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EXECUTIVE DIRECTOR
OF THE LEGISLATIVE COUNCIL

MAINE STATE LEGISLATURE

OFFICE OF THE EXECUTIVE DIRECTOR
LEGISLATIVE COUNCIL

# MEETING SUMMARY
**January 21, 2010**
**APPROVED FEBRUARY 25, 2010**

## CALL TO ORDER

Legislative Council Chair, Speaker Pingree called the January 2010 Legislative Council meeting to order at 10:02 A.M. in the Legislative Council Chambers.

## ROLL CALL

| | |
|---|---|
| Senators: | Senate President Elizabeth Mitchell, Sen. Philip Bartlett, Sen. Kevin Raye, Sen. Jonathan Courtney |
| | Sen. Lisa Marraché [arrived after the start of the meeting] |
| 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<br>Millicent MacFarland, Clerk of the House<br>Michael Cote, Assistant Clerk of the House<br>David E. Boulter, Executive Director of the Legislative Council<br>Debra Olken, Human Resources Director<br>Patrick Norton, Director, Office of Policy & Legal Analysis<br>Grant Pennoyer, Director, Office of Fiscal and Program Review<br>John Barden, Director, Law and Legislative Reference Library<br>Beth Ashcroft, Director, Office of Program Evaluation & Government Accountability |

Chair Pingree convened the meeting at 10:03 A.M. with a quorum of members present.

## SUMMARY OF DECEMBER 17, 2009 MEETING OF LEGISLATIVE COUNCIL

**Motion:** That the Meeting Summary of December 17, 2009 be accepted and placed on file. Motion by Senator Mitchell. Second by Senator Bartlett. **Motion passed unanimous. (9-0)** [Senator Marraché absent for vote.]

Chair Pingree asked if there was any objection to taking 1 item out of order. There was no objection. The council voted 9 – 0 to take Item 1 out of order. The Chair then moved to **New Business, Items 1.**

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## NEW BUSINESS

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

Legislative Council Chair Pingree noted that a number of bill requests related to taxation had been tabled at the October Council meeting awaiting the outcome of the November referendum. With respect to those bill requests, the council acted on them as follows.

**Motion:** That all taxation-related legislative requests for bills that had been tabled at either the Legislative Council's October or November meetings, specifically LRs 2371, 2068, 2141, 2497, 2088, 2239, 2309, 2431, 2299, 2042, and 2238 not be authorized for introduction in the 2nd Regular Session of the 124th Legislature. Motion by Representative Piotti. Second by Senator Courtney. **Motion passed unanimous. (9-0)** [Senator Mitchell absent for vote]

The Legislative Council then proceeded to consider and vote on the other bill requests in accordance with the previously adopted protocol. Of the 44 bill requests, the council authorized 20 requests for introduction in the 2nd Regular Session of the 124th Legislature, 18 failed to be authorized, 1 was withdrawn by the sponsor, and 5 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:

1. Participation in on-site health programs

   The H1N1 and season flu clinic held on January 12th was well attended, with 334 influenza vaccinations administered to legislators and employees. This was the second of two flu clinics held; over 165 seasonal flu shots were administered during the earlier flu clinic.

   Sixteen legislative employees, representing nearly all legislative offices, participated in a CPR training class held at the State House on January 19th. The goal is to encourage legislative staff to be fully informed on the fundamentals of CPR, first aid and use of an AED should an emergency arise.

2. Email notification of expense payments to legislators

   As reported earlier, legislators may now receive email notification using their designated email address whenever a state payment is made to their financial account. This notification allows legislators to know when deposits are to be made to their accounts along with transaction details. Since it was announced one week ago, 70 legislators have registered for this free service.

3. Library as potential repository for rules adopted by reference

   The Law and Legislative Reference Library is pursuing discussions with the Secretary of State's office about becoming a designated repository for adopted state rules and standards that do not appear in full text in agency rules including those incorporated

by reference, such as fire, plumbing and building codes. As a repository, the library would become a readily accessible resource for agencies, other librarians, legislators and patrons who are seeking access to those rules and codes.

4. Preparation of Legislators' tax packets

Legislator tax packets for calendar year 2009 prepared by the Office of the Executive Director will be distributed to all legislators on Thursday, January 28th. The packet provides important tax information related to legislator payments that legislators will need in order to prepare their 2009 income tax returns.

## Fiscal Report

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

### Revenue Update

**Total General Fund Revenue - FY 2010 ($'s in Millions)**

| | Budget | Actual | Var. | % Var. | Prior Year | % Growth |
|---|---|---|---|---|---|---|
| December | $213.2 | $243.4 | $30.2 | 14.2% | $241.5 | 0.8% |
| FYTD | $1,175.1 | $1,208.1 | $33.0 | 2.8% | $1,285.8 | -6.0% |

General Fund revenue in December was $30.2 million (14.2%) over budget and was $33.0 million (2.8%) over budget for the first half of FY 2010 based on the revised budgeted amounts of the December 2009 Revenue Forecast. General Fund revenue collections for the first half of FY 2010 declined 6.0% from the same period in FY 2009.

With the exception of Sales and Use taxes and Service Provider tax, all major General Fund tax categories were above budget with Corporate Income Tax leading the way at $12.6 million over budget in December and for the fiscal year-to-date (FYTD). While December's positive performance is good news, a majority of this positive variance for December is related to timing issues. Over the course of this fiscal year much of this positive variance will be offset. Cigarette Tax and Transfers to Tax Relief Programs, which contributed just under $10 million to December's positive variances, are the most significant examples of temporary variances that will likely be offset in January. $2.8 million of the positive variance in the Other Revenue category was from Milk Pool distributions. That positive variance will be eliminated by the end of FY 2010.

Individual Income Tax estimated payments, which are due January 15th, were over budget in December. Some of this may represent greater than budgeted early payments by taxpayers to reduce their 2009 federal income tax liability. These early payments in December will reduce January receipts, potentially increase refunds or reduce final payments due April 15th.

December's Sales Tax performance, although under budget in December, was much closer to revised targets and is virtually on target for the first half of FY 2010. However, the Service Provider Tax, which was not adjusted in the December forecast, has fallen further below projections and was $0.8 million (3.1%) below projections for the first half of FY 2010. Consumption of taxable goods and services remains weak. January revenue representing the remainder of holiday sales will be an important indicator for the next revenue forecast update.

**Total Highway Fund Revenue - FY 2010 ($'s in Millions)**

| | Budget | Actual | Var. | % Var. | Prior Year | % Growth |
|---|---|---|---|---|---|---|
| December | $22.6 | $23.7 | $1.1 | 4.9% | $26.4 | -10.2% |
| FYTD | $135.8 | $139.5 | $3.7 | 2.7% | $145.0 | -3.8% |

Highway Fund revenue was $1.1 million (4.9%) over budget in December. Primarily due to the gasoline tax portion of the Fuel Taxes category, the total variance for the FYTD was $3.7 million (2.7%). Because the gasoline tax was not adjusted in the December forecast, the monthly distribution of budgeted revenue was also not adjusted. That monthly distribution had built up a positive variance of $2.8 million for the gasoline tax through November.

With the exception of motor vehicle inspection fees, there were no other major variances from the revised revenue forecast. Motor vehicle inspection fees varied widely last fiscal year from month to month, but did average out close to budget by the close of the fiscal year. Expectations are the same for this fiscal year.

**Cash Balances**

Presented below is a summary of the State's average cash balances in December 2009 compared to December 2008. The reliance on internal borrowing to meet General Fund cash flow needs was at its highest level ever at $300.0 million last month, $175.0 million higher than December 2008. The December average balance for the total cash pool was $330.2 million, almost $74.3 million less than last December and significantly below the historical average (2001 to 2008) of $523.9 million.

The State Treasurer and State Controller have been evaluating cash needs and cash flow projections. Their current assessment is that the cash pool can support this high level of internal borrowing through January (current budget assumptions had assumed internal borrowing through December).

The Dirigo Health Fund made some progress with the receipt of additional revenue from the final installment of the previously assessed savings offset payments. The average balance in the fund exclusive of the $25 million General Fund cash advance was -$16.1 million in December. With just 6 months remaining, it will be very difficult for Dirigo Health to reverse that $16.1 million negative balance in order to repay the General Fund before the end of FY 2010.

Average balances for federal funds in December remained substantially negative as they were in the previous 2 months. This substantial negative balance was primarily related to MaineCare spending. The Department of Health and Human Services has not provided an explanation for the substantial negative balances. It appears to be coincident with unusually large payments related to hospital settlements. A similar negative balance occurred in May 2009 when another very large payment for hospital settlements occurred.

| Summary of Treasurer's Cash Pool<br>December Average Daily Balances<br>Millions of $'s | 2008 | 2009 |
|---|---|---|
| General Fund (GF) Total | $20.2 | $16.3 |
| General Fund (GF) Detail: | | |
| Budget Stabilization Fund | $130.9 | $0.2 |
| Reserve for Operating Capital | $40.6 | $0.0 |
| Tax Anticipation Notes | $0.0 | $0.0 |
| Internal Borrowing | $125.0 | $300.0 |
| Other General Fund Cash | ($276.3) | ($283.9) |
| Other Spec. Rev. - Interest to GF | $39.9 | ($15.9) |
| Other State Funds - Interest to GF | ($13.1) | $15.1 |
| Highway Fund | $11.8 | $20.4 |
| Other Spec. Rev. - Retaining Interest | $62.3 | $38.6 |
| Other State Funds | $204.9 | $152.4 |
| Independent Agency Funds | $78.5 | $103.2 |
| **Total Cash Pool** | **$404.5** | **$330.2** |

**Winter Revenue Forecast Schedule**

The Consensus Economic Forecasting Commission (CEFC) will meet on Monday, January 25th at 9:30AM in the Legislative Council Chambers to begin the winter forecast process. The Revenue Forecasting Committee will meet toward the end of February (very likely during the last week) to conclude the update of the revenue forecast in time for the March 1st reporting deadline.

**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 considering or discussing the results of the Personnel Committee's search process and resulting recommendations for appointment of a new Director of Information Services and a Director of the Office of the Revisor of Statutes, and also to discuss information from counsel with respect to a matter in litigation. **Motion by Senator Mitchell. Second by Representative Tardy. Motion passed unanimous. (8-0).** [Senator Marraché, Senator Raye absent for vote]

The Council recessed at approximately 10:56 a.m. to go into an executive session.

The Legislative Council adjourned its executive session at 11:19 a.m. Motion by Senator Mitchell. Second by Representative Berry. **Motion passed unanimous (8-0-0-2). [Senator Bartlett and Representative Tardy absent for vote]**

The Chair reconvened the Legislative Council meeting at 11:20 a.m.

## REPORTS FROM COUNCIL COMMITTEES

### 1. Personnel Committee

Speaker Pingree, chair of the Personnel Committee reported on the following.

The Personnel Committee's Interview Panel began a search process in late summer to recruit for the positions of Revisor of Statutes and Director of Information Technology (IS Director). The panel conducted an extensive recruitment process, advertising nationally, online, and in Maine newspapers. The panel met frequently over a period of months, establishing position qualifications, reviewing applications, interviewing candidates and contacting references. The recruitment process has now been concluded and two very strong candidates are being recommended for appointment.

The interview panel considered over 120 applicants for the Director of Information Technology position and after preliminary screening narrowed the list to a top tier list. The panel interviewed five highly qualified individuals, some in the public sector and some in private sector, and conducted several second interviews. After careful consideration, the panel has recommended unanimously that current deputy director Scott Clark's educational background as well as his extensive experience here in the Legislature during the past 9 1/2 years and as an IT director with another branch of government would serve the Legislature well as it continues to improve its technological systems and capacity.

Similarly, the Revisor position produced applications from 21 well-qualified candidates, four of whom the panel interviewed. Again after careful consideration, the panel is recommending unanimously that current ROS Principal Analyst Suzanne Gresser be appointed as director of the Office of the Revisor of Statutes. With her 20+ years of experience as an attorney in the Revisor's Office and exemplary credentials, the committee is confident that Suzanne can lead the Revisor's office in a progressive and effective manner.

The challenges and needs of the legislature will continue to evolve as it confronts both new and old issues. The Personnel Committee is confident that both Mr. Clark and Ms. Gresser will be effective directors in leading their offices with skill and foresight.

> **Motion:** That upon the unanimous recommendation of the Personnel Committee, the Legislative Council appoint Scott Clark of Augusta as director of the Office of Information Services for a 3-year term, commencing on Monday, January 25, 2010, pursuant to 3 MRSA, section 162, subsection 6, and that Mr. Clark's initial salary in the position be established at salary grade 14, step 7; further that, the executive director, in consultation with the director, establish performance standards and goals for the director's position and make such operational and organizational improvements as necessary to assure an effective Office of Information Services.
> Motion by Representative Pingree. Second by Representative Piotti and Senator Raye.
> **Motion passed unanimous. (8-0)** [Senator Bartlett and Representative Tardy absent for vote.]

Council Chair Pingree congratulated Mr. Clark on his appointment. She said there is considerable excitement about how best to improve legislative operations using technology including re-establishing an information technology committee that would meet periodically. She said she would be seeking volunteers from the council to sit on a committee.

**Motion:** That upon the unanimous recommendation of the Personnel Committee, the Legislative Council appoint Suzanne Gresser of Freeport as director of the Office of the Revisor of Statutes for a 3-year term, commencing on Monday, January 25, 2010, pursuant to 3 MRSA, section 162, subsection 6, and that Ms. Gresser's initial salary in the position be established at salary grade 14, step 6; further that, the executive director, in consultation with the director, establish performance standards and goals for the director's position and make such operational and organizational improvements as necessary to assure an effective Office of the Revisor of Statutes.
Motion by Representative Pingree. Second by Senator Raye. **Motion passed unanimous. (9-0)** [Representative Tardy absent for vote.]

Council Chair Pingree thanked the interview panel members for their work and stated that they should feel proud that the selected candidates were internal to the legislature, which speaks well of those offices and how hard they work.

2. **State House Facilities Committee**

Facilities Committee Chair Piotti stated that he had no report but he would be speaking to Mr. Boulter about scheduling a facilities committee meeting next month to discuss several items related to facilities.

3. **Budget Subcommittee**

Budget Subcommittee Chair Mitchell stated that she had no report but the budget work is really just beginning. Legislative Council Chair Pingree mentioned that, on behalf of the Council, she had sent a letter to the Joint Standing Committee on Appropriations and Financial Affairs indicating that the Council was planning to meet its budget adjustment target of $2.2 million, as proposed in the Governor's supplemental budget bill. The Council must decide if that target is achievable and if so, how to achieve it. President Mitchell noted that all legislative operations will be looked at, but keeping in mind that the legislature is a separate, co-equal branch of government as the Council strives to meet the target.

4. **CSG Annual Meeting Planning Subcommittee**

(No Report)

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

A copy of the list of actions taken by ballot by the Legislative Council since its December 17, 2009 meeting was included in the Council's packet of information. No further action by the Legislative Council was required.

Chair Pingree then proceeded to **Item 2** under New Business.

**NEW BUSINESS**

**Receipts of reports:**
**ITEM #2: 2009 Annual Report of Midcoast Regional Redevelopment Authority**

**ITEM #3: Study on the Feasibility of and the Process for the Creation of an Insurance Fraud Division within the Bureau of Insurance (Maine Bureau of Insurance)**

**ITEM #4: Review and Evaluation of LD 425, An Act to Require Private Insurance Coverage for Certain Services for Children with Disabilities (Maine Bureau of Insurance)**

**ITEM #5: Final Report of the Study Commission Regarding Teachers' Compensation**

**ITEM #6: Report on the State of Competition in the Maine Workers' Compensation Market (Maine Bureau of Insurance)**

**ITEM #7: Final Report of the Commission to Study Energy Infrastructure**

**ITEM #8: Review and Evaluation of LD 1198 – An Act to Reform Insurance Coverage to Include Diagnosis for Autism Spectrum Disorders (Maine Bureau of Insurance)**

**ITEM #9: Fourth Annual Report of the Right to Know Advisory Committee**

**ITEM #10: Final Report: Initiative to Streamline State Government (Joint Standing Committee on Appropriations and Financial Affairs)**

**Motion:** To accept the following reports and place them on file.

- *2009 Annual Report of Midcoast Regional Redevelopment Authority*
- *Study on the Feasibility of and the Process for the Creation of an Insurance Fraud Division within the Bureau of Insurance;*
- *Review and Evaluation of LD 425, An Act to Require Private Insurance Coverage for Certain Services for Children with Disabilities;*
- *Final Report of the Study Commission Regarding Teachers' Compensation;*
- *Report on the State of Competition in the Maine Workers' Compensation Market;*
- *Final Report of the Commission to Study Energy Infrastructure;*
- *Review and Evaluation of LD 1198 – An Act to Reform Insurance Coverage to Include Diagnosis for Autism Spectrum Disorders;*
- *Fourth Annual Report of the Right to Know Advisory Committee;*
- *Final Report: Initiative to Streamline State Government.*

Motion by Senator Bartlett. Second by Senator Raye. **Motion passed unanimous (9-0).** [Representative Piotti absent for vote]

**ITEM # 11: Government Evaluation Act Review of the Maine Human Rights Commission (Joint Standing Committee on Judiciary)**

The letter from the committee was presented for informational purposes only. The full report was submitted to the legislature. No Legislative Council action was required.

**ITEM #12: 2009 OPEGA Annual Report on Activities and Performance**
[Presentation by OPEGA Director Beth Ashcroft]

Ms. Ashcroft presented OPEGA's *Annual Report on Activities and Performance* for 2009. She proceeded to summarize the major components of the report. Ms. Ashcroft explained that the report is divided into three major categories: summary of the reports issued in 2009 and their results (page 19); assessment of OPEGA's performance on its strategic plan and objectives (page 6); and a five year review of OPEGA inputs, outputs and outcomes (page 3).

Reports Issued
In 2009, OPEGA issued five reports, four of which related to projects initiated in 2008 under the direction of the Government Oversight Committee of the 123rd Legislature. The reports were:

- *Final Report on MaineCare Children's Outpatient Mental Health Services*
- *Final Report on MaineCare Durable Medical Equipment and Medical Supplies*
- *Final Report on a Fund for a Healthy Maine Programs*
- *Information Brief on a Fund for a Healthy Maine Programs*
- *Final Report on Maine State Prison Management Issues*

Phase I of the Fund for a Healthy Maine Programs assessment addressed how Maine compares with other states in preventative health expenditures and phase II was a broad analysis of the effectiveness and efficiencies of activities.

In each report, key issues, required actions and recommendations were identified. Appendix C of the annual report summarizes the 19 reports issued by OPEGA during its five year existence and OPEGA's impact for those projects.

OPEGA's Performance
In February 2009, OPEGA developed a strategic plan designed to elevate OPEGA's performance. The plan established goals, objectives and performance measures to judge OPEGA's progress. A number of performance measures have target dates of December 2010, although progress toward those is noted in the report. Ms. Ashcroft explained that OPEGA has some goals and objectives that will be challenging to meet, including those related to conducting audits, evaluations and reviews on topics that are of primary interest to the legislature. OPEGA is exploring ways to make its work products more accessible and useful to legislators.

Five Year Plan
Ms. Ashcroft reminded the Legislative Council that the office was created five years ago. The cost effectiveness and efficiency of OPEGA and the Government Oversight Committee can be assessed by considering the resources expended (inputs), outputs produced and ultimately the outcomes achieved as a result. The report provides a snapshot of those factors. Ms. Ashcroft invited the Legislative Council members to provide her with feedback on the usefulness of those factors as indicators of performance. She concluded her remarks by saying she plans to work more with the office and the Government Oversight Committee to improve OPEGA's overall performance. Ms. Ashcroft then invited the council members to ask questions.

President Mitchell reflected on her time as a member of the oversight committee and asked Ms. Ashcroft to whether she felt the OPEGA statutes gave the office sufficient authority to analyze programs and make qualitative determinations as to which programs in a department are more

effective than others. By way of example, she mentioned children's mental health care where across the board budget cuts are being proposed, and asked how OPEGA could help the legislature understand where to focus limited funds.

Ms. Ashcroft responded that she felt current law was sufficient to allow those assessments. She said the focus of the assessment is principally driven by the question posed. Many of the topics OPEGA has dealt have been more general in nature so the results of the assessments have not produced that kind of information or system changes for improved effectiveness.

Speaker Pingree asked about the resources OPEGA expended on the Fund for a Healthy Maine Programs assessment in light of the availability of relevant information from other sources such as NCSL. Ms. Ashcroft responded by saying the report was divided into two components. The first component was a comparative assessment and OPEGA did utilize available externally-produced data. The second component, effectiveness/efficiencies assessment, required more internal assessment. The work required two analysts for several months, though not on a full-time basis.

Speaker Pingree noted that in spite of the staff time and readily available data for that assessment, OPEGA's report did not appear to result in quantifiable savings recommendations or identification of programs that are not working effectively. Ms. Ashcroft agreed. Senator Raye noted that, as a former Government Oversight Committee member, he realizes that decisions on the issues to be evaluated are at the direction of the Government Oversight Committee.

President Mitchell reiterated her concern that the reports issued by OPEGA to-date appear to have little immediate relevance to the legislature's priorities of closing the budget shortfall and identifying programs that work or do not work well. Senator Bartlett noted that it appears that a good deal of time appears to be spent on getting OPEGA staff up to speed on information that other staff, including OPLA and NCSL, already have. He suggested seeking out ways to better utilize OPEGA staff without duplicating information gathering efforts. Ms. Ashcroft agreed, indicating that better coordination and utilization of internal resources is important, including policy committees and staff offices such as OFPR and OPLA. She pointed out OPEGA has learned a great deal in its five years but state government is very large, and more expertise will need to be developed to better identify programs that are not useful.

In response to a question, Ms. Ashcroft explained that the double asterisks in Appendix C of the report indicate those areas where potential fiscal impacts are likely to be higher than the impact shown. Speaker Pingree concluded by noting that the report identifies "past costs that could have been avoided." She commented that emphasis should be on avoidance of future costs, rather than already incurred past costs. Ms. Ashcroft commented that the intent was to identify areas where the state is at risk for unnecessarily incurring those costs again in the future if corrective measures are not taken.

## ANNOUNCEMENTS AND REMARKS

None

## ADJOURNMENT

The Legislative Council meeting was adjourned at 11:54 A.M. Motion by Senator Mitchell. Second by Senator Raye. **Motion to adjourn passed, unanimous. (8-0)** [Representative Piotti and Representative Berry absent for vote.]