



STATE OF VERMONT
LEGISLATIVE JOINT FISCAL COMMITTEE

Thursday, August 8, 2013

Minutes

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

Other Attendees: Senators Lyons and Hartwell, and Representatives Botzow, Campion, and Miller; Administration, Joint Fiscal Office, and Legislative Council staff; and various media, lobbyists, advocacy groups, and members of the public.

The Chair, Representative Heath, called the meeting to order at 2:15 p.m.

A. Fiscal Office Updates – 1. Monthly Revenue Update:

Stephen A. Klein, Chief Fiscal Officer, Joint Fiscal Office (JFO), provided a handout with preliminary revenue estimates. He explained that the data were not conclusive but had some interesting information. Noteworthy were \$ 8.9 million in estate tax revenue, meaning the State made 47% of its target for the year; corporate tax was still lower than expected; rooms and meals tax was slightly stronger than sales tax; and transportation revenue was slightly over target for the first time in a few months.

2. Memorandum of Understanding (MOU) between the Tax Department and the Joint Fiscal Office

Mr. Klein explained that an MOU was signed recently to share state tax data. Sharing of federal tax data was prohibited by State statute and strict federal government regulations. Mr. Klein opined that the federal data are important for a meaningful analysis in a taxable increment-based system. The JFO would continue to work with the Department of Taxes on options to access data. Mr. Klein offered that the State of Ohio shared data using a type of Clearinghouse Company which encrypted personal information before distributing it. The Office was considering this as a possible means to address Vermont's tax data sharing issue. He ended by stating that even though the data collection process was limited at this time, it was a first step.

3. Update on Statutory Purposes for Tax Expenditures

Mr. Klein stated that the tax expenditures subject had been postponed until the next Joint Fiscal Committee (JFC) meeting on September 11, 2013.

4. Other Updates – a. Revenue Position

Mr. Klein informed the committee that there were many applicants for the new JFO tax revenue position and that some had been interviewed, but the process to select a candidate was ongoing.

b. Fiscal Focus Newsletter

Mr. Klein announced that the July Fiscal Focus newsletter was available online at the JFO website.

c. Department of Financial Regulation (DFR) Receipts and Balance of Rainy Day Fund

Mr. Klein referenced a memo from DFR that explained an adjustment made to its July 2013 receipts report of \$238,392.00. He added that the adjustment would be accounted for in the FY2014 Budget Adjustment process (BAA), and it increased the Rainy Day fund to just over \$12 million.

5. Draft Policy on JFC Review of Web Portal Charges

Nathan Lavery, Fiscal Analyst, Joint Fiscal Office, explained that the intent of the draft policy was for Web Portal charges to receive a higher scrutiny than other requests within the grant process. Currently, these types of requests could be approved through the JFC 30-day review policy. The draft policy would mandate that the Office hold all requests until the next scheduled JFC meeting for a full review and vote. Mr. Lavery suggested that the Committee keep its current informal policy (a standing request of the same intent as the draft policy but still offering the flexibility for the Committee to approve grant changes quickly if it so desired). Representative Ancel agreed to maintain this approach. The Committee agreed to retain its current informal policy on Web Portal charges (a standing request to hold for the next JFC meeting).

There was a committee discussion and agreement that the JFO would initiate an iAnnotate group for the JFC as soon as possible to share information electronically through iPads.

B. JFO #2634 Public Service Department Position Request

Chris Recchia, Commissioner, Public Service Department (PSD), referred to the grant packet sent to the Committee earlier and explained that the Department was requesting a new limited service position. Representative Heath questioned why the position was not requested during the FY 2014 budget process. The Commissioner explained that the position had new federal funding and was not tied to the Department's FY 2014 original funding request. The Department had interpreted the original grant to allow for an extension of a different work position but that was incorrect. The new position and funding would continue through August 2014, working through the State's energy grant program and the U.S. Department of Energy. The position would be dedicated to assisting the PSD on the Total Energy Standard report due to the legislature in 2014. The Department anticipates rehiring the same person from the previous funding and position because of familiarity with the project. Representative Heath asked how long the grant would continue. Commissioner Recchia stated the grant would continue as long as the U.S. Department of Energy funded this type of work, but the position was limited to one year of the funding. Senator Campbell moved to approve the request for the limited service position of grant JFO 2634, and Senator Snelling seconded the motion. The Committee approved the grant and position.

The Committee had a discussion on next Committee meeting dates and confirmed September 11, 2013 and November 21, 2013. A Legislative Briefing for the full legislature would occur on November 20, 2013.

C. Vermont Veteran's Home (VVH) Update:

Jeb Spaulding, Secretary, Agency of Administration, introduced Mike Pulling, President, Health Care Management Associates, Inc. (HCMA), a consultant hired by the Administration to conduct an independent review of the Vermont Veterans' Home mandated by Sec. 53.1 of Act 1 of the 2013 session. He distributed the "Independent Review Management and Operations of the Vermont Veterans' Home" report and summarized Mr. Pulling's qualifications in performing the review work, and experience with the VVH as a former interim administrator and planning coordinator.

Mr. Pulling gave an overview of his company's credentials and then referred to a summary on page 32 of the report. He explained that the HCMA conducted many interviews on the concerns within staff and management of the facility in order to get a sense of the issues causing the failure of two federal inspections to date. Three other state approaches with a similar facility or facilities and high ratings were reviewed: the Maine Veterans' Homes, Charlotte Hall in Maryland, and Long Island State Veterans' Home.

Mr. Pulling commented that the new Deputy Administrator, Al Faxon, is well respected and skilled, suggesting that Mr. Faxon be utilized in a greater capacity. Mr. Pulling clarified for Representative Johnson that VVH had a call-out rate of 12% when other nursing homes within Vermont had a rate of 2-3%. Mr. Pulling specifically highlighted a Maine nursing home hybrid model of three possible successful models for the VVH to mirror. Senator Sears asked if staff at the Maine facilities were state employees. Mr. Pulling replied that the model was a private entity with no state employees but there was statutory language that allowed the employees to be in the state pension system. In addition, it could issue its own revenue bonds.

Mr. Pulling explained that he was asked to also address the possibility of whether the VVH was capable of closing. He stated there were other Vermont facilities, including Mount Anthony's and the Bennington Rehab that had open beds now capable of taking VVH residents. He concluded that it would not be easy to accomplish a closure of the VVH but still possible if it became necessary.

Mr. Pulling returned to the report and explained the recommendations. Senator Campbell inquired whether the renaming of the Deputy Administrator to Chief Executive Officer (CEO) fit within the traditional military naming convention of the Administrator being referred to as the Commandant. Mr. Pulling explained that the title Commandant was no longer used as a title, and that a fresh new title should help dispel past issues with former Commandants as well as allow women to be appointed to the position in the future. Secretary Spaulding informed the Committee that the current statute stated that the Administrator was also the Commandant, and, therefore, the Administration was recommending that the statute be revised to incorporate a new title. Representative Branagan showed concerns for creating a position around an individual in case that person leaves. Mr. Pulling replied that the recommendation for the new title was based on the premise that there would be future candidates that fit better into the position. Senator Campbell inquired why the current Deputy Administrator was not the Administrator as well. Mr. Pulling explained that the Administrator had to be licensed by the State and the current Deputy Administrator was not licensed. He added that because it was so expensive to be licensed in the

State of Vermont, there were few licensed Administrators from Vermont. Reciprocity is available as a means to hire licensed administrators outside the State, such as the current licensed administrator who is from Connecticut. Representative Heath inquired what the Administrator's job description would be with the proposed new model. Mr. Pulling replied that the Administrator would focus on the job duties of regulatory requirements, enforcement, and compliance with federal regulations that had proven a big challenge for the VVH. Representative Heath asked what the relationship would be between the Administrator and VVH board. Mr. Pulling explained that was still to be determined but the idea behind making the CEO a board member was for the Administrator to report to the board through the CEO (Deputy Administrator). Representative Heath inquired how the chain of command would work or who would report to whom. Mr. Pulling stated the CEO would be the highest position but the concept was for a more flat and collaborative relationship between the CEO and Administrator that would work as a team to accomplish the goals of the VVH.

Representative Ancel asked who the exempt employees were at the VVH. Joe Krawzyck, Chair, Vermont Veterans' Home Board of Directors, explained the Deputy Administrator and the Administrator were the only exempt employees, but the plan is to have others changed to exempt status. Senator Sears asked for clarification from Mr. Pulling on the definition of maturity used earlier in the testimony when referring to the relationship between the VSEA/VVH staff and the VVH management. Mr. Pulling explained that there should be a more focused means to address organizational needs and issues through better communication.

Mr. Pulling completed his report summary by stating there were many positive elements at the VVH but change was critical for the facility to succeed. Senator Ashe inquired, of the amount of residents that needed a higher level of care and the overall staffing levels of VVH, how that compares to other institutions and whether there could be another way of administering the facility and still keeping its core component in place. Mr. Pulling replied that the VVH had the highest staffing of any other State nursing home facility or Veterans' Home. He added that the caveat to that statement was that VVH had a very difficult population that included a high concentration of males (3/4 of the population), there are 136 residents with 6 requiring licensed residential care, with the remaining 130 requiring skilled nursing. Within the four operational skilled nursing communities, two require memory care that has more challenging staffing needs. While the acuity is low compared to other facilities, there is a higher amount of men which are typically heavier. A recommendation within the report suggests an outside entity review the VVH medical coding to determine whether staff is accurately documenting medical conditions to receive full reimbursement from Medicare, Medicaid, and federal Veteran's Benefits. He also suggested that Vermont mirror Maine's model of providing residential care for veterans with mild to moderate memory care, rather than the more regulated skilled nursing home care.

Senator Sears commented that hearing the negative comments on the VVH were difficult to digest for all the different interest groups but that the report was crucial in raising issues and moving the VVH forward. He then inquired as to what was the proposed amount the VVH would need to offset its budget deficit for the BAA process beyond the \$2 million already realized by the Administration. Mr. Pulling stated that if the VVH were able to move beyond the low census rate and federal compliance issues, then the State may see a net gain of \$700,000 to \$800,000 from the \$2 million FY2014 proposed Budget Adjustment Act (BAA) amount. Senator Kitchel inquired what the

estimated turnaround time would be for the proposed VVH plan to achieve the additional revenues from the increase in the census, the infusion of part-time employees, and scheduling adjustments. Mr. Pulling explained it should take no more than a year to cover its deficits.

Representative Heath asked where the State stands with the Centers for Medicare and Medicaid Services (CMS). Mr. Pulling stated that the VVH was still under the enforcement cycle, and the decertification date was August 26, 2013. Secretary Spaulding clarified that between now and August 26 there would be another inspection from CMS. Representative Heath asked if the Administration had a contingency plan. Mr. Pulling explained the VVH would have 90 days' notice if it did not pass inspection, and 30 days to have a contingency plan in place. He added that CMS would maintain its funding to VVH during those 30 days, then cease its funding.

Secretary Spaulding asked to comment on the report, stating that despite the trials and tribulations of the VVH, there had been tremendous improvement. He added that there was a new board chair, Joe Krawzyck, who is involved in the VVH on a regular basis. He praised the nursing consultants for disposing of the mandatory overtime for staff, and encouraged both the staff and management to focus on the future of the VVH. Secretary Spaulding stated the Administration would like to see some of Mr. Pullings' recommendations enacted with some variations, such as changing the title of Deputy Administrator to Chief Operating Officer (COO), and keeping the current mix of board members. He added that the Administration supports VVH in receiving specialized assistance from the Administration but does not support any changes to management at this time. The Administration preferred to put on hold working with the Maine model or changing the current VVH model, and instead he advocated working with VSEA and management to voluntarily setup a new bargaining unit for medical staff that included the VVH and the new State Hospital State employees.

Senator Kitchel commented that the last report of CMS showed a possible funding deficit of \$12 million for VVH if it failed its next inspection, and she inquired if that deficit was still a possible reality. Secretary Spaulding confirmed it was possible and then explained that the Administration planned to address the situation if it occurred, but reality was that the State was not capable of absorbing \$12 million for the VVH on an annual basis.

Representative Johnson queried if the modified plan from the Administration to change the Deputy Administrator to a COO instead of a CEO allowed for the same integration of the board and the people knowledgeable of the daily technicalities and routine of the VVH. Secretary Spaulding replied that with the new board chair [Mr. Krawczck] at the VVH on a routine basis, it was not necessary for the COO to have a board seat at this time. Senator Sears asked where the Administration stood on VVH hiring part-time staff to avoid overtime of full-time staff. He also referred to a memo, written by Rebecca Wasserman and dated April 23, 2013, that stated Vermont had limited authority to make changes to the VVH, and he asked if the recommendations of the Administration were within the scope of that authority. Secretary Spaulding replied that the Administration strongly supports the recommendation of hiring part-time staff, which the VVH could accomplish.

Representative Sharpe stated he fully supported the Financial Officer change to an exempt position rather than classified, and ensuring the VVH fully apply for all the federal funds available to it. Representative Heath asked for suggestions on how to work with residents of the VVH who refuse to pay for services through their own assets or applying for federal assistance. Mr. Krawzyck stated that 10 residents were currently refusing to pay and owed over \$600,000.00 total. He added that the board had hired its own legal counsel and was pursuing legal action.

Representative Ancel asked that the Committee receive a list of recommendations from the Administration along with the entity responsible to ensure completion and time frames. Senator Sears asked that at the November JFC meeting the Administration give a progress report with the timeline and responsibilities of the planned pieces, along with what recommendations had been adopted or rejected and where the staffing issues were in the process. Secretary Spaulding stated the Administration would be happy to create that list, and he commented that the responsibilities of the CFO were planned to go before the board for review. He added that a meeting with the VSEA to determine collective bargaining agreements would happen in the near future. Representative Heath requested that Mr. Krawzyck be added to the JFC agenda in November to report back on the progress of the VVH. The Chair thanked Mr. Pulling for his report and Secretary Spaulding for the Administration's response.

The Committee adjourned at approximately 4:00 p.m.

Respectfully Submitted,

Theresa Utton-Jerman
Legislative Joint Fiscal Office