# LFC Newsletter

A publication of the **Legislative Finance Committee**
Senator John Arthur Smith, Chairman
Representative Luciano "Lucky" Varela, Vice Chairman
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*From the Chairman*

## We Are Here

Standing at the gas pump over the last few months, it can seem like there is no end to the rise in gas prices. Fourth of July drivers paid an average of $4.10 a gallon, compared with $2.95 a year ago. And we thought it was bad a year ago.

High gasoline prices tend to get a mixed reaction in the government circles of resource-rich states like New Mexico. High prices make it more expensive to provide services, but high prices also generally mean more energy-related revenue. For New Mexico, the strong energy market has softened the blow of the sliding economy. The updated revenue forecast due out later this month will show personal income tax revenue is weaker than expected, but state revenue from the oil and natural gas industry is stronger.

But we can't rely on notoriously unreliable energy prices to keep bailing us out. In FY06, natural gas prices shot up following the hurricanes in the Gulf of Mexico, As a result, energy revenues surged to 22 percent of all general fund revenue, well above the historic average of about 15 percent. In FY09, energy revenues are going to be more than a quarter of all recurring general fund revenues, greatly increasing volatility. The state is enjoying a boom right now that has lasted beyond all expectations but we can't bank on it lasting forever.

The state must be very careful about how it spends its energy revenue. Launching new programs with uncertain income is an invitation to later problems when the New Mexicans, who have come to depend on the service, are cut off. With growing demand from developing nations, it is possible oil prices will stay strong. It is equally possible that speculators will leave the market, fed-up consumers will cut back dramatically, or supplies will improve. And then where will we be?

***Senator John Arthur Smith***
***Chairman***

# Frustration Leads to Talk of Adjudication Reform

Frustration with the state's decades-long process for legally clarifying water rights has prompted a look at reform, but any reform is likely to be contentious, LFC analysis indicates.

New Mexico currently is a party in 11 lawsuits, called adjudications, involving water rights in the Rio Grande, Pecos, Upper Colorado River and Lower Colorado River drainage systems. Most of the adjudications have been underway for decades with one now more than 50 years old.

The current adjudication process starts with a legal and geographic survey of all water rights and uses in an area. The state then files a lawsuit naming all the identified water rights owners and claimants as parties. Many legal steps later, after challenges and usually a negotiation of certain rights, the court finalizes a decree identifying all the rights.

The slow progress on adjudications, the lack of a sound legal basis for the current adjudication process, public frustration with the State Engineer, and confusion among water rights holders prompted the Administrative Office of the Courts last year to look at the judicial process in other states with the goal of developing a better system in New Mexico. The State Engineer has worked with the office on the informal study.

The committee will hear a progress report on the study during its July meeting in Chama. The hearing is scheduled for 8 a.m. on July 11. Any reformed process would affect new adjudication, not the existing cases.

Based on initial research on successful practices in Idaho, Montana and Colorado, the Administrative Office of the Courts suggests the state consider limiting the State Engineer's participation in the legal process to "technical expert."

The office also suggests policymakers consider establishing the statutory basis for adjudication, identifying a less burdensome process for notifying water rights holders, clarifying timelines, requiring water rights claimants to respond, and giving the court a greater role in the process.

LFC staff analysis notes that any reform is likely to draw opposition and possibly legal challenges.

Any adjudication process that attempts to identify all water rights will be expensive and contentious and, while reform might make the process more efficient and less contentious, no reform will eliminate all problems, it says.

Further, creating a more efficient process could prompt complaints of unfairness from some water rights claimants.

Finally, the analysis indicates, that any reform of the judicial system will require reform of other steps in the process.

# Cyber Academy Implementation Not Ideal

New Mexico's attempts to create a single statewide online learning program for pre-kindergarten through adult education have been hindered by a lack of structure and limited funding, LFC analysis shows.

The committee heard about the progress of and problems with IDEAL – the Innovative Digital Education and Learning Initiative – during its meeting in June.

IDEAL is planned as an Internet-based system for offering classes to students statewide. The goal of IDEAL is to give the state's school districts and colleges a uniform way, and therefore more cost-efficient way, to offer classes to students who could not otherwise attend because of location or the school's capacity.

School districts offered 55 courses through IDEAL during the spring 2008 semester. Just under 190 students in 13 schools districts took the classes. Of those, 49 were taking the classes to recover course credit.

However, IDEAL representatives say funding has been inadequate to develop enough courses to make the program successful, the LFC review says.

In addition, the Public Education Department has failed to publish the rules for districts and colleges to participate in IDEAL and has opened the door for districts to develop their own systems.

Districts and colleges implementing their own online "distance learning" programs have used 22 different systems, the LFC review found.

Colleges are not committed to using IDEAL, according to the Higher Education Department, and many of the public schools responding to an LFC survey indicated they will not use IDEAL's course offerings, the review found.

In addition, while the Public Education Department has statutory responsibility for the Cyber Academy, almost all of the about $8 million spent so far has been appropriated to the Higher Education Department, the review says.

The Higher Education Department and Department of Information Technology have signed a $7.8 million contract with Blackboard Inc. to provide the state with a single online course system, but the LFC review notes a large number of districts would need to participate to justify statewide implementation.

# Rio Rancho Schools Benefit from Capital Funding Policy

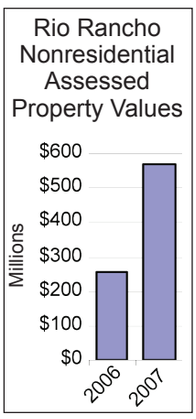
A policy that uses a three-year average of property values to determine how much money a local school district must provide for facility construction means Rio Rancho Public Schools get two-thirds of its capital outlay funds from the state despite strong property values and left-over property tax capacity.

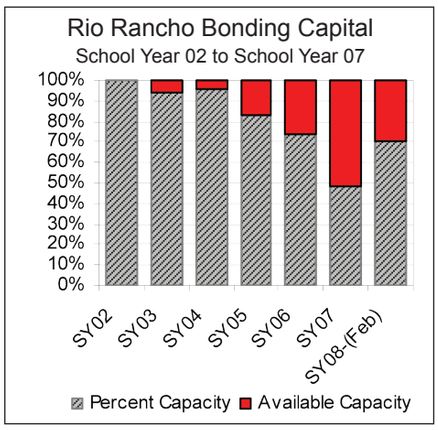
According to an LFC evaluation of the Rio Rancho schools, the assessed value of nonresidential property in the district almost tripled in 2007 but its local match rate will only increase from 31 percent to 33 percent because the state uses a three-year average of property values. If the state didn't use the average, the local match would be about 41 percent.

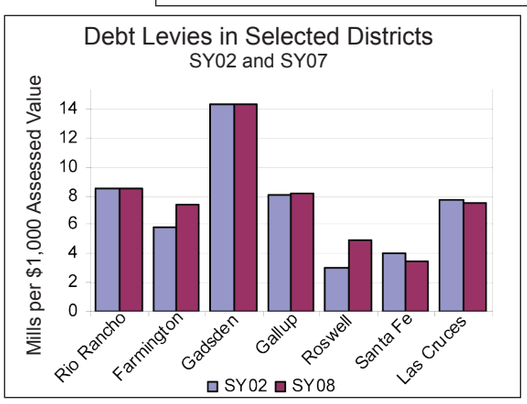
Because the state's match has stayed high even as property values have increased, the district has excess property tax capacity and independently funded an $11 million performing arts center.

In addition, strong property values allow a district to assess a lower mill levy, equal to a tax of $1 for each $1,000 of assessed value. As a result, the Gadsden public schools and other districts in poor areas of the state must assess a higher tax than the Santa Fe district and other districts where property values are relatively high.

The LFC evaluation recommends the state consider changes to the public school capital outlay funding formula.





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## *On the Table*

### Feds Could Sanction State for DWI Law

New Mexico's failure to impose a mandatory one-year license suspension for second-time DWI offenders could cost the state $16.6 million. The Federal Highway Administration is allowed to withhold 5 percent of its appropriation to a state if a state does not have the law on its books. The federal highway appropriation to New Mexico for federal FY09 is $331 million.

### New Mexico Crude Tops $100 a Barrel

New Mexico oil prices averaged $101.59 a barrel in March for the first time, according to reports from the Oil and Natural Gas Administration and Revenue Database. Natural gas prices were at $9.32 per thousand cubic feet, almost as high as the $9.86 price following the 2005 hurricanes. Analysts are predicting reports will show both prices were higher in April, May and June.

### Gallup-McKinley District Seeks Teachers

The Gallup-McKinley school district this summer must replace 85 teachers, about 11 percent of its teaching workforce. The district has among the highest number of schools facing sanctions for poor performance.

### Investment Shift Creates Unexpected Cost

The Public Employee Retirement Association has transferred $850,000 to contractual services, mostly to cover an unbudgeted $600,000 spent on outside lawyers hired to develop complicated contracts related to adding alternative investments to the pension fund's portfolio. The agency spent more than $28 million on contractual services in FY08.

### UNM Owes $2.4 million for Risk Insurance

The University of New Mexico owes $1.42 million and UNM Hospital owes $945,000 million to the Risk Management Division at the General Services Department for risk insurance premiums. The university's premiums have increased over the last several years because of a fire at UNM's Zimmerman Library and higher payouts for public liability claims. In addition, GSD is trying to improve the financial positions of all its risk funds. GSD is reviewing claims against the university and the rates might be adjusted.

### Transitions

Annette Martinez-Varela of the 13th Judicial District Attorney's Office has been appointed to the state member seat on the PERA board vacated by Jeff Varela.

Frank Coppler has been retained as bond counsel for the Transportation Commission.

Marcy Leavitt has been appointed the new director of the New Mexico Environment Department's Water and Waste Management Division. Marcy has been with the agency for 20 years, most recently as the chief of the Surface Water Quality Bureau. Carlos Romero, a 21-year veteran of the department, has been appointed director of the Environmental Health Division. Tom Ruiz is the new border and environmental justice liaison.

Deborah DeMella accepted the Institutional Auditor position at the Higher Education Department. She previously was an accountant with Department of Game and Fish.

John Bigelow, the retiring chief public defender, has been named chairman of the New Mexico Sentencing Commission to replace departing Joe Caldwell.


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