

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

125TH MAINE STATE LEGISLATURE
LEGISLATIVE COUNCIL

MEETING SUMMARY
March 3, 2011
Approved March 24, 2011

CALL TO ORDER

Legislative Council Chair, Senate President Raye called the March 3, 2011 Legislative Council meeting to order at 1:50 p.m. in the Legislative Council Chamber.

ROLL CALL

Senators: President Raye, Senator Courtney, Senator Plowman, Senator Hobbins,

Absent: Senator Alfond

Representatives: Speaker Nutting, Representative Curtis, Representative Cushing,
Representative Hayes

Absent: Representative Cain

Legislative Officers: Joseph Carlton, Secretary of the Senate
Heather Priest, Clerk of the House
David E. Boulter, Executive Director of the Legislative Council
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
Debra Olken, Human Resources Director

Senate President Raye convened the meeting at 1:50 P.M. with a quorum of members present.

SUMMARY OF JANUARY 27, 2011 MEETING OF LEGISLATIVE COUNCIL

Motion: That the Meeting Summary of January 27, 2011 be accepted and placed on file. Motion by Senator Courtney. Second by Representative Curtis. **Motion passed unanimous. (8-0;** Senator Alfond and Representative Cain absent)

Note: The Legislative Council did not meet in February.

Chair Raye asked if there was any objection to taking one item out of order. There was no objection. The Chair then moved to **New Business, Item 1.**

NEW BUSINESS

Item #1: Consideration of After Deadline Bill Requests / Addendum

The Legislative Council then proceeded to consider and vote on the bill requests in accordance with the previously established protocol. Of the 22 bill requests, the council authorized 13 requests for introduction in the 1st Regular Session of the 125th Legislature, 6 failed to be authorized, and 3 were tabled until a future Legislative Council meeting. Of the 11 joint resolutions, the council authorized 5 requests for introduction in the 1st Regular Session of the 125th Legislature, 2 failed to be authorized, and 4 were tabled until a future Legislative Council meeting. The Legislative Council's actions on the requests are included on the attached list.

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

REPORTS FROM EXECUTIVE DIRECTOR AND COUNCIL OFFICES

Executive Director's Report

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

Council of State Governments/Eastern Regional Conference

CSG/ERC is very appreciative of the Legislative Council's recent payment of outstanding expenses related to the 2010 annual meeting of CSG/ERC, and has sent a letter of appreciation.

Retirement of OFPR Staff Member Kathy Crowley Fuller

Long-term staff member Kathy Fuller retired last month after more than 25 years of service with the Legislature, in the Office of Fiscal and Program Review. There will be a reception for Ms. Fuller on Thursday, March 17th at noon in the Legislative Council Chambers. Legislative Council members are welcome to attend.

Retirement of Clerk of the House Millicent MacFarland

Mr. Boulter acknowledged the retirement of former Clerk of the House Millie MacFarland from state service, who retired on February 28th. Ms. MacFarland was a long-term member of the legislative staff and Clerk of the House.

President Raye stated that he and the other members of the Legislative Council join in wishing both Ms. Fuller and Ms. MacFarland well in their retirement.

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
January	\$263.0	\$266.1	\$3.1	1.2%	\$243.4	9.4%
FYTD	\$1,544.5	\$1,549.6	\$5.1	0.3%	\$1,451.4	6.8%

General Fund revenue was \$3.1 million (1.2%) over budget in January and was \$5.1 million (0.3%) over budget for the fiscal year-to-date (FYTD). Compared with the same period last fiscal year, General Fund revenue has grown 6.8% for seven months of FY 2011.

Late receipts in January in the Sales and Use Tax category produced a \$3.1 million positive variance for the month and increased the FYTD positive variance to \$11.0 million (2.2%). The Service Provider Tax recovered in January coming in \$1.3 million ahead of projections, but it remained under budget through January by \$1.8 million. The performance of these taxes and other taxes tied to consumer behavior will be watched closely over the next few months in light of the recent increases in heating oil prices.

The Individual Income Tax performed well in January, surging ahead of budget in January by \$8.8 million with strong performances in withholding and estimated payments more than offsetting higher than expected refunds. For the FYTD through January, Individual Income Tax collections were ahead of projections by \$8.1 million (1.0%).

Corporate Income Tax estimated payments in January fell well below projections and produced a \$5.6 million negative variance for the month and a \$3.5 million (3.1%) negative variance of the FYTD. In addition, the Other Revenue category was under budget by \$6.4 million in January and \$8.3 million (39.3%) for the FYTD. Within this category, Targeted Case Management revenue administered by the Department of Health and Human Services (DHHS) was the major factor in this negative variance, falling below projections by \$5.6 million in January. This shortfall is related to an information technology issue related to processing of claims filed internally within DHHS. The correction of this issue has been assigned a high priority by the department.

With the strong performance of the major taxes that affect revenue sharing, the amounts set aside for revenue sharing through January were ahead of projections by \$0.7 million (1.3%), which translates into a negative variance for General Fund revenue.

Some areas of concern through January of FY 2011 include fine revenue (\$2.1 million or 15.8% under budget), lottery transfers (\$2.0 million or 6.6% under budget) and STA-CAP transfers (\$1.4 million or 9.9% under budget). Inland Fisheries and Wildlife revenue in January offset much of its FYTD variance for the first half of FY 2011, but it is uncertain whether this is a temporary recovery.

Highway Fund Revenue Update

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

	Budget	Actual	Var.	% Var.	Prior Year	% Growth
January	\$24.1	\$25.7	\$1.6	6.8%	\$25.0	2.7%
FYTD	\$163.1	\$165.7	\$2.6	1.6%	\$164.5	0.7%

Highway Fund revenue was over budget by \$1.6 million (6.8%) in January and \$2.6 million (1.6%) for FY 2011 through January. Through January, Highway Fund revenue reflected modest growth of 0.7% over the same period last fiscal year. Fuel Taxes fell slightly below budget in January due to the negative variance for the Gasoline Tax, very likely affected by recent price increases. However, the Fuel Taxes negative variance for the month was more than offset by a strong performance in most other motor vehicle registration and inspection fee categories.

Cash Balances

The average total cash pool balance for January was \$536.9 million, more than \$200 million higher than one year ago. The recent historical average for January's average balance is \$546.6 million (January 2002 to 2010). Average cash balances have shown improvement in each of the groups broken out below. The improvement in the General Fund cash position is the primary contributor to this overall improvement with internal borrowing \$143.2 million less than a year ago. This improvement also increases the likelihood that the State can avoid external borrowing for the FY 2011 as it has done for the last 5 fiscal years, despite the potentially significant outlay to hospitals before March 31st as enacted by the Emergency Supplemental Budget Bill. The Emergency Supplemental Budget Bill also deappropriated most of the funds originally appropriated for this external cash flow borrowing.

Summary of Treasurer's Cash Pool		
January Average Daily Balances		
Millions of \$'s		
	2010	2011
General Fund (GF) Total	\$16.3	\$37.1
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	\$300.0	\$156.8
Other General Fund Cash	(\$283.9)	(\$156.3)
Other Spec. Rev. - Interest to GF	(\$17.2)	\$40.1
Other State Funds - Interest to GF	\$15.1	\$15.3
Highway Fund	\$20.4	\$53.9
Other Spec. Rev. - Retaining Interest	\$40.0	\$54.5
Other State Funds	\$152.4	\$225.0
Independent Agency Funds	\$103.2	\$110.9
Total Cash Pool	\$330.2	\$536.9

REPORTS FROM COUNCIL COMMITTEES

1. Personnel Committee

The Personnel Committee did not meet; no report was made.

2. State House Facilities Committee

Senator Courtney, Chair of the State House Facilities Committee reported on the committee meeting held on February 16, 2011.

1. Increased Security Options for the State House

The committee continued its discussions with Capitol Police Chief Gauvin about options for security enhancements. After discussion, a majority of the committee voted to recommend that the Legislative Council adopt Capitol Police Option #2: installing metal detection and package screening devices in the State House, train Capitol Police personnel in their use and to maintain them in a ready condition should unusual circumstances warrant their use. However, the equipment would not be deployed for use on a regular or periodic basis. It further voted to recommend that the Executive Director arrange for a threat assessment of the State House and the Cross Building to be conducted.

Senator Courtney recommended that the Legislative Council postpone action on the State House Facilities Committee recommendation until the next Legislative Council meeting.

2. Broadcasting House and Senate Sessions on Cable Television

The committee discussed exploring opportunities for broadcasting House and Senate sessions through a regional cable television company. This idea was considered by a previous Legislative Council but was not pursued due to several logistical and programming concerns. The committee identified several issues to be addressed, including filling airtime on legislative channels, programming and editing requirements and making broadcasts available state-wide. The committee asked Executive Director Boulter to invite a representative from Time Warner Cable to attend a future facilities committee meeting to discuss the potential for cable television broadcasts. No action by the Legislative Council on this item is required at this time.

OLD BUSINESS

ITEM 1: Legislative Council Actions Taken by Ballot

There were no Legislative Council actions taken by ballot since its January 27, 2011 meeting. No further action by the Legislative Council is required.

NEW BUSINESS

Item #2: Suggested Legislative Council Policy on Legislative Studies

Patrick Norton, Director of OPLA, presented a suggested policy on legislative studies for the 125th Legislature for consideration by the Legislative Council. Mr. Norton explained that Joint Rule 353, Section 11, requires the Legislative Council to adopt policies governing legislative studies at the beginning of each legislative biennium. Pursuant to that authority, the Legislative Council could adopt this policy on legislative studies to establish policies and procedures governing the Legislative Council's authorization of legislative studies, conditions on the funding of legislative studies, exceptions to the definition of legislative study, legislative study drafting standards and other provisions necessary to satisfy the requirements of that Joint Rule 353.

Motion: That the Legislative Council adopt the proposed Maine Legislative Council Policy on Legislative Studies for the 125th Legislature. Motion by Senator Courtney. Second by Representative Hayes. **Motion passed unanimous. (8-0, with Senator Alford and Representative Cain absent)**

Item #3: Policy on Use of Legislative Rooms

Legislative Council Chair President Raye stated that this matter was placed on the agenda for discussion because of a meeting that was held recently in the Legislative Council Chamber that did not seem appropriate for a chamber of the State House. Senator Hobbins asked if the issue should be referred to a council committee for review. President Raye felt it would be appropriate for a discussion by the full Legislative Council.

Senator Courtney explained that members of the Senate were invited by Senator Alford to a meeting in the Legislative Council Chamber on February 16, 2011 at which a representative of the Truman National Security Project would present information. Senator Courtney felt the nature of this meeting was more campaign training rather than the more typical political caucus topic, and as such is an inappropriate use of the Legislative Council Chamber.

President Raye inquired of Mr. Boulter the terms for use of the Legislative Council Chamber. Mr. Boulter explained that control and use of rooms in the State House are within the jurisdiction of the Legislative Council. With respect to the Legislative Council Chamber, the Council's Rules of Procedure states that the Legislative Council controls use of the chamber with room scheduling to be handled by the Executive Director's office. The rules give discretion to the chair of the Legislative Council to establish appropriate uses, particularly with respect to media events. Mr. Boulter felt that the current rules allow the chair to establish appropriate uses.

Senator Plowman asked who schedules and approves use of legislative rooms. Mr. Boulter answered that scheduling of the Legislative Council Chamber, Legislative Conference Room and the Welcome Center is the responsibility of the Executive Director's office. With respect to committee rooms, the committee clerks, in consultation with committee chairs, schedule use of the rooms during the session; during the legislative interim, committee room scheduling is administered by the Legislative Information Office. In response to a question by Senator Plowman, Mr. Boulter explained that a record of room scheduling is maintained.

Representative Hayes stated that the Legislative Council Chambers use in question was an event scheduled principally as a training session for House Democratic caucus members. She had been unaware of a broader invitation. She emphasized that the training was not related to political campaigning; it related to learning how to interact with the media and message delivery.

Senator Hobbins felt that referral of this matter to the State House Facilities Committee would be appropriate in order to establish a broader room use policy because a similar situation could occur in other legislative rooms used for large gatherings, such as the Appropriations Committee room.

Representative Nutting stated that it would be appropriate for the State House Facilities Committee to consider appropriate policies for room use. He asked about any current use policy regarding the Legislative Council Chamber. Mr. Boulter answered that the Rules of Procedure prohibit press conferences and other media events except by special permission by the chair of the Legislative Council.

President Raye concluded the discussion by saying that he will work with Executive Director Boulter to develop a policy on appropriate use of the Legislative Council Chamber and he asked the State House Facilities Committee to consider the matter of an appropriate room use policy for other legislative rooms. There was general agreement with that approach by the other members of the Legislative Council present. No motion was made or required.

Item #4: Final Report of the Joint Select Committee on Health Care Reform Opportunities and Implementation

The Joint Select Committee on Health Care Reform Opportunities and Implementation submitted its Final Report for acceptance by the Council.

Motion: That the Legislative Council accept the final report of the Joint Select Committee on Health Care Reform Opportunities and Implementation. Motion by Representative Cushing. Second by Representative Curtis. **Motion passed unanimous. (7-0,** with Senators Courtney and Alford, and Representative Cain absent)

Item #5: Fifth Annual Report of the Right to Know Advisory Council

The Right to Know Advisory Council submitted its Annual Report for 2010 for acceptance by the Council.

Motion: That the Legislative Council accept the Fifth Annual Report of the Right to Know Advisory Council. Motion by Representative Nutting. Second by Senator Hobbins. **Motion passed unanimous. (7-0,** with Senators Courtney and Alford, and Representative Cain absent)

ANNOUNCEMENTS AND REMARKS

The Legislative Council meeting was adjourned at 2:52 P.M. on a motion by Representative Cushing, seconded by Representative Curtis. **Motion passed unanimous (8-0,** with Senator Alford and Representative Cain absent).

Legislative Council Action on After Deadline Bill Requests, March 3, 2011

SPONSOR: LR 2084	Sen. Bartlett, II, Philip L. An Act To Promote Transparent Government	Action FAILED
SPONSOR: LR 2074	Rep. Beaudoin, Paulette G. An Act To Amend the Laws Governing the Replacement of Firearms Carried by Maine State Police	PASSED
SPONSOR: LR 2027	Rep. Berry, Seth A. An Act To Prohibit the Sale or Possession of Bath Salts Containing Dangerous Synthetic Drugs	TABLED 03/03/11
SPONSOR: LR 2071	Rep. Burns, David C. An Act To Require All Correctional Facilities in the State To Participate in the Unified Inmate Transportation System	PASSED
SPONSOR: LR 2072	Rep. Burns, David C. An Act To Require Videoconferencing for Arraignments and Civil Proceedings for Inmates	PASSED
SPONSOR: LR 2073	Rep. Burns, David C. An Act To Allow Counties To Opt out of Maine Judicial Marshal Service	PASSED
SPONSOR: LR 2094	Rep. Clarke, Michael H. An Act To Allow Eligible Nonprofit Organizations To Hold Two Texas hold 'em Card Games Per Month	TABLED 03/03/11
SPONSOR: LR 2064	Rep. Cornell du Houx, Alexander M. An Act To Protect Heating Oil Consumers	PASSED
SPONSOR: LR 2091	Rep. Fitts, Stacey A. An Act To Remove Obstacles to the Use of New Technologies in Heating Multifamily Structures	PASSED
SPONSOR: LR 2085	Rep. Fossel, Leslie T. An Act To Promote Transparency in the Medicaid Reimbursement Process	PASSED
SPONSOR: LR 2097	Sen. Gerzofsky, Stanley J. An Act To Rename the Statewide Fire Service Training Program at Southern Maine Community College the Maine Fire Service Institute	PASSED

SPONSOR: LR 2076	Rep. Haskell, Anne M. An Act To Allow Police Officers To Operate Mobile Command Units without a Special License	PASSED
SPONSOR: LR 2080	Sen. Hastings III, David R. An Act To Extend the Salary Supplement for National Board Certified Teachers at Publicly Supported Secondary Schools That Enroll at Least 60% Public Students	PASSED
SPONSOR: LR 2078	Sen. Jackson, Troy D. Resolve, Directing the Department of Labor, Bureau of Unemployment Insurance To Examine Decisions Made by the Bureau To Determine if an Extension May Be Granted Due to Technological Errors	FAILED
SPONSOR: LR 2026	Rep. Mitchell, Wayne T. An Act To Authorize the Training of Expanded Function Dental Assistants on Tribal Land	PASSED
SPONSOR: LR 2070	Sen. Thibodeau, Michael D. An Act To Reduce the Cost of MaineCare Services	FAILED
SPONSOR: LR 2096	Sen. Thomas, Douglas A. An Act To Fully Enfranchise Voters	TABLED 03/03/11
SPONSOR: LR 2082	Rep. Tilton, Dianne C. An Act Concerning the Labeling of Maine Products	PASSED
SPONSOR: LR 2063	Sen. Woodbury, Richard An Act To Amend the Nonresident Income Tax Filing Requirement	PASSED
JOINT RESOLUTION		
SPONSOR: LR 87	Rep. Cebra, Richard M. JOINT RESOLUTION ASSERTING THE SOVEREIGNTY OF THE STATE OF MAINE AND URGING CONGRESS TO CEASE CERTAIN MANDATES	PASSED
JOINT RESOLUTION		
SPONSOR: LR 985	Rep. Clark, Herbert E. JOINT RESOLUTION MEMORIALIZING THE CONGRESS OF THE UNITED STATES TO AMEND FEDERAL LAW REGARDING STUDENT VISAS TO ACCOMMODATE PUBLIC SCHOOLS	TABLED 03/03/11

JOINT RESOLUTION

SPONSOR: **Rep. Curtis, Philip A.** **PASSED**
LR 1484 JOINT RESOLUTION URGING CONGRESS TO
OPPOSE THE MOVE TOWARD COMPETITIVE
GRANTS IN THE DISTRIBUTION OF FEDERAL
EDUCATION AID

JOINT RESOLUTION

SPONSOR: **Rep. Dill, Cynthia A.** **FAILED**
LR 152 JOINT RESOLUTION MEMORIALIZING CONGRESS
TO PASS A CONSTITUTIONAL AMENDMENT TO
PREVENT THE CORPORATE OR UNION TAKEOVER
OF THE POLITICAL PROCESS AND REVERSE THE
UNITED STATES SUPREME COURT'S RULING IN
"CITIZENS UNITED V. FEC"

JOINT RESOLUTION

SPONSOR: **Sen. Goodall, Seth A.** **PASSED**
LR 2068 JOINT RESOLUTION MEMORIALIZING THE
UNITED STATES CONGRESS NOT TO CLOSE THE
COMMISSARY AND EXCHANGE AT BRUNSWICK
NAVAL AIR STATION

JOINT RESOLUTION

SPONSOR: **Rep. Harvell, Lance E.** **PASSED**
LR 525 JOINT RESOLUTION TO MEMORIALIZE THE
UNITED STATES FISH AND WILDLIFE SERVICE TO
EXPEDITE THE INCIDENTAL TAKE PERMIT

JOINT RESOLUTION

SPONSOR: **Sen. Jackson, Troy D.** **TABLED 03/03/11**
LR 2077 JOINT RESOLUTION MEMORIALIZING THE
PRESIDENT OF THE UNITED STATES AND THE
UNITED STATES TRADE REPRESENTATIVE
REGARDING STATES' RIGHTS IN FUTURE
INTERNATIONAL TRADE POLICY

JOINT RESOLUTION

SPONSOR: **Sen. Raye, Kevin L.** **PASSED**
LR 1634 JOINT RESOLUTION MEMORIALIZING CONGRESS
ON A BALANCED BUDGET

JOINT RESOLUTION

SPONSOR:
LR 1501

Sen. Rosen, Richard W.
JOINT RESOLUTION MEMORIALIZING CONGRESS
TO OVERTURN THE GREENHOUSE GAS
TAILORING RULE

FAILED**JOINT RESOLUTION**

SPONSOR:
LR 1179

Sen. Trahan, A. David
JOINT RESOLUTION MEMORIALIZING THE
FEDERAL TRANSPORTATION SECURITY
ADMINISTRATION TO MAKE CHANGES TO ITS
PROCEDURE FOR CONDUCTING PAT-DOWN
SEARCHES

TABLED 03/03/11**JOINT RESOLUTION**

SPONSOR:
LR 674

Rep. Waterhouse, G. Paul
JOINT RESOLUTION, MEMORIALIZING THE
GOVERNMENT OF CANADA TO END ITS
SANCTIONING OF THE ANNUAL SEAL PUP HUNT

TABLED 03/03/11**TABLED BY THE LEGISLATIVE COUNCIL**

SPONSOR:
LR 1998

Sen. Jackson, Troy D.
Resolve, To Direct the Bureau of Unemployment To Allow
Mark Hafford To Appeal a Claim of Overpayment

Action
FAILED

SPONSOR:
LR 1999

Sen. Jackson, Troy D.
Resolve, To Direct the Workers' Compensation Board To
Allow Lowman McBriarty To File an Appeal

FAILED

SPONSOR:
LR 1994

Sen. Thibodeau, Michael D.
An Act To Extend the Period for Remarketing Dig Safe
Areas

FAILED