

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
January 22, 2009
APPROVED FEBRUARY 26, 2009

CALL TO ORDER

Legislative Council Chair, Speaker Pingree called the Legislative Council meeting to order at 2:15 P.M. in the Legislative Council Chambers.

ROLL CALL

Senators: President Elizabeth Mitchell, Sen. Lisa Marrache, Sen. Kevin Raye,
Sen. Jonathan Courtney
Sen. Philip Bartlett (arrived immediately following the roll-call)

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

Legislative Officers: Joy O'Brien, Secretary of the Senate
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
Debra Olken, Human Resources Director
Patrick Norton, Director, Office of Policy & Legal Analysis
Grant Pennoyer, Director, Office of Fiscal and Program Review
Margaret Matheson, Revisor of Statutes
Paul Mayotte, Director, Legislative Information Services
John Barden, Director, Law and Legislative Reference Library
Beth Ashcroft, Director, Office of Program Evaluation and
Government Accountability

Chair Pingree convened the meeting at 2:15 P.M. with a quorum of members present.

SUMMARY OF DECEMBER 4, 2008 MEETING OF LEGISLATIVE COUNCIL

Motion: That the Meeting Summary of December 4, 2008 be accepted and placed on file. Motion by Senator Mitchell. Second by Representative Berry. **Motion passed unanimous (9-0).** [Representative Tardy absent]

REPORTS FROM EXECUTIVE DIRECTOR AND COUNCIL OFFICES

Executive Director's Report

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

MDF Regional Bus Tours and Policy Forum

The Maine Development Foundation has concluded its regional economic development bus tour of northern Maine and this week is hosting its bus tour of southern and western Maine. Sixty-one Legislators participated in the northern Maine tour, and in spite of winter weather conditions participants received excellent tours of Maine businesses and other venues. Feedback on the value of the tours has been very positive. The Legislator Policy Forum on Health Care will be held on Friday, January 30th at the Augusta Civic Center. MDF is still accepting forum registrations.

Bill Filings Before Cloture

The cloture date for legislative bill requests was January 16, 2009. The total number of bill requests filed was 1,870, and the number of requests filed by Legislators was 1,680. This compares with 2,188 in 123rd, 1,902 in the 121st and 1,705 in the 121st legislatures, 1st regular session. Bill drafting is well underway in the Revisor's office, OPLA and OFPR.

Orientation Program

Human Resources Director Debra Olken will be holding an orientation program for new legislative employees to acquaint them with legislative policies and protocols. As an outgrowth of discussions with committee chairs and leads at the chairs' orientation, committees may request presentations or training on Legislative Council policies of interest such as violence in the workplace and sexual harassment if a particular committee is interested in more information or a greater understanding of the procedures or services available.

Compendium of State Fiscal Information

The Office of Fiscal and Program Review has released its Compendium of State Fiscal Information through Fiscal Year 08. The compendium provides a summary of key fiscal information affecting State Government, including actual operating revenue and expenditures revenue sources, debt, reserve fund balances and tax burden. Copies are available in the OFPR office, and the report is available online as well through the Legislature's website.

Fiscal Report

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

Revenue Update

Total General Fund Revenue - FY 2009 (\$'s in Millions)

| | Budget | Actual | Var. | % Var. | Prior Year | % Growth |
|----------|-----------|-----------|--------|--------|------------|----------|
| December | \$224.4 | \$241.5 | \$17.2 | 7.6% | \$241.2 | 0.1% |
| FYTD | \$1,271.8 | \$1,285.8 | \$14.0 | 1.1% | \$1,293.8 | -0.6% |

- General Fund revenue was over the revised forecast by \$17.2 million in December, resulting in a positive variance of \$14.0 million or 1.1% for the first half of FY 2009. Despite the positive variance, FY 2009 fiscal year-to-date (FYTD) revenue declined by 0.6% compared with the same period in FY 2008. The December 2008 General Fund revenue forecast projects a decline of 4.3% for total General Fund revenue in FY 2009.
- Sales Tax revenue appeared to be the only major tax category that was substantially below estimates, falling \$5.0 million below budget for the first half of FY 2009 despite being revised downward by \$20.3 million for FY 2009 in the December revenue forecast. Consumer spending nationally fell below previous estimates and has declined for the last half of calendar year 2008. The level of decline in consumer spending was not anticipated in the current economic forecast.
- Individual Income Tax collections were over budget for the FYTD through December by \$10.0 million. A positive variance from the BETR, Business Equipment Tax Exemption (BETE) and Circuitbreaker tax reimbursement programs of \$8.8 million increased the positive variance for the Individual Income Tax category to \$18.8 million. Corporate Income Tax was also running ahead of revised projections for the FYTD by \$11.6 million based on December revenue. Much of these positive variances are thought to be timing issues that will be offset in future months.

Total Highway Fund Revenue – FY 2009 (\$'s in Millions)

| | Budget | Actual | Var. | % Var. | Prior Year | % Growth |
|----------|---------|---------|---------|--------|------------|----------|
| December | \$29.1 | \$26.4 | (\$2.7) | -9.3% | \$27.4 | -3.7% |
| FYTD | \$150.0 | \$145.0 | (\$5.0) | -3.3% | \$148.1 | -2.1% |

- Highway Fund revenue was under budget by \$2.7 million in December, falling \$5.0 million or 3.3% under budget for the first half of FY 2009. The decline of Highway Fund revenue from FY 2008 accelerated to 2.1% after December's revenue performance.
- Fuel Taxes continue to fall below projections despite the \$4.4 million downward adjustment for this category in FY 2009 by the Revenue Forecasting Committee. It appears that the tax model forecasts for fuel taxes have failed to adequately capture consumers' reactions to the current economic situation.
- Motor Vehicle Registration and Fees and Inspection Fees Highway Fund revenue categories were also running behind the revised forecast through December. Both these categories were revised downward in the December revenue forecast.

Revenue Forecasting Update

- A joint meeting of the Consensus Economic Forecasting Commission (CEFC) and Revenue Forecasting Committee (RFC) to review new economic data and tax practitioner survey data has been scheduled for Tuesday, February 17th.

Cash Balances Update

| Summary of Treasurer's Cash Pool | | |
|---|----------------|----------------|
| December Average Daily Balances | | |
| Millions of \$'s | | |
| | 2007 | 2008 |
| General Fund (GF) Total | \$22.8 | \$29.7 |
| General Fund (GF) Detail: | | |
| Budget Stabilization Fund | \$117.6 | \$131.1 |
| Reserve for Operating Capital | \$40.6 | \$40.6 |
| Tax Anticipation Notes | \$0.0 | \$0.0 |
| Internal Borrowing | \$127.9 | \$170.0 |
| Other General Fund Cash | (\$263.3) | (\$312.0) |
| Other Spec. Rev. - Interest to GF | \$50.2 | (\$0.1) |
| Other State Funds - Interest to GF | \$0.5 | (\$10.0) |
| Highway Fund | \$33.0 | \$17.9 |
| Other Spec. Rev. - Retaining Interest | \$79.4 | \$61.7 |
| Other State Funds | \$269.6 | \$202.8 |
| Independent Agency Funds | <u>\$132.8</u> | <u>\$80.1</u> |
| Total Cash Pool | \$588.3 | \$382.1 |

- The average total cash pool balance last month was \$382.1 million, which was \$206.2 million less than December 2008. The average balance for the last 7 Decembers, 2001 to 2007, was \$544.1 million.
- The General Fund revenue situation has increased the amount of internal borrowing to \$170.0 million in December. That additional reliance on cash flow borrowing will increase as the curtailment of General Fund spending does not offset the entire revenue shortfall projected by the December 2008 revenue forecast. The Governor's proposed budget relies on a \$45 million transfer from the Budget Stabilization Fund to address the FY 2009 General Fund shortfall.
- With December receipts of Savings Offset Payments, the Dirigo Health Fund's average balance in December improved from November's balance of negative \$16.9 million to negative \$14.2 million.

Information Technology Report

Mr. Mayotte reported the following project status reports.

Bill Tracking Application

For the start of the 124th Legislature, a new integrated bill status application has been implemented replacing two WANG mini-computer based applications. The functions of the new application are being closely monitored and the system's output in the form of reports and queries is being audited for accuracy on an on-going basis.

House Chamber Automation

The office is providing technical support to the House with the purchase and installation of hardware, legislator access to legislative data in the chamber, providing secure wireless access and providing assistance to House Members. This project is in its final stage of implementation.

Server Consolidation

The Legislature is in the process of reducing the number of computer servers it uses. This is being done through the use of virtualization software. As old servers are being retired, their functions are being moved to servers that support multiple applications at the same time. The goal of this project is to cut the number of servers used in half.

Web Page Data Updates

During the 2008 interim, changes were implemented to reduce the amount of time required to update data on the legislative website. Initial results indicate the website is now being updated within minutes of the data being made available.

Senator Marrache asked if there will be a phase-in of the automated chamber information system in the Senate chamber. President Mitchell responded by indicating that the Senate needs a plan to do so. She felt that automating one chamber but not the other would be counterproductive. She suggested that the Senate begin a planning process that factors in budgetary constraints but also builds on what was learned from developing document automation software for the House chamber.

Status of Legislative Studies

(No Report)

REPORTS FROM COUNCIL COMMITTEES

1. Personnel Committee

Chair Pingree presented the Personnel Committee report for the Personnel Committee meeting held earlier in the day.

The Personnel Committee met with Library Director John Barden to review his performance during his first year as director. Overall, the committee was very pleased with Mr. Barden's performance and the direction he has established for the library. He is emphasizing and instituting

much greater use of electronic information sources to manage costs and improve delivery of information to the Legislature. The committee voted unanimously to approve a step increase for Mr. Barden. No action by the Legislative Council was required.

The committee also met to consider a step increase for the Secretary of State, State Treasurer and State Auditor as required by law and Legislative Council procedures. The committee voted to approve a step increase for them, effective on their work anniversary date. The Attorney General is not eligible for a step increase this year. No action by the Legislative Council was required.

Chair Pingree commented that that since the Constitutional Officers are elected by the Legislature and their salaries are governed by statute, it is the responsibility of the Legislative Council, not the Governor, to decide their salaries. Money for step increases must come from within existing budgets of the departments of the elected officials, not the legislative budgets. Furthermore, it remains the prerogative of the elected whether to accept a step increase that has been authorized by the Legislative Council. In the past, some Constitutional Officers have declined to accept a step increase.

Senator Raye noted that he and other members of the Legislative Council are sensitive to the current budget situation and recognize that when considering the next biennial budget, issues of salary increases will be on the table for consideration.

2. State House Facilities Committee

(No Report)

3. Budget Subcommittee

Senate President Mitchell presented the Budget Subcommittee report. She reported that the subcommittee met on January 15, 2009 to review language in the Governor's proposed supplemental budget for FY09 that relates to legislative accounts. After review the subcommittee voted unanimously to recommend that the Legislative Council accept the proposed budget adjustments.

President Mitchell further reported that the subcommittee will be meeting over the next several months to consider budget adjustments for the FY10/11 biennial budget. The subcommittee invites other members of the Legislative Council to make suggestions for possible budget savings that can be considered by the subcommittee. Senate President Mitchell asked that suggestions be forwarded to her as subcommittee chair or to Rose Breton or David Boulter in the Executive Director's office. A motion was then offered.

Motion: That upon the unanimous recommendation of the Budget Subcommittee, the Legislative Council accept the legislative budget adjustments proposed in Part L of LD 45 (supplemental budget bill), totaling \$1,585,008 and convey its decision to the Joint Standing Committee on Appropriations and Financial Affairs. Motion by Senate President Mitchell. Second by Senator Raye. **Motion passed unanimous (9-0).** [Representative Tardy absent for vote]

Several Legislative Council members commented that the budget adjustments for the legislature relating to the supplemental budgets were relatively easy ones to make. Budget adjustments for the next biennial budget will be more difficult. Chair Pingree commented that the council will be

looking to legislative directors for creative ideas and solutions to develop an acceptable budget. President Mitchell noted that the legislative budget represents a small percentage of the state budget. Although the legislature will do its part, she reminded members that the Legislature will still need to maintain its capacity to do the people's business.

4. CSG Annual Meeting Planning Subcommittee

Planning Subcommittee Chair Bartlett reported that the subcommittee has not met yet but that he and co-chair Representative Nancy Smith have spoken informally. He plans to convene the subcommittee within the next few weeks. Chair Pingree commented that Representative Tardy has expressed an interest in helping the subcommittee fundraise for Maine's hosting of the CSG annual meeting in 2010.

OLD BUSINESS

ITEM 1: Legislative Council Actions Taken by Ballot

A copy of the list of actions taken by ballot by the Legislative Council since its December 4, 2008 meeting was attached. No further action by the Legislative Council is required.

ITEM 2: Request by Maine Indian Tribal-State Commission for Orientation Program for 124th Legislature to Address Tribal-State Relations

Chair Pingree stated that she and Senate President Mitchell have been working to address tribal-state relations and are currently considering various options for fostering good communications. She noted that the House of Representatives has recently added the names of the tribal representatives to the House voting board, an important gesture of cooperation. She also indicated that under consideration are several options and actions to help address tribal-state issues and provide important information to Legislators that may make holding a formal orientation program unnecessary. Under discussion currently is potentially holding a joint convention of the Legislature on the "State of the Tribes."

No action by the Legislative Council was taken.

There was no other Old Business.

NEW BUSINESS

ITEM #1: Consideration of Requests for Memorials

The Legislative Council considered and acted on three and tabled nine Joint Resolutions. The Legislative Council's actions on these requests are included on the attached list.

ITEM #2: *Annual Report of the Allagash Wilderness Waterway*

Motion: To accept the *Annual Report of the Allagash Wilderness Waterway* and place it on file. Motion by Senator Bartlett. Second by Senator Courtney. **Motion passed unanimous (9-0).** [Representative Tardy absent]

ITEM #3: *Annual Report of the Right to Know Advisory Committee*

Motion: To accept the *Annual Report of the Right to Know Advisory Committee* and place it on file. Motion by Senator Bartlett. Second by Senator Raye. **Motion passed unanimous (9-0).** [Representative Tardy absent]

ITEM #4: *Presentation of OPEGA's Annual Report on Activities and Performance*
(Ms. Ashcroft)

OPEGA Director Beth Ashcroft presented to the Legislative Council the annual report for 2008 on OPEGA's activities and performance prepared pursuant to 3 MRSA §995(4). She then summarized various sections of the report that may be of interest to the Legislative Council as follows.

Included in the report is a brief summary of key activities that OPEGA was involved in for 2007 and 2008. OPEGA completed eight performance audits and studies and has completed a total of 14 since 2005. OPEGA also conducted research related to 12 requests which were subsequently submitted to the Government Oversight Committee for consideration. The fourth section of the report is a summary of key actions that have been taken.

The Government Oversight Committee met 24 times during 2007-2008. The meeting summaries are available on the website. One other big effort was reviewing OPEGA's own performance as a legislative program, using input received from interviews with a number of Legislators. The result is a "draft" strategic plan which includes goals, objectives and performance measures including the targets for 2009-2010. It is a draft that is being reviewed with the Government Oversight Committee of the 124th Legislature. Four key goals are: to provide timely, relevant and useful information and recommendations to the Legislature, with four specific objectives, performance measures and targets; to conduct all work with objectivity and accuracy, with two related objectives; to communicate regularly on activities, results and impacts to the Legislature, with several related objectives; and to utilize OPEGA's resources effectively, efficiently and economically, with three related objectives.

Ms. Ashcroft noted that a section of the report related to OPEGA's performance. She noted that OPEGA started tracking the number of visits to its website in late 2007 so for 2008 she noted that it had 6,587 visits from 173 different Maine towns, 977 from 47 states other than Maine and 313 visits from countries other than the United States. As to estimated potential fiscal impact associated with the recommendations from the reports issued, for a number of the recommendations it had not been possible to estimate costs because of the nature of the recommendation. But for those where an estimate could be made, the recommendations if implemented effectively, could lead to reduced costs of at least \$3.8 million or better cash management, or reducing fraud, waste and abuse of at least \$167,806. Ms. Ashcroft noted that sometimes the recommendations require additional resources in order to implement them. Appendix A in the report is a listing of actions that would help improve performance. In conclusion, she noted that the recommendations were focused on making some positive fiscal impact.

Senator Marrache asked how many legislators OPEGA spoke with to obtain feedback about OPEGA's performance. Ms. Ashcroft responded that feedback was sought from Representatives and Senators from each political party. She estimated feedback was received from 30-40 Legislators. Senator Marrache then asked how "savings" identified in the report were quantified. Ms. Ashcroft responded by saying that the report identifies the bases for savings, as OPEGA documented them.

President Mitchell commented that it is important to focus, not on whether government is too large or too small, but rather how well it works. She asked whether OPEGA and the Government Oversight Committee devote sufficient attention to evaluating the effectiveness of state programs, or whether the focus is principally on audits. Ms. Ashcroft responded by it is a blend of the two; evaluation centered on effectiveness and efficiency and also accountability and transparency.

Several members commented that one role of the Legislative Council is to oversee legislative activities and functions to make sure they are working effectively. In doing so, one area that warrants attention is whether there is appropriate interaction between OPEGA/Government Oversight Committee and the policy committees of the Legislature. The Legislative Council and Leadership need to facilitate helpful interaction and coordination. Senator Courtney asked whether OPEGA has the capacity to fully evaluate state economic development programs. Ms. Ashcroft replied that it would depend on the questions being asked. Some may be answered by OPEGA staff while others may require hiring a firm to conduct an evaluation.

Chair Pingree concluded the discussion by saying that having OPEGA report to the Legislative Council periodically begins a helpful dialogue. Discussions such as this help the council do its job to make sure the committee oversight process works and that OPEGA is performing functions that are most useful to the legislature.

Chair Pingree thanked Ms. Ashcroft for her presentation.

Motion: To accept the *Office of Program Evaluation and Government Accountability Annual Report on Activities and Performance* and place it on file. Motion by Senator Raye. Second by Senator Bartlett. **Motion passed unanimous (9-0).** [Representative Tardy absent]

ANNOUNCEMENTS AND REMARKS

ADJOURNMENT

Motion to adjourn by Senator Raye. Second by Senator Courtney. **Motion passed unanimous (9-0).** [Representative Tardy absent]

The Legislative Council meeting was adjourned at 3:08 P.M.