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SEN. PETER SHUMLIN

STATE OF VERMONT
LEGISLATIVE JOINT FISCAL COMMITTEE

September 10, 2010

Minutes

Members present: Representatives Obuchowski, Ancel, Heath, Larson, and Senators Cummings, Bartlett, Sears, Shumlin, and Snelling.

Other attendees: Administration, Joint Fiscal Office staff, various media, lobbyists, and advocacy groups.

The Chair, Representative Obuchowski, called the meeting to order at 9:37 a.m., and Representative Heath made a motion to approve the July 15, 2010 minutes with a technical correction. Senator Snelling seconded the motion, and the Committee approved it.

A.1. Fiscal Office's Updates/Issues - Fiscal Officers' Report

Stephen Klein, Chief Fiscal Officer, Joint Fiscal Office (JFO), highlighted areas of the report sent previously to the Committee. JFO received one bid proposal for the Revenue Forecasting Services position (handout) from Tom Kavet of, Kavet, Rockler & Associates. The Committee's approval was sought by JFO to negotiate and sign a two- to- four year performance contract with Mr. Kavet.

> Senator Cummings moved that the Joint Fiscal Office be authorized to negotiate and sign a performance contract for up-to four years with Kavet, Rockler & Associates for revenue forecasting and economic analysis, consistent with the negotiations to date, and the recommendation of the Joint Fiscal Office provided to the committee. Representative Heath seconded the motion, and the Committee approved it.

Mr. Klein highlighted other areas of the Fiscal Officer's Report. Representative Heath inquired whether details of the bank franchise tax settlement were known, and Mr. Klein responded he would investigate further. Representative Obuchowski asked for more information on President Obama's proposal relating to infrastructure funding, announced on Labor Day, and Mr. Klein stated that the proposal could potentially be a hundred million dollar item nationally towards infrastructure capital, and JFO would continue to monitor developments.

A.2.a. Education Fund

Mark Perrault, Fiscal Analyst, Joint Fiscal Office, handed out an updated Education Fund Outlook. In the post-FY 2010 Education Fund closeout, revenues are up $5.7 million due to lower property tax adjustments and increased lottery and sales tax revenues. As a result, projected reserves for FY 2011 are up to 4.6%, a little below the full 5% statutory reserve. Preliminary JFO projections for FY 2012 indicate that the reserve will be full and that a surplus of $4.8 million may be available for education tax rate reductions. A meeting with the Administration to develop consensus projections is scheduled for next week. Since the preliminary figures for the FY 2012 Education Fund are promising, it may be possible to reduce the education tax rate subject to two caveats. First, that the General Fund transfer to the Education Fund is fully restored to statutory levels, and second, that schools are able to achieve the $23.2 million reduction in spending called for in Act 146 of 2010.

A conversation ensued on the formula that the Department of Education created for school districts to meet Act 146 targets. In answering a question from Representative Heath, Mr. Perrault explained that school districts have until December 15, 2010 to report back to the Department on whether they intend to participate in the savings formula, and if so, whether the targets are attainable. The Department has discretion to change the formula if some of the targets are not achievable. (see JFO website for additional documents).

b. Catamount Update

Nolan Langweil, Fiscal Analyst, Joint Fiscal Office, gave a summary of a memo sent earlier to the Committee on the Catamount Health premium differential. Representative Heath inquired whether the Administration had sent letters to the affected parties, and Mr. Langweil explained that indeed a letter was sent to those parties with anniversary/renewal dates between June and October. He also mentioned that advocates expressed concern about the letters clarity concerning beneficiary options for switching health care companies if they preferred not to pay a higher cost. The Department of Vermont Health Access (DVHA) was modifying the letter to address the advocates concerns. Representative Larson asked for a copy of the letter, and Mr. Langweil supplied the information for the record.

c. Waterfall Update

Stephanie Barrett, Fiscal Analyst, Joint Fiscal Office, provided a summary of the contingent appropriations for FY 2010 and FY 2011 authorized under Sections C.102 and D.106 of Act 156 of 2010 (budget). The summary sheet handed out was entitled "Contingent Waterfall Items." The complete list of contingent appropriations totaled $53.6 million, of which $12.9 million was addressed by FY 2010 available revenues under Sec.C.102, covering all items listed in that section except for $300,000 of the Case Management Project. The remaining items were covered by the transfer enabled by the congressional action extending the enhanced FMAP rate in the Medicaid program. An additional $35.5 million of appropriations were covered, and $5.1 million of appropriations are not needed at this time, leaving $2 million in the caseload reserve for the budget adjustment process or FY 2012 budget needs.

d. Review of FY 2012 Deficit

Ms. Barrett distributed a FY 2012 Consensus Budget Gap Analysis (Deficit Review), and a copy of a JFO issue brief. $1.184 million in revenue is projected for the FY 2012 budget; JFO and Finance and Management estimate a total budget need of $1.296 million after analysis of pressures and offsets. This indicated a current budget gap of $112 million for FY 2012. In answering Representative Heath's question, Ms. Barrett explained that the baseline growth assumption for FY 2012 general budget pressures was estimated at 3.5% of the budget.

With regard to the retirement related adjustments in the budget gap analysis, Mr. Klein explained that a conservative estimate of state employee retirement costs was projected to be over the previous projection of 3.5% growth level for teachers' retirement. Jim Reardon, Commissioner, Department of Finance and Management, explained that an Internal Revenue Service regulation states that state employee retiree health costs can not exceed 25% for qualified pension funds. The state teachers' retirement and health care benefits are disbursed from the teachers' pension fund and the healthcare percentage has been rising. In order to keep the fund within the federal cap allowance, $3 million has been included in the General Fund gap analysis but the issue will need addressing in the 2011 legislative session. Mr. Klein further explained that this adjustment of $1.3 million was included in the analysis related to teachers Other Post Employment Benefits (OPEB) liability, a first step at addressing this long-term fiscal issue. All of this is subject to change as the actuarial estimates are completed.

Ms Barrett continued her overview of the FY 2012 Consensus Budget Gap Analysis. In the Tobacco Settlement Trust Fund, 2010 revenues came in lower than anticipated, and payments disbursed from the trust fund are above the revenues being received. Currently, the trust fund is at $24 million and projected to be at $17 million at the end of 2010. Therefore, a $6 million adjustment has been included for FY 2012 to keep the trust fund reserves at $17 million.

Ms Barrett ended by stating that things that could change estimates are if revenues decrease, or if Challenges for Change savings are not realized.

B.1.a. Administration's Updates/Issue – Revenue Shortfall Reserve Report

Commissioner Reardon stated that the Revenue Shortfall Reserve was currently at zero balance. The General Fund preliminary August revenues were up $3.6 million but there were $5 million in one-time settlements. The Transportation Fund was relatively on target, and the Education Fund was slightly below its target at $400,000, due to the motor vehicle Purchase and Use tax and Sales and Use tax that were slightly below estimates. The Lottery revenues are within targets, improving earlier projections.

b. Funds Status Closeout Report – A. Education, B. General, and C. Transportation

Commissioner Reardon handed out two documents and explained that there was concurrence with the JFO on its testimony earlier by Mr. Perrault on the Education Fund outlook. The Transportation Fund Reserve closed out at the 5% statutory requirement. The General Fund operating statement was consensus except for the FY 2012 figures.

c. Report on FY 2011 Budget Adjustment Pressures (General and Challenges)

Commissioner Reardon handed out a working document on potential items for the proposed FY 2011 budget adjustment act (BAA). General Fund reversion targets were above projections. Direct Application figures were not known but were being worked on. The Challenges for Change initiatives have not fully identified the $38 million in projected savings but the full amount, including the unrealized portion, was anticipated for transfer to the General Fund in the next few weeks. Representative Heath asked for clarification on how the difference of the unrealized amount of the Challenges savings would be met if not through actual challenges, and Commissioner Reardon stated that he was hopeful all the savings could be met through additional challenges, rather than reductions.

Commissioner Reardon continued his review of the potential items for the FY 2011 BAA. Payment for a scheduled E-9-1-1 systems upgrade had been earmarked through a carryforward of FY 2010 surplus funds of $1.2 million, and E-9-1-1 will need spending authority to use the funds for FY 2011. The Public Service Board decreased the Universal Service Fund to 1.35% causing a lower amount of revenue to support the systems upgrade, thereby, forcing the carryforward of surplus funds for the project. The rate would invariably need adjusting upwards in FY 2012 to cover the unexpected transfer. The Administration has requested that the newly hired Executive Director, Colonel James Baker, for the Criminal Justice Training Council (CJTC), rebuild CJTCs budget before the BAA discussions for any adjustments in FY 2011. The Vermont Veterans Home had reestablished its recruitment for a director, but in the meantime a contracted administrator would be hired. There will be a potential liability of $1 million in Homeowners' Rebates, $1 million for Renters Rebates, and $1 million in the High School Completion Program. A projection of $5.3 million in General Fund savings from a labor contract has been realized, of which $950,000 may be needed to adjust employees' retirement savings booked at $1.8 million in FY 2010 that were not realized. Authority to reduce the General Fund transfer from the labor contract and to transfer funds to the retirement savings may also be needed.

Commissioner Reardon continued the explanation of other areas of potential BAA areas, including $125,000 to the University of Vermont for the Geological Survey Program, if it were transferred to UVM from the Department of Environmental Conservation. The funds were for replacement of the federal funds that the state was able to draw on for the program but UVM can not.

Senator Sears showed concern for achieving all of the Challenge savings, and Commissioner Reardon agreed it was a concern. Commissioner Reardon offered that the FY 2012 budget development instructions may be ready for transmission to departments by next Friday. Representative Obuchowski inquired whether Commissioner Reardon could address the tax expenditure report required by the Department of Taxes. Commissioner Reardon stated that $20,000 was set aside for production of the report. Representative Heath asked whether there would be any communication with JFC on the budget development process instructions. Mr. Klein stated JFO would forward those to the Committee when they were received from the Administration.

2. Web Portal Board Vermont Information Consortium (VIC) contract review, and e-procurement follow-up.

David Tucker, Commissioner, Department of Information and Innovation (DII), and Chair, Web Portal Board, introduced Jamie Gage, General Manager, VIC, and handed out information on VIC and the web development process (also see full packet of enclosures of fee requests on e-procurement, #2455 and #2456). Mr. Gage explained who VIC was and its responsibilities. VIC had created 80 online fee based access services in the last 4 years, and of those, 66 were available with no fee. The contract with VIC is a self-funded model with no upfront appropriations, and in 2006, Vermont was the 18th state to create and participate in this type of arrangement. The state has a 3-year contract with VIC that expires in 2012. VIC websites for Vermont state government have ranked in the top-10 governmental websites nationally, during the last 2 years.

Representative Obuchowski inquired what assumptions were made to arrive at the calculations for savings in the Estimated Market cost graph on the handout. Mr. Gage offered to send a copy of the spreadsheet to the Committee showing the breakdown of the costs.

Representative Ancel stated DII was requesting a process outside of normal legislative committee process for collecting fees, therefore, information on the value of the services, and how many dollars in user fees collected should be reviewed by the Committee. Mr. Gage supplied a handout showing VICs profit and loss, and stated that VIC received $1.2 million in 2009 and $3.3 million in anticipated income over 3-years. Representative Obuchowski asked for data to substantiate the numbers in regards to expenses. He further inquired whether the chart on the handout was cumulative. Mr. Gage offered to research and send further information to the Committee. The Chair requested that the information include projections for VICs budget, along with a breakdown of expenses, based on historic growth with an explanation of the assumptions. He stated that since the web based processes are relatively new, there was a higher level of scrutiny, and this was the reason for the Committee's diligence in verifying the facts. Senator Bartlett inquired if VIC envisioned other potential areas in state government for web development, and Mr. Gage responded there were additional areas that other states had successfully included, such as areas in buildings and general services, commerce, and Secretary of State's office. Senator Snelling asked whether the Agency of Natural Resources had been discussed in future plans. Commissioner Tucker responded that VIC was working with the Agency to find ways to incorporate permits into a web based system.

Representative Heath queried on the rationale of choosing a public-private partnership rather than a state-run service company, in what appeared to be a potentially lucrative endeavor. Commissioner Tucker explained that DII would reevaluate VICs fees every 2 years to ensure appropriateness but that it was not disadvantaging users. If it appears the fees are showing a large profit, they will be renegotiated to a lower amount. Representative Obuchowski requested that VIC recommend to the Committee what 2- to- 3 board members could be converted to legislators for a total of 4-to-5 legislators on the 11-member board.

Mr. Klein gave an update on the process of the two fee requests, and informed the Committee that if it did not object to the fees, then automatic approval would come next Friday. The Chair inquired from the Committee its preference, and stated the Committee would not take formal action on approving the fees, but instead let the Friday deadline pass and with the fees taking effect.

3. Environmental Contingency Fund Expenditures follow-up – JARD Company Brownfield site.

Justin Johnson, Commissioner, and George Desch, Director, Waste Management Division, Department of Environmental Conservation (DEC), handed out two documents and referred to a visual map of the JARD site in Bennington, and explained that DEC investigated and found no correlation between the Bennington State Office Buildings' issues and the JARD site. Mr. Desch further elaborated that PCB levels were normal and no water quality issues were found. The histories of the sites were then explained by Mr. Desch. Senator Sears stated that there were some neighbors around the JARD site that had concerns about a broken pipe discovered and possible impacts from the new geo-thermal project for the veteran's home. Mr. Desch responded that DEC was in communication with the JARD site neighbors, and that an informational public hearing will be held when the full results from the well monitoring was known. It was requested that DEC inform and share the results with the Committee.

4. Report on Preferred Provider Network expanding alcohol and drug abuse programs.

Linda Piasecki, Operations Chief, Alcohol and Drug Abuse Programs (ADAP), Vermont Department of Health, distributed a handout and summarized the information. Senator Snelling inquired whether the plan for the revised ADAP network would help to resolve current client access issues, and Ms. Piasecki responded that was one of the goals. Senator Bartlett asked whether protocols had been established to implement the plan. Ms. Piasecki stated that ADAP had ongoing meetings to create the protocols and mechanics for implementing the plan, and agreed with Senator Bartlett the plan should include the issue of more timely service to clients. She further offered that ADAP was working closely with providers. Senator Bartlett requested that ADAP update the Committee on its implementation plan at its November meeting.

5. Low Income Home Energy Assistance Program (LIHEAP) update.

Stephen Dale, Commissioner, and Richard Moffi, Fuel Assistance Program Chief, Department for Children and Families, distributed a document of possible benefit projections for FFY 2011. The Commissioner clarified that the Department could only give estimates of the pre-season but by October a better estimate of fuel prices and federal funding levels should be known for November benefit disbursements. One of the biggest changes to the program was the recent change in state law. Historically, Vermont has always had the highest benefits and the most restrictive criteria which cause a substantial cliff to program users. The new state law will be implemented for the first time this heating season. Fewer funds will be distributed to people at the lowest end of the poverty scale, allowing people at the highest end of the poverty scale to avoid the funding cliff. Mr. Moffi explained the two possible scenarios for federal funding from the 2-sided handout. The 9,000 household recipients that leverage $3 in fuel assistance receive additional 3SquaresVT benefits. Commissioner Dale offered that the handout showed very conservative estimates, and it did not include contingency levels. Representative Heath stated that Vermont's goal has been to cover 50% of eligible households and that in the last few years it had covered more than its goal, but now the federal funding estimates show that Vermont may only be able to cover 33% of its eligible households. She proposed that JFO draft a letter to the Vermont delegation about the Committee's concerns of the dramatic change this year to beneficiaries with the current federal funding proposal, which the Committee agreed to (letter entered into record, dated 9/20/2010).

6. Federal Education Grant Informational Update ($19 million federal and $23 million in Act 146 of 2010 [Challenge for Change] savings).

Armando Vilasecca, Commissioner, and Bill Talbott, Deputy Commissioner, Department of Education, answered questions from the Committee (see two enclosures). Representative Heath expressed concern that the Department did not include in its formula the district per pupil spending number as a factor for determining the districts savings targets, as prescribed by Act 146 of 2010. Because of the Department's formula, districts with low per-pupil spending received higher savings targets and visa versus. Commissioner Vilasecca explained that the Department used the equalized pupil spending, among other weighted formulas, because it caused less harm to high poverty areas. The challenge was to come up with a per pupil spending number when there are so many different organizational structures.

Mr. Talbott further explained that there was an economy of scale factor but there appeared to be no trend or pattern within the many different types of school districts. Representative Ancel asked what criteria were used to determine the target savings for school districts. Mr. Talbott replied that the Department reviewed the changes of five indicators: changes in total education spending, change in per pupil spending over 4 years, and 3 staffing ratios (students to direct instructional staff, students to all other staff, and direct instruction to total staff). Some components of education spending were excluded, such as tuitions, and debt service; then adjustments was made to technical schools and Supervisory Unions. If the savings targets were spread across all the districts, each district would have had to adjust its budget for a flat percentage of 2.35%.

Commissioner Vilasecca added that all the formulas and the list of targets for the districts could be viewed on the Department's website. Senator Sears commented that it appeared there were no discussions at the Department or the school districts about outcomes during this challenge (Act 146, 2010) exercise; instead school districts view the targets savings as just reductions. Senator Snelling suggested that the Department engage school districts in a conversation on ideas of how to meet challenge targets by hiring an expert to facilitate those discussions. Senator Cummings agreed that there should be more constructive information on the structural changes for the challenge targets, and that the $19 million from the Federal Education Grant would buy school districts time to organize those changes. She further stated that rather than small revisions to personnel in schools, bigger organizational changes, such as shared contracts or merged districts should be considered as a more efficient way to deliver services. Representative Heath added that shared resources and shared contracts within school districts to avoid duplication of services was an important conversation.

Commissioner Vilasecca stated that even though school districts appeared to be taking Act 146 seriously, the law mandated an unrealistic requirement for schools to achieve savings targets in the time frame given, and, with no expectations of structural change. He further added that the Department has given its recommendation to the Administration to allow the $19 million Federal Education Grant to be used for schools as a buffer for meeting the Act 146 structural changes. Representative Ancel suggested tying the structural changes to achieve the Act 146 target with bridge funds from the Federal Education Grant. She inquired whether the Department could create some ideas on how to legislate a bridge of funds to incentivize structural change. Senator Bartlett suggested that one area to focus on is business management best practices for schools.

Commissioner Vilasecca stated that structural change assistance for school districts should be planned for 3-to-5 years to allow conversations of consolidation to ensue. He also stated that the Department has received 5 requests from school districts to form a Regional Educational District (RED), and 2-to-3 more requests were considering a RED. Senator Bartlett queried whether it made sense to set aside some funds from the Federal Education Grant to hire an expert to work with school districts on best practices. Mr. Talbott responded that there was a 2% allowance in the grant to administer the Jobs Bill that could be withheld from the districts.

The Commissioner agreed with Representative Heath that there was a fear, that he considered unfounded, of schools not having enough of a voice on a larger consolidated board. He also agreed that schools were concerned they would loose school choice with consolidating, but the Department was working on a technical amendment to address that issue in 2011. The Chair requested that the Department, in regards to the $23 million Federal Education Grant, hire a consultant to guide and assist school districts and the legislature with discussions on voluntary merger. Commissioner Vilasecca agreed to consider the Committee's request.

7. Update on Start-up Business Competition Committee [§ 55 of Act 60 of 2010]

The Chair explained that due to time constraints, Commissioner Brooks has agreed to submit his testimony in writing to the Committee.

C. Challenges for Change Update

Senator Snelling explained that she had concerns about achieving the savings from Act 146, and that a list of investments from the Administration was pending. She informed the Committee that the Government Accountability Committee (GAC) was holding a special meeting on Monday to approve the proposed measures from the Administration, followed by a workshop on the use of measures. GAC was expecting a third quarterly progress report from the Administration in October. Representative Heath requested that the measures be sent to the chairs of the standing committees for consideration. Nathan Lavery, Fiscal Analyst, Joint Fiscal Office, agreed to send them to the chairs.

The Committee agreed on a next meeting date of Monday, November 15, 2010.

Respectfully,

Theresa Utton-Jerman, Joint Fiscal Office