

REP. HANNAH M. PINGREE
CHAIR

SEN. ELIZABETH H. MITCHELL
VICE-CHAIR

EXECUTIVE DIRECTOR
DAVID E. BOULTER



124TH MAINE STATE LEGISLATURE
LEGISLATIVE COUNCIL

SEN. PHILIP L. BARTLETT II
SEN. KEVIN L. RAYE
SEN. LISA T. MARRACHE
SEN. JONATHAN T. E. COURTNEY
REP. JOHN F. PIOTTI
REP. JOSHUA A. TARDY
REP. SETH A. BERRY
REP. PHILIP A. CURTIS

MEETING SUMMARY
November 5, 2009
APPROVED DECEMBER 17, 2009

CALL TO ORDER

Legislative Council Chair, Speaker Pingree called the November Legislative Council meeting to order at 12:30 P.M. in the Legislative Council Chambers.

ROLL CALL

Senators: Senate President Elizabeth Mitchell, Sen. Philip Bartlett, Sen. Kevin Raye, Sen. Lisa Marraché, Sen. Jonathan Courtney

Representatives: Speaker Hannah Pingree, Rep. John Piotti, Rep. Seth Berry, Rep. Joshua Tardy, Rep. Philip Curtis

Legislative Officers: Michael Cote, Assistant Clerk of the House
David E. Boulter, Executive Director of the Legislative Council
Debra Olken, Human Resources Director
Patrick Norton, Director, Office of Policy & Legal Analysis
Grant Pennoyer, Director, Office of Fiscal and Program Review
John Barden, Director, Law and Legislative Reference Library

Chair Pingree convened the meeting at 12:30 P.M. with a quorum of members present.

Chair Pingree asked if there was any objection to taking 2 items out of order. Hearing none, the Chair then moved to **New Business, Items 1 and 2.**

NEW BUSINESS

Item #1: Suggested Procedures for Deciding Appealed Legislative Bill Requests

The agenda included a suggested protocol for deciding appeals of legislative bill requests. Chair Pingree asked Executive Director Boulter to summarize the suggested protocol which he did, as follows:

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 Rules of Procedure for the 124th Legislature, 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 alphabetically 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 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 will be 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 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.

Motion: That the Legislative Council adopt the suggested protocol for deciding legislator appeals of the decision of the Legislative Council on bill requests as described in the "Deciding Appeals of Legislative Bill Requests Turned Down By the Council" document dated November

5, 2009. Motion by Senator Bartlett. Second by Senator Mitchell. **Motion passed, unanimous. (10-0)**

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

The Legislative Council proceeded to consider and vote on 65 appeals of the Legislative Council decisions on bill requests in accordance with the adopted protocol, and using an automated voting system. Of the 65 appeal requests, the council authorized 32 requests for introduction in the 2nd Regular Session of the 124th Legislature, 30 failed, and 3 were tabled until a future Legislative Council meeting. Nine appeals were withdrawn by the sponsor at or prior to the council meeting. A list of the bills and the roll call votes are attached. Legislative Council Chair Pingree noted that a number of bill requests related to school consolidation and taxation had been tabled at the October Council meeting and will be considered at the December meeting of the Legislative Council.

RECESS

The council recessed at 2:31 on the motion of the Chair.

RECONVENED

The Chair reconvened the meeting at 2:45 p.m. and then proceeded with the other items on the agenda.

SUMMARY OF OCTOBER 15, 2009 MEETING OF LEGISLATIVE COUNCIL

Motion: That the Meeting Summary of October 15, 2009 be accepted and placed on file. Motion by Senator Mitchell. Second by Representative Tardy. **Motion passed unanimous. (10-0)**

REPORTS FROM EXECUTIVE DIRECTOR AND COUNCIL OFFICES

Executive Director's Report

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

State Law and Legislative Reference Library

The Law and Legislative Reference Library under the direction of staff member Elaine E. Apostola, has compiled the first ever comprehensive listing of all Maine Statutes that have been ruled unconstitutional or void by court decisions dating back to 1916. The information should be very useful to the legislature and the judicial branch as well as to the public conducting legislative research. The information is also posted on the legislature's website at <http://www.maine.gov/legis/lawlib/constcases.htm>.

NCSL

NCSL is responding to travel restrictions by member states by offering web seminars (webinars) that allow conferencing in a way that minimizes staff travel and other costs at this time. It is anticipated that NCSL will make increasing use of webinars during the next two years.

Citizen Trade Policy Commission

OLPA Director Patrick Norton has finalized the Citizen Trade Policy Commission contract with the Department of Labor for staffing services. The contract amount is up to \$7,500 for staffing and other support services. The contract will be administered through the Department of Labor with legislative funds that were carried forward and previously authorized by the Legislative Council.

Fiscal Report

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

Revenue Update

Preliminary General Fund Revenue Variances (\$'s in Millions)

Major Categories	October Variance	FYTD Variance
Sales and Use Tax	(\$6.9)	(\$25.2)
Individual Income Tax	(\$19.1)	(\$58.3)
Corporate Income Tax	(\$7.9)	(\$5.3)
Cigarette and Tobacco Tax	\$0.3	\$0.5
Insurance Companies Tax	\$1.3	\$1.1
Estate Tax	\$3.9	\$1.8
Fines, Forfeits and Penalties	(\$1.1)	(\$2.9)
Transfers to Tax Relief Programs	\$2.2	\$4.9
Transfers for Municipal Revenue Sharing	\$1.8	\$4.6

Mr. Pennoyer stated that he anticipates that General Fund revenue will be significantly under budget again in October. The General Fund negative variance has been driven by declines in Sales Tax and Individual Income Tax collections. But for the variances in those 2 major revenue sources, the General Fund would have a positive variance. In October, Sales Tax revenue was under budget by \$6.9 million and fell \$25.2 million below budget for the first 4 months of FY 2010. Individual Income Tax revenue was under budget by \$19.1 million in October and fell below budget for the first 4 months of FY 2010 by \$58.3 million. Estate Tax revenue rebounded in October with a large single estate tax payment of approximately \$4.5 million. However, Corporate Income Tax revenue fell \$7.9 million under budget in October and \$5.3 million for the year-to-date.

Highway Fund revenue fell slightly below budget in October, primarily due to decreased Bureau of Motor Vehicle revenue. However, it remains above budget for the first 4 months of FY 2010 by roughly \$2.5 million.

Revenue Forecasting Update

The Consensus Economic Forecasting Commission (CEFC) met on Monday, November 2nd to conclude its forecast by filling in some of the detailed forecast of Personal Income. A summary report was attached, and a more detailed report will be released later. At a briefing to the Appropriations Committee Monday afternoon, the CEFC Chair discussed the revised economic forecast. He noted that the employment picture showed some improvement from the last forecast with approximately 4,000 fewer jobs lost during the recession than was previously projected. He also noted that there was a measurement issue with respect to Personal Income affecting all of the major national and regional forecasts that was revealed only very recently through the federal Bureau of Economic Analysis' update and revisions to Personal Income. That revision shows that the decline of salaries

and wages in the first quarter of CY 2009 was much worse than previously estimated, -17% (annualized) compared with a previous estimate of -1.7%.

The revisions to Personal Income revenue projections and the recognition of the much more significant drop in salaries and wages (see table on the next page) help explain the negative variances in Individual Income Tax and Sales Tax collections. When these variables are updated in the tax models, they will result in significant downward revisions that will be recommended to the Revenue Forecasting Committee when it meets on Friday, November 20th (note date change).

Consensus Economic Forecasting Commission Comparison of April 2009 and November 2009 Economic Forecasts

<u>Calendar Years</u>	<u>2008</u>	<u>2009</u>	<u>2010</u>	<u>2011</u>	<u>2012</u>	<u>2013</u>
• Wage & Salary Employment (Annual Percentage Change)						
> Consensus 4/2009	-0.3%	-3.8%	-1.6%	1.4%	2.2%	2.0%
> Consensus 11/2009	-0.3%	-2.9%	-1.2%	1.2%	2.2%	2.0%
Difference	0.0%	0.9%	0.4%	-0.2%	0.0%	0.0%
• Personal Income (Annual Percentage Change)						
> Consensus 4/2009	4.2%	1.0%	1.2%	2.8%	4.0%	4.7%
> Consensus 11/2009	4.0%	-0.6%	1.2%	3.2%	4.4%	4.8%
Difference	-0.2%	-1.6%	0.0%	0.4%	0.4%	0.1%
Major Components of Personal Income						
Wage and Salary Disbursements						
> Consensus 4/2009	3.6%	-1.3%	-0.4%	2.1%	4.3%	4.9%
> Consensus 11/2009	3.2%	-4.7%	-0.4%	2.5%	3.9%	4.9%
Difference	-0.4%	-3.4%	0.0%	0.4%	-0.4%	0.0%
Supplements to Wages and Salaries						
> Consensus 4/2009	3.7%	1.9%	1.3%	2.7%	4.0%	5.4%
> Consensus 11/2009	3.1%	0.5%	3.1%	3.3%	4.0%	5.2%
Difference	-0.6%	-1.4%	1.8%	0.6%	0.0%	-0.2%
Non-Farm Proprietors' Income						
> Consensus 4/2009	-1.4%	-2.2%	1.6%	4.6%	4.8%	4.2%
> Consensus 11/2009	-2.8%	-6.1%	0.9%	4.6%	5.0%	4.5%
Difference	-1.4%	-3.9%	-0.7%	0.0%	0.2%	0.3%
Dividends, Interest and Rent						
> Consensus 4/2009	4.3%	-1.0%	1.0%	3.0%	3.0%	4.0%
> Consensus 11/2009	1.9%	-3.5%	1.5%	3.9%	6.0%	7.0%
Difference	-2.4%	-2.5%	0.5%	0.9%	3.0%	3.0%
Transfer Payments						
> Consensus 4/2009	8.0%	8.7%	4.7%	4.0%	4.5%	5.4%
> Consensus 11/2009	11.8%	13.5%	3.6%	4.0%	4.7%	3.7%
Difference	3.8%	4.8%	-1.1%	0.0%	0.2%	-1.7%
• Consumer Price Index (Annual Percentage Change)						
> Consensus 4/2009	3.8	-1.4	1.7	2.3	2.1	2.0
> Consensus 11/2009	3.8	-0.5	1.7	2.0	2.1	2.0
Difference	0.0	0.9	0.0	-0.3	0.0	0.0

Status of Legislative Studies

Mr. Norton provided a written status report that is included in the Legislative Council meeting materials. Mr. Norton also explained that in response to earlier council suggestions for publication distribution efficiencies, his office has significantly reduced the number of printed copies of the legislative study reports. Printed copies of the study reports will be limited to those required by law, the Law and Legislative Reference Library, the State Library for distribution to local libraries, and to relevant joint standing committees. As an alternative to distribution of paper copies, OPLA will notify interested persons by email that a report is available on the Legislature's website. Upon request, OPLA will provide one paper copy and send email notifications that the information is available on the website. OPLA will continue providing one copy free for anyone who requests one but charging a fee for additional printed copies.

Speaker Pingree suggested that Mr. Norton consider an email distribution to Legislators with an electronic copy of the report attached (.pdf) because legislators will read it in most cases if they receive it electronically. Legislators could still request a paper copy if needed.

REPORTS FROM COUNCIL COMMITTEES

1. Personnel Committee

Mr. Boulter reported that the Personnel Committee's Interview Panel is continuing to review applications and hold interviews for the Information Technology Director position and for the vacant Revisor of Statutes position.

Speaker Pingree mentioned she was hopeful that by its December meeting, the Legislative Council will be presented with a recommendation of a candidate to be appointed to the Information Technology director position and perhaps the Revisor of Statutes.

2. State House Facilities Committee

(No Report)

3. Budget Subcommittee

(No Report)

4. CSG Annual Meeting Planning Subcommittee

CSG 2010 Annual Meeting Co-chair Senator Bartlett reported that he had circulated a draft letter on November 4th that is intended to solicit donations and participation on a corporate host committee, for Legislative Council comment. He would like to send out the fundraising letter soon and also convene a CSG subcommittee meeting, perhaps by phone, to determine the best strategy in following up the letter with calls.

Speaker Pingree asked if there was an ethics rule authorizing fundraising by Legislators during the legislative session. Senator Bartlett responded by saying that he had asked Executive Director David Boulter to check with the Ethics Commission on that very issue and he had received an official letter indicating that there was no prohibition on the fund raising.

Mr. Boulter added that current law provides an allowance for solicitations or contributions for (bone fide) social events for nonpartisan, charitable purposes such as the CSG/ERC annual meeting [1MRSA§1015(3)].

There was no Old Business. Chair Pingree then proceeded to **Item 3** under New Business.

NEW BUSINESS

ITEM #3: Proposed Fee Schedule for Legislative Documents for Second Regular Session of the 124th Legislature

Assistant Clerk of the House Michael Cote presented a recommended new fee schedule for legislative documents for the Second Regular Session of the 124th Legislature. There were no projected increases.

Motion: That the proposed fee schedule for Legislative Documents for Second Regular Session of the 124th Legislature be accepted. Motion by Representative Tardy. Second by Senator Mitchell. **Motion passed unanimous. (10-0)**

ITEM #4: Request by the Study Commission Regarding Teachers' Compensation for Extension of the Reporting Date from December 1 to December 15, 2009.

The Chairs of the study commission requested an extension of the reporting date since the commission has not yet convened. The commission has not convened because the Governor has not yet made his appointment as required by the enabling legislation.

Motion: That the request by the Study Commission Regarding Teachers' Compensation for a limited extension of its reporting date from December 1 to December 15, 2009 be approved. Motion by Senator Mitchell. Second by Representative Berry. **Motion passed unanimous. (10-0)**

ITEM #5: Proposed Pandemic Flu Response Guidelines

Proposed pandemic flu response guidelines for the Legislature, prepared by the Office of the Executive Director, were presented for consideration by the Legislative Council. Legislative Council Chair Pingree reminded Legislative Council members that the emergence of the H1N1 flu virus in April 2009 has become a significant public concern and as a result there is a need for the Legislature to have a plan of response. She asked Human Resources Director Debra Olken to briefly summarize the proposed flu response guidelines which she did. Ms. Olken explained that the guidelines provide information to Legislators and legislative employees on:

1. Preventing the spread of the flu virus;
2. Symptoms of seasonal and H1N1 flu;
3. When (and when not) to report to work; and
4. Credible sources of additional health and response information about the flu.

Ms. Olken also explained that the proposed response guidelines direct office managers to develop contingency plans that will allow the continuation of core legislative functions and operations in the event of a flu outbreak in the Legislature when there may be significant employee absenteeism due to the flu.

Motion: That the Legislative Council adopt the proposed Pandemic Flu Response Guidelines. Motion by Representative Tardy. Second by Representative Berry. **Motion passed unanimous. (10-0)**

ITEM #6: *Washington County Development Authority Annual Report*

ITEM #7: *Loring Development Authority of Maine 2009 Annual Report*

Motion: That the Legislative Council accept the Washington County Development Authority Annual Report and Loring Development Authority of Maine 2009 Annual Report and place them on file. Motion by Senator Mitchell. Second by Senator Raye. **Motion passed unanimous. (10-0)**

ANNOUNCEMENTS AND REMARKS

None

ADJOURNMENT

The Legislative Council meeting was adjourned at 3:13 P.M. Motion by Senator Bartlett. Second by Representative Tardy. **Motion to adjourn passed, unanimous. (10-0)**