



**GENERAL ASSEMBLY**  
**STATE OF VERMONT**  
LEGISLATIVE JOINT FISCAL COMMITTEE

Friday, July 27, 2018

Minutes

Room 10, State House

Members present: Representatives Ancel, Donovan, Fagan, and Lippert and Senators Ayer, Cummings, Kitchel, Sears, and Westman.

Other Attendees: Representatives Feltus, Ode, and Trioano, and Senator Branagan, Administration, Joint Fiscal Office, and Legislative Council staff, and various media, lobbyists, and advocacy groups.

Senator Ann Cummings, Vice-Chair, convened the meeting at 10:04 a.m. and Senator Sears made a motion to approve the minutes of November 9, 2017 with two corrections to the draft sent to members previously, and Senator Ayer seconded the motion. The Committee approved the minutes.

**B. Administration's Fiscal Updates – 1. Unencumbered Balances**

David Cameron, Business Manager, Department of Financial Regulation, submitted and reviewed a memo explaining the FY 2018 available receipts from unencumbered balances to the General Fund totaling \$12.6 million. Not included in the total is the additional \$3.5 million that was transferred to the General Fund during the FY 2018 budget reduction plan earlier in the year.

**2. FY 2018 Preliminary Closeout - a. Fiscal year 2018 Fund transfers, reversions, reserves**

Matt Riven, Deputy Commissioner, and Richard Donahey, Director of Budget and Management Operations, and Ruthellen Doyon, Director of Financial Operations, Department of Finance & Management, distributed and summarized a 2018 General Fund Operating Statement. Mr. Riven introduced Ms. Doyon, and Senator Kitchel thanked her for her good work.

Mr. Riven referred to the handout reflecting sources, uses, transfers, and reserve balance amounts. The FY 2018 budget actuals were not consensus numbers, but they are in agreement and understanding with the Joint Fiscal Office on where the Administration was with its numbers. There was a change in current law revenue of \$21 million since May 2018, and an overall increase of \$65 million since the January 2018 consensus forecast. Of the additional \$21 million in revenue, \$10 million is available in FY 2019 per the contingent provision within Act 11 of 2018 (Big Bill) for corporate refunds. Senator Kitchel clarified that the provision within Act 11 was intended to make those funds available for any contingent State tax obligation and not just corporate tax refunds. Mr. Riven agreed with the Senator that the funds were available

for any revenue downgrade impact that may occur in FY 2019. In addition, \$11.2 million of the remaining revenue had been transferred to the Teachers' Retirement Pension Fund per Act 11. In responding to Senator Sears, Mr. Riven explained there was language in Act 11 for a possible additional transfer of \$10 million dependent on any revenue upgrades, and currently the total amount transferring to the Pension Fund was \$26 million. He referred to the Allocation of Surplus (deficit) section of the handout and explained there was an additional \$15 million transfer to Teachers' Retirement Pension Fund and \$33.5 million to the Education Fund stemming from the Act 11 provisions.

Mr. Riven stated the Act 11 construct dictated the transfer of about \$80 million from the Global Commitment Fund (GC) to the Human Caseload Reserve (HCR), which would significantly increase the General Fund reserves on the State's balance sheet in FY 2019. Senator Cummings noted that, in attending a conference, she learned that Vermont was depicted as a red state or unprepared for a downturn due to a lack of reserves. She suggested building a bigger stabilization fund reserve for downturns and asked the Administration its thoughts. Mr. Riven agreed there could be additional funding for downturns in the Stabilization Reserve Fund to cushion the State, but the right amount was open to debate. In addition, the transfer of the GC funds to the HCR would show positively with the rating agencies because they accepted the HCR as an actual reserve that minimized the risk to the State of the federal government reducing Medicaid funds. Representative Fagan asked for clarity on the EF and the 5% statutory EF Reserve Fund balance. Mr. Riven stated that in Act 11 there was language requesting JFO and the Administration to review the Education Fund and its reserve to recommend the appropriate amount of both to the Legislature. Senate Kitchel added that Act 11 also asked that the statutory requirements of the Education Fund reserves be reviewed along with the General Fund and the State Health Care Resources Fund for recommendations to existing statutory requirements.

#### b. FY 2018 Transportation Fund Closeout

Joseph Flynn, Secretary, and Lenny LeBlanc, Chief Financial Officer, Vermont Agency of Transportation, referred to a memorandum sent by the Secretary of Administration on June 13, 2018 in regard to the transfer of \$1.325 million. The Secretary then explained that in the FY 2018 Transportation Fund Closeout, there was a year-end surplus of \$1.453 million due to higher revenue than forecasted. The Secretary stated the Administration would propose in the FY 2019 Budget Adjustment (BAA) to allocate the surplus for Maintenance. Additionally, there was a small infrastructure bond surplus of \$26k for availability in FY 2019 through the BAA.

### 3. Year-end Medicaid Update

Stephanie Barrett, Associate Fiscal Officer, Joint Fiscal Office, and Richard Donahey, Director, Budget and Management Operations, Department of Finance, distributed a report to the Emergency Board on FY 2018 Year-end Medicaid and Medicaid-related expenditures and caseload. Mr. Donahey explained that the total Medicaid spending in FY 2018 was \$24.4 million or 1.4% below the level appropriated, which was after paying for the \$4.5 million from the Blue Cross and Blue Shield of Vermont negotiated settlement agreement. Because the one-time \$7.1 million of General Funds that was set aside for Medicaid expenditures was not used, there were conversations about the use of those funds. Of the \$24.4 million of underspending, \$22 million

was from pharmacy rebates coming in over projections, of which \$10 million occurred in June. The effects of this underspending will be monitored in FY 2019.

Mr. Doherty continued to highlight areas of the report, noting that the caseload of childless new adults who receive an enhanced federal match rate at 90% was lower than anticipated. The State Health Resource Fund ended with a positive balance of \$1.65 million primarily due to claims assessment coming in above expectation. In addition, increased compliance of collections by insurers has occurred due to the transfer of employer assessment collections move to the Department of Taxes. Ms. Barrett concluded with reviewing the action item for the Emergency Board later that day for revenue forecast of the Health Care Resources Fund. She explained that the childless new adult's proportion of spending will need further analysis.

Ms. Barrett explained that there were step downs in Medicaid funding where the State would pick up these costs that the Center for Medicare and Medicaid Services (CMS) no longer allowed in Vermont's renegotiated Global Commitment (GC) Waiver. Senator Sears asked for clarification of a childless new adult. Ms. Barrett responded that it was a way to categorize adults without children under Obamacare that Vermont received 90% federal match and the 2-year transitional funding that U.S. Senator Patrick Leahy secured. Senator Sears inquired if these adults were older Vermonters with Medicare and Medicaid. Ms. Barrett responded that they were a mix. Senator Kitchel added that Medicaid and Medicare were originally designed as categorical coverage to either adults with children or elderly, but poor people not falling in either category went without health coverage. When the Affordable Care Act (ACA) was enacted, it changed eligibility standards to income levels rather than categories.

Ms. Barrett concluded with long-term anticipated pressures at the end of the Waiver period from Institutions for Mental Disease (IMDs) Vermont Psychiatric Care Center and The Retreat that will need to be out of the Waiver and fully State funded in the future; She explained the Children's Health Insurance Program (CHIP) is fully funded until 2023 but has a match rate step down in FY2021 and FY2022 another significant impact to the State budget.

Senator Ayer inquired about pharmacy rebates and how to estimate those fluctuations. Ms. Barrett responded that pharmacy pricing was not transparent, and even though Medicaid has a pharmacy contractor, it was still difficult to make estimates. Senator Kitchel added that there is a concern that raises the question of whether this was a matter of timing to the extent to which large fluctuations would change the receipts for the FY 2019 budget. Ms. Barrett stated that the Medicaid consensus team would review the issues in the fall and bring back information to the Committee, but it was a challenge to understand long-term rebate estimates. The Secretary Human Services, Al Gobeille, stated that the Agency would share information at the Committee's September meeting.

Representative Joseph "Chip" Troiano joined the Committee on behalf of the House Committee on Human Services for the Agency of Human Services testimony.

C. Agency of Human Services – Al Gobeille, Agency of Human Services – 1. Agency update on interim work schedule

Al Gobeille, Secretary, and Sarah Clark, Chief Financial Officer, Agency of Human Services, distributed a presentation on the closeout of AHS programs and on work being performed by AHS during the months before the start of the legislative session in January.

Secretary Gobeille opened by noting the tremendous resource that Stephanie Barrett of the Joint Fiscal Office has been to the Agency regarding the forecast of the Medicaid caseload and utilization as well as other work on various issues in the budget.

The Secretary explained that the Agency's total FY 2018 expenditures when considering all funds were just shy of \$4 billion. He noted that when FY 2018 is compared to FY 2016 the Agency's expenditures in FY 2018 were \$70 million below that of FY 2016. The Secretary noted that some of the contributing factors for this spending level included a reflection of a strengthening economy, good fiscal management, and accurate caseload forecasting by the Agency.

Senator Kitchel commended Senator Sears for his work to bring a whole systems change to the Department of Corrections that resulted in bringing the DOC budget closer to balance after so many years of deficits. Senator Sears stated that the entire Department's systems staff helped to facilitate the changes. The Corrections Health Care Study that is included in Act 11 of the 2018 Special Session should help to bring costs down further.

Senator Kitchel asked for an update on the stability of nursing homes with regard to staffing and costs. The Secretary responded those issues were still a very big concern especially considering the demographics of Vermont. The Choices for Care program has been very successful resulting in clients not choosing to go to nursing homes. This choice has strained nursing facility budgets. Secretary Gobeille stated that within Act 11, there was language for the creation of a working group to review the nursing home issue.

Secretary Gobeille explained that the Agency had a report due on facilities to the General Assembly in January 2019. There was an initiative to increase the number of beds at the Brattleboro Retreat by 12 and, in order to achieve this partnership with AHS, a Memorandum of Understanding was agreed upon to allow AHS to supervise the Retreats billing practices. Second, the Agency increased specific rates which will need to be monitored. There may be a proposal related to this in the FY 2019 BAA. The Secretary promised to update the Committee on these issues related to the Brattleboro Retreat at the September meeting.

The Secretary explained that there was a proposed rule to convert the Woodside facility to a mental health treatment facility to enable federal funding. The rule included issues related to ongoing changes to the facility. The Secretary confirmed for Senator Kitchel that there were funds in the FY 2019 Capital Construction Adjustment bill (Act 190 of 2018) for the facility to make its structural changes.

Secretary Gobeille mentioned that there would be an official update at the Committee's September meeting on the Designated Agencies rate increase. Senator Ayer asked if the flexibility asked for by the DAs had been included in the contracts. The Secretary responded that the Agency was finalizing the master grants but believe that there was flexibility within the contracts. Senator Kitchel stated that she looked forward to how the value-based allocation of the rates would be implemented.

Secretary Gobeille gave an update on the Accountable Care Organization (ACO) development, explaining that a report was due August 1 from the Green Mountain Care Board (GMCB) on the scale of the increase of the program. The Secretary then explained that the Agency would establish a working group on prescription drug importation. The State of Utah was due to release its report by October 1. The Secretary promised to update the Committee when there was more information.

### 2. and 3. Substance Use Disorder Initiative Funding and Activities

Secretary Gobeille explained that within Act 11 there were two pots of money appropriated to substance use disorder initiatives. There was \$2.5 million of FY 2018 carryforward funds, and \$7.1 million of one-time funds that were not used, as stated in the earlier Medicaid testimony, due to the pharmaceutical rebates. The Agency was charged with creating a plan to spend the one-time funds that would be presented to the Committee at its September meeting. The Secretary proposed some possible concepts such as: funding the expanded access to medication-assisted treatment (MAT) in Corrections; allocating the funds to cover two FTEs to staff the Opioid Coordination Council (OCC) that would additionally leverage federal funds; and allocating funds to the Nurse Home Visiting practice. Senator Ayer inquired what the additional funding would include for the Nurse Home Visiting practice program. Secretary Gobeille responded it would propose that the program reach the entire State.

The Secretary suggested that other possible areas to use the one-time funds were: Screening, Brief Intervention, and Referral to Treatment (SBIRT) program; creating a Federal Contingency Fund as a reserve to ensure funding to State programs; funding for the Hepatitis C (HCV) treatment at correctional institutions that currently has 70 people in need of treatment at an estimated cost of \$1.9 to \$2.7 million; and/or additional investments in the Syringe Services Program (SSP). In responding to Representative Lippert, Secretary Gobeille suggested there should be safe recovery locations throughout the State and not just Chittenden County.

Senator Kitchel confirmed with Secretary Gobeille that the Agency would return in September with two separate proposals for the two pots of funds, and then moved to delay the spending plans for the Substance Use Disorder Response Initiatives Plan until the Committee's September 2018 meeting, and Representative Fagan seconded the motion. The Committee approved the motion. Representative Lippert noted that the issues raised may need further testimony before the Health Reform Oversight Committee.

### D. Single Audit Report

Doug Hoffer, Vermont State Auditor, and Mat Riven, Deputy Commissioner, Department of Finance and Management, distributed a graph on the FY 2018 Single Audit Findings. Mr.

Hoffer explained that his office had just contracted with a new auditing firm, Clifton, Larson and Allen (CLA). The total number of findings and repeat audits continued to decline from previous audits because the Administration has worked hard to address its corrective action plans for the findings. Mr. Riven added that there was progress in all areas of the repeat findings as his Office worked with those departments to resolve them. Senator Kitchel inquired of the average costs for re-audits, and Mr. Hoffer stated that the previous audit firm, Klynveld Peat Marwick Goerdeler (KPMG) charged \$40k but the new contractor, CLA's costs are imbedded in contract.

#### E. Revenue Update

Tom Kavet, the Legislature's Economist, summarized the consensus revenue update. He announced that the State was in a cyclical peak that was generating additional revenue. The federal stimulus that was creating the growth in the economy would also cause additional stresses by way of higher interest rates. Vermont has three specific areas of revenue that are the most volatile: corporate, personal income, and estate tax. He advised that budgetary spending expectations should account for swings in these revenue streams.

Mr. Kavet explained that the State and federal government had made several changes to tax changes since the January 2018 consensus forecast. He referred to a budget summary prepared by the JFO that explained the budget changes since the last consensus forecast. Mr. Kavet confirmed for Senator Sears that the anticipated revenue from voluntary compliance of sales tax payments of Border State purchases had been accounted for within the forecast.

Stephen Klein, Chief Fiscal Officer, Joint Fiscal Office, reviewed the budget summary by explaining there were some large tax changes including: a \$29.2 million tax cut; the movement of the Sales and Use Tax, and 25% of the Meals and Rooms Tax to the Education Fund. With these changes, the budget was \$32.9 million above estimates in FY 2019, and had \$18 million of one-time money in FY 2020. The Education Fund had a lot of growth in its revenue due to the General Fund transfer changes and the online commerce activity. The Education Fund had \$17 million available in FY 2019 that could possibly reach \$20 million in FY 2020.

Senator Sears noted that the General Fund was now more volatile with the transfer of those stable revenue sources to the Education Fund. Representative Westman suggested that because the teacher retirement had been outstripping the GF growth, it should be paid as an educational expense through the EF.

Mr. Kavet continued by noting there was a wildcard with corporate revenues with the new federal repatriation, explaining it was possible that there could be a total upward amount of \$3 trillion nationally that could be repatriated. A legal opinion from the Vermont Department of Taxes and Legislative Council stated that those repatriated payments were subject to Vermont tax and had just a year to pay, where at the national level the rule was eight years. This could lead to a possible court case to negate tax obligations.

Mr. Kavet explained that the Department of Taxes was in the process of developing a tax form that would better track corporate taxes. Senator Kitchel asked if there would be an ongoing benefit to Vermont under its unified tax system from repatriation. Mr. Kavet responded that the

anticipated corporate tax increase was built into the base of the forecast. He added that the corporate tax base was more diverse and broader than in recent years, which could make it relatively more stable but still a very volatile revenue source with possible swing of 20%. Senator Kitchel suggested that it was important to build reserves and to set aside contingency funds for those unpredictable corporate tax refund obligations.

Mr. Kavet explained that the labor market was getting tighter with Vermont listed as the 6<sup>th</sup> lowest unemployment rate in the country. With the decreasing of the unemployment rate, there were wage pressures that overtime have increased from 2% each year to close to 3%. Senator Cummings referred to an article in the media on the southern portion of California where the real estate market was having difficulties, and then she asked if Vermont should be concerned. Mr. Kavet responded that economists were keeping a close eye on the real estate market after the housing volatility a few years ago. Since Vermont has seen very little appreciation of its local housing market, it would likely see little correction in the next recession.

The Committee recessed for lunch and the Emergency Board meeting at 12:04 p.m. and Representative Ancel reconvened the meeting at 2:23 p.m.

#### F. Property Tax Adjustment Claims Update

Kaj Samsom, Commissioner, Department of Taxes, gave an update on the property tax adjustment claims delay. The Department was unable to complete all the homestead declarations for the 2018 tax season by July 1. The Department failed to communicate to those towns sending out property tax bills in July for August payments of the delay. The Department has since sent a list of the homestead declarations and property tax adjustment claims it was still working on to Towns, which totaled about 4,000 statewide.

The Commissioner explained that the reasons for the backlog of property tax adjustment claims were due to some filers sending multiple property tax adjustment claim forms; and some filed incorrectly or missing information. There were 55,000 claim forms that were flagged by the system for manual review. The Administration has promised in a letter to towns on July 17 to reimburse them for the costs for reissuing the bills. Included in the memo was a file that listed the claim filers by town for rebilling. The Commissioner ensured there would be better communication going forward with towns on property tax claims.

The new tax system, myVTax, was doing its job and was very good at catching anomalies for possible fraud. The System caught \$8.5 million of fraud this year, but the down side was it flagged additional tax filers for manual review. Representative Ancel asked what the Department will do differently next year to avert the town mishaps. Commissioner Samsom responded that the Department shifted staff in May to ramp up for tax refunds but would then shift them in June for review of property tax claims. In addition, half of the flagged claims were discretionary and the Department would flag less upfront and instead review those later after information had been sent to the towns. Senator Kitchel asked if the Department would need legislative action or an appropriation in the BAA for the compensation to towns. Commissioner Samsom responded that there may be a difference of legal opinion between the Attorney General

and Legislative Council of whether the Department had the authority to reimburse towns but they would review the opinions and decide how to proceed after the tax issues had been fixed.

G. Agency of Digital Services – Cybersecurity Operations Center Budget and Implementation Plan

Shawn Nailor, Deputy Secretary, and Mark Combs, Chief Technology Officer, Agency of Digital Services, submitted a proposed plan for review and approval of the Committee. The intent behind the Security Operations Center (SOC) was to establish a collaborative team that would monitor and assess all of the State information systems 24/7 for potential cyber threats. Currently, any threat occurring after the work day of 5:00 p.m. would not be responded to until the next work day which could cause a significant issue with the State system.

Mr. Nailor explained that the plan is more of a service oriented plan that works with Norwich University (NU) in four phases. Phase I which is almost concluded, reviews the opportunities in working with the University; Phase II, which occurs in September, would review the design of the SOC; Phase III would be the test run for gathering data, analytics, and reporting; and Phase IV would occur in April and June of 2019 with the SOC becoming fully operational. Mr. Nailor confirmed for Senator Kitchel that the Agency was proposing to develop a sole source contract with NU. Senator Kitchel commented that standard university indirect charges could be as high as 40%, such as the transportation grant through St. Michaels College. She then asked if the plan reflected on those indirect costs with NU. Mr. Nailor responded that the Agency did not have indirect costs estimates before them from NU, but there would not be any additional indirect costs above and beyond the estimates in the plan.

Representative Fagan inquired why the contract was not put out to bid. Mr. Nailor responded the decision had not yet been approved by the Secretary of Administration, but documentation was under review and a waiver had been requested for the sole source contract with NU with the reason that the college was uniquely qualified for the work nationally with cyber security as a subject matter expert and tools readily available. In addition, another subject-matter expert in the field of cyber security is Champlain College, but they are more focused on the forensics and criminal justice. Representative Fagan asked if there were any other entities in the State of Vermont that would have been qualified. Mr. Nailor responded that he was unaware of any other entity with NU's unique qualifications for the job.

Representative Ancel pointed out that JFC must approve the budget and the spending plan before the Agency could move forward, and Mr. Nailor agreed. Senator Kitchel commented that the intent of the Legislature was to receive a plan from the Agency with a level of detail during the interim in order to receive the funds. Mr. Nailor responded that the Agency hoped to demonstrate that the plan was more articulated than initially provided during the session. Senator Kitchel asked if the waiver request for a sole source contract was public and that it be provided to the Committee. Mr. Nailor agreed it was public and the Agency would provide it to the Committee. He added that Dan Smith, the JFO Contractor, reviewed the waiver as well.



Daniel Smith, Information Technology Contractor, Joint Fiscal Office, distributed and summarized a report on his observations of the ADS SOC plan. He stated that the overall concept for a cyber operations center was positive for the State of Vermont, along with a partnership with Norwich University. However, there was a risk with delay for the project because of the wait involved, which could be up to 60 days, for the approval of the sole source contract Waiver. He stated that his preference would have been for the documentation of the Waiver request had been included within the proposed plan.

Mr. Smith recommended that the Legislature understand the long-term costs associated with the system and how it can measure its success through updates from ADS as it progresses through the plan phases. Senator Kitchel asked if Mr. Smith was comfortable with the budget proposal of SOC plan included in the plan, and the need for the SOC. Mr. Smith responded he was comfortable with what was proposed for upfront costs, and there was no question on the validity of the need for the system. In responding to Representative Lippert, Mr. Smith stated that there was a trigger for an independent review if the contract cost reached \$1 million over the life of the plan. Senator Kitchel recapped that Mr. Smith's recommendation was to approve the proposed spending plan and to stay vigilant on understanding the long-term costs, and Mr. Smith agreed.

Senator Kitchel stated she would like understand and have assurances of the long-term fiscal obligations associated with the contract, and then moved to accept the ADS proposed budget implementation plan for the cyber security center with the understanding that the Committee has the expectation that the Committee will receive updates from ADS on the areas of concern shared by the members. Representative Fagan seconded the motion, and then asked what happens to the SOC plan if the sole source Waiver approval takes 60 days. Mr. Nailor responded that ADS would be compressed in its timeline for implementation of the plan but will still move forward with the plan.

Senator Ayer asked if the SOC covered all of the State's systems, including the Vermont Information Technology Leaders (VITL). Mr. Nailor stated the SOC would cover all of the ADS data center systems but not independent systems such as VITL. Senator Ayer queried if SOC would also include the Health Care Exchange. Mr. Nailor responded that the expectation was to have the Exchange vendor OPTUM work with the SOC at some point. The Committee approved the motion for the ADS proposed spending plan. Senator Kitchel requested an update from ADS at the Committee's September meeting.

#### H. Fiscal Office Updates - 1. Fiscal Officers' Report

Mr. Klein gave updates on 3 major requests for proposals the Office was administering. The study of Decarbonization Methods in Vermont had been sent out for bid with four responses received and bids due August 20. The Health Care Corrections RFP had gone out to bid as well with responses due August 10. In addition, the Office was tasked with hiring either a staff or contractor for the Vermont Tax Structure Commission and it was gearing up to accomplish that in the fall.

Mr. Klein noted that the Office received 61 performance surveys back from members, which was slightly less than the 2016 survey. Most surveys were generally positive and the Office was reviewing the comments and breaking out the information by Committee to gain a different perspective.

## 2. Education Fund Outlook

Mark Perrault, Senior Fiscal Analyst, Joint Fiscal Office, distributed an Education Fund Outlook update for the post closeout for FY 2018 and July revenue update for FY 2019. He explained there were two notable things that happened since the adjournment of the special session. The Office and Department were able to closeout FY 2018 on a consensus basis, and update the nonproperty revenues in FY 2019. The key change in the Education Fund Outlook was the dedication of 100% of the Sales and Use Tax and 25% of the Meals & Rooms Tax to the Education Fund and the transfer of several Education Fund uses to the General Fund. There was a significant increase of Sales Tax revenue in FY 2019 and FY 2020 in the July consensus revenue forecast. Representative Westman asked for the amount of the increase of sales tax since the end of special session. Mr. Perrault responded that in FY 2019 there was \$11.9 million and in FY 2020 it was estimated at \$15.6 million. Mr. Perrault explained that some of the Education Fund Outlook differences are attributable to some accounting changing.

There was a discussion on the special education funding, and Mr. Klein stated the Office would include an article in its next fiscal focus that explains the issue.

The Committee confirmed its next meetings of September 27 and November 1 and adjourned at 3:25 p.m.

Respectfully Submitted,

Theresa Utton-Jerman  
Legislative Joint Fiscal Office