

MAINE STATE LEGISLATURE

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SEN. JANE A. AMERO
CHAIR

REP. ELIZABETH H. MITCHELL
VICE-CHAIR

Lynn Randall
Legislative Council Info.

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

Monday, September 25, 1995

Approved, As Amended, October 22, 1995

CALL TO ORDER

The Chair, Senator Amero, called the Council to order at 10:13 a.m. in the Legislative Council Chamber.

ROLL CALL

Senators:	President Butland, Sen. Lawrence, Sen. Kieffer, Sen. Bustin, Sen. Amero
Representatives:	Speaker Gwadosky, Rep. Jacques, Rep. Mitchell, Rep. Carleton Absent: 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

SUMMARY OF AUGUST 22 COUNCIL MEETING

Motion: That the Meeting Summary be accepted and placed on file.
(Motion by Speaker Gwadosky; second by Rep. Mitchell; unanimous).

EXECUTIVE DIRECTOR'S REPORT

Sally Tubbesing presented the following items for the Council's consideration:

Item #1: Bill Filing for the Second Regular Session: Status Report

Margaret Matheson, Revisor of Statutes, reported that, as of the previous Friday, September 22, legislators had filed 74 bill requests. She cautioned Council members that this could not be used as an accurate gauge for predicting the total number of bills that would be filed: by the comparable date in 1993, only 66 bills, or less than 15% of the 463 that were ultimately filed by cloture, had been received. In response to an inquiry from Sen. Amero regarding the experience with the use of the revised Bill Request form, Ms. Matheson reported that some legislators were using it, but that the quality of information was variable.

No Council action was required on this item.

Item #2: Statutory Study Commissions: Status Report

Sally Tubbesing drew members' attention to a list in their packets which summarized the current status of the newly-created interim study commissions. She noted that although the appointments to most commissions were complete, a significant number had not yet had their first meeting, and that the "late starts" had implications for both staff -- who are slated to be focussed on bill drafting after December 1 -- and the Legislature itself, if the study commissions are late in presenting legislation.

Item #3: Legislative Budget: Summary of FY 95 Expenditures and FY 96 Budget

Ms. Tubbesing drew members' attention to materials which had been distributed prior to the meeting that summarized the adjustments that have been made to the budget as a result of actions during the 1st Regular Session. She reported that the Budget Office had not yet released final information regarding balances forward but that, pending receipt of this information, the Council will need to review the reductions it had identified last spring and identify additional savings. In the brief discussion that followed, it was clarified that since there was no statutory language, legislators' salaries had not been reduced. Council members also asked for clarification about the Longevity Bonus, which had initially been eliminated from the legislative budget last spring. Ms. Tubbesing responded that the Longevity Bonus is paid to all state employees who have completed 15 years of service. The bonus is paid in one of two forms: eligible confidential employees, as well as legislative employees, receive it as a

lump sum check in December of each year. In December, 1994, the bonus for confidential employees who had completed 15 years of service was \$624.00; employees who had completed 20 or more years of service received \$832.00.

Council members agreed that they needed to devote additional time to the budget later in the fall and took no formal action on this item.

REPORTS FROM COUNCIL COMMITTEES

Personnel Committee

Senator Amero reported that the Committee had cancelled its meeting in order to accommodate the revised schedule for the Council meeting and noted that the meeting would be rescheduled.

OLD BUSINESS

Item #1: Letter from CSG Executive Committee Regarding Unpaid Dues for FY 92

Senator Amero had received a letter from the Officers of the Council of State Governments requesting payment of the "delinquent" dues for Fiscal Year 1992. In its discussion of the letter, Council members raised the following points:

- CSG is an organization that requires dues in order to function. (Sen. Bustin)
- The Legislature is not in "arrears", but made a conscious decision not to belong to CSG for 1 year. (Rep. Mitchell)
- The sanctions that the CSG Board has adopted to apply to non-paying members should be prospective and not retrospective. (Sen. Amero)

Sen. Amero also reported that she had had conversations with members of CSG's Executive Committee at the Eastern Regional Meeting in Quebec in August and had been told "not to worry."

Motion: That the Council Chair write a letter to CSG reiterating its position that Maine is not in arrears and that the Council looks forward to being an active member in the future and to hosting ERC's Annual Meeting in 1997. (Motion by Sen. Bustin; second by Rep. Jacques; unanimous).

NEW BUSINESS

Item #1: Communication from the Governor

The Governor had sent to Council members a summary of the recommendations that he had accepted to date related to the work of the Productivity Realization Task Force.

Motion: That the correspondence be accepted and placed on file. (Motion by Rep. Mitchell; second by Rep. Carleton; unanimous).

Discussion: Sen. Bustin expressed her concern that the proposal included some legal and contractual violations, as well as several things that go beyond the intent of the legislation establishing the Task Force. Rep. Mitchell stated that the motion is in no way intended to signify the Council's acceptance of the contents of the proposal, but is simply an acknowledgement of the communication.

Item #2: Letter from Senate President Butland to Members of the Council regarding Passworded Documents

Senate President Butland recalled that the Council had discussed this issue last December, but that the Council had, at the time, concluded that this was a Senate issue. He reported that the Senate and the Attorney General had agreed on a format to review the questioned computer files at that time, including the passworded files.

The passworded files were not reviewed by the Attorney General, however, and President Butland stated that he had written a letter to the Attorney General in which he contended that the Attorney General's investigation was not complete until all files had been reviewed. The Attorney General disagreed with this contention and has now closed its investigation. President Butland then requested Sally Tubbesing to request permission from the 3 employees whose documents remain passworded to have their passwords overridden. He stated that he was looking for the Council at this point to direct Ms. Tubbesing to override the passwords so that the material could be viewed.

Ms. Tubbesing reported that she had consulted with the Attorney General's Office after receiving President Butland's request, and that several themes had emerged from this consultation:

- While the Information Systems Office has custody of all computer files stored on the system, this custody is for administrative purposes; and there is an important distinction between having custody of a document and "owning" it.

- The Information Systems Office as the Security Administrator for the legislative computer system has the tools to override passwords on documents; however, no password has ever been overridden without a request from the author of the document.
- The Council has no policy on this issue.
- This situation involves a legal question of an individual's right to privacy in the work place, an issue that has no definitive legal precedents.

Ms. Tubbesing stated that she had contacted each of the 3 individuals and offered them the opportunity to review their documents, noting that one of the 3 had made arrangements to do this. She then recommended that if the Council chose to pursue this matter, it seek formal legal counsel before proceeding; and she further stated that if the Council were to direct her to override the passwords, she would personally seek legal counsel before proceeding, given the legal issues involved.

Motion: That the Council direct the Executive Director to override the passwords so that the material can be viewed. (Motion by Sen. Butland; second by Sen. Kieffer). There was no vote at this point.

Discussion:

Rep. Carleton asked for clarification about the intent of the motion -- of what the Council was being asked to do. Senator Butland replied that it was his desire to allow the documents to be viewed for the purpose of determining whether they are necessary to the operation of the Office of the Secretary of the Senate; and Sen. Kieffer agreed that he had thought the Attorney General was going to review all documents. Rep. Carleton then suggested that the motion be amended to ask the Attorney General's Office to view the documents, rather than the Executive Director. Sen. Bustin stated that she was not willing to proceed any further with this issue.

Sen. Kieffer then asked what purpose would be served by developing a policy regarding security of the legislative computer system if an employee has a right to set up "secret documents" under their own passwords. Sen. Bustin responded that she had no problem developing a policy for the future and enforcing the rules that are established. Rep. Carleton expressed his concern that the Council recognize the need to protect the privacy of personal, private information, and again, offered an amendment to the original motion:

Proposed Amendment to the Motion: That the documents in question be reviewed by the Attorney General to determine whether they relate to State business. (Motion by Rep. Carleton; second by Sen. Kieffer).

Discussion:

Rep. Jacques stated that the concerns he had expressed last December remained -- that the Council was putting the Executive Director and her staff in a difficult position. He noted that all users of the system had been told to use passwords to protect confidential, or private, documents, and that users had worked within this framework. He then recommended that the Council review the legislation that had been enacted during the 1st Regular Session to ensure that "it says what we think it needs to say." Rep. Carleton agreed with this, stating that he was not in favor of simply releasing a document.

Speaker Gwadosky said that he thought everyone believed that the statutes did specifically address the issue of using computers for political purposes, but that it appeared that there is a need to separate the use of equipment for political purposes from use for personal purposes. He then supported earlier suggestions that the Council develop policy to be applied prospectively so that people know what the rules are, noting that this would be an important role for the Subcommittee which Senator Kieffer chairs, to assume.

The vote on the amendment proposed by Rep. Carleton failed (3-5); the vote on the original motion was then taken and failed (3-5).

ANNOUNCEMENTS AND REMARKS

None.

ADJOURNMENT

The Council meeting was adjourned at 11:15 a.m. (Motion by Rep. Jacques; second by Sen. Kieffer).