MAINE STATE LEGISLATURE

The following document is provided by the

LAW AND LEGISLATIVE DIGITAL LIBRARY

at the Maine State Law and Legislative Reference Library

http://legislature.maine.gov/lawlib

Reproduced from scanned originals with text recognition applied

(searchable text may contain some errors and/or omissions)

REP. ELIZABETH H. MITCHELL
CHAIR

SEN. MARK W. LAWRENCE
VICE-CHAIR

118th MAINE STATE LEGISLATURE

LEGISLATIVE COUNCIL

SEN. CHELLIE PINGREE
SEN. JANE A. AMERO
SEN. ANNE M. RAND
SEN. R. LEO KIEFFER
REP. CAROL A. KONTOS
REP. JAMES O. DONNELLY
REP. MICHAEL V. SAXL
REP. RICHARD H. CAMPBELL

SARAH C. TUBBESING
EXECUTIVE DIRECTOR

MEETING SUMMARY
MARCH 23, 1998
Approved April 15, 1998

CALL TO ORDER

The Chair, Speaker Mitchell, called the Council to order at 1:03 p.m. in Room 427, the Banking and Insurance Committee Room.

ROLL CALL

Senators:	President Lawrence, Sen. Amero, Sen. Rand, Sen. Kieffer Absent: Sen. Pingree
Representatives:	Speaker Mitchell, Rep. Kontos, Rep. Donnelly, Rep. Saxl, Rep. Campbell
Legislative Officers:	Joy O'Brien, Secretary of the Senate Judi Delfranco, Assistant Secretary of the Senate Joseph Mayo, Clerk of the House Millicent MacFarland, Assistant Clerk of the House Sally Tubbesing, Executive Director, Legislative Council John Wakefield, Director, Office of Fiscal and Program Review David Boulter, Director, Office of Policy and Legal Analysis Margaret Matheson, Revisor of Statutes Lynn Randall, State Law Librarian Paul Mayotte, Director, Legislative Information Services

SUMMARY OF MARCH 9 AND MARCH 12 COUNCIL MEETINGS

Motion: That the Summaries be approved and placed on file. (Motion by Rep. Saxl; second by Senate President Lawrence; unanimous).

EXECUTIVE DIRECTOR'S REPORT

Sally Tubbesing presented the following items for the Councils' consideration:

Item #1: State House Repairs: Status

a) Responses to Ad for Owners Representative
b) Construction Manager

Ms. Tubbesing reported that, pursuant to the Council's previous action, she had prepared an ad for the position of Owner's Representative. The ad, which had appeared in the State's major weekend newspapers, had generated responses from two individuals. She proposed that members of the Council's Legislative Facilities Committee participate in interviews with the two candidates and develop a recommendation regarding the selection of a candidate for the full Council.

Ms. Tubbesing reported that she and the architect had also placed an ad for a Construction Manager, recalling the Council's discussion at a previous meeting that the intent in hiring a contractor in the capacity of Construction Manager is to incorporate the Contractor's experience into the initial construction schedule and documents, with the goal of breaking the work up into a logical sequence of tasks and carrying out work in a cost effective manner. She stated that three highly-regarded Maine firms had submitted qualifications packages in response to this ad and requested direction from the Council regarding whether members of the Council wished to participate in the interviews of the firms, noting that the Council has final approval of the firm who will act in this capacity.

The Chair, Speaker Mitchell, asked Ms. Tubbesing to provide the review schedule to all Council members so that they could participate if they wished. Rep. Campbell suggested that the interview would be a good time to negotiate the rate the Construction Manager will be paid, and Ms. Tubbesing responded that the 3 firms would be asked to described their basis for charging fees and that these responses would be one of the items scored in the evaluation process.

Motion: That the Executive Director proceed with the review process in accordance with her report. (Motion by Rep. Campbell; second by Rep. Saxl; unanimous).

At this point, the Chair proceeded to take up other items on the Council agenda out of order, in deference to legislators who were present for those items.

NEW BUSINESS

Item #3: After Deadline Bill Requests

After deadline requests were considered by the Legislative Council. The Council's action on these requests is included on the attached list.

OLD BUSINESS

Item #1: Performance Budgeting: Follow-up Discussion Regarding Proposed Amendments (see enclosed memo from Jim Clair, Office of Fiscal and Program Review)

The Chair, Speaker Mitchell, recognized members of the Appropriations Committee who were present -- the Committee Chairs, Senator Michael Michaud and Representative George Kerr, and Representatives Randy Berry, Richard Kneeland, Pat Lemaire, David Ott, Jean Ginn Marvin, Cassie Stevens, Liza Townsend, and Thomas Winsor. She also recognized Representative Martha Bagley, who is one of two members of the State and Local Government Committee who sit on the Commission on Performance Budgeting, and Jack Nicholas, the State Budget Officer.

Speaker Mitchell recalled that the upshot of an earlier discussion of proposed amendments to the Performance Budgeting process had been to ask the Appropriations Committee to discuss ways to make the proposed delay in the implementation date meaningful. She asked Jim Clair to lead off with a brief summary of the various amendments that have been proposed. Mr. Clair responded that since the earlier discussion he, David Boulter and Rose Breton had met to review the current proposals and to attempt to draft a new proposal that would address the concerns that had been raised by the Council. He stated that he had also had some discussions with members of the Appropriations Committee, but that the Committee has not had the time to have a full discussion, given its preoccupation with the Supplemental Budget. He then drew Council members' attention to a chart that he had prepared that compared the options that have been under discussion, including the original bill sponsored by Rep. Ott; the amendments that had been proposed by the Administration; and the proposal that had been developed by the staff working group described above. Mr. Clair pointed out that Rep. Kerr had also proposed an amendment which would simply discontinue the performance budgeting process.

The discussion that followed Mr. Clair's overview of the options produced the following questions and concerns:

- Whether anyone had done a cost benefits analysis of the Performance Budgeting process (Speaker Mitchell).

  Mr. Clair replied that the fiscal note on the bill that originally established performance budgeting had been "costs absorbed". Speaker Mitchell pursued the question, asking about the cost benefit for the Legislature: what benefit is the Legislature getting from this additional responsibility that this process imposes on committees and staff? Mr. Clair agreed that the performance budgeting process is clearly "time intensive", but that it is up to the Legislature to determine how much time it would devote to this process.

- Why the State Planning Office is involved with the Commission on Performance Budgeting (Senate President Lawrence)

  Mr. Clair suggested that the process envisions a blending of strategic planning and performance budgeting, to which Senate President Lawrence responded that he thought that the Bureau of the Budget could provide the necessary support for both elements.

  Jack Nicholas, State Budget Officer, affirmed Mr. Clair's statement that the Administration's original concept envisioned a continuum between strategic planning and performance budgeting and that the challenge now is to make the link to the budgeting process.

- The Administration's proposed amendment dilutes the performance budgeting process as it was originally enacted and raises questions of accountability; "if targets, goals and plans don't pan out, who is accountable?" (Rep. Kerr)

  Rep. Townsend stated that she currently supports Rep. Kerr's amendment - to discontinue the performance budgeting process - adding that the work to date "has consumed an enormous amount of time and paper, and there is nothing to show for it." She went on to say that she supports strategic planning at the department level. Rep. Ott countered that those who agree that strategies, goals and policy decisions are instructive for budget purposes are actually presenting the argument for codifying the process.

- How the Legislature and judicial branches are treated in the new proposed amendment. (Speaker Mitchell)

  Mr. Clair responded that the proposed language gives the legislative and judicial branches the choice to participate in any aspect of the process.

- Whether other states are using performance budgeting, and whether they have full time or part time legislatures. (Rep. Kontos)

  Mr. Nicholas responded that about half of the states do some form of performance budgeting and specifically mentioned Texas, North Dakota, and Minnesota. The Chair, Speaker Mitchell asked the Appropriations Committee to look into this question more thoroughly.

The Chair, Speaker Mitchell, reminded Council members that the issue before them was to give guidance to the members of the Appropriations Committee regarding how to proceed with the proposed amendments. Senator Amero stated that it would, in her view, be unfortunate if the entire process were dropped after so much hard work had been done by the executive branch. She asserted that the concept that performance should be a factor in budgeting is an excellent one and suggested that the process had not yet been given enough time to work noting that policy committees should have been immersed in the review of strategic plans with agencies during the First Regular Session, but that this had never happened. Senator Michaud responded that the Appropriations Committee is serious about wanting a better system of budgeting, but that it is important to have the wisdom to know when enough time has been invested

and the will to know when it is time to conclude that the current process is flawed and needs to be rethought. Rep. Donnelly acknowledged that the process seems to have gotten much more complicated than it started out to be and suggested that the goal should be to simplify the process. Rep. Bagley concurred, stating that it is a difficult process to understand. Rep. Donnelly then expressed his view that the proposal developed by staff is an improvement and encouraged the Appropriations Committee to not simply repeal the performance budgeting process. He concluded by recalling that during his term on the Appropriations Committee the Committee had asked departments to list their top priorities and include brief justifications and that he had found this to be very helpful. The Chair, Speaker Mitchell, suggested that this could be done without a performance budgeting process; and, Rep. Donnelly, while agreeing, advocated the need to build in continuity across legislatures, to build a base of information that would permit the tracking of success rates over time.

Senator Michaud then asked why the information Rep. Donnelly described couldn't be gathered through an audit process. Rep. Donnelly replied that the issue is not whether departments are spending funds in accordance with their appropriations, but whether they are spending it well, and that this is not in the scope of a financial audit. Senate President Lawrence then asked how performance budgeting differs from the process set forth in the Government Evaluation Act. The Chair, Speaker Mitchell, recognized David Boulter, who responded that the Government Evaluation Act, which had replaced the audit and program review process, is generally retrospective in nature, while performance budgeting is intended to shape the future. The Government Evaluation Act was intended to be complementary to performance budgeting, providing a program audit function. Rep. Donnelly offered the example of job training programs in the State, recalling that the Governor's Training Initiative, established in 1996 to look at the 16 different job training programs and to endeavor to evaluate the programs and reallocate the resources to those, that were successful, had been effective. Senate President Lawrence responded that he is concerned that some of the new initiatives will turn the Legislature into a perpetual study commission; and Rep. Lemaire stated that the key to all of this is accountability.

The Chair, Speaker Mitchell, closed this discussion by thanking those members of the Appropriations Committee who had participated in the discussion and encouraged them to consider the points raised during the discussion as they conclude their work on the proposed amendment.

Item #2: Proposal to Issue an RFP to Seek Assistance in the Legislative Computer System Migration Project

The Chair, Speaker Mitchell, drew Council members' attention to the fact that all members had received copies of the Draft RFP, following the request at the last meeting. She turned to Paul Mayotte, Director of Legislative Information Services, and asked him to bring Council members up to date on developments since the last meeting. Mr. Mayotte confirmed that the revised draft had been distributed to all offices, as well as to Council members, and that it incorporates the comments he had received through the middle of the previous week. He then drew members' attention to materials that he had distributed, including:

- A preliminary list of policy issues that the Council and/or the proposed Migration Oversight Committee need to address in the design phase of the migration project.

He reported that this list had been circulated to the Secretary of the Senate, the Clerk of the House and the Office Directors for comment.

- Proposed Statement of Intent

  Mr. Mayotte stated that this was an attempt to capture some of the key elements of the Council's discussion during its consideration of the proposed migration project. He offered it for the Council's consideration.

Mr. Mayotte recalled that Rep. Campbell had asked about cost savings that could be attributed to completion of the Migration and reported that he is still gathering information to respond to this question, as well as questions that Council members had raised at the previous meeting regarding charges for both telephone and Internet access.

Returning to the RFP, Mr. Mayotte stated that he continues to receive comments. He plans to incorporate additional revisions which more clearly identify the systems that support the Senate and the House. He also noted that the "Terms and Conditions" had been reviewed. He drew members' attention to a revised "Proposed Schedule" and to a list of interested bidders that his office has compiled. In response to a question from Rep. Campbell regarding how the list had been developed, Mr. Mayotte replied that the list comprises those firms who have expressed an interest in the project, adding that he thought it would be important to advertise in Maine newspapers to cast a broader net for qualified firms in Maine. Rep. Campbell then asked if there are any Maine-based companies that are qualified to do this work, and Mr. Mayotte responded that he didn't know of any. Senate President Lawrence concurred, noting that Keene Associates, a company based in New Hampshire, is probably the only such firm in northern New England.

Rep. Kontos thanked Mr. Mayotte for putting the list of policy issues together, adding that she would like to discuss it at the next Council meeting. Senate President Lawrence stated that he had not had an opportunity to read the RFP, and Senator Kieffer agreed, noting that this isn't the week to do it. The Chair, Speaker Mitchell, asked Mr. Mayotte whether the schedule could absorb an additional delay if the Council were to defer its final action until members had had an opportunity to read the RFP. Mr. Mayotte indicated his full appreciation for the other priorities that presently occupy Council members, but expressed concern that delay of more than another week would begin to impact the vendor's ability to complete the project by the time the 119th Legislature convenes in its Second Regular Session. The Chair, Speaker Mitchell, concluded the discussion by asking Mr. Mayotte to delay advertising and issuing of the RFP by one week, and stated that the Council would reconvene on Monday, March 30, to take final action on that RFP.

The Chair, Speaker Mitchell, then returned to those items on the agenda that had been set aside.

Item #2: Installation of TTY Telephone

The Chair, Speaker Mitchell, noted that Council members had received a letter from Mary Edgerton at the Maine Center on Deafness regarding the installation of a pay TTY telephone and asked Ms. Tubbesing to report on the status of the installation. Ms. Tubbesing reported that the TTY phone is now installed and has been tested. Installation had originally been scheduled for mid-January, but had been postponed due to the ice storm. Rescheduling of the installation had been slowed by confusion between the Telecommunications Division and Bell Atlantic about who had responsibility for various tasks associated with the installation.

Ms. Tubbesing stated that this project pointed up the need to have a single contact point in the Legislature for questions and concerns from the general public regarding the accessibility of legislative services and facilities. She drew Council members' attention to a list of proposed responsibilities for ADA Coordinator and recommended that the Council appoint Teen Griffin to assume these responsibilities, noting that Ms. Griffin already works extensively with Committees to coordinate and facilitate access to the committee process and that she is held in high regard by various advocacy organizations who represent the disabled community.

Motion: That Teen Griffin be designated as the Legislature's ADA Coordinator and have responsibility for bringing the concerns of advocacy groups to the Council's attention. (Motion by Rep. Donnelly; second by Rep. Kontos; approved unanimously).

REPORTS FROM COUNCIL COMMITTEES

Personnel Committee

Speaker Mitchell, who Chairs the Committee, reported that the Committee did have some unfinished business but had been unable to achieve a quorum at this point in the session. She reported that one pending item had been the annual salary adjustments for the Constitutional Officers and State Auditor and that a ballot had been circulated to members of the Personnel Committee so that this open issue could be resolved. She turned to Ms. Tubbesing, who reported that four of the five members of the Personnel Committee had returned ballots and that the vote to award step increases to each of the four individuals was 3-1. Pursuant to the Council's rules of procedure, which provide that step increases must be approved by a majority, the increases were approved.

This report required no further action by the Council.

Legislative Facilities Committee

Rep. Saxl, Committee Chair, reported that the Committee had met several times and had reviewed the proposals for work in the State House - both for the approaching interim and for the future, pending the Legislature's approval of funding. He stated that the Committee had issued surveys to members of the Legislature and all legislative staff that were designed to gather some information about priorities related to both the location and the characteristics of assigned space. Slightly more than 50% of all legislators responded; staff response is also strong, but has been slowed due to the pace of the session. The Committee will review the survey results following adjournment of the session. Rep. Saxl expressed his interest in

organizing a more open forum to give legislators an opportunity to ask questions about the work that is proposed in both the State House and the State Office Building.

This report did not require formal action by the Council

NEW BUSINESS

Item #1: Notification of Completion of Reviews Under the Government Evaluation Act

- Joint Standing Committee on Agriculture, Conservation and Forestry (Reviews of the Department of Agriculture, Food and Rural Resources and the Baxter State Park Authority)
- Joint Standing Committee on Marine Resources (Reviews of the Atlantic States Marine Fisheries Commission and the Department of Marine Resources)
- Joint Standing Committee on Natural Resources (Reviews of the Board of Environmental Protection and the Department of Environmental Protection)
- Joint Standing Committee on Utilities and Energy (Review of the Office of the Public Advocate)

Motion: That these Reviews be accepted and placed on file. (Motion by Senate President Lawrence; second by Sen. Rand; unanimous).

Item #2: Study Reports

- Commission to Study the Funding and Distribution of Teletypewriters and Other Telecommunications Equipment for People With Disabilities (pursuant to Resolves of 1997, chapter 72)
- Commission to Study the Use of Pharmaceuticals in Long-term Care Settings (pursuant to Resolves of 1997, chapter 71)

Motion: That these Reports be accepted and placed on file. (Motion by Senate President Lawrence; second by Sen. Rand; unanimous).

OLD BUSINESS

Item #3: Special Committee to Review the Study Commission Process: Status Report

The Chair, Speaker Mitchell, asked David Boulter to give the Council a brief update on developments related to this Study Report since the previous Council meeting. Mr. Boulter reminded Council members that formal legislative action is required to implement the proposed process, and recalled that Senate President Lawrence had indicated that he wanted to review the proposed changes in the Joint Rules. He stated that several new study commissions are proposed in legislation that is coming out of committees and that, absent new policies or guidelines, these proposals reflect many of the elements that precipitated the formation of the Special Committee. Senate President Lawrence expressed his sense that the proposed changes would probably not

be accomplished at this point in the session and recommended that the Council reconvene the Rules Committee that had revamped the Joint Rules in the 117th Legislature. The Chair, Speaker Mitchell, expressed concern that if this Council and Legislature defer action to the 119th Legislature, it will be necessary to start all over again; and she urged Council members not to let the work that the Special Committee has done disappear.

Rep. Donnelly, citing the "boiler plate" language that is now used to create and amend Water District charters, suggested that the development of boiler plate language to create studies would be very helpful. The Chair, Speaker Mitchell, responded that the proposals related to studies go far beyond boiler plate language and encouraged Council members not to lose sight of the fact that the current situation truly dilutes the role of the Legislature in policy making. Rep. Kontos suggested that the large number of study commissions that were created during the First Regular Session may be attributable in large part to term limits, and that new members viewed them as a way to develop a better understanding of complex policy issues before their committees. Senate President Lawrence then stated that this had been a staff study and that legislators had not yet had an opportunity to "buy in" to the recommendations.

The Council took no formal action on this item.

ANNOUNCEMENTS AND REMARKS

ADJOURNMENT

The Council meeting was adjourned at 2:26 p.m.