

MAINE STATE LEGISLATURE

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REP. JOHN RICHARDSON
CHAIR

SEN. BETH EDMONDS
VICE-CHAIR



122ND MAINE STATE LEGISLATURE
LEGISLATIVE COUNCIL

SEN. MICHAEL F. BRENNAN
SEN. PAUL T. DAVIS, SR.
SEN. KENNETH T. GAGNON
SEN. CAROL WESTON
REP. GLENN A. CUMMINGS
REP. DAVID E. BOWLES
REP. ROBERT W. DUPLESSIE
REP. JOSHUA A. TARDY

DAVID E. BOULTER
EXECUTIVE DIRECTOR

122nd LEGISLATIVE COUNCIL
March 24, 2005
1:00 p.m.
Room 334, Legislative Council Chamber
Revised Agenda

<u>Page No.</u>	<u>Item</u>	<u>Action</u>
	CALL TO ORDER	
	ROLL CALL	
1	SUMMARY OF THE FEBRUARY 24, 2005 COUNCIL MEETING	Acceptance
	REPORTS FROM EXECUTIVE DIRECTOR AND COUNCIL STAFF OFFICES	
6	• Executive Director's Report	
12	• Fiscal Report (Pennoyer)	
13	• Office of Information Services' Report (Mayotte)	
	• Update of Interim Studies (Elliott)	
	REPORTS FROM COUNCIL COMMITTEES	
	• Personnel Committee (Rep. Cummings, Chair)	
	The Personnel Committee is scheduled to meet after today's Legislative Council meeting	
	• State House Facilities Committee (Sen. Gagnon, Chair)	
	The State House Facilities Committee is scheduled to meet after today's Legislative Council Meeting	

<u>Page No.</u>	<u>Item</u>	<u>Action</u>
	<ul style="list-style-type: none"> • Budget Subcommittee <p>No report</p>	
OLD BUSINESS		
15	Item #1: Council Actions Taken by Ballot	Information
NEW BUSINESS		
16	Item #1: Consideration of After Deadline Bill Requests	Decision
23	Item #2: Request by Council of State Governments to Fund the Northeast States Association for Agricultural Stewardship (NSAAS)	Decision
29	Item #3: Project to Image Newspaper Clipping Files. (Memo from Lynn Randall, State Law Librarian)	Decision
	Item #4: NCSL Study of Legislative Operations Proposal	Update
31	Item #5: Submission of Study Report	
	Maine Drug Return Implementation Group (report and letter from Sen. John L. Martin, Chair)	Acceptance
32	Item #6: W. Tom Sawyer, Jr., et al v. Legislative Council et. al (CV-04-97) (Executive Session)	

ANNOUNCEMENTS AND REMARKS

ADJOURNMENT

REP. JOHN RICHARDSON
CHAIR

SEN. BETH EDMONDS
VICE-CHAIR



122ND MAINE STATE LEGISLATURE

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DAVID E. BOULTER
EXECUTIVE DIRECTOR

Meeting Summary February 24, 2005

CALL TO ORDER

The Chair, Speaker Richardson, called the Legislative Council meeting to order at 2:23 p.m. in the Legislative Council Chamber.

ROLL CALL

Senators:	President Edmonds, Sen. Gagnon, Sen. Weston Absent: Sen. Brennan, Sen. Davis,
Representatives:	Speaker Richardson, Rep. Cummings, Rep. Duplessie, Rep. Tardy (Rep. Bowles joined the meeting in progress)
Legislative Officers:	Joy O'Brien, Secretary of the Senate Millicent MacFarland, Clerk of the House Michael Cote, Assistant Clerk of the House David Boulter, Executive Director, Legislative Council Grant Pennoyer, Director, Office of Fiscal and Program Review David Elliott, 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 THE JANUARY 26, 2005 COUNCIL MEETING

Motion: That the Meeting Summary of January 26, 2005 be accepted and placed on file. (Motion by Rep. Tardy, second by Rep. Duplessie, unanimous).

REPORTS FROM EXECUTIVE DIRECTOR AND COUNCIL STAFF OFFICES

- **Executive Director's Report**

David Boulter, Executive Director of the Legislative Council, reminded members of the Legislative Policy Forum on economic development and health policy issues scheduled for March 10-11, 2005. The Speaker requested that a reminder of the policy forum be emailed to legislators.

No Council action required.

- **Fiscal Report**

Grant Pennoyer, Director of Fiscal and Program Review, presented his report to the Council.

1. General Fund and Highway Fund Revenue Variances for January 2005 (Reflects December 2004 Revenue Forecasting Committee Revisions)

- **General Fund**

General Fund revenue was ahead of budgeted revenue in January by \$0.9 million, increasing the positive variance for the year through January 2005 to \$6.6 million.

The positive variance in the Estate Tax of \$5.1 million is a timing issue and is the major contributor to the overall positive variance. Smaller positive and negative variances in the other lines essentially balance each other out.

- **Highway Fund**

Highway Fund revenue in January increased the positive variance by \$0.8 million to \$4.9 million for FY05 through January. Motor Vehicle Registration and Fees accounts for most of this positive variance.

2. Revenue Forecasting Schedule

- The Revenue Forecasting Committee met on Friday, February 18th for its March 1st update. Since the economic forecast was unchanged from the December 2004 forecast, the revenue revisions in this forecast were technical corrections or updates based on better data. The forecast is still preliminary and subject to change. The General Fund Revenue was revised by:
 - FY05: an additional \$ 2.0 million, which includes the \$1.5 million from EFY05 Budget Bill
 - FY06: an additional \$ 4.5 million
 - FY07: an additional \$13.6 million
- Highway Fund Revenues were revised upward in FY05 by \$2.0 million and downward by less than \$1.0 million for the 2006-2007 biennium.
- Fund for a Healthy Maine was not revised in this forecast.

3. Cash Pool Status

- Absent reserve accounts balances and tax anticipation notes, the General Fund average cash balance would have been negative by \$149.6 million.
 - Through January, 2005 the General Fund and Highway Fund historical trends still show an improving trend over the last 12 months.
- **Office of Information Services' Report**

1. Bill Drafting System

There has been no change in the status bill drafting system since the January 26, 2005 Council meeting. The Attorney General's Office is waiting for a response from HP as to the latest proposal for resolving the outstanding issues.

Speaker Richardson requested that Executive Director Boulter schedule a meeting with a representative of the Attorney General's office, President Edmonds, Paul Mayotte and himself to discuss the HP contract.

2. Office Suite 2003 Software

The Information Systems Office is completing the replacement of the outdated Office Suite 2000 with Office Suite 2003, and with its completion the office will have achieved a long-term goal of providing a uniform computing environment on all Legislative PCs by having both the current Office Suite software and current operating system software (XP).

3. Local Area Network

Upgrades to the switches that manage the local area network are complete and have resulted in an increase in network speed and capacity from 10Mb/sec to 100Mb/sec.

Speaker Richardson asked if there was objection to taking an item out of order. Hearing none, the Chair then moved to **New Business, Item #1.**

NEW BUSINESS

Item #1: Consideration of After Deadline Bill Requests

Twenty-seven after deadline requests were considered by the Legislative Council. The Council's actions on these requests are included on the attached list.

The Chair then returned to agenda items in the order they appeared on the agenda.

REPORTS FROM EXECUTIVE DIRECTOR AND COUNCIL STAFF OFFICES (con't)

- **Update of Interim Studies**

David Elliott, Director, Office of Policy and Legal Analysis, reported on the interim legislative studies. A copy of the Progress Report on the Legislative Studies is attached.

REPORTS FROM COUNCIL COMMITTEES

- **Personnel Committee**

Executive Director Boulter reported to the Legislative Council that the Personnel Committee met earlier in the day and voted to explore adopting a policy on domestic violence in the workplace and directed Executive Director office staff to develop a draft policy for its consideration.

No Council action required at this time. Speaker Richardson asked that a progress report be given to the Council at its next meeting.

- **State House Facilities Committee**

Sen. Gagnon, Chair of the State House Facilities Committee reported that the committee met on February 22, 2005 and reported the following:

1. An evacuation plan for the State House was approved, and will be disseminated to legislative offices..
2. The committee will be discussing issues related to the use of the Hall of Flags and developing a policy setting parameters for appropriate use.
3. The committee considered a request from the American Heart Association to light the State House dome in red. Although the request was for a worthy cause, it was concerned that granting the request would set a precedent for lighting the dome in support of various causes, some of which inevitably could politicize or offend. The State House Facilities Committee voted unanimously to recommend that the Legislative Council adopt a policy that such requests not be granted.

Legislative Council Motion: That as a matter of general policy, the Legislative Council not grant requests to light the State House dome or display legislative lights in various colors in support of, opposition to, or in recognition of various groups or causes. In exceptional circumstances, the presiding officers may waive the policy to grant approval. (Motion by Sen. Gagnon, second by Rep. Duplessie unanimous).

4. The committee agreed to develop a policy on staff access to and use of legislative retiring rooms, in keeping with the intent that retiring rooms are for the private use of legislators.
5. The committee agreed to explore ideas to honor important historical figure Joshua Chamberlain and his significant contributions to Maine and the Nation, perhaps through appropriate artwork funded by the Legislature's Percent for Art program.

The State Historian will be consulted as part of the committee's consideration, and if pursued, the committee will make a recommendation to the Legislative Council for its consideration.

6. The committee reviewed a proposed security plan for the State House. The plan describes in detail procedures for deployment of security measures in the building, and appropriate response actions, which are designed to protect the safety of

visitors, employees and Legislators through entry screening or monitoring. The committee agreed to establish a subcommittee to consider the policy issues relating to deployment of security measures and related staffing issues for Capitol Security.

- **Budget Subcommittee**

Speaker Richardson reported on the subcommittee's work. He referred members to the budget information and recommendations in their packets that were adopted by the Budget Subcommittee at its meeting on February 23, 2005.

The Budget Subcommittee will look at further items and potential savings as more information becomes available to the subcommittee.

Motion: That the Legislative Council accept and carry out the recommendations of the Budget Subcommittee as presented in its report of February 23, 2005. (Motion by Rep. Bowles, second by President Edmonds, unanimous).

The Subcommittee requested that Mr. Boulter contact NCSL to invite a proposal from NCSL to conduct a study of the legislative process and identify ways to improve operations and make them more efficient. Speaker Richardson mentioned that NCSL could help the Legislative Council find \$260,000 in savings to offset FY 06/07 budget increases. He asked that a proposal be brought back to the Legislative Council for a decision as to the scope and extent of the review and the cost.

OLD BUSINESS

Item #1: Legislative Study Standards (tabled at meeting of 1-26-05)

David Elliott reminded members that the Joint Rules direct the Council each biennium to adopt guidelines for drafting studies for the current biennium.

Motion: That the Legislative Council remove the item from the table and further that the Legislative Council adopt the legislative study standards as presented at an earlier Legislative Council meeting. (Motion by President Edmonds, second by Sen. Gagnon, unanimous).

Item #2: Council Actions Taken by Ballot

Executive Director Boulter provided Council members with a list of actions taken by ballot by the Legislative Council since its January 26, 2005 meeting.

No Council action required.

ANNOUNCEMENTS AND REMARKS

None.

ADJOURNMENT

The Legislative Council meeting was adjourned at 3:21 p.m. (Motion by Sen. Gagnon, seconded by President Edmonds, unanimous).

Fiscal Briefing for the Legislative Council

Legislative Council Meeting

March 24, 2005

*Prepared by the
Office of Fiscal & Program Review*

1. General Fund and Highway Fund Revenue Variances for February 2005 (Reflects March 2005 Revenue Forecasting Committee Revisions)

- **General Fund** - General Fund revenue was under budget in January by -\$0.8M, decreasing the positive variance for the year through February 2005 to +\$5.9M (+0.4%).
 - Major Positive variances for fiscal year through February include:
 - Estate Tax (+\$4.2M) – Variance is expected to decline over the year
 - Individual Income Tax (+\$6.5M)
 - Corporate Income Tax (+\$3.3M)
 - Major Negative variances for fiscal year through February include:
 - Sales and Service Provider Taxes (-\$7.7)
 - Cigarette Tax (-\$0.6M)
 - Lottery Transfer (-\$1.6M) – Powerball sales have been under performing due to lower than anticipated jackpots
- **Highway Fund** - Highway Fund revenue was under budget in February by -\$1.4 or -5.6% with February Fuel Tax revenue being the major reason for this negative variance. For the fiscal year through February, the Highway Fund is still \$3.5M or +1.8%.

2. Cash Pool Status

- February 2005 Cash Pool Summary (see attached) – Absent reserve accounts balances and tax anticipation notes, General Fund average cash balance would have been negative by \$171.2M
- General Fund & Highway Fund Historical Trends (see attached) - Through February 2005, both funds still show an improving trend over the last 12 months, although the General Fund trend improvement has flattened out recently

General Fund and Highway Fund Revenue
Fiscal Year Ending June 30, 2005
Based on All Actions of the 121st Legislature and December 2004 Revenue Forecast

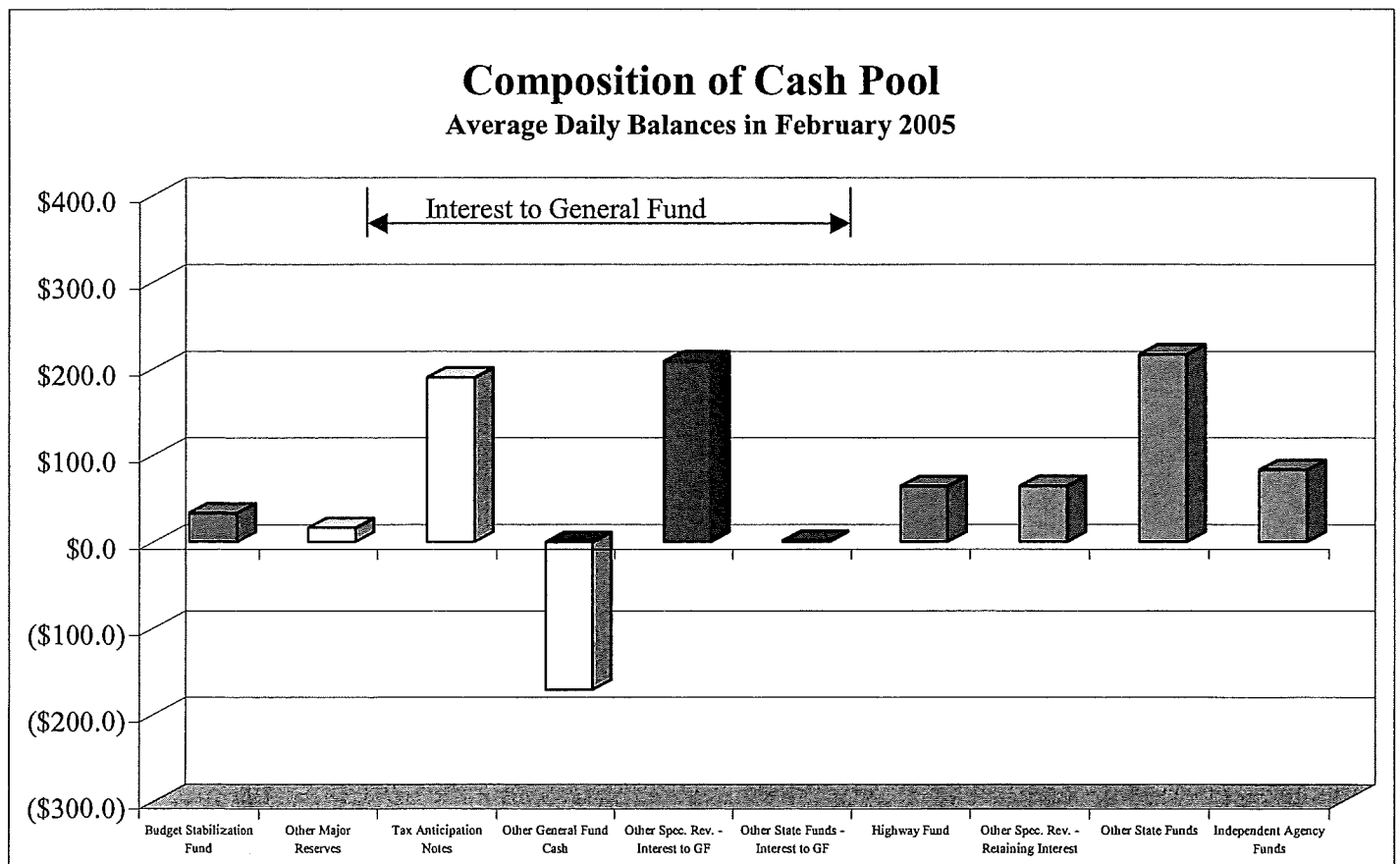
FEBRUARY 2005 VARIANCE REPORT

FUND	Revenue Line	Feb. '05 Budget	Feb. '05 Actual	Feb. '05 Var.	FY05 YTD Budget	FY05 YTD Actual	FY05 YTD Variance	FY05 Budgeted Totals
GF	Sales and Use Tax	57,375,822	49,438,944.74	(7,936,877.26)	551,197,056	544,364,735.05	(6,832,320.95)	914,710,000
GF	Service Provider Tax	3,866,201	3,853,559.08	(12,641.92)	26,038,455	25,164,241.79	(874,213.21)	46,700,000
GF	Individual Income Tax	35,785,972	42,476,859.09	6,690,887.09	728,082,840	734,552,326.06	6,469,486.06	1,196,106,196
GF	Corporate Income Tax	18,999	1,897,821.93	1,878,822.93	66,397,829	69,660,416.81	3,262,587.81	123,351,604
GF	Cigarette and Tobacco Tax	7,284,106	6,038,579.48	(1,245,526.52)	64,663,210	64,035,810.25	(627,399.75)	96,019,864
GF	Public Utilities Tax	0	0.00	0.00	(150,000)	(150,000.00)	0.00	26,675,000
GF	Insurance Companies Tax	1,310,389	1,630,908.32	320,519.32	15,829,215	16,571,500.67	742,285.67	78,615,872
GF	Estate Tax	2,380,539	1,536,766.48	(843,772.52)	14,759,530	18,996,366.14	4,236,836.14	29,042,767
GF	Property Tax - Unorganized Territory	0	0.00	0.00	9,722,362	9,638,377.00	(83,985.00)	10,580,086
GF	Income from Investments	318,482	530,303.30	211,821.30	2,449,400	2,840,664.20	391,264.20	4,084,735
GF	Transfer to Municipal Revenue Sharing	(4,949,396)	(4,981,026.42)	(31,630.42)	(69,957,524)	(70,010,827.68)	(53,303.68)	(116,324,258)
GF	Transfer from Lottery Commission	4,495,531	3,587,339.53	(908,191.47)	34,788,332	33,219,412.46	(1,568,919.54)	52,292,750
GF	Other Revenue	15,657,050	16,756,035.24	1,098,985.24	177,375,399	178,172,415.57	797,016.57	261,702,191
GF	Totals	123,543,695	122,766,090.77	(777,604.23)	1,621,196,104	1,627,055,438.32	5,859,334.32	2,723,556,807
HF	Fuel Taxes	16,915,584	15,544,295.63	(1,371,288.37)	132,080,708	131,554,896.51	(525,811.49)	220,838,729
HF	Motor Vehicle Registration and Fees	6,785,167	6,778,384.72	(6,782.28)	46,052,774	50,797,150.58	4,744,376.58	78,853,234
HF	Inspection Fees	298,033	220,748.50	(77,284.50)	3,209,654	2,774,093.41	(435,560.59)	4,381,459
HF	Fines	178,927	135,538.63	(43,388.37)	1,394,026	1,168,661.52	(225,364.48)	2,165,359
HF	Income from Investments	78,800	113,694.94	34,894.94	542,001	592,966.09	50,965.09	946,385
HF	Other Revenue	561,389	581,219.42	19,830.42	6,476,782	6,332,929.29	(143,852.71)	14,200,077
HF	Totals	24,817,900	23,373,881.84	(1,444,018.16)	189,755,945	193,220,697.40	3,464,752.40	321,385,243

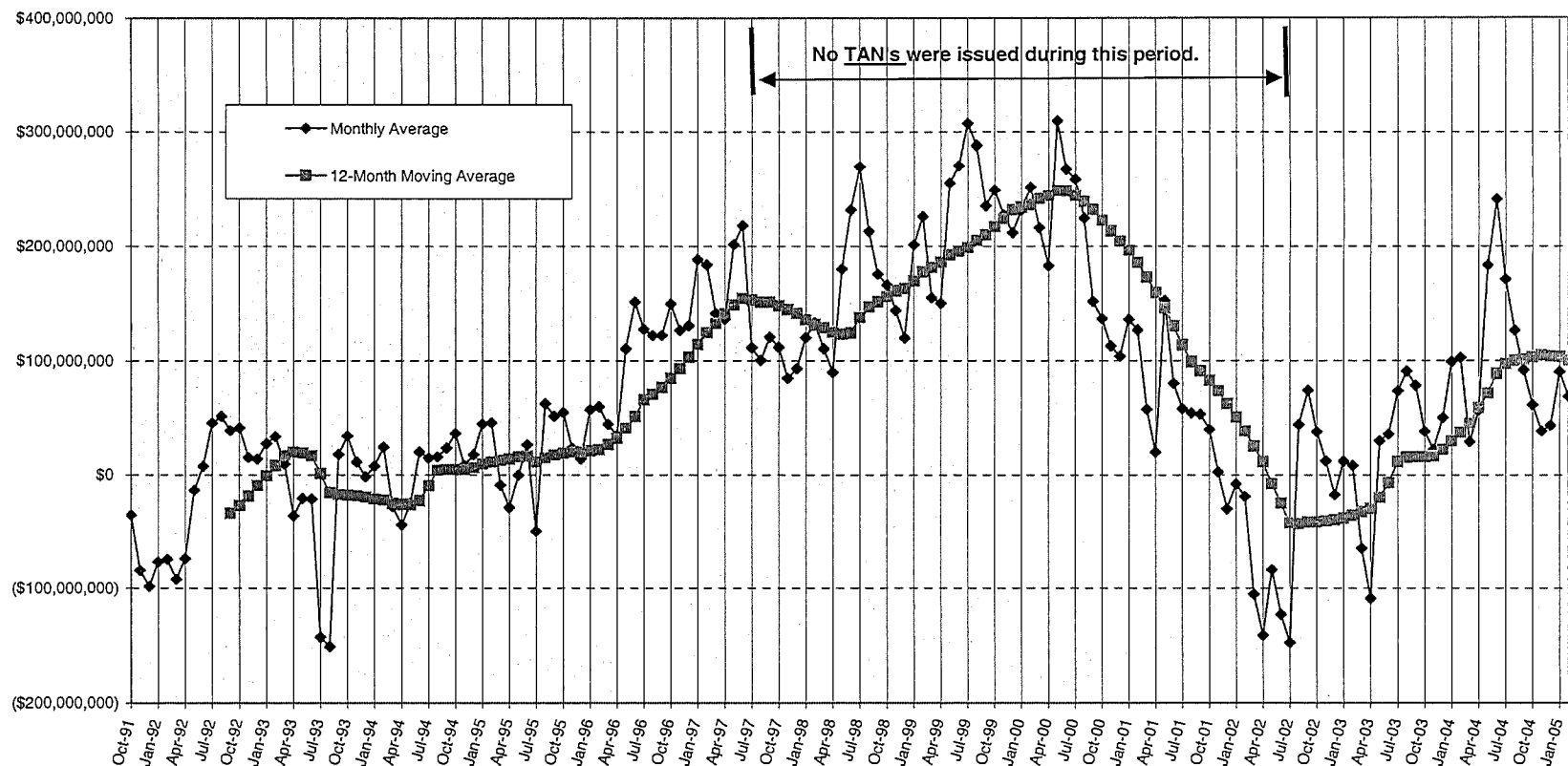
Composition of State's Cash Pool

February 2005 Average Daily Balances

	February 2005
General Fund - Total	\$68,829,777
General Fund - Detail	
Budget Stabilization Fund (Rainy Day Fund)	\$33,472,432
Reserve for General Fund Operating Capital	\$16,532,953
Tax Anticipation Notes	\$190,000,000
General Fund - Other	(\$171,175,608)
Highway Fund	\$64,627,763
Other Special Revenue - Contributing to General Fund	\$208,883,918
Other Special Revenue - Retaining Interest Earned	\$64,868,556
Other State Funds - Contributing Interest to General Fund	\$1,598,898
Other State Funds	\$216,803,079
Independent Agency Funds	\$83,500,894
Total Cash Pool	\$709,112,886



GENERAL FUND DAILY STARTING CASH BALANCES

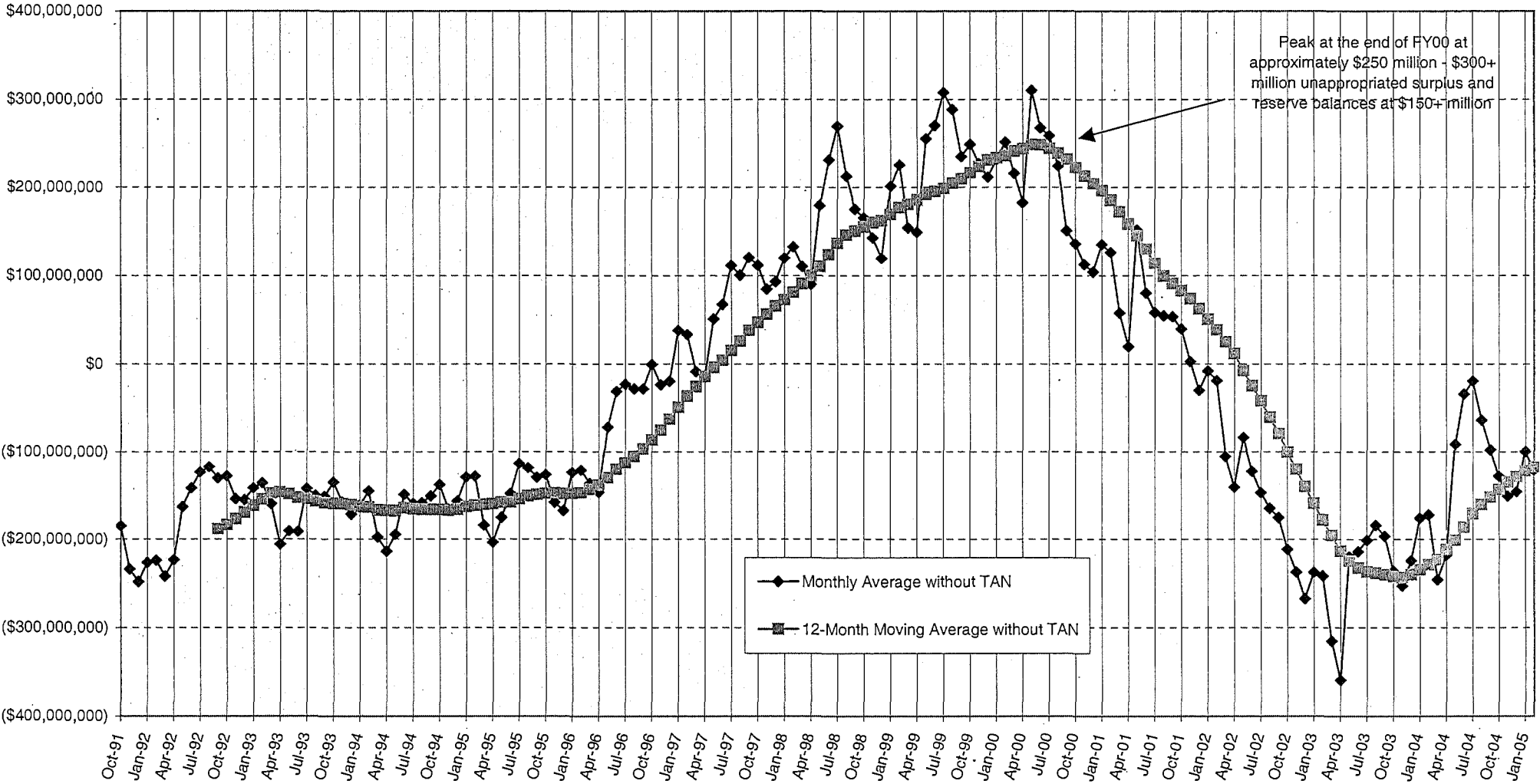


TAX ANTICIPATION NOTES (TAN's) - History from FY 1990-91 ⁽¹⁾

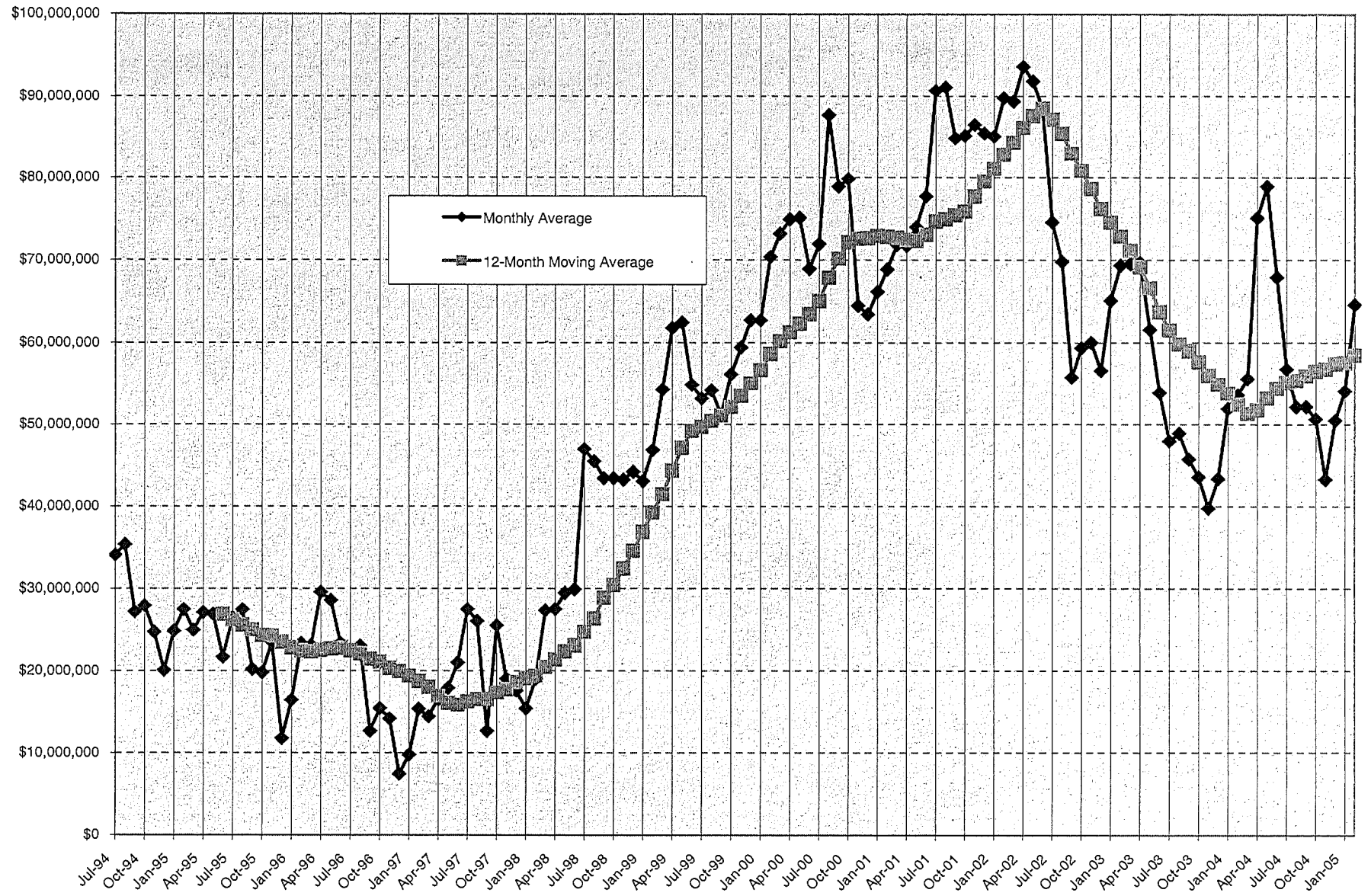
Fiscal Year	Amount Authorized	Amount Issued	Reference
2004-05 ⁽¹⁾	\$301,688,831 ⁽¹⁾	\$190,000,000	5 MRSA, §150 (as amended by PL 2001, c. 705)
2003-04 ⁽¹⁾	\$284,492,042 ⁽¹⁾	\$275,000,000	5 MRSA, §150 (as amended by PL 2001, c. 705)
2002-03 ⁽¹⁾	\$282,869,203 ⁽¹⁾	\$250,000,000	5 MRSA, §150 (as amended by PL 2001, c. 705)
2001-02	\$100,000,000	\$0	5 MRSA, §150 (as amended by PL 2001, c. 467)
1997-98	\$100,000,000	\$0	PL 1997, c. 24, §F-1 (Repealed by PL 1997, c. 643, §E-5)
1996-97	\$190,000,000	\$150,000,000	PL 1995, c. 665 §P-1
1995-96	\$182,000,000	\$182,000,000	PL 1995, c. 368, §V-1
1994-95	\$175,000,000	\$175,000,000	PL 1993, c. 707, §P-2
1993-94	\$170,000,000	\$170,000,000	PL 1993, c. 382, §1
1992-93	\$170,000,000	\$170,000,000	PL 1991, c. 780, §BB-1
1991-92	\$150,000,000	\$150,000,000	PL 1991, c. 589, §1
1990-91	\$125,000,000	\$115,000,000	PL 1991, c. 5, §1

Notes: ⁽¹⁾ 5 MRSA, §150 provides the statutory authorization for Tax Anticipation Notes. As amended by PL 2001, c. 705, the limit is the same as that imposed by the Constitution of Maine, Article IX, Sec. 14, 10% of total General Fund appropriations and Highway Fund allocations or 1% of the State Valuation, whichever is less. The amounts authorized for fiscal years 2002-03 and 2003-04 reflect General Fund appropriations and Highway Fund allocations through the 121st Legislature, 1st Regular Session. Amounts for fiscal year 2004-05 reflect budgeted amounts at the end of the 121st Legislature, 2nd Special Session. Special exceptions to the general authorization levels are detailed in this table.

GENERAL FUND
DAILY STARTING CASH BALANCES - EXCLUDING TAX ANTICIPATION NOTES



HIGHWAY FUND DAILY STARTING CASH BALANCES



**122nd MAINE STATE LEGISLATURE
LEGISLATIVE COUNCIL
Technology Report
March 24, 2005**

- **Bill Drafting System:**
 - **A signed agreement with HP is in place to complete the installation of the Bill Drafting System**
 - **The agreement provides for:**
 - **Warranty coverage to June 2006 (full session coverage)**
 - **Delivery of all previously agreed too software functions and hardware**
 - **Completion of all work by HP prior to the start of Second Session drafting**
- **Legislature's Internet Home Page:**
 - **Making changes to the prototype based on the feedback received**
 - **Plan to have the new page in place by the end of March**

Progress Report on Legislative Studies
(Studies authorized or undertaken following the 121st Legislature)

Status as of 3/18/2005 11:53:21AM

<u>Study Name</u>	<u>First Meeting Date</u>	<u>Date, Time & Location of Next Meeting</u>	<u>Report Dates/ Reports To</u>	<u>Comments/Status of Study</u>
Recodification of Title 7 SP0586 -			January 15, 2005: ACF Committee	Substantive change bill introduced and heard--LD 216
Commission to Study Public Health LD0471 - Resolve 2003, Chapter 95	12/5/03		November 3, 2004: 1st Regular Session, 122nd Legislature	Study complete; 4 bills introduced--LD110, 134, 439 and 796
Health Care System and Health Security Board LD0855 - Public Law 2001, Chapter 439, Part ZZZ	10/12/01		Nov. 1, 2004: 1st Reg. Session of 122nd Legislature	Study complete; 1 bill introduced--LD 32
Commission to Study Compliance with Maine's Freedom of Access Laws LD1079 - Resolve 2003, Chapter 83	11/19/03		November 3, 2004: Joint Standing Committee on Judiciary	Study complete; 3 bills introduced--LD 301, 466 and 467
Task Force to Study Parity and Portability of Retirement Benefits for State Law Enforcement Officers, Municipal and County Law Enforcement Officers and Firefighters LD1343 - Resolve 2003, Chapter 76	8/11/03		December 1, 2004: 1st Reg. Session of 122nd Legislature	Study complete; 1 bill introduced--LD 1021
Commission to Improve the Sentencing, Supervision, Management and Incarceration of Prisoners LD1614 - Public Law 2003, Chapter 451	9/4/03		2/5/2004: Criminal Justice and Public Safety Committee 1/1/2005: Criminal Justice and Public Safety Committee	7 meetings held; legislation being drafted

Progress Report on Legislative Studies
(Studies authorized or undertaken following the 121st Legislature)

Status as of 3/18/2005 11:53:23AM

<u>Study Name</u>	<u>First Meeting Date</u>	<u>Date, Time & Location of Next Meeting</u>	<u>Report Dates/ Reports To</u>	<u>Comments/Status of Study</u>
Citizen Trade Policy Commission LD1815 - Public Law 2003, Chapter 699	10/6/04		Annual: Governor, Legislature AG and municipalities Annually: Congressional delegation, Maine International Trad : Maine International Trade Center : Maine Municipal Association : United States Trade Representative's Office : NCSL and NAAG	5 meetings held; plan to meet monthly during session; 1st annual report in July
Maine Drug Return Implementation Group LD1826 - Public Law 2003, Chapter 679	10/15/04		January 31, 2005: Health and Human Services Committee	Study complete; report and legislation being drafted
Health and Human Services Committee Review of the Establishment of the Department of Health and Human Services LD1913 - Public Law 2003, Chapter 689	7/27/04		None Required	Study complete; no report; no legislation

Selection criteria:
Session ID = 121
Study Type = Legislative

**Action Taken by Ballot by
the Legislative Council Since
the February 24, 2005 Council Meeting**

1. Request for Introduction of Legislative

- A. LR 2294: An Act to Authorize the Deorganization of the Town of Cooper
Submitted by: Senator Kevin Raye
Accepted: March 23, 2005, 9 – 1 – 0 – 0

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LEGISLATIVE COUNCIL
REQUESTS TO INTRODUCE LEGISLATION
FIRST REGULAR SESSION
March 18, 2005

Action

SPONSOR: Rep. Canavan, Marilyn E.

LR 2281 An Act To Increase the Tax on Sales and Rentals of Violent Video and Computer Games and Compact Disks to Increase Court Security

SPONSOR: Rep. Clark, Herbert

LR 2269 An Act Regarding Buildings on Leased Lots

SPONSOR: Sen. Cowger, Scott W.

LR 2265 An Act To Fully Fund the Homestead Exemption

SPONSOR: Rep. Cressey, Jr., Philip

LR 2293 An Act To Permit Municipalities the Option To Allow Citizens To Vote on Warrant Articles at Town Meetings by Absentee Ballot

SPONSOR: Rep. Cummings, Glenn

LR 2262 An Act To Reduce Tobacco Use and Improve Health

SPONSOR: Sen. Gagnon, Kenneth T.

LR 2289 An Act To Prevent Campaigning at Polling Places

SPONSOR: Rep. Joy, Henry

LR 2275 An Act To Require a Nonprofit Organization that Files a Lawsuit Regarding the Application of Pesticides To Pay All Court Costs and Lost Wages and Profits of a Defendant

SPONSOR: Rep. Pingree, Hannah

LR 2261 An Act To Amend the Charter of the Stonington Sanitary District

SPONSOR: Rep. Rines, Peter L.

LR 2292 An Act To Provide an Exemption to Wiscasset for Taxes Based on Evaluation of Maine Yankee That is Currently Being Challenged

SPONSOR: Rep. Saviello, Thomas

LR 2279 An Act To Delay the Implementation of the Increase to The Homestead Exemption

SPONSOR: Sen. Strimling, Ethan

LR 2291 An Act To Restructure the Unfunded Liability of the
Maine State Retirement System

SPONSOR: Rep. Twomey, Joanne T.

LR 2282 Resolve, Directing that Signs Be Posted at Places Where
Lobbyist are Not Allowed

JOINT RESOLUTIONS

SPONSOR: Rep. Cummings, Glenn

LR 2266 JOINT RESOLUTION MEMORIALIZING CONGRESS TO AVOID
SOLE-SOURCE SHIPBUILDING

SPONSOR: Sen. Rotundo, Margaret

LR 2296 JOINT RESOLUTION MEMORIALIZING CONGRESS TO CONTINUE STIPENDS
AT CURRENT LEVELS FOR VETERANS IN VETERANS' NURSING HOMES

TABLED BY THE LEGISLATIVE COUNCIL

SPONSOR:	Rep. Dudley, Benjamin F.	TABLED 02/25/05
LR 2240	An Act To Ensure the Integrity and Independence of the Unemployment Insurance Commission	
SPONSOR:	Rep. Edgecomb, Peter	TABLED 02/25/05
LR 2233	Resolve, To Protect the Social Service Delivery System in Caribou	
SPONSOR:	Rep. Greeley, Christian David	TABLED 02/25/05
LR 2254	An Act Regarding the Taxation of Mobile Homes	
SPONSOR:	Rep. Koffman, Theodore	TABLED 02/25/05
LR 2232	An Act To Amend the Real Estate Transfer Fee	
SPONSOR:	Sen. Perry, Joseph Charles	TABLED 02/25/05
LR 2213	An Act To Allow a Prorated Refund of a Registration Fee Upon the Sale of a Motor Vehicle	
SPONSOR:	Rep. Saviello, Thomas	TABLED 02/25/05
LR 2260	Resolve, To Direct Department of Education to Continue Funding the Reading Recovery Program	
SPONSOR:	Sen. Strimling, Ethan	TABLED 02/25/05
LR 2141	An Act To Change the Procedure by Which a Vacancy in the United States Senate is Filled	

JOINT RESOLUTIONS

SPONSOR:	Sen. Edmonds, Beth G.	TABLED 02/25/05
LR 2245	JOINT RESOLUTION MEMORIALIZING CONGRESS TO REJECT PLANS TO PRIVATIZE SOCIAL SECURITY	
SPONSOR:	Rep. Lindell, R. Kenneth	TABLED 02/25/05
LR 2030	JOINT RESOLUTION, MEMORIALIZING CONGRESS TO REFORM SOCIAL SECURITY	

ADDENDUM

LEGISLATIVE COUNCIL
REQUESTS TO INTRODUCE LEGISLATION
FIRST REGULAR SESSION
March 24, 2005

Action

SPONSOR: Rep. Daigle, Robert A.

LR 2302 An Act To Restrict the Disposal of Propane Tanks in the Household Waste Stream

SPONSOR: Rep. Fletcher, Kenneth C.

LR 2310 Resolve, To Ensure the Effective Implementation of Alewife Restoration on Sebasticook River Watershed

SPONSOR: Sen. Gagnon, Kenneth T.

LR 2299 Resolve, To Establish a Commission to Evaluate Criteria for Siting Agency Liquor Stores

SPONSOR: Sen. Gagnon, Kenneth T.

LR 2307 An Act Regarding the Commission on Governmental Ethics and Election Practices

SPONSOR: Sen. Gagnon, Kenneth T.

LR 2304 An Act To Compensate the Gambling Control Board

SPONSOR: Sen. Mitchell, Elizabeth H.

LR 2303 An Act Regarding Voter Registration Cards

SPONSOR: Rep. Pingree, Hannah

LR 2311 An Act To Retain Maine's Theater Teachers

SPONSOR: Rep. Woodbury, Richard G.

LR 2297 An Act To Sunset Income Tax Checkoffs

JOSEPH C. PERRY, DISTRICT 32, CHAIR
 ETHAN STRIMLING, DISTRICT 8
 JONATHAN T. E. COURTNEY, DISTRICT 3

JULIE JONES, LEGISLATIVE ANALYST
 BETH ST. PIERRE, COMMITTEE CLERK



STATE OF MAINE

RICHARD G. WOODBURY, YARMOUTH, CHAIR
 HERBERT E. CLARK, MILLINOCKET
 DEBORAH J. HUTTON, BOWDOINHAM
 RAYMOND G. PINEAU, JAY
 THOMAS R. WATSON, BATH
 HAROLD A. CLOUGH, SCARBOROUGH
 H. STEDMAN SEAVEY, JR., KENNEBUNKPORT
 EARLE L. MCCORMICK, WEST GARDINER
 LEONARD EARL BIERMAN, SORRENTO
 BRUCE Q. HANLEY, PARIS

ONE HUNDRED AND TWENTY-SECOND LEGISLATURE

COMMITTEE ON TAXATION

March 15, 2005

Legislative Council
 State House Station 115
 Augusta, Maine 04333

Dear members:

On behalf of the Taxation Committee, we ask for your support for an after deadline bill to establish a sunset process for income tax checkoffs on the Maine income tax return.

Every year the Legislature considers several bills to add new income tax checkoffs to the Maine income tax return. There are currently eight checkoff lines on the Maine return, three for political party contributions and five to provide funding for other purposes, nongame wildlife, the Maine Children's Trust Fund, bone marrow donations, spaying and neutering of companion animals and military family relief. This year the Legislature will consider bills to add two more checkoffs; one for the veterans' cemeteries and one for a proposed new fund to support asthma and lung disease research. The average annual amount contributed through all of these checkoffs is approximately \$34,000, with the highest amount being approximately \$52,000 for the nongame wildlife fund.

While all of the causes requesting a checkoff for contributions on the Maine income tax return are worthy of support, the Taxation Committee is concerned about the administrative cost of the checkoffs, relative to the funds raised, and the complexity of numerous checkoff options in filing tax returns. Committee discussions have convinced us that it might be better to provide sunset dates for new and existing checkoffs so that those that are successful in raising funds through the checkoff can be identified and continued and those with little success can expire.

We believe that a change in the duration of income tax checkoffs should be a separate bill and have an opportunity for public comment. We ask for your support for an after deadline bill so that we may pursue this matter further.

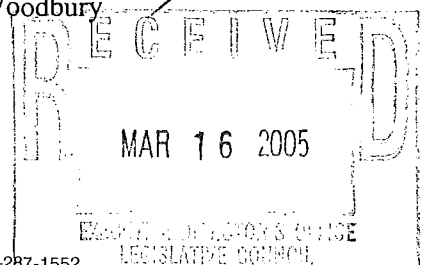
Sincerely:

Sen. Joseph C. Perry
 Senate Chair

Sincerely:

Rep. Richard G. Woodbury
 House Chair

cc: David Boulter, Executive Director
 Margaret Matheson, Revisor of Statutes





MAINE STATE LEGISLATURE

OFFICE OF THE EXECUTIVE DIRECTOR
LEGISLATIVE COUNCIL

March 18, 2005

TO:

FROM:  Dave Boulter, Executive Director

SUBJECT: **Your After Deadline Bill Request(s)**

The Legislative Council has scheduled its next meeting for:

**Thursday, March 24, 2005
1:00 p.m.
Room 334, Legislative Council Chamber**

In accordance with the Joint Rules, the Council will consider After Deadline Bill Requests at that time, including the request(s) you have filed with the Revisor's Office. In addition, the Council is required by Joint Rule 35 to decide all requests for Memorials (Joint Resolutions that memorialize another governmental agency or official) for introduction.

You should plan to attend this Council meeting or present your request(s) to a member of the Legislative Council prior to the meeting. The Council may, but is not obligated to, table a request until the following meeting if the sponsor is not present, so it will have the benefit of information from the sponsor when it votes.

The Council's review of After Deadline Requests is pursuant to Joint Rule. Please be advised that the Council asks that all sponsors first research whether there is an existing bill or LR available to a committee that could accommodate their request. The review procedure then will be as follows:

1. The Council Chair, Speaker John Richardson, will read the name of the sponsor and the title of the request.
2. Once recognized to speak by the Chair, the sponsor may proceed to the microphone. The sponsor should be prepared to concisely answer the following:
 - Why the bill request is "late" (filed after the cloture date);
 - Why the bill request constitutes an emergency such that the Legislature needs to consider the bill this session; and
 - Whether the likely committee of jurisdiction has a bill already referred to it that could be amended to include the proposal.

Council members may also ask questions related to the content or the intent of the bill to clarify the request, although sponsors generally are not asked to speak to the merits of the bill.

3. Following the questions Council members will vote on bill requests individually; a roll call vote is required pursuant to Joint Rule.

A complete list of the Council's action on After Deadline Requests is distributed to Council members and all sponsors as soon after adjournment of the Council meeting as possible. The list and the roll call votes are available in the Executive Director's office if you should have any questions.

I hope this information is useful. Please drop by or call me if you have any questions.

Attachment

cc: Members, Legislative Council

DAVID E. BOULTER
EXECUTIVE DIRECTOR
OF THE LEGISLATIVE COUNCIL



MAINE STATE LEGISLATURE

OFFICE OF THE EXECUTIVE DIRECTOR
LEGISLATIVE COUNCIL

Memo

To: Legislative Council Members
From: *Dave*
Dave Boulter, Executive Director
Date: March 20, 2005
Re: Request by Council of State Governments to fund NSAAS

Please find a request by the Council of State Governments that the State of Maine share in the funding of the Northeast States Association for Agricultural Stewardship (NSAAS). Maine's share for FY 06 is \$10,000. Please also find correspondence from CSG's director of NSAAS Marge Kilkelly that provides additional information about the association's relevance to Maine.

If you have any questions, I would be happy to answer them at the Legislative Council meeting.

Thank you.

Attachments

G:\COUNCIL\122nd\Misc\Memo to Mbrs-CSG req to fund NSAAS-3-2-05.doc



February 18, 2005

Eastern Regional Conference
40 Broad Street, Suite 2050
New York, NY 10004-2317
Phone: (212) 482-2320
Fax: (212) 482-2344

TO: Senator John Nutting
Representative John Piotti

FROM: Alan V. Sokolow, Director, CSG Eastern Office *AVS*
Marge Kilkelly, Director, NSAAS *MK*

RE: CSG/ERC Northeast States Association for Agricultural
Stewardship FY 2006 Budget Request

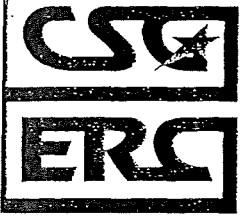
I am attaching a request for dues to be budgeted for Maine's proportionate share of the funding of the Council of State Governments' Eastern Regional Conference Northeast States Association for Agriculture Stewardship (NSAAS). The amount for FY '06 is \$10,000 and I would respectfully request that it be placed in the Legislative Council budget as do other membership dues items.

NSAAS's mission is to facilitate greater cooperation among its member states and jurisdictions in agriculture policy, with a particular focus on influencing federal policy, regulation and funding to benefit and protect the interests of the region's small and medium sized farms. The legislative chairs and key members from the region serve as the NSAAS Board of Directors with the Commissioners serving in an advisory capacity.

We work diligently to keep you and your colleagues up to date on the issues affecting rural communities. This past year has seen our weekly e-newsletter "NSAAS News Gleanings" readership expanded to nearly 900; farmers, legislators, federal and state ag staff and others. The international Legislative Ag Chairs meeting, co-sponsored by CSG, was attended by 21 northeast legislators and staff. The first Annual Rural Leaders Roundtable, held during our annual meeting in 2004 was attended by nearly 40 individuals. NSAAS is working hard for you, and with your support we can continue to provide quality information and advocacy for the northeast.

Should you have any questions, please contact me at your earliest convenience. We greatly appreciate Maine's support of the Council of State Governments' Eastern Regional Conference and its Northeast States Association for Agricultural Stewardship.

cc: Representative Nancy Smith
David Boulter



Eastern Regional Conference

40 Broad Street, Suite 2050

New York, NY 10004-2317

Phone: (212) 482-2320

Fax: (212) 482-2344

Co-Chairs
Senator Toni Nathaniel Harp
Co-Chair, Appropriations Committee
Connecticut

February 17, 2005

Representative Robert Godfrey
House Deputy Majority Leader
Connecticut

Co-Vice Chairs
Senator Rafael Musto
Minority Chair, Senate Environmental
Resources & Energy Committee
Pennsylvania

Representative Raymond Bunt, Jr.
Majority Caucus Secretary
Connecticut

Director
Alan V. Sokolow

STATE OF MAINE

Appropriations Request

FOR: Contribution to the Council of State Governments' Eastern Regional Conference
(CSG/ERC) Northeast States Association for Agriculture Stewardship (NSAAS).

Fiscal Year July 1, 2005 - June 30, 2006 \$10,000

(Federal Identification Number: 36-6000818)

Thank You for Your Continued Support.

Please make check payable to:

CSG/ERC Northeast States Association for Agriculture Stewardship

and return to:

Council of State Governments
40 Broad Street - Suite 2050
New York, NY 10004
Attn: Pamela Stanley



Northeast States Association for Agricultural Stewardship

An affiliate of The Council of State Governments' Eastern Regional Conference

5 McCobb Road, Dresden, ME 04342 • Phone: (207) 737-4717 • Fax: (207) 737-2280 • Cell: (207) 380-7783 mkilkelly@csq.org

To: Maine Legislative Council
From: Marge Kilkelly, Director NSAAS
Re: NSAAS Dues
March 15, 2005

Thank you very much for your consideration of the request for a dues item in the budget of \$10,000.

The Northeast States Association for Agricultural Stewardship (NSAAS) was created to strengthen the voice of northeast legislators interested in agriculture and rural viability. We had learned hard lessons about trying to "go it on our own" state by state; issue by issue and found ourselves always responding and reacting to policy, never being involved in developing it. The 2000 Farm Bill was the perfect catalyst for cooperation. We were very pleased with our ability to reach consensus on priorities and work with Fran Boyd, the NSAAS Washington Representative to see many of our proposals included in the final bill.

My job with NSAAS is to keep abreast of topical issues; inform members of regional and federal activities; provide briefings in each state for the Ag committees each year and develop partnerships that will enhance our role in advocating for the agriculture sector and rural communities of the Northeast. While the CSG/ERC office is located in New York City, I work from my home office in Maine.

The NSAAS News Gleanings, a weekly e-newsletter, is now being circulated to nearly 900 people and organizations each week.

Recently NSAAS worked with our other Council of State Governments (CSG) partners to host the third annual Legislative Ag Chairs (LAC) Meeting in Memphis TN an international meeting of over 180 Ag Legislators from the United States, Canada and Mexico. LAC was attended by 21 northeast legislators including Mainer Rep. Nancy Smith, Rep. Lelia Percy and Rep. John Piotti. The only cost to the state of Maine for their participation was travel as CSG took on the challenge of fundraising for all other expenses.

As an example of our efforts to work with every northeast state for the benefit of all the northeast in 2003; I worked with the Maine Potato Board and Soil and Water Conservation Districts (SWCD) to develop language for a resolution regarding the proposed Environmental Quality Incentive Program (EQIP) rules; which, as written, were detrimental to our region. This resolution was passed by five states in our region and forwarded to their Congressional representatives. Ultimately the language was included in a "Dear Colleague" letter circulated by Senator Susan Collins (ME) and, as a result, several changes were included in the final rule. Clearly it was a lesson in how we can work together to accomplish our goals.

Finally, it is important to note that health of the rural economy of Maine is critical to the health of the entire economy. According to the National Agriculture Statistics Services, in 2002 Maine agriculture and agriculture related jobs accounted for nearly 1 out of every 6 jobs in the state; employed over 17% of the rural Maine workforce and sold over \$78 million in products. In order to provide members and consumers with that information and more NSAAS has developed and is getting printed a brochure focusing on the importance of agriculture to the economy. These are in printing now, at a Maine printing company, and will be available by the end of March.

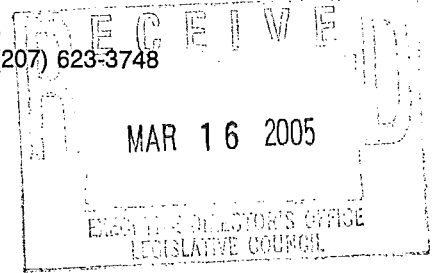
The ten state region included in NSAAS runs from Delaware to Maine and includes Puerto Rico, the Virgin Islands, Nova Scotia, New Brunswick and Quebec. The original dues structure include \$25,000 per state which would have covered a full time professional staff person, a full time clerical support person, a Washington representative and the various office and travel costs. As budgets have been under pressure we made cuts as well. The current level of requests range between \$10,000 and \$25,000 and covers a minimal work plan with the one professional staff and a limited availability of support from the Washington representative. Among member states and territories more than half have provided dues at some time and several have consistently paid a full share of \$25,000 per year which has allowed us to continue this work. Maine paid \$25,000 in 2000; \$10,000 in 2001 and \$5,000 in 2002. There was not an appropriation in 2003 or 2004.

Please let me know if I can provide additional information to you. I regret that I cannot be at the meeting as I will be in Albany, NY for a discussion with the American Farmland Trust about northeast priorities for the 2007 Farm Bill.



Maine Association of Conservation Districts

P.O. Box 152 - Hallowell, ME 04347 - Phone (207) 622-4443 - FAX (207) 623-3748



David E. Boulter,
Executive Director
Legislative Council
112th Maine State Legislature
Augusta, Maine 04333-0115

March 15, 2005

Dear Mr. Boulter:

On behalf of Maine's sixteen Soil and Water Conservation Districts, I am writing in support of Council funding for the Northeast States Association for Agricultural Stewardship (NSAAS).

Maine's Soil and Water Conservation Districts are "instrumentalities of the State of Maine", established under federal and state law, and under jurisdiction of the Maine Department of Agriculture. They serve as partners for the Conservation Technical Assistance and 2002 Farm Bill programs delivered by the U.S. Department of Agriculture's sixteen regional offices throughout Maine. These programs currently provide approximately \$13 million in USDA funds annually in cost-share funds for Maine landowners, communities, watershed groups, and others installing conservation practices on the land. Maine's waters are considerably cleaner, as result. The Conservation Districts are also major components in the delivery of Maine DEP programs.

One of the primary missions of our Districts and our Association is to maximize the federal funding for Maine, primarily from USDA but also from EPA. Marge Kilkelly's work with the NSAAS has been invaluable in this regard. The Northeastern states have traditionally failed to share in USDA appropriations, which until 2002 were primarily directed to support of commodity crop producers—corn, soy, cotton, and wheat. This imbalance was substantially corrected in the 2002 Farm Bill, which for the first time included "Regional Equity" in the Conservation Title of the Farm Bill, assuring Maine and the other "underserved" states at least \$12 million each. This represented a five-fold increase in the federal cost-share funds available for producers improving their nutrient management (manure storage) and other conservation practices. As result, the funds provided by the Maine Legislature for this purpose, through appropriations and a series of bond issues, have been very successfully leveraged.

“Regional Equity” would not have become part of the 2002 Farm Bill had the Northeastern states not organized around this concept. NSAAS made “Regional Equity” one of its top two priorities (the other was support for dairy farmers) and played a vital role in focusing the Northeast Congressional Delegation on this subject.

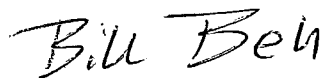
There was considerable disappointment among Northeast landowners when USDA published for comment its initial rules for implementation of Regional Equity and the 2002 Farm Bill. NSAAS again played a vital role in organizing and coordinating comment from different states. The comments submitted by the State Legislature in a state in the Southern tier of the Northeast were virtually identical to those submitted by the Maine Potato Board, which had shared its comments with NSAAS.

NSAAS is the one agricultural organization organized along Northeast regional lines; most others, such as American Farm Bureau, National Potato Council, and our own National Association of Conservation Districts, are organized on a national basis, and unable to fully reflect Northeast priorities which, in agriculture, are vastly different from those of the rest of the country.

Early next month, our Maine Association of Conservation Districts will be visiting Members of Congress to set forth issues important to Maine landowners and communities. These issues will include forestry and clean water programs, as well as agriculture. Our message will be reinforced by delegations from the other Northeast states, in their visits to their Congressional offices. For the third year in a row, Marge Kilkelly and NSAAS have helped our Northeast Conservation Districts develop a common message, through a Leadership Conference held over two days in Portsmouth every year. Marge Kilkelly and possibly a specialist from the Council of State Governments’ Washington office will again accompany us on our visits.

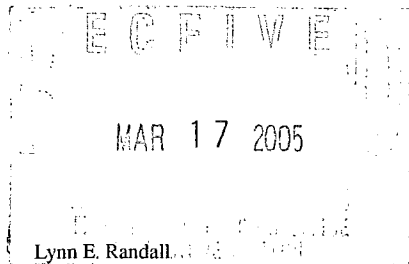
Support of NSAAS is one of the best expenditure of Maine tax dollars which our state can make, and we are grateful that the Legislative Council and Maine Legislature are considering such support.

Sincerely,

A handwritten signature in cursive script that reads "Bill Bell".

William Bell
Executive Director

P.S. The state Soil and Water Conservation Districts of the Northeast are currently seeking to organize along state lines—NSAAS has been very helpful in this regard—and will also be considering budgetary support for NSAAS.



Lynn E. Randall
State Law Librarian

Stephanie P. Ralph
Principal Law Librarian

Sheila M. Bearor
Principal Law Librarian

STATE OF MAINE
LAW AND LEGISLATIVE REFERENCE LIBRARY
43 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0043
Tel. 207-287-1600

TDD: (207) 287-6431
FAX: (207) 287-6467

Memorandum

Law and Legislative Reference Library

March 24, 2005

To: Legislative Council

From: Lynn Randall, State Law Librarian

Re: Project to image newspaper clipping files

You or your staff may have already made use of the newspaper clippings files maintained by the Library. You may not realize, however, that these files go back thirty years, or even more, and that the older files especially are in danger. The poor quality of newsprint means that the clippings will continue to deteriorate until they can no longer be handled.

I am proposing creating digital images of these clippings. Creating images will not only preserve the clippings, but also improves accessibility and increases the efficiency of our work. Images of the clipping would be stored digitally, and access would be through the public computer network already set up in the Library. To achieve this we would need additional hardware for scanning and software for optical character recognition, image storage, and retrieval. This proposal includes an HP ScanJet 8290 to scan the images, a Dell Precision 360 workstation to serve as the scanning station and server, and Alchemy Gold software.

The software will greatly improve access for users. Optical character recognition makes nearly every word in the article searchable, giving the user the ability to search for terms in the text of the article. In addition, the software allows users to combine terms and specify fields. A refined search at the computer will take the place of a manual search of subject folders of clippings that is very labor-intensive. In addition, we will have the ability to add headings or terms that may not appear in the articles, so it will still be possible to gain an overview of a subject area or find articles on a specific LD that don't include the LD number, for example.

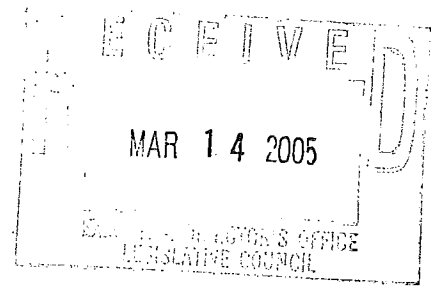
This project will also streamline the work of the library staff. The staff will see all the same benefits just mentioned, so we will be able to search efficiently and respond to requests quickly. Processing time for clippings will be dramatically reduced, as we will no longer have to stamp, date, note the filing subject, and physically file the clipping. Photocopying of clippings for different files or special binders will be eliminated thus conserving valuable shelf space. Photocopying will be further reduced because we will be able to e-mail individual clippings directly to users. Finally, the separate card file that we now create by LD number would be eliminated.

Library staff members have attended a demonstration of the imaging software utilizing some of our actual clippings. The software is very user friendly, both for searching and for scanning. The Library would be able to control the look of the screens, as well as define the search fields. The Information Systems Office assisted us in the evaluation of this hardware and software and connections with our existing network. We feel that it will meet our needs well, both now and in the future as the collection grows.

This imaging system would be one way for the Library to both work more efficiently and to provide a better service to library users. Therefore, I request authorization to work with the Executive Director of the Legislative Council over the next several weeks to purchase the necessary equipment and implement the imaging system. It is my understanding that the Legislative Council has set aside unexpended funds (Personal Services) from the library account that might be used for this purpose. Estimated costs are \$20,000.

I would be happy to respond to any questions you may have.

Thank you.



MAINE STATE LEGISLATURE
Augusta, Maine 04333

MAINE DRUG RETURN IMPLEMENTATION GROUP

March 8, 2005

The Honorable Beth Edmonds, Chair
The Honorable John Richardson, Vice-Chair
Legislative Council
115 State House Station
Augusta, ME 04333

Dear Chair Edmonds and Vice-Chair Richardson:

This letter is to inform you that the Maine Drug Return Implementation Group has completed its work and submitted its report, including recommended legislation, pursuant to Public Law 2003, chapter 679.

Sincerely,

A handwritten signature in black ink, appearing to read "John L. Martin".

Senator John L. Martin, Chair
Maine Drug Return Implementation Group

Attachment

STATE OF MAINE

KENNEBEC, ss.

SUPERIOR COURT

CIVIL ACTION

DOCKET NO. CV-04-97

W. TOM SAWYER, JR.,
ROBERT A. DAIGLE,
ALBION D. GOODWIN and
GARY E. SUKEFORTH,

Plaintiffs

v.

DECISION AND ORDER

THE LEGISLATIVE COUNCIL,
BEVERLY C. DAGGETT,
PATRICK COLWELL, and
DAVID E. BOULTER,

Defendants

This matter is before the court on cross-motions for summary judgment pursuant to M.R. Civ. P. 56. The present dispute involves a claim by the Plaintiffs, former Maine Legislators, that they are due compensation for service during the Second Special Session of the 121st Maine Legislature. Maine legislators are elected to serve for two-year terms, and the Legislature holds sessions during each of these years. The so-called First Regular Session begins on the first Wednesday of December following the November general election. *See* Me. Const. art. IV, pt. 3, § 1. The statutory deadline for the end of the First Regular Session is the third Wednesday in June. *See* 3 M.R.S.A. § 2 (2004). The so-called Second Regular Session begins on the first Wednesday after the first Tuesday in January of the following year. *See* Me. Const. art. IV, pt. 3, § 1. The statutory deadline for the end of the Second Regular Session is the third Wednesday in April. *See* 3 M.R.S.A. § 2 (2004). Although the Maine Constitution does not limit the type of business that may be conducted during the First Regular Session, the Constitution limits the business of the Second Regular Session to budgetary and other

specifically enumerated matters. *See* Me. Const. art. IV, pt. 3, § 1. Because legislators generally work five days a week when the legislature is in session, a First Regular Session involves approximately 120 days of work in Augusta and a Second Regular Session involves approximately 80 days of work in Augusta.

Article IV, Part 3, § 7 of the Maine Constitution states that legislators shall receive such compensation "as shall be established by law". Current law provides legislators with compensation of approximately \$19,000.00 for the two-year term. *See* 3 M.R.S.A. § 2 (2004).

In addition to the First and Second Regular Sessions, the Legislature may call itself, or be called by the Governor, into "special session." At the time of the Second Special Session of the 121st Maine Legislature, 3 M.R.S.A. § 2 provided that "[i]n addition to the salary paid for the first and second regular sessions of the Legislature, when a special session is called, the members of the Senate and House of Representatives shall each be compensated \$100 for every day's attendance."

The 121st Legislature's First Regular Session commenced on December 4, 2002, and adjourned on June 14, 2003. When legislators returned in January of 2004 for the Second Regular Session, it was generally understood by the Plaintiffs that the session would likely last until the middle or end of April due to the volume of work to be accomplished. One of the tasks facing legislators when they returned for the Second Regular Session was to enact a supplemental budget. The supplemental budget must take effect by the end of the fiscal year, which occurs annually on June 30.

The Maine Constitution mandates that legislation does not take effect until ninety days after the adjournment of the legislative session in which it was enacted. *See* Me. Const. art. IV, pt. 3, § 16. The State Constitution, however, also contains a limited exception that applies in the case of an emergency. Under this exception, if a bill

contains a preamble stating the facts constituting the emergency, and the bill passes both houses by a 2/3 majority, the bill may take effect immediately upon signing by the Governor. *See Id.* Hence, in years past, the Legislature typically ensured that the budget took effect before the end of the fiscal year by passing budgets as emergency measures by a 2/3 majority.

During the 121st Legislature's Second Regular Session, however, efforts to pass the supplemental budget by a 2/3 majority were unsuccessful, and instead, the budget received the approval of only a simple majority of the members. Therefore, to ensure that the supplemental budget took effect by June 30, a majority of the Legislature voted to adjourn the Second Regular Session on January 30, thereby beginning the running of the 90-day period. This action, however, meant that the Legislature had adjourned without addressing numerous other pending matters. Thus, before adjourning on January 30, and apparently realizing that a special session would be required to complete this unfinished business, the Legislature twice attempted to block the statutory \$100 per day payments that might otherwise be forthcoming. First, an Emergency Resolve was introduced and failed. The second measure introduced, however, a Joint Order, managed to pass both houses by a simple majority. The Joint Order did not purport to change the existing law, but rather, it stated that current law already provided for legislative compensation through April 21, 2004, the statutory adjournment date for the Second Regular Session.

Subsequent to the passage of the Joint Order, several senators asked the Attorney General to give an opinion as to the Order's effectiveness. The Attorney General concluded that the Joint Order was likely not effective to eliminate the special session payments because the State Constitution requires legislative pay to be "established by law". This requires that an act or resolve pass both houses of the Legislature and then

be signed by the Governor. The Attorney General did, however, suggest that the special session payments could possibly be eliminated by amending the legislative pay statute and by making the amendment retroactive to January 30, 2004.

Thus, during the Second Special Session, a bill was introduced to eliminate special session payments retroactive to January 30, 2004, just as the Attorney General suggested. Both the House and Senate passed the bill, which was signed by the Governor on May 6, 2004. The Act amended 3 M.R.S.A. § 2 to specify that special session payments would not be made for any special session called during the time period specified for regular sessions. *See* P.L. 2003, ch. 691, §§ 1, 2. Because the bill was not an emergency measure, it did not take effect until July 30, 2004, ninety days after the Second Special Session adjourned.

Each of the Plaintiffs to the present action, W. Tom Sawyer, Jr., Robert A. Daigle, Albion D. Goodwin, and Gary E. Sukeforth (hereinafter "the Plaintiffs" or "the Legislators") served as members of the Maine Legislature during the Second Special Session of the 121st Maine Legislature, which began on February 3, 2004, and ended on April 30, 2004. On or before May 3, 2004, each of these individuals requested payment from Defendant David Boulter, Executive Director of the Legislative Council, of \$100 for each day of their attendance at the Second Special Session. Each of these requests was denied¹.

The Plaintiffs filed their complaint on May 12, 2004, filed their amended complaint² on May 13, 2004, and filed their motion for summary judgment on August 24, 2004. All submissions relevant to Plaintiffs' motion were timely filed. The

¹ All legislators apparently were paid \$100 per day for days in attendance at the Second Special Session after April 21, 2004 pursuant to the amended version of 3 M.R.S.A. § 2.

² The amended complaint is in three counts. Count I seeks a declaratory judgment; count II asserts a claim of breach of contract; count III asserts a claim for unpaid wages pursuant to 26 M.R.S.A. § 626-A.

Defendants filed their motion for summary judgment on September 28, 2004. All Submissions relevant to Defendants' motion were also timely filed.

The Law Court has explained that:

Summary judgment is no longer an extreme remedy. It is simply a procedural device for obtaining judicial resolution of those matters that may be decided without fact-finding. Summary judgment is properly granted if the facts are not in dispute or, if the defendant has moved for summary judgment, the evidence favoring the plaintiff is insufficient to support a verdict for the plaintiff as a matter of law.

Curtis v. Porter, 2001 ME 158, ¶ 7, 784 A.2d 18, 21-22. Summary judgment is proper if the citations to the record found in the parties' Rule 56(h) statements demonstrate that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. See *Dickinson v. Clark*, 2001 ME 49, ¶ 4, 767 A.2d 303, 305. "A fact is material if it has the potential to affect the outcome of the case under governing law." *Levine v. R.B.K. Caly Corp.*, 2001 ME 77, ¶ 4, n.3, 770 A.2d 653, 655, n.3 (citing *Burdzel v. Sobus*, 2000 ME 84, ¶ 6, 750 A.2d 573, 575). "The invocation of the summary judgment procedure does not permit the court to decide an issue of fact, but only to determine whether a genuine issue of fact exists. The Court cannot decide an issue of fact no matter how improbable seem the opposing party's chances of prevailing at trial." *Searles v. Trustees of St. Joseph's College*, 1997 ME 128, ¶ 6, 695 A.2d 1206, 1209 (quoting *Tallwood Land & Dev. Co. v. Botka*, 352 A.2d 753, 755 (Me. 1976)). To avoid a judgment as a matter of law for a defendant, a plaintiff must establish a prima facie case for each element of her cause of action. See *Fleming v. Gardner*, 658 A.2d 1074, 1076 (Me. 1995).

1. Is This a Non-Justiciable Dispute?

In their brief, the Defendants first assert that the present action, which is essentially a dispute within the Legislature regarding the budget process, presents a

nonjusticiable political question. The Defendants note that the Plaintiffs filed this lawsuit in an effort to shape the budgetary process in the future because they were unhappy that the majority did not make more concessions to achieve a 2/3 majority on the supplemental budget. In the Defendants' view, this is a purely political question within a coordinate branch of state government, and the Court should permit the Legislature to deal with the issue on its own.

In support of their position, the Defendants first set forth the most commonly cited statement of the political question doctrine:

Prominent on the surface of any case held to involve a political question is found a textually demonstrable constitutional commitment of the issue to a coordinate political department; or a lack of judicially discoverable and manageable standards for resolving it; or the impossibility of deciding without an initial policy determination of a kind clearly for nonjudicial discretion; or the impossibility of a court's undertaking independent resolution without expressing lack of the respect due coordinate branches of government; or an unusual need for unquestioning adherence to a political decision already made; or the potentiality of embarrassment from multifarious pronouncements by various departments on one question.

Baker v. Carr, 369 U.S. 186, 217 (1962). The Defendants contend that at least three of these factors are present here. First, they assert that Maine's Constitution clearly commits to the Legislature the power to set its own compensation by statute. Since a majority in the Legislature has already decided that its members should not receive extra pay for the Second Special Session, they believe that the Court should acquiesce in this decision. Second, the Defendants contend that if the Court attempted to adjudicate this dispute, it would show a lack of respect for the Legislature. This argument rests on the fact that Plaintiffs have admitted filing this suit merely to affect the legislative budget process, and it should remain up to the Legislature how that process plays out. Finally, the Defendants suggest that there is an unusual need here for adhering to the Legislature's decision regarding special session payments. In particular, they assert that

the Legislature eliminated the payments in recognition of the fact that its members were performing the work of a regular session in the context of a special session, and it would be inappropriate for taxpayers to, in essence, pay twice.

In response, the Plaintiffs point out that although this action arises out of a budget dispute in the Legislature, they do not ask the Court to interfere with that process or to take action that would limit the Legislature's ability to act in the future. Instead, while recognizing that the parties and circumstances of this action are unusual, they assert that the requests for relief and need for Court interpretation of Constitutional and statutory provisions are not.

The Plaintiffs also believe that none of the factors espoused in *Baker* are present in this case. The Legislators first point out that the issue in *Baker* was the constitutionality of legislative districts created by a state legislature. Although there was no dispute that the legislature had the power to apportion legislative districts, the Supreme Court held that despite that grant of power, a Constitutional challenge to the districts created by the use of that power was not a political question. Hence, the Plaintiffs assert that more than a simple grant of power to a political branch is needed to create a political question – that branch must also be given the power to resolve disputes concerning the use of that power. As an example, the Legislators note that the Maine Constitution gives the Legislature the exclusive power to “be the judge of the elections and qualifications of its own members”. Me. Const. art. IV, pt. 3, § 3. Conversely, to show the weakness of the Defendants' argument, the Plaintiffs note that the Legislature is also given the power of taxation, yet the Courts have never concluded that the Legislature's use of that power is immune from a Constitutional challenge in court.

In response to the Defendants' argument that this Court would be expressing a lack of respect for the Legislature by becoming involved, the Plaintiffs note that this same argument was unsuccessfully raised in *Baker*. Instead, the Supreme Court determined that when a court's decision would require no more than an interpretation of the law, it does not involve a lack of respect due a coordinate branch of government. The Legislators assert that in this case all that is required is an interpretation of the law.

Lastly, in response to the suggestion that the Legislature was attempting to lessen the impact of special sessions payments on the State Treasury, the Plaintiffs simply respond that this is no defense for violating the Constitution.

In light of the foregoing, it appears that this Court may properly hear and decide the present case. It is true that the facts underlying this dispute implicate political processes. However, this on its own is insufficient to make the issues presented nonjusticiable. Indeed, "the mere fact that the suit seeks protection of a political right does not mean it presents a political question." *Baker*, 369 U.S. at 209. In this case, the Plaintiffs seek an interpretation of Maine statutes and the State Constitution, functions that are well within the authority of the Court. Moreover, the Defendants have failed to persuade the Court that the factors espoused in *Baker* show this to be a nonjusticiable dispute. Therefore, the Court will proceed to consider the other substantive arguments raised in the briefs.

2. Can a Joint Order Lawfully Affect a Change in Legislative Pay?

The Plaintiffs argue that the Joint Order of January 30, 2004, was ineffective to deny legislators \$100 for each day's attendance at the Second Special Session prior to April 22, 2004. In support of their position, the Plaintiffs cite two Law Court opinions from the 1950's. In *Opinion of the Justices*, 96 A.2d 749 (Me. 1953), the House asked the Justices if the Legislature could authorize reimbursement for expenses to legislators by

joint order. In its opinion, the Law Court distinguished between expenses necessary for operation of the Legislature, which can be provided for by an order, and the payment of personal expenses of legislators, which can only be provided for by a law passed by both Houses of the Legislature and signed by the Governor. *See Id.* at 750. The Plaintiffs also find pertinent the conclusion that legislative compensation can only be *effected* by act or resolve, and point out that the Law Court did not limit such formalities merely to *increases* in compensation. *See Id.* at 751. In *Opinion of the Justices*, 140 A.2d 762 (Me. 1957), the House asked the Law Court if the Legislature could increase the amount paid to legislators for travel by joint order. In finding that such an increase could only be accomplished by law, the Justices explained that "[a] Legislature by order, as here, if such a view prevailed, could destroy completely the mandate of the statute." *Id.* at 764. Based on these two opinions, the Plaintiffs assert that any terms of the Order that made changes to legislative compensation needed to have been enacted by statute to comply with the State Constitution.

Based on this framework, the Legislators contend that the next question for consideration is whether the compensation provisions of the Order were consistent with the statute that was in effect at the time of its passage, or if it made changes that require a statutory amendment. The Plaintiffs note that 3 M.R.S.A. § 2 sets legislative pay at \$7,725.00 for the second year of the two-year term, and also mandates that the second regular session of the Legislature adjourn no later than the 3rd Wednesday in April. Moreover, the version of 3 M.R.S.A. § 2 in effect at the time the Order was passed provided that "in addition to the salary paid for the first and 2nd regular sessions of the Legislature, when a special session is called the members of the Senate and House of Representatives shall each be compensated \$100 for every day's attendance." The Plaintiffs point out that the primary rule of statutory construction requires that courts

give effect to the plain meaning of a statute. See *Harding v. Wal-Mart Stores, Inc.*, 2001 ME 13, ¶ 9, 765 A.2d 73, 75. In their view, the "in addition" phrase quoted above requires that the \$100 per diem payment be made during any special session regardless of when it occurs. The Plaintiffs also note that payment to the legislators for service during the second year of a term in office is in no way tied to attendance at or the length of the second regular session. Therefore, the Plaintiffs believe that paying legislators for attendance at a special session held prior to the statutory adjournment date would not amount to paying legislators twice because statutory compensation paid for the second year of a term is not tied to the performance of particular services. Moreover, they believe the system implicitly recognizes that the work of the Legislature continues when the Legislature is not in session.

In opposition, the Defendants concede that the Court should first look to the plain meaning of statutory language. However, they assert that the prior version of 3 M.R.S.A. § 2 was ambiguous with respect to whether legislators are entitled to \$100 per diem under the present circumstances, and thus, legislative intent should be examined. See, e.g., *DiVeto v. Kjellgren*, 2004 ME 133, ¶ 18, 861 A.2d 618, 623. (If statutory language is ambiguous, court will look to other evidence of legislative intent). Furthermore, the Defendants note that the Law Court has even gone as far as to ignore unambiguous statutory language where strict adherence would frustrate the obvious intent of the Legislature. See, e.g., *Town of Union v. Strong*, 681 A.2d 14, 18 (Me. 1996) (Strict construction cannot defeat clear intent of statute or construe statute in an unreasonable manner); *State v. Niles*, 585 A.2d 181, 182 (Me. 1990) (Court can even ignore literal meaning of phrases if that meaning thwarts clear legislative objectives).

As proof of the Legislature's true intent, the Defendants assert that in passing the Joint Order, a majority in both chambers apparently believed that under existing law

they were not entitled to special session payments for special sessions held during the time reserved for regular sessions. Additionally, the Defendants note that the bill passed during the Second Special Session purporting to retroactively eliminate special session payments was entitled "An Act to *Clarify* Legislative Pay." L.D. 1961 (121st Legis. 2004) (emphasis in Defendants' brief). The Defendants contend that this also indicates that a majority of the Legislature believed that they were not entitled to special session payments, and only sought to clarify what was not then specifically stated in 3 M.R.S.A. § 2.

The Defendants also believe the history of the legislative pay statutes supports their position. The Defendants note that legislators originally received two dollars for each day of attendance at a session, regardless of whether it was a regular session or an "extra" session. Resolves 1820, ch. 23. Hence, legislative pay was historically based on the number of days of attendance at a session. The Defendants go on to surmise that when a fixed salary was eventually implemented, this was done in recognition of the fact that the length of the regular sessions is predictable. On the other hand, the Defendants speculate that because the length of special sessions is unpredictable, this is probably why legislators still receive per diem compensation for their attendance. Thus, the Defendants assert that the true legislative intent underlying 3 M.R.S.A. § 2 was to base legislative pay on the amount of work and approximate number of days that the Legislature is in session, irrespective of whether those days were spent in regular or special session.

In response, the Plaintiffs contend that if the statute could easily be interpreted to deny per diem pay under the present circumstances as the Defendants suggest, then it would have been unnecessary to introduce measures designed to ensure this result. Additionally, the Plaintiffs note that during a past session of the Legislature, a similar

emergency resolve was introduced to deny per diem pay for attendance at a special session held before the statutory deadline. These actions, in the Plaintiffs view, show that the Legislature actually believed that the pre-amendment version of 3 M.R.S.A. § 2 required the per diem payments regardless of when a special session was held.³

The parties have correctly noted the general rule regarding statutory interpretation, as well as the main exceptions thereto. Based on a plain reading of 3 M.R.S.A. § 2 as it existed at the time of the Second Special Session, the only reasonable interpretation of the statutory language requires the per diem payments to be made as argued by the Plaintiffs. Specifically, the "in addition" phrase that appears at the beginning of the sixth paragraph, and the absence of any language tying compensation for regular sessions to the length of those sessions, indicates that special session payments must be made without regard to why or when the regular session adjourned. Although the Defendants raise an interesting issue by delving into the history of legislative pay statutes, they have failed to persuade the Court that the Legislature's true intent was to base compensation on the length of the session. In fact, the Defendants' argument on this point is counterintuitive. If the Legislature meant for legislative pay to mirror days spent in session, the original statute assured this result. Thus, by amending the statute to provide a fixed salary it seems that there existed some alternative reasoning, such as the recognition that legislative work continues even when the Legislature is not in session.

Based on the foregoing, the version of 3 M.R.S.A. § 2 in effect during the Second Special Session did not prohibit special session payments for special sessions held during the time specified for a regular session. Moreover, the Court agrees with the

³ One must assume that the requirement that compensation be set by law is somewhat influenced by a public desire that a legislature not arbitrarily and capriciously play with legislative salaries and expenses.

Plaintiffs' interpretation of the two Opinions of the Justices cited above. Indeed, it appears that the Law Court sought to foreclose the possibility of altering the legislative pay statute by a unilateral act of the Legislature, regardless of whether the result would be to increase or decrease compensation. *See Opinion of the Justices*, 152 Me. at 305. Thus, the Joint Order of January 30, 2004, which purported to eliminate these payments, was an unlawful attempt to alter legislative pay. Therefore, as a matter of law, this Court finds that the Joint Order is of no legal effect. Furthermore, this Court declares that under the version of 3 M.R.S.A. § 2 referenced above, the Plaintiffs are entitled to payment of \$100 for each day in attendance at the Second Special Session between February 3, 2004 and April 30, 2004. The Joint Order of January 30, 2004, is ineffective to deny the legislators \$100 for each day's attendance at the Second Special Session prior to April 22, 2004.

3. Does 3 M.R.S.A. § 2 As Amended Apply in this Case?

Next, this Court must determine whether the amended version of 3 M.R.S.A. § 2 applies retroactively to prohibit special session payments for attendance at the Second Special Session between February 3rd and April 21st of 2004. As noted above, the amendment was signed by the Governor on May 6, 2004, the Plaintiffs filed their complaint on May 12, 2004, and the amendment became effective on July 30, 2004. The Plaintiffs argue that under these circumstances, their case constitutes a "pending proceeding" entitled to the protection of 1 M.R.S.A. § 302. 1 M.R.S.A. § 302 provides, in part, "[t]he repeal or amendment of an Act or ordinance does not affect...any action or proceeding pending at the time of the repeal or amendment.... Actions and proceedings pending at the time of the passage, amendment or repeal of an Act or ordinance are not affected thereby."

The Plaintiffs argue that the Law Court has made inconsistent rulings as to whether section 302 applies to actions that are filed after a statutory change is enacted but before the change in the law becomes effective. However, the Plaintiffs assert that most of the authority supports the position that section 302 applies when, as here, a complaint is filed after a statutory change is enacted, but before the change has gone into effect. Specifically, they recognize that in *Heber v. Lucerne-in-Maine Village Corporation*, 2000 ME 137, 755 A.2d 1064, and *Fishermens Landing, Inc. v. Town of Bar Harbor*, 522 A.2d 1312 (Me. 1987), the Law Court reached a conclusion that directly contradicts their position on this point, but in *Morrisette v. Kimberly-Clark Corp.*, 2003 ME 138, 837 A.2d 123, *Bernier v. Data General Corp.*, 2002 ME 2, 787 A.2d 144, *State v. Haskell*, 2001 ME 154, 784 A.2d 4, *DeMerchant v. DeMerchant*, 2001 ME 66, 780 A.2d 1134, *Loud v. Kezar Falls Woolen Co.*, 1999 ME 118, 735 A.2d 965, *Weeks v. Allen & Coles Moving Systems*, 1997 ME 205, 704 A.2d 320, *Kinney v. Great Northern Paper, Inc.*, 679 A.2d 517 (Me. 1996), *Peavey v. Taylor*, 637 A.2d 449 (Me. 1994), *State v. Dyer*, 615 A.2d 235 (Me. 1992), *DeMello v. Department of Environmental Protection*, 611 A.2d 985 (Me. 1992), *Moore v. Moore*, 586 A.2d 1235 (Me. 1991), and *Schlear v. Fiber Materials, Inc.*, 574 A.2d 876 (Me. 1990), the Law Court reached the opposite result. Furthermore, the Legislators contend that their position is the most practical one because neither the Maine Revised Statutes nor the Laws of Maine indicate when a statute was enacted – both refer only to the effective date of the statute. Hence, the contrary view would require courts to look to the legislative records for laws passed but not yet on the books whenever making a ruling.

In response, although the Defendants concede that the Law Court has in certain cases referred to the effective date of statutes when applying section 302, they believe that *Heber* and *Fishermens Landing* provide a more accurate statement of the law.

Particularly, the Defendants note that the Law Court specifically discussed and analyzed whether the effective date or the enactment date controls in *Heber* and *Fishermens Landing*, whereas in the cases relied upon the Plaintiffs, the Law Court provided no such analysis. Furthermore, the Defendants believe that their proffered interpretation is more consistent with the language of section 302, which refers to proceedings pending at the time of "passage." The Defendants point out that the Law Court in *Fishermens Landing* equated that term with "enactment," as opposed to "effectiveness." See *Fishermens Landing*, 522 A.2d 1312-13 (citing BLACK'S LAW DICTIONARY 1012 (5th ed. 1979)).⁴

After due consideration, it is apparent that the Defendants have presented the more persuasive argument regarding the operative date for the applicability of 1 M.R.S.A. § 302. While the inconsistencies noted by the parties are indeed puzzling, the *Heber* and *Fishermens Landing* decisions provide the most direct analysis of the question presented, and are therefore entitled to the greatest deference. Thus, this Court finds as a matter of law that a "pending proceeding" for the purposes of section 302 is one that commenced prior to the date of *enactment* of the act or ordinance in question. As the parties dispute neither the date that the amendment to 3 M.R.S.A. § 2 was enacted, nor the date that the Plaintiffs filed their complaint, this Court further concludes that 1 M.R.S.A. § 302 does not bar application of the amended statute to the Plaintiffs' claims.

4. Do the Plaintiffs Have a Vested Right to Receive Special Session Payments?

Irrespective of whether a statute purports to operate retroactively, the Plaintiffs assert that when a complaint is filed after a change in the law, but states a cause of

⁴The current version of Black's Law Dictionary (7th ed.) defines "passage, 1. The passing of a legislative measure into law." That same edition defines "enact, 1. To make it a law by authoritative act; to pass." This supports the favorable comparison of passage as enactment.

action that accrued before the change, courts look to common law principles to determine whether the new or old law applies. See *Heber*, 2000 ME 137, ¶ 10, 755 A.2d at 1066. Moreover, the Plaintiffs note that at common law, an individual has a vested right in an accrued cause of action, and a statutory enactment cannot act to defeat that cause of action retroactively. See *Dobson v. Quinn Freight Lines, Inc.*, 415 A.2d 814, 815-16 (Me. 1980). Since, in their view, they had a cause of action for unpaid compensation before the amendment to 3 M.R.S.A. § 2 was adopted, applying the amended statute would impermissibly change the nature of a vested right accrued pursuant to the prior version of the statute.

The Plaintiffs also discuss the applicability of the Law Court's holding in *Norton v. Blouin, Inc.*, 511 A.2d 1056 (Me. 1986), to the facts of this case. In *Norton*, the Law Court stated that "[i]f the Legislature intends a retroactive application, the statute must be so applied unless the Legislature is prohibited from regulating conduct in the intended manner, and such a limitation upon the Legislature's power can only arise from the United States Constitution or the Maine Constitution." *Id.* at 1060, n.5. Although this statement of the law directly conflicts with the common law approach espoused in *Heber*, the Plaintiffs emphasize that, in light of *Heber*, the Law Court has obviously not abandoned extra-constitutional methods of limiting legislative power to retroactively affect vested rights. However, even under the narrower view expressed in *Norton*, the Plaintiffs believe that the amendment under consideration should not be applied. Essentially, the Legislators suggest that their right to payment arises from Article IV, Part Third, § 7 of the Maine Constitution, and hence, even under *Norton*, applying the amended version of 3 M.R.S.A. § 2 would be inappropriate.

As for the specific source of their cause of action, the Legislators point to 26 M.R.S.A. § 626-A. According to the Plaintiffs, under the provisions of section 626-A,

their cause of action accrued, and thus became vested, eight days after they made a demand for unpaid wages, and the wages did in fact remain unpaid. Also, implicit in this argument is an assertion that this eight-day period lapsed prior to the change in the law.

In opposition, the Defendants first argue that the amendment to 3 M.R.S.A. § 2 can be applied retroactively because it can survive the three-part test governing challenges to retroactive economic legislation under the due process clause of the Maine Constitution. *See State v. L.V.I. Group*, 1997 ME 25, ¶ 9, 690 A.2d 960, 964. To satisfy this test, it must be shown that "1. The object of the exercise must be to provide for the public welfare. 2. The Legislative means employed must be appropriate to the achievement of the ends sought. 3. The manner of exercising the power must not be unduly arbitrary or capricious." *Id.* Accordingly, the Defendants note that the object of the legislation was to protect already strained state coffers, eliminating special session payments was an appropriate way to achieve this goal, and all legislators were equally affected by this action. Hence, in their view, the three-part test espoused in *L.V.I. Group* was easily satisfied.

Secondly, the Defendants argue that because this legislation was actually a clarification of existing law, and did not affect any real change in the law, the amendment may be applied retroactively. In support of this proposition, the Defendants cite to the "curative" exception to the general rule against retroactive application of statutes, whereby an amendment to a statute may apply retroactively where it is designed merely to carry out or explain the intent of the original legislation. *See Norman J. Singer, Sutherland on Statutory Construction* § 41:11, at 469-70 (6th ed. 2001).

In addition, the Defendants contend that the statute may be applied retroactively because the Legislators had no reasonable expectation of receiving special session payments under the present circumstances.

Lastly, the Defendants assert that because pre-amendment 3 M.R.S.A. § 2 is susceptible to different interpretations with respect to the per diem payments, the Plaintiffs could not reasonably have expected that such payments would be made. Therefore, the Legislators never acquired a vested right in the special session payments.

In response to these arguments, the Plaintiffs characterized their claim as arising under the Maine Constitution. This obviously depends upon a proper interpretation of the language, "...shall receive such compensation, as shall be established by law;". Further language requires that the expenses of members of the House of Representatives shall be paid by the State out of the public treasury but *quaere*, does the Constitution require that legislators receive a salary at all if it was established by law to set the legislative compensation at zero? Notwithstanding that uncertainty, it is clear that the true source of the Plaintiffs' alleged right to compensation is the statute itself. Moreover, even if the United States Constitution would permit the retrospective application of the amended statute to the Plaintiffs' claims, the Law Court has apparently adhered to a different approach based on common law principles, as illustrated in *Heber*. Also, as discussed above, the purported amendment was not simply an attempt to clarify the law as the Defendants suggest, but rather, it was in fact a substantive change. Thus, the remaining arguments presented by the Defendants are without merit.

Based on the foregoing, and particularly in light of the *Heber* decision, so long as the Plaintiffs' cause of action did in fact accrue prior to the change in the law, they have a vested right in that cause of action. Furthermore, the Legislature's attempt to

retroactively defeat their cause of action is ineffective. *See Heber*, 2000 ME 137, ¶ 10, 755 A.2d at 1066. The Law Court considers the date upon which this law "changes" in this context to be the date that the law becomes effective, not the enactment date. *See Heber*, 2000 ME 137, ¶ 12, n.5, 755 A.2d at 1067.

5. Do the Plaintiffs Have a Cause of Action Pursuant to 26 M.R.S.A. § 626-A?

The Plaintiffs claim that because the Defendants failed to make timely payment of wages (the per diem payments) as required by 26 M.R.S.A. § 621-A, they, as employees, are entitled to the remedies available under 26 M.R.S.A. § 626-A. At the threshold, the Plaintiffs recognize that there is a question as to whether these sections apply to them, as duly elected and sworn members of the Maine Legislature. The Plaintiffs note that there is no statutory definition of "employer" or "employee" which is made applicable to these sections.⁵ Thus, the Legislators suggest that such undefined terms in a statute should be given their common and generally accepted meaning, unless the context of the statute clearly indicates otherwise. *See State v. York*, 1997 ME 209, ¶ 9, 704 A.2d 324, 326. Accordingly, they offer the definition of employee found in BLACK'S LAW DICTIONARY, 5th Edition, which is, *inter alia*, "a person working for salary or wages." BLACK'S LAW DICTIONARY 471 (5th ed. 1979).

In this case, the Plaintiffs believe that the lack of any definition of the term employee in sections 621-A or 626-A shows an intent to include a broad scope of individuals within its meaning. The Legislators also note that several other Maine labor statutes specifically exempt elected officials from their provisions, including sections 663(10), 962(6)(A), 979-A(4-A)(A), and 10143(11)(f)(21)(i)(i) of title 26. However, the

⁵ But see 26 M.R.S.A. § 591(2) contained in the same chapter, Employment Practices, as section 626-A in defining "employer" as "an individual, partnership, association, corporation, legal representative, trustee, receiver, trustee in bankruptcy and any common carrier by rail, motor, water, air or express company doing business in or operating within the state."

Plaintiffs also point out that elected officials are not exempted from all Maine labor laws. See 39-A M.R.S.A. § 102(11) (2003). In sum, the Plaintiffs assert that the Legislature has exempted elected officials from Maine's labor laws where it has deemed appropriate, and the failure to do so in this case should be taken to indicate an intent to include elected officials within the scope of the statutes under consideration.

In response, the Defendants first present a defense based on the doctrine of sovereign immunity. The Defendants note that "[t]he immunity of the sovereign from suit is one of the highest attributes inherent in the nature of sovereignty". *Drake v. Smith*, 390 A.2d 541, 543 (1978). Moreover, "a claim against the State will be dismissed 'unless the State, acting through the Legislature, has given its consent that the present action be brought against it.'" *Waterville Industries v. Finance Authority of Maine*, 2000 ME 138, ¶ 21, 758 A.2d 986, 992 (quoting *Drake*, 390 A.2d at 543-44). The Defendants assert that the Legislature can consent by way of an enactment making the State amenable to a particular class of lawsuits, or the legislature can consent to a specific lawsuit. See *Drake*, 390 A.2d at 544-45. But, without legislative consent, the State may not be sued.

In addition, the Defendants note "the general rule in Maine that the State is not bound by a statute unless expressly named therein." *Jenness v. Nickerson*, 637 A.2d 1152, 1158 (Me. 1994) (quoting *State v. Crommett*, 151 Me. 188, 193, 116 A.2d 614 (1955)). Hence, in the absence of an explicit waiver by the Legislature, and because the State is not named in the unpaid wage statute, the Defendants suggest that the State is not subject to claims under 26 M.R.S.A. § 626-A.

Based on the legal propositions espoused in *Drake* and the other cases cited above, it appears that the Plaintiffs' statutory claims for unpaid wages are indeed barred by the doctrine of sovereign immunity. As was the case in *Drake*, the present

Defendants are officials or agencies of the State of Maine. Moreover, the alleged liability to pay money to the Plaintiffs arises by virtue of the Defendants' official activities. See *Drake*, 390 A.2d at 543. Therefore, "[t]he reach of the present action is against the State of Maine as the party to be adjudicated liable to pay the money claimed by the plaintiff[s]." *Id.* Furthermore, "[t]he State of Maine is a necessary party to the action, and sovereign immunity has applicability to require dismissal of the action unless the State, acting through the Legislature, has given its consent that the present action be brought against it." *Id.* at 543-44. It is apparent that the Legislature has not consented to be subject to the remedies provided under 26 M.R.S.A. § 626-A. Further, this court is not satisfied that the State of Maine would be considered an employer as defined in 26 M.R.S.A. § 591.

Less clear, however, and seemingly to the contrary, is whether the State has consented to be liable and subject to a cause of action to members of the Legislature as a result of 3 M.R.S.A. § 2.

6. Did the Defendants Breach a Unilateral Contract?

The Plaintiffs claim that they have a contractual right to the statutory per diem payments required by the pre-amendment version of 3 M.R.S.A. § 2. They concede that certain Law Court holdings establish that a statute will not be presumed to create contractual rights binding future legislatures unless the intent to do so is clearly stated. See *Spiller, et al. v. State of Maine, et al.*, 627 A.2d 513, 515 (Me. 1993) (citations omitted). However, they also assert that the case law distinguishes between contracts for future compensation and for compensation already earned under a contract. See *Bowman v.*

Maine State Employees Appeals Board, 408 A.2d 688, 692 (Me. 1979)⁶. Based on this distinction, the Legislators believe that they are entitled to the disputed per diem payments since, in their view, their attendance at the Second Special Session created a unilateral contract.

In response, the Defendants assert that the Plaintiffs would be unjustly enriched if they received the disputed payments because it would essentially amount to paying the Legislators twice for the same work. Moreover, the Defendants contend that the Plaintiffs have no contractual rights in any event.

In the final analysis, the Maine Constitution asserts mandatory language that the Senators and Representatives *shall* receive such compensation, as shall be established by law. (Emphasis supplied). The law, as it existed January 30, 2004, established that each member of a Senate and House of Representatives, "Beginning with the first Wednesday of December 2000 and thereafter, is entitled to ..." That language clearly indicates an intention on the part of the Legislature to establish a salary to be honored until changed. Furthermore, the word "entitled" establishes intent to vest in the members of the Senate and House of Representatives compensation. This vested compensation as of January 30, 2004, created a unilateral contract subject to change and repeal by change in the law. Closely following the language of the common law as presented by *Heber v. Lucerne-in-Maine Village Corp.*, 2000 ME 137; 755 A.2d 1064, when faced with questions regarding the applicability of a statutory change, the Court must first determine what body of law applies to the determination of the controlling statute. If the complaint is filed before the enactment of the statutory change, the general savings provision found in 1 M.R.S.A. § 302 applies. If the complaint is filed after the

⁶ In the Plaintiffs' brief, they cite to page 691 of the Bowman opinion. It is assumed that they meant to reference page 692. This language must be considered distinguishable since it is cited in a context of a contract between a teacher and a governmental employer. Citing *Sawin v. Town of Winslow*, 253 A.2d 694, 700 (Me. 1969).

statutory change is enacted, section 302 by its own terms does not apply. Plaintiffs' complaint was filed May 12, 2004, six days after the enactment of the amended 3 M.R.S.A. § 2. Although the amendment was not effective until July 30, 2004, after plaintiffs filed their complaint, for purposes of section 302, the enactment date, rather than the effective date, controls. Because the repeal was enacted before the plaintiffs filed their complaint, this action was not "pending at the time of the repeal" and section 302 does not apply as the Court has recited above. The court states in *Heber*:

The fact that section 302 does not apply to 'save' the complaint does not, however, end the analysis. When a complaint is filed after a change in the law, but states a cause of action that accrued before the change, we look to common law principles to determine whether the new or old law applies. At common law, an individual has a vested right in an accrued cause of action, and a subsequent statutory enactment cannot act to defeat retroactively such a cause of action. Citing *Dobson v. Quinn Freight Lines, Inc.*, 415 A.2d 814, 815-16 (Me. 1980).

Citing *Heber* again: "... [t]here can be no question that the repeal of the [statute] had the effect of entirely eliminating a cause of action that existed at the time [plaintiffs] suffered the damages [they] now allege[], thus affecting [plaintiffs'] vested rights in that cause of action." *Id.*, ¶ 12, 755 A.2d at 1067. Considering the statements of material fact, plaintiffs suffered damages prior to the effective date of the amendment. *See id.* Because the cause of action accrued prior to a change in the law, it is governed by the then applicable law and cannot be applied to extinguish plaintiffs' claim. This conclusion is founded upon established common law. *See Choroszy v. Tso*, 647 A.2d 803, 807 (Me. 1994) (a cause of action accrues at the time of the judicially recognized injury). *See Batchelder v. Tweedie*, 294 A.2d 443, 444 (Me. 1972) (substantive rights of the parties are fixed at the date upon which the cause of action accrued).

This recitation of the common law is supported by language in *Spiller, et al. v. State of Maine, et al.*, 627 A.2d 513 (Me. 1993). In this case, the plaintiffs complained of

modification to prospective retirement benefits for state employees made by the Legislature for budgetary reasons. As argued by the defendants in this case, "[u]nder time honored rules of construction, a statute will not be presumed to create a contractual right, binding future legislatures, unless the intent to do so is clearly stated." *Id.* at 515, (citing *National R.R. Passenger Corp. v. Acheson, Topeka & Sante Fe Railway Co.*, 470 U.S. 451, 465-466 (1985)).

Absent some clear indication that the legislature intends to bind itself contractually, the presumption is that "a law is not intended to create private contractual or vested rights but merely declares a policy to be pursued until the legislature shall ordain otherwise."

This well-established presumption is grounded in the elementary proposition that the principal function of the Legislature is not to make contracts, but to make laws that establish the policy of the State. Policies, unlike contracts, are inherently subject to revision and repeal, and to construe laws as contracts when the obligation is not clearly and unequivocally expressed would be limit drastically the essential powers of the legislative body.

National R.R. Passenger Corp., 470 U.S. at 465-466 (quoting *Dodge v. Board of Education*, 302 U.S. 74, 79 (Me. 1937)).

The court found the legislative intent not to create contractual rights but rather to state generally principles by noting a provision in the retirement law that stated that only the retirement benefits that "'would be due to a ... on the date immediately preceding the effective date of the amendment' cannot be reduced by an amendment to the retirement statute." *Spiller*, 627 A.2d at 516. The court found this to be, by implication, intent by the Legislature to reserve to future legislators the power to modify prospective retirement benefits for employees to whom benefits are not then due. The court noted that, "None of the benefits at issue here were due to any plaintiff on the effective date of this legislation." *Id.* That conclusion, as clearly recited by *Heber*, 755 A.2d 1066, makes a clear distinction from the legislative intent clearly stated in 3

M.R.S.A. § 2 that the members of the Legislature are "entitled to" compensation as provided by that law.

The entry will be:

Plaintiffs' motion for summary judgment on count I of their complaint is GRANTED; judgment for plaintiffs on count I of their complaint; defendants' motion for summary judgment on count I of plaintiffs' complaint is DENIED; plaintiffs' motion for summary judgment on count II of plaintiffs' complaint is GRANTED; judgment for plaintiffs on count II of plaintiffs' complaint; defendants' motion for summary judgment on count II of plaintiffs' complaint is DENIED; plaintiffs' motion for summary judgment on count III of their complaint is DENIED; defendants' motion for summary judgment on count III of plaintiffs' complaint is GRANTED; judgment for defendants on count III of plaintiffs' complaint.

Dated: March 16, 2005



Donald H. Marden
Justice, Superior Court