Legislative Finance Committee
Meeting Minutes
State Capitol Room 307
Santa Fe, NM 87501
January 19, 2015

Monday, January 19

The following members and designees were present on Monday, January 19, 2015: Chairman Luciano "Lucky" Varela; Vice Chairman John Arthur Smith; Representatives Larry A. Larrañaga, Jim R. Trujillo, Nick L. Salazar, Paul C. Bandy, James E. Smith, Jimmie C. Hall, and Patricia A. Lundstrom; and Senators Carlos R. Cisneros, Sue Wilson Beffort, Carroll H. Leavell, George K. Munoz, Steven P. Neville, and Pete Campos. Guest legislators: Senator Mary Kay Papen and Senator Clemente Sanchez.

Special Review: Early Childhood Services Accountability Report Card, Gap Analysis and Spending Plan. Rachel Mercer-Smith and Brian Hoffmeister, both program evaluators of the Legislative Finance Committee (LFC), presented a special review of the gap analysis of the early childhood programs. New Mexico ranks near the bottom nationally for child well-being, and in response, the Legislature has made significant, targeted investments in intervention programs. Seventy-five percent of young children in New Mexico have at least one risk factor known to impact health, education, or development, and 23 percent of children are at moderate or high risk for developmental delays or behavioral problems. Poverty contributes significantly to child development and negatively impacts a child's readiness to learn, leading many students to enter school significantly behind their peers.

Previous LFC evaluations and national research confirm evidence-based interventions and early childhood education programs can improve child well-being, safety, and educational outcomes and close the achievement gap. To achieve these outcomes, the Legislature invested in prekindergarten, childcare assistance, home visits to new families, and the state's extended school year program K-3 Plus, among other programs. Since FY12, early childhood appropriations have increased by almost $100 million, and the FY16 LFC recommendation adds another $25 million.

This special review of early childhood programs in New Mexico analyzed continued needs and gaps in services, assessed current accountability data being collected, identified barriers to program expansion, and identified potential funding options to meet continued needs.

While the state has experienced successes in identifying investment zones to expand home-visiting programs and infrastructure in communities exhibiting high risk, the majority of at-risk clients remain unserved, and the state lacks sufficient information about whether the program is reaching the targeted population. In contrast, New Mexico is close to providing sufficient funding to ensure all low-income 4-year-olds receive some service when childcare assistance, prekindergarten, and Head Start are considered. However, programs remain fragmented and the quality of service is still a concern. Without improved planning and coordination of program implementation, some communities in New Mexico may continue to experience service duplication or receive revenues that supplant existing funding streams, while other communities continue to experience significant needs.

The report included a report card of early childhood indicators to illustrate the need for comprehensive accountability reporting as programs expand to ensure investments are producing population-level improvements and the desired return on investment. Finally, the report highlights the need to scale program expansion to match community demand and infrastructure, ensure sufficient coordination among programs, and maintain quality.

Recommendations include incremental funding increases for programs, using Medicaid funds to accelerate the expansion of home visiting, prioritizing prekindergarten expansion in communities with shortages, and developing accountability measures to ensure desired outcomes and positive returns on investment.

Leighann Lenti, deputy secretary of the Public Education Department, discussed the department's response to the report. PED has three early learning programs: 1) prekindergarten, 2) K-3 Plus, and 3) New Mexico Reads to Lead. With funding which began in FY12, the Reads to Lead initiative is currently serving 87 districts and 33 charter schools. Ms. Lenti suggested Legislative Finance Committee staff include the Reads to Lead program in future evaluations. In relation to prekindergarten, there is a demand for additional full day slots. Ms. Lenti said if the program was expanded to 3-year-olds, there may not be appropriate classroom facilities to serve those students and a burden would be placed on districts to ensure they have enough licensed. PED is working with its districts on best practices around recruitment and retention of students in K-3 Plus. Ms. Lenti said the infrastructure needs to be in place to support incremental increases in funding. Ms. Lenit said currently only two staff members at PED support all the programs across the state.

Steve Hendrix, director of Early Childhood Services of the Children, Youth, and Families Department (CYFD), discussed the department's response to the report. Mr. Hendrix said the department agrees overall with the report's findings and recommendations. Regarding the childcare assistance recommendations, Mr. Hendrix said CYFD does not feel now is the time to begin repurposing funding.

In response to Chairman Varela, Ms. Lenti said PED has been able to reduce its programs waiting list from approximately 327 students to less than 200 students.

In response to Representative Hall's question regarding data collection, Mr. Hendrix said CYFD is currently working on a data system, funded by Race to the Top Early Learning Challenge Grant, which will assign unique identifiers for children in early education through school age and align with PED. Ms. Lenti added that it is the goal at the end of the grant term to have an integrated system that will provide data on when children start receiving early child care services and the impact those services have in their schooling after entering kindergarten.

In response to Senator Beffort, Ms. Lenti said although there is not a statutory mandate that would require a person to have a bachelor's degree to teach 3-year-old children, the PED prekindergarten program does require a teacher to have a bachelor's degree. Senator Beffort recommends legislators make a statute change that would require a teacher to have a bachelor's degree to teach 3-year-olds.

Representative Larranaga expressed concern over duplication of services provided by the various programs. Mr. Hendrix said coordination can be improved between the PED and CYFD to ensure services are not duplicated. Ms. Lenti talked about the Reads to Lead initiative and said the program is not duplicating other programs.

In response to Representative Larranaga, Mr. Hendrix said CYFD does not have income eligibility requirements for its home-visiting services and prekindergarten programs, but individual home-visiting programs may have their own requirements.

Program Evaluation: Department of Health: Status of Health Facilities Spending. Nathan Eckberg and Pamela Galbraith, both program evaluators of the Legislative Finance Committee (LFC), presented a program evaluation titled "Department of Health – Office of Facilities Management and Spending." Through seven state facilities, Department of Health (DOH) provides critical nursing home, substance abuse treatment, and mental health services to a monthly average of 700 New Mexicans at a cost of almost $140 million annually. The Legislature has granted DOH considerable budget flexibility to manage funding for state facilities through a mix of third-party payments from insurers like Medicaid and support from the general fund for indigent patients or for services not covered by insurers. However, with expansion of Medicaid and more newly insured New Mexicans, DOH has new opportunities to better leverage other sources of funding rather than rely on support from the general fund.

This evaluation assessed the oversight of fiscal and operational management of state health facilities and followed up on the implementation status of previous evaluations of health facilities. Additionally, this evaluation analyzed the necessity for the FY15 supplemental appropriation request for DOH facilities.

Overall, DOH continues to struggle to effectively manage facility spending in line with available funding and align staffing with service level and needs of clients. DOH has made little progress on these issues since LFC reported on them in 2009. The number of people being served monthly in facilities has declined over the past three fiscal years and occupancy rates remain low at some facilities. Total funding has remained generally flat during this time period but DOH facilities have reverted over $12 million to the general fund in FY12-FY13, suggesting over-funding of staffing. The FY15 budget assumes better alignment of funding for staffing, a corresponding decrease in assumed overtime, and improve billing for services in light of more New Mexicans having insurance. However, DOH has requested a $6.4 million supplemental appropriation for FY15 and a corresponding similar increase for its base facilities budget for FY16.

Although the workload has decreased, both overtime and contract personnel expenses continue to rise. Despite the still large vacancy rates, improved hiring at the same time as high overtime and contract staff costs likely cannot be sustained. Low occupancy at revenue generating units, recruitment of clients to non-revenue generating units, and inability to increase Medicaid reimbursements also cannot be sustained. DOH needs to take aggressive action on these issues, slow spending, and pursue revenue. The LFC did not recommend supplemental funding and the executive only $1 million. DOH will have more spending data for appropriators to review their financial position during the legislative session.

Recommendations include implementing a common staffing methodology across all facilities based on service type, targeting patient recruitment to services which generate revenue, pursuing Medicaid and indigent funding for certain services offered in chemical dependency units, and reporting quarterly on facility level finances to LFC and DFA to monitor progress.

Retta Ward, secretary of DOH, said the department is taking the information in the report very seriously and has begun implementing several of the recommendations.

Referring to the handout, Jeremy Averella, chief facilities officer of DOH, said the vacancy rate for program area six, which encompasses all seven facilities, has been reduced from 19 percent in January 2014 to 12 percent in January 2015. The Sequoyah Adolescent Treatment Center made the most significant improvement in its vacancy rate.

Leonard Tapia, chief financial officer of DOH, said DOH facilities expenditures show a fairly even trend from FY10 to FY15. A slightly higher expenditure rate in FY14 was due to the union payout. FY15 projections show a $4.3 million deficit.

Mr. Averella briefed the committee on the facilities oversight initiatives, which include

- Implementing the international classification of disease 10 codes,
- Ongoing collaboration with managed care organizations, and
- Seeking the Joint Commission and Commission on Accreditation of Rehabilitation Facilities accreditations.

Representative Larranaga requested DOH look closely into finding other funding sources as recommended in the report. Secretary Ward said many of the clients in the facilities do not have a payer source. DOH did not see a large expansion of clients with insurance and Medicaid coverage after Medicaid expanded and the Affordable Care Act was implemented. Secretary Ward said DOH is exploring every revenue source possible.

Chairman Varela expressed concern that health facilities across New Mexico fall under the overview of different departments including HSD and DOH. Commented that maybe the facilities needed to be separated from DOH and organized under one department.

Senator Cisneros expressed concern that DOH, as the department that covers substance abuse, cannot get a handle on what they need to do to provide important services and contain costs. Senator Cisneros agreed with Chairman Varela that it is confusing that HSD covers some facilities and DOH others. DOH clearly has a problem when they are reverting funds in recent years but then request a supplemental appropriation for FY15. DOH needs to focus on problem of staff retention to cut down on spending.

Representative Hall asked about the long waiting list for patients served by developmentally disabled waiver (DD waiver). Mr. Averella responded that Los Lunas Community Programs

(LLCP) cover DD waiver clients and offered to have the LLCP administrator answer specific questions. Representative Hall declined in the interest of time.

Secretary Ward invited the Committee to visit the facilities any time to get an idea of how complex they are**.**

<u>LFC-Sponsored Legislation.</u> Rachel Gudgel, analyst for the Legislative Finance Committee, briefly described the following eight bills proposed for potential committee sponsorship.

Increase At-Risk Cost Differential in Public Education Funding Formula (197974.1). The bill amends Section 22-8-22.3 NMSA 1978 of the Public School Finance Act to phase in a 0.032 increase in the at-risk index modifier over four years from 0.106 to 0.138 beginning in FY17. No appropriation is included in the bill because of the FY17 effective date; however, it is estimated to cost between $30 million and $35 million over a four-year period.

Senator Beffort expressed concern over the proposed bill because the future budget level is unknown. David Abbey, director of the LFC, explained the bill creates extra units rather than appropriate additional money. Director Abbey said the bill implements recommendations from the 2008 AIR funding formula study.

Chairman Varela suggested limiting the increase to one year instead of four years, striking lines 20 through 22 on page 2.

Representative Larranaga asked why the bill is being proposed this legislative session rather than next session since the increase is for FY17. Ms. Gudgel explained that the Public Education Department (PED) has historically noted the department needs a full year to implement funding formula changes to ensure the formula runs properly.

Chairman Varela moved to adopt endorsement of the bill subject to limiting the increase to a single year, striking lines 20 through 22 on page 2, seconded by Representative Lundstrom. With a vote of 9 to 6, the motion carried.

Strengthen the Current Three-Tiered System to Ensure Better Preparation of Educators and that Teachers Demonstrate Performance Commensurate with Higher Pay (198324.2). The bill amends requirements for advancement under the system to require student performance to account for 35 percent of an educator's local annual evaluation and on a revised professional development dossier used to screen educators for effectiveness. School districts and charter schools could increase the percentage to up to 50 percent at local discretion for the annual evaluation. The bill would allow a teacher to by-pass the dossier if their student growth score ranking was high enough. The bill would require PED to establish and consider input from an Educator Effectiveness Council on rules governing the system, including evaluation tools and student learning growth models. The bill would also raise standards for entry into the education profession by requiring outcomes-based accreditation or program approval requirements for education preparation programs. Finally the bill would phase in higher minimum salaries. Starting pay for new teachers would increase to $37 thousand in FY16 and $40 thousand thereafter. Minimum salaries would increase for all level two and level three teachers by

$5,000. Beginning in FY18, teachers advancing levels or renewing their license under the revised three-tiered system would have new minimum salaries of $50 thousand for level two, and $60 thousand for level three. Teachers choosing not to participate in the new accountability system would not be grandfathered in to the higher salary levels of $50 thousand and $60 thousand, respectively. Principal salaries would be adjusted based on current statutory responsibility factors.

In response to Representative Larranaga, Ms. Gudgel said the executive recommendation does not include increased compensation for level two or level three teachers.

In response to Representative Lundstrom, Ms. Gudgel said while there have been conversations with the Legislative Education Study Committee (LESC) staff concerning the bills, LFC staff has not asked LESC staff to present the bills committee endorsement.

With a vote of 5 to 11, the motion to adopt endorsement of the proposed bill failed.

Sunset Bill (198588.1). The bill addresses boards up for sunset at the end of FY15. The boards are within the Regulation and Licensing Department as well as the Office of Military Base Planning and Support Commission. The bill will include a recommendation for each board as made by the LFC Sunset Subcommittee. The subcommittee motioned to extend the sunset date of the Office of Military Base Planning and Support Commission, Board of Chiropractic Examiners, Board of Dental Health Care, Nutrition and Dietetic Board, Board of Optometry. Board of Pharmacy, Board of Podiatry, Board of Psychologist Examiners, Board of Social Work Examiners, and Speech Language Pathology, Audiology, and Hearing Aid Dispensing Practices Board. The subcommittee deferred action on the Athletic Trainers Practice Board, Counseling and Therapy Practice Board, Massage Therapy Board, Board of Osteopathic Medical Examiners, Physical Therapy Board, and Respiratory Care Advisory Board.

Senator Beffort suggested some of the boards be consolidated. Director Abbey noted that if the committee does not act on a board scheduled for sunset, it will continue for one year following the sunset date.

Chairman Varela moved to adopt endorsement of the bill, seconded by Senator Cisneros. The motion carried. Senator Cisneros will carry the bill.

Severance Tax Bond (STB) and Supplemental Severance Tax Bond (SSTB) Bond Capacity for Road Projects (197828.3). The bill generates additional revenue for state and local road projects by earmarking several revenue sources for this purpose. The bill dedicates 10 percent of senior severance tax bonding capacity as estimated by the State Board of Finance for five years beginning in FY15 and 5 percent of revenue to the severance tax bonding fund for supplemental severance tax bonds for road projects for five years beginning in FY16. The bill dedicates the senior bonds for statewide road projects and supplemental severance tax bond proceeds for local road projects. Beginning in FY16, the bill increases the gasoline and special fuels taxes by 2 cents and indexes them to inflation beginning in FY17. The additional fuel tax revenue is dedicated to the local governments road fund. Beginning in FY19, the bill increases the motor vehicle excise tax rate by 1 percent and dedicates the additional revenue to the state road fund.

These fuel and vehicle excise taxes are currently significantly lower than those in neighboring states and the increase puts New Mexico in line with its neighbors and would bolster the purchasing power of road fund revenues. The bill also provides a list of Department of Transportation (DOT) priority projects for which state road fund revenue may be used. DOT would be required to work with local governments to ensure local road priorities are funded. After the supplemental severance tax bonding capacity for roads expires, the balance will flow to the severance tax permanent fund.

In response to Representative Lundstrom, Director Abbey said the proposed bill would accelerate projects in the State Transportation Improvement Program (STIP). Director Abbey said DOT believes additional federal matching dollars can be identified over the course of a five-year plan to supplement any extra revenues the legislature gives the department.

Representative Lundstrom moved to adopt endorsement of the bill, seconded by Senator Cisneros. With a vote of 9 to 5, the motion carried. Representative Lundstrom will carry the bill and Senator Cisneros will co-sponsor.

Child Care Accountability Act (198608.2). The bill requires establishment of quality ratings for providers for the child care assistance program administered by the Children, Youth and Families Department (CYFD). CYFD may also implement an alternative pathway to a high quality rating by using an evidence based quality rating tool to identify provider quality. The childcare assistance program is the largest early childhood program administered by the state, serving about 18 thousand children monthly at an annual cost of over $90 million. Additionally, the bill requires an annual report from CYFD to the governor and Legislature detailing quality system inputs, program context, and performance outcomes.

Senator Sapien, chairman of LESC, said the proposed bill is next step in bringing together the business plan for early childhood education.

Representative Larranaga moved to adopt endorsement of the bill, seconded by Senator Beffort. The motion carried.

Tobacco Funds (198378.1). The bill allows the Legislature to appropriate all of the funds the state receives pursuant to the tobacco master settlement agreement, rather than depositing 50 percent of the funds into the tobacco settlement permanent fund and the remaining 50 percent in the tobacco settlement program fund for appropriation by the Legislature. The bill intercepts the 50 percent that should be transferred to the tobacco settlement permanent fund to address declining revenue estimates in FY16.

Chairman Varela moved to adopt endorsement of the bill. The motion carried. Senator Smith will carry the bill.

Increase Revenue Threshold for Tiered Auditing (198378.1). The bill amends the tiered system of financial reporting under the Audit Act to double the operating budget revenue thresholds for tiered financial reporting for incorporated municipalities, mutual domestic water associations, land grants and special districts (local public bodies). Special districts are enumerated in Chapter

73 NMSA 1978 and include drainage districts, irrigation districts, conservancy districts, soil and water conservation districts, watershed districts and acequias. The intent of the bill is to relieve financial reporting pressures on local public bodies that are at-risk for encountering withheld capital outlay funding as a consequence of Executive Order 2013-06.

Sunalei Stewart, chief of staff of the State Auditor's office, said the agency has significant concerns regarding the proposed legislation. Mr. Stewart said the agency believes the proposed legislation would weaken financial oversight of taxpayer monies. If adopted, the agency would like to work with the sponsor of the bill to find alternatives.

In response to Chairman Varela, Mr. Stewart said he will provide the committee a list of which entities are currently subject to the at-risk list. Carlie Malone, analyst for the LFC, said as of the June 2014 bond sale, there were 38 projects that were ineligible for capital outlay funding because of the executive order.

Senator Leavell moved to adopt endorsement of the bill, seconded by Senator Cisneros. The motion carried. Senator Neville will carry the bill.

Horse Racing Act (198079.2). The bill amends the Horse Racing Act to make appeals of commissioners' rulings go directly to the Court of Appeals, prohibit same day licensure, administratively attach the Racing Commission to the Gaming Control Board, change the penalty for certain drug violation to a lifetime ban from racing, make the possession of non-FDA-approved drugs on the grounds of a race track a felony, require the Racing Commission hearing officers to render decisions within 90 days, require a licensee to place a review fee equal two times the amount of the fine or $1,000, whichever is greater, in an escrow account at the time a sanction is appealed, suspend a horse that was drugged until the appeal is settled, and make it a felony for having an illegal race track on your property and a misdemeanor for attending an illegal race. The bill appropriates $100 thousand from the general fund to the Administrative Office of the Courts (AOC) for expenses incurred by the Court of Appeals related to direct appeals from the adjudicatory decisions of the Racing Commission.

Clint Elkins, analyst for the LFC, said because staff is still working with the Legislative Council Service on drafting the bill, endorsement of the bill would be contingent on final review. Director Abbey suggested recommending the bill in concept with approval by Senator Munoz, Senator Papen, and Representative Ezzel.

Adjustment Scenario for LFC Appropriation Recommendations. David Abbey, director of the Legislative Finance Committee (LFC), discussed a framework modeled by LFC staff to reduce state agency general fund appropriations approximately 1.2 percent to address the possibility FY16 revenue estimates will be revised downward significantly due to lower crude oil and natural gas prices. After conversations with Representative Larranaga, Senator Smith, and Finance and Administration Secretary Tom Clifford, Director Abbey said it is the desire of a consensus revenue estimating group to work for an update to the revenue estimates the first week of February. Director Abbey discussed the LFC and executive recommendations. The LFC recommended FY16 general fund appropriations of $6.292 billion, an increase of 2.3 percent over FY15 appropriations, which was $2 million higher than the executive recommendation.

Overall, the LFC and executive recommendations are similar for FY16. The staff framework for the adjustment scenario stays within LFC appropriation recommendation guidelines and also maintains executive and LFC priorities for early childhood investments, education, public health, public safety, and job creation.

Chairman Varela said legislators will need to work on creating a balanced budget using recurring dollars, however, nonrecurring reserve dollars may have to be used.

Miscellaneous Business

Action Items.
Approval of LFC Minutes – November 2014 and December 2014. Senator Cisneros moved to adopt November's and December's meeting minutes, seconded by Senator Munoz. The motion carried.

Approval of the Racing Subcommittee Report. Senator Munoz moved to adopt the Racing Subcommittee Report, seconded by Senator Leavell. The motion carried.

Information Items. Director Abbey briefed the committee on information items. Maria Griego, program evaluator for the LFC, updated the committee on the state general fund book-to-bank reconciliation. Ms. Griego said the state continues to not have an accurate book record of how much cash is in its accounts. After the cash reconciliation issue was noted in the 2013 Comprehensive Annual Financial Report (CAFR), Standard & Poor's changed the state's outlook to negative, advising the agency would downgrade New Mexico's credit rating if the cash reconciliation issue was not resolved. Referring to a memorandum to LFC members, Ms. Griego provided a background on the SHARE process and what a model accounting practice should be. LFC staff completed an exercise to test whether variances between SHARE and the state's bank accounts were stable enough to begin to rectify historical cash variances, and by doing so, provide a set of beginning balances as a foundation for all future cash reconciliation. However, in this process, LFC staff observed that the book-to-bank variances fluctuate greatly on a monthly basis due to a variety of issues, including

- Timing of when the Department of Finance and Administration (DFA) closes the general ledger on a monthly basis,
- Normal monthly in-transit activity, and
- Matching cash balances in SHARE to corresponding cash at the State Treasurer's Office.

Ms. Griego talked about agency cash management. Various agencies persistently experience issues in managing their cash, resulting in negative balances. Ms. Griego said if agencies continuously experience problems in managing their cash balances, reducing the state's reserves to eliminate outstanding historical cash variances will not solve the problem. Agencies will continue to seek deficiency appropriations even after historical cash variances are resolved unless the root problem is addressed. Ms. Griego discussed the issues concerning third-party payment systems. DFA plans to address cash accounting around third-party payment systems in the cash remediation II project in 2015. Ms. Griego provided staff recommendations and said upgrading SHARE is imperative in moving forward.

Senator Sanchez expressed his concern with the cash reconciliation issues and said the state is wasting valuable resources with no results. Senator Sanchez suggests cash numbers be adjusted and move forward.

Sunalei Stewart, chief of staff of the State Auditor's office, said State Auditor Tim Keller will be addressing the cash reconciliation issues. Mr. Stewart said staff is currently working on possible solutions that will recommended to the House Appropriations and Finance Committee and the Senate Finance Committee.

Ms. Griego said the State Treasurer's Office will need to bring account detail to the fund level to come up with a number moving forward.

With no further business, the meeting adjourned at 1:02 p.m.

John Arthur Smith, Chairman

Jimmie C. Hall, Vice Chairman