



SENATE FISCAL OFFICE  
REPORT

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**SPECIAL JOINT LEGISLATIVE COMMISSION ON  
THE WYATT DETENTION FACILITY**

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APRIL 25, 2012

## Joint Commission Members

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**Senator Elizabeth A. Crowley, Chair**

D-District 16  
(Central Falls, Pawtucket, Cumberland)

**Representative Agostinho F. Silva, Vice Chair**

D-District 56  
(Central Falls)

**Senator Dawson Tucker Hodgson**

R-District 35  
(East Greenwich, Warwick, North Kingstown)

**Representative Patricia F. Morgan**

R – District 26  
(Coventry, Warwick, West-Warwick)

**Ashbel T. Wall**

Director  
Rhode Island Department of Corrections

**Col. Steven G. O'Donnell**

Superintendent  
Rhode Island State Police

**Marie Twohey**

City Clerk  
City of Central Falls

*Representative James N. McLaughlin, (D-District 57, Cumberland, Central Falls), although not an official member of the Commission, took an active part in the Commission's meetings, representing his constituents in Central Falls.*

*Thank you to the staff of the City of Central Falls, the Central Falls Receiver's Office, the Department of Revenue, and the Wyatt Detention Facility for the information provided to the Commission and Commission staff.*

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## Executive Summary

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Joint Resolution 2011 S-0324 created a special legislative commission to examine the relationship between the City of Central Falls and the Wyatt Detention Facility known as the “Special Legislative Commission to Study the Wyatt Detention Facility.”

The Commission consisted of seven members, charged with making a comprehensive study of the Wyatt Detention Facility and its operations and finances. Members include: Senator Elizabeth Crowley, Chairman of the Commission; Representative Agostinho Silva, Vice-Chairman; Senator Dawson Hodgson; Representative Patricia Morgan; Ashbel T. Wall, Director, Department of Corrections; Colonel Steven O’Donnell, Superintendent of the Rhode Island State Police; and Marie Twohey, Central Falls City Clerk.

The Commission held six meetings and received testimony from Retired Judge Robert Flanders, State Receiver for the City of Central Falls; Steven Hartford, Esq., Chairman of the Board of the Wyatt Detention Center; Richard Kirby, Esq., Central Falls City Solicitor; Gayle Corrigan, Chief of Staff for the City’s Receiver; Ernest Almonte, Chief Executive Officer of the Almonte Group, LLC; Michael V. Fair, Chief Executive Officer of the Wyatt Detention Center; Terry Francassa and Margaret Lynch-Gadaleta, attorneys for the Wyatt Detention Center; Rosemary Booth Gallogly, Director, Department of Revenue; and Phillip St. Pierre, Treasurer of the Board of Directors for the Wyatt Detention Center.

The Wyatt Detention Facility (Wyatt) is operated by the Central Falls Detention Facility Corporation (CFDFC), a non-profit corporation created in 1991 and authorized by RIGL 45-54-1, which allowed municipalities to pursue economic development through the acquisition or construction of correctional facilities.

From 1994 through 2008, the City received a total of \$5.3 million in impact fees from the Wyatt facility; in addition, the City received payment of \$134,358 in 2009. However, since that time, the City has not received a payment, which is a contributing factor to the fiscal challenges facing the City.

Operations, bondholders, City of Central Falls and capital project needs are all competing for revenue generated by the facility. The Commission has received conflicting testimony as to whether the facility has the capacity to resume payments to the City, or whether the resumption of payments is advisable at this time.

- The Chief Executive Officer of the Corporation, contracted auditors and Wyatt Board legal counsel testified before the Commission arguing that the facility is not in a financial position to resume payments to the City. Testimony indicated that the Corporation’s two reserve accounts, which should contain \$3.0 million, have been depleted. This has caused the Corporation to be in violation of its Indenture Agreement with bondholders. Testimony also indicated that prior payments to the City were made from these reserve accounts, in violation of the Bond Indenture Agreement. The Corporation is in litigation with Cornell, the former operator of the facility for approximately \$600,000 in unpaid fees, and the Corporation needs over \$2.0 million in capital improvements.
- The State-appointed Central Falls Receiver and the Chairman of the Board of Directors for the Wyatt Detention Facility testified that payments to the City should be a priority of the facility. In fact, the Board of Directors of the facility has included approximately \$400,000 in impact fees and property taxes for the City in its FY2012 budget proposal. However, it is anticipated that bondholders will not ratify this budget proposal.

### MAJOR FINDINGS

- Since July 2010, the City of Central Falls has been operating under the oversight of a state-appointed receiver pursuant to RIGL 45-9-1.
- On September 22, 2011, the State Receiver filed a “Plan for the Adjustment of Debts of the City of Central Falls” with the United States Bankruptcy Court, District of Rhode Island. The City has a structural deficit of about \$6.1 million on an annual general fund budget of \$16.4 million (27.3 percent).
- In the enabling legislation the General Assembly envisioned the Wyatt as an economic engine for the City; however, it did not expressly provide for the payment of impact fees from Wyatt to the City of Central Falls. The indenture agreement also does not provide for the payment of impact fees to the City.
- From 1994 through 2008, the City received a total of \$5.3 million in impact fees from the Wyatt facility; and in 2009, the City received payment of \$134,358. However, since that time, the City has not received a payment, which is a contributing factor to the fiscal challenges facing the City.
- The Wyatt facility experienced a significant decline in revenue that began in 2008 and carried into 2009. The Immigration and Customs Enforcement (ICE) arm of the federal government, which had contracted for bed space with the Corporation, reduced its use of the facility in the latter months of 2008, and finally removed its detainees altogether (153 at the time) on December 14, 2008.
- The Corporation has failed to maintain Reserve Accounts specified in the Indenture of Trust Agreement between the Corporation and the Trustee.
- The Corporation is facing significant and long overdue capital improvements to the physical plant, and facing significant accounts payable accruals relating to operating and maintenance expenses. Such had begun accruing in 2007 and 2008. However, capital improvement and other funds were not available to address such needs.

### RECOMMENDATIONS

The recommendations are intended to help provide a sustainable revenue stream for the City, while fulfilling bondholder obligations, and adequately supporting the operations and infrastructure at the facility to ensure long-term financial success. Based on the testimony received and the ensuing discussions among the Commission members, the following recommendations were identified:

1. The Commission urges the Board of Directors of the Wyatt Detention Center to conduct a forensic audit, with particular focus on the years preceding 2010. The Commission believes, based on the testimony it has received, that there is evidence of prior mismanagement, and that the potential benefits of such an audit far outweigh the costs. The facility must regain a solid reputation within the corrections industry as well as with local residents if it is to move forward and grow.
2. The Commission requests that the Board work with the state Department of Revenue to investigate the potential of refinancing the 2005 bond issue. While initial discussions have not borne fruit, the Commission believes there may be alternatives that may include a State role to reduce interest rates, therefore freeing up debt service funds which could be directed to the City of Central Falls.
3. The Commission requests that the Board investigate the subpar work on the 2005 facility addition and investigate whether proceeds from a performance bond supplied by the contractor would cover the necessary repairs estimated to exceed over \$2.0 million.

4. If the recommendations above are not seriously considered or pursued, the Commission believes serious consideration should be given to developing a formal Payment in Lieu of Taxes (PILOT) agreement with the City.
5. The Board should also consider sale of the facility. The City would receive property tax revenue from the facility, while relieving itself from the burden of future ownership of the facility.

### Key Issues

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The founders of the Corporation envisioned the detention facility as an economic engine for the City of Central Falls, and until 2009, the City received impact fees from the Corporation. However, since that time, fiscal issues at the facility have prevented it from making a payment to the City. The Commission has received conflicting testimony as to whether or not the facility is now in a position to resume impact payments to the City. The Chief Executive Officer of the Corporation, contracted auditors and Wyatt Board legal counsel testified before the Commission that the facility is not in a financial position to resume payments to the City. Testimony indicated that the Corporation's two reserve accounts, which should contain \$3.0 million, have been depleted. This has caused the Corporation to be in violation of its Indenture Agreement with bondholders. Testimony also indicated that prior payments to the City were made from these reserve accounts, in violation of the Bond Indenture Agreement. The Corporation is in litigation with Cornell, the former operator of the facility for approximately \$600,000 in unpaid fees, and the Corporation needs over \$2.0 million in capital improvements.

State-appointed Central Falls Receiver and the Chairman of the Board of Directors for the Wyatt Detention Facility testified that payments to the City should be a priority of the facility. In fact, the Board of Directors of the facility has included approximately \$400,000 in impact fees and property taxes for the City in its FY2012 budget proposal. However, it is anticipated that bondholders will not ratify this budget proposal.

Testimony from the contracted auditor suggested that the Board conduct a forensic audit. During his follow-up assessment of the facility, he discovered issues that led him to believe that the past administration may have engaged in financial fraud. He stated that if a forensic audit uncovered evidence of past wrongdoing, the Corporation may be able to recoup money from insurance policies. However, a forensic audit would cost the Corporation more than \$125,000. The Chairman of the Board of the Corporation indicated that the Board may be reluctant to spend more money to review past problems at the facility, and hoped that the contracted auditor would be able to shed more light on this issue in upcoming meetings.



## History of Issues

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### WYATT DETENTION FACILITY

The Central Falls Detention Facility Corporation (CFDFC) is a special purpose corporation established pursuant to Rhode Island General Laws to address the need for additional criminal detention bed space and to promote economic development for the City and the State. The Corporation was established as an instrumentality and agency of the City of Central Falls, with separate legal existence from the City. The Corporation is governed by a 5-member Board of Directors, appointed by the Mayor of Central Falls. However, the State appointed a Receiver as of July 16, 2010, and the Receiver appointed a new 5-member board.

In November 1993, Wyatt opened with a capacity of 302 beds. In December 1993, Cornell Corrections commenced operations of the facility as a private operator under contract with the CFDFC. While Cornell served as the operator for Wyatt, CFDFC hired a “contract monitor” AVCORR, to work as a liaison with Cornell and the CFDFC. The contract monitor conducted the external business of CFDFC, including without limitation, contracting on behalf of the CFDFC with outside vendors and overseeing payments and reimbursements related to such vendors. The contract monitor had no real role in the actual operations of Wyatt.

By December 2001, demand for detainee space by the federal government had increased significantly due in part to national security issues and the subsequent response of law enforcement to the destruction of the World Trade Center Towers in New York City on September 11, 2001.

In 2005, bondholders invested \$106.7 million in the Wyatt Detention Facility, based on state law and a contract (Indenture of Trust) with the Central Falls Detention Facility Corporation (Corporation). These funds were to be used to refinance existing debt, provide the necessary funds to construct a 474-bed addition to the facility, pay interest for a two year period, establish a debt service reserve fund, and pay for the costs of issuance. The \$47.0 million expansion opened in December of 2006.

### CURRENT WYATT CONDITIONS

In 2006, the Corporation ceased making full payments to Cornell. In 2007, the Corporation terminated its management agreement with Cornell and transitioned the day-to-day management of the facility to an Executive Director. The \$3.5 million owed to Cornell was converted into debt. From 2007 through 2009, the Corporation paid the City \$1.1 million in impact fees, but during the same period incurred losses of \$6.2 million in addition to the indebtedness of \$3.5 million to Cornell.

In the latter months of 2008, the Immigration and Customs Enforcement (ICE) arm of the federal government, which had contracted for bed space with the Corporation, reduced its use of the facility, and finally removed its detainees altogether (153 at the time) on December 14, 2008. This was a result of the death of a foreign national in Wyatt custody, as well as a claim by ICE that Wyatt did not comply with ICE correction standards, that Wyatt had not complied with numerous ICE contract provisions, and that Wyatt had not complied with its own rules and policies.

ICE cancelled its contract with the Corporation in March 2009, which at the time represented approximately 25.0 percent of the Corporation’s revenues. This resulted in an annual loss in revenue to the CFDFC of approximately \$5.7 million. However, even without the loss of the ICE contract, the corporation would not have met its required coverage ratio; in 2008 the Corporation exceeded budget by \$700,000, and a shortfall of only \$357,000 in revenue can be attributed to the loss of the ICE contract. By

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late 2009, the corporation was in financial distress, in breach of financial covenants and a “going concern” risk. At this time, it appears that the bondholders were not aware of the extent of the problems.

Since 2010, the facility, under the leadership of Executive Director Michael Fair, has been effective in marketing the facility, and population counts and revenues have increased without ICE and without any per diem rate increased. However, the Corporation still maintains a deficit of approximately \$8.0 million and reserve funds, which were depleted in to pay impact fees to the City and other operating expenses, have not been replenished. Until these matters are resolved, the Corporation is in default of its agreement with the bondholders.

State law provides that the state “will not limit or alter the rights vested in the corporation to fulfill the terms of any agreements made with the holders “until the bonds are paid off (RIGL 45-54-21), and that the facility may be transferred to and become the property of the city when the bonds are paid off (RIGL 45-54-23). The contemplated stakeholders to be compensated would be the operator, the bondholders, local vendors and employees of the City of Central Falls, and the City of Central Falls itself in terms of receiving impact fees in lieu of taxes for serving as a host community to the prison facility. Ownership of the facility will revert to the City of Central Falls in 2035, upon completion of the bond payments.

- Financial condition of the Wyatt - The facility has incurred negative operating results for the past 4 years as follows:
  - 2007 – (\$1,440,099)
  - 2008 – (\$2,175,200)
  - 2009 – (\$2,638,409)
  - 2010 – (\$1,755,456)

### **CITY OF CENTRAL FALLS**

Central Falls, with an area of 1.29 square miles, is the smallest and most densely populated municipality in Rhode Island. The 2010 census indicates Central Falls has a population of 19,376, an increase of 448, or 2.4 percent over the 2000 census. The breakdown by ethnicity is as follows: 60.3 percent Latino, 14.2 percent Caucasian, 10.1 percent black, and 7.2 percent other. The median household income is \$23,687, compared to \$48,940 for Providence County and \$51,359 for the United States. Since 1992, the Central Falls School Department has been entirely funded by the State.

Since July 2010, the City of Central Falls has been operating under the oversight of a state-appointed receiver pursuant to RIGL 45-9-1. During the first 13 months, little progress was made to significantly improve the financial condition of the City. In fact, the estimated deficit did not change since the deficits were identified in July 2010. The Receiver indicated that the deficit would continue to grow unless remedial action was taken.

For FY2012, the Governor, in concert with the director of the state Department of Revenue and the state-appointed receiver, proposed to resolve the current-year and budget-year deficits with state general revenues, which included having the State making the ARC payment for the city’s pension on its behalf. However, there did not appear to be a long-term plan to resolve the City’s finances.

On Monday, August 1, 2011, the state-appointed receiver, Robert Flanders, filed for Chapter 9 bankruptcy in federal bankruptcy court. The filing allowed implementation of proposed changes to pensions and retiree and active employee health plans effective immediately, including 20.0 percent co-shares for health insurance premiums and aggregate savings of at least \$1.4 million from reduced pension payments to the retirees of the Central Falls Police and Fire Departments.

**WYATT'S PAYMENTS TO THE CITY**

From 1994 through 2008, the City received a total of \$5.3 million in impact fees from the Wyatt facility; and in 2009, the City received payment of \$134,358. However, since that time, the City has not received a payment, which is a contributing factor to the fiscal challenges facing the City.

The Corporation paid these fees to the City by depleting reserve funds and incurring operating losses of approximately \$6.2 million from 2007 through 2009.

<b>Impact Fees Paid to Central Falls</b>	
1994	\$210,000
1995	250,000
1996	306,890
1997	414,865
1998	425,200
1999	447,243
2000	463,635
2001	459,987
2002	345,823
2003	77,113
2004	262,337
2005	282,747
2006	334,155
2007	413,170
2008	558,607
2009	134,358
<b>Total</b>	<b>\$5,386,130</b>

*Source: Wyatt Detention Facility*

**BARRIERS TO THE RESUMPTION OF PAYMENTS**

- In the enabling legislation, the General Assembly envisioned the Wyatt as an economic engine for the City; however, it did not expressly provide for the payment of impact fees from Wyatt to the City of Central Falls. The indenture agreement also does not provide for the payment of impact fees to the City.
- Indenture of Trust (Indenture) expressly prohibits the payment of impact fees to the City until other obligations under the Indenture have been satisfied. The Indenture provides for a priority order for the disbursement of revenues:
  1. Into the Operation and Maintenance Fund – the amounts budgeted by the Corporation for the operation and maintenance costs of the facility.
  2. Into the Debt Service Fund – an amount equal to one-sixth of the amount of interest due and payable on the bonds on the next semi-annual interest payment date, plus an amount equal to any shortfall previously required to be deposited into this fund;
  3. Into the Debt Service Fund – an amount equal to one-sixth of the principal amount of the bonds due and payable on the next semi-annual principal payment date, plus an amount equal to any shortfall previously required to be deposited into this fund; and

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4. Into the Reserve fund – the amount, if any, needed to increase the balance in that fund to the Reserve Fund Requirement

On a semi-annual basis, the following payments and transfers will be made from any remaining revenues in the following order of priority:

5. Into the Project Operator Per Diem Fund – the amount payable to the Project Operator (that is, any private contractor retained by the Corporation to operate the facility) on each February 1 and August 1;
  6. Into the Contingency Reserve Fund – 50.0 percent of amounts remaining in the Revenue Fund, after making all of the foregoing deposits, and only until the Contingency Reserve Fund Requirement is met; and
  7. Into the Operational Reserve Fund – any and all remaining amounts.
- The Indenture provides that Local Impact Fees which are defined to mean “any payments made by the Corporation to the City shall be subordinate to the payment of debt service on the bonds.” The Indenture also makes clear that Local Impact Fees are to be paid, if at all, out of the Operating Reserve Fund, which as noted above sits at the bottom of the payment priority list, and only gets funded after all other payments and obligations have been satisfied.
  - Financial condition of the Wyatt - The facility has incurred negative operating results for the past 4 years.
  - The bondholders are reluctant to make payments to the City while the Corporation is in default under the terms of the Indenture and the Corporations negative operating results.

## Special Joint Legislative Commission on the Wyatt Detention Facility Meetings

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The Joint Commission held six hearings between September 2011 and February 2012. The hearing dates and summaries for each meeting are as follows:

### **SUMMARY OF FIRST MEETING - SEPTEMBER 27, 2011:**

The first meeting of the Special Joint Legislative Commission on the Wyatt Detention Facility was held on September 27, 2011.

Commission members in attendance included: Senator Elizabeth Crowley, Chairman of the Commission; Representative Agostinho Silva; Senator Dawson Hodgson; Ashbel T. Wall, Director, Department of Corrections; Major Stephen Bannon, representing Colonel Steven O'Donnell, Superintendent of the Rhode Island State Police; and Marie Twohey, Central Falls City Clerk. Representative Patricia Morgan was absent. Laurie Brayton of the Senate Fiscal Office provided staff support for the Commission.

Binders were distributed to members containing a copy of the resolution that established the Commission, a 5-Year budget projection for Central Falls from the State Receiver, an assessment of the Wyatt Detention Facility performed by Ernest Almonte, and financial information and annual reports from the Wyatt Detention Center from FY2009 and FY2010.

The Commission received testimony from the following speakers:

Retired Judge Robert Flanders, State Receiver for the City of Central Falls, stated that the purpose of establishing the Detention Center was to help with the City's economic development – to serve as an economic engine and a source of revenue for the City. The Legislature did not provide expressly for the payment of impact fees in the enabling legislation of Wyatt facility. The problem is restoring a cash flow from the facility to the City, which ceased in 2009, while not violating covenants of the 2005 bonds issued to U.S. Bank National Association. Payments from the Detention Facility have not been included in the City's five-year budget forecast. He believes that the best use of future payments from the facility would be for capital projects (which has now changed to pension supplements).

Steven Hartford, Esq., Chairman of the Board of the Wyatt Detention Center, testified that the Facility receives approximately \$100/day/prisoner and currently has 650 prisoners, which is near full capacity (740 beds). He stated that the Facility has a sizable debt reserve fund. The Board has engaged Michael Geezil, for \$1 per month, to complete a financial analysis.

Richard Kirby, Esq., was hired by Judge Flanders in August of 2011 to act as City Solicitor and to research the Wyatt bond. Mr. Kirby handed out a packet of information to the Commission which included the Municipal Detention Facilities Corporation Act, 2005 Bond Offering Prospectus, Indenture of Trust, Continuing Disclosure Agreement, the Corporation's by-laws, MVF Consulting Report of 2009, and the Receiver's Correspondence to the Corporation requesting financial information.

Gayle Corrigan, Chief of Staff for the City's Receiver, handed out copies of the Receiver's 5-Year Plan and résumés of Wyatt Board of Director Members. The City is seeking reconciliation of impact fees from the Corporation. Rescue services used by the inmates are paid by the city of residence of the inmate. Other services, such as snow plowing, which is less than \$20,000 per year, are billed to Wyatt. The City expects to receive payments on a portion of the property in FY2013, including \$198,000 in back property taxes and \$46,000 per year on-going. However, the Corporation disputes that this property is taxable under RIGL 45-54-7 which states that the corporation is not required to pay any taxes or assessments upon the projects or upon any property acquired since the work performed by the Corporation constitutes the

performance of essential governmental functions. The City contends that since this property is leased by the Corporation it is not technically “acquired.”

### **SUMMARY OF SECOND MEETING - NOVEMBER 21, 2011:**

The second meeting of the Special Joint Legislative Commission on the Wyatt Detention Facility was held on November 21, 2011.

Commission members in attendance included: Senator Elizabeth Crowley, Chairman of the Commission; Representative Agostinho Silva; Senator Dawson Hodgson; Representative Patricia Morgan; Ashbel T. Wall, Director, Department of Corrections; Colonel Steven O’Donnell, Superintendent of the Rhode Island State Police; and Marie Twohey, Central Falls City Clerk. Representative James McLaughlin was also in attendance. Laurie Brayton of the Senate Fiscal Office provided staff support for the Commission.

The Commission received testimony from the following speakers:

Ernest Almonte, Chief Executive Officer of the Almonte Group, LLC, briefed the Commission on a report he recently authored on the Wyatt Facility. This was a follow up assessment to a report prepared by MVF Consulting (Michael Fair) in 2009.

- Mr. Almonte stated that although the Wyatt Facility has made major improvements since the MVF report, he recommends a forensic audit be performed to uncover possible fraud at the facility. This would be a decision made by either the Board of Directors or the bondholders. If it can be proven that there was mismanagement or potential fraud, the Facility would be able to collect from the insurance company.
- He stated that, in his opinion, it is not in the best interest of bondholders or the City of Central Falls for the Facility to resume payments to the City right now, since there are questions as to whether the Facility can continue to operate for the foreseeable future due to its current debt and depleted reserve funds. It is important to restore the reserve accounts first. In twenty years, when the bonds are paid off, the City will own the facility. There is also the issue of \$670,000 owed to the previous operator of the Facility (Cornel). Refinancing of the bonds may lower the payments and interest rate; however, bonds are not very marketable because Wyatt runs a deficit every year.
- Mr. Almonte indicated in his testimony that the current management has done an excellent job of restoring the reputation of Wyatt to outside sources. Wyatt was recently re-accredited for 3 years. It has never lost its accreditation.

Michael V. Fair, Chief Executive Officer of the Wyatt Detention Center since January of 2010, and author of the first Wyatt Assessment in 2009, told the panel that resuming payments to the City of Central Falls may be difficult. The reasons given were:

- The facility incurred deficits of \$10.0 million between 2006 and 2009;
- Two funds, one reserved for bond payments which should have a balance of \$2.0 million and one to make impact payments to the City, which should have a balance of \$1.0 million, have been depleted; and
- The facility needs \$2.0 million in capital improvements due to faulty construction, which was completed three years ago.
- As of November 21, 2011, the inmate population was 618; the facility had over 700 prisoners at the beginning of the year; the annual average for this year is 658; the budget is based on a prison population of 653.

The Commission discussed the testimony and indicated its intention to make recommendations to leadership by the middle of January.

**SUMMARY OF THIRD MEETING - DECEMBER 12, 2011:**

The third meeting of the Special Joint Legislative Commission on the Wyatt Detention Facility was held on December 12, 2011.

Commission members in attendance included: Senator Elizabeth Crowley, Chairman of the Commission; Senator Dawson Hodgson; Representative Patricia Morgan; Ashbel T. Wall, Director, Department of Corrections; Colonel Steven O'Donnell, Superintendent of the Rhode Island State Police; and Marie Twohey, Central Falls City Clerk. Representative Agostinho Silva was absent. Representative James McLaughlin was also in attendance. Laurie Brayton of the Senate Fiscal Office provided staff support for the Commission.

The Commission received testimony from the following speakers:

Terry Francassa and Margaret Lynch-Gadaleta, attorneys for both the Wyatt Center Board and the Chief Executive Officer, provided the following testimony:

- The Board of the Directors for the Wyatt Facility has not voted on whether to conduct a forensic audit. In a follow-up assessment to a report which was prepared by MVF Consulting, Ernest Almonte stated that although major improvements have been made since the MVF report, he recommends a forensic audit be performed to uncover possible fraud at the facility. The Board is currently reviewing this report, and will meet with Mr. Almonte at its January 2012 meeting.
- The attorneys stated that the Almonte report has been presented to the State Police, the Office of the Attorney General, and the facility's insurance company.
- Mr. Francassa stated that the magnitude of repairs (\$2.0 million) needed to the portion of the facility constructed in 2007 took the Board by surprise, and he is looking into a potential recovery from the company that issued the insurance performance bond.
- A restructuring of debt could decrease costs; however, the Corporation's interest rate could be higher than 8.0 percent, as these would be non-rated bonds and the Corporation does not have taxing authority. It was suggested that the State may be able to refinance the bonds on the Corporation's behalf.
- Wyatt is still in violation of its Indenture Agreement with bondholders because its reserves are not completely funded.

Phillip St. Pierre, Treasurer of the Board of Directors for the Wyatt Detention Center, who has been on the Board since November 2010, provided the following testimony:

- A forensic audit would cost a minimum of \$125,000, so the Board is deliberating if this expense is necessary. The cost of the forensic audit would be the responsibility of the Corporation. Several members of the Commission strongly urged the Board to support funding for a forensic audit.
- The Board plans to include funding for Central Falls in its 2012 budget; however, the final decision to include this funding would be determined by the bondholders.

The next meeting of the Commission will be held on Tuesday, January 17, 2012, at which time the Commission will discuss testimony and formulate recommendations to present to leadership.

### **SUMMARY OF FOURTH MEETING - JANUARY 17, 2012**

The fourth meeting of the Special Joint Legislative Commission on the Wyatt Detention Facility was held on January 17, 2012.

Commission members in attendance included: Senator Elizabeth Crowley, Chairman of the Commission; Representative Agostinho Silva; Senator Dawson Hodgson; Representative Patricia Morgan; Ashbel T. Wall, Director, Department of Corrections; and Marie Twohey, Central Falls City Clerk. Colonel Steven O'Donnell, Superintendent of the Rhode Island State Police; was absent. Representative James McLaughlin was also in attendance. Laurie Brayton of the Senate Fiscal Office provided staff support for the Commission.

The Commission discussed several recommendations they should consider putting forward, including:

1. The Commission should urge the Board of Directors of the Wyatt Detention Center to conduct a forensic audit, with particular focus on the years preceding 2010. The Commission believes, based on the testimony it has received, that there is evidence of prior mismanagement, and that the potential benefits of such an audit far outweigh the costs. The facility must regain a solid reputation within the corrections industry if it is to move forward and grow.
2. The Commission indicated that the Board investigate the possibility of refinancing the 2005 bond issue, with the backing of the State. The Commission believes that State-backed bonds could be issued at a lower interest rate; therefore freeing up funds which could be directed to the City of Central Falls. The Commission would also like the Board to explore a renegotiation with current bondholders for a lower interest rate.
3. The Commission discussed that the Board investigate the subpar work on the facility addition and investigate whether proceeds from a performance bond supplied by the contractor would cover the necessary repairs cost of over \$2.0 million.
4. The Commission also discussed whether it should consider legislation to require a Payment in Lieu of Taxes (PILOT) from the Corporation.

The Commission agreed to hold two additional meetings. The Commissioners would like to hear from the Director of the Department of Revenue on the possibility of refinancing Wyatt debt through the State. The second meeting would be to receive testimony and recommendations from Gayle Corrigan, Chief of Staff to the State-appointed Receiver; Richard Kirby, Central Falls City Solicitor; and Steven Hartford, Chairman of the Board of the Wyatt Detention Facility.



**SUMMARY OF FIFTH MEETING – FEBRUARY 9, 2012**

The fifth meeting of the Special Joint Legislative Commission on the Wyatt Detention Facility was held on Thursday, February 9, 2012.

Commission members in attendance included: Senator Elizabeth Crowley, Chairman of the Commission Representative Agostinho Silva, Deputy Chairman; and Marie Twohey, Central Falls City Clerk. Laurie Brayton of the Senate Fiscal Office provided staff support for the Commission.

The Commission received testimony from the following speakers:

Gayle Corrigan, Chief of Staff to the State-appointed Receiver; Richard Kirby, Central Falls City Solicitor; and Stephen Hartford, Chairman of the Wyatt Detention Facility Board of Directors.

Gayle Corrigan and Richard Kirby provided the following testimony:

- If the State were to guarantee the refinancing of the Wyatt Detention Facility's \$106.0 million bonds, the facility could save as much as \$3.0 million per year of its annual \$8.8 million bond payment. This would require amending the legislation that established Wyatt, creating a state corporation and dismantling the municipal corporation.
- The State could either create a quasi-public corporation or use an existing financing vehicle in state government which would use the facility's operating revenue to finance the new borrowing, requiring the state to pay the debt in the event Wyatt was unable to make the payments.
- The facility generates between \$20.0 and \$24.0 million in revenue; debt service is \$8.8 million and operations are approximately \$18.0 million. This revenue stream could sustain the bonds at a lower interest rate; allowing the facility to resume payments to the City.
- Without some kind of refinancing of Wyatt's debt, the facility will eventually be forced into bankruptcy; the onerous debt service payments have resulted in deficits of between \$1.4 million and \$2.6 million during the past 4 years.
- The Wyatt rents a certain piece of property from a private owner (the "Fink" property). The property owners have not paid taxes on this property stating a clause in the lease agreement with Wyatt that this property would be tax exempt; however, the City contends that a private property owner does not get exemption status by entering into an agreement with a non-profit. The property owners have not responded to a recent bill sent by the city for \$198,000 in back taxes. The City expects to receive these funds and \$40,000 annually going forward.
- If the State is unable to guarantee financing and negotiations with bondholders fail, sale of the institution to a private entity should be explored; however the facility would be hard to sell as it is over-leveraged.

Stephen Hartford provided the following testimony:

- The Board is exploring possible renegotiations of the debt terms with the bondholders, but formal talks have not begun.

The next meeting of the Commission will be held on Wednesday, February 15, 2012, at which time the Commission will receive testimony from Rosemary Booth Gallogly, Director of the Department of Revenue.

**SUMMARY OF THE SIXTH MEETING – FEBRUARY 15, 2012**

The sixth meeting of the Special Joint Legislative Commission on the Wyatt Detention Facility was held on Wednesday, February 15, 2012.

Commission members in attendance included: Senator Elizabeth Crowley, Chairman of the Commission; Representative Agostinho Silva, Deputy Chair; Senator Dawson Hodgson; Representative Patricia Morgan; Ashbel T. Wall, Director, Department of Corrections; Colonel Steven O'Donnell, Superintendent of the Rhode Island State Police; and Marie Twohey, Central Falls City Clerk. Representative James McLaughlin was also in attendance. Laurie Brayton of the Senate Fiscal Office provided staff support for the Commission.

Rosemary Booth Gallogly, Director of the Department of Revenue was invited by the Commission to explain possible assistance the state could provide to the Wyatt Detention Facility in terms of refinancing options. She provided four alternatives to the Commission.

1. A Kushner resolution, on the State's credit and subject to annual appropriation, saving approximately \$700,000 per year. There would be both a taxable bond issue on the previously refinanced portion of the bonds and a non-taxable portion to the bonds. This would not generate the savings needed to meet the financial requirements of the facility.
2. A State moral obligation bond, similar to the original financing of the facility through the Port Authority. This would not generated any savings until the final year of the refinancing (2036) due to the availability of the debt service reserve fund set up at the time of issuance.
3. A change in ownership to the State. This would need a legal review, and would be essentially the State buying the facility from the bondholders. This could save approximately \$1.0 million per year; however, the State would probably be adverse to floating bonds to refinance the Wyatt debt or taking over the facility
  - There is an upfront cost of approximately \$2.8 million "premium" or penalty fee for refinancing
  - The State would be responsible for \$109.0 million in additional debt during difficult economic times
  - The State just closed a medium security prison on the grounds of the ACI, and is not in the market for additional prison space
  - The State would not likely take the risk of the Wyatt defaulting on bond payments just so Central Falls can receive impact fees
4. The Commission should urge the Board of Directors and Wyatt management to meet with the facility's bondholders and negotiate ways to refinance its \$100.0 million debt, while making it clear to bondholders that the facility is in peril of closing due to the weight of the current debt service.
  - It is in the best interest of the bondholders to see the facility succeed, and the best solution to the Wyatt's financial situation would be to get the bondholders to agree to restructure the 7.25 percent interest rate on the bonds to a rate closer to 4.0 percent.

Ms. Booth Gallogly also suggested that if the Board of Directors decides to conduct a forensic audit, it should be focused on a couple of key areas, such as faulty construction or operations. A full audit could eventually involve lawyers and accountants and cost more money than the facility would originally budget. She cited examples such as the Rhode Island Resource Recovery audit, which cost \$1.0 million and the Beacon Mutual Insurance Company audit, which costs \$7.0 million.

## Previous Assessments of the Wyatt Detention Facility

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### **ASSESSMENT OF THE DONALD WYATT DETENTION FACILITY PREPARED FOR THE CENTRAL FALLS DETENTION FACILITY BY MVF CONSULTING, LLC (MVF REPORT)**

In June 2009, the Central Falls Detention Facility Corporation (CFDFC), at the request of the majority bondholder, Oppenheimer Funds, commissioned a report, to contain recommendations, on financial conditions at the Facility. The bondholders were concerned that the Indenture of Trust Agreement between the bondholders and the Corporation had been violated, as the agreement requires that the Corporation maintain a debt coverage ratio of 1.20 percent. The debt coverage ratio had slipped to 1.13 percent.

*[The debt coverage ratio is the amount of cash flow available to meet annual interest and principal payments on debt. In general, it is calculated as Net Operating Income/Total Debt Service.]*

The MVF report indicated that the economics of the facility, which caused the Corporation's default on the debt coverage ratio requirement, included decreased revenues, significant debt burdens, and significant professional service fees and impact fee obligations.

#### **Major Report Findings**

There was a significant decline in revenue that began in 2008 and carried into 2009. The Immigration and Customs Enforcement (ICE) arm of the federal government, which had contracted for bed space with the Corporation, reduced its use of the facility in the latter months of 2008, and finally removed its detainees altogether (153 at the time) on December 14, 2008. ICE cancelled its contract with the Corporation in March 2009, which at the time represented approximately 25.0 percent of the Corporation's revenues. This resulted in an annual loss in revenue to the CFDFC of approximately \$5.7 million. However, even without the loss of the ICE contract, the Corporation would not have met its required coverage ratio; in 2008 the Corporation exceeded budget by \$700,000, and a shortfall of only \$357,000 in revenue can be attributed to the loss of the ICE contract. City impact fees, public relations, legal and consulting fees totaled \$520,000 of the \$700,000 variance and appear to have been unrealistically budgeted.

According to the report, the Facility has a "damaged goods" reputation that will serve as an obstacle in its path to fill beds with detainees or inmates from other jurisdictions until such time as the market is convinced that real and substantive change has been made.

According to the report, the facility operations conform to generally accepted institution standards and practices for correctional institutions and jails; however, there is no true executive at the administrative level to provide the organization with leadership, management and accountability. The relationship between the facility's management and the Board of Directors of the Corporation appears to be contentious; the facility management rarely communicates with the Board, and decisions are often made at the local level without notice to the Board. Many of these decisions have a direct impact on the fiscal well-being of the CFDFC and its potential for success. There have been numerous changes in the organizational and management structure of the past two years contributing to confusion and role conflicts.

According to the report, incidences of noncompliance with state law were uncovered, i.e., the 2008 Annual Report for the Corporation was not filed nor was the annual financial audit of the Corporation prepared and/or filed in accordance with state law.

#### **Recommendations**

MVF Consulting states that CFDFC cannot remain solvent unless additional revenue sources are developed to make up at least some of the shortfall resulting from the loss of revenue from ICE.

The pending civil lawsuits and criminal investigations surrounding the death of a foreign national need to be resolved so that the facility can extricate itself from the media spotlight and the resultant bad publicity that accompanies it.

The Board should hire an executive officer or a professional private operator to provide for the operations of the facility, which can speak for the Board, implement the Board's strategic plan and interact with the various stakeholders and external agencies/organizations, as well as manage the warden and the fiscal officer.

### **FOLLOW UP ASSESSMENT OF THE DONALD WYATT DETENTION FACILITY PREPARED BY DISANTO PRIEST & CO.**

Commissioned by bondholders in 2011 as a follow up to the MVF report, the DiSanto Priest assessment, authored by former Rhode Island Auditor General Ernest Almonte, reports that the current management, which took over the facility in 2010, has made significant progress in addressing deficiencies reported in the MVF report. However, the Corporation is still in violation of its Indenture Agreement with bondholders in terms of maintaining certain reserve accounts and the necessity of capital improvements to the facility.

#### ***Major Report Findings***

The Almonte report cites potential breaches of several of the bond covenants including:

- The Corporation failed to prepare annual budgets, quarterly financial statements, monthly average daily population statistics, Fiscal Year Summary and other reports by specified times and to provide such reports to any Significant Owner.
- The Corporation did not meet a Coverage Ratio Requirement in 2008 and 2009.
- In 2006, the Corporation ceased making full payments to Cornell to run the facility, and by mid-2007, the Corporation owed Cornell \$3.9 million. Of this amount, \$3.5 million was converted to additional debt without informing the bondholders. Under terms of the Indenture Agreement, only debt as permitted in the Indenture or to refund all outstanding bonds are allowed, unless the Majority Owner approves any additional debt in writing.
- Preservation of the Project: The Corporation is required to keep the project in good repair, working order and safe condition and to make, or cause to be made, all needed and proper repairs, renewals, replacements, betterments and improvements, thereto; and to pay all operating costs, utility charges and other costs and expenses arising out of ownership, possession, use or operating of the Project.

Beginning in 2007, it appears that payment of necessary operating costs was being neglected while additional indebtedness was being incurred, and that impact fee payments were being made while net income losses were being incurred in the millions. During this time, it appeared that the project was not only being neglected, but was beginning to deteriorate.

By 2010, the Corporation was facing significant and long overdue capital improvements to the physical plant, and facing significant accounts payable accruals relating to operating and maintenance expenses. Such had begun accruing in 2007 and 2008. However, capital improvement and other funds were not available to address such needs.

- Additional indebtedness was being paid at the rate of \$85,000 per month;
  - Impact fees of \$413,170 were being paid to the City in 2007;
  - Impact fees of \$558,607 were being paid to the City in 2008;

- Impact fees of \$134,358 were being paid to the City in early 2009; and
- The Corporation was experiencing net income losses aggregating to over \$6.2 million in the same years (2007 through 2009) and knew it was a “going concern” risk as early as 2008 (although such was not disclosed to the bondholders).
- By 2010, the Corporation no longer had meaningful cash reserves, and:
  - The Corporation was in need of over \$940,000 for overdue and necessary physical plant maintenance/repairs/needs;
  - The Corporation was in need of over \$1.3 million over the next two years to address physical plant maintenance/repairs/needs; and
  - The Corporation, with operating and maintenance accounts payable having accrued for so long, was no longer able to transact business with outside vendors in a normal commercial manner, no longer able to operate on credit and no longer able to access lines of credit (even if the bondholders consented).

### ***Recommendations***

The Almonte report recommends a forensic and legal review to follow up on potential areas for a claim on the director and key employee insurance policies and other potential legal issues relating to the 3-4 year period preceding mid-2009.

1. Potential Conflict-of-Interest Issues
2. Potential Breaches of State Law
3. Potential Breaches of Bond Covenants, including Failure to Preserve the Project
4. Potential Self-Dealing
5. Potential Gross Negligence
6. Potential Lack of Oversight and Accountability
7. Potentially Misleading Bondholders of the Fiscal Health of their Investment
8. Potentially Misleading the City on “Impact Fee” rights
9. Lack of disclosure and Non-compliant Accounting and Reporting Practices
10. Violations (Real and Potential) of Inter-Governmental Agreements
11. Potentially Incurring Prohibited Indebtedness and Failing to Preserve the Project
12. Non-Compliance with Procurement Policies

Almonte: “We are concerned with the fiscal and political situation in the host City of Central Falls. The board appointment power and the fiscal difficulties of the City could have a negative impact on the operation of the Wyatt Detention Facility if the fiscal needs of the City overpower the vision, mission and fiscal sustainability of the Facility.”



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