

**MINUTES
LEGISLATIVE FINANCE COMMITTEE
March 27 and 28, 2006**

Representative Luciano “Lucky” Varela, chairman, called the Legislative Finance Committee (LFC) meeting to order on Monday, March 27, 2006, at 8:00 a.m.

The following LFC members were present on March 27:

Representative Luciano “Lucky” Varela, chairman, Senator Ben D. Altamirano for Joseph Fidel, vice chairman, Representatives Nick Salazar, Rhonda King, Jeannette Wallace, Sandra Townsend, Brian Moore, Edward Sandoval for Donald Whitaker, and Patricia Lundstrom for Henry “Kiki” Saavedra, and Senators Mary Kay Pappen for Timothy Jennings, Leonard Rawson, Phil Griego, Joseph Carraro, Sue Wilson Beffort, and John Smith.

The following LFC members were present on March 28:

Representative Luciano “Lucky” Varela, chairman, Senator Ben D. Altamirano for Joseph Fidel, vice chairman, Representatives Nick Salazar, Rhonda King, Jeannette Wallace, Sandra Townsend, Brian Moore, Edward Sandoval for Donald Whitaker, and Patricia Lundstrom for Henry “Kiki” Saavedra, and Senators Mary Kay Pappen for Timothy Jennings, Phil Griego, Joseph Carraro, Sue Wilson Beffort, and John Smith. Representatives Picraux, Taylor and Larranaga joined the committee as guests.

Review of Executive Action on 2006 Fiscal Legislation

Secretary Jimenez said the FY07 budget signed by the governor invests in New Mexico’s children and is fiscally responsible. However, he reported that the governor was forced to make substantial vetoes to the Legislature’s budget and capital bills to ensure fiscal responsibility. According to DFA estimates, the Legislature’s appropriations would have reduced reserves to 4.7 percent of recurring appropriations, well below the 10 percent target set by the governor and Legislature before the 2006 session. DFA estimates that the governor’s vetoes restored reserve levels to 10.4 percent. Secretary Jimenez noted that average reserves for the nine states with AAA bond ratings were over 12 percent in FY04.

DFA estimates that the Legislature’s appropriations left a \$133 million deficit in the appropriation account after taking into account transfer authority of \$200 million. The governor’s vetoes eliminated this appropriation account deficit and left an estimated \$122 million unspent for use in FY08, when revenue growth is expected to be just 0.5 percent.

Secretary Jimenez reported that in deciding which items to veto, the governor considered whether the money funded basic services, whether the funding could be provided by local governments, whether the project had a sound plan, and whether the project had gone through the formal prioritization process.

Secretary Jimenez cautioned the committee that the January consensus natural gas price forecast is \$6.10 per mcf in FY07, while PIRA’s February forecast indicates a price of only \$5.30. However, weakening energy prices have been offset by strong performance of broad-based income and gross receipts taxes.

Following Secretary Jimenez' presentation, LFC Director David Abbey commented. Mr. Abbey indicated that there was general agreement in most of the fiscal information but that LFC included some appropriations as footnotes to the general financial summary rather than booking the items. These were \$75 million in water settlement contingent appropriations that according to a memo from the State Engineer had little probability of being spent. LFC projected a reserve of 7.5 percent rather than the 4.7 percent indicated by Secretary Jimenez. Abbey also pointed out that at least \$20 million of the appropriations failed before they arrived at the governor's desk due to failed contingencies. He indicated that there were outstanding issues as to the legality of some of the vetoed language that removed reporting requirements to LFC. Abbey finished by pointing out significant strength in FY06 revenues.

Representative Varela asked about the discrepancy between the DFA- and LFC-reported levels of appropriations above the transfer authority. Secretary Jimenez indicated that the difference was in what year revenues were booked. DFA's position was to book everything in the fiscal year it was appropriated unless specifically stated otherwise.

In response to Representative Varela's question on how the Legislature "misdirected education reform appropriations" as Secretary Jimenez' presentation indicated, Secretary Jimenez pointed to the \$93 million in appropriations from the appropriation contingency fund and said that those appropriations depleted the funds in the ACF intended for the education lockbox and disaster and emergencies.

Representative Varela asked Secretary Jimenez why 71 percent of references to the Legislative Finance Committee in the general appropriation act were vetoed. Secretary Jimenez replied that many of these references to LFC were superfluous because LFC does not need budget authority to request testimony from executive agencies. However, the governor also feels that the Legislature has overreached its authority in trying to manage the executive branch. Secretary Jimenez expects executive agencies to continue to testify before LFC as requested.

Representative Varela referenced a memorandum he believed the governor's office had sent to one executive agency directing that agency not to communicate with legislators, legislative staff, or the media without receiving clearance from the governor's office or a cabinet secretary. Representative Varela expressed concern that this type of "gag order" jeopardizes the working relationship between the executive and the Legislature and media. Secretary Jimenez said he was not familiar with this directive, but defended the role of the executive's exempt staff to represent the executive branch on policy issues.

Senator Beffort asked if there is an alternative funding source for the \$4 million that was vetoed for phreatophyte (invasive tree) removal. Secretary Jimenez said there was not a clear funding source but said the governor is committed to water protection.

Senator Beffort asked Secretary Jimenez to comment on the issue of Educational Retirement Board (ERB) solvency and the governor's veto of an accelerated ERB payment meant to protect the pension fund. Secretary Jimenez cautioned that "insolvency" is too strong a word to use when discussing ERB and said that provisions passed during the 2005 session had already gone a long way to improve the ERB situation.

Representative Moore asked what, if any agreement, existed before the 2006 session on how capital spending would be divided between the governor, House and Senate. Secretary Jimenez said that at the beginning of the session the governor had an agreement with the House but not the Senate, but that at the end of the session all agreements fell apart. Representative Moore commented that there needs to be better

communication among all entities to improve the capital process. Secretary Jimenez said he supports formalizing the capital outlay process to resemble the budget process.

Representative Lundstrom referenced a letter from Secretary Jimenez to local news media regarding the governor's veto of a \$75 million contingent appropriation for Indian water rights settlements. Secretary Jimenez explained that the governor vetoed this contingent appropriation because it was a double appropriation of the state's reserves, and because settlements have not yet been reached. Representative Sandoval questioned where the \$75 million proposal for Indian water right settlements originated. Secretary Jimenez denied that it was an executive proposal, and Representative Sandoval pointed out that \$75 million is much greater than the amount of capital expenditure allocated to each legislator. Representative Lundstrom suggested that because the proposal was endorsed by the interim Water and Natural Resources Committee the minutes from that committee would indicate where the \$75 million request originated. She said the proposal came through two of her committees and was endorsed legislation directly from the State Engineer's office.

Senator Papen remarked at the confusion of classifying expenditures as recurring or nonrecurring and asked if DFA had specific guidelines used to make that determination. Secretary Jimenez said DFA will propose a set of guidelines for treatment of expenditures made outside the normal budget process. DFA intends to work with LFC staff during the 2006 interim to reach an agreement on how to classify these expenditures as recurring or nonrecurring.

Senator Altamirano asked if the \$49 million for the College Affordability Act would increase enrollment at the state's higher education institutions and, if so, why money for repairing infrastructure at the schools was vetoed. Secretary Jimenez indicated the appropriations in the act were to help prospective students who failed to qualify for the lottery scholarships. With respect to the building renovation appropriations, it came down to making decisions about the budget.

Representative Varela asked that the LFC and DFA work together and come up with a statutory process on the budget act the section on capital budget and come up with a process. Secretary Jimenez said he'd be happy to do that.

Analysis of Implementation of Three-Tier Teacher Evaluation System

Peter Winograd, director of the Office of Education Accountability (OEA) at DFA, presented an overview of the three-tier evaluation system, the evaluation process, the licensure advancement process, the professional development program and progress to date. Included in the overview was a review of the teacher progression framework. Teachers are required to meet nine teacher competencies. OEA conducted a review of all implementation files to meet legislative direction to verify the accuracy of teacher dossiers and submitted files. OEA determined that 83.6 percent of the files analyzed were accurate, 8.6 percent had minor problems and 7.8 percent contained major problems. OEA has made significant recommendations to address critical issues revealed in the study.

In the first year of implementation of the program, 1,085 dossiers were submitted with a initial pass rate of 84.9 percent for level 1 and 66.7 percent for level 2 teachers. The pass rate for resubmitted dossiers grew to 91.5 percent for level 1 and 78.3 for level 2 teachers. Of the 1,085 dossiers submitted, 759 were level 1 teachers who had been prepared in New Mexico programs. These teachers had a final pass rate of 91 percent.

Mr. Winograd noted the need for continued adequate professional development for administrators who evaluate teachers, recurring funding to continue the evaluation system, funding formula changes to

interface with the three-tiered system, and continued rigor in the evaluation system. As a result of the system, the number of teachers on waivers has decreased from 8.4 percent to 1.9 percent.

Representative Varela asked whether the commitment made to funding is being seen in student achievement and how it is being measured. Mr. Winograd said student achievement is not yet being studied, however this will be the focus this year as the base is now in place. Representative Varela said the state has made a significant contribution to education and expects results now.

Robert Behrendt, LFC performance auditor, presented the results of his review of the three-tier evaluation system. Points of interest include

- Teacher quality affects student achievement.
- Teacher quality has fallen while salaries continue to rise.
- Teachers are allowed to advance to a higher level of licensure and compensation without data on student achievement.
- Quality teacher distribution in the state is significantly skewed away from high-poverty/low-achieving schools.

Issues raised by Mr. Behrendt noted the three-tier system is unlikely to increase teacher quality, the distribution of level 3 teachers favors high performing schools; financial rewards are needed to attract teachers to low performing schools.

Senator Beffort noted the need to look at increases in student achievement as they pertain to teacher performance. She further requested OEA look at a more equitable distribution of high-performing teachers across schools with higher needs by rewarding teachers to influence them to move. Incentives are important to attract teachers to these schools.

Laptop Initiative Review

Scott Roybal, LFC performance auditor, presented the results of a quick-response review of the laptop initiative. The objectives of the review were to determine if student achievement can be attributed to the initiative, how the Public Education Department tracks improved performance of seventh graders receiving laptops, the process for distribution of the laptops and how laptops are accounted for. Of concern to audit staff is that the department is not documenting outcomes of student achievement related to the initiative, qualifying criteria to receive laptops does not focus on expected outcomes, student achievement, or incorporating technology into daily academic curriculum, and many schools have minimal implementation, deficient networks, and a lack of a technology-based curriculum.

Veronica Garcia, secretary, Public Education Department, and Jim Holloway, assistant secretary, Public Education Department, were present to respond to the review. The secretary noted visiting five schools is not comprehensive enough and does not give a clear picture of how the initiative is being implemented. Secretary Garcia said “I have not had a lot of hands on direction with this laptop initiative, given with all the issues that we have had to address in the agency.”

The secretary noted the fast track approach does not allow for an in-depth look at what is being done in the schools over time. The secretary notes she would like to set up measurable objectives to better evaluate the program and will direct staff to work on this. Further the department indicated it does not have sufficient resources, either human or financial, to meet the evaluation or oversight needs.

A number of staff and students were in attendance and available for comment. The principal at Truth or Consequences middle school noted the laptops are a tool in the overall program and contribute to the overall value of the program in preparing students academically.

Mr. Lucero from the West Las Vegas schools noted the students are improving academically through the use of the computers.

Casey Benavidez from Wagon Mound brought six students. The students are grateful for the laptops. Students are on grounds after school hours to utilize the wireless network on the school grounds. Student comments note that the laptops make school more interesting and help students by making research available as well as allowing them to prepare presentations.

Review of Internal Audit Function

Bobby Griego, LFC performance auditor, presented the results of the quick-response review of agency internal audit function. The objectives of the review were to determine if the internal audit function assists in evaluating internal operations to assist with the external financial audit

Sixteen agencies were surveyed to determine the extent of the internal audit function. Nine agencies responded they had some type of internal audit function. Most of these audit contracts and program compliance. Internal audit functions are not mandated in law. Some agencies did not have an appropriate reporting structure and most did not have written policies and procedures. Among those that did have policies, most had policies that were outdated.

The following recommendations were made:

- Assess the risk to determine to ensure the maximum benefits and cost savings are realized by the activity,
- Examine feasibility of adopting an appropriate organizational structure,
- Use Institute of Internal Audit Standards,
- Develop or update written policies and procedures.

Chairman Varela questioned the Public Education Department internal auditor Sheridan Banamm about the status of the FY05 financial audit and what type of findings are expected in the FY06 audit. The chairman asked if internal audits are public and, if not, why not. Chairman Varela stated he would like summary reports and, if needed, he would request the entire report. He said internal audits should be submitted to the DFA controller and the Legislature should consider legislation to create an umbrella to require these reports.

Chairman Varela requested that Mr. Banamm let the PED secretary know the committee wants a status report on the financial audit by the first hearing on education.

Post-Session Fiscal Report

Highlights of the post session fiscal report were presented by LFC staff Norton Francis, senior economist, and Cathy Fernandez, deputy director. Mr. Francis discussed the consensus revenue forecast.

Senator Griego wanted clarification regarding the estimated FY08 cost of \$44 million just to fund current commitments such as the Springer prison and the level 3 teacher pay at \$50 thousand. If revenues do not grow as expected, the \$44 million is significant.

Mr. Francis discussed public education such as enrollment growth and education initiatives. Mr. Abbey, LFC director, pointed out the graph on enrollment growth. If districts are growing more rapidly than 1 percent it could be an issue.

Representative Lundstrom asked what percent of total budget goes to public schools for recurring operations. Mr. Abbey reported 45 percent of the general fund is for public schools and 15 percent is for higher education.

Representative Moore asked what new money is needed for education. Mr. Abbey replied that it was premature to get into details, but that he was hopeful revenues will be higher than expected. But if “new money” is only \$160 million, creating a budget will be hard, especially when \$40 million is already spoken for.

Representative Sandoval asked if the committee can require feasibility studies on appropriations. Mr. Abbey said the legislature may make an appropriation for a feasibility study; nonrecurring general fund is the best for a feasibility study. Mr. Abbey commented that an unprecedented amount of capital outlay money was for operating expenditures, \$18 million for Rodeo and \$4 million for Film. The Rodeo language said for construction of an arena and Rodeo programs which complied with the Governor’s Rodeo initiative, which is anything. Mr. Abbey said this goes back to Senator Rawson’s point on what belongs in capital outlay versus HB2. Including recurring appropriations in the capital outlay is eroding HB2. Representative Sandoval said capital outlay should be used for capital project infrastructure, and other items should come from HB2 or HB2 junior. Need to have a discussion on what should be in the capital outlay bill.

Representative Lundstrom asked who determines if a capital project is funded through state funds or severance tax bonds (STB). Representative Sandoval said individual legislators made the decisions on the House side. He said larger items are usually funded through STB; projects using \$50,000 or less do not use STB.

Senator Carraro asked whether the Legislature could override the veto of capital outlay. Senator Altamirano replied the Senate would need 23 votes, which are hard to get. Senator Smith said the committee needs to look at the capital outlay process. He said projects ended up in the bill without hearings and without legislators learning any details. The House and Senate did not see the executive capital outlay budget until it came to floor. No one introduced capital outlay requests on behalf of the governor; the bill was just amended for the governor’s portion. Chairman Varela asked that there be a detailed discussion. Mr. Abbey suggested bringing the LFC capital outlay audit back for another hearing that would include the DFA response on implementation. Representative King wanted staff to provide more in-depth analysis. Representative Taylor said the process assumes the governor will allow

legislators to spend their portion of capital outlay funds. Senator Smith said the governor slipped in millions in extra projects and something is wrong with the process if large amounts can slip through. Senator Altamirano suggested holding a meeting on the process to come up with suggestions on better ways to define statewide project needs.

Representative Lundstrom said two interim committees held hearings on the \$75 million water request but the Rodeo Hall of Fame may not have had a hearing. Senator Carraro stated the Legislature should have a committee that can take care of this, and made a motion that the committee look at possibility of coming back into special session no one seconded the motion. Chairman Varela said the state should have statutory language to define a process for everyone to follow.

Chairman Varela asked about the impact of the veto of language on federal funds. Mr. Abbey replied the language is symbolic and was included because the LFC was concerned that agencies were not submitting realistic budget requests. Chairman Varela said agencies lowball federal funds. Mr. Abbey said he would research the question and schedule hearings on some of the agencies that have budget increases.

Miscellaneous Business

Approval of LFC Minutes – January 16, 2006. Senator Altamirano moved to adopt the amendments to the manual, Representative Moore seconded the motion, and it passed with no objection.

Approval of Contracts. The committee reviewed a proposed contract for the Hay group that will require a \$15 thousand transfer from personal services to contracts. Senator Altamirano moved to approve \$15 thousand with option to increase funding to \$20 thousand if funds are available. Representative Moore seconded the motion and it passed with no objection.

Cash Balance Report February 2006. For information purposes only, Senator Rawson would like to see isolation of reserve funds compared with soundness of funds. Mr. Abbey reported that LFC will have a performance audit on the Risk Management Division of the General Services Department in June. Mr. Abbey instructed Christine Chavez, LFC deputy director, to ensure the report addresses how GSD can provide effective reporting on the actuarial soundness of risk funds. Representative Sandoval moved to approve the Cash Balance Report for February 2006. Representative Moore seconded the motion and it passed with no objection.

Informational Items. Mr. Abbey presented the LFC Financial Report for information items to the committee.

At 4:32 pm LFC went into executive session to discuss litigation.

Indian Education Act Review

Robert Behrendt, LFC performance auditor, presented the results of a quick-response review of the Indian Education Act. The objectives of the review were to determine if the current Indian Education Act and resultant policies are appropriate to address the Native American achievement gap in New Mexico. Mr. Behrendt noted the distribution of level 3 teachers is significantly skewed away from high Native American schools and districts. He further noted basic equity and adequacy problems in these districts and the need for development of Native American bilingual and culturally relevant instructional systems.

Major findings noted in the audit include difficulties in government-to- government relations; problems in the Indian Education Act that make it vague, overly ambitious, and difficult to implement given socio-economic conditions; low-performing schools and inappropriate content standards as well as PED's current strategy of shifting the development of relevant curriculum to school districts. Further, PED hasn't developed a strategy and working relationships to increase tribal programs and capacity.

Recommendations included in the audit include the need to develop standards and tests that include relevant language and cultural competencies, funding formula taskforce review of at-risk unit values, and an increase in capacity at PED to provide technical assistance to tribal entities. Additional recommendations include designating tribal education departments as local educational agency, holding districts accountable for the use of appropriate Indian education curriculum, and establishing an Indian education teacher corps program for accelerated teacher training.

Catherine Cross Maple, deputy secretary, PED, and Penney Bird, assistant secretary, PED, responded to the review. Ms. Cross Maple noted that while the department has some differences with the audit, many of the audit findings are accurate and will be addressed by the department. Ms. Cross Maple noted the department's use of a team approach to meet the needs of all students, the focus of all programs within PED. The department notes that the state content standards are what they are and must be the same for all students but that differences in teaching method must be used. PED further notes that political considerations are the reason schools with high Indian populations continue with a traditional nine-month calendar rather than adjusting for tribal considerations.

With regard to the lack of strategies and working relationships with tribes, the department notes the process is long and difficult and must progress in small steps to develop working relationships with the tribes. Ms. Bird noted the tribes are supportive of an additional study into the status of Indian education in the state and would support the effort. She also noted the process is a long one and will take time to implement.

Chairman Varela said the committee needs to get better and timelier information and a plan as to how the program will be implemented and how information will be presented to the committee.

Secretary Garcia noted the department may not be doing a good job of conveying information to the committee and suggested a working group consisting of the Indian oversight committee, legislative staff and others to come up with a timeline and a working plan to implement the program.

Representative Lundstrom said the Legislature has not been kept in the loop by the department with regard to Indian education. She expects to be informed on all issues related to Indian education. She expects to have a report and some recommendations regarding unit value adjustments relating to at-risk funding. She requested copies of the joint power agreements with tribes, the status of the University of New Mexico Indian education program, status of the Northwest office and why the Northwest office is not fully staffed.

Representative Varela directed staff to work with the department, Indian Affairs interim committee and the Department of Indian Affairs to develop a plan on how to implement the program.

Secretary Garcia noted she is surprised that Representative Lundstrom has not been kept in the loop and said she will receive a full briefing. LFC staff informed the department a corrective action plan has been

requested within 30 days and this would be an appropriate forum to address these issues and expand on the department's responses.

Senator Beffort asked about the use of federal funds for education and whether teacher salaries are higher or lower than state expenditures. Ms. Fernandez answered that federal funds are specifically earmarked to Bureau of Indian Affairs schools and do not go to state schools.

Representative Lundstrom said most Navajo students attend state schools rather than BIA schools and the committee should not assume the teachers in BIA schools understand Indian education any better than state schools.

Secretary Garcia noted the state and BIA schools now take the same adequate yearly progress test and comparisons between programs are now available.

Representative King would like to know from PED the percentage of students in high-need schools classified as using English as a second language and how curriculum interfaces with the language proficiency of the teachers.

Review 2006 Interim Work Plan. Ms. Fernandez, presented the 2006 Interim Work Plan to the committee. Senator Smith moved to accept the 2006 Interim Work Plan. Senator Carraro seconded the motion and it passed with no objection.

Review 2006 Interim Audit Work Plan Ms. Chavez, presented the 2006 Interim Work Plan to the Committee. Representative Sandoval moved to accept the 2006 Interim Audit Work Plan. Senator Griego seconded the motion and it passed with no objection.

Approval of Interim Calendar. Mr. Abbey presented the 2006 LFC Calendar to the committee. Changes were made based upon scheduling conflicts among committee members.

Chairman

Date