

# MAINE STATE LEGISLATURE

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# **LEGISLATIVE COUNCIL**

**September 8, 1993**

## **AGENDA**

### **CALL TO ORDER**

### **ROLL CALL**

### **SECRETARY'S REPORT**

Summary of August 16, 1993, Council Meeting

### **EXECUTIVE DIRECTOR'S REPORT**

### **REPORTS FROM COUNCIL COMMITTEES**

Personnel Committee

### **OLD BUSINESS**

Item #1: Request from Jt. Standing Committee on Audit & Program  
Review for Allocation of Resources to Support  
Committee's Interim Work Schedule (Tabled at July 14,  
1993 meeting).

### **NEW BUSINESS**

Item #1: Cloture Date and Related Deadlines for Second Regular  
Session

Item #2: Notification of Sale of State Property by the Maine  
Forest Service pursuant to statute (letter from Susan  
Bell, Director, Maine Forest Service enclosed)

Item #3: Joint Select Committee on Rules: Submission of Report

### **ANNOUNCEMENTS AND REMARKS**

### **ADJOURNMENT**

Lynn Randall  
Legislative Council Info.



STATE OF MAINE

116th LEGISLATURE

LEGISLATIVE COUNCIL

REP. DAN A. GWADOSKY  
CHAIR

SEN. DENNIS L. DUTREMBLE  
VICE-CHAIR

SEN. DONALD E. ESTY, JR.  
SEN. PAMELA L. CAHILL  
SEN. BEVERLY MINER BUSTIN  
SEN. DAVID L. CARPENTER  
REP. JOHN L. MARTIN  
REP. WALTER E. WHITCOMB  
REP. PATRICK E. PARADIS  
REP. STEPHEN M. ZIRNKILTON

SARAH C. TUBBESING  
EXECUTIVE DIRECTOR

**August 16, 1993**

## **MEETING SUMMARY**

**Approved September 8, 1993**

### **CALL TO ORDER**

The Chair, Rep. Gwadosky, called the Council to order at 3:22 p.m. in the Legislative Council Chamber.

### **ROLL CALL**

**Senators:** Sen. Dutremble, Sen. Esty, Sen. Cahill,  
Sen. Bustin, Sen. Carpenter

**Representatives:** Speaker Martin, Rep. Gwadosky, Rep.  
Whitcomb, Rep. Paradis, Rep. Zirnkilton

**Legislative Officers:** Sally Tubbesing, Executive Director,  
Legislative Council  
Martha Freeman, Director, Office of  
Policy and Legal Analysis  
Lynn Randall, State Law Librarian  
John Wakefield, Director, Office of  
Fiscal and Program Review  
Richard N. Sawyer, Jr., Administrative  
Services Director  
Margaret Matheson, Interim Revisor of  
Statutes  
Joy O'Brien, Secretary of the Senate  
Joseph Mayo, Clerk of the House

## SECRETARY'S REPORT

The Summary of the July 14, 1993 Council meeting was approved and placed on file (Motion by President Dutremble; second by Senator Cahill; unanimous)

## EXECUTIVE DIRECTOR'S REPORT

Sally Tubbesing reported that she had no items for members' consideration that were not otherwise on the Council agenda.

## OLD BUSINESS

With no objection; the Chair, Rep. Gwadosky, proceeded to take up this item out of order.

**Item #1: Report from the State House and Capitol Park Commission regarding the Vietnam Veterans' Memorial.**

The Chair, Rep. Gwadosky, reminded Council members that the proposal from Mr. David Lovejoy to make various repairs and enhancements to the Memorial had originally been presented to the Council last fall and referred to the State House Commission at that time. He then recognized Earle Shettleworth, Chair of the State House and Capitol Park Commission. Mr. Shettleworth prefaced his remarks by acknowledging the Council's pivotal role in allocating funds for long overdue repairs to both the stone wall and fence surrounding the State House and the dome ceiling. He then proceeded with a brief description of both the process the Commission had employed in reviewing the proposal from Mr. Lovejoy and the history of the Memorial itself, which was erected in 1985 under the aegis of the Vietnam Veterans' Leadership Project. He described the original design process as an interactive one between the sculptor, Roger Richmond, veterans through VVLP, and the general public throughout the State of Maine, who had an opportunity to see models of the designs submitted by the two finalists and to comment on them.

Mr. Shettleworth noted that the Subcommittee he had formed to review Mr. Lovejoy's proposals included representatives from the original sponsoring veterans' organization -- VVLP; the designer of the Memorial, Roger Richmond; the Director of the Bureau of General Services, James Keil; members of the Commission, and Mr. Lovejoy himself. He acknowledged the value of Mr. Lovejoy's efforts, noting that he had heightened awareness about the Memorial's general State of disrepair.

Mr. Shettlesworth then described each of Mr. Lovejoy's proposals and the Commission's conclusions and recommendations. They included:

- Replacement of the lighting at the base of the Memorial.

The Commission has worked with the Bureau of General Services to explore options and has concluded that it will cost approximately \$5,000 to replace the lights. The Commission has agreed, with the Council's approval, to spend funds out of its budget for this purpose.

- Repair of the walk surrounding the Memorial.

The Bureau of General Services has agreed to take responsibility for restoring the walk.

- Enhancement of landscaping in the area surrounding the Memorial.

The Commission has worked with Marian Pressley to develop a plan that is consistent with the Olmsted Master Plan for Capitol Park; however, no funds are available in the Commission's budget at this time to purchase additional plants and trees.

- Addition of flags to the Memorial.

Mr. Lovejoy had proposed adding two flags to the Memorial -- the United States flag and the POW-MIA flag. Mr. Shettlesworth noted that the subcommittee had discussed this proposal extensively, and that discussions continue, as veterans' groups from across the State have come forward and expressed their views. He reiterated, in response to a question from Sen. Bustin, that flags had been considered when the Memorial was originally designed in 1985, but had been rejected at that time.

He reported that a consensus from the recent discussions appears to have emerged that a single flag pole which would fly the U.S. and Maine flags be placed in an area adjacent to the Memorial. Mr. Shettlesworth then presented the Commission's recommendation to the Council that a single flag pole be designed with a base which could include the names of military personnel from Maine who had lost their lives in Vietnam or were POW's/MIA's and that the exact placement and design of the Memorial be determined by the sculptor, Roger Richmond and Marian Pressley.

Mr. Shettleworth closed his presentation with some general observations about Capitol Park, a Park which is even older than the State House, and which has been preserved since 1827 as a natural landscape to frame the State House. Referring to recent proposals to construct a new series of war memorials in the Capitol Complex, he noted the importance of finding a suitable location other than the Park.

Following Mr. Shettleworth's presentation, the Chair, Representative Gwadosky, recognized several persons in attendance at the meeting and invited each to speak briefly.

**James Keil, Director, Bureau of General Services**

Acknowledging the thoughtful work of Mr. Lovejoy, Mr. Keil noted that he had also been impressed to learn of the extensive time and effort that had gone into the design of the Memorial originally and committed the Bureau to working with others to restore the Memorial.

In response to a question from Sen. Cahill, he estimated that repair of the walk would be \$3,000 and that the Bureau of General Services could absorb this in its current budget.

**David Lovejoy, Hallowell, Maine**

Mr. Lovejoy thanked everyone who had been involved in the review of his proposals. He noted that he still hoped that there could be 2 flags, but that the plaque that had been proposed was an acceptable alternative at this time.

In response to a question from Sen. Cahill, he agreed that the plaque, not a second flag pole, represented the consensus at this point. Rep. Gwadosky congratulated Mr. Lovejoy on the effort that he has personally expended on this project.

**Motion:** That the Council adopt the recommendations of the State House and Capitol Park Commission, including immediate replacement of the lights and repair of the walk at State expense and the design of a single flag pole with a plaque at the base, to be fabricated and installed at such time as sufficient funds have been made available for this purpose (Motion by Sen. Carpenter; second by Speaker Martin).

The Chair then invited others to testify, and the following persons responded to his invitation:

**Michael A. Williams, Perry, Maine**

Mr. Williams, the Assistant Director of the POW-MIA group in Maine expressed his view that the POW flag should be flown over the Memorial.

**Mr. John Sapp**

Noting that he was not a part of any organized veterans' group, Mr. Sapp advocated the creation of a veterans' memorial park in Capitol Park and urged the Council to take up this issue before it made a decision about the placement of flags around the Vietnam Memorial.

**Mr. Larry Bailey**

Mr. Bailey expressed concern that the Vietnam Memorial was rusting. In response to a question, Mr. Shettleworth noted that the material had been chosen with the knowledge that it would rust to a point and then stop; thus its current condition was planned. Mr. Bailey also expressed support for flying the POW/MIA flag.

**Richard Blouin, Legislative Chair, Maine Veterans' Coordinating Committee**

Mr. Blouin deplored the lack of maintenance of the Memorial. He further noted that the request to install flags at the Memorial was not new, but that the Governor had agreed to fly the POW-MIA flags from the State House only on Veterans' holidays and any POW-MIA recognition day.

**Elizabeth Soucek, Legislative Chair, Maine Federation of Garden Clubs**

Ms. Soucek expressed concern on behalf of her organization about any further construction in Capitol Park, advocating that it be left green and complementary to the State House. She expressed support for the location of a memorial park somewhere else.

**John Grady, VFW, Eastport Area**

Mr. Grady advocated the use of a "mast" motif for the flag pole and expressed concern about maintenance.

Following these presentations, Council members returned to discussion of the pending motion, raising the following concerns and considerations:

- The relationship between Capitol Park and the area where the Naval Reserve Armory is located. (Sen. Bustin)

Mr. Shettleworth clarified that there are two distinct segments of the Park -- the first is Capitol Park, which is owned by the State and was originally set aside as a naturalistic area to frame the State House -- a designation which would argue against the construction of additional memorials in this area. The second part is the City-owned portion of the Park, which was originally conceived as a recreational area.

- The group Mr. Lovejoy represents (Sen. Bustin)

Mr. Lovejoy stated that he was working on behalf of a small committee that had no official name or title. Speaker Martin pointed out that the Vietnam Veterans Leadership Project had been a formally organized group and should continue to have a formal role in discussions related to the memorial.

- The reason the Memorial had been located in Capitol Park originally (Rep. Paradis)

Rep. Paradis' question grew out of discussion about issues of maintaining the security of the Memorial: the Memorial has been the target of vandalism several times since it was erected. He questioned whether there had been any discussion of moving the Memorial.

Mr. Keil responded that security cameras had been installed to address the vandalism and that they are operational. However, they require the lighting around the Memorial to be in good repair. Some general ensued discussion about other locations for the existing memorial. Sen. Carpenter noted that if had he been involved in the original discussions in 1985, he would have opted to put the Memorial on federal land.

Discussion again returned to the pending motion, with several members expressing concern about approving the addition of a flag pole and plaque to the Memorial based on a consensus that appeared to be elusive. Sen. Cahill offered the following amendment to the original motion:

**Motion:** That the pending motion be amended to approve only replacement of the lighting and restoration of the walk and that the Veterans' Coordinating Committee be asked to get together and report back to the Council at its September meeting regarding the flag and the plaque. (Motion by Sen. Cahill; second by Rep. Whitcomb).

**Discussion:** Speaker Martin objected to the motion, noting that if the Council was going to approve changes to the existing Memorial, other groups in addition to the Coordinating Committee must be involved -- specifically the VVLP. He therefore offered the following motion:

**Motion:** That the work on the lighting and walks proceed and that the previously designated designers -- Marian Pressley and Roger Richmond -- bring the proposed design of the flag pole and plaque back to the Council for review. (Motion by Speaker Martin; second by Rep. Whitcomb).



**Discussion:** The Chair recognized Rep. Susan Farnsworth, who was in attendance. Rep. Farnsworth reported that she had talked with many people over the past weeks about the Memorial and that she had been struck that while all felt comfortable speaking for themselves, they did not wish to speak on behalf of any group. Noting that the addition of flags represents a major change to the original Memorial, she expressed her hope that work on the single flag pole for the United States and State of Maine flags could proceed while the discussion of the more controversial POW-MIA flag continued. The Chair clarified that the motion would authorize proceeding with the design of the single flag pole, including its location and the plaque, under the auspices of the State House and Capitol Park Commission.

The amended motion was approved unanimously.

The Chair thanked all of those who had participated in the discussion.

## EXECUTIVE SESSION

**Motion:** That the Council proceed to go into Executive Session for the purpose of discussing matters related to personnel. (Motion by Speaker Martin; no objection).

The Council proceeded to go into Executive Session at 4:55 p.m.

## RECONVENE

The Council reconvened in open session at 5:22 p.m. on the motion of Speaker Martin (second by Sen. Bustin, approved 9-1).

**Motion:** That the compensation of legislative employees be adjusted in a manner comparable to the adjustments that have already been implemented for Confidential employees at the direction of the Governor with the objective of reestablishing parity with Confidential employees. (Motion by Speaker Martin; second by Sen. Bustin).

**Motion:** That the item be tabled. (Motion by Sen. Esty; second by Sen. Cahill; failed 5-5).

**Discussion:** Council members raised several questions about the impact of the motion:

- The relationship of the motion to the Council's earlier actions with regard to budget cuts (Rep. Whitcomb).

- Whether it has always been the Council's practice to follow the executive branch (Sen. Carpenter). Speaker Martin replied that the Council had traditionally followed the compensation actions awarded to Confidential employees with the exception that no legislative employee had received either the 7% or 5% cost of living increases which were awarded to executive branch employees in July, 1992 and October, 1992 respectively with offsetting shutdown and furlough days. Rep. Gwadosky clarified that the proposal would award the 7% and 5% cost of living increases prospectively.
- Whether the motion included furlough days (Rep. Whitcomb).
- Whether legislative employees should track those employees who occupy "major policy-influencing positions as defined in statute (Title II and Title V MRSA). (Rep. Gwadosky)

Speaker Martin noted that the Council's tradition had been to track those Confidential employees who were not major policy influencing.

The vote was again taken on the original motion, and it failed.

The Chair then returned to the printed agenda.

## REPORTS FROM COUNCIL COMMITTEES

### Personnel Committee

Rep. Gwadosky, Committee Chair, reported that the Committee had met prior to the Council meeting and had had a lengthy discussion of "work rules" with the Secretary of the Senate, Clerk of the House and the Office Directors. He reported that the Committee would be developing some recommendations for future Council consideration.

**Motion:** That the Executive Director be authorized to proceed with advertising the vacant position of Revisor of Statutes. (Motion by Sen. Cahill; second by Sen. Carpenter; unanimous).

### Committee on Total Quality Management in the Legislature

Rep. Gwadosky reported that the Committee had met and had begun to frame priorities for its work in the coming months.

No Council action was required on this item.

## OLD BUSINESS

- Item #2: Request from Jt. Standing Committee on Audit & Program Review for Allocation of Resources to Support Committee's Interim Work Schedule (Tabled at July 14, 1993 meeting)

The Council took no action on this item.

## NEW BUSINESS

**Item #1: Submission of Interim Report from Joint Select Committee on Rules**

Sen. Bustin, who is Senate Chair of the Jt. Select Committee, drew members' attention to the brief progress report which had been prepared pursuant to Joint Rule. She reported that the Committee was engaged in a thorough study of "concept drafting" options and would be issuing a complete report later in the fall.

No Council action was required.

**Item #2: Request for Use of Capitol Park during Employee Recognition Week**

**Motion:** That the request from Commissioner Millett be approved. (Motion by Rep. Paradis; second by Sen. Cahill; unanimous).

## ANNOUNCEMENTS AND REMARKS

The Chair, Rep. Gwadsoky, reminded Council members that State Treasurer Sam Shapiro had arranged a meeting with representatives from Moody's on August 19 to discuss the state's credit rating.

## ADJOURNMENT

The Council meeting was adjourned at 5:45 p.m., on the motion of Sen. Cahill.

SENATE

JOHN J. CLEVELAND, DISTRICT 22, CHAIR  
M. IDA LUTHER, DISTRICT 8  
CHARLES M. BEGLEY, DISTRICT 20



HOUSE

PHYLLIS R. ERWIN, RUMFORD, CHAIR  
BEVERLY C. DAGGETT, AUGUSTA  
GEORGE A. TOWNSEND, EASTPORT  
WILLIAM LEMKE, WESTBROOK  
MONA WALKER HALE, SANFORD  
ELEANOR M. MURPHY, BERWICK  
WESLEY FARNUM, SOUTH BERWICK  
ALBERT G. STEVENS, JR., SABATTUS  
ALVIN L. BARTH, JR., BETHEL  
EDWARD L. DEXTER, KINGFIELD

STATE OF MAINE  
ONE HUNDRED AND SIXTEENTH LEGISLATURE  
COMMITTEE ON AUDIT AND PROGRAM REVIEW

July 8, 1993

Honorable Dan Gwadosky, Chair  
and Members of the Legislative Council  
116th Maine State Legislature  
Augusta, Maine 04333

Dear Chair Gwadosky and Members of the Legislative Council:

We are writing to ask for your assistance in meeting the Audit Committee's statutory mandate and in pursuing a Legislative request for information originally posed in 1992. In order to obtain the needed information, we request that the Council augment current staff resources by assigning additional Legislative staff to finally provide this information originally sought by the Legislature 18 months ago.

A brief background and overview of the project is as follows:

On February 6, 1992, the chairs at that time of the Business Legislation Committee, Sen. John Baldacci and Rep. Carl Sheltra, sent a letter to the then-chair of the Board of Optometrists requesting 5 points of information; one of which is as follows [complete letter attached]:

"[The Business Legislation] Committee left the various restrictions on corporate practice in place based particularly on [the Board's] testimony concerning deterioration in the quality of care that could occur if

these restrictions were dropped. Now that there is more time we would appreciate it if you would give statistical documentation to this testimony. What we would have in mind is a complaints per 100 licensed optometrists in a state with and without these restrictions and/or the complaints per 100 optometrists in a state before and after it removed these restrictions."

A second letter was sent to the Optometrists on Business Legislation stationery the following month, March 1992, which included some of the items in the February letter, but did not include the item as listed above.

Accordingly, neither the Business Legislation Committee, nor the Legislature, has ever received the information originally sought.

During the course of the Audit Committee's review of the Board of Optometry, we have also reviewed the business restrictions imposed on the corporate practice of optometry and administered by the professional regulatory board. Since the sole purpose of a professional regulatory board is to protect the public's health and welfare, and not to regulate the corporate practice of the profession, we, too, raised questions similar to those raised by the Business Legislation Committee back in 1991.

Since the mandate of the Audit Committee is to ensure that entities under its review are operating in accordance with Legislative intent, the information requested by the Business Legislation Committee continues to be relevant to our mandate.

Therefore, since the one staff person currently assigned to the Audit and Program Review Committee is fully engaged in carrying out the Committee's business at hand, we are requesting that the Council assign other appropriate Legislative staff the task of collecting this information needed for the Committee to complete its review of the Board of Optometry.

For our purposes, we anticipate that the project would entail a survey of all regulatory boards of optometry in the country for the purposes of:

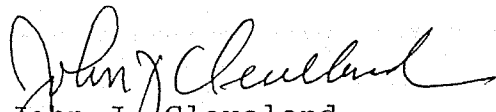
- determining the number of boards with jurisdiction over economic regulation;
- the nature and scope of these boards' authority over the corporate practice of the profession;

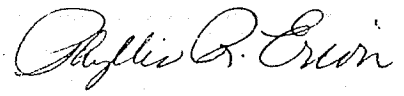
- the rationale for authorizing these professional regulatory boards to also exercise restrictions on the practice of the profession; and
- a determination of the public benefit derived from the boards' economic regulation of the profession.

We would need these data by January 1, 1994.

We would be happy to elaborate on our request for additional staffing assistance and appreciate your consideration.

Sincerely,

  
John J. Cleveland  
Senate Chair

  
Phyllis R. Erwin  
House Chair

**SCHEDULE FOR REVIEW OF BILL REQUESTS**  
**SECOND REGULAR SESSION**

**Proposed Date**

**October 4 (Monday)**  
**5 p.m.**

**Filing Deadlines:**

- Legislators (Title & Summary)
- Departments/Agencies  
(Final drafts)

**October 24 (Sunday)**

**Legislative Council Meeting**

**October 27 (Wednesday)**

Notification of Council's action  
mailed to sponsors

**November 1 (Monday)**  
**5 p.m.**

**Deadlines for:**

- Final drafts or sufficient  
information to draft for all  
bills accepted by Council
- Filing appeals
- Submission of study legislation

**November 6 (Saturday)**

**Legislative Council Meeting to**  
consider appeals and incomplete  
requests

September 8, 1993

John R. McKernan, Jr.  
Governor



C. Edwin Meadows, Jr.  
Commissioner

DEPARTMENT OF CONSERVATION

August 12, 1993

Sarah C. Tubbesing  
Executive Director of the Legislative Council  
State House Station 115  
Augusta, Maine 04333

Dear Sarah:

As you are aware, the Legislature during the recently concluded session, authorized the Maine Forest Service to sell the Forest Nursery located in the Town of Greenbush and Passadumkeag. This letter is notice, pursuant to 12 MRSA, Sec. 8003, Subsection 3, Paragraph M that the property will be sold at a public auction on September 23rd.

The Maine Forest Service is in the process of transferring 11+ acres of land, which includes the low level radioactive waste site, to the University of Maine as directed in PL 1993, Chapter 335. The Maine Forest Service will retain 13+ acres with the remaining 393 acres, including all structures, to be included in the auction. You may recall that the property being sold can only be used for agricultural or forestry purposes.

I would be happy to discuss any questions you may have regarding the sale of this property.

Sincerely,

A handwritten signature in cursive script that reads "Susan J. Bell".

Susan J. Bell  
Director  
Maine Forest Service

/jlc

cc: Bourassa  
Bartlett







MAINE STATE LEGISLATURE  
Augusta, Maine 04333

**JOINT SELECT COMMITTEE ON RULES**

September 3, 1993

TO: Legislative Council

FROM: Joint Select Committee on Rules  
Sen. Beverly Bustin, Senate Chair  
Rep. Charlene Rydell, House Chair

RE: Concept Drafting and Cloture Issues

The Joint Select Committee on Rules is required by Joint Rule 13-B to report to the Legislative Council regarding concept drafting and cloture issues. Attached is a copy of our report.

While the Rules Committee has come to the conclusion that a classic "concept drafting" system would require too many changes in the workings of the Maine Legislature to be advisable, we are recommending some changes in rules and Legislative procedures that contain many of the same advantages that a concept drafting system would be designed to accomplish. We believe that implementation of these changes would result in significant improvements in the committee process of consideration of legislation as well as make more efficient use of both legislators' and staff time.

We look forward to discussing these recommendations with you.

5334LHS

# SUMMARY

## PROPOSED CHANGE

- I. Confidentiality rules should be relaxed to permit bill titles, names of sponsors, indexing information and sponsor-provided summary to be made available as soon as possible after cloture.
- II. Committees would meet soon after bill information is made available to establish a schedule for consideration of legislation likely to come before them during the session.
- III. Drafting priorities would be established based upon schedules adopted by the committees.
- IV. Committees would adopt proposed schedule of public hearings and work sessions on bills by subject matter.
- V. Committees would be given authority to combine related bills that have been referred to them and report them out as a committee bill or with combined sponsorship.

## IMPLEMENTING ACTION SECOND REGULAR SESSION 116TH LEGISLATURE

- I. Not necessary for Second Regular Session because information is available on all bills as soon as approved for introduction by the Legislative Council. Revisor should be directed to amend drafting request form to permit sponsors to provide brief summary (optional this year).
- II. Requires either the Legislative Council or the Speaker and the President to authorize committees to meet for a day shortly after the date set for appeal of Council action on admission of bills.
- III. No action necessary. Can be implemented administratively by Revisor of Statutes working with committee staff persons.
- IV. It would be helpful to know likely deadlines for final committee action at this point so that committees would know the time frames available to them in which to schedule their work. Different deadlines could be established (as currently) for small, moderate and heavy work load committees.
- V. Requires a change in the Joint Rules. If this provision is to be implemented in the Second Regular Session, a change could be adopted early in January before most committees are ready to report out bills.

## IMPLEMENTING ACTION FIRST REGULAR SESSION 117TH LEGISLATURE

- I. Requires Joint Rule change for First Regular Session to permit title, sponsor, indexing information and sponsor-provided summary to be made available to committees shortly after cloture. (Est. time -- late December, early January)
- II. No action necessary. Committees could meet during the first week of January to propose a schedule.
- III. No action necessary. Can be implemented administratively by Revisor of Statutes working with committee staff persons.
- IV. It would be helpful to know likely deadlines for final committee action at this point so that committees would know the time frames available to them in which to schedule their work. Different deadlines could be established (as currently) for small, moderate and heavy work load committees.
- V. Requires a change in the Joint Rules.

VI. Initial drafting efficiencies would be adopted to speed up the flow of the initial drafting process.

- A. A two-tier level of cloture would be established in the First Regular Session to encourage early submission of bill requests.
- B. The Revisor of Statutes would no longer try to identify duplicates and closely related bills for purposes of expediting consolidation.
- C. Some detailed technical refinements would not be completed at the initial drafting stage and would be moved to the committee amendment stage (or another stage for bills not referred to committee).

VII. Additional issues to keep in mind:

- A. The relationship between indexing of bill requests and determination of suggested reference needs to be explored further.
- B. Committee schedules will need to be coordinated with the further consideration of the role of policy committees in the budget process.
- C. Consideration should be given to whether, in the 117th Legislature, committee jurisdictions or numbers should be changed to make more even workload in order to provide more efficient use of legislative time.

A. Not applicable

B. Can be implemented administratively.

C. Can be implemented administratively.

A. Requires a change in the Joint Rules

B. Can be implemented administratively.

C. Can be implemented administratively.

A. A group of staff involved in these functions has been asked to explore this issue and report back to the Rules Committee.

B. The Legislature's TQM committee is reviewing the budget process. Both the Rules Committee and the TQM Committee are aware of the need for coordination in this area. There is some overlap in membership of the two committees, and each is following closely the work of the other.

C. The Rules Committee intends to look at this question in further detail in the future.

# **REPORT ON CONCEPT DRAFTING AND OTHER METHODS OF IMPROVING COMMITTEE AND LEGISLATIVE EFFICIENCY**

## INTRODUCTION

The subcommittee identified the following goals for improving the flow of legislative work:

1. Make more effective use of legislator time
2. Strengthen the committee process
3. Make more efficient use of non-partisan staff
4. Increase public understanding of and public access to the legislative process
5. Improve public image of the Legislature and its workings
6. Reduce costs
7. Maintain quality of Maine Statutes
8. Keep the "playing field" as level as possible to support the expression of all members' points of view
9. Support the Legislature as an independent and co-equal branch of state government

Concept drafting is ordinarily described as a system whereby bill requests are initially drafted not in the form of legislation but as a brief description of the intent of the bill. Details and statutory language are worked out ordinarily at Committee level. Connecticut is the state that appears to use concept drafting in its purest form. A few other states offer concept drafting as an option that is rarely, if ever, pursued.

Concept drafting was originally suggested by the Peat Marwick Legislature Management Study commissioned by the Legislature in 1989. At that time the Advisory Committee on Legislative Structure and Operations appointed to review the Peat Marwick report was unable to reach agreement on concept drafting. Since that time numerous changes have been made in the drafting process. Most have brought efficiencies and cost savings to the drafting process.

The subcommittee reviewed with nonpartisan staff directors options for accomplishing the goals identified by the subcommittee. The subcommittee examined how concept drafting would work in the Maine Legislature. We were impressed by the extent to which changing to a concept drafting system would affect almost every aspect of the way individual legislators and the Legislature as an institution conducts its work. In considering all of the implications of concept drafting, we came to the conclusion that the benefits were outweighed by the costs.

In the course of identifying goals for improving the processing of legislation and investigating concept drafting, the subcommittee was able to identify several changes in the legislative process that could significantly improve the organization and flow of legislative work during the session and go a long way toward accomplishing the goals identified by the Committee. These changes would also incorporate some of the attractive elements of concept drafting at the committee level. We have called this the "committee efficiency process."

#### RECOMMENDATIONS FOR IMPROVING PROCESSING OF LEGISLATION

**I. Confidentiality should be relaxed to permit bill titles, names of sponsors and indexing information to be made available as soon as possible after cloture during a First Regular Session. Information relating to bills introduced by the Executive Branch after cloture would become available when the request is provided to the Revisor of Statutes.**

Currently, during a First Regular Session, information concerning bills being drafted is confidential until the bill is actually introduced in the Senate or House. This means that neither joint committees nor the Legislature as a whole can engage in any planning directed towards orderly flow of legislation because it is never possible to anticipate what legislation will appear or when.

If bill titles and sponsors are made public information at the time of cloture, bills can be indexed and committees could know early in the session what bills are likely to be before them. Indexing information is derived from a bill intake form. It includes a major subject area, a minor subject area and a detail area. This information identifies an estimate of the committee to which a bill may be referred and additional information regarding the subject of the bill. Although indexing is not as precise as the suggested reference that is made by the Secretary of the Senate and the Clerk of the House after a bill has been drafted, it could be used for initial scheduling purposes. The Rules Committee also recommends that legislators be required to use a drafting request form and provide the Revisor's Office with a one or two sentence description of a drafting request that would be forwarded, without editing, to the indexed committee. This should be optional for the upcoming Second Regular Session.

Indexing could take the place of "suggested reference" determinations by the Secretary or Clerk as a method of efficiency, although there would probably be some increase in deviations from "suggested reference" because it would not be possible to be as accurate at the time of indexing as at the time of current "suggested reference" decisions when bills are fully drafted. The Rules Committee has identified the relationship between indexing and "suggested reference" as a subject for additional review (see Recommendation VII.A, below).

A committee could group bills according to subject matter and adopt a proposed schedule of subjects for consideration in a way that would ensure adequate time for consideration of issues determined to be a priority by the Committee. It would also permit establishment of drafting priorities and scheduling of public hearings and work sessions by subject matter as further discussed in these recommendations.

Confidentiality is not an issue during a Second Regular Session because the required information is available at the time the Legislative Council meets (usually in October or early November) to decide which bills may be submitted.

**II. Committees would meet soon after bill information is made available to establish a schedule for consideration of legislation likely to come before them during the session.**

If committees are provided with a list of bill titles that are likely to come before them in the legislative session and indexing information, the committees can group bills into subject areas and plan their work to provide an appropriate division of the committee's time spent on each subject. A committee could adopt a proposed schedule for consideration of issues (bills) by subject matter within deadlines for committee work as currently established by the presiding officers. The committee could establish priorities that would facilitate timely consideration and enable the time of legislators, staff and the public to be allocated in a more efficient manner. There would need to be some flexibility in a proposed schedule, both to accomodate the numerous unanticipated demands on committee time and to recognize that early lists of bills likely to be referred to committee will not be exactly the same as the ultimate reference of the bills when introduced on the floor.

It is estimated that during a First Regular Session bill title and indexing information could be available approximately two weeks after cloture (i.e. early in January). During a Second Regular Session information could be available shortly after the Legislative Council has made final decisions on which bills will be admitted during the session.

### **III. Drafting priorities would be established based upon proposed schedules adopted by the committees.**

A recommendation similar to this was also made by the Peat Marwick report in 1990. Once committees have identified the order in which they will conduct their work, priorities for drafting can be established to enable bills to be drafted in the order in which they are needed to facilitate committee work. Guidelines will need to be established that balance the committee's requests for early drafting against available staff resources. Some flexibility will be required and committees will need to keep in mind when drawing up their schedules that all complicated bills cannot be drafted for consideration early in the session. Sponsors of bills and outside providers of proposed bill drafts will need to understand that if information is not provided to Revisor of Statutes to allow adequate time for drafting or if bills are not signed in a timely manner that those bills may not be able to be introduced in time to be considered by the committee as fully as timely bills. After cloture approved bills would be drafted last unless, in approving the after deadline request, the Legislative Council approves an earlier time.

### **IV. Committees would adopt proposed schedule of public hearings and work sessions on bills by subject matter.**

Currently, standard practice is to schedule a public hearing on every bill that is printed. Although committees have been making a serious attempt to schedule hearings and worksessions on similar bills at the same time, the inability to anticipate what bills will be introduced on a given subject and the timing of the introduction of those bills results in inefficient use of committee and staff time and inconvenience to the public when public hearings may be held at different times on closely related subjects. Although a procedure has been established to permit committees to request permission to dispense with a public hearing on a bill, such a request requires time to process and may not always be granted. In addition, dispensing with a public hearing now is clearly a practice that is outside the norm and is sometimes seen by some legislators and members of the public as a negative reflection on the bill or the sponsor rather than as a standard method of streamlining committee work. The establishment of procedures that result in hearings being scheduled on bills according to subject matter will provide clear expectations of those situations when a committee might choose not to hold a public hearing on a late-received bill.

**V. Committees would be given authority to combine related bills that have been referred to them and report them out as a committee bill or with combined sponsorship.**

Currently, a committee may report out a newly generated bill only if a joint order is passed permitting it to do so. If a committee chooses a favorable recommendation on several closely related bills, it must either report out each bill separately or go through the joint order process resulting in a committee bill. Establishing a procedure permitting committees to combine closely related bills already in the committee's possession would permit the committee to make combinations in an efficient manner. Combination bills would be required to be reported out according to the same deadlines that apply to other committee bills. This would have the benefit of reducing processing time and cost of numerous committee amendments on separate bills or the delay of joint orders. Issues relating to identification of combined bills and sponsors need to be addressed, and the Rules Committee is continuing to look at the most efficient way to implement this recommendation. It also reduces the possibility of conflicts between separate bills affecting the same section of the statutes that require resolution in a subsequent year's Errors Bill.

Committee management of legislation could also be facilitated if committees were permitted to carry over legislation without requiring further permission.

**VI. initial drafting efficiencies would be adopted to speed up the flow of the initial drafting process.**

- A. In order to facilitate the early drafting of bills in the First Regular Session a two tier level of cloture could be established as is done in several other states. Currently, cloture for the First Regular Session is the third Friday in December. Under a two tier procedure, legislators would be able to introduce bills without a limitation on numbers until the first cloture date that would be set earlier (perhaps the first Friday after the first Wednesday (convening day) in December). Additional efforts should be made to assist new legislators in understanding the procedures for requesting bills. Between the first cloture date and January 15th, each legislator would be able to introduce one additional bill. This would give legislator's an opportunity to consult with colleagues in January and do research regarding complicated bills. In this manner, legislators would still maintain unlimited ability to introduce bills but would have to decide on the bulk of those bills earlier in order to enable drafting and indexing to be



finished earlier. The second deadline would still permit last minute inclusion, but of a limited number of bills, thereby making most bills available for drafting at an earlier date.

- B. Significant additional time for drafting could be made available if the ROS was not required to contact sponsors of duplicate and "closely related" bills to provide sponsors with the opportunity to combine requests and reduce the number of printed bills. This process, established in recent years by the Legislative Council for the purpose of reducing the cost of duplicate measures, requires a enormous amounts of staff time and has been a significant source of frustration to legislators. The subcommittee believes that time would better be spent drafting even if the result is some duplicate bills. Making bill titles available earlier and early committee grouping by subject matter should encourage legislators who are interested in combining bills to pursue that avenue on there own without requiring staff time needed for drafting bills.
- C. Additional drafting time could be made available by eliminating some of the details currently provided in initial drafts of bills. These include:
- i. Cross reference checks to determine whether repealed sections are mentioned in any other sections of law;
  - ii. Name changes made throughout the statutes whenever a name (e.g. an agency, department, program, officer, etc.) is being changed; and
  - iii. Style corrections in sections of current law that are being amended.

It must be recognized, however, that while these changes would provide some additional time in the initial drafting stage, these details would need to be attended to later for any bill reported out of committee and would add to the time required to process committee amendments.

**VII. The following additional concerns also need to be addressed.**

The subcommittee has also identified the following concerns that will need to be taken into consideration if the committee efficiency process is adopted.

- A. Relationship between indexing of bill requests and determination of suggested reference.** It may be possible that some efficiencies could be achieved by permitting the legislative indexing process to also fill the role of determination of "suggested reference" currently decided by the Secretary of the Senate and the Clerk of the House. The Rules Committee has not yet had time to consider all of the possible implications of such a suggestion and intends to continue to discuss the issue with the Secretary and Clerk and other staff to determine whether to make such a recommendation.
- B. Relationship to budget process.** If the committee efficiency process is to work it must be coordinated with policy committee involvement in the budget process. An unpredictable budget process will play havoc with any committee schedule. It must also be recognized that budget work scheduled early in January of a First Regular Session will cause significant delays in drafting of bills as staff would need to be pulled away from drafting for budget work. The Legislature's Committee on Total Quality Management is reviewing the budget review process, and any system for policy committee involvement in the budget process will need to be coordinated with the system of committee consideration of legislation referred to it.
- C. Committee jurisdiction.** Consideration should be given to reorganization of committees and committee jurisdiction. The enormous disparity in numbers of bills referred to various committees causes inefficiencies in use of legislator and staff time. Increasingly overburdened committees are finding it difficult to give adequate attention to all the issues before them while committees with few bills have the luxury of spending more time on issues. A more even distribution of workload among committees would result in improved efficiencies and a more balanced opportunity for prioritization of issues.

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