

MAINE STATE LEGISLATURE

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REP. MARK W. EVES
CHAIR

SEN. JUSTIN L. ALFOND
VICE-CHAIR

EXECUTIVE DIRECTOR
DAVID E. BOULTER



SEN. SETH A. GOODALL
SEN. MICHAEL D. THIBODEAU
SEN. TROY D. JACKSON
SEN. ROGER J. KATZ
REP. SETH A. BERRY
REP. KENNETH W. FREDETTE
REP. JEFFREY M. MCCABE
REP. ALEXANDER R. WILLETTE

126TH MAINE STATE LEGISLATURE
LEGISLATIVE COUNCIL

**LEGISLATIVE COUNCIL
MEETING SUMMARY
February 28, 2013**

CALL TO ORDER

Legislative Council Chair Mark Eves called the February 28, 2013 Legislative Council meeting to order at 2:03 p.m. in the Legislative Council Chamber.

ROLL CALL

Senators: President Alfond, Senator Goodall, Senator Thibodeau and Senator Katz

Absent: Senator Jackson (arrived shortly after start of meeting)

Representatives: Speaker Eves, Representative Berry, Representative McCabe, Representative Fredette and Representative Willette

Legislative Officers: Darek Grant, Secretary of the Senate
Robert Hunt, Assistant Clerk of the House
David E. Boulter, Executive Director of the Legislative Council
Dawna Lopatosky, Legislative Finance Director
Debra Olken, Human Resources Director
Marion Hylan Barr, Director, Office of Policy and Legal Analysis
Grant Pennoyer, Director, Office of Fiscal and Program Review
Suzanne Gresser, Revisor of Statutes
John Barden, Director, Law and Legislative Reference Library
Scott Clark, Director, Legislative Information Technology
Beth Ashcroft, Director, Office of Program Evaluation and Government Accountability

Speaker Eves convened the meeting at 2:03 p.m. with a quorum of members present.

SUMMARY OF JANUARY 29, 2013 MEETING OF LEGISLATIVE COUNCIL

Motion: That the Meeting Summary for January 29, 2013 be accepted and placed on file. Motion by Representative Willette. Second by Representative Fredette. **Motion passed (9-0-0-1, with Senator Jackson absent).**

REPORTS FROM EXECUTIVE DIRECTOR AND COUNCIL OFFICES

Executive Director's Report

David Boulter, Executive Director, reported on the following:

1. Maine Capitol Connection Channel

MPBN's Maine's Capitol Connection Channel (MCCC) is in its fourth week of operation, televising various proceedings of the Legislature. Mr. Boulter met with each joint standing committee to explain the recent agreement entered into by the Legislative Council and MPBN and to invite suggestions by Legislators. The initial response by members has been favorable, and televising the legislative sessions, public hearings and work sessions has proceeded smoothly. The pilot program runs through mid-June 2013. Mr. Boulter included the current MCCC station guide in the Legislative Council packet.

2. Laws of Maine Digitized

Through the extraordinary efforts of Director John Barden and the staff of the Law and Legislative Reference Library, the entire record of the Laws of Maine, dating back to Maine's statehood in 1820, has been scanned and is available in a digitized format. In all, over 132,000 pages and 69,329 laws and resolves have been converted to electronic format and will be available to the public through the library. The project began in December 2009 and was completed earlier this month. An indexing protocol will now be developed for ease of search and public access.

3. Bill Drafting Status

As of Wednesday, February 27, 2013, the Revisor's office has drafted over 1,065 bills and sentiments. Of those, 350 are out for sponsor review and signature. The current number of bills, excluding any after-deadline bill requests, is 1701.

Representative Fredette asked whether MPBN's coverage of legislative proceedings resulted in any decreased coverage of high school basketball tournament games this year and requested that MPBN be asked to respond in writing. Mr. Boulter commented that he had posed that question to MBPN's program director who responded that there has been no decreased coverage of the games. Mr. Boulter will request a formal response from MPBN.

Fiscal Report

Grant Pennoyer, Director, Office of Fiscal and Program Review, reported on the following:

Revenue Update

Total General Fund Revenue - FY 2013 (\$'s in Millions)

	Budget	Actual	Var.	% Var.	Prior Year	% Growth
January	\$259.3	\$302.7	\$43.4	16.7%	\$242.0	25.1%
FYTD	\$1,563.4	\$1,607.4	\$44.0	2.8%	\$1,554.7	3.4%

General Fund revenue was above budget projections by \$43.4 million (16.7%) for the month of January and by \$44.0 million (2.8%) for the fiscal year through January. January's variance was

due to the significant positive variance in Individual Income Tax collections. Final estimated payments for the 2012 tax year, due by January 15th, increased significantly. Individual Income Tax collections for December and January may be attributed to taxpayer behavior shifting income into 2012 in anticipation of federal tax increases. Some of this effect may reduce estimated tax payments revenue later in this fiscal year or reduce revenue in future fiscal years. Also contributing to January's significant income tax variance was a delay in the start of federal income tax processing season which delayed refund processing and contributed \$19.4 million to the variance. Much of the refund positive variance should be offset in the next several months.

Sales and Use Tax performance is a concern as is Corporate Income Tax performance; both are under budget through January. Taxable sales performance for the holiday season was more than 3% below the 2011 holiday season and high heating oil prices and significant gasoline price increases will be a further drag on taxable sales.

Highway Fund Revenue Update

Total Highway Fund Revenue - FY 2013 (\$'s in Millions)

	Budget	Actual	Var.	% Var.	Prior Year	% Growth
January	\$25.9	\$26.1	\$0.2	0.6%	\$26.8	-2.6%
FYTD	\$172.1	\$171.4	(\$0.7)	-0.4%	\$168.9	1.4%

Highway Fund revenue was \$0.2 million (0.6%) over budget in January, but was \$0.7 million (0.4%) under budget for the fiscal year through January. Gasoline Tax revenue performance continues to be a major concern for the Highway Fund, lagging behind projections despite rather significant downward adjustments in the December revenue forecast. With recent prices increases and some national forecasts indicating no change until after Labor Day, negative variances in this category will likely continue until adjusted in the next revenue forecast.

Cash Balance Update

The average balance in the cash pool improved in January, being only \$9.5 million less than a year ago and \$65.1 million higher than last month. January's substantial positive variance related to Individual Income Tax final estimated payments and refund processing helped improved General Fund internal borrowing, which averaged \$46.1 million less in January compared with December 2012. However, General Fund internal borrowing remained roughly \$50 million higher than in January 2012. While the improvements in General Fund cash position resulted in additional budget savings from lowered assumptions on the extent of external cash flow borrowing required this fiscal year, there is still an assumption that some external cash flow borrowing will be required in FY 2013.

Legislative Council Chair Eves asked if there was any objection to taking one item out of order. There was no objection. The Chair then moved to **New Business, Item 1.**

Item #1: Consideration of After Deadline Bill Requests / Addendum

Legislative Council Chair Eves explained the criteria and general procedures to be used for considering after deadline bill requests, the criteria being: why the bill request is late (filed after the cloture deadline), why it is an emergency, necessary to be considered this session, and whether there is a related bill that has been or will be introduced that could be used as the vehicle to address the issue without the necessity of introducing an after deadline bill. Legislative sponsors may speak briefly to their bill request to explain how it meets the criteria for

introduction. Representative Fredette asked Mr. Boulter what standard for bill introduction has been used in past 1st regular sessions. Mr. Boulter responded that past Legislative Councils have generally been more lenient in accepting after deadline bill requests at the first meeting when they were considered since typically some of the requests were filed very soon after the cloture deadline. The Legislative Council would usually apply a more rigorous standard at subsequent meetings. This has been the case regardless of the party in the majority.

Mr. Boulter reminded the Legislative Council members that a roll-call vote is required for each bill request and 6 affirmative votes are required for acceptance of a bill request for introduction.

Representative Fredette stated that he supports the standard process for consideration of after deadline requests, but for a cloture deadline to have meaning, after deadline requests should have a high standard for acceptance.

The Legislative Council then proceeded to consider and vote on the bill requests in accordance with the established protocol. Of the 26 bill requests, the council authorized 21 requests for introduction in the 1st Regular Session of the 126th Legislature, 1 failed to be authorized, 1 was withdrawn, and 3 were tabled until a future Legislative Council meeting. Of the 13 joint resolutions, the council authorized 7 requests for introduction in the 1st Regular Session of the 126th Legislature, and 6 failed to be authorized. The Legislative Council's actions on the requests are included on the attached list.

The Legislative Council then returned to the other items on its agenda.

REPORTS FROM COUNCIL COMMITTEES

1. Personnel Committee

Speaker Eves, Chair of the Personnel Committee, presented the following report.

The Personnel Committee met earlier today, February 28, 2013, to consider the reappointments of nonpartisan office directors Scott Clark and Suzanne Gresser for a second 3-year term. The committee met with Mr. Clark and Ms. Gresser and discussed their accomplishments and challenges during the past 3 years and goals for the upcoming years. Upon the recommendation of Executive Director Boulter, the Personnel Committee voted unanimously to recommend that the Legislative Council reappoint Mr. Clark and Ms. Gresser to new 3-year terms.

Motion: That upon the unanimous recommendation of the Personnel Committee, the Legislative Council reappoint Scott Clark to a new 3-year term as Director of the Office of Legislative Information Technology, the date of his appointment being retroactive to January 25, 2013; further, that upon the unanimous recommendation of the Personnel Committee, the Legislative Council reappoint Suzanne Gresser to a new 3-year term as Director of the Office of Revisor of Statutes, the date of her appointment being retroactive to January 25, 2013; and further, that they each be granted a one-step salary increase upon resumption of step increases in the Legislature. Motion by Speaker Eves. Second by Senator Alford. **Motion passed unanimous (10-0-0-0).**

Speaker Eves expressed his appreciation to both Director Clark and Revisor Gresser for their work, commitment and professionalism.

2. State House Facilities Committee

Representative Berry, Chair of the State House Facilities Committee presented the following report.

The State House Facilities Committee met for the first time on February 21st and was briefed by Bureau of Capitol Police Chief Russell Gauvin on security screening at the State House. Chief Gauvin provided a brief history of the establishment of the security screening process that began in January of 2012, staffing costs and policy considerations. Members were provided a copy of the Legislative Council's Policy on Security Screening. Members asked for additional information regarding the screening, various options that would help move people through the screening process more efficiently especially when there are larger crowds and costs. The committee will continue its discussion at the next meeting.

Senator Katz asked if the committee had discussed reducing or eliminating security in the State House. Representative Berry responded that it was discussed, but the focus was on making it more efficient and cost-effective, rather than eliminating security screening.

NEW BUSINESS

Legislative Council Chair Eves asked if there was any objection to taking a second item out of order. Hearing no objection, the Chair then moved to **New Business, Item 4.**

Item #4: Request for Legislature's Participation in Maine Employers' Initiative, a Program of the Maine Development Foundation (Representative Hayes)

Representative Hayes presented her request by providing the Legislative Council with an overview of the MDF's Maine Employers' Initiative, an opportunity for an employer to encourage its employees to attain post-secondary degrees. She noted that among the Maine Development Foundation's Measures of Growth benchmarks is one to increase the number of adults who hold post-secondary degrees as one way to improve Maine's economy.

She indicated that there is no cost for an employer, such as the Maine Legislature, to join the Maine Employers' Initiatives, but once an employer joins, there are benefits that accrue to employees through arrangements with Maine's institutions of higher education.

Senator Goodall asked about MDF's view on the Legislature joining the initiative. Representative Hayes responded that MDF would be thrilled according to MDF's president with whom she had spoken.

Representative Hayes discussed some of the employee benefits, such as ones provided by Thomas College, an institution of higher education, that provides educational opportunities to employees of participating employers. The college offers one graduate course to employees free of charge, and a 10% reduction in tuition costs for subsequent courses.

Senator Goodall indicated that he is not familiar with the program and expressed a desire to better understand the program and an employer's obligations, if any, before acting on the request.

Motion: That the Legislative Council table the request by Representative Hayes that the Legislature participate in the Maine Employers' Initiative until a future Legislative Council meeting. Motion by Senator Goodall. Second by Representative Berry. **Motion passed (6-4,** with Senator Thibodeau, Senator Katz, Representative Fredette and Representative Willette opposed).

The Legislative Council then returned to the other items on its agenda.

OLD BUSINESS

Item #1: Council Action Taken by Ballot since January 29, 2013 Meeting

The following decisions were made by ballot.

Legislative Council Decision:

That upon the unanimous recommendation of the Budget Subcommittee, the Legislative Council approve budget savings totaling \$374,814 to be achieved in legislative accounts during the 2012-2013 biennium by lapsing funds to the General Fund in accordance with the subcommittee's recommendations; further, that upon the recommendation of the Budget Subcommittee, the Legislative Council approve these adjustments in lieu of the deappropriations contained in the Governor's supplemental budget for fiscal year 2012-13; and further, that the Executive Director be directed to prepare and transmit all necessary implementing language reflecting this decision of the Legislative Council to the Joint Standing Committee on Appropriations and Financial Affairs on behalf of the Legislative Council for inclusion in the committee amendment to the Governor's supplemental budget bill for fiscal year 2012-13.

Motion by: Senator Justin Alford

Second by: Representative Jeff McCabe

Approved: February 7, 2013

not vote)

Vote: 9-0-0-1 in favor (Senator Goodall did

Legislative Council Decision:

That the Legislative Council approve budget savings totaling \$1.0 million to be achieved in legislative accounts during the 2012-2013 biennium by lapsing funds to the General Fund; further, that the Executive Director be directed to prepare and transmit all necessary implementing language reflecting this decision of the Legislative Council to the Joint Standing Committee on Appropriations and Financial Affairs on behalf of the Legislative Council for inclusion in the committee amendment to the Governor's supplemental budget bill for fiscal year 2012-13.

Motion by: Senator Justin Alford

Second by: Representative Mark Eves

Approved: February 13, 2013

Vote: 10-0-0-0 in favor

Request for Introduction of Legislation:

LR 2017 An Act to Amend the Law Pertaining to the Amount of Methamphetamine Precursors that May be Bought or Sold

Submitted by: Representative Alexander Willette

Approved: February 22, 2013

Vote: 10-0-0-0 in favor

Item #2: Memorandum of Understanding between the Legislative Council and MPBN for Pilot Maine Capitol Connection Channel

The Memorandum of Understanding was presented to the Legislative Council for information purposes only. No further action of the Legislative Council was required.

Representative Berry asked whether MPBN intended to provide closed captioning of its broadcasts of legislative proceedings, which is helpful to the deaf and hard-of-hearing community. Mr. Boulter stated that he would raise the matter with MPBN.

NEW BUSINESS

Item #2: Proposed Legislative Council Policy on Legislative Studies (Ms. Hylan Barr)

Ms. Hylan Barr reviewed the proposed Legislative Council Policy on Legislative Studies as well as the background and procedures relevant to this policy. Mr. Boulter explained that the proposed policy is consistent with the ones for previous years. Representative Berry inquired if the budget for the legislative studies had changed. Mr. Boulter replied that the legislative studies budget of \$10,000 is consistent with previous years.

Motion: That the Legislative Council adopt the proposed Legislative Council Policy on Legislative Studies. Motion by Representative Willette. Second by Senator Jackson.
Motion passed unanimous (10-0).

Item #3: Request to serve lunch to attendees of Maine Credit Union Day in the Hall of Flags on March 28, 2013 (Request by Maine Credit Union League)

Ms. Quincy Hentzel, Director of Governmental Affairs for the Maine Credit Union League, requested that for its event, Maine Credit Union Day, to be held in the Hall of Flags on March 28, 2013, the Maine Credit Union League be given an exemption to the limitation on food served as established in the *Legislative Council Policy on the Use of the Hall of Flags*.

Mr. Boulter explained the request by the Maine Credit Union League to serve a meal to legislators in the Hall of Flags on "Maine Credit Union Day". He also drew Legislative Council members attention to the *Legislative Council Policy on the Use of the Hall of Flags* adopted in January 2006. Under the policy, food is allowed in the Hall of Flags subject to limitations, including that with few exceptions, the food served may not constitute a meal. The request by MCUL would not be consistent with the policy and, therefore, would require Legislative Council approval.

A Legislative Council member noted that one of the events where a meal may be served is Maine Banker's Day. Senator Thibodeau expressed concern that an expansion of the policy to allow meals would lead to a competitive situation among groups feeling compelled to serve ever more elaborate meals. [Note: Maine Banker's Association has not hosted Maine Banker's Day for the past 2 years and has not scheduled to do so in 2013.]

President Alfond indicated he would make a motion for approval of the request with the condition that Mr. Boulter work with the MCUL to ensure that the serving of food remains generally in keeping with past practices such as limiting the food to 'finger food' and not providing a sit-down meal.

Motion: That the Legislative Council approve the request by the Maine Credit Union League subject to the Executive Director and the League working out event details that will result in honoring the intent of the policy with respect to food in the Hall of Flags. Motion by Senator Alfond. Second by Senator Jackson. **Motion passed unanimous (10-0).**

Following the vote, President Alfond suggested that the State House Facilities Committee look at the policy to assure groups are treated fairly and the Legislative Council is not opening the door for an onslaught of requests for exceptions to the meal limitation in the policy.

Item #5: 2012 Annual Report on Activities and Performance, Office of Program Evaluation and Government Accountability (Ms. Ashcroft)

OPEGA Director Ashcroft presented OPEGA's Annual Report for 2012. She noted that the report is required by law to be submitted to the Legislature. She then proceeded to summarize key aspects of the report.

Ms. Ashcroft reminded members that OPEGA goals are to provide timely, relevant and useful information and recommendations, conduct all work with objectivity and accuracy, communicate regularly on OPEGA activities, results and impacts, and to utilize resources effectively, efficiently and economically. She briefly discussed OPEGA accomplishments, noting that the report identifies the number of visits to the OPEGA website (8,600 from 49 states and 89 countries) and the percentage of recommendations that have been partially or fully implemented by agencies.

Ms. Ashcroft stated that the office worked on 8 projects in 2012 as well as 2011, completed 4 projects in 2012 and issued a full report or information brief for each one. OPEGA drafted 2 pieces of legislation in 2012, one being related to quasi-independent agencies that was subsequently enacted by the Legislature. The 2nd one related to LD 34 (annual reporting by Child Development Services). The Government Oversight Committee assigned 3 "rapid response" projects and 4 other priority projects to OPEGA in 2011/2012. Ms. Ashcroft stated that OPEGA can devote limited resources only to following up on past reports and tracking agency responses to recommendations. She drew members attention to a chart of cumulative recommendations found on page 12 of the report, totaling 178 recommendations, of those 58% have had action taken.

Senator Katz commented that he believes the Legislature receives excellent value from OPEGA.

Representative Berry asked if OPEGA publishes a listing of all recommendations that are reflected in the noted chart that could be accessed in a consolidated manner rather than reviewing

individual reports. Ms. Ashcroft responded that she maintains a spreadsheet in the office but it is not generally available; that is a project on OPEGA's list.

Motion: That the Legislative Council accept the 2012 Annual Report on Activities and Performance, Office of Program Evaluation and Government Accountability and place it on file. Motion by Senator Alfond. Second by Representative Willette. **Motion passed unanimous (10-0).**

Item #6: Proposal for "Olympia Snowe Day" (Senator Katz)

Senator Katz drew Legislative Council members' attention to his memo proposing an "Olympia Snowe Day" that would include an invitation to former U.S. Senator Snowe to address a joint convention of the Legislature this session.

The purpose would be to recognize her many years of service to Maine and the Nation. He noted that Senator Snowe was born in Augusta and was a member of the Maine House of Representatives from 1972 to 1976 and of the Senate from 1976 to 1978. She then served in the U.S. House of Representatives for 8 terms and in the U.S. Senate for 3 terms, concluding a 34 year record of service to Maine in the U.S. Congress. Senator Katz indicated that her length of service is longer than any other official's in the state in the last 100 years, and further noted her reputation to reach out to both parties. He concluded by saying that he is suggesting that the Legislative Council chair invite Senator Snowe to the Legislature to extend the Legislature's thanks, offering her the opportunity to address the Legislature, and to hold a reception for her in the Hall of Flags in late April or early May.

After a brief discussion, the Legislative Council generally concluded that an invitation to Senator Snowe to address the Legislature in joint convention should properly be extended by the President and the Speaker.

Several Legislative Council members commented that it would be an honor for Senator Snowe to address the Legislature.

Motion: That the Legislative Council recommend to the President of the Senate and the Speaker of the House that in recognition of her public service they extend an invitation to former U.S. Senator Olympia Snowe to address a joint convention of the Maine Legislature this legislative session. Motion by Senator Goodall. Second by Representative McCabe. **Motion passed unanimous (10-0).**

ANNOUNCEMENTS AND REMARKS

Having no other business to consider or announcements, the Legislative Council meeting was adjourned at 3:26 p.m.