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VICE-CHAIR

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DAVID E. BOULTER



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SEN. MICHAEL D. THIBODEAU  
SEN. TROY D. JACKSON  
SEN. ROGER J. KATZ  
REP. SETH A. BERRY  
REP. KENNETH W. FREDETTE  
REP. JEFFREY M. MCCABE  
REP. ALEXANDER R. WILLETTE

126<sup>TH</sup> MAINE STATE LEGISLATURE  
LEGISLATIVE COUNCIL

**LEGISLATIVE COUNCIL  
MEETING SUMMARY  
April 29, 2013**

**CALL TO ORDER**

Legislative Council Chair Mark Eves called the April 29, 2013 Legislative Council meeting to order at 3:00 p.m. in the Legislative Council Chamber. [Note: the Legislative Council meeting that had been scheduled for April 25, 2013 was postponed until April 29, 2013.]

**ROLL CALL**

Senators: President Alfond, Senator Goodall, Senator Jackson, Senator Thibodeau and Senator Katz

Representatives: Speaker Eves, Representative Berry, Representative McCabe and Representative Willette

Absent: Representative Fredette

Legislative Officers: Darek Grant, Secretary of the Senate  
Millicent MacFarland, Clerk of the House  
Robert Hunt, Assistant Clerk of the House  
David E. Boulter, Executive Director of the Legislative Council  
Dawna Lopatosky, Legislative Finance Director  
Marion Hylan Barr, Director, Office of Policy and Legal Analysis  
Grant Pennoyer, Director, Office of Fiscal and Program Review  
Suzanne Gresser, Revisor of Statutes  
John Barden, Director, Law and Legislative Reference Library  
Scott Clark, Director, Legislative Information Technology

Speaker Eves convened the meeting at 3:00 p.m. with a quorum of members present.

## SUMMARY OF MARCH 28, 2013 MEETING OF LEGISLATIVE COUNCIL

**Motion:** That the Meeting Summary for March 28, 2013 be accepted and placed on file. Motion by Representative Willette. Second by Representative McCabe. **Motion passed unanimous (8-0-0-2**, with Representatives Berry and Fredette absent).

## REPORTS FROM EXECUTIVE DIRECTOR AND COUNCIL OFFICES

### Executive Director's Report

David Boulter, Executive Director, reported on the following:

1. Olympia Snowe Day at the Legislature

In response to the Legislature's invitation to her, former U.S. Senator Olympia Snowe expressed interest in attending a ceremony in her honor and addressing the Legislature in joint convention. No date for the event has been finalized yet, but a session day in late May might be workable for Senator Snowe.

2. Maine Public Broadcasting Network Information Session

MPBN President Mark Vogelzang has expressed his appreciation for the Legislative Council's arranging of the legislator information session that was held on April 10<sup>th</sup>. Over 40 legislators attended the session to discuss MPBN's pilot program televising legislative activities and offer suggestions for improvement or additional programming.

3. Video Control Units

The Office of Legislative Information Technology is working with MPBN to install control devices for video broadcasts in legislative committee rooms. The devices will allow the legislature to turn off video broadcasts or redirect them from MPBN broadcasts in emergencies or other necessary circumstances.

4. Maine Development Foundation Maine Employers' Initiative

Human Resources Director Debra Olken and Mr. Boulter will be meeting with the Maine Development Foundation this month to complete the application process and other related aspects so the Legislature may join the Maine Employers' Initiative, consistent with the Legislative Council's approval last month.

5. Legislative Emergency and Evacuation Plan

The Legislature's plan has been updated and was distributed to all legislators and legislative employees earlier this month. A building evacuation drill will be planned for the near future to familiarize legislators and employees with the emergency procedures in the event they are called upon to use them.

## 6. Legislative Record

The Law and Legislative Reference Library is concluding its multi-year project to scan and electronically process the Legislative Record of Maine Legislature from the 68<sup>th</sup> (1897) through the 125<sup>th</sup> legislatures (2012). The 68<sup>th</sup> Legislature was the first legislature to make a record of legislative debate. Once the project is completed, the Record will be available for research and access by the public, and eventually through the Legislature's website.

## 7. Passing of Edith Hary

Long-term Law Librarian Edith Hary of Pemaquid Point passed away on March 26, 2013 at the age of 90. Beginning in 1947, Miss Hary served as head of the law department of the state library when it was then housed in the State House. From 1971 to 1982, she served as the Law Librarian of the legislature's Law and Legislative Reference Library, retiring in 1982. She was a wealth of knowledge pertaining to the Legislature and Maine law and served with distinction and grace. In recognition of her contributions, unique gifts and the respect she earned among lawyers, judges, legislators, reporters and others, then Governor Joseph Brennan proclaimed October 22, 1982 "Edith Hary Day." Miss Hary served on numerous organizations including on the Executive Committee of the National Conference of State Legislatures and as first national chair of the Legislative Reference Librarians.

## Fiscal Report

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

### Revenue Update

#### Total General Fund Revenue - FY 2013 (\$'s in Millions)

	Budget	Actual	Var.	% Var.	Prior Year	% Growth
March	\$231.0	\$199.8	(\$31.2)	-13.5%	\$226.5	-11.8%
FYTD	\$1,924.3	\$1,919.3	(\$5.1)	-0.3%	\$1,918.9	0.0%

General Fund revenue was under budget by \$31.2 million (13.5%) for the month of March and by \$5.1 million (0.3%) for three quarters of fiscal year 2013. The Corporate Income Tax and Sales and Use Tax categories remain the primary drivers of the negative variance. Those categories are under budget by a combined \$17.6 million for March and \$29.7 million for the fiscal year. Individual Income Tax was a contributor to March's monthly negative variance, falling \$10.8 million below budget for the month. However, this variance is largely due to a distribution issue and the shift of two days of processing at the end of the month to April revenue. Individual Income Tax remained over budget for the first three quarters of FY 2013 by \$38.0 million. Another distortion to the reported variance is a \$3.2 million negative variance from the FY 2013 one-time hospital assessment, half of which was due at the end of March. Recognition of that \$3.2 million was delayed until April.

## Highway Fund Revenue Update

**Total Highway Fund Revenue - FY 2013 (\$'s in Millions)**

	Budget	Actual	Var.	% Var.	Prior Year	% Growth
March	\$23.4	\$22.7	(\$0.7)	-3.2%	\$23.2	-2.2%
FYTD	\$221.3	\$219.4	(\$1.9)	-0.9%	\$217.9	0.7%

Highway Fund revenue was under budget by \$0.7 million (3.2%) in March and \$1.9 million (0.9%) for three quarters of fiscal year 2013. Fuel Taxes remain the cause of the negative variance and have fallen \$2.6 million (2.1%) for the year. Positive variances from motor vehicle registrations and fees have offset only a portion of the negative variances from the Fuel Taxes category.

## Fund for a Healthy Maine Revenue Update

April Tobacco Settlement payments that accrue to the Fund for a Healthy Maine totaled \$50.95 million, \$1.48 million over budget. Assuming no further adjustments this fiscal year, this variance will be recognized as an increase of budgeted revenue when the revenue forecast is updated.

## Cash Balance Update

The average balance in the cash pool in March dropped to \$316.4 million. March is generally the low point for cash balances in the fiscal year, before the usual recovery in late April from income tax payments. The State has avoided external borrowing since FY 2006, the last year the State used Tax Anticipation Notes to meet General Fund cash flow needs.

## Revenue Forecasting Update

The Revenue Forecasting Committee will meet on Friday, April 26<sup>th</sup>, to update the revenue forecast. That forecast update will incorporate the new April 1<sup>st</sup> economic forecast and information gathered by individual income tax performance following the April 16<sup>th</sup> tax filing deadline.

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

## NEW BUSINESS

### Item #1: Consideration of After Deadline Bill Requests / Addendum

The Legislative Council considered and voted on the bill requests in accordance with the established protocol. Of the 17 bill requests, the council authorized 11 requests for introduction in the 1<sup>st</sup> Regular Session of the 126<sup>th</sup> Legislature, 5 failed to be authorized and 1 was tabled until a future Legislative Council meeting. Of the 1 joint resolution, the council did not authorize the request for introduction in the 1<sup>st</sup> Regular Session of the 126<sup>th</sup> Legislature. The Legislative Council's actions on the requests are included on the attached list.

The Legislative Council then returned to the other items on its agenda.

## REPORTS FROM COUNCIL COMMITTEES

### 1. Personnel Committee

Speaker Eves, Chair of the Personnel Committee, gave the following report. The Personnel Committee met earlier today, April 29, 2013, to consider the following matters.

- Reappointment of OFPR Director Grant Pennoyer. The committee met with Mr. Pennoyer and discussed his accomplishments and challenges during the past 3 years and his goals for the upcoming years. Upon the recommendation of Executive Director Boulter, the Personnel Committee voted unanimously to recommend that the Legislative Council appoint Mr. Pennoyer to a new 3-year term as Director of the Office of Fiscal and Program Review.

**Motion:** That upon the unanimous recommendation of the Personnel Committee, the Legislative Council appoint Grant Pennoyer to a new 3-year term as Director of the Office of Fiscal and Program Review, the date of his appointment being retroactive to April 26, 2013. Motion by Speaker Eves. Second by Representative Berry. **Motion passed unanimous (8-0-0-2, with Senator Goodall and Representative Fredette absent).**

Speaker Eves expressed his appreciation to Director Pennoyer for his work, commitment and professionalism.

- Extension of Employee Retirement Incentive. The Personnel Committee considered and voted to recommend extending the current legislative employee retirement incentive provision that would have expired in the first year of the 126<sup>th</sup> Legislature through the end of the 126<sup>th</sup> Legislature.

**Motion:** That upon the unanimous recommendation of the Personnel Committee, the Legislative Council extend the retirement incentive program established by the Legislative Council for legislative employees through December 31, 2014. Motion by Speaker Eves. Second by Representative McCabe. **Motion passed unanimous (8-0-0-2, with Senator Goodall and Representative Fredette absent).**

### 2. State House Facilities Committee

Representative Berry, Chair of the State House Facilities Committee, gave the following report. The State House Facilities Committee met on Thursday, April 18<sup>th</sup> to follow up on 2 matters previously discussed by the facilities committee:

#### 1. Security Screening in State House

Sen. Katz met with the committee to discuss his after deadline bill request to eliminate security screening in the State House which has been in place since January, 2012. Sen. Katz explained his rationale for removing security screening and felt that the resources now used for security screening would be better utilized elsewhere, including supplementing current security measures in state courts. Other committee members felt that security screening protocols should be modified to improve operations and efficiency rather than eliminating screening measures. Modifications discussed included allowing frequent, low-risk visitors to the State House to receive priority or be allowed to bypass screening measures after a background check.

After a full discussion, the committee made no recommendation but, instead, felt that the proposal to eliminate security screening measures in the State House should be discussed and

decided by the full Legislative Council. The committee asked Capitol Police Chief Gauvin to prepare a memo that outlined various aspects of the screening process for review by the council members. That information is in the Legislative Council's packet of information.

Legislative Council Chair Eves then invited Capitol Police Chief Russell Gauvin to summarize the information he gathered in response to the committee's request.

Chief Gauvin drew Legislative Council members' attention to 2 memos included in the packet, one dated March 26, 2013 and one dated April 24, 2013. The memo discuss the personnel costs for establishing the security screening measures. The initial cost was about \$500,000 for the biennium, including the costs to add one police officer to the Capitol Police force. The personnel costs for the security screening is about \$200,000 annually, for the 4 screener positions. If the screening was to be conducted only during each regular session, the cost savings would be about \$100,000 per year. Chief Gauvin mentioned that he is seeking ways to provide the security screening more efficiently, and a change in the physical layout of the lobby would be helpful. Chief Gauvin also stated that the committee asked about the number of states who conduct security screening at their state houses. He said that he could not locate an exact number, but in 2007 27 states plus the national capitol provided security screening at their capitols. He believed the number has increased significantly since 2007. In the northeast, of the 7 states, 5 are conducting security screening in some manner, and 2 are not conducting screening, those being the states of New Hampshire and Vermont. Vermont is now considering screening measures. The state of Connecticut conducts screening on a limited basis and the states of New York, Rhode Island and Massachusetts conduct security screening on a full-time basis. They also screen all packages and deliveries.

Rep. Berry asked Chief Gauvin to address the value of security screening measures as opposed to other ways of delivering security. Chief Gauvin responded by saying that security screening is prevention which is increasingly important with bombing or other attacks now sometimes occurring on a small scale, such what occurred in Boston on Patriots' Day. Furthermore, of the many buildings that could be targets of attack, the State House is high profile, highly visible building for making political statements, where hotly contested issues are debated and where the public has opportunity to meet with political leaders face-to-face. Chief Gauvin went on to say that the State House, even with security screening, is the least secure State building in the Augusta area. In other buildings, access is strictly controlled and persons must sign in and out and be escorted within the building. He summarized by saying that security screening is about preventing an incident from occurring, not just able to respond once an incident occurs. The goal of screening is to keep dangerous items out of the building and away from targeted areas or persons.

Rep. McCabe asked what benefit, if any, does screening provide to the Executive Protection Unit (a unit of the Department of Public Safety) that is charged with protecting the Governor. Lt. Scott Ireland, Commander of the Maine State Police Investigations Unit, who was present in the audience, stated that the screening has a very positive effect on how the unit does its job. Screening of packages and people provides a high degree of assurance that dangerous items are kept out of the building, when prior to instituting screening measures, transport of items into the building was uncontrolled and unmonitored.

The members of the Legislative Council then discussed the matter. Sen. Katz stated that although he felt the Bureau of Capitol Police does an excellent job, he felt that screening measures were unnecessary. He noted that in his discussions with the Office of the Governor, the Governor's office would not object to elimination of the screening. He stated that for the first

193 years following statehood, Maine did not need to have security screening in the State House, and 90% of the screening is being conducted on school children and other low risk individuals. Sen. Katz felt that an incident is more likely to occur in the Cross Building, a shopping mall or university campus. He suggested that the \$200,000 now being spent on screening could be put to better use, his suggestion being to improve security at state courts where screening is occurring only about 50% of the time. He concluded by saying that he felt that security screening provides a false sense of security and is an unwise use of scarce tax dollars.

Sen. Goodall inquired if a uniformed police officer would need to be stationed outside the Governor's office if security screening measures in the building were removed. Lt. Ireland stated that it would depend upon the perceived threats but elimination of screening in and of itself would not necessarily result in stationing an officer on the second floor of the State House. No action was taken following discussion. See the Legislative Council's action on LR #2071.

Following the discussion, Rep. Berry continued his State House Facilities Committee report.

2. Multi-Year Plan for State House Maintenance and Improvements – 2013

At the last Legislative Council meeting, the council asked the facilities committee to meet again to discuss the dome copper replacement work in light of several questions raised by council members. The committee did discuss the proposed copper replacement. The committee concluded that there are no feasible alternatives and copper replacement is necessary and appropriate given the condition and age (now 104 years old) of the existing copper.

The committee unanimously reaffirmed its earlier recommendation to replace the copper sheathing in 2014 and approve the other projects in the proposed work plan, with several exceptions that he described. Finally, the committee also discussed the general process now used for competitively bidding major construction projects through the construction manager. While this process generally works well, some committee members felt that the process should be committed to writing to better clarify and document the procedures used. The committee asked the Executive Director to outline in writing the process for competitive bidding major projects, taking into consideration such factors as company qualifications and experience and the historic nature of the building and grounds, and include a provision whereby the executive director, rather than the construction manager, would open bids for those projects.

Rep. Berry concluded his report by saying that the committee is unanimously recommending approval of the multi-year plan including necessary preparation for dome and roofing repairs in 2014 so they may be conducted as cost-effectively as possible and in a timely manner, with the following exceptions:

- a. replacement of west entry doors to the State House should be postponed until 2014 when all doors can be done while construction crews are already onsite for the dome work, resulting in some decreased overhead costs;
- b. installation of 3 video cameras in the Appropriations Committee room to facilitate video broadcasts should be postponed until a future date. The committee felt that this project was not as high a priority as other more pressing projects and that discussions with MPBN about cost-sharing capital equipment purchases should occur before the project is authorized; and lastly,
- c. that the Executive Director should arrange for an assessment of the current condition of carpets in the State House and make recommendations for replacement in future years, including potentially some this year if the carpeting poses a safety hazard.

**Motion:** That upon the unanimous recommendation of the State House Facilities Committee, the Legislative Council authorize maintenance and improvements to the State House and Grounds as described in the 2013 revision of the Multi-Year Plan including all necessary preparations for implementations of Projects 14.1 (dome resheathing) and 14.2 (penthouse repairs) in 2014, except that Project 13.2, west entry door replacements, be postponed until 2014 and Project 13.3, video camera installations in Room 228, be deferred until such time as the Legislative Council authorizes camera installation; further, authorize the Executive Director to take all necessary measures to implement the approved plan in accordance with the schedules contained in the plan; and further, that the Executive Director arrange for an assessment of carpet condition in rooms in the State House and report the results to the facilities committee. Motion by Representative Berry. Second by Senator Goodall. **Motion passed unanimous (9-0-0-1, with Representative Fredette absent).**

## OLD BUSINESS

### Item #1: Council Action Taken by Ballot since March 28, 2013 Meeting

#### Request for Introduction of Legislation

##### LR 2089 An Act to Temporarily Restore Boxing Rules

Submitted by: Representative James Gillway  
 Approved: April 3, 2013                      Vote: 10-0 in favor

##### LR 2094 An Act to Amend the Laws Governing Weight Tolerance for Certain Vehicles

Submitted by: Representative Alex Willette  
 Approved: April 19, 2013                      Vote: 8-0-2-0 in favor (with Senators Goodall and Jackson abstaining)

No Legislative Council action was required.

## NEW BUSINESS

### Item #2: Time Warner Cable: Recognition of Public Service Contribution – Status Report

Mr. Boulter explained that at an earlier meeting of the Legislative Council, the council voted to accept an offer by Time Warner Cable to install televisions in selected areas in the State House and upgrade the cable service as a public service without cost to the Legislature. The council approval did not allow for advertising or placement of Time Warner logos on the televisions. Instead, the council asked the Executive Director to identify an appropriate alternative form of recognition to Time Warner for its contributions. Mr. Boulter stated that the depiction found in the council's packet was developed by Time Warner Cable. Ms. Melinda Poore, representing Time Warner Cable, asked that the proposal be considered, and given the council's conditional approval at the last meeting, Mr. Boulter presented it for council review. Mr. Boulter described the design, indicating that it would be placed on the bottom of each television. Although they would be in a small font size, the decal that would be applied to the TVs would contain the words, "Time Warner Cable." There would be no other signs near the television sets.



Legislative Council Chair Eves asked for clarification as to whether the council's approval disallowed notation of corporate sponsorship. Mr. Boulter read back the approved motion, emphasizing that the part, "without accompaniment of a Time Warner Cable corporate logo." He stated that the Time Warner logo is its corporate name so it would be difficult to separate them. Legislative Council Chair Eves followed up by indicating that he felt that proposal was logo, along the lines of what the council wanted to avoid. Mr. Boulter indicated that it was a judgment call, which is why he presented the matter to the council for guidance as to its appropriateness.

Sen. Goodall expressed concern about the proposal and felt, as he stated at the earlier meeting, that use of the corporate logo or names would raise policy issues and open up the issues of use of corporate names elsewhere and for other things. He concluded by saying that he felt the proposal is contrary to what was discussed the last meeting, and recommended that the council not take any action on the proposal. The Legislative Council did not take any action with regard to the proposal.

**Item #3: Request for Use of Electrical Receptacles in Legislative Parking Lot to Recharge Electric Motor Vehicle(s) – Policy Matter**  
(Request by Rep. Bruce MacDonald)

Rep. Berry stated that as more people drive electric vehicles, there may be increasing interest in having areas available for battery recharging. He noted that Rep. MacDonald has had some discussions with Executive Director Boulter about recharging locations and paying for the electricity used. Rep. Berry then recommended that the request be referred to the State House Facilities Committee for review and recommendation.

**Motion:** That the Legislative Council refer the request to the State House Facilities Committee for review and recommendation. Motion by Representative Berry. Second by Senator Alford. **Motion passed unanimous (9-0-0-1,** with Representative Fredette absent).

**Item #4: Submission of the Nonpartisan Staff Study: *Standard Sewer District Enabling Legislation*** (report prepared by Office of Policy and Legal Analysis)

The Office of Policy and Legal Analysis submitted the nonpartisan staff study, *Standard Sewer District Enabling Legislation*, for acceptance by the Legislative Council.

**Motion:** That the Legislative Council accept the staff study, *Standard Sewer District Enabling Legislation*, submitted by the Office of Policy and Legal Analysis and place it on file. Motion by Senator Thibodeau. Second by Senator Alford. **Motion passed unanimous (9-0-0-1,** with Representative Fredette absent).

## ANNOUNCEMENTS AND REMARKS

Senator Thibodeau raised an issue regarding access to the Legislative Conference Room for regular Republican caucuses. [Note: This matter was discussed with the Executive Director and resolved following the Legislative Council meeting.]

With no other business to consider or announcements, the Legislative Council meeting was adjourned at 4:18 p.m.