

MAINE STATE LEGISLATURE

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SEN. CHARLES P. PRAY
CHAIR

REP. DAN A. GWADOWSKY
VICE-CHAIR



STATE OF MAINE

115th LEGISLATURE

LEGISLATIVE COUNCIL

SEN. NANCY RANDALL CLARK
SEN. DENNIS L. DUTREMBLE
SEN. CHARLES M. WEBSTER
SEN. PAMELA L. CAHILL
REP. JOHN L. MARTIN
REP. JOSEPH W. MAYO
REP. WALTER E. WHITCOMB
REP. FRANCIS G. MARSANO

SARAH C. TUBBESING
EXECUTIVE DIRECTOR

LEGISLATIVE COUNCIL

October 14, 1991

MEETING SUMMARY

APPROVED OCTOBER 27, 1991

CALL TO ORDER

The Legislative Council meeting was called to order by the Chair, Senator Pray, at 10:21 a.m. in the Council Chamber.

ROLL CALL

Senators:	Sen. Pray, Sen. Clark, Sen. Webster, Sen. Dutremble, Sen. Cahill
Representatives:	Rep. Martin, Rep. Gwadosky, Rep. Whitcomb, Rep. Mayo, Rep. Marsano
Legislative Officers:	Sally Tubbesing, Executive Director, Legislative Council Lynn Randall, State Law Librarian John Wakefield, Director, Office of Fiscal and Program Review Martha Freeman, Director, Office of Policy and Legal Analysis David Kennedy, Revisor of Statutes Joy O'Brien, Secretary of the Senate

SECRETARY'S REPORT

The Summary of the September 11, 1991, Council meeting was approved and placed on file. (Motion by Speaker Martin; second by Sen. Cahill; unanimous).

EXECUTIVE DIRECTOR'S REPORT

Sally Tubbesing, Executive Director, presented the following items for the Council's consideration:

Item #1: Resignation of Dyan Dyttmer, Legislative Analyst, Office of Policy & Legal Analysis

Ms. Tubbesing reported that Dyan Dyttmer, who had joined the OPLA staff nearly a year ago, had resigned.

She further noted that, in consultation with the Council Chair, Sen. Pray, the resignation had been accepted and a search initiated for candidates to fill the vacancy.

Motion: That the Executive Director's report be accepted and that a letter of appreciation be sent to Ms. Dyttmer. (Motion by Speaker Martin; second by Sen. Cahill; unanimous).

Item #2: Repairs to the State House Roof: Progress Report

Ms. Tubbesing reported that the project was on schedule and that access to the parking area outside the "Governor's Entrance" would be blocked off for significant periods between now and the end of November to accommodate a crane and other equipment.

No Council action was required.

Item #3: Revisor's Report (pursuant to Statute & Chapter 336, P.L. 1991).

Ms. Tubbesing drew Council members' attention to a copy of the first annual Revisor's Report which had been distributed previously. David Kennedy pointed out that this was the product of the Council's support of a bill introduced during the First Regular Session, and eventually passed and signed into law, that permits the Revisor of Statutes to correct purely technical errors in the statutes during the annual statute update process. The first report includes more than 70 items that would previously have been included in an Errors Bill. It has been submitted to the Joint Standing Committee on Judiciary as required by the law.

No Council action was required.

Item #4: General Revenue Fund: Status Report

Council members had received copies of a memo from John Wakefield that summarized the status of General Fund Revenues in the current fiscal year and, comparatively, for prior years. The information had already been distributed to members of the Appropriations Committee, who were scheduled to meet with the Governor on October 16.

No Council action was required.

REPORTS FROM COUNCIL COMMITTEES

- **Personnel Committee**

Rep. Gwadosky, Committee Chair, reported that the Committee had met on Thursday, October 10, and conducted interviews with 3 of the non-partisan Directors in conjunction with their annual performance reviews. Noting that Committee members had found the interviews to be very productive exchanges, he offered the following recommendations from the Committee in the form of motions:

Motion: That David Kennedy be reappointed to a new 3-year term as the Revisor of Statutes and, further, that he be awarded a step increase from Step 4 to Step 5 in his assigned salary range (Range 14). (Motion by Rep. Gwadosky; second by Speaker Martin; unanimous 9-0).

Motion: That John Wakefield be awarded a step increase from Step 6 to Step 7 in his assigned salary range (Range 14). (Motion by Rep. Gwadosky; second by Sen. Clark; unanimous 10-0).

Motion: That Richard Sawyer be awarded a step increase from Step 8 to Step 9 in his assigned salary range (Range 14). (Motion by Rep. Gwadosky; second by Sen. Clark; approved 9-0, with Rep. Whitcomb abstaining).

- **Subcommittee on Legislators' Travel**

Rep. Mayo, Committee Chair, reported that the Committee had met to consider the concerns raised during the Council's discussion of the Legislative Budget regarding the statutory provisions for reimbursing legislators for mileage, meals and lodging. He noted that the Committee had spent considerable time discussing the problems and various options for addressing those problems and that they concluded that most of the "solutions" would either entail additional cost to the Legislature or have no effect on cost. Rep. Mayo noted that although the Subcommittee was not making any proposals for change at this time, members had agreed to meet again prior to the convening of the Second Regular Session.

Rep. Marsano stated that he had attended the Subcommittee meeting with a firm preconception that the law needed to be changed; however, after listening to the discussion, he concluded that the law is fair and that the key is making sure that legislators understand the options they have (in electing "rental" or daily travel). Thus, he concurs with the Subcommittee's recommendation.

Motion: That Rep. Mayo's report on behalf of the Subcommittee be accepted and placed on file. (Motion by Sen. Dutremble; second by Sen. Clark; unanimous).

OLD BUSINESS

Item #1: Proposed Procedures for Council Review and Approval of Applications to Use Capitol Park. (Tabled at August 22 meeting; retabled at September 11 meeting).

Motion: That the proposed Procedures be adopted. (Motion by Rep. Mayo; second by Sen. Dutremble).

Discussion: Rep. Whitcomb recalled that he had raised his concern at previous meetings that groups receiving approval to use the Park be required to provide adequate toilet facilities, noting that the groups participating in the rallies in July had not had outside facilities.

The motion was approved 6-4.

Discussion: After the vote was concluded, the Chair, Sen. Pray asked whether those who had voted against the motion had other concerns. Rep. Whitcomb reiterated his concern regarding the lack of provision for adequate toilet facilities. Rep. Marsano expressed his concern that the proposed procedures contained no time frames, thus leaving room for hasty decisions, and offering little protection to insure that the Park is used appropriately. He noted that he would like to have an advance notification of several days built in to the process. Finally, Sen. Cahill expressed her concern that the proposed procedures did not appear to preclude any specific uses of the Park, noting that she would like to see a prohibition against overnight camping.

Rep. Mayo offered to move reconsideration of the approved motion; but the consensus seemed to be that amendments to address these and perhaps other concerns, could be introduced at future Council meetings. The Council took no further action at this time.

Item #2: Information Regarding Revenues from Parking Violations

The information had been requested by Council members at the prior Council meeting. Ms. Tubbesing drew members' attention to a memo from John Wakefield that summarized the total revenue from parking violations on State property in FY 91 (\$15,920) and the estimated total revenues for FY 92 (\$42,250).

The Council took no action on this information.

- Item #3: Correspondence from the State House and Capitol Park Commission pursuant to the Council's Request to Forward a Recommendation regarding the State House Cornerstone.**

Ms. Tubbesing stated that although there was no written report from the Commission, the Commission had voted at its most recent meeting to recommend to the Council that no further action be taken at this time to either confirm the exact location of the cornerstone for the original State House or to determine whether a time capsule had been buried in conjunction with the laying of that cornerstone.

Motion: That the Commission's report be accepted and that the item be referred to the Legislative Council in office at the time of the State House's bicentennial. (Motion by Rep. Mayo; the motion was not seconded).

NEW BUSINESS

- Item #1: Request from Chairs of the Joint Standing Committee on Human Resources to Hold a Series of Hearings on the Child Protective Services Division of DHS.**

Discussion: Rep. Marsano asked whether the Governor had had any input about the need for hearings. Sen. Pray responded that the Governor had pocket-vetoed a bill that would have provided for an independent review of the Department. Speaker Martin suggested that the Committee's request be approved in an amended form.

Motion: That the Committee be authorized to have two full committee meetings, after which it would submit a report to the Council which contained its findings, any recommendations and a request for more meetings if necessary. (Motion by Speaker Martin; second by Sen. Cahill; approved 9-1).

- Item #2: Request from Joint Standing Committee on Judiciary for One Meeting to Review New Information regarding the BIDE Program.**

The Chair, Sen. Pray, reported that he had just received a letter from the Committee Chairs, Senator Gauvreau and Representative Paradis, requesting one meeting to review information that had come up during the hearing to confirm the Governor's nomination of Department of Public Safety Commissioner John Atwood to the position of Superior Court Judge.

Motion: That the request be approved. (Motion by Sen. Clark; second by Sen. Dutremble)

Discussion: Discussion was extensive, and focussed on the following issues:

- The scope of the Committee's request. (Sen. Cahill)

Sen. Pray affirmed that the Committee was requesting a single meeting.

- The relationship of the Committee's request to the review of BIDE that the Joint Standing Committee on Audit and Program Review was currently conducting. (Rep. Marsano)

Sen. Gauvreau, who was present, responded that the Judiciary Committee was concerned with issues related to the appropriateness of the investigatory procedures employed by BIDE, issues which he felt were not central to the scope of the Audit Committee's review. Sen. Bustin, Senate Chair of the Audit and Program Review Committee, was also present and concurred that the Committee's statutory review had a different purpose and focus.

- The necessity for immediate action by the Judiciary Committee (Rep. Marsano; Sen. Webster)

Rep. Marsano noted that one of the bill requests that the Council would be considering later proposed a restructuring of BIDE and asked why this would not be a preferable vehicle for conducting the review proposed by the Judiciary Committee. He stressed the importance of having the investigation of the BIDE program done in a non-political atmosphere. Sen. Gauvreau responded that, since the Committee had met during the 114th Legislature to explore concerns about the BIDE program, the program had deteriorated significantly and that it was faced now with a situation of "near paralysis": the lack of communication among local, state and federal prosecutors had precipitated a crisis that requires more timely legislative action. Rep. Mayo expressed support for the Committee's request, noting that he felt that it was essential for the Committee to have an opportunity to separate issues related to Commissioner Atwood's qualifications for the post of Superior Court Judge from issues related to the BIDE program.

Finally, on this point, both Sen. Pray and Speaker Martin observed that the Committee would not have time to do this work in January, since it will need to concentrate all of its efforts on completing work on the carryover bills in its possession in order to meet the January 31 deadline established by the presiding officers.

- Concerns about the reports submitted by the Partisan Aides on nominees (Rep. Gwadosky)

Rep. Gwadosky reported his understanding that there had been no report from the Partisan Aide for the minority party on Commissioner Atwood and suggested that this information from Aides in both parties, as provided for in the Joint Rules, is extremely important to the confirmation process.

Motion: That the item be tabled until later. (Motion by Rep. Whitcomb; second by Rep. Marsano; failed 3-6).

Discussion then continued.

Sen. Gauvreau reiterated that 2 issues were of paramount concern to the Committee:

- 1) What knowledge, if any, Commissioner Atwood had of the various alleged patterns of behavior that BIDE staff had engaged in and whether the Commissioner had had the authority to deal with these; and
- 2) Whether BIDE should be restructured.

Sen. Gauvreau identified the first issue as the one requiring the Committee's immediate attention and as the reason for its request to meet at this time.

Rep. Marsano again urged the Council to reconsider its action and to table the item until later in the day.

Motion: That the Committee's request be tabled until later in the day. (Motion by Sen. Dutremble; second by Rep. Marsano; approved unanimously).

RECESS

The Council recessed at 10:43 a.m. on the motion of the Chair.

RECONVENE

The Council meeting was reconvened by the Chair, Sen. Pray, at 10:50 a.m. and resumed its consideration of New Business.

Item #3: Requests from Legislators to Introduce Legislation to the Second Regular Session.

Sen. Pray expressed his appreciation to David Kennedy and his staff for their efforts in preparing the material for the Council's consideration. He noted that there were 613 bill requests to be acted on and reminded Council members that in weighing the necessity of

letting each bill request in, they needed to keep in mind the fact that the "agenda" for the Second Regular Session already included 151 carryover bills and that 86 bills which had already been filed by executive departments and agencies.

The Council then proceeded with its consideration of legislators' bill requests. A list of those bills approved for introduction is attached. More detailed information may be obtained from either the Revisor's Office or the Office of the Executive Director.

Following the Council's consideration of bill requests, David Kennedy asked for clarification and further direction regarding 2 issues:

1. Co-sponsorship

The Council agreed to keep the same rule it had established last session: i.e., to suspend the Joint Rule that limits the number of co-sponsors for "closely-related" bills.

The Council further agreed to establish a deadline by which sponsors of closely-related bills must decide whether they are willing to "merge" their efforts with other sponsors.

2. Duplicate Bill Requests

The Council asked the Revisor to review its actions on duplicate bill requests and to report on the fate of the first-filed request in each case at the October 28 meeting.

NEW BUSINESS

Item #2: Request from Joint Standing Committee on Judiciary for One Meeting to Review New Information regarding the BIDE Program. (Tabled earlier in the day by a unanimous vote)

The Council then resumed its discussion of the item that had been tabled earlier in the day. Rep. Marsano expressed his appreciation for having had the opportunity to discuss the Committee's request further. The discussion then turned to the issue of the reports that are prepared on each nominee by the Partisan Aides in accordance with the Joint Rules. Both Rep. Whitcomb and Sen. Cahill stated that Republican staff had prepared a report on Commissioner Atwood. Speaker Martin indicated that this had not been clear at the confirmation hearing and that the focus of the Council's concern should be on the importance of these reports in

helping a committee find the best nominees. Sen. Pray supported this, as did Rep. Whitcomb, who suggested that it was important to keep talking about an effective mechanism for sharing the partisan reports. Speaker Martin suggested that this conversation about the entire confirmation process should be pursued by Council members as Leadership with the Governor at their next meeting.

Motion: That the Judiciary Committee's request be approved. (Motion by Sen. Clark; second by Sen. Dutremble; approved 9-1).

ANNOUNCEMENTS AND REMARKS

Notice of Next Council Meeting

Sunday, October 27

1:00 p.m.

Legislative Council Chamber

ADJOURNMENT

The Legislative Council meeting was adjourned at 6:10 p.m., on the motion of Sen. Cahill.