

BEYOND



THE ROUNDHOUSE

a summary of interim legislative committee work

2012 Interim

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TABLE OF CONTENTS

The 2012 Interim in Brief

Executive Summaries

Courts, Corrections and Justice Committee	1
Economic and Rural Development Committee.....	4
Indian Affairs Committee.....	5
Investments and Pensions Oversight Committee.....	7
Land Grant Committee.....	11
Legislative Health and Human Services Committee	13
Behavioral Health Services Subcommittee	15
Disabilities Concerns Subcommittee	16
Military and Veterans' Affairs Committee	17
Mortgage Finance Authority Act Oversight Committee	18
New Mexico Finance Authority Oversight Committee	20
Public School Capital Outlay Oversight Task Force.....	22
Radioactive and Hazardous Materials Committee	24
Revenue Stabilization and Tax Policy Committee	25
Science, Technology and Telecommunications Committee.....	26
Tobacco Settlement Revenue Oversight Committee	27
Water and Natural Resources Committee	29

THE 2012 INTERIM IN BRIEF

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The 2012 interim was bracketed at one end by an announcement from Speaker of the House Ben Lujan that he was retiring due to advanced lung cancer and at the other end by his passing. Lujan's retirement announcement turned out to be just the first of many as a veritable round of musical chairs erupted in the spring, with nearly one-fifth of the legislators announcing they either would not seek reelection to the seats they held or would run for newly opened seats in the senate, other state offices or Congress.

Amid all the shuffling and the distraction of a tense campaign season, legislators managed to serve on 20 interim committees and subcommittees that held meetings in nearly all corners of the state. In contrast to the previous two years, when each interim was dominated by a single topic — solvency in 2010 and redistricting in 2011 — the 2012 interim saw committees addressing a wide range of issues.

One issue garnered significant attention — a faked 2011 financial audit at the New Mexico Finance Authority (NMFA) that came to light in July, just as the NMFA Oversight Committee began its interim work. The committee heard several presentations on the matter, including updates on investigations being conducted by both the Office of the State Auditor and the Securities Division of the Regulation and Licensing Department (RLD), as well as a governance review conducted by Hewitt EnnisKnupp at the request of the committee. It also heard testimony that the NMFA's high bond ratings were not, apparently, affected by the incident. Similar concerns over the state's bond ratings came up in meetings of the Investments and Pensions Oversight Committee; that committee spent a great deal of its time considering measures to shore up the state's pension and retiree health care funds, whose unfunded liabilities could affect the state's bond ratings as well.

Other attention during the interim focused on the state's spaceport facility in Sierra County, the first such facility built in the country. With spaceports now sprouting up in several other states,

where tort liability restrictions are more favorable to the space flight industry than in New Mexico, lawmakers have been under some pressure to amend the Space Flight Informed Consent Act to match provisions in those states or risk losing the industry altogether. Three interim committees, accounting for nearly half of all legislators, toured the spaceport facility during the interim and heard presentations on the positive impact the space flight industry could have on the state's struggling economy.

Economic woes surfaced in many presentations during the interim. Housing and foreclosure issues were heard in several committees, as was the continuing need for job creation via economic development in rural areas, technology transfer from the national laboratories and community development financial institutions on tribal lands. Conversely, however, the Revenue Stabilization and Tax Policy Committee considered proposals to repeal several job-creation tax incentives from years past as a way to offset revenue that would be lost if the corporate income tax rate were reduced — a measure that was included in a vetoed bill from 2012. The committee also considered the Taxation and Revenue Department's (TRD's) 2012 tax expenditure report, which it found somewhat lacking.

Health issues addressed during the interim primarily concerned the state's efforts under federal health care reform and pending changes to the state's Medicaid program. The Human Services Department's (HSD's) proposed overhaul of Medicaid and the Department of Health's (DOH's) new assessment tool for determining disability levels prompted grave concerns in the advocacy community and, at times, standing-room-only crowds at meetings of the Legislative Health and Human Services Committee and its two subcommittees.

Beyond the Roundhouse summarizes the work of interim legislative bodies staffed by the Legislative Council Service. 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

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The interim began with an update from the new Secretary of Corrections Gregg Marcantel. He briefed the committee on the goals of the new administration and the changes being implemented within the Corrections Department (NMCD), including updates to its code of ethics, audit programs that identify inconsistencies in standards, revision of mission statements, development of strategic objectives and restructuring and changes in task assignments to make the department run more efficiently. Secretary Marcantel hopes to implement more vigorous tools for self-audit and is considering adopting an auditing program that has been implemented in Arizona. In a discussion that began last interim on solitary confinement and with encouragement from the committee, Secretary Marcantel assured the committee that the department is working with the Vera Institute of Justice on evaluating the policies and use of administrative segregation and solitary confinement in New Mexico prisons.

The committee held a meeting at the Central New Mexico Correctional Facility in Los Lunas where it heard a prison population forecast and a report from the LFC. The population at state correctional facilities reached a peak of 6,873 in fiscal year (FY) 2007; thereafter, the inmate population declined over a two-year period and then began to grow at a slow pace. The New Mexico Sentencing Commission attributes the stability of the state inmate population since 2007 to a number of factors, including a law that awards earned meritorious deductions to nonviolent offenders during the initial 60-day evaluation period of receipt by the NMCD; drug courts and other problem-solving courts; the Parole Board's ability to impose sanctions other than a return to prison for certain technical parole violations; and the fact that filings in district courts for criminal cases have decreased by 5%.

The LFC report described how to reduce recidivism, improve public safety and save money. Some of the issues discussed by the program evaluators and the NMCD were evidence-based programming and implementation, community-based resources, caseloads of probation and parole

officers, community corrections and intensive supervision programs and how to address the problem of inmates not qualifying for parole and serving their parole periods incarcerated. The committee heard from the chief public defender and the general counsel of the attorney general about the number and associated costs of parole hearings for sex offenders. Many of these offenders are serving their parole time as incarcerated inmates due to statutory requirements and unintended consequences in the law.

Later in the interim, the committee heard about the overcrowding problem facing the Metropolitan Detention Center, the largest jail in the state and the forty-seventh largest in the nation. Officials from Bernalillo County identified immediate, short-term and long-term solutions to deal with the population, including amending programs for probation and parole to incorporate a progressive sanctions program; reviewing internal policies and procedures to identify unrealized efficiencies; alternative treatment programs in the community with supervision; relocating pretrial services; identifying community resources to increase treatment and services; enhancing prisoner transport; increasing staffing levels; day-reporting with work detail as an alternative to incarceration; and renovation of the Regional Correctional Center to house inmates.

The committee held a joint meeting with the Water and Natural Resources Committee in Truth or Consequences on water adjudication issues. The committees heard presentations on and discussed, among other things, the compromise and settlement agreement between the Elephant Butte Irrigation District and the El Paso County Water Improvement District; the Pecos River Settlement issues; the water rights adjudication process; and the hot springs in Truth or Consequences. While in the area, both committees toured Spaceport America and discussed and debated the status of limited liability granted to spaceport operations. A panel presented a bill, previously introduced, that would expand immunity to include, among other things, immunity for manufacturers and suppliers of components or services used by space flight entities.

The judiciary presented its budget and proposed legislation in the fall. The courts continue to implement new technologies, including a case management system, which should be fully implemented in all of New Mexico's magistrate and district courts by the end of 2012. The judiciary requested a 3% increase to court base budgets to allow the courts to fill critical vacant positions, upgrade aging systems, address security, maintenance and information technology needs and continue funding drug courts and other problem-solving courts. Although there is a need for 23 new judgeships statewide, the judiciary requested only nine. The judiciary proposed 10 pieces of legislation, including bills that would modify qualifications for metropolitan court judges to make them consistent with constitutional requirements

for appellate and district court judges; allow retired peace officers to return to work as court security personnel without suspension of retirement benefits; allow sitting magistrates in districts with a population over 200,000 to run for election as long as there is no break in service; provide penalty assessments for certain Motor Vehicle Code violations; and make the courts responsible for processing all traffic citations to reduce the confusion and wasted resources of having both the courts and the Motor Vehicle Division of the TRD handle citations.

The committee was briefed on the Veterans Treatment Court created in the Second Judicial District Court in November 2011 to assist those veterans who are pulled into the justice system. Judges and staff provide pretrial services, supervision and case management. Treatment plans are created for each veteran in the program, and the program is having a positive impact on veterans, their families and communities.

Attorney General Gary King proposed 20 pieces of draft legislation for the 2013 session. The attorney general discussed the need to modernize certain statutes; to change the statute of limitations for certain crimes; to prohibit texting while driving; to address mortgage foreclosure issues; and to clarify the burglary statutes. He also informed the committee about his implementation of a Wage Theft Task Force that deals with wage theft such as time sheet fraud, employers forcing employees to work overtime without proper payment and employees working off the clock. The committee discussed many issues with the attorney general, including Medicaid fraud, domestic violence, government accountability and border protection issues.

The Children, Youth and Families Department (CYFD) discussed proposed changes to the Children's Code. There was some controversy with some of the changes that the CYFD was proposing, but no legislation was presented to the committee. The committee also heard presentations on problems that have arisen with public improvement districts (PIDs), specifically the Mariposa development. Homebuilders and developers expressed that PIDs are a good financing tool but acknowledged that the law should be amended to protect homeowners. The Attorney General's Office discussed its work with homeowners of the Mariposa development.

The committee heard from the League of Women Voters on the creation of an independent redistricting commission to assist in the process of redistricting every 10 years. Members of the league provided information on independent commissions in other states that vary in size from five to 14 members and how those states have placed restrictions and established criteria that should be considered when redistricting. Among other things, the committee and the panel discussed the politics

of redistricting and the costs to the state. The estimated total cost of redistricting New Mexico in 2012 was \$8 million.

The committee heard a proposal from the Drug Policy Alliance to decriminalize possession of up to eight ounces of marijuana and to reduce the penalty for possession of eight ounces or more from a fourth degree felony to a misdemeanor. The alliance argued that its proposal is very modest when compared to decriminalization laws in other states and spoke about the negative consequences of current enforcement policies and penalties. Discussion with the committee included actions in other states, legislation introduced in prior years and the effects of marijuana on health.

During the interim, the committee heard presentations on proposed uniform laws, missing persons and identification of human remains, changes to the Sunshine Portal Transparency Act, a study of the length of stay in detention facilities, prosecutions for leaving a child in a hot car, public financing of elections, modifications to the DNA Identification Act, hate crimes, attorney fees in contract cases, the duty to report child abuse and the creation of an independent public defender commission. Of the 50 proposed bills presented and discussed, the committee endorsed 25.

ECONOMIC AND RURAL DEVELOPMENT COMMITTEE

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During the 2012 legislative interim, the Economic and Rural Development Committee concentrated on topics central to the state's economy in both rural and urban areas. As in previous years, the committee convened in areas beyond the I-25 corridor, staying true to its mission to reach out to communities throughout the state. Meetings were held in Santa Fe, Chama, Truth or Consequences, Gallup and Albuquerque.

The committee's second meeting was held in Chama and was focused on presentations from Northern New Mexico College, the New Mexico oil and gas industry and New Mexico First and about the proposed Transfer of Public Lands Act. At this meeting, committee members questioned representatives from the Economic Development Department (EDD), during a presentation on how to access state money, about how to best close loopholes and to effectively institute clawback provisions on tax credits, citing specific examples of the state losing large contracts and sums of money.

In Truth or Consequences, the committee received an update on the MainStreet program and the various successes it has enjoyed throughout the state. A few highlights of the MainStreet program

were the addition of 670 new businesses in New Mexico, 107 business expansions and the creation of more than 2,998 jobs.

During the interim, the committee took tours of the Spaceport, the Cumbres and Toltec Scenic Railroad train station, Richardson's Trading Post, Mesa del Sol and the Albuquerque Studios. These tours highlighted economic development in their respective regions with an emphasis on tourism.

The committee met in Gallup to discuss issues relating to telecommunications in New Mexico. There was concern over effective competition among telecommunications carriers in New Mexico and larger national companies. The committee also received several presentations on tourism in the region and future opportunities for New Mexico as a whole.

At the Albuquerque/University of New Mexico (UNM) meeting, the committee heard testimony on PIDs and the Mariposa dispute. The committee also received a presentation from the RLD, including its Construction Industries Division, regarding the licensing of inspectors and the creation of a chief building official, which raised significant disagreements. The issue resurfaced without a concrete solution at the committee's final meeting for the interim.

The committee endorsed several pieces of legislation for the upcoming session, covering the following topics: creating requirements for proposing, adopting, amending or repealing rules; an appropriation for food entrepreneur projects; licensing construction inspectors; an appropriation for MainStreet programs; an appropriation for the frontier communities program; amending the Arts and Cultural District Act with an appropriation; telecommunications regulations and fees; an appropriation for UNM to expand the Design and Planning Assistance Center at the School of Architecture and Planning; and an appropriation to the EDD for job attraction and retention.

INDIAN AFFAIRS COMMITTEE

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Since its inception in 1989, the Indian Affairs Committee has addressed issues that disproportionately affect Native Americans residing in New Mexico. In fulfillment of its mission, the committee held seven meetings during the 2012 interim, conducted at six pueblos, one chapter of the Navajo Nation, the Jicarilla Apache Nation, Navajo Technical College and other locations accessible to tribal leaders and Native Americans.

During the 2012 interim, committee members focused on the priorities and concerns of the

Indian Affairs Department (IAD), the Department of Environment, the Navajo Nation and tribal leadership. The Public Regulation Commission urged tribes to fill out Native American utility and telecommunications tax exemption forms to aid in projects, and the New Mexico Gas Company stated that there are tribes in New Mexico that are eligible for gross receipts tax exemptions. Moreover, the committee received a presentation on expanding utility service to Indian country.

The HSD provided an update on the importance of tribal input into the Medicaid Centennial Care plan, stating that the department had met with almost 900 Native American consumers and reviewed 70 pages of Native American stakeholder analysis and recommendations from tribal leadership, tribal stakeholders, individual entities and organizations.

The IAD discussed with the committee the 2001 Indian Gaming Compact that is set to expire in 2015. The governor does not have a timetable for negotiations. Tribes expressed concerns that compacts could expire before negotiations are complete. Additionally, the tribes reminded the committee that the state is required to negotiate in good faith. The committee requested a follow-up meeting on this issue at the end of the interim.

The committee heard a presentation on domestic violence in tribal communities, where the rate of victims is significantly higher than in the non-Native American population. The presenters stressed the need for cultural awareness training for law enforcement officers to prepare them for domestic violence cases, as well as the need for resources and a safe place for victims to stay.

A presentation from the Joint Education Tribal Team prompted the committee to consider the effect that a well-managed impact aid program, as well as an Indian policies and procedures plan, could have in reducing the disparities that Native American communities experience. The committee discussed the formation of a Navajo charter school, a joint project between New Mexico and Arizona that would be the first charter school developed within the Navajo Nation.

The committee also discussed, in conjunction with the tribes and the Office of the State Engineer, the Aamodt settlement. Funding the state's share for the Aamodt, Taos and Navajo water settlements was of greatest concern.

At its final meeting, the committee endorsed six pieces of legislation for the 2013 legislative session.

INVESTMENTS AND PENSIONS OVERSIGHT COMMITTEE

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The Investments and Pensions Oversight Committee focused during the interim on the actuarial soundness of the trust funds of the Public Employees Retirement Association (PERA) Board, the Educational Retirement Board (ERB) and the Retiree Health Care Authority (RHCA), as well as the investment functions of the PERA, 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. The committee also took testimony on the impact on New Mexico's balance sheet of new Governmental Accounting Standards Board (GASB) pension reporting requirements.

The committee received testimony from the PERA, ERB and RHCA on their increasing unfunded liabilities and, in cooperation with the agencies, developed legislative proposals to ensure the long-term solvency of their respective funds. A subcommittee was formed to focus solely on solvency proposals for the municipal and state public safety employee retirement plans. The full committee 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. It also heard from SIC, PERA and ERB staff on overall investment performance of each fund and on the investment policies and performance of the SIC's private equity investment program and the Small Business Investment Corporation (SBIC).

The committee took testimony at its June 20 meeting from the SIC on recent investment performance and recent policy and management changes. The state investment officer also reported that the SIC had hired a law firm on a contingent-fee basis to pursue investment fraud litigation, has served all the defendants it has named and will likely name more defendants. The deputy state investment officer reported that the land grant permanent funds earned 9.45% for the quarter ending March 31 — the highest rate among comparable funds for the quarter — but that the funds' long-term growth lags behind the funds' peers.

The RHCA executive director reported an unfunded actuarial liability of \$3.3 billion in the Retiree Health Care Fund. He stated that recent employee contribution increases, reduced premium subsidies for pre-Medicare members and increased out-of-pocket expenses for all retired members have extended solvency for the fund through 2027.

The executive director of the ERB discussed the actuarial soundness of the ERB's retirement fund, reporting an unfunded actuarial liability of approximately \$6.3 billion and a funded ratio (actuarial liabilities/actuarial assets) of approximately 60%.

At its August 3 meeting, the committee received a report from the ERB and PERA on their recent investment performances and strategies to meet their long-term earnings benchmarks. The ERB's chief investment officer reported an investment return of 2% for the year ending June 30, 2012, an average annual return of 13% for the last three years and an average annual return of 9.3% over the life of the ERB's fund.

The chief investment officer for the PERA reported a return of -.38% for the year ending June 30, 2012, an average annual return of 11.96% over the last three years and an average annual return of 9.6% over the life of the PERA funds.

The executive director of the PERA gave an update on the actuarial soundness of the PERA pension funds and current pension fund proposals, reporting an unfunded liability of approximately \$6.2 billion and average funded ratio for all PERA funds of 65.3%, as of June 30, 2012. Among individual PERA funds, the funded ratio ranges from a high of 167.9% for the Volunteer Firefighters Retirement Fund to a low of 51% for the Judicial Retirement Fund. The executive director stated that House Joint Memorial 19 from the 2012 legislative session requested the PERA to develop a plan to get the PERA's average funded ratio to 100% by 2041 and that the proposal be presented to the committee by October 1, 2012. A preliminary plan includes an increase in the vesting period for new employees, a reduction of .5% in the annual pension calculation factor and a delay in when retirees would be subject to a cost-of-living adjustment (COLA). Current and future retirees would see a .5% reduction in the COLA.

Committee staff and the State Board of Finance bond counsel gave a presentation on the probable impact of new GASB pension reporting requirements on New Mexico state finances and bond ratings.

At its September 7 meeting, the committee heard testimony from the executive directors of the PERA and ERB on the status of their efforts to develop legislative proposals to ensure the actuarial soundness of their respective pension funds. The ERB proposal would increase member contribution rates to 10.1% in FY 2014 and 10.7% in FY 2015. For educational employees hired after July 1, 2013, a minimum retirement age of 55 would be established and the COLA would begin at age 67, instead of the current age 65 start date. A panel, including the chief investment officers of the PERA,

SIC and ERB, discussed the relative investment earnings of the three funds.

The first meeting of the Subcommittee on Municipal and State Public Safety Employee Retirement Plans Solvency was held on September 7. The PERA executive director presented the current proposal for retirement plan changes, and the executive director of the RHCA outlined the impact of those retirement plan changes to the solvency of the Retiree Health Care Fund. The director of the New Mexico Fraternal Order of Police (NMFOP), the president of the Albuquerque local of the International Association of Firefighters (IAFA) and the legislative director of the Association of Federal, State, County and Municipal Employees (AFSCME) discussed their organizations' views on the proposed retirement plan revisions. The executive director of the New Mexico Municipal League (NMML) gave the municipal government perspective on the proposed retirement plan changes for municipal employees.

In the second meeting of the Subcommittee on Municipal and State Public Safety Employee Retirement Plans Solvency, held on October 2, committee staff gave an update on recent actions by other states to improve the solvency of employee retirement plans. A roundtable discussion was held on the current PERA proposed retirement plan changes. Included in the discussion were the executive director of the PERA, the executive director of the NMML and representatives of the NMFOP, IAFA, AFSCME and other stakeholder groups.

At its October 23 meeting, the committee heard a report from the national chair of the GASB on the impact nationwide of the implementation of new accounting rules regarding the reporting of pension liabilities. The new rules are designed to improve the usefulness of reported pension information and to increase the transparency, consistency and comparability of pension information across governments. The committee then heard and discussed legislation proposed for committee endorsement by the New Mexico state treasurer, PERA, ERB, RHCA and SIC.

At its November 28 meeting, and at an additional meeting on December 17 approved by the New Mexico Legislative Council, the committee was primarily engaged in the consideration of draft legislation proposed for endorsement. The only two informational items were a report from the New Mexico college savings plan on its recent investment performance and pending litigation due to steep losses in college savings accounts and a report from the SIC on the investment policies and performance of the SIC's private equity program and the SBIC.

The committee considered draft legislation, proposed by the state treasurer, clarifying authorized investments of the state treasurer, increasing the percentage of the general fund and bond

proceeds that may be invested in the Local Government Investment Pool and making other technical changes related to state treasurer investments. The committee also considered a number of proposed draft bills dealing with SIC investment governance and investment policies. The committee heard proposed solvency legislation from the Administrative Office of the Courts for the judicial and magistrate retirement funds. Finally, the committee considered proposed draft solvency legislation for the ERB, PERA and RHCA. After lengthy discussion and debate, the committee endorsed the following bills:

(1) PERA retirement plan solvency legislation proposed by the PERA Board and amended by the committee;

(2) ERB retirement plan solvency legislation proposed by the ERB and amended by the committee;

(3) judicial and magistrate retirement plans solvency legislation proposed by the Administrative Office of the Courts;

(4) a bill to increase employer and employee contributions to the Retiree Health Care Fund as proposed by the RHCA Board and amended by the committee;

(5) a bill to change the membership of the SIC, increase the experience and fiduciary standards for SIC members, allow flexibility in the frequency of meetings and make other technical changes;

(6) a bill to amend the Judicial Retirement Act to have employer contributions to the judicial and magistrate retirement funds come from the general fund and have the portion of civil docket and jury fees that had previously been deposited to the retirement funds be deposited to the general fund and to increase contributions to the judicial and magistrate retirement funds;

(7) a bill to allow retired chiefs of police and undersheriffs to return to work without suspending their PERA pension benefits;

(8) a bill to allow retired state police officers, municipal police officers and adult correctional officers to return to work without suspending their PERA pension benefits;

(9) a bill to change the judicial and magistrate retirement plans to align more closely to the PERA state general member coverage plan 3;

(10) a bill to provide that the PERA Board would be authorized to set annually, within certain statutory limitations, employee contribution rates and the amount of the COLA;

(11) a bill to clarify and amend the qualified investments for the state treasurer; and

(12) a bill to eliminate the Education Trust Board and place its investing and administrative duties with the SIC.

LAND GRANT COMMITTEE

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The legislative interim Land Grant Committee held five meetings during the 2012 interim. Aside from its first and last meetings at the State Capitol in Santa Fe, the committee was hosted by the Village of Questa and the San Antonio del Rio Colorado Land Grant, the Anton Chico Land Grant and the Chilili Land Grant. In each of these communities, the committee was able to learn the distinctive history of the land grant and was informed of challenges faced and successes celebrated by the host communities.

The committee revisited many subjects that had been addressed in the 2011 interim, as there were critical issues relating to land grants in New Mexico that were in flux or in process during that interim. The committee received a progress report on the mapping project being undertaken by the land grant studies program of UNM. The committee heard once again about the controversial mineral rights deal between the Tierra Amarilla Land Grant Board and the Wind River Energy Corporation, a presentation that left the committee with as many questions as answers. The committee also heard an update on the status of quiet title actions involving the Cristobal de la Serna Land Grant and Arroyo Hondo Land Grant, legal actions that have inflamed passions in the Taos area. The committee received an update on litigation involving the traditional cultural properties designation on Mount Taylor, with parties on both sides of the Supreme Court argument presenting summaries of that argument and issues in the case, and also received an update on the once-mooted, now quashed transfer of the Marquez Wildlife Area to the Cebolleta Land Grant. Additionally, the committee received updates from the United States Forest Service (USFS) and the Abiquiu Land Grant and the Truchas Land Grant on the resolution of boundary disputes with those land grants. The USFS also discussed the memorandum of understanding that has been drawn up with the Land Grant Council that will pave the way to better cooperation and communication between the USFS and the land grant community; a key element to future cooperation is the master stewardship agreement that is being planned to facilitate coordination and communication between individual ranger districts and their local land grant communities.

Throughout the interim, the committee heard from the Land Grant Council and the Land Grant Consejo on the needs of the land grant community. The Land Grant Council also kept the committee informed of developments regarding federal legislation that would affect land grants. Representatives from the land grant studies program presented their concerns and successes. The committee served as a sounding board for disputes in certain land grants, including controversies in the Anton Chico Land Grant and the board election conflict in the San Miguel del Bado Land Grant.

The committee also heard presentations from organizations and interests that are connected to the issues surrounding the land grant community. The committee learned about the work of the New Mexico Forest and Watershed Restoration Institute at New Mexico Highlands University. The committee heard a presentation by an Albuquerque start-up called Incitor that is trying to perfect an economic model that would allow biomass to be converted into various fuels; if successful, Incitor would place small factories in rural communities in New Mexico, which could provide opportunities for land grant communities to profit from their biomass assets. The committee heard a presentation on the challenges involved in keeping young people on the land grants. The committee opened a formal discussion on the various issues surrounding taxation and the land grants, and it expressed the intent to pursue that topic in more detail in the 2013 interim. The committee heard from the descendants of the Chihene Nde Nation, whose ancestral lands include former land grant lands, whose ancestors were part of New Mexico's land grant community and who are trying to receive federal recognition of their nation. The committee also heard from Representative Yvette Herrell regarding a proposal to cause federal lands in the state to be returned to New Mexico, a proposal that could have a significant impact on the land grant community, if implemented, as many land grants claim as their historic landholdings land that is currently under federal control.

The tours that committee members take of the land grants are a highlight of every interim for the members. This interim, the committee toured the operations of the Chevron mine that operates on the San Antonio del Rio Colorado Land Grant; most of the far-flung Anton Chico Land Grant; and the Chilili Land Grant, including recent film locations (such as that for "The Avengers") and a forest restoration project. Such tours bring the arcana of land grant law and policy to life for the members of the committee, enriching their knowledge and personalizing their experience.

The committee endorsed the following bills for the 2013 legislative session:

(1) repealing Section 61-23-34 NMSA 1978, providing for notice requirement for surveys conducted on certain land grants;

- (2) expanding the eligibility for grants and loans under the Water Project Finance Act;
- (3) appropriating \$117,500 for the land grant studies program;
- (4) allowing the Land Grant Council to use private and federal funds to assist community land grants that are not political subdivisions of the state; and clarifying council authority to determine the status of a community land grant;
- (5) transferring the New Mexico Community Land Grant Registry to the Land Grant Council;
- (6) amending Chapter 49, Article 1 NMSA 1978 to include the Tecolote Land Grant-Merced;
- (7) granting political subdivision status to the San Antonio del Rio Colorado Land Grant-Merced; and
- (8) a joint memorial requesting that the United States Congress support the establishment of the Chihene Nde Nation of New Mexico as a recognized Native American tribe.

LEGISLATIVE HEALTH AND HUMAN SERVICES COMMITTEE

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The Legislative Health and Human Services Committee devoted considerable attention to human services; substance abuse, misuse and dependence; the health care work force; health information technology; hospitals; and Indian health. The committee continued its review of state law, programs and agencies related to the implementation of federal health care reform. At each of its meetings, the committee discussed the state's Medicaid program. The committee held hearings in Truth or Consequences, Farmington, Shiprock, Las Vegas and Santa Fe.

Regarding Medicaid, the committee received testimony from HSD leadership, local advocates and nationwide experts on the HSD's planned redesign of the state's Medicaid program, on the federal Patient Protection and Affordable Care Act's (PPACA's) provision directing states to expand Medicaid eligibility and on other states' innovations in improving health care delivery while cutting Medicaid costs.

The HSD, having named its new Medicaid program "Centennial Care", laid out some details about Centennial Care and the status of the waiver application that the HSD submitted to the federal Centers for Medicare and Medicaid Services pursuant to Section 1115 of the federal Social Security

Act.

In June 2012, the United States Supreme Court issued its decision on the constitutionality of the provisions of the PPACA. It upheld the requirement that nonexempt individuals obtain health insurance. It also held that the PPACA requirement that states expand Medicaid eligibility to cover adults with incomes under 138% of the federal poverty level was invalid and that Congress could not revoke states' participation in the Medicaid program, whether or not they chose to participate in expansion. The committee heard testimony from the HSD, LFC staff, local advocates and the public on whether or not the state should avail itself of the option to expand Medicaid eligibility. The testimony centered on economic factors and the effect upon the state's health care infrastructure and work force.

The committee heard testimony from nationwide experts on health care delivery models that emphasize care coordination, transitional care and the use of data to target high-risk patients for focused intervention.

A day of testimony focused on the state's options for obtaining and using health care data for a variety of purposes through an all payer claims database.

The committee heard extensive testimony on efforts by the HSD's New Mexico Office of Health Care Reform to establish a state health insurance exchange pursuant to the PPACA. It received testimony from the secretary of human services, local advocates and the public as to the functions, authority and time line for establishing an exchange.

The committee heard testimony on early childhood development and on supporting healthy development through supports such as home visiting programs.

The state's ongoing epidemic of the abuse of, misuse of and dependence on prescription drugs and other controlled substances was the subject of several hearings. The hearings focused on health professional licensure boards' new efforts at rulemaking to monitor and support best prescribing practices and on the causes of addiction, including childhood trauma. The committee heard testimony on therapeutic alternatives to opioid-based pain management.

The committee conducted hearings on a wide array of issues relating to health facilities, including hospitals and ambulatory surgical centers. There was testimony on peer review and credentialing; billing and collection practices; the potential effect of the PPACA's provisions relating to hospitals; and the role of information technology and infection control.

Health information technology, including telehealth and telemedicine, was the subject of

several hearings. The committee heard testimony regarding the status of the state's broadband connectivity; on "meaningful use" of health information technology by health care providers in accordance with federal law; UNM's Project Extension for Community Healthcare Outcomes (ECHO) telehealth program; the state health information exchange network; the HSD's Medicaid enrollment information technology system; and the potential for the use of telehealth to coordinate care in the state's Medicaid program.

Regarding human services, the committee heard testimony on efforts to address the incidence of domestic violence and sexual assault; to protect elders from abuse, exploitation and hunger; to provide early childhood services; to provide meaningful work opportunity to Temporary Assistance for Needy Families recipients; as well as testimony on energy assistance and on the application of federal community services block grant funds.

The committee held hearings on health care work force issues that included a proposal to create a licensure and scope of practice for dental therapists to work as mid-level dental health professionals in the state. There was discussion regarding the challenges of setting staffing standards for nurses.

The committee met for one day at the Shiprock Chapter House of the Navajo Nation, where it received updates on health care in the Navajo Nation, off-reservation health care and provisions of the PPACA that relate to Native Americans. The committee ended the day by touring the Navajo Regional Behavioral Health Centers in Shiprock.

► *Behavioral Health Services Subcommittee*

The New Mexico Legislative Council reauthorized the Behavioral Health Services Subcommittee for the 2012 interim, and the subcommittee met in Gallup, Albuquerque and Las Cruces. A recurring theme of presentations to the subcommittee was concern over the state's decision to carve in behavioral health services with physical health services to implement the "coordinated care" strategy proposed in the Centennial Care Medicaid waiver. This discussion included the subcommittee's concern that Centennial Care managed care organizations deliver behavioral health care alongside physical health care without diluting the quality of behavioral health services or adding to the administrative burden for providers. The discussion also raised concern over how managed care organizations would apportion the responsibility for, and profit from, care coordination.

The subcommittee also heard several presentations that highlighted behavioral health disparities experienced by the Native American community. Presentations focused on the high rate of alcoholism,

substance abuse and suicide, lack of adequate treatment resources and possibilities for funding additional treatment resources.

The subcommittee discussed the importance of early intervention for children and adolescents in need of behavioral health services, the need for timely intervention and funding options for additional treatment resources. It also reviewed the behavioral health needs of children in treatment foster care.

Finally, the subcommittee heard a recommendation from the LFC that the NMCD fund only evidence-based behavioral health and treatment programs.

► *Disabilities Concerns Subcommittee*

The statutory Disabilities Concerns Subcommittee met twice in Santa Fe and once at the site of the Southwest Conference on Disability in Albuquerque.

Much of the subcommittee's work during the interim focused on long-term care. The developmental disabilities (DD) waiver program was the focus of much interest as its co-administrator, the DOH, issued new rules and undertook assessments regarding the way DD waiver participants' level of care is determined. The subcommittee heard testimony on Money Follows the Person program policy, relating to the transition of some institutional care participants into community settings. Self-direction through Mi Via and proposed Medicaid Centennial Care programs was the focus of another hearing.

The subcommittee received an update on the medical cannabis program and the related fund that the DOH administers pursuant to the Lynn and Erin Compassionate Use Act. It also heard testimony on the rights of and opportunities for individuals living with disabilities in employment, in operating their own businesses and in living as protected persons under guardianships or conservatorships.

The subcommittee also heard testimony from the Governor's Commission on Disability on legislation relating to service animals and on the funding of disability programs through motor vehicle fees.

MILITARY AND VETERANS' AFFAIRS COMMITTEE

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The Military and Veterans' Affairs Committee held five meetings in 2012. The committee focused on many areas affecting veterans and military personnel, including:

- (1) housing issues;
- (2) family and community support;
- (3) treatment options for posttraumatic stress disorder (PTSD); and
- (4) opportunities at educational institutions around the state.

Don Arnold, a United States Department of Veterans Affairs (VA) prior approval lender and veteran advocate, gave a presentation to the committee on the problems some veterans are having with losing their homes and the foreclosure process. The committee suggested that Mr. Arnold work with Secretary of Veterans' Services Timothy L. Hale to discuss the issues and develop possible solutions.

Representatives from Cannon Air Force Base and from the National Guard spoke about the comprehensive community and family support services provided to military personnel. These programs include relocation and transition assistance, financial management, youth and community programs and help with behavioral health, suicide prevention and sexual assault issues.

The committee heard several presentations on the topic of PTSD, including the services available from community-based outpatient clinics and the New Mexico VA health care system. The VA is striving to provide effective treatments that can be accessed by all veterans in the state, including through telehealth services. Treatment for veterans and military personnel suffering from PTSD is and will continue to be a significant concern for the committee.

Many educational institutions in the state offer programs for veterans and military personnel. The committee heard discussions on:

- (1) Northern New Mexico College's Green Jobs for Veterans Academy;
- (2) New Mexico State University's military and veterans' program;
- (3) VetSuccess on Campus, currently located at Central New Mexico Community College; and
- (4) UNM's Veterans Resource Center.

A concern brought to the committee by Deputy Secretary Alan Martinez of the Veterans' Services Department is that a veteran may be running out of GI Bill benefits before the veteran has earned a degree. The committee agreed with Mr. Martinez that enabling legislation is needed to

implement the veterans' scholarship program approved by the voters in 2010.

Other issues heard by the committee included the priorities and initiatives of the Veterans' Services Department and the Office of Military Base Planning and Support; the status of cemetery space and long-term care options for veterans in the state; and the impact of the Veterans Treatment Court that was established in 2011.

MORTGAGE FINANCE AUTHORITY ACT OVERSIGHT COMMITTEE

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The Mortgage Finance Authority (MFA) Act Oversight Committee held five meetings during the 2012 interim, all of which were held in Albuquerque at the MFA Office.

At its organizational meeting, Jay Czar, executive director for the MFA, announced that Mr. Angel Reyes, president, Centinel Bank in Taos, is the governor's newest appointee to the MFA Board. The board currently has one vacancy that may be filled by the governor during the 2013 legislative session.

Mr. Czar re-familiarized committee members with the MFA by summarizing its 2011 work. Among other things, the MFA provided more than \$275 million in low-interest financing and grants, as well as nonfinancial support for affordable housing and related services throughout the state. Using tax-exempt single-family mortgage bonds, the MFA provided loans of more than \$120 million to 1,032 first-time New Mexico homebuyers.

Also at the organizational meeting, members were provided with the MFA 2012 Reference Guide, a useful guide to the agency, its work, contacts and resources. Members were also advised as to the 2012 MFA legislative proposals, including three items in the General Appropriation Act of 2012 that will have an impact on the MFA:

(1) the governor's veto of language in the bill to require that "[n]o less than fifteen percent and no more than twenty-five percent of the federal funds for the low income home energy assistance program [LIHEAP] shall be used for weatherization programs";

(2) a \$3 million appropriation to the Department of Finance and Administration (DFA) for the New Mexico Housing Trust Fund; and

(3) a \$250,000 appropriation to the DFA for regional housing authority oversight.

Additionally, there was an appropriation to the Office of the Attorney General for \$3.5 million

"to provide foreclosure prevention and mortgage counseling services to New Mexico residents". The appropriation is a budget authorization for a portion of the \$11.7 million in discretionary funds allocated to the state under the National Mortgage Settlement, and the MFA may be asked to administer some of the funding.

House Taxation and Revenue Committee Substitute for House Bills 184 and 256 (Laws 2012, Chapter 5) clarifies a gross receipts tax deduction for construction-related expenditures and enacts a deduction from gross receipts for the lease of construction equipment.

Lastly, two items, the reauthorization bill and the capital outlay bill, may have an effect on the MFA because of federal and state pass-through funding.

At the committee's second meeting, the members heard an update on the 2012 state of housing. Members expressed an interest in unemployment numbers because there is a strong link between employment and the ability to own a home. In January 2011, the Workforce Solutions Department reported New Mexico's unemployment rate at 8.7%, but by May 2012, the seasonally adjusted unemployment rate was 6.7%. At the same time, the national unemployment rate increased to 8.2%. The state's over-the-year job growth rate, comparing May 2012 with May 2011, was -0.2%, representing a loss of 1,500 jobs.

Much of the committee's discussions this interim focused on residential foreclosures. Members were informed that, according to RealtyTrac, as of May 2012, the six-month trend in foreclosures in New Mexico fell, with 700 total foreclosures in June 2011, a high of 1,195 foreclosures in August 2011 and 749 foreclosures in May 2012. In terms of national foreclosure rates, filings were down 2% for the first quarter of 2012 and down 16% from the first quarter of 2011. At the final committee meeting, the members heard an in-depth presentation on New Mexico residential foreclosure statistics from Nomalanga Nefertari and Srini Vasan, researchers with the Institute of Applied Research Services at UNM, which is home to Geospatial and Population Studies and the Bureau of Business and Economic Research.

Periodically throughout the interim, the MFA staff advised the committee of the progress in the MFA's expenditure of the federal American Recovery and Reinvestment Act of 2009 (ARRA) funding, all of which was projected to be expended by September 2012. In 2009, the MFA received \$27 million of ARRA funds for the weatherization assistance program. Since then, MFA staff reported that the MFA's partners have successfully weatherized more than 4,000 New Mexico homes.

At its fifth and final 2012 interim committee meeting, the MFA staff presented the agency's

legislative proposals for the committee's consideration. Among the legislative initiatives was a bill that would transfer the oversight of the regional housing authority from the MFA to the DFA. A bill with the same provisions was proposed by the MFA and endorsed by the committee for both the 2011 and 2012 legislative sessions; however, those bills did not pass. The MFA proposed the bill again for the 2013 legislative session because the agency currently does not receive any funding to support its statutorily mandated oversight of the regional housing authority. Additional legislative proposals included:

- (1) a \$5 million appropriation to the New Mexico Housing Trust Fund;
- (2) a \$1 million appropriation to the NM EnergySmart program;
- (3) a \$250,000 appropriation for the oversight of the regional housing authority;
- (4) legislation to transfer the regional housing authority oversight duties to the DFA;
- (5) a \$100,000 appropriation for oversight duties related to the Affordable Housing

Act;

- (6) legislation to make changes to the Affordable Housing Act, including penalties for violations and relief from long-term affordability restrictions for foreclosed properties;

- (7) a \$500,000 appropriation for rapid rehousing services; and

- (8) a \$500,000 appropriation for permanent supportive housing services.

NEW MEXICO FINANCE AUTHORITY OVERSIGHT COMMITTEE

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The committee met five times during the interim to carry out its statutory duties to monitor and oversee the NMFA, the Border Authority, the Spaceport Authority and the New Mexico Renewable Energy Transmission Authority (RETA). The committee examined the mission, organizational structure, operations, budgets, programs, activities and projects of all four authorities.

The operations of the NMFA were heavily scrutinized following the discovery in July 2012 of a faked 2011 financial audit report. The committee was particularly concerned about the continuation of the NMFA's high bond ratings and financial integrity. It heard testimony from NMFA staff that no adjustment was made to the NMFA's high bond ratings by Standard & Poor's or Moody's. The committee also took testimony attributing the stability of the high bond ratings to the NMFA's regular disclosure and provision of up-to-date financial information; its timely bond payments; and the

adequacy of its Debt Service Reserve Fund.

In response to the 2011 audit issue, the independent audit firm of Hewitt EnnisKnupp was retained by the New Mexico Legislative Council to: (1) analyze the scope and schedule of a forensic audit performed by PricewaterhouseCoopers at the direction of the Office of the State Auditor; (2) analyze the NMFA's governance, organizational structure, policies, procedures and practices; and (3) make recommendations about governance best practices. Hewitt EnnisKnupp presented its findings to the committee at the October and November meetings, and the reports are posted as handouts on the legislative web site: <http://www.nmlegis.gov/lcs/committeedetail.aspx?CommitteeCode=NMFA>.

The Office of the State Auditor and the Securities Division of the RLD provided several updates and reports to the committee about their respective investigations of the NMFA due to the 2011 faked audit. Each agency issued its own final report.

The committee took testimony from the NMFA Board and management about staffing levels and changes during the period leading up to and following the discovery of the faked 2011 audit. The committee also heard testimony about the anticipated completion of a valid 2011 financial audit in January or February 2013 and a valid 2012 financial audit in March or April 2013.

In its analysis of the loans, funds and programs administered by the NMFA under state law for the benefit of governmental entities and communities throughout the state, the committee took testimony from NMFA staff and board members regarding the NMFA's administration of and community outreach about such funds and programs as the new markets tax credits program, the Public Project Revolving Fund, the Water Project Fund, the Local Transportation Infrastructure Fund and the Colonias Infrastructure Trust Fund. In addition, the committee heard a presentation from NMFA staff about the instances when the NMFA offers more favorable loan rates than its competitors.

At its meeting in the southernmost part of the state, the committee took testimony about capital needs, border area infrastructure needs and economic development opportunities from Border Authority management, local officials and interested parties.

The RETA briefed the committee on Goldman Sachs' investment of \$380 million to \$400 million in renewable energy transmission lines and the RETA's need for an appropriation to continue its operations. The committee heard from RETA management and interested members of the public about the need for the RETA to remain an independent entity to pursue renewable energy transmission opportunities with its specialized experience and dedicated interest in renewable energy.

The committee heard from the Spaceport Authority regarding the crucial need for amendments

to the Space Flight Informed Consent Act to compete with other states that have been able to pass such legislation to attract space flight companies.

The committee endorsed the following pieces of legislation for introduction during the 2013 legislative session:

- (1) a \$2 million appropriation from the Public Project Revolving Fund to the Drinking Water State Revolving Loan Fund;
- (2) a \$2 million appropriation from the Public Project Revolving Fund to the Local Government Planning Fund;
- (3) a bill authorizing 95 projects to be funded through the Public Project Revolving Fund;
- (4) a \$2 million appropriation from the general fund to the RETA operational fund;
- (5) a bill changing the qualifications and appointment process for NMFA board members; and
- (6) a bill temporarily extending reporting requirements for, and temporarily suspending specific prior authorization of, Economic Development Revolving Fund projects.

The committee also heard presentations on the following pieces of legislation for introduction during the 2013 legislative session:

- (1) a bill clarifying and expanding the application of the Space Flight Informed Consent Act and removing the sunset clause; and
- (2) a bill authorizing funding from the Water Project Fund for projects to be approved after the conclusion of the 2012 interim.

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 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 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 Public

School Facilities Authority (PSFA); and to make annual recommendations related to 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 June 6, August 1, September 24, November 12 and December 12. The New Mexico Legislative Council also authorized the task force to hold two subcommittee meetings if needed.

The task force began its ninth year of overseeing the implementation of the public school capital outlay standards-based process with a brief review of task force-endorsed measures considered by the 2012 legislature.

One of the task force's policy recommendations was enacted by the 2012 legislature and signed into law by the governor. Laws 2012, Chapter 53 (SB 196) allows the New Mexico School for the Blind and Visually Impaired and the New Mexico School for the Deaf to participate in the public school capital outlay standards-based process. Both of these special schools were established by the state constitution, have their own boards of regents and are overseen by the Higher Education Department even though they are pre-kindergarten through twelfth grade schools. Enactment of this measure provides an additional source of funding for the capital outlay needs of these two historic institutions.

Two other task force-endorsed bills did not pass — one that would have delayed the repeal of the Charter School Capital Outlay Fund and one that would have made more consistent the language in the purchasing code that addresses competitive sealed proposals.

At the task force's request, the PSFA developed a series of policy briefs for task force members to use as resources for their 2012 interim policy discussions. These policy briefs provided background material on issues related to the statutory lease-assistance program, including standardizing language for lease documents, a policy review of the Public School Capital Outlay Act and capital outlay funding formula issues and charter school facilities issues.

The task force created two subcommittees, made up of task force members and representatives from the educational community appointed by the task force co-chairs, that met on October 16 and 17 to work on policy recommendations for the task force's consideration. The subcommittees agreed upon a number of recommendations, which, at the direction of the co-chairs, were presented to the task force as draft legislation and endorsed at the December 12 meeting.

The task force discussed the public school capital outlay funding formula at several meetings and subcommittee meetings and eventually endorsed legislation to: (1) allow an annual distribution from the Public School Capital Outlay Fund for building systems repair, remodeling or replacement; (2) allow the Public School Capital Outlay Council (PSCOC) more flexibility to determine local match waiver eligibility; (3) allow the PSCOC to make optional or adjust the automatic Consumer Price Index rate for the lease-assistance program; and (4) provide a separate appropriation from the Public School Capital Outlay Fund to increase the availability of funding for deferred maintenance.

Always a topic of concern, the task force and its subcommittees spent 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. As the result of extensive discussion by both the task force and its subcommittees, at its December 12 meeting, the task force endorsed two bills dealing with charter school facility issues: (1) a measure to amend the Public School Capital Outlay Act to reestablish the Charter School Capital Outlay Fund, which was repealed July 1, 2012, and reestablish criteria for grant awards from that fund; and (2) a measure to amend the Charter Schools Act to allow the PSCOC to recommend suspension, nonrenewal or revocation of a charter based on the charter school's facility condition.

RADIOACTIVE AND HAZARDOUS MATERIALS COMMITTEE

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The Radioactive and Hazardous Materials Committee is a statutory committee created in 1979 to act as the legislature's liaison with the U.S. Department of Energy and other federal agencies involved with the Waste Isolation Pilot Plant (WIPP) near Carlsbad. Through the years, various chairs have interpreted the committee's statutory mandate broadly to include not just radioactive and hazardous materials issues but environmental issues generally, including air and water quality, solid waste, underground storage tank leak mitigation, oil and gas regulations and renewable energy policies. The committee toured URENCO this year, in addition to hearing status reports on WIPP and cleanup of legacy sites at Los Alamos National Laboratory. The committee endorsed one bill — the right of first refusal for utilities to construct transmission lines within their service area. It also heard testimony this year on the status of the Corrective Action Fund, mercury lightbulb hazards, first-responder training, monitoring efforts of the potential sinkhole in Carlsbad and progress at International Isotopes,

Inc., and Eldorado Biofuels.

REVENUE STABILIZATION AND TAX POLICY COMMITTEE

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The Revenue Stabilization and Tax Policy Committee held seven meetings in 2012. Bill endorsements were completed on the second day of the December meeting, at which 16 of the 24 bills under consideration were endorsed.

This year, the tax that was discussed in the most detail was the corporate income tax (CIT). There have been many concerns raised about New Mexico's CIT rates and the way the state apportions income for multistate companies. In August, a hearing was held at Intel, and the committee received information from several sources about the need for a single sales factor apportionment formula, as well as the need for lowering the highest CIT rate from 7.6% to either 6.4% or 4.9%. Although there was much ongoing discussion about these proposals, there was not an endorsement of a bill because clarity was not reached on how the bill should be structured. Specifically, the committee tries to maintain revenue neutrality when giving tax incentives, which means that revenue anticipated to be lost from the incentive should be made up in some other way. The suggested mechanism for generating revenue to offset the loss in revenue from lowering the CIT rate was to repeal some of the tax expenditures in existing law or to require combined reporting. Some of the tax expenditures considered for repeal included the investment credit, the high-wage jobs tax credit, the rural job tax credit, the technology jobs tax credit and the research and development small business tax credit.

Two bills were endorsed by the committee to address the higher-than-expected costs of the high-wage jobs tax credit. The committee saw provisions in both bills that it would like to see in a final bill, and it will probably combine them into one bill at some point during the 2013 legislative session.

Another topic that was brought to the committee by several parties was that of creating an independent tax hearing office. There is a national concern that tax hearing officers are too tightly controlled by taxation departments and are subject to undue influence from the secretaries of those departments. The committee did not endorse this proposal at this time, but it will most likely be introduced in the 2013 session or be revised and brought before the committee again next year.

The release of the 2012 New Mexico Tax Expenditure Report, required by Executive Order 2011-071, was also of importance to the committee. Secretary of Taxation and Revenue Demesia

Padilla and John Tysseling, chief economist, TRD, presented a summary of the report at the September meeting. The committee expressed concern that the report appeared to be incomplete, since it did not include a significant number of tax expenditures; nor did it include evaluations and cost-effectiveness determinations mandated by the executive order or recommendations or details on the report's key findings.

SCIENCE, TECHNOLOGY AND TELECOMMUNICATIONS COMMITTEE

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The theme during the 2012 interim for the Science, Technology and Telecommunications Committee was technology transfer; that is to say, what can the legislature do to foster job creation by start-up enterprises that use technology developed at national laboratories or research universities in New Mexico? The committee met in Hobbs, Deming and Albuquerque as well as in Santa Fe to hear testimony from various experts on science and technology. Several bills were endorsed by the committee, ranging from approval for commercialization activities to be considered by universities when reviewing professor tenure to tax credits for investments in technology transfer funds. The committee toured the URENCO uranium enrichment plant in Jal and the community of Playas to get a hands-on sense of sites around the state that are technology ventures. The committee heard testimony from officials and contractors of the SIC about the status of state investments in technology ventures and what more the state can do to directly support technology ventures. Committee members also assessed some negative side effects of technology, such as the Kirtland Air Force Base fuel spill. Post-secondary educators explained work force training capacities and programs; university and national laboratory personnel described research and development programs at their respective institutions; entrepreneurs and business people discussed the effects of state policy on their business endeavors; the Department of Information Technology reported the status of state centralization of information and telecommunications systems; and the RETA reported the status of investments in transmission facilities and their potential impacts on the state economy. The committee endorsed 12 pieces of legislation.

TOBACCO SETTLEMENT REVENUE OVERSIGHT COMMITTEE

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On November 23, 1998, the attorneys general of 46 states entered into a Master Settlement Agreement (MSA) with the four largest tobacco companies in the United States: Brown & Williamson; Lorillard; Philip Morris; and R.J. Reynolds (Participating Manufacturers). Under the terms of the agreement, the Participating Manufacturers agreed to accept prohibitions and restrictions on the marketing and advertising of their tobacco products and to compensate the states for costs associated with tobacco-related illness and disease attributed to the Participating Manufacturers' products. In turn, the states agreed to enact model legislation, or a similar qualifying statute, to charge tobacco manufacturers that did not participate in the MSA an escrow payment, and to diligently enforce such legislation. Later, an additional 50 tobacco companies joined the MSA. Beginning in 1999, New Mexico passed various MSA-related legislation.

The Tobacco Settlement Revenue Oversight Committee was created in 2000 as a joint interim legislative committee to monitor the use of revenues received as a result of the MSA. The committee meets during the interim to evaluate programs that receive appropriations from tobacco settlement revenues and to make recommendations for future funding. Funding recommendations for FY 2014 were provided to the LFC on December 4, 2012.

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 and the UNM Health Sciences Center have historically been the primary recipients of those appropriations. The Medicaid program, which is administered by the HSD, has received the bulk of appropriations from MSA revenues.

Beginning in FY 2001, the distribution to the Program Fund from the Permanent Fund was limited to 50% of MSA settlement funds received by the state in the preceding fiscal year, until such time as that amount is less than 4.7% of the average of the year-end market values of the Permanent Fund for the preceding five years. The remaining 50% 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 their 2011 presentation to the LFC, the committee co-chairs noted that, in nine of the fiscal years since the creation of the Permanent Fund, no part of the annual MSA settlement revenues had been retained in the Permanent Fund. In FY 2013, all of the MSA annual settlement revenue went into the Program Fund; none was retained in the Permanent Fund.

For FY 2012 through FY 2014, MSA revenues have been, or are projected to be, essentially flat, hovering at around \$39 million. MSA revenue for FY 2012 was \$39.3 million. As of October 31, 2012, the balance in the Permanent Fund was \$148,977,549.

After meeting four times to receive testimony from agencies and programs currently receiving appropriations, the committee adopted funding recommendations for FY 2014. The committee's recommendations for FY 2014 are similar to those for FY 2013.

The Office of the Attorney General regularly reports to the committee regarding enforcement of, and compliance with, the MSA. The state is currently a party to an arbitration proceeding challenging the state's diligent enforcement efforts under the terms of the MSA since 2003, and to a dispute in which Participating Manufacturers contend that New Mexico has not had a qualifying statute since 2006. Adverse decisions in these controversies could place at risk up to \$550 million in future MSA revenues, as an award in favor of the Participating Manufacturers would be offset against future MSA revenues for several years.

Once again, at the request of the Office of the Attorney General, the committee has endorsed a bill identical to Senate Bill 225 (2012), which was vetoed last year by the governor. The bill amends 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 the past several legislative sessions, the Office of the Attorney General has recommended passage of such legislation 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". This year, the Office of the Attorney General has added that passage of the bill would immunize the state against any further challenges to the state's qualifying statute.

WATER AND NATURAL RESOURCES COMMITTEE

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The committee scheduled five meetings during the 2012 interim that were held in Las Cruces, Truth or Consequences, Ruidoso, Albuquerque and Santa Fe.

Continued drought and major wildfires again dominated the news in 2012 and were discussed in several presentations to the committee during the interim. Through November 2012, the average precipitation for New Mexico was near the record lowest value, ranking as the second driest since 1895, as severe to exceptional drought continued across New Mexico, and the average temperature for the state for the year was the highest on record. It was also the second consecutive year during which record-breaking wildfires burned across the state. The lightning-sparked Whitewater-Baldy Complex Fire in the Gila Wilderness burned more than 297,845 acres, which surpassed the area burned by the Las Conchas Fire of 2011, making it the largest wildfire in New Mexico history. The Little Bear Fire was also started by a lightning strike; it burned 44,330 acres and 254 buildings in Lincoln County after quickly growing out of control due to dry, windy conditions. The city of Ruidoso and the surrounding area will need more than \$14 million in the coming years to address the effects of that fire on their drinking water supplies alone.

At the committee's joint meeting in August with the Courts, Corrections and Justice Committee, the committees reviewed several legal issues of concern to both committees, including the state's suit against the federal Bureau of Reclamation on its administration of Rio Grande Project water, implementation of the Pecos River Settlement, the status of ongoing adjudications and the need for spaceport liability legislation.

Other issues covered during the interim included a final decision in the *Tri-State Generation and Transmission Assn., Inc. v. D'Antonio* case, in which the New Mexico Supreme Court upheld the state engineer's active water resource management rules and authority to administer water rights accordingly.

The committee endorsed three pieces of legislation this interim: a bill that changes the application procedures for certain replacement wells, a memorial urging Congress to reauthorize the Rio Grande environmental management program and an appropriation to fund farmers' markets across the state.



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