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SEN. RICHARD SEARS, JR.
SEN. PETER SHUMLIN

STATE OF VERMONT
LEGISLATIVE JOINT FISCAL COMMITTEE

Wednesday, October 28, 2009

Minutes

Members Present: Representatives Obuchowski, Larson, Heath, and Ancel, and Senators Bartlett, Cummings, and Snelling,

Other Attendees: Mental Health Oversight Committee (Representatives Michael Fisher, Anne Donahue, Tom Koch, and Mitzi Johnson, and Senators Mullin and White), the Chairs of the House and Senate Natural Resources and Energy Committees (Representative Tony Klein and Senator Ginny Lyons), Sen. Mark MacDonald, Rep. Floyd Nease, and Rep. Poirier, and Joint Fiscal Office, Legislative Council, administration, and VSEA staff, various media, lobbyists, and advocacy groups, and members of the public.

The Chair, Representative Obuchowski, called the meeting to order at 1:06 p.m. and asked for a motion to approve the minutes of September 10, 2009. Representative Heath moved to approve the minutes, and Representative Larson seconded the motion; the minutes were approved.

Rutland Regional Medical Center and Vermont State Hospital Report/Actions

The Chair convened a joint meeting with the Mental Health Oversight Committee (MHOC) at 1:07 p.m. to review a proposal from the Department of Mental Health for financing a new psychiatric wing at the Rutland Regional Medical Center (RRMC). Accompanying the proposal was a recommendation from the State Treasurer and the Joint Fiscal Office (JFO).

Robin Lunge, Legislative Counsel, provided the Committees with statutory language and an overview of the handout.

Michael Hartman, Commissioner, and Beth Tanzman, Deputy Commissioner, of the Department of Mental Health (DMH) introduced themselves. Commissioner Hartman explained the proposal, "Vermont Futures Project," included in a handout from Public Financial Management Group (PFM). The proposal explained how a new 28-bed psychiatric wing at the RRMC would be financed. The Commissioner emphasized that the goal was to ensure there would be no debt load to either the RRMC or the State from the new wing. The Commissioner offered that DMH's proposal included a viable long-term plan for 20 years.

The Chair requested that DMH continue updating the legislature on any additional steps it takes in the future on the RRMC project. Representative Heath asked for more information on the rates in light of budget constraints, and whether there would be another opportunity in the future to give comments on the proposal. The Commissioner responded that DMH welcomed comments and that during the Certificate of Need (CON) process, the legislature would have the ability to weigh in on the plan. He stated that DMH would continue to work with the standing committees of jurisdiction during the legislative session.

Representative Koch explained that he would prefer that legislative leadership agree to the proposal to ensure continuity. He expressed his concerns about releasing the funds appropriated for architectural planning, \$250,000, until the financing of the proposal was clearer and legislative leadership weighed in on the plan.

Representative Heath inquired about a comparison of the costs versus the proposed reimbursement rates for the new project in the event that CMS changed the rates. Commissioner Hartman responded that a comparison of rates had not been done. He estimated that given the level of financial guarantee that the RRMC project has, that it should receive the same level of federal reimbursement as the Vermont State Hospital. Representative Heath inquired if DMH could meet the needs of acute care clients without a new facility, and if there were other interested parties offering to support Vermont's acute care need without building a new facility. Commissioner Hartman answered that the new wing was critical, and that he had not received any solicitations from other sources.

Representative Larson asked what the next steps were in the process for finalizing the proposal. Commissioner Hartman explained the next steps in the legislative process are for DMH to present a master plan for the construction of the 15-bed facility 30 days prior to applying to BISHCA for CON approval.

Steve Wisloski, Director of Investment and Debt Management, Office of the Treasurer, and Steve Klein, Chief Fiscal Officer, JFO, introduced themselves. Director Wisloski summarized a joint report by his office and JFO, and he referenced the handout from Commissioner Hartman.

Representative Donahue inquired further if the plan for RRMC was viable for other hospitals. Mr. Wisloski responded that the financing model could be used by other hospitals venturing into like projects. Senator Snelling asked who would ultimately own the new structure. Mr. Wisloski stated it would be a separate 501c Corporation created for the financing mechanism of the project. James Reardon, Commissioner of Department of Finance and Management, further explained that the Rutland Corporation would be establishing a new nonprofit, and that after the 20-year mortgage was paid, the facility would continue to be owned by the Rutland Corporation.

Representative Fisher asked Wisloski to compare the cost of interest rates in the financing proposal to the more traditional general obligation. Wisloski explained that from a general market standpoint, the interest rates would equate to 6 or 7%, as compared to the state negotiating its bonding contract with interest rates closer to 3%.

Senator White suggested, in a variation of Representative Koch's proposal, that the Committees allow DMH to move forward with the financing plan but not take a formal action until all the members are comfortable with the proposal. Representative Heath stated that the legislature could weigh in on the plan when BISHCA requested approval through the CON process, and would prefer not to slow the already lengthy process down. Representative Fisher added that he had confidence that the administration would not expend the architectural money unless the project was feasible.

Robin Lunge, Legislative Counsel, at the request of the Chair presented and explained a motion to approve the RRMC proposal provided by DMH. Senator White asked for clarification of the motion and suggested a change stating that "The Committee does not object with moving forward with the financing arrangement." Representative Heath defined the language further with "proposed" financing arrangement." Lunge clarified the proposed changes to the motion. The Committees continued discussing the language changes. Representative Koch questioned why it was necessary to have a motion if the Committees were approving the proposal. Mr. Klein clarified that the formal motion was requested by the administration to allow more certainty from the legislature to enable the department to move forward with the proposal.

Representative Heath moved to amend the motion by striking the word "perspective" and adding the word "relevant" standing committees. Representative Obuchowski asked the Committees if they had the amended motion in mind. Senator White announced that she would not vote in favor of the motion because of outstanding questions on the overall project proposal. Representative Koch stated that he preferred to adjourn the meeting without action on the proposal, thereby continuing the process but still allowing for the ability to stop the process later. Representative Donahue suggested requesting that the architectural funds not be expended by DMH until after the January 15 update to the relevant standing committees, as stated in the motion. Representative Heath clarified that the Committees were only taking action on the proposal for financing presented before the Committees and not on any additional proposals or changes to the current proposal. Representative M. Johnson announced she was comfortable voting in favor of the amended motion and the current proposal before the Committees. Representative Fisher expressed concerns for the financing options but preferred to have an option to address the issues related to the Vermont State Hospital.

Representative Donahue made a motion to further amend the proposal by stating that the Committees make a nonbinding request to DMH not to expend the architectural funds allocated in Act 43 of 2009 before the relevant standing committees receive an update on the master plan in January 2010. Representative Obuchowski asked if the Committee had the proposed amendment to the amendment of the motion in mind, whereby the Committee defeated the proposed amendment to the amendment of the motion.

Motion before the Committee:

Representative Heath moves that pursuant to Section 32(c) of No. 43 of the Acts of 2009, the Joint Fiscal Committee and the Mental Health Oversight Committee do not object to the financing arrangement proposed in the report provided by the Treasurer's Office and the Joint Fiscal Office. The committees ask that the Department of Mental Health and the Treasurer's Office update the

relevant standing committees on or before January 15th on continued planning in regard to this financing arrangement.

Representative Obuchowski then asked for the Committee's vote on Representative Heath's motion as amended, whereby the Committee voted to approve the motion. Representative Obuchowski adjourned the joint meeting with the MHOC.

Update on Entergy

Representative Obuchowski then convened a meeting with JFC and the Chairs of the House and Senate Natural Resources and Energy Committees, to receive an update on Entergy Nuclear.

Catherine Benham, Joint Fiscal Office, introduced the consultant, Arnie Gundersen of Fairwinds, Associates Inc. Fairwinds Associates is under contract with JFC and will deliver 4 quarterly status reports on Entergy Nuclear Vermont Yankee (ENVY).

Arnold Gundersen, MSNE, RO, Chief Engineer, gave an overview of the first quarterly report submitted on ENVY. Five issues were highlighted within the report, including: slow progress toward developing action plans, operational issues, and three major reliability issues. The progress related to action plans is laid out in a detailed table on pages 26-42. Mr. Gundersen stated most of the plans required by the Vermont Yankee Public Oversight Panel's (POP) assessment analysis were incomplete or not submitted.

Mr. Gundersen listed ongoing reliability concerns for Vermont Yankee Nuclear Power Plant, including microbiologically induced corrosion in the service water system; at least two of the systems for underground drainage were contaminated by radioactivity; and a hiring freeze had been put in place by Entergy, which caused the company to fall behind in hiring 40 additional positions as was its commitment. Additionally, Mr. Gundersen produced a handout with POP's statement on the transfer of ownership of Vermont Yankee from Entergy to Enexus.

Representative Tony Klein, Chair, House Natural Resources and Energy Committee, and Senator Virginia Lyon, Chair, Senate Natural Resources and Energy Committee, questioned Mr. Gundersen about various Vermont Yankee reliability issues and the condition of the plant relative to being in compliance with NRC's requirements.

Richard Saudek, Esq. of Cheney, Brock and Saudek, handed out a copy of the Memorandum of Understanding (MOU) between Entergy, Enexus, and DPS, a chart of the corporate structure before and after the possible changes, and a memo he wrote regarding the MOU. Mr. Saudek stated that the basic plan has not changed from previous versions. It is a way to transfer Entergy's merchant nuclear plants to a new company and generate enough money through loans and bonds to pay Entergy the current value of those plants. While there are some positive changes from previous proposals, there are still many unanswered questions.

Representative Klein and Senator Lyons questioned Mr. Saudek regarding the various implications of this change in corporate structure. Representative Heath asked what the Public

Service Board's (PSB) position was on the MOU. Saudek explained that the PSB had completed hearings on the transfer of ownership in late July but had not yet ruled on the MOU.

Chair Obuchowski adjourned the joint meeting with the Chairs of House and Senate Natural Resources and Energy and reconvened the Committee.

Update on Budget Items

Commissioner Reardon handed out three documents (position totals, summary of labor savings, and upcoming FY 2010 budget pressures). He described the upcoming FY 2010 Budget Adjustment Act (BAA) pressures, including a possible November revenue forecast revision; a \$40,000 deficit in the Emergency Relief Assistance Fund; a \$400,000 deficit in the Sarcoidosis Benefit Trust Fund; Agency of Human Services had anticipated a federal increase to the state's share of the Aid to Aging, Blind, and Disabled (AABD) Cost of Living Allowance (COLA) but that increase does not appear to be imminent so therefore, a deficit of \$600,000 will need addressing; a delay from the federal government on an approval of the Global Commitment Waiver to cover the costs of recipients between 200 and 300% of poverty in the state for only pharmacy and Catamount health care programs meant Vermont was accruing a deficit. Representative Heath asked that the administration send information to the Committee on costs of the waiver delay, broken down by program and Mr. Reardon agreed.

Commissioner Reardon continued the overview of FY 2010 BAA pressures, adding that Medicaid's increase Per Member Per Month (PMPM) cost was being leveraged by utilizing the Caseload Reserve account and, therefore, that fund should be monitored for deficits; the General Assistance Fund may have a partial stabilizing fix for FY 2010 but is estimated to have a remaining shortfall of \$600,000; the amount for the Reach-up Caseload Reserve upward pressures had not yet been determined but, for the interim, ARRA funds would fill those funding gaps; the Corrections' out-of-state bed utilization pressures had not yet been determined. During the 2009 session, the legislature appropriated \$2 million from ARRA funds to the Vermont Economic Development Authority (VEDA), and since those funds cannot be drawn down without expenditure, an advance of the funds was made involving the Treasurer and the Vermont State Police, Department of Public Safety, budget. Those funds would need replenishing after the ARRA funds are drawn down. This transaction would be budget-neutral.

Commissioner Reardon then referenced the labor savings summary targets handout that reviewed the savings targets of the Alternate Savings Plan, Retirement Incentive Savings Hiring Freeze and the FY 2010 Rescission of labor cost. Mr. Reardon then summarized the labor savings from Executive Branch employees' Pay Act reductions, savings from recapture of a Premium Rate Holiday, position reduction savings from reductions in force (RIFs), and savings of \$525,000 in the Agency of Human Services from \$368,000 increased vacancy savings (1.5%) of the Department for Children and Families, \$91,000 in the Vermont State Hospital that will have no program impact. Savings of \$75,000 were achieved in the Agency of Natural Resources from the lower pay offered to new hires that occurred from the retirement incentive position rollover, and savings of \$54,000 from fewer seasonal employee positions in the Department of Fish and Wildlife and the Department of Forests, Parks and Recreation. The Department of Liquor Control has transferred \$157,000 in direct applications to the General Fund in lieu of eliminating additional warehouse workers. The State Attorneys and Sheriffs have used one-time

savings from some of its \$88,000 carry-over and a \$22,000 reduction in operating expenses to bridge its FY 2010 and FY 2011 budgets. In Agriculture, state funds could be freed up utilizing federal funds in lieu of eliminating 2 positions.

Reardon explained his final handout that totaled the reductions in positions for FY 2009. Representative Heath asked that the administration provide the Committee with a breakdown of the \$1.3 million position savings (spreadsheet received after meeting). Mr. Reardon then explained, at the request of Representative Heath, how the recapture of funds from the Premium Rate Holiday had been achieved. Representative Heath requested a document showing the percentage and number of positions lost by department since the first position reduction from 2007 to now. Mr. Reardon agreed to provide the information to the Committee.

Commissioner Reardon stated that an official report of the Administration's Tiger Teams was pending. The administration has established a target of 8% reduction in the FY 2011 General Fund. The Administration will update the Committee when the report is produced.

Respectfully Submitted,

Theresa Utton-Jerman, Legislative Joint Fiscal Office