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Agency of Administration

May 3, 2010

The House and Senate Conference Committee on 2010 H. 789:

The Honorable Senator Susan Bartlett
The Honorable Senator Diane Snelling
The Honorable Senator Richard Sears
The Honorable Representative Martha Heath
The Honorable Representative Mark Larson
The Honorable Representative Joe Acinapura
State House
Montpelier, VT. 05602

Dear Senate and House Conferees:

I appreciate the hard work of the House and Senate Appropriations Committees and the degree to which you concurred with the Governor's budget proposal. I am writing to provide the Administration's perspective as you work to reconcile the fiscal year (FY) 2011 Appropriations Bill H.789. I have focused on those areas where the Administration is most concerned and is not in agreement as it relates to policy and language.

TAXES AND LEVEL OF SPENDING: The FY 2011 House and Senate budgets are built on an unstable foundation of higher taxes and deferred spending decisions which threaten the long-term viability of the State's economic engine. The House and Senate budgets rely on over \$21 million in increased taxes imposed by the Legislature last year, plus more new taxes this year at a time when Vermonters can least afford it. Governor Douglas agrees with the Senate President Pro Tem, who said last fall, "We are taxed out in Vermont. There isn't any more tax capacity."

In accord with this sentiment, the Governor's budget proposed to sunset the capital gains and estate tax increases imposed by the Legislature last year. Instead, the House and Senate budgets rely on these taxes to restore spending to government programs, many of which are unsustainable even in the best of times. A budget built upon increased taxes is having a detrimental effect on economic recovery. Businesses have been clear that these taxes are hindering growth and the necessary reinvestment in our economy essential for its growth. Rolling back these taxes is a critical first step to getting Vermont on the path back to fiscal health.

Further, the Governor opposes the additional new taxes proposed in the Miscellaneous Tax Bill (H.783), including the partial decoupling from the Domestic Production Deduction Credit – a tax that increases costs for Vermont manufacturers and dairy farms. He also opposes the increased taxes on dietary supplements and the petroleum distributors licensing fee. Additionally, the



Governor opposes tax increases on participants in the Current Use program as outlined in H.485, *An Act Relating to the Use Value Appraisal Program*.

Rather than reduce spending, the House and Senate have chosen to shift more costs onto the shoulders of Vermont businesses and families through increased taxes. This is not acceptable. I urge the House and Senate to sunset last year's capital gains and estate tax and refrain from more new taxes this year. As the Governor demonstrated in his proposed budget, higher tax burdens can be avoided by addressing the underlying structural issue – that government is spending at an unsustainable level beyond what Vermont's people and businesses can afford.

LEVEL OF SPENDING/ WATERFALL: In FY 2009, the Legislature increased spending throughout the Agency of Human Services (AHS) by \$128.5 million, or 7.99%. For FY 2010, over the Governor's veto, the Legislature increased AHS spending by another \$127 million, or 7.3%. For FY 2011, the House and Senate's further increases for AHS range between \$70.7 million and \$81.2 million. These levels of increases continue an unsustainable trend and create insurmountable fiscal issues for the next Administration, Legislature, and people of Vermont.

In view of the very healthy increases in AHS spending over the past 2 years, we believe that constrained growth, as recommended by the Governor, for FY 2011 is reasonable. Further, both the Senate and House budgets expend enhanced federal matching funds appropriated under the federal JOBS act through existing appropriations, and then move the supplanted GF to the Human Services Caseload Reserve. State match is then appropriated to fund new initiatives in a waterfall methodology where expenditures are prioritized, and then allocated as revenue becomes available. We agree with the House and Senate that the supplanted GF should be moved to the Human Services Caseload Reserve and generally agree with the Senate's use of these funds should they become available. We will not support "waterfall" provisions that build base spending in general, and expand AHS appropriations in specific.

In general, the Administration supports the creation of the Vermont State Information Systems Fund (VSIS). However, the "waterfall" approach in this area could put funding for some critical initiatives at risk, specifically, AHS' VIEWS project. Given the critical importance of the VIEWS project, the Administration requests funding flexibility to mitigate the risk that the federal funds do not materialize as hoped; otherwise, AHS could be without the ability to fund state match needed to pay for contracted work. I will work with the Committee of Conference on language needed to achieve this flexibility.

EDUCATION: I have reviewed the recent Committee of Conference Education Fund Outlook prepared by the Legislature's Joint Fiscal Office (JFO) for FY 2011 and 2012. This Outlook compares the respective financial positions of the House and Senate actions, or lack thereof, prior to conference committees on the Miscellaneous Tax Bill and the Budget Bill.

Unfortunately, this Outlook affirms my concern that property taxes will increase severely in FY 2012 due to the inability of the Legislature to overcome the grip of the education establishment this year and to steer a prudent course for FY 2012 and beyond. The current Outlook reflects a rosy scenario that will likely turn dark before the start of FY 2012.

Fund Transfers: As you are well aware, given known GF pressures for FY 2012, there is a currently projected GF deficit of well over \$100 million. Of that, there are at least \$76 million of demands from the education fund that must be reconciled:

- \$69.1 million Replace ARRA funds in the GF transfer, restore the FY 2010 reduction, and provide the statutory increase
- \$ 6.9 million Restore Medicaid funds transferred to GF

To resolve the FY 2012 GF deficit, the Legislature will be forced to choose between two very divergent paths: either honor long-standing commitments to the education fund and leave other priorities, like human services and public safety, to face cutbacks; or short the education fund, forcing statewide property tax rates to cover the \$76 million, which means a rate increase of about 7 cents, or a 8% jump above current rates. Without meaningful structural reforms in our education system, unfortunate choices like this will persist for years to come.

I think it important to note that for FY 2009 and 2010 combined, GF and ARRA fund increases in the Agency of Human Services alone amount to \$99.7 million. As evidenced by the resistance this legislative session to even modest proposals such as Challenges for Change, tempering this spending momentum will be necessary to meet already made commitments to the education fund.

Education “Challenge”: For FY 2011, the Legislature established an administrative savings target in education of \$17.33 million, with \$6.07 million accruing to the GF and \$11.27 million to the benefit of property tax rates. Unfortunately, the House took the easy path by taking credit for the work of school boards who managed to level fund budgets for FY 2011. Consequently, no structural changes – the goal of Challenges for Change, after all – in our education system have been addressed. Cumulatively for FY 2011 and 2012, \$40.5 million in education savings is anticipated with \$14.2 million accruing to the GF and \$26.3 million to lower tax rates. Absent these savings in FY 2012, property tax rates will need to increase by another 2 cents.

For FY 2011, the House essentially side-stepped the opportunity for cost savings reforms in our education system. For FY 2012, the House relies upon “suggested savings targets” to be established by the Education Commissioner in consultation with a joint House-Senate Committee. However, other than this informational process, there is no substance to the Challenge. If the “suggested” savings are not achieved, the consequence falls solely on the backs of property tax payers.

In its approach to the Challenge, the House ignored the requirement of the original Challenges bill (S.286) to focus narrowly to “reduce costs of administration” and opened potential areas for savings to all school costs, including classroom instruction. With this approach, the House fatally undermined a meaningful attempt to curb the extraordinary administrative overhead of Vermont’s education system. Further, by applying the FY 2012 \$40 million administrative savings target to the entirety of school budgets, the House greatly minimized target savings necessary to provide real property tax relief. Total school expense should come down much more than \$40 million, but administrative expense at least this much.

Forty million dollars represents about only 3% of education fund spending. If the will and discipline exist, the fiscal goal of the Education Challenge is readily achievable, especially in the context of the lowest ratios in the nation of pupils-to-staff (4.55:1) and Vermont's high spending per pupil. However, given the actual experience for FY 2011 and the tepid demand for change in H.792, as passed by the House, the stage is not well set for a successful response to this Challenge for Change.

Income Sensitivity: This is the one area where some material progress appears evident. In January the Governor proposed reforms amounting to \$24 million. The House has passed a reform (the house-site value cap at \$425,000) which will save about \$5 million, and the Senate's proposed reform of asset valuation will save about \$10 million. With either of these reforms, the cost of the income sensitivity subsidies will increase by at least \$20 million, or 14%, by FY 2012. Thus, even with these reforms, state wide property taxes will need to rise by 2 cents to cover these increased costs of income sensitivity. As with education spending, much more needs to be achieved in this area in order to bring the education fund to fiscal sustainability.

The Road Not Taken: Over the past 5 years, the Governor has offered numerous reforms to bend the cost of K-12 education to a sustainable and affordable level. Unfortunately, these proposals have been substantially rejected, with no alternatives suggested and implemented. Consequently, the opportunity for incremental reforms to bend the spending curve gradually has been lost, making the road ahead far more difficult.

In the context of a \$100 million plus GF budget deficit, a weak approach to the Education Challenge, the minimal changes to education funding, and an absence of structural reform to our system of education in future years, the outlook for property taxpayers is bleak.

Administration's Position: While much opportunity has been lost in recent years to bend the Education Fund's spending curve gradually and less painfully, there are choices before us now that avoid exacerbating present and future taxpayer burdens.

- ***Tax Rates:*** As the Governor noted in his April 21st letter to Senator Shumlin, raising one tax to lower another is not acceptable. Raising taxes on vitamins and manufacturers and farmers to off-set property tax increases is not a good path for Vermont's economy. In January, the Governor proposed actually cutting state wide rates by 1 cent. The best from the Legislature is the House position of level rates, but this relies on increases in taxes on vitamins, manufacturers and farmers, among others. However, with the adoption of both the House and Senate reforms to income sensitivity, the House position on tax rates can be affirmed. Relative to FY 2011 rates, this appears to be the best that can be achieved this session.
 - ***Challenges for Change:*** As noted above, the House position on the education component of Challenges for Change for FY 2012 is "suggested", but lacks commitment. We believe these spending targets must be more than suggested if taxpayers are to avoid related tax increases. Therefore, if school districts and supervisory union budgets do not reflect the full savings target, then the Commissioner of Education should be empowered to reduce distributions to school districts to accrue the full targeted savings to the education fund.
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- **Other FY 2012 Remedies:** In January the Governor offered an array of reasoned education spending constraints to avoid severe property tax increases in FY 2012 and to provide flexibility relative to GF allocations. Unfortunately, the House and Senate Education Committees failed to address these opportunities. Two of the Governor's proposals in particular could have significant impact in FY 2012: the requirement that renewed teachers' contracts include a 20% premium share for teachers; and, a constrained management of replacement of teacher positions, in order to steer a course to a responsible pupil to teacher ratio of 13:1. With regard to cost-share for health care, it is worth noting that Barre granite workers recently joined Vermont state employees as unionized employees who will pay 20% for health care premiums; many teachers' unions continue to resist this common sense proposal.

Property taxpayers should not be held hostage to the pressures of the education establishment in Montpelier and the inability of state government to steer a reasonable fiscal course. It is important that the Legislature enact the above proposals to be effective for FY 2012.

Absent the above actions by the Legislature, property taxpayers are exposed to property tax increases of 12% or more which will stagger household budgets and weaken the State's economy. The current choices before the Legislature evoke the quote from Winston Churchill that "*the era of procrastination, of half-measures, of soothing and baffling expedients, of delays, is coming to a close. In its place we are entering a period of consequences....*"

The Governor's proposals in January steered a prudent fiscal course. His proposals have been opposed by the powerful education lobby in Montpelier. The Legislature's failure to act on these or to offer substantive alternatives will have undeserved and unnecessary consequences for property taxpayers.

CHALLENGES FOR CHANGE: Tom Evslin will be sending a letter pertaining to this issue under separate cover. In general, we are seeking a fully implementable approach to Challenges for Change that achieves the FY 2011 \$38 million savings and the FY 2012 \$72 million savings.

2010 H. 789 SECTIONS:

Sec. B.301 SECRETARY'S OFFICE - GLOBAL COMMITMENT

The global commitment (GC) appropriation is out of balance by (\$1,062,281) gross and (\$325,128) state share, based upon the expenditure changes and the legislative assumed quarterly e-FMAP for FY 2011.

We are also concerned in regards to new programs and expenses contained in S.88. If S.88 passes in its current form, Sec.40 (3) (c) appears to have an appropriation adjustment of GF from the GC appropriation (\$250K GF reduction, without any corresponding GC expenditure reduction). This loss of GF revenue grosses up to a \$816,727 gross deficit problem at 30.61%.

Sec. B. 308 DVHA LTC

It appears that the appropriation is built at an e-FMAP of 30.46% rather than 30.61%. It is unclear whether the state share or the gross is correct. If the gross is correct, then the appropriation is short by \$309,778.

Sec. B.1103 FISCAL YEAR 2011 ONE TIME APPROPRIATIONS

The Vermont Department of Tourism and Marketing (VDTM) objects to the earmark to the Shires of Vermont. In FY 2010 the Shires of Vermont received a last minute appropriation of \$20,000 to be used at the Bennington Chamber of Commerce's discretion. This funding was provided to the Bennington Chamber through a grant administered by the VDTM. In FY 2010 this appropriation raised the attention of the Vermont Association of Chamber Executives (VACE) that was disappointed that tourism funds were being doled out to a single chamber of commerce. VACE took it upon themselves to make a recommendation to the Legislature for the FY 2011 budget that funds destined for chambers of commerce should be provided by VDTM through a competitive process with significant emphasis placed on out of state marketing. VACE also recommended that funds should only be available if they are additional dollars to VDTM's budget.

Sec. E. 100.6 PROPOSED REDUCTION IN WORKFORCE WHEN GENERAL ASSEMBLY NOT IN SESSION

This provision requires the Governor to seek the consent of a legislative committee when the General Assembly is not in session, for the purposes of managing state government positions. The limitation interferes with the executive power granted to the Governor under the Vermont Constitution. The enactment threatens to undermine the separation of powers underlying our democracy.

This is similar to restrictions the Legislature placed on the Administration last year, but it makes the changes permanent (amends Title 32). The Administration went to court over similar language last year. The current provision has the same potential to trigger needless litigation. As you know, the State is faced with the need to make significant funding decisions for FY 2011 and beyond. The energies and resources of the Legislative and Executive branches are best spent working together to adopt a sustainable budget that is affordable for Vermonters.

I respectfully request and strongly recommend that the Conference Committee remove entirely Section E 100.6 from the Budget Bill to ensure that critical funding legislation is not delayed or defeated by this constitutionally defective provision.

Sec. E.100.7 STATE MONITORING OF INTERNET USE; FINDINGS; AUTHORITY; AGENCIES COVERED; WEB-CONTENT FILTERING COMMITTEE

With respect to the Senate amendment addressing the new Web Content Filtering System, we ask that you consider the following:

This amendment originated from Senate Appropriations, which unfortunately received incomplete and factually inaccurate information regarding the web content filtering system. This section was inserted into the Big Bill at the last moment. This Committee of Conference now provides the best opportunity for the Legislature to evaluate the necessity of this proposed amendment with full facts before it. Those facts are as follows:

- Web content filtering systems are increasingly common in larger organizations as companies and other state governments try to address the potential for misuse of assets owned by the various organizations, restrict access to inappropriate web sites, and protect against viruses, malware and other online threats.
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- With regard to the successful use of this system in state government, past performance is the best predictor of future success. Over the past few years, a similar web content filtering system has been used responsibly and productively to increase the efficiency of state agencies and departments. With appropriate notice to employees and responsible administration through trained human resources professionals, the newly purchased system will extend these same benefits throughout the entire state government network. The categories of web sites that are being blocked include the types of sites that most people would agree should not be accessed in the workplace. Examples include sites with sexual or gambling content.
 - The greatest value of a web monitoring system is that it acts as a deterrent. When managers are concerned about the extent to which the Internet is being used by an employee, the system gives the human resources professionals a tool to measure the extent to which web surfing has occurred. By identifying the sites visited, it is fairly easy to determine the extent to which the web surfing is work related. If there remains a question about excessive web use, the employee is verbally notified and has the opportunity to curtail the amount of Internet use without imposition of disciplinary action. As noted above, this approach has been used with significant success in those state agencies and departments who have had the web filtering system in place for a number of years. Indeed, one agency experienced a 72% decrease in internet usage by state employees after notice and implementation of the web filtering system. This demonstrates that a web filtering system can improve state government efficiency and avoid, rather than create, unnecessary disciplinary actions.
 - In one recent instance, an employee streaming video (NCAA Final Four basketball game) from their work computer lead one office to experience extreme internet slowdown that required significant IT resources to investigate, diagnose, and resolve. Downloading videos and music, as well as streaming audio and video, uses a considerable amount of bandwidth which can negatively impact the system performance. The web filtering system would allow IT professionals to diagnose problems more efficiently.
 - The web filtering system will only record the Uniform Resource Locator (URL), which is the address of the site that is accessed. “www.state.vt.us” is an example of a URL. The system is not capable of logging key strokes. It does not monitor e-mail, and it cannot record the actual content of a web site visited. The emphasis of this program is on deterrence and the appropriate management of state human and computer resources.
 - Because the system itself cannot determine whether web use is personal or work related, human resources professionals determine whether such usage is appropriate and work related. The employee’s rights are protected just as they are with any other potential workplace violation that can lead to discipline.
 - The web filtering system does not automatically generate a report of any kind. In consultation with management, human resources professionals determine to what extent reports need to be generated and reviewed. This is appropriate as an agency or department may have different concerns at any given time. Human resources professionals are trained to handle and analyze highly sensitive information, including medical information and identifying information, like social security numbers. As evidenced by the lack of any history of complaints related to state web monitoring, these
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individuals will continue to perform this function effectively and professionally in the future, as they have in the past.

These facts demonstrate that a web content filtering system can be extended throughout state government responsibly and productively. Where no problem has been identified to date, a proposed legislative cure is unnecessary.

Finally, specific provisions of the proposed amendment lack support for the following reasons:

- The proposed amendment contains language excluding certain organizations within state government from the web filtering system, including the Legislature, the Courts, the Attorney General, the Secretary of State, the Office of State Auditor and the State Treasurer. The system should apply to all Executive Branch departments, although it would be good practice for all branches of government.
- The web filtering system allows for a “carve out” for those employees who have a demonstrated work related need to visit sites that otherwise would be blocked. To date, the Human Resources Department, in consultation with agencies, departments and the Department of Information and Innovation, has been able to evaluate and implement these “carve outs” efficiently and without meaningful work disruption. There is no demonstrated need to create a wholesale exemption for the Department of State’s Attorneys and Sheriffs. Any reasonable, work related internet usage within this Department, as within others, can be easily and quickly identified and addressed.

For all of the above reasons, we urge the conference committee to reject the Senate amendment.

Sec. E. 114 (House Version) BUILDINGS AND GENERAL SERVICES – FLEET MANAGEMENT SERVICES

The Senate deleted this section and we concur for the reasons cited in my April 8, 2010 letter to the Senate Appropriations Committee. We hope the House will concur with the Senate.

Sec. E.131.1 (House version) STATE TREASURER, VSEA; MEMORANDUM OF UNDERSTANDING

In general, the House proposed language is vague, ambiguous, and unnecessary. We concur with the Senate’s action to delete this language.

Sec. E.235 (House version) ENHANCED 9-1-1 BOARD

We rely on the Willis compensation scale, not ad hoc comparisons with employees outside the state system. We concur with the Senate that this language should be struck in its entirety.

Sec. E.309 HOSPITAL RATES

We support the Senate version. The House version was very complex and difficult, if not impossible to implement.

Sec. E.309.1 MEDICAID; BENEFIT LIMITATIONS; RATES

The Senate added language in sub-section (a)(2) related to urine drug test limitations. DVHA would prefer that this new language be deleted. If it is not deleted, DVHA needs this language to be altered to say: DVHA shall **adopt SAMHSA guidelines, as available**, for appropriate use of

urine drug tests, including the frequency of testing, **and shall develop protocols for** exceptions to the limitation to 8 tests, ~~and/or other appropriate utilization requirements.~~

H.789 has added sub-section (e) to E.309.1 to account for the increase in dispensing fees to independent pharmacies. We did e-mail a clarification on the definition of “independent pharmacy” to JFO and the Senate Appropriations Committee, but the clarification did not appear in the language. Note the addition of **IN-STATE** that needs to be inserted in the language below:

(e) The department of Vermont health access shall increase the dispensing fee to an independent pharmacy from \$4.75 to \$5.75 per prescription filled. An “independent pharmacy” means a retail pharmacy with three or fewer **in-state** stores owned by the same individual or corporate entity.

Sec. E.309.14 EXPEDITED RULEMAKING; MEDICAID

The policy unit made corrections to the expedited rule section in order to: correct some errors and omissions in E.309.14 (a); add or modify language in E.309.14 (a)(1); add number (5); add letter (b) to indicate emergency rulemaking should expedited rulemaking not be feasible.

We are requesting a change in the implementation date for the Catamount Health changes (increase in deductible from \$250 to \$500 and increases in co-pays for brand name and non-preferred drugs) from July 1 to October 1. This change would result in a reduction in savings of \$184,406 according to a JFO estimate. We believe that a July 1 start date is neither desirable nor feasible for the following reasons:

Inadequate lead time for Catamount Health carriers and the State:

Following the passage of the appropriations act, Blue Cross Blue Shield and MVP must file new rates with BISHCA. BISHCA would have to approve the rates, at which point carriers are required to give enrolled members 45 days notice of the rate change. BISHCA can reduce the 45-day notice requirement to 30 days, making June 1 the latest possible date for issuing the notice. A passage date for the appropriations act at the end of the first week in May would leave only three weeks for the rate filing process to be completed. In addition, if either carrier needs to change product numbers, the State would have to make IT changes prior to issuing July 1 premium bills around the middle of May.

Increased administrative complexity (possibly leading to upward pressure on rates) and confusion for Catamount members:

The Patient Protection and Affordable Care Act (PPACA) requires several changes to private insurance that will affect Catamount, including the elimination of the lifetime limit and cost-sharing for preventive services. These changes will be effective on October 1 of this year. The Catamount carriers will therefore need to file rates with BISHCA to include the impact of these changes. The need to file rates for July and then again for October could create upward pressure on rates due to the administrative costs of filing the new rates and administering three different Catamount products.

The necessity for three Catamount products would result from the fact that by statute individuals are guaranteed a Catamount rate for 12 months. Changes to product design and cost must be phased in as individuals reach their anniversary date, which occurs 12 months following their

enrollment date. Therefore, individuals with anniversary dates in January through June would continue to receive the \$250 deductible product until their anniversary date in the first half of calendar year 2011; individuals with anniversary dates in July through September would receive the new \$500 deductible product beginning in the third calendar quarter of 2010, and individuals with anniversary dates in October through December would receive the new \$500 deductible product plus the PPACA changes in the last calendar quarter of 2010.

It would obviously be much simpler to make the deductible change and the PPACA changes effective on the same date of October 1. Administrative costs/complexity would be reduced, and enrolled members would be less confused when they received an explanation of the changes.

Sec. 309.18 PEDIATRIC PALLIATIVE CARE

The Senate passed an amendment to have Vermont add Pediatric Palliative Care as an optional service plan when the GC Waiver is updated. There is no appropriation for the services. This is an expansion of current services for GC and SCHIP eligible children. We recommend this language be struck.

Sec. E.312 PUBLIC HEALTH

Sub-section (a) (1) (C) IMANI, \$32,400

Please qualify this item by inserting the following language: “, if they meet the requirements of a corporation under state law or another Vermont AIDS service and peer-support organization that will serve former IMANI consumers.”

Sub-section (a)(3) refers to a GF carry-forward of \$140,000. However, no GF funding exists in FY 2010. The \$140,000 GF appropriation occurred for the final time in FY 2009 and will be distributed to the Aids Service Organizations (ASO) in July, 2010 as mandated by the FY 2010 Big Bill. The language should be deleted. If left as is, there will be a \$140,000 deficit in the Public Health Appropriation.

Sec. E.313 ADAP

Sub-section (b) is new language authorizing any state qualified LADC to participate as a Medicaid provider. The Case Coordination language is not a Medicaid State Plan Service. Clinical services would be allowed, but case coordination would have to be approved by CMS as a targeted case management (TCM) plan. CMS has questioned TCM plans nationally and expansion is far from assured. There is no additional funding for these services and we are unclear of the financial impact.

Sub-section (e) is new language specifically allocating the \$150,000 GC that the House added to ADAP's budget directly to Maple Leaf Farm (MLF) to increase their daily rate by \$13.82, bringing it up to \$264.11. We can live with the language adding the \$150,000 as long as it is done through a performance based contract, and the elimination of the language mandating that it be done through the rates. We will need to work with MLF and collect financial information before we can determine that \$150,000 can be justified by allowable costs through the rates.

Sec. B.317 and Sec. E.317 DCF FAMILY SERVICES

The Senate added \$100,000 GF to be granted for a parental representation initiative. We do not believe this is necessary. If the Conferees decide to move forward with this initiative at a time

when we are having difficulty funding current obligations, we recommend the following language be added:

- (a) \$100,000 is appropriated to Vermont Legal Aid. The funds may be granted out at Vermont Legal Aid's discretion, or used for internal staffing, to provide legal representation to parents in involuntary guardianships in probate court, or pre-petition legal representation to parents that are having contact and services through the Department for Children and Families. Post-petition legal representation of parents shall be transitioned to the Office of Defender General as usual.
- (b) Vermont Legal Aid, in consultation with the Office of Defender General, shall develop measures to evaluate the success of this initiative carrying out the purpose in subsection (a) of this section. This evaluation shall be submitted by no later than January 15, 2011 to the House and Senate committees on appropriations and judiciary.

Sec. E.318. CHILD CARE ELIGIBILITY; PROCESSING

The House added the following language: "Until July 1, 2011, the department for children and families shall continue to contract with community agencies for the determination of eligibility for the child care services program established in 33 V.S.A. § 3212." We can live with the Senate version that changes the date to February. The FY 2011 budget, as passed by the House, includes \$200,000 GF savings from restructuring grants based on centralized eligibility, which cannot be achieved with the original date.

**Sec. E.321.1. 33 V.S.A. IS AMENDED TO READ
§2301 BURIAL RESPONSIBILITY**

The current proposed language in (a) (1) of this section states that the State's maximum payment does not preclude the next of kin paying for or receiving contributions to pay for additional services above the maximum amount paid by the State. This is in conflict with the previous sentence which indicates that the State will establish by rule procedures for reducing this payment by the amount of other assets available. In determining eligibility "other assets available" is defined as those of the decedent and their spouse. We request that this language be clarified so that it does not include the spouse. We do not know the cost impact of this change, but it will increase the cost for burials.

The Senate amendment proposes to expand eligibility for Public Burials by removing sub-section (c) so that the State would assume responsibility for payment whether an individual died in their town of domicile or not. This would increase the GA burial costs and would eliminate the \$150,000 savings anticipated for FY 2011. Based on data from the Health Department gathered last year, there were 132 people who died at their home that were below the poverty level. Using this data, this expansion could cost an additional \$141,450.

**Sec. E.323.1 (REACH UP SANCTIONS PROPOSAL - REPLACES GOVERNOR'S
RECOMMEND PROPOSAL)**

The House replaced the Governor's recommended proposal for full family sanctions with a tiered sanction proposal that provides little if any savings and creates significant administrative burdens. The Administration feels strongly that the Governor's recommended proposal for full family sanctions be adopted in its entirety. Or, at a minimum, the Reach-Up Enhanced Service Program contemplated by the Senate Appropriations Committee should be adopted.

Sec. E.323.4 POSTSECONDARY EDUCATION; CASE MANAGEMENT

This section creates a mini-study. It allows DCF to cut two of four PSE case managers and then asks AHS to evaluate the impact of the two caseloads—the two which still have a PSE Case Manager and the two who do not. This seems like a make-work exercise. A study of two people is precisely that—it is a study of how good two employees are in their work. We have neither staff nor time to conduct such an exercise. We oppose this language.

Sec. E.325.1 INDIVIDUAL DEVELOPMENT SAVINGS PROGRAM

This section – along with the corresponding appropriation – requires DCF to restore funding for the Individual Development Accounts (IDAs) through the use of local match and additional federal funds. The department advises that there are not additional federal funds within DCF. DCF will be faced with the choice to either fully fund IDAs by diverting available federal grant funds from other uses, or reducing IDA activities. If this section remains unchanged, it should be awarded as a performance based grant.

Sec. E.702 FISH AND WILDLIFE – SUPPORT AND FIELD SERVICES

We object to the Legislature micromanaging the Department of Fish and Wildlife.

Sec. E.800 and E. 800.1 SUSTAINABLE JOBS FUND

The Executive Director of the Vermont Sustainable Jobs Fund (VSJF) has advised that the rationale for removing the authority of governmental officials including the Governor from making appointments to the VSJF board is to establish that the organization is not “controlled” by a governmental entity. The stated purpose for this action is to meet eligibility requirements for funding and services associated with the Community Development Financial Institutions (CDFI) program. Apparently, CDFI will not allow any appearance of government control over an applying organization in order to be eligible for CDFI funding and programs. However, eliminating the appointment authority of government officials only goes half way; the VSJF still derives its authority from statute. To truly create separation and to ensure CDFI eligibility the VSJF should be removed entirely from statute and operate as a true, private sector non-profit. To retain the organization’s authority in statute but eliminate governmental officials’ ability to appoint board members severs any accountability the organization has to the mission as established in statute. **There should be no half measures; either the VSJF should remain as it is with board members appointed by government officials and with appropriate accountability or it should be removed from statute and operate as a private organization.**

Sec. E.805 VERMONT CONVENTION BUREAU

Vermont Department of Tourism and Marketing (VDTM) feel that this funding is not necessary and has little return to the State. VDTM has been providing funding to the Vermont Convention Bureau (VCB) in the form of a \$100,000 grant to the Lake Champlain Regional Chamber of Commerce for nearly a decade. The intention all along was that the VCB would be sustained through its membership and ultimately no longer need a state GF appropriation. This year the administration recommended eliminating the funding for the VCB due to significant statewide budget shortfalls and questionable return on this regional investment. In this environment it is not beneficial to continue to support membership organizations with state subsidies, especially with the looming budget deficit in FY 2012. The VCB has also adjusted its dues to members to include paid commissions which should easily offset the need for state taxpayer support. If the

Legislature is intent on keeping this appropriation, it should be awarded as a performance based grant.

CONCLUSION: We appreciate your consideration of these comments and recommendations regarding the FY 2011 "Big Bill", and look forward to working with the conferees and legislative leadership to resolve these issues. Budgetary pressures for both FY 2011 and 2012 remain. We must come to an agreement on a sustainable spending plan for FY 2011 that maintains the quality of services and programs to Vermonters while addressing the economic realities of the next fiscal year. I am happy to provide additional detail and I am available to discuss these points with the Committee of Conference.

Sincerely,



James B. Reardon
Commissioner

cc: Senator Peter Shumlin, Senate President Pro-Tempore
Representative Shap Smith, Speaker of the House
Senator Ann Cummings, Chair Senate Finance Committee
Representative Michael Obuchowski, Chair House Ways and Means Committee
Senator Robert Starr, Chair Senate Education Committee
Representative Johannah Leddy Donovan, Chair House Education Committee
Senator Bill Doyle, Senate Minority Leader
Representative Patti Komline, House Minority Leader
Steve Klein, Chief Fiscal Officer, Joint Fiscal Office
Neale F. Lunderville, Secretary of Administration
