

# MAINE STATE LEGISLATURE

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SEN. BETH EDMONDS  
CHAIR

REP. GLENN A. CUMMINGS  
VICE-CHAIR

123<sup>RD</sup> MAINE STATE LEGISLATURE  
LEGISLATIVE COUNCIL

SEN. ELIZABETH H. MITCHELL  
SEN. CAROL WESTON  
SEN. JOHN L. MARTIN  
SEN. RICHARD W. ROSEN  
REP. HANNAH M. PINGREE  
REP. JOSHUA A. TARDY  
REP. SEAN FAIRCLOTH  
REP. ROBERT H. CROSTHWAITE

**MEETING SUMMARY**  
**July 27, 2006**  
**Approved August 24, 2006**

**CALL TO ORDER**

The Chair, Speaker Richardson, called the Legislative Council meeting to order at 1:48 p.m. in the Legislative Council Chamber.

**ROLL CALL**

**Senators:** President Edmonds, Sen. Brennan, Absent: Sen. Davis, Sen. Gagnon, Sen. Weston

**Representatives:** Speaker Richardson, Rep. Cummings, Rep. Bowles, Rep. Duplessie, Absent: Rep. Tardy

**Legislative Officers:** Joy O'Brien, Secretary of the Senate  
David Boulter, Executive Director, Legislative Council  
Grant Pennoyer, Director, Office of Fiscal and Program Review  
Patrick Norton, Director, Office of Policy and Legal Analysis  
Margaret Matheson, Revisor of Statutes  
Paul Mayotte, Director, Legislative Information Services  
Lynn Randall, State Law Librarian

**SUMMARY OF THE JUNE 19, 2006 COUNCIL MEETING**

**Motion:** That the Meeting Summary of June 22, 2006 be accepted and placed on file. (Motion to accept by President Edmonds, second by Rep. Duplessie, motion approved unanimous (6-0))

## REPORTS FROM EXECUTIVE DIRECTOR AND STAFF OFFICE DIRECTORS

- **Executive Director's Report**

David Boulter, Executive Director reported the following:

1. **Union Street Project**

All funding and approvals have been obtained to reconstruct Union Street and place utilities underground. Work will be completed by early fall. The State House and Capitol Park Commission expresses its appreciation to the Legislative Council for its financial support to this project.

2. **Storm Damage**

The violent storm that passed through Augusta on July 18, 2006 damaged a number of trees including a large oak tree immediately west of the State House. Several huge branches broke and damaged the wrought iron fence along the south entrance. The remaining portion of the tree presents a safety hazard and should be removed according to a licensed arborist. The tree is approximately 120 years old, probably having been planted about the time of the construction of the West Wing.

3. **Building Repointing**

Excellent progress is being made on cleaning and re-pointing the north wing of the State House. Work is scheduled to begin on the west side of the north wing next week, which will require some reduction in use of the north parking lot to prevent safety issues and vehicle damage. This progress will allow the renovations to the House Chamber to begin in early August.

4. **South Access and Parking Lot Project**

Work has begun on the south access and parking lot improvements. Site logistics have proceeded smoothly to date, and value management measures have been identified to keep the project cost-effective. The parking lot is scheduled to re-open by November. In the meantime, alternative parking spaces have been reserved for handicap parking and legislators, including Senate Leadership.

5. **Introduction of New Staff**

- A. Mark Deering, Programmer, Office of Legislative Information Services (hired June 19, 2006)

- B. Diane Vorpagel, Administrative Secretary, Law and Legislative Reference Library (hired June 5, 2006)

Speaker Richardson asked Beth Ashcroft to introduce her staff who were present to Council members.

6. **NCSL Recognition of OPLA Staff Member Phillip McCarthy**

Mr. Boulter announced that Phillip McCarthy was awarded the NCSL Legislative Education Staff Network (LESN) 2006 National Recognition Award for his high degree of professionalism and competence in service to the legislature and expertise in education policy.

OPLA Director Norton said that he was very pleased that Mr. McCarthy had received this national award as there were many other states participating. He said that Mr. McCarthy had traveled to Minneapolis to receive the award.

- **Fiscal Report**

Grant Pennoyer, Director, Office of Fiscal and Program Review, reported the following:

**1. Revenue Update**

- General fund revenue was \$4.8 million over budget for the month of June, resulting in a final positive variance for FY06 of \$74.1 million (+2.6%). All major tax lines with the exception of the telecommunication personal property tax performed above expectations.
- Highway fund revenue was under budget in June by \$2.6 million, resulting in a final negative variance for FY06 of \$4.4 million (-1.3%). Fuel taxes were the major reason for the FYTD negative variance. This revenue category was under budget by \$5.2 million. High gasoline prices have affected gasoline consumption, unlike the national trends.
- Fund for a Healthy Maine (FHM) ended FY06 with a positive variance of \$3.9 million, largely a result of receipt of tobacco settlement payments being higher than anticipated. Racino revenue and interest earnings also contributed to the positive variance. This positive variance may reduce the amount of the Fund-wide deallocations that will be distributed to individual FHM programs in FY07.

**2. Cash Pool and Cash Balance Trends**

- Average balance of the Cash Pool was \$795.7 million in June. This is above the five-year average balances of \$604.7 million and above last June's balance of \$739.0 million.
- For the general fund, the positive revenue variances have continued to improve the cash position. Additions to general fund reserve balances as a result of the FY06 positive variance and lapsed balances will provide a sufficient reserve to significantly reduce cash flow borrowing for FY07.
- Highway fund cash balances has remained relatively stable in the last few months, although the trend based on this fiscal year's budget shortfall, is still heading downward.

**3. Fund Status Reports – Based on FY06 Actuals**

- General fund budgeted ending balance at the close of FY07 remains unchanged from prior report at \$18,747. Revenue surplus, lapsed balances and other net accounting adjustments increased unappropriated surplus by \$89.0 million, all of which was reserved or transferred by statute. Balances in the Budget Stabilization Fund and Reserve for Operating Capital now are nearly \$150 million.
- Highway fund budgeted ending balance at the close of FY07 increased slightly to \$1.1 million. A revenue shortfall was offset by an emergency financial order that increased lapsed balances by an additional \$2.1 million.

Sen. Brennan asked if the legislature was facing a \$4 million or \$8 million gap in the budget. Mr. Pennoyer responded that the \$3.9 million positive variance in the revenue will help reduce what needs to be distributed from the fund-wide deallocation. He said there would also be lapsed balances that will increase from the program accounts that were not spent that will lapse back to the Fund for a Healthy Maine. Speaker Richardson then asked Mr. Pennoyer to email Council members a summary of the status of the Fund for a Healthy Maine relative to the overall fund balance.

Rep. Cummings asked Mr. Pennoyer what impact the current tax amnesty program will have on general fund revenues. Mr. Pennoyer responded that \$1.5 million in revenues had already been budgeted because of the program. He said that the revenues from the last amnesty program were significantly above budgeted estimates at that time.

- **Office of Information Services' Report**

**Bill Drafting System**

Mr. Mayotte reported that there were 13 unresolved items on the bill drafting system warranty list as of July 26<sup>th</sup>. He stated that staff are working daily to close the items. In preparation for the session, staff have conducted an in-depth review of the features of the MELD software. A list of action items that need to be addressed has been developed and will be worked on prior to session. The WANG statute update will be the baseline for a conversion into the MELD database. LIS is working to assure the quality and accuracy of the conversion process from the WANG to MELD system.

**Data Backup**

All computer data backups are current and are being performed to established procedure. LIS is proceeding with standardizing the software used to create backup tapes.

**SPAM Filtering**

Incoming SPAM volumes continue to increase. LIS needs to be proactive and respond quickly to these issues before they become a problem.

- **Study Commissions Report**

Mr. Norton, Director, Office of Policy and Legal Analysis reported that studies are moving along well, appointments are being made quickly and study commissions are starting their meetings in good order. Mr. Norton said that about 2/3 of the appointments have been made. The majority of the appointments that have not yet been are appointments by the Executive Branch. He also stated that certain studies have not started because the enabling legislation is not in effect until August 23<sup>rd</sup>.

Mr. Norton then directed Council members' attention to the Bill Summaries document which summarizes all bills that were dealt with during the 2<sup>nd</sup> Regular Session. He reminded members that they had been mailed this session's "Enacted Law Digest." He stated that extra copies of both publications were available in the office and on OPLA's website.

Mr. Norton drew the Council members' attention to a memo announcing that OPLA was beginning the biennial update of the Legislators' Handbook. He invited members to suggest changes and indicated that the revised handbook should be available in September.

**PERSONNEL COMMITTEE**

The Personnel Committee did not meet so there was no report.

**REPORTS FROM COUNCIL COMMITTEES**

The State House Facilities Committee did not meet so there was no report.

## OLD BUSINESS

### Item #1: Maine Development Foundation proposal for training for members of 123<sup>rd</sup> Legislature

MDF President Laurie Lachance updated the Council on the progress made since the May meeting when she had requested assistance in forming a planning group to plan Legislative forums and bus tours. She stated that she had formed the working group that included six chiefs of staff and four legislators and that two meetings had been held since that time. Ms. Lachance stated that progress had been made and some information and recommendations on the scope, timing and broad topics had been made. She requested feedback in two or three areas. Speaker Richardson suggested that members take time to review MDF's recommendations, offer suggestions and be prepared to discuss them at the next meeting. Speaker Richardson asked Ms. Lachance to identify time sensitive issues to the Council.

Ms. Lachance said that it would be helpful to have Council feedback on the following items:

#### 1. Scope

- Two, 3-day economic bus tours
- One, 1.5 to 2-day Policy Forum

#### 2. Timing

The Planning Group felt that January is the best time to offer both the bus tours and the forums as committee work has not begun at that time. The following dates were suggested:

- Potential forum dates: Thursday and Friday, January 4<sup>th</sup> and 5<sup>th</sup> or 18<sup>th</sup> and 19<sup>th</sup>
- Potential bus tour dates: Wednesday through Friday, January 10<sup>th</sup> – 12<sup>th</sup>, 17<sup>th</sup> – 19<sup>th</sup>, or 24<sup>th</sup> – 26<sup>th</sup>

#### 3. Broad Policy Areas (suggested topics)

- Tax/Fiscal
- Energy
- Healthcare
- Transportation
- Higher Education/Workforce Development
- K-12 Education
- Land Use/Sprawl

#### 4. Budget

- Forums: Costs range from \$7,000 - \$20,000 depending on keynote speaker(s) and the number in attendance
- Bus Tours: Costs range from \$50,000 to \$80,000 (50 – 100 participants)

#### 5. Stakeholder/Funding Group

Ms. Lachance requested permission to convene a meeting of a number of stakeholder organizations as soon as possible. The group would guide MDF and the Legislative Planning Group's planning efforts and help connect them to speakers and tour visitation sites and to raise money.

Speaker Richardson opened discussion among the members. President Edmonds recommended that bus tours and forums be held earlier in the session rather than later because the need for legislative sessions and committee work will increase by the end of January. Senator Brennan then suggested that it might be possible to hold the forums in December and bus tours in early January, to free up more legislator time in January.

After discussion, Speaker Richardson said there was consensus among members that early in January was the best time for the tours so the dates of January 3<sup>rd</sup>, 4<sup>th</sup>, and 5<sup>th</sup> and January 10<sup>th</sup>, 11<sup>th</sup> and 12<sup>th</sup> would be best. Rep. Bowles suggested simultaneous bus tours where people would sign up for the bus tour they were interested in or the possibility of a southern Maine bus tour in one legislative session and a northern Maine bus tour in the next legislative session. Speaker Richardson said the problem with simultaneous bus tours would be limited staff. He asked Ms. Lachance for feedback on the challenge of having north and south bus tours on the same day. She explained that the northern Maine tour included eastern Maine. The southern Maine tour included western Maine territories. She explained that it was also helpful for legislators from a certain area to be included in the tour so that they have the opportunity to explain what is going on in their region. Rep. Cummings concurred that the bus tours should be condensed because that many days away from the Legislature can be problematic. He went on to explain that the policy discussions would be better sooner. Once elected, a legislator needs to know the problems facing the state, thus the broad policy overview should happen in December.

President Edmonds said the Council was in agreement with two 3-day bus tours and 1 ½ to 2 days Policy Forum training. She suggested that 1 or more policy forums might be incorporated into the Pre-Legislative Conference in December and suggested working with Executive Director Boulter.

President Edmonds made a motion that Ms. Lachance return to Council in August with a final proposal, second by Sen. Brennan.

Sen. Brennan suggested the following topics might be helpful to provide information to legislators: racino, childrens' policy matters and conflict resolution.

Ms. Lachance said MDF would put a list of resources with contact information together.

Motion by President Edmonds (amending her previous motion) that MDF present a final proposal for legislative policy forums and bus tours to the Legislative Council at its August meeting, and further that MDF be authorized to begin necessary fund raising, second by Sen. Brennan. Motion approved, unanimous (6-0).

## **NEW BUSINESS**

### **Item #1: Certification Relating to Contributions for Task Force to Study Cervical Cancer Prevention, Detection and Education**

Speaker Richardson asked if this was an advisory matter. Mr. Boulter responded that Legislative Council policy requires that any outside contributions for legislative studies be reviewed and accepted by the Council. Mr. Boulter explained that this was the second year that the American Cancer Society had contributed to this study.

Motion by Rep. Bowles to accept the proposed contribution of \$1,251.84 from the American Cancer Society, second by Sen. Brennan. Motion approved, unanimous (6-0).

### **Item #2: Request by Joint Standing Committee on Judiciary Regarding Website Posting of Public Records Exceptions**

Mr. Boulter explained the request by the Joint Standing Committee on Judiciary to modify the Legislative website to provide a link to lists of statutory exceptions to "public records" under the Freedom of Access Law.

Motion by President Edmonds to approve the request for website posting, second by Rep. Duplessie. Motion approved, unanimous (6-0).

### **Addendum to Revised Agenda**

Speaker Richardson asked that an Addendum to the Revised Agenda be distributed. The addendum concerned the request by Rep. William Smith to receive special session pay for the 121<sup>st</sup> Legislature. Speaker Richardson explained that the Attorney General has indicated that since Rep. Smith was not a named party to the lawsuit, he would not be entitled to be paid; however, if he were to file a lawsuit seeking payment, it is likely the court would find in his favor.

Sen. Brennan inquired of the Legislature's financial exposure if others were to request payment. Mr. Boulter stated that the statute of limitations was for a period of six years and explained that the Legislature was into the second year (April 30, 2004). Sen. Brennan asked how many legislators would fall into Rep. Smith's category and Mr. Boulter responded that there were few. Mr. Boulter stated that there were approximately 56 that did not receive payment, the majority of that number had affirmatively refused payment.

Motion by Rep. Bowles to authorize the Executive Director to make payment to Rep. Smith in the amount appropriate for his attendance during the Special Session of the 121<sup>st</sup> Legislature, second by President Edmonds. Motion approved, unanimous (6-0).

### **Item #3: OPEGA**

Ms. Ashcroft began by introducing Diana Friou, principal analyst in OPEGA. Ms. Ashcroft then discussed the following items:

1. OPEGA's first annual report on its activities and accomplishments.

Ms. Ashcroft submitted OPEGA's annual report which is required by statute and summarized what OPEGA had accomplished. Speaker Richardson commended Ms. Ashcroft on her ability to confront a new challenge within state government and be able to produce a result.

Sen. Brennan asked about how OPEGA establishes priorities for reviewing programs. For example, how does the guardian ad litem rise to a priority when it is a small, very narrow subset in the child welfare system, a much bigger issue? He also asked how the policy committees participate and receive information



on OPEGA reviews; for example, how does the ad litem finding get transmitted to the Health and Human Services Committee?

Ms. Ashcroft explained that OPEGA staff reports to the Government Oversight Committee and that committee directs OPEGA's reviews. Ms. Ashcroft stated that when OPEGA develops its annual plan it notifies the joint standing committees of jurisdiction of the topic. It also does so when the GOC holds a hearing and issues reports. Ms. Ashcroft explained that the GOC sees its role as being supportive of the work of the other committees. Ms. Ashcroft said that OPEGA really sees itself as performance auditors. She stated that as OPEGA moves forward it is their intent that the GOC have a process so that when a topic comes up there is a ranking and scoring mechanism about the key risk factors to help with decisions on which are the priority topics. Speaker Richardson said that the Council needs to know when someone is acting in a manner that prevents OPEGA from doing its job, but that the Legislative Council does not have direct oversight over OPEGA's reviews. The GOC has that oversight.

Sen. Edmonds complimented OPEGA on producing a report that is readable.

Ms. Ashcroft then turned to the second topic, OPEGA's recommendations for Legislative action.

Speaker Richardson clarified that Ms. Ashcroft was asking the council to ratify the Legislative Council actions recommended by OPEGA (report attached). In particular, Ms. Ashcroft is seeking a motion to accept the recommendations of OPEGA that those matters which are closed are acceptable and those matters requiring some action are acceptable. Ms. Ashcroft explained that a "closed" item means that the issue is closed and OPEGA no longer continues to track it.

Ms. Ashcroft stated that there was nothing of real concern for the Legislative Council in the recommendations other than one of the actions related to business continuity. She stated that Executive Director Boulter and Mr. Mayotte are working on a business continuity plan which typically takes time and resources. This is an action item.

Motion by Rep. Cummings to accept the recommendations of OPEGA, to close those matters which are closed and to take no further legislative action matters on those where action has been taken, second by President Edmonds. Motion approved, unanimous (6-0).

Ms. Ashcroft then opened a discussion on the relationship between the Legislative Council, OPEGA, the GOC and joint standing committees. Speaker Richardson said that it was important for OPEGA to maintain its independent status and appear before the Council only when necessary. Sen. Brennan asked if there was a difference in having OPEGA or the chairs of the GOC report to the Council. Speaker Richardson said that GOC chairs could attend as necessary. President Edmonds stated that she felt a report from OPEGA once a year was sufficient.

Sen. Brennan raised a concern about potential conflict with joint standing committees and their work and an OPEGA agenda. He encouraged better communication with the GOC. As examples, he used the Riverview facility and MECMS reviews that have parallel OPEGA/committee activity. Ms. Ashcroft explained the quick track requests process and hoped that OPEGA and the joint standing committees could work even closer in the future.

Speaker Richardson suggested that OPEGA may want to be included in a Legislative training session so legislators can understand what OPEGA does.

Rep. Cummings pointed out that OPEGA has two broad goals:

1. Cost savings for government – are we using every dollar the best way possible?

2. Efficiency – is government delivering the services that it is supposed to in an efficient manner?

He said he would like to see OPEGA develop and focus on a broader list of recommendations to save money in state government, and maybe local government if there is an interaction. OPEGA's role is to find efficiencies and savings in state government. He said he felt school construction is a program where there could be huge savings; and that is something that should be looked into. He explained he would like to see a list of recommendations of what can be done to save money, and how much money would be saved. It is important for the Legislature to have a nonpartisan office to look for maximum efficiency and that is why OPEGA was established.

Rep. Bowles suggested OPEGA come before the Council if departments, agencies and other committees were not cooperating with them.

Ms. Ashcroft inquired as to the best way to distribute the report to all legislators. Speaker Richardson suggested letting legislators know the report was online and a paper copy available if they wanted one. Sen. Brennan suggested sending the Executive Summary to legislators. Members generally agreed with that approach.

## **ANNOUNCEMENTS AND REMARKS**

None.

## **ADJOURNMENT**

The Legislative Council meeting was adjourned at 3:00 p.m. Motion by Rep. Cummings to adjourn, second by Sen. Brennan. Motion was approved unanimous (6-0).