

**MINUTES**  
**LEGISLATIVE FINANCE COMMITTEE**  
**June 12-14, 2006**

Representative Luciano “Lucky” Varela, chairman, called the Legislative Finance Committee (committee) meeting to order on Monday, June 12, 2006, at 8:40 a.m.

The following LFC members were present on June 12th:

Representative Luciano “Lucky” Varela, chairman, Senator Ben Altamirano for Joseph Fidel, vice chairman, Representatives Nick Salazar, Rhonda King, Jeannette Wallace, Sandra Townsend, Donald Bratton for Brian Moore, Donald Whitaker, and Henry “Kiki” Saavedra, and Senators Mary Kay Papen for Timothy Jennings, Leonard Rawson, Richard C. Martinez for Phil Griego, Cisco McSorley for Pete Campos, Sue Wilson Beffort, and John Smith. Representatives Daniel P. Silva and Manuel Herrera joined the committee as guests.

The following LFC members were present on June 13th:

Representative Luciano “Lucky” Varela, chairman, Senator Ben Altamirano for Joseph Fidel, vice chairman, Representatives Nick Salazar, Rhonda King, Jeannette Wallace, Sandra Townsend, Donald Bratton for Brian Moore, Donald Whitaker, and Henry “Kiki” Saavedra, and Senators Mary Kay Papen for Timothy Jennings, Leonard Rawson, Richard C. Martinez for Phil Griego, Cisco McSorley for Pete Campos, Sue Wilson Beffort, and John Smith. Representatives Justine Fox-Young and Daniel P. Silva joined the committee as guests.

The following LFC members were present on June 14th:

Representative Luciano “Lucky” Varela, chairman, Senator Ben Altamirano for Joseph Fidel, vice chairman, Representatives Nick Salazar, Rhonda King, Jeannette Wallace, Sandra Townsend, Donald Bratton for Brian Moore, Donald Whitaker, and Henry “Kiki” Saavedra, and Senators Mary Kay Papen for Timothy Jennings, Richard C. Martinez for Phil Griego, Cisco McSorley for Pete Campos, Sue Wilson Beffort, and John Smith. Representative Justine Fox-Young joined the committee as a guest.

**WELCOMING REMARKS**

Chairman Varela welcomed the committee and public to the hearings. After opening remarks by John Counts, president, Western New Mexico University; James Marshall, Silver City mayor; Henry Torres, Grant County Commission chairman; Linda Kay Jones, Western New Mexico University Institutional Development; and Susie Trujillo, Gila Regional Medical Center; the committee heard the following:

**COMMUNITY INPUT**

Susie Trujillo of the Gila Regional Medical Center, Gary Staley of Grant County, Victoria Johnson, and Pam Galbraith of Value Options provided the committee a brief overview of the roles of their respective organizations in providing for the health needs of Grant County, discussing the following items:

- Lowering substance abuse rates in Grant County,
- Focusing efforts on community wellness initiatives,
- Redesign of community behavioral health needs,

Ms. Trujillo and Ms. Johnson provided the committee an overview of the Grant County First-Born

program, which provides pre-natal care for first-time mothers and further funds healthcare needs through the first three years of the child's life. The following items and future plans for the programs were discussed:

- Success of the pilot program in Grant County,
- Plans to implement the program in Rio Arriba and Los Alamos counties with state appropriations and private funding from the Los Alamos National Laboratory Foundation,
- Goal of expanding the program to include all of New Mexico,

Ms. Galbraith provided the committee with an overview of the operations of Value Options in providing mental-health services in Grant County. The following items and future plans were discussed:

- Providing home visitation model for mental-health services,
- Funding from the Children, Youth and Families Department to invest in new programs and expand services,

In response to Ms. Galbraith, David Abbey, director, LFC, indicated the need of federal funding for the mental-health programs due to the large percentage of patients on Medicaid receiving services from such programs.

In response to Ms. Trujillo and Ms. Johnson, Representative Wallace indicated that only Rio Arriba County, not Los Alamos, would be participating in the First-Born Program, and that the need for such services in the county was great.

In response, Senator Smith discussed the role of assisted living and day providers in providing health care at a national level.

In response, Representative King explained that providing funding for pre-natal care and early-childhood health programs would address community health problems that would otherwise become a financial burden to the state later in a child's life.

In response, Mr. Abbey indicated the need for funding to study the role of early intervention and pre-kindergarten programs, as well as finding other resources to replicate such programs statewide.

In response to the First-Born program, Representative Whitaker questioned the definition of "family," as relating to the program providing funds for a "family's" first-born child. Representative Whitaker questioned whether the mother need be married to receive funding, and whether a mother with children from two separate fathers would receive funds for both children through the program.

## **COPPER MINING UPDATE**

Tony Trujillo, government relations lobbyist for Phelps Dodge Mining Corporation in New Mexico, offered welcoming comments to the committee and then introduced Richard Peterson, communications manager, Phelps Dodge; and Rick Moore; reclamation manager, Phelps Dodge.

Mr. Peterson began the Phelps Dodge presentation, providing an overview of the financial activities and noting that Phelps Dodge continues to benefit from increasing copper costs, which has risen from 72 cents per pound in 2002 to \$2.25 per pound in the first quarter of 2006. For the Phelps Dodge financial profile, this translates into a net loss of \$338 million in 2002, as opposed to net income of \$334 million in the first

quarter of 2006. Mr. Peterson also provided a brief overview of world copper production capabilities, job creation in Grant County, and smelter dismantling activities.

Mr. Moore continued the presentation with a summary of Phelps Dodge reclamation activities and of the company's voluntary self-disclosure with respect to violations of hazardous waste water and water quality regulations. In response to Senator Beffort, Mr. Moore discussed the application of native grass seed mixtures in the reclamation efforts, and in response to Representative Salazar, he explained the processes in which trace amounts of other elements in particular copper deposits are identified and addressed.

In response to Senator Smith, Mr. Moore discussed the Phelps Dodge approach to environmental planning and, in particular, the corporate response to regulatory oversight by the U.S. Bureau of Land Management, and New Mexico's departments of Environment and Energy, Minerals and Natural Resources. Commenting on a follow-up statement by Senator Smith, Mr. Moore indicated that Arizona environmental regulations are similar to those in New Mexico, although the individual state regulatory agencies might differ with respect to their specific oversight regulatory responsibilities.

In response to Representative Saavedra, Mr. Trujillo explained that the individuals who had been laid off by Phelps Dodge a few years ago had been retrained to be able to pursue other employment opportunities, or had eventually been rehired by Phelps Dodge once copper prices began to rise and the industry regained its economic viability.

### **CONSTRUCTION INDUSTRIES DIVISION - PROGRAM EXPANSION AND PERFORMANCE**

Lisa Martinez, director, Regulation and Licensing Department's Construction Industries Division (CID), introduced Kate Baca, deputy director, and industry representatives, John Horton of Associated General Contractors (AGC) and David Gordon, immediate past president of the New Mexico Home Builders Association (NMHBA).

Ms. Martinez cited construction growth in the state and related that state's growth has caused the building department workload to increase; she thanked the committee, other legislators and governor for their assistance in providing increased funding for the division in FY07.

Representative Saavedra asked what the governor contributed to the CID budget. Ms. Martinez responded that CID met with the governor and with representatives and that the governor was supportive.

Ms. Martinez said CID plans to use the new \$1.25 million in general funds primarily for new inspectors (12 total), by adding three to each bureau; additionally, the division proposes to hire two investigators and one compliance officer, and two additional FTE for KIVA (the construction industries database) support. Ms. Martinez proposes implementing inspector salary positions' new salary ranges with any unused new funds.

Senator Rawson asked what language was associated with the \$1.25 million appropriation. Representative Varela responded that even though language was not included in the General Appropriation Act, the funds were appropriated for CID inspections, not compliance/investigation and that the CID plan breaks with legislative intent.

Ms. Baca presented an overview of the CID business plan outlined in a committee handout. The business plan includes division strategies to achieve goals and measures to determine the success of the division's strategies.

Representative Varela asked if the business practices for inspectors are defined and if they are being implemented.

Ms. Baca responded that adopting business practices is part of business plan strategy: that by creating KIVA support center, the division will save each inspector 1-1.5 hours on the phone each day. In addition to the support center, additional inspectors would increase effectiveness and efficiency, according to Ms. Baca, by reducing distances driven and increasing time available for inspections.

Ms. Baca related to the committee that inspections are essentially an unsupervised activity and that advocating and monitoring flow and effectiveness of activity through administrative support would reduce bureau chief clerical work. She also suggested increased technology use for reporting, documenting services, and increased timeliness.

Mr. Gordon said that as president of the New Mexico Home Builders Association he heard statewide perspectives regarding CID services. He views building departments as business partners in challenge of construction growth in New Mexico. Mr. Gordon related that the Dona Ana County building department is "very effective" and builders have few complaints. According to Mr. Gordon, the county makes good use of multi-discipline inspectors for greater efficiency. Mr. Gordon suggests fewer people performing more work would reduce the shortages for inspectors and allow greater flexibility for CID local government coverage.

Mr. Horton, director of Public Policy for the Associated General Contractors, pointed out the differences between the types of building projects. Mr. Horton asserted that commercial construction has greater risks. AGC views increased funding for CID as "premature." According to Mr. Horton, AGC contends CID should be funded at an amount equivalent to the amount of general fund revenue generated by the division. Mr. Horton expressed that the commercial building climate has not experienced delays in CID inspections, potentially due to inspector prioritization of commercial projects because they are the easier jobs. Mr. Horton suggests the distinction be highlighted between residential, commercial and highway and bridge inspection and oversight.

Ms. Martinez said that estimates of expenses tied to public school capital outlay work completed through March this year were over \$1.1 million; she said and the agency would like to increase the FY07 budget by this much.

In response to a Senator Beffort inquiry regarding inspector incentives, Ms. Martinez described a plan for inspector incentives and career path creation based on certifications and experience. Senator Beffort responded that she was hoping for incentives for timeliness and achievement. Ms. Martinez stated that the state personnel rules only allow for pay increases if the job description itself includes the specific allowances.

Senator Beffort stated that she was hearing that there are not incentives for customer services. Ms. Martinez said inspector evaluations include a component for customer satisfaction. She said businesses are surveyed for the component that also reflects the perspectives of office staff, the inspector's supervisor and the inspector's self-evaluation.

Stanley R. Bessey, executive director, National Electrical Contractors Association, New Mexico Chapter, reported to the committee that he has been involved in the CID goal-setting and business plan development process after the legislative session and can comment that CID is doing the utmost to serve the industry. Mr. Bessey pointed out that electricians in industry do not pursue inspector jobs because the pay is significantly less.

Representative Bratton stated that during a meeting in Lea County a discussion was held regarding whether communication occurs between inspectors and contractors confirming inspection appointments. Ms. Martinez responded that inspector cell phone numbers will be available to contractors next month.

Representative Bratton asked whether inspectors can work both within a county and city. Ms. Martinez answered that there are small building departments that share inspectors, and that two locations have requested this ability. Representative Bratton suggested small communities could certify inspectors in multiple disciplines and share them and requested resolution on joint powers agreement between local governments for shared resources.

Mr. Horton suggested to the committee that new compliance funds eventually become prohibitive. He further suggested that eventually the division should require more of contractors and raise their requirements rather than increase the funding for compliance and substantial penalties for shortfalls and illegal activity.

Senator Altimirano asked Ms. Martinez who is ultimately responsible if an inspector signs off on faulty work. Ms. Martinez answered that the tradesperson, not the inspector, would be responsible.

Mr. Bessey told the committee that electrical industry members (specifically within the commercial industry) do not support multiple inspection licensures.

### **STATUS REPORT ON STATE RODEO INITIATIVES**

Katherine Miller, secretary, Department of Finance and Administration (DFA), testified the Rodeo Council is broken into subcommittees. In 2005, \$1.5 million was appropriated for rodeo initiatives, including \$400 thousand from the general fund for improvements with local contribution required; \$700 thousand in statewide funds, and \$380 thousand for programs. Additionally, \$583 thousand was appropriated for State Fair facilities. In 2006, \$10 million was appropriated for an equestrian facility and \$8 million for other rodeo costs.

Debbie Romero, Local Government Division, stated that, of the \$400 thousand appropriated with local match required, all has been appropriated. Ms. Romero showed a list of localities that received funding.

In response to Senator Altamirano, Ms. Romero indicated that potential applicants for the rodeo capital outlay funds were notified of the grant program in September 2005, when all city and county managers received a letter. The Rodeo Council reviewed every application. Entities that did not receive funding were impacted by anti-donation issues and the need for a local match. In response to Senator Martinez, Ms. Romero indicated the grant process was not used to allocate program funds. She noted \$380 thousand was appropriated for rodeo programs. All those funds have been expended or will be by June 30, 2006. The Rodeo Council has sponsored barrel racing clinics from the only New Mexican competing in the national finals and rodeo queen workshops from the New Mexico representative in the queen's

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competition. Additionally, \$300 thousand went to universities. The council also sponsored Fiesta de los Indios Rodeo with over 600 contestants in Albuquerque. The Turquoise Circuit finals have been in Arizona in recent years but will come to New Mexico in November 2006 in Dona Ana County. The council has also sponsored junior high and high school finals. Collegiate statewide competition has also been funded, though the date and location of the statewide collegiate rodeo championship has not been determined yet.

Ms. Romero summarized the status of funding and accomplishments. She noted that rodeo is now an official activity of the New Mexico Activities Association and that the council has developed a website, attracted Turquoise Circuit finals to New Mexico, is helping with local rodeo infrastructure and is supporting a diversified number of events and increase number of contestants at 4H, junior high, high school, college and professional levels. In response to Representative Martinez about the potential for funding for governments that lack a match, Ms. Romero indicated that these projects could qualify for funds from \$3 million of the \$8 million appropriated in FY06.

Ms. Romero explained that funds were allocated among universities based on the number of team members. She indicated that the anti-donation clause prohibits funding of private facilities.

Representative Saavedra indicated the far South Valley doesn't have a rodeo facility. They have to pay rent at the county fair site and it is too expensive. Fred Peralta, State Fair director, indicated this situation is similar to Taos County where the Sheriff's Posse owns the rodeo grounds. He added that the Fair is working with the Rodeo Council to provide facilities for kids in the South Valley and wants to get the information out, including workshops using the fairgrounds.

David Hadwiger, principal analyst, LFC, indicated the Rodeo Council is doing a good job generally given limited staff resources but there are three concerns that arise because the council was created by executive order. First, the council lacks a dedicated staff. The executive order made them administratively attached to Sports Authority which is administratively attached to Tourism, but these agencies have not provided staff support. DFA has stepped up to staff them, which requires use of personnel in the capital outlay unit, which is currently unable to complete its own responsibilities. Second, they are not operating an open competitive process to award grant funds. The council did a competitive process for capital outlay but program grants have been awarded on a first-come, first-served basis. Third, the council is funded through capital outlay appropriations, even for ongoing operating costs. If the intention is to be recurring, rodeo programs should be in general appropriation act.

In response to Representative Varela about the status of the deal with the Professional Rodeo Cowboys Association, Ms. Romero indicated the PRCA backtracked after Colorado Springs provided additional incentives to stay. Despite losing this opportunity, she indicated the governor still wants to make New Mexico a frontrunner in rodeo. New Mexico only had one competitor in the last national competition due to lack of facilities and programs. The council would like to expand New Mexico's presence at national competitions.

In response to Representative Varela's inquiry about plans to request future funding, Secretary Miller indicated no firm decision has been made. Representative Varela urged the panel to consider creating the council in statute, as was done for the Sports Authority. Secretary Miller indicated this has not been discussed with the governor.

In response to Representative Varela's inquiry about future rodeo events at the State Fair, Mr. Peralta

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indicated that 2007 will be the last year for the Arabian horse show. From 2008 to 2010 the show will be in Tulsa. Then it will be rebid and New Mexico will try to get it back. In the meantime, the Junior Arabian horse show has re-upped for two years at the State Fair. They are also trying to get quarter horse and appaloosa shows here.

Senator Smith indicated support for rodeo but was concerned with how funding was added into the capital outlay bill late in the session and behind closed doors. He indicated that the state should figure out how to sustain this program. He opposed further efforts to draft capital outlay bills late in the session and noted that this could cause the bill to fail to reach the Senate floor before adjournment in future sessions and might even require a special session. He urged DFA to be more proactive and to work through the capital outlay process. He noted that the current process circumvents committees.

In response to Representative King about how \$5 million will be spent that was to go to PRCA for promotion, Ms. Miller indicated the funds will be used to promote rodeo and sponsor events. Representative King asked if the council would have contracted with PRCA to run their own activities. Ms. Miller indicated it is not what they currently do but for new activities for New Mexico (i.e. training New Mexicans and other specific things with entities in New Mexico). In response to Representative King, Ms. Romero indicated the Rodeo Council found early on that New Mexico needs a state-of-the-art facility for rodeo, cutting, etc. The State Fair will not be relocated and it is hard for rodeo participants to get into and out of the fair facility. The council wants to build a new facility like the one in Fort Worth. \$10 million is not sufficient to build a new facility. It is phase one. The total cost might be \$12 million \$30 million. Representative King indicated concern that the funds are not well-coordinated with existing facilities, particularly with what already exists at the State Fair. At this point, the state may build a new facility without maintaining old facilities at the fairgrounds. They might be in competition instead of supporting the fair. Ms. Romero indicated that larger events would be at the new arena and smaller events would still be held at the State Fair.

Representative Martinez noted there is no member from northern New Mexico on the Rodeo Council and urged the administration to ask him to recommend names from that area if there is a vacancy. Secretary Miller agreed to convey his offer to the governor.

### **NEW MEXICO AGRICULTURE: FROM TRADITION TO INNOVATION: 21ST CENTURY FOOD AND AGRICULTURE SYSTEMS**

Miley Gonzales, secretary, New Mexico Department of Agriculture (NMDA), and Paul Gutierrez of the New Mexico State University (NMSU) Cooperative Extension Service presented an overview of the operations of NMDA and its unique position as part of NMSU. Topics discussed included: cooperative agricultural research and extension activity throughout the state, biosecurity and bioterrorism research and education initiatives, water conservation, food safety, veterinary diagnostic services, fuel inspections, avian influenza testing and locally-grown foods in New Mexico schools. It was noted that product development laboratories and commercial kitchens are a source of rural economic development. Commercial kitchens in Taos and Espanola are allowing local producers to expand sales and marketing of products, particularly Internet sales.

In addition to bio-diesel and ethanol production, there is research using poplar trees and jojoba oil for cosmetics. There is a dairy cooperative project to develop bio-digesters for livestock waste,

The department is engaged in New Mexico commodity promotions locally and nationally. There is New

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Mexico chile advertising and product labeling in six states, roughly \$80,000 in costs, which has provided \$16 million in additional revenues to the industry.

Another key initiative is agri-tourism, including wine festivals and chile festivals. It was noted that Deming is the most active wine producing area of New Mexico; other important areas are Jemez and Albuquerque. Grape and wine production is an excellent source of rural economic development.

Senator Papen asked why the salt cedar removal project vetoed in the 2006 General Appropriation Act was vetoed. She also asked if the program was successful in conserving state water.

Responding to questions, Mr. Gutierrez noted salt cedar is not currently economically feasible for fuel production.

Mr. Gonzales continued discussing NMDA activities in promoting farmers markets. He said the farmers markets support local growers, providing niche markets for whole and organic foods.

In response to Representative Varela, Mr. Gonzales noted 57 public schools teach agriculture.

The panelists discussed vertical integration of local products. In the past, New Mexico products were processed out of state; however, now most products, except wholesale, are produced in-state. This creates jobs and economic development within the state.

Representative Varela asked how NMDA is integrated into NMSU. Mr. Gutierrez said the Legislature provides funding for NMDA. The work of NMDA is complemented by NMSU and other state universities.

Representative Wallace asked how farmers markets and other programs can be included in the budget so the Legislature does not have to re-appropriate every year. Mr. Gonzales noted that funding for farmer's market has not been in the base budget for the past 10 years. He stressed the need for certain NMDA line items to be recurring. Cathy Fernandez, deputy director, LFC, said farmers market appropriations were classified as recurring by DFA.

Representative Silva asked about the potential effects of congressional immigration bills on New Mexico agriculture. Mr. Gonzales said human resource needs in the agricultural sector are dependent on migrants, legal or illegal. Representative Silva also asked about New Mexico worker needs, with respect to a guest worker program. Mr. Gonzales said lack of human resources has caused trend towards mechanization and research in state to decrease dependence on human capital.

### **STATEWIDE TRANSPORTATION IMPROVEMENT PLAN**

Rhonda Faight, secretary, New Mexico Department of Transportation, advised the committee that New Mexico would only receive \$295 million in federal funding of the \$350 million that had been budgeted for FY07 and that similar cuts are projected for the remainder of SAFETEA-LU. Pam Condonbrock, assistant administrator, Federal Highway Administration (FHWA), stated that due to the increased and continuing costs of the Iraq war, over \$6 billion a day, increased materials costs and the unexpected costs associated with last year's natural disasters, over \$38 billion, the federal government was imposing significant budget reductions. She also indicated that there is serious concern over the future solvency of the highway trust fund beyond FY08. She indicated that FHWA is encouraging states to consider

alternative and creative funding mechanisms for highways in the future.

Chairman Varela indicated that he was concerned regarding New Mexico's gas tax and the impact decreased consumption will have on the FY07 budget. Secretary Faught indicated that the state road fund appears to be on track or even slightly ahead of projections for FY06.

Representative Silva questioned if the federal government was recommending that states borrow monies while cutting budgets. He felt this was not sound advice. Ms. Condonbrock indicated that the alternatives such as toll roads were being recommended as things for states to consider. Secretary Faught indicated that the state does not provide statutory authority for toll roads.

Secretary Faught advised the committee that costs for construction materials were exploding throughout the country. She presented national survey data on construction cost increases and competition. New Mexico has contained costs at 12 percent while surrounding states were experiencing 50 percent to 70 percent increases. She attributed this to value engineering and design optimization efforts within the department. Additionally, she indicated the department is considering establishing pre-qualification requirements for contractors to ensure knowledgeable bidding.

Joe Casey of Silver City addressed the committee indicating his concern on the relationship between economic development and a good highway system. He expressed concern regarding the continued delays in widening US 180. Secretary Faught responded that the US 180 project is part of GRIP, Governor Richardson Investment Partnership, and is scheduled to begin in FY07.

Charles Hamilton, president of James Hamilton Construction, advised the committee of his concerns as a contractor with the cost of materials and the impact it is having upon the contractors' ability to bid upon projects. Mike Gibson, director of the New Mexico Associated General Contractors, informed the committee that NMDOT is setting the standard nationally for working with the contracting community in keeping costs down.

Gene Moser, principal analyst, LFC, summarized for the committee the key points within the written brief highlighting the concerns over declining federal and state revenues coupled with inflationary pressures and its impact upon project scheduling in the future.

Representative Bratton questioned if the state had extended itself too far with such a large construction program. He referred to projects that seem to be dragging on for great lengths of time with no progress being made. Secretary Faught indicated that this was a problem with smaller contractors who may be in over their heads and was why NMDOT was looking at pre-qualifying as a means of sifting through the low bid process. She indicated that this was a problem with the procurement code that needed to be addressed.

Senator Beffort had a series of questions regarding activities surrounding commuter rail. Secretary Faught indicated that the rail would commence between Bernalillo and Albuquerque on July 14 and that progress was being made regarding making Albuquerque bus service and train scheduling seamless to encourage participation. Secretary Faught stated that the NMDOT would be requesting \$5 million from the Legislature for purchase of the Lamy to Raton track from Burlington. She also indicated that eventually I-25 between Bernalillo and Santa Fe will be scheduled for expansion to three lanes. The Tramway to Bernalillo expansion to three lanes, approximately 7 miles, is projected to cost \$50 million.

Senator McSorley indicated concern over the extensive bonding that is being done to finance road projects and would prefer more of a pay-as-you-go approach.

Senator Smith indicated that the state needs to look at other options for funding and that he thought that the gas-tax mechanism to finance roads was archaic and that there was a real need for the Legislature to seriously consider this matter.

Senator Rawson requested that the department begin reporting its worker compensation data by also looking at the severity index and the loss ratio and he would like to see comparisons to the prior year. He also expressed concern that GRIP had placed the state too far in debt and was concerned with GRIP II and the NMDOT stepping into the local government arena. He questioned Secretary Faught regarding steps the department had taken to prevent another sexual harassment incident as occurred with the former employee recently convicted of a felony. Secretary Faught stated that the department has a zero-tolerance policy.

Representative Varela questioned if GRIP bond monies were going as far given inflation and what action was being taken. Secretary Faught stated that monies from STIP, the state transportation plan, are being moved and the plan amended to accommodate these increases and that projects will be delayed but not excluded from the plan. She also stated that a \$400 million to \$450 million bond issuance will occur in the fall of 2006.

Representative Varela also questioned SPO's ability to respond to the department's needs in reclassifying positions or adjusting compensation levels of groups of employees. Additionally, citing the continued high vacancy rate he questioned the department's need for all of the positions. Secretary Faught indicated that NMDOT has a good working relationship with SPO and that she has concerns regarding employee compa-ratios and the need for wholesale increases in certain classifications. With respect to the vacancies she indicated that NMDOT is making progress in filling these positions and needs every position it has to fulfill its program. She also indicated that the department was considering possible expansion in certain areas in FY08.

Senator Smith stated that it was better to make highway investments with capital outlay and encouraged the department to lay out a long-term strategy on how it plans to maintain and develop its highways especially in light of the discussions on reduced funding.

## **REVIEW OF GENERAL SERVICES DEPARTMENT SELF-INSURANCE PROGRAM**

Jon Lee, performance auditor, LFC, reported on audit findings regarding General Services Department (GSD) risk management program. The review focused on public liability funds due to rapid growth, particularly medical/professional and civil rights. Mr. Lee reiterated objectives of the audit, including why estimated losses have escalated, risk management prevention, how premiums are determined, contract attorney use, and comparison of self-insurance to other states.

The LFC review team found no methodology was available to support premium allocation for accurate and equitable premiums. Documentation was not retained by division. The formula had many variables, but Risk Management Department (RMD) staff did not maintain documentation of the rationale for the variables. Previous management staff revised allocations on their own to make significant changes. Mr. Lee highlighted specific examples and noted problems with self-reporting of agency data for employees and property values used in premium calculations. He noted that new leadership since January has

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already taken some steps to improve agency operations and that the LFC review team received good cooperation and communication in performing the audit.

Mr. Lee said the review recommends GSD report in August on progress to improve premium activities and procedures, activities should be more transparent, in terms of data and formulas, the department should review and document and assess all variables in formulas to assure they reflect premiums and should eliminate self-reporting of data.

Mr. Lee said the main finding of the review was that the division is not providing leadership to state agencies for loss prevention. He said reviewers found varied levels of compliance from agencies with the risk prevention rule, confusion regarding the rule, and in some cases complete lack of knowledge of the rule. The Risk Management Division was not analyzing data to target problem agencies. For civil rights claims, the Department of Health, GSD and Department of Public Safety had high rates of losses and claims. Other states provide incentives and awards for loss control programs; New Mexico does not. RMD could adjust premiums to reflect levels of compliance with loss prevention; currently division does not.

Mr. Lee said the reviewers found the claims database information is not always useful or sufficiently detailed. For more meaningful analysis of claims, the agency should change its database procedures. Claims adjuster caseloads are very high, preventing the necessary attention to each claim. RMD took swift action to reduce division manager's claim load.

Mr. Lee said reviewers also found the procurement process was not followed for legal professional contracts. According to documentation, proposals were not reviewed by the division, but all bids were accepted. RMD assigns attorneys without analysis of their past performance or in compliance with contractual requirements. Most attorneys did not comply with all contractual requirements. The review suggests assessments be based on comparison of submitted litigation budget versus to actual charged amounts, as well as authorized settlement authority versus actual settlement amount.

Tom Romero, deputy secretary, General Services Department (GSD), thanked the committee and audit staff for the audit work. He indicated that Liz Stefanics has been in her position five months and they are all in learning mode.

Ms. Stefanics, director, Risk Management Division, indicated that Secretary Jaramillo decided to use outside contractors and actuaries to develop FY08 rates with regard to risk management premiums. Per statute, the RMD director can adjust rates. She stressed major adjustments can have a sizeable impact on the state's budget.

In response to Representative Saavedra, Ms. Stefanics said the division handles all the state universities. She indicated she has spoken to DFA and LFC analyst to meet on June 23 or 26 to get consensus on rates and how they are developed. In January, the division was owed \$7 million in past due premiums; currently it is down to \$1 million. She prefers an automatic DFA transfer from agencies to GSD of fees to relieve staff of bill collecting.

Ms. Stefanics continued talking about loss control. She indicated that each agency has a loss control coordinator and each agency manages this differently. She presented samples of a loss control plan and a sample self-inspection checklist.

Mr. Romero indicated that the issue of controlling contracts is a department-wide effort.

Ms. Stefanics indicated the Risk Advisory Board met in June and will meet again in the fall 2006. Mr. Abbey asked that LFC receive a notice of the meetings.

Ms. Stefanics mentioned the alternative dispute resolution (ADR) plan focused on mediating cases before lawsuits are needed. The program has 40 trained mediators. She handed out a new set of quarterly performance measures, which they have reported to the department.

Senator Sue Beffort expressed concern about the number of entities in the pool. Responding to Senator Beffort, Ms. Stefanics said all state agencies are required to be part of the pool, except universities, which can choose. There are 75,000 members plus their families in the plan; a little more than 150,000 people total. She said smaller membership would be catastrophic to rates.

Senator Beffort inquired on rumors of division suspensions. Mr. Romero said he couldn't discuss the specifics because it is a personnel issue. Mr. Abbey stated he had consulted with LFC's SPO analyst, Gene Moser. His lay interpretation is the action taken is public record but the details are not public. Mr. Romero said some individuals (originally three now just two) are on administrative leave due to actions that seemed to be inappropriate with regard to the use of public funds. He said the division brought in investigators from two other departments for an objective review. He said the issue concerned procurement and payments for purchases.

Ms. Stefanics said the agency has discussed cross-subsidization—whether one agency should carry the full cost of their losses. There are some anomalies. There has been cross-subsidization to minimize the impact on some agencies so their premiums do not go up exponentially. She said the division has not come up with a definitive recommendation.

Responding to Representative Bratton, Ms. Stefanics said we cover up to \$5 million for workers compensation. She said some lines of property insurance are totally self-insured but others – for example the \$240 million insurance carried by the Museum of Fine Arts – are not part of the self-insurance pool. She stated that past rates are based on actual experience and exposure and would be adjusted by DFA or by the Legislature. Actual premiums will be based on experience and exposure. She said attorneys perform an assessment to compare the cost of a legal defense versus losses. She said some firms only perform a legal costs assessment. She said

Mr. Abbey said LFC is having a hearing in August on GSD rates; hopefully, the information will be available sooner.

Senator McSorley asked if the Risk Management Division is evaluated by outside insurance companies. Ms. Stefanics said the division is evaluated only by actuaries for actuarial soundness. RMD provides losses and balances to two companies: one for risk and one for employee healthcare benefits and actuarial soundness for FY05 was acceptable. She said the current reserve is \$63 million. Last year it was \$80 million and that was determined to be appropriate; but \$63 million may not be enough. She said the division may request increased rates to build up the reserve.

#### **UPDATE ON DEPARTMENT OF HEALTH FACILITIES**

Senator Altamirano began the hearing by presenting Department of Health (DOH) Secretary Michelle

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Lujan Grisham a legislative certificate of appreciation for her efforts to improve New Mexico health care. Senator Altamirano next provided a brief overview of the history of Fort Bayard, which included periods as an U.S. army installation, as well as prisoner of war camp during World War II.

Secretary Lujan Grisham then introduced the panel, which included Deputy Secretary for Facilities Jennifer Stone, Fort Bayard Administrator Dale Pelton of GEO Care Incorporated, and Secretary of Aging and Long Term Services Debbie Armstrong. Mr. Pelton then provided a brief overview of the Fort Bayard Medical Center, which currently has 141 patients in the 200-bed long-term care facility and close to full occupancy in the separate 20-bed chemical dependency unit. Mr. Pelton then presented a large schematic diagram of the new one-story campus style replacement facility that will be built on a 55-acre site adjacent to the current facility. The new facility will be designed to house smaller pods of people living together in a person-centered environment. GEO Care hopes to break ground on the project in September 2006 and open the facility in June 2008. Although the facility will have the equivalent number of beds, it is designed for expansion. Also, GEO Care and DOH have been discussing with the Veterans' Administration (VA) the possibility of adding a veterans' clinic under the control of the VA and funded with federal dollars.

There was some discussion about what will happen to the old Fort Bayard campus with its many facilities, many in sub-par condition. Making radical changes to buildings is difficult because the campus is on the National Register of Historic Places. Possible ideas include conversion to a vocational technical campus or perhaps a corrections facility. Representative Varela suggested creating a commission like that for Fort Stanton to provide community input on the future of the campus.

Secretary Lujan Grisham provided an overview of the six facilities in the facilities division, including the Fort Bayard Medical Center in Silver City, Behavioral Health Institute in Las Vegas, New Mexico Veterans Hospital in Truth or Consequences, Turquoise Lodge in Albuquerque, New Mexico Rehabilitation Center in Roswell, and Sequoyah Adolescent Treatment Center in Albuquerque. Secretary Lujan Grisham emphasized four major points: (1) Community-based services should be expanded so patients can be treated in their local communities and not in DOH facilities. (2) She is not satisfied with the quality of care at DOH facilities. DOH is meeting the minimum set for standards of care but needs to meet the highest standard of care before the secretary will be satisfied. (3) She is concerned about the inherent conflict of interest in the department between regulating long-term care facilities while operating long-term care facilities. (4) She believes consideration should be given to transferring several DOH facilities to other entities.

Specifically, the secretary discussed moving long-term care facilities such as the Ponderosa and Meadows (located at the Behavioral Health Institute) and the New Mexico Veterans Hospital to the Aging and Long-Term Services Department, having Eastern New Mexico University Medical Center run the New Mexico Rehabilitation Center, having the Children, Youth and Families Department operate Sequoyah Adolescent Treatment Center, and having Bernalillo County operate Turquoise Lodge.

Representative Varela cautioned the secretary that decentralization of facility control to agencies outside of DOH will not necessarily guarantee quality of care as these other governmental entities also have budget concerns. Secretary Lujan Grisham reiterated her concern about the conflict of interest DOH has

in overseeing facilities while managing facilities and stated it would be better for the department to focus on healthcare quality issues and oversight.

There was also much discussion on the adequacy of community mental health services for patients. Secretary Armstrong stated the federal Olmstead court decision required that people must be served in the least restrictive environment. On a macro level the state is doing well—for example New Mexico is ranked only behind Oregon in dollars flowing into home and community-based settings on a per capita basis. However, there are gaps when it comes to taking care of individuals. At Fort Bayard there are individuals who want to be in the community but the state is not planning for this or the services are not there in the community (i.e., group residential homes and support services for people with behavioral health issues such as minimal supervision and distribution of prescription medication).

Secretary Armstrong outlined actions her department has taken at Fort Bayard, such as helping with Medicaid waiver for in-home care for disabled and elderly patients and discharge planning. She noted that some patients have been transferred out of Fort Bayard and, while some have done well, others have come back to long-term care facilities. Secretary Armstrong stated that New Mexico has a way to go to improving how we help individuals.

Senator Beffort and Senator Papen expressed concern about the capacity for mental health community services in southern New Mexico. Secretary Lujan Grisham did not have specific data on the capacity to serve Southern New Mexico but noted that increasing community mental health services was one of the objectives of the behavioral health collaborative. There are a variety of strategies for improving access and local behavioral health collaboratives are helping us assess community needs.

Senator Beffort noted she had heard from a constituent with concerns about quality of care given reimbursement rates at community-based mental health facilities. Secretary Lujan Grisham noted that Value Options (the contractor for the behavioral health collaborative) is working on examining the level of reimbursement for community services based on the level of care provided at these facilities compared with other services that just provide housing (with services provided off site). The secretary said she would look into this issue and respond back to LFC.

In response to a question on when Fort Bayard would be increasing its patient count, the secretary responded that DOH is close to lifting the moratorium on new patients after receiving a clean survey inspection from the DOH, Division of Health Improvement (DHI). In general, the secretary noted no facility is at 100 percent of capacity because DOH is in a fix-it mode and will keep patient counts down if the state can't provide the quality of care (particularly with staff shortages).

In response to more questions on Fort Bayard, Secretary Lujan Grisham noted the issues in the recent U.S. Department of Justice (DOJ) report on patient care at Fort Bayard were some of the worst she has seen. DOH brought a full team down to Bayard (as well as outside experts) and did a chart-by-chart review of all patient records and took other steps to ensure quality of care. She noted that privatization was part of the plan to keep this facility open. DOJ was pondering closing the facility and will be back next week. The secretary believes that the state has fixed most of the problems identified in the DOJ report but is concerned that the state is still weak in the area of providing alternatives for patients who could be served elsewhere in community settings. As a result the state may end up retaining a lawsuit liability because of Olmstead related shortcomings.

Senator Altamirano questioned how we know that GEO Care is providing good performance given how much we are paying. Secretary Lujan Grisham responded that DOH used to have facilities under program areas but the operational oversight at headquarters was not there. Now there is a core staff that is overseeing these facilities and facility governing board structure has been given more attention. DOH is

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much more visible at these facilities than before and exerting stronger oversight. On GEO Care, DOH has some external indicators in the contract and DHI makes sure DOH facilities are meeting minimum standards. Also governing boards are exercising more oversight. The secretary noted she gets weekly reports on quality indicators and that DOH is in constant contact with GEO Care. As DOH develops the long-term contract with GEO Care it will include more quality indicators. DOH has asked GEO Care to get ready for full hospital accreditation and they should be able to meet this standard after moving to the new building. The secretary noted that DOH is going to phase in electronic medical records, which will allow more focused reviews on quality of care.

In response to a question on state responsibility for providing community-based services, Secretary Lujan Grisham noted there is a threshold of reasonableness tied to state funding. State liability is less for what is out there in the community than for the lack of DOH patient transition planning. There is a need for an improved approach for community-based services.

In response to questions about the new Fort Bayard facility, Dale Pelton noted GEO care has worked with Grant County, the Village of Santa Clara, and local residents on the facility location and design. Bond documentation is pending, and phase one of the DOH contract with GEO Care will need to be extended until the final details are worked out on facility design and financing. Deputy Secretary Stone noted that DOH will lease the building from Grant County and will stay in the building regardless of whether or not GEO Care is retained in the future as the facility operator. At the end of the lease it will be a county building.

In response to a question of the short length on in-patient stays for drug treatment, the secretary expressed her view that we have created an expensive revolving door because of a shortage of follow-up care after in-patient stays.

Senator Smith noted that we have facilities that have not been maintained and to some extent it is the fault of the Legislature. He expressed concern that the state is leaving itself open to another Jackson type lawsuit. He said the state can put a lot of funding into facilities for capital improvements but there is no guarantee that the care will improve. More statewide prioritization of capital outlay is needed and governor has a part to play. Facilities will be addressed but we need to take care of the individual programs in the facilities. However, the executive has a responsibility to submit a budget that addresses agency needs and is not just flat.

## **DEPARTMENT OF HEALTH-QUARTERLY PERFORMANCE REPORT**

As the LFC hearing concluded, Greg Geisler, LFC senior fiscal analyst, provided some observations on DOH quarterly reporting. In general, DOH does a good job on quarterly reporting but has room for improvement. As shown in the LFC hearing brief, DOH continues to have mixed performance results for its measures. While they deserve much credit for continuing to seek improved measures and setting aggressive targets, there is room for improvement. DOH should endeavor to do the following:

1. establish key quarterly measures for areas like immunizations and youth suicide;
2. to the extent possible, develop more health-outcome-related measures instead of output measures;
3. working with the behavioral health collaborative, establish performance measures for the behavioral health area;
4. include self-evaluation of its performance in meeting key performance measures and include more detailed action plans for each measure.

## MISCELLANEOUS BUSINESS

### Approval of LFC Contracts

Senator Altamirano moved to approve the LFC contracts for Helen Gaussoin and Ralph Vincent, Representative Salazar seconded the motion, and it passed with no objection.

### Approval of LFC Minutes - May 2006

Senator Altamirano moved to approve the minutes from the May 2006 LFC meeting, Senator Smith seconded the motion, and it passed with no objection.

David Abbey, LFC director, discussed the following information items: budget adjustment requests, the LFC budget status and the status of the audit work plan.

Chairman Varela adjourned the meeting at 11:40.

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Chairman

Date

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