SEN. KEVIN L. RAYE
CHAIR

REP. ROBERT W. NUTTING
VICE-CHAIR

EXECUTIVE DIRECTOR
DAVID E. BOULTER

125TH MAINE STATE LEGISLATURE

LEGISLATIVE COUNCIL

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

MEETING SUMMARY
October 31, 2011

CALL TO ORDER

Legislative Council Chair, Senate President Raye called the October 31, 2011 Legislative Council meeting to order at 10:17 a.m. in the Legislative Council Chamber.

ROLL CALL

Senators:	President Raye, Senator Courtney, Senator Plowman, Senator Hobbins and Senator Alfond
Representatives:	Speaker Nutting, Representative Curtis, Representative Cushing, Representative Cain and Representative Hayes
Legislative Officers:	Joseph Carleton, Secretary of the Senate Heather Priest, Clerk of the House Rose Breton, Legislative Finance Director Jon Clark, Deputy Director, Office of Policy and Legal Analysis 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 10:17 a.m. with a quorum of members present.

SUMMARY OF SEPTEMBER 22, 2011 MEETING OF LEGISLATIVE COUNCIL

Motion: That the Meeting Summary of September 22, 2011 be accepted and placed on file. Motion by Senator Courtney. Second by Senator Alfond. **Motion passed (9-0-0-1,** with Representative Hayes abstaining**).**

REPORTS FROM EXECUTIVE DIRECTOR AND COUNCIL OFFICES

Executive Director's Report

In his absence, David Boulter, Executive Director, submitted the following written report in the revised agenda packet. No oral report was given.

115 STATE HOUSE STATION, AUGUSTA, MAINE 04333-0115
TELEPHONE (207) 287-1615 FAX (207) 287-1621

1. YMCA Youth in Government Program

   With prior approval by the Legislative Council, the State YMCA of Maine will be holding its annual Youth in Government Program in the State House on Friday, November 18th through Sunday, November 20th. Over 100 students from high schools throughout the state will participate in this civic education program designed to engage students in understanding and participating in the legislative process.

2. Replacement of Failed Tape Drive for Data Backups

   A tape drive used for off-site backup and storage of legislative documents and applications failed unexpectedly earlier this month. Repair was not feasible due to the vendor discontinuance of the tape drive system and product support. Due to the importance of maintaining capacity to back up and store legislative data off-site for disaster recovery purposes and to take advantage of limited time favorable pricing, a replacement unit has been ordered for installation this month. Because the unit cost exceeded $5,000.00, it is considered a Capital Equipment purchase, requiring the transfer of available All Other funds to the Capital line in the Legislature's budget last week to cover the costs appropriately.

   The Office of Legislative Information Technology is utilizing alternative, though slower, data backup conventions until the new unit is installed by the end of October. No data loss has occurred as a result of the tape drive system failure.

Fiscal Report

Grant Pennoyer, Director, Office of Fiscal and Program Review, submitted the following written report in the revised agenda packet. No oral report was given.

Revenue Update

Total General Fund Revenue - FY 2012 ($'s in Millions)

	Budget	Actual	Var.	% Var.	Prior Year	% Growth
September	$288.7	$303.6	$14.8	5.1%	$288.4	5.3%
FYTD	$603.8	$609.7	$5.9	1.0%	$586.8	3.9%

General Fund revenue was over budget by $14.8 million (5.1%) for September, which produced a positive variance of $5.9 million (1.0%) for the 1st quarter of FY 2012. The revenue growth for the 1st quarter of FY 2012 was 3.9% compared to the same period in the last fiscal year, which is well above the nearly flat growth projected for all of FY 2012. Corporate Income Tax revenue, over budget by $9.0 million for September and $12.5 million for the quarter, was the primary reason for improved revenue performance. Taxable sales were modestly ahead of projections and Individual Income Tax revenue helped offset the July negative variance, but it remained $5.8 million under budget for the 1st quarter. Another significant negative variance was related to earlier than anticipated payments in the tax relief programs, which totaled $6.0 million in the 1st quarter.

Highway Fund Revenue Update

Total Highway Fund Revenue - FY 2012 ($'s in Millions)

	Budget	Actual	Var.	% Var.	Prior Year	% Growth
September	$26.2	$24.9	($1.4)	-5.2%	$25.4	-2.0%
FYTD	$63.3	$60.9	($2.4)	-3.8%	$63.1	-3.6%

Highway Fund revenue was under budget by $1.4 million (5.2%) for September and $2.4 million (3.8%) for the 1st quarter of FY 2012. Highway Fund revenue for the 1st quarter declined 3.6% compared with the first quarter of FY 2011. The Fuel Taxes category has had a significant amount of variability from budget each month with both positives and negatives in both gasoline tax and special fuel collections. Overall for the 1st quarter, Fuel Taxes were $1.3 million under budget. Motor vehicle registration fee revenue accounted for the remainder of the negative variance and was $1.4 million under budget through the 1st quarter. This should begin to show improvement once a processing backlog begins to clear.

Cash Balances

The average total cash pool balance for September was $526.4 million, $11.3 million less than one year ago. However, General Fund internal cash flow borrowing was $39.5 million less than a year ago. Although this balance is beginning to show the effect of the $43 million General Fund borrowing from Other Special Revenue Funds to balance the FY 2012 General Fund budget that will be repaid in FY 2013, overall cash pool balances remain sufficiently healthy to avoid external borrowing in FY 2012 absent any significant variances in spending or revenue.

MaineCare Spending

MaineCare spending remains a concern. The weekly FY 2012 MaineCare cycle average through Week 15 was $42.7 million (state and federal dollars), which is greater than the weekly average for FY 2011 of $40.4 million. However, September weekly cycle payments did retreat below the spike in payments during August. In addition to the increase in total MaineCare spending, the loss of the enhanced matching rate under the federal stimulus and the General Fund repayment of $29.7 million during the 1st quarter of FY 2012 resulted in an increase in MaineCare General Fund spending of nearly $110 million when compared to the 1st quarter of FY 2011.

Economic Forecast

The Consensus Economic Forecasting Commission (CEFC) met on Monday, October 24th and revised the economic forecast that is used by the Revenue Forecasting Committee to forecast the major tax lines. The CEFC's new forecast compared with its April 2011 forecast is significantly more pessimistic through calendar year 2013 (see table below). While the size of the downward revisions in employment and income appears to place significant downward pressure on the revenue forecast, there are some mitigating factors in the forecast. The most significant is the improvement in the corporate profits assumption with very sizeable upward revisions to growth in 2011 and 2012. In addition, the positive variances of last fiscal year and the first quarter of this fiscal year may soften the blow as the models are targeted to that higher level of past performance before applying the lower growth rates. While these positive factors will help, the extent of the reduction to the growth assumptions will likely produce a lower revenue projection for each year of the 2012-2013 biennium.

Consensus Economic Forecasting Commission
Comparison of April 2011 and November 2011 Economic Forecasts

Calendar Years	2010	2011	2012	2013	2014	2015
• Wage & Salary Employment (Annual Percentage Change)						
> Consensus 04/2011	-0.6%	0.4%	1.5%	1.5%	1.4%	1.2%
> Consensus 11/2011	-0.6%	0.1%	0.1%	0.8%	1.3%	1.4%
Difference	0.0%	-0.3%	-1.4%	-0.7%	-0.1%	0.2%
• Personal Income (Annual Percentage Change)						
> Consensus 04/2011	3.0%	4.6%	2.9%	4.0%	4.0%	4.0%
> Consensus 11/2011	1.7%	3.8%	3.0%	3.0%	4.7%	4.8%
Difference	-1.3%	-0.8%	0.1%	-1.0%	0.7%	0.8%
• Consumer Price Index (Annual Percentage Change)						
> Consensus 04/2011	1.6%	2.5%	1.8%	2.0%	2.3%	2.1%
> Consensus 11/2011	1.6%	3.0%	1.3%	1.9%	2.3%	2.1%
Difference	0.0%	0.5%	-0.5%	-0.1%	0.0%	0.0%
• Before Tax Corporate Profits (Annual Percentage Change)						
> Consensus 04/2011	36.3%	-7.3%	0.2%	20.8%	6.5%	-3.8%
> Consensus 11/2011	25.0%	3.7%	6.7%	12.2%	5.3%	-2.5%
Difference	-11.3%	11.0%	6.5%	-8.6%	-1.2%	1.3%

Status of Legislative Studies

Jon Clark, Deputy Director of the Office of Policy and Legal Analysis, submitted a written report on the status of legislative studies. No oral report was given.

REPORTS FROM COUNCIL COMMITTEES

1. Personnel Committee

President Raye, Chair of the Personnel Committee, reported that the Interview Panel, a subset of the Personnel Committee, met on October 12, 2011 to conduct initial interviews for the position of Director of the Office of Policy and Legal Analysis, vacant due to the recent retirement of OPLA Director Patrick Norton. Six candidates were interviewed. The panel is continuing its review of candidate qualifications and expects to conduct follow-up interviews in early November, with an expected recommendation to the full Legislative Council by mid-November.

2. State House Facilities Committee

No report

OLD BUSINESS

None

NEW BUSINESS

Item #1: Legislative Council Meeting Schedule for 2012

President Raye informed the Legislative Council members of the Legislative Council Meeting Schedule for calendar year 2012 which is noted below. All meetings will be held in the Legislative Council Chambers and are tentatively scheduled to start at 1:30 p.m.

Thursday, January 26, 2012
Thursday, February 23, 2012
Thursday, March 22, 2012
Thursday, April 26, 2012
Thursday, May 24, 2012
Thursday, June 28, 2012
Thursday, July 26, 2012
Thursday, August 23, 2012
Thursday, September 27, 2012
Thursday, October 25, 2012
Thursday, November 15, 2012
Thursday, December 6, 2012 (tentative, 126th Legislature)

Item #2: Request by Commission to Study Priorities and Timing of Judicial Proceedings in State Courts to Establish Subcommittee, Hold Subcommittee Meetings and Extend Deadline for Report

The Commission to Study Priorities and Timing of Judicial Proceedings in State Courts submitted a request to establish a subcommittee to assist the full commission in its evaluation of issues. In addition, the commission requested an extension of its deadline to submit its final report and recommendations from December 7th to December 15, 2011.

Motion: That the Legislative Council approve the request by the Judicial Proceedings Commission to establish a subcommittee to meet as necessary and extend its final report deadline to December 15, 2011. Commission members may not receive compensation for their attendance at subcommittee meetings. Motion by Senator Courtney. Second by Representative Cain. **Motion passed unanimous (10-0).**

Item #3: Proposed Document Service Fee Schedule for 125th Legislature, Second Regular Session

Clerk of the House Heather Priest submitted a proposed fee schedule for Legislative Document Service for the Second Regular Session of the 125th Legislature. In her proposal, she noted that all documents offered in the document service are also available directly on the Legislature's website, and the public is being encouraged to use the online information. She further noted that as a result of the steady decline in the demand for paper copies of several documents, certain services are proposed to be discontinued. Documents are now available via email as well.

Motion: That the Legislative Council approve the prosed Legislative Document Service Fee Schedule. Motion by Representative Hayes. Second by Speaker Nutting. **Motion passed unanimous (10-0).**

Item #4: Suggested Procedures for Deciding Legislative Bill Requests

Legislative Council Chair President Raye summarized the suggested procedures for deciding Legislative bill requests. He drew Legislative Council members' attention to several key aspects of the proposed protocol, including that the initial motion on each bill request will be presumed to be a motion to accept the bill request for introduction into the Second Regular Session, along with a

presumed second to that motion. Also for procedural consistency, unless otherwise stated, each motion is presumed to have been made by the vice-chair of the Legislative Council, seconded by the chair. See the attached procedures.

Motion: That the Legislative Council approve the suggested procedures for deciding Legislative bill requests. Motion by Senator Courtney. Second by Representative Curtis. **Motion passed unanimous (10-0).**

Item #5: Consideration of Legislative Bill Requests for Introduction in the Second Regular Session of the 125th Legislature

The Council proceeded to consider and vote on two hundred eighty-eight (288) bill requests in accordance with the adopted protocol, and using an electronic voting system. The Legislative Council authorized one hundred seventeen (117) bills for introduction in the Second Regular Session, and tabled nine (9) bill requests. Out of the 288 requests, 4 bill requests were withdrawn. The Legislative Council's action on the bill requests is attached.

ANNOUNCEMENTS AND REMARKS

Legislative Council Chair President Raye thanked Ms. Breton for capably carrying out the Executive Director's responsibilities during Mr. Boulter's absence from the meeting.

The Legislative Council meeting was adjourned at 12:24 p.m. on a motion by Representative Cushing, seconded by Representative Curtis. **Motion passed unanimous (10-0).**

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Legislative Council Meeting
October 31, 2011

Procedures for Review of Legislative Bill Requests for Second Regular Session of the 125th Legislature

Requirements relevant to bills in the Second Regular Session

1. Under the terms of the Maine Constitution, Section 1 of Article IV, Part Third, Legislative Power, the business of the second regular session **must be limited to:** budgetary matters; legislation in the Governor's call; legislation of an emergency nature admitted by the Legislature; legislation referred to committees to study and report by the Legislature in the first regular session; and legislation presented to the Legislature by written petition of the electors (direct citizen initiative).

2. Under the Legislative Council's Rules of Procedure for the 125th Legislature, any action of the Legislative Council requires the affirmative vote of at least 6 members.

3. Under Rule 203 of the Joint Rules of the 125th Legislature, any vote of the Legislative Council to accept or reject a bill or resolve for introduction under the procedures established under the Joint Rules must be taken by the yeas and nays, and that vote must be recorded and made available for public inspection.

4. Under Rule 217 of the Joint Rules, a bill that has been introduced and finally rejected in a regular or special session may not be introduced in a subsequent session of the same Legislature except by a vote of 2/3 of both chambers. Therefore, determinations as to the relevancy of Rule 217 are within the purview of the presiding officers, rather than the Legislative Council.

Suggested Protocol for deciding legislative bill requests

A. The Legislative Council will review bill requests alphabetically by policy area. An exception to this order of review may be made for bill requests for which an ASL Interpreter is required for persons who are deaf or hard of hearing. Those bills will be taken out of order at a time during the meeting when an interpreter is available.

B. For procedural consistency, when voting on a bill request, the initial motion on a bill will be presumed to be a motion to accept the bill request for introduction into the second regular session along with a second to that motion. (Yea is to let in a bill; nay is to reject the bill for introduction). Also for procedural consistency, unless otherwise stated, each motion is presumed to have been made by the vice-chair of the Legislative Council, seconded by the chair.

C. In order to review all legislative requests in a timely manner, voting will be by electronic vote or a show of hands, with each Council Member's vote on each bill being recorded. The record of each vote will be made available by the Office of the Executive Director for public inspection following the meeting.

D. If a bill request has been identified by the Revisor as requiring a ruling under Joint Rule 217, the Legislative Council may vote to accept that bill for introduction, conditional upon a subsequent ruling by the presiding officers. Absent a vote to accept the bill, the bill is presumed to have been turned down by unanimous vote of the Legislative Council.

E. Legislative sponsors and others are welcome to observe the Council's deliberations on the bill requests, but discussion of the requests will be confined to Legislative Council Members. Discussion of a bill request among Legislative Council Members will be limited to whether it is appropriate for introduction under Constitutional provisions for second regular session bills, and will not speak to the merits of the bill itself.

F. If the Legislative Council turns down a bill request, a Legislator may appeal that decision if an appeal is filed in a timely manner. At a subsequent meeting of the Legislative Council, the legislator may speak briefly to the bill request under appeal.

G. A legislative request that has been identified by the Revisor as being either closely related to another legislative request that was earlier filed (i.e., having been assigned a lower LR number) or to a carryover bill is presumed to have been turned down by a unanimous vote of the Legislative Council.