

# MINUTES

## Joint Fiscal Committee Meeting of September 19, 2006

Committee Chair Martha Heath called the meeting to order at 10:10 a.m. in Room 11 of the State House.

Also present: Representatives Obuchowski, Perry, Severance and Westman  
Senators Bartlett, Cummings, Sears and Snelling

Others attending the meeting in whole or in part included: several members of the General Assembly; Chief Fiscal Officer Stephen Klein and other Joint Fiscal Office staff members; Administration officials, managers and staff; and representatives of advocacy groups.

### APPROVAL OF MINUTES:

1. Representative Severance moved approval of the minutes of the July 18, 2006 meeting as submitted. The motion was seconded by Representative Obuchowski and adopted.

### REVENUE UPDATE:

2. Mr. Klein summarized performance of the General, Transportation and Education funds for the first two months of fiscal year 2007. He handed out tracking sheets showing receipts from the major revenue sources of the three funds.

Cumulative General fund receipts are approximately \$1.4 million over the target figure for July and August, with the strongest showing in Personal Income Tax. Corporate taxes were below the estimate and Estate tax collections are considerably lower than anticipated. The Transportation fund is \$800,000 above the estimate, and the Education Fund has exceeded expectations by a modest amount, due to fairly strong Powerball sales.

### GLOBAL COMMITMENT:

3. Stephanie Barrett, Associate Fiscal Officer, presented and discussed Fiscal Year 2006 closeout information on the Global Commitment Medicaid waiver program and funds related to it. She explained that because the program did not start until FY 2006, the Agency of Human Services (AHS) was given some flexibility in closing out the year, although a reporting requirement was imposed.

Ms. Barrett's presentation consisted of a review of the details and nuances of data contained in handouts she distributed reflecting Fiscal Year 2006 revenue, expenditures and the preliminary ending balance as of June 30, 2006 in

the Health Access Trust Fund (HATF); showing Global Commitment transfers as of July 12 to meet adjustment needs in the Departments of Disabilities, Aging and Independent Living (DAIL), Children and Families (DCF), and Health, plus the Office of Vermont Health Access (OVHA); and depicting the status of the Global Commitment Fund, including the FY 2006 year-end balance, the amount reserved for FY 2007 budget adjustments, and the projected balance available for the next fiscal year. *(Copies of all the information distributed are on file in the Joint Fiscal Office.)*

In her presentation Ms. Barrett reminded the members that under Global Commitment the Agency of Human Services (AHS) pays the capitated rate into the HATF and the Legislature appropriates from that fund to all the Medicaid pieces involved in the waiver. She also explained the concept of blended federal-state dollars as applied to the program.

The year-end balance in the Health Access Trust Fund was very close to the estimated target. She pointed out that that target was nearly reached despite the fact that the hospital provider tax receipts were \$5.5 million lower than anticipated. The reason why the goal was still achieved is that the tobacco products tax receipts were not included in the original assumptions on which the HATF projections were based.

#### **MEDICAID FIVE-YEAR PROJECTIONS:**

4. Ms. Barrett also distributed a summary financial projection for Medicaid and Medicaid-related programs for the current fiscal year through Fiscal Year 2011, containing five-year projections for Medicaid based on Global Commitment waiver years. The projections rely on a number of assumptions summarized in the handout. In addition, she provided a revised "Issue Brief" as of the date of the meeting which updated the projected FY 2008 Medicaid deficit since the end of the 2006 legislative session. *(Copies of these documents are also on file in the Joint Fiscal Office and available on the JFO website.)*

#### **MOSQUITO SPRAYING:**

5. Finance and Management Commissioner James Reardon reported that the Administration anticipates an expenditure in the current fiscal year of close to \$180,000 for mosquito abatement, due to abnormal weather conditions. In prior years the expenditure has ranged from about \$75,000 to \$90,000, partially funded by a percentage of motorboat registration fees.

He wanted the Committee to be aware that carryforward funds, which in the past have sustained expenses in the mosquito control program, are depleted due to the high expenditures for spraying in 2006 and the fact that a new control district has been formed. The creation of one or more new districts may be an additional spending pressure for the 2007 spring spraying season. For the short term, he expected this issue may have to be addressed through the budget adjustment. It would be premature to develop precise cost estimates at this

point, however, because of the possible expansion into additional districts. Mr. Reardon did say that what had been a program costing the State approximately \$75,000 a year has the long-range potential to be in the magnitude of \$300,000 to \$400,000.

#### **PURCHASE OF ANTI-VIRAL VACCINE:**

6. Mr. Reardon also advised that in preparation for a possible pandemic influenza outbreak, the federal government has allotted 65,000 units of anti-viral vaccine to the Vermont, at a twenty-five percent (25%) subsidy. The earliest date of availability of the vaccine would be spring 2007.

Answering questions from Committee members, he further reported that there is a list of the categories of federal priorities for individuals who would be treated first; that the total cost of purchasing the 65,000 courses of treatment will be \$962,000, a substantial amount of which would be offset by purchase of the units by other entities such as hospitals and insurance companies; and that in addition to those units, the federal government will set aside 92,500 additional ones for Vermont, bringing to 157,500 the total number allocated to the state.

The Commissioner's reason for bringing this matter to the Committee's attention, rather than waiting to bring it to the Legislature's attention during the Fiscal Year 2007 budget adjustment process, is that the earlier the State makes a commitment to purchase the vaccine, the earlier the units will be delivered. In the absence of a state's commitment, the federal government will reallocate the vaccine units, giving other states the opportunity to purchase them.

While recognizing that the Joint Fiscal Committee lacks authority to commit the funds, Mr. Reardon sought its assent to the Health Department's proceeding with arrangements to purchase the 65,000 units of vaccine, with the understanding that any purchases by third parties such as hospitals and insurance companies would be refunded by the State to offset the \$962,000 cost, and with the further understanding that the Committee would support the inclusion of the funding in the Fiscal Year 2007 budget adjustment bill.

The Committee decided to defer consideration of Mr. Reardon's request until later in the meeting, pending his furnishing the names of the anti-viral drugs and their manufacturers. In the afternoon, he did in fact distribute a memorandum containing this and other information. *[Note: A copy of that memorandum is on file in the Joint Fiscal Office.]*

**Senator Sears moved that the Joint Fiscal Committee in effect approve the Administration's request to proceed with the steps necessary to reserve the 65,000 units of vaccine for Vermont, at whatever cost is not covered by payments for units purchased by third parties including insurance companies and medical providers; and pledging the Committee's support for including the necessary funds in the Fiscal Year**

**2007 budget adjustment bill. The motion was seconded by Representative Obuchowski and carried on a voice vote, with no dissenting voices heard.**

#### **BENNINGTON COUNTY TREATMENT COURT REPORT:**

7. Included on the agenda was a report from the Bennington County Drug Court Team required in Sec. 121(e) of Act 215 (FY 2007 appropriations) of 2006, which called for the committee to report "as to the continuation of a drug court or domestic violence court in Bennington County." Judge David Suntag, accompanied by Mary Frost, Bennington Family and District Court Manager, and Karen Gennette, Treatment Coordinator for the Judiciary, presented the report, which was mailed to the members in advance.

As explained in the report and by Judge Suntag in person, due to the lack of referrals to drug court since its inception in Bennington County, the team decided to abandon that initiative and instead focus on a domestic violence project. The plan's goals and the court process, coordination of local services deemed critical to addressing domestic violence, and a summary of other issues to be explored were addressed in the written report and recapped by the judge. The fact that Bennington already has an extremely strong probation and parole division makes it an ideal place, in the judge's opinion, to begin the experiment outlined.

The Chair complimented the work of Judge Suntag and the others involved in formulation of the plan and remarked that the Committee will look forward to the results.

Senator Bartlett talked about a project of several years' duration in Lamoille County to maintain statistics related to domestic violence issues, in order to correlate expenditures with results. She thought that county's experience might be useful to those involved in the Bennington effort, and she indicated she would propose that the woman overseeing the work in Lamoille contact one of the individuals involved with the Bennington model.

#### **DAIRY FUNDING UPDATE:**

8. Commissioner Reardon and Mary Morrison, Business Manager for the Agency of Agriculture, reported on allocation of State funds to assist farmers.

The Commissioner pointed out that the Emergency Board in July provided about \$8.9 million in relief for farmers. Most of that money was earmarked for the Vermont Target Price Program, a short-term plan to assist struggling dairy farmers struggling with low milk prices as well as high fuel costs and unusually wet weather. In addition, allocations of \$100,000 each have been made in several other, non-dairy farming-related areas: the Buy Local marketing program, traditional dairy farms' transition to organic (an undertaking supported by the House and Senate Agriculture committees), and farmers' development of business plans to promote marketplace profitability.

Payments for the Target Price Program are issued on the 25<sup>th</sup> of each month, and to date \$4.4 million has been spent. The balance of approximately \$4.2 million should allow the State to make payments to dairy farmers through January 2007.

Representative Obuchowski recalled that the Emergency Board intended accountability of use of the funds it appropriated in July; i.e., that the impact of the State's assistance be assessed and reports provided to enable legislators to judge the effectiveness of the expenditures. Mr. Reardon pointed out that there has been a maximum of two months' experience with release of the funds, and he confirmed that the Administration will provide some information at the Committee's November meeting.

Representative Perry requested that the Administration also report at the November meeting about federal farm assistance programs that might supplement the aid being provided by the State.

Representative Obuchowski recommended reading the article by journalist Kevin O'Connor about Vermont farmers in a recent "Vermont Sunday Magazine" supplement to the Rutland Herald and Times Argus

#### **FISCAL YEAR 2007 BUDGET PRESSURES:**

9. In response to the Chair's invitation to comment on other budget pressures in the current fiscal year, Mr. Reardon pointed out that transportation needs will be discussed later today in a separate meeting with the Chairs and Vice Chairs of the Senate and House Transportation committees. Despite additional funding and the availability of carryforward funds, there still will be a need for more money for the Low Income Home Energy Assistance Program (LIHEAP). The state faces challenges in the Temporary Aid to Needy Families (TANF) program, and there may be some issues in the Department of Public Safety, including curtailment of anticipated federal funds. He promised to furnish more information in November.

#### **LIHEAP:**

10. Pam Dalley, Director of the Office of Home Heating Fuel Assistance, gave an update on the LIHEAP program. As of July 15, her staff started taking applications, and as of Friday, September 15, they had already received 22,200 applications, approximately 980 more than last year at the same time. At the outset, her office made some internal changes in how the applications were to be processed. Only 5,800 applications are still pending, and her staff will be well ahead of meeting the deadlines for processing and for issuing benefits. The goal is to make payments in November to all those whose applications are received by the end of October, and the hope thereafter is to process all the applications that come in on a monthly basis the month following their receipt.

Representative Obuchowski thanked Ms. Dalley for the management that has been applied to the processing of the LIHEAP applications.

#### **PROPERTY TAX RATES:**

**11.** Mark Perrault of the Joint Fiscal Office distributed materials related to property tax rates and education spending. In addition, at the advance request of some Committee members, he provided information on a recent proposal from the Governor to cap education spending, including an analysis from the perspective of the Fiscal Office of what that plan would do. *(All documents which he distributed are on file in the Joint Fiscal Office.)*

First, Mr. Perrault reminded the Committee of how Act 68 (education spending law) works, including the fact that if the Education Fund has a projected undesignated balance, that money is to be used to reduce the education tax rate the following fiscal year. The Tax Commissioner is charged with making a recommendation to the General Assembly to adjust the rate no later than December 1.

Mr. Perrault then reviewed some of the significant changes in Act 68 enacted last session. Among those is that the base education payment will jump by over 5 percent next year, for the second year in a row. When the base education payment grows, it is in effect a reduction in the homestead tax rate. Other significant recent statutory changes are that the base rate on household income was fixed at 1.8 percent; that the household income limit was raised from \$85,000 to \$90,000; and that beginning in FY 2008 there will be no prebate checks. Instead, those taxpayers who under current law would be entitled to prebates will pay an actual reduced tax bill.

Going through the sheets he handed out, he pointed out that \$21.6 million is the figure currently projected as the Education Fund surplus in FY 2008, which means it should be possible to reduce education tax rates by three cents for that year. At a rate reduced by that amount from 2007, the base homestead tax rate in 2008 will be 92 cents, while for non residential property the tax rate will be \$1.41. Under current projections, it should also be possible to reduce one rate or the other, but not both, by an additional penny in 2008.

Several of the informational sheets distributed and discussed by Mr. Perrault pertained to the Governor's recently-publicized proposal to cap education spending. He pointed out that he based his summaries on a press release issued on August 23. One of them outlined the major components of the proposal, which would take effect in Fiscal Year 2008; another depicted how the Governor's plan would increase the base rate on household income above 1.8% regardless of whether education spending growth is under the 3.5 percent cap or if it exceeds that cap; and the third contained a preliminary analysis of the proposal and a comparison of it compared to current law.

Mr. Perrault's review of the Governor's plan was interspersed with questions and discussion with Committee members.

During discussion on capping education spending, Senator Sears observed that under the law, school districts face a penalty if they spend over the cap. He wanted information that would show which communities which are spending over the cap and by how much each is exceeding it. *[Mr. Perrault distributed a sheet with that information at the conclusion of the meeting.]*

The Committee recessed for lunch at 12:20 p.m. and reconvened at 1:40 p.m.

#### **VERMONT STATE HOSPITAL (VSH) FUTURES PLAN:**

12. As requested by the Committee at its July meeting, Beth Tanzman, Director of the VSH Futures Project, gave a brief history of the overall plan to replace services currently provided at the State Hospital plus an update on major policy drivers that have guided its development and a status briefing on the implementation of the plan.

Ms. Tanzman reminded the Committee that the Futures project has evolved into two key dimensions: one is the development of community services, and the other is delivery of inpatient services in a larger facility, associated with general medical facility, to replace the Vermont State Hospital.

Talking about the in-patient services component of the plan, Ms. Tanzman explained there have been two primary drivers guiding choices about in-patient services: clinical integration with a general health care service, and cost and ongoing sustainability of the program. She talked about what is needed to place the state in a position of being much more likely to assure federal participation through Medicaid reimbursement for mental health services provided to beneficiaries living in a major institution.

Ms. Tanzman also brought the Committee up to date on progress in creating a major new replacement facility for VSH and smaller satellite facilities. Because AHS anticipates that the cost for capital construction for the larger facility may exceed \$20 million, the agency has applied to The Department of Banking, Securities and Health Care Administration (BISHCA) for a conceptual Certificate of Need (CON) for replacing VSH from a clinical and physical perspective. She then outlined in detail the process that will follow approval of that application and some of the factors that must be weighed and explained why it is difficult to predict how long that process will take.

As for the Williamstown satellite facility on which AHS Secretary LaWare brought the Committee up to date at the July meeting, Ms. Tanzman reported that the agency is close to finalizing an agreement with the developer on a very good facility. She observed that once that residential recovery center is

operating, AHS will have the opportunity for its first look at the impact of a smaller residential facility on the current VSH census. AHS continues to work actively to develop an assessment of the most strategic and practical site to locate additional crisis beds.

Ms. Tanzman also mentioned that the staff is working to implement an alternative safe and clinically appropriate program to transport to facilities those individuals who seek voluntary treatment and who do not require a sheriff's transport.

Maria Royle, Legislative Counsel, then distributed and highlighted salient points contained in a detailed memorandum she had written on September 5 pertaining to Medicaid coverage for patients receiving psychiatric care in an institution for mental diseases (IMD). *[Note: a copy is on file in the Joint Fiscal Office.]* Specifically, the memorandum addressed the following issues:

*...the prohibition in federal law from claiming FFP [federal financial participation] for beneficiaries in IMD's (the IMD exclusion); the definition of an IMD; criteria for determining when the IMD exclusion applies to psychiatric units that are a part of larger institutions, such as general acute care hospitals; exceptions to the IMD exclusion; and judicial application of the IMD exclusion in specific instances.*

The purpose of Ms. Royle's memorandum, as stated therein, was "to provide guidance to the State's provision of inpatient psychiatric care so that the IMD exclusion is not triggered under implementation of the Future Plan and thus the availability of federal Medicaid dollars is maximized."

Ms. Royle considered it especially important for the members to be aware of the IMD exclusion from federal Medicaid participation if more than 50 percent of all the patients in a hospital are institutionalized for treatment of mental diseases. She considered this criterion to be especially important because not only does it limit the number of psychiatric beds that can be added to community hospitals, but it also must be taken into consideration in the proposed partnership with Fletcher Allen Health Care (FAHC) for development of a major new inpatient facility to be integrated with a general hospital.

Initiating Committee discussion, Representative Obuchowski asked how the Legislature can keep track of the whole situation so that it can make the right decisions and avoid wasting taxpayers' resources. Ms. Tanzman's talked about the importance of regular reports and discussions, and she pointed out that there are regular meetings with the Mental Health Oversight Committee and other legislative committees of jurisdiction, as well as individual legislators. She also mentioned that AHS recently has involved the Joint Fiscal Office staff in program discussions and deliberations. In response to the Representative's inquiry as to the cost of the total program envisioned to replace services currently offered at



the State Hospital, she was unable to furnish that figure, in part because of the unknown cost of operating a major inpatient facility integrated with a general hospital. In terms of capital development, the range of estimated costs is broad, reflecting alternative approaches. Senator Snelling, speaking as a member of the Mental Health Oversight Committee, added the total figure will be dependent in part on the clinical choices made about the satellite programs that will comprise part of the replacement of VSH.

Representative Obuchowski reiterated that he would like a projection of when the whole Futures project will be in operation, and what the total cost range might be. In his opinion, to meet the needs of the people involved, the process should have progressed much further than it has and that it should be expedited.

Ms. Tanzman stated that the projected capital construction costs attached to the conceptual CON application range from a low end of \$40 million to a very high end of \$85 million. Early in the year 2012 was the date she gave for opening the major facility, assuming new construction is required for that primary program. She cited factors which the time frame reflects, including the regulatory, planning, permitting, zoning and construction processes.

The Chair observed that she, Vice Chair Bartlett and the Fiscal Officer have been asking the same questions posed by Representative Obuchowski and that the Joint Fiscal Office will continue to work with the Administration on these issues. She went on to say that one of the strategies which has been discussed and should be considered if the state is able to achieve federal recertification of the State Hospital, is to reserve as one-time money the federal funds thereby received, to be applied toward the capital costs for replacement services. Another strategy she thought the Legislature may have to consider is the dedication of any year-end excess funds to very limited, select purposes rather than to the traditional list of "waterfall" projects. She pointed out that the capital bill cannot possibly absorb the level of expenditure which will be required for VSH replacement.

Answering a question from Representative Perry as to when the commitment will be made on the facility to be constructed and when and where it will be built, Ms. Tanzman hoped to achieve the Legislature's approval for the primary site and location by the end of the forthcoming session. She also talked about the importance of having a broad consensus about the core policy in replacing the services which have been offered at VSH.

Senator Sears expressed concern about the relationship between the State's mental health system and the Department of Corrections. With so many offenders having severe mental health problems, he suggested there is insufficient correlation between the two. He wondered to what extent Corrections is involved in the planning for VSH replacement services. Ms. Tanzman replied that the Administration does not believe it is feasible for the Department of

Corrections to operate its own hospital or to cover its own hospitalization services separately.

After more discussion, the Chair asked about the Administration's intent with respect to the fact that the Futures plan which the Committee approved at its April 25, 2006 meeting calls for fewer in-patient beds than in reality will be required, according to the actuarial report. Ms. Tanzman advised that the plan, which was developed prior to the issuance of actuarial findings, approved 32 in-patient beds. The actuarial report, however, calls for between 43 and 65 in-patient replacement beds. She said that AHS is working on developing language for consideration by the Mental Health Oversight Committee and the Joint Fiscal Committee that will enable the agency, in consultation with the two committees, to make in-course changes without reapproving the whole plan.

The Chair indicated that it would be helpful for the Committee to continue to receive periodic updates on this subject.

**PROPOSED INCREASE IN GRANT THRESHOLD APPROVAL:**

13. Fiscal Officer Stephen Klein, accompanied by staff member Rebecca Buck, proposed Committee approval to seek a statutory change to raise from \$1,000 to \$5,000 the threshold below which grants, gifts or similar items without attached positions can be approved without Committee action. The \$1,000 threshold has been in effect since 1985.

Prior to the meeting Mr. Klein circulated to the members a memorandum on this subject, citing the pertinent section of statute and providing background for the proposal, including history and several years' statistics on smaller grant items. The reasons for the staff request, for which the Administration has indicated its support, are to account for inflation and to minimize the paper work for very small grants. Mr. Klein's memorandum indicated that the Fiscal Office would provide the members with notification of grants and other items received under the raised threshold.

Some members, while not objecting to the proposed threshold per se, indicated they would like either an opportunity to be able request more information about a given small grant, or for the Fiscal Office to bring any unusual items to the Committee's attention for possible input.

There seemed to be agreement that Mr. Klein in essence should consider creating a separate category of items under the proposed new threshold which would not entail more paperwork than those under the current \$1,000 level, but which could be brought back into the Committee review process if a member so requested.

**BASIC NEEDS BUDGET:**

14. Mr. Klein and Steven Kappel reported on the methodology used to determine basic needs budget calculations. In Sec. 1(b) of Act No. 59 of 2005, the Legislature directed that changes or revisions in the methodology require approval by the Joint Fiscal Committee.

In a September 5 memorandum to the Committee on this subject, Mr. Klein, Mr. Kappel and analyst Sara Teachout indicated that the staff has been reviewing the methodology, comparing results with nearby states, and holding discussions with interested parties. They have identified several broad policy questions and developed a number of specific methodology changes which, because of the complexity of the policy issues and the study's importance, they proposed be discussed at the Committee's November meeting. In the meantime, they will convene interested parties.

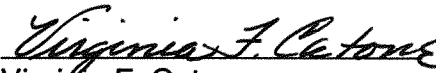
Attached to the memorandum were a comparison of livable wage figures among the four northern New England States and a description of the methodology changes the Fiscal Office staff have identified so far. The latter included the proposal to move to use of just one food plan in the calculations. In the meantime, the staff will obtain information on the differences in the low-cost and moderate food plans.

**NOVEMBER MEETING DATE CONFIRMATION:**

15. The members confirmed their prior decision to meet next on Thursday, November 9. The Chair noted the schedule for that day might include a joint meeting between the Joint Fiscal Committee and the Health Access Oversight Committee on the subject of the Employer Sponsored Insurance (ESI) premium assistance program. *[Note: Later a decision was made to reschedule the joint meeting to November 27 at 2 p.m.]*

The meeting was adjourned at 3:15 p.m.

Respectfully submitted:

  
Virginia F. Catone  
Joint Fiscal Office