

JOINT LEGISLATIVE FISCAL COMMITTEE

Legislative Office Building, Rooms 210-211

Concord, NH

Friday, September 29, 2017

COMMITTEE MEMBERS:

Rep. Neal Kurk, Chairman

Rep. Ken Weyler

Rep. Lynne Ober

Rep. Cindy Rosenwald

Rep. Dan Eaton

Rep. Karen Umberger (Alt.)

Sen. Gary Daniels

Sen. President Chuck Morse

Sen. Lou D'Allesandro

Sen. Andy Sanborn

Sen. John Reagan

(The meeting convened at 10:07 a.m.)

(1) Acceptance of Minutes of the August 25, 2017 meeting

NEAL KURK, State Representative, Hillsborough County, District #02 and Chairman: Good morning, everyone. I'd like to welcome you to the September 29th, 2017, meeting of the Fiscal Committee. Our first item of business is the minutes of August 25th, 2017.

**** DANIEL EATON, State Representative, Cheshire County, District #03:** Move approval.

CHAIRMAN KURK: Moved by -- approval --

LYNNE OBER, State Representative, Hillsborough County, District #37: Second.

CHAIRMAN KURK: -- is moved by Representative Eaton, seconded by Representative Ober. 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 minutes are approved.

*** {MOTION ADOPTED}

(2) Old Business:

CHAIRMAN KURK: We now turn to item number two, Old Business. Representative Rosenwald is recognized for a motion.

** CINDY ROSENWALD, State Representative, Hillsborough County, District #30: Thank you. Mr. Chairman, I move to take items FIS 17-014 and 140 -- 114 and 140 off the table.

REP. EATON: Second.

CHAIRMAN KURK: The motion by Representative Rosenwald is to remove items -- Fiscal 17-114 and 140 from the table, seconded by Representative Eaton. All those in favor, please indicate by saying aye? Opposed? The ayes have it and the item is now off the table and before us. Senator Daniels.

GARY DANIELS, State Senator, Senate District #11: Thank you, Mr. Chairman. I have some questions for the Department.

CHAIRMAN KURK: Is there someone from the Insurance Department who might be able to answer some questions? Good morning, folks. Would you identify yourselves for the record?

JOHN ELIAS, Assistant Commissioner, Insurance Department: Thank you, Mr. Chairman. My name is John Elias. I'm the Assistant Commissioner with the Insurance Department. And the Commissioner and Deputy Commissioner are sorry they could not make it.

JENNIFER PATTERSON, Insurance Company Examiner V, Insurance Department: Thank you, Mr. Chairman. I'm Jennifer Patterson. I'm the Director of Health Policy and Life, Accident and Health Market Conduct with the Insurance Department.

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CHAIRMAN KURK: I'm not sure your microphone is on. We'll try to make arrangements so that everybody can hear you. It is on. Good.

MR. ELIAS: It is now.

CHAIRMAN KURK: Senator Daniels has some questions.

SEN. DANIELS: Thank you. In the brief exams that you did in March, the results of those there were two areas that came back good, two came back bad, and three you indicated that you did not have enough time to elicit the data that you were looking for to determine compliance or non-compliance.

So I want to tie that together with your request for -- that's before us now to do the more broad examination, and ask you if there are any metrics that you have developed to let us know when the data comes back if there are things in non-compliance, what are you going to do about it. I guess my question, too, on the areas that you have identified as non-compliance on the March, have you done anything to put in legislation that would rectify the situation going forward or just what the plan of action of the Department is? And I'd like to apply all that thought process to the new request as well and ask if the Department could give this Committee metrics to show us, number one, what you're going to do with the data, how it's going to be treated, if there's non-compliance how that's going to be addressed, are you going to resolve problems?

And, thirdly, I would also ask that there be no examinations of companies that you're not going to have time enough to get the data that you need, because I see that as just kind of wasting the money that's before us, whether it's Federal or State, Federal in this case. So just ask for a little bit of preplanning on that to determine what companies you're going to look for and what the metrics are going to be for what the results you get back. And I'd like to put that as a conditional -- conditional on approving your request. Is that something you'd be able to bring back to us, say, at the next meeting?

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MS. PATTERSON: Yes, thank you, Senator Daniels. We'd be happy to come back at the next meeting with metrics. And just in brief, you know, market conduct exams are a process that are used by all insurance regulators whereby we ask for specific data from the company. They are obligated by law to provide it. We then look at it to determine whether they are treating consumers in accordance with the law.

The issue with our first round of exams and really one of the biggest issues as you've mentioned was that one of the carriers did not timely respond, which is a significant problem when we are conducting market conduct examinations. And so part of the reason for the second round of examinations is to make sure that when we look at these issues we do get that information from the company in a timely fashion so that we can fully analyze it.

So we agree and recognize that that is a critical important piece of this. So I think we'd come back -- we can talk in more detail about the needs for these exams; but, again, as you identified, Senator, at the time that we released the results of this first round of examinations there were clearly some areas that needed further follow-up, including looking more broadly at the carrier's compliance with parity requirements for all behavioral health services, not just SUD treatment services, which was the focus of the first round of exams. And then also looking at their compliance with some of the State laws that had passed more recently, and looking at more recent time frames because each exam does look at how carriers treat people in the marketplace during a specific time frame.

The first exams were for 2015. We need to look at the time period for 2016 and also at additional carriers. So that is a big piece of why it's important for us to conduct these additional rounds of exams.

CHAIRMAN KURK: Thank you. Will you make sure that you keep in touch with Senator Daniels during the interim to get the metrics and so forth?

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MS. PATTERSON: Yes, thank you, Mr. Chairman. We'd be happy to work with Senator Daniels on that.

CHAIRMAN KURK: Senator Daniels moves that the item be returned to the table, seconded by Representative Rosenwald. You ready for the question? All those in favor, please indicate by saying aye? Opposed? The ayes have it and the item is tabled again.

***** {MOTION TO RE-TABLE ADOPTED}**

CHAIRMAN KURK: We turn now to 17-129, a request from the Department of Safety -- thank you, folks.

MR. ELIAS: Thank you.

CHAIRMAN KURK: For authorization to retroactively accept and expend -- I'm sorry, take that back. Is there anyone who wishes to remove any other items from the table?

****** REP. EATON: Move to remove.

CHAIRMAN KURK: Representative Eaton moves that we remove --

REP. ROSENWALD: Second.

CHAIRMAN KURK: Seconded by Representative Rosenwald.

REP. OBER: What is the motion?

CHAIRMAN KURK: To remove from the table.

REP. OBER: What?

CHAIRMAN KURK: 17-129 from the Department of Safety, a request to retroactively accept and expend \$221,747, et cetera. Everybody clear on the motion?

REP. OBER: Yes, thank you, Mr. Chairman.

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CHAIRMAN KURK: All those in favor, please indicate by saying aye? Opposed? The ayes have it and the item is before us.

*** {**MOTION TO REMOVE THE ITEM FROM THE TABLE ADOPTED**}

CHAIRMAN KURK: Representative Eaton.

REP. EATON: Could someone from the Department re-brief us on where they're at and what the issues are?

CHAIRMAN KURK: Is there someone here from the Department of Safety?

STEVEN LAVOIE, Director, Division of Administration, Department of Safety: Good morning.

CHAIRMAN KURK: Good morning, Mr. Lavoie.

MR. LAVOIE: For the record, Steven Lavoie, Director of Administration for the Department of Safety. And with me is Mike Todd. He's our Public Information Officer for the Department.

CHAIRMAN KURK: Thank you both for being here and for your willingness to answer questions. Representative Eaton.

REP. EATON: Mr. Lavoie, these are the Federal funds that are used for ad campaigns for don't drive drunk, click your seat belt, that sort of thing?

MR. LAVOIE: Correct. So these are -- these are advertising campaigns related to Office of Highway Safety messaging, including driving while intoxicated messages; and they're a component of the Highway Safety Plan and campaign. We have management reviews from the Federal Highway Safety Agency, from NHTSA, and one of the areas of concern that they had was related to the lack of media and publicity with our existing Highway Safety plans. This media campaign is intended to address that.

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REP. EATON: And follow-up.

CHAIRMAN KURK: Follow-up.

REP. EATON: It's my understanding that the reason you're here is this contract goes out well in advance for an extended period. You had approval and then that part of the approval ran out. There's remainder funds, ad campaigns continued, even though there's a part of the contract that says they won't be paid if funds are not available. So that's the scenario we're at this moment, why you're back?

MR. LAVOIE: That's correct.

REP. EATON: And one follow-up is, since I think there's somewhat unanimity of folks here that New Hampshire has one of the best records on seat belt usage, any chance we can convert those funds into a campaign to train people to keep right except to pass on double lane highways?

MR. LAVOIE: That could be considered as part of a Highway Safety messaging campaign.

** REP. EATON: With that, Mr. Chairman, I move ought to pass.

CHAIRMAN KURK: Is there a second?

LOU D'ALLESANDRO, State Senator, Senate District #20:
Second.

CHAIRMAN KURK: Second by Senator D'Allesandro. Further question? Senator Sanborn.

ANDY SANBORN, State Senator, Senate District #09: Thank you, Mr. Chair. Thank you for coming in. Is this also part of the orange signs that are poking around when you talk about how the Department's messaging safety? You see those little sack orange signs that are poking around southern New Hampshire. Are you using these funds for that or is that different funds?

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REP. EATON: It's DOT.

MR. LAVOIE: I don't believe those are Department of Safety signs. I think those are from the Department of Transportation.

SEN. SANBORN: Okay, thank you very much.

MR. LAVOIE: Yes.

CHAIRMAN KURK: Mr. Lavoie, is there any evidence that this advertising campaign works?

MR. LAVOIE: We do have evidence from the Federal agencies, statistical evidence that media campaigns combined with enforcement work. I don't have evidence that this specific campaign works. We don't have that type of data. But there is data that -- that proves that a combination of enforcement based messaging combined with actual highway related enforcement does have an impact on behavior.

CHAIRMAN KURK: Thank you. Further questions? There being none, are you ready for the question? The motion before us is to approve Fiscal 17-129. If you're in favor of that motion, please now indicate by saying aye? Opposed?

SEN. SANBORN: Opposed.

CHAIRMAN KURK: The ayes have it and the item is approved. Thank you, gentlemen.

***** {MOTION ADOPTED}**

CHAIRMAN KURK: Does anyone else -- does anyone wish to remove the remaining item from the table? This is Fiscal 17-138, Health and Human Services, \$178,865.

****** REP. ROSENWALD: Move --

CHAIRMAN KURK: Representative Rosenwald.

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REP. ROSENWALD: Yes.

REP. EATON: Moves to remove, I'll second.

CHAIRMAN KURK: Representative Rosenwald moves to remove this item from the table, seconded by Representative Eaton. If you're in favor of removing this item from the table, please now indicate by saying aye? Opposed?

SEN. SANBORN: Opposed.

CHAIRMAN KURK: The item is removed. The vote was positive.

***** {MOTION TO REMOVE THE ITEM FROM THE TABLE ADOPTED}**

CHAIRMAN KURK: Is there someone from the Department of Health and Human Services who can address this issue? Ah, Mr. Serafin.

BRADY SERAFIN, Director, Sununu Youth Services Center, Department of Health and Human Services: Good morning. Brady Serafin, Director of Sununu Services Center.

SHERI ROCKBURN, Chief Financial Officer, Department of Health and Human Services: And Sheri Rockburn, Chief Financial Officer.

CHAIRMAN KURK: Good morning to you both and thank you for being here. My understanding is that this money has already -- excuse me -- that the services have already been provided because this was for summer school 2000 -- for the summer of 2017; is that correct?

MR. SERAFIN: That is correct.

CHAIRMAN KURK: I see. And if the item is not approved, the money for this will come out of the Department's budget for the Sununu Center: Is that correct?

MR. SERAFIN: That is correct.

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CHAIRMAN KURK: And this money is Federal?

MR. SERAFIN: It is.

CHAIRMAN KURK: Thank you. Questions? Discussion? Is there a motion? The motion was to take it off the table. Representative Rosenwald moves approval of the item, seconded by Senator D'Allesandro. 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 passes. Thank you both.

MS. ROCKBURN: Thank you.

MR. SERAFIN: Thank you.

*** {MOTION ADOPTED}

- (3) RSA 9:16-c, I, Transfer of Federal Grant Funds and RSA 14:30a, VI Fiscal Committee Approval Required For Acceptance and Expenditure of Funds Over \$100,000 From any Non-State Source:

CHAIRMAN KURK: We now move to the Consent Calendar under item number three. The first one is Fiscal 17-151, a request from the Department of Education. Well, let me step back.

REP. OBER: Do we want --

CHAIRMAN KURK: These need to be reviewed separately. There are questions about each of them. So there being no Consent Calendar, we will go to item number 17-151 first. This is a request from the Department of Education for authorization to transfer 10,000 in Federal funds in and among the accounting units through June 30th, 2019, and accept and expend \$2,179,841 in Federal funds through June 30th, 2019. Is there someone from the Department who can answer questions? Commissioner, good morning.

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FRANK EDELBLUT, Commissioner, Department of Education: How are you? For the record, Frank Edelblut, Commissioner of Education. And --

TAMMY VAILLANCOURT, Chief Financial Officer, Department of Education: Tammy Vaillancourt, Chief Financial Officer.

CHAIRMAN KURK: Thank you both for being here. Question. Does this work and what evidence do you have?

MR. EDELBLUT: Actually, so what these -- so what these funds are are left over SIG Grants. So what that means is there was a Federal program that is not carrying forward under ESSA. So the grants were extended to us to be able to use and deploy in non-performing schools, schools in need of improvement. Those grants were made. Not all of the grant funds were spent by the schools that those grant funds were given to. And so these are kind of left over funds in there, and we are -- basically, we've gone through our grant funds and seen who's consumed the grants that they have been given and who hasn't. And so we have gathered all those back up, and we are trying to then receive those funds back into our accounting record so that we can push those back out to the schools to be able to use.

In terms of whether or not the funds are effective in terms of the nature of the deployment of the funds, there was a Federal study that pointed out that total Federal grant was about \$7 billion, and the Federal study indicated that there was little improvement in the schools that received those grants. In the details of the report, you'll see that New Hampshire schools performed better in terms of the improvement outcomes than nationally, but not significant amounts of improvement.

We have seen -- today we have 16 schools that are under SIG Grant status, which basically means a school in need of improvement. You know, that number has come down. We had 21 the prior year. We've got 16 this year. We're finalizing the results for this year and looks like we'll probably have 11. So what I would say is that schools are coming off of this in need of improvement status. Whether or not there is correlation between

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the spending of these grant funds that is directly attributed to that or not, I can't tell you the answer to that.

CHAIRMAN KURK: Thank you. So the Federal Government, in effect, is cancelling a program which was ineffective.

MR. EDELBLUT: The Federal Government is cancelling this program.

CHAIRMAN KURK: Thank you.

REP. EATON: Well done.

REP. OBER: That was a polite way to do that.

KENNETH WEYLER, State Representative, Rockingham County, District #13: It's amazing.

CHAIRMAN KURK: Further questions. Senator D'Allesandro.

SEN. D'ALLESANDRO: Thank you, Mr. Chairman. When you locate a school that needs improvement and give them a grant, there is a period of time it takes to get that school moving from one -- from one particular position to another. I have a school in my district which was on the list, the Parker-Varney School, the Parker-Varney Elementary School. It went from the school that needed improvement to the best grammar school in the state. So it did show significant -- significant results. And it's a school that has a significant diversity in its population, an ever-changing population.

In Manchester most of the youngsters that are in the grammar schools, the K through five, they're not in the same school in June that they were in September, because there's a 30% movement. So to improve a school does take a period of time. And I would -- I would think that the real test of the spending of these dollars is to look at what's happened over a period of time, it's got to be maybe a three-year period, and to see what has actually happened within that environment. It's a very, very difficult situation. You've got tremendous diversity now,

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particularly in these centers that movement that takes place, you know, by what's happened in the family situations puts the schools in a very, very difficult situation; but some of them have been improving. And I think that's the important thing, they have been improving.

MR. EDELBLUT: Yes, so you're absolutely right that it takes time to make the improvement. These grants when they're given are, in fact, three-year grants. So the residual left over is a residual of a long-term program that has been taking place. Parker-Varney is one of our SIG schools this year, but we anticipate that they will be off that list for next year because of the good work that Amy Allen, the principal there, has done in terms of trying to personalize educational opportunities for her students.

CHAIRMAN KURK: Further questions. Representative Weyler moves the item be approved. Is there a second?

REP. OBER: Second.

SEN. D'ALLESANDRO: Second.

CHAIRMAN KURK: Seconded by Senator D'Allesandro. I'm sorry, seconded by Representative Ober. 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: We now turn to Fiscal 17-160, another request by the Department of Education for authorization to transfer \$184,028 in Federal funds in and among accounting units through the end of this Fiscal Year and accept and expend \$385,466 in Federal funds through December 31st, 2018. Question for the Commissioner. Again, does this work?

REP. EDELBLUT: So this is the same circumstance in that this is a program that the Federal Government has ended the math-science partnership and what we have done is gone

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through -- we've made grants in the past under this program. In all cases the funds have not been expended by the grantees, and so that we are collecting, you know, if they don't spend it in a grant period then it comes back to us. So we are basically saying what do we have left in this program and how would we grant that funding back out to somebody in a way that, hopefully, will get results; but, again, it's not an ongoing type of a program. This would be kind of a last shot.

I will tell you in the particular grant here where we are dealing with the math partnership, these grants have some fairly narrow parameters from the Federal Government in terms of how they are used. They are principally designed to create programs for teacher professional development. And we -- the last of this funding is going to shift in terms of where it goes. Historically, has been given to one vendor. This year it's going to another vendor. As I read through the different proposals, the second proposal seemed to be one that had a different approach to try to engage the educators in a way that would potentially be more effective. But basically, though, this is the end of this program at this point in time.

CHAIRMAN KURK: Was it effective?

MR. EDELBLUT: The Federal Government has cancelled the program at this point in time.

CHAIRMAN KURK: Was it effective?

MR. EDLEBLUT: I think they've concluded that it was not.

CHAIRMAN KURK: But you're optimistic that with this second or additional other vendor that you're willing to give it a shot with Federal dollars that this will be effective.

REP. EDELBLUT: So we are taking a different approach in terms of the way that we engage it. So, for example, the previous approach was, you know, had a lot of Committee work. So one of the philosophies that I'm using as we try and push these funds out is to make sure that they get as close to the intended

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purpose of the grant as possible. You know, that there's not a lot of administration that takes place between, you know, us and the ultimate activity that's taking place. So we have increased the professional development for the educators by changing vendors from three days of professional development to ten days of professional development. So, if nothing else, they're going to get a lot more education in that process and, in theory, then that would translate into better outcomes and better teaching experiences in their classrooms.

CHAIRMAN KURK: Thank you. Is there a motion? Representative Weyler moves approval of the item. Seconded by?

REP. OBER: Second.

CHAIRMAN KURK: Representative Ober. Any other questions? There being none, are you ready for the question? All those in favor, please indicate by saying aye? Opposed? The ayes have it. The item is approved. Thank you, Commissioner.

*** {MOTION 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:**

CHAIRMAN KURK: We turn now to Consent Calendar under item number four. There are two items, Fiscal 17-152 and Fiscal 17-156. These are both requests from the Department of Health and Human Services. Is there someone who wishes to move the Consent Calendar under item number four?

** SEN. D'ALLESANDRO: So move.

CHAIRMAN KURK: Moved by Senator D'Allesandro.

REP. OBER: Second.

CHAIRMAN KURK: Seconded by Representative Ober. Are there questions? There being none, are you ready for the question?

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All those in favor of the motion, please indicate by saying aye? Opposed? The ayes have it. The item is approved and that includes both Fiscal 17-152 and Fiscal 17-156.

*** {MOTION ADOPTED}

(5) RSA 124:15 Positions Authorized:

CHAIRMAN KURK: Item number five on the agenda is the Consent Calendar under positions authorized. There are three items, Fiscal 17-149, 155, and 158. They're all requests from the Department of Safety. Is there a motion to accept the Consent Calendar? So moved by Representative Rosenwald. Seconded by?

SEN. D'ALLESANDRO: (Raised his hand.)

REP. OBER: Second.

CHAIRMAN KURK: 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 items are approved.

*** {MOTION ADOPTED}

(6) 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:

CHAIRMAN KURK: We turn now to item six on the agenda. There are two items here. There are questions on the second one so we'll take up each separately.

The first one is Fiscal 17-153, request from the Department of Environmental Services for authorization to retroactively extend one temporary full-time Environmentalist III position from June 30th, 2017, through March 31, 2018, and to accept and

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expend \$245,244 -- 224 in Federal fund from June 30th, '17 to March 30th, '18.

** REP. OBER: Move to approve.

CHAIRMAN KURK: Representative Ober moves to approve.
Seconded by?

SEN. D'ALLESANDRO: Second.

CHAIRMAN KURK: Senator D'Allesandro. Are there questions? Questions? 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: Turn now to Fiscal 17-154, request from the Department of Safety for authorization to budget and expend \$302,055 in Other Funds from June 30th, 2018, and contingent upon approval of that to establish one temporary part-time Field Representative II position through June 30th, 2018.

** REP. EATON: Move approval.

CHAIRMAN KURK: Representative Eaton moves approval.
Seconded by?

REP. EATON: Senator D'Allesandro.

CHAIRMAN KURK: Senator D'Allesandro. Thank you for reminding him. Is there someone here from the Department of Safety who could answer a question?

MR. LAVOIE: Good morning again. Steve Lavoie, Director of Administration for the Department of Safety.

MICHAEL TODD, Public Information Officer, Department of Safety: Michael Todd, Public Information Officer with the Department of Safety.

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CHAIRMAN KURK: Thank you both again. The question is that there seems -- the item seems to indicate that this is required by an audit and yet it's a position. Did the audit require the position?

MR. LAVOIE: No. The audit does not require the position. What this item is doing is establishing -- requesting to establish a part-time position to assist the Division in addressing the audit findings.

CHAIRMAN KURK: Because existing personnel are otherwise occupied and cannot do that; is that correct?

MR. LAVOIE: Correct. We have additional personnel or the current personnel are focused on their day-to-day activities. They need to be involved in the process and help to address these components. But to ensure that we address the audit findings timely and effectively, we need additional resources.

CHAIRMAN KURK: And this person -- and this position will be eliminated once the activity of addressing the audit findings has been completed; is that correct?

MR. LAVOIE: That's correct. It's a temporary part-time position for this purpose.

CHAIRMAN KURK: And will not be morphed into some other position subsequently?

MR. LAVOIE: There's no intention of it to be morphed into a different position at this point in time.

CHAIRMAN KURK: Thank you. Senator Daniels.

SEN. DANIELS: Thank you. Since I'm assuming that the deficiencies that were found in the audit report were deficiencies that were based on day-to-day workings and something that was done wrong, why would it not be the responsibility of the existing supervisors to take care of those

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efficiencies and make sure things are done right as opposed to creating another part-time position to do that?

MR. LAVOIE: That's a good point. It is the responsibility of the supervisors in those respective areas wherever the comment might be. The concern that we have is the supervisors already are tasked with their day-to-day activities. They don't really have the capacity to necessarily address every finding and build the processes necessary to prevent them from reoccurring without impacting their work. So this position would be working closely with those -- those leads within those sections to address each one of these comments, and also act as a -- as an overall -- I almost want to say a project manager. Someone who's responsible for making sure these are being addressed across the Division itself. It's not just in one area.

SEN. DANIELS: Follow-up.

CHAIRMAN KURK: Follow-up.

SEN. DANIELS: So you're saying that the existing managers do not have the time to make sure that those that they are supervising are compliant and that we need to get another person to do that. And when that person disappears, who's to say that things aren't going to fall back into non-compliance because the managers won't have time to manage it?

MR. LAVOIE: So the issues with non-compliance have to do with the current process. If we have a situation where we are not in compliance with something, that's an indication that the current process isn't functioning as we had originally intended. This part-timer would help us and help those supervisors to develop the new process and implement that new process to then be compliant. There's a lot of time that's required in -- in analyzing the existing process, even finding out where those weaknesses are that will address the compliance issues that are noted. And that's the role of this position is to provide that extra -- that extra time. Once the process is established, once the new process is created, then this position's no longer necessary. The supervisors can be operating within that new

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process training their employees on how that new process should work, and the end result is we have stronger controls over our compliance areas.

CHAIRMAN KURK: Representative Weyler.

REP. WEYLER: Thank you, Mr. Chairman. If Vermont Yankee is no longer producing power, where's the money coming from that says Vermont Yankee?

MR. LAVOIE: So Vermont Yankee is no longer producing power but the plant is not fully decommissioned. So the process of decommissioning is going to happen over the next 20, 30 plus years. The Vermont Yankee is still providing some level of support to the State of New Hampshire because there are still risks associated with that facility until it's fully decommissioned.

REP. WEYLER: So follow-up.

CHAIRMAN KURK: Follow-up.

REP. WEYLER: These are decommissioning funds basically the money that's coming into this?

MR. LAVOIE: These are -- these are nuclear program assessment funds for which Vermont Yankee had been paying the State of New Hampshire all along. They have been reduced significantly over the last several years because the plant has shut down, but they're still related to the nuclear planning assessment.

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

CHAIRMAN KURK: So if it turns out over the next 20 to 30 years that there's not enough money in the decommissioning fund to pay the cost of decommissioning, we now have less money in the assessment fund which might be used to supplement the lack of funds in my hypothesis and now you're using those for other purposes? Are you comfortable that there will be enough

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money to decommission this without assessing rate payers in the future?

MR. LAVOIE: Well, this is -- this is the Vermont -- Vermont Yankee plant.

CHAIRMAN KURK: Yeah.

MR. LAVOIE: I guess I'm confused as to the question about assessing rate payers.

CHAIRMAN KURK: I thought that -- it was my understanding that New Hampshire rate payers through Vermont Yankee had been putting money into this fund, and we were responsible along with Vermont and the other New England states for decommissioning. That's not the case my question is incorrect.

MR. LAVOIE: I don't know. I'd have to get back to you on that. I'm not familiar with that, the specifics of that arrangement.

CHAIRMAN KURK: Representative Eaton.

REP. EATON: Mr. Lavoie, isn't it correct that there is an annual stipend that is scheduled over the next 20 years to the State of New Hampshire to cover mitigation costs related to Vermont Yankee that have nothing to do with rate payers or a pool, it is a scheduled declining stipend?

MR. LAVOIE: Correct, as part of the nuclear program assessment fund. Yes.

CHAIRMAN KURK: Thank you for helping me out.

REP. EATON: Trying to get there.

CHAIRMAN KURK: Senator Sanborn.

SEN. SANBORN: Thank you, Mr. Chair. Guys, thanks. I appreciate it. I don't recall ever seeing people come to Fiscal

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to hire a part-time or full-time staff to comply with deficiencies of an audit before. Does this happen often and how often has it happened? I've never seen anything come in so I may have just missed it.

CHAIRMAN KURK: Perhaps Mr. Kane would be better able to answer that question.

MICHAEL KANE, Legislative Budget Assistant, Office of Legislative Budget Assistant: Yeah, it's not -- well, the agencies, they have an option. They have to address the audit findings so they can do it with existing staff if they have it. They could come through the Legislature for legislation to look for additional positions or procedures that will help them out. This is an option that Safety has available funds where they're able to do that. I can't say it happens regularly, but it is a viable option for them to address it with existing funds that they have available.

SEN. SANBORN: Thank you. Thank you, guys.

CHAIRMAN KURK: Mr. Kane, perhaps you could answer the concern that I raised before. If there are insufficient funds to decommission the plant, would these funds if we don't spend it for this purpose be available for that? Does the State have an obligation? Do the rate payers have the obligation?

MR. KANE: There's a separate decommissioning fund. Now Vermont Yankee will have their decommissioning fund. The State has a nuclear decommissioning fund which is totally separate from here which is more of a Homeland Security Emergency Management type of they're taking actions to protect against any issues. Totally separate from the decommissioning funds that you're talking about, which are the funds necessary to actually decommission the plant. This fund wouldn't be tapped to take care of that.

CHAIRMAN KURK: Thank you. Do we have a motion?

REP. OBER: Yes, we have a motion.

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CHAIRMAN KURK: Question before us is the approval of Fiscal 17-154. Further questions or discussion? There being none, are you ready for the question? All those in favor of approval of item 17-154, please now indicate by saying aye? Opposed?

SEN. SANBORN: Opposed.

SEN. REAGAN: Opposed.

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

*** {MOTION ADOPTED}

(7) RSA 363:28, III, Office of the Consumer Advocate:

CHAIRMAN KURK: We turn now to item number seven on the agenda, Fiscal 17-157, request from the Office of Consumer Advocate for authorization to enter into a contract with Optimal Energy of Hinesburg, Vermont, in an amount not to exceed \$150,000 through June 30th, 2019. Is there a motion?

** REP. OBER: Move to approve.

CHAIRMAN KURK: Representative Ober moves approval.

REP. ROSENWALD: Second.

CHAIRMAN KURK: Seconded by Representative Rosenwald. 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}

(8) Chapter 156:183, Laws of 2017, Department of Health And Human Services; Unfunded Positions; Authorization:

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CHAIRMAN KURK: We turn now to item number eight, Fiscal 17-161, a request from the Department of Health and Human Services for authorization to fill ten unfunded positions effective upon Fiscal Committee approval through June 30th, 2019.

** REP. OBER: Move to approve.

CHAIRMAN KURK: Representative Ober moves to approve, seconded by?

SEN. REAGAN: Second.

CHAIRMAN KURK: Senator Reagan. Questions or discussion?

REP. ROSENWALD: Question.

CHAIRMAN KURK: Representative Rosenwald. Is there someone from Health and Human Services?

LORI SHIBINETTE, Deputy Commissioner, Department of Health and Human Services: Good morning. Lori Shibinette, Deputy Commissioner of Health and Human Services.

MS. ROCKBURN: Sheri Rockburn, Chief Financial Officer.

CHAIRMAN KURK: Good morning. Representative Rosenwald.

REP. ROSENWALD: Thank you, Mr. Chairman. I remember from the budget that we had identified basically a \$13.4 million shortfall from the MET revenue in the Department's budget. And since your financials are not on the Dashboard, I'm just wondering how filling these vacant positions will affect the rest of the Department's operations? Are you taking that into account?

MS. SHIBINETTE: So part of what we're doing is we are -- we are unfunding an additional ten positions to fund the ones we've listed.

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CHAIRMAN KURK: The question is -- the assertion is that there's a \$13 million deficit. The question is if you don't do this, won't you be making a step toward eliminating that deficit? If you do do this, you won't be making that step and the question is how are you going to deal with the deficit?

MS. SHIBINETTE: I can answer the first part. I'm going to let Sheri answer the second part. The total unfunded positions is going to be ten whether this gets approved or not. It's just whether we're getting the needs met within the Department.

CHAIRMAN KURK: I think we understand that.

MS. SHIBINETTE: Okay. I'm going to let Sheri answer next.

REP. ROSENWALD: Thank you.

MS. ROCKBURN: As far as the MET shortfall, I haven't been actively involved in that lately so I'd have to go back. Unfortunately, I don't have the information for you today is to see where that stands. I know that there was some concerns last year in terms of whether or not the Federal rule was still going to be upheld or appealed. So I kind of need to look into that a little bit more because I'm not sure where that is.

CHAIRMAN KURK: I think this deals with the other question. Because the MET revenue was below the floor, the rate went down from 5.4 to 5.25. Apparently, when we did the budget, we calculated it at five -- at the incorrect rate.

REP. ROSENWALD: Right.

MS. ROCKBURN: Correct; but what I'm saying is I think that's still being looked at to see if it would definitively drop to the 5.2 or would stay at the 5.4. So I'd have to go back and look at that. But in order to answer Representative Rosenwald's question by not filling these would that help offset it, and I think it's a net zero for that. I don't think these ten positions, whether we filled them or not, would impact the ability to work towards that MET issue.

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REP. ROSENWALD: Just one more.

CHAIRMAN KURK: Representative Rosenwald, follow-up.

REP. ROSENWALD: So if we're still looking at the MET, the Uncompensated Care, which I understood you to say if it doesn't drop, then we've under appropriated Uncompensated Care payments by something like, I don't know, a lot of money; millions. So I guess we still have to keep in mind that the Department's setting out with a structural deficit, either on the revenue or on the appropriation.

MS. ROCKBURN: I can look more into that. I wasn't ready for that this morning but you're correct. It either there's a revenue side to this or an expenditure, and so I'd have to look to see where that's falling.

REP. ROSENWALD: Thank you.

CHAIRMAN KURK: When you look, would you share the results with the Fiscal Committee?

MS. ROCKBURN: Sure, absolutely.

CHAIRMAN KURK: Thank you.

REP. ROSENWALD: Thank you.

CHAIRMAN KURK: Further questions or discussion? There being none, are you ready for the question? The motion is to approve 17-161. If you're in favor of that, please now indicate by saying aye? Opposed? The ayes have it and the item is approved.

*** {MOTION ADOPTED}

(9) Miscellaneous:

(10) Informational Materials:

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CHAIRMAN KURK: Representative Rosenwald -- ladies, please don't leave. Representative Rosenwald has a question about the Dashboard which was submitted as a late item. Representative Rosenwald.

REP. ROSENWALD: Thank you. I had two questions actually, if I could. The first are when is the Department planning on giving us the financial overview table?

MS. ROCKBURN: I'd have to defer. The Commissioner wasn't able to be here today. I have to work with him to find out what the status is on that.

CHAIRMAN MORSE: Follow-up?

REP. ROSENWALD: Okay.

CHAIRMAN KURK: Senator Morse.

SEN. PRESIDENT MORSE: I'd just like to follow-up on that because we are very good at putting statements in about future appropriations; but underneath the chart here it's suggesting the first quarter on the Medicaid Program we've overspent. Can we at least get that number from the Department to see what it equates to? And while you're doing that, which I believe the Senate's going to send you a document, but Page 3 there's a whole bunch of things that hasn't happened yet. We don't seem to get a number for what we haven't spent that was appropriated in the budget. I would guess there's some kind of offset. But we -- I think it's the comments in here that we're going to make future appropriations because of shortfalls. We did that in the last budget. I don't support that. And I think we have to start living within our means. And we're not seeing a financial with this table. We're just seeing a suggestion that the 2% is not working. If it's not working, we should make adjustments while we just got through a quarter, not when we get through half, three-quarters or all the way there. So that's the comment along with a question.

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SEN. SANBORN: Would you believe?

SEN. PRESIDENT MORSE: Would you believe?

CHAIRMAN KURK: I think your message was heard. Senator Daniels.

SEN. DANIELS: Thank you. On Page 4 of the mobile crisis teams and the designated receiving facility beds, both of those have notations that the time periods have been extended three times in one case, yet no applications were received. I'd like to know what kind of analysis is done when you make a request for money for an additional mobile crisis team, what kind of an analysis is done to say the resources are out there that are willing to be able to do this? I mean, it's really kind of staggering that we've put out bids three times and received nothing.

MS. SHIBINETTE: I know that Commissioner Meyers has been actively meeting with the Community Mental Health Centers and the providers in the community to find out what their obstacles are. And he's actively working with them to identify ways to help them overcome those obstacles so that they are able to bid on these programs.

SEN DANIELS: Follow-up.

CHAIRMAN KURK: Follow-up.

SEN. DANIELS: Can you give any example what obstacles may exist?

MS. SHIBINETTE: Some of it is finding viable housing to put transitional beds in. Some of it is having space within a hospital system. Some of it is the rate that we pay our DRFs. All of these topics have been talked about and really analyzed on how we can make this type of program and the proposal more attractive to our partners in the community so that they can bid.

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SEN. DANIELS: Thank you.

MS. SHIBINETTE: You're welcome.

REP. OBER: Mr. Chairman.

CHAIRMAN KURK: Senator D'Allesandro, then Representative Rosenwald.

SEN. D'ALLESANDRO: Thank you, Mr. Chairman. You say in the second -- in the second sentence that you've adjusted the RFP. So you've made changes in the RFP to add flexibility. Is it your perception that these changes were desperately needed? I mean, you don't get any replies through an RFP that's a dangerous situation. So in terms of developing the new RFP, could you bring to our attention the flexibility that's in the new RFP that creates a perception that you're going to get a positive response to this situation?

MS. SHIBINETTE: Some of -- some of those things had to do with input from providers on why they could not bid on an RFP. Some of it was time frame in the amount of time it took to prepare the RFP. So both of those areas impact the bidders' ability to come forward. So the Department kind of thought -- we really honed in on we needed to be flexible because we want innovative programs in the state. And that's what we're trying to do by reposting these RFPs and being more flexible to get the good ideas coming in the door.

SEN. D'ALLESANDRO: Further.

CHAIRMAN KURK: Follow-up.

SEN. D'ALLESANDRO: Is there a time frame established for the response?

MS. SHIBINETTE: There are time frames. I don't have them with me, but there are time frames established, yes.

SEN. D'ALLESANDRO: Thank you.

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CHAIRMAN KURK: Representative Rosenwald.

REP. ROSENWALD: Thank you, Mr. Chairman. On Table 10 – and I'm sorry, I don't have the page numbers – which is the Developmental Disability Wait List, I see that we currently two months into the year have 158 people on a -- on the DD Wait List. Could you explain why that is?

MS. SHIBINETTE: I have Chris Santaniello here who is responsible for the Wait List so I'm going to ask her to come up and answer that question.

REP. ROSENWALD: Thank you.

CHAIRMAN KURK: Good morning. Thank you for being here. Could you identify yourself for the record?

CHRISTINE SANTANIELLO, Department of Health and Human Services: Sure. I'm Chris Santaniello from the Department of Health and Human Services. Thank you for having me. Yes, Representative Rosenwald, we still have 158 people on the waiting list. At the end of last Fiscal Year, we had 227 people waiting for services. We -- with the funding that was allocated to the Department to serve individuals with developmental disabilities, we anticipated that we could serve 257 people in Fiscal Year 18 and continue their services into Fiscal Year 19.

As of today, the Area Agencies have reported that they've allocated funding to 295 people. So we've been really working hard with them to maximize the dollars that we have to serve as many people as possible.

Also, at the start of the Fiscal Year I was able to use some vacancy dollars from last Fiscal Year for people that left our service delivery system and serve an additional 20 people who were in crisis. And at the end of last Fiscal Year we were able to use some one-time crisis money just to kind of carry them over. And so that helped us serve more people.

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Right now we have collected information from all of the Area Agencies and the number -- I'm still scrubbing some of the data to be honest with you. I actually gave them until the end of the day today to give us some information and we are going back and forth; and I've asked them, okay, of those that are on the waiting list today, because we don't have the resources to allocate it to them, what would be the cost to minimally serve people to just get them by and what would it take? And so we're finalizing those numbers to really understand. We're not talking about wants, what is absolutely needed.

Also, at the same time, when we gave money out this year, we took a different approach. And we really -- we looked at all of the students and people newly eligible, those are the A's and B's, as to what is the dollar amount to serve those people. And that's how we based the allocation to the Area Agencies. We didn't take everybody waiting. We didn't take some performance measures. We just looked at the A's and B's and then we actually gave the expectation that you need to target A's, the students and newly eligible first, unless there's somebody who is already receiving services but has life safety needs. Because we couldn't discount the life safety needs, and we asked agencies to prioritize that way.

We're also working with the agencies to start conducting utilization reviews, which isn't popular among some of the service recipients, but really looking at does somebody still need the same level of service and can we decrease here to help over here. So we're working on all of those strategies.

REP. ROSENWALD: One follow-up, please.

CHAIRMAN KURK: Follow-up.

REP. ROSENWALD: How are you doing with workforce?

MS. SANTANIELLO: That's a challenge to be perfectly honest. I don't have the numbers right off my head. I actually have them in my office. But I want to say the turnover in vacancy rate is significant among the private providers and the Area Agencies.

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It's probably at about 20%. And so that's significantly impacting their ability. But it hasn't so far, I want to be honest, impacted taking the students off the waiting list, so.

REP. ROSENWALD: Thank you.

MS. SANTANIELLO: And we haven't added any students since July.

CHAIRMAN KURK: Representative Ober.

REP. OBER: Thank you, Mr. Chairman. I was actually going to e-mail the Assistant Commissioner, but since Representative Rosenwald opened the door. Would it be possible -- this is not actually a Fiscal item, but I would like to understand the process better. So would it be possible for you to get some information to Mr. Kane that he could share with all of us. And I really appreciate having broken this out into A's, B's, and C's because I see we have 16 people waiting for services who have transitioned from schools into being adult meaning they've turned 21, and we have 30 newly eligible people who are waiting to get services. So that's two populations not getting any services.

MS. SANTANIELLO: Hm-hum.

REP. OBER: Then I also see we have 112 people who are getting services but who have now requested something additional.

MS. SANTANIELLO: Yep.

REP. OBER: And my question was what I'd like to understand, and I know it's going to be different for all three, so rather than draw out Fiscal because I know this isn't a Fiscal question --

MS. SANTANIELLO: Yeah.

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REP. OBER: -- I'd like to understand the evaluation process. Once somebody turns 21, how do you evaluate them for services before they start? The same for the newly eligible. And, obviously, then the larger group is the group that is getting services.

MS. SANTANIELLO: Yes.

REP. OBER: But has requested a new service. So their evaluation process is probably somewhat different.

MS. SANTANIELLO: Hm-hum.

REP. OBER: I would love it if you could get that to Mr. Kane. He will distribute it to all of us.

MS. SANTANIELLO: I absolutely can if you give me like a week or so.

REP. OBER: Oh, absolutely, absolutely. It's not a today thing. I'd just truly like to have that.

MS. SANTANIELLO: I can go through the evaluation and the process and what we do and when we start.

REP. OBER: Thank you.

MS. SANTANIELLO: You're welcome.

CHAIRMAN KURK: Representative Weyler.

REP. WEYLER: Thank you, Mr. Chairman. If it takes up to six months to analyze the needs of a person and we know that they're over 20, six months away from their 21st birthday wherein they'll be expecting to get these services, what prevents you from beginning the analysis at 20 and 20 and a half?

MS. SANTANIELLO: Can you clarify what you mean as analysis?

REP. WEYLER: Your --

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REP. OBER: Evaluation.

REP. WEYLER: -- evaluation of how much services they'll need.

MS. SANTANIELLO: So, typically, what happens is the Area Agencies will put someone -- they'll actually start projecting, primarily for the students because that's the group that you know when they're going to need services, right? You know when someone's going to turn 21 and actually need the services. So Area Agencies will actually start planning four years in advance around, okay, what do we think the person is going to need, you know, and start doing some projections. And as it gets closer and closer to the time that they're going to be turning 21, they actually will pull together a much more formal process budget. And then once they get to the point of, okay, we know how much money we are actually going to get, then they go back and revise that again. So it's an ongoing process if you know when the person is going to need the services. Where it gets a little tricky are the B's and C's because you don't necessarily know.

CHAIRMAN KURK: So why is not the A's number zero?

MS. SANTANIELLO: Because -- I will drill down on that a little more. I suspect some of those A's were left over from last Fiscal Year. And so one of my tasks today is to drill down with those agencies and say to them, A -- one, I don't want to use the A -- does that person, why are they still waiting for services? And some of the regions honestly may have somebody who'd much higher need. And so they have to balance whose needs and look at the whole mix of people. And so that's what I am at right now to drill down on some of those. If they don't really want the service right now, then they shouldn't be on the waiting list regardless if they're an A, B or C.

CHAIRMAN KURK: Thank you. Senator Sanborn and then Senator Morse.

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SEN. SANBORN: Ladies, thank you. Lori, this is more a question for you. If I can go back to the RFP for mobile crisis team.

MS. SHIBINETTE: Sure.

SEN. SANBORN: I guess I ask this on a policy perspective that if the Legislature's made a policy on Rapid Response vehicles and we have done three different RFPs and all three of them have come back unsuccessful, at what point do we or should we assess whether or not the Legislature made a policy position that might not be in the needs of what our state can perform. And as opposed to continually to chase the ball down the road, do we come back and say this actually isn't something we can do or should do today and as a policy maybe we don't do it.

MS. SHIBINETTE: And I think that once the Department takes input from the providers to find out why they didn't bid on the proposal and to see if we can structure the RFP to overcome those obstacles, I think that after that last process I think the Commissioner will be back here saying, you know, this is just not reasonable within the state and the resources we have currently in the state. We need to look at a different innovative program that our providers can perform. But right now I think we are in the process of -- and I know the Commissioner's meeting with people multiple times a week to say what is stopping you from doing this service. And he is -- he is trying to overcome those obstacles. So I think that there's a point that you get to, I agree, Senator, that there's a point where you say, okay, we can't do this. We're not there yet.

SEN. SANBORN: Thank you.

CHAIRMAN KURK: Senator Morse.

SEN. PRESIDENT MORSE: Yeah, just to follow-up on that particular issue. Seventy people in waiting rooms is not acceptable. So if there's a better way to do it, we just brought this legislation forward in June. So if it's that expired by now, especially DRF beds, I guess we need to know about that

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immediately. I would like to thank you for your efforts. I think part of the success in the system is re-evaluating, re-evaluating, re-evaluating. I met with my region and they told me they satisfied everybody on the waiting list in the A's and B's, and basically was people asking for more and it was 13 at the time --

MS. SANTANIELLO: Hm-hum.

SEN. PRESIDENT MORSE: -- that was the group that they're working with. So I think the way you're approaching it, it is the right way to approach it. We have X amount of dollars. How do we keep re-allocating it? Because in here in the last administration that that stopped happening. I mean, that's what the region told me, at least in my district. It used to be done twice a year. I think that's the important piece that people do go into hospitals and fall off of ours and things like that. If we can keep moving that money around and not using it as our lapse, I think that's important.

MS. SANTANIELLO: Thank you. I just would like you to be prepared not -- some families, individuals think it's theirs all the time the money and so it's a whole cultural and learning curve and that we are trying to work with people. So you might also be getting calls. So I just, you know, want you to be prepared.

SEN. PRESIDENT MORSE: As a follow-up, I encourage them to do that, because I realize we left eight million and ten million in the budget phase not appropriated.

MS. SANTANIELLO: Right.

SEN. PRESIDENT MORSE: Senate and the House had a little bit of a disagreement there; but I understand that piece of it. But I think what you're doing is the right approach and let's see how it works out.

MS. SANTANIELLO: Thank you very much.

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CHAIRMAN KURK: Further questions? There being none, thank you both very much. Any other discussion on information items, miscellaneous items? There being none, then let's turn to the audit.

Audits:

CHAIRMAN KURK: This is the Office of Professional Licensure and Certification, Real Estate Commission Performance Audit Report dated September 2017.

STEPHEN SMITH, Director, Audit Division, Office of Legislative Budget Assistant: Good morning, Mr. Chairman, Members of the Committee.

CHAIRMAN KURK: Good morning, Mr. Smith.

MR. SMITH: As you stated, this is our performance audit for the Real Estate Commission. It's within the Office of Professional Licensure and Certification. From our office the in-charge manager on this audit, Vilay Skidds, who will present our portion and also joining us at the table is Dan Jones. He's the Chair of the Real Estate Commission, and Peter Danles, the Executive Director of OPLC. With that, I'll turn it over to Vilay.

VILAY SKIDDS, Senior Audit Manager, Audit Division, Office of Legislative Budget Assistant: Good morning. Good morning, Mr. Chairman, Members of the Committee. My name is Vilay Skidds, and this morning I'll be presenting the Real Estate Commission Performance Audit Report. The purpose of our audit was to determine whether the Commission operated efficiently and effectively between July 1st, 2013, and December 31st, 2016. Our Executive Summary starts on Page 1.

Prior to merging into OPLC in 2015, the Commission was a stand-alone entity. As part of the consolidation, all clerical business processing and administrative functions were transferred to the OPLC Director. The Commission retained responsibilities for overseeing the real estate profession's

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12,000 licensees, including licensing, establishing scope of the licensing exam, resulting complaints and setting fees. We found the Commission operated with very few documented policies and procedures, especially for critical functions, such as licensing and complaint resolution. Licensing was performed efficiently despite a lack of supervisory review as over 90% of licenses were approved within two weeks of receipt.

The licensing process appeared effective as very few complaints were filed against real estate agents. Of the complaints filed, most were usually resolved within one year. However, we did find some stalled for long periods of time.

The Commission could benefit from reviewing its fees, especially the amount charged for the licensing exam. OPLC was required to establish a cost allocation methodology to equitably allocate costs to all boards and commissions under its purview. However, by the end of the audit period, this had not yet been completed.

OPLC did not provide the Commission with any information on revenues collected or corresponding expenses during the audit period. Consequently, the Commission did not have financial information to set its fees accordingly. Our Recommendation Summary starts on Page 3.

Our report contains 13 Observations and Recommendations. The Commission concurred or concurred in part with twelve Observations and did not concur with one. Four may require legislative action. Six Observations also affected OPLC and OPLC concurred with all six.

Our first four Observations addressed licensing. We found brokers may have been granted reciprocal licenses without clear statutory authority and there was no process in rule for salespersons to obtain a reciprocal license. There was no guidelines of what constituted equivalent experience for brokers to obtain a broker license and the Commission did not use information it collected on an applicant's adverse financial

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history for any purpose. We also found no supervisory review over this licensing function.

The next two Observations, numbers five and six, address complaint resolution. We found complaints were not adequately tracked resulting in some stalled in various parts of the process. Additionally, the process established in statute may have limited flexibility to process some complaints timely.

Observation 7 addresses fiscal management. In addition to the lack of cost allocation methodology, the OPLC did not track all of the Commission's exam related expenses separately from its general operating expenses as required. We also found exam related funds were carried forward without proper statutory authority.

Our last six Observations in the report address administrative functions. We found Commission rules for some critical functions were expired. Declaratory rulings were inconsistently handled, lack of compliance with some statutory requirements and no developed records management program. We also found a lack of defined roles and responsibilities between OPLC and the Commission, and no system to evaluate its performance.

This concludes my presentation. I'll now turn it over to the Commission Chair and the OPLC Director.

CHAIRMAN KURK: Thank you. That was impressively short and impressively thorough.

MS. SKIDDS: Thank you.

SEN. D'ALLESANDRO: It's too impressive. That's impressive. That's impressive.

REP. OBER: It must be an impressive morning.

CHAIRMAN KURK: Good morning, sir.

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DAN JONES, Chair, Real Estate Commission, Office of Professional Licensure and Certification: Good morning. First of all, I just want to thank Vilay and her staff that they did a marvelous job. They were very thorough and the money was well spent.

I think previous to the audit, I think the Commission actually functioned maybe in spite of itself. We were able to, at least in the eyes of the Commissioners, I think we felt that most things were carried out very well. There were certainly systems that were not in place that I think were out of habit more than anything else. There were certainly some deviations from what the law may have allowed us to do; but they were, for the most part, minor deviations that I don't believe people were harmed by. And the overall -- overall purpose of the Commissioners was to oversee primarily the behavior of licensees to make sure that we're protecting the public, which is our charge, and to make sure that we are serving the licensees in the State of New Hampshire as we should. So I don't have anything other than what's in the report to add.

I think the -- one of the primary issues, as Vilay had mentioned, is the issue on the finances that for years we have questioned why we are -- where the money is going from the excess funds that are created through the testing. By statute, anything over 125% should come back to the Commission in one form or another, either in the form of reduced exam fees or as a rebate back to our Commission, perhaps to offer better services or more services to the licensees. And I think that's the one thing I would strongly say that we are very earnestly looking for answers to.

REP. OBER: Mr. Chair.

CHAIRMAN KURK: Thank you. Gentleman --

REP. OBER: Mr. Danles.

CHAIRMAN KURK: -- from the O-P-L --

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MR. DANLES: -- C.

CHAIRMAN KURK: -- C. Thank you.

MR. DANLES: Good morning, everybody. Peter Danles. I'm the Executive Director of the OPLC. I will have someone come up in a minute and address the fiscal issue; but what I can tell you since the purview of the audit the administrative services has improved significantly. When we took it over we found several educational falls. We found that several complaints had been waiting to be addressed at this time, and also we found that licenses were not being issued in an appropriate manner. We are down to about a dozen investigations that are pending.

Education for real estate is being approved within a week, and the licenses are being completed in about five days as well. Actually, they're being completed in three days. I myself have developed policies and procedures as of July that are more consistent, not only among the Real Estate Commission, but the other boards that we serve as well. And if you'd like to speak -- if you'd like us to speak to the fiscal piece, I'll have our Director of Administration come up here to talk to you.

CHAIRMAN KURK: Putting aside the fiscal issue, will all of the issues raised in this audit be addressed to the satisfaction and effect of the auditors within six months or so?

MR. DANLES: Absolutely.

CHAIRMAN KURK: Thank you. Representative Ober.

REP. OBER: I don't think that was the right question, Mr. Chairman, before I ask my question, and the reason I say that is because there are audit -- number one requires legislation and the Real Estate Commission itself, not the OPLC, but the Real Estate Commission is not in concurrence. And it only says may consider seeking legislation. So if they don't concur, and we haven't filed legislation, I don't see how we can ask the OPLC to have done that in six months. I don't know if Senator Daniels, because the House chance to pass legislation has ended,

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if Senator Daniels is planning to file legislation on those things and that's, you know, that's out of their hands. So I think the answer is which ones in your hands can you fix in six months.

CHAIRMAN KURK: Had I not recognized you, Representative Ober, my next question would have been to the real estate folks to find out whether it was going to be accomplished.

REP. OBER: Okay.

CHAIRMAN KURK: Why don't you answer that question.

MR. JONES: Sure. I believe most of those already have been addressed and the legislation was basically I think only held up into because of the Governor's request that any changes to legislation be postponed. Am I correct in saying that?

MR. DANLES: That's correct.

MR. JONES: For I think it was a six-month period. So we were a little bit hamstrung by that.

REP. OBER: That's rules.

MR. JONES: I'm sorry?

REP. OBER: Rules.

MR. JONES: Oh, that was on rules. Okay. Okay. So beyond that, my understanding is that everything that is -- has been waiting as legislation is either in process or has been processed already. Peter, do you --

CHAIRMAN KURK: The question -- remember, some of your responses were concur in part.

MR. JONES: Right.

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CHAIRMAN KURK: And my question was whether you would meet all of the auditor's requirements?

REP. OBER: Not whether you concur.

CHAIRMAN KURK: Not whether you concurred in part. So we have a checklist that we would get back from Legislative Services after a period of time. Has the audited agency complied with recommendation number one, recommendation number two, and so forth. And you can see that in Appendix F for your last report where number 21, the biennial report, nothing was accomplished, at least according to this. Well, in six months or a year we are going to be getting a list with the Observation numbers on it, and we would very much like to see three black dots after each of those which means total compliance and that's the question. Not whether you would concur in part, but whether you will be in compliance with these recommendations within a reasonable period of time, both the office and the Commission.

MR. JONES: Go ahead.

MR. DANLES: Understood. I believe we'll be there in six months.

CHAIRMAN KURK: Thank you. And for the Commission?

MR. JONES: Yes, I believe so, too.

CHAIRMAN KURK: Thank you. Representative Ober.

REP. OBER: Thank you, Mr. Chairman. Last biennium the Real Estate Commission for the first time done by then Governor Hassan became part of what was the Joint Board and it got renamed as the OPLC. I've been on Division I for six terms, which is 12 years. It distresses me to hear the fiscal piece because your previous director testified several times in front of Division I during the budget hearings that the Real Estate Commission was getting all the reports and she was meeting 125%, but no more. That fiscally was going correctly.

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So I would like to ask and I think Director Danles and I have already had this conversation, that next time we have the budget and I hope, sir, you will help him, that all of that information comes to Finance in the budget so we can see the 125. We can see the revenue. And Director Danles had already told me that would happen. We had asked your previous director for that same information. You didn't get it. I just want you to know we didn't get it either.

MR. JONES: Right.

REP. OBER: So we have been looking at that. But the current agency, I believe, understands why we need it so because they had several Board meetings and we have now worked out with Director Danles. So I think we're going to see some improvement in that area. And I just want to know if legislation were filed under the – and there are 3, 1, 6, and 8 that said legislation was required – if the Commission would support legislation in all of those areas. Because it's really awkward if you file legislation, for example, and allow other brokers licensed in other jurisdictions to receive reciprocal, for us to file the legislation and then have you come and testify against it. I mean, it's not good for anybody.

MR. JONES: Right.

REP. OBER: So while we would be happy to help out with the legislation piece, we don't do the rules, we just need to know you would be supportive if we did that.

MR. JONES: Relative to reciprocal licensing, we believe the legislation is already in place that allows it for the Commission, and we have been granting reciprocal licenses as appropriate. Specifically, our belief was that we had the authority to do it for Massachusetts, Vermont, Maine, and I believe Georgia. I don't know why Georgia but somehow Georgia popped in. But that we have had other licensees from other jurisdictions who have made application, and we have based our approval or not approval based on their qualifications. But I think we believe that legislation's already in place.

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REP. OBER: Question for the auditor. Then why is this, if that legislation is in place, why does it say legislative action required, please? Number one only.

MS. SKIDDS: Correct. We don't believe the legislation that is in place is clear enough to allow brokers to obtain reciprocal licenses.

REP. OBER: Thank you very much.

MS. SKIDDS: You're welcome.

CHAIRMAN KURK: Further questions? Can we have a discussion? Representative Eaton.

REP. EATON: How many commissioners are there for the Commission?

MR. JONES: There's supposed to be five.

REP. EATON: And how many are there now?

MR. JONES: We have, unfortunately, lost two in the last month's time.

REP. OBER: So there's three.

MR. JONES: They were both real estate broker licensees which has significantly hampered our ability to function.

CHAIRMAN KURK: Can we talk about the financial or fiscal one?

REP. EATON: Absolutely.

CHAIRMAN KURK: It's my understanding that you should be charging brokers and other people whom you license a fee to cover 125% of your costs.

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MR. JONES: Correct.

CHAIRMAN KURK: You suggested you could use the extra money, whatever that meant, for other purposes. Could you explain that?

MR. JONES: Well, only in some way it was as high as, I believe, 185% of the amount that we're supposed to raise. Instead of 125, it was 185. It has been over for a number of years' time. And under the statute it is our understanding that anything over the 125 is supposed to come back to the Commission to the benefit of the licensees in one form or another, either in reduced exam fees for anyone taking an exam or for -- and I threw out the idea in some other form. I don't know if that's legislatively possible or not but in some way to the benefit of the real estate of our body versus going to the OPLC if that's where it went to subsidize other agencies or to the General Fund.

CHAIRMAN KURK: Why don't we reduce the rate to real estate licensees?

REP. EATON: Right.

REP. OBER: Yes, exactly.

CHAIRMAN KURK: That's what's supposed to happen.

MR. JONES: And if we're authorized to do that, that's fine. I mean, that hasn't been suggested before. It sounds like a logical suggestion.

CHAIRMAN KURK: You're not authorized to charge more than 125%.

MR. JONES: Okay. My understanding -- well, and that's -- that approach has not been discussed before to my knowledge. Because if it was in our latitude to do that, I think that makes sense to do so.

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CHAIRMAN KURK: But I don't think you have a choice. The Supreme Court has made it very clear that if we are to charge a fee, the fee cannot exceed the actual cost by more than 25% for some sort of indirect cost and things like that. So your obligation as a, quote, 125% agency, unquote, is to make sure that your fee is 125% of your costs and some of your costs have to be allocated to you from the OPLC.

MR. JONES: Right, and that's understandable. I think our concern is we have never known -- we have never seen the true income and expense ratio for specifically the exams. It's always been hidden and it has been requested in the past I know. I know when Beth Edes was our director, she did request to whatever agency she had a request a breakdown and she did not get it.

CHAIRMAN KURK: Mr. Danles, will you see that that information is given to the Commission expeditiously and that the rates are set at 125%?

MR. DANLES: Absolutely. Melissa, you have anything else?

CHAIRMAN KURK: Ma'am.

MELISSA VANSICKLE, Director of Administration, Office of Professional Licensure and Certification: My name is Melissa Vansickle. I'm Director of Administration. It's a pleasure to present in front of you Representatives and Senators.

I have been working with the Division of Administrative Services, Bureau of Accounting, to develop an equitable cost allocation plan for salaries, rent, and what have you. The agency, OPLC, does track direct expenditures for each Board, and we are able to provide the direct expenditures, as well as revenues for each Board on a monthly or quarterly basis; but we cannot provide the indirect portion for personnel, benefits, and rent, what have you, as well as administration overhead expenditures to allocate those to the Board until the close of the Fiscal Year. So we can give them some sort of analysis to -- to where they stand, but that number will change until the year has closed out.

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CHAIRMAN KURK: Can you give them the amount for 2017?

MS. VANSICKLE: We'd be more than happy to give them 2016. 2017 expenditures have not been fully allocated yet.

CHAIRMAN KURK: When -- when that is done, when the CAFR comes out or whenever, you would then be able to give them 2017?

MS. VANSICKLE: Yes.

CHAIRMAN KURK: So they could then use that to set their rates?

MS. VANSICKLE: Yes. An analysis will need to be done between the current Director of the Real Estate Commission, as well as the Director of Technical Professions with the information I provide them. They would need to work with the Board to determine how much the fee should come down. That is not part of my function.

CHAIRMAN KURK: Understood. But you have a very important role in making sure they have the information on which they base their decision.

MS. VANSICKLE: Yes.

CHAIRMAN KURK: Representative Eaton.

REP. EATON: Mr. Chair, I'm frankly surprised with you that why would we wait for the 2017 info to come out? Why wouldn't they start acting now on the 2016 information? It -- it has been alleged for an extended period that the licensees were being overcharged. And if they have 2016 data that will show the costs are over and above, they could deal with that adequately now.

CHAIRMAN KURK: I'm not familiar enough with the intricacies of when the timing of when people are licensed to know whether the 2016 numbers should be used to determine that or whether it makes sense to wait for the 2017 numbers. But the next time a

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bill goes out to anybody, it should reflect the latest information available to you to allocate the cost so the rate would go down.

MR. JONES: Right.

CHAIRMAN KURK: Presumably.

MS. VANSICKLE: If I may interject?

CHAIRMAN KURK: Yes, ma'am.

MS. VANSICKLE: The law states that the 125% shall be of the previous Fiscal Year's expenditures. And since we have now gotten the allocation piece through Administrative Services with their assistance, to allocate it based on the number of licensees is a little unfair. So we chose to do it based on the percentage of time each employee works, and then take that percentage as a whole and allocate it fairly amongst the boards rather than on the number of licensees or the revenue coming in.

CHAIRMAN KURK: We're not in any way trying to interfere with how you do the allocation. We want to make sure that the law is followed and that licensees are charged 125% of your costs. And if you have to use the prior -- the latest year or the prior Fiscal Year, whatever the law requires, let's do so. So the next time you send out a bill to a licensee, it's 125%, not 180%, of costs.

MS. VANSICKLE: To be fair, I just want to summarize what I was trying to get to make it brief is I just got that piece and I am working to finalize that so they could have it for their October, if not their November, meeting for both '16 and 17.

CHAIRMAN KURK: Excellent. Thank you.

MS. VANSICKLE: Sorry.

CHAIRMAN KURK: You've even satisfied Representative Eaton, which is no small task. Representative Weyler.

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REP. WEYLER: If, in fact, we're trying to get this done in six months, and four of the 13 items require legislation, you can't get it done in six months, because it takes more than six months to get legislation approved. It's going to be perhaps next May or June, and we don't -- we are past the filing date for the House. Will the Senate pick up on filing the legislation? Representative D'Allesandro.

SEN. D'ALLESANDRO: If I might, Mr. Chairman?

CHAIRMAN KURK: Senator.

SEN. D'ALLESANDRO: There have been discussions with Senators about the legislation. I've had some discussions and I think Senator Bradley has had some discussions so yes, indeed, the Senate's prepared to file legislation.

CHAIRMAN KURK: Good. And please remember that if something comes up later after a deadline, we can always amend a bill. Representative Weyler.

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

REP. EATON: Second.

CHAIRMAN KURK: The motion by Representative Eaton, seconded by Representative Weyler is to accept the report, place it on file, and release it in the usual manner. Further discussion? Questions? There being none, are ready for the question? All those in favor, please indicate by saying aye? Opposed? The ayes have it and the item is approve. Thank you.

MR. JONES: Thank you.

*** {MOTION ADOPTED}

CHAIRMAN KURK: Is there anything else to come before us, Mr. Kane?

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MR. KANE: Just next meeting.

CHAIRMAN KURK: Just next meeting. Do you folks want to meet on the last Friday or the third Friday?

REP. WEYLER: October?

CHAIRMAN KURK: We are talking about October. October the last Friday is the 29th, the third Friday is the -- I'm sorry, I'm in the wrong month. The last Friday is the 27th, the Friday before that is the 20th. Is there a reason, Mr. Kane, for preferring one to the other?

MR. KANE: No, whatever you schedule.

SEN. D'ALLESANDRO: I attending a conference, a legislative Canadian-U.S.

CHAIRMAN KURK: When is that?

SEN. D'ALLESANDRO: The 27th. That's a conference that's in place.

CHAIRMAN KURK: So shall we do it on the 20th next month?

SEN. D'ALLESANDRO: I think we invited all the Legislators to attend.

REP. WEYLER: Trying to figure out what 1303 is about. Is that higher education? Oh, that's the withdrawal from a cooperative district. That may meet at 10 o'clock that day. If that's the case, then I'll have an alternate.

CHAIRMAN KURK: We will meet then -- our next meeting then will be at 10 o'clock on Friday, October 20th. There being nothing else to come before us, we stand adjourned.

(The meeting adjourned at 11:28 a.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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State of New Hampshire
License No. 47

