

JOINT FISCAL COMMITTEE

Legislative Office Building, Rooms 210-211

Concord, NH

Friday, June 7, 2013

Members Present:

Rep. Mary Jane Wallner (Chair)

Rep. Cindy Rosenwald

Rep. Peter Leishman

Rep. Dan McGuire

Rep. Bernard Benn

Sen. Chuck Morse

Sen. Peter Bragdon

Sen. Sylvia Larsen

Sen. Andy Sanborn

Sen. Sharon Carson (Alt.)

(Convened at 10:05 a.m.)

(1) Acceptance of Minutes of the April 19, 2013 meeting

CHAIRWOMAN WALLNER: It's five minutes after -- this microphone on? Five minutes after 10. I call the meeting of the Joint Fiscal Committee together for our May -- our May meeting. And do I have a motion to accept the minutes?

** SEN. MORSE: So move.

CHAIRWOMAN WALLNER: Senator Morse moved and do I have a second?

REP. LEISHMAN: Second.

CHAIRWOMAN WALLNER: And Representative Leishman seconds to accept the minutes from the April meeting. Any discussion? All in favor? Any opposed? The motion passes.

REP. MCGUIRE: Abstain.

CHAIRWOMAN WALLNER: And Representative McGuire abstained.

REP. ROSENWALD: Okay.

CHAIRWOMAN WALLNER: Representative Rosenwald has volunteered generously today to --

REP. ROSENWALD: Are we missing someone?

CHAIRWOMAN WALLNER: Yes, Senator Larsen is not here yet.

REP. ROSENWALD: Okay. So there are eight of us. Nine of us.

CHAIRWOMAN WALLNER: Nine of us.

REP. ROSENWALD: Only eight of us in the room. Abstain.

CHAIRWOMAN WALLNER: Motion passes.

*** {MOTION ADOPTED}

(2) Old Business:

CHAIRWOMAN WALLNER: Let's move to -- we have a number of items that were on the table. And I would like to know if there are people who would like to take items off the table?

** REP. LEISHMAN: I'd like to take item number 13-091 off the table, Madam Chair.

CHAIRWOMAN WALLNER: Okay. Representative Leishman wants to take item number 13-091 off the table. Any other items to come off the table? I believe Item 13-117 needs to

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also come off the table.

** REP. ROSENWALD: Yes, I would like to move that one.

CHAIRWOMAN WALLNER: Okay. So the rest of the items we will leave on the table. Let's move to 13-091, which is Department of Justice item that has been on the table.

REP. ROSENWALD: We need a second.

CHAIRWOMAN WALLNER: Representative Leishman moved and I need a second to bring it off the table.

SEN. SANBORN: Second.

CHAIRWOMAN WALLNER: And Senator Sanborn seconds.

REP. ROSENWALD: And for --

CHAIRWOMAN WALLNER: For 13-117, we need a second to bring that one off.

REP. LEISHMAN: Second.

REP. ROSENWALD: Representative Leishman.

CHAIRWOMAN WALLNER: Leishman seconds. Okay. Representative Leishman, would you like to speak to bringing 13-091 off the table?

SEN. PRESIDENT BRAGDON: Madam Chair, may I ask? I thought motion to table or untable were non-debatable?

CHAIRWOMAN WALLNER: Okay. Thank you. So --

REP. ROSENWALD: We are to --

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CHAIRWOMAN WALLNER: -- to bring it off the table 13-091, all in favor? Any opposed? The motion passes unanimously.

*** {**MOTION ADOPTED** to bring Item 13-091 off the table.}

CHAIRWOMAN WALLNER: Now we can have some discussion on that motion -- on the motion and hear about that.

** REP. LEISHMAN: I'd like to move the adoption, Madam Chair, of 13-091, and if it seconds speak to my motion.

CHAIRWOMAN WALLNER: Okay. Representative Leishman moves 13-091 ought to pass. And do I have a second?

REP. BENN: I'll second it.

CHAIRWOMAN WALLNER: Representative Benn seconds.

REP. LEISHMAN: The issues that several of us had at the last Fiscal meeting have, I believe, been addressed in the letter that was addressed to you dated June 4th. My primary concern that we allow the incoming Attorney General to review the request and if he concurred that I would be happy with his concurrence and that has been done.

CHAIRWOMAN WALLNER: Thank you, Representative Leishman. Any further discussion on this item? I'll ask the clerk to --

REP. MCGUIRE: Could I ask a question about this?

CHAIRWOMAN WALLNER: Yes, Representative McGuire.

REP. MCGUIRE: Just reading this it sounds like these companies are being -- paying the tax on the actual money that they receive for the hotel rooms, but we're thinking

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of suing them because we want the tax on the retail value of the hotel room; is that correct?

CHAIRWOMAN WALLNER: Could I ask Attorney General -- Deputy General Ann Rice to come to the table and answer Representative McGuire's inquiry?

ANN RICE, Deputy Attorney General, Department of Justice: Good morning. For the record my name is Ann Rice. I'm the Deputy Attorney General. As I understand your question, you were questioning what portion of the tax we are looking to sue the companies for?

REP. MCGUIRE: Right, they're paying some tax now; is that right?

MS. RICE: The hotels who are selling to the on-line travel companies are paying on the wholesale price. Then the on-line travel companies charge the retail price. It is that markup the tax is not being paid on.

REP. MCGUIRE: Okay. And follow-up. So why -- why do you think it ought to be? I mean, the hotel is selling the room for a certain amount of money. Tax is being paid on that amount of money. That's what the hotel's receiving. Shouldn't the State just get the percentage from that amount of money?

MS. RICE: Well, based on our statutes, we think that there is an obligation to also pay on that -- the markup as what we call an operator of the bed and breakfast -- excuse me -- not the bed and breakfast, the hotel.

REP. MCGUIRE: Could I follow-up?

CHAIRWOMAN WALLNER: Yes, Representative McGuire.

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REP. MCGUIRE: So the problem is this markup, as you're calling it, it sounds to me like it be sort of an unknown number. Hotel rooms vary in price day-to-day, hour-to-hour, all this sort of stuff. How would you know what the retail value of the hotel room could be when nobody's paying it?

MS. RICE: Well -- hum -- I don't have the absolute knowledge about the logistics of that. This -- this company, the National On-Line Travel Litigation Group, which we are seeking to hire, has done nationwide studies about the amount of money that these -- the general markup that these companies are charging when they buy the rooms wholesale from the hotel chains. And then when they buy them -- when they sell them to the consumer, there's a general amount, but they would have to report that. They would have to report the amount that they're obtaining as a markup. Does that answer the question?

REP. MCGUIRE: Madam Chair, I think I have to vote against this, because I can't understand how we can tax something that's basically a theoretical amount rather than an actual.

MS. RICE: Well, it wouldn't be a theoretical amount. It would be an actual amount because there would have to be a reporting on the amount of money that's coming in.

CHAIRWOMAN WALLNER: Senator Morse.

SEN. MORSE: Let me try to see if I understand this. Basically, if a room is being rented for \$100 a day and the hotel doesn't have it rented, they'll sell off a block to one of these groups at \$50.

MS. RICE: That's correct.

SEN. MORSE: That \$50 is already taxed right now here

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in New Hampshire.

MS. RICE: That's correct.

SEN. MORSE: If they rent that room for \$75 at one of these groups, the difference, the \$25 we're not picking up today.

MS. RICE: That's correct.

SEN. MORSE: That's the \$25 we are trying to pick up.

MS. RICE: Yes, thank you.

SEN. MORSE: To me, that's legitimate and I'm not becoming a taxer or anything. The -- the -- the number between that needs to be picked up by somebody because that's not fair to the person down the street that's still renting the room for \$100 and paying the full tax on it. So I understand it. I didn't understand it last month. I think -- I think it's a fair thing to do, and I don't think we're nickel grabbing or anything. I think it's legit.

MS. RICE: Thank you for your explanation, Senator Morse. That was very helpful.

CHAIRWOMAN WALLNER: Thank you. Any further discussion? Yes.

SEN. SANBORN: Thank you, Madam Chair.

CHAIRWOMAN WALLNER: Senator Sanborn.

SEN. SANBORN: Miss Rice, thank you for coming in. I'm actually asking a question Senator Carson so wisely asked someone this morning. Is this essentially an Internet tax if this is a hotel room being purchased on-line?

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MS. RICE: Well, it's for a specific service that is being taxed. You know, it's a service that's being provided in the State of New Hampshire, rooms and meals in New Hampshire. So, no, I don't think that it's an Internet tax.

SEN. SANBORN: Follow-up, Madam Chair.

CHAIRWOMAN WALLNER: Yes.

SEN. SANBORN: Again, I apologize. Because someone is going on-line to purchase something and pay for it on-line, although using it within the State of New Hampshire, I understand that. But you guys feel strongly about that that's not an Internet tax?

MS. RICE: I don't believe it's an Internet tax.

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

CHAIRWOMAN WALLNER: Thank you. Further discussion? Representative Benn.

REP. BENN: Thank you. Just to clarify. I think Representative -- Senator Morse made it fairly clear, but for Representative McGuire it's the actual amount that the consumer is paying --

MS. RICE: Correct.

REP. BENN: -- is what we're taxing. The difference between that actual amount and the amount that the wholesaler is already being taxed on.

MS. RICE: The wholesale price is already there's a tax on that that's already being paid. So it's only the

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difference between the wholesale amount that on-line Internet company bought the rooms for and the amount that they are actually charging.

REP. BENN: So it's actually no different than someone going, and not through the wholesaler, but going in and getting a hotel. They pay a certain amount. That's the amount that is taxed. And this other situation, it's the same amount that's being taxed, what the consumer actually pays.

MS. RICE: That's correct? If you think about it, we have local B&B's that don't sell rooms on-line. They -- they are taxed on the full amount. So this sort of levels the playing field.

REP. BENN: Right.

MS. RICE: Because people are all getting taxed at the same, not at the wholesale but at the retail rate.

CHAIRWOMAN WALLNER: Any questions? Representative McGuire.

REP. MCGUIRE: Thank you. Isn't one of the issues here that the company that you're trying to tax is not resident in New Hampshire. So we are trying to collect a tax from someone who exists out-of-state that a transaction took place out-of-state?

MS. RICE: Well, actually, the transaction is providing the room and meal in New Hampshire.

REP. MCGUIRE: Right. But that is already taxed.

MS. RICE: The person is using the room in New Hampshire.

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REP. MCGUIRE: The hotel in question is making a certain amount of money and that money is taxed. And that hotel is resident New Hampshire so it's legitimately taxed. But here you want to go to a company in California, who knows where, and tax them for things they're doing elsewhere.

MS. RICE: I understand what you're saying. I think that the issue is whether the company is doing business in New Hampshire and by selling and making rooms available in New Hampshire they're doing that. I suspect that those kinds of arguments will likely be raised in the course of litigation because this is all going to depend on how our statute's interpreted by the court. So those are issues that may very well come up in litigation.

REP. MCGUIRE: All right. Let me follow-up in that area. So what's the history of this kind of litigation? Has money been collected?

MS. RICE: Yes. I've laid out in the -- we laid it out in the request itself that there have been 50 lawsuits filed against these on-line travel companies. Eighteen have been resolved, twelve cases have settled. I don't have the figures on the amount at this point. So there's ongoing litigation in a number of different states on this same issue.

CHAIRWOMAN WALLNER: Further questions.

SEN. MORSE: I --

CHAIRWOMAN WALLNER: Senator Morse.

SEN. MORSE: Yeah. I'd just like to point out -- I mean, we have to be careful here. Because I know we all

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stand against taxing the Internet. We made that clear last year. The reality is if you think about this, if we didn't do this, everybody would be moving over to a state next to us and doing their sale through these companies and not paying New Hampshire Room and Meals Tax on all these rooms. Essentially, we could wholesale the room at 25% of the number and then have a deal with these companies so that they could go in another state, set up, make the deal, and save money on the State of New Hampshire on the tax. It would be insanity. This is good policy in my opinion and I don't see it as an Internet tax. I think they're actually beating the rooms and meals tax in our state. This would be just like them owning property in New Hampshire and not paying a state property tax because they live outside the State of New Hampshire. That wouldn't work. So I think this is -- this is -- I think it's fine. I don't know, maybe I'm losing something here but it makes sense.

CHAIRWOMAN WALLNER: Further discussion. Representative McGuire.

REP. MCGUIRE: Yes. So what Senator Morse just described is very, very common in business. You hear about this, like, Apple having money overseas. They don't want to repatriate it because it's going to cause taxes. Well, that's exactly the situation. They have some parts of Apple are domestic, some parts are overseas. They can decide internally how much they charge each other for funds and so they can make sure that profits exist in places where tax is low. So, you know, it's not -- it's not uncommon. It's not just in this one situation. This happens all over the world.

CHAIRWOMAN WALLNER: Further discussion.

SEN. MORSE: We are getting way out there. But, I mean, when we had repatriation back in, I think, '04 and '05, New

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Hampshire benefitted in a huge way, I believe, from American Express or a company like that, and they brought their money back into the country. It's our tax system. We own it in New Hampshire. I don't -- we are not going out to grab California's money, but we have this meals and rooms tax in New Hampshire that should be paid by everyone.

CHAIRWOMAN WALLNER: Senator Bragdon.

** SEN. PRESIDENT BRAGDON: Like to move the question.

CHAIRWOMAN WALLNER: Thank you. Senator Bragdon moves the question. And I will ask the -- yes, for a roll call. I'll ask the clerk to call the roll.

REP. ROSENWALD: Okay. The motion is to approve. Representative Rosenwald votes yes. Representative Leishman.

REP. LEISHMAN: Yes.

REP. ROSENWALD: Representative Benn.

REP. BENN: Yes.

REP. ROSENWALD: Representative McGuire.

REP. MCGUIRE: No.

REP. ROSENWALD: Senator Morse.

SEN. MORSE: Yes.

REP. ROSENWALD: Senator Bragdon.

SEN. PRESIDENT BRAGDON: Yes.

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REP. ROSENWALD: Senator Larsen.

SEN. LARSEN: Yes.

REP. ROSENWALD: Senator Carson.

SEN. CARSON: Yes.

REP. ROSENWALD: Senator Sanborn.

SEN. SANBORN: No.

REP. ROSENWALD: Representative Wallner.

CHAIRWOMAN WALLNER: Yes.

REP. ROSENWALD: Vote is 8 yes, 2 nos. The motion passes.

CHAIRWOMAN WALLNER: Thank you.

***** {MOTION ADOPTED}**

CHAIRWOMAN WALLNER: Let's move on to Item 13-117. We had a motion to take it off the table, and it was seconded, I believe, by Representative Leishman. All in favor to take the item off the table? Any opposed?

SEN. PRESIDENT BRAGDON: No.

CHAIRWOMAN WALLNER: Senator Bragdon voted not to take it off the table. And so we'll move now to the item. I'm going to ask Mr. Pattison to the item, we had a request to withdraw.

JEFFRY PATTISON, Legislative Budget Assistant, Office of Legislative Budget Assistant: In a letter received from

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Commissioner Sevigny yesterday, he's asking to withdraw this item from the agenda.

CHAIRWOMAN WALLNER: Do we need --

SEN. SANBORN: Madam Chair, procedurally do we need to vote at this point to ITL it or does it just withdraw?

CHAIRWOMAN WALLNER: No, I think we can just -- can we just withdraw the item, Mr. Pattison?

MR. PATTISON: I am not a parliamentarian, but I believe that the Agency's request to withdraw the item so that would be sufficient.

CHAIRWOMAN WALLNER: Okay. Thank you. So the item is withdrawn.

SEN. PRESIDENT BRAGDON: Yes.

CONSENT CALENDAR

- (3) RSA 9:16-a Transfers Authorized:
- (4) RSA 9:16-c Transfer of Federal Grant Funds:
- (5) RSA 9:17-d Transfer of Appropriations, Supreme Court:

CHAIRWOMAN WALLNER: And we'll move on to the Consent Calendar. Are there items that people would like to remove from the Consent Calendar?

REP. MCGUIRE: Yes.

CHAIRWOMAN WALLNER: Representative McGuire.

REP. MCGUIRE: Thank you. Numbers 124 on Tab 4.

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CHAIRWOMAN WALLNER: Go slowly for us here who are taking the notes. Okay. 124 which is Item 4.

REP. MCGUIRE: On Tab 6, number 95.

CHAIRWOMAN WALLNER: Tab 6.

REP. MCGUIRE: Also on Tab 6 number 131 and 154.

CHAIRWOMAN WALLNER: Okay.

REP. ROSENWALD: So 95.

REP. MCGUIRE: 95, 131, and 154.

CHAIRWOMAN WALLNER: Senator Morse.

SEN. MORSE: Senate would like to take off under Tab 6 Item No. 142.

CHAIRWOMAN WALLNER: Item No. 142. Any further items to come off Consent Calendar? Do I have a motion to accept the Consent Calendar?

** SEN. LARSEN: So moved.

CHAIRWOMAN WALLNER: Senator Larsen moved and Representative McGuire second to accept the Consent Calendar. Any discussion? All those in favor?

*** **{MOTION ADOPTED}**

CHAIRWOMAN WALLNER: That was to accept the Consent Calendar, all the items except the ones that were taken off.

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Okay. Let's move to Tab 4, Item 9:16-c, and 13-124, Department of Safety. Do we have someone here from the Department of Safety?

STEVEN KIANDER, Administrator III, Division of Administration, Department of Safety: Good morning. For the record, my name is Steve Kiander and I work --

CHAIRWOMAN WALLNER: I'm sorry, could you speak up a little bit.

MR. KIANDER: For the record, my name is Steve Kiander. I'm from the Department of Safety, an Administrator.

CHAIRWOMAN WALLNER: And?

LISA LIENHART, Financial Analyst, Division of Administration, Department of Safety: I'm Lisa Lienhart with Safety as well.

CHAIRWOMAN WALLNER: Thank you. Representative McGuire, do you have questions?

REP. MCGUIRE: Yes. Thank you, Madam Chair.

CHAIRWOMAN WALLNER: Department of Safety.

REP. MCGUIRE: This says this is to make -- do advertising for public information for sharing the road and also promoting rider training. My question is there are both State rider training programs and private rider training programs in New Hampshire. Is this just, in general, promote that people ought to be trained before they ride or is it specifically to go take the State program?

MR. KIANDER: Well, as we are heading into the summer

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season and with motorcycle week approaching, this is to raise awareness to share the roads with motorcycles and as well promote taking a safety course for inexperienced riders, as well as experienced riders. As you know, the importance and promotion of radio advertisements to the public pronouncing sharing the road greatly informs the motoring public and decreases motorcycle crashes and resulting deaths and life-changing injuries.

REP. MCGUIRE: Maybe can I try again? So that was a good general statement, but I asked a more specific question. Whether the promotion part of the ads are directing people only to the New Hampshire State training program or whether they're more general that you need to be trained and, you know --

MR. KIANDER: This is a Federal grant and it's more general. It's not -- it's not specifically promoting private motorcycle training courses. This is a raising awareness campaign. And it's -- we are not looking to, you know, specifically for the State program but the State program is -- it is mentioned in the ads.

REP. MCGUIRE: All right. Thank you.

CHAIRWOMAN WALLNER: Further questions of the Department? Seeing none. Thank you very much. Appreciate it. We need a motion.

** REP. LEISHMAN: So moved.

CHAIRWOMAN WALLNER: Representative Leishman moves.

SEN. LARSEN: Second.

CHAIRWOMAN WALLNER: And Senator Larsen seconds. Any discussion? I will have -- I'll just -- all in favor? Any

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opposed?

REP. MCGUIRE: No.

CHAIRWOMAN WALLNER: Representative McGuire. The motion passes nine to one.

*** {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:

CHAIRWOMAN WALLNER: Let's move on to item number 13-095 under Tab 6. Representative McGuire, would you like someone to come up from Department of Transportation to answer some questions?

REP. MCGUIRE: Yes, please.

CHAIRWOMAN WALLNER: Thank you. Thank you.

JEFF BRILLHART, Assistant Commissioner, Department of Transportation: Good morning. My name is Jeff Brillhart. I'm the Assistant Commissioner with the Department of Transportation. With me this morning is Patrick McKenna, Director of Finance.

CHAIRWOMAN WALLNER: Thank you. Representative McGuire.

REP. MCGUIRE: Yes, thank you, gentlemen. Thank you, Madam Chair. Thank you, gentlemen, for coming. I'd like to use this opportunity to learn more about the fees involved in these private airports. It seems to me from reading this that -- that I -- this is fees for -- I'm not sure -- for landing or for parking or for whatever. But a quarter of

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them go to the airport and three-quarters go to the General Fund; is that correct?

MR. MCKENNA: Yes, Representative. That's correct. It's essentially the equivalent of registration fees for those -- those planes that are based in New Hampshire and are registered at these particular air facilities. So the way the legislation is set up, three-quarters of the fees that are collected are deposited directly into the General Fund of the State. And then one-quarter is established as a pass-through to go directly back to the airports in question that have collected those fees.

REP. MCGUIRE: And may I follow-up?

CHAIRWOMAN WALLNER: Yes.

REP. MCGUIRE: And then but there's additional money coming out of the General Fund to this purpose; is that right? Or maybe it's for Department employees that are working on --

MR. MCKENNA: Yes. There are, within our Division of Aeronautics, there are general funded operations. In most years, the revenue collected far exceeds the operating expenses within the Department that are general funded with approximately a million dollars of General Fund expense on this area.

REP. MCGUIRE: All right. Thanks. I guess just discussion.

CHAIRWOMAN WALLNER: I believe Representative Benn has a question.

REP. MCGUIRE: Okay.

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REP. BENN: Thank you, Madam Chairman. Good morning.

MR. MCKENNA: Good morning.

REP. BENN: Is there an explanation as to why there's such a vast increase in fees this year? I mean, you're up 320%, I think, if my math is right.

MR. MCKENNA: Departmental employees working with the airports actually do go out and perform inspections out in the field. And there have been several, essentially, large aircraft that have been noted as needing to be registered here in the state. And so it's been -- it's kind of a spike in collection based on the registration itself.

REP. BENN: That's good.

CHAIRWOMAN WALLNER: Any questions of the Department? Thank you very much for answering our questions.

MR. MCKENNA: You're welcome.

CHAIRWOMAN WALLNER: I need a motion.

** SEN. PRESIDENT BRAGDON: Move the item.

CHAIRWOMAN WALLNER: Senator Bragdon moves and --

REP. ROSENWALD: Second.

CHAIRWOMAN WALLNER: -- and Representative Rosenwald seconds. Discussion?

REP. MCGUIRE: Yeah. So I guess I'm voting for this, but I just -- I dislike this particular kind of fee. I mean, I'm happy with things like 125% fees that give a little bit of money back to the General Fund. But here we

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seem to have a fee that way exceeds the cost of the program to the people that are using it. I don't like that sort of fee so I'm thinking that in the future we want to think about whether that's appropriate.

CHAIRWOMAN WALLNER: Thank you. Further discussion? The motion is ought to pass. Represent -- Senator Bragdon moved and Representative Rosenwald second. All in favor? Any opposed? The motion passes.

***** {MOTION ADOPTED}**

CHAIRWOMAN WALLNER: Move on to Item 13-131. This is an Environmental Services item. Representative McGuire asked for it to come off the Consent. Is there anyone here from Environmental? Thank you.

CHAIRWOMAN WALLNER: Representative McGuire.

REP. MCGUIRE: Thank you, Madam Chair, and thank you for coming. This -- reading this it was unclear to me whether this is a new activity or if it's continuing some existing activity a little further?

SUSAN CARLSON, Chief Operations Officer, Department of Environmental Services: Good morning. For the record, my name is Susan Carlson with the New Hampshire Department of Environmental Services. This is actually a new grant that was given to us from Office of Energy and Planning. They had received some ARRA money and were passing this portion on to us to help them with this project.

REP. MCGUIRE: Follow-up.

CHAIRWOMAN WALLNER: Yes, Representative McGuire.

REP. MCGUIRE: So then on the existing part but all the

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people working on it are already employees of this Department and that sort of thing?

MS. CARLSON: Yes.

REP. MCGUIRE: So of the items, like on the white page here, Statement of Work, Page 2, these six work tasks, for example, none of those have been started yet; is that right?

MS. CARLSON: No. We've actually started. We signed this agreement with OEP in February of this year. We received the first portion of this grant already and we have already started working on this. We are just putting on the last portion of this grant to run through September 30th.

REP. MCGUIRE: So I guess that goes back to my original question. So it is sort of continuation. There was more money previously on this project.

MS. CARLSON: Well, we received a grant of \$240,000. We've already put the first \$100,000 on our budget for '13. This piece is to accept the last \$140,000 into our budget for '14.

REP. MCGUIRE: Okay.

CHAIRWOMAN WALLNER: Further questions? Thank you.

MS. CARLSON: Okay.

** REP. LEISHMAN: Move approval.

CHAIRWOMAN WALLNER: Representative Leishman moves.

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SEN. LARSEN: Second.

CHAIRWOMAN WALLNER: And Senator Larsen seconds. Discussion? All in favor? Any opposed? The motion passes.

*** {MOTION ADOPTED}

CHAIRWOMAN WALLNER: Now move to Item 13-142, Department of Justice again. Do we have questions of the Department of Justice? Yes. Thank you. Senator Morse.

SEN. MORSE: Thank you. You have to understand, I'm a little gun shy after yesterday when it says Office of Violence Against Women moving money. But I just want to make sure that I'm reading the documents right. The original grant was – this goes back to 2009 or something like that – was for training or not for training?

MS. RICE: Go ahead.

ROSEMARY FARETRA, Director of Administration, Department of Justice: For the record, my name is Rosemary Faretra, and I'm the Director of Administration for the Department of Justice. This was for training and also for having emergency coverage for domestic violence and things like that all brought to everyone's attention. What we'd be doing is handing out grants or giving grants to people as well as training. It wasn't specifically for training.

SEN. MORSE: But was -- I guess a clearer question would be was it for violence against women or was it for what is being transferred into now which is elderly abuse?

MS. FARETRA: Elder abuse was a subset of the OVAW Grant. OVAW Grant, the Violence Against Women is an umbrella, and this particular grant was under the Violence Against Women's Grant. So it's a subset of the larger

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Federal grant.

SEN. MORSE: But I'm not transferring money.

MS. FARETRA: You're not.

SEN. MORSE: Okay. Thank you.

MS. FARETRA: We are not.

CHAIRWOMAN WALLNER: Further questions of the Department? Thank you. Do I have a motion?

** SEN. PRESIDENT BRAGDON: Move the item.

CHAIRWOMAN WALLNER: Senator Bragdon moves.

REP. BENN: Second.

CHAIRWOMAN WALLNER: And Representative Benn seconds. All in favor? Any opposed? The item passes.

*** {MOTION ADOPTED}

CHAIRWOMAN WALLNER: Let's move on to 13-154. Again, the Department of Justice. Representative McGuire has asked for this to come off the table.

REP. MCGUIRE: Yes, thank you.

CHAIRWOMAN WALLNER: And --

REP. BENN: Off the Consent Calendar.

CHAIRWOMAN WALLNER: Off the Consent Calendar, I'm sorry. Representative McGuire, do you have questions of the Department?

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REP. MCGUIRE: Yes. Thank you, Madam Chair. So I kind of have two questions about this. One -- first is this is to spend \$280,000 but it's being spent by June 30th of this month. So really, this is covering spending that's gone already presumably and so I'm wondering couldn't we have seen it earlier? And then, secondly, this seems to double the administrative -- this is basically a Federal grant that we're turning around and providing grants for others. And this seems to sort of double the administrative overhead of this project or close to it. So why is that?

MS. RICE: With respect to the first question on the \$280,000 and could we have seen this earlier. I think the answer is yes. And this is -- this is being moved. This is money that had not been spent by the grantees. The money becomes available and it's being moved to cover -- to line items where there may be a deficit in the future. Yeah, I think it's fair to say it may have been able to be seen at some point a little bit earlier. The reason it's being done now because we are coming to the end of the Fiscal Year, and we know what the money is going to be available. So we can do it in -- the grant actually closes on June 30th. So we know the money that's available and we are doing it as one request. With respect to the administrative overhead, Rose, can you speak to that?

MS. FARETRA: Yes, I can. The administrative overhead is not increasing. It's basically just putting the money in the right place or right class in order for us to pay up through June 30th for the grants and for the people that we already budgeted. There's no new people in there and no new consultants that we're paying for off of this grant. Everything was approved upfront back in 2009, and we have not changed that at all. Just making sure that the money is available in the right place.

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REP. MCGUIRE: Could I follow-up on that?

CHAIRWOMAN WALLNER: Yes. Representative McGuire.

REP. MCGUIRE: Thank you, Madam Chair. So I guess I don't understand that. Because when the project was originally budgeted, it was a total of \$5.05 million of which 4.67 million was going out to grants. As it's going to be after we adopt this item, only 4.4 million is going out to grants. And so, therefore, the original, what, three, 400 -- \$350,000 that was being spent on overhead is becoming six hundred something thousand dollars on overhead. Do you see what I mean? So I don't know how you can say the amount of overhead is not changing.

MS. FARETRA: Let me go back.

MS. RICE: When you're referring to overhead, are you talking about the personnel costs because that is actual -- the cost of doing the programs. Some of that money was granted back to the Department of Justice to do the Cold Case Unit.

REP. MCGUIRE: I see. So that wasn't clear to me.

MS. RICE: Yes, that's what it is. It's not overhead, but it is actually program services under the grant.

REP. MCGUIRE: Okay. All right. Thank you.

CHAIRWOMAN WALLNER: Thank you. Any further questions on this item? Thank you.

MS. RICE: Thank you.

CHAIRWOMAN WALLNER: Move?

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** REP. ROSENWALD: Move the item.

CHAIRWOMAN WALLNER: Representative Rosenwald moved and Senator Bragdon seconds. All in favor? Any opposed? The motion passes.

*** {MOTION ADOPTED}

(7) RSA 124:15 Positions Restricted:

CHAIRWOMAN WALLNER: Move on to Items 13-155, Department of Transportation.

** REP. LEISHMAN: Move.

CHAIRWOMAN WALLNER: Do I have a motion? Representative Leishman moves.

SEN. PRESIDENT BRAGDON: Second.

CHAIRWOMAN WALLNER: Senator Bragdon seconds. All in favor? Any opposed? Motion passes.

*** {MOTION ADOPTED}

(8) RSA 7:12,I, Assistants:

CHAIRWOMAN WALLNER: Item 13-146.

REP. MCGUIRE: I'd like to ask a question, please.

CHAIRWOMAN WALLNER: Department of Justice again. Thank you. Representative McGuire --

REP. MCGUIRE: Yes. Thank you.

CHAIRWOMAN WALLNER: -- has a question on this item.

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REP. MCGUIRE: So this, if I read it right, says that there's one lawsuit in particular over the mental health system that's causing 50% or more of the spending. Can you give us some more information about that? What's being alleged and what is being asked for in terms of relief?

MS. RICE: That is the constitutional challenge to our mental health system and the challenge is that we are relying too much on institutional care and that we should be providing our care in the community. That it's a violation of the patient's constitutional rights that we are not providing care in the least restrictive environment. That's essentially what the challenge is.

REP. MCGUIRE: Thank you. May I follow-up?

CHAIRWOMAN WALLNER: Yes.

REP. MCGUIRE: In general -- this is on a separate issue -- so we budgeted \$350,000 for this. And the end result's going to be about \$2 million more. Is there anything we can do to budget more accurately so that we're not hit with these big numbers at the last minute?

MS. RICE: Well, that's been an ongoing discussion, I think, in budget -- in budget hearings for many years as to how to do that, because there's a recognition that there's -- we simply don't have an ability to project what our litigation costs are going to be from year to year. This year's a great example of that, because we have such significant cost in this one lawsuit. I think there has been a decision that a flat funding of \$350,000 in the budget will get us started and there's a recognition that we are going to have to come back for additional requests.

CHAIRWOMAN WALLNER: Representative Benn.

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REP. BENN: Thank you, Madam Chairman. You have litigation cost for the Liquor Commission of about \$10,000. Now, I believe it's in HB 2 that hasn't quite passed yet. That -- is this the kind of cost that would be charged back to the Liquor Commission if HB 2 passes?

MS. RICE: I'm familiar with that provision and I think that this would be. That was part of an investigative cost what we were involved in.

REP. BENN: Hm-hum.

MS. RICE: A criminal investigation. I can't remember the specific language of House Bill 2, but I think this is likely something that would be passed back to the Liquor Commission.

REP. BENN: Thank you.

CHAIRWOMAN WALLNER: Representative Rosenwald.

REP. ROSENWALD: Thank you, Madam Chair. I'm looking at the wrong date on the first page down in the bottom paragraph saying that 600,000 was approved by Governor and Council on November 14th, 2014, and I'm just wondering if it should be 2012?

MS. RICE: I think you're probably right on that.

REP. ROSENWALD: I just wanted to be able to write in here what the right year was.

MS. FARETRA: That's correct.

MS. RICE: Yes, it would be 2012.

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REP. ROSENWALD: Thank you.

CHAIRWOMAN WALLNER: Thank you. Further items? Further questions for the Department? Thank you very much.

** SEN. PRESIDENT BRAGDON: Move the item.

CHAIRWOMAN WALLNER: Senator Bragdon moves.

REP. ROSENWALD: (Raising hand).

REP. LEISHMAN: Second.

CHAIRWOMAN WALLNER: Representative Rosenwald seconds. All in favor? Aye. Any opposed? No.

*** {MOTION ADOPTED}

REP. ROSENWALD: I raised my hand.

(9) **RSA 216-A:3-g, Fees for Park System:**

CHAIRWOMAN WALLNER: Go on to Tab 9. This is item 13-147. Do I have a motion?

** SEN. PRESIDENT BRAGDON: So moved.

CHAIRWOMAN WALLNER: Senator Bragdon moved.

SEN. LARSEN: Second.

CHAIRWOMAN WALLNER: Senator Larsen second. Any discussion? All in favor? Any opposed? None opposed. The item passes.

*** {MOTION ADOPTED}

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(10) RSA 228:12 Transfers from Highway Surplus Account:

CHAIRWOMAN WALLNER: Let's go to Item 10. Says Item 13-118, Department of Transportation. Do I have a motion?

** SEN. PRESIDENT BRAGDON: So moved.

REP. BENN: So moved.

CHAIRWOMAN WALLNER: Senator Bragdon moved and --

REP. BENN: Second.

CHAIRWOMAN WALLNER: Representative Benn second. Discussion? All in favor? Any opposed? None opposed. Item passes.

*** {MOTION ADOPTED}

(11) Chapter 155:1, Laws of 2012, Department of Corrections; Transfers:

CHAIRWOMAN WALLNER: Item 13-148. This is Tab 11.

** REP. LEISHMAN: Move.

CHAIRWOMAN WALLNER: Representative Leishman moved and Senator Larsen seconds. Any discussion? All in favor? Any opposed? The item passes.

*** {MOTION ADOPTED}

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

CHAIRWOMAN WALLNER: Tab 12. This is Item 13-136.

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REP. MCGUIRE: I'd like to ask a question.

CHAIRWOMAN WALLNER: Representative McGuire has a question. Could I ask someone from the Department of Health and Human Services to come? Thank you.

NICHOLAS TOUMPAS, Commissioner, Department of Health and Human Services: Good morning. For the record, Nick Toumpas, Commissioner of Health and Human Services. I would also -- in my packet I do not have this item so I would need -

CHAIRWOMAN WALLNER: Representative McGuire.

REP. MCGUIRE: Thank you, Madam Chair. Thank you, Commissioner for coming. Yeah, I want to direct you to Page 2, the two paragraphs starting at the Annual ProShare Payment and this request. It just seems -- I'm not against this item, but it just seems to me that these two paragraphs conflict with each other. Because on the one hand the first paragraph says that the ProShare payment, the Medicaid -- Medicare rates got bigger than Medicaid, I guess, and so therefore the ProShare payment is higher than prior estimates. But the second -- the next paragraph says that if we don't approve it, then counties would be hurt because they wouldn't get their anticipated cash flow. So either -- so how could the prior estimate be low and the counties expect more? You see what I mean? Either the prior estimate was low and counties were expecting low and now they're getting more or the other way around. It can't be both.

MR. TOUMPAS: I do not have the answer to that. I can certainly make a call back to the office and then come back toward the end of the meeting after the other items are dispensed with or I can write a note back to the Committee

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and to the Chair and be able to distribute to the Members of the Committee. I don't have the answer to that.

REP. MCGUIRE: But, in general, we think this is the appropriate amount --

MR. TOUMPAS: Yes.

REP. MCGUIRE: -- to do? So I am okay with it. Just thought the explanation was wrong. Thank you.

MR. TOUMPAS: I would look into that.

CHAIRWOMAN WALLNER: Thank you. Thank you, Commissioner. Do we have a motion?

** SEN. LARSEN: Move approval.

CHAIRWOMAN WALLNER: Senator Larsen moves approval.

REP. MCGUIRE: Second.

CHAIRWOMAN WALLNER: And was that --

REP. LEISHMAN: McGuire.

CHAIRWOMAN WALLNER: Representative McGuire seconds. All in favor? Any discussion of the item? All in favor? Any opposed? The item passes.

*** {MOTION ADOPTED}

(13) Chapter 224:14, II and III, Laws of 2011, Department Of Health and Human Services; Program Eligibility; Additional Revenues, Transfer Among Accounts:

CHAIRWOMAN WALLNER: Now we move to Tab 13. Again, this

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is Health and Human Service items. The first one is 13-137, and I believe that Representative McGuire has some questions on these -- on these three items.

REP. MCGUIRE: Yes, I just have a quick --

CHAIRWOMAN WALLNER: Thank you, Commissioner.

REP. MCGUIRE: It seems to me this first item, this is for personnel costs, and it's moving money from one section to another of personnel. But as I understand it, there's no people being moved from one section to another. So that makes me wonder why we wouldn't accurately budget in the first place. If we had the same people in place that we expected, wouldn't the money also be correct to start with?

MR. TOUMPAS: Well, we have a vacancy -- we have over 250 vacancies within the Department. And as a way in which to be able to manage the work, the workload and so forth, we need to move some things around where we may have held certain positions vacant and now we need to put money in for those particular accounts. May be other areas where we did not have an adequate amount in that particular area and we kept things vacant and moved things into another area. It's a way in which for us to be able to keep everything -- keep everything in line with what the appropriation is. Not asking for any additional money, just moving things around because of the nature of the caseloads that we've had, as well as the number of positions that we lost, as well as the number of vacancies that we currently have.

REP. MCGUIRE: So there really are different numbers of employees in these areas than were originally sort of planned?

MR. TOUMPAS: They're not -- they're not different from what was -- there may be additional people that we need to

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move in based on the nature of -- based on the nature of the program, what was going on and so forth, but we're not adding new positions into the mix.

REP. MCGUIRE: Right. Okay. Thank you.

CHAIRWOMAN WALLNER: Further question? Thank you, Commissioner. Do I have a motion on Item 13-137?

** REP. ROSENWALD: So moved.

CHAIRWOMAN WALLNER: Representative Rosenwald moves.

REP. BENN: Second.

CHAIRWOMAN WALLNER: Representative Benn seconds. Any discussion of this item? All in favor? Any opposed? None opposed.

*** {MOTION ADOPTED}

CHAIRWOMAN WALLNER: Next item is 13-138.

** REP. MCGUIRE: Move approval.

SEN. LARSEN: Second.

CHAIRWOMAN WALLNER: Representative McGuire moved and Senator Larsen seconds. Any discussion of this item? All in favor? Any opposed? The item passes.

*** {MOTION ADOPTED}

CHAIRWOMAN WALLNER: And the next item is 13-139.

** SEN. LARSEN: Move approval.

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CHAIRWOMAN WALLNER: Senator Larsen moves approval. And do I have a second?

REP. ROSENWALD: Second.

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

REP. MCGUIRE: Yeah.

CHAIRWOMAN WALLNER: Oh, Representative McGuire.

REP. MCGUIRE: We had an earlier question about where did the extra revenue come from.

CHAIRWOMAN WALLNER: Could I ask Commissioner to come back up? Thank you. Sorry.

REP. MCGUIRE: Two million.

REP. BENN: Two million, right.

CHAIRWOMAN WALLNER: This is on Item 13-139.

MR. TOUMPAS: I'm sorry, I didn't hear the question.

REP. MCGUIRE: There's like 2 million or more of new revenue here in this item, I think. So the question is where did that come from?

MR. TOUMPAS: It's likely to come from -- we are moving things around from various Federal funding sources. We may get a higher match in one particular area than another one.

REP. MCGUIRE: Oh, I see.

CHAIRWOMAN WALLNER: Further question? Thank you,

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Commissioner. Do I have a motion? We have a motion. Yes. We have a motion to move this item. All in -- any discussion? No discussion. All in favor? Any opposed? The item passes ten to zero.

*** {MOTION ADOPTED}

(14) Miscellaneous:

(15) Informational Materials:

CHAIRWOMAN WALLNER: You have Miscellaneous items in your book. Empty. Miscellaneous items are empty so for your reading pleasure. Don't have much this time weekend anyway getting ready for next week. And then you have a lot of informational items. And I think are we ready to move into the audits at this point?

REP. ROSENWALD: Do we need a motion on accepting the information?

MR. PATTISON: No.

REP. ROSENWALD: Yes, I would like to ask a question. Thank you.

CHAIRWOMAN WALLNER: Representative Rosenwald does have a question of the Commissioner of Health and Human Services.

REP. ROSENWALD: Thank you, Madam Chair. In our Fiscal Book is your Dash Board for March, and my question is just when we might expect the April Dash Board?

MR. TOUMPAS: I just signed the April Dash Board yesterday. So it should be coming -- should be coming over shortly.

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REP. ROSENWALD: Thank you.

CHAIRWOMAN WALLNER: Thank you.

MR. TOUMPAS: The caseloads remain -- remain at the high levels. We have not seen any deviation. I just saw the numbers for May and the numbers remain high there as well. We did see a particular significant uptick in the food stamp program. But beyond that, everything else was -- and not -- the caseloads are not decreasing but they are remaining relatively flat.

REP. ROSENWALD: Thank you.

CHAIRWOMAN WALLNER: Thank you, Commissioner. And we'll move to the audits.

AUDITS:

RICHARD MAHONEY, Director, Audit Division, Office of Legislative Budget Assistant: Good morning, Madam Chairman, Members of the Committee. For the record, I'm Richard Mahoney, Director of Audits for the Office of Legislative Budget Assistant. Joining me this morning to present the audit report to the Committee is Pam Veeder. Pam is a Senior Audit Manager with our office who was responsible for managing the audit on a daily basis at the Veterans Home.

PAM VEEDER, Senior Audit Manager, Audit Division, Office of Legislative Budget Assistant: Good morning, Madam Chair, Members of the Committee. For the record, my name is Pam Veeder, and I am here to present the Financial Audit Report of the Veterans Home for the Fiscal Year ending June 30, 2012. Also here at the table with me is Margaret Labreque, the Commandant of the Home.

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I would like to begin the presentation at the Table of Contents. In the middle of the page the audit comments are listed. There are 21 internal control comments here, including four material weaknesses that are highlighted here in bold. The Home concurred with each comment and as noted at the bottom of the page none of the comments suggest legislative action may be required.

On Pages 1 and 2 is some introductory information, and I'll provide you with a few items from the intro.

The Veterans Home is located in Tilton. The Home is governed by a Board of Managers, and that Board appoints the Home's Commandant who oversees day-to-day operations. The Home provides nursing home level of care for New Hampshire resident veterans, and the resident census at June 30, 2012, was 191. The Home's operations are primarily accounted for in the General Fund and Capital Projects Fund. And over on Page 2 is a summary of the activity in those funds.

In addition to the General Fund and Capital Projects Fund, the Home is also responsible for the administration of a permanent fund and two fiduciary funds that are further framed and described in the financial statements and note disclosures in this report.

On Page 5 is the start of the audit comment. In order to give you a summary tour of the comments at times I plan to speak to a few comments at once based on the underlying theme of those particular comments.

The first three comments, Observations 1 through 3, right here on Page 5, all speak to the need for formal policies and procedures, with each Observation focusing on a specific area. Those areas are accounting and financial

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reporting activities, fraud prevention, detection and reporting and compliance with the nepotism statute. Of primary importance is the need to develop a formal process for vetting, approving, establishing, and implementing policies and procedures in order to ensure appropriate guidance is in place to support and direct the Home's operations as management intends.

Observations 4 and 5 starting on Page 8 cover the need to strengthen controls over the determination of monthly room and board charges. Related policies and procedures should clearly define the aspects of room and board determinations, be effectively communicated and implemented, and review and approval of those determinations should be in place.

Observation 6 and 7 starting on Page 10 describe risks the Home should consider further. The first is the risk associated with employees providing assistance to residents with their personal off-site bank accounts and the second is the risk associated with periodic rather than perpetual inventory accounting. In both these cases, we recommend the Home consider and evaluate the associated risk further in order to more fully determine its response to those risks.

Observations 8, 9 and 10, starting on Page 13, all call for improving controls to ensure the timely and accurate accounting and reporting of revenue. The Observations note the need for a more robust review and approval control relative to proper revenue amount account and period. These comments also recommend more timely requests for certain Federal reimbursements.

Observations 11, 12 and 13, starting on Page 16, deal with the Home's canteen operations and vending machines. The canteen is the Home's on-site store that sells convenience items to the residents. We found the controls

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over the canteen sales and vending commissions needed improvement, including the maintenance of appropriate documentation to support the sales and vending commission. We also noted purchases of canteen inventory should utilize state purchasing controls as directed by statute.

The remaining Observations all deal with the Home's two fiduciary funds which are the Member's Benefit Fund, a fund that supports programs and activities for the direct benefit of the residents through donations from individuals and organizations; and the Member Administration Account, a custodial fund used to receive, hold, and disburse resident money according to the direction of the resident.

Observation 14 on Page 20 describes an absence of comprehensive policies and procedures for the accounting and reporting of the Member's Benefit Fund. The body of the Observation provides several examples supporting the need for formal policies and procedures and companion controls to ensure those policies and procedures are operating as management intends.

Observation 15 on Page 21 pertains to both the Member's Benefit Fund and the Member's Administration Account. The Home uses a software package to account for its fiduciary funds. During audit discussions, we were informed that accounting periods were not subject to a strong closing control, which presents a risk that transactions can be posted to commentaries that should have been closed. In addition, we noted the number of employees who had full access to the software seemed excessive. These weak closing controls and excessive access increases risk that errors or fraud could occur and not be detected and corrected timely.

Observation 16 on Page 22 also relates to both fiduciary funds. And the June 30th balances for the related

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checking and investments accounts are over on Page 23. To provide greater controls over these accounts, we recommend the Home segregate duties between preparing the bank reconciliations and initiating transactions in the accounting software, establish a review and approval function over the reconciliation process, limit on-line banking authority, restrict access to the business office safe, and establish a reconciliation process for the investment accounts.

Observations 17, 18, and 19 starting on Page 24 all relate to the Member's Benefit Fund. These Observations recommend stronger controls over the accounting for restrictive donations, recommend policies and procedures be established to ensure the Member's Benefit Fund is not used to supplant State funds; and, lastly, recommend expanded reconciliation procedures that include consideration of donated equipment.

The last Observations in the report, numbers 20 and 21, starting on Page 27, are both related to the fiduciary fund checking account. We recommend policies and procedures be established for dealing with stale outstanding checks and checking accounts be maintained at their target balances.

On Page 31 is the start of the financial section and the Independent Auditor's Report. As noted in the third and fourth paragraphs, the only exception to an unqualified opinion was due to the absence of a balance sheet for the General Fund and Capital Projects Fund, and this is due to a limitation in the State accounting system. Following the opinion are the financial statements, note disclosures, schedules and the appendix for the current status of Observations from the prior audit of the Home.

This concludes my presentation, and I'd like to thank

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the Home's Administrator, Margaret Labreque, and her staff for their assistance and cooperation during the audit process and would like to thank you, the Committee, for your time. We'd be happy to take any questions.

CHAIRWOMAN WALLNER: Thank you. Do we have -- does the Committee have questions?

REP. LEISHMAN: Yes, Madam Chair.

CHAIRWOMAN WALLNER: Yes, Representative Leishman.

MR. LEISHMAN: Thank you, Madam Chair. On Page 48 of the audit, under utilities, you show a shortfall of \$231,000. Is that for what utilities, oil or electricity?

MS. LABRECQUE: Hi. For the record, Margaret Labreque. That would be for water, sewer. Utility is also electricity, #2 heating fuel, as well as propane is purchased under the utilities line.

REP. LEISHMAN: Thank you.

CHAIRWOMAN WALLNER: Further questions. Representative Rosenwald.

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

SEN. MORSE: Second.

CHAIRWOMAN WALLNER: I see a second. Representative Rosenwald moved and Senator Morse second. All in favor? Any opposed? The motion passes ten to zero. Thank you very much for your report.

*** {MOTION ADOPTED}

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CHAIRWOMAN WALLNER: Appreciate it. And we have another audit report. Department of Resources and Economic Development.

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MR. MAHONEY: Yes, Madam Chairman. Thank you very much. Joining me this morning to present this report to the Committee is Christine Young. Christine is likewise a Senior Audit Manager with our office, who was responsible to manage the audit at DRED on a daily basis.

CHRISTINE YOUNG, Senior Audit Manager, Audit Division, Office of Legislative Budget Assistant: Good morning, Madam Chair, and Members of the Committee. For the record, my name is Christine Young, and I'm here to present our audit report on the Department of Resources and Economic Development's internal controls over revenue from the rental of space for antenna facilities for the eight months ended February 28th, 2013. With us this morning is Brad Simpkins, Interim Director of the Department's Division of Forests and Lands.

The Department rents space for antennas and associated communications equipment and structures, collectively known as antenna facilities on 20 Department properties, primarily mountaintop sites. The responsibility for the rental of space for antenna facilities is assigned to the communications program within the Department's Division of Forests and Lands, the Bureau of Land Management. The Department reported approximately \$384,000 of revenue from the rental of space for antenna facilities during the 8-month audit period.

Our Executive Summary on Page 1 notes the objective of the audit was to evaluate whether the Department has established and implemented adequate accountability and other internal controls over the invoicing, receipt,

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deposit, and reporting of proceeds from the rental of space for antenna facilities. As described in the summary of results, overall we found controls to be suitably designed to ensure the proper receipt, deposit, and recording of proceeds from the rental of space for antenna facilities on Department property. However, we noted the Department had not designed or implemented controls over its process for determining and invoicing fees, maintaining current tenant information, or for maintaining compliance with statutes related to the program. We also noted the Department did not maintain awareness and documentation of all antenna facilities on Department sites. There was an absence of required administrative rules. Fees were not consistently charged. Contracts were not consistently submitted for Governor and Council approval. And the Department generally lacked review and approval controls to support the program's financial activity.

During the audit period, the Department was in the process of writing policies and procedures for its communications program, and the Department continued to make improvements in internal control. The Department also hired an additional employee with communications experience during the audit period to help strengthen controls and make other improvements to the program.

As noted in the middle of Page 4, there have been no prior audits that specifically addressed the Department's communications program. This report includes eight findings and recommendations and the Department concurs fully with all of them. There are no findings in the report that suggest the need for legislative action.

Our findings begin with Observation No. 1 on Page 5 where we recommend the Department adopt administrative rules relative to the rental of space for antenna facilities on Department property as required by statute.

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In Observation No. 2, beginning on the bottom of Page 5, we noted the Department had not established controls to ensure agreements for the construction and operation of antenna facilities on Department property, are documented by contracts or other written devices. And on Page 6, we list a number of examples of related problems we identified during our audit.

We recommend the Department establish controls to ensure current documentation is created and maintained for all lease agreements. All agreements are reviewed and approved by management prior to execution and agreements are sufficiently detailed to describe the scope of the use allowed. Compliance with the controls should be monitored to ensure that agreements meeting the statutory criteria are submitted for Governor and Council approval and are recorded in the Registry of Deeds, and that rents are remitted timely in accordance with contracted due dates.

Observation No. 3 on Page 8 discusses the need to establish controls, including management reviews and approvals for determining what entities should be charged for operating antenna facilities on Department property and what entities, if any, should be allowed free use of Department property. We also recommend the Department review with legal counsel whether it has the authority to enter into quid quo pro agreements for the receipt of services in lieu of payment for the use of space for antenna facilities.

On Page 9, Observation No. 4 recommends the Department continue in its efforts to establish comprehensive policies and procedures for setting and monitoring rental rates to maintain and operate antenna facilities on Department property. We also recommend the Department consider contracting with a consultant with appropriate knowledge

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and experience to assist in determining and structuring fair market rates.

Observation No. 5 on Page 11 notes the Department has not fully implemented controls to ensure it maintains a complete and current inventory record of all antennas, communications equipment, towers, and buildings in place on Department property subject to its program for the rental of space. Without an accurate inventory record, the Department cannot fully ensure the properties are used in accordance with its intentions and that all revenues are fairly charged and collected. The Department reports the last inspection-based inventory was performed approximately 20 years ago. At the end of our audit period, the Department had started an inspection-based inventory and three of the 20 sites were completed. We recommend the Department continue in their efforts to complete the inventory and ensure that periodic reviews are performed to maintain a current and comprehensive inventory.

Observation No. 6 on Page 13 discusses instances where program revenues were not recorded in the correct State accounting system account. We recommend the Department establish an effective review and approval control to ensure that revenues are reported properly.

In Observation No. 7, starting on Page 13, we note that a commercial company operates antennas, support buildings and power lines on Department property without a use agreement or other contract in place. The Department reports it has no access to the site and does not know the extent of use at the site to determine the amount of rent that could or should be derived from use of the site. Since 2011, the Department has refused to accept a \$550 annual payment from the company in recognition that the amount does not represent fair rent.

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We recommend the Department not allow the use of Department property without properly approved rental agreements. We also recommend the Department review with legal counsel its options for exercising ownership authority over the site.

The final Observation No. 8 on Page 14 reports the Department has allowed the commercial use of antenna facilities on the summit of Cannon Mountain without bringing renewal agreement for that use to Governor and Council for approval. As of May of 2013, the Department had not established an agreement for the company's continued use of the facilities or invoiced the company for rent payments that were due to start in November of 2012. We recommend the Department senior management negotiate the agreement covering the current and future use of the Cannon Mountain facility and ensure the agreement is submitted for Governor and Council approval.

This concludes my presentation. I'd like to thank the Department for their cooperation during the audit. It was a pleasure working with them. So we would be happy to answer any questions the Committee may have.

REP. LEISHMAN: I have a question.

CHAIRWOMAN WALLNER: Representative Benn had a question.

REP. BENN: Thank you, Madam Chairman. Good morning.

MS. YOUNG: Good morning.

REP. BENN: Do you charge -- a couple questions. Do you charge State Agencies to put up antennas? For instance, Safety that might have a communication towers put up, is there a charge back to the State or do they --

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MR. SIMPKINS: No, we do not charge other State Agencies. That's a decision we made about two and a half years ago. If I can step back.

The Communications Program has really grown quite a bit in the last 10 years or so. And about two and a half years ago, we realized we needed to start revising some of the policies and programs and so we put together a Committee. In the last budget we requested a position, which we just hired five months ago. So we have been working on a lot of these things and the timing of this is actually very good because we can build these improvements in. One of the things that Committee decided upon was not to charge other State Agencies. Historically, we have not feeling that these are, even though DRED is responsible for the management, it's still a State-owned facility. So we have Department of Safety, Department of Transportation, Department of Environmental Services, Fish and Game, many Agencies are on our sites for communication facilities.

REP. BENN: Thank you. Follow-up.

CHAIRWOMAN WALLNER: Yes. Representative Benn.

REP. BENN: For a private company that, you know, rent our land --

MR. SIMPKINS: Right.

REP. BENN: -- do you verify their insurance, that they have liability insurance?

MR. SIMPKINS: Yes, yes. We do leases with them and we do -- we do have a fairly lengthy lease agreement that does include that.

REP. BENN: I mean, like you have this one that's \$550

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or something.

MR. SIMPKINS: Yeah. That one in particular is an odd one. That's Wantastiquet down along the Connecticut River. That's a kind of a unique situation that went back and at one point in time the Public Utilities Commission deemed they had jurisdiction over that site, not us. That's since been rectified so we are trying to get that corrected.

REP. BENN: Thank you.

REP. LEISHMAN: If I could?

CHAIRWOMAN WALLNER: Representative Leishman.

REP. LEISHMAN: Thank you, Madam Chair. First, I want to thank the Audit Bureau for what looks to be a very thorough review and, apparently, some issues that need to be addressed. I was wondering whether, Brad, in the next, say, three months you could provide the Fiscal Committee with an update on your follow-up with the recommendations to close some of these gaps that the audit folks found in DRED dealing with these sites?

MR. SIMPKINS: Absolutely, we'd be happy to do that.

REP. LEISHMAN: Thank you.

CHAIRWOMAN WALLNER: Further question?

REP. MCGUIRE: Yeah.

CHAIRWOMAN WALLNER: Representative McGuire.

REP. MCGUIRE: Thank you. Unlike other audits, this doesn't really list certain items as being, you know, extra severe or deficient and so on. But they all seem pretty

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serious to me. Is that your impression?

MR. MAHONEY: Representative McGuire, this is an audit conducted under performance audit standards, although we consider it to be a financial audit because we are looking at internal controls. The significant deficiencies in the material weaknesses that you normally see in our financial audit reports are required when we are performing an audit of financial statements. And so that's the difference. It's a result of the standards that we're using to generate these reports. What is consistent in both reports, however, is the fact that we try to highlight for you whether or not we believe legislative action is required on any one of our observations or recommendations.

REP. MCGUIRE: Just informally, do you think these are serious deficiencies or they're just -- I mean, it sounds like to me.

MR. MAHONEY: We believe they are important enough to warrant inclusion in our reports. Yes, we believe they require attention and that's why they're in the report.

REP. MCGUIRE: Okay.

CHAIRWOMAN WALLNER: Thank you. Further questions? Thank you very much. I recognize Representative Rosenwald for a motion.

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

CHAIRWOMAN WALLNER: Senator Morse seconds. All in favor? Any opposed? The motion passes. Thank you. I believe that's all the business we have before us.

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(16) Date of Next Meeting and Adjournment:

CHAIRWOMAN WALLNER: We have one more item and that is the date of the next meeting. Senator Morse and I just conferred and Wednesday, July 10th. Does that seem to work for people? Great. So our next meeting will be Wednesday, July 10th. Thank you.

** REP. ROSENWALD: Move we adjourn.

CHAIRWOMAN WALLNER: Meeting adjourned.

(Adjourned at 11:24 a.m.)

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CERTIFICATION

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

Cecelia A. Trask

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