

**Legislative Finance Committee**  
**Meeting Minutes**  
**Room 322 - State Capitol - Santa Fe, New Mexico**  
**October 24, 25, 26, 2012**

**Wednesday, October 24**

The following members and designees were present on Wednesday, October 24, 2012: Chairman John Arthur Smith, Vice Chairman Luciano “Lucky” Varela, Representatives Henry “Kiki” Saavedra, Larry A. Larrañaga, Don Tripp, Edward C. Sandoval, Nick L. Salazar, James P. White, Conrad James; Senators Carlos R. Cisneros, John C. Ryan, Mary Kay Papen, John M. Sapien, Carroll H. Leavell, Stuart Ingle, Linda M. Lopez.

**Program Evaluation: Motor Vehicle Division – Improving Operations and Service Delivery through Technology, Privatization and Management of State MVD Offices.** Jack Evans, program evaluator, LFC, stated the New Mexico Motor Vehicle Division (MVD) of the Taxation and Revenue Department (TRD) has the responsibility to administer the New Mexico Motor Vehicle Code, test and license drivers, register and license vehicles, and oversee the partner agencies, private companies and dealerships that serve the driving public. The report focuses on the efficiency of the MVD operations, customer service and the effectiveness of its oversight of partner agencies. The report and agency response is at [www.nmlegis.gov](http://www.nmlegis.gov) in its entirety.

The MVD is one of the largest retailers in the state, touches the lives of almost every New Mexican, oversees more than 2.5 million transactions each year, and generates more than \$350 million in revenue. With 1.4 million licensed drivers and 2.4 million registered vehicles, the MVD is the face of New Mexico state government. Unfortunately, as with its counterpart agencies nationwide, as laws and regulations become more complex, the public’s general experience at the MVD has often been frustrating. This has led to the iconic image of the MVD as the model for inefficient customer service and poor governance.

**Key Findings.** 1. MVD operations are handicapped by staffing problems, a dilapidated computer system, and a lack of useful performance measurement. The MVD faces some significant staffing challenges that impact operations and its computer system has been called one of the worst in the nation and needs immediate attention. 2. The agency is at a transition point with respect to improving its customer service. The current customer service performance measures, such as customer wait times for both the field offices and the call center, have improved – but more improvement is needed. 3. The MVD’s oversight of partner agencies needs to be enhanced. In general, the MVD’s oversight of these contractors is limited, and it is often difficult to tell if services are being carried out consistently according to policy.

**Key Recommendations.** The MVD should

- Develop a plan to convert existing temporary positions into state FTE by the start of FY14;
- Participate in the upcoming State Personnel Office classification review of its field office agent positions, comparing these with similar positions in neighboring states and with the private sector in New Mexico;
- Re-build its training capacity as soon as is practical;

- Move forward to re-engineer its computer system as quickly as possible;
- Expand its use of Qmatic data to monitor transaction times and total customer time in an MVD field office;
- Expand the Qmatic customer queuing system to all municipal field offices and standardize the use of this information across the system;
- Consolidate all of its customer feedback systems into a single, coordinated system and expand it to track complaint and question resolution;
- Resolve the inability for customers to use Visa cards for field office transactions;
- Continue with its planning to transfer as many transactions as possible to the Internet and other customer-friendly avenues such as kiosks as a way to improve customer service and as a mechanism for reducing its costs and pressure on field offices;
- Expand the number of licensing and compliance staff within its Dealer Licensing Bureau;
- Consider allowing the New Mexico Dealer Association to self-regulate its industry, including licensing and monitoring, as occurs in the state of Virginia.

The TRD and the Legislature should consider updating the New Mexico Motor Vehicle Code along the lines of the considerations presented in this report. First, the MVD should examine its underlying fee structure in the Motor Vehicle Code to determine the relationship of fees to marginal transaction costs, which fees are outdated, and if the volume of MVD fees can be effectively streamlined to improve business operations. MVD should also review the sections of the code dealing with dealer oversight and should consider a bill that combines the recommended additional fees and penalties.

Agency Response. Demesia Padilla, secretary, Taxation and Revenue Department, thanked the LFC for the evaluation and said she would like another one in three years for accountability. Ms. Padilla introduced Motor Vehicle Department Director Mark Williams and other MVD staff. Ms. Padilla stated the department agrees with all of the LFC key recommendations and the TRD action plan for FY13 already mirrors the recommendations.

A key goal of the MVD is to replace the department's antiquated information technology system. The MVD began its systems modernization request for proposal (RFP) on October 23, 2012, after cancelling the previous contract with Hewlett Packard (HP). Prior to cancelling the contract with HP, the state spent approximately \$2 million, with \$600 thousand from a federal grant. Ms. Padilla said the state is fortunate because the vendor wanted to charge \$4 million for overruns. The new RFP process includes buy-in from staff and visiting references without vendors present to get the "real" story.

Ms. Padilla agrees that automation through computers and kiosks will drive down costs to roughly \$3.50 a transaction, a tremendous savings, but will take education and time. Whatever kiosk system New Mexico uses, she said, will need to accept cash. The MVD is considering commercial locations with other advertising to offset costs. Another key goal in the MVD plan is to re-purpose field offices as highly personalized customer service centers that process fewer, more complicated

transactions, while the bulk of customer transactions are carried out online or via kiosks.

Regarding evaluating field office wait times, Ms. Padilla stated looking at regions or number of transactions per office would provide a better reading because volume is a large factor. Ms. Padilla stated the LFC evaluation validated the department's goals and the department is moving in the right direction. Ms. Padilla concluded by asking the committee to appreciate the front-line clerks who work very hard and are the face of the MVD.

Chairman Smith stated this Legislative Finance Committee needs to put on a "full court press" immediately and the TRD needs to request supplemental funding to help with its 19 percent vacancy rating.

Vice Chairman Varela asked for clear definitions of all positions within the MVD and said the Motor Vehicle Code needs work. Ms. Padilla said that task is complete and offered to provide him with a copy.

Senator Leavell expressed frustration with truckers throughout the state having to come to Santa Fe to get licenses. Mr. Williams said he agrees it is unnecessarily burdensome for commercial drivers and he recently became aware of the problem. The department is working on this program, taking statute and security into consideration. Senator Leavell asked when the federal Real ID Act would come online, and Secretary Padilla stated in January 2013, but New Mexico still issues drivers' licenses to undocumented immigrants, a hurdle to compliance the state will not be able to overcome. Various groups are not supportive of an alternate identification card. Besides needing a passport to board an airplane, New Mexico has another unique issue: Vendors and civilians who work at the national labs and on military bases will need another form of identification besides their drivers' license as well.

In response to Senator Sapien, Ms. Padilla said \$15 million has been collected since the Drive MVD initiative began in 2010, with \$9 million still remaining. Ms. Padilla was told it was the best way to fund the upgrade of the current system. Senator Sapien said the Legislature was told the increase for sale of data, from 75 cents to \$4.95 per copy, was to fund the computer system, with matching federal dollars. Sandra Martinez, finance bureau chief, MVD, stated she was unaware the increase was to go strictly to the Driver Vehicle Replacement System. The sale of data revenue has always gone to the department's operating budget, she said. Senator Sapien asked how much the new system would cost, and Mr. Williams stated the TRD is moving into the RFP process for the system's reengineering project and estimated the up-front cost to be between \$10 million and \$15 million. The MVD is looking for a solution that reduces implementation risk, and the overall range would be \$10 million to \$60 million. The Driver Vehicle Replacement System is one component of modernizing the system. The MVD is using those revenues to aggressively move toward more online services to reduce costs as well. Ms. Padilla said the TRD is requesting the Legislature allow the department to continue to use money from data sales and explained modernization must include all of the computer peripherals as well as the computer itself. Ms. Padilla clarified the money is operational in terms of modernization, not to supplement the MVD budget.

Representative Tripp asked if any of the MVD field offices are open after 5 p.m. Mr. Williams stated the department soon will pilot early, late and Saturday hours at certain offices.

**Department of Health (665) – Preview of FY14 Appropriation Request.** Brad McGrath, acting secretary, Department of Health, stated the mission is to provide leadership to guide public health and to protect the health of all New Mexicans, with the goal of maximizing effectiveness by prioritizing some of the state's most pressing health concerns, including child and adolescent

obesity, diabetes, and drug-overdose deaths.

The DOH consists of eight program areas: administration, public health, epidemiology and response, scientific laboratory, facilities, developmental disabilities support, health facility certification, licensing and oversight, and medical cannabis. The DOH has 57 public health offices statewide, seven developmental disabilities offices, five division of health improvement offices, six long-term care and behavioral health treatment facilities, and one community-based program in Los Lunas.

Mr. McGrath introduced a new chief medical officer, chief nursing officer, and a clinical performance director whose focus will be on patient safety and well-being. Mr. McGrath stated the department is working statewide to review policies and procedures to ensure delivery of high quality care and to identify areas needing improvement. Also, the DOH will begin random drug testing of direct care staff in facilities beginning November 1, 2012.

Three new organizational units focusing on accountability are the office of financial accountability, the office of policy and accountability, and the office of health equity that focuses on addressing and reducing health disparities.

Mr. McGrath briefed the committee on the medical cannabis program now staffed by four state employees. A physician is still needed.

*FY14 Appropriation Request.* Mr. McGrath said the DOH is requesting an additional \$11.4 million from the general fund: \$6.1 million for clients under the developmentally disabled (DD) waiver program to reduce the waiting list, serve 227 additional clients and fund 9 new FTE for the program; \$2 million for 20 drug treatment beds for adolescents at Turquoise Lodge; \$1 million for additional sexual assault treatment and prevention services statewide; \$2 million for health insurance premium and pension payment increases; and \$250 thousand for additional Scientific Lab staff to perform DWI testing.

The DOH will also be submitting FY13 supplemental and FY14 special appropriation requests: a \$2.6 million (\$2.3 million from the general fund) special appropriation request for court-required services related to the Jackson lawsuit against the state; a \$1.4 million (\$760 thousand from the general fund) supplemental appropriation request for additional staff and other costs associated with the implementation of the new DD waiver program; \$1 million from the general fund for a supplemental appropriation request to expand adolescent drug treatment at Turquoise Lodge Hospital.

*Accomplishments.* Mr. McGrath briefly highlighted a few of the department's accomplishments, saying recently 86 department employees provided prevention education and delivered 920 immunizations during the Celebration of Tribal Health conducted jointly with five New Mexico tribes. An accomplishment for the scientific lab was completely eliminating the backlog of implied consent cases as of August 31, 2012 – all cases are now being completed within the eight-week target.

Turquoise Lodge Hospital treated 629 patients from 25 counties and provided 4,404 outpatient treatment sessions through the department's addiction-related urgent care program under contract with Bernalillo County. Mr. McGrath told the committee the New Mexico Behavioral Health Institute's policy on Life Safety Components is being used as a "best practice" model. The Fort

Bayard Center passed the annual CMS/Medicare/Medicaid survey with zero deficiencies, received a zero deficiency survey by the Veterans Administration, maintained a four-star rating for nursing homes in the United States, and received a five-star rating from Medicare.

In F12, the Developmental Disabilities Supports Division (DDSD) completed reform efforts in the traditional DD waiver program, as approved by the federal Centers for Medicare and Medicaid Services, that included beginning effective cost-containment reducing the annual average cost per client from a projected \$85.3 thousand to about \$73 thousand without significant reductions to client services and completing an extensive provider rate study – new rates are effective November 1, 2012. The Families Infant Toddlers Program served 13,315 children and received no negative findings during the U.S. Office of Special Education Programs October 2011 monitoring visit.

Mr. McGrath stated the Health Facility Licensing and Certification Bureau surveyed 100 percent (156) of facilities required, investigated 380 complaints, renewed 945 facility licenses, and licensed 32 new facilities.

Deputy Secretary Jim Green said the DOH currently has 10 exempt positions outside the cabinet secretary position, with five vacancies. Vice Chairman Varela asked for a report on the department's 800 vacancies and how many they intend to fill. Mr. McGrath said he is working very hard with the State Personnel Office on reclassifications and is committed to filling vacancies.

DOH General Counsel Gabriella Sanchez-Sandoval said the federal court ruled in the Jackson lawsuit concerning care for the disabled that the DOH did not violate the Americans with Disabilities Act. It found the DOH was not yet in substantial compliance with other parts of the order from previous years. Ms. Sanchez-Sandoval stated this case began in 1987. The court found the DOH has made several steps in the right direction and can achieve substantial compliance within 18 months. The court asked the state hire a Jackson compliance administrator, part of the department's special request. Paying for plaintiffs' attorneys' fees is a large part of the request--\$1.5 million. In addition, the DOH pays approximately \$500 thousand a year to the Jackson attorneys for ongoing litigation work.

Senator Lopez asked how many people who are in the A or B category of the supports intensity scale (SIS-- an assessment tool that evaluates practical support requirements of a person with an intellectual or developmental disability) have been told they have the opportunity to ask for a reassessment. Cathy Stevenson stated all 600 people who have asked for a second SIS assessment have been notified by phone of their opportunity for the second assessment. Everyone will enter the system as of March 2013 based on their individual service plan (ISP) expiration date. Senator Lopez asked how many DD waiver participants who have received a SIS assessment to date ended up assigned to SIS group A or B. Ms. Stevenson said she would get the answer to her and added people in categories A and B who live in a residential 24-hour supported living setting now will have an additional ISP year to make alternate plans, which is two years before their residential status begins to change. Also, people will not lose supports in their homes; they will just receive them on an intermittent basis rather than a 24-hour basis.

Scientific Laboratory Director David Mills stated the biggest challenge facing the lab is a shortage of staffing to support the workload from the courts: the number of subpoenas has gone up to 1,800 a year. In the DWI area, the nature of cases include more drug driving than drunken driving, which requires more complex testing.

Senator Ryan asked if there was a plan for eligible people on the DD waiver waiting list. Ms. Stevenson stated there is a plan that includes cost containment and reform to bring between 800 and 1,000 people off the waiting list by FY16, when the program is fully implemented. Another key goal is to reduce the time people wait for services. Current regulation and law requires the department to bring people into service by registration date regardless of level of need. Although services are not retroactive, people can access state general fund services while on the waiting list, and Medicaid personal care if eligible.

Dr. Michael Landon said he agrees with Senator Papen that New Mexico has substantial behavioral health problems as evidenced by the highest drug overdose mortality rate among states, one of the highest alcohol-related death rates, and a high suicide rate. More inpatient and outpatient treatment is needed.

**Department of Tourism (418).** After introducing staff and partners in the industry, Monique Jacobson, secretary, New Mexico Tourism Department (NMTD), said everyone has worked hard to execute the four planks in their strategic plan presented to the committee last year. What the department has done and what the department is going to do will justify an additional \$2.5 million in their FY14 budget request.

*Build a strong, magnetic brand.* Ms. Jacobson said last year she told the committee the department would find one strong message to get travelers to think about New Mexico in a positive light and, the department launched the campaign New Mexico True in April 2012. The campaign speaks to what New Mexico delivers, she said, which is adventure steeped in culture. New Mexico True is about the state's authenticity, richness of experiences, and true beauty. The department launched the campaign with television, print, billboard and online digital executions in Texas, Arizona and Colorado. The NMTD has also launched a redesigned mobile website focused on trip conversions, making it easier to build and book trips.

In markets the campaign was launched, the NMTD has seen a lift in website visits anywhere from 50 percent to 300 percent, with the average lift of 175 percent in those markets. Ms. Jacobson told the committee the department has more than 44 thousand Facebook fans with a 118 percent increase in their PTAT score (measures overall Facebook presence). Almost 100 thousand new people have signed up for the E-newsletter.

With the additional \$2.5 million, the NMTD will maintain its presence in the market, expand the multimedia blitz to San Diego and Chicago, and hit psychographic targets to include art, spas, and ballooning adventures.

*Unify and Lead the Industry.* In the past, the NMTD had different ad campaigns active simultaneously. Now, the NMTD has made it easy for partners to use the New Mexico True ad campaign as their own with asset libraries and ad templates. Gallup was the pilot program.

The NMTD is continuing to improve the co-op program and regional marketing program. Rather than give a bunch of little projects a little money, the department encouraged fewer projects with more impact. Up 16 percent from 2011, 68 percent of co-op recipients were collaborative efforts.

Ms. Jacobson stated the NMTD is working to improve communication with key constituents and leveraging scale to create cost efficiencies for industry partners. Native American tourism is a critical part of the existing campaign, and the department is having one-on-one meetings with tribal

leaders to understand limiting factors and assist in overcoming those factors. The NMTD is leveraging scale to create cost efficiencies for industry partners by offering free listings, features, and promotion opportunities on newmexico.org.

*Ramp up the Rigor.* Ms. Jacobson testified that last year the committee wanted the NMTD to have better numbers and turn *New Mexico Magazine* around, and by running the department like a business, they have. The NMTD saved more than \$50 thousand in travel and an additional \$50 thousand in internal cost savings. Spending was reallocated to get more than \$400 thousand more from hard working consumer tactics.

For a more rigorous approach to its research, the department commissioned a study by Tourism Economics and learned that tourism is a \$5.5 billion industry in New Mexico, contributing \$1.2 billion in taxes (\$565 million to state and local taxes). Tourism offsets the average household tax burden by \$747. This economic impact study is broken down by region and county; the return on investment study is expected to be complete in December.

Ms. Jacobson said *New Mexico Magazine* is making a profit again after three years of running in “red.” Magazine FY12 revenues exceeded \$300 thousand in one year – a huge accomplishment for the department. Ad page sales are up 34 percent, and circulation has grown 6.4 percent. *New Mexico Magazine* won the gold award for the most improved magazine in the country.

*Inspiring In-State Tourism.* To get New Mexicans to travel and appreciate New Mexico, the NMTD launched a Get the Picture centennial promotion, where 100 photo locations around the state had to be recreated for a prize. The contest, which just ended, had 8,906 entries, 76,702 site visits, and 31 contestants matched all of the images. The department received hundreds of positive emails proving the promotion was a success. New Mexico True Stories, another in-state travel promotion, will launch in spring 2013.

Ms. Jacobson told the committee the Tourism Department has momentum now – more people are visiting the state, and there is growth with travelers who will spend more money. The number of visitors for whom New Mexico is their primary destination, a major focus for the department, is up 12.4 percent, with the average expenditure per trip up 9.3 percent from \$691.28 to \$755.87. More people mean more tax dollars. Tourism sustains one job in every 12 jobs in New Mexico – 86 thousand jobs. The state has benefitted from 2,000 new jobs between 2011 and 2012 because of tourism. Ms. Jacobson concluded her presentation by asking for the Legislature’s support building on the momentum with additional funding.

Representative White commended the department for turning *New Mexico Magazine* around and suggested more recreational aviation in New Mexico, a great opportunity for adventure.

Ms. Jacobson stated the department is not requesting deleting positions and wanted flexibility with 3 vacant FTE at *New Mexico Magazine* to accommodate growth in the future. Merging Cultural Affairs and the NMTD was discussed briefly, with Ms. Jacobson stating the governor is still committed to efficiency.

Vice Chairman Varela asked who printed the magazine. Ms. Jacobson said the department conducted an extensive search and no one in New Mexico was able to print the magazine. The magazine’s publisher, Jodi Vevoda, said Palm Coast Data is the fulfillment house for subscriptions and is based in Florida, and the sister company in the Midwest handles fulfillment for the

magazine's products department. The total expenses for the magazine last year were nearly \$3 million. Vice Chairman Varela asked if State Controller Ricky Bejerano had seen the NMTD audit and if there are corrective actions in place addressing exceptions. Vice Chairman Varela asked for a report on how many exceptions have been corrected on the audit from the controller's office and the department.

Representative James asked if there were any informal or formal agreements with small businesses for leveraging cost sharing for advertising. Ms. Jacobson stated the department is negotiating with bigger publications so that when the department purchases advertising, small businesses around the state get a discounted rate. Partners are also able to take advantage of the New Mexico True advertising. Advertisers and industry partners lauded the co-op programs, public/private partnerships, and efforts of the tourism department.

Representative Sandoval asked why the department is cutting back funding for the New Mexico Bowl. Ms. Jacobson stated that the department supports the New Mexico Bowl; \$50 thousand is the right amount considering the benefits New Mexico receives. Ms. Jacobson stated the New Mexico Bowl now has a national sponsor.

Chairman Smith encouraged the NMTD to work with New Mexico state parks and wished Ms. Jacobson luck.

**Indian Affairs Department (609).** Department Secretary Arthur P. Allison greeted the committee and audience in Navajo. Secretary Allison stated the department oversees the well-being of 22 tribes, nations and pueblos and said the Indian Affairs Department (IAD) is the lead coordinating agency for the state and tribal governments.

Mr. Allison stated, in addition to other important directives, the IAD will address four focus areas of New Mexico tribes – healthcare, education, water rights and economic development – through seven goals:

- Collaborate with appropriate state agencies, tribal governments and corporations, and Native American organizations to enhance state government support for Native American economic development ventures;
- Improve tribal governmental capacity to effectively compete for infrastructure funding;
- Ensure equitable provision of state health services and resources to Native Americans, consistent with the government-to government relationship;
- Leverage the State-Tribal Collaboration Act, promote meaningful collaboration and coordination between state and tribal governments;
- Establish clear and aligned departmental procedures that position the IAD as the leading organization within state government for building relations with tribes and tribal organizations;
- Collaborate with the Indian Education Division of the Public Education Department to strengthen partnerships with tribes, increase tribal involvement in the education of all Native American students, and ensure the maintenance and preservation of the native languages as an important mechanism for enhancing educational experiences and achievements;
- Support meaningful collaboration and coordination between state and tribal governments with regard to water management issues and Indian water rights.

Other key initiatives include cultural competency training, which trains state employees how to properly engage with native governments. The 2012 State Tribal Leadership Summit was held last

June with tribal leaders, agencies, and Governor Susana Martinez. The meeting was very productive and resulted in several state commitments.

Mr. Allison introduced Deputy Secretary Duane Duffy, Chief Financial Officer Rosemary Whitegeese (who is in charge of the 28 tribal infrastructure capital outlay projects), and Lillian Brooks, administrative services director. Ms. Brooks presented the department's FY13 budget request. The IAD has four exempt and 11 classified employees and is submitting a flat budget of \$2,667,800 with the approved increase for pension contributions and health insurance. The request breaks down as follows: \$1,125,000 for personal services and employee benefits; \$644,300 for contractual services; and \$898,500 in the "other" category, which includes \$674,000 in the grants and services line item. The balance goes to operations expenditures.

Graham Knowles briefly outlined the FY13 tribal infrastructure project fund, and the changes in the application process. Mr. Allison stated tribes and pueblos need help with tribal infrastructure.

Representative Larrañaga stated he wants Mr. Allison by his side if compacts are ever renegotiated because he was not supported in his efforts to establish an infrastructure fund for tribes that do not benefit from gaming money. Mr. Knowles said there are 33 funding streams (federal, state, or local) available for water and wastewater infrastructures so the reality is the money is available. The Indian Health Service has funding for sanitation deficiencies, and there is collaborative relationship with the New Mexico Environment Department.

Chairman Saavedra asked what has been done for Isleta Pueblo. Mr. Knowles said in FY13 Isleta Pueblo was funded in excess of \$700 thousand for a long-term health facility. Deputy Secretary Duffy stated the department is working with Isleta Pueblo on fire safety and protection, as well as San Felipe and Cochiti.

Rep Salazar asked if the department was making any attempt to open the center in Santa Clara, which was built but has no money for operations. Mr. Duffy stated operational costs are the responsibility of the pueblo or tribe in conjunction with other funding sources. Mr. Knowles stated Santa Clara received funding for two projects – a planning project and one construction project.

**Department of Veterans' Services (670)**. Timothy Hale, secretary, Department of Veterans' Services (DVS), stated the department is results-oriented, tactically focused, and strategically driven –striving to meet immediate needs with immediate urgency and have goals with timeframes in place. In practical terms, the VSD is a coordinating agency between the Veterans' Administration, various state and local agencies, and veterans' associations.

Mr. Hale stated the DVS has had successes working with mental health coalitions throughout the state who offer pro bono services – nearly 400 people have volunteered to help vets and their families. Along with the federal Department of Veterans Affairs (VA), the DVS helped to coordinate a Clergy Day for clergy to learn how to help veterans in their communities. Statistics show the first place vets go for help is their clergy, yet clergy have no experience with the military. Mr. Hale stated the department is working with the IAD to serve the veteran population on pueblos and reservations. The department has three Native American veterans' services officers serving the tribal areas.

In FY12, the DVS served 34,243 veterans, representing a penetration rate of 22.9 percent, with a total of \$131 thousand in compensation and pension derived from all claims. Mr. Hale stated more

than 200 thousand troops will be coming home from Afghanistan within the next two years to different bases. The DVS will serve many more veterans in the future because it is estimated more than 50 thousand of these troops will leave the military within this timeframe. Once veterans leave the military, 47 percent will sign up for initial benefits, whereas only 20 percent of Vietnam vets took advantage of benefits.

Mr. Hale said the number one way to solve homelessness is with jobs, and the department's number one priority is getting returning veterans into the job market within six months because their success as a civilian is greater. More than 20 percent of homeless people in the nation are veterans. The DVS has VetBiz programs to help veterans to be entrepreneurs. The number two priority is to meet gaps in veteran care. Many nonprofit groups are already voluntarily treating vets with post traumatic stress disorder (PTSD). The DVS, through the enterprise fund and different sources, is trying to help these nonprofits with grant programs.

The DVS is requesting a \$106.4 thousand budget increase from the general fund for 2 permanent FTE for healthcare outreach services for returning veterans with PTSD and traumatic brain injuries; and \$167 thousand in federal funds and 2 term FTE to conduct required certification of higher education and training programs so veterans may use their Montgomery GI bill allotments. The fund balance of \$56,900 is from the veterans' license plate program.

Senator Cisneros asked what is going to happen when the Santa Fe National Cemetery is full. Mr. Hale stated the Santa Fe National Cemetery will have space until 2025. Fort Bayard National Cemetery has a longer service life but is a smaller cemetery. Fort Stanton Cemetery meets a large need in the central southeast area of New Mexico, and the department resubmitted the Fort Stanton package to the VA but was denied because the state did not provide the required 10 percent matching funds. Mr. Hale said the department will continue to work with the VA. If everything comes together with state and federal funding, 2015 is the earliest work on the cemetery area at Fort Stanton will start.

Vice Chairman Varela asked for the status of the audit when it becomes available and an employee status.

Chairman Smith stated not every tax exemption generates economic development, and the state has to reduce spending. Nobody wants to slight veterans, but the Legislature has the responsibility of paying the bills for the state of New Mexico.

**Department of Game and Fish (516).** Jim Lane, director, Department of Game and Fish (DGF), said the department has gone through many substantive changes throughout the year. For FY14, the department's overall base request is slightly higher, largely due to the retirement swap and increases in health insurance costs. One of the large differences is a change in program structure due to a reorganization of the department. The department has taken 12 divisions down to eight, cutting out middle management. The law enforcement division was consolidated into a field operations division. Currently, there are 60 officers in the field.

Mr. Lane said the department realigned non-game professionals with two main resource divisions – the wildlife division and fisheries division. The Conservation Services Division is now the Environmental Review Division. Mr. Lane said administratively there is clear direction and communication throughout the department and divisions for improved customer service and continuity.

*Accomplishments.* Mr. Lane said the DGF recently developed an information center, a four-person

team to answer phones and questions in a quick, efficient manner. The new website will be online within the month and was designed by an "outsider," making it easy for everyone to use and obtain information.

Mr. Lane said his staff is doing an amazing job at becoming more efficient at delivering the DGF's products – licenses have gone almost paperless with minimal kickback and savings. The last time the DGF came to the Legislature with a proposed license fee increase was 2005. With the vacancy savings and restructuring, the department may get 12 years out of the latest fee increase.

A conservation education curriculum for the state is being developed which Mr. Lane hopes will meet core standards for science within the school system via the Public Education Department. This curriculum will help counter negative propaganda, and the curriculum will help customers and taxpayers understand sportsmen and women are true conversationalists. A monumental conservation success story, he said, was delisting the Desert Bighorn sheep in the United States; the Dune Sagebrush Lizard was not listed under the Endangered Species Act, enabling economic development through oil and gas to continue. Mr. Lane is working hard with other directors to make the Lesser Prairie Chicken a similar success story.

Mr. Lane said the National Archery in the Schools program is expanding. The state tournament in Albuquerque has 500 competitors, and qualifying winners will represent New Mexico for the first time at a national competition in Louisville, Kentucky.

In response to Representative Tripp, Mr. Lane stated the DGF took over the Off-Highway Vehicle (OHV) program from the NMTD about three years ago and has implemented requirements. The DGF is working on safe, legal locations to operate OHVs and is expanding training from online only to hands-on safety training. Representative Tripp asked how many people have completed training. Patrick Block said he would provide the exact numbers; the number is in the low thousands, with an estimated 50 thousand users in the state. The balance in the trail safety fund at the end of FY12 was \$1.8 million; the DGF brings in \$575 thousand annually in revenue. Higher compliance will lead to increased revenue, he said.

Mr. Lane told Representative White the DGF is now working closely with the tourism department to capitalize on opportunities.

The panel discussed the department's capital request from the game protection fund: Mr. Block stated the total request was \$15.3 million, including \$3.5 million from the game protection fund and \$5.7 from federal aid. The trust fund has a balance of approximately \$35 million.

The department has blanket hiring approval for law enforcement positions, allowing for qualified applicants. Mr. Lane admitted this slows the process down, but the goal is to hire the highest qualified law enforcement officers. Vice Chairman Varela asked Mr. Lane for a report of the total number of FTE, what they are paid, and remaining vacancies.

Mr. Lane stated most of the \$680 thousand that was transferred out of personal services and benefits funded legal counsel for two lawsuits: In one, Wild Earth Guardians sued Director Lane and the commission chairman for alleged violation of the Endangered Species Act for allowing trapping in Mexican Wolf range. The other was a constitutional challenge on the validity of Senate Bill 196, which changed the impact of the license structure on the non-resident outfitting structure.

Vice Chairman Varela asked about the monastery in Pecos Canyon. Mr. Lane said the DGF entered into a five-year lease with the monastery. Vice Chairman Varela noted the sites need improvements and repair, and he wants the Energy, Minerals and Natural Resources Department to collaborate with the DGF to keep all of the facilities in Pecos clean.

### **Miscellaneous Business**

#### *Action Items*

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

*Approval of September 2012 Subcommittee A and B Reports.*

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

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

*Approval of Contracts* – Director Abbey recommended an \$18,100.00 contract for Gary Chabot to serve as FIR manager during the 2013 legislative session. **Senator Cisneros moved to approve the contract, seconded by Representative Larrañaga. The motion carried.**

#### *Information Items*

Director Abbey briefed the committee on the FTE Report.

### **Thursday, October 25**

The following members and designees were present on Thursday, October 25, 2012: Chairman John Arthur Smith, Vice Chairman Luciano “Lucky” Varela, Representatives Henry “Kiki” Saavedra, Larry A. Larrañaga, Don Tripp, Edward C. Sandoval, Nick L. Salazar, James P. White, Conrad James; Senators Carlos R. Cisneros, John C. Ryan, Mary Kay Papen, John M. Sapien, Carroll H. Leavell, Gay Kernan, Pete Campos. Representative Patricia Lundstrum attended as a guest.

**New Mexico Finance Authority Budget Overview FY13 and FY14.** Interim Chief Executive Officer John Gasparich, New Mexico Finance Authority (NMFA), introduced members of his staff and presented an audit crisis chronology of events to date. On March 7, 2012, the NMFA staff made a rating agency presentation to Moody’s and Standards and Poor (S&P) for NMFA senior lien public project revolving fund (PPRF) bond series 2012A. On March 12, the preliminary official statement was released for the bond issue, and on March 21, 2012, the bond was sold for \$22.7 million, rated ‘AA1’ by Moody’s and ‘AAA’ by S&P. Mr. Gasparich stated all of the events surrounding this bond issue were predicated on the belief the NMFA had a valid and complete FY12 audit. On July 11, 2012, the NMFA confirmed the FY11 audit was not completed and was misrepresented as complete. A contract for FY11 was never executed and never approved by the Office of the State Auditor, although an audit firm evidently performed work and had been paid \$70 thousand in partial payment.

The State Auditor began a special audit, and on July 25, 2012, the NMFA provided written notification of a violation of the State Audit Act to the State Auditor. Moody’s placed the NMFA’s PPRF ‘AA1’ senior lien and ‘AA2’ subordinate lien ratings under review for downgrade and subsequently on credit watch, affecting approximately \$1.26 billion in outstanding debt. On August 1, 2012, the Securities Division of the Regulation and Licensing Department issued a search warrant and documents were seized from the NMFA premises. On August 8, 2012, the NMFA issued a PPRF lending protocol in effect until PPRF bonds could be issued. Mr. Gasparich stated until bonds

can be issued, PPRF loans will be restricted to infrastructure project loans of \$5 million or less.

The former NMFA comptroller and the chief operating officer were arrested by Securities Division agents on August 8, 2012. The next day, the NMFA chief executive officer and chief operating officer were placed on leave. On August 17, 2012, the NMFA board appointed an interim CEO and issued a request for proposal (RFP) for financial audits for FY11 and FY12.

On August 28, 2012, PricewaterhouseCoopers LLC (PwC), on contract with the State Auditor, made its first request for information pursuant to the special audit. The NMFA complied and has complied for all subsequent requests for data and documents. On September 10, 2012, an audit contract for annual and external audits of the NMFA finances for FY11 and FY12 was awarded to REDW, LLC, and later approved by the State Auditor.

On September 20, 2012, a Santa Fe grand jury declined to indict the NMFA chief operating officer, but the same grand jury indicted the former NMFA comptroller on 12 counts of forgery and securities fraud. Analysts at Moody's were briefed by the NMFA staff regarding the scandal and the authority's plan for resolving the crisis.

The next week, the State Auditor formally notified the NMFA that PwC was chosen to provide services in conjunction with the forensic audit, costing an estimated \$1.15 million, plus gross receipts tax of \$94,156. The State Auditor's fees are estimated at \$100 thousand.

Moody's extended its watch list for possible downgrade of the NMFA public PPRF ratings on October 10, 2012. On October 15, 2012, S&P removed the NMFA from "credit watch," affirmed the NMFA's triple A rating and assigned a new negative outlook. Finally, on October 18, 2012, the NMFA had an entrance conference with REDW for the FY11 audit.

Mr. Gasparich stated the FY11 financial audit report will be complete by December, and by January 2013 the NMFA will have an internal audit program in place. The REDW is expected to have the FY12 audit completed by March 31, 2013, and the NMFA plans to be in a position to issue PPRF bonds by then and normal operations restored shortly thereafter.

Donna Trujillo, chief financial officer, NMFA, gave a brief overview of the authority's actual expenditures as of September 30, 2012. For salaries and benefits, the NMFA has expended a total of more than \$3 million: \$901.2 thousand for personnel and benefits; \$1.8 million for contractual services; and \$312 thousand for other costs. The projected remaining expenditures through the end of the fiscal year are \$3.6 million in salaries and benefits (assumes filling all vacant positions), \$1.6 million in contractual services (includes unbudgeted PwC contract less internal audit contract), and \$932 thousand in other costs (included unbudgeted expenses related to investigations and enforced savings in other line audits).

Ms. Trujillo stated the budget shortfall is estimated at \$680,806; to cover the shortage, the authority could apply vacancy savings or operation fund balance. The board will have to approve the proposals. Total program spending is at 35.73 percent and the agency is over-expended through September 30, 2012 because of unexpected costs.

Vice Chairman Varela asked Mr. Gasparich what type of legislative initiatives can be taken to assure the public there will be better oversight and accountability at the NMFA and that bond ratings will be attractive to the markets. Mr. Gasparich stated the NMFA does not propose changing or

privatizing anything in regard to changing the government gross receipts tax or the basic structure of the PPRF. Regarding what needs to be done in response to this crisis, he said he believes it was because of a lack of supervision and the act of one individual. The board has revamped its audit committee now chaired by State Controller Ricky Bejerano, and NMFA has hired a chief financial officer and is hiring an internal auditor who will report directly to the board. Representative Varela stated quasi-governmental agencies are not required to submit budgets for approval by the Legislature, which concerns him. Mr. Gasparich said the NMFA is transparent and will make sure the board is aware of the vice chairman's concerns.

Representative Larrañaga asked what remedies bond holders have in the event of a downgrade directly tied to the audit crisis. Dan Opperman, general counsel, NMFA, said a loss on the sale of the bond could be directly tied to the audit. At this point, he said bonds are trading normally and there is no reason to believe bond-holder suits are forthcoming; the NMFA is not yet aware of the forensic audits. Representative Larrañaga asked what it means for the NMFA to have been assigned a "new negative outlook." Michael Zavelle, chief financial strategist, NMFA, read from the Standard and Poor's report which, in part, said that the negative outlook reflects S&P's concern that the authority's potential lack of oversight and internal controls could result in a deterioration of credit quality. Mr. Zavelle said should the state decide to punish the NMFA by taking away GGRT, S&P would lower the ratings. The NMFA has worked closely with both rating agencies throughout the crisis. If the results of the forensic audit are as expected, the NMFA would go off the negative watch list and NMFA will be going back to the S&P with the next issue, he said.

Chairman Smith asked for a list of board members who attended board meetings four months prior and every month after the incident.

Mr. Opperman briefed the committee that the NMDOT Commission directed the NMFA to sign settlements on their behalf and the NMFA is awaiting transfer of \$1 million to the NMDOT road fund. As for possible Financial Industry Regulatory Authority arbitration claims relating to the swap agreements, Mr. Opperman said the NMFA has not closed the door and will continue to evaluate the situation.

**Public Regulation Commission (430).** Patrick Lyons, chairman, Public Regulation Commission (PRC), introduced members of his staff and briefed the committee on commission highlights. Last year, the agency collected more than \$240 million for New Mexico, with 94 percent going to the general fund. A management study evaluated the agency division by division to enhance efficiency and effectiveness, focusing on enhanced accountability of overtime, comp time, flex scheduling, and other time reporting procedures. Mr. Lyons also stated the PRC vehicle policy was revised and improved by placing tighter controls on gas card usage, and management conducted a fiscal impact study on the effectiveness of leasing versus purchasing vehicles. The 2012 audit showed significant improvement on fleet management, he said. Other commission highlights include a new, user-friendly PRC website that streams live audio and video during all open meetings for enhanced transparency.

The Insurance Division is now accredited by the National Association of Insurance Commissioners; the Corporations Bureau now has an interactive online filing system to expedite filing requests.

Future key initiatives include managing the implementation of PRC-related constitutional amendments if passed by voters. The amendments would achieve three things: increase qualifications for PRC commissioners, remove authority to charter and regulate corporations from

the PRC and provide authority to the Secretary of State, and create a stand-alone appointed superintendent of insurance. Another key initiative is to begin a study to evaluate the feasibility of the PRC becoming a fully self-sustained agency.

The PRC FY14 overall budget request is \$53 million, representing an increase of \$1.2 million over the FY13 operating budget. The increase is made up of \$575 thousand to cover vacant positions being budgeted at midpoint and the replacement of agency vehicles with more than 180 thousand miles; other revenue increase of \$614.1 thousand to cover position adjustments and required equipment for State Fire Marshal's Office and Fire Fighters Training Academy, as well as increases for the Insurance Division's operations; federal funds decrease of \$20 thousand because of less federal funding available for the Pipeline Safety Bureau; and fund balance increase of \$40.1 thousand to cover additional costs associated with the patient compensation fund settlements.

Mr. Lyons stated the PRC has always had a complicated budget because of various funding sources and stood for questions.

In response to Senator Leavell, John Franchini, superintendent of insurance, PRC, stated the Taxation and Revenue Department is more specialized and better equipped to handle money the PRC collects on insurance premiums. The PRC collects a huge amount of money with a limited amount of people.

Representative White asked Mr. Franchini if the PRC has made any progress on the long-term care partnership. Mr. Franchini stated the PRC has a problem with the federal government accepting the program with the statute currently in place.

**Public Defender Department (355).** Jacqueline L. Cooper, chief public defender, Public Defender Department (PDD), stated effective public defense prevents crime, lowers jail and prison costs, reduces recidivism, increases public safety, and helps families. She thanked the committee for the \$1.2 million appropriated to the department in FY13, because it made a huge difference. Ms. Cooper said the 20 percent vacancy rate last year will go down to 8 percent in January 2013. Reducing the vacancy rate has boosted morale, increased productivity, helped cases move more efficiently, and helped clients and families.

The PDD now has 11 locations, with one recently opening in Gallup in May. Ms. Cooper stated she has 12 FTE for this location: nine are filled and three are being recruited. By taking more than 50 percent of the McKinley County caseload, the department will lower costly incarceration rates for counties and states.

Ms. Cooper stated the department has implemented measures for cost efficiency, such as sharing state vehicles, getting rid of printers on desktops, and entering into a new lease, saving \$1 million over a period of five years.

For FY14, Ms. Cooper said the department is asking for an increase of \$1.9 million, or 4.7 percent, to continue the work. This request includes 6 additional FTE, four core service agents to be hired in offices statewide, an attorney, and an administrative assistant dedicated to handling sex offender parole hearings.

Ms. Cooper said allowing more PD4 and PD5 positions at higher, competitive salaries able to support families would stabilize the PDD, especially in rural areas.

Representative Larrañaga thanked Ms. Cooper for her service and asked how the department qualifies someone who is indigent. Ms. Cooper stated the PDD does not take every case; in January 2011, the department revamped the entire eligibility guidelines. The PDD follows the federal poverty level guidelines, which have strict requirements on eligibility. Clients who have incomes above the poverty line may apply and enter in to a contract to pay for services. The PDD enters in to approximately 2,000 contract agreements a year. Collected money goes back in the general fund. Ms. Cooper said the conditional order of appointment she drafted will soon be approved and distributed statewide so judges will not be able to order appointment immediately on public defenders.

Representative James commended the PDD and asked if alternate courts have social workers. Ms. Cooper stated the PDD does not have social workers in the drug-court programs, but “wonderful” pretrial officers who monitor people and help them get out to the community for the services they need. Ms. Cooper said that people become angry and want punishment, but 60 percent to 70 percent of the problem is alcohol, drugs and mental illness and they need help.

In response to Vice Chairman Varela, Ms. Cooper stated \$1.5 million was transferred out of personal services and benefits for contract support because of the high vacancy rates. Vice Chairman Varela wanted LFC staff to follow up on the department’s FY12 audit.

Senator Ryan asked if the PDD tracks recidivism rates. Ms. Cooper stated the PDD does not track the rates, but as the head of Mental Health Court, she kept track of those rates and after three years, there is a 3 percent recidivism rate. In the probation area, there is a 50 percent recidivism rate, a huge difference. A person monitored for 12 months on a treatment track versus six months decreases the recidivism rate as well. Treating families also produces results. Pretrial supervision is a lifesaver, she added.

**State Racing Commission (469).** Vince Mares, director, State Racing Commission (SRC), said the commission is currently operating on a budget of \$1.9 million and asking for a significant increase to \$2.75 million for FY14. Equine testing is paramount in overall operations, and the commission is requesting an increase of nearly \$400 thousand, largely to expand the number of horses tested per race to three or four horses. The increase will also allow for out of competition testing. Mr. Mares stated the commission wants a comprehensive necropsy program and to begin taking dead equine to the Albuquerque Diagnostic Equine Center for testing. Currently, funding for the necropsy program comes, in part, from the racetracks, but the fund is dwindling, he said. Of the 12 horses that had necropsies, two have been found to be doped beyond allowable limits. Once found guilty, owners must reimburse the SRC for total costs.

Secondly, the SRC is operating on 18.7 FTE, which is inadequate. With five tracks, there are only two investigators. The SRC is requesting 3 additional FTE for support staff and another investigator. Mr. Mares said ideally he needs six or seven investigators, with one or two at each track. The SRC is drafting legislation to have these investigators certified as law enforcement officers. Support staff will help with licensing, budgeting and overall operations.

Mr. Mares stated he is also asking for an increase for rent, dues and additional vehicles. SRC vehicles are used every weekend and have more than 150 thousand miles on them. The SRC is now a member of the Association of Racing International (ARI), which allows the SRC to check on individuals who may be sanctioned from other racetracks, keep track of licenses, and look into other issues important to the industry.

Senator Kernan asked Mr. Mares if he can assure her the SRC will keep an eye on Zia Park. Mr. Mares stated an outside consultant has been hired to address the issues at Zia Park. The track is improving and having fewer horse injuries. Senator Kernan asked if the SRC has any control over horses racing at illegal tracks. Mr. Mares stated that the SRC only has jurisdictional authority on the tracks themselves. Legislation is being drafted that once investigators are certified law enforcement officers they will be responsible in identifying illegal tracks.

Representative Larrañaga asked if the commission is working with the horse owners, trainers, and track owners to make this a clean business. Mr. Mares stated the SRC is working with everyone they can.

Chairman Smith stated he thinks if he was a tribe participating in gaming, the state may have violated the gaming compact, and asked staff to notify the Department of Public Safety and the executive branch that there is a question on Class III gaming issues. Mr. Mares concluded the discussion by saying New Mexico is recognized as being in the forefront of changing the rules and regulations in the industry.

**Gaming Control Board (465).** Frank Baca, interim executive director and general counsel, Gaming Control Board, addressed the issue on Class II gaming at Chairman Smith's request. Under Section 11 of both the 2001 and 2007 gaming compacts, the limitations on expansion gaming only relate to licensed racetracks and gaming facilities. Mr. Baca stated he will research it further.

Mr. Baca introduced staff members and talked about what the board has done this past year beyond statutory requirements. The GCB has been involved with the Raton litigation; the Fort Sill tribe seeking to open a facility in Deming, and a response to Senate Memorial 52, and had the additional responsibility of reviewing a new casino near Farmington. Mr. Baca said the GCB has undertaken a complete rewrite of its bingo and raffle rules, saying the board took the time for numerous meetings and participation for complete buy-in. The product was responsive to the needs of the industry.

Mr. Baca summarized the board's strategic plan with three basic concepts: generation of revenue, enforcement, and stewardship of the public's money. Mr. Baca said the board is proud to return nearly \$400 thousand to the general fund from vacancy savings. Mr. Baca said the GCB is committed to continuing its good stewardship.

Mr. Baca stated the GCB is requesting, essentially, a flat budget with the exception \$79 thousand for pension and insurance rate increases, and \$300 thousand specifically for information technology maintenance. The GCB is requesting a \$200 thousand special appropriation for tribal litigation. Finally, the GCB is asking for a one-time appropriation for a new monitoring system, required under the Gaming Control Act.

### **Friday, October 26**

The following members and designees were present on Friday, October 26, 2012: Chairman John Arthur Smith, Vice Chairman Luciano "Lucky" Varela, Representatives Henry "Kiki" Saavedra, Larry A. Larrañaga, Don Tripp, Edward C. Sandoval, Nick L. Salazar, James P. White, Conrad James; Senators Carlos R. Cisneros, John C. Ryan, Mary Kay Papen, John M. Sapien, Carroll H. Leavell, Gay Kernan, and Peter Wirth.

**Education Trust Board (949).** José Z. Garcia, secretary of the Higher Education Department (HED), started by stating the department has improved fiduciary oversight of the Education Trust

Board (ETB). He also reported the department has integrated the ETB with the department's student financial aid goals.

Kevin Dieters, the executive director of the Education Trust Board (ETB), gave a brief overview and history of the board. The ETB is the governing body for New Mexico's 529 college savings programs and is responsible for making rules and regulations for the development and implementation of the Education Trust Act. The ETB is governed by a four-member board.

He described the need for families to save for college by noting, while the legislative lottery scholarship program has been one of the most successful aid programs in the state, even these students borrowed \$6.30 for every lottery scholarship dollar received in 2012. The ETB encourages families to start saving early for as little as \$25 per month. A family can establish an account in the education plan and make monthly contributions using automatic debits. Dieters then went on to give a brief overview of the 529 plans. He mentioned the accounts grow tax free and account owners or designated beneficiaries are exempt from New Mexico income tax, subject to certain exceptions. With these accounts, the monies have to be used for qualified tuition expenses, which include tuition and fees, books, supplies, computer technology, Internet access, room and board, and most other college expenses.

The ETB amended its contract with its plan manager, the Oppenheimer Funds, in 2009 to secure \$500 thousand annually to fund the ETB Pathways Scholarships. To date, nearly 1,800 students have received these scholarships. The scholarship is available to first-time freshmen who have graduated from a New Mexico high school with a minimum 3.25 grade point average and demonstrate financial need. This scholarship is also part of the matching funds for College Access Challenge Grant from the U.S. Department for Education, in which the state receives more than \$4 million in federal funding to support college outreach.

Mr. Dieters gave a brief overview on the two plans that the Education Trust Board administers. The Education Plan is a direct sold plan and has approximately \$355.7 million in assets for more than 12 thousand accounts. No financial advisor is needed to participate in this plan. The Scholar's Edge is the "advisor's sold" plan and has approximately \$1.6 billion in assets for more than 134 thousand accounts. In response to Representative Varela's questions, Mr. Dieters noted that most investors are not New Mexican residents. There are about 7,800 in-state account owners (14 percent) for the Education Plan, and only about 9,600 in-state account owners (7 percent) of the Scholar's Edge plan.

In May 2012, the board adopted an investment policy statement and monitoring guidelines to clearly establish the criteria and process for selecting investments and monitoring investment performance. More recently, the board completed a comprehensive review of its investment portfolios and made changes to its investment options with the intent of reducing interest rate risk, increasing diversification, and reducing manager risk.

Mr. Dieters updated the committee on the core bond fund litigation and settlement that was implemented this year. Between March and October, the ETB distributed the total settlement of \$67.3 million in settlement payments to more than 93 thousand account owners who lost money in the Oppenheimer Funds Inc. core bond fund, during 2008 and 2009. Though the settlement was reached in June 2010, the ETB was unable to implement the settlement and distribute funds until the dismissal of two related lawsuits. In response to member questions, all settlement payments have been completed.

Regarding the ETB's financial audits, Mr. Dieters said that the ETB has been working toward improving its financial audits and issued the 2008-2010 audited financial reports of the two investment funds during April 2012. The FY11 audit of the ETB's operations has been completed and will be sent to the Office of the State Auditor soon. He expects the FY12 investment portfolio and operations audit to be submitted on time.

Mr. Dieters stated the ETB does not receive any general fund revenues because its operations are funded entirely from fees and dividend revenues. The proposed budget for FY14 is \$1.6 million, slightly less than the previous fiscal year. The board has 1.5 FTE and a majority of the budget is used to pay for legal, audit, and investment-related expenses.

Senator Wirth asked for further explanation of the remaining lawsuit, *Ping Liu v. ETB*, related to the Oppenheimer core bond suit and a recent court of appeals decision. David Matthews, the HED general counsel, responded that there were three lawsuits filed regarding these funds: one lawsuit was settled by the attorney general's office in New Mexico and other states; another potential class action was dismissed for distribution; and the Ping-Lu class action suit. In an October 22 decision, the New Mexico Court of Appeals reversed a lower court decision that dismissed the class action against the state and the ETB on grounds of sovereign immunity. At this time, the parties may appeal the appellate decision to the state supreme court.

Senator Wirth and others expressed concern with any potential liability of the state if the state was found liable for claims asserted by Ping-Liu plaintiffs. Mr. Matthews responded the appellate court did not determine whether the state would be liable but noted that recovery of any losses by the plaintiffs appeared to be limited to those in the Education Trust Fund – not state funds. The parties await further appellate action or the beginning of the discovery phase at the district court level.

The committee discussed student financial aid issues, unrelated to the ETB. Representative White expressed his concern that universities have an obligation to sit with students or make it required for these students to have some financial counseling, when they sign in to student debt, so that they have a clear or better understanding of the implications. Secretary Garcia noted the department is drafting a letter to the presidents of the colleges regarding this point.

**Higher Education Department (950).** Mr. Garcia presented the goals for the Higher Education Department (HED):

- Revising the higher education funding formula, defining the metrics to recognize institutional performance;
- Identify state workforce demands and future needs so the department can target efforts toward addressing local and statewide needs;
- As part of the workforce goal, streamline nursing programs across all public institutions so students can seamlessly transfer from one school to another; and
- Help institutions identify solutions and alternatives to delivering remedial education and improving college-preparedness of high school students.

The secretary announced the department's renewal of a \$38 million Gaining Early Awareness and Readiness for Undergraduate Programs (GEAR-UP) grant (\$4.6 million annually for seven years) that will support a collective effort between the Public Education Department and the HED to improve college readiness of middle and high school students. The department also received one additional year of funding, for \$1.5 million, for the college access challenge grant to support college financial aid efforts and develop the state's longitudinal (prekindergarten through college) student

data system. These grants align with the department's goals for providing a better workforce for the state.

Kevin Romero, interim administrative service division director, reviewed the department's FY10 and FY11 audits; both received qualified (financial statements) and adverse (federal programs) opinions. He stated the FY10 audit began July 2010 but was completed in early 2012 because of a change in auditors. He reviewed the department's efforts to address the 20 unduplicated findings, which were all listed to some degree in the FY11 audit completed in April 2012. The findings could not be addressed fully because of the short time between the FY10 and FY11 audits being completed; many of these findings might be listed in the FY12 audit because of the late prior-year audit filings. The department intends to complete the FY12 audit by the statutory deadline.

Representative Varela asked for a review of the department's audits when the Legislature meets in January 2013. He also asked for clarification on the audit opinions. Glenn Walters, deputy director of the department, explained that a part of the audit included loan for service and loan forgiveness programs that have not had a satisfactory audit and reconciliation of accounts since the programs' inceptions. He noted the department has reviewed these programs and is doing its best to have all of those records reconciled and in the proper repayment status. Those where collection activities are needed and permissible under the statute of limitations, the department is moving forward to collect payments.

Mr. Romero described the department's FY14 budget request. The department's FY14 request totals \$104.7 million, representing a 0.29 percent increase, or \$593 thousand more than the FY13 operating budget. The FY14 budget request includes a general fund request of \$34.7 million, an increase of \$206 thousand. The increase comes from additional other state funds from the Private and Proprietary Schools Program and a correction in reporting the source of funds for two loan-for-service programs. The HED's general fund increase includes a \$41.3 thousand increase to cover higher health insurance premium rates and increased pension payments.

Mr. Garcia reviewed the department's staffing levels. In FY13, the HED was authorized for 55 FTE. The department currently has 30.5 FTE filled leaving 17.5 vacant though the department is actively seeking to fill these vacancies. The FY14 budget request eliminates 7.5 FTE but includes an expansion for 4 FTE: 2 FTE, an institutional auditor and information technology specialist, would be paid with \$165.3 thousand in additional general fund appropriations requested and 2 FTE, both business operation specialists, would be paid with \$100,400 from other state funds supporting the Private and Proprietary Schools Program. Representative Varela noted his concern with the department's high vacancy rate and asked for more information on whether resources were needed to fill such vacancies.

The secretary discussed House Memorial 43 requiring the department study the feasibility of establishing a school of public health. The secretary noted the department met with leaders from both the University of New Mexico (UNM) and New Mexico State University (NMSU) to discuss planning for the school of public health. Given changes in leadership at NMSU, the department concluded it should continue to study issues related to establishing such a school.

The committee asked the secretary and his staff about the higher education instruction and general (I&G) funding formula. Representative White asked about how the department measures progress in science, technology, engineering, and mathematics (STEM) areas. Given the I&G funding formula was implemented in FY13, he was interested in whether institutions had made progress and how

such progress is measured. The secretary responded that the easiest metric to evaluate progress in STEM areas is to measure the number of STEM degrees awarded. He reported that institutions have responded to formula incentives as measured by increases in awards in these specific areas over time. Kathy Ulibarri, vice president of finance from Central New Mexico Community College, responded to Representative White by noting that the college is working with industry partners to look at the community needs for STEM degree and is now targeting fiscal resources to expand the programs that need to be expanded.

To better preserve and target resources, Representative Larrañaga inquired about how the school of public health can be established and where the institutions have to go through to make this happen. Secretary Garcia stated that there is a consensus that there should be one school of public health. The department's assessment raised questions of how institutions' resources could be used to attract and deliver services given both UNM's and NMSU's programming, participation, and governing structure so as to maximize the assets of both institutions to deliver services throughout the state. The secretary stated that UNM will ask the Legislature for funds to complete planning for a school of public health. Under statute, the department is required to approve institutional programmatic and other changes required to establish a school.

Representative Varela asked the secretary for proposed legislation the department may offer on the legislative lottery scholarship program and for his proposals for the lottery to maintain solvency and scholarship award levels. Mr. Walters stated the lottery reserves will be depleted in FY14 and possibly have a estimated \$5 million deficit. Without changes to the program, the deficit increases to an estimated \$20 million. He said the department is considering final proposals to review different options to determine what the fiscal impacts would be versus what the statute already allows, which is already based on available money.

### **Staff Reports.**

**State Personnel Office (378).** Randall Soderquist, senior fiscal analyst, LFC, presented the FY14 budget for the State Personnel Office. The FY14 base request is at \$4.6 million, an increase of more than \$600 thousand, or 16.5 percent compared with FY13 operating budget. The request included an increase of \$649,700 or 18 percent in personal services and employee benefits and small decreases in contractual services and other categories. Four vacant FTE positions were deleted.

Eugene Moser, director, State Personnel Office (SPO) raised several issues. On compensation and classification, he stated that the current personnel system was in disarray and that the SPO, with the assistance of funding through the LFC and the Department of Finance and Administration, had contracted with the Hay Group to work on the issue.

The agency is in the process of implementing shared services agreements with state agencies of less than 100 employees to improve human resource functions across the state. The SPO has agreements with five state agencies, resulting in approximately \$334 thousand in revenue transfers. The agency continues to pursue intensive activities designed to improve its internal operations and to establish a foundation for effective personnel policy and practice for New Mexico.

With implementation of the NEOGOV application and certification system, Mr. Moser stated he was very cognizant of the complaints from agencies and the public. However, the committee should be aware this system represented a change in the normal way of doing business related to hiring. Because qualifications, not connections, now drive the selection of applicants, some resistance is

expected. The SPO is working with other states to understand the problems that other states are having or have had previously.

On the workforce report, the department has initiated analysis on measures that provide logic for decisions. On the life insurance issue, Mr. Moser said it is requiring them to process more than 9,000 state employee records to ensure that individuals were not charged for services they did not receive. Lastly, on labor negotiations, Mr. Moser stated the state and unions were in a stalemate.

Representative Larrañaga asked when about the conclusion for negotiations deadline. Mr. Moser replied that the agreement expired in January and continuation language keeps the agreement in force. If there is a continued stalemate, the issues will go to arbitration.

Representative Larrañaga then asked if the agency had enough resources to handle the shared services agreements. He stated agencies were responsible for human resource services and SPO should assist agencies in making sure services were accurate. Mr. Moser responded the issues at the Department of Military Affairs required the SPO to step in and ensure accuracy.

**Public School Insurance Authority (342).** LFC staff gave a brief overview of the Public School Insurance Authority (PSIA) agency functions and its budget request. PSIA has 11 FTE and is governed by an 11-member board, three of which are governor appointees. The agency's budget request is \$376.8 million with an increase in the benefits program of \$22.6 million, primarily for health insurance premium increases and an increase in the risk program of \$8.2 million for excess carrier insurance increases. The request anticipates health premium increases of 10 percent for FY14 and risk premium increases of 15 percent.

Staff also noted that for health benefits, educators in NMPSIA's plan pay a \$300 deductible and 20 percent co-insurance. In contrast, educators in the Albuquerque Public School's plan pay no deductible and no co-insurance. There is a disparity in health benefits for teachers, especially those teaching in charter schools in Albuquerque, alongside their APS counter parts and those teaching in more rural areas of the state. For risk on the property side, the frequency of claims associated with deferring maintenance continues. The FY11 audit option was unqualified and on time with zero findings.

Don Gonzales, budget director, said PSIA benefits and risk programs cover 88 public school districts (APS not included), 87 charter schools, and 23 other educational entities. Additionally, it insures CNM, Eastern New Mexico University, Las Vegas Community College and Santa Fe Community College. He said that for the last five years they have been able to use fund balance to meet any increases in costs. In the long run, however, it turned out to be a bad idea. Risk programs tend to be very volatile and losses occurred. Two significant losses – the East Las Vegas School district hazing case that cost about \$8 million in attorney's fees and awards to the victims and hail damage on the east side of the state that cost about \$7 million – are primarily the cause of the requested increase.

Christy Edwards, deputy director, said about 25 thousand employees are in the medical insurance pool, and about 40 thousand employees are covered by life insurance. She said the PSIA is self-insured, which basically means the agency assumes the risk and acts as the insurance company, setting the rates, premiums and plan designs.

The bulk of the benefit request for FY14 is for benefits, including medical, dental, and prescriptions. Ms. Edwards said they expect to spend \$223 million on medical care, another \$44 million on

prescriptions, \$17 million for the dental program, \$13 million for administration fees and then \$11 million for the fully insured life and disability. She said the increase is about 8 percent and assumes members.

Representative Larrañaga asked if rates are adjusted after a big loss, like that for the Las Vegas public schools. He wanted to know if everyone will pay the same amount or if the schools with incidents would have to pay higher rates.

Mr. Quintana responded by saying that PSIA is considered a true pool, which means risk and exposure are spread out through the entire membership. He said five school districts are habitually in that top five the agency has been unsuccessful in getting those districts to understand loss prevention. Agency managers are looking at the possibility of setting rates for everyone and then identifying the top 10 to 20 bad actors and imposing a 10 percent to 15 percent surcharge on them.

Representative Larrañaga responded that he thought that would be fair. He also suggested that schools set up some sort catastrophic insurance to carry beyond a certain point of insurance. He also wanted some clarification about the charters schools in the Albuquerque Public Schools and their association with PSIA.

Mr. Quintana said state law requires that all charter schools, whether they are chartered by the district or the state, fall under the PSIA. Each charter school has its own budget and pays a premium to the PSIA.

Representative Larrañaga asked if the premium is based on a formula. LFC staff informed the committee each charter school and each district get some portion of the funding formula for insurance but the amount does not tie to the amount that assessed by the PSIA.

**Review of Substance Abuse and Treatment Efforts in New Mexico.** Diana McWilliams, Behavioral Health Purchasing Collaborative, gave the committee a brief overview of her background and how she intends to apply it to the drug courts and the behavioral health collaborative. She stated she hopes drug courts will work more collaboratively with the Department of Health, Human Services Department, and Children Youth and Families Department and at the county and local levels.

Ms. McWilliams talked about the challenge of access to services, especially in the frontier and rural communities. She also said that capacity building – making sure that all levels of services are available for every community – is an issue and a challenge. The collaborative is also working on practice enhancement by making sure that services have the same depth and breadth in Albuquerque that they do in Farmington or Gallup. Ms. McWilliams stated a few things the agency will work on in 2013 are

- Increasing the number of intensive outpatient providers for adults and adolescents;
- Reviewing its current collaborative agency regulatory guidelines for ensuring prescription practices are monitored for abuse;
- Enhancing recovery supports by filling the gaps in communities;
- Working on an important service called comprehensive community support services, which is a Medicaid-reimbursable service that helps consumers get back into their community and promotes recovery;
- Refurbishing the agency website to make it easier to navigate but also provide some

- resources for people to see what is available in their communities;
- Making sure the curriculum of the Mental Health First Aid is available throughout our communities in New Mexico.

Ms. Williams concluded by saying that the collaborative will be updating and reporting goals quarterly at collaborative meetings.

Liza Luboff, local DWI bureau chief, Department of Finance and Administration, spoke about the operations and goals of the local DWI program. She stated the main goal of the program is to reduce the incidence of DWI, alcoholism and alcohol abuse in New Mexico. Ms. Luboff said staff members encourage their programs to work closely with the local collaborative and other behavioral health organizations and associations within the state. They also focus on underage drinking and binge drinking because they found that 25 percent of DWI offenders report that they started drinking alcohol monthly between the ages of 16 years and 18. For prevention programs, they have activities in 313 schools in the state (37 percent of schools) that reach 83 thousand students (28 percent of students in the state).

Peter Bochert, the statewide drug court coordinator, New Mexico Administrative Office of the Courts, gave a brief overview of the drug courts and day-to-day operations. He said there are 43 drug courts around the state in 25 of the state's 33 counties. Within the drug courts are four different programs. Mr. Bochert gave a brief breakdown of the demographics of the participants:

- Sixty-eight percent are male and 32 percent are female.
- More than 50 percent of participants in non-juvenile programs are between the ages of 18 through 34.
- Fifty-nine percent Hispanic, 29 percent are Caucasian, and 9 percent are Native American.

In juvenile drug courts, the drugs of choice are primarily marijuana and alcohol, but also prescription pain killers and heroin. The non-juvenile programs include alcohol, marijuana and methamphetamines. He stated the drug courts have lost 36 percent of their general funding since FY09 and the programs absorbed those cuts by cutting their treatment contracts and reducing capacity.

Representative Saavedra wanted to know if there are any programs set in place to help prevent these issues from happening in the first place. Ms. Williams stated \$3.4 million went to facilitate prevention programs throughout the state. She said many of those programs are in schools in which they are addressing and providing evidence-based curriculum to the students to stop them from ever having any kind of substance abuse problems. She stated the program starts in first grade and goes through 12<sup>th</sup> grade. At this time, the agency is collecting to determine which grades the programs are reaching.

Kristina Jaramillo, Metro Court presiding judge, agreed with Representative Saavedra's that prevention is important. She said prevention must include families and the state needs more community-based services and more residential treatment. Judge Jaramillo expressed concern about heroin use among juveniles. Everyone who works on juvenile drug issues must work together because eventually these children end up in the community and either contributes to their communities or drain resources.

Senator Papen asked about \$75 thousand appropriated for FY13 for operational expenses at the Los Lunas substance abuse center. Ms. McWinters said the appropriation was used to get the facility up and running and she will get a more precise answer to find out exactly where the appropriation money went. Senator Papen said she was concerned about the lack of enough mental health courts in the southern part of the state.

Senator Papen asked for clarification on the Optum Health and Corrections Department's issue in Hobbs. Troy Fernandez, Optum Health New Mexico, explained it was a FY10 budgetary issue valued at \$1 million. The reason the money has not been returned is because the Corrections Department needs to request that it be returned and overages and under-expenditures must be addressed. If the department decided to use the \$1 million toward the overages, then \$500 thousand will be refunded to the department. Optum Health is not keeping any interest on that money. Mr. Fernandez said he is working with the department on the amount to be reverted.

Mike Estrada, community corrections administrator, Corrections Department, said in the proposed reconciliation for FY10 dollars at the end of calendar year FY11, managers found about 22 providers had overspent their allocations from the Corrections Department. The department has to decide if it is going to pay for the overspending. He said the department is leaning toward paying the providers so they can be compensated for FY10. In that situation they will have \$500 thousand coming back to the agency, which would then revert.

Senator Smith concluded the discussion by saying the flow of drugs from across the border makes it hard to control supply, making it hard in turn to control demand. While some cities and counties may contribute resources to some of these drug court programs, ultimately it is the responsibility of the state.

With no further business, the meeting adjourned at 12:30 p.m.

  
Chairman John Arthur Smith

  
Vice Chairman Luciano "Lucky" Varela

