

**JOINT FISCAL COMMITTEE**

Legislative Office Building, Rooms 210-211

Concord, NH

Tuesday, October 20, 2015

**MEMBERS PRESENT:**

Rep. Neal Kurk, Chair  
Rep. Lynne Ober  
Rep. Mary Jane Wallner  
Rep. Dan Eaton  
Rep. Karen Umberger (Alt.)  
Rep. Richard Barry (Alt.)  
Sen. Jeanie Forrester  
Sen. President Chuck Morse  
Sen. Jerry Little  
Sen. Andy Sanborn  
Sen. Lou D'Allesandro

(Convened at 11:18 a.m.)

CHAIRMAN KURK: Good morning, everyone. I'd like to call the recessed meeting of the October 16<sup>th</sup> Fiscal Committee meeting to order today, October 20<sup>th</sup>, 2015. The only item on our agenda is Fiscal 15-201, Replacement dated September 22<sup>nd</sup>, 2015, dealing with retiree health care benefits. That item is on the table. Would somebody care to move it be removed from table?

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

CHAIRMAN KURK: Moved by Senator D'Allesandro, seconded by Representative Umberger. If you're in favor of removing Item 15-201 from the table, please now indicate by saying aye? Opposed? The ayes have it and the item is before us.

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

CHAIRMAN KURK: At this time I'd like to recognize Meredith Telus, the Governor's Budget Director, to answer some questions from Committee Members. Good morning.

MEREDITH TELUS, Budget Director, Office of the Governor: Good morning, Mr. Chair, and Committee Members. For the record, Meredith Telus, Governor's Budget Director.

CHAIRMAN KURK: Thank you for being here.

MS. TELUS: Certainly.

CHAIRMAN KURK: Could you explain to us the Governor's reaction to the Department's proposal which is contained in Item 15-201, which requires certain plan changes for the over 65 retiree population and certain plan changes and premium contribution increase for the under 65 population starting January 1, 2016? That was the plan that the Governor's Commission had -- Commissioner had presented to us. Could you explain what the Governor's current position is based on her letter to me and the Fiscal Committee dated October 19<sup>th</sup>, which I received at 7:47 last evening?

MS. TELUS: Certainly. If I might, just a little bit of history to get us there. As you know, in the Governor's Budget presented last February, the plan changes for the under 65s were in that budget and they looked the same as what is presented in the Fiscal item, and that was to match the budgeted amount. At that time, there was a \$5.5 million shortfall to match the budgeted amount. And so those plan changes were worked on with DAS and that was -- and that was presented in February. There was a slight change in the House phase where I think the premium contribution for the under 65s was increased to 20%, but the final budget removed that language and the budgeted amount. And the plan changes developed by DAS and shared with

both House Finance and Senate Finance were the same as what had been presented in February.

After, I believe it was around in June, DAS realized that the pharmacy trend caused another shortfall of another \$5.1 million and started working on new potential plan changes. And we worked very closely with them on those. Mostly, we wanted to avoid a premium for over 65s. So we thought of other things we could do, including Compass and Site of Service to try to save money; and, additionally, the items that you see before you, which are a deductible for inpatient, and pharmacy co-pays. There hasn't seemed to be -- hum -- a willingness to appropriate additional General Funds. So knowing the DAS has to work within the budget they have, it's not an area where we can draw a warrant or they can just come to Fiscal for more money. We developed the plan changes that we did so that DAS could live within that budget.

Given the last couple months or weeks of discussion, the Governor hoped that there may be a willingness to appropriate General Funds to avoid some of these plan changes. And so that was what she was trying to convey in the letter of yesterday evening that any appropriation that we can make to reduce the impact of the plan changes would be welcomed.

CHAIRMAN KURK: So, specifically, for the plan changes proposed in Fiscal 15-201, and I'm referring to Tables 1 and 2 --

MS. TELUS: Yes, thank you.

CHAIRMAN KURK: -- the Governor does not wish the Legislature to adopt those at this time; is that correct?

MS. TELUS: Any amount of General Fund appropriation that would alleviate these changes would be welcomed, yes.

CHAIRMAN KURK: That wasn't the question. Senator Morse.

SEN. PRESIDENT MORSE: Can you hand out the document that you're reading from because I believe LBA took the letters and put them on paper, and it looks to explain the situation quite clearly, and I'd like an answer, yes or no, is that -- is that the situation we are facing right now or not?

CHAIRMAN KURK: That's what I'm looking for. Mr. Kane, do you have sufficient copies for Ms. Telus especially?

MS. TELUS: And if I might, at this point I think we need either -- thank you -- for the Fiscal item to be approved so that DAS can start working on changes or for a willingness to negotiate for General Funds that might mitigate the need for the changes; but one or the other or some combination thereof would need to take place. That's what the Governor's looking for so that DAS can start working on the changes that are necessary.

CHAIRMAN KURK: Would you look at that sheet that's been handed out?

MS. TELUS: Yes.

CHAIRMAN KURK: And you'll notice Column B is the proposal that constitutes 21 -- sorry -- 15-201 and Column C is the Governor's proposal. And you'll notice that on all of the lines for over 65 proposed solution and under 65 proposed solution the Governor's column shows zero. In other words, nothing would get done. And that appropriations totaling \$5.3 million would be

made at some point, uncertain as to when, and the full \$5.3 million of surplus in the Retirees' Health Care Fund would be used for this purpose giving us a total of the needed \$10.6 million. So is the Governor, in effect, requesting that we not take action today on Table 1 and Table 2, which represents the over and under 65 changes?

MS. TELUS: The Governor would, yes, be willing to discuss that if there's a willingness from the Legislature to appropriate these funds.

CHAIRMAN KURK: Senator Sanborn.

SEN. SANBORN: Thank you, Mr. Chair. Thank you for coming and talking. I want to make sure I'm understanding this because there's some confusion going on. So the Governor working with her agency DAS came up with a proposal which we're seeing in this piece of paper laying out to try and come up with this shortfall that you're concerned is coming. But what you're saying is now, today, she no longer supports making changes to the plan and instead just wants us to spend money out of the General Fund and not do anything to fix the plan at this point. And if that's the case, if the Governor wants us to go draw out just over \$5.3 million out of the General Fund, obviously, that money has been appropriated for other government services. So what is she suggesting we cut to now fix this problem?

MS. TELUS: And it wouldn't be full 5.3 of General Funds. Those are multiple funding sources, just to clarify. So 3.1 million General Funds, correct. My guess would be that that would be funds not otherwise appropriated. And yes, I believe at this point what we're looking for is to identify a path forward, either appropriating these funds if there's not the willingness to make the plan changes, given that there have been multiple Fiscal Committee meetings to talk about the plan, but no -- no action at this time and

DAS needs to know that they can either take action or not.

CHAIRMAN KURK: Senator Sanborn.

SEN. SANBORN: So is the Governor coming in saying she's taking her proposed changes off the table and instead wants to replace them with just a cash appropriation?

MS. TELUS: No. If Fiscal Committee were to vote for the plan changes today, then we would have a response. The Governor, obviously, can't do this unilaterally. So it would be up to the Committee to approve the Fiscal item, which we worked with DAS to develop and discussed the plan changes with them. If that is approved today, that's the plan we will move forward with. But because there were multiple Fiscal Committee meetings and there seemed a willingness to -- especially concerned about the over 65 changes, the Governor is saying any amount that the Legislature is willing to appropriate to mitigate these changes she would be in support of.

CHAIRMAN KURK: Representative Ober.

MS. TELUS: Up to the full 5.3 million.

REP. OBER: Thank you, Mr. Chairman. Meredith, thank you for coming. It's always a pleasure to see you.

MS. TELUS: You, too.

REP. OBER: And I would like to say that Commissioner Quiram has been beyond professional as she has worked with us, and I know she inherited this from former Commissioner Hodgdon because in early March, I believe the document was dated March 9th, we in Division I saw the proposal that on this sheet you've got is called Original Proposal and under the -- it has

the date that we started working on it in Fiscal 'cause we did --

MS. TELUS: Hm-hum.

REP. OBER: -- get information, looked at it in August, but we did not have it for an action item. So I just want to see if I understand what you said. The Governor is okay, and this is a yes or no question, if we approve Original Proposal A today, which is the proposal we saw in Division I last March. Yes or no?

MS. TELUS: Yes.

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

CHAIRMAN KURK: Senator Morse.

SEN. PRESIDENT MORSE: Well, first of all, I'm glad the Governor finally realizes we have been meeting for a month and a half on this issue and we are finally getting answers. But are you telling me, Meredith, under your Proposal C which came out yesterday, that you're willing to make these back-of-the-budget cuts in Liquor, Highway, Turnpike, Fish and Game, and Lottery to the tune of a couple million dollars?

MS. TELUS: Uh -- I'm not saying that it would be easy; but, for example, the Highway Fund and Fish and Game Fund finished with surpluses higher than anticipated. They do also have to absorb employee pay raises this year, but we would have to manage that clearly.

SEN. PRESIDENT MORSE: I didn't think that was acceptable by your standards.

Mr. Chairman, may I just comment? The -- I have before me a document dated September 14<sup>th</sup> which was updated on September 22<sup>nd</sup>. As Finance Chair in the

Senate years ago, I was instructed by the Governor, and I'll paraphrase, that Department heads were to report to her first before they report to the Legislature. And ever since then I have had difficulty as a finance chairman and as a Senate President to get clear answers out of the Department. And the same situation is happening here, and I don't think it's any fault of the Department head. We have asked since the September 14<sup>th</sup> document does the Governor support this? The proposal that came last night certainly says she doesn't support it because LBA ran the math on it and there's zeros in every one of the columns that suggest that Item 1 and 2 or Table 1 and 2 should be approved.

So I'm not sure what the Governor wants right now. And I know the Senate and the House want to come to a solution, and I understand that, Senator D'Allesandro, but how do I do that? I'm -- I don't know where she's coming from and I honestly believe the legislation that we asked for a yes/no answer on was a solution to help everyone. And I was prepared to come and vote on that today. And I did see Representative Kurk, I'll call it response to the Governor last night, I agree with him fully. One, the General Funds, we have not seen the prelim CAFR numbers which we have asked for several times. I just got the lapse in within days to know where this Government's going. I don't know if there's extra funds left over. I wouldn't even talk about it at this point in time because I was told I won't have them until the end of January. So reality of appropriating any General Funds, I agree with Representative Kurk. It can't be done at this point. And Vicki's telling us if we don't do something today, we are going to head towards somewhere around \$380,000 problem every month. What do we do?

MS. TELUS: If I might?

CHAIRMAN KURK: Please.

MR. TELUS: We need action so we can either approve the plan changes that have been proposed or we can appropriate funds to avoid the plan changes that seems to make the Committee hesitate. Those -- or somewhere in the middle and those are our options.

CHAIRMAN KURK: Let me restate that. The Governor would be fine with adopting the changes for the over 65s and the under 65s as put forward on Tables 1 and 2 in Fiscal Item 15-201.

MS. TELUS: The Governor --

CHAIRMAN KURK: In the alternative, the Governor would be happy if we did not approve those but, in effect, agreed to take the money from General and other funds, plus surplus from the Retiree Health Care Fund to get to the \$10.6 million. She's okay with either of those; is that correct?

MS. TELUS: Not that the plan changes are easy or pleasant, but to live within the budget they're our only option.

CHAIRMAN KURK: So the answer is yes?

MS. TELUS: And that is why we worked with DAS to come up with the Fiscal item.

CHAIRMAN KURK: So the answer is yes?

MS. TELUS: Yes.

CHAIRMAN KURK: Thank you. Senator D'Allesandro.

SEN. D'ALLESANDRO: Thank you, Mr. Chairman. In response to the Senate President, obviously, it's a difficult situation. There are a lot of questions. We pose a lot of questions. Sometimes we get immediate

answers, sometimes we don't. But I think it's our responsibility as legislators to come up with work.

I commend Representative Ober for her work. She spent a lot of time, a lot of effort on this and has worked with us. So I appreciate that. I think it's been good work. In working through this process, it seemed to me that this group had to come up with some decisions of its own based on information that we received from Admin Services. I've worked with Senator Forrester, Senator Little, Senator Morse, Senator Sanborn wasn't around so we couldn't touch base with you yesterday. But in order to try to solve the problem and to come up with a solution that's acceptable to this group and provides what the corpus of the people over 65 need -- now I'm in that group. I don't get the insurance from the state but I'm over 65. So, obviously, I have empathy for the group.

We worked hard on this, and it seems to me working together, communicating with one another, and touching base with the Governor's Office, we've come up with some ideas that make sense. I think at this point in time it's incumbent upon us to look at those ideas and decide whether those ideas are acceptable to this body. Senator Forrester has worked hard. I commend her. I know we worked late last evening. People contacted her last evening. We were exchanging ideas right through the early hours of the evening. So I think our job is to come up with a solution. We can say we don't have this, we can say we don't have that, but our job is to come up with a solution. And there's a timeline. If we don't do it today, it creates problems for us. We've heard that from Admin Services.

So with that, Mr. Chairman, I would hope that we take a look at the material that's before us, we take a look at the suggestions, and I'm going to make a suggestion, first of all, that we divide the question and we take Table 1 and separate it from Table 2. That

**JOINT FISCAL COMMITTEE**

**October 20, 2015**

we have discussion about changes to Table 1 that would allow us to move forward and take care of the over 65 population. Have this discussion and then, hopefully, take a vote that carries us forward.

The Table 2 situation is not as imperative as the Table 1. That's the under 65. So let's address the situation that needs to be addressed. And this body has the authority based on the item that's before us to do that. So with that -- with that, Mr. Chairman, I would ask your opinion. Can we divide the question? That's number one. And if we can, let's talk about Table 1 and then carry on with discussion.

CHAIRMAN KURK: I think we certainly can divide the question any way you wish; but, ultimately, all parts of the question will be on the table, whether as a package or individually. But at this time I'm not ready to take a motion. There's quite a bit more discussion.

SEN. D'ALLESANDRO: I love the discussion period. Discussion is wonderful. Aristotle said that.

CHAIRMAN KURK: I would comment though that under your proposal if the only thing we did was to act on section -- the over 65 or the under 65 --

SEN. D'ALLESANDRO: Yes.

CHAIRMAN KURK: -- that we will be likely to be using -- burning up surplus, as the expression is, of \$380,000 a month to the extent that we cause a delay to occur.

SEN. D'ALLESANDRO: But that burning of surplus doesn't occur until January. So we have time.

CHAIRMAN KURK: That's correct. But to the extent that people have to be notified, and I'm not talking about CMS, I'm talking about plan notification to the

under 65s, that delays things. I don't know what the deadline is on that. We can certainly inquire.

SEN. D'ALLESANDRO: Thank you. Thank you, Mr. Chair.

CHAIRMAN KURK: You're welcome. Are there other questions of Ms. Telus? Thank you very much. Please don't leave.

MS. TELUS: I won't. Thank you.

CHAIRMAN KURK: Never can tell what will happen in a few minutes. Is Ms. Quiram here? I should have said Ms. Keane. Oh, it's three.

MS. KEANE: It's a package.

MS. QUIRAM: Package deal.

CHAIRMAN KURK: Our three Musketeers. Welcome. I think there are some questions. One of them was just alluded to. So would you please identify yourselves for the record and then we'll ask some questions.

MS. QUIRAM: Yes. I'm Vicki Quiram, Commissioner of Department of Administrative Services and with me today I have Cassie Keane who is our Director of Risk and Benefits, and Sarah Trask who's our Senior Financial Analyst. I also today in the audience have with me Steve Koon who's with our consultant Segal so if you have any questions about health care. And also Sue Wolfe from Express Scripts and you had some questions last time about timing and dates and things like that. So in case you have those questions they are here, too.

CHAIRMAN KURK: Do each of you have a copy of this document?

MS. QUIRAM: No, we don't.

CHAIRMAN KURK: You will in a moment. Mr. Kane will be distributing them.

REP. OBER: Mr. Kane must have made thousands of copies in anticipation.

MS. QUIRAM: Thank you.

CHAIRMAN KURK: I refer to Column B, Replacement Proposal. This is Fiscal 15-201. This is what you had presented to us. I want to understand the timing and the severability. It's my understanding that Line 6, the Pharmacy Plan Change Component, must be approved today or it cannot go in -- cannot go into effect on January 1<sup>st</sup>, 2016, because of a variety of CMS requirements; is that correct?

MS. QUIRAM: Yes, it is.

CHAIRMAN KURK: Line 5, Medical Plan Change Component. Does that have a deadline as to when it must be acted upon in order to go into effect? Are there CMS requirements with respect to that?

MS. QUIRAM: There are no CMS requirements with respect to that.

CHAIRMAN KURK: What is latest date that we could act on that so it would go into effect on January 1<sup>st</sup>, 2016?

MS. QUIRAM: In order for us to do the education that we need and in order for us to make the changes that we need with Anthem, I would believe we need to do it as close to immediately as possible.

CHAIRMAN KURK: That's not an answer. I need a date.

MS. QUIRAM: I think I've thrown out there before that if we had two weeks, you know, we could put it off

two weeks, but it would be difficult for us to do that. We just -- we need to get moving as quickly as possible. We would really prefer that the change be made today.

CHAIRMAN KURK: I understand, but we need to work together and some of the things that may affect our decision is timing.

MS. QUIRAM: We are committed to working with you the best we possibly can.

CHAIRMAN KURK: Right.

MS. QUIRAM: And provide you with the information that you need.

CHAIRMAN KURK: So two weeks from today would be the 27<sup>th</sup> -- looks like Tuesday, November 3<sup>rd</sup>. Now let's refer to the -- now let's refer to the under 65 component.

REP. OBER: Give them a minute, Neal. They're discussing that date.

MS. QUIRAM: We would send our letter out and we would try to reschedule the meetings that we currently have scheduled for November to start at the 1<sup>st</sup> of December --

CHAIRMAN KURK: Okay.

MS. QUIRAM: With the retirees to really talk about any changes.

CHAIRMAN KURK: It's never easy when a problem is complex and people can't agree on the obvious answer.

MS. QUIRAM: Yes.

CHAIRMAN KURK: Lines 10, 11 and 12, what are the drop dead dates for those? These deal with the under 65 population.

MS. QUIRAM: The same we just discussed.

CHAIRMAN KURK: The same, 11/3. Assuming that we made decisions on these before those dates, 10/20 and 11/3, for the respective ones, then the plan components could start on the third -- on the 1<sup>st</sup> of January, and you would not be using surplus to cover any short falls, based on your current estimates about what the plan is going to require for expenditures and based on your estimates of income.

MS. QUIRAM: We would not be using surplus at that time right up to that date. Is that the question?

CHAIRMAN KURK: No. Starting on January 1<sup>st</sup> you would not need to use surplus.

MS. QUIRAM: No.

CHAIRMAN KURK: You may be using it now, but that's a different matter. But based on your judgments about what's going to happen in the future, you will not be using surplus if these changes were to be made by the dates that you have given us.

MS. QUIRAM: That's correct.

CHAIRMAN KURK: Okay.

REP. OBER: Mr. Chairman.

CHAIRMAN KURK: Representative Ober.

REP. OBER: Thank you. I'm now straggling through my first two pages. I'm only on Page 2 of the memo we got on September 22<sup>nd</sup>, Commissioner.

CHAIRMAN KURK: This is Fiscal 15-201?

REP. OBER: Yes, sir. And I am down under the heading DAS's Retiree Health Benefit Plan Presentation. And I see starting four lines from the bottom in that paragraph it says that it intended to use approximately 4 million retiree health benefit plan surplus. So you do plan to use surplus if we do Table 1 and Table 2; is that not correct?

MS. QUIRAM: Oh, we will be using surplus for any of the plans that we have proposed. It will require the use of surplus. I was interpreting the question that we would not start using it before January. We would eventually have to use surplus in every one of the scenarios that we've presented so far.

REP. OBER: Thank you, Commissioner.

SARAH TRASK, Senior Financial Analyst, Risk and Benefits Division, Department of Administrative Services: We won't have to use anymore as long as we start 1/1.

CHAIRMAN KURK: When do you start using surplus?

REP. OBER: When they run out of money.

CHAIRMAN KURK: No. Under your plan, were it to be adopted, when do you start using surplus and at what rate?

MS. QUIRAM: We are using it now. You know, because of our pharmacy trend we are having to spend more per month every month.

CHAIRMAN KURK: But starting on January 1<sup>st</sup> if this plan were approved --

MS. QUIRAM: Hm-hum.

CHAIRMAN KURK: -- would you be using surplus and how much per month roughly over what, over the next -- I guess it's 18 months during the balance of the Fiscal Year, fiscal biennium.

MS. KEANE: Doing the math.

MS. TRASK: 211,000 per month.

CHAIRMAN KURK: Starting January 1<sup>st</sup>?

MS. QUIRAM: Starting January 1<sup>st</sup> for the rest of this Fiscal Year.

CHAIRMAN KURK: And the next Fiscal Year? That's six months.

MS. QUIRAM: Exactly. During the next Fiscal Year.

MS. TRASK: Starting 1/1/16 211 per month.

MS. QUIRAM: Okay. For the whole biennium?

MS. KEANE: Yes. It's 3.8 divided by 18 is 211,000 a month. Right?

MS. TRASK: Yes.

SEN. SANBORN: Mr. Chair, the plan --

CHAIRMAN KURK: Senator Sanborn.

SEN. SANBORN: My understanding is the plan doesn't cure the operational deficit we're facing. It technically only cures half of it. So by digging into another 5.5, 5.6, what would be required to deal with the 10.6 deficit? So the plan in front of us only covers half of the 10.6 deficit. Half will still have

to come from digging into the surplus every month. So is it technically a fix? It's a half fix.

CHAIRMAN KURK: Thank you. Further questions. Thank you. Discussion?

SEN. FORRESTER: Senator Morse.

CHAIRMAN KURK: Senator Morse.

SEN. PRESIDENT MORSE: This may need the Department so don't run away. The -- and to Senator D'Allesandro, I do apologize for frustration; but, quite honestly, I don't see any leadership on this right now. So if Fiscal is going to solve it, I have great difficulty Fiscal solving it without going through the legislative process. Because I think a lot of these things need to be debated by the Legislature.

Mr. Chairman, I need to understand one thing. If we don't do the top part and we don't do 1 and 2, and we have -- and where it says appropriations are \$5.3 million, all those different appropriations that are coming out of the departments and coming out of General Funds, if I were to look at it the way I'd look at it when I was in Finance as a Chair, those -- would those come out of some bucket and get re-appropriated in some way if we did nothing?

CHAIRMAN KURK: My understanding is that depending upon the state of our estimated surplus at the time we acted, and that surplus might not be positive, but to the extent that it was positive, this money could be taken out of funds not otherwise appropriated if there were a surplus in each of these lines. If there were not a surplus, for example, in the Liquor Fund, then it would have to be removed from the current appropriation and re-allocated. But as I said to a number of people, once we do a budget, then in the second year of the biennium we basically foreclose other expenditures as

legislative specials with money attached, unless there are emergencies. And while this is a tough situation, it certainly isn't an emergency. We have known about this for a very long period of time. So I would think this goes against the appropriating General Funds whether from -- certainly from funds not otherwise appropriated. To the extent there might be a surplus at that moment would violate long-standing House tradition and I would be loathed to do that.

SEN. PRESIDENT MORSE: Well, I agree with you, Mr. Chairman. That's not my question. My question is how do the retirees get these benefits if we don't come back and make appropriations?

REP. OBER: They don't.

CHAIRMAN KURK: My understanding, and I'll defer to the Commissioner on this, if we were to pass Tables 1 and 2, in other words, Fiscal 15-201, and did not take further action, at some point there would be no problem. That is to say, your plan is complete. It does not require any additional appropriation, if we were to do what you're suggesting. We would be using the full \$3.8 million of surplus and the incremental changes to plan recipients. The problem with that is that come Spring of 2017 when the next Legislature is in session and doing the budget, we would be facing a hole in the budget of roughly \$10.6 million, certainly 3.8 million but probably more than that, plus any increases in medical and prescription expenses that occur as a result of inflationary and other trends.

If we do nothing today, then the fund will continue to operate, there will be no changes in any of the recipients' co-pays, premiums, or anything like that. But the fund will run out of money, and I've heard different dates, but sometime, the most recent one I've heard, is in October 2016.

SEN. MORSE: Can we get an answer to that?

CHAIRMAN KURK: Could you confirm that?

MS. QUIRAM: Yes, that is the case.

CHAIRMAN KURK: And what happens at that point?

MS. QUIRAM: There would be no money to pay the health care costs of the retirees.

CHAIRMAN KURK: So who would bear their health care costs? They would, 100%; is that correct?

MS. QUIRAM: I --

MS. KEANE: I believe so.

MS. QUIRAM: I believe so. I don't know what we would do.

SEN. PRESIDENT MORSE: I'm trying to get an answer. Is that the law?

MS. KEANE: The law requires that we run the retiree health benefit plan within the funds appropriated. So if we didn't have the appropriation, that's why we say we have no money to spend and we believe that it would be the retirees' responsibility at that point.

CHAIRMAN KURK: If I may interject? In addition to surplus you have reserves. Under what circumstances legally may you access reserves for purposes of paying -- making payments?

MS. QUIRAM: That's questionable.

MS. KEANE: We do have reserves. We believe, and my prior answer, by the way, didn't speak to reserves. Okay. We believe that we have authority in RSA 21-I to

use the reserves. I forget the particular section off the top of my head. And we could use those reserves to operate beyond 10/1/16.

MS. TRASK: For four months.

MS. QUIRAM: It's about 2.5, about 3.5 months, three and a half months that 2 million would give us if we actually went in and took all the reserves. At that point we have no more reserves or surplus.

CHAIRMAN KURK: Your reserves are \$2 million?

MS. QUIRAM: \$2 million. That takes us about three and a half months. So January 17<sup>th</sup>.

CHAIRMAN KURK: And when you say you have the authority to do that, like surplus you have the authority to do that without further action by the Fiscal Committee or by the Legislature or by the Governor.

MS. QUIRAM: Yes. The only thing is, is that the law requires that we actually keep a 3% in the reserve fund. So there -- it's called a reserve fund. There is no -- there's nothing specific about how you go in and spend the reserve fund in the law. So if it requires it stays there and does stay there for reserve, yeah.

CHAIRMAN KURK: 3% of what?

MS. TRASK: Projected expenditures.

MS. QUIRAM: Projected expenditures. That was changed this year. Used to be 5%. This year was changed to 3%.

CHAIRMAN KURK: If your projected expenditures are zero, so you could spend that money.

(Miss Quiram nods her head.)

CHAIRMAN KURK: Okay. Senator Little.

SEN. LITTLE: Thank you, Mr. Chairman. Just some clarification. Until House Bill 2 was approved, you had 5% reserves. You now have 3% reserves. That difference between those two is in your calculation already? So are you still at 5% reserve or are you at 3% reserve now?

MS. QUIRAM: Go ahead.

MS. KEANE: We have adjusted our accounting for the 3% reserve. The reserve is not part of the calculation in our Fiscal item. If you look at Table 3, it refers to use of the surplus and only the surplus. There are two different buckets.

MS. TRASK: The difference in the reserve is already accounted for in the Surplus Statement in Fiscal 16.

SEN. LITTLE: Okay. Thank you. That was the question. What happened to that 2%.

MS. TRASK: It's already --

SEN. LITTLE: Went right over into surplus. So if we talk about surplus being exhausted October 16<sup>th</sup>, that 2% is in there.

MS. TRASK: No.

SEN. LITTLE: So when you lowered the reserve from 5 to 3.

MS. TRASK: Hm-hum.

SEN. LITTLE: Where did those funds go?

MS. TRASK: They're put back into each of the agency's budget who pay into the fund.

SEN. LITTLE: You sent those monies back to the agency?

MS. TRASK: They are going back to the agency. They're in their Fiscal 16 Surplus Statement.

SEN. LITTLE: Follow-up.

CHAIRMAN KURK: Follow-up.

SEN. LITTLE: When you say going, you haven't sent them back yet?

MS. TRASK: No, it hasn't been done yet.

CHAIRMAN KURK: But --

MS. QUIRAM: But that's the whole --

CHAIRMAN KURK: The budget was balanced on the assumption that those monies are going back.

MS. QUIRAM: Yes.

CHAIRMAN KURK: If you didn't send them back, then those agencies would have unbalanced budgets.

MS. KEANE: I don't know about the other agencies. We just --

MS. QUIRAM: That was my understanding.

MS. KEANE: We just haven't gotten to the exercise of doing it.

MS. QUIRAM: That is my understanding that during the budget that that was accounted for during the budget that that money would go back.

CHAIRMAN KURK: One of the things that we -- all of us had been discussing in various ways and various times was to adopt Tables 1 and 2 and to take additional money out of surplus through a fast-track bill in January that would do two things. Number one, provide additional revenue through using the balance of the surplus; two would have those retirees who turn 65, whose birthday is 65, continue to pay their premium, twelve and a half percent or 15%, as they turn 65 and became eligible for Medicaid and that was about \$50 a month. And, in addition, set up a choice plan for retirees, both under -- no, for over 65 retirees that would have allowed them to buy health insurance wherever they were, rather than be forced to go under the State Plan if they happen to be living in Florida or Arizona. And that the State would set aside a fixed sum of money to allow them to -- per person to allow them to do this, providing choice for those individuals. The Governor, we're told, does not support that concept, but that was one of the things that we had looked at as a way to deal with this in the long-term.

The Governor's proposal basically is to deal with the short-term and study the long-term. My language, not hers. And I mention this because I think all of us need to realize that this has not just been a static discussion. A whole variety of very serious alternatives have been looked at. The Governor's proposal basically is do nothing and pay for it through appropriations one way or the other. Not clear where they might come from, but certainly pay for it with appropriations, which clearly puts us with a six point -- 10.6 billion -- million dollar problem for the biennium 18-19. Some action has to be taken today. Is there further discussion that members wish to have?

SEN. FORRESTER: Is it --

CHAIRMAN KURK: Senator Forrester.

SEN. FORRESTER: Is it appropriate to talk about other potential alternatives?

CHAIRMAN KURK: Absolutely.

SEN. FORRESTER: As Senator D'Allesandro said, we worked on alternatives that I'd like the Fiscal Committee would consider. My understanding is today what we absolutely have to deal with today is Table 1. And Table 1 has to do with the over 65s.

MS. QUIRAM: Absolutely.

SEN. FORRESTER: And in the current proposal that was brought forward that the Governor supported included the medical plan, the Medicare Part A deductible, members going from zero in the current plan paying \$500. And then the retail co-payments would change from 10, 20 and 35, essentially a \$5 increase; is that correct?

MS. QUIRAM: Yes.

SEN. FORRESTER: And for the first part that would be a savings of 1.1 million, for the second Part 1.6 million.

MS. QUIRAM: Yes.

SEN. FORRESTER: So what I would like to propose is just dealing with Table 1 because that's what we have to deal with today, and to Senator D'Allesandro's point, I don't know when you want to do it but to divide the question and vote on it -- on these. For Table 1 Medicare eligible over 65 to remove, to delete,

I guess, the Medicare Part A deductible, which is where the member now pays zero and goes to 500, to take that off the table and only consider the retail co-payments which is essentially a \$5 increase in co-payments in the proposed plan change, which would save 1.6 million.

CHAIRMAN KURK: Which would save the retirees 1.1 million but increase the cost to State taxpayers of 1.1 million.

SEN. FORRESTER: Yes. I would propose that to come out of the health surplus.

CHAIRMAN KURK: And so do you have any thoughts about dealing with the under 65 plan and the long-term or a long-term solution to this issue?

SEN. FORRESTER: Thank you for the question. I -- what I would say is I think, and you've heard at least from this side, that we believe that requires a legislative solution. That we come back and work on the under 65s, come up with a plan, and we need to do it soon because you heard that starting January 1 it's going to cost us \$380,000 a month.

CHAIRMAN KURK: If your plan were adopted, it would cost us somewhat less, because you're proposing doing line -- eliminating Line 5 and not doing Lines 10, 11 and 12, if I understand you correctly. The only action you would have us take today is to adopt Line 6, the Pharmacy Plan Change Component.

SEN. FORRESTER: Correct.

CHAIRMAN KURK: To approve that.

SEN. FORRESTER: Correct, because that's all we really need to deal with today.

CHAIRMAN KURK: And then we would have to have another meeting on or before November 3<sup>rd</sup> in order to deal with these other items, because if you we didn't deal with these other items, then we would start incurring additional costs against surplus starting January 1<sup>st</sup>. The Commissioner is agreeing.

MS. QUIRAM: Hm-hum.

CHAIRMAN KURK: So I would ask you what does the extra two weeks buy us? What is it that you would expect us to be able to accomplish in those two weeks that we can't accomplish today? The original plan that I just described that I thought there was general agreement on the Governor does not accept. And although we could certainly present legislation to her, I doubt very much it would become law. Either she would veto it, the veto would not be over- ridden or it wouldn't pass.

SEN. FORRESTER: Well, you know, we have all been working on this and what I guess where we're at today is I don't feel like -- I don't feel like today as we sit here today that we have a bi-partisan solution to this problem that we're facing, and I am not prepared. The only thing I'm prepared to deal with today is Table 1, because that's something we have to deal with today.

SEN. D'ALLESANDRO: Mr. Chair.

CHAIRMAN KURK: Senator D'Allesandro.

SEN. D'ALLESANDRO: Thank you, Mr. Chair. I think the Senator makes a very valid point. We have to deal with it. We have a responsibility to deal with it. The over 65 is the largest component in terms of retiree health care. That's where the greatest number of people are. That's where the greatest number of people would be affected. To answer your question, what can we do in two weeks? We can do anything we want in two weeks.

If we have the energy, the desire, and the work ethic to make it happen, we can do it. We have done things in this place very, very quickly over a long period of time, Representative Kurk. I've been here to see it done. I've been a part of many things that have happened. When a sublimation of the available energies is brought together, we can make anything happen if we have the will. And that's why we're here, to make things happen. We have a problem. We have to deal with it.

Senator has brought forth a partial solution. That must be dealt with today. Let's deal with it today. You give us two weeks to do the rest of it that's what we'll do.

CHAIRMAN KURK: Thank God for the last minute. But for the last minute nothing would get done.

SEN. D'ALLESANDRO: Well, that's life.

CHAIRMAN KURK: It certainly is in the Legislature.

SEN. D'ALLESANDRO: It's in life in general, Representative Kurk.

CHAIRMAN KURK: Okay. Other thoughts? Other comments?  
Senator Morse.

SEN. PRESIDENT MORSE: Let me respectfully disagree. And, you know, to the retirees, the ones that have been sending us letters and the ones we have been returning the phone calls to at night, Vicki, we've been working on a narrow network, talking about it for a month and a half now like it was going to happen and that there was bi-partisan support. So that's where all my energy was going. And, quite honestly, all we were waiting for is the document to be drafted. We saw some kind of bullet points, a few of us commented, the

Chairman, myself, and made some changes to it, all debatable. All debatable. Page 7, Page 1, we want to go back and look at it. The reality is if something was done with the retirees' outside this building and talked to them, it's probably a good solution. Was outright rejected yesterday at the last minute. Outright rejected. We wouldn't have to be making a decision on option one right now. We wouldn't have to make that decision if we were going to go forward with the Representative's plan. So I have been working on it with all my energy. And I've been answering the phone calls with the truth. I thought it was ridiculous on the 65 and over retirees that we were putting them through this. I think it's absolutely wrong.

Now, I've been convinced under 65 that there were changes back in the early '90s that their pays were adapted so that that would be acceptable. But for the over 65s I find this to be absolutely wrong and I thought the solution presented was bi-partisan and deserved the support of the Governor. Now it's being tossed out the window, and we are going to make a cut on the retirees over 65. I know we're going to go caucus, and I know everyone's waiting to hear where I'm coming from on it; But the reality of this whole damn thing is it didn't need to come down to this. There's a perfectly good piece of legislation that the retirees could have worked with us on, and we could have got something. But the Governor's putting us in this position today and tell me where she lies, because I got two different charts. One saying accepted. That was presented to me twice. One saying don't do anything at all.

You know, it's getting awful tough around here and you want to deal with health care in this business? When are the answers going to come when we start putting a proposal that we think New Hampshire should change in health care? At the last minute? I ask for a recess, Mr. Chairman.

CHAIRMAN KURK: I think that's an excellent suggestion. 12:30. We will stand in recess until 12:30.

(Recess taken at 12:09 p.m.)

(Reconvened at 12:56 a.m.)

CHAIRMAN KURK: Committee will come out of -- the Committee will come out of recess and resume our action on Fiscal 15-201. The Chair recognizes Senator Forrester for a motion.

SEN. SANBORN: Could I ask a question first?

CHAIRMAN KURK: Senator Sanborn has a question. Yes, sir.

SEN. SANBORN: Thank you, Mr. Chair. Appreciate it. Ladies, thank you so much for all of your patience as we're obviously struggling so hard to find a solution here. One of the things that I think we need to consider when we continue to talk about timing, we know we kind of have a hard deadline to make a decision today, but it's my understanding, I'm asking for your confirmation on this, that this Committee makes a decision today that CMS will allow the State to come back and revisit the plan and make changes provided there is a benefit to the retirees. If there's not a benefit and it will increase their cost, CMS would not allow us to do that. But they would allow us to make a change to the plan of which there is a benefit.

For example, if this Committee voted today to raise co-pays, we could come back in a month or two months, if there's a holistic plan, and go back and reduce those co-pays. It would be much more difficult if it was like maximum out-of-pocket. That's not somewhere we'd want to go because it's too complicated. But on

something like co-pays CMS would allow us to do that; correct.

MS. QUIRAM: We just did check with Express Scripts and they said yes, that was the case for the co-payment piece.

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

CHAIRMAN KURK: When would that take effect if we were to make such a positive change?

SUE WOLFE, Express Scripts: We just need it any time.

CHAIRMAN KURK: It's not --

MS. KEANE: Enough time to implement it.

CHAIRMAN KURK: But not a particular date such as January 1<sup>st</sup>?

MS. KEANE: No, no.

CHAIRMAN KURK: It can happen during the plan year?

MS. KEANE: Yes, it can.

CHAIRMAN KURK: Thank you. Further questions? Representative Wallner.

REP. WALLNER: Well, I have a question about the pharmacy benefit change that is being proposed.

CHAIRMAN KURK: Would you like to wait until the motion is made?

REP. WALLNER: I will, yes. Thank you.

CHAIRMAN KURK: Further questions? The Chair recognizes Senator Forrester for a motion.

\*\* SEN. FORRESTER: Thank you, Mr. Chair. I'd like to make the motion that we accept -- and I'm going to use the summary, this sheet that was provided by LBA, make a motion that we accept Pharmacy Plan Change Component under the over 65, which is Line 6, and the Pharmacy Plan Change Component for the under 65 which is Line 11. So today what we would we voting on is just -- because we are under a deadline, just dealing with the Pharmacy Plan Change Components today for the over 65 and the under 65.

CHAIRMAN KURK: Thank you for that motion, Senator. Because what is before us is not the LBA's summary sheet, but the actual documents, I'm assuming that you're referring to Fiscal 15-201, dated September 22<sup>nd</sup>, Page 4 of 7, Table 1, under the bolded Pharmacy Plan Change Component.

SEN. FORRESTER: Yes.

CHAIRMAN KURK: And on Table 2, Page 5 of 7, Pharmacy Plan Change Component. Table 1 refers to those over 65, and Table 2 refers to those under 65. So those are the things -- those are the only items on Fiscal 15-201 that your motion proposes that we approve.

SEN. FORRESTER: Yes. And just for clarification, under Table 1 on Page 4 of 7, I'm talking about only the Pharmacy Plan Change Component.

SEN. SANBORN: The retail co-payment and the mail co-payment, not the maximum out-of-pocket.

SEN. FORRESTER: Yes, not the Medical Plan Change Component.

SEN. SANBORN: Or to the maximum out-of-pocket involved.

REP. OBER: Just those two lines; correct?

SEN. FORRESTER: Pharmacy Plan Change Component.

MS. KEANE: The whole box, three rows.

SEN. SANBORN: I apologize. I thought you said the maximum out-of-pocket you were not recommending the change.

SEN. FORRESTER: No, I didn't say that.

SEN. SANBORN: Only the co-payment.

SEN. FORRESTER: No, I didn't say that.

CHAIRMAN KURK: Senator, to clarify, is your motion for the three items under the Pharmacy Plan Change Component for a total saving assumed by the sheet of \$1.6 million?

SEN. FORRESTER: Correct.

CHAIRMAN KURK: For the over 65s and the same three items for a total for the under 65s of \$400,000; is that correct?

SEN. FORRESTER: Correct.

CHAIRMAN KURK: Thank you. That includes the maximum out-of-pocket change.

SEN. FORRESTER: Yes.

CHAIRMAN KURK: Is there a second to that motion?

SEN. LITTLE: Second.

CHAIRMAN KURK: Senator Forrester moves, Senator Little seconds that we approve the Pharmacy Plan Change Components for both the over and under 65 populations. Representative -- are there any questions or discussion? Representative Wallner.

REP. WALLNER: I would like to understand the maximum out-of-pocket portion of this. As I look at it, I see that it would be actually a 50% increase for individuals and a 50% increase for the family member. Am I reading this correctly? They'll move up that much?

MS. KEANE: Yes. In Table 1 the maximum out-of-pocket goes from 500 an individual to 750 an individual, 1,000 a family to 1500 a family.

REP. WALLNER: Okay.

MS. KEANE: It does the same in Table 2.

SEN. FORRESTER: And I think --

CHAIRMAN KURK: Senator Forrester.

SEN. FORRESTER: Sorry. I think what we are looking for is parity. Whatever we do with the over 65, we want to do the same for the under 65 when it comes to the Pharmacy Plan Change Component.

MS. KEANE: So -- so the Pharmacy Plan Change Component is identical in Table 1 and Table 2.

CHAIRMAN KURK: Further discussion or questions? Senator Sanborn.

SEN. SANBORN: Thank you, Mr. Chair. First, I want to thank all the Members of the Fiscal Committee, as well as the members of the DAS, for coming in and helping us create sausage like I haven't seen here in a

number of years. It's been very difficult for everyone and I appreciate everyone's efforts on it. All of that being said, I cannot support this proposal at this point because there's not enough for me to provide consideration for some things that I think are important for these universe of people. But I appreciate people's positions and where they need to be to try and find a partial fix on it. Thank you, sir.

CHAIRMAN KURK: Representative Wallner.

REP. WALLNER: I have to go back to just -- I want to go back to the maximum out-of-pocket. Did I understand earlier that we said that we could revisit within the next period of time the co-pay, but we could not revisit the maximum out-of-pocket?

SEN. SANBORN: Correct.

REP. WALLNER: Did I hear that correctly?

MS. QUIRAM: Yes.

REP. WALLNER: So what we would do in the maximum out-of-pocket would be permanent for at least this bi -- for this biennium?

MS. KEANE: For the Calendar Year.

MS. QUIRAM: For the Calendar Year.

REP. WALLNER: For the Calendar Year. So we would not be able to go back and revisit that. Do we have any idea what the difference is? I mean, what the --

SEN. FORRESTER: Yes.

REP. WALLNER: -- how much that is worth?

MS. QUIRAM: Maximum out-of-pocket on the over 65 is worth about \$200,000.

CHAIRMAN KURK: Of the one million six.

MS. QUIRAM: Of the one six. Now, I don't have the exact figure for the -- for the under 65s on that.

MR. KOON: It's 100,000.

MS. QUIRAM: Thank you, Steve. 100,000 difference on the -- on the under 65s.

CHAIRMAN KURK: Senator Forrester.

SEN. FORRESTER: So, Commissioner, is what you're saying for the maximum out-of-pocket for both under 65 -- over 65 is 200,000 is the value and for the under 65 is 100,000 so the total of 300,000.

MS. QUIRAM: Yes. And we would need to come up with that amount of money to cover those costs if we didn't make that cut.

CHAIRMAN KURK: Senator Sanborn.

SEN. SANBORN: Question, if I may, Mr. Chair? Mr. Chair, does the Governor support this proposal that's in front of us today as amended by Senator Forrester?

CHAIRMAN KURK: I don't know. The Governor supports -- we have been told the Governor supports the entire plan as presented by DAS of which this is a component. So I assume that she would support this component provided that the rest of the components were dealt with at our next meeting which will be on the 3<sup>rd</sup>, but no representations have been made.

SEN. SANBORN: Thank you, sir.

CHAIRMAN KURK: Are we ready for the question? The motion before us is to approve the Pharmacy Plan Change Component on Table 1 and the same on Table 2, Page 4 and 5 of 7 of Fiscal 15-201. Ready for the question? All those in favor, please indicate by saying aye? Opposed?

REP. EATON: No.

REP. WALLNER: No.

CHAIRMAN KURK: Let's see a show of hands. All those in favor, please raise your hand? Opposed?

(Representatives Wallner and Eaton and Senator Sanborn opposed.)

CHAIRMAN KURK: Seven to three. The motion passes.

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

CHAIRMAN KURK: Is there anyone else who wishes to take any other action on any other part of 20 -- 15-201 today? We have exhausted our interest in taking further action today. Because this is still before us, and we -- there is further action that we must take on this, we will have another meeting of the Fiscal Committee at 10 o'clock on Tuesday, the 3<sup>rd</sup> of November.

MR. KANE: You want the Department -- want to put the remaining item on the table?

CHAIRMAN KURK: We do. I just --

MR. KANE: Sure.

CHAIRMAN KURK: Just want to make sure everybody understands, and that as I understand it is the drop dead date for dealing with the rest of the proposal. And the reason for scheduling the meeting then is

because we seem to work best under pressure. Okay. Now is there a motion to put the remainder --

\*\* REP. OBER: So moved.

CHAIRMAN KURK: -- of 15-201 on the table? Moved by Representative Ober; seconded by Senator Sanborn. Discussion? There being none, are you ready for the question? All those in favor, please indicate by saying aye? Opposed? The ayes have it and the item is returned to the table.

\*\*\* {MOTION ADOPTED}

CHAIRMAN KURK: There being no further business to come before us, we now stand adjourned. And as I said, our next meeting will be in two weeks. It will be in the calendar, and it will be on the 3<sup>rd</sup> of November at 10 in the morning in this room. Thank you all.

(Adjourned at 1:08 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  
Cecelia A. Trask, LSR, RMR, CRR  
State of New Hampshire  
License No. 47

