

# MAINE STATE LEGISLATURE

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LEGISLATIVE COUNCIL

MARCH 1, 1988

REVISED AGENDA

CALL TO ORDER

ROLL CALL

SECRETARY'S REPORT

Summary of February 23, 1988 Council Meeting

DIRECTOR'S REPORT

REPORTS FROM COUNCIL COMMITTEES

OLD BUSINESS

Tabled Items

Item #1: Request for Funding of State and Local Legal Center. (Letter from Ted Strickland, President, NCSL, and Mary McClure, President, Council of State Governments)

NEW BUSINESS

Item #1: Submission of Study Report on Long Term Planning for the Corrections System in Maine from Joint Select Committee on Corrections

Item #2: Taxation of State and Local Workers' Benefits: Memorandum from NCSL

Item #3: After Deadline Requests

SEN. CHARLES P. PRAY  
CHAIRMAN

REP. JOHN L. MARTIN  
VICE-CHAIRMAN



STATE OF MAINE  
LEGISLATIVE COUNCIL  
STATE HOUSE  
AUGUSTA, MAINE 04333

SEN. NANCY RANDALL CLARK  
SEN. DENNIS L. DUTREMBLE  
SEN. THOMAS R. PERKINS  
SEN. CHARLES M. WEBSTER  
REP. JOHN N. DIAMOND  
REP. DAN A. GWADOSKY  
REP. THOMAS W. MURPHY, JR.  
REP. EUGENE J. PARADIS

## LEGISLATIVE COUNCIL

FEBRUARY 23, 1988

### MEETING SUMMARY

APPROVED MARCH 1, 1988

### CALL TO ORDER

The meeting of the Legislative Council was called to order in the Council Chambers by the Chair, Senator Pray, at 3:10 p.m..

### ROLL CALL

Senators: Sen. Clark, Sen. Dutremble, Sen. Perkins, Sen. Pray  
Absent: Sen. Webster

Representatives: Rep. Gwadosky, Rep. Martin, Rep. Murphy, Rep. Paradis  
Absent: Rep. Diamond

### Legislative Officers:

Sally Diamond	Executive Director, Legislative Council
Peter Siegel	Law Librarian
Bent Schlosser	Director, Office of Fiscal and Program Review
Helen Ginder	Director, Office of Policy and Legal Analysis
David Silsby	Revisor of Statutes
John H. Bailey	Information Systems Director

## SECRETARY'S REPORT

The summary of the Council's February 16, 1988, meeting was approved and placed on file (Motion by Rep. Martin; second by Rep. Murphy; unanimous).

## DIRECTOR'S REPORT

The report submitted by Sally Diamond, Executive Director of the Legislative Council, included the following:

Items #1: Out of State Travel

Sally Diamond, Executive Director, notified Council members that the NCSL Executive Committee of which she is a member, will be meeting in Sacramento in conjunction with the Assembly on the Legislature meeting on March 3 and 4.

Motion: That the request be approved. (Motion by Sen. Clark; second by Rep. Martin; unanimous).

Item #2: Request from Secretary of State for Staffing Assistance in the Elections Bureau

Ms. Diamond reported that she had received a request from Peter Danton, Deputy Secretary for Public Administration, to loan two legislative employees to the Elections Bureau immediately following adjournment sine die in April through the June primaries. The Council had authorized a similar arrangement last fall.

Council members expressed concern: 1) that its action last fall was not intended to be a long-term arrangement; and 2) that the Secretary of State needed to incorporate funds to support an adequate level of staffing in his own budget.

Motion: That the request be tabled pending action by the Appropriations Committee on the Secretary of State's supplemental budget request. (Motion by Rep. Martin; second by Sen. Clark; failed 5-1).

Motion: That the Secretary of State's request be forwarded to the Joint Standing Committee on Financial Affairs. (Motion by Rep. Martin; second by Sen. Clark; unanimous).

## REPORTS FROM COUNCIL COMMITTEES

None.

## OLD BUSINESS

## TABLED ITEM

Request from Blue Ribbon Commission on  
Regulation of Health Care Expenditures for  
Authorization to Hire a Consultant

The item had been tabled at the previous Council meeting pending clarification from Senator Gauvreau, Commission Chair, about why the proposed contract exceeded the total amount available to the Commission. Ms. Diamond reported that she had met with Sen. Gauvreau and Commission staff to review the Commission's current budget status and the additional funds that would be required to complete the Commission's work. Based on these discussions, it appears that the Commission will need an additional \$50,000.

Motion: That the request for \$50,000 be forwarded to the Joint Standing Committee on Appropriations and Financial Affairs with a letter indicating the Council's unanimous support of the request; and, further, that Sen. Gauvreau and the Commission be informed that it can enter into only a partial contract at this time pending legislative action on the additional budget request. (Motion by Sen. Dutremble; second by Rep. Murphy; unanimous).

## NEW BUSINESS

Item #1: Request for Funding of State and Local Legal Center. (Letter from Ted Strickland, President, NCSL and Mary McClure, President, Council of State Governments)

Motion: That the item be tabled. (Motion by Rep. Gwadosky; second by Sen. Dutremble; unanimous).

Item #2: After Deadline Requests

After deadline requests were considered by the Legislative Council. The Council's action on these requests is included on the attached list.

## ADJOURNMENT

The Legislative Council meeting was adjourned at 3:47 (Motion by Sen. Dutremble; second by Sen. Clark; unanimous).



MAINE STATE LEGISLATURE  
Augusta, Maine 04333

JOINT SELECT COMMITTEE ON CORRECTIONS

February 26, 1988

Senator Charles P. Pray, Chairman  
Legislative Council  
State House  
Augusta, ME 04333

Dear Senator Pray:

The Joint Select Committee on Corrections is pleased to submit the attached interim report of our study of Long Term Planning for the Corrections System in Maine pursuant to the authorization of the Legislative Council (SP 016). We hope you find this report a useful tool in our continuing efforts to develop a long term plan for Corrections.

A handwritten signature in cursive script, appearing to read "Bustin".

Sen. Beverly M. Bustin, Chair

Sincerely,

A handwritten signature in cursive script, appearing to read "Baker".

Rep. Harlan R. Baker, Chair

4019\*  
0029A

Draft Letter on Taxation of State Employee Benefits  
1/27/88

Dear Senator/Congressman:

On behalf of the state legislature of (state name), I urge you to clarify in technical corrections that benefits of state and local employees will be subject to taxation when actually received by the employee in benefit form. The U.S. Treasury announcement of taxation of employee benefits as credit towards benefits is earned would result in millions of state and local workers paying taxes on benefits they do not control, have not received and may never have the opportunity of receiving.

(State name) has designed our benefit programs such as sick and annual leave, to meet the needs of our changing and diverse workforce. Our benefit programs have been carefully crafted to balance the needs of state and local governmental workers with limited public tax dollars made available by our citizens.

Our state employee benefits are guaranteed and regulated by the (state name) state statutes and collectively bargained agreements. Treasury's announcement poses a serious threat to (state name)'s ability to keep the promises made to our workforce and meet the future needs of state and local governmental workers.

I believe that Treasury's announcement may result in the taxation of many state and local workers on benefits they may never actually take, like sick leave, severance pay or disability benefits. In fact, our workers only accrue credit for these benefits as a cushion or bank against an unanticipated crisis such as a disability or prolonged illness.

I urge you to clarify in technical corrections that benefits of state and local governmental employees will not be taxed until received by the employee in benefit form.

Sincerely,

Legislator



## National Conference of State Legislatures

444 North Capitol Street, N.W.  
Suite 500  
Washington, D.C. 20001  
202/624-5400

President Ted Strickland  
President  
Colorado State Senate

Executive Director  
William T. Pound

### 457: Taxation of State and Local Workers' Benefits 1/26/88

**Treasury Announced Taxation of State/Local Workers' Benefits.** State and local governmental employees will be subject to taxation on all employee benefits as credit towards those benefits is earned beginning January 1, 1988. The U.S. Department of Treasury clarified its intent to impose tax liability beginning with the accrual of the first credit towards the benefit of a state or local worker in a December 29th letter to NCSL Executive Director, William Pound. This means state, local and non-profit employees will be subject to tax on benefits they do not control, have not received, and in many cases, may never have the opportunity of receiving.

**Benefits Subject to Tax.** These benefits, now subject to taxation as credit towards the benefit is earned, include sick and vacation leave, compensatory time, severance pay, and death and disability benefits. Until 1988, state and local workers were taxed on these benefits as the employee actually received these benefits.

**Treasury's Position.** The U.S. Treasury's announcement in Internal Revenue Notice 87-13 and response to Mr. Pound, reflect Treasury's belief that these non-qualified benefit plans distort income assignment to the tax periods it is actually earned. The agency feels this is particularly a problem for tax-exempt organizations because such entities are indifferent to tax consequences and use these deferrals as passive income to fund deferred compensation programs for highly compensated employees. They feel their announcement would justly reduce the use of these deferred benefit programs as sweeteners for highly compensated employees.

**NCSL Wins Elimination of Retroactivity and Delayed Compliance.** Last year, NCSL succeeded in persuading Treasury to eliminate the retroactive application, back to 1978, of its announced taxation of state and local employee benefits. We also were successful in delaying compliance with 87-13's announcement from January 1, 1987 to January 1, 1988 or until the Internal Revenue Service (IRS) issues guidance on the taxation of these benefits. The IRS is expected to issue guidelines sometime this spring.

**Progress Made with Congress.** NCSL was also successful in obtaining an exemption for most state and local deferred compensation benefits in both the House and Senate technical corrections bill. However, both the House and Senate bills would have applied restrictive accrual limits on these benefits.

Senators Bill Bradley (D-NJ) and Sparky Matsunaga (D-HI) have pledged their support to obtain relief for state and local governments from Treasury's announcement this session.



**NCSL Position.** NCSL policy urges Congress to clarify that an employee will not be taxed on non-elective deferrals until such deferrals are actually taken by the employee in the form of benefits. NCSL concerns with Congressional proposals and Treasury announcement are listed below.

**Violates Congressional Intent.** In 1978, Treasury first proposed to eliminate the ability of employees to defer compensation by choice. Congress swiftly passed the Revenue Act of 1978 which rejected Treasury's proposal. When Congress modified the nation's tax code in 1986, its intent was only to extend 457 plans to tax-exempt organizations, not change the definition of an elective deferral. Both the House and Senate measures recognize that changing the definition of an elective deferral was not one of their objectives.

**Accrual Limits Preempt State Laws and Collectively Bargained Agreements.** Last year the House and Senate previously proposed a 2 or 12 month limit on accruals of benefits. Limits on accruals will violate already established limits set by state and local laws and collectively bargained agreements. A 1987 summary of state treatment of sick and annual leave by Workforce Economic Inc., is attached for your reference.

- o For example, last year's proposed limits will violate most states (36 states) unlimited accrual of sick leave.
- o Compensatory time is currently subject to federal regulation. Under the Fair Labor Standards Act, compensatory time is limited to 480 hours for public safety and emergency personnel, and 240 for hours other employees.
- o The limits do not recognize that benefits are based on years of service. Most states accelerate the accrual of benefits as the tenure of the employee grows. As an example, Texas vacation leave accrual rates and carryover balances are listed below.

<u>Length of Service:</u>	<u>Hours Accrued Per Month:</u>	<u>Allowable Carryover Per Year:</u>
less than 2 years	7	208
2 but less than 5 years	8	232
5 but less than 10 years	9	256
10 but less than 15 years	10	280
15 but less than 20 years	12	328
20 years or more	14	376

**Exclusive List.** Under last year's proposals, specific non-elective deferred programs are defined as exempted (House exempts sick and vacation leave, severance pay and compensatory time; Senate exempts sick and vacation leave, death and disability benefits, severance pay and compensatory time). Benefit programs vary from state to state to meet the needs of that particular work force. To uphold state flexibility and autonomy in establishing compensation programs for their employees, a non-exclusive list should be developed and included in the legislation.

**Parameters for State and Local Government Exists.** Treasury's view that state and local governments are immune to the tax consequences of establishing deferred compensation arrangements for programs such as sick or vacation leave does not recognize the other types of restraints surrounding governmental units.

**Constraint of Citizens' Tax Dollar.** First, all state and local employees are paid by citizens' taxes. Because these tax resources are currently stretched to provide for services demanded by the jurisdiction's residents, there is not a tendency to give away the store to workers of state and local governments.

**Constraint of Public Scrutiny.** Wages and benefits for state and local workers are public information. These forms of compensation must be approved by the state legislative process or collectively bargained agreements.

**Disincentive to Accrue Leave.** Under Treasury's announcement, an employee would be forced to decide whether to pay the tax on earned non-elective benefits and continue to accrue benefits which will be subject to tax, or to take his or her benefits as they are accrued.

**Administrative Problems.** State and local retirement systems would be forced to make onerous recordkeeping changes involving the tracking of employee benefits and computation of benefits such as severance pay, vacation leave, sick leave, survivor benefits and deferrals of income to retirement savings.

For more information, please contact Gina Mitchell or Deb Louison at NCSL's Washington office at (202) 624-5400.

# Treatment of Sick Leave:

State	Maximum Yearly Limit on Days of Sick Leave Accumulated	Payment for Unused Sick Leave:				upon Determination of Disability
		at Termi- nation	at Retire- ment	to Beneficiary at Death		
Alabama	150	no	50%	no	yes	
Alaska	none	no	no	yes	no	
Arizona	none	no	up to \$750	no	yes	
Arkansas	90	no	no	no	no	
California	none	no	additional service credit	no	no	
Colorado	none	no	25%	25%	yes	
Connecticut	none	no	25%	25%	yes	
Delaware	none	no	50% up to 45 days	yes	yes	
Florida	none	yes	25%	yes	no	
Georgia	90	no	additional service credit	no	no	
Hawaii	none	no	additional service credit	no	no	
Idaho	none	no	purchase insurance	no	yes	
Illinois	none	yes	50% since 1/84	yes	yes	
Indiana	none	no	no	no	no	
Iowa	none	no	up to \$2000 for min. of 240 hours	no	no	
Kansas	none	no	yes, based on years of service	no	no	
Kentucky	none	no	additional service credit	no	no	
Louisiana	none	no	no	no	no	
Maine	120	no	additional service credit	no	no	
Maryland	none	no	additional service credit	no	no	
Massachusetts	none	no	yes	no	no	
Michigan	120	yes, based on years of service	yes	yes	no	
Minnesota	112.5	yes	40%	yes	yes	
Missouri	none	no	additional service credit	no	no	
Mississippi	none	no	no	no	no	
Montana	none	25%	25%	25%	yes	
Nebraska	180	no	25%	25%	yes	
Nevada	90	yes	\$3500 for over 30 days with 20 years	yes	no	
New Hampshire	90-120	no	33% up to 30 days	-----	no	
New Jersey	none	no	50%	no	yes	
New Mexico	no	no	yes	no	yes	
New York	190-200	no	additional service credit	no	no	
North Carolina	none	no	additional service credit	no	no	
North Dakota	none	no	no	no	no	
Ohio	none	50%	50%	yes	yes	
Oklahoma	130	no	additional service credit	no	no	
Oregon	none	no	additional service	no	yes	
Pennsylvania	200	no	yes	no	yes	
Rhode Island	125	yes	yes, based on years of service	yes	yes	
South Carolina	180	no	no	no	no	
South Dakota	none	25% of 480 hours with 7 yrs. of service	yes	yes	yes	
Tennessee	none	no	additional service credit	yes	yes	
Texas	none	no	no	50% max up to 336 hours	no	
Utah	none	no	25%	no	no	
Vermont	none	no	no	no	yes	
Virginia	none	\$2500 maximum with 5 yrs. service	no	no	up to \$2500	
Washington	none	no	25%	yes	no	
West Virginia	none	no	25%	no	yes	
Wisconsin	none	no	converted to health insurance	yes	yes	
Wyoming	none	yes	50%	50%	yes	

Source: Workforce Economics, Inc., 1987 Survey of State Employee Benefits

# Treatment of Annual Leave:

<u>State</u>	<u>Maximum Yearly Limit on Days of Annual Leave Accumulated</u>	<u>Payment for Unused Annual Leave Days at Retirement or Termination</u>
Alabama	60	yes
Alaska	60	yes
Arizona	30	yes
Arkansas	30	yes
California	40-47.5	yes
Colorado	2 x A/R	yes
Connecticut	60	yes
Delaware	2 x A/R	yes
Florida	30	yes
Georgia	45	yes
Hawaii	90	yes
Idaho	2 x A/R	yes
Illinois	2 x A/R	yes
Indiana	no limit	up to 30
Iowa	2 x A/R	yes
Kansas	18-30	yes
Kentucky	30-60	yes
Louisiana	no limit	yes
Maine	30-40	up to 30
Maryland	35	yes
Massachusetts	2 x A/R	yes
Michigan	30-37.5	yes
Minnesota	30	yes
Mississippi	no limit	yes
Missouri	2 x A/R	yes
Montana	2 x A/R	yes
Nebraska	1 x A/R	yes
Nevada	30	yes
New Hampshire	30-48	yes
New Jersey	1 x A/R	yes
New Mexico	30	up to 30
New York	40	yes
North Carolina	30	yes
North Dakota	30	yes
Ohio	3 x A/R	yes
Oklahoma	45	yes
Oregon	31	yes
Pennsylvania	45	yes
Rhode Island	1 x A/R	yes
South Carolina	45	yes
South Dakota	30-60	yes
Tennessee	30	yes
Texas	2 x A/R	yes
Utah	40	yes
Vermont	45	yes
Virginia	42	yes
Washington	30	yes
West Virginia	30-40	can be used to purchase retirement credit
Wisconsin	varies	yes
Wyoming	30-48	yes

A/R is annual accrual rate.

Source: Workforce Economics, Inc., 1987 Survey of State Employee Benefits

LEGISLATIVE COUNCIL

TABLED REQUESTS

(AS OF FEBRUARY 24, 1988)

SPONSOR: Rep. Armstrong

LR 4719	AN ACT To Exempt Amateur Sports Officials From Civil Suit	TABLED 1/19/88
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SPONSOR: Rep. Clark

LR 4851	AN ACT Regarding Responsibility For Reporting Certain Infectious Diseases Upon Death	TABLED 2/16/88
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SPONSOR: Rep. Coles

LR 4899	AN ACT To Provide An Impartial Investigation Of Health, Environmental, And Public Safety Issues At International Paper Company's Androsocoggin Mill	TABLED 2/23/88
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SPONSOR: Sen. Erwin

LR 4630	AN ACT to Require Signs for the Maine Veteran's Cemetery on Route 95	TABLED 12/22/87
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SPONSOR: Rep. Foster

LR 4790	AN ACT Concerning The Taxation Of Certain Business Enterprises	TABLED 1/25/88 RETABLED 2/16/88
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SPONSOR: Sen. Kany

LR 4827	AN ACT To Require A Study Of Health Insurance For Part-Time Workers	TABLED 2/9/88
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SPONSOR: Rep. LaPointe

LR 4727	AN ACT To Require Any Person Charged With Rape To Undergo An AIDS Test	TABLED 1/19/88
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SPONSOR: Sen. Matthews

LR 4724	AN ACT to Create Minimum Standards for Shelters	TABLED 1/19/88
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SPONSOR: Rep. Michaud

LR 4444	AN ACT Relating To Development On Route 157	TABLED 12/22/87
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SPONSOR: Rep. Nicholson

LR 4610	AN ACT To Protect The Lobster Industry	TABLED 12/22/87
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SPONSOR: Rep. Rand

LR 4335	AN ACT To Establish A Portland Neighbor- hood Library System	TABLED 12/22/87
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SPONSOR: Sen. Randall

LR 4605	AN ACT To Provide For An Advisory Referendum In Washington County Area On Location Of An Ash Dump	TABLED 12/22/87
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SPONSOR: Rep. Smith

	AN ACT To Prohibit The Use Of Electronic Devices For Fishing In Inland Waters	TABLED 1/25/88
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SPONSOR: Sen. Tuttle

LR 4850	RESOLVE, to Study the Problem of Commercial Boat Insurance	TABLED 2/16/88
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SPONSOR: Sen. Usher

LR 4728	AN ACT To Authorize A Sheriff Or His Deputies To Make Service In Accordance With The Rules Of Civil Procedure When Service Is Unexecuted After A Diligent Search	TABLED 1/19/88
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