Legislative Finance Committee
Meeting Minutes
Room 307 - State Capitol - Santa Fe, New Mexico
November 16, 17, 18, 19, 2010

Tuesday, November 16

The following members were present on Tuesday, November 16: Chairman Luciano "Lucky" Varela, Vice Chairman John Arthur Smith, Representatives Donald E. Bratton, Rhonda S. King, Don Tripp, Edward C. Sandoval, Jeannette O. Wallace, Nick L. Salazar, and Henry "Kiki" Saavedra; and Senators Clint Harden (for Sue Wilson Beffort), Rod Adair (for Carroll Leavell), John M. Sapien, Mary Kay Papen, Pete Campos, Carlos Cisneros, and Stuart Ingle. Representatives Jim Trujillo and Dennis Kintigh and Senator Howie Morales attended as guests.

Administrative Office of the Courts (218). Charles Daniels, chief justice, Supreme Court, reported the courts partnered with other agencies of government, including Bernalillo County, to fund three part-time judges to conduct probation revocation hearings. Arrangements were made with the National Center for State Courts to bring in an outside study team funded by the federal government to interact with the New Mexico Reengineering Commission for the Courts to address better efficiency within the courts.

Chairman Varela asked for clarification regarding the significant difference between the LFC proposal and the executive's proposal for the FY12 budget. David Abbey, director, Legislative Finance Committee (LFC), said LFC assumes the Legislature will continue using tobacco settlement funding for Medicaid, continue deferring a scheduled increase in the state's contribution to education retirement, and continue the shift between employer/employee contributions to the Education Retirement Board (ERB) and Public Employees Retirement Association (PERA) pension funds. The DFA proposal assumes enrollment growth for Medicaid and cost inflation. LFC assumes enrollment growth and cost inflation will be held flat with the FY11 operating budget. Director Abbey noted Medicaid is the only part of the budget that has not been reduced. LFC also assumes $280 million of stimulus funding would be replaced for Medicaid and all funding for public education would be replaced. However, $10 million for higher education would not be replaced.

Unified Judicial Budget. Artie Pepin, director, Administrative Office of the Courts (AOC), reported AOC recently made the determination approved by the Supreme Court to finish Odyssey at the end of 2012, one year ahead of schedule. Courts are also working on electronic filing and electronic citation through the Odyssey system.

Since 2003, courts have gone from 390,000 cases to 460,000 in FY11 while experiencing an 11.5 percent reduction in general fund appropriations. Since FY08, case filings rose 9.3 percent in magistrate courts, 9.7 percent in district courts, and less than 1 percent in Metropolitan Court. As a result of the additional 3.2 percent reduction ordered on September 1, 2010, furloughs were anticipated for all courts; however, the governor granted federal stimulus funds. The base funding for general funds result in a $6 million difference after the 3.2 percent reduction. Courts are requesting enough funding to replace the 3.2 percent reduction. Mr. Pepin noted the 8th Judicial District is requesting an expansion of $423 thousand for district judgeships, as well as $50 thousand for a court monitor. Metropolitan court is also requesting $284.5 thousand to expand background investigations. AOC will submit a $300 thousand supplemental funding request to continue current operations through FY11. Chairman Varela requested information on the number of employees laid off or furloughed by each district.

Budget and Process Reforms. Mr. Pepin said Court-Appointed Special Advocates program (CASA) money is used in the courts to fund staff running CASA, advocates assigned to certain children's cases. An increase of $200 thousand was requested in the FY12 budget. CASA funding is approximately 20 percent of overall funding for the courts. Brian O'Connell, executive director, New Mexico CASA Network, added 20 percent is not reflected in the state contract money to local programs. Many local programs use state appropriations as their core funding source. CASA experienced a 14.5 percent reduction as a result of the 3.2 percent program adjustment. Senator Adair asked if part-time judges were considered to help alleviate the hearing workload in the 8th District Court. Chief Justice Daniels said a shortage of a judgeship is a long-range problem. Retired judges were contacted to consider working on a pro bono basis. The State Bar and the Supreme Court recommended that lawyers donate 50 hours a year in return for the privilege of serving as a member of the BAR. The retired judges indicated they would use the 50 hours to offer services as pro tem judges as recommended. Senator Cisneros expressed the crucial and critical need for a judgeship in the eighth judicial district. Representative Kintigh said the 10th district is the most underutilized judicial district according to the judiciary statistics. Representative Kintigh suggested moving Quay County into the 4th district, DeBaca County into the 9th district, and Harding County to the 8th district, and the 10th district judgeship to the 8th district. Mr. Pepin said shifting districts is a difficult legislative determination. The districts are already short the number of judges needed to handle the workload. In addition, it would create additional travel. Representative Kintigh said the 4th Judicial District and the 9th Judicial District are the least overburdened of all courts and are in the best position to absorb reorganization.

Mr. Pepin reported the FY12 budget request for AOC includes a request of $491.8 thousand for magistrate courts. Proposed legislation provides a solution through temporary funding expiring in 2014 to cover the request. The net request from AOC is $888 thousand; $725 thousand is for personal services and benefits.

District Courts (231-243).

6th Judicial District. Henry Quintero, chief judge, 6th Judicial District, reported the district experienced a 7 percent reduction over the last couple of years resulting in fewer contracts and more part-time employees instead of full-time employees. Further reductions will reduce drug courts and teen programs.

5th Judicial District. Gary Clingman, chief judge, 5th Judicial District, requested a flat budget for FY12 based on the reduced FY11 budget. The district is operating at a 9.9 vacancy rate and has terminated three individuals from the family drug court in Lea County to absorb shortfalls and avoid furloughs. In addition, the court's drug court has been eliminated. The district made the decision not to cut CASA or teen court; however, funding has been reduced through AOC.

3rd Judicial District. Jim Dempsey, chief executive officer, 3rd Judicial District, reported the FY11 appropriation totaled $6.198 million; however, the district absorbed a 5 percent or $321 thousand reduction through line item reductions and salary savings. The district currently has 9 vacancies and expects four additional retirees, bringing the vacancy rate to 14 percent. The FY12 recommended budget totals $6.13 million. The district is concerned with maintaining current judicial services with declining resources. Every 1 percent reduction results in four-day furloughs per employee per year.

12th Judicial District. Jerry Ritter, chief judge, 12th Judicial District, reported the district experienced a 12 percent budget reduction over the last few years. The district eliminated one juvenile drug court in Alamogordo and has maintained three vacant positions. The district submitted a flat FY12 budget request; however, it was notified of increased insurance premiums in the amount of $32 thousand. The district is requesting $21 thousand supplemental funding to prevent layoffs or furloughs in drug courts. The budget request also includes $103 thousand in general funds to replace an appropriation from the liquor excise tax fund, as well as the 3.2 percent reduction in FY11.

1st Judicial District. Steven Pacheco, court executive officer, 1st Judicial District, reported the district is requesting $6 million for FY12. The requested budget will allow the district to continue without furloughing employees. The district will submit a capital outlay request for the new Steve Herrera Judicial Complex in FY13.

2nd Judicial District. Ted Baca, chief judge, 2nd Judicial District, reported the district partnered with Bernalillo County to fund pro tem judges on an expedited basis. The district currently has a vacancy rate of 13 percent. The district is the largest in the state, handling over 36 percent of all district court filings. Filings increased 6.2 percent from FY03 to FY10; however, general fund appropriations only increased 4.5 percent, resulting in 11 employee layoffs. The district is requesting an increase of $1.7 million to fund salaries, document management, court reporter transcripts, operating cost expenditures, General Service Department rates, and replacement of the liquor excise tax funds.

4th Judicial District. Fred Sena, court executive officer, 4th Judicial Court, reported the district experienced a reduction of $300 thousand over the last two years and was underfunded in personal services during the same timeframe. The district is projecting an $80 thousand deficiency in personal services for the current year; however, funding from drug-court services was set aside to cover the deficiency. The district no longer has general fund contractual services to absorb additional reductions. The district is projecting a deficiency in payroll for FY12 of approximately $114 thousand, taking into account the 1.5 percent PERA shift as well as increased and unfunded GSD risk premiums. The district is requesting a restoration of $280 thousand to replace lapsing liquor excise tax funding for drug-court services and purchase of maintenance and service agreements for information technology courtroom security and surveillance equipment.

7th Judicial District. Kevin Swazy, chief judge, 7th Judicial District, reported the district is requesting a flat budget with two exceptions; $70 thousand to replace the FY11 3.2 percent reduction and $63 thousand for increased unemployment compensation tax. The district currently has a vacancy rate of 20 percent. Senator Harden expressed great concern with the increase of unemployment compensation rates.

8th Judicial District. Sam Sanchez, chief judge, 8th Judicial District, reported the district experienced a $207 thousand shortfall in the employee personal services and benefits category over the last three years. The district is requesting $83 thousand for employee personal services and benefits, $32 thousand from the liquor excise tax, $50.5 thousand for a court monitor, an additional FTE with no fiscal impact, and one judgeship. The district experienced a 27 percent increase in case filings over the last two years. The district is also requesting $190 thousand in capital outlay to complete the purchase of equipment and furnishings for a new court house. Representative Kintigh requested specific information on the 27 percent increase in case filings.

9th Judicial District. Ted Hartley, chief judge, 9th Judicial District, reported the district has an expanding population due to the expansion of Canon Airforce Base. Louis Moore, administrative assistant, added the 3.2 percent reduction resulted in furloughs for employees in FY11. The district no longer has a domestic violence hearing officer; the workload was absorbed by the district judges.

The district is requesting a $23.2 thousand increase in the base budget and $11.2 thousand to replace the liquor excise tax for FY12. Representative King requested information on the allocation of the liquor excise tax, including $1 million received from the DWI Grant Council. Representative Bratton requested information on the total impact of GSD unemployment rate increases for all districts.

10th Judicial District. Albert Mitchell, chief judge, reported the district is requesting a flat budget with an increase of $25 thousand. The district currently has one vacant position.

11th Judicial District. John Dean, chief judge, reported the district currently has a 12 percent vacancy rate and continues to operate without any layoffs or furloughs. The district is requesting a capital outlay increase to move into a new court building in San Juan County. The district is also requesting $52 thousand to replace federal stimulus funding.

13th Judicial District. Louis McDonald, chief judge, reported the district established pro se clinics in three counties and started a specialized docket on foreclosure cases to help maximize information. The Odyssey program was rolled out in Sandoval and Cibola counties and is expected in Valencia County on December 6. All three counties are piloting e-filing. The district currently has a 12 percent vacancy rate and experienced a budget reduction of 13.8 percent. The district is requesting a flat budget with a request to fill vacant positions. Senator Sapien asked what efficiencies are experienced through the introduction of e-filing and the Odyssey program. Chief Judge McDonald said there are reductions in the number of people in the court house, as well as a reduction in mail. Efficiencies at the counter include shorter wait times for people requesting documents.

Metropolitan Court (244). Judy Nakamura, chief judge, Metropolitan Court, reported since FY09 the court's operating budget was reduced $3 million, representing a 12.5 percent decrease in the overall budget. The court is requesting an FY12 increase of $911 thousand to cover personal services. Employees were furloughed in July and August saving $28 thousand. Seventy-thousand in ARRA funding prevented further furloughs. The court continues to delay preventive maintenance and dramatically reduced contracts. Metropolitan Court experienced a $75 thousand net increase in property insurance and had a total of 125 thousand new case filings in FY10.

Status Review of the Court Case Management System, E-Filing and E-Citation Initiatives. Aurora Sánchez, LFC information technology (IT) program evaluator, presented the status of the statewide court case management system and e-filing and e-citation initiatives. In 2007, the Legislature appropriated funding to replace the 10-year-old case management system. To date, the Legislature has appropriated $8.7 million from the general fund and $1.8 million from fee increases to the civil filing fee. In FY11, the civil filing fee is not anticipated to reach the appropriated level of $895 thousand. From the beginning of the project through October 2010, expenditures total $8.3 million. The case management system was rolled out to five magistrate courts and 12 district courts. The last of the courts in the 13th Judicial District (13th) will go live in December. Full implementation of the case management system is scheduled for December 2012, one year ahead of schedule. Court staff opinion about the system continues to be highly positive and the system is proving to be a good tool. The system uses the Sentencing Commission's charge code table, making it uniform across all courts. Staff at the Judicial Information Division (JID) is decreasing its reliance on contractor services and is getting better at rolling out the software.

E-filing capabilities were rolled out to two of the three courts in the 13th in FY10. In July 2010, the 13th made it mandatory for all civil cases to be filed electronically. The change has drawn objections from some attorneys partly because of the fees. Although their concerns are valid, additional training and disclosure by the court would alleviate or possibly eliminate concerns. To date, 9,600 e-filing envelopes have been filed in the 13th, generating $35 thousand in revenue, of which $29 thousand goes to the vendor as compensation for services and $6 thousand goes into the electronic filing fund.

Using electronic citations (TraCS) can save up to $262 thousand per year in clerk salaries and benefits at the magistrate courts and Motor Vehicle Division (MVD). Currently 781 officers in all law enforcement jurisdictions use the TraCS software. The Department of Public Safety (DPS), Motor Transportation and State Police Divisions issued 255,000 citations in FY10, MVD processed 303,000 citations and abstracts, and the magistrate courts processed 135,000 citations. Total savings identified in this and the previous review total $1.1 million per year.

Ms. Sánchez informed the committee that because the report was an update and not a full IT review, the staff is not making recommendations; however, the report contains suggestions about achieving savings and better collaboration among the courts, DOT, DPS, MVD, and AOC. Some of the suggestions included focused training for attorneys on e-filing, deploying the TraCS software to all DPS officers, and amending the Motor Vehicle Code to remove the signature requirement on citations. Representative Bratton suggested making sure the state and not the contractor owns the citation data.

State Engineer/Interstate Stream Commission (550). John D'Antonio, Jr., state engineer, presented the FY11 revenue sources and noted the budget is operating with 48.6 percent trust funds and 48.2 percent general funds. The current FTE total is 345, with the vacancies projected to increase from 57 to 65 by the end of the year. The department is concerned about the balances of the trust funds. The Irrigation Works Construction Fund is averaging a balance of $8.6 million and annual expenditures average $12.3 million. The Improvement to the Rio Grande Income Fund projections total $2.1 million with expenditures averaging $1.8 million. The State Engineer through litigation and adjudication program receives 10 percent of all water project funds with 20 percent of the distribution forwarded to AOC. Ten percent of the severance tax bond (STB) proceeds totaled $29 million with an annual distribution of $33 million.

In 2009, the agency received recognition from Quality New Mexico for its processes to streamline operations. The agency has also instituted a quality council focused on customer surveys to achieve agency efficiencies.

In 2005, the Indian Water Rights Settlement Fund Act required the State Engineer and the Interstate Stream Commission (ISC) to report on the status of the proposed Indian water rights settlements requiring state financing, distribution of funds from the Indian water rights settlement fund to implement approved settlements, and recommendations on appropriations to the fund necessary to timely implement Indian water rights settlements. Estevan Lopez, director, Interstate Stream Commission, said the Navajo Nation settlement was entered into between the state and the Navajo Nation in April 2005. In 2009, federal authorization allowed the secretary of Interior Department to execute on behalf of the Unites States a revised settlement agreement consistent with the act. The deadline for execution of the conformed settlement agreement is December 31, 2010. It is anticipated the review process will be complete by mid-December. Legislation authorized $870 million, requiring a $50 million state share for settlement project costs. To date, the state has appropriated approximately $31 thousand toward elements of the project. The federal fiscal budget recommendation for 2011 is $10 million to the Bureau of Reclamation and $6 million to the Bureau of Indian Affairs. The court entered a procedural order designating interstate processes that will likely be active beginning in 2011 and continue through 2012. The statutory deadline for the entry of the partial final decree is by the end of December 2013.

Mr. D'Antonio continued with the Aamodt settlement developments. In January 2010, H.R. 3342, the Aamodt Litigation Settlement Act and the Taos Pueblo Indian Water Rights Settlement Act, were debated and passed by the full House of Representatives. Both bills were presented to the Senate and are presently being held at the desk in that chamber. Since then, attempts to move the bill by unanimous consent have been unsuccessful with the next opportunity to be a constructive omnibus lands bill that would include the Aamodt and Taos settlements, as well as the Crow and White Mountain Apache settlements. Santa Fe County sponsored a series of 10 public meetings during the spring to increase the public knowledge and understanding of the terms of the settlement agreement. The meetings involved the state, the county, the pueblos, and legal and technical personnel to answer questions. A total 50-year cost for the project, including operations and maintenance and replacement costs, total $286 million. Of that, the proposed federal cost share is $169 million; the nonfederal is $116.9 million, and the state's portion is $50 million. The nonfederal funding would pay for non-Indian portions of the proposed pipeline delivering potable water from a purification plant near Otowi, through the Nambe-Pojoaque-Tesuque valley to each of the pueblos and non-Indian communities along its route. On September 17, President Obama's administration sent letters to the chairmen and vice chair of the Senate Committee on Indian Affairs and to the House Committee on Natural Resources expressing its support for the Aamodt Litigation Settlement Act.

Since November 13, 2009, the Taos Pueblo settlement project costs total $134 million. United States funding will be capped at $36 million, with the state's portion at $14.5 million.

In 2007, $10 million was appropriated to the Indian water rights settlement fund and was taken out by the 2009 Legislature and replaced with severance tax bond authorization. Currently, there is no cash in the fund and the ISC has not exercised its authority to sell the bonds. The governor, the State Engineer, and ISC reported a schedule of funding that will spread out the state's anticipated cost share over the Navajo Nation, the Aamodt, and Taos settlements over several years. Funding of $15.2 million was requested on a yearly basis. The state recently was able to amend pending federal authorization legislation that capped the index as of 2010 for the Taos settlement.

Senator Cisneros asked if there would be an impact on the terms of settlement agreements if requests were not earmarked. Mr. D'Antonio said there was funding set aside for base and development funds to be applied toward Indian water right settlements.

Senator Morales asked if the state was in jeopardy of losing $128 million of nonreversible federal funds for the Arizona Water Settlement Act. Mr. Lopez said the planning group evaluated 55 proposed projects; however, the group reduced the number to a minimum. The state is not at a critical point in losing funding, but the project has to keep moving forward. The proposed budget includes a request to use federal funding to continue the process. Mr. D'Antoino suggested that if federal authorization is granted, a portion of funding from the severance tax bond be set aside for Indian water right settlements.

State Treasurer (394). James B. Lewis, state treasurer, State Treasurer Office (STO), reported the FY12 budget request is flat. Revenue supporting the budget includes $122 thousand earned from local government investment pool fees, a total of $400 thousand annually. The remainder, $3.79 million, is direct general fund appropriation. Over the last two years, the budget has been reduced by 15 percent, from a high of $4.6 million to a current base of $3.9 million. The office is authorized 42 FTE and currently has eight vacancies with a 19 percent vacancy rate. Other budget categories are being reviewed to identify potential cost savings.

The FY10 audit is on track to be completed as of December 1. The new cash forecasting model is in use for revenue and expenditure projection. SHARE enhancements initiated by DFA and STO are expected to be completed by December 31. The STO website provides significant information, including daily investment rates and monthly, quarterly, and annual investment reports, allowing transparency and accountability to the public.

STO successfully transitioned to a new fiscal agent bank, Wells Fargo, and a new custodial bank, J.P. Morgan, selected by the State Board of Finance. Proposed legislation will update public fund statutes and definitions to reflect current business practices and industry standards. STO wants to allow up to 35 percent of the market value of the general fund and state bond proceeds funds to be deposited into local government investment pool (LGIP). Mark Valdes, deputy state treasurer, added STO has more $1 billion in the general fund portfolio model. Total portfolios are $3.6 billion.

Secretary of State (370). Mary Herrera, secretary of state (SOS), requests a flat FY12 budget of $4.528. Savings were incurred by implementing programs at the beginning of the fiscal year.

The 2010 general election cost was $4.2 million, or $324 thousand less than it projected it would cost. For the 2010 election, it implemented AutoVote and used nonprofit bulk mailing rate to send information cards. Although the SOS spent less than it projected it would for the general election, its expenses still exceeded its appropriation of $4 million and it is requesting a $225 thousand loan from the Board of Finance (BOF).

Ms. Herrera provided the following suggestions on how to reduce election expenses:

- Eliminate voter information cards;
- Publish constitutional mandates, amendments, and general obligation bond questions in one newspaper in every county for one week rather than four weeks;
- Publish the governor's proclamation for one day rather than five days;
- Report by legislative district rather than by precinct.

Ms. Herrera said the statewide voter registration system maintenance was paid by the counties and counties no longer want to pay the $540 thousand cost. Counties explained they had the freedom to contract with best and lowest vendor. Instead, the SOS entered into a contract with a single vendor and did not make the counties a party to the maintenance contract; therefore, the state is the responsible party. The SOS will request a loan from BOF to pay for the maintenance until the issue is settled during the legislative session.

Representative Bratton asked if steps are being taken to remove inactive voters from the mailing list. Ms. Herrera said inactive voters will be flagged and sent to each county clerk to be removed from the rolls.

State Auditor (308). Hector H. Balderas, state auditor, reported the general fund appropriation for FY11 totaled $2 million. Other funding includes $400 thousand from audit fees and from an audit fund that historically contributed $217 thousand. At the request of LFC, funding from the fund increased to $418 thousand; however, the fund is set to become insolvent in the next two years.

The Office of the State Auditor (OSA) submitted an overall flat budget for FY12, minus the 3.2 percent reduction with a general fund increase of $248 thousand. In recent years, OSA expanded its operations due to signs of waste, fraud, and abuse or deficiencies at agencies, cities, and counties. OSA received over 300 tips from citizens and has referred 301 matters to independent auditors, 45 to the attorney general, 129 to district attorneys, 64 to law enforcement, and 211 to oversight agencies.

OSA instituted the "at-risk" designation program to address late audits by notifying agencies that they being monitoring. Since then, 91 cases totaling over $1 billion were reduced to 35 cases within six months and most became compliant with the Audit Act. In addition, auditors are required to analyze findings and hold agencies accountable. OSA is also providing training to school boards, government officials, and community leaders and is participating with the Legislative Education Study Committee (LESC) to improve accountability at the school level. Chairman Varela suggested proposing legislation to intercept allotments for local governments in addition to school districts.

Public Education Department (924). Susanna Murphy, secretary designate, Public Education Department (PED), reported the department submitted a flat budget with two exceptions: funding for unemployment liability insurance and funding for the FY12 audit. Ms. Murphy noted the proposed budget excludes federal stimulus funding. PED currently has 82 vacant positions.

Steve Burrell, interim deputy secretary, finance and operations, provided an overview of the FY12 budget request. The FY11 operating budget after adjustments totaled $13,955. The FY12 base request totals $14,332. Mr. Burrell noted PED now has the option to carry over federal funding through multi-year budgeting, resulting in a decreased federal fund request.

In response to Chairman Varela, Mr. Burrell said PED has a thorough budget review process for public schools; however, the state equalization guarantee (SEG) provides funding through a noncategorical method. PED does not have the authority to direct school districts or charter schools to hold the line on salaries. Vice Chairman Smith expressed concern with PED not having adequate authority over public school funding.

Landon Mascarenas, executive director, Teach for America, reported the program has been in existence for 20 years and has been in New Mexico since 2001. Teach for America is the national corps of outstanding recent college graduates who commit to twoyears of teaching in low income communities and become life-long leaders for expanding education opportunity. The program has 8,500 teachers around the country and 20,000 alumni working across all career sectors.

Wednesday, November 17

The following members were present on Wednesday, November 17: Chairman Luciano "Lucky" Varela, Vice Chairman John Arthur Smith, Representatives Donald E. Bratton, Rhonda S. King, Don Tripp, Edward C. Sandoval, Jeannette O. Wallace, Nick L. Salazar, and Henry "Kiki" Saavedra; and Senators Clint Harden (for Sue Wilson Beffort), Rod Adair (for Carroll Leavell), John M. Sapien, Mary Kay Papen, Howie Morales (for Pete Campos), Carlos Cisneros, and Stuart Ingle. Speaker Ben Lujan and Representatives Jim Trujillo and Ray Begaye attended as guests.

Corrections Department (770). Joe R. Williams, secretary, Corrections Department, reported the FY12 budget request was submitted to DFA and the LFC on September 1. The total budget request is $295 million from all funding sources and includes $273 million from the general fund; a 1.5 percent increase from the initial FY11 budget request. In comparison with the adjusted FY11 operating budget, the FY12 request is 10.3 percent higher in the general fund appropriation. During FY10 and FY11, the department was reduced by $24 million in general fund moneys and $3 million from fund balances supporting the operation. The FY12 overall budget request is $500 thousand less than the initial FY11 operating budget. The department swept an idle $700 thousand in parole and probation fees into its budget. The department is anticipating an increase in the cost of employee benefits, as well as utilities, and other fixed costs. Because the department is moving inmates from private prisons to public prisons, it is critical to maintain public facilities ensuring safety for staff and inmates. To accommodate the necessary budget, vacancy rates from large program areas ranging from 7.5 percent to 10 percent were decreased.

Secretary Williams said the Office of the State Auditor (OSA) was notified about contract irregularities within the department. The contracts were related to cameras, asphalt and ceilings, and heating and air systems. The department requested and funded a special audit by OSA.

Secretary Williams said LFC reported a potential annual savings of $6 million if penalties were imposed on the private prison contractors. In FY09, $13.7 million was spent to operate the Guadalupe County Correctional Facility and $12.7 million was spent to operate the Northeastern New Mexico Correctional Facility. During the same period of time, Western New Mexico Correctional Facility had an operating budget of $14 million. In 2006 to 2010, the GEO Group, Inc., and Corrections Corporation of America (CCA) were paid a total of $21.6 million in gross receipts and property tax. Both contractors have taken on the responsibility of transporting inmates at their own costs. CCA spent $2.7 million in overtime costs from 2007 to 2010 to cover vacant positions and GEO spent $3.6 million between 2006 and 2010. The state of New Mexico has never imposed staffing penalties in the more than 20 years it has contracted with private prison operators. All private prisons are fully accredited by the American Corrections Association.

In response to Senator Papen, Bianca Martinez, bureau chief, Mental Health Services, said one out of every four inmates is in mental health treatment, with a higher percentage for women. Approximately 22 percent of inmates entering prison are already on psychotropic medications. The severity and acuity of mental health problems have increased markedly over the last year. Nationally, the mentally ill are three times more likely to be in jails or prisons than in treatments. National studies indicate the mentally ill recidivate more frequently and have substance abuse problems. Prisoners are released with 30 days worth of medication and are referred to the nearest outpatient clinic in the community. The department is also working closely with Optum Healthcare for outpatient visits upon release. Senator Harden asked if probation officers are given mental health training. Ms. Martinez said community correction officers have smaller caseloads and are trained annually and are geared to work with communities. Senator Papen suggested that additional mental health training be provided to parole officers.

Miscellaneous Committee Business

Action Items

Approval of LFC Minutes. **Cisneros moved to approve the September 2010 and October 2010 minutes, seconded by Representative Wallace. Motion carried.**

Approval of Contracts. Director Abbey presented five contracts to hire temporary staff during the session to help with fiscal impact reports (FIR). **Senator Cisneros moved to approve the proposed contracts, seconded by Representative Tripp. Motion carried.**

Approval of October Subcommittee Reports.

Representative Saavedra moved to approve the October Subcommittee A report, seconded by Senator Papen. Motion carried.

Senator Cisneros moved to approve the October Subcommittee B report, seconded by Representative King. Motion carried.

Information Items
Review of Monthly Financial Reports

FY10 LFC Financial Audit. Director Abbey reported no exceptions for the FY10 LFC financial audit.

Full-Time Employees by Agency. Director Abbey referred members to the full-time employees (FTE) by agency report, as well as the exempt FTE report.

LFC Program Evaluation Status Report. Director Abbey reported evaluation staff is completing a report on public employee health care and is preparing to present reports on school districts and the Coordination of Long-Term Services (COLTS) Program at the January meeting. Three new projects are proposed for 2011. They include review of grade 12 issues in conjunction with University of New Mexico (UNM), efforts on Medicaid healthcare fraud, and child protective services.

Chairman Varela recognized Anthony Armijo, comptroller, Department of Finance and Administration (DFA), for his years of services to state government and presented him with a letter on behalf of the LFC and the Legislature.

Department of Finance and Administration (341) and Special DFA-Appropriations (344). Dannette Burch, secretary designate, Department of Finance and Administration (DFA), provided an overview on the core services for the department and the FY12 operating budget request totaling $14.1 million from the general fund. The overall budget request totals $65.4 million. The nonoperating budget request totals $18 million, of which $10 million is supported by general fund. Ms. Burch noted the budget request does not include funding for the Board of Finance (BOF) director. DFA submitted a $750 thousand supplemental request for the BOF emergency fund. BOF received a number of requests from local entities and state agencies. Ms. Burch provided an overview of ongoing initiatives for each division.

Ms. Burch clarified information regarding the published $450 million shortfall for FY11. The numbers do not represent any scenario or a budget plan; they simply represent the FY12 budget outlook for the general fund. DFA is not in a position to make assumptions about budget growth or expiring solvency initiatives contained in the executive's version of the outlook without consulting the new administration. The outlook is consistent with proposed state agency budgets. DFA staff met with DFA secretary designate May to provide a high level budget briefing and access to the State Budget Division. DFA is in the process of responding to transition team requests and questions.

Chairman Varela requested an estimate of local government property tax assessments levied for operational costs. Rick Martinez, deputy secretary, DFA, added that DFA is developing a report card for local governments to address long-term debt, audits, budget status, and quarterly reporting. Representative Bratton suggested collecting information regarding the number of employees and the percentage of funding for administrative overhead, as well as benefits provided to employees before funding is provided to nonprofit organizations. Vice Chairman Smith expressed concern with funding organizations participating on campaign issues. Bill Strouse, New Mexico Legal Aid, said nonprofit organizations are prohibited from participating in political activities. In addition to Representative Bratton's request, committee members requested lobbyist information and government funding information. Representative Varela requested information regarding salaries for contract providers in the Civil Legal Service program.

Big Brothers Big Sisters of Northern New Mexico. Andrea Merrill, executive director, Big Brothers Big Sisters of Northern New Mexico provided an overview of the program's mission. The program holds itself accountable for higher aspirations, greater confidence, better relationships, avoidance of risky behaviors, and educational achievement and measures its impact directly through many vehicles, including a youth outcome survey. Over 3,000 children were served in 2009 despite economic challenges; the same number of children is being served in 2010. An increasing portion of funds are provided through private funding from donors.

Senator Morales asked if the program was seeking additional ideas for increasing fundraising efforts. Ms. Merrill said the program shares best practices with other state associations; however, annual grant funding from private foundations have decreased.

Workforce Solutions Department (631). Ken Ortiz, secretary, Workforce Solutions Department (WSD), reported the FY12 budget request is equal to FY11 expenditures. Secretary Ortiz noted WSD received additional federal funding for the Unemployment Insurance Bureau; therefore, the department is not requesting a general fund appropriation. WSD is requesting $600 thousand for the At Risk Youth Program and $250 thousand for the individual development accounts program.

Secretary Ortiz provided an overview of department challenges, revenue sources, expenditures, cost-saving measures, and accomplishments. WSD currently has a vacancy rate of 16.6 percent. Secretary Ortiz noted , the unemployment rate was 8.2 percent inSeptember 2010, down from 8.8 percent in March 2010.

Status of Unemployment Insurance Trust Fund and Solvency. Secretary Ortiz reported a 500 percent increase in the unemployment insurance (UI) trust fund during the last 18 months. The state is taking proactive measures to maintain solvency. New Mexico is one of 13 states with a positive trust fund and it is projected to be one of only 10 states to have a positive trust fund by the end of the year. However, the fund is projected to become insolvent by August 2011.

As of November 1, 2010, the trust fund balance totaled $201 million. Currently, WSD is paying $850 thousand a day in unemployment benefits. Federal extensions increased the number of weeks the unemployed are eligible for benefits to 93. As of November 30, the federal extensions will run out, decreasing eligibility benefits to 46 weeks. In addition, beginning December 1, WSD will pick up a 50 percent share of the extra 20 week eligibility. During the last legislative session, House Bill 144 transferred $117 million out of the state unemployment trust fund, and weekly benefits dropped from 60 percent to 53.5 percent. Employer contribution rates will increase to Schedule 1 effective January 1, 2011. Legislative action is needed to generate revenue and decrease expenditures.

Secretary Ortiz explained that when a state becomes insolvent, the state borrows from the U.S. Department of Labor (USDOL). New Mexico statute requires the employer contribution level to increase to the highest schedule and the estimated average yearly cost per employee would increase to $512. The interest of the USDOL loan must be paid with non-federal funds and employers will lose the federal tax credit. Secretary Ortiz noted in FY10, WSD paid $376 million in benefits. Of that amount, $342 million were regular benefits.

As of January 1, 2011, WSD projects the trust fund balance to be $138 million. The department expects to collect $209 million in contributions and pay out $429 million in regular benefits, as well as the additional 50 percent in federal extensions leaving a deficit of $82 million in January 1, 2012.

In response to Senator Morales, Secretary Ortiz said 80 percent of UI call center calls are handled through self service. Out of the remaining 20 percent, 65 percent of individuals had exhausted benefits and were referred to Human Services Department's (HSD), Income Support Division. Senator Morales asked if case management decisions could be given at the local level. Secretary Ortiz said the department is working with local boards on a memorandum of understanding (MOU) to provide access to the UI information data base.

Aging and Long-Term Services Department (624). Michael Spanier, secretary, Aging and Long-Term Services Department (ALTSD), presented an overview of the population served by ALTSD. It is projected there will be 343,000 individuals over the age of 65 in 2015, and nearly 500,000 over the age of 60. Currently, it is estimated that 15 percent of New Mexicans are living with a disability. Secretary Spanier provided an overview of strategic priorities including

- Increased access to home and community based services,
- Zero tolerance for adult abuse, neglect and exploitation,
- Support for caregivers,
- Support of individuals in self-direction,
- Support of geriatric and adult behavioral health needs,
- Advocacy for economic security,
- Promotion of active and healthy lifestyles,
- Promotion of social and civic engagement.

Secretary Spanier said ALTSD serves long-term service needs through its Adult Protective Services program and noted that 16,708 individuals are on the waiting list for services under the Coordination of Long-Term Services (CoLTS) "c" waiver program. Individuals are also served through the department's Aging and Disability Resource Center. The aging network ensures adults have access to services such as food, transportation, and adult day care. ALTSD's ombudsman protects and advocates for the rights of individuals and assists them in community re-integration. Matt Onstott, deputy secretary, ALTSD, provided additional information regarding the department's programs.

ALTSD is requesting an additional $1 million in the FY12 budget request for the Aging Network Division. Secretary Spanier added that since FY09 the department has experienced a $6.5 million decrease in general fund appropriations. Overall, the FY12 budget request for ALTSD totals $45.8 million.

Public comment:
Charlie Phillips, executive director, Chavez County Joy Centers, Inc., provided testimony in favor of restoring funding for the Aging and Long-Term Services Department. Additional funding reductions will affect delivery of services. Ms. Phillips also requested the department remain independent.

Carolyn Hat, client, Open Hands, provided testimony in support of funding for ALTSD.

Rumaldo Griego, county commissioner, Socorro County, provided testimony in support of funding for ALTSD, as well as maintaining its independence.

Representative Saavedra asked if all cities and counties around the state are assisting the department during this period of budget deficit. Secretary Spanier said it varies according to the capacity of each local municipality. Vice Chairman Smith emphasized that both education and Medicaid have been held harmless and suggested the department request supplemental funding from the executive.

Economic Development Department (419). Fred Mondragon, secretary, Economic Development Department, reported the department is requesting a flat budget for FY12. The department currently has eight vacancies and is under mandate not to fill those vacancies. Secretary Mondragon noted he will be retiring at the end of the year. In retirement, Mondragon will serve as Honorary Spanish Consul for New Mexico.

Secretary Mondragon highlighted capital outlay projects for FY10 and FY11. The department is requesting $5 million for the job training incentive program (JTIP), $5 million for the economic development fund (LEDA), and $2 million for MainStreet in FY12.

Tom Bowles, science advisor to the governor, reported on the status of the Research Application Center (RAC). The center was created in statute in 2009 as a 501(3) C nonprofit. The department is requesting $5 million in capital outlay to be used for matching grants for technology commercialization and an additional $3 million for energy innovation.

Public comment:
Alfonso Ortiz, mayor, Las Vegas, provided testimony in favor of the MainStreet program.

Becky Griffin, Main Street Coalition, testified the MainStreet program has helped local communities create businesses, rehabilitate commercial districts, and leverage private sector reinvestments. The community driven program continues to be a rural economic development tool for revitalization. The MainStreet success is due to the national, state, and local support, as well as the administration, coordination, and orchestration of the program's resources and its consultants.

In response to Chairman Varela, Secretary Mondragon said the reduced overall income tax rate has been an effective tool for the state; however, he noted there are surrounding states that do not have an income tax.

Office of Military Base Planning (491). Hanson L. Scott, director, Office of Military Base Planning, reported the office was established in the 2003 session. The commission is chaired by the lieutenant governor and consists of the leaders of the New Mexico community-military partnering organizations around the state. The commission and office was recognized by the Department of Defense as a model state organization. General Scott provided an overview of accomplishments and military installations, all in a state of transition.

General Scott noted the secretary of defense announced efficiency measures and directed the services to identify bases than can be closed; however, no legislation has been proposed at this point. He also noted that renewable energy initiatives have encroachment issues, particularly for the Army and Air Force, and may impact of military missions, testing, and training.

Thursday, November 18

The following members were present on Thursday, November 18: Chairman Luciano "Lucky" Varela, Vice Chairman John Arthur Smith, Representatives Donald E. Bratton, Rhonda S. King, Don Tripp, Edward C. Sandoval, Jeannette O. Wallace, Nick L. Salazar, and Henry "Kiki" Saavedra; and Senators Clint Harden (for Sue Wilson Beffort), Rod Adair (for Carroll Leavell), John M. Sapien, Mary Kay Papen, Howie Morales (for Pete Campos), Carlos Cisneros, and Stuart Ingle. Representative Jim Trujillo and Senator Timothy Keller attended as guests.

Economic Development Investments in the State's Permanent Funds. Steve Moise, state investment officer, State Investment Council (SIC), provided information on the nine economically targeted investments (ETI) mandated or recommended by the Legislature. The three most substantial are the New Mexico private equity funds and business investments. The cost of $268 million resulted in a 1031 market value of $159 million and constitutes 9 percent of the severance tax permanent fund. Film loans have not resulted in substantial investments and remain stable because they are secured by letters of credit issued by financial institutions. The small business investment corporation (SBIC) dropped in market value from $47 million to $38 million. Mr. Moise said the Legislature authorized 59 percent of the severance tax fund for use for r ETIs and suggested the Legislature analyze the percentage; currently, only 11 percent is being deployed into ETIs. ETIs have a cost of $411 million and had a market value of $294 million as of the end of October.

The severance tax permanent fund has underperformed the land grant fund on a 15-year annualized basis; 6.8 percent versus 6.3 percent. A more significant number appears when looking at a 10-year time frame; severance tax at 3.1 percent and land grant at 2.3 percent. The funds used for economically targeted investments are primarily from fixed income portfolio. Over the last decade, fixed income investments have been safe in volatile markets. The severance tax fund is considerably under-weighted in fixed income. The ETIs provide more ability to strengthen the fixed income allocation. There have been significant contributions from oil and gas revenues to the land grant fund because the money cannot be intercepted between the time it is generated and the time it is received. The severance tax fund receives only minimal contributions from oil and gas and other revenues affecting the growth of the fund. Chairman Varela asked what the market value is for each fund. Charles Wulman, director, communications, said the severance tax fund as of October 31 was at $3.6 billion and the land grant fund was at $9.66 billion. Chairman Varela said the intent of the Legislature to diversify the land grant fund and the severance tax fund was to set limits on the types of investments.

Tom Clifford, chief economist, LFC, reported these investments are clearly, negatively impacting the yield on the severance tax permanent fund, resulting in significantly lower distributions to the general fund with no way to evaluate the benefits. SIC is required to invest funds in accordance with the Uniform Prudent Investor Act. LFC staff recommends the SIC provide the Legislature with additional information on the economic benefits to the state.

Mr. Clifford said the difference in return on the severance tax fund and the land grant fund is entirely due to the requirement that the severance tax be partially invested in economic targeted investments. Based on the distribution formula, the general fund is taking an annual hit of $12 million. The performance of the severance tax permanent fund over the last 15 years is no higher than it was 12 years ago and inflation has reduced the value of the fund by one-third. Mr. Clifford noted the goal of the managers is to preserve the real value of the fund and not the nominal value.

Mr. Clifford provided interest on the film loan performance and said the state has forgone almost $35 million of interest over the last eight years. Legislative guidance is too general on how funds are managed. SIC needs quantitative criteria and specific directives. LFC staff recommends limiting additional requirements until there is a better handle on the program.

Senator Harden asked why a growth projection is used. Mr. Moise said SIC does not think they should use a growth projection; therefore, it is being re-examined. SIC will adopt a new projection within the next three months of approximately 7 percent to 7.5 percent.

In response to Senator Sapien, Greg Kulka, director, private equity and hedge funds, SIC, said Sun

Mountain is used as a consultant to monitor the private equity funds and is paid $100 thousand a year. They are also a general partner running a co-investment fund and are paid a 2 percent annual fee of an uncommitted amount that will drop when the investment period for that fund is over. In addition, they earn 20 percent of the profits. The balances reflect the fee amounts. Senator Sapien expressed concern with limiting part of the funds and suggested the Legislature re-examine whether the EITs should be part of the asset allocation law. Representative King added investments with different standards complicate policy and suggested that funds have to always meet the standard of prudent investment.

Representative Bratton said inflation has eroded the value of the severance tax permanent fund and is a lack of discipline on the part of the Legislature. The Legislature needs to revisit legislation earmarking funds with regard to the percentage amount for ETIs and add language to restrict investments subject to the prudent investment or repeal the language.

Evaluation of State Employee Interagency Benefits Advisory Committee Performance Review. Pamela Galbraith, program evaluator, LFC, reported the program objectives for the review were to assess the cost control efforts and oversight of health plan administration by the New Mexico Public Schools Insurance Authority (NMPSIA) and the Risk Management Division (RMD), General Services Department (GSD); review and assess NMPSIA and RMD performance monitoring to determine if enrollees in the state are receiving quality products and service; and review opportunities to coordinate and strengthen public health care purchasing and benefit alignment including through the Interagency Benefit Advisory Committee (IBAC).

The New Mexico Retiree Health Care Authority (RHCA), NMPSIA, RMD, and the Albuquerque Public Schools (APS), were mandated to form the IBAC through the Health Care Purchasing Act to coordinate purchasing. The agencies issue single requests for proposals (RFPs) for services but have not consolidated purchasing and continue to enter into separate contracts with vendors. Each entity designs their own benefit plan and continues to administer separate programs with associated costs of those programs. Ms. Galbraith noted over the last year, IBAC consolidated purchasing for pharmacy benefit management, a move projected to save $51.5 million over the next four years.

RMD and NMPSIA plans are self-funded and have over 135,000 enrollees. In FY10, over $520 million was spent on administrative costs and healthcare claims. Each entity is allowed to accept other public bodies to join their pools. Health benefit programs are funded through employer and employee contributions. The percentage of contributions is determined by a percentage of income and run between 20 percent and 80 percent. These two entities contract with insurance companies to provide administrative services such as claim payment processing and utilization review. NMPSIA also contracts with an additional third-party administrator to help with other administrative functions. Both agencies have the responsibility for the administration of other lines of insurance: property and casualty liability, disability, life, loss control, and workers' compensation. In evaluating the cost-control efforts in the administrative oversight of the health plan, opportunities exist to coordinate and strengthen public healthcare purchasing and benefit alignment.

From FY04 to FY10, spending increased 84.6 percent, or more than $237 million. Although higher enrollment in previous years added to the cost, additional enrollment is no longer the answer for increasing costs. From FY08 to FY10, the growth in cost continued to increase despite a 5 percent decrease in enrollment. This strongly suggests that provider rates are causing the increases. The mandate in the Medicaid expansion will create challenges for other state priorities, including funding the existing plans.

From FY07 to FY09, public employee salaries increased 8.8 percent and premiums increased 13.5 percent. Each agency increased the maximum amount of out-of-pocket expenses that could be imposed on enrollees. Paid claims do not represent the amount contributed by employees. In FY10, employees contributed an additional $49.1 million towards the payment of claims. Based on an actuarial assumption for medical trends in FY11 and FY12, medical spending may increase an estimated $96.5 million for both agencies. RMD calculation projections for FY11 also indicate $3.3 million in savings in the new pharmacy benefit program. Neither agencies benchmark pricing or utilization with other public funded programs. Average spending increased in all categories of care and all regions of the state while utilization remained flat or decreased. Regional spending per member varies widely and represents opportunities for cost savings by managing outlier costs through targeted improvements in pricing and utilization. Significant savings could also be realized in the per-member cost if all plans were brought down to the level of the lowest cost plan. High-priced hospitals also impact cost. The national net profit margin for hospitals is 2.64 percent, compared with New Mexico at 9.88 percent.

Both agencies can improve oversight of administration of plans and emphasis on quality improvement; contractors develop and maintain fee schedules. RMD expressed concern that interjecting the state in provider negotiations might increase liability by opening up a contract interference lawsuit. Administrative fees totaled $31.7 million in FY09 and $28.8 million in FY10. The decrease in administrative fees is primarily due to the decrease in enrollment. RMD increased the administrative fee for one insurance company by 4.5 percent, at a cost of $271 thousand in FY11 in spite of the state facing decreasing revenues. Neither plan has standardized management reports for cost and the use of health care and the agencies do not have reports issued in the same time period, making it impossible to measure metrics across healthcare plans. Neither agency receives quality of care information regarding members' health care or requires performance expectations from the plans related to the health status of their clients. In addition, RMD does not have sufficient performance information to justify additional expenses for disease management and wellness programs. NMPSIA eliminated disease management and wellness programs and opted for a different disease management program.

LFC staff suggests other opportunities for cost savings:

- Increasing the number of insurance claim audits from insurance companies;
- Imposing a surcharge on spouses who have healthcare options through their own employer, but are attached to the state employee health plan;
- Changing eligibility categories for NMPSIA;
- Review the value of employee assistance programs (EAP);
- Conduct a primary enrollee verification

LFC staff strongly encourages the state agencies to actively participate in provider rate development by establishing acceptable rates for state sponsored programs and to decrease administrative rates back to the FY09 levels. LFC staff also recommends performing an independent rate validation study to compare the state plans to other plans. Combining NMPSIA and RMD into a new health care authority would better position the state to contain costs, improve quality, attract other entities to participate, and reduce administration. LFC staff recommends legislation in the Health Care Purchasing Act, the Group Benefit Act, and the creation statutes for NMPSIA and RMD be amended to abolish both programs to create a new health care authority to administer health and benefit risks and model it after the NMPSIA. In addition, it is recommended the legislature maintain its fiscal and operation oversight and establish a board with defined membership.

Arturo Jaramillo, secretary, General Services Department (GSD), reported GSD has 13 staff members who operate the Employee Benefits Bureau and are responsible for 77,000 lives. The budget for the Employee Benefits Bureau increased from $437 million in FY08 to $488 million in FY09. In FY10, the budget decreased to $464 million and is currently at $432 million. RMD provides expertise in managing claims, developing rates for approval, and overseeing major contracts. RMD does not have the resources to enter the market place and develop enough power to have an influence on the cost of medical care. Since 2000, administrative services fees have been at 7 percent. The federal Health Care Reform Act requires 85 percent of premiums go directly to healthcare providers. Increased costs in provider rates are due to substantially increased enrollment. In FY09, premiums were increased 7.4 percent. In FY10 and FY11, premiums remained flat by utilizing plan design changes, utilizing health benefit reserves, and employee out-of-pocket expenses.

Christy Edwards, deputy director, NMPSIA, agreed with comments from Secretary Jaramillo and said as Medicare reimbursements come down from the federal level, New Mexico providers will request increases to make up for the shortfall. The NMPSIA board of directors would like to maintain its autonomous board for focus solely on its members.

In response to Representative Tripp, Ms. Galbraith said NMPSIA made the most dramatic changes in cost sharing. Data does not take into consideration the additional cost contributed by employees.

State Fair Commission (460). Craig Swagerty, general manager, State Fair Commission, reported that from FY07 to FY10, Expo New Mexico decreased its over-all operating deficit by $1.1 million, from $3 million to $1.9 million, with the majority of the decrease occurring through the reduction of personnel expenses. Additional policies are being implemented to cut overtime and payroll costs. Currently, the agency has six authorized exempt vacant positions.

Operation of the State Fair was decreased from 17 days to 13 days, resulting in revenues of a negative $365 thousand in 2009 to a positive $1.5 million in 2010. The agency is considering a further reduction of State Fair days in 2011, planning to run 10 consecutive days. This follows successful models used by state fairs across the country. The State Fair is located on 237 acres of land that houses 22 permanent buildings with over 300,000 square feet of rental space. Additionally, there is the Tingley Coliseum and the Downs Racetrack and Casino. All of these facilities require maintenance and some significant maintenance given their age. The agency has four principal sources of income: the State Fair, the Downs, rentals, and the flea market. The State Fair accounts for approximately 50 percent of total revenues and profits annually. Rentals related to exhibition and entertainment accounts for approximately 25 percent of Expo revenues. The Expo receives a payment of $2.2 million a year as a result of its current lease agreement with the Downs. Mr. Swagerty noted the agency is considering conducting business with the farmer's market to bring in additional income.

The State Fair is requesting $1.7 million in capital outlay, with costs related to bringing Tingley Coliseum and the food court up to code being the priority. In response to Vice Chairman Smith, Mr. Swagerty said several repairs have been done to the building at the Downs. The electrical system, the plumbing system, and the building as a whole are not up to code, and these problems must be addressed for the building to remain functional. Representative Sheryl Stapleton and a delegation that supports funding for the African-American Performing Arts Center expressed concerns with further budget reductions for a facility that plays a significant role in the community.

District Attorneys/Administrative Office of the District Attorneys (251-265). Richard Flores, 4th Judicial District Attorney and president of the District Attorney's Association, reported general fund appropriations have continually decreased from FY08 to FY11, resulting in an average reduction of 10 percent while case screening continue to increase dramatically. Several districts instituted employee furloughs, have turned to officer prosecution, and have foregone prosecuting misdemeanor cases. Chairman Varela said in recognizing resources at the state level, all revenue has to be considered. The Legislature raised concerns with out-of-cycle salary adjustments for district attorneys.

Kelly Kuenstler, director, Administrative Office of the District Attorneys (AODA), reported district attorneys (DAs) are being aggressive with federal grants; however, they are difficult to measure because of the different grant periods. DAs are also aggressive with information technology, resulting in decreased down-time for district attorney users, improved speed to systems, and enhanced security, as well as stressing the accountability of users on the internet. Other saving measures include negotiating expert witness fees resulting is significant savings. Ms. Kuenstler provided information on the number of furlough days, layoffs, and vacancies from July 1, 2010, to the present.

AODA is proposing an amendment to state law to generate revenue for automated victim notification. The proposal was presented to the New Mexico Sentencing Commission and will be presented to the Public Regulation Commission (PRC) within the next couple of weeks. AODA is studying other states to determine how they are raising revenue to pay for victim notification. To date, information has been received from 17 states.

7th District Attorney. Clint Welborn, district attorney, 7th Judicial District, requested a flat budget of $2.3 million. Contracts were eliminated to accommodate the 3.2 percent reduction imposed by the executive. The district currently has 5 vacant positions and has not had to enforce furloughs or layoffs. Mr. Welborn noted the district has not received federal drug intervention, tribal, or southwest border funds for the last five years.

6th District Attorney. Mary Lynne Newell, district attorney, 6th Judicial District, reported the district currently has 35 FTE and two vacancies. General fund appropriations are used to cover salary and benefits only since September 2010. The fiscal year began with a balance of $175 thousand in southwest border funds; however, as of January 1, it will drop to $57 thousand.

5th District Attorney. Jeannetta Hicks, district attorney, 5th Judicial District, reported the district converted to a paperless office, resulting in reduced operating costs. In addition, the district received a grant for video conferencing. The district currently has three vacant positions.

11th-1 District Attorney. Rick Tedrow, district attorney, 11th Judicial District Division Ie, reported the district has the largest southwest border budget and anticipates enough funding for 18 months. The district currently has five vacancies and has under-filled 4 attorney positions with paralegals. The county is in the process of building a new facility for the DA; however, funding will be required to move into the facility. The DA is also requesting an expansion of 2 FTE.

11t-2 District Attorney. Karl Gillson, district attorney, 11th Judicial District Division II, reported the district currently has 9 FTE, including one vacant deputy district attorney position. In FY09, DA's carried an average caseload of 421. Caseloads increased to 464 in FY10. Mr. Gillson said the district was able to hire two term employees through supplemental funding received from the McKinley County liquor excise tax fund. Mr. Gillson encouraged legislation for a statewide excise liquor tax. The district received a $90 thousand grant through the U.S. Traffic Safety Bureau. As a result of the grant, an attorney was hired strictly for DWI prosecution. In addition, in collaboration with the U. S. attorney's office, the district received a $200 thousand grant.

3rd District Attorney. Amy Orlando, chief deputy district attorney, 3rd Judicial District, requested a flat budget with no increases. The district currently has nine vacancies. During the current fiscal year, employees participated in a voluntary furlough. In response to Senator Papen, Ms. Orlando said the district is experiencing an increase in cases from the border area.

8th District Attorney. Daniel Romero, chief deputy district attorney, 8th Judicial District, reported the budget request as presented allows the district to operate at minimum efficiency to ensure public safety. The district has two employees on leave of absence for medical and military purposes. Further reductions to the budget will result in minimal efficiency placing public safety in jeopardy. Juvenile cases and probation revocations in Colfax and Union counties are lagging behind placing further burden to timely prosecute cases. The district is requesting an additional judgeship.

10th District Attorney. Kelly Kuenstler, AODA director, presented the district's budget totaling $1061. The request includes funding for one vacant position and audit fees.

9th District Attorney. Kelly Kuenstler, AODA director, requested an increase in contractual services for audit fees. All other categories remain flat.

13th District Attorney. Lumuel Martinez, district attorney, 13th Judicial District, reported a reduction over the last three years.

2nd District Attorney. Kari Brandenburg, district attorney, 2nd Judicial District, reported the district experienced a reduction of 10.1 percent over the last couple of years. The district mandated two hours of unpaid leave for every employee and encouraged employees to take voluntary leave without pay. Other cost-saving measures include eliminating cell phones, decreasing paper use, reduced parking fees, and negotiating with expert witnesses. The district anticipates leaving 11.5 positions vacant. The budget request includes an expansion in contractual services for security purposes.

4th District Attorney. Richard Flores, district attorney, 4th Judicial District, requested a budget increase for insurance and benefits, as well as an increase in contractual services.

12th District Attorney. Diana Martwick, district attorney, 12th Judicial District, reported the district is the third largest in the state. Court cases require additional attorney screening time due to a new law enforcement community with limited resources. The district has a two-year plan for southwest border funds; however, with additional reductions, funds are not expected to last the full two years. The district currently has three vacancies and has double-filled positions.

1st District Attorney. Angela "Spence" Pacheco, district attorney, 1st Judicial District, requested a flat budget with an exception of an increase of $51.4 thousand in unemployment liability. The district currently has six vacant positions and anticipates two additional vacancies by the end of the year.

Administrative Office of the District Attorneys. Kelly Kuenstler, director, AODA, said the primary function of the AODA is to provide information technology support and connectivity, as well as administrative support for all district attorneys in the state. AODA is requested a budget increase in personal services and benefits, unemployment liability, insurance premiums, and audit fees.

Public Regulation Commission (430). David King, chairman, Public Regulation Commission

(PRC), reported the agency held positions vacant, as well as eliminated several positions to achieve solvency. Commissioner King noted new federal legislation in the health area, added new responsibilities to PRC.

Michael Rivera, chief of staff, PRC, provided an overview of the agency including its mission and mandate. Over the last three years, revenues collected from fees, registration, and licensing increased from $225 million in 2008 to $265 million in 2010. However, the operating budget decreased 16 percent over the last three years by reducing or eliminating services and costs. Mr. Rivera noted PRC has not requested supplemental appropriations over the last few years and will continue internal cost-cutting measures.

Matthew Lovato, chief financial officer, PRC, presented a flat general fund request for FY12. The budget request includes increases for worker compensation premiums, unemployment liability, contractual services, and the patient's compensation fund; however, the increases were funded with other state revenues.

Department of Information Technology (361). Marlin Mackey, secretary, Department of Information Technology, provided an update on agency functions, as well as an overview of accomplishments over the last 12 months. Based on a strategic planning process, the state information technology (IT) strategic plan was updated and approved by the IT Commission. DoIT reviewed 42 agency funding requests for FY12, tracked previously funded projects, and reviewed 378 contacts and requests for proposal (RFPs). Agencies were requested to reduce IT requests; therefore, there are five system requests for FY12. DoIT is requesting an increase of $2.8 million for personal services and employee benefits and contractual services for FY12. DoIT has completed its FY10 audit, which indicated no new findings.

Friday, November 19

The following members were present on Friday, November 19: Chairman Luciano "Lucky" Varela, Vice Chairman John Arthur Smith, Representatives Donald E. Bratton, Rhonda S. King, Don Tripp, Edward C. Sandoval, Jeannette O. Wallace, Nick L. Salazar, and Henry "Kiki" Saavedra; and Senators Clint Harden (for Sue Wilson Beffort), Rod Adair (for Carroll Leavell), John M. Sapien, Mary Kay Papen, Pete Campos, and Carlos Cisneros. Representative Jim Trujillo attended as a guest.

Department of Cultural Affairs (505). Stuart Ashman, secretary, Department of Cultural Affairs (DCA), reported the department's FY11 adjusted general fund budget was $29.4 million and the current agency request was $29.5 million. The department requested one expansion item: $151.3 thousand for operating costs related to the New Mexico Archaeological Center. The department also requested $132.6 thousand for operating costs at the Los Luceros property near Espanola, the goal being to create a film education institute. It is the intent of the department that Los Luceros be economically self-sustainable through economic activities.

Secretary Ashman stated that spending in all programs at DCA has been cut dramatically, with the exception of those programs that require a federal match. Unrestricted/unreserved operating fund balances are expected to remain solvent through FY11, however, personnel costs are expected to significantly reduce if not eliminate the fund by FY12.

The department currently has 540.2 authorized FTE and an average vacancy rate of 18.7 percent, with some programs higher than others. The department has 20 authorized exempt positions.

Approximately 1.3 million individuals attended DCA education and outreach programs or visited state museums and monuments in FY10, with 8.3 million visiting DCA libraries and 80,000 using DCA web resources.

In response to a question from Chairman Varela concerning general obligation (GO) bonds and libraries throughout the state, Susan Oberlander, state librarian, responded there are 92 public libraries, of which 18 are tribal libraries. The 2008 GO bonds were intended for use in both public and tribal libraries, with all funding distributed on a reimbursement basis.

Retirement Systems Solvency Task Force. Michelle Aubel, senior fiscal analyst, LFC, reported due to concerns regarding pension fund solvency, legislation was introduced in the 2009 session for pension reform. House Bill 573 increased the years for retirement for nonuniform members from the current 25 for Educational Retirement Board (ERB) and Public Employees Retirement Association (PERA) to 30 years. It also created a 25-member task force to review the solvency of the pension plans and recommend any additional plan changes to address solvency concerns. Through an independent consultant hired by the Legislative Council Service (LCS), both ERB and PERA were found failing measures of solvency. Actuaries caution that funding shortfalls will grow as the investment losses from FY08 and FY09 are smoothed into calculations. PERA is expected to become insolvent in 2058 because assets do not grow as fast as the benefits paid out. ERB is expected to become insolvent in 2039. The taskforce relied solely on ERB and PERA boards to present solutions. PERA presented its plan to reduce benefits with both nonuniform and uniform members in a new plan tier for new hires. The plan does not address the unfunded liability for current members; however, PERA did offer contribution increases of 8 percent for five plans to address the current funding issues. The taskforce debated and recommended four pieces of proposed legislation to move forward to the Investments Oversight Committee (IOC).

Doris Faust, assistant director for drafting services, LCS, presented proposed legislation. The first bill addressed ERB solvency by increasing employer contributions from the current 10.9 percent to 13.9 percent over a period of six years. Under current law, state funding for education would move from 10.9 percent (for employees making $20 thousand) to 13.15 percent in FY12 and 13.9 percent in FY13. Representative King requested information on accounting for both state and federal funds from local districts. Tom Sullivan said districts are running parallel budgets. A separate calculation for the unit value is attributable to the federal dollars and the general fund moneys. Districts have to identify individual employees paid out of the separate parallel budget.

The second bill related to judicial retirement. Under current law, judicial retirement is funded through docket fees, making it difficult for actuarial analysis and consistent funding. Proposed legislation transfers docket fees to the general fund and appropriates the best estimate of the same amount from the general fund back to judicial retirement. In the short term, the bill is intended to be revenue neutral and correct the funding mechanism. The longer term fiscal impact of basing contributions entirely on payroll is unknown.

The third bill amends PERA to allow retired members to return to work and earn up to $15 thousand. After that point, a retired member's pension is suspended and becomes a member of PERA.

The final bill addressed PERA's proposed new plans that would close all the existing retirement plans on July 1, 2011, to any new employees. Employees hired on or after July 1, 2011, would be placed into one of the new plans. The bill reduces the cost of living and is a generally slightly reduced benefit for employees hired on or after July 1, 2011. The cost of living is tied to the consumer price index. Representative Bratton asked about the impact to retiree health care. Ms. Faust said a section of the bill deals with an increased payment for the enhanced plans. The director of the Retiree Health Care Authority (RHCA) indicated that the proposed legislation would not have a negative effect on the retiree health care assuming the increased payments for the enhanced members were in place.

Staff Reports

Educational Retirement Board (352). Michelle Aubel, senior fiscal analyst, LFC, reported SIC, ERB, and PERA posted positive gains for the first quarter and beat the 60/40 index of 7.9 percent. All agencies anticipate positive gains going forward. Both ERB and PERA are below the 8 percent five- and 10- year actuarial requirement.

Ms. Aubel said the FY12 budget request totals $10 million, or 2.8 percent over the FY11 operating budget, which has been adjusted upward by $9.8 million from its original appropriation of $26.9 million due to higher investment fees. In general, these fees will track with investment performance.

Jan Goodwin, executive director, Educational Retirement Board (ERB), reported the agency met all performance measures for FY10, resulting in a fund return of 18.2 percent – bringing the fund value to $8.2 billion. For the quarter ending September 30, 2010, the fund returned an additional 8.4 percent, bringing the fund value to $8.8 billion. The FY12 budget request is in line with the FY11 adjusted budget to provide for higher performance-related investment management fees. Representative Bratton asked if a smoothing component was included in manager fees. Bob Jacksha, chief investment officer, ERB, said it varies from manager to manager. However, some managers are on an annual incentive fee and use a "high water mark" or benchmark offering some general protection to the fund.

Public Employees Retirement Association (366). Michelle Aubel, senior fiscal analyst, LFC, reported Public Employees Retirement Association (PERA), requested a lower budget for FY12, partly due to the end of the data-cleansing project, accounting for $567 thousand in reduced spending and the elimination of 12 FTE. The agency's request for investment manager fees was lower than the FY11 operating budget partly due to a higher percentage of the portfolio being passively indexed and a more accurate methodology to estimate costs. In addition, a higher percentage of the portfolio is now allocated to alternative investments. Unlike traditional assets, manager fees for alternatives are embedded as part of the valuation process for investments. PERA's manager fee request understates the true cost of active management of the entire portfolio.

Terry Slattery, executive director, PERA, provided a budget comparison over the last four years. Administrative expenses including manager fees and expenses are only 27 basis points of the whole portfolio. PERA has been able to individually audit approximately 10,000 member records to process documents efficiently. PERA's current funded ratio is 78.5 percent as of June 30, 2010, down from 84.2 percent. The total statutory contribution rate is 25.06 percent; a weighted average of all plans under PERA excluding judges, magistrates, and volunteer fire plans. The normal cost on a weighted average is 20.65 percent, leaving an amount of 4.41 percent to amortize unfunded liability. The unfunded liability increase is due to the losses incurred in the FY08 and FY09 investment markets.

Mr. Slattery said the state general plan has an accrued liability of almost $7 billion with over $5 billion for allocated assets, leaving an accrued unfunded liability of $2 billion. The contribution between employer and employee is 24 percent. The normal cost is 19 percent, leaving 4.79 percent of contribution payroll to pay for unfunded liability. This amount does not equate the pay off for the unfunded liability over any period of time. In order to pay off the unfunded liability, an additional 6.67 percent is needed. The actuary recommended the board consider a 2 percent annual increase in statutory contributions each year over a four-year period (8 percent total). The board agreed with the actuary's recommendation.

The funded ratio for state police and corrections is 113.5 percent. The assets applied are greater than the liabilities by $100 million and there is no unfunded liability. Ms. Aubel noted, with additional negative returns smoothed in, it is anticipated the number will continue trending downward.

The municipal general continues to be in good condition; however, it does have an unfunded liability of $77 million. The amortization period rolls from 25 years to 44 years, and it is the first time it has exceeded the 30-year benchmark. No change in the statutory contribution rates is being requested at this time; however, it could be requested next year.

The municipal police division plan has a significant liability of $391 million. Only 3.3 percent is available in payroll to pay off the unfunded liability, with the difference in the statutory rates of 33.81 percent versus the normal cost of 30.5 percent. The amount of contributions available to pay off the unfunded liability is insufficient. The actuary indicated an increase of 7.49 percent in contributions is needed. The board agreed with the recommendation to increase contributions 2 percent per year over the next four years (8 percent total).

The number increase in statutory rate necessary to amortize unfunded actuarial accrued liability over 30-years is 11 percent for the municipal fire division. The board's funding policy limits it to no more than 2 percent per year and for no more than a period of 4 years. Like the other two municipal plans, an increase contribution of 2 percent per year over the next four years is requested (totaling 8 percent). Mr. Slattery noted volunteers are in a separate plan funded by fire insurance premiums. The plan is funded at over 200 percent.

As of June 30, 2010, total membership in PERA was 84,500. The number of retirees was over 27,000. As of October 31, 2010, the number of retirees grew to 29,000.

The judicial plan had a funded ratio of 61.2 percent as of June 30, 2010. The fund has an unfunded actuarial liability of over $50 million including assets of $79 million. The normal cost of contribution is 31.92 percent; an additional 19.87 percent is needed to pay off the unfunded liability over a 30-year period for a total contribution of 51.79 percent.

The magistrate plan is similar to the judicial plan; however, the total normal cost as of June 30, 2010 was 32.6 percent. Statutory contribution rates including current docket fees are only 30.05 percent.

The legislative plan is in good condition. The amount required by the actuary in contribution totals $857 thousand. The fund receives $2.4 million per year in contributions.

State Investment Council (337). Julie Anna Golebiewski, economist, LFC, reported the agency requested $34.5 million for FY12 representing a flat request from the FY11 operating budget. The request includes an increase of $265 thousand in personal services and employee benefits category, as well as an additional $234 thousand for contractual services. Within contractual services, the request includes a decrease of $4 million in professional services contracts and an increase of $3.7 million in attorney fees.

Steve Moise, state investment officer, State Investment Council (SIC), reported the increase in personal services and employee benefits realigns investment staff. The increase for attorney fees is due to an attempt to recover funds that were inappropriately paid to placement agents, as well as recover funds lost by investment managers.

The SIC has 32 authorized FTE with 4 vacancies. SIC anticipates filling the vacancies with investment professionals. SIC anticipates completion of the FY10 audit by December 15, 2010 and is transitioning to its new custody bank, JP Morgan.

SIC proposed legislation includes

- Restructuring its main statute,
- Removing the state investment officer from board service,
- Removing the Private Equity Investment Advisory Committee from statute,
- Authorizing limited funds for portfolio management by the University of New Mexico and New Mexico State University,
- Removing or increasing the current 15 percent constitutional cap on international equity investments.

Vince Smith, deputy state investment officer, State Investment Council, reported the land grant permanent fund was up 12.6 percen for the year ending September 30, 2010,; 80 basis points ahead of its policy benchmark. The severance tax permanent fund (without ETIs) was up 12.8 percent, 130 basis points ahead of its policy benchmark.

In response to Representative Bratton, Mr. Moise said the attorney general advised SIC that statutory authorization is required to hire attorneys on a contingency basis. Statutory authorization will satisfy any constitutional question raised by the attorney general; therefore, it is not required to be addressed by the voters. Representative Bratton asked if SIC is working with other agencies to address proposed language. Mr. Moise said SIC is working with the Risk Management Division (RMD) and the Legislative Council Service (LCS). Representative Bratton recommended ERB and PERA receive a copy of any proposed legislation before it is included in the structure of legislation.

Representative Bratton asked if SIC is working on a component that ties into the SHARE system for its general ledger. Stuart Hamilton, interim director, administrative services director, SIC, said SIC does not use SHARE to track permanent funds. The new general ledger needs to work within QED. Representative Bratton expressed concern with not having the ability to interface with SHARE. The ultimate objective is to have transparency and access to information. Chairman Varela requested SIC work with LFC staff on an interface-needs assessment for the general ledger system.

Retiree Health Care Authority (343). David Archuleta, senior fiscal analyst, LFC, reported for FY12 the agency requested a total of $250.8 million, an increase of $27.4 million, or 12.3 percent over the FY11 operating budget. The request includes $248 million for the Healthcare Benefits Program and $2.9 million for program support. In addition, the agency requested an expansion of 3 FTE and $128 thousand for program support.

Wayne Propst, executive director, Retiree Health Care Authority (RHCA), said over the course of the last three fiscal years, RHCA reverted over $600 thousand from the program support fund to the healthcare benefits fund. Since 2009, RHCA eliminated the gold plan for pre-Medicare participants, with the majority of members experiencing an increase in out-of-pocket expenses, deductibles, and coinsurance. RHCA also increased premiums charged to the retirees by 40 percent resulting in a savings of $5 million.

RHCA introduced cost-sharing for members participating in the Medicare supplement plan and members are now required to pay the $155 annual Medicare Part-B deductible. Premiums will also be increased by 8 percent beginning on January 1, 2011, resulting in a savings of $3 million.

Mark Tyndall, deputy director, RHCA, said historical growth levels for RHCA have been between 3.5 percent and 4 percent per year. Over the last 12 months, levels grew over 5.8 percent and actual per member costs increased 3 percent. RHCA placed considerable downward pressure on expenses by modifying plan designs.

Representative Bratton said the board needs to continue working on long-term solvency to protect the rights of employees that are currently paying into RHCA. Mr. Propst said the board is committed to ensuring that the retiree health care program exists not only for current retirees\ but for future retirees.

Information Items
Review of Monthly Financial Reports

Survey of American Recovery and Reinvestment Act Implementation. Cathy Fernandez, deputy director, LFC, presented a report on the American Recovery and Reinvestment Act (ARRA). The report incorporates comments from the ARRA office, as well as a timeline for use of the governor's discretionary funds. Chairman Varela requested a detailed year-end report by the ARRA office at the LFC December meeting.

Ms. Fernandez referred members to the October 2010 Cash Balance Report, the October 2010 BAR Report, and the FY11 LFC Budget Status.

With no further business, the committee adjourned at approximately 12:35 p.m.

Chairman

01-17-011
Date