

**JOINT FISCAL COMMITTEE**

Legislative Office Building, Rooms 210-211

Concord, NH

Friday, March 8, 2013

**MEMBERS PRESENT:**

Rep. Mary Jane Wallner (Chair)  
Rep. Ken Weyler  
Rep. Cindy Rosenwald  
Rep. Dan Eaton  
Rep. Sharon Nordgren (Alternate)  
Sen. Chuck Morse  
Sen. Jeanie Forrester  
Sen. Bob Odell  
Sen. Sylvia Larsen  
Sen. Andy Sanborn

(Convened at 10:11 a.m.)

**1. Acceptance of Minutes of the February 1, 2013 meeting.**

CHAIRWOMAN WALLNER: Good morning. Welcome to the March 8<sup>th</sup> Fiscal Committee meeting. And I'd like to open the meeting with an acceptance of the minutes.

\*\* REP. ROSENWALD: So moved.

SEN. LARSEN: Second.

CHAIRWOMAN WALLNER: All in favor? Any discussion?

REP. WEYLER: Who was the second?

REP. ROSENWALD: Senator Larsen.

REP. WEYLER: Okay.

CHAIRWOMAN WALLNER: Representative Rosenwald moved and Senator Larsen seconded.

REP. WEYLER: Say those, I'll be sure to get them.

CHAIRWOMAN WALLNER: Okay. All in favor? Any opposed?

\*\*\* {MOTION ADOPTED}

2. Old Business:

CHAIRWOMAN WALLNER: Now we are into Old Business and we have a number of items on the table. Do I hear from anyone who would like to take an item off? Yes, Senator Morse.

\*\* SEN. MORSE: Like to take off item number 13-005, 13-025, and 13-047.

CHAIRWOMAN WALLNER: Any other items that people would like to take off the table? Okay.

REP. WEYLER: Is there a second on that?

REP. EATON: Second.

REP. WEYLER: Is that for all of them?

REP. EATON: Yes.

CHAIRWOMAN WALLNER: So we have a motion to take 13-005, 13-025 and 13-047 off the table and to at this point have discussion.

SEN. MORSE: Can we ask the Department to come up?

CHAIRWOMAN WALLNER: Yes. Could I ask someone from the Department of Transportation to join us? Thank you.

CHRISTOPHER CLEMENT, Commissioner, Department of

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Transportation: Good morning.

CHAIRWOMAN WALLNER: Introduce yourselves.

MR. CLEMENT: Yes. Good morning. For the record, my name is Chris Clement, Commissioner of the New Hampshire Department of Transportation, and with me today to my right is Patrick McKenna, who's our Director of Finance for DOT as well. Good morning.

PATRICK MCKENNA, Director of Finance, Department of Transportation: Good morning.

CHAIRWOMAN WALLNER: Do we have questions for the Transportation Department? Yes, Senator Morse.

SEN. MORSE: Do we want to just do these one at a time or do you want to --

CHAIRWOMAN WALLNER: I think it be easier to do them one at a time.

SEN. MORSE: Okay. Starting with 13-005, we went to Governor Lynch's budget, we went to Governor Hassan's budget, and these numbers don't tie to those budgets, to either one of those budgets. You came back last year and asked for this and you're coming back this year and asking for it. Yet, the '14 and '15 budget that's been produced is, I believe -- I didn't bring the papers with me, but I believe they're like 50,000 and 25,000 for the two issues. So we going to be doing this again in '14 and '15?

MR. MCKENNA: No. We have accounted for -- we may be in a different accounting unit. I don't have all my '14 and '15 budget documents with me. We'll certainly provide that.

You're correct, Senator Morse, the -- this is a

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similar request that we had in Fiscal Year 12. And what we had found was that traditionally the Department had budgeted for some of these activities under Class 20. We've worked with the Department of Administrative Services pretty closely to identify those areas where there have been potential misclassification in the budget. We've worked to make sure that the classification occurs.

SEN. MORSE: Further question?

CHAIRWOMAN WALLNER: Further question.

SEN. MORSE: If I look under Executive Office, Organizational Dues, is there another spot I'm supposed to be looking at? Because I see where in '12 you came to Fiscal for the \$110,000 for dues, but I also see in your massive budgets in '14 and '15 the numbers 50,625 in both years.

MR. MCKENNA: Yes. Senator Morse, one of the things and we have been -- we have been discussing, we just went through a detailed discussion of our budget with Division II in House Finance earlier this week. Several of the areas that had traditionally been budgeted out of the Executive Office, what we've done in the budget is tried to direct fund those in the accounting units that activity is occurring. So the -- what you're seeing here is not the total of the organization dues for the Department of Transportation. You're seeing just those charged centrally to the Executive Office. There are additional budget requests in for, particularly, I believe, in Project Development.

SEN. MORSE: Further.

CHAIRWOMAN WALLNER: Yes, further question.

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SEN. MORSE: Well, the Agency's request, your request for '12 and '13 was only 40 and 40, for '12 and '13 respectively. You came in and asked for -- there was only a thousand dollars put on those lines so I realize you couldn't -- the Governor introduced that, by the way, he put a thousand dollars in those lines.

MR. MCKENNA: Yes.

SEN. MORSE: You came to Fiscal and asked for 111,000 and you're asking again. So you didn't change those lines in the last budget that we built and the Governor didn't fund them, and this Governor's not funding them. Where's the disconnect? That's what I'm trying to figure out, because we are being asked to do something that even the Governor is not supporting. So are there other lines I'm supposed to be looking at in the budget?

MR. MCKENNA: Yes. We have additional -- as I mentioned, we have additional -- much of the activity that we have charged in the front office does have particular relationship to particular areas in the organization; namely, some of the AASHTO dues for like our bridge software, the Pontis system, we are charging that in the Project Development area. So there are additional -- in the '14 and '15 budget request approved by Governor Hassan and submitted as requested, there are additional lines for these expenses. That is not the case in the '12 and '13 budget. All of those types of expenses were -- are being charged in '12 and '13 to the Executive Office. You are correct that that line item for organizational dues in the Executive Office was reduced to \$1,000. We did come in and make the case that two things.

Number 1, traditionally some of those expenses were charged in Class 20 under specific object codes. So more detail below that. Working with Administrative Services

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subsequent to the 2012 and '13 budget, we have realized that that classification was not correct. And we came before the Fiscal Committee earlier last year in Fiscal Year '12 and explained that and requested those funds be restored, which they were restored.

SEN. MORSE: But they're restored to that same exact line.

MR. MCKENNA: In Fiscal Year 12 and 13, yes. In '12 so far, yes.

SEN. MORSE: '13 the request is on the same line.

MR. MCKENNA: Yes.

SEN. MORSE: Unless I'm reading this wrong.

MR. MCKENNA: That's correct.

CHAIRWOMAN WALLNER: Further question. Yes, Senator Forrester.

SEN. FORRESTER: Thank you for your testimony. Can you just explain to me those organization dues, how they break out, what that includes?

MR. MCKENNA: They're primarily the AASHTO dues that the Department -- it's the American Association of State Highway organizations. The Department is a member of that organization. It's primarily the standard setting organization for standards for engineering, for highways and bridges nationwide. Federal Highway Administration relies on that body to set those types of standards and the Department's membership in that enables the State of New Hampshire to be involved in that standard setting process. We have several individuals in the Department that actually

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serve on committees and in leadership roles in that. It gives -- it gives a voice to a small state in the standard setting process. And much of the those dues also pay for critical software that that organization creates that we use for our bridge management and several other highway design and others.

SEN. FORRESTER: Follow-up.

CHAIRWOMAN WALLNER: Yes.

SEN. FORRESTER: So how many staff are members, I guess?

MR. CLEMENT: Well, I think as it relates to the whole Department, I think we have 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13 of New Hampshire DOT people are, I would say, leading staff roles throughout AASHTO. We have one on traffic. We have another one on a technical committee, on Safety, which we have a seat at the table. Another one is on Materials and Research. I mean, I could keep going, and going, and going. I mean, as Patrick said, it's not good not to be part of AASHTO. Every state in the country has a representative at AASHTO. And it allows us, again, I think Patrick summed it up as well, a small state like New Hampshire to have a very powerful voice in terms of what standards and what policies are being set nationwide. So I think that from my fellow members on AASHTO, New Hampshire traditionally has always had very intelligent, smart people and we have a good track record, and I think the rest of the country looks to have New Hampshire there because -- because of our technical prowess.

SEN. FORRESTER: One more question, please.

CHAIRWOMAN WALLNER: Yes, one.

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SEN. FORRESTER: One more question.

MR. CLEMENT: For us not to be a member of AASHTO would be not a good thing to put it mildly for the state.

REP. FORRESTER: And you're a member of another organization; correct?

MR. CLEMENT: Right. NASTO, which is the Northeast Association of State Transportation Officials. That's a much smaller amount. I think that's maybe, you know, \$2500 per year and that's all the Northeast states. That's all the Northeast states.

SEN. FORRESTER: Thank you.

MR. CLEMENT: Yeah.

CHAIRWOMAN WALLNER: Thank you. Representative Eaton.

MR. CLEMENT: Can I just follow-up one point to Senator Forrester? One point. As relates to NASTO, I think NASTO is equally important as AASHTO because we start to look at how we work, again, in the Northeast states. One of the issues we are going to be pushing forward this year, and I'm going to be President of NASTO this June, is I'm going to be pushing all the Northeast states from a global purchasing perspective. I haven't spoke to Linda about it yet, but we are going to look at, you know, if we can all go out the Northeast states and purchase tires, purchase glass beads, purchase guardrail, you know, to help drive the cost down, that would be a huge win for all of us because we'd be somewhat of a consortium. That type of stuff we do from a Northeast perspective. We help each other out. We try to do things in a smart way.

CHAIRWOMAN WALLNER: Representative Eaton.

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REP. EATON: I'll just say that outside of Safety, we brought Transportation in Division II for a 2-hour review. It wound up running roughly just under six hours. And part of that was that the plethora of budget lines were zeroed out and other budget lines had changes and increases with detailed explanations of what they had done. And it was to put monies where they should be instead of lumping them. And it's far, far, far more transparent than the budget has ever been and the explanation for each section was much clearer. And probably what you're seeing here would be much, much more explanatory as you go through that part of the budget.

CHAIRWOMAN WALLNER: Further discussion? Do I have a motion?

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

REP. WEYLER: Second.

CHAIRWOMAN WALLNER: Representative Eaton moves to approve and Representative Weyler seconded.

SEN. MORSE: We are going to recess on this one. If I can go through all three.

CHAIRWOMAN WALLNER: Okay.

SEN. MORSE: 024 we've checked the -- 025, I'm sorry, we checked the math on that. The Senate agrees with the Department. If no one else has questions on that.

CHAIRWOMAN WALLNER: Any further questions on 13-025? Okay. If we do 13-047.

SEN. MORSE: I guess my question on that is I believe

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it's an \$8 million budget and you can't find \$37,000 in the budget?

MR. MCKENNA: Thank you for the question, Senator Morse. That's actually a very -- one thing that I do also find frustrating, drawing from the Highway Fund Surplus or drawing from the base funding source surplus when in an original budget there had not been the establishment of a class line is one of the requirements that we're held to. I would say probably 80 to 90% of the transfer requests that we bring forward as the Department could be handled through the establishment from existing class lines, rather than drawing from surplus. We do not have that option at the moment. So any time there's the establishment of a class line that didn't have funding as part of the base budget, we do have to draw from the surplus itself, even if we would choose not to.

SEN. MORSE: So if you were to come to Fiscal and ask Fiscal to transfer from a line that's already been budgeted, we couldn't do that?

MR. MCKENNA: That's my understanding.

SEN. MORSE: LBA.

JEFFRY PATTISON, Legislative Budget Assistant, Office of Legislative Budget Assistant: That's true.

SEN. MORSE: That's ridiculous.

REP. EATON: Yes, it is.

MR. MCKENNA: It very much would benefit, I think, both the Department and the State if we had the ability to do so.

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MR. CLEMENT: Right.

SEN. MORSE: We got to be careful because there's a lot of that in the back of the budget. I'm not sure the Senate will agree on everything. Okay. If we could just take a break on the 005 we could vote on Representative Eaton's motion.

CHAIRWOMAN WALLNER: Okay. Thank you. Take a little recess.

(Recess taken at 10:27 a.m.)

(Reconvened 10:36 a.m.)

CHAIRWOMAN WALLNER: Okay. Thank you. We're back in session. Senator Morse.

SEN. MORSE: And let me apologize to the Department, because I should have got all these questions answered after I got the notes from LBA on the accounting side. On item number 005, the 110,000 and the 39,000, what is the effect of us keeping this on the table to our April meeting? What does it mean to the Department? I understand the other two items and what they mean. Just on that item.

MR. MCKENNA: Well, we're now into our ninth month in the Fiscal Year. And so we're -- the services that we use as part of membership, we are using software. We can't function without the software, that bridge software that we have. So we're, essentially, asking forbearance of the organization to not be paying our share, not be paying our dues. That's where we are at the moment. We are nine months into the Fiscal Year having not paid our dues.

SEN. MORSE: Further question.

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CHAIRWOMAN WALLNER: Further question.

SEN. MORSE: Not to put you on the spot because you didn't come prepared for this, if I go look at '14 and '15, am I going to tie to \$110,000 number?

MR. MCKENNA: I wouldn't say that it would probably be exact. But I will -- I will in 20 minutes after this meeting have a schedule to you with the exact numbers of Class 26 across the Department.

SEN. MORSE: Because we are going to be here an hour and a half, if you could bring those numbers and we could put this on the table until the end of the agenda, and then I think we are ready to approve the other two items.

REP. WEYLER: Agreed.

\*\* REP. EATON: So move to table 13-005.

REP. WEYLER: Second.

CHAIRWOMAN WALLNER: Representative Eaton moved and Representative Weyler seconds to table 13-005. All in favor? Opposed? Motion passes.

\*\*\* {MOTION ADOPTED}

CHAIRMAN WALLNER: Yes, Senator Morse.

SEN. MORSE: I move ought to pass on 13-025.

REP. EATON: Second.

CHAIRMAN WALLNER: Senator Morse moved ought to pass on 13-025 and Representative Eaton seconded. Any further

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discussion? All in favor? Any opposed?

\*\*\* {MOTION ADOPTED}

CHAIRWOMAN WALLNER: Yes, Senator Morse.

\*\* SEN. MORSE: I move ought to pass on 13-047.

REP. EATON: Second.

CHAIRWOMAN WALLNER: Senator Morse moved ought to pass on 047 and Representative Eaton seconded. All in favor? Any opposed?

CHAIRWOMAN WALLNER: Thank you.

\*\*\* {MOTION ADOPTED}

3. RSA 14:30-a, III Audit Topic Recommendation by  
Legislative Performance Audit and Oversight Committee:

CHAIRWOMAN WALLNER: We'll see you at the end of the agenda again. Thank you.

We move along to section 3. These are the recommendations by the Legislative Performance Audit Oversight Committee. They are recommending six audits.

REP. EATON: Madam Chair, I recommend that Item 3 be adopted with the exception of Police Standards and Training Council.

CHAIRWOMAN WALLNER: Do we have a second?

SEN. FORRESTER: Second.

CHAIRWOMAN WALLNER: Senator Forrester seconded.

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Discussion? All in favor? Any opposed?

\*\*\* {MOTION ADOPTED}

CHAIRWOMAN WALLNER: We have --

SEN. MORSE: I'll do it.

CHAIRWOMAN WALLNER: Senator Morse.

SEN. MORSE: It's my -- before I misstate my motion, because I know that will stop everything, it's my intent that this goes back to the Performance Audit and Oversight Committee. That's why I'll be making a motion to table the Police Standards and Training Council.

REP. EATON: Second.

CHAIRMAN WALLNER: All in favor? Any opposed?

\*\*\* {MOTION ADOPTED}

#### CONSENT CALENDAR

4. 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: Let's move on to item 4, the Consent Calendar. Would anyone have anything on the Consent Calendar they would like to remove?

\*\* REP. EATON: Move approval.

SEN. MORSE: Second.

CHAIRWOMAN WALLNER: Representative Eaton moved to

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approve the Consent Calendar and Senator Morse seconded.  
All in favor? Any opposed?

\*\*\* {MOTION ADOPTED}

5. RSA 124:15 Positions Restricted:

CHAIRWOMAN WALLNER: Positions Restricted, item number 5. Department of Administrative Services, authorization to establish a temporary full-time Administrator to the Deferred Compensation Plan. Could we ask Commissioner Hodgdon and State Treasurer to come up? Welcome.

LINDA HODGDON, Commissioner, Department of Administrative Services: Thank you.

CATHERINE PROVENCHER, State Treasurer, Department of Treasury: For the record, my name is Catherine Provencher. I'm your State Treasurer.

MS. HODGDON: And Linda Hodgdon. I'm Commissioner of Administrative Services.

CHAIRWOMAN WALLNER: Thank you. Do we have some questions on this item? Senator Morse.

SEN. MORSE: I believe we're in agreement, but we want to amend the item slightly. We all think you should move forward with this position. I believe what we want to see happen, because the budget right now doesn't -- this isn't there, we'd like the position -- we'd like you to go through with the process now, and I'm trying to figure out how to get there, of hiring the person that the effective date of hiring is July 1<sup>st</sup>. Would that affect you greatly? Because we have been told it takes about 90 days to hire someone anyways.

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MS. PROVENCHER: Want to take it or me to take it?

MS. HODGDON: Go ahead.

MS. PROVENCHER: Thank you, Senator. It is a very lengthy process to -- to actually place someone in a position. The -- we do believe that the State is taking on maybe some unnecessary risk by not having this position. If there's some way that there could be maybe an approval of the position, it's hard to make a commitment with the budget process. It will be difficult to recruit, I suppose, if there's not a position to recruit into. That will, I think, make the process challenging in trying to start the recruitment process. And the only other thing, and maybe Linda knows better than I, I don't -- I'm not clear on the legality or the authority to recruit without a position. So maybe --

SEN. MORSE: That was our question.

MS. HODGDON: Yeah. Obviously, the process as laid out this also needs to go to Governor and Council so Governor and Council has to have something to act on. Otherwise, there wouldn't be anything -- excuse me -- to send from Fiscal to Governor and Council. So I was trying to think about whether or not there's a way to say that the Fiscal Committee approves it -- approves the creation of the position with an effective date of July 1. The funding is -- there are no State funds. These are funds from the people that are investing in the program. And as the Treasurer says, we are definitely taking on unnecessary risk. We have given you a list of things that are, you know, somewhat concerning that are not being done that should, in fact, be done. I don't know if the Fiscal Committee feels comfortable about that; but that's taking, you know, that's making a firm decision that you, in fact, approve the creation of the position from these funds with

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an effective date of July 1<sup>st</sup>. Then there is, in fact, something that Governor and Council could act on. And then we could recruit and someone would know that those funds are going to be there with a July 1<sup>st</sup> date. Otherwise, nobody's going to want a position that maybe is going to be there.

REP. EATON: I think she just corrected the motion.

\*\* SEN. MORSE: I think we could approve item 13-080 with an effective date of July 1, 2013, and that would be our motion.

CHAIRWOMAN WALLNER: Accept a motion from Senator Morse.

REP. EATON: Second.

CHAIRWOMAN WALLNER: And seconded by Representative Eaton to accept the position and make an effective date of July 1. Okay. Any further discussion? All in favor? Any opposed? Thank you.

MS. HODGDON: Thank you.

SEN. MORSE: Thank you.

\*\*\* {MOTION ADOPTED}

6. RSA 14:30-a, VI, Fiscal Committee Approval Required for Acceptance and Expenditure of Funds Over \$100,000 from Any Non-State Source and RSA 124:15 Positions Restricted:

CHAIRWOMAN WALLNER: Item 6, also consent. Is there anyone who would like to bring an item off -- yes, Representative Rosenwald.

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REP. ROSENWALD: Thank you, Madam Chair. I would like to remove item 13-075 off the Consent Calendar for discussion.

CHAIRWOMAN WALLNER: Okay. Representative Rosenwald moves to take item 13-075 --

REP. WEYLER: Second.

CHAIRWOMAN WALLNER: -- off the Consent Calendar and Representative Weyler seconds. Do I have a motion for the remainder part of the Consent Calendar?

\*\* REP. EATON: So moved.

SEN. FORRESTER: Second.

CHAIRWOMAN WALLNER: All in favor? Any opposed?

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

CHAIRWOMAN WALLNER: Go to 13 --

REP. WEYLER: That was Eaton and Forrester?

CHAIRWOMAN WALLNER: Yes. Item 13-075. Could Insurance Commissioner join us? Thank you.

ROGER SEVIGNY, Commissioner, Department of Insurance: Thank you, Madam Chair.

CHAIRWOMAN WALLNER: I think we have some questions about this item.

REP. WEYLER: I do.

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CHAIRWOMAN WALLNER: Okay.

REP. WEYLER: Thank you. Good morning, Commissioner.

MR. SEVIGNY: Good morning, Representative Weyler.

REP. WEYLER: I've read three separate things in the last week since you and I talked about this item, all of which said from attorneys general from at least two different states and perhaps more, there was one that spoke generally of several attorneys general, stating that if there were no state exchange, State Insurance Exchange, then the IRS could not fine employers the two to \$3,000 for not having an insurance plan for their employees. And I thought that sounds pretty important that we don't have an Insurance Exchange because it would save the employers of New Hampshire collectively millions of dollars. And I think that's a wise thing to do by not having an Insurance Exchange if that's the way it works. So I've attempted to table this until I can find further information that says that that is either confirmed or denied. And what I read in the last week it seems to be confirmed.

CHAIRWOMAN WALLNER: Commissioner.

MR. SEVIGNY: May I address that, Madam Chair?

CHAIRMAN WALLNER: Yes, please.

MR. SEVIGNY: What the proposal you have before you has nothing to do with an exchange per se. For one thing -- let me back up a little bit and say that if what you've read about is, in fact, going to prove out, it would prove out regardless of whether this Committee passed and authorized the Department to accept this grant funding. There is no State-based exchange. By law last session, we -- the state, the Legislature, put into law the fact that

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there could not be a State-based exchange. So there will not -- there will not be one unless the law gets changed.

If, in fact, there is -- or what you've just said is borne out, what you have before you for approval is grant money, but it has nothing to do with the exchange. The exchange is federally facilitated. The box is built by the Federal Government. The State has nothing to do with building it. It has nothing to do with the Call Center or anything of that nature with all of the IT infrastructure that goes into building the exchange itself. What you have before you is really nothing more than the Insurance Department coming to the Legislature asking for permission to get the funding necessary to be able to continue our traditional role as a state regulator of health insurance and not turning that role over to the Federal Government and losing our sovereignty. That's all this is. If this money, if we are allowed to accept this money, it will give us the resources we need to be able to continue to regulate the insurance plans that are going to be sold in the exchange. It has nothing to do with the creation of or the running of the exchange itself.

CHAIRWOMAN WALLNER: Representative Rosenwald.

REP. ROSENWALD: Thank you, Madam Chair. Commissioner, if we have a plan management partnership, which I think is what this grant is about, does that mean that we will not have to have two sets of regulations, State and Federal?

MR. SEVIGNY: Yes, it does. What that means is that the State is going to be the regulator of the plans that go into -- that are going to be sold in the exchange. And that the State is going to be by MOU with the Federal Government be able to represent to the Federal Government that those plans meet the standards established by the Federal Government. So, yes, it does. It means that there will be a

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regulator, a single regulator.

CHAIRWOMAN WALLNER: Representative Rosenwald.

\*\* REP. ROSENWALD: If it's all right to move adoption of item 13-075.

REP. EATON: Second.

CHAIRWOMAN WALLNER: Representative Rosenwald moves adoption of 13-075, and Representative Eaton seconds. Further discussion? All in favor?

REP. WEYLER: I'd still like to say for the record that I'm not convinced that if we take this money and set this thing up that somebody in the Federal Government can come in and interpret it as a state exchange.

CHAIRWOMAN WALLNER: Okay. All in favor? Any opposed?

REP. WEYLER: No.

SEN. MORSE: No.

REP. WEYLER: Two of us.

CHAIRWOMAN WALLNER: Two -- two --

SEN. FORRESTER: Three.

CHAIRWOMAN WALLNER: Three opposed and seven yes.

\*\*\* {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 228:69, I, (b),

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**Appropriation and Use of Special Railroad Fund:**

CHAIRWOMAN WALLNER: Move on to item 7. Fiscal Committee approval required for acceptance of expenditure of funds over \$100,000. This, again, Department of Transportation. Do I see a motion?

\*\* REP. EATON: So move.

CHAIRWOMAN WALLNER: Representative Eaton moved.

SEN. MORSE: Second.

CHAIRWOMAN WALLNER: Senator Morse seconds. Discussion? All in favor? Any opposed?

\*\*\* {MOTION ADOPTED}

**8. RSA 21-I:56, II, Reclassification of Positions or Increases**

CHAIRWOMAN WALLNER: Reclassification of positions or increases, 13-055, the Joint Board of Licensure and Certification. Senator Morse.

\*\* SEN. MORSE: Move to table.

SEN. FORRESTER: Second.

CHAIRWOMAN WALLNER: Senator Morse moves to table, Senator Forrester seconds. All in favor? Any opposed?

\*\*\* {MOTION ADOPTED}

CHAIRWOMAN WALLNER: 13-082, Department of Administrative Services. Senator Morse.

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\*\* SEN. MORSE: Move to table.

CHAIRWOMAN WALLNER: Senator Morse moves to table. Senator Forrester seconds. All in favor? Any opposed? The motion passes.

\*\*\* {MOTION ADOPTED}

9. RSA 363:28, III, Office of the Consumer Advocate:

CHAIRWOMAN WALLNER: Office of the Consumer Advocate, Item 13-062. Do we have questions on this item? You do?

SEN. ODELL: I want to make sure I understand.

CHAIRWOMAN WALLNER: Okay. Is someone here present today from Consumer Advocate?

SUSAN CHAMBERLIN, Consumer Advocate, Office of the Consumer Advocate: Good morning. I'm Susan Chamberlin, Consumer Advocate for the residential ratepayers.

CHAIRWOMAN WALLNER: Yes, Senator Odell.

SEN. ODELL: Thank you, Madam Chair. Miss Chamberlain, could you just run through where we are in this process and why this particular contract is so important and the basis upon which you're operating in this review of the reasonableness of the expenditures for the scrubber?

MS. CHAMBERLIN: The Public Utilities Commission has a docket that is open. They issued an order recently that said we are going to investigate the reasonableness or the prudence of the scrubber costs, which is a typical investigation for the Commission.

Public Service Company of New Hampshire filed a motion

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for rehearing. Several parties filed an objection. The Commission then suspended the docket and opened a -- their own investigation and they will be issuing a white paper. So right now, the docket is suspended. I expect the docket will be resumed, but they can do what they wish at that point. This money would not be spent unless they open the docket and they continue the investigation. So these aren't General Funds. This is a special assessment that would only come after the fact if actually spent.

There are -- our office is going through transition. We had an economist who was on staff for about 25 years. He recently retired. So we are bringing along people to fill in that position. But we no longer have an economist on staff. And we also recently went through a transition from the former Consumer Advocate to myself. I just started in September. So we've been hiring consultants to kind of help us go through the bridge, and we are still in that process now. And so for this expert, this is an economist who will help us analyze the economic conditions of the market at the time the decisions were made and give us an opinion whether or not the utility behaved according to best utility practice, which is a standard of the field.

If we don't have this, it's very difficult for us to make that analysis on our own, and it would substantially weaken our position to participate. We simply believe at this point that a public airing of the decisions and how they were made, and what happened to the cost, and whether they were reasonable is very important for the residential ratepayers, as they will be paying for these costs if they are approved. So I look at the 430 approximately million dollars that the scrubber has cost and then the approximately \$40,000 it would take us to analyze it. It's a fair investment on the ratepayers' part to look at these costs. And it's also important to note, it's not an all or nothing. It's not all the costs or none of the costs. There

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may be positions in-between, but we won't really know that until we have an opportunity to investigate.

SEN. ODELL: Follow-up.

CHAIRWOMAN WALLNER: Yes, follow-up.

SEN. ODELL: Is there any difference in what you're doing here than you would do with other dockets, except for the fact that we are talking about a really substantial amount of money?

MS. CHAMBERLIN: No. This is a typical investigation. This is the sort of thing that we look at all the time.

SEN. ODELL: So this is no aberration in terms of the process?

MS. CHAMBERLIN: No, no. It's a little odd that it's been suspended, but.

SEN. ODELL: That's not your --

MS. CHAMBERLIN: That's not my -- right.

SEN. ODELL: Thank you, Chairman. Thank you, Miss Chamberlin.

\*\* REP. EATON: Move approval.

CHAIRWOMAN WALLNER: Any further questions?

SEN. ODELL: Move approval. Has it been moved?

REP. WEYLER: Not yet.

REP. EATON: Yes, I did.

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CHAIRWOMAN WALLNER: Representative Eaton moved approval.

SEN. ODELL: Okay, second.

CHAIRWOMAN WALLNER: And Senator Odell seconded. All in favor? Any opposed?

SEN. SANBORN: Nay.

CHAIRWOMAN WALLNER: Senator Sanborn. Thank you very much.

MS. CHAMBERLIN: Thank you.

\*\*\* {MOTION ADOPTED}

10. Chapter 224:14, II, Laws of 2011, Department of Health and Human Services; Program Eligibility; Additional Revenues; Transfer Among Accounts:

CHAIRWOMAN WALLNER: Moving on to items under 10.

REP. ROSENWALD: Madam Chair.

CHAIRWOMAN WALLNER: Yes.

\*\* REP. ROSENWALD: I'd like to move that we amend item 13-057 to make a correction.

CHAIRWOMAN WALLNER: Thank you. Representative Rosenwald wants to amend 13-057 and would you like to speak to your motion?

\*\* REP. EATON: Can we -- just for parliamentary purposes, I'll move the item, get a second, and then an Amendment.

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CHAIRWOMAN WALLNER: Thank you. Representative Eaton moves.

REP. ROSENWALD: I'll second it.

CHAIRWOMAN WALLNER: Representative Rosenwald seconds.

REP. ROSENWALD: And if I could amend the motion.

CHAIRWOMAN WALLNER: Yes.

REP. ROSENWALD: There's a mistake in the text of this item. If you look at the table that is on the first page, in the center column where it says increase/decrease amount, that first number the Federal funds of \$887,687 is referenced incorrectly in the paragraph above over to the left where there's a numerical transposition. And it says 877,687. That number should properly read in the paragraph \$887,687.

REP. WEYLER: Is there a second?

SEN. LARSEN: Second.

CHAIRWOMAN WALLNER: Senator Larsen seconded. All in favor of the Amendment?

**\*\*\* {MOTION TO AMEND ADOPTED}**

CHAIRWOMAN WALLNER: Would you like the Commissioner to speak to this item? No?

REP. EATON: So just you have the main motion.

CHAIRWOMAN WALLNER: So item 13-057 moved by Representative Eaton and seconded by Representative Rosenwald.

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REP. EATON: As amended.

CHAIRWOMAN WALLNER: Ought to pass as amended. All in favor? Any opposed?

\*\*\* {MOTION ADOPTED}

CHAIRWOMAN WALLNER: Item 13-058. Do I see a motion?

\*\* SEN. MORSE: Move approval.

REP. EATON: Second.

CHAIRWOMAN WALLNER: Senator Morse moves. Representative Eaton seconds. Any discussion? All in favor?

\*\*\* {MOTION ADOPTED}

CHAIRWOMAN WALLNER: Item 13-059.

\*\* REP. EATON: Move approval.

CHAIRWOMAN WALLNER: Representative Eaton moves.

REP. ROSENWALD: I'll second.

CHAIRWOMAN WALLNER: And Representative Rosenwald seconds. Any discussion? All in favor? Any opposed?

\*\*\* {MOTION ADOPTED}

CHAIRWOMAN WALLNER: 13-060. Do I see a motion? Representative Rosenwald moves and Senator Morse seconds. All in favor? Any opposed? The motion passes.

\*\*\* {MOTION ADOPTED}

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11. **Chapter 224:210, Laws of 2011, Department of Information Technology; Transfers Among Accounts:**

CHAIRWOMAN WALLNER: Tab 11. This is Department of Information Technology transfers. Do we have any questions about this one for the Department? No.

\*\* SEN. MORSE: Move approval.

REP. EATON: Second.

CHAIRWOMAN WALLNER: Senator Morse moves and Representative Eaton seconds. All in favor? Any opposed?

\*\*\* {MOTION ADOPTED}

12. **Miscellaneous:**

CHAIRMAN WALLNER: And I hope that you all have a late item that came in from the Attorney General. Does everyone have it?

REP. EATON: Yep.

CHAIRWOMAN WALLNER: Okay. I would ask -- yes, Senator Morse.

\*\* SEN. MORSE: I can explain. I'll move approval first.

CHAIRWOMAN WALLNER: Okay. Senator Morse moves approval.

REP. EATON: Second.

CHAIRWOMAN WALLNER: Representative Eaton seconds. Discussion?

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SEN. MORSE: In when we drafted the budget that was language that came over from the House that basically said we couldn't use attorneys outside the State of New Hampshire, I think in the conversations that I've had on this, the -- this has risen to a level that it's time to go outside New Hampshire and get an attorney. It's a serious case. It involves, I believe, \$26 million. And we've tried with local attorneys and we haven't gotten anywhere. So I think we should move forward.

CHAIRWOMAN WALLNER: Thank you. Further discussion? All in favor? Any opposed?

\*\*\* {MOTION ADOPTED}

**(13) Informational Materials:**

CHAIRWOMAN WALLNER: I believe that everything else we have is informational items, and I wonder if the Department of Transportation would resume. We'll wait for just a minute.

REP. WEYLER: You've got audits.

SEN. MORSE: You need LBA for both.

CHAIRWOMAN WALLNER: We'll take a 5-minute recess and --

REP. EATON: They're back.

CHAIRWOMAN WALLNER: We are just waiting on the Highway Department -- Department of Transportation.

(Recess taken at 11:04 a.m.)

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(Reconvened at 11:07 a.m.)

CHAIRWOMAN WALLNER: Thank you. Call us back to order. Recognize Senator Morse for a motion.

\*\* SEN. MORSE: I move to take item number 13-005 off the table.

SEN. FORRESTER: Second.

CHAIRWOMAN WALLNER: Senator Morse moves to take item 13-005 off the table and it was seconded by Senator Forrester. All in favor? Any opposed?

\*\*\* {MOTION ADOPTED}

CHAIRMAN WALLNER: Senator Morse.

\*\* SEN. MORSE: I'm going to move item number 13-005 and I'd like to speak to it.

REP. EATON: Second.

CHAIRWOMAN WALLNER: Senator Morse moves item 13-005 and Representative Eaton second, and you're recognized to speak to the motion.

SEN. MORSE: I don't know if it's Division II in the House or I can tell you when it gets to the Senate, the questions that are still lingering are why we belong to AASHTO. 'Cause we -- don't forget, the House suspended all their dues, the House and Senate, in their budgets the last time we built a budget, and we still stayed with these organizations. So I think there's some explaining on that end of it. And then, obviously, the lines that's been put into in the budget, which I think they could explain to us from what I'm hearing right now from LBA, we are going to

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want to see all that tied together. So the -- as you go through the process, I think the -- this will get reviewed when we go through the budget this time, but I'll support it today.

CHAIRWOMAN WALLNER: Any further discussion? All in favor? Any opposed? The motion passes.

\*\*\* {MOTION ADOPTED}

CHAIRMAN WALLNER: I believe that's the end of the Fiscal Committee agenda for today, and we go into the Audits.

REP. EATON: Except for what, Ken?

REP. WEYLER: Audits.

### Audits:

CHAIRWOMAN WALLNER: The first audit we are doing is the Juvenile Justice Audit. Juvenile Justice Audit.

RICHARD MAHONEY, Director of Audits, Audit Division, Office of Legislative Budget Assistant: Thank you, Madam Chairman. Good morning to you, Members of the Committee. For the record, Richard Mahoney, Director of Audits, for the Office of Legislative Budget Assistant. Joining me today to present the audit report to the Committee is Vilay DiCicco. Vilay is an Audit Manager with our office responsible to conduct the audit on a daily basis at the Department. We'll also be joined by Maggie Bishop at some point, Madam Chair, for the Department's response to the audit as well.

VILAY DICICCO, Senior Audit Manager, Audit Division, Office of Legislative Budget Assistant: Good morning, Madam

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Chair, Members of the Committee. My name is Vilay DiCicco and this morning I will be presenting the performance audit report of Juvenile Justice Services, Pre-Adjudicated Placements.

The purposes of our audit was to determine if children in the Juvenile Justice System were placed in more restrictive placements than needed, whether the DCYF continued to fund the three sheltered care providers as directed by State law, if shelter care utilization has declined and, if so, the contributing factors. Whether providing shelter care at the Sununu Youth Services Center is an appropriate use of the facility and if changes to the Children in Need of Services law impacted School Districts. Our Executive Summary is found on Page 1.

Overall, we found the Juvenile Justice System is focused on placing juveniles in the least restrictive, most appropriate placements, while ensuring the safety of the child in the community. Consistent with national trends, the approach used by DCYF and the courts focuses on maintaining children in their homes and seeking alternatives to placement while moving them to other, more restrictive placements only when necessary. DCYF's role in determining a placement prior to adjudication is limited as State law places these decisions exclusively within the purview of the court.

We found the number of juveniles entering the Juvenile Justice System has decreased creating excess capacity at shelters and at the Sununu Center. As a result, the Sununu Center may lend itself to alternative uses to address system needs for both pre-adjudicated and post-adjudicated juveniles. We found amendments to the Children in Need of Services or CHINS law in 2011 have negatively impacted local school systems. With fewer juveniles qualifying for services and increased requirements on School Districts,

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superintendents we surveyed reported increased truancy, increased disruption to teachers and other students, and more time and cost to file CHINS petitions.

Our recommendation summary can be found on Page 3. Our report contains four Observations and Recommendations all of which DCYF concurs. No recommendations require legislative action.

Our background section starts on Page 5 of the report. New Hampshire's Juvenile Justice System's administered through the Department of Health and Human Services, Division for Children, Youth -- Division for Children, Youth and Families or DCYF. The system operates primarily under RSA 169-B and 169-D which address delinquency and CHINS. Both statutes encourage maintaining juveniles in their homes and favor diversion from the courts rather than involvement in the Juvenile Justice System. The System includes the DCYF, local law enforcement, the Circuit Court, School Districts, and service providers, each playing a pivotal role.

Our first section, starting on Page 9, addresses whether juveniles are placed in the least restrictive placement and DCYF's role in placement decisions. We found the System is focused on ensuring children not being placed in more restrictive placements than needed prior to adjudication. This is due to several factors. Statutes governing CHINS encourage keeping juveniles in contact with their communities and only removing children from their homes when necessary for their welfare or in the interest of public safety.

Statutes specifically require the courts place CHINS in the least restrictive and most appropriate placement pending an initial hearing. While this is not a requirement for delinquent children, DCYF and the courts apply the

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standard universally to all out-of-home placements.

National trends, Federal guidelines, and internal changes at DCYF have also shifted away from detention and out-of-home placements. Instead, they focus on community-based treatment models which encourage juveniles to be maintained in their communities. Under these models, the first option is to maintain the child in their home; but if this is not possible, the next best option is with a relative or friend. If the juvenile requires placement outside of the home, the DCYF presents options to the court regarding shelter care, short-term emergency beds, or placement in a residential facility bearing in mind proximity to the child's community.

Detention at the Sununu Center is considered the most restrictive placement and is generally viewed as the last resort. The Sununu Center can only be used for children allegedly committing a delinquent act and cannot be used for CHINS. To further guide placement decisions, the Circuit Courts implemented the Detention Assessment Screening Instrument to help judges assess whether juveniles should be placed in the Sununu Center. While the instrument uses risk-based factors to aid in detention decisions, there is no risk-based guide to aid in placing juveniles in the continuum of other out-of-home placements.

Observation 1 on Page 11 recommends the DCYF and the courts and police departments establish guidelines for these placements.

Our next section starting on Page 13 addresses the decrease in shelter care utilization and the funding of the three shelter care providers. State law requires the DHHS continue to fund 37 shelter care beds in three facilities across the state. While we found the DHHS maintained its contracts with the shelters, it's unclear if the law

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required the DHHS to continue to pay the shelters even if the courts did not place children in them.

Table 1 on Page 13 shows the decline in occupancy rates at all three shelters from Fiscal Years 2008 to 2012. From 2008 until its closure in October 2011, the Antrim Girls Shelter's occupancy rate dropped from 87% to 27%, while the North Country and Midway Shelters combined dropped from 90% to 59% occupancy.

We found that shelter care utilization has been decreasing since 2008. A primary factor is the decreasing juvenile population in New Hampshire which has been declining at a faster rate than the nation as a whole.

Between 2004 and 2011, New Hampshire's population of 10 to 17-year olds has decreased by 8% compared to 1% nationally. Another factor is the decline in juvenile petitions in general. Nationally, the juvenile arrest rate in 2009 was near its lowest in two decades. Consistent with national trends, Figure 2 on Page 15 shows the decline in the number of juvenile petitions in New Hampshire. Between Fiscal Years 2008 and 2012, the number of juveniles petitioned as a whole decreased by 44% while CHINS petitions fell by 97%. This decline, driven mainly by changes to the CHINS law, has contributed to the decline in shelter occupancy.

Our final factor in the declining shelter population is the shift in DCYF and national trends to maintain children in their communities. In keeping with this focus, DCYF has worked with service providers to develop alternatives to shelter care and secure detention by using residential facilities across the state to provide short-term emergency placement. As a result of these efforts, the number of juveniles placed in both shelters and the Sununu Center have been generally decreasing since

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2008. A combination of all of these factors contributed to the Antrim Girls Shelter closure in 2011.

As the number of children needing shelter care continues to decline, Observation 2 on Page 18 recommends DHHS develop and adopt rules to determine the number of shelter and detention beds needed as required by statute or to seek to repeal this requirement.

Our next section starting on Page 21 addresses the alternate uses of the Sununu Center which has been underutilized since 2008. Table 3 on Page 22 shows that from Fiscal Years 2008 to 2012 occupancy at the Sununu Center Detention Unit has been declining.

Table 4 on that same page shows the number of juveniles committed to the facility has also been declining. We did find that using the Sununu Center for shelter care is feasible with modifications to the facility and it could benefit children, especially girls in the southern part of the state who may need shelter placements.

Observation 4 on Page 20 -- Observation 3, excuse me, on Page 24, recommends the DHHS formally assess additional uses for this underutilized facility.

Our last section, starting on Page 27, addresses the impact of changes to CHINS law on School Districts. Superintendents we surveyed overwhelmingly reported the 2011 changes to CHINS law negatively affected their School District. The most significant changes to RSA 169-D narrowed the definition of children eligible for services and required DHHS consent before a CHINS petition can be filed with the courts.

Figure 4 on Page 28 shows the dramatic drop in CHINS petitions from 2011 to 2012 after the law went into effect.

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Statutory changes also require DCYF to petition the courts to close existing cases which no longer met the legal definition resulting in termination of services for 460 juveniles. The majority of superintendents reported their communities lacked services for juveniles who previously qualified for services under CHINS. Schools reported increased truancy as the main problem with no recourse to address it. Additionally, superintendents reported the requirement to obtain DHHS consent has created a lengthier process requiring more time for administrators. As a result, an overwhelming majority indicated they no longer seek -- they no longer or rarely seek CHINS petitions.

Additionally, the process for requesting DHHS consent is not explicitly described in statute, and the DHHS has not established rules to clarify the process. Observation 4 on Page 29 recommends the DHHS establish rules surrounding this process.

The remainder of our report contains our scope objectives and methodology, a letter from the DCYF, flow charts describing the CHINS and delinquency processes, a list of in-state placement options for children entering the Juvenile Justice System, the results of our three surveys, a list of court-approved diversion programs, list of recent law changes affecting Juvenile Justice and the status of our prior audit findings.

We would like to thank the staff -- the DCYF staff for its cooperation during this audit. This concludes my presentation. We'd be happy to answer any questions you may have.

CHAIRWOMAN WALLNER: Thank you. Do we have questions? Director Bishop, do you want to respond to the report?

MAGGIE BISHOP, Director, Juvenile Justice Services,

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Department of Health and Human Services: No. As indicated in the presentation, we concur with the recommendations that came out of the audit, and we are actually in the process of working on many of them.

CHAIRWOMAN WALLNER: Yes, Representation Nordgren.

REP. NORDGREN: Thank you, Madam Chair. On Page 18 your No. 2 Observation, and then if we go back to the chart where it talks about whether or not there needs to be legislation or not on Page 3. For the Page 18 Observation, it says they might seek legislation as it does in the comment made by the Department on Page 18, which is Auditee Response. Says we'll concur with the recommendations and will seek legislation. So is there need for legislation or not?

MS. DICICCO: Our recommendation focuses on developing the administrative rules surrounding the process and does give DCYF an alternative option to seek legislation if they find it necessary. So it's up to the -- I would think it would be up to HHS if they feel that an Amendment to legislation is necessary.

REP. NORDGREN: May I just make a comment?

CHAIRWOMAN WALLNER: Further question.

REP. NORDGREN: Do you have a question, Ms. Bishop?

MS. BISHOP: I'm going to look to Mr. Kennedy if I could for a second.

BYRY KENNEDY, General Counsel, Division for Children, Youth, and Families, Department of Health and Human Services: Good morning. My name is Byry Kennedy. I'm General Counsel for DCYF. We have proposed a change in

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language relating to HB2 which would repeal the session law -- I think the 1978 session law which proscribes particular number of shelter care beds geographically disbursed around the state. In our view that is an antiquated vestige that doesn't deal with the realities that we currently face in terms of the need for shelter care. So we will be seeking that change, the repeal of that session law.

REP. NORDGREN: When we go over House Bill 2 this afternoon, we can find that related back.

MR. KENNEDY: Yes, ma'am. Yes.

REP. NORDGREN: Thank you.

CHAIRMAN WALLNER: Any further questions? Thank you very much. Representative Weyler has a motion.

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

CHAIRWOMAN WALLNER: Do I hear a second?

REP. EATON: Second.

CHAIRWOMAN WALLNER: Representative Eaton seconds. All in favor? Any opposed? Motion passes.

\*\*\* {MOTION ADOPTED}

CHAIRWOMAN WALLNER: Our next audit is Employees Versus Contractors. Steven Grady and Dick Mahoney.

STEVEN GRADY, Senior Audit Manager, Audit Division, Office of Legislative Budget Assistant: Good morning. For the record, I am Steve Grady. I was the in-charge auditor

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for the performance audit examining Agency Decision-Making Between Employees versus Contractors. I believe I'll be joined by Department of Administrative Services representative. No?

MR. MAHONEY: Go ahead.

MR. GRADY: State service contracting is decentralized lacking central oversight, standardization, and an overarching statute. In our 2009 service contract performance audit, we concluded this compromised management control, efficiency, and effectiveness. In 2009, we found no statewide requirement for agencies to justify a service contract's need in writing or to conduct a cost of benefit analysis. We recommended the establishment of a single procurement statute which would include requirements that agencies justify contracts based on service type or contract value.

While some legislative and agency level changes have occurred, contracting laws, rules, and policies have not fundamentally changed since 2009 and weaknesses remain.

In July of 2012, we were asked to examine if State agencies determined whether it was more cost-effective to hire personnel or to contract for services. We selected 21 State agencies to examine. We found they contractually obligated approximately \$3.5 billion through 986 multi-year contracts and were budgeted for approximately \$754 million in personnel-related expenses in State Fiscal Year 2012. The vast majority of these commitments were entered into without the benefit of a comparative analysis to determine whether providing a service using State employees or by contractor was in the State's best interest.

As we detail in Observation No. 1 on Page 6, the 21 State Agencies we examined usually did not conduct cost

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benefit analysis. Instead, agencies often recorded their budgets set the number and type of employees available. This, in turn, drove contracting because remaining service needs could only be met by contractors. Twenty-four percent of the agencies we examined reported conducting no analysis. When analysis was undertaken, agency decision-making was usually informal or ad hoc, with 67% of the agencies we examined reporting doing either formal or informal analyses. However, they inconsistently considered cost-effectiveness and risk during these analyses.

Only one agency documented its decision-making process. Most agencies were able, however, to enumerate the factors they might consider during decision-making. These factors are summarized on Table 1 also on Page 6. You will note the top factors include resource availability and cost. We asked agencies about the decisions that led to 105 contracts they entered into during State Fiscal Year 2012. No agency documented the decision to either contract out or provide service in-house for these 105 contracts. Agencies did report using State employees was not an option due to external constraints 26% of the time. They considered using State employees prior to deciding to contract 11% of the time, and they did not consider using State employees for the remaining 63% of the time.

We found some governments at the state, federal, and local levels regulate their agencies' decision-making processes when they choose between providing a service using a contractor or using State employees or public employees. Excuse me. However, no generally applicable law, rule, or policy exists in New Hampshire mandating that State agencies conduct cost benefit for similar analyses. Further, 17 agencies indicated they believe several inter-related factors obviated the need to conduct cost benefit analyses. These are bulleted on Page 7. They include the lack of in-house expertise, agency budget constraints, and

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the lack of enough in-house staff.

Further, they noted oversight bodies rarely, if ever, required agencies provide a cost benefit analysis prior to approval of a contract, a new position or a re-classification. We notice some jurisdictions establish functions as inherently governmental or commercial. This distinction establishes what services agencies cannot, may, and must contract for. In New Hampshire, no generally applicable law, rule, or policy exists establishing any service as inherently governmental or commercial. Most agencies reported they believed that their practices were adequate in protecting the State's best interests. However, the lack of a systemic control or oversight of these agencies' decision to either provide a service using contractors or State employees has led to a decentralized and ad hoc process and has created the potential for inefficiency.

We recommend the Legislature consider defining inherently governmental and commercial functions. We recommend the Legislature consider providing guidance on when agencies must provide a service using State employees, must provide a service using contractors, and must conduct an analysis to determine which method is in the State's best interest. We also recommend the Legislature consider to what extent they may wish to structure State Agency decision-making processes and that they consider including requirements and guidelines in the budget statute and process. We also suggest allowing Agencies to request changes outside the normal budget cycle.

While I will not go into the details of our Appendices, I will note that Appendix A contains this Audit's objectives and scope and the methodologies we used to address the question. Since we audited a statewide function, no single agency was subject to this audit. We

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did, however, request the Department of Administrative Services provide perspective from the agency level. Their comments begin on Page B-1, and their substantive response to our audit is encompassed in paragraphs 2 and 3 on Page B-3.

Appendix C contains our survey of State Agencies and their responses. Appendix D contains our assessment of the current status of several Observations from our 2009 Service Contracting Performance Audit.

This concludes my presentation this morning, and I'd be delighted to entertain any questions.

CHAIRWOMAN WALLNER: Thank you. Questions? Yes, Senator Odell.

SEN. ODELL: Thank you, Madam Chair. The question comes to mind is there any differentiation between contracts paid for by general funds versus those paid for by other funds and specifically federal funds? And as a sort of add-on those contracts that were done with federal monies, was there a better discipline to the development of the contracts for outside contractors, the decision-making as to whether do things in-house or out-of-house?

MR. GRADY: We looked at contracts funded by federal, state general funds, an assortment of funds, and we could not distill a differentiation in the process used. There were some constraints imposed on agencies by federal funding. For example, the Department of Transportation might have requirements that they use federal funds only on contracted services. So to that extent, federal or other sources of funds compel certain things. But there was no trend that contracts primarily relying on federal funds were more well-developed at the front-end and, conversely, general funded contracts same way. No trend we could

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discern.

SEN. ODELL: And may I?

CHAIRWOMAN WALLNER: Yes.

SEN. ODELL: Thank you. And in your evaluation or your examination, did you find anything that might be called best practices?

MR. GRADY: We had a difficult time distilling out best practices. We did look at practices of the Federal Government, as well as several other states and some municipalities across the nation. And there are common themes in the practices of those entities, but there is no body of what one might consider a body of best practice.

SEN. ODELL: Thank you.

CHAIRWOMAN WALLNER: Further question? Senator Larsen.

SEN. LARSEN: Would it be available to us to look at some of those other states and maybe Federal guidelines in how they structure their best practice?

MR. MAHONEY: Our papers are not public documents as you know, Senator; but we certainly can give you the information sources that we used to look at. But as Steve mentioned, we found really no central body of knowledge anywhere that would delineate best practices per se across governmental units, other than the Federal Government has some fairly detailed information with regard to contracting.

SEN. LARSEN: I think it would be interesting to see that if you could share that.

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MR. MAHONEY: We can get that information to you.

CHAIRWOMAN WALLNER: Further question.

REP. WEYLER: I have one observation.

CHAIRWOMAN WALLNER: Yes.

REP. WEYLER: I've been to national conventions where other Governors speak and the simplistic one that many of them use was the yellow pages test. If there's some service you need and it's in the yellow pages, then they don't do it by government. They do it by bids, by contractors. Anybody bring that up?

MR. GRADY: There were some responses from agencies that the reason they did not even consider using State employees for to provide some services was because that type of service had historically or was inherently, in their view, something that was commercially available.

REP. WEYLER: Thank you.

MR. GRADY: Yes.

CHAIRWOMAN WALLNER: Thank you. Further questions?  
Representative Weyler.

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

REP. EATON: Second.

CHAIRWOMAN WALLNER: Representative Weyler moves and Representative Eaton seconds. All in favor? Any opposed?

\*\*\* {MOTION ADOPTED}

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CHAIRWOMAN WALLNER: Our next audit is audit of the Lottery Commission.

MR. MAHONEY: Thank you, Madam Chairman. I'll be joined by Elizabeth Bielecki. Elizabeth is an Audit Manager in our office who was responsible for conducting the audit of the Lottery's financial statements for Fiscal Year 2012 and this Management Letter is a byproduct of that audit. Joining us also will be Executive Director of the Lottery Commission, as well as Cassie Strong, the chief accountant.

CHAIRMAN WALLNER: Thank you. Welcome.

ELIZABETH BIELECKI Audit Manager, Audit Division, Office of Legislative Budget Assistant: Good morning, Madam Chair, Members of the Committee. For the record, my name is Elizabeth Bielecki. We are here today to present the 2012 Lottery Management Letter. The Management Letter is a byproduct of a financial audit, the results of which were presented to the Committee at the February 1<sup>st</sup> meeting.

In looking at the Table of Contents, you'll see that the report includes 12 internal control comments, none of which are material weaknesses. Just for your information, a material weakness would be a most serious weakness in internal control. The Lottery concurred with 11 of the comments and concurred, in part, with one. The Observations begin on Page 3.

Observation No. 1 notes the Lottery did not perform any risk assessments during Fiscal Year 2012, contrary to the Lottery's policies and procedures. Recognizing the importance of periodic risk assessments to internal controls, we recommend Lottery perform at least semi-annual risk assessments in accordance with its established policies.

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Observation No. 2 also on the -- on Page 3 reports the Lottery was inconsistent in adhering to its policies and procedures for controlling entry into its draw room. We recommended Lottery require and monitor compliance with its draw room security policies and procedures. A similar comment was also included in the Fiscal 2011 Management Letter.

Observation No. 3 on Page 4 relates to the Lottery's new game Lucky for Life. Lottery began selling this game in March of 2012. While we did not note any payments made to ineligible players, we recommend Lottery work with its Lucky for Life partner lotteries to establish policies and procedures to prevent Lucky for Life prize payments being made to ineligible players.

Observations No. 4 and 5 relate to the Lottery's Replay Program. In this program, players can enter losing lottery tickets to earn points to purchase entries for drawings of various merchandise prizes.

On Page 6, Observation No. 4 addresses weaknesses in the Lottery's controls over its Replay Program. A similar comment has been included in the three prior Management Letters. We recommend the Lottery obtain a report on controls over the operation of the Replay Program from its vendor, commonly referred to as a SOC 2 Report. We should note the Lottery has been working with its vendor and is expecting a SOC 2 Report in the near future.

On Page 5 -- I'm sorry -- on Page 7, Observation No. 5 recommends the Lottery improve the segregation of duties over its merchandise prizes for the Replay Program.

Page 8, Observation 6 and 7 discuss opportunities to improve control -- controls, including controls over the

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calculation of ticket costs and reconciliation of prize reserve account.

On Page 9, Observation No. 8 discusses a control error identified in the Lottery's prize validation process for a certain instant game ticket.

Observation No. 9 on Page 10 recommends the Lottery monitor compliance with statement of financial interest filing requirements.

Observations numbered 10 through 12 on Pages 11 through 13 are follow-ups on 2011 Management Letter information technology observations. We found that these three findings noted during the IT review have not been resolved during Fiscal Year 2012.

Observation No. 10 recommends the work -- the Lottery work with its internal control system vendor to improve documented controls in the ICS system. The ICS system is a system used to ensure the gaming system is in balance prior to on-line game draws.

Observation No. 11 on Page 12 recommends the Lottery update its Disaster Recovery Plan.

Observation No. 12 on Page 13 recommends the Lottery in conjunction with DoIT strengthen its periodic reviews of user access to Lottery's networks and systems.

Finally, Page 15 behind the tab reflects the current status of Observations reported in our Fiscal Year 2011 Management Letter and Page 16 reflects the current status of IT Observations also included in that Fiscal Year 2011 Management Letter.

That concludes my presentation. I'd like to thank the

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Lottery's Executive Director, Charles McIntyre, and his staff for their assistance during the audit. Thank you, the Committee. We'll be happy to take any questions you might have.

CHAIRWOMAN WALLNER: Thank you. Questions? Mr. McIntyre.

CHARLES MCINTYRE, Executive Director, Lottery Commission: Good morning, Madam Chair, and Members of the Committee. I want to thank initially the LBA Audit Division for their time and effort in our building. They spent significant amount of time reviewing us. And this report suggests and reflects their professional attitude and professional response and a professional result. And we certainly welcome them each time they come in June. And, obviously, Elizabeth and Dick Mahoney and Bill Mitchell work very hard and we work very hard with them. So I want to thank them. This year they really made an effort to work more quickly and more diligently than they have in the past, and I thank them for that. I certainly welcome any questions you have, Madam Chair, Members of the Committee.

CHAIRWOMAN WALLNER: Questions. Thank you. Thank you very much.

MR. MCINTYRE: Thank you.

CHAIRWOMAN WALLNER: Representative Weyler.

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

REP. ROSENWALD: Second.

CHAIRWOMAN WALLNER: Representative Weyler moved, Representative Rosenwald second. All in favor? Any

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opposed? Motion passes.

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

CHAIRWOMAN WALLNER: Our final audit for today is the State of New Hampshire Turnpike System.

MR. MAHONEY: Thank you, Madam Chair. I'm joined to present the report by Jean Mitchell. Jean is a Senior Audit Manager with our office who is responsible for supervising and conducting the audit at the Department -- at the Turnpike System for the Fiscal Year 2012 audit of their Comprehensive Annual Financial Report.

JEAN MITCHELL, Senior Audit Manager, Audit Division, Office of Legislative Budget Assistant: Good morning, Representative Wallner, Members of the Committee. My name is Jean Mitchell. I'm here today to present to you the 2012 Management Letter of the Turnpike System. This Management Letter is a byproduct of our Fiscal Year 2012 audit of the system. Turnpike System's Comprehensive Annual Financial Report was presented to you at your February meeting.

I'd like to start my presentation with the Table of Contents. This audit report contains six comments, two on internal control, two are material weaknesses and four are significant deficiencies. It should be noted that none of the comments suggest legislative action is required.

Our first comment is on Page 3. This Observation is a material weakness and is similar to a comment reported in the prior 2011 Management Letter. While improvements were evident at Turnpike System's Financial Accounting and Reporting process during Fiscal Year 2012, Turnpikes continue to have difficulties accounting and reporting for capital contributions, capital assets, and cash flows.

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Significant adjustments were made in these areas during the Fiscal Year 2012 audit. Management cited inconsistent application of Turnpike and Department of Transportation policies and procedures over time as contributing to these issues.

We recommend Turnpikes continue in its effort to improve its financial accounting and reporting process and strengthen this effort through improved policies and procedures. We also cite the importance of an effective information-based review and approval process and recommend improved communication and sharing of financial-related information to strengthen that effort.

Observation No. 2 begins at the bottom of Page 5. This is also a material weakness. This Observation emphasizes the need for Turnpikes and the Department to develop comprehensive policies and procedures for use by employees to support their efforts to completely, efficiently, and accurately account for and report fixed or capital assets. Their present capital asset manual is not current or complete.

Capital asset issues that arose during the Fiscal Year 2012 Audit are outlined in items numbered 1 through 7 and include the identification of previously unrecorded assets, the misclassification within asset categories, question of ownership of assets purchased with mixed funding sources, and assets not removed from listings upon their disposal. The need for Turnpikes and Department to develop, document, and implement comprehensive capital asset policies and procedures to support employees' efforts cannot be overemphasized.

The Observation categorized as significant deficiencies begin with Observation No. 3 on Page 9.

Toll revenues collected through an automated tolling

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-- toll processing system highly reliant upon electronic and other automated sensors and transaction processing system. Turnpikes has implemented, physically observed, and video-based lane audits to determine its tolling system and equipment are functioning as intended. The audits are an important control because they support the accuracy of the automated toll processing system.

Items numbered 1 through 6 of the Observation identify concerns related to physically observed and video-based lane audits performed by Turnpikes during Fiscal Year 2012. While we did note improvements in the accuracy and completeness of the toll audits from the prior year, the toll audit process needs to be further developed with additional policies and procedures, including the definition of errors and criteria for prompting corrective action and strengthening monitoring procedures.

Going to Page 12 is Observation No. 4. This Observation addresses information technology controls over the electronic tolling system and recommends Turnpike develop a formal Disaster Recovery Plan, follow its formal IT change control policies, obtain and understanding of the segregation of duties within the IT operations of its tolling system vendors, and develop procedures to detect unauthorized IT changes to these systems.

On the bottom of Page 13 is Observation No. 5. It recommends Turnpikes develop a clear and full description of the Turnpike System that can inform and support the Turnpike's Business Office, including supporting the proper identification, recording, and reporting of its financial activity.

Our final Observation is located on Page 15, and it recommends Turnpikes implement procedures to ensure compliance with its current split invoice policy for

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invoices that cross Fiscal Years by monitoring to ensure accounting transactions are effectively reviewed.

Behind the tab is the current status of our Fiscal Year 2011 Management Letter of the system. As noted in the key of the 11 Observations, six are fully resolved, one is substantially resolved, and four are partially resolved.

I'd like to thank the Committee this morning for their time. I'd like to thank the Turnpike System management and staff for their help during the audit process. And we can answer any questions or Patrick might have a few words for the Committee. Thank you.

CHAIRWOMAN WALLNER: Thank you. Any questions? Yes.

MR. MCKENNA: Good morning. Again, my name's Patrick McKenna. I'm the Director of Finance for the Department of Transportation. Thank you for having us here this morning. With me is Chris Waszczuk. He's our Administrator of the Turnpikes Bureau, and also Len Russell, our Administrator of Financial Reporting within the Department of Transportation. Again, I'd like to thank the Committee for the time here.

As you can see through the audit report in the Observations, and also reference back the testimony that we had last year at this time when we brought forward the notion that the Department would go out and procure a fixed-asset module, a system, we did a stand-alone system procurement to -- in an attempt to work on fixed asset reporting. It's the single largest item on the balance sheet for the Turnpike System barring virtually anything. It's the main material item on the system itself. The Department's had and the Turnpike System has had noted material weakness in financial capital asset reporting for well over a dozen years. And yet, the systems available to the Department had not been updated in order to do that

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very thing which is to include that control.

In doing that purchase, which was about a \$4,000 purchase, the Department was able to apply staff time and effort over a course of about six months, where many of the items that were noted by the LBA Audit Division were items that the Department brought forward to the LBA Audit Division during the Fiscal Year.

We did a 60-year review of the capital assets of the system itself. We added considerable fixed assets to the balance sheet in that process. We have worked to do -- to go and to proceed. We're planning to do so.

We have, in terms of improving financial reporting, we have moved from an annual basis financial reporting to a quarterly basis. We did so in Fiscal Year 2012. And we are moving rapidly to a monthly reporting system. The ability to do so is really represented in the information that we receive directly from the market when we go to market for our bonding, Turnpike System bonds. We've recently received, and I have a report for the Committee, an upgrade from the Fitch Rating Agency on existing Turnpike debt. It's been increased from A to A plus rating. That's in a good market representation of the financial and fiscal management of the Department and the stewardship of the Turnpike System by the Legislature and the Governor and Council. That move and the ability to go to market quickly by shifting to a quarterly financial statement basis, the Department was able to accelerate the most recent bond issue in August of this past year, which would have normally been cut probably in November. We did so because we were on a third quarterly basis reporting last March.

The investment advisors and investment bankers were able to take that quarterly reporting and our pro formas that we developed and to assist us going to market quicker

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than many of our other turnpike and toll systems throughout the country. We secured favorable ratings and favorable interest rates. We believe that moving quickly toward monthly financial statements as we plan on for the last quarter of this Fiscal Year actually advances that even further. So that during whatever time of the Fiscal Year we'll be able to go to market with bonds and have a good understanding of the financial condition.

We welcome the review that comes with external audit as it strengthens the system itself. We believe that the time and duration should be very much looked at. We spend approximately nine months a year working on, as evidenced by the fact that we are here on March 8<sup>th</sup>, on the review of a prior Fiscal Year, and we believe that that could be dramatically shortened and still benefit the system and have the same result. Thank you.

CHAIRWOMAN WALLNER: Thank you, Mr. McKenna. Questions? Thank you. Representative Weyler with a motion.

\*\* REP. WEYLER: Thank you, Madam Chair. I move we accept the report, place on file, and release in the usual manner.

CHAIRWOMAN WALLNER: There a second?

REP. EATON: Second.

CHAIRWOMAN WALLNER: Representative Eaton seconds. All in favor? All opposed? No opposed. The motion passes.

\*\*\* {MOTION ADOPTED}

CHAIRWOMAN WALLNER: Thank you.

\*\* REP. EATON: Move to adjourn.

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CHAIRWOMAN WALLNER: The Next meeting -- what have we got for the next meeting? It's the 19th of March the next meeting.

REP. WEYLER: April.

CHAIRWOMAN WALLNER: April. April 19<sup>th</sup>.

REP. EATON: At 10 a.m.

CHAIRWOMAN WALLNER: At 10:00 a.m. Motion to adjourn.

\*\* REP. EATON: Motion to adjourn.

CHAIRWOMAN WALLNER: We're adjourned.

(Adjourned at 11:53 a.m.)

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CERTIFICATION

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

Cecelia A. Trask  
Cecelia A. Trask, LSR, RMR, CRR  
State of New Hampshire  
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