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Report to the Vermont Legislature

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Act No. 42. (H.543)

An act relating to capital construction and state bonding.

- Submitted to:** House Corrections and Institutions Committee, Senate  
Institutions Committee
- Submitted by:** Martha Maksym, Acting Secretary of Human Services  
Christopher Cole, Commissioner of Buildings and General  
Services (BGS)
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- Report Date:** October 15, 2019

In 2019, the Vermont Legislature passed Act 42, which included the requirement that the Secretary of Human Services and Commissioner of Buildings and General Services develop a proposal to expedite closure of the Middlesex Secure Residential Recovery Facility, also known as the Physically Secure Recovery Residence (PSRR).

*Sec. 30. REPLACEMENT OF MIDDLESEX SECURE RESIDENTIAL*

*RECOVERY FACILITY*

*(a) Intent. To the extent that the Department of Disabilities, Aging, and Independent Living amends its rules pertaining to therapeutic community residences to allow secure residential recovery facilities to utilize emergency involuntary procedures and that these rules are identical to the rules adopted by the Department of Mental Health governing the use of emergency involuntary procedures in psychiatric inpatient units, it is the intent of the General Assembly that the State shall replace the Middlesex Secure Residential Recovery Facility by:*

*(1) constructing a physically secure State-owned secure residential recovery facility for up to an additional 16 beds that meets the security standards currently used at the Middlesex Secure Residential Recovery Facility; and*

*(2) exploring the placement of interim secure residential recovery beds or permanent beds that could be flexible to meet other potential therapeutic community residential uses as determined by the Department of Mental Health.*

*(b) State-owned Secure Residential Recovery Facility Proposal.*

*(1) On or before October 15, 2019, the Secretary of Human Services and the Commissioner of Buildings and General Services shall develop a proposal that expedites the closure of the Middlesex Secure Residential Recovery Facility and provides for construction of a 16-bed State-owned secure residential recovery facility described in subsection (a) of this section and shall present this proposal to the House Committee on Corrections and Institutions and the Senate Committee on Institutions.*

*(2) With approval of the Speaker of the House and the President Pro Tempore, as appropriate, the House Committee on Corrections and Institutions and the Senate Committee on Institutions may meet up to one time when the General Assembly is not in session to evaluate the proposal described in subdivision (1) of this subsection and make a recommendation on the site location to the Joint Fiscal Committee. The Committees shall notify the Commissioner of Buildings and General Services and the Secretary of Human Services prior to holding a meeting pursuant to this subsection. Committee members shall be entitled to receive a per diem and expenses as provided in 2 V.S.A. § 406.*

*(3) The Joint Fiscal Committee shall review the recommendation of the Committees described in subdivision (2) of this section at its September or November 2019 meeting. If the Joint Fiscal Committee so determines, it shall approve the proposal as recommended by the Committees.*

## **Section 1. - Interim Secure Residential Recovery Facility Needs**

The Department of Mental Health's initial analysis indicates that there is not a need for an interim Secure Residential Recovery Facility. A more thorough report on the bed needs throughout the state will be completed and submitted to the legislature on or before December 15, 2019. The current physically secure facility has been successfully maintained by the BGS for the past 6 years and remains a safe and secure facility to provide the treatment needs of the residents. All indications at this time support that the facility can be safely maintained through the process of standing up the new 16 bed Physically Secure Residential Recovery Facility (PSRR). BGS plans to conduct an assessment of the existing facility to determine what interim actions will be required to maintain safety and security until the new PSRR can be completed.

The staff at the current Secure Residential Recovery Facility have been providing this level of care for 6 years. There is no other similar facility in the state and thus there is no knowledge base outside the current DMH staff with any experience operating a facility of this nature. With workforce issues throughout the state being as tight as they are, it would likely take significant time to get to a place of being able to adequately staff an interim facility.

It would also take significant time to develop enough staff expertise in order for another entity outside DMH to run this type of program. By the time this is all accomplished and the new interim facility is ready to accept residents, we would be closing in on the completion of the new 16 bed facility. This would be a costly endeavor which would provide little to no added value to the system of care. It also could negatively impact the residents clinical picture as it is well established that transitions are a particularly stressful time for individuals and adding in unnecessary moves/transitions could result in residents who have been successfully served and stabilized to begin decompensating, resulting in their need to be moved to a higher level of care (i.e. hospitalization).

Another consideration are the issues the state would face related to Reductions in Force of state employees from the current facility as not all staff from that facility could be absorbed into other areas with the Department of Mental Health.

## **Section 2. - Site Acquisition, Design, Permitting and Construction**

In early 2019, BGS developed a standard project delivery schedule for a new PSRR for the FY20/21 Capital Bill. The duration was found to be approximately 5.25 years from project initiation through project completion and occupancy.

At the request of the BGS Commissioner, an accelerated schedule was developed that reduces the timeline from 5.25 year to 2.75 years as shown in the attachments. In order to achieve this aggressive schedule, BGS would need significant support from the Administration and Legislature to implement the strategies below. It could also increase the overall project cost by about 25%.

If one or more of the strategies noted below are not met, it will extend the accelerated delivery schedule beyond the 2.75 years. Some of these items have already been undertaken as indicated in the final section of this report. A copy of the schedule is included for reference.

### Site Selection Process

As shown on the standard delivery schedule, it would take 10 months to acquire land for a new PSRR. In order to expedite this timeframe down to 4 months, the following actions would need to take place:

1. Secure statutory language to approve site selection and an option to purchase land during the off session.
2. Accelerate timeframe for siting of a new PSRR,
3. Proceed with site suitability analysis during the identification process (this would require vetting potential sites simultaneously for Geotechnical, Wetlands Delineation, Archeology, etc., - represents an additional project cost).

### Architectural and Engineering (A&E) firm procurement process

As shown on the standard delivery schedule, it takes 5 months to procure an A&E firm to provide design and construction services. In order to reduce this timeframe to 3 months, BGS would need to advance the A&E firm procurement process to occur concurrently with the site selection process (allowing site acquisition to occur simultaneously with design).

### Project Requirements

As shown on the standard delivery schedule, it will take 13 months to define the project requirements. In order to expedite this timeframe down to 8 months, the following actions are required:

1. Work directly with the Department of Mental Health (DMH) and the current service and treatment providers to identify programmatic needs and related facility requirements, and
2. Utilize a streamlined and efficient process to gain input from stakeholder and advocacy groups.

### Permitting process

Eliminate and/or streamline the permitting process. As shown in the standard delivery schedule, it will take 8 months to complete the standard permitting process. In order to expedite this timeframe down to 4 months, the following actions are required:

1. Identify permits that can be waived (if any),
2. Statutory language waiving permit requirements,
3. For all remaining required permits:
  - a. Require the State's approval authorities to aid in completing the permitting process,
  - b. Expedite through the permitting process,
  - c. DMH leads effort to expedite Certificate of Need (CON) process, and
  - d. Segment the Division of Fire Safety (DFS) permit approval process allowing for site and foundation approval from DFS prior to a full permit application.

Identified risks: Town planning and zoning approval and Act 250 and supporting permits. Other currently unknown state or federal permitting requirements such as an Environmental Assessment (EA) to receive a Finding of No Significant Impact (FONSI), and Centers for Medicare and Medicare Services (CMS).

#### Construction Phase

Expedite the start of the construction phase. As shown in the standard delivery schedule, it will take 18 months to complete the construction phase. In order to expedite the schedule, bidding for a Construction Manager should occur during the schematic design phase and construction will begin during the early stages of the construction documents phase. This allows construction to start 7 months earlier. In order to achieve this, the following actions are required:

1. Procure a Construction Manager (CM) early in the design process to conduct constructability and value engineering design reviews,
2. Use a prequalification process for a CM,
3. Segment design and construction into packages to allow for fast-track construction beginning with site and foundation work while the balance of the construction documents are completed, and
4. Early procurement of long lead items.

Identified risks: As shown on the accelerated delivery schedule, construction is slated to begin in October. This provides unideal construction conditions. Typically, a project of this size and scope would begin in the spring. Winter conditions are unpredictable and often result in increased costs, construction delays, and lesser quality materials. Our preference would be to start in spring which would push the accelerated schedule out from 2.75 years to 3.33 years.

#### Disclaimer

There will also be cost implications associated with the fast-track approach due to risks inherent in proceeding with construction before all final decisions are made, starting construction in the late fall, as well as requiring the A&E firm to expedite the design and documentation phases of their work.

### **Section 3. Summary of Work Completed to Date**

Language was included in the Capital Bill which permitted House Corrections and Senate Institutions to meet off-session to review and approve a proposed site.

BGS solicited proposals for properties in Central Vermont and retained Vanasse Hangen Brutlin (VHB) to analyze the proposals received. A property adjacent to the former Berlin State Library site was identified as the preferred alternative. The committees were alerted to the possibility and an off-session meeting was contemplated in the interest of forwarding a proposal to the Joint Fiscal Committee for purchase approval, but ultimately it was deemed unnecessary as the BGS Commissioner had the authority to option the land if necessary.

Because of a lack of clarity in the guidance related to Institutes for Mental Disease from CMS, concerns were raised that there could be a negative impact from a Federal Financial Participation standpoint and so BGS has renewed and expanded the solicitation for prospective properties to include the whole of Northwest Vermont. Results of that search are expected October 18.

BGS is in the process of contracting with an Architecture and Engineering firm concurrent with the site search so that when the final site is determined, they will be able to move quickly to keep the process moving forward as rapidly as possible.

DMH has been working with the Department of Disabilities, Aging and Independent Living (DAIL) regarding the Rule Making process for the allowance of Emergency Involuntary Procedures at the new 16 bed facility. Final sign off from the DAIL leadership is expected in the coming weeks and then it will be filed with the Secretary of State and will be put out for public comment. After the public comment period, feedback will be incorporated into the proposed rule and then it will go before ICAR and finally in front of LCAR for final rule making.

