

REP. RYAN FECTEAU
CHAIR

SEN. TROY D. JACKSON
VICE-CHAIR

EXECUTIVE DIRECTOR
SUZANNE M. GRESSER



130TH MAINE STATE LEGISLATURE
LEGISLATIVE COUNCIL

SEN. ELOISE A. VITELLI
SEN. MATTHEA E. DAUGHTRY
SEN. JEFFREY L. TIMBERLAKE
SEN. MATTHEW POULIOT
REP. MICHELLE DUNPHY
REP. RACHEL TALBOT ROSS
REP. KATHLEEN R.J. DILLINGHAM
REP. JOEL STETKIS

**October 7, 2021
12:00 NOON**

REVISED AGENDA

<u>Page</u>	<u>Item</u>	<u>Action</u>
	CALL TO ORDER	
	ROLL CALL	
1	SUMMARY OF THE SEPTEMBER 23, 2021 MEETING OF THE LEGISLATIVE COUNCIL	Decision
	REPORTS FROM EXECUTIVE DIRECTOR AND STAFF OFFICE DIRECTORS	
	None	
	REPORTS FROM COUNCIL COMMITTEES	
	None	
	OLD BUSINESS	
Item #1	Review of recent federal regulations affecting lobster industry	Discussion
Item #2	Executive Session—Discussion of pending or contemplated litigation regarding federal regulations affecting lobster industry	
	NEW BUSINESS	
	None	
	ANNOUNCEMENTS AND REMARKS	
	ADJOURNMENT	

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130TH MAINE STATE LEGISLATURE
LEGISLATIVE COUNCIL

**LEGISLATIVE COUNCIL
MEETING SUMMARY
September 23, 2021**

CALL TO ORDER

Speaker Fecteau called the September 23, 2021 meeting of the 130th Legislative Council to order at 2:06 p.m.

ROLL CALL

Senators: President Jackson, Senator Vitelli, Senator Daughtry, Senator Timberlake and Senator Pouliot

Representatives: Speaker Fecteau, Representative Dunphy, Representative Talbot Ross, Representative Dillingham and Representative Stetkis

Legislative Officers: Suzanne Gresser, Executive Director of the Legislative Council
Darek Grant, Secretary of the Senate
Rob Hunt, Clerk of the House
Ed Charbonneau, Revisor of Statutes
Chris Nolan, Director, Office of Fiscal and Program Review
Danielle Fox, Director, Office of Policy and Legal Analysis
Nik Rende, Director, Office of Legislative Information Technology
Dawna Lopatosky, Legislative Finance Director
Jackie Little, Human Resources Director

Speaker Fecteau convened the meeting at 2:06 p.m. with a quorum of members present.

SUMMARY OF June 24, 2021 MEETING OF LEGISLATIVE COUNCIL

Motion: That the Meeting Summary for June 24, 2021 be accepted and placed on file. Motion by Senator Daughtry. Second by Rep. Dunphy. **Motion passed unanimously (10-0-0-0).**

REPORTS FROM EXECUTIVE DIRECTOR AND COUNCIL OFFICES

Fiscal Report

Chris Nolan, Director, Office of Fiscal and Program Review, presented the following report.

1. General Fund Revenue Update

Total General Fund Revenue - FY 2021 (\$'s in Millions)						
	Budget	Actual	Var.	% Var.	Prior Year	% Change
August	\$360.0	\$402.4	\$42.4	11.8%	\$332.8	20.9%
FYTD	\$689.9	\$767.9	\$77.9	11.3%	\$587.9	30.6%

General Fund revenue was over budget by \$42.4 million (11.8%) for the month of August and over budget by \$77.9 million (11.3%) for the fiscal year to date.

Sales and use tax revenue for August (July sales) was over budget by \$23.3 million (13.2%) for the month and by \$54.1 million (15.6%) for the fiscal year to date. Individual income tax revenue was over budget by \$11.1 million (7.0%) for the month and by \$7.0 million (2.3%) for the fiscal year to date, with positive variances in individual income tax withholding and other payments partially offset by income tax refunds exceeding budgeted amounts (negative impact on revenue). Corporate income tax revenue was over budget by \$2.7 million for the month and by \$16.7 million for the fiscal year to date, a combination of positive variances in corporate income tax payments and estimated payments.

2. Highway Fund Revenue Update

Total Highway Fund Revenue - FY 2021 (\$'s in Millions)						
	Budget	Actual	Var.	% Var.	Prior Year	% Change
August	\$32.4	\$33.2	\$0.8	2.4%	\$31.3	6.2%
FYTD	\$62.7	\$64.3	\$1.6	2.5%	\$60.0	7.0%

Highway Fund revenue was over budget by \$0.8 million (2.4%) for the month of August and over budget by \$1.6 million (2.5%) for the fiscal year to date.

Motor vehicle registrations and fees were over budget by \$0.5 million for the month and by \$0.7 million for the fiscal year to date. Fuel taxes were over budget by \$0.1 million for the month and by \$0.3 million for the fiscal year to date.

3. Cash Balances Update

The average balance in the cash pool for August was \$3,774.8 million, a decrease from July's average of \$3,818.1 million. The decrease included a decrease in the General Fund balance as a result of the timing of FY 2021 closing transactions. The average Highway Fund balance in August was \$59.0 million, a decrease from July's average of \$69.8 million, reflecting normal construction season variances.

4. Fiscal Year 2021 Closing

The FY 2021 closing General Fund balance totaled \$520.3 million, \$155.3 million of which was budgeted and \$365.1 million was unbudgeted. The \$365.1 million not budgeted included \$349.6 million in General Fund revenue surplus, \$6.7 million in unbudgeted lapsed program balances and \$8.7 million in lapsed encumbrances and other accounting adjustments. Transfers under what is known as the "cascade" are made from the unbudgeted

surplus only. That surplus was enough to make all \$86.5 million of the fixed dollar transfers provided for under current law. Of the remainder of the unbudgeted surplus 80% (\$223.6 million) was distributed to the Maine Budget Stabilization Fund and 20% (55.9 million) was distributed to Highway Bridge and Capital. The distribution to the Maine Budget Stabilization Fund brought the balance of that fund to \$491.9 million. The table below summarizes the sources and uses of FY 2021 unbudgeted unappropriated surplus funds.

Studies Report

Danielle Fox, Director, Office of Policy and Legal Analysis, reported that most of the studies that were enacted or passed in the First Regular and First Special Sessions do not become effective until October 18, 2021 (the general effective date), and as a result, the majority of the studies are not yet effective. Ms. Fox reported that, nonetheless, appointments are being made, and planning is underway on many of those studies. The Ms. Fox reported that several of the studies that are in effect have begun holding meetings, and several Joint Standing Committees have held interim meetings. Ms. Fox expects to provide additional detail in her report to the Legislative Council at next month's meeting, which will occur after the general effective date.

REPORTS FROM COUNCIL COMMITTEES

Personnel Committee

Speaker Fecteau reported that the Personnel Committee met on Thursday, August 5, 2021 and Thursday, September 23, 2021 to consider the following matters:

1. Collective Bargaining

At its meeting on August 5, 2021, the committee provided guidance to Ms. Gresser and Ms. Little related to collective bargaining. At its subsequent meeting on September 23, 2021, the committee received an update from Ms. Gresser related to this matter.

This item will be discussed later in today's meeting.

2. Performance Evaluation and Step Increase for Nik Rende, Director, Legislative Information Technology

At its meeting on August 5, 2021, the committee reviewed the performance of Nik Rende, Director of Legislative Information Technology. The Personnel Committee voted unanimously to approve a step increase for Mr. Rende. No Legislative Council action is required.

OLD BUSINESS

Item #1: Council Actions Taken by Ballot

Legislative Council Decisions:

Motion: That the Legislative Council authorizes the funding for and, pursuant to Joint Rule 353, approves the nonconforming elements of the legislative study in LD 563, "Resolve, To Create the Criminal Records Review Committee"; and further, that the Legislative Council

authorizes an amendment to LD 563 that removes the requirement that the committee seek outside funding resources to fully fund the costs of the study.

Motion by: Speaker Ryan Fecteau Second: Senator Vitelli
Date: June 29, 2021
Vote: 6-3-0-1 Passed (with Senator Timberlake, Representative Dillingham and Representative Stetkis opposed and Senator Pouliot recorded as absent)

Motion: That the Legislative Council authorizes the funding for and, pursuant to Joint Rule 353, approves the legislative study in LD 1123, “An Act To Authorize a Monument to the Victims of and First Responders to COVID-19.

Motion by: Senator Daughtry Second: President Jackson
Date: June 30, 2021
Vote: 7-0-0-3 Passed (with Representatives Talbot Ross, Dillingham and Stetkis recorded as absent)

Motion: That the Legislative Council accept the funds contributed for the Commission To Increase Housing Opportunities in Maine by Studying Zoning and Land Use Restrictions authorized in Resolve, c. 59, and further authorize the commission to convene once a majority of the appointments to the commission have been made.

Motion by: President Jackson Second: Speaker Fecteau
Date: June 30, 2021
Vote: 6-1-0-3 Passed (with Representative Stetkis opposed and with Senator Daughtry and Representatives Dunphy and Dillingham recorded as absent)

Motion: That the Legislative Council reconsider its action whereby it did not approve the legislative study included in LD 924, “Resolve, To Establish a Task Force To Study the Coordination of Services and Expansion of Educational Programs and Vocational Opportunities for Young Adults with Intellectual or Developmental Disabilities or Acquired Brain Injury;” and further that the Legislative Council authorize the funding for and, pursuant to Joint Rule 353, approve the nonconforming elements of the legislative study included in LD 924.

Motion by: Speaker Fecteau Second: Representative Dunphy
Date: July 7, 2021
Vote: 7-1-0-2 Passed (with Representative Stetkis opposed and Senator Timberlake and Representative Dillingham recorded as absent.)

Motion: That the Legislative Council authorizes the funding for and, pursuant to Joint Rule 353, approves the nonconforming elements of the legislative study in LD 842, “Resolve, To Create the Commission To Examine Reestablishing Parole.”

Motion by: Speaker Fecteau Second: Representative Talbot Ross
Date: July 13, 2021
Vote: 6-2-0-2 Passed (with Senator Pouliot and Representative Dillingham opposed and Senator Timberlake and Representative Stetkis recorded as absent)

Motion: That the Legislative Council authorize the establishment of one limited period Legislative Aide position and related budget adjustments totaling \$168,663, to be implemented by allotting unspent balances in the Legislative General Fund account.

Motion by: Speaker Fecteau Second: President Jackson
Date: June 30th, 2021
Vote: 7-0-0-3 Passed (with Representative Dunphy, Representative Talbot Ross and Representative Stetkis recorded as absent.)

Motion: That the Legislative Council authorize the establishment of one limited period Senior Legislative Analyst position and related All Other, and related budget adjustments totaling \$267,969, to be implemented by allotting unspent balances in the Legislative General Fund account.

Motion by: Speaker Fecteau Second: President Jackson
Date: June 30th, 2021
Vote: 6-1-0-3 Passed (with Senator Pouliot opposed and President Jackson, Representative Talbot Ross and Representative Stetkis recorded as absent.)

Requests for Introduction of Legislation:

LR 2106 An Act To Fund Collective Bargaining Agreements with Certain Judicial Department Employees

Submitted by: Department Bill – Judicial Branch
Date: June 22, 2021
Vote: 7-0-0-3 Passed (with Senators Timberlake and Pouliot and Representative Stetkis recorded as absent)

LR 2111 An Act To Clarify Funding for the Office of Affordable Health Care

Submitted by: President Jackson
Date: July 6, 2021
Vote: 6-3-0-1 Passed (with Senators Timberlake and Pouliot and Representative Stetkis opposed and Representative Dillingham recorded as absent.)

LR 2114 An Act To Clarify The Definition of “Qualified Investment” For Purposes of the Income Tax Credit for Paper Manufacturing Facility Investment”

Submitted by: President Jackson
Date: July 15, 2021
Vote: 8-1-0-1 Passed (with Representative Dillingham opposed and Representative Dunphy recorded as absent.)

NEW BUSINESS

Item #1: Reinstatement of the Legislative Council COVID-19 Prevention Policy

Speaker Fecteau noted that, given the increase in COVID-19 cases in the State and the likelihood of Special Session next week, he believed that it is important to reinstate a COVID-19 Prevention Policy. Senator Vitelli indicated her support of reinstating a COVID-19 Prevention Policy. Rep. Dillingham inquired whether reinstating the policy would involve closing the building to the public. The Speaker confirmed with Ms. Gresser that the State House remained open to the public in the most recent iteration of the policy prior to its rescission. Senator Timberlake and Representative Stetkis registered their disagreement with reinstatement of the policy. Sen. Pouliot suggested that the Legislative Council might at a future meeting consider establishing a threshold number of daily positive cases that would trigger imposition of preventive measures. The Speaker agreed that the Council would need to revisit the issue in future meetings. President Jackson noted that, in light of the increase in COVID-19 cases in the State, he believed reinstating a policy now was the safest route. Sen. Pouliot indicated that he would prefer a mask requirement to a vaccination requirement. Speaker Fecteau noted that the previous policy included face shields as an acceptable alternative to face masks but new CDC guidance indicates that face shields do nothing to stop the spread of the virus, and the Speaker wondered whether the reinstated policy should exclude face shields as an acceptable alternative. Rep. Dillingham asserted that she has a member with a medical issue that prohibits the wearing of a mask, and wondered how to accommodate her. After a brief break, Speaker Fecteau suggested that for now, the policy be reinstated as it was in June prior to rescission with the understanding that people who wear face shields are doing so because a medical reason prevents them from wearing a face mask. Speaker Fecteau indicated that as we get closer to January and the return of the Legislature, it will be necessary to reevaluate policy.

Motion: That the Legislative Council reinstate the Legislative Council COVID-19 Prevention Policy as it existed prior to the policy's rescission on June 24, 2021, with the understanding that people who wear face shields are doing so because a medical reason prevents them from wearing a face mask, and except that it authorizes rather than requires remote staffing. Motion by President Jackson. Second by Rep. Dunphy. **Motion passed (7-3-0-0, with Senator Timberlake, Representative Dillingham and Rep. Stetkis opposed).**

Item #2: Review of recent federal regulations affecting lobster industry

President Jackson outlined the status of recent federal regulations affecting the lobster industry, and indicated his support for the Legislative Council to sign on to a lawsuit that would be filed in Bangor. The members expressed their support of the lobster industry and an interest in determining the optimum way to proceed. A multipronged approach was discussed under which (1) a joint order would be submitted to the Legislature's upcoming session on September 29, 2021 to authorize the Legislative Council to take such legal action as it determines appropriate and (2) the Legislative Council file an amicus brief in a pending lawsuit in support of the State's lobster industry.

Motion: That the Legislative Council file an amicus brief in pending litigation to prohibit, limit, or ameliorate the restrictions imposed on the northeast commercial lobster fisheries. Motion by Rep. Dillingham. Second by Rep. Dunphy. **Motion passed unanimously (9-0-0-1, with Senator Pouliot absent).**

Item #3: Executive session: collective bargaining Matters and Employment Terms and Conditions for Certain Legislative Employees

Motion: That in accordance with 1 MRSA § 405, sub§ 6, the Legislative Council enter into an executive session for the purpose of discussing collective bargaining negotiations. Motion by Senator Daughtry. Second by Representative Dunphy. **Motion passed unanimously (9-0-0-1, with Senator Pouliot absent).**

The Legislative Council entered into an executive session at 3:48 p.m. At the conclusion of its executive session, the Legislative Council voted unanimously to ends its executive session at 3:55 p.m. and reconvene its regular meeting during which the following motion regarding collective bargaining was made.

Motion: That pursuant to its authority under 26 MRSA, §979-A, sub-§5, the Legislative Council of the 130th Legislature ratify the collective bargaining agreement for the period October 1, 2021 through September 30, 2023 that was negotiated and tentatively agreed to by the authorized representatives of the Legislative Council and the Independent Association of Nonpartisan Legislative Professionals (IANLP) on September 21, 2021. Further, that the Legislative Council authorize the Executive Director to take all necessary steps to carry out the terms of this Agreement; Further, that upon recommendation of the Personnel Committee, the Legislative Council exercise its right to adopt the revisions to its personnel policies, pending agreement from the respective authorities; to apply personnel policies and benefit provisions that are comparable to those contained in the aforementioned ratified collective bargaining agreement; and direct its Executive Director to incorporate as appropriate and administer those provisions; and Further that compensation provisions in the form of cost of living adjustments, lump sum payments, longevity payments and salary steps comparable to that provided in the aforementioned ratified collective bargaining agreement be provided to legislative employees who are not represented by a collective bargaining agent, the effective dates of such compensation provisions to coincide with those contained in the aforementioned ratified collective bargaining agreement.

Motion passed unanimously (7-0-0-3, with Senators Timberlake and Pouliot, and Representative Dillingham absent).

ANNOUNCEMENTS AND REMARKS

With no other business to consider or further announcements, the Legislative Council meeting was adjourned at 4:02 p.m.