

# MAINE STATE LEGISLATURE

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SEN. KEVIN L. RAYE  
CHAIR

REP. ROBERT W. NUTTING  
VICE-CHAIR

EXECUTIVE DIRECTOR  
DAVID E. BOULTER



SEN. JONATHAN T. E. COURTNEY  
SEN. BARRY J. HOBBS  
SEN. DEBRA D. PLOWMAN  
SEN. JUSTIN L. ALFOND  
REP. PHILIP A. CURTIS  
REP. EMILY ANN CAIN  
REP. ANDRE E. CUSHING III  
REP. TERRY HAYES

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

**MEETING OF LEGISLATIVE COUNCIL  
DECEMBER 17, 2010  
2:00 PM  
REVISED AGENDA**

<u>Page</u>	<u>Item</u>	<u>Action</u>
	<b>CALL TO ORDER</b>	
	<b>ROLL CALL</b>	
1	<b>SUMMARY OF THE NOVEMBER 10, 2010 MEETING OF THE LEGISLATIVE COUNCIL</b>	<b>Acceptance</b>
8	<b>SUMMARY OF THE DECEMBER 2, 2010 MEETING OF THE LEGISLATIVE COUNCIL</b>	<b>Acceptance</b>
	<b>REPORTS FROM EXECUTIVE DIRECTOR AND STAFF OFFICE DIRECTORS</b>	
18	▪ Executive Director's Report (Mr. Boulter)	<b>Information</b>
19	▪ Fiscal Status Report (Mr. Pennoyer)	<b>Information</b>
24	▪ Status of Legislative Studies & Interim Committee Meetings (Mr. Norton)	<b>Information</b>
	<b>REPORTS FROM COUNCIL COMMITTEES</b>	
	• <b>Personnel Committee</b> (No Report)	
	• <b>State House Facilities Committee</b> (No Report)	

## **OLD BUSINESS**

### **Item #1: Council Actions Taken By Ballot (No Action Required)**

List of actions taken by ballot since December 2, 2010 meeting

(NONE)

## **NEW BUSINESS**

- |    |                                                                                                                                                                                                                                                                                   |                    |
|----|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------|
| 25 | <b>Item #1: Report of the Commissioner, Department of Professional And Financial Regulation<br/>Directing the Department of Professional and Financial Regulation To Study Residential Contractor Licensing, December 8, 2010</b><br>[Full copy of report available upon request] | <b>Information</b> |
| 36 | <b>Item #2: Final Report of the Legal and Veterans' Affairs Committee Review of Slot Machines, December 2010</b><br>[Full copy of report available upon request]                                                                                                                  | <b>Acceptance</b>  |
| 49 | <b>Item #3: Schedule for Legislative Office Closure Days for Balance of FY11</b>                                                                                                                                                                                                  | <b>Decision</b>    |

## **ANNOUNCEMENTS AND REMARKS**

## **ADJOURNMENT**

REP. HANNAH M. PINGREE  
CHAIR

SEN. ELIZABETH H. MITCHELL  
VICE-CHAIR

EXECUTIVE DIRECTOR  
DAVID E. BOULTER



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

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

**MEETING SUMMARY**  
**November 10, 2010**

**CALL TO ORDER**

Legislative Council Chair, Speaker Pingree called the November 10, 2010 Legislative Council meeting to order at 12:15 P.M. in the Legislative Council Chambers.

**ROLL CALL**

Senators: Sen. Philip Bartlett, Sen. Kevin Raye, Sen. Jonathan Courtney  
  
Absent: Senate President Elizabeth Mitchell, Sen. Lisa Marraché  
  
Representatives: Speaker Hannah Pingree, Rep. John Piotti, Rep. Seth Berry, Rep. Joshua Tardy, Rep. Philip Curtis  
  
Legislative Officers: Joy O'Brien, Secretary of the Senate  
Millicent M. MacFarland, Clerk of the House  
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 12:15 P.M. with a quorum of members present.

**SUMMARY OF AUGUST 25, 2010 MEETING OF LEGISLATIVE COUNCIL**

**Motion:** That the Meeting Summary of August 25, 2010 be accepted and placed on file. Motion by Representative Tardy. Second by Senator Bartlett. **Motion passed unanimous. (8-0)** [Senator Mitchell and Senator Lisa Marraché absent.]

{**Note:** The Legislative Council did not meet in September or October.}

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

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

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

#### **Flu Vaccination Clinic**

A flu vaccination clinic was held at the State House on Tuesday, October 26th 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.

#### **Change in Vendor for State House Café**

The Department of Labor, Division for the Blind and Visually Impaired, Business Enterprise Program notified the Executive Director's office in October that it was exercising its authority under current law to operate the State House café. The program has identified Richard Desjardins, current 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 is scheduled to open with a new name on Monday, November 15th.

#### **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 2nd program held in 2010 as the YMCA transitioned its annual program from spring to fall.

#### **Orientation Programs**

The first of several legislator orientation programs for the 125th 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 124th Legislature and all council members are welcome to attend.

#### **Governor Dingley Bust**

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 1st floor of the State House.

### **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
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)**

	Budget	Actual	Var.	% Var.	Prior 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.

## Revenue Forecasting Update

The Consensus Economic Forecasting Commission (CEFC) released its new economic forecast (see

[http://maine.gov/legis/ofpr/revenue\\_forecasting\\_committee/consensus\\_economic\\_forecast/nov2010.pdf](http://maine.gov/legis/ofpr/revenue_forecasting_committee/consensus_economic_forecast/nov2010.pdf)). 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 9th and November 23rd.

**Comparison of February 2010 and November 2010 Economic Forecasts**

<u>Calendar Years</u>	<u>2010</u>	<u>2011</u>	<u>2012</u>	<u>2013</u>	<u>2014</u>	<u>2015</u>
<b>• Wage &amp; Salary Employment (Annual Percentage Change)</b>						
> 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%		
<b>• Personal Income (Annual Percentage Change)</b>						
> 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%		
<b>• Consumer Price Index (Annual Percentage Change)</b>						
> 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		

## Status of Legislative Studies

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

The Health Insurance Reform Select committee will hold its final meeting on the 29<sup>th</sup> of November. The LVA Committee's review of Slot Machine Revenue will meet on the 16<sup>th</sup> of November. The Right to Know Advisory Committee is holding its third meeting on the 18<sup>th</sup> and the report will be finalized sometime in December. The staff study of the Education Funding is completed and a copy of the report was included in the Legislative Council members' Preliminary Agenda and packet of meeting materials. Mr. Norton noted that the study report is also on the agenda as New Business. He complimented Dr. Phillip McCarthy and Rachel Trembley for their excellent work in researching and analyzing the information and preparing the report.

Speaker Pingree commented that she had received very favorable comments on the study report from members of the Education Committee. She noted that the staff study is a good example of being responsive to committee needs and delivering results. She also thanked the staff for their excellent work.

## REPORTS FROM COUNCIL COMMITTEES

### 1. Personnel Committee

Speaker Pingree, Chair of the Personnel Committee reported the Personnel Committee had met on October 20<sup>th</sup> to consider the following.

The Personnel Committee met to consider the re-appointment of David E. Boulter as Executive Director of the Legislative Council for a new 3-year term. The committee met with Mr. Boulter to discuss accomplishments, and his goals for upcoming years. After discussion, the Committee voted unanimously to recommend that he be appointed to a new term.

**Motion:** That upon the unanimous recommendation of the Personnel Committee, the Legislative Council reappoint David E. Boulter to a new 3-year term as Executive Director of the Legislative Council, the date of his reappointment being retroactive to September 17, 2010. Motion by Speaker Pingree, second by Sen. Bartlett. **Motion passed unanimous. (8-0)** [Senator Mitchell and Senator Lisa Marraché absent.]

Speaker Pingree also reported that the committee meet earlier on November 10, 2010 and reviewed and unanimously approved a request by a member of the nonpartisan staff for temporary disability income benefits as provided in the council's personnel policies and guidelines. No council action is required.

### 2. State House Facilities Committee

(No Report)

## OLD BUSINESS

### ITEM 1: Legislative Council Actions Taken by Ballot

List of actions taken by ballot by the Legislative Council since its August 25, 2010 meeting.  
(ATTACHED)

Speaker Pingree noted that one ballot failed approval because not all Legislative Council members had been able to record their vote in time. The ballot related to the Legislative Document Fee Schedule for the 1<sup>st</sup> Regular Session. Because the matter must be dealt with before session, she invited a motion to reconsider the council's action on October 21, 2010.

A motion was made and seconded to reconsider the Legislative Council's action whereby it failed to approve the fee schedule.

**Motion:** That the Legislative Council reconsider its action of October 21, 2010 regarding the proposed fee schedule for legislative document service for the First Regular Session of the 125<sup>th</sup> Legislature. Motion by Senator Bartlett. Second by Representative Tardy. Motion passed unanimous. (8-0) [Senator Mitchell and Senator Lisa Marraché absent.]

Legislative Council Chair Pingree then asked Clerk of the House MacFarland who had recommended the fee schedule to summarize it. Copies of the proposed fee schedule were distributed.

Ms. MacFarland explained that the proposed fee schedule is for the next session of the Legislature. There are some changes that she recommended based on patterns of the number of subscribers over the years. For example, in the 119<sup>th</sup> Legislature there were 24 people that received legislative documents daily by First Class mail. This past year the number had dwindled to five, four of whom were from the Judicial Branch. Also proposed is a new service of email whereby some documents will be emailed rather than being sent in paper copy, such as the Legislative Record (the number of people receiving it by mail is only 6). These documents are available online at no charge. The other items for which a modest fee is proposed include the weekly computer printout which is known as the status of bills and the Advance Notice of Public Hearings (ANPH). Those will still be mailed under this proposal for \$32.00 for the session but to email them to people is only \$20.00 for the session. Joint Resolutions and the Weekly Legislative Calendar are similar.

House Clerk MacFarland added that the document service proposal is based on being able to reduce the number of copies of bills and amendments to be printed to reflect the declining demand over the past 20 years.

Sen. Raye asked for an explanation of the rationale for the fees for the email subscriptions.

Ms. MacFarland responded that email lists are easy to maintain. Some clients want the Weekly Calendar and Weekly Legislative Report by email even though they can go to the website and get it for no charge; they prefer the convenience of receiving it in their email Inbox. Because emailing does require some effort by staff, Ms. MacFarland felt the proposed fee schedule was reasonable for 52 issues of a document.

**Motion:** That the Legislative Council accept the proposed Legislative Document Service Fee Schedule proposed schedule for the First Regular Session of the 125<sup>th</sup> Legislature. Motion by Senator Bartlett. Second Senator Courtney. **Motion passed unanimous. (8-0)** [Senator Mitchell and Senator Lisa Marraché absent.]

## NEW BUSINESS

**Item #1: Tentative Biennial FY 2012-2013 Budget Submission**

David Boulter reported that as Executive Director, he is required to submit a tentative budget to the Executive Branch for the purpose of preparing the biennial budget statewide. Speaker Pingree reminded members that the submission is a tentative budget. She noted that it is the job of the next Legislative Council at the appropriate time to decide the legislative budget. Past Legislative Councils have established a Budget Subcommittee to review legislative accounts. No action by the Legislative Council is required at this time.

**Item #2: Staff Study of Maine Department of Education Program Funding**

Mr. Norton presented the report of the staff study and provided an overview. He noted that some further study was necessary and a follow-up report with recommended legislation would be issued in January.

**Item #3: Notice of Audit of State Budget for FY 2010 (Department of Audit)****Item #4: Annual Report of the Citizen Trade Policy Commission****Item #5: Final Report of the Task Force on Kinship Families****Item #6: Annual Report of Loring Development Authority of Maine's (LDA)****Item #7: Final Report of the State and Local Government Committee**

**Motion:** That the Legislative Council accept the Staff Study of Maine Department of Education Program Funding, Annual Report of the Citizen Trade Policy Commission, Final Report of the Task Force on Kinship Families, Annual Report of Loring Development Authority of Maine's and Final Report of the State and Local Government Committee and place them on file. **Motion passed unanimous. (8-0)** [Senator Mitchell and Senator Lisa Marraché absent.]

**Item #8: Collective Bargaining Matters [Executive Session]**

**Motion:** That, in accordance with 1 MRSA section 405, subsection 6, the Legislative Council enter into an executive session for the purposes of discussing collective bargaining negotiations between the employee representative for the Administrative Unit of Legislative Employees and the Legislative Council. Motion by Speaker Pingree, second by Rep. Curtis.

**Motion passed (7-0),** [Senator Mitchell, Rep. Tardy and Senator Lisa Marraché absent.]

The council entered into an executive session at 12:52PM. At the conclusion of the executive session, on a motion by Sen. Raye, seconded by Rep. Piotti, the Legislative Council voted unanimously to end its executive session.

**ANNOUNCEMENTS AND REMARKS**

None

The Legislative Council meeting was adjourned shortly after 1:00PM.

**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

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REP. TERRY HAYES

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

**MEETING SUMMARY**  
**December 2, 2010**

**CALL TO ORDER**

Pursuant to the Legislative Council's Rules of Procedure, Senate President Raye called the first meeting of the 125<sup>th</sup> Legislative Council to order at 2:46 p.m. in the Legislative Council Chamber.

**ROLL CALL**

Senators:	President Kevin Raye, Senator Courtney, Senator Plowman, Senator Hobbins, Senator Alfond
Representatives:	Speaker Nutting, Representative Curtis, Representative Cushing, Representative Cain, Representative Hayes
Legislative Officers:	Joseph Carlton, Secretary of the Senate Bonnie Gould, Assistant Secretary of the Senate Heather Priest, Clerk of the House Shawn Roderick, Assistant Clerk of the House David E. Boulter, Executive Director of the Legislative Council Rose Breton, Legislative Finance Director 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 Technology John Barden, Director, Law and Legislative Reference Library

Senate President Raye convened the meeting at 2:46 P.M. with a quorum of members present.

**ELECTION OF OFFICERS FOR THE 125<sup>th</sup> LEGISLATIVE COUNCIL**

Senate President Raye, declaring that a quorum was present, called the first meeting of the 125<sup>th</sup> Legislative Council for the purpose of electing a Council Chair and Vice-Chair, adoption of rules of procedures and such other matters of the Legislative Council.

The Legislative Council's Rules of Procedure prescribe the following with regard to the election of Legislative Council Officers:

Rule # 2 provides that the position of Chair alternate in succeeding biennial sessions between a member from the Senate and a member from the House of Representatives. Thus, pursuant to these Rules, the Chair for this new Council should be a Legislative Council member who serves in the Maine Senate.

Rule #3 provides that the Vice-Chair not be a member of the same body of the Legislature as the Chair. Thus, the Vice-Chair for the 125<sup>th</sup> Legislative Council member who serves in the House of Representatives.

President Raye stated that unless there was objection, the Council would continue the long-standing practice of conducting the vote by a showing of hands. Upon the election of a chair, the chair will preside over the remainder of this meeting.

Hearing no objection, Senate President Raye opened the floor for nominations for Chair of the Legislative Council.

**Nomination:** That President Kevin Raye, of Perry serve as Chair of the Legislative Council for the 125<sup>th</sup> Legislature. (Nominated by Rep. Curtis, second by Sen. Hobbins)

Senate President Raye asked if there were further nominations. Hearing none, Senate President Raye closed the nominations. The vote for Council Chair was taken. Senate President Raye was elected to serve as Chair of the Legislative Council for the 125<sup>th</sup> Legislature. Unanimous (9-0, with Rep. Cushing absent)

Senate President Raye then presided for the remainder of the meeting. Senate President Raye then proceeded to open the floor for nominations for Vice-Chair.

**Nomination:** That Representative Nutting serve as Vice-Chair of the Legislative Council for the 125<sup>th</sup> Legislature. (Nominated by Sen. Courtney, second by Sen. Alford)

Senate President Raye asked if there were further nominations. Hearing none, Chair Raye closed the nominations. The vote for Council Vice-Chair was taken. Speaker Nutting was elected to serve as Vice-Chair of the Legislative Council for the 125<sup>th</sup> Legislature. Unanimous (10-0).

## **ADOPTION OF RULES OF PROCEDURE**

### **Proposed Rules of Procedure for Legislative Council Adoption**

Executive Director David Boulter briefly explained the provisions of the suggested Rules of Procedure for the Legislative Council, which were generally modeled after the rules for the 124<sup>th</sup> Legislative Council.

A discussion followed, and a member suggested revising the proposed rules as follows:

Rule 13. Circulation of Ballots: Amend fifth sentence as follows: "Upon certification of the votes on a ballot, the executive director will report the results of the voting to the ~~Chair~~ members of the Legislative Council."

**Motion:** That the Legislative Council adopt the proposed Rules of Procedure for the Legislative Council as amended by the noted change to Rule 13. Motion by Sen. Courtney. Second by Rep. Cushing. **Motion passed unanimous (10-0).**

[A copy of the Rules of Procedure as adopted by the Legislative Council is attached.]

## **SUMMARY OF NOVEMBER 10, 2010 MEETING OF LEGISLATIVE COUNCIL**

**(Attached)**

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

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

Executive Director David Boulter congratulated the members on their re-election and welcomed them as members of the 125<sup>th</sup> Legislative Council. Mr. Boulter reminded the Legislative Council that the nonpartisan offices are available for assistance at any time and encouraged them to feel comfortable calling upon nonpartisan staff as questions or needs arise.

#### **Fiscal Report**

(No Report)

#### **Status of Legislative Studies**

(No Report)

### **REPORTS FROM COUNCIL COMMITTEES**

(No Reports)

### **OLD BUSINESS**

(No Old Business)

### **NEW BUSINESS**

#### **ITEM #1: Summary of Legislative Council Authority and Duties**

The council packet included information about the responsibilities and authority of the Legislative Council for members' reference. No Legislative Council action was required.

**ITEM #2: Establishment of Initial Salary of Constitutional Officers**

One of the initial decisions required of the Legislative Council once a new Legislature is convened is the assignment of the initial salary for newly elected Constitutional Officers. State law prescribes the salary grade and the initial salary step for each official.

The Secretary of State was newly elected at the convening of the 125<sup>th</sup> Legislature, and as such, the Legislative Council must establish the initial salary for the Secretary of State upon him taking office. Pursuant to law, at the time of initial appointment, the salary of the Secretary of State must be set at Step C (Step 3) within Salary Grade 88. Effective January 1, 2011, the salary for Grade 88 Step 3 is \$69,264.00.

The State Treasurer was newly elected at the convening of the 125<sup>th</sup> Legislature, and as such, the Legislative Council must establish the initial salary for the State Treasurer upon him taking office. Pursuant to law, at the time of initial appointment, the salary of the State Treasurer must also be set at Step C (Step 3) within Salary Grade 88. Effective January 1, 2011, the salary for Grade 88 Step 3 is \$69,264.00.

The Attorney General was newly elected at the convening of the 125<sup>th</sup> Legislature, and pursuant to law, the Legislative Council must establish the initial salary for the Attorney General upon him taking office. Pursuant to law, at the time of initial appointment, the salary for the Attorney General must be set at Step E (Step 5) within Salary Grade 91. Effective January 1, 2011, the salary for Grade 91, Step 5 is \$92,248.00.

In response to a question by a Legislative Council member, Mr. Boulter noted that the law provides no discretion to the Legislative Council when establishing the initial salary for the Constitutional officers.

**Motion:** That the Legislative Council establish the initial salary for the Attorney General at Step 5 of Salary Grade 91; and the initial salaries for the Secretary of State and the State Treasurer at Step 3 of Salary Grade 88, in accordance with the law. Motion by Senator Courtney. Second by Speaker Nutting. **Motion passed unanimous (10-0).**

**ITEM #3: Establishment of Initial Salary for Clerk of the House and Secretary of the Senate**

Another initial decision required of the Legislative Council once a new Legislature is convened is establishing the initial salary for a newly elected Secretary of the Senate and a Clerk of the House. Again, state law prescribes the salary grade and the initial salary options for each of the Legislative officials. Following the initial appointment of the legislative officials, the Legislative Council is authorized to adjust the salary of each official by one step for each year of continuous service. 3 MRSA §162-A.

Both the Secretary of the Senate and the Clerk of the House were newly elected at the convening of the 125<sup>th</sup> Legislature, and as such, the Legislative Council must establish the initial salaries. Pursuant to law, the initial salary for both the Secretary of the Senate and the Clerk of the House must be either of the following within salary grade 14:

- Step 1: \$76,627.20 (annual); or
- Step 2: \$83,532.80 (annual).

**Motion:** That, in accordance with the law, the Legislative Council establish the initial salaries of the Secretary of the Senate and the Clerk of the House at Step 2 of Salary Grade 14 of the Legislature's salary schedule. Motion by Sen. Courtney. Second by Sen. Alfond. **Motion passed unanimous (10-0).**

#### **ITEM #4: Suggested Policy for Processing Closely Related Legislator Bill Requests**

Revisor Suzanne Gresser explained that in past sessions, the Legislative Council has established a policy whereby the Office of the Revisor of Statutes was directed to combine legislator bill requests for duplicate or closely related bills (Joint Rule 206). This provision of Joint Rule 206 has existed since the 118<sup>th</sup> Legislature.

Joint Rule 206, Section 2 provides that:

*For duplicate or closely related bills or resolves, the Legislative Council may establish a policy for combination of requests and the number of cosponsors permitted on combined requests.*

Before the above language was adopted by the 118<sup>th</sup> and subsequent legislatures, every bill was simply processed and printed without regard to whether it was closely related to another. Since the advent of the rule, however, each Legislative Council has used its authority to direct that the Revisor's Office in some manner combine closely related bills in order to facilitate the efficient processing of bills.

In the past session, when the 124<sup>th</sup> Legislature adopted a cloture deadline of mid-January, the process was modified slightly in order to allow the printing of some bills in advance of the later cloture deadline. The Legislative Council of the 124<sup>th</sup> Legislature directed the Revisor's Office to make reasonable efforts to identify duplicate bills as the office processed them before cloture and to notify sponsors as in the past, setting up primary and mandatory cosponsors. The Council recognized that by printing bills prior to cloture, a number of potential duplicates would not be identified and combined; however, the Council did not want to suspend the printing of bills until after the cloture date because it would not further the Legislature's goal of expeditious processing and printing of bills.

Because the cloture deadline of the 125<sup>th</sup> Legislature is January 7, 2011, in order to facilitate the expeditious processing of bills in the same manner as was done in the First Regular Session of the 124<sup>th</sup> Legislature, Ms. Gresser recommended that the Legislative Council adopt the process that was established by the 124<sup>th</sup> Legislature.

**Motion:** To adopt the Policy for Processing Closely-Related Legislator Bill Requests as described by the Revisor's memorandum. Motion by Rep. Cain. Second by Rep. Cushing. **Motion passed unanimous (10-0).**

#### **ITEM #5: Acquisition of Insurance and Financial Services Committee Room for use as Senate Majority Staff Offices**

Sen. Courtney proposed converting the Insurance and Financial Services committee room (Room 427 in the State House) for use as additional staff offices for Senate Republican staff. He noted that the

committee room is located adjacent to current Senate Republican staff offices. Senate Democratic staff are not being relocated from their current office space. He said he would offer a motion to convert the space to the proposed use.

Speaker Nutting said that the House Republicans have decided that the House Republican office will remain in its current location on the south side of the third floor of the State House and the Democratic offices will remain on the north side. He explained that as a result, the House Republican staff need more office space, and he proposed to convert the legislators' computer room on the third floor to use as additional office space for House Republican staff. He noted that legislators now have greater access to cell phones and laptops in the chambers and elsewhere.

**Motion:** That the Legislative Council approve the conversion of the Insurance and Financial Services committee room, room 427, to use as additional staff offices for Senate Republican staff, and conversion of the legislators' computer room on the third floor to use as additional staff offices for House Republican staff. Motion by Sen. Courtney, second by Rep. Cushing.

Sen. Alfond asked about the costs of the conversion of space and how it would be paid for.

Mr. Boulter replied that the cost would have to be borne by the legislature's budget. If the costs seem extraordinary, Mr. Boulter would bring the matter back to the council, otherwise money would have to be found in the legislative account.

Rep. Cain stated that she wanted assurance that the number of computers available to legislators would not decrease, even if they were not located in one area.

Mr. Boulter replied that there are computer workstations in the Cross Building retiring rooms, but it is unlikely that all of the computers now present in the legislators' computer room could be relocated to the other retiring rooms in the State House.

Rep. Cain inquired about continued access to printers in the House chamber.

Mr. Boulter replied that the proposal would not affect printers in the chamber.

Rep. Cain asked for assurance from the council that the proposed elimination of the IFS committee room does not presuppose a particular outcome of the Joint Rules relating to the number of joint standing committees, and that whatever the final number of committees, that each committee have available a committee room.

Sen. Raye said that was correct. Currently, some committees share committee rooms and should there be 17 committees when the Joint Rules are adopted, options will be considered changing which committees share a room but that every committee would have a room.

Rep. Cushing asked if there was a budget prepared for costs associated with the transition of the majority party.

Mr. Boulter responded, no, the costs would have to be absorbed by the legislative account. Probably the most significant individual cost would be the removal and storage of the IFS committee table and equipment. Dismantling costs are roughly \$1,200.

A vote on the motion was then taken. **Motion passed unanimous (10-0).**

**ITEM #6: Annual Report of Washington County Development Authority, 2009-2010**

**Motion:** To accept the *Annual Report of Washington County Development Authority, 2009-2010* and place it on file. Motion by Sen. Courtney. Second by Rep. Cushing. **Motion passed unanimous (10-0).**

**ITEM #7: Notification from Maine State Museum regarding addition of Governor John E. Baldacci Portrait to State House Portrait Collection**

The letter from the museum explained the intended addition of Governor Baldacci's portrait to the State House Portrait Collection. No further action was required.

**ANNOUNCEMENTS AND REMARKS**

**ADJOURNMENT**

Motion to adjourn by Rep. Curtis. Second by Sen. Plowman. **Motion passed unanimous (10-0).**

The Legislative Council meeting was adjourned at 3:36 P.M.

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SEN. KEVIN L. RAYE  
CHAIR

REP. ROBERT W. NUTTING  
VICE-CHAIR

EXECUTIVE DIRECTOR  
DAVID E. BOULTER



SEN. JONATHAN T. E. COURTNEY  
SEN. BARRY J. HOBBS  
SEN. DEBRA D. PLOWMAN  
SEN. JUSTIN L. ALFOND  
REP. PHILIP A. CURTIS  
REP. EMILY ANN CAIN  
REP. ANDRE E. CUSHING III  
REP. TERRY HAYES

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

**MAINE LEGISLATIVE COUNCIL  
125<sup>th</sup> LEGISLATURE**

**RULES OF PROCEDURE**

**December 2, 2010**

1. **Organizational Meeting:** The President of the Senate shall call the biennial organizational meeting of the Legislative Council into session in December following the convening of the new Legislature and shall preside until the election of the chair of the Legislative Council.
2. **Chair:** At its organizational meeting, the Legislative Council shall elect a chair, who shall preside at all meetings of the council when he or she is present. The position of Legislative Council chair must alternate in succeeding biennial sessions between a member from the Senate and a member from the House of Representatives. Therefore, for the 125<sup>th</sup> Legislature, the chair must be a Senator.
3. **Vice Chair:** The Legislative Council shall elect a vice-chair who shall serve as chair in the absence of the chair. The vice-chair may not be a member of the same chamber of the Legislature as that of the chair.
4. **Quorum:** The Legislative Council may conduct business only when a quorum of members is present, which consists of six (6) members. Any action of the council requires the affirmative votes of not less than 6 members.
5. **Meetings:** The meeting schedule for the Legislative Council is determined by the call of the chair for the 125<sup>th</sup> Legislature or by a majority vote of the council. The council shall meet at least once per month, on a regularized schedule.
6. **Meeting Room and Location:** The official meeting location of the Legislative Council is the Legislative Council Chamber, Room 334, in the State House, and the chair shall convene all meetings there unless an alternative location is specified in the call of the meeting. The Office of the Executive Director is responsible for use and scheduling of activities of the Legislative Council Chamber. Meetings of the Legislative Council or its committees take precedence over all other functions in the Legislative Council Chamber.

The Legislative Council Chamber may not be used for press conferences or other media events; however, the chair of the Legislative Council or the Executive Director, if delegated by the chair, may authorize an exception when the chair determines that such use is appropriate and will not interfere with legislative activities.

7. **Meeting Notice:** The chair shall issue written calls for all regular and special meetings of the Legislative Council. The call must give the date, time, and place of the meeting and such other information as the chair directs.
  8. **Public Meetings:** All meetings of the Legislative Council are public meetings except for executive sessions; the council may not take any final action in an executive session.
  9. **Council Committees:** The chair shall make all appointments to committees established by the Legislative Council. Each committee must include at least three council members and must have representation from each of the two major political parties. At a minimum, the council shall establish Personnel and State House Facilities committees.
  10. **Approval of Step Increases:** All step increases that require a vote of the Legislative Council during the 125<sup>th</sup> Legislature are approved for the term of this council if, after review, a majority of the Personnel Committee approves the step increases.
  11. **Council Agenda and Records:** The Executive Director of the Legislative Council shall prepare, in consultation with the chair, meeting notices and a council agenda in advance of each meeting. The executive director shall also maintain an accurate, permanent public record of all meetings, proceedings and votes of the Legislative Council.
  12. **Order of Business:** The regular order of business of the Legislative Council is:
    1. Call to Order
    2. Roll Call
    3. Summary of Previous Council Meeting
    4. Executive Director's Report
    5. Reports from Council Committees
    6. Old Business
    7. New Business
    8. Announcements and Remarks
    9. Adjournment
- Items not on the Legislative Council's agenda may be considered only by leave of the council's presiding officer or by a majority vote of the Legislative Council.
13. **Circulation of Ballots:** The chair and the vice-chair, jointly, may authorize a Legislative Council member to circulate a ballot for Legislative Council action when they determine that the matter to be voted on must be decided before the next regular meeting of the council. The executive director shall prepare all ballots authorized for circulation among council members and shall certify votes taken by ballot. Each member of the Legislative

Council must be presented with the ballot and given an opportunity to vote on the ballot. If a member is unable to vote on a ballot by virtue of his or her absence from the State House, the member may authorize the Executive Director to record and attest to his or her vote. Upon certification of the votes on a ballot, the executive director will report the results of the voting to the members of the Legislative Council. In addition, actions taken by Legislative Council ballot must be reported at the next or following regular meeting of the council.

14. **Roll Call Votes:** Votes requiring a roll-call shall be made by the executive director calling the roll, a showing of hands or by electronic tabulation as long as the matter being voted on, how each member voted and the results of the vote are accurately determined and recorded. The executive director shall announce the vote following a roll-call. All decisions of the Legislative Council regarding the introduction of bills or other measures must be by a roll-call vote.
15. **Statements to News Organizations:** Only the chair of the Legislative Council, executive director or persons specifically authorized by the chair may make official statements to news organizations or to the public on behalf of or representing the Legislative Council.
16. **Rules of Order:** The Legislative Council's presiding officer shall conduct the proceedings of the council in accordance with Robert's Rules of Order except as otherwise specified in the council's own rules or by law.
17. **Amendments to Rules:** The Legislative Council may amend these rules, with the exception of Rules 2 and 4, upon a two-thirds vote of the Council members present and voting, provided that a vote to amend is by at least six affirmative votes. Rules 2 and 4 may not be amended during the term of the 125<sup>th</sup> Legislative Council unless otherwise changed by law.
18. **Decisions Affecting Capitol Park:** Any action affecting Capitol Park, be it a temporary or permanent alteration or change in use, must be approved by a majority of the Council, consistent with these rules and 3 MRSA §162(17). Prior to a final decision on any proposal affecting Capitol Park, the Council or its executive director shall consult with the State House and Capitol Park Commission.

Adopted by the Legislative Council of the 125<sup>th</sup> Maine Legislature on December 2, 2010 at Augusta, Maine.

By: David E. Boulter  
David E. Boulter, Executive Director of the Legislative Council

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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  
December 17, 2010**

1. Committee Chairs Orientation

As part of the Legislative Council's orientation programs for the 125<sup>th</sup> Legislature, a day-long orientation session is being planned for committee chairs in early January. The presiding offices will establish the exact date the session will be held.

2. Economic Development Bus Tour

Also as part of the Legislative Council's orientation programs for the 125<sup>th</sup> Legislature, the Maine Development Foundation (MDF) has arranged for an economic development bus tour of the mid-coast and Down East areas of Maine for all interested legislators. The bus tour will take place from Wednesday, January 12, 2011 through Friday, January 14, 2011. Bus tour registration is through MDF; seating remains available.

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# Fiscal Briefing

## Legislative Council Meeting

### December 16, 2010

*Prepared by the Office of Fiscal & Program Review*

#### 1. General Fund Revenue Update (also see attached tables)

**Total General Fund Revenue - FY 2011 (\$'s in Millions)**

	Budget	Actual	Var.	% Var.	Prior Year	% Growth
November	\$206.7	\$217.5	\$10.8	5.2%	\$201.8	7.8%
FYTD	\$978.6	\$1,046.1	\$67.5	6.9%	\$964.7	8.4%

General Fund revenue was \$10.8 million (5.2%) over budget in November. For the first 5 months of FY 2011, the General Fund was over budget by \$67.5 million (6.9%) and reflected growth over the same period in FY 2010 of 8.4%. The variances from budget do not yet reflect the December 2010 revenue revisions that increased General Fund revenue estimates in FY 2011 by \$111.6 million. The 8.4% growth rate over FY 2010 for the first 5 months of FY 2011 compares very favorably to the revised growth rate of FY 2011 of 4.7% based on the December revenue revisions.

Individual Income Tax was ahead of budget by \$8.6 million in November and \$28.9 million for the first 5 months of the FY 2011. The Revenue Forecasting Committee (RFC) revised Individual Income Tax estimates upward by \$43.3 million for FY 2011 in the December forecast. The variance noted above based on the old forecast reflects roughly 2/3 of the revision for FY 2011. Individual Income Tax performance appears to be doing well compared to the new forecast with a growth rate of 7.4% for the first 5 months, well ahead of the 5.6% growth rate projected for FY 2011 in the new forecast.

The other major adjustment in the recent revenue forecast was in the Corporate Income Tax. Although it was close to budget in November based on the old forecast, its positive variance for the first 5 months of FY 2011 was \$26.9 million. That variance, as with the Individual Income Tax, represents roughly 2/3 of the increase for this category in the December revenue forecast. The RFC increased Corporate Income Tax by \$41.7 million and projected an annual growth rate of 14.4% for FY 2011. The actual growth rate for the first 5 months of FY 2011 in the Corporate Income Tax was 53.9%.

The third largest revenue revision for FY 2011 in the December forecast was for the Estate Tax, which was increased by \$11.2 million, largely due to a very significant estate tax payment received in October of nearly \$6 million. Although the Estate Tax fell below the old forecast in November, it not uncommon for significant swings in collections from month to month and it remained ahead of that old forecast by \$7.2 million through November.

Other significant General Fund revenue revisions for the current fiscal year were for the Cigarette and Tobacco Tax and Insurance Companies Tax at \$8.5 million and \$4.8 million, respectively. At this point, it is too early to compare the performance of these categories to the new forecast, particularly for the Insurance Companies Tax, due to the timing of the receipts within the fiscal year. The growth rate of Cigarette and Tobacco Tax at 0.2% for the first 5 months of FY 2011 is better than the RFC's projected decline for the fiscal year of 1.9%.

November's performance for the other General Fund revenue categories does not provide any indication of significant variances from the new forecast. Most of the variances will be addressed when the new monthly forecast is developed based on the December revenue forecast.

## Fiscal Briefing (continued)

### 2. Highway Fund Revenue Update (also see attached tables)

Total Highway Fund Revenue - FY 2011 (\$'s in Millions)						
	Budget	Actual	Var.	% Var.	Prior Year	% Growth
November	\$26.3	\$27.4	\$1.0	4.0%	\$27.1	0.9%
FYTD	\$110.9	\$117.3	\$6.4	5.7%	\$115.8	1.3%

Highway Fund revenue was over budget by \$1.0 million (4.0%) in November and \$6.4 million for the first 5 months of FY 2011 based on the revenue forecast prior to the December forecast. The December revenue forecast increased Highway Fund revenue estimates in FY 2011 by \$0.7 million and projected a decline for FY 2011 of 1.1%. Highway Fund revenue performance through November that reflected a positive growth rate of 1.3% is encouraging.

November's positive performance relative to the forecast was spread out across all revenue categories with the exception of the fine revenue, which was revised downward in the December revenue forecast.

### 3. Cash Balances

The average total cash pool balance for November was more than \$200 million higher than one year ago and for the first time in many years was above the historical average for November of \$522.0 million (November 2001 to 2009). Average cash balances have shown improvement in all of the groups below. General Fund internal borrowing is more than \$60 million less than a year ago at this time.

Summary of Treasurer's Cash Pool		
November Average Daily Balances		
Millions of \$'s		
	2009	2010
General Fund (GF) Total	(\$0.6)	\$34.6
General Fund (GF) Detail:		
Budget Stabilization Fund	\$0.2	\$25.4
Reserve for Operating Capital	\$0.0	\$11.2
Tax Anticipation Notes	\$0.0	\$0.0
Internal Borrowing	\$242.6	\$180.0
Other General Fund Cash	(\$243.4)	(\$182.0)
Other Spec. Rev. - Interest to GF	(\$45.2)	\$20.7
Other State Funds - Interest to GF	\$10.8	\$13.0
Highway Fund	\$18.9	\$56.9
Other Spec. Rev. - Retaining Interest	\$47.2	\$55.3
Other State Funds	\$184.5	\$229.5
Independent Agency Funds	\$107.5	\$116.0
<b>Total Cash Pool</b>	<b>\$323.1</b>	<b>\$526.0</b>

**General Fund Revenue**  
**Fiscal Year Ending June 30, 2011 (FY 2011)**  
**November 2010 Revenue Variance Report**

Revenue Category				Fiscal Year-To-Date					FY 2011 Budgeted Totals
	November '10 Budget	November '10 Actual	November '10 Variance	Budget	Actual	Variance	Variance %	% Change from Prior Year	
Sales and Use Tax	72,208,531	73,361,094	1,152,563	338,143,872	342,859,162	4,715,290	1.4%	3.4%	904,850,262
Service Provider Tax	4,667,291	4,308,339	(358,952)	19,822,709	17,037,771	(2,784,938)	-14.0%	-11.0%	57,814,486
Individual Income Tax	109,941,811	118,528,722	8,586,911	499,894,017	528,840,787	28,946,770	5.8%	7.4%	1,326,790,000
Corporate Income Tax	543,845	889,804	345,959	33,858,970	60,798,115	26,939,145	79.6%	53.9%	158,786,702
Cigarette and Tobacco Tax	11,085,778	12,110,017	1,024,239	60,976,717	63,138,671	2,161,954	3.5%	0.2%	137,744,579
Insurance Companies Tax	4,316,813	5,797,499	1,480,686	11,721,809	11,591,291	(130,518)	-1.1%	-9.9%	71,990,000
Estate Tax	2,717,807	1,525,030	(1,192,777)	7,278,741	14,496,640	7,217,899	99.2%	54.4%	31,739,004
Other Taxes and Fees *	7,814,518	8,317,436	502,918	59,335,315	58,931,059	(404,256)	-0.7%	2.9%	148,117,322
Fines, Forfeits and Penalties	2,221,105	2,351,303	130,198	13,147,269	12,186,360	(960,909)	-7.3%	-16.1%	30,816,261
Income from Investments	210	31,621	31,411	30,970	107,137	76,167	245.9%	-47.0%	275,045
Transfer from Lottery Commission	4,002,631	3,633,534	(369,097)	22,014,495	20,433,570	(1,580,925)	-7.2%	-6.2%	52,034,250
Transfers to Tax Relief Programs *	(10,719,758)	(9,799,225)	920,533	(58,361,122)	(50,185,634)	8,175,488	14.0%	15.3%	(112,087,945)
Transfers for Municipal Revenue Sharing	(6,888,866)	(7,620,064)	(731,198)	(38,170,290)	(40,509,671)	(2,339,381)	-6.1%	8.3%	(89,213,027)
Other Revenue *	4,738,556	4,019,222	(719,334)	8,925,791	6,416,952	(2,508,839)	-28.1%	-2.0%	54,258,021
<b>Totals</b>	<b>206,650,272</b>	<b>217,454,331</b>	<b>10,804,059</b>	<b>978,619,263</b>	<b>1,046,142,208</b>	<b>67,522,945</b>	<b>6.9%</b>	<b>8.4%</b>	<b>2,773,914,960</b>

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

**General Fund Revenue**  
**Fiscal Year Ending June 30, 2011 (FY 2011)**

**November 2010 Revenue Variance Report**

Revenue Category				Fiscal Year-To-Date					FY 2011 Budgeted Totals
	November '10 Budget	November '10 Actual	November '10 Variance	Budget	Actual	Variance	Variance %	% Change from Prior Year	
Detail of Other Taxes and Fees:									
- Property Tax - Unorganized Territory	0	0	0	12,080,762	11,896,097	(184,665)	-1.5%	5.0%	13,245,281
- Real Estate Transfer Tax	1,574,763	1,508,068	(66,695)	8,347,207	7,316,435	(1,030,772)	-12.3%	9.5%	14,922,365
- Liquor Taxes and Fees	1,534,439	1,463,334	(71,105)	9,072,409	9,369,692	297,283	3.3%	3.7%	20,413,193
- Corporation Fees and Licenses	143,725	137,107	(6,619)	1,092,475	1,209,661	117,186	10.7%	-3.9%	7,505,099
- Telecommunication Personal Prop. Tax	0	(24,852)	(24,852)	0	(24,852)	(24,852)	N/A	74.2%	16,775,988
- Finance Industry Fees	1,829,586	2,070,450	240,864	9,147,930	9,499,800	351,870	3.8%	5.0%	22,365,980
- Milk Handling Fee	281,632	33,812	(247,820)	1,877,548	2,108,345	230,797	12.3%	-64.1%	3,848,975
- Racino Revenue	584,920	856,159	271,239	4,168,975	4,265,016	96,041	2.3%	10.2%	10,855,590
- Boat, ATV and Snowmobile Fees	162,391	166,402	4,011	1,519,138	1,683,562	164,424	10.8%	4.9%	4,500,295
- Hunting and Fishing License Fees	1,079,673	1,067,959	(11,714)	7,258,969	6,381,133	(877,836)	-12.1%	5.3%	17,420,998
- Other Miscellaneous Taxes and Fees	623,389	1,038,998	415,609	4,769,902	5,226,170	456,268	9.6%	102.9%	16,263,558
Subtotal - Other Taxes and Fees	7,814,518	8,317,436	502,918	59,335,315	58,931,059	(404,256)	-0.7%	2.9%	148,117,322
Detail of Other Revenue:									
- Liquor Sales and Operations	2,292	3,000	708	11,460	12,292	832	7.3%	-0.1%	7,391,759
- Targeted Case Management (DHHS)	1,508,142	1,059,689	(448,453)	7,540,710	5,681,373	(1,859,337)	-24.7%	-42.4%	18,097,695
- State Cost Allocation Program	1,393,965	1,285,471	(108,494)	6,978,999	6,060,739	(918,260)	-13.2%	-10.7%	16,581,224
- Unclaimed Property Transfer	0	0	0	0	0	0	N/A	N/A	2,333,420
- Toursim Transfer	0	0	0	(8,972,750)	(9,048,877)	(76,127)	-0.8%	-0.3%	(8,972,750)
- Transfer to Maine Milk Pool	(349,000)	(268,189)	80,811	(3,275,805)	(3,209,335)	66,470	2.0%	64.3%	(4,011,691)
- Transfer to STAR Transportation Fund	0	0	0	(2,946,769)	(3,100,352)	(153,583)	-5.2%	1.1%	(2,946,769)
- Other Miscellaneous Revenue	2,183,157	1,939,251	(243,906)	9,589,946	10,021,111	431,165	4.5%	-9.3%	25,785,133
Subtotal - Other Revenue	4,738,556	4,019,222	(719,334)	8,925,791	6,416,952	(2,508,839)	-28.1%	-2.0%	54,258,021
Detail of Transfers to Tax Relief Programs:									
- Me. Resident Prop. Tax Program (Circuitbreaker)	(4,435,714)	(4,554,847)	(119,133)	(33,609,355)	(29,861,990)	3,747,365	11.1%	4.6%	(43,500,000)
- BETR - Business Equipment Tax Reimb.	(6,284,044)	(5,244,379)	1,039,665	(24,751,767)	(19,883,602)	4,868,165	19.7%	28.8%	(51,043,140)
- BETE - Municipal Bus. Equip. Tax Reimb.	0	0	0	0	(440,042)	(440,042)	N/A	N/A	(17,544,805)
Subtotal - Tax Relief Transfers	(10,719,758)	(9,799,225)	920,533	(58,361,122)	(50,185,634)	8,175,488	14.0%	15.3%	(112,087,945)
Inland Fisheries and Wildlife Revenue - Total	1,336,360	1,289,243	(47,117)	9,257,728	8,478,518	(779,210)	-8.4%	5.3%	23,061,115

**Highway Fund Revenue**  
**Fiscal Year Ending June 30, 2011 (FY 2011)**  
**November 2010 Revenue Variance Report**

Revenue Category	November '10 Budget	November '10 Actual	November '10 Variance	Fiscal Year-To-Date					FY 2011 Budgeted Totals
				Budget	Actual	Variance	% Variance	% Change from Prior Year	
Fuel Taxes:									
- Gasoline Tax	15,905,023	16,422,966	517,943	67,700,246	72,670,816	4,970,570	6.8%	0.1%	189,570,000
- Special Fuel and Road Use Taxes	3,566,868	3,563,342	(3,526)	13,651,339	15,040,936	1,389,597	9.2%	1.3%	47,190,000
- Transcap Transfers - Fuel Taxes	(1,440,427)	(1,468,056)	(27,629)	(7,491,658)	(7,933,971)	(442,313)	-5.6%	-2.3%	(17,393,957)
- Other Fund Gasoline Tax Distributions	(397,737)	(411,543)	(13,806)	(2,193,092)	(2,318,074)	(124,982)	-5.4%	-3.2%	(4,840,577)
Subtotal - Fuel Taxes	17,633,727	18,106,708	472,981	71,666,835	77,459,707	5,792,872	7.5%	0.0%	214,525,466
Motor Vehicle Registration and Fees:									
- Motor Vehicle Registration Fees	4,329,099	4,516,981	187,882	27,513,262	26,726,769	(786,493)	-2.9%	2.7%	68,063,880
- License Plate Fees	211,607	271,682	60,075	1,376,608	1,471,830	95,222	6.5%	0.9%	3,280,493
- Long-term Trailer Registration Fees	427,351	493,880	66,529	969,522	2,019,342	1,049,820	52.0%	67.4%	6,183,601
- Title Fees	646,700	782,523	135,823	4,150,463	4,577,586	427,123	9.3%	3.1%	9,665,070
- Motor Vehicle Operator License Fees	392,779	459,808	67,029	2,371,349	2,515,959	144,610	5.7%	3.0%	5,589,208
- Transcap Transfers - Motor Vehicle Fees	0	0	0	(4,037,826)	(4,052,527)	(14,701)	-0.4%	-0.1%	(14,388,499)
Subtotal - Motor Vehicle Reg. & Fees	6,007,536	6,524,873	517,337	32,343,378	33,258,959	915,581	2.8%	5.5%	78,393,753
Motor Vehicle Inspection Fees	185,700	212,981	27,281	1,099,200	1,144,390	45,190	3.9%	31.4%	2,952,500
Other Highway Fund Taxes and Fees	89,816	102,266	12,450	564,297	620,843	56,546	9.1%	3.4%	1,270,460
Fines, Forfeits and Penalties	142,128	108,949	(33,179)	829,075	544,136	(284,939)	-52.4%	-25.4%	1,745,049
Interest Earnings	2,950	11,903	8,953	11,800	55,334	43,534	78.7%	-12.8%	32,446
Other Highway Fund Revenue	2,264,991	2,299,266	34,275	4,419,823	4,216,383	(203,440)	-4.8%	-6.8%	8,146,695
<b>Totals</b>	<b>26,326,848</b>	<b>27,366,946</b>	<b>1,040,098</b>	<b>110,934,408</b>	<b>117,299,752</b>	<b>6,365,344</b>	<b>5.4%</b>	<b>1.3%</b>	<b>307,066,369</b>

# Interim 2010 Legislative Studies and Interim Committee Meetings

Updated December 17, 2010

Study Name	Meetings Authorized	Meetings Held This Year	Next Meeting Date	Report Date	Chairs	Status
Task force on kinship families (Resolve 136)	4 meetings	4	Meetings concluded	11/3/2010	Sen. Craven; Rep. Jones	Report issued and available on-line
Joint Select Committee on Health Care Reform (HP 1262)	6 meetings	6	Meetings concluded	12/1/2010	Sen. Brannigan; Rep. Treat	Report being finalized
ACF committee to discuss report on milk handling fees (Resolve 183)	2 meetings	1	Not planning to meet again	12/1/2010	Sen. Nutting; Rep. Pieh	No plans to use their second authorized meeting.
AFA Committee	Monthly	7	No December meeting	No report required	Sen. Diamond; Rep. Cain	
EDU committee meetings on MaineCare Rules relating to CDS (PL 571, Part ZZZ)	2 meetings	2	Meetings concluded	Not specified	Sen. Alford; Rep. Sutherland	
LVA committee review of slot machine revenues (PL 571, Part FFF)	4 meetings	4	Meetings concluded	11/23/2010	Sen. Sullivan; Rep. Trinward	Report issued and available on-line
NAT committee study of solid waste and hot mix asphalt plant emissions	5 meetings	4	Meetings concluded	11/3/2010	Sen. Goodall; Rep. Duchesne	Report being reviewed by Committee
OPLA/OFPR staff study of DOE program funding	N/A	N/A	N/A	11/3/2010	OPLA/OFPR staff	Report issued and available on-line
SLG committee study of APA rulemaking process (Resolve 207)	Up to 3 meetings	3	Meetings concluded	11/3/2010	Sen. Simpson; Rep. Beaudette	Report issued and available on-line
SLG meeting with AFA regarding SPO reorganization (PL 571, Part JJJJ)	1 meeting	0	Not scheduled	No report required	Sen. Simpson; Rep. Beaudette	

## On-going Legislative Studies

Study Name	Meetings Authorized	Meetings Held This Year	Next Meeting Date	Report Date	Chairs	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	2/1/2012	125th chairs not yet appointed	
Right to Know Advisory Committee (PL 2005, c. 631)	At least 4 times annually	4	Meetings concluded	1/15 annually to JUD, Governor and Chief Justice	Sen. Hobbins	Report in production



DEPARTMENT OF

# Professional & Financial Regulation

STATE OF MAINE

- OFFICE OF SECURITIES
- BUREAU OF INSURANCE
- CONSUMER CREDIT PROTECTION
- BUREAU OF FINANCIAL INSTITUTIONS
- OFFICE OF LICENSING AND REGISTRATION

## *Report of the Commissioner* *Department of Professional and Financial Regulation*

**Submitted to the**  
**Joint Standing Committee on**  
**Business, Research and Economic Development**

***Pursuant to Resolve 2007, c. 219 as amended by***  
***Public Law 2009, c. 261***

**Directing the Department of Professional and Financial**  
**Regulation to Study Residential Contractor Licensing**

**December 8, 2010**

## DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION

Report to the Joint Standing Committee on  
Business, Research and Economic Development

### Study of Residential Contractor Licensing pursuant to Resolve 2007, c. 219 as amended by Public Law 2009, c. 261

December 8, 2010

#### I. Introduction

The concept of licensing building contractors, and in particular residential building contractors, has been the subject of numerous discussions in the Legislature for the past decade. During the 121<sup>st</sup> Legislature, the Joint Standing Committee on Business, Research and Economic Development directed the Commissioner of Professional and Financial Regulation to conduct a Sunrise Review of LD 1551 "*An Act to License Home Building Contractors and Improvement Contractors*." In his January 2004 sunrise report, Commissioner Robert Murray recommended against establishing a licensing program for building contractors. (Attached as Appendix A).

The Commissioner reasoned that any attempt to regulate building contractors must be preceded by the adoption of a mandatory statewide building code, which is essential to provide the building and construction trade with a set of minimum standards against which the work of construction trades could be measured. Further, the Commissioner concluded that the potential benefit of regulating home contractors through licensing did not justify the burden associated with home contractor licensing, in terms of both increased cost to the consumer public and the increased cost to the regulated community.

In the 122<sup>nd</sup> Legislature, Commissioner Christine Bruenn testified in opposition to LD 1306, a proposal that mirrored the prior bill, LD 1551. She said the issues considered by Commissioner Murray in concluding that the case had not been made to support a new licensing program were still relevant, and little had changed. She testified that although progress toward a mandatory statewide building code had been made, the process was not complete.

The 123<sup>rd</sup> Legislature considered LD 1038, a bill similar in most respects to LD 1551 and LD 1306. LD 1038 was set aside by the Committee in favor of enacting LD 2257, codified as PL 2007, c. 699, that established the Technical Codes and Standards Board charged with harmonizing the Maine Model Building Code with existing building codes. The idea underlying LD 2257 was to set aside plans to license residential contractors to make significant progress toward developing a mechanism for harmonizing various existing codes with the International Residential and Building Codes so that builders in Maine would start to learn and understand the standards with which they might

eventually be asked to comply. The Technical Codes and Standards Board within the Department of Public Safety began its work in November 2008.

A separate but related resolve enacted by the 123<sup>rd</sup> Legislature directed the Department of Professional and Financial Regulation to study the building and construction environment as the new board developed and finalized the building code and conflicts between existing codes and the building code were resolved. The report-back date for the Department's study was theoretically set far enough in the future for progress to be observed and analyzed as a benchmark before any new licensing proposals would be considered. This report is submitted pursuant to PL 2007 Resolve, c. 219 as amended by Public Law 2009 c. 261.

**Resolved:** *That the Department of Professional and Financial Regulation shall study the issue of residential contractor licensing. The department shall include in its study a review of the various building and energy codes in existence throughout the State. The department shall report its recommendations for residential contractor licensing to the joint standing committee of the Legislature having jurisdiction over business, research and economic development matters no later than December 1, 2010. The joint standing committee of the Legislature having jurisdiction over business, research and economic development matters may submit legislation regarding residential contractor licensing to the First Regular Session of the 125th Legislature.*<sup>1</sup>

Most recently, the 124<sup>th</sup> Legislature considered LD 272, a licensing proposal sponsored by Representative Bruce MacDonald similar in many respects to LD 1038 but without references to the Maine Building Code. The original bill was the subject of many thoughtful committee discussions and significant substantive revisions to address concerns raised by committee members and interested parties. The revised bill carried with it the same issues of increased costs for both consumers and contractors present in prior proposals. The 124<sup>th</sup> Legislature adjourned without enactment of LD 272, but with the assurance from the Department of Public Safety that work on the state-wide building code would continue and adoption of a state-wide building code by the Technical Codes and Standards Board would occur in June 2010 as required by law.

## **II. Methods of Regulation**

Regulation of an industry, profession or occupation may take different forms. Some professions are regulated through implementation of a certification program. "Certification" is a term that connotes training or an examination process administered usually by a private trade or professional association at either the state or national level. Obtaining certification status by the service provider is voluntary. The state has no

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<sup>1</sup> The resolve makes reference to studying "residential" contractor licensing which has been the subject of significant discussion by the Business, Research and Economic Development Committee. This report focuses on residential contractor regulation as a subset of the broader concept of regulation of building contractors. The policy decisions that must be considered are equally applicable to regulation of building contractors generally as to regulation of residential contractors specifically.

enforcement or regulatory role. Certification is used to enhance the stature of those certified within the profession or occupation. Since certification is voluntary, it would not prohibit anyone from practicing that profession or occupation. As described, certification is not typically a state function, and therefore not overseen by a state agency nor involving any state expense.

In other circumstances, a profession or occupation may be regulated at the local or municipal level. Many states regulate occupations, particularly those related to construction or construction-related occupations, including building contractors, at the municipal level. Municipalities are well situated to issue permits, perform inspections and enforce ordinances passed by cities and towns for the safety of residents. Some municipalities in other states issue local licenses and enforce the requirements associated with obtaining that license.

“Licensure” is a designation used to describe the highest level of state regulation. Typically, the state grants licensure to an individual who has complied with a legislatively mandated set of minimum educational, experiential, and training and competency standards, and has paid the required licensing fee. Regulation through licensure encompasses the setting of eligibility standards, examination requirements, and a process to resolve consumer complaints. The complaint process typically involves investigation of complaints and a disciplinary process whereby the licensing authority imposes discipline in situations where the licensee has violated state law. Effective licensing programs that protect the public require the existence of a clear threat to human health or safety, and a mechanism for protecting the public from that defined threat. The foundations for a licensure program typically include adoption of minimum standards and a clearly defined statutory scope of practice. This level of state regulation carries with it the highest level of state expense. The total cost of the program becomes the basis for a statutory fee cap, and license fees established through the Administrative Procedures Act rulemaking process.

Licensing professions and occupations at the state level is typically reserved for professions and occupations that have the potential for the greatest harm to the public in the absence of state action. Because it requires state involvement, state level licensing is expensive and carries with it the heaviest burden, both financially and economically, for those individuals subject to its requirements. In Maine, state regulation of occupations and professions is generally reserved for those professions that involve public trust being placed in the hands of professionals in areas in which the lay person might not be able to distinguish between an ethical, competent practitioner and an unethical or incompetent practitioner.

### **III. Regulation of Residential Building Contractors**

With respect to the status of residential building contractors, a number of incremental steps have already been taken to protect the public from potential harm.

Trade associations representing building contractors have formed effective voluntary certification programs in which contractors participate. In addition, state agencies offer voluntary certification programs, including a voluntary certification program administered by the Department of Environmental Protection to certify contractors on erosion control practices; and by the Department of Health and Human Services, Division of Environmental Health to certify septic system installers. Private organizations offer certification programs such as the program offered by the Maine Concrete Technicians Certification Board to certify individuals who test qualities of concrete; by building material manufacturers and suppliers to train contractors in the intended use of their products; and by the Midcoast Builders Alliance and the Maine Home Builders and Remodelers Association for members relating to building and structural issues. Also, Maine community colleges routinely offer building trade training.

The Attorney General's Office has reviewed and revised the consumer education information posted on its website and has updated its Consumer Law Guide to provide more effective guidance about how to identify an ethical and competent residential building contractor. The Attorney General's Office has also updated the standard contract required by the Home Construction Contract Act in Title 10 to more effectively protect the financial and property interests of consumers.

The Maine Municipal Association has provided information with respect to considerable efforts of municipalities to regulate construction practices of the residential contractors. It asserts that "More than 70 municipalities, encompassing over half of the state population, have adopted building codes governing the construction of residential property. Furthermore, most of these municipalities employ professional staff that inspects completed construction for compliance with the building code."<sup>2</sup>

Another effective form of state regulation of residential construction to protect the public interest is the adoption of a state-wide building code which resulted from the passage of a state law requiring the establishment of the Technical Codes and Standards Board within the Department of Public Safety (PL 2007, c. 699). In 2008, the Board embarked on a public process to adopt various residential and commercial building codes for the state as a whole and harmonize those with existing state-wide safety and installation codes in related construction areas. Throughout the process of adopting and harmonizing codes under the heading of the Maine Uniform Building and Energy Code ("MUBEC"), individuals and companies involved in the construction industry in Maine provided important input and have now been become focused on how enforcement of the new codes will affect their business plans and improve the housing stock in Maine. The public harmonization and adoption process has drawn needed attention of municipal officials across the state that are working to determine training needs for municipal inspectors and building officials who will eventually be involved in local inspections of construction in their jurisdictions for compliance with the MUBEC.

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<sup>2</sup> DPFR Sunrise report on LD 1551, p. 14.

#### IV. Maine Uniform Building and Energy Code (MUBEC)

The Maine Uniform Building and Energy Code was formally adopted by the Technical Codes and Standards Board on June 1, 2010. Maine towns with a population of 2,000 and over now have the option of implementing MUBEC effective June 1, 2010 or, continuing to observe an existing locally adopted building code until December 1, 2010. However, effective December 1, 2010, all Maine towns and cities must apply and comply with the provisions of the Maine Uniform Building and Energy Code and its component standards.

As described by the Technical Codes and Standards Board, the MUBEC is comprised of the four international building codes: 1) International Residential Code (2009); 2) International Building Code (2009); 3) International Existing Building Code (2009); and 4) International Energy Conservation Code (2009).

The following standards are adopted as additional components of the Code:

A. The American Society of Heating, Refrigerating and Air-Conditioning Engineers, Standards (ASHRAE)

1) 62.1 - 2007 (Ventilation for Acceptable Indoor Air Quality); 2) 62.2 - 2007 (Ventilation and Acceptable Indoor Air Quality in Low-Rise Residential Buildings); and 3) 90.1 - 2007 (Energy Standard for Buildings except Low-Rise Residential Buildings) editions without addenda.

B. E-1465-2006, Standard Practice for Radon Control Options for the Design and Construction of New Low- Rise Residential Buildings

The following existing installation and safety codes are also in effect:

National Electrical Code	NFPA <sup>3</sup> 70
National Fire Code	NFPA 1
Flammable Liquids Code	NFPA 30
Fuel Gas Code	NFPA 54
Life Safety Code	NFPA 101
Oil Burner Code	NFPA 31
Plumbing Code	Maine State Internal Plumbing Code
Floodplain Regulations	Local Municipal Regulation
Shoreland Zoning Regulations	
Sprinkler Codes	NFPA 13, 13D & 13R

The Technical Codes and Standards Board was granted authority in the 2008 law to review available building codes and adopt all or portions of those codes. Some codes were not adopted in their entirety as noted by the board in its adoption documents.

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<sup>3</sup> National Fire Protection Association

For the first time in state history, Maine has a state-wide mandatory building code. The final effective date of the code is December 1, 2010. Enforcement of the code will be phased in so the impact of having adopted a state-wide building code will not be known for several years. See, <http://www.maine.gov/dps/bbcs/>

## **V. Training Opportunities in MUBEC**

An important component of preparing for adoption of a state-wide building code is the development of effective training modules for individuals who will inspect and evaluate building plans and construction quality. The Technical Codes and Standards Board within DPS has partnered with the State Planning Office to redesign the existing SPO training and certification program for code officials. Pursuant to the provisions of the MUBEC, local code enforcement and building officials are required to be appropriately trained and certified to carry out the mandate of the original law. The State Planning Office staff, in conjunction with Technical Board staff, adopted training rules during a public process that garnered comments from the code enforcement and construction communities with suggestions for making training material more effective.

The State Planning Office Code Enforcement Officer Training and Certification program schedule has been announced. The schedule of training workshops for code and building officials, as well as third-party inspectors, in the following standards has now been announced: residential building code, commercial building code, residential energy code, indoor residential ventilation code, and indoor commercial ventilation code.

Instructors have been presenting periodic workshops during November and December at community college locations across the state covering: 1) statutory requirements of the Maine Uniform Building and Energy Code; 2) code purposes and organization; 3) applicable state laws, review and permitting; 4) report procedure; 5) occupancy approval requirements; and 6) inspection and enforcement techniques. Anyone may register and pay to attend these workshops, however, code enforcement officials and building officials who are municipal employees may attend at no cost. (see [www.maine.gov/spo/ceo/index.htm](http://www.maine.gov/spo/ceo/index.htm)).

At the present time, specific MUBEC training for residential building contractors on the IRC (2009 version) has not been planned. Although the State Planning Office has notified building and construction-related groups and associations about the adoption and effective date of the Maine Uniform Building and Energy Code, SPO is not required to provide training to any groups other than code enforcement officials and individuals seeking to become certified as third-party inspectors.

## **VI. Policy Questions To Be Addressed**

The Department of Professional and Financial Regulation's 2004 Sunrise Report on LD 1551 focused on three key foundational issues that would need to be addressed and resolved before a licensure program for building contractors should be considered. The first was the lack of a mandatory state-wide building code by which to measure quality of construction. As noted in prior sections of this report, the adoption of the Maine Uniform

Building and Energy Code and related standards is now an on-going process and will eventually determine what entities will be responsible for enforcing the provisions of the MUBEC.

- **Defining the Objective of State Licensure**

The Business, Research and Economic Development Committee has heard public testimony about the quality of residential construction as well as about the financial conduct and business practices of contractors. Should a state licensure program regulate the **quality of construction work** or the **business practices of building contractors**? Should a state licensure program encompass both objectives? How would a proposal address both objectives?

Measuring the quality of construction may be addressed by a mandatory state building code. However, a building code does not address ethical and honest business practices. Some states have combined contractor licensing programs with other components of a remedial program which requires disclosure of financial information as a condition of licensure and in some cases, to provide consumer remedies. These licensure models clearly increase costs associated with the program.

- Licensure of residential contractors that includes the imposition of financial requirements on residential contractors: Some states require a demonstration of financial stability and net worth as a condition of licensure.
- Licensure of residential contractors that includes a provision for a homeowner restitution fund: Some states have established a restitution account funded by an assessment on each licensed contractor.
- Licensure of residential contractors that includes a subcontractor recovery fund.

These and other combinations can be found in other states. As noted, the more complex the program, the more state expense is involved. However, until the basic policy objectives of a licensure program are established, the total costs of any program are speculative, at best.

- **Defining Scope of Practice**

The second key foundational issue that must be resolved is the “scope of practice” for any defined group of individuals that may be regulated. The statutory scope of practice provision is the hallmark of licensing statutes for all regulated professions and occupations. A profession or occupation’s “scope of practice” indicates to the public which services will require the service provider to have obtained a state license and, to the contrary, which services will not require a license.

The licensing proposals considered to date have failed to adequately define a specific scope of practice for residential home contractors. LD 1551 would have required

licensure of a "home contractor" which included any person who undertakes, offers to undertake or submits a bid to build a dwelling or perform any home improvement. However, the bill did not define which specific services performed by a home contractor are included in the "building" or "improving" of a dwelling.

Some proposals would have exempted a subcontractor providing window installation for a home contractor from licensure; however, the same subcontractor would have to obtain a license if he or she provided the same window installation service to a consumer directly. Thus, it would have been the relationship between a service provider and the consumer on a given day that would determine whether a license is required, rather than the actual service or conduct itself.

To date, the various licensing proposals have failed to define in specific terms the activity that would require a state license. Some proposals have focused on whether "home improvement" should be defined to include the "structural repair, renovation or rehabilitation of construction or an addition to a dwelling." Is this definition limited to what is generally thought of as carpentry work? If so, what is the definition and scope of practice for a carpenter? The definition in other proposals also includes "the removal, repair, replacement or installation of roofing, siding, insulation, windows or chimneys." Does this mean that a person working on a foundation is not required to be licensed? What about drywallers, floor covering installers or other specialty service providers? What specific range of services is included in each category? Does "roofing" include replacing both boards and shingles or just shingles?

Without a clear statutory scope of practice adopted by the Legislature, neither potential licensees nor the public will be able to determine under what circumstances a license would be required. Regulation of a profession is a policy determination to be made by the Legislature. More specifically, defining the actual conduct which will require a state license should be made by the Legislature.

- **Identifying Program Costs and Sources of Funding**

A third seminal issue that has not been resolved is the source of funding for any form of new regulation. The cost of regulating a profession is typically borne by the licensees in that profession through the payment of dedicated license fees. A typical licensing program will build into the established license fee the direct costs of examination development and administration, dedicated personnel and associated equipment, as well as overhead costs including rent, legal service, and technology and staff, depending on whether the program is located in a state agency or a private organization.

As noted previously, because prior licensing proposals have lacked specificity in defining what types of conduct would be regulated and under what specific circumstances, it is almost impossible to project either the number of potential licensees or the total cost of the regulatory program. Clearly, the important policy decisions about goals and objectives of licensing drive the costs associated with a regulatory program. Until those policy determinations are made, the costs cannot be determined. State licensing

programs are expensive to administer. Those costs would be imposed on licensees in the form of license fees and to the public in the form of increased construction costs.

- **Understanding the Consequences of Imposing New License Requirements**

Effective licensing statutes are the product of public policy discussions when a need to protect citizens from a certain group of businesses or individuals who offer professional services for compensation is clearly identified. Policy makers must balance the positive and negative consequences of imposing new license requirements on an industry whose financial stability impacts the state's financial and economic status.

When a licensing proposal is implemented and licensing requirements are imposed, many individuals and companies now doing business will not meet minimum standards and qualifications. Depending on how broadly the Committee views the necessary scope of licensure, many individuals who would not meet basic licensing standards will be prohibited from engaging in their current occupation. Is the existing economic climate in Maine strong enough to withstand the consequences of imposing new license requirements on individuals and businesses? In an economic climate in which some businesses are struggling under existing regulatory requirements in various areas, new regulatory programs must be evaluated in light of existing regulations affecting the same individuals and businesses. The mandatory nature of the Maine Uniform Building and Energy Code, standing alone, may be as much regulation as the economic and business environment can withstand.

## **VII. Recommendation**

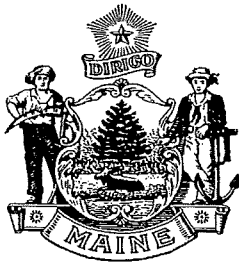
These are important policy considerations. The answers will determine the need for and breadth of any future licensing program. If every individual who performs any home improvement work with or without a contract is required to obtain a state license, the resulting program could include a group of more than 12,000 individuals.<sup>4</sup> If a program that imposes new licensing requirements on 12,000 individuals and businesses is perceived as too broad, then what subcategory of that 12,000 would it be more appropriate to license to avoid perceived harm to the public?

To the extent that these issues remain unresolved, meaningful discussion by the Legislature of whether regulation in this area should occur, and if so, what specific regulatory options should be considered remains difficult. Answers to the key policy questions discussed above should inform the decisions of policy makers only after a decision is made by the Legislature that additional regulation of building contractors, beyond those measures already in place, is necessary to protect the public.

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<sup>4</sup> Appendix D, DPFR Sunrise Review Report, "Economic Impact Analysis of Proposed Home Contractor Regulation, pgs 8, 10, 18. Planning Decisions, Inc. was engaged by the Office of the Attorney General to provide an economic impact analysis of LD 1551. 1997 US Census Reports for Maine were used by Planning Decisions. 2002 US Census Reports for Maine provide updated statistics.

If the Committee determines that, as a policy matter, it desires to move toward development of a regulatory program for residential and/or commercial builders, the Department stands ready to assist in that effort with information and staff expertise, as needed. Any proposal to regulate in this area should clearly state the Committee's policy determinations and reflect the Committee's policy objectives.



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**Final Report  
of the  
Legal and Veterans' Affairs Committee  
Review of Slot Machines**

**December 2010**

**The Office of Policy and Legal Analysis**

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**STATE OF MAINE  
124th LEGISLATURE  
SECOND REGULAR SESSION**

**Final Report  
of the  
Legal and Veterans' Affairs Committee  
Review of Slot Machines**

**December 2010**

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Representative Diane Russell  
Representative Stacey Allen Fitts  
Representative Wright H. Pinkham, Sr.  
Representative Joan M. Nass  
Representative Michael G. Beaulieu**

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## INTRODUCTION

Public Law 2009 chapter 571, Part FFF (see appendix A) was enacted by the Second Regular Session of the 124<sup>th</sup> Legislature as part of the “supplemental budget.” Part FFF has two primary components relative to the allocation of slot machine revenue as required by 8 MRSA §1036 (see appendix B). First, it requires reporting to the Joint Standing Committees on Legal and Veterans’ Affairs and Appropriations and Financial Affairs from recipients of slot revenue allocation by September 15<sup>th</sup> of each year. This report is required to include historical allocation and expenditure information beginning with the fiscal year 2005-06, when the racino that operates slot machines began operations.

The funds listed in Part FFF required to submit the annual reports are as follows:

- The Fund to Supplement Harness Racing Purses (Title 8 section 298);
- The Sire Stakes Fund (Title 8, section 281);
- The Agricultural Fair Support Fund (Title 7, section 91);
- The University of Maine System Scholarship Fund (Title 20-A, section 10909 );
- The Maine Community College System for scholarship distribution (in accordance with Title 20-A, section 12716);
- The Fund to Encourage Racing at Maine’s Commercial Tracks (Title 8, section 299); and
- The Fund to Stabilize Off-track Betting Facilities (Title 8, section 300).

The second component of Part FFF directed the Joint Standing Committee on Legal and Veterans’ Affairs to conduct a review of the allocation of funds required by current law and to make recommendations that address an appropriate framework for ongoing review of slot machine revenue allocation. This framework would provide for consideration of the adequacy of distribution of revenue among existing and potential new purposes and to compare to the principles of allocation of slot revenue or future casinos with the intent of the voters who approved the operation of gambling facilities.

The Legal and Veterans’ Affairs Committee was authorized to hold four meetings to accept the initial slot revenue recipient reports, conduct its review and make recommendations. The first meeting was held on August 17<sup>th</sup> when the committee reviewed the current law that provides for the allocation of slot machine revenue, a description of the funds that receive revenue, the original allocation that was part of the 2003 citizen initiative that first authorized the operation of slot machines and a history of dollars distributed since the slot machine facility in Bangor began operating in November of 2005. Committee members also communicated to slot revenue recipient’s specific information that they wished to be included in the revenue recipient reports due on September 15<sup>th</sup>. The second meeting was held on September 27<sup>th</sup>. All of the reports requested or required in accordance with Part FFF were received by the September 15<sup>th</sup> deadline with the exception of the report from the off-track betting facility in Sanford and the commercial harness racing track in Scarborough (these reports were received just prior to the committee’s third meeting). The committee allowed for presentation of the reports, a question and answer period and an opportunity for anyone in attendance to offer comment on the allocation of racino revenue. The third meeting of the committee was held on October 13<sup>th</sup>. At this meeting the committee reviewed a flow chart that shows the distribution of slot machine revenue including secondary distributions prescribed by statute, like the Harness Racing Commission Operating account and

agricultural fair premiums (see appendix D). A framework for reporting was proposed and statutory changes were recommended. The final meeting, held on November 16, 2010 allowed for review of the recommendations made in this report.

## BACKGROUND

### The 2003 Citizen's Initiative and LD 1820

In November of 2003, Maine voters supported a measure placed on the ballot as a result of a citizen's initiative that proposed to allow the operation of slot machines at existing commercial harness racing tracks. The vote was 272,394 to 242,490 in favor of the measure. The question read:

*"Do you want to allow slot machines at certain commercial horse racing tracks if part of the proceeds are used to lower prescription drug costs for the elderly and disabled, and for scholarships to the state universities and technical colleges?"*

The law that passed was originally proposed as LD 1371 (see appendix G) An Act to Allow Slot Machines at Commercial Horse Racing Tracks. Soon after the commencement of the Second Regular Session of the 121<sup>st</sup> Legislature in January 2004, Governor Baldacci submitted LD 1820 An Act to Establish the Gambling Control Board to License and Regulate Slot Machines at Commercial Harness Racing Tracks. LD 1820 repealed LD 1371 and replaced it with a broader regulatory framework that included the establishment of the Gambling Control Board within the Department of Public Safety and prescribed a distribution of slot machine revenue that built upon the distribution established by LD 1371. The following shows a comparison of the distributions of slot machine revenue in each bill:

Initiated Bill 2003 c. 1 (LD 1371)	Current Law as enacted by LD 1820 PL 2003 c. 687
<p>No "coin in" – all distributions are from slot revenue after prize pay-outs</p> <ul style="list-style-type: none"> <li>• 1% to board for administrative expenses (they are authorized to expend up to \$250,000 of that for gambling addiction services)</li> <li>• 7% to harness racing purses (all tracks)</li> <li>• 1% to Sire Stakes Fund</li> <li>• 3% Agricultural Fair Support Funds</li> <li>• 10% to Fund for a Healthy Maine for prescription drugs for the elderly</li> <li>• 2% to University of Maine System scholarships via FAME</li> <li>• 1% to Community College System via Board of Trustees</li> </ul> <p>(Total 25% of net slot revenue – *IB language referred to this as "gross revenue" meaning coin-in minus pay back to players)</p>	<ul style="list-style-type: none"> <li>• One percent of the gross revenue or "coin-in" goes directly to the state to cover administrative and enforcement costs.</li> <li>• The remaining net slot machine income (gross revenue after player payouts) is divided, with 61% going to the slot machine operator and 39% to be distributed as follows: <ul style="list-style-type: none"> <li>○ 3 % to the General Fund for administrative expenses of the board, including gambling addiction counseling services;</li> <li>○ 10% to supplement harness racing purses;</li> <li>○ 3 % to the Sire Stakes Fund to support breeding of Maine Standardbred horses;</li> <li>○ 3 % to the Agricultural Fair Support Fund;</li> <li>○ 10% to the Fund for a Healthy Maine for prescription drug benefits for the elderly;</li> <li>○ 2% for University of Maine System scholarships;</li> <li>○ 1% for Maine Community College System scholarships;</li> <li>○ 4% to the Fund to Encourage Racing at Maine's Commercial Tracks;</li> <li>○ 2% to the Fund to Stabilize Off-track Betting Facilities, to be reduced to 1% after 4 years with the remaining 1% going back to the General Fund; and</li> <li>○ 1% to the host municipality.</li> </ul> </li> </ul>

The changes made by LD 1820 to the distribution framework, often referred to as the “cascade,” primarily benefitted the harness racing industry and the general fund.

### **Slot Revenue Recipients**

The Fund to Supplement Harness Racing Purses: This fund was enacted as part of LD 1820 and receives 10% of the net slot revenue that is distributed in accordance with Title 8, section 1036. It provides funds to supplement harness racing purses for races conducted at commercial tracks and agricultural fairs. The fund is distributed using a formula that multiplies the amount of money available in the fund by the number of race dashes assigned to each track as divided by the total number of race dashes assigned to all of the tracks. The two commercial tracks get the bulk of the fund. In 2009, the commercial track in Scarborough received 53.5% of the distribution and the commercial track in Bangor received 23.1% of the distributions from this fund. Ten agricultural fairs divided the remaining distribution of 23.4%.

The Sire Stakes Fund/Standardbred Horses: This fund was established prior to the enactment of LD 1820. It receives a portion of the handle (wagers placed on live harness and simulcast races) that is distributed among members of the live racing and simulcast industry in Maine. The distribution of the live racing and simulcast handle is dictated by Maine Revised Statutes Annotated Title 8, section 286. In addition to the percentage of the harness racing handle, under LD 1820 this fund receives 3% of the net revenue from slot machines. The slot machine revenue distributions are deposited by the Department of Agriculture, Conservation and Forestry into a trust account entitled the Sire Stakes Fund. The statutory purpose of the fund is to encourage and promote the breeding of a strain of Maine Standardbred horses. The disbursements from the fund are required to be directed toward supplementing harness racing purses and the costs of administration of the standard breeder program.

The Agricultural Fair Support Fund: This fund was enacted as part of LD 1820 and receives 3% of the net slot machine revenue distribution. This fund covers the cost of administration for the Fair Coordinator within the Department of Agriculture, Conservation and Forestry and benefits harness racing and fairs generally. After the department’s administrative costs, 34% of the fund is distributed to commercial tracks and agricultural fairs that conduct harness racing for purse supplements. It is disbursed using the same formula as the Fund to Supplement Harness Racing purses that is based on the number of dashes run at each track. In 2009, commercial tracks received about 77% of the disbursements from this fund while 9 agricultural fairs shared the remaining 23% of the purse supplement portion of the fund. The other purpose of the Agricultural Fair Support fund, to which 66% of the distribution is dedicated, is to pay fair premiums. Premiums are essentially prizes or awards paid to exhibitors at agricultural fairs ranging from livestock displays to pulling contests to canned goods.

The Fund for a Healthy Maine – Prescription Drugs for the Elderly and Disabled Program: This fund was established prior to the enactment of LD 1820. The Drugs for the Elderly (DEL) program receives funding from other sources in addition to its 10% share of net slot machine revenues. This Department of Health and Human Services administered program pays for all or part of the costs of certain prescription drugs for Maine residents who live at or below the federal poverty line and are age 62 or older or age 19 or older and medically eligible disabled. In 2010, the Legislature passed LD 1668 An Act to Implement the Recommendation of the Initiative to

Streamline State Government (Public Law 2009 c.462) that imposed a temporary cap on slot machine revenue allocated to this fund. Through the year 2012, any money in excess of \$4.5 million distributed from net slot machine revenue is forwarded to the general fund as undedicated revenue.

University of Maine System Scholarships: This fund receives 2% of the distribution of net slot machine revenue in accordance with Title 8 section 1036. All revenues credited to this fund are required to be distributed as need-based scholarships for students who are Maine residents attending the University of Maine System. The fund is under the jurisdiction and control of the Board of Trustees of the University of Maine System. Costs of administering these scholarships may not be paid for using scholarship funds.

Maine Community College System Scholarships: This fund receives 1% of the distribution of net slot machine revenue in accordance with Title 8 section 1036. Funds distributed to the system are directed to be used in accordance with scholarship guidelines set forth in statute for the Maine Community College System. These guidelines direct the Board of Trustees of the System to award scholarships based on individual need and worth. Recipients must demonstrate they can complete a course of study successfully, support the expenses of their education and show need of financial assistance.

The Fund to Encourage Racing at Maine's Commercial Tracks: This fund was created with the enactment of LD 1820 and receives 4% of the distribution of net slot machine revenue in accordance with Title 8 section 1036. This fund provides a straight distribution to commercial tracks proportional to the race days conducted by each track. In 2009, the commercial track in Scarborough received approximately 67% of the disbursement while the commercial track in Bangor received the remaining 33%. There is no statutory purpose assigned to this fund. In the event that all commercial tracks operating in the state are authorized to operate slot machines, the distribution to the fund ends.

The Fund to Stabilize Off-track Betting Facilities: This fund was created with the enactment of LD 1820 and until November of 2009, received 2% of the distribution of net slot machine revenue. As of, November 2009, this fund receives 1% of the net slot revenue distribution in accordance with Title 8, section 1036. The money in the fund is disbursed equally among off-track betting facilities (OTBs) that were licensed to operate as of December 31, 2003. In 2009, funds were disbursed to four OTBs throughout the state in Sanford, Brunswick, Lewiston and Waterville. The reduction in the distribution to this fund was part of LD 1820 as enacted and was not reduced as the result of a subsequent legislative action. The general fund now receives the 1% distribution in addition to 3% of net slot machine revenue as prescribed by Title 8 section 1036.

In addition to the statutorily created funds and purposes, the host municipality of Bangor receives a 1% distribution of net slot machine revenue in accordance with Title 8 section 1036.

### **Revenue from the Operation of Slot Machines**

The original initiative and LD 1820 both contained a provision that required local approval by referendum election between December 31, 2002 and December 31, 2003 and for a commercial track to be eligible for a slot machine operator license. Of the two commercial tracks in the state, one in Scarborough and one in Bangor, only Bangor received local approval during that time. So,

in November 2005 the new operators of Bangor Historic Track, Penn National Gaming, opened the Hollywood Slots slot machine facility with just under 500 slot machines. In July of 2008, Hollywood Slots expanded its operation to a newly constructed facility and increased the number of slot machines to 1000.

In its first full year of operation, 2006, the racino in Bangor generated approximately \$37.5 million in net revenue of which \$12.4 million was allocated to recipients in accordance with Title 8, section 1036. The racino also deposited 1% of the gross revenue or \$5.6 million to the general fund. By the end of 2009, now operating 1000 machines, the racino generated \$50.5 million in net revenue with \$17.3 million going to section 1036 recipients. In that year, the 1% of the gross deposited to the general fund was \$6.2 million. The general fund also receives a percentage of net revenue. For a chart of slot machine revenue, as provided by the racino in Bangor, see appendix C.

At its meeting, held on September 27, 2010, the Legal and Veterans' Affairs Committee received reports from slot machine revenue recipients required to report under Part FFF. In addition to the revenue and expense figures, the reports from members of the harness racing industry also pointed out the role that racino revenue plays in keeping their businesses going. They cited competition for gambling dollars by the expanded state lottery, illegal internet gambling and glitzy casinos within a short drive to the south, as factors that hinder their prosperity. The greater economic and cultural impacts were also central to the reports and were echoed by members of the public who testified during the open comment period of the meeting. Preservation of farmland and open-space, maintaining Maine's agricultural heritage and providing incentives for youth to enter into veterinary and farming careers are the immeasurable benefits of supporting the harness racing industry according to those who offered their comments to the committee. Supporters of the current allocation of slot revenue, relayed stories of farms that were about to be subdivided and sold as house lots that were able to be reclaimed as farmland because of the increased demand for hay, horse training and boarding of horses. They reported that this income allowed for improvements of barns, building of new stables, installation of fencing and the purchase of farm machinery, all to the economic benefit of the greater community.

The importance of the relationship between the members of the industry was stressed by those required to report and reiterated by members of the public who testified. According to their comments, each revenue recipient contributes to the greater goal of maintaining the harness racing tradition and agricultural heritage of the state. They cite the agricultural fairs' role in providing ongoing opportunities for racing and keeping the connection of Maine families to farm life, that for many, is several generations in their past. The commercial tracks, referred to by supporters as a lifeline to the industry, provide the economic incentive for horse owners and breeders to continue in the sport. Reports and comments stressed that off-track betting facilities provide the opportunity for those who can't attend live racing to place wagers on Maine races through simulcasting. The enhancement of purses paid to races running Maine Standardbred horses using dollars from the Sire Stakes Fund ensures that local owners and breeders are invested in the sport and that the industry is not relying on an out-of-state horse supply, according to many breeders who testified. Overall, supporters tried to convey the interconnectedness of the recipients of slot machine revenue and how each is critical to preserving their industry.

Reports were also presented regarding the Drugs for the Elderly Program within the Fund for a Healthy Maine, scholarships for the University of Maine System and scholarships for the

Maine Community College System. Most of the testimony received related to the industry recipients of slot revenue, although there was some discussion among committee members seeking clarification of the funding of DEL and concern expressed that Maine Maritime Academy had been left out of the distribution that benefits the other state public institutions of higher education. All of the reports presented to the committee can be found in the appendix section of the report.

## FINDINGS

After reviewing the allocation of slot machine revenue in accordance with Title 8, section 1036, accepting reports from those who receive slot machine revenue and hearing comment from members of the harness racing industry and the general public, the Joint Standing Committee on Legal and Veterans' affairs finds the following:

**There has been limited reporting on the use of slot machine revenue allocated in accordance with Title 8, section 1036.** Although the amount of revenue generated by the slot machine facility in Bangor has been consistently reported to the Legislature since it began operation in November of 2005, there has been very little information about how that money is spent by those who receive an allocation of slot machine revenue. During joint worksessions on previous biennial and supplemental budgets with the Joint Standing Committee on Appropriations and Financial Affairs, the Legal and Veterans' Affairs committee has been consistently questioned on the purpose of slot revenue allocations and whether or not that purpose is being served. Prior to this report, those questions have not been adequately addressed.

**A majority of funds that receive slot revenue have no specific statutory requirements directing how they are to be spent.** The Legal and Veterans' Affairs Committee recognizes that part of the intent of the allocation of slot revenue as proposed by the citizen initiative in 2003 and built upon by LD 1820 in 2004, was to support the harness racing industry that was suffering a decline because of the competition for gaming dollars by lotteries, out-of-state casinos and illegal internet gambling and the temptation to develop farm land into housing developments. However, the funds that are designated to provide that support, as described in statute, provide very little, if any, direction on how to spend the money it receives from the operation of slot machines in order to benefit the industry.

**The Legislature should have measurable data to help it determine if the current distribution of slot machine revenue distributed is stabilizing or subsidizing the harness racing industry.** In order to comply with the charge of Public Law 2009, chapter 571, Part FFF, to develop a framework of reporting that will permit the consideration of the adequacy of distribution of gaming revenue among existing and new potential purposes, the Legislature must have the necessary data to determine if the current allocation is serving the purpose of providing scholarships, providing assistance with prescription drug costs and stabilizing the harness racing industry. The Legal and Veterans Affairs Committee sees a distinction between stabilizing the harness racing industry and subsidizing it. There needs to be transparency and accountability among those who receive slot machine revenue so that the impact of these funds can be thoughtfully measured. Increases in attendance, purse sizes, and the number and amount wagers made at places where harness races are run or simulcast are important to measuring the benefit of the allocation. However, the extended benefits to agriculture, maintenance open farmland and general economy that harness racing provides can not be overlooked. Future reports will provide

recipients with the opportunity to show the value of the harness racing industry to the state and how slot machine revenue supports the purposes for which they were intended.

**Voter intent is in the eye of the beholder.** Although Part FFF directed this committee to create a reporting framework that takes into consideration principles of allocation consistent with the voters' intent, there is no objective way to determine the voter intent for the allocation of slot machine revenue. Depending on whether a person uses the actual initiative law proposed, the question posed to the voters or the campaign that was waged prior to election-day, the determination of voter intent could vary significantly.

**It is difficult to establish a framework for future allocation of gaming revenue because of how racinos/casinos are authorized.** To date, the authority to operate a gaming facility like a racino or a casino, has come via the citizen initiative process. Even though some members of the committee strongly support developing a standard of how future gaming revenue should be allocated, a specific percentage to the operator and a specific percentage to the general fund as undedicated revenue, as an example, the provisions of law enacted by citizen initiative are determined by those who apply to circulate petitions and collect signatures to get the measure on the ballot. The Legislature can always offer a competing measure or change the initiative after it becomes law to put this division of gaming revenue into statute, but that is perceived as politically unpalatable by some and an affront to the initiative process by others. However, the standard of reporting recommended in this report should be applied to all future distributions of gaming revenue.

## RECOMMENDATIONS

The Legal and Veterans' Affairs committee is not making any recommendations to change the allocation of slot machine revenue. We are recommending a framework of reporting that will provide measurable data for a future Legislature to consider in the event changes to the allocation of revenue are proposed. The framework recommended by this report will focus primarily on harness racing industry recipients and is intended to demonstrate either an increase, decline or stabilizing of participation in the sport of harness racing.

**Recipient reporting requirements** – The committee recommends the following framework of reporting for harness racing industry recipients. These reports will be submitted directly to the Joint Standing Committees on Legal and Veterans Affairs and Appropriations and Financial Affairs. The first report is due December 1<sup>st</sup>, 2011. The first report must include the required data for the calendar years 2009, 2010 and up to November 2011. The Director of the Harness Racing Commission is encouraged to develop a format for these reports based on the recommended framework. The reports may include any additional information the slot revenue recipient chooses to offer to demonstrate the extended economic benefits of the industry and the non-dollar value recognized by supporting the harness racing industry.

Commercial track reports shall include:

- The number of people attending harness races;
- The number of individual wagers placed on live harness races, the average wager amount and the total amount wagered;

- The number of individual wagers placed on intra state simulcast races, the average wager amount and the total amount wagered;
- The number of individual wagers placed on inter-state simulcast races, the average wager amount and the total amount wagered;
- The number of Maine-based harness races exported via simulcast;
- The amount of the harness racing handle kept by the commercial track and the distribution of the handle to the state and industry recipients;
- The amount of money received from the handle distribution from wagers at other tracks and off-track betting facilities;
- The amount of revenue from each fund under section 1036 distributed to the commercial track;
- The name of the owner and the primary location of the company licensed to operate the commercial track;
- The number of employees, full-time and part-time, at the commercial track and the total payroll amount for all receiving compensation from the commercial track;
- The amount of dollars spent on capital improvements to the commercial track and related facilities and a description of those improvements. The first report should include the amount spent since November 2005 broken down annually. Subsequent annual reports should include the amount spent on capital improvements the previous calendar year.
- Operating costs for the commercial track;
- Profit and loss or depreciation figures for the commercial track; and
- Administrative costs to comply with reporting requirements and contributions to the Harness Racing Commission Operating Account.

Agricultural fairs that conduct harness racing shall include:

- The number of people attending the fair;
- The number of wagers placed on harness races and the total amount of dollars wagered;
- The number of races exported via simulcast signal;
- The number of full-time and part-time employees of the fair;
- Reimbursements provided to fair volunteers or other fair personnel;
- The amount of dollars spent on capital improvements at the fair location and a description of those improvements. The first report should include the amount spent since November 2005 broken down annually. Subsequent annual reports should include the amount spent on capital improvements the previous calendar year;
- Operating costs for the agricultural fair;
- The amount of the handle retained by the fair and the amount distributed to industry recipients;
- The amount of the handle from the industry received by the fair;
- The amount of revenue distributed in accordance with Title 8, section 1036; and
- Administrative costs to comply with reporting requirements and contributions to the Harness Racing Commission Operating Account.

Agricultural fairs generally, shall include:

- The amount of money spent on fair premiums using revenue allocated from slot machines;
- A detailed accounting of slot machine revenue not used for fair premiums, if any; and

- Administrative costs to comply with reporting requirements and contributions to the Harness Racing Commission Operating Account.

Standard breeders and owners report shall include:

- The number and geographic distribution of licensed breeders in the state;
- The number of horses bred by each breeder and the number of those horses actively racing in Maine;
- The number of horses bred under the program that race out-of-state;
- Whether the number of standard-bred horses in Maine is sufficient to meet the needs of harness races conducted in the state;
- The amount of money received from the allocation of slot machine revenue;
- The amount of money in the Sire Stakes Fund and the amount that is spent to supplement harness racing purses and the average purse amount;
- A detailed accounting of the other uses of the Sire Stakes fund, including direct payment to breeders, promotion contracts, advertising, Maine Harness Horsemen contract and administrative costs; and
- Administrative costs to comply with reporting requirements and contributions to the Harness Racing Commission Operating Account.

Off-track betting facilities reports shall include:

- The number of wagers placed on intra-state and inter-state simulcast races and the total dollar amount for each;
- The number of employees of the facility, full-time and part-time and the total payroll amount for all receiving compensation from the facility;
- The operating costs for the facility;
- The name and primary location of the company licensed to operate the off-track betting facility;
- The amount of dollars spent on capital improvements to the facility and a description of those improvements. The first report should include the amount spent since November 2005 broken down annually. Subsequent annual reports should include the amount spent on capital improvements the previous calendar year;
- The amount of the harness racing handle kept by the OTB and the distribution of the handle to the state and industry recipients;
- The amount of money received from the handle distribution from wagers at tracks and other off-track betting facilities;
- The amount of revenue from each fund under section 1036 distributed to the OTB; and
- Administrative costs to comply with reporting requirements and contributions to the Harness Racing Commission Operating Account.

### **Consideration of multiple forms of gambling**

- Future Legislatures should consider the impact of new and expanded forms of gambling on existing forms, in particular non-profit gaming and off-track betting facilities. Non-profit gaming is critical to supporting the charitable causes to which they are benefitting and

which we all support. Off-track betting facilities, prior to the advent of racinos, provided a lifeline to the harness racing industry when it was desperately needed. The supportive role these forms of gaming have played in the larger gaming arena should be recognized when examining the distribution of future gaming revenue.

#### **Other recommendations**

- The Department of Public Safety, Gambling Control Board shall develop a system of reporting slot machine revenue and distributions that allows for verification of revenue reports provided by the slot machine facility operator.
- Future members of the policy committee that oversees gambling laws should conduct a literature review to examine the financial impact of illegal internet gambling on legal forms of gambling.
- Parameters should be established that help define what constitutes a capital improvement among slot revenue recipients.
- Some members of the committee recommend that future members of the policy committee that oversees gambling laws should consider the adequacy of funding for the Prescription Drugs for the Elderly Program and increasing the percentage of slot revenue distribution to UMS and MCCS scholarships and include Maine Maritime Academy in that distribution. In addition, future committee members should determine whether the slot revenue distributions are subsidizing or stabilizing the harness racing industry. If the funds are stabilizing the industry, a cap on the distributions should be considered along with discontinuing the distributions to off-track betting facilities.

SEN. KEVIN L. RAYE  
CHAIR

REP. ROBERT W. NUTTING  
VICE-CHAIR

EXECUTIVE DIRECTOR  
DAVID E. BOULTER



SEN. JONATHAN T. E. COURTNEY  
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SEN. DEBRA D. PLOWMAN  
SEN. JUSTIN L. ALFOND  
REP. PHILIP A. CURTIS  
REP. EMILY ANN CAIN  
REP. ANDRE E. CUSHING III  
REP. TERRY HAYES

125<sup>TH</sup> MAINE STATE LEGISLATURE

LEGISLATIVE COUNCIL

MEMO

To: Legislative Council Members

From: David E. Boulter, Executive Director  
Legislative Council  
D.B.

Date: December 17, 2010

Re: Decision on Legislative Branch Office Closure Days for remainder of FY 11

As you may know, the legislative budget for the FY2010-2011 biennium includes reductions to the legislative budget including, among other things, the closure of legislative offices on various days during the current biennium, on a schedule determined by the Legislative Council. On December 10, 2009, the Legislative Council established a schedule for the closure of legislative offices for calendar year 2010. At that time, the council deferred any decision with respect to the schedule for closure days during the First Regular Session of the 125<sup>th</sup> Legislature pending an assessment by the Legislative Council for the 125<sup>th</sup> Legislature of the implications of closure days on legislative operations during the busy first regular session.

The Department of Administrative and Financial Services issued a memorandum earlier this year that established a schedule by which many executive branch state departments and offices, except those deemed to be essential due to the nature of their services, would be closed for FY11. Those days are generally associated with a state holiday (either preceding or following a holiday). The Judicial Branch is not subject to office closure days.

If the Legislative Council established a schedule whereby legislative offices would be closed on the same days as those of the Executive Branch, the office closure schedule would be as follows:

**Closure Day**

Friday, January 14, 2011  
Tuesday, February 22, 2011  
Friday, March 18, 2011  
Tuesday, April 19, 2011  
Friday, May 27, 2011

**Associated Holiday**

M.L. King Day, Monday, January 17, 2011  
President's Day, Monday, February 21, 2011  
N/A  
Patriot's Day, Monday, April 18, 2011  
Memorial Day, Monday, May 30, 2011

In order to achieve the desired salary savings, legislative offices would be closed and employees must take the days off without pay, and employees may not use paid leave for any office closure day.

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

Thank you.

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