



State of New Hampshire

HOUSE OF REPRESENTATIVES

CONCORD

April 21, 2021

Senator Gary Daniels, Senator John Reagan, Senator Bob Giuda, Senator Erin Hennessey, Senator Chuck Morse, Senator Lou D'Allesandro, Senator Cindy Rosenwald, Ms. Deb Martone

CC: House Division III Finance, Rep Mark Pearson, Rep Bill Marsh, Rep Karen Ebel, Rep John Graham, Mr. Kevin Ripple, NH Hospital CEO Heather Moquin, Commissioner Helen Hanks, Ms. Paula Mattis, Mr. Matt Mailloux

SUBJECT: Transmittal of Information Related to Construction of a New Forensic Psychiatric Hospital

The purpose of this transmittal is to provide related information and thoughts flowing from a 12 April 2021 NH House Division III combined meeting with representation from the Health, Human Services and Elderly Affairs and the Public Works and Highways committees (Attachment 1).

We scheduled the meeting as Division III removed Section 39 from HB2 (as introduced) from our mark-up of HB2 (Attachment 2).

Division III deleted Section 39 without prejudice. I would characterize our decision to be more related the complexity of the decision, the construction costs, unknown operating costs, and the methods made available for financing the project. In short, we knew we did not know enough to accept or amend Section 39. Therefore, we removed it and determined we would convene a comprehensive working committee to invite executive branch experts to speak with us.

Three key points became more obvious because of the meeting. The key issues appear to be:

1. Building a new forensic mental health hospital to JCAHO standards outside the State Prison is a well-supported.
2. The new facility must be seen as the center piece of a mental health pipeline accepting Emergency Room admissions and discharging those patients into community-based transitional housing and/or services.
3. Should the state build and operate a new facility or would contracting all or portions of the service be better?
4. Where should the new facility be located?

In other words, we know we have a significant problem with boarding involuntary mental health commitments for prolonged periods of time in our emergency rooms around the state. At times,

approximately one third of ER capacity has been consumed by having to manage the boarded patients. However, NH lacks sufficient space in communities to discharge patients.

It is unwise to look at the size of a new facility without a comprehensive analysis of the entire pipeline: Emergency Rooms, Forensic Mental Health Hospital, and Community-based Services. Without such a systemic analysis, it is a guess as to whether the state should construct a 25-bed or 60-bed or some other sized facility. Properly sizing the facility is first a reasonable fiduciary function of the Legislature and has dramatic long-term operational cost implications. For a "bed" to be useful, it needs to be staffed. NH has been experiencing a significant workforce shortage. Over building the facility could become wasteful if staffing is not available.

There is a potential analogy with the Sununu Youth Service Center (SYSC) which was in hindsight overbuilt with 144 beds only to have a daily census of 10-16 currently. Because of that initial decision, the state is grossly overpaying for the services needed.

Following the meeting, several members offered either potential HB2 language or other observations. For example, Public Works offered these points:

- The state CANNOT afford to bond another \$25-40M
- Until the Treasury guidelines clarify, we will not know how ARA funds could help with this project, but because the use of those funds is limited to making "necessary investments in water, sewer and broadband infrastructure," it is unlikely they can be used to fund a forensic psychiatric hospital.
- The project should be viewed strategically as one piece of the solution of state's overall behavioral health/community mental health challenges, a major part of which is the provision of more outpatient services and supports, such as housing, as opposed to more in-patient beds.

The American Rescue Plan might provide funding. Some reports suggest NH will receive \$1.54 billion. The text is available here: <https://www.congress.gov/bill/117th-congress/house-bill/1319/text>

Regarding projects, we are according to Subtitle M able to use funds among other things "(D) to make necessary investments in water, sewer, or broadband infrastructure."

Were the Legislature to defund the water projects in HB2 (section 59 and section 142 I and II), paying for them instead with these funds, it would then be possible to reallocate that \$7.2 million to partially fund the secure psychiatric facility.

There is concern that colocation with other state facilities in Concord would draw both city and neighborhood opposition despite the potential relief that could come from the synergy of sharing workforce. Proposed HB2 language is proposed in concert with Concord elected officials (Attachment 3).

Because of the complexity and inter-related connections within this funding decision, one proposal was to convene a Study Committee (Attachment 4). Another idea was to insert HB2 language that would require coordination of a project plan with the Legislature (Attachment 5). The minutes from the 12 April meeting can be found at Attachment 6.

The Department offered a set of "Next Steps". Additions to those were suggested and may be included in an updated presentation to the Senate Finance Committee.

Next Steps Heather Moquin

1. Identify federal funding opportunities.
2. Continue working towards finalizing design requirements.
3. Chose a site that best fits the facilities design requirements.
4. Engage with various stakeholders to source their input.
5. Partner with the legislature to identify funding in the FY22/23 biennium.
6. Issue an RFP for a full design-build contract.

RECOMMENDED ADDITIONS:

First, a clear mission statement for this facility is needed along with an adequately described patient population description. This should include a clear statement on the proposed use of the current facility once patients begin to be admitted into the new facility.

A comprehensive manpower assessment is needed to identify which positions can be transferred to the new site along with identifying additional hires needed for a range of requirements from security, laundry, meal preparation, administrative and clinical staff. What will be the net incremental financial requirements for personnel at the new setting?

The full presentation led by the NH Hospital for 12 April can be found at this link:

http://www.gencourt.state.nh.us/LBA/Budget/House_Finance_Division_III/4-12-21/Forensic_Hospital_Information_Session_Presentation.pdf

Please feel free to ask questions of any Representative who participated in the 12 April meeting. I'm available by phone at 603-370-7885 or by email at jess.edwards@leg.state.nh.us

Best regards,

Jess Edwards
Chair, Division III Finance

ATTACHMENT 1 – House Invitees to 12 April 2021 Combined Meeting

Department of Health and Human Services:

1. Heather Moquin, (NH Hospital, CEO)
2. Joe Caristi, (NH Hospital, CFO)
3. Jason Teaster (NH Hospital, title unknown)
4. Lori Weaver (DHHS Deputy Commissioner)

Department of Corrections:

1. Helen Hanks (Commissioner)
2. Paula Mattis (Director, Medical & Forensic Services Division)

Disability Rights Center:

Mike Skibbie

City of Concord:

Carlos Baia (Deputy City Manager for Development)

Health, Human Services and Elderly Affairs committee:

1. Rep Mark Pearson
2. Rep William Marsh

Public Works and Highways committee:

Rep Karen Ebel

Division III, Finance Committee:

1. Rep Jess Edwards
2. Rep Keith Erf
3. Rep Ken Weyler
4. Rep Harry Bean
5. Rep Mary Jane Wallner
6. Rep Sharon Nordgren
7. Rep Katherine Rogers

ATTACHMENT 2 – Section 39 HB2 (as introduced) deleted from House version.

- Page 13 of HB2 as introduced (Governor's Proposal) - 39 Department of Health and Human Services; Authorization and Appropriation for 60-bed forensic psychiatric hospital.

I. The department of health and human services shall proceed with the construction of a new 60-bed forensic psychiatric hospital on the grounds of New Hampshire Hospital utilizing funds appropriated in the fiscal year ending June 30, 2021.

II. Any federal funds provided to the state of New Hampshire for the purposes of revenue replacement or budget relief shall prioritize the provision of an additional \$17,250,000 to the department of health and human services for the purpose of constructing a new 60-bed forensic psychiatric hospital on the grounds of New Hampshire Hospital.

III. If the state of New Hampshire does not receive, by December 31, 2021, a sufficient amount of federal funds to provide an additional \$17,250,000 for the purpose of construction of a new 60-bed forensic psychiatric hospital, then the remaining sum necessary to provide an additional \$17,250,000 for construction of a new 60-bed forensic psychiatric hospital shall be appropriated to the department of health and human services. The sum appropriated shall be non-lapsing, provided that any unexpended amount following construction shall lapse to the general fund. To provide funds for the appropriation in this paragraph, the state treasurer is hereby authorized to borrow upon the credit of the state not exceeding the sum of \$17,250,000 and for said purpose may issue bonds and notes in the name of and on behalf of the state of New Hampshire in accordance with RSA 6-A

TITLE XII

PUBLIC SAFETY AND WELFARE

CHAPTER 155-A

NEW HAMPSHIRE BUILDING CODE

Section 155-A:2

IV. ~~[Except for buildings owned by the state, the community college system of New Hampshire, or the university system, t]~~The issuance of permits and certificates of occupancy pursuant to the state building code is expressly reserved for counties, towns, cities, and village districts. *Except for the City of Concord*, ~~[t]~~the state fire marshal shall issue state permits, conduct inspections, and issue certificates of occupancy for buildings owned by the state, the community college system of New Hampshire, and the university system.

V. *In the City of Concord*, the state fire marshal shall submit applications to the City of Concord's building inspector for approval for the issuance of permits, conducting inspections and issuing certificates of occupancy for buildings owned by the state, the community college system of New Hampshire, and the university system. All applicable building code and fire code application and permit fees of the municipality shall apply.

Nothing in this section shall prohibit the state fire marshal from contracting with or authorizing a local enforcement agency or other qualified third party for these services, provided the fees for such services are paid for by the applicant. Any municipality that has adopted an enforcement mechanism under RSA 674:51 alternatively may request the services of the state fire marshal under the state building permit system, including *for the* issuance of permits, conducting inspections, and issuance of certificates of occupancy, for buildings or projects owned by the counties, town, cities, or village districts, if a project requires specialized knowledge of the fire marshal or due to staffing limitations of the municipality. Nothing in this section shall require the state fire marshal to accept a project under the state building permit system when requested by a municipality.

TITLE XII

PUBLIC SAFETY AND WELFARE

CHAPTER 153

STATE BOARD OF FIRE CONTROL

Section 153:8-a

153:8-a Approval of Plans for Construction or Revision of all State Buildings Required. –

I. *Except in the City of Concord*, [F]the state fire marshal or, by his or her direction, the deputy fire marshal shall be responsible for:

(a) Approval of all plans for construction or revision of all state buildings and properties, including the university system and the community college system of New Hampshire, as to compliance with the state building code and state fire code.

(b) Enforcement of the state fire code.

(c) With approval of the commissioner of safety, adoption of rules relative to the granting of exceptions or variances under this paragraph.[, and rules to be known as the state fire code as provided in RSA 153:5.]

(d) Development, in consultation with the commissioner of safety and the commissioner of administrative services, of a schedule for the periodic safety inspection of all occupied public buildings owned by the state.

II. When performing his duties under paragraph I, *except in the City of Concord*, the state fire marshal or the deputy fire marshal shall consider the written recommendations of the local fire chief and the local building inspector

III. In the City of Concord, the state fire marshal shall submit plans for construction or revision of all state buildings and properties, including the university system and the community college system of New Hampshire to the City of Concord's fire chief and building inspector for approval under the state building code and state fire code. The City of Concord's applicable building code and fire code application and permit fees shall apply.

IV. With approval of the commissioner of safety, the state fire marshal or, by his or her direction, the deputy fire marshal may adopt rules relative to the granting of exceptions or variances to the state fire code as provided in RSA 153:5.

ATTACHMENT 4 – Proposed HB2 Language for a Study Committee

1 Committee Established. There is established a committee to study plans for both building a secure psychiatric facility and facilitating throughput at NH Hospital to alleviate the ER boarding issue.

2 Membership and Compensation.

I. The members of the committee shall be as follows:

(a) Three members of the house of representatives, appointed by the speaker of the house of representatives, including 1 each from Finance Division 3, HHS&EA, and Public Works.

(b) One member of the senate, appointed by the president of the senate.

II. Members of the committee shall receive mileage at the legislative rate when attending to the duties of the committee.

3 Duties. The committee shall study alternative proposals developed by DHHS for both building a secure psychiatric facility and facilitating throughput at NH Hospital to alleviate the ER boarding issue.

4 Chairperson; Quorum. The members of the study committee shall elect a chairperson from among the members. The first meeting of the committee shall be called by the first-named house member. The first meeting of the committee shall be held within 45 days of the effective date of this section. Three members of the committee shall constitute a quorum.

5 Report. The committee shall report its findings and any recommendations for proposed legislation to the speaker of the house of representatives, the president of the senate, the house clerk, the senate clerk, the governor, and the state library on or before November 1, 2021.

6 Effective Date. This act shall take effect upon its passage.

ATTACHMENT 5 – Proposed HB2 Language for a Project Planning and Coordination

HB2 Amendment (39?), DRAFT 1, 18 March 2021

Department of Health and Human Services; Authorization and Appropriation for research and reporting of a forensic psychiatric hospital not to exceed (NTE) 60-beds.

The department of health and human services shall proceed with research, coordination and reporting related to the potential construction of a new forensic psychiatric hospital NTE 60-bed on the grounds of New Hampshire Hospital, the grounds of the John H. Sununu Youth Services Center, or other state-owned property. The funds appropriated in the fiscal year ending June 30, 2021 may be used to research alternative sites, hospital bed sizes, and feasibility of safely serving a mixture of juvenile and/or adult patients consistent with relevant New Hampshire and federal law up to \$100,000. Consideration will be given to, but not limited to, the following:

- Town or municipal support for the project,
- the impact such a facility would have on boarding of the mentally ill in hospitals around the state,
- workforce availability in proximity of the hospital,
- telehealth capabilities to potentially collaborate with appropriate community-based and specialized services,
- potential bidders for a design and build project,
- key risk factors,
- project timelines with key milestones,
- Cost estimates will be included with a target of being within a +/- 15% range.

The report will be approved by the Commissioner of the Department of Health and Human Services without delegation authority. The report will be delivered electronically and in print to the NH General Court Speaker of the House, President of the Senate, Chair persons of the respective House and Senate Health, Human Services and Elderly Affairs committee, Public Works committee and the Finance committee not later than 1 September 2021. Additional funds appropriated in the fiscal year ending June 30, 2021 may be requested to be released by the Joint Legislative Fiscal committee. Appropriate legislation shall be drafted to authorize implementation of report recommendations for the term beginning in January 2022.

For the purpose of this review, we define a forensic psychiatric facility as a healthcare institution into which patients have been diverted from either correctional services, typically due to criminal irresponsibility issues or enduring post-sentencing mental illness, or general psychiatric services, typically due to serious risk of inter- or intrapersonal violence.

The term Juvenile will have the same meaning as (insert the right RSA reference).

Any federal funds provided to the state of New Hampshire for the purposes of revenue replacement or budget relief shall prioritize the provision of an additional \$17,250,000 to the department of health and human services capital accounts for the purpose of constructing a new forensic psychiatric hospital NTE 60-beds.

ATTACHMENT 4 – 12 April Combined Committee Meeting Minutes

HOUSE FINANCE COMMITTEE

DIVISION III

April 12, 2021

9:30 AM ZOOM Session

Secure Psychiatric Hospital

The meeting was called to discuss an item that had been removed from HB 2 by the Division. Item 39 called for a 60-bed forensic psychiatric hospital to be built on the Concord State Hospital Campus. There had been earlier budget money for a 24-bed facility. So, this proposal appeared to be short on explanation and most buildings should have gone before the House Committee on Public Works in order to be fit into all the other projects before that committee. Chairman Edwards read the script for all remote meetings and called for the roll of Division members. All were present, Reps.' Edwards, Weyler, Erf, Bean, Wallner, Nordgren, and Rogers. Also present to represent the Public Works Committee, Rep Ebel. To represent the Committee on Health and Human Services Chairman Pearson, Vice Chair Marsh. Others:

Heather Moquin, NH Hospital CEO

Joe Caristi, NH Hospital CFO

Jason Teaster, NH Hospital Facilities

Lori Weaver, DHHS Deputy Commissioner

Paula Mattis, DoC Director, Medical & Forensic Services Division

Mike Skibbe, Disability Rights Center

Carlos Baia, City of Concord, Deputy City Manager for Development

Chair Edwards explained that in our budget review there was not enough time for discussion on the proposed project, so decided to call this meeting after we had passed HB 2, so we could give more information to the Senate Finance Committee in their deliberations.

Heather Moquin put a presentation on the screen with assistance from Caristi and Teaster.

(SLIDES ATTACHED)

We need to include patients from the SPU (Secure Psychiatric Unit located in the Concord State Prison). A law suit by one of the patients complained that he was not a criminal and should not be kept in a prison. There had been earlier discussions between the HHS (Health and Human Services Committee,) Public Works Committee, and NHH (New Hampshire Hospital) employees. Paula Mattis from the DoC (Department of Corrections,) explained more details. The Secure Psychiatric Unit housed patients charged with crimes judged “Not Guilty by Reason of Insanity” (NGRI.) Others in the SPU were Not Competent to Stand Trial, and a third group were civilly committed as a danger to themselves or others. Mattis said that the civilly committed were the ones considered inappropriate in a prison, but the state had no other appropriate setting.

A slide showed the various categories of admission, with a bracket around those civilly committed

?Edwards: What is the breakdown and average daily census?

Rep. and Dr. Marsh answered that in his experience in a 24 bed hospital, too many occupied for long stay should have been stepped down to lesser treatment, and used the 24 bed for short length stays. We need to work more on step downs.

Rep. Pearson: We need to compare the two choke points; admission and step down.

Joe Caristi gave some history: In 2021 HB 726, the Senate put in 25 beds and 17.5 million dollars. The Committee of Conference reduced it to 8.75 million. Now the Governor reintroduces the 17.5 million, but not in the capital budget in the previous biennium? He is hoping to have a federal match of the 17.5.

?Edwards: Is Public Works aware ?

Rep Ebel; We did a review, but HHS did not include it in a request. LBA Shea said it was just to tip us off.

A slide showed the Governor was planning to add the 8.75 and the 17.5 to total 26.25.

However, it showed construction costs in 20/21 to be 35 million, and in 23/24 to be 40 million.

A federal match would be needed from MET.

Kerrin Rounds, CFO HHS. If State funded its not subject to MET match.

Rep. Ebel: When you mentioned Public Works, you meant the PW of the DAS not the committee.

An answer was that the 40 was based on an architect estimate of 4 which is usually 10% of the project.

Rep. Pearson: Be prepared for sticker shock, in my practice we are preparing to build and the materials are going way up in price.

Moquin: For the 8.75 we began planning, then COVID put that in delay. We also had to wait for all to be inoculated. We met with the City.

Teaster: We continue to work on the design for the 25 and possibly enlarge to 60 beds. He showed some concept pictures. The first showed where wings could be added. Design was on Clinton St. near Fruit St. Second picture was 2 story with the addition to be added without interruption of the first phase.

? Edwards: Would the laundry and kitchen be sized for the expansion?

Answer: Yes; and office space recreation and mechanical spaces.

? Rogers: Is this on Clinton St. right near the Jr. H.S. the soccer fields, the Memorial Fields and the new Archives building ? Yes

? Rogers: Is the parking lot the buffer for the recreational fields? Yes. We have met with City Officials.

? Rogers: Any problems meeting with the neighborhood people?

We are trying to reach out.

Moquin: We need more details first.

? Edwards: can we use any part of the Philbrook facility to leverage infrastructure?

We took over Philbrook in Sept. as NHH transitional housing. The meals are brought in. There is still office space there. All residents are discharges from NHH. There is no laundry there.

? Edwards: Before going to committee, did you discuss the perimeter fence and the Corrections aspect?

Ans. We have had discussions with Jonathan Hanson of the DoC. He has been a great resource.

? Pearson: Is the Philbrook facility 16 beds? Yes.

? Pearson: As a step down is it long term? Yes

? Nordgren: Can you give the location in Concord, so people can drive by and see the neighborhood. Given.

The Dept is not fully committed to this site but it is the driest on the grounds. There have been some problems with a high water table. We have looked at other sites.

We are considering RFP for "Design-Build." May have to wait for 24/25.

Moquin: We still have a lot of work to do to finalize the design and site, talk to stakeholders and prepare the RFP.

? Wallner: Have you looked at other sites? No. We prefer to keep it on the campus. There may be other state-owned property, but that might entail staffing shift. We might need a manpower survey.

? Edwards: Give me an idea of how much personnel will shift from SPU, or NHH ?

We have not done that yet.

Edwards: If we reprogram the slot there should be no net change.

Ebel: I am reminded of the Womens' Prison and all the changes that took place. I am glad you have Jonathan Hanson working on this. When we did the Merrimack

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County Court House as Design Build we got back a million dollars. Good for Finance and Public Works talking location. You can leverage staffing; sites can vary the costs. Our bonding capacity is diminished. We can hope for ARPA funds.

Mattis: After the 2019 law suit about civil people in PSU we had to change our process, with time frames and movements back and forth. The administration got fixed. I have looked up the average daily census. Historically it was 45. After the pandemic it dropped to 38, but that seems like an anomaly.

Mike Skibbe, Disability Right Center.

I am most concerned about the 60 beds versus 25. I support moving the civilly committed out. The NGRI (Not Guilty by Reasons of Insanity) and the Incompetent to stand Trial, will remain. I have never heard of any ever reaching competency to stand trial. Those categories are likely to be lifetime patients. Many at NHH are ready to step down. This proposal is more restrictive than necessary for them. The 2017 HSRI study would tell you that more beds are not needed. NGRI are more restricted than necessary. You could have more community based treatment. Not competent to stand trial should not be committed unless dangerous. If we treat them, will they become competent to stand trial? No one ever did that. The unmanageable behavior needs SPU. But 60-65 occupants do not need that level of care.

? Edwards: Is it your position that we need a care plan to create appropriate levels?

Skibbe: There are 25 civilly committed in the SPU. You don't need 60 beds.

Rep. Marsh: I am confirming that description.

Moquin: It is a very specialized SPU population. We need to transition them to the community, with a very specialized collaboration with the DoC as to levels of care.

? Wallner: Civilly committed at SPU, what about SPU plan and staff?

Mattis: There are 12 people eligible to go to a separate facility. SPU also takes in county prisoners. Within our own population at the prison, we have many convicted who have serious mental health issues.

?Wallner: What is your capacity?

Mattis: We have 66 beds. The normal population is 45. The 66 includes 6 infirmary beds.

Edwards: A scope document is needed.

Mattis: We can articulate better, and do that.

Edwards: Mr. Teaster, What advantage is there to making capacity greater? I see the Sununu Center for an example of overdoing.

Teaster: Awe have to look ahead at the mental health crisis we are having.

?Edwards: What will it cost to make that addition?

Teaster: I will try to flesh it out.

We have from the City of Concord, Carlos Baia, Deputy City Manager for Development.

Baia: We are looking at the magnitude of the Facility already, you've just added NHH transitional housing. This adds additionally to our water and sewer facility. Now this adds another in the middle of a residential neighborhood, near a child care facility, playing fields and a Junior High. People are passing by what looks like a prison. I hope that you have looked at alternative locations.

?Edwards: Where would you suggest?

Baia: I am not familiar with all the space. I know there's not a lot of land left, and sewer and water connections are limited.

?Rogers: Have you met with any of the planners? Answer: Yes. We have not taken a position. We have not looked as much as a Planning Board would.

?Rogers: Should we put in a bill to get tradeoffs?

Baia: Yes. There has been flooding in the adjacent fields. There could be storm water design that could help.

?Marsh: I question whether we looked at having it next to a step down facility, at a location where there is more room, like Laconia, or Berlin.

We will now take questions from the audience. Please identify if you are a lobbyist?

Karen Soucy: I am a lobbyist, but I am also a single mother, who worked hard to locate in this neighborhood. I don't like the location you propose.

Rep. Eric Gallagher: I represent Ward 6, where this is located. I have heard from constituents who are both NIMBY (not in my backyard,) and YIMBY (Yes in my back yard.) Having read about Planning Boards, I know that NIMBY's are more incentivized to show up at Planning Boards, and give an impression that they are the majority while it may not be so.

Nordgren: Laconia has contamination and may not be an option. Anyone think it should have been left that way?

Rogers: We need more meetings to discuss this further. We should pass on these minutes to the Senate so they can do an amendment.

Weyler: We do not need for this Division to have any more meetings. We should send our minutes to the Senate, and I think we should look at the Sununu Center for this secure hospital.

Wallner: I think 60 beds is not warranted. We should send our minutes to the Senate and some words for an amendment. Division 3 should keep having a role.

Nordgren: We should continue meeting on this and HB 2.

Ebel: It would be wise to get a group together to continue this while the Senate is busy with the budget. We can help. This reminds me of the Womens' Prison.

Edwards: Please write something for us to send.

Marsh:I think it is intended to solve two problems, both the PSU and capacity. We need a study committee. I don't think the feds will help. I will write some thing.

Adjourn at 1157 AM

Rep. Ken Weyler, Clerk