

PLS *Committee News*

Senate Appropriations

Senate Appropriations Budget Hearing with the DGS

1:00 p.m., 2/16/10, Hearing Room #1 North Office Building

By Jeff Cox

The committee conducted a budget hearing with Department of General Services (DGS) Secretary James Creedon and Deputy Secretary for Administration/Procurement Anne Rung.

Members present included Chairman Jake Corman (R-Centre), Minority Chairman Jay Costa (D-Allegheny) and Senators Lisa Boscola (D-Northampton), Patrick Browne (R-Lehigh), Michael Brubaker (R-Lancaster), Lawrence Farnese (D-Philadelphia), John Gordner (R-Columbia), Stewart Greenleaf (R-Montgomery), Sean Logan (D-Allegheny), John Pippy (R-Allegheny), John Rafferty (R-Montgomery), Lloyd Smucker (R-Lancaster), Michael Stack (D-Philadelphia), Robert Tomlinson (R-Bucks), Patricia Vance (R-Cumberland), and Mary Jo White (R-Venango).

Minority Chairman Costa asked about the disbursement of federal stimulus money within the Commonwealth. Secretary Creedon explained that they expect the Commonwealth will receive a little over \$26 billion in federal stimulus money. He said this number will go up as more competitive grants are awarded by the federal government. Secretary Creedon also noted that the moneys include \$11 billion in tax relief to individuals and businesses and an additional \$1 billion goes directly to recipients such as non-profits, hospitals, and the National Park Service. Minority Chairman Costa then asked what guarantees are in place to assure the resources are driven out to the appropriate programs and projects. Secretary Creedon explained that the Stimulus Oversight Commission is responsible for overseeing about \$13 billion. He pointed out the state did not receive this money in a lump sum but the money was distributed by the federal government for over 70 different programs including transportation, energy and weatherization. Secretary Creedon told the committee he has great confidence the money is going to where it is intended to go. He said they have developed a centralized system for tracking the federal moneys and, in addition, they have an internal auditing process that was developed with the Office of the Budget. Secretary Creedon noted Pennsylvania is subject to bi-monthly review by the federal government and ongoing auditing by the inspector generals' offices in various federal departments and agencies.

Senator Rafferty wanted to know about the criteria being used for federal stimulus moneys for alternative energy grants including solar energy. Secretary Creedon responded that all the funding as gone out through existing methods. He said there were major areas of spending in solar, wind, and green building initiatives done through a competitive grant process. He further explained that DEP publishing in advance a scoring system that would show how the grants would be scored. According to Secretary Creedon, those applications were reviewed and the highest rated proposals received funding up until the money ran out. He described it as a "very competitive process." Senator Rafferty asked if there is a follow-through process to make sure the money is used properly and they are getting the expected results. Secretary Creedon responded that the two important things with the stimulus money are transparency and accountability. He explained that the transparency side is showing people it is a competitive process and the accountability side is showing people the results of that process. Secretary Creedon said DEP has completely reinvented their project management system. He added that DEP is constantly receiving progress reports on the projects and assessing those reports. Secretary Creedon also told the committee he meets with DEP on a bi-weekly basis to also review the progress reports. Senator Rafferty wanted to know absent the federal stimulus money are any funds available for these programs. Secretary Creedon suggested that question be posed to DEP Secretary John Hanger.

Senator Boscola asked Secretary Creedon about the changes he has seen at the department since 2003. Secretary Creedon responded that the culture of the department in 2003 was if you got the money, spend it and they have shifted the culture to treat the money like it's your own and spend it very carefully. The other changes he noted included: the change order rate in 2003 was 20% and it is now consistently under 5% or lower; procurement is now centralized; and sole-source contracts were under 600 per year in 2003 and are now under 100. Regarding energy, Secretary Creedon told the committee the department now has a comprehensive energy management strategy in place to control their demand and manage their purchases of energy. He pointed out the department has reduced its energy demand by 20% which is a full year ahead of schedule so now they have set a goal of 25%. Senator Boscola asked why the line item for utility costs has doubled. Secretary Creedon explained that the department hoped that by decreasing the demand that cost would be reduced but the decrease in demand has not kept up with the increase in utility rates. He also noted the opening of the Judicial Center within the Capitol Complex which increased the number of facilities the department is responsible for. Secretary Creedon also said he is currently negotiating with NGR regarding the cost of steam heat within the Capitol Complex.

Senator Gordner wanted an update on the Commonwealth's prison projects. Secretary Creedon said there are currently plans for seven projects. He explained that four are for housing unit additions in Forest County, Coal Township, Pine Grove and Cambridge Springs. According to Secretary Creedon, the project contracts in Cambridge Springs, Coal Township and Pine Grove have been awarded and the projects are underway with rebidding on the Forest County project within the next several weeks. In addition, he said the department is working with Corrections on three sites at Rockview in Centre County, replacing Graterford in Montgomery County and building a new facility in Fayette County. Secretary Creedon explained that a combination of outrageous bids by contractors and litigation has caused some real problems with getting the Graterford and Rockview up and started. He further explained that the department was severely overbid at Rockview and there was litigation over the department's ability to use project labor agreements (PLAs) at Rockview and at Graterford. Secretary Creedon noted the courts have ruled the department has the appropriate framework to use PLAs and the department will apply them when necessary based on the court's guidelines. He said the department is focusing on making sure that in the next round the bids are more efficiently designed than last spring. He added the department is unsure in what order they will do these three projects. Senator Gordner pointed out the Commonwealth has limited resources and there is an increased demand. He said a couple of the projects were put out as PLAs and came in at huge numbers. Senator Gordner said the Commonwealth should address the issue sooner rather than later. Secretary Creedon responded that is what they are trying to do. He pointed out the Commonwealth Court took three months to issue its ruling and there is a chance there will be more litigation. Regarding the housing projects, Senator Gordner wanted to know how many additional spaces will be created. Secretary Creedon said he would have to get back to the committee with the exact number for each project but it numbers in the hundreds. Senator Gordner asked if after the completion of the housing additions whether the Commonwealth will still have to shift prisoners to other states. Secretary Creedon said yes.

Chairman Corman asked why the department sought a waiver from the Separations Act and why the department thought it would reduce costs. Secretary Creedon responded that the language in the capitol projects bill was the cause of the litigation. He said the legislation indicated the project shall be done as design-build but it also says the Separations Act shall apply. According to Secretary Creedon, under design-build you select one contractor and under the Separations Act you select four. He said the waiver would have removed the cloud of litigation over the projects and reduced some of the risks for contractors. Chairman Corman asked if the department prepared a fiscal note on the savings. Secretary Creedon said that would not be easily done because each project is different. He said it was their hope there would be an overall reduction in costs.

Senator Greenleaf asked how many prisoners are now in state correctional institutions. Secretary Creedon said he does not know the exact number but he believes it is around 50,000. Senator Greenleaf asked how many have been transferred to institutions in other states. Secretary Creedon suggested that question should be directed to Secretary Beard at the Department of Corrections. Senator Greenleaf asked how much the transfers are costing the Commonwealth. Secretary Creedon again suggested asking Secretary Beard. Senator Greenleaf asked about the cost of the housing projects. Secretary Creedon said it is costing \$16 million to \$20 million depending on the

site and the number of additions. Senator Greenleaf asked why the need for the construction. Secretary Creedon responded that it is because of the overcrowding at the prisons. Senator Greenleaf wanted to know if there will be a need for additional units after the projects are completed. Secretary Creedon said he would defer to Secretary Beard for a response. Senator Greenleaf asked if the department has taken steps to use energy efficient heating, Secretary Creedon responded that they do when it comes to new construction. He pointed out the department must consider the provisions of the Coal Act when it comes to heating facilities and noted the Capitol Complex uses steam heat.

Senator Stack said he has received telephone calls and letters from constituents who operate auto shops complaining about the DGS-contracted automotive garages and why the DGS labor rates are higher in the suburbs than in Philadelphia, where the cost of living is higher. Secretary Creedon explained that the department does an annual review of labor rates and the cost of service for their entire vehicle management system and they try to make it fair across the board while trying to get the as low as they possibly can. He said they will continue to evaluate it county by county to make sure they are paying a fair rate but at the same time it is competitive and not one that can be adjusted after someone submits a competitive rate. According to Secretary Creedon, some shops commit to a \$40 fee for something and then come in to say \$40 is not enough. He said that until the contract opens up the department cannot change it. Regarding minority/women owned businesses, Senator Stack wanted to know what percentage of state contracts are awarded to such businesses and whether the rules have "enough teeth" when a company fails to meet its goals. Secretary Creedon responded that there is no legal requirement for minority/women owned businesses to participate in the bidding for a state contract. He said the department tries to set aspirational goals. He also said that absent a statute they try to work with prime contractors who in turn must show how they plan to reach their goals. Senator Stack asked if any state requires that a percentage of contracts must go to minority/women owned businesses. Secretary Creedon said he is not familiar with any states having such a requirement but some cities do. He added he believes the department has gotten decent results with its efforts.

Noting the difficulty constituents are having with obtaining transcripts from Gaming Board meetings because of the contract with the transcript company, Senator Farnese wanted to know if the department is responsible for overseeing the contract. Secretary Creedon responded that the department awards the contract but the agency enforces it. He pointed out the Stimulus Oversight Commission publishes all of its meeting transcripts on their website. Senator Farnese asked if the department has been using best value when awarding contracts. Secretary Creedon said the department has been using best value and over \$5 million has been awarded to construction contractors using minority/women owned businesses. Senator Farnese asked about the criteria for awarding contracts. Secretary Creedon explained that most contracts are typically based on the lowest bid. He said under best value a contractor is scored on costs, their technical abilities and their use of minority-women owned businesses.

Senator White asked about the increase for recycling programs. He explained that most of the recycling is done within the Capitol Complex and costs of recycling have increased. He added that the market fluctuates regarding the commodities involved. Senator White asked about the contract with Aramark and if he has considered cancelling the contract after the situation at the Capitol Cafeteria and if he would consider cancelling it in the future. According to Secretary Creedon, the contract was awarded in June 2009 and two years, three months remain on the contract. He said he can't speculate about the future. Senator White asked if the incidents in December and January would be grounds to cancel. Secretary Creedon responded that he did consider it. He said that after the December inspection, the company was given a 30 day notice to cure and they met the requirements on January 4 but could not sustain it. Secretary Creedon told the committee members the company has taken action and now they are on "a short string". He added the Department of Agriculture has been working with the company.

Senator Vance said it her understanding the department is considering changes in their scoring when awarding contracts. She wanted to know if the department has hired a consultant regarding those changes. Secretary Creedon responded that the department did not have consultants when they first developed their scoring. Senator Vance asked if they now have a consultant. Secretary Creedon said yes. He went on to say it is difficult to determine how to weigh the various factors and see how the marketplace views any changes. Senator Vance asked about the cost for the

consultant. Deputy Secretary Rung said the contract was for about \$50,000 and they should be done by April. She added the consultants are looking at other states and consulting with various vendors about the proposed changes. Senator Vance commented that if she had a business, she would have a problem with getting points based on her gender. She then asked for an update regarding the Harrisburg State Hospital, the Scotland School and Mayview. Secretary Creedon said there is an active campus at the Harrisburg State Hospital and it is being used by other departments and organizations. Regarding Scotland School, he said he has been in conversation with the members of the General Assembly about it. Senator Vance asked if there have been any discussions about converting Scotland School into a veterans' home. Secretary Creedon said he was unaware of any such discussions in that regard but he has had discussions with FEMA and with local leaders. He said he has been working with Senator Pippy's office regarding Mayview. Secretary Creedon went on to say they try to work with the local communities regarding these facilities but said the department cannot keep the facilities dormant forever. Senator Vance asked about the cost of maintaining the Harrisburg State Hospital and whether the Commonwealth realizes a profit from it. Secretary Creedon said the cost is about \$8 million and the Commonwealth does not realize a profit. He said they get a "minor rent" from Gaudenzia but he would have to get more detailed information for the committee.

Senator Smucker said he was not surprised about the bids for the Rockview project being "outrageously high" considering the lack of competition. He added that contractors in his district were precluded because of the inclusion of the PLAs. Senator Smucker asked if the department considered the impact of the PLA. Secretary Creedon said he could not say the high bids were all driven by the PLA. He argued that the redesign of the bids will make some reductions in the costs. Senator Smucker asked if there is any data comparing the use of the Separations Act and design-build. Secretary Creedon said there have not been enough projects to do an accurate comparison. He added that the Separation Act "works". He went onto say that with the prison projects the department had to use both. Secretary Creedon said he would not advocate getting rid of the Separations Act. Senator Smucker asked if he is aware of any other jobs being done both ways. Secretary Creedon said he is not aware of any. He pointed out the Philadelphia Convention Center and the Penguins Arena projects were granted waivers from the Separations Act. Senator Smucker asked about the impact of scoring in design build on contractors. Secretary Creedon said the overwhelming number of contracts awarded has been done by low bid. He said the department has been encouraging contractors to look at best value contracting.

Senator Tomlinson asked about the increase in use of renewable energy. According to Secretary Creedon, about 40% is from renewable energy and they want to increase it to 50% this year. He added the department is working with DEP in utilizing more Pennsylvania resources. Senator Tomlinson asked if the department has applied to PJM. Secretary Creedon responded that they are always looking for ways to save on energy. He said the PJM grid could lead to significant savings and would allow them to own their information. Secretary Creedon said they have had good discussions with the PUC in this regard. Senator Tomlinson asked about the awarding of state contracts to veteran owned businesses. Secretary Creedon said they are having discussion within the Bureau of Procurement. He said they want to do it but it is a question of resources. He noted the department's budget is not going up again this year. Secretary Creedon said the department wants to do more outreach and they are trying to take as many steps as they can.

Senator Browne asked about the reduction in the number of employees within the department. Secretary Creedon said since 2003 their complement is down by 388 positions. He said they have hired fewer employees than they planned. He cited the new Judicial Center where they projected hiring 56 additional people but found they only needed 21. Secretary Creedon said the department has increased responsibilities with a smaller complement. Senator Browne asked about the outsourcing of the vehicle fleet. Secretary Creedon said they considered it for the pool fleet but found the department could do it more efficiently. Regarding the Department of Public Welfare's plan to shut down the Allentown State Hospital, Senator Browne wanted to know if Secretary Creedon has been involved in the transition meetings. Secretary Creedon said he has but noted DPW still has to go through its closing process. Senator Browne asked if there have been discussions about an appropriate transition. Secretary Creedon said his department will have to work with local leaders, legislators and the communities in that regard.

Senator Pippy asked about the rebidding of the Department of Revenue computer contract after a

bid was awarded. Rung responded that there were problems with the scoring the RFP. Senator Pippy asked about the changes in the RFP. Rung said the technical sections were rewritten not how the scoring. She said the awarding of the contract is now under protest. Senator Pippy asked if it was appropriate for a former employee of a bidder being involved in the scoring. Rung said it would be inappropriate. Secretary Creedon added it is difficult when someone comes from the industry and want to use his or her experience.

Senator Brubaker asked if the Secretary can assure the committee that every dollar in alternative energy funding is being properly utilized. Secretary Creedon responded, "Yes". Senator Brubaker asked about the department's efforts to use Pennsylvania companies when awarding contracts. Secretary Creedon responded that sometimes an out of state company wins the contract. He cautioned that the Commonwealth must be careful in awarding contracts so other states do not retaliate against Pennsylvania companies receiving contracts in their jurisdictions.

Chairman Corman asked about the cost of increasing the use of alternative energy from 40% to 50%. Secretary Creedon said the cost would be about \$200,000 per year. Noting the increased Marcellus Shale drilling, Chairman Corman asked if the department is looking at changing over to natural gas. Secretary Creedon said the Commonwealth should always have a full portfolio. He explained the cost of converting the state vehicle fleet to natural gas was too high. Secretary Creedon went on to say there are obstacles to single source energy such as the Coal Act. He noted the department has been moving to gas and electric for heating armories. Chairman Corman asked about the timetable for the Rockview and Graterford prison projects. Secretary Creedon said that hopefully the bidding will go out and get underway this summer.

Senator Greenleaf asked about what opportunities are available to Pennsylvania businesses at the department. Secretary Creedon responded that the department does over \$4 billion in procurement contracts and about one half billion in construction.

Senator White asked again about the cost of recycling doubling in one year. Secretary Creedon said he would get the committee more detailed information.

Senator Pippy asked about the use of biodiesel. Secretary Creedon said the Commonwealth uses it now with PennDOT being the primary user.

Chairman Corman asked Secretary Creedon to discuss the disposition of materials confiscated at airports. Secretary Creedon explained that after 9/11 the federal government asked the states to help with confiscated materials. He said the department agreed to participate and have been selling materials through E-Bay and other venues. Secretary Creedon said the materials have included machetes, hockey sticks, pen knives, nail clippers and handcuffs. He added the Commonwealth has received over \$500,000 since 2004 through this program.