State of Vermont
Agency of Administration
Pavilion Office Building
109 State Street
Montpelier, VT 05609-0201

[phone] 802-828-1350
[fax] 802-828-3320

Tom Evslin, Chief Technology Officer

May 3, 2010

Senator Peter Shumlin, Senate President Pro-Tempore
Senator Susan Bartlett, Chair Senate Appropriations Committee
State House
Montpelier, Vermont 05602

Dear Senators:

Although H.792, as it was passed by the House of Representatives, was the result of much hard work by both the committees of jurisdiction and the House Appropriations Committee, it is acknowledged to be a work in progress. Much needs to be done in the Senate in order to assure that we can achieve the outcomes specified in Act 68 (The first Challenges bill) under the budget constraints in both that Act and the pending appropriations bill.

SUMMARY STATUS:
If H.792 were passed as is, we would be hard-pressed to find $24 million in Challenge-related savings for FY11 and will have a huge hole in the FY12 budget.

1. Performance Contracting Challenge – all necessary authorization granted.
2. Charter Agencies Challenge – only minor issues to be worked out.
3. Regulatory Challenge – good progress but restriction on ability to execute must be removed.
4. Four AHS Challenges – roughly halfway there. Significant issues remain related to service provider resistance to performance-based contracting and restrictions on the ability of the Administration to act.
5. Corrections Challenge – very significant progress but too many restrictions on ability of the Department to execute.
6. Economic Development Challenge – no progress. Stymied by refusal of providers to recognize the need to restructure and become more effective.
7. Education Challenges – no progress. FY11 "solution" ignores mandate of first Challenge bill and there is no progress towards structural change for FY12. Outcomes are totally ignored.

MOVING FORWARD:
If the Senate does not add additional authority for significant outcome-based restructuring, then we must frankly face the fact that we need to trim an additional $14 million from the budget bill before it becomes law. It will be a loss for Vermonters if special interests manage to protect the status quo and torpedo this chance to make government more effective; but we must, as both of you have often said, end the session with a balanced budget which relies neither on the use of one-time funds nor on new taxes.

Where we have made progress, four principles have been observed. These principles need to be applied to the remaining unmet Challenges.

1. The executive has full authority necessary to achieve the required outcomes within the specified spending constraints.
2. The Legislature has measures to monitor progress towards required outcomes.
3. Service providers, where appropriate, are consulted but not given a veto. The interests of clients outweigh the interests of service providers.
4. We have not allowed defenders of the status quo to postpone change by calls for further study of issues.

DISCUSSION:
In the first progress report on Challenges for Change, the executive branch identified redesign options – most of which require legislation – sufficient to achieve mandated outcomes with $31 million less in general fund dollars in FY11 than were spent in FY10. The administration remains confident that it will be able to find $7 million of further restructuring opportunities for FY11 consistent with Challenges which do not require legislative authorization. Moreover, the redesigns proposed by the administration will put the State on track for the $72 million in GF savings assumed for FY12.

The House bill not only withholds statutory authority for some changes but also forbids actions which would have otherwise been permitted under current law. Our best current estimate is that, between restrictions and lack of authorization, only approximately $17 million of the $31 million in restructuring savings proposed by the executive branch can be achieved. Even with the $7 million of further restructuring possible without statute change, this leave a $14 million hole in the FY11 GF budget.

If there is not further statutory relief, the effect on the FY12 budget will be much greater. This is especially true in the education fund since the FY11 savings come from actions already taken independently by local school boards which are very unlikely to be replicated in FY12. As the districts begin to prepare FY12 budgets, they need and deserve specific *early* notification from the legislature that serious redesign and savings at the local level are necessary.

Challenges for Change is about outcomes, not just money. Even if money weren't an issue this year and next, the reorganizations proposed will result in better outcomes for Vermonters. If we are afraid to reorganize the myriad organizations doing economic development, we will not get as many new jobs as we can and must get. If we do not incent social service agencies to focus on outcomes rather than the organizational status quo, we will not help social service clients achieve their goals of independence and better lives.

H.792 requires significant work by the Senate so that Vermont can have the effective – and affordable – government it needs and deserves.

SUGGESTED CHANGES:
Below are section by section analyses of the bill with suggested changes. In some cases these changes may lag work already being done by both committees of jurisdiction and the Appropriations Committee in the Senate since much work is currently being done. Within a day, this letter will be somewhat out-of-date; but it can still serve as a checklist.

Sec. 11
The end of this section says: "Under H.789 as passed the house, the department is authorized to spend $200,000.00 of the fund for general operating costs. In furtherance of the purposes of this act, the general assembly anticipates increasing that spending authority in H.789 to $350,000.00."

Actually, the amount in H.789 is $350,000. This factual error should be corrected. Moreover, the Department miscalculated the extra spending authority it needs by $75,000. Taking into account that the base really is already $350,000, the initially planned $150,000 increase in authority plus and additional $75,000 mean that the final number should be changed from $350,000 to $575,000.

After Sec. 15
A new section should be inserted authorizing BGS to sell up to 500,000 square feet of state office space and enter into appropriate leaseback arrangements.

The State has 8% fewer employees than it did several years ago. Its physical footprint should shrink as well. Moreover, the State is a better tenant than it is a landlord; we pay our bills and potential landlords can get financing easily. However, we also defer maintenance due to the vagaries of the budget process when we are the landlord and buildings lose value and become eyesores. Even if we continue to occupy space in them, some buildings belong back on the tax rolls of local towns and in the hands of private owners who will maintain them well and find tenants for the space we don't need.

Suggested language:
Sec. X. BUILDINGS AND GENERAL SERVICES; AUTHORITY TO SELL STATE BUILDING ASSETS, AND LEASE BUILDING SPACE

(a) After consultation with the chairs of the senate committee on institutions and the house committee on corrections and institutions, the commissioner of buildings and general services is authorized to sell up to 500,000 square feet of state building assets, and lease building space for state purposes without following the provisions of 29 V.S.A. § 165(b) and (i) regarding lease of property for state purposes, or 29 V.S.A. § 166(a) and (b) regarding selling or renting state property.

(b) Notwithstanding 29 V.S.A. § 160 (a) and (b) regarding use of the property management revolving fund and 29 V.S.A. § 166(d) regarding use of funds from sale of property, net proceeds from the sale of property sold pursuant to this section may either be paid into a capital fund account pursuant to 29 V.S.A. § 166(d), or may be used to offset costs of resulting leases.

(c) Prior to entering into any financial agreement pursuant to this section, the commissioner shall consult with the state treasurer to determine the effects of the agreement on the state's debt as well as the creditworthiness of any company with which the state proposes to enter into contract.

Sec. 17 (a)(1)
For clarity, the word "co-occurring" should be added to this subsection so that it reads: "creation of an interdepartmental team to serve clients of the department of disabilities, aging, and independent living with co-occurring mental health needs;"

Sec. 17 (a)(2)
This section limits the establishment of single contracts for integrated early childhood services management to three pilot service areas. This restriction should be removed so that children and their families can get the known benefits of integrated management immediately and to allow more savings in FY11.

Sec. 17 (a)(4)
This section allows physicians, physician assistants and nurse practitioners to "document and bill for mental health services, engage in treatment planning, and approve case management and treatment plans."

The Administration intends to allow *psychiatric* nurse practitioners, who have special training, to perform these activities. The original DMH proposal provides an opportunity for some financial relief to agencies while not compromising care standards. The proposed change does not require legislation, nor was legislation requested. Changes would be made in the Medicaid State Plan and the corresponding DMH operating manual. The Administration does not believe that that psychiatric care provided at DA's should be provided by medical professionals other than psychiatrists and psychiatric nurse practitioners. Nor did DMH intend that physicians' assistants should have similar privileges to the psychiatric nurse practitioners. Additionally, this provision could add significant costs to the Medicaid system.

This subsection should be removed.

Sec. 17 (a)(7)
This subsection should be changed to read: "establishment by the department of disabilities, aging, and independent living of a process to provide clinically eligible individuals who meet initial financial eligibility criteria prescribed by the department with Choices for Care services while their financial eligibility for such services is being fully determined;"

As written, it might be taken to mean that presumptive eligibility is available for all DAIL programs, is a final decision, or is open to new applicants. In fact, presumptive eligibility will be made available only to clients known to AHS before they apply for Choices for Care through other benefits programs where the financial eligibility guidelines reasonably can be assumed to lead to Choices for Care financial eligibility. For example, this could include clients receiving supplemental security income.

Sec. 17 (b)
This subsection prohibits AHS from taking any of these actions prior to March 15, 2011:

1. creating a single 1-800 statewide mental health crisis line,
2. expanding the list of available providers of home- and community-based care service … to include providers other than home care agencies certified by the Centers for Medicare and Medicaid Services,
3. reducing the funding to individual service plans for Vermonters receiving developmental services.

The Administration believes that the benefits of a single toll-free number and an expanded provider list should not be delayed.

The plan to reduce funding to individual service plans is part of an effort to allow recipients to improve their personal results by entering into outcome-based "contracts" with their providers. The savings anticipated from this are considerable; and so, if it is not approved in this form, an alternative plan must to be developed. One possibility is a quarterly graduated decrease in funding to DAs with a prohibition against reducing benefits or services until such time as the DAs and AHS are able to develop a performance-based contract which assures that outcomes for clients will be achieved.

Sec. 17 (c)
This subsection prohibits AHS from taking certain steps until further reports are given to committees of jurisdiction. The language has been modified from an earlier version which would have required committee approval of actions when the Legislature is out of session. So long as this subsection is intended, as it seems to be, to allow the agency to proceed without committee approval or even if the committees oppose some actions, then no change is required.

Sec. 18
In two places the phrase "individuals who are mentally ill **or** children and adolescents with or at risk for a severe emotional disturbance" is used. The intent was only to cover at risk children so the wording can be made clearer by changing it to "mentally ill persons or children and adolescents with or at risk for..." in both places.

Sec. 18a(a)
This subsection does not relate to the section heading.

After Sec. 19
AHS has worked with Senate Appropriations to develop a proposal for a Reach Up Enhanced Service Program which will works as follows:

Under current rule 2375.5 participating adults in sanction must meet with their case manager for reassessment of service needs and review of the Family Development Plan as a condition of receiving financial assistance.

Reach Up will establish a performance-based contract for the Enhanced Service Program. Each participating adult in their **third month** of sanction will be referred to the Enhanced Service Program which will assess barriers, conduct an in-depth financial review and provide specialized case management services.

This performance-based contract will be performed by a team of six case managers who will meet with participating families no less than two times each week in person.

The following language is proposed to implement the program:

1106 (b) Prior to terminating services for a recipient under section 1108 of this title, the Commissioner shall provide specialized case management services to a family for at least two months. This service shall be provided through a performance-based contract. designed to provide clear choice for individuals around whether they desire to participate in the program or whether they do not. If they desire to continue and there appear to be barriers preventing effective participation, the service will include a family assessment and intensive intervention to help the family succeed.

1108

(a) Except as provided for in subsection (b) of this section, the commissioner . . .

(b)(1) The commissioner may adopt rules . . .

(2) The commissioner may terminate financial assistance to a family, including a dependent child, that includes an adult who has been in sanction for five (5) consecutive months and has received specialized case management services for at least two of those months. A family whose services are terminated may re-apply for Reach Up after a two month absence. If the family resumes participation in the Reach Up program, the family will be expected to participate in specialized case management services for at least two months.

(3) A family may not reapply for benefits after services have been terminated on three occasions.

DCF SANCTION NOTICE

The Department shall revise the notice informing families that they will receive a financial sanction under 33 VSA, section 1116 in order to simplify the content and provide a clear statement of the consequence of noncompliance.

Sec. 20
(see Sec 17(a)(4) above)

This section should be removed.

Sec. 24 Page 35 lines 11 and 12 and Page 40 lines 6 and 7
Language says "pursuant to this… shall wear clothing with the name of Department of Corrections clearly designated on it"

This language adds expense to the DOC budget for the purchase of clothing with no clear purpose. It also adds unnecessary stigma. This is a community based program; people are only under the custody of DOC from 8am to 4pm.

Recommendation – delete language

Sec. 24 – Page 36 last line of new language
Now reads "appropriate means of surveillance and electronic…"; should be changed to "appropriate means of **supervision** and electronic…"

Sec. 29 (1)-(4)
Each of these should specify that grants or contracts are performance-based. As a note, there has been an overwhelming response to the already-issued RFP for transitional housing.

Sec. 29a.
This section limits the number of persons who may be released from incarceration into any community.

This provision places an undue burden on communities with a low incarceration rate by sparing communities with a high incarceration rate from having to take their citizens back when they are released. While the burden may not be immediate, it will accumulate over time and may cause a significant resource issue for the DOC. The DOC has resources to assist those communities struggling with crime problems. If this amendment passes, the DOC will likely have to shift those resources and possibly violate its statutory caseload ratios.

In contrast to the spirit of Challenges for Change, this amendment adds a level of bureaucracy and inserts additional steps into the offender release process. There will be additional reporting requirements on the DOC to stay in compliance with this amendment and it will aggravate the incarceration levels by creating a more cumbersome release process.

This limitation should be removed.

Following Sec. 29a
The Administration recommends that the following provisions be added:

- The creation of a "Supervised Release" status to allow the Commissioner or designee to manage the population more effectively. The Commissioner or his designee would be authorized to release any inmate who has served at least 1/3 of his or her minimum sentence or 60% of his or her flat sentence (whichever is more) in accord with public safety. The sentencing court, State's Attorney and Defender General will be notified of the release and given 10 days to object. If an objection is filed, the court will schedule a hearing to review the release.
  Annualized Savings – 166 beds, $3,839,912

- Add back the 18 beds removed in S.292 because of a DUI 3 or greater offense.
  Annualized Savings – 18 beds, $416,376

- **Close South East State Correctional Facility Windsor Work Camp (SESCF):** Work camps house non-listed (non-listed crimes as defined by statute) offenders and many work camp participants will be offenders targeted for reduced incarceration in S.292. With insufficient work camp participants Vermont will not be able to populate two work camps, likely leaving one camp empty. This is particularly true if we are able to efficiently add twenty beds to the St. Johnsbury work camp.
  Annualized Net Savings – $2,643,092

Sec. 32
This section forbids the Department of Corrections from closing or substantially reducing services at a correctional facility during FY11. This reduction of current authority should be removed.

Sec. 33
The House language on the Education Challenge disregards the requirement of Act 68 of this session requiring that FY11 savings be made in *administrative* costs. Instead it accepts cutbacks the districts had already accomplished, largely in instructional expense. The effect is that administrative costs, already bloated, by any national benchmark, have been allowed to remain high not only in relation to the number of students in the system but also in relation to the number of teachers.

Even more troublesome is that this reliance on a one-time action by the districts, which they may well not repeat in FY12, leaves it almost impossible to achieve the even greater savings required next year in order to stop both general fund contributions to the education fund and property taxes from skyrocketing.

Educational outcomes specified in Act 68 are ignored.

H.792 provides for setting "suggested" targets for districts for FY12. The method for setting these includes constitutionally-dubious actions by legislative committees while the Legislature is not in session. Again the requirement that these be *administrative* cost savings is ignored. Districts are free to ignore the suggestions.

At a minimum, this section should be changed to:

1. Require that these costs savings be administrative both in FY11 and FY12 and in addition to reductions in instructional staff;
2. require that, if the total required budget reduction is not achieved for FY12, payments to high-spending districts be reduced sufficiently to achieve the needed savings;
3. require that districts meet the educational outcomes specified in Act 68;
4. make clear to districts now what will be required of them in FY12 so they have enough time to plan appropriately.

Note that even if all of the Challenge-related actions are taken with regard to education, expenditures will still grow more quickly than Vermont can afford. More detail on needed education reforms is in Commissioner Reardon's letter to the committee of conference on the Budget Bill.

Sec. 37 Page 59 lines 7-11
This language prohibits reducing staffing or resources when such a reduction is a direct result of regulatory reform under Challenges. Not only does this prohibition fly in the face of common sense; it also prohibits the Administration from taking action it would be able to take were there no Challenges bill; and it also directly contradicts 65(c) of this bill which specifically allows such reductions.

This language should be removed.

Sec. 64
The House felt that proposals to integrate economic development activities and create one-stop shopping in regional service centers were not fully developed. Language in the House bill calls for further discussion and proposals by May 1 (which has now passed although the bill, itself, has not). In fact discussions have continued and progress has been made. The Administration has agreed that some of its proposals should be phased in. There is not agreement on how much consolidation of RPCs and RDCs should be required.

Since discussions are progressing, this letter will only state some general principles which must be part of an eventual solution:

1. Contracts and grants from the State to any entities must be performance-based.
2. There cannot be duplication of function between entities which the State is paying to provide economic development services.
3. There cannot be confusion on where to go for what kind of help.
4. Reductions in cost must go into effect at the beginning of FY11, perhaps on a progressive basis, even if they will later be replaced by restructuring and consequent savings from the restructuring.
5. The outcomes and fiscal constraints of Act 68 must be achieved.

Sec. 67 (c)
Although this language was agreed between the Administration and the House, it is only appropriate if legislative authority for the Challenges or alternative proposals has been granted. The Administration cannot both achieve the required savings for FY11 without more statutory authorization than is in the House bill and also accept these extraordinary restrictions on how savings can be obtained.

It also appears that this language has been superseded by Senate language in the Big Bill to similar effect.

CONCLUSION:
I look forward to continuing to work with the Senate to meet these Challenges and provide Vermont with more effective governments services at a sustainable price. Thank you very much for your hard work and cooperation.

Sincerely,

Tom Evslin
Chief Technology Officer

cc: Senator Diane Snelling
Secretary of Administration Neale Lunderville
Steve Klein, JFO