

MAINE STATE LEGISLATURE

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SEN. JANE A. AMERO
CHAIR

REP. ELIZABETH H. MITCHELL
VICE-CHAIR



SEN. JEFFREY H. BUTLAND
SEN. R. LEO KIEFFER
SEN. MARK W. LAWRENCE
SEN. BEVERLY MINER BUSTIN
REP. DAN A. GWADOSKY
REP. PAUL F. JACQUES
REP. WALTER E. WHITCOMB
REP. JOSEPH G. CARLETON, JR.

SARAH C. TUBBESING
EXECUTIVE DIRECTOR

117th MAINE STATE LEGISLATURE

LEGISLATIVE COUNCIL

MEETING SUMMARY

January 25, 1995

(Note: The Council recessed on January 25 without having completed its business, and reconvened on January 27 to conclude its meeting).

CALL TO ORDER

The Chair, Senator Amero, called the Council to order at 10:45 a.m. in the Council Chamber.

ROLL CALL

Senators:	President Butland, Sen. Lawrence, Sen. Amero
Representatives:	Speaker Gwadosky, Rep. Jacques, Rep. Whitcomb
Legislative Officers:	Sally Tubbesing, Executive Director, Legislative Council Lynn Randall, State Law Librarian John Wakefield, Director, Office of Fiscal and Program Review David Boulter, Director, Office of Policy and Legal Analysis Margaret Matheson, Revisor of Statutes May Ross, Secretary of the Senate Joseph Mayo, Clerk of the House Millie MacFarland, Assistant Clerk of the House

SUMMARY OF JANUARY 11 COUNCIL MEETING

Motion: That the Meeting Summary be approved and placed on file.
(Motion by Rep. Jacques; second by Rep. Whitcomb; unanimous).

EXECUTIVE DIRECTOR'S REPORT

Sally Tubbesing presented the following item to Council members for their consideration:

**Item #1: Request for Information Pursuant to Freedom of Access Law
(1 MRSA § 408)**

Ms. Tubbesing drew members' attention to the letter in their agenda packets from Mr. John Lovell, of the Falmouth Forecaster, which requested access under the Freedom of Information law to computer files in libraries that had been assigned to the former Secretary of the Senate and then "deleted." Ms. Tubbesing reported that, following discussions with Sen. Amero and Rep. Mitchell, she had contacted the Attorney General's Office for guidance in developing a response to the request.

The Chair, Senator Amero, then recognized Mr. Tom Warren, Assistant Attorney General, whose presentation to the Council was followed by extended discussion among the Council members. The major points in his presentation and the ensuing discussion included:

- The statutes exempt some records from the freedom of information provisions, including:
 - 1) Records that are covered by statutory provisions related to confidentiality; and
 - 2) Records that are covered by any privilege recognized by the court.

Mr. Warren noted that the Freedom of Information law **includes** all records that are "prepared for use in connection with the transaction of public or governmental business" unless these records meet those specific tests. He noted that some "personal" records have also been determined to fall outside of the definition of public records, and stated that although people may have operated under the assumption that their documents were protected, none of the statutory protections applies. He stressed that the freedom of access law does not limit access based on who the record "belongs to" but on whether it was prepared in the transaction of public or governmental business.

- The status of constituent correspondence. (Rep. Jacques)

Several Council members expressed concern that some legislative correspondence could contain confidential information regarding a constituent's medical or financial status. (Rep. Jacques)

- Whether someone could make a "blanket" freedom of information request. (Sen. Lawrence)

Mr. Warren responded that the statute discourages "dragnet" requests by allowing the agency to charge the requestor for the time and effort required to respond to the request. He noted that it is useful to clarify the request before responding.

- The status of campaign-related documents that were prepared on legislative computers. (Senate President Butland)

Mr. Warren responded that each of those documents would have to be examined individually to make that determination and noted that their availability under the law was a separate question from whether they should be on the legislative computer system.

Council members concluded this portion of the discussion by agreed that neither statutory provisions nor personnel policies have caught up with technology and that it is incumbent on the Legislative Council to revise legislative policies so that legislative employees have a clear understanding of the law and its implications for their work.

The discussion then turned to the process for responding to the pending request from Mr. Lovell. Mr. Warren noted that the law requires Ms. Tubbesing to respond within 5 working days if she is going to limit the request or deny access to any documents. Rep. Jacques expressed concern about the burden that the request places on Ms. Tubbesing to make determinations regarding the "status" of individual documents. Mr. Warren responded that he and other members of the Attorney General's staff would be happy to assist her in reviewing documents before any are released. Finally, Rep. Jacques clarified that documents which presented potential violations of the law would not be released but would be turned over directly to the Attorney General's Office.

Council members agreed that it was important that Ms. Tubbesing to respond to the request in a timely manner and directed her to take any concerns that might arise in the course of dealing with this request to the Council Chair and Vice-Chair. The Council took no formal action on this item.

The Council then proceeded to **NEW BUSINESS** out of order in deference to those sponsors of after deadline bill requests who were present.

NEW BUSINESS

Item #1: Requests for Council Approval to Introduce Joint Resolutions and After Deadline Bills

Before proceeding with the list of requests, Sen. Amero noted that the Revisor's Office was working with the more than 2,000 bill requests that had been filed by cloture and expressed her hope that Council members would scrutinize each request carefully. Speaker Gwadosky then suggested that the Council consider postponing action on Joint Resolutions until bill drafting is further along unless there is a specific timing issue in terms of a particular Resolution's impact.

The Council then proceeded to consider after deadline requests. A summary of the Council's action on these requests is attached to this meeting summary.

REPORTS FROM COUNCIL COMMITTEES

Committee on State House Space Use and Improvements

The Chair, Senator Amero, reported that she and Rep. Mitchell, who chairs this Committee, had worked closely with the presiding officers to assign hearing rooms and offices to the newly-formed joint standing committees. She reported that several principles had guided them in the development of the proposal; including:

- Linking the size (capacity of the committee's hearing room to the average attendance by the general public.
- Leaving Room 113/State Office Building -- our largest legislative hearing room -- unassigned so that we can accommodate larger hearings within the Capitol Complex and, thus, reduce the cost of renting space and equipment at the Civic Center.
- Providing adequate office space for all Chairs that allows them to carry out their responsibilities effectively.

- Separating hearing rooms and Chairs' offices and thus freeing up some of the hearing rooms so that legislators can use these rooms for other meetings related to their legislative duties.

She concluded that all of the Committee Chairs had been notified of the proposed assignments.

In the discussion that followed, the following issues and questions emerged:

- Whether any space had been designated for small meetings. (Speaker Gwadosky)

Senator Amero pointed out that in addition to one undesignated office, there were 3 undesignated hearing rooms in the State Office Building.

- What provisions the plan included for alternate "telephone space" for House members, as well as space that might be required for the seasonal House Reporter. (Clerk Mayo)
- Whether there was space available for legislators to work on their own computers where they would have access to a printer.

The Chair, Senator Amero, noted the importance of resolving the assignment of committee space so that committees could begin their work. She acknowledged that the current proposal had not been designed to address all of the requests for space (e.g. requests from Senator Goldthwait for an office and from the Senate Minority Office for additional office space).

Sen. Lawrence expressed additional concerns -- that the Legal Affairs Committee had been moved from the room it had occupied during the 116th Legislature and that the chairs of some committees had been given office space in addition to "dedicated" hearing rooms.

Senator Amero responded that assigning additional office space to committees appeared to be the best way to give all legislators additional working space.

Motion: That the plan be accepted as presented. (Motion by Rep. Whitcomb; second by Rep. Jacques; failed 5-1).

Before announcing the vote, Senator Amero reiterated her concern that committees could not begin to settle into their offices until the Council approved a plan. However, Senator Lawrence, objected to having a second vote on the motion.

Motion: That the item be tabled pending the opportunity to address issues that were raised in the discussion. (Motion by Rep. Jacques; second by Speaker Gwadosky; approved 7-0).

Council members agreed that it was important to resolve the pending issues as quickly as possible.

OLD BUSINESS

Item #1: Consideration of Salaries for the Secretary of the Senate and Clerk of the House

Motion: That the item be tabled (to be discussed in Executive Session). (Motion by Rep. Jacques; second by Speaker Gwadosky; unanimous).

Item #2: Senior Secretary Position Previously Assigned to the Joint Standing Committee on Audit & Program Review

Motion: That the item be tabled (to be discussed in Executive Session). (Motion by Speaker Gwadosky; second by Rep. Jacques; unanimous).

NEW BUSINESS

Item #2: Consideration of Step Increases for Constitutional Officers

Motion: That the item be tabled. (Motion by Speaker Gwadosky; second by Rep. Jacques; unanimous).

Item #3: Legislative Budget: Continuation of Presentations by Staff Offices

Continuing the presentations that had begun at the January 11 Council meeting, John Wakefield, Director, Office of Fiscal and Program Review and David Boulter, Director, Office of Policy and Legal Analysis, both presented brief descriptions of the organization, staffing, and primary functions of their respective offices.

No Council action was required.

RECESS

The Council recessed at 12:45 p.m. until 1:30 p.m., upon the motion of the Chair, without objection.

January 27, 1995

RECONVENE

The Chair reconvened the Council on Friday, January 27, at 1:46 p.m. in the Council Chamber.

ROLL CALL

Senators: President Butland, Sen. Lawrence, Sen. Kieffer, Sen. Bustin, Sen. Amero

Representatives: Speaker Gwadosky, Rep. Jacques, Rep. Whitcomb, Rep. Mitchell, Rep. Carleton

Legislative Officers: Sally Tubbesing, Executive Director, Legislative Council
Lynn Randall, State Law Librarian
John Wakefield, Director, Office of Fiscal and Program Review
David Boulter, Director, Office of Policy and Legal Analysis
Richard N. Sawyer, Administrative Services Director
May Ross, Secretary of the Senate
Joseph Mayo, Clerk of the House
Millie MacFarland, Assistant Clerk of the House

REPORTS FROM COUNCIL COMMITTEES

Committee on State House Use and Improvements

Senator Amero reported that she and Rep. Mitchell had worked to address the concerns raised previously. In response to a question from Sen. Bustin as to whether the Committee had met, Sen. Amero replied that she and Rep. Mitchell had worked with both presiding officers and the other members of the Committee informally, including Sen. Lawrence in Sen. Bustin's absence, in an effort to resolve the assignments as quickly as possible. She reported that the Senate had worked out various "swaps" in order to respond the Sen. Lawrence's request for additional space that the office assigned to the Business and Economic Development Committee Chairs had been relocated from Room 123 to 120B.

Motion: That the Committee's original report with the amendments as described be accepted. (Motion by Rep. Jacques; second by Rep. Whitcomb; unanimous).

DISCUSSION OF THE LEGISLATIVE CONFIRMATION PROCESS

At this point, Governor King, his Legal Counsel, Elizabeth Butler, and Sawin Millett, Commissioner of Administrative and Financial Services, arrived and the Chair, Senator Amero, welcomed them, indicating that they had come at her invitation to discuss various aspects of the legislative confirmation process. Governor King indicated that he was interested specifically in the background checks and the procedures for sharing information.

Speaker Gwadosky briefly described the background checks that are performed by the partisan staff pursuant to law and further pointed out that the law pertaining to the confirmation process had been amended during the previous legislative session as an outgrowth of the work of the Legislature's TQM Committee. He noted that the prehearing process, which the law now includes as an option, was specifically designed to support the constructive sharing of information.

Governor King then stated his intention to complete his cabinet appointments as quickly as possible, noting the importance of getting these people in place. Speaker Gwadosky noted that the Council share that interest.

No Council action was required.

EXECUTIVE SESSION

Motion: That the Council go into Executive Session for the purpose of discussing those items on the agenda related to personnel. (Motion by Rep. Jacques; second by Rep. Mitchell; unanimous).

The Council proceeded to go into Executive Session at 2:00 p.m.

RECONVENE

The Chair reconvened the Council in open session at 2:38 p.m.

The Chair, Senator Amero, drew members' attention to the remaining items on the printed agenda.

OLD BUSINESS

Item #1: Consideration of Salaries for the Secretary of the Senate and Clerk of the House

Motion: That this Item be removed from the table. (Motion by Rep. Jacques; second by Sen. Kieffer, unanimous).

Motion: That the salaries for both the Secretary of the Senate and the Clerk of the House be set at Step 4 in Salary Range 14. (Motion by Sen. Lawrence; second by Senate President Butland; unanimous).

Item #2: Senior Secretary Position Previously Assigned to the Joint Standing Committee on Audit & Program Review

Motion: That this Item be removed from the table. (Motion by Speaker Gwadosky; second by Sen. Kieffer; unanimous).

Motion: That the position of Senior Secretary, which had previously been assigned to the Joint Standing Committee on Audit and Program Review be eliminated. (Motion by Rep. Whitcomb; second by Rep. Carleton).

Discussion: Sally Tubbesing inquired whether there had been discussion of an effective date for this action, noting that Judy O'Brien, who occupies the position in question, has worked on the non-partisan staff for 18 years. She further noted that the Council has no policies that define "bumping

rights" or in some other way provide any protection for non-partisan employees based on seniority. Rep. Whitcomb then amended his motion to establish February 28 as the effective date.

The motion was approved 8-2.

Item #3: Consideration of Step Increases for Constitutional Officers

Motion: That the Council authorize the award of step increases to the Secretary of State (to Step 6, Salary Range 88) and the State Auditor (to Step 7, Salary Range 89) pursuant to its statutory authority. (Motion by Speaker Gwadosky; second by Sen. Kieffer; unanimous).

NEW BUSINESS

Item #1: Requests for Council Approval to Introduce Joint Resolutions and After Deadline Bills

Motion: That the introduction of legislation be approved. (Motion by Rep. Jacques; second by Sen. Kieffer; unanimous).

Item #2: Requests to Introduce Joint Resolutions

Rep. Jacques drew members to one of the Joint Resolutions on the list that the Council had previously tabled, noting that it needed to be acted upon immediately if it were to have any effect on pending action at the federal level.

LR 2168 JOINT RESOLUTION MEMORIALIZING THE PRESIDENT AND CONGRESS OF THE UNITED STATES TO SUPPORT AMTRAK

Item #3: Request for Extension of Statutory Reporting Deadline for a Study being Conducted by the Commission on Governmental Ethics and Election Practices

Rep. Jacques presented this item to the Council. After brief discussion, the Council approved the introduction of a bill to accomplish this, 8-1.

ANNOUNCEMENTS AND REMARKS

The Chair, Senator Amero, drew members' attention to the Council meeting schedule, announced that the meeting originally scheduled for February 22 will be moved to March 1.

The next Council meeting will be
Wednesday, February 8
10:30 a.m.

ADJOURNMENT

The Council adjourned at 2:50 p.m.