

JOINT FISCAL COMMITTEE

Legislative Office Building, Rooms 210-211

Concord, NH

Friday, June 24, 2016

MEMBERS PRESENT:

Rep. Neal Kurk

Rep. Kenneth Weyler

Rep. Lynne Ober

Rep. Mary Jane Wallner

Rep. Daniel Eaton

Rep. Richard Barry (Alt.)

Sen. Jeanie Forrester

Sen. Chuck Morse

Sen. Gary Daniels (Alt.)

Sen. Andy Sanborn

Sen. Lou D'Allesandro

(Meeting convened at 10:10 a.m.)

(1) Acceptance of Minutes of the May 20, 2016 meeting.

CHAIRMAN KURK: Good morning, everyone. Welcome to the June 24th, 2016, Fiscal Committee meeting. Commissioner Meyers and Senator Forrester will be a bit late so we will not be taking up any of the Gateway to Work items until they're both here, unless somebody has an objection.

That being said, let's begin with acceptance of the minutes, item number one. Is there a motion?

**** SEN. D'ALLESANDRO**: Move the minutes.

REP. OBER: Second.

CHAIRMAN KURK: Senator D'Allesandro moves, seconded by Representative Ober that the minutes be approved. Discussion? There being none, are you ready for the question? All those in favor, please say aye? Opposed? The ayes have it and the minutes are accepted.

*** {MOTION ADOPTED}

(2) Old Business:

CHAIRMAN KURK: Under Old Business, we will delay, as I indicated before, Fiscal 16-087, which is Gateway to Work until both of those folks have arrived. Is there anyone who wishes to take anything off the table? Then let's move to item number (3), the Consent Calendar.

CONSENT CALENDAR

(3) RSA 14:30-a, VI Fiscal Committee Approval Required for Acceptance and Expenditure of Funds Over \$100,000 for Any Non-State Source:

CHAIRMAN KURK: I have requests to remove items 16-090, 091, 092, 093 and 098, leaving Fiscal 16-100, 104, 107. Does anyone wish to remove any of those three?

SEN. SANBORN: I apologize. State again, Mr. Chair?

CHAIRMAN KURK: The first five are removed. The last three are not. Does anyone wish to remove any of the last three?

SEN. SANBORN: Can I remove 104, please?

CHAIRMAN KURK: 104. Fine. So the motion -- I would entertain a motion to approve the Consent Calendar items 16-100 from the State Treasury and item 16-107 from the Department of Health and Human Services.

** REP. OBER: So moved.

CHAIRMAN KURK: Moved by Ober, seconded by Senator Daniels. Discussion? There being none, are you ready for the question? All those in favor, please indicate by saying aye? Opposed? The ayes have it and those two items are approved.

*** {MOTION ADOPTED}

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CHAIRMAN KURK: We now turn to those removed from the Consent Calendar on agenda item number (3). First, Fiscal 16-090, a request from the Department of Justice for authorization to budget and expend \$59,313,582 in Other Funds through June 30th, 2017. Is there discussion or a motion?

** SEN. D'ALLESANDRO: I would move the item.

REP. OBER: Second.

CHAIRMAN KURK: The item is moved by Senator D'Allesandro, and seconded by Representative Ober.

SEN. SANBORN: Mr. Chair, I have a question.

CHAIRMAN KURK: Senator Sanborn is recognized for a question. Is there someone from the Department who is in a position to answer?

ANNE EDWARDS, ESQ., Associate Attorney General, Department of Justice: Good morning.

CHAIRMAN KURK: Good morning. Thank you for being here. Senator Sanborn.

SEN. SANBORN: Thank you, Mr. Chair. Ladies, thank you so much for coming in and taking my question today. I really appreciate it. And I just might be confused so I guess I'm looking for clarity for us to kind of understand this.

When I look at the Memorandum of Understanding on Page 1, we are looking to substitute traditional language, talking about there's going to be orderly disbursements and kind of changing that to what looks to me, unless I'm missing something and I very well might be, that you're looking to essentially make one large disbursement.

Obviously, this is a tremendous amount of money and I think DES is doing a great job, and you guys are doing a great job.

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But, clearly, I'm always concerned about large chunks of money with what typically had some frugal accountability and checks and balances with the disbursements, turning into kind of like a waterfall send of \$50 million. So can you help walk me through it if I am misunderstanding it?

KATHLEEN CARR, Director of Administration, Department of Justice: Good morning. Kathy Carr, Director of Administration. What happens is we receive a detailed invoice or detailed explanation of all expenditures on a regular basis. We're able to reconcile those with the NHFirst Financial System. So we look over those. We do not pay it. They're not going to get all the -- the 81 million all at once. It will be disbursed on an expenditure basis only. So once we reconciled everything, we pay them. And we -- it could be monthly or if there are other expenditures, it may be a few more payments than that. But we always reconcile it back to the financial system to make sure that it's -- it's part of the program.

SEN. SANBORN: Follow-up, if I may, Mr. Chair?

CHAIRMAN KURK: Follow-up.

SEN. SANBORN: Thank you, ma'am. I appreciate it. The language now we're deleting, quote, "The DOJ will reimburse DES, at a minimum, on a quarterly basis for expenditures incurred." I would think that the language that even based upon your explanation would work. But you're either going to disburse quarterly or on an as-needed basis. So that's how I guess I don't understand why you're pulling that out of the MOU document.

ATTORNEY EDWARDS: Anne Edwards from the Attorney General's Office. Well, that's actually the replacement language. So 1(A)D, it's deleting the existing paragraph D and replace it with. And so the language that's being replaced is DOJ will reimburse DES, at a minimum, on a quarterly basis for expenditures incurred.

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SEN. SANBORN: And so my apologies, if that's what I'm misunderstanding. What are you taking out? What is the replacement?

ATTORNEY EDWARDS: So it's -- what it's changing, actually --

SEN. SANBORN: I guess --

ATTORNEY EDWARDS: I assume you have the whole set. If you go from the page we were just talking about, 1, 2, 3, 4 more pages, the MOU should be attached.

SEN. SANBORN: That puts me at 091. Maybe we go backwards.

CHAIRMAN KURK: No, it's the page before 091.

SEN. SANBORN: Okay.

ATTORNEY EDWARDS: And so on the bottom of the first page of the MOU is the existing paragraph D, which runs over to the top of Page 2.

SEN. SANBORN: Okay. You're going strictly on a quarterly basis to, at a minimum, on a quarterly basis.

ATTORNEY EDWARDS: We are. It also does, the reason I pointed it out because it does remove some of the language on the top of Page 2 as well, mostly because the top of Page 2 is referring to some of the past fiscal years.

CHAIRMAN KURK: If I may interject? I take it that this \$59 million cannot be spent at all, quarterly or otherwise, until some Department comes before the Fiscal Committee and requests some of this money and you folks agree. Only after that occurs can payments be made and whichever language, ultimately, is used be the language that is adopted. So approving this \$59 million does not mean it can -- a nickel of it can be spent.

ATTORNEY EDWARDS: That's correct.

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CHAIRMAN KURK: Because a second approval is required by the Fiscal Committee.

ATTORNEY EDWARDS: That's correct.

SEN. SANBORN: Thank you, Mr. Chair. Thank you, Miss Edwards. I appreciate it.

CHAIRMAN KURK: Representative Weyler.

REP. WEYLER: Thank you, Mr. Chairman. Attorney Edwards, while this money sits in a fund, it should be earning interest. Is that interest earmarked anywhere?

ATTORNEY EDWARDS: Sorry. We are looking back to the Department of Environmental Services.

MS. CARR: I have been in touch with the Treasury and I will get back to you on that. I had asked that question and I would have to see if it is an interest-bearing account.

REP. WEYLER: I would hope it would be with all that kind of money and the likely year or two that it's going to take to disburse it there's going to be some interest generated or should be. And it should be earmarked for some specific place. Perhaps additional projects on the MTBE. Thank you.

MS. CARR: Agreed.

CHAIRMAN KURK: Further questions? Thank you very much.

We have a motion before us to approve the item. Further discussion or question? There being none, are you ready for the question? All those in favor, please indicate by saying aye? Opposed? The ayes have it and the item is approved.

*** {MOTION ADOPTED}

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CHAIRMAN KURK: We turn now to Fiscal 16-091, a request from the Department of Environmental Services for authorization to accept and expend \$5,198,361 in other funds through June 30th, 2017.

** REP. OBER: Motion to approve.

SEN. D'ALLESANDRO: Second.

CHAIRMAN KURK: Representative Ober moves, seconded by Senator D'Allesandro that the item be approved.

SEN. SANBORN: I have a question, Mr. Chair.

CHAIRMAN KURK: Senator Sanborn is recognized for a question.

SEN. SANBORN: Could we have someone from the agency come up?

CHAIRMAN KURK: Good morning, Miss Carlson.

SUSAN CARLSON, Chief Operations Officer, Department of Environmental Services: Good morning, Mr. Chairman, Members of the Committee. For the record, my name is Susan Carlson with the New Hampshire Department of Environmental Services.

SEN. SANBORN: And good morning, and thank you so much for taking my question. And, respectfully, I kind of hope that the Assistant Commissioner or Rene was here as well, so if I can ask the discretion of the Chair.

I'm using this as an opportunity to ask a question about the MTBE settlement money. I mean, clearly, as we all know, there's a significant problem in southern New Hampshire in many towns with PFOA, all the way from Salem and Pease, all the way to Bedford and Merrimack and Litchfield, Amherst, and there's clearly a significant concern from people in the community about what the State's response is going to be. So my question was has anyone scrubbed the settlement document to see if there is any

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flexibility or what flexibility might exist in both the 80 plus million dollar settlement and the \$230 million settlement that the State might be in a position, if needed, to help all of these people in these communities? So I haven't honestly read the document to see how tightly drawn the decree was, and so I was hoping that someone from DES might be able to answer that.

MS. CARLSON: Thank you for the question. As far as the settlement dollars --

CHAIRMAN KURK: Miss Carlson, could you speak closer to the microphone so folks in the back can hear you. Thank you.

MS. CARLSON: Thank you. As far as the settlement monies go which is what is in front of you today, that is solely for MTBE and only MTBE. As far as the Exxon penalty of 236 million, plus a lot of interest, that is going into the, as you understand, the new Drinking Water-Groundwater Trust Fund. We are waiting on the creation of the Advisory Committee to talk to them to determine whether or not under the rules for the Trust Fund any of that could possibly be used for PFOA. But this money, no.

SEN. SANBORN: This money no. The other money maybe.

MS. CARLSON: Yes.

SEN. SANBORN: All right. Thank you very much. Mr. Chair, thank you for the discussion.

CHAIRMAN KURK: The question is, I think, a little bit more general. Can any of the \$59 million or \$81 million be used for PFOA? Not just this \$5.1 million chunk but the entire amount? Any portion of that available for PFOA?

MS. CARLSON: It is my understanding no, but I would ask the Attorney General to come back and answer the question.

CHAIRMAN KURK: Representative Weyler.

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REP. WEYLER: Thank you. Miss Carlson, to your knowledge was this amount of the settlement arrived at through a survey of the needs or was it a compromise?

MS. CARLSON: Again, I would have to -- you're talking about the MTBE settlement funds?

REP. WEYLER: Yeah. Do we know the list of projects? Do you know how much it's going to cost? Do we know where the treatment is going to go or is this just compromised settlement?

MS. CARLSON: If you would wait one second. This is why I brought him.

MICHAEL WIMSATT, Director, Waste Management Division, Department of Environmental Services: Good morning. For the record, my name is Mike Wimsatt. I serve as Director of the Waste Management Division of DES. Thank you for the question, Representative Weyler. And, again, part of this is really more probably appropriately addressed to the Attorney General because it goes to the history of the settlement and the trial, et cetera. However, I can tell you in general terms that the State asserted certain damages that totaled over \$800 million at trial. And throughout the pendency of the litigation, which took about 10 or 13 years, I believe. The settlements were with all settling parties, except for Exxon Mobil, and they were settlements so they didn't represent necessarily full, you know, apportions of all those damages. But they did total an amount after everything was extracted and amount to the Rainy Day Fund of \$81 million that went into this fund that we are currently using to address MTBE sites in the state.

Similarly, the verdict when we went to trial against Exxon Mobil, there was an apportioned amount associated with what Exxon Mobil's damages were determined by the court to equal. That amount was collected in full, and then as many of you know, has been recently, after all the appeals were exhausted, was recently awarded, along with interest, and that money in total, my understanding minus the extraction for the Rainy Day Fund,

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went to the Drinking Water-Groundwater Trust Fund which was created earlier this year by the General Court.

REP. WEYLER: Thank you very much for the answer.

CHAIRMAN KURK: Senator Sanborn.

SEN. SANBORN: Thank you, Mr. Chair. Thank you for answering that question. So on a math basis, 237 million or whatever it was, how many years and what was the prevailing interest rate as we sit here and compound my money?

MR. WIMSATT: I don't know the specific way we got there in terms of the interest rate or the years; but what it amounted to was a little over \$300 million it was awarded. And after a 10% reduction for removal and transfer to the Rainy Day Fund, \$276 million and change was deposited to the Drinking Water and Groundwater Trust Fund earlier this month.

SEN. SANBORN: Follow-up.

CHAIRMAN KURK: Follow-up.

SEN. SANBORN: Thank you for that. Is that 276 plus interest or that includes --

MR. WIMSATT: No, that is inclusive of the interest. The total corpus for, you know, what has been deposited in the Trust Fund.

CHAIRMAN KURK: But that's after deducting contingency fees for our attorneys.

MR. WIMSATT: That's correct. That's after all legal costs and the Rainy Day Fund transfer.

CHAIRMAN KURK: Thank you. Another couple of questions on this specifically. Why wasn't this included in the 16-17 budget?

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MS. CARLSON: As this program is in the settlement, we felt for the first few years that we were doing this that we would do it through Fiscal Committee because we were still trying to figure out how this works. For your edification, we are including this in the 18-19 budget. So you will see it as part of our Operating Budget request for the next biennium.

CHAIRMAN KURK: But it was in the 14-15 budgets. No?

MS. CARLSON: It was a Fiscal item. It's always been a Fiscal item.

CHAIRMAN KURK: Thank you.

(Senator Forrester enters the Committee room.)

CHAIRMAN KURK: Next question. What proportion of this \$5.2 million is going to be used for, quote, administrative expenses, unquote, and what proportion is going to be used for actual remediation?

MS. CARLSON: If you look on the second page at the bottom of the table, the last two expense categories, contracts and reimbursements add up to 3.7. So that's approximately 70% is going to direct reimbursements and contracts and 30% going to admin for this request. Overall, on an ongoing basis, we are running about 75% for direct contracts and reimbursements, and 25% for administrative so far.

CHAIRMAN KURK: Isn't that administrative proportion exceptionally high?

MS. CARLSON: Well, we are in the first few years. So our administrative expenses are lean right now. And as we -- as we are now up and running, we expect to be spending a great deal more on reimbursements and contracts. Yes.

MR. WIMSATT: I wonder if I could address that as well. It's important to understand that one of the key activities, in addition to actual remediation or, you know, extension of water

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lines or what have you, one of the key activities that is done is conducted under the MTBE Remediation Fund Program is extensive sampling of private drinking water wells, and that is -- so those are going to operating costs because we have staff who are actually going out and arranging appointments and meeting with people in their homes and grabbing a sample of their water and then sending that off for analysis. And then when the data comes back communicating the information about that and any concerns about health effects. Those are operational costs that come under administration, but they are really direct services to the public of New Hampshire.

CHAIRMAN KURK: Thank you. And could you explain this -- I guess it's the third page in, Page 3. Vacant positions to be temporarily reassigned. Existing positions that will be charged limited time. I think I understand the latter, but I don't understand the former.

MS. CARLSON: In order to be consistent when we started this, and if you go all the way back to the end you can see the original request, what we did as a program was we created five full-time temporary positions, and then we borrowed eight vacant positions from within the Department, filled all 13 positions. And these are -- these 13 positions make up the MTBE Bureau that is running this program. So they are no longer vacant. They are filled positions.

CHAIRMAN KURK: And these 13 positions are new hires. That is to say, these were not people who were doing other jobs who were borrowed and assigned to this particular task?

MS. CARLSON: No.

CHAIRMAN KURK: They're new.

MS. CARLSON: They're new or they were new. They're not new.

CHAIRMAN KURK: Okay. Thank you. Further questions? There being none, we have a motion?

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REP. OBER: Yes.

CHAIRMAN KURK: We have a motion before us to approve the item. Are you ready for the question? All those in favor, please now indicate by saying aye? Opposed? The ayes have it and the item is approved.

*** {MOTION ADOPTED}

CHAIRMAN KURK: We turn now to Fiscal 16-092, request from the Department or the Department of Environmental Services for authorization to budget and expend \$50 million in other funds through June 30th, 2017.

** REP. OBER: Move to approve.

CHAIRMAN KURK: Representative Ober moves to approve, seconded by Senator Sanborn.

REP. OBER: I have a question.

CHAIRMAN KURK: There are a number of questions on this. Representative Ober.

REP. OBER: Thank you. Good morning, Susan.

MS. CARLSON: Good morning.

REP. OBER: Do you remember when we did the bill this past session about funding some of the Tier 2 Projects and we ended up finding out that we could use some of the left over money from closed projects in 2011. And I believe the Commissioner stated that future projects would need to have the language in them that that money could be used after the project was closed. And I was curious if this paperwork contained the language he talked to us about in Division I. I know that's kind of off the wall and that's why I didn't expect that question.

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MS. CARLSON: Okay. When we were talking about the State Aid Grant Programs in those discussions, we talked about our ability to use management fee income to fund State Aid Grant Program.

REP. OBER: Right.

MS. CARLSON: Yes, we have filed an amended use plan with EPA and, yes, we do have their permission to use the funds to modify the intended use fund to use that to fund the State Aid Grant Program. This is actually direct loan money.

REP. OBER: Okay.

CHAIRMAN KURK: Follow-up on that. Will there be any fees, waived interest, or any way that the Department is going to get any part of this \$50 million as it's repaid by the Town of Exeter?

MS. CARLSON: Yes. Built into the interest rate is a program fee, which is -- which is -- which is what we charge, the 2% we charge that's in there.

CHAIRMAN KURK: 2%.

MS. CARLSON: 2%. So if we're charging an interest rate of 2.5%, and I'm just using that as an example, 2% of that is the program fee and the balance goes back into the repayment fund.

CHAIRMAN KURK: So you're going to be picking up a million dollars over the life of this \$50 million loan?

MS. CARLSON: If your math is correct, yes.

CHAIRMAN KURK: And what were you going to do with this money?

MS. CARLSON: This funds the staff to run the program.

CHAIRMAN KURK: With nothing left over?

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MS. CARLSON: No. We, obviously, as we discussed when we had the last -- at the meeting we were talking about State Aid Grant funds, we have a balance in the program fee account right now that we're using the excess in the balance to be able to fund \$825,000 worth of State Aid Grants.

CHAIRMAN KURK: So if, in fact -- I'm making up a number -- one-quarter of 1% is enough to cover your employees, administrative costs, why are you charging the Town of Exeter 1¼% to do some other function?

MS. CARLSON: Hum -- I'm not sure I understand your math on that one, Representative Kurk.

CHAIRMAN KURK: Aren't you overcharging communities at the 2% amount, since you told us it's in excess of the amount you need to cover your administrative costs? You're overcharging them and then taking this money from the people of that town and using it for some other purpose.

MS. CARLSON: Well, as you asked us, we did modify the intended use plan to be able to give a State Aid Grant Program. So if Exeter were to come to us under the State Aid Grant Program, we would be providing them 20% State Aid Grant money on when they go to apply for the repayment for this loan.

CHAIRMAN KURK: But -- I appreciate that. But that was -- that was looking at money that you had already collected. Now we're talking about surcharging towns in order to pay for these in the future.

MS. CARLSON: Well, you're talking about a program that runs us probably about \$3 million a year to run, correct me if I'm wrong, Tracy, from program fees. In addition, some of that money we're doing that program revenue is also repaying the Debt Service that we incur for the match that we use in the Capital Budget for the Federal grant portion of the program.

CHAIRMAN KURK: Do you have a separate accounting --

MS. CARLSON: Yes.

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CHAIRMAN KURK: -- for this particular fund?

MS. CARLSON: Yes.

CHAIRMAN KURK: Would you please share that with me or the Committee?

MS. CARLSON: Yes.

CHAIRMAN KURK: Not now, but at some point, so we can trace all of the money, where it comes from, where it goes.

MS. CARLSON: Every one of our individual programs in the SRF have their own accounting unit within NHFirst.

CHAIRMAN KURK: We'll see the source of funds for all of the employees, what proportion they're getting from this fund, General Funds, et cetera?

MS. CARLSON: Yes.

CHAIRMAN KURK: Thank you. Representative Weyler.

REP. WEYLER: Thank you. Comment. My recollection of this program is that there's principal forgiveness so that likely the total repayment will be less than the loan; is that correct?

MS. CARLSON: Yes, there is principal forgiveness. Sorry, but I don't know what Exeter is getting for principal forgiveness on this.

REP. WEYLER: Likely on most of these loans the actual repayment is less than what the loan is, is my recollection.

MS. CARLSON: If they qualify, yes.

REP. WEYLER: Thank you.

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CHAIRMAN KURK: Who bears the cost of that, the Federal Government or the State?

MS. CARLSON: Well, the program bears the cost of principal forgiveness.

CHAIRMAN KURK: Senator Sanborn.

SEN. SANBORN: Thank you, Mr. Chair. Mr. Chair, as you know, and thanks again for coming in, I've had a significant interest in these revolving loan funds for a few years now, because I think they're great programs. But I'm concerned, as this Committee has heard me say several times that, you know, nothing that lasts -- the only thing that should last forever is ultimate love between you and your wife or husband, whatever it is. And I'm concerned that this thing has become the ultimate gift of love. I think we are somewhere around, if my memory serves, \$600 million of loans outstanding, \$200 million worth of available balance fund. If we're charging 250 basis points so there's 200 basis points on \$600 million is being captured back into the agency as kind of like a level of fee income. I'm concerned about -- I guess I've got some real concerns about how big should it be, when should we stop growing the fund and let it cap? What are we doing with 200 basis points when only 25 basis points, I think, from what the Chair has said is actually going to admin expense? Can you give this Committee kind of a layout of the corpus of the fund, what the rates are, how much we're giving back a year in principal forgiveness? 'Cause, obviously, we also later on today have an audit to talk about as well, which kind of raises many of the same concerns to me that, you know, again, Mr. Chair, as I say, I think DES is a great agency, but it's turned into a bank that I'm concerned about the accounting.

CHAIRMAN KURK: And, Ms. Carlson, you can add that to the request.

MS. CARLSON: Yes.

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CHAIRMAN KURK: Thank you. Further discussion or questions? There being none, are you ready for the question? The motion is to accept the item. If you're in favor of that motion, please now indicate by saying aye? Opposed? The ayes have it and the motion is adopted. Thank you, Ms. Carlson. We look forward to your material.

*** {MOTION ADOPTED}

CHAIRMAN KURK: Turning now to item Fiscal 16-093, a request from the New Hampshire Liquor Commission for authorization to accept and expend \$109,692 in other funds through September 30th, 2016.

** REP. EATON: Move to deny.

CHAIRMAN KURK: What?

REP. EATON: Move to deny.

CHAIRMAN KURK: Representative Eaton moves to deny the request. Is there a second?

REP. OBER: Second.

CHAIRMAN KURK: Seconded by Representative Ober. Discussion?

SEN. D'ALLESANDRO: I'd like to know the rationale for the deny.

CHAIRMAN KURK: Representative Eaton.

REP. EATON: Be glad to, Senator. Back in the winter I sat on the Breathalyzer Committee and the Intoxilyzer 5000 is becoming extinct. Senator Stiles and I sponsored a bill to legitimize handheld devices in place of the Intoxilyzer. Their technology is such now they're actually more accurate than the machines that are in police stations.

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The Intoxilyzer is no longer support it, no longer manufactured. We are cannibalizing them to make existing ones function. The manufacturer no longer makes hand tools which you have to use in the machine. It's done by a private entity. That is the nature part of their whole business is just making those hand tools for us. If someone in the family dies they may discontinue.

The intent of the bill going through was to put it on the table and get an opinion of the Court as to whether we could use the handheld devices. And then come up with a handheld device that met criteria and it also interfaced with the existing computer systems for printout and duplicate copies and all that. We didn't get that homework done. We did not get an opinion of the Court and there will be future legislation to choose a device that will meet the technological requirements for the Court and interface.

Secondly, the Liquor Commission is a regulatory and revenue agency. They're supposed to make the most revenue they can for the State of New Hampshire and regulate their own rules. As you, Senator, I've been around. I got elected in '75. And I remember vividly in the floor of the House and in the Regulated Revenues Committee former Chair Ken McDonald of Moultonborough asking this body or this Legislature -- the Legislature then to authorize the use of weapons or the carrying of weapons by Liquor Commission's Liquor Enforcement Officers. The only thing they enforced were liquor laws. And, in fact, the statute states very clearly the Commission shall appoint liquor investigators whose primary function shall be the proper prosecution of this title, their regulations on liquor for licensees.

Representative McDonald stated emphatically on the floor of the House they just want to carry weapons. They do not want full police powers. They don't want cruisers and uniforms. They don't want to go through all the hoopla. They just want self-protection because at that point nightclubs were coming into fruition. It was getting a little more raucous in the local bar you went in to check the license.

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Last month the Commission came in. They asked for tablets. Under questioning they said oh, no, this is predominantly for licensees, not for highway. Then in the next statement said, well, we need special brackets because they were ordering Interceptor vehicles. The only reason you need an Interceptor vehicle is for highway enforcement, which would coincide with the use of the tablets they wanted.

My concern is that we seem to be going through an ongoing process to attempt to back door this body into approving a new Highway Patrol Agency. Any Department, any Department in the State of New Hampshire can apply to New Hampshire Highway Safety Agency for these devices if they need them, and I'd be thrilled if they do. Short of that, the Department of Safety or a County Sheriff in every County could make application through the Highway Safety Agency, and the distribution would be done through a traditional Title 20 authorized enforcement agency, authorized for highway enforcement.

While statute regulating the Liquor Commission Enforcement is broad, the statute is very clear what their primary function is: Regulatory, not highway patrol. They're now getting Interceptor cruisers, blue lights. They have gone from suit and tie to not just a regular standard police uniform, but to even a SWAT uniform. It's gone too far. Nobody is in jeopardy of losing a case because these are not legitimized for introduction in Court. It is a field test kit. And if a police officer's properly trained, and I know the Police Standards and Training does properly train, they don't need these to make a good court case. You can't introduce as evidence. It gives you a guide.

There is more than enough time for anyone and everyone to make proper application on their own or through a Sheriff or through the Department as a whole to distribute statewide. I don't want a regulatory agency that should be putting their money into the General Fund spending time being a distributor to all other agencies and legitimizing a highway patrol function that we will pay for dearly down the road.

CHAIRMAN KURK: Representative Ober.

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REP. OBER: Thank you, Mr. Chairman. My concern with this is that the timing is off. Since we are kind of halfway through the Senator Stiles/Representative Eaton bill, and I'm not even sure if it's been signed by the Governor yet, so we are kind of in limbo at this time of year. But my police department wants to have the devices that we standardize on. We may or may not at this point in time be buying it. Delaying this, denying this now, getting through that, and going through the process and making sure we are buying what we need to do is a much better option to make sure that they have really the best device. And the Senate did a lot of work on this. I trusted what they did when it came to the House. Representative Eaton spoke strongly in support of what the Senate had done on this bill to get a new device and so supporting that I find this premature.

CHAIRMAN KURK: Thank you. Is there someone from the Liquor Commission who's in a position to contribute to the discussion?

JAMES WILSON, Chief of Enforcement and Licensing, New Hampshire Liquor Commission: Good morning, Mr. Chairman, Members of the Committee. For the record, my name is James Wilson, Chief of Enforcement and Licensing for the Liquor Commission. And I have with me today as well James Young who's a Lieutenant with the Division.

CHAIRMAN KURK: Are you wearing your uniforms or this is business attire?

MR. WILSON: This is how I dress most of the time. Business attire.

CHAIRMAN KURK: Thank you. Senator Forrester.

SEN. FORRESTER: Thank you for coming in. I was just curious if you could respond to Representative Eaton's remarks.

MR. WILSON: Certainly. I can say that this is a continuation of -- of a grant program that we've been involved in for approximately six years now, maybe a little bit more.

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Originally, the PBT Program was administered under Police Standards and Training. And I don't have all the details as to why they got out of that, but we got into it, and we've been doing this for a long time. And this grant is a continuation to replace some of the older S-D5 models that have been out there. Some of them have been out there, I think the first iteration of this was 2003, and this would just to be to buy an additional 340 devices.

Last year we administered devices to 22 -- 22 agencies, including the Department of Safety, and some of the Sheriff's offices. We don't -- we just test the devices and facilitate the disbursement of the devices out to the various agencies. The -- go ahead.

CHAIRMAN KURK: Senator D'Allesandro.

SEN. D'ALLESANDRO: Thank you, Chair. But I think this goes well beyond. The commentary from Representative Eaton is well beyond what you just said. If, indeed, the narrative indicates you're getting cruisers, you're getting -- you're getting lights and you're creating a highway patrol entity, that's much different than replacing devices. And I think that really has to be addressed before this body here because you're saying one thing. You got a head of the agency, and we have another situation and Representative Eaton is saying quite the contrary. So where are we? We got rid of the highway patrol.

MR. WILSON: Yes, you did.

SEN. D'ALLESANDRO: We let them evolve into the State Troopers. If this is another creation, we ought to know about it. So I want you to address that directly.

MR. WILSON: Sure. We are not creating a highway patrol agency. It's not our intent to create a highway patrol agency. I've been with the Division since 2002. And when I came into the Division, we had a limited uniform capacity and we had blue lights in cars. We haven't changed that. In two thousand -- I think it was 2002 as well or three, we transitioned from some

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passenger vehicles to a police package vehicle. In fact, there were Crown Victorias and Dodge Intrepids, and the primary rationale for that was because of the amount of driving that we do. The feeling was they were more suited, they were more heavy duty, and we would spend less maintenance money on them.

So we do have uniforms, but we don't wear them into the licensed establishments. We have a dress uniform for occasions that was paid for using forfeiture money and grant money, because we were doing some programs for the Highway Safety Agency that required a more officious presence and that was the Ripple Effect Program when we were bringing inmates out of the prison to talk to school groups about the dangers of drinking and driving.

We're certainly not -- we have no intent to be a highway patrol agency or anything of that nature. We are a regulatory law enforcement agency. We realize that. Our primary focus is Title XIII, which is alcohol and tobacco law, restricting use of youth access, and administering liquor licenses and training to liquor licensees and monitoring them for compliance with the Title XIII laws.

CHAIRMAN KURK: Do you, in fact, have black SWAT type uniforms?

MR. WILSON: We do not have black SWAT type uniforms.

CHAIRMAN KURK: What color are your uniforms?

MR. WILSON: Our uniforms are blue and tan. Blue shirt and tan pants. We do have a high profile field uniform, enforcement uniform, which is a 511 cargo pocket pants and a blue golf shirt.

CHAIRMAN KURK: Color of the pants?

MR. WILSON: Tan.

CHAIRMAN KURK: Do you, in fact, have Interceptors?

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MR. WILSON: We have -- we have a few Ford Crown -- well, the Ford Taurus which they call the Interceptor package. It's the heavy duty package.

CHAIRMAN KURK: And do you have the legal authority to enforce highway laws?

MR. WILSON: We have the same authority by statute as a sheriff to enforce all laws. However, we focus in Title XIII. The majority of our motor vehicle activity revolves around illegal transportation of alcohol by minors, trying to separate minors from alcohol and motor vehicle situations. As you all probably are very well aware of the *State v. Weldy -- Kingston v. Weldy* case rather that sets a precedence, legal precedence in the state about minors and alcohol and motor vehicles. That's -- that's pretty much the extent of any motor vehicle stuff we do, unless it's something that if left unchecked would cause greater harm than letting it go.

CHAIRMAN KURK: Thank you. Senator Forrester.

REP. OBER: Mr. Chairman.

SEN. FORRESTER: She can go first.

CHAIRMAN KURK: Representative Ober.

REP. OBER: You asked a question about Interceptors. In the item that is tabled they have an installation of 25 tablets into 25 Interceptors, which we all have in our books from last time.

CHAIRMAN KURK: I believe the Department has acknowledged that they have and will continue to use Interceptors for a variety of reasons.

REP. OBER: Yes, but it's more than a few. It will be 25.

SEN. FORRESTER: Did you want to respond to that?

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MR. WILSON: We do not have 25 Interceptors. We have a patchwork of vehicles. We have the majority of our fleet are Chevy Impalas of varying ages all the way from, I believe, two thousand -- do we have 2003 or 5?

LIEUTENANT JAMES YOUNG, Enforcement and Licensing Division, New Hampshire Liquor Commission: Three.

MR. WILSON: 2003 in the fleet. Some of the newer vehicles that have come out, the heavy duty vehicles have, obviously, different options. We had learned, we were advised that Chevy was no longer going to be making the heavy duty Impala and the most cost-effective vehicle next for us was the Ford Taurus which offered a number of benefits. We have investigators that are all over the state in various weather and terrain conditions. So we opted for the Taurus all-wheel drive V-6 Model, but they have a badge on it. That's what they call the Interceptor package. It's not -- it's not a marked patrol unit. It has minimal equipment. It has an emergency radio and minimal lighting and it's simply for our regulatory law enforcement functions. But we do not have 25 Interceptors in the fleet.

CHAIRMAN KURK: Senator Forrester, did you have a further question?

SEN. FORRESTER: Yes, thank you. So this is not a new program. You said you've been doing this for six years.

MR. WILSON: Yes, ma'am. At least I could get you -- I could come back to the Committee with the actual start date. I know that Police Standards was involved up until about 2008 or 9. I'm not sure in that time frame if it was 10, 9, or 11 when we picked it up, but I can say we have been doing it since 2011.

SEN. FORRESTER: Follow-up.

CHAIRMAN KURK: Follow-up.

SEN. FORRESTER: Is this old technology?

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MR. WILSON: This -- this technology is not the same as the technology Representative Eaton was referencing as far as the Intoxilyzer 5000. And we all agree and I've confirmed with the Department of Safety that there is legislation or there was and there's work ongoing on that particular device because of a number of reasons. And most of them were pointed out by Representative Eaton. It's a device that does a sample capture. My understanding is there aren't any other states that are using that type of technology anymore. These devices are very old and the technology is very old, and they're not being supported anymore. So the primary focus is those stationary Intoxilyzer 5000 devices, which are the very large device that are usually at an agency, like in a booking room. We have one that's in the mobile DUI Command Unit that goes out to sobriety checkpoints. That's a very large stationary device. These are the portable Preliminary Breath Test devices designed for roadside assistance for the officer in determining level of impairment, level of blood alcohol concentration, breath alcohol concentration.

CHAIRMAN KURK: Further follow-up.

SEN. FORRESTER: So I just wanted to confirm that what you're proposing is not old technology.

MR. WILSON: No, ma'am. It's the newest.

SEN. FORRESTER: And one other question. So what happens if we don't approve this today, if you don't get this?

MR. WILSON: If we don't get this, then there will be 340 devices that will not be available to the various law enforcement agencies around the state.

CHAIRMAN KURK: I thought -- if I may? I thought that Representative Eaton said, and if this is not correct, please state the correct situation, that any Department on its own could apply for these with the Highway Safety Agency and would not be deprived of them if this motion were defeated or tabled.

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MR. WILSON: He's correct that any agency -- any agency can apply for Highway Safety Funds, the NHTSA funds. The National Highway Traffic Safety Administration funds, which is passed through through Highway Safety. The -- this program since its inception has been funneled through one -- one agency to make it easier for the Highway Safety Office to administer the grant. So instead of writing subgrants for the various law enforcement agencies, for example, last year the 22 agencies that we gave them out to, the limited staff in Highway Safety would have had to deal with those 25 sub -- 22 subgrants. We write the large grant and we have a much less restrictive process. We monitor. We issue the devices. We monitor who gets them. We report back to Highway Safety how the funds were expended. So it's simply a pass-through.

CHAIRMAN KURK: Did you say last year you distributed 22 devices?

MR. WILSON: No, licensed the 22 agencies.

CHAIRMAN KURK: How many devices, approximately?

MR. WILSON: Give me one second and I can look that up for you. 275 devices.

CHAIRMAN KURK: This year you're asking for 340?

MR. WILSON: Correct. And some of the rationale is that many of the original S-D5 devices that have been out there for awhile are now in disrepair. Their cells are not working properly. And, again, they're not functioning properly and they're an older device. So the technology is older.

CHAIRMAN KURK: Thank you, Senator Sanborn.

SEN. SANBORN: Thank you, Mr. Chair. Gentlemen, thank you very much. And at the risk of as a licensee, walking an interesting line for me here, first and foremost I want to say for the record since you've taken over enforcement there's been an amazing difference and the respect your agency has given to

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licensees, it has been a material change. So, globally, I appreciate everything that you've done, and it's gotten so much better in the past few years. So thank you for that.

MR. WILSON: Thank you, Senator. Appreciate it.

SEN. SANBORN: Now that being said, here comes the trouble. You know I have always struggled with this 450 or 490,000 what I call your war machine, which is like your driving jail enforcement truck that we haven't talked about yet so I'm not trying to throw a pile of flame on the fire. You know that's always kind of been a claw to me so help me understand at one hand I think you guys are doing such a better job at working with licensees and doing the compliance stuff; but you know I've always kind of knocked my knees have always knocked together when I see the battle axe come out on the road. How is that not enforcement like Highway Patrol?

MR. WILSON: And I wasn't -- first off, thank you again, Senator, for the kind comments and very good question. I was not the Chief when that piece of equipment came to the Division, but my recollection and understanding of the events was that there was a working group of a number of agencies and for whatever various reasons none of those agencies either could or wanted that piece of equipment. And there was a desire to have it not reside locally at a municipal agency or in one county at a Sheriff's Office, and the Department of Safety wasn't in a position where they could take it or they had one already. So the -- the request was actually made to the Liquor Commission if we would house it for a couple of reasons, not because we are out -- we are not out setting up sobriety checkpoints. That's not what we do. But one reason is that we have -- we have the -- we administer the State Drug Recognition Expert Program as well, because it all comes back to impairment and different types of impairment and levels of impairment.

So the rationale was if one central state agency that had the ability to and the expertise with alcohol issues could house this piece of equipment and get it out on the road, plus leverage a drug recognition expert at the sobriety checkpoints,

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because we all know that sometimes when an officer pulls somebody over, maybe their operation such that they believe they're impaired but maybe it's not alcohol, maybe it's something else. All of those things sort of melded together with a request that we be the agency that housed that. And the side benefit of that is we have an interest in monitoring the -- obviously the responsible sale of alcohol and service of alcohol.

So when we deploy this machine, we have a DRE. We don't run -- there's a drug recognition expert who's the operator. So in case there's an issue, you know, we have an expert on scene that can help the officer running that lane figure out what that individual may be impaired on, if it's not alcohol. But beyond that, we collect what we call place of last drink data, which is we solicit information from the individuals who are suspected of impaired driving as to where they had their last drink. So that helps us do a better job at a data-driven approach to our enforcement efforts so we can leverage our limited staff to those hot spots, those problems areas.

SEN. SANBORN: Follow-up.

CHAIRMAN KURK: Follow-up.

SEN. SANBORN: How often do you set sail on that thing; is it every weekend?

MR. WILSON: No, no. I'd prefer the Lieutenant, you're an operator, could you give him a sense how often that deploys?

LIEUTENANT YOUNG: Good morning, Committee Members. Again, my name is James Young. Excuse me. I am one of the operators for that unit. Have been since its inception.

It goes out various times throughout the year. It's available on a first-come, first-serve basis for any of the law enforcement agencies across the state that want to use it. We don't charge for that. It's free of charge. We just bring that out there.

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We're in a busy stretch right now. So the major weekends it's definitely out there. And it basically depends on when a local community is doing a checkpoint. If there's a community that's doing a checkpoint, they ask to see if it's available. If it is, we comply. If it's not there, they'll still do the checkpoint. It's just a different setup.

MR. WILSON: I will say, if I can add to the Lieutenant's comments just to clarify on the charging piece. Our place of last drink, the DRE, that is all funded through NHTSA, Highway Safety money as well. And we do -- we do get reimbursement for fuel consumption for the vehicle from the municipal agencies that request us to go.

CHAIRMAN KURK: Representative Ober.

REP. OBER: Thank you. I have a question for the Commissioner. Could the Commissioner come forward and sit at the table?

CHAIRMAN KURK: Thank you, gentlemen.

JOSEPH MOLLICA, Commissioner, New Hampshire Liquor Commission: Good morning, Mr. Chairman.

CHAIRMAN KURK: Good morning, Commissioner. Welcome.

MR. MOLLICA: Good morning, Mr. Chairman, Members of the Committee. Joseph Mollica, Chairman of the Liquor Commission.

REP. OBER: This is sort of a "buck stops here" question. As you know you come to Committee. We ask questions. We learn from the answers. We actually read what you give us. So because it's "buck stops here" and you're the Commissioner, on April 20th, 2016, you signed the paperwork that included installation of tablets into 25 Interceptors. The Director was not here, but the Lieutenant was here and answered those questions on that. They weren't mine but there were questions.

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This morning the Director is here, and you submitted and you again signed the paperwork, the "buck stops here" – aren't you just delighted to hear that – May 31st, 2016, and that's the offer we are suggesting, and now the testimony has been different. There's clearly a problem between the written documents that have been submitted that we've all read, the testimony in the two different meetings, last meeting, and this meeting; and I would ask that you get to the Chairman for distribution to all of us some sort of response as to what is really going on with vehicles and why one set of paperwork says request money to install 25 Interceptors and this morning we don't have it. I know you don't have that with you. And I know you, as the "buck stops here", you sign paperwork that's here, and you need to research that. But if you could and would you please get that back to us so we can all have it because, believe it or not, we do read what you give us.

MR. MOLLICA: I'm sure.

REP. OBER: Maybe it's a bad habit, but we do read what you give us.

MR. MOLLICA: I'm sure that you do. And under every circumstance I read what I sign as well.

REP. OBER: I know. I know.

MR. MOLLICA: I appreciate that, Representative Ober. We'd be happy to get that back to you.

REP. OBER: Thank you, Commissioner. I appreciate that.

CHAIRMAN KURK: Senator D'Allesandro.

SEN. D'ALLESANDRO: Thank you, Mr. Chairman. Just to clarify a point. Because there was a statement that this equipment is not state-of-the-art, it's not the current methodology that's used, Is that correct, or is that incorrect? And I think that's the basis really of the decision-making process here. If this

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equipment is up-to-date and is valid and needs to be used, would you address that?

MR. WILSON: Absolutely, Senator. Thank you for the question. The devices that this particular grant, the PBTs that we are looking to purchase on this grant, are the newest technology. The device that Representative Eaton referenced, the Intoxilyzer 5000, is a different device completely.

SEN. D'ALLESANDRO: Okay.

MR. WILSON: Two separate applications.

SEN. D'ALLESANDRO: So to make it perfectly clear, the device he was mentioning, separate application, that may be an antiquated situation; but these devices are state-of-the-art and are the newest?

MR. WILSON: They're the newest models available.

SEN. D'ALLESANDRO: The newest models available. You're going to give them out.

MR. WILSON: Yes.

SEN. D'ALLESANDRO: Thank you

CHAIRMAN KURK: Representative Eaton.

REP. EATON: Just like to clarify, Senator, I mentioned both. The Intoxilyzer which is antiquated, but what is accepted by the Court. The handheld devices are more accurate and I stated that than the Intoxilyzer 5000. The problem is, as of this moment, the handheld devices are not Court accepted as evidence as is the Intoxilyzer 5000. And we are mid-stream, not at the finish line yet, of getting direction from the Court of what will be accepted. And while there are multiple handheld devices out, some will interface with the electronic systems we have, some will not. And if we are going to be going forward with this, we should be making sure we are not throwing money out the door and going to have to replace that 12 or 18 months

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from now due to Court decree. And I don't think we are going to have any kind of decree or decision on that for at least 12 to 18 months.

And as they stated, they have already put a whole bunch of machines in the field that are not allowed to be used in a court. That's the key. They're all trained how to gauge an intoxicated driver. The machine just gives them added input, but you can't use it in a court of law. So they have already distributed a few hundred. Let's ride it out a bit and see what happens and have it go through a different agency.

SEN. D'ALLESANDRO: Just a question, Mr. Chairman. Is the --

CHAIRMAN KURK: Senator D'Allesandro.

SEN. D'ALLESANDRO: Is the issue before the Court as we speak?

CHAIRMAN KURK: Representative Eaton.

** REP. EATON: I tried to track all of that down this morning and the researcher couldn't give me a definitive answer. And the person at AG's Office I couldn't get to yet. I don't know. I do know Senator Stiles had intended to do that. I don't know what has happened on that side. And I apologize for not being on top of it. And, Mr. Chair, if you're willing I'd, to appease those present, I would withdraw my motion in place of -- actually, I don't have to. I can just replace it with a prior tabling motion. I move to table.

REP. OBER: Second.

CHAIRMAN KURK: Representative Eaton moves, seconded by Representative Ober that we table this item. Are you ready for the question? All those in favor, please indicate by saying aye? Opposed? Show of hands, please. All those in favor, please raise your hand? Opposed? The vote is 8 to 2. The motion is tabled. The item is tabled.

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*** {MOTION TO TABLE ADOPTED}

REP. OBER: That will give us a chance to see Commissioner's response anyway.

CHAIRMAN KURK: The next item is Fiscal 16-098, a request from the Department of Education, but this relates to the Gateway Program, and I think is contingent on what we do with respect to that program. So at this time, without objection, I'd like to return to Old Business under item number two, agenda item number two, Fiscal 16-087, a request from the Department of Health and Human Services for authorization to accept and expend \$8,298,168 in Federal funds effective July 1st, 2016, through December 31st, 2016, which was postponed at our May 20th meeting. Commissioner.

JEFFREY A. MEYERS, Commissioner, Department of Health and Human Services: Yes.

CHAIRMAN KURK: Good morning.

MR. MEYERS: Good morning. For the record, Jeff Meyers, Commissioner of Health and Human Services.

CHAIRMAN KURK: I received a copy of a -- or I received a e-mail from you suggesting you wanted this item postponed or tabled or something. Is that the case still?

MR. MEYERS: Yes, until the August meeting. Yes, it is. I mean, there have been additional questions raised in the last couple of days as to the substantive kind of operation and cost of the program, and I think the Committee would benefit from additional information. One of my key staff is out, and I think -- who has been deeply involved in putting this together. And I would request that in order to be able to, I think, bring forward some additional information on the cost of the program that I think are really relevant to the discussion that the Committee would have with respect to the item that I'd ask for it to be either postponed or tabled, whichever the Committee wishes to do, until the August 5th meeting.

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CHAIRMAN KURK: Thank you. The Chair would entertain a motion to table this.

** SEN. PRESIDENT MORSE: So move.

SEN. DANIELS: Second.

CHAIRMAN KURK: Moved by Senator Morse or Daniels?

SEN. FORRESTER: Morse.

CHAIRMAN KURK: Morse. Seconded by Senator Daniels. All those in favor, please indicate by saying aye? Opposed? The ayes have it and the item is tabled.

*** {MOTION TO TABLE ADOPTED}

MR. MEYERS: Thank you.

CHAIRMAN KURK: We now turn to Fiscal 16-098. This is under Tab 3, a request from the Department of Education, which is contingent upon Fiscal approval of Fiscal 16-087. That having been tabled, the Chair would entertain a motion to table Fiscal 16-098.

** SEN. FORRESTER: So move.

CHAIRMAN KURK: Moved by Senator Forrester, seconded by Representative Weyler. All those in favor, please indicate by saying aye? Opposed? The ayes have it and the item is tabled.

*** {MOTION TO TABLE ADOPTED}

(4) RSA 14:30-a, VI Fiscal Committee Approval Required for Acceptance and Expenditure of Funds Over \$100,000 From any Non-State Source and RSA 124:15 Positions Authorized:

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CHAIRMAN KURK: We turn now to agenda item number four on the -- which is approval required for acceptance and expenditure of funds over \$100,000.

REP. BARRY: Mr. Chair.

CHAIRMAN KURK: The first item --

REP. BARRY: Mr. Chair, did you miss 16-104.

CHAIRMAN KURK: Thank you. I apologize.

REP. BARRY: Senator Sanborn took that out.

CHAIRMAN KURK: Senator Sanborn available?

SEN. FORRESTER: No.

CHAIRMAN KURK: We can skip over that and go to number (4). Go to tab number (4). We'll go now to 16-099, a request from the Department of Employment Security which is contingent upon approval of Fiscal 16-087. Again, the Chair would entertain a motion to table this.

** REP. WEYLER: Move.

SEN. SANBORN: Second.

CHAIRMAN KURK: Moved by Representative Weyler, seconded by Senator Sanborn that Fiscal 16-099 be tabled. Are you ready for the question? All those in favor, please indicate by saying aye? Opposed? The ayes have it and the item is tabled.

*** {MOTION TO TABLE ADOPTED}

CHAIRMAN KURK: Let's now go back to 16-104 under agenda item number three. This is a request from the Department of Administrative Services for authorization to accept and expend \$100,000 in Other Funds through June 30th, 2017. Chair recognizes Senator Sanborn who has a question.

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SEN. SANBORN: Mr. Chair, hear from the agency.

MICHAEL CONNOR, Deputy Commissioner, Department of Administrative Services: Good morning, Mr. Chair, and Members of the Committee. My name is Michael Connor from the Department of Administrative Services where I serve as the Deputy Commissioner.

CHAIRMAN KURK: Good morning. Good to see you.

MR. CONNOR: Good morning.

CHAIRMAN KURK: Senator Sanborn.

SEN. SANBORN: Thank you, Mr. Chair. Mike, thanks for coming in. Clearly, I want people to be safe and we all do, but we seem to be struggling with this whole enforcement thing today. And I found it curious and personally maybe really disconcerting when I see press releases coming out that all of a sudden now we are going to start locking down the doors, have specific key access and make people walk around the buildings and putting bulletproof glass over at Treasury when I think a third of this building seems to be packing a gun every single day.

I'm concerned about the narrative that we have. I'm concerned about what are we trying to do and where are we trying to go, because it does concern me personally. That this is the people's house. And if we are going to start requiring everyone have a key access to use every door but one, and start the process of bulletproof every single office, makes me -- makes me nervous about our traditional values that are in the state. Help me reconcile this.

MR. CONNOR: Basically, our request is to try to bring the State House Annex into something that's comparable to a lot of the other State Agencies and, frankly, private sector, where you're basically trying to -- we are not trying to limit access, but bring the public facing things to basically -- our long-term

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plan is to have the public facing items on the first floor of the building as opposed to scattered throughout. So that the public when they do come in they can get services they need, but also provide some sense of security. Right now I think we have five different doors where people can come into the facility and we have, you know, all walks of life that come here. And we need to be able to provide some sense of security for our employees here. If we are going to be able to compete with other State Agencies that have those kind of sense of securities, we need to be able to provide that type of security here. So yes, we will be restricting that; but through the public entrances where we can monitor the activity that's going on, where we can provide a level of service that we need to provide and be open to the public, but still provide some security for the people that work in the facility here.

CHAIRMAN KURK: I would remind the Senator that the Joint Facilities Committee recently voted unanimously to restrict public access to the Legislative Office Building, the State House, and the Annex to one door plus a handicapped access in the case of the State House. So that there has been significant discussion, at least among the members of that Committee, on this issue.

SEN. SANBORN: Mr. Chair, I appreciate that. That's part of my concern frankly. Clearly, would be something that I would have voted against that or at least had a much longer, more open discussion about the Legislature voting. I understand it's a safety issue. I understand there's a very delicate balance happening. But it's surprising and concerning to me when I see that in the press and then see that all of a sudden we're armoring up per se, and I want people to be safe. I think it's important. But my vision is, you know, by next fall we'll look just like Washington D.C. where every building's going to have a guard and other protection, bolted doors. And I'm just not sure where we should be heading without a much broader discussion.

CHAIRMAN KURK: The purpose for my statement was to remind you that you have an issue with your colleagues, not with Mr. Connor.

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SEN. SANBORN: I never have an issue with Mr. Connor.

MR. CONNOR: Thank you.

CHAIRMAN KURK: Senator D'Allesandro.

SEN. D'ALLESANDRO: I really concur with Senator Sanborn's remarks. I've been here a long time, a long time. To envision a locked-down Capital and a locked-down Legislative Office Building is very disconcerting to me, and to see our security now armed is another thing that's disconcerting to me. It was an embarrassment when some of our membership let weapons fall out on the ground during a hearing. I thought that was an embarrassment to the Legislature. But I don't want Concord, New Hampshire, to look like Washington D.C.. I really don't. Going through the metal detectors, putting your equipment, et cetera, et cetera. This strikes a very negative note on the people's house.

CHAIRMAN KURK: Just one statement that I need to make. There are no metal detectors in this proposal and no metal detectors were even discussed by the Facilities Committee. Senator Morse.

SEN. PRESIDENT MORSE: Yes, and I think this is an appropriate conversation to bring to Facilities. So any member should be notified to come to Facilities. The Chiefs of Staff have been working on this for a long time. And as for arming the guards in the State House, that was approved, I believe, about a year ago, not this past week. I think they have taken their time about it because of the health of members involved in that group, but they certainly asked for permission to do that and went through a long process. So if there's anything to be discussed, I think it should be there. And, furthermore, State House is still open as far as the public is concerned. You can come through those three doors that were mentioned because it was suggested that if they come through three doors it would make it easier for them to do their job, and we only have so

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many people. So I think you should go to Facilities and express your concern.

SEN. D'ALLESANDRO: If I might? Facilities meeting was not open to the public.

SEN. PRESIDENT MORSE: That particular one. We certainly have had many.

SEN. D'ALLESANDRO: When I served on Facilities, I was adamantly opposed to arming. I felt that it was a -- really a disservice to the public. We have a couple of Troopers here. They're here. They do a great job. It seems to me that they took care of us and taken care of us in an excellent fashion. To go further than that --

SEN. PRESIDENT MORSE: You're well represented at Facilities. I'm sure they should have explained it to you by now.

REP. EATON: Neal.

CHAIRMAN KURK: Representative Eaton.

REP. EATON: I would, to backup Senator Morse, I started the arming or discussion arming back in 2007 and his predecessor had sat with me for hours going through national paperwork and local paperwork and working with Police Standards and Training and everybody else. This was a done deal in 2009 until his predecessor departed and at which point I believe Senator Morse was on board again and his Chief of Staff sandbagged it. This is nothing new. This has been ongoing for roughly ten years.

SEN. D'ALLESANDRO: The discussion has been ongoing. Yes, I agree with that. But my position for the last ten years has been no. And when I served on Facilities it was no. I want to make that perfectly clear.

REP. EATON: I remember.

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SEN. D'ALLESANDRO: I had no input with regard to what happened at this point in time. Those who were there made the decision. But I, again, am adamantly opposed.

CHAIRMAN KURK: Senator Sanborn.

SEN. SANBORN: Thank you, Mr. Chair. Kind of circle back to the fine gentleman sitting so patiently at the table in front of us.

So -- so, Mr. Chair, for the record, I am perfectly fine with our security staff being armed. Even if we do arm them, they'll be less armed than most of the members of the Legislature with smaller caliber of less weapon. Nevertheless, back to the important part, Mike. Is it the intent that we're going to start by -- my concern is it's the camel's nose. We start by bulletproofing this door. Then next we are bulletproofing every door and every building. And then it's going to be metal detectors and reducing access to every building at just one door. I appreciate the real world concern we have. I appreciate that. But as Senator "D" says, I'm also very concerned that this is the people's property and part of what has made New Hampshire such a jewel to me is we can walk in any door to the people that we have charged to take care of our affairs and have access.

So today you're doing the Treasury building which I'm not sure, I guess it's not up to me whether or not that's more important than the other building. But is it your plan to start doing all the doors and where's this going? This is one. We have a lot of buildings.

MR. CONNOR: This is one of the last ones, actually, of the 30 facilities that we have administrative or facility responsibility for. This is probably one of the last ones. They don't have some type of security restriction or a lobby where people can get access, but just not access to every office within the space. If you go to the Department of Safety, the Morton Building, all those buildings, the Data Center, they all have some type of a lobby where you go and you can be greeted

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and have your business taken care of. So this is one of the last buildings. So I don't have a grand plan. It's one of the last ones to be done.

SEN. SANBORN: You're reducing your grand plan right now. Thank you, sir.

CHAIRMAN KURK: Mr. Connor, there are two requests here, one on Class 47 and one on Class 48. Class 47 is interior and the Class 48 is exterior. I'd like to focus on interior, Class 47. Why are we purchasing bulletproof glass for the Treasury and the Department of Purchasing on the inside of the building? This is not the exterior doors. That's Class 48 expenditure.

MR. CONNOR: Correct. These are two of the areas that have a lot of public that visit them. Typically, if you go to Department of Justice where you see the receptionist, that's all bulletproof material, bulletproof glass. They have a lot of public that come there and the long-term plan is to, like I said before, we want to move all the public functions within the building down into those levels. So long-term plan is to have all the public functions on the first floor. So that glass we won't have to replace it. We can use that.

People that are in there may change, but that's part of our -- I guess our grand plan to actually have it on the first floor. All public places things that we do. We have a lot of offices that provide support services for State Government that have no public face. And to have people wandering about or showing up in their office knocking on the door is a serious situation for some of them.

CHAIRMAN KURK: Thank you. Further questions? Is there a motion? I don't think we have a motion.

** REP. EATON: Move approval.

REP. OBER: Second.

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CHAIRMAN KURK: Moved by Representative Eaton, seconded by Representative Ober that this item be approved. Further questions or discussion? There being none, you ready for the question? All those in favor, please indicate by saying aye? Opposed?

SEN. SANBORN: Opposed.

SEN. D'ALLESANDRO: No.

CHAIRMAN KURK: Let's have a show of hands. All those in favor, please raise your hands. Those opposed? Vote is seven to three and the motion passes.

MR. CONNOR: Thank you.

***** {MOTION ADOPTED}**

CHAIRMAN KURK: We turn now to Fiscal 16-108 under agenda item (4), the Consent Calendar for approval required for acceptance and expenditure of funds over \$100,000. Fiscal 16-108 is a request from the Department of Health and Human Services for authorization subject to the approval of number two, retroactively amend Fiscal 15-172 approved August 26th, 2015, by extending the end date for three full-time temporary positions. And further author -- and two, further authorization to accept and expend \$294,310 in Federal funds through June 30th, 2017.

****** SEN. D'ALLESANDRO: Move approval.

CHAIRMAN KURK: Senator D'Allesandro moves approval, seconded by Representative Weyler. Is there discussion? There being none, are you ready for the question? All those in favor, please indicate by saying aye? Opposed? The ayes have it and the item is approved.

***** {MOTION ADOPTED}**

(5) RSA 124:15 Positions Authorized:

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CHAIRMAN KURK: We turn now to item number five on the agenda, Authorized Positions. This is Fiscal 16-094, request from Department of Health and Human -- excuse me -- Department of Administrative Services for authorization to establish one temporary part-time planning analyst through June 30th, 2017.

Moved by Senator D'Allesandro, seconded by Representative Weyler. Discussion? There being none, are you ready for the question? All those in favor, please indicate by saying aye? Opposed? The ayes have it and the item is approved.

***** {MOTION ADOPTED}**

CHAIRMAN KURK: Representative Sanborn, I apologize. I had a note here you had a question. Is that still the case?

SEN. SANBORN: On 108?

CHAIRMAN KURK: No, 94; 094. Is that not the case? This is one temporary part-time position.

SEN. SANBORN: There was another one. No, I apologize, Mr. Chair. You know, my question was more just holistically there's a lot of positions this month in Fiscal. Kind of always been my understanding that we kind of look toward the budget process before we start bringing new positions and what's the pleasure of the Committee as we are looking at this of building a month with a lot of positions.

CHAIRMAN KURK: You had your say. Thank you.

SEN. SANBORN: Thank you, too.

(6) Chapter 276:4, Laws of 2015, Department of Administrative Services; Transfer Among Accounts and Classes:

CHAIRMAN KURK: Moving to agenda item number six, Fiscal 16-101, a request from the Department of Administration for authorization to transfer \$92,845 in General and Other Funds in

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and among accounting units through June 30th 2017. Is there a motion?

** SEN. D'ALLESANDRO: Move approval.

CHAIRMAN KURK: Senator D'Allesandro moves approval.

REP. EATON: Second.

CHAIRMAN KURK: Seconded by Representative Eaton.

Discussion? There being none, are you ready for the question? All those in favor, please indicate by saying aye? Opposed? The ayes have it and the item is accepted. Approved.

*** {MOTION ADOPTED}

CHAIRMAN KURK: We turn now to Fiscal 16-106, request from Department of Administrative Services again for authorization to transfer \$50,000 in General Funds in and among accounting units through June 30th, 2017.

** REP. OBER: Move to approve.

SEN. D'ALLESANDRO: Second.

CHAIRMAN KURK: Representative Ober moves adoption. Senator D'Allesandro seconds. Discussion? Questions? There being none, are you ready for the question? All those in favor, please indicate by saying aye? Opposed? The ayes have it and the item is approved.

*** {MOTION ADOPTED}

(7) Chapter 276:23, Laws of 2015, Judicial Branch; Transfers:

CHAIRMAN KURK: We turn now to item number seven on the agenda, Fiscal 16-097, a request from the Administrative Office of the Courts for authorization to transfer \$499,620 in General

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Funds between expenditure classes through June 30th, 2016. Moved by Representative Weyler. Seconded --

SEN. D'ALLESANDRO: Second.

CHAIRMAN KURK: -- by Senator D'Allesandro. Discussion? Questions? There being none, are you ready for the question? All those in favor, please indicate by saying aye? Opposed? The ayes have it and the item is approved.

*** {MOTION ADOPTED}

- (8) Chapter 276:143, Laws of 2015, Department of Health And Human Services; Transfer Among Accounts and RSA 14:30-a, VI Fiscal Committee Approval Required for Acceptance and Expenditure of Funds Over \$100,000 From any Non-State Source:

CHAIRMAN KURK: We turn now to Fiscal -- to Tab (8) on the agenda, approval required for requests over \$100,000 from non-state sources and turn to Fiscal 16-103, a request from the Department of Health and Human Services for authorization to transfer \$2,068,355 in General Funds, increase related federal revenues in the amount of \$981,121, and increase related other revenues in the amount of \$187,640 through June 30th, 2016.

** SEN. D'ALLESANDRO: Move approval.

CHAIRMAN KURK: Is there a motion? Senator D'Allesandro moves approval, seconded by Representative Weyler. Discussion? Questions? There being none, are you ready for the question? All those in favor, please indicate by saying aye? Opposed? The ayes have it and the item is approved.

*** {MOTION ADOPTED}

- (9) Chapter 276:219, Laws of 2015, Department of Corrections; Transfers:

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CHAIRMAN KURK: We turn now to item nine on the agenda, Fiscal 16-102, a request from the Department of Corrections for authorization to transfer \$335,250 in General Funds among accounting units through June 30th, 2016. Is there a motion?

*** SEN. D'ALLESANDRO: Move approval.

SEN. FORRESTER: Second.

CHAIRMAN KURK: Moved by Senator D'Allesandro, seconded by Senator Forrester, that the item be approved. Questions? Discussion?

REP. OBER: We had a question. Mike, you were following up to find out about this. Because we understood in April that would have covered all the transfers, you wouldn't need any more for overtime for the year, and we are back in June with another transfer.

CHAIRMAN KURK: Did you get a response, Mr. Kane, from the Department?

MICHAEL KANE, Legislative Budget Assistant, Office of Legislative Budget Assistant: I put that in the transcript that I didn't see any mention so the Department is here to answer.

CHAIRMAN KURK: Is there someone from the Department who can respond?

REP. OBER: Does this finally cover us and why weren't we done in April, kind of those things?

CHAIRMAN KURK: Good morning, and welcome.

REP. OBER: Good morning.

HELEN HANKS, Assistant Commissioner, Department of Corrections: Good morning.

REP. OBER: Is it still morning or afternoon?

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MS. HANKS: It is. I checked the clock. Helen Hanks, Assistant Commissioner for the Department of Corrections, and this is the last of our transfers to move within the lines to settle out.

REP. OBER: Okay. Thank you.

MS. HANKS: My pleasure.

CHAIRMAN KURK: You all set?

REP. OBER: I'm all set.

CHAIRMAN KURK: Senator D'Allesandro.

SEN. D'ALLESANDRO: Thank you. Mr. Chairman, I'd ask the Assistant Commissioner to comment on what's happened with people at the Department, the number of retirements that have taken place over the last two years necessitating overtime because we can't hire at the rate we are losing people. For the Committee's edification, let them know that, please.

MS. HANKS: I'd be happy to do that. Thank you for the comment and directing some information. I've been before this Committee before talking about our vacancy rates and I just wanted to continue to follow-up.

Last Fiscal Year, for example, we had net gain and what I mean by that is people being hired and people being retired moving on on their own accord of 43 and as we tracked this Fiscal Year, we are actually a negative 14. That's with retirements and also hires.

CHAIRMAN KURK: Ma'am, could you give us that number in context by saying 43 or 14 out of a total either staff or total corrections officer population?

MS. HANKS: Be happy to do that? We have 895 positions. Currently, today, we have 117 vacancies. We have 400 -- pardon

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me -- 467 corrections positions specifically meaning uniformed officers. Of those 467, today we have 75 vacancies in that line. In the civilian, which would be the difference of those, we have 42 vacancies. 75 and 42 gets you the total of 117 vacancies.

When I talked about the overall, it's among those minus the 117. We had 20 individuals retire in the last Fiscal Year. In this current Fiscal Year as of May 2016, we have had 41 people retire. I think for us this Fiscal Year has been our retirement in not being able to hire at a rate of people to be hiring. It's a credit to the Department that we have had that long retention with those individuals. But with the State's low unemployment rate, which is a testament to our state, it's very hard to recruit.

The positive news I have is we do have 14 individuals in our June Academy. So that's been a high number for us this Fiscal Year. And we continue to change our recruitment approaches, including radio advertisement, we use the internal posting to the Internet through the normal career Internet web sites, and we are also working with other State Agencies on ways to recruit.

We have met recently with members of the returning military and their employment forces to try to fast-track people coming back from conflicts to see if they're interested in corrections. So we are trying to tackle this full steam ahead and certainly with anyone's feedback or comments to help us take a different direction to help the State and the Department is certainly welcome.

CHAIRMAN KURK: Could you -- of the 75 corrections officer vacancies --

MS. HANKS: Hm-hum.

CHAIRMAN KURK: -- out of 467 authorized positions --

MS. HANKS: Yes.

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CHAIRMAN KURK: -- how many of those vacancies were a result of folks retiring at retirement age and how many of those were due to folks who left for greener pastures?

MS. HANKS: I don't have that number with me today, but I will get that for you.

CHAIRMAN KURK: To me that's important.

MS. HANKS: Exactly.

CHAIRMAN KURK: Could you also at the same time give us a little history of the total number of COs and vacancies and overtime?

MS. HANKS: Yes.

CHAIRMAN KURK: Thank you. Five years anyway.

MS. HANKS: Okay.

CHAIRMAN KURK: Thank you. Further questions? There being none. We have a motion before us. Further discussion or questions? There being none, are you ready for the question? All those in favor, please indicate by saying aye? Opposed? The ayes have it and the item is approved.

***** {MOTION ADOPTED}**

CHAIRMAN KURK: Thank you again.

MS. HANKS: Thank you very much.

(10) Miscellaneous:

CHAIRMAN KURK: We now turn to a late item which should be in your books at Tab (10).

This is Fiscal 16-109. It's a request from the Department of Health and Human Services to accept and expend additional

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drug rebate revenue in the amount of \$15,899,592 effective on approval by this Committee and Governor and Council through June 30th, 2016. And pursuant to Chapter 276:143, Laws of 2015, to authorize the Department to transfer the Medicaid Enhancement Private Local Funds in the amount of \$7,904,402, and pursuant to RSA 14:30-a, VI, authorize the Department to accept and expend additional matching Federal funds in the amount of \$7,912,306 through June 30th, 2016, and authorize allocation of these funds.

Commissioner, I can see you anticipated the fact that we might have some questions. Good morning to you again.

MR. MEYERS: Good morning, Mr. Chair.

CHAIRMAN KURK: And Miss Rockburn.

MR. MEYERS: Mr. Chairman, for the record, Jeff Meyers, the Commissioner of Health and Human Services, and Sheri Rockburn, the Chief Financial Officer.

CHAIRMAN KURK: Before I take a motion on this, why don't you help us by explaining it more fully, and I believe there will be many questions.

SHERI ROCKBURN, Chief Financial Officer, Department of Health and Human Services: Good morning. For the record, Sheri Rockburn, financial officer for the Department.

What this item does is a few things. The first is that we have to make annual DSH Payments, Disproportionate Share Payments to the hospitals here in New Hampshire, which represents a portion of their Uncompensated Care. When that account was budgeted, we anticipated a payment to the hospitals of approximately 191.4 million. By law, those payments have to be out by May 31st. And so what we did at that time is we paid the budgeted amount of 191.4. However, since as we worked through those calculations, the actual calculation is 207.2 million, and that's about a \$16 million increase over budget of a payment that is owed to the hospitals, and that payment is calculated based on several things.

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One is the settlement agreement with the hospitals. The statute that currently has the standards and the formulas for how those are paid. And we also have a Federal preliminary court injunction that also dictated the formula and we can put the formula aside for the moment. But all of those areas together make up what the formula is to calculate that payment. And that payment, once again, ended up being 16 million higher than anticipated.

What this action does is it asks to accept and expend additional revenue into that accounting unit in order to pay the full payment of 207.2 million to the hospitals.

The other part of this Fiscal item is to transfer MET revenue which is the Medicaid Enhancement Tax. That is budgeted in two separate accounting units in the Department. One of the accounting units is to pay for the DSH payment. The other accounting unit pays for normal Medicaid provider payments. So one part of this Fiscal item is just a transfer of revenue that was originally budgeted in our Medicaid provider payment account and move it into the payment account for DSH Payments. So that's about 7.9 million.

The last piece of this Fiscal item is to actually accept additional drug rebate revenue which has come in higher than expected this year. The original budget was about 8.8 million of drug rebate revenue and we are expecting by year end to have that revenue closer to 29 million. You may ask us what is the big swing in budget versus what we are actually seeing? The last three years drug rebate revenue has been tracking about 25 to 29 million. This last budget cycle for '16 and '17 we budgeted significantly less drug rebate revenue in anticipation of a MCO contract agreement that would allow MCOs to retain a portion of our rebate revenue. That contract though was delayed. It was not effective at the very start of this Fiscal Year. And as a result, we've been able to continue collecting some rebates for about a quarter or two quarters longer than we anticipated. So we get to see the benefit of that.

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I don't believe that that's going to be a sustainable revenue source in '17 in that extreme over budget. But we will know -- we do that on a quarterly basis and we'll have a sense of how that plays out when we get our June and September invoices.

CHAIRMAN KURK: So what you're telling us is that an unbudgeted need for \$16 million exists.

MS. ROCKBURN: Correct

CHAIRMAN KURK: For '16. Would you care to share with us what this is going to do for '17?

MR. MEYERS: So the amount of the DSH Payment, in part, will be in '17 will be a function of what the MET revenue is for '17. The MET revenue for '16 underperformed what was budgeted. The hospitals are probably in the best position to answer that question. But in terms of what was communicated to the Department and the Department's understanding is that there's a lot going on in the marketplace with movement toward exchanges, with different provider rate agreements coming into effect. There's some downward pressure on rates. There were some changes, I understand, again, I'm not the expert at this, but my understanding is that there were some changes in Medicare reimbursements that affected the hospitals' overall revenue, MET revenue, as a function of their net patient services revenue by definition under State Law as I note you're aware, Mr. Chairman. So the MET underperformed, 220 roughly was budgeted, and 212 and change came in.

The Uncompensated Care side of the equation, again, there were in terms of what our DSH Payment estimate was, it was based on moment in time. As the item fully points out, the Uncompensated Care, the DSH Payment is in order to calculate that, it was dependent upon information from 2014 of the hospitals' Uncompensated Care.

2014, as I noted in the cover letter, is going to be different than 2015. Because in 2014, the New Hampshire Health

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Protection was enacted, as you know, in March, signed into law, but it didn't start until August 15th of that year. And when it started, there were only -- there were much smaller number of people in the program then than there are now.

Hospitals, as I understand it, have varying Fiscal Years. Some are on a calendar year basis. Some are July 1 to June 30th. I think there's a third variation as well if I'm correct. And so the decrease in Uncompensated Care that everyone fully expected and continues to expect as a result of the New Hampshire Health Protection Program which will, obviously, impact all the hospitals, as well as other providers, but certainly all the hospitals, was not really fully reflected in the 2014 Uncompensated Care data reporting.

And I want to note for the record that -- that the Uncompensated Care information from the hospitals was not due to the Department until May. And so the Department didn't fully -- didn't have all the information in order to go ahead and make these calculations for DSH until all of that hospital data was in. Some hospitals that restated some of their debt as they were entitled to do.

So to answer your question specifically for next year in terms of what's going to happen, it will be a function of what MET revenue comes in, as well as their Uncompensated Care.

The expectation clearly is that by reflecting the full year of 2015 for next year's DSH Payment, because it lags two years behind in terms of the data for Uncompensated Care, that it will decrease. I hope very significantly. Again, the hospitals that are tracking this now, some hospitals may know today what their 2015 Uncompensated Care costs were. They would have to respond to that. I think -- I don't know what their auditing process is and their financial accounting processes and whether or not all the hospitals at this point in time would have all that information. Again, they would be in the best position to respond to that. But it's our expectation that the amount of the DSH Payment next year would be significantly less than it is this year.

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CHAIRMAN KURK: Let me try to get the answer I'm looking for in a different way.

MR. MEYERS: Okay.

CHAIRMAN KURK: Let's assume all the budget assumptions are MET. So we know what the MET tax is going to be. We know what Uncompensated Care is going to be, because it's built into the budget.

MR. MEYERS: In terms of what was budgeted you mean?

CHAIRMAN KURK: In terms of what was budgeted.

MR. MEYERS: Yeah, all right.

CHAIRMAN KURK: What difference will this court case, which is the impetus for our problem for the 16 million, have in 2017 in dollars? In other words, all of our other assumptions remain the same. The only change is the court case.

MR. MEYERS: Yeah.

CHAIRMAN KURK: And the redefinition that was not allowed.

MR. MEYERS: Yes.

CHAIRMAN KURK: So how much will that cost us in 2017?

MR. MEYERS: Well, I need to point out, and Attorney General's Office is here and can speak to the preliminary injunction as well. It's still a preliminary injunction. There's still a court of litigation involved with that. So it will come out one of two ways. The hospital position will succeed and will become final or the hospital position will be overturned. To the extent the hospital position is overturned, then there's an understanding that the hospitals would return certain funds that they -- their Uncompensated Care for '14 would have to be adjusted and, obviously, be adjusted in 15 as well.

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If the hospital position is maintained, you know, I'm not sure -- I don't think it's definite that it would be over budget next year; but I don't know that we have actually been able to do that calculation. Do you want to --

MS. ROCKBURN: Yes, we have not done that calculation yet.

CHAIRMAN KURK: Why wouldn't it be the same 16 million or, sorry, 8 million? No, 16.

MR. MEYERS: Well, no, the 16 in part --

CHAIRMAN KURK: Is because of the MET.

MR. MEYERS: Is because of the MET. There's two sides.

CHAIRMAN KURK: Why wouldn't it be at least eight?

MS. ROCKBURN: Well, I think that you're saying if everything is -- if everything plays out exactly the same, I think that's a reasonable --

MR. MEYERS: You're assuming their Uncompensated Care is the same next year than it is this year and that, I think, is a significant variable. I -- maybe I misunderstood.

CHAIRMAN KURK: I'm assuming the Uncompensated Care is whatever we assumed it was for budgeting purposes. All I'm asking is the difference from a budgeting point of view, not an actual point of view, a budgeting point of view. You told us it's going to cost us \$16 million this year.

MR. MEYERS: Yes.

CHAIRMAN KURK: Of which one part is likely to be repeated next year because I understand that case is not likely to be finally resolved before May 31st of 2017.

MR. MEYERS: Possibly, yes. Yes.

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CHAIRMAN KURK: Therefore, you're going to have to make a payment one year from today.

MR. MEYERS: Correct.

CHAIRMAN KURK: I want to know how much that payment is going to be.

MS. ROCKBURN: I want to add another piece of information, I think, is really critical. The budget for '17 for DSH Payments is 190 million. The budget this year was 191. So the budget for '17 did not reflect a substantial decrease that would have occurred in Uncompensated Care as a result of the Health Protection Program. I think if the budget had dropped by, let's say, 5 or 10 million as part of our budget assumption, I think that would -- that has the potential of creating an issue for '17. I think what we are trying to say is that because the budget for '17 is, you know, within a million dollars of this year's budget, and we anticipate that to go down, hopefully, the goal would be that any injunction would offset that.

CHAIRMAN KURK: Thank you. Representative -- Senator Morse.

SEN. PRESIDENT MORSE: I have a couple questions. The -- first of all, let's go back to '16. Right now you have a \$16 million problem which is requiring us to make an appropriation. We also in that fund that you were talking about, you raised 29 million here, but you also had 5 million carryover from the year before. You're wiping that out completely.

MR. MEYERS: Drug rebate money.

SEN. PRESIDENT MORSE: You're wiping out all \$34 million in that account.

MS. ROCKBURN: Correct.

SEN. PRESIDENT MORSE: Are you going to make your lapse in '16 after we authorize this?

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MR. MEYERS: Well, I think the short answer is no. There is money we are going to lapse in '16. I think but for this unanticipated expense which I want to point out still fully consistent with the settlement agreement with State Law, but for the higher Uncompensated Care, the higher DSH Payment, we would have made our lapse. I think given this payment we still will lapse some money and I think that estimate, and Sheri can correct me, I think it's around \$6 million.

SEN. PRESIDENT MORSE: Let me try to narrow this down. Because, basically, if we authorize this 16 million spend right now, that takes that off the table. We are paying for it. So are you saying the fact that we are paying for it with drug rebate money is hurting what you're going to produce in a lapse?

MR. MEYERS: Yes. The drug rebate money would have otherwise lapsed.

SEN. PRESIDENT MORSE: Okay. If we assume that you were coming up with 20 million, as a lapse.

MR. MEYERS: Yeah.

SEN. PRESIDENT MORSE: Which is pretty common knowledge for anyone who's built budgets here.

MR. MEYERS: Yep, yep.

SEN. PRESIDENT MORSE: So you're not going to make a \$20 million lapse.

MR. MEYERS: I don't believe so, no.

SEN. PRESIDENT MORSE: Is there anything else that's going to surprise us --

MR. MEYERS: Well --

SEN. PRESIDENT MORSE: -- in '16?

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MR. MEYERS: Well, for -- I mean, the Dash Board that is -- was made public a couple days ago, it's not being discussed here today, but will be discussed at the next meeting, and I have had conversations with members of the Committee about shortfalls in Medicaid as a result of several assumptions that have not proved to be the case. They were the best estimates at the time of the budget.

For example, the caseload dropped. A 2% drop in '16 and a 2% drop in '17. There's a cost associated with the fact that the caseloads have remained static and have not decreased. So there are other budget issues in Medicaid. But for the budget issues in Medicaid, the Department is managing its budget and would meet its lapse.

SEN. PRESIDENT MORSE: Well, I think this Committee needs to understand in '16 we are closing the books in one week.

MR. MEYERS: Correct.

SEN. PRESIDENT MORSE: Which bothers me that we are getting this document today with one week left in the year. We have a \$16 million problem. You're suggesting a way to pay for it. What you're telling us if we use that way to pay for it, we are wiping out what you would have turned in in lapse.

MR. MEYERS: The drug rebate revenue that is being used to help pay for this DSH Payment would otherwise have lapsed.

SEN. PRESIDENT MORSE: I'm trying to -- we agree with you. We are paying that today.

MR. MEYERS: Yes.

SEN. PRESIDENT MORSE: So hospitals can go home if they want to right now. So the next thing is we have a problem in your Department. You telling me you're going to be negative beyond that?

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MR. MEYERS: No, no. We're going to lapse about 6 million. Roughly \$6 million.

SEN. PRESIDENT MORSE: All right. My next question is if you built the budget, which the Senate and the House didn't touch '16 and '17 on the DSH Payments, that was delivered directly from the Governor's Budget, to the House, to the Senate. We built that based on knowledge. Okay. And now we have the knowledge of '16 and the understanding that the court case probably won't be settled by next spring. Why doesn't the Department have an answer because my next question is going either to the hospitals or to LBA, because I've had them meet, and they certainly believe they have the answer to that equation. Why wouldn't the Department have the answer to '17's problem?

MR. MEYERS: I honestly don't -- trying to be responsive to your question. Because of the fact that the budget was not built reflecting a drop in Uncompensated Care, because of the Health Protection Program, then I don't believe that we can really provide a number today. I'm happy to speak with LBA further and see if we can get on the same page on this, but I cannot tell you today what we think it's going to be yet, because I don't think we can calculate it.

SEN. PRESIDENT MORSE: Would you believe we had a presentation in our Fiscal briefing when you left the other day that's suggesting there's a \$30 million shortfall in 2017?

MR. MEYERS: I want to make sure I understand. I know you had a briefing, yes. The 30 million is as a result just of -- for the DSH Payment alone.

SEN. PRESIDENT MORSE: DSH and MET.

MR. MEYERS: I heard of that briefing, but I have not spoken directly to LBA. And I don't believe Sheri did either. Please correct me. I'm happy to meet with Mr. Kane and the staff, obviously, and look at that.

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SEN. PRESIDENT MORSE: Well, help me understand, Commissioner. We are not meeting our lapse in '16, but we are making this payment with monies that we didn't anticipate. We are going into '17 and we believe what we heard the other day could be a \$30 million problem in the spring. I'm not sure how you're going to convince me today that you're going to meet your lapse in '17.

MR. MEYERS: I just don't know how LBA could have calculated the DSH payment --

SEN. PRESIDENT MORSE: They met with the Hospital Association like the Senate asked them to do. You suggested the Hospital Association five minutes ago is the place to go. We sent LBA to the Hospital Association. They met on Tuesday and that's the answer we got delivered back to the Senate.

MR. MEYERS: With all respect, we haven't seen those numbers. I can't react to the number. I haven't -- the calculation.

SEN. PRESIDENT MORSE: If LBA can get the answer, why doesn't the Department have the answer?

CHAIRMAN KURK: Thank you, Senator. Representative Weyler.

REP. WEYLER: Thank you, Mr. Chairman. Commissioner, as I read your letter, it doesn't make sense that third party payments and Medicare payments do not count as compensation.

MR. MEYERS: Right.

REP. WEYLER: Therefore, the hospitals are getting double payments. Do we know the extent, without counting those two items that I mentioned, how much are they being overpaid?

MR. MEYERS: All I can say we don't have specific information from each hospital on all of their third-party payments that were included in their Uncompensated Care. And the reason we don't have that information is because the preliminary

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injunction that was issued in this case did not require them to provide that information at this time. So what I can say is that I think but for the injunction, I think the DSH Payment this year would have been closer to the floor of the settlement agreement, would have been lower than closer to the cap. But the exact amount of money is something we don't have the information at this point to calculate.

REP. WEYLER: Further question?

CHAIRMAN KURK: Representative Weyler.

REP. WEYLER: Were you aware of the Medicare payments that had gone and have not been counted as compensation?

MR. MEYERS: That's part of the information I just referred to.

REP. WEYLER: We don't have anything?

MR. MEYERS: No, it's part of the same information. They were not required to report right now under the terms of the preliminary injunction.

REP. WEYLER: This appears to be a totally bias decision. I hope we are going to continue to litigate. Thank you.

CHAIRMAN KURK: With respect to the litigation.

MR. MEYERS: Yes.

CHAIRMAN KURK: Is the State being represented?

MR. MEYERS: The State's not a party to the litigation. And the Attorney General's Office is present and I think it's best that they address this issue rather than me, if that's all right with the Chairman.

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CHAIRMAN KURK: Thank you. Other questions of the Commissioner?

SEN. PRESIDENT MORSE: Well, not of the Commissioner. I think we need an answer to your question of where we are going in '17.

CHAIRMAN KURK: I agree. I just want to make sure while the Commissioner is here that if you have other questions.

SEN. PRESIDENT MORSE: I would assume he could answer it; but obviously he can't.

CHAIRMAN KURK: He told us he's not in a position to answer that. Senator Sanborn.

SEN. SANBORN: Thank you, Mr. Chair. Commissioner, Sheri, thank you. Sheri, help me understand. We have a five year MET settlement that places a floor and a cap. And just generically and kind of seconding off the Senate President that I think part of our concerns are how do we not know the numbers at this point, right? Because we know that we have a floor in the MET settlement. We know generically that health care costs clearly are not going down with -- with Medicaid Expansion in there. This was based upon net -- net patient revenue.

Now I understand that there's an injunction and there's some questions about CMS as to what's an allowable expense or what isn't. But my concern of why I joined the Senate President that the number could be dramatically higher is we are starting based upon a floor. And if the Feds come in and say that, you know, or that their position is right or the State's position right, this number is only going up. It's not going down.

MR. MEYERS: Yeah.

SEN. SANBORN: Even if revenue comes down.

MR. MEYERS: I don't believe that's the case. I don't believe it's the case because the budget number, the number that

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was put in the budget, does not reflect a decrease in the Uncompensated Care that may well be expected to take place and anticipated to take place for next year because the '17 DSH Payment, if you will, will be based on 2015 Uncompensated Care information. And that's going to fully reflect a full year for all hospitals of the New Hampshire Health Protection Program. And keep in mind, the rates that were paid to the hospitals in '15, per Senate Bill 413, were, you know, Medicare rates, 100% Medicare rates. So, you know, I really believe -- I would question LBA's calculation. I haven't seen it yet. If the premise is it can only go up, then I disagree with the premise, because I think it can go down.

SEN. SANBORN: Follow-up.

CHAIRMAN KURK: Follow -up.

SEN. SANBORN: If all of this is going to be adjudicated and there's an injunction in place, why are we coughing up \$16 million or something the Legislature only heard about a week ago? Why aren't we putting that in some sort of reserve account to see what happens. Why are we --

MR. MEYERS: We are required in conjunction with the settlement right now, which is codified into State Law, we are required to make the full DSH Payment by May 31st.

SEN. SANBORN: Isn't it being challenged?

MR. MEYERS: No, the DSH Payment itself -- part of the definition of Uncompensated Care is at issue, but under the terms of the injunction we have to comply with the law.

SEN. SANBORN: But the definition is being challenged.

MR. MEYERS: Part of it is, yes.

SEN. SANBORN: The definition of what we use that bases our payments on is being challenged.

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MR. MEYERS: That's correct. And there's an agreement in place that if they lose the lawsuit that that money will be paid back to the State.

CHAIRMAN KURK: Commissioner, before we ask the LBA to answer some questions, I want to make sure I understand your response to Senator Morse's questions about lapses.

For 2016, what was -- what lapse was budgeted for your Department and how much of that do you expect to meet? The same question for 2017.

MR. MEYERS: So for 2016, I don't have the exact number, but it's about \$22 million, I believe.

CHAIRMAN KURK: Of which you will meet?

MR. MEYERS: Approximately six.

CHAIRMAN KURK: And for 2017?

MR. MEYERS: We have not been able to determine what we can meet in '17 yet.

CHAIRMAN KURK: Do you know your expected lapses is around 22, 24?

MR. MEYERS: It is. It is. Yes, I acknowledge that. Yes.

CHAIRMAN KURK: Thank you. Further questions of the Commissioner? Thank you both. Senator Sanborn.

SEN. SANBORN: Commissioner, I apologize. Real quick. Again, as I often do, I join Senator Morse with my concern about money. And he kind of had a glancing statement about are you aware of anything else that might be impacting your capacity to meet lapse? Can you commit to us that we're not going to be going off and doing all types of new programs next year to spend more money knowing how concerned we are that you're not going to make lapse? Clearly, this year puts you behind for next year. I

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mean, are we done growing this Department and we can get back into like focusing to make sure we are going to meet our numbers?

MR. MEYERS: You know, I don't know. With all due respect, I'm not sure what the definition of growth means. I mean, we're in the middle, obviously, of a challenging environment with Substance Use Disorder and misuse in New Hampshire. Since January 1st we have put out almost \$15 million in contracts. There's additional spending that's going to be done in that area next year. There's an additional spending in the mental health area. We are getting the developmental disabilities waitlist the maintenance money out the door. We are acting in accordance with our budget. And the waiver programs, the 1115 Waiver Program will be up and running next year. That's \$30 million is going to be spent to integrate our Behavioral Health System, increase its capacity to deal with some of the challenges we have, both on the mental health side. I am not sure how growth is defined in your question. But I can answer your question and Senator Morse's by saying other than the Medicaid deficit, which I've discussed at length with Senate Fiscal Committee members at this point, that I am not aware of any other issue that would significantly materially impact our lapse next year.

MR. SANBORN: Follow-up, Mr. Chair.

CHAIRMAN KURK: Follow-up.

SEN. SANBORN: I know we will be talking about this next month, Commissioner. When I look at the Dash Board which you released probably yesterday --

MR. MEYERS: Yes.

SEN. SANBORN: -- I see in the past two months it looks like in round numbers and it's a graph, that we've got about 75 added to staff in the past two months. So that when I see things like that --

MR. MEYERS: I'm not aware of that.

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SEN. SANBORN: It's on the information that you guys provided to me. Employment has been doing this and all of a sudden it's going up, between 75, 80 new FTEs. So when I see that in the last two months, and it's just going straight up, it says what else are we doing? Look, we might need the staff. I'm not saying that we don't, but it's dollars and cents at the end of the day.

MR. MEYERS: Yeah. Some of that is New Hampshire Hospital getting the ten-bed unit up and running, the staff cost involved there, a number of staff involved there and that's opening up on July 5th.

SEN. SANBORN: Thank you.

MR. MEYERS: Yes.

CHAIRMAN KURK: Thank you, Commissioner.

MR. MEYERS: Thank you.

CHAIRMAN KURK: Mr. Kane. Thank you.

MR. KANE: Sure.

CHAIRMAN KURK: Senator Morse, has some questions.

MR. KANE: Absolutely. And let me just preface with how difficult it's been to get answers. We have been working on the cash system since the beginning of March. And Mr. Kane still doesn't have the answers that I've been looking for to Senate Bill 32.

You presented to Senate Fiscal Committee the other day your version of meeting with the Hospital Association where we could be in '17 spring on DSH and MET.

MR. KANE: Yes.

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SEN. PRESIDENT MORSE: Can you just explain what you explained to us that day because you were pretty clear that the possibility exists after your conversation with the Hospital Association of a \$30 million deficit.

MR. KANE: Sure, absolutely. So based on statute, based on the MET settlement, if Uncompensated Care exceeds \$350 million, the 50 -- the non-critical access hospitals need to receive 50% of Uncompensated Care up to 224 million. So we know that. We know that in '16 it's about \$440 million was the Uncompensated Care number based on the injunction.

We met with the Hospital Association, and they're going to scrub those numbers. They're hoping by September they will have a better idea. But based on my meeting, no assurances, it may go down, it may not go down. Until we get that information in September, we don't know. So if we assume that the Uncompensated Care figure will remain the same in '17 and, again, that's a big assumption, that brings you to about 440 million, half of which is 220 million. And as Sheri had stated, 190 million is budgeted. That results in about a \$30 million shortfall with the DSH Payments, half of which would be General Funds. That's about 15 million in the General Fund share. Total fund shortfall on DSH is about 30. And, again, that's something that the Hospital Association is going to be working with the individual hospitals over the next couple of months to kind of get a better idea of what they get in '15, because they all have the varying fiscal years.

CHAIRMAN KURK: So for the biennium you're talking about 30 million General Funds?

MR. KANE: If you assume there will be no change in Uncompensated Care that's one of the risks, yes.

CHAIRMAN KURK: And to the extent that Uncompensated Care goes down that number will go down.

MR. KANE: Correct, correct, and depending how far it goes down. If it goes down below the 350, well, then you have to pay

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at least 135, there's 190 budgeted. There's no issue. So it depends how far it goes down.

CHAIRMAN KURK: And that will be known when?

MR. KANE: Well, won't be known until -- finally until May of next year. But the Hospital Association will work with hospitals to get a better understanding.

CHAIRMAN KURK: So we'll have a preliminary number by?

MR. KANE: My guess is maybe September, October. I'll work with the Hospital Association to see if that's possible. But I think it will take a couple months for them to collect that information.

CHAIRMAN KURK: Thank you.

REP. WEYLER: Will they also -- question.

CHAIRMAN KURK: Representative Weyler.

REP. WEYLER: Thank you. LBA Kane, is it possible the hospitals will also tell us what they receive in third-party payments as well as Medicare payments?

MR. KANE: We can work with them to get you a better number on what the impact of the injunction is, which would be -- which would have the value of those third-party payments and Medicare payments.

REP. WEYLER: All right. Thank you.

CHAIRMAN KURK: Senator Sanborn.

SEN. SANBORN: Thank you, Mr. Chair. Mike, I may have missed something because I wasn't paying attention. You just mentioned uncomp care is going to stay roughly in the 400 million range?

MR. KANE: That's a big assumption.

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SEN. SANBORN: I thought under Medicaid, the standing debate that we had here, there was a representation it had come down to 286?

MR. KANE: Hm-hum.

SEN. SANBORN: In my mind I'm thinking Medicaid Expansion, like it or hate it, it's here.

MR. KANE: Hm-hum.

SEN. SANBORN: Uncomp care goes from 400 to 280. How we jumping back up to 400? What am I missing?

MR. KANE: 440 million in '16. That's based on '14 Uncompensated Care numbers. Assuming that stays flat, it's a big assumption, assuming it stays flat. We don't know how much it's going to go down in '15 as a result of Medicaid Expansion. That's something that I think the hospitals will get a better idea of in September.

SEN. SANBORN: If it stays at 440 --

MR. KANE: Yeah.

SEN. SANBORN: -- even 400, does that mean all the money we spend, an additional 400 or 500 million dollars, we haven't seen any decrease. Again, I very distinctly, because you know this is an issue for me --

MR. KANE: Hm-hum.

SEN. SANBORN: -- that the testimony will show that Uncompensated Care has come down to 286, I believe, the number was in the debate.

MR. KANE: Right. A big part of that, too, though, which kind of blurs the waters are the impact of the injunction and what that value is. If you assume that 286 assumes that

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third-party payments would be deducted from that Uncompensated Care, that could impact that number. So I think the Hospital Association is in a position over the next couple months to maybe give us a better idea of where they think it will end up, which could be a decrease. Absolutely.

CHAIRMAN KURK: Senator Morse.

SEN. PRESIDENT MORSE: You're not comparing apples to apples. And in the sense that, and I think this is what the Commissioner was stating, you had March. You had filings by the hospitals. You had the injunction. Then the hospital restated their financials. So, basically, you have a different set of Uncompensated Care numbers which drove it back up to 440 or 439, whatever it was. I don't know how you compare that at this point because that's certainly -- I'll give you one that really -- that triggered the whole set of new arguments that we are not going to get to today. But reality is if they didn't restate these documents, we would have been paying the floor which was \$16 million less than we had in the budget. So there's a whole lot of complicated things here.

My chief concern right now is we are paying out \$16 million today, one week before we close the budget. We certainly spent some money during all this process that we closed out the year on. And I don't believe we would have. I don't believe we could have if we had known we weren't going to make our lapses in this Department because, you know, you guys in the House sent us a budget that had Medicaid reduced by a certain percentage. Senate used a certain percentage in their budget, and the Department now has a new theory that we are going to basically appropriate money to cover that or they're not going to make their lapses. I believe they have to live within their means and that's not happening.

CHAIRMAN KURK: Further questions or discussion? Does anyone wish to hear from the Hospital Association?

SEN. PRESIDENT MORSE: DOJ.

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CHAIRMAN KURK: Mr. Kane, question has been raised by a member. Is there an electronic version of the injunction that could be e-mailed to the Members of the Committee?

MR. KANE: Absolutely.

CHAIRMAN KURK: Would you do that, please?

MR. KANE: I will do that, yes.

CHAIRMAN KURK: Chair is ready for a motion.

** REP. WEYLER: Move to table.

REP. EATON: He wanted to hear from the AG.

SEN. SANBORN: Second.

CHAIRMAN KURK: I'm sorry. I apologize. I forgot about the Attorney General. Is there someone here from the Attorney General's Office?

ATTORNEY EDWARDS: Good afternoon.

CHAIRMAN KURK: Good afternoon, Miss Edwards.

ATTORNEY EDWARDS: Anne Edwards from the Attorney General's Office and also with me is Nancy Smith.

CHAIRMAN KURK: Senator.

SEN. PRESIDENT MORSE: I have a few questions and trying to understand how the State gets involved in things, because I certainly know what happened in the Dover lawsuit and all of a sudden, you know, Senate and the House are playing lawyers and I don't like this. And now I look at this situation, this case was filed sometime late in the fall. Then in January the Commissioner decides to write a letter that we weren't informed about. I read the legal documents. And, basically, it starts out with in the court case that the hospitals don't have legal

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standing in this, yet they convinced the courts that they do, because states run the Medicaid Program. So if states run the Medicaid Program, why weren't we at the table in this court case?

MS. EDWARDS: The challenge is that with respect to these assessments that are made, we are the agency that does what the Centers for Medicaid and Medicare Services require us to do. So we are implementing their law. We are implementing their rules.

In this case the hospitals sued CMS with respect to their rules, how they were promulgated and how they were being enforced, and we didn't have a specific role in that. We are essentially the entity that does the collections for it and passes the money through. And so as a result, while we weren't actively involved, we did monitor the litigation. We did have the ability if there was an argument that was missed that we could have argued an amicus brief. We didn't see any of those arguments that existed and so as a result we didn't join.

CHAIRMAN KURK: Follow-up.

SEN. PRESIDENT MORSE: Then how does the Commissioner write a letter that becomes part of the hospitals' legal documents? How does the Commissioner write a letter in January basically saying that he'll agree to this interpretation without legal counsel from the State of New Hampshire?

NANCY SMITH, Senior Assistant Attorney General, Department of Justice: If I could respond, Senator. We were asked the question of would the Department be bound if the Federal Court issued an injunction? And our analysis was that because the injunction would affect CMS's rules that we're applying that we would have to apply the injunction. That was -- we were just affirming what the effect would be if CMS was enjoined from applying its audit rules that New Hampshire has to apply.

SEN. PRESIDENT MORSE: Then why wouldn't the Legislature be informed in January of that move?

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ATTORNEY EDWARDS: I'm not sure why the Legislature wasn't informed. I mean, we don't -- obviously, there are parts of litigation that happen regularly. I know that our office worked diligently to inform especially legislative leadership regarding things. But if the Legislature wasn't specifically informed with respect to this matter beforehand, I don't know why that happened.

SEN. PRESIDENT MORSE: But this costs the State of New Hampshire over \$30 million just in '16. If I'm right and we would have hit the floor, and then we are adding another \$16 million today, that's a \$30 million cost to the State of New Hampshire we weren't informed in January. We certainly weren't informed at the end of March about the ruling. And here we are at one week before session closes getting hit with the bill. I don't understand why we didn't have legal standing in this whole process. What will be the future on this process?

MS. EDWARDS: We still don't have legal standing to be part of this case. We'll continue to monitor it. It's set to be argued for summary judgment motion so they're in the process of moving forward. I believe the summary judgment motions are due in July.

ATTORNEY SMITH: Summary judgment, the hospitals and CMS have both filed cross motions for summary judgment. The final briefings on that are due by July 18th. In our case here in New Hampshire the same issue is being litigated and a number of other forums in the country. Some of those cases are somewhat ahead of ours, and we are monitoring those as well. I'd be happy to provide you more information about those if you'd like.

SEN. PRESIDENT MORSE: I just don't understand why we are not at the table in these -- in these discussions at the court. Because, obviously, the court questioned -- obviously, it was questioned at the court whether they had legal standing to be fighting this battle, and we didn't say a word. We just said when you make your decision, we'll pay the bill.

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MS. EDWARDS: Well, as we said Senator, it's not -- while we weren't actively involved, there were no arguments that weren't made. We didn't have any additional arguments to make. If we had any additional arguments to make, we would have made them.

SEN. PRESIDENT MORSE: There's one title in this whole document that strikes me and it says common sense. And it's everything that's been mentioned already. And it certainly bothers me on the dual payment that it's written as common sense. But, yet, the Court turns around and says that we're not discussing common sense right now. That's pretty scary and the fact that we are not represented in the Senate, I don't know what the Speaker would say. I think that's wrong.

ATTORNEY EDWARDS: I understand, Senator. I think the challenge is as the court even noted, under common sense the argument that CMS was making is the logical one. But you also understand, especially as legislators, that there are processes that have to be followed. And in this case it sounds like at least the Court has found that CMS did not follow the proper processes in order to implement its laws and its rules, and as a result it's --

SEN. PRESIDENT MORSE: Because of two documents they picked up at the State of New Hampshire, I believe, they certainly move forward in a different manner. There were two documents in this filing, one that was written in '15 and one that was written in January of '16. Now '15 I can understand. They picked that up from files and that's fine. '16, we made a point as a state to put a document together and that document got accepted in the court case. It's in there. That's not a good situation for the State of in New Hampshire.

ATTORNEY EDWARDS: I don't disagree, Senator, at all; but I don't think that that document made a particular difference. I agree with you that it's cited in this pleading as one of the reasons. But when you read the remainder of the Court's order that document was one of the factors, it was not the sole factor.

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SEN. PRESIDENT MORSE: It was one of the factors because we said as a state that we were going to clawback in 2011 on the critical access hospitals. I was here in 2011. I'm sure if the Legislature was brought this in January of this year, I remember Senator Odell specifically solving the problem for critical access hospitals, and it was the intention of the Legislature in New Hampshire. We would never be doing any clawback. I mean, it wouldn't happen.

ATTORNEY SMITH: The 2011 requirement to recoup was -- was based on what was done -- what was paid in 2011 and how they calculated their Uncompensated Care in those years. This Federal audit requirement had been going on for three years before 2011. But 2011 -- but the year that the 2011 audit was done, was completed, which was 2014, and actually reported in March of 2014, under the Federal Law that was the first year that we would have been under Federal Law, been required to recoup overpayments from the hospitals.

SEN. PRESIDENT MORSE: It said CMS specifically said the states have the right to make that decision.

ATTORNEY SMITH: They did, but they -- the Federal Law would have said that if we decided not to recoup, the State would still have owed the Federal Government the Federal share. So we would have been on the hook to repay the Federal Government the Federal share of anything we did not recoup.

SEN. PRESIDENT MORSE: And that's what I'm saying. The Legislature did not get to weigh in on that decision in January of this year and that is wrong. That's why we're here.

ATTORNEY SMITH: I don't disagree with you, Senator.

CHAIRMAN KURK: Senator Sanborn.

SEN. SANBORN: Thank you, Mr. Chair. Clearly, because this has happened, but I guess I'm asking more of a holistic question, by what authority does the Commissioner and any

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Commissioner, and I want to pick on just this Commissioner on this issue, by what authority does a Commissioner have the ability to send out a document that clearly encompasses us, in this case, with upwards of \$30 million, to a court contingency between an outside public entity and the Feds? I mean, does this happen regularly that our Commissioners will enjoin, essentially to me, enjoin a case that could potentially be damaging to taxpayers?

ATTORNEY EDWARDS: Well, this is the document that wasn't specifically sent to the Court. It was a document I believe that was sent in response to questions from the Hospital Association. But with -- there are documents regularly that all of our Commissioners issue explaining how they're going to function in their agencies that are sometimes used in court cases. And it's not that any Commissioner intends to have that document become Exhibit A in a court case that will then cause the State to owe money but it does happen. I believe that generally when Commissioners issue letters that there are concerns about or that could cause issues, they do have contact with -- they clearly have contact with our office. They also have contact with the Governor's Office and the President and Speaker's Office.

SEN. SANBORN: Follow-up. Clearly, I'm hearing from my colleague on my right that I don't think he ever saw a copy of the letter. And, obviously, it's this frustration shared by a lot of us sitting up at this table today. So the second half is, does the Legislature have the right to intervene and become part of this process to try and protect the taxpayers at this point?

ATTORNEY EDWARDS: Well, I would argue that if the State itself doesn't have standing in this lawsuit, then the Legislature doesn't have standing. Does it mean that the Legislature can't file pleadings to try to intervene? No, it does not mean that. The Legislature can go forth and file pleadings to try to intervene and see if the Federal Court accepts them.

SEN. SANBORN: Thank you. Thank you, Mr. Chair.

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CHAIRMAN KURK: Senator Forrester.

SEN. FORRESTER: Thank you for coming in. So you said earlier in response to Senator Morse you weren't sure why the Legislature wasn't notified. Whose responsibility is that to notify the Legislature of what's happened?

ATTORNEY EDWARDS: I'm not sure whose specific responsibility it is. It depends sort of on the status of the case and talking to the Commissioner. In a case like this, we were not involved in the litigation, but it's not uncommon for us to have communications with legislative leadership, in particular, about litigation that has a potential impact. But it also is often expressed by the Commissioners of the agencies in which the litigation affects.

CHAIRMAN KURK: Follow-up.

SEN. FORRESTER: Thank you. So I guess what I'm trying to get at is how do we avoid this in the future so the Legislature is aware of what's going on? Whose responsibility is it to tell us what's happening?

ATTORNEY EDWARDS: I can't determine that at this point with respect to the Attorney General or any Commissioner. I can tell you that I know the Attorney General will re-double efforts to make sure communication occurs. But I can't commit at this time that it would be the Attorney General's Office over the Commissioner.

CHAIRMAN KURK: Could we at least get a commitment from the Attorney General that if at any time he is aware of any lawsuit or legal action which might result and affect the State's finances that he will notify legislative leadership?

ATTORNEY EDWARDS: If I could add some parameters to that. Because every single lawsuit that we have at the Attorney General's Office for slip and falls in State Parks and for everything else affects the State finances. So if you're talking

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about significant impacts, you could certainly have that commitment.

CHAIRMAN KURK: Thank you. Senator Morse.

SEN. PRESIDENT MORSE: I mean, obviously, we're not intimately involved in court cases. How do we get notice that summary judgment has been denied and at that point have a discussion as a state where we want to be with the terms?

ATTORNEY SMITH: Yes. We are actively monitoring the case and I have -- we have the ability to check the docket, and we do that on a regular basis. And so I know when the pleadings will be filed. I will know when if oral argument is set. And as with the preliminary injunction, we intended to monitor those proceedings and see what is going on. So we are watching it very closely.

ATTORNEY EDWARDS: So we can provide you with copies.

SEN. PRESIDENT MORSE: So our Chiefs of Staff would be provided with an answer to what happens with these summary judgments?

ATTORNEY EDWARDS: Yes. We're also happy to provide you with copies of those documents. I know the LBA sent out a copy of the original order. If anybody would like copies of the briefs that have been filed in the summary judgment motions and the further pleadings, we are happy to provide those.

SEN. PRESIDENT MORSE: Those answers will be coming in July.

ATTORNEY EDWARDS: Well, the pleadings will be coming in July. I'm not sure, right now it's not scheduled for oral argument.

ATTORNEY SMITH: It is not scheduled for oral argument yet. Some of the summary judgment pleadings have already been filed.

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The final ones will be filed in July, and we'll be happy to get those for you and provide copies.

SEN. PRESIDENT MORSE: I really don't want to read them. I just want to know the results of them. And I certainly have been contacted by the Speaker that he wants to know if we should enter into this.

CHAIRMAN KURK: Would you share with us the timing of this decision? When do you think we'll receive -- there will be a final decision one way or the other on this?

ATTORNEY SMITH: It depends very much on the Federal Court Judge. As I mentioned, the same issue has been pending in the Washington -- the District of Columbia Circuit where it's been fully briefed for over six months and oral argument in that case is now scheduled for next week on June 29th. So it can take -- it depends on the Federal Court. My experience with our Federal Court is I would expect a decision probably within six months after oral argument, if they have oral argument. That's been my experience with our Federal Court.

CHAIRMAN KURK: And that would be before or after next May?

ATTORNEY SMITH: I would think it would likely be, if the final brief is due in July, I would anticipate oral argument sometime in the fall. It could well be before next May. I can't guarantee it but it could be.

CHAIRMAN KURK: Is it -- is there any basis on which we can say that we choose not to make these payments at this time, but we'll wait until the case is finally resolved?

ATTORNEY EDWARDS: I think the challenge with that is we also have separate from this our own New Hampshire State Law, 164-- 167-a, as well as our settlement agreement in the MET case, in which we have agreed that we will make DSH payments by May 31st. It's my understanding that the hospitals have agreed to wait until June 30th pending this decision from the Fiscal Committee, but that there is the ability for them to sue. They

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can go after the MET tax again as part of the settlement agreement that we have with them. So if we don't make these payments now, that's what the State faces.

CHAIRMAN KURK: I didn't mean to say we would violate any statute of law. I wanted to know if in the preliminary injunction, and all of the other legal documents, we are required to make these payments at this time or whether there is either an argument or some loophole in these documents which would allow us to defer the payments until the case is finally resolved?

ATTORNEY EDWARDS: In our review that we did not find a loophole or anything that would allow us to not move forward at this time with payments.

CHAIRMAN KURK: So you're assuming that the nature of the statute requires us to accept not the definition of these various ideas at the time we signed the settlement and wrote that legislation, but we were binding ourselves to any future changes in Federal Law -- Federal rules in this case?

ATTORNEY EDWARDS: Well, that's not uncommon in settlements where there are changes to other components that are part of the settlement, and that they can sometimes impact the settlement amount. It's one of the reasons why there's a cap on these settlement payments. And even now we are under the cap for 2016.

CHAIRMAN KURK: But you folks are not suggesting that the interpretation of the Federal rules that the settlement was based on was a fixed interpretation at the time the settlement was signed and subsequent changes or interpretation to that rule would not bind us. That argument apparently was either not made or felt not to be valid.

ATTORNEY EDWARDS: Yes, I believe it was felt not to be valid because we had agreed to those terms.

CHAIRMAN KURK: Thank you.

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SEN. FORRESTER: Senator Morse.

CHAIRMAN KURK: Senator Morse.

SEN. PRESIDENT MORSE: On that same theory of binding --

ATTORNEY EDWARDS: Yes.

SEN. PRESIDENT MORSE: -- if today, because we are using the drug rebate money we are comfortable paying the \$16 million, does that bind us if this court case isn't settled next year to making a payment based on whatever financials are presented to the State?

ATTORNEY EDWARDS: It would require us to continue to follow the preliminary injunction which may be preliminary at that point or may be permanent. And, of course, all of that is then subject to appeal to the First Circuit and then to the United States Supreme Court. So that adds time.

But we also have -- it doesn't require us to pay any amount, because we still have the MET settlement and the statute that have caps on it. So the caps would be the outside limit.

SEN. PRESIDENT MORSE: But do we hurt ourselves today by making this payment? I mean, in any case, the Legislature in January can adapt to this. I don't have a problem doing that. I mean, we can come back and adapt to a budget problem in January, which we will. I mean, if we created a 30 or \$40 million problem here, we'll come back and fix it. But we certainly can't fix it today, because we're not here. If we pay this check today, though, will that have any -- if you had to defend us in court for some reason of not making a payment next year, would that affect it?

ATTORNEY EDWARDS: We would argue it wouldn't and we do have the ability, if the injunction is overturned or a permanent injunction is not issued, we do have the ability to recoup this payment.

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CHAIRMAN KURK: I know in a lot of cases when people make payments they write under protest or something like that on the check.

ATTORNEY EDWARDS: Yes, they do.

CHAIRMAN KURK: Can we approve this item under protest and will that help us in some way?

ATTORNEY EDWARDS: I'm not sure that it would help you, but you most certainly could approve it under protest.

REP. OBER: And we have certainly been protesting.

CHAIRMAN KURK: Thank you. Thank you very much. Are there further questions of these folks from the Attorney General's Office? Thank you, Anne.

Chair would entertain a motion. Oh, excuse me. Commissioner Meyers, thank you. Commissioner Meyers wishes to make some comments.

MR. MEYERS: Speak briefly. Thank you. I appreciate it.

The subject of my letter in January has come up, and I'd like to briefly address it, if I may. 'Cause I've expressed already, first of all, this occurred just as I was becoming Acting Commissioner. That's here nor there. I was in charge of the Department at that point in time. This -- my understanding at the time that I signed that letter that what I was doing, and I've expressed this to several Members of the Committee already, was delaying the time that the State would have to recoup money from critical access hospitals whose financial stability was already in question. I did not have an understanding at the time that I was creating liability for the State of New Hampshire.

That point aside, I apologize to this Committee. I think I will point out that we regularly disclose the existence of litigation that can have a material impact on a budget. We do that on the Dash Board every month. There are specific

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litigation items that are mentioned. Notwithstanding that, in retrospect, I clearly should have informed the Committee of the status of this particular matter. I didn't, not because I was trying to not inform the Committee, but because I had a genuine belief at that time that there was no material financial impact to the State from signing a letter that I believe all the letter says was not that I agree with the substance of the lawsuit, but if an injunction is issued I would, obviously, abide by the terms of that injunction. Notwithstanding all of that, I do apologize and will re-double my own efforts to ensure that the Speaker, and the Senate President, and the Legislature are informed of litigation that could potentially have any material impact on the Department's budget.

CHAIRMAN KURK: Thank you, Commissioner. One more quick -- if there were no questions of the Commissioner, one more question of Ms. Edwards. To what extent can the State or the Legislature or legislative leadership appeal this case, assuming that it's decided sometime next year?

ATTORNEY EDWARDS: If we are not --

CHAIRMAN KURK: Can we get involved?

ATTORNEY EDWARDS: Well, we could move to intervene and then it's up to the Court as to whether or not we're allowed. Other -- if we're not a party, then we don't have a right to appeal.

CHAIRMAN KURK: Is there some way -- is there some reason or some way that we would be advantaged if we tried to become a party now as opposed to waiting until the decision?

ATTORNEY SMITH: I don't think -- I think we might be able to move for amicus status, just that we're interested; but I don't think that we would have standing to be a party. Amicus is different. It's just that we have an interest in the case and there's a possibility that you could do that now or at an appellate level.

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CHAIRMAN KURK: And could, if we were granted amicus -- is it amicus or amicus?

ATTORNEY EDWARDS: I say amicus. She says amicus. Tomatoe, tomato. One of those things.

CHAIRMAN KURK: Would that status obtained now increase the likelihood that we would be able to appeal or are you saying no one in that status has a right to appeal?

ATTORNEY EDWARDS: No one in that status has a right to appeal.

CHAIRMAN KURK: Senator Sanborn.

ATTORNEY EDWARDS: Shall we sit back down?

SEN. SANBORN: Yes, please. Because I'm -- I'm surprised to know that since the State of New Hampshire manages the Medicaid Program, and I would think that \$30 million of potential liability to the taxpayers of this state wouldn't it be considered sufficient to intervene? I mean, what's the bar?

ATTORNEY SMITH: The -- the issue is that we are required as part of the Medicaid Program to apply the CMS -- the Federal Law regarding Medicaid and part of that is these audit requirements. And the audit requirements are set by CMS. So we are not -- we don't have the ability as a state participating in Medicaid to change the audit requirements or to set them.

SEN. SANBORN: Follow-up.

CHAIRMAN KURK: Follow-up.

SEN. SANBORN: When I see the EPA trying to get us to spend \$600 million to clean the Great Bay. For the record, I want the Great Bay cleaned. And when I see the MP4 permit issue now going on and the 41 towns that all of us represent here, I regularly seeing and talking with this -- this government about standing up to potential costs that were previously unforeseen,

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and either intervening or getting involved in some level with all of this. I'm honestly shocked to hear that if the Federal Government decides to change a rule which will have a massive material impact on the taxpayers of the state and on a program that the Federal Government is requiring that we manage, in this case Medicaid, that we won't have the right to get in, intervene in something they decided to change the ground game on.

ATTORNEY EDWARDS: Well, standing is a complicated issue to explain. And, you know, essentially you need to have an injury. I know this \$16 million feels like an injury. I know that. But in that sense, it's the hospitals who have standing because they're the ones who have the argument that the tax is being removed from them. It's hurting the State because of the fact that the hospitals are able to make different claims based on the Court's decision on what the definition is. But the Court -- we do not believe that the Court would find that we have an injury in that sense. And the State of Missouri is in litigation on this issue. They're actually taking the position that the hospitals have taken. And they -- and that CMS is battling with them over standing with all of the same arguments that they are just the state who's responsible for managing the program and that this is not an injury to them.

SEN. SANBORN: But cutting a check for 16 million or \$30 million that's going back to the hospitals, so in my book if I'm cutting someone else a check, I'm thinking that I'm financially injured and they're financially benefitting. I could be wrong on that because it's math. But I'm cutting a check to them. I'm turning to the people of New Hampshire and saying you cut me a check for 16 million bucks so I can send it to the hospital. How can that not be an injury? I'm not an attorney and I didn't stay at Holiday Inn last night but please.

ATTORNEY EDWARDS: We do not believe we would qualify for standing. And we have done the analysis. We have looked at the case. We have looked at the facts of the situation. We don't believe --

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SEN. SANBORN: If we don't pay it, then we get sued so there's clearly some sort of a --

MS. EDWARDS: Well, if we don't pay it, we get sued under our own State statute and under our own settlement agreement in a different case. That's where that litigation comes from.

SEN. SANBORN: All right.

CHAIRMAN KURK: So what you're suggesting is that the Legislature's response to this should be legislative. Some of us have some excellent ideas on how to deal with this legislatively.

ATTORNEY EDWARDS: The Attorney General would also suggest that this is a Federal issue. So far, the Federal Government has done nothing to change this statute that is causing this problem for all of us, and CMS has done nothing to move in that direction as well. So we do have Federal representatives who, perhaps, could be brought into conversations on how to rectify this situation.

SEN. SANBORN: You know the last time the Federal Government passed a law, because I don't think they have.

CHAIRMAN KURK: Okay. Further questions? Thank you again. Please don't go far. Who knows. At this point, Ceil, did you want to take a few minutes?

THE COURT REPORTER: Yes, please.

CHAIRMAN KURK: Thank you. We'll stand in recess for five minutes.

(Recess taken at 12:40 p.m.)

(Reconvened at 12:44 p.m.)

CHAIRMAN KURK: Committee will come out of recess. Is Representative Barry here?

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SEN. D'ALLESANDRO: He's coming.

CHAIRMAN KURK: Representative Barry will be sitting in for Representative Ober. At this point, the Chair would entertain a motion on Fiscal 16-109.

** SEN. D'ALLESANDRO: I move the item.

REP. WALLNER: Second.

CHAIRMAN KURK: Moved by Senator D'Allesandro, seconded by Representative Wallner that 16-109 be approved. Further discussion or questions? There being none, are you ready for the question? All those in favor say aye? Opposed?

CHAIRMAN KURK: The ayes have it and the item is approved.

*** **{MOTION ADOPTED}**

REP. WEYLER: What was the vote?

CHAIRMAN KURK: It was a voice vote. You want to challenge the Chair?

REP. WEYLER: No, I want to write it down.

CHAIRMAN KURK: It was a voice vote.

(11) Informational Materials:

CHAIRMAN KURK: At this point, does anyone have any questions about any of the informational items? There being none, then because we might lose a quorum during the course of this audit, I'd like to take a motion from Representative Weyler that the audit be approved, et cetera, in the usual course, and then we will hear the audit thereafter.

** REP. EATON: Move.

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CHAIRMAN KURK: Representative Weyler, you care to make your motion?

** REP. WEYLER: I move we accept the report, place it on file, and release in the usual manner.

CHAIRMAN KURK: Seconded by Representative Eaton. Discussion? Questions? There being none, are you ready for the question? All those in favor, please indicate by saying aye? Opposed? The ayes have it and the motion is approved.

*** {MOTION ADOPTED}

Audits:

CHAIRMAN KURK: At this point, I'd like to invite Mr. Smith and company to present the State Revolving Fund Management Letter.

STEPHEN SMITH, Director, Audit Division, Office of Legislative Budget Assistant: Good afternoon, Mr. Chairman, Members of the Committee. For the record, I'm Steve Smith, the Director of Audits for the Office of Legislative Budget Assistant. With me from our Office this morning to present the Management Letter is Bill Mitchell. He is a Financial Audit Supervisor. And joining us from the Department is Commissioner Burack and Susan Carlson. I'll turn it over, with your permission, to Bill.

CHAIRMAN KURK: Good afternoon.

WILLIAM H. MITCHELL, CPA, MBA, Audit Supervisor, Audit Division, Office of Legislative Budget Assistant: Good afternoon, Commissioner, and Members of the Committee. For the record, my name is William Mitchell, and I'm here this afternoon to present the Management Letter of the State Revolving Fund or SRF for the Fiscal Year ended June 30, 2015.

If you turn to the Table of Contents, you'll see the report includes 16 Internal Control Comments, four are categorized

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material weaknesses, 12 significant deficiencies. The Department concurs with 14 of the comments and partially concurs with two.

Also included in the report are Federal -- six Federal Single Audit Comments, copied from the State Single Audit Report concerning the operations of the SRF Federal Clean Water and Drinking Water Programs. You may notice from the titles of the comments in the report and the presentation this afternoon there's a common theme running through the report and that is the recommendation of the establishment of policies and procedures for significant SRF operations.

To that end, Observation No. 1 on Page 3 of the report notes the Department does not have documented policies and procedures in place for significant areas of their responsibilities, especially operational and financial accounting and reporting activities, including the financial activities in the bulleted list on Page 3. The absence of effective policies and procedures can result in a situation where compliance with Management's intentions and directions for the program can become dependent upon the knowledge and experience of current employees. And without reasonably comprehensive policies and procedures in place, turnover of key employee positions can cause significant disruption to financial operations.

We recommend the SRF establish policies and procedures to support all significant operational and financial accounting and reporting activities in coordination with Department of Administrative Services, the State Treasury, and other related organizations. It would be appropriate to ensure that the policies and procedures are consistent with related State policies and procedures.

Observation No. 2 on Page 4 addresses the posting of financial transactions in Project Manager, the SRF primary information system supporting the financial statements. We note that during Fiscal Year 15, the SRF posted the majority of its financial transactions in Project Manager in three batches. Transactions generally should be posted as soon as practical;

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generally daily or at least monthly. And transactions that are recorded but held unposted in pending status do not update account balances and can be changed without leaving an audit trail.

We recommend the SRF establish policies and procedures for the recording of transactions in the Project Manager system that ensure the transactions are posted timely and provide a complete historical accounting record.

Observation No. 3 on Page 5 addresses the regular reconciliation of the SRF information system. As of June 30, 2015, the SRF had not fully reconciled the Project Manager accounting and information system to similar information in the State's accounting system NHFirst since the SRF was designated as a separate enterprise fund at the start of Fiscal Year 14.

We recommend the SRF establish policies and procedures for the regular reconciliation of the common data in the Project Manager and NHFirst Systems.

Observation No. 4, the last of the material weaknesses is on Page 6, and it notes the SRF did not establish effective policies and procedures to account for and report on proceeds intended to match Federal grant revenues during Fiscal Years 14 and 15.

Fiscal Year 14 the State issued approximately \$19 million of general obligation bonds to finance the State Match to Federal program funds drawn for certain clean water and drinking water loans.

During Fiscal Year 14 and 15, the SRF paid the State Match from Capital Project Fund appropriations but did not charge the bond proceeds cash account for the disbursements. Auditors proposed and the SRF recorded a material adjustment in Fiscal Year 15 financial statements to correct that. And, again, we recommend the SRF establish policies and procedures to account for and report the State Match money.

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Significant deficiencies begin on Page 8 with Observation No. 5, which addresses issues with the SRF reconciliation of cash and investment accounts. We noted weaknesses in the SRF cash account reconciliations that are identified in numbered paragraphs 1 through 5.

We recommend that the SRF establish policies and procedures for formal bank reconciliation processes that include a full documentation of the reconciliation.

Observation 6 and 7 address risk assessment and continuity of operations plan. In Observation No. 6 on Page 10 we recommend the Department and SRF establish formal risk assessment process supported by policies and procedures for recognizing and evaluating and responding to risk that could affect their ability to reach their objectives.

In Observation No. 7 on Page 11, we recommend that the Department continue with a rewrite of their combined continuity of operations and disaster recovery plan.

In Observation No. 8 on Page 12, we note the SRF did not have policies and procedures for managing its investments of excess SRF funds during Fiscal Year 15.

We recommend the SRF take increased responsibility for the management of the funds and establish policies and procedures for actively monitoring and projecting cash flow need in investable balances and ensure that it maintains current and comprehensive and executed investment guidelines for the State Treasury.

Observation No. 9 on Page 13 identified a segregation of weakness existed in the SRF business office. And we recommended the SRF review and re-assign as practical the incompatible responsibilities currently assigned to one business office employee, and also to ensure that the scope and responsibilities placed with this employee is adequately documented to allow for continuity of operations.

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On Page 14, Observation No. 10, we noted instances where the SRF could improve its report of accounts receivable.

In Observation No. 11 on Page 15, we note that audit testing identified instances where charge rates applied to some SRF loans were not in full compliance with program administrative rules and loan agreements. Errors were noted -- errors noted particularly of three types. The first type included errors where charge rates applied to a loan were not the rates in effect at the time of the execution of the loan agreement. And, generally, these errors were due to the timing of the preparation and execution of the documents crossing an annual rate change date.

The second type of errors we noted were instances where there were errors in the calculation of charge rates used to invoice borrowers.

And the third type of errors included charge rates applied to loans that were derived from an incorrect market rate. Incorrect or misapplied charge rates result in borrowers paying incorrect amounts to the SRF.

We recommend the SRF review the cause of the above noted errors and institute controls to ensure charge rates are as outlined in the program's rules are accurately determined and consistently applied. We also recommended the SRF review the above noted errors and correct, as appropriate, the effects of the application of the incorrect rates.

CHAIRMAN KURK: Before you go on, will you share with us whether those errors benefited the borrower or the Department?

MR. MITCHELL: They could go both ways.

CHAIRMAN KURK: On the total, if you added them all up, did the Department get more money or did the borrowers get more money?

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MR. MITCHELL: We didn't make that calculation. We do give an example. On Page 16 for loans closed prior to Fiscal Year 15, there were some numbers given where two borrowers were overcharged approximately \$25,000 and \$2,000 respectively during Fiscal Year 15 and overcharged approximately 181,000 and 14,000 respectively over the life-to-date of the loan as of June 30, '15.

CHAIRMAN KURK: Would you be able to calculate and give us that information, the total impact of these errors?

MR. MITCHELL: On the ones that we looked at, we could. What I would say is that, in general, the differences were low in terms of the -- the errors in the rates were low. The problem, of course, is these loans go over many years. So while the rate difference might be low, the time aspect of the loan can make the number larger; but we can do that, certainly.

CHAIRMAN KURK: Thank you.

MR. MITCHELL: Observation No. 12 on Page 17 noted a review of employee access of authority to the SRF Program Project Manager Common Information System indicated a number of users had excess authorities in the system. And we recommended that they review their policies and procedures to ensure that access to the Project Manager system, again, the key information system for the SRF, is appropriate based on the employee's current job responsibilities.

In Observation No. 13, we questioned whether the SRF drew Federal funds at the earliest date allowed by the Federal program. And we recommended the SRF review the application of the Treasury State Agreement with the State Treasury and the Federal Agencies to ensure that the SRF is drawing Federal funds as close as possible to when the underlying disbursements are made.

In Observation No. 14, we recommend the SRF establish policies and procedures intended to encourage borrowers to make timely repayments, and review its internal communication of late

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payment information to ensure both the program management and the business office are made aware of loans that become delinquent.

Observation No. 15 on Page 21 illustrates opportunities for the SRF to improve documentation of loan conditions, including changes in loan conditions.

And the final comment, Observation No. 16, we recommend that the SRF implement policies and procedures to ensure that the appropriate amount of revenue is recorded in the Audit Fund Set-Aside Account as required by statute.

Starting on Page 26 of the report are the Single Audit Comments related to the SRF Federal Program. These comments were included in the Fiscal Year 15 Single Audit Report that was presented to the Committee at an earlier meeting.

That completes my presentation. I would like to thank the Commissioner and the Department, and especially the employees of the SRF, for their assistance and cooperation during the audit and would be happy to answer questions anybody has.

CHAIRMAN KURK: Thank you, sir. Are there questions? You want to wait? Commissioner, would you care to respond?

THOMAS BURACK, Commissioner, Department of Environmental Services: Be very happy to. Thank you very much.

Again, good afternoon, everyone. For the record, my name is Tom Burack. I serve as Commissioner of the Department of Environmental Services. Please to be joined here this afternoon by Susan Carlson, our Chief Operations Officer. And I thank you, Mr. Chairman, and Members of the Committee, for this opportunity to speak to the Observations noted in the audit report.

First thing I want to do is to thank the LBA Audit Division for their audit of our State Revolving Fund for State Fiscal Year 2015. Although she's not here today, I especially want to thank Christine Young, as well as other members of the team,

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Andrew Charles and Kimberly Bisson, for their hard work on this audit. We also appreciate the time that both Bill Mitchell and Steve Smith have spent discussing these matters with us.

As you are aware, the State Revolving Fund or SRF Program has been in existence since 1989. Recently, in 2014, the SRF Program was converted to an enterprise fund. So Fiscal Year 2015 was only the second year in which the SRF Program was accounted for in this manner. And as we worked through this transition, DES has been working and continues to work closely with the Comptroller's Office in the Department of Administrative Services to help ensure a smooth conversion.

We thank the LBA for identifying the issues noted in the audit, and we are already actively working to address the Observations and Recommendations made by the LBA, including ensuring that we will have current policies and procedures in writing for this program.

Mr. Chairman, because you asked a specific question, I do just want to take a moment to address one set of the specific findings, just to let you know that we are also working with the Attorney General's Office on issues regarding the possible misapplication of interest rates that you asked about. And while we do not believe that the program miscalculated or misapplied rates, we do understand the auditors' views regarding the determination of the actual execution date of a loan. And we expect to update our administrative rules and loan documents to make this clearer for all going forward. And to the extent that after a careful review is determined that errors have been made with respect to these, we would certainly make whatever adjustments financially are determined to be necessary.

There is one set of findings that the auditors made relating to what we would consider to be clerical errors in two loans. Those were the two that Mr. Mitchell provided additional information on. We are, in fact, in the process of cutting checks now to provide rebates to those borrowers for excess funds they have paid to date because of the clerical errors that

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were made. And we are also revising the amortization schedules going forward on those loans.

So, again, we appreciate the LBA staff work on this audit. They have really done their work now, and it's now up to us to do our work. And I'm confident that based on what we have learned from this audit that we will be able to make this an even better and more effective program in serving the communities and people of New Hampshire. And, with that, I'd be happy to take any questions.

CHAIRMAN KURK: Thank you, Commissioner. Representative Weyler.

REP. WEYLER: Thank you, Mr. Chairman. Commissioner, how many employees are exclusively assigned to the SRF?

MR. BURACK: I'm not sure that I can give you that specific number. Do you know offhand, Susan?

SUSAN CARLSON, Chief Operating Officer, Department of Environmental Services: There are 67 employees across both programs. That's from compliance work, loan work, administrative staff, engineers.

REP. WEYLER: Follow-up.

CHAIRMAN KURK: Follow-up.

REP. WEYLER: In another matter, typically, if someone borrows \$10 million on this program, what is their repayment? I have been informed it's usually less than the loan.

MS. CARLSON: Thank you. Normally, when under both the drinking water and now the clean water program, borrowers may be eligible for principal forgiveness. And depending on the type of borrower it is and various economic factors, in the clean water side they're eligible for principal forgiveness between 5 to 12½%. On the clean water side it goes higher than that.

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REP. WEYLER: Higher than that?

MS. CARLSON: Excuse me. Yeah, on the drinking water side it goes higher than that.

SEN. SANBORN: How much higher?

MS. CARLSON: It's upwards of 20 and 30% on the drinking water.

REP. WEYLER: Is it dependent on the demographics of the district borrowing or what determines the forgiveness?

MS. CARLSON: It is more involved in the ability of borrower of -- hang on one second.

MR. BURACK: If you don't mind, we are going to ask Tracy Wood who administers the Clean Water Program to come and speak to us.

TRACY WOOD, Administrator, Wastewater Engineering Bureau, Department of Environmental Services: Tracy Wood, Administrator for the Wastewater Engineering Bureau for just about a year now. We have several factors that go and determine how much principal forgiveness we give to each community; affordability, environmental benefit, whether they have an enforcement action, and several other factors.

REP. WEYLER: Thank you. Thank you, Mr. Chairman.

CHAIRMAN KURK: Could you tell us who bears the cost of forgiveness?

MS. WOOD: The program.

CHAIRMAN KURK: The program consists of a number of parts. Does the General Fund bear that? Does some Federal Government agency bear that? Are the State taxpayers subsidizing whatever community gets forgiveness?

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MS. WOOD: Okay. So each year we have a Cap Grant that comes from the Federal Government.

MR. BURACK: Capitalization Grant.

MS. WOOD: Capitalization Grant. And the State match gives 20%. In order to, when we get that Cap Grant, there's certain stipulations that go with it, and each year they tell us how much we have to give back in subsidies to communities. So in Fiscal Year 16, our Capitalization Grant is about a little over 13 million, and we have to give back 10% of that in principal forgiveness.

CHAIRMAN KURK: And of that 10%, 80% comes from the Fed and 20% from the State?

MS. WOOD: Well, the 13 million is the Federal portion, and then the State would give us 20% which would be 2.6 million say. And I believe we do give 10% of that 2.6 million to communities.

CHAIRMAN KURK: What happens to the other 90%? You've got \$15.6 million. You just gave away 10% of it.

MS. WOOD: Hm-hum.

CHAIRMAN KURK: 90% is left. What happens to that?

MS. WOOD: That is low-interest loans that are given out to communities.

CHAIRMAN KURK: I'm sure when Ms. Carlson gives us the information that we requested this will all be clear. Thank you. Representative Barry.

REP. BARRY: Thank you, Mr. Chairman. Usually when we go through an audit, we find some areas that may require legislative action. I saw none in here.

MR. MITCHELL: That's correct, Representative.
The -- normally, what we would do if there was a comment that

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needed legislative action, we'd put an asterisk beside it on the Table of Contents, and I neglected to say that none of these currently need any legislative action that I understand.

REP. BARRY: Thank you.

CHAIRMAN KURK: Senator Sanborn.

SEN. SANBORN: Thank you, Mr. Chair. I appreciate it. So if I can back up for a couple questions before my main drive point. There's \$260 million of a cash balance. But then between the Drinking Water Fund and the Clean Water Act Fund, how much do we have in outstanding loans or bonds with municipalities at this point? What's the aggregate size of this program knowing 260 in cash?

MS. CARLSON: The balance of the fund at June 30, 2015, to stay consistent was approximately 610 million.

SEN. SANBORN: Between both funds?

MS. CARLSON: Both funds.

SEN. SANBORN: So 610 out in debt and 216 in cash.

MS. CARLSON: No, no. The total is 610. You have cash of -- of 200 and then we have loans out. And, I'm sorry, I didn't bring the financial statements with me, but we usually run about 350 to 375 million in loans outstanding. That number will go up substantially over the next few weeks as we give Exeter its loan for \$50 million.

SEN. SANBORN: That's just moving from one GL account to another GL account, going from cash to loan.

MS. CARLSON: Yes.

SEN. SANBORN: If I may, Mr. Chair? So, for the record, Commissioner, I'd like to commend you 'cause your new Assistant Commissioner and his team of staff as they have been -- as we

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have all been dealing with the PFOA issue. He's clear, he's articulate, he is kind in a very complex issue for people, and they've done an amazing job.

MR. BURACK: Thank you.

SEN. SANBORN: I'm very proud of all the work and you should be as well. It's really been very open-ended. Back to this.

I, as you know, Commissioner, I have decades in commercial banking. So I've looked at this from a banking perspective. So I think you guys are doing an amazing job and are so dedicated to ensuring clean drinking water and some days I support and agree with you and other days I don't. But, in general, I think your heart's in the right place and you're doing the right thing.

MR. BURACK: Thank you.

SEN. SANBORN: But I look at this document as a banker looks at this document. If I replaced every word in here that said DES and put the Kurk Community Bank with \$600 million in total assets, honestly, I think people would be going to jail. Now I know a lot --

CHAIRMAN KURK: Certainly, Kurk would not be going to jail.

SEN. SANBORN: Well, whether or not he would be or should be is a discussion we'll have on another day. But full disclosure, being heavily invested in bank stocks, having a twin that's CEO of a bank and having spent 20 years in the banking industry myself, understanding a lot about MOUs and financial processes, I question whether or not the role of loan administration should be a function of DES or whether or not the Legislature, when we talk about, as the Representative said, when we look about the role of agencies for all of these places, not just DES, where we are lending money, shouldn't we be looking at, some would say, maybe the Banking Department to be administrator, a guy like me and others might say, should we be outsourcing the administration of these loans. Because this implies that maybe

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due to someone's fault, maybe due to just honest mistake, but your bailiwick -- this will lead me to believe your bailiwick isn't being a lender. Because if we are misapplying payments and we are charging the wrong rates and we are -- you know, this is the type of stuff that legends were made of in the late '80s in the banking industry, and they weren't necessarily good legends.

Again, I think your heart's in the right place, but I just question is this a role for DES to be a bank and payment administer or should we be looking for some other way to process this? Because, again, I would -- I would think that if, like I said, if this was a community bank with \$600 million, I can guarantee you there would be indictments handed around this stuff.

MR. BURACK: Mr. Chairman, Members of the Committee, Senator Sanborn, thank you for that question. I -- I appreciate the concern and I want to assure you that when I first saw this audit report, I -- I had some very similar concerns because these responsibilities are ones we must take extremely seriously when we are managing any amount of the people's monies. I -- I want to assure you that I have spent many, many hours already looking at this, working with staff on this, and communication with -- with folks from the LBA to fully understand their concerns. We have brought the Attorney General's Office in already to begin looking at this with us. I -- I want to assure you that based on what I have learned so far from the Attorney General's review, I would not concur in your analysis that these are matters on which people would or could be indicted. I simply don't believe that any of this rises anywhere close to that level. I could be wrong about that, but that's -- but that's my view after looking at this closely and spending, as I say, some time in initial consultation with the AG's Office. There's more of that to be done, for sure.

I -- I would be pleased to sit down with you and other Members of the Committee and walk you through in detail the nature of the -- of the issues that have been raised here in which, candidly, we do have some differences of opinion with the

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auditors in terms of the appropriate application of the rules to -- to these -- to these situations.

Having said that, with respect to who can most appropriately administer this program, I -- I hear your concern that maybe DES is not the right agency to do this. I would ask you and all of your colleagues here within the Legislature to give us a chance to do everything we can to get this right to make sure we do, in fact, have the right people on staff doing the right -- the right work, that we have the right review and analysis being done at the right times, and that we have the right policies and procedures in place and, certainly, would welcome any input that you or other members of the Legislature would like to share with us.

I will tell you that what I know of how other states administer this same program is that various states do it in different ways. There are some states that effectively have a separate agency that just administers their revolving funds, and then there are other states that, as with New Hampshire, package all of this so that we can provide really one-stop shopping for the communities. And, certainly, it will be within the prerogative of the Legislature to look at are there other ways that this all could be structured.

I would like to believe that we can most effectively administer this program and at the same time meet all of the concerns raised within this audit by bringing this all together and keeping this all together. But, again, certainly open to thinking about other ways that we can get this done.

I would point out that we do regularly bring in the Business Finance Authority to help us look at loans and underwriting issues so that we have their expertise available to us. And it may be that there's much more of that that we should be doing in order to ensure that we are meeting not just the environmental goals as you've indicated we are clearly doing, but also ensure that we are meeting our fiscal obligations to the highest possible standards.

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SEN. SANBORN: Follow-up. Thank you, Mr. Chair. And, again, for the record, I do not want to imply that anyone has done anything with malice intended. Please be assured I'm not saying any of your staff have specifically gone out and done something wrong. But I'm just concerned about financial management. I mean, look, you know, I could never perform brain surgery. You know, everyone has their skill set.

MR. BURACK: Right.

SEN. SANBORN: Why have you or why haven't you thought, and this kind of goes back into what's the role of the State of becoming essentially a bank that – Mr. Chair, I'll say I didn't hear that – what's the role of the agency, like, why aren't we packaging these and selling them off and reframe up all the cash because I know we've talked, Senator D'Allesandro, I think, been there, we talked about a billion or \$10 billion, a clean water program we could be doing. Why are we making loans and holding onto them? Why aren't we packaging them and selling them which, again, frees up more money to do all types of more program. Granted, you're sitting on \$260 million in cash about to be 210 so you have some lending capacity there. But I just think if this is kind of the programs that we want to be doing, I think there's a lot of things we could do which might necessitate outside processors or maybe the Banking Department that could move you along in your view for cleaner water for every town.

MR. BURACK: Thank you, Senator Sanborn, for that. I believe the answer to that question is going to be that we operate under the limitations that are given to us by the Federal Government under the rules and statutes that guide the State Revolving Fund. I don't believe, but we will research this, to determine whether or not we would have the authority to be able to take the loans and repackage them or secure it in some fashion if that's what you're suggesting. I don't think we would have the legal authority to do that; but we will certainly look into this based upon your question today.

SEN. SANBORN: Thank you, Commissioner.

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MR. BURACK: Any other thoughts you have on ways that we could more effectively leverage these funds to get the best -- the best available return for the people of New Hampshire, we're all for doing that.

SEN. SANBORN: Cool, thank you.

MR. BURACK: Thank you.

SEN. SANBORN: Thank you, Mr. Chairman.

CHAIRMAN KURK: Further discussion? There being none, we thank you all very much. We appreciate it.

We've concluded our business for today. Our next meeting will be on August 5th. Oh, yes, wait. Mr. Smith has an announcement for us.

MR. SMITH: Yes. If I could just take a couple minutes of the Committee's time in recognition to a Division employee, Steve Fox.

REP. BARRY: Here he comes.

MR. SMITH: Dr. Stephen Fox will be retiring from State service at the end of July. And since this is the last Fiscal meeting before he retires, I'd like to indulge the Committee and take a minute to just acknowledge his years of service.

Dr. Fox started with the LBA Audit Division in January 1992 as an Audit Manager. He came to the LBA from the State of Virginia where he served in the Joint Legislative Audit Review Commission as a Senior Associate Legislative Analyst.

In October of 1998, after six and a half years in the Division, Steve was promoted to Performance Audit Supervisor in which he has served admirably for the last 18 years. During his tenure, Steve has shepherded, by my count, in excess of 60 performance audit reports which have been presented to this Committee. Steve has been dedicated to his trade, displayed

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professionalism both with the staff and auditees and represented the Audit Division well.

On a personal note, I've enjoyed working with Steve over the last year and a half, and I'd like to thank him for his assistance and insight provided to me during that time. So Steve, thank you, and congratulations.

DR. STEPHEN FOX, Performance Audit Supervisor, Audit Division, Office of Legislative Budget Assistant: Thank you.

(Applause.)

CHAIRMAN KURK: I'd like to point out for the Committee's benefit and for Steve's benefit that at \$150,000 an audit the man is responsible for \$9 million worth of product.

REP. WEYLER: I'd like to say that, maybe I'm a little odd, but I've always enjoy reading performance audits because they give us a unique insight into the functions of the government. I've enjoyed them all. I read every page. And I thank you very much for all the enlightenment I've received over the years from your work. Thank you very much, Steve, and I wish you well in retirement.

DR. STEPHEN FOX, Performance Audit Supervisor, Audit Division, Office of Legislative Budget Assistant: Thank you, Representative Weyler. Thank you, Members of the Committee. I must say, Mr. Chairman, when I saw you reaching for the calculator I thought maybe you were going to calculate the number of audits we did over 18 years per year. But I would just like to say, again, thank you, primarily to my colleagues in the Audit Division and the Budget Division, and to the various configurations of this Committee through the years that I've been here. I have to say that I've received nothing but support, and it's been a great career, and I thank this body and the people of the State of New Hampshire for the opportunity to serve in this capacity.

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CHAIRMAN KURK: Well, we really appreciate this because one of the advantages of long tenure is that we have benefited from a consistent standard, and in your case a consistently high standard of work, and we can rely on these things and know that it's solid. And so your departure will leave us in a position where we are going to have to figure out whether the quality of the output is comparable, better, or not so good in the future. So your work, as well as your performance edit, will truly be missed so thank you.

DR. FOX: Thank you.

SEN. D'ALLESANDRO: Best of luck in your retirement.

CHAIRMAN KURK: With that, Ladies and Gentlemen --

REP. BARRY: Excuse me. He did say I have to say. Who told you you had to say that? Oh sorry, about that.

REP. EATON: Was Mr. Kane going to make a request at this time or next meeting?

MICHAEL KANE, Legislative Budget, Assistant Office of Legislative Budget Assistant: Next meeting.

CHAIRMAN KURK: We stand adjourned, folks. Thank you.

(The meeting adjourned at 1:23 p.m.)

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CERTIFICATION

I, Cecelia A. Trask, a Licensed Court Reporter-Shorthand, do hereby certify that the foregoing transcript is a true and accurate transcript from my shorthand notes taken on said date to the best of my ability, skill, knowledge and judgment.

Cecelia A. Trask

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