

**Legislative Finance Committee  
Meeting Minutes  
Room 322 - State Capitol - Santa Fe, New Mexico  
November 13, 14, 15, 16, 2012**

**Tuesday, November 13**

The following members and designees were present on Tuesday, November 13, 2012: Chairman John Arthur Smith, Vice Chairman Luciano "Lucky" Varela, Representatives Henry "Kiki" Saavedra, Larry A. Larrañaga, Rhonda S. King, Don Tripp, Edward C. Sandoval, Nick L. Salazar, James P. White, William "Bill" J. Gray; Senators Sue Wilson Beffort, Mary Kay Papen, John M. Sapien, Peter Wirth, Phil A. Griego, Sander Rue, and Steven P. Neville.

**Administrative Office of the Courts (218).** Artie Pepin, director, Administrative Office of the Courts (AOC), introduced Judge Jerry Ritter as the judiciary's budget committee chair and said the three priorities in the budget request are increasing base budgets (which include some growth with an emphasis on technology funding), a compensation initiative for employees and new judgeships; drug court funding, and staff expansion. The courts are requesting a 3 percent increase in funding.

Mr. Pepin briefed the committee on the AOC's requests exceeding the 3 percent average. The AOC's base budget request of \$3.5 million will fund information technology operations, the jury and witness fund, drug courts, and magistrate court operations. The AOC also requests additional funding of \$2.6 million for increased General Services Department, health insurance and Public Employee Retirement Association premium rates. Under the expansion requests, the new FTE within the general fund portion is \$277,700, nine new judgeships constitute \$3.5 million, and a 5 percent rate increase for employee compensation is another \$4.6 million, he said.

Mr. Pepin stated the AOC is requesting an \$883 thousand increase in the Statewide Automation program to pay for the Judicial Information Division building lease, to make up for the loss in fee funding (fees fund automation purchases such as equipment and software), and create a budget for video arraignment previously funded out of the magistrate court budget. The AOC requests a general fund increase of 6.42 percent for magistrate courts to pay lease costs because the fee revenues that fund magistrate court operations and leases are expected to decrease in FY14. In the Special Court Services program, the largest part of the request is \$900 thousand for the drug court program: \$500 thousand to replace liquor excise tax revenue and \$400 thousand to increase enrollment. The AOC is requesting an increase of \$883,400 in the administrative support program for jurors and interpreters.

Mr. Pepin stated some courts are requesting special appropriation funding for technology that would allow full implementation and benefit from the Odyssey case management system and electronic filing, as well as other information technology.

Regarding employee compensation increases, Mr. Pepin said the reason judiciary employees deserve a 5 percent pay increase in FY14 is because efficiency gains with new technologies would not be possible without intense training for employees and their dedication to the task of converting the entire judiciary to a new way of operating. Fewer employees are doing more

work better and faster, he said. To further his argument, Mr. Pepin cited a study (not yet final) of three courts where time spent on case filings went down as a result of electronic filing and the Odyssey case management system.

Also in the base budget request are nine judgeships in the 1st, 2<sup>nd</sup>, 13<sup>th</sup>, 5<sup>th</sup>, and 3<sup>rd</sup> judicial district courts, Doña Ana County Magistrate Court, and Bernalillo County Metropolitan Court. Mr. Pepin stated the Doña Ana County magistrate has the biggest need.

Increasing enrollment and serving members of the community in the drug courts is a priority. The loss of more than \$3 million from the general fund for these programs since FY09 has impacted programs immensely, and the AOC is asking for a \$900 thousand increase from the general fund to its base budget.

Mr. Pepin said the AOC's expansion requests include \$35 thousand for a part-time signed language interpreter. The AOC does not have vacancies they can convert for the two new positions requested. Mr. Pepin briefly discussed requests for special appropriations (furnishing the new courthouse in the 1<sup>st</sup> District), capital requests totaling just below \$5 million, supplementals; and upcoming proposed legislation that includes clean-up provisions in the Motor Vehicle Code, and judicial pension reform.

Judge Jerry Ritter emphasized the importance of the requested appropriation for a staff and workload study and the need for raises because trained staff is more skilled and more valuable in the marketplace.

Responding to Vice Chairman Varela, Mr. Pepin stated the request includes the judgeships, pay increases, supplemental – everything. Judge Karen Mitchell, president, Magistrate Judge's Association, stated vacancies are a concern because the backlog in some of the larger courts is significant. Judge Mitchell and Mr. Pepin agreed vacancies are attributable to a combination of low compensation levels and availability. The AOC is having a tough time with recruitment, he said. Vice Chairman asked for a backlog of all of the magistrate courts and asked the AOC to be diligent in hiring.

In response to Senator Sapien, Mr. Pepin said the AOC will, when the NMDOT is ready, be able to transmit electronically in any format all traffic data run through TRACS. It is currently only in Doña Ana County.

Representative King asked how much it would cost if proposed legislation to remove the Motor Vehicle Department from the traffic citation procedure and all traffic tickets would be sent to the courts subject to adequate resources. The one-time appropriation, Mr. Pepin said, is \$500 thousand to purchase scanners to image the citations. The AOC is funding some employees with revenues from existing fees. Representative King stressed the importance of having everything in one system.

Senator Wirth stated the drop in filings suggests new judgeships are not needed. He asked how many new judgeships have been created in the last few years. Mr. Pepin stated a total of 23 have been added since 2003. Existing workload drives the demand. The Legislature approved

three judges last year, he added, but the governor vetoed the money because the AOC did not include funding for public defenders and district attorneys. However, the judgeships would have handled civil cases. Mr. Pepin acknowledged nine is a big number but it is not completely unprecedented and he assured the committee the need is there.

Representative Tripp asked if pro se filings (where people represent themselves) are increasing. Mr. Pepin said pro se cases are on the rise, particularly with domestic cases. The AOC is using technology to develop simple computer forms that courts require and would recognize as a filing. Judge Ridder stated he has seen a transition in domestic relations cases to about three-quarters pro se. Civil pro se litigation is on the rise as well.

12th Judicial District (242). Judge Jerry Ritter stated the district's total request is greater than 3 percent primarily to prepare for Odyssey coming out in one month and the expansion and renovation project at the district court in Lincoln County. Judge Ritter said the district closed one of its juvenile drug court programs and laid off personnel, making its vacancy rate 12 percent.

6th Judicial District (236). Chief Judge J.C. Robinson told the committee the district's total request is for \$90.3 thousand – \$67 thousand for contractual services (primarily money to keep drug courts going) and the remainder for tires for vehicles, maintenance on copy machines and similar costs. Melissa Frost, chief executive officer, stated about \$15 thousand of the general fund appropriation will go toward replacing the “soft” money. OptumHealth is currently the fiscal agent and Ms. Frost said it is time to get hard money to help support this crucial function of the judicial system. Senator Beffort asked if OptumHealth was doing a good job of supplying the money. Ms. Frost stated payment has not been adequate. Senator Beffort asked for a written statement and said the amount of money the state pays to this contract is very high. She said replacing that money with a lump sum general funds would not work.

5th Judicial District (235). Chief Judge Gary Clingman stated the district's request of a 3 percent increase is about \$175 thousand – one half to revitalize and refund drug courts. Other costs of \$98.2 would be for other costs and restore the district to pre-FY09 levels for line items such as equipment rental and postage. Judge Clingman addressed the requested judgeship in Lea County, saying new and reopened filings increased 14 percent between FY09 and FY12. Representative Larrañaga asked how many drug courts have been closed. Mr. Pepin stated four have been lost and most have shrunk by about 25 percent.

3rd Judicial District (233). Chief Judge Douglas R. Driggers said the requested 3 percent increase is to restore portions of budget reductions from previous years, prevent reductions in drug court programs, and allow positions to be filled. Judge Driggers said Doña Ana County is the second most populous county in the state and total caseload filings have increased 30.4 percent, justifying the need for a new judgeship in his district. Representative Tripp asked for data illustrating district caseloads.

9th Judicial District (239). Ted Hartley, chief judge, said part of the increase requested for his district is for an assistant for staff attorney Ben Cross, who was recently hired and has expanded some of the best work of the court. Louis Moore, chief executive officer, said the district is

requesting an expansion FTE for one paralegal for the new pro se/domestic mediation programs. The 3 percent requested increase is to hire a part-time bailiff and pay increased expenses, such as postage, gas, and repair and replacement of aging equipment. Mr. Moore concluded with a story of one exemplary employee whose last 94 cent raise was in 2008 and who now makes less, even after eliminating her children from her health insurance. He urged the committee to please consider the overall 5 percent pay increase.

10th Judicial District (240). Chief Judge Albert Mitchell thanked the committee and said filings in the district are up 10 percent. Judge Albert said he wasn't going to ask for a drug court or security because there is no money. Judge Mitchell stated the pro se filings are huge and ugly and probably going to get worse. The 3 percent increase is \$22.5 thousand, which will almost get the 10<sup>th</sup> district back on its feet, he said.

11th Judicial District (241). Chief Judge John Dean said the district would lower the vacancy rate and improve service to the court. The new building needs to be furnished. Three judges are in a two-judge building, a bad working situation.

13th Judicial District (243). Chief Judge Louis McDonald said the 13th district is the second most populous judicial district in New Mexico, with 10 pueblos and four Navajo chapters and a land area of 9,714 square miles. Judge McDonald stated the 2.5 percent requested increase, or \$154.2 thousand, would be used to fill additional vacancies and return money to other categories. Funds would also be used to increase the number of people in the district's six drug courts and one mental health court. The district has a very mature pro se program with clinics for litigants. Judge McDonald is asking for one additional civil judgeship to cope with the increased number of civil filings. The district is also requesting \$50 thousand in capital outlay to replace aging electronic equipment and \$125 thousand for security equipment at the Cibola County courthouse.

8th Judicial District (238). Sarah Backus, chief judge, stated she is requesting a 3 percent base increase amounting to \$78 thousand mainly to make up for shortfalls from previous cuts. An expansion request for 1 FTE in the clerk's office is also requested, as is capital outlay funding for video conferencing for both Colfax and Taos counties.

7th Judicial District (237). Chief Judge Kevin Sweazea stated the budget is relatively small, and if the 3 percent budget increase were granted, the district would use it to fill a clerk position and hire a security bailiff. The district is using video to the extent they can to alleviate travel and expenses. Representative Tripp asked if there is any requirement for a judge to be physically present in the courtroom. Judge Sweazea stated there are no clear rules for guidance.

4th Judicial District (234). Chief Judge Abigail Aragon said the district is requesting \$40 thousand to restore its adult and juvenile drug court to full capacity, \$10 thousand for their court mediation program, and \$58 thousand for contractual services for technology, security and surveillance equipment. Judge Aragon stated the district has remained the same in the number of case filings. Currently, Mora residents must travel to San Miguel County and it is difficult not having a courthouse in Mora County. Judge Aragon, in response to Representative Saavedra, said the Mora County Courthouse is a shell; county commissioners from Mora County will be

asking the Legislature for about \$6 million in capital outlay to finish the building and the county is attempting to find tenants whose rent will help with maintenance and upkeep.

2nd Judicial District (232). Ted Baca, chief judge, is seeking a 3 percent increase from the FY13 operating budget for operations; repair and replacement of furniture as needed; and contracts to hire attorneys to investigate and make referrals for guardians and conservators of the elderly. Judge Baca stated the district is very efficient with funds. Large monitors for Odyssey are needed and part of the request is for a server and security equipment. The caseload study justifies six judgeships in the district, but they are asking for three. Judge Baca stated although case filings in 2011 numbered 49 thousand cases, down from 54 thousand case filings in 2009 and 2010, many of the cases are not complete. From 2002 to 2011, only three judgeships were added. Senator Rue stated it is a real injustice that courts take so much time to get things resolved and there should be more of a sense of alarm.

1st Judicial District (231). Chief Judge Barbara Vigil said the district's needs are great and asked for a 3 percent increase to the general fund base budget of \$185.3 thousand to cover fixed operating costs. The district is requesting a special, one-time appropriation of \$1.3 million to purchase furniture, security and technology equipment for the new Steve Herrera Judicial Complex scheduled for completion in December, 2012, and pay back an \$87 thousand loan from the State Board of Finance to purchase security equipment for the facility. Judge Vigil said the district is in desperate need of another judge. Judge Vigil, in response to Vice Chairman Varela, said last year's requested amount for furniture was vetoed by the governor. The loan from the BOF was to get the district into the new complex.

Metropolitan Court (244). Chief Judge Judy Nakamura said the 3.6 percent budget increase, or \$785 thousand, that Metro Court is requesting comes down to four items: filling critical vacancies, reinstating maintenance contracts, keeping up with increasing costs of supplies, and addressing safety and health issues. With respect to legislation, Metro Court is seeking one additional judgeship and associated staff (\$401.2 thousand), and an expansion of the court's fourth floor as part of the capital request of \$2.5 million. Judge Nakamura said she is proud of the court's accomplishments. In response to Representative Gray, Judge Nakamura said Metro Court hears misdemeanors and is different from other courts because it is the court of record for the DWI and domestic violence cases. Metro Court also hears felony first appearances.

State Engineer/Interstate Stream Commission (550). State Engineer Scott Verhines said the Office of the State Engineer (OSE) is requesting \$18.6 million from the general fund, a \$3.8 million increase over its FY13 operating budget of \$14.8 million. He said the department is trying to offset the irrigation works construction trust fund, which has been used for operations and salaries over the last few years. Mr. Verhines stated the FY14 request is \$3.3 million below the agency's FY13 operating budget.

Estevan López, director, Interstate Stream Commission (ISC), said the agency projects replacing \$3.5 million from the irrigation works construction fund with the general fund will extend the life of the fund for one year. Ideally, he said, the ISC can get to the point of stabilization of the fund.

Mr. López briefed the committee on three pending Indian water rights settlements – the Navajo settlement, the Aamodt settlement, and the Taos Pueblo settlement. The Navajo settlement was signed in 2005, and in 2009 federal legislation authorized the settlement. Mr. López said it is a big project, just over \$1 billion, which will bring water from Navajo Reservoir in the San Juan River down to Navajo communities between Shiprock and Gallup and other non-Navajo communities in northwestern New Mexico. Mr. Lopez stated he believes the ISC is within \$10 million of meeting the cost-share obligation based on preliminary estimates.

The Aamodt and Taos Pueblo settlements are on a similar timeline, López stated. Both are working on trying to get the final settlement documents conformed to the authorizing legislation, which should be done in December 2012. For the Taos Pueblo settlement, there are some early federal and state funds that have been made available for the acquisition of water rights, which have begun to be distributed. The Aamodt settlement contemplates a pipeline being built to take water from the Rio Grande to serve Indian and non-Indian households along the Rio Pojoaque and Rio Tesuque. The level of non-Indian beneficiary participation is being discussed, and once it is resolved the overall cost of the infrastructure will be clearer.

The overall federal obligation for these three settlements is \$1.3 billion; the state's cost-share obligation is about \$130 million. Mr. Lopez stated with credits the state is likely to receive and amounts already appropriated to the Indian water rights settlement fund, another \$75 million would allow the state to meet all of the obligations.

Within the Arizona Water Settlements Act (2004), New Mexico has the opportunity to develop 14 thousand additional acre feet of water, about a 47 percent increase in the southwest portion of the state. In addition, New Mexico is to receive anywhere from \$66 million to \$128 million, depending on whether the state chooses to build a project to divert additional waters out of the river. By 2014, New Mexico has to inform the U.S. Department of Interior whether or not a New Mexico unit will be developed. The ISC is analyzing 16 proposals and will make a decision by mid-2014.

Mr. Verhines briefed the committee on the OSE's special requests: \$4 million for litigation support, \$400 thousand for state and regional water planning, \$250 thousand for temporary contract support to augment dam safety review staff, \$75 thousand to support Dam Safety Bureau staff working with the dam owners' coalition.

Capital requests include \$1 million to continue monitoring groundwater and surface water around the state, \$6.8 for dams in Springer, \$250 thousand for monitoring wells statewide, \$2.1 million for the middle Rio Grande floodway improvement, and \$631 thousand for the San Juan Recovery Implementation Program, a multi-state, multi-agency program for the benefit of endangered species..

Representative Tripp asked about the operating agreement with the El Paso Irrigation District. Mr. Lopez stated the operating agreement is subject of litigation filed by the Attorney General against the U.S. Bureau of Reclamation. Since the litigation was filed, there has been no movement from the Bureau of Reclamation to modify the operating agreement, which is highly

detrimental to New Mexico. On a full supply year, it reallocates about 179 acre feet away from the Elephant Butte Irrigation District to the El Paso Irrigation District.

Senator Wirth asked if part of the fund swap issue is with adjudication money that comes out the water project fund. Mr. Lopez stated that is a different issue, and the ISC is not yet addressing that. Mr. Verhines stated this past fiscal year the amount of funds coming out of the water project fund was about \$2.4 million. Senator Wirth asked how the ISC is able to use severance tax bond money for operations. Greg Ridgley, deputy counsel, OSE, said the OSE has been using the bond money for salary and benefits for several years, causing operational problems for the program in the years when the amount appropriated has exceeded the amount received. Shortfalls in the last two fiscal years have caused the Litigation and Adjudication Program to have high vacancies.

Representative Larrañaga asked what projects New Mexico could do to receive the maximum \$128 million from the Arizona Water Settlements Act. Mr. López stated if New Mexico chooses a project diversion and storage project to access an additional 14 thousand acre feet the state will be eligible to receive up to \$128 million. Municipal conservation, effluent reuse, watershed restoration, or agricultural conservation/irrigation infrastructure projects would attract funds of \$66 million but would not be eligible for the additional amount.

Representative Larrañaga asked for the total of all special project requests. Mr. Verhines stated the amount was just shy of \$5 million. Mr. Verhines informed the committee that both the OSE/ISC and the Attorney General's Office (NMAG) are requesting \$4 million for litigation support for the Lower Rio Grande basin lawsuit. Mr. Verhines stated in the OSE/ISC's request, the funds would come to his agency and a memorandum of understanding with the NMAG for legal support would be necessary. Special appropriations for this project would be shared between the agencies. Attorney General Gary King stated there should be a discussion about the particulars.

Mr. Verhines, in response a question from Representative Gray, said there are about 177 thousand domestic wells in New Mexico approved for one acre foot of water per well.

**Attorney General (305).** Attorney General Gary King introduced his staff and then briefed the committee on the \$25 billion national mortgage settlement with the nation's five largest mortgage servers, addressing violations in foreclosure procedures. New Mexico received \$11.1 million from the settlement and has established a Homeownership Prevention Program designed to provide foreclosure prevention services for New Mexico homeowners.

Attorney General King said District Court Judge Michael Vigil entered his decision and final order in the case against FastBucks, finding the company developed its installment loan products to circumvent the New Mexico Legislature's 2007 efforts to stop payday loan abuses. The NMAG expects restitution to consumers to exceed \$17 million, although the defendant is appealing the judge's decision.

The state is still facing legal action from participating tobacco manufacturers for failing to enforce provisions in the Tobacco Master Settlement Agreement. The Attorney General stated

that approximately \$35 million in tobacco settlement payments are at risk unless New Mexico comes into compliance with the agreement through the passage of legislation. The Attorney General is part of an ongoing arbitration process and the budget request reflects continued budget adjustment authority to hire outside counsel. For New Mexico, the case will be arbitrated in March.

Attorney General King said the NMAG is prosecuting 74 active cases regarding Internet crimes against children, indicting and prosecuting certain white-collar crimes, and requesting 1 FTE for a human trafficking special agent to investigate these cases.

The NMAG provides legal services to 100 state agencies and enforces the Open Meetings and Inspection of Public Records Act. The Consumer Division is particularly busy working on consumer complaints. Attorney General King briefly spoke about his charities enforcement unit, criminal appeals unit, and Medicaid fraud and elder abuse unit. Attorney General King stated it recently won a conviction against Counseling and Mediation and believes it is the first felony conviction of its kind against a corporation.

Attorney General King said he is requesting a modest increase of 4.4 percent, primarily for an expansion request of \$611.9 thousand for an additional human trafficking prosecutor, an additional criminal appeals attorney, 2 FTE each to work on sex offender parole hearings and Internet crimes against children (administrative assistants), and for a traffic safety resource prosecutor and a legal assistant. The total budget request is for \$21.3 million, \$15.7 from the general fund and approximately \$2 million from the other categories. Attorney General King said the request includes \$750 thousand to pursue the Help America Vote Act case, diligent enforcement of the tobacco settlement fund and for expert witness fees for qui tam cases. The NMAG is also requesting \$400 thousand for litigation support in the Lower Rio Grande water basin lawsuit. Attorney General King asked again for a special request of \$100 thousand from the general fund to contract for a third party salary study for the agency.

Vice Chairman Varela asked about a memorial to move the Public Regulation Commission attorneys under the Attorney General. Attorney General King said he believes his office could not absorb additional responsibilities. Attorney General King said it might be worthwhile to see the results of the coming changes within the PRC before the Legislature decides to move the attorneys.

Chairman Smith asked if the NMAG has been contacted about possible violations of the Indian gaming compacts with the expansion of class III gaming. The Racing Commission contends they do not have statutory authority to halt illegal gambling, but the Department of Public Safety does. Chairman Smith added about \$70 million that flows to the general fund is at risk. Attorney General King stated he would keep Chairman Smith apprised of the situation.

**State Treasurer (394).** State Treasurer James B. Lewis requested \$397 thousand new dollars for the new Bloomberg station, GSD risk management fee increases, information technology software, and filling three existing vacant positions, one of which is a key IT business analyst position to work with the SHARE system. Mr. Lewis said an account auditor and a certified public accountant is necessary. Other funding requests include \$1.95 million to fund the

integration of treasury of management system in SHARE and an investment-related Bloomberg terminal and subscription.

Mr. Lewis stated the goal is to update the public funds investment section of the statutes by repealing obsolete language, updating security names and terms, clarifying ambiguity, allowing investments in municipal bonds issued in state and local governments in other states, and enhancing the standards for collateral pledge against public fund deposits. Mr. Lewis respectfully requested the Investments and Pensions Oversight Committee endorse the proposed legislation.

**State Auditor (308).** State Auditor Hector Balderas said the budget request primarily reflects THE COST OF filling remaining vacant auditor positions so the Office of the State Auditor (OSA) can continue to conduct financial audits of government agencies and to perform and oversee special audits targeted at fraud, waste and abuse. The OSA's budget appropriation request contains increases in the base budget in the following areas: \$340 thousand to fill vacant auditor positions; \$219 thousand in category 300 to fund special audits and examinations focusing on government agencies at risk, needed upgrades to the OSA's IT system, and replacing antiquated IT equipment. Finally, \$51 thousand in category 400 directly related to hiring more audit staff. Mr. Balderas stated he wants mandatory audit committee training in the areas in auditing.

The committee discussed the consequences of untimely audits. Mr. Balderas stated proposed legislation would enable the DFA to withhold up to 5 percent of budget appropriations from six months after a late audit, until the audit report is complete. Senator Beffort suggested templates for required financial documents for local communities. Withholding of tax distribution to the smaller communities is statutory, which also became effective July 1, 2012. Training for local bodies is a struggle as well, and the OSA does not have infrastructure to support it. Chairman Smith stated some municipalities should not be incorporated. He cited Columbus as an example.

**State Land Office (539).** Commissioner Ray Powell said almost 40 percent of the agency's budget request for FY14 is for mandated rate increases. Additionally, the State Land Office (SLO) is requesting a 3 percent, or \$313 thousand, increase for salaries and benefits to bring employees to parity with other state agencies. Commissioner Powell stated the FY14 request also includes 1 FTE in the oil and gas division to keep up with the high demand. The SLO requests \$1.96 million for special appropriations; \$250 thousand for contractual serves spanning two years to capture and kill feral pigs causing severe disruption on state trust lands; \$890 thousand for wildlife and community safety. Capital improvement requests total \$570 thousand for electrical panels in the building, repairing the building's entry, and plan and design for the Morgan Hall renovation.

Senator Griego asked if a permit was needed to kill feral pigs on state trust lands. Commissioner Powell stated a permit was not needed, but hunting is one of the least effective methods in trying to eradicate the feral pigs because they are highly adaptive and become nocturnal and move in family units. Senator Beffort stated surrounding states have huge problems with feral hogs as well. Commissioner Powell said there is a working group with the Department of Defense, the

Department of Game and Fish, and New Mexico State University. Helicopters can be effective in eradicating the invasive species.

Senator Rue asked for clarification on turnaround time for oil and gas leasing activities. Commissioner Powell stated the SLO assignments jumped from 500 a year to 6,000 this fiscal year. The turnaround time is anywhere from three weeks to three months, which is why the agency is requesting an additional FTE.

Vice Chairman Varela asked about the status of 2 FTE authorized in FY12 to increase the auditing component on the royalties. Commissioner Powell stated the SLO is attempting to fill the positions. Elaine Olah, assistant commissioner for administrative services, stated the auditor positions were recently reclassified by the State Personnel Office and will be advertised once approved. The SLO has 15 vacancies out of 153, or 9 percent.

The timeframe for upgrading and transferring the ONGARD system was discussed. For FY14, approximately \$500 thousand was budgeted. Commissioner Powell stated he had concerns about the antiquated ONGARD system, which must run properly or result in revenue reduction.

**Staff Report.** Anne Hanika-Ortiz, an analyst with the LFC, introduced Mark Tyndall, executive director, New Mexico Retiree Health Care Authority (NMRHCA). Ms. Hanika-Ortiz stated the authority requested \$270.8 million for FY14, which includes an increase of 9 percent, or \$22 million for the Healthcare Benefits Administration Program. For the past four years, the board has implemented plan design changes that have kept projected medical claims at 4 percent, while retiree population growth has averaged 5 percent. With an unfunded liability of \$3.3 billion, the fund is projected to reach zero in 2029. According to statute, the overall financial viability of the healthcare program is not an obligation of the state; however, a minimum retirement age to receive a pension benefit would significantly help preserve retiree health benefits for future retirees. The board should explore a broad range of benefit design changes to reduce expenditures and improve solvency, such as raising the minimum age for subsidized premiums each year,; reducing the subsidies similarly for pre-Medicare spouses, and increasing years of service to 25 years from 20 years to receive the maximum subsidy.

The RHCA discontinued a subsidized \$6 thousand life insurance benefit for new retirees after January 1, 2012, but kept it in place for existing retirees, costing the program \$3.8 million in FY14; in the interest of fairness to new retirees, the LFC staff would like the program to consider eliminating the subsidized benefit for all.

The FY11 audit was unqualified with one finding and the RHCA has corrected the issue.

**Retiree Health Care Authority (343).** Mr. Tyndall said the NMRHCA covers more than 52,500 members, providing medical, dental, and vision care for retired public employees, including public educators. As of the end of September 2012, the fund balance was \$242.4 million. The program support budget request is flat, he said. The vast majority of the RHCA's budget goes to pay benefits for retirees. Mr. Tyndall said membership growth has accelerated the last two years, growing to almost 7 percent in FY12, and he anticipates it will grow 5 percent in FY14. The other portion of the increase request is the result of medical cost increases, he said.

For the past five years, the NMRHCA has grown 28 percent and averaged only 1 percent per year increase on a per-member basis.

As part of its five-year strategic plan, the NMRHCA will phase out family coverage subsidies for retirees with multiple dependent children and in 2013 members will have increased cost-sharing on prescription coverage and pre-Medicare plans. Mr. Tyndall stated they will remain good, solid plans.

An increase in contribution levels from active employees and employers requires legislative approval. There is a very grave imbalance between what is paid during the course of a career and what is received in benefits during the course of an average retirement. The NMRHCA is looking to alleviate that imbalance.

### **Wednesday, November 14**

The following members and designees were present on Wednesday, November 14, 2012: Chairman John Arthur Smith, Vice Chairman Luciano "Lucky" Varela, Representatives Henry "Kiki" Saavedra, Larry A. Larrañaga, Rhonda S. King, Don Tripp, Edward C. Sandoval, James P. White, William "Bill" J. Gray; Senators Carlos R. Cisneros, Sue Wilson Beffort, Mary Kay Papen, John M. Sapien, Pete Campos, Sander Rue, and Steven P. Neville. Senator Phil A. Griego attended as a guest.

Emily, Timothy and Justin, representing Big Brothers/Big Sisters of Northern New Mexico, told the committee how they benefit from the program. Chairman Smith told Justin he had a future in politics. Senator Rue said they were wonderful ambassadors for the program.

**Department of Public Safety (790).** Robert Shilling, New Mexico State Police chief, introduced DPS staff and stated the DPS has four main programs: Law Enforcement, Motor Transportation, Statewide Law Enforcement, and Program Support.

Chief Shilling said the department's FY13 supplemental appropriation request, as well as the base budget request, is critical to the mission and includes \$2.4 million in law enforcement and \$630 thousand in motor transportation to replace aging fleet vehicles, \$250 thousand to meet the projected fuel budget shortfall for FY13, \$816 thousand to purchase in-car digital cameras required to replace the outdated VHS system cameras, and \$425 thousand to cover operational costs associated with the absorption of the governor's security travel expenses, significant increases in vehicle maintenance expenses, and escalating New Mexico State Police recruit school costs.

The DPS budget request for FY14 is \$141.9 million, an increase of \$6.4 million. Chief Shilling stated requests are critical to meet the mission, goals, and performance measures going forward. Shilling briefly addressed the department's recruitment issues. Chief Shilling thanked the committee and the DPS for its support.

Senator Cisneros asked if the DPS can meet the challenge of illegal horse racing and other illegal horse racing activities and said he did not see any expansion requests from the DPS to cover the costs of the State Police helping the State Racing Commission or investigating the allegations.

Chief Shilling said the DPS investigations bureau is not fully staffed but stands ready to help any agency with manpower and equipment when asked. Chairman Smith stated \$75 million is at risk.

Bill Hubbard, director, Special Investigations Division, told Senator Neville the department receives more than 100 applications for concealed carry weapons weekly and briefed the committee on the advantages of Livescan, a digital fingerprint-based FBI check. Livescan will be up and running by February of next year.

Parity with salaries and retirement for public safety officers was discussed, as was the DPS vacancy rate of 17 percent and starting salaries. Representative Larrañaga asked what other issues besides salary and retirement is an impediment to recruitment. Chief Shilling stated the DPS cancelled several recruit schools during the economic downturn because of budget constraints, and salary is the major impediment to recruitment. Officers can also retire at a higher pay with other police agencies at 20 years and often do. Vice Chairman Varela stated he's still at a loss as to what constraints the DPS has in terms of adjusting the salary plan. Chief Shilling stated the fundamental issue is everyone is frozen. Vice Chairman Varela stated all of the other agencies are having difficulty hiring and asked Chief Shilling to bring a plan on how to fix salaries within the DPS.

Allison Smith, New Mexico Association of Food Banks, stated the DFA gave \$435 thousand last year, \$100 thousand more than previous years to buy 4 million pounds of fresh produce (40 thousand people a week) for the hungry. Ms. Smith thanked Senator Beffort and Representative Sandoval for carrying the legislation. If an increase is possible, Ms. Smith stated the association would like to launch a gleaning project where farmers would be paid to do one last sweep of their fields and add to the poundage.

**Department of Finance and Administration (341) and Special DFA Appropriations (344).**

Tom Clifford, secretary, Department of Finance of Administration, said the agency's mission is to strengthen New Mexico's financial management practices through leadership and oversight. With a \$260 million surplus in FY12, the state was able to build reserves in the 13 percent to 14 percent range, and argued this is an essential level. The DFA received a \$400 thousand loan from the Board of Finance (BOF) for the cash remediation project, which is on track to get the state's "checkbook" balanced, and is expected to be complete in March 2013. The DFA also dealt with financial projects in Sunland Park, deficiencies in payroll processes, and the New Mexico Finance Authority's special audit this year. Mr. Clifford stated it has been a challenging budget season, and the DFA is also working on capital outlay reform, an important program for the governor.

The DFA has four programs to provide core services: the Policy Development, Fiscal Analysis, and Budget Oversight Program; Community Development, Local Government Assistance and Fiscal Oversight Program; Financial Management and Oversight Program; and Program Support. A new cash control bureau has been added for an identified cash reconciliation problem, and another big initiative within the division is to do the necessary work for a comprehensive annual financial report that will be a separately audited report.

The DFA is requesting \$59.9 million from the general fund for the operating budget, reflecting a 1.1 percent increase for the 1.5 percent shift in PERA contributions and increased healthcare costs. The 7 percent decrease in total funds is due to a projected reduction of federal funds for the community development block grant program. Also, 10 FTE are being transferred to the Department of Information Technology, all to enhance SHARE.

Mr. Clifford said the nonoperating budget is basically a flat request, with a small increase in the fiscal agent contract -- \$54 thousand as a result of a prolonged period of lower interest earning. The DFA expects to request supplemental and special appropriations: \$400 thousand in FY13 to replace the emergency loan from the BOF for the cash remediation program and \$150 thousand to replace operating budget in financial control for payroll remediation contract. In FY14, the DFA requests \$500 thousand for the comprehensive annual financial report project and \$200 for the transition to a new fiscal agent contract. Mr. Clifford stated he may also request \$75 thousand special appropriation for a study of the impacts of film industry on the state required by statute.

Mr. Clifford said preliminary findings with the audit can be discussed after it is completed. A more comprehensive review of the Financial Control Division activities was included.

Ed Marks, executive director, New Mexico Legal Aid, stated he is requesting \$2.6 million for civil legal services in FY14 to support families in New Mexico. Funding has been cut nearly 40 percent since 2009, he said, and the gap is too wide to address with pro bono assistance alone.

In response to Senator Cisneros' question about the capital outlay process, Mr. Clifford stated in the past there has been a litany of problems identified with some of the appropriations made, and the DFA is trying to use those to turn around and improve the process. The goal is not to cut out the Legislature in any sense, he said, but the governor made it clear when it is time to sign off on those appropriations. Part of that is the infrastructure capital improvement plan process. Senator Griego said legislators do not want to be cut out of the process of working with the smaller communities on capital outlay projects. Representative King said many times legislators are the only resource in small, rural communities for funding.

Senator Griego stated the Boys and Girls Club would benefit from funds from the youth mentoring program (one of the "special appropriations" within the DFA nonoperating budget) because they provide a necessary program to youth across the state. Local Government Division Director Ryan Gleason stated the language in the General Appropriation Act is "youth mentoring" and welcomed more clear direction. Big Brothers and Big Sisters scored higher on the request for proposal. Senator Beffort suggested expanding the qualification criteria so everyone wins.

Senator Beffort brought up standardization and templates for required reporting documents as a way to strengthen municipal oversight for better audit outcomes and said it needs to take priority during the next legislative session. Mr. Clifford said the DFA is asking for an additional appropriation to the Board of Finance emergency fund to help stabilize vulnerable communities with concentrated tax bases that are experiencing severe shortfalls and had specific ideas around disincorporation and raising the standard for incorporation.

Senator Sapien asked why the film study has been delayed. Mr. Clifford stated it was a resource issue; there is a preliminary study in hand and the DFA believes the best process would be a request for information. Two previous studies yielded conflicting results. Proceeding carefully with a deliberative approach is important, he said. Mr. Clifford suggested having personnel in the State Auditor's office to independently examine state tax expenditures and initiatives.

Mr. Gleason, in response to Vice Chairman Varela, said local governments are given conditional budget approval until they comply with the Audit Act. Many local governments have made substantial improvements and have a progress plan in place for compliance.

**Department of Cultural Affairs (505).** Veronica Gonzales, secretary, Department of Cultural Affairs, introduced staff and said one of the goals in of the DCA is to strengthen arts and industries across New Mexico, which includes raising the profile of New Mexico as truly a cultural state. The DCA has diverse sources of funding: only 70 percent of the request is funded through the general fund. Another 8 percent of revenues are federal funds, and 16 percent is other revenue, including earned museum revenues. Nonrecurring fund balance is 5 percent, which, she said, is expected to support budget deficiency through FY13 and FY14 and will need to be replaced beginning in FY15. Expenditures across the department include almost three-quarters of the operating budget, which goes directly to staff costs. Most programs and exhibits are funded by private partners.

An in-house economic impact analysis conducted in 2012 concluded the cultural industry has a \$3.3 billion impact on New Mexico's economy each year, supporting 60 thousand jobs with a \$952 million payroll and generating \$246 million in tax dollars annually. Ms. Gonzales stated essentially the DCA's budget is flat for all programming levels, with one budget increase requested for personal services and benefits because of mandated health insurance and retirement costs and for salary upgrades for pay bands 25 to 45 to help strengthen security and address retention issues. The department has a 17 percent vacancy rate. The DCA requests a \$500 thousand special appropriation for Los Luceros to address deferred maintenance of the property and expects the conclusion of a "use audit" for the property in December. Ms. Gonzales stated the DCA has made incredible progress in addressing audit findings by reducing 16 findings to eight, and this year auditors do not expect to find any material weaknesses in the FY12 audit.

Ms. Gonzales briefly addressed capital outlay needs with top priorities statewide repair maintenance and completing projects already underway. The DCA plans on a bill request during the upcoming session to rename state monuments to become state historic sites after a marketing study.

Senator Cisneros asked what is being done at Los Luceros currently. Ms. Gonzales stated department staff frequently visit the property and the DPS leases space for security. The main reason for the request is for maintenance on the orchards, gardens and structures, which has not been done due to lack of funds. Senator Papen said she believes the property and value have deteriorated considerably with state ownership and the \$1.7 million American Recovery and Reinvestment Act (ARRA) money to improve the property as a film center (Milagro at Los Luceros) has created limitations on how the property can be used. She asked what type of activities can be pursued on the property that allow for profit. Ms. Gonzales stated the

department is looking carefully at the ARRA restrictions. The only restrictions are on improvements or new structures. Ms. Gonzales stated the property needs to be used more and the department is at a standstill with Milagro because of proof of insurance matters. Vice Chairman Varela said he wanted an economic plan addressing Los Luceros from the Economic Development Department.

The committee discussed more partnerships and marketing for the department and a stronger interface with the Department of Tourism. Representative Larrañaga stated promoting cultural arts should be a higher priority for both departments and encouraged collaboration. Museum directors briefed the committee on various collaborations benefiting New Mexicans.

Regarding the New Mexico Coalition for Literacy, in FY12 and FY13, \$325 thousand was appropriated to the DCA. Working with the Higher Education Department, the DCA used the appropriation as leverage for the HED's money. The state budget director approved this transaction. Ms. Gonzales stated the partnership with the HED extended the reach of the program and believes the Coalition for Literacy can use this as leverage for federal support.

Senator Griego asked about the public/private partnerships regarding Fort Stanton and Lincoln County. Ms. Gonzales stated Fort Stanton was another property transferred from the General Services Department with no accompanying budget. Managing the property has been difficult; an estimated \$30 million is required to bring buildings on the site up to code, she said. Ms. Gonzales said Fort Stanton, with all of its problems, is loved by the surrounding community. The DCA is in the midst of reclassifying a position to manage the site. Director of State Monuments Richard Simms stated the DCA would welcome partnerships with colleges and training companies.

The committee heard from Leroy Garcia, a member of the foundation supporting the DCA's budget, about the name change to historic sites and fundraising endeavors. Julie Baca, executive director, National Hispanic Cultural Center, was introduced.

Chairman Smith said the state needs to have a plan in place before taking ownership of anything special interest groups want to give, and the communities that advocate for these endeavors need to have more skin in the game. The state is jeopardizing important sites by accepting more and more and not being able to provide maintenance. Chairman Smith said he invites input through the DCA to solve the problem and develop a more methodical system.

**Public Education Department (924).** Secretary-Designee Hannah Skandera stated one of the committee members told her that she was his least favorite cabinet secretary and said she appreciated him being "up front" with her and wanted it on the record.

Ms. Skandera highlighted process-oriented accomplishments: the PED has reduced the backlog in the teacher licensure applications from nine weeks to four weeks, created a district audit team to ensure fiscal responsible at the PED and within districts, and reduced the need for \$1.9 million in assessments by streamlining the accountability process.

Ms. Skandera noted legislative requests have risen from 223 in 2009 to 550 in 2012. Requests for information and clarification have doubled within two years and Ms. Skandera attributed this to good communication with the public.

Ms. Skandera continued listing the department's many accomplishments. The department implemented a new school-grading system allows for the accountability for more than 20 thousand students not counted under adequate yearly progress and includes performance in math and reading, and developed charter school performance contracts and frameworks pursuant to Senate Bill 446.

The PED general fund appropriation base request is flat with the exception of two DFA-directed increases: \$84,300 for the employee/employer retirement swap and \$66,300 for increased healthcare premiums. The department is authorized 256.8 FTE; 192 positions are currently filled and 23.8 vacant positions are unfunded. The Charter Schools Bureau, the Assessment and Accountability Bureau, and the School Budget and Finance Analysis Bureau all need funding to fill positions, she said.

Ms. Skandera stated she is requesting the move of an existing \$750 thousand special recurring appropriation and the associated FTE into the PED revenue base to provide a more secure revenue source for the OBMS/STARS data system.

Vice Chairman Varela stated it would be helpful to measure the results and achievements of the \$47 million funding "below the line" for FY14.

In response to Senator Beffort, Ms. Skandera stated the PED has chosen to invest in the state's struggling schools by training more than 2,000 New Mexico educators through a partnership with the Southern Regional Education Board and University of New Mexico. Currently, 10 schools are going through the program. Senator Beffort said all colleges of education need to turn out leaders who effectively manage teachers.

The committee discussed at length the pros and cons of investing \$2.4 million in a training program in Virginia. Ms. Skandera, in response to Senator Morales, stated the leadership training program was based in Virginia and discussions are underway to see if New Mexico has the capability to replicate the program. Currently, \$2 million is being invested in this program. Senator Morales said his concern was spending money on leaders and possibly losing leaders to other states. Representative King asked what specifically makes the program successful, and Ms. Skandera stated the program is successful because leaders have an understanding of data-driven decision-making and have a consistent, continuous improvement model for student achievement. Representative King said the core emphasis has to be on closing the achievement gap and requested specifics on how the PED sets proficiency levels. Ms. Skandera stated she would provide Senator Sapien with the numbers of people who have participated in the program to date.

**State Fair Commission (460).** Dan Mourning, general manager, New Mexico State Fair (NMSF), said this year the State Fair was successful and has come a long way since March 2011 when the fair was in financial disrepair. This year's fair was one of the most successful on record

since 2006; attendance increased by nearly 10 thousand patrons and revenues were within one-half of 1 percent of 2011 revenue total despite one fewer weekend. Next year the fair will celebrate 75 years with special events planned.

Mr. Mourning stated the NMSF has implemented many of the 2011 LFC performance evaluation recommendations, continues to work on them, and is an operationally sustainable enterprise today. A need for better financial oversight was necessary so the NMSF is working with the SPO and the DFA to transfer to the SHARE system. The NMSF reduced expenses and shortened the fair to two weekends with great results. The NMSF hired a chief financial officer, Bill Nordin, who also administers internal controls and training to permanent employees in cash handling. Parking was free this year so temporary employees no longer had access to cash for parking without accountability. The NMSF is also exploring charging food vendors at the fair a percentage of revenue rather than a flat rate, and all contracts are now executed under legal counsel advice and per the state Procurement Code, he said.

The fairgrounds have a 75-year old infrastructure, he said, including sewer, water, electrical, and building maintenance. Work has begun and is necessary to be competitive. The GSD has completed the facility index for 2012. Mr. Mourning addressed an inoperable air handling unit in Tingley Coliseum will cost \$300 thousand to replace. As funding becomes available, the NMSF wants to hire a master planner.

Mr. Mourning stated although there are many challenges ahead including the \$1.8 million owed to the GSD, rising costs of building rentals while remaining competitive, and addressing critical infrastructure needs, he was charged with turning the agency around and making the fair solvent and sustainable. With his dedicated staff he believes he has accomplished his goal.

Chairman Smith asked if there were currently any problems with the Downs paying its bills. Mr. Mourning stated the Downs is current with its utility and rent payments, adding there is better communication with the new management and a better lease, which is a more enforceable tool. The casino is being built for a capacity of 750 machines.

Representative Saavedra asked if the NMSF celebrates the counties. Mr. Mourning stated the NMSF still celebrates all 33 counties and has a Gathering of Counties Day where counties are recognized.

Vice Chairman Varela asked about the issue with Risk Management. Mr. Mourning said the NMSF is working with the GSD to resolve the debt, incurred from 2008.

Representative Tripp asked if there is a decline in traditional exhibits. The NMSF is a culturally sensitive fair with an emphasis on exhibits and county participation. A reporter from *Newsweek* canvassing state fairs across the country told Representative Larrañaga the New Mexico State Fair was the best fair he had ever been to. Mr. Mourning added the article had not come out yet and the reporter told him he could not believe how clean and beautiful the fairgrounds were and was very complimentary of everything, including the livestock show.

## **Thursday, November 15**

The following members and designees were present on Thursday, November 15, 2012: Chairman John Arthur Smith, Vice Chairman Luciano “Lucky” Varela, Representatives Henry “Kiki” Saavedra, Larry A. Larrañaga, Rhonda S. King, Don Tripp, Edward C. Sandoval, Nick L. Salazar, James P. White, William “Bill” J. Gray; Senators Carlos R. Cisneros, Sue Wilson Beffort, Mary Kay Papen, John M. Sapien, Pete Campos, Stuart Ingle and Steven P. Neville. Senators Phil A. Griego, Rod Adair, and Pat Wood attended as guests.

**Program Evaluation: Effective Use of Student Test Data to Assess and Improve Teacher Evaluation.** In 2003, New Mexico introduced the three-tiered system to increase the recruitment and retention of quality teachers to improve student achievement. The system created a three-level career ladder for teachers to ascend based on experience, leadership, and skills. Movement up a level results in pay increases of \$10 thousand a year.

This evaluation assessed the status of the system since the majority of teachers have advanced at least one level and reviewed options for using value-added models (VAM) to identify effective teaching. The evaluation used multiple years of student and teacher data to assess the performance of New Mexico’s fourth through eighth grade teachers and partnered with researchers at the University of New Mexico to model how student populations influence VAM calculations.

Student performance within teacher licensure levels and between licensure levels suggests the local and state evaluation systems are not screening teachers for their effectiveness in the classroom. The difference in performance between teachers of each of the three levels is small.

The three-tiered system continues to offer a solid framework to align resources to performance, but student achievement must be better incorporated into the process. If modified, student achievement could be a data-driven concern for all teachers and serve as a way to reward the state’s best teachers and intervene for struggling teachers. Properly implemented, VAMs can identify teachers for advancement; their complexity, however, limits VAMs role in annual local evaluation of teachers.

Finally, the state has not incorporated the three-tiered system into the funding formula. Instead, the formula uses a district-wide training and experience (T&E) factor, even though districts with high T&E values do not regularly achieve better performance than those with low T&E values. As currently structured, T&E widens the achievement gap by providing more funding for more affluent school districts.

## **KEY FINDINGS**

### **New Mexico’s three-tiered career ladder system does not align pay with student achievement.**

- Improving student achievement was a key policy goal of implementing the three-tiered system.
- The state has not established expectations for student achievement in evaluation of level I, II, and III teachers.

- The local evaluation system does not differentiate between high- and low-performing teachers or focus on student achievement.
- The professional development dossier (PDD) does not effectively screen teachers for advancement, resulting in ineffective teachers receiving large pay increases.
- The state allows low-performing teachers to keep their license level because the state does not have a rigorous license renewal process.
- The three-tiered system offers a framework to align resource allocation to performance, but student achievement must be better incorporated into the process.

**When used appropriately, VAMs can help identify teachers' success levels and drive student achievement.**

- Value-added models are increasingly used across the country to evaluate teacher performance.
- Depending on the demographic factors used, value-added models produce varied results.
- Some value-added models adversely affect educators teaching certain populations of students.
- Value-added models are limited in what they can tell educators, the public, and other stakeholders.
- The use of value-added models can be responsibly integrated into the three-tiered system to identify teachers for advancement and bonus pay.

**Resource allocation among districts and schools creates funding disparities between low-income students and their more affluent peers, without driving student achievement.**

- New Mexico directs nearly \$200 million for higher teacher compensation through the T&E index in the public school funding formula.
- The T&E index directs more funding to more affluent school districts and produces a questionable return on investment after factoring in poverty.
- The T&E index is not aligned to the three-tiered system.
- Level III teachers are more likely to teach in more affluent districts and schools.
- The state system can offer a mix of incentives to recruit and retain good teachers in high-poverty schools.

**KEY RECOMMENDATIONS**

**The Legislature should**

- Replace the PDD and establish the effective teaching portfolio (ETP) as part of the licensure advancement application with new requirements and competencies. The ETP will have new requirements strengthening expectations for student achievement, requiring satisfactory annual evaluations, and allowing the most effective teachers, as measured by a statewide VAM, to bypass the ETP process.
- Create licensure terms for level I, II, and III licenses. Level I licenses should have a five-year license term; and teachers must submit for renewal after three years; level II and

Level III licenses should have an eight-year term and teachers must submit for renewal after six years.

- Create new requirements for level II and level III licensure renewal, including meeting student performance expectations through the ETP or statewide VAM, and allowing teachers not meeting those expectations extra time to show competency before being denied renewal of a teaching license.
- Require PED to annually rank the performance of licensed teachers providing instruction in tested grades and subjects through two different value-added models.
- Change the T&E index to an effective teacher index that rewards districts based on the number of teachers they have in each license level.
- Consider a mechanism, possibly through the funding formula, to provide additional compensation to effective teachers (as measured by the new aforementioned teacher evaluation and three-tiered licensure system) to teach in high-poverty schools.

**Agency Response.** Hannah Skandera, secretary designee, Public Education Department (PED), stated the PED agrees with the three primary findings in the report. Ms. Skandera stated last year the governor's budget did propose a pot of funds to pilot and provide opportunity to reward and attract effective teachers to low-performing schools that did not receive support.

Matt Montaña, director, Licensure and Teacher Effectiveness, in response to Representative Sandoval, said the dossier process is the sole process for advancement of licensure for teachers. It is a written portfolio where a teacher demonstrates understanding of competencies but is not a demonstration of implementing the competencies. The process looks at the three strands; instruction, student learning and professional developing requiring teachers to respond and document what they have done in the classroom. Mr. Montano said there are a number of issues with the dossier process as far as validity, although the PED has done a good job of having reviewers having inter-rater reliability, but it is not identified on overall classroom performance, it is identified on whether teachers are able to specifically address the competencies. The dossier process has remained unchanged for seven years, so answers are known, he said. Principals receive submissions so originality of submissions cannot be fully verified.

Senator Beffort said the issue needs to be on the table and asked if it was possible to get effective leaders who have the authority to choose their own people (principals and teachers) to turn around low performing schools, adding the subject is controversial and had opposition last year. Ms. Skandera stated charter schools and traditional public schools currently have this capability, although difficult, and highlighted Las Cruces Superintendent Stan Rounds taking issue with his union to replace leadership and much of the staff. Chairman Smith said state law is focused on tenure rather than management skills and needs to change.

Vice Chairman Varela asked how the evaluation was going to come together with the Legislative Education Study Committee (LESC) and possible legislation. Charles Sallee, deputy director, LFC, said there are recommendations in the evaluation that could lead to legislation and the LFC may have the opportunity to present the evaluation to the LESL.

Vice Chairman Varela asked about restructuring licensure procedures. Mr. Montano said level I teachers have a five-year provisional license that cannot be extended and by the end of the fifth

year the teacher must advance to level II. Level II teachers may remain at level II throughout their careers.

Regarding charter schools, Vice Chairman Varela stated requirements, resources, and performance outcomes should be equal. In response, Ms. Skandera stated Senate Bill 446 raised the bar for charter schools (achievement, operations and finances) and the committee has her commitment to close those charter schools not meeting standards. Secondly, she said, five of the top 10 performing schools across the state are charter schools; and when it comes to teacher effectiveness, five charter schools out of 68 schools are piloting a new teacher evaluation system that incorporates student achievement.

Representative Saavedra asked for a listing of principals who have or have not retired and have leadership roles in charter schools.

Representative King said during her tenure as a legislator she is saddened by the fact that we have not been able to work collectively to really look at how we train our teachers in school and in the classroom setting. Richard Howell, dean, UNM College of Education, said colleges of education need to show evidence of internal preparation quality. Within the program, moving from input-based systems to outcome-based systems is necessary. The external performance quality out in the field is also necessary, he said.

Senator Woods said he has spoken to many teachers who expressed the need for classroom management training because managing students is a big part of their job. Mr. Howell said there are two critical weaknesses in his program: One is assessment – teaching and modeling the behavior they ask of their students – and the other is classroom behavior management, which Mr. Howell intends to incorporate into UNM's education program.

**Aging and Long-Term Services Department (624).** Retta Ward, secretary, Aging and Long-Term Services Department (ALTSD), said the ALTSD meets essential needs of New Mexico's seniors, adults with disabilities, and other vulnerable populations by providing access to critical resources and by delivering a comprehensive array of direct services throughout the state. Ms. Ward asked for the committee's endorsement and support for \$46 million, a \$3.2 million increase to its base budget for maintaining necessary service levels and the capacity to respond to the growing number of citizens requiring assistance. The increase takes the ALTSD to FY09 levels, she said.

The ALTSD is a resource for more than 200 thousand New Mexicans. Currently, 13 percent of New Mexicans are age 60 and older; projections rise to 23 percent by 2015 and increase to 32.5 percent by 2030. Ms. Ward said New Mexico will soon have more people older than age 65 than younger, which has never happened before. Currently 267 thousand New Mexicans are living with a disability, 41.4 percent are 65 and older.

The department's strategic priorities are to provide services in homes and communities; prevent adult abuse, neglect and exploitation for seniors who do not have the capacity to protect themselves; provide caregiver support and person-centered planning for long-term care services; and promote active and healthy lifestyles and economic security. Ms. Ward said promoting

active and healthy lifestyles is one of her passions and told the committee currently 25.6 percent of New Mexico adults are obese; 43 percent of New Mexican men between the ages of 65 and 74 are obese and 45 percent of women in those age ranges are as well. Regarding economic security, Ms. Ward stated in 2011 15 percent of New Mexicans age 65 and older lived in poverty, compared with 12 percent overall in the United States.

The ALTSD has four main divisions: Program Support, Consumer and Elder Rights, Adult Protective Services, and the Aging Network. Ms. Ward stated the 2012 audit will be done on time. Program support is also where the department manages its largest contractors.

The ALTSD is requesting an increase of 11.13 percent for Adult Protective Services (APS). The APS receives more than 10 thousand reports of abuse, neglect, or exploitation each year; increased funding will allow APS to provide an additional hour of home-care services for the most underserved clients. The increased funding will allow APS to serve an additional 100 clients with three hours of service per week and provide clinical supervision of high-risk investigations. More than 60 percent of APS victims are older than age 60 and the most frequently encountered problem is self-neglect, which means they can no longer care for themselves safely. Ms. Ward stated in FY12 more than 1,400 adults without the capacity to protect themselves received a service such as homecare services, adult day care, or emergency placement following an APS investigation. Most investigations involve people age 60 and older, she said. For FY13, the projected average cost of serving 1,000 APS clients is about \$47 a week, a low amount to keep someone in their homes.

Within the Consumer and Elder Rights Division (CERD) the Aging and Disability Resource Center maintains staff service levels to provide support, assistance, and advocacy for those wishing to remain in their homes. The number of calls to the center has increased since 2008; 40 percent of calls require a thorough assessment. The CERD also maintains advocacy services for institutional residents who wish to return to their communities. Ms. Ward discussed the ombudsman program and the extent of oversight of long-term care facilities and advocacy for individuals. In FY11, the impact of 130 volunteers statewide who provided 11 thousand hours of service exceeded the average in the United States, making New Mexico a national leader in providing advocacy for long-term residents and families.

The proposed FY14 increase will restore some cuts to Aging Network Division contracts, such as delivering home meals on weekends and addressing growing populations. The division delivers services to more than 115 thousand older adults and is a safety net. Ms. Ward said 80 percent of state funding goes to four area agencies on aging that contract with local, city, county, tribal, and non-profit organizations throughout the state to provide meals, transportation, adult day care and other social services. Ms. Ward stated the department's nutrition program provided more than 1.6 million congregate meals and more than 1.8 million home-delivered meals in FY12; New Mexico ranks second in food insecurity among older adults. Ms. Ward briefly talked about caregiver support services, older worker programs, and job placement assistance programs.

The ALTSD is requesting \$450 thousand for evidence-based health promotion and disease prevention initiatives. Ms. Ward stated as much as 75 percent of how a person ages is related to

health behaviors and targeting behaviors and risks impacting health can have enormous benefits; 10 percent of premature deaths worldwide may be attributed to inactivity. Exercise reduces the risk of every leading cause of death and disability, she said. Investment in prevention has the potential to help older adults and reduce the fiscal burden. Ms. Ward thanked the committee and stood for questions.

Vice Chairman Varela asked if voters passed a bond issue for seniors. Gino Rinaldi, deputy secretary, ALTSD, said a general obligation bond was passed for \$10.5 million to purchase vehicles and equipment and renovations.

Ms. Ward confirmed for Senator Papen that due to budget cuts, delivered meals were reduced by 12,875. Mr. Rinaldi stated the intent is to restore meals through various programs. Senator Papen stated the homebound elderly are some of our most vulnerable population and we need to take care of them. Mr. Rinaldi stated Doña Ana County has had a problem securing providers.

In response to Representative Tripp, Ms. Ward said contributions come from federal funds (Older Americans Act), the general fund, and county and city funds which don't have the same fiscal capacity as others and lead to service inequalities. Ms. Ward said if entities are looking for government funding for facilities, the state should be looking at multi-use centers, not just senior centers -- a more fiscally sound approach to deliver services for a wide population range.

Vice Chairman Varela said San Miguel County needs to step up to the plate and tasked Mr. Rinaldi with finding out how much the count will contribute. Mr. Rinaldi stated the new city manager in Las Vegas is aware of the situation and is very supportive of the programs. Senator Smith tasked the department with providing data prior to the start of the session regarding local governments' contributions to seniors' services.

**District Attorneys/Administrative Office of the District Attorneys (251-265).** Rick Tedrow, 11<sup>th</sup> Judicial District Attorney Division I and president of the District Attorney's Association, asked the committee on behalf of the association to restore funding to previous levels. Mr. Tedrow introduced three newly-elected district attorneys: Francesca Estevez from the 6<sup>th</sup>, Mark DeAntonio from the 3<sup>rd</sup> and Tim Rose from the 10<sup>th</sup>.

6<sup>th</sup> Judicial District Attorney. Mary Lynn Newell said her office has collected \$1.6 million in restitution for victims over the past nine years. Staffing issues have warranted cutting the number of juvenile cases the district works through the system. The requested increase of \$431.5 thousand would fill a deputy district attorney and a senior trial attorney position. Ms. Newell stated the district is also requesting an increase of \$93.4 thousand for fuel costs and insurance premium costs. Ms. Newell thanked the committee and wished them well.

5<sup>th</sup> Judicial District Attorney. Janetta Hicks stated the 5<sup>th</sup> is in a crisis situation with a dramatic increase in caseloads, violent crimes, and staff retention, a problem because caseloads are so high. Ms. Hicks stated the district is still significantly understaffed and 10.5 lawyers down from where the level needs to be and asked for an expansion of three attorneys and three support staff. Ms. Hicks said southwest border money can be used for operating costs.

3<sup>rd</sup> Judicial District Attorney. Amy Orlando asked for an increase to bring the district back to levels enjoyed in 2009 and said expert witness costs statewide have increased.

12<sup>th</sup> Judicial District Attorney. Diana Martwick asked for \$226 thousand to fund all of the district's positions at a median level. The challenges for a rural jurisdiction are drive time and high caseloads, with difficulty retaining people. Ms. Martwick stated she is looking for three prosecutors. The juvenile drug court in Otero County shut down; a new program Ms. Martwick began with the juvenile probation office is Network to Empower Teens. Ms. Martwick stated prohibiting experienced state employees from "double-dipping" is hurting her district.

9<sup>th</sup> Judicial District Attorney. Matt Chandler briefed the committee on the district's recent accomplishments: The district has obtained three murder convictions; just finished up an Abolish Chronic Truancy (ACT) program, leading to a 9 percent increase in attendance rates; busted a fraudulent drivers' license ring; and recently indicted 21 cases of "deadbeat" parents. Mr. Chandler asked for an increase to fill three vacant positions.

7<sup>th</sup> Judicial District Attorney. Clint Welborn asked for \$147.2 thousand, including \$14 thousand in other costs for fuel, SHARE, attorney subscriptions and dues, and vehicle maintenance costs. Mr. Welborn asked to fill two vacant supervising secretary positions to go paperless.

10<sup>th</sup> Judicial District Attorney. Timothy Rose, deputy district attorney, said the 10<sup>th</sup> is the smallest district in the state with 13 employees and one secretarial vacancy. Mr. Rose is asking for \$48 thousand to fill this position.

8<sup>th</sup> Judicial District Attorney. Henry Valdez, director, Administrative Office of the District Attorneys, briefed the committee for absent District Attorney Donald Gallegos and introduced Cindy Gallegos, chief financial officer. Mr. Valdez stated the 8<sup>th</sup> is requesting a flat budget and deleting two positions that have never been funded. Mr. Valdez noted the district is requesting slight increases in the base budget are for personal services and benefits, contractual services and operating costs.

4<sup>th</sup> Judicial District Attorney. Mr. Valdez presented the budget for District Attorney Richard Flores. The 4<sup>th</sup> is requesting a flat budget with a slight increase for audit costs and operating expenses. Mr. Valdez introduced Carla Martinez, chief financial officer.

13<sup>th</sup> Judicial District Attorney. Speaking on behalf of District Attorney Lemuel Martinez, Randy Saavedra, office manager, stated the caseload is high with multiple vacancies and asked the committee for \$1 million, the majority going for personal services and benefits. Mr. Saavedra said their contractual budget is suffering, and the district needs safer fleet.

2<sup>nd</sup> Judicial District Attorney. Kari Brandenburg stated she is asking for an increase in the budget to fill 13 vacancies to deal with the high workload. Within the "other" category increases are needed for expert witness fees for high profile cases, fuel and vehicle replacement costs. In response to Representative Saavedra, Ms. Brandenburg estimated the average salary of attorneys is \$52 thousand, but rather than start attorneys at that rate, she would want to have money to use as leverage to keep from losing them after gaining experience and training.

1<sup>st</sup> Judicial District Attorney. Angela Pacheco introduced the district's chief financial officer Lucas Gauthier, acknowledging the hard work he has done. Ms. Pacheco stated the district received a \$43 thousand grant that helped fill victim advocate vacancies. The district requests money for two more victim advocate positions. Ms. Pacheco stated she was concerned about elder incident abuse, one of the most under-investigated crimes. The district will not move into the new courthouse, she said.

11<sup>th</sup> Judicial District Attorney Division 2. Karl Gilson asked LFC analyst Connor Jorgensen to pencil in \$50 thousand for two vehicles that get a lot of wear and tear. Mr. Gilson stated the district is one of the poorest in the nation. Mr. Gilson briefed the committee on federal grants the district benefits from and thanked the committee for a public defender's office in Gallup.

11<sup>th</sup> Judicial District Attorney Division 1. Rick Tedrow said everyone is in the same boat with high caseloads, old vehicles, audit costs, and losing attorneys and support staff because of salaries. Mr. Tedrow said Farmington is a high traffic area and will do what needs to be done.

Administrative Office of the District Attorneys. Mr. Valdez addressed the truancy issue Representative Tripp brought up earlier saying there is a group working on drafting truancy legislation.

The AODA developed NMSAVIN, a statewide automatic victim notification system that notifies registered victims and law enforcement with any changes of status to their cases. Successful fall training was conducted via webcast and spring training is planned. Mr. Valdez stated further live webcast training for attorneys in the spring saves money and meets state bar requirements. Another huge project was moving servers to Albuquerque, he said. Mr. Valdez said there are two expansion requests related to NMSAVIN for a programmer and the NMSAVIN administrator already on staff and funded by a grant. The committee discussed community prosecution models and efforts to prevent crime.

Vice Chairman Varela stated he wanted an LFC report on parity between the courts, the district attorneys, and the public defenders; and wanted to ensure the three players are visible and that equity and sufficient human resources are being provided.

Regulation and Licensing Department (420). J. Dee Dennis, Jr., superintendent, Regulation and Licensing Department, said within the last 12 months the RLD has continued to improve customer service and has made significant progress in getting businesses into compliance. The RLD is strengthening procedures by reducing them into writing and assembling operation manuals for businesses with clear procedures.

In 2012, the Recycle Metals Act was passed and the RLD adopted rules, developed applications, reporting forms, built the compliance program, which went into effect in July 1, 2012. To date, the RLD has 79 dealers registered.

The alcohol and gaming division reduced the time it took for an application to be processed from 300 days to 100 days for a dispenser's license; a beer and wine license takes 80 days to process. The division encourages better compliance through better communication and earlier

intervention with problem licensees. Mr. Dennis stated the price of an existing liquor license is skyrocketing, creating a significant hardship for businesses in New Mexico. In 2006, the standard liquor license sold for \$235 thousand; in 2011, a license sold for \$435 thousand or more -- some up to \$1 million, he said. Mr. Dennis asked for a legislative solution.

The Construction Industries and Manufactured Housing Division (CID) rolled out an electronic plan review, a new service intended to save money and time during the construction document review and permitting process and allow CID plan reviewers to respond electronically. The CID has also tackled and improved poor inspection responses plaguing the division for years, he said. The CID is also reviewing the overall cost structure for permits. Mr. Dennis said in August that 100 compliance cases were dismissed because the statute of limitations ran out, so the department has overhauled this division for better response on complaints. Currently, there are 360 active compliance cases being investigated, with 150 additional cases at the Attorney General's office.

Mr. Dennis stated the Financial Institutions Division (FID) began full-scope examinations of small loan industry. With 596 small loan institutions in New Mexico, the RLD has visited 174 this year, examined 17 of 23 credit unions, completed sole examinations of six chartered banks, and performed 15 percent samplings which, he said, should be at 40 percent. The RLD is requesting an expansion in its budget for financial institutions, as well as a budget increase. Mr. Dennis continued by briefing the committee about complaints received on two escrow companies where widespread embezzlement of funds was discovered. He said the RLD needs to examine escrow companies on a regular basis.

The Securities Division currently has 69 open cases, of which 29 are assigned and actively being investigated. The bright side of this division, Mr. Dennis said, is the consumer protection and investor education piece, developing successful programs. Outreach events number 188 through meetings, pamphlets and media.

The Boards and Commissions Division licenses and regulates more than 30 professions and strives to provide the efficient delivery of services. Mr. Dennis stated body art inspectors conducted a week-long sting on unlicensed body art establishments in July 2012, filing 46 complaints against unlicensed individuals and establishments. The RLD led the way for returning veterans called New Mexico's Returning Veterans Counselors and Therapists Project, a statewide initiative providing returning veterans and their families an opportunity to receive counseling and therapy services at no cost.

Mr. Dennis stated the department is asking for additional funding for four staff positions previously unfunded, along with added IT support in the CID. The FID requested expansion would allow the division to do what is required by statute, he said. The department has 301 FTE, 54 are vacant, with 23 of the 54 not funded. Of the remaining 31, 22 positions are in some stage of the hiring process.

Larissa Byrd, administrative services director, said for FY14 the RLD is requesting a base budget increase from the general fund of \$1,083,000; the total request for FY14 is \$26.4 million, including federal revenues and revenues coming from boards and commissions. Only \$800

thousand is from the general fund for base budget increases for a budget analyst and human resources manager position. The IT section is requesting a base budget increase of \$64.5 thousand to fund an IT generalist position. Within the AGD, the total request is \$79.4 thousand to fill an administrative law judge position. Finally, she said, the FID is requesting an increase of \$515.7 and an increase of 8 FTE to provide five bank examiners, one credit union examiner, one consumer/small loan examiner, and one consumer industry manager. Ms. Burg stated this division is no longer accredited because of lack of funding. Mr. Burg said it is imperative that banks are healthy and remain so in this economic and regulatory environment, which warrants the increase.

The committee discussed how the vast amount of unnecessary licenses within the CID. CID Director Martinez stated the division is working on this issue; the division has reviewed specialty licenses and removed unnecessary licenses. This still has to go to a public hearing, but it is a step in the right direction, she said. In the oil patch area, there is no need for the CID to be regulating “behind the fence,” she said, and a second meeting is underway. The CID has come up with an idea for an annual permit for the oil and gas industry to help ease the inspection process when it comes to the electrical connection piece as well as alleviating the CID portion of releasing the utility. Ms. Martinez said she recognized Senator Ingles’s concerns.

Representative Larrañaga asked what can be done with local jurisdictions that are not up to speed in getting a permit for the contractor. Mr. Dennis stated it is unfortunate the CID has driven this wedge between local municipalities by underperforming for many years; with partners, the RLD is currently working on legislation to share inspectors to ease the inspection side, because delayed inspections cost money.

Representative Saavedra asked how a liquor license is obtained. Mr. Dennis stated a license must be purchased from an existing owner of a license—currently 1,411 dispensary licenses exist in New Mexico. They are transferrable, and although not property, banks loan money on these licenses. Mr. Dennis said there are another 75 that are retailers, and about 800 beer and wine licenses which are reverted back to the state. The challenge is to overhaul licenses for a proper amount without devaluing current license holders’ investment. The RLD will propose four possible solutions.

Representative Gray asked about banks. Cynthia Richards explained the process for examining banks along with federal counterparts. Ms. Cynthia stated she currently has three bank examiners for 36 charter banks, two credit union examiners for 23 state chartered credit unions, two small loan examiners for 596 small loan companies. Cynthia said if any kind of little “blip” happens such as another recession and the “fiscal cliff,” our small community banks are going to close their doors.

Chairman Smith said the bottom line is New Mexico has terrible liquor laws and encouraged having a hearing on liquor licenses next year.

**Department of Information Technology (361).** Darryl Ackley, secretary and chief information officer, New Mexico Department of Information Technology (DoIT), stated the DoIT is the consolidated IT agency that provides enterprise services and operations, oversight and

compliance to state agencies and departments. The DoIT is an enterprise-funded agency and compliant all cost recovery laws. Mr. Ackley briefed the committee on the department's vision and mission.

Mr. Ackley gave a brief overview of enterprise services within the department which include SHARE infrastructure and applications such as email, telephony, and cellular wireless. Oversight and compliance includes statutory oversight of IT projects, strategic planning, and training and professional development.

A major accomplishment for the DoIT this year was implementing the Tivoli Usage Account Manager, replacing a Legacy mainframe application to streamline billing electronically. The DoIT is continuing the mainframe stabilization project which includes z114 implementation and upgrades; 100 percent successful ISD2 disaster recovery test, and ONGARD stabilization. Also this year, the DoIT upgraded telephony and network and improved outreach and strategic planning by meeting with IT leads monthly and forming working groups to advance policy on quickly-evolving technology. Mr. Ackley stated the DoIT is also working on construction on 59 towers across the state and expanding the Pilot Wireless Networking Project, upgrading SHARE, and providing encryption of email at a competitive cost to agencies.

Priorities and initiatives for the DoIT include SHARE upgrades, cost avoidance metering, cyber security, mobile computing, and the Information Technology Commission, which will convene on December 12, 2012. Mr. Ackley told the committee there should be a quorum by then.

Mr. Ackley said without the requested expansion, the budget remains the same. The DoIT is asking for an expansion of \$2.2 million for the SHARE team structure and enhancing SHARE system. One recent accomplishment was consolidating the SHARE team in the DoIT. Mr. Ackley said there are a couple of components to the increase of the overall budget in FY14: an adjustment for the SHARE employees moved to the DoIT from the DFA and a \$2 million increase in the operational budget for the SHARE upgrade and roadmap (money already collected and in the equipment replacement fund that the DoIT is asking for authority to spend). The \$300 thousand is reorganization savings. The department requests \$2.2 million for an 8 FTE expansion for SHARE. The DoIT has 205 FTE and 44 vacancies that include 16 vacancies actively being recruited and 12 positions pending reclassification.

Mr. Ackley stated he would brief extensively on the SHARE roadmap if asked.

Senator Griego said he wants something in writing on the SHARE program, a pet peeve of his for years, and asked if it was working "top-notch." Mr. Ackley stated significant improvements have been made, most recently through the upgrade of the patch bundles that have brought many of rules into better compliance and stability, and by re-platforming the system to the disaster recovery hardware appropriated two years ago. From a hardware perspective, these will provide absolute stability, he said. Senator Griego asked Mr. Ackley to provide a report of how much it costs the state for agencies that do not use the DoIT for broadband services and cost savings if agencies go through the DoIT. Mr. Ackley also briefed the committee on various measures the department is taking with regards to law enforcement bandwidth channels and said he was available to brief Senator Griego.

Vice Chairman Varela tasked Mr. Ackley with contacting the agencies with voting members on the Information Technology Commission and providing him names of voting members on the commission. Vice Chairman Varela also requested follow-up on ONGARD at a later date.

### **Miscellaneous Business**

#### *Action Items*

*Approval of October 2012 Minutes* – **Senator Cisneros moved to approve the October 2012 meeting minutes, seconded by Representative Sandoval. The motion carried.**

*Approval of October 2012 Subcommittee Sunset, A and B Reports.*

Sunset Subcommittee -

Subcommittee Report A – **Representative Saavedra moved to approve Subcommittee Report A, seconded by Representative Sandoval. The motion carried.**

Subcommittee Report B – **Senator Cisneros moved to approve Subcommittee Report B, seconded by Representative Salazar. The motion carried.**

*Approval of Contracts* – Director Abbey recommended a **Senator Cisneros moved to approve the contract, seconded by Representative Larrañaga. The motion carried.**

#### *Information Items*

Director Abbey briefed the committee on the FTE Report.

### **Friday, November 16**

The following members and designees were present on Friday, November 16, 2012: Chairman John Arthur Smith, Vice Chairman Luciano “Lucky” Varela, Representatives Henry “Kiki” Saavedra, Larry A. Larrañaga, Rhonda S. King, Don Tripp, Edward C. Sandoval, Nick L. Salazar, James P. White, William “Bill” J. Gray; Senators Sue Wilson Beffort, Mary Kay Papen, Stuart Ingle, John M. Sapien, Phil A. Griego, and Sander Rue.

**Department of Workforce Solutions(631).** Celina Bussey, secretary, Workforce Solutions Department said the DWS is requesting \$1 million for the labor relations division to cover what has been historically funded by Workers Compensation. She broke down planned expenditures for FY14 totaling \$67,569.7 million by five divisions: Workforce Transition Services Division, Labor Relations Division, Workforce Technology Division, Business Services Division, and Program Support Division. Ms. Bussey stated the labor relations division does not receive federal revenue, so this division receives the most from the general fund. The department is operating at a 17 percent vacancy rating, with 40 vacancies currently in recruitment. Ms. Bussey stated the department is asking for higher budget authority to avoid the high number of BARs unique to the DWS.

Vice Chairman Varela asked if the at-risk program came out of the general fund. Ms. Bussey stated the at-risk youth program used to come out of the general fund and is administratively attached but was not funded last year. Vice Chairman Varela noted the DWS vacancy rate traditionally is about 18 percent, yet in FY12 \$3.3 million was transferred out of salaries and benefits to the “other” category. Ms. Bussey stated contract developers were needed for the

implementation of the new system and could not be found within the classification system, so much of the money went for contractual services.

The State Workforce Development Board was discussed, and Senator Sapien stated much to his dismay this board is very political because the governor vetted names for subcommittees.

Ms. Bussey continued her presentation, saying the department was recently awarded \$5.2 million by the U.S. Department of Labor, the fifth highest in the country, to continue to address unemployment insurance (UI) program integrity. The grant also provides \$94,090 for the expansion of re-employment and eligibility assessments. Also geared around integrity initiatives is the continuation of the department's Work Search Verification Pilot Project to increase the number of work search audits conducted by the department. Communication and outreach initiatives include informational videos on social media for employers and claimants; and summits across the state.

The New Mexico UI Advisory Council has discussed and considered reform in work search requirements, partial benefits, negative account balances, and other topic areas. Ms. Bussey stated the department has researched a complete overhaul of the current contribution system to benefit ratio, identifying weakness and providing the council with an alternative proposal. The council is also reviewing policy on new employer rates and tiered benefits. The council is reviewing the Florida legislation and also researching the average duration and exhaustion rates in New Mexico. New Mexico has the "early on, early off" and the exhaustees, she said.

The current UI trust fund balance was \$59.2 million, down approximately \$540 million from 2007. The majority of contributions come in the first and second quarters. Major factors impacting the UI trust fund balance are benefit payout, quarterly employer contributions, and overall unemployment and the labor force. Ms. Bussey said many states around the country have adopted negative account surcharges for employers to address negative account balances, and this is something New Mexico is going to have to discuss.

Approximately 26 thousand people are certifying for UI benefits every week, down approximately 45 thousand last year. In New Mexico, claimants can be eligible for a maximum of 54 weeks – 26 weeks paid out of the trust fund (13,332 claimants currently) and the remainder paid out by a federally funded program called the Emergency Unemployment Compensation program set to expire January 2, 2013. If the program is not extended, benefits will stop for approximately 7,000 claimants.

The new Unemployment Insurance Tax and Claims system will officially launch on January 6, 2013. UI claimants will be able to conduct routine business online and employers will be able to register and directly manage their own UI accounts and have access to claims information. Ms. Bussey detailed all the benefits of the new system.

Senator Beffort lauded Ms. Bussey for tackling new employer rates. Ms. Bussey stated "pseudo-dumping" is when a new company is guaranteed a low 2 percent locked in rate for four years; at the end of the fourth year, the company changes its name or board of directors, allowing them to

continue the same low rate. Ms. Bussey one of the goals of the council is to have better tracking technology.

In response to Representative White, Ms. Bussey said almost all of federal funds come out of employer Federal Unemployment Tax, and these funds pay almost all Department of Labor operations. The entire UI program is funded through federal employer contributions trickling down to the state. For those states whose trust funds have gone insolvent, there is a separate holding account at the federal level from employer contributions.

Senator Griego asked for a report on what is going on in New Mexico, and a specific breakdown of what is going on with the board and how much money is going to specific areas. Senator Griego also said he wants Ms. Bussey to change his mind on the department because he believes it is a black hole. Ms. Bussey stated the four local boards still exist, and money is still at the local level; boards determine all priorities. Ms. Bussey stated she shares Senator Griego's concerns and welcomes the opportunity to sit before Corporations Committee, and discussions are necessary. Senator Sapien stated local boards need to be present because challenges are different throughout the state, and addressed Senator Griego's concern with conflicts of interest among board members, saying it is not the epidemic.

The committee discussed transferrable skills in today's changing workforce.

**Economic Development Department (419).** Jon Barela, secretary, Economic Development Department, stated the FY14 budget request remains flat with the exception of a \$250 thousand increase for salaries and benefits; \$34.7 thousand for PERA contribution shift changes; \$30 thousand for increased costs associated with employee healthcare rates. The total of \$6.8 million is one of the smallest budgets in New Mexico.

Mr. Barela briefed the committee on agency accomplishments with regard to performance measures, saying more than half of the 2679 jobs (goal was 2500 jobs) created were rural jobs. The JTIP funded fewer jobs than the department goal but more than doubled the goal for participating companies and workers who were still employed after one year. Mr. Barela said MainStreet (MS) is one of his favorite programs, and New Mexico has one of the best MainStreet programs in the country – returning \$19 for every \$1 invested in the MS infrastructure and responsible for creating 3,000 jobs. The partnership program is focused on marketing for the state, and Mr. Barela said it is a viable program for the state. The department is looking to expand the film office's role to include digital media and although projects totaled 57, just short of the goal of 60, the economic benefit exceeded the performance measure of \$300 million, earning \$600 million. The Borderplex is developing with a focus on the Santa Teresa and Chihuahua border; improvements to the port of entry are being made, and retail and housing is developing. Union Pacific is making construction jobs, he said, and stressed New Mexicans have these jobs. Regarding international trade, New Mexico more than doubled the total dollar amount of exports reaching \$2.1 billion and exporting to more than 200 countries.

Mr. Barela again said the department is in the process of a restructuring plan restructuring a plan to streamline the department, making it more effective and efficient. Mr. Barela said the EDD wants to continue focusing on international trade and also enhance science and technology

efforts. Mr. Barela said the EDD moved the Office of Mexican Affairs funding into the ED division to support international commissions and conferences.

The EDD has 52 FTE in the FY14 plan, 10 vacant positions, and five in the hiring process. Finally, he said, the EDD is trying to align staff to new century economy needs. The New Century Jobs Economy Summit on October 2, 2012, reinforced the need to make New Mexico competitive in a number of ways by investing in infrastructure, workforce training, and small businesses and job creators from a tax standpoint. Mr. Barela stated the looming job cuts require working together for a softened impact.

In response to Senator Rue, Mr. Barela stated the EDD has resurrected the Rural Jobs Economic Development Council to coordinate legislative efforts and prioritization of needs. Rural economic developments are different, and the council is to educate the department on rural needs. Urban areas have ongoing meetings through various organizations, he said, and he sees improvement with the communication.

Mr. Barela said seven modest, common-ground approaches to New Mexico's economy moving forward are a single sales factor; a simplified tax code and reducing the corporate income tax rate from 7.6 percent to 4.9 percent; replenishment the Local Economic Development Act fund with \$10 million and the JTIP with \$4.7 million. Mr. Barela said New Mexico also needs Spaceport informed consent legislation so a \$209 million asset is not collecting dust and more funding for MainStreet for rural areas.

Representative Tripp asked what New Mexico is exporting to warrant the increase. Mr. Barela stated pecan, cattle, beans and chili exports have risen; machine goods; and energy-related services. Mr. Barela talked about Mexico, saying violence is abating. Despite the violence, Ciudad Juarez had an increase of 21 thousand manufacturing jobs in the first half of 2012 alone, and New Mexico needs to take advantage of this. Growth around the border area is expected, and Mr. Barela stated all three areas have enormous growth potential.

Vice Chairman Varela asked what kind of statewide development plan Mr. Barela found when he came into office. Mr. Barela said he arrived and perceived the previous statewide plan as having a heavy emphasis on film and a heavy emphasis on renewable energy progress, with some emphasis on science and technology. Mr. Barela stated film has continued aggressively, and the Spaceport is a continuous investment, an initiative from the prior administration. Mr. Barela said the department has not abandoned the commitment to renewables. Vice Chairman Varela asked for the plan.

Senator Sapien asked about the film study. Mr. Barela stated a lot of money was spent on two previous film studies with mixed results, and the EDD has nowhere near \$200 thousand to pay for the study. Mr. Clifford is working on funding, he said.

Chairman Smith said Burlington Northern brought the state to the dance, and the EDD needs to recognize this. The average salary, including benefits, is \$110 thousand, he said. Intel's competitiveness could be greatly diminished with Apple and its chips. These are areas of concern needing proactivity. The other area, he said, is water. Chairman Smith asked what tax

incentives the state can eliminate to assure a low rate in the long term. Mr. Barela stated there are a number of ineffective incentives and others that have not been used.

**Office of Military Base Planning (491).** Brigadier General (Ret.) Hanson L. Scott, director, Office of Military Base Planning (OMBP), recapped accomplishments. 1) Melrose Air Force Range was expanded. The 75-year lease is with the New Mexico State Land Office. 2) Doña Ana County has agreed to act as the fiscal agent for a joint land use study underway that includes five New Mexico counties, White Sands Missile Range, Holloman AFB and Fort Bliss. This review provides participating entities an opportunity to address potential encroachment issues and is the largest the DOD has supported. 3) The members of the Military Base Planning Commission to develop appropriate actions for community support groups have been appointed and validated. One meeting a quarter is required. 4) Additional land adjacent to Cannon AFB was purchased with remaining capital outlay funds for force protection and transportation access. 4) Holloman AFB bedding down two F-16 squadrons; direction is no aircraft movements from Luke AFB until the FY13 is approved, but the one year delay may be disruptive, he said.

Mr. Scott said looking forward, the OMBP will continue to work on the southern New Mexico/El Paso joint land use study. In coordination with the FAA, Fort Bliss, and White Sands Missile Range, the OMBP will work aggressively to develop an airspace plan meeting requirements for varied missions in Southern New Mexico but income is needed to come to the FAA with a proposal, he said. Mr. Scott said one of the major issues he has talked about previously is the impact of renewable energy initiatives on military missions. The OMBP will continue to identify and pursue actions and legislative language supporting "military value," a term Mr. Scott described as the capability of a base to support a military mission. Mr. Scott said the Department of Defense will most likely look at reducing the number of bases between 2013 and 2016 because of what is going on nationally. The OMBP is requesting \$30 thousand for contractual services to help address military value issues and actions.

Senator Ingle asked which New Mexico base is most vulnerable. Mr. Scott said Cannon AFB will be robust for years to come. Kirtland AFB is also in good shape, with a possible tendency to nickel and dime some of the high-tech outfits there. White Sands Missile Range offers many capabilities to the DOD. It is important to New Mexico get the two F-16 squadrons bedded down at Holloman AFB, he said.

Chairman Smith asked what percentage of Fort Bliss is in New Mexico. Mr. Scott stated 89 percent, and it is the largest Army post in the United States. The discussion continued with cuts to defense spending. Mr. Scott stated if military spending is exempt, reductions must be taken out of investments and operations, which will hurt because this includes flying hours and civilian personnel.

Mr. Scott said the plane training out of Reserve is a CV22 Osprey, whose mission is to drop off special forces teams.

**Educational Retirement Board (352).** Anne Hanika-Ortiz, senior analyst, LFC, said the Educational Retirement Board request of \$34.3 million represents a \$3.5 million decrease from the FY13 operating budget of \$37.8 million. The request includes the following: a decrease of

\$4.5 million in asset management fees due to an increase in alternative investments and three expansion positions – two to manage fixed income investments internally and one to audit employer reporting of employee wages and contributions. The agency is authorized 62 FTE, 4 exempt; 12 are vacant. Ms. Hanika-Ortiz stated addressing loopholes is important, such as half-time work for full-time benefits. The ERB had an on-time, unqualified audit with three findings.

During FY12, the unfunded liability increased from \$4.9 billion to \$5.7 billion, further decreasing the plan's funded ratio from 63 percent to 59.8 percent. The ERB is proposing a pension reform plan to reach 100 percent funding within 30 years that will increase revenues with higher employee contributions and slightly decrease spending by delaying the cost of living allowance (COLA) until age 67 and enacting a minimum retirement age of 55 for new employees only. The proposal assumes the Legislature will fund a statutory increase in the employer contribution of 0.75 percent for FY14 and FY15.

Jan Goodwin, executive director, Educational Retirement Board (ERB), said part of the reason for off-budget expenses for performance managers is the ERB is increasing the percentage of assets that are alternative investments. The ERB has made a deliberate move away from having a high proportion of equity investment stocks because of the high volatility. Ms. Goodwin said the ERB is concerned about the increase in the liability insurance premiums charged by the GSD and thinks there is a better method.

For the one-year period ending September 30, 2012, the fund experienced a net investment gain of \$1.4 billion, which included a net investment gain of \$429.1 million during the third calendar quarter. Assets increased from \$8.7 billion a year ago to \$9.8 billion on September 30, 2012, with \$292.4 million in distributions during the year.

Ms. Goodwin reiterated the ERB's proposal, adding the employee contribution rate of 10.7 percent would be effective in FY15 and employees currently get COLA at age 65. The committee discussed the retirement age of 55 within the new proposal. Ms. Goodwin stated the ERB tried to come up with a balance; a level of contribution rate (10.7 percent) and a minimum retirement age which together would significantly improve solvency.

Chairman Smith stated the state is nowhere near getting this fixed.

ERB member Brad Day testified the proposal developed by beneficiaries of the plan will not fix the solvency problem. Mr. Day stated two things are wrong: The state has unsustainably generous benefits and no one is paying for them (participants and state.) The benefits must be adjusted downward, and the COLA benefit must be tied to the funding percentage of the plan. A new proposal involving only new employees is planned. Vice Chairman Varela stated competing proposals will mean nothing will get done at the session.

**Public Employees Retirement Association (366).** Ms. Hanika-Ortiz said the Public Employees Retirement Association (PERA) base request of \$35.2 million represents an increase of \$5.5 million, or 19 percent, above the FY13 operating budget of \$29.7 million, primarily for investment manager and consultant fees. The request includes expansion positions to support the

training and reporting needs of employers who report wages and contributions to the PERA. The department is currently authorized 75 FTE, six are exempt and five are vacant.

In the last fiscal year, the unfunded liability increased from \$4.9 billion to \$6.2 billion, further decreasing the plan's funded ratio from 78 percent to 65 percent. The PERA reported a negative 0.38 percent return for FY12, however, that return was 120 basis points better than respective benchmarks. The PERA is proposing a pension reform plan to reach 100 percent funding within 30 years that increases employee and employer contributions for a total of 27 percent of compensation. The PERA's compounded COLA is currently 3 percent, begins year three of retirement, and accounts for 32 percent of the cost of the benefit. The proposal decreases spending by lowering the COLA to 2 percent for all and includes a graduated seven-year eligibility period to receive the increase. Ms. Hanika-Ortiz said the PERA proposal also creates a new tier for future hires and active employees hired after July 1, 2010, and decreases the benefit by 30 percent.

Wayne Propst, executive director, Public Employees Retirement Association, introduced board members and said he inherited a dedicated and talented staff. Mr. Propst stated he is committed to filling the PERA's vacant positions and briefly went over requested increases due to investment fees. Mr. Propst said retirements and member service requests are increasing, and briefly covered the PERA's investment fund, \$12.2 billion at the end of October, 2012.

The PERA is requesting \$2.8 million to upgrade its stand-alone RIO pension administration system.

In response to Vice Chairman Varela, Mr. Propst stated from June 30, 2011, to June 30, 2012, the unfunded liability rose to \$1.2 billion, primarily because of the worst losses experienced in 2008 and 2009. The PERA board recently adopted a new asset allocation and a new investment policy in response to what happened in 2012. Vice Chairman Varela stated he wanted an independent review.

**State Investment Council (337).** Elisa Walker-Moran, chief economist, LFC, said the State Investment Council (SIC) request is \$56.9 million, 65.9 percent above the FY13 operating budget of \$34.3 million. The FY14 request for contractual services is \$52.4 million, 75 percent above their FY14 operating budget, she said, and according the SIC, is to be used to support external investment manager fees as outlined in the council's new asset allocations. The SIC expects higher investment returns to offset these increased costs. As part of its restructuring plan the SIC eliminated 3 FTE. Total FTE is 29.

Ms. Walker-Moran stated the SIC's two main funds (land grant permanent fund and severance tax permanent fund) had returns of 0.63 percent at the end of FY12 and have recently improved to 17 percent year-over-year in the recent quarter ending September 30, 2012.

State Investment Officer Steve Moise stated the SIC operated on the "cheap" for many years. The council unanimously supports the 60 percent requested increase. Mr. Moise asked the committee to recognize the fact the SIC has added \$2.3 billion to the portfolio in the past 12

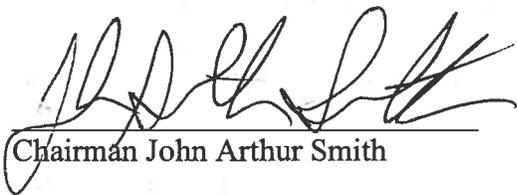
months. For each dollar spent on increased management fees, the funds expect to receive two to three times that amount in improved returns, which is not wishful thinking, he said.

Investment returns have improved as a result of the council's in-depth asset re-allocations, by replacing underperforming investment managers and consultants, and by sourcing new staff.

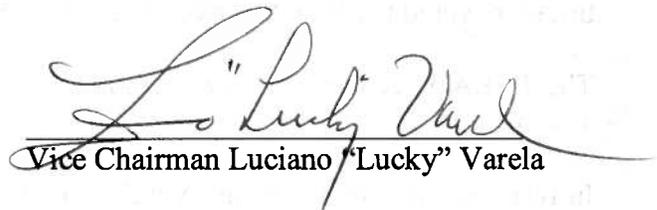
Representative White said wanting to reward success is great but there was no penalty for failure. Vince Smith, deputy state investment officer, said performance has come from new managers. The strategy is to find the best managers and negotiate the best fee. It is only a few basis points in cost when it is done in house, but the extra fees to outsource have paid off. Basis points are spread according to risk, he said.

Senator Sapien lauded the SIC, and said with the size of the fund and the results the state has seen, it is a small amount of money to put toward a great return.

With no further business, the meeting adjourned at 12:55 p.m.



Chairman John Arthur Smith



Vice Chairman Luciano "Lucky" Varela