Legislative Finance Committee
Meeting Minutes
Room 322 – State Capitol – Santa Fe, New Mexico
January 16, 2012

Monday, January 16, 2012

The following members were present on Monday, January 16, 2012: Chairman John Arthur Smith, Vice Chairman Luciano "Lucky" Varela, Representatives Don Tripp, William "Bill" J. Gray, James P. White, Edward C. Sandoval, Nick L. Salazar, Larry A. Larrañaga, Henry "Kiki" Saavedra; and Senators Carlos R. Cisneros, Steven Neville, Mary Kay Papen, Carroll H. Leavell, Sue Wilson Beffort, Pete Campos, and John M. Sapien.

Miscellaneous Business

Action Items
Approval of Minutes. **Vice Chairman Varela moved to approve the November 2011 and December 2011 meeting minutes, seconded by Senator Papen. The motion carried.**

Chairman Smith spoke briefly about revenue liability, stating New Mexico has a tremendous surplus of natural gas. Chairman Smith stated caution is better than regret and said he believes it's time to make adjustments.

Special Review: Performance of the New Mexico PreK Program. Michael Weinberg, program evaluation manager, LFC, stated the brief is in response to questions that came up in December and compares funding and performance of prekindergarten programs run by the Children Youth and Family Department (CYFD) and the Public Education Department (PED). This also follows up on information presented in the LFC's 2009 program evaluation of early childhood programs.

Background. Sarah Guzmán, program evaluator, LFC, gave background information, saying in FY06 the state appropriated $4.8 million from the general fund to educate more than 1.5 thousand students. Since then, the amount has tripled to more than $14.5 million in FY12 to serve 4.5 thousand students in both PED and CYFD programs. New Mexico has appropriated $91 million between the PED and the CYFD to educate about 25.5 prekindergarten students.

In FY08, about 50 percent of the CYFD's program allocation for direct services and support went to prekindergarten sites that operated Head Start programs. There was a shift, and by FY12, only 24 percent was allocated to sites that operated Head Start Programs. The remainder of CYFD's $7.7 million allocation went for prekindergarten programs operated by the city of Albuquerque (11 percent), private programs (51 percent), and support services (15 percent). Ms. Guzmán noted that 63 percent of the CYFD's 70 sights are four-star or five-star levels.

Ms. Guzmán stated the similarities between the CYFD and the PED are in curriculum and annual instructional hour requirements, as well as assessments and student-teacher ratios.

The differences between the two agencies are in teacher qualification requirements. The PED requires a New Mexico teaching licenses, whereas the CYFD has a grace period of five years and allows teachers to begin with a 45-hour entry-level certificate, followed by a child development certificate. In FY11, about 28 percent of the PED teachers had master's degrees and 72 percent had bachelor's degree, and about 8 percent of the CYFD teachers held masters and 33 percent held bachelors degree.

Ms. Guzman said approximately 58 percent of all prekindergarten students are Hispanic, while 21 percent of the PED and 6 percent of the CYFD prekindergarten students are Native American.

Funding. In FY11, the CYFD and the PED reimbursed sites at $2.9 thousand per child. In FY12, the PED changed their reimbursement to $2.4 thousand per student to increase the number of students served in prekindergarten. Ms. Guzman stated the LFC will do further analysis to calculate actual program costs by site and evaluate how the programs define administrative expenses.

Performance. A study by the National Institute for Early Education Research (NIEER) reported that during a three-year period, differences in gains between students who did and did not attend prekindergarten were similar between the PED and the CYFD. In FY09, the final year of NIEER's study, student in the PED's prekindergarten program gained one to five more points in language, math and literacy compared with CYFD prekindergarten students; the PED students also started at levels below the CYFD students.

Early Learning Indicators. The University of New Mexico has a contract with the PED and CYFD ranging from $595 thousand to $750 thousand annually to collect and provide data on instructor observations of students in Prekindergarten and to provide professional development for teachers. UNM data showed that, in FY11, 90 percent of the CYFD and 92 percent of the PED prekindergarten students demonstrated measurable progress toward school readiness, an increase from FY08 when 66 percent of the CYFD and 71 percent of the PED prekindergarten students showed progress. Ms. Guzman stated it is important to note that prekindergarten performance data is not currently reported in the General Appropriation Act. The NIEER also reported similarities in classroom quality and student support in four areas - point variations were one tenth to half of a point.

Next Steps. Mr. Weinberg stated the LFC is evaluating broader early literacy initiatives and plans to present findings in April. The LFC will look at how students who had the benefit of prekindergarten have done once they reach third grade using cohort analysis. Evaluators will take an in-depth look at cost comparison among sites and how New Mexico benefits from the contract with the University of New Mexico.

Vice Chairman Varela said the state needs to strengthen the quality of teachers coming out of higher education institutions. In response, Mr. Weinberg stated the NIEER recommends having a higher education system that enables college students to graduate fully qualified to teach prekindergarten. Mr. Weinberg added that although there are differences in teacher qualification requirements, student outcomes are similar.

In response to Senator Sapien's question, Mr. Weinberg stated UNM provides a unique data set to the state. Initially, it was used to justify prekindergarten. The question now is how is this data is being used. Senator Sapien thanked Mr. Winograd and his team for the unique data they provide.

Senator Beffort stated the intent of prekindergarten is to have a better educational outcome for graduating seniors and still ensure money is there for afterschool activities and physical education. Senator Beffort asked if money was best spent by permitting high levels of degrees. Leighann Lenti, director of policy for the PED, stated the PED requires prekindergarten teachers to have a license but not necessarily a master's degree. A level one license requires a bachelor's degree, a level two requires completion of a professional development dossier, and a level three teacher requires a master's degree or national board certification. Professional development for prekindergarten teachers with both the PED and the CYFD program is similar.

Representative Salazar asked about the disparity in language and literacy. Mr. Weinberg stated that the math, language, and literacy tests are all different. Dan Haggard, deputy director of early childhood programs for the CYFD, added the three tests are scored differently, so one test could have a possible 10 points, whereas another test could have 100 points. Mr. Haggard stated there is no statistical difference between the PED score and the CYFD score, yet there is a significant difference between the children in prekindergarten and children who did not attend prekindergarten.

Program Evaluation: Selected Capital Outlay Projects. Jeff Canney and Brenda Fresquez, LFC evaluators, presented their evaluation on selected capital outlay projects. Mr. Canney noted over the last ten years, the LFC staff issued five reports on capital outlay regarding planning, oversight, and execution; many recommendations identified in these reports, such as creating a permanent capital outlay commission, developing short- and long-term statewide capital project plans, and developing more meaningful performance measures, have not been implemented. Since FY02, the state has appropriated $4.6 billion and spent $3.4 billion for capital outlay.

The five projects evaluated account for more than $21 million in state capital outlay and were selected based on risk assessment, dollar amount, and project diversity. They are the J. Paul Taylor Center, Dine College library at Shiprock, conservation easements, Ohkay Owingeh airport improvements, and statewide dam rehabilitations. While these five projects were largely completed on time and within budget, they highlight the importance of careful planning, cost containment, and adequate oversight to provide the most efficient delivery of services to taxpayers.

Mr. Canney stated the funding of capital outlay projects should be a two-step process: the planning and design phase to provide an accurate estimate of the cost and the approval for the funding of construction. This two-step approach would provide the Legislature with an accurate scope and cost of the projects and would allow shovel-ready projects to be prioritized according to need.

As a best practice, the Public Schools Facility Authority (PSFA) spends considerable time in the planning stage to identify space and cost requirements and to distinguish between needs and wants. When planning and design is completed before the construction funds are appropriated, the 'wants' can be controlled. The PSFA does not fund construction until project design is complete and allows approximately 12 months for plan and design, then moves forward with construction.

The state appropriated $5.5 million to plan, design and construct a new library for the Diné College at Shiprock. The library was not over budget, but the library was constructed at almost three times the average cost per square foot for a similar size library in Farmington. The Diné library was delayed by almost 14 months. The project was behind schedule from the start and was completed more than a year later than projected. The delay occurred primarily within the planning and design process, and once construction was complete, it took almost one additional year to open.

Oversight varies widely from agency to agency. Mr. Canney told the committee that strong expertise exists within state government to manage complex capital outlay projects, but not all agencies have access to this expertise, and some of these agencies need to improve due diligence. This includes using Department of Finance and Administration standardized grant agreements, using policies and procedures to promote internal controls, conducting site visits during construction, and withholding payment until accountability is achieved.

Mr. Canney said, as an example, the Indian Affairs Department (IAD) did not conduct a site visit during library or airport project construction but attended the site visits with the LFC staff in November 2011. The IAD oversight was limited to reviewing status reports, approving payment requests, and maintaining project status documentation.

J. Paul Taylor Center Key Findings. *The state appropriated $5.7 million to build a gymnasium and classrooms at the J. Paul Taylor Center (JPTC).* Designed to house a maximum of 48 male clients, the state has spent over $118 thousand per bed. Since 2006, the state has spent $7.3 million or $150 thousand per bed to improve the JPTC. These amounts were authorized to design, construct, furnish, and expand the facility, and included a cafeteria. The JPTC gymnasium and classroom were built at a relatively high cost of $234 per square foot. Reed Construction Data, a leading information provider to the construction industry, provided estimates for gymnasium and school construction in Las Cruces. While the buildings were not secured facilities, the estimates were comparatively low and were approximately 45 percent below the JPTC cost. The 2010 CYFD master plan projects construction of new secured juvenile classrooms and gymnasiums at $183.91 per square foot, and while only a projection, it is still 21 percent below the amount that was spent on the JPTC.

Security features and extra equipment explain some but not all of the higher construction costs. The architect estimated the security features easily added 5 percent to 8 percent to the construction costs. In addition, building to LEED standards (Leadership in Energy and Environmental Design) also contributed to higher costs. The architect reported that LEED requirements added approximately 5 percent to construction costs.

The project was behind schedule from the start and delayed up to 15 months. It is now within two months of completion. The architect's planning and design impacted the start of construction. The delays between the phases were not adequately documented. This project was not shovel-ready.

The GSD uses antiquated software to track more than $764 million in capital assets. The General Ledger Bureau at the GSD uses a DOS-based software system (GEAC) to track the capital assets owned by the GSD. The DOS software is considered outdated and by all measures inefficient. Related to the accounting tracking, in FY10, the GSD required a prior period audit adjustment of $48.9 million to the capital assets category.

Financial auditors have identified a material weakness to account for capital assets for five years in a row. This audit finding is caused by a lack of effective accounting procedures and internal controls for construction in progress, which includes the JPTC construction project. While the GSD has improved many other audit findings, this area still requires resolution.

An inappropriate purchase of security equipment was noted. The GSD and the CYFD used a price agreement to purchase security equipment upgrades. These upgrades were highlighted in the *Albuquerque Journal* last month, "Juvenile Jail Gets Tech Upgrade." The $724 thousand sole source contract was justified with the need for high definition cameras available only through one vendor. The use of the price agreement was inappropriate because the cameras bought were not the ones listed in the agreement. The price agreement specifically describes the cameras as "Co-Star," the justification required Avigilon cameras. These cameras represented only 4 percent of the entire contract.

Recommendations. General Services Department should

1. Properly enforce the terms of all contracts;
2. Develop policies and procedures to ensure the capital assets are depreciated according to their estimated useful lives;
3. Improve the antiquated system of tracking capital assets;
4. When material weaknesses are identified, should ensure that corrective action is taken.

Finally, the GSD and the CYFD should ensure that purchases for goods and services using price agreements are adequately limited to the scope and specifics of the agreement.

Diné College Shiprock Library Key Findings: *The state appropriated $5.5 million to build a new library for the Diné College at Shiprock.* The Diné Shiprock College is split between two small campuses that serve 300 students: the main campus and the new south campus three miles away on the other side of the San Juan River. The distance between the two campuses creates a transportation challenge for students and faculty and an infrastructure challenge, such as computer networking. A long-term plan for the college is to eventually retire the old main campus and transition into the new south campus.

The project was behind schedule from the start and was completed more than a year later than projected. The specific cause for delays was not available from the Diné College. It was explained that college administration turnover and issues regarding insurance were factors. This was not a shovel-ready project.

The one-story library was constructed at a cost of $275 per square foot (psf), more than twice the national and local averages. The national average cost psf for a two-story, 22-thousand-square-foot library is $106.39 according to the Reed Construction Data. The estimated costs for a new library for Farmington are $95.14 per square foot. Using this estimate, the library was nearly three times the average Farmington cost. Numerous attempts to clarify costs with the architect were unsuccessful.

The IAD could improve project oversight. The IAD documentation did not contain critical contracts for the grant. Files did not contain the architect's contract or the general contractor's contract, under which more than $5.5 million was obligated. These contracts were obtained on December 8, 2011.

Recommendations: The Indian Affairs Department should

1. Increase project oversight, as described in the IAD policies and procedures;
2. Reconcile grant balances with the grantee for each quarterly progress report,
3. Conduct site visits during construction to ensure accountability.

Conservation Easements Key Findings: *In 2010 the Energy, Minerals and Natural Resources Department (EMNRD) received $4.8 million in capital outlay, of which $3.5 million was allocated to purchase conservation easements.* While the appropriations are not expected to continue, the EMNRD continues a tax credit program for the same conservation purpose.

Conservation easements are of undetermined value to the state. The benefits of easements are difficult to measure because they may not be apparent for many years. It is unknown if financial incentives play a role in conserving desirable property.

Assessing the value of easements is difficult and error-prone. Generally, there is no market for conservation easements and thus no comparable sales data exists. The U.S. Joint Committee on Taxation report in February 2004 found the process for appraising the value of the easement is ripe for error and the subjective nature of assessing the value of the easement before and after the donation made it "virtually certain that many appraised values are incorrect." New Mexico uses appraisals to value conservation easement purchases.

With both the tax credits and state appropriations for conservation easements, accountability is delegated to land trusts, which the state does not oversee. A potential risk regarding tax credits is the relative lack of control over the amount of the tax expenditure compared with appropriations.

Recommendations. Conservation easements are of questionable value to the state and benefits are difficult to measure. The Energy, Minerals and Natural Resources Department is charged with administering the tax credit program and should conduct a cost-benefit study to identify what funding could be leveraged, such as federal funds, as well as the best formula for financial incentives.

Ohkay Owingeh Airport Key Findings. *The state invested $3 million for improvements at the Okay Owingeh airport, now fully operational.* Ms. Fresquez briefed the committee the $3 million appropriation to the Indian Affairs Department was to plan, design, construct, and improve infrastructure for the Ohkay Owingeh airport. Tsay Corporation, the economic development arm of Ohkay Owingeh, was responsible for project management and administration of state appropriations for the airport improvements project.

The U.S. Department of Commerce Economic Development Association (EDA) awarded Ohkay Owingeh a $1 million grant that was a 50 percent match to the $2 million appropriation in 2005. Total project funding was $4 million. The improvement project was completed in 2011 and $123 thousand in state funds is unspent. Legislation mandates that the agency (IAD) revert the fund balance on completion of the project.

Improvements to the Ohkay Owingeh Airport have been underway since 2002. The Federal Aviation Administration (FAA) Airport Improvement Program provided funding of $1.8 million for reconstruction of the runway, site grading, drainage improvements, runway lighting system, and aviation navigational aids. For airports to receive federal Airport Improvement Program funding they must be included in the National Plan of Integrated Airport Systems.

The FAA apportions Airport Improvement Program (AIP) funds annually, giving priority to safety and then pavement maintenance projects. When an airport receives AIP funds, the FAA provides 95 percent funding and the New Mexico Department of Transportation (NMDOT) splits the 5 percent match with the airport. The Aviation Division of the NMDOT updated the New Mexico's System plan in 2009 for 51 of New Mexico's public use airports.

With a reconstructed runway, the airport was re-opened in 2004. Ohkay Owingeh infrastructure improvements include construction of new roads, primary utilities (electricity, water and telephone), T-hangars for general aviation aircraft, security fencing, automobile parking area, lighting, and airport support services, such as a fueling depot and fire protection. The infrastructure utilities were included at the airport and the adjacent industrial park on the airport property. Ohkay Owingeh's airport layout plan, provisionally approved by the FAA, includes these infrastructure improvements.

Ms. Fresquez noted the Ohkay Owingeh airport, primarily used for air medical evacuation operators, is a public use airport owned by the Ohkay Owingeh Tribal Council, and employs three part-time individuals with payroll expenses at $92 thousand per year. The Tsay Corporation is subsidizing operating expenses including payroll because the airport is not at a breakeven point.

The FAA reported for the 12-month period ending April 8, 2009, the airport had 1 thousand general aviation operations, an average of 83 per month. In comparison, Jicarilla Apache Nation community general aviation airport for the 12-month period ending April 10, 2009, showed 700 general aviation operations. The NMDOT established a baseline in 2007 where airport operations activities for similar airports ranged from 150 (Fort Sumner) to 30 thousand (Moriarty). At that time, Ohkay Owingeh and the Jicarilla Apache Nation had 1 thousand general aviation operations.

As with the Dine College library project, the IAD could improve project oversight. The IAD had no records in its files indicating it were monitoring the project schedule in its agreement and holding Ohkay Owingeh accountable for a delay in spending the 2005 appropriation.

Although project spending was delayed, it appears subcontracts were properly awarded and authorized. Major subcontract expenditures included $525 thousand for an 8 foot high perimeter fence, $277 thousand for design services and drainage study, $1.7 million for site grading, earthwork, paving, a sanitary sewer line and construction, $265 thousand for the hangar facility, $310 thousand for the aviation fuel system, and $119 thousand for electricity infrastructure.

Ms. Fresquez stated AvGas and Jet A fuel are available self-service 24 hours a day, seven days a week, and fuel sales from September 2010 through November 2011 were $73 thousand. Other sources of revenue include hangar leases at $350 per month, or $25 thousand annually, and at the time of the evaluation six of the eight hangars were leased. All revenues generated by the airport are expended to support the operating costs of the airport in accordance with FAA rules.

<u>Key Findings for Statewide Dam Rehabilitations.</u> Ms. Fresquez indicated piecemeal funding and delays by dam owners have impeded completion of dam rehabilitations, though some projects are successful.

The state appropriated $5 million for rehabilitation of existing dams throughout the state in need of repair to improve safety as identified by the state engineer. The Office of the State Engineer (OSE) Dam Safety Bureau ensures that dams in New Mexico are designed, constructed, operated, and maintained safely to prevent dam failures. The OSE identified eight publicly owned dams eligible for statewide funding from the $5 million capital appropriation.

The OSE completed rehabilitation of the Bloomfield Dam and Hackberry Draw Watershed, two out of the eight dams or 25 percent of the eligible dams. The OSE reverted 15 percent, or $754 thousand, of the appropriation at the end of FY11. Although funds were reverted, the amount remaining was not enough to complete another rehabilitation project. The OSE's first priority is to use earmarked funds balanced with the expiration date of statewide funds.

There are 36 publicly owned high hazard dams in unsatisfactory or poor condition in need of rehabilitation at an estimated cost of $111 million. The OSE leveraged the statewide funds for the other six dams primarily to complete a phase of the rehabilitation and still require an estimated $22 million to complete the rehabilitations.

Although the OSE has a plan to address deficient dams, rehabilitation on only one to two dams is feasible, given piecemeal funding and staffing resources.

Failure of dam owners to meet OSE requirements threatens the successful completion of projects and the use of state funds. The town of Springer subcontracted a design engineering firm that failed to meet timelines and deliverables for three years, jeopardizing the availability of the capital outlay funds. The Dam Safety Bureau continuously monitored the progress and when Springer's design engineer subcontractor did not meet OSE requirements, the OSE rejected Springer's payment requests. Springer subsequently terminated the subcontract and had to issue another request for proposal, delaying progress on the dam rehabilitation and the use of state funds.

The condition classification for Bloomfield dam, prior to the rehabilitation, was "poor" and after rehabilitation it is "satisfactory." The Bloomfield dam is the primary drinking water source for the community. Water is diverted from the San Juan River to the Citizens Ditch where the water is piped to the reservoir (dam) owned by the city of Bloomfield. The rehabilitation included the spillway, inflow and outflow concrete pipe and the reservoir intake siphon.

Public safety is at risk due to the lack of a security fence surrounding the ditch inflow pipe and siphon intake area. During the LFC's site visit, staff noted the lack of a fence limiting access to the inlet owned by the Citizens Ditch. The replacement of the siphon could not occur without the association's approval, and the ditch association did not want a permanent means of protection despite the inherent risk of drowning and the risk to residents below the ditch should the siphon connection and intake be obstructed.

The Hackberry Watershed Project (near Carlsbad) was part of a national pilot rehabilitation project. The U.S. Department of Agriculture Natural Resources Conservation Service (NRCS) provided $1 million through the 2000 Agricultural Appropriation Act, or 65 percent of the project construction cost and technical assistance. These dams were rehabilitated to meet current safety standards due to land use changes in the area to protect lives and property downstream. They provide flood protection for more than 2 thousand people, roads, and other structures.

Mr. Canney gave overall recommendations:

- The funding of capital outlay projects should be a two-step process. First approve funding for planning and design, and then approve funding for construction.
- Cost constraints should be introduced at the planning and design phases.
- All capital outlay projects should include a performance measurement, such as cost per square foot.
- The Capital Building Planning Commission should continue its practice of reviewing all new requests for state-owned buildings.
- Training is suggested for those agencies that require improvement.
- The GSD needs new software to adequately manage over $764 million in capital assets.

Mr. Canney thanked people from various agencies.

Chairman Smith said although the evaluated capital outlay projects began under the last administration, there is a shared responsibility.

In response to Representative Sandoval, Mr. Canney explained the library was expensive with higher than average costs. Costs could be constrained if first there was a process in place to fund planning and design.

Representative Salazar said that with three funding sources (FAA, EDA, and state funds), the Indian Affairs Department played a very small role in terms of oversight and said he thought it was unfair to blame them. Representative Salazar asked what the fund balance was and Ms. Fresquez said the fund balance is $123 thousand but there was an outstanding payment request of an unknown amount, so the fund balance will most likely net zero.

With no further business, the meeting adjourned at 3:07 p.m.

Chairman John Arthur Smith

Vice Chairman Luciano "Lucky" Varela