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DAVID E. BOULTER



124TH MAINE STATE LEGISLATURE
LEGISLATIVE COUNCIL

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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
June 30, 2010
Approved August 25, 2010

CALL TO ORDER

Legislative Council Chair, Speaker Pingree called the June 30, 2010 Legislative Council meeting to order at 1:35 P.M. in the Legislative Council Chambers.

ROLL CALL

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

Absent: Sen. Philip Bartlett

Representatives: Speaker Hannah Pingree, Rep. Joshua Tardy [arrived shortly after the start of the meeting], Rep. Philip Curtis

Absent: Rep. John Piotti, Rep. Seth Berry

Legislative Officers: Millicent MacFarland, Clerk of the House
Michael Cote, Assistant Clerk of the House
David E. Boulter, Executive Director of the Legislative Council
Rose Breton, Legislative Finance Director
Patrick Norton, Director, Office of Policy & Legal Analysis
Grant Pennoyer, Director, Office of Fiscal and Program Review
Suzanne Gresser, Revisor of Statutes
Scott Clark, Director, Legislative Information Services

Chair Pingree convened the meeting at 1:35 P.M. with a quorum of members present.

SUMMARY OF MAY 26, 2010 MEETING OF LEGISLATIVE COUNCIL

Motion: That the Meeting Summary of May 26, 2010 be accepted and placed on file. Motion by Senator Mitchell. Second by Senator Raye. **Motion passed unanimous. (6-0)**
[Representative Berry, Representative Piotti, Representative Tardy, Senator Bartlett absent for vote.]

REPORTS FROM EXECUTIVE DIRECTOR AND COUNCIL OFFICES

Executive Director's Report

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

Women Veterans' Plaque - Update

At the May Legislative Council meeting, the council voted to authorize placement of a plaque in the Hall of Flags honoring Maine women veterans, subject to deciding on an appropriate location. The director of Maine Veterans Services, chair of the State House and Capitol Park Commission and Executive Director David Boulter met and agreed upon an appropriate and permanent location. Their recommendation will be presented by the chair of the Legislative Council Speaker Pingree who is authorized to make the final decision.

Speaker Pingree asked what location would be recommended. Mr. Boulter responded by saying that the location is the wall area that is immediately to the east of the Governor's board for gubernatorial nominations. The portrait that is now located on the wall will be relocated.

Breach in Legislative Website

The Lawmaker public bill status system was taken offline last Friday after the Office of Information Services discovered two security flaws in the Lawmaker web application. The flaws were identified when it was discovered that malware had been inserted into the Lawmaker web database. The web application is outside the legislative's firewall because it is available to the public and no other legislative programs or databases, which are protected by the firewall, were affected.

This was not a data breach and no personal data was exposed. There was no attempted or successful access to any data inside the firewall. Mr. Clark is working with the software vendor IRC to reprogram the Lawmaker web program to not only close all security flaws but also to take all necessary steps to assure its applications are security tested in the future before they are released for legislative use.

Speaker Pingree asked Mr. Clark if his office identified who had caused the issues. Mr. Clark responded, no, it was likely random. He stated that because it is a public facing website, little user access information is logged. This is quite a common type of attack on a website. Website intruders look for holes in the security and the technique they use is called SQL insertion, inserting an URL into the data. The risk is to the website user, rather than the website itself. If the users have current antivirus, anti-malware software running on their computers, it should protect them from the vulnerability.

President Mitchell asked that in light of Mr. Clark's surprise that these flaws existed that allowed malware to get into the system, whether he was directing IRC to further investigate whether any other flaws might be in the system.

Mr. Clark responded that he was surprised that IRC had not protected its application against malware intrusions of this type since they are fairly common. Mr. Clark said both IRC and his staff are reviewing the application code to identify and close all security holes. Speaker Pingree then inquired as to how the security breach was discovered. Mr. Clark responded that he received two indications of problems: the system was running slowly (because of the imbedded URL) and a member of the public called to report apparent system issues that affected use of the bill status system. He was uncertain when the URL was imbedded but suspected it was the previous Thursday or Friday.

President Mitchell asked if the vendor will be absorbing the costs to correct the problem. Mr. Clark answered that the maintenance contract between IRC and the legislature obligates IRC to make the corrections at its expense. There has not been any discussion at this time of vendor reimbursement for legislative staff costs incurred. Mr. Clark concluded his remarks by commenting that his office will be investigating a more active monitoring system for legislative websites and perhaps purchasing third party software to help monitor the public websites, which are outside of the firewall.

Mr. Boulter concluded by saying that Mr. Clark will be speaking with the vendor and setting security standards that the legislature will find acceptable before the vendor's software applications will be accepted for legislative use. In addition, Information Services will be employing new software to scan for vulnerabilities. He noted that an internal network assessment of system vulnerabilities inside the firewall was completed last month, and except for minor issues and a hardware recommendation, the system tested out fine.

Fiscal Report

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

Revenue Update

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

	Budget	Actual	Var.	% Var.	Prior Year	% Growth
May	\$208.9	\$224.0	\$15.1	7.2%	\$214.1	4.6%
FYTD	\$2,262.3	\$2,310.5	\$48.1	2.1%	\$2,367.0	-2.4%

General Fund revenue was \$15.1 million (7.2%) over budget in May, increasing the fiscal year-to-date (FYTD) positive variance to \$48.1 million (2.1%). FYTD revenue was 2.4% below projections for the same period in FY 2009.

May's Individual Income Tax performance lead the surge in revenue coming in \$12.0 million over budget in May. Withholding payments were \$6.7 million ahead of projections and refunds fell below projections. For the FYTD, Individual Income Tax revenue was \$11.8 million ahead of projections.

Corporate Income Tax continued its positive variance with May collections coming in \$3.5 million ahead of projections and pushing the FYTD variance upward to \$19.0 million.

Sales tax collections were again ahead of projections in May and were more than \$11.8 million ahead of projections through May. Some concern remains that some of this positive variance may represent earlier spring-related sales than normal due to the weather. So far, this effect has been more than offset by other growth in taxable sales.

Areas of concern remain the Real Estate Transfer Tax revenue and Inland Fisheries and Wildlife revenue, each remained more than \$1 million under budget through May. Fine revenue fell more than \$0.5 million below budget for May. The negative variances from these sources have been more than offset by strong performances in various other categories, such that the overall positive variance for the FYTD is expected to hold up through the end of the FY 2010.

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

	Budget	Actual	Var.	% Var.	Prior Year	% Growth
May	\$25.0	\$25.3	\$0.3	1.1%	\$26.3	-3.9%
FYTD	\$259.4	\$264.9	\$5.5	2.1%	\$274.3	-3.4%

Highway Fund revenue was \$0.3 million (1.1%) over budget in May, increasing the FYTD positive variance to \$5.5 million (2.1%). Highway Fund revenue through May declined by 3.4% compared to the same period in FY 2009.

The positive variance in the Fuel Tax category that had built up earlier in the fiscal year remains and represented the major contributor to the FYTD positive variance with a \$3.6 million positive variance through May. The Motor Vehicle Registration and Fee category also has performed well, largely due to a positive variance in the long-term trailer registration program, and was \$2.2 million ahead of projections through May.

Cash Balances

Recent revenue performance has benefitted Maine's cash position. In May, average balance in the total cash pool was \$448.4 million, which was almost \$130 million higher than in May of 2009 despite May 2009 having had \$115 million more in General Fund reserve balances.

Dirigo Health

The Dirigo Health Fund (DHF) has repaid all but \$5.0 million of the \$25 million General Fund cash advance that is due by June 30, 2010. The plan is to pay an additional \$0.8 million at the end of June from surplus of revenue over expenditures assuming assessments come in as projected and by continuing to cap enrollment. The remaining \$4.2 million balance at the end of June will be paid with cash that will be made available by delaying premium payment to Harvard Pilgrim until July 1st, by prior agreement with Harvard Pilgrim. The cash for the early July payment will come from the \$5 million Fund for a Healthy Maine (FHM) allocation to Dirigo Health. This early payment of FHM cash will likely necessitate earlier cash advances to the FHM from the General Fund.

Possible Year-end Surplus Distributions

Mr. Pennoyer presented a table (below) that shows the possible General Fund year-end transfers assuming that the General Fund revenue surplus and other adjustments results in an increase in the unappropriated surplus of \$50 million.

Fixed Transfers

Reserve for FY 2011 Budget Stabilization Fund Transfer (PL 2009, c. 571, UUU)		(\$5,597,244)
Replenish Contingent Account up to \$350,000 (5 MRSA §1507)		(\$350,000)
Transfer to Loan Insurance Reserve up to \$1,000,000 (5 MRSA §1511)		(\$1,000,000)
Up to \$7 million to DOT, Railroad Assistance Program (PL 2009, c. 645, H)		(\$7,000,000)
% of Remaining Uncommitted Unappropriated Surplus	%	\$36,052,756
Transfer to Budget Stabilization Fund	35%	(\$12,618,465)
Transfer to Retirement Allowance Fund	20%	(\$7,210,551)
Transfer to Reserve for GF Operating Capital	20%	(\$7,210,551)
Transfer to Retiree Health Internal Service Fund	15%	(\$5,407,913)
Capital Construction & Improvements Reserve Fund	10%	(\$3,605,276)
Total Closing Transfers		(\$50,000,000.00)

This surplus along with budgeted transfers to the Maine Budget Stabilization Fund (MBSF) could increase balances in that reserve fund by more than \$20 million. In addition, the \$7 million designated to DOT, Railroad Assistance Program was intended to accrue to the MBSF, but remains designated to Railroad Assistance despite \$7 million being directly appropriated for this purpose, due to a drafting error in the budget amendment. This error will likely be corrected in the next budget bill.

For the Highway Fund, if the unallocated surplus increases by the \$5 million revenue variance, all but \$100,000 of the increase or \$4.9 million will be transferred to the Department of Transportation for the Highway and Bridge Capital, Highway and Bridge Capital Light (Maintenance Paving) and/or Maintenance and Operations programs for capital needs.

The actual amounts to be available for General Fund and Highway Fund year-end transfers will not be finalized until late July.

Status of Legislative Studies

Mr. Norton reported on the status of legislative studies as follows.

All the appointments to the Task Force on Kinship Families have been made, the monies have been received and accepted and the staff is working with the chairs to schedule four meetings and conclude by the reporting date. The first meeting is likely to be during the first half of July.

The Health Care Reform Committee has met twice. It is authorized for five meetings. It is likely that the committee will not meet in July but will meet in August.

The Natural Resources Committee has met four times; it may not need a fifth meeting but hasn't made that decision yet.

The State and Local Government Committee has not yet scheduled meetings for the two issues it has been charged with reviewing.

The Citizen Trade Policy Commission is meeting nearly every month. It has held four meetings to date and will be meeting again in July.

The Right to Know Advisory Committee has held one meeting. It is authorized to hold at least four meetings but usually operates through subcommittees. Those subcommittees are meeting more often than the full committee.

Mr. Norton concluded his report by mentioning that at the last Legislative Council meeting there was some interest by the council members in receiving email notification of upcoming study committee meetings. He said that he utilized an "opt in" model and sent an email out indicating that if Legislative Council members wanted to continue getting emails to let him know. Several members responded, opting in and he will continue emailing out to members who responded.

REPORTS FROM COUNCIL COMMITTEES

1. Personnel Committee

Speaker Pingree, Chair of the Personnel Committee reported the Personnel Committee had met earlier that day.

She reported that the committee reviewed and unanimously approved a request by a member of the nonpartisan staff for temporary disability income benefits as provided in the council's personnel policies and guidelines. No council action is required.

2. State House Facilities Committee

(No Report)

3. Budget Subcommittee

(No Report)

4. CSG Annual Meeting Planning Subcommittee

Senator Bartlett, chair of the subcommittee was absent so there was no formal report.

Speaker Pingree asked Mr. Boulter if any new information was available on the event planning process. Mr. Boulter explained that meeting registrations have increased, with the initial number having been low. Progress has been made in developing the social program for guests. Currently planned are several bus tours for spouses and other adult guests, one to the Boothbay Harbor area, including a stop at the Coastal Maine Botanical Gardens and a second day trip to Kennebunkport for shopping. Youth programs include a trip to Portland for an evening "haunted" walk, and a day at Funtown/Splashtown in Saco. Progress in fundraising has been the most problematic. While Mr. Boulter did not have a recent update on funds raised, he indicated that CSG told him that significant fundraising still needs to occur. Mr. Boulter reminded the council members that the regional meeting will be held from Sunday, August 15th through Wednesday, August 18th, and Speaker Pingree noted that the Executive Committee will meet on Saturday, August 14th.

Speaker Pingree asked if Maine is obligated to fund the program, in light of the fund-raising difficulties. Mr. Boulter responded that CSG controls and authorizes all contracts related to the event, so it is legally responsible for those costs. However, CSG is clearly expecting the state to fund the social programs. He said that the legislature has not provided funding to CSG but will pay registration fees for legislator attendees. In response to a question, Mr. Boulter indicated that 70 people have registered so far. Speaker Pingree invited the Legislative Council members to attend the State dinner hosted by Maine on Tuesday evening, August 17th, to have a strong showing by Leadership.

OLD BUSINESS

(There was no Old Business.)

NEW BUSINESS

ITEM #1: Alternative Legislator Salary Payment Schedule

Speaker Pingree opened the discussion by saying that Representative Stacy Dostie had approached her about her idea of paying legislators their legislative salary on a yearly basis rather than only during the session. In response, Speaker Pingree had asked the Executive

Director to assess the proposal in preparation for a Council discussion on the matter. The Executive Director prepared a memo that discusses the proposal and related issues (included in the council packet).

Representative Dostie attended the Legislative Council meeting and explained that her proposal was to change the frequency of payment to Legislators but not the total amount of payment. She said that she had spoken to numerous legislators and they support her proposal. She cited the reasons why she believes a change from the current payment schedule would be beneficial:

- Budgeting ease for self-employed or retired legislators;
- Recruitment incentives for candidates to the legislature, knowing they will be paid every month; and
- Having health insurance premiums deducted from their check.

She noted that school teachers have an option to be paid monthly and so should legislators. Representative Dostie said her research suggested that over 20 states pay their legislators on a monthly basis, some biweekly and some only during the session. She cited one additional reason for being paid year-round, being that it was easier to be paid on the same schedule as other state employees.

President Mitchell asked if this approach would be more difficult for some Legislators since their legislative salary would be spread across an entire calendar year rather than during the 4-6 month legislative session. Representative Dostie acknowledged the concern and indicated this alternative pay schedule would be optional to each Legislator.

Speaker Pingree then asked Mr. Boulter to summarize his office's analysis of the proposal.

Mr. Boulter directed the Legislative Council members to the memo in the packet. He explained that initially it appeared that the presiding officers were authorized to establish any Legislator payment schedule they chose. However, upon close review it appears that current law limits that discretion to the period from convening through adjournment sine die. Under the Maine Constitution, Legislator salary must be established by law. So the first threshold that must be addressed is current law that establishes final payment at the end of each session. Mr. Boulter noted that the states mentioned by Representative Dostie as having bi-weekly or monthly salary payments to Legislators include states that have full-time legislatures. Mr. Boulter's analysis of the number of states is limited to states having a part-time Legislature as does Maine.

Mr. Boulter explained other challenges that would have to be addressed in order to provide for an alternative payment schedule. Among those included the current payroll system operated by the State Controller and used by the legislature. It is a centralized system for payroll and according to the Controller's Office, all salary payments are on a bi-weekly basis; programming would be required to create a new system for monthly payrolls. The Controller's Office indicated that a new payroll schedule could be programmed but it strongly recommended that if a change is to be made to the payment schedule for Legislators, it apply to all Legislators - for efficiency, consistency and checks and balances.

Mr. Boulter further explained that if a year-round schedule was instituted, it would create logistical issues every second December/January when outgoing and incoming Legislators would also be paid. New positions (for payroll purposes only) would need to be created. In addition, the turnaround time to place incoming legislators in the payroll system and nonreturning Legislators out of the system after the general election is very short, resulting in a potential for additional costs and errors since little time would be available for a "dry run" payroll to verify accuracy.

How Legislator salaries are budgeted would change. Currently, their salaries are budgeted in a single fiscal year. Under Representative Dostie's proposal, salaries would have to be budgeted across two fiscal years, using estimates since one cannot determine in advance how many Legislators might want an alternative payment schedule.

Lastly, Mr. Boulter mentioned that if Legislators adopt a year round payment schedule, they will not only receive their salary payment throughout the year but also per diem and expenses when members attend committee meetings and study commission meetings during the interim. The result would be that at times, when they attended authorized meetings, Legislators would receive two payments. This could lead to a perception of legislator "double dipping."

Mr. Boulter stated that if the noted hurdles were addressed, a new system could be developed.

Speaker Pingree noted that because of the current statutory constraints, Representative Dostie's proposal cannot go forward at this time. She mentioned that Representative Dostie could introduce legislation next session that would be heard by the Joint Standing Committee on State and Local Government. She recommended that Representative Dostie stay in touch with the Legislative Council if legislation is to be pursued.

Mr. Boulter concluded by saying that he would be happy to work with Representative Dostie to draft a bill if she wants to pursue an alternative salary payment schedule.

ITEM #2: Nonpartisan Staff Study Analyzing General Fund & Other Revenue Expenditures of Programs within the Department of Education

Mr. Norton explained that the memo from Senator Alford, Rep. Sutherland and Rep. Richardson is requesting a staff study during the interim. The request is an outgrowth of a series of discussions that Senator Alford had with Dr. McCarthy who staffs the Education Committee. Because of the complexity and staff resources involved, Mr. Norton felt it was appropriate that this request come before the council for review and decision. Mr. Norton estimated that the study would require one person in OPLA and one person in OFPR. The study is fiscally orientated, looking at all the sources of money that is received by the Department of Education and how money is spent, by program area. The General Fund funding is easier to account for than federal funding sources. Mr. Norton explained that Senator Alford, Representative Sutherland and Representative Richardson believe that the information derived from this study will help the education committee tremendously. Mr. Norton explained that the study will likely not be able to identify and account for all monies entirely because of the accounting issues. If that is the case, staff would bring recommendations on what kind of reporting changes might work in order to obtain income and expenditures in the future.

Speaker Pingree asked Mr. Pennoyer if it makes sense that the Legislature compile this information so it may understand what programs are in the Department of Education and where the funding is coming from and how it is spent.

Mr. Pennoyer agreed fully that the information would be helpful.

Speaker Pingree noted that the study does not require hiring extra staff, but it does mean a significant amount of current staff time will be required over the summer and fall to conduct a study of this complexity.

Motion: That the Legislative Council approve the request for a staff study using nonpartisan staff in the offices of Policy and Legal Analysis and Fiscal and Program Review. Motion by Representative Pingree. Second by Senator Raye. **Motion passed unanimous. (7-0)** [Representative Berry, Representative Piotti, and Senator Bartlett absent for vote.]

Senator Raye concluded this discussion by saying that he thought the staff study will be very worthwhile given that the Department of Education is such a sizable part of the state budget.

Mr. Norton noted that a staff-directed study is somewhat different than a legislative study which is directed by Legislators. For this study, he developed a work plan (a draft of which is in packet) that will serve as a roadmap for the study. Mr. Norton will establish an internal reporting deadline of November 3rd for the study which is consistent with the other reporting deadlines. In this way, the study would be completed prior to the bill drafting activities in late November and December.

Speaker Pingree concluded by saying that while the November deadline is not required, she encouraged Mr. Norton to do what needs to be done to complete the study by November.

Item #3: 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 collective bargaining matters between the employee representative for the Administrative Unit of Legislative Employees and the Legislative Council. Motion by Chair Pingree. Second by Senator Mitchell. **Motion passed unanimous (7-0).** [Representative Berry, Representative Piotti, and Senator Bartlett absent for vote.]

The Council recessed the meeting and entered into an executive session at 2:34 PM.

The Legislative Council adjourned its executive session, resumed its regular meeting and adjourned the Legislative Council meeting at 3:00 P.M. Motion by Senator Raye. Second by Senator Marraché. **Motion passed (7-0).** [Representative Berry, Representative Piotti, and Senator Bartlett absent for vote.]

ANNOUNCEMENTS AND REMARKS

None