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REP. KENNETH W. FREDETTE  
REP. ELEANOR M. ESPLING

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

**LEGISLATIVE COUNCIL  
MEETING SUMMARY  
November 30, 2016  
Approved January 31, 2017**

**CALL TO ORDER**

President Thibodeau called the November 30, 2016 meeting of the Legislative Council to order at 2:22 p.m. in the Legislative Council Chamber.

**ROLL CALL**

Senators: President Thibodeau

Absent: Senator Mason, Senator Cushing, Senator Alfond and Senator Hill

Representatives: Speaker Eves, Representative McCabe, Representative Gideon, Representative Fredette and Representative Espling

Legislative Officers: Heather Priest, Secretary of the Senate  
Robert Hunt, Clerk of the House  
Grant T. Pennoyer, Executive Director of the Legislative Council  
Jackie Little, Human Resource Director  
Marion Hylan Barr, Director, OPLA  
Christopher Nolan, Director, OFPR  
Suzanne Gresser, Revisor of Statutes  
John Barden, Director, Law and Legislative Reference Library  
Kevin Dieterich, Director, Legislative Information Technology

President Thibodeau convened the meeting at 2:22 p.m. with a quorum of members present.

**SUMMARY OF SEPTEMBER 22, 2016 MEETING OF LEGISLATIVE COUNCIL**

**Motion:** That the Meeting Summary for September 22, 2016 be accepted and placed on file. Motion by Representative McCabe. Second by Speaker Eves. **Motion passed unanimous (6-0-0-4, with Senators Mason, Cushing, Alfond, and Hill absent).**

## REPORTS FROM EXECUTIVE DIRECTOR AND COUNCIL OFFICES

### Executive Director's Report

Grant Pennoyer, Executive Director, reported on:

1. Status of Interim Construction Projects

We have wrapped up a busy construction season with the replacement of the State House EPDM roofing over the North and South Wings, the replacement of the State Street sidewalk in front of the State House and plaster repairs of water damage in the House Chamber from previous roof leaks. Work in House Chamber also included upgrading outdated network cables, replacing outdated video cameras and replacing the carpet. The Senate video cameras and system were also upgraded with similar equipment as the House during this interim.

2. Youth in Government Program at the State House

The Youth in Government Program held its annual event at the State House beginning Thursday evening November 10<sup>th</sup> through Sunday, November 13<sup>th</sup>. This year's program went very well.

3. New Member Orientation

The first day of orientation for new members of the 128<sup>th</sup> Legislature was held on Thursday, November 17<sup>th</sup>. We had approximately 40 members attending, including some members with prior service in the Legislature. The Pre-Legislative Conference beginning on Monday, December 5<sup>th</sup> continues this training.

4. Video of Legislative Process

We are currently exploring an option with the University to replace an outdated video of the legislative process. The University has proposed using its Media Studies Program's long-standing capstone course, Service Learning Practicum, as the means to update the video. We are focusing the video primarily on the committee process to keep the project manageable.

5. Copper Reuse Project – Artist Selection Process

The last phase of the copper reuse project is in process. The Maine Arts Commission has sent out a request for proposals based on the guidance developed by the Artist Selection Committee at its September 21<sup>st</sup> meeting.

6. Electric Vehicle Charging Stations

Two electric vehicle charging stations in the Parking Garage have been installed, but remain inoperative pending some final contract negotiations. The estimated implementation date has been delayed until January 1, 2017.

### Fiscal Report

Chris Nolan, Director, Office of Fiscal and Program Review, reported on the following.

#### General Fund Revenue Update

**Total General Fund Revenue - FY 2017 (\$'s in Millions)**

	Budget	Actual	Var.	% Var.	Prior Year	% Growth
October	\$274.9	\$291.2	\$16.3	5.9%	\$280.3	3.9%
FYTD	\$1,146.8	\$1,195.6	\$48.8	4.3%	\$1,140.8	4.8%

General Fund revenue was over budget by \$16.3 million (5.9%) for the month of October and over budget by \$48.8 million (4.3%) for the fiscal year to date. Individual income tax revenues were over budget for the month by \$11.1 million and over budget for the fiscal year to date by \$14.0 million. Final and estimated income tax payments were over budget for October while withholding receipts were essentially on budget. Sales and use taxes were over budget by \$6.0 million for the month and over budget by \$16.4 million for the fiscal year to date. September taxable sales increased 5.7% over last September. Corporate income tax revenue was over budget by \$5.5 million for the month of October and over budget by \$12.9 million for the fiscal year to date. The “other taxes and fees” category was under budget by \$12.7 million for the month, largely the result of the transfer for unorganized property taxes not being made until November. Similarly the “other revenue” category had a positive variance of \$8.2 million for October because tourism and Department of Transportation multimodal fund transfers were not made until early November.

### Highway Fund Revenue Update

Total Highway Fund Revenue - FY 2017 (\$'s in Millions)						
	Budget	Actual	Var.	% Var.	Prior Year	% Growth
October	\$28.0	\$28.3	\$0.3	1.2%	\$27.8	1.7%
FYTD	\$113.9	\$115.8	\$1.9	1.7%	\$114.1	1.5%

Highway Fund revenue was over budget by \$0.3 million (1.2%) for the month of October and over budget by \$1.9 million (1.7%) for the fiscal year to date. Motor fuel taxes were essentially on budget for the month, while motor vehicle registrations and fees were over budget for the month of October by \$0.5 million.

### Cash Balances Update

The average balance in the cash pool in October of \$978.6 million was down from the September average of \$985.3 million but was still well above both last year’s average balance for October and the ten-year average for the month. General Fund internal borrowing from other funds was not needed in October. The average Highway Fund balance of \$41.4 million in October decreased from September’s average of \$44.7 million.

### Revenue Forecast

The Revenue Forecasting Committee is scheduled to meet on November 28<sup>th</sup> to review and update the current revenue forecast to comply with its December 1<sup>st</sup> statutory deadline. A brief summary of its findings will be provided at the Legislative Council meeting.

### Studies Update and Report

Marion Hylan Barr, Director, Office of Policy and Legal Analysis, reported on the status of the Interim Legislative Studies and Committee meetings (please see the attached report). Most of the studies are meeting and work is progressing. One is in the process of drafting its report and one study has its final report complete and the Council will be acting on accepting it under new business during today’s meeting.

## REPORTS FROM COUNCIL COMMITTEES

### 1. Personnel Committee

Speaker Eves reported that the Personnel Committee met on October 27<sup>th</sup> to consider the following items.

1. Discussion regarding Starting Salaries of the Clerk/Secretary

The committee discussed possible approaches to providing some flexibility based on the experience of a candidate at the time of initial appointment and directed Mr. Pennoyer to gather informal input from key stakeholders prior to any potential Personnel Committee or Legislative Council decision.

2. Request for Temporary Disability Benefits for Nonpartisan Employee

The committee considered a request by a legislative employee for temporary disability income benefits. The request was consistent with the provisions for temporary disability income benefits under the Legislative Council's personnel policies and guidelines. Upon the recommendation of the Executive Director, the committee voted unanimously to approve the request. No Legislative Council action is required.

3. Request for Temporary Disability Benefits for Partisan Employee

The committee considered a request by a legislative employee for temporary disability income benefits. The request was consistent with the provisions for temporary disability income benefits under the Legislative Council's personnel policies and guidelines. Upon the recommendation of the Executive Director, the committee voted unanimously to approve the request. No Legislative Council action is required.

4. Step Increase and Annual Evaluation of OPLA Director

The committee reviewed the annual evaluation of and considered a step increase for Director Marion Hylan Barr. The committee voted unanimously to approve this step increase. No action required by the Legislative Council.

5. Step Increase and Annual Evaluation of OFPR Director

The committee reviewed the annual evaluation of and considered a step increase for Director Christopher Nolan. The committee voted unanimously to approve this step increase. No action required by the Legislative Council.

6. Annual Evaluation of Executive Director

The committee reviewed the annual evaluation of Executive Director Grant Pennoyer. No action required by the Legislative Council.

7. Discussion regarding Legislator Attendance

Pursuant to statute, the committee reviewed a draft policy for recording attendance and for reducing legislators' salaries for absences as guidance for the 128<sup>th</sup> Legislature. The committee voted unanimously to give its recommendation to the 128<sup>th</sup> Legislative Council.

8. Review of Legislative Council Harassment Policy

Ms. Little prepared a draft policy for Legislative Council approval. The committee unanimously voted to recommend adoption by the Legislative Council. This item will be discussed further under old business.

9. HR Updates

Ms. Little provided the committee with information regarding the Legislature's new Aspiring Leaders Program, the Nonpartisan Employee Engagement Survey and Nonpartisan Core Values. No action required by the Legislative Council.

**2. State House Facilities Committee**

Senator Mason reported that the State House Facilities Committee met on October 27<sup>th</sup> to consider the following items.

1. Status Report on the Blaine House Landscaping Project

William Lund, Friends of the Blaine House, and Barbara Claudel, Blaine House Director, provided an update on the Blaine House Landscaping Project. Although the project started later than planned, they indicated that project is progressing well.

2. DHHS Secure Forensic Rehabilitation Facility at Riverview

Mr. Pennoyer noted that the Attorney General's Office discovered a previously ignored requirement that the Legislative Council in addition to the Capitol Planning Commission and the Bureau of General Services must approve construction projects in the statutorily defined Capitol Area. As a result, the committee received an overview of the project from representatives of the Bureau of General Services and the Department of Health and Human Services on the proposed construction of a new Secure Forensic Rehabilitation Facility to be located in a parking lot near the Riverview Psychiatric Recovery Center. After a long discussion, the committee recommended unanimously to send this issue to the full Council for discussion under new business on today's agenda.

3. Discussion of audio recording of committee meetings and MPBN *Capitol Connection*

This committee once again continued its discussion of the recording of committee meetings and was unable to reach consensus on a policy for the recording of committee meetings. The committee directed the Executive Director to draft a memo describing the committee's positions and provide options for the Legislative Council to consider. This memo will be reviewed and discussed later under old business on today's agenda.

#### 4. Updates from the Executive Director

Mr. Pennoyer noted that construction for this interim is coming to a close with only some work on the heating system repairs remaining. He also noted that Division of Risk Management made available to the Legislature some matching funds for the costs of preemptive repairs to the problematic State House heating and cooling system, which helped fund the project. Mr. Pennoyer also noted that he is exploring using the Prison Industries Program to repair the damaged wooden yoke of the State's Liberty Bell replica.

### OLD BUSINESS

#### **Item #1: Revision to the *Legislative Council Policy on Harassment***

Mr. Pennoyer presented a new revision to the *Legislative Council Policy on Harassment*. This is to make this separate policy in keeping with the updates to the Personnel Policy and Guidelines that were just approved. This is a separate policy from the personnel policies as it applies to the entire Legislature not just the staff. Representative Fredette questioned about the process for appeals under this policy, since it is not spelled out in the policy. Ms. Little explained that appeals are covered within the Personnel Policy and Guidelines and the collective bargaining agreement.

**Motion:** That the Legislative Council table this item for a future date. Motion by Representative Fredette. Second by Speaker Eves. **Motion passed unanimous (6-0-0-4,** with Senators Mason, Cushing, Alford, and Hill absent).

#### **Item #2: Recording and Archiving of Committee Audio Files**

Mr. Pennoyer brought the attention of the members to a memo summarizing the status of the State House Facilities Committee's discussions of the policy regarding recording and archiving of committee audio files and options for proceedings. Mr. Pennoyer explained that the members of the State House Facilities Committee were unable to reach consensus on this issue and noted the options for implementing a policy regarding committee audio files included in the memo.

**Motion:** That the Legislative Council table this item for a future date. Motion by Representative McCabe. Second by Representative Fredette. **Motion passed unanimous (6-0-0-4,** with Senators Mason, Cushing, Alford, and Hill absent).

#### **Item #3: Council Actions Taken by Ballot**

##### **Decision by Legislative Council Ballot:**

**Motion: That the Legislative Council approve the Legislative Document Service for the First Regular Session of the 128<sup>th</sup> Legislature proposed by the Clerk of the House**

Motion by: President Thibodeau  
Approved: November 18, 2016  
Vote: 10-0 in favor

Second by: Speaker Eves

**NEW BUSINESS****Item #1: Approval of New Construction in the Capitol Area by the Legislative Council – DHHS  
Secure Forensic Rehabilitation Facility**

Mr. Pennoyer presented a requirement in statute that had previously been overlooked that require the Legislative Council to approve new construction in the statutorily defined Capitol Area. This requirement was discovered by the Attorney General before the final approval of the proposed construction of a new secure forensic rehabilitation facility near the Riverside Psychiatric Center, therefore, the Legislative Council needs to provide final approval of this new construction proposal that has received all other approvals required.

**Motion:** That the Legislative Council table this item for a future date. Motion by Representative McCabe. Second by Representative Gideon. **Motion Failed (5-1-04,** with Senators Mason, Cushing, Alford, and Hill absent).

Rep. Fredette stated his understanding that this project has been approved and is ready to go forward pending the approval by the Legislative Council and if not approved by Legislative Council this project could be built elsewhere.

Ricker Hamilton, Deputy Commissioner for Programs, Department of Health and Human Services was invited to present some information about the project. He explained that this is not a new service on the East Campus, it was provided by contracted services in the past, and confirmed Rep. Fredette's understanding that Governor could look elsewhere should the Legislative Council not approve the project.

Rep. Gideon stated that there is a desire by members of both parties to build a step-down facility and proposed tabling this so that returning members of the Legislative Council and the Governor can have a conversation about how we make this happen quickly in the committees of jurisdiction.

In response to questions from Rep. Fredette, Mr. Hamilton said that this facility would be built on the existing site and that the consequences of not approving this project would be significant. The lack of this facility was cited as one of the top issues identified by CMS for the decertification of Riverview Psychiatric Center and it is important for the whole mental health system. He also stated that the funding for this project is available from existing sources, which is estimated to be a little more than \$3 million of construction and \$2.6 million for services depending on the outcome of a request for proposals. He also noted moving the patients from acute beds to this facility would result in savings. He also noted that its proximity to the Riverview Psychiatric Center and the ability to coordinate with forensic services and psychiatrists and staff there were the reasons for recommending the proposed location.

In response to Rep. McCabe questions about the funding and if from existing sources what is not being done and will the funding continue, Mr. Hamilton explained that the \$3.5 million of construction costs were coming from: \$655,000 from mental health General Funds; \$900,000 in unspent funds; \$500,000 from funds that were not obligated; and the remaining from the journaling of expenditures to a federal grant for case management. These are one-time sources of funding that involved no cuts to services. For the ongoing costs of \$2.6 million for services, \$1 million from mental health General Fund, \$550,000 from the unused Consent Decree funding, and \$1 million of the \$1.4 million appropriated annually for forensic patients.

Rep. Gideon and Speaker Eves noted their preference of a public process with the committees of jurisdiction in January. In response, Mr. Hamilton stressed that the Legislative Council needs to vote today and that as far as he is willing to go with his commitment. Rep. Fredette indicated that if this project is not approved, that the department will go in another direction as the Governor has the authority.

Rep. Gideon noted that action would be sad and that it doesn't have to go that route and she listed out a series of questions that needed to be answered about the funding, the provider of the services, the licensing and regulation of the facility and the oversight by the Court Master and advocates that were included in a letter from the policy committees to the department that the department indicated it was too busy to answer

Mr. Hamilton indicated that the questions were answered and noted the costs of not approving this project.

John Blais of the Bureau of General Services explained the current RFP for this project produced a very favorable outcome with the successful bidder coming in \$1,000,000 lower than other bidders and that having to go through the RFP process again would up the project costs. A new site would also mean additional costs to go through a whole new set of permitting.

Rep. Espling asked if the permitting processes were public processes and Mr. Blais confirmed that they were public.

**Motion:** That the Legislative Council approve the request of new construction in the Capitol Area. Motion by Representative Fredette. Second by Representative Espling.  
**Motion failed (3-3-0-4, with Senators Mason, Cushing, Alford, and Hill absent).**

The Chair asked Mr. Pennoyer if the tabling motion required 6 votes. Mr. Pennoyer responded that pursuant to the Legislative Council's Rules of Procedure that the 6-vote requirement does apply to the tabling motion. The Chair explained that a tabling motion was not necessary as the previous motion to approve the project failed and that the council could move on.

The table motion by Rep. McCabe, second by Speaker Eves was withdrawn.

Rep. Fredette proposed a new motion of approving the project conditioned on the Department of Health and Human Services coming before a joint meeting of the Committee on Appropriations and Financial Services and the Committee on Health and Human Services to answer questions about the project in January.

In response to a question to clarify the motion, Rep. Fredette explained that his motion would give the department the authority to proceed today and it would require the department to come before the committees to answer questions and give the Legislature its proper ongoing oversight role. Rep. Fredette also noted a long list of projects that had been approved in the Capitol Area without Legislative Council approval.

**Motion:** That the Legislative Council approve the request of new construction in the Capitol Area on condition that DHHS participate with the AFA and HHS committees. Motion by Representative Fredette. Second by Representative Espling. **Motion failed (3-3-0-4, with Senators Mason, Cushing, Alford, and Hill absent).**



**Item #2: Acceptance of the Final Report of the Working Group to Study Background Checks for Child Care Facilities and Providers**

**Motion:** That the Legislative Council accept the Final Report of the Working Group to Study Background Checks for Child Care Facilities and Providers and place it on file. Motion by Representative Gideon. Second by Representative McCabe. **Motion passed unanimous (6-0-0-4**, with Senators Mason, Cushing, Alford, and Hill absent).

**Item #3: Acceptance of the Washington County Development Authority's Annual Report**

**Motion:** That the Legislative Council accept the Annual Report of the Washington County Development Authority and place it on file. Motion by Representative McCabe. Second by Speaker Eves. **Motion passed unanimous (6-0-0-4**, with Senators Mason, Cushing, Alford, and Hill absent).

**Item #4: Acceptance of the Loring Development Authority of Maine's Annual Report**

**Motion:** That the Legislative Council accept the Annual Report of the Loring Development Authority of Maine and place it on file. Motion by Speaker Eves. Second by Representative Gideon. **Motion passed unanimous (6-0-0-4**, with Senators Mason, Cushing, Alford, and Hill absent).

**ANNOUNCEMENTS AND REMARKS**

With no other business to consider or further announcements, the Legislative Council meeting was adjourned at 3:50 p.m.