federal supply schedule purchases. The rebates for single source drugs are a minimum of 15.1% plus additional amounts if prices exceed inflation. The rebate for generic drugs is 11% and there is no inflation adjustment. Spokesmen for drug manufacturers did say that rebates on generic drugs equivalent to rebates on brand name drugs could produce as much as \$8-\$10 million in additional rebates.

Staff research shows that federal law permits additional rebates, and that other states do negotiate additional rebates from drug manufacturers. Florida has recently passed legislation authorizing its Medicaid agency to negotiate bigger rebates on generic drugs, and California has negotiated additional rebates on single source drugs for several years. California rebate agreements include prices paid by veteran's affairs and the federal supply schedule in determining the "best price" for rebate calculations.

Information from HCFA suggests that states often relax formulary restrictions, such as prior authorization, for companies that agree to additional rebates. This is specifically the case in California, which requires prior authorization of all drugs that do not have state rebate agreements.

Estimated Fiscal Impact: Data on the savings from such state-negotiated rebates is limited. California Medicaid officials indicate that the additional savings (over the National Rebate Program) is about 5%. The fiscal analysis of Florida's legislation for generic rebates indicated that savings would be about \$2 million. Florida's drug program is roughly three times the size of the Louisiana drug program.

DHH drug utilization confirms that the savings from additional rebates on generic drugs would be relatively small (about \$1 million at a 15.1% rate). Additional rebates on single source drugs would be more significant, and would increase the rebate by about \$3 million for each additional percentage point of rebate.

Action Required to Implement: DHH can pursue such supplementary rebates on its own initiative. However, the legislature may wish to instruct it to do so through legislation.

OPTION 4: *Generic Drugs* - DHH should consider additional provider and Medicaid client incentives to encourage more generic drug use, including:

- Lower co-payments for generic drugs
- Better reimbursement rates for generic drugs
- Physician education about generic substitution
- Expanded electronic therapeutic authorization

Description and Background: Testimony indicated that there were some problems with using more expensive brand name drugs when less expensive generic equivalents were available. This problem is not largely due to the use of maximum allowable cost pricing and generic substitution by pharmacists. However, there are still a significant number of instances where generics are not used, although they could be.

Estimated Fiscal Impact: Cannot be determined.

Action Required to Implement: Agency rule making or statutory change.

OPTION 5: *Other Issues* - Require DHH to activate the various boards and committees involved in setting Medicaid drug policies and solicit their input on cost saving measures.

Description and Background: Testimony by retail pharmacists and others indicated that other administrative actions could also help control Medicaid drug costs. These included:

- Reactivation of the Pharmacy Interdisciplinary Advisory Committee
- Better use of disease state management by physicians
- Expand drug utilization review and expansion of electronic therapeutic authorization

Estimated Fiscal Impact: Cannot be determined.

Action Required to Implement: Action by DHH to activate committees and review groups.

SERVICES FOR MR/DD CITIZENS

FINDING: Louisiana lags behind most other states in moving to community care for its developmentally disabled citizens. Remaining programs for disabled citizens are functionally separate from each other and are scattered among several agencies.

Louisiana spends more on institutional and less on community-based developmentally disabled services than the nation. In 1998 (the most current comparative data) the U.S. spent 28% of its total MR/DD budget on institutional care and 72% on community services, whereas Louisiana spends 41% of its MR/DD budget on institutions and 59% on community services. Other statistics further illustrate this “institutional bias” in Louisiana’s MR/DD service mix. When compared to other states, Louisiana ranks

- 42nd in the proportion of total MR/DD spending allocated to community services
- 37th in federal Home and Community Based Services (HCBS) Waiver spending per capita
- 3rd in the proportion of the state population placed in developmental centers (LA has 44 developmental center placements per 100,000 of the general population, compared with 20 for the U.S.)
- 1st in the proportion of state citizens served by Intermediate Care Facilities for the Mentally Retarded (private group homes). (LA places 134 people per 100,000 population in ICF/MR’s compared with 46 nationally.)

Some progress toward community based care has occurred since 1998. The state spent over \$517 million in FY 1999-00 to provide services for MR/DD citizens and their families or caregivers. One-third of that total was spent on institutional care in state developmental centers. Another one-third was spent on residential care in private ICF/MR Community homes. The remaining one-third was scattered among services provided through thirteen non-residential community-based programs.

OPTION 1: *Eligibility and coordination of MR/DD services - Require DHH and DSS to present formal recommendations on eligibility and coordination of services that can be implemented in the budget for FY 01-02.*

Description And Background: A survey conducted for the committee showed that three agencies in DHH and DSS-Rehabilitation Services provide services to developmentally disabled clients through thirteen distinct non-residential (community-based) programs. Numerous public and private local entities also provide services to the same clients. A broad array of services is available, but no state agency offers a comprehensive set of services. There is also some duplication of services among the various programs. Each agency, and in some cases, each program develops and applies its own standards for eligibility. Each program has a separate funding constraint, waiting list, etc. Although there is some coordination among agencies to avoid duplicate delivery of specific

services, there is no mechanism to ensure MR/DD individuals obtain services from the most appropriate source or to comprehensively organize the delivery of MR/DD services.

During the committee hearings DHH agreed that it needed to review the total process of eligibility determination and service provision for all its programs and services. The committee urged it to do so, and to recommend changes that will reduce costs or improve the services delivered to MR/DD citizens for the same cost.

Estimated Fiscal Impact: Savings will be determined by the degree that eligibility determination or service delivery can be consolidated. However, it is likely that savings will be used to improve services rather than reduce expenditures.

Action Required To Implement: DHH review and development of options for legislative approval through budget process.

OPTION 2: Reallocate resources toward community-based care.

DHH should:

- Make greater efforts to move developmental center residents into the community when adequate community-based care is available.
- Develop and recommend options to consolidate state developmental center populations and to reduce physical facility and administrative costs.
- Develop and recommend cost-neutral ways to shift resources from residential care (state developmental centers and private ICF/MR group homes) to non-residential home and community-based services.

Description and Background: DHH supports efforts to move more clients to home and community based settings, but it has had only limited success in this effort. In part, this is because DHH has a strong commitment to providing “freedom of choice” to institutionalized clients, and it only moves residents who willingly accept a community placement. Downsizing developmental centers is also hampered by lack of providers in some parts of the state and the fact that new residents are accepted each year because the developmental centers are a caretaker of last resort.

Consequently, progress on downsizing state DD centers has been slow. Similar problems, including reimbursement rates and local availability of care have impeded efforts to move persons from ICF/ MR group homes into non-residential care settings. At the same time, many disabled persons who are not in institutions also desire home and community based services (HCBS) that are provided through the MR/DD waiver or other non-residential programs. The MR/DD waiting list is currently about 7,500, and other community-based programs have substantial waiting lists.

During the hearings, the committee also raised numerous questions about the higher costs associated with state developmental centers as compared to private ICF/MR community homes. Extensive research on this issue showed that much of this cost difference is due to greater patient needs or additional services provided by developmental centers. However, some of the higher costs (e.g., wage rates and regulatory compliance costs) occur because the facility is operated by the state.

Estimated Fiscal Impact: Savings will be determined by the degree client relocation, consolidation or waiver alternatives can be developed. However, it is likely that savings will be used to improve services rather than reduce expenditures.

Action Required To Implement: DHH development of specific plans to be implemented through the budget process. Legislation will be required if any existing developmental center is recommended for closure.

OPTION 3: DHH should develop alternatives to the MR/DD waiver that will expand access to services at a reasonable and affordable cost per person.

Description And Background: Cost of MR/DD Waiver Services. The committee also raised questions about the costs of the MR/DD Waiver program. Costs have grown from about \$23,000 per “slot” in 1995-96 to over \$30,000 per slot in 1999-00. Future costs are projected to increase at 10% or more annually. One explanation for the increase in the average cost per waiver slot is that those clients now entering waiver slots are more complex and therefore more costly to serve than those who opted into waiver slots at the advent of the program. However, costs for existing clients are also increasing. DHH also shares these concerns about the rapid escalation of costs in the MR/DD waiver program. In response DHH developed the Children’s Choice program and is developing other options to address both the long waiting list and the cost of services provided.

Estimated Fiscal Impact: Unknown – will depend on the specific plans developed. However, it is likely that savings will be used to improve services rather than reduce expenditures.

Action Required To Implement: DHH development of specific plans to be implemented through the budget process. If plans include new waiver programs or modifications to the existing MR/DD waiver, these plans must be approved by the federal Medicaid authority.

MENTAL HEALTH

FINDING: Louisiana’s public mental health service mix is out of balance with the nation. It has more hospital and less community-based care than the average state. Providing a more balanced mix of public mental health services – one that better meets consumer needs, incorporates a broader range of treatment types, and is more cost effective – will likely require innovative efforts to leverage additional non-state (federal, local government, or private sector) resources to enhance community-based care.

OPTION 1: Reduce the number of uninsured in the population served by the public mental health system by increasing efforts to enroll this population in the Medicaid Program.

Description and Background: Louisiana has the third highest proportion of its population without health insurance in the U.S. – 22.5% in 1999. In the population served by the public mental health system the proportion of uninsured is even greater. As in the general population, some uninsured may be eligible for Medicaid but not enrolled in the program.

Medicaid provides coverage to mentally ill children and elderly who meet the program’s income and asset tests. Non-elderly adults who qualify for Social Security Insurance-Disability (SSI-D) are also Medicaid eligible. Non-elderly adults are the largest subpopulation served by the public mental health system. Some of these adults have Medicaid coverage by way of SSI-D, while others remain uninsured because they cannot complete the long and complex SSI-D qualification process.

Located in each of the LSU (“charity”) hospitals is a Medicaid Assistance Program (MAP) unit that helps uninsured individuals with Medicaid eligibility determination and enrollment. The Office of Mental Health recently experimented with a pilot program to establish a MAP unit function specifically to meet the needs of the seriously mentally ill whose Medicaid enrollment process is complicated by the SSI-D requirement. Broader implementation of the mental health MAP could reduce the number of mentally ill people who lack health insurance coverage by increasing enrollment in the Medicaid program.

Estimated Fiscal Impact: The state pays for health care for the uninsured primarily in two ways. It pays hospitals for the uncompensated cost of care provided to the uninsured. These uncompensated care cost (UCC) payments are a mix of 70% federal and 30% state funds. UCC payments are only for hospital-based services; they may not pay for community-based clinic visits or maintenance medications that are critical to keeping those with chronic mental illness out of the hospital. The state pays for clinic visits, maintenance drugs and other community-based supports for the uninsured with 100% state funds and limited federal grants.

To the extent that Medicaid coverage can be increased within the public mental health system, clients may have improved access to community-based services, since Medicaid pays for both inpatient and outpatient mental health care services. The state may also

reduce its reliance on SGF for community-based services since federal funding pays for 70% of Medicaid costs.

Action Required To Implement: Minimal funding and positions for mental health MAPs would have to be appropriated by the Legislature.

OPTION 2: Explore the feasibility of making more community-based mental health services eligible for Medicaid reimbursement.

Description and Background: A wide range of mental health services may be covered by the Medicaid program at the state's option. For covered services, the state sets payment rates, provider rules and program spending caps. Louisiana currently opts not to cover some Medicaid mental health services and to provide others in a limited way. Some services that could be but are not covered by Medicaid are provided by the state nonetheless, but with SGF rather than Medicaid's mixture of state and federal funds.

To the extent that the state can broaden the limits of mental health services covered by Medicaid, it may be able to shift the cost of those services from SGF to the Medicaid program which is both state and federally funded. Among the Medicaid options that could be explored are rehabilitation, clinic services, residential treatment, local match certification, and Hospital Admission Review Program (HARP).

Estimated Fiscal Impact: Depends on which options are exercised and how.

Action Required to Implement: DHH can change state Medicaid rules by amending its state plan. Means of Financing changes would have to be made by the Legislature either during the appropriations process or by BA-7.

OPTION 3: Amend state law to produce more effective screening and treatment of the mentally ill individuals in the criminal justice system.

Description and Background: Each year a significant number of individuals entering Louisiana's criminal courts require psychiatric evaluation to determine whether they are mentally fit to stand trial. Others make it through the courts and are found Not Guilty by Reason of Insanity. In both cases, the state is mandated to provide mental health treatment, and these individuals become "forensic" clients of the public mental health system.

Over the past several years, the number of forensic clients in the system has grown considerably. And in recent years funding was added to DHH for forensic mental health care, specifically to address a federal court order to reduce the backlog of Orleans Parish inmates awaiting state treatment.

The monies (\$2 million SGF) added in FY 00-01 provided for jail-based competency restoration services and 20 new inpatient beds. Recent performance data show that the jail-based treatment was effective at diverting clients from inpatient treatment. But the

new inpatient beds, though able to provide relief to a small number of inmates who required more intensive treatment, did little to reduce the overall waiting list for services for jail inmates.

State laws governing forensic clients' exit from state mental health treatment partly explain the long lengths of stay and low discharge rates for this population. In a number of cases, forensic clients remain in inpatient treatment not because it is clinically necessary but because state law and court actions based on it prevent their step-down to less restrictive environments.

Funds provided for FY 00-01 (\$3.3 million SGF and \$4.7 million federal) provide for additional jail-based competency restoration services, a 50-bed forensic acute unit, and a 25-bed step-down group home. Like the jail-based services, the acute units are designed to avoid long-term hospitalizations by providing short-term treatment to restore competency to the client. The group home works on the back end to transition clients back to the community. Though data are not yet available on the outcomes of these enhancements, it is expected they will help reduce the backlog in parish jails. However, the overall effort will likely continue to be constrained by state laws on treatment of the mentally ill individuals involved in the criminal justice system.

The funding increases for forensic mental health care have not been commensurate with growth in forensic population, and have resulted in existing resources within the public mental health system being reallocated from civil clients (those not involved with the criminal courts) to forensics. In fact, the maximum-security facility designed for the most seriously mentally ill now represents only a fraction of the total public services for forensic clients. In one civil hospital (Eastern in Jackson, LA), the proportion of the total inpatient population that is forensic-involved tops 40%.

In the absence of changes in state law to reduce demand for forensic mental health services, additional funding may be needed to prevent further compromise in the states' ability to care for the mentally ill who are not involved in the criminal justice system.

Estimated Fiscal Impact: Will depend on specific statutory and programmatic changes recommended.

Action Required To Implement: DHH will recommend statutory changes in the regular session.

OPTION 4: Renegotiate LSU-OMH contracts on psychiatric acute unit operations to minimize the state funds required.

Description And Background: Acute psychiatric services are provided by the Office of Mental Health out of the LSU hospitals. Funding for the acute units is governed by contracts between LSU and OMH and by each agency's annual appropriation. The current contracts are based on outdated budget figures.

Since the contracts were first negotiated the service delivery system has changed. OMH now provides a number of crisis intervention services to divert clients from the acute units when possible. These services, including a 24-hour crisis hotline, clinic and emergency room-based screening and evaluation, are not included in the contracts, and have been paid for with 100% SGF to date.

To the extent that the services could be written into LSU-OMH contracts, which are funded primarily by hospital uncompensated care cost reimbursements, these SGF expenditures could be paid for by UCC payments which are a mix of state and federal funds.

Estimated Fiscal Impact: The current SGF cost of these services runs \$2 million to \$3 million. Any costs that could be paid for by UCC would cost just 30% SGF, rather than the current 100%. Further study is required to learn how much of the total cost would be eligible for DSH reimbursement if the contracts were renegotiated to include them.

Action Required To Implement: LSU and OMH would have to renegotiate the acute unit contracts based on current costs. The Legislature would have to amend the budgets of those agencies involved to reflect the financing changes.

HEALTH CARE FOR THE UNINSURED

FINDING: Louisiana's current approach to indigent health care lacks a comprehensive understanding of the health care needs of the state, and should be redirected to achieve specific policy priorities and outcomes, such as reducing the number of people who lack health insurance coverage, increasing access to community-based and primary health care, reducing excess hospital capacity, and improving the state's low health status rankings.

- Louisiana has the 3rd highest percentage of its population without health insurance coverage in the nation, and that percentage is on the rise.
- One reason for the large number of uninsured is a large a low-income population in the state.
- For many low-income people, private coverage is either unavailable or unaffordable.
- State Medicaid coverage or "free care" from hospitals, doctors, clinics or other providers is the only option for a number of low-income people.
- Medicaid covers only a fraction of Louisiana's low-income population, because the state has chosen to expand Medicaid eligibility only modestly beyond the federal minimum requirements.
- The state relies on a limited number of "safety net" hospitals to meet the health care needs of those without insurance, and makes direct payments to those hospitals for the uncompensated cost of indigent care.
- The state's hospital-based approach to indigent care inadequately addresses a number of issues, including excess hospital capacity and a shortage to community-based and primary health care in Louisiana.
- The state's high uninsured rate may contribute to its low health status rankings.

(See Appendix for two issue briefs which explain the above findings and following options in greater detail, *Issue Brief on Health Care for the Uninsured* - pp. 39-42 and *Issue Brief on Primary Health Care* - pp. 43-44.)

OPTION 1: Expand Medicaid/LaCHIP eligibility to narrow the gap in health insurance coverage between children and adults.

In 1999, children comprised less than one-third of Louisiana's total uninsured population. Since mid-1999, the state has invested in the LaCHIP program to expand Medicaid eligibility for children with family income up to 200% of poverty (low-income families). Last year, children in low-income families accounted for more than half (51%) of all children in the state. It is projected that the LaCHIP expansion will have covered 90,000 children by the end of this calendar year, making it likely that by 2002 children will

account for an even smaller proportion of total population lacking health insurance in the state.

The vast majority of Louisiana's uninsured are adults, reflecting that Medicaid eligibility for non-disabled (non-pregnant) adults is limited to parents of minor children with income up to 20% of poverty. Pregnant women with incomes less than 133% of poverty are Medicaid eligible. Childless couples and single adults are not eligible for Medicaid at any income level. These eligibility limits reflect the pre-welfare reform era, despite recent changes in federal law that encourage the transition from welfare to work by allowing states to expand Medicaid eligibility to low-income working parents.

Both Medicaid and CHIP funds may now be used to pay for Medicaid coverage for low-income working parents. Nationally, parents of CHIP kids account for more than half of the adult uninsured population. Their coverage in Louisiana could narrow the gap in health insurance coverage between children and adults and substantially reduce the state's uninsured rate overall. It could also improve child health in light of recent research showing that children get better health care when parents are also insured.

Expanded Medicaid coverage to the uninsured could improve the state's health status rankings. Research shows that the uninsured are less likely to get preventative and primary care, less likely to have continuity of care, more likely to be diagnosed and treated at a later stage of illness, more likely to be hospitalized for avoidable conditions, and have higher death rates.

Medicaid coverage would allow freedom of choice of providers (hospital- or community-based, urban or rural) and coverage of outpatient medications that are essential to maintaining health, two benefits not currently afforded to the uninsured who rely on LSU and other safety net hospitals for their health care.

Estimated Fiscal Impact: Louisiana may be able to expand Medicaid eligibility without additional SGF costs through the use of tobacco settlement revenues, Intergovernmental Transfers (IGTs), and/or reallocations of current uncompensated care (UCC) spending.

An IGT is a contribution to the state from local government that may be used as state match for federal Medicaid or UCC funds. Generally, local government, such as a hospital service district, is motivated to contribute match by the prospect of a direct payment in return. But direct payments are possible only with UCC; by definition UCC payments are paid directly to a hospital for its uncompensated care costs. Local government may be less motivated to contribute match for a Medicaid expansion, because Medicaid participants can choose where they get care and the state has limited ability to direct payments back to the contributor.

Another source of non-SGF funding for a Medicaid expansion is the state match currently budgeted for UCC payments. Because LSU hospitals' primary revenue source is UCC, a Medicaid expansion funded by shifting existing state match from UCC to Medicaid

would likely result in a downsizing of the LSU hospitals. This is especially true if LSU loses to other Medicaid providers a significant number of its previously uninsured patients made eligible for Medicaid by the expansion.

Providers cannot be mandated to see Medicaid patients. For a Medicaid card to guarantee access to care, Medicaid payment rates must be set high enough to attract providers. Current payment rates may have to be increased, though in medically underserved areas even higher rates may not ensure adequate access.

Federal Medicaid payments are limited only by the amount a state spends. Administrative and outreach costs are likely to increase with a significant expansion of Medicaid eligibility.

Medicaid is an entitlement, and costs cannot be reduced as easily as payments for UCC.

Action to Implement: An expansion of state Medicaid eligibility could be achieved in a number of ways, the two simplest being 1) an amendment to the state plan and 2) a 1115 CHIP waiver.

Using Section 1931, the state could submit to the federal government an amendment to its state plan that would expand Medicaid eligibility by increasing the current income, asset or work hour limits. Section 1931 relates to federal welfare reform and changes in Medicaid eligibility that facilitate the transition from welfare to work. State plan amendments are not subject to federal approval.

An 1115 CHIP waiver may be used to expand LaCHIP eligibility to include low-income parents. Only children are eligible for coverage under the basic CHIP program, but an 1115 waiver waives the basic rules to allow states to use CHIP funds to cover parents. Unlike state plan amendments, the 1115 waiver is subject to federal approval.

Neither a state plan amendment nor an 1115 waiver requires legislative action, but DHH would likely seek approval from the legislature before it pursued either option. However, any reallocation of state match and related UCC and Medicaid expenditures would have to be made by the legislature, either in the general appropriation bill or in a BA-7 to the Joint Legislative Committee on the Budget.

OPTION 2: Increase or reallocate existing uncompensated care payments to non-state hospitals.

The vast majority of payments for uncompensated care (UCC) costs go to state hospitals. Last fiscal year, 86% of UCC payments went to LSU hospitals, all but one of which is located in an urban area. Only 4% went to non-state hospitals. Half of Louisiana hospitals received no payment for UCC at all, though all provided some level of uncompensated care.

The state's practice of directing UCC payments to a small number of urban hospitals has raised the issue that many indigent uninsured who live in rural areas must travel 30 miles or more to obtain care. Its practice of reimbursing only half of all hospitals for uncompensated care costs has raised issues of equity and hospital solvency.

Increasing or reallocating existing UCC payments to non-state providers could address these issues but would not address other health policy concerns. For example, UCC may only reimburse the uncompensated costs of *hospital-based* care. Not included in hospital-based care are outpatient drugs, doctor's office visits or other community-based health care. A variety of state rankings indicate that LA has too many hospitals and not enough community-based and primary health care. Additional UCC payments are unlikely to address these concerns. Moreover, additional UCC payments to non-state hospitals located in the same locality as state hospitals also receiving UCC could contribute to a duplication of services and help maintain excess hospital capacity.

Estimated Fiscal Impact: Additional UCC payments would require additional state match. Currently Louisiana relies on SGF for match more than other states. Other sources of state match include Intergovernmental Transfers, certified match, and provider fees. Any additional UCC payments should rely on non-SGF sources of state match.

Federal funding for UCC payments is capped. Any UCC spending above the cap would be a 100% state expense, whereas below the cap the state pays only 30% of the UCC total. Congress recently raised the cap, but only slightly. Increased UCC payments could quickly get the state to the new cap, and result in additional SGF liabilities.

Action to Implement: DHH already has the authority to use IGTs and certified expenditures as state match.

State law mandates certain providers pay a fee to participate in the Medicaid program, but hospitals are exempt. A change in state law would be needed to implement a Medicaid provider fee for hospitals.

Additional UCC expenditures would have to be authorized by the Legislature either in the general appropriation bill or in a BA-7 to the Joint Legislative Committee on the Budget.

UNOBLIGATED TEMPORARY ASSISTANCE TO NEEDY FAMILIES (TANF) BLOCK GRANT FUNDS

FINDING: Since its implementation in 1997, welfare reform has caused a significant decline in the number of recipients and the resources devoted to cash assistance. Consequently, a large balance of unused funds has accumulated. This unobligated balance, combined with the flexibility of the block grant structure, make TANF funds a significant source of revenue to support programs aimed at the needy in a time when state general funds are constrained.

Although best known for its affect on the old Aid to Families with Dependent Children (AFDC) program, welfare reform changed the direction of U.S. social policy in many other areas. The enactment of the Personal Responsibility and Work Opportunity Act of 1996 transformed public assistance, as well as child support enforcement, child care, food stamps, and disability benefits for children. This section, however, will examine the Temporary Assistance to Needy Families (TANF) block grant, which replaced the AFDC cash assistance program or what is commonly called “welfare.” (*See Appendix pp. 51-52*).

Each state is allowed significant latitude in designing their welfare programs. Louisiana’s version of the federal public assistance program, called FITAP (Family Independence Temporary Assistance Program), provides time-limited cash grants to needy families. The work component of the program, Family Independence Work Program (FIND Work) provides job preparation, work and support services. Both are administered by the Department of Social Services (DSS).

The welfare reform law of 1996 gives state legislatures unprecedented authority to decide how to appropriate or use this federal block grant. This authority allows the Louisiana State Legislature to appropriate all or a portion of the block grant and associated state funds to any department of state government for any purpose as long as it fulfills one of the four TANF goals listed below.

TANF Purposes:

- Provide assistance to needy families
- End the dependence of needy parents by promoting job preparation, work and marriage
- Prevent and reduce out-of-wedlock pregnancies; and
- Encourage the formation and maintenance of two-parent families.

The state also has the option of creating “non-assistance” programs. These programs are different from those that fit the definition of “assistance”, that is programs that provide for ongoing basic needs. “Non-assistance” programs are not subject to the spending

limitations and requirements—including work, time limits, child support assignment, and data reporting—that apply to assistance programs.

Both the federal government and the state of Louisiana share the cost of providing welfare to the poor. In LA, the basic yearly federal grant to the state is over \$164 million and is based on 1994 caseloads. Louisiana also has received a supplemental grant ranging between \$13 and \$17 million each year and has received incentive grants in the past. (The supplemental grant is set to expire at the end of FY 01) The state's FY 2000 grant totaled over \$180 million. In addition to the federal TANF funds, the state must meet a "maintenance-of-effort" (MOE) requirement of approximately \$55 million in State General Fund per year.

With the approach of reauthorization in 2002, the structure of the TANF block grant as well as funding levels and state performance will be examined. During the anticipated reauthorization debates, the issue of large balances of unobligated TANF funds will be closely scrutinized, and changes are certain to affect the funding levels of states such as Louisiana that have large balances. As of December 31, 2000, Louisiana had substantial 1999 and 2000 unobligated block grant funds available. For the 1999 grant the balance was over \$54 million, and for the 2000 grant the unobligated balance was over \$107 million, bringing the total balance to approximately \$161.6 million (worth nearly one year's basic grant).

It is clear that the State has an opportunity to address the pressing needs of many segments of the state's population with TANF funds. This can be done in a way that both maximizes existing revenues and that minimizes the risks of creating recurring obligations that may not have sufficient funding after reauthorization. The challenge facing the state during the upcoming legislative session is twofold. First, the legislature must assess the needs that still exist in the TANF recipient population, the population of ex-recipients, and others who would qualify for services. Second, specific priorities should be set that target specific needs. Once a plan is formulated and implemented, regular performance evaluations should be conducted to determine the effectiveness of these TANF-funded programs and whether they should be continued.

The following are options for the use of unobligated TANF funds and propose ways to help the state increase its usage of the yearly TANF block grant.

OPTION 1: Require that unobligated TANF funds be spent on cash assistance before any state Maintenance of Effort (MOE) dollars or new TANF block grant funds are used for this purpose.

Description And Background: Federal regulations require that TANF funds that are not spent in the first year they are awarded will be designated as unobligated. These unobligated funds can ONLY be spent on cash assistance. As of December 31, 2000 there was approximately \$162 million unobligated. Yet even with this significant resource that can only be spent on cash assistance, the state of Louisiana continues to use the required

state Maintenance of Effort (MOE) funds to pay for some cash assistance (nearly \$11 million as of September 30).

This practice is problematic for two reasons. First, the state has a significant amount of flexibility in the way it can use state funds, when compared to the flexibility afforded by the federal TANF funds. By using state funds to pay for cash assistance, the state loses this flexibility and therefore cannot create more innovative programs to address the needs of welfare recipients, ex-recipients and the working poor. Second, by not using unobligated funds to pay for all cash assistance needs, the state continues to let the large balance grow.

Estimated Fiscal Impact: State general funds required in the program would not increase, however, the categories on which they are expended would be different. State Maintenance Of Effort (MOE) dollars totaling \$55 million MUST be spent every year in order receive the full TANF block grant. One reason the state is continuing to use MOE dollars on cash assistance is because there is a dearth of other programs on which to spend state monies. By disallowing the use of state funds to pay cash assistance, the legislature would encourage the development and implementation of more programs to address the many needs of potential beneficiaries.

Action Required To Implement: At a minimum, the state should promulgate rules. Modification of the state TANF plan, amendment of the preamble of the Department of Social Services section in the General Appropriations Bill or statutory revision may also be considered.

OPTION 2: Increase the education level of recipients, ex-recipients, and the working poor such as noncustodial parents; and provide job retention and advancement services

Background And Description: *(For more detailed information see Appendix, pp. 45-48)*

Studies conducted across the nation have shown that about ¼ of recipients who have left welfare due to employment lose their jobs within three months, and at least half are no longer working within one year. The problem of job retention and low wage jobs is not limited to the welfare population, which totaled 26,405 cases in December 2000. Income statistics show that 19% of Louisiana's working parents are considered "working poor" (below 150% of the federal poverty limit). In addition, 7% of workers and 18% of the total population live in poverty. Moreover, 38% of the population 16 and older are not in the labor force. (LA Workforce Commission) While there are many underlying causes that contribute to these statistics, one of the major problems is educational attainment.

The National Center for Education Statistics reported in its literacy survey that individuals demonstrating higher levels of literacy were more likely to be employed, work more weeks in a year, and earn higher wages than individuals demonstrating lower proficiencies. In 1996, 28% of Louisiana adults were functionally illiterate.

These statistics reveal the need for expanded basic skills training and job retention and advancement services for both ex-recipients of welfare and the working poor. Training in adult literacy, GED test preparation, and job preparation is crucial to ensure that adults who lack basic skills can benefit from the occupational skills training currently provided in the state.

Nearly 70,000 individuals receive some level of basic skills training through a number of departments and programs. However, since the total population of adults aged 18-64 without a high school diploma approaches 525,000, there is still a significant need for additional services.

There are a number of options that can be used to expand services. Two departments have been identified that provide this service to the general population of adults without high school diplomas—the Department of Education and the Department of Labor. The state may opt to transfer some TANF dollars directly to one or both of these departments for the expansion of existing basic education and skills training to adults aged 18 through 64 who have children and who have not completed high school. An alternative approach, which could potentially assure more coordination and a focus on performance outcomes, would be to transfer funds to an entity such as the LA Workforce Commission.

Estimated Fiscal Impact: No additional state revenues required. More Federal TANF funds will be spent in the year they are awarded, causing the balance to decrease.

Action Required To Implement: May just require a legislative appropriation accompanied by an interagency transfer and agreement, or a contract. The state may also choose to make statutory changes.

OPTION 3: Help specific populations attain better paying jobs by providing post-employment and job retention services, or advanced skills training. One area of focus is incarcerated noncustodial parents nearing release.

Background And Description: *(For more detailed information see Appendix p. 49)*

There are many reasons that justify a focus in this area. Studies have shown that non-custodial fathers are poorer, have lower educational and skills levels, and are more likely to be incarcerated and unemployed.

In Louisiana, 36,000 persons are incarcerated in state and local prisons. The Department of Corrections (DOC) has a number of effective programs that improve the ability of inmates to find jobs once they are released. One such program is the Job Skills Education Program (JSEP), a computer-based, three-component learning system developed by the U.S. Army. The recidivism rate was 14.2% for the 436 FY 99 parolees who completed the program and were released, compared to 31.1% for non-JSEP parolees. This low recidivism rate has generated a savings of over \$1 million in the incarceration budget.

Currently the program can be expanded to 4 additional correctional facilities at an initial start-up cost of \$288,390 each. Recurring costs for the program include salaries, supplies

and computer maintenance totaling approximately \$135,000 per facility. TANF federal or State MOE funds could be used to pay for the nonrecurring expenses associated with the acquisition of supplies and computers in the first year of the expansion. The DOC, which is committed to this innovative program, can be required to pay for the recurring costs.

Another program is Project Metamorphosis, a 3-year federal grant aimed at reducing recidivism through higher post-release employment and wage rates and increased vocational, cognitive and employability skills. DOC estimates that decreased recidivism would generate approximately \$900,000 in savings to the correctional system. However, since the federal grant will end in Spring 2001, the program will be discontinued if state funding is not appropriated to support salaries and supplies. The average annual cost is \$380,000.

Estimated Fiscal Impact: The Corrections budget would see savings of approximately \$2 million. No additional state revenues required. More Federal TANF funds will be spent in the year they are awarded, causing the balance to decrease.

Action Required To Implement: Legislative appropriation accompanied by an interagency transfer and agreement, or a contract.

OPTION 4: Enhancing the ability of certain poor populations to accumulate savings through the use of Individual Development Accounts

Background And Description: *(For more detailed information see Appendix p. 50)*

Individual Development Accounts (IDAs), similar to Individual Retirement Accounts (IRAs), are one innovative policy tool that enables low-income families to build assets and achieve greater economic prosperity and financial stability. Use of the savings accrued in IDAs is restricted to post-secondary education and training, business capitalization, and home ownership. The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) authorizes states to create community-based IDA programs with TANF block grant funds and to disregard all money saved in IDAs in determining eligibility for all means-tested government assistance. All deposits into the IDAs are limited to earned income.

Estimated Fiscal Impact: No additional state revenues required. More Federal TANF funds will be spent in the year they are awarded, causing the balance to decrease.

Action Required To Implement: The State can promulgate rules to implement the program. This should be accompanied with a legislative appropriation as well as an interagency transfer and agreement, or a contract. Statute should be modified to remove the prohibition against using TANF funds for IDAs.

OPTION 5: Use TANF/MOE funds to expand the Drug Court program by \$2 million in order to promote work and job preparation and reduce the incidence of out-of-wedlock births.

Description And Background: Drug Courts are special courts given the responsibility to handle cases involving less serious drug-using offenders through a supervision and treatment program. These programs include frequent drug testing, judicial and probation supervision, drug counseling, treatment, educational opportunities, and the use of sanctions and incentives. According to a national survey by the Department of Justice, 70 percent of all drug court participants have either finished the program or stayed in treatment; 90 percent of drug tests have been clean; and only 4% of graduates recidivate, compared to "well over 50 percent" of defendants who go through the "traditional adjudication process."

Louisiana presently has 14 active adult drug courts and 11 juvenile drug courts. With all sources of funding, drug courts have the treatment capacity to serve 1,339 adults and 445 juveniles (1,784 total). DHH Office of Addictive Disorders reports that some 2,266 persons have been admitted to Louisiana's drug court system this year. Of that number, 178 have successfully completed the program and 1,471 remain in active status. Seventy-five percent of the successful participants are gainfully employed; 33% have obtained either their GED or high school diploma. While national retention rates are 70%, Louisiana reports a rate of 74%. Statistics on the adult program show that the vast majority of participants are poor, are of childbearing age, and many have children. Therefore, expanding this program would fulfill at least two of the TANF purposes.

Estimated Fiscal Impact: It has been demonstrated that drug courts reduce the cost of adjudicating low level drug offenders. Substantial benefits include reduced recidivism and fewer days of incarceration, shorter supervision periods, increased employment and higher levels of social functioning, all generating significant long-term savings to taxpayers. The average cost of incarcerating adult offenders in state correctional facilities or local jails for F 01-02 is projected to be \$12,300 per year, (juvenile incarceration costs are \$46,700 per year). The cost of an adult drug court slot is \$3,600 for a two-year treatment program (\$5,000 for juveniles). The existing 1,784 drug court slots currently cost the state approximately \$7 million annually. Providing an additional \$2 million in funding for adult and juvenile drug court slots could save the state \$24 million in incarceration costs over the next two years.

Action Required To Implement: At a minimum a legislative appropriation is needed accompanied by an interagency transfer and agreement, or a contract. The legislature may also make statutory provisions.

OPTION 6: Segregate or separate state MOE funds to provide assistance to recipients who are currently taking advantage of the "earned income disregard."

Description And Background: The state currently can disregard up to \$900/month of earned income for welfare recipients for up to 6 months. During this period, recipients are not subject the 24-month state time limit, but they are subject to the 60-month federal time limit. Louisiana statute however, states: "The department *shall take any available steps* that would not require additional state expenditures to keep these six months of

assistance from counting against the sixty-month lifetime limit on receiving TANF assistance.” (R.S. 46:460.5 (A)(3))

Louisiana’s TANF State Plan indicates that it commingles all state and federal funds and does not currently segregate or separate any state MOE funds for any purpose. Since the state currently commingles federal and state dollars in the program, recipients of assistance during the period of the income disregard are still subject to the federal time limit.

A simple solution would be to segregate or separate state funds for this purpose. If this were done, any assistance program funded with these dollars would not be subject to the federal time limits. Moreover, separating or segregating state MOE dollars would not require additional state expenditures.

Estimated Fiscal Impact: None

Action Required To Implement: Modify the accounting system of cost centers to track these funds in order to be able to document the expenditures.

OPTION 7: Reexamine the state policy to commingle state MOE dollars with federal TANF funds. Segregate or separate a portion of the state MOE funds in order to increase spending flexibility. Assess the needs of Louisiana’s poor populations. Investigate programs that have been developed in other states in order to identify ways to address these needs using the increased flexibility and the ability to design non-assistance programs with TANF funds.

Description And Background: The TANF Maintenance of Effort (MOE) requirement compels the state to spend a specified amount of state funds (75-80% of 1994 spending levels) every year in order to receive the annual federal block grant. Louisiana is required to pay approximately \$55 million or 75% since it meets required work participation rates. State MOE may only be used on *needy* families, as defined by the state plan, which can designate differing levels of need based on varying income levels.

The state may spend its required MOE in three different ways: through commingling it with federal funds; segregating the MOE; or creating separate state programs. Separate state programs allow the most flexibility since they are not subject to any of the TANF restrictions, time limits or requirements.

The state of Louisiana currently commingles all of its MOE dollars with its federal TANF funds. The Department of Social Services has voiced concern that the 2-year state-imposed time limit as well as the 5-year federal time limit restrict the state’s ability to provide both assistance and extensive educational services to recipients of the cash assistance. However, the state can use some of its MOE dollars to create a separate state cash assistance program for people who need a longer educational training program. Such a program would not be subject to the 2-year or 5-year time limits.

“Non-assistance” programs developed using TANF funds are also not subject to time limits and other restrictions associated with “assistance” programs.

States across the nation have implemented a number of innovative “non-assistance” programs that address many areas of need. The state should investigate the feasibility of implementing similar programs in Louisiana. Some examples include:

- High performance bonus awards to provide employee incentive bonuses
- Business and entrepreneurial education/training in rural communities
- Programs for women who are in prison for non-violent crimes and their children
- Prepaid tuition fund or vouchers
- School-based health services
- Relative caregiver program
- Microenterprise development that helps low-income people attain self-sufficiency by developing their own businesses
- Adult basic education and ESL services for immigrant populations
- Transitional housing vouchers
- Temporary housing assistance for homeless families
- Non-medical substance abuse treatment
- After school services for at-risk children
- Boys and Girls clubs
- Job retention and follow-up services for former TANF recipients
- Family preservation services
- School readiness centers and child literacy centers

Estimated Fiscal Impact: No additional state revenues required. More Federal TANF funds will be spent in the year they are awarded, causing the balance to decrease.

Action Required To Implement: At a minimum the state plan should be modified to express this policy goal, or the department may promulgate rules. The legislature may also make statutory provisions.

OPTION 8: Reexamine the definition of an “eligible family” as set in the state TANF plan. Set varying levels of eligibility to increase the number of people who can be served by different TANF- and MOE-funded programs.

Description And Background: In order for the department to create new non-assistance programs that benefit persons that are not currently receiving cash assistance, the state must broaden its eligibility criteria. This can be done on a program-by-program basis or the state can develop a number of differing eligibility categories before programs are created.

Estimated Fiscal Impact: No additional state revenues required. More Federal TANF funds will be spent in the year they are awarded, causing the balance to decrease.

Action Required To Implement: At a minimum the state plan should be modified to express this policy goal, or the department may promulgate rules. The legislature may also make statutory provisions or pass a resolution.

OPTION 9: Increase legislative oversight of TANF block grant and child care block grant spending by requiring the submission of the federal quarterly ACF-196 and ACF 696 reports and other reports to the appropriate legislative agencies, committees and their staffs.

Description And Background: As the legislature has a significant interest in monitoring the expenditure of TANF block funds, this reporting is essential. It ensures that all relevant parties have the same information regarding the size of the unobligated balance and the categories or which TANF and MOE dollars are being spent.

Estimated Fiscal Impact: None

Action Required To Implement: Resolution or informal request from the legislature; language in the General Appropriations Bill can be added as well.

DEPARTMENT OF REVENUE

Finding: Department of Revenue, due to a lack of consistent collection policies and procedures and a failure to aggressively pursue delinquent taxpayers, has failed to adequately collect taxes, penalties, and interest owed to the state. As of June 1999, a total of \$308 million in state taxes had not been collected from delinquent taxpayers. The department should take steps to become more aggressive with its current collection mechanisms and develop a consistent policy and procedure regarding collections of delinquent taxes.

OPTION 1: Enhance the Department's ability to maximize in-state collections by encouraging new policies and procedures to more effectively utilize existing departmental or state resources and personnel or by expanding the department's authority to use private collection agencies to include in-state uncollectibles.

Description And Background: The department has experimented in the past with utilizing existing personnel in special collection efforts. These efforts should be reinitiated, possibly including creation of a collection unit with existing staff to work during evening and weekend hours to enforce collection.

R.S. 47:1516 currently authorizes the Department to enter into contracts with collection agencies for the purpose of debt collection for out-of state taxpayers. The liability of the taxpayer must be in warrant status and the taxpayer's identifiable assets subject to distraint must be insufficient to satisfy the obligations owed. The Department currently assigns out-of-state accounts to collection contractors after all collection efforts have been exhausted. The contractor adds a 25 percent collection fee to the existing balance of tax, interest, penalties, and fees already due the state.

The Department recommends that its authority to assign delinquent accounts to private collection agencies be extended to in-state delinquent accounts. However, since collection agencies do not have the authority to seize assets, these accounts should not be sent to the private agency until after the Department has determined that the taxpayer has insufficient assets to satisfy the amount owed.

Estimated Fiscal Impact: According the Department records, the total in-state uncollectible amount is more than \$88 million. The Department hopes that this change will result in greater taxpayer compliance, but cannot estimate what fiscal impact would result.

OPTION 2: Amend R.S. 47:1580(C) to interrupt prescription if a taxpayer fails to file any state tax return.

Description And Background: Prescription is the period of time in which a person or the state has a right of action to exercise a legal right against another party. The Constitution of Louisiana provides that taxes prescribe three years from December thirty-first in the year in which they are due. After the three-year period has expired, the

Department does not have a right of action to collect taxes from the taxpayer, unless a waiver of prescription is obtained from the taxpayer or there is some statutory authority which gives the Department more time.

Act 957 of the 1997 Regular Session amended R.S. 47:1580(C) to provide that prescription shall be interrupted if the taxpayer fails to file a state income or corporation franchise tax return. The Act also repealed R.S. 47:1580(A)(5), which suspended prescription for the willful non-filing for all taxes. Failure to file for taxes other than income or corporation franchise taxes is subject to the normal three-year prescription. The IRS and most neighboring states do not have a statute of limitation (prescription) when no return is filed. Prescription does not begin to run until the return is filed.

The Department recommends that prescription be interrupted if a taxpayer, for whatever reason, fails to file any state tax return.

Estimated Fiscal Impact: The Department hopes that this change will result in greater taxpayer compliance, but cannot estimate what fiscal impact would result.

Action Required To Implement: Legislation to amend R.S. 47:1580(C) to interrupt prescription if a taxpayer fails to file any state tax return.

OPTION 3: Amend R.S. 47:1580(A)(4) to provide more specific language to clarify the meaning of “false or fraudulent” return.

Description And Background: At the present time, R.S. 47:1580(A)(4) is rarely used to interrupt prescription because of the vagueness of the meaning of a “false or fraudulent” return. More specific language to define the meaning of “false or fraudulent” return would make administration of the provision more effective. The Department proposes defining the term to include “the omission of facts, circumstances, or conditions through concealment, camouflage, or subterfuge, which results in the material misstatement or misrepresentation of facts.”

The IRS and most neighboring states interrupt prescription when a “false or fraudulent” return is filed and have more specific definitions or examples of what is a “false or fraudulent” return.

Estimated Fiscal Impact: It is expected that the interruption of prescription for filing false or fraudulent returns would enhance voluntary taxpayer compliance, reduce the occurrence of certain offenses, and increase tax revenues. However, the amount of revenue increase cannot be estimated.

Action Required To Implement: Legislation to amend R.S. 47:1580 to add specific language to define the meaning of a “false or fraudulent” return.

OPTION 4: Amend the crime of issuing worthless checks, R.S. 14:71, to clarify that the term “thing of value” includes taxes and other payments to the Department of Revenue, and expand application to include any worthless check tendered to any state agency.

Description And Background: Many District Attorneys are not prosecuting NSF checks written by taxpayers to the Department of Revenue because they are of the opinion that the crime of issuing worthless checks does not include those issued to the Department of Revenue for the payment of taxes. They claim that the remittance of checks for the payment of taxes is not an exchange for a “thing of value” and therefore an important element of the crime has not been met. Clarifying the meaning of this term and expanding application to include not only taxes and other payments to the Department of Revenue, but such payments to all state agencies would facilitate pursuit of action in these cases.

Estimated Fiscal Impact: Increasing the prosecution of persons writing NSF checks for taxes can be expected to reduce the occurrence of NSF checks, enhance delinquent tax collections, and increase tax revenues. However, the amount of revenue increase cannot be estimated.

Action Required To Implement: Legislation to amend R.S. 14:71, the crime of issuing worthless checks, to define a “thing of value” to include checks tendered to the Department of Revenue and any other state agency in payment of taxes, penalties, interests, and fees.

OPTION 5: Apply existing sales tax cease and desist provisions to all taxes collected by a third party on behalf of the state, such as income withholding taxes and certain gasoline taxes.

Description And Background: If a retailer fails to remit any sales tax collected from a purchaser, the Department has the authority to institute legal action to cause the retailer to cease from further pursuit of business. While this has assisted the Department in the collection of delinquent sales taxes, it does not apply to enforcement of the collection of other delinquent taxes. This method of enforcement is preferable when the seizure of assets would not benefit the state due to pre-existing liens already filed against the taxpayer.

Estimated Fiscal Impact: Cannot be determined at this time. Expansion of the cease and desist provisions would assist in reducing outstanding accounts and promote greater voluntary taxpayer compliance.

OPTION 6: Conduct further research to determine the feasibility of requiring applicants for certain permits and licenses and contract bidders on goods and services to state departments and government agencies to obtain state tax clearances.

Description And Background: The tax clearance program was initiated to ensure that certain businesses and taxpayers pay their proper taxes. This was in response to the apparent increase in the number of businesses that continue to operate without paying their taxes. There are currently six major programs where the Department issues tax clearances, namely, alcoholic beverage permits, video poker permits, gaming licenses, initial lottery licenses, resident/nonresident contractor program, and boat registration.

The Department of Revenue recommends expansion of the tax clearance program to include businesses under contract to provide goods and services to state departments and agencies and renewals for businesses that have permits from the Louisiana Lottery Commission. The Department also recommends that the program be expanded to include clearance for all state taxes.

It is unclear whether the potential benefits of expanding the tax clearance program would offset the additional administrative burden of implementation or whether the resources are available for successful implementation.

Estimated Fiscal Impact: Expanding the tax clearance program may enhance voluntary taxpayer compliance, reduce the occurrence of delinquent filing and payments, and increase tax revenues. However, the amount of revenue increase cannot be estimated.

Action Required To Implement: Resolution to require Department of Revenue and Division of Administration to study and report to the Legislature on the feasibility of expanding the program and alternatives for implementation.

OPTION 7: Expand the Department of Revenue's authority to issue refunds of overpayments.

Description And Background: In November 2000, the Revenue Department drastically changed its policy pertaining to the refunding of overpayments of state tax. The policy change was a reaction to a 19th Judicial District Court case, *Amoco v. Kennedy*, in which the court found that the Department did not have the authority to refund an overpayment under a strict interpretation of the refund statute, R.S. 47:1621. As a consequence of the court decision, the Department conducted an internal review of its refund policy to determine if it was consistent with the refund authority granted by R.S. 47:1621. The result of review was the issuance of Policy and Procedure Memorandum 30.1, issued November 6, 2000, which severely restricted the circumstances under which an overpayment of tax would be refunded.

The Policy and Procedure Memorandum basically outlines the steps which will be taken by Department employees to determine the authority to issue a refund. First, the Department will look outside of the refund statute itself to determine if any other statutory provision gives them the authority to grant the refund, such as the statute authorizing refunding of overpayments of withholding taxes. If there is no outside authority, then the Department will look to the specific provisions of the refund statute for authority to issue a refund. The refund will be issued when:

- The overpayment was due to an error on the part of the taxpayer in mathematical computation.
- The tax was overpaid because of a construction of law on the part of the taxpayer contrary to the secretary's construction of the law at the time of the payment.
- The overpayment results from a change made by the secretary in an assessment.
- An income tax overpayment occurs because of a change in federal income tax data which formed a basis for calculation of the Louisiana income tax.
- An income tax overpayment results from an overpayment of estimated Louisiana income tax.
- An income tax overpayment results from application of a Louisiana net operating loss carryback.

There has been much discussion of this topic since the Department issued the memorandum. As a result, the Department, on January 2, 2001, issued an emergency rule dealing with refunding of erroneous or duplicate payments. The rule, issued under authority of R.S. 47:1519, allows the Department to issue a refund to persons remitting erroneous or duplicate payments, whether such payments are made by cash, personal check, money order, electronic funds transfer, or other form of payment.

Estimated Fiscal Impact: Cannot be determined.

Action Required To Implement: Legislation to expand the Department of Revenue's authority to issue refunds of overpayments. This item is included in the call for the 1st Extraordinary Session of 2001 and legislation has been introduced.

OPTION 8: Authorize the Department of Revenue to publish the names of delinquent taxpayers once their tax liabilities have become collectible by distraint and sale.

Description And Background: Currently, the department publishes the names of delinquent taxpayers for which a tax lien has been filed with the recorder of mortgages in accordance with C.C. Art. 3320 et. seq. The publication of tax information from public records does not constitute a violation of R.S. 47:1508 confidentiality provisions for taxpayer information. Amendment of R.S. 47:1508 to allow publication of delinquent taxpayer names when their tax liabilities have become collectible by distraint and sale, without the requirement of filing of a lien, would enhance the department's ability to collect delinquent taxes.

Estimated Fiscal Impact: This change may result in greater taxpayer compliance, but the actual fiscal impact cannot be determined.

Action Required To Implement: Amendment of R.S. 47:1508 to provide this authority

EDUCATION

CHARTER SCHOOLS

Charter schools, authorized in 1995 to provide for the creation of innovative independent public schools for pupils, may be of four types:

Type 1	Type 2	Type 3	Type 4
A new school operated pursuant to a charter between a nonprofit corporation created to operate the school and a local school board.	A new school or a preexisting public school converted and operated pursuant to a charter between the nonprofit corporation and BESE.	A preexisting public school converted and operated pursuant to a charter between a nonprofit corporation and a local school board.	A preexisting public school converted or a new school operated pursuant to a charter between a local school board and BESE.

FINDING: The number and cost associated with Type 2 charter schools has continued to increase since school systems are not required to transfer local funds to a Type 2 charter school. State funds are provided in lieu of local funds for Type 2 charter schools.

OPTION 1: Require that a Type 2 charter school shall receive the local per pupil funding amount for each pupil from the local school district in which the pupil would otherwise be enrolled if he was not enrolled in a Type 2 charter school and was attending a public school.

Provide that the state department of education designate the local per pupil funding amount for each Type 2 charter school and the local school district responsible for providing that amount. Require each local school district so designated by the state department of education to provide the local per pupil funding amount in accordance with guidelines adopted by the State Board of Elementary and Secondary Education.

Description And Background: Sixty-four percent of all approved charter schools are Type 2 charter schools that receive all their funding from the state while the other three types receive state and local funds. Federal funds, where applicable, are allocated to all charter schools.

The following schedule illustrates the Type 2 funding history.

FISCAL YEAR	SGF	NUMBER OF TYPE 2 CHARTER SCHOOLS
1998-99	\$1,606,448	2
1999-00	\$7,487,089	8
2000-01	\$12,924,122	10
2001-02		
ExecBudRec	\$13,224,122	20

Note: The 2001-02 Executive Budget for Type 2 charter schools is \$13 million. The state Department of Education projected a Type 2 cost ranging from \$29-\$35 million for 2001-02. The department has estimated the 2000-01 Type 2 cost to be approximately \$9 million. The Executive Budget did not indicate how BESE and the department should administer the Type 2 charter school program in the event the appropriation is insufficient to fund those schools.

Estimated Fiscal Impact: If this option had been in effect for FY 00-01, local school systems would have contributed \$3.2 million.

Action Required To Implement: Legislation is needed to require the local contribution for Type 2 Charter Schools.

FINDING: A Type 2 charter school may not be funded at a per pupil amount other than that specified in the charter school legislation.

OPTION 1: Authorize BESE to determine the Type 2 charter school per pupil funding amount up to but not to exceed the per pupil amount specified in the charter school legislation.

Description And Background: A charter school chartered by a local school board may agree to receiving a lesser per pupil amount than required in the statutes in exchange for specific services provided by the local board. This authorization does not extend to BESE. Although a Type 2 charter school may request in their budget a per pupil amount that is less than the per pupil amount mandated in the statutes, BESE is not authorized to award the lesser amount.

Estimated Fiscal Impact: Savings are possible. However, there are no data with which to estimate savings for this option.

Action Required To Implement: Legislation is needed to provide BESE with this authority.

FINDING: By BESE policy, funding for Type 2 charter schools is based on the October 1 pupil count. Charter school law does not specifically authorize a second pupil count to reflect changes after October 1 in the number of pupils served in the Spring Semester.

OPTION 1: Provide for a second pupil count during the Spring Semester which would be used to determine that period's funding for Type 2 charter schools.

Description And Background: Type 2 charter schools receive a per pupil allocation based on an October 1 enrollment which is then audited and any funding adjustments are made the following year. Although the number of pupils may change after the October 1 enrollment count during the school year, the Type 2 charter school allocation is unaffected.

Estimated Fiscal Impact: There are no data with which to estimate any savings or costs from this option.

Action Required To Implement: Legislation is needed to adjust funding based on enrollment changes within the school year. BESE and the state Department of Education should determine when a second enrollment count should be made and if it could be undertaken when BESE and department staffs review the operation of the Type 2 charter school.

FINDING: A charter school which fails to open and serve pupils is required to refund all allocated money to the state or the local school district as appropriate although a major portion of the initial funding has already been spent. The charter school law is not specific if the charter school closes for any reason.

OPTION 1: Require that “all cash on hand attributed to state or local funding be returned” to the state or to the local school system rather than requiring the return of all money allocated if the charter school fails to open. Expand this requirement to a charter school that “closes for any reason.”

Description And Background: Currently, if any charter school fails to open and serve pupils, all money allocated for such a school is to be refunded even though some of those funds may have already been expended. Charter school law does not specifically address this issue for a charter school that closes for any reason. Requiring the return of all cash on hand provides an alternative policy if the charter school fails to open and should also apply to a charter school that closes for any reason.

Estimated Fiscal Impact: There are no data with which to estimate the fiscal impact of this option.

Action Required To Implement: Legislation is needed to impose this requirement.

FINDING: Charter school law states that all students no matter their age shall count for funding purposes whereas the MFP membership definition by BESE limits the student count to those in kindergarten through age 21 with certain exceptions for special education children.

OPTION 1: Provide that, for purposes of funding, the age requirements of students served in charter schools correspond with the age requirements established by BESE for MFP purposes for students served by the public school systems.

Description And Background: Charter school law provides that all students enrolled in a charter school, no matter their age, shall count in the school's total student count for the purposes of funding as long as each such student is pursuing a regular high school diploma or a general education development certificate.

Estimated Fiscal Impact: Type 2 charter schools are the only charter schools funded outside the MFP membership definition. Any savings will be dependent on the ages of students enrolled at Type 2 charter schools for which they will no longer receive funding.

Action Required To Implement: Legislation is needed to impose this requirement.

FINDING: General Educational Development (GED) students enrolled in Type 2 charter schools generate the same per pupil funding amount as do regular students enrolled in those charter schools.

OPTION 1: Authorize BESE to limit Type 2 charter school per pupil funding for students seeking a GED equivalency diploma.

Description And Background: The annual average cost per adult education student is approximately \$300. The annual average cost per Type 2 charter school student is approximately \$5,000. The funding limitation could be set at an amount under \$1,000.

Estimated Fiscal Impact: Savings are possible. However, there are no data with which to estimate the savings from this option.

Action Required To Implement: Legislation is needed to implement.

TUITION OPPORTUNITY PROGRAM FOR STUDENTS (TOPS)

FINDING: Remedial courses required by a higher education institution and repeated/deleted courses are considered in the accumulation of college credit hours to maintain a TOPS award.

OPTION 1: Discontinue inclusion of remedial courses and repeated/deleted courses in the accumulation of college credit hours necessary to maintain a TOPS award.

Description And Background: A TOPS student must earn a total of at least 24 college credit hours as determined by totaling the earned hours reported by the institution for each semester or quarter in the academic year. If a TOPS student is required by the attending institution to fulfill remedial course work, the remedial course work is included in the total of earned hours reported by the institution. A repeat/deleted course is included in the requirement to complete 24 hours per academic year if the college policy is to give academic credit for the repeated course.

Estimated Fiscal Impact: The Office of Student Financial Assistance (OSFA) collects a social security number, number of earned hours and the cumulative grade point average from colleges and universities to determine if a student is eligible to continue receiving a TOPS award. OSFA stated that the remedial and repeat/delete cases were a small percentage of TOPS awards, and would decrease, as the requirements to receive a TOPS award become more difficult. For example, beginning in 2002-03 the high school minimum cumulative GPA will be calculated by using only the grades obtained in completing the core curriculum requirements established pursuant to law.

Action Required To Implement: Legislation is needed to discontinue the inclusion of remedial and repeated/deleted courses in determining continuing eligibility for a TOPS award.

FINDING: Sixty-one percent of students who forfeited TOPS awards for failure to maintain the minimum college GPA or full-time enrollment had ACT Composite Test Scores ranging between 19 and 22. Improving the number of students capable of maintaining a TOPS award should be a top priority to be discussed in conjunction with the development of the community college system.

OPTION 1: As Louisiana strives to distinguish the role, scope, and mission of its postsecondary education institutions and provide increased access to community colleges in all regions of the state, eligibility criteria for TOPS could be reviewed as a part of this overall restructuring.

For example, ACT scores between 20 and 22 could become a standard eligibility requirement for TOPS awards to be used at community colleges and then transferred to a four-year institution upon successful completion of the community college program.

ACT scores of 23 and above could become a standard eligibility requirement for a TOPS award to be used at a four-year institution. Such a policy is, of course, dependent on providing adequate opportunities for students to attend community colleges and, perhaps even then, only in extreme fiscal circumstances.

Description And Background: The minimal ACT score for TOPS eligibility is 20, which qualifies a student for an Opportunity award. The Office of Student Financial Assistance (OSFA) has reported that, of the 9,638 students who failed to meet the TOPS continuation requirement of a GPA and full-time status, 61% had achieved less than a 23 on the ACT. The Board of Regents is currently developing a new master plan for higher education.

Estimated Fiscal Impact: Cannot be determined. Due to the cost differential in tuition between two and four-year institutions, savings could be realized as more students chose to attend community colleges upon graduation from high school. This may be offset by an increased number of students retaining TOPS eligibility.

Action Required To Implement: Legislation is needed to restrict TOPS eligible students having ACT scores ranging from 20 through 22 to initial attendance at the technical college or community college.

<p>FINDING: Seven high schools (four public and three private) voluntarily reported that not all TOPS required courses are being offered this academic year.</p>

OPTION 1: Extend the waiver of the TOPS required courses or offer courses through programs such as the Virtual High School program sponsored by the state Department of Education, distance learning programs and courses offered through correspondence.

Description And Background: All of the TOPS awards require a minimum of 16.5 units of high school course work constituting a core curriculum as specified in the TOPS legislation. Individual courses may be waived for students with exceptionalities or disabilities under specified circumstances.

Estimated Fiscal Impact: Extending the waiver for the 2000-01 school year would add approximately 440 awards and \$1.2 million to the cost projection for 2001-02.

Action Required To Implement: Legislation is needed to extend the waiver of required courses. The waiver should span the 2000-01 and 2001-02 school years since the 2002 Regular Session would not allow the waiver to be introduced.

FINDING: General Educational Development (GED) students seeking an equivalency diploma are not eligible for a TOPS award.

OPTION 1: Provide standard eligibility requirements for students with a GED equivalency diploma to qualify for TOPS. The requirements could be at the level required for high school graduates, with exceptions for GPA and core curriculum. Or an alternate requirement could be used of an ACT score at least three points higher than the minimum ACT as is done currently for home study and students graduating from an approved out-of-state high school.

Estimated Fiscal Impact: The Office of Student Financial Assistance (OSFA) calculated that, based on ACT information spanning 1998 to 2000, approximately 318 residents having a GED took the ACT, 46 would have had an ACT score of 23 or higher. Based on that information, OSFA estimated that 16 GED students per year could receive an award with a cost approximately \$104,000 a year after four years.

Action Required To Implement: Legislation is needed to provide for the GED TOPS award.

MINIMUM FOUNDATION PROGRAM

FINDING: The Louisiana 1999-00 average classroom teacher salary was \$33,109 which placed the state 14th in National Education Association data for the SREB states which demonstrates that teacher pay needs to be a greater priority within the resources of the MFP.

OPTION 1: Require that new funds appropriated in the MFP be used to increase classroom teacher pay.

Description And Background: The 2001-02 Executive Budget provides additional funding to reflect normal growth of \$70.6 million and states that the increase shall be dedicated to a uniform pay raise of \$1,000 per certificated employee as defined in the PEP report. A Supplementary OPTION of \$70.4 million in SGF represents an additional \$1,000 pay raise for the certificated employees in the PEP report and for certificated nonMFP employees. The Supplementary OPTION is contingent upon revenues derived from the governor's gaming proposal.

Estimated Fiscal Impact: Based on the Executive Budget, a uniform pay raise of \$1,000 to \$2,000 will be given, depending on the availability of revenues.

Action Required To Implement: First, BESE will have to amend its MFP formula to implement an across-the-board pay raise for all school systems, since the present MFP provides new funds only to the less wealthy school systems and restores the one-time reduction to all the school systems. Second, if BESE does not amend the MFP formula, an amendment to the General Appropriations Bill would be sufficient to direct that the new MFP funds be used to provide a pay raise, but only systems receiving new funds would be impacted. Third, legislation is necessary if the legislature wants to require that a school system, in any year in which it receives new MFP funds, provide a pay raise. The legislation will have to state what portion, if not all, of the new funds will be used for pay raises.

FINDING: School systems will have a reduction in retirement costs in 2001-02.

OPTION 1: Request that BESE provide for an adjustment in state MFP funds for 2001-02 as a result of the decrease in employer contribution costs in Teachers' Retirement and the use of a credit in School Employees' Retirement.

Description And Background: The Teachers' Retirement employer contribution will decrease from 14.2 to 13.1 in 2001-02. Based on 1999-00 personnel information, this reduction in contribution costs should reduce school system employer contributions by approximately \$22 million. A second retirement reduction for local school systems will result from a credit in the School Employees' Retirement employer credit account in the amount of \$12 million.

Estimated Fiscal Impact: Assuming that state funds and local funds contributed to employer contributions in earlier years and that state funds should also benefit from retirement reductions, the amount of state funds available to be recouped is approximately \$22-\$23 million.

Action Required To Implement: BESE will have to amend its MFP formula to accomplish this option.

COLLECTIONS/RECEIVABLES

FINDING: Due to a lack of comprehensive collections and receivables policies, the state is failing to collect revenues owed in fees, fines, penalties and state taxes. As of September 2000 approximately \$776 million was reported as outstanding receivables and of that amount \$361million is estimated to be uncollectible.

As a result of reports by the Legislative Auditor, the Select Committee on Fiscal Affairs began its hearings with the issue of outstanding receivables and collection practices in state agencies which collect large amounts of revenue, including the Office of Motor Vehicles in Public Safety Services, Wildlife and Fisheries, Natural Resources and Revenue. In addition to these agencies, the Office of the Treasury and the Division of Administration also participated in these discussions.

Wildlife & Fisheries: The Legislative Auditor in a May 2000 audit of the Department of Wildlife and Fisheries (DWF), which criticized the department for not having adequate procedures for the collection of receivables for civil penalties. Out of about \$3.5 million in receivables for civil penalties for Class One violations and civil restitution, about \$2.6 million had been outstanding over one year. Based on departmental reports and discussions with personnel, no evidence existed of any attempts to collect these outstanding penalties. The department testified that with the implementation of the new Point of Sale License system, outstanding fines are being identified and must be paid prior to issuance of a new license. However, the audit report recommended that the department establish and implement written policies and procedures for the collection of all civil penalties.

Public Safety Services: The Legislative Auditor reported on findings from the 1997 audit of the Department of Public Safety & Corrections, Public Safety Services (DPS) which criticized the department for having \$996,000 in NSF checks outstanding. The Undersecretary at that time responded that Act 1455 of 1997 would allow the department to cancel an individual's driving license and vehicle registration if it was paid for with an NSF check. The 2000 audit, which was still in progress at the time of the hearings, indicated another finding relative to weaknesses in the department in these collections. Specifically: the department had no comprehensive listing of all NSF checks; there was no system of notifying the field offices when NSF checks were received from an individual or business so that future checks would not be accepted by them; and lastly, the department had not revoked individual driver's licenses or vehicle registrations if they had been paid for with an NSF check. As a result of these meetings the DPS has implemented a number of steps to improve collections including; revising their NSF policies and procedures, establishing a NSF database, and tightening their check acceptance policies.

Revenue: The Legislative Auditor reported on findings from the August 2000 financial audit of the Department of Revenue which found a total of \$308 million owed by delinquent taxpayers. Of this total \$124.9 million was estimated as uncollectible and \$172 million was over one year old. The report further found that:

- The ten largest delinquent taxpayers as of March 2000 owed approximately \$9.4 million collectively.
- Louisiana has no jurisdiction in other states to collect taxes owed by delinquent taxpayers that leave this state.
- A considerable amount of time elapses from the date of non-payment by a taxpayer to the date actual collection efforts begin. As much as 16.5 months can elapse before the account is assigned to an analyst/tax officer for collection.
- Since May 5, 1998, the Department has not had an effective contract with an out-of-state collection agency that can pursue delinquent taxpayers that leave the state.
- There was no evidence that the Department has pursued the principal owners of businesses or the officers, directors, or managers of corporations for payment of sales and withholding taxes owed, as allowed by R.S. 47:1561.1.
- The Department does not have policies and procedures to ensure that refunds are not issued to individual taxpayers whose business accounts have been placed in uncollectible status.
- The Department does not provide adequate documentation to verify that all attempts to effect collection have been completed before a taxpayer's account is deemed uncollectible.
- The Department does not have adequate disclosure in accordance with R.S.39:79(C) regarding the reporting of debts and receivables owed to the department. As of June 30, 1999, the Department had unreported proposed assessments of system taxes alone for \$870 million.
- The Department is not charging off uncollectible receivables in a timely manner.
- The Department only bills taxpayers for amounts due that exceed \$9.99 for each tax period.
- The Department is allowed by R.S. 47:1562-1573 to levy upon or seize property or the rights to property of delinquent taxpayers. Over the past three years, the Department has not performed any real property seizures to satisfy a taxpayer's debt.

OPTION 1: Create a computerized database, which could be used by all state agencies, to house information on individuals and businesses that write NSF checks.

Description and Background: Creation of a statewide database will require a coordinated effort among all agencies. Each agency would be responsible for updating

the database with NSF check writers as well as updates to reflect collections of the NSF checks. The Louisiana Data Base Commission is currently working with the Treasury and the Department of Public Safety to establish a policy plan for the implementation of such a database. In order to address the privacy and confidentiality issues relative to personal information, DPS is revising existing application forms to obtain authorization for disclosure of personal information as the department deems necessary in its collection efforts.

Estimated Fiscal Impact: The cost to establish such a database will depend on the computer resources required by each agency, including hardware storage requirements, the method used to access the database, i.e. web based application, and the up-front programming requirements. Maintenance costs will depend upon the requirements of the database. However, due to the proprietary nature of the information, security measures would need to be established to ensure appropriate access controls. Additional personnel would be required to administer this database. Exact costs cannot be determined at this time.

Action Required To Implement: Further study is required to determine the most appropriate agency (Department of Public Safety and Corrections, Treasury or the Division of Administration) to adopt rules relative to creation, implementation and maintenance of the database. Legislation is necessary to require that all agencies utilize and update this database as needed.

OPTION 2: Establish a comprehensive receivable and collection policy and procedure which would include the requirement that all state agencies use the receivable and collections procedures. The policy would also include a separate policy directive relative to NSF checks.

Description and Background: Information was obtained from seventeen other states to determine accounting or collection procedures and reporting criteria (*see Appendix pp. 53-57*). All responding states age their receivables monthly. The general consensus is that the receivable is past due after 30 days, and each consecutive 30 days past due makes it much less likely that the receivables will be collected. Six of these states have a central accounts receivable system that allows each agency to establish its own policies and procedures. All these states utilize private collection agencies and the Attorney General's office for collections even if a central collection agency has been established within their state organization. Other states allow the use of offsets against tax refunds, unemployment benefits, federal levies and lottery winnings. Other collections methods used include garnishments, warrants or voucher intercepts and revenue recapture. Once all available methods have been tried, the account can be written off using procedures established for financial statement reporting. Attached are copies of proposals submitted by the Division of Administration and the Treasury for a comprehensive collections/receivables policy under the Cash Management Review Board and a separate Policy Directive relative to collection of NSF checks (*see Appendix pp. 59-69*).

Significant factors of both proposals include: a shortened time frame to implement collection efforts and involvement of law enforcement agencies in these efforts.

Estimated Fiscal Impact: Fiscal Impact can not be determined at this time.

Action Required To Implement: Legislation would require the adoption of rules for a comprehensive policy and procedure to be used by all state agencies. Further study is required to determine if this authority should be placed with the Cash Management Review Board or with the Division of Administration.

OPTION 3: Establish a central collection function within the Division of Administration or other state agency and further require participation by all state agencies.

Description and Background: Five of the 50 states currently have a functioning statewide collection agency (*see Appendix pp. 71-75*). These agencies are self-funded; most assess a percentage of the amount collected before monies are remitted to the appropriate agency. Excess fees received by a central collection agency, once it is self-supporting, can be transferred to the General Fund, or used by other internal collections functions. The establishment of this agency has been very beneficial to these states. The results: collections of outstanding accounts receivables have greatly increased, providing additional funds for each state; fees charged by outside collection agencies has declined; payments by debtors are becoming timelier; and agencies with their own in-house collections sections focus on collecting current receivables and can turn over longer term outstanding debts to the central collections agency. Participating agencies and departments in these states (including colleges and universities) submitted defaulted student loans, hospital charges, delinquent taxes, insufficient funds checks, library charges, pension system overpayments, and delinquent child support payments to the central collections functions. All five states with a statewide collection agency also use outside collection agencies. The creation of a central collection function does not appear to end the need for contracted collection agencies. It seems to only centralize the function of contracting with outside collection firms and provide another layer of collection activities. It appears that more state agencies participate in these programs once their usefulness is proven. Along with the increasing number of state agencies, several states have passed legislation that allows counties, municipalities and district courts to participate in the central collection function.

Estimated Fiscal Impact: Minnesota's collection agency has increased collections from \$3 million in 1994 to \$12 million in 2000; collections in Kansas increased from \$6.2 million in fiscal year 1996 to \$10.7 million in fiscal year 2000; and in Utah, old accounts receivable collections nearly doubled between fiscal year 1999 (\$1.4 million) and year 2000 (\$2.5 million). If a new agency is to be established within the Division of Administration, an increase in personnel will be required. Operational costs will also have to be provided for at least one or two years until such agency can become self-supporting. Cost of collection functions in other states ranges from \$620,000 for a staff of 4 in Utah to \$2.4 million for a staff of 50 in Minnesota.

Action Required To Implement: Legislation creating a central collection function, including authority to contract with collection agencies. Legislature would further require participation by all state agencies and possibly include parishes, municipalities and district courts.

OPTION 4: Amend R.S. 47:299.2 to allow for all agencies to use offset of income tax refunds for receivables.

Description and Background: State law currently restricts the use of offsets against individual income tax refunds to the following agencies: Department of Justice- Collections Section, LA Student Financial Assistance Commission- Student Loan Collection Section, The Division of Support Enforcement of the Office of Family Support in the Department of Social Services (DSS) , any other office or facility of DSS and the Department of Health and Hospitals, the Department of Public Safety and Corrections and the Department of Labor.

Estimated Fiscal Impact: Fiscal impact cannot be determined at this time.

Action Required To Implement: Amend R.S. 47:299.2.

OPTION 5: Revise the law to allow for local retailers and others to collect outstanding receivables on behalf of the Department of Wildlife and Fisheries.

Description and Background: The Department of Wildlife and Fisheries (DWF) currently uses local retailers to issue hunting and fishing licenses. Using the new Point of Sale electronic system, a license cannot be issued if the intended recipient has outstanding fines or penalties owed to the DWF. However, the law does not currently allow for these retailers to collect the outstanding amounts on behalf of the state. Revisions to the existing law would allow the local retailers and other who issue licenses and permits on behalf of the state to collect outstanding fines, penalties and other receivables before issuing new and renewal documentation.

Estimated Fiscal Impact: Fiscal impact cannot be determined at this time.

Action Required To Implement: Legislation would allow for agents issuing licenses and permits to collect payment of fines and other penalties owed to DWF.

REVIEW OF SPECIAL TREASURY FUNDS

FINDING: There are more than 300 special funds in the state treasury which are currently authorized by statute and constitution. \$2 billion of the state budget is funded through dedicated revenues. These dedications restrict the flexibility of the governor and legislature in addressing revenue shortfalls and budget problems. The committee conducted three hearings to review these funds on a departmental basis with respect to functionality and activity and developed the following options associated with this issue.

See "Select Committee on Fiscal Affairs – Study of Special Treasury Funds – List of Funds Recommended for Repeal" - Appendix pp. 77-86

See "Select Committee on Fiscal Affairs – Study of Special Treasury Funds – List of Funds Recommended for Further Action" - Appendix pp. 87-90

OPTION 1: Repeal inactive special treasury funds.

Description and Background: The committee identified 44 inactive funds which could be repealed. The appendix contains a detailed listing containing information on each of these funds. Unexpended fund balances associated with these special treasury funds would either be appropriated for the designated purpose or transferred to the state general fund where feasible.

Estimated Fiscal Impact: The total fund balances of these 44 inactive funds is approximately \$6 million. These balances would either be appropriated for the designated purposes or transferred to the state general fund for other uses. Otherwise, the fiscal impact will be limited to administrative savings resulting from elimination of accounting costs associated with these funds.

Action Required to Implement: Legislative action will be needed to appropriate any balances and to repeal the designated funds. The effective date of the repeal of funds with balances may need to be as late as July 1, 2002 in order to accommodate expenditure of monies budgeted in FY 02. After July 1, 2002, the treasurer will be directed to credit any residual monies attributed to a repealed fund to the state general fund.

OPTION 2: The Classroom-Based Technology Fund and Teacher Supplies Fund should be modified to allow use of remaining balances for other purposes which are more appropriate for the amount of available money in the funds, or should be repealed and balances used for a related or other purpose. The balances in these funds are insufficient to allow effective distribution for the required uses of the monies. (See Appendix pp. 87, 89).

Description and Background: The Classroom-Based Technology Fund and the Teacher Supplies Fund were created to facilitate the use of surplus monies for acquisition of technology equipment and for purchase of school supplies. Both funds provide for

distribution of funds to elementary and secondary schools. Most of those surplus monies have been expended and residual balances in the fund are insufficient to distribute as required under existing provisions.

Estimated Fiscal Impact:

- Classroom-Based Technology Fund balance is approximately \$1.3 million
- Teacher Supplies Fund balance is approximately \$1.2 million

Action Required to Implement: Legislation is needed to revise or repeal the funds, and to appropriate or transfer any balances. If expenditures from the remaining fund balances are appropriated in FY 02, repeal for the funds should become effective after July 1, 2002, after which the treasurer would be directed to credit any residual to the state general fund.

OPTION 3: Abolish the Louisiana Charter School Start-Up Loan Fund or transfer a portion of its balance to the State General Fund. *(See Appendix p. 87).*

Description and Background: The Charter School Start-Up Loan Fund was provided \$3 million in FY 97. The first loan of \$100,000 was made in FY 01. The fund has maintained a large balance because the demand for these loans has not reached the level anticipated when the fund was established. Federal charter school grants, in addition to loans, have been available since FY 96.

Estimated Fiscal Impact: The fund had a balance of \$3.4 million at the end of FY 00. Some funds may be required to remain in the fund based on outstanding loans and anticipated loan approvals.

Action Required to Implement: Legislation is needed to abolish the fund and to transfer any portion of the balance.

OPTION 4: Revise the Telecommunications for the Deaf Fund to expand the allowable uses for these monies, since the fund balance is much larger than is necessary to satisfy the current purposes of the fund *(See Appendix p. 90).*

Description and Background: The Telecommunications for the Deaf Fund receives the proceeds of a 5 cent tax on Louisiana telephone services, and monies are to be used to administer a statewide program to provide access for the hearing impaired to all public telecommunications services. The cost of providing the current services mandated for use of these monies is much less than the tax proceeds deposited into the fund. According to testimony in the SCOFA committee, there are additional services to assist the hearing impaired which could be added as allowable uses for these monies. Additionally, it was stated in testimony that even with inclusion of such new purposes, there may still be an excess balance in this fund. The amount of such revenues is indeterminable, however, until implementation of any expanded services.

Estimated Fiscal Impact: The Telecommunications for the Deaf Fund balance is approximately \$6.5 million. Some portion of this balance could be determined to be excess to the needs of the fund even if the purposes for use of fund monies is expanded.

Action Required to Implement: Legislation will be needed to expand the uses of the fund, and as well to or transfer any balances determined to be excess to fund needs.

OPTION 5: Repeal the Louisiana Employment Opportunity Loan Fund since the fund is no longer used and currently holds a lingering balance of approximately \$500,000. (See Appendix p. 89).

Description and Background: The fund was established in FY 93 to support a three-year pilot program for loans to assist people in obtaining employment. Monies were used to pay for loan defaults and administration of the loan program. The January 2001 Fiscal Status Statement presented to the Joint Legislative Committee on the Budget cited use of the \$532,000 balance in this fund as a source of revenue to address the current year's revenue shortfall which would require legislative action this session to access these funds.

Estimated Fiscal Impact: The balance of this fund could be appropriated for any purpose. The balance is approximately \$532,000.

Action Required to Implement: Legislation will be needed to repeal the fund and transfer balances to the state general fund.

OPTION 6: Repeal the Administrative Fund (Department of Insurance) unless the fees on health insurance providers which provide the source of monies in this fund are increased to a level which makes retention and usage of this fund practical. The Department of Insurance may seek to have legislation introduced this session to increase such fees. (See Appendix p. 87).

Description and Background: The source of monies deposited into this fund are fees assessed by the Department of Insurance on health insurance providers. The current fee structure is grossly inadequate to support the activities which are designated to be provided through such fees via this fund. Thus, the program for enforcement of law related to health insurance coverage is supported mostly with state general fund rather than this fund. If the fees are not increased, then the fund is not useful as designed and should be repealed.

Estimated Fiscal Impact: The current fees collected as the source of monies for this fund are negligible.

Action Required to Implement: Legislation will be needed to repeal the fund, and as well to appropriate or transfer the balance. The effective date of the repeal would be contingent upon the fiscal year for which the fund balance was appropriated. A bill could be introduced and held, pending passage of legislation to increase the fees.

OPTION 7: Repeal the Louisiana Tax Commission Expense Fund, the Refund Offset Fund, and the Louisiana Consumer Credit Education, and budget these monies as self-generated revenues rather than as dedicated revenues. (See Appendix pp. 88, 89).

Description and Background: The Louisiana Tax Commission Expense Fund is comprised of monies collected by the Louisiana Tax Commission, which are used for support of the commission. The commission spends these self-generated monies rather slowly and a balance accumulates in the fund. If these monies were budgeted as self-generated funds, monies which are not needed by the commission would revert to the state general fund.

The Refund Offset Fund is comprised of fees for “offset claims” related to state taxes, which are used for the expenses of the Department of Revenue in the processing of refund offset claims. These monies would be better budgeted as self-generated funds so that monies which are not needed by the department would revert to the state general fund.

The Louisiana Consumer Credit Education Fund is supported by civil penalties paid to the commissioner of financial institutions and used to finance education programs for consumers and lenders on consumer credit laws and enforcement of these provisions by the Office of Financial Institutions. Only small amounts have been appropriated from this fund and it has accumulated a small balance.

Estimated Fiscal Impact: The FY 00 year-end balance of the Louisiana Tax Commission Expense Fund was \$511,000. The FY 00 year-end balance of the Refund Offset Fund was \$192,000, with a FY 01 appropriation of \$50,000. Only \$4,500 is appropriated for the current fiscal year from the Louisiana Consumer Credit Education Fund and the FY00 ending balance was only \$12,000. Any residual balances for the FY 01 year, which would not be needed by these departments, would be transferred to the state general fund.

Action Required to Implement: Legislation will be needed to repeal the funds, as well as to transfer the balances.

OPTION 8: Repeal the Vocational Technical Enterprise Fund, and budget these monies as self-generated revenues rather than as dedicated revenues. (See Appendix p. 90).

Description and Background: The Vocational Technical Enterprise Fund is comprised of all self-generated revenues of the technical colleges, which are required to be distributed among the schools based on each school’s prorated portion of the total collections. The monies may be expended at the discretion of the school director subject to approval by the appropriate management board. This fund predates the technical colleges transfer to higher education. These monies could be budgeted as self-generated

funds, which would provide flexibility to the schools in the use of these monies. Self-generated revenues of institutions of higher education are retained by the institution at the end of the fiscal year rather than reverting to the state general fund.

Estimated Fiscal Impact: There would be no fiscal impact on the state general fund as these funds are currently retained in the dedicated fund.

Action Required to Implement: Legislation is required to repeal the fund.

OPTION 9: The Fraud Detection Fund, the Louisiana Blind Vendor's Trust Fund, and the Traumatic Head and Spinal Cord Injury Trust Fund have all accumulated rather large balances due to budgetary restriction on the expenditure of these monies. Either expenditure authority in the budget should be increased to allow for use of these funds pursuant to current fund mandates, or the funds should be revised to expand the purposes for which appropriations from the funds may be made. In the case of the Fraud Detection Fund, such monies could also be converted to self-generated revenues for the Department of Social Services. (See Appendix pp. 88, 90).

Description and Background: The Fraud Detection Fund receives monies recovered by the Department of Social Services in the detection of public assistance fraud. The fund has accumulated a large balance (approximately \$3.3 million) due to failure to add budget expenditure authority from this program.

The Louisiana Blind Vendors Trust Fund receives monies collected from vending machines pursuant to the Randolph-Sheppard Act, and is used for enhancement of programs for persons who are disabled through blindness. The fund has accumulated a large balance (approximately \$1 million) due to failure to add budgetary expenditure authority for the provision of these services.

The Traumatic Head and Spinal Cord Injury Trust Fund receives monies collected from certain fines for motor vehicle violations, which are required to be used for assistance to Louisianians who have survived traumatic head and spinal cord injuries. The fund has accumulated a large balance (approximately \$3.7 million) due to failure to add budget authority for expenditure of these funds.

The accumulated balances in these funds could be used in one of the following ways:

- 1) Budget additional monies from these funds for the designated purposes
- 2) Revise statutes to expand the uses of the monies in the fund
- 3) Transfer the balances to the state general fund to be used for other purposes

Estimated Fiscal Impact:

Fraud Detection Fund balance is approximately \$3.3 million
Louisiana Blind Vendors Trust Fund balance is approximately \$1 million
Traumatic Head and Spinal Cord Injury Trust Fund is approximately \$3.7 million

Action Required to Implement: Amendment of the general appropriations bill could provide enhanced expenditure authority for the use of these funds. Legislation would be required to expand the purposes for use of the funds or to transfer the balances.

OPTION 10: The Mineral Audit and Collection Fund should be combined with the Legal Support Fund since both funds are used by the Department of Natural Resources and relate to the audit and collection functions. (See Appendix p. 89).

Description and Background: The Mineral Resources Audit and Collection Fund receives certain monies from judgments and settlements received by the Department of Natural Resources, which are used for audit and collection activities of the department.

The Legal Support Fund also receives certain monies from judgments and settlements received by the Department of Natural Resources, which are used for audit and collection activities and legal expenses of the department.

Estimated Fiscal Impact: Savings could be realized in administrative costs through combination of these funds.

Action Required to Implement: Legislation would be required.

OPTION 11: The Volunteer Firefighters Insurance Premium Fund could be eliminated and the funding for the premiums it supports could be allocated and distributed from the 2% Fire Insurance Premium Fund. (See Appendix p. 90).

Description and Background: Monies accrue to this fund through an allocation from the 2% Fire Insurance Premium Fund. Monies are used by the State Fire Marshal to purchase group medical and other insurance policies for volunteer firefighters injured or killed in the line of duty. The amount allocated to this fund has historically exceeded the required premium payments resulting in an accumulated balance in the fund. An allocation for purchase of such premiums directly from the 2% Fire Insurance Premium Fund would eliminate the need for the Volunteer Firefighters Insurance Premium Fund and allow additional funds to be distributed under the 2% allocation.

Estimated Fiscal Impact: Savings could be seen in administrative costs from repeal of the fund. The existing balance could be distributed through the 2% Fire Insurance program.

Action Required to Implement: Legislation would be required to repeal the fund, to add the necessary provisions to the 2% Fire Insurance Premium Fund, and to transfer the deposit of any fund balances to the 2% Fire Insurance Premium Fund.

OPTION 12: Repeal the Drug Treatment Fund since the source of revenues for the fund is negligible, and the fund is unnecessary for the provision of the services supported by it. These monies could be budgeted through the state general fund. (See Appendix p. 87).

Description and Background: The Drug Treatment Fund receives the proceeds of the tax on certain controlled substances, which are to be appropriated 95% to the Department of Health and Hospitals for services related to addictive disorders, and 5% to the Department of Revenue for administration and collection of the tax. This tax generates about \$2,000 to \$5,000 per year and the current balance is approximately \$147,000.

Estimated Fiscal Impact: Savings could be realized in administrative costs through repeal of the fund.

Action Required to Implement: Legislation would be required to repeal the fund, to transfer the deposit of these monies to the state general fund, and to appropriate any balances.

STATE GOVERNMENT – LOCAL GOVERNMENT FISCAL RESPONSIBILITIES

FINDING: In Louisiana there is no clear delineation of fiscal responsibilities between state and local government. State spending on local functions totals more than \$2.5 billion annually which consumes nearly 28% of the state's own source revenues. The largest portions of this spending are for funding local elementary and secondary education, funding portions of the monthly salaries of parish and municipal law enforcement and fire protection officers, parish and municipal judges, constables, and justices of the peace, and funding of revenue sharing, parish road funds, and mass transit. Such huge transfer funding by the state of traditionally local functions presents problems of accountability, engenders questions about the adequacy of the state and local government revenue bases, and creates barriers to efficient delivery of services at both the state and the local level.

OPTION 1: Before the state can evaluate an appropriate revenue base to meet its needs, it must first begin a process of 'Sorting Out' the fiscal responsibilities between the state and its local governments to determine: 1) what services should be provided by government; 2) which level of government should finance each of those services; and 3) which level of government should deliver those services.

This process should be undertaken either through an existing entity, such as the Louisiana Advisory Commission on Intergovernmental Relations, or through a special committee or task force created specifically for this purpose.

Description and Background: The state provides over \$2.5 billion in funding assistance to local governments each year, over 90% of which comes directly out of the state general fund. The vast majority of such funding, (over 88% of the total or \$2.2 billion) goes to fund kindergarten through grade 12 elementary and secondary education. This means that the state indirectly pays over half of the cost of the local elementary and secondary education in Louisiana through the Minimum Foundation Program, but has little control over how the local school systems spend their monies. Moreover, the determination of how many dollars are necessary to fund the MFP formula is largely out of the control of the Legislature since the Board of Elementary and Secondary Education (BESE) writes the funding formula.

The state pays a significant portion of the monthly salaries of parish and municipal law enforcement and fire protection officers employed by local governments (\$65 million a year). It pays a portion of the monthly salary of constables and justices of the peace and the state also pays a large portion of the salaries of parish and municipal judges. However, the funding control for most of these expenditures is out of the state's control. For example, control over supplemental pay largely rests with the local government; if they hire more eligible officers, the state is obliged to pay.

In addition to the salaries of various parish and municipal judges provided in statute, the state pays for juvenile protective care monitoring and juvenile court reporters in Orleans Parish Juvenile Court.

Given the issues of spending control and expenditure demand of the current state – local fiscal system, it is difficult to determine what needs to be done to the existing revenue base to adequately provide for the future. NCSL has suggested the process of ‘Sorting Out’. For states to proceed, they must first determine whether services being provided are the responsibility of government. Once this decision is made, the focus shifts to which level of government should finance the services and which level of government should deliver the services. NCSL also suggests five principles to guide the sorting out process:

- 1) Provide the clearest possible separation of responsibility between state and local governments.
- 2) Assign program responsibility to the lowest possible level of government unless there is an important reason to do otherwise.
- 3) Consider the fiscal effects of state mandates on local governments, and either assume financing responsibility, allow local discretion implementation, or repeal them.
- 4) Assume state responsibility for programs where uniformity or statewide benefits will result.
- 5) Provide state financial assistance to local governments that have the lowest capacity to raise their own revenue.

Estimated Fiscal Impact: Cannot be determined. Will depend on future realignment of funding responsibilities between state and local government and the dollars associated with specific programs which are realigned.

Action Required to Implement: Use an existing administrative avenue. The Louisiana Advisory Commission on Intergovernmental Relations was created by statute in 1987 and has representatives of both state and local government, but the organization has functioned only sporadically since it was created. This body could serve as forum for beginning the sorting out process.

Another approach would be to establish a special committee or task force through legislative resolution to bring the various state and local groups together to examine state/local fiscal responsibilities.

USE OF STATE RIGHT-OF-WAY FOR FIBER OPTIC CABLE

FINDING: OTD has issued permits for installation of fiber optic cable on interstate right-of-way for a one-time fee of \$5,000 per mile. This fee will be offset by an in-kind payment in the form of permanent access for DOTD to fiber optic communications when cable is installed.

OPTION: A statewide policy should be designed to insure maximum return to the state for access to state right-of-way for installation of fiber optic cable, including appropriate access by all state agencies to available fiber optic communications. This policy should incorporate the strategic technology initiatives contained in Vision 2020.

Background and Description: In March 1999 DOTD issued a notice of intent for rules related to permitting the installation of fiber optic cable on interstate highway right-of-way. DOTD proposed a one-time fee of \$140,000 per mile. Act 1382 of 1999 limited the fee amount to the cost of administering the program which resulted in DOTD submitting a reduced fee proposal in August 1999. In advance of the September public hearing to receive input on the proposed fee, DOTD began approving interim permits at \$5,000 per mile. These interim permits provided that terms and price could be changed or become void contingent on the final rule, but put the process in place prior to legislative oversight. At a November legislative hearing on the proposed rule, the department presented an estimated cost for processing permits and granting access of \$11.25 million over a 50 year period. It further estimated that some 2,000 miles of access would be granted, for a cost per mile of \$5,625. No legislative action was taken and the rule went into effect. DOTD will not receive any cash payment, but will instead receive in-kind payment in the form of permanent fiber optic communications access when the cables are installed. There has been no legislative review of the level of cable access granted in exchange for the fee payment or the availability of such access for other state agencies.

Fiscal Impact: Cannot be determined at the time.

Action Required to Implement: Legislation may be required to implement the policy; however, development of policy could be accomplished through administrative action or legislative resolution.