LEGISLATIVE EDUCATION STUDY COMMITTEE

REPORT TO THE FIRST SESSION

OF THE

FIFTIETH LEGISLATURE

STATE OF NEW MEXICO

WINTER 2011

STATE OF NEW MEXICO
LEGISLATIVE EDUCATION STUDY COMMITTEE

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Winter 2011

Fiftieth Legislature, First Session, 2011
State Capitol
Santa Fe, New Mexico

Dear Fellow Legislators:

This report summarizes the activities of the Legislative Education Study Committee (LESC) during the 2010 legislative interim as well as the committee's recommendations for the 2011 legislative session.

Like the reports of previous interims, this one reviews the research and testimony that the LESC considered in making its recommendations for public school support and for legislation introduced during the 2011 Regular Session. Unlike previous reports, however, this one is being presented primarily in electronic format on the LESC website, http://lesc.nmlegis.gov. In addition to serving the purposes of economy and efficiency, this format allows hyperlinks that you may use to move quickly and easily from one part of the report to another. Please note, however, that hard copies can still be provided upon request to the LESC office.

On behalf of the committee, it is my pleasure to present this report. I hope that you will find it informative and useful.

Sincerely,

Senator Cynthia Nava, Chair

THE LEGISLATIVE EDUCATION STUDY COMMITTEE

As a permanent bipartisan, bicameral committee of the Legislature, the Legislative Education Study Committee (LESC):

- conducts a continuing study of all education in New Mexico, the laws governing such education and the policies and costs of the New Mexico educational system, including the training of certified teaching personnel in postsecondary institutions;
- recommends funding levels for public education;
- recommends changes in laws relating to education; and
- makes a full report of its findings and recommendations.

The LESC comprises 10 voting members appointed to provide proportionate representation from both houses and both major political parties, as well as a number of advisory members of the Legislature.

The LESC is currently supported by 12 full-time staff members:

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LEGISLATIVE EDUCATION STUDY COMMITTEE
2011 REPORT TO THE LEGISLATURE

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FY 12 PUBLIC SCHOOL SUPPORT RECOMMENDATIONS AND RELATED APPROPRIATIONS

(dollars in thousands)

		A	B	C	D	
		FY 11 Final Unit Value $3,712.17 [1]				
		FY 11 APPROPRIATION reduced by an add'l 3.244% (per Sec. 14)	**FY 12 EXECUTIVE RECOMMENDATION**	**FY 12 LFC RECOMMENDATION**	**FY 12 LESC RECOMMENDATION**	
1	**PROGRAM COST**	*$2,171,012.2*	$2,255,050.1	$2,255,050.1	$2,255,050.1	1
2	**Restoration with General Fund Dollars of ARRA State Fiscal Stabilization Funds**	*$164,700.0*	$88,767.6	$88,275.6	$88,275.6	2
3	**FY 11 ARRA FUNDS**	*($23,898.0)*				3
4	ENROLLMENT GROWTH	*$14,016.9*		$4,500.0	$4,500.0	4
5	FIXED COSTS	*$3,723.9*				5
6	INSURANCE COSTS	*$11,500.0*				6
7	**PUBLIC SCHOOL EMPLOYEE COMPENSATION**					7
8	Employer's ERB Contribution Changes (See footnotes for specific changes by agency) **(Contingent on Enactment of Legislation)**		SEE FOOTNOTE [2]	SEE FOOTNOTE [3]	SEE FOOTNOTE [4]	8
9	Increase Employer's ERB contribution by 0.25% (recommendation of the Legislative Retirement Systems Solvency Task Force) **(Contingent on Enactment of Legislation)**				$3,895.7	9
10	Shift Return-to-work Employee ERB Contribution to Employee (9.4%) **(Contingent on Enactment of Legislation)**			($4,860.5)	($4,860.5)	10
11	Reduce Professional Development Days for FY 12 (1 day for LFC, 1 day for LESC Recommendation)			($12,193.3)	($11,250.0)	11
12	Cap Ancillary FTEs at 1.5 Times PED Guidelines **(Contingent on Enactment of Legislation)**				($3,036.0)	12
13	Suspend High School Graduation/Standards-Based Assessment Requirement for 1 Year (FY 12) **(Contingent on Enactment of Legislation)**				($2,530.2)	13
14	Correct Formula Inefficiencies (LFC Recommendation only) **(Contingent on Enactment of Legislation)**			($21,500.0)		14
15	Administrative Savings (Executive Recommendation only)		($30,000.0)			15
16	Administrative Savings Contingency (Emergency School Fund to Ensure no Reductions in Smaller Districts) (Executive Recommendation only)		$3,000.0			16
17	**PROGRAM COST**	**$2,255,050.1**	**$2,316,817.7**	**$2,309,271.9**	**$2,330,044.7**	17
18	**Dollar Difference over Previous Year's Appropriation**		$61,767.6	$54,221.8	$74,994.6	18
19	**Percent Change**		2.7%	2.3%	3.3%	19
20	LESS PROJECTED CREDITS	($59,400.00)	($62,400.0)	($72,900.0)	($72,900.0) [5]	20
21	LESS OTHER STATE FUNDS (from driver's license fees)	($850.00)	($850.0)	($850.0)	($850.0)	21
22	**STATE EQUALIZATION GUARANTEE (General Fund recurring appropriations, not including ARRA)**	**$2,194,800.1**	**$2,253,567.7**	**$2,235,521.9**	**$2,256,294.7**	22
23	**Dollar Difference over Previous Year's Appropriation**		$58,767.6	$40,721.8	$61,494.6	23
24	**Percent Change**		2.7%	1.9%	2.8%	24
25	**STATE FISCAL STABILIZATION FUNDS FROM ARRA: Phase 2**	**$23,898.0**				25
26	**EDUCATION JOBS FUND**	**$64,377.6** [6]				26
27	**ADJUSTED STATE EQUALIZATION GUARANTEE, INCLUDING ARRA and EDUCATION JOBS FUNDS**	**$2,283,075.7** [7]	**$2,253,567.7**	**$2,235,521.9**	**$2,256,294.7**	27
28	**Dollar Difference over Previous Year's Appropriation**		**($29,508.0)**	**($47,553.8)**	**($26,781.0)**	28
29	**Percent Change**		**-1.3%**	**-2.1%**	**-1.2%**	29

[1] FY 11 Final Unit Value = $3,572.34 General Fund + $37.85 federal ARRA dollars + $101.98 in Education Jobs Funds, a decrease of $0.28 from the initial Unit Value of $3,712.45.

[2] The Executive recommends delaying the prescribed 0.75% increase and extending the 1.5% employer/employee swap, and recommends an additional 2.0% employer/employee swap, excepting teachers and educational assistants. The Executive's Public School Support recommendation spreadsheet does not reflect a decrease due to these changes, and DFA staff have not been reached to reconcile the savings, which LESC staff estimate to be between $10.0 and $16.0 million.

[3] LFC recommends delaying the prescribed 0.75% increase, extending the 1.5% employer/employee swap, and recommends an additional 1.75% employer/employee swap. LFC staff report that the LFC's Public School Support recommendation spreadsheet does not reflect a decrease due to these changes because it does not recommend making the reductions in Section 4 of the *General Appropriation Act of 2011* . The LESC estimates these changes to be approximately $27.27 million above-the-line and $685,600 (line 35) for transportation employees.

[4] LESC recommends delaying the prescribed 0.75% increase, extending the 1.5% employer/employee swap, and recommends an additional 1.75% employer/employee swap. The LESC estimates these changes to be approximately $27.27 million above-the-line and $685,600 (line 35) for transportation employees.

[5] Includes language permitting PED to request from the State Board of Finance a transfer from reserves in the amount by which credits fall short of the projected amount.

[6] New Mexico's FY 11 Education Jobs Fund award totals $64.869 million; however, PED retains $492,000 for administrative costs, and therefore $64.377 million will be distributed through the funding formula.

[7] Lines 25-29 reflect the inclusion of federal ARRA dollars in the recurring General Fund appropriation for the State Equalization Guarantee (see Line 22). These one-time federal funds replaced recurring General Fund dollars in both FY 10 and FY 11. The total in Column A includes approximately $64.4 million in federal Education Jobs Funds for FY 11.

FY 12 PUBLIC SCHOOL SUPPORT RECOMMENDATIONS AND RELATED APPROPRIATIONS

(dollars in thousands)

		A	B	C	D	
		FY 11 Final Unit Value $3,712.17 [1]				
		FY 11 APPROPRIATION reduced by an add'l 3.244% (per Sec. 14)	**FY 12 EXECUTIVE RECOMMENDATION**	**FY 12 LFC RECOMMENDATION**	**FY 12 LESC RECOMMENDATION**	
30	**CATEGORICAL PUBLIC SCHOOL SUPPORT**					30
31	TRANSPORTATION					31
32	Operational	$83,049.3	$83,049.0	$82,339.0	$82,339.0	32
33	Rental Fees (contractor-owned buses)	$11,578.2	$11,578.3	$11,724.4	$11,724.4	33
34	**TRANSPORTATION EMPLOYEE COMPENSATION**					34
35	Employer's ERB Contribution Changes (See footnotes for specific changes by agency) **(Contingent on Enactment of Legislation)**		SEE FOOTNOTE [2]	SEE FOOTNOTE [3]	SEE FOOTNOTE [4]	35
36	Increase Employer's ERB contribution by 0.25% (Recommendation of the Legislative Retirement Systems Solvency Task Force) **(Contingent on Enactment of Legislation)**				$97.9	36
37	TOTAL TRANSPORTATION	**$94,627.5**	**$94,627.3**	**$94,063.4**	**$94,161.3**	37
38	SUPPLEMENTAL DISTRIBUTIONS					38
39	Out-of-state Tuition	$333.0	$333.0	$346.0	$346.0	39
40	Emergency Supplemental	$1,924.6	$1,924.6	$1,924.6	$1,924.6	40
41	INSTRUCTIONAL MATERIAL FUND (FY 12 adoption includes grades K-12 Social Studies, Health Education, and Physical Education)	$14,603.2	$14,603.2	$15,092.8	$15,092.8 [8]	41
42	Dual Credit Instructional Materials	$962.3	$962.3	$812.3	$812.3	42
43	INDIAN EDUCATION FUND	$1,924.6	$1,924.6	$1,924.6 [9]	$1,924.6 [10]	43
44	**TOTAL CATEGORICAL**	**$114,375.2**	**$114,375.0**	**$114,163.7**	**$114,261.6**	44
45	**TOTAL PUBLIC SCHOOL SUPPORT (General Fund recurring appropriations, not including ARRA)**	**$2,309,175.3**	**$2,367,942.7**	**$2,349,685.6**	**$2,370,556.3**	45
46	**Dollar Difference over Previous Year's Appropriation**		$58,767.4	$40,510.3	$61,381.0	46
47	**Percent Change**		2.5%	1.8%	2.7%	47
48	**STATE FISCAL STABILIZATION FUNDS FROM ARRA: Phase 1**					48
49	**STATE FISCAL STABILIZATION FUNDS FROM ARRA: Phase 2**	$23,898.0				49
50	**EDUCATION JOBS FUND**	$64,377.6				50
51	**ADJUSTED TOTAL PUBLIC SCHOOL SUPPORT, INCLUDING ARRA and EDUCATION JOBS FUNDS**	$2,397,450.7 [11]	$2,367,942.70	$2,349,685.60	**$2,370,556.3**	51
52	**Dollar Difference over Previous Year's Appropriation**		**($29,508.0)**	**($47,765.1)**	**($26,894.3)**	52
53	**Percent Change**		**-1.2%**	**-2.0%**	**-1.1%**	53

[8] The LESC recommendation for the Instructional Materials Fund includes language specifying that, in using the funds, school districts must give priority to completing the FY 11 adoption for K-8 language arts/reading, K-8 modern, classical, and native languages, and grades K-8 reading intervention programs.

[9] The LFC recommendation for the Indian Education Fund includes language specifying that the appropriation includes: $300,000 for a nonprofit organization that provides teaching support in schools with a high proportion of Native American students.

[10] The LESC recommendation for the Indian Education Fund includes language specifying that the appropriation includes: $400,000 to provide a rural literacy initiative to support after-school and summer literacy block programs for students in grades K-8 in schools with a high proportion of Native American students, contingent on receipt of $400,000 in matching funds from a nonprofit organization; and $400,000 for a nonprofit organization that provides teaching support in schools with a high proportion of Native American students.

[11] Lines 48-53 reflect the inclusion of federal ARRA dollars in the recurring General Fund appropriation for Total Public School Support (see Line 45). These one-time federal funds replaced recurring General Fund dollars in both FY 10 and FY 11. The total in Column A includes approximately $64.4 million in federal Education Jobs Funds for FY 11.

FY 12 PUBLIC SCHOOL SUPPORT RECOMMENDATIONS AND RELATED APPROPRIATIONS

(dollars in thousands)

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		FY 11 Final Unit Value $3,712.17 [1]				
		FY 11 APPROPRIATION reduced by an add'l 3.244% (per Sec. 14)	**FY 12 EXECUTIVE RECOMMENDATION**	**FY 12 LFC RECOMMENDATION**	**FY 12 LESC RECOMMENDATION**	
54	**RELATED APPROPRIATIONS: RECURRING**					54
55	**PUBLIC EDUCATION DEPARTMENT**	$13,955.3	$10,955.4	$12,469.3	$12,469.3 [12]	55
56	**Regional Education Cooperatives Operations**	$938.2 [13]	$938.2	$567.2	$938.2	56
57	Advanced Placement	$541.8	$541.8		$541.8	57
58	After-school Enrichment Program	$144.3	$144.3		$144.3	58
59	Apprenticeship Assistance	$192.5	$192.4	$192.4	$192.4	59
60	Breakfast for Elementary Students	$1,924.6	$1,924.6	$1,924.6	$1,924.6	60
61	GRADS – Teen Pregnancy Prevention	$288.7 [14]	$288.7			61
62	K-3 Plus	$5,292.6	$5,292.6	$5,292.6	$5,292.6	62
63	NEW MEXICO CYBER ACADEMY/INNOVATIVE DIGITAL EDUCATION AND LEARNING (IDEAL-NM)	$685.2	$500.0		$500.0	63
64	Operating Budget Management System (OBMS) and Student Teacher Accountability Reporting System (STARS) Operational Costs	$673.6	$673.6		$673.6	64
65	Pre-kindergarten Program	$5,292.6 [15]	$5,292.6	$6,292.6	$6,292.6	65
66	Summer Reading, Math, and Science Institutes	$158.8	$158.8		$100.0	66
67	**TOTAL RELATED APPROPRIATIONS: RECURRING**	**$30,088.2**	**$26,903.0**	**$26,738.7**	**$29,069.4**	67
68	**GRAND TOTAL (General Fund recurring appropriations, not including ARRA)**	**$2,339,263.3**	**$2,394,845.7**	**$2,376,424.3**	**$2,399,625.7**	68
69	**Dollar Difference over Previous Year's Appropriation**		**$55,582.4**	**$37,161.0**	**$60,362.5**	69
70	**Percent Change**		**2.4%**	**1.6%**	**2.6%**	70
71	**STATE FISCAL STABILIZATION FUNDS FROM ARRA: Phase 1**					71
72	**STATE FISCAL STABILIZATION FUNDS FROM ARRA: Phase 2**	$23,898.0				72
73	**EDUCATION JOBS FUND**	$64,377.6				73
74	**ADJUSTED GRAND TOTAL, INCLUDING ARRA and EDUCATION JOBS FUNDS**	**$2,427,538.9** [16]	**$2,394,845.70**	**$2,376,424.30**	$2,399,625.73	74
75	**Dollar Difference over Previous Year's Appropriation**		**($32,693.2)**	**($51,114.6)**	**($27,913.1)**	75
76	**Percent Change**		**-1.3%**	**-2.1%**	**-1.1%**	76

[12] The LESC does not make a recommendation for the PED Budget; for the purposes of this table, the LFC recommendation is included in the LESC recommendation.

[13] The FY 11 appropriation to Regional Education Cooperatives included language requiring the funds to be allocated based on justified need; timely submission of quarterly financial reports; and compliance with state and federal reporting requirements.

[14] The FY 11 appropriation to GRADS included an additional $250,000 from the TANF block grant to New Mexico.

[15] For FY 11, an additional $2.5 million was appropriated to the Pre-kindergarten program: $1.0 million from the Public Pre-kindergarten Fund and $1.5 million from theTANF block grant to New Mexico.

[16] Lines 71-76 reflect the inclusion of federal ARRA dollars in the recurring General Fund appropriations that make up the Grand Total (see Line 68). These one-time federal funds replaced recurring General Fund dollars in both FY 10 and FY 11. The total in Column A includes approximately $64.4 million in federal Education Jobs Funds for FY 11.

FY 12 PUBLIC SCHOOL SUPPORT RECOMMENDATIONS AND RELATED APPROPRIATIONS

(dollars in thousands)

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		FY 11 Final Unit Value $3,712.17 [1]				
		FY 11 APPROPRIATION reduced by an add'l 3.244% (per Sec. 14)	**FY 12 EXECUTIVE RECOMMENDATION**	**FY 12 LFC RECOMMENDATION**	**FY 12 LESC RECOMMENDATION**	
77	**RELATED APPROPRIATIONS: NONRECURRING**					77
78	Emergency Support to School Districts	$6,000.0 [17]		$4,000.0	$6,000.0	78
79	Emergency Supplemental Support to Small Rural School Districts	$4,000.0 [18]	(See Line 16)			79
80	New Mexico Mathematics, Engineering, Science Achievement (MESA) (to HED)				$100.0	80
81	Summer Science Program (to New Mexico Institute of Mining and Technology)				$50.0	81
82	**TOTAL RELATED APPROPRIATIONS: NONRECURRING**	**$10,000.0**	**$0.0**	**$4,000.0**	**$6,150.0**	82

[17] For FY 11, the appropriation for emergency support is for school districts statewide experiencing shortfalls.

[18] For FY 11, the appropriation for emergency supplemental support is for small rural school districts with a total membership of fewer than 600 in their elementary, middle, and high schools in financial need. Language in the bill prohibits emergency funding to a school district having cash or other resources of 5 percent or more of its operational budget.

LEGISLATIVE EDUCATION STUDY COMMITTEE
ADDITIONAL RECOMMENDATIONS FOR THE 2011 SESSION

P-20 INITIATIVE

1. **Create Dual Credit Textbook Fund:** Add a new section to the *Public School Code* to:
   - create the Dual Credit Textbook Fund to distribute money to college bookstores on warrant of Public Education Department (PED) to provide textbooks and course supplies for students participating in the Dual Credit Program;
   - require that PED establish, by rule, a method to allocate and distribute monies in the fund to college bookstores on warrant of PED; and
   - require that PED establish, by rule, provisions for the schedule and amount of monies to be distributed, the tracking of inventory and possession of the textbooks, and an accounting of the monies distributed to the bookstores.
2. **Dual Credit Reimbursement:** Introduce legislation to provide that dual credit reimbursement through the higher education funding formula be based on course completion, not enrollment.

FISCAL ISSUES AND CAPITAL OUTLAY

3. **No Education Dept. Auditor Approval:** Introduce legislation to amend the *Audit Act* to remove the requirement that PED approve the selection of an independent auditor by a school district.
4. **School Business Official Licensure:** Introduce legislation to amend the *School Personnel Act* to require PED to:
   - provide by rule for licensure of school business officials (SBOs), including initial and continuing licensure, competencies, ethics and reporting requirements, and a savings clause;
   - track the denial, suspension, or revocation of SBO licenses and determine if these actions occur in a timely manner;
   - assess the quality of and enforcement of training requirements for SBO licensure; and
   - require mandatory training for superintendents on the evaluation of SBOs, including how to assess SBO competencies.
5. **School Personnel "Ethical Misconduct" Definition:** Introduce legislation to amend the *School Personnel Act* to add "financial malfeasance or misfeasance" to the definition of "ethical misconduct" in current law.

6. **PED Office of Inspector General (OIG) positions:** Write a letter to the House Appropriations and Finance Committee requesting language in the *General Appropriation Act of 2011* to transfer the six PED OIG positions to the Office of the State Auditor and to dedicate the positions to education-related reviews.
7. **Small School District Service Consolidation:** Introduce a joint memorial requesting that PED, in collaboration with the Office of Education Accountability, the Office of the State Auditor, Regional Education Cooperatives, Cooperative Educational Services, and other stakeholders examine the feasibility of (1) consolidating certain business services for small school districts; (2) providing support services to small districts through a regional system; and (3) operating one or more pilot projects to determine the effectiveness of such proposals; and provide a report to the LESC before October 31, 2011.
8. **Letter regarding Increased School Board Training Requirements:** Write a letter to PED requesting that the department change rules relating to school board member and charter school governing board member training to increase the required training from five to 10 hours, five of which shall be focused on the financial and audit responsibilities of boards and governing bodies.
9. **Letter regarding Certain School Audit Issues:** Write a letter to the Office of the State Auditor requesting that the office explore:
    - whether the state audit rule could be amended to allow certain school districts to submit their financial audits on December 15 rather than on November 15; and
    - the feasibility of allowing locally and state-chartered charter schools to have audits independent of their authorizers.
10. **Letter regarding SBO Successor Planning:** Write a letter to PED requesting that PED include confirmation on the school budget questionnaire that school districts and charter schools have established SBO successor planning as part of their internal control process.
11. **Letter regarding CPA Training Courses:** Write a letter to the New Mexico Association of School Business Officials (NMASBO) from the LESC requesting that NMASBO develop courses that count toward required annual Certified Public Accountant training.
12. **Reduce Professional Development Days:** Include language in the *General Appropriation Act of 2011* that states: "The General Fund appropriation to the state equalization guarantee distribution considers a reduction to the school year by two full professional development days. Prior to the approval of a school district's or charter school's budget, the Secretary of Public Education shall verify that each school district or charter school has reduced its academic calendar by two full professional development days below the 2010-2011 school year"; and reduce the appropriation to the state equalization guarantee (SEG) by $11.5 million.

13. **Limit Certain Special Education Program Units:** Introduce legislation to amend the *Public School Finance Act* to provide that, in calculating related services (ancillary) units, school districts and charter schools may not exceed 1.5 times the PED guidelines for calculating related services FTEs.
14. **Recapture Graduate NM Funds:** Request that the Governor reallocate unspent Graduate NM *American Recovery and Reinvestment Act* (ARRA) funds to the SEG.
15. **Approval of Emergency Supplemental Funding Requests:** Introduce legislation to amend the *Public School Finance Act* to grant the State Board of Finance approval authority for the distribution of emergency supplemental funds to school districts.
16. **New School & School Building Moratorium:** Introduce legislation to amend the *Public School Code* to include a temporary provision to establish a six-year moratorium on new public schools to save the cost to the state of constructing and opening these facilities; and provide for exceptions in certain circumstances.
17. **Postsecondary School Building Moratorium:** Introduce legislation to create a temporary provision to establish a six-year moratorium on postsecondary branch campuses, campuses of independent community colleges, and learning centers, to save the cost to the state of constructing and opening these facilities; and provide for exceptions in certain circumstances.
18. **School Fund Reversions & Transfers:** Introduce legislation to:
    - amend the *Public School Finance Act* to provide that the balance remaining in the Public School Fund at the end of each fiscal year shall not revert to the General Fund unless otherwise provided by law; and
    - amend the *Public School Finance Act* to require that, if excess local or federal revenues (as defined in Section 22-8-25 NMSA 1978) are received in the fiscal year for which these revenues were used to compute the SEG distribution, the revenues be deposited in the State Support Reserve Fund to maintain the credit balance required in current law of at least $10.0 million.
19. **Create School Transportation Task Force:** Endorse legislation to create a school transportation task force, appointed by the Legislative Council, to examine provisions in current state and federal laws and regulations governing public school transportation in New Mexico, including: the transportation funding formula; the personnel costs to school districts and school bus contractors; the costs of fuel, equipment, and maintenance; and the administration of the public school transportation program; and appropriate funds from the General Fund to the Legislative Council Service for FY 12 for the expenses of the task force.
20. **Instructional Material Adoption Cycle:** Introduce legislation to amend the Instructional Material Law to require an eight-year instructional material adoption cycle.

21. **LESC Emergency Fund Distribution Work Group:** Introduce a memorial requesting two members of the House and two members of the Senate, in collaboration with two superintendents, a school business manager, a representative from PED, and other stakeholders to study the process of funding, awarding, and distributing emergency supplemental funds to school districts and provide a report to the LESC by December 1, 2011.
22. **Public Works Contract Subcontractor Bonds:** Endorse legislation to raise the minimum contract size on which a subcontractor's bond shall be required for public school capital outlay projects to $250,000.
23. **School Facility Leases and Standards:** Endorse legislation to:
    - require that, on or after July 1, 2011, a new charter school cannot open, nor an existing charter relocate, unless the facility of the school receives, within 18 months, a New Mexico Condition Index rating equal to or better than the average condition of all New Mexico public schools for that year;
    - exempt a school district leasing a facility to a charter school from the requirement for State Board of Finance approval; and
    - require prior Public School Facilities Authority approval before execution of a lease or lease-purchase agreement for school facilities or before applying for a grant for lease payments. (For the Public School Capital Outlay Oversight Task Force)
24. **School Budget Division of Education Dept.:** Introduce legislation to amend the *Public Education Department Act* to create a budget and finance division at PED.

ASSESSMENT AND ACCOUNTABILITY

25. **Early K-3 Plus Pilot Fund Early Allocation:** Introduce legislation and include language in the *General Appropriation Act of 2011* to ensure that K-3 Plus funds can be made available to school districts before the start of the fiscal year, so that districts receive the funds in time to commence programs prior to the start of the new school year.
26. **Educational Test Service Multi-Year Contracts:** Amend the *Procurement Code* to allow extensions of up to 12 years for the development and implementation of standardized tests in grades K through 12 and for the development and implementation of teacher tests for professional licensures.
27. **Education Dept. Pays for Standard-based Tests:** Amend the *Assessment and Accountability Act* to require PED to pay the costs of administering, scoring, and reporting standards-based assessments.
28. **Suspend Non-federally Required Assessments:** Endorse legislation to suspend, for one year, all student assessments currently required in state law but not in federal law. (Recommendation of the December 10, 2010 PED Student Assessment Priorities Stakeholder Meeting.)

29. **No 4th Grade without Reading Proficiency:** Endorse legislation to require school districts to retain any student who is not academically proficient in reading by the end of grade 3; to develop objective standards based on which the retention determination is made; and to provide that a student may be held back in grade 3 only twice.

EDUCATOR QUALITY

30. **Science of Teaching Reading Requirement:** Amend the *School Personnel Act* to require that, to qualify for licensure to teach grades K-5, a candidate must demonstrate an understanding of, and ability to apply, the scientific research on teaching reading by passing a rigorous exam.
31. **Educator Evaluation Council and Evaluation Pilot Project:** Introduce legislation to amend the *School Personnel Act* to create an annual educator evaluation system for licensed school personnel that:
    - includes a student growth component;
    - is integrated into the existing three-tiered licensure system;
    - provides a basis for personnel actions for school personnel; and
    - has the capability to link the licensed person's evaluation to the PED-approved educator preparation program that prepared the individual for licensure, with a timetable and process to tie results of the system to departmental approval of such programs;

      by:
      - establishing an Educator Evaluation Council as a policy advisory body to PED, to make recommendations to PED for the design of the evaluation system, including a cost analysis and implementation plan; and
      - providing for a one-year pilot study of the new system to be conducted by three school districts, one large, one medium, and one small, prior to the presentation of final recommendations by PED for legislation to establish the system in statute.

MEETING THE NEEDS OF STUDENTS

32. **Title-1 Supplemental Education Services:** Amend the *Assessment and Accountability Act* regarding supplemental educational services (SES) to:
    - allow local school boards and charter school governing bodies to adopt a policy governing whether a school's teachers may be hired as tutors for the teacher's own students or for students from the teacher's school; and
    - require PED to adopt rules (1) establishing a range of rates that providers may charge, and (2) requiring each SES provider to include in its application for state approval, as prescribed by PED, documentation that the

tutoring services to be offered are consistent with the instructional program offered by the district or charter school whose students the SES provider will serve.

33. **Conform to Federal Disability Definitions:** Introduce legislation to align the language in state special education law with that in the federal law to which the state and public schools are accountable.
34. **Charter School Expenditure Reports:** Endorse legislation to amend the *Public School Capital Improvements Act* (SB 9) and the *Public School Buildings Act* (HB 33) to require charter schools to report anticipated and actual expenditures of distributions made pursuant to those acts. (For the Public School Capital Outlay Oversight Task Force)
35. **Charter School Audit Monitoring:** Introduce legislation to amend the *Charter Schools Act* to require an authorizer to monitor the fiscal condition of any charter school it has authorized when that charter school has received an adverse audit. The monitoring shall continue until the charter school receives a clean audit, and shall consist of at least one site visit and at least three status reports per year. Each status report shall address the charter school's progress toward resolving the specific audit findings.
36. **Charter School Conversion Attendance:** Amend the *Assessment and Accountability Act* to clarify that, if a traditional public school in Restructuring 2 is converted to a state-chartered charter school pursuant to its restructuring plan, it may grant enrollment priority to students already attending that school.

OTHER TOPICS

37. **Clarify School Year & Day Length:** Introduce legislation to repeal the provision enacted in 2009 that requires that a school year consist of 180 full instructional days for a regular school calendar or 150 days for a variable school calendar, exclusive of professional development days and adjustments for cancelled days due to inclement weather.
38. **Student Teacher Alternative Curriculum:** Amend the *Public School Code* to allow the Secretary of Public Education to waive class-size requirements for classes to which a student teacher who meets certain criteria has been assigned.
39. **School District Bullying Prevention Programs:** Introduce legislation to require PED to establish guidelines for bullying prevention policies to be promulgated by local school boards; require local boards to promulgate policies by August 2011; and require every public school to implement a bullying prevention program by August 2012.

40. **Study Effects of Bullying:** Introduce a memorial requesting the Children, Youth and Families Department, PED, and the Department of Health to conduct a joint study of the incidence, nature, and effects of bullying and other forms of harassment affecting New Mexico children and youth, and to report findings and recommendations to the LESC by November 30, 2011.
41. **Develop Diploma Stamp System:** Endorse legislation requiring that, by the beginning of school year 2012-2013, PED establish a system to allow school districts voluntarily to award "diploma stamps" on diplomas of students who excel in completion of specified career technical education courses.
42. **Continued Educational Assistance Debt Service:** Endorse legislation to repeal and replace sections of the *Educational Assistance Act* to allow the NM Student Loan Guarantee Corporation and the NM Educational Assistance Foundation to manage the orderly elimination of the Federal Family Education Loan Program portfolio and to explore other opportunities that could provide services to educational institutions and students in the state.
43. **NM Tech Summer Science Program:** Endorse legislation to appropriate $50,000 to New Mexico Tech for the Summer Science Program.
44. **Minority Math & Science Achievement Program:** Endorse legislation to appropriate $100,000 to the Higher Education Department for the Mathematics, Engineering, and Science Achievement, Inc. (MESA) Program.

REPORT OF THE 2010 INTERIM

INTRODUCTION

During each interim, the Legislative Education Study Committee (LESC) examines a wide range of education issues, both fiscal and programmatic, that affect the achievement and well-being of preschool, elementary, secondary, and postsecondary students in New Mexico. Issues are identified at the initiative of committee members, other legislators, or bills or memorials; and the LESC Interim Workplan establishes the framework for the committee's research, data collection, deliberations, and analysis. This report summarizes the LESC's examination of education issues identified during the 2010 legislative interim and includes the committee's recommendations for the 2011 legislative session.

During the 2010 interim, the LESC continued certain practices common during previous interims. For example, the committee maintained its focus from the 2009 interim on the results of existing educational programs, reiterating its desire to hold these programs accountable and stating once again its intention not to consider individual requests for funding of new programs. Given the economic downturn that began during the 2008 interim and that lingers still, this decision seems especially appropriate. Because of this economic downturn, the LESC held only three meetings outside Santa Fe and they were close by: two in Albuquerque and the other in Rio Rancho. At all of these meetings, the committee continued to provide a forum for students, school personnel, members of the public, and other interested parties to express their views on education issues. To ensure that each interested party had the same opportunity for access to the committee and to ensure that the LESC received concise information, the committee continued the use of specific criteria for community input that had been adopted during the 2007 interim.

This report provides summaries of presentations categorized according to certain themes: the P-20 Initiative, Fiscal Issues and Capital Outlay, Assessment and Accountability, Educator Quality, Meeting the Needs of Students, and Other Topics. Although the report covers all of the issues examined during the 2010 legislative interim, it is intended only as a summary, not a detailed record. Readers interested in more information are encouraged to consult staff reports, minutes, reports of previous interims, and other material on file in the LESC office or available through the LESC website, http://lesc.nmlegis.gov.

Finally, as a complement to this report, a collection of tables and figures presenting public school data is available in the same two formats as this report: on the website and in hard copy upon request.

ISSUES STUDIED BY THE LESC

P-20 INITIATIVE

Since 2001, the LESC has been examining and supporting the continuum of public education from preschool to postsecondary, often called the P-20 Initiative. Perhaps the fundamental goal of the P-20 Initiative is to improve student success by removing barriers at each educational level. Toward that end, the LESC has consistently endorsed legislation intended to enhance one point or another along the P-20 continuum. This section of the annual report reviews a number of these measures as reflected in testimony to the committee during the 2010 interim. While there is frequent overlap among them – as there is with almost all education initiatives – some of these measures focus on data collection and dissemination, others on issues and needs at the secondary level, and still others on the transition into postsecondary education and the workplace. Because they were presented within the context of external evaluations, measures related to pre-kindergarten and the elementary grades are discussed under the heading "Assessment and Accountability."

P-20 EDUCATIONAL DATA SYSTEM UPDATE

In 2010, LESC-endorsed legislation was enacted to codify the requirements for a P-20 education accountability data system in order to:

- collect, integrate, and report longitudinal student-level and educator data required to implement federal or state education performance accountability measures;
- conduct research and evaluation of federal, state, and local education programs; and
- audit program compliance with federal and state requirements.

LESC staff testimony explained that the legislation also requires the creation of a data system council, led by the secretaries of public education and higher education, and that this council had its first meeting on September 22, 2010.

Staff testimony provided an overview of the components of the P-20 data system, noting that the Higher Education Department (HED) had been able to upload data from the Student Teacher Accountability Reporting System (STARS) used by the Public Education Department (PED) and to match data of high school graduates to the college records maintained at HED. Further testimony by HED described the capabilities of existing data systems to produce P-20 reports. HED testimony said that the two education departments were already capable of producing most of the reports required in the legislation, including:

- matching individual public school students' test records from year to year to measure academic growth, including student-level college and career readiness test scores;
- providing postsecondary remediation data, including assessment scores on exams used to determine the need for remediation; and
- connecting performance with financial information.

Finally, PED provided a brief update on the status of the implementation of the electronic student management system, or "Carve Your Path," an individual student-based, interactive system for personal management and review of requirements associated with graduation and readiness for college or the work force.

STUDENT ID NUMBERS IN TWO-YEAR COLLEGE DATA SYSTEMS

In 2010, the LESC chairs wrote a letter to HED, PED, the New Mexico Association of Community Colleges, and the New Mexico Independent Community Colleges requesting that they form a work group to develop solutions for reporting students' unique IDs to those branch and community colleges that do not require high school transcripts for admission and that they provide a report to the LESC prior to September 30, 2010.

Staff testified that, in August 2010, a meeting took place between representatives from each of these parties and LESC staff, the result of which was an agreement between Central New Mexico Community College (CNM) and PED to conduct a pilot project to test the feasibility of CNM having access to STARS. PED testimony indicated that the initial estimate to purchase software licenses to allow this type of data sharing is approximately $500,000.

EDUCATOR ACCOUNTABILITY REPORTING SYSTEM

The Educator Accountability Reporting System (EARS) is a data system that measures how well colleges, schools, and departments of education are performing in the preparation of educators. Statute requires PED to work with teacher preparation programs, the postsecondary institutions that offer those programs, and HED to provide a report to the Legislature each year.

Staff testimony began by explaining that 12 of the 13 New Mexico teacher preparation programs submitted data for the 2010 report. Staff testimony further noted that the institution that did not submit data in 2010, the University of Phoenix, is a private institution that is not subject to the reporting requirements in law; and two other private institutions – the University of the Southwest and Wayland Baptist University – voluntarily participated in the report.

Among other findings, staff testimony indicated that the report makes the following points:

- educator preparation programs continue to attract academically prepared candidates;
- standards for admission to teacher education programs use common factors that enhance transparency and transferability among institutions;
- the goal of all educator preparation programs is that their student population closely mirror their local ethnic populations;
- field and clinical experiences are designed to connect classroom practices to candidate preparation; and
- the goal of teacher preparation programs is to recruit, prepare, and graduate candidates in the high-need areas of math, science, special education, bilingual education, and Teachers of English to Speakers of Other Languages.

Staff testimony explained that current law requires that the EARS report include an evaluation plan with objectives and measures for increasing – among other things – student achievement, teacher retention, and the pipeline for math and science teachers. According to the report, the deans and directors of teacher education established six objectives to address the requirement for common evaluation measures across all preparation programs, among them increasing the achievement of all students, increasing teacher and administrator retention, and increasing the percentage of students who pass the New Mexico Teacher Assessments for initial licensure on the first attempt.

Finally, staff testimony indicated that the report highlights several limitations, in terms of the quality and the content of the data, and makes some recommendations to address the limitations.

COHORT GRADUATION RATE REPORTS FOR 2009 (FOUR-YEAR RATES) AND 2008 (INCLUDING FIVE-YEAR RATES)

Along with student scores on state standards-based assessments, four-year graduation rates are used to determine if high schools make adequate yearly progress (AYP) as required by the federal *No Child Left Behind Act of 2001* (NCLB). Annual graduation rate targets established by PED in the state Accountability Workbook and approved by the US Department of Education (USDE), increase by 3.0 percentage points each year to a goal of 85 percent in the year 2020.

Staff testimony provided the committee with a report on the 2010 release of cohort graduation rate data by PED. Staff testimony reported that, according to PED data, 66.1 percent of the class of 2009 cohort graduated within four years of starting high school, a rate that exceeded the 2009 accountability target of 63 percent and that represented a gain of 5.8 percentage points over that for the class of 2008. According to PED data, the graduation rate for all subgroups but one improved in 2009 over 2008.

Based on data reported by PED, staff testimony indicated that approximately 108 public high schools in the state achieved the 63 percent target for 2009, and approximately 78 did not. This testimony further explained that, beginning in 2012, federal rules will require the state, and each high school and school district, to achieve the annual graduation targets for each subgroup as well as for the class as a whole. Staff testimony also noted that, although the committee had heard testimony indicating that AYP itself may no longer be an issue for public schools once the federal *Elementary and Secondary Education Act* is reauthorized, a communication from USDE indicated that the department considers high school graduation rates an important accountability factor in its proposed Blueprint for Reauthorization.

To illustrate how disaggregated data could offer insight into which districts and high schools appeared to be closing the achievement gap between subgroups, staff testimony took the example of the gender gap. Noting that LESC-endorsed legislation that passed in 2007 required all reported education data to be disaggregated by gender, testimony explained that PED data for 2009 showed that the graduation rate for female students exceeded that for males by 7.5 points. Testimony also said that this gap was smaller than the 2008 four-year graduation rate gender gap of 8.9 points, noting that the gap varied among school districts.

Turning to another set of data, staff testimony recalled that, in 2009, the Legislature passed a bill providing that any student who satisfied the requirements for graduation within five years of entering ninth grade may be counted as a high school graduate by the school system in which the student was enrolled for the year in which all requirements were satisfied. Staff testimony noted that, in April 2010, PED announced its first five-year cohort graduation report, for the class of 2008, showing that 66.2 percent of all students in the cohort graduated within five years, an increase of 5.9 points, or approximately 1,830 students, over the four-year rate for that group.

On a related note, PED testified that the department was developing a richer database to collect information about reasons students left school, and that these data would be reported when the four-year cohort graduation data were released for the class of 2010. PED testimony further explained that the department was also developing the capability to report a "promotion index" to understand how students were matriculating through high school. This information, to be reported in 2011, would include the number of students in any high school grade, how many were promoted, how many retained, and the number demoted.

READY FOR COLLEGE 2010 REPORT

The Education Policy Advisor, Office of the Governor, presented the 2010 edition of the *Ready for College* report. Each year since 2006, this testimony explained, the Office of Education Accountability (OEA), PED, and HED have produced the *Ready for College* report, which is designed to support policymakers in key policy initiatives such as high school redesign, alignment of postsecondary placement tests, and improved communication between secondary and postsecondary institutions. Testimony further noted that, for the purpose of equitable comparison, charter schools and alternative schools are measured separately from traditional public high schools.

Among the highlights from the 2010 report, using data from the fall 2009 semester:

- the number of New Mexico public high school graduates attending a New Mexico public postsecondary educational institution increased to 9,713 in fall 2009 from 9,346 the year before;
- there was a statistically significant decrease (3.1 percent) in the percentage of those students required to take at least one remedial course; and
- of the 4,524 seniors who had taken a dual credit course in school year 2008-2009, only 35 percent were required to take a remedial course during the fall of 2009.

The Governor's Education Policy Advisor also testified that taking one remedial course in college reduces a student's chance of completing a degree or certification. Even so, 36 percent of students who had taken one or more remedial courses managed to complete a degree or certification in 2009.

Finally, testimony indicated a desire to be able to track students who attend postsecondary institutions in other states. Toward that end, the Office of the Governor was seeking $18,000 for the state to join the National Student Clearinghouse, which maintains a database of enrollments in all US postsecondary institutions. According to PED, approval

by the Department of Administration and Finance of this procurement was still pending as of early January 2011.

ACADEMIC RIGOR IN HIGH SCHOOL REFORM PROGRAMS: *HIGH SCHOOLS THAT WORK*

High Schools that Work (HSTW) is the largest and oldest of the Southern Regional Education Board (SREB) school improvement initiatives. LESC staff testimony noted that, as of 2008, there were over 1,400 *HSTW* sites in 30 states and the District of Columbia, including 22 high schools in New Mexico. Staff testimony identified the goal of the *HSTW* initiative as the enrichment of students' school experiences in both the quantitative areas of academic achievement and the qualitative elements of value and guidance.

Testimony from the Senior Vice President of SREB reviewed New Mexico's National Assessment of Educational Progress (NAEP) grade 4 and grade 8 math and reading scores within the context of *HSTW*. Although there have been improvements in both grade 4 and grade 8 math scores, this testimony emphasized that New Mexico remains below the national average in achievement scores.

The SREB testimony further acknowledged that the increase in required math and science lab units in high school were a step in the right direction but emphasized that the high school reform efforts do not provide an option for a career concentration in high school, a pathway that *HSTW* finds particularly relevant for modern work force needs. To address these needs, the SREB testimony continued, the *HSTW* model relies upon key practices that foster the development of a comprehensive school improvement design, among them:

- using data for continuous improvement;
- providing challenging programs of study;
- integrating work-based learning into the classroom and curriculum; and
- holding high expectations for all students.

This testimony ended by presenting 10 challenges to New Mexico's public high schools:

- increase annually the percentages of students meeting college- and career-readiness standards as measured by ACT;
- increase annually the percentages of students leaving middle grades ready for challenging high school studies in reading and math;
- establish a graduation goal of 90 percent by 2020;
- support school districts and high schools by embracing a broader concept of rigor;
- reduce the failure rate in grade 9;
- redesign the senior year to improve transitions to college, advanced training, and careers;
- make adolescent reading a priority for all subject areas;
- make the improvement of math instruction a priority;
- target both large and small high schools with the lowest achievement levels and graduation rates; and

- continue efforts to select, prepare, and support a new generation of school principals to be instructional leaders and develop current principals' instructional leadership skills.

DUAL CREDIT PROGRAM REPORT

One of the more deliberate and effective components of the P-20 Initiative is the dual credit program, which allows high school students to take courses offered through postsecondary educational institutions and to earn credit at the high school level and the college level simultaneously. In 2007, LESC-endorsed legislation was enacted to create a dual credit program in state law to replace the multiple and varied local agreements that had been in effect throughout the state. This legislation was amended in 2008, also as endorsed by the LESC, to include special state-supported schools, in addition to school districts and charter schools, and to allow dual credit courses to be taken during the summer term. Most recently, in 2010, the legislation was amended to include federal Bureau of Indian Education (BIE) high schools and tribal colleges in the program.

According to LESC staff testimony, the dual credit program in New Mexico continues to grow more popular. From an estimated figure of 10,000 during school year 2008-2009, actual enrollment during school year 2009-2010 grew to almost 11,000.

Staff testimony also reviewed developments in several components of the dual credit program:

- One notable improvement is in the alignment of the departments' data sets. In addition, staff testimony referenced HED data from school year 2008-2009 that illustrate graduation rates and student success for previous dual credit students at the postsecondary level.
- Staff testimony outlined the provisions in law to facilitate the uniform management of dual credit throughout the state. Despite these provisions, staff testimony noted considerable variety in the areas of student eligibility, course locations, and compensation for high school teachers.
- The method for distributing funds to help secondary schools fulfill their requirement of providing textbooks and course supplies for their dual credit students continues to be an issue. Although the Legislature appropriated funds for this purpose in FY 09, FY 10, and FY 11, the Legislature did not pass either of the two LESC-endorsed bills that would have created a dual credit textbook fund in law.
- The recent amendment to include BIE high schools and tribal colleges in the dual credit program created the need for new administrative procedures, particularly with regard to tuition reimbursement. Staff testimony cited HED's recommendation for a General Fund appropriation directly to the department that will be disbursed to the tribal colleges.
- Staff testimony also referred to revisions to the agency rules that govern dual credit. In spring 2010, HED held hearings that led to the repeal of the HED rules, replaced by a cross-reference to the PED rules, which are identical. Staff testimony also cited several amendments that went into effect August 16, 2010 to exclude

physical education activity courses and to include core courses, among other provisions.

Staff testimony concluded with a review of three points:

- Since the implementation of agency rules, a course credit ratio of 3:1 has been required – that is, three hours of college credit for one high school unit. Staff testimony explained that HED has been made aware of situations where dual credit courses are being offered in a year-long format. Because neither statute nor rule specifies a format for dual credit courses, staff testimony stated that it has been difficult for PED and HED to make a ruling on the eligibility for funding of these classes.
- Staff testimony cited responses to the LESC questionnaire that indicated room for improvement in the guidance participants in the dual credit program have received from the district, PED, or HED. According to staff testimony, PED is investigating funding for a staff person to be in charge of the dual credit program.
- The final point of staff testimony focused on the reintroduction of legislation to create a dual credit textbook fund in state law.

Finally, the committee also discussed the reimbursement for tuition waivers that postsecondary institutions receive through the higher education funding formula. One point of concern was that, because this reimbursement is based on course enrollment, not completion, institutions may receive reimbursement for students who withdraw early in the term. The committee also noted that the master plan for higher education recommended creating a new funding formula related to student outcomes such as completion of studies and, with dual credit in particular, encouraged course completion.

See recommendations 1 and 2.

LEGISLATIVE LOTTERY SCHOLARSHIP: UPDATE

Created by legislation enacted in 1996, the Legislative Lottery Scholarship is a renewable, full-tuition award granted to qualifying students beginning in their second semester at a public postsecondary institution in New Mexico and continuing for seven more consecutive semesters. The scholarship covers the cost of tuition only.

Among its provisions, current law requires an eligible student to:

- be a New Mexico resident;
- have graduated from a New Mexico public or accredited private school or have obtained a New Mexico general educational development (GED) certificate;
- enroll full-time (in at least 12 credit hours) at an eligible New Mexico public college or university, in the first regular semester immediately following high school graduation; and
- obtain and maintain a cumulative grade point average (GPA) of at least 2.5.

Other provisions address specific accommodations with regard to:

- students with disabilities;
- students whose parents are in the military; and
- individuals who either immediately enlist in, or have recently departed from, the US Armed Forces.

Staff testimony reported that, since its inception, the New Mexico Lottery has raised $459 million for education, and more than 68,000 students have attended college on lottery scholarships.

In a report to the committee at its June 2010 meeting, staff testimony reviewed lottery recipients by ethnicity for academic years 2004-2008. Testimony illustrated that student populations receiving the Legislative Lottery Scholarship have increased every year across all institutions dating back to 1997. Staff testimony further indicated that total lottery headcount has increased from 133 students in 1997 to 18,426 students in 2008; and total lottery disbursements have increased from $76,901 in 1997 to $43,236,870 in 2008.

Concerning the educational outcomes of lottery scholarship recipients, staff testified that lottery scholarship recipients graduate at a higher rate than students from the same four-year cohort who do not receive the lottery scholarship; and emphasized data suggesting that lottery students require less remediation than their non-lottery counterparts (see "Ready for College 2010 Report," p. 5).

Concluding the June report, staff testimony called attention to the status of the Lottery Tuition Fund. According to HED, expenditures from the fund currently exceed incoming revenue, and the department anticipates issues with the fund's solvency by either FY 11 or FY 12.

In response to some of the issues raised in the June 2010 report – the status of the Lottery Tuition Fund in particular – HED convened the Lottery Study Committee in late summer 2010. Through the course of their deliberations, members of the committee identified three issues that merit further discussion:

- whether the lottery scholarship should pay for remedial coursework;
- how to clarify whether a student has earned a high school diploma or merely a certificate of completion; and
- the challenges encountered by students with disabilities as they try to complete degrees.

Regarding remedial coursework, staff testimony explained that, under current provisions, a student may be enrolled in one or more remedial classes and still qualify for the lottery scholarship as long as the student maintains a 2.5 GPA in college-level coursework. This circumstance led the committee to question whether the original intent of the scholarship was to subsidize remedial studies.

The distinction between a diploma and a certificate of completion is significant, staff testimony explained, because only a diploma or a GED makes a student eligible for the

Legislative Lottery Scholarship. According to PED, a student's official high school transcript should clarify if he or she received a diploma or a certificate. However, HED and a number of postsecondary institutions have reported that some transcripts do not contain this information, creating a problem for institutions that require diplomas for admission.

Staff testimony noted that the Lottery Study Committee identified two issues regarding students with disabilities who receive the lottery scholarship:

- like other students, many students with disabilities receive a high school certificate of completion, as opposed to a diploma, therefore calling into question their scholarship eligibility; and
- according to observations from postsecondary faculty and administration, some of these students are struggling to complete credits toward a degree, despite LESC-endorsed legislation enacted in 2007 to extend the eligibility period for students with disabilities.

Staff testified that the members of the study committee considered a range of ideas to address these issues and the solvency of the Lottery Tuition Fund. Some of these ideas would increase the requirements of qualifying for or maintaining the lottery scholarship, while others would revise the conditions required or allowed. However, the study committee offered no formal recommendations.

USE OF FEDERAL SCHOOL IMPROVEMENT GRANT FUNDS

According to the USDE, Title I of the *Elementary and Secondary Education Act of 1965* authorizes School Improvement Grants through state educational agencies to local educational agencies for use in Title I schools that are identified for improvement, corrective action, or restructuring and that demonstrate the greatest need for the funds and the strongest commitment to use them to raise substantially the achievement of their students.

Staff testimony stated that, in early April 2010, the US Secretary of Education announced that New Mexico will receive more than $28.5 million in federal School Improvement Grants. Using the federal definition of persistently lowest achieving schools, PED identified 20 Title I schools in New Mexico as the first ones eligible to apply for these funds. In early May 2010, PED announced that nine of these 20 schools were selected to receive awards ranging from $500,000 to $2.0 million.

Staff testimony explained that schools participating in the program selected one of four models for improvement:

- Turnaround Model: This model requires that the principal and at least 50 percent of the staff be replaced and that the school adopt a new governance structure and implement a new or revised instructional program.
- Close/Consolidate Model: Under this model, the low-performing school is closed and its students are enrolled in other, higher-performing schools in the district.

- Restart Model: This model requires either that the school be converted or that it be closed and then restarted, perhaps as a charter school.
- Transformation Model: A school adopting this model must implement certain strategies that address teacher and instructional reform.

Additional testimony came from representatives of two of the schools that had received School Improvement Grants. The Chief Academic Officer of Albuquerque Public Schools (APS) and the Principal of Ernie Pyle Middle School, APS, briefed the committee on how School Improvement Grants were being used to implement the Transformational Model at Ernie Pyle Middle School. This testimony noted district-wide actions being undertaken in pursuit of school reform, including professional learning communities and social-emotional learning support, as well as teacher and principal incentives designed to further the commitment to instructional and professional development initiatives.

The Superintendent of Santa Fe Public Schools (SFPS) and the Director of Curriculum and Instruction, SFPS, discussed how SFPS is using the School Improvement Grants at Ramirez-Thomas Elementary School, the only school in the state to implement the Turnaround Model. They also discussed support measures designed to enhance the effectiveness of school principals. Finally, this testimony focused on non-academic support for students, centered on strong ties between families and schools.

NEW MEXICO PARTICIPATION IN NATIONAL SCHOOL REFORM INITIATIVES

RACE TO THE TOP – STATUS OF APPLICATION

Race to the Top (RttT) is a federal competitive grant program through the *American Recovery and Reinvestment Act of 2009* (ARRA) intended to encourage states to advance education reforms around four specific areas:

- adopting standards and assessments that help prepare students for college and the workplace;
- building data systems that measure student growth and success;
- recruiting, developing, rewarding, and retaining effective teachers and principals; and
- turning around the lowest-achieving schools.

Staff testimony explained that funding for the program was awarded through two rounds of applications: the first in January 2010 and the second in June 2010. At the time of the presentation to the committee, only two of the 41 states that had applied during round one – Delaware and Tennessee – had been awarded funds; and New Mexico had chosen to join 34 other states and the District of Columbia in applying for funds through round two.

The Secretary of Public Education testified about the process through which PED had decided to pursue the round two application. Among other points, she noted that, despite some participants' reservations about the review of applications at the federal level, there was general agreement that, even if the second application were unsuccessful, New Mexico will have identified important strategies for education reform. The Secretary also emphasized one specific point of broad agreement: that with or without the RttT funding

New Mexico will implement a student growth model linked to teacher and principal performance (see "Teacher Evaluation," p. 29).

In late August 2010, the USDE announced the 10 recipients of funding through the second round of the RttT competition – New Mexico not among them. Joining Delaware and Tennessee were the District of Columbia, Florida, Georgia, Hawaii, Maryland, Massachusetts, New York, North Carolina, Ohio, and Rhode Island. Committee members observed that, of all 12 recipients, only Hawaii was a western state.

COMMON CORE STATE STANDARDS

In May 2009, the Governor of New Mexico and the Secretary of Public Education signed a memorandum of agreement with the Center for Best Practices of the National Governors Association (NGA) and the Council of Chief State School Officers (CCSSO), along with most other states, and the District of Columbia, to work together to develop common standards in English/language arts and mathematics for grades K-12. According to the NGA, the standards would be:

- aligned with college and work expectations;
- clear, understandable, and consistent;
- based on rigorous content and application of knowledge through high-order skills;
- built upon strengths and lessons of current state standards;
- internationally benchmarked; and
- evidence-based.

According to LESC staff testimony, states had an additional incentive to join the Common Core State Standards Initiative when, in November 2009, the USDE announced that among the final selection criteria for RttT grant applications was an applicant's participation in such a consortium (see "Race to the Top – Status of Application," p. 11).

Additional staff testimony indicated that PED anticipates that the adoption and implementation of the new Common Core State Standards will involve certain adjustments, some with financial consequences for the state, and some that can be absorbed without cost. For instance:

- instructional materials that align with the new standards can be purchased by school districts for mathematics and English language arts according to the normal instructional material cycle, thus avoiding any additional costs; and
- assessments based on the new standards may involve new costs. The state hopes to defray some of these expenses by:
    - participating in the SMARTER Balanced Consortium that is applying for a portion of $350 million in funds available from USDE to develop assessments aligned to the new standards; and
    - including in the state's RttT grant a request for approximately $2.25 million to improve technology infrastructure for online administration of state standards-based assessments.

In September 2010, the USDE announced that New Mexico and 30 other states were awarded a grant of $160 million as members of the SMARTER Balanced Consortium to develop a series of online summative and formative multi-state assessments, which would include a new high school exit exam and other tools aligned with the Common Core State Standards.

Additional testimony from the Secretary of Public Education indicated that PED had announced a rule hearing on July 23, 2010, to take comments on adoption of certain of the common core standards. PED testimony further specified that the revised K-12 Benchmarks and Performance Standards will be published for review and adoption in October 2010 and that the implementation of the Common Core State Standards is intended to be delayed from the time the standards are adopted until no sooner than school year 2011-2012.

BOARD EXAMINATION SYSTEMS PROGRAM (TOUGH CHOICES OR TOUGH TIMES)

The Board Examination Program (BEP), whose goal is to create college-ready students by age 16, was one of the recommendations of a 2006 report entitled *Tough Choices or Tough Times*, an initiative commissioned by the New Commission on the Skills of the American Workforce and the National Center on Education and the Economy (NCEE). Central components of a board examination system include:

- a core program of courses defining what it means to be "an educated person";
- constructed course designs captured in a syllabus;
- teacher training matched to the course syllabi;
- exams derived from the curriculum using multiple assessment methods; and
- general costs associated with program implementation, training, and materials.

LESC staff testified that, on February 17, 2010 New Mexico became one of eight states to join with NCEE and the Bill and Melinda Gates Foundation in the BEP initiative. School year 2010-2011 is a planning year, and each state will be prepared to introduce the BEP initiative to a select number of pilot high schools by school year 2011-2012.

Staff testimony further noted that the BEP program is structured around a move-on-when-ready model wherein students who have demonstrated competence – defined by NCEE as able to succeed in credit-bearing courses at open-admissions postsecondary institutions – have three options available to them:

- stay in high school and enroll in upper division courses to prepare for selective colleges and universities;
- move into career and technical education programs at the high school, if available; or
- leave high school and enroll in a community college or four-year open-admissions institution to pursue a postsecondary education.

Regarding costs, staff testimony explained that NCEE estimates a total cost per school of $53,890 for year one; $115,345 for year two; $122,568 for year three; and $118,937 for year four. Additionally, testimony indicated that NCEE was developing proposals for

funding from two sources: a Race to the Top (RttT) Assessment Program grant; and (2) an i3 Innovation Program grant.

Staff testimony also outlined three potential issues with the BEP pilot:

- the inability of BEP students to satisfy all of the high school graduation requirements that are outlined in current New Mexico statute;
- the inability of BEP students to meet federal accountability and assessment requirements; and
- the total, and potentially ongoing, costs of the program.

Finally, in early September 2010, as a part of RttT competition, the USDE chose not to fund the State Consortium on Board Examination Systems. In response, an NCEE representative has indicated that the consortium of states will look for other funds to develop the initiative.

FISCAL ISSUES AND CAPITAL OUTLAY

LESC SCHOOL FINANCE WORK GROUP

During the 2010 legislative session, the LESC endorsed Senate Joint Memorial 24, *Study School District Finances & Operations*, requesting that the Office of Education Accountability (OEA), in collaboration with the Public Education Department (PED) and in consultation with the Office of the State Auditor (OSA), form a work group to examine public school finance issues.

Although the joint memorial did not pass, in keeping with the LESC's focus on public school finances during the 2010 interim, the LESC requested that an LESC work group be formed and that updates on the progress of the work group be provided at each interim meeting, with a final report to the LESC in December 2010. At the June 2010 meeting of the LESC, the committee approved the objective, activities, and membership of the LESC School Finance Work Group. During the interim, the work group met four times to consider its objective "to evaluate the adequacy and effectiveness of New Mexico's laws and regulations relating to public school finance, including the financial capacity and controls of school districts and charter schools statewide."

The activities of the work group included:

- reviewing laws, rules, and policies governing school finance, including the implementation of two provisions effective in 2010 that:
    - require local school boards and charter school governing bodies to create finance subcommittees and audit committees; and
    - allow PED to impose sanctions for failure of school districts or charter schools to submit timely audits to the State Auditor, including withholding up to 7.0 percent of a school district's or charter school's State Equalization Guarantee distribution and suspending the board of finance, effective July 1, 2010;

- investigating whether the tiered audit process for local public bodies, effective July 1, 2010, or a similar tiered audit process may be appropriate for public schools;
- reviewing current licensing and training requirements for school business officials and current training offered for boards of finance;
- investigating the availability of qualified school business officials and independent auditors with a focus on the needs of small, rural school districts;
- examining the internal financial controls within school districts and charter schools, including segregation of duties and the bank reconciliation process; and
- examining the supply and demand of school business officials, including the capacity of institutions of higher education to train future school business officials.

At the November 2010 meeting, the work group discussed and, through consensus, approved recommendations to the LESC, which were presented at the December 2010 interim LESC meeting.

See recommendations 3-11.

STATE REVENUE UPDATE

During the 2010 interim, the LESC received periodic state revenue updates from the Chief Economist of the Legislative Finance Committee (LFC). Given the state's fiscal crisis, as well as uncertainty in some state revenue sources, the committee monitored the revenue estimates prepared by the Consensus Revenue Estimating Group, consisting of professional economists at the Department of Finance and Administration (DFA), Taxation and Revenue Department (TRD), Department of Transportation (DOT), and the LFC. Testimony to the LESC generally consisted of:

- a review of the most recent consensus revenue estimate, broken down by the taxes that serve as the source of state revenues;
- a discussion of trends of various taxes, including:
    - the gross receipts tax;
    - severance taxes;
    - personal income taxes; and
    - corporate income taxes;
- a review of the state's economic outlook, including discussion of New Mexico's labor markets and inflation rate; and
- a presentation of the projected FY 12 current services funding scenario, which estimated the projected revenue shortfall for FY 12 based on projected revenues, and assuming a budget held flat at FY 11 spending levels.

Although the revenue estimates fluctuated between the consensus revenue projections made in July, October, and December, one evident trend was that the FY 12 current services funding scenario illustrated a shortfall. Although the estimated FY 12 recurring revenue continually exceeded the FY 11 recurring General Fund appropriations, the revenues were not estimated to be sufficient to replace federal funds, including funds to public education, pursuant to the *American Recovery and Reinvestment Act of 2009*

(ARRA), as well as other one-time funds and savings. As a result, the LFC economist testified that estimated revenues would fall short of the total level of spending for FY 11. During the most recent revenue estimate presentation, the economist testified that the LFC estimates this shortfall to be approximately $215 million.

POTENTIAL COST-SAVING AND EFFICIENCY MEASURES

In light of the economic downturn that began in 2008, and related to the projected state deficit leading into the 2011 legislative session, staff testimony presented several cost-saving and efficiency measures at the December LESC meeting. Four of them were alternatives to proposals by the Government Restructuring Task Force (GRTF) (see "Government Restructuring Task Force" p. 44).

The first two alternatives dealt with small school size adjustments. The first proposal would change the way small school size adjustments are calculated in situations where multiple schools are located in the same facility. Specifically, the proposal would calculate size adjustment units based on the total population of the facility, regardless of the number of schools located in that facility. The second proposal would cap size and growth units at the amount of K-12 enrollment units.

The third alternative would establish a "finance" program and a "program" program at PED so that the Legislature can direct resources into financial oversight activities. Draft legislation creating the budget and finance division was presented along with the *Accountability in Government Act*. The fourth alternative would transfer six full-time equivalent (FTE) positions in the Office of Inspector General from PED to the State Auditor.

Staff testimony also outlined several other cost-saving and efficiency proposals for consideration by the committee. In addition to proposals related to such matters as emergency supplemental funding, school transportation, school facilities, and instructional materials, the LESC discussed:

- a reduction of instructional and/or professional development days;
- a delay of the Educational Retirement Board (ERB) employer contribution increase;
- a reduction in administrator salaries;
- the elimination of double funding for students attending new charter schools;
- a cap on ancillary service FTE positions;
- suspending the use of the eleventh grade New Mexico Standards-Based Assessment for high school exit exam purposes;
- a limitation on elementary breakfast funding to Non-provision II schools; and
- the recapture of Graduate New Mexico funds.

See recommendations 12-24.

FY 12 BUDGET REQUESTS: NEW MEXICO PUBLIC SCHOOLS INSURANCE AUTHORITY AND ALBUQUERQUE PUBLIC SCHOOLS

Each year, if funding is available, the Legislature appropriates dollars to the State Equalization Guarantee (SEG) distribution to provide for projected increases in the employer's group health and risk insurance contribution rates of the state's public schools. New Mexico's charter schools and most school districts participate in the New Mexico Public Schools Insurance Authority (NMPSIA), while Albuquerque Public Schools (APS), due to its size, is exempted from participation in NMPSIA, and is self-insured.

LESC staff testimony addressed insurance plan changes and premium increases for FY 11:

- NMPSIA reported that no plan changes occurred for FY 11, but that medical and dental premiums had increased by 6.4 percent as of October 2010.
- APS reported that, as of July 2010, the fund balance for medical, dental, and vision reserves was $1.4 million and that the APS Board of Education approved the use of $8.8 million from reserves to offset FY 11 costs.
- In addition to the use of reserves in FY 11, the APS Board of Education approved a series of FY 11 plan changes with a savings of just over $1.1 million.

Staff testimony then reviewed the FY 12 budget requests from both APS and NMPSIA:

- NMPSIA requested a decrease of approximately 2.0 percent from the FY 11 funding level, and reported no premium increases or plan changes for FY 12; and
- APS requested an appropriation of $4.7 million to provide for the employer's share of increased insurance premiums for members.

Staff testimony also included an update on federal ARRA funds as they pertain to insurance premiums and professional development. This testimony reported that, for FY 11, the Governor allocated $2.0 million in discretionary ARRA dollars to offset insurance premiums for teachers and school employees, including $1.5 million to PED for NMPSIA and $500,000 to APS. This discretionary funding, staff testimony explained, will be used to offset a 6.4 percent FY 11 medical insurance premium increase affecting NMPSIA. APS distributed its one-time subsidy funds to employees during September 2010.

PUBLIC SCHOOL CAPITAL OUTLAY PROCEDURES AND STATUTES

Statutory provisions for public school capital outlay are contained in three sections of law:

- the *Public School Capital Outlay Act*, which, through a standards-based process, ensures that the physical condition and capacity, educational suitability, and technology infrastructure of all public school facilities in New Mexico meet an adequate level statewide;
- the *Public School Capital Improvements Act*, more commonly known as SB 9, which allows local districts to impose a property tax to fund capital improvement; and

- the *Public School Buildings Act*, or HB 33, which authorizes another local property tax to fund certain public school capital outlay projects.

To compare the status of school facilities to statewide adequacy standards, LESC staff testimony explained, that New Mexico uses the New Mexico Condition Index (NMCI) to rank every public school facility in terms of relative need, from greatest to least. The condition of the facilities of all of New Mexico's 89 school districts is tracked by staff from the Public School Facilities Authority (PSFA), who weigh deficiencies according to nine categories to determine a facility's NMCI score. The NMCI score is calculated as the ratio of the cost of needed repairs to the cost of replacement. Staff testimony added that the cost of standards-based projects is the responsibility of both the state and the local school district, and the primary determinant in the state/local match calculation is net taxable value (valuation) per student membership (MEM).

The *Public School Capital Outlay Act* provides for other adjustments to the state share of an award, including an offset that reduces the amount of state funding based on direct legislative capital outlay appropriations to a district. The offset amount considers the total to the district of all legislative appropriations and of federal money for non-operating purposes pursuant to the federal ARRA. Staff testimony explained that the *Public School Capital Outlay Act* creates several entities to oversee the public school capital outlay process, including:

- the Public School Capital Outlay Council (PSCOC);
- the PSFA; and
- the Public School Capital Outlay Oversight Task Force (PSCOOTF).

The *Public School Capital Improvements Act*, or SB 9, allows local districts to impose a property tax to fund capital improvement. Staff testimony then enumerated the authorized purposes for the use of SB 9 funds:

- erecting, remodeling, making additions to, providing equipment for, or furnishing public school buildings;
- purchasing or improving public school grounds;
- maintaining public school buildings or public school grounds, including purchasing or repairing maintenance equipment, participating in the Facility Information Management System (FIMS) as required by the *Public School Capital Outlay Act*, and making payments under contract with regional education cooperatives (RECs) for maintenance support services and expenditures for technical training and certification for maintenance and facilities management personnel, but excluding salary expenses of school district employees;
- purchasing activity vehicles for transporting students to extracurricular activities; and
- purchasing computer software and hardware for student use in classrooms.

The *Public School Buildings Act*, or HB 33, authorizes another local property tax to fund certain public school capital outlay projects. Staff testimony further noted that provisions of this act allow districts to impose a tax not to exceed 10 mills for a maximum of six years

on the net taxable value of property upon approval of qualified voters. Authorized uses of HB 33 funds include:

- erecting, remodeling, making additions to, providing equipment for or furnishing public school buildings;
- making lease-purchase arrangement payments;
- purchasing or improving public school grounds;
- purchasing activity vehicles for transporting students to and from extracurricular activities (excepting school districts with membership greater than 60,000); and
- expending up to 5.0 percent of the total project costs on project administration, including expenditures for facility maintenance software, project management software, project oversight, and district personnel specifically related to administration of projects funded by proceeds of the HB 33 levy.

Staff testimony concluded with a discussion of the procedures for issuing general obligation (GO) bonds, as well as the purposes for which local school districts may issue GO bonds:

- erecting, remodeling, making additions to, and furnishing school buildings;
- purchasing or improving school grounds;
- purchasing computer software and hardware for student use in public schools;
- providing matching funds for capital outlay projects funded pursuant to the *Public School Capital Outlay Act*; or
- any combination of these purposes.

ASSESSMENT AND ACCOUNTABILITY

NEW MEXICO PREK EXTERNAL PROGRAM EVALUATION

In 2005, addressing the beginning point of the P-20 Initiative, LESC-endorsed legislation was enacted to establish the *Pre-Kindergarten Act*, creating a voluntary program of pre-kindergarten services for four-year-old children offered by public schools, tribes or pueblos, Head Start centers, and licensed private providers. The New Mexico PreK program is administered jointly by PED and the Children, Youth and Families Department (CYFD). The *Pre-Kindergarten Act* reimburses service providers on a per-child basis, and it creates two non-reverting funds: the Public Pre-kindergarten Fund, administered by PED, and the Children, Youth and Families Pre-kindergarten Fund, administered by CYFD.

According to LESC staff testimony, since 2005, the Legislature has appropriated over $98.8 million to implement New Mexico PreK, including over $6.0 million in federal Temporary Assistance for Needy Families (TANF) funds and approximately $17.0 million for classrooms. For FY 11, the Legislature approved total funding of approximately $17.0 million, and PED and CYFD have approved 92 programs serving a total of approximately 4,400 children statewide.

Staff testimony then discussed the PreK External Program Evaluations. To address the need for program evaluations, staff testimony continued, PED and CYFD contracted with the National Institute for Early Education Research (NIEER) at Rutgers University to conduct a "comprehensive program evaluation" of the New Mexico PreK program. The initial contract evaluated New Mexico's PreK program for school years 2005-2006, 2006-2007, and 2007-2008:

- during the 2006 interim, NIEER presented its first report, which concluded that the New Mexico PreK program was just beginning and had promise;
- during the 2007 interim, NIEER found that New Mexico PreK had made a statistically significant impact on children's early language and math development;
- during the 2008 interim, NIEER reported that New Mexico PreK had produced gains in children's vocabulary knowledge, math skills, and print awareness; however, the evaluators found the overall classroom quality of New Mexico PreK programs to be limited; and
- during the 2009 interim, NIEER presented results from the initial four years of New Mexico's PreK program and found that New Mexico PreK produces consistent benefits for children who participated in PreK, compared to those who did not.

In October 2010, NIEER issued a report on the fourth year (2008-2009) of the PreK program. Overall, the findings suggest that New Mexico PreK improves children's readiness for kindergarten in key academic areas, including:

- an increase of approximately five points in the area of vocabulary;
- an increase of approximately two points in the area of math; and
- an increase of approximately 23 points in early literacy.

On a related note, staff testimony reported that, due to budget constraints, this will be the last report submitted by NIEER because PED and CYFD have terminated the contract for further evaluations effective November 13, 2010.

In conclusion, the Director of OEA provided additional detail on the results of the external evaluation. Among the points noted, the report indicated that one in four (approximately 25 percent) American four-year-old children attends a program that can be classified as state PreK; and that, in school year 2009-2010, approximately 17 percent of New Mexico's four-year-olds attended PreK.

K-3 PLUS EXTERNAL PROGRAM EVALUATION

In 2007, the Legislature enacted legislation creating K-3 Plus, a six-year pilot project that extends the school year in kindergarten through third grade by at least 25 instructional days, starting up to two months earlier than other classes. Patterned after Kindergarten Plus, the K-3 Plus pilot project is designed to demonstrate that increased time in kindergarten and the early grades narrows the achievement gap between disadvantaged students and other students, increases cognitive skills, and leads to higher test scores for all participants. Thus, the program, which is administered by PED, will measure the effect of the additional time on literacy, numeracy, and social skills development of the participants.

According to LESC staff testimony, since FY 08 the Legislature has appropriated approximately $27.6 million in General Fund revenue for K-3 plus programs, which have been serving an average of 6,500 students each year. Staff testimony further explained that, for school year 2010-2011, PED approved 62 K-3 Plus programs, serving 5,816 students in 19 districts, plus one state-chartered charter school.

Staff testimony also addressed the external program evaluation of K-3 Plus, noting that the Early Intervention Research Institute (EIRI) at Utah State University recently received approximately $19.1 million in funding to conduct a full evaluation of the K-3 Plus program in partnership with New Mexico State University and four school districts. The funds include:

- approximately $15.3 million from the USDE's Investing in Innovation program; and
- a required 20 percent funding match which has been met with dollars received from foundations and in-kind contributions from districts and publishers.

The EIRI established two goals of the evaluation: (1) to determine the cost-effectiveness of the K-3 Plus program in reducing the achievement gap; and (2) to use the evaluation to support the scale-up and replication of the K-3 Plus program. Staff testimony further explained that the evaluation funding will pay for K-3 Plus services to students randomly assigned to the program in approximately 38 classrooms and that approximately $8.8 million in funding will be provided to those four school districts for K-3 Plus services and research activities. This funding will supplement and not supplant existing state K-3 Plus funds and will pay for K-3 Plus services for students who otherwise would not receive them.

Staff testimony indicated that in spring 2011 the first cohort of pre-kindergarten students will be randomly assigned to either the experimental group or the control group. Both the experimental group and the control group will be given the pre-intervention assessment and the post-intervention assessment. According to staff testimony, the study will collect data in three research areas: child outcome measures, implementation measures, and cost data.

In conclusion, a representative of EIRI presented additional details on the goals and design of the K-3 Plus evaluation and outlined future milestones and reports.

See recommendation 25.

NATIONAL ASSESSMENT OF EDUCATIONAL PROGRESS (NAEP) READING RESULTS FOR NEW MEXICO, 2009

Since the passage of the federal *No Child Left Behind Act of 2001* (NCLB), states have been required to administer the National Assessment of Educational Progress (NAEP) to a sample of students in fourth and eighth grades in reading and mathematics as a condition of receiving federal Title I dollars. Because NAEP is the only nationally representative, continuing assessment of American students, performance on NAEP is often compared

among the states. The exam is administered by the National Assessment Governing Board (NAGB), a bipartisan board appointed by the US Secretary of Education.

LESC staff testimony explained that NAEP is designed to test representative samples of students from each state in each subject area. For reading, for example, the National Center for Education Statistics (NCES) selects students from approximately 100 schools in each state so as to achieve a random but representative sample of a state's students. According to NCES, in 2009 approximately 2,900 fourth grade students in 100 schools and approximately 2,500 eighth grade students in 100 schools in New Mexico took the reading tests.

NAEP scores are reported both on a quantitative scale from zero to 500 and by achievement levels of *below basic*, *basic*, *proficient*, and *advanced*. Staff testimony explained that approximately 20 percent of New Mexico's fourth graders scored proficient or advanced in reading in 2009, and students' average scale score was 44th in the nation. At the eighth grade level, 21 percent were proficient or advanced in reading, and the average scale score was approximately 42nd in the nation.

Staff testimony also illustrated the persistent achievement gap between Hispanic, Native American, and African-American students on the one hand and white students on the other.

The report ended with four recommendations to be undertaken in concert with national initiatives such as the reauthorization of the *Elementary and Secondary Education Act* (see "US Department of Education Update: Reauthorization of the Federal *Elementary and Secondary Education Act*," p. 42 and "National Conference of State Legislators Update: Reauthorization of the Federal *Elementary and Secondary Education Act*," p. 43) and the adoption of common core state standards (see "Common Core State Standards," p. 12):

- to develop a coherent, integrated system of early care and education, including a strong commitment to implementing the National Reading Panel recommendations;
- to enable parents and others to play their crucial roles by providing more support for community schools and children in foster care;
- to invest in results-driven initiatives to transform low-performing schools; and
- to develop practical, scalable solutions to two major contributors to under-achievement among low-income children: chronic absence from school and summer-learning loss.

NEW HIGH SCHOOL EXIT EXAM

In 2007, LESC-endorsed legislation was enacted to require that, beginning with school year 2010-2011, in order to graduate a student must demonstrate competency in required subject areas on a standards-based assessment or assessments or a portfolio of standards-based indicators to be established by PED. LESC staff testimony stated that, in conformity with a later amendment, PED designated the eleventh grade standards-based assessment (SBA) required in the *Assessment and Accountability Act* to serve as the exit exam. Staff testimony further explained that, by using the existing SBA also as an exit exam, the state resolved three problems: it ceased using a test for high school graduation that was not

based on standards taught in the classroom; it addressed the perception of low expectations set by the old exit exam; and it reduced cost and time in the state testing system.

Called the New Mexico Diploma of Excellence, this new graduation credential provides a number of options pursuant to PED rule and guidance:

- students must first take the eleventh grade SBA/high school exit exam;
- they will have two additional opportunities to take and pass any sections of the test they did not pass as juniors;
- they will also have the chance to assemble a portfolio of alternative standards-based indicators of competency for all or any sections of the assessment they do not pass; and
- they may continue to retake any portions of the assessment, or work on their portfolios, for up to five years after they complete all the coursework necessary for graduation.

Staff testimony then described the process PED planned to use to set the passing score for graduation on the test. In fall 2010, PED planned to convene committees to develop "performance level descriptors" of the knowledge and skills needed both for school accountability and for graduation from high school. After the assessment was scored, PED and the contractor would reconvene the committees to determine the cut scores, with results reported to school districts by August 2011.

Next, staff testimony explained that PED had been engaged in discussions concerning the time frame and cost of aligning the eleventh grade SBA/exit exam with the new Common Core State Standards.

Regarding the alternate demonstration of competency prescribed in statute, staff testimony described the requirements of a PED rule and the contents of a guidance memorandum sent by PED to school districts in June 2010.

See recommendations 26-28.

PUBLIC EDUCATION DEPARTMENT PLAN TO COLLECT AND REPORT COURSE INFORMATION

During a 2009 interim LESC meeting, committee members expressed concern that the number of students who meet graduation requirements in law cannot be reported because the Student Teacher Accountability Reporting System (STARS) tracks only course enrollment, and not course completion. Furthermore, statutorily required course offerings cannot be tracked because students do not always enroll in an offered course. As a result, staff testified, in January 2010 the LESC requested that PED provide a report to the committee during the 2010 interim outlining how the department will address these data collection and reporting issues.

In response, staff testimony in August 2010 stated, PED provided a letter explaining that a thorough report on the department's plan to collect and report course grades would be available for the August 2010 LESC meeting. Testimony further indicated that PED

would issue an "assurances document" to school district superintendents and charter school administrators asking them to certify that:

- all graduation requirements would be met for the graduating class of 2011;
- the appropriate course codes and credits would be uploaded into STARS per guidance from the STARS user and reference manuals; and
- the state identification number for each student would be included on each student's high school transcript.

To conclude, staff cited a PED estimate of 12 to 18 months for developing, testing, and providing accurate grade reporting.

THE FLORIDA MODEL FOR K12 IMPROVEMENT: RAISING STUDENT ACHIEVEMENT AND CLOSING RACIAL ACHIEVEMENT GAPS

The Vice President for Research of the Goldwater Institute provided the committee with an overview of the methods and model that the state of Florida is using to raise student achievement and close racial achievement gaps. This testimony began by discussing pertinent statistics related to race and achievement, specifically the NAEP scores of minority populations in Florida compared to average statewide scores of all students:

- African-American students in Florida now outscore or tie the statewide reading average of all students in eight states;
- Hispanic students in Florida now outscore or tie the statewide reading average of all students in 31 states;
- Hispanic students in Florida receiving free- or reduced-price lunch now outscore all New Mexico students in fourth grade reading by more than a grade level;
- all students in Florida now outscore all New Mexico students in fourth grade reading by almost two grade levels; and
- English language learners in Florida now score less than half a grade level below all New Mexico students in fourth grade reading.

Testimony from the Goldwater Institute then described K-12 education reforms in Florida that have led to the state's progress:

- grading schools using A-F letter grades based on solid state standards and a state accountability exam;
- a ban on social promotion – students not learning basic literacy skills by the end of the third grade do not advance; and
- Florida lawmakers have revamped early childhood literacy curriculum and instruction.

One result of the *Florida A+ Plan*, this testimony continued, is that the number of schools receiving an A or B grade has risen to over 3,000 since 1999, while the number of schools receiving a D or an F has dropped from over 600 to just over 200. Parental choice has also played a significant role in Florida's reforms, this testimony indicated, citing the availability of scholarships for students with disabilities, tax credit scholarships for low-

income students, the Florida Virtual School, and the strength of Florida's charter school law.

This testimony concluded with a description of the incentives that Florida has used to increase rigor and an account of the measures that the Florida Partnership for Minority & Underrepresented Students has taken:

- free PSATs for all tenth graders;
- Advanced Placement (AP) teacher bonuses of $50 for every passing student score, up to $2,000; and
- a $700 bonus to schools for each passing AP score.

See recommendation 29.

EDUCATOR QUALITY

STUDY READING CURRICULA IN TEACHER EDUCATION (HJM 16) WORK GROUP

Endorsed by the LESC, House Joint Memorial 16 (2010), *Study Reading Curricula in Teacher Education*, requested that the New Mexico Deans and Directors of the Colleges of Education form a work group to examine the curricula and assigned text materials of all required reading courses in programs that prepare teachers for state licensure, to determine if those courses meet the statutory requirement that they be based on current scientifically based research. The memorial further requested that a report with findings and recommendations be provided to the LESC and the Governor by November 1, 2010.

The work group requested by the memorial included three deans and directors of teacher preparation programs and three members of the LESC, supported by two LESC staff members. The work group appointed six reading experts from within the state to review the curricula in the two reading courses required for elementary licensure at each of the nine public teacher preparation programs, as well as two at private postsecondary institutions that participated voluntarily. The costs of the study were born equally among the participating programs.

The work group's final report found that, while the reviews pointed to a wide variance among the participating programs in the degree to which their required reading courses for elementary teachers prepared candidates in the science of reading instruction, every program showed room for improvement on one or more of the criteria used in the reviews. In fact, the report states that many New Mexico teacher education programs "missed the target" in addressing the science of reading instruction to a disappointing degree. The report provided a summary of the findings regarding each program as well as copies of all reviewers' evaluations of each course.

The HJM 16 report presented the following five recommendations to address the need for improvement in preparation of teachers to teach reading:

1. Rigorously assess candidate knowledge of how to teach reading based on the scientific research as a condition for elementary licensure, either through the New Mexico Teacher Content Knowledge Assessment in Elementary Education or through a separate exam.
2. Convene a statewide gathering of programs in early spring 2011 for faculty to review the issues raised in the report, to share texts, supplemental resources, syllabi, instructional activities and assessments, and other resources and approaches, for the purpose of strengthening reading instruction statewide.
3. Develop a list of recommended texts that address the five essential elements of literacy instruction, among which programs would be encouraged but not required to select for coursework beginning in school year 2011-2012.
4. During the 2011 legislative interim, convene the Deans and Directors at an LESC meeting to present the approaches and solutions developed at the spring gathering.
5. Include review of required reading courses based on alignment with scientific research as part of the NCATE accreditation review process.

See recommendation 30.

BEGINNING TEACHER MENTORSHIP PROGRAM

Since 2007, the LESC has received interim staff reports on the beginning teacher mentorship program. In the 2010 interim, staff testimony addressed a study conducted by PED and OEA in response to a 2010 letter from the LESC requesting that those agencies examine:

- the specific uses of mentorship funds in each school district;
- the performance outcomes of district mentorship programs; and
- the circumstance under which a school district in school year 2008-2009 was assigning Level 1 teachers to mentor other new teachers.

Staff testimony included results of the study by PED and OEA, which, among other findings, indicated that:

- among the districts and charter schools that provided stipends for mentors in FY 10, the amounts ranged from $150 to $2,000 per mentor;
- the most commonly cited reason for first-year teachers departing a district or charter school was "unknown"; and
- in school year 2009-2010, 14 school districts and nine charter schools reported using Level 1 teachers as mentors.

Staff testimony also summarized LESC-endorsed legislation that was enacted in 2010 to amend the beginning teacher mentorship provisions in the *School Personnel Act* to mandate, among other requirements, that mentorship services be provided by Level 2 or Level 3 teachers.

Finally, PED reported that the department would work with districts both to reduce the use of "unknown" as a reason for departure and to ensure that districts are aware that Level 1 teachers may no longer serve as mentors.

SCHOOL PRINCIPAL RECRUITMENT & MENTORING (SJM 3)

Endorsed by the LESC, Senate Joint Memorial 3 (2008), *School Principal Recruitment & Mentoring*, requested that OEA, PED, and HED, in collaboration with school districts and institutions of higher education, develop a plan to enhance the recruitment, preparation, mentoring, evaluation, professional development, and support for school principals and other school leaders. A report presented to the LESC in 2008 identified six recommendations made by a statewide work group to implement the intent of SJM 3:

1. revitalize school principal standards;
2. strengthen recruitment, incentives, and retention;
3. develop and implement the New Mexico Leadership Institute;
4. establish data and accountability systems;
5. refine current certification requirements; and
6. refine and revitalize university principal preparation programs.

The presentation during the 2010 interim provided an update on the implementation of those recommendations, including legislation endorsed by the LESC.

Testimony from PED, the School Leadership Institute, and OEA reviewed the progress toward implementing the recommendations of SJM 3, including:

- the activities of a work group that PED had created in summer 2009 to review and revise the PED rule governing school principal standards, with particular attention to the administrative licensure competencies and indicators;
- OEA's plan to update an analysis of principal turnover rates throughout New Mexico and of the graduation rates from administrator preparation programs;
- the creation of an online survey account and the responses to the Conditions of Leadership Survey, developed by OEA and the School Leadership Institute; and
- a two-year effort by university faculty work teams that developed a core educational leadership curriculum and expanded candidates' clinical experiences, among other activities.

This testimony concluded with a list of future actions, among them ensuring the transferability of courses and alignment of all components of the educational administrator system.

Finally, the committee also heard testimony from a successful school leader, the Principal of Valle Vista Elementary School in Albuquerque Public Schools (APS) – also the New Mexico National Distinguished Principal for 2010 – who emphasized the importance of the relationship among families, teachers, and students. When first assigned to Valle Vista Elementary School, this testimony noted, the school was one of the lowest performing in APS; however, through a variety of initiatives the school increased its percentage of students proficient in math from 16 percent to 49 percent over a period of four years, with up to 60 percent proficiency in grade 5.

TEACHER PROFESSIONAL DEVELOPMENT PLANS

New Mexico has long recognized the connection between student achievement and teacher quality. According to LESC staff testimony, in its final report in December 2002, the LESC Ad Hoc Subcommittee for Education Reform identified improving student achievement as the premise behind its recommendation of a three-tiered teacher licensure framework. Staff testimony further explained that this three-tiered framework, enacted in 2003, has included student achievement as a factor in teacher evaluations.

In 2010, staff testimony continued, New Mexico took another step in the direction of evaluating teacher effectiveness by enacting LESC-endorsed legislation that addresses the connection between teacher performance and student achievement. This legislation amended the *School Personnel Act* to require that teacher professional development plans include documentation of how the results of professional development are incorporated in the classroom.

Regarding the implementation of an existing statutory requirement for "objective uniform statewide standards of evaluation," staff testimony explained that PED has developed a number of materials. However, because many of the materials have not been updated since 2005, staff testimony stated, they do not reflect the changes in recent law. To address this issue, the department is taking several actions:

- drafting a rule to implement the new law;
- planning to convene the Professional Development Subcommittee of the Professional Practices and Standards Commission; and
- issuing a survey on how the uniform teacher and principal evaluation system is currently being used.

Related to the issue of professional development plans (PDPs), staff testimony explained that, since 2003, state law has required that teachers and principals devise PDPs at the beginning of each school year; and teacher performance evaluations must be based, in part, on how well the PDP was carried out. Although these requirements apply statewide, staff testimony noted that the frequency and delivery of teacher professional development vary considerably among school districts.

In an attempt to gain a better understanding of the state and federal funds that are used to support educator professional development, staff testimony noted responses to a questionnaire that LESC staff had presented to school district superintendents. According to the responses, the top funding sources are federal Title II funds, federal IDEA funds, federal Title I funds, and federal ARRA funds. Staff testimony further clarified that, although the respondents indicated that the majority of funds supporting professional development come from federal sources, an additional percentage identified SEG operational dollars as a funding source. Staff testimony also noted that the vast majority of districts had eliminated or reduced expenditures or budgets for teacher professional development in both school year 2009-2010 and school year 2010-2011.

Staff testimony concluded by providing background on the funding appropriated for teacher professional development and the related professional development framework from FY 05 to the present.

TEACHER EVALUATION

The President of the Albuquerque Teachers Federation (ATF), and the President and Chief Executive Officer of the New Mexico Business Roundtable (NMBR), provided the committee with a presentation on teacher evaluation, compensation, and student outcomes.

ATF testimony began with background and developments related to teacher evaluation, stating that:

- RttT has replaced NCLB emphasis on "highly qualified" teachers with "highly effective" teachers; and
- RttT also required that evaluation of teachers and principals "take into account data on student growth."

This testimony also noted the growing assumption that teacher effectiveness can be measured by linking student test scores to teachers' evaluations. The purposes of an evaluation system, according to ATF testimony, include:

- improving the quality of the teacher work force;
- identifying exemplary teachers;
- identifying ineffective teachers; and
- ensuring fair employment decisions.

ATF testimony continued by describing value-added methods (VAM), noting that good teaching is more than a student test score. ATF testimony further noted that VAM has shifted the focus from students in general to students who are on the cusp of proficiency as measured by standardized tests.

Regarding teacher compensation, ATF testimony stated that:

- teachers should be well compensated and any evaluation must have as its primary goal strengthening the practice of teaching to improve student learning;
- teaching is broad in its scope of responsibilities, all of which must be taken into account within a compensation system; and
- any compensation system should reward both expertise and extra time.

Emphasizing that the ideas being presented were preliminary and subject to change, the NMBR testimony explained the desire of the business community to develop a teacher evaluation system that is fair, rigorous, and effective; that is tied to student outcomes; and that offers rewards, remediation, and removal based on the evaluations. This testimony also noted the significance of the Business Roundtable's collaborating with a teachers union on the subject of teacher evaluation. While the two groups have found a good deal of common ground – the value of a pilot program, for example – there are some points of divergence. To illustrate:

- the business community agrees that teacher evaluations must be determined through multiple criteria but believes that not all criteria should have the same weight;
- parent evaluations and student evaluations should accompany principal evaluations, student learning, and teacher artifacts when constructing a balanced evaluation system; and
- the business community has reservations about granting tenure to teachers in public schools, noting that such a system has the unintended effect of protecting teachers who cease to be highly effective.

After the testimony and the committee discussion, the Chair encouraged the ATF and the NMBR to work with OEA and LESC staff to develop a more specific proposal for the 2011 legislative session.

See recommendation 31.

MEETING THE NEEDS OF STUDENTS

INNOVATIVE DIGITAL EDUCATION AND LEARNING NEW MEXICO (IDEAL-NM)

In 2007, LESC-endorsed legislation was enacted to establish the *Statewide Cyber Academy Act*. Among its provisions, the act created a collaborative statewide cyber academy program involving PED, HED, telecommunications networks, and representatives of other state agencies engaged in providing distance education. When fully implemented, this cyber academy will provide distance learning courses for grades 6 through 12 and professional development for teachers, instructional support providers, and school administrators.

The structure of IDEAL-NM consists of three main components:

1. a statewide eLearning services center, which is the physical location for the IDEAL-NM cyber academy staff, who provide support for users of the statewide learning management and web-conferencing systems;
2. the statewide eLearning system, which is the infrastructure that supports all aspects of online learning, the most important piece of which is the learning management system; and
3. a cyber academy serving grades P-12 statewide, which operated as a pilot in school year 2007-2008 and which officially opened in school year 2008-2009.

Regarding the FY 11 budget, staff testimony noted that approximately $4.5 million was available for the operation of IDEAL-NM. Since its creation, staff testimony added, the Legislature has appropriated a total of approximately $10.6 million to fund the implementation and operation of IDEAL-NM.

Next, staff testimony discussed the Learning Management System (LMS) and explained that IDEAL has contracted with Blackboard, Inc. to provide this service. Testimony from Blackboard, Inc. noted that the contract provides perpetual license rights to nine instances

of Blackboard Vista or Blackboard Learn that cover up to 200,000 users across all participating entities, as well as three years of standard maintenance and support services, hosting services, training, and consulting services. This testimony added that the contract will expire on June 30, 2011, and noted that the cost for services would be approximately $1.7 million for FY 11.

Regarding the LMS, staff testimony cited IDEAL in reporting issues experienced by several institutions of higher education (IHEs) during fall 2009 and spring 2010 wherein both faculty and students were unable to access the LMS, preventing students from logging in or completing tests or coursework. IDEAL-NM reported that the issues were the result of the LMS database being shared by multiple institutions; and added that the contract with Blackboard was amended and that Blackboard migrated each of the affected institutions from the shared database to an individual database. On a related note, LESC staff contacted representatives of the affected institutions to verify whether the migration to separate databases had resolved the issues. Most IHEs reported positive experiences with the LMS since the start of the fall 2010 semester.

Regarding enrollment, staff testified that students from 72 school districts, 26 charter schools, three juvenile justice system schools, two Bureau of Indian Education schools, and six private schools have enrolled in cyber academy courses. Staff testimony also discussed the course development and enrollment costs associated with the cyber academy and stated that the IDEAL-NM website lists 59 courses that have been developed at a cost of approximately $7,000. Staff testimony added that the course materials are available for free, noting that the main cost of participating in the cyber academy is the eTeacher's salary, paid from a $200 per-student fee for each semester-long course. Regarding the eTeachers themselves, staff testified that the *Statewide Cyber Academy Act* requires that all online courses be taught by highly qualified teachers who also have experience as online learners. Moreover, PED requires cyber academy teachers to complete eTeacher training and online teaching-specific professional development. A total of 175 eTeachers have been trained to date.

Staff testimony concluded by addressing the state agency training portion of IDEAL-NM, whose potential advantages include reduced employee travel time and associated costs, expanded training opportunities, and flexible scheduling.

SUPPLEMENTAL EDUCATIONAL SERVICES

The federal NCLB requires each Title I school that has failed to make AYP for three consecutive years to use a portion of its Title I funds to provide supplemental educational services (SES) to students from low-income families attending that school. Federal guidance defines these supplemental educational services as academic instruction provided in addition to instruction during the school day, "such as tutoring, remediation and other supplemental academic enrichment services that are consistent with the content and instruction used by the local educational agency (LEA) and are aligned with the state's academic content and achievement standards." According to information from PED, during school year 2010-2011 approximately 450 schools in 61 districts are required to provide SES to their students through providers chosen by the parents from a list of 66 providers approved by PED.

In addition to the federal requirements, state law as enacted in 2003 and as amended in 2006, through legislation endorsed by the LESC, further requires PED to adopt rules that address the priority for students who are provided with SES, a sliding-fee schedule based on the educational level of the tutors, and a pre- and post-assessment instrument used to measure the gains that students achieve through SES.

During the 2010 interim, the LESC heard testimony about several aspects of the SES program:

- the federal and state provisions that govern the program, with particular attention to the limitations that the USDE has placed on state and local modifications of the program;
- the origin of the program in part as an effort to stimulate the marketplace for providers of educational services;
- the limited – in most cases, negligible – effect of the SES program on student academic achievement, both in New Mexico and nationwide; and
- the likelihood that, when the *Elementary and Secondary Education Act* (also known as NCLB) is eventually authorized, it may not include the SES program as currently configured.

Finally, this testimony also focused on certain particular issues that have arisen within APS and perhaps other school districts as well:

- the frequent lack of consistency between the district's instructional program and the tutoring services offered by SES providers;
- the practice of some SES providers' hiring a school's teachers as tutors to provide services to that school's students; and
- the wide range in hourly rates charged by SES providers.

See recommendation 32.

SPECIAL EDUCATION ISSUES

ALIGNMENT OF STATE LAW WITH FEDERAL LAW

The New Mexico Legislature passed legislation regarding the educational rights of students with disabilities in 1967, before passage of federal special education legislation. Once federal law was enacted, it contained some provisions unlike those in state law. Then in 2004, when the federal *Individuals with Disabilities Education Act* was reauthorized, PED announced its own new rules aligned with the federal regulations in 2007. Nonetheless, the pre-existing state special education law was not amended, even where the changes in federal law rendered certain language in state law obsolete. As a result, staff testimony explained, PED rule is not fully aligned with state law. To address this issue, the LESC requested its staff, the Legislative Council Service, and PED staff to form a work group to study differences among state special education law, state agency rule, and federal law and regulation to determine whether they could be aligned by a clean-up bill.

Staff testimony presented a discussion draft of the clean-up bill noting that the work group had confined its work to the clean-up language and minor issues in the state's special education law. In its work, however, the group identified one area that represented a policy question: the issue of children aged three through nine who were evaluated as being developmentally delayed and who need special education services.

Staff testimony explained that, according to federal law and regulation, this group was the only group of students eligible for special education services who might be served at the discretion of the state and of local school districts. Testimony noted that the Legislature had never acted to adopt the term "developmental delay," and that it was not clear whether PED had the authority to have promulgated an agency rule providing for operation of programs by local districts for developmentally delayed students aged three through nine. Testimony from PED noted that every school district in the state had created programs for students with developmental delays and contended that, in creating rules authorizing the programs, the department was acting under its general authority in statute to develop rules and standards for the provision of special education in the schools and classes of the public school system in the state.

The committee directed staff to complete the draft legislation with language defining the term "developmental delay" and authorizing PED to provide for programs for students with developmental delays between the ages of three through nine, and to provide a discussion draft of the revised proposed legislation to the committee later in the interim. The committee approved the revised discussion draft of the bill at its December meeting.

See recommendation 33.

CONTRACTS BETWEEN SCHOOL DISTRICTS AND RESIDENTIAL TREATMENT CENTERS

In 2009, a law was enacted to clarify the responsibility of school districts, PED, and other parties to provide a free, appropriate public education (FAPE), in compliance with the federal IDEA, to students placed in private residential treatment centers (RTCs).

LESC staff testimony began by explaining that, following a presentation to the LESC in the 2009 interim, PED created three draft documents that were designed to assist local school boards and district staff in contracting with RTCs to provide special education and related services to students for whom they are responsible to provide a FAPE in compliance with the 2009 state law and IDEA. Accordingly, PED testimony reviewed the following documents for the committee:

- a draft memorandum to superintendents and state charter school administrators;
- a draft template for a contractual agreement; and
- a draft application for reimbursement.

Regarding the question of responsibility of school districts to provide educational services to students in private, for-profit treatment centers, staff testimony reported that, although a 1988 Attorney General Opinion appeared to exempt districts from responsibility for those students, a 2007 rewrite of the *Children's Code* created a new section entitled "personal rights of a child in an out-of-home treatment or habilitation program." Staff testimony

reported that one of the rights included in that section is that "in no event shall a child be allowed to remain in an out-of-home treatment or habilitation program for more than 10 days without receiving educational services." According to the statute, if the child has an individualized education program, the sending district is responsible for providing educational services; otherwise, the district within whose borders the center is located is responsible. In addition, staff testimony referred to the *Children's Code*, which, as rewritten in 2007, granted children in out-of-home treatment or rehabilitation programs (including RTCs) the right to a FAPE.

Staff testimony also described a 2009 statute that required CYFD to include, in its minimum standards for RTCs, that they make reasonable provisions for adequate physical space for a school district to provide a FAPE to the RTC's students. However, staff testimony noted, as of August 2010, the applicable CYFD rule had not been amended as mandated. In response, CYFD staff testimony indicated that the department hoped to be able to begin the process of rule-making soon.

PUBLIC EDUCATION DEPARTMENT (PED) WORK GROUP ON THE RESTRAINT AND SECLUSION OF STUDENTS IN PUBLIC SCHOOLS

As noted in a report to the LESC during the 2009 interim, attention to issues of restraint and seclusion of students has risen across the country due to published accounts of alleged abuse. In May 2009, an investigation by the Government Accountability Office found that there were "no federal laws restricting the use of seclusion and restraint in public and private schools" and that laws at the state level were widely divergent.

LESC staff testimony stated that on July 31, 2009, US Education Secretary Arne Duncan sent a letter to all chief state school officers encouraging them to review their state's existing policies and guidelines on the subject and, if necessary, to develop or revise them. Staff testimony further clarified that, in compliance with Secretary Duncan's request, the former Secretary of Public Education created a work group in November 2009 to consider legislation and/or rule-making related to restraint and seclusion of all children in New Mexico public schools.

Testimony by LESC staff and PED reviewed highlights of a report written by PED on behalf of the Restraint and Seclusion Work Group. According to the PED report, there are no state statutes or rules governing the use of restraint and seclusion in public schools. Regardless, staff testimony noted that PED has issued guidance on the subject in at least two instances.

Staff testimony further reported that the Restraint and Seclusion Work Group began meeting in March and had meetings every month except April. Staff testimony also reported that, at their first meeting, work group members developed a workplan and formed three subcommittees:

- the Survey Subcommittee;
- the Best Practices Subcommittee; and
- the Liability/Costs Issues Research Subcommittee.

Staff testified that the Survey Subcommittee sent out two surveys: an educator survey and a parent survey. The Best Practices Subcommittee reviewed data and information regarding restraint and seclusion from a variety of sources. The Liability/Costs Issues Research Subcommittee researched the costs of providing appropriate training to school districts and researched two methodologies: Crisis Prevention Institute and Positive Behavior Interventions and Supports. Staff testimony reported that the work group reached a consensus at its September meeting regarding recommendations to be made to the Governor and the LESC.

Additional testimony came from members of the audience.

- A representative of Pegasus Legal Services for Children presented a letter to the committee expressing support for the recommendations included in the PED report, a letter also endorsed by the American Civil Liberties Union of New Mexico, Disability Rights New Mexico, Native American Disability Law Center, New Mexico Family Network, and Parents Reaching Out.
- The Executive Director of the New Mexico Coalition of School Administrators (NMCSA) expressed support for most of the recommendations outlined in the PED report, but he emphasized that some of them may require further study and that some of the costs may be underestimated.
- A representative of the National Education Association of New Mexico expressed concern over the reporting requirements outlined in the PED report.

Staff testimony concluded with an account of two companion bills pending in Congress dealing with this issue: H.R. 4247 and H.R. 5628.

CHARTER SCHOOLS

CHARTER SCHOOL LEGISLATION IN NEW MEXICO: OVERVIEW

Legislation affecting charter schools has been enacted in nearly every legislative session since 1993 when the state's first *Charter Schools Act* was enacted. This law allowed only five charter schools, all of them converted traditional schools, approved by the State Board of Education. The current *Charter School Act* – enacted in 2006, with an effective date of July 1, 2007 – allows both local school boards and the Public Education Commission (PEC) to authorize charter schools. Among its purposes, this act encourages the use of different and innovative teaching methods and forms of measuring student learning and achievement; provides parents and students with an educational alternative; and holds charter schools accountable for meeting PED's educational standards and fiscal requirements. With 81 charter schools operating in New Mexico in school year 2010-2011, staff testified, the 2010 interim seemed like a good time for an examination of several aspects of charter schools.

To begin, staff testimony illustrated that charter schools are affected not only by the *Charter Schools Act*, but also by several other sections of the *Public School Code* including the *School Finance Act* and the *Assessment and Accountability Act*. Altogether, these laws address such topics as application contents and process, student assessments,

budgets, enrollment procedures, the governing body, renewal of charters, the revocation and nonrenewal of charters, and appeals.

Charter Schools – Capital Outlay Provisions and Issues

Staff testimony noted that the capital outlay provisions affecting charter schools are found in several places in the *Public School Code*:

Charter Schools Act – This section of law makes locally chartered charter school facilities eligible for state and local capital outlay funds and requires that they be included in the school district's five-year facilities plan. This law also requires that the facilities of a charter school whose charter has been renewed at least once be evaluated, prioritized, and made eligible for grants in the same manner as all other public schools; and it allows money in the Charter School Capital Outlay Fund to be used to assist state-chartered charter schools with the local match for a public school capital outlay project. Staff testimony reminded the committee that in 2007 the fund was created, that $4.0 million was appropriated to the fund, and that $2.1 million of this amount remains for school year 2010-2011 and subsequent funding cycles.

Concerning charter schools' location in public facilities, the *Charter Schools Act* requires that, on or after July 1, 2015, a new charter school may not open and an existing charter may not be renewed unless the charter school is housed in a public facility; is subject to an approved lease-purchase arrangement; or meets certain other criteria. Staff testimony added that, according to the Public School Facilities Authority (PSFA), 33 charter schools currently meet, or are projected to meet, the facility criteria by 2015.

Public School Capital Outlay Act – This section of law requires that a school district make a lease assistance application for a charter school located in the school district, but it also permits the charter school to submit its own application if the school district fails to make an application on its behalf. In addition, the act allows charter schools to use lease assistance grants to make payments toward lease-purchase arrangements that have been approved pursuant to the *Public School Lease Purchase Act*. Staff testimony added that the past six fiscal years have seen the number of schools receiving lease assistance awards nearly double, and the amount of funding used for lease assistance increase from approximately $2.0 million to over $8.0 million, adding that, of the 77 schools receiving lease assistance for FY 10, 69 are charter schools.

Public School Capital Improvements Act (SB 9), and *Public School Buildings Act* (HB 33) – Amendments made in 2007 to the *Public School Buildings Act* and in 2009 to the *Public School Capital Improvements Act* required the capital improvements needs of charter schools to be included on district resolutions to impose property taxes for capital improvements if the charter school provides the necessary information to the school district for inclusion on the resolution. The statutes governing both SB 9 and HB 33 require that the revenue raised by these property levies be distributed to each charter school on the resolution in the proportion of the charter school's enrollment to the district's enrollment.

Staff testimony further noted that the *Public School Buildings Act* requires that, to be on an HB 33 resolution, the capital improvements for a charter school must be included in the

five-year facilities plan of the school district or the state-chartered charter school. Staff testimony also stated that a state match exists for the SB 9 two-mill levy, and the district must distribute a portion of this match to each charter school in the school district, not just to those schools on the resolution.

Staff testimony discussed the districts that had held SB 9 or HB 33 elections since statute required the inclusion of charter schools on the resolution, noting that not all resolutions included charter schools. Staff testimony reported that some charter schools had expressed concerns about a lack of uniformity in how property tax revenues are distributed to charter schools; a school district's non-compliance with provisions in law requiring distribution of SB 9 and HB 33 funds; and a lack of consequences for such non-compliance. However, staff testimony also reported that other charter schools reported that they did not have any issues with access to bond proceeds.

Finally, staff testimony cited the APS policy concerning charter schools, which states that the district must include a charter school in its capital master plan and queue it in the district's prioritization needs assessment if it has had its charter renewed at least once and has been in operation for five years.

LEGISLATIVE FINANCE COMMITTEE'S PROGRAM EVALUATION OF NEW MEXICO CHARTER SCHOOLS

Staff from the Legislative Finance Committee (LFC) provided an overview of the findings and recommendations of the LFC's recent program evaluation of charter schools in New Mexico.

This testimony explained that the objectives of the LFC program evaluation of charter schools were to analyze oversight, resource allocation, and student outcomes. The LFC evaluators examined data from all 72 schools operating in New Mexico during school year 2009-2010; solicited input from school districts, PED, and the PEC; and conducted 16 site visits at selected charter schools.

Regarding the cost of charter schools, LFC testimony reported that, in FY 10, charter schools generated $24.1 million in small school size adjustments and $7.5 million in growth funding. Citing language in the *Public School Finance Act*, testimony said that the LFC questions whether charter schools qualify for small school adjustment funds because they appear to be "separate schools established to provide special programs," which by law are not eligible for those funds. Other fiscal concerns with charter schools, LFC testimony continued, are (1) the lack of oversight to ensure that the lease payments made to private landlords are at fair market rates, and (2) the possibility of conflicts of interest when the school founder is also the lease holder. To address these and similar concerns, LFC recommended that authorizers conduct annual site visits and request quarterly performance reporting when necessary.

Regarding the performance of charter schools, LFC testimony reported that the evaluation found levels of student performance similar to those of traditional public schools. The evaluation also found lower rates of graduation and higher rates of college remediation among students from charter schools than among students from traditional public schools overall.

Regarding the rigor of the application and renewal processes, LFC testimony said that authorizers should approve no new charter schools until they increase their oversight and monitoring of the existing schools, until more poorly performing charter schools are closed, and until there are more objective performance-based measures in the applications, among other conditions. The evaluation report also recommended that authorizers take a more proactive approach in considering new charter applicants by implementing a process similar to a request for a proposal. Taken together, these measures would result in what is sometimes called "smart caps," a policy that closes ineffective schools and allows the proliferation of only effective schools.

Next, the committee heard responses to the LFC program evaluation by the Secretary of Public Education and the Chief Executive Officer of the New Mexico Coalition of Charter Schools (NMCCS). To begin, the Secretary of Public Education expressed a number of concerns about the methods and findings of the LFC evaluation, among them that a number of findings were based upon past practices without regard to more recent improvements, and that the report does not reflect the full picture of charter schools' fiscal conditions. In general, the Chief Executive Officer concurred with the points raised by the Secretary, but she also agreed with some of the recommendations in the LFC report, particularly with regard to "smart caps."

A Sampling of the National Charter School Landscape

To provide a national context for an examination of charter schools in New Mexico, LESC staff testimony reviewed a sample of circumstances, initiatives, and issues found among charter schools throughout the country. According to several sources, staff testimony continued, more than 5,000 charter schools are currently serving more than 1.5 million students nationwide – approximately 3.0 percent of all public school students. In addition, the National Alliance for Public Charter Schools estimates that approximately 365,000 students are on charter school wait lists throughout the country.

Effects on Student Achievement

According to standard measures and recent studies, charter schools in New Mexico, as a group, seem to be performing at approximately the same levels as traditional public schools. The same assessment, testimony continued, seems to apply to charter schools nationwide although definitive conclusions seem elusive.

Fiscal Concerns

Staff testimony cited a March 2010 report by the Office of Inspector General with the USDE describing a number of criminal investigations of embezzlement that have been opened against charter school officials throughout the country since 2005, resulting in 18 indictments and 15 convictions.

Virtual Charter Schools

Staff testimony cited a study from 2004 showing that, during the five-year period from 1999-2003, some 60 virtual charter schools came online in 15 states. The number has

grown since. According to one study, some of the challenges that virtual charter schools face are:

- accountability for student performance and educational program quality; and
- defining enrollment boundaries and funding responsibility.

Staff testimony then described inroads into this field made recently by a number of states, noting that in 2009 the PEC had denied the applications of two virtual charter schools because of deficiencies in the applications.

Charter Management Organizations

Staff testimony identified charter management organizations (CMOs) as nonprofit entities that manage public charter schools. According to an ongoing national study of their effectiveness by Mathematica Policy Research Inc. and the Center on Reinventing Public Education, staff testimony continued, CMOs were developed to solve problems associated with the number and quality of charter schools. Approximately 50 CMOs are currently in operation in the United States.

Performance Contracts

Performance contracts, staff testimony explained, are legal documents signed by representatives of the charter school and its authorizer after the charter has been approved. Performance contracts typically emphasize the goals of the charter as contract terms and clarify the process for closing charter schools that do not meet their performance goals. According to survey results received by the National Association of Charter School Authorizers, 90 percent of large authorizers – those that authorize 10 or more schools – sign formal contracts with the charter schools they oversee, as do 98 percent of responding district authorizers.

IMPLEMENTATION OF HB 74A, CHARTER SCHOOL OVERSIGHT FOR 1 YEAR

In 2010, LESC-endorsed legislation was enacted to:

- ensure that, during the planning year, a charter school develops in accordance with the conditions, standards, and procedures of its approved charter, as demonstrated by three status reports during that year; and
- require that the chartering authority and the charter school agree to the content, format, and schedule of the reports prior to signing the charter contract.

With its effective date of May 19, 2010, staff testimony explained, the planning year legislation will affect any of those charters that are approved in 2010 for a six-year term, which includes the initial planning year.

Testimony from the Charter Schools Division of PED explained the steps that the division has taken to implement the planning year legislation for state-chartered charter schools and to assist school districts in implementing the legislation for locally chartered charter schools. The checklist, PED testimony said, consists of a series of activities, including

documentation, to be completed by certain deadlines. At the suggestion of the committee, PED agreed to expand the checklist to address facilities issues and indicators.

PED testimony concluded by describing workshops that the Charter Schools Division had conducted and that had been attended not only by members of the PEC and charter applicants seeking state approval, but also by local board members and charter applicants seeking local board approval.

VARIETY IN CHARTER SCHOOLS

In addition to some fundamental differences according to their authorizer, staff testified that charter schools in New Mexico are further diverse in terms of their missions, their student demographics, their pedagogical approaches or philosophies, their facilities, and their results. To illustrate this variety, LESC staff testimony continued, the committee heard presentations from representatives of four charter schools in New Mexico:

- Turquoise Trail Elementary School – the only remaining charter school from the original five conversion charter schools authorized under the 1993 law and a school that has made AYP in math and reading every year from 2005 to 2009;
- El Camino Real Charter School – one of the largest charter schools in New Mexico and a recipient of a federal School Improvement Grant (see "Use of Federal School Improvement Grant Funds," p. 10);
- Gordon Bernell Charter School – a school that targets adult high school students 18 and older who are either incarcerated at the Bernalillo County Metropolitan Detention Center or who are in a community custody program, as well as any other adult seeking a high school diploma, and which by virtue of its population will never make AYP; and
- New Mexico School for the Arts – the first public arts charter high school in New Mexico, which opened in school year 2010-2011, and which selects students based on a written application, teacher recommendations, and subsequent auditions and portfolio reviews.

RECOMMENDATIONS OF THE NEW MEXICO COALITION FOR CHARTER SCHOOLS

The Chief Executive Officer of NMCCS, together with two members of the governing board of the coalition, presented three recommendations to the committee.

- The first was a policy affecting the establishment of charter schools known as "smart caps." An alternative to an arbitrary limit on the number of charter schools or an outright moratorium, smart caps reward school and student performance with incentives such as replication funds or facilities. They also provide targeted assistance for schools that need help, and they establish a clear process or protocol for closing charter schools that, despite assistance, continue to be low-performing.
- The second was the use of performance contracts, which LESC staff testimony had mentioned during the overview of the national charter school landscape. As a document separate from the charter application, the NMCCS testimony continued, a performance contract is executed after the charter is approved; and, as a contract between the authorizer and the charter school, it is intended to clarify the

responsibilities of each party, ensure the resolution of disputes, and establish protocols for closing ineffective schools.

- Third, the presenters testified about the quality initiatives that the coalition was pursuing, as illustrated in an excerpt from a draft framework for building charter school quality in New Mexico that members of the NMCCS had developed in collaboration with several national partners. Chief among the areas that NMCCS has identified as being possible points of improvement are business and financial practices.

FINAL NOTES FROM THE FIELD: LESC CHARTER SCHOOL QUESTIONNAIRE

To obtain some sense of the activities of charter schools, their relationships with their authorizers, and their views of charter school legislation, LESC staff sent a questionnaire to the 61 charter schools that had been in operation for at least three years. Staff testimony indicated that there was a total response rate of 51 percent. LESC staff then presented overviews and examples of the responses to each of six questions.

Among many other programs, practices, and organizational structures that charter schools have implemented, respondents noted:

- the innovation of choice that charter schools afford students and their parents, often citing sizable waiting lists as evidence that people are taking advantage of that choice;
- a large number of specific programs or projects that the charter structure facilitates; and
- plans for shared governance.

When asked about the outcomes of these programs, practices, or organizational structures, respondents noted success with standard measures of student or school achievement, and, in a few cases, having overcome significant deficits in student proficiency. Other respondents cited outcomes that were less quantifiable: such points as high rates of teacher, student, and parent satisfaction, as well as increased student motivation.

Responses to the questionnaire indicated that there have been few instances of charter schools sharing successful initiatives with the school district in which they are located. Overall, however, most reported good relationships with their authorizer – most of which were local school boards.

Finally, when asked what provisions, if any, in the *Charter Schools Act* or in agency regulations should be changed, respondents mentioned such points as:

- allowing charter schools to use alternative methods of measuring student success;
- requiring an accounting for the 2.0 percent of charter school budgets received by the authorizer;
- providing clear authorizing standards for the oversight of charters; and
- amending the enrollment procedures in the *Charter Schools Act* to grant priority to children of faculty and staff of the charter school.

The most often cited point, however, was an objection to a proposed change: the recommendation of the LFC program evaluation to remove charter schools from the small school size adjustment factor in the public school funding formula.

FINAL NOTES FROM THE FIELD: PED SURVEY OF CHARTER SCHOOLS

The Assistant Secretary of the Charter Schools Division, PED, provided a brief description of a survey that the division sent to all charter schools in March 2010. Testimony indicated that the Charter Schools Division intends to compile these responses and post on the PED website a catalog of best practices that the charter schools can share among themselves and with school districts. The categories to be addressed include school mission, student assessment systems, instructional practices, community involvement, and fiscal policies and procedures.

See recommendations 34-36.

OTHER TOPICS

US DEPARTMENT OF EDUCATION UPDATE: REAUTHORIZATION OF THE FEDERAL *ELEMENTARY AND SECONDARY EDUCATION ACT*

NCLB is the latest reauthorization of the federal education law, the *Elementary and Secondary Education Act* (ESEA). Currently, ESEA is scheduled for reauthorization. Testimony from the Senior Policy Advisor to the Secretary of the US Department of Education (USDE), provided the committee with an overview of the USDE proposal for the reauthorization of ESEA, the goal of which is to regain the nation's status as the country with the highest proportion of college graduates in the world.

According to this testimony, for the economic stimulus funds distributed in 2009 and for all competitive education grant programs thereafter, the administration has required states to commit to four assurances:

1. to raise standards and improve assessments;
2. to recruit, retain, and support effective educators and to ensure the equitable distribution of effective educators;
3. to build robust data systems that track student progress and improve practice; and
4. to turn around low-performing schools, focusing on dropout factories and their feeder schools.

The Senior Policy Advisor noted that the Secretary was pleased to recognize the development of the Common Core State Standards, an initiative that New Mexico has joined. Testimony further indicated that the overarching principles of the ESEA reauthorization were to close the achievement gap; to insist on goals but to be flexible on means; and to foster innovation and reward success.

This testimony also identified major themes of the proposed reauthorization of ESEA, contrasting them with those of NCLB, such as:

- raising the bar by focusing on college and career readiness, versus lowering the bar through counterproductive incentives;
- giving greater flexibility to all but the lowest performing schools, versus being prescriptive for too many schools;
- recognizing success with rewards and taking lessons from progress, versus being too punitive even where progress is being made;
- encouraging a well-rounded education and better-funded tests, versus narrowing the curriculum and testing only math and English language arts; but
- maintaining ESEA focus on achievement gaps and reaching equity among all groups.

One prediction in particular was that the SES required under NCLB may be amended substantially or discontinued under the re-authorized ESEA (see "Supplemental Educational Services," p. 31).

Testimony also noted the competitive funds totaling approximately $8.2 billion for a series of grants: RttT, School Improvement, Investing in Innovation, and School Longitudinal Data Systems (see "New Mexico Participation in National School Reform Initiatives," p. 11). In addition, Congress passed the "Jobs Bill" to allow districts to rehire teachers and others who would otherwise be laid off due to budget shortfalls.

This testimony concluded by predicting that, while there is active committee work being done in Congress in 2010, reauthorization was unlikely that year.

NATIONAL CONFERENCE OF STATE LEGISLATURES UPDATE: REAUTHORIZATION OF THE FEDERAL *ELEMENTARY AND SECONDARY EDUCATION ACT*

The Federal Affairs Counsel for the National Conference of State Legislatures (NCSL) provided the LESC with another perspective of the reauthorization of the federal ESEA.

In February 2010 the NCSL Task Force on Federal Education Policy released a report entitled *Education at a Crossroads, a New Path for Federal and State Education Policy*. According to the NCSL testimony, the report made the following findings regarding recent federal education policy:

- historically, the federal role in public education has focused on compliance, targeting blatant access and equity problems with prescriptive remedies;
- such policies can have a number of unintended consequences; and
- NCLB was the culmination of the "one size fits all" approach.

This testimony explained that, under the proposed reauthorization of the ESEA, there are four basic requirements:

- reward more effective teachers by tying teacher evaluation to student assessments;
- intervene more in "failing" schools in the form of opened-up charter laws;
- commit to national standards and assessments; and
- build enhanced data systems.

The NCSL testimony also indicated that research tying most of these elements to an increase in student achievement is inconclusive; and that, by tying limited federal resources so heavily to complex and unproven systemic reform, the traditional federal focus on the disadvantaged and on sponsoring useful, nonpartisan research has diminished. For these reasons, this testimony stated, NCSL believes it is time to re-position the role of federal government in education policy. Accordingly, the NCSL Task Force makes the following recommendations:

- concentrate available federal funding on populations most at-risk;
- fund the IDEA at promised levels;
- make permanent changes to the tax credit provisions of bonding laws that apply to school construction;
- revitalize the federal focus on research and reporting on what works and why; and
- use any remaining funds to reward and encourage innovation.

This testimony concluded with a description of the interventions and sanctions for the lowest 5.0 percent of chronically underperforming schools, noting that recipients of prescribed School Improvement Grants must adopt one of these four approaches (see "Use of Federal School Improvement Grant Funds," p.10).

GOVERNMENT RESTRUCTURING TASK FORCE

Legislation enacted in 2010 created the Government Restructuring Task Force (GRTF), a 17-member body that was charged to examine all of state government, including education, and to make recommendations leading to increased efficiencies and reduced costs.

The membership of the task force comprised:

- five House members appointed by the Speaker of the House and five Senate members appointed by the President Pro Tempore of the Senate, reflecting the same proportional representation of the two major political parties in each house;
- six public members who possess expertise in public and private sector organizational structure and who reflect the ethnic, cultural, and geographic diversity of the state, three appointed by the Speaker of the House and three by the President Pro Tempore of the Senate; and
- the Secretary of Finance and Administration.

In addition to these members prescribed by law, the task force included eight advisory members: four representatives and four senators, appointed by the leader of each house, respectively.

Beginning with its first meeting in April 2010, GRTF met at least once each month during the interim to hear a wide variety of testimony and to consider recommendations for legislation during the 2011 session. As required by law, the Legislative Council Service, the LFC, the LESC, and DFA provided the staff for the task force.

Staff testimony to the LESC at each of its meetings during the 2010 interim provided an update on the activities and recommendations of GRTF, with particular attention to those affecting public education. Among the GRTF proposals were:

- eliminate the PEC and remove the authority of the Secretary of Public Education over "functions relating to the distribution of school funds and financial accounting for the public schools," with the understanding that these functions would be assigned by law;
- change the criteria under which school districts and charter schools qualify for small school and small district size adjustments in the public school funding formula so that fewer schools and districts would qualify for the adjustment;
- merge PED and HED;
- eliminate the Family and Youth Resource Advisory Committee and the Council on Technology in Education; and
- combine NMPSIA and APS with two other insurance organizations, the General Services Department and the Retiree Health Care Authority.

During a special meeting in Albuquerque called for that purpose, the LESC reviewed not only these GRTF proposals but also others affecting public education. Then, during the November meeting, the Chair, the Vice Chair, and the Director, together with the committee, presented the LESC responses. In brief, the LESC expressed concerns about most of the GRTF proposals and offered the committee's own alternatives for cost-saving or increased efficiency (see "Potential Cost Savings and Efficiency Measures," p. 16).

STUDY VARIOUS SCHOOL CALENDARS (SJM 12) WORK GROUP

In 2009, legislation was enacted to require, effective school year 2010-2011, that school calendars consist of 180 full instructional days for a regular school year calendar and 150 full instructional days for a variable school year, excluding release time for in-service training.

LESC staff testimony explained that issues raised during discussions about the implementation of this legislation led to the passage of legislation in 2010 that delayed the implementation of the 2009 legislation until school year 2011-2012. Staff testimony further reported that, to study the effect of the delayed school calendar legislation, the 2010 Legislature also passed Senate Joint Memorial 12, *Study School Calendars*, which requests the study of current practices and issues related to school calendars and the length of a school day.

Testimony from OEA described the creation of a work group comprising 31 representatives of public school districts, charter schools, the business community, public education professional organizations, and PED, as well as the Legislature and legislative agencies, including the LESC. OEA testimony noted that the work group met four times during the 2010 interim, both in person and via teleconference, and communicated via email in between meetings to complete its work.

According to OEA testimony, the work group focused on the impact of the 2009 school calendar legislation whose effective date was delayed. The work group gathered information regarding public school calendars by:

- reviewing school calendar data submitted to PED by school districts and charter schools;
- conducting a survey of school district superintendents and charter school administrators; and
- soliciting position statements from public education professional organizations.

OEA testimony concluded by reporting that, based on the calendar data, the survey, and the responses from the educational professional associations, the work group recommends that the 2009 amendments to the *Public School Code* requiring a minimum number of instructional days be either repealed or indefinitely delayed until further study of both the costs to districts and charter schools and the impact on student and teacher performance has been completed and the results presented to the Legislature for further consideration.

See recommendation 37.

CHANGES TO RETIREMENT BENEFITS FOR EDUCATORS AND PUBLIC EMPLOYEES

In 2010, five bills were enacted to amend either the *Educational Retirement Act* (ERA) or the *Public Employees Retirement Act* (PERA).

LESC staff testified that two of the five bills amended the PERA by:

- aligning the return-to-work provisions in that act more closely with those in the ERA; and
- allowing a retired member a one-time opportunity to change the designated beneficiary.

Staff testimony further explained that the three remaining bills amended the ERA by:

- ensuring that retirees will not see a decrease in pensions due to a negative cost-of-living adjustment;
- delaying, by one year, the 0.75 percent contribution increase scheduled for the Educational Retirement Board (ERB) employers in FY 11; and
- correcting an unintended consequence of previous legislation by clarifying that pension amounts can be disclosed.

Supplementing this staff testimony was an attachment entitled *Comparison of ERA and PERA Benefits*, which provided an evaluation of selected benefits in each retirement plan.

ADDITIONAL PRESENTATIONS AND REPORTS

In addition to the presentations summarized elsewhere in this report, the LESC heard testimony about the New Mexico First Town Hall: *Raising the Aspirations of New Mexico Youth*; the V. Sue Cleveland High School Capital Outlay Project; New Mexico's representative to the National Spelling Bee; a state master plan for higher education; the higher education funding formula; service learning and civic engagement; the federal Education Jobs Fund; the New Mexico Museum of Art education website; the Carlsbad Graduation Summit; Graduate New Mexico; elementary breakfast program funding criteria; the Los Alamos National Laboratory education program and Northern New Mexico schools; Elev8 New Mexico; a community conversations process for school reform; gaining grounds in the middle grades; the Public Education Department's Assessment Priorities work group; the summer science program; ERB benefit plan design changes; and transforming education from birth through grade 4.

The committee also received the following written reports: *Preliminary Adequate Yearly Progress Results from 2010 Assessments*; *Capital Outlay Awards*; *Study Autism & School Services*, SJM 25a; and *Study Uniform Military Credits at NM Colleges*, HJM 1.

Finally, either through items included under correspondence in the committee members' notebooks or through brief presentations, the LESC staff kept members informed of revisions to rules that agencies proposed at various times during the 2010 interim. Among the rules reviewed were those governing the Dual Credit Program, administrator competencies, and the Legislative Lottery Scholarship.

See recommendations 38-44.