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State of Maine  
ONE HUNDRED AND TWENTY-EIGHT LEGISLATURE  
COMMITTEE ON APPROPRIATIONS AND FINANCIAL AFFAIRS

The Honorable Paul R. LePage  
Governor of Maine  
1 State House Station  
Augusta, ME 04333

May 23, 2017

Dear Governor LePage:

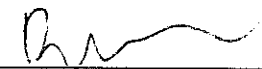
We are requesting the presence of a representative of the Department of Corrections at a work session for LD 390 (*the Biennial Budget*) this Wednesday (May 24<sup>th</sup>) at 4:00 pm.

We would like the representative to present responses to the list of questions in Attachment A and answer follow-up questions or requests for clarification from the committee.

As you know, we are in the final stages of committee work on the budget and getting requested information is essential to our progress. With that in mind, please let us know by this afternoon whether the information will be provided and if we can expect a representative from the Department on Wednesday afternoon. You may respond to either of us directly or through Maureen Dawson, our Committee Analyst (State House room 226, 207-1635 or [maureen.dawson@legislature.maine.gov](mailto:maureen.dawson@legislature.maine.gov))

Sincerely,

  
James Hamper, Senate Chair  
Appropriations and Financial Affairs

  
Drew Gattine, House Chair  
Appropriations and Financial Affairs

Attachments

cc: Dr. Joseph Fitzpatrick, Commissioner, Department of Corrections

Attachment A

Questions for the Department of Corrections  
May 22, 2018

**Regarding the Closure of the Down East Correctional Facility:**

- Have prisoners been released pursuant to the closure and do you anticipate releases within the next two days?
- Without the facility how many minimum security beds remain in the Department of Corrections system?
- How many beds are currently available in state prisons?
- What will happen to prisoners currently housed at the Downeast Correctional Facility?
- Are there plans to release prisoners currently housed in other facilities to make room for transfers from Downeast?
- Will the sentences of current prisoners at Downeast be commuted?
  - Would such commutations be conditional?
  - Who would enforce the conditions?
- What are the anticipated terms of release?
  - What would happen to those who violate the terms?
  - If violators would be re-incarcerated, would there be sufficient capacity to house them?
  - What would be the terms of release?
- A letter from Chief Deputy General Linda Pistner, dated April 27, 2017 may be found in Appendix B. In the letter, Ms. Pistner indicates that the Governor does not have the authority to unilaterally end the program at Downeast that is set in statute. How does the Administration view its authority to, effectively, close the facility?

**Regarding a Potential Prerelease Center:**

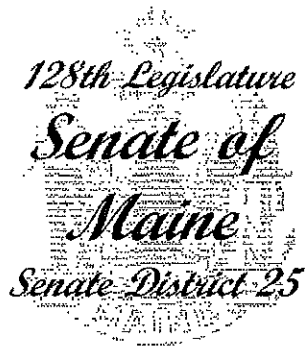
- At the time borrowing was authorized for repairs and improvements to the facility at Windham, borrowing was also authorized for a prerelease center in Washington County. What is the administration's intent regarding that facility?

**Regarding the Long Creek Youth Development Center:**

- The proposed Biennial Budget contains a proposal to eliminate teaching positions at Long Creek but there are now indications that the school will be closed entirely. Is this true?
  - What is the alternative plan for educating the school aged residents.
  - What is the estimated cost of the alternative plan?
- The letter requesting several pieces of information regarding Long Creek was submitted by Senator Cathy Breen on April 6, 2017. The information has not yet been provided but is re-requested for Wednesday's work session. The letter can be found in Attachment C.

ATTACHMENT B

Letter from Senator Cathy Breen  
Dated April 6, 2017



*Senator Cathy Breen*  
3 State House Station  
Augusta, ME 04333-0003  
Office (207) 287-1515  
Cell (207) 329-6142  
*Cathy.Breen@legislature.maine.gov*

*Joint Standing Committee:  
Appropriations & Financial Affairs, Ranking Member*

April 6, 2017

Commissioner Joseph Fitzpatrick  
Maine Department of Corrections  
25 Tyson Drive, 3rd floor  
State House Station 111  
Augusta, Maine 04333-0111

Dear Commissioner Fitzpatrick,

I respectfully request the following from the Department of Corrections:

1. A complete census of the resident population at Long Creek Youth Development Center as of March 29, 2017, the date of Commissioner Hasson's visit to Long Creek and the Criminal Justice and Public Safety Committee report back to the Appropriations and Financial Affairs Committee. The census should redact the names of the residents, but include information for each individual resident including, but not limited to: age, gender, identity, detained or committed population, and educational program services (e.g. High School, Hi-Set [GED], Vocational, Post-High School, Detained [High School, Hi-Set, Post High School]. et.) received at Long Creek.
2. A copy of the census report for Long Creek produced by the Department of Corrections in July 2107.
3. A copy of the current paperwork between the Maine Department of Corrections Long Creek and the Maine Department of Education regarding current accreditation and who signed as Superintendent of schools for Long Creek.

Thank you for your attention to this matter.

Sincerely,

Sen. Cathy Breen  
District 25

ATTACHMENT C

Letter from Chief Deputy Attorney General Linda Pistner  
Dated April 27, 2017

JANET T. MILLS  
ATTORNEY GENERAL



STATE OF MAINE  
OFFICE OF THE ATTORNEY GENERAL  
6 STATE HOUSE STATION  
AUGUSTA, MAINE 04333-0006

TEL: (207) 626-8800  
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REGIONAL OFFICES  
84 HARLOW ST. 2ND FLOOR  
BANGOR, MAINE 04401  
TEL: (207) 941-3070  
FAX: (207) 941-3075

415 CONGRESS ST., STE. 301  
PORTLAND, MAINE 04101  
TEL: (207) 822-0260  
FAX: (207) 822-0259

14 ACCESS HIGHWAY, STE. 1  
CARIBOU, MAINE 04736  
TEL: (207) 496-3792  
FAX: (207) 496-3291

April 27, 2017

Senator Joyce A. Maker  
State of Maine  
Office of the Senate  
3 State House Station  
Augusta, ME 04333-0003

Dear Senator Maker:

Your question is whether the Governor has the authority to close the Downeast Correctional Facility regardless of how the Legislature acts on his budget proposal to do so. Although this is not a formal opinion of the Attorney General, I can offer you the following comments on the legal issues that arise from your question.

The Downeast Correctional Facility is established by statute, in 34-A M.R.S. Section 3901, and its operation is further described in Sections 3902-3905. The Governor cannot unilaterally amend statutes without violating the separation of powers provisions in article III of the Maine Constitution. Me. Op. Att'y Gen.95-6.

Similarly, the current budget establishes the Downeast Correctional Facility as a discrete program by making appropriations specific to this facility. A program so established cannot be eliminated by the executive branch. This is true even in the extraordinary circumstances when the governor is authorized by 5 M.R.S. Section 1668 to curtail spending based on a determination that state spending will exceed anticipated income. And in the absence of express statutory authority, the Governor cannot put appropriations to a different purpose than that specified in the budget or other law.

I hope this information is helpful, and that you will feel free to call with any questions that it might raise.

Sincerely,

A handwritten signature in black ink, appearing to read "L. Pistner".

Linda M. Pistner  
Chief Deputy Attorney General

LMP/elf