MINUTES
LEGISLATIVE FINANCE COMMIEE
JUNE 14th, 15th and 16th, 2005

Representative Luciano "Lucky" Varela, chairman, called the Legislative Finance Committee (LFC) meeting to order on Tuesday, June 14, 2005, at 9:50 a.m., at the Western New Mexico Corrections Facility in Grants, New Mexico.

The following LFC members were present on June 14th:

Representative Luciano "Lucky" Varela, chairman, Senator Joseph Fidel, vice chairman, Representatives Nick Salazar, Rhonda King, Jeannette Wallace, Sandra Townsend, Justine Fox-Young for Brian Moore, Edward Sandoval for Donald Whitaker and Patricia Lundstrom for Henry "Kiki" Saavedra, and Senators Shannon Robinson for Timothy Jennings, Sue Wilson Beffort, John Arthur Smith, Pete Campos, Carroll Leavell for Joseph Carraro, Phil Griego, and Leonard Lee Rawson.

Members of the Courts, Corrections and Justice Committee joined the LFC for the Inmate Growth, Population Control Strategies: Prison Capacity Requirements and Location of Possible New Prison; Review of Quarterly Performance Report hearing: Representatives Ken Martinez, Al Park, Gail Beam, and Senators Cisco McSorley and Lidio Rainaldi, Rod Adair, Clinton Hardin.

The following LFC members were present on June 15th:

Representative Luciano "Lucky" Varela, chairman, Senator Joseph Fidel, vice chairman, Representatives Nick Salazar, Rhonda King, Jeannette Wallace, Sandra Townsend, Justine Fox-Young for Brian Moore, Edward Sandoval for Donald Whitaker and Patricia Lundstrom for Henry "Kiki" Saavedra, and Senators Linda Lopez for Timothy Jennings, Sue Wilson Beffort, John Arthur Smith, Pete Campos, Carroll Leavell for Joseph Carraro, Phil Griego, and Leonard Lee Rawson.

The following LFC members were present on June 16th:

Representative Luciano "Lucky" Varela, chairman, Senator Joseph Fidel, vice chairman, Representatives Nick Salazar, Rhonda King, Jeannette Wallace, Sandra Townsend, Justine Fox-Young for Brian Moore, Edward Sandoval for Donald Whitaker and Patricia Lundstrom for Henry "Kiki" Saavedra, and Senators Linda Lopez for Timothy Jennings, Sue Wilson Beffort, John Arthur Smith, Pete Campos, Carroll Leavell for Joseph Carraro, Phil Griego, and Leonard Lee Rawson.

Chairman Varela welcomed the committee and public to the hearings and asked Senator Fidel to chair the committee. Senator Fidel welcomed the committee and public to Grants. Senator Fidel said Grants was known in New Mexico as the capital for prisons, with four to five facilities in the area. Mayor Tom Ortega, city of Milan welcomed the committee to Grants. Secretary Joe Williams, Corrections Department (CD) also welcomed the committee. Warden George Tapia, Western New Mexico Corrections Facility, welcomed the committee and gave them a logistic briefing.

After introductions by the committee members, the members heard the following hearings.

MEDICAID WAIVER PROGRAMS: (DEVELOPM ENTAL DISABILITIES, DISABLED & ELDERLY, BRAIN INJURY, AND MI VIA, (SELF DIRECTED WAIVER)

Deborah Armstrong, secretary, Aging and Long-Term Services Department (ALTSD), said the agency was elevated to cabinet level department two years ago and as part of that plan for the elevation, a number of programs transferred to the department July 1, 2004, which included the Disabled and Elderly Waiver Program (D&E), Personal Care Option, the Pace Program and the Traumatic Brain Injury Program. This July Adult Protective Services will be transferred. In addition to those transfers several large grant initiatives are on-going, such as the Aging and Disability Resource Center and the Cash and Counseling Grant which is to develop the Self Directed Waiver. Ms. Armstrong said with regard to the D&E waiver, individuals must be eligible both medically for nursing home level of care as well as financially for institutional level of care. It is not an entitlement but a waiver program and unless the individual meets emergency criteria or are moving out of a nursing home back into the community they have to wait for an available slot. The services are home and community based services. Since the transfer in July, 2004, the Robert Wood Johnson Foundation (RWJF) grant to develop the Self Directed Waiver was awarded, the plan for the special appropriation due to the Lewis lawsuit was approved by the Board of Finance and allocations began. As part of the transition, the department inherited the Long-Term Care Link Program which was the contractor for the Human Services Department (HSD) to manage the central registry. The department had to create a data base, transfer the data, hire staff and bring the process internally. The department assumed full responsibility internally in the resource center for the central registry functions. Ms. Armstrong said the department hired staff and trained case managers with regard to the influx of allocations which would be happening for the D&E waiver. The Centers for Medicare and Medicaid Services (CMS) waiver application for the D&E waiver was amended to increase the number of approved slots and the department received the approval in May to increase the slots to three thousand. The department sent out 200 letters in October and an since then has sent an additional 12 hundred letters to persons on the waiting list to see if they were interested in the services.

Ms. Armstrong reviewed the process for applying for the D&E waiver with the committee. Ms. Armstrong reviewed the status of the letters of interest (Lols) mailed to individuals on the waiting list, stating between October 2004 and March 2005, 1,454 Lols for regular waiver services were mailed to individuals whose names were on the central registry, from as far back as 1998 and up to as recent as July 2002. Of those Lols there were 800 responses. Of the 800 responses, 233 are receiving services. There were 89 denials for medical or financial reasons, 62 automatically denied due to no activity in 60 days. Ms. Armstrong also reviewed the reasons for denial which included incomplete documentation, withdrawn application, did not meet financial eligibility and denied SSI.

Ms. Armstrong reviewed clients served and average monthly costs with the committee. In 2004 2,435 unduplicated clients were served, 2,523 unduplicated clients were eligible, 7,400 was the average monthly number on the central registry, $24 thousand was the average annual cost of care plans, average cost of additional Medicaid benefits outside of the waiver was $3.8 thousand and actual expenditures to date are $44.3 million. For 2005, the actual number of unduplicated clients served through May of 2005 is 2,222, the actual number of unduplicated clients eligible through June 2, 2005 is 2,367 clients, the average monthly number on central registry through May 2005 was 6,765, the average annual cost of care plan was $20.6 thousand and the average cost of Medicaid benefits was $3.7 thousand. These figures are based on claims data only.

Michelle Lujan-Grisham, secretary, Department of Health, (DOH), said the Medicaid waiver programs and the Long-Term Care Program are a significant budget item, in terms of management, policy and advocacy support cross over not just HSD, ALTSD and DOH, but in fact impact delivery and decision making in the Public Education Department, (PED) and the Children, Youth and Families Department, (CYFD), and they are critical and priority areas for these cabinets to work collectively on. Ms. Lujan-Grisham said the hearing matter is a federal and state program administered by the state to provide health care and related services to individuals who are not independent without support. Medicaid allows waivers for programs that gives states the flexibility to operate differently than a state program. The criteria are that it must be cost neutral and cannot cost more than the regular Medicaid program. We are talking about services are designed for individuals to remain in their homes and communities. To be eligible it is a combination that mirrors the financial and level of care eligibility for regular Medicaid in a waiver.

Ms. Lujan-Grisham said the Developmentally Disabilities Waiver Program, (DD), is designed to provide services and support which allows individuals with developmental disabilities to participate as active members of their communities. Individuals must have the diagnosis for this waiver before the age 22. The diagnosis includes physical limitations, an IQ test that identifies deficiencies in intellectual capacity and have three or more areas of life functioning must be present. Some examples of services the waiver provides for individuals are case management, community living services, day services, behavioral, physical, occupational and speech therapies, personal care, nursing, respite and nutritional counseling. Ms. Lujan-Grisham said 94 percent of DD funding in New Mexico is used for community services. The bulk of the funds the state is spending in this regard are dedicated at keeping individuals in an independent home and community based setting.

Ms. Lujan-Grisham said the department still has considerable challenges, however, another area it is doing well in is 35 percent of the individuals receiving day services are employed, compared with the national average of 24 percent. Supporting employment is a performance measure required by the legislature and is an area in the Jackson lawsuit as a focus of that lawsuit. The supporting employment rates for Jackson Class members are at the national average. About 40 percent of the Class members on the DD waiver are identified as having severe or profound mental retardation. The state needs to do a better job of getting individuals on the waiver process, everyday lost means an individual is more at risk and their family has other significant issues. The process is cumbersome, difficult and confusing. Entry into service includes identifying, assessing, testing financial eligibility, IQ testing, etc., and then requires participation by either the guardian, family member or individual in order to make the process work.

Ms. Lujan-Grisham reviewed actual expenditures from FY03 to date with the committee. In FY03 the state general fund portion of the program was $46.6 million and the federal portion was $141.5 million. In FY04, the state general fund portion of the program was $46.7 million and the federal portion was $122.5 million. With regard to the activity over the last 10 months of FY05, the state's portion is $42.5 million and the federal portion is $122.6 million.

Representative Varela stated the numbers the committee had differed from the department's numbers and staff would need to reconcile them and report back to the committee.

Ms. Lujan-Grisham said working on a projection model and reconciling is no easy task to the credit of HSD and a shift in strategy at HSD where it was often working independently and before now did not work to reconcile the numbers. The departments are now reconciling the numbers. Most recently, the state general fund was within a projected model $60 thousand. The partnership with the LFC analyst is changing the dynamic and the reconciliation is better.

Ms. Lujan-Grisham reviewed DD waiver funding statistics with the committee. Even though the department received $4.4 million in additional funds for FY05 and $2 million in additional funds for FY06, which does not include the fact that the legislature had to appropriate $5 million to make up for the loss in federal matching dollars, the reality is DOH is still making incremental changes to the waiver. The purpose of these appropriations is to eliminate a central registry. The $65 million, the state's share of the DD waiver includes the $5 million contingency fund for federal matching appropriation for the loss in for the loss in federal match rate. For the FY06 budget the state will serve approximately 37 hundred clients. Of the 37 hundred it includes 175 new client allocations. Of that 175, some of those are not attributable to the additional $2 million, in fact 53 of the 175 are through attrition. As of June 1, 2005 there were 3,433 clients on the waiver and with the 175 new allocations there are approximately 3,700 individuals on the waiver. Currently, there are roughly 300 more individuals in the program than on the central registry. Ms. Lujan-Grisham reviewed the five region DD waiver program statistics in the state with the committee.

Ms. Lujan-Grisham said the state has an obligation to serve these individuals and is not meeting that obligation if it takes 18 months for an individual to get into the process. The costs associated go up the longer individuals do not obtain services. The Lewis lawsuit says, if you have an individual that is eligible and the legislature funds it, serve the individual within 180 days.

Ms. Lujan-Grisham said the state has service providers who do not have appropriate tools or the capacity to provide services and it is a range of issues, some providers are problematic, some providers have rate issues and professional staff recruitment problems. As a result the state has the obligation to build an infrastructure that has significant capacity. The department needs to determine what the recipients of service believe the department needs to be doing. Ms. Lujan-Grisham said 90 percent of the people on the waiver are not in the Jackson lawsuit and 90 percent of the department's time is not dedicated to the non-Jackson class members. It does cost more for the Jackson lawsuit members at 11 thousand per month and 75 hundred per month for non-Jackson members. The state is ready to disengage the following desired outcomes: an information management and evaluation process will be established to ensure continuous feedback on the effectiveness of the employment plan implementation with regard to supported employment D. In FY05 the state received $4.4 million which translates to 322 eligible individuals, of the 322, 23 individuals did not meet the court requirement to have them in the financial and medical eligibility which is about 7 percent of the total.

Jim Jackson, executive director, Protective and Advocacy System, said many of the processes the secretary refers to, directly impact the individual and personal lives of people in the developmental disability system and the state continues to say it is committed to try and get out of the lawsuit in the Jackson case which is fine as long as the department complies with the requirements and it is troubling that it had to go to federal court earlier this year even to require the department to continue to do the independent community monitoring of all of the community DD services that gives us the most important information about how well people are doing in the community and whether the state is actually living up to its obligations in that case.

Mr. Jackson said the DD & D&E waivers both began as a result of the legislature responding to advocates, family members and consumers to create this kind of a program. In 1983 the legislature passed a bill that required the state to apply for these waivers. In 1984 the legislature passed a bill to require the state to apply for a medically fragile waiver program and that is why we have them and the advocates appreciate the responsiveness of the legislature because at the time they did not come out of the administration but the consumer movement and the legislature responding. And as a result of those programs we have been able to significantly expand our community based service system. The number of people served has been expanded and the quality and the extensiveness of services that are offered in the community systems that has also allowed for the closure of the Los Lunas training school which has been restructured as a community program. Mr. Jackson reviewed the Adult DD services system in New Mexico and how it compares in the U.S. as a whole. The state has fewer people with developmental disabilities in nursing homes where they typically do not receive appropriate services and are doing better than the national average. The state has no one in the large state facilities because they have been closed and the system has been reformed to reflect that. Mr. Jackson said 82 percent of individuals being served are receiving residential support outside the family home and living in settings of different sizes. Mr. Jackson reviewed the spending in community services and institutional settings with the committee. With regard to people who are waiting for residential services, New Mexico leads the country in the highest percentage of people who are waiting for services that have a residential component to them. Mr. Jackson said if you put all of the states spending on institutional care, nursing home care and intermediate care facilities and you balance it against the spending done through the waiver programs and the personal care options, New Mexico leads the country in the percentage that goes into those communities settings rather than institutional settings.

Mr. Jackson said with regard to current issues with the waiver programs, there continues to be some significant compliance issues with the Lewis lawsuit and the federal court order in it. There is a dispute about the allocation of slots. The legislature doesn't specify when it passes House Bill 2 each year the number to be served in any of the waivers or the specific dollar amount to be spent in the waiver programs. In the D&E waiver program the appropriation is part of the HSD Medicaid budget. So there is some dispute about the availability of slots and dispute about the method of counting the number of people who go through the programs. Another issue in the Lewis case is spending the money the legislature appropriates in the year it is appropriated which is what the court requires the state to do. The legislature passed an appropriation of $4.9 million in the 2004 legislative session and the administration earmarked $4 million for the D&E waiver program to create additional slots to meet the needs of these people on the waiting list in the D&E program. The Department of Finance and Administration (DFA) gave approval to the plan in September and the Board of Finance signed off on it in October. Mr. Jackson expressed concern over the number of individuals being served at the current time. Mr. Jackson said there is an issue of how to meet the needs on the waiting list and is one of the real frustrations in the advocacy community that this administration has made no effort or commitment to tell the legislature what the need is. No plan has been seen as to what the next year or next five years as to ending the waiting list.

Kacee Collard, fiscal analyst, LFC, said the secretaries realize the importance of getting this information out and showing they are making an improvement towards getting people into services. Ms. Collard said the special appropriation that was allotted to the DOH, created 322 slots, up from the 264 slots in the original service plan, primarily due to attrition. The DOH has moved to get clients into services meeting the 180 day of the requirement with the exception of one percent. Ms. Collard said DOH has already started to look at their quarterly report and, based on the Performance Subcommittee hearing, the department has gone back to all their division directors and requested meaningful performance measures and that is part of what has been presented today. A mock draft will be presented to the committee before the final report is done. With regard to the D&E waiver the current number of clients in service as of May 30, 2005, is 1,184, down from the 1,927 clients in service in October 2004 and is troublesome given the $4 million given to the ALTSD for up to 600 new clients. And while the department has put the 79 plus clients into services up to this point, there is question as to whether the $4 million for direct services will be spent before June 30, 2005. Ms. Collard said with regard to the Brain Injury waiver that has not been implemented yet and will not be until the Self Directed waiver comes about, it is important to note how the department is defining "brain injured" and how clients will be eligible. ALTSD has used best practices from a plethora of other states.

Ms. Collard said as a visual of the funding the legislature provides for these programs, if you take $5 million for the DD waiver added annually for additional slots and $4.2 million, which is about the number they received for FY06, as the appropriations increase the waiting list decreases, but it seems like a bottomless pit. In this scenario, with regard to the DD general fund, in FY09, the state is up to $80 million in general fund with a waiting list of 2,363 individuals. And while that is a decrease it's not much for the large increase in appropriation. To take all of the people on the DD waiting list into services right now, the cost would be $56.5 million from the general fund. With regard to the D&E general fund, with an increase of $4.2 million annually, in FY09 we are funding $29.4 million of general fund with 3,405 people still on the central registry waiting list. To get all of them off the waiting list the cost would be $33.8 million from the general fund. Something needs to be done to decrease the waiting lists and the secretaries are trying to accomplish this with the Self Directed waiver.

Responding to Representative Varela with regard to when the FY04 appropriation would revert, Ms. Lujan-Grisham said the deadline for identifying reversions is September or October of 2005. While the department is continuing to bring in claims data and close the books, they are not anticipating any reversion related to the $4.9 million appropriation for the DD waiver.

Responding to Representative Varela with regard to when the FY04 D&E waiver appropriation would revert, Ms. Armstrong said she was sure they would not have spent the $4 million because it has been slow in getting everyone on. The money is actually at HSD as part of their Medicaid budget, which was one of Mr. Jackson's points. While all of the money for the DD waiver is at DOH and they can track it more closely, ALTSD's waiver money is at HSD.

Responding to Representative Varela with regard to the D&E waiver reversion, Mark Weber, principal analyst, LFC said ALTSD administers the program so while the money resides at HSD, the administration resides at the aging program. Approximately $340 thousand is the amount of money out of the $4 million that they have anticipated spending. On the Medicaid projection, the entire amount is still on the projection, but since they will not have expenditures that are consistent with $4 million, whatever would be leftover would revert out of that program.

Responding to Representative Varela with regard to next year and possible additional clients before the funding reverts, Ms. Armstrong said the budget projections for the D&E waiver for FY06 include the projection of having all the additional 600 people on the waiver.

Responding to Representative Sandoval with regard to D&E waiver and staff to address the issues, Ms. Armstrong said the actual agreement for how much money and so forth was done before ALTSD actually had responsibility for the program and it was caught in the transition of the program shifting to a new department that did have to gear up in staffing and had to become familiar with and acquire data reporting capabilities and develop a coordinated relationship with the other departments. As soon as the department was able to have staff on board and be able the manage the process it was also that the management of the central registry was done with a contractor who had been doing for years and the department geared up to bring it in house to better manage it and made significant changes as to how fast the department gets letters out and try and work the waiting list and get people on services. Ms. Armstrong said the department was now in a better position to work quickly in getting allocations out but it was caught in a whole shift of program and management capacity.

Responding to Senator Beffort with regard to moving the processing along faster by having the medical part done earlier, Ms. Armstrong said the state can do more of the homework in advance such as medical evaluations and it has been a problem with the D&E waiver. The department has noted that some of the early activities could have been done so that when appropriation was available and people could be taken on to the program a lot of the homework could have been done and it could have gotten people onto the program sooner. A year from now we will be in the same position with the Brain Injury and Self Directed Program.

Senator Beffort suggested that this issue be incorporated into the performance quarterly reports with regard to procedures, medical reports, how many people are going to be brought in and what the status is in terms of their financial issues in order to see on a three month basis that the money is going to be spent down regularly. Senator Beffort said one seems to understand how difficult it was for the legislature to come up with the $4 million and the $2 million for the Brain Injury Waiver and to think that we are going to lose this money. And the risk that you have is that the rest of the legislature may lose faith in us making this priority expenditure and we may not be able to get that level of funding continually if it just reverts back.

Responding to Senator Beffort, Ms. Armstrong said she agreed and the department is working on the D&E waiver and the people on the registry to try and keep current on what their needs are and where they are so we can get them moving faster. On the Brain Injury waiver the department does not have a ready waiting list of identified people to start early and it will start working to pre-identify potential eligibles to begin communicating with people and getting things started and perhaps using the other Brain Traumatic Brain Injury Waiver funds to obtain pre-diagnostic work and do as much as possible up front with those who are identified as potential eligibles. For the D&E waiver it is probably more difficult to have medical reports done early because there are too many changes in people's medical conditions.

Responding to Senator Beffort with regard to the DD waiver and reverting funds, Ms. Lujan-Grisham said they are not reverting one dollar.

Anna Otero-Hatanaka, executive director, The Association of Developmental Disabilities Community Providers, said it is important to note that when people are talking about advocates they do not forget the fact that community programs are advocates for people with developmental disabilities. It is these programs and staff that live and work and recreate with people with developmental disabilities on a daily basis. The staff becomes friends and family to the people they serve. Ms. Otero-Hatanaka said during the 2004 Legislative Session, the legislature appropriated a $1 million appropriation for a rate increase for developmental disability Medicaid waiver services, that rate increase was vetoed. For the current fiscal year we are living under a rate reduction of 1.5 percent. In the last ten years there have only been two rate increases for the DD Medicaid waiver program and the costs are increasing dramatically in the ability to deliver services.

INMATE GROWTH, POPULATION CONTROL STRATEGIES: PRISON CAPACITY REQUIREMENTS AND LOCATION OF POSSIBLE NEW PRISON; REVIEW OF QUARTERLY PERFORMANCE REPORT

Members of the Courts, Corrections and Justice Committee joined the LFC for the Inmate Growth, Population Control Strategies: Prison Capacity Requirements and Location of Possible New Prison; Review of Quarterly Performance Report hearing: Representatives Ken Martinez, Al Park, Gail Beam, and Senators Cisco McSorley and Lidio Rainaldi, Rod Adair, Clinton Hardin.

Representative Varela said the committee recognized what events occurred leading up to the hearing including a press conference held in Santa Fe and that much of this particular initiative had been reported by news media.

Renada Peery, Analyst, LFC, said capacity and inmate population growth has become an issue over recent years. The FY06 forecast of inmate growth is down to 2.3 percent. As of May 31, 2005, the inmate population was 6,576. A 2.3 percent increase in FY06 translates into an increase of approximately 151 more inmates. The New Mexico Corrections Department's (NMCD) monthly statistic report shows as of May 31, 2005, there were 21 general population beds available. At the current growth rate, NMCD will need more capacity in three months or less. The greatest need for additional capacity is for medium security Level 3 beds. Under the Johnson administration there was legislation passed regarding the Corrections Population Control Act (Act) which was enacted as a tool to relieve overcrowding should the prisons go over capacity. Ms. Peery said in February 2004, NMCD formed a Population Control Strategy Committee to address ways to stabilize and lower the prison population. Since the creation of the committee, 624 in-house parolees have been paroled out into the community. Currently, New Mexico has 2,788 out of 6,576 inmates in private prisons. The state has 42 percent of inmates in private prison facilities. New Mexico is the highest state in the nation for percentage of inmates housed in private prison facilities. The next closet to New Mexico is Alaska with 30.6 percent of their state inmates in private prison facilities.

On May 16, 2005, Correction Department officials met with representatives from Clayton, Union County, GEO, Economic Development, Union County Community Development Corporation and others to discuss the City of Clayton and Union County's proposal to build a prison to house state prisoners. Prior to the meeting, the City of Clayton and Union County officials approached Santa Rosa officials who recommended GEO based upon their experience. It is the intention of the department to contract for the construction operation of a 600 bed Level 3 facility in Clayton. Ms. Peery said it is unclear what NMCD's methodology was in making the selection for Clayton as the site for a new prison. New Mexico Economic Development Partnership reports there are 13 critical site selection factors of which are: real estate, labor, operating, costs, access to critical places and things, transportation network, supplier vendor network, utility infrastructure, business appetite, educational climate, community characteristics, tax environment, financing infrastructure and incentives. The LFC recommended the correction department prepare a report and evaluation on prison site alternatives reflecting the criteria reported with the particular emphasis on cost differential. Suggestions for comparison were Hobbs, Santa Rosa, Las Cruces, Clayton, Clovis, Tucumcari and Grants. The 2002

Corrections Yearbook reports the average cost per bed as of January 1, 2002 for a maximum-security cell is $92,560, medium-security cell is $62,444, and minimum-security cell is $39,089. Based on this information to construct a 600 bed medium-security prison would cost approximately $37.5 million. The cost could increase based on the additional cost of construction in a rural area. R.S. Means Facility Construction Cost Data (2004) reported that in New Mexico construction cost was the lowest in Las Cruces with a weighted average of 83.9 and the highest in Carrizozo with a weighted average of 89.9. In addition, a construction manager for a state agency states that construction in a rural area can increase cost by 10 to 15 percent. An article in The Santa Fe New Mexican reports the state estimates the correctional facility in Clayton will cost around $50 million. With regard to Per diem estimates, cost savings are often passed on to states to the extent that the contracted per diems for the private facilities are less than the states' per diems. The per diem encompasses the private prison's operational cost to house the inmate such as correctional officer's salaries, medical, food, clothing, etc. and the cost associated with owning or leasing a facility. Based on FY06 per diem rates for Lea County Correctional Facility was at $55.25, Guadalupe County Correctional was at $58.04 and Southern New Mexico Correctional Facility was at $90.78, and the reason for it being much higher is the facility deals with the highest Level 6 maximum security inmates, where the private facilities only deal with Level 3, medium security inmates.

Ms. Peery said there is a significant economies-of-scale in housing state prisoners. The economies-of-scale creates a lower per diem rate or average daily cost if expansion takes place at an already existing prison facility. Such a facility would have an increase in efficiency from the increase in the number of inmates. The Southern NM Correctional Facility, Lea County Correctional Facility and Guadalupe County Correctional Facility already have established medical, food, education programs, therapeutic communities, and trained staff. Operating costs become more efficient decreasing the cost per inmate housed in an expanded facility. LFC staff expects that Hobbs and Santa Rosa correctional facilities could house additional inmates at even less than current contract rates. By comparison, the per diem rate at Clayton might be 15 percent higher or approximately $2 million. Another crucial factor in looking at a site for a prison is Labor Supply for Construction and Operation. NMCD estimates that 600 medium-security Level 3 beds would require approximately 200 correctional officers. Also, Ms. Peery said availability of housing is an issue in recruiting personnel to work and live in the community. Ms. Peery reviewed the availability of housing in Clayton, Hobbs, Las Cruces and Santa Rosa with the committee.

Ms. Peery said with regard to NMCD's authority to contract with the private sector, LFC staff asked the Legislative Council Service (LCS) attorney Maha Khoury to address the statutory authority. Section 33-1-17 NMSA 1978 addressed private prison contracts. The statute states that the Corrections Department will solicit proposals and award any contract under this section in accordance with the provisions of the Procurement Code [Section 13-1-28 NMSA 1978]. The department is required to develop a contract to include terms and conditions required after consultation with the General Services Department. The statute states any contract awarded pursuant to this section may include terms to provide for the renovation of the facility or for the construction of new buildings. The corrections department is basically making an agreement with Union county to build a medium security correctional facility for 600 beds. This agreement might be seen as similar to agreements with Torrance and Santa Fe County. Counties have the authority to build jails. It has been the practice of the Corrections Department to lease bed space from county jails when additional beds are available. However, the Clayton facility is being built as a correctional facility, not a jail, and for the purpose of housing state inmates.

Ms. Peery said with regard to the FY07 budget outlook, NMCD reports that they will need to come in with a supplemental request estimated to be between $6 and $8 million in the 2007 legislative session. The need for the supplemental stems from being under-funded for private prison beds, and additional cost of leasing 200 inmate beds from Santa Fe County for population growth. The 200 additional beds available at the Santa Fe County Detention Center will take care of male inmate growth for approximately 18 months. With regard to funding for Camino Nuevo, the department is undecided at this point on whether the supplemental will include the operational cost to run Camino Nuevo as a minimum-security, Level 1 to 2 facility for female inmates. The operational cost for Camino Nuevo is estimated at $5 million. The Camino Nuevo facility has the capacity for 192 beds. These additional beds will take care of the female inmate population growth for the next eight years. With regard to additional costs, NMCD plans to request in their FY07 budget the operational cost of Camino Nuevo at $5 million, the per diem cost of 200 additional inmates at Santa Fe County Detention Center at $4.2 million, and the per diem cost of the Clayton facility for 5 months (estimated based on the Santa Rosa and Hobb's facility per diems) at $5.1 million. Ms. Perry briefed the committee on the quarterly performance report.

Joe Williams, secretary, New Mexico Corrections Department, said the options the department had to look at were to control the population it would have to construct, lease or release. The critical issues the department is facing are the need for an additional 650 beds, which includes both the female and male projections. As LFC staff reported, the population is growing and is down from an 8.7 percent growth. The population control initiatives have brought that down to 2.8 percent growth. A decision needs to be made on whether to construct a private prison and the governor's agenda is not to build anymore prisons. Factors affecting the NMCD budget are: a flat budget where it is trying to make up the funding where it is not funded for 178 inmates which are in overflow facilities. The correction officer retirements will have significant impact with the 20 year retirement taking affect in January 2006 and the department will be losing approximately 200 correction officers and many of those will be cashing in their annual leave. As the prisons grow, the Probation and Parole Division's rate of growth of supervised offenders will also increase with inmate population growth including the need for staff and treatment funding. Mr. Williams stated some of the laws affecting inmate population growth are the Good Time, DWI and Sex Offender, which have had significant impact on the department's ability to release inmates and following the order of the courts, so they are staying incarcerated much longer. Mr. Williams said the state would have already run out of bed if not for some population control initiatives such as, assist in-house parolees in finding suitable parole plans, award good time to medical care cases, ensure good time is awarded, increased the number of programs where inmates receive good time credit, utilizing new female inmate classification instrument, assess feasibility of re-entry drug courts, create sanction parole violator program, study the return rate of inmates, careful discharge planning and target probation violators.

Mr. Williams reviewed inmate growth history with the committee. The current inmate count is 6,571. Mr. Williams reviewed female and male inmate population projections for 2005 to 2015 with the committee. Mr. Williams also reviewed the capacity vs. need with regard to public run and private run facilities. Mr. Williams said the department looked at many options on deciding where it could expand the prison system such as Union county with a 600 bed facility, Santa Rosa expansion of 300 or 600 beds, Hobbs expansion of 300 or 600 beds, Las Cruces expansion of 600 beds, Los Lunas addition of Phase II for the Mental Health Treatment Center 104 beds, adding a DWI unit in Roswell at 72 beds and along with the Camino Nuevo Facility in Albuquerque adding 192 beds. Mr. Williams reviewed the estimated cost scenarios for additional beds with the committee such as the Union County Correctional Facility option at a cost of $17.1 million annual operating cost with the assumption it would be a 600 bed facility, the Guadalupe County Correctional Facility option adding 600 beds at 16.1 million, the Lea County Correctional Facility option adding 600 beds at 15.5 million, the option of a 300 bed expansion at Guadalupe County Correctional Facility at $8 million and a 300 bed expansion at Lea County Correctional Facility at $7.7 million. The Level I, Level II option for the female offenders at Camino Nuevo Facility of 192 beds would cost $5 million per year. Other options considered were Southern New Mexico Correction Facility with a 600 bed facility construction capital cost of about $42 million with an annual operating cost of $17 million, the 104 expansion of Central MHTC at $10 million, with an annual operating cost of $3.6 million and a 72 bed expansion of Roswell Correctional Center Expand DWI beds at $1.7 million. The department went through every option in detail. Mr. Williams said they were not building this prison they were expanding lease capacity in the different scenarios.

Mr. Williams reviewed the average cost per inmate/client per day throughout the state facilities with the committee such as the Penitentiary of New Mexico at $121, Western New Mexico Correctional Facility at $103, Southern New Mexico Correctional Facility at $90, Central New Mexico Correctional Facility at $96, Roswell Correctional Center at $58. The average for the department operated facilities is $99. The Women’s Facility cost per inmate, per day is $72 and the total Male Out of System cost is $56, with the average cost across the board of $59. Total institutional cost for the state average is $80.

Mr. Williams addressed the question everyone is asking “Why Clayton” with the committee, such as a decrease in population in the area counties and they feel without new jobs, northeastern New Mexico will continue to lose population and decline economically. The community of Clayton has been involved for the past six years actively pursuing a prison, trying to recruit a federal prison and contract into their community. They have given up on that and have approached the governor about the prospect of the state supporting the budget for the state to lease beds from them in their area, would they build the prison and release the beds. With regard to infrastructure, the city will donate 1,700 acres to the project. Water wells exist and the city feels the infrastructure is all in place to support the project. Mr. Williams reviewed the demographics and services in Clayton with the committee.

With regard to the question of “Why GEO?”. Mr. Williams said the leaders of the city of Clayton contacted members and visited Santa Rosa and inquired as to what they were doing and why they were so successful and they were told it was because of the prison and the economic impact and development the prison brought to the area. And Clayton introduced themselves to the GEO group which is running the prisons. The leaders with the community were impressed with what they saw and they decided to lobby to obtain a prison in their community and have had many meetings and discussions, most recently a town hall meeting with 150 people in attendance and no one was against the project and the city leaders received a standing ovation from the community for pursuing this effort. Mr. Williams said again “Why GEO?”, continuity of care right now, consistency in management and treatment and the ability to manage the Level III inmates in New Mexico, shared resources, experience in New Mexico and a proven track record with the NMCD.

Nick D’Angelo, general council, NMCD, with regard to procurement of the contract said this contract agreement would not be an agreement where the NMCD would contract directly with a provider. This would be done almost precisely in the same manner as the department currently contracts Lea county and Guadalupe county. The contract would not be with GEO rather the city of Clayton. The first provision in Section 13-1-98 NMSA 1978 which creates an exemption from the Procurement Code and states the provision of the Procurement Code shall not apply to contracts entered into by a local public body with a private independent contractor for the operation, or provision and operation of a jail pursuant to Sections 33-3-26 and 33-3-27 NMSA 1978. Those statutory sections provide that any county or municipality may enter into an agreement including an agreement with an independent contractor, to operate, or to provide and operate, jail facilities for the care and housing of prisoners. And, that all agreements with private independent contractors for the operation, or provision and operation, of jails must be approved in writing, prior to their becoming effective, by the Risk Management Division of the General Services Department (GSD). So the city of Clayton would contract with GEO similar to what Lea county and Guadalupe County are doing in terms of GEO. In turn another provision of the Procurement Code that grants an exemption from the Procurement Code when a state agency contracts with local public body. So just as NMCD did not ultimately utilize procurement process when it contracted with Guadalupe county and Lea county, in this instance the NMCD would contract with the city of Clayton as a local government entity and that procurement would also be exempt from the procurement code.

Kathy Keith, Executive Director, Economic Development said a report the department has run about the economic impact to Union county shows over the next 10 years the total number of direct and indirect jobs created would be 267, 189 with GEO Services and 78 indirect jobs created through the local economy in terms of services provided to those additional salaries in the community. The annual salaries would be $476.7 into the economy. The total expected additional gross receipts tax over the next 10 years split between the state and the community is $175 million and the total property to be added to the local tax rule over the next 10 years would be over $40 million. The total property would not include the facility itself because the facility would be owned by the community but would include the housing that would have to be built to accommodate the employees and other developments that would occur in Union county in connection with the facility there. The benefits the state county and school districts can expect include $245 thousand in lodgers tax, $3 million in property tax collections, $1.5 million in utility revenues, $7 million in collections of other taxes and user fees from new residents, $571 thousand in additional funding from the state and federal governments for the school district. The total added benefits to the community would be $26 million over the next 10 years. The cost of providing municipal services to the new residents is $39 thousand, and school district cost of educating new students will have no impact. The total over all cost benefit ratio would be $24 million over the next 10 years in economic impact to Union county, an average annual benefit of $2.4 million into the economy. Ms. Keith said Union county is a favorable place to do business for reasons such as community support, the transportation system and a dedicated, hard working workforce.

Maha Khoury, staff attorney, LCS, reviewed a preliminary look at the legal issues with the committee. She stated the primary question is whether what is proposed to be built is a jail or a correctional facility because different requirements come into play whether it is determined to be a jail or a correctional facility. If it is a correctional facility it is believed it needs legislative authority and if it is a jail, it does not. If it is a correctional facility there is Procurement Code requirements, if it is a jail there are not as many requirements. Ms. Khoury said there are different requirements and standards for jails than for correctional facilities including who controls the jail, by statute, jails are controlled by the Sheriff, county or local public body. The kinds of inmates that traditionally go into jails are different than the kinds of inmates that go into correctional facilities. If it is considered a correctional facility, than pursuant to Chapter 33, Article 15, Section 3, requires statutory authority before a privately operated correctional facility can operate or house inmates. This provision is in a section which talks about out-of-state inmates and so it may be interpreted to mean only if it houses 10 or more out-of-state inmates.

In either case there needs to be some statutory authority according to the research. Section 33-1-17 NMSA 1978 gave authority for the prisons in Grant, Santa Rosa and Hobbs, states in Subsection E that if a privately operated correctional institution is not authorized by the legislature then the employees of that institution would not be deemed correctional officers. Other sections would give the status of peace officers to corrections officers which we now give in the correctional facilities with powers to arrest and all the powers of a peace officer inside the facility and when transporting prisoners. The section says that if a privately operated correctional facility is not authorized by the legislature, the officers of that facility would not have the powers or immunities of peace officers. The crucial question is how the facility is deemed.

Ms. Khoury said with regard to the exception of the Procurement Code for a county or city to build a jail would not apply, again, if it is a correction facility they would have to go out to bid. The NMCD may also have some Procurement Code issues when it contracts to house inmates in a privately operated correctional facility and that is pursuant to Section 33-1-17.

Representative Varela asked the Secretary Williams to have the department's legal counsel to work with LCS with regard to the disagreement on the issue and that legal opinion may be sought to determine who has jurisdiction. If there is a proposal to build the facility in Clayton, they could come to the legislature for legislative authority to do that.

The committee heard comments from Union county officials. Mike Running, city manager of Clayton, said this project has been on the city of Clayton's radar for the last six years. After a failed attempt to obtain a Federal Bureau of Prisons contract, the city was still resolved to obtain something to help with the economic conditions. As indicated the city had a decrease in population over the last 10 years based on the census indicators that show the city has lost 8.6 percent of the population over the last 10 years. These are dramatic numbers and were indicated in a *Associated Press* article as there are only 26 other counties in the U.S. that are losing population at a greater rate, one being Harding county at a rate of 17.9 percent. The city believes it is in the midst of an economic dust bowl. Something is desperately needed to boost the economic viability and reverse the trend that is occurring with the population decreasing. The school enrollment numbers are decreasing and businesses close annually. City officials met with officials in Santa Rosa and found the economic impact was still being realized from the creation of the facility since 1999. All indicators with the elected officials and the public support for the facility now shows that it is a viable economic development project to help preserve the community and region in the state. Clayton officials were impressed with the relationship the GEO group had formed with the community. Clayton officials met with representatives of GEO and discussed the viability of the Clayton, Union county area as far as the northeast regional facility. There is overwhelming support for this project by the community.

Union County Commissioner, Richard Arguello, said there are quite a few citizens in the community which form the local Union County Development Committee which meets twice a month to pursue and brainstorm different economic development ideas and at the forefront of this it has been a prison. The committee has continually strived to find different ways to approach a federal government or any other private prison facilities into coming to Union county and Clayton because it is felt it is something that will definitely be a big shot in the arm to the community as far as economic development goes.

Steve Campbell, president, Union County Development Corporation and director of the Clayton Hospital said a lot of ground work had been done on this project so that when officials got to the GEO group information was already available such as land, topography, water and all the utility needs and the project has been worked on diligently for 6 years. Concerns expressed by a variety of people were workforce and level of professional services in Clayton, granted the population has been declining for the last 15 years, the feeling amongst the community is not to treat or dwell on the negatives, but to dwell on the positives. The hospital this last year was able to obtain a loan from the New Mexico Finance Authority (NMFA) for $3.8 million as well as work hard to have the governor and the legislature to appropriate $1 million in capital outlay for the hospital. This will be the first significant renovation of the hospital in 40 years, even though the population is declining.

Wayne Calabrese, vice-chairman and president GEO Group, said GEO was asked by NMCD to give a set of different numbers which were reflected today. GEO gave the department a set of numbers on constructing additions to Lea County Correctional Facility and Guadalupe County Correctional Facility, to both build and operate additions and numbers to build and operate a new 600 bed in Clayton. With regard to the "is it a jail that is being contemplated being built and if so are the contracts that would be developed from that legal?". Mr. Calabrese said the answer is yes. It is a jail first because we expect to house all the local detainees of the county and it has been designed for that purpose. It is of course much larger that Union county requires, but excess capacity in a local jail is in fact a routing factor not just in New Mexico but nationally. Many local governments have built local facilities, "jails", to accommodate capacity from other contracting agencies as a way to bring in economic development, this would be no different. In terms of whether or not the contracts would be legal, the best answer to that is built into the statute designed in the 1980's and the one that was utilized for Lea county and Guadalupe county. In fact the contracts themselves must be reviewed and approved by the Attorney General who is not limited to a legal review but would probably substantially spend her time looking at the legality of the contract and its provisions. It is also required to be reviewed by DFA who would look at the numbers. GEO's numbers would be open book as they were for Lea county and Guadalupe county and DFA will see exactly what the budget numbers are comprised of and determine whether or not to approve the contracts. And finally the GSD Risk Management Division must review the contracts and insure that very specific provisions with respect to the risk assumed by the private company are in fact in that contract. For the answer to whether or not the contracts would be legal, must be answered affirmatively or nothing will happen.

Responding to Representative Varela with regard to why it was not feasible to obtain a Request for Proposal (RFP) from other companies, Mr. Williams said right now with Clayton, their relationship with GEO and the state's current relationship with GEO, the department currently has all of its Level III inmates essentially housed in GEO prisons. Mr. Williams said what he is looking for as a secretary, is continuity, consistency of care, management and resources. We have all learned from our mistakes with inexperienced staff and problems opening up both public and private prisons and with GEO's presence in the state, their staff and experience it will be a much smoother and wiser decision to keep those Level III inmates in the confines working with the same company. Mr. Williams said he did not introduce GEO to the project and that Clayton approached them, but he also supported the project and thought GEO was a fine company and has the ability. Mr. Williams said for the adult male prisoners in the Level III, the state of New Mexico will be better served staying with the same company. He said he did not want the competition and mix match and problems that come with that and it would create more harm than good by having different companies run the Level III facilities.

Responding to Senator Smith Mr. Williams said as far as he was aware, the only additional current capacity in the state for jail or prison space is Santa Fe county, Torrance county is full. If there is any excess capacity he said he was not aware of it.

Responding to Senator Smith, Mr. Campbell said the remoteness of Clayton is an asset and the service level of the hospital is higher than other rural hospitals simply because Clayton is not a bedroom community to anybody.

Responding to Senator Griego with regard to should the legislature decide to ask for an RFP based on the fact that it has to foot the bill for the per diem and where that put the department as far as moving forward with the contract, Mr. Williams said he would ask the legislature to help supplement whatever it will take to house inmates in the Santa Fe county detention facility. If the projections run over and the department is out of capacity, then it would have to look at implementing the Population Control Act or move inmates out of state.

Responding to Senator Griego said because Mr. Williams had brought the issue to the LFC, he was unsure as to whether or not to ask the LFC to allow the department to enter into a contract, but if there are questions in regards to RFPs, would the secretary continue to move forward until this committee tells him to stop moving forward or how would it work? Responding to Senator Griego, Mr. Williams said he was going to ask the department's general counsel to promptly get an opinion from the Attorney General to clear the matter so everyone would have that available.

Responding to Senator Beffort with regard to what the department is legally or statutorily allowed to ask for in a contract, Mr. D'Angelo said generally speaking the department has very wide latitude in terms of the conditions it can request in a contract. There are few limitations contained in the statues for example, the statutes require such things as all good time that is awarded is ultimately be approved by the department and not simply awarded at the private level. There are requirements in terms of approvals from the Attorney General, GSD and DFA, but in terms of programs the department can ask or contract for any degree of programming though appropriate.

Responding to representative Lundstrom with regard to what the per diem costs would be for Clayton compared to the other two options and what was the reason for going with the most costly, Mr. Williams said they understood it is the more expensive option, but again with economic development and trying to revitalize northeastern New Mexico, the department feels it can make up the difference. The per diem rate is roughly $63 for Clayton and the other numbers are based on the current rates throughout the state which are $54 at the Lea County Correctional Facility, $57 at the Guadalupe County Correctional Facility, $53 at Torrance county, $57 at Santa Fe county and $58 at the women's unit, with a scale that determines the rate at the number of inmates.

On Wednesday, June 15, 2005, the committee held its hearings at the New Mexico State University, Grants Branch.

RENEWABLE AND CLEAN ENERGY INITIATIVES: REVIEW OF PROGRAMS, COSTS AND BENEFITS

Joanna Prukop, secretary, Energy, Minerals and Natural Resources Department, (ENMRD), reviewed the following with the committee: defining clean energy, ENMRD clean energy responsibilities, clean energy program benefits, clean energy drivers in New Mexico, clean energy 2006 legislative initiatives, and Energy, Conservation and Management Division duties.

Craig O'Hare, special assistant, Renewable Energy, ENMRD, gave the committee an overview of why the state has Clean Energy Division and program and what benefits it provides to the state and its citizens. Some of the benefits are easy to quantify and some are not. When it comes to clean energy, whether it is renewable energy or energy efficiency programs or clean fuels programs the primary benefit to the state is to position New Mexico to be a leader in what is called the New Emerging Energy Economy. We are seeing both nationally and internationally energy based economies transition during this century rather quickly. The objective of the state being involved is to position ourselves with respect to economic development to get a piece of that pie and be in a leading position to take advantage of that new emerging economy. In a sense we are in competition with other states and other countries for positioning ourselves in that direction. Additional benefits are reducing state and local government operating costs, businesses and industry more cost-competitive, protecting the state's natural areas, decreasing consumptive water use, the state's contribution toward national energy security and protecting public health.

Mr. O'Hare said energy economies in the U.S. and around the world have always been emerging and in transition. In the year 1900 the number one source of energy was wood, it then transitioned into coal, oil, natural gas, nuclear and then hydropower to a certain extent. The new emerging energy economy is a national trend and we are seeing the energy industry diversify, not abandoned their existing role in traditional energy markets, oil, gas, coal, etc., but expanding into the new 21st century technologies. There is a new zero emission coal fire electric power plant technology that may allow us to continue to use coal which is one of the more abundant fossil fuel resources we have to be able to burn it in a clean safe environmentally public health sound way, an effort the federal government is pushing and is called a Future Gen proposal. In general there is recognition of a need to diversify the energy economy because these fossil fuels we have been left with on this planet are finite and ultimately will be depleted. This trend is not just price driven. The leading countries in the new emerging energy economy are Spain, Germany, England and Japan who have adopted renewable energy goals to bring renewable energy into their mix and are using bridging incentives to assist with technology overcoming cost hurdles. Many of the technologies at the beginning are expensive on a cost per megawatt hour basis because they are new and emerging.

Mr. O'Hare said we are increasingly seeing the CEO's and shareholders of major energy corporations being concerned about the financial risk exposure they have, particularly in the area of greenhouse gas emissions and carbon releases. It is the bottom line long-term profit concerns that are driving some of the transitions in industry. Some of the leading companies are British Petroleum, Shell Oil, General Electric, Sharp Electronics and Public Service Company of New Mexico.

Mr. O'Hare said New Mexico is competing with other countries and states for this emerging economic pie and the notion is that it is time to diversify our energy economy now before some of the constraints of resource depletion become a reality. New Mexico has world class renewable resources, particularly solar and wind. That combined with the national labs, land area and state incentives make it ideal to attract clean energy economic development. Clean energy projects and related manufacturing offer significant economic stimulus and job creation particularly in the state's rural areas stressed by drought and mine closures. Both the wind projects and solar projects are primarily in the rural areas whether it is the eastern plains for wind or the southern and southwestern part of the state for sun, all economic areas that could use a shot in the arm.

Mr. O'Hare reviewed the economic development renewable energy generates with the committee with regard to photovoltaics, CSP and Biomass.

Chris Wentz, director, Energy Conservation and Management Division, ENMRD, reviewed the following clean energy drivers:

- Alternative Fuel Acquisition Act: 75 percent of all new state vehicles must be capable of running on alternative fuels
- Public Facility Energy Efficiency Act: No up front capital outlays; efficiency upgrades and ancillary costs paid from energy savings; $4.4 million per year in cost savings from the Act
- Renewable Energy Production Tax Credit: 1 cent per kilowatt; caps per company and in the aggregate; stimulated 400+megawatt of wind, interest in biomass
- Renewable Energy Act: Codified the renewable portfolio standard; 5 percent renewable electricity by 2006; 10 percent by 2011; consumers protected; reasonable cost threshold
- Gas-Electric Hybrid Vehicle Exemption: One-time exemption from Motor Vehicle Excise Tax; sunsets after 5 years
- Clean Energy Capital Outlay Projects: $2.65 million appropriated in 2004
- Diverse clean energy projects funded: Jemez Mountain School biomass heating system; Eagle Nest Lake Visitor Center; Schools with *Sol* Solar Demonstration Program; New Mexico's first pubic hydrogen project at the Albuquerque airport
- Clean Energy Grants Program: funds renewable energy, energy efficiency and alternative transportation; eligible applicants; only public entities; $1 million in funding available; 20 projects funded in FY05; benefits are jobs and revenues in local communities; utility energy savings for public entities; cleaner air; public outreach and education

Mr. Wentz said during the 2005 Legislative Session a number of clean energy bills were passed. SB 644, Efficient Use of Energy Act; HB32, Energy Efficiency and Renewable Energy Bonding Act; HB885, Clean Energy Grants Program; and HB995, Compensating Tax Deductions for Biomass Materials and Equipments. To date the department has not had much provided by the utilities in terms of energy efficiency incentives for the residential or commercial sub-sector. SB644 requires gas and electric utilities to develop energy efficiency programs and the programs must be deemed cost effective to be approved by the Public Regulation Commission, (PRC). HB32 authorizes the New Mexico Finance Authority to issue up to $20 million in revenue bonds and is a revenue neutral proposal and operates just like the performance contracting law. It will result in long-term savings for schools. With regard to HB885, ENMRD plans on issuing an RPF in July with proposals due in September. HB995 is intended to stimulate the industry and provides a deduction for certain Biomass materials and equipment from the compensating tax.

Robert Castillo, director, ASD, ENMRD, reviewed 2006 clean energy legislation and possible initiatives with the committee. Net metering is the difference in energy sold by the customer by a utility company and the amount of energy a customer generates and credits the customer for the difference for what they purchase vs. what they generate. ENMRD would like to amend the PRC's net metering rule which currently requires the utility purchase at the retail rate up to 10 kilowatts of renewable power from their customers. ENMRD would like an amendment that would increase the maximum capacity to 100 kilowatts for agricultural and commercial systems. ENMRD believes this would provide a strong incentive that would stimulate photovoltaic manufacturing and installation in the industry in rural areas. The other initiative is the Renewable Energy Transmission and Storage Authority Act which provides for planning, construction, financing and operation of transmission infrastructure and would authorized revenue bonds for electricity transmission projects. It would require that a minimum of 30 percent of the energy that would move on theses two new transmission lines would be renewable energy and is designed to meet New Mexico renewable energy needs and any excess would be exported to out-to-state markets which is in the theme for economic development for New Mexico. In addition, any new transmission lines that would be built would add to the reliability of our electrical grid all over the western U.S.

Mr. Castillo said the concept was introduces in the 2005 Legislative Session where there was support, however there were underlying concerns and it was not passed. ENMRD's goal is to bring it back again and continue to educate policy makers. ENMRD will further refine the bill and address some of the outstanding issues.

Kelly O'Donnell, assistant secretary, Taxation and Revenue Department, (TRD), said the Motor Vehicle Excise Tax for high fuel efficiency vehicles applies to hybrid vehicles and exempts from New Mexico's three percent motor vehicle excise tax. It is estimated that 900 such cars will be sold in the state this year and with an average tax savings of about $750 per car. Thus, the expected cost of this particular exemption is $700 thousand this year. When you expect however, that the cost will rise somewhat dramatically in 2006, if purchases of this vehicle increases at the rate it has been, we expect to spend over $1 million on this tax incentive in 2006. The Compensating Tax Deduction for Biomass equipment was enacted this year and is effective June 17th. It applies to the value of Biomass equipment, the various things you need to make energy out of Biomass and Biomass materials. If you are going out of state to purchase either things with Biomass materials with which to generate energy or equipment to use in generating energy from Biomass you are not liable for the compensating tax on those purchases. The compensating tax is the complement of the Gross Receipts Tax (GRT) and is a tax levied on items used in New Mexico. The purpose of which would have been passable in New Mexico under the GRT as the purchase occurred in New Mexico. It is not clear whether there is any fiscal impact from that particular tax law, however the expectation is that it will be utilized, that there are people generating enough energy from Biomass in the state using materials and equipment from out-of-state that it at some point will start costing something, perhaps in the near future. As a big dollar item in terms of tax incentives for renewable energy in New Mexico is the current deduction available from the GRT for equipment used to generate wind power. Most if not all of the wind projects are IRB financed. The current cost is estimated to be $7 million per year and the incremental cost for every 10 megawatts of new wind capacity the state adds is suspected to be $360 thousand. That revenue impact is split 60/40 between the state and local governments.

Ms. O'Donnell said the Renewable Energy Production Tax Credit is a corporate income tax credit and is only available to qualified energy generators that are certified by ENMRD as producing power from either solar wind or Biomass. The credit is worth up to one cent per kilowatt hours for the first 400 thousand megawatt hours of energy generated annually which equates to $4 million per year per generator. The credit can be taken for up to 10 consecutive years. The total annual expenditure is capped at $20 million. During the last Legislative Session the credit was modified substantially. The perceived problem by the industry was that most of the business that were generating power from renewable sources, particularly wind were not able to take advantage of the credit because they had no corporate income tax liability. They have the option of seeking investment from businesses with corporate income tax liability but the corporate income tax base in New Mexico and the actual number of corporate income payers in the state is small, so as the corporate income tax base streaks, the effectiveness of corporate income tax credits becomes limited. The credit was amended in order that a partnership, for instance a wind facility, could go out and say to a corporate income tax payer in New Mexico, even though you own only a small share in our facility, we can allocate all of that credit to you.

Ms. O'Donnell said TRD staff estimates that New Mexico's current wind generation capacity, both existing and planned is sufficient to generate about $10 million in credits annually if the generators can figure out a way of getting to the credit. The essential impediment to utilization of the credit is the fact that it is corporate income tax.

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Mr. O'Hare said energy economies in the U.S. and around the world have always been emerging and in transition. In the year 1900 the number one source of energy was wood, it then transitioned into coal, oil, natural gas, nuclear and then hydropower to a certain extent. The new emerging energy economy is a national trend and we are seeing the energy industry diversify, not abandon their existing role in traditional energy markets, oil, gas, coal, etc., but expanding into the new 21st century technologies. There is a new zero emission coal fired electric power plant technology that may allow us to continue to use coal which is one of the more abundant fossil fuel resources available, an effort the federal government is pushing called a Future Gen proposal. In general there is recognition of a need to diversify the energy economy because these fossil fuels we have been left with on this planet are finite and ultimately will be depleted. This trend is not just price driven. The leading countries in the new emerging energy economy are Spain, Germany, England and Japan who have adopted renewable energy goals to bring renewable energy into their mix and are using bridging incentives to assist with technology overcoming cost hurdles. Many of the technologies at the beginning are expensive on a cost per megawatt hour basis because they are new and emerging.

Mr. O'Hare said we are increasingly seeing and shareholders of major energy corporations being concerned about the financial risk exposure they have, particularly in the area of greenhouse gas emissions and carbon releases. It is the bottom line long-term profit concerns that are driving some of the transitions in industry. Some of the leading companies are British Petroleum, Shell Oil, General Electric, Sharp Electronics and Public Service Company of New Mexico.

Mr. O'Hare said New Mexico is competing with other countries and states for this emerging economic pie and the notion is that it is time to diversify our energy economy now before some of the constraints of resource depletion become a reality. New Mexico has world class renewable resources, particularly solar and wind. That combined with the national labs, land area and state incentives make it ideal to attract clean energy economic development. Clean energy projects and related manufacturing offer significant economic stimulus and job creation particularly in the state's rural areas stressed by drought and mine closures. Both the wind projects and solar projects are primarily in the rural areas whether it is the eastern plains for wind or the southern and southwestern part of the state for sun, all economic areas that could use a shot in the arm.

Mr. O'Hare reviewed the economic development renewable energy generates with the committee with regard to photovoltaics, CSP and Biomass.

Chris Wentz, director, Energy Conservation and Management Division, ENMRD, reviewed the following clean energy drivers:

- Alternative Fuel Acquisition Act: 75 percent of all new state vehicles must be capable of running on alternative fuels
- Public Facility Energy Efficiency Act: No up front capital outlays; efficiency upgrades and ancillary costs paid from energy savings; $4.4 million per year in cost savings from the Act
- Renewable Energy Production Tax Credit: 1 cent per kilowatt; caps per company and in the aggregate; stimulated 400+megawatt of wind, interest in biomass
- Renewable Energy Act: Codified the renewable portfolio standard; 5 percent renewable electricity by 2006; 10 percent by 2011; consumers protected; reasonable cost threshold
- Gas-Electric Hybrid Vehicle Exemption: One-time exemption from Motor Vehicle Excise Tax; sunsets after 5 years
- Clean Energy Capital Outlay Projects: $2.65 million appropriated in 2004
- Diverse clean energy projects funded: Jemez Mountain School biomass heating system; Eagle Nest Lake Visitor Center; Schools with *Sol* Solar Demonstration Program; New Mexico's first pubic hydrogen project at the Albuquerque airport
- Clean Energy Grants Program: funds renewable energy, energy efficiency and alternative transportation; eligible applicants; only public entities; $1 million in funding available; 20 projects funded in FY05; benefits are jobs and revenues in local communities; utility energy savings for public entities; cleaner air; public outreach and education

Mr. Wentz said during the 2005 Legislative Session a number of clean energy bills were passed. SB 644, Efficient Use of Energy Act; HB32, Energy Efficiency and Renewable Energy Bonding Act; HB885, Clean Energy Grants Program; and HB995, Compensating Tax Deductions for Biomass Materials and Equipments. To date the department has not had much provided by the utilities in terms of energy efficiency incentives for the residential or commercial sub-sector. SB644 requires gas and electric utilities to develop energy efficiency programs and the programs must be deemed cost effective to be approved by the Public Regulation Commission, (PRC). HB32 authorizes the New Mexico Finance Authority to issue up to $20 million in revenue bonds and is a revenue neutral proposal and operates just like the performance contracting law. It will result in long-term savings for schools. With regard to HB885, ENMRD plans on issuing an RPF in July with proposals due in September. HB995 is intended to stimulate the industry and provides a deduction for certain Biomass materials and equipment from the compensating tax.

Robert Castillo, director, ASD, ENMRD, reviewed 2006 clean energy legislation and possible initiatives with the committee. Net metering is the difference in energy generated by a consumer and the amount actually used. The difference is then sold to power companies who then credit the customer. ENMRD would like to amend the PRC's net metering rule which currently requires the utility purchase at the retail rate up to 10 kilowatts of renewable power from their customers. ENMRD would like an amendment that would increase the maximum capacity to 100 kilowatts for agricultural and commercial systems. ENMRD believes this would provide a strong incentive that would stimulate photovoltaic manufacturing and installation in the industry in rural areas. The other initiative is the Renewable Energy Transmission and Storage Authority Act which provides for planning, construction, financing and operation of transmission infrastructure and would authorized revenue bonds for electricity transmission projects. It would require that a minimum of 30 percent of the energy that would move on theses two new transmission lines would be renewable energy and is designed to meet New Mexico renewable energy needs and any excess would be exported to out-to-state markets which is in the theme for economic development for New Mexico. In addition, any new transmission lines that would be built would add to the reliability of our electrical grid all over the western U.S.

Mr. Castillo said the concept was introduced in the 2005 Legislative Session where there was support, however there were underlying concerns it had not been sufficiently studied by interim committees to allow the legislature to make an informed decision and did not pass. ENMRD's goal is to bring it back again and continue to educate policy makers. ENMRD will further refine the bill and address some of the outstanding issues.

Kelly O'Donnell, assistant secretary, Taxation and Revenue Department, (TRD), said the Motor Vehicle Excise Tax for high fuel efficiency vehicles applies to hybrid vehicles and exempts buyers from New Mexico's three percent motor vehicle excise tax. It is estimated that 900 such cars will be sold in the state this year and with an average tax savings of about $750 per car. Thus, the expected cost of this particular exemption is $700 thousand this year. Expectations are high that costs will rise somewhat dramatically in 2006, if purchases of this vehicle increase at the current rate; we expect to spend over $1 million on this tax incentive in 2006. This incentive is scheduled to sunset in 2009. The Compensating Tax Deduction for Biomass equipment was enacted this year and is effective June 17th. It applies to the value of Biomass equipment, the various things you need to make energy out of Biomass and Biomass materials. If you are going out of state to purchase equipment to process Biomass materials which will generate energy or equipment to use in generating energy from Biomass you are not liable for the compensating tax on those purchases. The compensating tax is the complement of the Gross Receipts Tax (GRT) and is a tax levied on items used in New Mexico. The purpose of which would have been passable in New Mexico under the GRT as the purchase occurred in New Mexico. It is not clear whether there is any fiscal impact from that particular tax law; however the expectation is that it will be utilized, when people begin generating enough energy from Biomass in the to attract more investors and equipment users. As a big dollar item in terms of tax incentives for renewable energy in New Mexico is the current deduction available from the GRT for equipment used to generate wind power. The equipment must be sold to a government entity so any Industrial Revenue Bond (IRB) finance project qualifies. Most if not all of the wind projects are IRB financed. The current cost is estimated to be $7 million per year and the incremental cost for every 10 megawatts of new wind capacity the state adds is suspected to be $360 thousand. That revenue impact is split 60/40 between the state and local governments.

Ms. O'Donnell said the Renewable Energy Production Tax Credit is a corporate income tax credit and is only available to qualified energy generators that are certified by ENMRD as producing power from either solar wind or Biomass. The credit is worth up to one cent per kilowatt hours for the first 400 thousand megawatt hours of energy generated annually which equates to $4 million per year per generator. The credit can be taken for up to 10 consecutive years. The total annual expenditure is capped at $20 million. During the last Legislative Session the credit was modified substantially. The perceived problem by the industry was that most of the business that were generating power from renewable sources, particularly wind were not able to take advantage of the credit because they had no corporate income tax liability. They have the option of seeking investment from businesses with corporate income tax liability but the corporate income tax base in New Mexico and the actual number of corporate income payers in the state is small, so as the corporate income tax base streaks, the effectiveness of corporate income tax credits becomes limited. The credit was amended in order that a partnership, for instance a wind facility, could go out and say to a corporate income tax payer in New Mexico, even though you own only a small share in our facility, we can allocate all of that credit to you.

Ms. O'Donnell said TRD staff estimates that New Mexico's current wind generation capacity, both existing and planned is sufficient to generate about $10 million in credits annually if the generators can figure out a way of getting to the credit. The essential impediment to utilization of the credit is the fact that it is corporate income tax.

Paul Aguilar, senior fiscal analyst, LFC, noted that policymakers should consider the following questions as discussions move forward:

- Will the benefit of the renewable energy produced be great enough to justify decreased revenue collections?
- What price assumptions are needed for the incentive to make sense without a subsidy?
- Is there a mechanism to reduce or eliminate tax incentives in cases where prices rise to the point where projects are viable without them?
- How much of the economic benefit of the renewable energy project encouraged remains in the state?
- Does the incentive produce a positive environmental externality, such as reducing pollution, finding a way to dispose of waste or reducing the risk of fire?
- Can the energy produced be utilized close to production facilities to avoid high transportation costs?
- To what extent do the incentives actually change economic behavior, e.g. increase the amount of renewable energy generated or increase the number of fuel-efficient cars purchased.

Stephanie Shardin, LFC economist further noted with regard to hybrid vehicles that extended waiting lists for hybrids suggest that the motor vehicle excise tax exemption is probably not necessary as high gasoline prices alone may provide sufficient incentive to increase fuel-efficient car purchases. Incentives for these vehicles would be more appropriate at the time waiting lists disappear and fuel prices ease. Evaluating the effectiveness of the tax exemption requires estimating how many additional fuel-efficient cars are purchased as a result of the incentive and the resulting public value associated with having more fuel-efficient cars, for example the value of reduced pollution. The value of benefits can be compared with the cost of providing the subsidy, i.e. foregone motor vehicle tax revenue.

Responding to Senator Beffort with regard to the transmission bill and wind farms, Ms. Prukop said the intermittent nature of wind leads to a need for a follow-up technology which is wind storage and it is true that the state's national labs are working aggressively to try and solve that problem for both wind and solar in terms of what storage technologies might be. That is why as we look at the bill it also has a storage component because for renewables that is an area that must be developed.

Responding to Senator Beffort Mr. Wentz said there is a lot of research going on with respect to storing wind power, one is hydrogen fuel cells, compressed air storage and pump water storage, all technically feasible, however the problem is there is efficiency losses that go with them that make them not very economically viable.

Responding to Senator Smith with regard to the hybrid vehicles leaving the state, Ms. O'Donnell said it was worth noting that a number of other states have various different incentives for the purchase of hybrid vehicles and although they may not be more generous on the tax side but in some states the hybrid vehicles can drive in the carpool lane regardless of the number of people in the vehicle. She said they are working on obtaining the data to see how many vehicles are sold and registered in the state.

Responding to Senator Smith with regard to state vehicles Ms. Prukop said ENMRD has met with GSD to review the program with regard to the use of vehicles powered by alternative fuels and the use of alternative fuels. It is true that although the state has purchasing alternative fuel vehicles they are not regularly being fueled by alternative fuels. Issues discussed have been access to sources of alternative fuels. One initiative will be to develop bulk fueling stations for the Department of Transportation (DOT) and the Department of Public Safety at their property sites around the state, where particularly Biodiesals and Ethanol based fuels will be available to fuel state vehicles. And in Santa Fe the notion is that between GSD and DOT they would make those sites available to all agencies in Santa Fe.

Responding to Senator Leavell with regard to what percent of the renewable had the state achieved at this point, Ms. Prukop said with PNM for instance in terms of meeting their renewable obligation through the year 2011, will have met their quota. Excel Energy will exceed their requirement by 2011 as well.

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CAPITAL OUTLAY QUARTERLY REPORT

Robert Apodaca, Director, Capital Outlay Unit, Department of Finance and Administration, reviewed capital projects, accountability, the monitoring report and initiatives with the committee. The division has done research to try and identify exactly how many projects we are looking at when we talk about capital projects. It is estimated that between 1993 and 2004 there has been close to 13,000 projects that have been appropriated by the Legislature which equates to $2.8 billion worth of capital appropriations for the State of New Mexico. These numbers do not reflect the appropriations from the 2005 Legislative Session which added another 2,800 projects. Mr. Apodaca said when you look at the last three years with regard to capital projects from 2003 to 2005 there has been over 7,000 projects authorized by the Legislature totaling over $1.1 billion appropriated throughout the state. Issues encountered over the last year have been the accountability and monitoring of the projects. At this point in time, when talking about centralization of capital projects, one issue is we have is the central accounting system which takes into consideration the majority of capital projects appropriated. However, it does not account for non-vouchering agencies, for example higher education institutions, the New Mexico Finance Authority, etc. The different systems are not compatible into one central accounting system. Each of the agencies utilize their own data bases for tracking capital projects, therefore, trying to tie all the systems together it is quite a task. There is no centralization for the capital projects.

Mr. Apodaca indicated the unit has been trying to build a foundation to tie as many of the capital projects to what is considered to be good data from the central accounting system. The majority of projects appropriated do tie to the central accounting system and the unit is working with the different agencies to verify the numbers within the central financial control accounting are also in line with what the state agencies have on their individual systems. This year the unit will begin working with the state agencies to make sure the projects that have reversion dates coming up or have passed are either closed out or to get the funds reverted as soon as possible so the Legislature can utilize the money during the next legislative session. The unit is looking forward to the SHARE accounting system that will be implemented and will try to build a foundation to take the existing projects and make sure they are accounted for properly going forwarded in the SHARE accounting system.

Mr. Apodaca said the majority of projects that still have open balances are between 1998 and 2004. It is estimated there are 5,100 capital projects that have open balances. Of those, 2,000 are general fund projects and the remaining are severance tax and general obligation bond projects. There are agencies that voucher through DFA and agencies that do not voucher through DFA. Approximately 4,200 of the 5,100 projects are vouchered through DFA and the remaining 700 are projects that are tracked on an off-sight accounting system. Of the 5,100, staff has reconciled nearly 5,000 of the projects with the financial control system and the state agencies to verify that numbers financial control has are also in line with what the state agencies are showing. Even with this, the unit is showing unexpended balances reaching $520 million. With this in mind, the next process the unit is working on is trying to reconcile those projects that are not going through financial control and it is estimated there are 133 projects with the different universities representing $192 million worth of appropriations, Again, the unit will work closely with the agencies to determine those projects that can be closed out or reverted. Mr. Apodaca said the unit is beginning to get its hands around the appropriations that have been outstanding and the number of capital projects that will be available for reversion through 2005 in order to start the foundation for reporting to the Legislature and the executive on a consistent basis.

Mr. Apodaca reviewed the Infrastructure Capital Improvement Plan (ICIP), with the committee. Historically the ICIP has been administered by the Local Government Division, DFA. After the last legislative session, Secretary Jimenez thought it would be best that the process be coordinated by the unit to better coordinate the planning and the implementation of a number of these capital projects. Goals of the ICIP include making it more user friendly to not only the state agencies and to the local governments, but also make it more of a useful tool for the legislators and the governor when looking at making recommendations for capital outlay. The new system will include both state agency requests and local government requests. Historically they were two separate systems, but will be rolled up into one web-based program in the next two weeks. Last year the governor requested the top three priorities from the local communities. The legislative priorities will also be requested through the ICIP process and will be shared with the legislators. Mr. Apodaca reviewed a new initiative with regard to the uniform funding application with the committee. Executive order 2005-031 is a water infrastructure development executive order which basically puts the responsibility on the state agencies to better coordinate the funding for water and wastewater projects throughout the state. The partners are DFA, New Mexico Finance Authority, United States Department of Agriculture/Rural Utility Services, and the Environment Department. The four different applications have been brought together to one application which each entity can use in order to streamline the process for better coordination of the funding that is out there at the state, federal and local levels.

Responding to Representative Varela with regard to the executive order outlining the process that will be followed for applying for water funding projects, Linda Kehoe, principal analyst, LFC, said the order came out following the last legislative session when monies were appropriated. The secretary of DFA, along with other heads of agencies will be responsible for advising the governor and making funding recommendations for long-range plans for water and wastewater infrastructure projects in the state.

Responding to Representative Sandoval with regard to the unexpended figures and data accuracy, Ms. Kehoe said it is one of the concerns expressed in her brief that was before the committee. The state agencies have not had an opportunity to review Mr. Apodaca's report at this time. Ms. Kehoe said she felt confident that the reconciliation has been made of actual cash balances against Financial Control Division and the Board of Finance, (BOF) records. However, if there are any discrepancies it will be in the encumbrances because BOF does not keep track of encumbrances so the only ones who are going to know what activity is going with the projects and what the actual status is, and if there are obligations to third party vendors, it is going to be the state agencies. It is hopeful that by the next reporting period in September, agencies will have had an opportunity to have input and maybe make some changes. In addition, as the agencies are able to look at the quarterly report, they will see many balances that are under $300 to $500, etc., and those are the type of projects the agencies and the unit should birddog to reduce balances. BOF and the Financial Control Division insist they receive a letter from the agency certifying the project is complete and then they will do the reversion because using this means is the only way BOF and the Financial Control Division have to know if there is an actual third party obligation exists. The numbers could be reduced drastically by September.

Responding to Representative Sandoval, Ms. Kehoe said that so far as General Obligation Bonds (GOB) and Severance Tax Bonds (STB), those monies are very closely monitored by counsel and the BOF. There is a letter of certification that goes out asking the grantee to certify exactly how the money will be spent. If a reimbursement does not fit the criteria under STB and GOB legislative language, they will not be reimbursed for those monies. Responding to another question, Ms. Kehoe indicated that statutorily the Property Control Division does have statutory authority to spend up to two percent of capital outlay for direct costs to a project.

Responding to Senator Rawson, Ms. Kehoe said the monies for museums are appropriated to the Department of Cultural Affairs and does not generally go through the Financial Control Division. Ms. Kehoe said staff would look into any issues with regard to Senator Rawson's concerns relative to project and payment delays.

Responding to Representative Varela, Mr. Abbey said LFC staff will try and have agencies report their top information technology or capital outlay request with their operating budget to emphasize the need to integrate all the aspects of the budget and the relationship between one-time spending and recurring spending and address it during the fall budget hearings.

STATUS REPORT ON COLLECTIVE BARGAINING

Gene Moser, principal analyst, LFC, gave the committee an update on collective bargaining which was reinstated in the state of New Mexico two years ago. Currently 53 percent of the employees in state government are not represented by a union, 28 percent are represented by the American Federation of State County and Municipal Employees (AFSCME), 18 percent by the Communication Workers of America and 1 percent by the Fraternal Order of Police (FOP). The FOP was certified 7 months ago to represent Motor Transportation Division employees in the Department of Public Safety (DPS), however they have not requested to come to the table and negotiate so there no contract in place for those employees.

This year's negotiations with AFSCME resulted in an impasse which was resolved by arbitration. The issues at impasse dealt with compensation and compensation related issues. The Public Employee Bargaining Act requires that if negotiations reach an impasse, the parties will utilize an arbitration process known as "Last Best Offer" arbitration. This means the parties are required to present their last best offer to the arbiter who then hears testimony from each side regarding that proposal and then is restricted by statute to select one proposal or the other. The process is designed to force the parties closer to the middle on issues. In February 2005, the arbiter awarded the decision to AFSCME and AFSCME received the full benefit of all the issues they had on the table at the time. The arbitrator observed that last best offer restricted his abilities by forcing him to award issues to the union that he would not normally have awarded.

Mr. Moser said the arbitration process showed a flaw in the latitude that the parties have in negotiation. The Executive's recommendations to the legislature on base salary increases is negotiated and presented as a recommendation to the legislature. The legislature at that point conducts the appropriation process. However, there were a number of other issues that are unbudgeted for FY06 totaling almost $4 million. This is a sizable amount of money for agencies to go into a fiscal year without appropriations. It will mean agencies will have to make adjustments in order to accommodate these additions.

Negotiations currently are set fro 2006 to begin this fall. That is the same timeframe in which the legislature is initiating and pulling together budgetary recommendations to carry forward, which makes it difficult. If there is another impasse it is probable that what happened this year will occur again. Negotiations will again be proceeding while the legislature is actively developing a budget. This process excludes the parties from being able to actively engage in addressing compensation needs and removes the planning process.

Mr. Moser indicated that other states approach negotiations very differently. The state of Michigan, for example, provides a statutory requirement that negotiations be concluded 60 days prior to legislative consideration. They also have multi-year contracts with a clear understanding that each budget year it has to go through the appropriation process which gives an advance to the parties of a year ahead of time.

Mr. Moser said "fair share" is a concern because both contracts clearly state that employees who do not contribute to fair share, which is the equivalent of paying dues, shall be terminated from state employment.

Sandy Perez, director, State Personnel Office, (SPO), said forty years ago state lawmakers agreed that it was time to end the political patronage "spoils system" of New Mexico's early statehood years, and turn instead to a career civil service model. The result was the Personnel Act and the classified service. The purpose of the Act was to establish a system of personnel administration based solely on qualification and ability, which will provide greater economy and efficiency in the management of state affairs. This vision has guided the State Personnel Board and the office well during the last four decades and like any good vision statement, it reflects the wisdom of its framers by standing the tests of time interpretation. There is a growing recognition that cooperation between management and labor is sensible when issues are resolved in a labor contract and prevent grievances. As the agreements state: The union and the employer recognize the mission, goals and obligations of the State of New Mexico as a provider of services to the citizens of the state through its employees. The best possible services and programs will be provided consistent with available funds. The employer and the union agree to uphold the well-being and care of the citizens of New Mexico.

Ms. Perez said SPO believes the agreements with Communication Workers of America (CWA) and AFSCME furthers our ability to deliver quality services to the citizens of New Mexico and are a result of good faith negotiations between the administration and the Union's elected bargaining teams. These agreements cover the rights of management and state employees alike and were careful negotiated remaining mindful of the fact that the PEBA gave us clear direction in event of conflict with other laws. From July to October, SPO conducts and responds to multiple salary surveys. Policy makers in determining recommendations of funding for annual systematic salary increases use a combination of market analysis, industry analysis, and economic indicators all of which we provide in our annual compensation report. A majority of this information is not available until early October. At that time, information is carefully analyzed and provided to the governor, DFA and the LFC.

Ms. Perez said the subject of our wage negotiations with the Unions remains equal with what the Executive is prepared to request for all classified state employees and is related only to what the governor will submit in his executive budget request.

Ms. Perez briefed the committee on the status of collective bargaining. Ms. Perez said SPO serves as the central service point for administration of the Agreements. SPO is in a position to guide both the agencies and the Unions through PPC discussions, contract interpretations, and enforcement of management's policy direction.

Ms. Perez said David Martinez of the Federal Mediation and Conciliation Service, (FMCS) is partnering with SPO to make sure that the relationship between labor and management get started correctly.

Beginning in April the FMCS and SPO to make sure that the relationship between labor and management get started correctly. The FMCS, created in 1947, is an independent agency whose mission is to preserve and promote labor-management peace and cooperation. Headquartered in Washington, D.C., with two regional offices and more than 70 field offices, the agency provides mediation and conflict resolution services to industry, government agencies and communities. Beginning in April FMCS and SPO began partnering in delivering a training program for Union represented agencies that will provide the following training:

- Living in a union environment
- Labor contracts and relations
- Relationship development between stewards and supervisors/managers in each agency
- Interest based resolution of grievances
- Resolution of grievances at the lowest possible level

There have already been two trainings provided and two more are scheduled for CWA agencies. Eighty persons have been to training to date. The target is approximately 1,000. With AFSCME agencies FMCS and the Corrections Department have three trainings scheduled for the summer.

Ms. Perez said each month SPO hosts a meeting for AFSCE and CWA agencies to discuss issues, problems and solutions. The contracts for CWA and AFSME both call for a standing Labor Management Committee for the duration of the agreements. There will be a separate LMC for each union. The LMC is scheduled to meet at least every other month and has co-chairs, one from labor and one from management.

A success of the collective bargaining process has been the consistent application/approach administration of common personnel policies and/or procedures. When we began the negotiation process with both unions we discovered that each agency at the table was administering and/or applying common personnel policies (administration of leave, approach to overtime, performance evaluations, interpretation of State Personnel Board Rule) differently. The successful negotiation of common agreements now assures that over 50 percent of the workforce will have these policies consistently applied.

Robin Gould, executive director, CWA, thanked the committee for their support and briefed them on the benefits she feels that CWA brings to the collective bargaining process.

Carter Bundy, Political Director, said many groups and specific professions within the state have drastic recruiting and retention needs. What happened this year is something in the future we hope can be resolved at the table. Mr. Bundy said it is hoped that different groups will not address the legislature independently but that the collective bargaining process and the contract will be where all the compensation issues are addressed.

Responding to Representative Varela with regard to the purpose of the Personnel Act and how people meet the qualifications of the existing system, Ms. Perez said they would meet the qualifications through the recruitment process and then the release of the employment lists. Currently SPO posts job vacancies, agencies identify qualification standards for positions, SPO reviews and has to give its approval for those qualification standards in giving those approvals it refers back to many sources of information to ensure the qualification standard are relevant for that occupation group and the position for which they are recruiting and that it matches back to the pay grade assigned to it. Then applicants apply to the agency or SPO, a screening is done and a score in ranking is provided.

Responding to Representative Fox Young with regard to obtaining the results of AFSCME's audit, Mr. Bundy said they do mail the audit and that it is a detailed audit. Representative Fox Young requested a copy of the audit and was told she would receive one.

Responding to Senator Beffort with regard to the amount of the dues floating and the dollar amount of the dues for the last year, Mr. Bundy said for most members it is $12 dollars per pay period. The Fair Share amount is approximately $9 dollars.

DEPARTMENT OF PUBLIC SAFETY FOLLOW-UP

Mr. Moser stated after the Roswell meeting in May, the committee requested LFC staff to meet with Secretary John Denko, Department of Public Safety, (DPS), and his staff and try to develop guidelines and action plans on with the major issues and develop action plans. Consensus was reached regarding action plans for compensation and for general policies with the establishment of a timeframe for presentation to the committee. Staff felt that the meetings were productive and that the ball was in DPS' court with developing action plans.

Secretary Denko stated these were fruitful hard working meetings and acknowledged weaknesses due to circumstance but that they would do the best possible to overcome the issues and weaknesses that exist. The department has action plans for the revisions of policies and procedures including the things that will come up for recommendation for statutory changes. The department will have action plans for addressing State Police compensation and retention and an additional report on third quarter performance. The department is also looking specifically to a grievance policy, the issue of employee conduct and misconduct and how the SPO rules may be applied and how the department may be able to come to a single system. Currently DPS has a fragmented system for classified and exempt employees and it is hoped during the next Legislative Session legislation may be introduced to cure that problem. The department will be looking at the EEO policy, the definite standards of conduct. State Police are looking for accreditation through CALEA which is nationally known. Once this is achieved many ills should be cured. Mr. Denko said the department is no longer using administrative leave for disciplinary action, but in almost all cases uses administrative duties for staff that cannot be used on the highway, this is due to staff shortages. This gives them their due process and they earn their keep. The department is also looking at overtime compensation.

Deputy Secretary Roxanna Knight, DPS, said with regard to the action plan for revisions to policies and procedures, at this point in time the plan is still under development. The department is assessing what resources it will have available in FY06 to support both policy development and the implementation of CALEA. The department anticipates rewrites of both civilian and commissioned personnel policies.

Adjutant Chief Faron Segotta, DPS, said they had met with Mr. Moser who has proved them with very useful information and has recommended the following timeline for presenting the compensation plan to the LFC.

- July 31, 2005 – Data and survey material received by DPS;
- August 31, 2005 – Plan Design and associated implementation costs; and
- October 31, 2005 – Finalized plan recommendation for review

Mr. Segotta said the compensation plan presented to the LFC in FY05 and FY06 did not recommend across the board pay raises but an entire restructuring of the pay plan to better align itself within the labor market in order to retain and recruit employees. The DPS compensation plan recommended the following changes:

- The two year waiting period currently in effect for probationary employees is eliminated
- Employees reach the end of the pay range in 10 years as opposed to 16 years
- Employees are placed in the correct step based on experience; and
- Compaction and lack of incentive to promote are eliminated with the new plan

Additionally, the department is reviewing the following items:

- Revisiting incentive pay
- Increasing recruit salary
- Decreasing the mandatory probationary period; and
- Input from a committee comprised of patrol officers, which is already in the process

Mr. Segotta said the Compensation Plan presented to the LFC utilized the same methodology used by DMG, and Associates, the company who prepared the salary study in 1997. The survey information was obtained from Tech Net, a Utah based company that provides information to the State Personnel Office, used as part of their formulation of the classified salary study performed annually.

It is the department's belief that the Compensation Survey presented to the LFC adequately addresses the needs of the organization, as well as the LFC. The department is working on refining the

Compensation Survey and the presentation of the data to be provided in the future as part of our revised Compensation Plan.

Mr. Segotta said the department is currently seeking accreditation with CALEA, Commission of Accreditation for Law Enforcement Agencies, Inc. The accreditation process has compelled the department to review, develop and implement policy on a variety of issues to include disciplinary policies, grievance policies and collective bargaining. The accreditation process is a two to three year process.

Mr. Segotta stated a committee comprised of patrol officers is being established to provide recommendations to the administration on a variety of topics. This committee will also serve as a direct form of communications from headquarters to officers in the field.

With regard to 3rd quarter measures, Mr. Segotta said it is important to note the Quarterly Measures report distributed in Roswell was incorrect. Data from the Motor Transportation Division was inadvertently excluded from the report. The MTD data has since been added to the report, which has resulted in significant changes in some of the reporting areas.

Mr. Segotta said the Quarterly Measures were selected by the department's DFA and LFC analysts and are in line with the Governor's crime initiatives. Additionally, the performance measures have changed over the last two years, creating challenges to benchmarking data. Furthermore, the several of the Key Quarterly Measures are based on a 10 percent increase in DWI arrests, sobriety checkpoints, patrol saturations and repeat DWI offender arrests that have been carried over for three (3) consecutive years translating to a 30 percent increase for each over the three year period. It has been our concern that the continued 10 percent increase per year would not be reasonable. However, to our credit in FY03 the department increased DWI arrests by 26 percent and by 2.4 percent in FY04 for a total increase of 28.4 percent over a two year period.

DPS has little impact on overall crime reduction in New Mexico, but significant impact in some very isolated areas of the state. Such as the impact team currently in place in the Española area which is comprised of uniform officers, criminal investigators and undercover narcotics officers working together to disrupt illegal activities e.g. burglary rings, distribution of illegal drugs and violent crime.

Mr. Segotta said regarding the reduction of productivity we reviewed several years of data and compared the 3rd quarter outputs to the five year average for the same reporting area in several categories. As with most data there are periods where activity increases and periods where activity decreases, therefore, we normalized the data by a standard deviation of one or to 95 percent of the mean. We believe this provides a better analysis of activity typically generated in the 3rd quarter of the fiscal year. The average difference in staffing levels from January through March for years FY04 and FY05 is 15 fewer officers, not the five as indicated in the document presented at the Roswell hearing. There are 332 uniform patrolmen within the state police division who generate more than 95 percent of all activity reported. There were 42 vacancies within the division during the 3rd quarter all 42 vacancies are at the patrolmen level which translates to a 12.6 percent vacancy rate. Therefore, one can conclude that you would expect some reduction in overall activity from FY04 to FY05. In reality that number is much higher fewer officers to handle calls for service equals less non-obligated time (patrol time), equals fewer citations, arrests etc.

Other factors that impact non-obligated time are inclement weather. The winter of 2005 was much more severe than the winter of 2004, again resulting in a reduction of activity. Another factor to be considered is more officers on special assignment i.e. the 2005 Legislative session was 60 days compared to the 30 day session in 2004, again fewer officers available in the 3rd quarter of 2005 as compared to the 3rd quarter of 2004, resulting in a reduction of productivity. Additionally, the department is involved in Community Policing initiatives which take officers away from performing non-obligated time activities. Another factor impacting activity is the high price of fuel requiring the implementation of mileage restrictions which again reduces the amount of time officers have to spend on non-obligated time activities.

Mr. Segotta said regarding the reduction in narcotics arrests, undercover narcotic operations are initiated based on the narcotic activity in specific areas and culminates at various intervals throughout the year. It is not uncommon to see a spike or decline in narcotics arrests from year to year. For example, in 2004 the narcotics section was involved in two very large operations that resulted in over 200 arrests. The total number of narcotics arrests should not be used as the sole measure of the effectiveness the department has had on the use, sale and manufacture of illegal drugs in New Mexico. The Motor Transportation Division has been plagued by high vacancy rates which results in more time spent on recruiting, testing and training new officers, thus less time for non-obligated activities. The Special Investigations Division has been plagued, as well by high vacancy rates, 40 percent; in addition five (5) Agents were dedicated to the Concealed Carry Weapons Unit. Agents were taken from the field to train the Agents hired to comprise the Mobile Strike Team.

The Law Enforcement Program utilizes sound methods in terms of deploying resources throughout the state to address the law enforcement needs of the diverse communities in which we serve. We are constantly analyzing crash data, evaluating crime trends and emergency preparedness to effectively accomplish our mission with emphasis on our Key Measures. The department has made a significant impact in many areas e.g. a reduction in alcohol related deaths, and will continue to work diligently to provide “Quality Service Always”.

Chief Legal Council John Wheeler, DPS, briefed the committee on the status on the individuals discussed in December 2004 and at the hearing in Roswell in May 2005. With the exception of one individual, all hearings have been scheduled and the court process has begun and each is in front of a hearing officer and all the officers are represented by council.

Responding to Representative Varela with regard to the number of individuals on administrative leave and the cost of the process to the department, Ms. Knight said the department was able to determine the number of individuals on administrative leave during FY05, which required 50 man hours to ascertain. There were two officers in addition to the 7 reported to the LFC in December 2004. The difference of the 38 individuals reported to the LFC by LFC staff and the 7 individuals is that on the system HRMS a report was generated the names of individuals on administrative leave within DPS would essentially be every employee in the department. It includes administrative leave for inclement weather and duty injury. Currently the State Police is not on a fully automated time keeping system, therefore some administrative leave which is for duty injury is not isolated within that report. So in order to ascertain which of those officers of the 38 refereed to that were on duty injury leave the department had to go back and manually look at the records and check the worker’s compensation files. The department concluded that there were only 9 officers out of the list that were on administrative leave were for disciplinary purposes.

Responding to Representative Varela with regard to the process name, Mr. Wheeler said it was the process implemented pursuant to the rules in the New Mexico Administrative Code. It is believed the process is fair and it provides for individual officers having the opportunity to have matters of discipline beyond 30 days, demotions or terminations heard in front of the Public Safety Advisory Commission.

Mr. Moser said the CALEA process establishes an action plan for moving policies through. Well over 100 policies have been identified in need of being created or reviewed and revised. What was lacking in an action plan prospective was placing start date on the process in which the department would start to look at them. On human resource policies, staff was given assurance that those policies were in process of being reviewed and would be completed prior to the budget process in the fall and the remaining policies would be completed prior to the Legislative Session in 2006.

Responding to Senator Smith, Mr. Wheeler said in 1998 the Motor Transportation Division (MTD) was moved from their location at the Taxation and Revenue Department (TRD) to DPS. At that time the enabling legislation for the MTD contained in the Motor Carrier Act in Article 65 was amended. Before that time it included and had been created over several years, essentially piece mail and it said the MTD was responsible for enforcing the Act and other incidentals were added including the New Mexico Criminal Code, the New Mexico Motor Vehicle Code and the New Mexico Control Substances Act. When that legislature amended the legislation they removed the additional language and the current enabling legislation indicates the MTD is responsible for enforcing the Motor Carrier Act. By a different statute and by letter commission the director of the MTD has commissioned those MTD officers who are certified commissioned peace officers to enforce the Motor Vehicle Code and the secretaries interpretation similar to the provisions in place for the parks and recreation commissioned police officers and game and fish commissioned police officers is that MTD officers will take action in the face of an emergency. With regard to controlled substances, the MTD is responsible for massive seizures of drugs, incidental to their functioning the Motor Carrier Act. With regard to their participation in a New Mexico Controlled Substance Task Force, the administration and the secretary determined it would be best for them to focus on their motor carrier mission and be brought into those processes as needed. The department believes MTD is doing an exceptional job.

Senator Smith said this is an interpretation of the secretary and the prior administration interpreted it differently in that it was more restrictive.

Senator Smith recommended to the committee that the LFC request an opinion from the Attorney General on state law with regard to seizures.

Responding to Senator Leavell with regard to mile restrictions in place with the State Police, Mr. Segotta said the current mileage restriction is three thousand miles per month per officer. The department is going to have to drop it back to 25 hundred per month. This last fiscal year the department was between 700 thousand and 800 thousand short in the fuel coverage in the budget. The mileage restriction is not used as a punitive measure against any employee. The supervisors are asked to monitor and ensure the officers are providing a service and being productive.

Responding to Senator Leavell with regard to the high vacancy rates and what is taking place to address it, Mr. Denko said salary has been a big issue and the department is losing officers to other agencies. The last recruit school for the State Police, within the first week, one third walked away because they decided it was not for them. The department is not seeing the ex-military individual with more discipline and the willingness to stay on. The individuals are much younger and still attached to home. MTD and Special Investigation Division (SID) is experiencing the same thing.

Mr. Segotta said the phenomena is not just seen in New Mexico it is also being seen across the country. Law Enforcement for whatever reason is not attracting the people it did 10, 15 and 20 years ago. When you have agencies such as the Detroit Police Department and the Cincinnati Police Department actively coming to New Mexico to recruit that says everyone is facing this issue. DPS is being as creative as it can to try and attract more people into the pool. The investment into the training is over $50 thousand, only to lose them in the first few years. The people leaving beyond the first few years are leaving because the department hasn't stayed as competitive as it would have liked to with other agencies in New Mexico. It is hoped if there is a withdrawal from Iraq the military experienced applicant number will go up and will help address the current situation. Today State Police is 58 patrol officers down.

Responding to Representative Varela, Mr. Denko said Tim Manning serves as director of Homeland Security and also serves as deputy secretary of Emergency Services.

Responding to Representative Varela, Mr. Manning said Forrest Smith is the director of the Office of Emergency Management Division that deals with the operation issues of natural hazard preparedness, response, recovery and mitigation as well as counter terrorism activity and reports through him to the secretary. The Office of Homeland Security as part of the governor's office deals strictly with the policy implementation and coordination of all the other cabinet level agencies and political subdivisions. It is the operational implementation of that policy that happens at DPS specifically the Office of Emergency Management and it is his position as a deputy secretary in DPS where he oversees that directly.

Representative Varela asked the liaison to the governor's office to look at the organization chart and determine why we cannot have different people performing different functions rather than having people wearing several hats. Representative Varela said his concern is the structure. The office needs policy and oversight. Representative Varela asked LFC staff to look at the structure adjustments on agency organization.

MISCELLENAOUS BUSINESS

LFC Minutes – May 2005. Mr. Abbey presented the minutes for adoption, Representative Sandoval motioned to adopt the minutes, Senator Smith seconded the motion which passed with no objections.

LFC Contracts. Mr. Abbey presented two contracts in the amounts of $22.5 thousand for Helen Gaussoin and $28.9 thousand for Ralph Vincent. The LFC issued an RFP for these contracts and these are the only to respond. They have both worked for the LFC for sometime. Senator Smith moved to adopt the contracts, Senator Griego seconded the motion which passed with no objections.

LFC Subcommittee Reports. Senator Smith reviewed the May 2005 LFC Performance Review Subcommittee report with the committee. Representative Sandoval moved to adopt the report, Senator Smith seconded the motion which passed with no objection.

Senator Griego reviewed the LFC Audit/IT/Capital Subcommittee report with the committee. Senator Beffort moved to adopt the report, Senator Smith seconded the motion which passed with no objection.

LFC Salaries. Representative Varela said in July the committee will be considering salary increases for staff and members were needed to approve them before they go into affect. He asked for a four member subcommittee to report on the recommendations for staff. He requested Representative Wallace, Senator Beffort, Senator Smith and himself participate.

Representative Varela adjourned the committee at 5:40. The committee met in subcommittees at the NMSU branch on Thursday, June 16th at 8:00.

Chairman Date