

MINUTES
LEGISLATIVE FINANCE COMMITTEE
October 21-22-23-24, 2008

Chairman John Arthur Smith, Chairman, called the Legislative Finance Committee (LFC) to order on Tuesday, October 21, at 8:30 a.m.

The following LFC members were present on October 21st:

Senator John Arthur Smith, Chair; Representative Luciano “Lucky” Varela, Vice Chair; Representatives Jeanette O. Wallace; Brian K. Moore; Don Bratton; Rhonda S. King; Nick L. Salazar; Henry “Kiki” Savaadra; Edward C. Sandoval; and Senators Pete Campos; Carroll H. Leavell (for Leonard Lee Rawson); Mary Kay Papen; Phil A. Griego; Sue Wilson Beffort; Suart Ingle; Carlos Cisneros. Speaker of the House Ben Lujan; and Representatives Don Tripp, Richard J. Berry; and Senator Lopez attended as guests.

Program Evaluation of State Purchasing. Donna Hill-Todd, Brenda Fresquez and Lawrence Davis, LFC performance evaluators, presented a review of the General Services Department (GSD) State Purchasing Division’s (SPD) procurement effectiveness. Ms. Donna Hill-Todd began her presentation by stating that the procurement code was enacted to ensure fair competition and conserve state resources. SPD has not been reviewed since the division’s inception.

LFC staff research efforts have determined that nine out of 10 states’ purchasing function resides within the state’s finance and administration agency. Presently, New Mexico’s Department of Finance and Administration (DFA) is responsible for administering professional services contracts, approving emergency purchases, and issuing warrants for all statewide purchases. The Legislature should consider transferring the state purchasing division function to the DFA.

The LFC review identified the need for statutory guidance for emergency purchases and exemptions in the procurement code to ensure adequate oversight. New Mexico has gotten into the habit of exempting “special projects/contracts” instead of just tangible personal property, livestock, benefits, etc. causing the Procurement Code to reflect “sheltered” special interest projects and “protection” for some sole source purchases. For example, contracting for both the use and operation of prison facilities are exempt from the Procurement Code. This may put the state at a poor negotiating position to obtain low cost, high quality services. Another example given was the Department of Health (DOH) using exemptions from the procurement code to select a contractor to manage Fort Bayard Medical Center. There is no evidence other firms were considered or allowed to offer their services. According to the State Purchasing Director, sole source and emergency purchases are one of the highest procurement categories of abuse.

Ms. Hill-Todd provided a list of additional exemptions in the procurement code that should be reviewed by the Legislature. LFC staff recommends that the LFC, DFA and GSD consider appointing an interim committee to review the procurement code to establish oversight and monitoring mechanisms of emergency purchases, to evaluate all

exemptions and determine if non-competitive purchasing status is in the best interest of New Mexico and its public funds.

Ms. Hill-Todd reported that \$5.2 billion was spent by state agencies in FY07. The SPD is responsible for buying tangible personal property and services for state agencies worth \$550 million each year. However, SPD can only account for \$16 million through the Request for Proposal (RFP) and Invitation to Bid (ITB) process because of limited tracking mechanisms.

The LFC review has identified the need for improved management accountability procedures to ensure statutory requirements are met and efficient procurement practices are implemented. The internal control environment, SHARE, several statutory mandates, core operations/strategic planning and performance measures are some of the primary areas of responsibility that are not being efficiently and effectively managed within the division. Several statutory requirements have not been fulfilled including the development of several annual reports to the legislature, following the statutory definition and requirements of a "small business", and the establishment of the State Procurement Standards and Specifications Committee.

The LFC review recommended that the State Purchasing Agent adhere to all aspects of the Procurement Code and immediately develop and document processes to submit the annual reports, form the statutory required committee, and develop/implement all parts of the Procurement Code. Also, if GSD's executive management and the State Purchasing Agent believe these requirements are burdensome to the agency, then management should review current statute, justify revisions, prepare and propose alternative language for consideration by the legislature during the 2009 session.

Ms. Hill-Todd reported that strategic planning and core operations for the division have not been successful during the past several years. If the division's Core Operations and Action Plans published for fiscal years 2007 and 2008 were "graded", it would reflect all non-passing ratings in SPD's Core Operations for both years except for one which deals with external agency training. SPD provided training to agencies when they requested it, however, management does not have an annual training plan developed for external agencies. The LFC review recommended that the state purchasing agent with executive management re-evaluate division strategic plan components and revise as necessary.

SPD reported in the review that under-funding, insufficient staffing, and the loss of its electronic support system shortly after the implementation of SHARE in 2006, has adversely impacted the SPD's progress in meeting strategic plan objectives. As a result, the division works on a reactive basis because of the intensely manual environment which causes the workload to exceed staffing capabilities. LFC staff recommend that the state purchasing agent and staff focus on hiring for the funded vacancies; conduct a staffing analysis to justify FTE request for the upcoming budget hearing; follow-up with the State Personnel Office (SPO) about position reclassifications; and contact the purchasing departments in Arizona and Utah to find out more about their strategic sourcing processes conducted in-house with similar staff size.

Ms. Hill-Todd reported that the initial plan for GSD's implementation of the e-procurement and strategic sourcing modules was presented to the Department of Information Technology (DoIT) Project Certification Committee (PCC) for certification in September 2008. The PCC approved \$92 thousand for the initiation phase. LFC staff recommended that SPD, DoIT, and the SHARE project team, work on the feasibility of implementing the e-procurement and strategic sourcing modules and determine the amount of additional funding that may be required. Management is also encouraged to dedicate the staff and resources to function in a leadership role with the e-procurement project team.

Ms. Hill-Todd reported that it appears the Save Smart initiative will not be continued due to lack of adequate knowledge retention, outdated data on which the savings formula is based, and limited resources. The State spent \$8.6 million on Save Smart between 2004 and 2006. The primary function of Save Smart was to create statewide savings by leveraging the state's purchasing power to save money. In 2003 GSD contracted with Silver Oaks Solutions (SOS) to accomplish the Save Smart initiative by applying strategic sourcing methods to achieve best pricing. The state purchasing agent determined there was insufficient staff to handle Save Smart procurement processes, and discontinued the program.

Ms. Hill-Todd further reported that the state-wide impact of SPD not utilizing the strategic sourcing methods provided by SOS could affect state expenditures and price agreements. LFC staff recommended that the state purchasing agent perform a staffing analysis to determine if additional positions are needed to support strategic sourcing methods; review and apply strategic sourcing techniques gained from SOS and surrounding states; challenge staff to take the initiative to achieve best pricing; and, develop and implement a contract monitoring plan.

Ms. Hill-Todd concluded by stating that procurement code violations have ranged from \$2 million to \$7 million and do not appear to be tracked or monitored. The state purchasing agent reviews the documentation submitted by the agency, issues a form letter that a procurement code violation has occurred, and provides information on the steps necessary to resolve the issue. The state purchasing agent reported that the violation is usually because of employee lack of knowledge, and staff turnover. Management does not track these violations, nor does the division provide any feedback to agency management. The LFC review recommended that the state purchasing agent should establish a process to effectively monitor the procurement violation process.

Ms. Fresquez began her presentation with a review of the internal control environment. The internal control environment needs significant improvement. Control risk exists in the areas of password security, data accuracy and reliability, undocumented policies and procedures, and management reports. Two staff members have been using their supervisor's password to update the vendor database. These two individuals need the access authority to update and create vendors as part of their responsibilities.

The LFC review indicated that errors and/or omissions in data and information are largely attributed to the manual environment and lack of written procedures. For example, the procurement violation data was not accurate nor did it distinguish procurement process violations, from procurement code violations. The debarred and suspended vendor listing was not known to exist by the state purchasing agent. Sole source data is not reliable. The manually-prepared sole source contracts spreadsheet did not include an aircraft purchased by the Department of Public Safety (DPS) for \$1.2 million in April 2007. Sufficient documentation to support training for external agencies and vendors was not retained or not filed.

Ms. Fresquez reported that the procurement code and administrative code are used as policy and are not supported by current operating procedures. Procurement and administrative codes are not sufficient to guide staff through daily operations. When written policies and procedures do exist; they are inaccurate, incomplete, or not current. Written procedures would provide consistency in the procurement process, establish standard practices, and ensure compliance with laws and administrative regulations.

There are no standard procurement-related reports from management. The state purchasing agent and staff do not use the available SHARE purchasing reports. LFC staff recommended SPD eliminate the sharing of passwords and evaluate the staff's SHARE access authorities; develop and document formal policies and procedures for the procurement process; and, coordinate with DFA for division training on which reports can be generated using report modules and available queries in SHARE.

Ms. Fresquez stated that documentation was insufficient to validate the performance measures for the General Appropriation Act and internal measures. The current monitoring plan needs updating to reflect current targets and processes. Measure definitions were not accurate. For instance, definitions for "small business" and "customers" were not consistently applied. It was difficult to determine how performance targets were established based on the documentation. LFC staff recommended SPD update the monitoring plan to reflect current processes and targets; define what is being measured for each performance measure; re-evaluate customer satisfaction survey questions and include follow-up to demonstrate how management is striving to improve customer satisfaction; and create a system for tracking data to ensure accuracy and consistency.

Ms. Fresquez reported that SPD has a fair and consistent RFP and ITB process except for the written notice of award to the lowest bidder that was not issued for the ITBs as required by the procurement code and contract files lacked standardization. LFC staff recommended SPD establish minimum and mandatory requirements for documenting the procurement process and establish standardized table of contents and format for RFP and ITB submissions.

The vendor registration and notification process also appears to need improvement. Vendor registration is initiated on the division's website. The contact information and references to statute were not current at the time of the review. Prior to awarding a

contract procurement staff should evaluate vendor's status to minimize the risk of issuing an award to a debarred or suspended vendor. Other states check the General Services Administration's (GSA) Excluded Parties List System as part of their process. LFC staff recommended that SPD maintain a current website for potential vendors; implement the use of the standard acknowledgement letter to notify vendors and provide their vendor number; develop a process to evaluate vendor status; and, re-establish the debarment and suspension process.

Ms. Fresquez reported that a good-faith review did not appear to have been conducted for a sole source purchase by the DPS for an A500 surveillance aircraft for \$1.2 million. The state purchasing agent approved the purchase without documenting support for the decision to approve the sole source purchase. The division has no formal procedures for conducting good-faith reviews. Price negotiations for the aircraft were conducted by the DPS cabinet secretary. The state purchasing agent did not take an active role in the negotiations of the aircraft as would have been appropriate. LFC staff recommended that the SPD develop and document specific criteria for good-faith reviews of sole source purchases exceeding \$500 thousand. Also, research other states sole source procurement policies and procedures to establish more stringent procedures for procuring by sole source to discourage agencies from using this purchasing option and detect possible abuse.

General Services Department (GSD). Arthur Jaramillo, GSD secretary, responded to the LFC review of the SPD. Secretary Jaramillo began by expressing his disappointment with the lack of balance in the presentation. Inadequate staffing and the lack of an electronic data support system limits the ability of the SPD to meet all of the requirements listed in the report. When the SHARE system was put into effect collateral electronic support systems were discontinued. Staff and IT analysts had to be reallocated to support the move to a manual process.

Secretary Jaramillo stated that last year a proposal was submitted for \$500 thousand that would allow the division to buy a subscription onto a web based electronic system to support vendor registrations and RFP and ITB responses. The proposal was denied. A gap analysis was also provided last year to support a request for an additional 15 FTE for buyers and IT analysts. Funding for the additional staff was denied. GSD did receive \$500 thousand to study the SHARE electronic system while being denied access to the web-based system that would have provided substantial support. SPD continues to work cooperatively with DFA and the SHARE team to evaluate what it would take to put the SHARE procurement modules in place.

In this budget cycle GSD will be reducing the request for FTE buyers and IT analysts to six in response to the Governor's request to cut costs. Secretary Jaramillo suggested that the legislature consider adding a one-half of one percent administrative fee to contracts over a certain amount to help compensate for the work that goes into moving contracts through the bid process.

Secretary Jaramillo stated that the SPD did not abandon Save Smart as indicated in the LFC review. Two years ago Save Smart contracts were beginning to expire. The baseline against which the savings program was measured was audited by an independent auditor. The audit tracked \$42 million in savings by FY07. However, the baseline set in 2003 was becoming less and less relevant to what the state should be achieving. In the strategic plan for FY07, FY08, and FY09, the division described a transition of Save Smart into a process called strategic sourcing. The Secretary emphasized that the State's investment in Save Smart was not lost. The strategy for strategic sourcing remains the same today.

Secretary Jaramillo agreed with LFC staff recommendations to put an interim team together to discuss sole source vendors and emergency purchases. Secretary Jaramillo responded to concerns raised in the LFC review regarding the sole source procurement of an aircraft purchased by DPS. The state purchasing agent participated "as appropriate" by providing experienced technical advice to the DPS cabinet secretary whose specific requirements and specifications for the use of the aircraft for law enforcement surveillance were matters to be resolved within his broad authority.

In closing, Secretary Jaramillo stated that effective checks and balances in the procurement process are supported and complemented by the current division of responsibilities and staffing resources between SPD and DFA. "Buyer" and "payer" functions should be separate. DFA does not issue RFP's or provide procurement oversight for professional services contracts, only contract review. Procurement and oversight is performed by the user agency for professional services. Mike Vinyard, SPD purchasing director, also responded to concerns raised by the LFC review. Mr. Vinyard stated that the division will continue to work toward addressing deficiencies noted in the LFC review.

Secretary Jaramillo responded to a report detailing procurement violations agency-wide. When a procurement violation shows up on a report, it means DFA will not make payment until the agency provides justification for the circumstances under which the procurement was attempted. This demonstrates a check and balance system which supports why this process should continue in two different arms of government. Procurement violations are those that do not comply with the procurement code. Process violations do not violate the procurement code, but do not comply with processes necessary to effect procurement. The committee heard many examples of why procurements might show up as code violations or as process violations.

Chairman Smith asked about the state of any delinquent audits. Secretary Jaramillo was pleased to report that by year-end there will be three successive audits completed for FY06, FY07 and FY08. Chairman Smith asked if DOT Secretary Denko was aware of DOT's opinion regarding the purchase of the A500 surveillance aircraft. Mr. Vinyard said yes, but DPS's requirements overruled that opinion.

Senator Griego recognized the commitment Secretary Jaramillo has shown to New Mexico. Senator Griego expressed his reservations about SHARE; concerns about the practice of sole source contracts; and Save Smart and the impact on small business.

Representative Varela asked why DoIT and DFA were not present to talk about their participation in the procurement process. He also expressed disappointment that the procurement module within SHARE is still not active. Procurement is an important part of the SHARE project. He asked if the State Auditor could look at the LFC review and the Secretary's response to see if an independent third party is needed to look at areas of disagreement and come up with a consensus plan. Director Abbey stated he stands behind staff recommendations in the LFC review of the SPD.

Representative Varela referred to the 77 vacancies within GSD and reminded Secretary Jaramillo of his authority to redirect staff and resources where needed. Procurement is a critical function that needs to be addressed and this may not be the best time to ask for additional FTE's. Agencies may need to look to each other for additional staff and resources.

Representative Moore expressed concern over delays in payment for local businesses. He also expressed caution in adding administrative fees to local businesses for the privilege of doing business with the State. Representative Bratton concurred further stating that companies already pay taxes to help fund state government.

Senator Papen asked about the loss to the State's investment if DPS's A500 plane ends up grounded indefinitely when maintenance is required. Secretary Jaramillo replied that Secretary Denko assured him that the State can continue to contract for mechanical maintenance and procure the parts necessary to keep airworthy despite the vendor's bankruptcy status. Representative Bratton cautioned concern when specifications are drawn specific for one vendor. There needs to be a legitimate purpose for when this occurs.

Chairman Smith asked about the practice of cabinet secretaries overriding concerns raised by GSD regarding certain procurements. Secretary Jaramillo said he believes cabinet secretaries know their agencies best. Representative Varela stated the need to revisit the procurement code and how it applies to all agencies, including quasi-agencies. The State needs to clarify GSD's jurisdiction over state agencies and the procurement code.

In closing, Chairman Smith stated GSD's management response to the LFC report did not reflect the intensity of the Secretary's feelings. He expressed appreciation to the LFC staff for the depth of the report. He further stated that the end result will be a better return on taxpayer dollars.

Corrections Department Preview of FY10 Appropriation Request. *New Mexico Corrections Department (NMCD).* Joe Williams, NMCD secretary, introduced various staff members to the committee. Secretary Williams began by stating that the FY10 budget request was submitted before the economic downturn. The Department has not had an opportunity to meet with executive staff regarding the directive to trim budgets. Most of the expansion requests were for programs from the governor's task force on prison reform.

The Department is requesting \$337.8 million from all funding sources, including a general fund increase of \$18.9, or 6.4 percent, more than the FY09 operating budget. The base budget general fund increase is \$9 million, or 3 percent, more than FY09. Male inmate population growth is expected to grow for an additional 254 inmates, or an overall increase of 3.9 percent. Female inmate growth is expected to grow for an additional 42 inmates, or an overall increase of 7 percent. The Department's request also includes 2,603.5 FTE, 59 of which are expansion positions.

The following are the major increases in the general fund base budget request:

- vacancy rates and overtime for correctional officers,
- prison facility maintenance,
- probation and parole office leases,
- inmate food,
- utilities and fuel,
- medical contract,
- information technology hardware and software maintenance, and
- National Crime Information Center data lines.

The Department is requesting a general fund expansion of the base for the following FTE, most of which are for prison reform:

- 6 FTE teachers to expand *Success For Offenders After Release Program*,
- 9 FTE to increase community behavior health programs or "half-way houses",
- 10 FTE to expand substance abuse programs inside prisons,
- 1 FTE to implement a risk and needs assessment tool,
- 1 FTE to coordinate create restorative justice reentry panels,
- 2 FTE for Corrections Industries workforce development program, and
- 1 FTE chaplain position to coordinate faith based reentry.

Also in the expansion request were rate increases for offender services, FTE for transporting offenders, sex offender monitoring, probation and parole officers, cadet training academy administrative support, and a Western New Mexico Correctional Facility maintenance officer.

Additional requests include \$250 thousand for modules to support the NMCD Criminal Management Information System; \$270 thousand for the Enterprise Content Management contract to perform needs assessments for electronic records management; and a special appropriation request for \$5.2 million for security equipment for prison SORT teams, security improvements primarily for Turquoise Lodge, prison kitchen equipment, Correction Industries capital equipment replacement, ground repairs, inmate transport vehicles and inserts, and modular units.

Capital outlay priorities include \$28.5 million for maintenance, repairs and equipment particularly for aging facilities; \$3.6 million for security level facility upgrades; \$11 million for statewide security upgrades; and \$6 million for PNM/Roswell waste water treatment projects.

The Department does not anticipate asking for a supplemental appropriation for FY09. FY09 budget challenges include lowering the turnover rates of probation and parole and correctional officers; recruiting and retaining probation and parole and correctional officers; containing costs for medical services from prison vendors; providing parole supervision for sex offenders on a 24/7 basis; maintaining aging prison physical plants particularly for heating and cooling; reducing recidivism rates; and the successful transition of male offenders to the Training Center in Los Lunas, and the female offenders to Turquoise Lodge.

The Department will be asking the SPO and DFA for an exemption to the hiring freeze for correction and parole officers. FY10 budget issues include maintenance of public prisons; increased office lease rates for probation and parole offices; and probation and parole and correctional officer salary increases. The Department is requesting in FY10 a change in the General Appropriations Act to utilize intensive supervision fees throughout the entire Department.

Jolene Gonzales, NMCD deputy secretary, reported on additional budget adjustment language for FY09 and FY10 being requested of the legislature. The requests included converting the NMCD to a non-reverting agency to assist with maintenance, repairs and security of facilities; and requesting a change in the General Appropriation Act to utilize probation and parole fees for the entire Probation and Parole Division. NMCD will be asking for general fund support for Corrections Industries which has been self-sustaining up to this point. The prison reform and reentry challenge for FY10 will be to fully implement the recommendations of the Prison Reform Task Force of 2008. The focus of reentry will be on the highest risk offenders.

Chairman Smith reminded the committee that when considering capital outlay requests, statewide repair needs are a priority over individual district needs. The executive and legislative branch will need to work together to address priorities.

Representative Varela said that the State is having a major shortfall in the general fund. However, the Permanent Fund is based on a five year average and the Department may be able to find additional revenue since the effects of the decline in the markets will not affect the Fund until next year, or the year thereafter. Representative Varela asked what mandates are being given private facilities in terms of reducing expenditures. Secretary Williams replied that private facilities are difficult to deal with because of the profit motive. However, he said NMCD will be approaching all vendors to see what can be negotiated if even on a temporary basis. Representative Varela stated that the LFC tends to oppose adding new departments as non-reverting in the General Appropriation Act, and would need to hear good justification.

Senator Lopez asked what was used to project the growth in the inmate population. Secretary Williams replied that the Department has a contract with J.F.A & Associates to project trends based on demographics. Senator Lopez asked what the Department was doing to support inmate success with reentry. Gail Oliver, NMCD deputy secretary,

replied that the Department received a federal grant to implement a risk and needs assessment when an inmate enters prison that identifies barriers an inmate has that will impact successful reintegration. A transition accountability plan is then initiated that will follow the inmate through their incarceration and out into parole. Domestic violence programs offered in prison were provided as an example.

Senator Lopez emphasized that as the State looks at prison reform, to not neglect a parolee's needs for education and community support after incarceration. In response, Ms. Oliver provided information on restorative justice efforts. Restorative Justice is a program where persons representing the community identify offenders that will be released into the community. These community members welcome the offender back into the community, offer encouragement and support, and work with the inmate throughout their parole. Roswell has been chosen as the first reentry center in the state.

Representative Varela asked LFC staff to provide a copy of all private prison facility contracts before the Department submits its budget reduction plan in December.

General Fund Revenue Outlook for FY09 and FY10; Bonding Capacity Update.

Department of Finance and Administration (DFA). Katherine Miller, DFA secretary, presented a general fund consensus revenue forecast update. Secretary Miller emphasized that the key factor in this update is that natural gas and crude oil prices for FY09 and FY10 are expected to decline from the levels reported in July and August 2008.

Since the August forecast, the predicted recurring revenue for FY09 has decreased by \$344.4 million and the FY10 forecast has been lowered by \$372.1 million. This revenue estimate is predicting a shortfall for FY09 of \$185.8 million to maintain a 10 percent reserve level. FY09 recurring appropriations exceed FY10 recurring revenues by about \$6.7 million.

In response to this forecast, all executive agencies have been directed by the Executive to cut operating costs and develop plans by November 7th to save 5 percent in FY09 expenditures. DFA has also been directed to identify earmarked funds, earmarked appropriations, and stalled capital outlay projects that could be deauthorized by the legislature and help shore up the general fund. The Executive recommends that New Mexico should maintain general fund reserve balances at 10 percent of current year appropriations.

DFA believes that the structure of the reserves needs to be addressed so that the general fund operating reserve balances are sufficient to pay the obligations in the appropriation accounts. Additionally, the balances in the appropriation contingency fund need to be adjusted similarly to cover any unforeseen obligations.

The current estimates of FY10 severance tax bond capacities have been reduced by about \$203 million since the August forecast. Bond capacity for FY11 is about \$169 million less than the August estimate. The effect of legislation passed in the 2008 special session is reflected in this update. The consensus revenue forecast group will prepare the

forecast that will be used for the FY10 budget in early December and a mid-session review in 2009.

The US economy shows continued weakness. Spot prices for oil have fallen as low as \$66 per barrel, the federal funds rate is at 1.5 percent, the S&P 500 index closed at 940.55 on Friday, October 17 and consumer sentiment hit 57.5, down from 70.3 the previous month.

Secretary Miller continued with the New Mexico economic outlook. New Mexico ranked 16th among states in job growth for the period of July 2007 to July 2008. Job growth in New Mexico was 0.6 percent in August 2008, well above the national rate of minus 0.3 percent. Unemployment in New Mexico averaged 3.5 percent in 2007 and has increased to 4.7 percent in August 2008. This is below the national unemployment rate of 6.1 percent.

New Mexico total personal income expanded at a rate of 5.8 percent from the 2nd quarter of 2007 to the 2nd quarter of 2008. National growth in personal income for the same period was 5.3 percent. New Mexico had 8.1 percent growth in average hourly earnings in construction, 3.0 percent growth in manufacturing, 4.0 percent in retail, and 9.7 percent in wholesale.

Total housing unit authorizations in New Mexico are down 40 percent in the second quarter of 2008 with a 42 percent drop in single family and a 24 percent drop in multi-family residential contracts. Non-residential contracts showed a 6 percent increase.

Retail trade performed well adding 1,200 jobs, or a 1.3 percent gain. The accommodation and food service sector picked up 667 jobs or a 0.8 percent gain. The information sector posted 1,300 jobs or an 8.6 percent gain, primarily in the film industry. Energy and minerals, manufacturing, professional, and business sectors were flat or slightly declining. Health care and social assistance added 3,767 jobs or a 3.8 percent gain, largely from hospital expansions. The government sector increased 2,400 jobs or a 1.9 percent gain, primarily from Native American expansions.

The 30 year fixed-rate mortgage was 6.01 percent for September 2008 according to Freddie Mac. On October 9, 2008, the Federal Reserve lowered the target for the federal funds rate to 1.5 percent, from 2.00 percent.

Home prices were up 1.7 percent for the second quarter of 2008. The House Price Index was up 3.4 percent for New Mexico between the first quarter of 2007 and the first quarter of 2008. The corresponding figure for the nation was a decline of 0.3 percent for the same period. In the second quarter of 2008, foreclosures increased by 60 percent over the second quarter of 2007 in New Mexico while the increase nationwide was 121 percent. The foreclosure rate in New Mexico was one in every 1,724 homes while the foreclosure rate nationwide was one in every 416 homes.

Rick Homans, TRD secretary, presented the FY08 revenue update. Total general fund revenues for FY08 are expected to be about \$92 million over the December 2007 forecast with weakness in the broad-based taxes and investment income balanced by strength in severance reserves. Gross receipts taxes only grew 0.4 percent in FY08, the slowest in two decades. Personal income taxes showed unexpected strength and grew by 3.1 percent but corporate income taxes were down 8.3 percent from the December 2007 estimate. Oil and gas revenues, up by over \$125 million, offset the weakness in the gross receipts and other taxes in FY08.

Secretary Homans continued with the FY09 through FY13 revenue forecasts. The general revenue outlook has changed significantly since the August forecast. Broad-based taxes are exhibiting growth less than the long-term trend. Oil and gas prices are expected to be lower than previously expected. FY09 gross receipts and compensating taxes are expected to see 3.1 percent growth with a further growth of 3.0 percent expected for FY10.

Oil and gas prices have become extremely volatile. The price of crude oil has fallen over 52 percent from a high of \$147 per barrel in July to a low of \$69.85 per barrel on October 16. Producers responded to record prices by significantly increasing their supply during a time when demand in the United States had fallen significantly. Gas prices are equally volatile. San Juan gas is currently trading at a five-and-one-half low. Of equal concern is an over 6 percent decline in San Juan volumes during FY08. FY09 oil prices in New Mexico are expected to average \$94 per barrel and natural gas prices to average \$6.75 per MCF. FY10 oil prices are expected to moderate to \$90 per barrel and natural gas is expected to increase to \$7.10 per MCF. The oil and gas share of the general fund will peak at 21.2 percent in FY08, and decline to more typical levels thereafter.

Net personal income tax collections are expected to hold constant from FY08 levels. Any growth in gross personal income tax collections is expected to be offset by tax credits passed during the 2007 and 2008 regular legislative sessions, and the 2008 special legislative session. Corporate profits for non-oil and gas corporations are expected to drop significantly. Corporate profits for oil and gas corporations are expected to show a modest increase. The film production tax credit is expected to continue to be strong through FY13.

The committee engaged in discussion about moving money between the various state funds that may help any revenue shortfall in the interim. Representative Varela emphasized that any deficit reduction plan must be combined with a look to next session and agency budget requests for FY10.

Secretary Miller reported that all state entities have been asked to provide updated reports on capital outlay projects by November 21st. The State will need to ensure it does not deauthorize appropriations for projects that have had money expended against them. Once stalled capital outlay projects are deauthorized, the money will be reauthorized to projects that are moving forward. Representative King asked for a copy of capital outlay projects being considered for deauthorization.

Representative Varela asked about any directives regarding exemptions when considering budget cuts. Secretary Miller replied that the Executive expects exemptions in hiring freezes to exist for public safety and health sector service providers.

Department of Health; Preview of FY10 Appropriation Request. *Department of Health (DOH).* Katrina Hotrum, DOH deputy secretary facilities, began by stating there are 55 local public health offices, 68 school-based health centers, 7 long-term care and/or behavioral health facilities, and 4,100 employees at the DOH. Ms. Hotrum provided a detailed list of accomplishments within the Department this year that supported the health of individuals and communities, and health delivery systems.

Duffy Rodriguez, DOH deputy secretary finance, provided a summary on the Department's performance based on 17 measures outlined in the LFC 4th quarter report card. DOH had earned 9 green ratings, 5 yellow or "needs improvement" ratings, and 3 red ratings for unmet targets. Unmet targets included the amount of time for DD waiver applicants to complete the eligibility determination process; the number of DD providers receiving an unannounced survey; and the number of patient encounters provided through telehealth sites.

The DOH FY10 base budget request is an increase of 2.1 percent over FY09. DOH has reduced its base budget request from the September 1, 2008 submission by \$2.5 million. About \$2,274.2 million is for overtime and salary issues at seven 24/7 facilities; \$4,284.6 for increases in fixed costs at seven 24/7 facilities; \$692.6 for GSD rate increases; \$420.0 for a decrease in indirect costs reflective of decreasing federal grants; and \$248.0 for the Value Options Rate Equalization. Expansion requests total \$9.572 million and were further detailed to the committee.

DOH will have a draft budget reduction plan to DFA on or before November 7th as directed by the Executive. The actual vacancy rate for the DOH at this time is 4.8 percent. Even with this low vacancy rate, DOH still accrues significant overtime due to 24/7 facilities.

New Mexico Finance Authority Budget Overview FY09 and FY10. *New Mexico Finance Authority (NMFA).* William C. Cisneros, NMFA chief executive director, began by stating the steps the organization continues to make each year to become a source of financial strength for New Mexico. Aggressive strategies are in place to manage fluctuations in the financial markets. NMFA is proposing additional policy statements to eventually achieve a "Triple A" rating for the Public Project Revolving Fund (PPRF) bonds. Mr. Cisneros provided a summary of notable 2008 accomplishments.

NMFA has an \$8.2 million budget with 39 employees. NMFA anticipates recovering a good portion of that budget by charging a 3 percent fee on transactions as the New Markets Tax Credits program is implemented. Mr. Cisneros reminded the committee that NMFA is a leveraging organization. Reducing the level of funding will also reduce NMFA's capacity to provide for infrastructure improvement.

Representative Varela stated his concerns about NMFA being a “quasi-agency” and as such, not being required to submit a future budget plan as are other state agencies. Mr. Cisneros replied that NMFA reports to an oversight committee on a regular basis, and would provide any documentation requested by the LFC. Jerry Trojan, NMFA chief operating officer, proceeded to present highlights of the Authority’s 2009 performance budget.

Managed gross assets consist mainly of managed investment cash and loans receivable. The increases in managed gross assets correspond to the growth in NMFA programs. Investment Partnership Bond proceeds is responsible for the increase in managed gross assets beginning in FY04 and FY07. The large volume of new loans issued is primarily due to the increase in managed assets in FY08.

In 2002, the gross assets managed per employee were \$24 million. In 2008, the ratio increased to \$66 million per employee. Investments are made in accordance with the Authority’s approved investment policy. The increase in managed gross assets in FY08 is due to the new GRIP 2 program in which funds are used for DOT local government highway projects and the increase in loan volume in the PPRF.

New money coming into the Authority each year and available for leveraging is the governmental gross receipts and interest income on equity loans. The Public Project Revolving Fund (PPRF) provides low-cost financing for capital projects with a useful life of 3 or more years. Mr. Trojan provided examples of the various funds and their core mission. The Authority goes to market each year with a series of bond issues that are used to replenish the PPRF. The bond portfolio of the authority has grown from under \$300 million in FY02, to over \$1 billion in FY08. The Authority issued 4 PPRF bond issues totaling \$391.2 million in FY08. The committee heard discussion of new fiscal management policies for the PPRF; including strategies for enhancing bond ratings, loan monitoring, and liquidity policies. As of June 30, 2008 the NMFA had made 704 PPRF loans totaling about \$1.4 billion.

Governor Richardson’s Investment Partnership is a \$1.6 billion transportation expansion and infrastructure improvement initiative with DOT. Bonds are issued for no longer than 20 years with annual debt payments to be maintained at a \$162 million level. In FY08, the Authority refunded \$470 million in GRIP auction rate securities (ARS). The ARS were converted to variable rate demand notes. The Authority established a \$200 million line of credit to be used as a source of commitment for new projects. The use of the line of credit is to be reimbursed by a future bond issue.

The Local Government Transportation Fund (GRIP 2) is payable from a portion of severance tax bonds. GRIP 2 was established to finance road construction projects for 116 local governments. In 2008 the legislature appropriated general fund monies for some of these projects due to increased costs of construction. To date there have been 71 projects authorized for \$87.5 million.

The Drinking Water Revolving Loan Fund provides local authorities assistance in the construction and rehabilitation of drinking water facilities. To date the state has been awarded \$91.2 million in capitalization grants from the United States Environmental Protection Agency, and NMFA has provided a state match of about \$18.2 million. In 2009 the NMFA will pursue bonding against already issued loans to provide second tier funding for New Mexico drinking water projects. The level of bonding will be greatly enhanced if NMFA can accomplish cross collateralization with the State of New Mexico Clean Water Program loans.

The Water Project Fund is jointly administered with the Water Trust Board. The Water Trust Board determines programmatic decisions regarding projects and NMFA determines the financial structure. Since inception, NMFA has closed 49 projects totaling \$45.2 million.

The Water and Wastewater Grant Fund provides up to \$5 million in bonds to fund grants for 38 public water and wastewater systems. As of June 20, 2008, the NMFA had made 153 grants totaling \$58.7 million and had approved an additional 8 projects totaling \$2.4 million. All funds in the Water and Wastewater Grant Fund have been obligated and this program is nearing completion.

The Water and Wastewater Planning fund provides grants for qualified entities to evaluate and estimate the costs of implementing alternatives for meeting water and wastewater public project needs. As of June 30, 2008 the NMFA had made 48 grants totaling about \$1.16 million. In 2009 the NMFA will seek an additional commitment of \$1 million from the PPRF to assure the continuation of this essential program.

The Behavioral Health Capital Fund provides low-cost financing to non-profit behavioral health clinics. In 2008 the Authority and the Department of Human Services released the application for funding and received five applications for amounts exceeding the \$2.5 million available. The Authority expects to fund four of those applications in 2009 which will exhaust the funding until loans being repayment.

The Statewide Economic Development Finance Act allows NMFA to issue bonds, make loans, and provide loan and bond guarantees on behalf of for-profit and non-profit entities. The projects financed must stimulate economic development and create jobs particularly for rural communities. The loan participation program share risk of the project with the bank and provides interest rate buy-down to businesses. In FY07 NMFA completed its first projects closing 5 loans benefiting 2 projects for \$1.9 million. Two projects were approved that will close in 2009 along with other projects that are expected to move forward during 2009.

The federally funded New Markets Tax Credit program provides financing to qualified businesses in communities that have historically lacked access to credit. In FY08 NMFA for-profit arm *Finance New Mexico* was awarded \$110 million in New Markets Tax Credits authority. The intent of the program is to attract equity investors. NMFA charges a 3 percent fee on any allocation to the equity investor. The equity investor gets a 39

percent tax credit over a period of seven years whether the project succeeds or fails. The first applications are due in early FY09 and will be prioritized by economic impact. To help in getting funds out to rural communities, the Authority will establish a revolving loan fund in FY09.

The Local Transportation Infrastructure Fund provides local governments with grants and low-cost financial assistance to meet their local matches for GRIP 2 transportation projects. The source of funding for this program is 12.5 basis points or 50 percent of the funds received by NMFA for administering Governor Richardson's Investment Partnership. NMFA has authority to issue up to \$20 million in bonds.

The Primary Care Capital Fund provides funding for capital projects to non-profit providers to increase health care services in rural and underserved areas. In 2008 the Authority and DOH exhausted the remaining funds by making two loans totaling \$3.2 million. To date, the Authority has funded 16 loans totaling about \$10 million.

The Child Care Revolving Loan fund was designed to update licensed child care facilities by providing long-term, low-interest funding through a revolving loan fund. NMFA administers this program with the Children, Youth and Families Department (CYFD).

The Energy Efficiency and Renewal Bonding Act allow public schools and universities to make energy efficiency improvements to their facilities and use the savings on utility bills to pay back the bonds. New Mexico is the first state in the nation with this creative financing mechanism.

The Debt Service Fund for Stand-Alone Bonds allowed for the issuance of bonds for projects that did not meet the criteria to qualify for PPRF loans. The definition has since broadened and similar projects today are funded as PPRF loans. The source of repayment of the debt service on the related bonds is a legislative appropriation. A list of bonds previously issued to fund Stand-Alone loans was provided.

Chairman Smith expressed concerns about GRIP funding strategies and teams selected to perform certain transactions. Mr. Cisneros replied that NMFA had selected CDR as part of the GRIP project. CDR is under investigation by the SEC, IRS and Justice Department for a bond issue in New Jersey that paid on a transaction without a finished product. The federal investigation is looking at similar CDR transactions nationwide, and the timing of certain political contributions. The NMFA Board has asked for a full review that is scheduled for November 23rd.

Mr. Cisneros provided further background. CDR told NMFA that the treasury department would soon be closing a window of opportunity related to a certain market opportunity. The treasury department ended up moving very slowly. NMFA made \$8.6 million on the deal and 4 percent was paid to CDR. NMFA did not solicit any campaign contributions from CDR for the transaction. CDR among others had responded to an RFP issued by NMFA. NMFA is participating fully in the investigation.

Chairman Smith expressed regret about any perceived breaches in state government. He encouraged NMFA to continue to participate fully in investigation efforts. He encouraged the NMFA Board to appoint members that have a significant background in finance.

Chairman Smith asked for the names of primary marketers of CDR to give to other state agencies involved in investments. Chairman Smith concluded by asked Mr. Cisneros if anything had been put in place to prevent this from happening in the future. Mr. Cisneros replied that NMFA has since implemented a more comprehensive procurement process.

Chairman Smith adjourned the committee for the day at 5:30 p.m.

Chairman John Arthur Smith, Chairman, called the Legislative Finance Committee (LFC) to order on Wednesday, October 22, at 8:45 a.m.

The following LFC members were present on October 22st:

Senator John Arthur Smith, Chair; Representative Luciano “Lucky” Varela, Vice Chair; Representatives Jeanette O. Wallace; Brian K. Moore; Don Bratton; Rhonda S. King; Nick L. Salazar; Henry “Kiki” Savaadra; Edward C. Sandoval; and Senators Pete Campos; Carroll H. Leavell (for Leonard Lee Rawson); Mary Kay Papen; Phil A. Griego; Sue Wilson Beffort; Suart Ingle; Carlos Cisneros.

New Mexico Department of Tourism. Michael Cerletti, NMDT secretary, began by stating that the mission of the Tourism Department is to create an image and brand for the state of New Mexico and increase in-state, national, and international awareness of New Mexico. The Indian Tourism Program promotes tribal communities and tourism assets to visitors. The New Mexico Magazine Program produces a monthly magazine and vacation guide about New Mexico from a cultural, historical and educational perspective.

The Tourism Department is asking for an expansion request of \$5 million in additional advertising monies to allow the Department to more effectively penetrate new mid-sized markets. Researchers in New Mexico have found a \$40 return-on-investment (ROI) for every \$1 spent on tourism advertising. With the additional \$5 million investment in tourism advertising, New Mexico could generate an additional ROI of \$200 million in annual visitor spending. An additional expansion request includes six customer service representatives for the GlenRio and Manuelito Visitor Information Centers. The newly remodeled centers are experiencing an increase of nearly double the number of visitors previously seen.

Secretary Cerletti reported that the Department is also requesting an information technology specialist to address a critical lack of IT support personnel. The Department has 86 FTEs and 15 exempt positions. Representative Varela is concerned about the number of exempt positions being created across state agencies. He asked about the status of the FY08 audit. Secretary Cerletti replied that the Department would have the audit completed by the December 15th deadline.

Representative Varela is also concerned about a Prosperity Project report on the New Mexico Restaurant Association website that grades Democratic legislators unfairly on certain issues. Allison Kupfer, New Mexico Restaurant Association, reported that the Association put a link on their website to the Prosperity Project which is a national effort to help employers know how elected officials vote on legislative issues that may impact their businesses. Ms. Kupfer stated that the organization is not endorsed by the Association and the link has since been removed.

Senator Griego is concerned about the environmental impact of off-road vehicles. Secretary Cerletti replied that the Off-Highway Vehicle Program attempts to balance motorized and non-motorized recreational needs with safety and environmental concerns. The program is charged with developing and disseminating information regarding safety, in-state registration and out-of-state user permitting, and other state off-highway vehicle regulations. Secretary Cerletti reported a lack of resources to support enforcement of state laws regarding off-road vehicle use. Representative Wallace encouraged the Department to work cooperatively with the federal government regarding enforcement issues. Senator Papen talked about the importance of preserving public lands for future generations.

Chairman Smith asked about the possibility of the Department cross-training with other agencies for staffing visitor centers. Secretary Cerletti replied that he will discuss the concept further with the State Parks Division and DOT. The Department is actively recruiting volunteers and finds it more difficult to staff visitor centers in outlying areas with volunteers. The Department is creating an ambassador program to place more volunteers at visitor centers.

Chairman Smith reported that Ruidoso Downs will be requesting tax relief to sustain racing. He asked what the Department can do to generate more tourism in the Ruidoso area. Secretary Cerletti replied that the Department will be promoting golf and skiing in addition to horse racing. The Department expects marketing dollars to be used to target more statewide efforts. Chairman Smith said education dollars are flat yet the legislature is being asked to give tax relief to the gambling industry. Secretary Cerletti expects a devastating economic impact for the region if the racetrack closed down and hopes something can be worked out so the industry remains profitable.

Representative Varela stated that with the global recession there will be stiff competition with other states and countries for tourist dollars. He advised the Department to keep key interim committees involved with continued economic development efforts.

Public Defender Department (PDD). Hugh Dangler, PDD chief public defender, introduced himself and David Eisenberg, deputy chief public defender. The PDD mission is to provide all clients with legal representation that protects their liberty and constitutional rights. Mr. Dangler reported that PDD requested a general fund increase of \$3.3 million, or 7.6 percent over the FY09 operating budget. In FY08 the PDD handled 47,819 new cases; contractors handled 23,979, an increase of nearly 9 percent from FY07. In FY08 it disposed of 49,656 cases, a 2.1 percent increase over FY07.

The Department requested \$270 thousand and 9 FTE to open an office in Gallup. The Department also requested \$1.4 million for 27 FTE related to the 2007 workload study conducted by the New Mexico Sentencing Commission. This FTE expansion request was designed to create growth that was even throughout the criminal justice system. Mr. Dangler replied he was not sure to what extent PDD was subject to the recent executive directive addressing budget cuts. PDD will hold positions open indefinitely once vacated. Representative Savaadra voiced concerns about PDD being understaffed. He encouraged Mr. Dangler to work with the executive to make sure PDD remains well supported.

Representative Varela said the committee was under the impression all agencies must look at ways to reduce their budgets. Agencies are being asked to provide input on recommended budget cuts by November 15th to assist LFC and DFA in developing a budget reduction plan.

Representative Varela asked about PDD recruitment efforts to address the 30 vacant positions in criminal legal services. Mr. Dangler replied that public defenders typically stay two to three years and then leave. Representative Varela asked Mr. Dangler to provide current staffing numbers and contracts. Mr. Dangler replied that PDD is moving toward opening an office in Gallup to handle 50 percent of the cases currently under contracts.

Senator Griego expressed concern about defendants not getting good representation with contract lawyers. Mr. Dangler replied that one third of all lawyers are contract because many districts are without offices. In reviewing cases, he has seen areas of concern. Contract lawyers are uneven and need better training. Senator Griego believes there is a miscarriage of justice in San Miguel County for defendants with contract lawyers and provided examples.

The committee asked about the status of the Santa Rosa prison riot death penalty cases. An LFC brief reported that nearly \$1.7 million has been spent and PDD requested an extension one time to expend its special appropriation which has a balance of \$791.5 thousand. The cases involved three inmates charged with the murder of a prison guard. Mr. Eisenberg replied that a plea agreement was reached in the disposition of one of the men charged. Of the remaining two cases, one is scheduled for trial in November, while the other is on appeal before the Supreme Court.

Game & Fish Department (DGF). Dr. Bruce Thompson, DGF director, began by emphasizing that DGF generates 99.9 percent of the revenues that support the Department through enterprise activities and federal assistance. DGF is charged with protecting game and fish and providing these resources for public recreation.

The FY10 base budget request is \$37.2 million, \$600 thousand over the FY09 operating budget. This includes a general fund level of \$336.8 thousand. The base request includes increases in GSD risk management insurance; banking costs for on-line services for hunters; and increases related to leased buildings. DGF requested a general fund increase

of nearly \$1.2 million in support of expansion items. Secretary Thompson highlighted a few items that included support for habitat in wildlife recreational areas and eleven FTE, six of which are conservation officer positions.

In FY10 DGF will be transferring properties within Pecos Canyon to the State Parks Division for Pecos Canyon State Park. Representative Varela asked about the status of the monastery. Secretary Thompson replied that the lease has a month-to-month provision which DGF has used to continue fishing opportunities in that area. DGF recently communicated with the monastery which has expressed interest in a new lease. Representative Varela suggested negotiating a lease with a site improvement component to provide some financial relief to the monastery. The monastery is selling off portions of the property to owners that are erecting fences. It is a key area for fishing in the Canyon.

Representative Varela asked how the general fund appropriation is used. Mr. Block replied that the general fund appropriation goes into the Conservation Services Program. It provides a non-federal match to pay expenses, salary and benefits of employees that are threatened and endangered wildlife specialists. There is a provision in the Wildlife Conservation Act that conserves these species with funding from sources other than the Game Protection Fund. Last year the remainder of the general fund appropriation was used for operating costs of the new warm water hatchery; contracts for wildlife rehabilitation; and shooting sports programs.

Secretary Thompson said that people are still engaging in hunting and fishing despite the economic downturn. However, people are staying closer to home primarily due to high gas costs. DGF has seen increases in federal assistance because of excise assessments on firearms, ammunition and archery tackle that have become more popular among the shooting public. DGF's *Gaining Access into Nature Program* facilitates recreational opportunities for people other than hunters and anglers that are anticipated to generate revenues.

DGF just completed a successful federal audit with the Department of the Interior. It is anticipated that the FY08 state audit will be submitted on time. DGF is waiting on June hunting and fishing license sales to be reported by vendors before closing out the books for FY08.

Senator Ingle asked if DGF has seen any decline in hunting and fishing license sales due to complexity. Mr. Block replied that there are 200 license vendors statewide. Selling licenses generates foot traffic for businesses. DGF would like to get to the point of vendors using an on-line system to sell licenses and generate reports instead of vendors tallying license sales manually. Hunting and fishing license sales are affected more by weather than fee increases or economic trends. Drought conditions may cause a significant decline in sales.

Dave Moore representing the Game and Fish Association asked about funding for the Aquatic Invasive Species Management Plan. Secretary Thompson replied that the plan once completed will be subject to federal approval by the US Fish and Wildlife Service.

DGF expects that between now and December. The aquatic species in question have been documented in Colorado, Utah and Arizona. Colorado has implemented boat inspections for boaters than move between states or between water bodies within the state.

Chairman Smith asked about capital outlay projects. Secretary Thompson replied that requests were made prior to the economic downturn. Capital outlay projects being considered include purchasing a wildlife viewing aircraft; completing the warm water hatchery; dam renovations in high hazard locations; San Juan River habitat; and wildlife habitat areas that are part of the *Gaining Access Into Nature* program which, along with the San Juan River, supports economic activity for communities in the vicinity. Chairman Smith asked if there are any stalled capital outlay projects. Secretary Thomson replied that there have been appropriations for capital outlay projects only sufficient to do some of the design work and none are close to being completed. Mr. Block said he and the budget staff will be working with the capital unit to look at projects that can be deauthorized and reallocated to projects seeking completion.

DGF has *Open Gate Agreements* with landowners to allow access for certain sportsmen purposes. The landowner decides what land they will make available and for what purpose. This is subject to annual appropriation and the agreements with landowners are year-to-year.

Action Items

Senator Cisneros moved to adopt the October minutes, Representative Savaadra approved the motion, and it passed with no objection.

Director Abbey summarized public testimony and agency requests in the September subcommittee reports. Director Abbey said the sunset committees' recommendation was to continue all sunseting agencies, and bills will be brought next month. Senator Cisneros moved to adopt the five October subcommittee reports, Representative Moore approved the motion, and it passed with no objection.

LFC will be revisiting staff recommendations regarding agency FY10 budget proposals particularly for general fund impact and expansion requests.

Information Items

Director Abbey requested input on proposed LFC sponsored legislation that would address certain technical, public policy and financial issues that were noted to have been of interest to members and staff during the interim. Staff suggested to statutorily create a capital outlay budget process; subject quasi-governmental agencies to the Budget Act; provide for a uniform school day; and mandate a certain number of professional development days for teachers; among others. Director Abbey said that most of the way legislators can control funds for education is through statutory changes. Director Abbey also anticipates the need for solvency bills that will authorize the transfer of funds to the general fund.

Director Abbey presented the cash balance report; September budget adjustment reports; LFC September budget projections; and other monthly financial reports to the committee. Representative Varela asked that LFC auditors begin working with DFA in terms of deficit reduction planning.

Department of Veterans' Services (DVS). John M. Garcia, DVS secretary, introduced staff members Dan McCormick, administrative service director and Alan Martinez, director state benefits to the committee. Secretary Garcia began by restating the Department's mission to assist veterans, widows and children of veterans in establishing the privileges to which they are entitled. Last year, DVS provided over 34 direct services to over 34 thousand veterans. There are 4 thousand men and women from the National Guard in Iraq and Afghanistan, most more than once.

The current New Mexico veterans population is 179,497; 163,583 men and 15,914 women. There are between 26 thousand to 30,000 thousand veterans home from the Iraq and Afghanistan conflicts. The recent surge in troops during 2007 will be discharged shortly. Many troops have returned home with post traumatic stress disorder (PTSD) and traumatic brain injury. Female veterans have a higher incidence of PTSD. The Montgomery GI Bill provides up to 36 months of education benefits to eligible veterans. DVS' task is to increase outreach to get more veterans into higher education. The aging veteran population is also increasing and the issue for them is long term care. New Mexico ranked number one nationwide for providing outreach and services for veterans.

Mr. McCormick highlighted items in the budget request. For FY10, the overall VSD request was \$4.2 million. This represents a general fund request of \$4 million, an increase of \$606 thousand, or 18 percent over FY09. In the base, the general fund increased \$80.5 thousand. The remainder of the increase is attributable to 5 expansion requests for outreach programs for Iraq and Afghanistan veterans totaling \$525.5 thousand. DVS has 40 FTE and 4 exempt employees. DVS is looking at ways to trim the budget in light of the recent executive directive.

Senator Leavell commended the Department on their outreach efforts and services to veterans. Secretary Garcia said DVS intends to deploy mobile counseling centers to address the needs of veterans in rural New Mexico. Senator Cisneros asked about the capacity of Santa Fe's veterans' cemetery. Secretary Garcia said the cemetery is scheduled to reach capacity by 2015. A Joint Resolution passed for the city to acquire 5.7 acres contiguous to the current site. State cemetery programs increase costs for the state. Some believe the Federal government is abdicating responsibility toward burying veterans.

Secretary Garcia reported that DVS has hired more female and Native American service officers. There are 17 DVS field offices in New Mexico and each is staffed by a Veteran Service Officer (VSO). VSO's advise local veterans and their dependents of their rights and entitlements under various federal and state laws, counsel them, and assist by filling out necessary forms and obtaining documents and affidavits. There are 7 thousand

homeless veterans in New Mexico. The vast majority are single, most come from poor, disadvantaged communities, 45% suffer from mental illness, and half have substance abuse problems.

The Homeless Stand Down is a one- to three-day event that includes shelter, food, clothing, legal aid, medical assistance, social services, job referrals, and transitional housing options. This year, more than 100 Homeless Stand Downs are scheduled nationwide. This event often serves as an entry point into the VA health care system, where more comprehensive services are provided to eligible veterans.

In light of recent restrictions on travel due to budget concerns, Chairman Smith offered to draft a letter in support of Secretary Garcia's frequent visits to Washington D.C. to brief House and Senate Committees on veterans' affairs.

Regulation & Licensing Department (RLD). Kelly O'Donnell, RLD superintendent, introduced staff and stated that the goals for FY10 are to enhance regulation compliance activities, protect the public and generate additional revenue. RLD oversees 33 boards and commissions, 6 divisions and 4 programs. RLD has 327 employees and 344 positions.

Alcohol and Gaming Division (AGD) reported five successful "Three Strikes" prosecutions; a 25 day decrease in the time it takes to issue restaurant beer and wine licenses; and a reduction in New Mexico's nationwide DWI ranking. Correction Industries Division (CID) reported a fully operational call center; adoption of current building codes and development of green codes. Financial Institutions Division (FID) reported that the State's banking systems are healthy as measured by indicators including return on assets, net worth, and foreclosure rates. Securities Institutions Program (SIP) reported expansion of investor education programs; and enhanced enforcement of securities law.

RLD will be looking at reducing the FY10 budget in a way that does not impact services. RLD is a revenue generating entity and needs adequate resources to monitor compliance with boards and commissions. Ms. O'Donnell said she would like to see more resources put towards the Manufactured Housing Division (MHD). Manufactured housing makes up 50 percent of the housing stock in New Mexico and the division has a small staff. RLD will be requesting a special appropriation of \$159 thousand to FID to participate in a nationwide mortgage originator licensing database.

RLD is involved in a lawsuit brought by US Air questioning RLD's authority to regulate the service of alcoholic beverages on airlines. RLD will be requesting a supplemental of about \$200 thousand to get the Department through trial. RLD will also be requesting that all funds for the Animal Sheltering Services Board be from the general fund as opposed to split between general fund and other state funds. Animal Sheltering Services regulates the practice of euthanasia. Their mission is public safety and they are not a revenue generating professional licensure board.

Representative Wallace asked if the CID call center will allow requests for inspections to be done more quickly. RLD staff reported that requests for inspections are now sent directly to field inspectors with laptop computers. Ninety percent are performed within 24 hours. Inspectors are required to log in results of inspections as soon as completed. There are 33 local government programs that plan, review and perform inspection services. Some do one trade, some do all trades. If local governments lose inspectors, CID becomes responsible for covering that area. CID would like local governments to determine if they will be full service or not so CID can place inspectors where needed. CID is developing rules to enhance local government programs and help them hire more inspectors. CID has developed a multiple inspector program that allows certification in more than one trade. It is harder to certify inspectors in multiple trades for commercial compared to residential.

Representative Moore asked how many banks in New Mexico are under state charter as opposed to a national charter. RLD staff reported that the state banking system is comprised of 37 banks and \$9 billion in assets. The national banking system in the state is comprised of 17 banks and \$10 billion in assets. The state credit union system is comprised of 35 credit unions and \$1.5 billion in assets. The federal credit union system is comprised of 14 credit unions and \$3.5 billion in assets. Both the state and federal banking system is community-focused which might help explain their soundness during the financial crisis. Representative Moore asked for financial literacy education materials to give students.

MHD has 15 FTE and Construction Industries Division has 123 FTE. Of the 15 positions in MHD, 5 are vacant. Representative Varela said the State has not taken care of manufactured housing. He encouraged greater oversight because low-income people depend on manufactured housing. He asked how many more positions are needed to keep up with inspections. Ms. O'Donnell replied that RLD has requested 5 more positions in MHD for inspectors and to staff a call center similar to CID's. RLD does not have the authority to move positions across programs. Director Abbey said that is because RLD does not have the authority to move money, therefore positions, across divisions.

Representative Varela encouraged the Administrative Support Division to develop a plan to provide more timely and accurate audits to the committee. He asked Ms. O'Donnell to separate program budgets for hearing purposes in the future. The committee needs to have accurate data so recommendations can be made to reallocate resources to programs where they are most needed.

Senator Papen asked what the reasons are for the delay in businesses obtaining beer and wine licenses. Ms. O'Donnell replied that the largest contributor for the delay is the statutory timelines. The second largest contributor is incomplete application documents. She also said she does not believe it would impact public safety if some of the statutory guidelines were shortened.

Senator Leavell asked what the reasons are for the delay in requests to transfer a business to another location if the same owners. Ms. O'Donnell replied that it takes time to allow

for local districts to respond, and public input. Senator Leavell encouraged RLD to look at ways to make the process more business-friendly.

Chairman Smith encouraged the Department to look at models in other states that may do a better job at balancing the need to protect the public with the need to support and protect small business. Chairman Smith said FID may need more support for enforcement dependent upon federal approaches to sub-prime mortgages, and the illegal practice of mortgage lenders asking real estate appraisers to reach value.

Indian Affairs Department (IAD). Alvin H. Warren, IAD secretary, introduced staff members. The mission of IAD is to lead and improve the quality of life for all New Mexico Indian citizens by affecting policies that strengthen tribal-state relations.

Secretary Warren highlighted accomplishments to address the challenges Indian people face in their communities; challenges such as economic development, infrastructure improvement, the protection of cultures and languages, health care accessibility, and educational opportunities for children. There is increased cooperation between the state and the 22 tribes, with 43 liaisons working across state agencies.

The IAD budget request is \$4.9 million for FY10, or a 20.1 percent increase from FY09. The LFC brief reported that the request includes 10 expansion items totaling \$729 thousand and an increase of 3.5 FTE. The expansion request includes an increase of \$529 thousand from the general fund. A three year transformation grant of \$38.9 thousand for the Center for Native American Health administered through IAD expires in FY09. A \$200 thousand expansion will come from a similar federal grant made to CYFD replacing the \$38.9 thousand. The expansion will be for a student development program to assist Native Americans pursuing higher education in the health sciences. The other transfer revenue source includes \$500 thousand from the tobacco settlement program fund for Native American tobacco cessation efforts.

IAD currently monitors 651 capital outlay projects valued at nearly \$100 million with 4 FTE. IAD signed an agreement with the Navajo Nation which will help streamline 53 capital outlay projects totaling \$3.9 million. The main challenging in implementing these projects is that communities do not have the capacity to move projects forward.

The agreement was signed by Indian Affairs Secretary Alvin Warren and members of the Navajo Nation on October 2, 2008, and will streamline the Navajo Nation's approval process for capital outlay projects passed by the New Mexico Legislature. Fifty-three projects have now been approved as a package, rather than individually, which should reduce the timeline for completing them. Projects previously had to go through about 43 steps to gain full approval. Projects can now be approved in as little as six steps. IAD hopes the agreement can be used as a model to improve the administration of capital projects on the Navajo Nation in future years.

IAD is currently performing analysis on older, under-funded capital outlay projects. IAD recommends reauthorizing stalled infrastructure projects if necessary to other Tribal

projects seeking completion. IAD supports depositing appropriations from stalled projects into the Tribal Infrastructure Fund rather than reverting those appropriations back to the general fund. Several committee members voiced support for that effort.

Secretary Warren reminded the committee that many of New Mexico's Tribal communities lack basic infrastructure including water and wastewater systems, roads and electrical power lines, among others, and the lack of such infrastructure has impacted public education, health services, and economic development for those Tribal communities.

Project ECHO and Treatment of Hepatitis C (HCV). *University of New Mexico (UNM).* Dr. Sanjeev Arora, UNM School of Medicine, began by saying that the mission of Project Echo is to develop the capacity to safely and effectively treat chronic, common and complex diseases in rural and underserved areas and to monitor outcomes.

Dr. Arora reported greater than 28 thousand individuals living with HCV with less than 5 percent receiving treatment. Without treatment, 8,000 patients will develop cirrhosis of the liver between 2010 and 2015 and die. There are 2,300 prisoners diagnosed with HCV in correctional facilities not receiving treatment. Treating HCV is a complicated disease process and it takes years to develop the expertise. Goals for project ECHO include developing the capacity to safely and effectively treat Hepatitis C and monitor outcomes; and developing a model to treat other complex diseases particularly for rural, underserved locations and developing countries.

Project ECHO partners include the New Mexico Department of Corrections, New Mexico Department of Health, Indian Health Service, and a network of rural primary care providers. Project ECHO brings the physicians to the experts via videoconferencing or similar technology in order to provide them with the tools and resources they need to care for their patients. These clinics assist rural health care professionals to use telemedicine for a sharing of best-practices, case-based learning, and centralized database to monitor patient outcomes.

Telemedicine benefits include professional interaction with colleagues; less provider isolation with improved recruitment and retention; no-cost continuing education credits for providers; and access to consultations with specialists in the field. Criteria for disease selection include common diseases; complex disease management; rapidly evolving treatments and medicines; high societal impact; serious outcomes of untreated disease; and improved outcomes with disease management strategies in place.

Project ECHO has resulted in 305 HCV telehealth clinics that have been conducted. The HCV disease management program has 3016 patients. Continuing education credits issued at no-cost to ECHO providers are 3,631 hours. There have been 205 hours of HCV training conducted at rural sites. Project ECHO was nationally recognized as a model for complex disease care. Project ECHO won the Ashoka and Robert Wood Johnson Changemaker Award. Applications for this award were sought for new models that would change healthcare nationally and globally. The Foundation received 307 applications from 27 countries. Project ECHO was selected as one of three winners.

Chairman Smith adjourned the committee for the day at 5:45 p.m.

Chairman John Arthur Smith, Chairman, called the Legislative Finance Committee (LFC) to order on Thursday, October 23, at 8:30 a.m.

The following LFC members were present on October 23rd.

Senator John Arthur Smith, Chair; Representative Luciano “Lucky” Varela, Vice Chair; Representatives Jeanette O. Wallace; Brian K. Moore; Don Bratton; Representative Patrica A. Lundstrom (for Rhonda S. King); Nick L. Salazar; Henry “Kiki” Savaadra; Edward C. Sandoval; and Senators Pete Campos; Carroll H. Leavell (for Leonard Lee Rawson); Mary Kay Papen; Phil A. Griego; Sue Wilson Beffort; Stuart Ingle; Carlos Cisneros. Senator Joseph J. Carraro attended as a guest.

Program Evaluation of Financial Aid. Craig Johnson, LFC staff program evaluator, presented a review of the New Mexico Higher Education Department’s (NMHED) financial aid programs. The objectives of the evaluation were to see to what extent the use of public funds contribute to student success and the effectiveness of workforce targeted loan programs.

Mr. Johnson began by highlighting key findings within the review. Students are taking longer to graduate which can strain the financial aid system and increase the students’ debt level. The state has successfully promoted access, but NMHED does not have a clear plan that outlines other goals. It is increasingly difficult for low-income students to attend college. Research indicates need-based aid can help address access and persistence. Workforce targeted loan repayment programs have less financial risk and provide immediate benefit.

New Mexico students received over \$486 million in financial aid in 2006 to 2007. Nearly one-fifth was from Federal Pell Grants, and half from Federal Stafford loans. The NMHED Financial Aid Program distributed over \$70 million in student aid from 2006 to 2007. Of this amount over half came from Lottery revenues. NMHED administers 19 programs: three merit based scholarships, four need-based scholarships, two programs that have merit and need-based criterion, the work study program, and nine workforce related programs.

New Mexico has a high rate of adults enrolled in higher education but a low rate of adults attaining a bachelor’s degree. New Mexico has a very low high school graduation rate compared with other states. About 50 percent of high school students that do graduate enroll in remedial math and/or literacy courses in college. A failure to align high school class rigor to help prepare for college coursework lengthens the college experience, increases student debt, and lowers students’ probability of college success.

Financial aid is one of three sources of funding for higher education. The other two are state appropriations and tuition. The design of the financial aid program along with a low

tuition policy has successfully promoted access, but not persistence and degree completion. New Mexico's state appropriations are about 15 percent of the state's budget and higher than neighboring states. New Mexico's public higher education institutions rely less on tuition and more on federal grants and state appropriations relative to other states.

The LFC review recommends that planning efforts should address; tuition levels, state appropriations, and financial aid; incorporating outcomes into the funding formula; providing incentives for institutions to graduate students; identifying research and public service project (RPSP) funds that could be better used for need-based aid; and, developing action plans for ways financial aid can contribute to goals.

Across the country, growth in need-based aid has not kept pace with growth in merit based aid. The Lottery Scholarship has increased access but most of the recipients may not need financial aid. The Lottery program does not require students to complete a federal application for student aid (FAFSA) so true numbers of students demonstrating financial need is unknown. According to NMHED, nearly five thousand Lottery recipients completed a FAFSA and received federal Pell Grants in 2007 which demonstrated only 29 percent of students had financial need.

In New Mexico, growth in need-based aid has not kept pace with the rising costs of attendance. In 1992 families with income in the bottom 20 percent needed 46 percent of their income to pay the net costs of their child attending a public four year institution. By 2005 that percentage had increased to 61 percent. Debt burden is especially problematic for students who drop out and do not acquire the increased earning capacity associated with graduation.

The LFC review recommended that NMHED complete an assessment of the impacts of allowing tuition to rise moderately, reallocate RPSP funding, and use state funds for additional need-based aid. This assessment should include ways to increase funding in the college affordability endowment fund; the impact of tuition increases on the Lottery scholarship; and requiring more of the three percent institutional scholarships be need-based.

New Mexico could better meet its workforce obligation at a lower cost by increasing its reliance on loan repayment programs. *Loans for Service Programs* and *Loan Repayment Programs* primarily target healthcare and education. Loan for service programs provide funds for students in school; whereas, loan repayment programs provide funds for professionals currently in the workforce. The state loans students money with loan for service funds and pays off loans of employed professional with loan repayment funds. In FY03 to FY08, 85 percent was spent for loan for service programs.

Loan repayment programs provide New Mexico with an immediate return on investment. State financial risk is reduced as the student gets loans from other lenders and the state only spends money upon demonstrated service in high needs areas. The state can achieve

more immediate results and does not have to hope the students complete their education and obtain jobs.

NMHED has not attempted to collect on the sizeable number of defaulted loans but has negotiated a contract with a loan servicing company to do so in the future. NMHED is currently working to replace inadequate data systems. Data limitations prevent a true comparison of loan default rates to standard benchmarks. Since 2002, *Loan for Service* programs have experienced an average default rate of 8.8 percent.

NMHED has not developed specific procedures for how recipients and award amounts will be determined to ensure transparency, consistency, and fairness. Proposed legislation recommended in the report establishes a teacher loan repayment program. The purpose is to increase the number of teachers in high demand instructional areas such as math and science and provide an incentive for teachers who advance in the three-tiered licensure system to work in schools with a high percentage of low income students. This would result in schools having the most qualified teachers in the schools where they are needed the most. Shifting money from loan for service programs could be the source of appropriations for the teacher loan repayment program.

The second piece of legislation recommended in the report would increase the amount of the 3 percent institutional need-based scholarship. Requiring two thirds of the three percent scholarship to be need-based, instead of the current one third, would provide over \$2.5 million in additional need-based aid at no additional cost to the general fund.

The legislature created the College Affordability Fund in 2005. Clean up language is recommended to more precisely define income and change the distribution mechanism to provide inflationary protection. To date the legislature has appropriated \$95 million to the fund. In 2007 an appropriation was passed contingent upon investing the fund with the State Investment Council to increase yield. Due to poor market returns, the fund balance as of June 30 is down to \$93.9 million.

Another recommendation in the review was to add language to House Bill 2 requiring a certain percentage of revenue generated from tuition increases to go to need-based aid to ensure that these increases do not negatively impact access to higher education.

Dr. Dasenbrock, NMHED secretary, commented on a well thought out report that will advance the discussion on financial aid policy in the state. He then briefly commented on the main points in the NMHED's written response to the report. NMHED supports a policy-driven approach to financial aid; expanding need-based aid; and transitioning from loan for service programs to loan repayment programs. NMHED has identified five areas of focus in its strategic plan: making postsecondary education affordable to all; expanding access; increasing degree attainment; meeting the workforce needs; and improving Department efficiency.

Dr. Dasenbrock stated that NMHED has limited authority. Many of the recommendations in the review include approaches that require legislative approval. Tuition is also set by

the regents at individual institutions, not by NMHED. Requiring a FAFSA to access the Lottery may drive students away from higher education and not improve the data. NMHED agrees with increasing the amount of the 3 percent institutional need-based scholarship. The increase could be as high as 100 percent and if done in phases, would not impact university planning. NMHED agrees with clarifying the College Affordability Act by defining income. There is strong demand for NMHED loan for service programs. There needs to be a balance between loan for service programs and loan repayment programs. Current loan for service programs in place should not be changed given the needs of the state. Secretary Dasenbrock believes access is improved with a low tuition approach.

Representative Salazar asked about the rising costs of college textbooks for students. Secretary Dasenbrock replied that schools districts are incurring high costs for books for high schools students taking advantage of dual credit courses. Representative Salazar asked for state-wide data on high school drop out rates. Secretary Dasenbrock stated he would provide county-by-county data on educational attainment to the committee.

Senator Leavell asked for data on private institutional scholarships and a projection on the availability of Lottery scholarships into the future. Secretary Dasenbrock replied that the Lottery has a considerable carry-forward from previous years that would enable sustainability for some time at a 5 percent tuition increase.

Representative Bratton asked about the recommendation requiring 60 hours of credit toward a degree plan before being eligible for a loan for service. Secretary Dasenbrock supports individual schools making those decisions. Representative Bratton asked what can be done to increase work-study programs at state institutions. Secretary Dasenbrock replied that the state allocation is \$5.95 million, up from \$5.7 last year. This year there will be a request for an increase of \$3.3 million. NMHED believes the most important place to put state aid would be in work-study programs. Secretary Dasenbrock offered to provide a comprehensive LESC report on work-study to the committee.

Representative Lundstrom expressed concern about Highlands and Western universities graduating students at half the rate as the research institutions. She also expressed concern about rising credit card debt for students and the marketing of credit cards on state campuses. Secretary Dasenbrock replied that NMHED has no authority but will ask institutions to consider a policy to ban marketing on state campuses.

Representative Lundstrom asked about the lack of transferability for certain classes from branch campuses to main campuses. Secretary Dasenbrock replied that there is full transferability of the general education core for all institutions in the state. Career technology classes do not always transfer. Representative Varela asked for a report on classes from branch campuses and community colleges that do not transfer to four year universities.

New Mexico Educational Assistance Foundation (NMEAF). Woody Farber, NMEAF president, provided an update on the effect of the economic crisis, and the impact on

student loans for students in New Mexico. On June 26, 2008, NMEAF completed the restructuring of \$436 million of its auction rate securities into variable rate demand obligations with a direct pay letter of credit. The initial interest rate was 1.85 percent for the tax-exempt bonds, and 2.3 percent for the taxable bonds. This leaves \$371 million in auction rate bonds outstanding which are currently being reviewed to restructure without constituting a reissuance. The target date to complete final restructuring is the end of November.

There have been no student loan new money bond issues for 2008 to 2009 academic year funding. All students requesting a loan from NMEAF have been funded. NMEAF also has the funding in place for the spring semester disbursements. To obtain academic year funding, NMEAF established a \$50 million private placement bond with the New Mexico State Treasurer. If the State Treasurer needs liquidity, NMEAF call sell participation interest in the loans to the United States Department of Education and refund the bond in seven days. Second, NMEAF established two bank loans of credit to draw on as NMEAF moves into the spring semester disbursement period. And third, the remainder of the funding was obtained from recycling payments received from borrowers on loans currently in repayment. All of these three funding sources, taken together, have met NMEAF's 2008 to 2009 academic year funding needs.

Representative Savaadra asked what percentage of students take out loans over and above the Lottery scholarship. Mr. Farber replied that the Lottery scholarship only covers 15 to 20 percent of the student's expenses. The average student loan on a per-year basis is \$6 thousand. Students are currently borrowing at a 6 percent rate of interest. The average length of a loan for a student going into repayment is 10 to 25 years. Representative Savaadra asked NMEAF to provide the committee a breakdown of a student's total expense while attending universities in the state.

Chairman Smith thanked Mr. Farber for accommodating the committee's request to provide an update on the impact of the financial crisis on student loans in New Mexico.

Higher Education Department (NMHED). Dr. Reed Dasenbrock, Secretary, presented the FY10 Higher Education Department (HED) budget request submitted September 1st. Secretary Dasenbrock began by providing an updated organizational chart; restating the mission, values and priorities; and highlighting accomplishments since the budget hearing last fall.

HED requested a flat budget for operations. Secretary Dasenbrock stated the base budget request is a decrease except for the required worker's compensation premium increase. He stated there are a number of program expansion requests crucial for state policy. HED and the Public Education Department (PED) have each received \$1 million recurring funding to ramp-up the Innovative Digital Education and Learning-New Mexico (IDEAL-NM). Additional funding is being requested for that effort. HED will ask for a continuation of the Health Professional Loan Repayment Program funding. There are a number of requests around student financial aid totaling \$3.3 million, which includes an expansion for work-study. HED requested funding for an outreach campaign targeting

middle and high school students. HED also requested \$250 thousand for an Intensive Film Boot Camp.

HED is requesting recurring funding for a facilities coordinator position. This position was supported by nonrecurring funds in FY09 and is responsible for verification of instructional and general space that is reported by institutions for input into funding formulas for physical plant, operations and maintenance, and building renewal and replacement.

HED requested \$2.5 million to provide adult basic education services to wait-listed students and for new locations. HED also requested the Legislature consider authorizing new, mostly term, positions that will be supported from existing funding streams with no general fund impact.

Senator Cisneros asked what HED is doing to engage post secondary institutions in training and preparing students for renewable energies technologies. Secretary Dasenbrock talked about various community college and branch programs statewide addressing career-technical workforce needs. The challenge for the state as well as the nation is balancing the need for career-technical jobs, and the need for math and science engineers. Dual credit can help reach those students and keep their interest before they drop out of high school. The committee also heard discussion on various GEAR UP rural partnership grants statewide.

Representative Varela asked the HED to revisit and prioritize budget requests in light of the recent executive directive to reduce budgets. Chairman Smith reminded the committee to focus on the fundamental needs of New Mexico. The state needs to offer incentives that will still accomplish the goals, but at a lower cost to the state. For instance, for every \$1 the state spends on the film tax credit, the state receives \$0.14 cents back. Chairman Smith stated it makes it more difficult for the legislature to meet the fiscal needs of state agencies when the executive branch circumvents the legislative process.

Follow-up on the LFC Program Evaluation and Report on Funding Research and Public Service Projects. Arley Williams, LFC analyst, presented a follow-up to the January 2008 LFC performance review of 28 research and public service projects (RPSP) at New Mexico public colleges and universities. There had been significant growth over the last several years in the number of projects and funding dedicated to these projects. The LFC review recommended that the Department appoint a joint task force to review the formula for adequacy, equity and integrity; move toward best practices for funding these types of projects; and determine evaluation processes.

Currently, there are over 200 RPSP line item appropriations in the General Appropriation Act; significant growth in recurring base appropriations in the GAA has occurred by increasing appropriations to existing line items or creating new line items in Section 4. There were significant Junior Bill appropriations for higher education in the last four years for a total of \$38.2 million. In FY09, there was \$5.4 million from the tobacco

settlement program fund allocated to research activities within the University of New Mexico Health Sciences Center.

The types of public policy projects that are funded as research and public service projects include constitutional entities; statutorily created programs; institutions serving state health needs; offices charged with a statewide mission; research line items and public services line items. Ms. Williams gave examples of projects and their budgets in an attachment provided to the committee.

There is a significant category of these appropriations that are providing funding outside of the formula. Ms. Williams detailed the difficulties of the current funding structure for RPSPs. Everyone who tracks this large extent of funding has a different way of managing their databases. As a result of the large number of projects, there is significant use of constrained general fund appropriations; increased complexity of budget and appropriations processes; increased complexity for oversight; voluminous data collection and reporting; and difficulty in reprioritizing funding based on outcomes and the changing priorities of the state.

Ms. Williams said that higher education enrollments tend to increase when the economy weakens. With a two year funding lag, it is important for the state to look at funding issues in FY10 and beyond.

Ms. Williams discussed options to move forward. There was a lack of stakeholder support in funding some of the five incentive funds recommended by the Blue Ribbon Task Force on higher education in 2003. There was also a lack of stakeholder support in funding the alternative to the research incentive approach in the form of the Technology Research Collaborative. Ms. Williams believes it is valuable to consider whether past legislative and executive branch action has established a de facto policy for funding RPSPs. The current budget situation may require a "pay as you go" approach. The Instruction and General (I&G) steering committee is the new leadership group for the Formula Enhancement Task Force and will be have strategic priorities discussions with a re-emphasis on the current funding formula. The current funding formula is intended to support instruction, academic support, student services, and institutional support. Ms. Williams detailed 11 line item options to move forward over the next couple of years to address the general fund need to support higher education, particularly if enrollment increases and drives higher education budget costs higher.

Higher Education Department (NMHED). Dr. Reed Dasenbrock, Secretary, responded on the agency's follow up to the LFC review of RPSP's in 2007-2008. There were three key findings identified in the evaluation. Program funding was not being spent according to legislative intent. There was a perception of insufficient institutional and HED oversight. The approach for special projects did not match up appropriations with strategic priorities. Secretary Dasenbrock highlighted actions HED has taken in 2008 in response to the LFC review.

In FY08 the legislature funded an institutional auditor position: a program evaluator position for FY09; and \$150 thousand for space for the space audit process and position. Next steps for NMHED include hiring a program evaluator; follow up evaluations of 28 RPSP's; rank and schedule for review remaining 300 RPSP's; work with LFC and DFA to recommend line item consolidations for the 2009 session; and review FY09 1st quarter financial statements and FY08 audits and tighten fiscal watch. For FY10, HED has been asked to look at RPSP's for deauthorization.

Recommendations of the Food Gap Task Force. Representative Brian Moore began by thanking Pam Roy and the New Mexico Food and Agriculture Policy Council for the locally-grown lunch being provided to the committee. The New Mexico Department of Agriculture is requesting \$100 thousand for pilot projects statewide to address food retail and food service infrastructure needs in rural and underserved communities. These projects will help to promote the expansion and creation of local food businesses that provide jobs, keep money in the local economy and ensure that all New Mexicans have access to fresh, healthy, affordable and culturally appropriate food.

New Mexico Department of Agriculture (NMDA). Craig Mapel, NMDA, talked about local growers and their desire to get their products into the public school lunch programs. There has always been a problem with the lack of cold storage in certain counties. Up until a few years ago most of the fresh fruits and vegetables were either sold at farmers' markets and roadside stands, or thrown out. Four years ago NMDA received federal money to purchase used refrigerated units for Rio Arriba County which made a tremendous difference. Farmers now ship to 8 school districts across the state from mid-August to the end of March. This has resulted in new investments in orchards, equipment and locally grown products.

Ms. Roy talked about New Mexico's "food gap". About one third of New Mexico's population lives in rural communities. New Mexico is considered the second most food insecure state in the nation. Schools across the country are facing higher food prices. Schools saw very little increases in the Farm Bill for free and reduced lunches. Schools receive about \$2.57 in federal dollars for a child eligible for a free lunch. In New Mexico it costs schools \$3.07 to put a meal together with the federal requirement for five nutritious items. Food transportation and distribution costs account for 20 percent of a school's budget. Affiliated Foods, based in Texas, is the major supplier of products to rural grocery stores in New Mexico. Buying from local farmers as opposed to large distributors will ensure students get a healthier selection for their school lunch. Representative Lundstrom asked that a past LFC review of state funding for the school lunch program be provided to the committee.

Senator Leavell asked if USDA is also working to provide more fresh fruits and vegetables to senior citizen centers across the state. Ms. Roy replied that senior centers are having some of the same issues as public education departments. They are also struggling with enhancing and making meals more nutritious and still keeping costs down.

Senator Papen asked if students are eating more fresh fruits and vegetables. Ms. Roy replied that schools who have implemented farm to school programs have done waste management surveys. Students are wasting less, and appear to be eating more fresh fruits and vegetables. Schools do need to invest in the right kind of equipment to prepare fresh fruits and vegetables to strengthen their appeal. Representative Varela requested a report on local fruits and vegetables that are being purchased by schools.

Chairman Smith adjourned the committee into two subcommittees at 12:15 p.m.

The following LFC members were present on October 24th.

The following LFC members were present on October 24: Senator John Arthur Smith, Chair; Representative Luciano "Lucky" Varela, Vice-Chair; Senators Mary Kay Papen, Carlos Cisneros, Pete Campos, Sue Wilson Beffort, Carroll Leavell (for Leonard Lee Rawson), Joseph J. Carraro (for Stuart Ingle), and Phil A. Griego; Representatives Don Bratton, Brian K. Moore, Jeannette O. Wallace, Nick Salazar, Rhonda King, Edward C. Sandoval, and Henry "Kiki" Saavedra. Speaker Ben Lujan and Representative Mimi Stewart attended as guests.

The Legislative Finance Committee meeting began at approximately 8:00 a.m.

Report of the Higher Education Funding Formula Task Force. Dr. Reed Dasenbrock, Department of Higher Education Secretary, reported that the Formula Task Force has been working for several years to review issues that emerge each year. Membership includes staff from the LFC, DFA and a large representation from the institutions. A change that has occurred this year is the creation of a steering committee.

Mr. Curtis Porter, Associate Vice President for the University of New Mexico. said the committee is called the ING Steering Committee to primarily get more input from the presidents. There are seven members on the committee and includes a president from a research university, a president of a regional university, a president of an independent community college, a campus director of a two-year branch community college, the director of the LFC, the secretary of higher education, and the chair of the task force. Any issues that are approved by the task force are not officially sent to the AGD as recommendations until the ING Steering Committee also approves them.

Dr. Dasenbrock said there are six recommendations that the task force is putting forward. The first recommendation called Program Sharing is the most important and does not have any general fund implications. Eight of the ten largest communities in the state do not have four-year schooling. Significant percentages of the state's population have access to high quality two-year programs, but not automatic access to four-year programs. It is not made easy for students registered at one institution to take courses at another. Taking an online course from another university would require separate tuition. Institutional inter-operability through the computer is being proposed to develop a vehicle by which a student registered at one institution can take an on-line course at

another institution without having to change his or her registration. Also being proposed is the development of models by which one institution can offer physical face-to-face programs at another institution by using their facilities. A hard-wired formula split would be defined so the money would flow out automatically. The proposal includes a blended tuition rate and waives the tuition credit.

Buildings within the institutions of higher education are not in good condition; there are huge issues of deferred maintenance. There are issues with the current BR&R formula. Despite the nonrecurring funding and the increased emphasis in HED, infrastructure and maintenance is not making progress. The estimate on the backlog of deferred maintenance is up to \$1.5 billion. It is hoped that the common data base process will provide better information on where best to spend the money. The committee has recommended a nonrecurring appropriation of \$25 million. It is advised to move ahead with the common data base in order to move the BR&R to 2009 values and also work on new revenue sources to address the back log of deferred maintenance.

The third recommendation is the Cost of Opening Doors which was funded in 2007 and partially funded last year. It focuses on the "must pay" bills in the institution for utilities, insurance, risk management, and library acquisitions.

With the new formula in 2003, assumptions have not been validated behind the formulas since the early 1990s. The proposal developed by the task force includes updating the peer groups, reviewing the data files at the AGD, and updating them in order to conduct a cost analysis of ING totaling \$365,000. A proposal was done to include an extension to review current faculty salary studies for all institutions. The AGD has submitted an appropriation request making the total \$615,000.

Library purchases increasingly spent on electronic subscriptions are site licenses and are usually institutional specific. On average a statewide site license for all institutions for higher education would cost 20 or 30 percent more and would show significant savings statewide.

Based on each institution's cost of attendance and the authorized number of scholarships by sport, the committee has developed a process to look at how to divide any new dollars that might be available for athletics. The process is set up to obtain the approval from the governing board and HED in order to obtain approval from the legislature for any new sports.

The Steering Committee will discuss the possibility of aligning formula funding with strategic objectives. The formula funds credit hours which is an important cost, but is not an outcome. Recurring funding strengths for deferred maintenance issues needs to be identified. The Higher Education Department is interested in pushing institutions towards their GO Bond proposals and other capitol funding proposals being focused on key infrastructure and maintenance issues. The committee also worked on IT funding; there are some challenges on how institutions are receiving it.

Representative Bratton asked if the statewide research library would be a necessary component in order to do core sharing between four year institutions and community colleges. Dr. Dasenbrock said it depends upon the rules of the vendor. Getting more electronic resources available particularly to the two years schools is crucial in building programs. However, there may be individual access for students' initial courses.

Representative Salazar asked how lab work would be accomplished in course sharing. Dr. Dasenbrock said there are two different models; one is face to face program sharing and the other is online instruction. If a four year institution is offering a bachelor's program at a two year school, it would use the facilities of that two year school. There will not be physical labs for online courses. Representative Salazar said the formula does not address the inequity of salaries for faculty from school to school and asked if there was any remedy in the formula. Dr. Dasenbrock said it is believed that the funding formula funds faculty equally.

Public School Funding Outlook including Formula Funding Taskforce. Mr. Paul Aguilar reported that in FY09, the appropriations to public schools support and the related and recurring appropriations totaled \$2.6 billion, an increase of \$121 million or 4.9 percent over FY08 with \$2.4 billion appropriated to the State Equalization Guarantee for distribution to school districts. Since 2003, the legislature has appropriated over \$800 million to public education. Of that, \$728 million has gone into the SEG for direct distribution to the schools. The legislature was able to expand funding for the Student Nutrition Programs, primarily elementary breakfast, preserve after school programs, and continue funding for professional development. Last year's appropriation included sufficient funding for a two percent salary increase for all education employees and an additional one percent for select employee classifications. The funding was increased for Pre-K last year to \$19 million, divided between CYFD and PED. This year, approximately 4,500 students are being served of an original estimate of 19,000 students statewide. Student performance as measured by proficiency in math and reading has not improved significantly. In FY10, a number of educational reforms and initiatives are expected to be presented and pressure will be placed to fund them. It is the recommendation from staff to delay these programs until better accountability data is received.

Some programs have showed success; Pre-K being one. K3 Plus has also been a success with 8,500 being served statewide. The proficiency scores for English language learner students and high poverty students were up significantly this year. Staff believes that with the funds being appropriated to the Pre-K program, a higher number of students could be served. At present, it appears that only 75 percent of appropriations go directly to student cost. A lot of money is being spent on professional development for transportation, instructional materials, etc.

Original estimates for FY10 indicate that the enrollment growth is continuing to trend downward with pockets of enrollment growth in some districts. A two percent reduction in enrollment growth is anticipated. It is projected that between \$15 and \$27 million is

needed for fixed costs. Also in FY10, another year increased employer share of ERB is scheduled. This might be delayed, but would require a statutory change.

The legislature has funded elementary physical education for the last two years with \$16 million currently in the base, accounting for half the identified costs. That amount covers almost all students at all schools that did not have elementary PE programs when it was initially implemented. Moving forward, funds would pay for programs currently in place.

Vice-Chair Varela said appropriations were based on estimated enrollment numbers. If enrollment is down the unit value should reflect the change. Why shouldn't the unit value remain unchanged and money remaining be redirected to other parts of education. Mr. Aguilar said there is a floating unit value. The preliminary unit value was set last year; prior year numbers are used and growth factors are incorporated. A number has been requested from PED as to what was held back. Giving the secretary the option to reset the unit value is included in HB2 and could be removed at the legislature's direction.

Mr. Aguilar said estimates for transportation are relatively flat with minor adjustments for fuel. The legislature appropriated \$4 million during the special session for fuel costs directed to the districts with the direction that it could only be used for fuel costs and if balances were available at the end of year, they would revert to the General Fund.

The department is estimating the instructional material fund should rise from the current appropriation of \$39 million to \$45 million.

Vice-Chair Varela said what constitutes professional development may need to be identified by policy or by statute for a better understanding of what type of training teachers are taking.

Mr. Aguilar said there are currently 3,900 seniors statewide that are registered or only attend school one or two hours a day; however, they generate full funding.

Program evaluations conducted on Albuquerque Public Schools and other schools districts indicate overcharging for related services. These personnel generate 25 units which are multiplied against the training experience index. An option is to move those units out of the base program unit and place it below the T&E multiplier, resulting in savings of \$18 million per year.

The new funding formula recommends a census based special education count. A number of districts would be impacted and it is believed that the Legislature could implement an 18 percent cap. The new funding formula also recommends for those districts to reevaluate their system of identifying students with special needs making sure they are not over identifying. A Response to Intervention System has been implemented for students having difficulty in school to be evaluated by a team that includes their teachers and parents to see what interventions might be needed.

Chairman Smith said the committee would like a letter to be written from the director to school administrators giving them a “heads up” even though they are currently exempt from the Executive Order.

Racing Industry Issues. Ms. Ann McGovern, President and General Manager from Ruidoso Downs, presented a slide show of the flooding that occurred in Ruidoso in July.

Mr. Bruce Rimbo, Executive Vice-President and part owner of Ruidoso Downs said only three live days of racing were lost due to the flooding. Ruidoso races 60 days and is the highest of live race product. The parimutuel income over the last nine years has stayed relatively stable. The percentage of total play that is done at the casinos in the state shows that approximately 73 percent of plays are done at the tribes and pueblos versus 25 percent at the tracks.

In May 2003, the Mescalero tribe opened the second gaming facility on Highway 70. Since then, it has been the biggest contributor to lost revenue for Ruidoso Downs. HB484 was introduced in 2007 to amend the current Gaming Act to mirror what was done in the tribal compacts. The gaming excise tax rate is 26 percent. HB484 would lower the tax on tracks with net wins less than \$14 million. This is the exact same language as in the current compacts. In the current Horse Racing Act, there are licensed Class A and B tracks based on parimutuel; to do one for the gaming side would be no different. Any track that does \$10 million or more is a Class A track, any track that does \$10 million or less is a Class B track. A tribe that is under \$15 million pays three percent on the first \$5 million and then goes to 9.25 percent on anything over that.

Each track is allowed 600 machines and the Legislature allowed for machines to be leased from one entity to another. Sunland Park leased 120 machines and Zia Park leased 150 machines from Ruidoso. Fifteen dollars per day is received per machine which amounted to \$1.3 million during 2007. Purse money is also received off machines that amount to \$2.5 million given to horsemen’s purses during the Ruidoso session. The alternative is to try and seek a different market place that is bigger and can support a year round nature.

Ms. Freda McSwain, the immediate past president of the Ruidoso Valley Chamber of Commerce and vice-chair for the Ruidoso Valley Economic Development Corporation, provided testimony for the Ruidoso Downs.

Ms. Sandy Aguilar, Executive Director at the Ruidoso Chamber of Commerce also provided testimony.

Senator Carraro asked if Ruidoso Downs was insured. Mr. Rimbo said it was not insured for flooding. Senator Carraro asked if federal fiscal relief was available. Mr. Rimbo said Highway 70 was not impacted so there were no access issues. Senator Carraro asked how much the cost was to get the race track up to its previous standard. Mr. Rimbo said approximately a half million dollars, not including the cost of replacing the jockeys quarters.

Chairman Smith said given the shortage of general fund dollars that are available, other sources will have to be considered and asked if there would be consideration to reducing half the parimutuel tax collections going to the State Fair. Mr. Rimbo said all possibilities are open. The Racing Commission has approved a sixth license in Raton.

Racing Commission. Mr. Luna, Director of the Racing Commission said the Racing Commission is committed to live horse racing and every action taken is in the best interest of horse racing. The gaming part of the race tracks has been a tremendous asset to the industry. As part of the responsibility, an expansion is requested for individuals to assist in pursuing and ensuring that the horse racing industry continues to thrive. The base budget request is \$2.49 million with an expansion request of \$356 thousand. The expansion includes a financial specialist, an investigator, and a medical director to ensure drug testing programs stay on top of and are part of the overall responsibility. The Raton race track was recently approved; however, they do not have a license at this time. The Commission took action with regards to other applicants and is only allowed to give a license on an annual basis. In 2009, Raton will be eligible for a license in 2010. The move to Moriarity was done in the same manner.

Representative Moore said he understood that Moriarity was a transfer of an existing license. Mr. Luna concurred and said they will not be able to apply for a license until June 1, 2009. Because Raton is a new proposed race track, they can apply in January 2009. Chairman Smith said there have been press releases issued regarding the licensure for Raton and asked if there has been anything done to correct them. Mr. Luna said no. Chairman Smith said he would like for SRC to issue a press release indicating a license has not been granted to Raton which is in competition with Lordsburg.

Representative Bratton asked if it was possible for Raton to obtain the racing permit and the Gaming Commission award the slot machines to the track at Lordsburg. Mr. Luna said there is a chance that if the Lordsburg application is good under the Gaming Compact and another license becomes available with a casino, they may be put at the top of the waiting list.

Gaming Control Board. Mr. Dave Norvell, Gaming Control Board Chairman said that reducing the budget would jeopardize a reliable revenue stream of \$133 million from gaming alone. The Gaming Control Board is requesting additions to its budget.

Mr. John Monford, Executive Director said the primary reason for an increase to its budget relates to additional obligations put on the Gaming Control Board. Navajo Nation will open a casino on Interstate 40, east of Gallup on November 15th. With the Buffalo Thunder operation in Pojoaque and other expansions in general, an additional 1,500 gaming machines will be utilized on the tribal side alone. An additional race track will also place a burden on the agency as well as the move from Albuquerque Downs to Moriarity. The agency is requesting a base increase of \$459,000. There is an additional request for an increase of \$79,300 for a fixed cost put in place by the central monitoring system and a marginal increase of \$34,000 in category 400. The expansion increase is

for \$272.6 thousand and two FTEs in the IT department; these positions are critical to the revenue flow.

Representative Saavedra said the Board requested two additional positions last year and said he would help them during the regular session on the House side.

With no further business, the committee adjourned at approximately 12:20 p.m.



Chairman

11/18/08
Date