

**Legislative Finance Committee**  
**Gallup McKinley County Schools Administration Building**  
**640 South Boardman**  
**Gallup, NM**  
**July 8, 9, 10, 2009**

**Wednesday, July 8**

*Joint meeting with Legislative Health & Human Services Committee*

The following members were present on Wednesday, July 8: Chairman Luciano “Lucky” Varela, Vice-Chairman John Arthur Smith, Representatives Donald E. Bratton, Rhonda S. King, Don Tripp, Edward C. Sandoval, Jeanette O. Wallace, Nick L. Salazar, and Henry “Kiki” Saavedra; and Senators Carlos R. Cisneros, Sue Wilson Beffort, John M. Sapien, Steven Neville (for Stuart Ingle), Mary Kay Papen, and David Ulibarri (for Pete Campos). Representative Patricia Lundstrom attended as a guest.

The following Health and Human Services Committee members were present on Wednesday, July 8: Chairwoman Danice Picraux, Vice-Chairwoman Dede Feldman, Representatives Miguel P. Garcia, Ray Begaye, Gloria C. Vaughn, Nathan P. Cote, and Dennis J. Kintigh; and Senators Gerald Ortiz y Pino, Linda M. Lopez, Rod Adair, Cisco McSorley, and Linda Lovejoy.

**Update on Workforce Development Training and Temporary Assistance for Needy Families.**

*Status of Key Recommendations from the 2006 LFC Review of the New Mexico Works Program and Workforce Development System Integration.* Renada Peery-Galon, senior fiscal analyst, LFC, reported that a performance review on the New Mexico Works program and workforce development system integration was completed in 2006 and contained three significant findings: New Mexico Works families lack sufficient access to effective and comprehensive workforce development services, including child care, through one-stop centers; New Mexico Works policies need adjustment to help families transition off welfare into self-sustaining employment; and lack of Office of Training and Workforce Development authority and decentralized administration may impede further progress to meet the needs of New Mexico’s businesses and job seekers.

Brent Earnest, senior fiscal analyst, LFC, reported the review made seven recommendations concerning the Human Services Department (HSD), Temporary Assistance for Needy Families (TANF) program, including requiring that employment and training service contractors provide their services through one-stop centers, amending state law to create a post-TANF job retention bonus program, and creating a separate state two-parent cash assistance program to avoid federal penalties for not meeting work participation rates.

Ms. Peery-Galon said there were two key recommendations for Children, Youth and Families (CYFD): The department should co-locate childcare eligibility workers at a minimum of three one-stop centers by the end of FY07, and the Legislature should consider maintaining the childcare income eligibility threshold at 155 percent of federal poverty level and target future expansion funding to raise the exit level eligibility threshold. There were also two key recommendations for the Workforce Solutions Department, including a legislative study of options to consolidate workforce development programs into a single department and how services be delivered to job seekers and employers.

Senator Beffort asked about the delay in passing through child support funds to TANF clients. Mr. Earnest said the change in law allowed the department to increase the pass-through and additional general fund revenue was appropriated to the Child Support Enforcement Division because it was likely to lose other state funds to support its operations. Senator Beffort asked that the process be expedited.

Senator Ortiz y Pino asked about CYFD not providing access to childcare services through one-stop centers. Julienne Smrcka, African American liaison, CYFD, responded that information technology (IT) has been an issue in terms of being able to screen applicants at the site and placing someone at those sites. An integrated IT system with HSD and the Workforce Solutions Department is being reviewed. Senator Ortiz y Pino asked that cross training also be reviewed.

*Workforce Investment Act Funding for Adults and Dislocated Workers -- Status of American Recovery and Reinvestment Act Funding.* Betty Sparrow-Doris, secretary, Workforce Solutions Department, reported on the American Reinvestment and Recovery Act (ARRA) funding. The ARRA provides funding to the state from the U.S. Department of Labor and follows legislation initially provided for various programs. The Workforce Solutions Department serves as the administering agency for all U.S. Department of Labor funded programs. These programs include the unemployment insurance program, Wagner-Peyser (labor exchange activities), and the Workforce Investment Act (WIA).

WIA in New Mexico received over \$11 million provided through local workforce boards for the actual provision of services; four local boards represent all regions in the state. The Navajo Nation also received over \$1 million. The state serves as the recipient of the funds but has no authority over the funds. WIA is composed of three component parts providing for adult services, youth services, and dislocated workers services. The department is operating in a comprehensive and integrated workforce system with all integration completed as of December 31, 2008. Support services are also provided and include needs-based payments to assist individuals in getting to job interviews. Funds under the ARRA must be expended by June 30, 2011.

The governor established an oversight office for ARRA. The office is overseeing all funds related to the ARRA and how they leveraged with other funds. In addition to providing an initial report of the plan for use of the funds, there has been and continues to be weekly reports that must be provided to the New Mexico Office of Recovery and Reinvestment. Subsidiary plans are also submitted in addition to the overall plan. A liaison is also assigned from the Office of Recovery and Reinvestment and meets with the department on a weekly basis to review expenditures and performance.

Representative Begaye asked if provisions, policies or both could be put in place requesting the federal government to provide reports of the Navajo Nation to the state. Secretary Sparrow-Doris said the state does not have the authority to require reports. Representative Begaye asked if pueblos and tribes are eligible for state funding under the workforce. Secretary Sparrow-Doris said they are not eligible as direct recipients; however, they are eligible for services through local workforce boards.

Secretary Sparrow-Doris said the state Workforce Development Board is responsible by law for the oversight and advice to the governor in terms of bringing together coordination to improve the economic viability of the state and providing a trained workforce. Nationally, an annual report is

required by state boards and quarterly information is provided. Vice-Chairman Smith asked why the state board has not met in over a year. Secretary Sparrow-Doris said the state board last met and expired in December 2008. Orientation for the new board is scheduled for July 24, 2009, and a full board meeting will be held on August 21, 2009. Vice-Chairman Smith said he is concerned with regulatory citations and requested a report for the last two years.

Representative Garcia asked if it were possible to work with libraries and local schools so displaced and unemployed individuals could access services provided by the department. Secretary Sparrow-Doris said individuals do not have to go directly into an office to access job listings; they are available online. The boards would be willing to look at ways where itinerant services could be provided in existing community service venues. Representative Garcia recommended that the department guarantee that those individuals seeking employment opportunities have an e-mail address.

Senator Sapien said WIA state funding is insufficient and asked the committee and the full bodies of the House and Senate to consider funding workforce investment not only as a flow-through on the federal side, but with state funds as well.

*How Local Workforce Boards are Spending ARRA Funding and Tracking Performance Measures.* Lou Baker, chair, Northern Area Local Workforce Development Board, reported that the mission of the board is to be the labor market's number one choice. WIA requires that 51 percent of board composition represent the business community; 49 percent of those board members are federally mandated members. There are 25 members, five staff, and one service provider. The board covers 10 northern counties and serves a population of over 300,000. Since 2002, the WIA formula funding has seen a 67 percent reduction.

ARRA funding has enhanced existing programs such as the Attain and Sustain Film Industry Project, the Commercial Driver's License (CDL) program, allowing city and county governments' access to training for their employees, and the Raytheon program. Alex Martinez, executive director, SER-Jobs for Progress, reported that the Raytheon program is in the Farmington area and 167 candidates were identified for prescreening. Sixteen individuals have met the minimum requirements for employment with Raytheon. On-the-job contracts have been generated and the board is paying 50 percent of the wages for training of specific occupations with Raytheon paying the other 50 percent. These individuals will transition into employment once training is complete.

Ms. Baker said staff met with business owners to discuss the Summer Youth Employment Program funded with ARRA funds. Funds received totaled \$838 thousand; 83 percent went to administration. A total of 316 youth are served through HELP and ARRA funds. The northern board implemented a Youth Employment Success (YES) initiative and currently has 360 registrants. Staff interacts with business owners in the community and provides assessment profiles and work readiness skills.

Representative Begaye asked if there is a federal formula used to draw resources on a cost reimbursement basis or distribution of resources. Secretary Sparrow-Doris said dollars are allocated by formula and not specific activities to the local boards. The formula is based on the number of individuals living in poverty and the unemployment rate.

Representative Lundstrom requested that a meeting be specifically set up with northwest legislators.

Temporary Assistance for Needy Families -- Providing Cash Assistance and Building Self

## Sufficiency.

*Caseload Growth and Maximizing ARRA.* Patricia Anders, staff attorney, New Mexico Center on Law and Poverty, reported that New Mexico should take steps to ensure that no federal TANF stimulus funds will be left on the table, seize the opportunity presented by the TANF ARRA funds to implement an emergency assistance program, and discuss policies to prevent poor families and their children from being cut off of TANF cash assistance when facing hardships. A TANF emergency contingency fund was created in ARRA to help states weather the recession. In addition to the fund, a regular contingency fund has long been available to states. New Mexico will be eligible to draw down up to \$55.3 million between funds over federal fiscal years 2009-10. To date, New Mexico has accessed \$16.6 million from the regular contingency fund. New Mexico is eligible for emergency contingency funds through basic cash assistance, short-term nonrecurring assistance, and subsidized employment.

New Mexico could set up a short-term TANF benefit program and be eligible to receive 80 percent federal reimbursement for these expenditures. The other 20 percent of expenditures do not have to be new state funding. The state could claim existing state spending as the matching funds. In addition, spending from nonprofit organizations and charities already providing assistance and services meeting the TANF purpose and other maintenance effort requirements can be used toward the additional 20 percent.

Participants in subsidized employment receive wages rather than cash assistance. ARRA funding also provides the opportunity to expand this program.

A policy option is currently available to New Mexico ensuring families with children facing hardships are not cut off of TANF benefits because of the timeline. Generally, there is a 60-month time limit on how long families can receive TANF cash assistance; however, federal law in recognition of the special hardships faced by the very poor allows states to provide hardship extensions up to 20 percent of the TANF caseload.

The Legislature has statutorily codified its intent that families facing hardships be provided extensions. To date, HSD has not fully used the flexibility granted by the Legislature. The department is in the process of making the extension more accessible to families.

*Are We Building Self Sufficiency -- NM Works Workforce Program and Other Support Services.* Katie Falls, deputy secretary, Human Services Department, reported that the TANF program is a federally funded program for low-income families with dependent children. The record low enrollment for the program was in July 2007. Since May 2009, the program has seen an increase of 20 percent, attributed to the economy. Individuals on the program are required to participate in a work activity unless they are exempt from it.

The TANF program focuses on ending dependency of needy parents by promoting job preparation, work, and marriage. The purpose of the New Mexico Works program focuses on improving the quality of life. National trends show the people on TANF are people who have multiple problems and barriers and are ill-equipped for work.

As TANF has imposed time limits, people are leaving the program without jobs and the most common sources of income are food stamps and child support. One-third of them are moving in with family or friends. Reasons for not working include poor health, not finding a job, and no childcare; 40 percent

childcare; 40 percent of people on the TANF program in New Mexico are exempt from work because of these problems.

Beginning in FY11, the same TANF contract for support services will not be issued because the population has changed. TANF clients will be interviewed to ask about services they are receiving, how they are helping, and what they need. Individuals who have left the program will also be asked what helped them get off TANF and what could have been done better. Work will then be done with the public and advocates to design an request for proposals enabling the department to provide services in the future that meet the needs of current TANF clients.

The TANF program is funded with a federal block grant spent on cash assistance, support services, and administrative costs. HB590 appropriated funding to the Taxation and Revenue Department (TRD) for the working families tax credit. HSD has applied for and has drawn down \$11 million for cash assistance. The amount of money appropriated for cash assistance has been declining while the amount of funding for support services has been increasing.

Chairman Varela requested that HSD provide a written response to the report submitted by the Center on Law and Poverty. Senator McSorley requested that extensions (triggers) be included in the response.

**Update on Behavioral Health Collaborative.** Linda Roebuck-Homer, chief executive officer, Behavioral Health Collaborative, reported that the collaborative re-bid its statewide entity contract and awarded it to OptumHealth New Mexico effective July 1. Eleven core service agencies have been identified across the state establishing clinical homes to allow people with multiple needs to receive thorough assessments and assistance. The first round will go live in October; it will take 12-18 months to have the entire state covered.

Implementation of a housing plan focuses on housing and developing capacities with specific focus on people with behavioral disorders. Stimulus funding coming into the state will be invaluable to populations. The goal is to get people into permanent housing.

The number of local collaboratives has expanded by three to a total of 18. Expansion occurred to accommodate additional Native American collaboratives; there are now five local collaboratives for Native Americans.

Other accomplishments include the expansion of projects for returning soldiers and veterans, pilots for quality service review system, and the consortium for behavioral health research and training (CBHTR).

The total projected for the FY10 contract is approximately \$378 million (both general fund and federal monies), with an overall administrative cost of \$47 million. Approximately \$10 million to \$12 million will return to New Mexico in taxes.

Sandra Forquer, CEO, OptumHealth New Mexico, reported the regional model has been strengthened to ensure staff is in communities assisting in facilitating care. Regional offices that have between 12-18 staff have been put in place in six areas of the state and include family and consumer peer specialists. The care coordination function has also been moved to the regional offices along with a provider care team. Fifty-three peer and family messengers were hired and have met with over 3,000 consumer and family members.

Ms. Roebuck-Homer said there is less funding available for behavioral health with an increasing need and demand for services.

The Behavioral Health Planning Council works with local collaboratives around the state and has identified priorities across the state. Priorities include crisis services, supportive housing, transportation, and support for the local provider base. OptumHealth has committed to assist in developing a crisis system.

Local collaboratives have been funded at \$21 thousand a year. Each collaborative receives \$3 thousand from OptumHealth and the remaining \$18 thousand is given out of a transformation grant; grant funding ends in September 2010.

**Working Lunch and Roundtable Discussion -- New Mexico Legislative Behavioral Health Caucus.** Ms. Karen Wells, researcher, Legislative Council Service, reported that HB271 was signed into law on May 19, 2004, creating the Behavioral Health Collaborative. Value Options was chosen as the statewide entity. The behavioral health collaborative oversight team has engaged in ongoing contract compliance to make sure the contractor is meeting their contract.

A program assessment was conducted and covered the first year of the contract with Value Options. Local collaboratives and key stakeholders were involved in developing a strategic plan through an evaluation of the planning process. The New Mexico Medical Review Association (NMMRA), the external quality review organization for the state conducted annual compliance audits and several specialized audits.

External audit findings from the Lewin Group indicated access to care increased. Forty-four percent of providers were dissatisfied because of untimely payments or reimbursements being too low. Consumers of the behavioral health services were satisfied, with the exception of Native Americans who felt that the program effectiveness ranked low.

The external audit from NMMRA compared how ValueOptions' annual performance with regulations and standards set in the New Mexico Administrative Code (NMAC). In the final audit, it was found that ValueOptions was compliant with the regulations and the overall audit compliance was 96.7 percent. Over the course of four years, there was a variation among the different standards; however, ValueOptions always had minimal compliance. If ValueOptions was found to be in minimal compliance in any area, a plan of correction was automatically put in place.

LFC reviewed and evaluated the collaborative in 2006, and did a follow-up report in 2007. Those findings and recommendations led to the passage of HB181, which established rule-making authority for the collaborative regarding standards of delivery and contracts and amendments. It also required the appointment of a director and quarterly reports of performance measures and a separately identifiable consolidated behavioral health budget. The 2007 report asserted ongoing concerns with pre-payments for non-Medicaid services. As of July, they have transitioned to a fee-for-service basis. There were also concerns with fragmented reports on performance measures and problems with residential treatment services for adolescents.

The Legislative Health and Human Services Committee (LHHSC) has heard testimony from the collaborative annually since its inception. There were consistent issues, questions, and comments made regarding administrative overhead, the value received for the money expended, and how

consumers and family members received timely information regarding services. Concerns were brought to the Courts, Corrections and Justice Committee asserting there had been drastic cuts in services for youth, as well as elimination of residential treatment centers.

The transition poses uncertainty and the Legislature has a consistent continuing interest in ensuring transparency, accountability, quick resolution of problems, responsiveness by both the collaborative and OptumHealth, and assurance that the behavioral health needs of New Mexicans are met efficiently, safely and compassionately.

Senator Feldman requested information on the number of providers that failed and are no longer in New Mexico. Ms. Forquer said an expedited payment process has been put in place for providers who have been deemed vulnerable by the collaborative. A contract was developed with the National Council of Behavioral Health Care. Every provider in the state was asked to provide a financial viability assessment, including audited or unaudited financial statements from 2008. Technical assistance will be provided for improving business practices for those in trouble.

Bill Belzner said the increasing number of denials for out-of-home placements over the last six months has raised concerns. The oversight team is analyzing changes in denials that began in November 2008. The reasons for denials, reductions of care, and termination of care have been tracked. The covering agencies were asked to look at the utilization management decisions by ValueOptions. ValueOptions was placed on a corrective action plan for denials regarding treatment foster care. In cases where alternative levels of care were not appropriate or denials exceeded a particular percentage, the medical director or other clinical staff was required to report back.

Chairman Varela requested a progress report for OptumHealth during the regular session as well as a status report of the Value Options contract as of December 31, 2009.

**Welcoming Remarks.** Harry Mendoza, mayor, city of Gallup, reported that Gallup is the Indian capital and 80 percent of all authentic Indian arts and crafts are made in the area. The largest amateur rodeo in the state and the Wrangler rodeo were held in the area and made a big impact to the community, county, and state. A bid has been made to be the site for the national high school finals (the largest rodeo in the country).

Judi Starkovich, executive director, Administrative Services Division, city of Gallup, reported that the city has been fortunate with increased recurring revenues due to gross receipt tax increases. The number of recreation and other facilities is growing and the city is a retail hub for surrounding areas. The city's population is approximately 20,000 and facilities must be able to accommodate a capacity of 1.5 times that amount. Most revenues are used to operate the city in personnel operations and capital outlay. Without legislative appropriations, facilities or new property cannot be acquired. City councils from the past two administrations have taken a lead in negotiating salary increases for personnel. The city is under three new union contracts and has increased the police salary dramatically; negotiations with the fire union have begun to increase salaries for the fire unit.

**Status Report on the Gallup-McKinley County Public Schools Accountability Report Card and Educational Programs.** Ray Arsenault, superintendent, Gallup-McKinley County Public Schools, reported on demographics of McKinley County. Programs are offered as incentives for education assistants to obtain bachelor degrees; 95 teachers have been added to the school district over the last four to five years. Multi-million dollar teacher housing is located throughout the school district and increments up to \$2 thousand are paid to teachers to live in those areas. Two new teacher housing

facilities were bonded at Navajo and Ramah.

Reading and math scores show improvement; however, not enough for the district schools to meet national standards. More students in elementary and mid-school are nearing proficiency levels. The school district uses Learnia Short Cycle Assessments (SCA) to determine academic growth and educational needs of students; assessments are given three times a year.

The school district is over 80 percent Navajo. A Navajo language and culture book was adopted and has been incorporated into schools. A program has also been developed in the Zuni language and culture and will be adopted in the fall.

George Bickard, principal, Crownpoint High School, said the data-driven decision-making model was brought into the school setting focusing on aligning curriculum and instruction not only with the state tests, but with the state standards. Short-cycle assessments were devised and students were tested on those standards. Gaps in instruction were immediately addressed by providing different strategies and techniques. In 2006, students were scoring 20 percent proficient in reading and 15 percent proficient in math. Last year students were at 63 and 61 percent proficient.

Mr. Arsenault said financial literacy in the county and school district is a great need; students need to know how to prepare a budget. Implementation will take place in 2011; funding has already been assigned.

John Samford, assistant superintendent, reported on the school district's budget. Reduction in the operational budget amounts to \$2.1 million. The district is below 12,000 students and many school districts around the state are seeing similar reductions.

Paul Aguilar, principal analyst, LFC, reported that Gallup was a participating party in the Zuni lawsuit. The district has 34 schools with one under construction. In 2004 and 2005, a number of schools in the district needed to be replaced. Gallup-McKinley schools received \$27 million in critical capital outlay. Since the standards base program was put into place, Gallup-McKinley schools have received more than \$130 million to replace or renovate 21 of their 35 schools. Mr. Aguilar recommended the committee focus efforts on getting all school districts to use data to drive instruction on a statewide basis. Title I and IDEA-B funds are subject to the federal tidings amendment and funds have two years to be encumbered and five years to be expended.

**Performance Effectiveness Report.** Paul Kraft, director, student services, University of New Mexico-Gallup, reported that UNM Gallup has an enrollment of approximately 3,000 students; 80 percent are native students. Eighty-nine percent of students seek degrees; nine out of 10 students require developmental or remedial course work. The branch is an open admission campus. Enrollment is up 5 percent from last year with 34 percent new students. Tuition is a third of the cost of UNM Albuquerque. Dual enrollment continues with high schools with over 650 students participating. A mandatory computer literacy program will be implemented for new students and a financial literacy college success class is also being incorporated into the curriculum. Development courses are being revised using best practices. A student success committee includes members from the community and meets monthly to review data for students who are persisting. Outreach to the community includes talking circles providing an opportunity to ask keys questions. Challenges and opportunities include the Zuni Pueblo and tremendous educational needs and interests in meeting those needs using the UNM Gallup branch. The branch is working on increasing the number of students graduating with an associate of arts or associate of science degree wanting to continue with a

a four-year degree.

**Review of \$700 Million Budget Increases for Human Services Department from ARRA and Other Federal Funds.** Brent Earnest, senior fiscal analyst, LFC, reported that during FY09 the department submitted 50 budget adjustment requests (BARs); 32 of those were to increase the department's budget by \$737 million (18.6 percent). Twelve BARs transferred \$40 million among programs and another six transferred money within categories. Of the \$737 million, the largest amount consists of federal stimulus funds that will be budgeted over multiple years. Other budget increases are for general fund appropriations made in SB79.

Elain Olah, chief financial officer/administrative services division director, Human Services Department, reported that the end-of-year BARs were normal course of business. Single-year appropriations were addressed through the general funds appropriation act. Multi-year appropriations were a result of special appropriations expanding over multiple fiscal years. The department has increased its budget by \$731 million in federal funds due to ARRA. Some of the funds are not new; they are funds received through the extension of existing programs. In addition to Medicaid, funds will be received for TANF, the community services block grant, incentive funds for child support, and commodities for the Emergency Food Assistance Program, including administrative funds.

#### **Thursday, July 9**

**The following members were present on Thursday, July 9:** Chairman Luciano "Lucky" Varela, Vice-Chairman John Arthur Smith, Representatives Donald E. Bratton, Rhonda S. King, Don Tripp, Edward C. Sandoval, Jeanette O. Wallace, Nick L. Salazar, and Henry "Kiki" Saavedra; and Senators Carlos R. Cisneros, Sue Wilson Beffort, John M. Sapien, Steven Neville (for Stuart Ingle), Mary Kay Papen, and David Ulibarri (for Pete Campos). Representative Patricia Lundstrom and Senators David Ulibarri, Lynda M. Lovejoy, Gerald Ortiz y Pino, George Muñoz, and John Pinto attended as guests.

**Travel and Tour of Motor Transportation Division Gallup Port of Entry.** The committee was provided a tour of the Gallup port of entry built in 1991 with Department of Transportation funds. The port is staffed with 13 transportation inspectors, seven officers, and two sergeants. Random inspections are given to truckers and are inspected at either level 1 or level 2 inspections. The port processes 4,000 trucks daily.

**Welcome.** Mike Cerletti, secretary, Tourism Department, reported there are nine visitor information centers in the state; 1,300 visitors are seen daily. The department is working with the Ruidoso Downs and the city of Carlsbad to consider centers in those locations.

**Update on Weight-Distance Tax Enforcement and Collection Initiatives.** Rick Homans, secretary, Taxation and Revenue Department, and Forrest Smith, Mother Transportation Division director, combined information to report on the weight-distance tax, trip tax and gas tax. Secretary Homans reported that gas and tax revenues remain flat. Weight-distance tax and special fuels tax revenues are down and trip tax revenues are up slightly. Compliance with these taxes is critical as each is an important component of the road tax revenue stream.

New Mexico is one of four states administering a weight-distance tax (WDT). MTD performs field compliance for trucks operating in the state. The operators report and pay the tax quarterly based on miles traveled and the weight of the vehicle. The key issue on compliance in the reports is self-

reporting and there is concern many operators fail to accurately report mileage. Many states offset the lack of a weight-distance tax by having higher commercial vehicle registration fees, resulting in simplified compliance.

The presenters noted good agency cooperation among the Taxation and Revenue Department (TRD), Motor Transportation Division (MTD), and Department of Transportation (NMDOT) to enhance revenue collection. These agencies have a WDT workgroup that includes TRD auditors, MTD port workers, and other stakeholders. TRD has a 5 FTE audit group hired and in training to focus on WDT collections. MTD and DOT have an electronic license plate reader project partially federally funded that will increase efficiency and accuracy. MTD has focused on intrastate compliance with an eight-day “blitz” operation in Albuquerque and Santa Fe metro areas, resulting in identifying 322 commercial vehicles without WDT permits.

**Update on Highway 491.** NMDOT reported \$12.1 million has been spent on engineering, with \$41 million being committed from federal stimulus funding. NMDOT is working with the Navajo Nation on clearing the remaining rights of way on the northern corridor and anticipates concluding this activity by the end of July 2009.

**Intertribal Ceremonial -- Update and Presentation of Intertribal Ceremonial Business Plan.**

Louie Bonaguidi, president, Gallup Intertribal Indian Ceremonial Association, Earnest Becenti, member, Gallup Intertribal Indian Ceremonial Association, and Evan Williams, Northwest New Mexico Council of Governments, presented an update on the Gallup Inter-Tribal Indian Ceremonial Association (GITICA) business plan. The committee adopted a motion to send a letter to the governor expressing support for the restoration of the vetoed Intertribal Ceremonial Office (ICO) operating budget.

Testimony included a discussion of \$8 thousand in missing GITICA funds. A motion was adopted to send a letter to the secretary of the Tourism Department asking the New Mexico State Police to investigate the following and report back to the committee:

- Who was supervising the suspect employee at the time of the incident,
- What is the potential liability to the state,
- What actions have been taken against the employee,
- Whether the incident falls under sovereign or state jurisdiction.

**Infrastructure Funding and Other Fiscal Policy Issues for the Navajo Nation and the State of**

**New Mexico.** Ben Shelly, vice president, Navajo Nation, reported infrastructure development is important to the Navajo Nation. Many roads are unpaved and many homes lack electricity, running water, and sewer. Sixty percent of Navajo lack telephone service and 78 percent of roads are dirt or gravel. Funding is necessary to improve the infrastructures on the Navajo Nation. Basic infrastructure can improve quality of life and can help move economic development forward. A funding shortage contributes to project backlogs and creates additional complications that interfere with Navajo Nation efforts. To prevent the delay of projects, the Navajo Nation requests infrastructure projects be fully funded. Navajo Nation law requires a funding plan be in place before any project is considered for funding.

Charles Long (representing Lawrence T. Morgan, Navajo Nation Council speaker) added that the State Tribal Collaboration Act is the underlying law that will guide the state, Indian tribes, and pueblos to work together. The act requires an annual summit to discuss differences and issues that are common reaching a consensus. The approval system for joint powers agreements and grant

agreements has been streamlined and funds have been designated to be used as matching funds assisting chapters and communities that have projects requiring start up.

Representative Lundstrom said part of the problem in New Mexico has been that there is not a single source of program funds outside capital outlay to direct constituents to and requested a matrix of all available funds from the cabinet secretary of the Indian Affairs Department.

**Navajo Gallup Water Supply Project.** John W. Leeper, Water Management branch manager, Navajo Nation, reported on the Navajo Nation/New Mexico settlement. The project will have the largest wastewater treatment plant in New Mexico. The plant will have authority to treat all water and solve regional problems. The settlement includes a conjunctive groundwater component and the state, as well as chapters and federal agencies, has put millions of dollars into the project. The city of Gallup is building a regional system so water can be provided to the Gallup-area Navajo and surrounding communities.

Andrew Robertson, consultant, Navajo Nation, reported pipeline construction will be split into five stand-alone phases, beginning at the southern end and connecting three chapters. Eventual connection to the San Juan River will provide immediate access to 20,000 water customers. The state has invested \$18.6 million, and as a direct result, the U.S. Department of Agriculture has provided matching funds of \$8.75 million. The Navajo Nation central government contributed \$900 thousand and individual chapters contributed \$160 thousand. In addition, the Indian Health Service has \$7 million to \$8 million of distribution to individual homes that can be built after the water supply is put into place. All four programmatic phases (nonfederal) will be under construction within one year, allowing all eight chapters to have a good supply of groundwater.

Lance Allgood, executive director, Gallup Joint Utilities, reported on the Gallup regional system. The system will be built at a capacity to accept and deliver the maximum surface water. The well is ready to be connected to the regional system delivering water through Gallup's existing plumbing. Four grants are in place through the Water Trust Board totaling \$6.68 million. A portion of the facilities will be owned and operated by the tribe. Statutes creating the New Mexico Finance Authority do not allow for transfer of facilities unless the tribe waves sovereign immunity. The Water Trust Board funding has a 20 percent loan component and a large portion of the facilities built do not directly benefit the city of Gallup and will be owned and operated by the Navajo Nation. The city of Gallup has made \$500 thousand in in-kind contributions. Mr. Robertson added that SB723 transferred funds to the general fund and reauthorized them to New Mexico Environment Department, solving the solvency issues and protecting the state's and Navajo Nation's interests. The Navajo Nation's attorneys and the New Mexico Finance Authority's attorneys are continuing to work together to find a long-term solution. Representative Lundstrom said \$10 million was transferred from the general fund to severance tax bonds. Funds are specifically to assist with water settlements. Director Abbey suggested working with staff to find ways to make the long-term financial plan clearer.

### **Miscellaneous Committee Business.**

#### *Action Items*

*Approval of LFC Minutes -- June 2009.* **Senator Cisneros moved to approve the minutes of June 2009, seconded by Senator Smith. Motion carried.**

*Contract Approval* -- Director Abbey recommended three contracts for approval in the amount of \$89.6. The total contract budget for FY10 is \$216 thousand. **Senator Cisneros moved to adopt the recommended contracts, seconded by Representative King. Motion carried.**

### **Information Items**

*State Agency Personnel Levels* -- Director Abbey reported the hiring freeze has not made a big impact on state agency employment levels, although turnover at agencies slowed down. There are a number of exemptions (critical positions) by agency. The freeze is likely to result in a reduction in state employment to make budgets work. Chairman Varela said he would like exempt positions to be reviewed so that, if funding is reduced, the FTE compliment in agencies could be reduced as well. Senator Beffort suggested including the number of temporary employees.

*Follow-up on Issues Related to HSD Medicaid Program Structure and Appropriations* -- Director Abbey reported that DFA only submitted one performance program for Medicaid; however the General Appropriation Act included three programs. Michael Browdy was hired to look at legal issues related to the DFA action. Mr. Browdy prepared an analysis and supports the position of staff that the programs should be set up as provided in the act. In discussion with Secretary Miller, she proposed going back to the status quo for FY09 of two programs. Secretary Miller committed to continue discussion with the Human Services Department, DFA, and LFC.

*Monthly Report on Federal Stimulus Funding* -- Director Abbey said all agencies have to submit plans to DFA on how they will use stimulus funding. Bi-weekly reports are also to be submitted.

*June BAR Report* -- Cathy Fernandez, deputy director, LFC, reported the greatest number of BARs submitted in June; 98 BARs were approved during the month. HB10 greatly expanded the budget adjustment authority allowing agencies to move money between programs and categories for FY09. Board of Finance approved allocation of the \$500 thousand appropriation in Section 5, Laws 2009, for the Economic Development Department, State Fair, and Administrative Office of the Courts (AOC), jury and witness fee fund. The BAR was submitted to LFC at 5 p.m. on June 30. LFC can object to a BAR or call a hearing, unless the fiscal year ends. Representative Bratton suggested reviewing legislation to change the BAR submittal date.

*June LFC Budget Status Report* -- Director Abbey reported that \$38 thousand was reverted.

*FY10 Budget Projections* -- Director Abbey reported that based on a vacancy rate of a half percent, LFC is showing a surplus. If a 2 percent budget reduction is needed, Director Abbey proposed to take it from contracts and use the remaining amount to hire staff for the session.

*FY11 LFC Budget Guidelines* -- Discussion Draft

*May BAR Report* -- Information Item

*Use of Stimulus Funds for Recurring and Nonrecurring Purposes for Public Education* -- Director Abbey reported on the experience with agencies using stimulus funds for recurring purposes. Language was vetoed in HB2 directing the Public Education Department (PED) to make sure agencies were not using the one-time stimulus funds for recurring purposes. PED reported they have limited oversight authority; they have oversight on districts and not individual schools. The federal grant agreements pursuant to Title I and special education funding supersede their ability to tell districts

districts how to use the funds. Vice-Chairman Smith encouraged a letter be written from the chairman to the school districts reflecting the forecasting of revenues in the out years keeping it in mind when funds are expended on recurring purposes. Vice-Chairman Smith also suggested a letter be written to the PED requesting information on how the funds are being used.

*June Cash Balance Report -- Information Item*

### **Friday, July 10**

The following members were present on Friday, July 10: Chairman Luciano “Lucky” Varela, Vice-Chairman John Arthur Smith, Representatives Donald E. Bratton, Rhonda S. King, Don Tripp, Edward C. Sandoval, Jeanette O. Wallace, Nick L. Salazar, and Henry “Kiki” Saavedra; and Senators Carlos R. Cisneros, Sue Wilson Beffort, John M. Sapien, Steven Neville (for Stuart Ingle), Mary Kay Papen, and David Ulibarri (for Pete Campos). Representative Patricia Lundstrom and Senators David Ulibarri, Gerald Ortiz y Pino, and John Pinto attended as guests.

Update on Progress of the Tribal Infrastructure Fund and the State -- Tribal Collaboration Act. Alvin Warren, secretary, Indian Affairs Department (IAD), reported that during the last session, no less than 40 bills and memorials important to Native Americans were adopted into law. The Indian Affairs Department has existed since 1953 as the Office of Indian Affairs and was elevated to cabinet level in 2004. The department is the lead coordinating agency for intergovernmental and interagency programs that affect tribal governments and Native Americans. Statute tasks the department with two particular responsibilities: to investigate, study, consider and act on every issue that affects Native Americans; and to assist in setting the policy and acting as the clearinghouse for all state programs that affect Indians in the state. The department created a strategic plan by following the communication and collaboration method and included four priority areas and a new mission:

- Assisting in developing and securing legislation and policy affecting tribes and Native Americans,
- Maintaining a consistent high-level visibility of tribal concerns and issues,
- Provide capital outlay funding to tribal entities,
- Provide special projects and appropriation funding to tribal entities, and
- Provide training and technical assistance to tribes and state agencies

Secretary Warren reported on the tribal infrastructure fund (TIF). HB868 created the fund to build basic infrastructure to address poor social, health, and economic conditions in tribal communities. It also provides support for tribal economic development projects. The act created both a tribal infrastructure trust fund and a tribal infrastructure project fund. The trust has never been funded and continues to carry a zero balance. In 2008, SB18 amended the TIF statute to provide an opportunity to capture monies appropriated to Aging and Long-Term Care Department projects. The TIF does not have a recurring funding source. In 2008, the TIF board received 27 applications totaling over \$9.7 million; 16 of those projects were funded at a partial level. The governor has directed DFA and IAD to explore and look into options for creating a recurring funding source. A significant amount of funding is available through the stimulus package. Some of those funds are going to the tribes through a formula and others are competitive. Other funds for tribes and tribal communities are available through state agencies. Senator Ortiz y Pino asked if the tribes have a method for bonding construction projects. Secretary Warren said he is aware of some bonding capacity and authority; however, the revenue to service a bond might prevent communities from using bonding authority. Senator Smith asked if there was accountability to determine how funds are expended on projects.

Secretary Warren said there are several layers of accountability to make sure funds are used appropriately.

Capital Outlay Quarterly Report and Work Session on Methodology for Funding Capital Outlay for Local Governments. Jeannae Leger, fiscal analyst, LFC, reported on the June quarterly capital outlay report derived from the capital projects monitoring system (CPMS) operated and maintained by DFA.

Analysis of the data from the CPMS for outstanding capital funding authorized between 2003 and 2008 demonstrates the following:

- During the time period, \$3.7 billion was appropriated.
- To date, \$1.3 billion for 5,825 projects remains unexpended,
- Since March 2009, \$145 million was expended for 622 projects.

Unexpended funds are as follows:

- \$439 million – general fund;
- \$401.9 million – severance tax bonds;
- \$314.6 million – general obligation bonds;
- \$49.6 million – other state funds;
- \$91.3 million – reauthorizations (funding source unknown).

Five projects remain in CPMS for 2002 and 2003. For 2003 through 2008, there are 3,706 projects that have no activity. Of these projects, 2,942 represent appropriations of \$150 thousand or less. Ms. Leger reported on projects \$1 million or greater.

Robert Apodaca, director, Local Government Division, Department of Finance and Administration, reported that DFA will work with LFC staff to identify potential projects that are not moving forward.

Reauthorizations that have legitimate third-party contracts continue to be a huge problem. Several statewide initiatives were addressed through limited capital funding. The department is working on drafting a rule to address anti-donation issues that will include processes and procedures. Linda Kehoe, principal analyst, LFC, added that public hearings will be held and nonprofits will be contacted so they can participate and provide input the rule. DFA plans on implementing the rule by the 2010 session.

William Fulginiti, executive director, New Mexico Municipal League, discussed issues related to the 103 municipalities in the state and their property tax capacity. Projects that are statutorily mandated include those concerning water, wastewater, and solid waste. Most wastewater treatment facilities are 40-50 years old and are filling up to capacity. Local governments are funded through gross receipts tax. Outstanding debt as of June 30, 2008, totals \$2.3 billion (\$1.9 billion revenue bonds) and does not include operational costs. Small towns do not have a tax base to support projects required by statute and financing patterns do not lend themselves to large projects and small populations. Paul Gutierrez, executive director, New Mexico Association of Counties, added that counties often become fiscal agents for nonprofits.

Ms. Kehoe reviewed proposed criteria and requirements for statewide and general obligation bonded projects. Staff developed guidelines for the committee adoption for legislators to use during the interim. Chairman Varela asked if there has been any consideration for phased funding to ensure projects would be complete. Ms. Kehoe said it is a legislative decision. Members made several recommendations to the proposed guidelines.

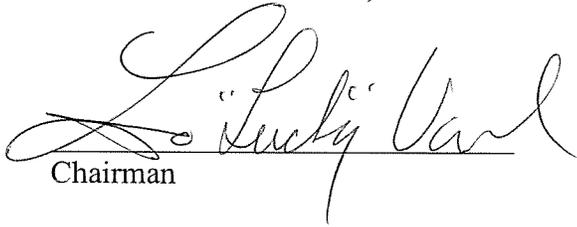
**Information Items**

Chairman Varela congratulated Director Abbey on behalf of the Committee and staff for receiving the Legislative Staff Achievement award from the National Conference of State Legislators (NCSL).

*FY11 LFC Budget Guidelines* -- Chairman Varela asked members to take and review the FY11 budget guidelines for discussion at the August meeting.

Director Abbey referred members to other information items, the June Cash Balance Report and the May BAR Report, in the member's binders.

With no further business, the committee adjourned at approximately 11:20 a.m.

  
Chairman

  
Date

