

MINUTES
Legislative Finance Committee
Virtual Meeting
December 3-4 & 8-9, 2020

Thursday, December 3th

The following members and designees participated virtually on Thursday December 3, 2020: Chairman Roberto “Bobby” Gonzales; Vice Chairwoman Patricia A. Lundstrom; Senators Clemente Sanchez, Steven P. Neville, William F. Burt, George K. Muñoz, Mary Kay Papen, Gay G. Kernan, and Pete Campos; and Representatives Javier Martinez, Phelps Anderson, Rodolpho “Rudy” Martinez, Gail Armstrong, Candie G. Sweetser, Andres G. Romero, and Randal S. Crowder. Guest legislators: Senator John M. Sapien and Representatives Cathrynn N. Brown, Jack Chatfield, Joy Garratt, Harry Garcia, Tara L. Lujan, Antonio Maestas, Marian Matthews, and Nathan P. Small.

Early Childhood Education and Care Department (611). Elizabeth Groginsky, secretary of the Early Childhood Education and Care Department (ECECD), presented the landscape of early childhood in New Mexico, including how many early childhood professionals work in New Mexico, children and family demographics, and annual births. The secretary then presented the updated department organizational chart and strategic priorities. For FY22, ECECD requested \$401.4 million, of which \$183.6 million was from the general fund. In the Support and Intervention Program, the secretary reported the home-visiting program established a public-private working group to plan expansion of Centennial Home Visiting (plan to be completed in April) and evidence-based models currently offered in nine of the state's home-visiting organizations. In the Early Childhood Education and Care Program highlights, the request included emergency regulations to expand eligibility and reduce administrative burden; maintained services to support vulnerable families, children, and essential workers; comprehensive Covid-19-safe practices, protocols, and supports; waivers for parent copayments, and differential payments to providers. The secretary presented the department’s request for allocation of the early childhood education and care trust fund, including \$10 million to replace requested reduction of general fund revenue for prekindergarten, \$3 million for workforce pay, \$2 million to expand prekindergarten, \$2 million for IT, \$2 million to expand home-visiting services, and \$1 million to expand the Families First Program. Representative Crowder asked the department to review any federal CARES revenue the department received and the secretary responded ECECD received \$29.4 million, of which about \$2.9 million was unspent as of November 2020.

Children, Youth and Families Department (690). Secretary Brian Blalock presented CYFD’s FY22 appropriation request. The secretary highlighted the proposed budget aligned spending with the department’s strategic plan to create more appropriate placements, strengthen prevention, optimize use of data, and improve accountability and staffing. Budget considerations also focused supporting core child wellbeing initiatives and improving the department’s finance operations to leverage more federal funding. The secretary explained the department’s legal obligations under the *Kevin S.* settlement agreement. To avoid a long and ongoing consent decree, the department entered into a contractual settlement that requires structural reform of the child welfare system, including least restrictive placements, trauma responsive services, and community-based behavioral health services.

The proposed budget for the Behavioral Health Services program focuses on rebuilding community-based services. The secretary reported the program had already made significant progress, with a 50 percent increase in infant mental health services, 100 percent increase in wraparound services, and a reduction in the number of youth placed out of state. During the pandemic, telehealth services have expanded and the department rolled out a phone application for mental health services. The proposal also includes funding for expanded trauma responsive services and trainings.

Annamarie Luna, Protective Services director, presented the program's priorities, including increasing kinship placements and reducing out-of-state placements. The program has reduced its investigation backlog from 5,000, at the end of 2018, to 700 in November 2020 and its new Indian Child Welfare Act unit started accepting cases in January 2020. During the pandemic, the program has focused on communications and is using predictive analytics to reach out to at-risk families. Federal Covid-19 relief funding has been used to provide monthly supplemental payments to foster families and transition-age youth. The program is preparing for the launch of its new differential response service in FY22. This service will connect at-risk families with preventive services.

Nick Costales, Field Service director, presented for the Juvenile Justice Services (JJS) program. Costales explained the program is now in a new phase of reform and is moving toward transitioning to kinship placement and providing services similar to those offered by protective services, especially behavioral health programs such as multisystemic therapy. The program is planning to transition secure facilities to therapeutic facilities, moving from detention to treatment. The department is currently assessing the viability of repurposing facilities, assessing youth needs and making the changes to staffing and programs necessary to support this transition. JJS is investigating alternative placements strategies, with parents or kin, to leverage federal Title IV-E funding, but this will require certain court findings and changes in the children's code. During the pandemic there have been zero Covid-19 positive cases in JJS secure facilities. JJS is also using predictive analytics to identify at-risk families and is reaching out to support family needs. The program is shifting from a prosecutor or compliance role to a service provider, and this has in improved communication.

The secretary emphasized the department is moving toward increased transparency and accountability and a modern IT system that can support data-based decision-making. The department is working with the Substitute Care Advisory Council to improve third-party oversight and care review and continues to increase training.

In response to questions about the proposed reduction in foster care spending, the secretary explained the reductions are a result of reduced operating expenses, eliminating inefficiencies to ensure more funding goes to services, as well as better leveraging federal funding. When asked about the tension between ensuring safety versus promoting reunification, the secretary stated the department is working to increase supportive services available to families to allow reunifications without sacrificing safety. In response to questions about reductions in staffing, Secretary Blalock explained the department was moving from being a direct service provider to being a purchaser of services and was working to support community-based providers. In response to questions about the department's vacancy rate, the secretary explained the rates are currently higher because of

new positions added in FY21 and a lag in hiring. The department is working to fill priority positions through targeted hiring events.

Department of Cultural Affairs (505). Debra Garcia y Griego, secretary of the Department of Cultural Affairs (DCA) introduced staff including, State Librarian Eli Guinnee, State Librarian, Deputy Secretary Nick Schiavo, and Chief Financial Officer Greg Geisler. Secretary Garcia y Griego discussed the department’s mission of “building a more vibrant, resilient New Mexico by improving the quality of life, supporting a culturally rich education, strengthening the creative economy, fostering a diversity of expression, and preserving our cultural resources.” The secretary also presented achievements and pandemic response during FY20.

The secretary presented the FY22 budget request, which included a 5 percent general fund reduction. The reductions were made by reducing or eliminating new projects and initiatives, maintaining museum contracts and other costs at FY20 actual levels, utilizing increased capacity in the facilities bureau to realize cost-savings, and reducing contracts and other costs resulting from exhibition changes and online programming.

Representative Sweetser asked the state librarian how local libraries have helped communities during the pandemic. Eli Guinnee stated libraries were still providing WiFi access to communities even though their doors were closed. There were families sitting in cars to use the Wi-Fi access, especially for students. The e-rate program is still strong; 27 libraries are currently working with the state librarian to receive federal funding for broadband.

Representative Crowder asked how much CARES funding the department has received and if CARES funding is included in the FY21 budget submitted. Mr. Geisler reported the department received a pass-through of about \$600 thousand in federal funds, and none of the funds were used internally at the department.

In response to Representative Romero, the secretary stated there has been work done on Joint Memorial 6 from the 2020 legislative session. The historic preservation director and his staff have been working on a coordinated effort on the Camino Real, including public meetings.

In Response to Chair Gonzales, the secretary stated about 200 grants go out to communities from the department every year.

Corrections Department (770). Alisha Tafoya Lucero, secretary of the Corrections Department (NMCD), and Ed Smith, acting administrative services director for the department, presented the agency’s FY22 budget request. The total request is \$356.6 million and includes \$316 million in general fund revenue, a decrease of \$13.8 million – 4.2 percent – compared with the agency’s FY21 operating budget.

Secretary Tafoya Lucero and Mr. Smith reviewed key program accomplishments and budget changes. The department’s request for Program Support is \$12.7 thousand from the general fund and includes a \$150 thousand reduction achieved through vacancy savings. Key accomplishments include zero audit findings in FY20 and improvements in recruitment and the training academy

(which produced 105 more correctional officers and probation and parole officers than the previous year).

The request from the general fund for the Inmate Management and Control Program is \$12.8 million less than its FY21 operating budget and includes swapping \$7 million from a previous appropriation for hepatitis c treatment among inmates to fund personnel expenses, \$3.2 million in savings in population management between private and public facilities, and \$2 million in savings from private facility staffing penalties and credits. Key accomplishments include installing virtual programming equipment in facilities and scaling up the hepatitis c treatment program to treat 600 inmates per year.

The Corrections Industries Program is enterprise-funded and did not request general fund revenue. The program currently operates at five facilities but plans to expand operations to include three more.

The request from the general fund for the Community Offender Management Program is \$608.1 thousand less than FY21 and includes a \$300 thousand reduction in contracts to align with FY20 actual expenditures. Key accomplishments include expanded use of video monitoring by officers and telehealth by treatment providers, expansion of alternative sanctions to address violations, and the implementation of an incentives program to acknowledge offender progress and achievement. Additionally, to ensure available federal funding is fully leveraged, the department has transitioned its contracted behavioral health providers to bill Medicaid funding first, prior to billing NMCD.

In response to questions from Representative Crowder and Senator Neville, Mr. Smith explained NMCD had not been fully expending the funds appropriated to reimburse county jails for holding parole violators, so the department had requested a lower amount for that purpose to align to actual expenditures. Senator Neville noted counties were not being fully compensated. Mr. Smith stated he would follow up with LFC staff to clarify the discrepancy. Director Abbey clarified the Department of Finance and Administration received the bulk of the funding to compensate counties for holding felony offenders, and that funding has been cut in recent years, leading counties to report higher costs than are reimbursed.

In response to questions from Representative Anderson and Senator Sanchez regarding the spread of Covid-19 in prisons, Secretary Tafoya Lucero explained the physical structure of the facilities was a factor in the spread. Facilities with dormitory style housing – such as Otero County Prison Facility, Roswell Correctional Center, and the level 2 facility at the Penitentiary of New Mexico – saw much faster spread than higher security facilities with cells. Only essential staff members are allowed to enter prison facilities, and all staff members are screened for symptoms on entry to the facility. Staff are tested every two weeks and all inmates are tested on entry and before release, as well as any time they show symptoms. While staff are taking precautions, the secretary noted staff infection rates directly correlated with community spread, and stated she would send the committee supporting graphs and data related to this finding. As of the day of the presentation, the secretary reported 13 inmates had died from Covid-19.

In response to a question from Representative Anderson, Secretary Tafoya Lucero explained that, while private prison facilities used to have much higher occupancy levels – in part due to inmate

classification (custody levels) – NMCD had been redistributing the inmate population between public and private facilities to decrease the population at private facilities, which produces direct cost savings to the department.

In response to a question from Senator Muñoz, Mr. Smith explained the department could fund an expected \$8 million shortfall in its medical contract costs with savings from private prison population reductions. However, Mr. Smith clarified the department's FY22 budget request did not account for increases in its medical contract costs, which could lead to an additional shortfall that year.

Vice Chair Lundstrom requested an update on the status of NMCD's inmate classification system, originally created in 1999. Secretary Tafoya Lucero explained NMCD is working with the University of New Mexico's Institute for Social Research (ISR) to completely redo its classification system but could not make direct changes to the system while ISR is studying its system and anticipates the process will take about 18 months. The secretary noted the new system needs to focus on gender differences and inmate needs (rather than just risk). Vice Chair Lundstrom requested the department provide LFC staff with details on what ISR is doing, the cost of ISR's work, and the timeline.

In response to questions from Senator Muñoz and Representative Romero, Secretary Tafoya Lucero explained the department is trying to implement Covid-19 hazard pay (including retroactive hazard pay) for any staff working in affected units. The department is working to identify all eligible staff and hours and hopes to be distributing additional compensation in December. The secretary also clarified correctional officers who receive positive Covid-19 test results generally receive quarantine pay.

New Mexico Environment Department (667). Environment Secretary James Kenney presented an overview of the agency's work, which now includes responding to the Covid-19 pandemic in workplaces across the state. The Environment Department (NMED) is also pursuing litigation and remediation related to PFAS contamination and is finalizing a proposal for emissions rules to mitigate the amount of methane in the environment.

Secretary Kenney presented NMED's FY22 budget request of \$89.8 million, including \$12.5 million in general fund revenue, a 5 percent decrease from the agency's FY21 general fund appropriation. The agency's current vacancy rate is 17.8 percent, and 65 positions are in active recruitment. Secretary Kenney stated NMED has received \$2.9 million in federal funds related to Covid relief, including \$1.8 million from the U.S. Department of Labor to hire recently unemployed New Mexicans for 18 months to support the agency's rapid response program. The remainder was from the state's allocation of CARES Act funding.

Secretary Kenney discussed the solvency of three of the agency's special revenue funds, including the water conservation fund, supported by fees set in statute. NMED will pursue legislation in 2021 to raise those fees but will likely still need to reduce service levels beginning in January.

Secretary Kenney discussed two of the agency's special appropriation requests: one to continue rapid responses and other Covid-19 efforts and another for environmental cleanup of contaminated

surface and groundwater. Secretary Kenney also talked about the impact revenue reductions will have on NMED operations in FY22, including disinvesting from certain programmatic activities, reducing leased office space, loss of federal grants, and delayed permit issuance and compliance assurance.

Chairman Gonzales asked if the agency primarily sees repeat violations from the same offenders or first-time violations. Secretary Kenney said it depends on the program, but large oil and gas operators and the federal government often have multiple violations while small companies are less likely to be repeat offenders. Chairman Gonzales also asked whether NMED does outreach and training to prevent noncompliance, to which Secretary Kenney replied the agency spends a lot of resources on compliance training and education.

Senator Kernan asked where NMED's proposed emissions reduction rules are budgeted and Secretary Kenney answered those rules would be implemented by the Air Quality Bureau, supported by revenues generated by the program and not from the general fund. Senator Kernan then asked about requirements to study the economic impact of proposed regulations. Secretary Kenney confirmed economic analysis is statutorily required, and the analysis will be available for legislators.

Representative Crowder asked for an update on NMED's timeline for the modeling that provides data to inform emissions rulemaking. The agency did ozone modeling in 2015 and again in 2020, which should be finished by February.

In response to Senator Munoz, Secretary Kenney said the draft FY20 audit has four findings, one of which is due to a lack of staffing that caused a breakdown of processes within the agency. Secretary Kenney also provided more detail about NMED's rapid responses and the breakdown by sector. Senator Munoz expressed concern and asked about the drinking water sampling services that will be reduced due to budget constraints. The agency submitted a special appropriation request for this purpose.

In response to Senator Burt, Secretary Kenney explained the plan for using a \$1 million special appropriation for PFAS contamination. A contractor will begin delineation of the contamination this fiscal year, and NMED is still in litigation with the Department of Defense regarding responsibility for the contamination. Senator Burt also asked about collaboration with oil companies regarding emissions rules and whether economic circumstances will affect the implementation timeline of those rules. Secretary Kenney said there had been at least a dozen formal meetings and more informal meetings with both operators and other stakeholders. The new regulations, if approved, would likely not require implementation of new technologies until late 2021.

Capital Outlay. Linda Kehoe, LFC consultant, presented an overview of available capacity for capital expenditures for the 2021 legislative session. Ms. Kehoe stated net severance tax bond (STB) capacity for capital expenditures is \$353.7 million, far less than the nearly \$1.7 billion requested by state agencies and local governments for priority projects. STB earmarks total \$79.5 million, including \$39.7 million for the water project fund and \$19.9 million each for the colonias and tribal infrastructure funds. Ms. Kehoe added \$162 million in supplemental severance tax bond

capacity is available for public schools, including \$25 million the Legislature can appropriate for transportation or instructional materials.

Stevie Olson, LFC analyst, reviewed the staff severance tax bond (STB) framework for proposed capital funding for consideration by the full Legislature. Mr. Olson stated LFC staff develops the framework based on site visits, review of infrastructure capital improvement plans (ICIPs), monthly meetings with major departments, and testimony presented at interim hearings. Staff also considers deferred maintenance and asset preservation, code and regulatory compliance, projects included in an agency ICIP, and projects that may provide future operating savings.

Mr. Olson stated capital expenditures capacity is far less than the \$515 million of priority projects requested by state agencies, higher education institutions, tribal schools, and special schools.

Mr. Olson explained the staff STB framework spends 57 percent of state agencies' total funding capacity, leaving \$153.7 million, or 43 percent, for policymaker decisions.

Mr. Olson highlighted major requests, including Corrections Department, \$38.5 million; Department of Health, \$19 million; Department of Public Safety, \$10 million; Energy, Minerals and Natural Resources Department (EMNRD), \$27.6 million; and General Services Department, \$27.6 million.

Ms. Kehoe explained 95 percent of local entities, including cities, counties, special districts, and tribal and senior centers, develop infrastructure improvement plans. To date, the top three priorities for local infrastructure needs statewide total \$1.2 billion.

Senator Munoz asked if any of the \$1.4 billion in outstanding capital balances would result in IRS penalties. Ms. Kehoe responded the state does not have any issues with IRS compliance at this time.

Senator Munoz asked if any capital projects have been identified that are not going to move. Mr. Olson explained that several projects are not moving forward and have been deprioritized by agencies. Ms. Kehoe stated the State Board of Finance does not sell bonds for projects that do not meet certain readiness standards. David Abbey, LFC director, stated it is easy to find projects that are not moving.

Senator Munoz asked if federal CARES Act funds are being used for capital projects. Mr. Olson explained staff is tracking CARES funding for capital projects on the Navajo Nation but is unaware if those funds are being used by other entities for capital projects.

Representative Martinez asked how much was requested for the Carlsbad brine well and how much the staff framework appropriates for the project. Mr. Olson stated EMNRD requested \$17.6 million for the project, and the framework includes a total of \$7 million from STB, general fund, and other state funds. The state allocation requires a one-to-one match from local entities.

Representative Lundstrom asked what portion of the outstanding balances from capital projects was appropriated from the general fund. Mr. Olson responded 47 percent of the total unexpended

balance is from the general fund. Representative Lundstrom asked staff to consider legislative mechanisms for reverting the outstanding balances for beneficial purposes.

Representative Garratt asked for clarification on the broadband appropriation. Mr. Abbey explained the broad perception of the need for broadband has resulted in a recommendation in both the capital framework and special appropriations.

Senator Kernan asked if the recommendation to remediate abandoned wells should instead supplement the Carlsbad brine well appropriation. Mr. Abbey explained staff learned current funds are used by the state to plug wells at a rate significantly below the backlog of wells.

Miscellaneous Business.

Action Items. Vice Chairwoman Lundstrom moved to approve the LFC October 2020 meeting minutes, seconded by Representative Martinez. The motion carried.

Vice Chairwoman Lundstrom moved to approve the LFC October 2020 Subcommittee A and B reports, seconded by Senator Sanchez.

Senator Burt moved to approve the LFC October 2020 Sunset/Sunrise Subcommittee report, seconded by Senator Neville.

Review of Monthly Financial Reports and Information Items. David Abbey, director of LFC, briefed the committee on information items.

Friday, December 4th

The following members and designees participated virtually on Friday, December 4, 2020: Chairman Roberto “Bobby” Gonzales; Vice Chairwoman Patricia A. Lundstrom; Senators Clemente Sanchez, Steven P. Neville, George K. Muñoz, Mary Kay Papen, Gay G. Kernan, and Pete Campos; and Representatives Javier Martinez, Phelps Anderson, Rodolpho “Rudy” Martinez, Gail Armstrong, Candie G. Sweetser, Andres G. Romero, and Randal S. Crowder. Guest legislators: Senators John M. Sapien and Pat Woods and Representatives Jack Chatfield, Kelly K. Figueroa, Joy Garratt, Harry Garcia, Tara L. Lujan, Antonio Maestas, Marian Matthews, and Nathan P. Small.

Department of Health (665). Jason Cornwell, acting deputy secretary, Department of Health (DOH), presented the organizational chart, mission, vision, and values of the department. DOH’s strategic plan goals include expanding access to services, improving health status, ensuring safe healthcare environments, and pursuing organizational excellence. Aryan Showers, policy director, updated the committee on the department’s public health reaccreditation in 2021 and performance planning and monitoring. Roy McDonald, chief procurement officer, reported the department’s FY22 budget request was \$601.9 million, of which \$293.2 million was from general fund revenues. Mr. McDonald also presented DOH Covis-19 vaccine funding request of \$8.9 million. Acting Deputy Secretary Cornwell then updated the committee on New Mexico Covid-19 impacts and trends and the DOH response to the pandemic. Finally, Mr. Cornwell updated the committee on

the developmental disabilities supports waivers including waiting list trends, the new community supports waiver, waiver reforms and funding needs. There were no questions from the committee.

Human Services Department (630). Dr. David Scrase, secretary of the Human Services Department (HSD), said all HSD programs together serve over 1 million unduplicated New Mexicans.

Reporting on HSD's accomplishments, Secretary Scrase said Medicaid experienced significant enrollment expansion and received federal approval for 20 additional waivers and supported other state agencies in the coordination of pandemic-related services and supports, HSD transformed its business model to safely meet customer needs during the pandemic; Medicaid implemented IT advancements, such as real time eligibility that accurately enrolled 22 percent of online Medicaid applicants without human intervention.

Secretary Scrase reported HSD's challenges included losing more client calls at the Consolidated Customer Support Center, scheduling, and resource challenges for critical IT projects, including advancing HHS 2020, integrating with the health insurance exchange, and implementing ASPEN enhancements. New programs and initiatives were delayed, including a Behavioral Health Services Division (BHSD) satellite office in Las Cruces and implementing Medicaid provider payment strategies and innovations.

Presenting HSD's FY22 budget request, Secretary Scrase said \$1.1 billion is requested from the general fund and \$6.7 billion in federal funds. Secretary Scrase said HSD currently will earn over \$4 in federal revenue for every additional general fund dollar appropriated for the Medicaid program. Secretary Scrase reported, at the level of general fund the department requested for FY22, the Medicaid program is projected to have a shortfall in general fund support of \$161 million; without additional federal support, Medicaid will have to reduce costs by 16 percent, or \$162 million in general fund revenue, equating to almost \$800 million in total reductions to the program with federal matching funds.

Behavioral Health Collaborative. Bryce Pittenger, chief executive officer of the Behavioral Health Collaborative (BHC), along with Secretary Scrase, Secretary Blalock of CYFD, and Neal Bowen, director of the Behavioral Health Services Division, presented the overall budget of the BHC agencies. They indicated for every dollar of investment in behavioral health, there is a return on investment of four dollars. They discussed the BHC goals, agency funding, and some of the program details.

In response to Representative Anderson asking about the additional 6.2 percent pandemic federal Medicaid matching funds ending in March 2021 and maintaining the current program, Secretary Scrase clarified, if the federal public health order ends in January 2021, the \$70 million in federal funds extends through March 2021. Secretary Scrase indicated 21 thousand people dis-enrolled from Medicaid during the pandemic, but the maintenance of effort remains in place during the public health emergency and limited the department's ability to make enrollment and other changes to the program. After the public health emergency, more people will dis-enroll from Medicaid and other provider and MCO rates will be reviewed to manage costs. Secretary Scrase also said he wants state agencies to use general fund dollars to leverage federal Medicaid dollars.

Representative Anderson asked about the Medicaid Management Information System Replacement (MMISR) information technology project and New Mexico being the first state in the country implementing the system. Secretary Scrase said the one-stop shop will help New Mexicans get quick access to all benefits for which they are eligible.

Representative Lundstrom asked about HSD's proposed "healthcare affordability fund" and why HSD is proposing a new initiative and not asking to use the health insurance premium surcharge tax to fund the Medicaid shortfall if Medicaid is \$161 million short in HSD's projection. Secretary Scrase indicated the revenue would generate \$56 million to \$126 million of federal funds, and HSD is not sure how much the program would cost but indicated the program is intended to reduce premiums and out-of-pocket costs for low- and middle-income New Mexicans who purchase coverage on the state health insurance exchange. Representative Lundstrom expressed concern about starting a new program when Medicaid has a projected shortfall for FY22. Representative Lundstrom asked Secretary Blalock about expanding substance use disorder housing and treatment in Gallup. Secretary Blalock responded the state is working on continuing housing initiatives in collaboration with local citizens.

Senator Munoz asked Secretary Blalock about transitional housing in Gallup because housing shortages has forced people to live in clusters. Ms. Pittenger indicated multiple departments are collaborating to implement an array of services. Senator Munoz indicated the temperatures are dropping and immediate implementation the array of services are critical. Senator Munoz asked Secretary Scrase why a substance abuse contract was cancelled in Gallup, and Secretary Scrase replied the agency overall is expanding services in the community. Senator Munoz indicated the rehabilitation facility on the east side of Gallup should be reviewed again to receive funding and provide services. Secretary Scrase responded to Senator Munoz regarding customer services and said most people prefer the new automated online services. Senator Munoz asked about how the Covid-19 vaccine will be distributed, and Secretary Scrase indicated Native Americans in New Mexico chose to channel vaccine distribution through Indian Health Services. Secretary Munoz asked if HSD could ask DOH when the Native American community can expect to receive the Covid-19 vaccine.

Senator Neville asked for information on the federal poverty limit (FPL) and was told the annual income threshold was about \$36 thousand for a family of four at 138 percent of FPL. Senator Neville asked if the 1 million people receiving services delivered by HSD, including the almost 900 thousand people enrolled in Medicaid, fell below the income tax thresholds and was told many of the clients are below the thresholds and do not file income tax returns.

Chairman Gonzales asked if HSD has people who just manages grants. Secretary Scrase replied several employees at HSD work on applying for grants at different times, but there is not a dedicated section for just applying for grants. Secretary Scrase indicated ISD received \$5.8 million in grants, but more grants could be received by HSD.

Taxation and Revenue Department (333). Stephanie Schardin Clarke, secretary of the Taxation and Revenue Department (TRD), presented the agency's FY22 budget request. The agency requested a general fund budget of \$62.8 million, a decrease of \$1.2 million, or 1.9 percent below

the FY21 operating budget. The total request was \$98.9 million, which included \$32 million in other revenues and smaller amounts of federal revenues and fund balances.

The secretary gave a brief presentation on key initiatives and achievements in FY20 and FY21, including continuing updates to GenTax to implement changes resulting from 2019 tax code legislation, and moving more Motor Vehicle Division (MVD) services online.

Senator Gonzales asked why the agency's request did not represent a 5 percent reduction from the FY21 operating budget, per Department of Finance and Administration guidance. Secretary Schardin Clarke explained, due to a TRD budgeting error, the agency included fee revenue in its FY21 operating budget that did not materialize, leading to cuts in the Tax Administration Program for personnel and some other expenditures. TRD now wants to stabilize its operating budget with more general fund revenue to offset the loss of the recurring fee revenue. The agency also requested a supplemental appropriation for FY21 of \$1.25 million for the Audit and Compliance Division (ACD) for shortfalls in the personal service and employee benefits category.

Senator Munoz asked whether a delay in property tax payment deadlines until May could pose problems for counties. The secretary indicated counties are aware of the delay, but it is possible counties could face challenges in covering costs for FY21. Senator Munoz also expressed concern about the difficulty in obtaining some essential MVD services, such as commercial driver license exams and vehicle inspection number (VIN) inspections, especially for law enforcement and commercial transport, and the secretary indicated TRD is working to provide more services, but at the moment there is more demand for services than it can safely provide. Senator Munoz stressed the importance of figuring out how to provide essential services in a timely manner.

Representative Anderson asked about the status of Internet sales tax distributions to local governments and Secretary Schardin Clarke explained a temporary distribution of \$24 million was doubled to \$48 million during the 2020 special session, and local governments will receive their share of Internet sales tax revenue beginning in FY22.

Review of Special, Supplemental, Deficiency, and Information Technology Requests. For the 2021 legislative session, agencies requested \$628.8 million, of which \$350.3 million was from the general fund, in special, supplemental, and deficiency appropriations.

The general fund requests include \$98.8 million in supplemental and deficiency appropriations from the Public Education Department for potential impact aid liabilities in FY20 and FY21; \$41.7 million in special appropriations from the Economic Development Department, including \$30 million for LEDA, \$7 million for JTIP, \$4.2 million outdoor recreation and trails, and \$450 thousand for competitive grants for Black, indigenous, and Hispanic filmmakers; \$25 million in special appropriations from the Tourism Department for a tourism revitalization plan; \$10 million in special appropriations from the General Services Department for shortfalls in the group health benefits fund of the Risk Management Program; \$10 million in special appropriations from the Department of Information Technology for broadband expansion; \$9.9 million in special appropriations from the Department of Public Safety to purchase and equip police vehicles; \$9.9 million in special appropriations from the New Mexico Attorney General, of which \$6.4 million is for interstate water litigation, \$2 million is for extraordinary litigation, \$975 thousand is for

tobacco enforcement, and \$500 thousand is for consumer protection related to the Covid-19 public health emergency; \$8 million in special appropriations for the Energy, Minerals, and Natural Resources Department for continued remediation of the Carlsbad brine well; \$6.5 million in supplemental appropriations for the New Mexico State Fair for operational shortfalls; and \$5 million in special appropriations from the Taxation and Revenue Department to implement tax code changes.

Representative Lundstrom asked for follow up information on the specific duties of the Attorney General's office and the Office of the State Engineer in *Texas v. New Mexico* litigation, as well as a clarification of how the Second Judicial District Attorney expended special appropriations from the 2018 legislative session. LFC staff will follow up.

Representative Anderson asked for more information on the 2nd Judicial District Attorney's \$1 million request for alternative sentencing programs, as well as how the General Services Department assesses the need for new vehicles, and why the Tourism Department is requesting \$3 million for trail improvement when the public is currently not using trail systems due to the public health emergency. LFC staff will follow up.

In response to Senator Munoz, Director Abbey clarified language in the request allowing the Tourism Department to expend unspent funds for "other purposes" is not statutorily mandated but intended to grant the agency flexibility to expend remaining funds from a 2019 appropriation for Virgin Galactic Marketing on other tourism initiatives. Director Abbey also clarified the committee views the \$8.9 million request from the Department of Health for distribution of the Covid-19 vaccine as duplicative of funds appropriated to the department during the second 2020 special legislative session.

Representative Sweetser asked about the special appropriation requests from the Public Education Department from the public education reform fund. Micaela Fisher clarified the reform fund has statutory restrictions, and those requests must be examined closely.

Chairman Gonzales asked if there were any requests for vehicles through capital outlay. LFC staff will follow up. In response to Chairman Gonzales' question regarding a \$95 million request from the public education reform fund from the Public Education Department for lost instruction time due to the Covid-19 public health emergency, Micaela Fisher clarified the department received significant federal relief for that purpose, and the reform fund had statutory restrictions for its use.

Information Technology Funding Requests. Jessica Hitzman, analyst for the LFC, presented an overview of FY22 agency IT funding requests. Eighteen agencies submitted 26 requests totaling just under \$82.1 million, including \$39.2 million in general fund revenue, \$10 million in other state funds, and \$32.9 million in federal funds. IT funding requests are evaluated based on criteria indicative of project success, and the LFC staff scenario identifies and funds ongoing, mission-critical, previously funded, and cost-effective projects. However, some projects are better suited for other funding mechanisms.

John Salazar, secretary for the Department of Information Technology, presented the executive IT funding requests for FY22 and provided an overview of statute requiring DoIT to review and make

written recommendation to DFA and LFC on agency IT funding requests. Eighteen agencies submitted funding requests for 26 projects, 10 of which are ongoing and 16 are new, totaling \$82 million. DoIT provided guidance and feedback to agencies that present their requests to a C2 committee. Criteria include whether projects are ongoing, have an internal project manager and external evaluation, have federal matches, or if the project can be phased or partially funded. DoIT recommend 19 projects, including \$19.7 million in general fund revenues, \$6.2 million in other state funds, and \$32.9 million in federal funds.

Highlights related to the general fund recommendation include the Public Defender Department's document management project, the Department of Health's (DOH) electronic health records, and all payers claim database projects. Federal funding highlights include DOH's Medicaid management information system and client data management projects, and the Children, Youth and Families Department's child welfare information system project. Other state fund highlights include projects for the Regulation and Licensing Department, the Medical Board, the State Land Office, and the Worker's Compensation Administration.

Vice Chair Lundstrom asked if all state agencies are participating with DoIT and if they are paying an increased rate schedule. In response to Vice Chair Lundstrom, Secretary Salazar mentioned a reduction in SHARE, Telecommunication services, and radio rates this year and reports a majority of state agencies are using DoIT's services. Some agencies are securing software as a service from software providers directly but they still require DoIT's approval. Vice Chair Lundstrom requested to be provided with any broadband related requests and information about how DoIT is coordinating them.

Vice Chair Lundstrom asked whether all agencies are paying fees and why rates were reduced. In response, Secretary Salazar reports agencies are keeping up with invoicing apart from outstanding balances from before DoIT's inception. In response, Vice Chair Lundstrom asked whether the outstanding balances were written off. Brenda Fresquez of DoIT said the past-due amounts cannot be written off according to the constitution and offered to provide a report with details about what is currently due, estimated to be significantly reduced at about \$3 million in current receivables.

Secretary Salazar responded to Vice Chair Lundstrom saying rates are lower because they are based on the agency's expenses. DoIT's expenses the prior year were analyzed in a cost model to identify the cost recovery rate, and the biggest factor driving the decrease is lower expenditures as a result of the high vacancy rate. Vice Chair Lundstrom believes DoIT needs to be staffed to limit vacancies and help with providing telecommunication services.

Representative Anderson asked how many of the 19 recommended IT projects are new and how many are ongoing. In response to Representative Anderson, Secretary Salazar says he is unsure and will follow up with more information on the new IT projects being proposed.

Representative Sweetser expressed concern about the different broadband initiatives and asked whether staff can pull together all broadband initiatives before the session.

Tuesday December 8th

The following members and designees participated virtually on Tuesday, December 8, 2020: Chairman Roberto “Bobby” Gonzales; Vice Chairwoman Patricia A. Lundstrom; Senators Clemente Sanchez, Steven P. Neville, George K. Muñoz, Mary Kay Papen, Gay G. Kernan, and Pete Campos; and Representatives Javier Martinez, Phelps Anderson, Rodolpho “Rudy” Martinez, Gail Armstrong, Candie G. Sweetser, Andres G. Romero, and Randal S. Crowder. Guest legislators: Senators John M. Sapien; and Representatives, Cathrynn N. Brown, Christine Chandler, Jack Chatfield, Kelly K. Figueroa, Joy Garratt, Harry Garcia, Susan K. Herrera, Tara L. Lujan, Antonio Maestas, Marian Matthews, Tomás E. Salazar, Nathan P. Small, and Sheryl Williams Stapleton.

FY21 and FY22 General Fund Revenue Forecast. Stephanie Schardin Clarke, secretary of Taxation and Revenue, began by reviewing the macroeconomic assumptions and expectations for national economic forecasts. The secretary went on to highlight general domestic product declines and employment losses of 22 million jobs caused by the pandemic in 2020 and a cautious optimism for recovery in both within the next five years.

Secretary Schardin Clarke then presented New Mexico macroeconomic data, highlighting an expected decline of 28 percent GDP in the second quarter of 2020. Additionally, the secretary illustrated the spike in unemployment insurance claims and the magnitude of people who have remained unemployed over the year.

Focusing on employment data, Secretary Schardin Clarke pointed out New Mexico’s job losses were delayed when compared with national data. Furthermore, New Mexico total employment declined 6.3 percent, or 54.7 thousand jobs, by October, on a year-over-year basis. By sector, retail and leisure and mining have lost the most jobs, proportionally, since the start of the pandemic.

Shifting to the oil and gas market, Secretary Schardin Clarke presented a chart of the active oil and gas rigs in New Mexico, which have declined for over 40 weeks. Along with the number of rigs, the secretary discussed the relation of oil prices and active rigs and the unpredictability that has been introduced in predicting oil volumes as a function of drilling given low price expectations. The secretary pointed out that a \$1 change in oil price is roughly equivalent to \$22 million to the general fund, which has contributed greatly to reduced revenue expectations from December 2019.

Discussing wages and salaries, Secretary Schardin Clarke described expectations that New Mexico would recover its wages and salaries faster than employment in what is called a “k-shaped” recovery. The secretary said this is a phenomenon where employment is split in its recovery by high- and low-wage jobs, where the high-wage jobs are recovering more quickly, resulting in wage growth despite low-wage job losses.

On gross receipts taxes, Secretary Schardin Clarke pointed out the steepest declines have been experienced in Eddy and Lea counties due to declines in drilling and rig activity, which drive up revenues in those areas. Related to the declining rig counts, the secretary pointed out that severance taxes and rents and royalties are expected to decline over the forecast period. Yet, the impact to general fund of this decline has been mitigated by a statutory provision that sends some severance tax revenue to the tax stabilization reserve fund, strengthening the state’s financial position.

DFA Acting Secretary Romero resumed the presentation highlighting the general fund's expected decline in both FY20 and FY21 by 1.9 percent and 10.9 percent, respectively. Despite the declining revenues, state reserves are estimated to reach 33.4 percent of recurring spending at the end of FY21, before any further legislative action.

Secretary Romero said the path of revenues remains highly influenced by the pandemic, consumer confidence, and fiscal stimulus. Highlighting the impact of the virus, the secretary pointed out, despite raising estimates from the September midpoint, the forecast is still significantly below expectations from December 2019. The resulting change is a raised expectation for reserves which reached 35.4 percent of recurring appropriations at the end of FY20. Reserves are expected to continue to benefit from transfers from excess severance tax and rent and royalty revenues.

Presenting the general fund financial summary, Secretary Romero pointed out the estimates provide for \$169 million in "new money" for FY22. Yet, significant uncertainty remains. Secretary Romero described how pandemic uncertainty, vaccine rollouts, federal stimulus funds, and oil market volatility all present risks to the forecast which could result in substantial deviations from the revenue forecast.

Secretary Romero highlighted the stress testing analysis conducted by the Consensus Revenue Estimating Group. The analysis shows optimistic and pessimistic scenarios that demonstrate the impacts of alternative economic expectations. The possibility of a prolonged economic recession and associated revenue declines, Secretary Romero said, highlights New Mexico's sensitivity to volatile revenues and the need to maintain healthy reserves and a conservative approach to crafting state agency budgets.

Dawn Iglesias, chief economist for the Legislative Finance Committee, presented the Legislative Finance Committee Revenue brief. Reinforcing the secretaries' comments, Ms. Iglesias pointed out FY21 recurring revenues are estimated to decline \$857.1 million, or 10.9 percent from the prior year. Most of this decline, Ms. Iglesias pointed out, are related to the pandemic's effects on the oil market.

Ms. Iglesias showed, had the federal government failed to provide additional funding to the state, New Mexico would have needed to pull nearly \$1.1 billion from reserves to cover the current budget. These supports include state and local supports from the CARES Act, federal government fund swaps, and other agency program supports.

Moving on to the "new money" estimate, Ms. Iglesias said, had the Legislature made no adjustments to the budget in the June 2020 special session, the new money would have been negative \$243 million. This would have required either budget cuts or reserve use for recurring spending.

Ms. Iglesias stated ending reserves in FY20 were \$2.5 billion, a hallmark year for the state and well above the \$1.9 billion reserve target. This was due to three factors: less than expected declines in GRT and personal income tax collections related to federal stimulus supports, solvency actions taken by the Legislature in the special session, federal funds offsetting general fund expenditures,

and about \$260 million in special appropriations that were expected to be allotted in FY20 will now be allotted in FY21, which artificially bumped up reserves.

Ms. Iglesias then highlighted the oil and gas industry impacts, saying about 70 percent of the expected decline is related to this industry. Production declines are expected to continue to decline in the fourth quarter of 2020 and level off in 2021, despite declines elsewhere in the U.S. Ms. Iglesias stated industry information experts reflect this because of lower breakeven costs in the Permian Basin which will prop up production and drilling for the state when compared with previous expectations.

On the stress testing, Ms. Iglesias described a sensitivity analysis which does not reflect as significant decline as in previous reports. This is because the state is already in a recession and low-oil price environment, which leaves less opportunity for further declines. Pointing to the trend analysis, Ms. Iglesias described how FY19 and FY20 appear to show above-trend revenues which are followed by below-trend revenues in the forecast period. This analysis informs reserve targets by demonstrating when the state should restrain spending and prepare for potential declines when experiencing above-trend revenues.

Following the stress-testing discussion, Ms. Iglesias discussed gross receipts taxes and the large exposure of the revenue stream to oil and gas production. Eddy and Lea counties accounted for over 90 percent of the state's gross receipts tax losses, across many industries. Yet, GRT losses were mitigated by growth in retail trade associated with online sales that resulted from stay-at-home orders and federal stimulus that bolstered personal incomes and consumer spending. Despite overall retail growth, Ms. Iglesias parsed out the growth attributed to large business revenues, noting small businesses have experienced declines.

Risks to the forecast were also mentioned. The primary risks are in oil and gas prices and volumes, but also mentioned were the path of the pandemic, a prolonged recession, federal stimulus, and more. Also of note, is the risk posed by film tax credits. Ms. Iglesias pointed out the successful recruiting of additional film partners to New Mexico could dramatically increase state obligations to pay tax credits in future years. Tax protests and local governments lawsuits could also pose risks to the revenue expectations.

Ms. Iglesias concluded the presentation demonstrating the inequity in economic recovery experienced by high-vs low-wage workers and large vs small business revenues.

In response to questions from Representative Crowder, Acting Secretary Romero committed to providing the committee with further information on the amount of federal stimulus funds the state has received. Furthermore, Ms. Iglesias committed to providing an analysis of the change in hold harmless distributions to local governments and provided context for FY20 reversions totaling about \$400 million.

In response to questions from Representative Martinez, Secretary Schardin Clarke stated House Bill 6 provided for the taxation of Internet sales, which supported general fund revenues through the pandemic. Secretary Romero responded the executive is no longer expecting 5 percent cuts to agency appropriations and is now providing for nearly-flat budgets in the coming fiscal year.

In response to questions from Senator Kernan, Ms. Iglesias pointed out the fiscal and economic impacts of new methane rules and regulations have not been considered in the current stress testing analysis. Furthermore, Ms. Iglesias stated over \$3 billion in annual state revenues would be needed to replace state revenues from the oil and gas industry, when considering all revenue sources.

In response to questions from Senator Munoz, Ms. Iglesias clarified industry insights from investor presentations and energy information agencies do not describe how significantly prices must decline to induce production cuts. Secretary Schardin Clarke responded to a question relating to construction growth in small counties, pointing out large construction projects boosted revenues in rural locations.

In response to questions from Senator Sanchez, Ms. Iglesias clarified reserves at the end of FY20 were inflated by unspent but encumbered dollars approved in the 2020 regular session.

In response to questions from Representative Anderson, Ms. Iglesias noted the current GRT data does not allow for identification of business by size, and granular data is available through private companies using credit card data state economists do not have access to review. Additionally, Ms. Iglesias and Secretary Schardin Clarke clarified tax revenues from renewable energy production are currently included in the forecast although is a minimal impact to the general fund.

Higher Education Institutions (952-977). Stephanie Rodriguez, acting secretary for the Higher Education Department; Dr. Joe Shepard, Chair, Council of University Presidents; Dr. Becky Rowley, Chair, New Mexico Independent Community Colleges; and Dr. Cynthia Rooney, Chair, New Mexico Association of Community Colleges.

After acknowledging the disruption brought on by the Covid-19 pandemic and institutional responses, HED Acting Secretary Stephanie Rodriguez began the presentation expressing the importance of higher education to New Mexicans for developing marketable workforce skills. She expressed the sentiment that investments in higher education contribute to New Mexico's economy. As part of the workforce nexus to higher education, Rodriguez commented on the persistent declining enrollment as an indicator of a need to return focus to recruiting New Mexicans to college campuses, announcing HED will embark on a marketing plan to accomplish the goal. Highlighting the fastest growing jobs in New Mexico – renewable energy, HED recognized the need to develop stronger workforce and CTE programs at two-year colleges that translate to immediate employment results.

Following the workforce discussion, Acting Secretary Rodriguez outlined the Department's recommendation for the I&G funding formula, for research and public service projects recommendations, and other policy issues. HED advocates improving on the mechanics of the funding formula, by pulling together stakeholders from higher education to refine strategic goals for higher education, including stronger enrollment and completion. For the instruction and general (I&G) formula recommendation, Secretary Rodriguez commented HED would likely revise its FY22 budget recommendation given the improvement in state general fund revenues since the summer special session.

Foremost, like the LFC recommendation, HED recommends restoring the FY21 federal funding swap of \$20 million. Based on the adjusted FY21 budget, HED recommends a 2 percent reduction for I&G with no base redistribution. The recommendation for RSPs seeks to reduce funding by 4 percent across the board with no new or expansion RSPs recommended. The secretary also recommends continued funding for the Opportunity Scholarship with a \$5 million annual appropriation.

Rodriguez closed with a preview of the leadership initiatives she has begun at HED, including creating several stakeholder committees to address structural challenges in the sector including a strategic planning group, a data and performance measure advisory group, an academic advisory group, a marketing group and a student diversity and success group. This stakeholder groups will meet during the next year to address issues like the trifecta of reforms and declining enrollment.

Legislative Priorities Common to All Institutions. HEIs presented a unified request again this year. The institutions are seeking restoration of the federal funds swap and a flat I&G recommendation with no base redistribution. In addition, institutions requested fully funding dual credit outside of the I&G funding formula, though a specific amount was not identified. One request was for dedicated funding for analysis of structural challenges at institutions, such as predictive analytics or optimized financial aid management. Finally, institutions requested additional support for students through financial aid programs like the Lottery Scholarship and a follow through on the HED commitment to expand the Opportunity Scholarship to the four-year sector. Two-year colleges expressed support for workforce development programs like the high-skills fund at HED.

After the presentations concluded, LFC members shared comments, concerns and questions with the colleges and universities. Considerable discussion surrounded the unfinished trifecta reform initiative and oversight of higher education. Rep. Romero mentioned he would be introducing legislation to provide the Legislative Education Study Committee with oversight authority of the higher education sector in New Mexico. The concern from legislators focused on the lack of accountability and effectiveness of the system to prepare students. The Vice Chair commented on the distortion of the presentations about the dropping state funding support for higher education. Specifically, the presentation did not address total revenue, which includes tuition and fee revenue, which has declined precipitously, or the benefit of indirect costs gained from federal contracts, which can be as high as 45 percent. Dr. Robert Martin, President of the Institute of American Indian Arts, presented on behalf of the tribal colleges, including IAIA, Dine College, Navajo Technical University and the Southwest Indian Polytechnic Institute. Dr. Martin offered a brief overview of capital outlay requests for all the institutions.

Report of Civil Rights Commission. Former New Mexico Supreme Court Chief Justice Richard Bosson presented the recommendations of the Civil Rights Commission (CRC). The Commission voted in favor of enacting a New Mexico Civil Rights Act that would provide a cause of action for violations of the New Mexico constitution, disallow the use of qualified immunity as a defense for public employees, allow for compensatory damages and injunctive relief, allow for attorney fees to be awarded to prevailing parties, and indemnifies public employees so they will not bear personal risk or responsibility for payment of judgements.

Justice Bosson noted the costs of enactment of such legislation cannot be known because insurance premiums are based on prior experience. Additionally, the commission heard testimony the number of insurers is being reduced making it harder to secure excess coverage insurance. The commission did not include punitive damages awards in part to keep costs down and not dissuade private insurance companies from offering excess coverage insurance to clients in New Mexico. Mr. Bosson noted larger cities and counties would likely be able to cover any increased costs encountered as a result of lawsuits and judgements related to enactment of a civil rights act, while smaller municipalities and counties may not. Justice Bosson stated, should a civil rights act similar to the one proposed by the CRC be enacted, the state should act as a backstop to ensure small cities and counties would be able to shoulder the additional burden.

Following the presentation from Justice Bosson, Commissioner Kim Stewart, Sheriff of Dona Ana County, shared concerns of the minority included in the final report of the commission. Ms. Stewart stated enactment of the CRC recommendations would severely limit the availability of excess coverage insurance and indemnification of public employees will result in public institutions, and ultimately taxpayers, being exposed to additional risk. Sheriff Stewart noted several lawsuit payouts in New Mexico, including a suit against the Dona Ana County jail which resulted in a total payout of \$22 million, of which \$9 million was paid by the county rather than the insurer and resulted in the reduction of other mental health services in the county. In closing, Ms. Stewart noted the Law Enforcement Academy (LEA) has no budget of its own and the funding for it is in the DPS. Sheriff Stewart advocated for establishing the LEA as an independent agency as well as passing legislation to reduce the power of police unions to allow for termination of bad actors.

Senator Neville, who also served as a commissioner, noted the provisions of the proposed bill would cover all public employees, not just law enforcement. The senator also stated one-third of sheriff's departments have six employees or less and many municipalities have either no or very small police departments.

Representative Armstrong stated, under federal Title X, no state act or rule can be enforced without providing funding to the local government affected and asked how the CRC recommendation would deal with this constraint. Justice Bosson responded the commission did not consider that question, but he does agree some amount of funds should be made available to local governments so they are not completely exposed to liability.

Senator Munoz asked if this proposal increases civil lawsuits the state is liable for without creating any real accountability. Senator Munoz also noted rural New Mexico relies on limited state police, and acts like this may discourage law enforcement officers from serving in such areas of the state. He also asked if the commission examined other states for potential cost. Justice Bosson responded, though other states have provided for civil actions under their constitutions, the only other state to completely eliminate qualified immunity is Colorado, and it's too recent to measure how much it has cost. Bosson notes there is already law enforcement exposure under the tort claims act and federal law. The civil rights bill provides an additional mechanism for recovery, but does not allow for the settlements to be doubled.

Representative Garcia echoed concerns about how small police and sheriff's departments would be funded to pay for the additional costs.

Higher Education Department (950). Stephanie Rodriguez, acting secretary for the higher education department presented the agency's FY22 budget request. The request included keeping the agency budget flat with FY21 funding levels at \$3.8 million general fund support and additional staff to implement a longitudinal data system, capital outlay updates and data and analysis priorities.

Acting Secretary Rodriguez reported the agency's notable efforts toward student success included enhancement and additions to the student financial aid programs, implementation of teacher pipeline support, providing Covid-19 support to the lottery scholarship program, maintaining and increasing federal funding for adult education and GEAR UP programs, improvements on capital projects process, guiding and implementing a safe reopening processes amidst the Covid-19 pandemic, re-establishing the Higher Education Advisory Council and establishing the New Mexico Academic Advisory Committee.

Acting Secretary Rodriguez reported teacher preparation scholarship programs provided over 900 scholarship awards in FY20 and have over \$4 million budgeted for use in FY21. Although no data was provided on the Opportunity Scholarship, Acting Secretary Rodriguez requested the legislature consider reducing the credit hour requirement from 12 credit hours to six credit hours as Covid-19 has severely impacted students in the two-year sector.

Acting Secretary Rodriguez reported the agency distributed 300 new Chromebooks to adult education programs to assist with remote learning and also distributed computers specifically for test proctoring. She also reported 79 percent of students gained employment and 15 percent of students in 2019 continued into higher education programs on the completion of their adult education program.

Acting Secretary Rodriguez went on to describe the agency's plan for a longitudinal data system to fully implement a cradle-to-career educational system that would entail partnerships among key state agencies. She also reported the agency recommended 24 capital projects for funding totaling over \$29.

There were no comments or questions from committee members.

Special Schools – New Mexico School for the Deaf (980), New Mexico School for the Blind and Visually Impaired (979) and New Mexico Military Institute (978).

New Mexico School for the Deaf (980). Dr. Rosemary Gallegos, superintendent of the New Mexico School for the Deaf (NMSD), presented an overview of the institution's accomplishments in the previous year. She gave a recap of the institution's history, dating to 1885. Superintendent Gallegos noted NMAC regulations implement in 2020 ensure all families are informed about the resources provided by the NMSD. Superintendent Gallegos went over NMSD's footprint in the state, reporting in 2020 NMSD served a total of 693 students across the state – 181 in direct instruction, 287 early interventions, and 253 with outreach services.

In an overview of the institution's financials, Superintendent Gallegos reported the permanent fund makes up 73 percent of total unrestricted revenue and noted the monthly allotment was steadily decreasing from that specific revenue source. She reported the forecast trend shows, in 2021, the revenues will increase 2.3 percent from FY20 and thus, based on financial history, NMSD will not be able to maintain a 15 percent fund balance. The I&G fund balance will continue to decline with rising expenses due to inflation, higher benefit costs, and modest salary increases for staff.

Representative Maestas voiced concerns regarding the *Martinez and Yazzie* requirement for equal access to education and funding needs to be dispersed equally for every deaf student in the state. The lack of properly dispersing funding for deaf students leaves the state vulnerable to a lawsuit. He commented funds could go to the PED and dispersed from there.

New Mexico School for the Blind and Visually Impaired (979). Patricia Beecher, superintendent for the New Mexico School for the Blind and Visually Impaired (NMSBVI), presented an overview of the institution's 2020 Annual Report. Superintendent Beecher reported, in school year 2020, NMSBVI served 2,500 students across the state. Over 86 percent of school-age students, over 96 percent of students in early childhood program and over 78 percent of students in insite categories achieved moderate to substantial progress across 8 areas. Superintendent Beecher also reviewed the hardships and change in delivery of materials due to the Coronavirus pandemic. She reported NMSBVI prepared by purchasing personal protective equipment, cleaning and sanitizing supplies, technology and access for students and staff, and more. NMSBVI upgraded HVAC systems and put pandemic plans into place. They kept lines of communication open with families and staff by sending out surveys, making individual contact through emails and phone calls, and posting COVID-19 information and plans on school website. NMSBVI created a COVID-19 Task Force and a COVID-19 Planning and Response Team, which continue to meet on a weekly basis and continue to keep to date on instructions from state resources. In addition, Superintendent Beecher also reported most of their programs moved to a virtual program, given the current health emergency.

Sen. Burt noted the institution has had several capital projects in the past years and asked the status of the current dormitory construction project. Superintendent Beecher responded any issues with the dorms had been resolved and the project is moving forward.

New Mexico Military Institute (978). Major General Jerry Grizzle, superintendent/director of the New Mexico Military Institute presented an overview of the institution and its achievements during school year 2020. General Grizzle reported the institute's Covid-19 protocols were highly successful and only minimally interfered with their instruction being given remotely like other schools across the state. He reported approximately 30 percent of the students at NMMI were from New Mexico, the majority of students coming from out of state.

Representative Anderson remarked NMMI had been around in 1919 when the Spanish Flu was in New Mexico and asked whether the institution was doing a better job at handling the current pandemic than they had in 1919. General Grizzle responded a much smaller population existed then, and much of the same protocols continued through during the current pandemic such as isolation. General Grizzle noted that unlike in 1919, there are many more resources and technology available in current day. Representative Anderson then asked General Grizzle though

NMMI was doing better for its students now in terms of education than the education it was providing last year. General Grizzle responded, saying an in-person education is always a better alternative than remote education.

Senator Burt asked if there is any new data on how many individuals graduate from NMMI and go into the military. General Grizzle responded, saying an average of 20 percent of graduates go into the military in some form.

University of New Mexico Health Sciences Center (952). UNM President Garnett Stokes introduced Dr. Douglas Ziedonis, who is the replacement for recently retired Chancellor Paul Roth. Ziedonis outlined the HSC response to Covid-19, expressing gratitude to the medical and healthcare staff for their extraordinary efforts to manage the Covid-19 pandemic. UNM HSC budget request is to maintain I&G support similar to FY21 levels and seek additional support for expansion of several categorical or RPSP projects, some of which are state entities like the office of medical investigator. The first request is for almost \$250 thousand for the New Mexico Poison and Drug Information Center, an additional \$538 thousand for OMI given the increased 20 percent workload from the Covid-19 pandemic, increased funding for the Comprehensive Cancer Center, and a \$2.1 million capital outlay request for UNM HSC Rio Rancho campus.

Legislators had questions for UNM HSC staff regarding Covid-19 pandemic and the nature of patient care from citizens throughout the state. Members also inquired about the NMFA proposed financing for the Cancer Center.

State Engineer/Interstate Stream Commission (550). State Engineer John D'Antonio presented the FY22 budget request for the Office of the State Engineer (OSE) and Interstate Stream Commission (ISC), along with the state drought outlook, updates on the *Texas v. New Mexico* lawsuit, and agency priorities for FY21-22. State Engineer D'Antonio reported severe drought has required direct water administration by OSE water masters in multiple river basins.

The agency's vacancy rate is 17.8 percent after deleting 27 positions that had been vacant for two years, and budget reductions will affect the ability to fill positions. State Engineer D'Antonio discussed the revenue and expenditure trends contributing to declining fund balances in the agency's two trust funds.

State Engineer D'Antonio provided an update on the *Texas v. New Mexico* lawsuit: discovery has closed, New Mexico filed three motions for partial summary judgment in November, and a retired federal district judge was appointed as mediator. An FY22 special appropriation of \$5.375 million was requested for the case. On Indian water rights, the State Engineer reported the State is in settlement negotiations with nine Pueblos, Tribes, and Nations in six adjudications.

State Engineer D'Antonio reported on the status of the Lower Rio Grande water conservation and fallowing pilot program. Staff have completed an assessment of other regional fallowing programs for comparison, accepted 30 grant applications covering 1,600 acres for the program, and are currently assessing options for creating a user group that will manage the program long-term.

In response to Chairman Gonzales, State Engineer D'Antonio discussed the condition of New Mexico's dams, several of which are high risk and in poor condition.

In response to a question from Senator Papen on drought and water conservation in the Lower Rio Grande, the State Engineer recapped parts of his presentation on the following pilot project and discussed the future conditions dependent on this year's snowpack. ISC Director Rolf Schmidt-Peterson also mentioned collaboration with the Middle Rio Grande Conservancy District and U.S. Bureau of Reclamation on not storing in upper Rio Grande reservoirs.

In response to Representative R. Martinez, Director Schmidt-Peterson elaborated on delivery requirements on the Colorado River. Director Schmidt-Peterson also clarified the National Environmental Policy Act (NEPA) process would have allowed the Gila diversion project to move forward is now almost completely terminated. Representative Martinez also asked if the New Mexico unit fund would be available for other local projects in the four county region, to which Director Schmidt-Peterson replied yes and that his staff is working with the Central Arizona Project (CAP) Entity to come up with a set of criteria to help get more projects shovel-ready.

Department of Transportation (805). Department of Transportation (NMDOT) Secretary Michael Sandoval presented the agency's FY22 budget request. Mr. Sandoval reported overall state road fund (SRF) revenue was down 9 percent from FY19 to FY20. NMDOT initially thought the reduction could be as much as \$30 million, but the actual loss was around \$9 million. Federal revenue has stayed relatively flat over the past several years. The original projection of \$412.6 million in SRF revenue is likely to be low, but that will not be known until the January revenue forecast is completed. While federal revenue may grow if there is another stimulus package, the FY22 request does not assume an increase in federal funds. The total budget request of \$958.5 million is \$31.8 million less than the FY21 budget.

Secretary Sandoval gave a status update on the nonrecurring appropriations made to NMDOT by the Legislature. The secretary stated, of the \$56.9 million for local projects appropriated in 2019, \$16.2 million was encumbered and \$36.5 million was expended. Of the \$250 million for major projects appropriated in 2019, \$10.3 was expended and \$102.3 is encumbered. Of the \$100 million appropriated in 2019 for maintenance projects, \$21.6 million is encumbered and \$74.2 million has been encumbered. Of the \$135 million appropriated in 2020 for maintenance projects, \$30.6 million has been expended and \$79.3 million is encumbered and all funding is expected to be spent by December, 2021.

Secretary Sandoval stated the department is working to reduce the vacancy rate from the current 14 percent to closer to 10 percent. The department intends to file 8 bills during the session. One of the bills would allow design/build procurement for NM31/NM128, another will authorize the department to use a construction management general contractor project delivery method, and a third would transfer port of entry buildings to NMDOT. Additionally, NMDOT will seek legislation to direct revenue raised for local governments through the motor vehicle excise tax to the local transportation fund instead of directing it to the local government road fund. The department states the local transportation fund has a lower match requirement and fewer restrictions on projects than the local government road fund. Lastly, the department will request

authority to use the remaining \$234 million in bonding authority available to the department under the old GRIP legislation. The department would not issue debt past 2030.

In response to a question from Senator Sanchez, Secretary Sandoval stated it was the department's intent to direct additional motor vehicle excise tax revenue for local governments to the local transportation infrastructure fund. The fund does not currently have a recurring revenue source. Additionally, the fund is more flexible than the local government road fund making it easier to get projects completed.

Representative Crowder asked if rail roads in New Mexico are expanding and adding track or if they are declining. Secretary Sandoval responded there is a big expansion coming in Valencia county and BNSF is putting money toward creation of an overpass to alleviate congestion around the rail tracks.

Senator Burt asked is there a safety concern with the brine well running under highway 285? Secretary Sandoval stated there is no eminent safety concern, but remediation efforts are ongoing. NMDOT is working with EMNRD to ensure the roadway remains safe and open.

Representative Garcia voiced concern about bonding for projects as the interest costs reduce the amount of funding available for projects in the future.

Representative Stapleton asked about what is the timeline on the Gibson interchange and Secretary Sandoval reported the project is in design which could take up to 18 months. NMDOT does not have construction funding identified. Should the project be fully funded, it would take approximately 2 years to begin construction.

Representative Tara Lujan asked if NMDOT can increase revenue through use of right-of-way for broadband expansion.

Secretary Sandoval reported DOT is in negotiations with 2 companies to lay fiber infrastructure along I-25 and I-40. The deal may provide revenue to the department, free access to the fiber infrastructure, or both.

Wednesday, December 9th

The following members and designees participated virtually on Tuesday, December 8, 2020: Chairman Roberto "Bobby" Gonzales; Vice Chairwoman Patricia A. Lundstrom; Senators Clemente Sanchez, Steven P. Neville, George K. Muñoz, Mary Kay Papen, Gay G. Kernan and Pete Campos; and Representatives Javier Martinez, Phelps Anderson, Rodolpho "Rudy" Martinez, Gail Armstrong, Candie G. Sweetser, Andres G. Romero, and Randal S. Crowder. Guest legislators: Senators, Linda M. Lopez and Pat Woods; and Representatives, Cathrynn N. Brown, Christine Chandler, Jack Chatfield, Rebecca Dow, Kelly K. Figueroa, Joy Garratt, Harry Garcia, Susan K. Herrera, Tara L. Lujan, Antonio Maestas, Marian Matthews, Tomás E. Salazar, Nathan P. Small and Sheryl Williams Stapleton.

Public School Support (993) and Public Education Department (924). Dr. Ryan Stewart, secretary of the Public Education Department (PED), presented the FY22 budget request for public

school support and the department's operations. Secretary Stewart discussed the PED strategic plan, public school support priorities, PED agency budget, and additional requests for appropriations from the public education reform fund (PERF). The PED strategic plan is established on four pillars: educator ecosystem, access to opportunity, pathways and profiles, and whole child education. Each of these pillars are designed to address a specific group or issue identified in the *Martinez-Yazzie* lawsuit and each tie to the funding request.

Secretary Stewart noted the public school support budget request maintains investments in the state equalization guarantee (SEG) distribution and holds public school districts harmless for pandemic-related enrollment and transportation anomalies. The request combines the K-5 Plus and Extended Learning Time Program (ELTP) funds into a *Martinez-Yazzie* consolidated remediation program fund, which could also be used for community schools and career and technical education programs. PED's request also includes funding to eliminate the federal Impact Aid credit in the funding formula, cover insurance and fixed costs, and increase enrollment growth program units. Secretary Stewart requested the use of PERF balances to create a family income index, used to direct funding according to students based on tax and Census track data, and a pandemic relief fund to provide additional learning time, transportation, counseling, work-based learning opportunities, and student supports over the next two years. Other requests for PERF appropriations support requests from tribes and pueblos, expand PED's regional technical assistance.

Regarding PED's operating budget request, Secretary Stewart reported general fund dollars account for 29 percent of the agency's budget while federal funds account for 62 percent. The secretary presented a 5 percent reduction to the agency budget, noting the request cuts contracts that have the least impact on organizational needs and school support.

Committee members asked questions about the budget request and topics related to the ongoing pandemic, such as decisions surrounding remote education. Representative Stapleton asked why PED did not request funding for prior initiatives, such as panic buttons, and how the department planned to "move the needle forward" with their proposed strategies and initiatives. Representative Stapleton also asked LFC staff for details about PERF recommendations and an explanation of how the funding formula would be affected by enrollment declines. LFC staff indicated PERF funds come from unspent K-5 Plus and ELTP appropriations and the recommendation for PERF appropriations is mostly used for the same purpose. Staff also explained the public school funding formula uses prior year student membership to calculate funding allocations, but includes an enrollment growth factor that accounts for current year membership changes. Regarding "moving the needle forward," Secretary Stewart indicated more schools would be able to access targeted programs by maximizing special appropriation funding.

Representative Garcia expressed concern about rural Internet access, the distribution of federal CARES Act funds, and repaying families who are covering the cost of Internet connection during remote learning. Secretary Stewart explained funding for rural Internet access was prioritized based on the number of underserved students and rurality of the community. He also noted the costs of home Internet connection was likely covered by CARES Act funding and private-public partnerships.

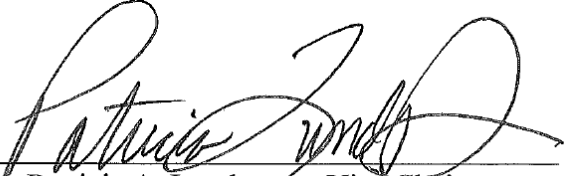
Representative Lundstrom commended the secretary's leadership and his efforts to bring the committee a recommendation that considered issues caused by the pandemic. She also requested a meeting with the secretary and LFC staff to further discuss the secretary's PERF appropriation requests.

Senator Sanchez asked if the family income index violated any confidentiality agreements by giving PED access to tax and Census information. Secretary Stewart gave assurances no confidentiality laws were violated, as PED is only provided an aggregated poverty index by district.

Committee members focused the discussion toward PED's directives on remote learning. Representatives Anderson, Lujan, and Martinez all expressed concerns about keeping students in remote learning due to issues with cyber security, mental health, and academic learning loss. The secretary noted decisions relating to school closure were made by the Medical Advisory Team and indicated he supported in-person learning when safe to do so.

LFC Appropriation Recommendation. Director Abbey and Mr. Sallee reviewed staff recommendations for FY22 appropriations, supplemental and special appropriations, fund transfers and the capital outlay framework. The committee adopted the recommendations with 15 yes and Representative Andres Romero voting no. Then the committee adjourned.

John Arthur Smith, Chairman



Patricia A. Lundstrom, Vice Chairwoman