Legislative Finance Committee
Meeting Minutes
Room 322 – State Capitol – Santa Fe, New Mexico
December 5, 6, 7, 8, 9, 2011

Monday, December 5

The following members were present on Monday, December 5, 2011: Chairman John Arthur Smith, Vice Chairman Luciano "Lucky" Varela, Representatives Don Tripp, William "Bill" J. Gray, James P. White, Edward C. Sandoval, Rhonda S. King, Larry A. Larrañaga, and Henry "Kiki" Saavedra; and Senators Carlos R. Cisneros, Steven Neville, Mary Kay Papen, Carroll H. Leavell, and John M. Sapien. Representatives Dennis J. Kintigh and Jimmy Hall attended as guests.

The committee met in executive session until 9:20 a.m.

General Fund Revenue Outlook for FY12 and FY13. Demesia Padilla, secretary, Taxation and Revenue Department, stated the consensus estimating group revised its October forecast. Fiscal year 11 preliminary revenue is $5.47 billion; FY12 was revised upward by $21 million and revised for FY13 upward by $9 million. New money is projected at $254 million.

Tom Clifford, secretary designee, Department of Finance and Administration, discussed economic indicators, stating the U.S. gross domestic product (GDP) grew by 2.6 percent during FY11; FY12 will grow at a slower rate, however, GDP was revised upward from the October consensus to 1.7 percent. Federal spending and consumer spending is going up; however, consumer confidence numbers are declining. The housing sector is still weak and is expected to come back next year but not a substantial growth.

Unemployment numbers fell, which should be a good sign, but the government sector is shrinking and the total employment rate has decreased.

Oil prices have fluctuated this year, from a low below $75 a barrel to more than $102 a barrel, with the risk being associated with the current economic situation in Europe. For every dollar increase in the price per barrel, New Mexico earns $1 million. New Mexico oil prices are $4 lower per barrel than West Texas Intermediate prices. Natural gas prices came down from highs at the beginning of fiscal year of $6. Inventories are at record levels with the average prices for per thousand cubic feet revised down for FY12 and FY13 to $5.20 and $5.60, respectively. Oil production had a 7 percent increase in FY11 and looks to increase in FY12. Natural gas production continues to fall processing more gas to extract liquids but loss of total volume.

In response to Representative King, Secretary Designee Clifford responded the amount would be closer to $204 million after the retirement swap takes effect.

Representative Varela wanted to know about tax increases and if they were built in with the growth. Secretary Designee Clifford stated FY12 growth in New Mexico is weak and data suggests only 5 thousand to 6 thousand jobs were added for the entire year. And U.S. forecasters are pessimistic. There would be an increase of $185 million from taxes.

Secretary Designee Clifford said oil prices are volatile and the state should have 10 percent in reserves. He recommends a deficiency for Medicaid be at least 1 percent, or $50 million. They will be asking for a supplemental during the session.

Chairman Smith concluded the budget balance had a 12.6 percent revenue enhancement and spending levels are dropping. Large companies are liquid and are doing well and waiting for consumers to gain more confidence.

<u>Severance Tax Bond and General Obligation Bond Capacity</u>. Secretary Designee Clifford briefed the committee on bonding capacity estimates: After subtracting the $81 million authorized during the 2011 special session, $130 million of senior severance tax bond capacity is expected to be available for new statewide capital projects authorized during the 2012 regular session. In FY12, $148.7 million is expected to be available for public school facility projects through the Public School Facilities Authority. Earmarked appropriations for FY12 total $26.4 million for water trust board projects and $13.2 million each for colonias and tribal infrastructure projects. Subject to voter approval, $299 million will be available for projects to be funded through general obligation bonds.

Senator Cisneros asked about using STB capacity for highway maintenance needs. Secretary Clifford agreed that would be a good use of proceeds.

<u>Taxation and Revenue Department (333).</u> Demesia Padilla, Secretary, Taxation and Revenue Department introduced members of her staff. The TRD has 12 exempt employees and is in the process of hiring 99 Motor Vehicle Division clerks. Secretary Padilla stated the department requested a flat general fund appropriation except for an increase for human capital management (HCM) system fees. Federal fund grant money for FY13 is uncertain and was not budgeted; if grants are awarded, the TRD will submit a budget adjustment request (BAR) to budget the funds. Other program revenue is over FY11 due to additional fees from the MVD and delinquent property taxes; FY13 fee estimates are based on FY 11 actuals. Fund balances are due to property tax income. Increases to employee salaries are for the social security tax and insurance costs and contract increases are for software maintenance and equipment to support operations in revenue processing. The TRD has hired more auditors and plans more out-of-state audits. The department is wrapping up its amnesty program.

The TRD submitted C2 (information technology funding) requests for GenTax and ONGARD and are discussing options with Department of Information Technology (DoIT) Secretary Darryl Ackley and two other agencies. The TRD's first priority for capital outlay funding is for the Lujan building renovation. The Clovis motor vehicle office is second choice. Clovis has outgrown this building and issues need to be addressed for the safety of both taxpayers and employees.

Senator Leavell asked whether the MVD budget request was sufficient to serve New Mexico citizens; in Hobbs constituents testing for a driver's license have only one computer, and this has resulted in significant delays. Secretary Padilla responded by saying she was instructed to submit a flat budget and that the agency might still be awarded some federal fund grants. She stated her department issued a new RFP (request for proposals) to obtain more MVD kiosks and would begin hearing company presentations soon. The TRD is also looking into whether MVD offices in rural areas with low use rates can possibly share kiosks with other state entities to boost the number of transactions and bring down costs. Deputy Secretary Monforte said administrators are also looking to put the program on a regular personal computer, and the TRD will look specifically into Hobbs, Lovington, and others with pronounced issues.

Vice Chairman Varela asked about the upgrade the department is requesting for GenTax. The TRD chief information officer, Greg Saunders, stated the system will be upgraded in FY13, and the upgrades will not impact operations. ONGARD, which supports oil and gas severance taxes, is the other system the TRD has for processing and the TRD requested $1.8 million for getting ONGARD off the mainframe. The DoIT secretary was asked to work with TRD to develop a detailed plan for ONGARD. Representative Varela requested a breakdown of all revenue collected for the state from both GenTax and ONGARD. Representative King requested the TRD secretary work closely with the Administrative Office of the Courts so the new MVD system will communicate effectively with the AOC's.

Also discussed were the TRD procedures for audits and special investigations, property foreclosures, and driver licenses for undocumented foreign nationals. Chairman Smith asked the number of undocumented individuals with New Mexico driver licenses be provided to legislative staff. Representative King stated that she wants to know what the criteria are to determine if someone is eligible for a New Mexico drivers' license.

New Mexico Business Tax Competitiveness Study. Richard Anklam, president and executive director of the New Mexico Tax Research Institute (NMTRI), provided an update of the enhanced Ernst and Young tax competitiveness study, which includes tax incentives. Mr. Anklam stated the decision of a manufacturing company to move to Arizona over New Mexico was attributed to New Mexico's tax structure. This loss of business encouraged Albuquerque Mayor Richard Berry to commission Ernst and Young to update its study with input from the NMTRI and state agencies.

The original study noted New Mexico's high corporate income tax, the absence of a single weighted sales factor, and the gross receipts taxation (GRT) of business puts the state's rank at dead last. However, the study did not include tax incentives, which New Mexico uses to level the playing field, and likely miscalculated the effect of GRT, which is a difficult tax to model.

The new study includes tax incentives in calculations for eight neighboring states and New Mexico, and adds a rural location (Deming). The study also asks additional policy questions, such as the effect of a rate or deduction change or the use of a single weighted sales factor.

Mr. Anklam noted that the preliminary results of the study excluding incentives suggest that New Mexico's effective tax rate (ETR) is more than double the average of the other eight states, and this is largely due to relatively high corporate income tax and sales taxes on business purchases under GRT. The preliminary results with incentives place New Mexico second best with a middle of the pack ETR of 6 percent. In five of the nine industries examined in the study, New Mexico's ETR is still higher than average. In contrast, the high-wage jobs credit is sufficient to create a slightly negative ETR. No other state has a negative after-credit ETR, but New Mexico's tax system is almost certainly impeding economic growth. Mr. Anklam stated the regulatory environment is not accounted for in study, pyramiding hurts small businesses. Uncertainty might have an impact, but it is not assumed in this model.

Mr. Anklam stated that the examination of rural communities suggests the GRT rate is 25 percent higher than Albuquerque.

Vice Chairman Varela asked if the ranking includes local and state taxes, and Mr. Anklam confirmed yes. Vice Chairman Varela asked about the tax principle of adequacy and how it is determined. Mr. Anklam replied a tax system that meets the needs specified by policymakers in the most efficient means possible is considered adequate. Secretary Clifford noted that the per capita income for New Mexico is about $35 thousand.

Mr. Anklam told Senator Neville the study only examined c-corporations, and that if the study were modeling limited liability corporations, it would not look at taxes at all, because personal income tax is the tax paid by the owner. Senator Neville noted the problem is perception, and New Mexico is no less competitive.

Representative White asked if there was more political influence in New Mexico because of tax incentives. Mr. Anklam stated this is the case with capital outlay or any kind of discretionary funding. Statutory incentives are less influenced by politics, but less targeted.

Representative Tripp asked what percentage of New Mexico businesses are c-corporations, and Secretary Designee Clifford noted about 30 thousand c-corp tax returns out of 80 thousand businesses in the state. Incentives are $80 million per year, which is extremely limited and not enough to buy down the corporate income tax rate to make New Mexico more competitive. If the corporate income tax rate were reduced by 1 percent, it would cost $45 million.

Mr. Anklam stated some of the states have apportionment rules that skew the amount of taxable income down by paying a lower rate on exports. New Mexico has not changed its policy in 20 years, but other states have.

Mr. Anklam said oil and natural gas was not included in this study. Vice Chairman Varela noted that the state relies on oil and gas to stabilize revenues, and he wants to see the impact of personal income tax, low-income tax credit, and a more comprehensive report.

Senator Neville stated the corporate income tax proceeds are a small percentage of general fund revenues; the state could eliminate it and still handle the budget. He also claimed that oil and gas producers are here because there is oil and they will come anyway, but if the state does not adjust GRT, New Mexico will suffer. Representative Sandoval noted there are $900 million in tax expenditures, about $1 billion that the general fund is not receiving.

Representative King noted New Mexico can only reduce corporate income tax by 2 percent if all incentives are eliminated. She asked Mr. Anklam to provide information about what the Legislature might be able to reduce and what makes sense to reduce. Maybe there is a desire to clean up the tax code in process.

Chairman Smith noted the compounding of incentives. He stated it might be necessary to strike a deal with the executive to not do anything without tax reform, and if all the costs of doing business are examined, New Mexico is very competitive. Before looking at initiatives, the entire system needs to be overhauled. Mr. Anklam stated New Mexico has a bad reputation, but it is not entirely deserved.

Corrections Department (770). Secretary Designee Gregg Marcantel provided an overview of the department highlighting the challenges the department faces. Staffing vacancies are significant: The vacancy rate for correctional officers is 24.47 percent; probation and parole officers are at 23.19 percent; and administrative support staff is 24.66 percent. Staff retention and training is another challenge and Secretary Designee Marcantel noted department cost is about $6 thousand to train and equip a correctional or probation and parole officer, and there is inadequate succession planning and leadership training necessary to meet these challenges.

Another immediate challenge is the increase in the female population, which has required opening up space in the men's facility in Grants. Staffing vacancies negatively impact the quality and quantity of supervision and impact continued accreditation. The department will start working with the Property Control Division on long-term planning because the inmate population over the next decade is projected to be higher than what current, older facilities can accommodate. The department is reviewing programs that support re-entry and recidivism reduction, conducting internal assessments for dealing with offender families, reviewing and holding vendors accountable, reorganizing the Health Services Bureau, and employing evidence-based employee retention strategies.

Bryan Maestas, acting administrative services director, presented the department's budget request. At the top of the list were increases for correctional officer overtime, prison facility maintenance, leases for probation and parole offices, clothing for officers and inmates, utility costs, and the inmate medical contract. The department reduced its federal funds from the State Criminal Alien Assistance Program grant by $751.9 thousand due to the uncertainty of the funding. The department would like to have additional budget authority allowing it to transfer among all programs and transfer authority in excess of the 5 percent limit from other state funds and internal services funds/interagency transfers. Increases to its budget will allow the department to start addressing some of its challenges.

Vice Chairman Varela asked about the status of the medical contract and Representative Larrañaga wanted to know why the cost was increasing. Secretary Designee Marcantel responded the RFP was issued October 28, 2011, responses are due January 10, 2012, and the new contract is expected to be signed in March 2011. The cost is attributable to the geographical location of the prisons, sicker inmates, and increased mental health issues.

Senator Leavell asked why it was necessary to penalize GEO for understaffing if there have been no serious incidents in the facility and if a corrections industry program was going to be restarted in Hobbs. Secretary Designee Marcantel told the committee that there have been serious incidents at the GEO-operated facilities, including two deaths. With regard to the corrections industries programs in general, the department is looking at restarting license plate manufacturing at Hobbs but will have to wait until staffing is sufficient to provide adequate supervision.

Representative Kintigh asked about using restraints on pregnant inmates and the number of out-of-state or out-of-country inmates held in New Mexico prisons. Secretary Designee Marcantel informed the committee policy allows correctional officers to use their judgment on a case-by-case basis. The number of out-of-state inmates is insignificant and there are 193 non-U.S. citizens.

In response to Senator Papen, Secretary Designee Marcantel said that they are not sure why the female population has surged. Housing them at the men's facility is not a problem because the layout of the facility allows men and women to be properly separated.

Members asked the secretary to work with the governor and the State Personnel Office on correctional officer pay and recruitment.

New Mexico Environment Department (667). Butch Tongate, acting deputy secretary, New Mexico Environment Department, presented the NMED's FY13 budget request to the committee. Acting Secretary Tongate stated the general fund request for FY13 is flat and that the overall request is a slight increase over FY12 operating budget. Mr. Tongate reported that for FY13 the agency is requesting a major departmental reorganization that would reduce the number of exempt FTE from 10 to six. The requested reorganization would reduce the department from five programs to four by combining the Field Operations Division with the Waste Water and Infrastructure Division. Mr. Tongate noted the agency-wide vacancy rate is currently 19.2 percent, and the greatest vacancy rate is in the field offices, where 23.1 percent of positions are vacant.

Major agency accomplishments in 2011 included collaboration with the federal Environmental Protection Agency (EPA) and the Los Alamos National Laboratory (LANL) to monitor air quality data during the Las Conchas fire; amendment of the "dairy rule" for groundwater protection following negotiation with the dairy industry and environmental groups; expedited remediation of the Kirtland Air Force Base fuel spill; and initiation of the Chevron Questa Mine remediation plan in collaboration with the EPA. Another of the department's priorities is to work with the U.S. Department of Energy to accelerate the removal of above-ground transuranic waste from LANL.

Mr. Tongate noted that after the department's reorganization, the department's mission will be to balance the protection of the environment with economic development and employment growth in New Mexico, adding that the agency further aims, through regulation, to set clear expectations for the regulatory community, and to do so clearly and consistently.

Mr. Tongate concluded by describing the agency's reliance on special revenues from permitting and inspection programs, as well as on federal revenues, noting that support from the general fund has declined from a peak of $16 million in FY09 to $11.4 million in FY12.

Representative Varela requested the department provide a list of all environmental regulations changed since the beginning of the governor's administration. Staff from the department responded the agency had amended the dairy rule and liquid waste regulations and had adopted petroleum storage tank regulations. Environment Department staff added that proposed changes to the cap and trade rules were currently before the Environmental Improvement Board. The department added it would respond to the request prior to its budget hearing before the House Appropriations and Finance Committee.

Further committee discussion centered on the department's landfill regulations and issuance of landfill permits, as well as dairy regulations and the backlog for permits under those rules. In response to a question concerning the time that an applicant can expect to wait for a discharge permit for a dairy to be processed, the agency stated the wait is generally 90 to 150 days. Staff added that as a result of the amended rules, existing dairies where waste reservoirs have not contaminated groundwater are permitted to operate without lining the reservoirs, while new dairies and those that have contaminated groundwater are required to install the liners.

Regulation and Licensing Department (RLD). Superintendent J. Dee Dennis Jr. briefed the committee of the achievements and challenges of the RLD's five programs: Construction Industries and Manufactured Housing, Financial Institutions and Securities, Alcohol and Gaming, Program Support, and the Boards and Commission.

Using grant funds, the Alcohol and Gaming Division hired two term attorneys to clean up a backlog of nearly 1 thousand citations dating back as far as 10 years. The RLD settled or dismissed nearly 700 citations, resulting in $47.7 thousand in settlement fees collected. A major focus of the Alcohol and Gaming Division is the unnecessary amount of time it takes for a dispenser or restaurant liquor license to be processed. Superintendent Dennis stated this new administration has cut that processing time in half, from 128 days to just 60 days.

Representative Saavedra asked why the RLD cannot administer a temporary liquor license pending all investigations, stating the profits from alcohol sales are a restaurant owner's lifeline and critical to the survival of many restaurants. Superintendent Dennis agreed and assured Representative Saavedra that the RLD is considering all steps to benefit the public, but current statutes place many restrictions on options.

Superintendent Dennis spoke of the Construction Industries Division (CID) and reported concerns regarding the shortage of inspectors leading to extensive wait times for building or structure inspections. Superintendent Dennis stated if an inspection request is along the Interstate 25 corridor, it can be completed within two to five days but admitted rural area inspections still can have significant delays. To remedy this problem, the CID decreased overhead and requested a $150 thousand, or 1.9 percent, increase from the general fund to fully staff vacant inspector positions. Superintendent Dennis assured Representative Larranaga that if appropriated, the $150 thousand increase would be used only to fill vacant inspector positions. Lack of inspectors being cross trained in all fields is another issue the RLD is resolving with an educational aspect called the residential combination inspector (RCI), a training which will cross-certify all inspectors.

When speaking of the Financial Institutions and Securities Division, Superintendent Dennis stated, prior to January 2011, not one mortgage originator here in New Mexico received an onsite inspection. Fifteen have occurred in 2011 alone. Regarding banks, 17 inspections occurred in 2011, along with 17 credit unions and two trust companies. Onsite visits of New Mexico's lending organizations is the mission of this division, and it will continue to pop in until all are in compliance and stay on track, thus helping to rid of any unfair lending practices. Representative Hall asked how many banks in New Mexico have been ordered to cease and desists, and Financial Institutions Division staff claims three are currently receiving some help from the Federal Deposit Insurance Corporation.

Administration Services Director Larissa Byrd presented the FY13 budget request. For FY13, the Regulation and Licensing Department (RLD) requested $24.3 million, a $1.1 million or 4.8 percent increase over the FY12 operating budget. The general fund request was $12.7 million, a $150 thousand or 1.2 percent increase; fund balance increased $352.6 thousand, and the use of other revenue increased $519.1 thousand. The request included vacancy savings of $1 million. The agency also requested the elimination of seven full-time employees within the Construction Industries and Manufactured Housing Program, a savings of $529 thousand.

Tuesday, December 6

The following members were present on Tuesday, December 6, 2011: Chairman John Arthur Smith, Vice Chairman Luciano "Lucky" Varela, Representatives Don Tripp, William "Bill" J. Gray, James P. White, Edward C. Sandoval, Rhonda S. King, Larry A. Larrañaga, and Henry "Kiki" Saavedra; and Senators Carlos R. Cisneros, Steven Neville, Mary Kay Papen, Sue Wilson Beffort, Carroll H. Leavell, and John M. Sapien. Senator Linda Lopez; and Representatives Jimmy Hall, and Ray Begaye attended as guests.

The committee met in executive session until 9:30 a.m.

Children, Youth and Families Department (690). Yolanda Berumen-Deines, secretary, Children, Youth and Families Department told the committee the department underwent a comprehensive review and decided reorganization was necessary. As a result, the Youth and Family Services Division was eliminated. To place a greater focus on behavioral health issues affecting children and families, an Office of Community and Behavioral Health Programs was created within the Office of the Secretary.

The budget request for FY13 included a general fund increase of 4.1 percent. The request included an additional $1 million from the general fund for domestic violence programs. The agency is working with the courts to ensure individuals convicted of domestic violence complete the batterer's intervention program and pay court fees. The request also included $2.8 million to replace lost Title IV-E foster care funding and an additional $4.2 million to lower vacancy rates. The department struggles to fill vacancies and it will be some time before vacancy levels return to optimum functioning levels. The CYFD continues to revise policies to provide employees with clear direction and is also working on a web-based client data management that will be used by all department divisions.

Representative Larrañaga asked several questions regarding the early childhood home visiting program in the South Valley of Albuquerque and requested a map of the area where the Nurse Family Partnership would be sending home visitors. Deputy Director Dan Haggard stated he would provide that information and the CYFD is working to develop a common point of entry for home-visiting services because the programs serve different populations. Representative Larrañaga emphasized the importance of collaboration.

Senator Sapien asked questions regarding the Race to the Top Early Learning Challenge grant competition and how much would go to the CYFD and the Public Education Department (PED). Secretary Berumen-Deines stated the funds that would go to the PED would be focused on a kindergarten assessment tool. The senator also asked about the Early Learning Advisory Council. He was informed that there were currently two vacancies remaining and that the council met prior to the submission of the Race to the Top application.

Representative Saavedra encouraged the department to consider city and county land for a new juvenile facility. Secretary Berumen-Deines responded the agency had already identified state-owned land on which to build.

Several of the legislators expressed concerns regarding the quality of childcare. Early Childhood Division Director Diana Martinez-Gonzales informed the committee the department is looking at revising the tiered quality rating system. Chairman Smith requested a listing of all facilities and the star level ranking, with indications on which facilities have moved up in the Star level rankings.

Vice Chairman Varela also asked about the Behavioral Health Collaborative and the secretary stated she had seen improvements with OptumHealth and a new RFP would be issued in 2012.

Senator Papen focused on the juvenile justice recidivism rates and community programs for mental health and asked the secretary about the kinds of programs available to youth after they leave the juvenile justice facilities. Secretary Beruman-Deines said the agency is working on developing substance abuse programs and that some youth are released too early.

Representative Tripp asked about the Juvenile Justice Advisory Council and Secretary Berumen-Deines said there were several vacancies on the board but there have not been enough people qualified and interested.

Chairman Smith asked about the autonomy of juvenile probation officers. Secretary Berumen-Deines stated that the department is working on revisions to the Children's Code. The CYFD's Ted Lovato discussed alternative sentencing community programs, including the program in Deming that stopped receiving referrals.

Department of Health (DOH). Secretary Catherine Torres testified the department is organized into seven program areas; a new Medical Cannabis Program area is being requested for FY13. She also noted teen pregnancy is increasing in the state, overdoses have increased, and the DOH's objectives include injury reduction, tobacco cessation, and diabetes control. Secretary Torres stated she wants to do drug testing and require immunizations for all DOH employees. Secretary Torres indicated she wants to cut overtime in the DOH public facilities by 50 percent. The DOH request reduces the Public Health Program budget by $700 thousand in general fund revenue and transfers these funds to the Scientific Laboratory Program for utilities, staffing and maintenance. The department is also requesting 7 term FTE and $598 thousand in other state funds for creation of a new program area for the Medical Cannabis Program. The developmental disabilities (DD) central registry contains 5,571 people. The $1 million appropriated by the Legislature in FY12 to reduce the DD Medicaid waiver waiting list can serve 50 people. The DOH is in the process of implementing a new DD waiver from October 2011 through July 2012. A DD rate study is currently ongoing. The supports intensity scale assessment tool is being evaluated for its validity but is not applicable to children, only adults.

In response to Representative White's questions about the medical cannabis program, Secretary Torres indicated producers are licensed and grow medical cannabis for medical purposes and are assessed a fee of $10 thousand annually increasing to $30 thousand for licensure renewal. The DOH licenses patients and monitors the quantity of medical cannabis purchased but does not monitor the potency of what the patients purchase. Producers take orders electronically, because New Mexico does not have dispensaries, and the state limits the number of producers to a maximum of 25. Each producer can grow 100 plants, and some patients can grow their own. Only about 1 thousand clients use producers and the number of producers is based on demand. Production depends on patients' needs and producers' yield is based on patients' needs, but no official statutory limit on producers exists. Renewal fees have grown from $10 thousand to $20 thousand for renewal, and the application fee is $1 thousand. There are 80 applications pending. A majority of the 25 producers are not at their 150 plant limit yet. Medical Cannabis Program fees are reverted to the general fund and it would require a statutory change to direct the fees to the Medical Cannabis Program.

Secretary Torres informed the committee of the DOH's organizational chart, highlighting classified, acting and exempt positions, and testified no DOH contract was behind in July 2012 nor left unpaid.

Senator Cisneros asked for the rationale for a new, separate Medical Cannabis Program, and Secretary Torres told the committee the statute was never funded. Staff was taken from the Public Health Program's Harm Reduction Program and the program has grown to 4 thousand patients. In 2010, additional diagnoses were added, including post-traumatic stress disorder (PTSD) and severe chronic pain, and these two diagnoses have probably contributed to the majority of the program growth. DOH Epidemiology Director Mac Sewell indicated diabetes-related deaths are statewide. The DOH will provide Senator Cisneros information about specific geographic areas of the state and the incidence of diabetes. Public Health Program Acting Director Maggi Gallaher indicated the DOH is doing a number of different program approaches to address diabetes.

Senator Beffort asked why the DD rate study was not approved by advocates and clients. Developmental Disabilities Program Director Cathy Stevenson replied the rate study was conducted in 2001, and advocates and clients did not like the study's methodology. Allocations to the waiver program are based on date of registration to the DD waiting list or DD central registry. The average cost per DD waiver client is $75 thousand, and the DD Program grew by $30 million from FY11 to FY12 due to the decrease in the federal medical assistance percentage (FMAP) and the loss of federal stimulus funds.

Chairman Smith asked why $2 million from the DD Medicaid waiver program was reverted back to the general fund in FY11, and Ms. Stevenson responded the DD Program received $3.1 million in supplemental funding from the Legislature for FY11 and, due to the DD Program's cost-containment efforts, did not need most of this supplemental funding, so it reverted the $2 million back.

Program Evaluation: Financing Healthcare through Tax Code Policy and Local Counties. Jack Evans and Maria Griego, LFC program evaluators, provided an overview of the LFC's report on locally financed healthcare programs and a special report on deficit balances at the Human Services Department (HSD). This report is a continuation of a report presented in October 2011 regarding healthcare tax expenditures. The second half of that deals with locally funded healthcare, specifically three locally financed healthcare programs: the county indigent fund, the county-supported Medicaid fund, and the Sole Community Provider Program. Staff also presented recommendations regarding important healthcare databases currently under the jurisdiction of the Health Policy Commission. Staff was joined by HSD Secretary Squier for comments on the department's balances.

The report findings and recommendations followed two major themes: (1) New Mexico's system of locally financed health care is a complex patchwork of programs designed to provide an indigent care safety net, and (2) spending on the Sole Community Provider Program is projected to be $267 million with insufficient accountability and an unclear future need.

Key Findings on Locally Financed Health Care: *New Mexico's locally financed healthcare system is a complex patchwork of programs designed to provide an indigent care safety net.* (See report, page 13) New Mexico counties play an important role in the funding of indigent healthcare programs throughout the state. In FY09, counties spent more than $87 million on indigent healthcare. Funds are raised primarily through optional gross receipts tax (GRT) increments dedicated to healthcare spending. The Indigent Hospital and County Health Care Act provides the legal basis for three indigent healthcare funding mechanisms: the county indigent care fund, the county-supported Medicaid fund, and the Sole Community Provider Program. By statute, the New Mexico Health Policy Commission (HPC) collects data on locally financed healthcare programs.

County indigent care programs vary in their scope of coverage, eligibility requirements, and funding, creating a disjointed indigent care system in New Mexico. County indigent care programs represent a way for counties to customize the provision of healthcare services to meet the unique needs of their communities. Counties use various models to manage their programs, and eligibility requirements vary by county. The majority of counties that have programs use

GRT increments for funding, while the remainder either uses mill levy funds or a combination of GRT and mill levy. Counties completely control their indigent funds and programs. The counties consider this a strength, because it allows counties more direct involvement and flexibility in designing their indigent care programs. However, the dollars are not eligible for federal match under Medicaid. It is unclear whether some individuals covered under county indigent care programs might also be eligible for Medicaid. The county would not be able to draw down federal match for those later determined to be Medicaid eligible.

Counties use different models ranging from fee-for-service, medical home structures, and capitated plans. A few examples are located at the bottom of page 13 of the report. Additionally, it is notable that county indigent care programs vary in eligibility requirements. Bernalillo County focuses the majority of indigent funds on the University of New Mexico Hospital. Bernalillo County has enacted a mill levy to support indigent care, which in FY11 totaled $91 million and takes $1 million out of its second 1/8th GRT increment for health care to also support UNMH's indigent care function. (See report, page 14).

Additionally, indigent program funding is compromised by declining GRT revenues. Indigent care programs are funded through the statutorily designated second and third 1/8th GRT increments, therefore negative changes to GRT revenue directly impact funds available to provide indigent care for the majority of New Mexico's counties. For example, San Juan County's second 1/8th GRT increment for health care was $4.4 million for FY11, while indigent claim costs were $2.1 million, a growth rate of 1 percent and 13 percent, respectively, from FY10. If care costs continue to outpace GRT revenue growth, GRT alone will not be able to fund indigent care.

Growing obligations to the Sole Community Provider Program (SCP) minimize funds available for indigent care. (See report, page 15) As the funding formula for SCP continues to grow exponentially, residual funds for other county healthcare programs are reduced. Counties use indigent care funds for everything from indigent care claims to funding preventive care clinics, county inmate health care, and detox and sobering centers. According to a 2004 Commonwealth Fund study, "Reducing preventable hospitalizations can preserve healthcare dollars to help fund improvements in ambulatory care." Putting more county dollars towards preventive and primary care reduces the burden on county hospitals, but counties do not have the resources to further invest in these programs and continue to fund the SCP program at its current growth rate.

Staff concludes it is unclear what impact the federal Affordable Care Act will have on county indigent programs. When the ACA is implemented in 2014, more individuals will have health insurance or will be eligible for Medicaid, so it is anticipated that fewer individuals will require at least primary care services. However, there will still be a need for programs not covered under the ACA, such as undocumented persons, who are not eligible for Medicaid or for participation in an insurance exchange.

County-supported Counties contributed $23.5 million in FY11 to the county-supported Medicaid fund without any feedback reporting on how these funds serve a county's Medicaid population. Counties are statutorily required to either enact a 1/16th GRT increment or pay the equivalent through other revenue sources to support the Medicaid program in New Mexico. The Taxation and Revenue Department collects funds for those counties that enact the GRT increment, and the HSD bills counties that are satisfying this obligation through other revenues.

The economic downturn and lower county GRT revenues have negatively impacted county-supported Medicaid funding, resulting in a greater need for state general fund to offset this deficit. The County Indigent Care Act stipulates that $1/16^{th}$ of county GRT revenues go to support the state Medicaid program. As a result of the recent economic downturn, consumer spending has declined, causing GRT revenues to follow suit. As a function of this same trend, the GRT revenue available to support the $1/16^{th}$ mandate for county-supported Medicaid has also been shrinking. (See report, page 17)

Counties are statutorily required to contribute to the state Medicaid program but do not receive consistent reporting from the HSD to validate how these funds are used. County funds go into the overall balance of state funds to support Medicaid programs. At this point, counties lose visibility as to how funds are disbursed and used, and counties are unable to identify what they are buying for their constituents with county-supported Medicaid dollars. While not statutorily required, it would be beneficial for the state to provide county-specific information to counties benefitting from county-supported Medicaid funding. By making more information available, the HSD would foster a stronger working relationship with counties.

The Health Policy Commission databases are an important source of information regarding locally financed healthcare programs. The New Mexico Health Policy Commission collects much of the data regarding the local financing of healthcare services in New Mexico. The HPC has responsibility for three databases: the hospital discharge database (HIDD), the geographic access data system (GADS), and the county-based financing of health care database (CIF).

Funding for the Health Policy Commission has been discontinued while statute mandates that this agency maintain this vital information. A memorandum of understanding was put in place between the Department of Health (DOH) and the HPC, but parts of it are no longer functional because of the loss of budget and staff. Currently, only the hospital discharge database may be used by the DOH, but restrictions remain on the release of information. These restrictions on the use of data may not meet requirements of healthcare reform for the state's purposes.

These databases face the threat of disappearance unless changes are made to the statute covering the HPC. At this time, data is accumulating to these databases but the HPC does not have the funding to continue reporting. The DOH does have access to the hospital discharge database but cannot release this information publicly. No one other than the HPC has the authority to release information. The last reports from these databases cover 2009. Statutory change is needed to transfer the responsibility for collection and reporting of this information to another state agency, such as the DOH.

<u>Recommendations for locally funded health care, particularly the county indigent funds and county-supported Medicaid.</u> (See report, p. 18)

1. The HSD should continue to make available on its website a county-supported Medicaid fund report showing Medicaid enrollment in each county. Information should also be included regarding Medicaid expenditures in each county.

2. The Legislature should redefine the uses of the second and third 1/8th GRT increments under the County Indigent Care Act, allowing counties to determine other uses for these funds as healthcare moves more under state jurisdiction due to healthcare reform.
3. The Legislature should revise statute to move the responsibility for collecting and reporting of Health Policy Commission database information to another state agency, such as the DOH.
4. The Legislature should revise statute to allow researchers and policy experts at the University of New Mexico Health Sciences Center to have access to HPC data.

<u>Key Findings on New Mexico's Sole Community Provider Program.</u> *The Sole Community Provider Program (SCP) is designed to provide supplemental Medicaid payments for hospitals that are the sole source of care for individuals in a designated area.* In 1994, the Indigent Hospital and County Health Care Act established the SCP, a federal/state/local payment program administered by the HSD that uses county funds to match federal Medicaid dollars. The SCP program was initiated as a way to maximize indigent funding for hospitals. Similar to other hospital-based supplemental payment programs through Medicaid/Medicare, the underlying assumption is that a sole rural provider will have unreimbursed expenses because of scale inefficiencies, limited means to cost-shift for indigents, and the frequent use of hospital emergency rooms as the healthcare provider of last resort, albeit an expensive one. The HSD has stressed the purpose of the SCP program is broader than indigent care. The program acknowledges that

- Hospitals and hospital emergency rooms are often the care provider of last resort and that costs associated with that situation would require additional reimbursement.
- The SCP program takes into consideration under-compensated care for individuals on public assistance programs and recognizes that.
- Because of the rural nature of sole community hospitals, incentives are often required to attract qualified healthcare professionals.

Qualified hospitals are also eligible for a related upper payment limit (UPL) program intended to close the gap between the differences in rates paid by Medicaid from Medicare. As a result, additional federal dollars are made available to these facilities so that they can continue to provide a critical healthcare service and to promote access to Medicare and Medicaid beneficiaries. The program operates under the state's federally approved Medicaid state plan.

Funding for the SCP is projected to be $267 million with insufficient accountability and an unclear future need. This program has grown from $55 million in FY01 to $267 million in FY12. If counties were able to come up with the full amount of contributions – another $52 million in federal match could be drawn, making this a $340 million program. Counties primarily use money from the county indigent care fund to meet the matching requirements, but can, and do, also use hospital mill levies or other general funds to support this program. However, the vast majority of the local match comes from the county indigent care fund. It is becoming increasingly difficult to draw down the full match.

The SCP funding formula has contributed to average annual increased spending of about 20 percent between FY03 and FY10. The SCP is not a mandatory program and counties have complete discretion in how much to allocate for this locally financed healthcare program. Each year the HSD calculates the maximum amount allowed for each hospital using the federally approved SCP funding formula. To determine the current year base funding amount, the HSD includes the previous year's base funding plus the previous year's supplemental funding plus a market basket factor (an inflation factor that is typically 2 percent to 3 percent). The result is the current year's new base. The amount available for hospitals is based on the lesser of the amount approved from counties or the state's calculation.

As a result of this formula, counties often feel pressured to increase their contribution to fully match available SCP funds, causing their contributions to grow over the years. For most of the past decade, county GRT revenues and contributions kept up with this growth rate, though SCP has taken a larger share of indigent funding. Between FY02 and FY09, counties' SCP contributions increased more than 250 percent, from $15.1 million to more than $53 million. Transfers from the indigent care fund accounted for about 87 percent of the counties' match, or $46.9 million. During that same year (FY09), these SCP payments accounted for 54 percent of county indigent care fund expenses.

The state and the counties do not regularly assess the impact of SCP funding on access to healthcare, on reducing uncompensated care, or on the adequacy of Medicaid payments for hospital services. The SCP reporting from hospitals is often inadequate and lacks standardization statewide. Better training for local officials is needed. Many hospitals do not report the number of county patients served by SCP funds and whether or not these patients are Medicaid eligible, though some do. Several counties would like to have this information for their constituents and boards to support the securing of county funds for the SCP program, while some, like San Juan County, appear to receive sufficient information for decision-making. Lastly, a standardized county commission education program on locally financed healthcare would help commissioners, and partly newly elected members, make fully-informed policy decisions.

The SCP program does not specify how funds are to be used by hospitals and lacks an assessment of whether Medicaid and indigent uncompensated care costs are reduced. The SCP is not the only Medicaid program intended to help offset uncompensated care from indigent patients or low Medicaid payments. State Medicaid programs are required by federal law to consider hospitals that serve a disproportionate number of low-income patients when determining in-patient payment rates. In New Mexico, as of 2007, almost half of the hospitals receiving sole community provider funding also received funding through the Medicaid Disproportionate Share (DSH) program. For DSH, the HSD uses a special formula that takes into consideration each hospital's Medicaid inpatient utilization rate, its low-income utilization rate, the amount of Medicaid funds it received, the total cost of care for Medicaid services, its uncompensated care, and other factors to determine the Medicaid DSH payment. As of 2007, 19 of 23 DSH hospitals received a higher total Medicaid reimbursement than their total cost of care for Medicaid services. The excess Medicaid payments, including SCP, eliminated total unreimbursed, uncompensated care costs and resulted in a net gain to these hospitals totaling $46.2 million. The DSH reporting format could serve as a useful template for an ongoing assessment of the role of not only DSH, but SCP and other Medicaid payment levels, in covering Medicaid and indigent/uncompensated care costs.

Staff were unable to obtain more recent (than 2007) data on DSH payments from the HSD because these newer reports have not been audited. Staff reasonably assumes that in later years, Medicaid payments have decreased. However, the LFC may wish to consider the complete picture – including all Medicaid-related payments to hospitals, as well as other sources of income (tax breaks) -- and use that information for planning for major changes that will occur with Medicaid redesign and the impact of national healthcare reform.

Issues have been raised concerning the financing of SCP, including whether certain provider donations to counties are permissible. The SCP is oriented to maximize the amount of federal matching funds that can be drawn down for hospitals in communities across the state. The federal Centers for Medicare and Medicaid Services (CMS) has been scrutinizing how county matching funds are acquired to ensure compliance with federal regulations. Federal regulations prohibit use of funds as the nonfederal share where the state or county had received donations from private healthcare providers that are related to the amount of Medicaid reimbursement paid to the provider.

A preliminary CMS report has concluded that in certain instances the nonfederal share of SCP payments in FFY09 were based on improper provider donations. In February 2011 CMS issued a draft financial management review of SCP payments in FFY09, which found that in nine instances private SCP hospitals had made donations, either via direct payments to the county or, in one case, through in-kind services, related to the amounts transferred by the counties to the state to fund SCP payments. The hospitals involved in this report contend that any donations made by them to the counties were unrelated to their Medicaid payments and did not violate federal regulations according to the HSD. Since 2006, the HSD has required counties to certify that the transfers are public money, and in 2010 began requiring hospitals to do the same. Currently, to strengthen this requirement, so that arrangements between hospitals and their counties are compliant with federal regulations, the HSD has deferred further SCP payments to private hospitals pending full agreement the program meets federal requirements. The HSD is now engaged in negotiations with CMS to resolve the issues raised by the draft report for 2009 in a manner that would eliminate the state's exposure related to SCP payments that have been made until now. The resolution is expected to require a repayment to the federal government. The last figure we heard was approximately $11.6 million – down considerably from earlier estimates. HSD will need to update the committee on their negotiations.

In addition, five New Mexico private hospitals have been named in a whistleblower lawsuit alleging that they violated the False Claims Act by making donations to New Mexico counties correlated to the amounts transferred by those counties to the state to fund SCP payments to the hospitals. The federal Department of Justice has intervened in the lawsuit with regard to three of the hospitals. The HSD is working with the Department of Justice and the CMS to facilitate a resolution to both the lawsuit as well as the federal management review.

In FY11, UNM Hospital assisted with funding the SCP supplemental. Each fall, the HSD calculates the maximum amount of federal funds available for SCP payments after taking into account regular Medicaid payments and what Medicare would have paid for those same services. Based on the allocation prepared by HSD, the amount is determined that must be transferred by the counties to support payment to the hospital of the full available federal funds. In 2010, because of diminishing revenues, the counties were unable to transfer the full amount necessary to access all available federal funds. Working with the HSD, the University of New Mexico Hospital provided the additional amount of nonfederal funds required to access the full amount of federal funds. UNMH made payments to the counties that in turn transferred them to the state to facilitate the SCP supplements totaling $2.3 million to draw down federal match of $11.9 million.

The continuing need for the SCP program following national healthcare reform is questionable and warrants careful consideration. There is no specific known impact on the SCP program spelled out in the Accountable Care Act. With the full implementation of national healthcare reform, most individuals will be covered by healthcare insurance and there should be less uncompensated care. Other Medicaid supplemental payment programs, such as DSH, are scheduled to have funding declines in recognition of the anticipated improved payer mix. New Mexico has one of the highest uninsured rates in the nation and as more people have a source of payment for care, the continued need for SCP, particularly at current levels, will diminish beginning in 2014. The resources may be redirected toward picking up the eventual state share of newly eligible Medicaid recipients. However, should the state choose to use Medicaid to help finance uncompensated care from residual gaps in coverage, then a smaller SCP program might continue to be needed. For example, some communities might have significant numbers of uninsured immigrants who seek care in local emergency rooms that result in uncompensated care costs.

Recommendations for SCP.

1. The HSD working with counties and hospitals, should develop guidelines for standardized SCP reporting by hospitals and should post reports on their website that show the full amount of SCP funding, both local and federal, by county, for the SCP program.

2. The HSD should develop a training module on locally funded healthcare and make it available for use by the Association of Counties and individual counties.

3. The SCP funding formula should be revisited and changed to control exponential growth, and ensure total Medicaid payments do not exceed the costs of Medicaid and indigent care at specific hospitals.

4. The HSD, working with counties, should ensure local funding for SCP complies with federal regulations and provide a status report to the LFC no later than January 31, 2011 on resolution of outstanding issues stemming from the federal audit of SCP payments. The HSD should ensure that any possible repayment of funds does not impact the general fund.

5. No later than September 1, 2012, the HSD, working with counties and hospitals, should study and make recommendations to the LFC and governor whether SCP should continue with its current form and financing mechanisms given federal health reform and state Medicaid redesign.

Mr. Evans and Ms. Griego thanked various individuals for their assistance and expertise.

Status Report on Medicaid Deficiency Request. Maria Griego, LFC program evaluator, presented a quick summary of a special review completed on deficit balances at the Human Services Department. For FY10, the HSD identified negative fund balances for the Medicaid program, resulting in an $88.4 million deficit fund balance on its financial statements. Since that time, the HSD has sought to reconcile the sources of the fund deficit with the assistance of an outside auditing firm and has provided periodic status reports. The HSD indicated $103 million in reporting errors contributed to the deficiency. In September 2011, the Legislature made an appropriation of $11.8 million to reduce Medicaid's cash deficiency.

Under Medicaid, the federal government reimburses states the federal match after states make expenditures. Thus, the program must temporarily use state funds to make payments, and run a deficit until federal reimbursements are deposited into the Medicaid account. Untimely requests for reimbursements can negatively impact the finances of state government, including reducing the amount of interest earned on short-term investments of cash in the general fund. In addition, state law prohibits, and provides penalties for, the issuance of payments from the treasury if agency funds have insufficient balances (Section 8-6-7 NMSA 1978). As such, the Legislative Finance Committee has repeatedly expressed concern with the persistently large negative cash balances reported by the Medicaid program.

The specific amount needed for a deficiency appropriation and reason for the negative fund balance remains unclear. However, contributing factors include a cumulative impact of poor internal controls, untimely and incorrect reimbursement requests, incorrect federal reporting, and lack of cooperation among HSD staff. These issues were documented by the HSD and its auditing consultants, Myers & Stauffer. The audit firm's report details a multitude of over- and under-claiming of federal Medicaid funds; however, the report does not fully explain the deficit fund balance that occurred specifically in FY10, and further review of the HSD cash balance issue is necessary. For example, the FY10 financial audit shows a deficit fund balance of $88.4 million. Most recent data shows the year end FY10 cash balance in SHARE was a positive $24.5 million. Reported cash balances appear to deteriorate further during FY12, however, closer examination of expected revenue shows the HSD has received and identified outstanding receivables generating sufficient revenue to result in a positive balance of more than $13 million. However, it should be noted that some of these expected revenues, such as the $40 million from federal reimbursements not claimed, might not materialize.. The HSD has requested federal approval to claim this funding but at the time of this review had not received a final decision. Further complicating the matter is the potential inability to collect historical overpayments from providers totaling an estimated $46 million.

Currently, the Financial Control Division of DFA and the State Treasurer's Office are working with a number of agencies that report regular, large negative fund balances but have not had an opportunity to fully engage the HSD in this process yet. Additional time will give these agencies an opportunity to review and monitor the deficit fund balance, reconcile cash activity to SHARE, and review the FY11 audit when it is complete in order to provide more clarity on the exact amount the HSD will need to resolve this problem with a deficiency appropriation. In light of all of this, the staff recommendation is for the Legislature to defer making a deficiency appropriation until all pending issues have been resolved and new information is available, including results from the FY11 year-end audit. If the federal government denies the HSD request, Medicaid will need funding to offset the negative impact from not receiving this expected revenue. As the Legislature develops an FY13 budget, care should be taken to ensure general fund reserves are kept at a sufficient level to deal with the HSD's Medicaid deficit fund balance.

Vice Chairman Varela called up Ricky Bejarano, state controller, to also address questions related to this issue. Both Representative Varela and Representative Larrañaga inquired about whether negative fund balances were normal, how often federal funds were drawn down, and when corresponding entries were made to SHARE.

Human Services Department (630). Cabinet Secretary Sidonie Squier provided an overview of the department's FY13 budget request and current issues. Secretary Squier provided updated enrollment and participation in the Medicaid, Temporary Assistance for Needy Families (TANF), child support, and behavioral health programs. The FY13 budget request of $4.7 billion includes $1 billion from the general fund, which represents 21 percent of the budget. The majority of the $50.1 million general fund requested increase is for the $3.88 billion Medicaid program. The secretary said the HSD's latest Medicaid projection has increased the general fund need to $55.8 million, including $15.9 million for enrollment growth, $19.7 million for a possible federal disallowance for the personal care option (PCO) program, $9.2 million for utilization increases, and $11.0 million to offset a decrease in federal match.

In the Income Support (ISD) program area, the budget request of $838.6 million includes $40.1 million from the general fund. The HSD is requesting an additional $795.9 thousand increase to replace nonrecurring revenue in the general assistance program that was swapped in the FY12 budget to fund the state Supplemental Nutrition Assistance Program (SNAP). For the federally funded SNAP program, enrollment growth continues to exceed expectations and the number of cases is approaching 200 thousand. The total federal funds projected for SNAP are $666.7 million in FY13. Secretary Squier noted the state receives a $110.6 million in the annual block grant for the TANF program. TANF spending priorities are geared toward increases in services that help families achieve self-sufficiency, including $500 thousand for job-related transportation expense and $1 million for the wage subsidy program to employ more TANF clients. The FY13 request includes $1 million to reinstate the clothing allowance of $50 per year/per eligible family member.

The secretary provided an update on the Income Support Determination System computer software replacement project (called ASPEN). She noted the current client eligibility system is nearly 30 years old and is hard to support. The new integrated eligibility system will improve public access to services through web access and streamline services by providing field staff with more efficient and technically advanced eligibility tool. Total approved funding is $75 million and the goal for project completion is in early 2014. She also noted the state received a $34.2 million grant (Level 1) for implementation of a healthcare insurance exchange as required by the new federal health reform legislation. The HSD will need to integrate eligibility functions of the health insurance exchange with ASPEN and will be required to demonstrate readiness for new clients in January 2013 and begin enrolling new clients in October 2013.

In the area of Medicaid modernization, the secretary discussed concerns over the overall financial sustainability of Medicaid and noted several core elements of the plan now under review by the governor including: 1) comprehensive care coordination, where health plans will be responsible for care coordination programs that identify high-risk and complex members and then coordinate care to better manage conditions and avoid hospitalizations and other expensive services; 2) personal responsibility, which may include some form of incentive payments (such as a debit card), to reward Medicaid enrollees engaged in healthy behaviors, and 3) pay for provider performance, which includes the use of contractual financial incentives and disincentives to hold health plans responsible for improved care quality and improved health outcomes. The HSD wants to achieve administrative savings by streamlining many current Medicaid waivers and will request a Section 1115 waiver to implement its proposed reforms.

The secretary answered a number of questions from LFC members. In response to questions about a potential $53 million liability to the federal government due to improper use of hospital funds as matching funds for Sole Community Provider Program, Secretary Squier stated the HSD is waiting for final sign-off by the Centers for Medicare and Medicaid Services (CMS) on a proposed $7.9 million settlement of the claim. The HSD staff attorney Larry Hayek noted the settlement does not resolve issues related to the separate U.S. Department of Justice "qui tam" whistleblower lawsuit involving three hospitals owned by Community Health Systems. According to Secretary Squier, the source of funds for the settlement will come from either the hospitals or county contributions. As part of the settlement, the HSD has worked with the counties on improved reporting mechanism on sources of match funding from the counties.

In response to questions about the HSD's cash deficiency due to Medicaid accounting reconciliation difficulties, Secretary Squier noted the department has adopted a new reconciliation process for federal reports and the state accounting system and has implemented stronger internal controls on the receipt and disbursement of cash. These steps, along with staff reorganizations and improved cross-division collaboration should prevent this problem from occurring again. Representative Varela asked State Controller Ricky A. Bejarano to work with the HSD to help determine its true cash deficiency. In response, Mr. Bajarno said it is a good idea to keep examining this issue with the HSD as well as other agencies with negative cash balances. Mr. Bejarano noted the HSD is recording its Medicaid receivables and doing a good job of drawing down federal funds. This cash shortfall is really due to prior issues.

On Medicaid modernization, LFC members stated it is important for the Legislature to see the modernization plan as soon as possible. Secretary Squier also answered a number of LFC member questions on the procurement of a contractor to manage the HSD's Medicaid management information system (MMIS). The discussion focused on the structuring of the RFP to maintain the current system as opposed to procuring the latest software, as well as whether or not the RFP was designed to favor the current incumbent contractor, ACS. LFC members expressed concern the HSD did not go back out for a new request for proposals (RFP) after the incumbent ended up being the only bidder.

Wednesday, December 7

The following members were present on Wednesday, December 7, 2011: Chairman John Arthur Smith, Vice Chairman Luciano "Lucky" Varela, Representatives Don Tripp, William "Bill" J. Gray, James P. White, Edward C. Sandoval, Rhonda S. King, Larry A. Larrañaga, and Henry "Kiki" Saavedra; and Senators Pete Campos, Carlos R. Cisneros, Steven Neville, Mary Kay Papen, Sue Wilson Beffort, Carroll H. Leavell, and John M. Sapien. Senators Cisco McSorley and Phil A. Griego and Representatives Jimmy Hall, Jane E. Powdrell-Culbert, and Jim Trujillo attended as guests.

Staff met in executive session until 9:40 a.m.

Department of Transportation (805). The Department of Transportation hearing agenda was divided into three sections: (1) a presentation by Albuquerque Mayor Richard J. Berry on the Paseo del Norte/Interstate 25 interchange proposal, (2) a presentation by Cabinet Secretary Alvin Dominquez and Budget Director David Archuleta on the department's FY13 budget request, and, (3) a presentation by the department's Rail and Transit Division in response to House Memorial 42 (2011 legislation session) on the costs and benefits of the Rail Runner. Time constraints prevented the presentation on the Rail Runner, but a document titled *Rail Runner Efficiency Study (HM42 of 2011)* was submitted for the record.

The presentation by Mayor Berry established an initial framework for the funding of a $93 million phase one construction project, consisting of the replacement of signalized intersections at the interchange with a free flow ramp, a flyover, and separated lanes. In this scenario, Albuquerque would provide up to $50 million in matching funds through the issuance of bonds. The mayor emphasized current levels of traffic congestion at the interchange and the necessity of anticipating critical future transportation needs. The mayor also emphasized the significance of local job growth provided by the project.

Questions from Representatives Larrañaga, Varela, Sandoval, Tripp, Gray, and White focused on three issues: (1) the existing consensus among relevant political actors in the Albuquerque region that the project was considered a priority and the potential for funding available beyond that mentioned by the mayor, e.g. from Bernalillo and surrounding counties, (2) how long a fix to the Paseo del Norte/I-25 would work, and, (3) the timeline for construction. The answer to question one, provided by the mayor and Dewey Cave and Terry Doyle of the Mid-Regional Council of Governments (MRCOG) suggested some consensus but no clear availability of additional funding. The answer to question two, provided by the secretary, Mike Riordan, Director of Municipal Development for the City of Albuquerque, Cave, and Doyle was approximately 15 years if current growth projections hold. The answer to question three, provided by Secretary Dominquez and Riordan, was approximately four years; planning, design, and acquisition would take two years and construction an additional two years. Although a design/build approach was possible, Secretary Dominquez emphasized the importance of the identification of a recurring revenue stream from state and local governments to ensure environmental regulations were met and federal funding was available. Representative Saavedra asked a question about support from the Martinez Administration for the project, and the secretary stated there was strong support from the administration.

By and large, there was considerable support from the committee for the project, including Senator Beffort who stated congestion concerns at the interchange had to be addressed for public safety reasons. However, Senator McSorley expressed concern for the approach of bonding against the gross receipts tax and considered this an overextension of debt obligations on the part of Albuquerque. He also asked if a better approach to obtaining revenues would be an increase in the gasoline tax.

Senator Smith stated the Paseo del Norte/I-25 interchange project was indicative of continued efforts in the state to work on individual deals versus a long-term strategic transportation plan for the state and stated concern that this project was leap-frogging ahead of others when other projects might be of equal importance. He emphasized that given the financial constraints being faced by the department, the State Transportation Commission (STC) and the NMDOT needed to come up with a concrete plan to create a viable revenue stream that could be used for new major construction projects across the state.

Secretary Dominquez then presented the department's request of $841.3 million, an increase of $19.5 million, or 2.4 percent, from the FY12 operating budget of $821.7 million. The secretary provided summaries of each program, and then emphasized several critical points for the committee: (1) an uptick in state road fund revenues, (2) uncertainty in federal revenues, (3) debt obligations that create significant obstacles to the department pursuing its mission, and, (4) existing maintenance and construction gaps.

Representative Larranaga asked whether the maintenance contract with Herzog would be reviewed and renegotiated. Secretary Dominquez and Mr. Doyle responded yes. Representative Larranaga pursued a set of questions and comments concerning the significant debt obligations of the NMDOT and mechanisms being considered to remedy the problem. The secretary stated the State Transportation Commission (STC) was actively considering solutions.

Chairman Smith asked about the current status of the line between Raton and Trinidad. Secretary Dominquez and Deputy Secretary Kathryn Bender (Program and Infrastructure) stated the state of New Mexico had withdrawn from the agreement with Burlington Northern Santa Fe (BNSF) Railway Company and had requested partial reimbursement for the purchase price. Negotiations continued with BNSF on this issue. Chairman Smith stated it is time for the STC to step forward and do what is responsible – that is finding a real solution to the long-term debt problems being confronted by the NMDOT. Senator Phil Griego asked about the potential property taxes to local government entities that would be lost if NMDOT assumed ownership of the BNSF railway. The secretary assured Senator Griego that NMDOT had decided not to assume ownership and had stated so in a letter to BNSF.

Higher Education Institutions (952-977). José Garcia, secretary, Higher Education Department (HED), requested a flat budget for institutions of higher education and the special schools. Referring to the LFC's November 2011 hearing on the new instruction and general expenditure funding formula, Secretary Garcia reported the HED applied the new formulas to redistribute the $577.5 million of formula funding based on performance outcomes. The HED request made sure no institution received more or less than 2 percent of its FY12 operating budget.

David Schmidly, president, University of New Mexico (UNM), voiced the institution's support of the revised formula, including moving towards performance-based funding and elimination of the tuition credit. Noting the decline in state appropriations over the last four fiscal years, President Schmidly requested that members recommend an FY13 budget of FY12 operating levels and additional funds. Since institutions have participated in the secretary's formula-development process and are moving forward on more institutional measures, President Schmidly requests additional funding, particularly because faculty and staff are working harder to serve more students.

Daniel Lopez, president, Council of University Presidents (CUP) and New Mexico Institute of Mining and Technology, recognized the formula-development process and the efforts of the HED, Higher Education Funding Task Force, LFC staff, and others. The CUP supports outcomes-based funding, a direction followed by many states, but institutions request funding over the FY12 budget levels to accomplish this. He reported that postsecondary institutions combined were staffing a 17 percent increase in workload with 17 percent less in state appropriations, and this reduction has lead to fewer course selections, increased tuition, and fewer research opportunities. These reductions have resulted in research university faculty teaching more, spending less time on research, and considering other options where there are more resources; a similar trend is seen with senior staff leaving or retiring.

The CUP supports an FY13 budget that (1) maintains FY12 sector ratios, (2) is the FY12 budget plus additional funds for outcomes, (3) removes UNM Health Sciences Center from the I&G formula calculations as has been done historically, (4) does not incorporate the HED's proposed utilities adjustment in the operating base, and (5) addresses salaries.

Barbara Couture, president, New Mexico State University (NMSU), echoed the comments of President Schmidley and Lopez, supporting a FY13 budget that is more than the FY12 appropriation and funds outcomes and compensation. She noted that Secretary Garcia has stated that some NMSU issues with the formula will be addressed, and with that impending action, NMSU will fully support the formula.

Felicia Casados, president, New Mexico Association of Community Colleges (NMACC) and NMSU-Grants, voiced concern the formula changes might negatively impact rural, small community colleges and the full impact of the formula changes should be considered prior to its implementation. She acknowledged the LFC's role in leading the discussions on higher education and formula revisions, particularly as there has been inconsistent leadership at HED since it was formed. She also discussed some of the achievements of community college students.

Steve McCleery, president, New Mexico Independent Community Colleges (NMICC) and New Mexico Junior College, noted highlights in the NMICC's annual report, particularly the call from national leaders to support higher education because an educated workforce will improve the state's economic condition. Community colleges, particularly rural ones, frequently serve as economic engines for their communities. He recognized the Legislature's continued support and called for a FY13 request that holds every institution harmless based on FY12 operating levels. Further, if there are sufficient new revenues, the Legislature should restore the Education Retirement Board reduction from FY12.

Chairman Smith thanked the presidents for their comments. He noted that with reductions, including the ERB retirement swap, more draconian budget steps were avoided – reductions in force, early retirements, and furloughs. A member asked about minority student retention as described in the CUP 2011 report.

Discussing the new funding formula, Vice Chairman Varela voiced his concern the formula does not include a tuition credit and tuitions have risen steadily. President Lopez stated all institutions support eliminating the tuition credit from the formula, but also stated that, even without a credit, tuitions may still increase because revenues are needed to provide services and expand research or other initiatives. The committee reviewed the FY06-FY11 history of tuition credits and tuition levels from the LFC's 2011 budget recommendation. The secretary confirmed the HED used three formulas, one for each sector; each sector received the same share of formula-funding in the HED's FY13 budget request; and that capital funding is distinct and separate from institutional formula funding.

Members asked about whether institutions will lower the academic quality of programs and student performance because the formula incentivizes institutions to produce more awards and achieve other statewide outcomes. The HED secretary and institutional leaders noted that there can be checks on institutions, such as testing student knowledge on program completion, measuring student incomes after graduation or program completion, or limiting state support for credits over the number required for a credential. If the marketplace does not value the credential, then institutions may need to address a quality issue.

The N.M. Soil and Water Conservation Districts requested additional funding for FY13. Without additional funding provided to the N.M. Department of Agriculture (NMDA) for soil and conservation districts, technical staff will be cut by as much as 14 positions and the state will continue to receive less federal funding because of the flat state support. The HED FY13 request for the NMDA was the same as FY12 operating levels, and the department did not request additional funding for soil and conservation districts.

Special Schools – New Mexico School for the Deaf (980), New Mexico School for the Blind and Visually Impaired (979), and New Mexico Military Institute (978). Chairman Smith welcomed the panel, and Ronald J. Stern, superintendent, New Mexico School for the Deaf, made the first presentation. Superintendent Stern described the school's statewide reach, serving early childhood, prekindergarten, and older children and adults; in FY11, 645 infants and children were served. A constitutionally created school, the school also works with teachers and others in 54 of the state's 86 school districts. The school has lowered the target age (from 2 years and younger to 6 months or younger) to identify children with hearing problems because early intervention can have the strongest impact on improving an individual's quality of life, literacy and learning potential, and ability to earn a living. Superintendent Stern expressed serious concerns with the loss of up to $600 thousand in reduced revenue from the land grant permanent fund (LGPF) for FY13, and requested an increase in general fund appropriations to make up this difference.

Linda Lyle, superintendent, New Mexico School for the Blind and Visually Impaired, offered an initial observation – of the blind community, 20 percent are employed, and of this 20 percent, 80 percent are underemployed – and noted the school's efforts to work with school district administrators and teachers on ways to improve impaired students' skills to improve these odds. Because visually impaired students are not visual learners, nearly all teachers need additional help serving these students. As more visually impaired students are identified and assisted, a growing cause of blindness -- optic nerve hypoplasia (ONH) – is challenging the school's ability to diagnose and assist individuals with this condition; since July 2011, 36 children with OHN have been admitted to the school. These individuals frequently manifest autistic behaviors and require a great deal of attention. Ninety-six percent of the school's budget comes from LGPF revenues, and the projected $500 thousand reduction in revenues for FY13 would be devastating to the school. The school's funding reserves are modest, and the school will reduce instructors and staff without additional general fund support.

Major General Jerry Grizzle, superintendent/president, New Mexico Military Institute, reported on the institute's enrollment growth and higher retention rates because of improved placement testing and altered curriculums. Importantly, the institute achieved the highest standard during the recently completed accreditation process, after years of extensive review and intervention by the regional accrediting body. Like the other schools, the institute will receive more than a million dollars less from LGPF revenues for FY13 and requests an offset with general fund appropriations. Further, the institute has received varied levels of appropriations for the Knowles legislative scholarship program in addition to supplemental revenue from the institute's endowment and other funds. Currently 270 students receive this scholarship funding, but there mains unmet need and the institute cannot maintain its level of scholarship support after years of declining appropriations and lower LGPF revenues.

Vice Chairman Varela asked about student recruitment or identifying students with need. Ms. Lyle summarized the school's outreach department and infant/toddler program that provides information and trains administrators and teachers in public schools. Currently the School for the Visually Impaired works with 15 school districts and serves students on campus. Superintendent Stern emphasized early intervention is necessary to maximize the opportunities as a child's brain develops, so working with state agencies, healthcare organizations, and schools is important for the School for the Deaf. Major General Grizzle described the student recruitment process at the institute.

Members asked about the schools' infrastructure needs and access to the public schools capital process or other funds, including general obligation bonds. All institutions require infrastructure repairs and maintenance. The institute receives mill levies for its capital infrastructure, but additional funds are needed for the older campus. The other special schools have received general obligation bond revenues and severance tax bond proceeds, though the failed 2010 higher education general obligation bond effort impacted the schools' efforts. The special schools are being included in the public schools capital process, and they hope additional funds will be available for necessary and immediate infrastructure repairs.

Program Evaluation on Community Colleges: Doña Aña Community College and Central New Mexico Community College. Community colleges play a pivotal role in the pipeline from high school to four-year institutions and the workforce. In FY12, New Mexico's 10 branch community colleges and eight independent community colleges served 58 percent of the state's total postsecondary population and received $177 million of higher education's $731 general fund appropriation. Central New Mexico Community College (CNM), New Mexico's largest postsecondary institution, enrolled 30 thousand students in fall 2010 with an instruction and general (I&G) budget of $111 million. In the same year, Dona Ana Community College (DACC), the largest branch community college, enrolled 10 thousand students with an I&G budget of $33 million.

Higher education formula has incentivized course-taking over completion of certificates or degrees — students average 35 percent to 45 percent more credits than is necessary for an associate degree -- and learning site expansion has not been aligned closely enough to workforce needs. The colleges have kept tuition low and encouraged access, but three-year completion rates, 8 percent at CNM, and 7 percent at DACC, are below the state average of 13 percent and the national average of 20 percent. Continuing to develop an outcomes-based funding formula will incentivize better student results. This evaluation of CNM and DACC presents findings and recommendations in four areas: One, strategies for moving toward a more coordinated community college system. Two, ways to reduce remediation rates and improve articulation agreements with four-year schools. Three, the need for careful decisions around dual credit. And four, how current disparities in the blend in revenues provided by students, localities, and the state represent opportunities to close the higher education achievement gap in New Mexico by increasing need-based aid.

Findings:
First, improvements to New Mexico's fragmented governance structure could save money and produce better student outcomes. General Hosmer stated last month the state's three public research universities, four comprehensive universities, 10 branch community colleges, and eight two-year independent community colleges are not systematically organized New Mexico currently has 27 two-year learning sites and more than 50 total locations all together. Each of these satellites increases overhead costs, including administration and maintenance, and creates challenges to providing quality services to students. In the last five years, capital expenditures have increased from $7 million to $18 million at DACC and from $677 thousand to $45 million at CNM, although for CNM's Rio Rancho campus, these costs are offset by tax base expansion. As these schools expand, it is challenging to maintain quality programs — offering all things to all students — because each school is only able to offer a fraction of its total courses at each campus. Evaluators heard repeatedly by surveying students as well as in interviews about the inconvenience of courses scheduled across campuses.

Also, as programs have grown across the state, they are not integrated to avoid the over- or under-production of degrees. In some fields, such as dental assistants, the number of certificates produced exceeds the number of positions available. In others, like nursing aides and related healthcare support occupations, New Mexico does not keep up with the demand.

LFC staff recommends the HED consider population growth, educational attainment gaps, and workforce needs to inform legislative consideration of campus expansions, beginning with new requests for FY13. A second area for improving the efficiency of New Mexico's community college system is through collaborative purchasing. Other states have saved millions of dollars through purchasing consortiums in areas such as information technology systems, accounting and human resources systems, library services, and bookstores. With one phone call, LFC evaluators learned that something as simple as collectively purchasing placement exams could save $89 thousand per year. *LFC evaluators recommend the HED or institutions should pursue this and other collaborative purchasing opportunities.*

Finally, DACC's governance relationship with NMSU presents promise as well as challenges. While this arrangement is unique to New Mexico, coordination between DACC and NMSU has the potential to lower costs and add value to both institutions. DACC's 2008 accreditation report recommends the two institutions revise their master agreement to avoid duplication of services and ensure smooth transitions for students. That report recommends that DACC study the economic feasibility of increasing its mill levy rate, an issue the LFC evaluation explores in more depth regarding the statewide variation in the blend of costs between students, local taxpayers, and the general fund. *LFC staff recommends DACC follow these accreditation recommendations to update its master agreement with NMSU and conduct a feasibility study on the economic implications of increasing its mill levy rate. Staff also recommends that NMSU and DACC identify opportunities to streamline services, purchase collaboratively, and clarify cost structures for students.*

The second finding is that improving the educational pipeline between high schools, community colleges, and four-year institutions could help students succeed at lower costs. The high costs of remediation -- $32 million annually -- to both students and the state. The more remedial, or developmental, education a student needs, the less likely that student will earn a credential and students who do obtain a credential take longer to complete their education, spending more time and money in the process. CNM and DACC have implemented best practices in this area, such as preparing students prior to taking placement exams and shortening the time students need to spend in remedial classes, but two additional steps could help.

The first is standardizing placement scores across the state and possibly moving to one placement test. The state's colleges primarily use two tests, Accuplacer and Compass, and cut scores vary between institutions. For example, a reading score of 90 places a student into a college-level course at Santa Fe Community College, while only an 80 is required at CNM. A placement score validity study, such as the College Board's, will provide a defensible link to standardized placement scores and help incoming students prepare for college credit-bearing courses.

Second, New Mexico's 11th grade standards-based exams could be used as early assessments to reduce costs and help students make better use of their senior year to lower remediation rates. New Mexico spends millions of dollars on a comprehensive test that indicates if our juniors are proficient, but the colleges don't use the results as indicators of college readiness. Studies have found a strong relation between this exam and the need for remediation in college. This addresses an issue recently reported in the LFC's review of 12th grade study – the number of seniors who do not use their final year of high school to prepare for college. It would also reduce placement exam costs at DACC, CNM, and other two-year institutions. As a side note, in 2014, New Mexico will replace the SBA with new exams intended to align to career and college readiness, presenting an ideal transition opportunity. *Staff recommends, therefore, that the HED, CNM, and DACC use the state's 11th grade standards-based exam for postsecondary placement and the HED facilitate statewide coordination of placement validity studies to unify cut scores across institutions for those students who do need to complete these tests.*

CNM and DACC can also improve remediation rates by focusing efforts with a handful of local high schools. Seventy-three percent of DACC's in-state students needing remediation in FY10 came from Oñate, Gadsden, Las Cruces, and Mayfield high schools. Students from nine high schools within the Albuquerque Public Schools had the highest enrollment at CNM in FY10, although CNM's remedial rate, 34 percent, was lower than the state's 47 percent average.

On the other end of the pipeline, doing a better job moving students from two-year to four-year schools is in the best interests of both students and the state. Tuition prices in New Mexico incentivize students to complete lower-division courses at CNM or DACC -- a credit hour costs four times as much at NMSU or UNM as at CNM or DACC -- but actual costs to the state and institutions are roughly equivalent at two-years and four-years. Nationally, when expenditures for upper- and lower-division courses are separated, it is less expensive to educate students for the first two years of a bachelor's degree at a public four-year institution than at a two-year college. When this methodology is applied to New Mexico, two- and four-year costs per student are within an estimated $600 of each other, between $4.3 thousand and $4.9 thousand. While this doesn't mean that these lower-division courses should only be taught at one type of institution over another, it does point to the importance of efficient transfer of credits between the two. Looking at students who transferred from DACC and graduated from NMSU in 2010, however, it took an average of 2.5 DACC credits to lower the number credits taken at NMSU by one, increasing the number of credits at both DACC and NMSU. The transfer of credits between UNM and CNM is better; every credit taken at CNM reduced the number of credits taken at UNM by seven-tenths of a credit. While staff identified research-based strategies to improve transfer, *the staff's primary recommendation is for the HED to continue revising the funding formula in 2012 to reward institutions for increasing transfers and timely completions.*

The third finding is that more in-depth study is needed to determine the effectiveness of dual credit. Outcomes for students who take dual credit are generally positive: high school graduation rates are higher, enrollment in postsecondary institutions is higher, and remediation rates are lower. Those students' scores on the 11^{th} grade exams are also higher; making it unclear if dual credit causes these improved outcomes. The way dual credit is split between HED and PED makes this analysis challenging, though the departments are providing additional data and results are expected soon. The existing data suggested dual credit students at CNM and DACC demonstrate different course taking patterns as a result of local policy. In 2010, six of the top 10 dual credit courses at CNM are considered general education level, while because of the while with Las Cruces Public Schools, eight of the top 10 dual credit courses at DACC are electives. Some classes, such as introductory cake decorating and keyboarding basics, raise questions about fulfilling the legislative intent of New Mexico's high school redesign. LFC staff recommends *moving rulemaking to the HED, adding 11th grade SBA scores to the dual credit request form, and formalizing policy on dual credit eligibility.*

The last finding is that New Mexico needs to adjust financial incentives to increases completion rates. While New Mexico's community college cost of tuition is second lowest in the nation, for many CNM or DACC students, the real affordability barrier is the opportunity cost of foregone wages. Inadequate need-based aid increases the likelihood that students will take fewer classes, decreases timely completions, and increases loan debt. The average aid award in FY10, including grants and loans, was $2.6 thousand at CNM and $3.5 thousand at DACC. After subtracting the financial aid award from the annual estimated expense, including the opportunity cost of lost wages, the estimated unmet financial need per student at CNM and DACC is approximately $8 thousand. The state's investment in need-based aid lags behind other states. Student aid grants and stipends have tripled from FY08 because of increasing federal Pell grants.

For every Pell grant dollar a student receives, the state of New Mexico gives only 20 cents in aid and the state's share of need-based aid ranks 42nd nationally.

One minor fix is to change a current HED regulation to allow institutions to require students to complete the free application for federal student aid (FAFSA). This will improve the state's ability to analyze the relationship between financial need and state aid, increase the use of federal financial aid dollars, and improve student access to individual income tax credits and deductions. A more significant approach is to revisit the uneven share of I&G revenues from students, local taxpayers, and the state. The percentage of mill levy revenue ranges from a low of 4 percent at NMSU-Alamogordo and NMSU-Grants to a high of 49 percent at Santa Fe Community college. In FY12, mill levy revenues make up 36 percent of CNM's I&G revenues and only 11 percent at DACC and you can see how this fits into those schools overall mix of revenues. These differences represent potential margins for increased revenue that could be used to boost need-based financial aid at DACC as well as other two-years.

Tuition is another revenue source for closing New Mexico's achievement gap given that the net cost of public-two-year colleges in New Mexico in 2008, 19 percent of a median family income, is less than the national average of 24 percent. While the portion of 3 percent scholarships awarded based on need has increased to two-thirds, at no cost to the state, institutions could award all 3 percent scholarships based on need. *Staff recommends the Legislature phase in this need-based requirement for 3 percent scholarships and along with institutions, consider how to increase other need-based aid through mill levy revenues and tuition.*

Margie Huerta, DACC president, emphasized the vital role community colleges play in the development of the local workforce of their respective community both nationally and in New Mexico. Nationally, 50 percent of students enrolled in higher education are in community colleges, the average, 58 percent, for New Mexico is higher than the national average. Research also indicates that minority, first-generation, academically and economically at-risk students are more likely to attend community colleges. The student population is older and nontraditional. Large numbers of these students are seeking second or third careers or enrolled in noncredit, adult education classes. Thus, community colleges serve a complex and diverse student population with a variety of demographic characteristics, goals, needs, and life circumstances. Ms. Huerta stated the DACC is passionate about ensuring student success by implementing proven best practices as stated in their strategic plan, and welcomed the specific recommendations to increase completion, graduation and transfer rates as outlined in the report as they will be resourceful to improve student outcomes. Ultimately, the goal is to benefit students first and foremost. Ms. Huerta also referenced the complete written response.

Maria Saenz, DACC advisory board member, described the importance of branch campuses in meeting the needs of the rural, impoverished communities in Doña Aña County.

Kathy Winograd, CNM president, responded by saying she recognized the very important role community colleges play in the state's higher education system and in the state's economy. As the audit noted, 59 percent of higher education students in New Mexico are attending community colleges. CNM continues to place students in quality careers and help many students improve their career prospects at their current place of employment through skill development. The biggest percentage of job growth, both currently and in projections for the future, is tied tightly to middle skill jobs. Education and training for these middle skill jobs have always been at the core of the community college mission. And community college students help make up the backbone of our state and national economy. CNM continues to look forward to helping our state and our citizens prepare for the economy of tomorrow. Ms. Winograd described strategic planning that went into the decision to build the Rio Rancho campus and the revenue structure that paid for construction and operation of that campus and offered to continue to play an active role in leading improvement efforts within New Mexico's higher education system.

In response to Senator Sapien, Ms. Huerta and Ms. Winograd said they believe the funding formula is a step in the right direction and additional incentives for community colleges would enhance the formula. Ms. Winograd stated she wanted to further address the certification issue with community colleges, adding more thought is necessary about the approval of additional certifications because certain certifications are not included in the formula because of the definition applied to certifications.

Representative Trujillo asked if there is space in the ABE programs to take on additional students. Ms. Winograd stated both ABE and ESL education are primarily funded by the federal government. Although those programs are subsidized with some additional funding, administrators do not want to fund these programs at the expense of other taxpayer - funded programs. Mr. Walden, deputy secretary, stated they only provide 5 percent of services to eligible ABE students. State funding for ABE is about $5M and almost matches what the federal government provides.

Senator Griego asked how the funding formula worked for GED, ESL, ABE or certificate program graduates, and how are they accounted for in the funding formula. Ms. Winograd stated GED students are accounted for under ABE and in a separate funding string. Every student on campus is included in CNM's funding formula, and no student goes unfunded. The way the formula is designed there is the potential for schools to receive additional points in certain areas that will accrue additional funding. CNM's primary conflicts with the funding formula are around these additional points, and believe they don't include all of the areas that CNM would like to be included which are important to both our colleges and to colleges in rural areas. Ms. Huerta agreed with Ms. Winograd and as a mechanism of increasing revenue stream DACC will also be seeking the passage of an additional mill levy, for which she asks for the committee's support.

Vice Chairman Varela asked why there wasn't a written response to the evaluation from the HED and Deputy Secretary Walters stated the HED responded to Mr. Weinberg verbally and have had several conversations around these recommendations. The HED agrees with most of the recommendations and would like a closer look but staffing issues make it challenging.

Thursday, December 8

The following members were present on Thursday, December 8, 2011: Chairman John Arthur Smith, Vice Chairman Luciano "Lucky" Varela, Representatives Don Tripp, William "Bill" J. Gray, James P. White, Edward C. Sandoval, Rhonda S. King, Larry A. Larrañaga, and Henry "Kiki" Saavedra; and Senators Pete Campos, Carlos R. Cisneros, Gay Kernan (for Senator Ingle), Mary Kay Papen, Sue Wilson Beffort, Carroll H. Leavell, and John M. Sapien. Senator Phil A. Griego; and Representatives Jane E. Powdrell-Culbert, and Jim Trujillo attended as guests.

The committee met in executive session until 9:44 a.m.

Public School Support (993). Secretary Designee Hanna Skandera and Deputy Secretary Paul Aguilar presented the public school support budget request. The PED request reflects an increase of more than $100 million in new funding for public schools. Of this new money, $13 million is for instructional materials, $8 million for enrollment growth, $27 million to offset the retirement swap, $11.5 million for early reading interventions, $5.5 million for prekindergarten and kindergarten-three plus, $5.5 million for rewarding high performing schools and targeted assistance for struggling schools, $2.5 million for early adopters of the teacher evaluation system rewarding highly effective teachers, $3 million for transition to the new teacher evaluation system, $3 million for common core transition, $1.5 million for the innovation fund, and $2.5 million for the Charter School Stimulus Fund.

The department's plan for an early reading intervention includes supporting interventions for struggling readers, reading coaches, and district level training on effective reading instruction. The PED indicated the department will secure and provide a formative assessment tool in grades one through three to identify struggling readers at a cost of approximately $1.5 million. Under the department's proposal, $2.8 million will be available to districts to target interventions for students most in need, and the remaining $6.3 million will be used to support one reading coach in every six elementary schools. The department indicated that districts will less than six elementary schools will likely have to share a reading coach with other districts.

The department request included funding to transition to a new teacher evaluation system that includes student learning as a significant component prior to adoption of legislation requiring this to be done. The PED indicated the department has agreed to implement a redesigned teacher and school leader evaluation system that includes student learning as a significant component as part of the Elementary and Secondary Education Act flexibility waiver the department applied for in November to exempt the state from federal No Child Left Behind Act reporting. The department's proposal includes $3 million to support development of key components in the new system, dissemination of information on the new system to districts and schools, technical assistance and training to districts on the new evaluation system, creation and convening of a Technical Advisory Committee to provide guidance and technical assistance on the development of the statistical model used to measure a teacher's impact on student learning, and baseline data runs.

The department noted requested increases for programs including instructional materials ($13.1 million), prekindergarten ($2.2 million), kindergarten-three-plus ($3.2 million), dual credit instructional materials ($188 thousand), and college and career readiness ($158 thousand). The department also outlined new funding for reforms the department considers essential. The department requested $11.5 million for an early reading intervention, including assessment of first- through third-grade students, interventions for struggling kindergarteners through third-grade students, and professional development opportunities for educators. The department's request for new initiatives included $5.6 million to reward high performing schools and provide interventions in low-performing schools. The department indicated the top 25 performing schools based on the school's grade would be awarded $50 thousand, and the lowest performing schools would be eligible for funding for interventions. The department request included $2.5

million for statewide short cycle assessments in fourth grade through 10th grade, and accounts for reinstatement of the ninth grade and 10th grade short-cycle assessments. The department intends to provide a list of short-cycle assessments to districts and charter schools to choose from. The last new request highlighted by the department was $2.5 million to reward highly effective teachers and incentivize early adoption of the recommendations of the Effective Teaching Task Force.

K-3 Plus Evaluation. Linda Goetze, Utah State University, presented on the Kindergarten-Three-Plus (K-3 Plus) evaluation the university is conducting pursuant to a federal Investing in Innovation (i3) fund. K-3 Plus provides 25 additional days for students in high-poverty schools at an affordable cost ($800 per student). The federal government is funding the "Start Smart" evaluation to determine if K-3 Plus can effectively reduce the achievement gap. Preliminary outcomes show K-3 Plus significantly boosts student third grade achievement scores in reading, math and writing. Students who had K-3 Plus for at least one year prior to third grade gained 7.5 points in reading, 43.8 points in writing, and 12.4 points in math. K-3 Plus saves money by avoiding the need for more costly remediation programs and retention in third grade. Ms. Goetze noted that not enough children have access to K-3 Plus. Ms. Goetze recommended continuation of the K-3 Plus program as a cost-effective strategy to prepare high-needs students in reading, writing and numeracy; consideration of different per student funding to increase district and school participation; and consideration of increasing the level of funding to increase access.

Public Education Department (924). Deputy Secretary Paul Aguilar reviewed the department's budget request, noting the department is reducing 56 positions as part of the restructure. As a result of reduced funding in FY12, the department had to eliminate 33 positions through a reduction in force. The department rehired 15 individuals in other positions and 10 individuals found positions in other state agencies. The department estimates it will hold approximately 20 positions vacant in FY13 because of insufficient funding. The department indicated that the department has met statutory requirements during the restructure, and through the school budget process increased funding for direct instruction (classroom spending).

General Services Department (350). Ed Burckle, secretary, General Services Department, introduced key staff and stated the budget request was $491.3 million, which represents a 3 percent increase in general fund revenue over the FY12 operating budget. Operational enhancements include an additional $1 million in personnel that will reduce the vacancy rate from 27 percent to 17 percent for FY13.

The FY13 increase over FY12 includes $500 general fund for capital project oversight and building maintenance, to restore security services, and to provide funding for an increased property insurance premium. The request slightly increases the amount for deferred maintenance from $74 thousand to $136.3 thousand for FY13. Actual expenditures for deferred maintenance in FY11 were $423 thousand. Utility costs for state owned buildings are also increasing between 5 percent and 9 percent, for sewer, water and electricity.

State Purchasing is requesting an increase over FY12 of $161 thousand to support procurement task force objectives once known, to migrate procurement processes to a paperless system, and to hire a contract administrator for oversight. Program Support is requesting an increase over FY12 of $306 thousand to hire a general counsel and internal auditor using funds from fees previously directed to the Department of Information Technology.

To present a flat appropriation request, the Risk Management Program was directed by the Department of Finance and Administration to hold risk rates flat with FY12. To prevent an increase in employer and employee health premiums for FY13, the Health Benefits Program requested a use of about $20 million in fund balance to meet a proposed increase in expenditures, due to medical inflation.

The State Printing and Graphic Services Program request is flat to FY12. A new marketing plan is in place to improve turnaround and digital print capability, provide web-to-print services, and increase the nonprofit customer base. The Transportation Services Program requested an increase of $54 thousand over FY12. The program is charging $133 for vehicles other than commercial leases. Under-collecting for overhead and maintenance of motor pool vehicles is expected to result in a cost to the fund balance of about $1 million. The request does not provide for additional costs associated with replacing aging vehicles. The motor pool has reduced its fleet by 103 vehicles.

Property Control has saved the state $819 thousand per year in space lease costs, $160 thousand is still under renegotiation. The Procurement Task Force has had six meetings to date and Governor Martinez will be briefed December 9. There are four subcommittees; laws and regulations, process, education and training, and contract administration. Secretary Burckle concluded his presentation stating that the agency's FY13 request meets mission requirements.

The chairman opened the hearing up for questions. Senator Wilson-Beffort asked if state printing can compete with non-state printers in terms of services. Bob Mesch, state printing director, said yes, and proceeded to further detail the available services. Representative Savaadra commented on the costs to the state in printing memorials. Senator Wilson-Beffort also asked about the jump in healthcare costs. Jay Hone, RMD director, said actuaries are by nature conservative, and the actuarial valuation may be over-reactive due to three years less than projected healthcare costs. Secretary Burckle said the agency is exploring innovative wellness programs. Secretary Burckle also stated the benefits to providing incentives as opposed to imposing surcharges to correct behavior.

Representative Varela asked the secretary to consider an analysis of permanently reducing FTE, asked for a list of agencies that have saved money from consolidation of office space, and asked how expenditures are encumbered because the procurement module within SHARE is not active. Karen Baltzley, GSD chief information officer, stated it would cost between $2 million and $3 million to get SHARE to a point where it will work for procurement and contract management. She also said the agency is looking at a third-party web-based interim solution.

Senator Griego asked about how consolidation of leased space will impact private landlords and asked for an update on the Las Soleras project. Chuck Gara, PCD director, replied that leases due to expire within the next two years give the best opportunity for renegotiation. He also said the purchase agreement for the land for the Las Soleras project has been extended until May 2012.

Senator Sapien asked about the wisdom of holding insurance premiums flat just to meet a flat budget requirement. Mr. Hone talked about the costs to the state to defend parties in the redistricting lawsuits pursuant to voting rights legislation. Michelle Aubel, GSD chief financial officer, said the impact could be $5 million or higher in attorney fees from the public liability fund which is reflected in the appropriation request within contractual services.

Senator Cisneros asked about fixed costs for the Aviation Services Bureau. Secretary Burckle responded that it costs the state about $600 thousand to maintain the aircraft whether you fly one hour or more. In closing, Senator Smith clarified for the committee that the purchase of Las Soleras is also dependent upon whether the state receives permission from the federal government to build another Railrunner stop.

Executive Compensation Report. The director of the State Personnel Office (SPO), Eugene Moser, presented a report titled, *The State of New Mexico Compensation*, which emphasized several critical concerns: (1) The state compensation system has not been reformed since HR2001, and the need for structural adjustment in state salaries is significant. (2) The state classification system has not been significantly modified since HR2001. (3) Low figures for the retention of new hires and new hires who complete their probationary period remain serious concerns for the SPO. (4) The state currently has no effective mechanism to recognize and reward performance among employees.

Senator Beffort commented the state needs to find an innovative way to reward employees outside salary increases that affect "high three" calculations that bases retirement benefits on the three highest annual salaries, and added there should be language in statute that prevents the "high three" approach. Representative Tripp asked if reforms in testing procedures were part of the changes in the classification process, and Director Moser described the significant efforts being pursued at the SPO in this area. Representative Varela asked detailed questions on (1) the current state of play in the labor negotiations, (2) the efficacy of the new NEOGOV personnel application and database system, (3) the current lack of performance evaluations for employees at state agencies and the importance of completing these evaluations for bonuses or other forms of rewards to have any meaning, and (4) what legislation would be introduced by Governor Martinez related to personnel issues in the 2012 regular session. On the latter issue, Director Moser stated no specific decisions had been made and he would be meeting with the Department of Finance Administration and the administration in the near future to discuss the issue.

Representative Varela requested a document from Director Moser outlining in detail the regulatory changes that had been made at SPO since the beginning of the new administration. Representative Gray asked about (1) drug testing, and (2) problems in the state in the recruitment and retention in critical positions – especially those in rural areas where the private sector paid more and make a practice of recruiting trained state personnel. Director Moser and his staff provided specifics on the positions for which drug testing was required and then stated that the SPO was exploring mechanisms where certain positions would be temporarily exempt from pay grade requirements to ensure that the state could retain employees.

UNM Health Sciences Center. Dr. Paul Roth, chancellor, UNM Health Sciences, and dean, School of Medicine, presented an overview of the Health Science Center's (HSC's) FY13 budget request and answered questions from the committee. Dr. Roth noted the HSC has a $782 million economic impact to the state. Although associated with higher education, the HSC is administered like a business in a competitive industry, with the significant majority of revenues coming from delivery of patient care. Dr. Roth discussed four separate entities that provide statewide services that are part of the HSC: the Office of Medical Investigator (OMI), Carrie Tingley Hospital, the Children's Psychiatric Center, and the Poison and Drug Information Center (PDIC).

Dr. Roth noted that even with a 20.8 percent reduction in budget since FY09, HSC has done better than a lot of other state supported medical centers. Dr. Roth provided an overview of the HSC's six FY13 funding priorities, requesting additional funds over the FY12 operating levels. First, the HSC requests a $1.06 million increase to instruction and general support for the last year of base funding for the bachelors/masters program. Dr. Roth noted that 170 students have been accepted to the program to date with the majority from rural areas of the state. Given the funding outlook, the HSC plans to reduce the faculty associated with this program 25 percent and reduce the number of student slots from 96 to 72. The HSC also requested an increase of $731 thousand for the nursing education program to avoid reducing enrollment and faculty. Senator Smith noted the several nursing programs across the state could be optimized. UNM staff responded they are working to create a higher education nursing consortium to help coordinate the nursing programs.

The HSC requests an additional $503 thousand of general fund support for the PDIC to maintain 24 hours/7 days per week service hours. Dr. Roth noted that any drop in service hours will endanger facility accreditation. The HSC's fourth priority is a $684 thousand request for the OMI to hire critical staff. Currently, the pathologists average 320 autopsies a year, 70 higher than the best practice of 250 per year, and this caseload threatens OMI's national accreditation. In New Mexico, the OMI is mandated by the state to complete all medical-related death investigations. Dr. Roth pointed out that this centralized approach is unique, compared with many other states were this function is decentralized or even handled by local governments. Legislators asked Dr. Roth about the practice of billing families for the transportation costs to return bodies to them. While HSC staff agreed this is not an optimal practice, it would cost an additional $180 thousand to eliminate this practice.

The HSC requests a $629 thousand increase for the Project ECHO telemedicine program. This funding will help offset the loss of $1.5 million in Department of Health (DOH) funding. Failure to obtain these funds may endanger asthma and high-risk pregnancy programs. Senator Beffort noted the DOH had reported to the LFC that Project ECHO had sufficient funding.

The last HSC priority is for a new initiative: $400 thousand for a bachelors/doctorate dentistry program to attract New Mexico students into dentistry and ensure an adequate pipeline of future dentists to the state. Dr. Roth noted the request would represent the first year of a 10-year commitment for incremental and permanent recurring funding for the program. Dr. Roth told the committee that the BA/DDS program would not replace the eight dental school slots New Mexico has with other western state universities. Senator Smith commented this planned approach is a lot less expensive than building a new dental school. Representative Saavedra noted that a number of dentists have opposed the creation of a dental school, but Dr. Roth responded that the NM Dental Association supports the BA/DDS proposal.

The Higher Education Department's FY13 budget request for UNM HSC was the same as FY12 operating level, with an increased formula-adjustment for utilities, including flat budgets for the HSC's FY13 priority issues and no funding for the BA/DDS program.

Reports of Interim Legislative Committees.

Tobacco Settlement Revenue Oversight Committee

Representative Gail Chasey and Senator Mary Jane Garcia provided an overview of the interim activities of the oversight committee. Representative Chasey noted that fiscal year 2013 would represent the fifth straight year of diversion of funding from the tobacco settlement revenue trust fund into programs. She noted that there is one committee-sponsored bill, a follow up to Senate Bill 39 from the 2011 session that was vetoed by the governor. The bill will remove ambiguity that exists in current law on which sales are subject to escrow and to help equalize the treatment between manufactures' participating in the tobacco settlement and nonparticipating manufacturers. Participating manufacturers are putting funds into a disputed funds account and New Mexico will not receive future payments if they prevail. Senator Mary Jane Garcia noted a number of reductions in funding for tobacco cessation programs as well as funding for programs at UNM and Lovelace Medical Center.

Legislative Health and Human Services Committee

Senator Dede Feldman provided an update on the interim activities of the Legislative Health and Human Services Committee (LHHS), including an update on its committee-sponsored legislation. At this point LHHS is not privy to any specifics of the administration's plans for Medicaid reform under review by the governor. Bills endorsed by the committee include legislation requiring the Legislature's approval of Medicaid plan changes and a version of Representative King's bill from a prior session requiring fiscal impact reports (FIRs) on Medicaid plan changes. The committee has also endorsed legislation for a BA/DDDS program at the University of New Mexico Health Sciences Center, funding for consumer and elder rights, funding for a primary care pilot in Southern New Mexico, and a bill requiring creation of a basic health insurance program.

In the area of healthcare reform, Senator Feldman noted the committee has endorsed legislation creating a health insurance exchange. The committee-sponsored bill is a compromise effort with the administration and establishes the exchange under the health insurance alliance and tweaks the board of directors. In response to how the committee's bill compared with any executive-backed legislation, Senator Feldman said that LHHS has not received the executive's bill. Senator Feldman noted the state has received more than $100 million of federal funds for the state since last year to support clinics, high-risk insurance pools, and other work needed to implement health reform.

Friday, December 9

The following members were present on Friday, December 9, 2011: Chairman John Arthur Smith, Vice Chairman Luciano "Lucky" Varela, Representatives Don Tripp, William "Bill" J. Gray, James P. White, Edward C. Sandoval, Rhonda S. King, Larry A. Larrañaga, and Henry "Kiki" Saavedra; and Senators Pete Campos, Carlos R. Cisneros, Gay Kernan (for Senator Ingle), Mary Kay Papen, Sue Wilson Beffort, Carroll H. Leavell, and John M. Sapien. Representative Jim Trujillo attended as a guest.

Capital Outlay. Linda Kehoe, principal analyst, LFC, presented the status of outstanding Capital funds. Over $1 billion was appropriated between 2008 and 2011 for 3,563 projects. As of September 2011, approximately $425.7 million for 979 projects remains outstanding. The balance includes over $86 million authorized in the 2011 special session. Ms. Kehoe indicated the LFC staff conducts site visits and attends monthly meeting with larger agencies to ensure projects are moving forward and assist with potential bottle necks. Percentage of outstanding funding sources: general fund (4 percent), severance tax bonds (72 percent), general obligation bonds (22 percent), and other state funds (2 percent). Ms. Kehoe mentioned that the low percentage of general fund projects was due to swapping general fund appropriations to severance tax bonds for solvency.

A review of outstanding balances indicates approximately $18.3 million for 82 projects appropriated between 2008 and 2010 have no expenditures. In most cases only the percentage for the arts in public places has been deducted. Ms. Kehoe reminded members that although the reports demonstrate no progress, some entities may not have requested reimbursement at the time the reports were generated. Also, some entities wait until near completion of the project or near the reversion date before requesting reimbursements and in most cases, entities have two to four years to spend appropriations. Ms. Kehoe stated reports of outstanding projects will be mailed to individual sponsors by next week. The next quarterly update is due December 19 and updated reports will be available prior to the start of the session.

Ms. Kehoe then provided a summary of the capacity available for the 2012 session. After earmarks totaling $52.8 million for the water project, colonias, and tribal infrastructure funds, the net senior severance tax bond capacity is $130.3 million. Supplemental severance tax bond capacity dedicated for public school construction is $148.7 million. General obligation bond (GOB) capacity is estimated at $298 million if issued to full capacity but to maintain a flat mill levy, GOB capacity is $180 million. Consensus revenue estimates indicate no general fund monies are available for capital outlay in 2012.

Ms. Kehoe stated a lack of general fund surpluses and a decline in capital capacity in recent years has impacted all political subdivisions of the state. She also reminded members of the 2010 defeated $155.3 million GOB package which would have funded higher education facilities, the failed capital bill in the 2011 regular session, and the stop gap capital bill adopted in the 2011 special session totaling more than $86 million.

As in past years, state and local requests are well beyond capacity; requests for both state and local projects submitted to the Department of Finance and Administration (DFA) and reviewed by

LFC staff totals over $2.3 billion compared to capacity of $310 million from all resources – the $310 million assumes general obligation capacity at a flat mill levy.

Ms. Kehoe reiterated the recommendations developed by the LFC staff for state agencies from STB capacity are projects "proposed" for funding consideration by the full Legislature. The recommendations reflect the most critical projects impacting public health and safety, the preservation of state facilities, and ongoing projects requiring additional funds to complete. The projects, with few exceptions, are nearly all the same projects requested in both the 2011 regular session and the 2011 special session. Some projects were funded for completion of a phase while others were not funded. (A spreadsheet with proposed STB recommendations was distributed to members and Ms. Kehoe proceeded to identify each project on the spreadsheet.)

Ms. Kehoe informed the committee the executive has expressed support in funding "incomplete" projects statewide; at the request of the DFA, the LFC and the LCS staff assisted in developing and compiling a survey to determine the "incomplete" projects. Following contacts with governmental entities to confirm data, information received from state agencies, and meetings with governmental entities, the amount needed may only require $11 million to $12 million to address "incomplete" projects statewide.

A spreadsheet was distributed to members with LFC staff recommendations for GOB capacity for senior citizen center projects, library systems, and higher education. The criteria used to rank projects were health and safety, completion of projects, other funds available, operational savings, critical service to the public, client/program growth, and readiness to proceed.

Ms. Kehoe noted there was not a funding recommendation for two special schools because the Public School Capital Outlay Council reopened the deficiency correction process with a commitment to address infrastructure deficiencies at the New Mexico School for the Deaf (NMSD) and the New Mexico School for the Blind and Visually Impaired (NMSBVI). In November 2011, the PSCOC awarded approximately $13 million for three projects on the campuses of the two schools. The NMSD was awarded $6.8 million to plan, design, and renovate Dillon Hall and for site improvements. The NMSBVI was awarded $6.1 million for renovations to the Watkins Education Center. A match might be required but could be waived to advance the projects. Ms. Kehoe finalized her presentation with an update from the Capitol Building Planning Commission (CBPC) and referred to the members for questions.

Chairman Smith stated the committee may need to look into how combining the Cultural Affairs and Tourism departments might affect capital outlay. Senator Smith also expressed concern of using bonds for vehicles that may have a lifecycle less than the ten year repayment cycle for bonds. Ms. Kehoe explained the vehicles recommended for funds are for specialized vehicles that will exceed the 10-year bond payment cycle. He further stated the New Mexico State Fair will be questioned with more intensity and need to be prepared to explain where funds will be utilized. The chairman expressed the need for projects to be "ready to go" – funds allocated in the 2011 special session have not been spent – an example is the push for Paseo del Norte funding when the City of Albuquerque is still two to three years out before funds can be used. The chairman also indicated he would like to know "where the money is going" for cultural affairs and state park recommendations. The chair also asked staff to consider the recommendation for prekindergarten classrooms be taken care of by Public Schools Capital Outlay fund instead of GOB and might need to be more specific as the capital bill moves forward on the state road fund recommendation – need to be specific as funds pertain to roads.

Representatives King, Sandoval, and Trujillo expressed concerns of the need to have capital funds for local projects and asked members of the LFC to be cognizant of the fact that locals have not received funding for the past three years.

Staff Reports.

Legislature (111-131). The Legislative branch requested a $36.8 thousand increase, or approximately 0.2 percent, compared with the FY12 operating budget. Appropriation estimates for the operation of the legislative branch of government are transmitted herewith by the Legislative Finance Committee. Estimates have been supplied by the Legislative Council Service, Legislative Finance Committee, Legislative Education Study Committee, Legislative Building Services, Senate chief clerk, and House chief clerk. All appropriations to the legislative branch of government are made through the feed bill, except for Legislative Building Services and Energy Council Dues, which are made through the General Appropriation Act.

Review of Special, Supplemental and Deficiency Requests.
The LFC staff presented information on the special, supplemental and deficiency appropriations recommendation. The recommendation includes a total of $38 million from the general fund for special, supplemental and deficiency appropriations. This amount includes $19.7 million in contingency funding for the Human Services Department (HSD) to pay a potential claim to the federal government for provider overcharges in the Personal Care Option program. The specific amount needed for a deficiency appropriation remains unclear and requires further examination after the FY11 audit is released, and the HSD is awaiting approval of reimbursement requests from the federal government that would reduce the negative balance significantly. The LFC staff recommendation transfers $75 million to the appropriation contingency fund pending the determination of the final amount required from the general fund appropriation account. The LFC staff recommendation includes a $742 thousand deficiency appropriation associated with the transfer of the Coordination of Long-Term Services (CoLTS) Program from the Aging and Long-Term Services Department to the Human Services Department. The FY12 supplemental appropriation recommendation from the general fund totals $3.5 million, and the FY13 special appropriation recommendation from the general fund totals $33.7 million.

Status Report on Information Technology Projects and Funding Requests. Aurora B. Sánchez and Christine Boerner presented the requests and recommendations for nonrecurring information technology projects. Ms. Sánchez informed the committee that there were 37 IT projects from 17 agencies totaling $60.3 million: $42.9 million from the general fund, $14.8 from other state funds, and $2.7 from federal funds. The LFC staff recommended a total of $13.9 million: $11.6 million from the general fund, $1.9 million from other state funds and $363 thousand from federal funds

Accountability in Government Act (AGA) Activity. The FY11 Accountability in Government Act (AGA) report card summary was presented to the committee. The summary noted that solvency spending reductions of approximately 10 percent over the last three fiscal years resulted in some unmet needs and a higher level of performance outcomes would be more desirable.

Performance outcomes indicate a need to address deteriorating roads, dismal grade school reading and math proficiency, low graduation rates, lengthy waiting lists, etc. A number of efficiency measures indicate slower processing times, longer wait times, and increased caseloads and backlogs throughout the state. However, most agencies requested flat budgets indicating a need for more data-driven decision making. Performance outcomes indicate the need for more action plans and strategic planning that improve outcomes.

The committee met in executive session from 11:00 a.m. to 11:20 a.m.

Miscellaneous Business

Actions Items
Approval of Minutes. Chairman Smith stated November's Meeting Minutes would be approved in January.

FY12 Contract Approval. Director Abbey requested contract approval for Chris Hoffman for work as an analyst during the 30-day session. **Senator Cisneros moved to approve the contracts, seconded by Representative Tripp. The motion carried.**

Approval of Subcommittee Reports. **Senator Cisneros moved to approve the November 2011 Subcommittee Reports, seconded by Representative Saavedra. The motion carried.**

Information Items

Director Abbey briefed the committee there was no LFC-sponsored legislation and directed committee briefly through the *Quarterly Investment Report*, LFC's FY12 budget status, *Full-Time Employees by Agency*, the cash balance report for 2011, and the *BAR Report* for November, 2011.

Deputy Secretary Sallee proposed evaluating selected Capital Outlay Projects.

With no further business, the committee adjourned at 11: 24 a.m.

Chairman John Arthur Smith

Vice Chairman Luciano "Lucky" Varela