Legislative Finance Committee
Meeting Minutes
Room 322 - State Capitol - Santa Fe, New Mexico
October 18, 19, 20, 21, 2011

Tuesday, October 18

The following members were present on Tuesday, October 18, 2011: 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 and Henry "Kiki" Saavedra; and Senators Sue Wilson Beffort, Pete Campos, Stuart Ingle, Carlos R. Cisneros, Carroll H. Leavell, and John M. Sapien. Representatives Ben Lujan and Dennis J. Kintigh attended as guests.

General Fund Revenue Outlook for FY12 and FY13: Bonding Capacity Update. Tom Clifford, secretary designee, Department of Finance and Administration, stated the consensus estimating group revised its forecast from July. Legislators will hear forecasts in December and during the session. Fiscal Year 11 total recurring revenue increased by $113 million to a total of $5.39 billion; FY12 total recurring revenue has been revised down by $21.5 million, and for FY13, the total recurring revenue has been revised down by $122.7 million.

The U.S. gross domestic product, the foundation the whole forecast, grew by 2.6 percent during FY11, but growth is now expected to be only 1.3 percent in FY12, compared with July's forecast of 3 percent. New Mexico's employment grew by only 0.2 percent in FY11, equating to roughly 1.6 thousand new jobs. Growth is now forecast at only 0.5 percent in FY12 and 1.2 percent in FY13.

Most economic indicators point to weak economic growth. The unemployment rate remains above 9 percent nationally, and New Mexico's rate fell below 7 percent due to discouraged workers leaving the labor force. The Federal Reserve Board announced it will maintain record low interest rates through 2013, indicating minimal economic growth is expected. Secretary Clifford stated the key problem for the economy is lack of consumer confidence.

In terms of energy markets, crude oil prices fell sharply in August and September but stabilized around $80 per barrel in recent weeks, and the consensus group expects New Mexico oil prices to average $82 in FY12 and $84 in FY13. Crude oil production continues to increase in New Mexico. Fiscal Year 11 production reached 67 million barrels, a 6.5 percent increase over FY10, but the consensus group expects production to decrease gradually after FY12. Natural gas prices fell along with oil prices due to lack of significant weather-related demand and plentiful inventories. Natural gas liquids continue to provide a premium of roughly $1.30 per thousand cubic feet relative to dry gas prices. The consensus group expects New Mexico gas prices to average $5.35 in FY12 and $5.80 in FY13. Natural gas production in New Mexico continues to decline, falling 4.5 percent in FY11.

Demesia Padilla, secretary, Taxation and Revenue Department (TRD), said corporate income tax collections were higher at the end of FY11, but the July forecast already incorporated strong growth in this revenue so the forecast for FY12 and FY13 was not increased by as much. The gross receipts tax has had an increase of $120 million, with one third due to the oil and gas sector. The construction industry is beginning to move upward, slowly. Some $95 million in film credits were paid out at the end of the year.

Secretary Clifford continued with negative risks to the outlook, which include the possibility of another U.S. recession. Default by one of the European countries could lead to concentration of financial markets with reduced lending, slower global growth, and sharply lower oil prices.

Positive risks include the potential for fiscal or monetary stimulus and a stronger recovery of business and consumer confidence. A successful resolution of the European debt crisis could also add to the current forecast, which assumes a European recession will occur within the next six months. Secretary Clifford stated the baseline outlook is pessimistic.

Secretary Clifford gave a bond capacity update, stating $149 million will be available in FY12 for public school facility projects. Earmarked appropriations for FY12 total $26.4 million for water trust board projects, and $13.2 million each for colonias and tribal infrastructure projects.

Leila Burrows, economist, LFC, summarized the consensus revenue estimate by saying the preliminary revenues were underestimated by 4.2 percent compared with the December 2010 forecast and 1.5 percent compared with the December 2009 forecast. Interest earnings on tobacco are higher in FY11 than DFA's financial summary due to information received from State Investments Council. Regarding taxable gross receipts, one-third of the growth came from mining, oil and gas. Recurring revenue in FY11 was underestimated by 4.2 percent compared with a December 2010 forecast, and the pattern seems to follow the national trend of overpredicting in good times and underpredicting in tough times. Ms. Burrows stated this emphasized the volatility of revenues. Preliminary ending balances were $488 million, or 9.4 percent of recurring appropriations at the end of FY11.

In response to Senator Beffort, Director Abbey stated revenues were underestimated by 4.2 percent only in FY11 due to extraordinary circumstances in the oil and gas sector and corporate income tax.

Secretary Clifford told the committee senior severance bond capacity is a combination of available capacity less $81 million already authorized, leaving $130.5 million available for appropriation.

The Medicaid deficiency, revenue from oil rigs and pipelines, and the film tax credit were also discussed.

Chairman Smith talked about restoring consumer confidence and asked Secretary Clifford for input. Secretary Clifford stated overall, the forecast is cautious. Governor Martinez is interested in looking at incentives for employment, tax reform, maybe payroll relief, but Secretary Clifford has no specific recommendations now. New Mexico does not have a robust revenue scenario in the near term. The state should focus on employment incentives and move cautiously.

Review of Earmarked Revenues. Leila Burrows and Charles Kassicieh, economists with the LFC, briefed the committee. Ms. Burrows stated the review was preliminary and includes revenue collected by the Taxation and Revenue and Regulation and Licensing departments, the Public Regulation Commission, and Motor Vehicle and Property Tax divisions. Earmarks are dedicated taxes or fees to a specific program or fund and accomplished by constitution or statute.

Advantages of earmarking are programs receive guaranteed minimum funding, funding decisions are depoliticized, and taxpayers are more effectively targeted. The disadvantages are budget inflexibility and decreased accountability in the appropriation process.

During the 2011 legislative session, House Bill 161 and Senate Bill 47 were passed requiring the Taxation and Revenue Department to report annually on tax expenditures and dedicated revenue budgets, but the governor vetoed both bills. An executive order was issued in August 2011 requiring the TRD to prepare an annual tax expenditure budget in conjunction with other executive agencies. The order doesn't include any directive regarding earmarks.

Ms. Burrows stated local governments receive a large share of earmarked revenue and have experienced smaller revenue declines than the general fund because of the relatively stable property tax base. Other issues with local government earmarks: earmarks relying on census data, county classification or property assessments to funnel revenue to particular beneficiary can have unforeseen consequences.

The severance tax bonding fund for capital projects was $358 million in FY11, the public projects revolving fund was $25 million in FY11, and the New Mexico Finance Authority received an additional $18 million, showing outstanding debt service can reduce budget flexibility.

Earmarked revenues also feed the road and aviation funds. Gasoline tax revenue to the state road fund was $108 million in FY11, the special fuel tax to the state road fund was $87 million, and $76 million from Motor Vehicle Division fees went to the road fund as well. The gross receipts tax distribution to the state aviation fund was $6 million in FY11. In total, revenues dedicated to road funds were about $436 million.

Approximately $4 billion of tax revenue and fees are earmarked for use by specific agencies and funds each year and the LFC, TRD, and DFA should continue to report on tax earmarks annually to examine effectiveness.

In response to Representative Saavedra, Ms. Burrows stated counties and municipalities do not charge gross receipts tax on food and medical, so the state reimburses them for their lost revenue. The state is out the revenue, and the reimbursement. The combined total from what the state reimburses counties and municipalities plus what the state didn't collect is $260 million and growing.

Representative Tripp asked whether funding for indigent health care was filtered through hospitals to receive matched federal funding and whether property tax revenue has remained relatively constant during the recession due to yield control legislation. Ms. Burrows stated she would find answers and get back to him.

Department of Tourism (418) – Monique Jacobson, secretary, New Mexico Tourism Department (NMTD), presented the department's strategic plan. Secretary Jacobson said tourism is a critical economic driver for the state, accounting for over 55 thousand jobs and contributing $5.5 billion to the economy. New Mexico is 36th in terms of states people visit, and 32 percent of people who visit New Mexico are just passing through. Tourism in New Mexico has suffered declines for several years, although market share has held relatively flat. Recent growth is driven primarily by out-of-state visitors drawn to historical sites, parks, and outdoor recreation. In the past, tourism focused on international markets and now New Mexico must nail the domestic market first.

To improve the trends, Secretary Jacobson stated the department is going to change the way it operates, moving from a tourism service agency to a tourism-generating agency. The department will focus on fewer, bigger things, do more with less, and expect more from communities.

The Department of Tourism's main focus is making New Mexico the primary destination for the target travel market. To achieve this, the NMTD will build a strong, resilient, impactful brand and increase the level of rigor and analysis behind marketing efforts.

The key to driving economic impact is attracting out-of-state, overnight visitors. The economic impact of travelers making New Mexico their destination versus people travelling through is significant, because people spend more on a planned vacation. Secretary Jacobson noted people coming to New Mexico are coming from five neighboring states, and they are significantly older. A strong brand will bring all ages from all states to New Mexico.

The NMTD's social media audit showed New Mexico has the opportunity to improve visibility and consumer perception. New Mexico is also out-spent, out-performed, out-marketed and out-converted by neighboring states and many people don't recognize New Mexico is part of the United States. Secretary Jacobson said there is a lot of work to do in terms of building and changing perceptions of New Mexico.

To accomplish the goal, the NMTD will first build a brand to create a strong foundation for tourism growth. Through positioning and consumer research, the NMTD found a psychographic target of people who are adventurous and have a thirst for authenticity. New Mexico will brand itself as "adventure steeped in culture." Generating awareness through an effective advertising campaign is a strategic priority in building the brand, as is converting trips by rebuilding the website and fueling advocacy through *NM Magazine* and social media. A successful advocacy program could infuse $2.3 billion over a three-year period.

Secretary Jacobson said once the strong brand foundation is built, the NMTD must unify and lead the industry to maximize impact with the following strategic priorities: the NMTD will speak with one voice by developing a brand book and industry-specific website; create scale and synergy through advertising partnerships and trade shows; and inspire product development not by creating a product, but by delivering on the experience tourists want.

Ramping up the rigor means the NMTD will look at the numbers a lot more when making decisions. Secretary Jacobson stated she will ensure the department is spending money in the most effective way possible and will have proposals to refer to when asking for money in the future.

The NMTD also identified four key measures of performance with the traveling consumer: brand performance, consumer relationships, consumer profile, and visit characteristics. Secretary Jacobson said the department also has very specific measures to judge success. The NMTD will measure impact relative to five critical performance objectives with clear indicators.

The strategic priorities to block and tackle ensure tactical programs are fully leveraged to create impact without high levels of investment. The Catch the Kid promotion had between $4 million and $5 million in direct economic impact with spending of $600 thousand. Another block and tackle promotion will be New Mexico's centennial, beginning in January.

Directed Abbey stated the NMTD is asking for a flat budget.

Representative Kintigh asked Secretary Jacobson to research an explanation of the disparity between the numbers the tourism industry puts forward and what is reported to the U.S. Department of Commerce.

Vice Chairman Varela asked if the Department of Cultural Affairs and the NMTD were merging and Ricky Bejarano, former tourism chief financial officer, stated although both departments share a lawyer, a financial officer, and are looking at synergy and cost savings together, a merger is not necessarily in the works.

Chairman Smith said he appreciated the NMTD's strategic plan and hopes the department will be more unified in the future. Chairman Smith asked Secretary Jacobson to research the economic impact of the Rose Bowl float and baseball game.

Gaming Control Board (465). Rick Martinez Jr., analyst, LFC, introduced interim agency Director Frank Baca and board chairman David Norvell, and provided an overview of the agency and its FY13 budget request. The Gaming Control Board requests $5.7 million from the general fund, a $514 thousand increase over FY12. The majority of the increase is for personal services and benefits. The agency requests deleting 4.5 classified FTE and a zero vacancy rate for the remaining 58 FTE. The statewide gaming machine count as of the end of September is 2,649 in racetrack casinos, 657 in nonprofit venues, and an estimated 15,130 machines in tribal locations.

Mr. Norvell stated the GCB has reached critical mass. Mr. Norvell informed the committee the GCB has not been able to get sufficient attention from the executive branch to pursue arbitration against some tribal venues to comply with the compact. An alternative to arbitration is to close the casinos, but the GCB has not received any support. Mr. Norvell stated arbitration would cost about $1 million.

Mr. Baca said the GCB has paid back the entire $178 thousand loan to the Board of Finance and more than $95 thousand was returned to the general fund, examples of good money stewardship.

Mr. Baca stated with an adequate staff level GCB can oversee the revenue generation that is statutorily required with licensees.

Vice Chairman Varela asked how tribes pay to the fund and Mr. Norvell stated there is a schedule on the compact that has different percentages depending on revenue, from 3 percent to 9 percent.

Senator Cisneros asked about the language in the compacts allowing for process for arbitration. Mr. Norvell said the language is clear but the GCB cannot get the tribes to table to arbitrate because the tribes refuse. Mr. Baca stated there is a glitch in language because there is not a specific period of time in which the tribe has to name an arbitrator.

Chairman Smith verified the GCB does not differentiate between class 2 and class 3 machines and stated the Department of Interior, machine manufacturers, New Jersey, and Nevada needs to be notified the machines are operated in violation of New Mexico law. Chairman Smith asked the GCB to follow up with LFC staff. Chairman Smith said the governor needs to be brought up speed on gaming and he is not happy with the direction gaming is headed.

State Racing Commission (469). Interim Agency Director Vince Mares provided an overview of the agency and requested $2 million for FY13 from the general fund, a $150.8 thousand increase over the FY12 general fund level. The increase is entirely for personal services and employee benefits. The SRC is requesting to delete a vacant deputy director position and maintain a zero vacancy rate for the remaining 18.7 FTE. The SRC needs a license database upgrade. Mr. Mares stated last year $378 thousand was dedicated to equine testing, and cutbacks would hinder adequate testing. Currently, finances limit testing to the winning horse but the SRC would like to be able to test any horse at any time.

Senator Beffort asked what steps the commission is currently taking to remove an employee that has been placed on administration leave since January 2010, and Mr. Mares stated they have contacted the State Personnel Office for assistance.

In response to Representative Tripp, SRC Manager Rosemary Leeder stated the cost to test every winning horse is $120 for a urine sample and $35 for a blood sample.

Wednesday, October 19

The following members were present on Wednesday, October 19, 2011: 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 and Henry "Kiki" Saavedra; and Senators Sue Wilson Beffort, Mary Kay Papen, Pete Campos, Stuart Ingle, Carlos R. Cisneros, Carroll H. Leavell, and John M. Sapien. Representative Dennis J. Kintigh attended as a guest.

Department of Veterans' Services (670). For FY13, Secretary Timothy Hale requested an overall budget of $3.27 million, a $385.6 thousand increase over the FY12 operating budget. The DVS has 37 FTE and 2 term positions. The general fund request for FY13 is $3.07 million, a $435.6 thousand increase over the FY12 general fund level; however, fund balance decreased $50 thousand while the use of federal revenue remained at $150 thousand. The agency request submits a zero vacancy rate.

Secretary Hale said veterans and their families are the centerpiece of the department's mission. The DVS served 38,478 veterans in FY11, representing a penetration rate of 21 percent and totaling $133 million in compensation and pension from all claims. Secretary Hale attributed New Mexico's top five ranking of states per capita for veterans receiving compensation and pension from the Veterans Administration to the DVS's service officers and small staff.

The DVS's key goals are to improve overall management and operational systems, deliver and improve existing programs and services, identify new initiatives, and develop annual budget and performance standards. The DVS is focusing on maximizing the use of its dollars through cooperation and coordination of nonprofits, other government agencies, organizations to provide important services to constituencies.

In response to Representative Saavedra, Secretary Hale stated the Veterans' Integration Center and Mesilla Valley of Hope, the two main groups the DVS provides contract funding for, require veterans to agree to stay drug and alcohol free and it is difficult for the VSD to monitor.

Senator Cisneros asked why fiduciary client numbers are declining and Chief Financial Officer Dan McCormack stated the number of fiduciary clients has declined from 300 to less than 100 clients because more court-appointed caretakers are being assigned to assist veterans.

Deputy Director Allen Martinez, in response to Representative Larrañaga, reported since 09/11 service men and women no longer have to be inactive to qualify for the GI Bill and can pass on the benefits of the GI Bill to their spouse or children.

Chairman Smith asked if New Mexico provides any exclusive benefits to veterans. Secretary Hale stated a post-traumatic stress disorder retreat in Angel Fire was unique, and the program "Heroes Hiring Heroes" is the country's first and used as a benchmark in other states. Secretary Hale added the VSD is working on a matrix for unique services.

Game and Fish Department (516). Tod Stevenson, director, Game and Fish Department, is requesting a flat budget, although increases in some areas are offset by decreases in others. Four positions approved in the FY12 budget are now being staffed, including an Aquatic Invasive Species (AIS) Program coordinator. Director Stevenson said AIS continue to be a significant issue at Sumner Lake, where earlier this year sampling indicated menacing zebra mussels present in the water. After subsequent weekly testing, the lake was deemed uninfested.

The DGF's requested budget is based solely on department revenues from hunting and fishing licenses, totaling $25 million annually. The DGF spent less money over the last two years by complying with hiring freeze requirements and having 70 vacant FTE. The DGF was recently approved to hire 47 people. Vacancy savings accruing in the game protection fund will allow the department to operate under the current fee structure and potentially allow for 10 or more years between fee adjustments.

Director Stevenson said he is concerned about drought conditions and the impacts on wildlife and habitats. The department will continually evaluate habitat conditions and how hunting and fishing is impacted.

Director Stevenson thanked the committee and said it was an honor to work with them. He also expressed his faith in newly appointed director Jim Lane.

In response to Vice Chairman Varela, Assistant Director Patrick Block stated the fund balance is around $35 million and has grown more than anticipated due to a hiring freeze. Some fund balance is used outside of the game protection fund. The bond interest retirement fund balance is $1.5 million.

Other topics of discussion were the joint power agreement on the Pecos Canyon State Park, off highway vehicles, and securing federal match dollars for the program.

FY11 Performance Report on Key Agencies. Deputy Secretary Charles Sallee, deputy secretary, LFC, and David Lucero, principal analyst, LFC, gave an overview of how well agencies are performing and using taxpayer money to get results for citizens. The performance report cards show strong performance results, yet there is significant room for improvement in the performance-based budgeting process.

Education – Public school support shows incremental annual progress, however, the pace of improvement is too slow given the amount of funding provided to the agency. As an example, the percentage of fourth-grade students reading at or above proficiency levels in reading declined from 51 percent in FY10 to 46.5 percent in FY11, with a target of 74 percent. Mr. Sallee said the narrative on report cards gives a description of the importance of focusing on certain areas, including closing the achievement gaps and using targeting investments to help outcomes for children.

Health and Human Services – Medicaid's performance measures need an overhaul for a better sense of people, programs involved, and better outcomes. Although the number of children receiving Medicaid reduced-cost services exceeded the target, information is lacking in some areas. Important developmental disabilities waiver and Family, Infant, and Toddler data was not collected and reported by the Department of Health.

Mr. Sallee noted the HSD's Child Support Division has a good, solid set of performance measures with collections exceeding the target. The Juvenile Justice Services Program in the Children, Youth and Families Department is collecting data on the number of physical assaults in juvenile facilities is a baseline, so next year a reasonable level can be determined.

Department of Public Safety – Mr. Lucero stated overall DPS exceeded targeted levels.

Department of Corrections – The Inmate Management and Control Program received an overall green rating even though targets for measures gauging successful and timely release of inmates were not met in the fourth quarter. An area of concern in the Community Offender Management Program is lack of staff.

Energy, Minerals and Natural Resources - The department had many positive results even though some parks were closed.

Environment Department - Overall, inspection efficiency measures showed positive performance.

Office of the State Engineer - Data is old and doesn't show improvement, so air and water quality improvement isn't clear.

Workforce Solutions Department – Mr. Lucero stated the WSD has underperformed at a time when needed most. Results for individuals employed after the first exit quarter of training were far below FY11 targets and actuals.

Mr. Lucero stated the Department of Transportation, Taxation and Revenue Department, and State Personnel Office will brief the committee on their performance measures.

Given spending reductions of approximately 10 percent over the last three fiscal years, some unmet needs remain and a higher level of performance outcomes is desirable. These performance outcomes indicate the need for more action and strategic plans.

Executive budget analyst for the Department of Finance and Administration Richard Blair told the committee performance measures are an annual requirement for agencies. The reporting process requires agencies to regularly track performance and establish a baseline for measuring improvement. The DFA uses quarterly reports to identify strengths and weaknesses, identify potential problems and recommend deletion, revision, or introduction of new measures. Mr. Blair stated the intent was to tie performance with the budgetary process, but this remains an area in which the state is lacking.

Key agencies are generally reporting in a timely manner and most agencies met or exceeded the majority of their FY11 targets. In many cases, this means agencies are performing well, but in others, it may mean the bar is set too low. Some cases might primarily reflect external factors, like the number of people receiving food stamps is closely related to levels of unemployment.

A good performance measure connects the primary mission and key activities of the agency; is clear, concise, and useful; and provides meaningful feedback to policymakers regarding desired outcomes, cost-effectiveness and program impacts. Mr. Blair suggested using results of customer satisfaction surveys as a performance measure. Performance measures that are confusing or primarily measure results outside control of the agency are not considered good measures. Mr. Blair gave examples of each.

Having a large number of performance measures is less important than having well-crafted measures. Quarterly Reports are most beneficial if DFA and LFC provide state agencies with consistent feedback following submission. Mr. Blair recommends providing additional training on the use and development of performance measures and using results of external evaluations and audits as the basis for new performance measures.

In response to Vice Chairman Varela, Deputy Director Sallee stated analysts are instructed to take performance measures into consideration with staff recommendations to the committee.

Spotlight on Select Fourth Quarter Agency Performance Report.

State Personnel Office. Gene Moser, director, State Personnel Office, told the committee the SPO did not have a clear strategic plan with measurable output so along with the Human Resources Council and various agencies, it is developing one. The SPO is developing monthly audit processes that look at overtime and leave balances and plans to digitize personnel records.

There was a lack of information available to applicants, state employees, and agencies and an improved website with an easier application system will be up November 1, 2011. The SPO's action plan includes providing certified lists of all top 15 applicants to hiring agencies and including minimum qualifications on all classifications.

Mr. Moser also presented the SPO's FY12-First Quarter Workforce Report and said the comprehensive report provides much more information. New in the report are overtime, sick leave, and annual leave statistics for managers. Director Moser said an area of concern in the report is salary ranges.

New Mexico Taxation and Revenue Department. Demesia Padilla, secretary, Taxation and Revenue Department talked about the Motor Vehicle Division (MVD), taxation, and property tax measures from the department's FY11 performance report. Secretary Padilla stated the department is taking corrective action to improve MVD field office wait times and is now confident it will select a qualified contractor to reengineer the MVD's antiquated Legacy system. The department needs to use the latest technology to serve more people outside offices.

Between 1 and 2 FTE are needed to process foreign national licenses, depending on the size of field office. Almost 70 percent of foreign national licenses are issued in Albuquerque, and the TRD is looking for a centrally located field office to meet the demands. This will decrease wait times throughout the state. Deputy Secretary John Monforte added there is a 25 percent vacancy rate in the call center

Mr. Monforte addressed performance measure findings on taxes saying the department will strive to balance the state desire for efficiency and modernization with the needs of small businesses with e-Filing.

The percentage of driving-while intoxicated drivers license revocations rescinded due to failure to hold hearings within ninety days continues to exceed expectations. Mr. Monforte stated the Hearings Bureau has been doing an outstanding job. The percent has declined from 0.43 percent in FY09 to 0.3 percent in FY10 and 0.29 in FY11.

New Mexico Department of Transportation. Deputy Secretary Tom Church briefed the committee on performance areas needing improvement, such as the annual number of riders on the Rail Runner corridor, percent of airport runways in good condition, roadway conditions, vacancies, litter collection, and number of employee injuries.

Mr. Church says federal funds are still up in the air.

In response to Representative Tripp, Secretary Padilla stated she wants to incorporate "mystery shoppers" to improve customer service in the MVD. There are comment cards at MVD offices and online, but audited taxpayers do not fill out customer service surveys.

Senator Beffort asked about temporary employees and Director Moser explained rules for temporary employees.

Thursday, October 20

The following members were present on Thursday, October 20, 2011: Chairman John Arthur Smith, Vice Chairman Luciano "Lucky" Varela, Representatives Don Tripp, William "Bill" J. Gray, James P. White, Edward C. Sandoval, Rhonda King, Larry A. Larrañaga and Henry "Kiki" Saavedra; and Senators Sue Wilson Beffort, Mary Kay Papen, Carlos R. Cisneros, Carroll H. Leavell, Clinton D. Harden, and John M. Sapien. Senators Timothy M. Keller, Cisco McSorley and Representatives Nick L. Salazar and Dennis J. Kintigh attended as guests.

Program Evaluation: State Fair Operations and Financing. Mr. Dupuy Bateman, LFC, told the committee the key points in the evaluation are that the New Mexico State Fair is operationally insolvent and continues operations by not paying key creditors, has failed to properly manage key contracts and has inadequate cash controls, and lacks a strategic capital plan.

The State Fair, as an enterprise agency of the state of New Mexico, is designed as a self-sufficient entity governed by a seven-member commission appointed by the governor and confirmed by the Senate. Operating revenues, ranging from a high of $16 million in FY08 to $13 million in FY10, come from the State Fair, the Albuquerque Downs, concerts, and numerous other events held in the facility at the fairgrounds.

Key Findings: *The New Mexico State Fair is operationally insolvent.* Revenues have fallen from a high of $7.3 million in 2007 to $5 million in 2010 because of dwindling attendance and increasing costs. The amount currently due to creditors exceeds the cash available to pay those creditors, with the largest amount, $1.9 million, owed to the Risk Management Division of the General Services Department for insurance coverage dating back to FY09. This loan allowed the State Fair to have enough cash to maintain solvency.

The Fair is in a crisis management mode, forcing strategic decisions according to short-term need rather than a strategic plan. Mr. Bateman said an example is the process leading to the recent request for proposal (RFP) for the lease of the 93 acres currently leased by the Downs at Albuquerque. The $2 million annual lease agreement is vital to the Fair's solvency, yet because of cash flow concerns, only 30 days was allowed for the RFP and only two responses were received.

The Fair is down to 36 FTE after a reduction in force in September, though this effort is not a permanent solution. Additionally, the Fair's chief financial officer position has remained unfilled for over a year.

From 2006 to 2011, paid admission dropped from 512 thousand to 370 thousand and unpaid attendance declined from 227 thousand to 30 thousand. In 2011, only attendees holding unpaid admission passes were counted.

The State Fair's lease with the Downs of Albuquerque is fraught with problems. In 2009, the Legislature granted an authorization for extension of the lease for two years. The financial terms establish a lease rate of $2 million per year with a 10 percent increase of $200 thousand in the first year and an additional 10 percent of $420 thousand in the second year. Although the Downs at Albuquerque made its monthly cash lease payments during the extension through January 11, 2011, there is no evidence of promotional events, marketing, or advertising that benefited the Fair to offset the 10 percent increase payment.

At the suggestion of Albuquerque Downs, the Fair signed an agreement capping utility payments on a monthly basis to $20 thousand. It is estimated the Fair gave up $27 thousand or more because of this letter of agreement.

In addition, the Fair and the Downs both hold racing licenses. During the annual event, the Downs operates under the Fair's license. In turn, the Downs pays the Fair 1 percent for the first $5.7 million wagered and 1.25 percent in excess of this amount. The Fair shows no record of payment in 2006, 2007, 2008 and 2010. In 2009, $13 thousand was paid. The total still due the Fair is $215 thousand.

Lack of oversight and accountability resulted in contract irregularities and inadequate cash controls. Although in 2010 there was a new carnival concessions contract with Spectacular Attractions, d/b/a Murphy Bros. that called for increased ride, food, and game compensation, the Fair received payment according to the prior, lower rates. The result: an estimated $477 thousand underpayment. Amendments to the new contract, signed by the former manager, substantially reduced the financial benefits to the Fair. One amendment reduced the percentage the Fair collected on tickets and wristbands and reduced payments for game and food concessions.

The Fair takes in $3.5 million in cash every year with limited controls. As a result, during the 2011 event, an employee allegedly embezzled $5 thousand.

The State Fair lacks a strategic capital plan. Some $27 million in capital appropriations the Fair has received since 2003 have largely been spent to keep the fairgrounds operating. With no preventive maintenance program, capital funds are used for emergency maintenance and repairs on old systems. Numerous contracts for commercial work have been awarded to residential contractors.

The Legislature should amend statute to increase oversight of the State Fair, including the DFA, SPO and GSD

Mr. Bateman said the State Fair should do the following:

- Devise a plan, looking at strategic changes to reduce costs and increase profitability such as changing length of the fair and costing out all events to insure profitability;

- Work with affected state agencies to develop a debt repayment plan;
- Hire a qualified CFO;
- Explore charging food vendors at the State Fair annual event a percentage of revenue, much like contracts with year-round venders rather than a flat rate;
- Properly enforce terms and conditions of all contract and develop written policies and procedures clarifying the State Fair Commission's role in the approval of all contracts and amendments;
- Process all Fair contracts through DFA in compliance with DFA rules;
- With the advice of legal counsel, consider voiding the current carnival concession contract and issue a new concessions RFP;
- Retain an outside consultant to recommend internal controls for the cash handling function, including limiting handling of cash to permanent employees and using cashless systems, and immediately implement those controls;
- Complete a facility condition index and develop a comprehensive preventive maintenance plan and capital budget;
- Enter into a new capital master planning process for the fairgrounds that integrates the need for enhanced revenue into a new strategic capital master plan;
- Review how capital contracts are awarded to ensure compliance with all applicable laws, rules, and regulations.

Mr. Bateman thanked LFC staff and said Dan Mourning, Agnes Maldonado, and other staff made every effort to make all requested information available and acted on recommendations during the evaluation.

Mr. Bateman told Senator Keller general fund transfers in FY09 were $478 thousand and $435 thousand in FY10. Senator Keller expressed concern about the RFP for the lease of 93 acres currently leased by the Downs, and said it was irresponsible to try to buy a 25-year land deal in 30 days. Regarding the Downs at Albuquerque not paying its 10 percent increased payment, Mr. Mourning stated he expects full payment of $420 thousand at the end of the lease in January 2012. Senator Keller stated the State Fair is the executive's responsibility and it is structurally a failure. He also stated it might not be appropriate to have a State Fair Commission meeting if there is no public notice or no quorum. Senator Keller said he wants to see a proposal to make the Fair an enterprise again.

Representative Kintigh questioned why the Downs is allowed to bid on the contract when they are not in compliance with the current contract. Mr. Mark Shoesmith, State Fair general counsel, stated payments in question are due at the end of the lease and it is his understanding the State Fair Commission has not discussed possible litigation with the Downs. Mr. Shoesmith said Tracy Wolff is the acting manager and vice president of the Downs.

Charlotte Rode testified she is the newest member of the State Fair Commission and has not been provided with requested information from State Fair management. With regard to the Downs, it was written in the addendum that at the discretion of the Fair, the Downs would provide promotional materials to make up for the 10 percent additional fee, but the Downs did not give the State Fair a clear picture of what that 10 percent would be. This year, the 1 percent the Fair is supposed to receive from the race meet during the annual event was crossed out by Mr.

Mourning on the contract. Ms. Rode stated the commission has not been allowed to fulfill its duties and requests for meetings have been denied. Referring to the land lease, Ms. Rode said taxpayers are subsidizing a multi-million dollar private industry in addition to subsidizing the State Fair. The commission was told they could view RFP responses individually, but not as a group, and when the RFP is public, they will be asked to vote on it.

Hossie Sanchez, chairman, New Mexico State Fair, stated the commission is what's wrong with the fair – they have too much power. As commissioner, Mr. Sanchez said he's given the power back to management and said Mr. Mourning is doing a great job.

In response to Representative King, Mr. Mourning stated an invoice on racing amounts owed to the State Fair will be sent to the Downs on October 21, 2011. The Downs has 15 days to respond. Representative King requested LFC be courtesy copied for documentation purposes.

Senator McSorley said he asked Mr. Mourning for two things: make sure the Legislature passed a memorial asking the governor to put together a commission to study the Fair, which was never done; do an evaluation before signing a long-term contract with any racinos without doing an evaluation. Mr. Mourning stated an official appraisal has not been done. Senator McSorley stated $2 million dollars for 93 acres in the middle of Albuquerque is nothing compared with what the state should be getting. Senator McSorley asked if the RFP included a provision for a racino on the corner of Louisiana and Central, and Mr. Mourning stated he could not answer that.

In response to Senator Harden, Mr. Sanchez stated if the Fair had a gaming license as well as a racing license the Fair would not have to ask the Legislature for money.

Ms. Baldonado, responding to Senator Beffort, stated there is no State Fair information on the state's "sunshine portal," and the Fair has made adjustments in response to the evaluation with regard to protecting more than $3.5 million in cash collected annually.

In response to Representative Larrañaga, Mr. Mourning stated the lease expires on January 11, 2012. Regarding the RFP on a new lease, Mr. Mourning stated the Fair is in negotiation with the evaluation committee's top-ranked offer. Commissioners were not involved in the review process of the RFP.

In response to Representative Sandoval, Ms. Rode said the lease she has is dated July 1990. The extensions approved by the Legislature were for 2010 and 2011. On June 2, 2011, Mr. Mourning signed addendum number six with the Downs to extend the contract through January 11, 2013, and as far as Ms. Rode knows, there is nothing in the addendum which rescinds this. In Ms. Rode's opinion, the lease is good until 2013. Senator Keller stated the Legislative Council determined the lease was good until 2013.

<u>New Mexico State Fair (460).</u> David Lucero, principal analyst, LFC, said the State Fair is requesting a $935 thousand reduction from FY12. The primary reduction is in salaries because of the recent RIF and shifting a portion of expenditures for temporary employees to contractual services. The agency has reduced the number of FTE by 22.

In response to Vice Chairman Varela, Ms. Maldonado stated the New Mexico State Fair had a cash deficit of $1.9 million. It was determined the Fair could get by with 34 FTE, saving $1 million. Vice Chairman stated placing the State Fair's cash bank under the control of the State Treasurer and putting positions on SHARE should be considered.

New Mexico Finance Authority Budget Overview for FY12 and FY13. Richard E. May, NMFA chief financial officer, stated NMFA has a proven track record and hopes to build on it. The NMFA receives no state dollars for operating expenses. The NMFA does receive approximately $25 million in governmental gross receipts taxes, paid primarily by water and sewer customers across the state.

The two core missions of the NMFA are to help governmental entities address their infrastructure needs through financing and expand economic development around the state.

Steps have been taken to balance the inherited budget, beginning with the layoff of three people and requiring employees to pay a portion of healthcare benefit premiums. These measures saved about $70 thousand in the last six weeks.

In response to Vice Chairman Varela, Mr. May stated there is a rigorous process to analyze projects. Local communities, rather than the NMFA, make value judgments. Mr. May stated the NMFA is willing to help reform the capital outlay process.

Greg Campbell, the NMFA's controller, stated the Spaceport Authority is a concern for him because every draw the NMFA does for the Spaceport Authority, goes directly to a contractor out of bond proceeds.

Department of Information Technology (361). – Darryl Ackley, secretary, Department of Information Technology, stated the vision of DoIT is to provide the information technology (IT) fabric on which the state is enabled to execute its mission in a secure, reliable, and efficient manner. The better DoIT does, the more agencies are empowered. Its mission is to provide core enterprise IT services in a professional manner, foster an environment of value-added oversight, and provide trusted IT leadership and vision. Secretary Ackley explained DoIT is an enterprise, or revenue-funded. The federal Office of Management and Budget Circular A-87 is important for cost recovery because it strictly governs cash balances and the way they are charged.

Infrastructure services include mainframe development and maintenance, which most of the states revenue goes through at one time or another; application hosting; transport; and dispatch for the radio network. Applications services include cellular wireless, web, video and teleconferencing, and web design maintenance. Oversight and compliance provides statutory oversight of all state IT projects and procurements.

DoIT has 203 classified positions, including three term positions. DoIT's vacancy rate is 19 percent. Four out of eight exempt positions are filled, and Secretary Ackley said he was happy to note he has hired general counsel.

Secretary Ackley gave an overview of DoIT's 2011 accomplishments, highlighting the mainframe stabilization project, which now has current versions of the IBM Z09, and agency savings of $1.4 million annually, after approval from the rate committee for FY13 rates. DoIT also negotiated 54 new statewide price agreements for IT services. DoIT deployed newmexico.gov in 2011 and made significant updates to the state IT contract templates.

Transparency with the sunshine portal is an initiative for DoIT, as well as the mainframe, SHARE improvements, and procurement reform. DoIT's top grant, the SIRCITS grant, is a $43 million matching grant and allows the state to complete the upgrade of the digital microwave towers. New Mexico is one of seven and the first state in the country to have a waiver to operate in the 700 Megahertz LTE and have federal funding earmarked to deploy that system. Secretary Ackley stated this is the same LGE technology recently available in Albuquerque.

DoIT's total budget request is $56.6 million, with $43 million for enterprise services, $3.6 million for Program Support, and $5.3 million DoIT's half of SHARE. DoIT is requesting $870 thousand for oversight and compliance. One key request is for budget adjustment authority for enterprise services, because demands can fluctuate. This gives DoIT the flexibility to increase the budget against revenues.

Vice Chairman Varela asked if the governor still intends to combine the General Services Department and DoIT, and Secretary Ackley stated the intention still stands. Secretary Ackley intends for all operations under DoIT to be stable should there be reorganization.

Vice Chairman Varela asked Secretary Ackley to inform him of the next commission meeting.

In response to Senator Harden, Senator Ackley stated the contract to replace the public assistance computer system is for $75 million to replace computer software, with a federal match. Mr. Mike Baca stated the Medicaid management information system is under a separate contract and in the procurement process. DoIT does have oversight on procurements. The Human Services Department is negotiating the contract and DoIT will ensure technological requirements are met.

Public Defender Department (355). Jacqueline Cooper, chief public defender, Public Defender Department, stated she believes the justice system works best when all players have access to resources. The new office in Gallup is scheduled to open in March 2010. The cost to run the office is $1.4 million, which is included in the budget. This is a $300 thousand increase over what is paid contract attorneys in this district. Ms. Cooper stated the PDD intends to hire 13 employees from the Gallup area. Because public defenders often act as social workers, this will be an additional benefit to the community.

Ms. Cooper said the current FY13 budget will not adequately staff all offices. The PDD is authorized 411 positions, with 333 currently filled. There are 80 vacant positions, and Ms. Cooper has submitted 20 for deletion. Ms. Cooper stated the PDD must maintain a 17 percent vacancy rate to stay within budget.

Ms. Cooper stated the PDD has to borrow attorneys to ensure statewide courtroom coverage, which affects moral and creates a danger of attrition. The use of contractual services has gone up as well.

The PDD is requesting $10.7 million.

Miscellaneous Business

Actions Items
Approval of Minutes. **Senator Cisneros moved to approve the August 2011 meeting minutes, seconded by Representative White. The motion carried.**

FY12 Contract Approval. Director Abbey requested contract approval for Cathy Fernandez to work for three months. **Senator Cisneros moved to approve the contract, seconded by Representative Saavedra. The motion carried.**

New Mexico State University has the capability to compare performance data throughout the state. Director Abbey requested a contract approval. **Vice Chairman Varela moved to approve the contract, seconded by Representative Larrañaga. The motion carried.**

Information Items

Director Abbey referred the committee to the American Recovery and Reinvestment Act status report, September 2011 cash balance and BAR reports, the FY12 budget status and full-time employees by agency.

Deputy Secretary Sallee proposed looking at the Medicaid reconciliation issue and effective investments and strategies to improve student literacy by third grade.

Friday, October 21

The following members were present on Friday, October 21, 2011: 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 and Henry "Kiki" Saavedra; and Senators Sue Wilson Beffort, Mary Kay Papen, Carlos R. Cisneros, Carroll H. Leavell, Pete Campos, Clinton D. Harden, and John M. Sapien. Representative Eleanor Chavez attended as a guest.

The committee met in executive session from 8:08 to 8:46.

Program Evaluation: Cost-Effectiveness of Healthcare Tax Expenditures and of Locally Financed Healthcare Programs. Jack Evans, program evaluator, LFC, gave a summary of LFC findings and recommendations after examining five healthcare tax expenditures:

- Rural healthcare practitioner tax credit,
- Hospital gross receipts tax credit,
- Pre-emption of taxes for those subject to the premium tax,
- New Mexico Medical Insurance Pool (NMMIP),
- Assessment deduction,
- Deduction for medical service providers.

Mr. Evans stated information and recommendations will be presented surrounding the major finding regarding healthcare tax expenditures, which is that New Mexico's healthcare tax expenditures account for an estimated $290 million in foregone revenue but their true impact is difficult to measure.

Health care in the United States is the highest among all industrialized nations and the rate of total healthcare spending has grown faster than inflation and the growth in national income. These healthcare expenditures surpassed $2.3 trillion in 2008. The healthcare sector is also one of the fastest growing in the New Mexico economy. Estimated spending on healthcare for FY12 will total more than $4.5 billion through various state-run healthcare programs. For Medicaid alone, expenditures are estimated to reach $980 million from the general fund and $3.7 billion in total.

General Findings. *New Mexico's healthcare tax expenditures lack a clearly specified purpose and adequate reporting requirements.* There are few specified goals associated with healthcare tax expenditures, and most only have implied goals and are not specifically targeted. Of the five tax expenditures reviewed, only one had a stated healthcare outcome goal and none had ways to accurately measure the impact of the provision. Mr. Evans noted all five clearly spelled out tax credit or deduction eligibility.

The TRD does not systematically collect data on existing tax expenditures, instead relying on forecasting to gauge impact. Neither the combined reporting system (CRS) forms for gross receipts taxes nor the corporate income tax return form asks the taxpayer for detailed data on credits and deductions. Both forms ask total deductions only and are two pages in length with minimal data reporting requirements. The TRD official explained at the LFC hearing in August that there is a balance between requirements more information from taxpayers and the need to ensure a tax incentive doe not impost a burden on taxpayers, a deterrent.

There are inconsistencies in the reporting of foregone revenue associated with tax expenditures. These inconsistencies are in the medical insurance pool assessment tax deduction for insurance carriers and the deduction for medical service providers, and is basically a function of basing evaluation of financial impact on forecasting.

It is very difficult to determine if healthcare outcomes occur "because of" or "in spite of" the tax expenditure. There was a lack of baseline data and results data, so cause and effect relationships could not be drawn.

Mr. Evans reviewed five selected healthcare tax expenditures in detail.

The Rural Healthcare Practitioner Tax Credit has a clear goal and is being used by rural healthcare providers; however, its true impact is illusive. The tax credit is intended to recruit and retain rural healthcare practitioners in New Mexico. The program, which began in 2007, provides a personal income tax credit to healthcare practitioners who provide services in rural underserved areas. It can be carried over for three years and the maximum allowable credit is $5 thousand for doctors and dentists and $3 thousand for mid-level practitioners. The DOH determines qualification for the credit and issues a certificate to the TRD.

The LFC found the following:

The Rural Healthcare Practitioner Tax Credit has a clear goal but evidence that it is achieving this goal is anecdotal. Mr. Evans stated those who take the credit or use it to recruit or retain professionals like it, but it is unclear whether a $5 thousand tax credit would be the deciding factor in where a physician chooses to work.

In practice, the tax program is better understood as a retention tool rather than a recruitment tool. There are number of programs to help practitioners to pay off their loans, but the tax credit program is the only incentive for mid-career health professionals who have little or no debt.

The tax credit program has grown much larger than originally expected and the state has seen a much larger loss of tax revenue than earlier expected. Originally, the program had a $3 million cap. Foregone revenue associated with this tax expenditure has averaged $6.3 million a year. Also, fewer healthcare professionals were expected to take the credit because it was not known 25 percent of practitioners live in urban areas and work part-time in rural areas.

An accurate count of rural practitioners is not currently available, except for this tax credit. Licensure data has its limitations because it is not possible to determine if a person is practicing, not practicing, or practicing in multiple locations, counties, or another state. Determining the number of hours an individual is working based on licensure data is also not possible. Although the number of licensed physicians has increased from 4,478 in 2007 to 4,689 in 2009, true impact is unknown. It would be in New Mexico's interest to continue to explore if there are more effective and economical recruitment and retention tools.

The hospital gross receipts tax credit will results in for-profit hospitals paying no state gross receipts tax by FY12, an estimated $12.5 million cost that will grow to $14.million by FY15. This tax credit was apparently instituted to level the playing field for for-profit hospitals. About half of New Mexico's hospitals are for-profit. These hospitals compete with nonprofit hospitals in New Mexico and hospitals in neighboring states that do not pay gross receipts tax. New Mexico law allows for-profit hospitals to take a 50 percent tax deduction. This then allows a tax credit against their gross receipts tax liability, taking their liability down to zero. On average, for profit hospitals pay a little more than 1 percent in GRT. Little evidence is available to suggest that reducing the GRT liability of New Mexico for-profit hospitals has resulted in reduced costs to patients or insurance plans.

Maria Griego, program evaluator, LFC, briefed the committee on the pre-emption of taxes for those subject to the premium tax, medical insurance pool assessment deduction, and the deduction for medical service providers.

The pre-emption of all other taxes for insurance companies subject to the premiums tax results in a large amount of foregone revenue with unclear policy goals. Under the premium tax statute, health and life insurers pay a 4 percent tax on gross premiums received from their insured in lieu of paying other taxes. The pre-emption of all other taxes for insurers created foregone GRT revenue for tax year 2010 of $83.6 million. Estimates are not available for foregone corporate income tax, property taxes, or lost revenue from exempting taxation on other services provided by these companies. While the premium tax is high in comparison with other states, insurers still receive a substantial benefit from paying 4 percent tax on premiums instead of the state GRT rate of 5.125 percent, making New Mexico's premium tax more competitive when compared side by side with other state taxation policies for insurers. In New York, for example, insurers are subject to various taxes, including corporate income tax and a premium tax. While New York's premium tax rate is between 0.7 percent and 1.75 percent, the overall tax rate for insurers can be as high as 7.96 percent. New Mexico ranks 8th highest for health and life insurer taxation when compared with all 50 states. Additionally, managed-care organizations pay premium tax for Medicaid programs, making the state a significant contributor to premium tax revenue going into the general fund. In FY10, Medicaid programs spent approximately $2.3 billion with managed-care organizations hired to run the Salud, long-term care, and the behavioral health managed care programs. This resulted in an estimated $152 million coming back to the state general fund in premium tax revenue.

The medical insurance pool assessment tax deduction for insurance carriers accounted for $49.6 million in foregone revenue for tax year 2010 but will no longer be needed after national healthcare reform is implemented in 2014. All health and life insurers operating within the state of New Mexico are subject to paying an assessment fee to subsidize premiums paid into insurance pool. Insurers subject to the insurance pool assessment are able to deduct 50 percent, and in some cases 75 percent, of total assessments paid off of their premium tax obligation. The insurance pool assessment accounted for $90 million in state revenue earmarked for a specific purpose in tax year 2010. These funds bypass the general appropriation process and are not subject to legislative scrutiny.

New Mexico insurers' effective tax rate should be an estimated 3.5 percent once the insurance pool assessment deduction is applied, but data issues at the Insurance Division of the PRC (DOI) made this unverifiable. For tax year 2010, health insurers operating in New Mexico collected $2.7 billion in premiums, which would have generated $107 million at the 4 percent premium tax rate. This left a total tax liability for insurers of $52.7 million, of which DOI reported collecting $51 million. In obtaining this data, there were concerns over data integrity within the DOI database tracking premium taxes and premiums written in New Mexico. In 2005, LFC completed a report emphasizing data integrity and reporting concerns within DOI. This continues to be a significant concern in the accurate measurement of tax expenditures for taxes that fall under DOI management.

If the insurance pool is no longer required as a result of healthcare reform, both the assessment and the corresponding deduction should be addressed statutorily. The premium tax revenue that would be gained by eliminating the assessment tax deduction could potentially bring $49 million back into the general fund based on 2010 data.

The GRT tax deduction for medical service providers, coupled with a corresponding hold harmless for local governments, represents a double impact where the state is losing revenue through a tax expenditure and direct general fund expenditure to localities. Total general fund impact for foregone GRT revenue plus hold harmless payouts to municipalities under the medical GRT repeal totaled $82 million for FY11. Ms. Griego stated the hold harmless distribution was created to offset local option GRT revenue losses. However, the state is losing the opportunity to appropriate hold harmless payments to federally matched programs, which would have a greater impact on alleviating county healthcare burdens.

Ms. Griego stated the GRT deduction itself applies to providers who receive payments from any organized plan network, including managed care and preferred provider plans. Therefore, virtually all medical services are exempt from GRT. Similar to other tax expenditures reviewed in this evaluation, the medical service provider deduction does not have a specific and measureable purpose. However, in the fiscal impact report completed by LFC in 2004, it was speculated that eliminating the tax would increase provider take home pay, facilitating recruitment and retention of providers in New Mexico.

Key Recommendations

- The TRD should work to collect data on the financial impact of healthcare tax expenditures through a more detailed and transparent combined reporting (CRS) form, rather than relying solely on forecasting. Options include allowing additional form sections for taxpayers to detail credits and deductions being taken, as this data should be readily available, or asking for the five largest tax expenditures to be detailed on the CRS form.

  This will provide fundamental data for the analysis of tax expenditures and ultimately for the development of a tax expenditure budget. It is expected there will be tradeoffs for collecting more information. It will involve more effort on the part of taxpayers and the TRD could incur additional administrative costs. These are important considerations and the need for additional data is paramount.

- Support recommendations in the LFC staff brief on the inventory of New Mexico's tax expenditures presented to the LFC on August 19, 2011:

  - TRD-led development of tax expenditure report,
  - New healthcare tax expenditures subject to thorough review,
  - Consider caps or sunset provisions or both.

- Support the work of the Department of Health in implementing Senate Bill 14. Given the lack of good information on rural healthcare providers, the DOH work group should consider the following:

  - Consider progressively narrowing the tax credit to practices in the neediest areas of the state ;
  - Consider surveying providers taking tax expenditure to validate that the rural healthcare practitioner credit indeed attracts and retains healthcare professionals in rural areas;
  - Explore direct expenditure alternatives (grants, bonuses, etc.) to the rural healthcare practitioner credit;
  - Look at the Health Policy Commission 2011 report on ways to recruit and retain providers – cite the report and suggest following up on some of its recommendations;
  - Consider devices, such as incentive bonuses, to keep providers in rural areas beyond the average three years;
  - Consider recommending the funding of additional rural residency programs;

- Continue to evaluate the effectiveness of the rural healthcare practitioner credit by monitoring rural placement trends and rates of retention.

- The DOH work group should make legislative recommendations no later than September 1, 2012.
- At the time the DOH workgroup makes its recommendations, the Legislature should consider capping the healthcare provider tax credit at $15 million per year.
- The Legislature should work to phase out the hold harmless provision of the medical service providers deduction for GRT and redistribute these funds to federally matchable programs as the need for local financing of health care diminishes.

Demesia Padilla, secretary, Taxation and Revenue Department, explained that a tax expenditure is the use of a tax code in lieu of direct spending to achieve a public policy purpose and must be distinguished from tax exemptions and deductions needed to properly define the tax base.

A non-tax expenditure is an exemption or deduction that has been enacted to properly define the tax base. Examples of provisions that define the base include resale deductions, enacted to prevent a pyramiding of tax, and exemptions eliminating double taxation.

Healthcare tax expenditures include Medicare payments and Indian Health Services. The purposes for these deductions appear to be to provide tax relief in situations where the taxpayer is not reimbursed for the cost of the tax. Taxpayers will sometimes combine deductions with exemptions, which results in overpayment and underpayment. Ms. Padilla stated the TRD can talk about expanding and detailing the report but will still have to rely on information taxpayers provide. This is an expensive cost to the state and taxpayers. The actual cost of hold harmless provision is increasing.

The credit for unpaid charges for medical services converts cash basis taxpayers to an accrual taxpayer for the purpose of the credit. After a year, if medical receipts are deemed uncollectable, the medical provider can take a credit.

Medical supplies, prescription drugs, and equipment deductions allow for receipts from hearing or vision aids. These deductions are considered tax expenditures and are not separately reported, so the fiscal impact would have to be estimated from other sources.

Secretary Padilla explained practitioner deductions were designed to avoid double taxation of services that are resold.

The insurer premium tax allows the TRD to only collect property taxes; all other taxes are in lieu of the premium tax credit, and it is also not separately reported.

Secretary Padilla said there is a "blended" area. These provisions for hospitals are not clearly tax expenditures but also do not define the tax base. Sections in the tax code exempt receipts of hospitals that the IRS has classified as a non-profit organization. Hospitals licensed by the DOH get to take a credit, which should be after all appropriate deductions, but this may be flawed. Then, they get to take a credit against the GRT, resulting in no tax.

In response to Senator Beffort, Jerry Harrison with New Mexico Health Resources (NMHR) stated every recruit is informed of the tax credit, which he says gives New Mexico an advantage. A retention study is underway, which will take two years to complete. Dr. Harrison stated NMHR recruits about 50 people a year.

In response to Senator Harden, Ms. Griego stated with regard to premium tax, New Mexico is the second highest behind Tennessee, but not all states assess a premium tax. As far as total taxation to insurers, New Mexico is 8th in the nation. Senator Harden said he assumed insurance companies pass that tax on, and Ms. Griego stated it was a fair assumption and if premium taxes were lower, there could theoretically be a trickle down affect, but in practice this might not occur.

Senator Harden expressed concern with the turnover of doctors not tied to hospitals, and the extent of the impact tax incentives have in rural areas.

In response to Representative Tripp, Mr. Evans stated certification data states where a doctor is licensed and where they are working. Working part-time in rural areas enables professionals to claim partial credit.

Senator Smith indicated he is preparing legislation that would cap the dollar amount allowed annually for certain tax expenditures and establish sunset provisions for certain tax expenditures. Chairman Smith stated he needed support from the governor's office for this legislation.

Mortgage Finance Authority. Jay Czar, executive director, Mortgage Finance Authority, introduced Gina Hickman, deputy director of finance, and Joseph Montoya, deputy director for operations.

Mr. Czar stated MFA has more than 30 programs. Production highlights at MFA include over $300 million in low-interest financing grants and non financial support for programs all around the state. Of that, $145 million helped almost 1,200 people achieve their goal of home ownership. About $5.6 million helped with down payment assistance and $95 million was spent for new construction and rehabilitation of rental homes.

Mr. Czar briefed the committee that, although home sales are dwindling, entry-level sales are somewhat stable and the number of residential building permits issued in 2010 was dismal.

The MFA's funding sources for 2011 are $178 million in MFA bond issues, $139.7 million from Federal Housing Programs, and $17.3 million from the general fund, $4 million from state appropriations and tax credits, and $14.5 million from "other."

The MFA is requesting $5 million for the housing trust fund, $1 million for the New Mexico Energy Smart Program and $1 million for the emergency repair fund, which with fires and extreme weather conditions is crucial. The MFA requests $1 million for the Homebuyer Education/Foreclosure Mitigation Program, specifically for homebuyer financial literacy. Federal money for this program is gone.

Trends identified in the State Housing Report include the following: New Mexico's home ownership rate has dropped 5 percent since 2000; fewer people qualify for mortgage loans;

people are renting for longer periods of time; and 31.5 percent of households are headed by women.

Chairman Smith stated Senator Papen led the charge in uncovering abuses taking place with the Regional Housing Authority.

In response to Vice Chairman Varela, Mr. Czar stated the MFA is requesting $250 thousand for Albuquerque regional housing authority.

Senator Papen asked about litigation involving the authority and Mr. Czar stated they are not involved in that situation at all. Senator Papen asked about the houses in Doña Ana County along Highway 70, and Mr. Montoya said some of the properties were held by the Council of Governments, not by MFA.

In response to Representative Larrañaga, Ms. Hickman stated the "other" funding source represents housing trust fund dollars, land title trust fund dollars generated, tax credit donations, and contracts with NM Gas and the Public Service Company of New Mexico for weatherization dollars.

In response to Representative White, Mr. Czar stated prior to federal stimulus money, there was a U.S. Department of Energy award for weatherization. The MFA also receives 15 percent of Low-Income Home Energy Assistance Program money from the state. Mr. Montoya stated he would provide Representative White with weatherization information and criterion.

Chairman Smith asked Director Abbey to request the status of Region 3 Housing litigation from the Attorney General's Office.

With no other business, the meeting adjourned at 10:45 a.m.

John Arthur Smith, Chairman

Luciano "Lucky" Varela