

# CAPITAL PROJECTS AND BOND OVERSIGHT COMMITTEE

**March 22, 2001**

The Capital Projects and Bond Oversight Committee met on Thursday, March 22, 2001, at 10:00 AM, in Room 125 of the Capitol Annex. Representative Jodie Haydon, Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Representative Jodie Haydon, Chairman; Senator Robert Leeper, Vice Chairman; Senator Bob Jackson, and Representatives Robert Damron, Paul Marcotte, and Jim Wayne.

Guests testifying before the Committee: Bill Hintze, Governor's Office for Policy and Management; Commissioner Armond Russ, Finance and Administration Cabinet; Porter Dailey, Morehead State University; Mike Mullins, Department of Juvenile Justice; General Leslie Beavers and Charles Lewis, Department of Veterans' Affairs; John Covington, Kentucky Infrastructure Authority; and Tom Howard, Office of Financial Management.

LRC Staff: Mary Lynn Collins, Pat Ingram, Kevin Mason, Lola Williamson Lyle, and Shawn Bowen.

Representative Marcotte made a motion to approve the minutes of the February 21, 2001 meeting as submitted. The motion was seconded by Representative Wayne and passed by voice vote.

Chairman Haydon called on Mr. Bill Hintze, Deputy Budget Director, Governor's Office for Policy and Management, and Commissioner Armond Russ, Department for Facilities Management, to discuss a project report submitted by the Finance and Administration Cabinet.

Mr. Hintze first reported an emergency authorization to increase the scope of the Prestonsburg Community College Pike Building HVAC project by \$77,000 in order to accept the low bid on the project. The revised project scope is \$476,000.

Chairman Haydon said emergency actions are to be reported to the Committee within 30 days, but no further action is required.

Mr. Hintze said the next project was an increase in scope for a land acquisition pool for Morehead State University (MoSU). The pool is funded through the University's restricted fund balances. He said for some time MoSU has sought to acquire land

adjoining the University which is currently a trailer park, and the owner is now willing to sell. The University is proposing to enter into a seven year lease-purchase at a total cost of \$1,069,116. However, Mr. Hintze said in order to purchase the land, the University's land acquisition authorization, currently capped at \$1,337,000, needs to be increased by \$200,000. (The University has made other land acquisitions under this authorization.) Mr. Hintze said the University has money for the purchase, and the Administration encourages universities to take advantage of such opportunities as they arise.

Senator Leeper said he was somewhat concerned about a state university getting into the trailer park business. He referred to tragic fires which have occurred on university campuses and recent efforts made to improve safety in living facilities at state universities.

Mr. Porter Dailey, MoSU Vice-President for Administration and Fiscal Services, responded that the University's goal is to acquire the land, not to operate a trailer park. However, he said the University probably will continue to operate the park for a couple of years. He indicated after that, the University would dispose of the trailers and convert that land to another use.

Senator Leeper asked if the trailers would be rented only to students. He said he understands that the University needs the property, but again expressed concerns about the University operating a trailer park. He asked if the University's legal counsel had reviewed the liability involved. He also asked if only students lived in the trailer park.

Mr. Dailey said he thought approximately 90% of the people currently living in the trailer park are students. He said the University does not want to displace those students. Once the University takes over the trailer park, the University's policies will restrict the housing to students, staff, and faculty. He assured the Committee the University will take the necessary steps to insure the units are safe.

Representative Damron asked if the Council on Postsecondary Education (CPE) had approved MoSU running a trailer park for students. Mr. Dailey said CPE is aware of the acquisition, but is not required to formally review and approve it.

Representative Damron said CPE has made strong statements in recent months about expenditure of funds, operations of university budgets, and a variety of other things. A major request they brought to the 2000 General Assembly was life safety issues such as installation of sprinklers in dormitories. He asked if this is the only trailer park that a state institution of postsecondary education is operating as student housing and if so, how does that fit within the edicts from the CPE and the General Assembly regarding university campus safety. He asked if anybody has looked at the liability issues relating to maintaining a trailer park and if a review of environmental hazards has been done on the site.

Mr. Hintze said, by delegated authority under existing statutes and in agreement with the Finance Cabinet, the universities are responsible for their own property acquisitions, including analyses of on-site conditions. Mr. Dailey said University policy requires an environmental impact analysis before any option to buy is executed.

Representative Damron reiterated his question as to how the operation of this type of housing fits with the safe student housing edicts of the CPE. Mr. Hintze said he would follow-up with the Council on this issue.

Representative Wayne said under sovereign immunity, the University will not be liable, so the students would actually be in a better legal position if the University does not own those facilities. However, he said provisions relating to safety and crime issues included under the Michael Minger Act enacted last year would be applicable to the trailer park if it is part of student housing. Also, a 1996 law requires all manufactured housing, mobile homes, and trailers to be equipped with working smoke detectors and signs posted at the entrance of the park stating that state law requires smoke detectors in each unit.

Senator Jackson asked if tax benefits to the seller is the reason the University wishes to continue operation of the trailer park. Mr. Dailey said that was not the reason. He said the primary reason they will operate the trailer park is to prevent displacing students currently living in the units. Commissioner Russ also noted that the University has a project underway to replace student family housing. As part of that project, they have demolished some existing housing to make way for the new facilities, such that there is, for a short time, a decrease in housing on campus.

Senator Jackson asked when the new housing is to be completed. Commissioner Russ said they hoped to have the project completed for students returning to campus in the fall of next year.

Senator Jackson said he thought, from a safety standpoint, it was bad policy for the University to operate a trailer park. He moved that the Committee approve this acquisition but with strong encouragement that the University not get into the trailer renting/leasing business. The motion was seconded by Representative Wayne and passed by voice vote.

Mr. Hintze next discussed an unbudgeted project for the Department of Juvenile Justice - a new Classroom, School Office, and Dining Room for the Campbell Regional Juvenile Detention Center. Mr. Hintze said when the Center was designed, the Department deleted from its original plans a dining room and classroom space because of budget constraints. The Department would like to add these things now that federal funds are available. The total project scope is \$645,000 (\$580,000 from the federal Juvenile Accountability Incentive Block Grant and \$65,000 from agency funds).

In response to a question from Representative Wayne, Commissioner Russ said there is a dining facility at the detention center, but it is not the size that was originally intended, and there are classrooms at the facility, but not enough classrooms to have simultaneous classes.

Representative Wayne asked if the state followed national standards in construction of the facility. Mr. Mullins said the facility meets all the national building standards for juvenile detention facilities. The Department has received accreditation from the American Correctional Association (ACA). He said they did not have ACA evaluation on that particular facility, but they are confident it can pass ACA.

In response to a question from Senator Leeper, Mr. Mullins said they will also be constructing a new dining facility and additional classrooms at the Paducah juvenile facility. He said they just received bids for that expansion. Mr. Mullins said, fortunately, in this case, they had funds remaining from the original project to pay for this expansion, and they will also use an additional \$100,000 available in federal funds.

Senator Leeper asked if the Department of Juvenile Justice is consistently underestimating its projects. Commissioner Russ said prison construction is more difficult and complicated, and price per square foot tends to be higher. Mr. Mullins noted the budget for these first two juvenile detention centers was \$4.3 million each, and the budget for the next three was approximately \$5.3 million each.

Senator Leeper asked if the need for kitchen and classrooms at the Campbell County facility was identified in the agency's Six-Year Capital Plan. Mr. Mullins said the expansion of the Campbell County facility was not in the Six-Year Plan, although it probably should have been.

Representative Damron asked how long the Department knew about the possibility of the Juvenile Accountability Incentive Block Grant funds. Mr. Mullins said the Department applied for this grant in the summer of 1998.

In response to questions from Representative Damron, Mr. Mullins said the Department is not diverting money from any previously authorized projects. The \$645,000 may have been appropriated in the Department's federal operating budget but for various reasons, it is no longer needed.

Representative Damron said he has a problem when the General Assembly enacts a budget, and then the Department of Juvenile Justice decides after the Session that it is better to do something other than what was in the enacted budget.

Representative Marcotte made a motion to approve the unbudgeted project. The motion was seconded by Senator Jackson and passed by voice vote with Representative Damron voting "no".

Mr. Hintze next discussed a \$1,180,000 federally funded project scope increase for the Fayette County Secure Juvenile Detention Center. This project was approved as a 50-bed facility by the 2000 General Assembly at a scope of \$6,700,000. It will be located at the Blackburn Correctional Complex on a portion of the state-owned tract.

Mr. Hintze said after the Session, the Department determined that the authorized Fayette County project needed to be expanded by approximately 15-30 beds. The money for this project is coming from the federal Violent Offender Incarceration Program.

Representative Damron asked where the Department had originally planned to spend the federal funds. Mr. Hintze said the Justice Cabinet receives a reasonable estimate of what to anticipate from this federal grant and that is incorporated into the state budget. They have a number of options for how that money can be used, all of which require federal concurrence. He said this money is used more often to supplement or to build adult correctional facilities. None of these funds are earmarked for individual facilities in the budget as enacted.

Representative Damron said during the 2000 Session, the Justice Cabinet made statements that it did not have sufficient funds to commit violent sexual offenders and predators. Now the Cabinet has found over \$1 million from the federal Violent Offender Incarceration Program to expand a juvenile facility. He said he had problems when he saw violent offender grants coming through the Committee for juveniles when he was told by the Justice Cabinet that there is no money to deal with adult violent sexual offenders.

Representative Marcotte asked if any further thought had been given to privatizing some of the juvenile detention institutions. He said a number of states have successfully built bigger centers and built them quicker through privatization. Mr. Mullins said the Administration's plan is to build centers within 1 to 1 1/2 hours of each county seat which necessitates smaller facilities of 48 to 50 beds.

Senator Leeper asked if the project's original budget included the cost of land acquisition. Mr. Hintze responded that they knew during the Session the site for this facility would be state-owned and at Blackburn. He said it is almost always their preference to use existing state-owned land so the state does not have to spend extra money on acquiring other tracts. There will be no transfer of money between the departments, because the money can simply be used as envisioned for the original project.

Mr. Hintze said there are a number of facilities, such as the juvenile detention centers and the veterans' nursing home, where the trend in the last decade has been that the land is donated.

Commissioner Russ said they do ask that question as they help agencies build their biennial budgets and their Six-Year Plans. He said he recalled going through the exercise specifically with Juvenile Justice and this land donation was offered in advance.

In response to a question from Senator Leeper, Mr. Hintze said the project has not been bid yet, but they do not intend to come back to the General Assembly for more money.

Senator Jackson made a motion to approve the scope increase for the Fayette County project. The motion was seconded by Senator Leeper and passed by voice vote with Representative Damron voting "no". The revised project scope is \$7,880,000.

Mr. Hintze then presented a scope increase request for the Eastern Kentucky Veterans Center, located in Hazard. Additional funds are being sought for equipment and furnishings for the nursing home. He noted that the project was authorized in the 1998 Regular Session at a scope of \$13,500,800 and the scope was increased in the 2000 Session of the General Assembly to \$14,884,800. The increased costs approved last year were attributable to location factors that required a two-story facility rather than a one-story facility as originally planned.

Mr. Hintze said this latest increase is necessary to assure the facility is fully equipped prior to its opening. The request is to increase the authorized scope from \$14,884,800 to \$15,784,800 (\$900,000 increase). Funding for the increase would come from (1) operating funds available due to the delay in the opening of this facility as well as the Western Kentucky Veterans Center being built at Hanson (Hopkins County) and (2) moneys available from the Thomson-Hood Veterans Center in Wilmore that have accrued because of staffing shortages. Up to 65% of the increase is federally reimbursable. The state's share of the \$900,000 increase would be \$315,000.

Representative Damron noted that \$350,000 of operating funds appropriated for the Eastern and Western Centers are not needed because of the delayed openings and asked why funds from Thomson-Hood, which is a currently operating facility, are also being used. He asked if it was not the normal approach to use the Capital Construction and Equipment Purchase Contingency Account in such cases where the funds are to be reimbursed.

Mr. Hintze said that was an option, but the Administration, at the urging of this Committee, has tried to conserve the Contingency Fund. He said he recognized Representative Damron's point that a large portion of the funds will be reimbursed. However, he noted that a decision on the scope increase was made at the same time the Administration is dealing with a shortfall of \$116 million in the enacted budget for the current year and an anticipated even worse shortfall next year. He said the statutes and the budget act direct the Administration, when dealing with budget reductions, to analyze the availability of restricted funds in all Executive Branch agencies and determine

whether those funds can be employed in balancing the General Fund shortfall. Similarly, the Administration is admonished to also consider using General Fund money accruing from vacancies to solve the problem. He indicated the money they have identified for the cost overrun had earlier been identified as resources that could be employed to address the budget shortfall. He said when they were made aware of the problem at the Hazard facility, they determined that a portion of those funds should instead be retained by the Department to address that problem.

Representative Damron asked Mr. Hintze if any funds from Thomson-Hood's operating budget used for the Hazard project scope increase will be replaced when the federal reimbursement is made. He also asked if any other funds within the Department of Veterans' Affairs would be used to balance the budget. Mr. Hintze said when the federal reimbursement comes in, that money will be credited in the first instance to the Department of Veterans' Affairs, whether it be for Thomson-Hood or the other two veterans nursing homes. However, he said, by law, he cannot rule out the possibility that the Administration will re-examine the Department of Veterans' Affairs as they attempt to address next year's shortfall. At the same time, he said they would not take any dollars from the veterans centers that are necessary for proper staffing and operation. If the Department can hire the nurses and professional staff they need, the funds will be there. No positions will be abolished. He said they are only taking money available that would otherwise lapse to the General Fund or, in the case of restricted funds, would otherwise carry forward. He emphasized that the Administration is doing nothing to impair the viability of the facilities to meet their maximum patient loads.

Representative Damron said that he and others have urged the Department to raise the salaries and provide other benefits at Thomson-Hood to address the staffing shortage. He said it concerned him that he sees deficit reduction coming only from Thomson-Hood and not from any other place in the Kentucky Department of Veterans' Affairs. He said he did not think there was a member on the Committee that would ever vote to restrict in any way the quality of care at the veterans' nursing homes. He said the reason there is a surplus in funds at Thomson-Hood is due to the lack of expenditures. Representative Damron said in a recent meeting at Thomson-Hood, several people suggested that funds were needed to provide a sidewalk so patients could exercise, but they were told money was not available. The Executive Budget directs that if it is necessary to reduce the budget, unappropriated unbudgeted restricted funds can be tapped but the Thomson-Hood funds under review were appropriated and budgeted to provide the facility with adequate staff.

Senator Jackson said Representative Damron had brought up some very valid points. He asked if there is not some other more palatable option to address the cost overrun at Hazard. Mr. Hintze said that, as he had noted earlier, one option would be the Capital Construction and Equipment Purchase Contingency Fund. However, he reiterated that the Administration tries to preserve that Fund as a matter of policy, as the Committee has urged them. He said they also try to employ agency resources wherever possible to

meet overruns. He said that is what the Finance Cabinet and his office did, with the concurrence of General Beavers and his staff. Mr. Hintze said there are excess dollars within the Department of Veterans' Affairs which, under the budget reduction plan, they are obliged to seriously examine to solve budget shortfalls.

General Beavers said in no way does the proposal before the Committee or the reduction plan affect the quality of care at Thomson-Hood. He discussed efforts that have been made to address staff shortages.

Senator Jackson moved to defer the request until next month so that other alternatives can be found that would permit this project to move forward as quickly as possible.

Chairman Haydon asked how a delay would impact the project. Mr. Charles Lewis, the Comptroller for the Department, said many of the items of equipment needed could take three to four months for delivery. He said any lengthy delay in ordering the equipment would result in a further delay in the facility's opening date.

Chairman Haydon said he felt very strongly that any delay by the Committee could delay beds for deserving veterans. At the same time, he said he was just as concerned for those folks at Thomson-Hood. He said sometimes concessions must be made, and it sounds like this might be such a case.

Representative Damron asked if a cost overrun is anticipated at the Western Kentucky Veterans Center. General Beavers indicated that was not the case.

Representative Damron moved that the increase should be paid from the \$350,000 in General Funds that the Department of Veterans Affairs indicated would not be needed due to a delay in the openings of the two new veterans centers, and the remaining amount (\$550,000) should come from the Capital Construction and Equipment Purchase Contingency Account with the understanding that the Contingency funds will be reimbursed by the federal government.

Senator Jackson seconded the motion. Chairman Haydon asked Mr. Hintze to respond to the motion.

Mr. Hintze said if the Committee votes for this, his next step next will be to confer with Secretary Flanery, who ultimately has authority over the Capital Construction and Equipment Purchase Contingency Account. He assured the Committee that he would relay to Secretary Flanery the Committee's concerns and noted the Committee's goal is the same as the Finance Cabinet and the Governor's Office of Policy and Management-- to build the two new veterans facilities properly and to preserve our commitment to Thomson-Hood, and at the same time cope with a major revenue shortfall.

Representative Damron's motion was adopted by voice vote.

Senator Leeper asked about the use of construction management for the veterans centers and asked if they anticipate any problems relating to litigation similar to problems experienced under the Commonwealth Convention Center expansion project which also used a construction manager instead of a general contractor. Commissioner Russ said as a result of lessons learned on the Commonwealth Convention Center expansion project, they have made changes in their legal contracts, and do not anticipate similar problems.

Senator Leeper asked about the costs related to construction management for the two veterans centers. Commissioner Russ said he would follow-up with the Committee to provide that cost information. He said, generally speaking, construction management costs will range between 1%-2%.

In response to another question from Senator Leeper, Commissioner Russ said his office had done a tremendous amount of research on the use of construction management, and plans to experiment using various forms of construction management. He stressed that the Department is in a learning process in regards to this method of construction delivery.

Chairman Haydon then introduced Mr. John Covington, Kentucky Infrastructure Authority (KIA), to present two new projects proposed for KIA assistance. He first discussed a proposed \$208,000 Fund C (Governmental Agencies Program - No state-supported debt service) loan for the City of Barlow. The Fund C loan will be used to rehabilitate the city's wastewater collection and treatment system.

Mr. Covington then discussed a Fund F (Federally Assisted Drinking Water Revolving Loan Fund) loan in the amount of \$2,362,626 for the City of Ashland. The Fund F loan will be used to expand the city's wastewater treatment plant.

Representative Marcotte asked why the interest rates for the two KIA projects (Fund F at 3.8% and Fund C at 7%) are different, since both loans have terms of 20 years. Mr. Covington said the two loans are from different programs. The Fund F loan is subsidized with federal and state funds, but the Fund C loan is not. However, he said the estimated interest rate for the Fund C loan is a "worst-case" rate, and KIA does not anticipate the interest rate going to 7%.

Senator Leeper made a motion to approve the two KIA projects. The motion was seconded by Senator Jackson and passed by voice vote.

Chairman Haydon then called on Mr. Tom Howard, Deputy Director of the Office of Financial Management, to present the agency's bond activity report. Mr. Howard first reported one new bond issue: State Property and Buildings Commission (SPBC)

Revenue Bonds Projects 69 and 70 (\$500,000,000). Proceeds will be used to refund notes and provide permanent financing for projects authorized by the 1998 General Assembly.

Senator Leeper made a motion to approve the new bond issue. The motion was seconded and passed by voice vote.

Next, Mr. Howard presented two follow-up reports for previously issued bonds: Turnpike Authority of Kentucky Economic Development Road Revenue Bonds, 2001 Series A (\$152,960,000) & B (\$60,475,000); and Kentucky Asset/Liability Commission Project Notes, 2001 General Fund First Series, \$37,450,000.

Chairman Haydon said no action is required for follow-up reports.

Lastly, Mr. Howard reported five new bond issues with School Facilities Construction Commission (SFCC) debt service participation: Ashland Independent (Boyd Co.); Bullitt County (2); Jefferson County; and Perry County.

Senator Leeper made a motion to approve the school bond issues with SFCC debt service participation. The motion was seconded by Representative Marcotte and passed by voice vote. Representative Damron abstained from the vote, citing a potential conflict of interest.

Chairman Haydon said there were eight locally funded school bond issues submitted to the Committee for review this month: Clark County; Jefferson County; Laurel County; Lewis County; Lincoln County; Mayfield Independent (Graves Co.); McCracken County; and Whitley County. He said all disclosure information has been filed, and no further action on these bond issues is required.

Chairman Haydon then recognized Lola Lyle, Capital Projects Committee staff member. He said today is Ms. Lyle's last Committee meeting, and she will be leaving LRC to accept a position with the Environmental Quality Commission.

With there being no further business, Senator Jackson made a motion to adjourn the meeting. The motion was seconded by Representative Marcotte and passed by voice vote. The meeting adjourned at 11:45 a.m.