

MINUTES
Legislative Finance Committee
Virtual Meeting
January 18, 2021

Monday, January 18th

The following members and designees were present on Monday, January 18, 2021: Chairman Roberto “Bobby” J. Gonzales; Vice Chairwoman Patricia A. Lundstrom; Senators Steven P. Neville, William F. Burt, George K. Muñoz, Clemente Sanchez, and Pete Campos; and Representatives Javier Martinez, Gail Armstrong, Harry Garcia, Candie Sweetser, Phelps Anderson, Andres G. Romero, and Randal S. Crowder. Guest legislators: Senator Mimi Stewart and Representatives Jack Chatfield and Derrick J. Lente.

Proposed LFC Endorsed Legislation. LFC staff proposed eight bills and additional language in the preamble of the capital bill for the committee to consider endorsing in the 2021 legislative session. Fiscal impact reports on the proposed legislation were provided.

1. *Public School Funding Formula Credits.* The bill amends the Public School Finance Act to eliminate impact aid, local half mill levy, and federal forest reserve credits in the public school funding formula. The bill further requires schools to budget a portion of the state equalization guarantee distribution, equal to the eliminated local and federal credits, for specified uses. Specified uses include capital outlay, capital improvements, community schools, and activities related to implementation of the Indian Education Act. The Public Education Department will monitor and report expenditures for these purposes through the statewide transparency website. Vice Chairwoman Lundstrom moved to adopt endorsement of the bill, seconded by Representative Romero.
2. *Tobacco Fund Reallocation.* The bill is similar to past years’ legislation when the Legislature diverted the 50 percent of tobacco funds that would go to the tobacco settlement permanent fund and placed all the revenue in the tobacco settlement program fund for legislative appropriation. Due to ongoing arbitration, the Department of Finance and Administration, Attorney General’s Office, and LFC are projecting a total of \$12 million in tobacco funds for FY22 instead of the usual \$30 million to \$35 million. The LFC FY22 budget recommendation would appropriate all of the projected \$12 million for programs that currently receive tobacco settlement funds while equally reducing the programs’ tobacco funds and offsetting the reduced revenue with general fund when possible. The Tobacco Settlement Revenue Oversight Committee voted to endorse the legislation on November 30th. Senator Campos moved to adopt endorsement of the bill, seconded by Representative Martinez.
3. *Agency Sunsets.* The bill extends the sunset, or termination, date to July 1, 2027, for the Office of Military Base Planning and Support, Military Base Planning Commission, Counseling and Therapy Practice Board; Board of Osteopathic Medicine; Respiratory Care Advisory Board; Physical Therapy Board; Massage Therapy Board; Nutrition and Dietetics Practice Board; Speech-Language Pathology, Audiology, and Hearing Aid Dispensing Practices Board, Board of Examiners for Occupational Therapy, and Board of Psychologist Examiners. Following the sunset date, the agencies would have until July 1, 2028 to wrap

up operations. The agencies are currently scheduled to sunset on July 1, 2021, and wrap up operations on July 1, 2022, if no action is taken. The LFC sunset review subcommittee reviewed 12 agencies on October 16 and voted to recommend extending the sunset date of ten and take no action on the other two: Athletic Trainers Practice Board and Chiropractic Board. Senator Burt moved to adopt endorsement of the bill, seconded by Representative Armstrong.

4. *Broadband to Student Households.* The bill expands the public school capital outlay definition of "education technology infrastructure" under Section 22-24-3 NMSA 1978 to include the physical hardware used to interconnect education technology equipment for school districts, school buildings, and school children's homes necessary to support broadband connectivity as determined by the council. Currently, up to \$10 million of the public school capital outlay fund is available to the Public School Capital Outlay Council for education technology infrastructure deficiency corrections. However, with nearly all schools and districts connected to high-speed fiber-optic networks, connectivity needs have moved beyond the school building and into children's homes. This new definition will allow the council to authorize home connectivity equipment in addition to that equipment used specifically for school buildings. Senator Campos moved to adopt endorsement of the bill, seconded by Representative Sweetser.
5. *Emergency Funding Authorization.* The bill revises the system for the governor to allocate emergency funding from the general fund by clarifying the emergency or disaster situations for which such funding may be allocated, restricting the allowable funding sources and amounts that may be allotted, and establishing requirements for reporting on allocations and expenditures. Vice Chairwoman Lundstrom moved to adopt endorsement of the bill, seconded by Senator Campos.
6. *Public-Private Partnerships.* The bill creates the Public-Private Partnership (P3) Act, providing legal authority for governmental entities, including tribal governments, to enter into agreements with private entities to develop public projects. Projects are restricted to transportation infrastructure, except for publicly or privately operated toll roads. The bill also creates a board, staffed by the New Mexico Finance Authority that would review, approve, and participate in the financing of P3 agreements. Senator Campos moved to adopt endorsement of the bill, seconded by Vice Chairwoman Lundstrom.
7. *Higher Education Coordinating Council.* The bill responds to a 2018 Higher Education Department (HED) assessment of governance structures at the 31 public colleges and universities in New Mexico, which called for either restructuring the entire higher education system – requiring nine amendments to the New Mexico Constitution – or creating a coordinating oversight entity to address statewide policy and financial issues for higher education. The bill creates a 15-member statewide coordinating council, composed of experts in finance, education, and workforce, to support HED's statewide higher education initiatives, focused on improving student outcomes. The council will be staffed by HED. Vice Chairwoman Lundstrom moved to adopt endorsement of the bill, seconded by Representative Gonzales.

8. *Biennial Budgeting.* The bill establishes a four-year pilot project with two budget cycles to determine if biennial budgeting will enhance the budget process by reducing costs of annual budget preparation, implementation, and oversight. Agencies will still be able to request supplemental or deficiency appropriations on an annual basis. The pilot project will begin with the preparation of an FY24 biennial budget, the biennium beginning on July 21, 2022, and conclude at the end of FY26. Participating agencies would include DFA, LFC, the Regulation and Licensing Department, and other state agencies with less than \$5 million annual operating budgets. The bill also establishes an evaluation team composed of LFC and DFA staff to monitor and report on the biennial budget pilot program, including changes in costs and other resources devoted to the budget process. Vice Chairwoman Lundstrom moved to adopt endorsement of the bill, seconded by Senator Campos.
9. *Capital Outlay Reversion Language.* The proposed language in the preamble of the capital bill will specify stricter requirements and timely reversions for general fund monies appropriated in 2021 and forward. The additional language will revert the unexpended balance of a general fund appropriation unless a notice of obligation of at least 5 percent of the total appropriation is certified within one year of the enactment of the bill and 50 percent within two years. The language will also clearly define the terms “encumbrance” and “contractual obligation” as pertaining to the capital outlay process.

LFC Progress Report: Indian Education Act Implementation. LFC Program Evaluator Brian Hoffmeister presented a progress report on the implementation of New Mexico’s Indian Education Act (IEA). Enacted in 2003 and updated in 2019, IEA lays out goals and requirements for providing Native American students an equitable, culturally relevant education through collaboration between tribes, schools, and the state. However, Native American students, who make up 10 percent of enrollment in New Mexico’s public schools, continue to perform well below their peers on state and national measures of achievement, and state courts have ruled Native American students are not receiving a sufficient and equitable education in the *Martinez-Yazzie* consolidated lawsuit.

The state is investing significant financial resources in addressing these shortcomings, with state funds conservatively making up \$90 million of \$147 million in combined state and federal funds available in FY21 for districts, charter schools, and institutions of higher education to devote to purposes aligned with IEA. Nevertheless, a history of understaffing in the Public Education Department’s Indian Education Division, difficulties with utilizing funding including the Indian education fund, and with local collaboration at the district level, and challenges with ensuring funds are aligned to specific, targeted outcomes have resulted in a system that has not served Native American students in a comprehensive and coordinated manner.

Recent state actions place a high priority on Native American education, including 2019 legislation to amend the act, added flexibility to use funding for at-risk students, and efforts to fully staff the Indian Education Division. More work is needed to ensure the Public Education Department tracks and assesses financial reporting of at-risk funds for Native American students, Indian education fund grants are not left unspent, and these dedicated funds are more closely linked to student outcomes.

Consultant Kara Bobroff identified five factors that matter in promoting successful culturally revitalizing sustaining education practice: tribal sovereignty and self-determination, community-to-teacher collaboration, teacher-driven curriculum development, models of excellent culturally sustaining and revitalizing education practices, and system approaches. Ms. Bobroff explained tribal involvement with school districts and teacher preparation programs can help Native American students connect with their cultures. Collaborations with families can work to ensure initiatives impact students and meet community satisfaction. Curricula designed by teachers can help sustain and revitalize Native American cultures. Numerous local initiatives have developed cultural curricula for Native American students. Cataloging and sharing cultural lessons and instructional practices can help expand access to cultural instruction. Lastly, a collaborative approach across all stakeholders, including tribes, pueblos, state agencies, local school districts, charter schools, and regional educational cooperatives, can help sustain and revitalize Native American cultures. Ms. Bobroff recommended PED play a central role in developing a statewide approach over the next five years.

PED Secretary Ryan Stewart said the Indian Education Division (IED) recently reorganized and is working to establish deep relationships and put systems in place to ensure funding and policies for IEA implementation produce results.

Providing an overview of current initiatives, IED Assistant Secretary Lashawna Tso said Native American curriculum is being reviewed internally. The division is developing a tribal consultation guide for local education agencies (LEAs) and revising its mid-year and end-of-year reports to include an achievement component. Cultural competency training is also in development. PED is establishing data sharing agreements with school districts and charter schools.

Sunset Review for the New Mexico Racing Commission. According to the LFC staff brief, the New Mexico Sunset Act requires periodic review of agencies and regulatory boards. The act requires LFC to hold a public hearing, receive testimony from the public and the head of the regulatory agency involved, and make a recommendation to the Legislature for the sunset or continuance of the agency prior to its termination date.

The New Mexico Racing Commission (NMRC) is currently scheduled to terminate on July 1, 2021. Per the Sunset Act, the agency would have a one-year period, through July 1, 2022, to continue operations “for the purpose of winding up [its] affairs.” The Horse Racing Act would be repealed on July 1, 2022.

LFC staff recommends taking no action at this time, given the importance of several key policy and operational issues affecting the horseracing industry, including ongoing drug violations and racehorse fatalities, high amounts of uncollected penalty fees, illegal track activity, and uncertainty around the implications of a new federal horseracing commission and potential expansion of online wagering. NMRC has made progress over the last several years in expanding testing, strengthening penalties for violations, and addressing illegal activity and also recognizes the need for ongoing and effective regulation of horseracing activity. LFC staff recommend comprehensive hearings on extension of agency life during the 2021 interim. The agency has until July 1, 2022, to operate, and statutes of the Horse Racing Act are in place until the same date, providing more time for further analysis and discussion.

Beverly Bourguet, chairwoman of NMRC, said closures during the pandemic and the Horseracing Integrity and Safety Act of 2020 are negatively impacting the horse racing industry in New Mexico.

NMRC Executive Director Ismael Trejo said the commission was established in 1938 to regulate horse racing in New Mexico. Equine drug testing, investigating, and auditing are among the several duties administered by the 23 FTE-agency. Mr. Trejo said the workload of NMRC's drug testing program increased 120 percent from 2017 to 2019. The program has effectively decreased the number of violations, decreasing 43 percent respectively.

In response to Senator Burt, LFC Analyst Alison Nichols said NMRC typically meets 11 times a year.

Miscellaneous Business.

Action Items. Senator Campos moved to adopt the November 2020 meeting minutes, seconded by Representative Armstrong. The motion carried.

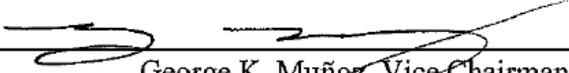
Senator Burt moved to adopt the December 2020 meeting minutes, seconded by Representative Armstrong. The motion carried.

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

With no further business, the meeting adjourned at 1:31 p.m.



Patricia A. Lundstrom, Chairwoman



George K. Muñoz, Vice-Chairman