

# MAINE STATE LEGISLATURE

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REP. JOHN RICHARDSON  
CHAIR

SEN. BETH EDMONDS  
VICE-CHAIR



122<sup>ND</sup> MAINE STATE LEGISLATURE

LEGISLATIVE COUNCIL

SEN. MICHAEL F. BRENNAN  
SEN. PAUL T. DAVIS, SR.  
SEN. KENNETH T. GAGNON  
SEN. CAROL WESTON  
REP. GLENN A. CUMMINGS  
REP. DAVID E. BOWLES  
REP. ROBERT W. DUPLESSIE  
REP. JOSHUA A. TARDY

DAVID E. BOULTER  
EXECUTIVE DIRECTOR

## 122nd LEGISLATIVE COUNCIL

April 28, 2005

1:3-0 p.m.

Room 334, Legislative Council Chamber

Revised Agenda

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	<b>REPORTS FROM EXECUTIVE DIRECTOR AND COUNCIL STAFF OFFICES</b>	
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	<b>REPORTS FROM COUNCIL COMMITTEES</b>	
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	Report of the Personnel Committee	
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15	Report of the State House Facilities Committees	
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	The Budget Subcommittee met on April 28, 2005	

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DAVID E. BOULTER  
EXECUTIVE DIRECTOR

**Meeting Summary**  
**March 24, 2005**

**CALL TO ORDER**

The Chair, Speaker Richardson, called the Legislative Council meeting to order at 4:26 p.m. in the Legislative Council Chamber.

**ROLL CALL**

Senators:	President Edmonds, Sen. Brennan, Sen. Davis, Sen. Gagnon, Sen. Weston
Representatives:	Speaker Richardson, Rep. Cummings, Rep. Bowles, Rep. Duplessie, Rep. Tardy
Legislative Officers:	Joy O'Brien, Secretary of the Senate Millicent MacFarland, Clerk of the House Michael Cote, Assistant Clerk of the House David Boulter, Executive Director, Legislative Council Grant Pennoyer, Director, Office of Fiscal and Program Review David Elliott, Director, Office of Policy and Legal Analysis Margaret Matheson, Revisor of Statutes Lynn Randall, State Law Librarian Paul Mayotte, Director, Legislative Information Services

**SUMMARY OF THE FEBRUARY 24, 2005 COUNCIL MEETING**

**Motion:** That the Meeting Summary of February 24, 2005 be accepted and placed on file.  
(Motion by President Edmonds, second by Sen. Davis, unanimous).

## REPORTS FROM EXECUTIVE DIRECTOR AND COUNCIL STAFF OFFICES

- **Executive Director's Report**

David Boulter, Executive Director of the Legislative Council, reminded members that State of Maine YMCA Youth in Government Program will be held in the State House from April 8-10, 2005.

Executive Director Boulter advised the Council of a staffing issue for the Legislative Youth Advisory Council. By legislative resolve, the Muskie School is required to provide staffing to the council, but the person who staffed it for the Muskie School, has resigned. The Muskie School has notified the Executive Director that it lacks sufficient funds to continue to staff the Youth Advisory Council. Mr. Boulter said funding remains an issue but the Muskie School is working with the Department of Education to secure temporary staffing and funding. Mr. Boulter believes it may require legislative action to be resolved for the long-term.

Mr. Boulter reported that the Daily Show with Jon Stewart (Comedy Central) featured a segment on the Maine Legislature.

Speaker Richardson requested that Clerk MacFarland send out a notice reminding legislators and staff that the use of the House Chamber is only by leave of the presiding officer.

Several bills affecting the Legislative Council have been introduced this session. They are technology/facility related:

LD 802 relating to providing lap computers for Legislators, LD 1315 regarding recording legislative proceedings and making them available through the law library, and LD 1452 relating to consumption of Maine farm products at the State House complex.

**Motion:** That LD 802, 1315 and 1452 be referred to the State House Facilities Committee for its review. (Motion by Sen. Gagnon, second by Rep. Cummings, unanimous).

Speaker Richardson asked if there was objection to taking an item out of order. Hearing none, the Chair then moved to **New Business, Item 1.**

## NEW BUSINESS

### **Item #1: Consideration of After Deadline Bill Requests**

Thirty-one after deadline requests were considered by the Legislative Council. The Council's actions on these requests are included on the attached list.

The Chair then returned to agenda items in the order they appeared on the agenda.

The Chair and Vice-Chair noted that the Legislative Council has been agreeable to the introduction of most after deadline bill requests, but requested that Executive Director Boulter prepare a memo to all legislators from the Chair and Vice-Chair of the Legislative Council notifying them that future after deadline bills requests will be held to a stricter standard for introduction.

## **REPORTS FROM EXECUTIVE DIRECTOR AND COUNCIL STAFF OFFICES (con't)**

- **Fiscal Report**

Grant Pennoyer, Director of Fiscal and Program Review, presented his report to the Council.

1. **General Fund and Highway Fund Revenue Variances for February 2005  
(Reflects March 2005 Revenue Forecasting Committee Revisions)**

- **General Fund**

General Fund revenue was under budget in February by \$0.8 million, decreasing the variance for the year through February 2005 to a positive \$5.9 million.

The positive variances for the fiscal year through February include:

- Estate Tax was ahead of budgeted revenue by \$4.2 million, but is expected to decline over the year.
- Individual Income Tax was ahead of budgeted revenue by \$6.5 million.
- Corporate Income Tax was ahead of budgeted revenue by \$3.3 million.

The major negative variances for the fiscal year through February include:

- Sales and Service Provider Taxes was under budget \$7.7 million
- Cigarette Tax was under budget \$0.6 million.
- Lottery Transfer was under budget \$1.6 million due to the Powerball lottery sales under performing due to lower than anticipated jackpots.

- **Highway Fund**

Highway Fund revenue was under budget in February by \$1.4 million (-5.6%) with February Fuel Tax revenue being the major reason for this negative variance. For the fiscal year through February, the Highway Fund remains positive by \$3.5 million (+1.8%).

2. **Cash Pool Status**

- Absent reserve accounts balances and tax anticipation notes, the General Fund average cash balance would have been negative by \$171.2 million.
- Through February 2005, the funds still show an improving trend over the last 12 months, although the General Fund trend improvement has flattened out recently.

**Motion:** That the Legislative Council accept Director Pennoyer's fiscal report. (Motion by Sen. Davis, second by Rep. Tardy, unanimous).

- **Office of Information Services' Report**

Paul Mayotte, Director, Legislative Information Services, reported the following:

- **Bill Drafting System:**

The Executive Director's office has entered into a binding agreement with HP that will result in completion and installation of the Bill Drafting System. The agreement provides for:

- Delivery of the system with most components in May, 2005
- Twelve months of warranty coverage to June 2005 to June 2006.
- The delivery by HP will include all agreed to software functions and hardware by early October, 2005.

- **Legislature's Internet web site:**

Mr. Mayotte reported that his office has been working with legislative offices to develop a new Internet home page that has a dramatically improved appearance, and to have it in place by early April.

**Motion:** That the Legislative Council accept Director Mayotte's technology report. (Motion by Sen. Gagnon, second by Rep. Duplessie, unanimous).

- **Update of Interim Studies**

David Elliott, Director, Office of Policy and Legal Analysis, reported on the interim legislative studies. A copy of the Progress Report on the Legislative Studies is attached.

**Motion:** That the Legislative Council accept Director Elliott's interim study report. (Motion by Sen. Brennan, second by Sen. Davis, unanimous).

## REPORTS FROM COUNCIL COMMITTEES

- **Personnel Committee**

The Personnel Committee did not meet so made no report.

- **State House Facilities Committee**

Sen. Gagnon, Chair of the State House Facilities Committee reported that although the committee had not met, they previously discussed the creation of a Facility Security Subcommittee. The members of the subcommittee include:

Senator Gagnon  
Senator Davis  
Representative Duplessie  
Representative Bowles

Secretary of the Senate (nonvoting)  
Clerk of the House (nonvoting)  
Executive Director of the Legislative Council (nonvoting)

Also invited to participate are:

Public Safety Commissioner or his designee  
Augusta Police Chief or his designee

Sen. Gagnon also reported that the subcommittee will be meeting during the interim to address the security issues at the State House in a comprehensive fashion.

No Council action required.

- **Budget Subcommittee**

The Budget Subcommittee did not meet so made no report.

## **OLD BUSINESS**

### **Item #1: Council Actions Taken by Ballot**

Executive Director Boulter noted that the Council packet includes a list of actions taken by ballot by the Legislative Council since its February 24, 2005 meeting.

No Council action required.

## **NEW BUSINESS**

### **Item #2: Request by Council of State Governments to Fund the Northeast States Association for Agricultural Stewardship (NSAAS)**

Executive Director Boulter explained the request by the Council of State Governments and noted the memo from Marge Kilkelly, Director of the Northeast States Association for Agricultural Stewardship (NSAAS). CSG stated that Maine's share would be \$10,000 for 1 year.

**Motion:** That the Legislative Council pay the dues to the Northeast State Association for Agricultural Stewardship in the amount of \$10,000. (Motion by Sen. Edmonds, second by Sen. Brennan).

Maine had not paid dues to NSAAS over the last two years. Sen. Weston explained that although the Legislative Council has never paid dues to CSG for NSAAS, the Department of Agriculture did for several years. She requested more information before the Legislative Council decides on the request.

**Motion:** That CSG's request for payment of dues to NSAAS be tabled. (Motion by Sen. Weston, second by Sen. Davis, unanimous).

### **Item #3: Project to Image Newspaper Clipping Files**

Lynn Randall, State Law Librarian, presented to the Council the Library's proposal to create, store and make accessible digital images of the newspaper articles with the purchase of an HP ScanJet 8290, Dell Precision 360 workstation and Alchemy Gold software. The system would be in place shortly after the end of the session, if authorized.

**Motion:** That the Legislative Council authorize the Law and Legislative Reference Library to purchase the HP ScanJet 8290, Dell Precision 360 workstation and Alchemy Gold software at the estimated cost of \$20,000, using funds previously reserved by the Legislative Council Budget Subcommittee for this purpose. (Motion by Rep. Duplessie, second by President Edmonds, 6-4, Sen. Davis, Sen. Weston, Rep. Bowles and Rep. Tardy opposed).



**Item #4: NCSL Study of Legislative Operations Proposal**

Executive Director Boulter reported that Ron Snell from NCSL had visited the State House recently and had met with offices. He is working with NCSL staff on a proposal for the Legislative Council's review to study legislative operations. This proposal arrives from a recommendation of the Budget Subcommittee.

Speaker Richardson reported he had received NCSL's proposal and he will distribute it to other members of the Council. The matter will be on the agenda for the Legislative Council's consideration at the Council meeting on April 28<sup>th</sup>.

**Item #5: Submission of Study Report****Maine Drug Return Implementation Group**

**Motion:** That the Legislative Council accept and place on file the annual report of the Maine Drug Return Implementation Group. (Motion by Brennan, second by Rep. Duplessie, unanimous).

**Item #6: W. Tom Sawyer, Jr., et al v. Legislative Council et. al (CV-04-97)**

**Motion:** That, in accordance with 1 MRSA section 405, subsection 6, the Legislative Council enter into an executive session for the purposes of discussing the pending lawsuit by W. Tom Sawyer, Jr., et al v. Legislative Council et al. (Motion by Rep. Bowles, second by Rep. Duplessie, unanimous).

The Council proceeded into Executive Session at 5:24 p.m.

**MEETING RECONVENED**

The Council ended its Executive Session and reconvened in open session at 6:05 p.m. on the motion of Rep. Tardy, second by Sen. Brennan, unanimous).

**ANNOUNCEMENTS AND REMARKS**

None

**ADJOURNMENT**

The Legislative Council meeting was adjourned at 6:06 p.m. (Motion by Rep. Tardy, second by Rep. Duplessie, unanimous).

REP. JOHN RICHARDSON  
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DAVID E. BOULTER  
EXECUTIVE DIRECTOR

**MEETING SUMMARY**  
**April 5, 2005**

**CALL TO ORDER**

The Chair, Speaker Richardson, called the Legislative Council meeting to order at 12:02 p.m. in the Legislative Council Chamber

**ROLL CALL**

Senators:	President Edmonds, Sen. Brennan, Sen. Davis, Sen. Weston (Sen. Gagnon joined the meeting in progress)
Representatives:	Speaker Richardson, Rep. Cummings, Rep. Bowles, Rep. Tardy (Rep. Duplessie, joined the meeting in progress)
Legislative Officers:	Joy O'Brien, Secretary of the Senate Millicent MacFarland, Clerk of the House David Boulter, Executive Director, Legislative Council Grant Pennoyer, Director, Office of Fiscal and Program Review David Elliott, Director, Office of Policy and Legal Analysis Margaret Matheson, Revisor of Statutes Paul Mayotte, Director, Legislative Information Services

**REPORTS FROM EXECUTIVE DIRECTOR AND COUNCIL STAFF OFFICES**

There were no reports from the Executive Director or Council Staff Offices

**REPORTS FROM COUNCIL COMMITTEES**

- **Personnel Committee** (Rep. Cummings, Chair)

The Personnel Committee did not meet so made no report.

- **State House Facilities Committee** (Sen. Gagnon, Chair)

The State House Facilities Committee did not meet so made no report.

## **OLD BUSINESS**

None

## **NEW BUSINESS**

### **Item #1: Consideration of After Deadline Bill Requests**

Fifteen after deadline requests were considered by the Legislative Council. The Council's actions on these requests are included on the attached list.

### **Item #2: W. Tom Sawyer, Jr., et al v. Legislative Council et. al (CV-04-97)**

The Chair, Speaker Richardson, reported that the Legislative Council had to decide whether to appeal the Superior Court decision to the Maine Supreme Court.

Motion: That the Legislative Council recommend to the Attorney General that he not appeal the Superior Court decision regarding W. Tom Sawyer, Jr., et al v. Legislative Council et al. (Motion by President Edmonds, second by Sen. Gagnon, unanimous).

Chair Richardson requested that Executive Director Boulter prepare a letter to the Attorney General conveying the Legislative Council's decision on this matter.

Since the Legislature will not appeal the Court's decision, upon the expiration of the appeal period, the Executive Director's office will make payment to the four Plaintiffs. The Chair requested that the Attorney General be invited to the Legislative Council meeting on April 28, 2005 for the purpose of discussing the obligations of the Legislature to other members of the 121<sup>st</sup> who have or may request payment.

## **ANNOUNCEMENTS AND REMARKS**

None.

## **ADJOURNMENT**

The Legislative Council meeting was adjourned at 12:26 p.m. (Motion by President Edmonds, second by Sen. Gagnon, unanimous).

# Fiscal Briefing for the Legislative Council

Legislative Council Meeting

April 28, 2005

*Prepared by the  
Office of Fiscal & Program Review*

## 1. General Fund and Highway Fund Revenue Variances for March 2005 (Reflects Enacted Law through 122<sup>nd</sup> Legislature, 1<sup>st</sup> Regular Session)

- **General Fund (GF)** - GF revenue was under budget in March by -\$12.7M, resulting in a negative variance for through 3 quarters of FY05 of -\$14.5M (-0.8%).
  - Major positive variances for fiscal year through March include:
    - Estate Tax (+\$4.2M) – Variance is expected to decline over the year
    - Individual Income Tax (+\$1.3M)
    - Corporate Income Tax (+\$0.8M)
  - Major negative variances for fiscal year through March include:
    - Sales and Service Provider Taxes (-\$10.3M)
    - Insurance Companies Tax (-\$5.5M)
    - Lottery Transfer (-\$2.2M)
    - Other Revenue (-\$3.3M) - DHHS alone represents -\$4.2M
- **Highway Fund (HF)** - HF revenue was under budget in March by -\$0.9M or -3.2%. Motor Vehicle Registration and Fees accounted for -\$1.3M in March, but remained positive for the fiscal year. For the 1<sup>st</sup> 3 quarters of FY05, the HF still has a positive variance of +\$1.6M or +0.7%.

## 2. April Income Tax Collections

- Based on preliminary data, income tax collections look very strong for tax year 2004 with final payments and refunds creating a positive variance of approximately \$40M to \$50M for FY05. This positive variance should be sufficient to offset other negative variances through FY05.

## 3. April Tobacco Settlement Payments

- Although Maine received less than anticipated in the memo from the Attorney General as a result of withholding of some disputed payments, revenue for the Fund for a Healthy Maine will be slightly above budget for FY05.

## 4. Cash Pool Status

- March 2005 Cash Pool Summary (see attached) – Absent reserve accounts balances and tax anticipation notes, General Fund average cash balance would have been negative by \$228.0M. GF & HF average balance trends still positive.

**General Fund and Highway Fund Revenue**  
**Fiscal Year Ending June 30, 2005**  
**Based on All Actions of the 122nd Legislature through 1st Regular Session**

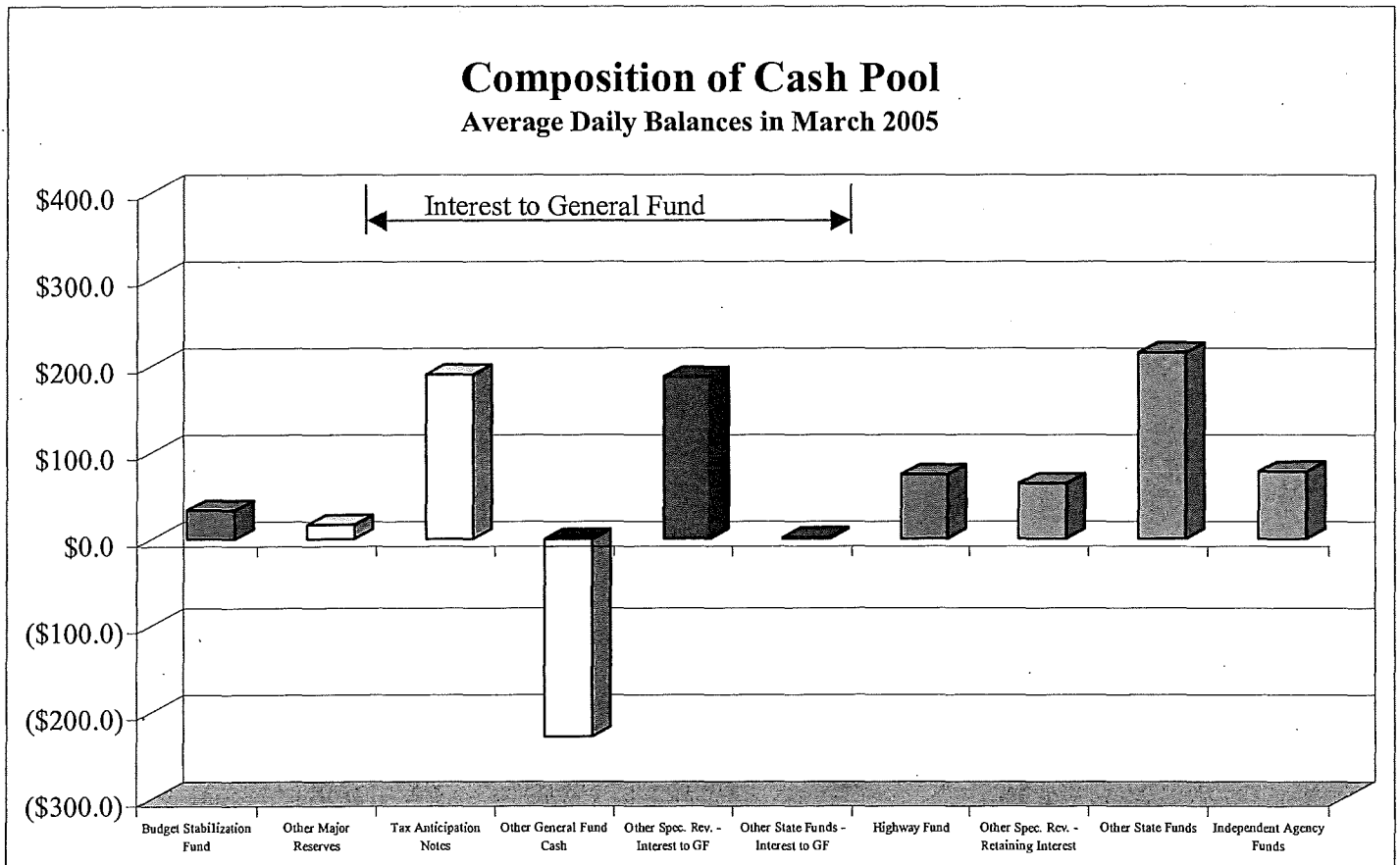
**MARCH 2005 VARIANCE REPORT**

FUND	Revenue Line	Mar. '05 Budget	Mar. '05 Actual	Mar. '05 Var.	FY05 YTD Budget	FY05 YTD Actual	FY05 YTD Variance	FY05 Budgeted Totals
GF	Sales and Use Tax	58,710,540	56,571,436.23	(2,139,103.77)	609,907,596	600,936,171.28	(8,971,424.72)	914,710,000
GF	Service Provider Tax	4,279,651	3,813,744.67	(465,906.33)	30,318,106	28,977,986.46	(1,340,119.54)	46,700,000
GF	Individual Income Tax	40,987,956	41,279,330.18	291,374.18	774,511,593	775,831,656.24	1,320,063.24	1,189,334,448
GF	Corporate Income Tax	14,706,561	12,229,974.50	(2,476,586.50)	81,104,390	81,890,391.31	786,001.31	123,300,647
GF	Cigarette and Tobacco Tax	7,553,949	8,090,300.09	536,351.09	72,217,159	72,126,110.34	(91,048.66)	96,019,864
GF	Public Utilities Tax	0	0.00	0.00	(150,000)	(150,000.00)	0.00	26,675,000
GF	Insurance Companies Tax	19,857,763	13,580,379.41	(6,277,383.59)	35,686,978	30,151,880.08	(5,535,097.92)	78,615,872
GF	Estate Tax	2,380,539	2,381,084.91	545.91	17,140,069	21,377,451.05	4,237,382.05	29,042,767
GF	Property Tax - Unorganized Territory	0	0.00	0.00	9,722,362	9,638,377.00	(83,985.00)	10,580,086
GF	Income from Investments	322,470	380,419.50	57,949.50	3,163,466	3,221,083.70	57,617.70	4,896,463
GF	Transfer to Municipal Revenue Sharing	(6,151,401)	(5,808,618.76)	342,782.24	(76,386,406)	(75,819,446.44)	566,959.56	(116,074,782)
GF	Transfer from Lottery Commission	4,501,592	3,870,595.47	(630,996.53)	39,289,924	37,090,007.93	(2,199,916.07)	52,292,750
GF	Other Revenue	20,602,418	18,662,885.27	(1,939,532.73)	200,104,758	196,835,300.84	(3,269,457.16)	264,907,493
GF	Totals	167,752,038	155,051,531.47	(12,700,506.53)	1,796,629,995	1,782,106,969.79	(14,523,025.21)	2,721,000,608
HF	Fuel Taxes	16,684,093	17,286,327.98	602,234.98	148,764,801	148,841,224.49	76,423.49	220,838,729
HF	Motor Vehicle Registration and Fees	9,795,630	8,500,849.54	(1,294,780.46)	57,324,192	59,298,000.12	1,973,808.12	81,378,234
HF	Inspection Fees	348,666	283,987.80	(64,678.20)	3,499,874	3,058,081.19	(441,792.81)	4,281,459
HF	Fines	174,529	119,636.27	(54,892.73)	1,343,191	1,288,297.79	(54,893.21)	1,890,359
HF	Income from Investments	110,696	157,252.78	46,556.78	601,732	750,218.87	148,486.87	1,059,903
HF	Other Revenue	685,270	510,746.14	(174,523.86)	6,973,554	6,843,675.43	(129,878.57)	13,817,473
HF	Totals	27,798,884	26,858,800.51	(940,083.49)	218,507,344	220,079,497.89	1,572,153.89	323,266,157

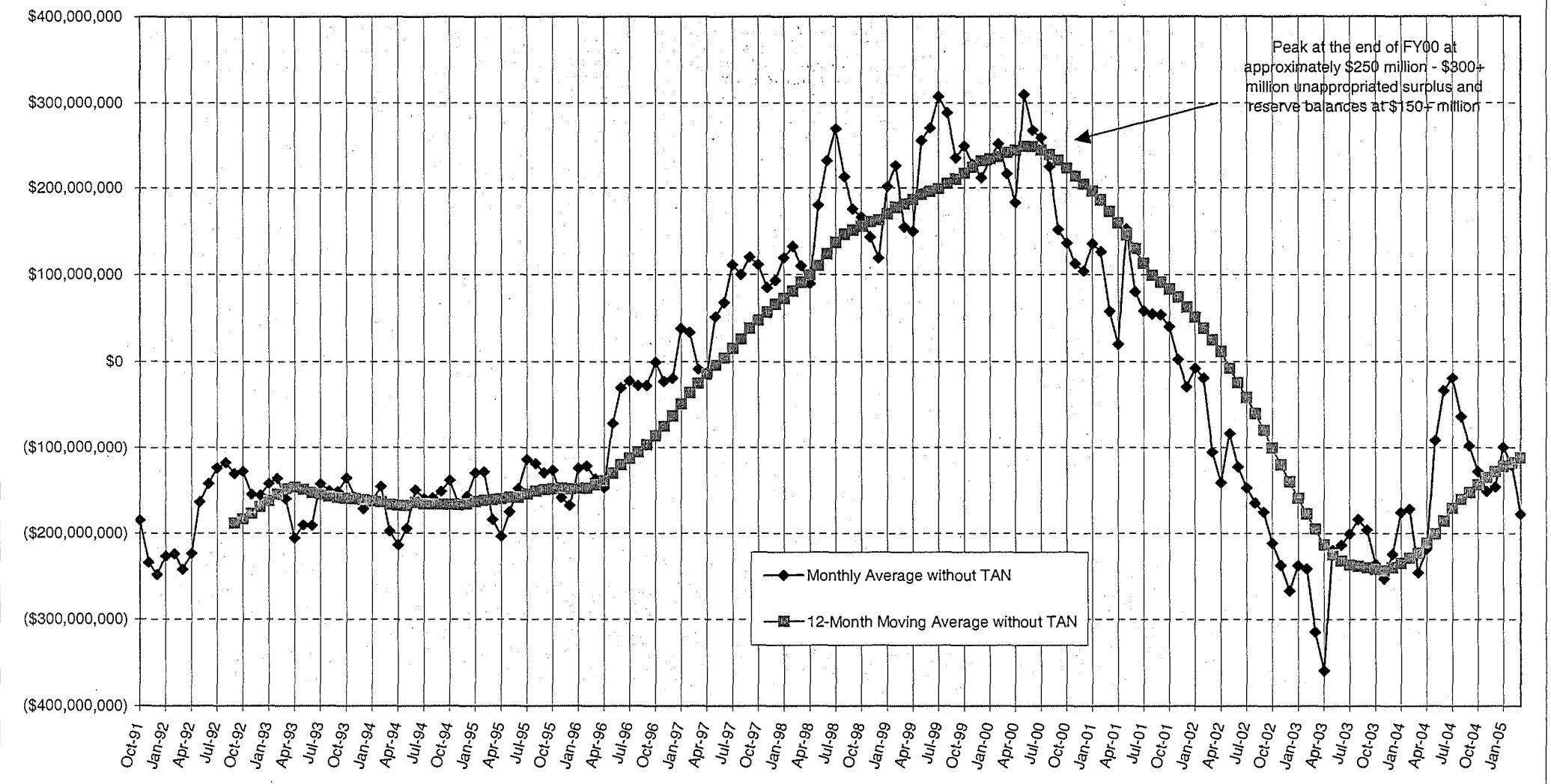
## Composition of State's Cash Pool

### March 2005 Average Daily Balances

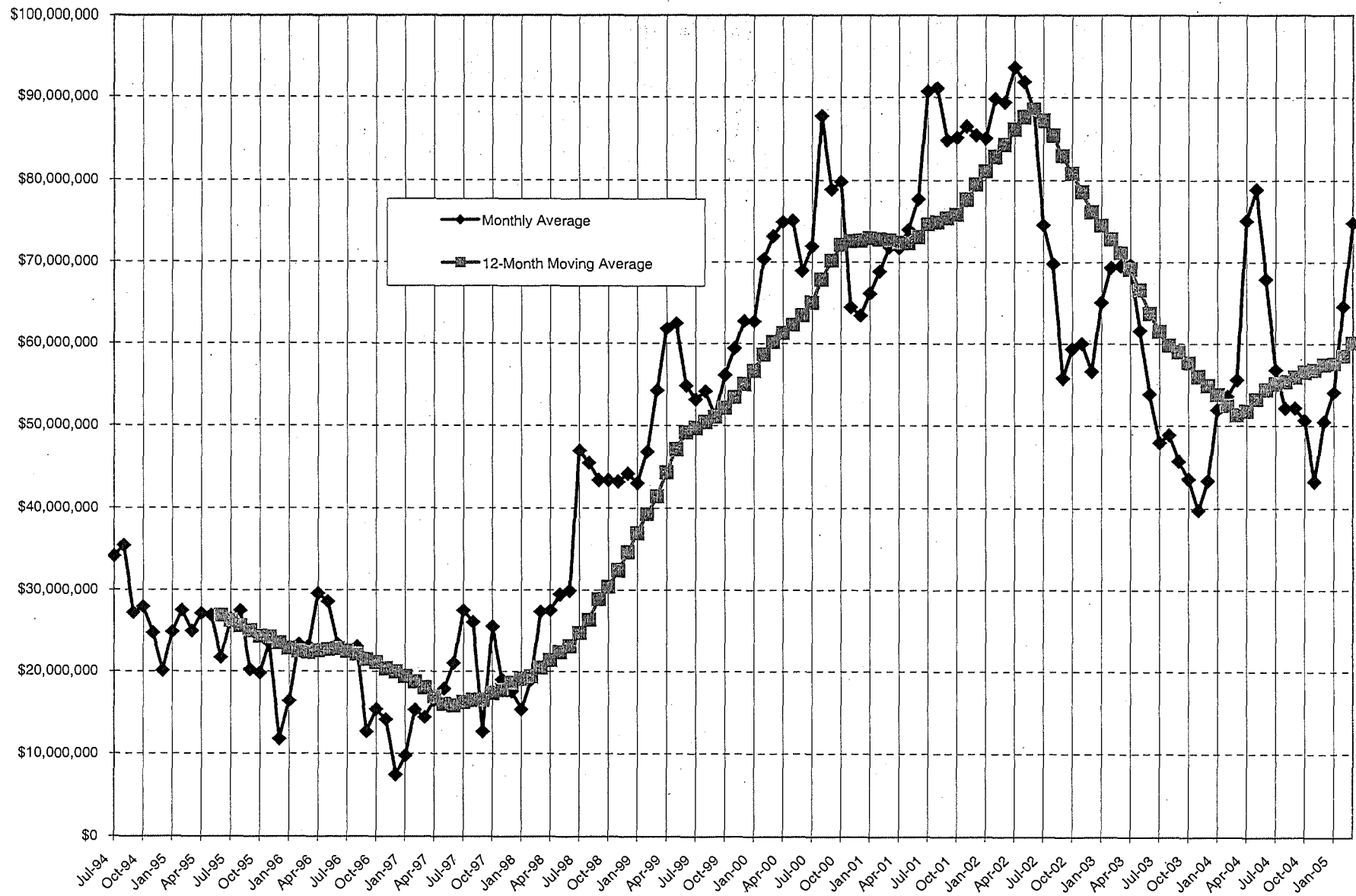
	March 2005
General Fund - Total	\$12,077,263
General Fund - Detail	
Budget Stabilization Fund (Rainy Day Fund)	\$33,550,100
Reserve for General Fund Operating Capital	\$16,532,953
Tax Anticipation Notes	\$190,000,000
General Fund - Other	(\$228,005,789)
Highway Fund	\$74,835,760
Other Special Revenue - Contributing to General Fund	\$187,286,040
Other Special Revenue - Retaining Interest Earned	\$64,305,105
Other State Funds - Contributing Interest to General Fund	\$1,760,166
Other State Funds	\$215,370,330
Independent Agency Funds	\$78,205,249
<b>Total Cash Pool</b>	<b>\$633,839,913</b>



**GENERAL FUND**  
**DAILY STARTING CASH BALANCES - EXCLUDING TAX ANTICIPATION NOTES**



### HIGHWAY FUND DAILY STARTING CASH BALANCES





**122<sup>nd</sup> MAINE STATE LEGISLATURE  
LEGISLATIVE COUNCIL  
Technology Report  
April 28, 2005**

**Bill Drafting System:**

- HP reports that as of April 22, 2005, they are on schedule to meet the May 23 hardware and software installation requirement
- Legislative Systems staff has made significant improvements to the automated the process of converting the Wang statutes database to the new database format

**SPAM Blocking:**

- Since the last Council meeting the filters used to block incoming SPAM have been tightened twice with the following results:
  - For the week ending 3/28, 53.8% of the emails identified as SPAM were blocked
  - For the week ending 4/21, 87.9% of the emails identified as SPAM were blocked
- To date, no false positives have been identified

**Business / Disaster Recovery:**

- Hardware to increase the capacity of the Legislature's automated data backup system has been installed
- Further steps are in process to provide for offsite data backup and recovery capability

REP. JOHN RICHARDSON  
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VICE-CHAIR



122<sup>ND</sup> MAINE STATE LEGISLATURE

LEGISLATIVE COUNCIL

**Legislative Council  
State House Facilities Committee  
Meeting Summary for  
April 12, 2005**

SEN. MICHAEL F. BRENNAN  
SEN. PAUL T. DAVIS, SR.  
SEN. KENNETH T. GAGNON  
SEN. CAROL WESTON  
REP. GLENN A. CUMMINGS  
REP. DAVID E. BOWLES  
REP. ROBERT W. DUPLESSIE  
REP. JOSHUA A. TARDY

DAVID E. BOULTER  
EXECUTIVE DIRECTOR

**Members Present:**

Sen. Gagnon, Chair  
Rep. Duplessie  
Rep. Bowles  
Sen. Edmonds (joined meeting in progress)  
Sen. Weston (joined meeting in progress)  
David Boulter, Executive Director *DB*

**Nonvoting Members Absent:**

Joy O'Brien, Secretary of the Senate  
Millie MacFarland, Clerk of the House

Sen. Gagnon convened the meeting at approximately 1:30 p.m. The committee then proceeded to consider the following agenda items:

**1. Policy on use of legislative retiring rooms.**

The members discussed various aspects of the proposed policy and generally agreed that it reflected the committee's intent for use of the retiring rooms. Rep. Bowles recommended clarification on access by elected and appointed officials and by relatives of Members as set forth in paragraph 3 of the proposed policy. Other members agreed that use by such employees is for limited purposes and that relatives of Members should be authorized to access the rooms without obtaining approval from the chair of the Legislative Council.

Rep. Bowles made a motion to recommend that the Legislative Council adopt the proposed policy as amended (see below), seconded by Rep. Duplessie. Motion approved unanimously (Gagnon, Duplessie, Bowles and Weston supporting, Edmonds absent).

**Amended ¶ 3:**

"Family members and personal guests of a legislator may use a retiring room while visiting and accompanied by the legislator.

Elected employees and employees appointed to their position by the Legislative Council, are authorized access to the rooms. Furthermore, committee clerks whose committee is located in the State House are authorized access to legislative retiring rooms in the State

House, and committee clerks whose committee room is located in the Cross Building are authorized access to legislative retiring rooms in the Cross Building. Such access is limited to contacting or delivering messages or information to legislator, and to use the bathroom or kitchen facilities.”

Sen. Gagnon asked Executive Director Boulter to distribute a copy of the recommended policy to the facility committee members before the matter is voted on by the Legislative Council.

## **2. State House Plan for Security.**

The members reviewed Chief Suitter’s memo and discussed the matter with Chief Suitter, who was in attendance. Chief Suitter indicated that Capitol Security employs 9 persons full-time including 4 watchpersons, and 1 part-time secretary. It is assigned 5 vehicles. Building Control (DAFS) employs 7 people who staff the building control and dispatch center, whose emphasis is on environmental control monitoring rather than on security, notwithstanding the recent, major investment in security cameras and related computer equipment. Chief Suitter also noted the Executive Protection Union with the State Police employs 5 officers whose sole function is to protect the Governor.

Reinforcements for Capitol Security are provided by the Augusta Police Department if a situation is urgent, or by State Police if the situation is planned (e.g., coverage for public hearings).

Members inquired as to the level of written protocols for Building Control in the event a response or back up help is needed, an important aspect since Building Control does not report to Capitol Security. Chief Suitter indicated some protocols were written, but could not attest to compliance. Chief Suitter recommended 5 additional positions to meet current security needs, including additional security measures for the State House. He also reminded members that prior to the 1990’s, a uniformed officer (S.P.) was stationed in each chamber during all legislative sessions.

Sen. Gagnon reminded members that he established a subcommittee to review the current structure, formation and reporting authority of Capitol Security, assess responsibilities and security gaps, consider alternative funding mechanisms, and to make recommendations for improved security in the State House complex. The subcommittee will meet during the summer. Members include: Sen. Gagnon, Sen. Davis, Rep. Duplessie, Rep. Bowles, Chief Suitter and invited members Chief McCammish, Augusta Police Department and Commissioner Cantara, Department of Public Safety.

The committee took no further action.

## **3. Recognition of Joshua Chamberlain.**

Sen. Gagnon drew members’ attention to photographs in the packet that depicted a bust of Joshua Chamberlain in the Hall of Flags on or about 1890-1909. The bust has since disappeared but a copy is on exhibit at Bowdoin College. Sen. Gagnon indicated that he would like the committee to pursue establishing a permanent memorial (e.g. bust or similar exhibit) to honor Joshua Chamberlain and his contributions to Maine and the Nation. He also indicated that the committee may want to consider honoring Harriet

Beecher Stowe, who made significant contributions toward antislavery sentiment mobilizing during the Civil War period. Sen. Gagnon suggested that State House Percent for Art funds would be an appropriate funding source. The committee agreed to continue its discussions at its next meeting when State Historian Earle Shettleworth can attend. The committee took no further action on this matter.

**4. Policy on Use of the Hall of Flags.**

The committee postponed discussion on this matter until its next meeting.

**5. OPEGA offices.**

Executive Director Boulter reported that the OPEGA offices are completed and furnished and OPEGA offices are open for business. He urged members to stop by Room 107, in the Cross Building to tour the office.

**6. Proposed legislation.**

L.R. 2282 (Resolve, Directing that That Signs Be Posted At Places Where Lobbyists Are Not Allowed).

The committee took no formal action on the request (now tabled by the Legislative Council) but generally agreed that the matter should be decided administratively by the Legislative Council, not through legislative resolve. The Legislative Council (through the Facilities Committee) has jurisdiction over this policy matter.

The committee briefly discussed LD 802, An Act to Improve the Efficiency of the Legislature, LD 1315, An Act to Permit Recording Proceedings of the Legislature, and LD 1452, Resolve, Promoting the Consumption of Maine Farm Products at the State House Complex. The committee noted that LD 802 will be placed on the Appropriations Table due to the costs involved. The committee asked that Executive Director Boulter send a letter to the State and Local Government Committee indicating that legislation affecting the Legislative Council should not be overly prescriptive, that Leadership sitting as the Legislative Council, is structured to resolve internal legislative matters and that it has jurisdiction pursuant to law to resolve those internal matters. It was also recommended that if 1315 (if supported by the State and Local Government Committee) should be amended to direct the Legislative Council to develop procedures for appropriate archiving of audio and video records and availability to the public, but not necessarily requires the Law and Legislative Reference Library to maintain the records.

**7. Work Plan for State House Improvements-2005**

The committee reviewed and discussed the proposed work plan for State House Improvements for 2005. The committee supported the plan Mr. Boulter highlighted several key projects, including the proposed handicapped access to the 3<sup>rd</sup> floor porch. He indicated that a final design for the punch alterations will be submitted to the committee for its review because of the historic and aesthetic considerations relating to the porch.

Rep. Duplessie made a motion that the committee recommend to the Legislative Council that it approve the 2005 plan, as presented, seconded by Rep. Bowles. The motion was unanimously approved.

With all matters having been dealt with, the meeting was adjourned at approximately 2:45 p.m.

**Action Taken by Ballot by  
the Legislative Council Since  
the March 24, 2005 Council Meeting**

**1. Request for Introduction of Legislative**

- A. LR 2342:      An Act to Minimize the Risk to Maine's Marine Water and Organisms  
                      Posed by the Application of Pesticides  
Submitted by:    Representative Leila Percy  
Accepted:        March 23, 2005, 10 – 0 – 0 – 0

DAVID E. BOULTER  
EXECUTIVE DIRECTOR  
OF THE LEGISLATIVE COUNCIL



MAINE STATE LEGISLATURE  
OFFICE OF THE EXECUTIVE DIRECTOR  
LEGISLATIVE COUNCIL

**Memo**

To: Legislative Council Members  
From: *Dave* Dave Boulter, Executive Director  
Date: March 20, 2005  
Re: Request by Council of State Governments to fund NSAAS

Please find a request by the Council of State Governments that the State of Maine share in the funding of the Northeast States Association for Agricultural Stewardship (NSAAS). Maine's share for FY 06 is \$10,000. Please also find correspondence from CSG's director of NSAAS Marge Kilkelly that provides additional information about the association's relevance to Maine.

If you have any questions, I would be happy to answer them at the Legislative Council meeting.

Thank you.

Attachments

G:\COUNCIL\122nd\Misc\Memo to Mbrs-CSG req to fund NSAAS-3-2-05.doc



February 18, 2005

*Eastern Regional Conference*

*40 Broad Street, Suite 2050*

*New York, NY 10004-2317*

*Phone: (212) 482-2320*

*Fax: (212) 482-2344*

TO: Senator John Nutting  
Representative John Piotti

FROM: Alan V. Sokolow, Director, CSG Eastern Office *AVS*  
Marge Kilkelly, Director, NSAAS *MK*

RE: CSG/ERC Northeast States Association for Agricultural  
Stewardship FY 2006 Budget Request

*o-Chairs*  
Senator Toni Nathaniel Harp  
o-Chair, Appropriations Committee  
Connecticut

Representative Robert Godfrey  
House Deputy Majority Leader  
Connecticut

*o-Vice Chairs*  
Senator Rafael Musto  
Minority Chair, Senate Environmental  
Resources & Energy Committee  
Pennsylvania

Representative Raymond Bunt, Jr.  
Majority Caucus Secretary  
Connecticut

Director  
Alan V. Sokolow

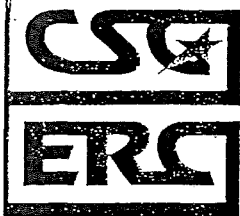
I am attaching a request for dues to be budgeted for Maine's proportionate share of the funding of the Council of State Governments' Eastern Regional Conference Northeast States Association for Agriculture Stewardship (NSAAS). The amount for FY '06 is \$10,000 and I would respectfully request that it be placed in the Legislative Council budget as do other membership dues items.

NSAAS's mission is to facilitate greater cooperation among its member states and jurisdictions in agriculture policy, with a particular focus on influencing federal policy, regulation and funding to benefit and protect the interests of the region's small and medium sized farms. The legislative chairs and key members from the region serve as the NSAAS Board of Directors with the Commissioners serving in an advisory capacity.

We work diligently to keep you and your colleagues up to date on the issues effecting rural communities. This past year has seen our weekly e-newsletter "NSAAS News Gleanings" readership expanded to nearly 900; farmers, legislators, federal and state ag staff and others. The international Legislative Ag Chairs meeting, co-sponsored by CSG, was attended by 21 northeast legislators and staff. The first Annual Rural Leaders Roundtable, held during our annual meeting in 2004 was attended by nearly 40 individuals. NSAAS is working hard for you, and with your support we can continue to provide quality information and advocacy for the northeast.

Should you have any questions, please contact me at your earliest convenience. We greatly appreciate Maine's support of the Council of State Governments' Eastern Regional Conference and its Northeast States Association for Agricultural Stewardship.

cc: Representative Nancy Smith  
David Boulter



*Eastern Regional Conference*  
40 Broad Street, Suite 2050  
New York, NY 10004-2317  
Phone: (212) 482-2320  
Fax: (212) 482-2344

*Co-Chairs*  
Senator Toni Nathaniel Harp  
Co-Chair, Appropriations Committee  
Connecticut

February 17, 2005

Representative Robert Godfrey  
House Deputy Majority Leader  
Connecticut

*Co-Vice Chairs*  
Senator Rafael Musto  
Minority Chair, Senate Environmental  
Resources & Energy Committee  
Pennsylvania

Representative Raymond Bunt, Jr.  
Majority Caucus Secretary  
Connecticut

Director  
Alan V. Sokolow

## STATE OF MAINE

### Appropriations Request

FOR: Contribution to the Council of State Governments' Eastern Regional Conference  
(CSG/ERC) Northeast States Association for Agriculture Stewardship (NSAAS).

Fiscal Year July 1, 2005 - June 30, 2006 ..... \$10,000

(Federal Identification Number: 36-6000818)

*Thank You for Your Continued Support.*

*Please make check payable to:*

**CSG/ERC Northeast States Association for Agriculture Stewardship**

*and return to:*

**Council of State Governments**  
40 Broad Street - Suite 2050  
New York, NY 10004  
Attn: Pamela Stanley





## Northeast States Association for Agricultural Stewardship

An affiliate of The Council of State Governments' Eastern Regional Conference

5 McCobb Road, Dresden, ME 04342 • Phone: (207) 737-4717 • Fax: (207) 737-2280 • Cell: (207) 380-7783 [milkelly@csg.org](mailto:milkelly@csg.org)

To: Maine Legislative Council  
From: Marge Kilkelly, Director NSAAS  
Re: NSAAS Dues  
March 15, 2005

Thank you very much for your consideration of the request for a dues item in the budget of \$10,000.

The Northeast States Association for Agricultural Stewardship (NSAAS) was created to strengthen the voice of northeast legislators interested in agriculture and rural viability. We had learned hard lessons about trying to "go it on our own" state by state; issue by issue and found ourselves always responding and reacting to policy, never being involved in developing it. The 2000 Farm Bill was the perfect catalyst for cooperation. We were very pleased with our ability to reach consensus on priorities and work with Fran Boyd, the NSAAS Washington Representative to see many of our proposals included in the final bill.

My job with NSAAS is to keep abreast of topical issues; inform members of regional and federal activities; provide briefings in each state for the Ag committees each year and develop partnerships that will enhance our role in advocating for the agriculture sector and rural communities of the Northeast. While the CSG/ERC office is located in New York City, I work from my home office in Maine.

The NSAAS News Gleanings, a weekly e-newsletter, is now being circulated to nearly 900 people and organizations each week.

Recently NSAAS worked with our other Council of State Governments (CSG) partners to host the third annual Legislative Ag Chairs (LAC) Meeting in Memphis TN an international meeting of over 180 Ag Legislators from the United States, Canada and Mexico. LAC was attended by 21 northeast legislators including Mainer Rep. Nancy Smith, Rep. Lelia Percy and Rep. John Piotti. The only cost to the state of Maine for their participation was travel as CSG took on the challenge of fundraising for all other expenses.

As an example of our efforts to work with every northeast state for the benefit of all the northeast in 2003; I worked with the Maine Potato Board and Soil and Water Conservation Districts (SWCD) to develop language for a resolution regarding the proposed Environmental Quality Incentive Program (EQIP) rules; which, as written, were detrimental to our region. This resolution was passed by five states in our region and forwarded to their Congressional representatives. Ultimately the language was included in a "Dear Colleague" letter circulated by Senator Susan Collins (ME) and, as a result, several changes were included in the final rule. Clearly it was a lesson in how we can work together to accomplish our goals.

Finally, it is important to note that health of the rural economy of Maine is critical to the health of the entire economy. According to the National Agriculture Statistics Services, in 2002 Maine agriculture and agriculture related jobs accounted for nearly 1 out of every 6 jobs in the state; employed over 17% of the rural Maine workforce and sold over \$78 million in products. In order to provide members and consumers with that information and more NSAAS has developed and is getting printed a brochure focusing on the importance of agriculture to the economy. These are in printing now, at a Maine printing company, and will be available by the end of March.

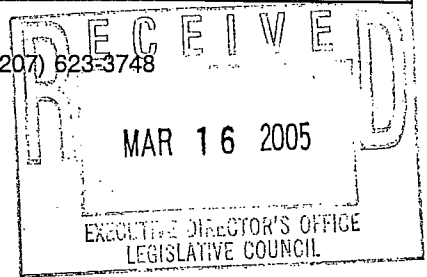
The ten state region included in NSAAS runs from Delaware to Maine and includes Puerto Rico, the Virgin Islands, Nova Scotia, New Brunswick and Quebec. The original dues structure include \$25,000 per state which would have covered a full time professional staff person, a full time clerical support person, a Washington representative and the various office and travel costs. As budgets have been under pressure we made cuts as well. The current level of requests range between \$10,000 and \$25,000 and covers a minimal work plan with the one professional staff and a limited availability of support from the Washington representative. Among member states and territories more than half have provided dues at some time and several have consistently paid a full share of \$25,000 per year which has allowed us to continue this work. Maine paid \$25,000 in 2000; \$10,000 in 2001 and \$5,000 in 2002. There was not an appropriation in 2003 or 2004.

Please let me know if I can provide additional information to you. I regret that I cannot be at the meeting as I will be in Albany, NY for a discussion with the American Farmland Trust about northeast priorities for the 2007 Farm Bill.



**Maine Association of Conservation Districts**

P.O. Box 152 - Hallowell, ME 04347 - Phone (207) 622-4443 - FAX (207) 623-3748



David E. Boulter,  
Executive Director  
Legislative Council  
112<sup>th</sup> Maine State Legislature  
Augusta, Maine 04333-0115

March 15, 2005

Dear Mr. Boulter:

On behalf of Maine's sixteen Soil and Water Conservation Districts, I am writing in support of Council funding for the Northeast States Association for Agricultural Stewardship (NSAAS).

Maine's Soil and Water Conservation Districts are "instrumentalities of the State of Maine", established under federal and state law, and under jurisdiction of the Maine Department of Agriculture. They serve as partners for the Conservation Technical Assistance and 2002 Farm Bill programs delivered by the U.S. Department of Agriculture's sixteen regional offices throughout Maine. These programs currently provide approximately \$13 million in USDA funds annually in cost-share funds for Maine landowners, communities, watershed groups, and others installing conservation practices on the land. Maine's waters are considerably cleaner, as result. The Conservation Districts are also major components in the delivery of Maine DEP programs.

One of the primary missions of our Districts and our Association is to maximize the federal funding for Maine, primarily from USDA but also from EPA. Marge Kilkelly's work with the NSAAS has been invaluable in this regard. The Northeastern states have traditionally failed to share in USDA appropriations, which until 2002 were primarily directed to support of commodity crop producers—corn, soy, cotton, and wheat. This imbalance was substantially corrected in the 2002 Farm Bill, which for the first time included "Regional Equity" in the Conservation Title of the Farm Bill, assuring Maine and the other "underserved" states at least \$12 million each. This represented a five-fold increase in the federal cost-share funds available for producers improving their nutrient management (manure storage) and other conservation practices. As result, the funds provided by the Maine Legislature for this purpose, through appropriations and a series of bond issues, have been very successfully leveraged.

"Regional Equity" would not have become part of the 2002 Farm Bill had the Northeastern states not organized around this concept. NSAAS made "Regional Equity" one of its top two priorities (the other was support for dairy farmers) and played a vital role in focusing the Northeast Congressional Delegation on this subject.

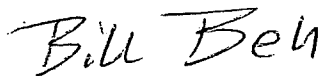
There was considerable disappointment among Northeast landowners when USDA published for comment its initial rules for implementation of Regional Equity and the 2002 Farm Bill. NSAAS again played a vital role in organizing and coordinating comment from different states. The comments submitted by the State Legislature in a state in the Southern tier of the Northeast were virtually identical to those submitted by the Maine Potato Board, which had shared its comments with NSAAS.

NSAAS is the one agricultural organization organized along Northeast regional lines; most others, such as American Farm Bureau, National Potato Council, and our own National Association of Conservation Districts, are organized on a national basis, and unable to fully reflect Northeast priorities which, in agriculture, are vastly different from those of the rest of the country.

Early next month, our Maine Association of Conservation Districts will be visiting Members of Congress to set forth issues important to Maine landowners and communities. These issues will include forestry and clean water programs, as well as agriculture. Our message will be reinforced by delegations from the other Northeast states, in their visits to their Congressional offices. For the third year in a row, Marge Kilkelly and NSAAS have helped our Northeast Conservation Districts develop a common message, through a Leadership Conference held over two days in Portsmouth every year. Marge Kilkelly and possibly a specialist from the Council of State Governments' Washington office will again accompany us on our visits.

Support of NSAAS is one of the best expenditure of Maine tax dollars which our state can make, and we are grateful that the Legislative Council and Maine Legislature are considering such support.

Sincerely,

A handwritten signature in cursive script that reads "Bill Bell".

William Bell  
Executive Director

P.S. The state Soil and Water Conservation Districts of the Northeast are currently seeking to organize along state lines—NSAAS has been very helpful in this regard—and will also be considering budgetary support for NSAAS.

STATE OF MAINE

KENNEBEC, ss.

SUPERIOR COURT  
CIVIL ACTION  
DOCKET NO. CV-04-97

W. TOM SAWYER, JR.,  
ROBERT A. DAIGLE,  
ALBION D. GOODWIN and  
GARY E. SUKEFORTH,

Plaintiffs

v.

DECISION AND ORDER

THE LEGISLATIVE COUNCIL,  
BEVERLY C. DAGGETT,  
PATRICK COLWELL, and  
DAVID E. BOULTER,

Defendants

This matter is before the court on cross-motions for summary judgment pursuant to M.R. Civ. P. 56. The present dispute involves a claim by the Plaintiffs, former Maine Legislators, that they are due compensation for service during the Second Special Session of the 121<sup>st</sup> Maine Legislature. Maine legislators are elected to serve for two-year terms, and the Legislature holds sessions during each of these years. The so-called First Regular Session begins on the first Wednesday of December following the November general election. *See* Me. Const. art. IV, pt. 3, § 1. The statutory deadline for the end of the First Regular Session is the third Wednesday in June. *See* 3 M.R.S.A. § 2 (2004). The so-called Second Regular Session begins on the first Wednesday after the first Tuesday in January of the following year. *See* Me. Const. art. IV, pt. 3, § 1. The statutory deadline for the end of the Second Regular Session is the third Wednesday in April. *See* 3 M.R.S.A. § 2 (2004). Although the Maine Constitution does not limit the type of business that may be conducted during the First Regular Session, the Constitution limits the business of the Second Regular Session to budgetary and other

specifically enumerated matters. *See* Me. Const. art. IV, pt. 3, § 1. Because legislators generally work five days a week when the legislature is in session, a First Regular Session involves approximately 120 days of work in Augusta and a Second Regular Session involves approximately 80 days of work in Augusta.

Article IV, Part 3, § 7 of the Maine Constitution states that legislators shall receive such compensation "as shall be established by law". Current law provides legislators with compensation of approximately \$19,000.00 for the two-year term. *See* 3 M.R.S.A. § 2 (2004).

In addition to the First and Second Regular Sessions, the Legislature may call itself, or be called by the Governor, into "special session." At the time of the Second Special Session of the 121<sup>st</sup> Maine Legislature, 3 M.R.S.A. § 2 provided that "[i]n addition to the salary paid for the first and second regular sessions of the Legislature, when a special session is called, the members of the Senate and House of Representatives shall each be compensated \$100 for every day's attendance."

The 121<sup>st</sup> Legislature's First Regular Session commenced on December 4, 2002, and adjourned on June 14, 2003. When legislators returned in January of 2004 for the Second Regular Session, it was generally understood by the Plaintiffs that the session would likely last until the middle or end of April due to the volume of work to be accomplished. One of the tasks facing legislators when they returned for the Second Regular Session was to enact a supplemental budget. The supplemental budget must take effect by the end of the fiscal year, which occurs annually on June 30.

The Maine Constitution mandates that legislation does not take effect until ninety days after the adjournment of the legislative session in which it was enacted. *See* Me. Const. art. IV, pt. 3, § 16. The State Constitution, however, also contains a limited exception that applies in the case of an emergency. Under this exception, if a bill

contains a preamble stating the facts constituting the emergency, and the bill passes both houses by a 2/3 majority, the bill may take effect immediately upon signing by the Governor. *See Id.* Hence, in years past, the Legislature typically ensured that the budget took effect before the end of the fiscal year by passing budgets as emergency measures by a 2/3 majority.

During the 121<sup>st</sup> Legislature's Second Regular Session, however, efforts to pass the supplemental budget by a 2/3 majority were unsuccessful, and instead, the budget received the approval of only a simple majority of the members. Therefore, to ensure that the supplemental budget took effect by June 30, a majority of the Legislature voted to adjourn the Second Regular Session on January 30, thereby beginning the running of the 90-day period. This action, however, meant that the Legislature had adjourned without addressing numerous other pending matters. Thus, before adjourning on January 30, and apparently realizing that a special session would be required to complete this unfinished business, the Legislature twice attempted to block the statutory \$100 per day payments that might otherwise be forthcoming. First, an Emergency Resolve was introduced and failed. The second measure introduced, however, a Joint Order, managed to pass both houses by a simple majority. The Joint Order did not purport to change the existing law, but rather, it stated that current law already provided for legislative compensation through April 21, 2004, the statutory adjournment date for the Second Regular Session.

Subsequent to the passage of the Joint Order, several senators asked the Attorney General to give an opinion as to the Order's effectiveness. The Attorney General concluded that the Joint Order was likely not effective to eliminate the special session payments because the State Constitution requires legislative pay to be "established by law". This requires that an act or resolve pass both houses of the Legislature and then

be signed by the Governor. The Attorney General did, however, suggest that the special session payments could possibly be eliminated by amending the legislative pay statute and by making the amendment retroactive to January 30, 2004.

Thus, during the Second Special Session, a bill was introduced to eliminate special session payments retroactive to January 30, 2004, just as the Attorney General suggested. Both the House and Senate passed the bill, which was signed by the Governor on May 6, 2004. The Act amended 3 M.R.S.A. § 2 to specify that special session payments would not be made for any special session called during the time period specified for regular sessions. *See* P.L. 2003, ch. 691, §§ 1, 2. Because the bill was not an emergency measure, it did not take effect until July 30, 2004, ninety days after the Second Special Session adjourned.

Each of the Plaintiffs to the present action, W. Tom Sawyer, Jr., Robert A. Daigle, Albion D. Goodwin, and Gary E. Sukeforth (hereinafter "the Plaintiffs" or "the Legislators") served as members of the Maine Legislature during the Second Special Session of the 121<sup>st</sup> Maine Legislature, which began on February 3, 2004, and ended on April 30, 2004. On or before May 3, 2004, each of these individuals requested payment from Defendant David Boulter, Executive Director of the Legislative Council, of \$100 for each day of their attendance at the Second Special Session. Each of these requests was denied<sup>1</sup>.

The Plaintiffs filed their complaint on May 12, 2004, filed their amended complaint<sup>2</sup> on May 13, 2004, and filed their motion for summary judgment on August 24, 2004. All submissions relevant to Plaintiffs' motion were timely filed. The

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<sup>1</sup> All legislators apparently were paid \$100 per day for days in attendance at the Second Special Session after April 21, 2004 pursuant to the amended version of 3 M.R.S.A. § 2.

<sup>2</sup> The amended complaint is in three counts. Count I seeks a declaratory judgment; count II asserts a claim of breach of contract; count III asserts a claim for unpaid wages pursuant to 26 M.R.S.A. § 626-A.

Defendants filed their motion for summary judgment on September 28, 2004. All Submissions relevant to Defendants' motion were also timely filed.

The Law Court has explained that:

Summary judgment is no longer an extreme remedy. It is simply a procedural device for obtaining judicial resolution of those matters that may be decided without fact-finding. Summary judgment is properly granted if the facts are not in dispute or, if the defendant has moved for summary judgment, the evidence favoring the plaintiff is insufficient to support a verdict for the plaintiff as a matter of law.

*Curtis v. Porter*, 2001 ME 158, ¶ 7, 784 A.2d 18, 21-22. Summary judgment is proper if the citations to the record found in the parties' Rule 56(h) statements demonstrate that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. See *Dickinson v. Clark*, 2001 ME 49, ¶ 4, 767 A.2d 303, 305. "A fact is material if it has the potential to affect the outcome of the case under governing law." *Levine v. R.B.K. Caly Corp.*, 2001 ME 77, ¶ 4, n.3, 770 A.2d 653, 655, n.3 (citing *Burdzel v. Sobus*, 2000 ME 84, ¶ 6, 750 A.2d 573, 575). "The invocation of the summary judgment procedure does not permit the court to decide an issue of fact, but only to determine whether a genuine issue of fact exists. The Court cannot decide an issue of fact no matter how improbable seem the opposing party's chances of prevailing at trial." *Searles v. Trustees of St. Joseph's College*, 1997 ME 128, ¶ 6, 695 A.2d 1206, 1209 (quoting *Tallwood Land & Dev. Co. v. Botka*, 352 A.2d 753, 755 (Me. 1976)). To avoid a judgment as a matter of law for a defendant, a plaintiff must establish a prima facie case for each element of her cause of action. See *Fleming v. Gardner*, 658 A.2d 1074, 1076 (Me. 1995).

#### 1. Is This a Non-Justiciable Dispute?

In their brief, the Defendants first assert that the present action, which is essentially a dispute within the Legislature regarding the budget process, presents a



nonjusticiable political question. The Defendants note that the Plaintiffs filed this lawsuit in an effort to shape the budgetary process in the future because they were unhappy that the majority did not make more concessions to achieve a 2/3 majority on the supplemental budget. In the Defendants' view, this is a purely political question within a coordinate branch of state government, and the Court should permit the Legislature to deal with the issue on its own.

In support of their position, the Defendants first set forth the most commonly cited statement of the political question doctrine:

Prominent on the surface of any case held to involve a political question is found a textually demonstrable constitutional commitment of the issue to a coordinate political department; or a lack of judicially discoverable and manageable standards for resolving it; or the impossibility of deciding without an initial policy determination of a kind clearly for nonjudicial discretion; or the impossibility of a court's undertaking independent resolution without expressing lack of the respect due coordinate branches of government; or an unusual need for unquestioning adherence to a political decision already made; or the potentiality of embarrassment from multifarious pronouncements by various departments on one question.

*Baker v. Carr*, 369 U.S. 186, 217 (1962). The Defendants contend that at least three of these factors are present here. First, they assert that Maine's Constitution clearly commits to the Legislature the power to set its own compensation by statute. Since a majority in the Legislature has already decided that its members should not receive extra pay for the Second Special Session, they believe that the Court should acquiesce in this decision. Second, the Defendants contend that if the Court attempted to adjudicate this dispute, it would show a lack of respect for the Legislature. This argument rests on the fact that Plaintiffs have admitted filing this suit merely to affect the legislative budget process, and it should remain up to the Legislature how that process plays out. Finally, the Defendants suggest that there is an unusual need here for adhering to the Legislature's decision regarding special session payments. In particular, they assert that

the Legislature eliminated the payments in recognition of the fact that its members were performing the work of a regular session in the context of a special session, and it would be inappropriate for taxpayers to, in essence, pay twice.

In response, the Plaintiffs point out that although this action arises out of a budget dispute in the Legislature, they do not ask the Court to interfere with that process or to take action that would limit the Legislature's ability to act in the future. Instead, while recognizing that the parties and circumstances of this action are unusual, they assert that the requests for relief and need for Court interpretation of Constitutional and statutory provisions are not.

The Plaintiffs also believe that none of the factors espoused in *Baker* are present in this case. The Legislators first point out that the issue in *Baker* was the constitutionality of legislative districts created by a state legislature. Although there was no dispute that the legislature had the power to apportion legislative districts, the Supreme Court held that despite that grant of power, a Constitutional challenge to the districts created by the use of that power was not a political question. Hence, the Plaintiffs assert that more than a simple grant of power to a political branch is needed to create a political question – that branch must also be given the power to resolve disputes concerning the use of that power. As an example, the Legislators note that the Maine Constitution gives the Legislature the exclusive power to “be the judge of the elections and qualifications of its own members”. Me. Const. art. IV, pt. 3, § 3. Conversely, to show the weakness of the Defendants’ argument, the Plaintiffs note that the Legislature is also given the power of taxation, yet the Courts have never concluded that the Legislature’s use of that power is immune from a Constitutional challenge in court.

In response to the Defendants' argument that this Court would be expressing a lack of respect for the Legislature by becoming involved, the Plaintiffs note that this same argument was unsuccessfully raised in *Baker*. Instead, the Supreme Court determined that when a court's decision would require no more than an interpretation of the law, it does not involve a lack of respect due a coordinate branch of government. The Legislators assert that in this case all that is required is an interpretation of the law.

Lastly, in response to the suggestion that the Legislature was attempting to lessen the impact of special sessions payments on the State Treasury, the Plaintiffs simply respond that this is no defense for violating the Constitution.

In light of the foregoing, it appears that this Court may properly hear and decide the present case. It is true that the facts underlying this dispute implicate political processes. However, this on its own is insufficient to make the issues presented nonjusticiable. Indeed, "the mere fact that the suit seeks protection of a political right does not mean it presents a political question." *Baker*, 369 U.S. at 209. In this case, the Plaintiffs seek an interpretation of Maine statutes and the State Constitution, functions that are well within the authority of the Court. Moreover, the Defendants have failed to persuade the Court that the factors espoused in *Baker* show this to be a nonjusticiable dispute. Therefore, the Court will proceed to consider the other substantive arguments raised in the briefs.

## 2. Can a Joint Order Lawfully Affect a Change in Legislative Pay?

The Plaintiffs argue that the Joint Order of January 30, 2004, was ineffective to deny legislators \$100 for each day's attendance at the Second Special Session prior to April 22, 2004. In support of their position, the Plaintiffs cite two Law Court opinions from the 1950's. In *Opinion of the Justices*, 96 A.2d 749 (Me. 1953), the House asked the Justices if the Legislature could authorize reimbursement for expenses to legislators by

joint order. In its opinion, the Law Court distinguished between expenses necessary for operation of the Legislature, which can be provided for by an order, and the payment of personal expenses of legislators, which can only be provided for by a law passed by both Houses of the Legislature and signed by the Governor. *See Id.* at 750. The Plaintiffs also find pertinent the conclusion that legislative compensation can only be *effected* by act or resolve, and point out that the Law Court did not limit such formalities merely to *increases* in compensation. *See Id.* at 751. In *Opinion of the Justices*, 140 A.2d 762 (Me. 1957), the House asked the Law Court if the Legislature could increase the amount paid to legislators for travel by joint order. In finding that such an increase could only be accomplished by law, the Justices explained that "[a] Legislature by order, as here, if such a view prevailed, could destroy completely the mandate of the statute." *Id.* at 764. Based on these two opinions, the Plaintiffs assert that any terms of the Order that made changes to legislative compensation needed to have been enacted by statute to comply with the State Constitution.

Based on this framework, the Legislators contend that the next question for consideration is whether the compensation provisions of the Order were consistent with the statute that was in effect at the time of its passage, or if it made changes that require a statutory amendment. The Plaintiffs note that 3 M.R.S.A. § 2 sets legislative pay at \$7,725.00 for the second year of the two-year term, and also mandates that the second regular session of the Legislature adjourn no later than the 3<sup>rd</sup> Wednesday in April. Moreover, the version of 3 M.R.S.A. § 2 in effect at the time the Order was passed provided that "in addition to the salary paid for the first and 2<sup>nd</sup> regular sessions of the Legislature, when a special session is called the members of the Senate and House of Representatives shall each be compensated \$100 for every day's attendance." The Plaintiffs point out that the primary rule of statutory construction requires that courts

give effect to the plain meaning of a statute. See *Harding v. Wal-Mart Stores, Inc.*, 2001 ME 13, ¶ 9, 765 A.2d 73, 75. In their view, the "in addition" phrase quoted above requires that the \$100 per diem payment be made during any special session regardless of when it occurs. The Plaintiffs also note that payment to the legislators for service during the second year of a term in office is in no way tied to attendance at or the length of the second regular session. Therefore, the Plaintiffs believe that paying legislators for attendance at a special session held prior to the statutory adjournment date would not amount to paying legislators twice because statutory compensation paid for the second year of a term is not tied to the performance of particular services. Moreover, they believe the system implicitly recognizes that the work of the Legislature continues when the Legislature is not in session.

In opposition, the Defendants concede that the Court should first look to the plain meaning of statutory language. However, they assert that the prior version of 3 M.R.S.A. § 2 was ambiguous with respect to whether legislators are entitled to \$100 per diem under the present circumstances, and thus, legislative intent should be examined. See, e.g., *DiVeto v. Kjellgren*, 2004 ME 133, ¶ 18, 861 A.2d 618, 623. (If statutory language is ambiguous, court will look to other evidence of legislative intent). Furthermore, the Defendants note that the Law Court has even gone as far as to ignore unambiguous statutory language where strict adherence would frustrate the obvious intent of the Legislature. See, e.g., *Town of Union v. Strong*, 681 A.2d 14, 18 (Me. 1996) (Strict construction cannot defeat clear intent of statute or construe statute in an unreasonable manner); *State v. Niles*, 585 A.2d 181, 182 (Me. 1990) (Court can even ignore literal meaning of phrases if that meaning thwarts clear legislative objectives).

As proof of the Legislature's true intent, the Defendants assert that in passing the Joint Order, a majority in both chambers apparently believed that under existing law

they were not entitled to special session payments for special sessions held during the time reserved for regular sessions. Additionally, the Defendants note that the bill passed during the Second Special Session purporting to retroactively eliminate special session payments was entitled "An Act to *Clarify* Legislative Pay." L.D. 1961 (121<sup>st</sup> Legis. 2004) (emphasis in Defendants' brief). The Defendants contend that this also indicates that a majority of the Legislature believed that they were not entitled to special session payments, and only sought to clarify what was not then specifically stated in 3 M.R.S.A. § 2.

The Defendants also believe the history of the legislative pay statutes supports their position. The Defendants note that legislators originally received two dollars for each day of attendance at a session, regardless of whether it was a regular session or an "extra" session. Resolves 1820, ch. 23. Hence, legislative pay was historically based on the number of days of attendance at a session. The Defendants go on to surmise that when a fixed salary was eventually implemented, this was done in recognition of the fact that the length of the regular sessions is predictable. On the other hand, the Defendants speculate that because the length of special sessions is unpredictable, this is probably why legislators still receive per diem compensation for their attendance. Thus, the Defendants assert that the true legislative intent underlying 3 M.R.S.A. § 2 was to base legislative pay on the amount of work and approximate number of days that the Legislature is in session, irrespective of whether those days were spent in regular or special session.

In response, the Plaintiffs contend that if the statute could easily be interpreted to deny per diem pay under the present circumstances as the Defendants suggest, then it would have been unnecessary to introduce measures designed to ensure this result. Additionally, the Plaintiffs note that during a past session of the Legislature, a similar

emergency resolve was introduced to deny per diem pay for attendance at a special session held before the statutory deadline. These actions, in the Plaintiffs view, show that the Legislature actually believed that the pre-amendment version of 3 M.R.S.A. § 2 required the per diem payments regardless of when a special session was held.<sup>3</sup>

The parties have correctly noted the general rule regarding statutory interpretation, as well as the main exceptions thereto. Based on a plain reading of 3 M.R.S.A. § 2 as it existed at the time of the Second Special Session, the only reasonable interpretation of the statutory language requires the per diem payments to be made as argued by the Plaintiffs. Specifically, the "in addition" phrase that appears at the beginning of the sixth paragraph, and the absence of any language tying compensation for regular sessions to the length of those sessions, indicates that special session payments must be made without regard to why or when the regular session adjourned. Although the Defendants raise an interesting issue by delving into the history of legislative pay statutes, they have failed to persuade the Court that the Legislature's true intent was to base compensation on the length of the session. In fact, the Defendants' argument on this point is counterintuitive. If the Legislature meant for legislative pay to mirror days spent in session, the original statute assured this result. Thus, by amending the statute to provide a fixed salary it seems that there existed some alternative reasoning, such as the recognition that legislative work continues even when the Legislature is not in session.

Based on the foregoing, the version of 3 M.R.S.A. § 2 in effect during the Second Special Session did not prohibit special session payments for special sessions held during the time specified for a regular session. Moreover, the Court agrees with the

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<sup>3</sup> One must assume that the requirement that compensation be set by law is somewhat influenced by a public desire that a legislature not arbitrarily and capriciously play with legislative salaries and expenses.

Plaintiffs' interpretation of the two Opinions of the Justices cited above. Indeed, it appears that the Law Court sought to foreclose the possibility of altering the legislative pay statute by a unilateral act of the Legislature, regardless of whether the result would be to increase or decrease compensation. *See Opinion of the Justices*, 152 Me. at 305. Thus, the Joint Order of January 30, 2004, which purported to eliminate these payments, was an unlawful attempt to alter legislative pay. Therefore, as a matter of law, this Court finds that the Joint Order is of no legal effect. Furthermore, this Court declares that under the version of 3 M.R.S.A. § 2 referenced above, the Plaintiffs are entitled to payment of \$100 for each day in attendance at the Second Special Session between February 3, 2004 and April 30, 2004. The Joint Order of January 30, 2004, is ineffective to deny the legislators \$100 for each day's attendance at the Second Special Session prior to April 22, 2004.

3. Does 3 M.R.S.A. § 2 As Amended Apply in this Case?

Next, this Court must determine whether the amended version of 3 M.R.S.A. § 2 applies retroactively to prohibit special session payments for attendance at the Second Special Session between February 3<sup>rd</sup> and April 21<sup>st</sup> of 2004. As noted above, the amendment was signed by the Governor on May 6, 2004, the Plaintiffs filed their complaint on May 12, 2004, and the amendment became effective on July 30, 2004. The Plaintiffs argue that under these circumstances, their case constitutes a "pending proceeding" entitled to the protection of 1 M.R.S.A. § 302. 1 M.R.S.A. § 302 provides, in part, "[t]he repeal or amendment of an Act or ordinance does not affect...any action or proceeding pending at the time of the repeal or amendment.... Actions and proceedings pending at the time of the passage, amendment or repeal of an Act or ordinance are not affected thereby."



The Plaintiffs argue that the Law Court has made inconsistent rulings as to whether section 302 applies to actions that are filed after a statutory change is enacted but before the change in the law becomes effective. However, the Plaintiffs assert that most of the authority supports the position that section 302 applies when, as here, a complaint is filed after a statutory change is enacted, but before the change has gone into effect. Specifically, they recognize that in *Heber v. Lucerne-in-Maine Village Corporation*, 2000 ME 137, 755 A.2d 1064, and *Fishermens Landing, Inc. v. Town of Bar Harbor*, 522 A.2d 1312 (Me. 1987), the Law Court reached a conclusion that directly contradicts their position on this point, but in *Morrisette v. Kimberly-Clark Corp.*, 2003 ME 138, 837 A.2d 123, *Bernier v. Data General Corp.*, 2002 ME 2, 787 A.2d 144, *State v. Haskell*, 2001 ME 154, 784 A.2d 4, *DeMerchant v. DeMerchant*, 2001 ME 66, 780 A.2d 1134, *Loud v. Kezar Falls Woolen Co.*, 1999 ME 118, 735 A.2d 965, *Weeks v. Allen & Coles Moving Systems*, 1997 ME 205, 704 A.2d 320, *Kinney v. Great Northern Paper, Inc.*, 679 A.2d 517 (Me. 1996), *Peavey v. Taylor*, 637 A.2d 449 (Me. 1994), *State v. Dyer*, 615 A.2d 235 (Me. 1992), *DeMello v. Department of Environmental Protection*, 611 A.2d 985 (Me. 1992), *Moore v. Moore*, 586 A.2d 1235 (Me. 1991), and *Schlear v. Fiber Materials, Inc.*, 574 A.2d 876 (Me. 1990), the Law Court reached the opposite result. Furthermore, the Legislators contend that their position is the most practical one because neither the Maine Revised Statutes nor the Laws of Maine indicate when a statute was enacted – both refer only to the effective date of the statute. Hence, the contrary view would require courts to look to the legislative records for laws passed but not yet on the books whenever making a ruling.

In response, although the Defendants concede that the Law Court has in certain cases referred to the effective date of statutes when applying section 302, they believe that *Heber* and *Fishermens Landing* provide a more accurate statement of the law.

Particularly, the Defendants note that the Law Court specifically discussed and analyzed whether the effective date or the enactment date controls in *Heber* and *Fishermens Landing*, whereas in the cases relied upon the Plaintiffs, the Law Court provided no such analysis. Furthermore, the Defendants believe that their proffered interpretation is more consistent with the language of section 302, which refers to proceedings pending at the time of "passage." The Defendants point out that the Law Court in *Fishermens Landing* equated that term with "enactment," as opposed to "effectiveness." See *Fishermens Landing*, 522 A.2d 1312-13 (citing BLACK'S LAW DICTIONARY 1012 (5<sup>th</sup> ed. 1979)).<sup>4</sup>

After due consideration, it is apparent that the Defendants have presented the more persuasive argument regarding the operative date for the applicability of 1 M.R.S.A. § 302. While the inconsistencies noted by the parties are indeed puzzling, the *Heber* and *Fishermens Landing* decisions provide the most direct analysis of the question presented, and are therefore entitled to the greatest deference. Thus, this Court finds as a matter of law that a "pending proceeding" for the purposes of section 302 is one that commenced prior to the date of *enactment* of the act or ordinance in question. As the parties dispute neither the date that the amendment to 3 M.R.S.A. § 2 was enacted, nor the date that the Plaintiffs filed their complaint, this Court further concludes that 1 M.R.S.A. § 302 does not bar application of the amended statute to the Plaintiffs' claims.

#### 4. Do the Plaintiffs Have a Vested Right to Receive Special Session Payments?

Irrespective of whether a statute purports to operate retroactively, the Plaintiffs assert that when a complaint is filed after a change in the law, but states a cause of

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<sup>4</sup> The current version of Black's Law Dictionary (7<sup>th</sup> ed.) defines "passage, 1. The passing of a legislative measure into law." That same edition defines "enact, 1. To make it a law by authoritative act; to pass." This supports the favorable comparison of passage as enactment.

action that accrued before the change, courts look to common law principles to determine whether the new or old law applies. See *Heber*, 2000 ME 137, ¶ 10, 755 A.2d at 1066. Moreover, the Plaintiffs note that at common law, an individual has a vested right in an accrued cause of action, and a statutory enactment cannot act to defeat that cause of action retroactively. See *Dobson v. Quinn Freight Lines, Inc.*, 415 A.2d 814, 815-16 (Me. 1980). Since, in their view, they had a cause of action for unpaid compensation before the amendment to 3 M.R.S.A. § 2 was adopted, applying the amended statute would impermissibly change the nature of a vested right accrued pursuant to the prior version of the statute.

The Plaintiffs also discuss the applicability of the Law Court's holding in *Norton v. Blouin, Inc.*, 511 A.2d 1056 (Me. 1986), to the facts of this case. In *Norton*, the Law Court stated that "[i]f the Legislature intends a retroactive application, the statute must be so applied unless the Legislature is prohibited from regulating conduct in the intended manner, and such a limitation upon the Legislature's power can only arise from the United States Constitution or the Maine Constitution." *Id.* at 1060, n.5. Although this statement of the law directly conflicts with the common law approach espoused in *Heber*, the Plaintiffs emphasize that, in light of *Heber*, the Law Court has obviously not abandoned extra-constitutional methods of limiting legislative power to retroactively affect vested rights. However, even under the narrower view expressed in *Norton*, the Plaintiffs believe that the amendment under consideration should not be applied. Essentially, the Legislators suggest that their right to payment arises from Article IV, Part Third, § 7 of the Maine Constitution, and hence, even under *Norton*, applying the amended version of 3 M.R.S.A. § 2 would be inappropriate.

As for the specific source of their cause of action, the Legislators point to 26 M.R.S.A. § 626-A. According to the Plaintiffs, under the provisions of section 626-A,

their cause of action accrued, and thus became vested, eight days after they made a demand for unpaid wages, and the wages did in fact remain unpaid. Also, implicit in this argument is an assertion that this eight-day period lapsed prior to the change in the law.

In opposition, the Defendants first argue that the amendment to 3 M.R.S.A. § 2 can be applied retroactively because it can survive the three-part test governing challenges to retroactive economic legislation under the due process clause of the Maine Constitution. See *State v. L.V.I. Group*, 1997 ME 25, ¶ 9, 690 A.2d 960, 964. To satisfy this test, it must be shown that "1. The object of the exercise must be to provide for the public welfare. 2. The Legislative means employed must be appropriate to the achievement of the ends sought. 3. The manner of exercising the power must not be unduly arbitrary or capricious." *Id.* Accordingly, the Defendants note that the object of the legislation was to protect already strained state coffers, eliminating special session payments was an appropriate way to achieve this goal, and all legislators were equally affected by this action. Hence, in their view, the three-part test espoused in *L.V.I. Group* was easily satisfied.

Secondly, the Defendants argue that because this legislation was actually a clarification of existing law, and did not affect any real change in the law, the amendment may be applied retroactively. In support of this proposition, the Defendants cite to the "curative" exception to the general rule against retroactive application of statutes, whereby an amendment to a statute may apply retroactively where it is designed merely to carry out or explain the intent of the original legislation. See Norman J. Singer, *Sutherland on Statutory Construction* § 41:11, at 469-70 (6<sup>th</sup> ed. 2001).

In addition, the Defendants contend that the statute may be applied retroactively because the Legislators had no reasonable expectation of receiving special session payments under the present circumstances.

Lastly, the Defendants assert that because pre-amendment 3 M.R.S.A. § 2 is susceptible to different interpretations with respect to the per diem payments, the Plaintiffs could not reasonably have expected that such payments would be made. Therefore, the Legislators never acquired a vested right in the special session payments.

In response to these arguments, the Plaintiffs characterized their claim as arising under the Maine Constitution. This obviously depends upon a proper interpretation of the language, "...shall receive such compensation, as shall be established by law;". Further language requires that the expenses of members of the House of Representatives shall be paid by the State out of the public treasury but *quaere*, does the Constitution require that legislators receive a salary at all if it was established by law to set the legislative compensation at zero? Notwithstanding that uncertainty, it is clear that the true source of the Plaintiffs' alleged right to compensation is the statute itself. Moreover, even if the United States Constitution would permit the retrospective application of the amended statute to the Plaintiffs' claims, the Law Court has apparently adhered to a different approach based on common law principles, as illustrated in *Heber*. Also, as discussed above, the purported amendment was not simply an attempt to clarify the law as the Defendants suggest, but rather, it was in fact a substantive change. Thus, the remaining arguments presented by the Defendants are without merit.

Based on the foregoing, and particularly in light of the *Heber* decision, so long as the Plaintiffs' cause of action did in fact accrue prior to the change in the law, they have a vested right in that cause of action. Furthermore, the Legislature's attempt to

retroactively defeat their cause of action is ineffective. *See Heber*, 2000 ME 137, ¶ 10, 755 A.2d at 1066. The Law Court considers the date upon which this law "changes" in this context to be the date that the law becomes effective, not the enactment date. *See Heber*, 2000 ME 137, ¶ 12, n.5, 755 A.2d at 1067.

5. Do the Plaintiffs Have a Cause of Action Pursuant to 26 M.R.S.A. § 626-A?

The Plaintiffs claim that because the Defendants failed to make timely payment of wages (the per diem payments) as required by 26 M.R.S.A. § 621-A, they, as employees, are entitled to the remedies available under 26 M.R.S.A. § 626-A. At the threshold, the Plaintiffs recognize that there is a question as to whether these sections apply to them, as duly elected and sworn members of the Maine Legislature. The Plaintiffs note that there is no statutory definition of "employer" or "employee" which is made applicable to these sections.<sup>5</sup> Thus, the Legislators suggest that such undefined terms in a statute should be given their common and generally accepted meaning, unless the context of the statute clearly indicates otherwise. *See State v. York*, 1997 ME 209, ¶ 9, 704 A.2d 324, 326. Accordingly, they offer the definition of employee found in BLACK'S LAW DICTIONARY, 5<sup>th</sup> Edition, which is, *inter alia*, "a person working for salary or wages." BLACK'S LAW DICTIONARY 471 (5<sup>th</sup> ed. 1979).

In this case, the Plaintiffs believe that the lack of any definition of the term employee in sections 621-A or 626-A shows an intent to include a broad scope of individuals within its meaning. The Legislators also note that several other Maine labor statutes specifically exempt elected officials from their provisions, including sections 663(10), 962(6)(A), 979-A(4-A)(A), and 10143(11)(f)(21)(i)(i) of title 26. However, the

<sup>5</sup> But see 26 M.R.S.A. § 591(2) contained in the same chapter, Employment Practices, as section 626-A in defining "employer" as "an individual, partnership, association, corporation, legal representative, trustee, receiver, trustee in bankruptcy and any common carrier by rail, motor, water, air or express company doing business in or operating within the state."

Plaintiffs also point out that elected officials are not exempted from all Maine labor laws. See 39-A M.R.S.A. § 102(11) (2003). In sum, the Plaintiffs assert that the Legislature has exempted elected officials from Maine's labor laws where it has deemed appropriate, and the failure to do so in this case should be taken to indicate an intent to include elected officials within the scope of the statutes under consideration.

In response, the Defendants first present a defense based on the doctrine of sovereign immunity. The Defendants note that "[t]he immunity of the sovereign from suit is one of the highest attributes inherent in the nature of sovereignty". *Drake v. Smith*, 390 A.2d 541, 543 (1978). Moreover, "a claim against the State will be dismissed 'unless the State, acting through the Legislature, has given its consent that the present action be brought against it.'" *Waterville Industries v. Finance Authority of Maine*, 2000 ME 138, ¶ 21, 758 A.2d 986, 992 (quoting *Drake*, 390 A.2d at 543-44). The Defendants assert that the Legislature can consent by way of an enactment making the State amenable to a particular class of lawsuits, or the legislature can consent to a specific lawsuit. See *Drake*, 390 A.2d at 544-45. But, without legislative consent, the State may not be sued.

In addition, the Defendants note "the general rule in Maine that the State is not bound by a statute unless expressly named therein." *Jenness v. Nickerson*, 637 A.2d 1152, 1158 (Me. 1994) (quoting *State v. Crommett*, 151 Me. 188, 193, 116 A.2d 614 (1955)). Hence, in the absence of an explicit waiver by the Legislature, and because the State is not named in the unpaid wage statute, the Defendants suggest that the State is not subject to claims under 26 M.R.S.A. § 626-A.

Based on the legal propositions espoused in *Drake* and the other cases cited above, it appears that the Plaintiffs' statutory claims for unpaid wages are indeed barred by the doctrine of sovereign immunity. As was the case in *Drake*, the present

Defendants are officials or agencies of the State of Maine. Moreover, the alleged liability to pay money to the Plaintiffs arises by virtue of the Defendants' official activities. *See Drake*, 390 A.2d at 543. Therefore, "[t]he reach of the present action is against the State of Maine as the party to be adjudicated liable to pay the money claimed by the plaintiff[s]." *Id.* Furthermore, "[t]he State of Maine is a necessary party to the action, and sovereign immunity has applicability to require dismissal of the action unless the State, acting through the Legislature, has given its consent that the present action be brought against it." *Id.* at 543-44. It is apparent that the Legislature has not consented to be subject to the remedies provided under 26 M.R.S.A. § 626-A. Further, this court is not satisfied that the State of Maine would be considered an employer as defined in 26 M.R.S.A. § 591.

Less clear, however, and seemingly to the contrary, is whether the State has consented to be liable and subject to a cause of action to members of the Legislature as a result of 3 M.R.S.A. § 2.

#### 6. Did the Defendants Breach a Unilateral Contract?

The Plaintiffs claim that they have a contractual right to the statutory per diem payments required by the pre-amendment version of 3 M.R.S.A. § 2. They concede that certain Law Court holdings establish that a statute will not be presumed to create contractual rights binding future legislatures unless the intent to do so is clearly stated. *See Spiller, et al. v. State of Maine, et al.*, 627 A.2d 513, 515 (Me. 1993) (citations omitted). However, they also assert that the case law distinguishes between contracts for future compensation and for compensation already earned under a contract. *See Bowman v.*



*Maine State Employees Appeals Board*, 408 A.2d 688, 692 (Me. 1979)<sup>6</sup>. Based on this distinction, the Legislators believe that they are entitled to the disputed per diem payments since, in their view, their attendance at the Second Special Session created a unilateral contract.

In response, the Defendants assert that the Plaintiffs would be unjustly enriched if they received the disputed payments because it would essentially amount to paying the Legislators twice for the same work. Moreover, the Defendants contend that the Plaintiffs have no contractual rights in any event.

In the final analysis, the Maine Constitution asserts mandatory language that the Senators and Representatives *shall* receive such compensation, as shall be established by law. (Emphasis supplied). The law, as it existed January 30, 2004, established that each member of a Senate and House of Representatives, "Beginning with the first Wednesday of December 2000 and thereafter, is entitled to ..." That language clearly indicates an intention on the part of the Legislature to establish a salary to be honored until changed. Furthermore, the word "entitled" establishes intent to vest in the members of the Senate and House of Representatives compensation. This vested compensation as of January 30, 2004, created a unilateral contract subject to change and repeal by change in the law. Closely following the language of the common law as presented by *Heber v. Lucerne-in-Maine Village Corp.*, 2000 ME 137; 755 A.2d 1064, when faced with questions regarding the applicability of a statutory change, the Court must first determine what body of law applies to the determination of the controlling statute. If the complaint is filed before the enactment of the statutory change, the general savings provision found in 1 M.R.S.A. § 302 applies. If the complaint is filed after the

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<sup>6</sup> In the Plaintiffs' brief, they cite to page 691 of the Bowman opinion. It is assumed that they meant to reference page 692. This language must be considered distinguishable since it is cited in a context of a contract between a teacher and a governmental employer. Citing *Sawin v. Town of Winslow*, 253 A.2d 694, 700 (Me. 1969).

statutory change is enacted, section 302 by its own terms does not apply. Plaintiffs' complaint was filed May 12, 2004, six days after the enactment of the amended 3 M.R.S.A. § 2. Although the amendment was not effective until July 30, 2004, after plaintiffs filed their complaint, for purposes of section 302, the enactment date, rather than the effective date, controls. Because the repeal was enacted before the plaintiffs filed their complaint, this action was not "pending at the time of the repeal" and section 302 does not apply as the Court has recited above. The court states in *Heber*:

The fact that section 302 does not apply to 'save' the complaint does not, however, end the analysis. When a complaint is filed after a change in the law, but states a cause of action that accrued before the change, we look to common law principles to determine whether the new or old law applies. At common law, an individual has a vested right in an accrued cause of action, and a subsequent statutory enactment cannot act to defeat retroactively such a cause of action. Citing *Dobson v. Quinn Freight Lines, Inc.*, 415 A.2d 814, 815-16 (Me. 1980).

Citing *Heber* again: "... [t]here can be no question that the repeal of the [statute] had the effect of entirely eliminating a cause of action that existed at the time [plaintiffs] suffered the damages [they] now allege[], thus affecting [plaintiffs'] vested rights in that cause of action." *Id.*, ¶ 12, 755 A.2d at 1067. Considering the statements of material fact, plaintiffs suffered damages prior to the effective date of the amendment. *See id.* Because the cause of action accrued prior to a change in the law, it is governed by the then applicable law and cannot be applied to extinguish plaintiffs' claim. This conclusion is founded upon established common law. *See Choroszy v. Tso*, 647 A.2d 803, 807 (Me. 1994) (a cause of action accrues at the time of the judicially recognized injury). *See Batchelder v. Tweedie*, 294 A.2d 443, 444 (Me. 1972) (substantive rights of the parties are fixed at the date upon which the cause of action accrued).

This recitation of the common law is supported by language in *Spiller, et al. v. State of Maine, et al.*, 627 A.2d 513 (Me. 1993). In this case, the plaintiffs complained of

modification to prospective retirement benefits for state employees made by the Legislature for budgetary reasons. As argued by the defendants in this case, "[u]nder time honored rules of construction, a statute will not be presumed to create a contractual right, binding future legislatures, unless the intent to do so is clearly stated." *Id.* at 515, (citing *National R.R. Passenger Corp. v. Acheson, Topeka & Santa Fe Railway Co.*, 470 U.S. 451, 465-466 (1985)).

Absent some clear indication that the legislature intends to bind itself contractually, the presumption is that "a law is not intended to create private contractual or vested rights but merely declares a policy to be pursued until the legislature shall ordain otherwise."

This well-established presumption is grounded in the elementary proposition that the principal function of the Legislature is not to make contracts, but to make laws that establish the policy of the State. Policies, unlike contracts, are inherently subject to revision and repeal, and to construe laws as contracts when the obligation is not clearly and unequivocally expressed would be limit drastically the essential powers of the legislative body.

*National R.R. Passenger Corp.*, 470 U.S. at 465-466 (quoting *Dodge v. Board of Education*, 302 U.S. 74, 79 (Me. 1937)).

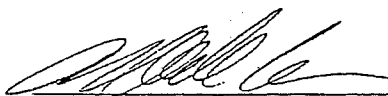
The court found the legislative intent not to create contractual rights but rather to state generally principles by noting a provision in the retirement law that stated that only the retirement benefits that "'would be due to a ... on the date immediately preceding the effective date of the amendment' cannot be reduced by an amendment to the retirement statute." *Spiller*, 627 A.2d at 516. The court found this to be, by implication, intent by the Legislature to reserve to future legislators the power to modify prospective retirement benefits for employees to whom benefits are not then due. The court noted that, "None of the benefits at issue here were due to any plaintiff on the effective date of this legislation." *Id.* That conclusion, as clearly recited by *Heber*, 755 A.2d 1066, makes a clear distinction from the legislative intent clearly stated in 3

M.R.S.A. § 2 that the members of the Legislature are "entitled to" compensation as provided by that law.

The entry will be:

Plaintiffs' motion for summary judgment on count I of their complaint is GRANTED; judgment for plaintiffs on count I of their complaint; defendants' motion for summary judgment on count I of plaintiffs' complaint is DENIED; plaintiffs' motion for summary judgment on count II of plaintiffs' complaint is GRANTED; judgment for plaintiffs on count II of plaintiffs' complaint; defendants' motion for summary judgment on count II of plaintiffs' complaint is DENIED; plaintiffs' motion for summary judgment on count III of their complaint is DENIED; defendants' motion for summary judgment on count III of plaintiffs' complaint is GRANTED; judgment for defendants on count III of plaintiffs' complaint.

Dated: March 16, 2005



Donald H. Marden  
Justice, Superior Court



NATIONAL CONFERENCE of STATE LEGISLATURES

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*Executive Director*

April 21, 2005

David E. Boulter  
Executive Director  
Maine Legislative Council  
115 State House Station  
Augusta, Maine 04333-0155

Dear Mr. Boulter,

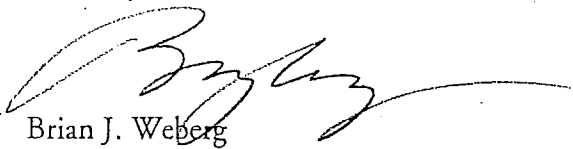
On behalf of the National Conference of State Legislatures (NCSL) I am pleased to present to you and to the Maine Legislative Council the enclosed proposal and budget for the study of legislative operations and processes in your state. NCSL has extensive experience conducting these kinds of projects and has a long and successful record of providing similar consulting services to the Maine Legislature.

The NCSL proposal suggests a project start date of May 2005 with a final report and recommendations presented to the Maine Legislature in November 2005. The project study team will make site visits to Augusta on four occasions to conduct interviews, observe legislative operations and report its progress to legislative leaders and senior staff.

The total projected cost of this project is \$81,700. NCSL will contribute \$33,400 of that amount in the form of salaries and other overhead costs. We ask the Maine Legislature to reimburse NCSL for the remaining \$48,300. A detailed budget is included in the attached proposal.

We look forward to working with you, your state's legislators and staff on this important project. Please contact me if you have any questions about any aspect of NCSL's proposal.

Sincerely,

  
Brian J. Weberg  
Director, Legislative Management Program  
enc

## AGREEMENT

**DRAFT**

The Maine State Legislature agrees to pay the National Conference of State Legislatures (NCSL) for work and services related to *A STUDY OF THE MAINE LEGISLATURE* as described in the accompanying proposal (Attachment A). Performance of these services shall be subject to the following terms and conditions.

1. **Scope of Services**

NCSL shall perform in a reasonable, proper and timely manner the work and services described in Attachment A that is hereby incorporated into this agreement.

2. **Performance**

In consideration of the performance of the work and services described in Attachment A, the Maine State Legislature shall pay to NCSL a fee of forty-eight thousand and three hundred dollars (\$48,300). Such sums shall be payable upon delivery of the final report.

3. **Rights in Documents**

NCSL agrees that all final data including, but not limited to reports, studies and statistical analyses prepared under the terms of this agreement shall become the property of the Maine State Legislature. Nevertheless, NCSL shall have the right to use any such data, or portions thereof, without restriction or limitation, and without compensation to the Maine State Legislature.

4. **Modification**

Modifications or amendments to this agreement shall be in writing and signed by the party to be charged.

5. **Termination**

Either party may terminate this agreement by giving written notice to the other at least fifteen (15) days before the specified termination date. In the event of such termination, NCSL shall be entitled to just and equitable compensation for work in progress. NCSL shall deliver to the Maine State Legislature all completed reports, documents, or other information that has become the property of the Maine State Legislature under paragraph 3 of this agreement.

6. **Independent Contractor**

In performing services under this agreement, NCSL is, for all purposes, an independent contractor, and neither NCSL or any of its employees shall be deemed an agent or employee of the Maine State Legislature.

7. **Applicable Law**

This agreement shall be deemed to have been executed and performed in the State of Colorado, and all questions of interpretation and construction shall be construed by laws of such jurisdiction.

\_\_\_\_\_  
David Boulter  
Executive Director  
Legislative Council  
Maine State Legislature

\_\_\_\_\_  
William T. Pound  
Executive Director  
National Conference of State Legislatures

\_\_\_\_\_  
Date

\_\_\_\_\_  
April 21, 2005  
Date

**DRAFT**



NATIONAL CONFERENCE *of* STATE LEGISLATURES

*The Forum for America's Ideas*

**A STUDY OF THE MAINE LEGISLATURE:  
PROPOSED WORKPLAN, STAFF AND BUDGET**

NCSL

APRIL 2005

## AN STUDY OF THE MAINE LEGISLATURE

**DRAFT**

### INTRODUCTION

State legislatures are dynamic institutions that exist in an environment of constant challenge and change. It is crucial, therefore, that legislatures routinely examine their operations, procedures and organizational structure to ensure that they are well prepared and equipped to respond to public expectations and to the demands of policy making. This kind of self-examination is critical to any organization that wishes to remain effective and relevant.

The following proposal outlines a process for the systematic study and evaluation of legislative operations and practices at the Maine State Legislature. The goals of the study are to identify opportunities for improved efficiency and effectiveness in key legislative areas, and to present specific recommendations that respond to those opportunities.

### STUDY OVERVIEW

The National Conference of State Legislatures is pleased to submit this proposed work plan and budget for conducting a study of the Maine Legislature, its key operations, facilities and staff operations.

The NCSL study will focus on the following goals:

1. To assess the efficiency and effectiveness of key legislative operations in Maine;
2. To assess the logic, effectiveness and efficiency of the current organizational structure of the Maine Legislature;
3. To examine the relevance and efficiency of each staff agency and/or staff group currently providing services to the Maine Legislature;
4. To review the role and structure of the State House Facilities Committee and the general legislative procedure for resolving facilities issues; and
5. To identify practical opportunities for streamlining legislative operations that preserve the integrity of essential legislative activities and services.

NCSL has extensive experience conducting studies of legislative operations. Over the past twenty years, we have performed in-depth reviews of staff organization, rules and procedures, internal management and legislative personnel systems in 23 state legislatures. Through this experience we have developed an expert group of in-house professionals who specialize in these assessments.

### WORKPLAN

Based on our experience conducting legislative reviews, NCSL has developed a general methodology that has proved to be very successful. We will follow this methodology for the Maine study.

We propose to review the constitutional and statutory mandates governing the legislature, its staff agencies and other legislative operations. The study team will conduct extensive personal interviews with key legislators, legislative staff and other legislative observers, collect data and examples of work products, and observe operations during four site visits to Augusta. NCSL also will survey all members of the Maine Legislature on issues relevant to the study. We will analyze the information obtained, assess the efficacy of current operations, identify possible options for strengthening and streamlining those operations and produce a report that summarizes our



findings and recommendations. The attached schedule of activities provides more detail about each step in the process.

**DRAFT**

To help guide this study, we will convene a group of legislative staff from comparable states who will review our work throughout the course of the study. The review group will comment on our findings, suggest potential avenues for investigation and offer options for our recommendations.

To provide a continuous flow of information to the Legislature about the progress of the study, we will submit interim reports to legislative leaders and the Legislative Council members during the course of our work. These reports will summarize work completed, our preliminary findings, comparative data from similar states and, if needed, suggestions for immediate action. The attached schedule of activities indicates our tentative schedule for issuing interim reports. Future amendments to the work plan may alter this schedule. In addition, NCSL staff will be available to provide oral briefings to legislative leaders or their designees during our site visits to Augusta.

We will begin this project in April 2005 and conclude our work with a final report in November 2005. A review draft of the report will be submitted to legislative leaders and staff for comments and reactions before producing the final report.

#### **BUDGET**

The cost to the Maine Legislature for this study is \$48,300. NCSL will contribute \$33,400 in staff time and miscellaneous costs. A detailed budget is attached. We propose that the Maine Legislature make two payments in the amount of \$22,420: one at the commencement of the study and one at the conclusion of study.

#### **STAFF**

NCSL will assign four senior staff to this project. Brian Weberg, NCSL's Legislative Management Program Director will lead the project team. Mr. Weberg has participated in or served as team leader on more than a dozen similar studies. He also has consulted on legislative institutional issues internationally in eight countries including recent work for the new Transitional National Assembly of Iraq.

## WORKPLAN SUMMARY

**DRAFT**

NCSL will begin this project in April 2005 and conclude with a final report presented in November 2005. Interim reports will be provided to legislative leaders throughout the project. The following summary describes the steps involved in completing this project.

### **GENERAL PLANNING AND SITE VISIT PREPARATION (APRIL)**

In this stage of the project, the NCSL study team will outline the scope of the project, identify specific objectives, develop a schedule, gather background information on Maine and other comparable legislatures and prepare for the first site visit.

### **ON-SITE INTERVIEWS AND DATA COLLECTION (APRIL-JUNE)**

The NCSL study team will visit Augusta two times during this period to observe legislative operations and procedures and to interview a cross section of legislators, staff, former legislative officials, lobbyists and other relevant observers. The first visit will occur prior to the May 6 committee deadline. Data and other information describing legislative operations including budget data will be gathered during the site visits.

### **FIRST INTERIM REPORT (JUNE)**

The study team will issue its first interim report to the Maine Legislature no later than June 30. This report will summarize activities to-date and present a preliminary assessment of key issues.

### **SURVEY OF MEMBERS AND STAFF (JUNE-JULY)**

The study team will develop and administer a written survey of all members of the House and Senate. This survey will solicit opinions, comments and recommendations about staff services, legislative operations and ideas for improving the efficiency of the legislature. A survey will also be sent to all staff in the Legislature and provide an opportunity for them to contribute their knowledge and ideas to the project.

### **MEETING OF THE REVIEW GROUP (JULY)**

NCSL will use a group of senior legislative staff from comparable states to guide our work on this project. The group will assist the NCSL study team by reviewing our preliminary conclusions, suggesting targets for further investigation and offering options for our final recommendations. This meeting could be delayed to September depending upon the teams' progress and the demands of the NCSL Annual Meeting (see next item).

### **NCSL ANNUAL MEETING PROJECT RECESS (JULY-AUGUST)**

The preparation for and administration of the NCSL Annual Meeting puts considerable demand on study team members to attend to other duties. We therefore will recess activities on the study from about mid-July until the end of August.

### **THIRD ON-SITE STUDY TRIP (SEPTEMBER)**

The study team will make its final investigative trip to Augusta in September to wrap up its interviews, discuss preliminary conclusions with legislative leaders and staff directors, and to collect any remaining information required for the project.

### **REVIEW AND ANALYSIS (SEPTEMBER-OCTOBER)**

During this phase the study team will review the results of the on-site work and refine preliminary conclusions and issues for further investigation. Interim reports will be provided to legislative leaders in June and September.

**DRAFT REPORT SUBMITTED FOR OUTSIDE REVIEW AND COMMENT (OCTOBER)**

The draft of the final report will be submitted to the review group, Maine legislative leaders and directors of the staff agencies for review and comment.

**DRAFT**

**PREPARE AND PRESENT FINAL REPORT (NOVEMBER)**

The final report will be prepared and submitted to the Legislative Council. The study team will make an oral presentation of the report at this time.

**DRAFT**

STUDY OF THE MAINE LEGISLATURE  
PROPOSED BUDGET

	<u>NCSL</u>	<u>MAINE</u>
<b>STAFF</b>		
Four at 25% for 6 months	\$25,000	\$25,000
Secretarial Support (1 month @\$3200)	1,600	1,600
	<hr/>	<hr/>
Total Staff Costs	\$26,600	\$26,600
<b>TRAVEL</b>		
Staff Travel (four site visits)		
16 flights @ \$650		\$10,400
64 nights @ \$85		5,440
80 days @ \$50 per diem.		4,000
(meals, ground transportation, telephone)		
Three Member Review Group—Denver Meeting		
3 flights @ \$400		\$1,200
3 nights @ \$120		\$360
6 days @ \$50 per diem		\$300
Total Travel Costs		\$21,700
<b>MISCELLANEOUS COSTS</b>		
1) Supplies	\$250	
2) Report Printing & Binding	300	
3) Mailing Costs	525	
4) Photo Copying	175	
5) Freight	300	
6) Telephone	250	
7) Rent (10% of salaries)	5,000	
	<hr/>	<hr/>
Total Miscellaneous Costs	\$6,800	0
<b>TOTAL DIRECT COSTS</b>	<b>\$33,400</b>	<b>\$48,300</b>

**LEGISLATIVE COUNCIL  
REQUESTS TO INTRODUCE LEGISLATION  
FIRST SPECIAL SESSION  
April 28, 2005**

**Action**

**SPONSOR:** Sen. Cowger, Scott W.

LR 2352 An Act To Limit Mercury Emissions from Crematoria

**SPONSOR:** Rep. Curley, Darlene J.

**WITHDRAWN**

LR 2337 An Act To Delay the Increase in the Amount Exempt Under  
the Maine Resident Homestead Property Tax Exemption Program

**SPONSOR:** Rep. Duchesne, Robert S.

LR 2348 An Act To Establish a Fair System for the Protection of  
Volunteer Firefighter's Regular Employment

**SPONSOR:** Sen. Edmonds, Beth G.

LR 2335 An Act To Require Large Employers To Pay Their Fair Share  
of Health Care Costs

**SPONSOR:** Rep. Pelletier-Simpson, Deborah

LR 2362 An Act To Protect Maine Citizens from Identity Theft

**SPONSOR:** Rep. Saviello, Thomas

LR 2347 An Act To Amend the Maximum Allowable Tuition for Students

**SPONSOR:** Rep. Trahan, A. David

LR 2333 Resolve, Directing the Department of Inland Fisheries and  
Wildlife to Coordinate and Facilitate Salmon and Brook Trout  
Habitat Restoration Efforts

**JOINT RESOLUTIONS**

**SPONSOR:** Sen. Bartlett II, Philip L.

LR 2358 JOINT RESOLUTION MEMORIALIZING THE CONGRESS OF THE UNITED  
STATES TO PROVIDE A DOMESTIC NATURAL GAS POLICY

**SPONSOR:** Sen. Gagnon, Kenneth T.

LR 2334 JOINT RESOLUTION MEMORIALIZING CONGRESS NOT TO REQUIRE A  
PASSPORT TO CROSS THE CANADIAN BORDER

**SPONSOR:** Rep. Mazurek, Edward J.

LR 2355 JOINT RESOLUTION MEMORIALIZING THE PRESIDENT OF THE UNITED STATES AND THE CONGRESS OF THE UNITED STATES TO ALLOW POLAND'S CITIZENS TO TRAVEL TO THE UNITED STATES WITHOUT VISAS

**TABLED BY THE LEGISLATIVE COUNCIL**

**SPONSOR:** Rep. Dudley, Benjamin F.

**TABLED**  
**03/24/05**

LR 2240 An Act To Ensure the Integrity and Independence of the Unemployment Insurance Commission

**SPONSOR:** Rep. Lerman, Arthur L.

**WITHDRAWN**

LR 2329 Resolve, To Establish a Commission to Study How Best to Support Children Who are Subject to Custody Proceedings

**SPONSOR:** Sen. Perry, Joseph C.

**TABLED**  
**03/24/05**

LR 2213 An Act To Allow a Prorated Refund of a Registration Fee Upon the Sale of a Motor Vehicle

**SPONSOR:** Sen. Strimling, Ethan

**TABLED**  
**03/24/05**

LR 2141 An Act To Change the Procedure by Which a Vacancy in the United States Senate is Filled

**SPONSOR:** Rep. Twomey, Joanne T.

**TABLED**  
**03/24/05**

LR 2282 Resolve, Directing that Signs Be Posted at Places Where Lobbyists are Not Allowed

DAVID E. BOULTER  
EXECUTIVE DIRECTOR  
OF THE LEGISLATIVE COUNCIL



MAINE STATE LEGISLATURE

OFFICE OF THE EXECUTIVE DIRECTOR  
LEGISLATIVE COUNCIL

April 22, 2005

TO:

FROM:  Dave Boulter, Executive Director

SUBJECT: **Your After Deadline Bill Request(s)**

The Legislative Council has scheduled its next meeting for:

**Thursday, April 28, 2005  
1:00 p.m.  
Room 334, Legislative Council Chamber**

In accordance with the Joint Rules, the Council will consider After Deadline Bill Requests at that time, including the request(s) you have filed with the Revisor's Office. In addition, the Council is required by Joint Rule 35 to decide all requests for Memorials (Joint Resolutions that memorialize another governmental agency or official) for introduction.

**You should plan to attend this Council meeting or present your request(s) to a member of the Legislative Council prior to the meeting.** The Council may, but is not obligated to, table a request until the following meeting if the sponsor is not present, so it will have the benefit of information from the sponsor when it votes.

The Council's review of After Deadline Requests is pursuant to Joint Rule. Please be advised that the Council asks that all sponsors first research whether there is an existing bill or LR available to a committee that could accommodate their request. The review procedure then will be as follows:

1. The Council Chair, Speaker John Richardson, will read the name of the sponsor and the title of the request.
2. Once recognized to speak by the Chair, the sponsor may proceed to the microphone. The sponsor should be prepared to concisely answer the following:
  - Why the bill request is "late" (filed after the cloture date);
  - Why the bill request constitutes an emergency such that the Legislature needs to consider the bill this session; and
  - Whether the likely committee of jurisdiction has a bill already referred to it that could be amended to include the proposal.

Council members may also ask questions related to the content or the intent of the bill to clarify the request, although sponsors generally are not asked to speak to the merits of the bill.

3. Following the questions Council members will vote on bill requests individually; a roll call vote is required pursuant to Joint Rule.

A complete list of the Council's action on After Deadline Requests is distributed to Council members and all sponsors as soon after adjournment of the Council meeting as possible. The list and the roll call votes are available in the Executive Director's office if you should have any questions.

I hope this information is useful. Please drop by or call me if you have any questions.

Attachment

cc: Members, Legislative Council



REP. JOHN RICHARDSON  
CHAIR

SEN. BETH EDMONDS  
VICE-CHAIR



122<sup>ND</sup> MAINE STATE LEGISLATURE

LEGISLATIVE COUNCIL

SEN. MICHAEL F. BRENNAN  
SEN. PAUL T. DAVIS, SR.  
SEN. KENNETH T. GAGNON  
SEN. CAROL WESTON  
REP. GLENN A. CUMMINGS  
REP. DAVID E. BOWLES  
REP. ROBERT W. DUPLESSIE  
REP. JOSHUA A. TARDY

DAVID E. BOULTER  
EXECUTIVE DIRECTOR

## **Legislative Council Policy on Use of Legislative Retiring Rooms**

### **Background**

The Legislature has established "retiring" rooms for legislators as places where legislators may rest, study, work or meet informally when the Senate or the House is not in session or committees are not meeting. Most members do not have offices and their only formally assigned work area is their desk in the chamber. The retiring rooms are intended to provide additional space for legislators to work and relax uninterrupted by agency staff, lobbyists, legislative staff or others. The Legislative Council adopts this policy to provide appropriate guidance for the use of legislative retiring rooms, in keeping with the purpose of the rooms, and pursuant to its authority under 3 M.R.S.A. §162.

### **Retiring Room Locations**

State House:           Room 337  
                              Room 420

Cross Building:       Room 205  
                              Room 213

### **Policy**

The Legislative Council establishes retiring rooms for the beneficial use of the legislators. The retiring rooms are for the nonexclusive use of legislators, regardless of party affiliation or legislative chamber, for work, study, relaxing and conversations with their peers. The Legislative Council is responsible for compliance with this policy. Use of retiring rooms is subject to the following conditions:

1. Rooms may not be used exclusively by a legislator or group of legislators, and a legislator may not formally or informally establish a desk or office within retiring rooms.
2. Legislators may not reserve a retiring room for a private function or other exclusive use, and legislators may not prohibit other members from entering or using a retiring room.

3. Family members and personal guests of a legislator may use a retiring room while visiting and accompanied by the legislator.
4. Elected officers of the Legislature and legislative employees appointed to their position by the Legislative Council are authorized access to the rooms. Furthermore, committee clerks whose committee rooms are located in the State House are authorized access to legislative retiring rooms in the State House, and committee clerks whose committee room is located in the Cross Building are authorized access to legislative retiring rooms in the Cross Building. Such access is for the limited purposes of contacting or delivering messages or information to legislators, and for using the bathroom or kitchen facilities.

For all other authorized legislative employees, access is for the limited purposed of contacting legislators or delivering messages or information to legislators.

5. Legislators and authorized legislative employees are responsible for keeping the retiring rooms in a clean and orderly condition. Personal items such as jackets, coats, shoes and briefcases must be removed from the room when the legislator leaves for the day. Damaged or missing equipment must be reported promptly to the Executive Director's Office.

Care must be taken to turn off ovens, microwaves, coffee pots and other electrical devices when not in use in order to prevent the potential for fire or mishap.

6. The Legislative Council is responsible for the furnishing of the rooms including artwork, and modifications may be made only with the prior approval of the Legislative Council or its designee.

The Legislative Council hereby adopts this policy at its meeting on the 28<sup>th</sup> day of April, 2005.

Effective date: April 28, 2005

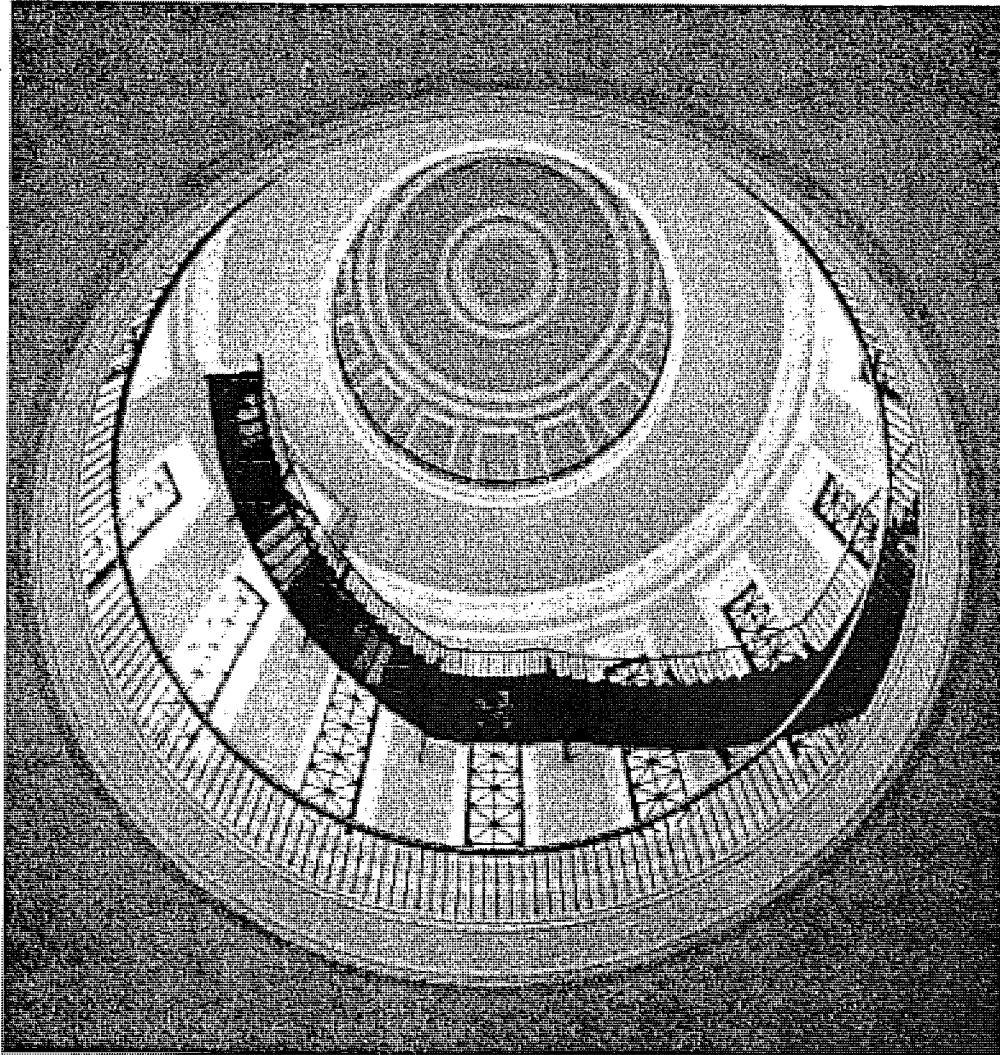
By: \_\_\_\_\_

David E. Boulter, Executive Director, Legislative Council

G:\COUNCIL\122nd\Policies\retiring room use policy final (04-28-2005).doc (April 20, 2005 1:20:00 PM)

# MAINE STATE HOUSE & GROUNDS

2005



## Multi-Year Plan For Maintenance & Improvements 2005 Revision

Prepared by  
Richard Burt Architects  
Damariscotta, Maine

For the Office of the  
Executive Director of the  
Legislative Council

April 2005

P64

# PLAN FOR MAINTENANCE AND IMPROVEMENTS

## 2005 Revision

2005

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# MAINE STATE HOUSE MULTI-YEAR PLAN

2004  
through  
2008

Architect  
Richard Burt Architects  
Damariscotta, Maine

Construction Manager  
Consigli Construction Co., Inc.  
Portland, Maine

## Introduction

With the completion of a four-year full interior facility renovation, the Maine State House stands today in the highest condition of maintenance and repair since its original construction. As the most public structure in Maine, the ceremonial and functional demands placed on the State House as both seat of government and state-of-the-art office building are significant and constant. The recent substantial public investment made in its preservation and restoration is testimony to the importance of the State House to the citizens of Maine. As magnificent as they are, the State House and grounds require ongoing attention to prevent deterioration. In addition, substantial exterior work, deferred until completion of the interior renovations, is essential. The first phase of the exterior work began in 2004. Both ongoing maintenance and necessary improvements require a planned approach, for scheduling and cost reasons. This Multi-Year Plan for Maintenance and Improvements is intended to preserve and extend the investment in the State House and provide an overall plan for facility improvement projects. Working with the Office of the Executive Director of the Legislative Council, Richard Burt Architects has developed a planning document that describes a series of necessary projects that combine to provide:

1. A structured program of annual inspection and maintenance for those components of the building most susceptible to deterioration from intensive public use or from the forces of weathering or aging, and
2. A program of continued improvement to the State House, including both improvements to the physical structure with projects such as roofing replacement and exterior granite restoration, improved safety, access, and use by the Legislature, staff, and public with projects such as redesigned parking and pedestrian walks, selected landscaping, and access by the disabled to the east porch.

This planning document includes a chronological organization of projects over a five-year period. Projects have been scheduled in a manner which matches expected project duration with the 5.5 month and 7 month "construction window" available between Legislative Sessions.

In selected cases, projects of more significant cost or duration have been phased over a number of years. Phasing has been developed in order to maximize construction efficiency and manage costs by combining projects of a similar nature or which are planned for a similar location within the State House or grounds.

Included with this document are preliminary project budgets, including both construction costs and associated professional services fees. Due to the preliminary nature of planning at this time, budgets included herein are planning level projections. As for past work, a contingency should be added to the estimates recorded herein. Prior to actual construction, projects will be bid or project costs recalculated and verified by the Legislature's construction manager.

# MAINE STATE HOUSE MULTI-YEAR PLAN

2004  
through  
2008

## Construction Schedule

Legislative Session	Year	Construction Period	Duration
122 <sup>nd</sup> Session: Jan. '05 thru June '05	3	July 1, '05 – Dec. 15, '05	5.5 mos.
Jan. '06 thru April '06	4	May 1, '06 – Dec. 1, '06	7 mos.
123 <sup>rd</sup> Session: Jan. '07 thru June '07	5	July 1, '07 – Dec. 15, '07	5.5 mos.
Jan. '08 thru April '08	6	May 1, '08 – Dec. 1, '08	7 mos.

## Prequalified Subcontractors

The following subcontractors have participated in all prior phases of State House renovations. Working with Consigli Construction Co., Inc. as construction manager, they will provide for the continuity of construction warranties and familiarity with technical building systems required to complete applicable five-year projects.

Electrical Systems: E.S. Boulos Company, Westbrook, Maine

Mechanical Systems: RaNor, Inc., Jay, Maine

Fire Suppression (Sprinkler) Systems: Sprinkler Systems, Inc., Lewiston, Maine

Granite Repointing and Masonry: Joseph Gnazzo, Co., Inc., Vernon, Connecticut

Roofing Inspections: Independent Roof Services, Inc., Pownal, Maine

Roofing Subcontractor: Hahnel Bros. Company, Lewiston, Maine

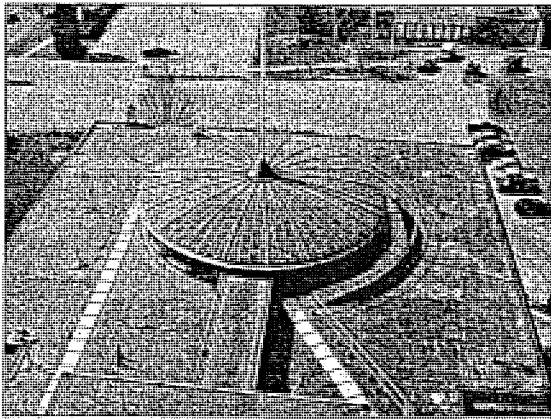
Painting Subcontractor: Theodore Logan & Son, Inc., Portland, Maine

Irrigation System: Irrigation Systems, Yarmouth, Maine

# MAINE STATE HOUSE 5-YEAR PLAN

2005

Annual  
A.1



## ANNUAL PROJECT #1

### Roofing — EPDM/Copper Inspection

#### What Needs To Be Done?

Due to a variety of roof forms, the State House is protected by two types of roofing, i.e., copper at the high and two low domes and east/west sloped roofs, and EPDM at the north/south low pitched roofs. The existing roofing on the entire west wing was removed, and copper roofing was installed in 2004.

This project involves the regular review and maintenance of all roofing systems. A yearly review of all roofing areas will be completed by a qualified independent roofing consultant. Areas requiring maintenance will be identified and assessments made whether required repairs are covered under roofing warranties. The inspection in 2004 revealed significant deterioration of roofing at the high dome shelves, necessitating \$44,800 in repairs. Repairs will be completed by a roofing subcontractor.

#### Why?

A program of regular roofing maintenance is necessary to prevent deterioration and damage to interior areas of the State House. Under this yearly project, potential leak points will be identified and repaired before interior building finish or structural deterioration can occur.

#### Project Schedule

Construction Documents  
Complete: April 1, 2005

Construction Schedule  
Start of Project: May 1, 2005  
Duration: one month  
Complete Project: May 31, 2005

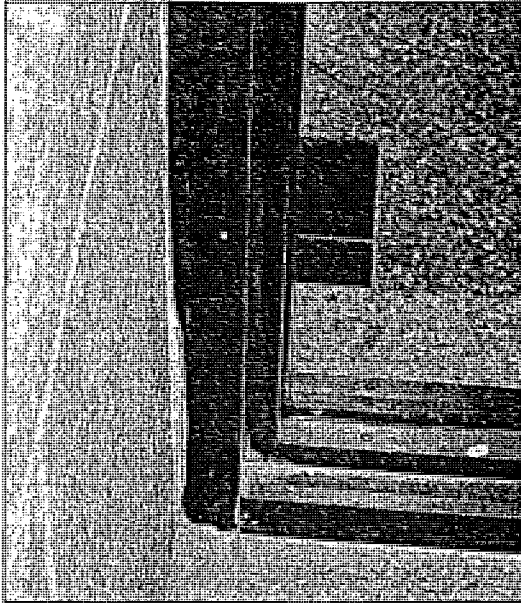
#### Annual Allowance

\$ 46,200  
(\$1,400 Roofing Inspection  
Services + \$44,800 Repair  
Allowance)

# MAINE STATE HOUSE 5-YEAR PLAN

2005

Annual  
A.2



## ANNUAL PROJECT #2 Building-Wide Interior Cleaning

### What Needs To Be Done?

This project involves a complete building-wide cleaning, including all public spaces throughout the State House, including the State House café and public toilet areas.

### Why?

It is the intent of this project that, at the completion of each Legislative Session, a more thorough building-wide cleaning effort be completed than is normally possible during the active legislative session.

### Project Schedule

Construction Documents  
Scope of Work Descriptions

Construction Schedule  
Start of Project: Oct. 1, 2005  
Duration: three-four weeks  
Complete Project: Oct. 30, 2005

### Annual Allowance

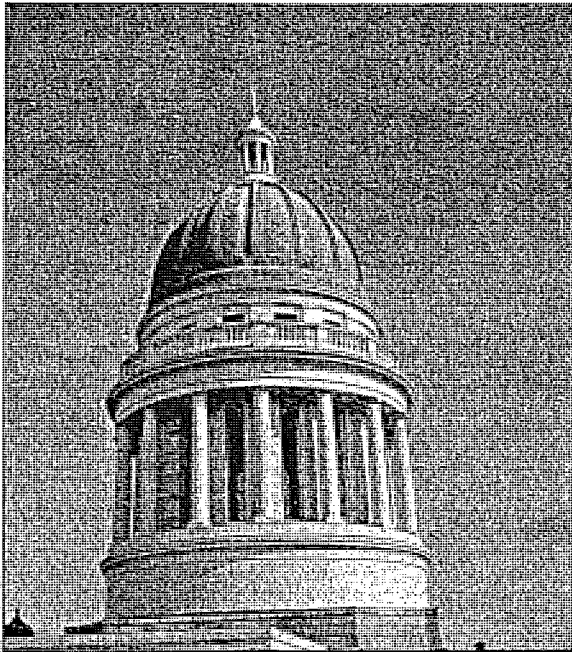
Public Spaces Only: \$23,500



# MAINE STATE HOUSE 5-YEAR PLAN

2005

Annual  
A.3



## Project Schedule

Construction Documents

Complete: April 30, 2005

Construction Schedule

Start of Project: July 1, 2005

Duration: six weeks

Complete Project:

August 15, 2005

## Project Budget

Plaster repair and  
painting allowance:  
\$85,000

## ANNUAL PROJECT #3

Painting & Cosmetic Upgrade at  
Public Spaces – Third Floor and Other  
Selected Locations

### What Needs to be Done?

At each year's session recess, portions of the State House will be provided with a cosmetic and paint upgrade at public and major ceremonial spaces.

With this project, a survey of first- and third-floor wall surfaces will be completed and plaster preparation and painting will be provided in all locations requiring maintenance. Selected other areas, including repairs to areas behind glass panels at the House Chamber and at Room 438, will be reviewed and repaired as required.

Completed in successive phases, the result will be a cosmetic upgrade for each floor generally on a four-year rotating basis.

### Why?

As the state's most important public landmark facility and seat of government, the State House receives sustained and substantial use by the public, staff, and legislators. As a result, significant stress is placed on the appearance of the building, most particularly in the public corridors and major public spaces. This project will provide for regular scheduled maintenance that will prevent more costly repairs later on.

# MAINE STATE HOUSE 5-YEAR PLAN

2005

Phased  
Year 2



## Project Schedule

### Construction Documents

Complete: April 1, 2004

### Construction Schedule

Start of Project: July 1, 2005

Duration: four months

Complete Project: Oct. 31, 2005

## Project Budget

**\$1,100,100**

Phase 1: \$355,267 (completed 2004)

Phase 2: \$350,867 (2005)

Phase 3: \$393,966 (2006)

Note: The Legislative Council previously authorized this project with a total contract price of \$1,100,100. No further Legislative Council action is needed.

## PHASED PROJECT P.1

### Exterior Granite: Repointing, Granite Cleaning – Phase 2: South Wing

#### What Needs To Be Done?

This project will focus on the preservation and long-term maintenance of the exterior granite walls (envelope) of the State House. Repointing of the State House has not been done for more than 25 years, with some areas not having been repointed since 1910.

The work of this project includes repointing (new mortar) at all locations, sealant replacement at granite/trim interface, and cleaning of exterior granite.

This project is phased over three years due to the difficulty of providing concentrated building access and the abbreviated duration of the available construction window. Phase 1, the West Wing, was completed in 2004. Phase 2, the South Wing, is scheduled for 2005.

The budget was based on a complete building-wide analysis of all exterior granite completed by a specialized stone consultant. Costs have therefore been refined from prior assumptions. The three-year project was bid and awarded in 2004.

#### Why?

Although the building is massive in appearance and structurally impenetrable, it is case that even small amounts of water infiltration into the exterior granite walls of the State House will cause significant long-term damage and structural deterioration.

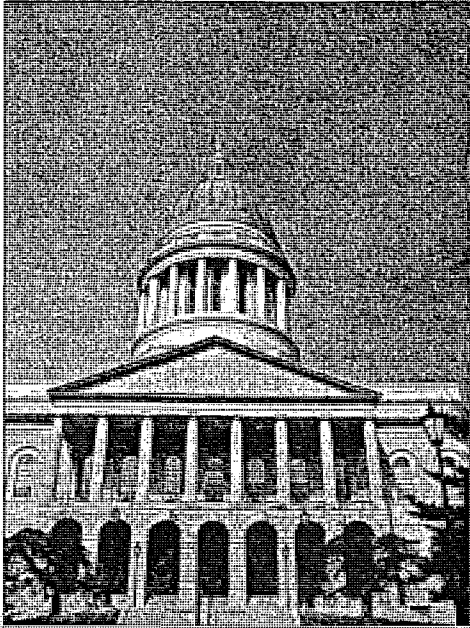
By observation, there are a numerous locations where existing mortar has cracked or fallen from the walls. In addition, a number of building leaks have occurred due to wind-driven rain infiltration at high granite/roof/cornice intersections.

This project will restore the integrity of the State House exterior granite walls. Wind-driven rain will be interrupted and controlled in a manner that will protect the envelope well into the future.

# MAINE STATE HOUSE 5-YEAR PLAN

2005

Phased  
Year 2



## Project Schedule

Construction Documents  
Complete: May 1, 2004

Construction Schedule  
Start of Project: Sept. 1, 2005  
Duration: one month  
Complete Project:  
Sept. 30, 2005

## Project Budget

**\$ 90,000**

Irrigation System

Phase 1: \$39,819 (2004)

Phase 2: \$25,787 (2005)

Phase 3: \$ 6,446 (2006)

Maintenance, pruning, and new plantings

\$4,950 (2004)

\$12,998 (2005)

Note: The Legislative Council previously authorized this project with a contract price of \$90,000. No further Legislative Council action is needed.

## PHASED PROJECT P.2

### State House Landscaping and Maintenance, Irrigation System

#### What Needs to be Done?

This project is intended to provide much needed maintenance and pruning of the existing State House landscaping. In addition, selected plantings shall be provided in a manner consistent with the building's stature as the Maine State House, and the recommendations of the State House and Capitol Park Commission. Damaged or diseased trees will be repaired or replaced. An automatic lawn irrigation system will be provided. Phase 1 of the irrigation system was installed in 2004. Phase 2 is scheduled for 2005, coinciding with Phase 2 of the granite repointing (South Wing).

#### Why?

Maintenance and pruning is required in order to maintain the long-term health and durability of the vegetative stock. Improved landscape planting will be provided in a manner consistent with the State House stature as a significant public building. Lawn irrigation will provide for sustained lawn growth and uniform appearance.

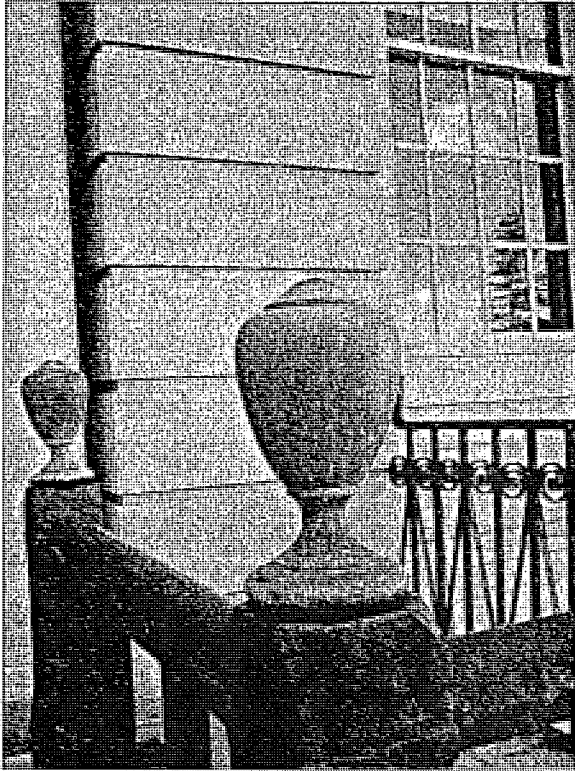
#### Irrigation System Phases:

Phase 1 – 2004 east and south State House lawns and skylight island at west (completed)

Phase 2 – 2005 west and north State House lawns

Phase 3 – Lawn areas within 30' of State House exterior walls.

- 7 -



## Project Schedule

Construction Documents  
Complete: May 1, 2005

Construction Schedule  
Start of Project: Aug. 1, 2005  
Duration: two weeks  
Complete Project: Aug. 15, 2005

## Project Budget

\$ 5,000

## PROJECT 05.1

### Improvements at West Wing Entry Stair Railings

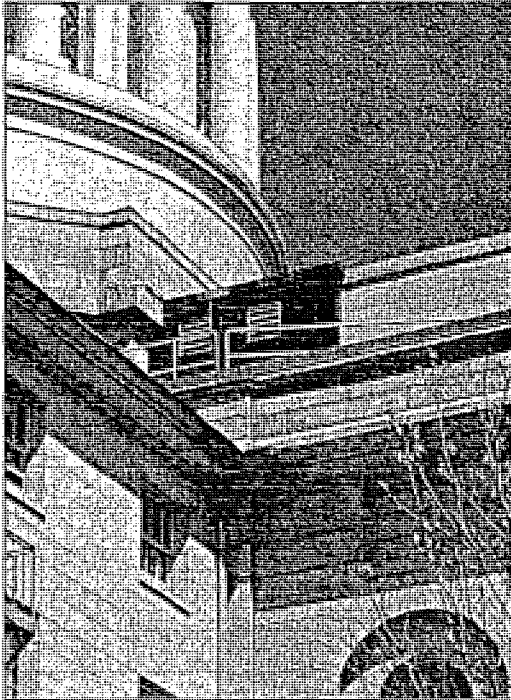
#### What Needs to be Done?

The historic railings at the West Wing exterior stair ("Governor's Entrance") were stabilized, repaired, and painted during Summer 2004 renovations. Lead-based paint was removed at that time. This work, originally scheduled for 2005, was completed in 2004 due to the availability of contractors onsite, coordination of related stair work, and resulting cost efficiencies. This project will involve the installation of an oak rail cap at the upper landing guardrails. Currently, no rail cap is present exposing an unfinished metal top rail.

In addition, the handrails may be replaced with a rail system more closely matching historic precedent than that currently in place.

#### Why?

This project will complete the restoration, begun in 2004, of this important and prominent stair.



## PROJECT 05.2

### Remove Original Elevator Penthouse on South Roof

#### What Needs to be Done?

Originally intended for demolition during the summer 1999 renovations, the existing elevator penthouse remaining at the roof immediately south of the high dome was left in place due to construction schedule conflicts. The new mechanical penthouse constructed with the 1999 renovations was designed to incorporate all new elevator equipment provided at that time. In order to maintain full and uninterrupted operation of the elevator, the equipment changeover was not be completed during that original renovation. Accordingly, this project will complete that renovation project.

#### Project Schedule

Construction Documents  
Complete: October, 2004

Construction Schedule  
Start of Project: July 1, 2005  
Duration: three months  
Complete Project: Oct. 1, 2005

#### Project Budget

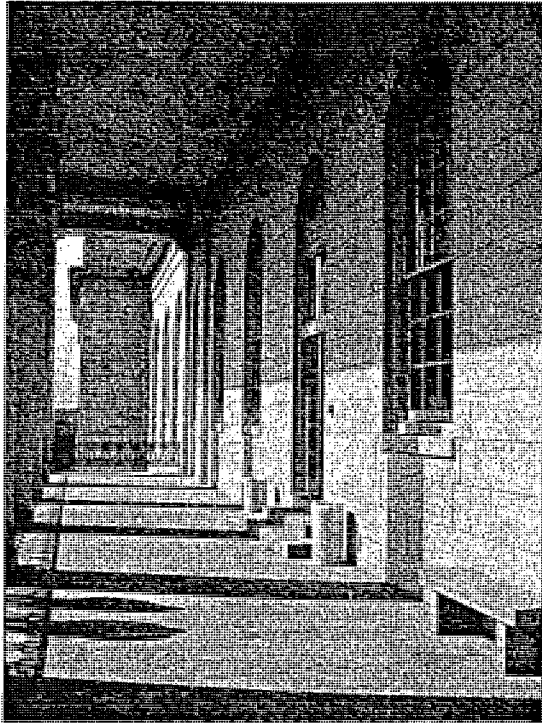
**\$ 145,000**

Note: The Legislative Council previously authorized this project with a contract price of \$145,000. No further Legislative Council action is needed.

#### Why?

Relocation of the elevator equipment and removal of this existing penthouse will provide a safer and improved access to the new mechanical penthouse, restore the visual integrity of the south roof area, and contribute to the long-term roofing integrity of this portion of the State House.





### Project Schedule

Construction Documents  
Complete: May 1, 2005

Construction Schedule  
Start of Project: July 1, 2005  
Duration: three months  
Complete Project: Oct. 1, 2005

### Project Allowance

**\$ 88,000**

Note: The Legislative Council previously authorized this project with a contract price of \$95,000. No further Legislative Council action is needed.

### PROJECT 05.3

Provide Handicapped Access and Guardrail Support at Third Floor East Porch

### What Needs to be Done?

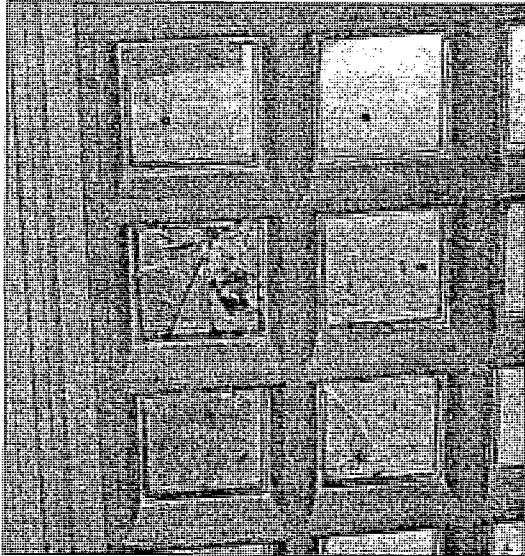
This project will provide accommodation and access to the public third floor east porch of the State House by persons with physical disabilities. An important component of the State House renovation has been the provision for full handicapped accessibility, to the extent feasible, throughout the facility. The third floor east porch is an important public gathering place for legislators, staff, and the general public.

In addition, the existing guardrail system at the perimeter of this elevated porch must be repaired and braced in order to safeguard the general public and bring it into applicable code compliance.

All work will be completed in consultation with the State House and Capitol Park Commission and will be in keeping with the historic architecture of the State House. Great care will be given to developing an appropriate design since the porch is the only visible remains of the original State House design of 1829.

### Why?

Completion of this project will make the third floor porch accessible to those individuals in wheelchairs and safe for visitors at the porch edges.



## PROJECT 05.4

### Cosmetic Repairs to Glass Blocks at Fourth Floor West Wing Ceiling

#### What Needs to be Done?

This project originally anticipated the replacement of five broken glass blocks at the fourth floor West Wing ceiling. It has subsequently been determined that replacement is not structurally feasible. This project will now involve the complete cleaning of all in-place glass block surfaces and the preparation and paint of the surrounding structural support system.

#### Project Schedule

Construction Documents  
Complete: 2000

#### Construction Schedule

Start of Project: June 1, 2005

Duration: two weeks

Complete Project: June 15, 2005

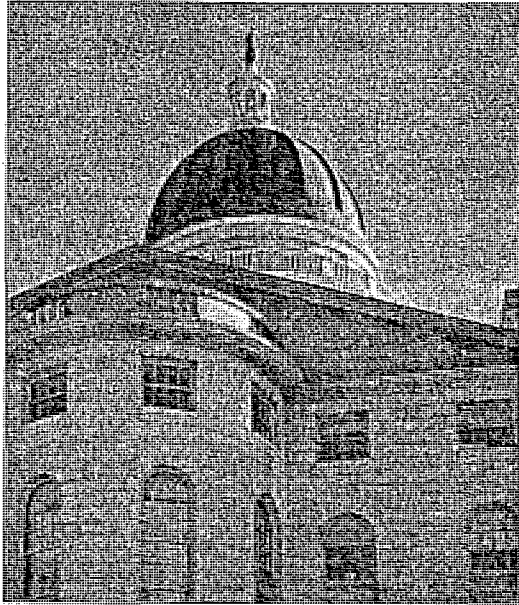
#### Why?

These cosmetic repairs will restore the visual integrity of this important architectural element to acceptable levels.

#### Project Budget

**\$ 3,000**

Note: The Legislative Council previously authorized this project with a contract price of \$3,000. No further Legislative Council action is needed.



## PROJECT 05.5

### Provide Drainage System at West Wing Entry Roof

#### What Needs to Be Done?

As originally constructed, openings in the granite parapet located at the roof immediately above the State House west entrance align exactly with the State House entry doors below. As a consequence, rain runoff from this roof falls directly on occupants entering and exiting the State House. This project will involve the installation of rain runoff diverters on the cornice level of this roof to redirect runoff away from the entrance doorways. These diverters will be installed so as to not be visible to the public.

#### Project Schedule

Construction Documents  
Complete: February 2005

Construction Schedule  
Start of Project: June 1, 2005  
Duration: two weeks  
Complete Project: June 15, 2005

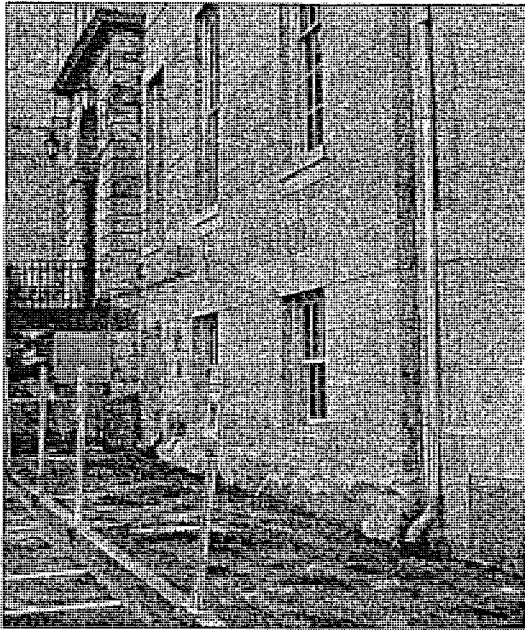
#### Why?

New rain diverters will direct roof runoff to areas between State House entry doors, thereby increasing both the convenience and safety of all building users.

#### Project Budget

\$ 2,500





### Project Schedule

Construction Documents  
Complete: January 2005

Construction Schedule  
Start of Project: May 15, 2005  
Duration: five months  
Complete Project:  
Oct. 30, 2005

### Project Budget

\$ 20,000 (Part One)  
\$ 50,000 (Part Two)

Note: The Legislative Council previously authorized this project with a contract price of \$75,000. No further Legislative Council action is needed.

### PROJECT 05.6

Provide Granite Veneer on West Wing  
North Rubble Foundation

#### What Needs to be Done?

This project addresses the inconsistent and unsightly visual appearance provided by the remaining rubble foundation visible at the West Wing north wall.

With this project, granite veneer will be installed at this portion of the State House. Originally intended for complete removal and new granite replacement during the State House 2000 renovations, the extent of building shoring required in order to install the granite as originally detailed was determined to significantly affect project completion schedules. Accordingly, this portion of exterior granite renovations was postponed.

Construction detailing for this new veneer has been modified and shoring requirements have been eliminated. This project was originally scheduled for completion in 2006. As currently phased, work can be completed by the pre-qualified masonry subcontractor while onsite for 2005 renovations.

#### Why?

This project will remove the unsightly concrete covered rubble foundation existing at this important public entry to the State House and give the wall base near the main entrance a finished appearance. In addition, the provision of exterior granite will provide a more complete and durable barrier to water infiltration at this north exposed location.

#### Part One – Site Excavation (three weeks duration)

Excavate to reveal existing conditions.

Backfill and stabilize.

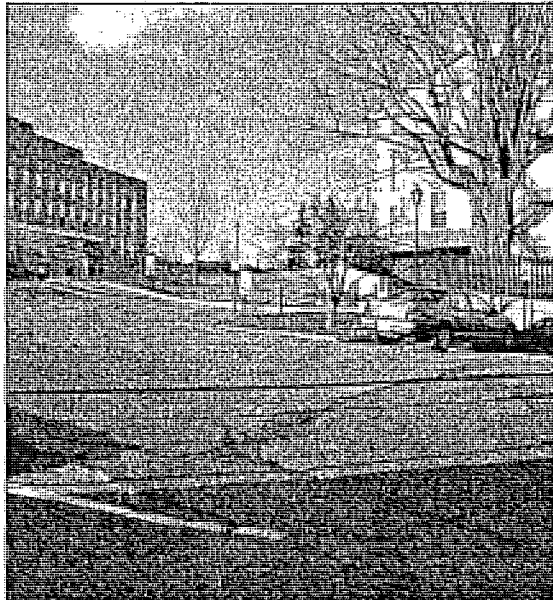
Order granite based on conditions encountered.

#### Part Two – Install New Granite

Excavate for installation of concrete and granite.

Install granite.

Complete installation of backfill and pavement.



## Project Schedule

Design Completion and  
Presentation: August 1, 2005

## Project Budget

\$9,660 Concept Design  
\$2,500 Traffic Consultant  
(if required)

## PROJECT 05.7

### Improvement To State House Grounds – South Pedestrian Access – Concept Design Studies

#### What Needs to be Done?

Completed in 2001, the new West Wing entrance to the State House has greatly improved pedestrian access and circulation in the immediate vicinity of the State House and Cross Building. What remains undone is vehicular access and pedestrian drop-off access to the main entrance. This project involves developing conceptual architectural designs with the goal of providing safe, convenient, and aesthetically pleasing access to the State House's main entrance.

Currently, the site layout of south parking lots, vehicular drives, and drop-off areas presents a confusing, unsightly, and unsafe condition for visitors, legislators, and State House employees. In addition to Legislators and employees who frequent the State House, many tens of thousands of people visit the State House annually, including school-age children on school tours. This project will improve all aspects of this south access. Currently, no sidewalks exist to provide pedestrians safe access to the State House Legislative and public parking lots or the Maine State Museum and State Library. The current layout forces Legislators, staff and visitors alike to walk in the roadway and between parked vehicles to travel between the parking lots and the State House. There are no defined walkways or motor vehicle drop-off points for visitors or informational signage to either provide directions for drop-off and parking or even identify an area as the entrance to the State House.

Within the context of the south access drive and parking lots, conceptual studies will focus on improvements to vehicular and pedestrian circulation and safety while increasing orientation to the State House and its public entrance. This study will also focus on the improvement of the access and safety of vehicular drop-off areas, particularly those involving school buses. The overall goal of this study is to redesign vehicular and pedestrian access to the main entrance of the State House in a manner that enhances the West entrance as the main entrance and provides safe and convenient access for everyone visiting the State House and grounds.

#### Why?

Currently, the site layout of south parking lots, vehicular drives, and drop-off areas presents a confusing, unsightly, and unsafe context for visitors, legislators, and State House staff. This project will improve all aspects of this experience. Currently, no sidewalks exist to provide pedestrians safe access to legislative and public parking lots or the Maine State Museum and State Library. There are no defined walkways or drop-off points for visitors.



## PROJECT 05.8

### Operable Windows in State House Mezzanine Areas

#### What Needs to be Done?

This project will provide operable portions of four windows at the exterior existing windows at the north and south mezzanine levels of the West Wing. Existing fixed rectangular lights, located immediately below the curved window tops, will be made operational.

The budget is for the installation of operable window components at four existing mezzanine windows, two per mezzanine, thereby allowing cross-ventilation.

In 2004, the Legislative Council approved the four-window option, deciding against an alternative proposal to replace seven windows, thus reducing costs by \$19,000.

#### Why?

Operable windows at these locations will allow increased ventilation in the mezzanine level. Currently, the windows may not be opened to provide for fresh air into the mezzanine areas.

#### Project Schedule

##### Construction Documents

Complete: April, 2004

##### Construction Schedule

Start of Project: June 15, 2005

Duration: One month

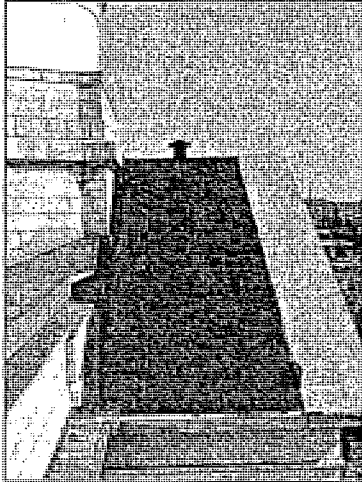
Complete Project: July 15, 2005

#### Project Budget

4 total windows

**\$33,000**

Note: The Legislative Council previously authorized this project with a contract price of \$33,000. No further Legislative Council action is needed.



## PROJECT 05.9

### East Porch SBS Roofing Replacement with Standing-Seam Metal, Rain Leader Replacement

#### What Needs to be Done?

This project involves the removal of the in-place SBS roofing and replacement with standing-seam metal at the sloped East Porch roof. Also included will be the replacement of existing rain leaders (down spouts), and provision of a snow-melt system in the roof eave gutters.

In 1994, the in-place SBS roofing was installed as a temporary repair measure only. This project will remove the existing roofing materials and the prior roof substrate, and replace them with standing-seam metal roofing. Pre-patinated copper, a roofing metal consistent with the character of the State House, will be installed.

#### Why?

This project will restore the long-term waterproof integrity of the East Porch sloped roof. Marginally functional rain leader systems will be replaced, thereby controlling rain runoff in a manner that will protect the granite building envelope well into the future. In addition, this very prominent roof will be restored, employing a material consistent with the overall architectural integrity and quality of the State House.

Note: West Wing roofing was completed during summer 2004 renovations.

#### Project Schedule

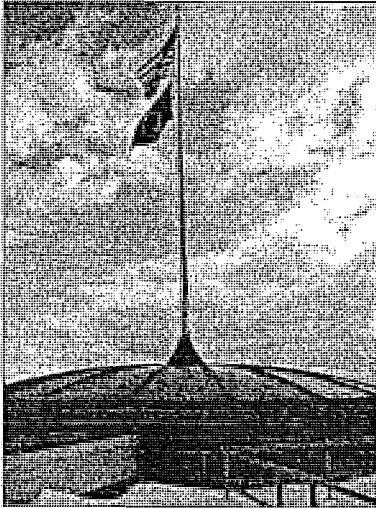
Construction Documents  
Complete: 2001

Construction Schedule  
Start of Project: July 1, 2005  
Duration: two months  
Complete Project: Sept 1, 2005

#### Project Budget

\$ 54,533

Note: The Legislative Council previously authorized this project in conjunction with the overall roofing replacement. No further Legislative Council action is needed.



## Project Schedule

Construction Documents  
Complete: April 2005

Construction Schedule  
Start of Project: July 1, 2005  
Duration: one month  
Complete Project: Aug. 1, 2005

## Project Budget

\$ 35,000

## PROJECT 05.10

### Install Flagpoles at West Entrance and North and South State House Roof

#### What Needs to be Done?

Two flagpoles will be installed adjacent to the skylight plaza located between the State House and Cross Building. The flagpoles will be constructed of white anodized aluminum and will be provided with gold pole top finials. The flagpoles will be vandal-resistant and flags will be appropriately lit during night hours.

At each flagpole located at the State House roof above the House and Senate Chambers, modifications to the halyard system shall be provided. Modifications will include the installation of an internal remote-controlled halyard system. This system will eliminate the susceptibility of flagpole halyards to severe weather freeze-up and wear. Most importantly, access to these flagpoles by State House staff during severe and dangerous weather conditions will be eliminated.

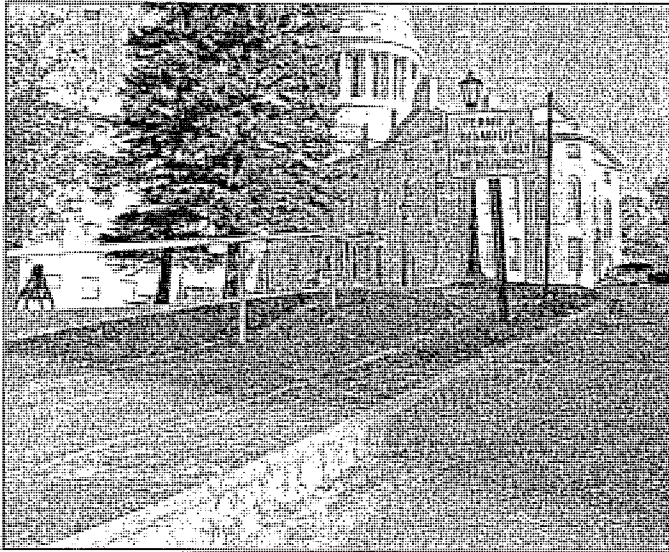
#### Why?

With the building renovations, the West Wing entrance was created as the main entrance to the State House. Improvements, including signage and walkway designations, have been made to develop a visible and appropriate main entrance. With installation of the flagpoles, the major improvements to the entrance will be completed.

With the installation of halyard improvements at the roof-mounted flagpoles, a very dangerous roof access condition will be eliminated.

Under existing conditions, raising, lowering or changing the flags requires a person to climb atop the low domes on the State House roof and walk, without the benefit of railings or other support devices, on the sloped surface to the flagpole.

The person must cling to the pole while attempting to maneuver the halyards to raise or lower the flags. It is not unusual for the halyards and flags to become twisted, frayed or broken, making raising or lowering the flags difficult. It is also not unusual for adverse weather conditions, such as high winds and precipitation, to make adjusting the flags a dangerous undertaking. Because flag raising or lowering (e.g., half-mast) is usually dictated by external events, it often occurs during inclement weather. For safety reasons, corrective measures should be implemented.



## PROJECT 05.11

### Improve Pedestrian Access to Capitol Street and Public Parking Areas and Satellite Parking Lots

#### What Needs to be Done?

This project is intended to provide an improved and easier access route from the new State House entry to the public parking garage located north of the Cross Building and to satellite parking lots via Capitol Street.

As currently exists, the excessively steep sidewalk and the existing industrial handrail system are inadequate, unsightly, and are a significant safety hazard for pedestrians, particularly during inclement weather.

This project will provide a combination of sidewalk, stair, and new lighting systems, which would eliminate excessive slope and greatly improve public access and safety en route to the main entrance of the State House.

#### Why?

This project will eliminate current safety hazards due to inadequate lighting and handrails, and the steepness and unevenness of the slope of the sidewalk to Capitol Street.

#### Note:

The project allowance assumes stairs, stair cheekwalls, and pavers will be of concrete construction. Existing exterior stairs at the State house are of granite.

The projected cost increase results from the need to have five intermediate stairs in order to reduce the slope of the walk to acceptable standards.

#### Project Schedule

##### Construction Documents

Complete: May 1, 2005

##### Construction Schedule

Start of Project: July 1, 2005

Duration: two months

Complete Project: September 1, 2005

#### Project Allowance

**\$ 108,000**

Note: The Legislative Council previously authorized this project with a contract price of \$75,000.





## PROJECT 05.12

Install Emergency Call Stations in  
Parking Garage and Selected Other  
Parking Lot Locations

### What Needs to be Done?

Four emergency call stations will be installed at the north parking garage and two installed in alternate parking lot locations. Call stations will be monitored by Capitol Security/Building Control. Emergency call boxes are typically metal boxes on stanchions easily identified by blue lights above the boxes. The call boxes contain auto-dial phones that connect the caller to Building Control. Once the emergency button is pushed, an officer will be immediately dispatched to the caller's location.

### Why?

Emergency call stations will be installed to provide enhanced security for members of the public, state employees, and legislators who use the parking garage and south legislative parking lots. Call stations will be used in concert with existing security cameras.

### Project Schedule

Construction Documents  
Complete: May 15, 2005

Construction Schedule  
Start of Project: June 1, 2005  
Duration: three months  
Complete Project: September 1, 2005

### Project Allowance

\$ 50,000

# MAINE STATE HOUSE 5-YEAR PLAN

2005

## List of Projects for 2005

		Budget
Annual Project A.1	Roofing – EPDM/Copper Inspection	46,200
Annual Project A.2	Building-Wide Interior Cleaning	23,500
Annual Project A.3	Painting/Cosmetic Upgrade at Public Spaces	85,000
Phased Project P.1	Exterior Granite: Repointing, Granite Cleaning – Phase 2 – South Wing	350,867
Phased Project P.2	Landscaping, Irrigation System – Phase 2	38,785
Project 05.1	Improvements at West Wing Entry Stair Railings	5,000
Project 05.2	Remove Original Elevator Penthouse on South Roof	145,000
Project 05.3	Handicapped Access and Guardrail Support at Third Floor East Porch	88,000
Project 05.4	Cosmetic Repairs to Glass Blocks at Fourth Floor West Wing Ceiling	3,000
Project 05.5	Drainage System at West Wing Entry Roof	2,500
Project 05.6	Granite Veneer on West Wing North Rubble Foundation	70,000
Project 05.7	Improvement to State House Grounds – South Pedestrian Access – Concept Design Studies	Included in architectural fees

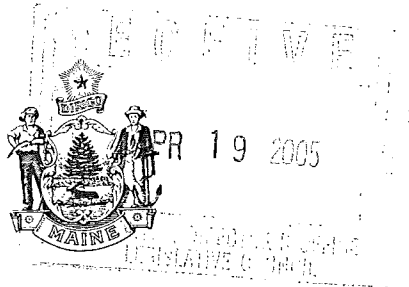


Project 05.8	Operable Windows in State House Mezzanine Areas	33,000
Project 05.9	East Porch SBS Roofing Replacement with Standing-Seam Metal, Rain Leader Replacement	54,533
Project 05.10	Install Flag Poles	35,000
Project 05.11	Improve Pedestrian Access to Parking Garage	108,000
Project 05.12	Install Emergency Call Stations in Parking Garage and South Legislative Parking Lot	50,000
	PROJECTS BUDGET	\$ 1,138,385
	Construction Manager Fee – 5.5% of Construction Cost	\$ 62,615
	Construction Bond	\$ 25,000
	General Conditions – 10% of Construction Cost	\$ 113,840
	Architectural/Engineering Professional Services Fees	<u>\$ 85,660</u>
	TOTAL BUDGET	\$ 1,425,500

SENATE

ELIZABETH SCHNEIDER, DISTRICT 30, CHAIR  
MARGARET ROTUNDO, DISTRICT 16  
MARY BLACK ANDREWS, DISTRICT 1

ANNA BROOME, LEGISLATIVE ANALYST  
SUZANNE ARMSTRONG, COMMITTEE CLERK



STATE OF MAINE

HOUSE

CHRISTOPHER R. BARSTOW, GORHAM, CHAIR  
SONYA G. SAMPSON, AUBURN  
RICHARD D. BLANCHARD, OLD TOWN  
CHARLES WILLIAM HARLOW, PORTLAND  
JAMES M. SCHATZ, BLUE HILL  
ROBERT H. CROSTHWAITE, ELLSWORTH  
GEORGE R. BISHOP, JR., BOOTHBAY  
HOWARD E. MCFADDEN, DENNYVILLE  
BRADLEY S. MOULTON, YORK  
ROBERTA M. MUSE, FRYEBURG

ONE HUNDRED AND TWENTY-SECOND LEGISLATURE  
COMMITTEE ON STATE AND LOCAL GOVERNMENT

April 14, 2005

State Compensation Commission  
David Boulter, Clerk of the Board  
Legislative Council  
115 State House Station  
Augusta, ME 04333-0115

Dear David Boulter,

The State and Local Government Committee will be conducting a public hearing for LD 1537, An Act To Repeal Certain Boards and Commissions on Wednesday, April 27, 2005 at noon in Room 216 of the Cross Office Building. The purpose of the bill is to repeal inactive boards and commissions.

According to the Department of the Secretary of State, the State Compensation Commission did not meet in 2003 or 2004. If the State Compensation Commission would like to be removed from the repeal list, the Commission should present testimony at the public hearing showing that the Commission is, in fact, active, or is about to become active. The State and Local Government Committee will take all testimony into account when considering the bill.

If you have any questions please feel free to contact one of us, or the committee's legislative analyst, Anna Broome.

Sincerely,

Senator Elizabeth Schneider  
Senate Chair

Representative Christopher Barstow  
House Chair

ELIZABETH SCHNEIDER, DISTRICT 30, CHAIR  
 MARGARET ROTUNDO, DISTRICT 16  
 MARY BLACK ANDREWS, DISTRICT 1

ANNA BROOME, LEGISLATIVE ANALYST  
 SUZANNE ARMSTRONG, COMMITTEE CLERK



STATE OF MAINE

CHRISTOPHER R. BARSTOW, GORHAM, CHAIR  
 SONYA G. SAMPSON, AUBURN  
 RICHARD D. BLANCHARD, OLD TOWN  
 CHARLES WILLIAM HARLOW, PORTLAND  
 JAMES M. SCHATZ, BLUE HILL  
 ROBERT H. CROSTHWAITE, ELLSWORTH  
 GEORGE R. BISHOP, JR., BOOTHBAY  
 HOWARD E. MCFADDEN, DENNYVILLE  
 BRADLEY S. MOULTON, YORK  
 ROBERTA M. MUSE, FRYEBURG

ONE HUNDRED AND TWENTY-SECOND LEGISLATURE

COMMITTEE ON STATE AND LOCAL GOVERNMENT

April 14, 2005

Commission on Performance Budgeting  
 David Boulter, Clerk of the Board  
 Legislative Council  
 115 State House Station  
 Augusta, ME 04333-0115

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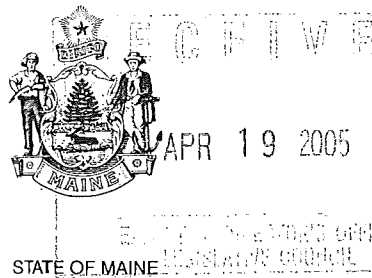
Sincerely,

Senator Elizabeth Schneider  
 Senate Chair

Representative Christopher Barstow  
 House Chair

ELIZABETH SCHNEIDER, DISTRICT 30, CHAIR  
 MARGARET ROTUNDO, DISTRICT 16  
 MARY BLACK ANDREWS, DISTRICT 1

ANNA BROOME, LEGISLATIVE ANALYST  
 SUZANNE ARMSTRONG, COMMITTEE CLERK



CHRISTOPHER R. BARSTOW, GORHAM, CHAIR  
 SONYA G. SAMPSON, AUBURN  
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 HOWARD E. MCFADDEN, DENNISVILLE  
 BRADLEY S. MOULTON, YORK  
 ROBERTA M. MUSE, FRYEBURG

ONE HUNDRED AND TWENTY-SECOND LEGISLATURE

COMMITTEE ON STATE AND LOCAL GOVERNMENT

April 14, 2005

New England and Eastern Canada Legislative Commission  
 David Boulter, Clerk of the Board  
 Legislative Council  
 115 State House Station  
 Augusta, ME 04333-0115

Dear David Boulter,

The State and Local Government Committee will be conducting a public hearing for LD 1537, An Act To Repeal Certain Boards and Commissions on Wednesday, April 27, 2005 at noon in Room 216 of the Cross Office Building. The purpose of the bill is to repeal inactive boards and commissions.

According to the Department of the Secretary of State, the New England and Eastern Canada Legislative Commission did not meet in 2003 or 2004. If the New England and Eastern Canada Legislative Commission would like to be removed from the repeal list, the Commission should present testimony at the public hearing showing that the Commission is, in fact, active, or is about to become active. The State and Local Government Committee will take all testimony into account when considering the bill.

If you have any questions please feel free to contact one of us, or the committee's legislative analyst, Anna Broome.

Sincerely,

Senator Elizabeth Schneider  
 Senate Chair

Representative Christopher Barstow  
 House Chair

ELIZABETH SCHNEIDER, DISTRICT 30, CHAIR  
 MARGARET ROTUNDO, DISTRICT 16  
 MARY BLACK ANDREWS, DISTRICT 1

ANNA BROOME, LEGISLATIVE ANALYST  
 SUZANNE ARMSTRONG, COMMITTEE CLERK

APR 19 2005



STATE OF MAINE

CHRISTOPHER R. BARSTOW, GORHAM, CHAIR  
 SONYA G. SAMPSON, AUBURN  
 RICHARD D. BLANCHARD, OLD TOWN  
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 JAMES M. SCHATZ, BLUE HILL  
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 GEORGE R. BISHOP, JR., BOOTHBAY  
 HOWARD E. MCFADDEN, DENNYVILLE  
 BRADLEY S. MOULTON, YORK  
 ROBERTA M. MUSE, FRYEBURG

ONE HUNDRED AND TWENTY-SECOND LEGISLATURE

COMMITTEE ON STATE AND LOCAL GOVERNMENT

April 14, 2005

Maine-Canadian Legislative Advisory Commission  
 David Boulter, Clerk of the Board  
 Legislative Council  
 115 State House Station  
 Augusta, ME 04333-0115

Dear David Boulter,

The State and Local Government Committee will be conducting a public hearing for LD 1537, An Act To Repeal Certain Boards and Commissions on Wednesday, April 27, 2005 at noon in Room 216 of the Cross Office Building. The purpose of the bill is to repeal inactive boards and commissions.

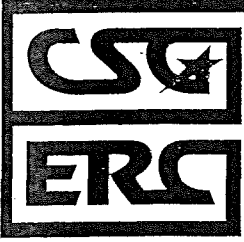
According to the Department of the Secretary of State, the Maine-Canadian Legislative Advisory Commission did not meet in 2003 or 2004. If the Maine-Canadian Legislative Advisory Commission would like to be removed from the repeal list, the Commission should present testimony at the public hearing showing that the Commission is, in fact, active, or is about to become active. The State and Local Government Committee will take all testimony into account when considering the bill.

If you have any questions please feel free to contact one of us, or the committee's legislative analyst, Anna Broome.

Sincerely,

Senator Elizabeth Schneider  
 Senate Chair

Representative Christopher Barstow  
 House Chair



*Eastern Regional Conference*  
40 Broad Street, Suite 2050  
New York, NY 10004-2317  
Phone: (212) 482-2320  
Fax: (212) 482-2344

*Co-Chairs*  
Senator Toni Nathaniel Harp  
Co-Chair, Appropriations Committee  
Connecticut

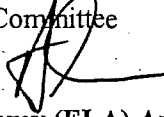

Representative Robert Godfrey  
Deputy Speaker of the House  
Connecticut

*Co-Vice Chairs*  
Senator Rafael Musto  
Minority Chair, Senate Environmental  
Resources & Energy Committee  
Pennsylvania

Representative Raymond Bunt, Jr.  
Majority Caucus Secretary  
Pennsylvania

*Director*  
Alan V. Sokolow

April 20, 2005

TO: Members, ERC Executive Committee  
FROM: Alan Sokolow, Karen Imas    
Re: Eastern Leadership Academy (ELA) Applications

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We are pleased to send you two CSG/ERC Eastern Leadership Academy applications for 2005. We hope that you can work with fellow ERC executive committee members from your state to identify and recruit the best and brightest state officials (two legislators, one from each house, and either a legislative, executive or judicial staff person) from your jurisdiction as potential candidates for the inaugural ELA class.

We appreciate the strong support you have provided to this important venture. We look forward to receiving applications from your colleagues. Please feel free to contact us should you have any questions regarding ELA.



# THE COUNCIL OF STATE GOVERNMENTS

## EASTERN REGIONAL CONFERENCE

## Eastern Leadership Academy

# ELA

A Joint Project of CSG/ERC  
and the Fels Institute of Government,  
University of Pennsylvania

The First Annual CSG/ERC Leadership Academy

September 11-15, 2005

The Inn at Penn—Philadelphia, Pennsylvania

2005 ELA APPLICATION

Deadline: May 30, 2005

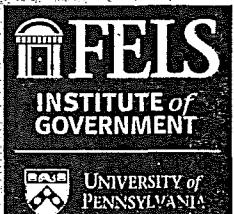
This fall, 40 state officials from the 15 Eastern region member jurisdictions will gather in Philadelphia, PA, for the inaugural Eastern Leadership Academy (ELA). This select group of state officials, from all three branches, will receive training to enhance their leadership skills and will study the most significant policy issues facing the states today.

Participation in ELA is a unique opportunity to learn with the best and the brightest policymakers from across the region.

CSG/ERC is pleased to invite you to apply for the 2005 ELA and be a member of what is sure to become the preeminent leadership development program for state officials in the region. If you strive to be an effective leader, an informed decision-maker and an astute policy analyst, ELA is the program for you.

Conducted by  
The Council of State Governments'  
Eastern Regional Conference  
40 Broad Street, Suite 2050  
New York, NY 10004  
phone 212 482 2320  
fax 212 482 2344  
[www.csgeast.org](http://www.csgeast.org)

In Partnership with  
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3814 Walnut St.  
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19104-6197  
phone 215 898 8216  
fax 215 898 1202  
[www.fels.upenn.edu](http://www.fels.upenn.edu)



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# THE COUNCIL OF STATE GOVERNMENTS

## EASTERN REGIONAL CONFERENCE

ELA  
September 11-15, 2005  
Philadelphia, PA

## Why Apply to Participate in ELA?

**Improve Understanding of Key Regional Public Policies:** ELA is the only leadership academy designed exclusively for eastern regional officials from all three branches. By focusing on the most important regional trends facing state government officials today, scholars from the University of Pennsylvania and outside experts provide a context for you to effectively analyze policies and programs, evaluate the information you receive, and communicate your message successfully with constituents and colleagues.

**Develop Leadership Skills:** Through a series of hands-on and group workshops ranging from consensus-building to media relations, ELA provides training to sharpen and develop the skills you need to become an effective leader.

**Network with the Best and Brightest:** During the ELA Academy, you will come together with some of the most promising state officials from across the region to share your knowledge and to learn from each other's experiences. After the program, a Web site will be available and events planned for graduates of the academy to maintain contacts.

## Who Should Apply?

The Leadership Academy is designed for legislators, as well as legislative staff, executive branch and judicial branch officials, primarily in the early-mid stages of their government careers.

Members of the ELA Application Review Committee will look for applicants who demonstrate:

- Leadership potential, including problem-solving and consensus-building skills
- Dedication to public service
- Commitment to improving government institutions and respect for state government

## How to Apply

In addition to the application form (page 3), each applicant must submit a résumé and a letter of recommendation.

### Résumé or Biographical Sketch

Your application must include a current résumé or biographical sketch. Your résumé must be limited to two typed pages and include the following information, as applicable:

- Government background (first elected/appointed, number of years of service)
- Legislative committees or executive/judicial task forces on which you currently serve
- Legislative, executive, or judicial leadership positions currently and/or previously held
- Prior elected office(s) and jobs held
- Community service/volunteer activities
- Occupational and educational background



### About CSG/ERC

CSG/ERC is a non-profit, non-partisan organization established in 1937 in New York City, serving legislative, executive and judicial branch officials from the ten Northeastern states, Puerto Rico, the U.S. Virgin Islands, and three eastern Canadian provinces. CSG/ERC promotes region-wide initiatives, facilitates inter-branch cooperation, advocates on state-federal issues, and educates policymakers on regional priorities and trends.

### About the Fels Institute

The Institute was founded in 1937 by industrialist and philanthropist Samuel S. Fels. It has the distinction of being one of the oldest public management programs in the nation emphasizing state and local government. Building on its tradition of leadership for results, its graduates acquire the professional skills to serve in all levels and branches of government, as well as with government's partners in the for-profit and nonprofit sectors. The Fels Institute also hosts the Pennsylvania Leadership Academy.