MINUTES
LEGISLATIVE FINANCE COMMIEE
AUGUST 9th, 10th , 11th and 12th, 2005

Representative Luciano "Lucky" Varela, chairman, called the Legislative Finance Committee (LFC) meeting to order in the subcommittees, the LFC Performance Review Subcommittee and the LFC Audit/Information Technology/Capital Subcommittee, on Tuesday, August 9, 2005, at 8:40 a.m., at San Juan College, in Farmington.

The following LFC members were present on August 9th:

Representative Luciano "Lucky" Varela, chairman, Senator Ben D. Altamirano for Joseph Fidel, vice chairman, Representatives Nick Salazar, Rhonda King, Jeannette Wallace, Sandra Townsend, Thomas Taylor for Brian Moore, Edward Sandoval for Donald Whitaker, and Henry "Kiki" Saavedra, and Senators Shannon Robinson for Phil Griego, Timothy Jennings, Sue Wilson Beffort, Joseph Carraro, and Carroll Leavell for Leonard Lee Rawson.

The following LFC members were present on August 10th:

Representative Luciano "Lucky" Varela, chairman, Senator Ben D. Altamirano for Joseph Fidel, vice chairman, Representatives Nick Salazar, Rhonda King, Jeannette Wallace, Sandra Townsend, Thomas Taylor for Brian Moore, Edward Sandoval for Donald Whitaker and Henry "Kiki" Saavedra, and Senators Shannon Robinson for Phil Griego, Timothy Jennings, Sue Wilson Beffort, Joseph Carraro and Carroll Leavell for Leonard Lee Rawson, and Leonard Tsosie for John Arthur Smith.

The following LFC members were present on August 11th:

Representative Luciano "Lucky" Varela, chairman, Senator Ben D. Altamirano for Joseph Fidel, vice chairman, Representatives Nick Salazar, Rhonda King, Jeannette Wallace, Sandra Townsend, Thomas Taylor for Brian Moore, Edward Sandoval for Donald Whitaker, and Henry "Kiki" Saavedra, and Senators Timothy Jennings, Sue Wilson Beffort, Joseph Carraro and Carroll Leavell for Leonard Lee Rawson, Leonard Tsosie for Pete Campos, and Mary Kay Papen for John Arthur Smith.

The following LFC members were present on August 12th:

Representative Luciano "Lucky" Varela, chairman, Senator Ben D. Altamirano for Joseph Fidel, vice chairman, Representatives Nick Salazar, Rhonda King, Jeannette Wallace, Sandra Townsend, Thomas Taylor for Brian Moore, Edward Sandoval for Donald Whitaker, and Henry "Kiki" Saavedra, and Senators Shannon Robinson for Phil Griego Timothy Jennings, Sue Wilson Beffort, Joseph Carraro and Carroll Leavell for Leonard Lee Rawson, Leonard Tsosie for Pete Campos, and Mary Kay Papen for John Arthur Smith.

Upon adjournment of the Audit/Information Technology/Capital Subcommittee, the members of the subcommittee moved to the full committee as a subcommittee of the whole to begin the following hearings. Upon adjournment of the Performance Revenue Subcommittee, the subcommittee members also joined the members hearing.

SUBSTANCE ABUSE AUDIT

Lorenzo Garcia, performance auditor, LFC, said staff had five objectives: identify all substance abuse programs, determine dollars appropriated and how disbursed, determine population served and how they have been served, determine administrative costs, and determine equity of funding distribution by regions. The majority of substance abuse treatment is spread across the following six areas: Department of Health (DOH), Medicaid at the Human Services Department (HSD), the drug courts at the Administrative Office of the Courts (AOC), the DWI program at the Department of Finance and Administration (DFA), adult community corrections program at the Corrections Department (NMCD), and the Children, Youth and Families Department (CYFD). Because of data incompatibility among the various programs and because DOH is the only one of these agencies whose program is designed specifically to manage and track substance abuse client treatment and progress, the audit was focused on DOH treatment-related activities. Staff limited its review of these other programs to gaining an understanding of their substance abuse activities.

Mr. Garcia said the Behavioral Health Services Division (BHSD) of DOH has been delegated the primary responsibility for administering publicly funded substance abuse treatment services in New Mexico. Until June 30 of the current year the division contracted with three regional care coordinators (RCCs) to manage substance abuse providers. Since July 1, the regions have been adjusted to accommodate the needs of the system's redesign. The RCCs and their subcontractors provide a variety of treatment services including detoxification, inpatient and outpatient services. The management of the substance abuse providers by the RCCs and DOH depends largely on data that is processed into the Behavoiral Health Information System (BHIS). A February 2004 review by the U.S. Department of Health and Human Services stated that department's prevention leadership has been stable, is well-versed in prevention practice and theory and is dedicated to improving the prevention system. Important to the report's subject matter is the establishment of the Interagency Behavioral Health Purchasing Collaborative, or the collaborative. The collaborative is 15 state agencies and was formed to create a single behavioral-health-delivery system that combines funding sources of multiple state agencies into a unified network of services. ValueOptions New Mexico was selected to run the system with oversight by the collaborative.

Mr. Garcia reviewed substance abuse trends in New Mexico and substance abuse problems in New Mexico with the committee.

Susan Fleishmann, performance auditor, reviewed comparisons between regions with regard to data and methodology.

Mr. Garcia said the Behavioral Health Information System has significant limitations, particularly with tracking provider service encounters and related costs. The department uses the addiction severity index (ASI), the most common national used tool for monitoring substance abuse clients, but does not gather enough data to adequately assess outcomes. Clients are not tracked after completion of the treatment program. The limited available outcome data shows the substance-abuse clients who stay in a treatment program long enough to have their progress assessed improve.

Mr. Garcia said the overwhelming workload of the monitoring three RCCs and hundreds of providers significantly impedes adequate oversight of the system. DOH audits each RCC and only 10 to 15 providers annually, although they do review the oversight that the RCC provides. The problem is the oversight includes providers auditing themselves.

Mr. Garcia said the method for tracking the volume of services is inaccurate because it allows for double reporting when funding comes from different sources. As a result some providers report providing 200 percent of the services for which they have been paid while some providers report providing just 50 percent of the services for which they have been paid. These reports have not been reconciled or documented and the differences have not been explained.

Mr. Garcia said the auditors found serious negligence, reporting deficiencies and possible fraud at the Recovery from Addictions Program (RAP) in Santa Fe. A copy of the review was provided to the Attorney General (AG) to see if the AG wanted to investigate and they declined because of a conflict of interest. AG suggested that it be reported to other local investigative and prosecutorial agencies. Staff recommends that DOH refer the RAP matter to law enforcement as recommended by AG.

Mr. Garcia said the staff an analysis of billing by DOH and Medicaid showed that for at least the past two years some providers have been billing both programs for the same services. At LFCs' request DOH and HSD have been jointly investigating the matter.

The audit staff has concluded that many of the issues raised by the audit will be address by ValueOptions and the collaborative, although the contract with the ValueOptions has some weaknesses. The staff recommends the contract be amended.

Susan Fleishmann said an analysis of the ValueOptions contract found the contract calls for a baseline client outcome measure that may be insufficient, does not provide for adequate contract oversight, and does not address data ownership, among other problems.

Chairman Varela asked Mr. Garcia to send a letter to the collaborative on the assessment of the contract on how it can be strengthened.

INVESTMENT CONSIDERATIONS FOR INVESTING IN ALTERNATIVE ASSET CLASSES FOLLOWING ELIMINATION OF LEGAL LIMITS ON INVESTMENT CLASSES; ACHIEVEMENT AN 8 PERCENT INVESTMENT RETURN

Greg Geisler, principal analyst, LFC, introduced Allan Martin from New England Pension Consultants. Mr. Martin said the passage of House Bill 389 will provide the state the opportunity to invest large funds outside of the traditional constraints.

Motivation for looking at alternative investments is that return expectations for most traditional asset classes are historically low. Looking forward, analysts estimate equities and bonds are going to be returning around 4 percent, especially with the prospect of rising interest rates. As return expectations decline, the trustees face three options: lower the funds' investment return assumption and require the state, employers, and individual employees to make higher contributions, improve fund returns, or reduce benefits.

Mr. Martin discussed alternative investments, how they behave, and what challenges that will be faced in implementing these programs. Alternative assets include private equity, such as ventures, buyouts, and special situations, and subordinate debt. Alternative assets often involve companies, often new, that are not publicly traded on the stock market. Hedge funds are funds that seek return by employing strategies such as selling stocks long or short to take advantage of swings in markets. Real estate investments involve purchasing assets such as raw land or commercial property. The State Investment Council has recently undertaken this activity. Other alternative assets include natural resources such as oil and gas, timber, and agriculture. Mr. Martin said fund managers can typically generate higher rates of return in these more inefficient markets.

Mr. Martin said, however, alternative portfolios require extensive monitoring and the information can be difficult to obtain. Because it can take years to realize returns, it is difficult to incorporate non-liquid assets into performance measurement for a total portfolio, making it harder to get performance data. Alternative assets typically require relatively high minimum investments and management fees tend to be higher, especially for real estate investment managers.

David Abbey, director, LFC, said the State Investment Council is moving aggressively into alternative assets and noted Mr. Martin's point that performance can be hard to measure. Mr. Martin said the joint LFC/Department of Finance and Administration quarterly report on investment performance does a good job of comparing investing agency performance. He said New England Pension Consultants would be happy to work with LFC staff to help identify possible improvements.

WELCOMING REMARKS

Representative Varela welcomed the committee and public to Farmington and the committee heard welcoming remarks from Mayor William Standley, Farmington, Commissioner Jim Henderson, San Juan County Commission Chairman and Dr. Carol J. Spencer, president, San Juan College.

STATE TAX EXPENDITURES-PURPOSE AND PERFORMANCE

Jim Eads, executive director, New Mexico Tax Research Institute, said the term "tax expenditure" refers to the revenue a government gives up by providing tax rebates, credits and other departures from a "normal" tax structure. The federal government and many states, including several in the region, use different methods for measuring the expenditure. LFC could benefit from adopting a formal method for quantifying tax expenditures because it would provide a more systematic way of looking at departures from standard tax policy with the same transparency as the methods of looking at more explicit expenditures. In times of fiscal constraint, the tax expenditure budget could become a "shopping list" that could be used to select the "departures" that could be subject to reduction or elimination.

Kelly O'Donnell, assistant director for fiscal policy, Taxation and Revenue Department (TRD), said the Legislature has shown interest lately examining the effectiveness of tax incentives in encouraging certain behaviors. Ms. O'Donnell reviewed what the tax incentives are, how they are utilized, what they cost and how the state could gauge their effectiveness. Five types of tax incentives are in place in New Mexico, exemptions and deductions to the gross receipts tax (GRT), industrial revenue bonds, income apportionment methodologies, and detached credits.

Ms. O'Donnell said the objectives of tax incentives are to stimulate economic development and improve the quality of life in the state with job creation and by fostering specific industries that the state has deemed valuable as sources of potential job growth and income growth. New Mexico is comparable with other states with regard to tax incentives. States are trying to attract economic growth with favorable tax laws. Competition among states is successfully used by industry to receive preferential tax treatment where it may not otherwise be warranted. Ms. O'Donnell said New Mexico has 39 exceptions and 62 deductions from the GRT. The state will have to adopt a more detailed income-reporting process if it wants to precisely determine the cost of those exemptions and deductions.

Norton Francis, chief economist, LFC, said the hearing brief includes the costs of some tax incentives. Most of the values come from fiscal impact reports and such data. Mr. Francis said the state foregoes a total of about $75 million in GRT revenue through exemptions for insurance premiums and motor vehicle, food, and medical purchases and another $26 million through the low-income comprehensive tax rebate.

Mr. Francis also reviewed the tax expenditures related to the film production tax credit, the high wage jobs tax credit and the hybrid motor vehicle excise tax exemption. They each have particular purposes and defining the purpose is critical.

Responding to Representative Varela with regard to the tax base in New Mexico and where the state ranks in the country, Mr. Eads said whether or not New Mexico's base is good or bad obviously depends on your perspective. He said in his experience in looking at state tax bases, New Mexico's gross receipts tax is different than many other states.

Responding to Representative King, Mr. Francis said an informal task force of economists is looking at how to use an existing tax analysis model more effectively. Mr. Abbey said the committee should consider holding a follow-up hearing in October when the revenue estimates are presented. What matters is that the Tax secretary and DFA secretary working with our staff need to come in and give a clearer direction of where they are heading with this. And if the Chairman agrees we will put that on our October 26th agenda along with the revenue estimates," Mr. Abbey said.

UPDATE ON STATE INVESTMENT COUNCIL'S ECONOMICALLY TARGETED INVESTMENTS, FILM AND PRIVATE EQUITY PROGRAMS

Greg Kulka, director, State Investment Council, Private Equity and Film Investments; said he was asked to testify on economically targeted investments and private equity investments. He said investing in private equity tends to result in greater returns, is removed from up and down movement in the stock market, diversifies a portfolio, and provides access to proprietary deals.

Mr. Kulka said the State Investment Council's target for return on private equity investment is 6 percent of the market value and the fund is $12 billion. Since 2004, SIC has made a more concerted effort to allocate more money to the buyout sector to move away from venture capital. When the national program started in 1988 the statute specified venture capital. In 1998 the law was changed to include all the other aspects of private equity and the land grant permanent fund was added as a funding source. The goal is to have 25 percent to 30 percent of the portfolio in venture capital and the rest in other classes of private equity. Right now, 37 percent is in venture capital.

Mr. Kulka said the New Mexico companies in which the state has invested currently employ 1,016 and have a total annual payroll of $102 thousand. The state has invested almost $63 million in film productions that have payrolls of $12 million, have spent $42.5 million in New Mexico, and have employed 1,017 state residents.

Brian Birk, regional director of Fort Washington Capital Partners, said his company advises New Mexico on its instate private equity fund and is the general partner or investment manager for New Mexico co-investments.

Responding to Senator Carraro, Mr. Birk said the state pays Fort Washington a flat fee of $120 thousand and Fort Washington must meet performance requirements. Responding to Representative King, Mr. Birk said the company first assesses the return to the state from a film investment then the potential economic impact.

Mr. Abbey commented that the Economic Development Department Performance has information on jobs created, but more important, part of the reporting from this office has to projected rates of return on these kinds of investments.

Senator Beffort said she talked to Mike Bowes, the chief executive officer of Desert Power who testified earlier on the importance of state investment in the creation of his company, and Mr. Bowes said the company pays 80 percent of the employee portion of health insurance premiums and hires their employees out of the San Juan College apprentice programs at a starting pay of $15.98 an hour. Senator Beffort said these types of investments are good for New Mexico and suggested to the investment company that they might incorporate some of their evaluations of these firms.

HIGHER EDUCATION FUNDING FORMULA OVERVIEW AND MULTI-YEAR FUNDING OUTLOOK – COST OF OPENING THE DOORS; UPDATE ON PERFORMANCE FUNDING

Arley Williams, principal analyst, LFC, reviewed LFC history of general fund functional expenditures with the committee from FY89 to FY06, actual, preliminary and estimated. Ms. Williams also reviewed state general fund expenditures by major function to include public education, Medicaid, higher education, health and human services, public safety and all other government from FY96 to FY06. Ms. Williams overviewed sources of two-year and four-year public, post-secondary institutional revenue between FY95 and FY05 with the committee. In FY95 the state appropriation for two-year institutions was 62 percent of total revenue and in FY05 the state appropriation was 60 percent of total revenue for instruction and general purposes, while tuition revenues were at 12 percent in FY95 and 14 percent in FY05. Local tax levy revenues as a percent of total instruction and general revenues were 25 percent in FY95 and 23 percent in FY05 for two-year institutions. For four-year institutions, state appropriations accounted for 68 percent of total instruction and general revenues in FY95, down to 62 percent in FY05. Tuition revenues in FY95 were 21 percent, compared to 26 percent in FY05 with local tax levy revenues at 9 percent in FY95 and in FY05 as well. Ms. Williams reviewed the New Mexico higher education funding formula structure with the committee:

- Prior year funding base
- Plus adjustment, such as workload and facilities
- Plus net transfers
- Minus revenue credits
- Plus inflationary factors and compensation increases
- Plus incentive funding
  Plus research and public service project funding

The funding formula emphasizes the enrollment band concept to each campus to qualify for incremental enrollment-based workload funding increases, specifically:

- +3% threshold in either student credit hours or base dollars
- -5% threshold in only student credit hours

Ms. Williams reviewed typical higher education enrollment drivers with the committee:

- Population growth
- Underlying demographic trends
- Changes in the rate at which high school graduates continue on to college
- Changes in participation rates for 18 to 24 year olds
- Changes in participation rates for 25 to 49 year olds
- Higher education funding levels and tuition and fees
- Opportunity costs, i.e. the availability and attractiveness of other options such as entering the workforce
- Availability of student financial aid
- Economic conditions
- Need for continuing education and skills for the workplace
- Extending access
- Alternative delivery mechanisms
- Participation in concurrent enrollment programs
- Effectiveness of student retention efforts which drive up costs
- Greater preparedness of students which reduces the need for remedial courses and reduces time to degree, but may add to costs through reduced drop-out rates

Ms. Williams reviewed a comparison of New Mexico two-year and four-year public, post-secondary institution enrollments for formula workload purposes for FY07 based on preliminary data from an survey of institutions by LFC working with COUP and NMACC. The results show that the number of institutions which may be above the 3 percent student credit hour enrollment band to trigger formula funding increases could be lower than last year. Ms. Williams cautioned the survey is only a preliminary indicator, but could be a sign that the general fund cost of workload for FY07 could be lower than FY06. Final data for both student credit hours and dollar changes will be calculated by the Higher Education Department and available later this fall.

Ms. Williams reviewed the General Fund cost of one percent adjustments in FY06 with regard to formula factors:

- One percent tuition credit = $1.8 million
- One percent compensation increase = $6.9 million

One percent increase in inflationary factors:

- Group insurance: $447 thousand
- Other fringe benefits: $27 thousand
- Risk Insurance: $58 thousand
- Libraries: $95 thousand
- Utilities: $339 thousand
- Other Costs: $588 thousand

Ms. Williams also reviewed a comparison of medical insurance cost trend factors and a comparison of drug cost trend factors.

NATIONAL PERSPECTIVE ON HIGHER EDUCATION COSTS AND TUITION AND PRICING POLICY TREND

Paul Lingenfelter, State Higher Education Executive Officers (SHEEO), stated last year the U.S. had 1.3 million college graduates with 70 thousand engineers, China had 3.3 million college graduates with 60 thousand engineers, India also had 3 million college graduates. The importance of education in the United States has become enormous. Dr. Lingenfelter said the present situation with regard to state funding for higher education is almost as if higher education was going to the grand jury seeking an indictment of the state for its failures. The instruction and research of colleges and universities build prosperity, add to quality of life and are essential for democracy. Nationally, the enrollment demand is unrelenting yet state funding is decreasing as a percentage of university revenues and higher education is receiving a decreasing percentage of state appropriations. The state's response is: 1) we have funded enrollment growth; 2) inflation, tuition and fee increases have greatly exceeded inflation; 3) the people have needs in addition to higher education and 4) where is all the money going? Higher education responds the money is going for: 1) competitive faculty salaries, student aid and student services, 2) health care costs and retirement, keeping pace with technological change, 3) the cost of keeping programs current; 4) teaching loads to attract strong faculty and 5) operation and maintenance of aging facilities. The state's counter-response is: 1) what about incoherent curricula-courses on obscure topics; 2) lots of mediocre research; 3) wasteful competition for empty prestige; 4) wasteful uses of faculty time, 5) frills for pampered students, 6) unjustified reductions in teaching loads and 7) no motivation to reduce costs in seller's market. Dr. Lingenfelter said the grand jury deliberates, and both the state and higher education are indicted.

Dr. Lingenfelter said the point of the scenario is to emphasize the importance of higher education. Last year SHEEO sponsored a national commission on accountability in higher education; the final report noted accountability is all about improving performance and is not about measuring it, punishing it or rewarding it (DID HE REALLY SAY THIS?). It is a shared responsibility that requires cooperation between educators, state leaders and public officials.

Dr. Lingenfelter said money is the answer is the higher education question, but there are some wrong ideas about money, that there is one right amount, the only way things will get better results is to spend more money and you can get the results needed without spending new money. The right questions to ask about money are:

- What do we need from higher education?
- What can we do better with the money we have?
- What do we need that justifies additional funds?

Dr. Lingenfelter reviewed the national perspective on higher education funding trends with the committee, including state funding per full-time equivalent (FTE) student from 1980 to 2004 and 1970 to 2003. Dr. Lingenfelter also reviewed tuition and fees trends with the committee.

Dr. Lingenfelter said higher education cost drivers are the price of talent, competition for students, faculty, market position and changing technology. Dr. Lingenfelter reviewed the Consumer Price Index (CPI) and other key indicators and costs in the nation's economy. Since 1991 the CPI went up 39 percent. Personal income per capita went up 65.6 percent. In comparison, the higher education price index went up 56 percent, and the higher education cost adjustment went up 52 percent. Basically the higher education cost adjustment takes 75 percent of the budget, personal services, benefits, salaries and 25 percent general inflation. Dr. Lingenfelter reviewed a national analysis of state higher education finance with the committee, adjusting for the most significant factors that are part of the financial decision making part of the process.

- Annual, full-time-equivalent enrollment
- State and local support per FTE
- Net tuition and state student aid
- State funding for research, agriculture, medicine
- Differences in cost of living and enrollment mix
- Inflation
- Educational spending per FTE
- Taxable wealth and tax effort

Dr. Lingenfelter reviewed FTE enrollment growth for all states from 1991 to 2004 with the committee. A state like California that has a large community college sector tends to have a smaller aggregate cost per student than states such as Nebraska that has virtually none. Dr. Lingenfelter also reviewed educational appropriations per FTE and percent change by state with regard to appropriations, tuition, tuition as a percent of educational revenue and percent tuition per one percent appropriation cut comparisons among the states. Dr. Lingenfelter reviewed enrollment growth national averages with the committee which showed New Mexico above the national average. The higher education appropriation and tuition changes in New Mexico were also above the national average. With regard to 2004 tuition and student aid, Dr. Lingenfelter said the tuition in New Mexico is below average. New Mexico has 80 percent of the national average in tax wealth, and tax effort is 5 percent higher than the national average. Dr. Lingenfelter reviewed cost of living and enrollment mix percentages and total revenues per FTE with the committee.

The committee heard comments from the higher education representatives present at the hearing, including responses to questions on the impacts and historical trends in the tuition credit and tuition increases,

Acting Secretary Kathy Cantrell, New Mexico Higher Education Department, reviewed New Mexico fiscal trends in higher education with the committee. Ms. Cantrell reviewed appropriation history, total current fund budgets, restricted and unrestricted, budgeted vs. formula-generated instruction and general expenditures per FTE student at university level and community college level. Ms. Cantrell also reviewed university and community college instruction and general revenues.

Mr. Jim McDonough, vice president, Business and Finance, New Mexico State University, (NMSU), representing the Council of University Presidents, said the Blue Ribbon Task Force recommended essentially four major components for the general fund cost of funding higher education: Current appropriations, adjustments for compensation increases, adjustments for inflation, and increases and decreases based on student credit hours and student facilities. Mr. McDonough reviewed full-time instructional faculty salaries as a percent of peer averages with the committee. NMSU added one percent to what the legislature appropriated for compensation this last year. Over the last five years NMSU had an average increase of a little over three percent. When you consider the cost of living, Mr. McDonough noted it makes it difficult to make any difference. Mr. McDonough reviewed tuition and fee comparisons of New Mexico Tech, NMSU, University of New Mexico, Eastern New Mexico

University, New Mexico Highlands University and Western New Mexico University. Mr. McDonough said with regard to health insurance, over the last five years, the four-year institutions have had an average increase of 12.06 percent to their health care costs. The institutions have also had to add for utility costs where there has been no increase for the last decade. Over the last five years, the 6 universities have had to address $5.6 million in utility costs. NMSU has worked on conservation and is negotiating with providers of gas and oil. With regard to risk management charges for insurance, Mr. McDonough said based on some major lawsuits as well as property damage throughout the United States due to weather conditions over the last 5 years, the four-year institutions have had to come up with $4.1 million or a 60 percent increase to risk management charges. Mr. McDonough also reviewed appropriations with regard to building and equipment replacement over the last five years.

Ms. Katharine Winograd, Planning Officer, Albuquerque Technical Vocational Institute and New Mexico Association of Community Colleges, said when the higher education funding formula was put together, the intent was to be very clear on the workflow issues in terms of its relationship to what happens to the students in the classroom and in student services. Inflation was separated from workload; however, in the three years the new formula has been in use, inflationary elements have never been fully funded which is a problem for many of the higher education institutions. Albuquerque TV I has been fortunate in that it has had very large enrollment growth over the last three years which has provided financial support and allowed the institution to pay for the increases in health insurance and increases in utilities. However, addressing these costs has taken money away from the classroom. When the formula was put in place, the intent was that four-year and two-year institutions would be funded at the same level, however, that did not happen for the science cluster.

Responding to Senator Carraro with regard to peer institutions, Mr. McDonough said the institutions are competing in a national market and in order to be competitive in a national market and attract and retain the faculty the institutions have to strive to at least try and get closer to the peer institutions.

Responding to Representative Saavedra, Mr. Abbey said the Higher Education Department and institutions will come to the LFC budget hearing in November and again in December in order to give more time.

NEW MEXICO HIGHER EDUCATION PRICE AND COST ISSUES; INFLATIONARY FACTORS; SALARY AND BENEFIT ISSUES; AND OTHER COST DRIVERS

Acting Secretary Kathy Cantrell, New Mexico Higher Education Department, reviewed fiscal trends in higher education and Jim McDonough, vice president, Business and Finance, New Mexico State University (NMSU), reviewed full-time instructional faculty salaries as a percent of peer averages. NMSU last year added 1 percent to the legislative appropriation for salaries but, given that salaries have increase an average of just 3 percent over the last five years, salaries have not kept pace with the cost of living. Mr. McDonough said the state's universities over the last five years have also had to address a 12 percent increase in healthcare costs and unfunded increases in utility costs of $5.6 million. NMSU has worked on energy conservation and has negotiated with fuel suppliers. The institutions have also had to absorb a 60 percent increase in risk management charges over the last five years.

Katharine Winograd, planning officer, Albuquerque Technical Vocational Institute and New Mexico Association of Community Colleges, said when the formula was put together, the intent was to ensure it was very clear on the workflow issues in terms of its relationship to what happens to the students in the classroom and in student services. Inflation was separated from that however in the three years the formula has been in use and only workload has been funded. The higher education formula has never been truly funded. Albuquerque TVI has been fortunate because it has grown significantly over the last three years, which has allowed it to pay for the increases in health insurance and utilities, but that has taken money away from the classroom. When the formula was put in place the intent was that the four-year and the two-year institutions would be funded at the same level, however, that did not happen.

Responding to Senator Carraro with regard to peer institutions, Mr. McDonough said the institutions are competing in a national market and in order to be competitive in a national market and attract and retain the faculty the institutions have to strive to at least try and get closer to the peer institutions.

MISCELLANEOUS BUSINESS

Approval of FY07 Budge Guidelines. Mr. Abbey presented the guidelines for approval, saying gas prices will be higher. The guidelines list committee priorities as education, health care, employee compensation, and public safety. Mr. Abbey said included in the guidelines is an alternative for expansion or initiation of new programs; the committee will consider use of current funding to accelerate multi-year spending commitments. Senator Altamirano moved to adopt the guidelines and Representative Salazar seconded the motion, which passed with no objections.

Approval of July 2005 Minutes. Mr. Abbey asked for approval of the minutes based on the committees review and comments. With the chairman's approval they will then be distributed to the public. Senator Altamirano moved to adopt the minutes with the caveat that they will be reviewed by the members and Representative Saavedra seconded the motion, which passed with no objections.

Approval of Contract. Mr. Abbey asked for approval of a contract with the University of New Mexico Bureau of Business and Economic Research, which helps the LFC staff with the state and national economic forecasts. Staff works with Taxation and Revenue Department and Department of Finance and Administration to bring the forecasts together. The recommendation includes an increase of $1,400. Representative Sandoval moved to approve the contract and Representative Salazar seconded the motion, which passed with no objection.

Adopt FY07 Budget Request. Mr. Abbey said LFC is seeking a base request increase of 1 percent. The request includes more in printing and committee travel. The request includes 1 additional FTE for the audit staff. Mr. Abbey asked for the committee to review the request and to take action at a later date. Senator Altamirano suggested adding an additional analyst as well. The committee discussed the professional staff at LFC and how they are dependant on them for information and the concern of burnout. The committee asked Mr. Abbey to determine any additional staffing needs.

Approval of Changes to LFC Policy and Procedures. Mr. Abbey said he was not asking for approval but for the members to review it and approve it at a later date. Mr. Abbey reviewed a significant change, the updated annual leave accrual rates, effective July 1, 2005 pursuant to approved rates by Legislative Council Service (LCS). The executive boosted the rate of leave for exempt employees by 20 percent. LCS administratively adopted the executive policy because its staff is also exempt. Mr. Abbey suggested the committee should consider it so it can conform to the rest of the legislative agencies. Mr. Abbey said LFC staff does not have a problem with the current accrual amounts and most staff has substantial accrued leave. The executive also adopted a policy where exempt employees with annual leave greater than 240 can sell it back. LFC staff is not able to take advantage of this and some staff members have large amounts of leave. Representative Varela recommended requesting a detailed exempt salary plan by law from the departments and agencies. Senator Altamirano asked the chairman and Mr. Abbey to work on the policy. Representative Varela suggested the committee look at exempt versus classified policies. Gene Moser, principal analyst, LFC, said as soon as the unions pick up on the issue they will insist there be equity on the table and they will want the same thing. It was suggested a subcommittee address the issue.

SCHOOLS IN NEED OF IMPROVEMENT PERFORMANCE AUDIT

Dr. Robert Behrendt, performance auditor, LFC, reviewed the executive summary of the report with the committee:

EXECUTIVE SUMMARY

Findings.

- *The Achievement Gap in New Mexico and Schools Not Making Adequate Yearly Progress.* New Mexico's achievement gap is driven by poverty and many factors causing low student achievement are out of the control of schools. Low-performing poverty schools lack quality teachers and have weak leadership and high principal turnover. Only 41 percent of children in the poverty subgroup as defined by the federal No Child Left Behind Act are proficient in math and reading while 70 percent of children in the NCLB Caucasian subgroup are proficient.

  A growing number of New Mexico schools are positioned to enter corrective action. The number has increased from 15 in the 2002-2003 school year (SY03) to 55 in SY04 to 69 in the SY05. Public Education Department (PED) projections have the number growing to 90 in SY06. The good news is that only 46 of those schools have serious problems as indicated by all students not making adequate yearly progress.

Responding to Representative Varela, Secretary Veronica Garcia, PED, said 37 different factors affect whether a school makes AYP. For example, Eldorado failed to meet participation rates this year because not all special education students were tested.

Responding to Representative Varela with regard to a parallel to defining students in terms of progress, Ms. Garcia said the department is working on defining the terms of progress.

- *Research on Low-Performing Schools and State Interventions.* Research on low-performing schools indicates that many schools in corrective action cannot improve themselves but need external change agents and additional resources to turn around. Research indicates states should target specific interventions to the unique needs of each school.

- *PED School Improvement Strategies.* PED's school improvement strategy and unit has changed every year since SY03. Since SY03 the unit has experienced 300 percent staff turnover and been relocated organizationally five times with as many different directors. The proposed SY06 PED school improvement strategy does not call for the legal prescriptions for corrective action schools to be implemented until SY07. The PED's School Improvement Framework and the ambitious Project Excel do not provide intensive site-based interventions to schools in need of improvement

(SINOI), spread PED resources across 132 schools, and are designed to keep schools out of corrective action rather than getting those already in out.

- *Best Practices of Districts and Schools.* Best practices of New Mexico school districts and schools indicate that APS, with the largest number of SINOI schools, also has the greatest resources to redirect to those schools. Districts with high percentages of Native American and English language learners and many SINOI schools have fewer resources to allocate for improvement efforts.

- *Funding, Student Outcomes and Resource Allocation Pattern Comparisons.* Comparison within New Mexico show that high achieving school districts are smaller, spend more per student due to the impact of funding formula factors that generate more dollars for teacher training and experience and school and district size. New Mexico high poverty/high achieving districts have fewer students and lower percentages of Native American and English language learners than high poverty/low achieving districts. New Mexico high poverty/high achieving districts are also smaller than high poverty/low achieving districts, spend more on direct instruction and instructional support per pupil, and have a higher percent of teachers with master's degrees.

  Data presented in this report indicates that the state equalization guarantee computation for at-risk unit values needs to generate more funding for larger high poverty school districts with higher populations of Native American and English language learner students. To close the achievement gap these districts need the funding capacity to lower student-teacher ratios, recruit and retain highly qualified teachers and principals, and increase the amount of direct expenditures on instruction.

Responding to Senator Altamirano, Mr. Behrendt said the data suggests 90 percent of the schools that are not making AYP are not bad schools; it is the 10 percent where all students did not make the AYP that are highly in need of improvement.

Responding to Senator Carraro with regard to the correlation between ethnicity and poverty as a predictor of what is lacking in achievement, Mr. Behrendt said a student living in poverty has a higher chance of being a low academic performer. It is the poverty not ethnicity that is causing achievement issues.

Mr. Behrendt said the recommendations on the audit report are as follows:

- PED, DOH, HSD and CYFD must work together to address the childhood poverty in our schools and to target high poverty schools and develop a comprehensive implementation strategy.
- Redistribute high quality principals and teachers and provide better working conditions and salary levels to reduce teacher and principal turnover. It is going to require some incentive pay.
- Conduct comprehensive site audits to determine what specific operational and leadership factors need to be improved in individual corrective action schools and target 17 to 30 of this years corrective action schools whose total populations are not making AYP progress.
- Provide targeted schools with expert PED change agents who can provide a variety of tools and strategies to transform school operations and culture and staff the Priority Schools Bureau with highly skilled educators and change agents to work with districts to implement the corrective action measures called for in the law.

- Review the Arizona school improvement strategy, which has been successful in making quick improvement and uses rewards for successful principals and highly qualified teachers.
- Provide a significantly higher level of district management oversight through PED to New Mexico school districts that are under performing.
- Address PED organizational issues with respect to changing school improvement strategies, internal reorganization and staff turnover.
- Analyze the funding formula to determine if the at-risk factor needs to be adjusted.

Representative Varela said he wants to wait and see what the Interim Formula Task Force comes up with and consider the issues of additional funding to try to improve the system. He said the governor wants the Legislature to work with the department so a plan is ready for the next legislative session. The audit findings should also be presented to the Legislative Education Study Committee. Representative Varela said the Legislature should also consider the limitations on the authority of the state department over local districts. The best policies and practices are worthless if not implemented on a local level.

Secretary Garcia said the department concurs with the recommendations and has begun to implement some of those recommendations. Secretary Garcia would like to propose a plan to the governor that all schools move toward national accreditation. District efforts along with accreditation and other approaches should result in significant results.

REVIEW OF NEW TRAVEL REIMBURSEMENT POLICY

Sylvia Barela, office services manager, LFC, briefed the committee on the new per diem rates.

PRE-KINDERGARTEN IMPLEMENTATION

Secretary Veronica Garcia, Public Education Department; Deputy Secretary Diane Rivera, Children, Youth and Families Department; Dr. Kurt Steinhaus, Office of the Governor; Stephanie Clothier, National Conference of State Legislatures

Mr. Jack Tweedie, Director, Children and Family Program, NCSL, and Steffanie Clothier, Program Manager, Children and Family Program, NCSL, reviewed with the committee a list New Mexico Pre-kindergarten Implementation Questions.

Secretary Garcia introduced the following presenters Ms. Diane Rivera, Deputy Secretary, CYFD; and Dr. Kurt Steinhaus, Office of the Governor.

Secretary Garcia thanked the committee for the opportunity to provide them with a summary of the pre-kindergarten implementation. The gap begins with young children and continues through higher education, and New Mexico is investing its resources in closing the K-12 achievement gap between students. One report estimates about half of the achievement gap already exists by the time children enter kindergarten. This happens so early because too many kids do not have the opportunity to learn pre-literacy and developmental skills before they start school. That is changing, thanks to the efforts of the legislature with the PreK Act of 2005. The committees' interest in helping pass HB 337 in focusing resources in communities of greatest need is very appreciated.

Mr. Steinhaus reviewed the Presentation Topics and also introduced Danny Sandoval, Deputy Secretary, CYFD; Roger Gillespie, Acting Director, Family Services, who were in the audience.

Dr. Garcia reviewed the purpose of New Mexico's Pre-Kindergarten (Pre-K) initiative it is to:

- Increase access to voluntary high-quality PreK programs
- Provide developmentally appropriate activities for New Mexico children
- Expand early childhood community capacity
- Support linguistically & culturally appropriate curriculum
- Focus on school readiness

Ms. Rivera said legislation HB 337 begins with findings from the legislature which specifically are special needs among the state's population of four-year-old children which warrant the provision of pre-kindergarten programs. Secondly, participation in quality pre-kindergarten has a positive effect on children's intellectual, emotional, social and physical development are critical to children's success in school.

Dr. Steinhaus quoted "CYFD and PED will cooperate in development and implementation of the PreK Initiative". He said that almost every Tuesday at 10:30 in the morning at the capitol building staff members from both agencies as well as from the department of Department of Finance and Administration (DFA), the Governor's office, the Children's Cabinet, and the Lieutenant's Governor's office meet to work together on Pre-K, Dr. Steinhaus invited committee members to these meetings. Dr. Steinhaus second point was a quick summary of the work being done or in process: Pre-K Request For Proposal (RFP) and awards, grant writing workshops, statewide evaluation of the RFP, data collection, work with early childhood professionals, higher education, orientation training and technical assistance.

Dr. Garcia reviewed the Pre-K Collaborative: The collaborative meets on Tuesdays with members of the Collaborative CYFD, PED, DFA Office of Education Accountability, Children's Cabinet and staff from the Lieutenant Governor and Governor's Office. The collaborative is developing the Pre-K Concept including measuring growth and development, technical assistance and staff development in Pre-K programs, the orientation for teachers and project directors, communications with legislators, identifying a strong role for the Office of Child Development Board, and the data collection strategy.

The Pre-K Act eligibility summary is services may be provided by eligible providers and public schools on a per-child reimbursement rate in communities with the highest percentage of:

- Elementary students not meeting proficiency in reading and math as required for calculating adequate yearly progress (AYP).
- Title 1 elementary schools at least 66 percent of the children live within the attendance zone.

Dr. Steinhaus reviewed the Pre-K Funding 2005 Legislature:

- HB2 had $4 million that translates to $2,278,81 per child for 540 hours of direct services
- SB190 had $950,000 thousand for PreK program support and staff development
- Money appropriated for pre-kindergarten programs in fiscal years 2005 through 2007 and shall be divided equally between PED and CYFD

Dr. Steinhaus reviewed the Expenditure Plan:

- The per student reimbursement rate $3,165.02 (unit value) x 1.44 (kindergarten multiplier) divided by 2 (half-day program) = $2,278.81
- Grant Writing Workshops - $21 thousand
- T.E.A.C.H. Scholarships - $450 thousand
- Statewide PreK Evaluation - $180 thousand
- Program and In-service Training - $250 thousand
- Higher Education - $200 thousand
  - Prior learning assessments
  - Online courses

Ms. Rivera reviewed the PreK Implementation Standards:

- Flexibility: Based upon the community's cultural and linguistic strengths, programs have the flexibility to establish learning activities that best meet the developmental needs of children while adhering to New Mexico's Pre-K Program Standards.
- Growth and Development: New Mexico's Pre-K learning outcomes provide programs the framework for comprehensive, on going assessment of children's growth and development based on research-based indicators of school readiness.

Secretary Garcia said that the Pre-K Act required the agency to publish a request for proposal. The proposal was released on April 12, 2005 on PED and CYFD websites. In addition PED emailed the proposal to school district superintendents and regional educational cooperatives. CYFD's notice was sent to all licensed childcare providers. On April 14, 2005 a pre-proposal conference was attended by 160 potential bidders. There were seven grant-writing workshops throughout the state that were held April 25 through May 12. Proposals were due to PED and CYFD by May 24, 2005. Two important definitions were defined in PreK Act 2005. First is eligible provider, eligible provider is defined as a person licensed by CYFD that provides early childhood development readiness services or preschool special education or is a public school, tribal program or headstart program. Community was defined as an area defined by school district boundaries, tribal boundaries or joint boundaries of school and tribes or any combination of school districts.

Dr. Steinhaus reviewed the Request for Proposals: The total number of points the RFP can get from either the childcare center or school district is 300. 100 points applies to proficiency in reading and math, and another 100 points applies to title 1 designation. Those are the 2 priorities the legislature required on the bill. The subtotal was 100 points and that was the total on all the other evaluation factors.

Dr. Steinhaus said there are 31 programs that were funded across the state that totaled 1,538 children that will be receiving Pre-K services this year.

Ms. Rivera reviewed the Pre-K Program Funding CYFD sites. CYFD received 30 proposals requesting a total of $3.2 million in funding to service over 14,000 children. 20 programs were recommended for funding for a total of $1.7 million in funding to service 768 children in 30 locations. Of these programs, all but one are active programs within a typical school day calendar, about half of them offer other services or headstart programs and the remainder are typical half-day programs. One program, St. Marks in Albuquerque is proposing two full-day cohorts of children, one in the fall and one in the spring.

Secretary Garcia reviewed the PreK Program Funding PED funded sites. PED received 16 proposals from 15 districts and 1 charter school, requesting a total of $3.3 million to serve 1,149 children. 11 districts were recommended for a total of $1,754,683 million to serve 770 children in 20 locations in 38 classroom settings.

Secretary Garcia reviewed the PreK Evaluation. One of the best ways to provide accountability is through evaluation. Three levels of assessment and evaluation will be integral to the PreK Initiative:

- Level 1: Pre, Midpoint and Post-Assessment of children's development and readiness. It is funded by U.S. Department of Education and is called Get It, Got It, Go, it is assessment of the key educators of readiness, it includes alliteration, picturing naming and rhyming, and these are three pre-literacy skills. The data is reported on a single website and allows for printing of individual and group level report. This level 1 assessment and evaluation will be administered by teachers.
- Level 2: Assessment of program's achievement of unique program goals. Level 2 data will be gathered through annual reporting and ongoing contract monitoring.
- Level 3: External statewide evaluation of Pre-Kindergarten Initiative. Managed through DFA/OEA. This statewide evaluation will be used to determine if the Pre-K program resulted in improved student readiness for schools, using scientific methods required by the General Appropriations Act 2005. The RFP review committee has recommended that they send a contractor to begin negotiations. The plan will address the following:
    - Whether the PreK Program enhances young children's preparation for success in school.
    - How children who participate in PreK program compare to children who do not participate in PreK program, in terms of the kindergarten readiness.
    - How program quality, consistency and developmental appropriateness is addressed.

  Evaluation is at the student level, program level and overall statewide effectiveness of the program.

Dr. Steinhaus reviewed the Budget and Program Accountability. In the budget accountability every program has a contract with specific requirements. CYFD and PED staff will monitor contract implementation and submission of invoices. Pre-K funds will be stopped if requirements are not met. In the program accountability each proposal will be reviewed and monitored for programmatic expectations. Programs must inform parents about the availability of the Pre-K program, implement a selection process for equal access to the program, and post a calendar of when services will be provided. Staff will conduct announced and un-announced site visits.

Ms. Rivera stated the following information should be available before the 2006 Legislative Session:

- The Departments should have the number of T.E.A.C.H. scholarships awarded and future demand.
- Baseline child assessment information including picture naming, alliteration, and rhyming.
- Recommendations from the Assessment Task Force.
- Baseline data from the Early Learning Outcomes Observation Tool.
- Update about contract monitoring and site visits.
- Initial progress report from the statewide Evaluation Team.
- Update from NMSU about Prior Learning Assessments and Online Courses for teachers.

Secretary Garcia thanked the committee for allowing the department to come and present their presentation. She said investing in what is best for New Mexico's children includes having developmentally appropriate learning, but also challenges and provides opportunities for children. This includes engaging parents and the extended family and providing parental choice and voluntary education. The Pre-K program is not under any regulation by No Child Left Behind Act. It provides quality curriculum and quality teachers. The program needs to provide local culture, language and history in its learning activities. The department is moving quickly because it wants as many 4 year olds as possible to have access to higher quality Pre-K this fall. Secretary Garcia wanted to thank the staff from both agencies and the Governor's office. The work force of the agencies is what made this happen in a short time period. The response to passage of HB 337 confirms that New Mexicans want Pre-K opportunities for all 4 year olds not just those who can afford it, and those with easier access to programs in larger cities. Every child deserves an equal chance to succeed.

Mr. Tweedie presented NCSL's recommendations for **Implementation of Current Program Ensuring Quality** and asked how PED and CYFD will monitor the implementation of the contracts to ensure quality Pre-K services including:

- Teacher qualifications
- Curriculum and instructional materials
- Are the targeted children being reached?
- Evaluation of specific programs?

Mr. Tweedie said it is important to recognize the size of the task, that has been under taken in trying to develop a new program largely from the ground up, both because it is new or a major change in some of the programs currently being offered. In addition, Mr. Tweedie asked how is the implementation of Pre-K going to be coordinated with existing child care provision and funding:

Representative Varela asked Mr. Tweedie to comment on Coordinating with Existing Programs. Representative Varela said that Santa Fe Community College is involved with an existing Pre-K program and a number of programs in Santa Fe are articulating children to the pre-kindergarten requirement. Representative Varela asked are PED and CYFD coordinating these potential Pre-Kindergarten programs that already exist, for example at child care centers. Representative Varela said it is important that we get an update on how are we coordinating programs that could be evolving into the Pre-Kindergarten environment so we could consider them as part of the success.

In response to Representative Varela's question Secretary Garcia said PED does not have authority for community programs that are in place that they do not fund. PED would like to collaborate and work with them and many of the public school programs are coordinating services in their proposals with existing programs.

Deputy Secretary Rivera, CYFD said CYFD currently funds the Focused Portfolio method, because those programs are working very hard towards quality, assessing children in very developmentally appropriate ways.

Ms. Clothier said the question is designed not so much about the quality, as quality was the earlier question but more about how to coordinate with the existing programs. How is this program going to be delivered in terms of services and how does this Pre-K funding fit in with other programs. One of the unique pieces of the program is the requirement for new children to be served. Pre-paid funding is a way to add funding to community settings so the 4-year old program gets usually a bigger amount of funding than with a child care subsidy. It is an incentive to participate, but that also raises the quality as well. If you have a half-day program in a community setting then what is happening on the CYFD side with childcare subsidy program. so are you doing a half day to create a whole day for that provider who normally would of provided a whole day these children.

Deputy Secretary Rivera said CYFD does have that opportunity and it is called a wrap around service, child care subsidy in New Mexico anything above 30 hours is full time care. If the existing child care provider has been awarded a Pre-K contract, the first and most important thing to know is that in the Pre-K contract there is language that says in expectation that slots of Pre-K are blocked. It is the first or second requirement in the contract language to insure we are serving new children. The second thing for example, if the program is providing services to a child from 7 am to 6 pm, that is 55 hours a week, 5 of those hours is considered non-traditional care. That child is actually in child care for 50 hours a week, even if the child is in child care for 30 hours a week that would be a full time rate. The child care provider would be getting $80.00 a month whether the child is in for 30 or 50 hours a week. Lets take that same child care provider by the pre-k insurances from 1:00 to 4:00 each day, those 3 hours we now have 50 hours of full time child care minus 15 hours because that child is in Pre-K. That still leaves that child care provider at the full-time rate. But they are also getting PEDs, it is a distinctly different program with a distinctly different curriculum for those 3 hours a day, 5 days a week that that child is getting for Pre-K and that child is getting the Pre-K rate and not the childcare rate.

Mr. Tweedie said it is worth assessing the impact of the Pre-K programs where there are private Pre-K programs outside the system and the child care providers in those areas. It is the outside the scope of program of assessment; however, in terms of seeing what the impact is as the programs get started, the departments should be checking with local childcare providers and other Pre-K programs, to see if it has effected their enrollment or demand for enrollment. I expect an impact, whether it is troubling is another question.

Mr. Tweedie continued with the presentation:

Assisting Providers: What assistance will be provided to the PED and CYFD contractors to support development and provision of high-quality services

Tracking Progress: What information will PED and CYFD be tracking and reporting so that they and the legislature can monitor the implementation of NM Pre-K? What will be available for the 2006 session?

Coordinating Governance: How are the efforts of the PED and CYFD branches of NM Pre-K going to be coordinated to avoid developing two separate systems?

Representative Sandoval asked Secretary Garcia if Headstart was duplicating what Pre-K is intended to do. Secretary Garcia said that Headstart has requirements in terms of eligibility and does not serve as broad a population. There were more applications for services that exceeded what the program could provide, so it is very clear that Headstart is not meeting the demand or the need that exist in low income communities.

Representative Taylor asked what specifically differentiates Pre-K from childcare. Deputy Secretary Rivera said that Pre-Kindergarten is for four-year olds who meet the criteria. Childcare is income eligible and can be in a registered home with or without a curriculum or in a licensed home or center. Pre-Kindergarten does not have the program standards required in childcare, although it can be part of that. In childcare not all programs can participate but in Pre-K all programs in the community are eligible to participate. Pre-Kindergarten has a requirement for a research based curriculum. The Pre-K programs in public schools have to be certified teachers.

Representative King asked if any of the respondents to the RFP that were not selected have they asked for any reviews as to why they were not selected. Dr. Steinhaus said there have been three formal challenges but it has not slowed the process. Procurement code that was put in the statute is very clear, is being followed and there are agency guidelines on how to address challenges.

Representative King asked Secretary Garcia what expectations or anticipation of funds will the department be requesting for this program in terms of expansion or other dollars needed to supplement even for the existing fourteen hundred that are being served. Secretary Garcia said Governor Richardson announced two or three weeks ago that the 2006 Legislature should be the year of the child. There are various components including child health, immunizations, and physical education. The Children's Cabinet is looking at how agencies work together to support children. There has not been a policy made yet at the executive level as to what the legislative package or request should be from the agencies. There will be focus on children the expansion of Pre-K that has not been decided. There is collaboration between the agencies, lieutenant governor's office, and governor's office, but that determination has not been made.

OIL AND GAS SURFACE MANAGEMENT ISSUES

Paul Aguilar, principal analyst, LFC, said oil and gas exploration and production continues to expand in the west in unprecedented levels. It is expected aggressive production activities will continue. An offshoot of these activities is dissatisfaction by some property owners and how they view the oil and gas industries responsibility of respecting the land. The oil and gas industry believes they are being responsible and there is a disagreement between the two. The purpose of the hearing is to introduce the issue to the committee because it is sure to be a big issue in the future.

Tim Gomez, San Juan County Rancher and Land Owner, San Juan county, said he had dealt with just about all the oil and gas personnel and some of them worked well with ranchers and some were not. He said he believed they needed to come to an agreement where they pay a fair market value for destroying property and compensate landowners for the damage they cause.

John Zent, director, Compliance, Burlington Inc., said there is surface impact in oil and gas operations. Historically oil and gas companies have addressed surface impact with their legal license to operate, the lease, communalization and pooling agreements that historically have given us that legal right to access the surface and ingress and egress and also to use as much surface as reasonably necessary to produce the mineral estate. Those two concepts are extremely important to continue oil and gas production in the U.S. However, in addition to surface impact there is also community impact and in addition to the legal license to operate there is also a social license to operate and many oil and gas producers in the New Mexico are addressing their social license to operate which is more and more important as we deal with our communities. Surface impact consists of construction, drilling completion, production interim reclamation and final abandonment. Mr. Zent reviewed photos of locations in all phases of production with the committee.

Mark Fesmire, director, Oil Conservation Division, Energy, Minerals and Natural Resources Department, said one of the most pressing surface issues in the industry today is called the split estate where the surface ownership and the mineral ownership belong to different people. Most of the titles transferred out of the government without the mineral estate and now in many parts of the state the mineral title is different than the surface title so under the common law a mineral lessee specifically in oil and gas has a right to use as much of the surface of the land overlying its minerals as may be reasonably necessary to explore for and produce the minerals. The right is a part of the mineral estate and applies whether the surface and mineral estate owners are the same party or if the surface and mineral estate owners have been divided or split. Under current law in New Mexico the surface owner without an agreement to the contrary is not entitled to any compensation for the loss or the use of the portion of the surface reasonably necessary for mineral operations nor for any diminution in the value of the surface due to such operations. The mineral producer is liable for damages to the surface caused by its negligence or by unreasonable or excessive use of the surface. This comes from a case decided by the state's Supreme Court in 1985. This rule of no reliability is mitigated to some degree by a requirement that the oil and gas producer conduct its operations in such a manner as to reasonably accommodate existing surface uses. Now whether this applies only to the current surfaces uses or likely extended to foreseeable future uses, is unsettled in New Mexico at the present time. Texas has litigated this issue several times and they limit that accommodation to just the current uses. New Mexico law does not presently require prior notice of operations to the surface owner or require any security from the operator for damages that may accrue to the surface owner where however the mineral estate is owned by the federal government the U.S. Bureau of Land Management currently requires that an oil and gas operator give notice to the surface owner and either obtain a surface use agreement or post security prior to commencement of operations. This BLM requirement however does not change the law concerning the damages to which the surface owner is entitled. Oil and gas producers in New Mexico typically pay surface damage settlements to surface owners prior to beginning operations. The going rate is somewhere in the neighborhood of $35 hundred per location but that can vary widely. There is however currently no legal requirement they make that payment and furthermore producers often require surface owners in exchange for such payment to execute a waiver or release of future damages. The enforceability of such a waiver or release in the event the producers subsequently causes recoverable damage to the surface is uncertain under New Mexico law. Much of the production in New Mexico comes from split estates. The major problem appears to be where the federal government owns the minerals and the surface is privately held. Theoretically the purchase price of the surface reflected the diminished value of property due the mineral severance and the restrictive uses of the land during mineral development. With the increased sales price of oil and gas those surface owners are now finding themselves living, farming or ranching in the middle of oil and gas fields. As energy development expands throughout the state more and more surface owners are finding themselves in this situation and surface owners in other states are approaching their legislators looking for relief. These demands have not fallen on deaf ears. Eight states now have in place spilt estate bills, Illinois, Kentucky, Montana, North Dakota, South Dakota, Tennessee, Oklahoma and West Virginia. During the 2005 Legislative Session, Wyoming also enacted a split estate bill extending the rights of the surface owner. The governor of Wyoming announced he attended to enforce the law on federal mineral rights including those subject to the BLM policy. On June 13, 2005 the BLM expressed the Wyoming statute did apply to the federal mineral estates in the state. This issue appears to be headed for a showdown that could drastically affect cooperative state regulation of oil and gas operations on federal lands. During the 2005 New Mexico state Legislative Session, HB1015 was introduced by Representative Nunez and eventually passed the House by a vote of 43 to 23. HB1015 would have set out a regulatory process under state law that would have required strict liability on the oil and gas producers for all damages sustained by the surface owner or tenant as a result of oil and gas operations including the loss of the surface and the diminished value of the surface. An oil and gas producer would be required to give notice to the surface owner 45 days prior to the commencement of operations and at the time of that notice to make an offer for the settlement of surface damages. If the owner did not accept the producers offer for surface damages, the bill would require the parties to enter into good faith negotiations. If the parties failed to reach an agreement after good faith negotiations, damages may be determined by arbitration at the election of either party. If a producer commenced operations prior to reaching an agreement with the surface owner or in the event of arbitration prior to the arbitration award itself the producer would have been liable for damages to the surface owner. Although patterned after statutes in other states HB1015 was more stringent than any of the statutes that had been enacted, the 45 day notice requirement is longer than any other state with the next longest is in South Dakota which requires a 30 day notice. The bill contained a list of specific issues to be addressed in negotiation in determining damages and has no counter part in the statutes of any other state. HB1015 did not allow the commencement of operations prior to the determination of surface damages. All statues in other states allow operations to begin either upon the passing of time or the satisfaction of certain conditions. Under the proposed statute producers time-sensitive operations would have been delayed until the completion of these negotiations. The statutes in other states impose no restrictions on the right of the producers to commence operations after the notice period and required the surface owner to sue for damages if an agreement is not reached. West Virginia provides for arbitration at the direction of the surface owner but does not restrict the right of the producer to conduct operations while the arbitration is pending. Oklahoma allows the producer to request determination of damages by court appointed appraisers if an agreement is not reached that allows commencement of operations upon the filing of a request for the appointment of appraisers. The Wyoming statute will allow commencement of operations upon the furnishing of a minimal bond. HB1015 by contrast would have precluded operations prior to agreement or a final arbitration award. HB1015 died in a Senate committee. Two other pieces of legislation connected to this subject introduced during the 2005 Legislative Session were HM34 and HJM106. HM34 calls upon the New Mexico congressional delegation and the U.S. Department of the Interior to support legal and administrative reform to protect the rights of the surface owners and decrease the surface damages done during energy development. The memorial identifies conflicts between surface owners and mineral producers on federal lands as an issue to be addressed by the federal government. HJM46 sponsored by Representative Cheney called for the New Mexico Cattle Growers Association, the New Mexico Farm and Livestock Bureau, the New Mexico Association of Conservation Districts, the New Mexico Homebuilders Association, the Realtors Association of New Mexico, the New Mexico Oil and Gas Association and the Independent Petroleum Association of New Mexico to meet and develop a bill on the subject of rights and surface and mineral owners prior to the 2006 legislature. This memorial died.

Steve Henke, district manager, Bureau of Land Management, (BLM), Farmington, New Mexico office, said together with the staff of 110 the office manages 1.3 million acres of surface estate and administer 3 million acres of federal mineral estate. While the BLM is a true multiple use agency there is no question oil and gas activity is the dominate program for the Farmington office. The San Juan Basin produces 7 percent of the nation's natural gas. Approximately 75 percent of that production comes from BLM administered lands in the southeast and the northwest. Every day in the San Juan Basin, 3 billion cubic feet of natural gas are brought to the surface, processed and transported to the market principally on the west coast. Demand for natural gas in this country is growing and projections are that at the current levels the projections are the demand will double in the next 20 years and much of the gas in northwestern New Mexico is used for electrical generation. While the economy is increasingly diversified in northwestern New Mexico the health of this economy is tied directly to the oil and gas industry. The state share of the federal royalty from natural gas and oil and gas is exceeding $1 million per day. The majority of that royalty is coming from the San Juan Basin. Another indication of the value of that resource, in April of 2004 after completing the land use plan and process, the BLM leased 1,200 acres under very restrictive conditions in the canyon area. The successful bidder paid a bonus bid of $28 million for the 1,200 acre lease. Half of the bonus bid went to the state of New Mexico.

Mr. Henke said the public lands in San Juan Basin, administered by the BLM are 99 percent leased and have been for decades. The leases are legally binding contractual arrangements. There are 20 thousand producing wells in the San Juan Basin. The BLM completed its land use planning process two years ago, analyzing impacts of an additional 10 thousand wells in the basin. The demand for access to the existing leases is as strong as ever. Each well has an individual site specific environmental assessment in order to avoid impacts and build mitigation. Half of the new wells will be on or adjacent to existing infrastructure. Given the growing demand for natural gas, its importance to our economy, the Presidents emphasis on domestic production of natural gas on public lands as part of our national security program, the fact that we have existing leases and infrastructure, the question becomes what if, but how we develop this resource in a environmental responsible manner. The challenge is in creating and maintaining balance which has been especially challenging given the pace of activity in the basin in the last couple of years. But to put the amount of surface disturbance associated with oil and gas into perspective, each well access road and associated pipeline will take an average of two acres out of production. The projected 30 thousand wells over the life of the plan occupying at a maximum 60 thousand acres, that would be slightly less than 5 percent of the surface area that BLM manages in the Farmington office, and less than one percent of the total land mass of 12 plus million acres that BLM manages in the state.

Mr. Henke said some of the initiatives BLM has worked on collaboratively with many attending the hearing today would include review of stipulations or conditions of approval on wells authorized. They are under constant evaluation and revision to employ and adopt the best management practices and techniques that improve the work. A compliance program was initiated on all new construction activities when Mr. Henke took office. Mr. Henke said the office has individuals working with the private contractors to complete compliance checks on 100 percent of the new well construction as well as the pipeline construction to ensure compliance with the stipulation. The BLM has adopted a policy to negotiate and resolve access on split estate and private surface. Using federal bonding process should be a last resort. The BLM has developed a consultation policy to provide the opportunity for a grazing permit.

Responding to Representative Varela with regard what percent of oil and gas production occurs on state land, Mr. Zent said approximately 25 percent of the oil and gas production occurs on state land.

Responding to Representative Varela with regard to the noise complaints stemming from production, Mr. Fesmire said to the extent that it is addressed the Oil Conservation is handling them. The oil conservation division is responsible for the environmental regulation of all oil and gas production activities in the state.

DWI IN NEW MEXICO: CURRENT STATUS, KEY MEASURES, HIGHLIGHTS WITHIN STATE AGENCIES, PROBLEM AREAS AND RECOMMENDATIONS FOR THE FUTURE

Commissioner Harry Montoya, vice chair, Santa Fe County Commission, requested the committee consider this year increasing the distribution of the alcohol excise tax. He said the priority this year's legislative session is the increase in the alcohol excise tax. Last year HB897 and SB937 both looked at a gradual increase in the distribution going to the DWI funds where had it been enacted in FY06 it would have increased to about 53 percent. In subsequent years it would increase.

Responding to Representative Varela with regard to what the total contribution to the fund once phased in at 100 percent, Mr. Montoya said it would be approximately $40 million.

Responding to Senator Jennings, David Hadwiger, principal analyst, LFC, said with regard to the question "what is the allocation of the DWI grant fund by county", an additional $1.5 million from the Local DWI Grant Fund is used for drug courts.

Rachael O'Connor, DWI Czar, Department of Public Safety, (DPS), reviewed overarching measures on DWI with the committee. New Mexico has done well in decreasing crashes. In 2004 the state had a 9 percent decrease in alcohol related injury crashes and 9 percent decrease in overall alcohol related crashes. Alcohol involved fatal crashes are at the lowest point of 9.07 per hundred thousand population. With regard to alcohol related fatalities, there has been a consistent downward trend. Alcohol involved fatal crashes are down from 202 from 2002 to 176 in 2004. Ms. O'Connor said alcohol fatality rates per Motor Vehicle Mile (MVM) is an indicator used with regard to federal funding. Alcohol fatalities per 100 thousand population is moving downward but not to the degree as in the early 1990s. As DWI arrests in New Mexico increase, deaths decrease. Ms. O'Connor reviewed arrests by agency and state rank, with the committee.

Ms. O'Connor said New Mexico was ranked number 1 in the nation for alcohol related fatalities for many years; after 2003 New Mexico is ranked number 6th. The ranking for 2004 is not yet available.

Ms. O'Connor said that 70% of those causing death and injury are first time DWI offenders. 50% of those arrested never do it again. 70% of fatalities are in rural areas. Treatment is most effective when in combination with conviction and jail time.

Ms. O'Connor reviewed state agencies involved in DWI:
Department of Transportation/Traffic Safety Bureau has lead statutory authority in DWI.

- NMDOT Traffic Safety Bureau spent $3.5 to $4.5 million in 2005 towards DWI. In 2005 that has gone up. Funds go to law enforcement, court programs, public awareness education, ignition interlock program at Metro court, super blitzes, overtime to local law enforcement.
- DFA spent $13.2 million that is filtered down through the counties in a variety of different ways. Funds go to prevention, treatment, enforcement, and several other categories of DWI programs.
- Department of Public Safety spent $1 million dollars which is used for enforcement, check points, saturation patrols, and overtime.
- CYFD does specific DWI work, $1 million dollars in underage drinking enforcement, prevention and education.
- DOH does substance abuse work.

- Corrections has a specific program in Roswell the budget is \$1.7 million, it is treatment incarceration program for felony DWI offenders.
- Regulation and Licensing/Alcohol and Gaming Division have a specific role and will be discussed later in the presentation.

Ms. O'Connor said Project Traffic Safety Bureau has increased law enforcement in those counties in the state where DWI is a problem and that includes Dona Ana, Bernalillo, McKinley, Rio Arriba, and San Juan. The department was awarded \$3 million from the federal government and Department of Transportation Safety Bureau to provide full time law enforcement through the Sheriff's Department in those 5 counties.

Ms. O'Connor reviewed the Mobile Strike Unit headed by the Department of Public Safety and said there were five new officers at DPS to do work on sale to intoxicated persons and sale to minors and is in partnership with Alcohol and Gaming to adjudicate cases. DOH is working on a merchant education piece that will be coming out soon. The department doubled the number of Superblitzes from 4 to 8 in 2005.

Ms. O'Connor said that over 60 law enforcement agencies participated in a statewide public awareness campaign. A toll free hotline to report drunk driving, funded by the legislature through DPS, is in the process of development and should be operational in October.

Ms. O'Connor said ignition interlock is now mandatory for all convicted DWI offenders, effective June 17th 2005. The Ignition Interlock fund now pays 50% of the costs, and New Mexico is looking at the possibility of using the Secure Continuous Remote Alcohol Monitor (SCRAM).

Mr. Sandoval said there are two major initiatives regarding traffic records; first is the Ignition Interlock Database; second is the electronic transfer database where the courts can access the information. The agencies participating in the pilot program are State Police, MTD, APD, Dona Ana Sheriff, Santa Fe and Rio Rancho Police Departments.

Ms.O'Connor said there was funding for 8 new Judgeships in the 2005 legislative session. The Taxation and Revenue Department is in the process of moving the MVD offices across from Metro court to facilitate police officer attendance criminal hearings at the courts and civil (license revocation) hearings at MVD. A new DWI Resource Prosecutor Ms. Donna Bevacqua Young was hired to provide training for district attorneys in prosecution in DWI cases.

Ms. Maestas reviewed the Rule Changes and said the main role the Courts play is adjudicating these cases when they come before the court. The primary cases to be litigated is about half of the DWI cases are litigated in Metro Court in Albuquerque the other half are litigated throughout the state in various magistrate courts in the 32 counties. The Supreme Court has the Rules Committee that makes recommendations and we do recommendations on rule changes and it is moving to streamlining some of the Supreme Court rules that guide the process of DWI litigation in the courts. Next are the repeat offender cases that come into court. Treatment is most effective when a combination of conviction and jail time is used. There are drug courts that treat adult and families of drug offenders. The DWI drug court is quite successful. There are DWI courts in McKinley County as well as Dona Ana County. When offenders have a dirty urine sample or have violated conditions of their treatment program they are immediately put in jail within 24 hours so they have an immediate response and are immediately held accountable for improper behavior instead of waiting for months and months to come to a hearing. The main area of funding dollars from the legislature is in drug courts. Another piece that is being focused on in terms of DWI, is information, we are trying to make sure that the data is accurate and can transmit easily. There are a lot of changes mainly is first DWI offenders which by law requires installing an Interlock device. The reality is, there is no one to follow up to make sure that in fact the Ignition Interlock is installed. What the department is looking at is some sort of form that is required to be filled out and sent back to the court saying that it has been installed. The difficulty is the monitoring; there is no one to monitor the people who have Ignition Interlock devices to make sure they are using only that vehicle and that there is any alcohol registered on the Ignition Interlock.

Ms. O'Connor reviewed Alcohol and Gaming/Regulation and Licensing: The department is trying to encourage focus on this division because it has not had a lot of attention over the years. The local crime unit that is developed through the DPS, Special Investigation Division is issuing increased citations to bars and restaurants, in regards to violations of sales to intoxicated and sale to minors. It is particularly important because a number of people who are arrested for DWI, shows about 50 percent of people are coming from bars and restaurants. Our average BAC at arrest is 1.6 that is twice the legal limit. What that means, is that somewhere people are being served when they are already intoxicated. It's particularly the bars that encourage that. The issue of sale to minors has changed for the better. People are being carded a lot more, establishments are being very careful since this law has come into effect. Not enough emphasis has been done on sale to people who are intoxicated. There were 77 citations for sales to minors and persons who are intoxicated in ten different cities in New Mexico. Hearings will be held from August 16 through October 14th. The Zero Tolerance Policy is to see what the directive is for violations of sales to minors and sales to persons who are intoxicated. In the future, the department is looking at the possibility of rewriting the regulations that come out of the Alcohol and Gaming Department for better oversight of bars and restaurants. Protecting You, Protecting Me is a MADD evidence based curriculum. The Legislature allocated $250,000 to train 400 teachers to reach approximately 10,000 students per year.

Ms. O'Connor went over what problems that may come up in the future. Ms. O'Connor said the health of the State Police is vital to preventing DWI, 70 percent of all DWI fatalities are rural. State Police are the first line in regard to preventing a crash that is alcohol related. The overall capacity of our state police force is an issue that affects nearly every agency in state government including DPS, DOT, DOH, CYFD, HSD and others. Current issues include vacancy rate (10%) retention and capacity (650 officers).

Treatment in now mandatory for DWI second and subsequent offenders. Nearly $4 million new dollars went to DWI and Drug Court. Each court is defining treatment differently. There is not adequate data on who is receiving treatment on a statewide basis or the outcome of interventions. The San Juan Model program started 10 years ago; it combines 28 days jail time and treatment combination on a first conviction. The program has a partnership with the state, county and judiciary. The department is looking at replicating the program throughout the state.

30 percent of repeat offenders continue to be rearrested.

The evaluation of the NHTSA has declared New Mexico a "national model" on DWI and will be reporting routinely to Congress, and there will be assistance in identifying other funding.

The Administrative License Revocation System works well in making the hearing process less burdensome on law enforcement officers; there are issues in regards to moving ALR to Metro Court, the possibility of using trailing dockets and the possibility of statute change to look more like the Colorado Model.

1. DFA Screening and Tracking
   - Alcohol screening is mandatory for all convicted offenders in New Mexico.
   - Currently about 62 percent compliance on screening.
   - DFA is moving to a Web based system.

Paul Guerin, Social Research, University of New Mexico said he has a PhD in sociology and currently works for Institute for Social Research, and also do work for the New Mexico Sentencing Commission. We have had a contract of 4 years with the DFA evaluating their DWI program. Recently we conducted some research that has looked at conviction in DWI dismissal rates in Bernalillo County. His primary purpose is to answer any questions the committee may have.

Senator Beffort said she wants the committee to review the second DWI audit and see how exactly the monies have been spent and if the committee needs to revisit it and get it out to the drug courts, public defenders and district attorney's.

Mr. Guerin said there is some evidence that some of the treatment programs within the DWI local programs actually are affective. The study that was conducted for DFA evaluated a number of different programs for their treatment effectiveness. One of the programs was in Bernalillo County. Being in treatment was more effective than if people were not. One of the problems is DFA is attempting to standardize treatment criteria throughout the state. People with more serious alcohol use and or drug abusers do less well in treatment than people who are not. Treatment has to be targeted towards the type of user. DWI drug courts target specifically that.

Representative Wallace said she has a problem with officers having to be present for hearings. Representative Varela said that at the Grants meeting one of the Magistrates in that area had talked about video taping DWI arrests, and if that would suffice in terms of taking action in the courts when the officer is not present for the hearing. Representative Varela asked what the response to that is. Ms. Maestas said there are Constitutional issues as to the right to cross exam the witness against the defendant.

Senator Robinson made a comment that outstanding warrants were not addressed in the presentation.

MISCELLENAOUS BUSINESS

Adoption of FY07 Budget Request. Mr. Abbey presented the budget request for adoption. Representative Saavedra motioned to adopt the budget request; Representative Sandoval seconded the motion which passed with no objections.

Representative Varela adjourned the meeting at 11:30 a.m.

Chairman Date