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SEN. RICHARD SEARS, JR.
REP. DAVID SHARPE

STATE OF VERMONT
LEGISLATIVE JOINT FISCAL COMMITTEE

Friday, July 20, 2012
Minutes

Members present: Representatives Ancel, Branagan, Heath, Johnson, and Sharpe, and Senators Cummings, Kitchel, Sears, and Snelling.

Special Committee Members for Mental Health: Representative Haas and Senator Mullin. Senator Ayer and Representative Pugh participated by conference call.

Other Attendees: Representatives Donahue, Hooper, and Koch, and Senators Baruth, Fox, and White, and staff from the Administration, Joint Fiscal Office, and Legislative Council, and various media, lobbyists, advocacy groups, and members of the public.

The Chair, Senator Ann Cummings, called the meeting to order at 9: 32 a.m., and Senator Kitchel moved to adopt the minutes of November 8, 2011. The Committee passed the motion and approved the minutes.

The Committee recessed at 9:34 a.m. on a motion from Representative Sharpe.

The Chair, Senator Cummings, convened a special committee on Mental Health, Representative Heath moved to approve the minutes of April 5, 2012. The Committee passed the motion and approved the minutes.

Gail Hutchings, Martin Cohen, Kevin Huckshorn, Leslie Schwalbe, and Heather Cobb of Behavioral Health Policy Collaborative, LLC, participated by speakerphone. Ms. Hutchings led the report overview that was mandated by Act 79 of 2012. Refer to the final report and presentation submitted at the meeting.

Ms. Hutchings thanked all the Vermonters her collaborative interviewed and worked with to develop the report. She presented a final report "Advancing from Vision to Results: Findings and Recommendations to Implement Act 79 and Improve Vermont's Mental Health System" and gave an overview through PowerPoint. Senator Snelling inquired whether there were examples of dashboard measures from other states available. Ms. Hutchings stated there were examples, and she offered to provide some to the committee. Representative Heath asked how long it might take to write an implementation plan with the details outlined in the report. Ms. Hutchings responded that the plan was already underway through the Department of Mental Health's efforts, and significant

progress has ensued. She deferred to Commissioner Patrick Flood of the department to follow-up with Representative Heath.

The Special Committee on Mental Health adjourned on a motion from Representative Heath at 10:29. The Chair then reconvened the Legislative Joint Fiscal Committee at 10:30 a.m., and proceeded through the agenda.

A. Tropical Storm Irene State Issues – Financing the State Hospital & State Buildings

Michael Clasen, Deputy Secretary, Agency of Administration, submitted information on the estimated construction costs of \$182.8 million, revenue of \$62.7 million to negate costs, and the funding gap between the two of \$120.1 million. He announced that the Federal Emergency Management Agency (FEMA) information provided earlier for expected significant funding for the state Waterbury Complex and the State Hospital may have been incorrect. FEMA has stated that any verbal funding promises from their agent were incorrect and they were disavowing that information. Funding promises included the permanent relocation costs of the State Hospital and the more expensive renovation costs of the Waterbury Complex, including moving the heat plant, relocating the Agency of Natural Resources laboratory, and some demolition costs associated with restoring the flood plain. It was anticipated from discussions with the FEMA agent that state officials had worked with over the course of at least eight months that 90% of the relocation costs for the State Hospital would be covered by FEMA. Recently, FEMA stated that Vermont's State Hospital relocation may not qualify for funding, and additionally, work done to the Waterbury Complex to temporarily shore-up the heating plant structure through the winter months may have made the building ineligible for funding.

Mr. Clasen submitted an estimated time line for completing project worksheets using the new plan that FEMA has put forth for the state. In addition, a special team of FEMA staff has been co-located with state staff within the Montpelier state office complex to assist in the filing of paperwork for possible federal funding toward the relocation of the State Hospital and the renovation of the Waterbury Complex.

Representative Sharpe queried whether Vermont's congressional delegation was aware of the funding shortfall. Mr. Clasen replied that Vermont's congressional delegation have been working diligently to rectify the funding issues related to the State Hospital and the Waterbury Complex along with all the other issues associated with the Irene recovery. Representative Heath asked how FEMA explained its change of funding actions after so many months of reassurance. Mr. Clasen stated that FEMA had not adequately explained its actions. Senator Kitchel asked for clarification on the project worksheets and when they were started. Mr. Clasen responded that even though FEMA had just begun submitting project worksheets for the Waterbury Complex and State Hospital, it had completed over 3,000 project worksheets for public and private Vermont entities affected by Irene. Representative Branagan voiced her dismay at the change- in- funding dialogue with FEMA, and queried how long the state would be waiting to hear of funding and the amount. Mr. Clasen

explained that the state could only be patient and wait for a reply from FEMA. Sue Minter, Irene Recovery Officer, explained that her office was having weekly conference calls with the Vermont congressional delegation.

Representative Heath asked whether the information on FEMA funding participation would delay or stop the state's plans for the relocation of the State Hospital or the renovation of the Waterbury Complex. Mr. Clasen responded that the administration had no intent to slow or delay either project's planning but those plans may be altered depending on the final funding outcome of FEMA's deliberations. Senator Sears inquired whether other states that have experienced a natural disaster had similar complications with FEMA. Mr. Clasen stated that communication with other states has revealed similar experiences.

B. The State Hospital - Emergency Certificate of Need Process

Patrick Flood, Commissioner, Department of Mental Health, was invited to interrupt the regular JFC proceedings and distribute a document on the time line (plan) of the opening for the new State Hospital. He requested that the Committee review the plan review process and give comments. Representative Heath noted that the plan's emergency Certificate of Need (CON) process did not require or include public hearings, and suggested that the commissioner present his plan to the Mental Health Oversight Committee (MHOC) for comment. The Commissioner agreed and promised to return before the Committee adjournment for the day with the MHOC deliberations.

The Committee recessed for a break.

C.1. Tropical Storm Irene and 2011 Spring Flooding Issues – State Match and FEMA Grants.

The Committee reconvened and Ms. Minter submitted three documents: Updates for FEMA Public Assistance & More, Vermont Recovering Stronger – Irene Recovery Status Report, Federal Emergency Management Reporting and Oversight, and Intergovernmental Advisory #39 – FEMA assistance summary. She explained that the disaster relief fund continues to raise money to support individuals in the recovery process from Irene. The Recovery Office is working to condemn mobile homes and applying for federal aid for homeowners to rebuild or buy new housing.

Ms. Minter explained that since FEMA does not offer financial support to businesses affected by disaster, the legislature enacted and funded an expedited loan program to businesses through the Vermont Economic Development (VEDA) Authorities Small Business Administration loan program. Ms. Minter made a plea for additional volunteers to clean up and rebuild homes, stating that the need was great.

Ms. Minter informed the committee that her office has heard concerns from local municipalities that they were experiencing similar FEMA funding communications not unlike those the state has encountered. Senator Sears expressed his frustration with the lack of funding support

from FEMA for his community. Representative Branagan referred to one of the handouts from Ms. Minter with a list of payments to towns, and inquired whether the money had already been spent or just received. James Reardon, Commissioner, Department of Finance & Management, and Ms. Minter explained that the money listed was money spent through state reimbursement. Ms. Minter also referred to a copy of a letter sent to the municipalities explaining the reimbursement or payment process.

Commissioner Reardon responded to Senator Kitchel's inquiry from earlier for an update on the money appropriated to the Emergency Relief Assistance Fund (ERAF). Commissioner Reardon explained that \$21.8 million was transferred to the ERAF through the Emergency Board and Act 75 of 2012 (FY2012 Budget Adjustment) process. As of July 1, cash on hand totaled just under \$16 million, and of that amount, it was anticipated that approximately \$1.7 million would be encumbered, leaving \$14.3 million available for other Irene assistance.

Commissioner Reardon summarized a report required by Sec. 77a(b) of Act 75 of 2012. A list within the report showed grayed-out towns representing those that met the FEMA public assistance match criteria for eligibility. Ms. Minter elaborated that once a municipality reached this threshold, they were eligible for 100% of FEMA-related costs.

Commissioner Reardon summarized another report required by Sec. E.100(a) of Act 162 of 2012. Representative Heath inquired why some municipalities received FEMA public assistance but not ERAF funds. Norman (Alec) Portalupi, Technical Services Engineer, Agency of Transportation, stated that municipalities with small projects would not receive ERAF, nor would municipalities that had not yet reached the FEMA eligibility status.

2. Community Development Block Grant (CDBG) Disaster Relief Program

Lawrence Miller, Secretary, Agency of Commerce & Community Development, and Jennifer Hollar, Deputy Commissioner, Department of Economic, Housing & Community Development, submitted information on the distribution of Vermont's CDBG Disaster Recovery Funds, and announced that yesterday the U.S. Department of Housing & Urban Development (HUD) approved the state's request to include Windham County in the CDBG disaster recovery area. The Agency was in the midst of a deadline at the end of the day to submit an action plan.

Ms. Hollar stated that the information sheet before the committee included the proposed 80% allocations for Washington, Windham, and Windsor Counties and the 20% allocations for all other Vermont counties. Once the plan is submitted, HUD has 90 days to review, but the agency can make applications available to the public at the beginning of September. The agency's citizen-based board (Community Development Board) will review applications and make recommendations to the Secretary sometime around mid-October. Senator Snelling queried whether additional accountability standards should be used for the additional CDBG funds. Ms. Hollar responded that the agency was confident with its existing staff and standards to manage the funds properly.

D. Revenue Update

Tom Kavet, Legislature's Economist of Kavet, Rockler & Associates, LLC, distributed an Economic Review and Revenue Forecast, and stated there was still a slight downgrade in Vermont's financial recovery. There were increases in the General Fund and Transportation Fund due to fee changes but because of the economic decrease, there was little positive overall increase. The major economic risks include the issues of the European financial crisis and the uncertainties that are associated with the international dilemma. The other is the delayed financial decisions in the U.S. Congress; the lack of political compromise is causing further economic concerns. Vermont's product exports to China have increased to 25%, and Vermont's home prices are stabilizing.

The committee recessed at 12:10 p.m. The Emergency Board met at 1:00 p.m.

Representative Heath reconvened the meeting at 2:18 p.m. at the request of the Chair who was delayed.

E. Administration Update/Issues – 1. FY2012 Preliminary Closeouts

Commissioner Reardon submitted preliminary closeouts for FY2012, and summarized the revenues versus target information. He highlighted that direct applications exceeded estimates by \$7 million. After FY2012 preliminary close-outs, a balance of \$11.23 million was available for Irene reconstructions (state buildings) in accordance with Sec. 205 of Act 162 of 2012, allowing for up to \$15 million of available revenue at close-out.

Commissioner Reardon announced that based on current projections and last year's usage, the Low Income Heating & Energy Assistance Program (LIHEAP) may have a budget gap of about \$8 to \$9 million. Representative Heath stated that the Emergency Board asked the Department for Children & Families (DCF) last year to come back to the legislature with a list of ways to reduce heating costs. She continued, explaining that DCF then submitted a report in March 2012 with a list it was comfortable acting upon. She then requested that DCF come to the JFC in September with an update on the implementation of that list. She also showed concern that Vermont received a much smaller price differential for fuel than most other New England states, and asked that DCF add that issue to its update in September to JFC as well. Senator Kitchel mentioned that legislation was passed in the past session that allowed for a state-funded utility benefit program, and asked for an update on that issue. Commissioner Reardon, in anticipation of the question, responded by summarizing an e-mail he received on the case from Deputy Commissioner Sarah Hofmann.

Commissioner Reardon explained that out of the \$3 million in the state liability fund for the data mining litigation, about \$1.8 million had been paid out to the first litigant, leaving \$1.2 million in the fund. Recently, the second litigant settled at \$2.2 million, creating a \$1 million deficit and a potential FY 2012 BAA item.

2. Porter Air Program

Secretary Miller gave an update on the Porter Air Program, stating that the Agency of Commerce & Community Development had been very successful in its first year but was working on a 3-year commitment with them. There were ongoing discussions with U.S. Customs and Porter to organize the baggage issues and reduce time in customs and security.

3. Transfer of Unencumbered Balances

Commissioner Reardon and Sandra Barton, Business Manager, Department of Financial Regulation (DFR), submitted a summary of the FY2012 final receipts for transfer to the General Fund, totaling \$10,054,784.49. The Committee recognized Ms. Barton for her commitment of 15 years in her capacity with DFR and wished her well in her retirement.

F. Grants

Nathan Lavery, Business Manager, Joint Fiscal Office, gave a summary of two grants: Agency of Agriculture, Food and Markets related to Irene Recovery (JFO #2570), and FEMA disaster assistance grant related to the May 29, 2012 storm (JFO #2571). Senator Kitchel made a motion to approve both grants, and Senator Sears seconded the motion. The committee approved the motion (grants).

G. Review of the Emergency Medical Services Fund – VT Fire Service Training Plan

Chris Bell, Director, Office of Public Health Preparedness & Emergency Medical Services for the Department of Health, submitted a handout and explained the proposed plan. He stated that the plan would also be reviewed by the newly formed Emergency Medical Services Committee. Senator Kitchel asked for clarification on the two different provisions and appropriations to the University of Vermont for EMS training. Mr. Bell explained that there were two separate \$150K appropriations made by the legislature during the previous session. One appropriation was made as a one-time allocation for training and certifying personnel of paramedics. The other appropriation is allocated to the Department of Health for several different priorities for education and training of EMS personnel. Senator Kitchel inquired if the second appropriation was funded by casualty insurance, and Mr. Bell agreed; it is an ongoing funding source. Representative Johnson commented that she would like to see rural squads have a higher level of training and easier access to recertification. Mr. Bell agreed and responded that the largest amount of EMS training money was slated for people to maintain their certification level; the online training component will allow for people to gain the education they need through an on-demand system. Some of the training money will be available to the districts for local training, and allow for continuing education classes at little or no cost to the participant.

Representative Heath asked for an estimate of the cost for online training. Mr. Bell stated he had some anecdotal information regarding the costs other agencies paid for similar products. Products could range from \$30K to above the \$150K appropriation. The products surpassing the appropriation level would not be considered. Representative Sharpe queried whether software

compatibility issues with medical facilities, such as hospitals, would be addressed in the RFP process. Mr. Bell stated that a requirement within the RFP is for any new software to integrate with other medical training systems.

H. Fiscal Office's Updates/Issues – 1. Fiscal Officer's Report

Stephen Klein, Chief Fiscal Officer, asked the committee if there were questions in regard to the fiscal officer's report, of which there were none. He then moved on to staff updates.

2. Updates – a. Medicaid

Stephanie Barrett, Associate Fiscal Officer, submitted the FY2012 Year-End Report on Medicaid and summarized its contents. Medicaid enrollment was slightly below expectations, and spending continued to come in below estimates even though targets were reset lower than previously. The Global Commitment Fund ending balance was anticipated to be about \$38 million but ended \$27 million above expectation. The State Health Care Resource Fund expected balance was \$4.3 million but ended at \$4.9 million. However, Federal Medical Assistance Percentages (FMAP) are anticipated to decline again in FY2014, creating a \$22 million budget pressure. Estimating the budget for FY2014 is particularly challenging as midway through the fiscal year the health care exchange begins.

Senator Cummings inquired whether the declining Medicaid enrollment was a positive trend from creating the broader health care coverage through Blueprint. Ms. Barrett responded that there had been no definitive study or analysis to confirm a trend, and she added that Vermont was not the only state that had experienced the same phenomenon.

b. Education Fund

Mark Perrault, Fiscal Analyst, explained that the FY2014 estimate at the end of the 2012 session had improved slightly. Revenues in FY2012 are about \$2 million higher than estimates, which will eventually affect FY2014 estimates. FY2012 Education Fund closeout had not yet been completed so it was unclear whether additional carryforward would be available in preparing the FY2014 but typically there was between \$2 and \$3 million available for carryforward each fiscal year so potentially there could be a total of \$5 million from FY2012.

Mr. Perrault stated that the FY2013 Education Fund outlook currently was good but he noted two things of concern: an error in the Grand List that has a potential impact of \$2.5 million less in tax collections than projections; and the FY2012 income sensitivity portion of the property tax claims may be about \$10 million less than projections.

c. Legislative Budget Closeout

Nathan Lavery, Fiscal Analyst and Business Manager, explained that the Legislature's FY2012 budget closeout was in line with estimates, and there is unallocated carryforward available for future use. The Joint Fiscal Office and Legislative Council budgets each had unallocated

carryforward in the range of \$60K to \$80K. Legislative Information Technology (IT) budget was on target, and the Sergeant at Arms budget had an estimated \$30K in carryforward. Mr. Lavery further stated that the Legislative IT budget carryforward was lower than desirable, but it was due to the software license updates and the Microsoft 2010 software upgrade.

The Committee confirmed the next meeting date of September 19, 2012 and a future tentative date of November 26, 2012.

Action Item:

Senator Cummings reported that the Mental Health Oversight (MHO) accepted the Department of Mental Health's use of the Department of Financial Regulation's emergency CON process with the amendment that there would be a public hearing. Representative Heath then moved to support the department's use of DFR's emergency CON process with MHO's amendment for a public hearing. Senator Sears seconded the motion and the committee approved it.

The Committee adjourned at 3:25 p.m.

Respectfully Submitted,

Theresa L. Utton-Jerman
Legislative Joint Fiscal Office