

**JOINT LEGISLATIVE FISCAL COMMITTEE**

Legislative Office Building, Rooms 210-211

Concord, NH

Friday, January 10, 2020

**MEMBERS PRESENT:**

Rep. Mary Jane Wallner, Chair

Rep. Ken Weyler

Rep. Susan Ford

Rep. Lynne Ober

Rep. Peter Leishman

Rep. David Huot (Alt.)

Rep. Erin Hennessy (Alt.)

Rep. Patricia Lovejoy (Alt.)

Sen. Lou D'Allesandro

Sen. Dan Feltes

Sen. Chuck Morse

Sen. Jay Kahn

Sen. Cindy Rosenwald

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

**(1) Acceptance of Minutes of the December 13, 2019 meeting**

MARY JANE WALLNER, State Representative, Merrimack County, District #10: So we'll open today with we have no -- we have the acceptance of the minutes of the December 13<sup>th</sup> meeting.

**\*\*** LOU D'ALLESANDRO, State Senator, Senate District #20: Move the acceptance.

LYNNE OBER, State Representative, Hillsborough County, District #17: Second.

CHAIRWOMAN WALLNER: Senator D'Allesandro moved we accept the minutes and Representative Ober seconds. Is there any discussion of the minutes? Any corrections? Seeing none. All in favor? Any opposed? Item passes.

**\*\*\* {MOTION ADOPTED}**

**(2) Old Business:**

CHAIRWOMAN WALLNER: We have no Old Business.

**CONSENT CALENDAR****(3) RSA 9:16-a, Transfers Authorized:**

CHAIRWOMAN WALLNER: And now we come to the first Consent Calendar, and I have had -- do we have any -- any items off Consent?

REP. OBER: There's only one item.

CHAIRWOMAN WALLNER: There's only one item, so.

**\*\*** REP. OBER: Move to accept.

CHAIRWOMAN WALLNER: Representative Ober moves to accept the item, Health and Human Service item.

SEN. D'ALLESANDRO: Second.

CHAIRWOMAN WALLNER: Any discussion, Representative? And Senator D'Allesandro seconds. Any discussion of the item? Seeing none. All in favor? Any opposed? Item passes.

**\*\*\*** {MOTION ADOPTED}

**(4) RSA 9:16-a, Transfers Authorized and RSA 14:30-a, VI Fiscal Committee Approval Required for Acceptance and Expenditure of Funds Over \$100,00 from any Non-State Source:**

CHAIRWOMAN WALLNER: Next is area four, and there is only one item here on this item. Do we have a motion?

**\*\*** REP. OBER: Move to accept.

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CINDY ROSENWALD, State Senator, Senate District #13:  
Second.

CHAIRWOMAN WALLNER: Representative Ober moves to accept and Senator Rosenwald seconds. Any discussion of this item? Seeing none. All in favor? Any opposed? Item passes.

**\*\*\* {MOTION ADOPTED}**

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

CHAIRWOMAN WALLNER: Now we move to Tab (5), and we have a number of items that people have asked me to take off. The first one coming off is 003, also 004, and 005. It only leaves us with one item on the Consent Calendar, 016, Department of Health and Human Service item. Do we have a motion on that one item?

**\*\* SEN. D'ALLESANDRO:** Move the item.

REP. OBER: Second.

CHAIRWOMAN WALLNER: Senator D'Allesandro moves and Representative Ober seconds. All in favor? Any opposed? That item passes.

**\*\*\* {MOTION ADOPTED}**

CHAIRWOMAN WALLNER: Let's now go to Item 003, Department of Employment Security, and could someone from the Department come up. Thank you.

RICHARD LAVERS, Deputy Commissioner, Department of Employment Security: Good morning, Madam Chair.

CHAIRWOMAN WALLNER: Good morning. Thank you for coming up.

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MR. LAVERS: For the record, Richard Lavers, Deputy Commissioner with the New Hampshire Department of Employment Security.

JILL REVELS, Business Administrator, Department of Employment Security: Jill Revels, Business Administrator, Department of Employment Security.

CHAIRWOMAN WALLNER: Thank you very much. And I think there were questions. I guess the questions were from Senator Kahn, and I didn't realize he wasn't up here.

SEN. D'ALLESANDRO: Lay it on the table until Senator Kahn arrives, and then deal with the others.

CHAIRWOMAN WALLNER: Okay. I'm sorry, I did not realize he wasn't at the table. Sorry to call you up. So we'll lay the item on the table for now. That meet with -- all in favor of --

REP. OBER: Yes, no objection.

CHAIRWOMAN WALLNER: No objection. Okay. So we'll lay that one on the table. And now we'll move to 004, and this is the Office of Professional Licensure and Certification. And we want to invite both Department of Information Technology and the Licensure Board up at the same time. And if you look at your agenda on the second page, you'll see that in the middle of the -- of (7), 010, is also the item. If Item 004 passes, Item 010 will be affected, also. So if -- if I could have a motion to take that one off the table -- off Consent --

\*\* REP. OBER: So move.

SUSAN FORD, State Representative, Grafton County, District #03: Second.

CHAIRWOMAN WALLNER: -- so we can do them both together. Representative Ober moves and Senator --

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SEN. D'ALLESANDRO: Second.

CHAIRWOMAN WALLNER: -- D'Allesandro seconds that we remove that from Consent, 010. We remove that from Consent. All in favor? Any opposed?

**\*\*\* {MOTION ADOPTED}**

CHAIRWOMAN WALLNER: So we'll talk about the two items together, because they go hand in hand. Thank you.

DAVID L. GROSSO, Executive Director, Office of Professional Licensure and Certification: Good morning. Dave Grosso, Madam Chair, Committee Members, Executive Director of OPLC.

DENIS GOULET, Commissioner, Department of Information Technology: Denis Goulet, the Commissioner of the Department of Information Technology.

CHAIRWOMAN WALLNER: And I know we have questions. Representative Ober has some questions about this one.

REP. OBER: Thank you, Madam Chairman. Commissioner Goulet, I'm really looking at Item 004, which I know is not yours, but it deals with the numbers that are in yours, if you don't mind. Item 004 says that you will need two staff members dedicated, but dedicated means that they still report to you; is that correct?

MR. GOULET: That's correct.

REP. OBER: Follow-up, Madam Chairman.

CHAIRWOMAN WALLNER: Yes.

REP. OBER: Then can you explain to me on Page 3 why we need a Labor Grade 31 IT Manager? So you have one manager and one staff member. Why can't you have these two people at a lesser lower grade report to one of your managers already existing?

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MR. GOULET: This -- this structure matches the structure we operate in other agencies of similar size. In the larger agencies we tend to have ITM V's in this role as an IT lead. It's an IT lead role and they're really responsible for both the business relationship management function, as well as the IT function. So an ITM III in this case would tend to be more of a "roll your sleeves up" type of manager, not the "sit behind a desk and think deep thoughts" manager. We think this is an appropriate labor grade based on what we're doing in other agencies as well. We did -- we did do that analysis before we requested this.

REP. OBER: May I continue?

CHAIRWOMAN WALLNER: Yes, please.

REP. OBER: Can you explain to us how much e-mail support you're providing to non-State agency -- non-State Employees across the state and what the cost of that is, because that is included in here?

MR. GOULET: There's a significant volume of support that we're doing with senior technical people now because we don't have anybody functioning in that role; but I don't have precise numbers for you here. I could actually get them, if you wish.

REP. OBER: Why are we supporting non-State Employees with State dollars, Commissioner?

MR. GOULET: Well, these are -- these are members of the boards and commissions and that are mostly that are using our systems to -- to do their jobs. In particular, the collaboration type stuff that they use to get their jobs done. And there's -- the Attorney General, staff from the Attorney General's Office has asked us to improve that, which we haven't been able to do over the past couple years because we really didn't have anybody to do it. We have an issue there where the members of the Boards and Commissions are using their own

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technology and for housing State documents on their own technology, and we've been asked to remediate that to improve the -- if there's a potential for litigation hold or Right-to-Know request we want to improve our ability to gather that information, and that's one of the things that we -- we expect to improve should the Committee approve this.

REP. OBER: May I continue?

CHAIRWOMAN WALLNER: Yes.

REP. OBER: During the budget time, Commissioner, neither you nor any staff member from OPLC came and discussed this particular need. Now, I will grant you we need to have a way for people to apply for their licenses on-line. We have approved and at one time we had a \$7 million capital fund that went to provide the scheduling system for our staff, including Corrections, which is still scheduling with paper and pencil. I don't see the commitment to doing some of the ongoing projects we have. For example, getting a schedule module up for Corrections so that they could schedule better without spending so many overtime dollars. If you don't have enough staff, why are we expanding projects on your staff to do things that we haven't already prioritized, such as that scheduling system? Because that hasn't even been started yet, has it?

MR. GOULET: No. The scheduling system it's been decided, I believe, and I would ask for detail assistance from Administrative Services on this because they're working that through the NHFirst, but I believe that we're -- it is our intent to implement the scheduling module in NHFirst. That's been vetted with the Department of Corrections and the folks at State Police who were the folks that we initially targeted for the scheduling system that we did not finish implementing. So that is an ongoing project. I don't know that offhand what the dates and where we stand in terms of the details, because the folks at DAS and FDM are actually running that. We're supporting them, but they're running the project; but that is moving forward.

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In terms of the investment that we made in technology for OPLC and others, New Hampshire's doing fairly well there in the sense that, you know, when I talk to my other colleagues about an enterprise licensing system, most states don't seem to have that. They're doing, you know, they have this system here, another system there. And so New Hampshire has achieved an enterprise system for licensing. The system is MLO, My License Office; but I do feel we've underutilized its capabilities at OPLC who is the major user, because we haven't had the time to focus on implementing new features and really training the users at OPLC. I sat in a meeting with the power users at OPLC about a month ago, I think, and I was surprised at the lack of knowledge, and I think that's really a failing of DoIT because we haven't had the time to really do what we need to do there.

When you look at other agencies the size of OPLC, we would typically have two or three dedicated IT folks there. We have none. So I think that, to me, this is a clear resource gap. One might ask, gee, why didn't we budget this? I wanted to budget this.

REP. OBER: I guess the real question, Commissioner, not why we didn't budget it, but why you didn't even discuss it when we were discussing your budget. Because we understand that you come with some things you want budgeted and you know and I know we don't give them all to you; but we didn't even have this discussion.

MR. GOULET: A good question. I had been discussing this with the previous Executive Director and we didn't have traction to move forward. So, typically, when I'm working with collaborating on budget stuff with the agencies, I will definitely or typically not go against what the agency's desires are. And I was not able to get this moved forward so I didn't mention it. Here we are today because this Executive Director agreed that we need to add these resources to get the things that we both feel need to be done at OPLC with respect to technology.

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REP. OBER: My last question, Madam Chairman.

CHAIRWOMAN WALLNER: Yes.

REP. OBER: Commissioner Goulet, I guess this will fall on you. Mr. Grosso, I'm not ignoring you. It's just I felt my questions were more appropriate for the DoIT Commissioner so my apologies. Don't feel --

MR. GROSSO: No apology necessary.

REP. OBER: Can you tell us exactly the salary label, the salary amount you plan to pay these two people should you hire them? You have a Labor Grade 31 and Labor Grade 28.

MR. GOULET: I'm looking at pay periods here. So I'd have to do the math in my head. But it's -- I'm sorry, I have it here. You want to answer that?

MR. GROSSO: Yeah. Ma'am, according to what I'm tracking here for the IT Manager Labor Grade 31 in FY20 would be 19,336. For FY21, 63,890. For the Business Systems Analyst Labor Grade 28 in FY20, 38,162 and then for FY21, 129,558 is what DoIT and I are tracking.

MR. GOULET: Those are the totals. So we have four -- Labor Grade 31 IT Manager and I'll skip '20 because that's only part of the year. We are looking at just the salary part would be 69 and plus a little bit for the Labor Grade 31. And 60,000 for -- 69 for the Labor Grade 28.

REP. OBER: So you're asking for almost \$300,000 and of that a little over 120,000 a year goes to salaries. But there is a piece that's going on in '20, almost 20,000 for one of them and a small amount for the other.

MR. GOULET: Right, right. But the largest impact would be in '21 because we're far enough along in this budget year that

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we -- and we have some lead time to recruit, et cetera. So that's our assumption was eight pay periods in '20 and then the full -- the full 26 pay periods in '21.

REP. OBER: And then, finally, I just want to verify. My original question was has the scheduling module started and your answer was yes, it has started. Is that correct, Commissioner?

MR. GOULET: That's correct.

REP. OBER: Okay. Because I'm going to ask Commissioner Arlinghaus, too.

MR. GOULET: I'm certain.

MR. GROSSO: Ma'am, I know there wasn't a direct question to me; but while I appreciate Commissioner Goulet's explanation regarding OPLC's capabilities and needs, I would also say it's the Department's or Agency's responsibility to use the resources and to identify capabilities or capacity shortfalls. So while this was not accounted for previously in the budget planning or deliberative process for FY20-21, when I first started the job on July 1<sup>st</sup>, it became very readily apparent that we had a significant shortfall in our capabilities and capacity regarding the utilization information technology. And I measure that by that we've had a significant increase in the number of licensees each year for OPLC, and we are licensing or maintaining licenses of upwards of 172,000 licensees from across the state in the region. And we have experienced since FY16 approximately a 325% increase of the on-line licensing that takes place within OPLC.

So that kind of drove, at least my initial assessment, and then my interaction with Commissioner Goulet, and we felt that this was the most responsible way for us to -- in the immediate term meet the needs, allow us to complete the mission that we've been entrusted with and also try to be the best steward of public funds.

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CHAIRWOMAN WALLNER: Thank you. Are there further questions for the Commissioner and Mr. Grosso? Seeing none. I need a motion on 004, the item before us, and then also on the item that we took off Consent from Tab 7, 010.

**\*\*** REP. OBER: Madam Chairman, I would move both items with the proviso that this Committee would get a written report on progress at the end of the Fiscal Year.

CHAIRWOMAN WALLNER: Representative Ober moves that we move both items and that we have a report from the two departments at the end of the year. Do I hear a second?

SEN. D'ALLESANDRO: Second.

CHAIRWOMAN WALLNER: Senator D'Allesandro seconds. All in favor? Any opposed?

**\*\*\* {MOTION ADOPTED}**

KEN WEYLER, State Representative, Rockingham County, District #13: It's going to go on both?

REP. OBER: Yes, I move both items.

CHAIRWOMAN WALLNER: She moved both items. Okay. Thank you very much.

MR. GOULET: Thank you.

CHAIRWOMAN WALLNER: Look forward to the report. Next we move to Item 005 and, Mr. Grosso, I think there's a question on this one also for you. This time it's all you.

MR. GROSSO: Yes, ma'am.

CHAIRWOMAN WALLNER: Representative Ober has a question on this item, also.

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REP. OBER: Thank you, Madam Chairman. This is a continuation and we have the memo from your predecessor, Mr. Danles, from September of 2018, Mr. Danles' memo which people may not have, but if you look at it on-line gives all the details of the personnel that he's dealing with. Yours does not which made a little hard to try to figure out exactly what was going on. But maybe you could talk to us about the need for an additional 8% salary increase above and beyond the 30% that we approved in September of '18.

MR. GROSSO: Okay. Could you restate it for me, ma'am, again so I make sure I capture that?

REP. OBER: In September of '18 we had a memo from Mr. Danles asking for a 30% salary increase for certain labor grades which are mentioned in the first paragraph of his memo. In December of '19 we have your memo, which I understand now asks for not a 30% salary increase but a 38% salary increase for the three employees. And I wondered about the rather large cost increase given the CPI that we've had in New Hampshire. Is that clear?

MR. GROSSO: The question is clear. I'm not convinced I'm prepared to answer that specifically to account for that 8%. As I entered this meeting and my prep for it, ma'am, what I regarded this as is a continuation of past policy that had been enacted prior to my taking tenure of the agency. And I deliberated a bit over the last 60 days about this enhancement 'cause I wasn't really sure I really wanted to throw my -- my weight behind it. And I looked at this as a, unfortunately, a due course and those are hard words to perhaps use in this forum. I needed to pass this action along because it had been previously approved by my predecessor and by the approving Committees. But that we had not properly accounted for this in our budget and so mine was more of analysis as the Executive Director that we needed to account for this amount. But I have to say that I'm not prepared to talk about that 8% here yet.

REP. OBER: Follow-up.

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CHAIRWOMAN WALLNER: Yes.

REP. OBER: So I would agree with you we have approved a 30% increase over normal salary pay; but I really feel like I need some justification for why you're asking for an additional 8%, slightly more. We're talking 14 months, 15 months later than we approved the 30%. So I don't know where to go from here, because this clearly asks for 38% which is an increased policy over the 30% that we have agreed to.

MR. GROSSO: I agree with your statement and I believe that we need to do some more homework to come back and account for the 8%. I'm not prepared at this point to talk either effectively or accurately regarding that 8%.

REP. OBER: Madam Chairman, I would move to table and allow the Director to come back next month with the answer to the question and let us discuss this fully.

CHAIRWOMAN WALLNER: Do I hear a second?

SEN. D'ALLESANDRO: Second.

CHAIRWOMAN WALLNER: Senator D'Allesandro seconds the motion that Representative Ober made. The motion is to table this item. All in favor? Opposed? Seeing none.

**\*\*\* {MOTION ADOPTED}**

CHAIRWOMAN WALLNER: We'll see you back next month.

MR. GROSSO: Yes, ma'am.

CHAIRWOMAN WALLNER: Thank you.

MR. GROSSO: Thank you.

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CHAIRWOMAN WALLNER: So I need to check with Ceil about something. On Item 004, did we -- did we actually take the vote?

(The court reporter checked the record. A vote was taken and passed on both Items 20-004 and 20-010.)

CHAIRWOMAN WALLNER: Let's go back now to Item 003. It's New Hampshire Department of Employment Security, and I believe Senator Kahn is with us now to ask the questions.

SEN. D'ALLSANDRO: Take it off the table?

CHAIRWOMAN WALLNER: Yes, we need to take it off the table first.

**\*\*** SEN. D'ALLESANDRO: So move.

REP. OBER: Second.

CHAIRWOMAN WALLNER: Senator D'Allesandro moves to take it off the table and Representative Ober seconds. All in favor taking it off? Any opposed?

**\*\*\* {MOTION ADOPTED}**

CHAIRWOMAN WALLNER: Okay, it's off the table, and we have some questions for you.

JAY KAHN, State Senator, Senate District #10: Thank you, Madam Chair. My question on the item, we've had -- is this on -- testimony on various training programs that have come before the Senate in the last year. That testimony has varied on the number of training programs, and I think you've made clear your goal is to be able to communicate to those who might qualify for the State-sponsored programs to be able to explore the multiple programs that they might qualify for. And so the number that actually exists kind of makes a difference here. That number's varied between 13 and 84, which is a pretty wide swing.

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When I looked at the 13 list, I thought a number of them were actually operated by the same Department, and I probably could have consolidated that down to say that the Department of Employment Security administers a half a dozen or the State of New Hampshire administers a half a dozen different programs. They just have kind of different tangents. I wonder, from your perspective, if you could clear that up for us. How many training programs does the State of New Hampshire offer and it will be part of the State list?

MR. LAVERS: Thank you, Senator. So I can speak to the role that Unemployment Security plays in the providing of the training programs here in the state. I know that several other departments who took part in the Commission that reviewed training and workforce issues this past session, they're also here that they could talk about some of their programs.

For Employment Security specifically, we have five programs that would be categorized as training programs. Two of them the -- the Department has administered for quite some time. One is with regard to the State Grant for Veterans' Services. That's a federal grant that we receive, and we employ individuals that provide direct services to our veterans here in the state and those services are provided in the New Hampshire Works offices at 12 locations. We also administer the Trade Act Program which is another program that provides services and training to individuals who lose their employment due to overseas competition.

The other programs, the other three training programs directly administered by Employment Security are new to the agency. They're part of the item -- the item later on in this morning's agenda, but they are part of the Job Training Fund Program. So those include the Work Invest New Hampshire Program which is training grants to employers, the Work Now New Hampshire Program which is training assistance and supports to individuals, and then the WorkReadyNH Program which is funded out of the job training fund and administered at the Community

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College System. So those five are the training programs that we directly administer.

The money that is concerned with this item, Senator, this would allow Business and Economic Affairs to case manage the services that they're providing to individuals under their WIOA training programs, specifically the Adult and Dislocated Worker Program, and the jobs for youth program. This would allow them to case manage those services provided within the existing case management system that the Department utilizes in all of the New Hampshire Works offices. So that will allow for better services, quicker services for individuals as they come into a New Hampshire Works office, as all of those programs would all be case managed out of the same system.

CHAIRWOMAN WALLNER: Further question.

SEN. KAHN: I think what I learned here there's seven programs administered either by Business and Economic Affairs or Employment Security that are coming together within this case management system.

MR. LAVERS: Correct. That number seven would be correct. That will be housed within this case management, yes.

SEN. KAHN: And -- and accessible through the Employment Security Offices?

MR. LAVERS: Correct.

SEN. KAHN: And if I -- just one last. Then there are some training programs that exist outside of those two agencies and that you're not accountable for and won't be a part of the advising case management that's performed by New Hampshire Works.

MR. LAVERS: Correct, and those programs will be administered by those respective agencies. I'm not sure how they case manage the services.

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SEN. KAHN: Good. Thank you.

CHAIRWOMAN WALLNER: Thank you. We need a motion.

\*\* SEN. KAHN: I would move approval.

CHAIRWOMAN WALLNER: Senator Kahn moves this item.

REP. OBER: Second.

CHAIRWOMAN WALLNER: And Representative Ober seconds. Any further discussion of the item? All in favor? Any opposed? Item passes. Thank you.

MR. LAVERS: Thank you.

\*\*\* {MOTION ADOPTED}

(6) RSA 124:15, Positions Authorized:

CHAIRWOMAN WALLNER: We move now to Tab 6 and anyone have any questions on this item? Could I have a motion?

\*\* SEN. D'ALLESANDRO: Move the item.

REP. OBER: Second.

CHAIRWOMAN WALLNER: Senator D'Allesandro moves the item and Representative Ober seconds. Any discussion? All in favor? Any opposed? Item passes.

\*\*\* {MOTION ADOPTED}

(7) 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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CHAIRWOMAN WALLNER: Now moving on to Tab 7. I had a request to remove 007, which is an item from the Department of Education. I've had a request to remove Item 010, which is an item from the Department -- oh, that one -- I'm sorry. I'm sorry. We have already moved that one. That was already passed.

REP. WEYLER: It's been removed.

CHAIRWOMAN WALLNER: Yes. And also I -- did someone want Item 018, Department of New Hampshire Employment Security off? No? That one okay? Move on. Okay. So we have two items left on Consent which is Item 009 and 018. Could I have a motion?

**\*\*** SEN. ROSENWALD: Move the item.

CHAIRWOMAN WALLNER: Senator Rosenwald moves.

REP. OBER: Second.

CHAIRWOMAN WALLNER: And Representative Ober seconds. Any discussion of those two items? Seeing none. All in favor? Any opposed? None opposed. The item passes.

**\*\*\* {MOTION ADOPTED}**

CHAIRWOMAN WALLNER: Now we'll move to Item 007 and I'm going to --

REP. OBER: I do have a question, Madam Chairman.

CHAIRWOMAN WALLNER: I'm going to have -- Senator Feltes is going to make a motion, and then I'm going to invite the Commissioner up.

**\*\*** DAN FELTES, State Senator, Senate District #15: Thank you very much, Madam Chair. I move that we do not accept Item FIS 20-007. If there's a second, I'll briefly speak to that motion.

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PETER LEISHMAN, State Representative, Hillsborough County, District #24: Second, Madam Chair.

CHAIRWOMAN WALLNER: Senator Feltes moves that we not accept Item 007, and Representative Leishman seconds. Senator Feltes.

SEN. FELTES: Thank you very much, Madam Chair. Hum -- this grant does not support existing Charter School students or operations. It doesn't protect New Hampshire taxpayers, and it's identical to a grant that was already rejected by this Committee. And despite some of the rhetoric out there by the administration, supporting existing Charter School students in schools has been a bi-partisan priority of this Legislature.

Just covering a few things. Over the last couple budgets we substantially increased support, State support for existing charter school students in schools. We have in a bi-partisan way relaxed some of the restrictions and the use of State funds for public charter schools students and operations. A bill I filed, a number of folks around this table co-sponsored, a bi-partisan bill to establish a Charter School Program Officer position to support existing public charter schools and students. We've done that in a bi-partisan way.

It's been a bi-partisan priority to support existing Charter School students and operations. This grant doesn't do that. And what's more, we look back at it, it's unprecedented for an administration to submit the exact same request right after it's been rejected. Unprecedented. So I don't know why, but that's what's happened here. So I think we ought to be consistent. I think the Chair has been generous in allowing this to even be on the agenda. And I think we ought to stick with the course of action we've taken prior. Thank you, Madam Chair.

CHAIRWOMAN WALLNER: Thank you, Senator Feltes. Representative Weyler.

REP. WEYLER: I think it's important that we recognize the success of charter schools, and the fact that has been requested

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by other parts of the state where it would be a long drive for them to get their students to a charter school. So they'd like to have them spread a little bit more around the state, and I think the Department of Education has recognized that. They have also recognized that there are some that are so successful, like the Academy of Design, Science and Design, that they would like to replicate it in other parts of the state and I think that's a very good goal. That's one of the reasons why they requested this because they want to recognize both the successful charter schools and the fact there is more demand for them.

I think it's partisan and it's wrong to deny this and to keep on denying it. This is an important thing. They have done hard work to get this accepted, and I'm totally in favor of this, and I don't think we should be denying it. Thank you.

CHAIRWOMAN WALLNER: Representative Ober has some questions. You would like to ask the Commissioner to come up?

REP. OBER: Yes, I would, Madam Chairman. Thank you. And I appreciate the speeches by my previous two colleagues, but I have a question. Commissioner, last time you were here you had answered a plethora of questions from us and given us a great deal of information, which I have to admit I had not quite read all of it by the time you came to the Committee, because it came late. Oh, by the way, I want to thank you. The two newspaper articles that were in the paper yesterday, the Vo-Tech Program for the disabled adults we've gotten off of the list and fixing the audit problems and both of those were in the newspaper. And I thought that was terrific for our state and I want to thank you.

Now my question. As I read through that and then I got a phone call from a local school administrator, there apparently is some money in this grant that also goes to support or could be used to support our existing public school districts. I apologize for not having really realized that last time and asked the question. But could you tell me a little bit about

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that, because the person who called me was a little confused. Thank you.

MR. EDELBLUT: So I would be happy to respond to that, as well as to Senator Feltes, just to clarify some items. And it won't take long, Madam Chairman. The reason I am back in an unprecedented way of bringing the same fiscal item before this Committee is that I believe from some of the questioning and testimony that the grant was not completely understood, and I think some of the comments today reinforce that belief. So I am here to clarify that.

To your point, Representative Ober, and really I was thinking that it would be in response to many of the questions that Representative Leishman had for me during the last time I was here before you, and that is relative to the accessibility of these grants to our traditional public schools. These funds are available to that schools. Members of my Department estimate that when this grant gets approved that as many as 20 of our superintendents in the state will reach out to access these funds to do something innovative and creative in their Districts.

I will read a brief statement from a superintendent in the New Hampshire high schools what that says. He runs an entire system, but it's relative to the high school. He says, 'cause we had been talking about an idea and he responds to one of my staff members. He says the idea was to use the charter funds to create a Two Plus Two opportunity for 9<sup>th</sup> and 10<sup>th</sup> graders' CTE experience tied to an Associate degree in their junior and senior years. The immediate area superintendents were interested in the concept but that's all it is, a concept. With the charter funds we could have developed it into a charter school. Without the funds, I'm afraid we are dead in the water.

So these are innovation funds available to our traditional schools that are struggling to meet the needs of all of our students. And so the first point of clarification for Representative Leishman and responsive to the question by

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Representative Ober is that yes, these funds can be accessed by our traditional public schools.

The other aspect that I would like to reflect on and I had passed out a letter to you before this, is a letter from Senator Hassan, who at the time was Governor Hassan, who was writing in support of this Charter School Grant Program at the federal level. And in that letter, and you can read it in its entirety, I won't, she says in New Hampshire we have created a system of high quality and accountable public charter schools. This is what we are fighting for. Charter schools create an opportunity to provide access to an educational experience that students may not otherwise have, and this grant is targeting at-risk students in the State.

The final thing that I will clarify, and again, just to make sure that everybody understands the grant, so Senator Feltes made the comment that these funds are not available to existing charter schools, and that's simply not the case in terms of the grant. There are portions of this grant that I refer to as expansion grants. I have a wait list today of over 1300 students that are interested in accessing existing program at some of the State Charter Schools that are represented behind me today. This grant would be accessible to those charter schools to be able to expand opportunities to more at-risk students in our state. And, in addition to that, in terms of creating resources for our students, this grant would provide support to the Department, financial support to the Department to hire people to be able to better support those charter schools that are already in existence so we can spread best practices, we can improve and continue to support accountability and move the system forward.

I am very thankful that Senator Feltes helped us to get a charter school position in the Department, and that has been an immense help to all of our charter schools. This would continue that good work on the behalf of at-risk students.

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CHAIRWOMAN WALLNER: Thank you, Commissioner. Further questions for the Commissioner?

REP. OBER: No further question.

CHAIRWOMAN WALLNER: Representative Leishman.

REP. LEISHMAN: Thank you, Madam Chair. So, first off, obviously nice to see you as always, but I'm a little concerned because I looked at the tab and I said, oh, he's responding to our questions that we had last month, and the date in the letter was the 18<sup>th</sup> of December so after the last Fiscal Committee meeting. But the letter's identical, I believe. I read it through and looked identical to the information you provided us last month with absolutely no information to address the questions that a number of us had at the last meeting. And you yourself, Commissioner, said this basically was an expansion grant, and one of my biggest concerns as I expressed last month was the financial viability of the existing charter -- public charter school system. And I specifically stated that it would make more sense to me that you apply for a federal grant to support the existing charter schools, because I believe everybody on this Committee, and perhaps in the entire Legislature, has supported public charter schools and increased the funding. And I'm a little disappointed, if I can say, that there is nothing new in your request as a response to questions that we had last month.

And, again, you said it yourself, this was an expansion grant. And I hope you heard, at least me, of my concerns that we really need to address the financial viability of our existing charter schools so we can continue to make them better without adding another 20 that the State is going to have to support.

Once this grant is received, if it was received, we are still going to have to support additional funding for these additional charter public schools that you want with State funds. So you could address some of those comments.

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MR. EDELBLUT: So I would be happy to address those comments for you. And I think one of the things that was clear from the last meeting and you had talked to me if I could go get additional funds for the traditional schools. So I was trying to clarify that information for you.

Relative to the financial viability of our existing charter schools, I would tell you that they are financially viable. The standard that you have used to measure those schools as if they are a for-profit corporation that would spin off profit. And what I will tell you is that the financial viability of our charter schools is no less tenuous than the financial viability of our existing traditional schools, the difference being that the existing traditional schools have the ability to simply call up additional revenue.

And so our schools are working very hard. Our charter schools are working to try and create an environment in which students can learn and that is what they are succeeding in. And many of those schools have wait lists, that they have the ability to open those wait lists, expand their opportunities and bring more students in successfully in that process.

We closely monitor both the programmatic, as well as the financial performance of our charter schools, and with the additional resources that we have we can continue to support them and make sure that they don't get themselves into financial difficulty where they're not able to meet their obligations. But that's not the case today that we have charter schools who are going belly up or not meeting their financial obligations.

And so I support our charter schools because of the work that they do for the children. I don't disagree that everyday it's a challenge for them just as it's a challenge in our traditional schools to make sure that the resources go as far as they possibly can and that they get delivered in a way that is most cost efficient and that's what our charter schools are doing.

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CHAIRWOMAN WALLNER: Further question.

REP. LEISHMAN: Thanks. Just to clear the air. You made a statement that is completely false. I have never said these schools should be for profit or be making a profit. I think the schools need to be viable but that doesn't mean they have to be making a profit. But I made very clear last month with after looking at 20 audits that these schools are struggling. And without State support, in many cases greater than 75% for these schools, they would fail. I've never said that these schools should be for profit. I think all schools ought to meet their expenses and I pointed out one school has a \$400,000 plus IRS lien against them. Those things tell me that we have some issues and I would certainly hope that you would make a request to the Federal Department of Education to seek funding for existing charter public -- public charter schools to put them on a better footing financially. Thank you, Madam Chair.

CHAIRWOMAN WALLNER: Thank you.

MR. EDELBLUT: So you can rest assured that if a grant program becomes available at the Department of Education that would be to directly fund funds into the existing charter schools for the existing programming and not an expansion, we will make that application. That application has not been made available to any of the states. I will even make a request to the Department that they consider a grant program like that. Today they're offering grant programs to help at-risk students. That is the grant that we have applied for.

CHAIRWOMAN WALLNER: Further questions? Seeing none. I've had a request from Representative Weyler that we have a roll call on this item. The motion was made by Senator Feltes, and seconded by Representative Leishman to deny the item. And I will ask the -- I will ask -- unless there's further discussion, I will ask Representative Weyler to call the roll.

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CHUCK MORSE, State Senator, Senate District #22: Madam Chair, can you clarify that, 'cause I thought the motion was to deny letting the item come on. It's not to vote yes or no on the item.

REP. WEYLER: Motion was to deny. That's what I wrote down.

CHAIRWOMAN WALLNER: Further questions about the motion? Seeing none, I will ask Representative Weyler to call the roll.

REP. WEYLER: Representative Leishman.

REP. LEISHMAN: Yes.

REP. WEYLER: Representative Ford.

REP. FORD: Yes.

REP. WEYLER: Representative Weyler votes no. Representative Ober.

REP. OBER: On the motion to deny I vote no.

REP. WEYLER: Rep -- let's see. Representative Wallner.

CHAIRWOMAN WALLNER: Yes.

REP. WEYLER: Senator D'Allesandro.

SEN. D'ALLESANDRO: Yes.

REP. WEYLER: Senator Feltes.

SEN. FELTES: Yes.

REP. WEYLER: Senator Kahn.

SEN. KAHN: Yes.

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REP. WEYLER: Senator Rosenwald.

SEN. ROSENWALD: Yes.

REP. WEYLER: Senator Morse.

SEN. MORSE: No.

REP. WEYLER: Vote is seven to three. Again, the Democrats proving they put priority for the teachers' union ahead of the students.

CHAIRWOMAN WALLNER: Representative Weyler, I think that was an inappropriate --

REP. WEYLER: This is a public meeting. People should face up to what they do publicly.

CHAIRWOMAN WALLNER: The motion carried seven to three. And we'll move on now to Tab 8. Yes.

SEN. D'ALLESANDRO: Hold on. Just like to address Representative Weyler's --

REP. OBER: Madam Chairman, if we are going to do -- we have many members in the audience at this moment. Could we have a brief recess so we can hear as we did last month?

CHAIRWOMAN WALLNER: Are there people who are leaving at this point? Senator D'Allesandro has a statement.

SEN. D'ALLESANDRO: Thank you, Madam Chair. To my colleagues, deep respect for everyone that serves on this board, and we vote our consciences. We do what we perceive is in the best interest of the people that we represent. And it seems to be that, indeed, to throw things in a partisan fashion when, indeed, the lives and well-being of the children in this state are really our concern. All of my children went to public schools. All of my children, K through 12, and then public

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institutions of higher education. It seems to me I've been an educator all of my life that my interest is in the well-being of students. Public charter schools are public charter schools. I agree with Representative Leishman what we should do is shore up what we have. They get significant public support. I think everybody should recognize that. In the vicinity of \$7,000 per student. That's more than we give our normal public schools. And, indeed, to throw this into a partisan environment, to me, it is just not -- it's not acceptable. And Senator -- Representative Weyler has been a friend of mine for years, will continue to be a friend of mine. We disagree on this particular issue; but I think all of us should recognize that we are here to serve the public. That's why we're here and the public knows that's what we do. Thank you, Madam Chair.

CHAIRWOMAN WALLNER: Thank you. Let's take a five-minute recess while we let some of the people in the audience leave.

(Recess taken at 11:03 a.m.)

(Reconvened at 11:09 a.m.)

**(8) 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 7:12 Assistants:**

CHAIRWOMAN WALLNER: I'm going to call the Fiscal Committee back to order. And our next item is under Tab 8. And this is an item from the Department of Justice, item number 20-006. And I ask Attorney General to come up. Thank you very much.

I know there are several questions of this item. Everybody back? Okay. Thank you. You want to do your introductions?

GORDON MACDONALD, ESQ., Attorney General, Department of Justice: Good morning. I have it on.

CHAIRWOMAN WALLNER: Great.

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ATTORNEY MACDONALD: Good morning, Madam Chair, Members of the Committee. My name is Gordon MacDonald. I am the Attorney General. With me --

REP. WEYLER: I don't think it's on, Gordon. Push the red one and hold till it clicks down.

ATTORNEY MACDONALD: How's that? I apologize. With me is Associate Attorney General Anne Edwards who serves as General Counsel to the Department of Justice, and the Director of Administration Kathy Carr.

The item before you has really two parts. One is to budget and expend \$420,309 and the other is to request an additional appropriation of \$777,321 in support of the Department's litigation fund. The litigation fund is authorized under RSA 7:12. It exists to permit the Attorney General to engage outside resources to assist in the office's functions, both in the areas of criminal prosecution and in cases where we are defending the State. The fund is used for expenses such as in our criminal jurisdiction the retention of experts, in our ongoing investigations with respect to such issues as competency, crime scene analysis, crash scene analysis, medical experts to help us determine times of death which is critical sometimes in our homicide cases. Laboratory testing where we have investigations and litigation involving large volumes of discovery. We do retain outside help. It assists with travel expenses for witnesses, stenographer costs, transcription costs, and transportation costs for our attorneys.

On the civil side these funds are used to help with experts that we need in defending cases against the State, witness expenses, and discovery expenses in our civil litigation, and it also assists with instances where we retain outside counsel. In some cases, and this is relevant to the first part of the item, we are able to recover funds that we have expended, and that is the \$402,000 before you. Those are funds that we recovered as part of our investigation in the criminal -- in the Consumer

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Protection and Antitrust Bureau with respect to the hospital transactions.

The expenditures from this fund are recorded on an annual basis under RSA 21-M:5, and I know the Committee has seen a draft of our accounting of the expenses that were made for Fiscal Year 2019.

As you will see from that handout, which I hope the Committee had a chance to at least see, there were more than 500 separate cases for which we draw these -- the funds during Fiscal 19; more than 500 cases.

The other handout that we provided to the Committee was an overview of the litigation account history. And over the period of eight years in the chart that we made available, actual spend from this account has ranged from \$709,000 in 2000 -- 2012, to a little over \$2.2 million in 2016. The average is about 1.3 million.

Accordingly, our agency requested 1.3 million for each year of the biennium. The actual budgeted amount was \$350,000. And I know the veterans on this Committee know this is a regular exercise that we go through.

We did make a prior request during the Continuing Resolution period. And this Committee and the Governor and Council approved an additional \$562,000 to the fund. So that happened in -- on July 25<sup>th</sup> of 2019, a few weeks into this current Fiscal Year.

The rationale, Madam Chair, is very simply the workload of the Department of Justice is at an historic high. Last year in the Calendar Year of 2019 the State, unfortunately, experienced more homicides than it has in more than 30 years. We average 19 and we had 33 last year. Those cases are under an active investigation and prosecution, and we need these funds to assist with those prosecutions.

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Our Consumer Protection Bureau, as I mentioned earlier, is facing an unprecedented number of very significant transactions involving three separate proposals by hospitals, acute care hospitals, to either merge or affiliate. And, finally, our Civil Bureau has been exceptionally busy defending such cases against the State, including our school funding -- the school funding case brought by ConVal School District. We have major litigation against the United States Department of Justice with respect to the Lottery Commission and, of course, and I know the Committee is interested in this, defending the laws of the state with respect to the election law changes that were made by the Legislature.

With that, Madam Chair, that is the -- what I would offer the Committee and, obviously, we're here and prepared to answer any questions the Committee has.

CHAIRWOMAN WALLNER: Representative Leishman.

REP. LEISHMAN: Thanks, Madam Chair, and thanks for providing us the litigation report. It was quite interesting. So I had a question on action item two. And the LBA was kind enough to reach out to you folks and get a response for the Committee. The cost for Senate Bill -- the litigation for Senate Bill 3 and House Bill 1264 seemed very high to me. Can you explain what's going on there?

ATTORNEY MACDONALD: Yes. And thank you for the question, Representative. Let me take it one case at a time, because they are quite different.

Senate Bill 3 was enacted by the Legislature in 2017. The litigation in that case began roughly in September 2017. So the office has been defending that law for over two years. It has been exceptional in the sense that we have essentially had two trials in that case. The first one in 2019 was a nine-day trial in Superior Court with over 100 exhibits.

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Then earlier or recently a couple months ago there was a second trial involving that lasted seven days and more than 200 exhibits. As a general matter, what drives expenses in civil litigation is discovery. Discovery in civil litigation these days is very, very, expensive. And the reason is with respect to particularly documents you are dealing with electronically stored information, and both sides in those cases have made extensive document demands. And let me just give you some statistics on that.

The document review in this case based on the discovery request that we received involved literally terabytes of information. Eventually, we culled down 24 -- 27,000 documents that warranted attorney review. And every document before it's produced, it's our obligation as attorneys must be reviewed to ensure that there's no privileged or confidential information before it's turned over. So, ultimately, 3100 documents were produced totaling 24,000 pages.

We also issued and received inbound discovery, discovery that we demanded of the plaintiffs. Again, this is just typical in any large civil case, and produced to us were 22,000 pages or actually a little over 23,000 pages which, again, required attorney review.

There were an exceptional number of depositions in this case; 58 depositions were taken. Each deposition requires stenographer expense and transcripts expense. And, finally, there was extensive expert practice, discovery practice. The plaintiffs in the case disclosed four experts and there's extensive work that needs to be done with respect to experts and the defendants disclosed one expert. So that's Senate Bill 3.

HB 1264, the litigation was -- began in the middle of 2019. The -- again, the case to the extent there have been expenses in the case has been driven by discovery. And just to give you the statistics analogous to the ones I gave you on SB 3, 12,000 documents were identified for attorney review, 689 were actually produced totaling over 89,000 pages of documents that were

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produced. There is going to be expert discovery on both sides. The actual status of that case is that the -- it was brought in the United States District Court. The Court has certified questions of law to the Supreme Court and those questions of law are being briefed and there would be -- will be a trial scheduled -- has been a trial scheduled for May of 2020, expecting those certified questions to come back.

REP. LEISHMAN: Thank you very much. Thanks, Madam Chair.

REP. OBER: Madam Chairman.

CHAIRWOMAN WALLNER: Yes, Representative Ober. Go ahead.

REP. OBER: Good morning.

ATTORNEY MACDONALD: Good morning, Representative.

REP. OBER: As you know, I sit on Division I. This is not a partisan issue. Doesn't matter if the Democrats are in the majority or Republicans are in the majority. On the House side and on the Senate side we must pass a balanced budget. Your agency is one of the agencies that always kind of gets nicked by that because we always need more money than we have.

On the House side we effectively say, as Senator D'Allesandro will know, well, maybe the Senate can do something about this because they'll have more money, because the business taxes come in in April and May which is more revenue than the House has to spend. And, yes, we do cut this budget beyond what you ask for and sitting behind you is Commissioner Hanks who goes through the same situation and is here with an almost identical thing, only not for litigation. Hers is for trying to keep staffing in the prison.

So because you can come, Mr. Attorney General, I'm sorry to say, we do do this to you and yes, you do have to come, and I appreciate all the detail you have brought us on this. And I wish I could tell you it would never happen again, but we're

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always crunching for money. And so please understand we do the best we can with the budget. And it's not a partisan issue. And the nice chair of Division I is here sitting at the table and former chair of Division I. So we are all going to shake our head yes. We know -- thank you for being so kind and bringing all the details, even when we know we inflict it on you. I appreciate it.

ATTORNEY MACDONALD: Thank you, Representative.

CHAIRWOMAN WALLNER: Representative Weyler.

REP. WEYLER: Thank you, Madam Chair. Welcome, Attorney General. Many years ago I remember one of your predecessors coming to us and when we discussed how much we would put in the budget she said, well, it could go as high as 2 million. But the decision between both of us, and I think the Attorney General brought it forward, don't make it too big a target. If we had -- if we gave you millions of dollars then those that wanted to sue the State would say, oh, there's 2 million I can get. So we know that's part of the reason we do this. And we support the fact that you're going to need more. And I'm certainly going to support it, but I appreciate all the detail you give us.

ATTORNEY MACDONALD: Thank you, Mr. Chairman. Representative Weyler. I'm sorry.

\*\* REP. OBER: I would move to approve.

REP. WEYLER: Second.

CHAIRWOMAN WALLNER: Question.

SEN. D'ALLESANDRO: Thank you, Madam Chair. I would -- I would ask parliamentary I'd like to divide the question.

CHAIRWOMAN WALLNER: I believe the question -- I believe the question would be divisible because it's in two parts.

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MR. KANE: You can take a vote on each item, if you like.

CHAIRWOMAN WALLNER: Okay. So the first -- are you asking us to divide it by the first request 420 --

SEN. D'ALLESANDRO: Yes.

CHAIRWOMAN WALLNER: -- 309?

SEN. D'ALLESANDRO: Yes.

CHAIRWOMAN WALLNER: Okay. And the second being the 777,321?

SEN. D'ALLESANDRO: Yes.

CHAIRWOMAN WALLNER: Is that how you would like to divide it?

REP. LEISHMAN: I'll second it.

CHAIRWOMAN WALLNER: Okay. Senator D'Allesandro moves to divide the question.

REP. OBER: Madam Chair, there is a motion on the floor. You need to either ask us to withdraw or something? And we shouldn't have two motions on the floor.

CHAIRWOMAN WALLNER: Did we move?

REP. WEYLER: Well, I made the motion.

REP. OBER: I made the motion.

REP. WEYLER: She made the motion and I seconded.

CHAIRWOMAN WALLNER: I at that point did not accept that motion. But I would ask if we could withdraw Representative

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Ober's motion of approve and move to Representative -- Senator D'Allesandro's motion to divide the question. All in favor of --

REP. WEYLER: Do you withdraw?

REP. OBER: You asked me. That's not a motion.

CHAIRWOMAN WALLNER: You move to withdraw.

REP. OBER: I'm reluctantly withdrawing my motion. Thank you.

REP. WEYLER: I withdraw my second.

CHAIRWOMAN WALLNER: Okay. And --

SEN. D'ALLESANDRO: I make the request, Madam Chair. I'd like it divided into two parts. The first part being the acceptance of the \$420,000. The second part is the second request for \$700,000, divided into those two parts.

CHAIRWOMAN WALLNER: All in favor of -- yes.

REP. OBER: Could we have discussion?

REP. WEYLER: The vote now is on dividing the question.

REP. OBER: May we discuss this? Is this a discussable motion?

CHAIRWOMAN WALLNER: Yes. Representative Kahn. Senator Kahn.

SEN. KAHN: Good. We're good.

CHAIRWOMAN WALLNER: Representative Ober, you have a question?

REP. OBER: Yes, Madam Chair, I did. For the maker of the motion.

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SEN. D'ALLESANDRO: Yes.

REP. OBER: I'm curious, there's a Constitutional obligation to do these things. And I think there's probably a Constitutional obligation for the Attorney General and his or her staff to do the best job they can on every lawsuit whether they like it or not. I certainly don't like the murder lawsuits, but that's beyond my control. And the State Law allows us to do this. What is the proposal? I assume you're going to vote for the first part and not for the second part. And I would like to know your proposal for how this agency should fill its Constitutional duties if I am reading your motion correctly. If I'm reading it incorrectly, I apologize in advance, sir.

SEN. D'ALLESANDRO: Well, thank you very much for those comments and for your intuitive read. It's an honorable situation. I love that.

I wanted -- I want to divide it into two parts because I think the first part is very easy to accept that money and give it to the AG. He deserves it. Indeed, they have done a great job. The second part I want to discuss is the appropriation in the request. I, too, respect the Attorney General highly. He's a fine man and does a great job as Attorney General. I wouldn't dispute that for a moment. And my job as a public official is to support him in every way -- support that Department in every way I can. I think I have some queries about the second item and that's why I've asked to divide the question. But I understand what the Attorney General and Department of Justice has to do. I support that. I do have some concerns and I'll iterate those at the appropriate time. Does that answer your question?

REP. OBER: Yes, thank you. Thank you. I appreciate your kindness in answering.

SEN. D'ALLESANDRO: My pleasure. Always nice to answer your questions.

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CHAIRWOMAN WALLNER: The question is -- any further -- any further comments?

REP. WEYLER: Motion is to divide the question.

CHAIRWOMAN WALLNER: Motion is to divide the question. All in favor? Any opposed? Seeing none opposed, the item passes.

**\*\*\* {MOTION ADOPTED}**

CHAIRWOMAN WALLNER: And let's move to the first part which would be the \$420,000.

**\*\*** REP. OBER: Move to approve.

SEN. D'ALLESANDRO: Second.

CHAIRWOMAN WALLNER: Representative Ober moves to approve and Senator D'Allesandro seconds. Any discussion of that item? Seeing none. All in favor? Any opposed? Item passes.

**\*\*\* {MOTION ADOPTED}**

CHAIRWOMAN WALLNER: Now moving on to the second part of the request. This is for \$777,321. And I know that there are questions about this item. Senator D'Allesandro.

SEN. D'ALLESANDRO: Well, I would like to move that the request of 777,000 be reduced to 300,000, and I'll speak to that request.

CHAIRWOMAN WALLNER: Senator D'Allesandro moves that we reduce the 777,000 to 300,000.

REP. LEISHMAN: Move for discussion, Madam Chair.

CHAIRWOMAN WALLNER: Move for discussion. Okay. Senator D'Allesandro.

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SEN. D'ALLESANDRO: First of all, I'm very impressed by the material that was submitted to us by the Attorney General. Thank you very much for doing that. There's one particular situation where we have spent almost \$600,000 on. That's a situation that I've had discussions with the General about it. That involves action done by this legislative body in terms of rescinding an action done by another legislative body. It was vetoed by the Governor. It just seems to me that going further with this particular situation is inconsistent. That's all. It's just -- I recognize what he has to do; but, indeed, it doesn't make any sense to me to spend almost \$600,000 with the -- with the chance that we'll spend another \$600,000. And you do have many cases that should rise way above this. You talked about the murder cases, the number of killings that have taken place in the State of New Hampshire. Every one of them must be handled by your office, and the number of other crimes that directly -- directly affect individuals. And that, indeed, is my purpose for doing this and I think it's -- you have to make a judgment, and I understand that, as to what takes priority. The priority in this case would be \$300,000 further appropriation. Thank you, Chair.

CHAIRWOMAN WALLNER: Thank you.

REP. OBER: I have a question.

CHAIRWOMAN WALLNER: Representative Ober.

REP. OBER: Thank you, Madam Chairman. Attorney General, this comes to us every year. I know it comes to us every year because I know what happens in the budget. What I don't have in my mind is how much money historically we have been giving the Attorney General and, again, you haven't been always sitting in that seat, and can you help me? It seems like 300,000 is much smaller than what other Attorney Generals have asked for, but I don't recall.

ATTORNEY GENERAL MACDONALD: Representative Ober, we provided with this spreadsheet.

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REP. OBER: Do we have a copy, sir?

MR. KANE: I haven't received that spreadsheet. I haven't received that spreadsheet. I don't know who it was sent to.

KATHLEEN CARR, Director of Administration, Department of Justice: Mike Hoffman. He said he was -- that was a couple days ago. He said he had given it to the Committee.

MR. KANE: The Committee doesn't have a copy of that.

REP. OBER: Can we get copies of that, Mr. Kane?

MR. KANE: Yep.

REP. OBER: Thank you.

ATTORNEY GENERAL MACDONALD: I apologize, Representative. I understood the Committee had received the spreadsheet.

REP. OBER: I didn't even know we were getting it. I was asking you to refresh my memory which is apparently aging faster than the rest of me.

CHAIRWOMAN WALLNER: Let's wait until we have the information. Yes, Senator Morse.

SEN. MORSE: Thank you, Attorney General. First of all, on the 777,000, I'm to understand we've already spent that money?

ATTORNEY GENERAL MACDONALD: Senator, no, with an asterisk. The pending balance in the litigation fund is now \$13,000. We do have receivables in the office, one -- which amount to about \$160,000. So at the present time we're not able to meet the obligations based on the invoices we've received.

SEN. MORSE: My second question is, and I should know the answer just based on the amount of time I've been here, has the

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Attorney General's Office ever been denied a request here at this Committee?

MS. CARR: Not to the best of my knowledge.

ATTORNEY GENERAL MACDONALD: I'm looking to my colleagues with greater experience. I think the answer Senator is no.

SEN. MORSE: Further, Madam Chair. I thought I already knew the answer to that question. I'm trying to understand the logic of where we're going as a Committee, because I just heard a debate about an item that we weren't supposed to come back and hear the second time, yet we have dozens of pieces of legislation that are coming before our body that were vetoed by the Governor and upheld, and we are sending those same pieces of legislation through the process because we can. That's what we do here. We debate things publicly and we explain ourselves. And we just pushed that item out and said we won't debate it. I believe that item should go through the Legislature. I believe it should be in the form of a bill, but that's a separate item.

Now we're here with Attorney General where we basically have not denied funding something in the past. The office has, in my opinion, in all the years that I served as Senate President, I never looked at Republican/Democrat once. If an Attorney General came into my office and said this is where we're headed in the State of New Hampshire, we're going to have financial problems, we respected the office to do their job. We're not debating every item on there. We're not debating the hospital item on there, which is certainly a challenge in the State of New Hampshire. Is it to the point in the State of New Hampshire that if we can be outgunned financially, say in the hospital item they continue to take out advertisements time, after time, after time against our government, is that going to be something we just stop paying and then they win the case? Is that how we're going to operate as a state? I think there's much more to this.

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The ethics of this is unclear to me from our Committee's point of view when we've always upheld the request from the Attorney General on all litigation. We have actually upheld it in other litigation that's come before us and we haven't refused it. And, you know, it was a standing joke where they always wanted to hit me that I underfunded this line in the budget and that they could come back here and we weren't doing things right. Well, finally I'm not sitting on Finance, and I can say you didn't do things right. You should have fund it, but especially with a 13% increase in the budget. But the reality of the whole thing is I think there's a respect of the office that needs to be realized here, and I think reducing this would be wrong.

CHAIRWOMAN WALLNER: Thank you.

REP. OBER: Madam Chairman, may I go back to my question?

CHAIRWOMAN WALLNER: Yes.

REP. OBER: We do have the copy. Thank you for bringing this and really helps nudge my brain, and I should have remembered this. So we have consistently approved \$350,000 from 2012 through 2019 to your agency for this. We have gone as high as \$2,265,391. This year you're asking us for the amount of money that would take you to 2.1 million. Oh, I see we've gone \$2,300,000 as well. And so we seem to be in the ballpark with this amount. Am I misreading this chart that you gave us?

ATTORNEY GENERAL MACDONALD: No, Representative. You are correct.

REP. OBER: Thank you, and thank you for the chart and helping my brain. You must have known I was going to ask, huh?

CHAIRWOMAN WALLNER: Further discussion of the motion?

\*\* REP. OBER: Yes, I would move to amend the motion.

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CHAIRWOMAN WALLNER: Yes. What's your amendment?

REP. OBER: I would move to amend the motion to fully accept item two on this item in the full amount. I apologize. I did not have my microphone on. My amendment would be to fully accept item two and that is my amendment. Thank you, Madam Chairman. I apologize about the microphone.

CHAIRWOMAN WALLNER: Further discussion of the amendment? Representative Ober moves and Representative Weyler seconds, an amendment to the motion and the amendment would fully --

REP. WEYLER: 777,321.

CHAIRWOMAN WALLNER: -- fully fund the item at 77 -- \$777,321. Any discussion of that, of the Amendment? Seeing none.

ATTORNEY GENERAL MACDONALD: Madam Chair.

CHAIRWOMAN WALLNER: Yes.

ATTORNEY MACDONALD: I apologize for interrupting.

CHAIRWOMAN WALLNER: Yes, that's fine. Please do.

ATTORNEY GENERAL MACDONALD: I feel duty bound to respond to what's been said. In our democracy it is this body, the General Court, which sets the policy of the state as representatives of our people. And those policies are set forth in statute. It is the duty of the Executive Branch to faithfully execute those statutes, and it's the specific duty of the Attorney General that when one of those solemn acts of the Legislature is challenged, to defend the act of the Legislature, except in the most extreme circumstance where it is patently illegal or patently unconstitutional. That is my sworn duty as a Constitutional officer, and it's also my obligation as an attorney admitted to the practice of law in New Hampshire.

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I have come to the Committee with a good faith estimate of what it will cost for us to fulfill those duties. These bills are the law of the State of New Hampshire. I am duty bound to defend those laws, and every attorney in my office is obligated to defend those laws. And that's why I've come before the Committee with this request, and I just wanted the record to reflect that.

CHAIRWOMAN WALLNER: Thank you, Mr. Attorney General. I appreciate that.

REP. WEYLER: Request a roll call.

SEN. D'ALLESANDRO: Second.

CHAIRWOMAN WALLNER: Representative Weyler requests a roll call. Any further discussion?

REP. OBER: As a roll call?

CHAIRWOMAN WALLNER: All in favor? Any opposed to the roll call?

REP. WEYLER: So the motion is to approve 777,321. Representative Leishman.

REP. LEISHMAN: No.

REP. WEYLER: Representative Ford.

REP. FORD: No.

REP. WEYLER: Representative Weyler votes yes. Representative Ober.

REP. OBER: Yes.

REP. WEYLER: Representative Wallner.

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CHAIRWOMAN WALLNER: No.

REP. WEYLER: Senator D'Allesandro.

SEN. D'ALLESANDRO: No.

REP. WEYLER: Senator Feltes.

SEN. FELTES: No.

SEN. D'ALLESANDRO: Senator Kahn.

SEN. KAHN: No.

REP. WEYLER: Senator Rosenwald.

SEN. ROSENWALD: No.

REP. WEYLER: Senator Morse.

SEN. MORSE: Yes.

REP. WEYLER: Seven to three on that vote or three to seven. I'm sorry.

CHAIRWOMAN WALLNER: The Amendment fails, and we return to the original motion which is to reduce the item to \$300,000. The motion was made by Senator D'Allesandro and seconded by Representative Leishman.

REP. OBER: Question on the motion.

CHAIRWOMAN WALLNER: Discussion of the motion.

REP. OBER: Yes.

CHAIRWOMAN WALLNER: Yes.

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REP. OBER: What is the proposal for the maker of the motion and the seconder of the motion on how to pay the bills that are going to come in or have come in but have not been paid?

SEN. D'ALLESANDRO: Well, the best answer I can give you at this time is with the 300,000 and the 400,000 he'll have \$720,000, plus the 13 that he has -- that they now have in place that gets them to almost \$800,000. That's how I propose that they pay the bills.

REP. OBER: Further question.

CHAIRWOMAN WALLNER: Yes, further question.

REP. OBER: And when those bills are paid and there's still more litigation bills or is the proposal that the AG stops all litigation at this point?

SEN. MORSE: He can't do that.

SEN. D'ALLESANDRO: I think if the Attorney General needs more money he'll come back to the Fiscal Committee and ask for more money so that he can -- so that he can pay the bills. I'm sure he'll do that as he'll do his job as well as he can. And, indeed, we'll listen. We'll listen to him at that point in time. And the Attorney General will prioritize. I mean, that's the name of the game in our business. We do it. We do it all the time. And, as I say, I have greatest of respect for the AG. He knows that. He's my friend, and I think he does a good job. I have an opinion, and we all have opinions as Senator, excuse me, as representative for --

REP. OBER: Final question, Madam Chair. It's for the LBA.

CHAIRWOMAN WALLNER: Yes.

REP. OBER: Is there an RSA that allows the Attorney General to prioritize which case he will or will not litigate?

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MR. KANE: I would defer to the Attorney General, definitely defer to the Attorney General.

CHAIRWOMAN WALLNER: The Attorney General want to answer that question?

ATTORNEY GENERAL MACDONALD: If I may, Representative, I can answer it by a little bit of an interesting historical document that exists in our office. And in some ways it demonstrates what a wonderful state we have. It's a letter dated March 30<sup>th</sup>, 1978, to then -- then and currently esteem lawyer who is now one of your colleagues, Robert A. Backus, and it's from one of my predecessors, David H. Souter. And it talked about this very situation. Attorney Backus asked why -- what discretion the office would use in defending the actions of Governor Thomson who was involved in lawsuits regarding raising and lowering the flag.

SEN. D'ALLESANDRO: I was there. I was there. I was right there, Mr. Attorney General, and David Souter was my attorney.

ATTORNEY GENERAL MACDONALD: And Attorney General Souter responded to Attorney Backus saying, in part, because Attorney Backus said is there going to be discretion in what you do, Office of Attorney General, in doing this? The answer is, I'm quoting from the letter, sure there's going to be some discretion. And I assume the discretion will be exercised on the same criterion I have used. My standard in flag cases and any others has been simply this. This office will represent any Governor in a proceeding brought against him in his official capacity whenever his action cannot reasonably be judged patently illegal or unconstitutional. If, as I believe the attorney -- or Attorney General should act as a lawyer guided by generally applicable principles, I don't believe any other standard is possible. That applies directly here. My duty is to defend those who've been sued in these cases under this standard.

REP. OBER: Thank you, sir.

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CHAIRWOMAN WALLNER: Senator Feltes.

SEN. FELTES: Thank you, Madam Chair. Thank you, Madam Chair. Thank you, Mr. Attorney General. Just to follow-up on your comments from the letter and this line of inquiry and also Senator D'Allesandro's observations.

So it's not just though, and correct me if I'm wrong, it's not just that you have the discretion in terms of whether it's extreme case in terms of Constitutional viability of a statute, that kind of thing, but also you do have discretion in the words of Senator D'Allesandro to prioritize how much time, effort, and work you do put in and whether or not to settle a case and those kind of things are part of your discretion. It's not just whether or not to defend or not defend. It's also to what extent and to what judgment calls you make and your office makes during the course of defending a law, too, and that goes to the priority question.

ATTORNEY GENERAL MACDONALD: There are two responses, Senator. First, as you well know, there's -- there's very little discretion involved in responding to discovery demands. You either do it or you risk default in a case, and that is what has driven the expenses in these cases as I have outlined.

Second, the office -- it would be an arrogation of power to the Attorney General to settle a case involving Constitutional questions, involving the constitutionality of a statute. Again, my duty is to defend this statute. It's the law of the State. So, yes, in the margins do we make decisions? Of course. But there -- and do I try to be a -- a good steward of public resources? Yes, I do. But we also have our duties as lawyers and our duties as officers of the state.

SEN. FELTES: Appreciate that.

CHAIRWOMAN WALLNER: Senator Morse.

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SEN. MORSE: In speaking to what we're going to vote on the -- I think we're -- I've sat on this Committee for a long time. I've never seen us do something like this, and I've never seen us challenge an Attorney General before. And I do believe the theory of whether the hospitals that are suing the State want to spend more money and we give up when we get to a certain amount of money comes into precedence here because, certainly, the outside groups could be doing this forever and keep spending money.

But to the minority party, I challenge you to understand what I came back to in 2011. You had a budget of 11.5 and a Governor made a decision on what to cut in order to make sure that he brought a budget here, and that's the Governor's choice. And as the Governor governs during this session, is this how we're going to make choices? If a Governor decides we are not going to go forward with an item, is that what we're going to do? The Governor's basically going to say minority party voted for this, so I'm going to hold it back. Is that how New Hampshire is going to be? Because it certainly sounds like Washington, and it's certainly not why I'm here. I have a lot of respect for everyone on this body; but what we are doing right now is absolutely wrong for what the State of New Hampshire stands for. Because the challenges of people on the outside wanting to know if we spend enough money New Hampshire will stop litigating, or whether or not we want to stop spending as a state on items that the other party proposed because we didn't like the fact that the budget went up. Is that how we're going to govern, because that's what it's headed towards and it's absolutely wrong.

CHAIRWOMAN WALLNER: Mr. Attorney General, I just want to be sure that I understand. I thought I heard you say that you had right now in your possession \$160,000 worth of bills that need to be paid; is that correct?

ATTORNEY GENERAL MACDONALD: Approximately, yes, Madam Chair. Yes.

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CHAIRWOMAN WALLNER: Okay. So the 300,000, you have enough with the 300,000 to cover that 160,000 that you already have in your possession.

ATTORNEY GENERAL MACDONALD: Correct. It would cover the 160,000 approximately of the receivables that we have. Yes.

CHAIRWOMAN WALLNER: Okay, thank you. I just want to be clear that you had enough to cover what you have already incurred. Thank you.

SEN. MORSE: Excuse me, I just want to correct the Attorney General. Those are payables.

ATTORNEY GENERAL MACDONALD: I'm sorry.

PATRICIA LOVEJOY, State Representative, Rockingham County, District #36: The two CPAs just said that.

ATTORNEY GENERAL MACDONALD: I said receivables, I'm sorry. Still looking like a private lawyer.

REP. WEYLER: Request a roll call just so I can keep all the paperwork straight.

CHAIRWOMAN WALLNER: You request a roll call and the motion is to reduce the --

REP. WEYLER: Part two of 20-006.

CHAIRWOMAN WALLNER: To \$300,000.

REP. OBER: Madam Chairman.

CHAIRWOMAN WALLNER: Representative Weyler -- yes, Representative Ober.

REP. OBER: I don't know if I understood your question. Did you ask him if those were the payables he had in hand or if

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those were the payables for everything that has already been out there but not been billed? And I'm not certain what your question was. I'm sorry about that, Madam Chairman.

CHAIRWOMAN WALLNER: I was trying to clarify whether or not that -- I thought I heard him say that those were payables. He said receivables, but we all thought they were payables, payables that you already had in hand; is that correct?

ATTORNEY GENERAL MACDONALD: We have invoices in the office for approximately \$160,000. There are obligations that we know we have no choice but to pay that are in excess of that number, and a very important example is the State's obligation under the current Community Mental Health Agreement where we are required to pay some attorney's fees and the overseer of that agreement. And Associate Attorney General Edwards is the attorney responsible for administrating that important agreement and she's informing me now that we can expect \$125,000 in that matter alone to come in, and obviously, the State -- that's a very important agreement and, obviously, the State needs to honor that obligation.

CHAIRWOMAN WALLNER: So we might see that at a later -- in a later request?

ATTORNEY GENERAL MACDONALD: Well, those -- those payments would have to come from this fund. And they are expected, and I can tell you right now, you know, those invoices will be received by our office.

CHAIRWOMAN WALLNER: Thank you. Representative Weyler, you want to call the roll?

REP. WEYLER: The motion is to reduce to 300,000. Representative Leishman.

REP. LEISHMAN: Yes.

REP. WEYLER: Representative Ford.

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REP. FORD: Yes.

REP. WEYLER: Representative Weyler votes no. Representative Ober.

REP. OBER: No.

REP. WEYLER: Senator D'Allesandro.

SEN. D'ALLESANDRO: Yes.

REP. WEYLER: Senator Feltes.

SEN. FELTES: Yes.

REP. WEYLER: Senator Kahn.

SEN. KAHN: Yes.

REP. WEYLER: Senator Rosenwald.

SEN. ROSENWALD: Yes.

REP. WEYLER: Senator Morse.

SEN. MORSE: No.

REP. WEYLER: Chairman Wallner.

CHAIRWOMAN WALLNER: Yes.

REP. WEYLER: Seven to three.

**\*\*\* {MOTION ADOPTED}**

**(9) Chapter 346:46, Laws of 2019 Department of Corrections; Transfer Authority:**

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CHAIRWOMAN WALLNER: Thank you. And let's move on now to Tab 9.

REP. OBER: Madam Chairman, you didn't give him any money. You reduced. You moved to reduce this by \$400,000 but you didn't move to pay him the \$300,000. So we are going to leave him with no money.

REP. WEYLER: No, the motion was to reduce the request to 300,000.

REP. OBER: And is it the understanding that the Attorney General should come back next month when he gets those bills in and ask for the rest of the money? Just asking.

REP. WEYLER: He has no other choice.

CHAIRWOMAN WALLNER: I think the Attorney General will make that decision to come back when the time comes.

REP. OBER: Under State Law that's what he's supposed to do; right?

CHAIRWOMAN WALLNER: Yes.

ATTORNEY GENERAL MACDONALD: Thank you.

CHAIRWOMAN WALLNER: Tab 9, Department of Corrections, Item 20-011. Do we have any questions about this item?

\*\* REP. LEISHMAN: Move approval.

REP. FORD: Second.

CHAIRWOMAN WALLNER: Representative Leishman moves approval. Representative Ford seconds. Any discussion of the item? Questions of the Department? Seeing none. All in favor? Any opposed? Item passes.

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\*\*\* {MOTION ADOPTED}

(10) Miscellaneous:

CHAIRWOMAN WALLNER: Senator Feltes.

\*\* SEN. FELTES: Thank you, Madam Chair. I think we are now in Miscellaneous. I have a Miscellaneous item. And it's -- Madam Chair, it's related to something that came up earlier today for the Committee to consider and discuss.

Mike Kane will distribute a possible motion for the Committee in terms of procedure moving forward. While it's being distributed it deals with the issue of identical items being brought back after they have been rejected, Madam Chair. And it's something that obviously just came up, having come up ever before the Committee, so thought it might be worth considering adopting a policy about how to deal with this moving forward, Madam Chair. So what has been distributed, and I hope everybody has an opportunity to take a look at it, I'll just read it. It's a policy trying to deal with this issue moving forward.

It says the Office of the Legislative Budget Assistant shall not accept a request to place an item on the Fiscal Committee agenda that is the same, essentially the same, or substantially similar to an agenda item that has been previously denied.

And so for discussion purposes, I move that policy adoption by the Fiscal Committee so we can have that -- have that discussion and have a policy dealing with this moving forward.

SEN. KAHN: Second.

CHAIRWOMAN WALLNER: Representative -- hum -- Senator Feltes moves the motion that you have in front of you and Senator Kahn seconds. And I think I saw Senator Morse.

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SEN. MORSE: Yes. First of all, I would hope that we take this up at a future meeting just being put before us now.

Second of all, based on the last item that we just voted on, this would not allow that item to come back which I think was somewhat suggested that it might. But if I were going to interpret it, that's why I think we need to sit on this for a month, that couldn't come back.

CHAIRWOMAN WALLNER: Senator Feltes.

SEN. FELTES: Thank you, Madam Chair. Just to respond to my colleague from Salem's question. I think I would disagree with that interpretation; but I do agree, I think it's worth waiting to have everybody digest this and have some conversation about it. No doubt about that.

CHAIRWOMAN WALLNER: Would the maker of the motion and the seconder withdraw their motion so that we could have a month?

SEN. FELTES: I'm happy to withdraw the motion.

CHAIRWOMAN WALLNER: Or even longer to think about this.

SEN. FELTES: Yeah.

CHAIRWOMAN WALLNER: I would say it was very frustrating when I saw that there was an item coming forth that was absolutely just completely identical to what we had just turned down. It was only like four or five days later that it was placed on the agenda. And I had to really struggle with whether or not I really had the authority to say no to allowing that item in. And I decided that I did not have the authority. That, actually, the item needed to be on the agenda, and we needed to have the discussion around the item again. But to start a process here where items that get denied just keep coming back, and back, and back is a waste of all of our time, and not -- not a situation that I would like to see us get started. So let's

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think about this for a month or two, and come back and talk about it at a later date.

REP. OBER: Madam Chairman.

CHAIRWOMAN WALLNER: Yes.

REP. OBER: I tell people all the time I'm not an attorney. I will tell you my dad was. I grew up with lots of conversation about litigation around the dinner table. I know the maker of this proposal, he's both an attorney and candidate for Governor. But I will tell you this has significant issues that are going to make most of what we do illegal. It has no time frame for when the item may not be brought back.

This Committee is well aware that we only accept money, even if it's a five-year federal grant but we have three months left in the Fiscal Year, we only accept three months' of that. And then as soon as we cross to a new Fiscal Year the same grant comes back for us to vote on. We would not be able to do this.

This morning we tabled on behalf of OPLC an item that came to us in October of '18 for a 30% raise for certain staff members above and beyond State pay raises. This morning, nearly a year later, it came back to go to 38%. That is substantially the same.

This has significant legal issues that will impact us, and as it's worded cannot, simply cannot be adopted by this Committee. And I'm afraid that it was written in anger by one person against a Commissioner who brought an item back without thinking it through.

So I think we really need to see an attorney on our part, whether that's the AG's Office, although I can't pay the money to litigate, but we need to be careful about how we word this, because we do get those grants back. They are exactly the same. We would lock ourselves out of doing much of our work and that is not what we intend to do as a body of ten, no matter what

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your political party is, that is not what we intend to do. Thank you.

CHAIRWOMAN WALLNER: And I appreciate your comments and see that that's why it's really good that we take a month, two, three, to consider whether or not this is the way we want to move forward with this particular motion. Okay. Now we are into Miscellaneous. Yes, Senator D'Allesandro.

SEN. D'ALLESANDRO: Thank you. I don't think it's appropriate when speaking to say what one person is running for. I think we're here. We have an office. That's why we're here. That's why we sit here. But the future holds whatever it holds, but that's not the item that should be discussed. I think the Chair exercised good judgment saying here's an item that came before us. We were all kinda taken back to seeing the same item come again, and it is good to look at things. It is good to look at things. We're going to take time to look at it and to exercise judgment as to whether this should happen or be part of our program, part of our rules and regulations.

So I think good judgment exercised by the Chair. Something to think about. Does take a lot of time and effort. We keep getting the same thing over and over again. I feel that way about legislation, you know, and déjà vu just happened in the last Senate session, and I'm sure in the last House session.

REP. OBER: Welcome to the House.

SEN. D'ALLESANDRO: And I remember back in 1973 when I was here when Jim O'Neill, the Speaker of the House said we should have a Committee that looks at legislation before it's filed so we don't have the same legislation filed over, and over, and over again. And I might say I was here in 1978 when David Souter was the Attorney General, and I was on the Council and he made that statement. So, you know, a lot of things what goes around, comes around. But I think we're exercising good judgment and let's -- cooler heads have to prevail. Listen, we're here to serve people. That's what we're here for, that's what our job

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is, and I appreciate what every -- what everything -- everything that happens and what everybody does, and I think let's keep it on an even plane here. Otherwise, the Department of Corrections will be seeing all of us. Thank you.

HELEN HANKS, Commissioner, Department of Corrections: I'll find you a good room.

CHAIRWOMAN WALLNER: Let's move on to -- do we have any other Miscellaneous items?

MR. KANE: No.

CHAIRWOMAN WALLNER: No. You have another Miscellaneous item?

SEN. D'ALLESANDRO: It's in Miscellaneous.

MR. KANE: Informational.

CHAIRWOMAN WALLNER: Informational.

**(11) Informational Materials:**

SEN. D'ALLESANDRO: Oh, it's Informational. Seeing that we have -- is Miss Rounds here? I had a CIA agent find her. Very, very nice to see you.

KERRIN ROUNDS, Interim Commissioner, Department of Health and Human Services: You as well.

SEN. D'ALLESANDRO: Thank you.

MS. ROUNDS: Nice job pronouncing my name.

SEN. D'ALLESANDRO: Excuse me?

MS. ROUNDS: I said nice job pronouncing my name. We had a nice conversation about that yesterday.

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SEN. D'ALLESANDRO: I do my best. I do the best that I can do with limited resources.

With regard to a letter from the Governor with regard to the \$25 million back-of-the-budget cuts, where are we in terms of preparation? What are we doing in terms of looking at this? And I looked at one of the drafts in the letter and that was increases in non-prioritized needs, and how that plays into this situation with the 25 million in cuts have to be -- have to be done. Where are we at this point?

MS. ROUNDS: So, for the record, Kerrin Rounds. Currently Interim Commissioner of the Department of Health and Human Services.

Where we are in the process, I think, is mostly outlined in this letter. We identified some major areas that we know we should look at for reductions. You know, first and foremost on that list is phase implementation. With the results of the Continuing Resolution, we do expect that some of the things will take longer. As I've explained to this Committee, part of the process after a Continuing Resolution is a lot of clean-up work. So it takes time to get things through the contracting process because it takes time to put our books back in order. So I think that's just one area that I would really draw your attention to.

I've spent some time really in that section more than any of the others; but as time has allowed, I'm going through each of these bullets to identify different things that might fit into these categories more broadly and maybe something more broadly as well. And then when the new Commissioner is appointed or confirmed, then I will spend time with her or him to -- to identify what those cuts will apply to.

SEN. D'ALLESANDRO: Further question.

CHAIRWOMAN WALLNER: Yes.

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SEN. D'ALLESANDRO: Thank you. Thank you, Kerrin. And, indeed, will you keep the Committees in the House and the Senate informed? For example, the Finance Committee in the Senate and I'm sure the Appropriations Finance Committee in the House as to what's happening with regard to those items?

MS. ROUNDS: Absolutely.

SEN. D'ALLESANDRO: Thank you.

MS. ROUNDS: We will -- we will need to notify the Department of Administrative Services where in our appropriations to make those reductions. So it would be by Accounting Unit, by Class Line. We have to specify where those reductions are. So that would be public information that we can share with you.

SEN. D'ALLESANDRO: Great. Thank you. Thank you, Madam Chair.

CHAIRWOMAN WALLNER: Thank you. Senator Rosenwald.

SEN. ROSENWALD: Thank you, Madam Chair. Good morning. Do you have a target date for when those notifications on the Class Lines will be done? I'm just thinking we're halfway through the first Fiscal Year. The longer we wait, the harder it gets.

MS. ROUNDS: I -- I understand your concerns. I think I'm still in the glass half full if we have 18 more months to determine that, more so than only 18 months, but I think that it depends. It may be that we're able to determine all 25 million, you know, within a couple of months of the Commissioner starting. It may be that we're able to determine part of it, and then we need to take some time to allow them to do some strategic planning to determine the future vision of the Department before we can identify all of them. So I think that that's -- that's hard to nail down exactly, but I will certainly share information as we have it.

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SEN. ROSENWALD: Okay. Thank you.

CHAIRWOMAN WALLNER: Thank you. Thank you, Miss Rounds. Very helpful. Yes, Senator Feltes, and then Senator Kahn.

SEN. FELTES: Thank you, Madam Chair. Thank you, Miss Rounds. So just interpreting or trying to interpret the letter that was provided to the Committee. With respect to an update on 25 million, it talks about current services and it talks about prioritized requests. Are we to conclude that the Legislature's work on new services that wasn't necessarily in a prioritized request in the Department, for example, the Children's System of Care that was authorized and signed into law and funded by the Legislature, that that is actually not moving forward right now?

MS. ROUNDS: So I think you're asking about a very specific program. You're actually referring to a very specific program, and I think it's been stated very publicly that we have been moving that program forward, and it continues to move forward so with regards to that one that you're mentioning. But can I tell you that we won't look at any of the new funding that would be added? Of course not. I think that we need to look at any of those items that were not requested by the Department or -- or were maybe prioritized differently as the legislative session went on for us or for you. I don't know. But I think we need to look at that closely and determine what our priorities are.

CHAIRWOMAN WALLNER: Yes.

SEN. FELTES: Thank you, Madam Chair. Thank you, Kerrin. So just as a follow-up on that specific line item. So the Department going out, RFP's on the Statewide Mobile Crisis, is that something the Department's pursuing right now?

MS. ROUNDS: Yes.

SEN. FELTES: Follow-up, Madam Chair, if I could?

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CHAIRWOMAN WALLNER: Yes.

SEN. FELTES: So just as a general framework, setting aside a specific -- specific priority we just talked about, do you have identified new authorized expenditures that were not in the Governor's proposed budget that was not a prioritized need that the Legislature funded, of which there are dozens, have you identified which one of those dozens that you're not moving forward with right now? Because a lot of them have been authorized right now. They're effective.

MS. ROUNDS: Hm-hum.

SEN. FELTES: There's funding there. The letter implies that some of the new stuff is not going forward. I'm glad to hear the Children's System of Care is, but what isn't going forward right now?

MS. ROUNDS: So I -- I don't think I can commit to anything not going forward right now, because that to me says that we won't be going forward with it at all. And that's -- we haven't determined that yet. So I am waiting another three weeks for a new Commissioner, hopefully, to be confirmed and be on Board to make some decisions. So are there things that we are holding or not even necessarily holding. The contract process takes time. So we're researching everything that the Legislature passed and determining feasibility and time lines. But will there be things that won't ultimately be spent? Yes, because we have to reduce it.

SEN. FELTES: One more follow-up, if I may?

CHAIRWOMAN WALLNER: Yes.

SEN. FELTES: Thank you, Madam Chair. So I understand you're in a tough position as interim and I can fully get that. I'm not asking for any commitments on behalf of the administration. I'm just asking what exactly is not moving forward that under

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law should be moving forward right now and that we appropriate money for?

MS. ROUNDS: I don't think I have a specific answer to that.

SEN. FELTES: Okay. All right. I appreciate that. Thank you.

CHAIRWOMAN WALLNER: Senator Kahn.

SEN. KAHN: Thank you, Madam Chair. My question's similar territory, but it's to the words that are in the memo, Program Funds Savings, and there are a few new programs where the funding provided is insufficient for meaningful implementation. I would hope, Madam Chair, that those items or whatever fits under that category is something that would be -- the Legislature and Fiscal Committee would be party to those conversations in advance of making the determinations. Obviously, the insufficient funds is something that we'd want to understand --

MS. ROUNDS: Hm-hum.

SEN. KAHN: -- know what the options are, and consider whether the program as passed by the Legislature ought to go forward and the Legislature take what actions and the Department take what actions are necessary to do that.

MS. ROUNDS: I understand your request and I think if there's any anything to consider it would be whether or not this reduction should be applied in full. And if there was going to be a change to the Department's budget because of non-appropriate funding, I would think that this \$25 million reduction should be reviewed first.

SEN. KAHN: It's the suggestion that new programs would be not moved forward, I think.

MS. ROUNDS: Hm-hum.

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SEN. KAHN: You'd want us to be part of that conversation.

MS. ROUNDS: I understand.

CHAIRWOMAN WALLNER: Thank you. And thank you for joining us. And we look forward to continuing to hear from you about how the Department is moving forward on these reductions. Are there any other items from Information that people have questions about? I don't see any at this point. Thank you.

MR. KANE: Just the audits.

CHAIRWOMAN WALLNER: We have a number of audits in front of us.

MR. KANE: Yes. So the audits have all been approved for release at the December meeting. These are presentations since they have been released.

**Audits:**

CHAIRWOMAN WALLNER: Okay. So let's -- let's start with the audits. Which one we going to do first?

MR. KANE: The State CAFR will be the first one.

CHAIRWOMAN WALLNER: Okay.

STEPHEN SMITH, Director, Audit Division, Office of Legislative Budget Assistant: Good afternoon, Madam Chair, and Members of the Committee. For the record, Steve Smith, the Director of Audits for the LBA.

The first audit we will be presenting is the State Comprehensive Annual Financial Report. During this presentation there's actually two what I'll say auditor reports or panes that will be discussed. The first will be the CAFR itself so if you refer to the large document, the State CAFR which you're

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familiar with, but also you should have a presentation or a letter to the Committee with some required communication. KPMG has graciously put that in writing form to expedite their process; but there are some comments that they do want to make.

And then after that piece we'll transition to the internal control letter according to Government Auditing Standards. That's the letter looks like this. There's a couple of significant deficiencies that both the KPMG and Administrative Services would like to address to the Committee. So, with that, just give you a little kind of a preview of what we'll do for the State CAFR.

With me today is Brock Romano. He's the partner for KPMG on the State CAFR and also from KPMG is Jen Renaud, the Manager on the engagement. And with Administrative Services Commissioner Arlinghaus, and our State Comptroller, Dana Call. So I will turn it over to you, KPMG.

CHAIRWOMAN WALLNER: Thank you. Brock.

BROCK ROMANO, Audit Partner, KPMG: Good afternoon, Madam Chair, Committee Members. Again, for the record, my name is Brock Romano. I'm the Audit Partner for the State of New Hampshire. My understanding is you've got four audits. I think you're going to hear a similar story in terms of some of the required communications and standard discussion topics. So I'll try to be brief. And if my colleagues want to kind of allow me to speak for them in terms of some of the protocols to expedite your afternoon, hopefully, they will do so.

So we've got -- we've got a handout that I will use just to kind of keep me a little bit on track, a couple points that I want to make, but would encourage Committee Members to stop and ask questions along the way if there are any. Then I'll leave some opportunity for Administrative Services to hit some highlights from the actual financial statements themselves.

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So I start every meeting when I meet with Fiscal Committee or audit committees or bodies charged with governance, when we present financial statements I pretty much like to point out that the CAFR itself, the large-bound document that's some 160 pages, there are three pages there that belong to KPMG and that's our opinion, and the rest of the document is the responsibility of Management. I'm just going to hit a few highlights from the opinion.

The headline news, if you will, is the actual audit opinion on the financial statements themselves. That's unmodified. Sometimes referred as a clean opinion. Basically means that we believe those financial statements are presented fairly in all material respects in accordance with General Accepted Accounting Principles. So that's a lot of technical language, but I think the concept of a fair, clean opinion is something that I think the Committee Members are more familiar with.

I think the pledge from KPMG is if we were ever in a situation that we had a modified opinion on the State's CAFR we would be messaging that to you well in advance of this particular meeting.

A couple other items on the opinion. As Stephen pointed out, we do do the audit in accordance with a couple of standards. There's Generally Accepted Auditing Standards and then there's also, because of the federal funding that you receive, we also do our audit in accordance with Generally Accepted Government Auditing standards. And the Generally Accepted Government Auditing standards has a required byproduct of the audit which we sometimes call the Yellow Book Report. That's what was referred to a moment ago. There's some comments there. We'll kind of defer that discussion after we walk through the CAFR itself.

So the next few pages of the -- of our handout walk through some of the responsibilities of Management with KPMG and the Fiscal Committee. I'm not going to get into this in a great level of detail. I think the highlights are that Management is

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responsible for internal controls. Management's responsible for presenting its financial statements. KPMG's responsibility is to do our audit in accordance with the professional standards and then render that opinion that I mentioned.

Our handout also has a few pages on KPMG's system of internal control. A cornerstone of what we do as auditors is maintain our auditor independence so there's some information on how we do that. I think the highlight that I'd like to leave for the Committee is that there is -- sometimes there is a concern about the level of non-audit services that a professional services firm provides, in addition to being the independent auditor and questions about independence. Here at the State of New Hampshire we do very little non-audit services. Most of our services is of audit category.

We do have a system in place that if -- if KPMG is asked to or elicits non-audit services, our system of internal control routes all of those requests to me as the lead audit engagement partner that I'll evaluate and will have to pre-approve based upon the nature of services. That's a measure of control that I think the Fiscal Committee might want to be aware of as the topic of auditor independence is sometimes discussed -- discussed.

So I will kind of close my presentation with the required communications. Again, this is one of those standards that requires us to communicate certain matters to those in charge with governance. They are listed here on the handout on Page 8. I'm not going to go through them in great detail. I will say that we're required to tell you when we don't get cooperation. We're required to tell you when we have disagreements. We're required to discuss with you when the State seeks other auditors' opinion on the application of GAAP in accounting pronouncements. None of those matters occurred. There's nothing -- there's nothing that we -- I believe the Committee needs to be made aware of. We got full cooperation from Management at every level of our audit. They're thoroughly engaged in the process and participate as partners with us in

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the completion of the audit. And, with that, I'll -- I will pause in the interest of time and turn it over to DAS for sort of some commentary they might have.

CHARLIE ARLINGHAUS, Commissioner, Department of Administrative Services: I'm Charlie Arlinghaus, Commissioner of DAS. Dana Call is the State Comptroller. She's the smart person. Gees, I listened. I swear I did. Hello. Try again. Oh, there we go. Good. You think I could figure out microphones.

Before we start, I want to say that a lot of people did a ton -- I mean, producing this is a ton of work by a ton of people, and nobody does as much work as Dana Call. But I also want to make sure we acknowledge in the audience I think Karen Burke -- Karen right there -- who's in charge of financial reporting and does a really remarkable job and is a terrific staff member and everything good that happened is their fault.

I'll also note that we've been on time three years in a row with the CAFR which is unusual. And it happens to correspond entirely with Dana's tenure as Comptroller. So and I think that's cause and effect. It's a good CAFR. I think it's sort of a fun read for your spare time. I'm one of four people who probably think that but you should do that.

I have to thank KPMG because you know that LBA does a usual good job and that's not a news flash to anyone here and they did. Saying you have a good relationship with your auditor most people think is like saying you have a good relationship with your proctologist, but in the particular case it's not like that at all. We were -- at least, I don't think it is.

We have a good relationship. And it's important to say that because what we're doing is hiring somebody to come in. You are hiring someone to come in to look at the State's books and say, you know, are we hiding anything? Are we doing anything stupid? Are we doing anything wrong? It's always good to have another set of eyes on everything. There's no piece of work that any of us does that we don't want to have another set of eyes on. And

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it's good to have somebody who's that other set of eyes who is -- who is both challenging and respectful at the same time, and I think that's the relationship that we had, and it's why things work really well.

It helps that -- it helps that she and she are very good, helps that they are very good. And then I just go to meetings and follow for the first half hour and then we get lost in GASB this and GASB that, and at some point I look across the table at Joe and say to them -- look at them and go (Indicating).

REP. OBER: And you have an app.

MR. ARLINGHAUS: I have an app for that. It's very important to have an app. But I want to say that because very professional even when we disagree. And I want to highlight one of the areas where we did essentially disagree. And it's the thing that you're going to want to talk most about today, I suspect, and that's credit carrying forward, CCO, credit carryovers. And I'm going to do my sort of laymen interpretation of this.

As a state, people pay business taxes. At the end of the day, a lot of people have credits on their business taxes that they roll forward. A lot of money gets rolled forward, hundreds of millions of dollars gets rolled forward, and there has been a question for a very long time of how do we account for that. We've settled on something, and this dates back to the famous or notorious Ed Carter memo from 2010. Ed Carter was the Comptroller in '09, '10, '11, in that range, and we spent a lot of time looking at this and with DRA and they had an analyst at the time who helped who's now Commissioner. But worked on a system where we have -- do we need to book as a liability the \$200 million of credits that theoretic -- was 200 million this year. 224, I think, is the net number that people could book.

What we settled on doing, as a state, was that we net that against this is how much money we have in taxes that are owed to us, and we look at it and we say, well, you know what, we are going to audit. It is true that this is a potential liability.

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We are not actually going to have to write a check. That never happens. It rolls out and everybody just sort of lets it ride and applies it against next year. But we also know that -- but that's potential lost revenue, but we also know that we are going to audit people. And we have an idea for how much we get from audits and DRA does a very complicated and detailed analysis. And over the past 9 or 10 years that we've been doing this, we've netted out more audit revenue than we have credit carry forwards. And we've always gotten to that point based on that number. When that happens you don't book a GAAP adjustment, because it's -- because it's greater than zero or you have gone below zero, so to speak, so you don't net anything. This year it's not -- it's not zero. It's, in fact, in the document you have before you it's negative 10 million because that's where we got to. There's a GAAP adjustment of negative 10 million.

There was a lot of discussion, and Brock spent a really long time, I think, with accounting literature, which must be fascinating, and looking at things and discussing whether this is the appropriate way to do things. Well, one of the things we've always known as a state is that this is not -- this is not -- this is not a typical GAAP principle, but this is what we do. And it's important for us that our accounting -- that our accounting records be transparent and comparable and that we can compare back over time as well. And before you make any significant change you would have to decide what to do about that.

Should we start-- should we start booking hundreds of millions of dollars of revenue as a GAAP adjustment that we're not going to have to pay, as it swings violently backwards and forwards and, frankly, make people look at the -- look at the statements in the CAFR and say, okay, what's the one I need to care about for the budget because it's not this though and have those two numbers diverge from each other.

We made a decision as a -- for the State's position to be to book business tax revenues as we have been booking them in the past, to treat them in the audits as we have been treating

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them in the past. It's a decision that the auditors have said you really ought to look at doing this differently. And, essentially, what we said, and I'm boiling down many, many conversations, but essentially what we said is we should look at doing something differently but not this year. We're not going to come in and all of a sudden book 89 or \$92 million on a budget revenue and say, hey, there's not really a surplus. I mean, there is really a surplus, but there isn't really a surplus. On accounting standards it's not a surplus. From a cash basis there is a surplus. You can spend the money, but it's not going to look on the books like you can spend the money. We thought that might be difficult, confusing, and perhaps even misleading.

But one of the things we did agree is that we are looking at things, and this is probably not standard practice and this may not be best practice, and one of the commitments we made to them is that we would over the course of the next six months, and I say six months because in time for the next -- I was going to say the next audit, but it's sort of always happening. But figure out what we should be doing and put a whole bunch of people in a room, a whole bunch of people who aren't me, frankly, who are smart people who know a lot more about what to do and that's going to involve a lot of people from the Comptroller's Office and from DRA and have a much broader conversation about what should we be doing.

It's also, I think, very possible that we may end up at a point where we look at it and we say, based on everything we're doing, is what we're doing ideal? No; but it is probably the appropriate thing going forward.

There's no question in my mind that this was the right thing to do this year and that it's what we had to do this year. What we do next year may change as a result of that. But one of the options on the table we can continue business as usual. One of the other options will be to come forward to you, probably a bigger you than this you, probably, you know, both Finance Committees, both Ways and Means Committees, that kind of thing,

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and say, we're doing something different. There's going to be some angst over that, and here's how it's hard to understand. So that's the big thing here that is a significant deficiency; am I right?

MR. ROMANO: Correct.

MR. ARLINGHAUS: Which isn't as bad. There's something worse that sounds better and this is not as bad, so.

MS. CALL: That is right. I can't add to that. Any questions?

CHAIRWOMAN WALLNER: After that, more comments?

MR. ROMANO: Thank you, Commissioner. So I won't add to that commentary. I thought it was robust, fairly -- fairly indicative of kind of the healthy dialogue that happens between client and auditor. But we do have this other deliverable that I believe is on your agenda. It's what we essentially call the Yellow Book Report. It's a report on internal controls, and I stress the word report. We are not rendering an opinion on the State's internal controls. Unlike a public company that's required under the Sarbanes-Oxley Act, we are not required to opine on the system of internal controls, but we do make observations and we produce a report, and before you is that report.

There are two comments in here and maybe before I talk about the comments we -- we categorize comments into three buckets, if you will. The most severe is what we call the material weakness. I'm sure the Committee's kind of heard that terminology in the past.

The second category is, is this item called a significant deficiency. Both of those categories, material weaknesses and significant deficiencies, are required to be communicated to you in writing so -- and then there is a third category that we just call all else or just deficiencies. Sometimes you've seen those

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in a document called a Management Letter. So just as kind of background as to what the document is.

Commissioner covered the first comment which was on credit carry forwards. There is another comment on just the accounting of capital assets. It's a little bit of inside baseball. But basically there were some assets that had been put into construction in progress, if you will. A category of capital assets that aren't depreciated until they're put into use. Well, those assets actually had been put into use but never categorized as such. So there was never any depreciation taken on them. Management recognized that, did that, but took all of the depreciation from inception over several years and recorded all in one period of time. We just have a technical correction to kind of spread that over the beginning period as opposed to putting it all into the current period. That was an adjustment that we had proposed and, ultimately, not material and Management waived and we kind of concurred with that. But we're just highlighting the control observation that got you to that point.

So we've been talking for a while here. I probably will -- I'm going to pause now. We're done with our formal remarks. If there's any questions, we'd be more than happy to answer them.

CHAIRWOMAN WALLNER: Thank you. Members of the Committee, do we have questions of the auditors?

SEN. D'ALLESANDRO: Just one, if I may?

CHAIRWOMAN WALLNER: Yes, Senator D'Allesandro.

SEN. D'ALLESANDRO: Thank you, Brock. Obviously, always good to hear from you and always good news. The two -- the two -- A, the observations, and B, the recommendation, what's the time frame that you expect we're going to address these? And is that part and parcel they get back to you and then get back to us as a Legislature?

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MR. ROMANO: I'll just speak to the part about KPMG and Admin Services. The expectation is that we would -- we would continue the dialogue we started as part of this fiscal audit and continue it as part of next year's audit. One of the things to maybe stress about this whole credit carry forward topic is it is an estimate.

SEN. D'ALLESANDRO: Right.

MR. ROMANO: So there's lots of judgment that will go into that estimate and there is some ebb and flow on that credit carry forward balance, and we would have to evaluate it every year based upon that ebb and flow.

SEN. D'ALLESANDRO: The other one that strikes me is something that's been bothering me for a long time and that's Health and Human Services and software projects. That seems to never get complete. And that's the MMIS program and you say we recommend the Department of Health and Human Services develop formal policies and procedures for identifying completed software projects and removing the associated costs from the software work in process in a timely manner. That's a concern to me.

MR. ROMANO: So I think there's two things maybe in your question. One is operational. One's an operational question. You know, are software projects viable and do they accomplish what they -- what they were set out to do?

SEN. D'ALLESANDRO: Right.

MR. ROMANO: What we're talking about is a little bit more academic about a project that actually is completed and then not identified as such. Therefore, the annual depreciation isn't turned on. So that's where our comment lies. We're not -- we're not making an observation among the viability of certain software projects and their economic benefit, if you will, to the State.

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CHAIRWOMAN WALLNER: I think --

SEN. D'ALLESANDRO: Kerrin.

MS. ROUNDS: I couldn't help myself.

CHAIRWOMAN WALLNER: Any comment you want to make.

MS. ROUNDS: I just wanted to say that operationally this is an area where we did not have a staff dedicated to reviewing our capital assets and the projects that were put into place, and we have hired someone that this is part of their functions to track this. And part of what we did is actually do a ten-year reconciliation which is why this adjustment came to be because we did that ten-year reconciliation.

SEN. D'ALLESANDRO: Thank you.

CHAIRWOMAN WALLNER: Thank you.

SEN. D'ALLESANDRO: Thank you.

CHAIRWOMAN WALLNER: Further questions. Yes, Representative Leishman.

REP. LEISHMAN: Thanks, Madam Chair. Just backing up to the DRA and that carryover you mentioned. Why -- wasn't that, say, brought up last year? Is this like a new tax law change or how that's handled?

MR. ROMANO: That's probably coming to me.

MS. CALL: Rock, paper, scissors.

MR. ROMANO: That's an excellent question, and I think that there isn't any specific answer that says why -- why now versus why last year. Why not three years ago or sometime in the intervening time period? I think the trigger for me was this

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year the analysis that the State has historically used identified a small liability. The analysis the State has historically used has resulted in there being no liability recorded. This year the analysis identified a liability. It was \$10 million as the Commissioner mentioned. When we started to pull apart the components of that, we got deeper into the dialogue. So if there was a trigger for me, and again, my tenure is just the last two years, it was that we -- the State analysis had produced a liability this year, whereas in last year and many years in the past that analysis had not produced a liability.

REP. LEISHMAN: Madam Chair, it was an excellent question and it came from our CPA, Representative Hennessey. So I can't take credit for that.

CHAIRWOMAN WALLNER: Very nice question.

MR. ARLINGHAUS: I want to add something to that. I don't want people to think that this subject never -- never comes up. It, obviously, came up very significantly in 2010 or '11, I don't even remember now, when the so-called Ed Carter memo was actually written. And there was a lot of discussion of CCO's generally in the 2015 budget cycle or CAFR cycle, I guess, not the budget cycle. I think Senator Morse is well aware of because he harangued me about it three years ago or talked to me I think is what he did. And so this rises periodically. And it comes up and it's one of those things where, you know, occasionally the mole does stick its head out and you suddenly notice that there's a mole. And so it's happened in the past and I think just this year, you know, the numbers are getting big and all the weirdness with business taxes over the last two years have created more angst and then, you know, and then Brock. In a good way.

MR. ROMANO: I took it that way.

CHAIRWOMAN WALLNER: Senator Kahn.

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SEN. KAHN: Thank you, Madam Chair. And just so I understand that the remaining \$85 million that's not directly attributable to Fiscal 19 that moving forward seeing a similar instance of that in Fiscal 20, eventually does that represent a liability, something that needs to be paid back to those who establish the credit balance in the first place?

MR. ARLINGHAUS: I'm going to do a vague version of it. But like we know -- so every year this happens. All of this happens every year in some quantity or another. The quantities are not dissimilar to each other. Every year some refunds are paid out. Kind of like you might do if you had an income tax refund you probably took it and didn't just let it roll. Some people let it roll, not very many.

In business taxes a lot of people let it roll. It eventually flushes out, so to speak, because the -- that's probably not a good technical term -- for the people pay the next month quarter and the next quarter and the next quarter. You do another true-up and eventually it all goes away. And that just happens, and happens, and happens, and happens.

Will we have to write a check? No. Is there an \$85 million check that's about to be written? No. Will we have to write some checks? Yes. Will we have to write some more checks this year than we did last year? Big picture; not really. It's all in the same ballpark. We are always paying some refunds. But the lion share of the refunds are being rolled over into your next year's taxes. So from a -- from a transactional standpoint there's not a looming -- this is why this has always been sort of this tension about it, instead of just booking it and not booking it, is because it's not like a check that's going to get written. It's not an accounts payable or an accounts receivable to quote the Attorney General both times. Does that make sense?

SEN. KAHN: It does. I mean, I worked with those before, and it is a way to establish cash reserves is putting the money -- setting it aside in the event of. At any rate, there are, as you say, a variety of ways of addressing it.

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MR. ARLINGHAUS: We could create -- I mean, we could create a cash reserve just -- like a just in case, but I'm not really convinced that from an operational standpoint that there are very many legislators or Governors who would be supportive of setting it aside in that manner. I think that's probably not a solution we're going to investigate because I think it's almost certainly a nonstarter. It's a hunch.

CHAIRWOMAN WALLNER: Further questions. Thank you. We have already accepted the audit and put it on file and released it to the public. So we are going to the next one. Thank you very much. Thank you for the excellent work.

MR. SMITH: Next up is the Turnpike System Annual Financial Report. This was also audited by KPMG but a different Partner and Manager. With me is Scott Warnetski. He's the Partner and Karen Farrell, the Manager on the engagement, and from DOT Marie Mullen, Director of Finance.

CHAIRWOMAN WALLNER: Thank you and welcome.

KAREN FARRELL Manager, KPMG: Thank you. Good afternoon.

SCOTT WARNETSKI, Audit Partner, KPMG: All right. Thank you. And, again, for the record, my name is Scott Warnetski. I'm a Partner at KPMG responsible for the audit of the Turnpike System. And, you know, I'll assuage your fears that I will not go into the detail that Brock just went into. As he mentioned, you know, some of those required communications that he made also apply to us. And what I'll do is point out where we may have slightly different communications throughout my presentation.

So maybe first off kind of with the Turnpike financial report that actually does show up in the document that Brock talked about earlier, the Statewide CAFR. It is an enterprise fund of the State, and the Turnpike System does produce their own financial report, I think, primarily for different reasons.

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Maybe starting off, you know, we audited the Turnpike financial statements as of June 30, 2019, and we ultimately issued an unmodified or a clean opinion on those financial statements. I think it's also worth pointing out that we issue a -- what we call a debt compliance letter as part of our audit essentially saying that nothing has come to our attention that would indicate the Turnpike System has defaulted on any of their bond covenants.

So as far as differences between our audits, the Turnpike audit and the CAFR audit, you know, Brock mentioned that we do -- we do, I would say, analyze or inquire about and test internal controls. Like him, we do not issue an opinion on the internal control system over the Turnpike Fund. But we do -- we would be required to report to you any significant deficiencies or material weaknesses that we find throughout that audit. And we are happy to report that we have no significant deficiencies or material weaknesses to report in relation to our audit of the Turnpike System.

One other area that's slightly different from the CAFR audit in relation to the Turnpike audit is that we did have one uncorrected audit difference that is required to be reported to you. And maybe I'll start kind of at a high level.

There are -- the State kind of participates in two other post-employment benefit plans, and we separate them into two plans. There is what we call the trusted plan that is administered by the New Hampshire Retirement System, and then there's a non-trusted plan which is essentially administered by Administrative Services. So what the -- the non-trusted plan Administrative Services will take that liability and they'll parse it out to the different departments and funds of the State, including the Turnpike System, which they do. For the trusted system that's administered by the New Hampshire Retirement System, the State essentially records that all in one place as part of the -- their governmental activities. It's our position that GAAP would require that liability to be allocated

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out to the enterprise funds, including the Turnpike System, which is not done. But that based on our estimate is an immaterial amount, but it's above our thresholds to report that to -- to you, those charged with governance. This year the estimate was approximately \$1.4 million which, you know, on the Turnpike System we view as immaterial, and we're still able to issue a clean opinion on the Turnpike financial statements.

So I think, you know, as far as highlights, differences between the communications you just heard and what I'm reporting to you today, those are the two primarily different areas. So I don't know, Marie, if you have anything to add as far as the Turnpike financial statements, but that is essentially the extent of my communications to you.

MARIE MULLEN, Director of Finance, Department of Transportation: So good afternoon. I will be brief and just I'd like to thank KPMG and, obviously, our staff at Turnpikes. To have a clean audit with no material weaknesses or significant deficiencies is very important to us. And we have a great team there that support each other with that.

With regards to the unreported or the unrecorded entry, we work in collaboration with the Turnpike System, we work in collaboration with the Comptroller's Office, and we worked as a joint decision to put out the Statewide CAFR and not report it separately on the Turnpike System. That was also the case last year. So you may or may not remember that this was also pointed out last year as well. But we have made a joint decision with the Comptroller's Office and Admin Services not to report this because it's not material. So I just wanted to let you know that and clarify that, that that was the joint decision and we worked together with on a statewide basis to make sure that all liabilities are recorded at least on the Statewide CAFR. And if anyone has any questions, I'm willing to take any questions on that.

CHAIRWOMAN WALLNER: Yes, Representative Weyler.

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REP. WEYLER: Thank you. We've all heard recently about going to zero on the Merrimack tolls. Was that something that you looked at the finances that you had and realized that you had sufficient surplus that this wouldn't hurt at all in going to zero on that piece of revenue?

MS. MULLEN: That was a decision made by the Executive Council and not the Department. So we implemented what was passed by the Executive Council.

REP. WEYLER: Did you support it based upon the financial improvements over the years?

MS. MULLEN: I don't know how to respond to that, I guess. Initially, I don't think we did support it. It's -- from a bond perspective and the bond ratings, I think it hurts the Department to have reductions in revenue. So -- but we did just have a bond refunding where we are identifying savings of approximately \$11 million in the next ten years. So that reductions -- that refunding somewhat offsets the reduction in revenue.

REP. WEYLER: Thank you.

MS. MULLEN: You're welcome.

CHAIRWOMAN WALLNER: Further question? Representative Leishman.

REP. LEISHMAN: Thanks, Madam Chair. So several years ago I served on a Committee that was ably chaired by Senator Morse looking at the Department of Transportation. And one of the things that I was concerned about at the time and curious about your comments is using toll credits for other things other than the Turnpike System. Is that a good thing or a bad thing or does it make any difference?

REP. WEYLER: DOT uses them, not Turnpike.

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MS. MULLEN: Yeah, I think with respond to the Turnpike System, the Turnpike System, the work we do on the Turnpike System gives us credits and -- but those are used on the Highway Fund side. So those are part of Federal Highway Administration rules, and they allow us for the work that we do on the Turnpike System to build up these credits and allow them to use them as our statewide match for on the highway side for those federal programs and those federal projects.

REP. LEISHMAN: Okay. Thanks.

MS. MULLEN: Yep.

CHAIRWOMAN WALLNER: Further questions? Thank you very much. I appreciate it.

MS. FARRELL: Thank you.

MR. WARNETSKI: Thank you.

CHAIRWOMAN WALLNER: And we now are moving to Lottery.

MR. SMITH: For the Lottery Commission CAFR this audit was done by our office, the LBA Office, and I'd like to introduce Kim Bisson. She's an Audit Manager. And representing the Commission is Director Charlie McIntyre and Jim Duris, the CFO.

KIMBERLY BISSON, Audit Manager, Audit Division, Office of Legislative Budget Assistant: Good afternoon, Madam Chair, and Members of the Committee. Again, for the record, my name is Kimberly Bisson. We are here today to present the results of our audit of the Lottery Commission's financial statements for the Fiscal Year ended June 30<sup>th</sup>, 2019. The financial statements began on Page 32 of the Lottery's Comprehensive Annual Financial Report.

Lottery Management is responsible for the preparation and fair presentation of these financial statements in accordance with Generally Accepted Accounting Principles. Our

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responsibility was to express an opinion on the Lottery's financial statements based on our audit. Our Auditor's Report and opinion can be found on Pages 15 through 17 of this report.

As described in the opinion paragraph on Page 16, we issued an unmodified or clean opinion on the Lottery Commission's basic financial statements, which also includes the notes to the financial statements. While our opinion speaks directly to the basic financial statements and notes, no matters came to our attention that caused us to believe that any other information in the financial section of the report was inconsistent with the basic financial statements.

Auditing standards require we make a number of disclosures to you. You've previously heard KPMG identify those disclosures and in the interest of time we can say that we were satisfied with the cooperation of the Lottery and the progress of the audit, and there's nothing that we need to bring to the Committee's attention related to any concerns with those required disclosures.

Also, inside the back cover of the report is a multi-page letter that presents the result of certain agreed upon procedures we performed over the Lottery's operation of its Lucky for Life game. All states offering Lucky for Life game are required as a condition of participation to have similar agreed upon procedures performed with the results reported to other participating state lotteries.

Finally, in accordance with Government Auditing Standards as a byproduct of our audit we will also issue a report on the Lottery's internal control over financial reporting and on compliance in other matters. That report will be included in the Management Letter which will be presented to this Committee at a future meeting.

That concludes my presentation. I'd like to thank Executive Director McIntyre and the Lottery staff, as well as the

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Department of Administrative Services for their assistance during the audit.

With your permission, Madam Chair, I will turn the presentation over to Director McIntyre who can provide Management's perspective on Lottery and their report. Thanks.

CHAIRWOMAN WALLNER: Thank you very much.

CHARLES MCINTYRE, Executive Director, New Hampshire Lottery Commission: Is this on?

REP. WEYLER: Hold the red one down till it clicks.

JIM DURIS, Chief Financial Officer, New Hampshire Lottery Commission: You had it.

MR. MCINTYRE: Is it good? There we go. There's no light actually.

REP. OBER: Charlie, we all had to have a lesson on how to use the microphone before you got here this morning. It's not just you.

MR. MCINTYRE: I was not a part of the AV Club in high school. Good afternoon, Members of the Committee, Chairman Wallner. Like to thank the folks at the LBA for their audit. As always, they do a thorough and complete job. I also want to thank staff at the Lottery led by Jim, who do our finances. This year happy to report our finances were far more robust than previously. This was our record year. This was also the record year of New Hampshire Lottery. And I was just notified that we received the Sharp Award, which in my industry means we were the fastest growing Lottery in North America. So that's a good thing.

Our goal was 96 million and we exceeded that well and through above. So I want to thank you for that. So happy to

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answer any questions you have. I so much love being here with good news versus not good news, so.

CHAIRWOMAN WALLNER: We like to hear that good news.

MR. MCINTYRE: Yes, happy to answer questions, Madam Chairman, and Members of the Committee.

CHAIRWOMAN WALLNER: Questions? Yes, Representative Weyler.

REP. WEYLER: I just want to compliment you on your busy work getting Keno established all over the state. I know you've done a lot of travel, you've done a lot of public hearings, you've done a lot of that and it's yielded results, and I'm proud to see it. Thank you very much.

MR. MCINTYRE: Thank you, Representative Weyler. That was a bit of work. I felt like I was running for governor at some point the places we visited.

REP. WEYLER: Should have been one of the best known people.

MR. MCINTYRE: Uh -- but, honestly, one of the nice things, even the places that voted against it, were the receptions we held that it was just nice. A lot of folks, I think, enjoyed somebody from Concord coming out and visiting them, even in the far reaches, you know, Gorham, to Keene, to Portsmouth, to everywhere, just appreciating a Department head visiting them and spending a couple three hours with them. So very valuable and sales reflected that.

CHAIRWOMAN WALLNER: Further comments? Questions? I think we're happy with it, and thank you very much for coming.

MR. MCINTYRE: Thank you, Madam Chairman.

CHAIRWOMAN WALLNER: Thank you. It's already put on file. So we have nothing else to do.

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MR. MCINTYRE: All righty.

CHAIRWOMAN WALLNER: And I think our final audit is of the Liquor Commission.

MR. SMITH: As you stated, Madam Chair, the last audit we'd like to present is the CAFR for the Liquor Commission. Again, this audit was performed by the LBA Office. With me is Jim Lariviere who's the Senior Audit Manager on this job. And joining us from the Commission is Chairman Joe Mollica. Also, the CFO, Tina Demers, and then the Director of Administration, Rosemary Wiant.

JIM LARIVIERE, Senior Audit Manager, Audit Division, Office of Legislative Budget Assistant: Good afternoon, Madam Chair, and Members of the Committee. Again, for the record my name is Jim Lariviere. We are here today to report the results of our audit of the financial statements of the Liquor Commission's -- contained in the Liquor Commission's comprehensive financial statements -- contained in the Liquor Commission's Comprehensive Financial Annual Report for the Fiscal Year ended June 30<sup>th</sup>, 2019. Our Auditor's Report and opinion dated December 18<sup>th</sup> can be found on Pages 6 through 8 in the financial section of the report.

As noted in the opinion paragraph on Page 7, we issued an unmodified opinion, again, also known as a clean opinion on the financial statements. An important item to note is that there were no material adjustments to the accounting records that were proposed as a result of our audit.

Similarly, as mentioned by KPMG during their presentation of the Turnpike System Annual Financial Report, and further explained in our handout letter, as a result of the State's decision not to flow the New Hampshire Retirement System sub trust, Other Post-Employment Benefit expense and liability down to the enterprise fund financial statements, we identified a significant but non-material, uncorrected misstatement -- uncorrected misstatement understating the

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Lottery Commission -- excuse me -- Liquor Commission's Other Post-Employment Benefit expense and related liability by approximately \$4 million.

We assessed this amount for materiality and determined that even though a correction was not made on the Liquor Commission's funds financial statements, it did not affect their opinion on the financial statements.

The auditor disclosures that you've heard previously also pertain to the Liquor Commission. I will not go through them individually but will say there is nothing that I need to bring to your attention. We will be issuing a report on our consideration of the Liquor Commission's internal control over financial reporting, compliance, and other matters based on our audit of the financial statements which was performed in accordance with Government Auditing Standards. That report will be included in the Management Letter that will be presented to this Committee at a future meeting.

I'd like to thank the Liquor Commission management and staff, as well as the Department of Administrative Services for their cooperation and assistance throughout the audit. And with your assistance -- with your permission, Madam Chair, I'd like to turn the presentation over to the Liquor Commission for any comments they may have.

CHAIRWOMAN WALLNER: Thank you very much.

JOSEPH MOLLICA, Chairman, New Hampshire Liquor Commission: Good afternoon, Madam Chair, Members of the Committee. For the record, I'm Joe Mollica, the Chairman of the Liquor Commission. As already stated, with us is our COO, Rose Wiant, and our CFO, Tina Demers. I'd like to thank them both for their work on this and, obviously, Tina's staff for her work though. I'd also like to thank Jim and Steve and the LBA for the work that they've done. Just some quick numbers to let you know where we're at from June to January 5<sup>th</sup>.

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Our sales are up 15.7 million or 3.8 percent. Our GP is up \$1 million, 1% or about a million dollars, which just goes to show you that even though the additional sales are in place, we're having to be more competitive cross border. Our GP we're marketing our products up less to be more competitive. So our GP is steady. There is growth and the sales growth is there that proves what we're doing is working.

On the cover of your CAFR you'll notice our three newest stores. The Portsmouth store is at the top. That store is up 21%. In the middle is our Lancaster store. That store is up 17.3%. And our Somersworth store that is up 16.3%. So people are recognizing the brand. They're coming to the state to buy, and we're very grateful for when they come here to New Hampshire. With that, we'll accept any questions that you may have. Thank you.

CHAIRWOMAN WALLNER: Thank you very much. Questions of the Commissioner? Yes, Representative Leishman.

REP. LEISHMAN: Just one quick question on Page 46, 47, it carries over. Several of the border State Liquor Stores -- State Liquor Stores show a rather deep decline, like Keene 27, the store in Nashua 27, that's over a million dollars. Is that because they're on the border facing stiffer competition from Mass.?

REP. OBER: We quit drinking down there.

REP. LEISHMAN: I don't believe that for a minute.

MR. MOLLICA: What we see where those numbers are represented is our large volume sale customers don't tend to buy in the same stores over and over again. They move from store to store, depending on how they are -- how they're coming into the state or how they're leaving the state and that tends to affect the ebb and flow of the border stores; not only on the western border but on the southern and eastern borders as well. As we know, 50% of our business does come from out-of-state, so.

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REP. LEISHMAN: Thanks, Madam Chair.

CHAIRWOMAN WALLNER: Yes. Further questions? Seeing none. Thank you very much for that, and good job.

MR. MOLLICA: Thank you, Madam Chair, Members of the Committee. Thank you.

CHAIRWOMAN WALLNER: Is there any other further business to come before the Committee?

REP. OBER: When is our next meeting, Madam Chair?

CHAIRWOMAN WALLNER: Or next meeting is --

MR. KANE: Valentine's Day, the 14<sup>th</sup> of February.

CHAIRWOMAN WALLNER: Oh, Valentine's Day. Everybody come prepared for a happy day. This Committee is adjourned.

(Adjourned at 1:04 p.m.)

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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