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
November 17, 2011

CALL TO ORDER

Legislative Council Chair, Senate President Raye called the November 17, 2011 Legislative Council meeting to order at 10:25 a.m. in the Legislative Council Chamber.

ROLL CALL

Senators:	President Raye, Senator Courtney, and Senator Alfond
	Senator Hobbins and Senator Plowman arrived after the start of the meeting.
Representatives:	Speaker Nutting, Representative Curtis, Representative Cushing, Representative Cain and Representative Hayes
Legislative Officers:	Joseph Carleton, Secretary of the Senate Shawn Roderick, Assistant Clerk of the House David Boulter, Executive 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

Senate President Raye convened the meeting at 10:25 a.m. with a quorum of members present.

SUMMARY OF OCTOBER 31, 2011 MEETING OF LEGISLATIVE COUNCIL

Motion: That the Meeting Summary of October 31, 2011 be accepted and placed on file. Motion by Senator Alfond. Second by Senator Courtney. **Motion passed (8-0-0-2,** with Senators Plowman and Hobbins absent**).**

REPORTS FROM EXECUTIVE DIRECTOR AND COUNCIL OFFICES

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

Executive Director's Report

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

1. YMCA Youth in Government Program
   As a reminder, 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 160 students from high schools throughout the state will participate in this civic education program. This is one of the highest participation rates in recent years.

2. Sprinkler System Inspection & Repair
   A 5-year inspection of the sprinkler system in the State House under the direction of the Bureau of General Services has revealed a buildup of material in some of the piping. In order for the sprinkler system to remain certified, the piping needs to be flushed and drained. Work began on Monday, November 16th. Some piping repairs will be made at the same time. The project is expected to take 6 weeks. Work will be done at night so as not to disrupt legislative operations.

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
October	$243.2	$230.6	($12.6)	-5.2%	$241.9	-4.7%
FYTD	$847.0	$840.2	($6.7)	-0.8%	$828.7	1.4%

General Fund revenue was under budget by $12.6 million (5.2%) for October, which resulted in a negative variance of $6.7 million (0.8%) for the 4 months of FY 2012. The revenue growth through one-third of FY 2012 was 1.4% compared to the same period in the last fiscal year. The two major contributors to the October negative variance were Corporate Income Tax and Transfers to Tax Relief programs, $7.9 million and $5.1 million, respectively. Corporate Income Tax remained $4.6 million over budget for the fiscal year. However, the tax relief programs, BETR and Circuitbreaker, were $11.0 million under budget through October. Absent these tax relief program negative variances, General Fund revenue would have remained over budget through October.

Highway Fund Revenue Update

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

	Budget	Actual	Var.	% Var.	Prior Year	% Growth
October	$26.9	$29.0	$2.1	7.9%	$26.8	8.3%
FYTD	$90.2	$89.9	($0.3)	-0.3%	$89.9	0.0%

Highway Fund revenue was over budget by $2.1 million (7.9%) for October, reducing the negative variance for the fiscal year to 0.3 million (0.3%). October's positive performance was related to a significant reduction in the Bureau of Motor Vehicle processing backlog. Gasoline tax collections fell further below budget in October, but special fuel taxes rebounded in October. Gasoline taxes and fines remain the larger concerns for Highway Fund revenue.

Revenue Forecasting Schedule

The Revenue Forecasting Committee will meet on Friday afternoon, November 18th to review staff recommendations and update the revenue forecasts for the General Fund, Highway Fund, Fund for a Healthy Maine and MaineCare Dedicated Revenue Taxes.

Cash Balances

The average total cash pool balance for October was $489.3 million, $29.4 million less than one year ago. However, General Fund internal cash flow borrowing was still less than a year ago. Reserve balances have offset overall reductions in General Fund cash. Highway Fund cash balances have declined recently.

MaineCare Spending

DHHS Commissioner Mayhew recently announced significant FY 2012 shortfalls for MaineCare and General Assistance. The weekly tracking of MaineCare cycle payments through Week 18 has increased to an average of $42.9 million (state and federal dollars), which is greater than the weekly average for FY 2011 of $40.4 million.

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.

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

NEW BUSINESS

Item #1: Suggested Procedures for Deciding Appeals of Legislative Bill Requests

Legislative Council Chair President Raye summarized the suggested procedures for deciding bill appeals. See attached procedures.

Motion: That the Legislative Council approve the suggested procedures for deciding Legislative bill appeals. Motion by Representative Nutting. Second by Representative Cain. **Motion passed unanimous (10-0).**

Item #2: Consideration of Legislators' Appeals of Council Action on Bill Requests

The Council proceeded to consider and vote on sixty-four (64) bill requests in accordance with the adopted protocol, and using an electronic voting system. The Legislative Council authorized

fifteen (15) bills for introduction in the Second Regular Session. Of the 64 requests, 5 bill requests were withdrawn by the sponsor. The Legislative Council's action on the bill requests is attached.

REPORTS FROM COUNCIL COMMITTEES

2. State House Facilities Committee

No report

OLD BUSINESS

None

NEW BUSINESS

Item #3: Acceptance of Loring Development Authority of Maine's Annual Report

The Loring Development Authority of Maine submitted its 2011 Annual Report for acceptance by the Legislative Council.

Motion: That the Legislative Council accept the 2011 Annual Report of the Loring Development Authority of Maine. Motion by Senator Hobbins. Second by Senator Plowman. **Motion passed unanimous (10-0).**

Item #4: Acceptance of Washington County Development Authority's Annual Report

The Washington County Development Authority submitted its 2011 Annual Report for acceptance by the Legislative Council.

Motion: That the Legislative Council accept the 2011 Annual Report submitted by the Washington County Development Authority. Motion by Representative Cushing. Second by Senator Plowman. **Motion passed unanimous (10-0).**

Item #5: Consideration of Producing New Legislator Orientation Video to Replace *Person-to-Person Legislating Maine © 1994*

President Raye remarked that the last orientation video for Legislators was produced in 1994. He and other Legislative Council Members felt that the video is outdated and a new one should be developed. Mr. Boulter explained that some filming would need to be done during the legislative session of the Second Regular Session. Mr. Boulter further stated that he would take the next steps to investigate options for producing a new video and report back to the council.

Collective Bargaining Matters and Personnel 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 personnel matters as well as collective bargaining negotiations between the employee representative for the

Administrative Unit of Legislative Employees and the Legislative Council. Motion by Representative Cushing. Second by Representative Curtis. **Motion passed unanimous. (10-0)**

The council entered into an executive session at approximately 12:25 p.m. At the conclusion of the executive session, on a motion by Representative Curtis, seconded by Senator Hobbins, with Senator Courtney absent, the Legislative Council voted unanimously to end its executive session at approximately 12:56 p.m.

REPORTS FROM COUNCIL COMMITTEES

1. Personnel Committee

President Raye, Chair of the Personnel Committee, reported that the Personnel Committee began a search process in late summer to recruit for the position of Director of the Office of Policy and Legal Analysis following the retirement of OPLA Director Patrick Norton. The Personnel Committee established an Interview Panel that conducted an extensive recruitment process, advertising online and in Maine newspapers. The panel met several times over a period of months, establishing position qualifications, reviewing applications, interviewing candidates and reviewing references.

The recruitment process has now been concluded and one candidate is being recommended by the Personnel Committee for appointment.

The interview panel considered 23 applicants for the OPLA Director position and, after preliminary screening, narrowed the list to 6 qualified individuals, representing a spectrum of internal and external, and public and private sector candidates. The panel interviewed the six individuals, and conducted follow-up interviews with 3 of the candidates. After careful consideration, the panel has recommended unanimously that Marion Hylan Barr be appointed as the director of OPLA. The committee felt that Marion exhibits the appropriate combination of education, skills, and experience to successfully lead OPLA. Marion is extremely familiar with the Legislature and its process having worked in OPLA as Analyst and Senior Analyst for 19 years. The Personnel Committee believes that Marion's appointment as director would serve us well as the Legislature continues to improve its capacity for timely and high quality analysis and committee staffing through OPLA.

The challenges and needs of the legislature will continue to evolve as it confronts both new and continuing issues. The Personnel Committee is confident that Marion will be an effective director in leading OPLA with skill and insight.

Motion: That upon the unanimous recommendation of the Personnel Committee, the Legislative Council appoint Marion Hylan Barr of Hallowell as director of the Office of Policy and Legal Analysis for a 3-year term, the effective date of appointment being Monday, November 21, 2011, pursuant to 3 MRSA, §162, subsection 6, and that Ms. Hylan Barr's initial salary in the position be established at Salary Grade 14, step 5 of the Legislature's salary schedule; 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 and well run Office of Policy and Legal Analysis. Motion by Senator Hobbins. Second by Representative Cain. **Motion passed (9-0-0-1,** with Senator Alfond absent**).**

ANNOUNCEMENTS AND REMARKS

Representative Hayes announced that the Maine Development Foundation will be conducting an economic development bus tour of Southern and Western Maine for Legislators on January 11-13, 2012. This is a continuation of the Legislator orientation program that was established for the 125th Legislature.

The Legislative Council meeting was adjourned at 1:05 p.m. on a motion by Representative Cain, seconded by Representative Cushing. **Motion passed unanimous (10-0).**

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Legislative Council Meeting
November 17, 2011

Deciding Appeals of Legislative Bill Requests Turned Down By the Council
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 125th Legislative Council's Rules of Procedure, any action of the Council requires the affirmative vote of at least 6 members.

3. Under Rule 203 of the Joint Rules of the 124th 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 appeals

A. The Legislative Council will review appeals in alphabetical order by Sponsor.

B. For procedural consistency, when voting on an appeal of a bill request that was denied, the initial motion on a bill will be presumed to be a motion to accept the bill request for introduction in 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 appeals 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. Legislators who appeal a decision of the Legislative Council will be given a brief opportunity to make their case to the Council. A time limit of 2 minutes will be observed for Legislators making an appeal. Only by leave of the Chair of the Legislative Council may a person who is not a Legislator address the Council.

E. Discussion of a bill request 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. If a bill was turned down because it is closely related to another legislative request or to a carryover bill, the burden is on the Sponsor to convincingly distinguish his or her bill request from the closely related one.