

MAINE STATE LEGISLATURE

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LEGISLATIVE COUNCIL
December 2, 1992
PRELIMINARY AGENDA

CALL TO ORDER

ROLL CALL

ELECTION OF OFFICERS

SECRETARY'S REPORT

Summary of November 13, 1992, Council Meeting

EXECUTIVE DIRECTOR'S REPORT

Items #1: Personnel Actions

- a. Notification of New Employees Hired to Fill Existing Vacancies
 - William Eberle to fill the vacant Computer Programmer/Analyst position in the Office of Information Systems.
- b. Resignation of Jo-Ellen Staples, Legislative Information Office

REPORTS FROM COUNCIL COMMITTEES

OLD BUSINESS

NEW BUSINESS

Item #1: Rules of Procedure for the Legislative Council

Item #2: Submission of Study Reports

- Staff Study on **Medicaid Cost Containment: Issues and Options** (by Paul Saucier, Office of Policy & Legal Analysis).
- Staff Study on **Privatization of State Services, Volume I, A Process Review and Status Report** (by Karen L. Hruby, Office of Policy & Legal Analysis).
- Staff Study on **Privatization of State Services, Volume II, Corrections** (by John B. Knox, Office of Policy & Legal Analysis).
- Staff Study on **Sovereign Immunity Waivers** (by Deborah C. Friedman, Office of Policy & Legal Analysis).

Item #3: Redistricting: "Calendar" and Related Information

Item #4: Conference on "Rethinking State Government", sponsored by the University of Maine (Letter from Judith Bailey, Interim Vice-President for Research and Public Service).

ANNOUNCEMENTS AND REMARKS

ADJOURNMENT

Lynn Randall
Legislative Council Info.



STATE OF MAINE

115th LEGISLATURE

LEGISLATIVE COUNCIL

November 13, 1992

MEETING SUMMARY

Approved December 3, 1992

SEN. CHARLES P. PRAY
CHAIR

REP. DAN A. GWADOSKY
VICE-CHAIR

SEN. NANCY RANDALL CLARK
SEN. DENNIS L. DUTREMBLE
SEN. CHARLES M. WEBSTER
SEN. PAMELA L. CAHILL
REP. JOHN L. MARTIN
REP. PATRICK E. PARADIS
REP. WALTER E. WHITCOMB
REP. FRANCIS C. MARSANO

SARAH C. TUBBESING
EXECUTIVE DIRECTOR

CALL TO ORDER

The Legislative Council meeting was called to order by the Chair, Senator Pray, at 3:15 p.m.

ROLL CALL

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

The Chair, Senator Pray, also recognized Senators Esty and Bustin, who had recently been elected to Senate leadership posts for the 116th Legislature and would, therefore, be members of the new Legislative Council.

SECRETARY'S REPORT

The Summary of the October 6, 1992, Council meeting was approved and placed on file. (Motion by Sen. Dutremble; second by Sen. Cahill; unanimous).

EXECUTIVE DIRECTOR'S REPORT

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

Item #1: Blue Ribbon Commission To Examine Alternatives To The Workers' Compensation System And To Make Recommendations Concerning Replacement Of The Present System: Final Budget Status Report

The report indicates that a balance of \$79,256.67 remains out of the Commission's original appropriation of \$250,000. Mr. Tubbesing also drew members' attention to the letter from Richard Dalbeck, one of the Blue Ribbon Commission's Co-Chairs, in which Mr. Dalbeck commended Jane Orbeton and Lisa Copenhaver for their competence and their non-partisanship.

Motion: That the report be accepted and placed on file.
(Motion by Rep. Gwadosky; second by Sen. Dutremble; unanimous).

Item #2: Legislative Printing Contracts for the 116th: Bid Awards

Council members had received a memo identifying the successful bidders for the various printing contracts for the 116th legislative biennium. They are:

LD's	:	J.S. McCarthy
Amendments	:	Copy Center
Senate & House Calendars	:	J.S. McCarthy
Senate & House Roster	:	Letter Systems
Senate & House Register	:	J.S. McCarthy
District Directory	:	J.S. McCarthy
Legislative Record	:	Copy Center
Acts & Resolves	:	Quality Copy

Because the Council had previously authorized the Executive Director to execute contracts with the low bidders, this was presented as an information item: no further Council action was required.

Item #3: Personnel Actions

Ms. Tubbesing reported that the following individuals had been hired to fill vacant positions as previously authorized by the Council:

- Erna Koch, to fill a vacant Analyst position in the Office of Fiscal & Program Review, and
- Marion Hylan Barr, to fill a vacant Analyst position in the Office of Policy & Legal Analysis.

Resumes for both Ms. Koch and Ms. Barr had been included in the advance mailing to Council members.

Ms. Tubbesing then reported that Karen Hruby, an Analyst in the Office of Policy & Legal Analysis had submitted her resignation

She requested Council approval of Martha Freeman's recommendation to promote Roy Lenardson, currently a Research Assistant, to the vacant Analyst position and to hire Darlene Shores Lynch to fill the Research Assistant position.

Motion: That Ms. Hruby's resignation be accepted and that the Council authorize the position to be filled as recommended. (Motion by Speaker Martin; second by Sen. Dutremble; unanimous).

Item #4: 3rd and 4th Special Sessions: Summary of Expenditures

The report from Ms. Tubbesing indicates that the total cost of the Third Special Session (October 1 - 6) was \$231,767.78, and the cost of the Fourth Special Session (October 16) was \$40,007.25.

Motion: That this report be accepted and placed on file. (Motion by Sen. Dutremble; second by Sen. Cahill; unanimous).

REPORTS FROM COUNCIL COMMITTEES

EXECUTIVE SESSION

Motion: That the Council go into Executive Session for the purpose of discussing matters related to personnel. (Motion by Speaker Martin; second by Sen. Clark; unanimous).

The Council proceeded to go into Executive Session at 3:19 p.m.

RECONVENE

The Council reconvened at 3:26 p.m., and continued its consideration of Reports from Council Committees.

Personnel Committee

Representative Gwadosky, presented the following recommendations, in the form of motions:

Motion: That the Legislative Council approve the award of Income Protection to legislative employees as recommended by the Personnel Committee. (Motion by Speaker Martin; second by Sen. Cahill; unanimous).

Motion: That Stephanie Ralph be promoted to the position of Principal Law Librarian, a currently vacant position, effective immediately. (Motion by Sen. Clark; second by Rep. Marsano; unanimous).

Committee on Total Quality Management in the Legislature

The Chair, Senator Pray, recognized Sen. Paul Gauvreau, who had chaired both of the subcommittees that had been appointed to develop recommendations in two specific areas: 1) Committee Rules and Procedures, and 2) the Legislative Confirmation Process. Sen. Gauvreau briefly reviewed the Committee's recommendations, noting that some would require amending the Joint Rules and some amending the statutes.

Motion: That the Committee's report and recommendations be accepted and that the proposed changes in law and the Joint Rules be formally drafted and authorized for introduction. (Motion by Sen. Dutremble; second by Sen. Clark; unanimous).

Rep. Gwadosky stressed the importance of communicating the proposed changes in the Joint Rules to members of the 116th Legislature before they convene. The Chair Senator Pray, replied that he concurred with this.

Senator Pray then thanked Sen. Gauvreau for all of his work with the TQM Committee and congratulated him on the productiveness of the Committee's efforts.

OLD BUSINESS

None.

NEW BUSINESS

Item #1: Request from the Joint Select Committee to Study the Feasibility of a Statewide Health Insurance Program to Extend the Reporting Deadline.

Motion: That the request to extend the reporting deadline to December 1 be approved. (Motion by Speaker Martin; second by Sen. Cahill; unanimous).

Item #2: Proposed Fee Schedule for Legislative Document Service.

Clerk of the House Joe Mayo had submitted the recommended schedule for the First Regular Session, which included no price increases. Senator Pray observed that he thought the fees should be increased; and Speaker Martin replied that he would support an increase in fees if postage rates were to go up during the session.

Motion: That the fee schedule be approved as submitted with the provision that subscribers be notified that rates might increase. (Motion by Speaker Martin; second By Sen. Dutremble; unanimous).

Item #3: Report from State House and Capitol Park Commission Regarding Proposal to Enhance the Vietnam Veterans' Memorial and Other Issues.

Council members had received a letter from the Commission Chair, Earle Shettleworth, that summarized the current status of the Commission's work in 3 areas and presented the following specific recommendations:

1. That funds in the Commission's current budget be set aside to engage the landscape architects firm of William Pressley & Associates to work in consultation with the Commission's Subcommittee on the Vietnam Veteran's Memorial to review the proposed changes and develop recommendations regarding improvements to the Memorial;
2. That the Commission be authorized to issue a Request for Qualifications for an Historic Structures Report for the State House and to present a recommendation regarding a contractor to the 116th Legislative Council; and
3. That the Council authorize the Commission to develop preliminary bid estimates for repair and painting of the rotunda ceiling.

Motion: That the Commission's recommendations be approved. (Motion by Speaker Martin; second by Sen. Clark; unanimous).

Item #4: Submission of Report from the Commission to Arrange the Display of the Flags of Maine's Desert Storm Units in the Hall of Flags of the State House.

Motion: That this report, submitted pursuant to Resolves of 1991, Chapter 35, be accepted and placed on file; and, further, that the Executive Director be directed to bring it to the attention of the 116th Legislative Council for implementation as necessary. (Motion by Speaker Martin; second by Sen. Clark; unanimous).

Item #5: Letter from Rep. Anne M. Larrivee requesting Changes in the Joint Standing Committee Structure.

The Chair recognized Rep. Larrivee, who was present. Rep. Larrivee reported that the intent of her letter was to reinforce a letter that the Council had received several months ago that recommended replacing the current Joint Standing Committee on Judiciary and Joint Select Committee on Corrections with two new joint standing committees - one on Criminal Justice and one on Civil Justice. She stressed the need for close legislative coordination on issues related to corrections and criminal justice.

Discussion

Rep. Marsano expressed his opposition to the recommendation, noting that, although he supports the recommendation to coordinate corrections issues more closely with criminal justice, he does not agree with separating civil and criminal law. He noted that the 116th Legislature would have fewer lawyers among its members than the 115th and that there would not be enough lawyers to "equip" two committees adequately. Rep. Larrivee stated that her objective was to even the workload among committees. Finally, Sen. Cahill expressed her hope that the new Legislative Council would be taking a look at all committees.

Motion: That the letter be accepted and referred to the 116th Legislative Council for priority attention. (Motion by Sen. Clark; second by Sen. Dutremble; unanimous).

ANNOUNCEMENTS AND REMARKS

None.

ADJOURNMENT

The Council meeting was adjourned at 3:40 p.m., on the motion of Sen. Clark.

**MAINE LEGISLATIVE COUNCIL
115th LEGISLATURE**

RULES OF PROCEDURE

Adopted by the Legislative Council, December 21, 1990

1. **Organizational meeting:** The President of the Senate shall call the biennial organizational meeting of the Legislative Council into session and preside until the election of the Chair.
2. **Chair:** The Council shall select a Chair, who shall preside at all meetings of the Council when present. The position of Chair must alternate in succeeding sessions between members from the Senate and members from the House.
3. **Vice Chair:** The Council shall select a Vice Chair who shall act as Chair in the absence of the Chair. The Vice Chair may not be a member of the same branch of the Legislature as the Chair.
4. **Quorum:** The Council may not conduct business in the absence of a quorum, which consists of six members. Any action of the Council requires the affirmative votes of not less than 6 members.
5. **Meetings:** The Council's meeting schedule is determined by vote of the Council or by call of the Chair.
6. **Meeting Location:** The official meeting place of the Legislative Council is the Legislative Council Chambers, and the Chair shall convene all meetings there unless a different place is specified in the call of the meeting.
7. **Meeting Notice:** The Chair shall issue written calls for all regular and special meetings of the Council. The call must give the date, time, and place of the meeting and such other information as the Chair directs.
8. **Public Meetings:** All meetings of the Council are public except for executive sessions, and the Council shall take all final action at a public meeting.
9. **Council Subcommittees:** The Chair shall name subcommittees of the Council. The subcommittees must consist of at least three members. All subcommittees shall have representation from each of the two major political parties.

MAINE STATE LEGISLATURE LEGISLATIVE COUNCIL

10. **Council Records:** The Executive Director of the Legislative Council shall maintain an accurate permanent public record of all meetings and proceedings of the Council.
11. **Order of Business:** The regular order of business of the Council is:
 1. Call to Order
 2. Roll Call
 3. Secretary's Report
 4. Executive Director's Report
 5. Committee Reports
 6. Old Business
 7. New Business
 8. Announcements and Remarks
 9. Adjournment
12. **Statements to the Press:** Only the Council Chair or persons authorized by the Chair may make official statements to the press or to the public on behalf of the Legislative Council.
13. **Rules of Order:** The Chair or Vice Chair shall conduct the proceedings of the Council in accordance with Robert's **Rules of Order** except as otherwise specified in the Council's own rules or by law.
14. **Revision of Rules:** The Council may amend these rules, with the exception of Rule 4, upon a two-thirds vote of the Council members present and voting, provided that the vote to amend is by at least six affirmative votes.

OFFICE OF POLICY AND LEGAL ANALYSIS

STAFF STUDY PROPOSAL

Re: Medicaid Cost Containment

Containment of costs in the Medicaid program has become a major issue nationwide in recent years. As states struggle with budget deficits, they look at their "big ticket" items and find that Medicaid not only falls in that category, but is among the fastest growing lines in their budgets. Factors contributing to the growth include new federal mandates, rising health care costs, expansion of optional services, and increases in the number of people who become eligible during periods of economic decline.

Many states, including Maine, have initiated cost containment strategies in recent years. Universities and "think tanks" have proposed other approaches yet to be implemented. This study would:

1. Describe Medicaid cost containment measures implemented or proposed recently in Maine;
2. Compile a list of Medicaid cost containment strategies that have been tried elsewhere or proposed in the literature; and
3. Assess the feasibility and likely impact of implementing new strategies in Maine.

Where appropriate, requests for fiscal analyses would be submitted to the Office of Fiscal and Program Review.

OFFICE OF POLICY AND LEGAL ANALYSIS

INTERIM 1992: STAFF STUDY PROPOSAL

Privatization Of State Services

Privatization, the contracting out to private companies of services previously performed by state employees, has been used in many municipalities, counties and special districts throughout the country over the past several years. The variety of services that have been privatized range from maintenance to medical services and from solid waste disposal to data processing. There is less documentation of privatization by the states and perhaps less use of privatization by them.

The push to privatize state services in Maine reached a watershed during the second session of the 115th Legislature. The idea appeared among the recommendations of the Special Commission on Governmental Restructuring, was a major part of the initial budget presented by the Governor and generated intense debate among legislators over policy issues.

Two areas in which privatization is being implemented or seriously considered for Maine are the areas of retail Alcoholic Beverage Sales and Juvenile Corrections. Additionally the trend, by both clinicians and governments, in the areas of mental health and developmental disability is toward community-based treatment, often utilizing private, local sub-contractors. Examples of states' or counties' privatizing these types of services do exist and the Legislature would benefit from a review of their experiences.

The proposed study would consist of four parts. The parts, and their associated products are listed below:

Part	Products
1. Literature review	1-a. Overview/summary of major points in the literature of privatization. 1-b. History of the privatization. 1-c. Bibliography.

Part

Products

2. Survey of states

2. Current data on state privatization including:

- a. Services privatized;
- b. Laws governing privatization;
- c. Criteria for privatization;
- d. Cost result;
- e. Quality result; and
- f. Evaluation methods.

3. Focus on specific areas of privatization in other states

3-a. Areas could include retail alcohol sales; juvenile corrections; mental health services; and/or developmental disability services.

3-b. In-depth information obtained on: barriers encountered; opportunities gained or lost; RFP process; relations with state employees & unions; confidentiality; availability of federal funds.

4. Synthesis

4. Based on the information gathered, a list of options for legislators in the areas of:

- a. Criteria elements and process in determining if a service area should be privatized; and
- b. Evaluation elements and methods to determine if privatization of service areas reaches its goals.

OFFICE OF POLICY AND LEGAL ANALYSIS

1992 INTERIM: STAFF STUDY PROPOSAL

Re: Resolves Waiving Governmental Tort Immunity

The number of bills waiving governmental immunity under the Maine Tort Claims Act has increased over the past few years. In the First Regular Session of the 114th Legislature, there were 5 bills authorizing suit against the State. In the First Regular Session of the 115th, the Legal Affairs Committee heard 10 bills authorizing suit against the state and 3 bills authorizing suit against various municipalities. Several issues and difficulties arise during the committee's consideration of these bills, including issues about confidentiality of information revealed during the hearings, confusion regarding what rights the state is actually waiving under the bill, and difficulties with obtaining appropriate factual information with which to understand the issue involved. It would be helpful to the committee to have some established procedures and guidelines for hearing and considering these bills, which are unlike other bills considered in the legislative process.

It would also be helpful to look back at the history of these bills to see how often immunity is waived, under what circumstances, how the suits authorized are concluded, and what difficulties arise in those suits from the way the bill is drafted or the way the legislative process considers the bill.

The Attorney General's Office has expressed interest in the past in reviewing the way these resolves are drafted and discussing other issues related to the resolves. The Revisor's Office has also expressed interest in clarifying the format they use for drafting these resolves.

The study would include:

1. Developing a list of bills waiving governmental immunity since adoption of the Tort Claims Act, and committee action on each bill;
2. Tracking post-legislative action on bills that are approved by the Legislature;
 - This would include finding the outcome of the cases, talking with the parties to the cases to determine any difficulties they encounter in bringing or defending these cases;

3. Reviewing and proposing guidelines for committee process in considering these bills;

- Confidentiality issues, such as what waiver of confidentiality to require from parties to guarantee that privacy is respected, but to protect the public's right to information concerning committee activities, and under what circumstances, if any, to hold executive committee sessions;
- Obtaining information for the committee regarding the case in a useable manner and in a useable time frame so that the committee can adequately understand the incident; process for assuring that parties have opportunity to react to information presented;
- Concerns about state employee rights;

4. A review of other states' laws regarding governmental immunity and how those states handle waivers.