

ONE BALDWIN STREET  
MONTPELIER, VT 05633-5701

REP. MICHAEL OBUCHOWSKI, CHAIR  
SEN. ANN CUMMINGS, VICE-CHAIR  
SEN. DIANE SNELLING, CLERK  
REP. JANET ANCEL  
SEN. SUSAN BARTLETT



PHONE: (802) 828-2295  
FAX: (802) 828-2483

REP. MARTHA HEATH  
REP. RICHARD HUBE  
REP. MARK LARSON  
SEN. RICHARD SEARS, JR.  
SEN. PETER SHUMLIN

**STATE OF VERMONT**  
LEGISLATIVE JOINT FISCAL COMMITTEE

Thursday, September 10, 2009

Minutes

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

Other Attendees: Representatives Branagan, Donahue, Fisher, and M. Johnson, Joint Fiscal Office, Legislative Council, administration, and VSEA staff, various media, lobbyists, advocacy groups, and members of the public.

The Chair called the meeting to order at 9:30 a.m. and asked for a motion to approve the minutes of August 5 and August 18, 2009. Senator Cummings made the motion to approve both minutes, Representative Heath seconded it, and the Committee approved it.

**1. Fiscal Officer's Report**

Stephen Klein, Chief Fiscal Officer of the Joint Fiscal Office, highlighted areas of the fiscal report. Transportation revenues declined 2.5% since the July 2009 consensus forecast, but the General Fund was on target. Mr. Klein pointed out two potential areas that may impact the FY 2010 budget. The first was that the number of participants in the Retirement Incentive Program totaled 87 less than the originally budgeted 330, which may change the amount planned for offsetting the August downgrade. The second was that Medicaid caseloads were growing at a faster rate than anticipated but the usage or cost per case may countervail that growth. More information will be known at a later date. The last area the office is monitoring is Congress's proposed health care reform bill and how it could impact Vermont's budget.

Representative Hube inquired whether there was an analysis on the impacts of the 3-year downgrade to property values. Mr. Klein responded that the semiannual property valuation trend data, built in November, could include the issue of possible property tax erosion, and that he would consult the legislature's economist.

**2. Fiscal Updates – a. Revenue Shortfall Reserve Report**

James Reardon, Commissioner of the Department of Finance & Management, explained a memorandum on the Revenue Shortfall Reserve and a handout on the breakdown of FY 2009 Revenue vs. Targets. He referred to an additional enclosure, Human Resources Caseload Reserve Transfers Report, documented under other reports/information of the agenda as item VI.

**b. Report on FY 2010 Budget Adjustment Pressures**

Commissioner Reardon reminded the Committee of a budget adjustment pressure from the August rescissions totaling \$7.4 million in labor savings that had not yet been resolved in labor negotiations, and that an additional downgrade may occur in November. The Emergency Relief Assistance Fund is currently \$40,000 out of balance. A further deficit of \$122,000 was anticipated in the Sarcoidosis Benefit Trust Fund for projected claims, bringing the FY 2010 deficit in that fund to \$400,000. All claims toward the fund were being processed regardless of the trust fund deficit. In corrections, the actual numbers for state utilization of out-of-state beds was higher than projected. The previously anticipated \$600,000 in savings for waiving the federal Cost of Living Adjustment (COLA) increase in the Department for Children and Families' Aid to the Aged, Blind, and Disabled (AABD) program did not occur; therefore, that amount would have to be made up.

**c. Report on FY 2011 Budget Development Process**

Commissioner Reardon informed the Committee that the administration had not yet issued a report on the FY 2011 Budget Development Process but it would be available soon, once the administration's Tiger Teams finished their work in a couple of weeks.

**d. Funds Status Closeout Report**

Commissioner Reardon reported that the funds status closeout report for Education, General, and Transportation had not changed substantially, illustrated in the handout FY 2009 Revenue vs. Targets. He offered that in the operating statement, the direct application reversions were \$2.4 million higher than anticipated for FY 2009, due to BISHCA receipts being higher than projected. All reserve balances are at the 5% targets, including Education, Transportation, and General Fund.

Commissioner Reardon responded to Representative Hube's question by stating that budget pressures for corrections were due to more people being incarcerated. Representative Heath commented that the Corrections Oversight Committee had invited Judge Davenport to testify at its next meeting on the issue of increased detainees, and she further stated that the number of incarcerated women was again on the rise.

Commissioner Reardon in answering Representative Heath's question stated that the Revenue Shortfall Reserve for FY 2010 Special Education Medicaid of \$6.46 million was from special education receipts. Those funds were historically earmarked for the Education Fund but were redirected to the General Fund for FY 2009 and FY 2010, with an expectation that those receipts in FY 2009 would be held for use in FY 2010.

Representative Obuchowski inquired how the administration planned to share information with the legislature on outcomes from the Tiger Teams. Commissioner Reardon responded that the administration had not discussed how to present that report but offered that the information would be ready for the November Committee meeting.

Representative Ancel inquired about the progress of labor negotiations between the administration and the Vermont State Employees' Association (VSEA) to achieve the \$7.4 million in budget savings for FY 2010, and showed concern that if the approaching contract target date is not met layoffs may ensue. Commissioner Reardon responded that the administration preferred to avoid layoffs but has not come to agreement with VSEA for sustainable labor savings for future

budgets. The administration has proposed a couple of furlough days and some across-the-board wage reductions to the state labor force. The VSEA have proposed four unpaid holidays and four furlough days. The administration would prefer sustainable savings rather than furloughs because it may further aggravate out-year budgets. The administration would consider using furlough days to heal the FY 2010 budget deficit if there was agreement of sustainable savings for future budgets. Representative Ancel asked for confirmation of whether concurrent negotiations were occurring for labor savings for FY 2010 and FY 2011, and Commissioner Reardon affirmed that they were. Representative Ancel further inquired whether the savings in those negotiations could be used to achieve more sustainable savings for those fiscal years. Commissioner Reardon countered that savings would be more attainable if the proposed plan from the negotiations included concrete savings that included concurrent future budget savings.

Representative Heath questioned why the administration needed assurances of sustainable savings for the small time frame of a single year (FY 2010) when many other states such as New Hampshire were using furloughs as short-term fixes instead of layoffs. She also agreed that future budgets, starting in FY 2011, should have sustainable savings. Commissioner Reardon submitted an outline that listed the administration's concerns on the issues of actual sustainable savings and senior employee fairness from electing to agree to furloughs. He stressed the projected deficits of \$90 million for FY 2011 and \$174 million for FY 2010.

Representative Heath reiterated that furloughs could be used to achieve the short-term savings for FY 2010 to avoid layoffs. Senator Cummings agreed with Representative Heath and explained that state reductions and layoffs in her own County (Washington) had caused a high rate of unemployment which further aggravates the already dire economic situations of local businesses. Commissioner Reardon agreed that layoffs were not a good alternative for labor savings. Senator Bartlett offered that there were many options for negotiating sustainable labor savings such as fact finding, but that the present concern was of the short-term savings for the remainder of the fiscal year, and blending the two conversations and delaying the current budget problems may cause unintentional consequences to state programs. She suggested that there be two separate negotiations for bargaining for short-term and long-term savings. Commissioner Reardon indicated the administration did not anticipate agreement with the VSEA by the September 18 contract deadline. Commissioner Reardon warned of possible layoffs due to the delayed labor agreement and responded to Senator Cummings that an analysis of the impacts on services and programs from layoffs had not yet been determined, but that there would be adverse impacts to state government functions. Representative Hube reiterated his request for a matrix of employees who have involuntarily and voluntarily left state government, and Commissioner Reardon stated it was in the process of being written.

The Chair reiterated the Committee's concerns on the importance of bargaining a labor contract to achieve the FY 2010 budget savings to close the August rescission amount of \$7.4 million, and that layoffs would be the least desirable action toward achieving those savings. Representative Larson stated the legislature was relying on the administration's ability to negotiate with state employees since it had no authority to intervene in those discussions, nor would it do so.

**3. Other Committee Reports – a. Child Care Eligibility and Rates Rule Process**

Steve Dale, Commissioner, Department for Children and Families, explained the proposed rule process with three prepared documents. He added that the charts in the PowerPoint presentation would be updated to reflect any additional changes by the end of October.

Representative Ann Pugh, Chair, House Human Services Committee (HHSC), thanked the Commissioner and the JFC and handed out a letter from HHSC recommending the rule with further additions. She commented that the Chair of the Senate Health and Welfare Committee, Senator Racine, concurred with the letter after receiving no comments from his committee. Representative Pugh explained that seven members from her committee responded to the proposed rule, and the recommendations in the committee letter were an effort to address those concerns and comments.

Senator Snelling inquired about the annualized projection of costs for FY 2011. Commissioner Dale deferred to a memorandum showing potential upward pressures. The proposed rule was not requesting broad expansion of the child care subsidy program to recipients; instead, it framed a more functional system to encourage qualified people to take advantage of the program, which may potentially become a future pressure on the budget but most likely a gradual one. Senator Snelling inquired of the FY 2010 General Fund increase of \$3.3 million and the one-time \$1.5 million in ARRA funds listed on the PowerPoint handout as new allocated funds. Commissioner Dale clarified that the increase in funds was built into DCF's budget, and the department was anticipating an increase in the Childcare Block Grant funding to potentially replace ARRA funds. He further explained that there would be some upward pressure on the STARS program; however, it was not expected to be significant. An ongoing discussion of the state's ability to keep up with the annual change in the federal poverty level and market trends will provide information on whether the program will be able to maintain the new eligibility thresholds.

Senator Snelling inquired on how DCF would track federal funding and outcomes of the new child care subsidy program initiatives. Commissioner Dale responded that outcome data were available at the national level. Senator Snelling asked that data be collected at the state level to track the success of the program initiatives. Commissioner Dale agreed to try. Representative Hube asked what the department foresaw as the estimated child care enrollments for 2010 and 2011. Commissioner Dale responded that an estimated 300 additional children would be enrolled in 2010 with an estimated cost of \$400,000. The estimates double in 2011. He further stated that due to the elimination of variances, the rate increases have a cost-neutral effect on the program.

Senator Bartlett clarified for Representative Hube that the existing child care providers with varying support systems would not be dramatically affected by the program transition because the department planned to work with those providers to reorganize their business plans and minimize the transitional effects of the program, and Commissioner Dale agreed. Representative Pugh reiterated the HHSC proposed three additions to the rule that included DCF reporting on the impact on providers and the state's ability to keep up with federal poverty levels.

Representative Heath moved to approve the proposed rule by DCF, with the inclusion of two recommendations from the Committee on House Human Services' letter to the JFC as Follows:

**1.** *“DCF report to the House Committee on Human Services and the Senate Committee on Health and Welfare by March 15, 2010 and March 15, 2011*

*regarding the transition to the new provider rate structure; the impact on the number of children served and the quality of the services provided under both the former structure and the new system; whether the new system has had an impact on providers' ability to serve families with special or greater needs; and whether under the new system any providers have ceased offering infant-toddler care, have had to raise rates, or are at financial risk."*

**3.** *"DCF provide the Joint Fiscal Committee, the House Committee on Human Services, and the Senate Committee on Health and Welfare with a copy of its transition plan and be prepared to report on it during the first week of the 2010 legislative session."*

Representative Heath further stated that the HHSC's second recommendation was a good idea but due to state budget constraints, it was unlikely the state would be able to achieve the federal poverty level eligibility standards. Representative Heath further stated that the appropriations committees would do their best to stay within the federal poverty guidelines but could not commit to those standards each year. The Chair reiterated the motion and the Committee approved it.

#### **b.1. Medicaid Waiver Proposals – 1. Global Commitment (GC) Extension Proposal**

Susan Besio, Director, Office of Vermont Health Access (OVHA), handed out a draft extension request to the U.S. Department of Health and Human Services and explained the process. The proposal included an automatic three-year extension of the GC waiver.

Representative Pugh, Co-Chair, Health Access Oversight Committee (HAOC), submitted a memorandum on the proposed GC extension that included the HAOCs recommendations. Director Besio explained that prior three-year projections showed \$256 million of savings in investments but actual savings totaled \$260 million. Additionally, original estimates of \$148 million in additional federal receipts were anticipated but actual amounts totaled \$245 million, due to the state's ability to use certified match for some portions of the programs. The Director concluded that savings were anticipated to continue to accrue over the length of the GC 3-year extension, and that a decision from the federal government on the extension request was expected by March 2010.

Representative Obuchowski asked Director Besio what specific approval was needed from the Committee for the GC Waiver extension, and she explained that OVHA was requesting from the Committee the approval to move forward with the submission of a letter of intent to the Centers for Medicare and Medicaid Services (CMS) asking for automatic renewal of Vermonts GC Waiver for 3 years, starting October 1, 2010. Representative Obuchowski inquired what the value was of the last bullet on page 5 of her handout (see agenda link), and she responded that the value of the capitation for payment of claims paid subsequent to termination of the waiver (i.e. the tail) was estimated at \$76 million gross.

Representative Heath moved to approve OVHA submitting the letter of intent to CMS requesting a 3-year extension for a Medicaid GC Waiver. The Committee approved the motion.

#### **b.2. Long-term Care – Choices for Care Waiver Extension Proposal**

Joan Senecal, Commissioner, Department of Disabilities, Aging, and Independent Living (DAIL), submitted to the Committee a second draft letter of intent to the U.S. Department of Health & Human Services, requesting an automatic 3-year extension for the Choices for Care 5-year

waiver. DAIL has been asked by CMS to provide budget neutrality figures that will include a growth trend. The current trend is 7.8% (cap for expenditures) over the average of the 5-year waiver, and DAIL is well under that budget neutrality cap. Commissioner Senecal commented that she believed DAIL was meeting all the requirements of the waiver by serving more people and relying less on nursing home care.

Senator Bartlett asked whether by DAIL staying under the imposed cap for expenditures for the Choices for Care program, the state had more GF dollars for the program that DAIL could draw down. Commissioner Senecal agreed. Representative Obuchowski inquired if DAIL could supply documentation to the Committee when available on the new budget neutrality figures. Commissioner Senecal agreed and commented that the information would be available after submission of the letter of intent.

Senator Bartlett made a motion to approve the submission of a letter of intent by DAIL to CMS for an automatic 3-year extension for the Choices for Care Waiver, and the Committee approved the motion.

#### **4. Human Services Reports and Updates – a. Chittenden County Unified Substance Abuse Treatment Pilot Program Update**

Barbara Cimaglio, Deputy Commissioner, Department of Health, explained a memorandum handed out to the Committee summarizing the details on the progress of the program.

#### **b. Update on Rutland Regional Medical Center (RRMC) and Vermont State Hospital**

Michael Hartman, Commissioner, Department of Mental Health, and Stephen Wislosky, Director of Investment and Debt Management, Office of the Treasurer, gave an update on the financing plan for RRMC. Commissioner Hartman stated that meetings were occurring on a weekly and biweekly basis with the interested parties, and the process from those meetings would bring forth a financing proposal for the RRMC project tailored to legislative intent of avoiding debt to the state and RRMC through bonding. The final report on RRMCs financial plan was due to the JFC and Mental Health Oversight Committee (MHOC) by October 1.

The Chair discussed with the Committee a date for a joint meeting with MHOC to receive the report and decide final deliberations on the RRMC financing report, which was confirmed for October 28 at 1 p.m.

The Chair confirmed an additional tentative JFC meeting on November 12 for its regular meeting and to receive the revenue forecast. The Emergency Board was scheduled for this date at 1:00 p.m. to receive the consensus forecast.

#### **5. Other Fiscal Issues – Burlington Tax Increment Financing (TIF) Business Plan and Projections – a. Tax Department: Education Fund Context**

Susan Mesner, Tax Economist, Department of Taxes, handed out and highlighted areas of a letter from her department explaining the administration's position on the proposed plan for Burlington to expand its debt financing. Senator Cummings inquired whether a cap imposed by the legislature had been administered onto TIFs, and Ms. Mesner agreed it had. Ms. Mesner encouraged the Committee to read a study on tax increment financing that would be released soon by the

Department of Taxes and Joint Fiscal Office. Representative Larson clarified that the question for the Committee was how the payment should be calculated for Burlington's TIF district.

**b. Burlington Presentation**

The Burlington testifiers introduced themselves to the Committee as David Weinstein, CEDO Special Projects, City of Burlington; Jonathan Leopold, Chief Administrative Officer, City of Burlington; and Ken Schatz, City of Burlington Attorney. Mr. Weinstein gave an overview of a presentation packet and a letter from the Mayor of the City of Burlington.

In answering Senator Snelling's question, Mr. Weinstein clarified that the strict interpretation of the new plan for the cost and what was included had been calculated at about \$700,000 over the life of the district. Burlington's different estimate was \$1.5 million. Mr. Leopold estimated that, if not for the exclusion of the two properties of Cherry Street and the Marriot Hotel, it would generate about \$30,000 to \$40,000, which would be roughly half of the Burlington offer. He further stated that the two properties were directly related to the \$7.8 million in financing that Burlington contracted in 2005 and the debt covenants on the financing identified 100% of the TIF revenue that cannot be ignored. Representative Larson commented that the two TIFs could be compared but that they elicited two different questions.

Mr. Weinstein stated that the letter from the Mayor had been incorporated in a motion handed out to the Committee. Attorney Schatz explained the necessity for the letter as a response to a question of what happened to the excess TIF revenue once the debt was retired. A tax discussion involving the City of Burlington and Representative Hube then ensued.

Sara Teachout, Fiscal Analyst, Joint Fiscal Office, explained the motion before the Committee and pointed out a typographical error on the Mayor's letter as "...TIF period in 2026" should be dated "2025." An additional correction was made in the last sentence of the second paragraph in the motion from "...will be returned proportionally" to "...will be returned to the City of Burlington and State Education Fund in proportion..." Representative Obuchowski in following up from a discussion between Representatives Hube and Larson, inquired from the Joint Fiscal Office of the relevance of a no vote. Mr. Klein responded that by not adopting a formula, there would then be no obligation for the City of Burlington to the state, and lack of certainty would make it difficult for the City of Burlington to move forward with the project.

The Committee voted to approve the motion, whereby the Chair adjourned the meeting at 12:40 p.m.

Respectively Submitted,

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Theresa Utton-Jerman, Joint Fiscal Office