

BEYOND 
THE ROUNDHOUSE
a summary of interim legislative committee work

2013 Interim

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THE 2013 INTERIM IN BRIEF

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As the legislature adjourned its 2013 regular session, the interim ahead promised to be relatively drama-free. Legislators faced none of the major issues that had dominated the previous three interims — no solvency cliffs to avoid, no elections, no redistricting and no imminent changes in leadership. But a few weeks into the interim, the most sacred of legislative cows was gored when the governor issued an executive order withholding funds from various capital outlay projects statewide. So much for the calm that might have been.

In her executive order, the governor cited late or incomplete audits as reason enough to delay disbursement of capital outlay funds to certain governmental entities. While some applauded the governor for taking a stand for government accountability, others felt she had usurped the legislature's appropriating authority by unilaterally imposing a restriction on funding after the capital outlay bill was passed and signed into law. A group of legislators requested an attorney general opinion, which, when it was finally issued late in the interim and found that the governor lacked authority for her action, did nothing to free up the delayed capital outlay funding. In the months that it took for the attorney general to consider the matter, many of the governmental entities whose audits were incomplete managed to bring themselves into compliance, and their capital outlay funding was restored. Some entities, however, lacked the resources to bring their books into compliance, leading several interim committees to consider ways the state auditor might provide local government audit assistance in the future to prevent further interruptions in capital outlay disbursements.

As if the capital outlay situation were not controversy enough for one interim, the Human Services Department (HSD) in early summer made credible allegation of fraud determinations against 15 behavioral health service providers in the state. Again the attorney general was called in, this time to conduct a criminal investigation. When the HSD not only halted payments to the providers under investigation but also contracted with agencies from Arizona to replace them, the Behavioral Health

Subcommittee (BHS) revised its original plans for the interim and devoted hours to testimony on the controversy. The interim ended without resolution on the topic — the attorney general investigation was still under way, and litigation brought by various affected parties was still pending.

While no additional interim legislative bodies were created to address the capital outlay and behavioral health uproars, four new single-topic bodies were created to address other pressing issues. With much of the Southwest caught in an extended drought, the New Mexico Legislative Council created the Drought Subcommittee of the Water and Natural Resources Committee (WNRC) to assess the impact of the state's water shortages, including how the drought affects New Mexico's obligations under the Rio Grande Compact and the Pecos River Compact. A memorial passed during the 2013 session spurred creation of the Legislative Council's Transportation Infrastructure Revenue Subcommittee, which was charged with identifying current and potential revenue sources for improving the state's deteriorating transportation infrastructure. The Jobs Council, which has both public and private members, was created to address the challenge of job creation as the state slowly recovers from the recent recession. And in a rare move, the Legislative Council created a body with bipartisan co-chairs — the Criminal Justice Reform Subcommittee of the Courts, Corrections and Justice Committee (CCJC) — to focus on successful criminal justice reform efforts in other states that might be replicated in New Mexico. In addition to these interim bodies, legislators served on more than 20 other committees, task forces and work groups.

Beyond the Roundhouse summarizes the work of interim legislative bodies staffed by the Legislative Council Service (LCS). Summaries of work done by the Legislative Finance Committee (LFC) and the Legislative Education Study Committee are published separately by those committees.

COURTS, CORRECTIONS AND JUSTICE COMMITTEE AND
CRIMINAL JUSTICE REFORM SUBCOMMITTEE

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The CCJC held six meetings during the 2013 interim. Three meetings were held in the State Capitol in Santa Fe. The remainder of the meetings were held in communities around the state in conjunction with visits to various state correctional facilities. The community had the opportunity to visit the Metropolitan Detention Center, the J. Paul Taylor Center and the New Mexico Women's Correctional Facility. At each of these facilities, committee members had informative and enlightening discussions with facility administrators and staff and, most significantly, were able to interact with incarcerated individuals to hear firsthand of their experiences.

Two overriding themes dominated the 2013 interim: cost-effective programming for criminal justice and criminal justice reform.

In its July meeting, the committee heard an extensive presentation from the director of the Pew-MacArthur Results First Initiative and from LFC staff. The LFC report that was presented to the committee summarized "the findings of a cost-benefit analysis of New Mexico's adult criminal justice system based on a model developed and supported by The Pew-MacArthur Results First Initiative (Results First). This cutting-edge approach provides policymakers with new information that estimates the long-term costs and benefits of investments in public programs; this report compares options and identifies those that most effectively achieve outcomes at the lowest cost to taxpayers". The committee also heard about the application of Results First to child welfare initiatives at its August meeting. The Results First model became a touchstone for committee discussions throughout the interim.

In its August meeting, the committee heard presentations on criminal justice reform from Right on Crime, an organization of conservatives who advocate for criminal justice reform throughout the country, and the Rio Grande Foundation. Their presentations generated a broad, bipartisan discussion on the policy possibilities inherent in criminal justice reform and how those possibilities

might be realized in New Mexico. The presentation on criminal justice reform dovetailed with the Results First information the committee had already received, resulting in a bipartisan consensus to launch a criminal justice reform initiative in New Mexico.

To that end, the committee petitioned the New Mexico Legislative Council to allow the committee to form the Criminal Justice Reform Subcommittee. The subcommittee requested to meet for the balance of the 2013 interim and reconvene early in the 2014 interim. The council approved the formation of a bipartisan subcommittee, composed of two Democrats and two Republicans from each chamber of the legislature, and co-chairs from the Democratic Party and Republican Party. The subcommittee met once in November and once in December, and will reconvene in April 2014. At its November meeting, the subcommittee heard detailed presentations on criminal justice reform efforts in South Dakota and Texas. At its December meeting, the subcommittee was briefed by the New Mexico Sentencing Commission (NMSC) on the 1999 criminal justice reform effort in the state, and on current criminal justice reform efforts in New Mexico, and it received an overview of the state's prison population. The subcommittee also heard a presentation at the December meeting from the Corrections Department on drivers for costs in corrections and on entrepreneurial prison programs.

During the interim, the committee also heard presentations on and discussed:

- ▶ the New Mexico Adult Detention Professional Standards Local Government Accreditation Program, an initiative of the New Mexico Association of Counties to raise standards of professionalism at county detention centers;
- ▶ the federal Prison Rape Elimination Act of 2003;
- ▶ a proposal to create a school of public health at the University of New Mexico (UNM);
- ▶ the need for increased funding of the DNA identification system;
- ▶ the budgetary needs of the NMSC;
- ▶ issues and concerns regarding female inmates in the state;
- ▶ issues concerning probation and parole, including a proposal to modify parole for sex offenders;
- ▶ the Colorado initiative to legalize marijuana and possible decriminalization of marijuana in New Mexico;
- ▶ the Law Enforcement Assisted Diversion Program that has been launched in Santa Fe;
- ▶ double jeopardy and how it relates to the Forfeiture Act and other statutes;
- ▶ the Southwest Region National Child Prevention Training Center at New Mexico State

University (NMSU);

- ▶ the use of solitary confinement in New Mexico's prisons and jails;
- ▶ the study initiated by House Joint Memorial 17 (2011) on the needs of and available resources for people with mental health disorders in crisis situations;
- ▶ the Pew Charitable Trusts' Electronic Registration Information Center initiative;
- ▶ the needs of human trafficking victims in New Mexico; and
- ▶ the possibility of legislation addressing gun sales at gun shows.

Additionally, the NMSC presented its annual prison population forecast to the committee.

The committee had its regular updates from the Corrections Department and from the Children, Youth and Families Department. The committee also had a presentation from the chief justice of the New Mexico Supreme Court and the Administrative Office of the Courts (AOC) on the judiciary's unified budget and proposed legislation. In addition, the committee heard from the newly formed Public Defender Commission and had the opportunity to meet the new chief public defender, the first chief of the Public Defender Department since that department was established as an independent state agency.

The committee endorsed the following bills for the 2014 legislative session:

- ▶ a bill relating to courts; creating additional judgeships in the first, second, fifth and thirteenth judicial districts; creating an additional magistrate in the Dona Ana district; making appropriations;
- ▶ a bill relating to court operations; making the Magistrate Courts Operations Fund and fees permanent;
- ▶ a bill relating to the Metropolitan Court Bond Guarantee Fund; including the AOC as a recipient of balances in the fund above the reserve amount; making an appropriation; and
- ▶ a bill relating to parental rights; providing for the termination or permanent suspension of parental rights when criminal sexual penetration results in conception of a child; clarifying language in the Adoption Act that consent from the biological father of a child conceived as a result of criminal sexual penetration is not required; providing a penalty.

ECONOMIC AND RURAL DEVELOPMENT COMMITTEE

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During the 2013 interim, the Economic and Rural Development Committee (ERDC) met six times in communities throughout the state. Meetings were held in Santa Fe, Farmington, Truth or Consequences, Ruidoso and the Pueblo of Santa Clara. The committee focused its work on addressing issues that directly affect the state's economy and growth, including the state's work force, the health of small businesses and farms and programs and industries that serve the elderly and tribal and rural communities. Additionally, the committee received presentations on various economic development tools and strategies that could be used to help strengthen the state's business environment.

Throughout the interim, the ERDC heard presentations from the several executive agencies that focus on economic development-related issues. Secretary of Economic Development Jon Barela described the successes of the Job Training Incentive Program and the MainStreet program and suggested that the state would benefit from development of a deal-closing fund to encourage companies to set up in or relocate to New Mexico. Representatives from the Tourism Department provided updates on the department's widespread tourism marketing campaign, "New Mexico True". Nick Maniatis, director of the New Mexico Film Office, informed the committee of the many past, current and future film and television projects in the state.

Several community members and organizations made presentations to the committee about the importance of supporting the state's business incubators, which aim to grow local businesses. Representatives of the business incubation industry stressed the important role of incubators in creating long-term job and business ownership opportunities for New Mexicans.

The ERDC received several presentations on the shortage of dental health care providers, especially in the most rural parts of the state. The committee and interested parties discussed several potential solutions to the shortage, including establishing a dental school, supporting dental health coordinator programs, establishing dental therapist programs and providing additional funding for New Mexico students wishing to study dentistry at out-of-state schools.

Economic development through the development of natural resources was also addressed by the ERDC during the interim. The committee heard presentations from many interested parties, including tribes and pueblos; environmental groups; and oil, gas and uranium industry representatives. The committee was provided with extensive information about the industries' job-creation possibilities as well as the significant impacts on tribal communities and the environment that result from the

development of natural resources.

The committee considered four pieces of legislation for endorsement and chose to endorse three bills, including appropriations to support a food kitchen incubation program, the Pueblo of Santa Clara's adult daycare center and students studying dentistry through the Western Interstate Commission for Higher Education program.

INDIAN AFFAIRS COMMITTEE

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Since its inception in 1989, the Indian Affairs Committee (IAC) has addressed issues that disproportionately affect Native Americans residing in New Mexico. In fulfillment of its mission, the IAC held six meetings during the 2013 interim, conducted at the pueblos of Isleta, Santa Ana, Santo Domingo, Ohkay Owingeh, Picuris, Zuni and Pojoaque; the Nenahnezad and Church Rock chapters of the Navajo Nation; and the Mescalero Apache Reservation.

This interim, the members of the IAC heard presentations from executive agencies to better comprehend their efforts on behalf of New Mexico's tribes, pueblos and nations. The Indian Affairs Department (IAD) provided a summary of the annual State-Tribal Summit and the IAD's programs and priorities. The Indian Education Division of the Public Education Department (PED) discussed its work on overcoming obstacles and its plans for the future. The secretary of state talked about outreach efforts to Native American communities and explained the process for providing early voting sites in Indian country. The state engineer and the director of the Interstate Stream Commission provided an update on Indian water rights settlements. The secretary of veterans' services gave a presentation on outreach to Native American veterans and the possibility of a Native American division within the Veterans' Services Department (VSD).

A central concern of the IAC is the educational opportunities that exist for New Mexico's Native American students. In an effort to better understand the pertinent issues and to better address challenges faced in this arena, the IAC heard from a variety of entities, including: Save the Children; Teach for America; the UNM School of Architecture's Indigenous Design and Planning Institute; Northern New Mexico College's Northern Pueblos Institute; Shiprock Associated Schools, Inc.; the superintendents of the Gallup-McKinley County and the Central Consolidated school districts; the Public School Facilities Authority (PSFA); AMIKids Sandoval; and the National Board for Teaching

Standards.

No single issue was covered during the 2013 interim more than Indian gaming and the ongoing State-Tribal Class III Gaming Compact negotiations. The 2001 gaming compacts are set to expire in 2015, and both the state and 2001 compact tribes have been working tirelessly to enter into new compacts before the current ones expire. The Navajo Nation, Pueblo of Pojoaque, Pueblo of Acoma, Jicarilla Apache Nation and Mescalero Apache Tribe have spent nearly two years negotiating with the state pursuant to the Compact Negotiation Act. The IAC heard updates on the progress of negotiations over the course of the interim. While the IAC did gain valuable knowledge and insight into the negotiations, the committee did not take any official action on them, as that would overstep its statutory authority.

Other major issues covered by the IAC include questions of tribal and state police enforcement jurisdiction, tribal infrastructure needs and obstacles, forest fire mitigation efforts, a Native American perspective on the New Mexico Health Insurance Exchange (NMHIX), the work of the Navajo Transitional Energy Company, the proposed Navajo code talkers museum, suicide prevention efforts, uranium development and abatement, the endeavors of the Gallup Intertribal Ceremonial Association, dentists and dental therapists, Zuni MainStreet and oversight of and by the Gaming Control Board.

Finally, the IAC endorsed seven pieces of legislation for the 2014 legislative session.

INVESTMENTS AND PENSIONS OVERSIGHT COMMITTEE

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A legislatively created interim committee, the Investments and Pensions Oversight Committee (IPOC) met six times during the 2013 interim at the State Capitol in Santa Fe. Legislative oversight of investments and pensions began in 2003 with the creation of the State Permanent Fund Task Force by Senate Joint Memorial 14 and continued pursuant to Senate Joint Memorial 13 of the 2005 session. House Bill 212 of the 2006 session would have created a committee much like the IPOC; however, Governor Bill Richardson pocket-vetoed that measure. Still concerned about the solvency of state retirement funds, the New Mexico Legislative Council created the IPOC in 2006 and its successors each year after that. During the 2013 interim, the IPOC focused on the solvency of the trust funds of the Public Employees Retirement Association (PERA) board, the Educational Retirement Board (ERB) and the Retiree Health Care Authority (RHCA). The committee also focused on changes in the

retirement plans resulting from legislation enacted during the 2013 session, as well as the investment functions of the PERA, the ERB and the State Investment Council (SIC). The oversight of PERA, ERB and SIC investment functions included not only an examination of overall investment policies and returns but also testimony on the progress of current or pending litigation involving the state's investment or pension funds and testimony on and a discussion of the impact of new Governmental Accounting Standards Board (GASB) pension-reporting requirements.

The IPOC received testimony from the PERA, ERB and RHCA on their increasing respective unfunded liabilities and, in cooperation with the agencies, developed legislative proposals to ensure the long-term solvency of their respective funds. The IPOC also took testimony from accounting and bond market experts on the potential impact of increasing unfunded pension and retiree health care liabilities on New Mexico's state finances and bond ratings.

The IPOC took testimony at its June 6 meeting from the SIC on recent investment performance and policy and governance development changes. The committee heard that the permanent funds managed by the SIC have grown more than \$3.9 billion in the past three years, with a total asset value of nearly \$18 billion. Also, investment returns of the Land Grant Permanent Funds (LGPF) and the Severance Tax Permanent Fund (STPF) have rebounded in the past two fiscal years.

The RHCA executive director reported that all stakeholders have contributed to an improved financial outlook for the plan through increased pre-Medicare plan deductibles and increased out-of-pocket maximums. Medicare supplement plans now require all members to pay the Medicare Part B deductible, and all prescription plans have shifted to having members pay a percentage of total costs. Increased retiree health care premiums averaging eight percent annually and continued increases in contribution levels for active employees and employers have contributed to revenue enhancement. The fund's solvency has been extended to 2029 with continued implementation of plans to extend the fund's solvency to 2043. Meanwhile, changes to the system have not decreased access to health care, and preventive care is still fully covered with the state's funding level ranked fourteenth in the nation.

The IPOC heard testimony that the PERA fund has grown 15.7 percent since the beginning of fiscal year 2013 and was valued at \$13.3 billion in April 2013. PERA officials also discussed the changes brought about by amendments to PERA statutes, including cost-of-living adjustment (COLA) reductions and eligibility changes, retirement eligibility, vesting period and pension benefit changes for new employees and increases in employee and employer contribution rates. The IPOC also heard testimony that the Educational Retirement Fund had a market value of \$10.2 billion as of March 31,

2013, with investment of the fund returning 11.2 percent thus far in fiscal year 2013, putting the 10-year average at 8.8 percent.

At its July 10 meeting, the IPOC received a report from the chief economist of the LFC on PERA, ERB and SIC asset allocation strategies and investment returns. The IPOC learned that comparison to a defined peer group is an appropriate measurement of a policy allocation benchmark and that, according to the LFC report, PERA's policy allocation returned 1.24 percent less than the median fund, while the SIC's policy allocation returned .02 percent below the median fund and the ERB's policy allocation returned 1.52 percent below the median fund. The IPOC heard testimony from chief investment officers of the PERA, ERB and SIC on their recent investment performance and strategies to meet long-term earnings benchmarks.

At its August 9 meeting, the IPOC received presentations from LFC and LCS staff on the process for selecting and funding statewide and local capital outlay projects. They also presented recommended legislative guidelines for selecting local capital outlay projects. IPOC members engaged in an extensive discussion on concerns about the executive order that put a number of projects on hold because of audit issues.

Also at the August meeting, the IPOC received reports from the SIC on economically targeted investments that the SIC supports; however, the SIC is now focused on investments that can bring market-rate returns to the STPF. A representative from Sun Mountain Capital discussed private equity investments of \$350 million that have been committed to 28 different venture capital funds that support New Mexico-based companies. Albuquerque Economic Development discussed "deal closing funds" and how they are used to attract economic development. The Small Business Investment Corporation provided an overview of its programs; the ERB presented an update on possible changes to the pension plan; the RHCA discussed possible statutory changes; and the AOC presented possible changes to the Judicial Retirement Act and the Magistrate Retirement Act.

At the September 9 meeting, IPOC members heard from the chair of the Education Trust Board that New Mexico's portfolios have performed better than those of most other states, and the Education Plan has performed slightly better than the Scholar's Edge Plan. Other reports included a look at the volunteer firefighters' retirement plan's eligibility, funding sources and solvency. The fund is in good shape, with a funded ratio of 167 percent, more than 5,000 active members and 633 retirees receiving a modest pension.

The IPOC also heard from a panel led by James B. Lewis, state treasurer, on the new GASB

Statement No. 68, "Accounting and Financial Reporting for Pensions". According to panelists, the new rule has the possibility of affecting the rate received by the State Board of Finance when selling general obligation bonds or severance tax bonds because bond disclosure rates include calculated pension liabilities, causing the state to have to pay a higher interest rate when it sells bonds even though sales of those bonds have very little to do with the state's pension liabilities.

At the October 16 meeting, IPOC members took testimony from the LFC and Taxation and Revenue Department (TRD) on the funding of capital projects. The committee learned that senior severance tax bonding capacity is expected to decrease by \$38 million in 2014, to \$186 million. General obligation bond capacity, assuming a proposed flat mill levy, will be about \$165 million. The committee learned that many projects continue to be thwarted by not having sufficient funding to complete a phase. Many projects are underfunded by 80 percent to 90 percent and remain that way for years. TRD staff suggested a model of funding projects that prioritizes local financing first, followed by federal financing, then by state loans and last by state grants.

Members also heard a presentation from State Board of Finance staff on the severance tax bonding program and the STPF. Committee members learned that, since 1999, nearly all severance tax deposits (95 percent) have been used to back bonds for capital improvements, with only five percent being deposited to increase the STPF corpus.

The IPOC also heard from a large panel of speakers from the National Conference of State Legislatures (NCSL), state and local agencies and state and local associations on legislative planning for the new GASB reporting requirements, with a focus on the impact on local governments.

At its November 7 meeting, the IPOC was primarily engaged in the consideration of draft legislation proposed for endorsement. The only informational items included new actuarial valuations and funding projections for PERA, new actuarial valuations for the ERB and the recent investment performance of the SIC.

The committee adopted the following measures for endorsement for consideration by the 2014 legislature:

- ▶ a joint resolution proposed by the SIC to preserve the LGPF by increasing the duty of care and restricting the type of investment that may be made;
- ▶ amendments to the Retiree Health Care Act to incrementally increase contribution rates over a six-year period;
- ▶ amendments to the Judicial Retirement Act to increase the solvency of the Judicial

- Retirement Fund by changing the age and service requirements for normal retirement; decreasing the pension multiplier for service credit earned after June 30, 2014; providing a temporary suspension of, decrease in and delay of the COLA; increasing the maximum pension benefit; and changing the pension form of payment;
- ▶ amendments to the Magistrate Retirement Act provisions applicable to certain members to increase the solvency of the Magistrate Retirement Fund by changing the age and service requirements for normal retirement; decreasing the pension multiplier for service credit earned after June 30, 2014; providing a temporary suspension of, decrease in and delay of the COLA; increasing the maximum pension benefit; and changing the pension form of payment; and
 - ▶ an amendment to legislator retirement statutes to provide a minimum retirement age for legislative members of the PERA.

JOBS COUNCIL

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In response to the recession-delivered blow to the state's jobs numbers and the sluggish economy, the New Mexico Legislative Council created the Jobs Council (council) to explore the jobs problem and identify ways to accelerate post-recession economic recovery. The council consisted of eight voting members, three voting public members and eight advisory members. Guided by an economic development consultant and a facilitator, the council met seven times during the interim in locations throughout the state.

The council engaged in a process designed to elicit information on key topics from groups of participants — council members, subject matter experts, economic developers and other interested individuals. That information formed the basis for the topics explored in subsequent sessions.

Each session was structured to allow the council to deliberate on the session's focus questions and reach consensus on conclusions. Session-specific main topics and questions were:

- ▶ Coherence: What process should be used to understand and define the scale and nature of the jobs-loss problem?
- ▶ Predicament: How many economic base jobs are needed to reach pre-recession employment levels 10 years from now? ("Economic base" refers to jobs that yield goods or

services that are sold outside of the state or, in the case of some federal jobs, that are mostly paid for by taxpayers in other states.)

- ▶ Economic Sectors: How many jobs can be created in each economic sector?
- ▶ Geographic Distribution: In what regions of the state will those jobs be created?
- ▶ Factors of Production Gaps: What are the major impediments to creating those jobs?
- ▶ Programs and Policies: What measures could lawmakers take to remove those impediments and otherwise spur job creation?

After agreeing on the method and terminology to use in the process, participants set out to frame the jobs problem. The council found that approximately 160,000 economic base jobs would need to be created in the next 10 years in order to restore the state to its pre-recession jobs level.

Participants then identified the economic sectors that those jobs could come from and generated a profile outlining how many jobs could be created in each sector in the 10-year period. When considered this way, the estimated job-creation potential totaled 162,000.

After contemplating job-creation potential and job-creation impediments by sector and region, participants developed ideas for the legislature to overcome those impediments and otherwise encourage job growth. Among other measures, participants recommended the re-creation of the Jobs Council and an injection of resources into targeted areas to begin fueling economic recovery.

LAND GRANT COMMITTEE

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The interim legislative Land Grant Committee held six meetings during the 2013 interim. Aside from its first and last meetings at the State Capitol in Santa Fe, the committee was hosted by the Tome Land Grant, the newly organized Tajiue Land Grant, the Juan Bautista Baldes Land Grant and the Tecolote Land Grant. In each of these communities, committee members were able to learn the distinctive history of the land grant and were informed of challenges faced by and successes celebrated by the host communities. In addition, the committee was privileged to be given tours of these communities and see firsthand the richness of life in the state's land grants.

The committee revisited many subjects that had been addressed in the 2012 interim and prior interims and addressed new challenges that have manifested in the state's land grant communities. The committee heard a number of updates on the controversial mineral rights agreement between the

former Tierra Amarilla Land Grant board and the Wind River Energy Corp, including an update from representatives of the Office of the State Auditor on the progress of its investigation of the payment that was transmitted to the Tierra Amarilla Land Grant board. Members of that land grant community who are working to reinstate the land grant's board of trustees also updated the committee on their progress. Additionally, the committee received updates from the United States Forest Service (USFS) and the Abiquiu Land Grant and the Nuestra Señora del Rosario San Fernando y Santiago Land Grant (Truchas) on the resolution of boundary disputes between those land grants. The USFS also discussed the progress of the memorandum of understanding that has been drawn up with the Land Grant Council, which will pave the way to better cooperation and communication between the USFS and the land grant community, and the related master stewardship agreement. The USFS also addressed reports of problems with USFS employees exercising police powers in certain areas of the state. The committee celebrated the restoration of access to the cemetery of the San Joaquin del Rio Chama Land Grant. The cemetery sits on land that the USFS had claimed as part of the Chama River Canyon Wilderness. In addition to its work with the USFS, the committee also heard from the Bureau of Land Management (BLM), and members were able to express concerns that the land grant community has with the bureau and learn about the bureau's land disposal process.

Throughout the interim, the committee heard from the Land Grant Council and the Land Grant Consejo on the needs of the land grant community. Of particular interest were the discussions of training workshops undertaken by the Land Grant Council and proposed changes to the land grant statutes. The Land Grant Council also kept the committee informed of developments regarding federal legislation that would affect land grants. Representatives from the UNM Land Grant Studies Program presented their concerns and successes. The committee also heard from the New Mexico Acequia Association, inaugurating what the committee hopes will be an annual update from the acequia community. The committee served as a sounding board for disputes in certain land grants, including the continuing election controversies in the Anton Chico Land Grant and the San Miguel del Bado Land Grant, and a land dispute in the Merced de la Comunidad de El Carmel. The committee also engaged in a discussion with the Department of Finance and Administration (DFA) concerning its relationship with the Land Grant Council.

There was a particular focus in the 2013 interim on learning the long and varied history of New Mexico's land grants. To that end, the committee heard presentations from established and upcoming historians on a variety of topics: an historical overview of land grant history; a discussion of modern

legislation affecting land grants; a presentation on the original Spanish legal rights to common lands in the Spanish land grants in New Mexico; a new approach to reconstructing historic surveys and traditional-use boundaries for community land grants; and a discussion of the modern history of the land grant movement. These presentations gave the committee a strong sense of the depth and complexity of the history of New Mexico's land grants.

The committee endorsed the following bills for the 2014 legislative session:

- ▶ allowing land grant funds to be deposited in a credit union; allowing expenditure of land grant funds with approval of a majority of the board and with support by invoice or receipt;
- ▶ allowing land grant boards of trustees to approve comprehensive plans;
- ▶ requiring land grant boards of trustees' annual reports to be filed with the Land Grant Registry;
- ▶ incorporating land grants into the Colonias Infrastructure Act;
- ▶ requesting an appropriation to the Department of Environment (NMED) to fund the removal of solid waste, liquid waste and hazardous waste from land grant common lands; and
- ▶ a joint memorial requesting the congressional delegation to work with the BLM to return lands under bureau control to land grants.

LEGISLATIVE HEALTH AND HUMAN SERVICES COMMITTEE,
DISABILITIES CONCERNS SUBCOMMITTEE AND BEHAVIORAL HEALTH SUBCOMMITTEE

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At its June 18, 2013 meeting, the New Mexico Legislative Council appointed Representative James Roger Madalena as chair and Senator Gerald Ortiz y Pino as vice chair of the Legislative Health and Human Services Committee (LHHS). The New Mexico Legislative Council also appointed members to the LHHS, as well as to the committee's statutory Disabilities Concerns Subcommittee (DCS) and temporary BHS. Senator Nancy Rodriguez was appointed chair and Representative Doreen Y. Gallegos was appointed vice chair of the DCS. Senator Benny Shendo, Jr., was appointed chair and Representative Stephen Easley was appointed vice chair of the BHS.

On August 14, 2013, Representative Easley passed away unexpectedly. Representative Phillip M. Archuleta was appointed to replace Representative Easley as vice chair of the BHS.

The LHHS continued its wide-ranging review of health and human services agencies, policies and programming in the state during the 2013 interim. However, one issue overshadowed all other topics this interim: the matter of credible allegation of fraud determinations that the HSD made against 15 behavioral health services agencies that had theretofore provided over 80 percent of the state's publicly funded behavioral health services. The credible allegation of fraud determinations led to a referral of these providers to the Attorney General's Office (AGO) for investigation. Pending the outcome of the AGO's investigation, the HSD instituted pay holds against 14 of the 15 agencies and made provisions for their replacement by five behavioral health services agencies from Arizona. The AGO's investigation, the pay holds against most of the 15 agencies and litigation over this matter continue.

The LHHS and the BHS rearranged much of their interim agendas to accommodate extensive hearings with testimony from representatives of the HSD, the AGO, the Office of the State Auditor, some of the agencies that were the subject of the referrals, individual behavioral health professionals, behavioral health services recipients and their families and advocates and a representative of one of the Arizona replacement agencies.

The LHHS reviewed the progress of the establishment and operation of the NMHIX, newly created through 2013 legislation to offer health insurance plans to individuals and small businesses. Receiving nearly monthly testimony from NMHIX board members and staff, the LHHS learned that the NMHIX began offering access to enrollment in these plans on October 1, 2013, with the federal government temporarily operating the individual-market portion of the NMHIX until January 1, 2015. At its last meeting, the LHHS heard testimony on the pace of enrollment in both the state's small-business exchange and the federal individual exchange.

The expansion of Medicaid eligibility to previously ineligible adults with incomes below 138 percent of the federal poverty level, regardless of parental status or disability, and the planned rollout of the Centennial Care Medicaid redesign were extensively reviewed by the LHHS, with testimony from the HSD, LFC staff and Medicaid recipients and advocates on the potential impact of these changes on Medicaid recipients and on the state as a whole.

Health care work force continued to be a focus of the LHHS, which received testimony from experts, universities, agencies, advocates and consumers concerned about the state's capacity to meet the future demand for health care services. The LHHS heard proposals for: health work force data collection and analysis; the establishment of a dental school in the state and better funding for dental

education; the potential use of allied dental professionals; licensure for dental therapist-hygienists; the creation of a school of public health; expansion of scopes of practice for several health professions; possibilities for extending graduate medical education beyond academic institutions; allied and community health professionals; and interstate licensure compacts.

The developmental disabilities waiver program jointly administered by the Department of Health (DOH) and the HSD was the focus of several meetings of the LHHS and the DCS. At issue were concerns about the length of delay for those individuals awaiting placement in waiver services; the use of a new tool, the "supports intensity scale", to evaluate the service needs of enrollees and the enrollees' concerns about changes to their service packages; the status of the *Jackson* lawsuit — long-standing litigation between certain enrollees and the state; the regulation of intermediate care facilities for developmentally disabled individuals; the impact of the Medicaid Centennial Care program upon persons waiting for developmental disabilities waiver services and upon those receiving them; and the program's overall sustainability. The committee heard testimony from individuals living with developmental disabilities, developmental disability rights advocates, members of the provider community, the DOH and the HSD.

In addition to its extensive review of services and supports for individuals living with developmental disabilities, the DCS also heard reporting on the State Use Act and on early interventions for children under three years of age.

The committee reviewed matters relating to protective services, including child abuse prevention; elder abuse and exploitation; the state's guardianship program; prescribing of psychotropic drugs to children; and suicide prevention.

The committee heard testimony on public health concerns and disease surveillance, including efforts to address these issues. The committee heard testimony on the pros and cons of creating a liver transplant facility in the state; chronic obstructive pulmonary disease; heart disease among newborns; integrated care models to address complex health conditions; and the continued existence of disparities in the health status and outcomes for New Mexicans on the basis of race, ethnicity and geography.

As noted above, at each of its four meetings this interim, the BHS heard testimony on the matter of credible allegation of fraud determinations that the HSD made against 15 behavioral health services agencies. In addition to these hearings, the BHS examined the status of behavioral health services statewide, including access to services for Native Americans, women, low-income residents and individuals residing in rural areas. It heard testimony on behavioral health in the criminal justice

system, medical marijuana and harm reduction, and community engagement teams and from the public and advocacy groups on access to behavioral health services during and after the HSD's transition of these services to five Arizona providers.

MILITARY AND VETERANS' AFFAIRS COMMITTEE

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The Military and Veterans' Affairs Committee (MVAC) was originally created by statute for the 2009 interim and then permanently reauthorized during the Forty-Ninth Legislature, Second Session. Pursuant to Section 2-20-2 NMSA 1978, the MVAC holds hearings in several geographically dispersed areas of the state and hears issues related to military issues and veterans. The MVAC is also tasked with making legislative recommendations to Congress and regulatory recommendations to the United States Department of Veterans Affairs and the United States Department of Defense.

In fulfillment of its statutory duties, the MVAC: held six meetings during the 2013 interim in Roswell, Albuquerque, Santa Fe and Alamogordo; was able to visit Holloman Air Force Base, the New Mexico Military Institute and the New Mexico National Guard Armory headquarters; and held a joint meeting with the Mortgage Finance Authority (MFA) Act Oversight Committee.

At its initial meeting, the MVAC developed a work plan, later approved by the New Mexico Legislative Council, that identified numerous military and veterans issues of concern.

A number of advocates discussed housing solutions for homeless veterans and for those who are struggling with inadequate living situations. Significant strides have already been made to improve the situation, and it was shown that this is a problem that can be solved with adequate resources.

A hot topic of discussion was the plan for the strategic funding of veterans cemeteries. Legislators and the governor are considering building veterans cemeteries, and the MVAC heard plans for how that will be accomplished.

The MVAC also heard from a number of interested parties regarding the various impacts of the proposed SunZia Southwest Transmission Project. A number of proposed routes for two bi-directional extra-high-voltage electric transmission lines were the subject of much debate, and MVAC members had the opportunity to better assess the project at its meeting in Alamogordo.

Access to state and federal health care is of critical importance to military and veteran communities in New Mexico. The United States Department of Veterans Affairs outlined its eligibility

requirements and billing procedures, and other presentations covered transportation to medical service providers, treatment options for posttraumatic stress disorder and options available for family and community support.

The MVAC has an ongoing interest in all things that affect veterans in the state, and to that end, it heard presentations on: the opportunities that exist for veterans at New Mexico's higher education institutions; military base planning; and taxation of veterans.

As part of its community outreach, the MVAC publicly recognized a New Mexico airman for his contribution to its work. A bill endorsed by the MVAC during the 2012 interim and that passed into law, House Bill 175 (2013), prevents utility companies from charging for the suspension of service or for reconnection due to the deployment of active-duty military personnel. The catalyst for that law, Sergeant Fabian Silva, was recognized by the MVAC at its October meeting.

The VSD, led by Secretary of Veterans' Services Timothy L. Hale and Deputy Secretary of Veterans' Services Alan Martinez, was instrumental in outlining critical issues and securing experts and stakeholders to make presentations before the MVAC.

Finally, the MVAC endorsed three pieces of legislation for the 2014 legislative session.

MORTGAGE FINANCE AUTHORITY ACT OVERSIGHT COMMITTEE

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During the 2013 interim, the MFA Act Oversight Committee held six meetings in Albuquerque. The committee's August meeting was held as a joint meeting with the MVAC at St. Joseph Community Health Services (SJCHS) in northwest Albuquerque, while the other five meetings were held in downtown Albuquerque at the MFA office.

At its organizational meeting in June, Jay Czar, MFA executive director, summarized the agency's work in 2012. Among other things, the MFA provided more than \$223 million in low-interest financing and grants for affordable housing and related services throughout the state. Using tax-exempt single-family mortgage bonds, the MFA provided loans in excess of \$106 million to 911 first-time homebuyers.

Reviewing the MFA's 2013 legislative agenda, Mr. Czar noted that none of the seven bills — some for specific appropriations and some for amendments to existing statute — had passed. He also noted that Senator Nancy Rodriguez's direct appropriation of \$200,000 for the New Mexico Housing

Trust Fund was the only funding the MFA received from the 2013 legislature. He explained that the New Mexico Legislature created the MFA in 1975 as a government instrumentality, which means, he explained, "You're in business for yourself.". Even though the state legislature has no funding responsibility for the agency, he said that any appropriations to the New Mexico Housing Trust Fund can be leveraged by a factor of about 11 through other funding sources.

Also at the organizational meeting, members were provided with the MFA 2013 Reference Guide, a useful reference on the agency and its work, contacts and resources. Committee members reviewed statutory duties of the MFA and also discussed and adopted a 2013 interim proposed work plan and meeting schedule and agreed to request from the New Mexico Legislative Council a sixth meeting and to have a joint meeting with the MVAC to examine veteran-related housing issues.

The joint meeting was held in August at the newly refurbished SJCHS facility on North Fifth Street in Albuquerque. Allen Sanchez, SJCHS president and chief executive officer, provided a history of the facility, which is owned by the diocese, and described the organization's advocacy programs for children from birth to age five. He also noted that SJCHS runs the largest family home visiting program in the country.

Members of both committees heard several in-depth presentations on:

- ▶ homeless veterans and the Housing First Model;
- ▶ services provided at the New Mexico Veterans Integration Center in Albuquerque;
- ▶ Goodwill Industries' supportive services for veterans' families;
- ▶ the United South Broadway Corporation's homeless prevention program;
- ▶ veterans assistance programs in the city of Albuquerque;
- ▶ the New Mexico veterans affairs health care system;
- ▶ Presbyterian Medical Services programs for veterans and their families;
- ▶ programs at Fort Bayard; and
- ▶ reintegration centers for homeless veterans in Las Cruces and Santa Rosa.

The July, September and October meeting agendas emphasized issues discussed at the organizational meeting, issues included in the committee's 2013 interim work plan and policy directions for recommendation to the 2014 legislature, including regional housing authorities oversight; adding to the corpus of the New Mexico Housing Trust Fund; issuance of bonds; bond market updates; mortgage foreclosure; the attorney general's homeownership preservation program; updates on MFA activities; updates on federal programs and housing issues; and the MFA strategic plan

and budget considerations.

At the sixth and final 2013 interim meeting, MFA staff presented the agency's legislative proposals for the committee's consideration. Among the legislative initiatives was a bill to transfer the oversight of the regional housing authorities from the MFA to the DFA. Similar bills have been proposed and endorsed by the MFA Act Oversight Committee for the past three sessions, but those bills have not passed. Endorsed legislative proposals included:

- ▶ a recurring \$250,000 general fund appropriation to the DFA to fund MFA oversight of the regional housing authorities;
- ▶ an amendment to the Regional Housing Law to transfer oversight of the regional housing authorities to the DFA. This is for legislative consideration if recurring oversight funding is not provided to the MFA in the General Appropriation Act of 2014;
- ▶ a nonreverting \$5 million general fund appropriation for the MFA to carry out provisions of the New Mexico Housing Trust Fund Act;
- ▶ a \$1 million general fund appropriation to the DFA for the MFA to support "Energy\$mart", a residential energy conservation program to increase energy efficiency and reduce energy expenditures for low-income New Mexicans;
- ▶ a recurring \$200,000 general fund appropriation to the DFA to fund MFA oversight of the Affordable Housing Act;
- ▶ amendments to the Affordable Housing Act to provide terms for the timely sale of foreclosed or failed affordable housing projects without retaining the long-term affordability restrictions and to provide for enforcement of provisions of the act and penalties for violations of the act; and
- ▶ an amendment to the Affordable Housing Tax Credit Act to eliminate the current conflict with the Affordable Housing Act by removing local and tribal governments from eligibility for the affordable housing tax credit.

NEW MEXICO FINANCE AUTHORITY OVERSIGHT COMMITTEE

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The committee met five times in the 2013 interim to carry out its statutory duties to monitor and oversee the New Mexico Finance Authority (NMFA), the Border Authority, the Spaceport

Authority and the New Mexico Renewable Energy Transmission Authority (RETA). The committee examined the mission, organizational structure, operations budget, activities and projects of all four authorities.

NMFA representatives periodically updated the committee on the NMFA's responses to findings and concerns that emerged after the 2012 fraudulent audit discovery from investigation and audit reports produced by the State Auditor's Office, the Securities Division of the Regulation and Licensing Department and auditing firms. In many areas singled out as needing improvement, NMFA representatives reported that they had met or made progress toward designated goals. The representatives also testified that the NMFA submitted all of its required 2013 audits on or ahead of schedule.

Committee members continued to probe for measures to strengthen the NMFA's organizational structure in an effort to prevent an incident like the production of a fraudulent audit from recurring.

2013 was the transition year for a new water project application cycle, intended to improve efficiency and oversight in the administration of water project funding programs.

The transmission of electricity for exportation was discussed multiple times during the interim. Representatives of the New Mexico Express project testified about their plan to bury high-voltage direct-current lines across the state to connect major regional electricity hubs. They requested from the committee help to overcome anticipated rights-of-way issues and proposed giving the state a portion of transmission line user fees. The committee heard reactions to the proposed plan from representatives of the LFC, the Department of Transportation (DOT), the State Land Office, the RETA and the Public Regulation Commission.

The committee discussed the needs of communities that are similar to defined "colonias" in all respects but geographic designation. Committee members discussed proposed measures to address the needs of such colonia-like communities.

Representatives of the Border Authority highlighted key current and planned projects, including the expansion of the Santa Teresa port of entry and construction of the Santa Teresa-San Jeronimo rail bypass project, infrastructure to control flooding in Columbus, a binational industrial campus, a dual customs clearance facility and commercial lanes adjacent to the rail border crossing.

Representatives of the RETA requested funding for operations and updating a study on energy transmission concepts, economic benefits and cost allocation and a corresponding 20-year plan.

Committee members heard from Spaceport America employees, board members and Virgin Galactic representatives about developments concerning, among other topics, the spaceport's self-sufficiency, spaceport-area infrastructure and the timing of passenger launches. Members questioned the propriety of using the local-share portion of the spaceport gross receipts tax for local school district science, technology, engineering and math programs. Members expressed concern about the state's investment in the spaceport, generally, and emphasized the necessity of constructing a high-quality southern road for greater access to Spaceport America.

The NMFA experienced some transition in its leadership. Nann Winter, board chair, and Paul Gutierrez, board member, resigned from the board. The committee learned that a new chief executive officer (CEO), Robert P. Coalter, formerly of the Texas Public Finance Authority, would replace John Gasparich, the interim CEO.

The committee endorsed the following bills and memorials for introduction in the 2014 legislative session:

- ▶ a bill authorizing the NMFA to make loans for public projects from the Public Project Revolving Fund (PPRF);
- ▶ a bill authorizing the NMFA to make loans or grants from the Water Project Fund;
- ▶ a bill changing the NMFA board composition and meeting requirements;
- ▶ a bill providing an opportunity for disadvantaged communities to finance infrastructure projects;
- ▶ a bill expanding the definition of "local revenue" for calculation of a school district's state equalization guarantee distribution;
- ▶ a bill appropriating \$2 million from the PPRF to the Local Government Planning Fund for expenditure in fiscal year 2014; and
- ▶ a memorial requesting that a task force be formed to study improving the state's telecommunications infrastructure.

PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE

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As the "direct descendent" of several task forces that were created in response to the court's decision in the 1999 *Zuni* lawsuit (*The Zuni Public School District et al. v. The State of New Mexico*

et al., CV-98-14-11), the Public School Capital Outlay Oversight Task Force is the entity charged by statute to monitor the implementation of the "Zuni Fix", including implementation of the standards-based process established in provisions of the Public School Capital Outlay Act, the Public School Capital Improvements Act and the Public School Buildings Act; to monitor the revenue streams that fund the standards-based process; to oversee the work of the PSFA; and to make annual recommendations regarding the implementation of the standards-based public school capital outlay process to the legislature and the executive before the beginning of each legislative session.

State statute allows the task force to hold a maximum of four meetings during each interim in addition to one organizational meeting. Those meetings were held in Santa Fe on July 24, August 6, September 12, October 10 and November 18.

With a record 18 new members (including, for the first time, nine advisory members), the task force began its tenth year of overseeing the implementation of the public school capital outlay standards-based process with discussion of a number of basic issues on its July 24 agenda, including staff presentations on interim committee procedures, a primer and brief background review of the task force's purpose and history and a review of the *Zuni* lawsuit. The chair of the Public School Capital Outlay Council (PSCOC) provided the task force with the council's fiscal year 2012 annual report and proposed fiscal year 2013 strategic issues. Having been reminded that the 2013 legislature had passed only one of the task force's endorsed bills, which the governor vetoed, the task force focused on a discussion of its work plan and items for future agendas and other organizational business, including approval of Representative Mimi Stewart as chair and Senator John M. Sapien as vice chair.

Continuing its review of public school capital outlay basics at its August 6 meeting, the task force heard a staff presentation on a brief overview of property tax rates as they relate to public school capital outlay and a presentation from the state investment officer and his deputy on the Public School Capital Outlay Act funding stream, which is the STPF, and the issuance of severance tax bonds. The PSCOC chair provided a report on the PSCOC fiscal year 2014 awards, and the NMFA provided a presentation on other sources of funding to finance school-related buildings outside Public School Capital Outlay Act provisions.

At its September 12 meeting, the task force heard a presentation from the State Board of Finance on the state's severance tax bonding program and the STPF. PSFA staff provided presentations on PSCOC finances, funding allocations and the Facilities Condition Index, as well as utilization and maintenance issues related to public school facilities.

Always a topic of concern, the task force spent some time at each meeting discussing the availability of facilities for charter schools to meet the statutory requirement that all charter schools be in public buildings by 2015. The agenda for the October 10 meeting, however, was devoted almost entirely to charter school capital outlay issues with a general presentation by PSFA staff on Public School Capital Outlay Fund lease assistance. PSFA staff also provided an update on the current status of the development of a standardized lease form as well as an update on the status of charter schools already in public buildings.

School district staff and PSFA staff provided a presentation on opportunities to lease public spaces that local school districts have been using. Finally, representatives of the New Mexico Coalition for Charter Schools presented on their proposal to include charter schools in a buying consortium similar to the Cooperative Educational Services purchasing consortium used by a large number of school districts and charter schools to purchase supplies and pay for some capital outlay projects.

At its final meeting on November 18, the task force unanimously agreed to endorse legislation to amend the Public School Capital Outlay Act to allow the PSCOC to allocate up to \$15 million per year in fiscal years 2015 through 2019 for building systems repair, renovation or replacement projects. The task force had endorsed a similar bill in 2013 that did not pass.

The task force declined to endorse proposed legislation to allow PSCOC allocations to purchase educational technology to meet assessments requirements of the common core currently adopted and being implemented by the PED. The task force also discussed the possibility of supporting proposed legislation to provide waivers of the district match for certain qualifying districts but decided the issue needed additional study.

RADIOACTIVE AND HAZARDOUS MATERIALS COMMITTEE

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The Radioactive and Hazardous Materials Committee (RHMC) is a statutory committee created in 1979 pursuant to the provisions of the Radioactive and Hazardous Materials Act. Within the purview of the RHMC is to review and monitor activities related to radioactive or hazardous waste, the handling of waste being transported to the Waste Isolation Pilot Plant (WIPP), remediation efforts at contaminated sites, compliance with environmental statutes and standards, uranium mine and mill tailings disposal and other issues related to ground water protection and hazardous chemicals.

In keeping with its statutory mandate, in 2013, the RHMC heard a wide variety of testimony related to its responsibility to keep an eye on the state's efforts to dispose of hazardous waste safely, to deal with fuel spills, to clean up hazardous waste at its sites and to find new ways to protect the environment and ensure safe water quality.

Specifically, the RHMC heard testimony and engaged in discussions on the following major topics:

- ▶ cleanup of Los Alamos National Laboratory (LANL);
- ▶ WIPP permit modification requests and details of WIPP's hazardous waste permit and the regulatory function of the NMED;
- ▶ details on WIPP's mission, the possibility of an interim storage site outside of WIPP, the unused space and potential for more storage at WIPP and U.S. Representative Steve Pearce's efforts to pass legislation that would allow WIPP to accept all government-owned transuranic (TRU) waste;
- ▶ how the framework agreement between the state and the federal Department of Energy to receive 3,706 cubic meters of surface TRU waste by June 2014 is on target;
- ▶ dealing with the Kirtland Air Force Base fuel spill;
- ▶ the science, technology, engineering and mathematics programs at LANL to help increase the local talent pool and efforts to educate teachers in math and science more fully;
- ▶ a URENCO USA update;
- ▶ the state of fiber communication, which has become more necessary due to a significant increase in global data traffic;
- ▶ the status of the Carlsbad brine well and a review of the tasks being accomplished at that site, which include site monitoring and an early warning system, geophysical characterization and a feasibility study to determine next steps;
- ▶ a product stewardship program, which is a product-centered approach to environmental protection that calls on the participants in a product's life cycle to share responsibility for reducing its environmental impact, and a pilot program for mattresses to test the waters in New Mexico; and
- ▶ water treatment innovations by a team at NMSU that provide a low-cost method of analyzing water for uranium contamination and, with the proper funding, could be instituted immediately where needed, such as on the Navajo Nation.

The RHMC did not endorse any legislation for the upcoming session.

REVENUE STABILIZATION AND TAX POLICY COMMITTEE

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The Revenue Stabilization and Tax Policy Committee held six meetings in 2013. Bill endorsements were completed on the second day of the December meeting, at which 13 of the 19 bills under consideration were endorsed.

This year, the committee discussed and studied a variety of issues, ranging from reform of the state's various tax programs to the effectiveness of existing tax incentives and tax issues facing local governments. The committee also heard presentations regarding the status and health of the state's funds.

One of the first issues explored during the interim was tax reform. Richard Anklam of the New Mexico Tax Research Institute and Helen Hecht of the Federation of Tax Administrators provided the committee with an overview of tax schemes of different states. A significant topic involved reform of the state's existing gross receipts tax system and the manner in which other states have reformed their consumption tax systems. In that context, the committee heard presentations about how other states are taxing internet sales, trends toward "market-based" sourcing for sales and increased focus on evaluation of state economic and tax incentives.

Early in the interim, the TRD presented an overview of the fiscal impacts anticipated with regard to the various portions of the New Mexico jobs package (HB 641) that passed during the last legislative session. HB 641 resulted in changes with respect to the corporate income tax rate, certain gross receipts tax deductions, the high-wage jobs tax credit and the film production tax credit and significant changes to "hold harmless" distributions and the authority for municipalities and counties to impose a hold harmless gross receipts tax.

The New Mexico Association of Counties and the New Mexico Municipal League made presentations on the consequences of changes to the hold harmless distributions, including that some municipalities and counties will get "windfalls" as a result of the hold harmless gross receipts tax authorization, while others will never receive an amount equal to the distribution they would have received before the enactment of HB 641.

The department presented its 2013 tax expenditure report in October. This year's report is more comprehensive than last year's, and staff is working to make next year's report even more comprehensive. The report also states that further discussion is needed on the merits of requiring additional information from taxpayers so that policymakers can make informed decisions regarding tax incentives.

SCIENCE, TECHNOLOGY AND TELECOMMUNICATIONS COMMITTEE

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During the 2013 interim, the Science, Technology and Telecommunications Committee (STTC) set out to find solutions to issues in emerging technologies, communications infrastructure, information technology and technology transfer. The STTC sought to study how innovative technologies can create opportunities for the state in areas such as water reuse, energy, energy storage, education and agriculture.

The interim began and ended with the STTC hearing from the Department of Information Technology (DOIT) on its operations and projects, which include the testing of a public safety broadband system, security concerns and disaster recovery requirements for state agencies. The STTC expressed concern over non-responsiveness from the DOIT to its requests, over the SHARE accounting system difficulties and over the Information Technology Commission's membership not being filled after over a year's time. The STTC also reviewed the DOIT's accomplishments, goals and challenges as a department.

A range of topics were considered and discussed by the STTC, including:

- ▶ regulations and disparities in regulation of communications carriers in the state and local exchange carrier competition;
- ▶ the importance of fiber communications given the growth of global data traffic;
- ▶ the possibility of New Mexico as a center for small satellite development in space technology and exploration;
- ▶ keeping the state competitive in the commercial space industry;
- ▶ renewable energy infrastructure opportunities in geothermal energy;
- ▶ photovoltaic and solar energy exploration;
- ▶ means of conserving water and creating methods to ensure an adequate water supply

- through the Alamogordo desalination project;
- ▶ irrigation efficiency research;
 - ▶ a broadband program for the state;
 - ▶ an overview of the cable industry;
 - ▶ a forest restoration technology initiative; and
 - ▶ a review of the activities in the southeast New Mexico nuclear corridor.

The STTC also heard testimony on LANL that included a status report on its cleanup and ground water protection efforts. The committee considered the importance of stability in LANL's work force and of collaboration among the private sector and research institutions, as well as the need to recruit and retain local talent and the educational efforts to help this cause. Technology transfer and economic development were looked at, too, as well as the need to create research districts in the state to increase support between science institutions and technology businesses. The idea of scaling up public-private partnerships and creating a core collaborative model to make New Mexico a solid technological research community was also discussed.

The STTC toured LANL's Area G and Technical Area 54, as well as the site of the TRU waste facility. It also toured the impressive Center for High Technology Materials at the UNM Research Park, which is a nationally recognized center for phototonics and microelectronics research.

Renewable energy storage policies and regulations were reviewed alongside a consideration of New Mexico's market for energy storage and an assessment that the state needs to have a strong power distribution system in place to become a major exporter of energy resources.

The STTC did not endorse any legislation but had much discussion over a telecommunications reform bill that, although it purported to create retail parity, ended up causing more concern among small rural telecommunications carriers over the need for disparate regulatory treatment and the STTC's concern over the possible risk to customers in rural areas.

TOBACCO SETTLEMENT REVENUE OVERSIGHT COMMITTEE

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The Tobacco Settlement Revenue Oversight Committee (TSROC) was created in 2000 as a joint interim legislative committee to monitor the use of revenues received as a result of the Master Settlement Agreement (MSA) between states and certain participating tobacco manufacturers. The

committee meets during the interim to evaluate programs that receive appropriations from tobacco settlement revenues. Each year, the TSROC takes testimony regarding the performance of funded programs and makes recommendations for future funding. Funding recommendations for fiscal year 2015 were provided to the LFC on December 11, 2013 by Senator Cisco McSorley, the committee co-chair.

In 1999, the Tobacco Settlement Permanent Fund (permanent fund), consisting of money distributed to the state pursuant to the MSA, was created. In 2000, the Tobacco Settlement Program Fund (program fund), consisting of distributions from the permanent fund, was established. Appropriations are made from the program fund for health and education purposes. The DOH, the HSD (Medicaid has received the bulk of appropriations from MSA revenues) and the UNM Health Sciences Center have historically been the primary recipients of such appropriations.

Beginning in fiscal year 2001, the distribution to the program fund from the permanent fund was limited to 50 percent of the MSA settlement funds received by the state in the preceding fiscal year, until such time as that amount is less than 4.7 percent of the average of the year-end market values of the permanent fund for the preceding five years. The remaining 50 percent was to be retained in the permanent fund. In 2003, an amendment made the permanent fund a reserve fund of the state that could be expended, under certain circumstances, to avoid an unconstitutional deficit. At various times since, other amendments have allowed for distributions from the permanent fund to the general fund or for additional distributions to the program fund. In most of the fiscal years since the creation of the permanent fund (including fiscal year 2014), amounts equal to the total annual MSA settlement payment have been appropriated, with no increase to the corpus of the permanent fund.

For fiscal years 2012 through 2015, MSA revenues have been or are projected to be essentially flat, hovering around \$39 million. MSA revenue for fiscal year 2015 is projected to be \$39.5 million. As of October 31, 2013, the balance in the permanent fund was \$184,193,836. By November 30, 2013, the fund balance is projected to be approximately \$186 million.

The AGO regularly reports to the TSROC regarding enforcement of, and compliance with, the MSA. An arbitration proceeding challenging the state's diligent enforcement efforts for calendar year 2003 was concluded earlier this year, with a ruling against the state on this issue. Among factors supporting the panel's finding of "an overall culture of non-compliance" were:

- ▶ missing or poor documentation by the state relating to required reporting by nonparticipating manufacturers (NPMs);

- ▶ the state's failure to sue noncompliant NPMs;
- ▶ the state's lack of a plan or guidelines to collect data from NPMs or to educate NPMs as to their reporting obligations;
- ▶ lack of funding and personnel dedicated to enforcement;
- ▶ increased 2003 sales over those of previous years by a noncompliant NPM;
- ▶ failure on the state's part to sufficiently and timely publicize complementary legislation or to notify distributors of new legislation;
- ▶ the state's failure to make use of the Cigarette Enforcement Act to seize noncompliant foreign cigarettes;
- ▶ lack of documentation demonstrating enforcement actions such as seizures, injunctions, settlement efforts or regulations as supplementary enforcement tools; and
- ▶ lack of documentation showing participation in, follow-up on or sharing of information from the National Association of Attorneys General's tobacco project, which was formed to assist states in MSA enforcement.

The AGO advised the committee that the adjustment resulting from this arbitration award will be deducted from the next annual MSA payment due to the state in spring 2014; the amount of the adjustment has not yet been determined, but is estimated at between \$12 million and \$24 million.

The AGO has advised the TSROC that the recent arbitration decision for calendar year 2003 appears to obviate the need for legislation amending the definition of "units sold" to include both "tax-exempt" and "tax-credit" stamps for the purposes of determining escrow payments of cigarette manufacturers that are not participating in the MSA. In prior years, such legislation was passed (but vetoed) to "remove ambiguity under current law about which sales are subject to escrow payment and to ensure equalization of treatment of participating and nonparticipating manufacturers". The AGO interprets the lack of specific findings on this issue to mean that the arbitration panel agreed with the state's position that tribal sales are not, and have never been, subject to escrow.

According to the AGO, the participating manufacturers are pursuing diligent enforcement challenges against New Mexico for succeeding years. A different panel of arbitrators will hear future proceedings. Further, the findings of the calendar year 2003 arbitration panel are not binding on future panels. There is also uncertainty regarding when such future arbitration proceedings and resulting findings are likely to occur. Accordingly, while it is possible that the state could be facing future adverse diligent enforcement determinations, the AGO does not expect a resulting reduction in

future annual MSA payments to occur every year.

After meeting five times to receive testimony from agencies and programs currently receiving appropriations, and after being advised of the recent MSA arbitration award, the committee adopted funding recommendations for fiscal year 2015. The committee's recommendations for fiscal year 2015 are the same as those for fiscal year 2014.

The committee endorsed a bill to include e-cigarettes under the current Tobacco Products Act to prohibit the sale, including the online internet sale, of e-cigarettes to minors. E-cigarettes are devices that use a heating element to atomize liquid resulting in aerosolized vapor that is inhaled into the lungs, with the practice called "vaping". According to committee presentations, the liquid may contain nicotine as well as other toxic substances such as heavy metals, propylene glycol and volatile organic compounds. The nicotine, if any, may or may not be derived from tobacco. There is limited data regarding the short- or long-term safety of these devices. There are no standards by which these products must be manufactured or labeled. While it appears that the federal Food and Drug Administration (FDA) is likely to regulate e-cigarettes as nicotine delivery devices, they are not currently subject to FDA regulations or regulated in New Mexico. Experts appearing before the committee presented evidence that e-cigarettes are being marketed to youth and that the use of e-cigarettes among middle and high school students more than doubled between 2010 and 2011.

TRANSPORTATION INFRASTRUCTURE REVENUE SUBCOMMITTEE

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The Transportation Infrastructure Revenue Subcommittee held five meetings in 2013. Bill endorsements were completed at the subcommittee's final meeting on November 12.

The subcommittee was created by the New Mexico Legislative Council on April 30, 2013 to identify current and new sources of transportation revenue and to develop recommendations to meet the needs of the state's transportation infrastructure. The subcommittee heard various proposals and other presentations on the status of the state's transportation infrastructure.

The New Mexico Section of the American Society of Civil Engineers (ASCE) presented the results of the New Mexico 2012 Infrastructure Report Card, which includes the categories of aviation, bridges, rail, roads and transit. The assessment of the condition of New Mexico's overall infrastructure for 2012 resulted in a composite grade of C. The assessment for roads resulted in a grade of C. The

report states that 22 percent of New Mexico's major roads are in poor or fair condition and that driving on rough roads costs New Mexico motorists \$397 million a year in extra vehicle repairs and operating costs, which is equivalent to \$291 per motorist.

Secretary-Designate of Transportation Tom Church and his staff presented on the gap between what the DOT's budget is for transportation maintenance and construction, and what the state actually needs. The gap between the budget and the need for transportation maintenance is \$268 million. The gap between the budget and the need for transportation construction is \$608 million.

TRIP, a nonprofit organization that researches, evaluates and distributes economic and technical data on surface transportation issues, identified 50 transportation projects throughout the state that are most needed to support New Mexico's economic growth. The top three projects include the U.S. 491 expansion to four lanes from Twin Lakes to Naschitti, reconstruction of U.S. 64 from Farmington to McGee Park and reconstruction of the I-25 Gibson, Cesar Chavez and Lead and Coal interchanges. The total cost, as estimated by TRIP, to complete the top 10 projects is \$751 million. The total cost of all 50 projects is \$1.89 billion.

A presentation also was made by representatives from the NCSL and the United States Chamber of Commerce on the challenges that all states are facing in regard to transportation infrastructure. The nation as a whole is spending one-third to one-half of what is needed to maintain and improve the nation's transportation system. The value of the gas tax has fallen, especially in New Mexico, which is providing less and less revenue for transportation infrastructure. Citing the ASCE report card, in 2010, deteriorating surface transportation infrastructure cost U.S. households and businesses nearly \$130 billion in vehicle operating, safety and environmental costs and time delays. If current trends continue, these costs will grow exponentially and accumulate in coming years.

James Whitty, manager of the Office of Innovative Partnerships and Alternative Funding at the Oregon Department of Transportation, made a presentation on Oregon's efforts to move from a gas tax to a "vehicle miles traveled" tax (VMT). Oregon began studying the idea in 2001 because per-gallon taxes often do not keep up with inflation, and those taxes are bringing in less money as cars become more fuel-efficient. The Oregon legislature passed, and the governor signed, a pilot project to begin in 2015 using 5,000 volunteers who will choose from several options to keep track of the miles they drive. The VMT is intended to be revenue neutral. Oregon's current gas tax is \$.30 per gallon, and the VMT will be 1.5 cents per mile.

Several presentations were made to the subcommittee on public-private partnerships (PPP), a

partnership between private and governmental entities to finance an infrastructure project. PPPs allow the private sector to take on responsibilities and risks usually undertaken by the state, including financing. A PPP can complete large-scale transportation projects that cannot be fully funded through traditional means, but it is not a funding source to create new revenue. The subcommittee was advised that PPPs are not ideal for all transportation projects, but have been shown to reduce upfront public costs through accelerated or more efficient project delivery. PPPs do not create new money for states, and a state will still have to pay back the private investment with revenue that can come from various sources, such as existing taxes or tolls.

WATER AND NATURAL RESOURCES COMMITTEE AND DROUGHT SUBCOMMITTEE

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The WNRC scheduled five meetings during the 2013 interim, and the Drought Subcommittee of the WNRC scheduled three meetings. Meetings were held in Santa Fe, Clovis, Farmington and Las Cruces.

As of July 2013, the state was in its driest, and warmest, 24-month and 36-month periods on record, with over 86 percent of the state experiencing extreme or exceptional drought conditions. Many reservoirs in the state were at less than 13 percent capacity, and statewide storage was at 17 percent of normal; all were below 50 percent capacity. While heavy rains in late summer eased drought conditions in much of the state, reservoir levels in the Rio Grande Basin remained much below average, and 36 percent of the state was still experiencing severe drought conditions in December.

As the current drought entered its third year, the legislature convened a Drought Subcommittee to assess how the state was coping with the consequent water shortages and catastrophic wildfires. The subcommittee heard extensive testimony on a range of issues and programs, including planning for projected impacts of drought and the effects of climate change; the federal SECURE Water Act and federal WaterSMART Program; implementing active water resource management; the Colorado River Basin Water Supply and Demand Study; the hydrology of agricultural conservation practices; and state and regional water planning efforts.

The WNRC further explored the issue of federal, state and local cooperation on forest watershed and fire management programs. Representatives from the New Mexico Association of Counties, the New Mexico Forest and Watershed Restoration Institute, the New Mexico Forest

Industry Association, the Nature Conservancy, the office of the New Mexico State Forester and the USFS all agreed that a concerted effort was needed to address the increasing frequency and severity of wildfires and that both the public and private sectors needed to be actively involved in that effort. The representatives noted that the total costs associated with the wildfires that New Mexico experienced from 2009 through 2012 are estimated to be between \$223 million and \$3.4 billion, costs that far outstrip the amount of money the state spends on forest and watershed treatments.

The committee also took testimony on efforts by the Water Trust Board to rationalize the process by which the board evaluates and approves water projects for funding; water use in uranium mining and hydraulic fracturing; various technologies used to treat brackish or contaminated water; cooperative efforts by water users, such as acequias and irrigation districts, to share water during times of shortage; litigation over the Rio Grande Project, along with Texas' lawsuit against New Mexico and Colorado over the Rio Grande Compact; deregulation of humate mining; and Right to Farm Act issues.

The committee endorsed four pieces of legislation this interim: a bill requesting \$1.4 million for the PED to purchase New Mexico-grown fresh fruits and vegetables for school meal programs; a bill excluding humate from the New Mexico Mining Act and changing financial assurance requirements in that act; a bill changing the financial assurance requirements in the New Mexico Mining Act; and a bill amending the Right to Farm Act to prevent certain agricultural operations from being found to be operating negligently.



*New Mexico Legislative Council Service
Santa Fe, New Mexico*