

MAINE STATE LEGISLATURE

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LEGISLATIVE COUNCIL MEETING
Legislative Council Chamber

January 5, 1977

CALL TO ORDER

The meeting was called to order by the Chairman, Sen. Jerrold Speers at 10 a.m.

ROLL CALL

Senators: Sen. Conley, Sen. Danton, Sen. Sewall, Sen. Speers

Representatives: Rep. Martin, Rep. Palmer

Staff: William Garside, Legislative Admin. Director
Ronald Lord, Legislative Finance Officer
David Silsby, Legislative Research Director
Edith Hary, Law Librarian
Helen Ginder, Legislative Staff Asst. Coordinator

Guests: Rep. Garsoe, Rep. Huber, Rep. Tierney
Steve Lakis, State Legislative Leaders Foundation

SECRETARY'S REPORT

MOTION

Sen. Sewall moved that the secretary's report be accepted as presented.

The motion was duly seconded and carried unanimously.

COMMUNICATIONS

MOTION

A motion was made and seconded to place communications on file as being received.

Sen. Speers advised that he had received a letter from Helen Ginder requesting two additional staff aides. She advised that the two new members would fill positions left vacant by Suzanne Havens and George Viles.

Discussion followed on hiring two permanent staff members for the Legislative Assistants Office, one member being assigned to the Judiciary Committee as Craig Nelson is no longer with that committee. It was agreed that were a member hired for Judiciary both chairmen of the committee would consult with Helen Ginder in determining who will be hired for the position. Sen. Speers asked the Council members whether the person hired to work with the

Judiciary Committee should be assigned to the Legislative Staff Assistants Office or to the Legislative Research Office. David Silsby also submitted a request for additional staff members for his office.

MOTION

Rep. Martin moved that two additional staff people be hired for the Legislative Assistants Office.

The motion was duly seconded and failed with a vote of 5 to 1 (Palmer).

Sen. Conley stated that the need for additional manpower was for the purpose of drafting legislation to meet deadlines and cut overtime costs. Rep. Martin questioned David Silsby on three points concerning the request: 1) Would there be sufficient room without acquiring additional space? 2) Would it require additional secretarial help? and 3) Would they be trained in time to be effective for this session?

David Silsby answered that there would be no need for extra space or additional secretarial help. He advised that the training would be beneficial later and in the meantime the training gained would be valuable.

William Garside, Legislative Administrative Director, suggested that the Council review the Legislative Budget which is tight at this time. In order to handle costs of hiring additional help there would have to be an emergency bill introduced to fund this and the legislative budget for the next biennium.

Sen. Danton stated that if we were to hire the additional help it would speed up the process enabling the session to adjourn earlier saving on Legislators' salary that could be used to pay the additional staff employees.

Sen. Speers made a point that this matter should be handled by the new Council.

MOTION

Sen. Conley moved to table this matter on hiring additional staff members until tomorrow morning at the next Council meeting.

The motion was duly seconded and carried.

ADJOURNMENT

The Council adjourned at 11 a.m.

REMARKS

The next Legislative Council will be held on January 6, 1977 at 8:30 a.m.



STATE OF MAINE
DIRECTOR OF LEGISLATIVE RESEARCH
AUGUSTA, MAINE 04333

January 4, 1977

Chairman of the 108th
Legislative Council
State House
Augusta, Maine 04333

Dear Mr. Chairman:

In response to a request of the Legislative Council at their last scheduled meeting concerning the Legislative Resource Improvement Study recommendation for two additional staff members in the Legislative Research Office, I respectfully submit the following requests for the Council's consideration:

1. That the Director of Legislative Research be authorized to employ two additional staff members on a full-time basis to be trained for drafting and revision services in the Legislative Research Office; and
2. That such employees be employed on a probationary basis at a starting salary of \$14,000 for a period of 6 months. After satisfactory completion of their probationary period, these employees' salaries to be adjusted to \$14,500.

This request comes on the eve of annual sessions and with the new time constraints under which the Legislative Research Office will soon be faced. The basis for this request is well stated in the Legislative Resource Improvement Study report. The appropriate portions of this report are appended hereto.

Thank you for your kind attention.

Respectfully,

A handwritten signature in cursive script that reads "David S. Silsby".

DAVID S. SILSBY
Director, Legislative Research

DSS/tml

Attachments

The Office of Legislative Research

The Office of Legislative Research was established in 1947 for the express purpose of providing professional staff assistance to the legislature in areas of bill drafting, statutory revision, and preparation for printing and indexing of the session laws. In each of these areas the duties and responsibilities of this office have expanded markedly since its creation some thirty years ago.

During and immediately prior to the formal convening of a legislative session, The Office is almost exclusively involved with drafting legislation and amendments to legislation. In the most recent regular session of the legislature, (107th.), the Office of Legislative Research drafted a total of 2,394 bills and resolves, of which 1,948 were introduced. In addition, the office drafted 1,566 amendments to bills of which 1,245 were introduced and further drafted 333 orders and 46 resolutions.²

Associated with this bill drafting function, the office is also responsible for preparing and affixing to each bill a statement of fact. This statement of fact which outlines the salient characteristics and purpose of each bill, requires that the office conduct a limited amount of research on nearly every bill it drafts.

In 1975 the office assumed further responsibilities as a new Office of Legislative Information and a new position of Legislative Indexer were created and placed under its jurisdiction. In a subsequent section of this report both of these relatively new legislative resources will be considered in detail. For our present purposes it will suffice to simply note that the creation and placement of these resources under the jurisdiction of Legislative Research represents an additional responsibility and function of this office.

² Maine State Government, Annual Report 1974-1975, ed. Carl T. Silsby (Augusta, Maine, 1975), p.50.

During the interim between legislative sessions the office becomes primarily involved with publishing the newly enacted statutes and revising the master setup of the Maine Statutes. In addition to these activities the office is responsible for drafting any pre-filed measures as well as any proposed legislation originating out of interim study. Finally, the Office of Legislative Research holds a number of supportive roles, chief among them being staff to the Legislative Council.

Because it is responsible for these and a number of other activities, and because many of its most significant activities occur during the opening weeks of the legislative session, The Office of Legislative Research holds a pivotal position in the Maine legislative process. It is, by virtue of its primary bill drafting responsibility, a major determinant of how the legislature will utilize its available time.

In assessing the performance of this office particular attention has been paid to its ability to carry out its bill drafting and associated responsibilities in a timely fashion. This responsibility has, in turn, been considered from the perspective of the customary volume of legislation the office must prepare and the staff resources the office can bring to bear on this volume. Additionally, in formulating our recommendations here we have been concerned with the ability of this office to satisfy the future and more demanding needs of the legislature.

Given the volume of legislation which this office is customarily called upon to draft, and given the wide range of duties and responsibilities assigned to this office, we can only conclude that the present two man professional bill drafting staff is not large enough to fully satisfy the needs of the legislature. Indeed, it is only because of the high individual abilities and dedication of the current two man bill drafting staff that the office has been able to provide the basic drafting services to the legislature.

Referring back to Table 8 we see that fully 86% of all legislators responding indicated that the Office of Legislative Research should receive either high or medium priority with respect to increasing its professional staff complement. We concur wholeheartedly with this sentiment and accordingly recommend that:

- (14) THE LEGISLATIVE COUNCIL AUTHORIZE THE DIRECTOR OF LEGISLATIVE RESEARCH TO HIRE TWO ADDITIONAL FULL TIME, PROFESSIONAL BILL DRAFTERS.

Our reasons for this recommendation are

- 1) Earlier and firmer deadlines for introduction of bills being processed in the Legislative Research Office. This constitutes one of the most important reasons for increasing the current bill drafting staff. In the past two regular and special sessions of the legislature the original deadline for the introduction of bills being processed by Legislative Research has never been adhered to. The effect of this failure, (i.e., the failure to use available legislative time efficiently), upon the legislative process has become only too apparent as the legislature has repeatedly found itself running out of time at the end of the session.

A number of remedial procedures such as: pre-session organization; greater use of pre-filing; and extended committee periods during the opening weeks of the session; have already been cited as methods of improving the legislature's use of available time. Our concern at this juncture is with insuring that these recommended procedures, if implemented, will achieve the results the legislature desires. To do this the legislature must now recognize that no staffing agency in the legislature will have a greater impact on, nor be more affected by these procedures than will the Office of Legislative Research. In every instance - with pre-filing, pre-session organization, and extended committee periods

- 1) much of the responsibility for making these recommended procedures work will fall squarely upon the staff in this office.

A modest staff increase such as is being recommended here will enable the office to far more effectively and efficiently meet its present duties and responsibilities within the deadlines set by the legislature. Moreover, only with such a staff increase in this office will the legislature be able to realize the full benefit of those recommendations suggested above. In short, if the Maine Legislature desires to reduce end-of-session logjams; permit more thorough review of legislation before final action; and finish its work either on time or possibly before the final deadline for adjournment; it must make a commitment to improving the staff resource capability of this office.*

One final point on this recommendation for increased staff support. A staffing system has been recently worked out whereby the Office of Legislative Staff Assistants provides the Office of Legislative Research with staff support for bill drafting in the opening weeks of the session. This stop-gap measure is no solution to the problem. Rather, it merely serves to further point out the need for increased staff support in the Office of Legislative Research. More importantly, as this legislature now moves into an annual session format with all its expected consequences such as increased legislative volume and shorter and more significant interim periods; the need for increased staff support from both offices will become heightened. Accordingly, the legislature should now discount this stop-gap procedure as a viable alternative to increased staff support for the Office of Legislative Research.

* An interesting comparison in bill drafting staffs can be made between the Maine Office of Legislative Research and the N.H. Office of Legislative Services. The N.H. Legislature, which is limited to 90 legislative days and must meet for all these days in the first year of the biennium, has a bill drafting complement of six full-time attorneys. On the average the N.H. Legislature considers 1,500 pieces of legislation. Rarely are deadlines ever extended in N.H. Also, the N.H. experience with end-of-session logjams has been far less severe than Maine's.

- 2) A second benefit of increased staff support in this office will be improved statements of fact. Currently, as has been noted, in addition to their bill drafting duties, the staff in the Office of Legislative Research must also affix to each bill a brief, concise summary of what the bill is intended to do. These summaries, or statements of fact, are valuable and useful informational tools and as such their preparation by this office should continue.

In order to maximize the potential of these summaries however, it is necessary to provide the Office of Legislative Research with additional staff support. Now, with only two full-time professionals in the office, this responsibility constitutes an added burden. Furthermore, because the staff in the office correctly view their primary duty as being bill drafting, it logically follows that the careful preparation of statements of fact must be relegated to a lesser priority. While this situation is inevitable under the present conditions it nonetheless remains that the absence of carefully developed statements of fact robs the legislature of a useful and impartial informational tool.

In lieu of this recommendation for increased staff support being adopted by the legislature we recommend that the Legislative Assistants assume a portion of the responsibility for the preparation of these summaries. We further recommend that the legislative leadership encourage all legislators to prepare clear statements as to what their legislation proposes to do. This latter recommendation should hold regardless of what action the legislature may take with respect to increased staff support for the Office of Legislative Research.

- 3) Still a third benefit of increased staff support in Legislative Research will be more thorough review of legislation being reported out of this office. Under the current limited staffing system there is practically no opportunity for careful review of legislation prior to it being reported out. Furthermore, because

- 3) the Director of Legislative Research is one-half of the entire bill drafting staff, there is little opportunity for him to exercise his administrative and supervisory roles. The immediate consequences of this situation are twofold: first, certain technical errors in the language of drafted legislation may be overlooked only to resurface and cause delay at a later stage in the legislative process; and second, duplicate legislation or perhaps legislation which is unconstitutional may be drafted and reported out to the legislature.

The inability of the Director to exercise his administrative and supervisory roles due to the fact that he must draft legislation full-time, has certain long term consequences for the office and the legislature as well. Most notably, because the Director must be so involved with drafting legislation, he can have little opportunity for other matters such as developing new techniques to improve the effectiveness of his staff. In effect, by restricting his role, the legislature is denying itself and the Office of Legislative Research the full potential of its Director.

- 4) A fourth benefit accruing from increased staff support in this office will be realized in a more productive interim period. Specifically, added staff will enable the Office of Legislative Research to revise the entire Maine Revised Statutes - an objective which the office itself had set forth in the 1974 - 1975 Annual Report. In addition to this comprehensive statutory revision, the office will be in a stronger position to handle any increases in bill drafting brought about strengthened pre-filing procedures and interim committee studies.

M E M O R A N D U M

To: Legislative Council
From: John L. Martin
Re: Confirmation of Gubernatorial Appointments

ON JANUARY 4, 1977 THE LEGISLATURE WILL ASSUME RESPONSIBILITY FOR CONFIRMATION OF MAJOR GUBERNATORIAL APPOINTMENTS.

THE CONSTITUTIONAL AND STATUTORY GUIDELINES MAY BE FOUND IN ARTICLE V PART I SECTION 8 OF THE CONSTITUTION AND CHAPTER 771 SECTION 11 OF THE PUBLIC LAWS OF 1975.

THE CONFIRMATION OF GUBERNATORIAL APPOINTMENTS WILL BE ONE OF THE LEGISLATURE'S MOST IMPORTANT CONSTITUTIONAL RESPONSIBILITIES. THE CONFIRMATION PROCESS MUST BALANCE THE AUTHORITY OF THE CHIEF EXECUTIVE TO NOMINATE PEOPLE OF HIS CHOICE AND THE RESPONSIBILITY OF THE LEGISLATURE TO REVIEW THOSE NOMINATIONS. ITS IMPORTANCE IS INCREASED BY THE PROVISIONS OF CHAPTER 771 UNDER WHICH MANY APPOINTEES WILL SERVE AT THE PLEASURE OF THE GOVERNOR.

IT IS ESPECIALLY IMPORTANT TO DEVELOP AND ADOPT A PROCEDURE PRIOR TO JANUARY 4, 1977. THE PROCEDURE USED TO HANDLE THE FIRST NOMINATION SUBSEQUENT TO THAT DATE WILL LIKELY SERVE AS A PRECEDENT. ALSO, PROSPECTIVE NOMINEES SHOULD KNOW AS FAR IN ADVANCE AS POSSIBLE WHAT PROCEDURES WILL BE USED. MOST IMPORTANT, PROSPECTIVE NOMINEES MUST BE ASSURED THE PROCEDURE WILL BE FAIR.

THE IMPORTANCE OF PROCEDURE CAN NOT BE OVEREMPHASIZED. A CAREFULLY IMPLEMENTED PROCEDURE FOR HANDLING NOMINATIONS WILL INSURE THE CHIEF EXECUTIVE'S PREROGATIVES ARE PROTECTED, THE NOMINEE IS TREATED FAIRLY AND THE LEGISLATURE IS PROTECTED FROM UNNECESSARY CRITICISM.

THE CONFIRMATION OF GUBERNATORIAL NOMINEES SHOULD BE CONDUCTED IN A THOROUGH, CAREFUL AND DELIBERATE MANNER. TO CONDUCT A HURRIED OR SUPERFICIAL INVESTIGATION OF NOMINEES IS TO RISK THE EMBARRASSMENT OF ALL PARTIES AND/OR SERIOUS LEGAL COMPLICATIONS.

IT WOULD BE VERY DIFFICULT TO RESOLVE A SITUATION IN WHICH A NOMINEE WAS INADVERTLY CONFIRMED WHO DID NOT POSSESS THE STATUTORY QUALIFICATIONS FOR THE OFFICE OR WHO HAD A LEGAL CONFLICT OF INTEREST.

AN EXTREME EXAMPLE OF THE EMBARRASSMENT THAT CAN OCCUR FROM SUPERFICIAL EXAMINATION IS THE CONFIRMATION OF AUGUSTUS HEALD, A RESIDENT OF THE STATE PRISON, AS JUSTICE OF THE PEACE SEVERAL YEARS AGO. IN THAT INSTANCE THE LACK OF THOROUGH PROCEDURE SERVED NO ONE'S INTERESTS NOT THE GOVERNOR NOT THE CONFIRMING BODY.

THERE ARE THREE TIME FRAMES INVOLVED IN THE APPOINTMENT PROCESS. THE CONSTITUTION STATES "EVERY NOMINATION BY THE GOVERNOR SHALL BE MADE SEVEN DAYS AT LEAST PRIOR TO APPOINTMENT OF THE NOMINEE." THE STATUTES REQUIRE THE APPROPRIATE COMMITTEE TO ACT WITHIN TWENTY DAYS FROM THE DATE OF THE GOVERNOR'S WRITTEN NOTICE

- 3 -

OF THE NOMINATION TO THE PRESIDENT AND THE SPEAKER. THE SENATE MUST ACT WITHIN FORTY FIVE DAYS OF THE GOVERNOR'S NOTICE TO THE PRESIDENT AND THE SPEAKER.

ONCE THE CHAIRMAN OF THE APPROPRIATE COMMITTEE RECEIVES NOTICE FROM THE PRESIDENT OF A NOMINATION, THE CHAIRMAN SHOULD ESTABLISH A PUBLIC HEARING DATE. SEE TITLE 3 SECTION 151.

TWO AIDES SHOULD BE ASSIGNED TO ASSIST THE COMMITTEE IN DOING BACKGROUND WORK ON THE NOMINATION. ONE AIDE SHOULD REPRESENT THE MAJORITY PARTY AND ONE THE MINORITY. THIS WILL HELP INSURE THE REVIEW PROCESS IS BALANCED AND COMPLETE. THESE AIDES SHOULD HANDLE ALL NOMINATIONS REGARDLESS OF COMMITTEE. THEY WILL QUICKLY DEVELOP EXPERTISE IN THE MECHANICS OF THE REVIEW PROCESS THAT WILL COMPLIMENT THE SUBJECT MATTER EXPERTISE OF THE COMMITTEE.

HAVING TWO PEOPLE WORKING TOGETHER ON ALL NOMINATIONS WILL INSURE INVESTIGATIONS DON'T GET OUT OF HAND. IT WILL ALSO FACILITATE SENATE REVIEW SINCE THE STAFF WORK ON EACH APPOINTMENT WILL BE STANDARD IN FORM AND PROCEDURE.

THE LEGISLATURE MAY WANT TO GRANT STANDING SUBPOENA POWER TO ALL COMMITTEES FOR THE PURPOSE OF CONFIRMATION HEARINGS.

ALL WITNESSES SHOULD BE PLACED UNDER OATH TO PROTECT THE NOMINEE FROM FALSE OR LIBELOUS STATEMENTS BY WITNESSES.

THE STATUTE REQUIRES THE COMMITTEE VOTE BY THE YEAS AND NAYS AND THE MOTION BE AFFIRMATIVE. THE RECOMMENDATION IS THEN FORWARDED TO THE PRESIDENT OF THE SENATE.

THE MATERIAL GATHERED BY THE COMMITTEE SHOULD BE MADE AVAILABLE TO MEMBERS OF THE SENATE IN SUMMARY FORM. MINORITY REPORTS SHOULD BE ALLOWED.

BOTH THE CONSTITUTION AND THE STATUTES REQUIRE THE OPTION OF THE COMMITTEE BE REVIEWED BY THE SENATE. THE LANGUAGE IS NOT ENTIRELY CLEAR. IT APPEARS NO ACTION BY THE SENATE CONFIRMS THE ACTION OF THE COMMITTEE. IN ORDER TO CLARIFY THE SITUATION AND AVOID UNNECESSARY DELAYS I SUGGEST WHEN THE PRESIDENT RECEIVES THE RECOMMENDATION OF THE COMMITTEE THIS MATTER BE PLACED ON THE CALENDAR AND THE FOLLOWING BE THE PENDING MOTION:

"SHALL THE NOMINATION OF JOHN SMITH TO THE POSITION OF COMMISSIONER OF AGRICULTURE BE CONFIRMED/DENIED NOTWITHSTANDING THE ACTION OF THE JOINT STANDING COMMITTEE ON AGRICULTURE WHEREBY THIS NOMINATION WAS ~~CONFIRMED/DENIED~~."

THE MOTION WOULD REQUIRE A 2/3 VOTE OF THOSE MEMBERS PRESENT AND VOTING FOR PASSAGE.

IT SHOULD NOT BE DIFFICULT TO HANDLE NOMINATIONS WITHIN THE STATUTORY TIME LIMITS WHILE THE LEGISLATURE IS IN SESSION.

WHEN THE LEGISLATURE IS OUT OF SESSION CLOSE COOPERATION WITH THE GOVERNOR PRIOR TO POSTING OF NOMINATIONS WILL FACILITATE THE PROCEDURE.

RECOMMENDATION

THE SPEAKER AND THE PRESIDENT WHOULD EACH ASSIGN AN AIDE TO DEVELOP DETAILED HEARING PROCEDURES CONSISTANT WITH THE ABOVE TO BE PRESENTED TO THE LEGISLATIVE COUNCIL FOR APPROVAL.

MISCELLANEOUS: Appointments by the Governor, subject to review by a Joint Standing Committee of Legislature and confirmation by the Legislature.

Effective: January 4, 1977

(Reference) P.L. 1975 - Special Session - Chapter 771

<u>Title & Section:</u>	<u>Name</u>	<u>Joint Standing Committee of Legislature</u>
T7-Sect. 1	Agriculture, Commissioner of	On Agriculture
T10-Sect. 8001	Business Regulation, Commissioner	Business Regulation
T12-Sect. 5011	Conservation, Commissioner	Natural Resources
T4-Sect. 157	District Court Judges	Judiciary
T20-Sect. 51	Education, Members, Board of	Education
T20-Sect. 1A	Educational & Cultural Serv., Commissioner	Education
T5-Sect. 751	Employees Appeals Board, Members	Labor
T26-Sect. 1081	Employment Security Commission	Labor
T38-Sect. 341	Environmental Protection, Commissioner -Dept. of	Natural Resources
T38-Sect. 361,	Environmental Protection, Board	Natural Resources
T5-Sect. 287	Finance & Administration, Comm.	Financial Affairs
T10-Sect. 751	Guarantee Authority, Members	State Government
T22-Sect. 1	Human Services, Commissioner	Health and Institutional Services
T30-Sect. 4602	Housing Authority, Director	Government
T39-Sect. 91	Industrial Accident Commission	Judiciary
T12-Sect. 1951	Inland Fisheries & Wildlife, Commissioner of	Fisheries and Wildlife
T26-Sect. 968	Labor Relations Board, Members	Labor
T12-Sect. 683	Land Use Regulation Comm., Members	Natural Resources
T28-Sect. 51	Liquor Commission, Members	Liquor Control
T39-Sect. 428	Maine Maritime Academy, Members, Board of Trustees	Education
T26-Sect. 1401	Manpower Affairs, Commissioner	Labor
T12-Sect. 3451	Marine Resources, Comm. Dept. of	Marine Resources
T34-Sect. 1	Mental Health & Corrections, Comm.	Health and Institutional Services
T5-Sect. 591	Personnel Board, Members	Labor
T5-Sect. 631	Personnel, Commissioner of	State Government
T25-Sect. 1501	State Police Chief	State Government
T25-Sect. 2901	Public Safety, Commissioner	State Government
T35-Sect. 1	Public Utilities Commission, Members	Public Utilities

<u>Title & Section</u>	<u>Name</u>	<u>Joint Standing Committee of Legislature</u>
T35-Sect. 1031	Retirement System, Board of Trustees	Veterans and Retirement
T4-Sect. 152	Superior Court Judges	Judiciary
T4-Sect. 152	Supreme Court Judges	Judiciary
T23-Sect. 4205	Transportation, Commissioner, Dept. of	Transportation
T20-Sect. 2251	University of Maine, Board of Trustees	Education

We have been unable to find any of the following boards in the new laws which show who approves these appointments - The Governor or the Governor and Legislature

Agricultural Bargaining Board (T13-Sect. 1956)

County Records Board (T30-Sect. 347)

Members, Institution for the Blind (P&S 1923- Chapt. 96)

Commissioners of Interstate Boundary Commission to Establish a Marine Boundary between Maine and New Hampshire T5-Sect. 2)

Members, Maine-New Hampshire Interstate Bridge Authority (P&S 1937; Chap. 18)

Members, Northeastern Forest Fire Protection Commission (P&S 1949-Sect. 75)

Members, Passenger Tramway Safety Board (T25-Sect. 1941)

Members, Portland Harbor Commission (P&S 1957; Chapt. 65)

Directors, Greater Portland Public Development Commission (P&S 1945-Chapt. 123)