

MEETING SUMMARY
SEPTEMBER 24, 2008
Approved October 22, 2008

CALL TO ORDER

Legislative Council Chair, President Edmonds called the Legislative Council meeting to order at 1:16 P.M. in the Legislative Council Chambers.

ROLL CALL

Senators: President Beth Edmonds, Sen. Elizabeth Mitchell, Sen. Carol Weston, Sen. Richard Rosen, Absent: Sen. John Martin

Representatives: Speaker Glenn Cummings, Rep. Hannah Pingree, Rep. Sean Faircloth, Rep. Robert Crosthwaite, 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

Legislative Council Chair, President Edmonds convened the meeting at 1:17 P.M. with a quorum of members present.

REPORTS FROM EXECUTIVE DIRECTOR AND COUNCIL OFFICES

Executive Director's Report

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

- YMCA Camp of Maine's Youth in Government Program
Mr. Boulter continues to work with the YMCA's program director to find a date for holding the Youth in Government program that works for both the legislature and the many participating schools. The current best workable, though not ideal, date appears to be in early May 2009. Over 200 high school youth from schools across the state participate each year.
- Maine Education Research Institute
A new approach to the annual cooperative agreement between the Legislature, University of Maine System and the Department of Education that clarifies roles and decision-making has been developed. This should noticeably improve the process for developing education research projects and administering the contract, and reduce participant frustrations.
- Citizen Trade Policy Commission
An agreement between the Department of Labor and the Legislature has been developed that will provide staffing and technical support to the trade commission over the next year, following resignation of the former contractor who had provided staffing to the commission. OPLA will continue to provide assistance drafting legislation as needed.
- Emergency Preparedness
The Executive Director's office is working to make information such as emergency contact numbers and locations and use of emergency call stations and equipment available to legislative employees online as well as developing a more efficient approach to providing notices of emergency events or conditions. The information will be available this fall.

Legislative Council Chair President Edmonds then proceeded to the Summary of July 30, 2008 meeting of the Legislative Council. Senator Weston stated that discussion of some items at the July meeting had not been concluded and she wanted to complete those discussions. President Edmonds recommended discussing those items later in the meeting.

SUMMARY OF JULY 30, 2008 MEETING OF LEGISLATIVE COUNCIL

Motion: That the Meeting Summary of July 30, 2008 be accepted and placed on file. Motion by Senator Weston. Second by Representative Crosthwaite. **Motion passed unanimous (8-0).** [Senator Martin and Representative Tardy absent]

Fiscal Report

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

1. Revenue Update

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

	Budget	Actual	Var.	% Var.	Prior Year	% Growth
August	\$78.0	\$61.9	(\$16.1)	-20.6%	\$91.4	-32.3%
FYTD	\$315.2	\$309.2	(\$6.0)	-1.9%	\$314.6	-1.7%

- General Fund revenue was under budget by \$16.1 million in August, resulting in a negative variance of \$6.0 million or 1.9% for the first 2 months of FY 2009. Revenue for the first 2 months was 1.7% below revenue for the same period in FY 2008.
- Sales tax collections in August resulting from July taxable sales exceeded budgeted projections by \$3.2 million. Taxable sales detail is not yet available. Growth for the first 2 months of FY 2009 was 5.5% above that same period in FY 2008.
- The timing issue in the Individual Income Tax category identified last month, which produced a positive variance in July, was by the \$17.8 million negative variance in August, resulting in a \$9.6 million negative variance for the first 2 months of FY2009. Roughly half of the negative variance was related to the Circuitbreaker Program tax and rent refunds payments exceeding projections. Representative Pingree asked if the negative variance was due to the Circuitbreaker expenses being paid out for the last fiscal year's or for the current year's program. Mr. Pennoyer agreed to research and report back on his findings.

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

	Budget	Actual	Var.	% Var.	Prior Year	% Growth
August	\$8.4	\$6.9	(\$1.5)	-18.3%	\$7.6	-9.8%
FYTD	\$35.3	\$32.1	(\$3.3)	-9.3%	\$33.4	-4.1%

- Highway Fund revenue was under budget by \$1.5 million in August and \$3.3 million for the fiscal year-to-date. Highway Fund revenue continues to show negative growth at 4.1% for the first 2 months of FY 2009.
- Fuel taxes remain the largest contributor to the negative variance in the Highway Fund for the first 2 months of FY 2009 (\$1.9 million below budget), but motor vehicle registration and fees have also begun to show some weakness, falling \$0.9 million below budget for the first 2 months of FY 2009.

2. Revenue Forecasting Update

- The Consensus Economic Forecasting Commission (CEFC) will meet on Thursday, October 16th to update the economic forecast. The CEFC's report is due on November 1st.
- The Revenue Forecasting Committee (RFC) has not yet established its fall meeting schedule. The major tax categories relying on the economic forecast will not be ready for review until mid-November.

3. Cash Balances Update

Summary of Treasurer's Cash Pool		
August Average Daily Balances		
Millions of \$'s		
	2007	2008
General Fund (GF) Total	\$73.5	\$39.2
General Fund (GF) Detail:		
Budget Stabilization Fund	\$115.7	\$129.0
Reserve for Operating Capital	\$40.6	\$40.6
Tax Anticipation Notes	\$0.0	\$0.0
Internal Borrowing	\$78.4	\$60.0
Other General Fund Cash	(\$161.2)	(\$190.4)
Other Spec. Rev. - Interest to GF	\$78.4	\$110.8
Other State Funds - Interest to GF	\$5.6	(\$15.2)
Highway Fund	\$28.1	\$21.9
Other Spec. Rev. - Retaining Interest	\$82.1	\$73.6
Other State Funds	\$262.2	\$159.8
Independent Agency Funds	\$114.6	\$77.9
Total Cash Pool	\$644.5	\$467.9

- Presented above is a comparison of the average balances of August 2007 and August 2008. The average total cash pool balance last month was \$467.9 million, which was \$176.6 million less than the \$644.5 million average for August 2007. The average balance in August for the 7 years from 2001 to 2007 was \$655.2 million.
- The major contributors to the decline in the cash pool compared with August 2007 are: a weaker General Fund cash position (\$34 million); a shift of cash balances in the State's health insurance funds (\$102 million); withdrawal of cash by the University of Maine System (\$34 million); and the declining balance in the Dirigo Health Fund (\$26 million). Only the Other Special Revenue Funds, the "dedicated revenue" accounts, showed improvement over August average balances in 2007.

Senator Rosen asked Mr. Pennoyer to explain why the Executive Branch estimates relating to the Dirigo Health Fund that were made to the Legislature last session were so inaccurate. He noted that the Governor's Office of Health Policy and the Dirigo Board consistently maintained during the last legislative session that the program would have sufficient cash to maintain the program through Spring 2009. In fact, a review of the account reveals that the fund had a negative cash balance as early as partway through the last fiscal year (November 2007).

Mr. Pennoyer reported that he had met briefly with the executive director of Dirigo Health and director of the Governor's Office of Health Policy and Finance, Trish Riley, and they acknowledged they had been aware of the negative cash position by the first half of November 2007. Mr. Pennoyer noted that his office had been told by Executive Branch officials that the financial position of the Dirigo Health program was a "looming" but not imminent problem.

Senator Rosen asked if the Legislature or OFPR had been receiving information sufficiently clear and detailed enough to have anticipated this financial problem.

Mr. Pennoyer said that his office had accepted the representations made by the program officials that it was a future problem. Had his office realized the program was out of money by November 2007, he would have brought it to the Legislative Council's attention. He stated that the State Controller is now planning to retroactively adjust entries to show appropriate internal borrowing so the fund was technically in balance by the end of FY08.

President Edmonds asked Mr. Pennoyer to report back to the Legislative Council before the next council meeting with any new information.

Senator Weston asked when the transfer began. Mr. Pennoyer reported that the borrowing from the cash pool to support the Dirigo program began in November, 2007.

Speaker Cummings asked Mr. Pennoyer to elaborate on the cash withdrawals relating to the State Health Insurance program (\$110 million) and the University of Maine (\$34 million). Mr. Pennoyer explained that a legislative change to Retiree Health authorized the Maine Public Employees Retirement System to invest funds to earn a higher rate of return rather than invest them with other funds in the cash pool investment vehicles that earn a lower rate of return. The hope is to earn a much higher rate of return and, therefore, significantly reduce the unfunded liability.

The University System typically had invested a substantial amount of cash, some \$40-\$50 million, in the cash pool. In the past, independent agencies were allowed to keep money earned on the "float" balances, thus receiving an enhanced rate of return. That policy ended. In response, the University System removed money from the cash pool to invest it in other investment vehicles to earn a better rate of return.

Senator Mitchell asked whether the Legislature should put measures in place in order to enhance checks and balances and receive better reporting of financial information so the Legislature does not learn of significant changes in financial conditions of accounts (e.g., information known by the Executive Branch) some nine or ten months after the changes first occurred. She questioned how this late disclosure (or discovery) of the Dirigo funds status could have occurred without the Appropriations Committee having been informed immediately.

Mr. Pennoyer said that the transition to the State's new accounting system has been challenging. As a result, his office has not been able to easily and independently access financial data as with the former system. The State Controller's office has been working to improve the system and querying capability. Mr. Boulter noted that timely receipt of information requested by OFPR has been a chronic problem, some causes of which is technical, some of which is not. Currently, OFPR has limited information available to it to conduct thorough, timely analysis to obtain accurate, timely information. OFPR needs to have access to all financial systems of the state, and receive timely responses to its requests for information.

Senator Mitchell expressed her desire that for the Legislature to be as strong a branch of government as possible, it must have access to the most current information so as to make informed decisions.

Senator Weston then inquired about the Treasurer's Mainsail investment and whether the state had received the \$20 million from Merrill Lynch. Mr. Pennoyer replied that the State Treasurer reported that he had received the money.

Representative Pingree asked if there were concerns about state investments given the current financial markets. Mr. Pennoyer said that he did not foresee concerns for the cash pool, since the state has invested more in treasury bills and similar conservative investment vehicles. Of greater concern are investments made by the Maine PERS or other independent state agencies.

Information Technology Report

1. Post-Session Updates
The statute database update process for the 2nd Regular and 1st Special session is well underway. Posting of the updated Laws of Maine to the Legislature's website was completed on June 30th.
2. WANG System Phase-out
Work to phase-out the WANG is on track. Several tasks have been completed.
3. Training
Linda Weston, Helpdesk Administrator, and Debby Olken, HR Director, have developed an in-house training program to provide a basic skills refresher for word processing and spreadsheets as well as specific advanced functions such as mail merge and tables.
4. Server Consolidation
As part of the normal process of replacing computer servers at the end of their service life, the legislature is reducing the number of servers it uses to support operations. This is being done through a process known as server virtualization. The office is in the process of moving the functions currently performed on ten old servers to two new servers.

Status of Legislative Studies

Patrick Norton, Director, Office of Policy and Legal Analysis, drew the Legislative Council Members' attention to the Summary of the Status of Studies found in the packet. The summary now includes more useful information on the status including, *Meetings Held to Date* and *Next Meeting Date* made in response to a suggestion from Senator Mitchell. Mr. Norton also reported that the *Commission to Study Long-Term Home-Based and Community-Based Care* received the required outside funding and has held its first meeting, and the *Citizen Trade Policy Commission* meeting scheduled for October 8, 2008 had been cancelled with an alternate date to be set in the near future.

REPORTS FROM COUNCIL COMMITTEES

1. Personnel Committee

Speaker Cummings presented the report of the Personnel Committee which met on September 24, 2008 and considered two items:

1. The committee voted unanimously to approve temporary disability income benefits to a member of the Revisor's office, consistent with criteria established in the Legislative Council's personnel policies. No Legislative Council action was required.
2. The Personnel Committee intends to finalize the revised *Personnel Policies and Guidelines for Employees of the Office of the Secretary of the Senate and the Office of the Clerk of the House of Representatives* employees at its next meeting. No Legislative Council action was required.

2. State House Facilities Committee

(No Report)

Representative Pingree mentioned that due to the lack of a quorum, the September 17th meeting of the State House Facilities Committee was rescheduled to October 15th at 10:30 A.M. in the Legislative Council Chambers.

3. Budget Subcommittee

(No Report)

4. Subcommittee to Administer Technology

(No Report)

OLD BUSINESS

A copy of a list of actions taken by ballot by the Legislative Council since its July 30, 2008 meeting was attached. No further action by the Legislative Council was required.

There was no other Old Business.

NEW BUSINESS

**ITEM #1: State House Common Project Completion
(Recognition of Architects & Construction Firms)**

Construction firms that designed and constructed the State House Common were recognized for their work. Executive Director Boulter introduced each firm, and summarized their involvement.

The team of Terrence J. DeWan & Associates Landscape Architects from Yarmouth and Richard Burt Architects, Damariscotta did an excellent job bringing symmetry and symbolism to the project that enhances the appearance of the State House grounds while maintaining functionality. Those present were Keith Smith and Sarah Marshall from Terrence J. DeWan & Associates and Richard Burt from Richard Burt Architects (Terry DeWan was unavailable).

Constructions firms recognized were Consigli Construction Inc., from Portland and Jorgensen Landscaping, Inc, from Bath. Mr. Boulter mentioned the excellent work ethic which is evident when looking at the State House Common. The construction crews worked long hours and weekends to complete the project on time which spoke of their work ethic, dedication and quality of work. Michael Desmond and David Thomas from Consigli were present. (Matthew Cyr was unable to attend, as were Mark Jorgensen and David Brodeur from Jorgensen Landscaping, Inc.)

President Edmonds presented the firms with a Special Legislative Sentiment acknowledging the work of each of the firms and expressing the Legislature's gratitude.

Executive Director Boulter also acknowledged the contributions of Facility Support Staff Howard Boucher of the Office of the Executive Director who was instrumental in working with the various firms to represent the Owner's interest and coordinated various activities. In addition, Mr. Boucher coordinated the ordering, delivery and setup of various features including, benches, tables, water receptacles and signage. On behalf of the entire Legislative Council, President Edmonds extended her appreciation for Mr. Boucher's contributions and for the great care Mr. Boucher takes in maintaining the State House.

ITEM #2: Request for Citizen Trade Policy Commission to Carryover Funds from FY 08 to FY 09

Motion: That the Legislative Council accept the request of the Citizen Trade Policy Commission to carryover funds from FY08 to FY09. Motion by Representative Pingree. Second by Senator Mitchell. **Motion passed unanimous (8-0).** [Senator Martin and Representative Tardy absent]

ITEM #3: Update of 2002 Feasibility Study for a Single-Payor Health Plan Results of Funding Search

Mr. Norton reported that Ms. Elizabeth Kilbreth, Muskie School of Public Service was unsuccessful in securing funds for the Single-Payor Health Plan Study. She had contacted numerous grant-making organizations seeking their financial support but all organizations declined to provide any funds.

ITEM #4: Nomination of Senator Bartlett and Representative Smith to serve as co-vice chairs of the Council of State Government Eastern Regional Conference for 2009

The Chair and Vice-chair of the Legislative Council sent a letter to Council of State Government Eastern Regional Conference (CSG-ERC) nominating Senator Philip Bartlett and Representative Nancy Smith to serve as co-vice chairs of the CSG-ERC Conference for 2009. At the CSG-ERC meeting in Atlantic City this summer, they were voted in as Chair and Vice-Chair. No action was required from the Legislative Council.

ITEM #5: Legislative Council's Orientation Programs and Schedule for 124th Legislature

As part of the planning process for the incoming legislature, the outgoing Legislative Council organizes and holds various orientation activities for newly elected and returning legislators. Historically, these activities include, New Member Orientation and a Pre-Legislative Conference.

The New Member Orientation is a 1-2 day orientation for newly elected members to provide an overview of the Legislature. The Pre-Legislative Conference is a 4-day orientation for newly elected and returning legislators. Other orientation programs sponsored by or authorized by the Legislative Council includes, committee chairs orientation, legislative policy forums, and the economic development bus tours conducted by the Maine Development Foundation.

While each of the orientation sessions has followed a similar format and agenda as for past orientation programs, the Legislative Council is free to tailor the ones for the 124th Legislature to its own preferences and perceived needs of the incoming legislature. Mr. Boulter recommended that a small subcommittee (2-4) of the Legislative Council be established to provide guidance on the scheduling and content of the orientation programs. Such a subcommittee need not meet often but should meet soon to provide guidance as legislative staff prepares schedules and program materials. If a subcommittee is established, the council chair will appoint the subcommittee members.

Upon inquiry of Senator Rosen, Mr. Boulter clarified that the economic development bus tour, and the legislative policy forums are usually funded by the sponsoring entities, not the Legislature.

Motion: That the Legislative Council establish a subcommittee to provide guidance on the scheduling and content of the orientation programs for the 124th Legislature. Motion by Senator Mitchell. Second by Representative Pingree. **Motion passed unanimous (8-0).** [Senator Martin and Representative Tardy absent]

President Edmonds requested that any recommendations for appointment to the subcommittee be forwarded to her as soon as possible.

ITEM #6: Letter from Commission on Governmental Ethics and Election Practices Regarding Holding Information Sessions on Legislative Ethics

Jonathan Wayne, Executive Director of the Ethics Commission, has offered to hold several informational sessions for legislators to discuss legislative ethics issues during the course of the first regular session of the 124th Legislature. This would be in addition to the required ethics training to be held during the Pre-Legislative Conference in December. President Edmonds recommended that this matter be referred to the subcommittee on legislative orientation programs. The other members agreed. No vote was taken on this matter.

ITEM #7: Submission of Tentative Legislative Budget for FY 2010/2011

Maine law requires that the Governor prepare a budget for State Government for the upcoming biennium. It also provides that the Executive Director submit a tentative budget for all legislative accounts. Executive Director Boulter explained that the budget presented in the packet is the legislative's tentative budget for FY2010 - 2011. No action by the Legislative Council is required at this time. The incoming legislature traditionally establishes a budget subcommittee to review the tentative budget and tailors it to its own requirements. Mr. Boulter pointed out that most offices did an excellent job keeping down the discretionary cost increase to a minimum, less than 0.5% increase for All Other.

No action required by the Legislative Council.

President Edmonds then proceeded to Senator Weston's request to discuss unfinished matters from the July 30, 2008 meeting, specifically ITEM #3: *Request for Update on Pilot Project for Computer Automation in House Chamber and Related Council Ballot.*

Senator Weston stated that in spite of her request of the July 30th meeting, she still had not received a copy of the contract entered into by the Speaker and International Roll-Call Corporation (IRC) for further software development that the Speaker said he would distribute. Furthermore, she said there has been no accounting of the \$65,000 transferred by council ballot to the House's technology line. She asked for an explanation of the expenditures and commitments made.

Mr. Boulter replied that he had provided Senator Weston with a copy of the contract with IRC for the "pilot project" approved by the Legislative Council. He also stated that he was not aware of any other contract, and asked Clerk of the House Millie MacFarland whether there was another contract. She replied that there was not another contract.

Senator Weston then asked Ms. MacFarland whether the money (\$65,000) had been spent without a contract and what commitments have been made toward this project. Ms. MacFarland stated that \$65,000 was authorized by Legislative Council ballot for a fund transfer for enhancing and contracting for further enhancements of House operations. She said that although she did not know the exact amount, some of the \$65,000 was for the purchase of "In Design" software to be given to the House Republican office. Senator Weston asked whether the cost of the software was approximately \$200, far less than \$65,000. Ms. MacFarland acknowledged that the software cost was minimal. She further stated that approximately \$8,000 was spent purchasing a new server, two printers and two document scanners to enhance House operations, and \$50,000 was given to IRC for further software development.

Senator Weston asked if the servers, printers and scanners were part of the paperless chamber project. Ms. MacFarland said they were related to the project, but emphasized that the House will not be seeking to purchase laptop computers. Senator Weston then asked if it was standard protocol to proceed to expend money when there was no contract with IRC. Ms. MacFarland said that she would expect that the House will not enter into a contract until the remainder of the project funding has been authorized. Senator Weston asked to see the invoice from IRC for services provided. Ms. MacFarland said she would provide a copy of the invoice to Senator Weston as soon as possible. She said that the House has not committed, in writing or orally, funds to IRC for the project.

Senator Weston reminded the Legislative Council members that the council had authorized a pilot project only, costing \$35,000, but the House evidently has spent more, and without benefit of a contract. President Edmonds commented that the council had authorized the transfer of funds beyond the \$35,000.

Senator Weston then summarized her understanding of the current expenditures: \$50,000 to IRC for further software development and the remainder of the \$65,000 for the purchase of a server, printers, and scanners. She then asked for confirmation that no more money will be expended, and that there have not been any commitments made to commit any more money. Ms. MacFarland said that was correct, but noted that the House will be seeking additional funding to complete the project, the total cost being about \$150,000. The project is fifty percent completed and Ms. MacFarland said that the House will be seeking another \$78,000. Representative Pingree stated that the decision is with the next legislature whether to approve the budget request next session.

ANNOUNCEMENTS AND REMARKS

President Edmonds extended an invitation to the Legislative Council and members of the audience to a reception for Rick McCarthy her Chief of Staff, on Friday, September 26th in the President's office.

Mr. McCarthy has resigned his position with the Maine State Legislature to accept a position in the private sector.

ADJOURNMENT

Motion to adjourn by Speaker Cummings. Second by Senator Mitchell. **Motion passed unanimous (8-0).** [Senator Martin and Representative Tardy absent]

The Legislative Council meeting was adjourned at 2:35 P.M.