STATE OF NEW MEXICO
LEGISLATIVE EDUCATION STUDY COMMITTEE

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Frances Ramírez-Maestas, Director

MINUTES
LESC MEETING
JUNE 12-13, 2013

Senator John M. Sapien, Chair, called the meeting of the Legislative Education Study Committee (LESC) to order at 9:12 a.m., on Wednesday, June 12, 2013, in Room 322 of the State Capitol in Santa Fe, New Mexico.

<u>The following voting members of the LESC were present</u>:

Senators John M. Sapien, Chair, and Craig W. Brandt; and Representatives Rick Miera, Vice Chair, Nora Espinoza, Jimmie C. Hall, Dennis J. Roch, and Mimi Stewart.

<u>The following voting members of the LESC were not present</u>:

Senators Gay G. Kernan and Howie C. Morales; and Representative Sheryl M. Williams Stapleton.

<u>The following advisory members of the LESC were present</u>:

Senators Jacob R. Candelaria, Daniel A. Ivey-Soto, Linda M. Lopez, John Pinto, and William P. Soules; and Representatives Alonzo Baldonado, Nathan "Nate" Cote, David M. Gallegos, Stephanie Garcia Richard, Timothy D. Lewis, Tomás E. Salazar, James E. Smith, and Christine Trujillo.

<u>The following advisory members of the LESC were not present</u>:

Senators Lee S. Cotter and Pat Woods; and Representatives George Dodge, Jr. and Bob Wooley.

Representative Phillip M. Archuleta was also in attendance.

On a motion by Representative Roch, seconded by Representative Hall, the committee approved the agenda for the meeting.

The Chair informed the committee that LESC staff has been directed to create a digital version of the committee notebook, and asked for volunteers to convert to the digital committee notebook and provide feedback to improve the product. He emphasized that members who prefer hard copies will continue to receive them, but in the interest of the environment, members are encouraged to use the digital notebook.

SUMMARY OF PUBLIC EDUCATION-RELATED LEGISLATION PASSED BY THE 51ST LEGISLATURE, 1ST SESSION, 2013

The Chair recognized LESC staff for a review of FY 14 public school-related appropriations and selected language, and public education-related legislation considered by the 2013 Legislature.

Referring the committee to staff-developed materials included in the meeting notebook, Ms. Frances Ramírez-Maestas, LESC staff, noted that:

- in total, the *General Appropriation Act of 2013* (Laws 2013, Chapter 227), appropriated $5.88 billion from the General Fund, an increase of $245.7 million, or 4.4 percent, over FY 13, including:
    - nearly $2.6 billion for public schools, an increase of $112.1 million, or 4.6 percent, over FY 13 appropriations; and
    - approximately $796.5 million for higher education, an increase of $38.8 million, or 5.1 percent, over FY 13 appropriations.

She explained, however, that a review of the history of General Fund recurring appropriations reveals that for FY 14 the percent to public schools and higher education is 57.1 percent, which includes approximately 43.7 percent for public school and 13.5 percent for higher education.

Ms. Ramírez-Maestas noted that, during the week before the 2013 legislative session was convened the Legislature became aware of several items surrounding possible federal special education maintenance of effort shortfalls, including the shortfall itself and the submission of a waiver request by the Public Education Department (PED) for FY 10 and FY 11. These events, she emphasized, added an element of uncertainty to the budget development process and posed questions as to whether the state also maintained effort in other fiscal years.

As enacted, Ms. Ramírez-Maestas stated, the *General Appropriation Act of 2013* includes appropriations and language to address potential shortfalls in FY 13 and FY 14. If the appropriated amounts are insufficient, she added, the Legislature also passed, and the Governor signed, *CS/HB 628, *Special Education Funding* (Laws 2013, Chapter 191) to support required funding. She then referred the committee to a staff-developed chart outlining the required process for the distribution of appropriations in both bills.

Ms. Ramírez-Maestas then referred to Representative Stewart, as sponsor of pension reform legislation during the 2013 Legislature, to summarize the provisions of two retirement bills – CS/SB 27a, *Public Employee Retirement Changes* (Laws 2013, Chapter 225); and SB 115aa, *Educational Retirement Changes* (Laws 2013, Chapter 61). Representative Stewart explained that the amendments to the *Public Employees Retirement Act* improve the actuarial standing of the retirement fund by:

- reducing cost-of-living adjustments for all retirees;
- delaying the cost-of-living adjustment for certain future retirees up to seven years from the current two-year waiting period, with a three-year phase-in of this provision;
- suspending cost-of-living adjustments for certain return-to-work retirees;
- providing for an increase in member contributions for employees earning more than $20,000 in salary annually; and
- increasing employer contributions by 0.4 percent for FY 15.

Other provisions, she stated:

- outline how service credit earned under multiple coverage plans will be calculated;
- change the benefits for members initially employed after June 30, 2013 by reducing the multiplier and increasing the number of years used to calculate the final average salary; and
- increase the vesting period, and age and service requirements for public employee retirement while increasing the maximum pension benefit.

With regard to educational retirement, Representative Stewart explained that the legislation that was enacted improves the actuarial standing of the Educational Retirement Fund by amending the *Educational Retirement Act* to:

- increase certain members' contribution rates;
- change the benefits for new members by imposing a minimum retirement age;
- delay and reduce the cost-of-living adjustment; and
- increase age and service retirement requirements for educators.

Ms. Sarah Amador-Guzman, LESC staff, reviewed legislation relating to public school capital outlay outlined in two tables included in the committee notebooks, including:

- three statewide projects appropriated to PED: (1) $2.5 million to renovate and construct public school prekindergarten classrooms from the Public School Capital Outlay Fund; (2) $13.0 million from Severance Tax Bonds to purchase school buses also from the Public School Capital Outlay Fund; and (3) $298,357 to purchase and install robot equipment and related infrastructure statewide; and
- $2.5 million in reauthorized projects from Severance Tax Bonds to the New Mexico School for the Deaf to address deficiencies through FY 15.

Ms. Amador-Guzman then reviewed five bills endorsed by both the LESC and the Public School Capital Outlay Task Force, noting that only one of those bills, HB 273, *Public School Capital Outlay Lease Payments*, passed both the House and Senate but was subsequently vetoed. Among its provisions, she stated, the legislation would have amended the *Public School Capital Outlay Act* to make the adjustment for lease payments optional based upon the consumer price index.

Mr. Travis Dulany, LESC staff, outlined 2013 legislation regarding the Educator Accountability Reporting System (EARS) and the General Educational Development (GED). Current law, Mr. Dulany stated, requires PED to work in collaboration with teacher preparation programs, colleges and universities, and the Higher Education Department and to provide an annual statewide report to the Governor and the Legislature by November 1 of each year. He noted that, during the 2012 interim, higher education staff requested the LESC to consider amending current law to require a July 1 reporting date because the colleges of education are currently required to compile similar data twice – once for Title II reporting during the spring and again for the EARS report in the fall. During its January 2013 meeting, Mr. Dulany reported, the LESC endorsed legislation to amend the law in order to allow for a more uniform reporting date in line with Title II; however, the legislation did not pass.

According to Mr. Dulany, another bill endorsed by the LESC for the 2013 legislative session would have amended multiple sections of law in order to replace the terms “GED,” “General Education Diploma,” “General Equivalency Diploma,” and “General Educational Development Certificate” with a different term – “High School Equivalency Diploma.” He explained that the acronym “GED” is a registered trademark of the American Council on Education (ACE) and may not be used or reproduced without written permission. Although the acronym “GED” refers specifically to a series of tests owned by the ACE, Mr. Dulany added, a common assumption has been that “GED” describes all high school equivalency tests. He also noted that, although the company GED Testing Service LLC is responsible for developing and administering the tests through a license from ACE, GED Testing Service is not responsible for determining high school completion. Participants who successfully pass the battery of GED exams receive a GED credential, he stated, but it is up to the administering jurisdiction – in this case the state of New Mexico – to determine the name of the credential. Citing information from the US Census Bureau, Mr. Dulany informed the committee that 63 percent of jurisdictions award a “diploma,” while 31 percent issue a “certificate,” and 6.0 percent classify the credential under some other name. To conclude, Mr. Dulany reported that, while the legislation was passed by both chambers of the Legislature, it was subsequently pocket vetoed.

Ms. LaNysha Adams, LESC staff, provided an update on legislation related to the K-3 Plus program and to assessments. With regard to the K-3 Plus program, she noted that *CS/HB 310a, *K-3 Program Eligibility* (Laws 2013, Chapter 175), was enacted. The bill amends the *Public School Code* to lower the eligibility rate for the K-3 Plus program to 80 percent from 85 percent for those public schools in which students are eligible for free or reduced-fee lunch at the time the public school applies for the program, or an elementary school with a D or F school grade the previous year. Another bill, she reported, HB 290, *K-3 Plus Program School Buses,* proposed to amend the *Public School Code* to enable students enrolled in K-3 Plus programs to receive school bus transportation at the discretion of the local school board or governing body of a state-chartered charter school; however, the legislation did not pass.

Regarding assessments, Ms. Adams reported that both chambers passed HJM 30, *Study Uses of Standardized Test Scores* (2013), which requests that the LESC convene a work group to study the validity of using standardized test scores for purposes other than those for which the test was designed – principally for teacher and school administrator effectiveness and school grading – and report to the LESC by October 1, 2013.

Mr. Kevin Force, LESC staff, briefed the committee on HB 392a, *Public Education Commission as Independent*, which passed both houses, but was vetoed. Among its provisions, he stated, the bill proposed to:

- establish the Public Education Commission (PEC) as an independent entity;
- remove its administrative attachment to PED;
- provide PEC with rulemaking authority and staff;
- allow a charter applicant denied by a local school board to appeal to the PEC; and
- provide for an applicant denied by the PEC to appeal to district court.

Committee Discussion

Among the other bills that did not pass, committee members discussed:

- HB 166a, *Charter School Audit Finding Reporting*, and the desire to present the bill again during the next legislative session;
- HB 215a, *Remove School AYP & Funding Incentives*, which would have amended multiple sections of the *Public School Code* to remove adequate yearly progress requirements in state law;
- SB 587aa, *State School Grades Council*, which would have required changes to the current grading system point distribution and created a 21-member council to review the grading system and develop recommendations to the LESC and Legislative Finance Committee on a new school grading system; the bill passed both the House and Senate; and
- CS/HB 660, *Education Technology Equipment*, and CS/SB 147a, *Education Technology Definitions*, which addressed the need to prepare the state's information technology infrastructure for the common core assessments.

FY 13 POTENTIAL FINAL UNIT VALUE ADJUSTMENT

The Chair recognized Ms. Frances Ramírez-Maestas, LESC staff, who informed the committee that during the 2013 School Law Conference, Public Education Department (PED) staff announced that the FY 13 Final Unit Value ($3,673.54) would be increased by at least $15 as a result of additional credits becoming available.

For FY 13, she explained, the *General Appropriation Act of 2012* includes the following language: "The rate of distribution of the state equalization guarantee distribution shall be based on a program unit value determined by the secretary of public education. The secretary of public education shall establish a preliminary unit value to establish budgets for the 2012-2013 school year and then, on verification of the number of units statewide for fiscal year 2013 but no later than January 31, 2013, the secretary of public education may adjust the program unit value."

To provide some historical background, Ms. Ramírez-Maestas reported that, prior to 1992 the *General Appropriation Act* included language that set the rate per program unit for the State Equalization Guarantee (SEG) distribution. However, in 1992, she said, the Legislature instituted what came to be called the "floating unit value" in the *General Appropriation Act* by including an overall appropriation amount without establishing the actual unit value, as had been the practice in the past.

The language, Ms. Ramírez-Maestas continued, required the State Superintendent of Public Instruction to determine a preliminary unit value for the SEG to be used for districts to establish tentative budgets for school year 1992-1993, and upon verification of the number of units statewide, the Superintendent of Public Instruction was authorized to increase the program unit value. While never added to statute, she noted, this language or its equivalent has been included with each public school support appropriation since the *General Appropriation Act of 1992*.

Beginning in 1998, Ms. Ramírez-Maestas noted, the provisions in the *General Appropriation Act* changed the language related to the unit value by requiring the State Superintendent of Public Instruction to designate a preliminary unit value to establish tentative budgets and then, upon completion of final budgets or verification of the number of units statewide, but no later than January 31, allowed the Superintendent to adjust the program unit value. Since then, according to Ms. Ramírez-Maestas, each *General Appropriation Act* has specified that any adjustment to the unit value may occur no later than January 31.

The Chair recognized Mr. Paul J. Aguilar, Deputy Secretary for Finance and Operations, PED, who testified that the department has received concerns from stakeholders regarding any decrease in the unit value after January 31, but there were no objections about an increase in unit value after that date. He added that the Secretary-designate set the unit value on January 31 based on the credits available at the time; however, starting in May, Mr. Aguilar explained, school districts reported additional federal Impact Aid revenues being distributed from prior fiscal years (Gallup-McKinley County Public Schools and Central Consolidated Schools each received $3.0 million, and a group of districts received $1.8 million). To conclude, Mr. Aguilar noted that PED legal staff is trying to determine whether it is appropriate to make the distribution at this time.

Committee Discussion

Several committee members expressed concern that the school districts would not have enough time to spend the additional funds in a thoughtful manner.

In response to a committee member's question as to what will happen to these revenues if they are not distributed as credits in the SEG, Mr. Aguilar stated that the dollars would revert to the General Fund.

In response to a committee member's question as to the amount of federal Impact Aid dollars that have been reverted to the General Fund in the past, Mr. Aguilar stated that the amount is approximately $14.0 million every year.

EXECUTIVE SESSION

At approximately 1:15 p.m. the Chair called the committee into executive session. The Chair called the committee into a regular meeting session at 1:56 p.m.

PUBLIC SCHOOL FUNDING FORMULA OVERVIEW

The Chair recognized Ms. Sarah Amador-Guzman and Mr. David Craig, LESC staff, to provide an overview of the Public School Funding Formula (PSFF).

Referring the committee to staff-developed documents included in the committee notebooks, Ms. Amador-Guzman began by providing some background information regarding the PSFF, or the State Equalization Guarantee (SEG) distribution, including the history prior to its creation in 1974. The review, she noted, included past studies by independent groups such as the 2008 American Institutes for Research study that analyzed the inner workings of the formula and provided recommendations for improvement. She emphasized that a key recommendation from the study encouraged the state to consider appropriating an additional $334.7 million in order to achieve levels of sufficient funding for public schools.

Ms. Amador-Guzman explained that the formula recognizes different costs for different grades or programs like bilingual education or fine arts. The formula, she added, was designed to distribute funding in a noncategorical manner, which means local school districts have autonomy in using the funds to address local priorities. She emphasized that the current formula is student driven using the average number of students enrolled on the prior year's second or third reporting dates, also known as the 80th and 120th day, to identify the membership of each school district or state-chartered charter school.

Under the mechanics section of the presentation, Ms. Amador-Guzman reported that four items are required to determine the SEG including the:

1. appropriation to the SEG;
2. appropriation to the program cost;
3. total statewide units generated by districts and charters; and
4. unit value.

She also reported that each year the SEG appropriation recommendation considers the prior year's program cost as the base funding amount. The recommendation then considers student enrollment growth, insurance costs, and fixed costs, also known as "opening the doors" costs in the development of the appropriation.

Next, Ms. Amador-Guzman stated that the PSFF has been modified multiple times since 1974 in efforts to improve equity of educational funding. However, she continued, modifications to the formula need to be analyzed carefully, primarily because any change to the formula may impact the distribution to districts and state-chartered charter schools. She then discussed three key questions to ask when considering a modification to the PSFF:

1. Will this change result in an increase or decrease in the total statewide units?
2. How does this increase or decrease in the total statewide units impact the unit value?
3. Based on the changed unit value, how will districts and state-chartered charter schools see their SEG distribution change?

Using the questions above, Mr. David Craig, LESC staff, reviewed a bill introduced during the 2013 legislative session – HB 165a, *School Finance Units for Small Districts* – which proposed to modify the size adjustment program unit section of the *Public School Finance Act*. Specifically, he stated, the bill would have generated units for school districts with student memberships under 200, provided that the Public Education Department certified that the school district has implemented practices to reduce scale inefficiencies, including:

- shared service agreements with regional education cooperatives or other school districts for non-instructional functions; and
- distance education.

Referring to committee handout, Mr. Craig highlighted the districts that would have seen a gain in their distribution and those that would have seen a loss, commonly referred to as reviewing the winners or losers of a formula modification.

DIRECTOR'S REPORT

a. Approval of LESC Financial Reports for January 2013 through April 2013

After a discussion led by Senator Ivey-Soto regarding whether the committee should approve unaudited financial statements, Senator Lopez recommended that the committee change the action item to "accept" rather than "approve" the financial reports.

On a motion by Representative Stewart, seconded by Representative Miera, the committee accepted the LESC financial reports for January 2013 through April 2013.

b. Approval of Independent Auditor for FY 13

On a motion by Representative Stewart, seconded by Representative Miera, the committee approved Robert J. Rivera, CPA, PC, as the independent auditor for FY 13.

c. Informational Items:

Ms. Frances Ramírez-Maestas, LESC staff, noted that for the committee's review, the following items were included in the meeting materials or distributed to members:

- an LESC staff brief regarding administrative rulemaking;
- a response to the LFC Report: *Charter School Facilities Lease Assistance and Capital Outlay Planning*, by the New Mexico Coalition of Charter Schools;
- a copy of the *Legislative Education Study Committee, Report to the First Session of the Fifty-First Legislature, April 2013 (Annual Report)*; and
- a copy of the *Legislative Education Study Committee, Public School Data Reference Guide, January 2013*.

SUPERINTENDENTS AND COMMUNITY INPUT

The Chair recognized the following individuals for this item:

- Ms. Meredith Machen from the League of Women Voters of New Mexico, who testified before the LESC regarding the league's concerns about the privatization of public education by companies such as K-12 Inc.

- Mr. Keith Franklin, a member of the New Mexico Indian Education Advisory Council (NMIEAC), who informed the committee of problems resulting from a lack of communication between NMIEAC and the Public Education Department (PED). First, he discussed PED's plans for a reduction-in-force (RIF) from five staff members to one at the Indian Education Division within the department, and explained that none of the NMIEAC members were advised or informed of the plans, which included the relocation of the office in Gallup to an undetermined location by July 1, 2013.

  In addition to asking the Indian Affairs Committee to support a delay in the RIF and the office relocation, Mr. Franklin also asked the LESC to support the delay. He stated that such a staff reduction would be unacceptable since it would leave one person to provide services for more than 20,000 students. Mr. Franklin also indicated that for Native Americans the achievement gap has increased rather than decreased, since 1926.

There being no further business, the Chair with the consensus of the committee, recessed the LESC meeting at 3:50 p.m.

MINUTES
LESC MEETING
JUNE 13, 2013

Senator John M. Sapien, Chair, called the meeting of the Legislative Education Study Committee (LESC) to order at 9:08 a.m., on Thursday, June 13, 2013, in Room 322 of the State Capitol in Santa Fe, New Mexico.

<u>The following voting members of the LESC were present</u>:

Senators John M. Sapien, Chair, and Craig W. Brandt; and Representatives Rick Miera, Vice Chair, Nora Espinoza, Jimmie C. Hall, Dennis J. Roch, and Mimi Stewart.

<u>The following voting members of the LESC were not present</u>:

Senators Gay G. Kernan and Howie C. Morales; and Representative Sheryl M. Williams Stapleton.

<u>The following advisory members of the LESC were present</u>:

Senators Jacob R. Candelaria, Daniel A. Ivey-Soto, Linda M. Lopez, John Pinto, and William P. Soules; and Representatives Alonzo Baldonado, Nathan “Nate” Cote, David M. Gallegos, Stephanie Garcia Richard, Timothy D. Lewis, Tomás E. Salazar, James E. Smith, Christine Trujillo, and Bob Wooley.

<u>The following advisory members of the LESC were not present</u>:

Senators Lee S. Cotter and Pat Woods; and Representative George Dodge, Jr.

SPECIAL EDUCATION MAINTENANCE OF EFFORT OVERVIEW

The Chair recognized Mr. Ian Kleats, LESC staff and Mr. Paul J. Aguilar, Deputy Secretary for Finance and Operations, Public Education Department (PED), for a presentation of the issues regarding maintenance of effort (MOE) requirements for the federal *Individuals with Disabilities Education Act* Part B (IDEA-B).

Mr. Kleats explained that the week before the 2013 legislative session convened the Legislature became aware of New Mexico not meeting the federal MOE requirements for State Fiscal Year (SFY) 10 and SFY 11. Mr. Kleats noted that, in order for the state to be eligible for IDEA-B federal grant awards for special education, the state must fulfill certain requirements in the *Code of Federal Regulations* (CFR), which require that:

- a state must not reduce the amount of state financial support for special education and related services for children with disabilities below the amount of that support for the preceding fiscal year; and
- if a state fails to meet MOE and is not granted a waiver, the US Department of Education (USDE) Secretary shall reduce a future IDEA award by the same amount by which the State failed to meet the requirement.

Mr. Kleats stated that on June 3, 2013 the USDE issued its response to New Mexico's waiver requests and the state was granted a waiver for SFY 10 and denied a waiver for SFY 11. He explained that several national developments could impact the state's MOE waiver process, including:

- language in the most recent federal appropriations bill passed by the US Congress limiting the reduction of IDEA-B funds for failing to meet MOE to a single year; and
- a federal district court ruling, originating from South Carolina's MOE waiver requests, that the USDE must provide both written notice and an administrative hearing before its determination becomes final.

Mr. Kleats provided a history of PED's waiver requests and data submissions and explained that PED began a dialogue with the USDE in February 2011 and has continued that dialogue on an ongoing basis since that time. He stated that in the spring of 2012, PED and the USDE determined New Mexico would have to submit MOE waivers. As a result of its conversations with the USDE, Mr. Kleats indicated that, PED submitted two separate waiver requests for SFY 10 and SFY 11, each citing an unforeseen decline in the financial resources of the state as a waiver from MOE requirements. He also noted that, in PED's submission of additional information to USDE on February 18, 2013, PED asserted that the state, through the State Equalization Guarantee (SEG), met the CFR requirements for the state to pay or reimburse all local education agencies (LEAs) 100 percent of the cost of special education and related services.

Mr. Kleats explained that the waiver requests and supplemental data in support of SFY 10 and SFY 11 submitted by PED to USDE appeared to consider certain federal stimulus dollars as state financial support for special education. Referring to Attachment 1 in his staff report, Mr. Kleats explained that guidance from the Office of Special Education and Rehabilitative Services of the USDE stated that a state may treat State Fiscal Stabilization Funds as non-federal funds for the purpose of any requirement to maintain fiscal effort (i.e., MOE) under any other program that the USDE administers, such as IDEA, upon prior approval from the USDE Secretary.

Referring to a letter received from the USDE to PED, Mr. Kleats indicated that the USDE:

- for years after SFY 09, determined that New Mexico's required level of state financial support for special education is $461,998,1683, the level made available in SFY 09;
- for SFY 10, granted a waiver of $48,094,194 based on "exceptional or uncontrollable circumstances"; and
- for SFY 11, rejected the waiver request in the amount of $34,120,713.

Referring to the letter from the USDE, Mr. Kleats explained that the USDE noted that data provided by PED suggests that the state may have failed to meet MOE in FY 12 by approximately $26.4 million. He stated that the USDE letter raised further concerns that "the State may not maintain State financial support in SFY 2013" either. Mr. Kleats also indicated that further reductions to the state's IDEA-B grant award might occur in Federal Fiscal Year (FFY) 14 and SFY 15, which would give the Legislature sufficient time to appropriate monies to replace any lost federal funds.

Mr. Kleats explained that the *General Appropriation Act of 2013* contains several contingent provisions related to meeting special education MOE requirements for both SFY 13 and SFY 14. Referring to Attachment 3 of his staff report, he described two sets of contingent provisions related to meeting MOE in *CS/HB 628, *Special Education Funding* (Laws 2013, Chapter 191):

1. for SFY 13 and SFY 14, *CS/HB 628 could appropriate up to an additional $20.0 million and $16.0 million, respectively, from the General Fund Operating Reserve; and
2. for SFY 13 and SFY 14, if funds were transferred from the SEG, *CS/HB 628 could appropriate up to $20.0 million and $16.0 million, respectively, from the operating reserve to replace any funds transferred out of the SEG.

While the appropriations and transfers contained in the *General Appropriation Act of 2013* and *CS/HB 628 could address MOE requirements for SFY 13 and SFY 14, Mr. Kleats alerted the committee to two unresolved issues:

1. failure to fulfill contingency language for SFY 13 as a result of the amount of time needed for a final determination of SFY 10 and SFY 11 waiver requests by USDE; and
2. possible reduction of federal IDEA-B grant awards in SFY 15.

Mr. Aguilar began his presentation by stating that the USDE decision to deny a waiver for SFY 11 was affected by information received above and beyond what PED provided, and it was unclear about the validity of the information provided to USDE, but PED was appealing the USDE decision rejecting the state's waiver request for SFY 11. Mr. Aguilar explained that the MOE was not met for SFY 12 as a function of reduced appropriations, and he explained that PED would soon pursue a waiver for SFY 12 and expected to have a hearing with USDE later this year.

Committee Discussion

Ms. Frances Ramírez-Maestas, LESC staff, referred the committee to a letter received from the Governor regarding the state's MOE issues and information provided by legislative agencies, districts, and others. She explained that the letter states that information provided by others may have affected the USDE decision to deny the state a waiver for SFY 11. Mr. Aguilar followed up by referring the committee to footnote 17 on page 9 of the USDE letter. He claimed that the USDE questioned PED's methodology for calculating benefits when the state never calculated benefits for special education because there is no code in the Student Teacher Accountability Reporting System to calculate benefits.

A committee member asked for clarification regarding how the districts calculated benefits, and Mr. Aguilar stated that all health benefits from the LEAs, except for the Albuquerque Public Schools district, were done through the New Mexico Public Schools Insurance Authority. The committee member asked if the benefits for school personnel who worked in special education could be calculated, and Mr. Aguilar explained that those numbers could be calculated, but the state has not used that data in the past and that the costs of benefits for school personnel working in special education would have to be calculated on an individual basis in all 89 school districts.

In response to a committee member who asked for clarification on the LEA requirements for meeting MOE, Mr. Aguilar explained that, while districts have not maintained the same amount of expenditures annually, they have maintained MOE because of allowable reductions.

Responding to a committee member who asked when PED was notified about the MOE issue, Mr. Aguilar explained that he has known of the issue since February 2011, when he began working at PED. However, because of the transition to the new administration, he explained, it took PED some time to understand the MOE issue and to gather the appropriate information to submit a waiver request to USDE. The committee member expressed concern that the Legislature did not know of the issue until 2013.

A committee member asked if a waiver would be requested for SFY 12 and SFY 13, and Mr. Aguilar explained that PED will request a waiver for SFY 12 and ensure that MOE will be met for SFY 13. He then stated that there are already appropriations for SFY 14 and explained that, because the final unit value has to be set by the Secretary, PED does not have all the information it needs until February or March.

In response to a committee member who asked if PED is working with the LESC and the Legislative Finance Committee (LFC) to ensure that the state meets MOE, Mr. Aguilar explained that PED works with the LESC and the LFC during the legislative session.

The Chair asked for clarification regarding a joint study conducted by the LFC and the LESC on the MOE issue, and Ms. Ramírez-Maestas explained that the LESC was not part of the LFC study, which was examining districts. A committee member pointed out that the LFC study is not a study of the state MOE, but focuses on districts and clarified that the school districts are required to meet MOE, which is separate from the state focus, which is to ensure that the funding level remains the same per requirements from USDE. The committee member explained that the difference between MOE at the state and district levels have to do with what is made available and actual expenditures and that the LFC report focuses more on the expenditures.

When a committee member asked whether PED would use $20.0 million from the education lockbox and the driver's license fee to help meet MOE for SFY 13, Mr. Aguilar indicated that PED would. The committee member also asked about the contingent provisions for funding from *CS/HB 628, and Mr. Aguilar explained that, after final negotiations there would be access to these funds.

Responding to a committee member who asked for clarification on the dollar amount the state would fall short in meeting MOE, Mr. Aguilar explained that there were two figures based on conflicting methodologies and the complexity of the state's funding formula. He stated that PED calculated $16.8 million, while USDE calculated $36.0 million. The committee member asked which figure PED would ask for a waiver for, to which Mr. Aguilar stated that PED would have to be prudent and that, depending on the outcome of the hearing with the USDE, funding would be applied to SFY 13 to meet MOE.

A committee member asked how the state would give $20.0 million to districts. Mr. Aguilar replied that the appropriation is specific for special education in the SEG as specified in the *General Appropriation Act of 2013*. Mr. Kleats stated that the money would be distributed to districts on the same basis as the SEG, which could dis-equalize because there is one district that does not have special education students and they would receive money through the SEG. The committee member stated that this could create more problems for the state and asked what can be done to prevent MOE issues in the future. In reply, Mr. Aguilar stated that the problem is one of timing and that appropriations exist in SFY 13 and SFY 14 to address the MOE issue.

Mr. Kleats recommended three options: (1) the state could maintain current actions; (2) the state could change how it distributed special education funds, like in legislation introduced but not passed during the legislative session that separated out special education funding from the SEG; or (3) the state could work with the Congressional delegation to change the federal law regarding MOE.

FEDERAL FUND SEQUESTRATION OVERVIEW

The Chair recognized Mr. David Craig, LESC staff, to provide the committee with an overview on Federal Fund Sequestration. He began by stating that, during the Spring Budget Workshop, the Public Education Department (PED) indicated that school districts were directed to budget 90 percent of federal funds instead of 95 percent as in years past due (in part) to concerns about reduction of federal funds through "sequestration."

Mr. Craig then provided an explanation of the *Budget Control Act* (BCA) and sequestration, noting that when the US Congress drafted the BCA they put in place automatic reductions for mandatory and discretionary spending for defense and non-defense programs if federal legislation was not enacted to reduce the federal budget deficit in 2012. He indicated that no such federal legislation was enacted and for FY 13 reductions are being done through automatic across the board cuts called "sequestration." Mr. Craig said sequestration is the process by which federal discretionary and mandatory program levels are reduced as outlined in the BCA.

He said guidance from the US Department of Education (USDE) indicates that PED will take the sequester amount from the July 2013 regular appropriations for FY 14 instead of forward funded programs. Therefore, most FY 13 programs would not be impacted by sequestration with the lone exception being the Impact Aid program, which would face FY 13 cuts.

Guidance from the Office of Management and Budget, according to Mr. Craig, indicates the sequestration amount for FY 13 as 5.0 percent for non-exempt, non-defense, discretionary spending. The current continuing resolution funding federal government for FY 13 did not reverse sequestration and may lessen or worsen the impact of the sequester depending on the program.

Mr. Craig said that, according to USDE estimates, New Mexico will have a $20.5 million net reduction in federal education funding for elementary, secondary, and vocational programs. This estimates federal FY 13 award reductions of:

- $7.4 million for Title I programs;
- $5.1 million for Impact Aid programs;
- $15.5 million for *Elementary and Secondary Education Act* programs;
- $4.8 million for special education programs; and
- $181,000 for vocational and adult education programs (including career and technical education state grants).

Data from Federal Funds Information for States (FFIS), he continued, estimates a 20.7 million ***net*** reduction in total federal education budget items, but this also includes programs for individuals, higher, and general education not generally associated with the elementary, secondary, or vocational education programs. Mr. Craig said the only exempt program is the Pell Grant program and some of these items have maintenance of effort requirements.

Mr. Craig then provided an overview of the federal Impact Aid program and explained that Impact Aid provides federal funds to local school districts in lieu of property taxes not received from federal lands in the geographic area. He said that PED estimates Impact Aid will be reduced by approximately 6.0 percent or about $5.6 million and USDE and FFIS estimate a 5.2 percent reduction or about $4.9 million.

Mr. Craig reported that conversations with PED indicate that, although PED set the unit value based on the number of credits it had received as of January 31, 2013, limited additional credits have materialized which may lead to a reduction of approximately 6.0 percent from last year. To help equalize funding in the State Equalization Guarantee (SEG), Mr. Craig said, the state takes credit for 75 percent of these payments and if credits come in lower than estimated in the budget development, the State may need to fund the SEG to hold the unit value constant and guarantee the program cost to Impact Aid school districts. He said the Legislature took steps to ensure funds would be made available to the school districts if the traditionally conservative estimate of projected credits is still higher than actual credits received. PED has indicated that projected credits are lower than actual credits due to increases in Impact Aid distributions, according to Mr. Craig.

He then provided a brief overview of the State Support Reserve Fund (SSRF), explaining the steps that New Mexico took to mitigate the impact of sequestration. The SSRF, Mr. Craig noted, is established in law to supplement the SEG so that the unit value will not be reduced. He said the SSRF has a $1.0 million balance and according to provisions in law state it is the *intent* of the Legislature for the fund to have a credit balance of $10.0 million. Although legislation was introduced in the 2013 session to *require* a $10.0 million balance, this legislation did not pass, and Mr. Craig stated that if sequestration continues for FY 14 and has impacts on projected credits, or other federal funds for which the state takes credit do not materialize (like the federal forest reserve funds), then the state may lack an adequate balance in the SSRF with which to hold the unit value constant. He said the Legislature may wish to consider legislation requiring a credit balance in the SSRF to help mitigate any future federal funding fluctuations.

To conclude, Mr. Craig then gave an overview of federal FY 14 budget appropriation activities. He said both the US Senate and House of Representatives have separate budget resolutions governing their appropriations discussions. The Senate resolution calls for tax increases and spending cuts and eliminates BCA sequestration, while the House resolution does not increase revenues and relies on spending cuts while keeping BCA sequestration in place. The budget resolution guides the House Appropriations subcommittees and the subcommittee for education would see the largest reduction. Mr. Craig said as of the time of this report the Senate had not considered any federal FY 14 spending bills.

Committee Discussion

A committee member alluded to the impact of sequestration when she commented that public education receives approximately 22 percent of its budget from the federal government.

In response to a committee member who asked whether the drop in federal funding due to sequestration would result in a drop in any potential requirement in maintenance of effort requirements, Mr. Craig said no additional information on this issue has been found, but he will continue to do research.

A committee member asked that, if by reducing future funding awards, the federal government was instructing states on how to budget. In reply, Mr. Craig said the federal government is reluctant to instruct states regarding appropriations, but there could be instances where the requirements for meeting federal grant awards may require the state to consider increasing state appropriations.

PROPOSED ACTIVITIES FOR THE 2013 INTERIM

Discussion Draft 2013 Interim Workplan Issues/Topics

The Chair emphasized that the discussion should focus on issues where there are known challenges and initiatives that can result in bipartisan support for committee-endorsed legislation for consideration of the 2014 Legislature. He then recognized Ms. Frances Ramírez-Maestas, LESC staff, to review a discussion draft of potential interim topics for the committee's consideration.

After committee discussion on the topics included in the discussion draft as well as other initiatives requested by committee members, Ms. Ramírez-Maestas stated that the staff would summarize the items into a summary document to be sent to the committee's members for their review prior to the finalization of the interim workplan.

Approval of LESC 2013 Interim Meeting Schedule

The Chair recognized Ms. Ramírez-Maestas, who referred the committee to a proposed 2013 interim schedule included in the committee notebooks. She noted that the schedule included proposed meeting dates that had been reviewed by the Chair and that the meeting locations for July, August, and September could include travel outside of Santa Fe. On a motion by

Representative Roch, seconded by Representative Espinoza, the committee approved the following meeting dates and locations:

June 12 – 13
Santa Fe

July 10 – 11 – 12
Ruidoso

August 19 – 20 – 21
Chama

September 18 – 19 – 20
Clovis

October 16 – 17 – 18
Santa Fe

November 13 – 14 – 15
Santa Fe

December 9 – 10 – 11
Santa Fe

January 20, 2014
Santa Fe

SUPERINTENDENTS AND COMMUNITY INPUT

The Chair recognized the following individuals for this item:

- Mr. Thomas McGaghie, Director of Adult Basic Education (ABE), New Mexico State University-Grants, who informed the committee that SB 183a, *Replace GED Terms with Equivalency Diploma* (2013), would have allowed the state to look at all available high school equivalency tests and choose the best one. The pocket veto of SB 183a, he added, has temporarily locked the state into using the alternative high school test provided by Pearson and will adversely affect a large portion of the state's population.

  Mr. McGaghie noted that adult educators in the state have many concerns with this new testing system, including problems with the tests being solely computer-based because many poor, rural, ethnic, and older students have never been exposed to computers and may lack the keyboarding skills required. He added that, while most young people have texting abilities, many of them may lack the necessary keyboarding skills too.

  Another concern, according to Mr. McGaghie, is with the cost. Currently, he said, the most that any program in the state charges is $100 for the full test battery; and the program in Grants charges $35 for the full battery. Pearson reports that the cost will now be $120 for the full battery, Mr. McGaghie added, and they will also be charging $10 per practice test. In addition, for students to receive additional official transcripts they will have to pay $18 through a program called Diploma Sender (which also adds an additional $5.00 mailing fee). Therefore, Mr. McGaghie explained, if a student takes one practice test in each area and pays the $120 testing fee – and orders an additional transcript costing $23 – their total will be $183, and there may be more costs to the students yet to be mentioned. He noted that Pearson has also said that the cost for the test may rise to $240 per student within several years, and increases may occur for individual programs as well.

  To conclude, Mr. McGaghie indicated that there are numerous other questions about this testing system that have not been answered, and there are concerns that adult education is being marginalized. He believes that the problems facing New Mexico education will never be fully solved unless adult education programming is brought into the discussion.

- Ms. Monica Miera, representing the New Mexico Chapter of the National Federation of Families for Children's Mental Health, who referred to the special education maintenance of effort. She emphasized that the families of children with mental disabilities are significant stakeholders and should be invited in the discussion. Ms. Miera also noted that it is not clear how funds are being distributed at the district level and suggested that the LESC review the

Public Education Department (PED) practices to ensure that funds are going to the right place. After noting that some families have been denied services, she expressed support for conducting an internal audit of PED processes and stated that when funds are not being spent, it implies that local education agencies are not providing services.

- Ms. Teresa Wimborne, an educator with Catholic Charities who teaches in the English as a second language and General Educational Development (GED) preparation programs, informed the committee that 71 percent of her students, most of whom are between 30 and 40 years of age, indicated that they take classes to help with the education of their children. Since they are among a host of parents who have expressed the desire to be better-educated, Ms. Wimborne asked the LESC to ensure that adult education is included in discussions regarding the GED exams.

- Mr. Todd DeKay, the Director of the ABE Center at Eastern New Mexico University-Roswell, who thanked the LESC for listening to his concerns and previously sponsoring legislation to address them. Mr. DeKay stated that his program serves 2,000 to 2,500 students a year and those students currently pay approximately $8,000 to earn their GEDs. He said that, next year, that figure will increase to roughly $24,000, and he stressed the need for those students to be included in discussions regarding GED cost increases. In closing, Mr. DeKay noted that if parents are educated, they will value education, and 75 percent of crimes committed in the US are done by high school dropouts.

ADJOURNMENT

There being no further business, the Chair adjourned the LESC meeting at 4:15 p.m.

______________________________ Chair

8-19-2013 ____________________ Date