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SEN. DEBRA D. PLOWMAN
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REP. EMILY ANN CAIN
REP. ANDRE E. CUSHING III
REP. TERRY HAYES

125TH MAINE STATE LEGISLATURE
LEGISLATIVE COUNCIL

MEETING SUMMARY
April 24, 2012
Approved June 28, 2012

CALL TO ORDER

Legislative Council Chair, Senate President Raye called the April 24, 2012 Legislative Council meeting to order at 3:18 p.m. in the Legislative Council Chamber.

ROLL CALL

Senators: President Raye, Senator Courtney, Senator Plowman, Senator Hobbins and Senator Alfond

Representatives: Speaker Nutting, Representative Curtis, Representative Cushing and Representative Cain

Absent: Representative Hayes

Legislative Officers: Heather Priest, Clerk of the House
David Madore, Assistant Secretary of the Senate
David E. Boulter, Executive Director
Rose Breton, Legislative Finance Director
Debra Olken, Human Resources 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
Beth Ashcroft, Director, Office of Program Evaluation and Government Accountability

Senate President Raye convened the meeting at 3:18 p.m. with a quorum of members present.

SUMMARY OF MARCH 22, 2012 MEETING OF LEGISLATIVE COUNCIL

Motion: That the Meeting Summary of March 22, 2012 be accepted and placed on file. Motion by Senator Courtney. Second by Representative Emily Cain. **Motion passed (9-0-0-1,** with Representative Hayes absent).

REPORTS FROM EXECUTIVE DIRECTOR AND COUNCIL OFFICES

Executive Director's Report

David Boulter, Executive Director, reported on the following:

1. Robert Indiana Painting, *First State*

The painting, *First State*, now hangs in the 2nd floor entrance atrium to the Cross Building consistent with the earlier decision by the Legislative Council. Numerous positive comments have been received on this new location for the painting. Mr. Boulter is waiting for formal approval from the artist's representative for the placement. Steps are being taken to provide appropriate security for the painting.

2. State House Fire Detection System

Earlier this month, 39 smoke detectors were replaced with heat detectors in key areas of the State House, notably where kitchenettes or food preparation equipment are located. The change in equipment should reduce or eliminate false fire alarms triggered by burned food (such as popcorn) and was recommended by the sprinkler system consultants who tested and repaired the State House fire suppression system earlier this year.

Fiscal Report

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

Revenue Update

Total General Fund Revenue - FY 2012 (\$'s in Millions)

	Budget	Actual	Var.	% Var.	Prior Year	% Growth
March	\$199.3	\$226.5	\$27.3	13.7%	\$203.9	11.1%
FYTD	\$1,883.9	\$1,918.9	\$35.0	1.9%	\$1,884.6	1.8%

General Fund revenue was \$27.3 million (13.7%) over budget in March and was \$35.0 million over budget through 3 quarters of FY 2012. The variances are relative to the Revenue Forecasting Committee's (RFC) March revenue forecast and new monthly distribution. March revenue also includes \$13.8 million of General Fund revenue that was received in January, but not recorded as revenue in the State's accounting system. The related revenue sharing transfers from January's revenue recorded in March will increase by \$0.7 million in April decreasing the net effect of this revenue issue to \$13.1 million.

The 2 most significant positive variances were in the Sales and Use Tax and the Corporate Income Tax, which were over budget in March by \$9.1 million and \$13.7 million, respectively. These 2 categories included the largest increases from January's revenue adjustment (\$6.6 million and \$5.2 million, respectively). Lottery revenue also had a very good month in March (\$0.7 million over) due to the record Mega Millions jackpot in the last week of March.

Highway Fund Revenue Update

Total Highway Fund Revenue - FY 2012 (\$'s in Millions)

	Budget	Actual	Var.	% Var.	Prior Year	% Growth
March	\$24.3	\$23.2	(\$1.1)	-4.5%	\$23.4	-0.8%
FYTD	\$218.3	\$217.9	(\$0.4)	-0.2%	\$214.2	1.7%

Highway Fund revenue was \$1.1 million (4.5%) under budget in March and \$0.4 million (0.2%) for the first 3 quarters of FY 2012. Substantial Gasoline Tax negative revenue variances are the primary source of overall Highway Fund negative variance. With gasoline prices at roughly \$4 per gallon, consumers are responding by adjusting their driving habits. The RFC will likely make another downward adjustment to Gasoline Tax estimates when it meets at the end of April.

Revenue Forecasting Committee

The RFC will be meeting on April 30th to discuss the effect of January revenue adjustment. The timing is such that the RFC can respond to preliminary data on April's individual income tax processing.

MaineCare Spending Update

MaineCare weekly cycle payments remain volatile. The latest week reported, week #40, was the lowest in FY 2012 at \$28.5 million, substantially below the average and lowered the weekly average for FY 2012 to \$43.9 million down from \$44.5 million through week #39. A report on the dollar impact of the eligibility status issues will be presented to the Appropriations Committee on April 26th.

Status Report on Bills Presented to Governor

Suzanne Gresser, Revisor of Statutes, reported on the status of bills that were presented to the Governor, and provided an overview of the line item veto procedure.

Between the Legislature's recess on April 14th and April 24th, 24 bills were signed into law, 5 became law without the Governor's signature and 2 were vetoed. Of the 24 bills, the Governor line item vetoed portions of one bill and signed the remainder into law. That legislation will be chaptered by the Revisor's office and will have an effective date of April 24th. Ms. Gresser also went on to explain various effective dates. If an emergency bill becomes law without the Governor's signature, the effective date is 10 days after it was presented to the Governor. If a non-emergency bill becomes law without the Governor's signature, as with other non-emergency bills, it takes effect on the general effective date, which will be 90 days after adjournment sine die. In response to a question from Senator Courtney, Ms. Gresser explained that bond questions are presented to the Governor for signature. In order to pass the legislature before being presented to the Governor, bond questions, unlike emergency legislation, require a vote of 2/3 of the membership present and voting. With emergency legislation, the requirement is 2/3 of the entire elected membership of the body.

REPORTS FROM COUNCIL COMMITTEES

1. Personnel Committee

President Raye, Chair of the Personnel Committee, offered the following report. The Personnel Committee met April 24, 2012 to consider 2 items:

The committee received a briefing on a confidential personnel issue related to a legislative employee. No action was required by either the committee or the Legislative Council.

The committee considered a request by OPEGA Director Ashcroft for approval to establish a new, limited period principal analyst position in OPEGA to assist with meeting the workload of the office. The position would be part-time, a maximum of 24 hours per week, and would terminate in June 2013. Funds to pay for the costs of the position would come from unspent funds in the OPEGA budget, by various line transfers. The committee voted to recommend that the Legislative Council authorize the temporary position subject to certain conditions.

Motion: That upon the recommendation of the Personnel Committee, the Legislative Council authorize the establishment of a limited period part-time position of Principal Analyst at Grade 12 of the Legislature's salary schedule, up to 24 hours per week and ending on June 7, 2013; and further that the Legislative Council authorize the Legislative Finance Director, Office of the Executive Director, in consultation with the OPEGA Director, to make all necessary budget adjustments, including transfers of unencumbered balances and transfers from All Other to Personal Services lines in OPEGA accounts, with costs to fund the position totaling approximately \$99,524 in Personal Services and \$10,000 in All Other, all within existing funds. The position is not authorized to be established or continued in the next biennium. Motion by President Raye. Second by Representative Cain. **Motion passed (9-0-0-1, with Representative Hayes absent).**

2. State House Facilities Committee

Senator Courtney, Chair of the State House Facilities Committee, presented the following report. The State House Facilities Committee met April 24, 2012 to consider 2 facility-related items:

Draft Legislative Policy on the Use of Capitol Park

Mr. Boulter presented the committee with a draft Legislative Council policy on the use of Capitol Park for its consideration. The draft policy would establish standards and guidelines for use of Capitol Park. It would also codify long-standing practices that govern use of the park and establish, with specificity, allowed and prohibited activities. The Legislative Council has jurisdiction over Capitol Park and is empowered to set standards for its use.

The committee did not take action on the draft policy and invited review of the policy by all members of the Legislative Council. It anticipates making a recommendation on the proposal in May after it meets again to discuss the policy in detail. No action by the Legislative Council is required at this time. A copy of the draft policy will be distributed to all Legislative Council members.

The 2012 plan for maintenance and improvements to State House and Grounds

The committee reviewed the various maintenance and improvements projects proposed for this year, including roof and safety inspections, paver sealant, stairs and pavement inspection and minor repairs, painting and cosmetic upgrades in public areas of the building, continued restoration of paths and other improvements to Capitol Park, and cosmetic repairs at the high dome. The committee also discussed installation of video cameras in 3 committee rooms that would broadcast committee proceedings. It also discussed replacement of 1 or more of the doors at the West entrance to the State House. The committee voted unanimously to recommend approval of the proposed plan, with 2 exceptions: in lieu of implementing the 2 video camera projects and the door replacement, it felt that an assessment and conceptual design should be conducted that would afford the council a better sense of the design issues, feasibility and costs to implement those projects. It was felt that implementation of those projects at this time would be premature. The assessments and conceptual designs would be made available for consideration by this or the Legislative Council of the 126th Legislature.

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 2012 revision of the Multi-Year Plan, except that Projects 12.1 and 12.4 relating to installing video broadcasting capability in three committee rooms be deferred and reconsidered in the future; further, authorize the Executive Director to take all necessary measures to implement the plan in accordance with the schedules contained in the plan; and further, authorize the Executive Director to conduct an assessment and develop a conceptual design for installation of video broadcasting in the Appropriations Committee room and conduct an assessment, including cost options, for replacing 1 or more West entrance doors in the State House (Project 13.3). Motion by Senator Courtney. Second by Senator Alfond. **Motion passed (9-0-0-1**, with Representative Hayes absent).

OLD BUSINESS

Item #1: Legislative Council Actions Taken by Ballot

A. LR 2880 RESOLVE, Authorizing the Executive Department to Facilitate the Closure of the Maine Energy Recovery Facility in Biddeford by Negotiating the Transfer of the Juniper Ridge Landfill and Requiring Other Actions to Improve Recycling

Submitted by: Senator Barry Hobbins
Approved: April 3, 2012 Vote: 6 - 4 in favor

B. LR 2881 An Act to Allow the Town of Fort Kent to Adopt the Definition of Original Assessment Value for a Downtown Tax Increment Financing District

Submitted by: Representative John Martin
Approved: April 4, 2012 Vote: 8 - 2 in favor

C. LR 2882 An Act to Encourage Responsible Teen Driving

Submitted by: Senator William Diamond
Approved: April 4, 2012 Vote: 8 - 2 in favor

No further action by the Legislative Council was required.

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

The Legislative Council took no action on the 12 bill requests and 2 joint resolutions on the agenda.

Item #2: Proposed Policy on Security Screening Protocols for the Maine State House

Mr. Boulter reminded the Legislative Council members that security screening was initiated in January 2012 and has been operational in the State House for 3 months. Mr. Boulter felt that overall, the screening procedures have been implemented fairly smoothly, and adjustments have been made as needed to improve operations.

There are two areas where attention is needed to improve security screening operations. The first is the physical layout of the lobby where screening occurs. No changes were made to the layout of the lobby prior to the beginning of screening operations, the thinking being that the Legislative Council could gain a better sense of what changes to the layout are needed once the screening had been operational for a legislative session. The second area is establishing security screening protocols to guide screening personnel. Mr. Boulter felt that guidance from the Legislative Council, as the governing body of the Legislature, is appropriate at this time, so Capitol Police is given clear and consistent guidance in terms of what and how security protocols are to be implemented. It also would allow certain protocols to differ from the standard TSA protocols that are used in airports while still being protective of the public. Mr. Boulter stated that he reviewed the proposed policy with the Chief of Capitol Police and with the Commissioner of Public Safety, received their comments, and made changes as appropriate. Mr. Boulter then explained the key provisions of the proposed policy.

He made special mention of the section of the policy that exempts certain persons including legislators and legislative employees from undergoing security screening. He also drew members' attention to a limited exception from screening for school groups, children under the age of 12 and adults over the age of 75. Lastly, Mr. Boulter explained the provisions of the policy that provide for members of the media to be "credentialed." These provisions were generally based on those adopted by the Gallery of Congress.

Speaker Nutting asked about the prohibition of certain items. He noted that pocket or other very small knives were not listed. Chief of Capitol Police Gauvin responded by saying that he considered all knives, including pocket knives, to be "weapons" and while there is some discretion, he generally considers them to be prohibited.

Senator Alfond inquired about exempting lobbyists from the security screening measures. Mr. Boulter explained that under the proposed policy registered lobbyists as well as other lobbyists would not be exempted. Senator Alfond commented that the Legislative Council may want to consider exploring the option of creating an exemption for registered lobbyists.

President Raye commented that the policy was comprehensive and well done, but suggested one change to Section VII, that being adding the Governor's spouse as being allowed to enter the State House upon his or her personal recognizance without undergoing security screening measures.

Motion: That the Legislative Council adopt the Policy on Security Screening Protocols for the Maine State House as amended to include reference to the Governor's spouse in Section VII and direct the Executive Director to take all necessary measures to implement the policy, and transmit a copy of the policy to the Chief of Capitol Police and to the Secretary of State's office as provided by law. Motion by Senator Plowman. Second by Representative Cushing. **Motion passed (9-0-0-1, with Representative Hayes absent).**

Item #3: Request to Display Fenway Park Banner on State House

Mr. John Delahanty, Esq. of Pierce Atwood, representing the Red Sox ownership group, presented a request that a large banner (approximately 28' x 25') commemorating the 100th anniversary of Fenway Park in Boston be hung from the 3rd floor porch of the State House. Mr. Delahanty explained that the banner is now hung from the Massachusetts State House in Boston and the Red Sox ownership group is seeking to display the banner for a limited period from each State House in New England, home of the "Red Sox Nation." Mr. Delahanty drew Legislative Council members' attention to his letter that was in the council's packet. He stated that Fenway Park occupies a special place in baseball for thousands of Mainers, and he hoped that the banner could be displayed in recognition of that, and furthermore perhaps the Legislature could pass a Special Sentiment that would recognize Fenway Park's unique place in baseball history.

Speaker Nutting stated that while he is a long-term, long-suffering Red Sox fan, he was concerned about setting a precedent of displaying banners at the State House, noting that to his knowledge, only the United States and Maine flags, never banners, have been displayed from the State House. He noted that there are likely many worthy organizations, groups, facilities or alumni who would be interested in displaying their banner to give recognition to their cause or group. He said he would be very hesitant to begin the practice of allowing organizations to place banners on the state capitol.

In response to an inquiry by a member of the Legislative Council, Mr. Delahanty answered that although requests have been made, he was not aware of any other capitol in New England (other than Massachusetts' Capitol) that has agreed to display the banner.

Senator Courtney suggested that having a higher threshold for Legislative Council decisions on hanging banners, such as a unanimous vote, may be a way of limiting banner displays to truly worthy ones. Senator Plowman suggested an alternative location might be more appropriate such as on the lawn or at the Blaine House.

Representative Cain shared Speaker Nutting's concerns about the precedent, and suggested that an alternative location such as in the Hall of Flags might be more appropriate. She asked about the proposed duration of the display. Mr. Delahanty responded that there is no specific time frame, but hoped it could be displayed in April, May or June.

Speaker Nutting added that a basic objection he has to the proposal is the commercial aspect; even though Fenway Park is a popular attraction, the banner would be advertising a commercial entity on the State House, and the Speaker is reluctant to set that precedent.

Senator Alford then suggested that in light of the members' questions, that no other state has acted on the request, and that an immediate decision is not required, the request be tabled and the Legislative Council consider the matter again at a meeting in May or June. There was general agreement to this approach.

Motion: That the Legislative Council table the request to display a Fenway Park commemorative banner on the State House to a future meeting of the Legislative Council. Motion by Senator Hobbins. Second by Representative Cushing. **Motion passed (9-0-0-1,** with Representative Hayes absent).

Item #4: Suggested Protocol for Considering Proposed Legislative Studies and

Item #5: Consideration of Proposed Legislative Studies and Study Table

Ms. Hylan Barr, Director of OPLA, reviewed the suggested protocol for considering proposed legislative studies. She summarized it as follows:

- The Legislative Council will review study requests alphabetically by policy area.
- Voting will be by a show of hands, and each Legislative Council member's vote on each bill will be recorded. The record of each vote will be made available for public inspection following the meeting. A 2/3rds majority is required to authorize any study reporting to a subsequent Legislature.
- Committee chairs and others are welcome to observe the council's deliberations on the study requests, but discussion of the requests will be confined to council members. However, Legislative Council members may ask questions of committee chairs and other legislators regarding the proposed study if needed.
- Unless otherwise specified by the Legislative Council, authorized studies are to be drafted consistent with applicable standards and policies approved by the Council. Floor amendments to authorized studies making Council-authorized changes will be prepared in the name of the Senate Majority Leader, except for studies tabled in the House which will be in the name of the House Majority Leader.

The Legislative Council agreed to the suggested protocol and proceeded to consider and decide the requests for studies.

Ten (10) legislative study requests were reviewed and decided by the Legislative Council. The decisions of the Legislative Council are attached.

ANNOUNCEMENTS AND REMARKS

None

The Legislative Council meeting was adjourned at 4:58 p.m. on a motion by Senator Courtney, seconded by Representative Cain. **Motion passed (9-0-0-1,** with Representative Hayes absent).

**LEGISLATIVE COUNCIL ACTION ON
AFTER DEADLINE REQUESTS TO INTRODUCE LEGISLATION
SECOND REGULAR SESSION, 125th LEGISLATURE
As of: April 24, 2012**

		Action
SPONSOR: LR 2866	Sen. Brannigan, Joseph C. Resolve, To Require the Office of Program Evaluation and Government Accountability To Conduct an Independent and Internal Audit of the Operations of the Department of Health and Human Services	TABLED 3/22/12
SPONSOR: LR 2747	Rep. Cebra, Richard M. An Act To Enact the Liberty Preservation Act	TABLED 02/23/12
SPONSOR: LR 2836	Rep. Clark, Herbert E. An Act To Allow the Town of Millinocket To Sue the State To Recover the Full Amount Due to Millinocket Due to a Sudden and Severe Disruption of Valuation	TABLED 3/22/12
SPONSOR: LR 2319	Sen. Courtney, Jonathan T. E. An Act To Change Certain Effective Dates Regarding Guaranteed Access and the Purchase of Health Insurance from outside Maine	TABLED 11/01/11
SPONSOR: LR 2709	Rep. Cushing, III, Andre E. An Act To Improve the Accountability of Government Officials	TABLED 01/26/12
SPONSOR: LR 2665	Sen. Goodall, Seth A. An Act To Update the Laws Concerning Defects in Real Estate Transfers	TABLED 01/26/12
SPONSOR: LR 2772	Sen. Jackson, Troy D. An Act To Make the Forest Management and Harvest Plan Public Record	TABLED 02/23/12
SPONSOR: LR 2808	Rep. Knight, L. Gary An Act To Completely Exempt the Property of Houses of Religious Worship from Taxation	TABLED 3/22/12
SPONSOR: LR 2339	Rep. Maloney, Maeghan An Act To Limit Taxes on Pensions	TABLED 11/01/11

SPONSOR: **Rep. Martin, John L.** **TABLED 11/01/11**
LR 2535 An Act To Repeal the Authority for an Insurer To Vary
the Premium Rate Based on Geographic Area

SPONSOR: **Rep. Prescott, Kerri L.** **TABLED 3/22/12**
LR 2817 An Act To Allow the Use of Tax Increment Financing
Revenue To Fund School Costs in Brunswick and
Topsham

SPONSOR: **Sen. Raye, Kevin L.** **TABLED 11/01/11**
LR 2618 An Act To Clarify Municipal Budget Requirements within
an Alternative Organizational Structure

JOINT RESOLUTION

SPONSOR: **Rep. Knight, L. Gary** **TABLED 3/22/12**
LR 2871 JOINT RESOLUTION MEMORIALIZING THE
CONGRESS OF THE UNITED STATES TO ADOPT
THE MARKETPLACE FAIRNESS ACT

JOINT RESOLUTION

SPONSOR: **Sen. Sherman, Roger L.** **TABLED 3/22/12**
LR 2843 JOINT RESOLUTION MEMORIALIZING THE
UNITED STATES CONGRESS TO ADDRESS THE
ISSUE OF SALE AND DISTRIBUTION OF MEAT
AND POULTRY

ERRATA SHEET 6-28-12

**LEGISLATIVE COUNCIL ACTION ON
PROPOSED LEGISLATIVE STUDIES AND
INTERIM MEETINGS OF JOINT STANDING COMMITTEES
SECOND REGULAR SESSION, 125th LEGISLATURE**

As of: April 24, 2012

		Action
LD 1756	State Council for Juvenile Supervision (on-going)	PASSED
	OPLA Staff Study on Creation of a Sewer District Enabling Law	PASSED
LD 1705	Task Force on the Prevention of Sexual Abuse of Children	PASSED
LD 1884	Commission to Study Allocations of the Fund for a Healthy Maine	PASSED
LD 1810	Committee on Regulatory Fairness	TABLED
LD 1675	Response Team to Facilitate the Redevelopment of Unoccupied Mills and Other Unoccupied Buildings	PASSED
LD 1897	Commission to Develop a Competitive Bidding Process for the Operation of Additional Casinos or Slot Machines in the State	PASSED
LD 1830	Interim Meetings of the Joint Standing Committee on Agriculture, Conservation and Forestry on the Establishment of the Department of Agriculture, Conservation and Forestry	PASSED
LD 958	Joint Standing Committee on Education and Cultural Affairs' Review of the Contract for an Independent Review of the Essential Programs and Services Funding Act	PASSED
LD 1882	Interim Meeting of the Joint Standing Committee on Veterans and Legal Affairs on Establishing a Presidential Primary	PASSED