

REP. HANNAH M. PINGREE CHAIR

SEN. ELIZABETH H. MITCHELL VICE-CHAIR

EXECUTIVE DIRECTOR DAVID E. BOULTER

SEN. PHILIP L. BARTLETT II SEN. KEVIN L. RAYE SEN. LISA T. MARRACHE SEN. JONATHAN T. E. COURTNEY REP. JOHN F. PIOTTI REP. JOSHUA A. TARDY REP. SETH A. BERRY REP. PHILIP A. CURTIS

Action

124<sup>TH</sup> MAINE STATE LEGISLATURE LEGISLATIVE COUNCIL

## MEETING OF LEGISLATIVE COUNCIL NOVEMBER 10, 2010 12:00 PM <u>REVISED AGENDA</u>

Page Item

**CALL TO ORDER** 

## **ROLL CALL**

1	SUMMARY OF THE AUGUST 25, 2010 MEETING OF THE LEGISLATIVE COUNCIL [Note: The Legislative Council did not meet in September or October]	Acceptance
	REPORTS FROM EXECUTIVE DIRECTOR AND STAFF OFFICE DIRECTORS	
8	<ul> <li>Executive Director's Report (Mr. Boulter)</li> </ul>	Information
10	<ul> <li>Fiscal Report (Mr. Pennoyer)</li> </ul>	Information
14	<ul> <li>Legislative Studies &amp; Interim Committee Meetings (Mr. Norton)</li> </ul>	Information
	<b>REPORTS FROM COUNCIL COMMITTEES</b>	
	<ul> <li>Personnel Committee (Speaker Pingree, Chair)</li> <li>Reappointment of David E. Boulter as Executive Director of the Legislative Council</li> </ul>	Decision
	• State House Facilities Committee (Rep. Piotti, Chair) (No Report)	

## **OLD BUSINESS**

15		<b>Council Actions Taken By Ballot (No Action Required)</b> List of actions taken by ballot by the Legislative Council since its August 25, 2010 meeting. <b>(ATTACHED)</b>	Information
	NEW B	USINESS	
16	Item #1:	Tentative Biennial FY 2012-2013 Budget Submission	Information
	Item #2:	<b>Staff Study of Maine Department of Education Program Funding</b> (separate handout) (Office of Policy and Legal Analysis)	Discussion
23	Item #3:	Notice of Audit of State Budget for FY 2010 (Department of Audit)	Information
26	Item #4:	<b>Annual Report of the Citizen Trade Policy Commission</b> (October 2010)	Information
30	Item #5:	<b>Final Report of the Task Force on Kinship Families</b> (November 2010)	Information
44	Item #8:	Annual Report of Loring Development Authority of Maine's (LDA)	Information
45	Item #9:	Final Report of the State and Local Government Committee	Information
	Item #10:	Collective Bargaining Matters [Executive Session]	

## ANNOUNCEMENTS AND REMARKS

## ADJOURNMENT

REP. HANNAH M. PINGREE CHAIR

SEN, ELIZABETH H. MITCHELL VICE-CHAIR

EXECUTIVE DIRECTOR DAVID E. BOULTER



SEN. PHILIP L. BARTLETT II SEN. KEVIN L. RAYE SEN. LISA T. MARRACHE SEN. JONATHAN T. E. COURTNEY REP. JOHN F. PIOTTI REP. JOSHUA A. TARDY REP. SETH A. BERRY REP. PHILIP A. CURTIS

## 124<sup>TH</sup> MAINE STATE LEGISLATURE LEGISLATIVE COUNCIL

## MEETING SUMMARY August 25, 2010

## CALL TO ORDER

Legislative Council Chair, Speaker Pingree called the August 25, 2010 Legislative Council meeting to order at 11:15 A.M. in the Legislative Council Chambers.

### ROLL CALL

Senators:	Senate President Elizabeth Mitchell, Sen. Lisa Marraché, Sen. Philip Bartlett [arrived shortly after the start of the meeting]
	Absent: Sen. Kevin Raye, Sen. Jonathan Courtney
Representatives:	Speaker Hannah Pingree, Rep. Philip Curtis, Rep. John Piotti, Rep. Seth Berry
	Absent: Rep. Joshua Tardy
Legislative Officers:	Joy O'Brien, Secretary of the Senate Michael Cote, Assistant Clerk of the House David E. Boulter, Executive Director of the Legislative Council Debra Olken, Human Resources Director Patrick Norton, Director, Office of Policy & Legal Analysis Grant Pennoyer, Director, Office of Fiscal and Program Review Suzanne Gresser, Revisor of Statutes Scott Clark, Director, Legislative Information Services

Chair Pingree convened the meeting at 11:16 A.M. with a quorum of members present.

## SUMMARY OF JUNE 30, 2010 MEETING OF LEGISLATIVE COUNCIL

Motion: That the Meeting Summary of June 30, 2010 be accepted and placed on file. Motion by Representative Berry. Second by Senator Marraché. Motion passed unanimous. (6-0) [Representative Tardy, Senator Bartlett, Senator Raye and Senator Courtney absent for vote.] {Note: The Legislative Council did not meet in July.}

## **REPORTS FROM EXECUTIVE DIRECTOR AND COUNCIL OFFICES**

#### **Executive Director's Report**

David Boulter, Executive Director of the Legislative Council, reported on the following:

Civil Support Team Training Exercise

On August 18, 2010, the Maine Army National Guard, in conjunction with U.S. Army North's evaluation team, conducted a Civil Support Team training and evaluation exercise in the State House. The purpose of the exercise was to evaluate the team's performance in responding to an incident where terrorist use of a harmful agent in a public building is suspected. The CST conducted an investigation of various rooms to identify the "harmful agent" and isolate it, and the team was evaluated on its response. According to the Department of Defense, Veterans and Emergency Management, an exercise such as this is essential to developing a capability in Maine to respond to an incident should one ever occur. No harmful substance was actually brought into the State House; the exercise went smoothly and was deemed a success.

Annual Employee Recognition Picnic

On Tuesday, September 14<sup>th</sup>, the annual recognition picnic for legislative employees will be held in Capitol Park. A picnic lunch will be provided and employees with extensive state/legislative service will be recognized. The event will be held from 11:30 AM - 1:00 PM. All members of the Legislative Council are welcome and encouraged to attend.

Repairs to the State House Dome

Earlier this year the Legislative Council authorized maintenance and improvement projects for 2010, one of which was repairs to the high dome in the State House. No work on the dome had been performed since 1994. Once contractors began work on the high dome to repair minor cracks and repaint the dome, contractors discovered areas where plaster and plaster support showed signs of serious deterioration. In some areas, plaster was at high risk of falling out, which if it had, could have fallen to the 3<sup>rd</sup> floor. Fortunately, the condition was discovered and repairs made in a timely fashion, without incident. Mr. Boulter showed photographs of the deteriorated area.

Mr. Boulter noted that the situation is an example where the Legislative Council's longstanding program for preventative maintenance is beneficial. Mr. Boulter concluded by saying the repairs are completed and the staging has been removed.

### **Fiscal Report**

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

## **Revenue Update**

	Total General Fund Revenue - FY 2011 (\$'s in Millions)									
	Budget Actual Var. % Var. Prior Year % Growth									
July	\$218.0	\$216.7	(\$1.2)	-0.6%	\$223.4	-3.0%				
FYTD	\$218.0	\$21 <u>6.7</u>	(\$1.2)	-0.6%	\$223.4	-3.0%				

General Fund revenue was \$1.2 million (0.6%) under budget in July. However, July revenue grew by 1.7% compared to last July. FY 2011 revenue was budgeted for a modest increase of 0.7% over FY 2010 revenue.

Sales tax collections were over budget by \$1.8 million in July, continuing the recent positive experience for this category.

Negative variances for July in the major revenue categories were the Individual Income Tax and the Cigarette and Tobacco Products Tax. Neither of these variances is a concern at this point as each largely reflects timing differences. Withholding payments seem to have recovered during the early part of August and will likely offset July's negative variance.

Mr. Pennoyer pointed out several areas of concern including the real estate transfer tax, Inland Fisheries and Wildlife revenue and Health and Human Services (HHS) revenue. These revenue sources have been underperforming and may likely be adjusted downward in the next revenue forecast. HHS revenue was nearly \$1 million under budget. While some portion of this was related to Medicaid billings not being filed in July, a budget savings initiative may end up reducing targeted case management revenue to HHS.

	Total Highway Fund Revenue - FY 2011 (\$'s in Millions)										
	Budget Actual Var. % Var. Prior Year % Growth										
July	\$26.5	\$27.8	\$1.3	5.0%	\$28.1	-0.8%					
FYTD	\$26.5	\$27.8	\$1.3	5.0%	\$28.1	-0.8%					

#### Total High . . TX 2011 (01- -- MCH).

Highway Fund revenue was \$1.3 million (5.0%) over budget in July. The positive variance in July was 0.8% less than last July, but less of a decline than the 1.3% decline budgeted for all of FY 2011 Highway Fund revenue.

July's positive variance results primarily from the Fuel Tax category, which was \$1.4 million over budget. This reflects a timing issue between June and July. June's negative variance in this category was \$4.7 million. The Revenue Forecasting Committee will be watching this category carefully over the next couple of months to gauge its performance as the tax models have had difficulty predicting this category during this recession.

Mr. Pennoyer noted that the Revenue Forecasting Committee process will begin with an update of the economic forecast, and the Consensus Economic Forecasting Commission will meet on Tuesday, October 26<sup>th</sup>.

#### **Cash Balances**

Recent revenue performance and increases to General Fund reserve balances at the close of FY 2010 have benefitted Maine's cash position, such that the Treasurer indicates that he sees no immediate need for external cash flow borrowing.

General Fund reserve balances increased from \$0.2 million at the close of FY 2009 to \$36.6 million (\$25.4 million in the Budget Stabilization Fund (MBSF) and \$11.2 in the Working Capital Reserve). An additional \$2.5 million in FY 2011 is budgeted to be transferred to the MBSF.

#### FY 2010 Year-end Surplus Distributions

Presented below is a table presented by Mr. Pennoyer that shows the General Fund yearend transfers (aka "the Cascade") based on a General Fund revenue surplus and other accounting adjustments totaling \$70.0 million.

FY 2010 Year-end Summary - General Fun	d Surplus	
General Fund Revenue Variance		
Actual Revenue		\$2,755,682,500
Less Final Budgeted Revenue		(\$2,693,005,389)
Sub-total Revenue Variance		\$62,677,111
Lapsed Balances		
Total Lapsed Balance from State Controller's Report		\$29,404,139
Less Budgeted Lapsed Balances		(\$24,143,701)
Sub-total - Lapsed Balances		\$5,260,438
Other Accounting Adjustments Increasing (Decreasing) Unappropriated	Surplus	\$2,085,482
Increase in Uncommitted Unappropriated Surplus		\$70,023,030
FY 2010 Closing Transfers/"Cascad	le''	
Fixed Dollar Transfers		
Reserve for Budget Stabilization Fund transfer (PL 2009, c. 571, UUU ar	rd c. 645, H)	(\$5,597,244)
Replenish Contingent Account up to \$350,000 (5 MRSA §1507)		(\$350,000)
Transfer to Loan Insurance Reserve up to \$1,000,000 (5 MRSA §1511)		(\$1,000,000)
Transfer to Dept. of Transportation's Railroad Assistance Program (PL 20	009, c. 645, H) <sup>1</sup>	(\$7,000,000)
Percentage Transfers - Remaining Uncommitted Unappropriated Surg	blus	\$56,075,786
Maine Budget Stabilization Fund	35%	(\$19,626,525)
Retirement Allowance Fund	20%	(\$11,215,157)
Reserve for General Fund Operating Capital	20%	(\$11,215,157)
Retiree Health Internal Service Fund	15%	(\$8,411,368)
Capital Construction & Improvements Reserve Fund	10%	(\$5,607,579)
Total Closing Transfers		(\$70,023,030)
Notes:		

<sup>1</sup> Transfer in PL 2009, c. 645, Part H was intended to be reserved in the Maine Budget Stabilization Fund, but a drafting error left it dedicated to Railroad Assistance Program despite change to an actual appropriation of \$7,000,000 in Part H, section 7.

For the Highway Fund, the unallocated surplus increased by the \$4.2 million revenue variance, all but \$100,000 of the increase or \$4.1 million was transferred to the Department of Transportation for the Highway and Bridge Capital Light program (Maintenance Paving) as an adjustment to Highway Fund allocations in FY 2011.

## **Status of Legislative Studies**

Mr. Norton reported that the legislative studies were all on target to complete their work by their reporting date. He noted the following studies updates:

Staff Study of education matters: The study is progressing nicely. OPLA staff made its first request for qualitative program information to the department last week and there will

be a second request coming from OFPR within the next week or so for financial information. Mr. Norton concluded by saying he felt the study will produce information that will be very useful to the legislature.

Speaker Pingree asked if there was any objection to taking one item out of order. There was no objection. The Chair then moved to **New Business**, Item 2.

## **ITEM #2:** Request from the Joint Standing Committee on Health Care Reform Opportunities and Implementation for Travel Reimbursement for Invited Presenters

Mr. Boulter stated that the committee is requesting funds totaling \$750.00 to reimburse two individuals who have been invited to make a presentation at a meeting of the committee. There is insufficient reserve in the committee's budget to fund the request; however, there are funds remaining unspent from the FY10 studies that could be used to cover the reimbursement expense.

Motion: That the request from the Joint Standing Committee on Health Care Reform Opportunities for up to \$750.00 to reimburse presenters for travel expenses be approved. Motion by Senator Bartlett. Second by Senator Marraché. Motion passed unanimous. (7-0) [Representative Tardy, Senator Raye and Senator Courtney absent for vote.]

The Legislative Council then returned to the other items on its agenda.

### **REPORTS FROM COUNCIL COMMITTEES**

#### 1. Personnel Committee

(No Report)

#### 2. State House Facilities Committee

(No Report)

#### 3. Budget Subcommittee

(No Report)

#### 4. CSG Annual Meeting Planning Subcommittee

Senator Bartlett reported on the results of the CSG/ERC annual meeting that was held in Portland on August 15-18, 2010. Although hosting the meeting posed many fundraising and organizational challenges, the meeting was very successful. 600 people from the northeast and Canadian providences attended and the feedback is that the attendees enjoyed Maine and the meeting, and commented how friendly Maine volunteers, staff and legislators were.

Senator Bartlett acknowledged the contributions of John Hennessy for his tireless efforts and those of Pat Eltman, Director of the Bureau of Tourism, who worked hard to obtain in-kind contributions that significantly helped to defray costs. He also thanked Mr. Boulter who organized the event volunteers, and the volunteers who participated. Senator Bartlett stated that enough pledges were received to cover Maine's costs as long as all pledged amounts are received. Speaker Pingree remarked that the weather and venue were perfect. She noted a number of attendees indicated they would be extending their stay in Maine so hopefully it will result in increased sales taxes to Maine.

#### **OLD BUSINESS**

(There was no Old Business.)

#### **NEW BUSINESS**

### ITEM #1: Memorandum of Agreement Regarding Maintenance of the Road Connecting Union and Gage Streets

Mr. Boulter explained that this item was for information only. Mr. Boulter explained by way of background that the Legislative Council had authorized him to enter into an agreement with the city of Augusta some time ago and only recently had all the parties to the agreement signed the document. In July the agreement was fully executed. The agreement establishes road maintenance responsibilities by the city, rather than the state, for the road connecting Union and Gage Streets, at the east portion of Capitol Park. No Legislative Council action was required.

#### Item #3: Request for Proposal (RFP) for VoIP Telephone System

Scott Clark, Director of Legislative Information Services, presented a request for authorization to issue a Request for Proposals for a new voice VoIP telephone system to replace the legislature's aging analog telephone system. He stated that his initial assessment after discussing a potential system with vendors was that a new system could save the legislature somewhere between \$35,000 to \$70,000 annually. He said that he is seeking authorization to solicit specific proposals from qualified vendors to help assess whether a telephone system replacement is feasible and will yield that amount of savings. If after proposals are received and reviewed, the matter would come back to the council with a recommendation (to proceed or not).

Speaker Pingree sought clarification that the request is only to issue an RFP at this time and not actually authorize purchase of a replacement telephone system. Mr. Boulter confirmed that Speaker Pingree's understanding was correct. President Mitchell commented that she hoped a new phone system would not replace people with automating answering, believing that such a system is off putting to members of the public. Retaining a personal response is very important in a legislative environment.

Motion: That the Legislative Council authorize the issuance of a "Request for Proposal" to solicit proposals from qualified firms for providing VoIP service to the Legislature. Motion by Senator Marraché. Second by Representative Berry. Motion passed unanimous. (7-0) [Representative Tardy, Senator Raye and Senator Courtney absent for vote.]

#### ANNOUNCEMENTS AND REMARKS

None

The Legislative Council adjourned its meeting at 11:37 A.M.

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#### DAVID E. BOULTER

EXECUTIVE DIRECTOR OF THE LEGISLATIVE COUNCIL



## MAINE STATE LEGISLATURE

OFFICE OF THE EXECUTIVE DIRECTOR LEGISLATIVE COUNCIL

#### Legislative Council

## Executive Director's Report November 10, 2010

1. <u>Flu Vaccination Clinic</u>

A flu vaccination clinic was held at the State House on Tuesday, October 26<sup>th</sup> for Legislators, legislative employees and other state employees who participate in the state's group health insurance program. The vaccination was for both the H1N1 and seasonal influenza. Over 150 people were immunized.

2. Change in Vendor for State House Café

The Department of Labor, Division for the Blind and Visually Impaired, Business Enterprise Program notified us in October that it was exercising its authority under current law to operate the State House café. The program has identified Richard Desjardins, operator of the Cross Café, as the new vendor. He will maintain the full service operation and schedule that was in effect with the prior vendor. The café will open with a new name on Monday, November 15<sup>th</sup>.

## 3. Youth in Government Program

The YMCA's Youth in Government program will be held in the State House this weekend, running from Friday through Sunday. About 125 high school youth from across the state will participate in this civic education program to learn about the legislative process. This is the  $2^{nd}$  program held in 2010 as the YMCA transitioned its annual program from spring to fall.

## 4. <u>Orientation Programs</u>

The first of several legislator orientation programs for the 125<sup>th</sup> Legislature will be held on Friday, November 19, 2010; New Member Orientation is designed to acquaint newly elected members with the legislative process and provide an overview of key legislative procedures and resources. This program will be followed by the Pre-Legislative Conference on November 29, 2010 through December 2, 2010. A chairs training program will be held in early January. The orientation programs are sponsored by the Legislative Council of the 124<sup>th</sup> Legislature and all council members are welcome to attend.

## 5. <u>Governor Dingley Bust</u>

As authorized by earlier action of the Legislative Council, the bronze bust of former Governor Nelson Dingley, Jr. has been placed on permanent display in the Legislative Conference Room on the 1<sup>st</sup> floor of the State House.

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Governor Dingley served in the Maine Legislature in 1862, 1863, 1864, 1865, 1868 and 1873, and was elected Speaker of the House of Representatives in 1863 and 1864. He served as Governor of Maine for 2 terms from January 8, 1874 to January 6, 1876. He chose not to seek a third term. Governor Dingley was elected to the U.S. Congress from the 2<sup>nd</sup> District in 1881, and was re-elected to the 48<sup>th</sup>, 49<sup>th</sup>, 50<sup>th</sup>, 51<sup>st</sup>, 52<sup>nd</sup>, 53<sup>rd</sup>, 54<sup>th</sup> and 55<sup>th</sup> Congresses. Governor Dingley's portrait hangs adjacent to the stairwell on the 4<sup>th</sup> floor of the Maine State House.

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# **Fiscal Briefing**

## Legislative Council Meeting

November 10, 2010

Prepared by the Office of Fiscal & Program Review

## 1. Revenue Update (also see attached tables – new format)

	Total General Fund Revenue - FY 2011 (\$'s in Millions)									
	% Prior %									
	Budget	Actual	Var.	Var.	Year	Growth				
September	\$284.6	\$288.4	\$3.8	1.3%	\$270.7	6.5%				
FYTD	\$560.5	\$586.8	\$26.3	4.7%	\$545.1	7.7%				

General Fund revenue was \$3.8 million (1.3%) over budget in September. For the first quarter of FY 2011, the General Fund has built up a positive variance of \$26.3 million (4.7%). FY 2011 first quarter's performance represents 7.7% growth over the first quarter of FY 2010. October's positive variances in Corporate Income Tax and Estate Tax (single \$6 million estate tax payment) will roughly double the positive variance through the first quarter. October revenue is still not finalized.

	Total Highway Fund Revenue - FY 2011 (\$'s in Millions)								
	% Prior %								
	Budget	Actual	Var.	Var.	Year	Growth			
				-					
September	\$26.1	\$25.4	(\$0.7)	2.8%	\$25.9	-1.8%			
FYTD	\$57.8	\$63.1	\$5.4	9.3%	\$61.9	1.9%			

Highway Fund revenue was under budget by \$0.7 million (2.8%) in September, but it remained over budget by \$5.4 million (9.3%) through the first quarter of FY 2011. Highway Fund revenue growth was 1.9% for the first quarter of FY 2011. October's performance will not significantly affect the first quarter variance.

## 2. Revenue Forecasting Update

The Consensus Economic Forecasting Commission (CEFC) released its new economic forecast (see <u>http://maine.gov/legis/ofpr/revenue\_forecasting\_committee/consensus\_economic\_forecast/nov2010.pd</u> <u>f</u>). Summary table presented below. Changes in Personal Income will produce upward revenue revisions when the Revenue Forecasting Committee (RFC) updates the revenue forecast. RFC is meeting on November 9<sup>th</sup> and November 23<sup>rd</sup>.

<u>Calendar Years</u>	<u>2010</u>	<u>2011</u>	<u>2012</u>	<u>2013</u>	<u>2014</u>	<u>2015</u>
• Wage & Salary Employment	(Annual Percer	itage Chan	ge)			
> Consensus 02/2010	-1.3%	1.2%	2.2%	2.0%		
> Consensus 11/2010	-1.0%	0.4%	1.5%	2.1%	1.7%	1.0%
Difference	0.3%	-0.8%	-0.7%	0.1%		
• Personal Income (Annual Per	rcentage Change	e)				
> Consensus 02/2010	1.5%	3.0%	4.0%	4.6%		
> Consensus 11/2010	2.9%	3.0%	4.7%	4.9%	5.0%	4.5%
Difference	1.4%	0.0%	0.7%	0.3%		
• Consumer Price Index (Annu	al Percentage C	Thange)				
> Consensus 02/2010	1.7	2.0	2.1	2.0		
> Consensus 11/2010	1.7	1.5	2.3	2.6	2.3	2.2
Difference	0.0	-0.5	0.2	0.6		

Comparison of February 2010 and November 2010 Economic Forecasts

## General Fund Revenue Fiscal Year Ending June 30, 2011

## September 2010 Revenue Variance Report

Revenue Category	September '10 Budget	September '10 Actual	September '10 Variance	FY11 YTD Budget	FY11 YTD Actual	FY11 YTD Variance	FY11 YTD Variance %	FY11 YTD % Change from Prior FYTD	FY11 Budgeted Totals	
Sales and Use Tax	93,214,672	89,842,731.45	(3,371,940.55)	181,049,374	183,484,933.39	2,435,559.39	1.3%	3.9%	904,850,262	
Service Provider Tax	4,798,406	4,767,006.02	(31,399.98)	9,919,203	8,068,776.84	(1,850,426.16)	-18.7%	-20.0%	57,814,486	
Individual Income Tax	144,301,182	147,084,980.15	2,783,798.15	290,185,077	308,468,602.48	18,283,525.48	6.3%	9.7%	1,326,790,000	
Corporate Income Tax	28,344,172	35,161,359.95	6,817,187.95	39,386,581	43,983,746.92	4,597,165.92	11.7%	10.9%	158,786,702	
Cigarette and Tobacco Tax	11,104,240	16,359,831.10	5,255,591.10	37,572,235	40,051,489.15	2,479,254.15	6.6%	2.6%	137,744,579	
Insurance Companies Tax	132,443	(103,743.82)	(236,186.82)	1,124,976	372,282.01	(752,693.99)	-66.9%	-61.6%	71,990,000	
Estate Tax	2,243,127	2,442,746.70	199,61 <b>9</b> .70	1,843,127	3,761,302.64	1,918,175.64	104.1%	365.1%	31,739,004	
Other Taxes and Fees *	10,765,560	10,532,180.04	(233,379.96)	30,342,006	29,764,899.46	(577,106.54)	-1.9%	0.7%	148,117,322	
Fines, Forfeits and Penalties	2,725,962	2,540,345.52	(185,616.48)	8,350,194	7,845,538.36	(504,655.64)	-6.0%	-19.1%	30,816,261	
Income from Investments	11,161	10,934.75	(226.25)	21,600	44,847.15	23,247.15	107.6%	-63.4%	275,045	
Transfer from Lottery Commission	4,002,631	3,954,728.56	(47,902.44)	13,008,563	12,602,394.14	(406,168.86)	-3.1%	-3.7%	52,034,250	
Transfers to Tax Relief Programs *	(18,784,897)	(23,328,431.13)	(4,543,534.13)	(33,007,035)	(31,511,018.76)	1,496,016.24	4.5%	5.1%	(112,087,945)	
Transfers for Municipal Revenue Sharing	(1,790,786)	(2,586,364.11)	(795,578.11)	(22,016,845)	(22,815,145.13)	(798,300.13)	-3.6%	11.2%	(89,213,027)	
Other Revenue *	3,534,667	1,697,621.02	(1,837,045.98)	2,748,838	2,668,418.29	(80,419.71)	-2.9%	-11.8%	54,258,021	
Totals	284,602,540	288,375,926.20	3,773,386.20	560,527,894	586,791,066.94	26,263,172.94	4.7%	7.7%	2,773,914,960	

\* Additional detail by subcategory for these categories is presented on the following page.

## General Fund Revenue Fiscal Year Ending June 30, 2011

## September 2010 Revenue Variance Report

								FY11 YTD % Change	
	September '10	September '10	September '10	FY11 YTD	FY11 YTD	FY11 YTD	FY11 YTD	from Prior	FY11 Budgeted
Revenue Category	Budget	Actual	Variance	Budget	Actual	Variance	Variance %	FYTD	Totals
Detail of Other Taxes and Fees:									
- Property Tax - Unorganized Territory	0	0.00	0.00	0	0.00	0.00	N/A	N/A	13,245,281
- Real Estate Transfer Tax	1,722,127	1,474,363:79	(247,763.21)	4,782,471	4,203,813.28	(578,657.72)	-12.1%	9.8%	14,922,365
- Liquor Taxes and Fees	1,784,776	2,055,449.02	270,673.02	5,761,140	6,168,516.10	407,376.10	7.1%	7.0%	20,413,193
- Corporation Fees and Licenses	211,325	210,040.50	(1,284.50)	823,925	887,701.50	63,776.50	7.7%	-3.0%	7,505,099
- Telecommunication Personal Prop. Tax	0	0.00	0.00	0	0.00	0.00	N/A	100.0%	16,775,988
- Finance Industry Fees	1,829,586	2,459,550.00	629,964.00	5,488,758	5,830,300.00	341,542.00	6.2%	8.2%	22,365,980
- Milk Handling Fee	375,510	494,194.98	118,684.98	1,314,284	1,604,288.06	290,004.06	22.1%	-62.3%	3,848,975
- Racino Revenue	755,920	991,274.56	235,354.56	2,653,135	2,826,226.06	173,091.06	6.5%	14.0%	10,855,590
- Boat, ATV and Snowmobile Fees	281,579	286,588.83	5,009.83	1,158,749	1,277,907.84	119,158.84	10.3%	3.6%	4,500,295
- Hunting and Fishing License Fees	1,218,021	1,081,829.73	(136,191.27)	4,723,196	4,532,743.81	(190,452.19)	-4.0%	4.8%	17,420,998
- Other Miscellaneous Taxes and Fees	2,586,716	1,478,888.63	(1,107,827.37)	3,636,348	2,433,402.81	(1,202,945.19)	-33.1%	65.6%	16,263,558
Subtotal - Other Taxes and Fees	10,765,560	10,532,180.04	(233,379.96)	30,342,006	29,764,899.46	(577,106.54)	-1.9%	0.7%	148,117,322
Detail of Other Revenue:									
- Liquor Sales and Operations	2,292	2,850.00	558.00	6,876	6,292.00	(584.00)	-8.5%	7.6%	7,391,759
- Targeted Case Management (DHHS)	1,508,142	1,176,090.91	(332,051.09)	4,524,426	3,520,099.50	(1,004,326.50)	-22.2%	-47.4%	18,097,695
- State Cost Allocation Program	1,511,169	990,329.69	(520,839.31)	4,146,269	3,541,450.16	(604,818.84)	-14.6%	-12.3%	16,581,224
- Unclaimed Property Transfer	0	0.00	0.00	0	0.00	0.00	N/A	N/A	2,333,420
- Toursim Transfer	0	0.00	0.00	(5,589,232)	(5,550,464.00)	38,768.00	0.7%	2.3%	(8,972,750)
- Transfer to Maine Milk Pool	(622,000)	(646,805.81)	(24,805.81)	(2,567,805)	(2,673,145.71)	(105,340.71)	-4.1%	61.7%	(4,011,691)
- Transfer to STAR Transportation Fund	(871,081)	0.00	871,081.00	(2,946,769)	(2,065,958.00)	880,811.00	29.9%	1.9%	(2,946,769)
- Other Miscellaneous Revenue	2,006,145	175,156.23	(1,830,988.77)	5,175,073	5,890,144.34	715,071.34	13.8%	-16.6%	25,785,133
Subtotal - Other Revenue	3,534,667	1,697,621.02	(1,837,045.98)	2,748,838	2,668,418.29	(80,419.71)	-2.9%	-11.8%	54,258,021
Detail of Transfers to Tax Relief Programs:									
- Me. Resident Prop. Tax Program (Circuitbreaker)	(9,673,891)	(11,916,571.43)	(2,242,680.43)	(20,538,060)	(20,126,068.06)	411,991.94	2.0%	-5.3%	(43,500,000)
- BETR - Business Equipment Tax Reimb.	(9,111,006)	(10,971,817.70)	(1,860,811.70)	(12,468,975)	(10,944,908.70)	1,524,066.30	12.2%	22.2%	(51,043,140)
- BETE - Municipal Bus. Equip. Tax Reimb.	0	(440,042.00)	(440,042.00)	0	(440,042.00)	(440,042.00)	N/A	N/A	(17,544,805)
Subtotal - Tax Relief Transfers	(18,784,897)	(23,328,431.13)	(4,543,534.13)	(33,007,035)	(31,511,018.76)	1,496,016.24	4.5%	5.1%	(112,087,945)
Inland Fisheries and Wildlife Revenue - Total	1,600,125	1,463,468.58	(136,656.42)	6,172,006	6,089,302.42	(82,703.58)	-1.3%	5.0%	23,061,115

## Highway Fund Revenue Fiscal Year Ending June 30, 2011

## September 2010 Revenue Variance Report

	September '10	September '10	September '10	FY11 YTD	FY11 YTD	FY11 YTD	FY11 YTD Variance	FY11 YTD % Change from Prior	FY11 Budgeted
Revenue Category	Budget	Actual	Variance	Budget	Actual	Variance	%	FYTD	Totals
Highway Fund									
Fuel Taxes									
- Gasoline Tax	18,666,162	19,401,514.30	(735,352.30)	35,173,999	39,479,544.92	4,305,545.92	10.9%	1.6%	189,570,000
- Special Fuel and Road Use Taxes	5,391,982	3,930,709.75	1,461,272.25	6,048,298	7,327,117.42	1,278,819.42	17.5%	-2.8%	47,190,000
- Transcap Transfers - Fuel Taxes	(1,771,188)	(1,713,037.25)	(58,150.75)	(4,531,204)	(4,928,455.11)	(397,251.11)	-8.1%	-3.0%	(17,393,957)
- Other Fund Gasoline Tax Distributions	(466,784)	(485,005.57)	18,221.57	(1,379,708)	(1,487,205.77)	(107,497.77)	-7.2%	-3.9%	(4,840,577)
Subtotal - Fuel Taxes	21,820,172	21,134,181.23	(685,990.77)	35,311,385	40,391,001.46	5,079,616.46	12.6%	0.5%	214,525,466
Motor Vehicle Registration and Fees									
- Motor Vehicle Registration Fees	5,538,795	5,274,623.32	264,171.68	17,822,175	17,365,741.17	(456,433.83)	-2.6%	3.1%	68,063,880
- License Plate Fees	293,568	365,373.00	(71,805.00)	924,116	1,076,443.00	152,327.00	14.2%	4.9%	3,280,493
- Long-term Trailer Registration Fees	137,174	294,065.00	(156,891.00)	361,733	1,010,924.00	649,191.00	64.2%	124.6%	6,183,601
- Title Fees	937,477	932,188.00	5,289.00	2,647,891	2,834,502.00	186,611.00	6.6%	0.1%	9,665,070
- Motor Vehicle Operator License Fees	474,333	527,804.50	(53,471.50)	1,501,288	1,553,141.50	51,853.50	3.3%	0.5%	5,589,208
- Transcap Transfers - Motor Vehicle Fees	(4,037,826)	(4,052,527.00)	14,701.00	(4,037,826)	(4,052,527.00)	(14,701.00)	-0.4%	-0.1%	(14,388,499)
Subtotal - Motor Vehicle Reg. & Fees	3,343,521	3,341,526.82	1,994.18	19,219,377	19,788,224.67	568,847.67	2.9%	6.1%	78,393,753
Motor Vehicle Inspection Fees	211,700	139,966.00	71,734.00	738,800	766,966.50	28,166.50	3.7%	18.7%	2,952,500
Other Highway Fund Taxes and Fees	133,452	106,817.42	26,634.58	362,147	375,587.43	13,440.43	3.6%	7.5%	1,270,460
Fines, Forfeits and Penalties	166,913	105,088.05	61,824.95	520,696	320,873.30	(199,822.70)	-62.3%	-30.4%	1,745,049
Interest Earnings	2,950	15,789.30	(12,839.30)	5,900	30,610.25	24,710.25	80.7%	-20.7%	32,446
Other Highway Fund Revenue	427,281	542,123.89	(114,842.89)	1,591,828	1,466,990.77	(124,837.23)	-8.5%	-9.3%	8,146,695
Totals	26,105,989	25,385,492.71	720,496.29	57,750,133	63,140,254.38	5,390,121.38	8.5%	1.9%	307,066,369

## **Interim 2010 Legislative Studies and Interim Committee Meetings**

Updated November 10, 2010

and the second secon		Meetings Held This	Next Meeting			
Study Name	Meetings Authorized	Year	Date	Report Date	Chairs	Status
Task force on kinship families (Resolve 136)	4 meetings	4	Meetings	11/3/2010	Sen. Craven; Rep.	Report issued and available on-line
			concluded		Jones	
Joint Select Committee on Health Care Reform	6 meetings	5	Not yet scheduled	12/1/2010	Sen. Brannigan; Rep.	
(HP 1262)					Treat	
ACF committee to discuss report on milk handling	2 meetings	1	Not planning to	12/1/2010	Sen. Nutting; Rep.	No plans to use their second authorized meeting.
fees (Resolve 183)			meet again		Pieh	
AFA Committee	Monthly	. 6	11/18/2010	No report required	Sen. Diamond; Rep.	n
					Cain	
EDU committee meetings on MaineCare Rules	2 meetings	2	Meetings	Not specified	Sen. Alfond; Rep.	
relating to CDS (PL 571, Part ZZZ)			concluded		Sutherland	
LVA committee review of slot machine revenues	4 meetings	3	11/16/2010	11/23/2010	Sen. Sullivan; Rep.	Extension of reporting deadline to 11/23 approved
(PL 571, Part FFF)					Trinward	
NAT committee study of solid waste and hot mix	5 meetings	4	Meetings	11/3/2010	Sen. Goodall; Rep.	Report being reviewed by Committee
asphalt plant emissions	-		concluded		Duchesne	
OPLA/OFPR staff study of DOE program funding	N/A	N/A	N/A	11/3/2010	OPLA/OFPR staff	Report completed and in Council Packet. Will be posted after Council
						meeting.
SLG committee study of APA rulemaking process	Up to 3 meetings	3	Meetings	11/3/2010	Sen. Simpson; Rep.	Final report issued and on-line
(Resolve 207)			concluded		Beaudette	
SLG meeting with AFA regarding SPO	1 meeting	0	Not scheduled	No report required	Sen. Simpson; Rep.	
reorganization (PL 571, Part JJJJ)					Beaudette	

## **On-going Legislative Studies**

Study Name	Meetings Authorized	<u>Meetings Held This</u> <u>Year</u>	Next Meeting Date	Report Date		Status
Citizen Trade Policy Commission (PL 2003, c. 699)	At least 2 per year	7	11/19/2010	12/2/2010	Sen. Jackson; Rep. Rotundo	Report issued and available on-line
Legislative Youth Advisory Council (3 MRSA, section 168-A)	2 per year	0	Not planning to meet until early 2011		Sen. Sullivan; Rep. Hayes	
Right to Know Advisory Committee (PL 2005, c. 631)	At least 4 times annually	2	11/18/2010	1/15 annually to JUD, Governor and Chief Justice		Subcommittees continuing to meet regularly.

## Legislative Council Actions Taken by Ballot Since the August 25, 2010 Council Meeting

## Request for additional meeting and extension of reporting deadline

**MOTION:** That the Legislative Council approve the request by the Joint Select Committee on Health Care Reform Opportunities and Implementation to hold a sixth meeting and to extend the deadline for issuing its report from November 3, 2010 to December 1, 2010, and further to authorize additional funds in the amount of \$1,785.00 solely to support the costs of holding the additional meeting. [Memo attached]

Accepted: October 14, 2010 Vote: 9 – 1 in favor

## **Request for extension of reporting deadline**

**MOTION:** That the Legislative Council approve the request by the Joint Select Committee on Legal and Veterans' Affairs, Interim Study to Review the Allocation of Slot Machine Revenue for an extension of its reporting deadline from November 3<sup>rd</sup> to November 23<sup>rd</sup> and permission to hold its fourth and final meeting on November 16<sup>th</sup>.

Accepted: November 4, 2010 Vote: 6-0-0-4

### Proposed document service fee schedule

**MOTION:** That the Legislative Council approve the proposed fee schedule submitted for legislative document service for the First Regular Session of the 125<sup>th</sup> Legislature.

Not Accepted: November 4, 2010 Vote: 5-1-0-4

REP. HANNAH M. PINGREE CHAIR

SEN. ELIZABETH H. MITCHELL VICE-CHAIR

EXECUTIVE DIRECTOR DAVID E. BOULTER



SEN. PHILIP L. BARTLETT II SEN. KEVIN L. RAYE SEN. LISA T. MARRACHE SEN. JONATHAN T. E. COURTNEY REP. JOHN F. PIOTTI REP. JOSHUA A. TARDY REP. SETH A. BERRY REP. PHILIP A. CURTIS

## 124<sup>TH</sup> MAINE STATE LEGISLATURE LEGISLATIVE COUNCIL

Memo

To: From:	Legislative Council Members D.B. David E. Boulter, Executive Director
Dated:	November 4, 2010
Re:	Tentative FY 12/13 Budget

Please find attached, for your information, a tentative consolidated budget for the legislative accounts for FY 2012-2013. Legislative Finance Director Rose Breton developed this tentative budget submission in consultation with the Secretary of the Senate, Clerk of the House, Legislative Council directors and the director of OPEGA. As you may recall, Maine law requires that the Governor prepare a budget for State Government for the upcoming biennium and this submission fulfills the Legislature's obligation to submit its tentative budget request.

I want to emphasize that this tentative legislative budget reflects an estimate of what it will cost to operate the Legislative Branch over the next biennium. In accordance with law (copy attached), this office forwarded the Legislature's budget to the Bureau of the Budget in a consolidated budget format in October. No action by the Legislative Council is required at this time.

As you review this tentative budget, you will see that this budget reflects a small increase over the current biennium. The vast majority of the increase is in Personal Services and is primarily due to the projected increases in health and dental insurances and Retirement System costs, all of which are externally driven, as well as the statutory COLAs for legislator salaries and the addition of a third Indian Representative in the House. Please note that the All Other budget for the legislative account itself reflects a 2% decrease resulting primarily from savings that have been achieved through more efficient operations including the negotiated publishing rates for advertising and lower printing costs. However, the All Other line overall has increased by approximately 1.5% which is due solely to the Constitutional requirement that House and Senate districts must be apportioned every ten years and funding is required in FY 13 for that purpose. The Maine Constitution requires that the Legislature establish a budget for the apportioning commission to conduct its work.

The incoming Legislative Council is authorized to review the tentative consolidated budget submission, revising, increasing or decreasing the items as it deems appropriate, and forward its changes and decisions to the Joint Standing Committee on Appropriations and Financial Affairs at the appropriate time. In the past, the incoming Legislative Council has formed a subcommittee of the council to conduct a detailed review of the tentative budget submission and make recommendations to the full Legislative Council for decision. During the last biennium, the (then) incoming Legislative Council formed a budget subcommittee that reviewed the budget in late February of 2009 and recommended approval of the

Memo to Legislative Council Tentative FY 12/13 Budget Page 2

legislative budget to the Legislative Council. The Budget Subcommittee also met a number of times to consider various options for budget savings in legislative accounts and recommended a number of budget adjustments, which were later approved by the Legislative Council.

Rose and I will be happy to elaborate on any aspect of the tentative budget at the Legislative Council meeting. Thank you.

## Attachments

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## Title 3: LEGISLATURE Chapter 7: LEGISLATIVE COUNCIL Subchapter 1: GENERAL PROVISIONS

### §162. Authority

The Legislative Council shall have the authority:

1. Legislative budgets. To prepare and approve all legislative budgets;

1-A. Budget requests. To authorize the Executive Director of the Legislative Council to prepare and submit a tentative consolidated legislative budget request and other budget requests necessary for the operation of the legislative branch and other additional information, as requested, directly to the State Budget Officer on or before September 1st of the evennumbered years prior to review by the Legislative Council. The Legislative Council shall review the tentative budget submission developed by the executive director, altering, revising, increasing or decreasing the items as may be determined necessary. Upon final approval of the full legislative budget request, the Legislative Council shall submit a report to the joint standing committee of the Legislature having jurisdiction over appropriations and financial affairs outlining any differences from the tentative legislative budget submission;

1-B. Office of Program Evaluation and Government Accountability budget. To present the budget request of the Office of Program Evaluation and Government Accountability to the State Budget Officer as provided in Title 5, section 1665. If the budget presented pursuant to subsection 1-A differs from the budget request submitted by the Office of Program Evaluation and Government Accountability pursuant to this subsection, the Legislative Council shall simultaneously submit a report to that office and to the State Budget Officer explaining why the Legislative Council's budget request differs from the budget request of the Office of Program Evaluation and Government Accountability.

2. Legislative employee salary and benefit schedules. To establish salary schedules for all employees of legislative agencies, departments and offices, except as otherwise provided by law, to develop relatively uniform salary schedules for House and Senate employees and officers and, notwithstanding any other provision of law, to establish benefit schedules for legislative employees. Every publication that states the salary of an employee or a position must also include a statement of the dollar value of the fringe benefit package provided;

**3.** Joint committees. When the Legislature is not in session, to assign bills, resolves and studies for consideration by the joint standing committees and joint select committees of the Legislature, to request reports, studies and legislation from said joint standing committees and to convene meetings of said joint standing committees and joint select committees and to exercise supervision over them;

## PROPOSED TENTATIVE LEGISLATIVE BUDGET 2012-2013 BIENNIUM OVERVIEW

The tentative 2012-2013 budget for all legislative programs has been prepared by the Executive Director's Office in consultation with the other offices of the Legislature. It is based on currently authorized positions and beginning salary calculations reflect the current grade and step for all incumbents as step increases were frozen for the 2010-2011 biennium for all legislative employees, including those of the Law and Legislative Reference Library and the Office of Program Evaluation and Government Accountability. For 2012-2013, step increases have been calculated for all eligible employees and the proposed Personal Services budget does not incorporate the continuation of unpaid days off for employees that were implemented for the 2010-2011 biennium. It also includes estimated increases in benefit costs, health and dental insurances and retirement, as projected by the State Budget Office for fiscal years 2012 and 2013 and it retains the 2010-2011 attrition rate of 1.6% for the Legislature. The overall increase in Personal Services is 3.9%

While All Other budgets are to be flat funded based on FY 11 funding in accordance with the Biennial Budget Instructions issued by the Bureau of the Budget (baseline budgeting approach applied to all departments and agencies of state government), this proposed tentative budget does take into consideration the difference in expenses between the First and Second Regular Sessions of the Legislature and reflects the costs of continuing existing levels of service. Applying the baseline budgeting model and the baseline All Other budget established by the Bureau of the Budget of \$4,899,453 for the Legislative account, the proposed All Other request for this account is lower by \$566,970 in FY 12 and \$179,135 in FY 13. While increases have been projected for All Other in certain expense categories based on projected operational needs and expenditure patterns, there is an overall decrease of approximately 2.3% in the All Other line category in the Legislative account when comparing the 2010-2011 biennium to 2012-2013. However, due to projected increases in dues to be paid to NCSL and CSG during the 2012-2013 biennium and the requirement to establish a budget for the Apportionment Commission, the net result is an approximate 1.5% increase in All Other over the biennium for all accounts. Excluding the budget for the Apportionment Commission, the All Other line would reflect a decrease of 1.5% when comparing 2010-2011 to the 2012-2013 biennium.

As stated above, this proposed budget does include an appropriation to the Legislature in the amount of \$400,000 in fiscal year 2012-13 for the Apportionment Commission to conduct its work. In accordance with Article IV, Part Third, section 1-A of the Constitution of Maine, the Legislature is required to establish an Apportionment Commission to develop a plan "to apportion the districts of the House of Representatives or the Senate, or both". The Legislature is required to establish a budget for the apportioning commission for it to satisfactorily perform its duties and responsibilities. Section 1-A further states that "the budget shall include sufficient funds to compensate the chairperson of the commission and the chairperson's staff. The remainder of the appropriation shall be made available equally among the political parties represented on the commission to provide travel expenses, incidental expenses and compensation for commission members and for partisan staff and operations."

In summary, this proposed tentative budget for 2012-2013 fairly represents anticipated needs and operational expenses to support the work of the Legislature during the next biennium.

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9/10/2010										
		FY 2012-2013 SUMM	ARY OF BIENNIA	L BUDGET-GENERAL	FUND					
	FISCAL YEAR 2008	FISCAL YEAR 2009	2008-2009	FISCAL YEAR 2010	FISCAL YEAR 2011	2010-2011	FISCAL YEAR 2012	FISCAL YEAR 2013	2012-2013	
ACCOUNT	Final Appropriation	Final Appropriation	Biennial Budget	Final Appropriation	Adj. Budget	Biennial Budget	Proposed Request	Proposed Request	Biennial Request	
(col. 1)	(col. 2)	(col. 3)	(col. 4)	(col. 5)	(col. 6)	(col. 7)	(col. 8)	(col. 9)	(col. 10)	
Legislative Account										
Personal Services	18,849,857	20,438,751	39,288,608	20,255,401	21,145,154	41,400,555	20,505,292	22,504,432	43,009,724	3.887%
All Other	4,499,047	4,825,342	9,324,389	4,363,818	4,899,453	9,263,271	4,332,483	4,720,318	9,052,801	-2.272%
Capital	30,000	30,000	60,000		0	0			0	
Total Legislative Account	23,378,904	25,294,093	48,672,997	24,619,219	26,044,607	50,663,826	24,837,775	27,224,750	52,062,525	
Annual % Change		8.192%		-2.668%	5.790%		-4.634%	9.610%		
Biennium % Change			·			4.090%			2.761%	
Comm on Interstate Cooperation										
All Other	206,120	218,998	425,118	211,315	219,557	430,872	223,285	227,146	450,431	4.539%
Annual % Change	200,120	6.248%	742,110	-3.508%	3.900%	450,072	1.698%	1.729%	430,431	4.339%
Biennium % Change		0.24070		-5.500 70	5.700 70	1.354%		1./23/0	4.539%	
Comm on Uniform State Laws										
All Other	12,000	12,000	24,000	0	0	0	0	0	0	
Annual % Change		0.000%		-100.000%						
Biennium % Change						-100.000%				
Apportionment Commission										
Personal Services				0	0	0	0	24,000	24,000	100.000%
All Other				0	0	0	· · · · · · · · · · · · · · · · · · ·	376,000	376,000	100.000%
Total Apportionment Account		1		0	0	0	1	400,000	400,000	100.000 //
Annual % Change				0	0	v	ŀ	100.000%	400,000	
Biennium % Change								100.000 /0	100.000%	
State House & Capitol Park Comm									Į	
All Other	67,834	67,834	135,668	67,834	67,834	135,668	67,834	67,834	135,668	0.000%
Annual % Change		0.000%		0.000%	0.000%		0.000%	0.000%		······
Biennium % Change						0.000%			0.000%	
Misc Studies-Legislative										
Personal Services	16,530	7,450	23,980	3,725	3,725	7,450	3,725	3,725	7,450	0.000%
All Other	24,300	12,550	36,850		6,275	12,550	6,275	6,275	12,550	0.000%
Total Misc Studies	40,830	20,000	60,830	10,000	10,000	20,000	10,000	10,000	20,000	
Annual % Change		-51.016%		-50.000%	0.000%		0.000%	0.000%		
Biennium % Change						-67.121%			0.000%	
LEG. ACCTS SUMMARY:										
PERSONAL SERVICES	18,866,387	20,446,201	39,312,588	20,259,126	21,148,879	41,408,005	20,509,017	22,532,157	43,041,174	3.944%
ALL OTHER	4,809,301	5,136,724	9,946,025	4,649,242	5,193,119	9,842,361		5,397,573	10,027,450	1.881%
CAPITAL	30,000	30,000	60,000			0	the second secon		0	
TOTAL SUMMARY	23,705,688	25,612,925	49,318,613	24,908,368	26,341,998	51,250,366	25,138,894	27,929,730	53,068,624	······································
Annual % Change		8.045%		-2.751%	5.756%		-4.567%	11.102%		
Biennium % Change						3.917%			3.548%	
	1			1		r				

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9/10/2010							· · · · · · · · · · · · · · · · · · ·			
······································		FY 2012-2013 SUMM	IARY OF BIENNIAL	L BUDGET-GENERAL	FUND					
	FISCAL YEAR 2008	FISCAL YEAR 2009	2008-2009	FISCAL YEAR 2010	FISCAL YEAR 2011	2010-2011	FISCAL YEAR 2012	FISCAL YEAR 2013	2012-2013	
ACCOUNT	Final Appropriation	Final Appropriation	Biennial Budget	Final Appropriation	Adj. Budget	Biennial Budget	Proposed Request	Proposed Request	<b>Biennial Request</b>	
(col. 1)	(col. 2)	(col. 3)	(col. 4)	(col. 5)	(col. 6)	(col. 7)	(col. 8)	(col. 9)	(col. 10)	
Reserve Fund for State House										
Preservation and Maintenance						1			L	
All Other	800,000	800,000	1,600,000	800,000	800,000	1,600,000	800,000	800,000	1,600,000	0.000%
Annual % Change	· · · · · · · · · · · · · · · · · · ·	0.000%		0.000%	0.000%		0.000%	0.000%		
Biennium % Change						0.000%			0.000%	·
OPEGA										
Personal Services	697,777	727,714	1,425,491	769,991	769,637	1,539,628	754,605	795,423	1,550,028	0.675%
All Other	254,499	253,949	508,448	122,602	126,188	248,790	122,602	126,188	248,790	0.000%
Capital	0	0	0	0	0	0	0	0	0	
Total OPEGA	952,276	981,663	1,933,939	892,593	895,825	1,788,418	877,207	921,611	1,798,818	
Annual % Change		3.086%		-9.073%	0.362%		-2.078%	5.062%		
Biennium % Change						-7.525%			0.582%	·····
Law & Legislative Reference Library		:								
Personal Services	1,195,522	1,221,991	2,417,513	1,207,626	1,204,380	2,412,006	1,236,298	1,285,266	2,521,564	4.542%
All Other	356,928	356,757	713,685	356,757	356,757	713,514	356,757	356,757	713,514	0.000%
Capital	0	and the state of t	0				0		0	
Total Library	1,552,450	1,578,748	3,131,198	1,564,383	1,561,137	3,125,520	1,593,055	1,642,023	3,235,078	
Abnual % Change		1.694%		-0.910%			2.045%			
Biennium % Change		1.09470		-0.91070	-0.207 70	-0.181%	2.042.70		3.505%	
SUMMARY: ALL PROGRAMS										
PERSONAL SERVICES	20,759,686	22,395,906	43,155,592	22,236,743	23,122,896	45,359,639	22,499,920	24,612,846	47,112,766	3.865%
ALL OTHER	6,220,728	6,547,430	12,768,158	5,928,601	6,476,064	12,404,665	5,909,236	6,680,518	12,589,754	1.492%
CAPITAL	30,000	30,000	60,000	0		han and a second second second			0	
TOTAL SUMMARY	27,010,414	28,973,336	55,983,750	28,165,344	29,598,960	57,764,304	28,409,156	31,293,364	59,702,520	
Annual % Change		7.267%		-2.789%			-4.020%		<u> </u>	
Biennium % Change		1.207.70		-2,70770	5.07070	3.180%		10.1.0270	3.355%	
Dicumum 70 Change						5.10070			0.000 /0	

PROPO	SED LEGISLAT	<b>FIVE BUDGET</b>								
	2012-2013 BIEN									
BIENNIAL INCREASE ANALYSIS										
Proposed Budget by Umbrella	2010-2011	2012-2013	\$ Difference	% Increase						
LEGISLATIVE ACCOUNTS-30A										
Personal Services	41,408,005	43,041,174	1,633,169	3.94%						
All Other	9,842,361	10,027,450	185,089	1.88%						
Capital	0	0	0	0.00%						
Total 30A	51,250,366	53,068,624	1,818,258	3.55%						
RESERVE FUND FOR STATE HOUSE PRESERVATION AND MAINTENANCE - 32A										
All Other	1,600,000	1,600,000	0	0.00%						
OPEGA - 33A		<u> </u>								
Personal Services	1,539,628	1,550,028	10,400	0.68%						
All Other	248,790	248,790	0	0.00%						
Capital	0	0	0	0.00%						
Total - 33A	1,788,418	1,798,818	10,400	0.58%						
LAW AND LEGISLATIVE REFERENCE LIBRAR	Y - 31A									
Personal Services	2,412,006	2,521,564	109,558	4.54%						
All Other	713,514	713,514	0	0.00%						
Capital	0	0	0	0.00%						
Total - 31A	3,125,520	3,235,078	109,558	3.51%						
Personal Services	45,359,639	47,112,766	1,753,127	3.86%						
All Other	12,404,665	12,589,754	185,089	1.49%						
Capital	0	0	0	0.00%						
YI3/2010	57,764,304	59,702,520	1,938,216	3.36%						

9/13/2010



STATE OF MAINE

## DEPARTMENT OF AUDIT

66 STATE HOUSE STATION AUGUSTA, MAINE 04333-0066

> Tel: (207) 624-6250 FAX: (207) 624-6273

October 27, 2010

RICHARD H. FOOTE, CPA DEPUTY STATE AUDITOR

MARY GINGROW-SHAW, CPA SINGLE AUDIT COORDINATOR

MICHAEL J. POULIN, CIA DIRECTOR OF AUDIT AND ADMINISTRATION

NERIA R. DOUGLASS, JD, CIA STATE AUDITOR

> TO: Legislative Council members for the 124<sup>th</sup> Legislature The Honorable John Elias Baldacci, Governor, State of Maine

We are engaged, in accordance with 5 M.R.S.A. § 243 (9) *Single Audit* and federal regulations, to audit the financial statements of the governmental activities, the business-type activities, the aggregate discretely presented component units, each major fund, and the aggregate remaining fund information of State of Maine for the year ended June 30, 2010. Professional standards require that we provide you with the following information related to our audit. We would be pleased to meet with you to discuss this information further.

# Our Responsibilities under U.S. Generally Accepted Auditing Standards and OMB Circular A-133

As stated in our engagement letter dated October 26, 2010, our responsibility, as described by professional standards, is to express opinions about whether the financial statements prepared by management with your oversight are fairly presented, in all material respects, in conformity with U.S. generally accepted accounting principles. Our audit of the financial statements does not relieve you or management of your responsibilities.

In planning and performing our audit, we will consider the State of Maine's internal control over financial reporting in order to determine our auditing procedures for the purpose of expressing our opinions on the financial statements and not to provide assurance on the internal control over financial reporting. We will also consider internal control over compliance with requirements that could have a direct and material effect on a major federal program in order to determine our auditing procedures for the purpose of expressing our opinion on compliance and to test and report on internal control over compliance with OMB Circular A-133.

As part of obtaining reasonable assurance about whether the State of Maine's financial statements are free of material misstatement, we will perform tests of its compliance with certain provisions of laws, regulations, contracts, and grants, noncompliance with which could have a direct and material effect on the determination of financial statement amounts. However, providing an opinion on compliance with those provisions is not an objective of our audit. Also in accordance with OMB Circular A-133, we will examine, on a test basis, evidence about the State of Maine's compliance with the types of compliance requirements described in the "U.S. Office of Management and Budget (OMB) Circular A-

133 Compliance Supplement" applicable to each of its major federal programs for the purpose of expressing an opinion on the State of Maine's compliance with those requirements. While our audit will provide a reasonable basis for our opinion, it will not provide a legal determination on the State of Maine's compliance with those requirements.

## **Other Information in Documents Containing Audited Financial Statements**

Accounting standards generally accepted in the United States provide for certain required supplementary information (RSI), such as management's discussion and analysis (MD&A), to accompany the State of Maine's basic financial statements. As part of our engagement, we will apply certain limited procedures to the State of Maine's RSI. These limited procedures will consist principally of inquiries of management regarding the methods of measurement and presentation, which management is responsible for affirming to us in its representation letter. Unless we encounter problems with the presentation of the RSI or with procedures relating to it, we will disclaim an opinion on the required supplementary information.

The following RSI is required by generally accepted accounting principles and will be subjected to certain limited procedures, but will not be audited:

- management's discussion and analysis
- budgetary reporting
- retirement plan
- other postemployment benefit plans
- information about infrastructure assets reported using the modified approach

Supplementary information (SI) also accompanies the State of Maine's basic financial statements. We will subject the combining statements and the individual fund statements – non-major funds which are required to be presented for a Comprehensive Annual Financial Report (CAFR), to the auditing procedures applied in the audit of the basic financial statements and will provide our opinion on these statements in relation to the basic financial statements.

The introductory and statistical sections accompanying the basic financial statements in the CAFR will not be subjected to the auditing procedures applied in our audit of the financial statements, and accordingly, we will express no opinion on these sections of the CAFR.

The Schedule of Expenditures of Federal Awards (SEFA) is supplementary information that accompanies the State of Maine's Single Audit Report. We will subject this information to the auditing procedures applied in our audit of the basic financial statements and will provide an opinion on the SEFA in relation to the basic financial statements

## Planned Scope and Timing of the Audit

An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements; therefore, our audit will involve judgment about the number of transactions to be examined and the areas to be tested.

Our audit will include obtaining an understanding of the entity and its environment, including internal control, sufficient to assess the risks of material misstatement of the financial statements and to design the nature, timing, and extent of further audit procedures. Material misstatements may result from (1) errors, (2) fraudulent financial reporting, (3) misappropriation of assets, or (4) violations of laws or governmental regulations that are attributable to the entity or to acts by management or employees acting on behalf of the entity. We will communicate our significant findings at the conclusion of the audit.

We started our audit in April 2010 and will issue our opinion on the State of Maine's basic financial statements on or before December 31, 2010 and the Single Audit Report on or before March 31, 2011.

This information is intended solely for the use of those charged with governance and management of the State of Maine and is not intended to be and should not be used by anyone other than these specified parties.

Very truly yours,

Nevia Rivergas

Neria R. Douglass, JD, CIA State Auditor

cc: Ellen Jane Schneiter, Commissioner, Department of Administrative and Financial Services



## STATE OF MAINE 124<sup>th</sup> LEGISLATURE FIRST REGULAR SESSION

Sixth Annual Report of the Citizen Trade Policy Commission

### October 2010

#### Voting Members

Sen. Troy Jackson, Co-Chair Rep. Margaret Rotundo, Co-Chair Sen. Stan Gerzofsky Sen. Roger Sherman Rep. Jeffery Gifford Rep. Sharon Treat

#### Staff

Curtis Bentley, Legislative Analyst Natalie Haynes, Legislative Analyst Office of Policy & Legal Analysis Maine Legislature (207) 287-1670 http://www.state.me.us/legis/opla Ms. Sarah Bigney Ms. Carla Dickstein Mr. Michael Herz Mr. Michael Hiltz Mr. John Palmer Mr. John Patrick Ms. Cynthia Phinney Ms. Linda Pistner Mr. Paul Volckhausen Mr. Joseph Woodbury

### **Advisory Members**

Mr. Wade Merritt Mr. Malcolm Burson Ms. Jane Aiudi Mr. Michael Roland Ms. Barbara Van Burgel

#### **EXECUTIVE SUMMARY**

Public Law 2003, chapter 699, established the Citizen Trade Policy Commission (commission) during the Second Special Session of the 121st Legislature. The 22-member commission includes six legislators, an Attorney General designee, five non-voting agency officials representing the Department of Labor, the Maine International Trade Center, the Department of Environmental Protection, the Department of Agriculture, Food and Rural Resources, and the Department of Human Services, and 10 public members representing business, labor, health, government and environmental interests. The commission provides an ongoing state-level mechanism to assess the impact of international trade policies and agreements on Maine's state and local laws, business environment and working conditions.

Among other things, Public Law 2003, chapter 699 as amended by Public Law 2007, chapter 266, requires the commission to hold regular meetings, to gather information from the public through public hearings, to conduct a biennial assessment on the impacts of international trade agreements on Maine and to submit a report on its activities annually. This report covers the commission's activities from July 1, 2009 through June 30, 2010 during which the commission held 10 regular meetings and two public hearings. The commission held a public hearing on October 15, 2009 at the State House in Augusta and on May 6, 2010, in Oxford Hills at the Oxford Hills Comprehensive High School. The October 15<sup>th</sup> public hearing provided a forum for public testimony on international trade concerns related to groundwater extraction in Maine and the Oxford Hills public hearing yielded testimony on the affects of international trade agreements on manufacturing jobs and comments about the pending Fair Trade Act sponsored by Congressman Michaud.

The '124<sup>th</sup> Legislature enacted Resolve 2009, chapter 132, which directed the Water Resource Planning Committee, of the Land and Water Resources Council, in coordination with the commission and the Attorney General (Ground Water Working Group) to conduct an examination of the potential legal impacts of international trade agreements on the State's ability to manage its ground water resources. The working group held five joint meetings as part of the commission's regular meeting schedule and issued its final report to the Joint Standing Committee on Natural Resources in February 2010.

During this reporting period, the commission took the following actions.

1. The commission participated in a groundwater study as directed by Resolve 2009, chapter 132, and voted to approve the Ground Water Working Group's final draft report "The Potential Impact of International Trade Agreements on Ground Water Withdrawal Regulations." The report is located on the commission's webpage at <a href="http://www.maine.gov/legis/opla/citpol.htm">http://www.maine.gov/legis/opla/citpol.htm</a>.

2. In conjunction with the Forum on Democracy and Trade, the commission completed its 2009 assessment that touches on the commission's accomplishments over the past two years and focuses on state sovereignty issues regarding international investment agreements, international service agreements, the Agreement on Technical Trade Barriers, international subsidies agreements and international procurement agreements.

3. In 2008, the commission sent a letter to the United States Trade Representative (USTR) in opposition to the pending Columbia Free Trade Agreement. Shortly after the commission sent its letter, parties to the negotiations postponed discussion on the proposed Columbia Free Trade Agreement. However, USTR signaled in 2009 its willingness to restart negotiations so the commission resent the letter to USTR to ensure the commission's views were consideration during the most recent discussions.

4. As required by Public Law 2003, chapter 699, the commission considered whether to continue its existence as currently structured, modify its structure or to disband entirely. The commission voted to continue in its current form after determining that it continues to be a cost-effective forum on trade matters and that its services is still needed.

5. The commission sent a letter to USTR and Maine's Congressional Delegation in opposition to USTR's proposed Special 301 report regarding pharmaceutical pricing restraints. Commission member, Rep. Sharon Treat, presented the commission's position on the Special 301 report before the USTR on March 3, 2010. The commission expressed its concern that the proposed office would give one person the power to invalidate state insurance laws perceived as "inconsistent with" international trade agreements.

6. The commission sent a letter to United States Congressman Christopher Dodd, Chairman of the Committee on Banking, Housing and Urban Affairs, Maine's Congressional Delegation and Maine's Attorney General opposing the establishment of the Office of National Insurance under the Restoring American Financial Stability Act. The commission expressed its concern that the proposed office may give one person the power to invalidate state insurance laws perceived as "inconsistent with" international trade agreements.

7. The commission sent a letter to the United States Committee on Finance regarding a "loophole" in federal law that allows foreign footwear manufactures to reclassify their footwear as "textiles" by inserting small amounts of fiber in the soles of their shoes. Duty rates for footwear are higher than those for textiles and are designed to level the playing field for our few remaining domestic footwear manufacturers.

8. The commission sent a letter to Maine's Congressional Delegation advising them to support H.R. 2293/S. 1644 the Public Health Trade Advisory Committee Act that amends the Trade Act of 1974 to add a Public Health Advisory Committee on Trade to the Second Tier of the Federal Trade Advisory Committee System. The proposed Public Health Advisory Committee on Trade would enable public health representatives to work with other advisory committees to the President on trade matters.

9. It voted to have Representative Pat Jones represent the commission at the National Association of State Legislatures in California since the Representative planned to attend the meeting but no commission members were able to attend.

10. The commission worked closely with Maine's Congressional Delegation, state officials and other entities involved with international trade to stay abreast of current trade activity and to relay the concerns of Maine's citizenry.

Over the next reporting period, the commission will begin to conduct its 2011 assessment, hold public hearings and continue its dialogue with federal, state and local entities and Maine's citizenry to improve the Federal Government's consultation process with states. The commission will also continue to monitor international trade negotiations and elevate trade related issues affecting Maine at the state and local levels to Maine's Congressional Delegation and other appropriate federal entities.

## STATE OF MAINE 124th LEGISLATURE SECOND REGULAR SESSION

## Final Report of the TASK FORCE ON KINSHIP FAMILIES

November 2010

Staff:

Jane Orbeton, Senior Analyst Karen Nadeau-Drillen, Legislative Analyst Office of Policy & Legal Analysis 13 State House Station 215 Cross Building Augusta, ME 04333-0013 (207) 287-1670 www.maine.gov/legis/opla Members: Sen. Margaret M. Craven, Chair Rep. Patricia Jones, Chair Sen. Richard W. Rosen Rep. David C. Webster Rep. Sara R. Stevens Rep. Donald J. Soctomah Rep. Joan M. Nass James Beougher Joanna Dotts Barbara Kates Diane Loranger Honorable Joseph Mazziotti David Stockford

### EXECUTIVE SUMMARY

The Task Force on Kinship Families was established by Resolve 2009, Chapter 136 and Public Law 2009, Chapter 571, Part EEEE (Appendix A). Pursuant to the resolve and the public law, 13 members were appointed to the task force, four of whom were appointed by the President of the Senate, seven of whom were appointed by the Speaker of the House of Representatives, one of whom serves by virtue of serving as Commissioner of Education and one of whom serves by virtue of serving as Commissioner of Health and Human Services. A list of task force members can be found in Appendix B. On June 29, 2010 the Executive Director of the Legislative Council provided notice that the Legislative Council had accepted contribution of outside funding sufficient for the work of the task force (Appendix C). Outside funding was provided by Families and Children Together, a state-wide nonprofit organization, and the University of Maine Center on Aging.

The duties of the task force are set forth in Resolve 2009, Chapter 136 and in Public Law 2009, Chapter 571, Part EEEE (Appendix A). The duties include the following:

- Conduct a study of issues pertaining to kinship families. Within the study the task force is directed to:
  - Examine the issues facing kinship families and how state policies and practices can be crafted to meet the special needs of kinship families;
  - Identify existing resources within the State for kinship families;
  - Determine the needs of kinship families and gaps in services;
  - Review legal and custody issues and concerns for kinship families; and
  - Create strategies for sustaining and maintaining resources for kinship families.

The task force is required to submit a report, with findings and recommendations including suggested legislation, to the Legislature by November 3, 2010.

The task force met four times and at the conclusion of its last meeting reached agreement on the following findings and recommendations to address the needs of kinship families.

1. Kinship families, particularly those in the informal system of kinship care, would be well served by free or reduced cost legal representation in the Probate Court and in the District Court.

Recommendation A. Explore expanded access to legal representation for kinship families in the informal system through the University of Maine School of Law, Volunteer Lawyers Project (VLP) and Cumberland Legal Aid Clinic (CLAC). (Appendix G)

Send a letter requesting that the Maine Commission on Indigent Legal Services convene a stakeholders group to discuss expanding access to legal representation for informal kinship families, possibly through service learning outreach for Law School Family Law students. The stakeholders group should include the Law School, VLP and CLAC, and representatives of children, families, the Probate Courts and the

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District Court and other interested parties. The stakeholders group will be asked to report back the results of their work to the Health and Human Services Committee and Judiciary Committee by February 1, 2011.

2. Kinship families would benefit from recognition by school districts of powers of attorney as sufficient for enrollment in school and participation in educational decisions. Kinship families would also benefit from lengthening the maximum time period of powers of attorney from the current 6 months to 12 months.

3. In uncontested cases, when enrollment is necessary for the child's health and safety, kinship families would be well served if the school administrative units recognize the beginning of the guardianship process as sufficient for school enrollment and participation in educational decisions relating to the child.

4. Kinship families would be well served by guardianship orders that include transitional arrangements. Depending on the circumstances transitional arrangements may be in the best interest of the child when a guardianship is ordered, modified or terminated.

Recommendation B. Change the length of a power of attorney, authorize transition arrangements in guardianships, and authorize school enrollment and participation in education decisions by certain persons holding a power of attorney and by certain applicants for guardianships. Note: The recommendations regarding school enrollment and participation in education decisions are by majority vote, with abstentions from the Department of Education and the Department of Health and Human Services. (Appendix H)

 Amend the Probate Code to lengthen the maximum time period of a power of attorney from its current length of 6 months to 12 months.

Amend the Probate Code to authorize the judge in an application to establish, modify or terminate a guardianship to issue an order providing for transition arrangements for the child that are in the best interest of the child and that will assist the child with the transition of custody.

 Amend the Probate Code and education statutes to specifically authorize school enrollment and participation in education decisions:

> 1. By a person who holds a power of attorney, unless the school district determines that enrollment is not being done for reasons of the child's health and safety. Provide an appeal process, with a decision by the Commissioner of Education and with enrollment and participation in education decisions pending decision on the appeal; and

2. By a person who has filed a guardianship application if:

The application appears likely to proceed on an uncontested

basis;

The child is living with the applicant;

The applicant has obtained a court date; and

family member and not a guest in the kinship home and that the issue is a human rights concern. The letter will ask for a report back to the Health and Human Services Committee and the Business Research and Economic Development Committee by March 1, 2011.

9. Kinship families would be well served by improved training, practice, procedures and reimbursement rules in the Department of Health and Human Services, including standardization of practices and procedures and improved family team meeting casework practice.

10. Kinship families would be well-served by expansion of the Parents as Partners program, which is a mentoring program for parents who have had a child removed from their home by the Department of Health and Humans Services. The program partners parents with other families who have had similar experiences to provide support, resources and education.

11. Kinship families would be well-served by the Department of Health and Human Services, Office of Child and Family Services adding to its website a link for information specifically relating to kinship families.

12. Kinship families would be well-served by the development by the Department of Health and Human Services of a "suitcase" program in Maine for children in transition out of their homes. Similar "suitcase" programs in other states provide children in foster care programs with luggage to transport their belongings when in transition, personal care items such as clothes and basic toiletries, and school supplies and backpacks.

Recommendation E. Send a letter to Department of Health and Human Services (DHHS) memorializing that DHHS has agreed to do the following (without the need for legislation): (Appendix K)

Improve DHHS training, practice, procedures and reimbursement rules – adopt best practices training to standardize policies and procedures, and improve family team meeting casework practice;

Expand Parents as Partners peer-to-peer program;

Add to the Office of Child and Family Services website a link for information on kinship families; and

Develop a "suitcase" program for children in transition out of their homes

## I. INTRODUCTION

The Task Force on Kinship Families was established by Resolve 2009, Chapter 136 and Public Law 2009, Chapter 571, Part EEEE (Appendix A). Pursuant to the resolve and the public law, 13 members were appointed to the task force, four of whom were appointed by the President of the Senate, seven of whom were appointed by the Speaker of the House of Representatives, one of whom serves by virtue of serving as Commissioner of Education and one of whom serves by virtue of serving as Commissioner of Health and Human Services. A list of task force members can be found in Appendix B. On June 29, 2010 the Executive Director of the Legislative Council provided notice that the Legislative Council had accepted contribution of outside funding sufficient for the work of the task force (Appendix C). Outside funding was provided by Families and Children Together, a state-wide nonprofit organization, and the University of Maine Center on Aging.

The duties of the task force are set forth in Resolve 2009, Chapter 136 and in Public Law 2009, Chapter 571, Part EEEE (Appendix A). The duties include the following:

- Conduct a study of issues pertaining to kinship families. Within the study, the task force is directed to:
  - Examine the issues facing kinship families and how state policies and practices can be crafted to meet the special needs of kinship families;
  - Identify existing resources within the State for kinship families;
  - Determine the needs of kinship families and gaps in services;
  - Review legal and custody issues and concerns for kinship families; and
  - •, Create strategies for sustaining and maintaining resources for kinship families.

The task force is required to submit a report, with findings and recommendations including suggested legislation, to the Legislature by November 3, 2010.

## **II. TASK FORCE PROCESS**

The Task Force on Kinship Families held meetings on August 3, September 7, September 28 and October 19. All meetings were open to the public and were broadcast by audio transmission over the Internet. Most of the meetings included opportunities for the public to address the task force. Agendas and summaries of task force meetings can be found in Appendix D of this report.

At the first meeting of the task force on August 3, 2010, the co-chairs invited task force members to make opening statements about their knowledge of kinship care and concerns regarding the needs of kinship families and children. Task force members mentioned the following issues as they related to kinship care:

• Achieving permanency for children and balancing parental, kin and children's rights and interests (keeping children as the focus) and the timeline for permanency; concern about the effect of further disruption in the life of the child;

- Legal processes, legal expenses, finding a parent unfit and determining the best interest of the child;
- Balancing the benefits, requirements and restrictions of involvement by the State;
- Providing support and services to kinship families, including sorting out legal requirements for education, special educational services, and health care services;
- The range of legal status of families caring for non-biological children: (1) formal with Department of Health and Human Services (DHHS) involvement, (2) informal with a legal guardianship or parental rights and responsibilities court order, (3) informal with power of attorney and (4) informal with no written authority;
- Whether informal care should be formalized to more easily know children's status and provide the support and services children and their families need;
- What are the special needs of children in kinship care;
- How to provide behavioral health services for children in kinship care; and
- Whether the State could provide guidance to schools regarding enrollment requirements, to families and health care providers regarding authority to consent to treatment and authority to treat, and to housing authorities regarding non-biological children being considered members of the family.

The second meeting of the task force was held on September 7, 2010. The meeting included the following:

- The meeting began with task force member David Stockford, from the Department of Education, who addressed the roles and responsibilities of the Department of Education relating to kinship care.
- Cliff McHatten, Consultant for Exceptional Children with the Department of Education, discussed the surrogate parent program.
- Nancy Connolly, from the Department of Education, presented information on residency requirements for school districts and the opportunities and challenges for Maine with regard to the federal Fostering Connections to Success and Increasing Adoptions Act of 2008. She explained the difficulties of establishing legal authority to enroll a child and to participate in decisions regarding special education.
- Susan Lieberman presented information on the Maine Children's Cabinet initiative program entitled Keeping Maine's Children Connected. This initiative establishes liaisons in school districts and children's residential care facilities. The liaisons in consultation with the youth and family assist children in transition who live in kinship families and in foster families through placements by the Department of Health and Human Services.
- Virginia Marriner, from DHHS, and Barbara Kates, from the Maine Kids-Kin program, presented information regarding legal processes and kinship care in the formal system, when the DHHS child welfare system is involved with the child and family, and in the informal system, when DHHS child welfare system is not involved. Through Maine Kids-Kin and the award of a Family Connections Grant kinship navigations services, kinship focused family team meetings and family finding processes have begun across Maine.

- Nina Williams-Mbengue of the National Conference of State Legislatures (NCSL) presented information to the task force about initiatives and approaches to kinship care in other states. The task force requested additional information from NCSL and invited a kinship care expert to attend the September 28<sup>th</sup> meeting.
- Jennifer Crittenden, research associate at the University of Maine Center on Aging, presented information on kinship family initiatives and research in the formal and informal systems. The Center on Aging has been working with Families and Children Together, Health Access Network, Adoptive and Foster Families of Maine and Casey Family Services on the Maine Rural Relatives as Parents outreach project. This project provides resources for kinship families, conducts periodic meetings and trainings, publishes materials to assist kinship families and conducts electronic e-conversations. The Maine Rural Relatives as Parents outreach project has addressed issues identified by older adults providing kinship care, such as mental health; resource and support issues; and increasing cultural awareness. During their work, the task force reviewed and considered the January 2005 white paper "Supporting Maine's Families: Recommendations from Maine's Relatives as Parents Project." (Appendix E)
- The task force also hosted a panel representing families who have provided kinship care to children. The panel of three grandparents made several specific recommendations, as follows:
  - Provide less time for rehabilitation of the unfit biological parent and reunification efforts;
  - Allow kinship parent to limit biological parent visitation with the children;
  - Limit the ability of biological parents to submit motions to amend court orders

     this puts children at further risk; and
  - Provide more financial assistance for grand families in both formal and informal systems.
- The task force completed the second meeting with a discussion of legal processes and case flow in the child welfare system with Janice Stuver, Assistant Attorney General, and Virginia Marriner, DHHS.

The third meeting of the task force was held on September 28, 2010. The meeting included the following:

- The meeting began with presentations of information that had been requested at prior meetings and a discussion of the on-site meeting in Pittsburgh, Pennsylvania hosted by the Annie E. Casey Foundation.
- Nancy Ives, Volunteers of America, Northern New England, and Mary O'Leary, from the Look Up and Hope program, presented information on a kinship care project that focuses on care for children whose parents are incarcerated. They provided information on the work of the program and research results to date. Nancy Markowitz, from Community and Agricultural Mediation, Volunteers of America, presented information on the use of mediation for kinship families.

- Following up on information provided by telephone on September 7<sup>th</sup> by Nina Williams-Mbengue, Kelly Crane of the NCSL provided information on initiatives and approaches to kinship care in other states. Josh Kroll, from the North American Council on Adoptable Children, provided information and answered questions by telephone.
- The task force began discussions of ideas for recommendations. Ms. Crane provided additional information and assisted the task force as an expert resource.

The fourth and final meeting of the task force was held on October 19, 2010.

- At this meeting task force members received information requested on September 28<sup>th</sup>. David Stockford, from the Department of Education, provided information on school enrollment issues for kinship families.
- Josh Kroll, from the North American Council on Adoptable Children, submitted information on adoption subsidies in different states.
- Kelly Crane, Policy Specialist with the Children and Families Program at NCSL, provided information on the use of powers of attorney forms for school enrollment, definitions of "best interest of the child" and "harm and neglect," the threshold for petitioning for a change in custody or guardianship and other states' use of child welfare policies and timelines in kinship care.
- Nancy Markowitz, from Community and Agricultural Mediation, Volunteers of America, provided additional information on mediation in Washington State.
- Peter Merrill, from Maine State Housing Authority, provided information on public housing and section-8 housing.
- Mary Ann Lynch, Director of Court Information, Maine Judicial Branch, discussed mediation through the court administered dispute resolution services.
- Following review of the new information, the task force reviewed and made final decisions on the proposals for recommendations identified at the September 28<sup>th</sup> meeting.

# III. BACKGROUND

The Task Force on Kinship Families was established in Resolve 2009, Chapter 136 and Public Law 2009, Chapter 571, Part EEEE to study and make recommendations on the needs of Maine's kinship families.

Although the authorizing legislation for the task force defines "kinship families" for the purposes of the study as "family members who care for a relative's child," the task force in their deliberations expanded the definition to include families that assume responsibility and care for children of all ages, including children who are related by birth, adoption or marriage and children who are not related but who have strong emotional ties to the adults who assume the kinship role or adults who are designated as kinship parents by the parents.

Some kinship families have legal authority through court orders of parental rights and responsibilities from the District Court or guardianships from the Probate Court, some have powers of attorney or written documents and instructions, and some have no paperwork and no legal authority but function as responsible families day in and day out for their children. Contributing further to the diversity of kinship family situations, some children cared for in

kinship families have been involved in their families of origin with DHHS child welfare services. In some of these families of origin, child protective orders have been entered in District Court and the child has been placed with kinship family or a foster family.

To distinguish among types of families, the task force referred to the families with District Court child welfare court orders as belonging to the formal system of kinship care. In other families of origin, DHHS has completed child welfare assessments and provided services but placement of the child in the kinship family has been accomplished without entry of child protective orders. In other families, the department has not been involved and is not providing services to the families. Kinship care has been arranged by default when the parent or parents separated from their children or by agreement between the parent or parents and the kinship family adults. To distinguish among types of families, the task force referred to these families, including those with Probate Court guardianships but without child welfare court orders, as belonging to the informal system of kinship care.

In the formal system of kinship care, DHHS reported 1,718 children in state foster care, of whom 463 live with relatives. But many kinship families have little or no formal contact with DHHS or with the District Court or Probate Court. The only published figures on kinship care are available from "GrandFacts, a State Fact Sheet for Grandparents and Other Relatives Raising Children," published by the American Association of Retired Persons (AARP) Foundation, the Brookdale Foundation Group, Casey Family Programs, Child Welfare League of America, Children's Defense Fund and Generations United (Appendix F). "GrandFacts Maine, January 2008" reports that 9,276 children in Maine live in grandparent-headed households and another 2,078 children live in households headed by other relatives. Of these families, 4,326 are living in households where neither parent is present, comprising the informal and formal systems of kinship care for children.

Several members of the task force have direct experience with kinship families and kinship care. Other members have worked in the field of children's services or have served children and families in health care, legal or social services fields. Task force members drew on their own experiences, spoke frequently with kinship families and reached out for public testimony, comment and written submissions. Several grandparents who are providing primary childrearing for their grandchildren spoke to the task force. From this wealth of information the following common themes emerged about children in kinship care and their kinship families.

### A. Information and resources issues

1. Kinship families would benefit from a single point of entry for social services and benefits programs.

2. Kinship families would benefit from increased access to low-barrier, peer provided, family centered services.

3. Kinship families would benefit from expanded information, resource and services, available statewide.

### **B.** Health care and services issues

1. Kinship families would benefit from broader qualification for the permanency guardianship subsidy, qualifying families of children who were and were not in the child welfare foster care system.

2. Kinship families would benefit from expanded access to flexible funding to meet the essential needs of children coming into their care and to "suitcase" projects to provide children with needed items at times of transition.

3. Kinship families would benefit from expanded access to low-cost child care.

4. Kinship families would benefit from eligibility for health coverage for all members of the family.

5. Kinship families would benefit from expanded access to benefits under the Temporary Assistance for Needy Families (TANF), qualifying adult caregivers who are not related by blood or marriage.

6. Kinship families would benefit from policies and procedures that recognize their function and authority as families.

Kinship families would benefit from best practices training, standardization of policies and procedures and improved family team meeting casework practice.
 Kinship families would benefit from expanded access to behavioral health services for children.

9. Kinship families would benefit from expanding the adoption subsidy to cover children who do not qualify as special needs children.

10. Kinship families would benefit from access to services on an equal basis with foster families in the child welfare system.

# C. Educational issues

1. Kinship families would benefit from school administrative unit policies and procedures that recognize kinship families' function and authority and allow enrollment in school and participation in special education decisions for kinship children based on families' residency or prior residency of the children, as is in the best interest of the child.

2. Kinship families would benefit from acceptance by school districts of power of attorney forms in order to enroll students.

### D. Legal issues

1. Kinship families would benefit from free or reduced price legal services to assist them with legal matters, including guardianships and family matters.

2. Kinship families would benefit from laws that recognize the value of stability and permanency for children and that minimize disruption in children's lives.

3. Kinship families would benefit from standards for the guardian's defense of a motion to terminate a guardianship that does not require the guardian to prove that the parent is unfit.

4. The Probate Court in a guardianship matter would benefit from a timetable for review and action.

5. The Probate Court in a guardianship matter would benefit from the ability to provide mediation services to the parties.

### **IV. FINDINGS AND RECOMMENDATIONS**

1. Kinship families, particularly those in the informal system of kinship care, would be well served by free or reduced cost legal representation in the Probate Court and in the District Court.

Recommendation A. Explore expanded access to legal representation for kinship families in the informal system through the University of Maine School of Law, Volunteer Lawyers Project (VLP) and Cumberland Legal Aid Clinic (CLAC). (Appendix G)

Send a letter requesting that the Maine Commission on Indigent Legal Services convene a stakeholders group to discuss expanding access to legal representation for informal kinship families, possibly through service learning outreach for Law School Family Law students. The stakeholders group should include the Law School, VLP and CLAC, and representatives of children, families, the Probate Courts and the District Court and other interested parties. The stakeholders group will be asked to report back the results of their work to the Health and Human Services Committee and Judiciary Committee by February 1, 2011.

2. Kinship families would benefit from recognition by school districts of powers of attorney as sufficient for enrollment in school and participation in educational decisions. Kinship families would also benefit from lengthening the maximum time period of powers of attorney from the current 6 months to 12 months.

3. In uncontested cases, when enrollment is necessary for the child's health and safety, kinship families would be well served if the school administrative units recognize the beginning of the guardianship process as sufficient for school enrollment and participation in educational decisions relating to the child.

4. Kinship families would be well served by guardianship orders that include transitional arrangements. Depending on the circumstances transitional arrangements may be in the best interest of the child when a guardianship is ordered, modified or terminated.

Recommendation B. Change the length of a power of attorney, authorize transition arrangements in guardianships, and authorize school enrollment and participation in education decisions by certain persons holding a power of attorney and by certain applicants for guardianships. Note: The recommendations regarding school enrollment and participation in education decisions are by majority vote, with abstentions from the Department of Education and the Department of Health and Human Services. (Appendix H)

Amend the Probate Code to lengthen the maximum time period of a power of attorney from its current length of 6 months to 12 months.

Amend the Probate Code to authorize the judge in an application to establish, modify or terminate a guardianship to issue an order providing for transition arrangements for the child that are in the best interest of the child and that will assist the child with the transition of custody. Amend the Probate Code and education statutes to specifically authorize school enrollment and participation in education decisions:

1. By a person who holds a power of attorney, unless the school district determines that enrollment is not being done for reasons of the child's health and safety. Provide an appeal process, with a decision by the Commissioner of Education and with enrollment and participation in education decisions pending decision on the appeal; and

2. By a person who has filed a guardianship application if:

 The application appears likely to proceed on an uncontested basis;

The child is living with the applicant;

The applicant has obtained a court date; and

The applicant has provided to the school district written certification from the Probate Court of the requirements of this recommendation.

5. Kinship families would be well served by guardianship orders that include terms of visitation for the child with the child's parents or other persons.

6. Kinship families would be well served by guardianship orders that include findings or reasons for granting or modifying the guardianship.

7. Kinship families would be well served by the increased use of mediation prior to contested guardianship proceedings.

Recommendation C. Request recommendations from the Probate and Trust Law Advisory Commission regarding ordering terms of visitation, including reasons or findings in guardianship orders and increasing the voluntary use of mediation. (Appendix I)

 Send a letter to the Probate and Trust Law Advisory Commission asking for a report to the Health and Human Services Committee and Judiciary Committee by February 1, 2011 with recommendations on the following issues:

1. Whether to include terms of visitation between the child and the child's parents or other persons in guardianship orders;

Whether to include reasons or findings for the imposition of the guardianship in guardianship orders; and

With regard to contested guardianships of children in kinship families, consideration of ways that the Probate Court could increase the voluntary use of mediation without cost to the courts.

8. Kinship families would be well served by housing policies that are supportive of kinship families, and by landlord and housing project recognition of kinship care children as members of tenants' families as opposed to, in some instances, considering the children to be guests in the housing unit.

Recommendation D. Enlist Maine Housing to protect kinship families in rental housing. (Appendix J)

Send a letter to the Maine State Housing Authority (MSHA) asking that MSHA convene a working group that includes Maine Housing staff, a representative of the federal Department of Housing and Urban Development (HUD), the nonprofit organization Families and Children Together (FACT), public housing authorities, section-8 landlords, and associations that represent private landlords and other interested parties. The letter will ask for review of housing policies that require the kinship family to obtain guardianship in order to avoid eviction, particularly if the timeframe for action is only two weeks. The working group will be asked to review kinship family issues and to address the challenges facing kinship families in rental housing. The letter will convey the sentiment of the task force that the child is a family member and not a guest in the kinship home and that the issue is a human rights concern. The letter will ask for a report back to the Health and Human Services Committee and the Business Research and Economic Development Committee by March 1, 2011.

9. Kinship families would be well served by improved training, practice, procedures and reimbursement rules in the Department of Health and Human Services, including standardization of practices and procedures and improved family team meeting casework practice.

10. Kinship families would be well-served by expansion of the Parents as Partners program, which is a mentoring program for parents who have had a child removed from their home by the Department of Health and Humans Services. The program partners parents with other families who have had similar experiences to provide support, resources and education.

11. Kinship families would be well-served by the Department of Health and Human Services, Office of Child and Family Services adding to its website a link for information specifically relating to kinship families.

12. Kinship families would be well-served by the development by the Department of Health and Human Services of a "suitcase" program in Maine for children in transition out of their homes. Similar "suitcase" programs in other states provide children in foster care programs with luggage to transport their belongings when in transition, personal care items such as clothes and basic toiletries, and school supplies and backpacks.

Recommendation E. Send a letter to Department of Health and Human Services (DHHS) memorializing that DHHS has agreed to do the following (without the need for legislation): (Appendix K)

- Improve DHHS training, practice, procedures and reimbursement rules adopt best
  practices training to standardize policies and procedures, and improve family team
  meeting casework practice;
- Expand Parents as Partners peer-to-peer program;

Add to the Office of Child and Family Services website a link for information on kinship families; and

Develop a "suitcase" program for children in transition out of their homes.

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**EXECUTIVE DIRECTOR'S** LORING COMMERCE CENTRE OFFICE

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October 28, 2010

Mr. David Boulter Executive Director State of Maine Legislative Council 115 State House Station Augusta, ME 04333

Dear Mr. Boulter:

Pursuant to "Section 13080-L Annual Report" of the Loring Development Authority of Maine's (LDA) enabling legislation, please find enclosed a complete report of the activities of the LDA for the fiscal year ended June 30, 2010. The report includes a summary of the LDA's development activities and audited financial statements for FY10. Subsequent events through October 15, 2010 and proposed activities for FY11 are also reported.

If you have any questions or need additional information, please don't hesitate to call.

Very truly yours,

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Carl W. Flora President & CEO

Enclosure

cc: Senator Elizabeth M. Schneider, Chair Representative Nancy E. Smith, Chair Business Research and Economic Development Committee

This institution is an equal opportunity provider. To file a complaint of discrimination, write to the Loring Development Authority of Maine.

Loring Development Authority of Maine 154 Development Drive, Suite F Limestone, Maine 04750 phone: (207) 328-7005 fax: (207) 328-6811 e-mail: LDA@loring.org TTY: 1-800-437-1220



ション・それは、アインションション・ションとは、ションチャンションをはことも、大学が自体なな思想

Final Report of the State and Local Government Committee Study of the Rule-making Process under the Maine Administrative Procedure Act

November 2010

# The Office of Policy and Legal Analysis

13 State House Station Room 215 Cross State Office Building Augusta, Maine 04333-0013 Telephone: (207) 287-1670 Fax: (207) 287-1275

#### **Executive Summary**

The Joint Standing Committee on State and Local Government Committee (herein referred to as "the Committee"), pursuant to Resolve 2009, chapter 207, met three times over the interim after the Second Regular Session of the 124<sup>th</sup> Legislature to study the rulemaking process under the Maine Administrative Procedure Act ("APA"). Although the genesis of the study resolve originated in major substantive special education rules dealt with by the Education and Cultural Affairs Committee, the charge to the State and Local Government Committee to examine the APA was fairly broad. The duties under the resolve included an examination of the circumstances surrounding the adoption of emergency rules, the Legislature's role in reviewing major substantive rules, and the relationship between the intent of the Legislature and the rule as actually drafted.

In conducting this study, the Committee held three meetings. During those meetings, the Committee reviewed a summary and legislative history on the special education rules dealt with by the Education and Cultural Affairs Committee; heard from the sponsor of the bill, Representative Connor, representatives of the Department of Education, and a member of the public who is a stakeholder in the special education programs; and received briefings from the Office of the Attorney General and the Office of the Secretary of State.

The Committee makes the following recommendations:

- 1. The Legislature enacts legislation to clarify the meaning of the deadline for agencies to submit major substantive rules for legislative review. Currently, the statutory language is ambiguous and allows for the possibility of an agency to adopt a major substantive rule without any review if the Legislature fails to act on rules submitted after the current deadline. We recommend that rules submitted after the statutory deadline may not be finally adopted by the agency in the event the Legislature fails to act on those rules prior to adjournment.
- 2. The agency's findings with respect to the existence of an emergency be included in the emergency rule at the time of adoption or at the time of the public hearing in a section clearly labeled "Findings". Currently, the law requires an emergency rule to include, with specificity, the agency's findings with respect to the existence of an emergency. Including the findings with the rule ensures the transparency of the process itself by informing the public of the reasons why the rule is being adopted on an emergency basis.
- 3. Each separate item in an emergency rule has an estimate of the fiscal impact. Understanding the fiscal impact of an emergency rule adopted to satisfy the requirements of a temporary curtailment order by the Governor is essential to the public and the Legislature in evaluating the programmatic impacts of the emergency rule.

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- 4. Orientation seminars for incoming legislative members every two years include a discussion on the issues a legislative committee should consider when deliberating on legislation that will grant rulemaking authority to an agency. The more detail the Legislature includes in a statute with respect to specifying policy criteria or standards, the less discretion an agency will have on those issues when drafting its rule.
- 5. Orientation seminars for incoming legislative members every two years include discussions on all aspects of the Administrative Procedure Act, especially the role of the Legislature and its committees in reviewing provisionally adopted major substantive rules. Legislators would benefit from a regular program of education and training on the Administrative Procedure Act and the Legislature's role in reviewing provisionally adopted major substantive adopted major substantive adopted major substantive rules.
- 6. The Legislature and the Secretary of State implement a coordinated process that fully automates the submission, distribution and posting to the internet of documents filed by agencies under the Administrative Procedure Act. Automating the filing and posting of annual regulatory agenda, rulemaking fact sheets prior to the adoption of any rule and the filing of the adopted rule itself would reduce printing costs and expedite the access to those documents by the public and members of the Legislature.

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## I. INTRODUCTION

The Joint Standing Committee on State and Local Government, pursuant to Resolve 2009, chapter 207, was authorized to meet up to three times during the interim following the Second Regular Session of the 124th Legislature to study issues relating to the Maine Administrative Procedure Act. (See Appendix A for Resolve 2009, chapter 207.) The Committee's duties included:

1. The circumstances surrounding the adoption of emergency rules, in particular major substantive rules, to ensure that the process of adopting an emergency rule is applied only when there is truly an emergency;

2. The Legislature's role in reviewing major substantive rules, including whether sufficient information is being provided by agencies, oversight functions are adequate and appropriate notice is being provided to the public, and the implications for state agencies of the statutory deadline for submitting major substantive rules to the Legislature; and

3. The relationship between the intention of the Legislature in adopting specific content in a major substantive rule and the rule as drafted by the department.

The committee met three times, holding two work sessions and one meeting to review a draft of the report. This report fulfills the Committee's requirement to submit a report on its study of issues related to the Administrative Procedure Act, including suggested legislation. Following receipt and review of the Committee's report, the Joint Standing Committee on State and Local Government is authorized to submit a bill in the First Regular Session of the 125<sup>th</sup> Legislature.

# II. BACKGROUND

### **Origins of the study**

The bill that led to Resolve 2009, chapter 207 was initially introduced as LD 1784, a concept draft to examine the rulemaking authority of the Commissioner of the Department of Education as it relates to rules submitted to the Legislature by the Commissioner, considered by the Legislature and rejected by the Legislature. The bill was referred to the Education and Cultural Affairs Committee.

LD 1784 was an attempt to address issues raised by the adoption in 2009 and 2010 of emergency major substantive rules by the Department of Education regarding services to children with eligible disabilities under the State's special education regulations, including the Child Development Services (CDS) program. The process of rulemaking and subsequent legislative review was not smooth and raised a number of concerns among many Education and Cultural Affairs Committee members and stakeholder groups. The two primary concerns that were expressed were that:

- Some of the changes proposed to the special education and CDS programs in the Department's rules were inconsistent with the intent of the Legislature; and that
- Those changes were implemented through the emergency major substantive rulemaking process and were in effect before the Legislature had an opportunity to review those rules.

The policy disagreements between the Education and Cultural Affairs Committee and the Department on the special education rules were complicated by the fact that the changes were taking place at a time when the Department was being told to significantly cut its budget, and that the Department was attempting to address those budget cuts in part through changes in the special education and CDS programs. After several contentious work sessions, the Education and Cultural Affairs Committee unanimously voted to reverse some of the special education program changes adopted in the emergency rule, to sunset several other provisions and to direct the Department to adopt major substantive rules on the sunsetted items for consideration by the next Legislature. The specifics of the rules and resolves relating to CDS are contained in a memorandum drafted for the first committee meeting (Appendix B).

It was in that context that LD 1784 was introduced and heard by the Education and Cultural Affairs Committee. Although a number of committee members felt that the emergency major substantive rulemaking process suffered from a number of deficiencies and needed some sort of review, a majority (11-2) voted Ought Not To Pass on the bill, citing a lack of time remaining in the session to thoroughly work the bill and concerns among some that the problem was more general in nature and not limited only to the Department of Education. The minority report on the bill attempted to address those concerns by proposing to create a legislative study comprised of members from several committees, including the State and Local Government Committee which is charged with a broader study of the state's Administrative Procedure Act in general. The minority amendment was ultimately adopted in the House and the Senate (with several changes) and sent to the Special Study Table for consideration by the Legislative Council. For budget reasons and because of their belief that issues relating to the APA were most appropriately within the jurisdiction of the State and Local Government Committee, the Council amended the bill to require that this review be done by that committee during this legislative interim.

## The Maine Administrative Procedure Act

Rulemaking has always existed at the federal level beginning with delegation to the President to issue rules that would govern those who trade with Indian tribes.<sup>1</sup> Rulemaking was limited at first but has become increasingly common as governing has become more complicated. Statutes in the 1880s creating the Interstate Commerce Commission and protecting wildlife required varying numbers of rules to be issued to implement important provisions. The New

<sup>&</sup>lt;sup>1</sup> Cornelius M. Kerwin. Rulemaking: How Government Agencies Write Law and Make Policy (Washington D.C.: CQ Press, 1994)

Deal brought more extensive rulemaking and the 1970s, in particular, are frequently characterized as the "era of rulemaking".<sup>2</sup>

In 1946, the federal government enacted the Administrative Procedure Act to ensure predictability in agency rulemaking and to grant the public clear rights to participate in the process by requiring notice of proposed rulemaking and giving opportunities for comment.<sup>3</sup> Proponents of the APA argued that rulemaking "should be conducted in public, allowing for citizen participation in the formulation of policies that would affect them."<sup>4</sup> The National Conference on Uniform State Laws drafts model state APAs and it approved the first model act after the passage of the 1946 federal APA. Revisions to the model act were completed by 1961 and this version has formed the basis for half of state APA laws albeit with substantial individualizing by states. A new model was adopted in 1981 by the Conference but only a few states adopted that version.<sup>5</sup> Some states already had their own APAs by 1946; Maine enacted the APA in 1977.

In 1995, the Maine APA was substantially amended to establish two sets of rules. Prior to January 1<sup>st</sup>, 1996, all rules were adopted in the manner that routine technical rules are now adopted. However, since 1996, whenever the Legislature enacts a law granting a state agency rulemaking authority that law must categorize the rules as either routine technical or major substantive. Rules adopted prior to January 1<sup>st</sup>, 1996 continue to be subject to the pre-1996 adoption process and not subject to formal legislative review. Final adoption of a major substantive rule, and subsequent amendments to those rules, requires the agency to submit the provisional rule to the Legislature for formal review.

Agencies must submit provisional major substantive rules to the Legislature by 5:00 p.m. on the second Friday in January. The rule and a Resolve proposing to allow the agency to adopt the rule are referred to the committee with jurisdiction over the rule's subject matter. The committee usually holds a public hearing and work session on the Resolve as with any other bill. The committee makes a recommendation on whether the rule can go forward and whether the specifics of the rule should be amended. The Resolve is then reported to the full Legislature for approval in the same manner as any other bill. If the rule is filed after the deadline of the second Friday in January, the reviewing committee may decline to review the rule or may choose to review it. If a rule is submitted by the agency by the deadline and the Legislature takes no action, the rule may go forward. The intent of the Legislature was to ensure that rules submitted after the deadline may not be adopted unless approved by the Legislature. The lack of clarity in those provisions of law is addressed in this report by a recommendation to amend the law to clarify that original intent.

The Maine APA allows agencies to adopt emergency rules under certain conditions for a temporary period (provided, of course, that the agency has rulemaking authority granted to it for

<sup>5</sup> Koch 2010.

<sup>&</sup>lt;sup>2</sup> Kerwin 1994, p. 14

<sup>&</sup>lt;sup>3</sup> Kerwin 1994; Charles H. Koch. Administrative Law and Practice, vol. 1. 3<sup>rd</sup> edition. (Eagan, MN: West, 2010);

<sup>&</sup>lt;sup>4</sup> Patty D. Renfrow and David J. Houston. "A Comparative Analysis of Rulemaking Provisions in State

Administrative Procedure Acts" Policy Studies Review 6(4) 1987 pp 657-665

the purpose). Under 5 MRSA §8054, an agency may adopt emergency rules to "avoid an immediate threat to public health, safety or general welfare" and may modify usual procedures to enable adoption of rules designed to mitigate or alleviate the threat found. The agency must report findings with respect to the existence of an emergency, including any modifications to procedures. Emergency routine technical rules are effective for up to 90 days. Occasionally, it is deemed necessary for emergency major substantive rules to be adopted and this is governed under §8073. Emergency major substantive rules may be effective for up to 12 months or until the Legislature has completed review (if earlier).

## **Committee process**

The State and Local Government Committee held its first study meeting on the APA on September 9<sup>th</sup>, 2010. The Committee reviewed the duties in the resolve as well as a memorandum from the Office of Policy and Legal Analysis summarizing the content of the emergency substantive rules that prompted LD 1784 and the subsequent Resolve 2009, chapter 207. The Committee was briefed by the Secretary of State, Matt Dunlap, with an overview of how the APA is administered by that office. The Committee also heard from Representative Connor, the sponsor of LD 1784, and he expressed his concern that the 2010 emergency rule had undone what the Legislature had already decided upon in 2009. In addition, the Committee heard from representatives from the Department of Education, Greg Scott, Director of State/Local Relations, and Jaci Holmes, federal/state legislative liaison. Director Scott stated that the provisions of the emergency rule were controversial but that times and needs had changed since the passage of the 2009 rule and the Department had been asked by the Appropriations and Financial Affairs Committee to review and recommend changes where state rules on special education exceeded the federal requirements. He added that the contents of the emergency rule still had to be approved in a resolve to the Legislature for final approval and some provisions of the rule were approved and some were not.

The second study meeting took place on October 13<sup>th</sup>, 2010. At that meeting, Linda Pistner, Chief Deputy Attorney General, explained the role of the Office of the Attorney General in agency rulemaking. The APA requires agencies to submit rules to the Attorney General for approval as to form and legality. This involves reviewing compliance with all procedural steps required by the APA; whether the rule is consistent with the agency's statutory authority; identifying possible conflicts between the rule and Maine statutes, the Constitution and/or federal law; and suggesting changes to improve organization, readability and clarity. In addition, Governor Baldacci's Executive Order 17 FY 02/03 requires all agencies to submit rules to the Office of the Attorney General for a "legal pre-review" prior to a rule going out for public hearing and comment. Chief Deputy Pistner stated that the pre-review can identify any legal issues prior to the public comment process and therefore, can be more efficient; it can be more difficult to make changes after the public process. It was pointed out that the pre-review and the review are often done by different people in the Office. (See Appendix C for Linda Pistner's handout.)

The Office of the Attorney General also reviews emergency rules (both routine-technical and major-substantive) for compliance with the statutory emergency standards<sup>6</sup> in addition to its regular review of form and legality. Agencies must include specific findings with respect to the existence of an emergency and any modifications of procedures that were necessary. Under the law, delay is not considered a sufficient basis for an emergency rule and would be denied. Committee members asked whether a financial question such as a curtailment could be considered an emergency under the statute. A curtailment order is a response by the Governor to a situation in which there will not be enough money to make it through the year; waiting until the Legislature is in session to make necessary budget adjustments would result in the budget reductions being realized over a shorter period of time. According to Chief Deputy Pistner, there have been challenges in court to emergency rules when a shortfall in Medicaid funds was cited as constituting an emergency for rulemaking. In Colorado Health Care Association v. Colorado Dept of Human Services, 842 F.2d 1158 (10th Cir. 1988), the 10th Circuit Court of Appeals upheld that a shortfall in Medicaid funds was a sufficient basis for emergency adoption of the rule. In Wheelchair Carriers Assoc. v. District of Columbia, 2002 U.S. Dist LEXIS 4617 (D.D.C. 2002), the Federal District Court for the District of Columbia found that the agency's findings did not demonstrate that an emergency existed and voided the emergency rule (although the court did not say that an emergency could not be based on a financial shortfall). There have not been any cases in Maine challenging emergency major substantive rules.

Agencies are not supposed to add provisions into an emergency rule relating to curtailment that do not save money, although Chief Deputy Pistner acknowledged that this is a factual requirement of which the Office of the Attorney General is not the expert. The Committee determined that clearly defined dollar amounts for each part of the emergency rule would help the Office of the Attorney General to ensure that an emergency rule is not used by an agency to include items that do not fall under the emergency classification.

During the second meeting, representatives from the Office of the Secretary of State provided data on rules adoptions since 2007, including major substantive rules and emergency rules. In 2007, there were six emergency major substantive rules adopted. There were six in 2008, two in 2009 and seven in 2010 (as of October 13<sup>th</sup>, 2010). There are many routine technical emergency rules adopted with the vast majority being area closures promulgated by the Department of Marine Resources. (The table provided by the Office of the Secretary of State is in Appendix D.)

## III. FINDINGS AND RECOMMENDATIONS

During its discussion of the APA, the Committee chose not to delve too deeply into the substance or specifics of the major substantive special education rules dealt with by the Education and Cultural Affairs Committee in 2009 and 2010. Although those issues prompted

<sup>&</sup>lt;sup>6</sup> 5 MRSA §8054 determines that an emergency rule may be adopted if the agency finds it "is necessary to avoid an immediate threat to public health, safety or general welfare". The agency may modify regular procedures relating to public notice and comment to the "minimum extent necessary to enable adoption of rules designed to mitigate or alleviate the threat found".

the creation of this study, the charge to the State and Local Government Committee was to review the APA more broadly. The Committee looked for potential systemic issues in the rulemaking process that may have contributed to the problems that arose during the Education Committee's review of the special education rules. The Committee also examined administrative policies with a view to ensuring clarity, transparency, accountability and timeliness in the rulemaking process. The following proposals are the findings and recommendations of the State and Local Government Committee.

**Finding #1.** The statutory language establishing a deadline for the submission to the Legislature of major substantive rules for legislative review is an essential part of the APA, but it is ambiguous and ineffective as currently drafted. Because of the manner in which the law is currently structured, the Legislature risks allowing agencies to adopt major substantive rules without any review if the Legislature fails to act on rules submitted after the current "deadline".

**Recommendation #1:** We recommend that the statutory language pertaining to a deadline for agency submission of major substantive rules for legislative review be amended to clarify that rules submitted after the statutory deadline may not be finally adopted by the agency in the event the Legislature fails to act on those rules prior to adjournment. (Language implementing this recommendation is included as Sections 1-4 in the proposed legislation attached as Appendix E.)

**Finding #2.** Current law (5 MRSA §8054, sub-§2) requires that any emergency rule include, with specificity, the agency's findings with respect to the existence of an emergency. Inclusion of such findings in any emergency rule is essential in informing the public as to the reasons why the rule is being adopted on an emergency basis and for ensuring the transparency of the emergency rulemaking process itself.

**Recommendation #2.** We recommend that 5 MRSA §8054, sub-§2 be amended to require that an agency's findings with respect to the existence of an emergency be included in the emergency rule, at the time of adoption or at the time of the public hearing, in a separate section of the rule clearly labeled as "Findings". (Language implementing this recommendation is included as Section 5 in the proposed legislation attached as Appendix E.)

**Finding #3.** Understanding the fiscal impact of an emergency rule adopted to satisfy the requirements of a temporary curtailment order by the Governor under 5 MRSA §1668 is essential to the public and the Legislature in evaluating the programmatic impacts of the emergency rule. This is true for all emergency rule adoptions, but is particularly true in instances in which the emergency rule must be adopted as a major substantive rule. By their nature, major substantive rules are rules that the Legislature has determined to have potentially significant impacts on the public welfare and, as such, are subject to an increased level of legislative scrutiny under the APA.

**Recommendation #3.** We recommend that 5 MRSA §8054 be amended to include a requirement that any emergency rule adopted to satisfy the requirements of a

temporary curtailment order by the Governor under 5 MRSA §1668 sub-§2 include within the adopted rule an estimate of the fiscal impact of each separate item in the rule. (Language implementing this recommendation is included as Section 6 in the proposed legislation attached as Appendix E.)

**Finding #4.** Questions about whether or not an agency rule satisfies the "intent" of the Legislature are legal questions that are difficult to resolve after the adoption of a rule without either judicial interpretation or subsequent action by the Legislature to clarify the underlying statute. Disagreements between the Legislative and Executive Branches about whether or not an agency satisfied Legislative "intent" in the rulemaking process can most effectively be avoided through careful attention by the Legislature, and its committees, to the statutory language used when granting an agency rulemaking authority. The more detail the Legislature includes in the statute with respect to specifying policy criteria or standards, the less discretion the agency will have on those issues when drafting its rule. The more general the authority granted to an agency by the Legislature, and its committees, must think carefully when deliberating on legislation that will authorize agency rulemaking about the policy standards and criteria they wish to include in the statute which are not generally subject to agency discretion, and those areas in which they choose to give an agency discretion to set specific criteria or standards during the rulemaking process.

**Recommendation #4.** We recommend that the orientation seminars provided to incoming legislative members every two years include a discussion on the issues a legislative committee should consider when deliberating on legislation that will grant rulemaking authority to an agency. Those issues should include, but are not limited to, discussion on when policy criteria or standards should be specified in statute and when criteria and standards are more appropriately left to the discretion of the agency to adopt during the rulemaking process; when rulemaking authority be specified as major substantive; and in determining an appropriate timeframe for the adoption of the rule.

**Finding #5.** Legislators would benefit from a regular program of education and training on the APA in general and on the role of the Legislature, and its committees, in reviewing provisionally adopted major substantive rules.

**Recommendation #5.** We recommend that the orientation seminars provided to incoming legislative members every two years include discussions for all incoming members on all aspects of the Administrative Procedure Act, including discussions on the role of the Legislature and its committees in reviewing provisionally adopted major substantive rules.

**Finding #6.** The APA imposes numerous filing requirements on the agencies, including filing an annual regulatory agenda listing the rules expected to be proposed in the coming year, filing rulemaking fact sheets prior to the adoption of any rule and the filing of the adopted rule itself. These filing requirements are essential in maintaining the transparency of the rulemaking

process, but they are largely paper-based and dependent on manual distribution to the public and the Legislature. For example, because of the manual nature of reviewing and posting such documents to the internet, the Office of the Secretary of State currently has a two year backlog in its web posting of regulatory agenda and a nine month backlog in web posting of adopted rules. In addition, the Legislature spends thousands of dollars each year photocopying and distributing regulatory agenda and rulemaking notices to members of the committee of jurisdiction. Automating the filing and posting of these documents to the internet would significantly expedite the filing of these documents, significantly reduce, or perhaps eliminate, the cost of printing and distributing many thousands of pages of material, and provide greater and more immediate access to those documents by the public and by members of the Legislature.

**Recommendation #6.** We recommend that the Legislature and the Secretary of State implement a coordinated process that fully automates the submission, distribution and posting to the internet of documents filed by agencies under the Administrative Procedure Act, including a mechanism by which the actual text of the proposed or adopted rule is available on the internet at the time it is filed and a process that automatically notifies members of the legislative oversight committee of that filing.