

MINUTES

Joint Fiscal Committee Meeting of November 13, 2007

Senator Susan Bartlett, Chair of the Joint Fiscal Committee, called the meeting to order at 9:40 a.m. in Room 11, State House.

Also present: Senators Sears, Shumlin and Snelling
Representatives Bostic, Heath, Obuchowski, Smith and Westman

Others attending the meeting included Vermont Supreme Court Chief Justice Reiber and Associate Justices Burgess, Dooley, Johnson and Skoglund; State Auditor Thomas M. Salmon; Joint Fiscal Office and Legislative Council staff; Administration officials and staff; and representatives of the Vermont State Employees Association as well as of various other advocacy groups.

APPROVAL OF MINUTES:

1. Representative Heath moved approval of the minutes of the September 18 meeting. Senator Snelling seconded the motion, which was adopted.

STATE'S ATTORNEYS AND PUBLIC DEFENDERS - STAFFING LEVELS:

2. Jane Woodruff, Executive Director of the Department of State's Attorneys, and Matthew Valerio, Defender General, addressed the Committee regarding plans to address caseload and staffing issues. Act 65 (FY 2008 appropriations bill), Section 293d. of 2007 mandated that they, in consultation with stipulated other parties,

...develop a five year plan to address existing caseload and staffing levels in the Chittenden County public defense office and the department of state's attorneys...[to] identify appropriate staffing levels and a process for achieving them over a five-year period...[and to] also consider the impact that additional staff would have on the judiciary and department of corrections.

Section 293d. required presentation of the plan to the Joint Fiscal Committee at this November meeting. Written reports from both Ms. Woodruff and Mr. Valerio were mailed to the members prior to the meeting and are part of the permanent record of the meeting on file in the Joint Fiscal Office.

Ms. Woodruff addressed the Committee first, pointing out that her written submission proposed two alternative plans, one covering five years and the other a one-year plan in the event "...the Legislature was inclined to only address critical caseload pressures on a one-time basis." After summarizing the background for what she described as a "crisis" in the Chittenden County State's

Attorney's office, she pointed out that \$466,528 would be the cost in Fiscal Year 2009 for relieving on a one-time basis the high caseload stress. That sum would cover funding for two positions currently funded by a Byrne grant, plus a Violence Against Women Act (V.A.W.A.) attorney position and several positions for which the Legislature added funding on a one-time basis for the current fiscal year. *(Details were provided in the written report.)*

Mr. Valerio described the creative approaches which the Defender General has employed to accommodate caseload increases over the last decade, given the fact that no new positions have been added to the system during that period. Addressing the staffing deficit in the Chittenden County office would entail the addition of seven positions, five of them attorneys, and renovation of existing space over a five-year period, at a total estimated cost of \$485,779. First-year costs for Fiscal Year 2009 he projected to be just under \$141,000, which would include the addition of an attorney and support secretary.

In his written report, the Defender General made the observation that "...the staffing situation in Chittenden County has reached a critical level such that the attorneys, and the [Office of the Defender General] are on the verge of ethical violations if caseload continues to rise and staffing remains the same." He asked that the Legislature and the Administration assist in developing a fiscal plan to address the crisis, consistent with the information outlined in his report.

Senator Sears was concerned about addressing needs in the arena of criminal justice piecemeal and continually backfilling positions as compelling needs become apparent, as opposed to looking at the system as a whole. He also was interested in learning the impact of federal budget cuts on the total criminal justice system. After discussion of the points he raised, he remarked that ideally the Administration and Joint Fiscal Office should work together to develop for legislative review a proposed budget for all segments of the criminal justice system that would also depict where gaps have developed in federal funding.

The Chair suggested there may be a way to track where the State has lost federal grant money in criminal justice. If that process should prove too time consuming to accomplish during preparation of the fiscal year 2009 budget, she thought it should be a future goal.

JUDICIARY:

3. a. Budget issues: Vermont Supreme Court Chief Justice Paul Reiber and Associate Justice John Dooley met with the Committee regarding budget problems facing the judicial branch. The Chief Justice said that inherent in the constraints facing the Judiciary is that it is administering a very inflexible system, one with structural impediments to managing funds in a more efficient way. For example, he pointed to the fact that the judicial branch operates at many sites

distributed throughout the state which are staffed primarily by people whose salaries set in statute.

Chief Justice Reiber opined that the Judiciary should be recognized as having a problem that is very different and distinct from the other branches of government. Because of the inflexibility he described, the Judiciary is left with the option primarily of balancing its budget out of personal services, such as not filling vacancies. This solution, he maintained, is not satisfactory and has begun to create a morale problem.

The Chief Justice went on to describe the approximately \$1,000,000 shortfall in the judicial budget in the current fiscal year, \$800,000 of which is a result of the unfunded pay act. Of that amount, he understood that the Governor is prepared to recommend a supplemental appropriation of \$420,000. In addition, a committee chaired by Justice Dooley with members from the various segments of the judicial branch has developed cost-saving measures totaling an additional \$320,000. Between \$250,000 and \$300,000 remains as the gap in funding this year, with the situation compounded by the fact that the Judiciary has carried forward a deficit due to underfunding in prior years.

Justice Dooley, reinforcing Chief Justice Reiber's observations about the Judiciary's deficit having grown larger while the ability to manage it has become exhausted, provided details such as the number of sites and employees spread throughout those sites. He also cited some long-term measures under consideration by the Judiciary to reduce personal services costs. As the discussion ended, Justice Dooley said that the judicial branch hopes in the future if the pay act should be underfunded or not funded, there will be an opportunity for a separate discussion of the effect on the judicial branch.

Representative Smith remarked that to address the deficit situation over the long term, the Legislature needs to engage with the Judiciary in rethinking the way services are delivered now.

b. Status of collection of fines and penalties: Lee Suskin, Court Administrator, distributed and briefly discussed a report on the status of collecting fines and penalties. Act 51 (judicial fines and other matters) of 2007 called for measures directed to increased compliance with court ordered fines and penalties, and Act 65 in Sec. 60 (a) required the Judiciary to report on the status of collection of them at this meeting.

Mr. Suskin told the Committee that the Judiciary has implemented all the steps required by Act 51. Ninety-four thousand (94,000) collection letters have been sent out, and an on-line credit card payment option has been implemented. That measure has proven very effective. In December 70,000 unpaid judgments will be sent to the Tax Department for income tax refund setoff. In addition, there will be a contract with a collection agency to collect additional unpaid judgments.

FISCAL OVERSIGHT ITEMS:

4. Commissioner of Finance and Management James Reardon gave reports on numerous topics.

a. **Fiscal Year 2008 budget adjustments update:** He presented preliminary, tentative figures on probable budget adjustments which will be submitted to the House Appropriations Committee in early December, emphasizing that the Administration continues to scrutinize and analyze FY 2008 spending pressures.

The tentative proposals which as of this date the Administration plans to recommend include \$420,000 need in personal services costs in the Judiciary. The Chair suggested that the Commissioner meet with the judicial branch to address the issues raised earlier in this meeting. Mr. Reardon agreed with the need to hold ongoing discussions, indicating that a multi-year approach to the structural deficit in the Judiciary has been under consideration.

Besides backfilling the \$6.5 million in a Corrections Department appropriation which the Emergency Board allocated to the Low Income Home Energy Assistance Program (LIHEAP), the Administration plans in its budget adjustment recommendations to address numerous other funding issues in the department (out-of-state bed contract inflationary increases and upward pressures in health care and mental health contracts).

Other areas of budget adjustments are:

- Department for Children and Families (increase in Temporary Aid to Needy Families caseload); the Emergency Relief Assistance Fund (\$531,273)
- the Facilities Operation Fund (various revenue problems and spending pressures, including the Bennington District Office Building)
- Sheriffs transport (\$25,000); the Defender General (\$91,000 for various increased costs)
- Public Safety (revenue issues plus overtime exceeding original projection)
- the Attorney General (\$169,000 in increased costs related to litigation plus other issues)
- LIHEAP (possibly nearly \$600,000)
- the Catamount Fund (as much as \$2.5 million as a result of the failure of the Centers for Medicaid and Medicare Services to grant a waiver for participants beyond 200% of the Federal Poverty Level)

b. **Pay Act allocations:** Commissioner Reardon presented a written report on distribution of pay act funds in the current fiscal year, as required by the Legislature in Section 277 of Act 65 Of 2007. His submission consisted of a

schedule containing details of pay act needs by department, offsetting savings/carryforwards, and pay act allocations, accompanied by a memorandum with explanatory comments.

The memorandum included the information that the amounts available for pay act distribution in the current fiscal year are \$2,545,548 general funds and \$2,158,786 transportation funds. The net amount of general funds available for salary increases, however, is \$1,801,143, after a \$744,405 reduction which is dedicated to various non-salary items specified in the current year contract between the State and the Vermont State Employees Union (VSEA).

Mr. Reardon told the Committee that allowing departments to use carry-forward funds from 2007 means that, with some exceptions, most of them have been able to manage their pay act needs. He emphasized that in all cases the agreed-upon employee salary increases for 2008 will be honored.

Discussion focused primarily on the pronouncement in the memorandum that the Administration anticipates "...an abatement of salary requirements due to the announced reduction of 400 positions due to attrition and retirements." Members questioned the Commissioner on such issues as what kind of system is being established to track the savings attached to the reduction; what he estimates the savings to be; whether essential services will be maintained; and VSEA's role in implementing the reduction plan; and the potential federal funding implications of the reductions.

Senator Shumlin in particular quizzed Mr. Reardon about the extent to whether discussions about the plan and how to implement it may have involved the VSEA. He strongly urged him to include union representatives, pointing out that an inclusive process will increase the chances of success.

c. Positions pool: Mr. Reardon also reported further on positions available in the State's pool of authorized positions. This subject was discussed at the July meeting and included on the September agenda, but delayed at that time. The report requirement was set forth in Section 7(c) of the Fiscal Year 2008 appropriations bill (Act 65), which additionally called for recommendations to reduce the total authorized positions in state government.

The Commissioner answered questions about specific information reported on a one-page sheet he handed out showing total filled and flux authorized classified and exempt positions as of July 2 as well as October 30, and the number in the pool in each category. He reminded the members of the discussion at the July meeting about budgetary implications of the position pool and of unfilled position, and he described efforts during the summer to analyze how many positions included in the budgetary purposes were not filled and which needed to be removed. This process is a difficult, time-consuming task, for reasons he explained. He had hoped to reconcile the position development

system with the position pool in the Fiscal Year 2009 budget submission, but his realistic expectation is that another year of work and analysis will be required.

d. In-state travel appropriation reductions: Commissioner Reardon provided a written report concerning in-state travel appropriations reductions, as required by 2007 Act 65 Section 6(a). The report, which is on file in the Joint Fiscal Office, included a schedule reflecting department-by-department reductions, which for the executive branch totaled \$155,814.

e. Internal Service Fund deficits: In accordance with Section 277(e)((1) of Act 65, Mr. Reardon reported that \$1,500,000 General Funds was applied to the reduction of the following Internal Service Fund deficits:

<u>Fund #</u>	<u>Fund Name</u>	<u>EOFY 2007 deficit</u>	<u>\$1.5 million applied</u>
58300	Copy Center Fund	\$2,011,782	\$1,050,000
58400	Postage Fund	\$1,107,560	\$ 150,000
58800	Facilities Operations Fund	\$1,706,107	\$ 300,000

STATE AUDITOR UPDATE:

5. State Auditor Thomas M. Salmon informed the Committee about the status of the audit of the State's Basic Fiscal Statements and the tentative 2008 work plan regarding special audits and internal control reviews.

He described three kinds of audits undertaken by his office--financial, compliance, and statutorily mandated--and provided updates of the work his staff has performed in each category. Mr. Salmon cited examples of statutory audits, and he talked about the importance of focusing more on performance audits as opposed to financial ones. He then described some of the other areas of interest to the State Auditor and answered questions from Committee members.

The Committee recessed for lunch at 12:00 p.m. and reconvened at 1:20 p.m.

TAX DEPARTMENT COMPUTER SYSTEM MODERNIZATION FUND RECEIPTS:

6. Tom Pelham, Commissioner of Taxes, reminded the Committee that Section 282(d) of Act 65 requires that he report to the Joint Fiscal Committee on receipts in the system modernization fund through the first four months of Fiscal Year 2008. He said that the Tax Department is close to signing a contract for the department's computer system modernization project, with a budget of \$7,800,000 from a fund created and delineated in Section 282(a).

Mr. Pelham described the two separate parts of the modernization fund and what has transpired with respect to both projects. He was optimistic about the success of implementing the data sharing and comparison project with the Department of Labor relating to employee filings at both departments, or lack thereof. This project is expected to be a principal source of revenue into the modernization fund.

REVENUE COMMITTEE:

7. George Phillips from the Tax Department gave a report on behalf of the Revenue Committee established in Section 267 of 2007 Act 65. The purpose of the new committee is to review management of revenues paid to certain entities within Vermont state government, in order to determine whether management of each revenue stream should remain as it currently is or transferred to the Treasurer's lockbox services contract or to the Tax Department. Criteria for evaluating proposals to manage each revenue stream are set forth in the act, along with other charges.

Mr. Phillips briefed the members on the committee's work plan and progress to date, and he indicated that no proposals will be ready in the near future.

HEALTH DEPARTMENT REALIGNMENT PLAN:

8. Commissioner of Health Sharon Moffatt gave an overview of the factors inherent in the Legislature's mandate to restructure the Health Department, as set forth in the provision of Section 115a of 2007 Act 65 reading:

The secretary of the agency of human services and the commissioner of finance and management shall present to the joint fiscal committee for approval a plan to realign the structure of the department of health. The plan shall include changes required as a result of Act No. 15 of 2007, establishing a department of mental health. If approved, the commissioner of finance is authorized to adjust the fiscal year 2008 appropriations of the department of health and the department of mental health, but may not alter the total amount appropriated from any funding source.

Prior to the meeting Committee members received a memorandum from the Human Services Agency Secretary Cynthia LaWare and Commissioner Reardon forwarding documents outlining the Health Department's plan to realign its operations beginning in Fiscal Year 2009. *(These documents are on file in the Joint Fiscal Office.)* In that memorandum they advised that Act 15 has been implemented, with a new Department of Mental Health in effect. There will be no change to the appropriation structure of the remaining components of the Health Department in the current fiscal year. The Governor's budget submission for Fiscal Year 2009 will reflect the new organization.

The Committee gave tacit approval to the restructuring plan for the Health Department.

AGENCY OF COMMERCE AND COMMUNITY DEVELOPMENT – REPORT AND RECOMMENDATIONS ON FUNDING, STRUCTURE OF REGIONAL DEVELOPMENT CORPORATIONS (RDC's):

9. Agency of Commerce and Community Development Secretary Kevin Dorn presented the report required by the Legislature in 2007 Act 65, Section 218, which called for “potential changes to the current funding and structure of the state’s regional economic development system...[which] may include expansion, elimination, or consolidation of regional development corporations.” Two documents were distributed and are on file in the Joint Fiscal Office, one of them the Department of Economic Development’s report to the Committee, and the other a response from the RDC’s to questions raised at the Committee’s September meeting plus recommendations from the organizations.

In the course of some general comments about the role and importance of the RDC’s to Vermont, Secretary Dorn observed that he and his staff believe that the existence of this public-private partnership saves the State a considerable amount of money and is very productive.

Representative Heath said that the House Appropriations Committee’s major issues are the fact that there is a disparity in performance of the various organizations, that the State does not do more to establish some benchmarks and inform the RDC’s that their grants from the state will be withheld if they do not reach their goals.

Tim Smith, Director of the Franklin County Industrial Development Corporation, was invited by the Chair to address the Committee. He described some of the accomplishments of his organization and recapped the highlights of the document prepared by the RDC’s as a result of the September Joint Fiscal Committee meeting.

REACH FIRST AND REACH AHEAD:

10. Commissioner Stephen R. Dale of the Department for Children and Families (DCF) presented a three-year plan to implement Reach First, Reach Ahead and Reach Up changes. *(The document is on file in the Joint Fiscal Office.)* Act 30 Section 25 of 2007 mandated DCF’s development of the plan; set forth elements to be included, along with any applicable recommendations pertaining to additional resources; and directed that the plan be submitted to certain standing committees and the Joint Fiscal Committee.

The Commissioner assured the members that DCF already is moving forward with implementation of Reach First and Reach Up changes.

WEB PORTAL BOARD REQUEST TO ESTABLISH FEE:

11. Thomas Murray, Commissioner of the Department of Information and Innovation, briefed the Committee on a request by the Web Portal Board to establish a \$2.00 transaction fee for Department of Motor Vehicle driver reinstatement as part of Vermont Information Consortium’s (VIC) services. The fee, Committee approval of which is required by 22 V.S.A. §9(c) would be added to the \$65 statutory reinstatement fee.

Committee members received numerous documents in support of this request prior to this and the September 18 meeting, and they are all on file in the Joint Fiscal Office. In addition, Mr. Murray distributed a one-page handout describing benefits of the proposed service and the anticipated financial expectations, from the standpoint of both revenue and expenses.

Representative Obuchowski voiced concern over the issue of oversight in a public/private partnership, saying he feared that in some cases the public's interest might be abused. Furthermore, he was worried that legislators will not have the ability easily to learn how this undertaking is progressing.

On a motion by Representative Heath, the Joint Fiscal Committee approved the request of the Web Portal Board on a voice vote, with the understanding that drivers will continue to have the option of paying license reinstatement fees in the same ways that they do now. Representatives Obuchowski and Westman voted "no" on the motion.

JOINT FISCAL OFFICE MATTERS:

11. Chief Fiscal Officer Stephen Klein and numerous staff presented information, as follows:

a. Joint Fiscal Committee and Office budget: Mr. Klein sought and received Committee approval of a \$1,295,000 budget request for Fiscal Year 2009. He distributed a breakdown of the budget requirements and funding sources, along with an explanation of the minimal 1.5 percent increase in the proposed budget as compared with current fiscal year spending. Built into the budget is up to \$20,000 to be available in connection with work associated with the Basic Needs Budget re-analysis. A group including two legislators and a number of advocates has been meeting to consider the Joint Fiscal Committee's and Office's role in this project, with the possibility of changes in the underlying legislation.

Due to staff changes explained in his handout, Mr. Klein told the Committee that most of the Joint Fiscal pay act increase of 4.2 percent in the current year can be absorbed.

The Committee adopted a motion by Senate Sears, seconded by Representative Westman, to approve the FY 2009 budget proposal which Mr. Klein presented.

b. Education Tax rates: Mark Perrault reported that as of this date the education fund surplus is projected to be substantial enough to allow for an additional two-cent reduction in education property tax rates in Fiscal Year 2009. Under current law the base rate on household income will remain at 1.8%. The base homestead property tax rate will fall to \$.85 per \$100 of fair market value and the uniform non-homestead property tax rate will fall to \$1.34 per 4100 of fair market value. Both tax rates are 25 cents below their statutory levels.

He suggested that in Fiscal Year 2010 an additional reduction in education property tax rates may be possible. Significantly slower rates of growth in property values are now projected, however, and it is likely that those rates will have to be raised beginning the following year. Mr. Perrault noted that the tax commissioner will make a formal recommendation for education property tax rates to the Legislature on or before December 1st.

d. General and Transportation Fund revenues: Sara Teachout told the Committee that final revenue figures through the month of October are expected to be released on this date. Collections into General and Transportation Funds are ahead of the cumulative revenue forecast, but collections into the Education Fund are slightly below the cumulative targets for the first four months of the current fiscal year. For reasons she explained, final figures are slightly misleading.

She talked about collections in the individual components of the General Fund and the Transportation Fund.

e. Revised budget bill format: Maria Belliveau and Richard Reed reported on the planned new format for the budget adjustment and omnibus appropriations bills to be instituted during the forthcoming session.

Starting with the FY 2008 budget adjustments, the bill will be divided into six parts: introduction; appropriations; budget adjustment appropriations; receipts, reversions, transfers and direct applications and other; language; and codified language. At the Committee's request, another part will be added to clearly delineate where the codified sections of language reside.

The meeting was adjourned at approximately 3:00 p.m.

Respectfully submitted:

Virginia F. Catone
Joint Fiscal Office

