

**Legislative Finance Committee
October 23, 24, 25, 2013
State Capitol Room 307
Santa Fe, NM 87501**

Wednesday, October 23, 2013

The following members and designees were present on Wednesday, October 23, 2013: Chairman Luciano “Lucky” Varela; Vice Chairman John Arthur Smith; Representatives Henry “Kiki” Saavedra, Don L. Tripp, Edward C. Sandoval, Nick L. Salazar, James P. White, Donald E. Bratton, and Jimmie C. Hall; Senators Carlos R. Cisneros, Sue Wilson Beffort, Steven Neville, Carroll H. Leavell, George K. Muñoz, and Pete Campos. Guest Legislators: Senator Michael Padilla

Workforce Solutions Department (631). Secretary Celina Bussey, Workforce Solutions Department (NMDWS), spoke about agencies accomplishments for FY13. More than 500 thousand New Mexicans accessed services and resources through the public workforce system. New Mexico Workforce Connection Centers are now in 20 communities and accessible 24/7 online. Online services include applying for benefits, requesting payments, maintaining account information, receiving and responding to requests for information. Some key initiatives include the commitment to advancing the awareness and use of skills-based hiring within the business community. *WorkKeys* is a job skills assessment system that helps employers select, hire, train, develop, and retain a high-performance workforce.

New Mexico has more than 400 thousand individuals eligible for adult basic education services. These individuals face significant challenges in securing self-sustaining employment due to limited education attainment and lack of skills development. *WorkKeys* offer valuable opportunities for this population.

Another key initiative is the statewide business survey, which works with the Employability Partnership of New Mexico to collect data and information from private and public employers, assess the data, and present findings.

Secretary Bussey updated the committee on the status of the unemployment insurance fund (UI). The UI trust fund balance was \$52 million as of October 15, 2013. The fund has received the majority of contributions for 2013 and is in the process of receiving the third-quarter contributions. The major factors impacting the UI trust fund balance are benefit payout, quarterly employer contributions, the overall unemployment rate, and the labor force participation rates. The secretary discussed the current status of the unemployment insurance benefits; currently claimants are eligible for a maximum of 54 weeks. The first 26 weeks are state-funded regular benefits that come directly out of the UI trust fund. Weeks 27 through 54 are funded 100 percent by the federal government.

There are approximately 21 thousand individuals certifying for UI benefits every week: 15 thousand certifying for regular state funded benefit and 6,000 certifying for the federally funded extensions. Secretary Bussey highlighted federal challenges for the UI programs, including the most recent federal shutdown. She said New Mexico ranked seventh among states most affected

by the government shutdown. During that time the agency processed more than 1,200 federal employee initial claims. The secretary said the Emergency Unemployment Compensation (EUC) Benefits program is set to expire on January 1, 2014. Congress has extended and modified the EUC08 program 12 times since 2008.

Secretary Bussey said 66 percent of initial claims in the month of October were filed via the internet, 30 percent through the call center and approximately 4 percent via the interstate system. Weekly certifications in the month of October increased to 75 percent via the internet. She said New Mexico's fully integrated UI tax and claims system has empowered employers to register and directly manage their own UI accounts for the very first time online, including accessing claims information; 95 percent of employers are now filing quarterly tax and wage reports online and 62 percent of employers are taking advantage of the online payment option. Other UI tax and claims system employer benefits include electronic submission of quarterly wage reports, wage adjustments and appeals; automatic calculation of taxable and excess wages, amounts due, interest and penalties; immediate validation of file formats and submission errors; ability to view and respond to notices of claim filings, requests for separation and other fact-finding information, and appeals to eligible determinations; access to current and historical documents, reports, client accounts, calculations and rates; electronic payments of UI taxes and fees with ACH credit and debit; submission of bulk wage and tax reports and bulk payments; and complete tracking of benefit charges.

Secretary Bussey discussed UI tax legislation, in particular Senate Bill 334, that changed the formula used to calculate employer contributions (limited to the current maximum of 5.4 percent). The formula is intended to correlate the employer's actual claims experience with a tax rate and equitably distribute the burdens of unemployment among employers. The bill changed the system from the *Reserve Ratio* to the *Benefit Ratio*. The contribution rate for employers in business for less than 24 months will be the average of the contribution rates for all contributing employers in the employer's industry, as determined by administrative rule, not to exceed 5.4 percent and not less than 1 percent.

Secretary Bussey directed the committee's attention to a handout titled *NMDWS Budget Overview*. The FY15 appropriation request includes an increase of general fund totaling 11.4 million as a result of a reduction in federal funds. She said if \$11.4 million is not replaced with general fund it will result in the degradation of effective and efficient delivery of UI services and response time affecting 21 thousand New Mexicans and 45 thousand employers. The increase will pay for contractual services to include federal or state legislative changes, mandates or improvements to the system; daily support of the UI application along with other agency applications and project management; and security management assistance. The increase will also pay for overall software and hardware licensing and will fund the projected annual cost of sustaining the toll-free number available to employers and claimants. The Labor Relations Division's general fund request increased by approximately \$1 million -- \$900 thousand to cover what has been historically been funded by workers compensation; and approximately \$192 thousand to fund the Apprenticeship Assistance Act, a program that supports adults exclusively apprenticeship training programs in the fields of building and construction industries. Secretary Bussey spoke about reductions in federal funding due to reductions in UI contingency funding and the end of the emergency unemployment compensation program. The agency will be using

\$8.9 million of the balance in the Employment Security Department as a revenue source. She said historically this has only been used as a placeholder until the federal award notices are received. She talked about the UI federal funding trend and highlighted in FY11 nearly \$10 million was in the UI Contingency and Emergency Unemployment Compensation Fund in FY 13 that fund is down to \$1.6 million. Next she discussed total anticipated revenue for FY15, even with the significant increase in request for general fund dollars it is clear programs are predominately funded through the federal government.

Senator Leavell asked for the average length of time a claimant receives UI benefits before returning to work. Secretary Bussey said the current duration rate is approximately 21. Currently, New Mexico has one of the highest exhaustion rates in the country, meaning the individual receives all 26 weeks of state regular benefits.

Senator Neville asked how the New Mexico Workforce Connection online system is working. Secretary Bussey said it is working well and the department is currently working through data conversion issues and making the site more user friendly. Senator Neville asked if small employers with 10 to 15 employees would be allowed to file once a year versus once a quarter. Secretary Bussey said the U.S. Department of Labor will not allow that because it is a quarterly process.

Senator Munoz pointed out in FY14 NMDWS asked for a \$1.8 million increase, including funding for the toll free number. Secretary Bussey said \$1.8 million is the estimated annual cost needed to keep the toll free number functioning. She noted the toll free number had never been funded in the past. Senator Munoz asked how the toll free number existed before if it had not been funded. Secretary Bussey said it has not been paid in some time and prior to that it was paid out of ARRA funds. Senator Munoz asked if the Department of Information Technology (DoIT) should have the responsibility of providing the toll free number. Secretary Bussey said \$1.8 million is DoIT's cost. DoIT passes the cost down for the services they provide as well as the actual cost of the toll free number. Senator Munoz stated the DoIT cost is twice that in the market. Sue Ann Athens, chief information officer, NMDWS stated the department is legislatively mandated to use DoIT services for all telecommunications. The toll free number, as well as all phone systems, are a service provision of DoIT. She said the state pricing agreement sets the cost of the service at 0.2 cents per minute; however, the cost is 0.4 cents with DoIT's surcharges and overhead. Ms. Athens pointed out legislative mandates prevent the department from seeking a more competitive rate.

Senator Munoz asked for current documentation tracking payments in and out of the UI trust fund. Secretary Bussey said she would provide that information. Senator Munoz asked about the budget request of \$192.4 thousand to fund the Apprenticeship Assistance Act and how many are served by that program. Secretary Bussey said approximately 600 registered apprentices are in the state, all in the construction industry.

Senator Padilla asked how much of the \$11.4 million request will go toward overall software and hardware licensing. LFC Director Abbey stated IT licensing cost is \$1.2 million. Senator Padilla asked about the department's methodology for implementing software and ensuring compliance with the budget. Sue Ann Athens stated the hardware and software is already established; it is

not a software development project. The funds would be spent on continuity of operations and maintenance on the existing platform.

Senator Smith asked if information could be shared with the committee from DoIT regarding rates for the toll free number and its charge to the department. Darshana Kanabar, project manager for Enterprise Project Management Office, said she would be happy to take the question back to management and get back to the committee with answers.

Senator Smith spoke about the unemployment rate in his district and the inability to find a trained work force, and asked if NMDWS could network with local communities to address unemployment rates. Secretary Bussey spoke about the ineffectiveness of the system in the past and highlighted the need to work with adults using intensive case management, remedial education, and on-the-job training. She stated the vast majority of the eligibility and entitlement programs are supporting adults in a way that discourages work when work is the key to self-sustainability.

Senator Beffort expressed concern for the drug issues in New Mexico and if the department is able to drug test to receive UI benefits. Secretary Bussey said Congress has started to recognize push back from states in administering programs like unemployment insurance. There are some states that have tried to work into legislation parameters to use information related to drug testing as a potential disqualification for benefits. Senator Beffort discussed the growing number of individuals transitioning from UI benefits to disability benefits, which are a life-time entitlement. Secretary Bussey discussed the problem of some individuals using UI benefits as a bridge to permanent disability status.

Representative Tripp asked if small businesses have access to the *WorkKeys* skills assessment system. Secretary Bussey said the assessments are currently available in local workforce connection offices and some community colleges have offered function as testing sites.

Chairman Varela asked whether the agency works with the city of Albuquerque. Secretary Bussey said Mayor Berry and the city of Albuquerque are working with NMDWS and Central New Mexico Community College (CNM) to launch over 20 *Skill Up* centers, which are all at branches of CNM, local city offices and public libraries and offer the *WorkKey* assessments to individuals.

Chairman Varela asked to what extent the Information Technology Commission review the UI system. Secretary Bussey said to her knowledge the IT commission has not been active since early 2011. She stated she had regular engagement with the PCC and DoIT. Chairman Varela asked if it was a non-functioning commission and highlighted their responsibility for approving significant scale IT projects throughout the state. He also asked about the status of the Human Rights Commission and the Labor and Industrial Commission. Secretary Bussey said both are fully staffed and are currently experiencing no backlog.

New Mexico Corrections Department: Preview of FY15 Budget Request. Gregg Marcantel, secretary, Corrections Department (NMCD), introduced staff members and highlighted his commitment to getting key work systems under control and moving toward reducing recidivism.

Aurora Sanchez, deputy secretary of administration, NMCD gave a presentation that included an overview of appropriation requests since FY10. Ms. Sanchez highlighted a budget reduction of \$26.6 million from FY10 to FY12; however, NMCD remains \$14.2 million below FY10 levels. There has also been a reduction in FTE since FY10 of 85.5. Next she went over budget requests by program stating program support reflects a 5.6 percent increase, inmate management and control reflects a 3 percent increase, corrections industries reflects a reduction of 4.4 percent, community offender management reflects 4.4 percent reduction.

Joe Booker, deputy secretary of operations, reported information on prison facility populations, cost per inmate, and recidivism-reduction initiatives. He noted a change in inmate numbers due to construction and the need to move inmates to other facilities in the meantime. He also highlighted a 2.25 percent increase in the female inmate population. Cost per inmate has risen slightly due to staffing issues and the need to pay overtime to supplement staffing shortages. Mr. Booker also reviewed recidivism-reduction initiatives, which include a greenhouse program, yoga, sustainability, healing hearts dog rescue, unifying moms and children (parenting classes and overnight visits), dress for success, community reintegration, inmate canteen, old main museum, inmate rodeo, Malachi man, seminary, building maintenance, automotive and welding, Joni and friends – wheels for the world, automotive and HVAC, culinary arts, cowboy up, residential drug abuse program, and cognitive behavioral therapy. Secretary Marcantel noted the need of these programs to create transferability of skills as well as the programs ability to give inmates an experience larger than the problems they took to prison.

Ms. Sanchez spoke about vacancy rates in FY14 by program. She said the vacancy rate is 3.8 percent in Program Support, 1 percent in Inmate Management and Control, 3 percent in Corrections Industries, and 1.2 percent in Community Offender Management. Ms. Sanchez reviewed reasons for vacancies, which include movement across state government and non-competitive salaries; employment requires passing psychological and agility tests, drug-free applicants, and retirements. Representative Saavedra asked why starting salaries for these employees is so low. Ms. Sanchez said there wasn't a reason. NMCD is working with the State Personnel Office (SPO) and the Governor's office to raise salaries. Eugene Moser, director, SPO, stated counties offer the officers more money after NMCD trains them.

Senator Leavell asked Secretary Marcantel to explain the sustainability initiative. Secretary Marcantel said the sustainability in prisons project is a green discipline of the future that is a transferable skill for inmates. The program is starting in Lea County, where inmates are learning how to convert cooking oil to biodiesel, which will run in department vehicles. The program also recycles food waste that feeds worms used for agriculture and green house programs. He said the project has the potential to save hundreds of thousands of dollars once it is statewide. Senator Leavell asked about prisons making license plates. Secretary Marcantel said he has studied the financial viability of making license plates and cannot produce a license plate as inexpensively as other companies. He noted it is not a transferable skill. Senator Leavell asked about the status of staffing in Lea County. Secretary Marcantel stated the department has done its best to partner with the GEO Corporation and made an agreement to partner with them. He stated the GEO Corporation has committed to pay raises for staff.

Representative Bratton asked for statistics from facilities that show the percentage of time occupied by inmates relative to meaningful activity, such as job skills training or education. Secretary Marcantel stated he is committed to reinvigorating Corrections Industry with programs to reduce recidivism and increase transferability skills.

Senator Beffort commended NMCD for the introduction recidivism reduction initiatives and asked that Secretary Marcantel work with local communities and counties to improve their facilities and reduce cost. Secretary Marcantel said he had the opportunity to sit as an ex officio member of the Association of Counties; Law Enforcement and Detention Advisory Committee and through that mechanism is trying to create cost-reduction initiatives.

Representative Hall asked what the cost difference is between male and female inmates. Secretary Marcantel said the female offenders cost more than male offenders because they typically embrace medical and psychological services. Ms. Sanchez stated it costs approximately \$8 per day more for a female offender because of the use of residential treatment programs, which allow women to have their children with them as a way to encourage the unity of family.

Senator Neville expressed concern with the inmate rodeo and the liability issues that may arise for the state. Secretary Marcantel stated the inmate rodeo program is in its infancy and the potential liability impact on medical costs will be considered. He also said there are a number of events that would not be implemented. His hope is to create an event that will be exciting, well-attended, profitable, and create opportunities for inmates to be involved in something bigger than themselves

Representative Sandoval asked if inmates are in other states because of overcrowding. Secretary Marcantel stated that New Mexico has inmates in other prisons through an interstate compact agreement with many states. Placing inmates in other states is not driven by population; it is more for security and risk management purposes.

Senator Cisneros asked if there were educational initiatives for inmates to attain a high school or postsecondary diploma. David Huerta, director of the Office of Recidivism Reduction, stated NMCD has an electronic general education development (GED) program that will be implemented January 2014 and is currently piloting a program with community colleges to come into facilities and teach, but nothing online is being offered. Senator Cisneros asked that an online pilot program be initiated and expressed the importance of education and the potential for reduces recidivism as well as a path to career readiness.

Senator Munoz asked if NMCD has cleared all audit findings. Ms. Sanchez said it has not cleared all audit findings but is working on each of them. She pointed out that some findings require policy changes and strengthening internal controls. Senator Munoz asked the amount of an overpayment to the AmeriCorps program. Ms. Sanchez said it was approximately \$2,000. Senator Munoz expressed concern with the inmate rodeo program and the state's liability. Secretary Marcantel stated the department has not determined what events will be included in the rodeo; it is possible the department could bring in professional bull riders for that event.

Spaceport Authority (495). Christine Anderson, executive director, New Mexico Spaceport Authority, presented a snapshot of New Mexico Spaceport America (NMSA). She highlighted the spaceport is below the 2007 authorized project total of \$225 million at \$212 million. NMSA has carved out \$8.1 million for the southern access road, although that was not included in the budget. NMSA has been paying the majority of its operational costs, including state employee salaries from revenue for the past three years, and NMSA is host to two of the largest and most well-respected commercial space companies -- Virgin Galactic (VG) and SpaceX. She briefed the committee on NMSA's completed projects, which include VG Gateway to Space, a 12 thousand foot runway, Spaceport operations center, wastewater treatment plant, 1.3 million gallon water storage facility and booster station, communication and security system, internal roads, fencing and gates, electrical substation, emergency response vehicles, and automated weather-observing system. SpaceX is the newest tenant and has signed a three-year lease with two one-year options. The technology it uses is called Grasshopper and is currently undergoing testing in Texas. The company hopes to have its first launch in December out of the NMSA. VG continues to test in Mojave and has conducted its second hot-fire integrated rocket test with feather maneuver on September 5, 2013.

Ms. Anderson highlighted NMSA's two types of budgets, including a construction/pre-operational budget, which was bond money from severance tax capital bonds and gross receipts tax capital funds from Doña Ana and Sierra Counties. The second budget is the operational budget from appropriated operational funds, NMSA revenue and gross receipt excess pledge bond revenue. She stated the balance of bond funds is \$212 million – general fund/severance tax capital funds total \$135.6 million, gross receipts tax capital funds total \$76.4 million and unencumbered bond balance as of September 15, 2013, total \$9.3 million severance tax bonds and \$6.7 million in GRT bonds. Operating budget assumptions for FY15 include VG starting flight operation at the spaceport and the opening of the visitor experience center. Fiscal year15 projected revenue include payments for VG operational flights, \$2.2 million from VG facilities lease and ground rent payment, \$1 million from tourism, \$1.6 million from excess pledged revenue from GRT, and \$739 thousand from other launch customer revenue. Ms. Anderson stated FY14 pre-operational support contractors could be replaced by a combination of 9 FTE and a few small specialized maintenance contracts at a savings of \$883.1 thousand per year.

Chairman Varela asked how many jobs have been created in the area. Ms. Anderson said to date the Spaceport has employed approximately 1,300 New Mexicans and anticipates more aerospace, supply chain and hospitality management jobs, which would be approximately 1,600 by FY18. Chairman Varela asked if gross receipts taxes have been imposed on Otero County. Ms. Anderson said the county did not vote for the tax. Chairman Varela expressed concern with Otero County not voting for the gross receipts tax but directly benefiting from the spaceport.

Representative White asked if the Spaceport has other sources of revenue, such as ground equipment or fuel storage capabilities. Ms. Anderson said NMSA gets reimbursed for fuel costs, water etc. and is currently looking for other opportunities for revenue. She said as the Spaceport will supply more equipment as it learns more about tenant needs. Representative White suggested the Spaceport lease real estate to build storage or maintenance facilities. Ms. Anderson said as other tenants might want to build their own facilities.

Responding to Senator Smith, Ms. Anderson stated the local option tax for public schools in Dona Ana and Sierra counties has been approximately \$7 million, or 25 percent of revenue to both counties to date. Senator Smith asked for reasons VG is running behind schedule. Ms. Anderson said the company is working very hard but has to test extensively to ensure passenger safety. Senator Smith asked for a brief summary of potential facilities that could be in competition with NMSA. Ms. Anderson said to date there are eight Federal-Aviation-Administration-certified commercial spaceports and one other private spaceport. The biggest competitors are Florida and Texas.

Senator Padilla asked Ms. Anderson to speak on the southern road issue and if constructing that road will divert dollars toward El Paso rather than New Mexico. Ms. Anderson stated one paved access road to NMSA goes through Truth or Consequences from the north; southern access is by four dirt county roads. She highlighted the southern routes importance for the future supply chain and the importance of the road to the community.

Senator Cisneros stated Linda Kehoe, LFC staffer, asked the governor to submit a listing of potential capital outlay projects to which she has not received a response. Is there any assurance capital outlay funds will be cut out for the southern road? Director Abbey emphasized the importance of creating an expectation that the executive branch submit a capital outlay recommendation required by statute. Senator Cisneros asked if the road be dedicated as a state road temporarily then returned back to county after repairs. Ms. Anderson said she tried to contact the secretary of the Department of Transportation but the secretary did not respond.

Representative Salazar asked the panel to speak on the issue of commercial development around the Spaceport. Ms. Anderson said, with time more, aerospace companies may move here and the supply chain will develop once they start launching. The company will not move here before launch occurs. Representative Salazar asked if maintenance of the spacecraft will occur in New Mexico. Ms. Anderson stated maintenance will more than likely but manufacturing, in the case of VG, may stay in California.

Senator Munoz asked if VG has made a payment. Ms. Anderson said VG paid \$1 million in January 2013. Senator Munoz asked about projected revenue for FY15 Senator Munoz asked if NMSA has signed any vertical launch leases. Ms. Anderson said SpaceX and UP Aerospace will be paying \$25 thousand per launch and will probably conduct multiple launches per month.

New Mexico Finance Authority Budget Overview FY14 and FY15. John Gasparich, interim chief executive officer, began his presentation with an update on an upcoming bond sale. The NMFA Board will approve pricing. The two separate bond issues 2013B revenue bonds will be \$16.3 million with the longest maturity to 2036 with an average maturity of 7 years.

Responding to Chairman Varela, Mr. Gasparich said Standard and Poor's has given the state a AAA rating, the rating prior to the audit problem. Moody's rating on the senior lien is AA1.

Mr. Gasparich updated the committee on the recruitment of a permanent CEO. He said NMFA has retained the firm of Ralph Anderson and Associates to recruit and has two finalists. He said the board would announce a final decision the week of November 4.

Next Mr. Gasparich directed the committee's attention to a handout highlighting program and budget structure. He stated NMFA provides low-cost financing for public infrastructure, vehicles and equipment, water resources, private sector economic development and job creation. Four major programs of our public infrastructure program are the public project revolving fund (PPRF) in the amount of \$61.1 million, Department of Transportation DOT/GRIP in the amount of \$1.4 billion bonds outstanding, local government planning fund in the amount of \$575,769 and the colonias infrastructure fund in the amount of \$16.6 million, with an additional \$8.4 million in matching funds from the U.S. Department of Agriculture and the federal community development block grant for a total of \$25 million. Participants eligible for public project revolving funds include local and tribal governments, state agencies, public schools, higher education institutions, special districts and local police and fire departments.

Two major water resources programs include the Water Trust Board with \$105 million in outstanding projects; in FY13, allocations totaled \$36.9 million. The second major water resource program is the drinking water revolving loan fund with approximately \$30 million in outstanding projects and \$30.7 million in the pipeline with a four to one state match ratio. Fiscal year 13 consisted of \$12.4 million in base loans and \$13.1 million in principal forgiveness totaling \$25.5 million. Participants in this program are local and tribal governments, mutual domestic water associations, regional water projects, water utility authorities and conservation and watershed protection entities.

Economic development programs include a new markets tax credits program which financed \$17.9 million in projects for the private sector. The state small business credit initiative is a loan participation program which partners with commercial banks to assist in making viable business loans. The New Mexico economic development fund is a legislative appropriation and funded \$1.4 million in FY13. Participants in these programs include private business in rural and underserved areas, small business associated with tribal entities, and corporations locating in New Mexico.

Donna Trujillo, chief financial officer, reported status on findings from several reports, including those from Hewitt Ennis Knupp, PricewaterhouseCoopers, LLC, NM State Auditor's Office, Regulation and Licensing Securities Division, and the Rogoff Firm. Findings from each report were accumulated and organized by each focus area. The findings matrix attempts to identify issues in each findings or area of concern. One major finding in each report indicated the external audit was late. Ms. Trujillo stated that finding was associated with the compliance related to the State Auditor rule and federal requirements in the single audit act as well as bond covenants. To date, the agency has completed FY11 and FY12 audits and field work for the FY13 audit. Other major findings in each audit were staffing issues, loan servicing issues, accounting practices, and state compliance, which are being addressed.

Representative Tripp asked for more information on the state small business credit initiative. Marquita Russel, chief of programs, NMFA, explained the program varies based on location of project, collateral position, and duration of the loan. Participation can range from 10 percent to 40 percent. The program targets shorter-term loans because the federal government requires NMFA to leverage each dollar 10 times by the end of 2016. To do that, NMFA participates in construction loans and working capital lines of credit.

Senator Munoz asked about a water pipeline project and if NMFA was overseeing that project. Mr. Gasparich said the Navajo-Gallup pipeline project is being reviewed by the Construction Programs Bureau of the Department of Environment. Senator Munoz pointed out a bill last session that gave authority to the Department of Environment to oversee the management of the project but NMFA opposed the bill. Mr. Gasparich said the bill would have moved the financing function from NMFA to the Department of Environment and would have been an unnecessary disruption of process. In addition to that, NMFA has the ability to bond against that fund should the time come.

Senator Padilla asked about the economic development fund and if small businesses can apply for gap funding to get them from start up to operations. Ms. Russel stated both smart money loan participation programs and collateral support programs are available to help banks fund start-up companies for expansion of projects. However, they have to have an originating bank.

Senator Cisneros asked about water trust fund allocation and when it is likely to be depleted. Mr. Gasparich stated it will most likely deplete 17 years from now. Senator Cisneros asked about the Ute Dam Project and how it was funded. Mr. Gasparich said it is funded with a combination of grant and loan funds. Senator Cisneros asked if there is an allocation on a continual basis or a onetime disbursement. Mr. Gasparich said up until now it is allocated on an annual basis. Senator Cisneros if he can expect that disbursement to continue. Jana Amacher, director of Water Resources, NMFA, stated the two state-sponsored projects that go before the Water Trust Board every year go through the application process annually and are reviewed against established criteria. The project has received high scores and is expected to be funded in coming years.

Senator Beffort discussed economic development, the need to grow the state, and how community banks can be more competitive in lending funds financed by taxpayers. Ms. Russel explained NMFA works primarily with smaller banks on *Smart Money* loan programs, in which the bank and the board share the security interest. That longer-term participation and partnership seems to be appreciated by smaller banks in more rural communities. Collateral support program which uses federal dollars and smaller participations with shorter duration loans tend to be favored more by larger communities and banks.

Game and Fish Department (516). Dan Brooks, deputy director, Game and Fish Department, reported budget requests for programs, including field operations, conservation services, and depredation programs. The field operations program oversees field officers and is requesting \$8.7 million to support 96 FTE. The Conservation Services Program, which conserves wildlife habitat, is requesting \$22 million to support 144 FTE. Deputy Director Brooks noted the department's accomplishments, which include the handling of more than 150 thousand special hunt applications, supplying 54 thousand big game licenses to residents, and providing 133 thousand acres for the open gate program, which allows for greater access throughout the state for recreation. The depredation program has 4 FTE and is requesting \$1 million and program support is requesting \$8.2 million and has 52 FTE.

Deputy Director Brooks reported expansion requests include \$360 thousand for vehicle purchases, \$25 thousand for uniform purchases, \$50 thousand for off-highway vehicle youth safety equipment, and \$125 thousand for marketing purposes. He also highlighted vacancy rates,

currently at 22 percent. He stated 68 positions have not been filled; however, 52 are in various stages of hiring.

Senator Munoz asked about the game protection fund and how to use those funds. Pat Block, assistant director, Game and Fish Department, stated the fund can be used by appropriating funds for projects covered under the provisions of Chapter 17. He said the cash balance will be reduced by \$8 million due to capital appropriations from the last legislative session. Responding to Senator Munoz, Mr. Block said the balance in the game protection fund is approximately \$40 million.

Responding to Chairman Varela, Deputy Director Brooks stated the members of the State Game and Fish Commission are, by statute, appointed by the governor and confirmed by the Senate. Chairman Varela asked about the commission's position is on the management of the Valle Caldera, and Deputy Director Brooks stated the commission is concerned the National Parks cannot effectively manage the elk population if it should take over management.

Veterans' Services Department (670). Timothy Hale, secretary, Veterans' Services Department, reviewed the New Mexico veteran population, stating the department served 28,121 in FY13, a penetration rate of 19.8 percent, with a total of \$182 million in compensation and pension derived from all claims. The Veterans' Administration (VA) spent \$1.6 billion in New Mexico in federal fiscal year 2010 to serve more than 172 thousand veterans who live in the state. Last year the VA spent \$433 million on health care at the VA medical centers and clinics and approximately 32 thousand veterans and survivors received disability compensation or pension payments from the VA in New Mexico. New Mexico veterans generate an estimated \$1.5 billion of economic development through pensions, disability payments, retirements, dependent payments, educational benefits, and other state and federal veteran and dependent compensation benefits and services. The state of New Mexico ranked in the top five states per capita for veterans receiving compensation and pension from the VA. Veterans' federal education benefits provide funding for education, on-the-job training and apprenticeship programs in excess of \$55 million a year for veterans and their dependents enrolled in New Mexico education and training programs. Mr. Hale outlined key goals for the department, which include improving overall management and operational systems, delivering and improving existing programs, identifying new initiatives, and developing action plans. Mr. Hale reported the department's FY15 budget request, which includes a general fund request of approximately \$3.1 million. He reported federal revenue at \$318 thousand and a fund balance of approximately \$71 thousand, for a total budget of approximately \$3.5 million.

Representative Saavedra asked how many Vietnam, Korea and World War II veterans are served. Mr. Hale stated approximately 50 percent of the veteran population served in New Mexico are Vietnam, Korea and WWII veterans, with approximately 25 percent of veterans from the Iraq and Afghanistan wars.

Senator Munoz stated Gallup no longer has a veterans' service provider and asked when he will be replaced. Mr. Hale stated the department is currently in the process of re-hiring and examining the possibility of shifting that provider to a more central location, possibly Grants.

Senator Munoz advised against moving the office to Grants because of the large number of Native Americans served in the Gallup office.

Senator Leavell spoke about the search for locations for veteran's cemeteries in New Mexico and expressed the need and interest in having one in or near Red River. Mr. Hale stated a town hall meeting was held in Angel Fire and he is aware of the needs in the northeast part of the state.

Representative Sandoval asked if there were plans to purchase more land to expand the Santa Fe National Cemetery. Mr. Hale stated there are no plans for the federal government to purchase more land and expansion projections have moved to 2035.

Chairman Varela asked about the departments vacancy rates and if those are funded positions. Mr. Hale reported 8 vacancies all of which are funded and the majority in the process of being filled.

State Land Office (539). Ray Powell, commissioner of Public Lands, reported over the past three years the Land Office has generated \$1.7 billion for public schools, universities, and hospitals. FY12 and FY13 marked the two highest years on record and earnings are projected to remain strong in FY14 and FY15. The Land Office base budget request represents 2.2 percent of the total revenue earned by the agency each year and is completely funded by the revenue it earns. With an annual budget of about \$14 million, the Land Office earns an average of approximately \$1.6 million per day. Mr. Powell highlighted budget priorities in three major areas including human resources, optimizing revenue and enhancing the health and productivity of trust lands. He highlighted the department's total projected revenue at \$657 million for FY15 and a request of \$14,475,300, an increase of 4.9 percent. He provided a summary of additional requests, which include 3 FTE, contractual services, and capital projects.

Chairman Varela asked for clarification about the capital project for the entry renovation and security enhancement. Mr. Powell stated when the building was constructed there was a marble entry with a system of heating to keep the marble from freezing in the winter; however, the heating was severed during a construction project and the marble has broken, creating a hazard. The security enhancement project would provide a safe ingress and egress for clients and staff. Chairman Varela asked what percentage of land in New Mexico are state trust lands. Mr. Powell stated 11.4 percent are considered state trust lands. Chairman Varela asked Mr. Powell to explain renewable energy projects currently underway. Mr. Powell said the Land Office has a portfolio of 22 projects, which will generate approximately \$574 million over the life of the wind, solar, and geothermal projects. Mr. Powell said the Land Office can spend up to 9 percent of severance tax permanent fund on venture capital in New Mexico. He highlighted the use of severance tax funds to gain the largest return on investment in the history of the state.

Senator Munoz asked what amount was lost in venture capital funds. Mr. Powell stated approximately \$34 million but he couldn't recall a loss when funds were invested in New Mexico, stating those investments have been few and far between. Mr. Powell said people want to invest in New Mexico. He said the Land Office invested in a 1,400-acre business park in Senator Leavell's district. The first tenant from Cambridge, Massachusetts, is a pilot project

where they use patented algae, salt water disposal, a waste product from oil rigs, and use New Mexico sunshine to alter the genome of the algae to produce jet fuel, diesel and kerosene.

Senator Smith expressed his concern with eroding the land grant permanent fund. He said continued erosion will lead to tax increases. Mr. Powell said he shares his concern and discussed a proposal with the federal government to get a portion of 1 million acres of Bureau of Land Management disposal lands for the permanent fund. He estimates at current uses the land could make an additional \$50 million to \$60 million to grow the permanent fund for education purposes.

Thursday, October 24, 2013

The following members and designees were present on Thursday, October 24, 2013: Chairman Luciano “Lucky” Varela; Vice Chairman John Arthur Smith; Representatives Henry “Kiki” Saavedra, Don L. Tripp, Edward C. Sandoval, Nick L. Salazar, James P. White, Donald E. Bratton, and Jimmie C. Hall; Senators Carlos R. Cisneros, Sue Wilson Beffort, Howie C. Morales, Steven Neville, Carroll H. Leavell, George K. Muñoz, and Pete Campos. Guest Legislators: Senator Michael Padilla

Public Defender Department (355). Bennett Baur, interim chief public defender, Public Defender Department, highlighted the strong feeling among the commission that the public defender’s office is underfunded and finds it difficult to meet constitutional mandates to provide effective assistance to clients. Mr. Baur stated the agency currently has 394 FTE throughout the state and is requesting an additional 26 FTE, a 6.6 percent increase. He reviewed the agency’s base request increases, which include \$400 thousand for Contract Council Legal Services (CCLS) fee increase, \$200 thousand for CCLS regular increase, \$123.2 thousand for existing building leases, \$66.5 thousand for Department of Information Technology data line increase, \$18.2 thousand for commission travel, and \$189.7 thousand for other line item increases. Next he reviewed expansion items to include 6 additional attorney FTE positions for Albuquerque Metro Court and 20 additional FTE for district offices throughout the state. Mr. Baur said according to the latest New Mexico Sentencing Commission study the office is 119 FTE short.

Chairman Varela asked for clarification of vacancy rates, challenges of recruitment and asked about a transfer of \$1 million in personal services and benefits and funds reverted out of the budget. He said those transfers indicate adequate funding. Mr. Baur explained the reported 46 vacancies, stating that is not an adequate representation of what is happening. He said there are a number of positions for public defender 2 (PD2) are being held open for a program for law clerks, who are new attorneys who have completed law school but have not yet passed the bar. In the past, the agency was not able to hire anyone in the PD2 positions because of state personnel requirements. Since then, the agency has worked with SPO and created a law clerk position, which allows the agency to get a recruitment waiver from SPO and transfer law clerks into PD2 positions upon passing the bar. Mr. Baur reviewed other agency vacancies and discussed recruitment issues, such as competitive pay and efforts to increase recruitment at UNM and Texas Tech.

Representative Tripp asked how the agency maintains quality when working with contract attorneys. Mr. Baur said clauses in the contract allow the agency to review the work and make

decisions regarding the quality of work done. Department managers speak with judges about how attorneys are performing. Responding to Representative Tripp, Mr. Baur said clients can file complaints and the agency contacts the attorney and resolves the disputes.

Representative Saavedra asked what the starting salary is for a public defender. Mr. Baur said the starting salary is \$48 thousand a year in the Albuquerque and Santa Fe Offices and \$52 thousand for offices in other areas with opportunities to increase to \$93 thousand per year. Salaries are determined by the State Personnel Office and it is very difficult to get pay adjustments.

Senator Cisneros asked about the case backlog and if anyone is in jail because of a shortage of public defenders. Mr. Baur said, while difficult to quantify, there are individuals staying in jail because there are fewer attorneys to represent them.

Miscellaneous Business

Action Items

Approval of September 2013 Meeting Minutes – Senator Cisneros moved to approve the September 2013 meeting minutes, seconded by Representative Saavedra. The motion carried.

Approval of Subcommittee A Report – Senator Cisneros moved to approve Subcommittee A Report, seconded by Senator Neville. The motion carried.

Approval of Subcommittee B Report – Senator Morales moved to approve Subcommittee B Report, seconded by Senator Neville. The motion carried.

Approval of Contracts –

Director Abbey recommended contracts for Marty Daly, Laird Grasier, and Mark Webber. **Senator Cisneros moved to approve the contracts, seconded by Representative Saavedra. The motion carried.**

Information Items

Director Abbey stated he did not believe there are any items requiring further attention and advised the committee to review the contents.

Indian Affairs Department (609). Arthur Allison, secretary, Indian Affairs Department (IAD), discussed the tribal infrastructure fund (TIF), stating in 2012 and thereafter 5 percent of the estimated senior severance tax bonding capacity for the state of New Mexico is allocated to TIF. Crispin Kinney, tribal infrastructure planner, reported 19 capital outlay projects totaling \$16.3 million.

Duane Duffy, deputy secretary, IAD, presented information on the 2014 tobacco cessation and prevention program, which awarded a total of \$249 thousand to seven projects throughout New Mexico. He then discussed a list of 2014 special projects, which were awarded a total of \$761 thousand to 12 projects statewide.

Jerry Sandoval, economic development and tourism director, IAD, discussed the development of numerous programs to address and assist the tribes accessing capital, financing, bonding, business development, technical assistance, grant writing and other programs. The growing interest and participation of tribal governments, tribal enterprise boards, section seventeen corporations and native entrepreneurs shows that these programs will be beneficial, progressive and prosperous.

Chairman Varela asked for clarification on the audit finding in FY12. Rosemary Whitegeese, chief financial officer, said IAD has hired two contractors to reconcile capital outlay projects, beginning with the conversion of SHARE in 2006 to today. She said there are three main funds with negative balances and the department is currently working to reconcile by the end of FY14.

Senator Munoz asked why there are no tobacco cessation and prevention programs in the western part of the state. Deputy Secretary Duffy stated no one from that part of the state submitted a project. Senator Munoz asked for the rationale behind a waste water project that was vetoed by the governor but was approved for funding by tribal infrastructure board. Mr. Crispin Kinney, tribal infrastructure planner, stated that may have been due to timing. The vetoes occur after the projects are selected by the TIF board.

Representative White asked how TIF funds flow. Secretary Arthur said IAD works with the finance board out of the department of Finance and Administration (DFA) who set the bond. We then provide a list of projects, they write a purchase order and the funds are drawn down. Representative White asked if 5 percent of TIF can be used for administration and if that is in addition to the 10 percent set aside for planning. Mr. Kinney stated 10 percent is the target for planning then 5 percent was to be available for administration.

State Fair Commission (460). Dan Mourning, general manager, State Fair Commission, highlighted successes of the State Fair since an LFC audit was conducted in 2011. Since the audit, the State Fair is reporting increased attendance, increased revenue over expenses, increased safety, increased attendee satisfaction, and a return to its former glory. Mr. Mourning stated the Fair has converted to the SHARE financial system, upgraded administrative information technology infrastructure to accommodate SHARE, addressed Environmental Protection Agency compliance issues, welcomed the construction of a new casino, and partnered with University of New Mexico ticketing services to improve ticket function and reduce cash handling. Mr. Mourning reported FY12 revenue over expenditures, excluding depreciation, totaled \$659 thousand. He also said the fair is current on its General Services Department (GSD) obligations and working toward resolution of the \$1.8 million owed GSD from previous administrations. Mr. Mourning stated the Fair Commission is exploring charging food vendors a percentage of revenue rather than a flat rate for space, as well as researching cashless systems to work more effectively with external constituencies. Mr. Mourning said it would be a challenge to the solvency of the fair to add the \$1.8 million owed GSD to the cost of gate admission and building rental and remain competitive in the marketplace given current economic factors and competition. In order for the state fair to move forward it must complete a facility condition assessment, develop a new campus master plan, upgrade and remove or replace aging buildings and infrastructure.

Responding to Senator Smith, Mr. Mourning said the Fair Commission is statutorily required to meet once a year. This year they met in January and have no meetings currently scheduled. Senator Smith asked the chairman when the next meeting is scheduled. Chairman Kennedy stated there is not a meeting currently scheduled but they are planning a meeting as soon as the reconciliation from the last fair is complete. Senator Smith expressed concern with the commission's lack of involvement in planning and oversight. Senator Smith asked for a copy of the final reconciliation for the committee and staff. Director Abbey stated it was his understanding the FY12 audit had not been finalized. Mr. Mourning stated a copy will be provided to staff.

Status on Investigations of Behavioral Healthcare Providers. Gary King, attorney general, (AG) gave an update with regard to the Human Services Department (HSD) investigation into the 15 behavioral health accused of fraud. He said HSD decides whether there are credible allegations of fraud. He said NMAG has brought investigators from other parts of the agency and is working with state and federal agencies to increase the number of investigators working on these cases. The healthcare providers have cooperated and there has been ongoing communication. Attorney General King said the Public Consulting Group, Inc. (PCG) audit is an important document in the investigation but not the only thing to consider in the investigation. He said investigators are interviewing people involved in the billing cycle, therapists, office managers, IT personnel, clients, client families etc. He said the PCG audit was not a forensic audit; the audit itself is not likely to be the basis for criminal charges.

Attorney General King said NMAG is comfortable that the sections redacted from the publically released copies of the audit fall under the law enforcement exception. He said the agency hopes to have some answers on some of these cases relatively quickly but is hesitant to give a specific date due to the complexity of some cases.

Hector Balderas, state auditor (OSA), reported the Audit Act requires the Human Services Department (HSD) to submit its fiscal year 2013 annual financial audit by December 16, 2013. Federal law also requires HSD receive a federal single audit, which tests whether or not the department is expending federal funds properly. As part of this process, staff auditors are working closely with the independent audit firm conducting the annual financial audit, which is testing both federal and state funds. Due to HSD's significant expenditures of federal funds, independent auditors are required by federal law to ensure HSD has adequate procedures in place to identify fraud and safeguard federal funds. In FY12, the department expended more than \$3.5 billion in federal funds. HSD spent approximately \$2.6 billion in federal funds for Medicaid and Medicare services.

Mr. Balderas said, pursuant to federal law and guidelines, there are audit objectives and audit procedures that apply to Medicaid cluster funds currently expended by HSD. HSD must have the following criteria for identifying suspected fraud cases: HSD must have methods for investigating cases and have the ability to refer cases with sufficient evidence of suspected fraud to law enforcement officials. Consequently auditors are also required to test whether or not HSD has established and implemented procedures to safeguard against unnecessary utilization of care and services.

Mr. Balderas outlined procedures the auditors will conduct, which include sampling of identified suspected fraud cases, ascertaining if the agency took appropriate steps to investigate, and obtaining and evaluating the adequacy procedures used by HSD to conduct reviews. Mr. Balderas stated OSA received the PCG report on July 26, 2013, following a court-issued subpoena and are reviewing the audit as it relates to HSD's verification and referral of credible allegations of fraud. Under federal regulations, it is a responsibility of HSD to review all allegations, facts and evidence carefully and act judiciously on a case-by-case basis in order for allegations to be considered credible.

OSA has engaged HSD on whether or not the agency properly verified and refereed credible allegations of fraud related to the 15 providers identified in the PCG report. In the executive summary of the PCG report, there was a summary where PCG did not categorize any of its findings as credible allegations of fraud and specified that a determination of credible allegation of fraud can only be made by the state of New Mexico. Therefore OSA requested and received additional documentation from HSD regarding its process for verifying credible allegations of fraud. Staff auditors and staff from OSA, along with the independent audit firm, are currently reviewing that documentation and analyzing that information. This process is ongoing and auditors may make follow up inquiries for additional information.

OSA contacted PCG directly to get more detail about their process and how they conducted the audit including analysis and extrapolation methodology. Finally OSA issued a specific confidential referral to the independent audit firm identifying risks related to HSD's oversight and expenditures of Medicaid funds. As this process moved forward OSA anticipates continuing work with HSD, the independent audit firm and PCG. After the report is officially released it will become public record and OSA will provide copies to HSD, LFC and the department of finance and administration (DFA) as required by law.

Chairman Varela asked when the reports and findings will be released. Attorney General King stated it is his hope to report on some providers before the end of the year but cannot guarantee it will be done before then. He said it will not be true for all 15 providers because of the volume of documents and resources we have available. He noted they are using resources not paid for by Medicaid, but are moving some investigators paid by general fund to complete the report.

Chairman Varela noted the LFC's attempt to work with HSD when they requested \$18 million of budget adjustments to pay outside contractors. He said at the time LFC did not have sufficient information to authorize the entire \$18 million so it authorized \$7 million with the understanding if HSD needed the additional dollar transfer that they would provide a justification. Chairman Varela said this committee did not approve that transfer but it doesn't have the authority to stop it, consequently additional dollars were transferred.

Senator Padilla questioned the procurement of PCG and asked for clarification of HSD's relationship with PCG and if there was a request for proposals to select this company. Attorney General King stated it is his understanding HSD did not procure PCG through an RFP but did it as an emergency procurement based on some discussion or information from OptumHealth Care. Senator Padilla stated the Procurement Code authorizes up to \$50 thousand before an RFP is

required. He expressed concern that a cabinet secretary has the authority to award a contract for \$3 million.

Senator Padilla asked how many individuals working for the 15 providers lost their jobs.. Attorney General King said he was unsure of the number but was told the therapists could be hired by the new providers out of Arizona. Senator Padilla asked if PCG was an authorized firm to conduct audits in New Mexico. Mr. Balderas said PCG is not on the state's approved list. Mr. Balderas said it is my understanding they were not obtained to do traditional government audits but were retained to conduct a review of Medicaid funding and were pulled off a GSA federal vendor list. He said OSA is looking at whether there is an issue with the contract.

Senator O'Neill asked if it is standard procedure to notify agencies of findings before the audit is released. Mr. Balderas said it is common the audit firm will, as a courtesy, provide findings before an exit conference to let management know of the discoveries. However, if it is a high risk special audit investigation, there may be a rare time when the entity is not notified because of a criminal referral or something of that sort. Senator O'Neill asked why these 15 providers were not given the opportunity to know what the results of this audit were. Mr. Balderas said it wouldn't be fair to speculate given that there is an ongoing audit. He stated the reason OSA subpoenaed the report was so it could conduct its own independent test work of the PCG report and develop its own opinion and conclusions of how reliable that report is as well. Attorney General King added PCG conducted a similar audit in North Carolina with similar circumstance and in that case the state agency called in providers individually to talk about findings. It certainly would have been in the discretion of HSD to sit down with agencies individually to discuss billing irregularities as part of the determination to decide whether or not there were credible allegations of fraud.

Representative Tripp asked if credible allegations of fraud are solely determined by HSD in this case. Attorney General King said NMAG does not approve or disapprove the allegations of fraud. The NMAG Medicaid Fraud unit gets involved when HSD alleges fraud to determine if fraud exists. He said NMAG will pursue fraud cases if it finds sufficient evidence to take to a jury.

Representative Bratton asked if, once allegations of fraud are made, there are federal requirements regarding the halting of payments. Jody Curran, director, Medicaid Fraud and Elder Abuse Division, said once a credible allegation of fraud is determined, the agency must suspend payments and the allegations must be referred to the Attorney General's office. Representative Bratton said it is his understanding a number of providers went to federal court to get injunctions to continue payments. Attorney General King said the federal court did not grant a temporary restraining order or a permanent injunction.

Senator Smith discussed LFC's attempt to work with HSD when HSD requested \$18 million of budget adjustments to pay outside contractors and highlighted the LFC's concern with continuing services as the reason the first \$7 million transfer. He spoke about a case several years ago which involved Medicaid fraud and the fact that the federal government had taken over that investigation and if this is would be a possibility in this case. Mr. Curran said it is possible

but not probable that the U.S. Attorney could think it more appropriate that these cases be prosecuted in federal court.

Friday, October 25, 2013

The following members and designees were present on Friday, October 25, 2013: Chairman Luciano “Lucky” Varela; Vice Chairman John Arthur Smith; Representatives Henry “Kiki” Saavedra, Don L. Tripp, Edward C. Sandoval, Nick L. Salazar, James P. White, Donald E. Bratton, and Jimmie C. Hall; Senators Carlos R. Cisneros, Sue Wilson Beffort, Howie C. Morales, Steven Neville, Carroll H. Leavell, George K. Muñoz, and Pete Campos. Guest Legislators: Senator Michael Padilla

Program Evaluation: ASPEN (Automated System Program and Eligibility Network)

Project. LFC program evaluator Brenda Fresquez reported the Income Support Division (ISD) of the Human Services Department (HSD) plays the critical role of making services available for over 800 thousand low-income clients through statewide programs of financial assistance, food assistance, employment assistance, Medicaid, and training services. HSD is replacing its integrated service delivery (ISD2) system for eligibility determination, benefit issuance and case management system. ISD2 is over 25 years old and running on obsolete technology. At a cost of \$115 million, The ASPEN project is on time and on budget. Being one of the most expensive information technology (IT) projects in the state, it was very well managed and is a model for best practices in project management and oversight.

The purpose of ASPEN is to have an integrated eligibility system, which will improve public access to services through the web and streamline services by providing field staff with a more efficient and technically advanced eligibility tool. The ASPEN system will enhance HSD’s ability to administer over seven programs, including Temporary Assistance to Needy Families (TANF), Supplemental Nutrition Assistance Program (SNAP), Low Income Home Energy Assistance (LIHEAP), Medicaid and Cash Assistance.

While this investment has benefits, it does not appear it will reduce staffing needs, particularly in light of Medicaid expansion. Maintenance and operation cost for the ASPEN system will increase by \$6.4 million and is scheduled for completion in FY14, HSD initiated the four phase implementation with the pilot in ISD’s Rio Arriba County office in July 2013, continuing with three phases in September 2013, November 2013 and January 2014.

Key Findings.

HSD’s new eligibility system, ASPEN, will cost taxpayers \$115 million to implement.

In FY15, maintenance and operation cost for the ASPEN system will increase by \$6.4 million to \$11.7 million. HSD estimates it will need \$4.9 million in additional general fund to compensate for the increased maintenance and operational costs in FY15. The ASPEN warranty period is through June 30, 2014. Therefore, the increase in maintenance cost is not until FY15. HSD is currently developing a request for proposals (RFP) for maintenance and operations, and anticipates issuing the RFP by the end of November 2013, with a contract award by July 2014.

ASPEN should result in many benefits, however, improved productivity might not reduce staffing needs for ISD. With ASPEN, new business processes such as electronic document management and going 100 percent paperless will reduce the caseworker's time in locating case files and increase the timeliness in processing applications. ASPEN will improve data collection and data integrity, benefit timeliness, and increase claim accuracy and collection. ASPEN will increase accessibility to recipients with a self-service website (YES-NM) and by calling an Interactive Voice Response (IVR) system.

HSD reengineered its business processes, shifting staff from managing individual caseloads to managing the application process, resulting in improved office efficiencies. Since implementing the process management model, caseworkers no longer are assigned a specific caseload. ASPEN is designed for ISD's process model and will provide a single point of access for all case-related data wherever it resides, making the data more readily available to caseworkers. ISD's process model has become a best practice for other states in the country. Although the number of caseworkers has remained consistent since FY08, cases have grown by 394 per worker. Further, HSD faces large scale increases in Medicaid enrollment, which will likely impact workload.

HSD was not required to document expected cost-savings, particularly in staffing, from implementing an expensive large scale IT project. The Department of Information Technology (DoIT) requires a business case for detailing the business problem and proposed solution when submitting a request for IT funding. However, the required cost benefit analysis in the business case is limited and rarely quantified.

Initially required by the centers of Medicare and Medicaid Services (CMS), in March 2011, HSD estimated total cost of \$103 million and estimated benefits of \$98 million resulting in a benefit to cost ratio of 95 percent. HSD is no longer required to show the return on investment and was not required to calculate cost savings. With budget and actual cost data, HSD has the opportunity to determine the return on investment for the \$115 million system.

ASPEN project management and oversight is successful, ensuring the project is on time and on budget and is a model for best practices. HSD's commitment of staff resources, both quantitatively and qualitatively had a positive impact on project management. ASPEN project personnel at all levels, senior management, business leads, application, testing, and technical infrastructure were fully focused on the completion of critical tasks necessary to ensure the start date of the pilot and continuing success in implementation.

The ASPEN project is successful because of three factors. Each of these factors; top management support, a sound methodology, and solid technical leadership by someone who has successfully completed a similar project is vital to any project's success. Without each of these solidly in place, the project would have failed.

The Centers for Medicaid and Medicare Services (CMS) values the success of HSD's project management. A September 12, 2013, letter from CMS to Deputy Secretary Saavedra recognizes how New Mexico has demonstrated the great execution of a project being "on time, on budget." Because of the state's very thorough itemization and budgeting of the project, and their judicious

application of funds, the original scope of work solicited remained within the approval of the original budget request and without experiencing delays in the ASPEN project. The letter further states New Mexico's willingness to share experiences with CMS while working collaboratively with other states has leveraged lessons learned to assist other states in their development efforts.

Key Recommendations.

The Human Services Department should:

- Work with the State Personnel Office to reallocate IT vacancy savings to reclassify information technology positions at a more competitive higher pay band to help the department recruit and retain qualified IT staff;
- Evaluate the impact of Medicaid expansion on caseload projections and develop a staffing plan; and
- Use current budget and cost data to calculate the return on investment for stakeholders and to provide a benchmark for other large IT projects.

Charissa Saavedra, Deputy Secretary, New Mexico Human Services, Department gave a brief summary of the agencies response which included working with the State Personnel Office to reallocate IT vacancy savings to reclassify information technology positions at a more competitive higher pay band to help the department recruit and retain qualified IT staff. To date HSD has reclassified 3 positions and will continue to work with SPO in that effort.

In response to the finding of evaluating the impact of Medicaid expansion on caseload projections and develop a staffing plan HSD has revised their FY14 budget request. HSD evaluated the staffing needs to handle the estimated 20 percent increase in the population we serve due to the expansion of Medicaid. Of the additional positions requested, 75 FTE were dedicated to eligibility determination work in the Income Support Division. Those positions were strategically located across the state to manage the increase of applicants for Medicaid and other programs.

In response to the finding of using current budget and cost data to calculate the return on investment for stakeholders and to provide a benchmark for other large IT projects. HSD believes it prudent to provide a return on investment following statewide implementation and are projected to be rolled out at the end of January. Ms. Saavedra said it is important that caseworkers have time to learn the system and become proficient.

Ms. Saavedra stated in response to the finding of the states struggle to attract and retain staff to support critical IT systems which warrants caution before funding new IT expansion positions. She said it is a true statement however, ITD has primarily struggled to fill IT Application Developer positions. We have been successful in filling non-developer positions such as IT Generalist and IT Tech Support Specialist positions. The six new positions ITD is asking for are IT Generalist I positions. We requested these IT-Generalist positions to fill needs distinct from those provided by IT Application Developers. These new positions would provide field office support in Roswell, Las Cruces and Albuquerque, services that will help our staff and improve our customer service.

Racing Commission (469). Vince Mares, director, Racing Commission, briefed the committee on successes and struggles faced by the racing industry. He said the racing commission's goal is to restore the traditional foundation of horse racing and return integrity to the New Mexico racing industry. He stated Senate Bill 72, which passed in the last legislative session, will increase revenue to conduct more intensive audit competition testing which allows for the horses to be tested prior to racing. It will also allow necropsy testing which allows them to test horses that have died on the track.

Mr. Mares said bush tracks have continued to plague the state and the racing commission does not have the jurisdiction to police those sites. Bush tracks are illegal race tracks more than likely used by organized crime throughout the state. Mr. Mares said the commission will introduce legislation at the next session to grant New Mexico racing commission investigators state law enforcement accreditation which will allow them to go outside of the tracks and work with federal authorities to address bush track issues.

Mr. Mares discussed the commission's efforts in raising penalties. Senate Bill 444 increased violation penalties to up to \$100 thousand or 100 percent of the purse, whichever is greater. He discussed a rise in violations as far as therapeutic drugs.

Senator Leavell asked if off-track betting and racing are prohibited. Mr. Mares said it is not against the law to race, it is against the law to bet off site. He highlighted the commission's inability to police bush tracks without jurisdiction. He said an owner or trainer can take their horse off any track and race in these bush tracks.

Responding to Senator Neville, Mr. Mares said the commission has increased testing significantly and is now testing more horses per race and conducting more audit competition testing before races. He cited an increase in the abuse of respiratory drugs, such as albuterol, a bronchial dilator that can have a steroid effect if used in large quantities. It can weaken the heart and kill the horse.

Senator Smith asked about the commission's membership in the Association of Racing Commissioners International (ARCI) and if the commission has to maintain standards or rules to keep membership status. Mr. Mares said membership has no conditions; however, as ARCI members, the commission wants to fall within the norms and standards of the association. Responding to Senator Smith Mr. Mares said the New Mexico commission is part of the ARCI database networked throughout the country.

Senator Smith expressed concern with the addition of a new race track, stating the Legislature approved class three gaming because legislators were told it would save racing. He said attendance records verify class three gaming has not significantly helped racing. It seems racing has maximized its maturity.

Representative Bratton asked if a policy could be established that a horse could not return for the remainder of a season once. Mr. Mares said it could be a policy however; horses are taken off the track for a number of reasons, making it very hard to enforce.

Gaming Control Board (465). Frank Baca, interim executive director, Gaming Control Board, discussed savings and reversions made to general fund in the past two fiscal years. He said the agency was very mindful of fiscal restrictions in state budget over the recent years and worked hard to be fiscally conservative. He then discussed an evaluation conducted by LFC and how the agency has since worked to address findings and recommendations. He said his agency is actively and aggressively moving to fill all vacancies and hopes to fill all vacancies by early spring. Mr. Baca said the agency is seeking funding for 2 additional FTE, which was a recommendation from the LFC audit. Mr. Baca discussed the agency's use of an of audit software program, which would allow auditors in the field to submit information making audit and time keeping more efficient, effective, and consistent.

Chairman Varela asked how many vacancies the agency has and if they are fully funded positions. Mr. Baca said there are 13 vacancies, one of which has been filled and seven of which are in advanced phases of hiring. He also said all vacancies are fully funded to the end of the fiscal year and will continue to be if the FY15 budget request is granted. Chairman Varela asked how long the state personnel process took. Mr. Baca said some applications took quite some time. Part of the reason is our difficulty in hiring enforcement officers, primarily because the pool of candidates is generally retired law enforcement officers due to the inability to compete with other law enforcement agency salaries. He said the board is currently in the process of reclassifying those positions to make them more competitive.

Senator Smith asked for clarification of the sited enforcement division inspections completed. Tom Fair, Audit and Compliance Division director, stated there were 95 racetrack inspections in FY13 at five racinos. Senator Smith asked about specific citations and which are most egregious. Mr. Baca said he would be happy to provide that information to the committee.

Status Report on Tribal Gaming Compacts. Senator Smith briefed the committee on the background of gaming in New Mexico and asked for an update regarding the third proposed Navajo Nation gaming compact. He stated the Legislature is mandated to vote on the entire package, noting it cannot be amended or substituted unless it goes through the executive branch.

Ben Shelly, president, Navajo Nation, expressed disappointment the gaming compact was not placed on the Senate floor for consideration during the 2013 legislative session. He then briefed the committee on the history of Navajo Nation gaming compacts, stating they have been seeking an amendment to include an extension of the term of the current compact since 2008. He noted the importance of the extension as necessary for third-party financing, continued expansion and economic development. He stated 400 jobs were created with the opening of the first casino *Fire Rock Navajo Casino*. He said the current compact will expire on June 30, 2015, and would devastate the Navajo Nation financially with the loss of over 950 jobs.

Johnny Naize, speaker of the Navajo Nation Council, discussed compact negotiations along with four other tribes with the executive branch in 2001 and stated three tribes did not want to continue negotiations for a compact to be presented at 2013 session. However, the Navajo Nation thought it important to proceed. He stated the compact negotiations act requires the Navajo Nation prepare and introduce a joint resolution to approve the compact without delay. It is the Navajo Nations position the compact should have been immediately moved to the floor. Next he

discussed the need for the passing of the compact during the 2014 legislative session to ensure the continued economic development and prosperity of the Navajo Nation.

Lorenzo Bates, Council delegate, Budget and Finance Subcommittee chairperson, provided an explanation of six main negotiated positions within the proposed compact, which include revenue sharing, number of facilities, contract duration, jurisdiction, operations/development, and notice. He said under the 2001 gaming compact the Navajo Nation paid 8 percent of the net win. The Navajo Nation's adjusted net win is between \$70 million to \$150 million, with the revenue share at 9.75 percent of the adjusted net win, which will increase over the years to 10.75 percent by 2003. He noted the payment in 2014 will be \$9.2 million. This proposed compact creates a new range for revenue sharing payments. He emphasized the compact is only binding between the Navajo Nation and the state of New Mexico and is not binding to any other tribes.

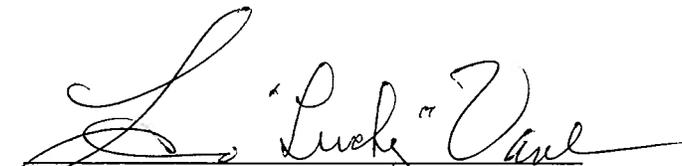
Senator Smith asked how many casinos are currently operated by the Navajo Nation in New Mexico and for clarification on the duration of the new proposed compact. Mr. Bates said they have two class three casinos and one class two casino in the state. The proposed compact will expire in 2024.

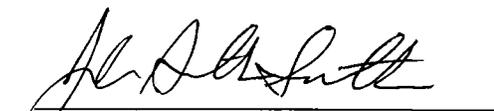
Senator Cisneros asked what would happen in the event the compact does not get approved in the 2014 legislative session. Mr. Bates said the Indian Gaming Regulatory Act requires a compact with state. If it were not approved, gaming for the Navajo Nation could come to a halt. Karis Begay, Navajo Nation Department of Justice, stated if the compact is not approved the Navajo Nation would have to re-initiate the process with another letter to the governor requesting negotiations to open. She noted the current compacts expiration date of June 30, 2015.

Senator Neville expressed concern with the saturation of casinos in San Juan County. He discussed the problem of having too many casinos so close together and how that could potentially be detrimental. He asked how many class two machines are at Flowing Water Casino. Mr. Bates said 130; the number could grow to 325. Senator Neville asked if the compact addressed issues of proximity. Mr. Bates said at this time there is no discussion of when or where a new casino will be built and would discuss the issue in five or so years.

Senator Smith asked if the Navajo Nation would be ineligible under the second compact in the event they could not come to an agreement. Ms. Begay said, under the New Mexico compact negotiation act, tribes are allowed to sign under other compacts that are approved by the state legislature. Whether or not they want to is the question.

With no further business, the meeting adjourned at 11:22 a.m.


Chairman Luciano "Lucky" Varela


Vice Chairman John Arthur Smith